THE CITY OF NEW YORK

COMMISSION TO COMBAT POLICE CORRUPTION

NINTH ANNUAL REPORT OF THE COMMISSION

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APPENDIX
Executive Orders

I. OVERVIEW

In February 1995, the Commission to Combat Police Corruption (the "Commission") was created through Executive Order 18[1] for the purpose of monitoring the anti-corruption efforts and systems of the New York City Police Department (the "Department"). Throughout its tenure, the Commission has published 28 reports, including eight Annual Reports,[2] which examined various aspects of the Department's anti-corruption policies and procedures. In this report, the *Ninth Annual Report*,[3] the Commission summarizes its latest report: *Review of the Background Screening Process of Civilian Employees*,[4] and reports on the Commission's work over the past year. This work includes a review of closed IAB investigations; an examination of the Police Academy curriculum for new recruits; a review of how the Department handles whistleblower complaints; a review of disciplinary cases involving false statements, and a review of the Department safeguards implemented to prevent and detect the filing of false motor vehicle accident reports. This report concludes with a summary of the Commission's daily operations and an outline of the Commission's planned projects for the coming year.[5]

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[1] Executive Order No. 18 is reproduced as Appendix A to this report.

[2] In its Annual Reports, the Commission describes the studies and audits it has conducted since the publication of the prior Annual Report. The Commission also describes any other work it has performed during that time period.

[3] This report covers the work performed by the Commission between January 2005 and July 2005. It does not cover the Commission's work between August 2005 and the publication of the report in February 2006 as this time was used for the editing and publication process. That time period will be covered in the *Tenth Annual Report of the Commission* expected to be published in February 2007.

[4] August 2005.

[5] The Commission provided the Department with a draft of this report.

II. SUMMARY OF PUBLISHED REPORT

Review of the Background Screening Process of Civilian Employees

After previously reporting on the Department's Applicant Processing Division's ("APD's") method of conducting background investigations of police officer recruits, the Commission conducted its first study about how the Department screens applicants for civilian positions.[6] The Commission chose to examine how civilian applicants are screened because they may interact with the public and may have access to confidential information within the Department.[7] To accomplish this goal, the Commission reviewed background investigations of a random sample of 156 applicant files for Traffic Enforcement Agents ("TEAs") and School Safety Agents ("SSAs") appointed to the Department between December 23, 2003 and June 4, 2004.

At the commencement of the study, the Commission requested information from the Department about the guidelines that APD applies when screening civilian employees. The Commission was informed that APD does not have specific written instructions that an investigator must follow to complete the background investigation of a civilian applicant. The Department did, however, state that APD investigators conducting civilian background checks

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[6] *See* The Commission's Report: *Performance Study: A Review of the New York City Police Department's Background Investigation Process for the Hiring of Police Officers* (January 1999); *Fifth Annual Report of the Commission* (February 2001) at pp. 55-63; *Review of the New York City Police Department's Recruitment and Hiring of New Police Officers* (December 2001); and *Review of the Background Screening Process of New Recruits* (February 2005).

[7] For example, Police Administrative Aides ("PAAs") have access to blank Police Accident Reports and tax identification numbers for members of the service. Several PAAs have been implicated in the preparation of fraudulent motor vehicle accident reports that they have prepared using their access to this information. These reports are then submitted to insurance companies in order to collect money for these fraudulent accidents and for services which are either unnecessary or have not been provided. For further information on fraudulent accident reports *see infra* at pp. 35-45.

perform steps similar to those taken in the investigation of police officer recruits.[8] The Commission, therefore, conducted its review of the civilian applicant files based on the guidelines used for police officer recruits. At the conclusion of the study, the Commission recommended that APD set forth written procedures for the background investigation of civilian applicants. The Department has stated that they are in the process of creating an instruction manual for civilian employee investigations that will reflect APD's current policies and will contain updated forms to be used during the investigations.

In its review, the Commission examined the steps taken by the APD investigators to verify information supplied by the applicants. The Commission specifically focused on the investigators' efforts to obtain information about the candidates' academic and employment histories, as these are two areas where investigators seek specific character information about the candidates.[9] The Commission examined the investigators' attempts to obtain the information, the rate of success in obtaining substantive information, and whether the information obtained was derogatory in nature. In cases where derogatory information was discovered, the Commission determined whether any further efforts were made to obtain clarification or additional information concerning the derogatory information. Finally, the Commission examined whether the candidate made false statements or omissions in his[10] application and if so, how the investigators responded.

As to the educational background of the candidates, the Commission found that, in most

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[8] For a complete list of the requirements for conducting background investigations on police recruits, *see* the Commission's Report: *Review of the Background and Screening Process of New Recruits* (February 2005) at pp. 2-3.

[9] To screen police recruits, the investigator must obtain information from all schools attended by the candidate since ninth grade and contact former employers for the five years prior to the candidate's employment.

[10] Throughout this report, the third person masculine pronoun will be used in conjunction with all persons regardless of their gender.

cases, investigators were following APD guidelines by contacting all schools attended by the candidate since the ninth grade. The Department attempted to get information from 89% of the schools attended by all the candidates in the sample.[11] While investigators made adequate initial efforts to obtain information from schools, in some cases, the investigators did not follow up after their original inquiry failed to secure a response. Of the educational institutions contacted in the Commission's sample, 23% did not respond to the initial inquiry and were not contacted again. In addition, in most cases where the investigator successfully obtained information from schools, no substantive information was provided about the candidate's character. Instead, most schools only verified the dates of the candidate's attendance.[12] Of the schools that responded, only 19% provided substantive information about the candidate's performance or disciplinary history.[13]

As to the candidates' employment history, the Commission found that APD was consistently seeking information from each of the candidates' employers for the five years prior to appointment. The Commission found that investigators attempted to contact 91% of all former employers in the sample. At times, however, the Commission found that investigators failed to follow-up when an employer did not respond to their initial request. Thirty–two percent of all the employers who failed to respond were not contacted again. Despite this lack of follow-up in some cases, the overall response rate of employers was 68%.

In addition, approximately 64% of the responses received from these employers

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[11] While investigators did not contact every school in the sample, the basic education requirement of a high school diploma or its equivalent was documented in all cases.

[12] The form sent to the schools requested information about whether the candidate had any disciplinary, truancy, or lateness problems in addition to requesting dates of attendance and information about whether the candidate received a degree from the institution.

[13] The remaining 81% only provided the dates the candidate attended the school or the transcript or diploma of the candidate.

contained some substantive information regarding the candidate's performance or character. Consequently, investigators were able to obtain substantive information from at least one previous employer for 78% of the candidates screened. When investigators made personal contact with employers, they usually received a faster response, and, in some cases, obtained more substantive information. It appears, therefore, that increased use of personal contact would improve the efficiency and quality of the investigation. Based on the increased responses observed when efforts to follow-up were made with employers who were initially not responsive, the Commission recommended that APD enhance their efforts in this area. The Department indicated that it intended to increase follow-up contact with candidates' employers in the future.

Derogatory information was obtained in approximately half of the investigations.[14] While this is a significant percentage, in most cases the derogatory information warranted further investigation, but did not appear to be of the type that would preclude the candidate's appointment. The Commission did, however, comment that investigators should make efforts to follow-up on any such information received to determine whether or not derogatory information was indicative of more serious character issues. Based on the documents found in the file, in more than half of the cases containing derogatory information, it appeared that the investigator conducted as much follow-up as was practicable. The Commission recommended that additional investigative efforts be made in those cases where substantial derogatory information is revealed during the candidate's screening whether or not the information would automatically prevent a candidate's appointment. The Commission also recommended that the reasons underlying decisions not to explore certain information be documented in the candidate's file.

[14] Of the 81 candidates whose files contained derogatory information, 14% had negative information that related to prior schools or jobs; 37% had negative information in other areas, such as driving history, debt collection proceedings, or criminal records; and 49% contained derogatory information from schools or employers in addition to another area.

While some candidates disclosed derogatory information in their applications, some others misrepresented or omitted information. Twenty eight percent of candidates made some form of omission or misrepresentation in their initial application.[15] The Commission also found that, in many files, the candidates provided a statement that corrected the facts misrepresented or omitted, but did not provide a satisfactory explanation for the initial omission or misrepresentation. In addition, it appeared that, in some cases, investigators failed to follow-up on incomplete or unsatisfactory explanations for omitted information. The Commission recommended that candidates who intentionally omit or misrepresent information to conceal prior misconduct should, absent exceptional circumstances, be denied appointment. In this type of situation, the APD investigator should document his assessment of the significance and the intent underlying a candidate's omissions or misrepresentations.

Because there were a significant number of cases where schools, employers, and computer checks did not provide the investigators with a complete or accurate depiction of the candidate's character, the Commission also recommended that APD supplement its existing format of candidate investigations with personal references. The Department is in the process of implementing this recommendation.

The Commission further recommended that investigators should document the extent of their initial efforts to obtain information and their follow-up attempts when this information is not forthcoming or when derogatory information is revealed.

[15] The Commission did not believe that all of these misrepresentations or omissions were for the purpose of deliberately concealing negative information. The Commission, however, maintains that it is important for the APD investigator to determine the reasons underlying the misrepresentation or omission.

III. THE COMMISSION'S MONITORING OF CLOSED IAB INVESTIGATIONS

A. Introduction

Under Executive Order No. 18, the Commission is required to analyze "the effectiveness of the Department's systems and methods for investigating allegations of corruption."[16] As part of its mandate, the Commission annually reviews various "C" cases[17] closed by the Internal Affairs Bureau ("IAB"). During this past year, the Commission examined 44 closed IAB investigations conducted by nine separate IAB investigative groups.[18] The cases examined for this review were closed between 2004 and 2005.

B. Methodology

The Commission randomly selected "C" cases from lists of investigations that were recently closed by IAB. After a case was selected for review, the Commission examined the investigative file in an effort to ascertain the quality of that particular investigation. In evaluating these cases, the Commission examined the case as a whole, based on the nature of the allegation and the progress of the investigation. The Commission specifically looked at whether a specific investigative plan was created for each case and whether appropriate investigative steps were performed, including the utility of the investigative techniques that were used. The Commission also evaluated the quality of interviews conducted by IAB investigators and whether those interviews were conducted in a timely manner. Finally, the Commission evaluated whether the case was open for an undue length of time based on the nature of the

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[16] *See* Executive Order 18 2(a) (ii).

[17] IAB classifies cases as "C" cases when allegations of either serious misconduct or criminal activity have been made.

[18] IAB has nineteen investigative groups which are divided both geographically and by subject matter.

allegations and the investigative steps that were performed.

As the Commission reviewed these cases, it discussed its findings with IAB executive staff and investigators. The Commission found these discussions to be productive because it was able to provide timely feedback to investigators regarding any issues the Commission noted in its review. These discussions also provided an opportunity for Commission and IAB staff to exchange ideas and work together to evaluate the quality of IAB investigations. The Commission found IAB personnel to be professional and responsive, and it believes that this on-going dialogue has enhanced the Commission's monitoring function.

C. Findings

In its reviews over the past ten years, the Commission found that IAB had sufficiently investigated the majority of its cases and was also generally closing cases in a timely manner with correct dispositions.[19] This audit revealed similar results. Despite the overall positive quality of the investigations, the Commission noted three general areas in which some IAB investigations could be strengthened. Specifically, investigators need to ensure that a case specific investigative plan is developed for each investigation. The Commission believes that IAB can investigate the allegations it receives in a more efficient and direct manner if a detailed strategy is developed at the beginning of each investigation and is periodically evaluated as information is uncovered and the investigation progresses. Investigators also need to fully develop and utilize particular investigative tools in ways that are likely to succeed in uncovering evidence rather than as a routine step to take as a part of an investigation. Finally, investigators need to ensure they explore all significant evidentiary leads before closing a case.

[19] *See Fifth Annual Report of the Commission* (February 2001) at pp. 18-29; *Sixth Annual Report of the Commission* (December 2001) at pp. 20-32; *Seventh Annual Report of the Commission* (March 2004) at pp. 12-70; and *Eighth Annual Report of the Commission* (February 2005) at pp. 15-20.

1. Investigative Strategies

In this closed case review, the Commission observed that IAB often used a similar investigative plan in many of its cases. While a generic plan provides some guidance in how a case should be investigated, each case should have a plan that is specifically developed as evidence is gathered. The Commission understands that in an effort to resolve a case, investigators may utilize a number of traditional investigative steps, and the Commission commends IAB's efforts to explore a variety of options during the course of an investigation. The value of an investigative step, however, needs to be made within the context of the individual facts of each case. In this review, the Commission noted that in a few cases, some investigative steps were utilized which did not have a foreseeable benefit to the investigation. Specifically, the techniques, when evaluated, were not likely to produce evidentiary leads. Instead, reliance on these techniques only served to delay the ultimate resolution without adding any significant information to the case.

A more individualized approach to each case can lead to a quicker resolution of allegations by creating more targeted investigations. The Commission believes that team leaders can assist investigators in devising a unique plan specifically tailored to each case and also help determine whether a particular investigative technique is likely to add to the investigation or merely engender further delay. The Commission further recommends that once a plan is devised, periodic team leader reviews should be conducted to evaluate each case plan for its effectiveness. The Commission has observed that IAB executives are aware of this issue and are encouraging investigators and team leaders to develop case specific strategies and evaluate the effectiveness of any proposed investigative technique before it is utilized.

2. Specific Investigative Techniques

Team leader reviews can also be used to plan how to execute a specific investigative technique. Techniques such as witness interviews, surveillance, targeted integrity tests,[20] E.D.I.T. operations,[21] and P.G. 206-13 interviews ("P.G. interviews", "P.G.", or "P.G. hearings")[22] can be valuable tools for gathering information when implemented in an appropriate manner. In past reports about IAB investigations,[23] the Commission has examined how the Department has used these specific investigative techniques and has found that investigators have consistently improved their utilization and implementation of these techniques. In this review, however, there were some cases where particular techniques were sometimes executed in a manner that was not likely to yield the best results.

Surveillance, to be effective, must be conducted in a way that maximizes the opportunity to observe the subject officer and at times when the officer is likely to engage in the reported misconduct. To increase the likelihood of locating the subject officer, his on duty schedule

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[20] An integrity test is an artificial situation, designed and closely monitored by IAB, to test a subject officer's adherence to the law and to Departmental guidelines. In targeted integrity tests, specific officers are tested as part of an on-going investigation into allegations of corrupt activity.

[21] E.D.I.T. is an acronym for enforcement, debriefing, intelligence gathering, and testing. In these operations, IAB investigators will arrest civilians suspected of criminal activity or will ensure that another Department unit arrests these individuals so investigators can interview them regarding their knowledge about police corruption, in general, or about a particular subject officer.

[22] Patrol Guide § 206-13 (formerly PG § 118-9) allows the Department to interrogate officers within the context of an official Department investigation. Officers that refuse to answer the questions during these interviews are suspended and officers that are found to have been untruthful during the examination will be dismissed, absent exceptional circumstances, from the Department.

[23] *See* the Commission's Reports: *Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau* (October 1997); *Second Annual Report of the Commission* (October 1997) at p. 21; *Third Annual Report of the Commission* (August 1998) at pp. 3-7 and 22-24; *Fourth Annual Report of the Commission* (November 1999) at pp. 22-42; *Performance Study: The Internal Affairs Bureau's Integrity Testing Program* (March 2000); *Performance Study: A Review of Internal Affairs Bureau Interrogations of Members of Service* (March 2000); *Fifth Annual Report of the Commission* (February 2001) at pp. 18-29; *Sixth Annual Report of the Commission* (December 2001) at pp. 20-32; *Seventh Annual Report of the Commission* (March 2004) at pp. 12-70; and *Eighth Annual Report of the Commission* (February 2005) at pp. 15-20.

should be ascertained prior to undertaking the surveillance. Planning should also include determining whether the misconduct was alleged to have occurred while the subject officer was off or on duty and whether it occurred on particular days or at particular times. Surveillances should then be scheduled accordingly so the investigator is more likely to observe the officers engaging in the complained of conduct. In its review, the Commission found that these steps were not always performed prior to initiating surveillance of a subject officer. Team leader reviews can be utilized to plan the best time and ways to conduct surveillance. They can also be used to remind investigators to check background information including the officer's on duty schedule and current address.

Similarly, targeted integrity tests should test for the behavior that was reported and should be conducted in a manner that provides the officer with an opportunity to commit misconduct that is similar to the alleged misconduct. This, again, involves scheduling the test when the officer is most likely to be alone or otherwise willing and able to engage in misconduct. The Commission found cases where integrity tests were performed while the officer was working with a partner or as a part of team and therefore, unlikely to engage in the alleged corrupt acts without alerting his colleagues and risking being reported. Also important is the development of realistic scenarios that will not tip the officer off that he is the subject of a test.

When conducting a P.G. interview, investigators need to remain cognizant that this interview can be a valuable means of collecting evidence and is not merely a formality which must be conducted before the closure of a case. Before a P.G. interview, the team leader and the investigator should evaluate how best to conduct the interview based on the allegations and information the investigator has already gathered. Investigators should use the P.G. interview to fill in informational gaps in the case. Before an investigator asks the ultimate question of

whether or not a subject officer committed the act of which he is accused, the investigator should probe the subject officer's actions, movements, associations, and any other relevant evidence that was discovered during an investigation. To achieve this, the investigator, in conjunction with the team leader, needs to develop questions and an outline of subject areas in advance to ensure that all relevant information is obtained. Team leaders should also be present during interviews to assist less experienced investigators.

3. Investigative Leads

In the majority of cases, investigators spoke with all necessary witnesses, obtained all relevant documents, and pursued all significant leads. In ten cases, however, the Commission noted that investigators could have better pursued leads that were developed during an investigation.[24] While these leads may not have necessarily changed the outcome of a case, they did warrant an additional inquiry at the time they were discovered. The Commission believes that further examination of these leads would have been beneficial in that they may have revealed pertinent information, strengthened the eventual disposition, or led investigators in a different direction.

The Commission believes that leads that may produce evidence that will assist in the investigation of a case should be pursued. When a particular lead is discovered, the investigator and his team leader should determine if the investigation of that lead will benefit the case as well as the best manner in which to pursue it. In its review of these investigations, the Commission rarely found evidence of any discussion concerning whether a particular lead was likely to produce evidence and, therefore, whether its pursuit was a constructive use of Department

[24] The Commission raised this issue with IAB executives, and a number of cases were reopened for additional investigation.

resources.

D. Conclusion

The overall quality of IAB investigations remains high, and the majority of cases in this review were appropriately investigated. The Commission, however, believes that IAB could strengthen some of its investigations by pursuing more focused investigative strategies and evaluating the potential benefits of individual investigative techniques.

IV. POLICE ACADEMY CURRICULUM AND TRAINING

A. Introduction

To prevent corruption, every police department must adequately inform and educate its police cadets about the moral and ethical dilemmas faced by police officers on a daily basis and the appropriate responses to those dilemmas. Classroom instruction and role-playing should be used to not only teach cadets about proper procedures and legal concepts but to also impart information about integrity in policing that will be a foundation for ethical behavior on the street. A department that strives to create a strong ethical foundation for its cadets will have greater influence on the way cadets will view their jobs and their behavior in the future. Moreover, a significant emphasis on integrity during academy training can convey the message that the Department does not tolerate acts of corruption or those who fail to report such acts.

For these reasons, the Commission chose to monitor how integrity and ethics are being taught in academy classrooms as well as the quality and quantity of ethics and integrity materials included in the Police Academy curriculum. To that end, Commission staff and Commissioners met with Police Academy officials to discuss integrity training given to recruits as well as any

additional integrity training that is available to members of service once they graduate from the Academy. In addition, staff members reviewed the Police Academy curriculum and observed classroom instruction in an effort to see how the integrity and ethics materials were applied in the classroom.

B. Integrity and Ethics in the Police Academy Curriculum

The NYPD Academy training materials consist of the *Police Student's Guide* ("*the Guide*"), the *Role-Playing Guide*, the *Instructor's Guide*, the *Recruit Officer Handbook* and various memorandums and handouts concerning specific issues such as sexual harassment and the Holiday Integrity Program. The *Guide* is a comprehensive textbook of policing. Integrity and integrity-related crimes are the focus of two chapters, with general integrity issues addressed throughout the *Guide*.

Overall, the *Guide* adequately addresses police integrity issues. For example, in a chapter entitled "*Policing With Integrity*," there is an explanation of the Department's Code of Ethics, the importance of maintaining a high standard of conduct when off-duty, and a history of specific events of police corruption. This chapter also includes the mission and function of IAB, the integrity control officer ("I.C.O."),[25] precinct level safeguards against corruption, a condemnation of the "Blue Wall of Silence," and the proper mechanisms to report corruption.

There is a separate chapter entitled "*Integrity Crimes*" which defines and explains the prohibitions against engaging in the crimes of Bribery, Official Misconduct, Rewarding Official

[25] An I.C.O. has the rank of Lieutenant and is the supervisor at the command level who is responsible for developing strategies to identify and address problem officers and locations and for investigating certain types of alleged misconduct that are determined not to warrant investigation by an outside investigative unit. For further discussion about I.C.O.s *see* the Commission's Reports *The New York City Police Department: The Role and Utilization of the Integrity Control Officer* (December 12, 1996) and *The New York City Police Department's Non-IAB Proactive Integrity Programs* (December 2001).

Misconduct, and Giving and Receiving Unlawful Gratuities. This chapter also includes excerpts from the New York City Administrative Code and the New York City Charter, as well as selected Board of Ethics Rulings involving the Department.

With the exception of one reference to the existence of federal, state, and local whistleblower statutes, the Guide does not mention any measures in place to protect officers once they have come forward with an allegation of corruption.[26] The Commission recommends that the Department enhance its efforts to educate recruits on the general protections available to officers who report instances of corruption.

The *Role-Playing Guide* lacks any reference to integrity-related instruction in the written curriculum. NYPD Academy officials explained that many of the role-playing exercises have integrity components within them. In addition, at the end of a role-playing exercise, recruits are graded based on their knowledge of procedure, their knowledge of the law, their courtesy, professionalism, respect, their professional demeanor, and their integrity in completing the exercises. The Commission recognizes that integrity and ethics cannot be integrated into every subject; however, the Commission recommends that integrity and ethics questions and scenarios be incorporated into the written role-playing curriculum. The Commission believes that instructors will place a greater emphasis on integrity in policing during role-playing exercises if it is a written requirement in the curriculum.

C. Classroom Observations

Commission staff attorneys and Commissioners separately observed approximately 28 hours of in-class integrity training. These 28 hours encompassed the two courses that are

[26] *See infra* at pp. 17-30 for discussion about the Department's protections for officers deemed to be whistleblowers.

specifically focused on integrity and ethics in policing that are taught to the recruits.[27] Overall, the Commission found the instructors to be adequately teaching cadets on the necessity of integrity and ethics in policing. Most instructors were generally proficient in the subject matter and their ability to teach the materials. Instructors conveyed the seriousness of the subject to recruits and made an effort to engage the recruits in dialogue. The Commission observed that interaction concerning current events and typical scenarios that involve corruption and police officers were valuable tools in effectively relaying difficult concepts.

The Commanding Officer of IAB also addresses each Academy class to describe the role of IAB and the consequences of engaging in corrupt behavior. Commissioners and staff also observed these lectures and found them to be informative.

D. Continuing Education

The Commission encourages the Department to offer continuing integrity and ethics training after graduation from the Academy. Police Academy officials informed the Commission that after September 11, 2001, most on-going training was devoted to terrorism prevention; however, at some point in the future the Academy intends to resume integrity training for experienced officers. The Commission believes that continuing education in integrity and ethics in policing would not only re-emphasize the importance of the subjects but convey to the more experienced officers the Department's ongoing concern and desire to prevent corruption within its ranks.

[27] Recruits in the Academy are divided into smaller sections. Each section receives the same instruction but by different lecturers. This instruction is not necessarily taught in the same order for all of the sections. Therefore, Commission staff and Commissioners observed the courses involving the same material being taught by different instructors to different sections of the Academy. These two courses represented only a small fraction of the courses taught to the recruits.

The Commission also encourages the Department to examine the feasibility of establishing field training officers[28] to monitor the new police officers as they begin their careers. The Commission believes that having an experienced officer within each platoon charged with monitoring, assisting, and instructing new members of the service in a wide variety of subjects including integrity and ethics would further help attain a corruption-free police force. A field training officer would assist new police officers in responding in an appropriate manner to every day ethical and policing dilemmas.

E. Conclusion

The Commission believes that interaction between instructor and student as well as integrity scenarios incorporated into role-playing lesson plans are necessary components to a meaningful integrity and ethics curriculum. While there are a few areas that could be augmented, the Commission believes that police cadets are being adequately informed and trained in issues of integrity and ethics in policing.

V. DEPARTMENT WHISTLEBLOWER PROTECTIONS AND RETALIATION INVESTIGATIONS

A. Introduction

In order to maintain a corruption free police department, administrators within the Department must be aware of misconduct committed by its members so penalties, including termination, can be imposed in a quick and decisive manner. Members of the service are an invaluable resource in rooting out corruption and gathering evidence concerning allegations that have been made.

[28] Field training officers are members of the service who work with probationary police officers over an extended period of time in the field once they have graduated from the Academy.

Given the value of information from inside sources, the Department should encourage reporting by its members. The Commission chose to re-examine how the Department encourages and protects officers who provide information about misconduct within the Department because of its belief that officers will not come forward unless they are reasonably assured of protection from retaliation. Mechanisms should be in place to preserve the confidentiality of the whistleblower; to transfer personnel as necessary to ensure the physical safety of the whistleblower; and to provide support services such as counseling and career monitoring to prevent a negative effect on the reporting officer's career. Additionally, when a reporting officer alleges that he is the victim of retaliation based on his cooperation, there must be a swift and fair investigation into his claim. Finally, severe discipline must be imposed on those members of the service found guilty of committing retaliatory acts.

In past reports, the Commission has examined how the Department treated officers who came forward with allegations as well as those members who, during an investigation, were instrumental in providing information and evidence to help sustain a finding that a subject officer committed wrongdoing.[29] When the Commission originally examined this subject in 1997, it was prompted to do so by requests for assistance by several active members of the service for what those members believed to be acts of retaliation taken against them. The Commission found that there was no unit within the Department for members with this type of complaint to turn to for help. The Commission recommended that the Department institute a clear policy prohibiting retaliation and develop procedures to identify and assist officers who provide evidence of corruption. It also recommended that this policy apply to all officers who provided useful information whether or not they fell within the classic definition of a "whistleblower".

[29] *See Third Annual Report of the Commission* (August 1998); *Fourth Annual Report of the Commission* (November 1999); and *Fifth Annual Report of the Commission* (February 2001).

Additionally, the Commission recommended the creation of a proactive unit which could offer assistance to those members of the service who provided information and could monitor their careers to guard against future adverse actions. Finally, the Commission recommended that the Department provide career incentives to those who came forward or otherwise provided meaningful assistance.

After this review, the Department issued Interim Order 70 ("I.O. 70").[30] While this order did not create the separate unit that the Commission had recommended, it articulated a clear policy which acknowledged that the success of the Department's efforts to eliminate misconduct and corruption depended on the willingness of its members to come forward to report such activities. With the implementation of I.O. 70, the Commanding Officer of the Employee Relations Section of the Personnel Bureau ("ERS") was given responsibility for personally interviewing all members of the service who sought assistance to determine if they met the criteria required for Department protection.[31] After making this determination, the Commanding Officer could decide to refer any allegations to IAB for further investigation.[32] Contrary to the Commission's original recommendation, the unit did not proactively make contact with the reporting officer unless he requested help.

In 2001, the Commission again evaluated the status of the Department's whistleblower program. As part of this evaluation, the Commission spoke with the Commanding Officer of ERS and the Chief of Personnel. The Commission learned that although 64 cases had been

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[30] An Interim Order is an amendment to the Patrol Guide that is added between updated editions. It sets forth the Department's newly adopted policies and procedures. I.O. 70 was issued on November 16, 1998.

[31] These requirements were that the complainant must have come forward voluntarily with information about misconduct or corruption and some retaliatory action must have been taken against the complainant for providing that information.

[32] The Office of Equal Employment Opportunities remained responsible for the investigation of all employment discrimination and sexual harassment claims.

referred to ERS since I.O. 70 was implemented; only seven were deemed to meet the two criteria that entitled the complaining officer to whistleblower protection. While the Commission found that these seven cases were properly investigated, it stated that the Department needed to improve the performance of the whistleblower unit. For instance, the Commission recommended that the Department needed to better publicize the existence of the ERS program within the Department and proactively monitor the careers of all officers who filed whistleblower complaints whether or not they requested this specific action. Finally, the Department needed to make available support services and career incentives to officers who supplied information about police corruption or misconduct.

B. Methodology

In conducting this review, the Commission first researched and examined State and local "Whistleblower" laws to determine exactly what claims were entitled to protection under these laws.

The Commission also examined the policies and procedures that the Department has in place to encourage and protect members of the service who report misconduct by their colleagues and supervisors. This review was accomplished through the examination of the relevant Patrol Guide section[33] and Interim Order,[34] the analysis of closed cases that were investigated by IAB which involved either allegations made by a member of the service or allegations of retaliation, and through discussions with high ranking executives in the Department.

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[33] Patrol Guide § 205-38: Investigation of Incidents of Retaliation against Members of the Service.

[34] Interim Order 12 ("I.O. 12").

For its case review, the Commission examined closed IAB cases where the corruption allegations originated from a member of the service. These cases were chosen from the 2005 closed case reviews previously conducted by the Commission. Of the 37 closed cases randomly chosen and reviewed by the Commission during this time period, only seven were initiated by a member of the Department.[35] Additionally, the Commission requested all IAB investigations[36] that were closed between January 2004 and January 2005 which included an allegation of retaliation.[37] The Commission received seven such cases.

Additionally, the Commission spoke with Department executives to determine how the Department protected whistleblowers and addressed allegations involving retaliation. The Commission inquired how these allegations were classified, what investigative groups were responsible for investigating them, and what protections were available to members of the service who allege retaliation. The Commission also requested information on the efforts of the Department to encourage officers to report corruption and whether any career incentives were provided to those officers who do provide such information.

Finally, the Commission contacted and spoke with other large city police departments to determine whether and how they afforded protection to officers who provided information about corruption, encouraged officers to provide such information, and the manner in which they addressed allegations of retaliation.

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[35] The Commission did not include the seven cases it reviewed in connection with the retaliation analysis as part of this sample.

[36] As noted *infra* at p. 24, depending on the classification of the retaliation allegation, it can be investigated by IAB, the Office of Equal Employment Opportunity, or the complainant's Command. Those allegations investigated by the Office of Equal Employment Opportunity are, by law, confidential. The Commission did not request the retaliation investigations conducted by the individual commands.

[37] Cases involving chronic complainants with known credibility issues were eliminated from the sample.

C. How the Department Encourages Officers to Report Corruption

According to Patrol Guide § 207-21, every member of the service has an absolute duty to report allegations of serious misconduct or corruption of which they become aware. The reporting officer must inform either his Commanding Officer or IAB of any such allegations. In fact, pursuant to this section, the failure to disclose corruption or serious misconduct is in itself an offense which will be penalized if discovered.

To ensure that complainants are protected from reprisal as well as to encourage complainants to come forward, the identity of an officer who reports corruption or retaliation should be safeguarded. The Department has tried to encourage reporting by the use of a confidential telephone line that assures reporting officers anonymity and places strict limits on the ability of the Department to trace the call. Under current Department policy, a call made to this confidential line will only be traced if there is a belief that someone's personal safety is at imminent risk.

While no career incentives are promised, officers who do come forward with information or who provide information during the course of an investigation can be transferred to requested commands when possible or given assignments which could facilitate promotions. In cases of retaliation, sometimes the only way to end the retaliation is to remove the complainant from the precinct through a transfer. Naturally, in this circumstance, maintaining confidentiality is particularly important because the value of transferring the officer is considerably diminished if he is transferred to another precinct whose members know why he is being transferred. According to Department executives, if an officer is transferred, the reasons for his transfer are kept confidential. Even the Commanding Officer at the reporting officer's new command may not be told the reasons for the reassignment.

As noted above, the NYPD does not have a separate unit to monitor the careers of those officers who report allegations of corruption or otherwise cooperate with an internal Department investigation. Currently, the Department does not have a policy of monitoring the career progress of those officers who provide information about corruption. The belief is that if an officer does confront problems from his colleagues or supervisors, he will actively seek Department assistance, either through IAB or elsewhere. Similarly, if a reporting officer desires counseling or other support services, he can request assistance from ERS. If a reporting officer determines that a transfer out of his command is his best option, he can also discuss this with ERS or with the Chief of IAB who will then recommend the appropriate action to be taken.

The Commission reviewed two sets of seven cases. The Commission reviewed seven closed cases where an officer reported corruption-related information about another member of the service. The Commission also reviewed seven separate cases where an officer claimed that he was the victim of retaliation by other members of the service because he reported allegations of corruption or misconduct. The second set of seven cases is discussed further in the next section. The Commission obtained the initial seven cases from those closed IAB investigations that Commission staff had reviewed during the previous year as part of its monitoring responsibilities. Officers may not risk reprisal and report allegations of corruption if they do not believe that their allegations will be investigated seriously and thoroughly. Therefore, the Commission tried to discern whether or not there was a difference in the quality of IAB investigations for those complaints lodged by civilians and those complaints lodged by members of the service. The Commission found that those complaints made by members of the service were investigated with the same level of diligence as other investigations originating from non-Department sources.

D. How the Department Addresses Retaliation Allegations

The Department's procedures for cases involving allegations of retaliation are set forth in I.O. 12.[38] This section sets forth the Department's official policy that retaliation against any member of the service who voluntarily provides information regarding corruption and misconduct will not be tolerated. Retaliation complaints may be made to ERS, to the Office of Equal Employment Opportunity ("OEEO"), directly to IAB, or to any other unit. Whoever initially receives the allegation, however, must report it to IAB. IAB then directs which group within the Department will investigate the allegation. All cases involving allegations relating to equal employment opportunities, designated "retaliation-EEO" cases, must be referred to OEEO for investigation.[39] "Retaliation-whistleblower" allegations are those that fall within the protections of the whistleblower law and are investigated by IAB. Those cases that do not fit into either of these categories are classified as "retaliation-other" and are usually investigated by the complainant's Command. All retaliation cases that are investigated by IAB are presented to IAB executives in Steering Committee meetings.[40] All allegations that are "retaliation-whistleblower" or "retaliation-other" are also forwarded to ERS which is directed to contact the complainant to offer employee assistance regardless of whether the retaliation allegation is substantiated. In any investigation that is not conducted by OEEO, a report must be forwarded to the Police Commissioner explaining the findings and recommendations at the conclusion of the

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[38] During the course of the Commission's study, the Department superseded Patrol Guide § 205-38 with I.O. 12. This interim order placed more stress on protecting a complainant's confidentiality and eliminated reporting requirements in Office of Equal Employment Opportunity cases in order to comply with confidentiality provisions set forth in federal law.

[39] Due to the confidential nature of OEEO investigations, these investigations are not addressed in further detail in this report.

[40] *See infra* at pp. 46-47 for a discussion about Steering Committee meetings.

investigation. The Police Commissioner will then issue directives regarding the necessary actions to be taken.

IAB does not have separate investigators who specialize in retaliation allegations. In fact, if the underlying corruption allegations are still under investigation, the same IAB investigator will address the retaliation allegations. The Commission agrees with this approach in most cases because the original investigator will have a better understanding of the various issues and the personnel involved in the investigation. The Commission is concerned, however, that a finding of "unsubstantiated" in the underlying case may have an impact on the investigator's ability to assess the retaliation portion of the case impartially. The Commission has conveyed this concern to IAB and believes it could be easily addressed through frequent and detailed team leader reviews.[41]

With respect to the seven closed IAB cases involving allegations of retaliation by a member of the service that the Commission reviewed, the purpose of this review was to examine the procedures the Department used to guide and manage retaliation cases from intake to closure. The allegations of retaliation ranged from negative personnel changes, such as unnecessary transfers, to withholding favorable personnel changes, such as refusals of requests to change tours, to general harassment. The retaliation components of all seven cases were deemed unsubstantiated at the conclusion of the investigations. The Commission concluded that this sample was too small for it to make a meaningful judgment concerning how the Department investigates these types of cases.

[41] Subsequent to the drafting of this report, the Department instituted a policy in which those retaliation cases investigated by IAB would be reviewed on a quarterly basis. Therefore, every three months after the close of the investigation, IAB personnel will contact the complaining officer to determine the status of his work environment. This check will be performed for the year following the conclusion of the investigation and will be conducted regardless of the disposition of the IAB investigation.

As part of this overall review, the Commission focused on a number of issues, including how the reporting officer's identity was protected. From the seven cases of alleged retaliation reviewed, it did not appear that there was any heightened effort to protect the confidentiality of the complainant.[42] The Commission believes that special care should be given, when possible, to protect the identity of an officer who claims retaliation. The Commission recognizes that in most cases it may be necessary to reveal the complainant's identity in order to move the investigation forward. When such disclosure is required, the complainant's identity should be revealed only to necessary personnel and only after advising the complainant.

As part of its case review, the Commission examined whether members of the service were reporting retaliation allegations to the appropriate division. The Commission found that in four cases, allegations of retaliation were initially reported to the incorrect division necessitating a transfer to IAB. Members of the service may be unclear as to which Department division should receive specific allegations of retaliation. Because reporting allegations to an incorrect division may result in a delayed investigation and multiple interviews of a complainant which may discourage further cooperation, the Commission recommends that the Department create a centralized repository where these complaints can be lodged and quickly assigned to the appropriate investigative bureau. Alternatively, the procedures for reporting these types of allegations should be better publicized so that members of the service will have a better understanding of what unit will investigate their complaint, as well as what they can expect throughout an investigation. This information can be provided through postings on the Department's website. The reporting procedures can also be more clearly defined and explained in posters located in the precincts. Finally, greater emphasis can be placed on the reporting and

[42] In some of these cases, however, the complainant's identity was evident from the nature of the allegation.

investigation process and the protections and incentives that are in place for whistleblowers during the Police Academy training of new recruits.

E. How Other Jurisdictions Address Retaliation Cases

The Commission contacted police departments in Philadelphia, Washington, D.C., Boston, Houston, Minneapolis, and Chicago to determine how they encouraged officers to report corruption, how they protected officers from retaliation, and how investigations of retaliation were handled. The Commission also discussed this issue with representatives from Kroll Associates, which is responsible for monitoring the consent decrees imposed on the Los Angeles and Detroit Police Departments.

The majority of these police departments handled these types of allegations in basically the same way as they are handled by the NYPD. With the exception of the Philadelphia Police Department, none of the agencies contacted reported having a distinct unit to protect whistleblowers. Philadelphia's whistleblower unit is known as the Internal Municipal Police Anti-Corruption Team or "IMPACT".[43] When a police officer provides information regarding police corruption, IMPACT conducts the investigation in conjunction with the Attorney General's Office and if the complaint is substantiated, the reporting officer is granted a transfer to a precinct of his choosing, if possible. If the officer chooses to stay in his position, IMPACT monitors him for the following six months under the theory that if retaliation is going to happen, it would happen within that time period.

Like the NYPD, approximately half of the jurisdictions surveyed had express policies that prohibited retaliation. Those that did not still considered retaliation to be a serious allegation

[43] This unit is responsible for municipal corruption whistleblower complaints as well as police corruption whistleblowers and conducts integrity tests and surveillances.

meriting significant penalties if proven. Most departments, however, reported that official complaints of retaliation were not common. With the exception of the Philadelphia Police Department,[44] Internal Affairs or its equivalent was responsible for the investigation of the more serious allegations. Only Los Angeles designated specific personnel to investigate allegations of retaliation. None of these jurisdictions provided training to investigators on issues and procedures particular to retaliation cases.[45]

Based on all of the above information, the Commission renews the recommendations it has made in prior reports and has developed the following new recommendations it believes the NYPD should implement to encourage members of the service to report instances of corruption and to provide protection for those who do. Generally, these recommendations concern training investigators, protecting the reporting officer, and providing support services and career monitoring for these officers.

G. Recommendations

1. The Commission continues to recommend that the Department's policy announced in P.G. 208-38 and I.O. 12 be applied to all officers who provide useful information whether or not the officers fall within the classic definition of a "whistleblower".

2. The Commission continues to recommend the creation of a proactive unit that would be responsible for contacting officers who have provided information to the Department about misconduct or corruption, offering assistance to these officers, and actively monitoring their

[44] In Philadelphia, those allegations rising to the level of a Federal criminal violation are investigated by the United States Attorney's office.

[45] Los Angeles plans to conduct training on retaliation-related issues, but this had not yet taken place.

careers to guard against future adverse actions. The Commission also recommends that the Department provide career incentives to those officers who come forward or otherwise provide meaningful assistance during an investigation.

3. The Department should regularly publicize the responsibilities of officers to report instances of corruption and their rights when they do so. This should include information on how to file a complaint, how the investigation will be handled and the programs the Department has in place to ensure confidentiality and provide support to the complainant. This information should be provided to recruits in the Academy and be clearly explained on the Department website as well as on posters in each precinct. Further, the Commission continues to recommend that the Department better publicize the existence of the ERS program and the services which ERS can provide to officers.

4. Investigations involving allegations of retaliation should be handled in an unbiased manner regardless of the findings on the underlying corruption complaint. In those instances where an investigator handles the original complaint of corruption and deems it to be unsubstantiated and then is assigned the subsequent claim of retaliation, extra precaution should be taken to ensure that the investigation is handled in a fair and objective manner. Safeguards to maintain objectivity should include increased supervisory reviews of the progress of these investigations.

5. The Department should strive to protect the identity of the complainant during the course of the investigation. In the event it becomes necessary to disclose the complainant's identity, the complainant should be notified in advance.

6. The Department should promptly determine whether a complaint of retaliation has been reported to the appropriate division so that the investigation is not unduly delayed.

7. Investigators should inform the complainant how the investigation will proceed, address any concerns the complainant may have and provide the complainant with information concerning support services that may be available and the possibility of transfer.

VI. FALSE STATEMENT CASES

In 1996, the Commission published its first report addressing the topic of the appropriate penalty to be imposed on officers found to have made a false statement in an official context.[46] The Commission chose this topic because the failure by the Department to adequately discipline members of the service who have made false statements would have ramifications far beyond the isolated incident. First, public confidence in the criminal justice system would suffer. Second, the failure to impose severe penalties on violators would support and maintain "the blue wall of silence" whereby members of the service choose to lie to cover up the misconduct of themselves or their colleagues without fearing the consequences. As a result of this study, the Department released its official policy regarding false statements. The policy announced that termination was the appropriate penalty for any member of the service found to have made a false statement in a PG interview[47] or other official context unless there were exceptional circumstances which mitigated against termination. These exceptional circumstances were to be determined by the Police Commissioner on a case by case basis.

With each subsequent report on this issue,[48] the Commission reviewed the disciplinary

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[46] *See The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements* (December 12, 1996).

[47] *See supra* at p. 10, fn. 22 for a definition of an interrogation conducted pursuant to PG §206-13.

[48] *See Third Annual Report of the Commission* (August 1998), at pp. 12-15; *The New York City Police Department's Disciplinary System: A Review of the Department's December 1996 False Statement Policy* (August 1999); *Fifth Annual Report of the Commission* (February 2001), at pp. 42-55; *Sixth Annual Report of the Commission* (December 2001), at pp. 62-87; and *Seventh Annual Report of the Commission* (March 2004), at pp.122-150.

cases for the previous year where the charge of making false statements was levied or the Commission believed that the charge should have been brought based on the facts and circumstances surrounding the case. Excluding those cases involving administrative time and leave issues, the Commission divided these cases into two categories, those where the false statement was made in a PG interview or under oath and those that were not. Throughout the several follow-up reports on this issue, the Commission found that those officers whose cases fell under the first category were consistently separated from the Department either through termination, resignation, or retirement. Less consistency was found in the latter category of cases. The Commission also noted that, in many instances, the Department failed to charge the subject officer with making a false statement although such a charge appeared appropriate.

In some cases, the Commission noted that the Department relied on circumstances that it determined were "exceptional" to impose a penalty short of termination. Some of these circumstances did not appear to warrant a finding that they were exceptional based upon a totality of the facts. These included when an officer recanted during the same PG interview or at a subsequent PG interview; when the underlying misconduct about which the officer was being terminated was not, in and of itself, a terminable offense; the expression of remorse and admitting to the false statement at the administrative trial; and a lack of prior disciplinary history and good annual evaluations. The Commission believed that while all of these circumstances might be factors to consider when determining whether exceptional circumstances existed, they did not constitute exceptional circumstances in every case.

In 2005, the Department issued Interim Order 4 which modified its original false statement policy. This order prohibited false statement charges from being levied when the member of the service "…merely pleads not guilty in a criminal matter, or merely denies a civil

claim or an administrative charge of misconduct." In the past, the Commission stated that a mere denial should not constitute an automatic exceptional circumstance mitigating against termination.[49] While the Commission, however, understands the Department's rationale that members of the service should have the right to defend themselves and deny their guilt without risking termination, the Commission does not agree that the denial of guilt should remove the offending officer from the application of the policy and its subsequent consequences. The denial of guilt, when it is a false denial, is still a lie and, therefore, directly erodes the credibility of the officer and indirectly affects the public's confidence in the integrity of the Department.

In its last study on this topic, the Commission found that the current Department administration applied its false statement policy less consistently than prior administrations and found exceptional circumstances in more cases.[50] Based on this finding and the new modified Department false statement policy, the Commission decided that it was important to revisit this topic for this report. In order to determine whether the policy was being appropriately followed, the Commission examined all disciplinary cases that were adjudicated between January 2005 and May 2005[51] where the officer was either charged with making a false official statement or where the Commission believed that the facts and circumstances surrounding the disciplinary matter would have supported this charge. This review encompassed 70 cases. Overall, the Commission found that the Department was appropriately disciplining those subject officers found guilty of making false statements. The Commission did not include in this sample those cases where false statements were made to the Medical Division in the form of exaggerating an illness or injury for

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[49] *See Seventh Annual Report of the Commission, supra* at pp. 135-137.

[50] *Id*. at pp. 122-150.

[51] This time period was chosen because these were the 2005 disciplinary cases to which the Commission had access at the time of this analysis.

the purpose of extending sick leave time or placement on restricted duty status. The Commission divided the remaining cases into the following categories: false statements made under oath that were a mere denial of misconduct, substantive false statements made under oath, false statements made to a supervisor or investigative body[52] which were a mere denial of misconduct, substantive false statements made to a supervisor or an investigative body, fraud, and false entries in Department records. The Commission also examined those cases where false statement charges were supported by the evidence but no such charge was brought. These cases were grouped into those that were mere denials of misconduct, substantive false statements made under oath, and substantive false statements not made under oath. Due to the Department's revised false statement policy, the Commission removed all of those cases where the false statement could be characterized as a mere denial of guilt.[53]

After removing these cases from the sample, twelve cases remained in the category of substantive false statements made under oath. Of these twelve cases, only three did not result in the subject officer's separation from the Department.[54] The Commission did not agree that exceptional circumstances existed in two of these cases.[55] There were ten cases where a

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[52] Investigative bodies included other law enforcement agencies, prosecutors, and CCRB.

[53] Given Interim Order 4, the Commission decided not to judge each disciplinary case involving a false statement that was solely a denial of guilt without further elaboration because the Department was following its own stated policy when discipline was imposed or when charges were levied in these cases. There were, however, ten cases where the Commission believed that if not for Interim Order 4, false statement charges should have been brought. There were also five cases where the subject officer made false statements under oath, in the context of a PG hearing, which were considered mere denials. None of these officers were terminated from employment. In fact, in one of these cases, the officer was specifically found not guilty of making a false statement during her PG interview because the statement was a mere denial. There was one other case where a false denial was charged, but this did not occur in a sworn context. That officer was not terminated.

[54] Separation from the Department could occur due to termination, resignation, or retirement. As the Commission believes that the importance is in the result that the officer is removed from the Department and not in the method of the removal, the Commission did not further differentiate these cases.

[55] In two of these cases, the subject officers signed the name of another member of the service to criminal court paperwork without authority to do so. The officers were permitted to plead guilty and were penalized by the forfeiture of eighteen and seventeen vacation days respectively. In both cases, the Department relied upon the

substantive false statement was made to a supervisor or an investigative body but was not made under oath. Of these, only four were separated from the Department. The Commission believed that two of the remaining six should have been terminated. In both of those cases, false statements were made to Assistant District Attorneys and in one of the cases, the subject officer supported the false statements made by another member of the service in order to collect on an insurance claim. There were fourteen cases in the category of false entries in Department Records. These false entries ranged from recording crimes as less serious than reported in order to manipulate the Precinct's crime statistics, to claiming overtime for time that was not worked, to altering the officer's memo book to indicate that he was at a post when, in fact, he was not. Of these, only four officers were separated from the Department. There were eight officers in the category of fraud. Of these, two cases were dismissed on the motion of the Department Advocate[56] and one officer was found not guilty after an administrative trial. Of the remaining five officers, three were terminated. The Commission agreed with the penalties imposed in the remaining two cases. The Commission found three cases where the subject officer made false statements under oath but was not charged with this conduct. There were another two cases where the Commission believed that false statement charges should have been levied where these false statements were not made under oath.

In conclusion, it appears that the Department is, in most cases, appropriately applying its

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respondents' good service and performance history and subsequent admissions to the falsehood to mitigate the penalty of termination. The Commission does not believe these factors alone constituted exceptional circumstances. In the remaining case, the officer wrongfully received public assistance benefits while employed by the Department, made false statements on his application to the Department, and made false statements about where he resided during a PG interview. The officer explained that he told his wife to remove them from public assistance and believed she had. He had not disclosed the prior receipt of public assistance to the Department because he was embarrassed. He also stated that he misrepresented where he resided because he feared being arrested for fraud. While not agreeing with the ultimate penalty, the Commission believed that termination was not required in this case.

[56] The Department Advocate's Office is the part of the Department's disciplinary system responsible for prosecuting internal disciplinary cases.

false statement policy as currently stated. The Commission does not agree, however, with the policy's current incarnation which removes those statements considered to be only denials of guilt without further embellishment from the policy's application. Further, as noted in past reports, the application of the original false statement policy was less consistent in those cases where the false statement was not made under oath. The Commission, however, agreed with the penalty imposed in the majority of those cases. Also, the Department needs to remain vigilant and levy false statement charges when appropriate. The Commission will continue to monitor this topic.

VII. DEPARTMENT SAFEGUARDS FOR FRAUDULENT ACCIDENT REPORTS

A. Introduction

One of the routine functions of the Department is to accept and file reports for motor vehicle accidents. In the past few years, there has been a significant amount of publicity regarding the submission of false motor vehicle claims to insurance companies. Networks involving doctors, lawyers, health facilities, and at times, Police Department employees have developed sophisticated means to defraud insurance companies and collect fraudulent payments. The Department has uncovered and investigated several instances where members of the service or civilian members of the service[57] were alleged to have participated in these insurance schemes. These allegations ranged from providing copies of accident reports without collecting the required fee; preparing reports using inaccurate information based on what was provided by the participants instead of using facts that were elicited as the result of an investigation; preparing

[57] For the remainder of this section, the term "member of the service" includes civilian Department employees.

accident reports knowing that the accidents were staged;[58] or participating in the staging of these accidents. These fraudulent accident reports were then used to collect money from insurance companies to reimburse automobile owners for accidents which never occurred and participants for injuries that they did not sustain. This particular type of fraud results in the increase of insurance rates when the insurance companies pass the costs of these claims on to consumers.

Based upon the Commission's ongoing review of IAB investigations and discussions with Department officials regarding insurance fraud, it was clear that the Department was thoroughly investigating allegations of this nature. It was also apparent that when a member of the service was found to have engaged in this type of fraud, the Department appropriately terminated the offending member. The member of the service also usually faced criminal penalties. In the wake of several arrests of members of the service, both civilian and police, for their participation in these fraudulent schemes, the Commission sought to determine what safeguards the Department had implemented to prevent or, at least, deter other members of the service from becoming involved in this type of fraud.

B. Methodology

To examine the way that the Department has responded to the problem of fraudulent automobile accident insurance enterprises, the Commission reviewed several major Department investigations which involved thirteen members of the service. The Commission did not review these investigations to judge the quality of the investigative work. Instead, the Commission sought to determine how these allegations were brought to the attention of the Department and whether there were any Department procedures which facilitated the execution of corrupt practices or prevented its earlier detection.

[58] *See infra* at p. 37 for further discussion about staged accidents.

The Commission also met with members of the Department's Fraudulent Accident Investigation Squad ("FAIS"). FAIS is a specialized bureau that was created in August 2001 in response to the widespread increase in the submission of false accident claims. This meeting focused on the different ways in which accident claims can be falsified, the creation and operation of FAIS, and the Department polices that have been changed in response to these allegations. The Commission also discussed its own recommendations to further improve Department safeguards.

Finally, the Commission attempted to interview insurance company representatives to obtain their perspective on ways to detect and deter fraudulent accident claims. In general, these representatives were reluctant to speak about any changes that the NYPD could implement to detect fraud; however, they did state that automobile accident insurance fraud enterprises were no longer the significant problem they had been in the recent past.

C. Types of Fraudulent Accident Claims

There are three general categories of fraudulent accidents. First, there is the "staged" accident, where an accident actually takes place, but both vehicles are involved in the fraud and the 'accident' is intentionally created by the participants. In these cases, an officer will take an accident report reflecting the damage and injury to the vehicle and may not be aware that the 'victims' are engaged in fraud. There are also "caused" accidents, where one driver intentionally creates the 'accident' by striking an unsuspecting, innocent vehicle. Both staged and caused accidents may involve "runners" who solicit other persons to participate in the fraud by asking them to provide their personal information to the officer taking the report in exchange for financial compensation. Sometimes these participants, referred to as "jump-ins", are paid to list

themselves as passengers in accident vehicles when they were in fact not involved in the crash. Runners also appear at accident scenes to steer both jump-ins and legitimate victims to particular clinics where they will receive unnecessary treatment and file medical claims in exchange for a payment. In either of these types of accidents, the scheme can proceed without the aid of a member of the service. In this scenario, a responding officer's lack of experience with auto accidents can allow a staged accident to go undetected.

The final category of fraudulent accidents is the "paper" accident, where a report is generated even though no accident has actually taken place. Police Accident Reports ("PARs") can be generated for paper accidents by people walking into a precinct and reporting a past accident or by completing a previously obtained blank PAR with fictitious information and then mailing it to the precinct. PARs for paper accidents can also be created with the assistance of a corrupt member of the service who completes or files the false report.

D. FAIS

The most significant Department response to the problem of fraudulent accident claims occurred with the creation of FAIS which then, based on its investigations, recommended the implementation of changes in Department policies and procedures for the completion of PARs.[59] FAIS is comprised of detectives, sergeants, and lieutenants who all have substantial investigative experience. The primary function is to catch and disassemble criminal insurance fraud rings. It conducts investigations into potentially fraudulent accident reports and the criminal enterprises responsible for this fraud. It does not focus on the investigation of Department employees who are involved with these rings except incidentally to its investigation of the ring itself. If FAIS

[59] These changes are discussed *infra* at pp. 40-45.

suspects that a Department employee is involved, it will report its suspicions to IAB and offer whatever assistance is needed.

According to FAIS representatives, their main source of information is paperwork filed in conjunction with the fraudulent accident. Investigators analyze accident reports to find patterns or inconsistencies with other documents or databases. FAIS receives many referrals, both from precincts and from insurance companies. They also initiate their own cases through computer checks or even random audits of police paperwork. When a FAIS investigator finds a fraudulent report, they are able to cross-reference that information using various databases containing accident reports, driver histories and insurance company claims. By following the trail of information found in a fraudulent report, such as a license plate number, vehicle identification number ("VIN number")[60] or the names and addresses of victims, FAIS investigators are often able to find a series of related fraudulent claims. From this information, FAIS can develop large scale investigations into extensive fraud organizations.

Other NYPD divisions consult FAIS when their cases require expertise in accident fraud. To facilitate the detection of fraudulent accidents, FAIS conducts training in every precinct. Highway Safety Officers, Traffic Safety Sergeants, and Executive Officers receive extensive training, and all officers receive periodic roll-call training. FAIS also conducts training for new recruits. Because of their status in the precinct, less senior officers often respond to motor vehicle accidents, and their relative inexperience makes them good targets for criminals attempting a staged or caused accident. FAIS therefore encourages officers to investigate every accident as they would any other crime, as opposed to simply copying down information onto a report.

[60] VIN numbers are unique numbers which are placed in various locations within a car to identify the car.

E. Case Review

The Commission's review of Department investigations involving fraudulent accident reports had police officers and a civilian employee as their subjects. The cases involved both staged and paper accidents, in addition to valid accident reports that were altered after filing. The Department was alerted to employee involvement in these cases from agencies outside of the Department who were conducting their own criminal investigations of insurance fraud enterprises. These law enforcement agencies included District Attorneys offices, the New York State Attorney General's office, and the Federal Bureau of Investigation. The Department also received some information from anonymous sources inside of the Department. The misconduct in these cases did not appear to be detected based on any internal mechanisms the Department had in place to identify fraud.

From this review, the Commission identified several areas where it believed additional safeguards would be beneficial in either preventing or detecting this type of corruption. After its meeting with FAIS, the Commission learned that many of the recommendations it was prepared to make were already being implemented by the Department. The areas the Commission believed could be enhanced either involved the easy accessibility of Department computers and databases by all members of the service or the ability of civilians to initiate and file an accident report at a location or time remote from the actual accident without any Department investigation of the accident.

Greater scrutiny of prepared accident reports for inconsistencies or other indicators of potential fraud appeared to be the best way to detect this problem. Such indicators could include an unusually high number of reports signed by a particular member of the service, reports taken by officers whose routine assignment would not involve responding to an accident scene, or

reports taken at times inconsistent with the assigned tours of the officer. In addition, the Commission intended to recommend random checks of accident reports for accuracy. During its meeting with FAIS, the Commission learned that in order to increase accountability for accident paperwork, each precinct now has a Highway Safety Officer ("HSO") who is responsible for reviewing and monitoring the Precinct's accident reports. On a daily basis, the HSO compares all of the written accident reports to the accident numbers assigned by the Accident Index System ("AIS") which is the Department-wide database of accident reports. The HSO verifies the accident numbers generated each day by determining whether they each correspond to a hard copy of a PAR. The Precinct HSO also conducts a "24-hour review" of each accident report where the PAR and any supporting documents are reviewed for signs of fraud. Finally, the HSO retains original PARs for one year from the date of the report.

Ensuring that only valid reports are entered into the AIS is important because insurance investigators frequently validate a paper accident report through its inclusion in the AIS database. When a report is entered into AIS, it acquires a unique number. If an insurance company investigator verifies that an accident number is valid and corresponds to a particular report, they may end their inquiry into a suspected fraudulent claim. Accident index numbers are, therefore, a valuable means of perpetrating insurance fraud and safeguards need to be in place to ensure they are not assigned to false claims.

There is currently no method of controlling access to the AIS and passwords are given to anyone who enters data. PARs are typed by the Police Administrative Aides ("PAAs") who, by necessity, have the most access to the AIS. To control potential abuse, under current Department policy, PAAs are supposed to have the Desk Sergeant approve the reports before the PAA enters them into the AIS. The reports are then sent to the HSO, who, as described above, should

compare the PARs to the numbers accessed in the AIS. There are some limited safeguards built into the database. For example, AIS will not accept a non-existent tax identification number for the preparer; it will, however, accept any valid tax number regardless of where that officer is assigned or its correlation to the location of the accident report. The database is also supposed to reject any attempt to input more than one report per index number.

Other precinct supervisors now also assist in the detection of fraudulent accident reports. For example, the Executive Officer of each precinct attends meetings designed to familiarize them with traffic and accident patterns. The I.C.O. is supposed to monitor the AIS to look for signs of fraudulent entries, such as frequent entries by one tax identification number, inconsistencies in reports and the corresponding officer's tour or sector assignment, or reports from outside precincts.[61]

The above steps are the main changes instituted by the Department to detect and prevent preparation of fraudulent accident reports. The Commission also discussed with FAIS other safeguards it believed would be beneficial. In some cases reviewed by the Commission, where there were many fraudulent accident reports discovered during the course of the investigation, the same participants came up as being involved on multiple reports. A computer system that notifies FAIS if a person is involved in more than one car accident within a specified period of time may also assist in detecting these fraudulent enterprises. Currently, no such computer generated alert is in development.

The Commission also observed that some false PARs were prepared using the names and tax identification numbers of officers who had no knowledge of the report. In these circumstances, a PAA or another officer used Department computers to obtain the names and tax

[61] *See infra* at pp. 43-44 for further discussion about reports prepared by outside precincts.

identification numbers of other officers to legitimize the report. Further, at times, the name and tax identification number used to complete the report did not match. The Commission suggested to FAIS that only the officer who actually took the report should have the ability to enter it into AIS. Currently, this task is often performed by PAAs who often have better typing skills and more familiarity with the computer systems. FAIS responded that such a requirement would be a time-consuming distraction from patrol duties for the sake of a low-priority, data entry task. Similarly, FAIS dismissed Commission suggestions such as restricting access to officers' tax identification numbers or limiting the use of computer systems as unnecessary obstacles to the efficient completion of both uniformed and civilian employee duties. According to FAIS, the same result can be achieved by increased supervision within the Command. Finally, the Commission suggested that the Department forward copies of PARs on a regular basis to the officers whose name and or tax number appear on the form for personal verification. FAIS deemed this as being to onerous but stated that random checks of this nature could be an acceptable alternative.

The Commission believes that accident reports should not be permitted to be prepared on a walk-in basis[62] because this potentially allows civilians to create fictional accidents without any investigation by police. Instead, officers should be required to respond to the scene of an accident and verify that the reported incident occurred as well as the circumstances surrounding the incident, including, how many parties were involved, the extent of any damages, and whether any parties required medical attention. The Commission also suggested that accident reports should only be accepted at the precinct where the accident occurred. While walk-in reports are still permitted, the Department has instituted policy changes to reduce the frequency of paper

[62] This occurs when a person comes into the precinct to report a past accident and a report is taken at the precinct. Walk-in reports, in the past, could then be mailed to the precinct where the accident allegedly occurred.

accidents. The Commission was informed that while reports can be filed at outside precincts, they are subjected to extra scrutiny which should be sufficient to eliminate the risk of paper accidents. For example, mail-in reports, where a report is taken elsewhere and sent to the precinct of occurrence via inter-departmental mail, are no longer permitted. An officer may file an accident report taken in another precinct, but it must be filed in person and through a supervisor. Further, the officer taking the report is encouraged to conduct an investigation with the reporter by going to the scene of the accident or otherwise verifying as much information as possible.

The Commission was also concerned about the security of blank accident reports as their easy availability could facilitate the completion of false PARs by members of the service. Currently, blank reports are maintained in a generally accessible room where most of the precinct's blank documents are kept. Access to the room is not controlled, and the forms are readily available. FAIS reported that the Department had considered serializing accident reports as they serialize property vouchers or summonses, but decided it was impractical and unnecessary. Their reasons included that the PAR, as a statewide form, was readily available in many places other than a precinct document room. Further, blank reports have no value until they are completed and signed by a supervisor. Therefore, FAIS representatives expressed the opinion that prohibiting mail-in complaints, scrutinizing walk-in complaints, and an overall increase in supervision and investigation of PARs would be more effective and more practical than controlling access to blank forms.

There is currently technology in the testing stage for scanning documents such as license and insurance cards at the scene of accidents, and it is possible that, in the future, complaint reports and accident reports will be entered directly into Mobile Digital Terminals or laptop

computers in Department vehicles. While these technology changes may eventually take place, they are not immediate solutions; currently, the Department must rely on supervisory reviews by the precinct HSO and ICO as the primary method of detecting and deterring misuse of the AIS.

F. Conclusion

In recent years, the Department has increased its vigilance in monitoring accident reports and has instituted safeguards to prevent fraudulent reports, both inside and outside of the precinct, primarily through increased supervision over the filing of PARs. The Department has also increased training about the warning signs associated with staged and caused accidents. Through education and changes in procedure, the Department has made substantial progress in curbing fraudulent accident claims. The New York State Insurance Department has announced that many insurance companies have reduced automobile insurance premiums by an average of 6% based upon the decrease in fraudulent claims.[63] The Commission believes that with additional developments in technology such as computer programs that alert the Department to unusual circumstances in connection with a particular report or systems that eliminate the use of hard copies of reports; the instances of fraudulent accident claims can be further reduced.

VIII. THE COMMISSION'S ONGOING WORK

A. Open/Pending Case Monitoring

The Commission undertakes to monitor open IAB investigations. This type of monitoring enables the Commission to keep up-to-date with corruption trends and allegations and evaluate how the Department investigates and responds to allegations of corruption. Open

[63] *See* New York State Insurance Department *Annual Report to the Governor and the Legislature of the State of New York on the Operations of the Insurance Frauds Prevention Act* , January 14, 2005; www.ins.state.ny.us/updates.htm.

case monitoring is accomplished by various means, including: daily review of corruption logs received from the Department; attendance at IAB Steering Committee meetings; and attendance at IAB briefings to the Police Commissioner and other high-ranking officials in IAB. All of these monitoring activities are discussed below.

1. Log Review

The principal means by which IAB records new corruption allegations, as well as updates new information on past allegations, is through the creation of logs. All corruption and misconduct allegations received by the Department by mail, telephone, or in-person are reported to IAB's Command Center, which is open 24 hours a day, seven days a week.

The Commission receives and reviews new IAB logs on a daily basis. This ongoing review of the logs allows the Commission to conduct immediate follow-up on allegations, obtain timely additional information from IAB at the outset of the investigation, and select cases for long term monitoring. The review of these logs also allows the Commission to discern any emerging corruption trends.

2. Steering Committee Meetings

Throughout the year, Commission staff and the Commissioners attend IAB Steering Committee meetings. The Steering Committee is comprised of IAB's executive staff and is chaired by the Chief of IAB. The purpose of the Steering meetings is to examine the more serious cases handled by each investigative group and discuss new developments to ensure that all appropriate investigative steps have been taken. On a regular basis, each investigative group presents their most significant cases to the Committee and reviews the investigative steps which

have been taken as well as future investigative plans. Attendance at these meetings allows the Commission to observe how IAB responds to and investigates allegations of corruption. Additionally, this review of cases enables Commission staff to remain up-to-date on all pending IAB investigations.

3. Intensive Steering Committee Review

Each year between June and September, the Steering Committee conducts intensive reviews of all open cases. The Commission attends all intensive Steering Committee meetings which provide an overview of IAB's entire open caseload.

4. IAB Briefings to the Police Commissioner

In order to keep the Police Commissioner fully apprised of significant cases and corruption trends, on a regular basis, IAB's executive staff meets with the Police Commissioner and certain members of his executive staff, including the First Deputy Commissioner and the Chief of the Department, for briefings. The Commissioners and the Executive Director of the Commission attend each of these meetings. At these briefings, IAB investigative Group Captains present selected cases and describe the investigative steps that have been taken. Additionally, periodically the Commanding Officer of IAB's Corruption Prevention and Analysis Unit presents a statistical analysis of corruption allegations which compares annual and monthly statistics by category of allegation, borough, and bureau. This analysis enables the Commissioner and executive staff to identify corruption trends and provides information as to the facts underlying the data being presented.

B. Other Types of Monitoring Activities

The Commission is also involved in a number of other monitoring activities that do not focus solely on evaluating case investigations.

1. Monthly Monitoring Lists

On a monthly basis, the Commission receives several monitoring lists maintained by the Department. These lists identify officers who have a history of misconduct and are being scrutinized by the Department. Commission staff regularly reviews these lists to remain informed about officers being monitored and also to ascertain if any of the officers on the lists are involved in investigations under the Commission's review.

2. Interim and Operations Orders

The Commission also receives on a monthly basis all of the Interim and Operation Orders issued by the Department. The Commission reviews these and maintains an updated copy of the Patrol Guide in order to monitor any change in Department policies and procedures related to the Commission's mandate.

C. Additional Commission Functions

In addition to the above monitoring activities, the Commission also performs a number of other functions in carrying out its monitoring mission.

The Commission periodically receives allegations of police corruption or misconduct by individuals who wish to lodge complaints against the Department. Commission staff obtain all relevant information concerning the allegation and then forward that information to IAB's

Command Center so that a log may be created and the appropriate investigative steps taken. In order to track IAB's handling of these allegations, the Commission assigns each allegation its own internal log number, and Commission staff then monitors IAB's handling of certain allegations.

The Commission maintains regular contact with Federal and State prosecutors responsible for the investigation and prosecution of police corruption. Through these relationships, the Commission is kept informed of issues or concerns of these law enforcement agencies and of their general perceptions about IAB and the quality of its work.

This past year, Commissioners and staff also met with representatives from each police union.[64] The purpose of these meetings was to learn how each union addressed integrity-related issues among its members and to determine which Department anti-corruption programs the unions believed needed improvement and which the unions found effective. The Commission found these meetings very productive and is considering some of the representatives' concerns for topics to study in the future.

Finally, in April 2005, the former Chair of the Commission and the Executive Director, testified before the Public Safety Committee of the New York City Council. The subject matter of this testimony included the findings and recommendations of the Commission's prior report, *Review of the Background and Screening Process of New Recruits*,[65] the manner in which the Commission operates, the cooperation the Commission receives from the Department, and future projects of the Commission.

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[64] These included the Patrolmen's Benevolent Association, the Detectives' Endowment Association, the Sergeants' Benevolent Association, the Lieutenants' Benevolent Association, and the Captains' Endowment Association.

[65] February 2005.

IX. FUTURE PROJECTS OF THE COMMISSION

The Commission intends to study and report on several discrete areas of the Department's operations in the coming year. A brief synopsis of the Commission's planned projects is provided below.

A. Currently, the Commission is in the process of drafting a follow-up study to its 2001 report, *The New York City Police Department's Non-IAB Proactive Integrity Programs*.[66] A significant portion of that report was devoted to the effectiveness of the Performance Monitoring Unit ("PMU"). PMU is the principal entity within the Department responsible for monitoring potentially problematic members of the service. In that report, the Commission found, overall, that while the idea underlying the monitoring system was sound, it was not being implemented as designed. Further, proactive measures were not being taken to prevent those officers who were subject to monitoring from committing further acts of misconduct or to expeditiously terminate those officers who were unable to conform their behavior to Department standards. For the Commission's current report, staff reviewed the monitoring case folders of all officers on Level II and Level III monitoring, the levels for which PMU is responsible. 203 files were reviewed. The Commission anticipates releasing this report in the next few months.

B. While IAB investigates allegations of corruption, less serious allegations of misconduct are usually handled by the Investigative Borough or Bureau Units. These units are divided geographically or by a particular subject matter. The Commission intends to review closed investigative files from the Investigative Borough/Bureau Units to evaluate the sufficiency of their investigations.

C. The Commission plans to participate in a more significant manner in open case monitoring. Specifically, the Commission is selecting newly reported cases to follow and review

[66] December 2001.

with IAB investigators on a quarterly basis. The Commission expects that this will provide IAB with immediate feedback concerning the progress of their investigations as well as allow the Commission to discuss with investigators any perceived missed investigative steps while the investigation is ongoing. This will enable investigators to consider the Commission's suggestions and modify their investigative strategy when considered appropriate.

D. As a follow-up to its prior two reports on this issue, the Commission intends to continue monitoring the Department Trial Rooms and the Department Advocate's Office to determine if improvements have been made to the disciplinary system.[67]

[67] *See* The Commission's Reports: *The New York City Police Department's Prosecution of Disciplinary Cases* (July 2000) and *Follow-up to the Prosecution Study of the Commission* (March 2004).