

I. OVERVIEW

During the past year, the New York City Commission to Combat Police Corruption (“Commission”) has continued its independent monitoring of the New York City Police Department's (“Department”) anti-corruption efforts. Established by Mayor Rudolph W. Giuliani on February 27, 1995, through Executive Order No. 18,¹ the Commission conducted various audits and studies during the past year of the Department’s policies and procedures related to corruption. To this end, the Commission completed four studies focused on the Department's Internal Affairs Bureau (“IAB”). These included reviews of IAB's interrogations of police officers and its integrity testing program² -- two important aspects of IAB's investigative efforts. More broadly, the Commission examined the IAB experience from the perspective of former members, surveying these officers in order to identify areas affecting recruitment and retention of IAB personnel. Finally, in its ongoing examination of the Department's disciplinary system, the Commission completed a comprehensive study of the Department's prosecution of disciplinary cases.

This report reviews these studies as well as the Department’s responses to them. In addition, as an ongoing monitor of the Department's anti-corruption programs and policies, the Commission is in a position to follow-up on findings and recommendations made in earlier reports. In this light, during the past year the Commission undertook follow-up reviews of several areas on which the Commission previously reported, including the disciplining of officers who have committed serious off-duty misconduct or who have made false statements,

¹ Executive Order No. 18 is reproduced as an Appendix to this report.

² An integrity test -- an artificial setting designed to emulate situations encountered during policing -- tests an officer’s adherence to the law and Department guidelines.

and the quality of the Department's background investigations of police officer candidates.

Finally, this Report contains a review of a number of closed investigations completed by IAB.

This Report describes a process of constructive interaction with the Department involving ongoing attempts by the Department to improve its performance. While the Commission has identified, and undoubtedly will continue to identify, areas for improvement, in general the Commission believes that the Department is seeking to address corruption issues positively. More specifically, the Commission, among other things, finds that:

- While during the past year, the Commission identified several areas for improvement in IAB's programs, IAB remains committed to the investigation of corruption allegations, and is performing its responsibilities, on an overall basis, in an effective manner.
- While continued attention needs to be paid to improving the disciplinary system, the Department recently has taken a major positive step by announcing its intent to adopt and implement one of the Commission's central recommendations contained in its report on the disciplinary process. That recommendation was that the Civilian Complaint Review Board ("CCRB") be responsible for prosecuting the cases that it investigates and substantiates. This significant change in the disciplinary system is an important step towards improving the overall quality of the prosecution of Department disciplinary cases and indicates the Department's willingness to address key issues contained in the Commission's report. The Department has also indicated that it is currently reviewing other recommendations contained in the report.
- In general, the Department is appropriately implementing its false statement policy where the false statement is made at a PG 206-13 interview or in a similar formal testimonial setting. Additional attention, however, needs to be paid to false statements made in other investigative contexts.

- In analyzing the Department’s response to other earlier reports, it appears that while some important Commission recommendations have not been followed, there has been an attempt to respond positively to a number of the Commission’s recommendations. Based on recent communications with the Department it appears that the Department is also reviewing again some of the recommendations which have not previously been implemented.

II. PUBLISHED REPORTS

The Commission released five reports during the past year. These reports addressed various aspects of IAB's investigative programs, summarized the results of a survey of former IAB members, and contained the findings and recommendations of the Commission's comprehensive study of the Department's prosecution of disciplinary cases. Each of these reports is summarized below.

A. THE NEW YORK CITY POLICE DEPARTMENT’S PROSECUTION OF DISCIPLINARY CASES (“PROSECUTION STUDY”)

1. Purpose of the Prosecution Study

In prior studies, the Commission had examined the penalty aspects of the Department’s disciplinary system by evaluating how police officers who were found guilty of engaging in particular types of misconduct were disciplined. While at times the Commission also had raised issues about the quality of the Department’s prosecution of disciplinary cases,³ it had not, however, previously undertaken a comprehensive study of the Department’s prosecution

³ See, e.g., *First Report of the Commission* (March 1996), at pp. 101-104.

function.

The Commission, therefore, completed a broad study of the Department's prosecution of disciplinary cases. Rather than focusing on charges and penalties, the focus of this study was on the prosecution function as a whole, its structure and mechanics, and those core areas related to the Department's ability to effectively and expeditiously prosecute and adjudicate disciplinary cases. In furtherance of this review, the study addressed a broad range of issues involving the Department Advocate's Office, the arm of the disciplinary system responsible for prosecuting disciplinary cases.⁴

Specifically, the Commission examined the qualifications, training, and supervision of the Department advocates, who are responsible for prosecuting disciplinary cases. The Commission evaluated how cases were handled, including the preparation and presentation of cases in the Department's Trial Rooms and the OATH hearing rooms. Finally, the Commission examined the issue of adjudicatory delay by assessing its nature and extent at each stage of the adjudicatory process.

As part of this study, the Commission conducted an in-depth review of closed cases that had been prosecuted by the Advocate's Office. The Commission reviewed all documents related to these cases, and met with Department Advocate officials regarding specific issues raised by some of these cases. The Commission also developed an extensive database of statistical information on case dispositions for over 1,200 closed cases that had been processed through the system over a twelve-month period in order to identify and examine particular areas of delay within the system. In addition, over an eight-month period, Commission staff observed

⁴ At the outset of the Commission's study, two Department offices -- the Special Prosecutor's and Department Advocate's -- prosecuted disciplinary cases. During the course of the study the Department consolidated

numerous Department trials and negotiations in order to assess the quality of Department disciplinary presentations.

2. Findings

The Commission found that significant delay occurs throughout the adjudication process, beginning with when an allegation is substantiated by an investigative unit and forwarded to the Advocate's Office for prosecution. Delays occurred at almost all stages of the process and affected all types of cases. Extensive delay occurred, for example, from the filing of charges to the closing of the case, and from the end of the trial to the issuance of the Trial Commissioner's findings and recommendations.⁵ Often, cases remained open for a significant amount of time even if they were ultimately dismissed by the advocate. Delay within the system negatively and seriously impacts the viability of prosecutions, deterrence of future misconduct, fairness to members of the service who are ultimately exonerated, and the public's perception that the Department is willing and capable of effectively disciplining its own.

Among the cases where delays were found were those that had been substantiated by CCRB, but lacked sufficient legal proof to prevail at trial. The delay in prosecuting these cases, once referred to the Department, resulted in them lingering in the disciplinary system for significant periods of time before being dismissed. A number of cases -- both those originating with CCRB and IAB -- where evidentiary problems existed, could have been dismissed on a

the two offices (hereinafter referred to as "the Advocate's Office" or "DAO").

⁵ Specifically, half of the cases in the Commission's sample took approximately one year from the filing of charges to the closing of the case, with another 25% taking seventeen months or more. Of the cases which went to trial, approximately half took three months or more for a Trial Commissioner to issue a decision and an additional 10% took over seven months.

more timely basis had substantive witness contact been made earlier. Indeed, the failure in too many cases to make timely contact with witnesses was a major finding of the study.

Another general finding was that the Department treats the prosecution of cases as a police function when it should be treated more as a legal function. The Advocate's Office is structured, staffed, and managed more like a police bureau in how, for example, supervisors are selected and how members of the service rotate out of the office to patrol assignments when promoted. This approach, the Commission reported, undermines the effectiveness of the prosecution function.

In terms of staffing, the Commission found that while some advocates possessed appropriate legal knowledge and trial skills, the overall quality of Department prosecutions is diminished by the significant number of advocates who are under-qualified or inexperienced. Although some of the trial presentations observed were competently conducted, many presentations were of marginal quality. A number of these cases were deficient because of insufficient and untimely contact with, and preparation of, witnesses coupled with a lack of trial advocacy skills. In other cases, as discussed above, untimely substantive contact with witnesses resulted in cases being dismissed after long periods of time.

The Commission also found that there was inadequate supervision of advocates. In this regard, the Commission found that some senior level supervisors, while skilled as police officers, did not possess the appropriate legal and advocacy training to effectively supervise and train advocates. For all these reasons, the effectiveness of prosecutions is hurt.

Due to deficiencies in case preparation and trial presentation, it was often common in the courtrooms to observe the frustration of Department Trial Commissioners with the performance of the advocates. This was too often accompanied by defiant attitudes exhibited by the

advocates towards the Trial Commissioners. The Commission found that this apparent lack of mutual respect between the Trial Commissioners and Department advocates risks damaging the perception of the system by all those who deal with it, including civilians and officers.

3. Recommendations & Department's Response

The Commission made a number of significant recommendations related to its findings.

Some of these are summarized below.

- While it remains important to the effective management of the Department that ultimate responsibility for disciplinary decisions, including the right to approve or reject plea agreements, remain with the Police Commissioner, the prosecution of CCRB cases should be handled by CCRB. This would promote increased accountability and accompanying public confidence. The City should also evaluate the feasibility of having the prosecution of disciplinary cases for all city agencies, including the Police Department, centralized in one agency.
- The Advocate's Office should be organized more like a legal office rather than a police bureau. This would include changing recruiting and promotion practices to ensure that only members of the service committed to prosecution would join and remain in the Advocate's Office, and making certain that supervisors are appropriately qualified.
- The Department should hire a greater number of appropriately qualified attorneys with at least some trial experience and should work to enhance trial preparation and skills. Qualified managers with trial experience should be responsible for supervision and training of advocates. The Department should develop training programs and utilize outside programs in order to teach, develop and strengthen fundamental trial advocacy skills.
- The Department should have substantive contact with key witnesses earlier in the process so that the viability of cases may be evaluated in a more timely manner and advocates should better document significant work completed on cases.
- The Department should develop a system to more closely track cases in order to identify and address areas of excessive delay. As part of such a system, the Department Advocate should regularly and aggressively monitor cases that have been pending for longer than six months.
- Trial Commissioners should be supported by more law clerks to help expedite decisions.

While the Department acknowledged the importance of the disciplinary system and the

need for it to run more efficiently, in general terms, the Department in its initial response, disagreed with much of the criticism identified by the Commission. In response to the Commission's recommendation that the Department hire a greater number of appropriately qualified attorneys and increase the amount of training and supervision that they receive, the Department noted its recent practice of hiring civilians with outside trial experience and stated that this practice will continue. Additionally, in support of its contention that DAO is effectively prosecuting cases, the Department cited its conviction rate.⁶ Nonetheless, to address some of the problems identified in the Prosecution Study, DAO created a training position within the unit to be filled by a former prosecutor and began to formulate an enhanced training program for advocates.

The Department did acknowledge that delay exists within the system and impacts negatively on the disciplinary system's overall effectiveness. At the time of the issuance of the Prosecution Study, the Department stated its intention to hire additional law clerks as well as an additional Trial Commissioner in an effort to eliminate some delay in the system.

Beginning in the Fall of 2000, the Commission met with the new leadership of the Department to discuss the findings and recommendations contained in the Prosecution Study. As noted above, the Department has now announced that it is adopting and implementing the Commission's recommendation to transfer the responsibility of prosecuting CCRB cases from

⁶ According to the Department at the time the Prosecution Study was written, the conviction rates for disciplinary cases after trial was 86% in 1996, 83% in 1997, 85% in 1998, and 77% in 1999 (from January 1999 through October 1999). These figures apply to cases adjudicated in the Trial Rooms only and exclude all dismissed cases as well as all cases adjudicated at OATH, which are exclusively CCRB cases. The Department did not provide data for an overall conviction rate that includes OATH cases and dismissals because it did not maintain a database that collates this information. In response to a draft of this report, the Department provided new data for its conviction rates which included DCT and OATH combined. While the Commission has not audited this data, the Department reported these conviction rates to be: 72.27% in 1996; 73.57% in 1997; 77.10% in 1998; and 75.50% in 1999 (through October).

the Department to CCRB. In furtherance of this objective, the Department and the City stated that they are exploring and beginning to effect the administrative changes that are necessary to actualize this reform. Implementing such a system will provide an incentive to CCRB to substantiate only those cases that can be successfully prosecuted and prevents the Department and CCRB from being able to blame each other for the failure of CCRB prosecutions. Increasing accountability for these cases within CCRB would also enhance public confidence in how these complaints are being addressed and would eliminate some delay in resolving these cases.

Additionally, the Department reported other positive steps that have been taken or are being considered to address concerns raised by the Commission regarding case preparation, case presentation, and delay. Specifically, the Department stated that new training methods are being utilized to develop and improve case enhancement and advocacy skills, such as developing training films which simulate trials and evidentiary issues. Also, the Department has sought increased funding to enable advocates to attend additional outside training courses and to enable them to conduct necessary legal research. The Department also agreed with the need to emphasize early witness contact, improved supervision, and better documentation of case handling.

In order to address the issue of delay in the disciplinary system, the Department also reported that it has implemented additional efforts, such as automatic calendaring of cases that have been pending for over eight weeks and more formally conducting monthly case reviews.

4. Conclusion

The Department has over the years made serious efforts to increase the effectiveness of

the disciplinary system in general and the prosecution function in particular.⁷ The Department's adoption of several of the Commission's recommendations in the Prosecution Study, especially the recommendation regarding the prosecution of CCRB cases, indicates the Department's willingness to revise and improve the disciplinary system. Additionally, the Commission believes that the Department should continue its efforts to make meaningful changes in the way cases are prepared and presented in the Trial Rooms and strive to eliminate unnecessary delay in the prosecution of cases. These improvements are necessary for the system to adequately meet the needs of the Department, its members, and the justified expectations of the public.

B. THE NEW YORK CITY POLICE DEPARTMENT'S INTERNAL AFFAIRS BUREAU: A SURVEY OF FORMER IAB MEMBERS ("SURVEY REPORT")

1. Purpose of the Survey Report

Central to the proper functioning of the Internal Affairs Bureau, and especially to the quality of IAB investigations, is a motivated and skilled staff committed to the objectives of IAB. If there is difficulty recruiting or retaining qualified IAB staff, the quality of investigations may suffer and IAB's mission may be damaged. During the course of its work, the Commission observed that IAB experienced a significant and regular turnover of its personnel. Given the importance of this issue to the quality of IAB investigations, as well as the broader issues of staff recruitment and retention, the Commission undertook a survey of former IAB

⁷ For example, since 1997, there has been a significant increase in the Department Advocate's staff, including hiring a number of former prosecutors. This practice has continued and the current hiring policy requires that new civilian advocates have felony trial experience. Additional improvements made by the Department have been described in previous Commission reports. *See, e.g., The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements* (December 1996); *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998); *The New York City Police Department's Disciplinary System: How the Department Disciplines Probationary Police Officers Who Engage in Misconduct* (August 1998).

members to assess their perspectives on working in IAB. These former IAB members were questioned about their overall attitudes and opinions about working in IAB as well as issues relating to recruitment and retention, including morale, and their reasons for transferring out of IAB after completion of their two-year commitment.⁸

2. Findings

The Commission's interviews with approximately 40 former IAB members of varying ranks and assignments revealed that many of the officers were initially displeased about being drafted into IAB because of the fear of being labeled a “rat” and having to investigate other members of the service. While these same officers overwhelmingly left IAB with a very positive view of their assignment, they also eagerly anticipated the completion of their IAB tour. Many officers also cited a *de facto* reduction in salary as one reason why they did not remain in IAB past their two-year commitment. This “reduction” arose because of fewer overtime opportunities in IAB, thereby effectively reducing salaries. The Commission found that this attitude raises potential long term issues as to the effectiveness of IAB.

Finally, most interviewees found that IAB was staffed with qualified investigators, and that the officer’s IAB assignment did not adversely affect long-term relationships with other members of the Department. During their tenure, many felt they gained substantive investigative skills and had the opportunity to participate in training programs both within and outside of the Department.

⁸ Under the provisions of Department Interim Order 39 (“I.O. 39”) issued in 1994, IAB gets the first opportunity to select members of the service who are seeking transfer to investigative assignments. These IAB draftees are then assigned to a 2-year IAB rotation.

3. Recommendations & Department's Response

The Commission suggested extending the tenure of assignment to IAB, under I.O. 39, to three years. This increased tenure would allow for greater continuity and more experienced investigation teams. To deal with the financial disincentive to remaining in IAB, the Commission recommended that members of IAB receive some form of additional compensation, noting that, for instance, more special assignment money and the development of financial incentives could be introduced to increase the benefits of serving in IAB. Currently, only qualified personnel who commit to extended assignments in IAB, after their two year commitment has ended, are eligible to receive special assignment money. While the central recommendations of the Report -- including a minimum three year term in IAB -- have not been implemented, the Department recently stated that it actively seeks and has received incentives for personnel assigned to IAB who deserve recognition. These incentives include citation, promotion, salary enhancement, and assignment preference.

C. PERFORMANCE STUDY: THE INTERNAL AFFAIRS BUREAU'S INTEGRITY TESTING PROGRAM ("INTEGRITY TESTING REPORT")

1. Background of the Integrity Testing Report

The Commission undertook a review of both the targeted and random integrity testing programs of IAB.⁹ The Commission reviewed a sample of random and targeted tests conducted in 1998 and 1999. In addition to reviewing investigative reports related to these tests, the Commission reviewed audio and video tapes of the tests themselves.

⁹ In a previous study, the Commission also examined IAB's integrity testing program and commissioned KPMG Peat Marwick LLP to review that program. *See Report to The New York City Commission to Combat Police Corruption, The New York City Police Department Random Integrity Testing Program* (December 1996).

Integrity tests are an important component in the Department's overall anti-corruption program because they can be a deterrent to corruption, as well as a valuable tool in gathering evidence against corrupt officers. There are two types of integrity tests: a targeted integrity test which is directed at a specific officer who has been the subject of a corruption allegation; and a random test, which tests any officer who interacts with the test setting. Even random tests, however, are often conducted in locations where there is at least some generalized intelligence suggesting the existence of a corruption risk.

Targeted and random integrity tests thus generally fulfill different, but equally important functions. Targeted integrity tests may, at times, provide a critical means of developing a provable case against an officer in a corruption investigation, while random tests may provide a strong corruption deterrent within the Department by creating uncertainty as to whether otherwise corruption-tempting events are or are not, in fact, integrity tests, as well as provide a means to discipline officers who fail such tests.

2. Findings

While the Commission determined that the Department's integrity testing program was a sophisticated one, it found that the scenarios employed in random tests had become too routine, and might be recognizable to members of the service as tests. The review also indicated that IAB needs to continue to work to ensure that tests are realistic and that there is adequate preparation by those participating in them. While targeted tests tended to be more creative and realistic, the Commission found that some of these tests were not sufficiently compatible with the allegations being investigated. The Commission also noted that efforts to memorialize evidence in both random and targeted tests were often hindered by technical difficulties with

audio and video equipment or by the failure to attempt to record the test at all. Recording these tests is a valuable form of evidence that can be used in a criminal or Department trial.

Furthermore, these tapes can provide a means for training IAB investigators.

3. Recommendations & Department's Response

Recognizing that random testing has a potential deterrence value, the Commission recommended that the quality of random integrity tests be enhanced. To accomplish this, the Commission recommended that test scenarios, especially in random testing, be more realistic and creative. The Commission stressed that if a test scenario is unrealistic it will be less effective in testing either a subject or random officer. And if it is used repeatedly in the random testing program, there is an increased risk of it becoming recognizable and its effectiveness as a deterrent is diminished. In targeted testing, the Commission recommended that IAB investigators work to more consistently develop tests adequately tailored to the specific allegations against the subject officer. The Commission also recommended that IAB take appropriate measures to ensure the proper use of audio/video recordings of tests. Finally, the Commission recommended that IAB formalize a means by which information gained through these tests can be disseminated for training purposes.

In response to the above recommendations, the Department stated that it viewed their integrity tests as realistic, and believed that even if such tests are easily identifiable by members of the service, they are a meaningful deterrent to misconduct. Also, the Department noted that although audio and visual recording of tests is helpful, it is not always feasible. In response to the Commission's recommendation regarding the formal identification and dissemination of training material, the Department created a form to be completed in order to identify training

needs.

D. PERFORMANCE STUDY: A REVIEW OF THE INTERNAL AFFAIRS BUREAU'S INTERROGATIONS OF MEMBERS OF THE SERVICE ("INTERROGATION STUDY")

1. Purpose of the Interrogation Study

Most IAB investigations into corruption allegations include an interrogation of the subject officer and other officers who witnessed the alleged incident. Patrol Guide Section 206-13 (AG 206-13", "PG interviews")¹⁰ mandates that members of the service must answer questions by the Department relating to their duties as police officers. Consequently, PG interviews are a potentially valuable way to obtain information from subject or witness officers. Information obtained during these interviews can both assist the Department in building a case against the officer or in exonerating that officer. Given the importance of PG 206-13 interviews within an investigation, the Commission sought to assess the quality of these interviews.

2. Findings

While the majority of PG interviews reviewed for this study were conducted competently, the Commission found important areas in which improvement was needed. In a number of cases, the Commission determined that interviewers failed to ask appropriate follow-up questions or explore all aspects of the allegation during questioning. The Commission also found that at times IAB investigators did not adequately prepare for interviews. Thus, in some

¹⁰ Because a subject officer may be terminated from the Department should he refuse to answer questions under PG § 206-13 (formerly PG 118-9), his answers are considered to be compelled and under constitutional law may not be used in a criminal prosecution. *See Garrity v. State of New Jersey*, 385 U.S. 493, 87 S.Ct. 616 (1967).

instances, there was little evidence that the interviewer had prepared questions before the interview or had a strategy before commencing the interrogation.

3. Recommendations & Department's Response

Based on its findings, the Commission made several recommendations to improve the quality of PG 206-13 interviews. The Commission recommended that IAB's Investigative Review Unit ("IRU"), the unit responsible for reviewing IAB investigations, include PG interviews as part of its routine quality-control function. The Commission also recommended that interviewers be better prepared before conducting interrogations. Investigators should have an interrogation strategy, and should prepare questions that are reviewed by a supervisor prior to the interview. Additionally, IAB should offer more PG interview training, such as role-playing, to allow an interviewer to conduct mock interviews and receive feedback from more experienced interrogators.

In response to the Commission's recommendations, IRU now routinely reviews PG interviews. Also, IAB stated that although there is no formal policy, supervisors meet with interrogators before interviews in order to devise strategy and review questions to be posed. Finally, with respect to the Commission's recommendation regarding the need for increased formal continual training, the Department stated that it utilized an in-house two-week training course which teaches PG interview techniques.

E. PERFORMANCE STUDY: THE INTERNAL AFFAIRS BUREAU'S INVESTIGATIVE REVIEW UNIT ("IRU REPORT")

1. Purpose of the IRU Report

The Internal Review Unit was created by IAB to act as an internal quality assurance unit. IRU reviews both open and closed IAB investigations to identify problems in an investigation. Where problems are identified, IRU alerts IAB's executive management and Commanding Officers so that appropriate corrective action may be taken. In conducting this study, the Commission sought to evaluate the effectiveness of IRU's review of closed investigations by examining a number of investigations that IRU reviewed.

2. Findings

Overall, the Commission determined that IRU performs a valuable quality-control function. The Commission found that IRU reviewed investigations in a timely manner and generally provided constructive commentary, thus permitting additional investigative action to be taken where necessary. The Commission learned, however, that there was not a formal mechanism in place for addressing training issues raised by IRU reviews, and that IRU staff did not routinely receive or review audio or video cassettes of integrity tests or PG 206-13 interviews conducted during the course of an investigation.

3. Recommendations & Department's Response

The Commission recommended that IRU findings and recommendations should include more enhanced evaluative comments and that training issues be disseminated to investigative groups in a more formalized manner. In response, the Department stated that training comments were successfully disseminated in an informal manner. The Commission also advised that IRU routinely obtain and review audio tapes of PG 206-13 interrogations and integrity testing documents (including audio and video recordings) as part of its review of all cases. In response,

and during the course of the study, IAB established a formal policy requiring that IRU staff review PG interviews and integrity tests as part of its investigative review function. Finally, the Commission recommended that an officer more senior than a lieutenant be appointed the Commanding Officer of IRU, because IRU's responsibilities include advising and sometimes criticizing high ranking officers of the IAB investigative groups. The Department stated that it considered this recommendation, but believes that such a change in rank is unnecessary because the Commanding Officer of IRU reports directly to the Chief of IAB, who is responsible for disseminating information or criticism to the investigative groups.

III. COMMISSION'S MONITORING OF CLOSED IAB INVESTIGATIONS

A. CLOSED CASE MONITORING REVIEW

In prior studies and reports,¹¹ the Commission described its findings after conducting reviews of a large number of closed IAB cases. Because of the large number of cases reviewed, time taken to receive all relevant paper work, and time taken to discuss the cases with IAB, the Commission's past reviews of closed cases often involved investigations that were several years old by the time the Commission reported its findings.

In order to make its findings more timely, during the past year the Commission modified its approach. Rather than do a single study involving a large number of cases, it deliberately selected a smaller number of closed IAB investigations to review each month. Accordingly, while the monitoring section that follows in this report reflects the review of a smaller number of closed cases than those in earlier studies, all of the investigations reviewed were closed during

¹¹ See, e.g., *Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau* (October 1997); *Fourth Annual Report of the Commission* (November 1999), at pp. 22-42.

2000. These IAB cases cover virtually all of IAB's investigative groups,¹² with the investigations of several groups reviewed in a more in-depth fashion.

Thus, as part of its closed case review during the past year, Commission staff examined 45 IAB investigations that were designated as "C"¹³ cases. Some of these cases were chosen randomly from lists of closed cases and were not selected for any particular type of allegation although the Commission did obtain at least one closed case from virtually each IAB investigative group. The remaining cases included in this review were ten closed cases handled by Group 53 (School Safety) and ten closed cases handled by Group 41 (which investigates allegations against officers assigned to the Organized Crime Control Bureau, "OCCB").¹⁴ In each instance, the Commanding Officer of the relevant group was asked to produce the complete investigative file, including video and audio tapes where present, so that Commission staff could fully assess the quality of the investigation.

Commission staff evaluated, in light of the particular allegations in each case, whether appropriate investigative steps had been taken. Specifically, the Commission looked at issues such as whether complainants and witnesses were interviewed in a timely manner, whether IAB investigators obtained and reviewed documents critical to the case, whether necessary surveillance techniques were used and if so, their effectiveness. Further, the Commission looked at the efficacy of integrity tests and PG 206-13 interviews conducted by investigators. In

¹² There are sixteen investigative groups in IAB. The groups are divided up by geography and subject-matter. Fourteen groups were encompassed within this study.

¹³ An IAB allegation is deemed a "C" case where the allegation involves a crime or serious misconduct.

¹⁴ In the case of Group 53, the Commission was interested in how IAB's newest investigative group dealt with allegations against school safety agents. Group 41 has always been of particular interest to the Commission given the importance of allegations involving detectives and others who work in narcotics enforcement.

assessing these cases, the Commission, factoring in the nature of the allegation, looked at the totality of the investigative work carried out by IAB in determining whether the investigation was competently handled.

Overall, the Commission found that IAB conducted competent investigations in virtually all of the investigations reviewed, and the Commission is satisfied that investigators are generally handling cases in an appropriate manner. Specifically, the Commission found that IAB investigators were generally contacting witnesses in a timely fashion, utilizing the E.D.I.T.¹⁵ program appropriately, adequately reviewing relevant documents and records, and conducting competent interrogations. In two instances, where the cases were not initially handled well, the Commission found that IAB's Internal Review Unit had noted problems and directed the investigative group to address its shortcomings. In six cases, as discussed below, the Commission identified investigations that could have been improved, but were on an overall basis conducted in an adequate manner.

One case, which is illustrative of effective investigation by IAB, involved a telephone call that IAB received at its Command Center. There, a complainant alleged that a school safety agent was in possession of an unlicensed pistol, had admitted marijuana use on a recent job application, had retained property that he had taken from students and, in one instance, used unnecessary force against a student. Within one day of receiving this allegation, the IAB investigator interviewed the complainant and set the ground work for setting up a controlled telephone call between the complainant and the subject officer. Subsequently, the subject officer made incriminating comments to the complainant on the taped telephone call that had been

¹⁵ E.D.I.T. - the acronym for enforcement, debriefing, intelligence and testing - utilizes IAB personnel in pro-active enforcement efforts that result in the arrest and debriefing of individuals to gather possible corruption-

arranged by the investigator. On the basis of this call, the investigator was able to obtain a search warrant. During the execution of the warrant, investigators discovered an unlicensed pistol for which the subject officer was arrested. In addition, the investigators checked with the organization to which the subject officer had allegedly made statements concerning drug use, and interviewed students and school administrators to determine whether the subject officer had taken property from them and not returned it. The investigator ultimately determined that the subject officer had not retained property nor had he made statements concerning drug use. Thus, as a result of an effective and efficient investigation, some allegations were substantiated and the officer was exonerated as to others.

Of course, the Commission recognizes that each case is different. In some instances complainants are reluctant to cooperate, if at all; surveillance in locations such as schools pose particular problems; and often there is incomplete or misleading identification information on a subject officer which makes investigation of the allegation difficult. Nevertheless, as subsequent cases illustrate, despite encountering such difficulties, IAB carried out effective investigations in all the cases reviewed.

1. Timeliness of Contact with Complainants and Witnesses

In past reports, the Commission has raised issues about the timeliness of witness contact in IAB investigations. Ideally, an investigator should make contact immediately after the allegation is received so that the incident is fresh in the minds of complainants and witnesses. Clearly, a lapse between the time an allegation is made and the interviews of complainants and

related intelligence.

witnesses can have detrimental effects on the outcome of an investigation, including on the ability ultimately to substantiate the allegation. In some circumstances, however, the Commission recognizes that the facts of a particular case may dictate that there be a lapse in time between the allegation and the interview of witnesses. For instance, an investigator may decide not to interview a possible officer witness about an alleged incident until the investigator is confident that the officer himself was not involved in the misconduct, or the investigator may wait until he has gathered additional evidence which could corroborate or disprove the officer's statement. Alternatively, an investigator may be unable to contact a witness despite repeated efforts. Therefore, barring some specific rationale or investigative purpose, contacting witnesses in a timely fashion should be one of the investigator's first and fundamental responsibilities.

Based on its current review, the Commission found that in these cases, IAB investigators generally were contacting witnesses and complainants in a timely fashion. This represents an improvement over what had been reported in prior reports. Even in instances where the complainant was ultimately uncooperative, the Commission found that IAB persisted in its efforts to interview a complainant. For example, in a case in which the complainant alleged he had witnessed NYPD officers physically brutalize a civilian, the investigator repeatedly contacted the complainant even when the complainant refused to return telephone calls and provided only promises about making contact at a later date. In this case, the investigator also repeatedly attempted to contact another witness, who, according to the complainant, had observed the incident. That eyewitness provided vague information that conflicted with the complainant's original allegation as well as the witness's previous statements. Notwithstanding such lack of cooperation, the investigator continued her efforts to elicit information from both parties, and only after numerous and varied efforts to gain additional information from the

complainant and witness were stymied did the investigator close the case.

2. IRU

IAB's Investigation Review Unit ("IRU") provides quality control by reviewing open and closed investigations and making recommendations to IAB executive management regarding its findings. As discussed above, the Commission carried out a study of IRU during the past year. In that study, the Commission found that IRU generally performs its investigative review function in an effective manner. In this study, the Commission found that this conclusion is still accurate.

For example, in one case, an officer reported anonymously to the Command Center that he had overheard another officer make a statement about prior drug use. The complainant also alleged that the officer had admitted that a member of his family had been arrested for selling drugs and was a "crackhead." The case was originally filed for information and intelligence, and closed within a few weeks. However, IRU reviewed the investigative file and recommended that further work be carried out. Specifically, IRU recommended that identification of the reporting officer be made so that further information concerning the allegation could be obtained; that CPIs¹⁶ of the subject and reporting officer be examined; that a lifestyle check of the subject be initiated; that surveillance of the subject be undertaken; that an integrity test be carried out; and that the place where the subject allegedly made his incriminating comments be identified so that other possible witnesses could be identified. Subsequently, the backgrounds of both officers -- the subject and the reporting officer -- were examined including drug testing results, personnel

¹⁶ A central personnel index contains a summary of allegations, if any, made against an officer, as well as certain personnel-related information.

folders and CPIs. The investigation is currently open.

In another case, a complainant alleged that police officers had assaulted him and stolen his property. Investigators failed to interview the complainant, and failed to review the property invoices, the command log, and the subject officer's activity logs. IRU noted these deficiencies and recommended steps to rectify the investigation. Although the initial investigation was insufficient, IRU appropriately ensured that the necessary investigative steps -- such as interviewing the complainant and searching the property invoices to ascertain whether, in fact, the complainant's property had been vouchered -- were ultimately taken. Again, as the Commission has previously found and this case illustrates, IRU has effectively identified problematic investigations and made recommendations to aid investigators in improving their investigations.

3. PG 206-13 (formerly PG 118-9) Interrogations

Because information gleaned from police officer witnesses and subject officers can be so important to an investigation and ultimately to an administrative prosecution, the Commission's previous studies have recommended that PG 206-13 interrogations be conducted more effectively and that the interrogators fully familiarize themselves with the case, draft appropriate questions and generally lay the groundwork for a successful interrogation before conducting the interviews. In the Commission's sample, worksheets summarizing interrogations were reviewed with several issues in mind, including whether the interrogation was a useful tool to employ given the facts of the case; whether appropriate information was solicited; and whether the file reflected preparation for the interrogation. Further, the Commission listened to audiotapes of a number of interrogations, including all interrogations that raised issues after the initial review of

worksheets contained in the file. Although this review was less extensive than in prior studies, this more limited review indicated an improvement in the overall quality of PG interviews. Nevertheless, because PG 206-13 interrogations can be critical to the resolution of a case, the Commission will continue to review this area of IAB investigations.

4. Investigation of Subject Officer in Property Cases

In cases where more than one officer is involved with the execution of a search warrant and a complainant alleges the theft of property, the complainants are often unable to provide the identity of the individual who allegedly stole the property. IAB must therefore determine the responsible officer(s) by investigating the group of officers present at the scene where the warrant was executed. Unless specific information has been supplied which points to one officer as the subject, the case should be investigated with a focus on all officers present at the scene as potential subjects. Absent the presence of independent verifying information, designating one officer as the subject and focusing on that officer, rather than on all the officers present at the scene, risks not identifying the true subject and adversely affecting the investigation. The Commission has observed IAB executive personnel generally taking great care during their periodic meetings when they review cases,¹⁷ especially those involving search warrants, to ensure that all the appropriate officers have been named as subject officers. One case reviewed by the Commission, however, indicates that this is an issue which requires additional attention.

The case involved an allegation of theft after the execution of a search warrant. IAB initially named only the executing officer as the subject officer and obtained the background

¹⁷ These periodic conferences are called “steering” and occur monthly. At these meetings, IAB executive personnel discuss important open IAB investigations. They discuss investigative steps, offer suggestions, and

information of only this one officer, even though other officers were present at the time the apartment was searched and the complainant was unable to specifically identify that particular officer, or indeed any officer, as the responsible party. Further, nothing in the investigative file indicated a rationale -- for instance, perhaps only one officer had access to the property or a particular room -- for focusing only on the executing officer as the subject. Without such a rationale, the Commission believes it is proper for IAB to designate all the officers present at the scene as subjects and investigate each of them accordingly. The failure to include all appropriate officers as subjects means that if other allegations later arise against the unnamed officers, there will be no record that they were involved in a similar earlier incident. Additionally, conducting background investigations on all officers present at the incident may help the investigators focus on a likely subject officer or may reveal officers who should be subject to integrity tests. Here, although the other four officers present at the scene were ultimately named as subjects at the conclusion of the case, the case file disclosed background information only on the executing officer. While a more expansive investigation may not have had an effect on this particular case, in general, obtaining background information on all officers present at an incident may provide investigative leads that could be utilized in the case. Indeed, in other types of cases, such as arrests involving allegations of unjustified force where the officer is not identified, the Commission has observed IAB designating all officers present as possible subjects and investigating all of them.

5. Integrity Testing and Surveillance

provide directions to the investigative groups in order to assist them in resolving their open cases.

Most of the cases reviewed for this study reflected appropriate use of integrity testing and surveillance techniques. In a few instances, however, the facts reflected in the case file appeared to call for the performance of an integrity test or surveillance, but these procedures were not utilized by the investigators.

In one case, money was stolen from a vending machine located in a secure, police facility. The investigator carried out a canvass of the area and even went so far as having fingerprints taken from the machine, which apparently had a broken lock at the time the thefts occurred. The investigative file further indicated that a prior theft from the same machine had occurred three months earlier. Despite taking various investigative actions, no subject was ever identified, the case was closed for information and intelligence only, and a new lock was placed on the machine in order to thwart any future thefts. The Commission recognizes that certain policy issues might militate against the use of a surveillance camera in a police facility. However, the potential subject may have been a new police officer who could therefore be a liability to the Department in the future. Given that issue and the relative ease with which a camera could have been installed, an integrity test may have been useful in the investigation.¹⁸

In other cases, the type of test used by the investigator was not realistic given the nature of the allegation made against the subject officer. For instance, IAB received an allegation that a school safety agent had been observed in a night club using marijuana. The investigators

¹⁸ In connection with a review of this case, senior IAB management has stressed to the Commission that an integrity test was unnecessary given the replacement of the vending machine's defective lock.

A similar issue arose in another case where, after the death of a complainant's brother inside an apartment, the complainant stated that subject officers removed \$18,000 from the apartment and only vouchered approximately \$800. Two of the five subject officers who had been at the scene had previous allegations indicated on their personnel histories. Based on a review of the file, the Commission learned that one of the prior allegations involved improperly obtaining money. No integrity tests were carried out and the case was closed as unsubstantiated. The Commission believes that an integrity test for all subject officers present in the apartment or the officer who had prior similar allegations may have been appropriate.

decided in that case, after several unsuccessful surveillances, to approach the subject during work hours and ask her if she knew where they could buy drugs. The subject passed the test but the Commanding Officer of the IAB group later criticized the test as not appropriate given the allegations. While the Commanding Officer did not apparently review the test before its execution, his post-test comments demonstrate the value of IAB supervisory oversight, particularly where integrity tests are concerned.

6. Documentation

Most of the files appeared to contain all documents necessary for a thorough investigation. In no cases did critical documents appear to be missing. In a few instances, the Commission noted that there was some question as to whether investigators had obtained and reviewed prior investigations of the subject officer. As recommended in prior reports, IAB should document its review of all relevant files related to the subject officer in order to assist new investigators should a case be transferred¹⁹ prior to its conclusion.

7. Summary

The Commission's review of 45 cases, encompassing fourteen investigative groups, indicates that IAB is competently handling investigations. IAB investigators are generally contacting complainants and witnesses in a timely manner and the files examined were generally complete and reflected appropriate investigation by investigators. Further, the review illustrates that IRU is functioning effectively to identify problematic cases.

¹⁹ The Commission has found that it is not uncommon for an investigation to be transferred from one investigator to another before closing.

As part of its mandate, the Commission will continue to conduct closed case monitoring during the next year.

IV. FOLLOW-UP ON PAST COMMISSION RECOMMENDATIONS

In its last Annual Report, the Commission stated that during the coming year it would review how the Department had responded to recommendations contained in various of its earlier reports. This section describes the results of that review.

A. SERIOUS OFF-DUTY MISCONDUCT

1. Introduction

In the Commission's August 1998 Report, *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct*, ("Off-Duty Misconduct Report"), the Commission examined the disciplinary process and the penalties imposed on officers who have been charged with, and found guilty of, certain types of misconduct while off-duty. Specifically, the report focused on serious instances of misconduct --those involving the discharge or display of a firearm, other violent behavior, and alcohol abuse.²⁰ The Commission found that while the Department appropriately handled the majority of cases reviewed, there were certain areas which warranted changes in Departmental policy and the Commission therefore made a series of recommendations, some of which were

²⁰ These cases included allegations of driving while intoxicated ("DWI") and allegations of officers so affected by alcohol consumption that, whether or not they were driving, they were found by a ranking officer to be unfit to carry out their duties as police officers. Pursuant to Departmental regulations, the Commanding Officer or Duty Captain -- a ranking officer assigned to the overall responsibility for a particular borough and surrounding jurisdictions for a given tour on a rotating basis -- is responsible for evaluating an officer's fitness for duty after notification of the officer's involvement in an off-duty incident. (See *Patrol Guide*, § 206-12).

adopted by the Department. The Commission revisited the issues and recommendations made in its earlier Off-Duty Misconduct Report by examining the dispositions of cases that have been adjudicated since the new policies were implemented.

2. Recommendations & Department's Response

In the Off-Duty Misconduct Report, the Commission made a series of recommendations, particularly relating to cases involving discharge of a firearm, unjustified acts of violence, and offenses involving the use of alcohol. The Commission recommended that:

- In general, officers who unjustifiably discharge their weapons or who under any circumstances discharge their weapons off-duty, and fail to report it to the Department, should be terminated, absent exceptional circumstances, whether or not the incident involved alcohol.
- Officers who engage in more than one (or even one, depending on the severity of the violence) unjustified act of violence should likewise be terminated.
- The Department should employ stronger language in its Patrol Guide to discourage officers from consuming alcohol while carrying a weapon off-duty, and consider altogether banning the consumption of alcohol while armed.
- The Commission also recommended that officers who are unfit for duty while armed should receive significant penalties, and be treated more severely than officers who are unfit for duty and not armed. Where such officers are not terminated, any penalties should include the imposition of mandatory counseling and dismissal probation.²¹
- Duty Captains should make fitness-for-duty findings based on an officer's condition at the time of the alleged misconduct, not just at the time a Duty Captain personally observes the officer. In its 1998 study, the Commission had found that Duty Captains overall, relied on the condition of the officer only at the time the captain observed the subject officer, which might be hours after the incident where intoxication was suspected. Instead, the Duty Captains should draw upon all available evidence in making a fitness determination, including testimonial and

²¹ In conjunction with other penalties, the Department may also place individuals on dismissal probation for a period of time not to exceed one year. When imposed, an officer is actually terminated from the Department but the penalty is held in abeyance until the expiration of the probation period, after which the officer is restored to his prior status. While on dismissal probation, the officer may be summarily terminated at the discretion of the Police Commissioner, without any further due-process proceeding, for any misconduct.

scientific evidence such as the subject's blood alcohol content.

- Where there is objective evidence of possible intoxication, the Department should use a breathalyzer test to determine fitness, at least in cases involving driving or the commission of violent acts with or without a weapon.
- An officer's refusal to submit to a breathalyzer test should be routinely offered as evidence in the Department's case-in-chief in all administrative prosecutions for driving under the influence and other acts of misconduct where an officer has been found unfit for duty.
- New York City's Administrative Code should be amended to allow Trial Commissioners to require officers found guilty of misconduct to undergo counseling, where appropriate.

The Department instituted a number of changes in response to the Commission's findings relating to offenses involving the use of alcohol. The Department created a new administrative charge, "armed while unfit for duty" thereby putting officers on notice, and enabling the Department to punish more severely those who are armed and unfit, as opposed to those unfit, but not armed.²² It also added stronger language to its Patrol Guide, to more forcefully discourage the consumption of alcohol by off-duty officers so long as they have their weapons.

Regarding the Commission's recommendations as to determinations of unfitness, the Department agreed that a charge of unfit for duty should be brought against any officer who has engaged in misconduct if there is scientific or other evidence of the officer's intoxication, even if by the time the Duty Captain sees the officer, he or she is no longer unfit for duty. As a result, the Department created a specialized form that directs Duty Captains to consider a number of physical indicia of intoxication as well as witness statements and breathalyzer evidence, and makes clear that the officer's fitness at the time of the incident - not just at the time of the Duty Captain's observation of the officer - is relevant. In Driving While Intoxicated ("DWI") cases,

²² The maximum amount of time that the Department may suspend an officer without pay is 30 days per offense.

the Department stated that it would use evidence that an officer refused a breathalyzer test in the presentation of its case and file a separate charge of “conduct prejudicial to the good order of the Department” (hereinafter “conduct prejudicial”) in those instances. Further, the Department stated that it would charge all officers who have been charged with DWI with a specific charge of unfit for duty.

In recognition of the need for alcohol counseling where appropriate and the Commission’s recommendations, the Department codified its previously existing policy of requiring all officers to consult with the Counseling Services Unit of the Department before any disciplinary matter involving alcohol is adjudicated. Continued counseling and/or evaluations may also be made part of any plea agreement. Neither the Police Commissioner nor the Trial Commissioners, however, have the authority to mandate counseling as part of a penalty imposed after trial. The Department did not concur with the recommendation related to providing Trial Commissioners with the authority to mandate counseling, but noted that in all cases of misconduct where alcohol consumption is indicated, conferral with, and evaluation by, the Alcohol Counseling Unit is mandated.

The Department acknowledged the gravity of violence-related misconduct, but it did not adopt the Commission’s recommendations involving mandatory termination in cases involving unjustifiable discharge, failure-to-report, or extreme violence, because it believed that mandated penalties would infringe upon its discretion to evaluate each case on an individual basis.²³ The Department did, however, adopt a new policy involving the misuse of a firearm. In its Patrol Guide, the Department adopted a policy that, absent exceptional circumstances, “misuse of a

²³ If an officer is found guilty by plea or after administrative trial, the Department may impose one or more of the following penalties for each offense: reprimand; probation; forfeiture of up to 30 vacation days; suspension of

firearm while unfit for duty . . . will result in that member's termination from the Department."²⁴

3. Findings

With the Commission's findings and recommendations of the Off-Duty Misconduct Report (1998) in mind, the Commission reviewed the same types of cases as those covered by that study which had been closed by the Department from January 1999 through April 2000. In total, the Commission reviewed approximately 200 cases, including firearm discharge cases, other violence-related cases, and alcohol-related misconduct, and sought to evaluate the discipline imposed in light of the Commission's prior recommendations and the implementation of the Department's new policies.

In general, while disagreeing with some of the results, the Commission found that in most cases the Department imposed appropriate penalties in all areas of misconduct which were studied. The Commission also noted a significant increase in the application of dismissal probation in conjunction with counseling in alcohol-related and domestic violence cases. While there were cases in which the Commission questioned the ultimate outcome or penalty imposed, the Department satisfactorily handled the majority of cases in each area discussed below.

a. Misconduct Involving the Display or Discharge of a Firearm

Approximately one-quarter of the cases in the sample involved the discharge or display

up to 30 days without pay; and termination.

²⁴ See Patrol Guide § 203-04. Although this revision only became effective July 28, 2000, a similar interim order had been in effect from January 1999 through January 2000. In the Commission's sample, however, there were no cases falling within the criteria to be affected by the new policy during that period. The Commission will therefore continue to monitor the application and effectiveness of the new policy.

of a firearm. These cases ranged from the accidental failure to safeguard a weapon and subsequent discharge, to the intentional discharge of a firearm. Due to varied factual settings, mitigating factors, and the subject officer's prior disciplinary record and performance evaluations, the penalties varied. Overall, the Commission found that most penalties sufficiently addressed the nature of the misconduct. In ten cases, however, the Commission found that there is a question about the adequacy of the penalty imposed.

Where a respondent intentionally and unjustifiably displayed or discharged his firearm, the case generally resulted in termination. These cases primarily involved incidents where an altercation ensued, either stemming from a domestic incident or a traffic dispute. For example, in one case after a minor traffic accident, the subject officer physically assaulted a taxi cab driver injuring him and threatened the taxi driver with a gun. The subject officer then swore out a criminal complaint against the taxi driver, falsely stating that the cab driver had assaulted the officer and threatened him with an anti-theft device ("The Club"). Approximately sixteen months earlier, the officer had been found guilty of assaulting a prisoner and threatening a supervisor who had intervened. Noting that it would not be in the Department's best interest to retain an officer who had twice engaged in violent misconduct, the Trial Commissioner recommended termination and the Police Commissioner approved the penalty.

An example of a case where the Commission found that the penalty imposed was inadequate and that the officer should have been terminated, involved an officer who discharged eight rounds of ammunition from his firearm while traveling as a passenger in a car. This occurred in a public place on a major thoroughfare, putting at least two individuals who observed the incident in physical danger. After his arrest, the respondent was found to be unfit for duty. Although on the date of this incident, the Department had not yet adopted a policy requiring

termination, absent exceptional circumstances, where a subject officer is unfit for duty and there is deliberate and unjustifiable discharge of a firearm off-duty, this is a case where even without such a policy, the appropriate outcome was termination of the officer. Instead, however, the respondent received a penalty of one year dismissal probation and a 60-day suspension. While the Department felt that this penalty was sufficient in light of respondent's stress over financial problems and his cooperation with the investigation, the respondent's work evaluations cited a pattern of problems with following rules and regulations. Because of the seriousness of the officer's misconduct, and his work history, termination was the appropriate penalty.²⁵

In other cases where an officer unintentionally discharged his firearm or his negligence contributed to an accidental discharge, sometimes injuring another, the penalties were generally appropriate when the incident was immediately reported by the officer.²⁶ In those cases, a respondent generally lost vacation days as a penalty.²⁷ As discussed above, the Commission believes that discharge of a weapon, accidental or otherwise requires the immediate reporting of

²⁵ Similarly, in another case involving the unjustified discharge of a firearm, the Commission believes that termination would have been a better result, although there clearly was a basis for not terminating the officer. There, after a traffic dispute and physical altercation in which the subject officer was beaten, he fired his gun at the complainant's vehicle with numerous bystanders nearby, and then smashed the window of the car with the gun. The subject officer then drove away, leaving his companion on the street, to be beaten by the complainant and his friends. When the subject officer arrived at home, he tampered with evidence by reloading his weapon and disposing of the spent shells. There was also evidence that the subject officer had been drinking and there were numerous witnesses to the incident. Although there were evidentiary problems with the case -- some witnesses were either unavailable or unreliable, and the officer had been punched before reacting -- which the Department cited as the basis for the plea, the Commission believes that the Department had an arguably provable case and the subject officer's actions warranted termination. Instead, however, the officer entered into a plea agreement and received a penalty of 27 days on suspension, loss of 18 vacation days and one year dismissal probation.

²⁶ In the Commission's sample only eight cases fit this criteria, with most being immediately reported because of an injury requiring immediate medical attention.

²⁷ An officer who loses vacation days will be affected in the following manner: 1) the officer will not be able to take vacation time off during the year, unless the officer has accumulated additional vacation time by carrying accrued time from year to year; or 2) at the conclusion of the officer's service to the Department, the officer will have a shorter terminal leave -- the period prior to his official leave date when an officer who is retiring after 20 or more years of service, or upon a disability, is allowed to take time off, with pay, accrued at a rate of three days per year on the force.

the incident.²⁸

As an example, in a case where the discharge was immediately reported, a probationary police officer, while cleaning his gun, accidentally shot himself. He immediately reported the incident, was cooperative throughout the investigation and received a penalty of forfeiture of ten vacation days. Because the respondent acted responsibly following the incident, the Commission believes that the penalty appropriately addressed the misconduct and held the officer accountable. Imposing this kind of penalty in such cases will encourage immediate reporting and allow a prompt investigation as to the circumstances of a discharge.

In another case, however, the respondent unjustifiably discharged his gun, failed to report the incident, and failed to safeguard the scene, resulting in a penalty of a loss of only twenty vacation days. In this case, according to the respondent, he fired one round of ammunition at a raccoon in his attic. The round passed through the attic and entered the bedroom of a neighbor's home. The incident was reported the next day, by the neighbor, when he found the bullet lodged in a bookcase. Here, the Commission believes that respondent's failure to report the incident warranted termination.²⁹

b. Violent Behavior Not Involving a Firearm

In cases involving violent behavior, respondents were generally appropriately

²⁸ It is imperative that all officers promptly report any instance of weapon discharge because otherwise important evidence may be lost. This may include forensic evidence -- such as spent shells, physical evidence of discharge, and changes in the condition of the weapon -- as well as statements of the witnesses. This evidence is critical in determining the facts and circumstances of the discharge and whether the officer acted properly.

²⁹ In another case, the respondent failed to report the discharge of his gun until one hour later and failed to safeguard the scene. The respondent discharged his firearm in the direction of a threatening dog and the discharge was justified. The officer received a loss of twenty vacation days. The Commission believes that the reporting here was timely enough to justify a penalty short of termination.

disciplined. Where not terminated, respondents usually received dismissal probation and counseling in conjunction with loss of vacation and/or suspension days. Almost all cases that involved assaultive behavior arose out of domestic disputes, traffic disputes, or disputes at an establishment where liquor was served, with the majority being domestic incidents.³⁰ In a number of the domestic violence cases, the Department successfully pursued the cases and entered into plea agreements which imposed penalties, including counseling, despite occasional difficulties with uncooperative witnesses.

There were a few cases however, where counseling was not made part of the plea agreement. For example, in one case where an officer choked his wife and punched her in the stomach, the respondent received a penalty of forfeiture of 20 vacation days and one year dismissal probation. Whatever other questions may exist about this penalty, this is certainly a case where domestic abuse counseling should have been mandated as part of a pre-plea condition.

In another case, an officer was found guilty after trial of shoving and striking his girlfriend. The officer received a penalty of one year dismissal probation, and a 45-day suspension. Here, and in other similar cases, the Trial Commissioner should be given the authority to include counseling as part of the penalty recommendation after trial and the Police Commissioner should have had the authority to mandate it. The New York City Administrative Code, however, does not currently provide this authority. Further, the officer should be monitored to ensure his participation in such counseling.

³⁰ A significant number of these cases involved allegations of violent behavior by civilian members of the service. While uniform members of the service were the focus of this study, additional findings regarding how

c. Offenses Involving the Use of Alcohol

The Commission generally found consistent and appropriate penalties imposed in offenses involving the use of alcohol, especially where a respondent was charged with DWI. The Commission also observed that dismissal probation was frequently imposed in conjunction with counseling as a penalty for alcohol-related misconduct.

Notably, in every case where a uniformed member of the service was found guilty of DWI and received discipline other than termination (and excluding cases where the subject officer resigned or retired), the officer received one year dismissal probation in addition to counseling and forfeiture of vacation days and/or suspension days. The Commission believes that dismissal probation can be an effective tool, both in reforming the behavior of police officers who have had disciplinary problems and in swiftly removing those officers who engage in subsequent misconduct during the probationary period. This is especially true where alcohol abuse is present and dismissal probation can be used to monitor and deal with subsequent alcohol-related misconduct.³¹ Pursuant to broad managerial prerogative, the Department may impose counseling as a condition of a negotiated plea, including instances where dismissal probation is part of the penalty. However, the effectiveness of a counseling requirement is limited without a formal mechanism to monitor an officer's successful completion of counseling. At present, no such mechanism is in place. As part of any penalty, pre- or post-trial, the respondent should be on notice that any violation of the terms of counseling will require a reevaluation of the initial penalty imposed and perhaps result in more significant penalties or

civilian members of the service were disciplined are described below at pp. 41-42.

³¹ As discussed in the original study, while counseling may be an appropriate initial remedy, if an officer fails in treatment, there may be no choice but to terminate the officer to avoid potentially serious on-the-job problems.

additional charges.

The Commission found that in most cases where an officer was charged with DWI and/or where indications of alcohol consumption were present, a charge of unfit for duty was appropriately brought against respondent. Also, in line with the new Patrol Guide guidelines, the Commission found several instances where the Department used observations of witnesses and evidence related to the time of the misconduct to determine unfitness for duty.

For example, in one case, respondent was charged with DWI and other charges. He had spent hours in a bar, become disorderly, and after he had left the establishment, was involved in a car accident. Respondent refused to take a breathalyzer test and at the time the Duty Captain observed the respondent, hours after the incident, he was found fit for duty. Nonetheless, the officer was charged with being unfit for duty and this finding was based on evidence of the officer's condition earlier in the evening. Among those interviewed were the bartender, the owner of the bar, the driver of the other car, and police officer witnesses from outside of New York City. Here, the Department properly charged respondent with being unfit for duty at the time of the occurrence despite a Duty Captain's finding -- hours after the incident -- that the officer was fit for duty.

There were, however, certain cases where unfit for duty should have been charged and it was not, since the totality of the circumstances accompanying the misconduct indicated that the officer was unfit for duty due to alcohol consumption. This occurred in four instances where a subject officer was charged with DWI, including one case where the subject officer had taken a breathalyzer test so that the Department had scientific proof of respondent's intoxication.³²

³² In addition, this respondent had previously been charged with leaving the scene of an automobile accident, and had previously been on dismissal probation and had received a 40-day suspension. As a result of this

In the cases where subject officers refused to take breathalyzer tests after being detained for DWI, the Department generally charged the officers with “refusal.” This is in accordance with the Patrol Guide revision discussed above adding an additional charge of “conduct prejudicial” in such instances. In some circumstances, the actual Departmental charge was “conduct prejudicial” and in others, the subject officer was charged with “refusal.” While the labeling of the charge is not critical, the specifications of the charge should sufficiently detail the behavior so that the Trial Commissioners may use the refusal as evidence indicative of consciousness of guilt at Department trials. In any event, the charging in these situations should be consistent.

In addition, fifteen cases involved alcohol-related misconduct that occurred following the imposition of the Department’s policy of charging unfit-while-armed. That specific charge was levied in five cases. In the remaining cases where unfit for duty was not charged,³³ only one case contained a finding that the respondent was not armed. It thus is unclear whether unfit-while-armed could have been charged in the other cases. In the five cases where a respondent was charged with unfit-while-armed, the penalties imposed were more severe than similar misconduct where no such finding was made. Due to the small number of cases falling into this criteria, this issue will be revisited after the policy remains in effect for a more significant period of time.

case, the officer received dismissal probation, counseling, and a loss of 48 days’ pay. While his prior disciplinary record was fairly far removed from the present incident, he should have been charged with being unfit for duty at the time of occurrence and received a stiffer penalty.

³³ This category includes one case where respondent was charged with DWI, but not unfitness. In this case, the charge was filed after the respondent resigned from the Department.

4. Additional Findings

While not a focus of this study, the Commission had examined in a previous report how probationary police officers (“PPOs”) who engaged in misconduct were disciplined. The Commission had noted that while the Department swiftly terminated PPOs who had used narcotics, in cases involving other types of misconduct, some PPOs were not terminated as expeditiously.

In the instant review, fifteen cases in the Commission’s sample involved PPOs charged with off-duty misconduct.³⁴ Of those, three cases were closed within three months of the date of the incident. Five cases were adjudicated within six months, four within twelve months, and three took over one year from the date of the incident. It appears that a greater number of these cases could have been resolved more quickly.

Although the Commission did not initially seek to review the penalties imposed on civilian members of the service, the Commission noted that significantly lighter penalties were imposed on civilian members of the service for the same or more serious conduct than that of uniform members of the service. Also, the Commission found that penalties imposed on civilian members were often inconsistent. Civilian members are afforded the option of a different, less formal adjudication process than uniformed members of the Department. Cases may be resolved and penalties may therefore be imposed in forums outside, and independent from, the Department. The Commission intends to review this issue in the future, at least as it relates to civilian employees who have a law enforcement function, such as traffic and school safety agents.

³⁴ This number does not include cases where the identity of the subject officer was redacted and the Commission could not identify if the subject was a PPO.

B. FALSE STATEMENT CASES

1. Background

Since its inception in 1995, the Commission has focused its attention on the issue of false statements made by members of the service and the manner in which those found guilty of such misconduct are disciplined by the Department. The First Report of the Commission, for example, offered a preliminary analysis of a sample of these cases, and in December 1996, the Commission published a thorough review of the issue.

During the course of the 1996 study, the Commission concluded that many officers found guilty of making false statements were not being adequately punished, and that, absent exceptional circumstances, termination was the appropriate penalty. The Commission then endorsed a new policy statement issued by the Department that “[a]bsent exceptional circumstances, the making of a false official statement will result in dismissal from this Department.”

The Commission revisited the issue in its Third Annual Report and again in a report dated August 1999. There, the Commission analyzed all false statement cases disposed of in 1998. Among the Commission’s 1999 recommendations, were that:

- Departmental decisions in false statement cases should be more thoroughly documented in case files -- especially where an officer is not terminated despite serious false statements -- both to explain the decision-making process and to create precedent.
- Because of the overriding importance of the PG 206-13 interview,³⁵ officers who lie in

³⁵ Any member of the service can be compelled to appear at a formal interview, as either a subject or witness in an investigation, and can be terminated for failing to appear or for failing to answer questions posed at such an interview. These interviews can be a pivotal information-gathering tool. (The provision of the Patrol Guide covering this official Departmental interview has recently been changed from Section 118-9 to 206-13. Previous Commission reports have used the earlier designation.)

this setting should be terminated, absent exceptional circumstances, regardless of the seriousness of the underlying misconduct that prompted the questioning.

- In any false statement case in which the Trial Commissioner finds termination is not appropriate, the Trial Commissioner should explain the exceptional circumstances leading to that result.
- The Department should review officer testimony in civil and criminal proceedings, to monitor whether false statements are being offered in these settings.³⁶

In this report, the Commission reexamines the implementation of the previously adopted policies. As discussed more fully below, the Commission found that the Department remains committed to the false statement policy and generally is properly terminating officers who make false statements in the context of a PG 206-13 hearing or other testimonial setting. The Commission concluded, however, that in other contexts, continued improvement is needed since the Department was not as likely to terminate some officers whose cases fell within the policy. Also, there were a number of cases where the Department failed to appropriately charge the subject officer with making a false statement. Finally, in cases where it was appropriately charged and the officer was not terminated, the Department generally did not specify the exceptional circumstances mitigating against termination.

2. Methodology

For this review, the Commission examined summaries of all disciplinary cases disposed of by the Department in 1999 -- approximately 1,200 in all. Those cases that appeared to involve a charge related to a false statement by a member of the service -- or misconduct that,

³⁶ In response to this recommendation, the Department contacted various agencies, including prosecutors' offices and criminal court judges, requesting their assistance in reporting incidents of police perjury. This action partially addressed the Commission's recommendations.

while not charged, might reasonably have led to such a charge -- were then more closely analyzed.

As in past studies, the Commission excluded from its review certain categories of false statements which did not fall within the category of false statements, which it believed were intended to be covered by its 1996 report or the Department's new policy. These included: false statements made to supervisors in a non-investigatory context where it was not an effort to cover-up serious underlying misconduct, or where the false statement involved an administrative matter, such as cases involving time and leave issues. Cases that were included in the study involved false statements made at PG interviews, false statements at grand jury proceedings, false statements to cover up serious misconduct by officers, issuance of false summonses, lying to other official investigative bodies such as the CCRB, and other false statements.

3. Analysis

What remained were 99 cases involving various types of false statements.³⁷ As indicated in the chart below, these cases included a roughly equal number of instances of false statements at a PG 206-13 hearing and other false statements that the Commission believes fell within the December 1996 policy. In addition, in ten cases in the final sample, the Commission believes false-statement charges ought to have been brought but were not.

Both because such false statements are specifically addressed by the Department in its

³⁷ This figure includes at least one school safety agent ("SSA"), eleven traffic enforcement agents ("TEAs"), and at least sixteen other civilians. The Department's policy on false statements (as discussed directly below) applies explicitly to all members of the service, including civilians, but the issue is most acute for uniformed officers, TEAs and SSAs -- who are most likely to be called upon to testify at court proceedings. As discussed below (see p. 45), a false statement finding poses serious problems for the credibility of a member of the service should he or she testify at a future hearing or trial.

policy statement -- which states, “[e]xamples of a false official statement include ... [lying] during an official Departmental interview conducted pursuant to Patrol Guide Section 118-9”³⁸ -- and because it is especially crucial that members of the service are truthful in such investigations, false statements made during a PG 206-13 interview are considered by the Commission always to be sufficiently serious to justify termination. One important rationale for this policy is the reality that once an officer is found guilty of making such a false statement; he will be unable to testify at a future hearing or trial with full credibility.

Also in the Commission’s sample were false statements in other contexts involving misconduct that the Commission believes fall within the parameters of the Department’s December 1996 policy. About two-thirds of these cases dealt with either some type of false entry in Department records (typically to cover up other misconduct), false report (as in the case of a traffic enforcement agent who intentionally prepared a bogus summons against an individual), complaint, or other instrument; or some type of fraud committed while off-duty, such as insurance fraud, tax fraud, or welfare fraud.

The remainder of these serious cases included false statements uttered in the context of a criminal proceeding and false statements to investigators that did not fall under the purview of PG 206-13.

As noted below, the Department appears to be committed to terminating members of the service who have lied about serious matters. Indeed, 23 members of the service were terminated in 1999 for misconduct involving, at least in part, false statements. The Department, however, appears to be making a distinction between lying in the context of a PG interview and other

³⁸ This section is now designated as section 206-13 of the Patrol Guide. *See* discussion at footnote 35 and accompanying text.

settings where officers are often not being terminated in circumstances where the Commission believes that termination is warranted. In a number of non-termination cases, while the Commission may have agreed with the disposition of the case, the Department nevertheless inadequately expressed its reasons for allowing an officer to remain by not specifically articulating the existence of exceptional circumstances.

Breakdown of False-Statement Cases, by Classification:

| | <i>Total Number of Cases:</i> | <i>Guilty and Terminated</i> | <i>Filed ³⁹</i> | <i>Guilty and Not Terminated</i> | <i>Not Guilty or Charges Dismissed</i> |
|---|---------------------------------------|----------------------------------|--------------------------------|--|--|
| False statements at a PG 206-13 hearings or other testimonial settings:⁴⁰ | 51 | 19 ⁴¹ | 11 | 5 | 16 |
| Other False Statements:⁴² | 48 | 5 ⁴³ | 27 ⁴⁴ | 13 | 3 |
| Failure to charge: | 10 | | | | |

³⁹ When an officer is separated from the Department for any reason during the pendency of a disciplinary case, the Department typically “files” charges nonetheless to preserve its case against the officer in the event he reapplies to the Department. The Commission considers such cases to have positive outcomes, because the officers involved are separated from the Department.

⁴⁰ This category includes: one instance where the subject officer was charged with lying at an official CCRB investigative interview (“IO 51 hearing”); one case where the subject officer was charged with lying at a grand jury proceeding; two cases where the officer was charged with lying in a criminal setting; and one case where the officer was charged with lying at a civil deposition.

⁴¹ This total includes two cases in which respondent resigned before the Police Commissioner could act on the Trial Commissioner’s recommendation that he be terminated and one case that was dealt with informally through the Office of Labor Relations.

⁴² See below at p. 52 for further discussion of these cases.

⁴³ This total includes one case in which respondent agreed to retire as part of a plea agreement.

⁴⁴ This total includes two cases in which respondent resigned before he could be terminated by operation of law (for conviction of a felony), and a third case in which the Department was seeking termination when respondent resigned. Also, this category includes two officers who were convicted of felonies. By operation of law, officers convicted of felonies cannot serve as police officers and the Department can summarily terminate any such officer.

4. False Statements at a PG 206-13 Hearing

The chart above shows that the Department generally terminates an officer found guilty of lying at a PG 206-13 hearing.

In one such case, an officer was charged with filing a fraudulent application for a pension based on a line-of-duty injury, lying at her PG 206-13 hearing, and filing a false instrument. The case was combined with another case where the Department charged the officer with failing to comply with an order. The Department contended that the officer was engaged in a scheme to collect for injuries that had actually been sustained in an off-duty traffic accident, but at trial, the officer was found guilty only of the charge of lying at her PG 206-13 hearing about whether or not she had previously injured her knee, as well as failing to comply with an order. For the false statement and the failure to comply with an order, the officer was terminated.

Another termination case addressed an officer's lies at a PG 206-13 hearing regarding his unauthorized off-duty employment and presence at the scene of a police incident. The officer was present at his unauthorized off-duty employment when gunfire erupted. He left the scene, failed to render assistance to members of the service and failed to report his presence at the scene. The officer then lied at his official interview, admitting that he worked at the location, but claiming that he left before the hostilities began. Approximately two weeks after his interview, he requested a second PG 206-13 hearing, but that request was denied. The Trial Commissioner recommended, after finding the officer guilty of all the above misconduct, a 70-day suspension and one year dismissal probation -- a stiff penalty but shy of termination. The Police Commissioner, however, disagreed and terminated the officer, saying in part, that the point of his false-statement policy "must be driven home that the opportunity to tell the truth is afforded at

the ‘first and only’ [PG 206-13 hearing]. Granting subsequent [hearings] upon request contradicts the rationale ... and would [encourage] officers to lie...”

As demonstrated by the above case, officers may request a second PG interview in order to revise their answers given in a previous official interview. Additionally, more than one interview may be conducted under other circumstances, such as where an investigator has further questions or where an officer has new information to offer. Consistent with the above statement of the Commissioner, the Commission believes that where second interviews are granted to a subject officer and the subject officer corrects his prior misstatements; this correction should not routinely mandate a penalty short of termination. Despite the Commissioner’s statements consistent with this position, however, the Commission identified three cases in which a second PG 206-13 hearing was conducted and the officer was found to have lied at his first interview and was not terminated.⁴⁵

One case involved an officer who lied at his first PG 206-13 about sick-leave abuse. The officer then requested a second interview, at which he significantly altered his account, claiming to have been confused at his first interview and unable to recall key details. He recanted his statements made at the first interview and subsequently received a penalty of a loss of 30 vacation days and dismissal probation. Here, while the officer was not charged with making a false statement when he should have been, this case also highlights the issue involved with granting second PG interviews. While in appropriate cases rapid recantation can be a factor in deciding not to terminate an officer, as the Police Commissioner noted, routinely granting an officer a second chance to admit his misconduct diminishes the investigative value of the PG

⁴⁵ In four additional cases where more than one PG interview was conducted, the officer was separated from the Department, either by termination or resignation.

206-13 hearing and may even encourage officers to lie during an interview, while they attempt to learn how much damaging information investigators have about them.

5. False Statements at a PG 206-13 Hearing Where Officer Not Terminated

Only three members of the service in the Commission's sample found guilty of lying in a PG 206-13 interview were allowed to remain on the force in 1999.⁴⁶ The Commission believes that in two of these cases, the officer ought to have been terminated.⁴⁷

In one of these two cases, the Commission noted a memo from the Department Advocate's Office, in which the advocate argued for termination even after the Trial Commissioner recommended a lesser penalty. In that case, respondent flatly denied during an official CCRB investigative interview that he menaced a civilian during a traffic dispute. He was found guilty of making a false statement, but was not terminated. According to the Trial Commissioner, the factors which mitigated against termination were the respondent's prior disciplinary record, which was fairly remote in time, and the belief that the respondent merely displayed his gun, without the intent to harm anyone. The advocate, specifically citing the Commissioner's false statement policy, found no exceptional circumstances had been offered to explain a deviation from that policy and noted that "[respondent] should be terminated because the instant case does not meet the stern requirements allowing for a penalty other than

⁴⁶ Although there were two other cases which involved false statements made during a PG hearing and the officers were initially charged accordingly, these charges were later amended by the Department to interfering with an investigation. Both officers were convicted of this charge and received a penalty short of termination.

⁴⁷ In the third case, although a Department advocate wrote a memo calling on the Police Commissioner to override the Trial Commissioner's recommendation and impose termination, the Commission believes that the result is not inappropriate. The officer lost 30 vacation days for lying at his interview (the only charge for which he was found guilty), and the Trial Commissioner noted exceptional circumstances justifying a penalty short of termination, including the respondent's unblemished record and his candid testimony at his administrative trial. DAO took issue with the existence of such exceptional circumstances, but the Commission does not believe that the record clearly contradicts the Trial Commissioner's finding.

termination in a false statement case.” He went on to write that the officer must not be allowed to remain on the force because of the “dark cloud surrounding his veracity.” While concerns about diminished credibility at subsequent proceedings is one of the bases of the policy, in this case, the Police Commissioner, who has the ultimate disciplinary authority, agreed with the Trial Commissioner that the officer should not be terminated. Based upon a review of the file, the Commission disagrees, and believes that the advocate’s position was correct.

The other such case involved an officer who was found guilty of lying about the circumstances surrounding an improper motor vehicle record search that was conducted on an individual with whom the respondent was engaged in a custody dispute over a child. There, the respondent denied, in a PG 206-13 hearing, either conducting the search herself or having any knowledge of who might have done so. The Trial Commissioner, in recommending a penalty short of termination (with which the Police Commissioner concurred), cited what she believed constituted exceptional circumstances to justify such a recommendation. These circumstances were, that respondent’s false statement was a flat denial of the underlying misconduct, and that the underlying misconduct was relatively minor, consisting of a single license plate inquiry for non-official purposes. The Commission believes that the case should have led to the officer’s termination. The purported exceptional circumstance regarding the nature of the underlying misconduct was the rationale criticized by the Commission in a 1999 report issued after the decision in this case. In connection with that report, the Department said not discharging officers based on the nature of the underlying misconduct did not reflect Department policy. Nonetheless, articulating exceptional circumstances in cases that do not result in termination -- which often is not done -- is not only in keeping with the Department’s policy itself, but also can be quite helpful both to the DAO and the Police Commissioner (who will ultimately have to

decide what penalty to impose) and as precedent for similar cases in the future.

6. Other False Statement Cases

The Department's treatment of officers found guilty of serious false statements other than at a PG 206-13 hearing was less consistent and raised more questions about how the December 1996 policy is being applied. While officers in seventeen such cases either resigned or retired, and an additional ten were terminated without trial (either as probationary employees, for a criminal felony conviction, or for another Departmental disciplinary case entirely), only four of the eighteen officers who were found guilty administratively in such cases were separated from the Department. This includes cases which went to trial, as well as cases in which a plea agreement was reached before trial. The Commission also found that in the large majority of cases in which an officer was found guilty of such a serious false statement and was not dismissed, the Trial Commissioner (and, for that matter, the Police Commissioner) offered no specific articulation of what constituted exceptional circumstances in the case.

There also was a significant difference in the result, depending on whether the officer went to trial. Indeed, of the six officers who went to trial, four were terminated. However, none of the twelve cases settled by plea agreement resulted in the respondent's separation from the Department.

The Commission believes that if a case is appropriate for termination after a guilty finding at trial -- as false statement cases are, absent exceptional circumstances -- the respondent should not be allowed to stay on the force by agreeing to plead guilty in advance of trial. Whether there is a plea or trial conviction, the misconduct involved is no less serious, and the implications for the respondent's continued ability to carry out all of the duties of a police officer

are no less troubling. While there may be circumstances where termination is inappropriate in the context of a plea resolution, the Commission believes that six of the twelve cases that did not result in termination after plea agreement, should have.

7. Failure to Charge False Statements

In addition to the above cases, in which officers were charged with various types of false statements, the Commission identified another ten cases in which officers did not face any such charges although evidence in the Department's files indicated that they probably should have.

One of the serious cases that resulted in a plea agreement involved an officer who falsified a police accident report and forged a superior officer's signature. He agreed to a penalty of a loss of 30 vacation days and dismissal probation for one year. The Commission believes the officer should have been charged with making false statements and been terminated.

This officer's girlfriend was involved in a car accident that left her unconscious and therefore unable to offer her version of events to responding officers. The subject officer then destroyed the original report, substituting a falsified one which presented an account of the accident in the most positive light to his girlfriend, omitting the accounts of the other driver and one witness which had appeared in the original report. The falsified report included a forged signature of a superior officer. A handwritten note in the advocate's file called for charges based on the officer's forgery, but in the end the officer faced only two charges: for "wrongfully alter[ing]" the report and for attempting to file an "improper" report.

In another case, an officer was charged only with directing a racial slur toward a civilian. The officer plead guilty and lost five vacation days, but the CCRB, which performed the initial investigation, concluded that the officer should also be charged for his "complete loss of credibility" in answering questions posed by investigators. Indeed, the officer -- in an apparent

attempt to exonerate his partner, who faced charges for an improper stop-and-frisk during the same incident -- offered a version of events that differed not only from his own contemporaneous report but also from his own partner's account of the incident to investigators.

A Departmental memo concluded that no false statement was involved, "because it is mitigated by the time lag between the incident and the interview coupled with the less than remarkable circumstances of the stop." The Commission disagrees. The officer should have been confronted with the stark differences between accounts, but in any event, based on the Commission's own review of the file, his unequivocal statements to investigators provided grounds for a false statement charge.⁴⁸ What makes the case more problematic is that CCRB found that not only was this officer guilty of lying to its investigators, but three other officers interviewed appeared to have "conspired to make their stories similar."

In two other cases of this kind, CCRB investigators concluded that the respondents should be charged with, among other things, making false statements. Yet when each of these cases went to DAO, no false statement charges were brought. Furthermore, an extensive review of the files in each case offered no insight into the reason for the decision not to bring a false statement charge. The Commission believes that where CCRB has found that an officer has lied, there ought at least to be a memo to the file expressing DAO's reasoning for not filing a false statement charge. The other six cases where the Commission believes that a false statement charge was appropriate were all non-CCRB cases and involved a range of allegations.

⁴⁸ While CCRB has jurisdiction to investigate allegations of force, abuse of authority, discourtesy, and offensive language, ("FADO"), it maintains that it should make findings regarding false statements made by officers during the investigation of FADO claims. The Department has disagreed with this view. According to the Department, CCRB's jurisdiction does not allow it to make findings regarding false statements. Rather, all allegations regarding officers lying in CCRB cases should be referred by CCRB to IAB for investigation.

8. Conclusions

On the whole, the Commission concluded that the Department is making a genuine effort to uphold its policy on false statements. The most serious of false statements are indeed met with the most serious of penalties -- most often separation from the Department. This is particularly true where officers are found to have lied in the PG setting. While the Department imposes a penalty of termination in other contexts as well, it failed to do so in too large a number of non-PG cases where the Commission believed that termination was the appropriate penalty. The Department also generally did not articulate the circumstances to justify a penalty short of termination. Additionally, the Commission noted that the Department did not bring a false statement charge in some cases where the facts presented in the file appeared to suggest such a charge could be sustained.

C. BACKGROUND INVESTIGATIONS OF POLICE OFFICER CANDIDATES

1. Introduction

Thorough background investigations of candidates to the Department is crucial to the Department's anti-corruption efforts because such investigations allow the Department to assemble a police force comprised of members of the highest integrity. Factors that should be looked at during such an investigation include an examination of a person's character and his reputation within his community, school disciplinary records, employment history, driving record and interactions with the criminal justice system.

2. Prior Commission Study

The Commission has previously examined how the Department conducts background investigations of police officer candidates, reporting its findings in *Performance Study: A*

Review of the New York City Police Department's Background Investigation Process for the Hiring of Police Officers (January 1999). After reviewing the background investigations of 95 candidates who were hired for the April 1997 class of recruits to the Police Academy, the Commission found that this sample of candidates met the mandatory requirements⁴⁹ and all but one candidate met the discretionary in-house requirements⁵⁰ established by the Department. The Commission determined that in these investigations most of the investigative steps were conducted according to the guidelines set out by the Department in the Applicant Processing Division ("APD") manual. In a number of cases, however, the Commission found that key investigative steps were not taken prior to hiring and in a few cases the steps were not taken at all. The Commission also learned that investigators relied heavily on written correspondence rather than personal contact with employers or schools, and that often the Department only made personal contact with these references when an investigator obtained derogatory information about the candidate. Additionally, the Commission found that in many cases APD investigators did not contact neighbors of the candidate, as required under Department guidelines, and considered contact with neighbors that did not know the candidate as satisfying the requirement that three neighbors of the applicant be contacted.

⁴⁹ These mandatory requirements include that no candidate be convicted of a felony crime or dishonorably discharged from the military. The candidate must also meet various requirements in the areas of residency, age, citizenship, valid driver's license, and education. If a candidate does not meet one of these requirements, her application is placed "on hold" (pending fulfillment of a missing requirement, where possible), or "disapproved."

⁵⁰ When a candidate possesses one of the disqualifiers in this category, that candidate will be presumptively disqualified. Firstly, the candidate must not have been dismissed from tenured government employment. Secondly, the candidate cannot possess a certain number of misdemeanors or criminal summonses within a specified time period in relation to his application to the Department. Finally, the candidate cannot possess a certain number of moving violations, hazardous moving violations, license suspensions or revocations within a specified time period before application to the Department. If a candidate is placed on review because he has one of the disqualifiers, a special board, composed of senior personnel from the Applicant Processing Division, convenes. The Board determines, in light of the candidate's entire investigative file, whether to continue to disapprove the candidate, approve the candidate, or place the candidate on hold pending further information.

The Commission recommended that the Department make more meaningful personal contact with a candidate's neighbors and employers, and where necessary, with schools and local law enforcement agencies. The Commission also suggested that the APD forms which are submitted to the candidate's employers and schools be revised in order to elicit more substantive information about a candidate. After the issuance of the report, the Department stated it would begin, on a trial basis, to have investigators make personal field visits, rather than telephone contact, with a candidate's neighbors who have actual knowledge of the candidate. In a follow-up letter to the Commission dated June 2000, the Department stated that it conducted more than 2,000 background investigations where direct personal contact was made and no derogatory information about candidates was discovered. As a result, the Department stated it would no longer continue to have APD investigators conduct field visits to candidates' neighborhoods, unless none of the required three neighbor contacts reached by telephone knew the candidate or if derogatory information was revealed. This rationale for discontinuing personal contact with neighbors fails to take into account that many of the neighbors contacted did not know the candidate and had no information, negative or positive, regarding that individual. The Commission believes that field visits should continue with the requirement that investigators must contact individuals who know the candidate and can provide substantive information.

3. Methodology

As part of the Commission's follow-up review of its prior study, the Commission reviewed a sample of background investigations of candidates who were appointed to the Department subsequent to January 1999 and who attended the Police Academy in July 1999 or March 2000. The Commission selected a sample of candidates who were chosen for hire post-

January 1999 because in these investigations the Department had the opportunity to implement recommendations made by the Commission in its hiring study released in January 1999.

The Commission received hiring lists for four Civil Service Exams. From each exam list, the Commission selected a random sample of fifteen candidates who met agility, medical, psychological, and character requirements. The Commission thus randomly selected a sample of 60 background investigations to review. In addition, the Commission selected six candidates deemed **Not qualified** to review these background investigations. The Commission wanted to learn if the background investigations of the disqualified candidates differed in any way from those of hired candidates.

4. Analysis

All approved candidates in the Commission's sample met the Department's mandatory requirements including residency within the five boroughs of New York City or its five surrounding counties; U.S. citizenship; possession of a valid New York State drivers license; 60 college credits or two years of military service; being at least 22 years of age by the time of appointment, and a high school diploma.

In three cases, candidates did not meet the discretionary requirements but there were other factors that led to their approval. After reviewing the totality of the applicant's background, the Commission agreed with these decisions and found that the APD board acted within its discretion in approving these candidates in light of all the available background information.

For example, in one instance, a candidate failed the driving history category of in-house disqualifiers by having more than two hazardous moving violations within the last two years

from the date of application. This candidate had an otherwise exemplary background with no other derogatory information noted. In another instance, the candidate also did not meet the driving history criteria in that the candidate had one license suspension within two years for a lapse in insurance. Again, the background investigation otherwise revealed a candidate with positive qualifications. Finally, a third candidate did not meet driving criteria because of multiple moving violations (including hazardous ones) within a short time prior to appointment date, but otherwise possessed very positive qualifications including a college degree with high marks.

For the most part, the Commission found that investigators sent APD reference forms to candidates' schools and that these completed forms were returned to the Department. In many instances, however, schools only provided dates of attendance, indicating that they did not have personal knowledge of the candidate. All of the background investigations of candidates who attended college contained appropriate transcripts documenting their having received at least 60 college credits. No derogatory information was noted by any of the schools in the Commission's sample.

At the time of the background investigations in the Commission's sample, the Department was requiring, on a trial basis, that APD investigators make personal visits with a candidate's neighbors. As discussed above, subsequently, the Department determined that no derogatory information was disclosed during these investigations and the procedure was discontinued. Despite the policy in effect during this period, in the area of making contact with neighborhood references, the Commission's sample showed that:

- In seventeen background investigations, APD investigators conducted personal visits, including four investigations where the investigator used a photograph of the candidate for identification purposes.

- In 27 investigations, APD investigators only made telephone contact with the candidate's neighbors. In eighteen of these, there was at least one neighbor who stated that they did not know the candidate, yet APD counted such "contact" as fulfilling a reference requirement. In six of those eighteen cases, all three of the completed neighbor contacts indicated that they did not know the candidate.
- Finally, in thirteen investigations, there was no evidence of any contact with a candidate's neighbors.⁵¹

Generally, the Commission determined that APD investigators mailed questionnaires to former employers of the candidate. These forms asked for information about the candidate such as the manner in which the candidate left the employment, whether the candidate was excessively late or ever disciplined and whether the candidate is considered eligible for rehiring. In most instances, these forms were returned to APD and contained information regarding the candidate. In some cases, however, the Commission found that the forms were not returned and the investigators did not follow-up with employers to obtain information. The Commission recognizes that sometimes forms are returned because the employer has moved and there is no forwarding address; that often an employer may not complete evaluative information because it does not release such information and will only give dates of employment; and that some of the jobs held by candidates were of a seasonal nature or internships.

The Commission found that in 42 of the background investigations in its sample the Department received substantive information from the candidate's previous employers regarding the candidate's job performance and qualifications. In an additional eleven investigations, forms were sent to employers, but not all were returned and the investigator did not follow-up with the

⁵¹ These files contained no evidence of such contact, either in the form of completed APD forms, or a "Coles" printout (list of telephone numbers) indicating calls to neighbors.

employers. Finally, in one case, derogatory information was received where the investigator did not contact the employer to obtain further information. In that case, it was revealed that the candidate had received a three-day suspension and had been ultimately dismissed from a position. There was no evidence in the investigative file that the investigator attempted to interview the employer regarding the candidate's employment history or glean the details of that particular incident.

In its evaluation of background investigations of candidates who were not appointed, the Commission reviewed the files of three candidates who were placed on review and three who were disqualified. Of the three candidates placed on review,⁵² one candidate supplied two different dates of birth causing the investigator to obtain two different Department of Motor Vehicle histories. Additionally, the candidate had a driving while intoxicated arrest. Owing to the arrest and two different DMV histories, the APD investigator placed the candidate's application on review. In a second case, the candidate allegedly attempted to defraud an employer. In the third case, the candidate had a criminal record requiring further investigation.

Of the candidates that were disqualified, one candidate had a high level of debt, was unemployed at the time of his application, and refused to release his tax returns to APD. This candidate additionally listed numerous former employers and while APD submitted reference forms to each of these employers, few were returned with substantive information. Of those returned, several employers stated they had no record of the candidate's employment. In a second case, the candidate's driving record revealed more than three hazardous moving violations within the last two to five years before application, and one license suspension within

⁵² When a candidate is placed on review, his application is held in abeyance until further documentation or investigation is completed.

two years. Thus, the candidate failed the discretionary in-house requirements in the area of driving. Finally, in a third case, the investigation showed that the candidate engaged in credit card fraud and forgery. The candidate's employer indicated that the candidate was not eligible for rehire and that they had "grave issues" with his honesty and integrity. The Commission agreed with the Department in their decision to place on review or disqualify all of these candidates.

5. Recommendations

While some issues remain, the Commission found that generally the Department conducted background investigations of candidates in an appropriate manner. No candidates were hired who failed the mandatory requirements. Regarding the discretionary in-house requirements, although three candidates were found not to have met these criteria, the Commission determined that the Department was within its sound discretion to approve these candidates for hire. With respect to the other areas of review, the Commission found that investigators sent out questionnaires to former schools and employers, and where available, received substantive information from those references. Regarding contacts with neighbors, however, issues still remain and the Commission continues to recommend that APD investigators make personal contact with at least three neighbors who actually know the candidate. The Commission still believes that personal contact with neighbors is better than telephonic contact in developing a meaningful evaluation of the candidate. While the Department has indicated that field visits of neighborhoods has not led to the receipt of derogatory information, without such visits there is no assurance that neighborhood references are providing meaningful feedback on candidates. It also is important for the Department to

make greater efforts to obtain meaningful information from schools and/or employers.

D. WHISTLE-BLOWERS PROGRAM

In its Third Annual Report released in 1998, the Commission reported that it had received several allegations of retaliation from officers who believed that they had reported misconduct or otherwise provided assistance in uncovering wrongdoing. Without focusing on the Department's treatment of these cases, the Commission ascertained that officers "who may be considered 'whistle blowers' had no place to turn within the Department for guidance, support or redress."⁵³

The Commission noted the importance of protecting and supporting officers who come forward with information or assist in investigations, especially in light of a reporting officer's vulnerability to negative treatment by colleagues. In light of these concerns, the Commission recommended that policies and procedures should be institutionalized to identify and protect those persons who cooperate with an investigation and adequately punish those who engage in retaliation against whistle-blowers. Specifically, the Commission recommended that a high-level Department office should be established that would monitor the treatment of, and offer career incentives to, those members providing information and/or otherwise cooperating in the pursuing of wrongdoing.

In response to the Commission's recommendations, on November 16, 1998, the Department issued Interim Order 70 ("I.O. 70") which established formal Department processes and guidelines for conducting investigations into alleged incidents of retaliation against members

⁵³ See *Third Annual Report of the Commission*, (August 1998).

of the service who voluntarily provide information regarding corruption or misconduct. Through its various regulations, the order is designed to protect those members who are willing to come forward with such information. This order also officially prohibits reprisals against them.

Contrary to the Commission's recommendation, however, I.O. 70 did not create a separate unit to deal exclusively with retaliation investigations. Rather, the Department placed the program under the auspices of the Employee Relations Section ("ERS") of the Personnel Bureau.

In its Fourth Annual Report, the Commission followed-up on I.O. 70 and evaluated the status of the Department's whistle-blower program. Pursuant to that review, Commission staff spoke with the Commanding Officer of ERS, who reported that, as of the time of the report's release in 1999, three cases had been handled by the program. The Commission ultimately determined that although the Department was investigating allegations of retaliation, ERS was not being proactive in reaching out to officers who assisted in pursuing wrongdoing or otherwise monitoring the progress of their careers. The Department failed to publicize the existence of this program to the extent that the Commission had hoped. In the report, the Commission noted that it would continue to monitor the progress of the program.

Under I.O. 70, when a member of the service believes that he has been the victim of retaliation for providing information regarding corruption or misconduct, he is to notify IAB or the Commanding Officer of ERS.⁵⁴ If, after interviewing the member of the service, the ERS Commanding Officer determines the allegation of retaliation falls within the parameters set out

⁵⁴ When IAB is notified first, IAB notifies the Commanding Officer of ERS.

in Local Law 10,⁵⁵ the City’s general whistle-blower law, he will instruct IAB to commence an investigation to assess the validity of the complaint. At the conclusion of the investigation, a confidential report summarizing the investigation is prepared by IAB and submitted to the ERS Commanding Officer who reviews paperwork and prepares a report recommending what relief is appropriate in order to prevent future retaliation. This report is sent to the Chief of Personnel and then to the First Deputy Commissioner, who renders a final decision regarding what action should be taken.

The Commission was informed by ERS that cases must meet two criteria for the retaliation law to apply. First, the complainant must have come forward voluntarily with information about misconduct and/or corruption; and second, some sort of retaliatory action must have been taken against the member of the service for providing that information.

If the complaint is of an equal employment nature (such as employment discrimination or sexual harassment), the procedures found in Interim Order 48 (“I.O. 48”)⁵⁶ apply and the case must be investigated by the Department’s Office of Equal Employment Opportunity.

For the purpose of this Annual Report, the Commission met with the Commanding Officer of ERS and the Chief of Personnel to discuss the current status of the program and reviewed all of the cases which the unit has handled to date.

The Commission learned that since the adoption of I.O. 70 in 1998, IAB has referred 64

⁵⁵ Local Law 10 provides that “[n]o officer or employee of an agency of the city . . . shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct, which he or she knows or reasonably believes to involve corruption.”

⁵⁶ I.O. 48 provides that when a member of the service believes that she has been the victim of discrimination or sexual harassment, or that retaliation relating to an equal employment opportunity issue has occurred, she is to file a complaint with the supervisor or Commanding Officer or the Department’s Office of Equal Employment Opportunity (“OEEO”). When the supervisor or Commanding Officer is notified first, he is then expected to forward the allegation immediately to OEEO.

cases of possible retaliation to ERS. The ERS Commanding Officer determined that seven of those cases fell under the criteria of Local Law 10 and were therefore deemed appropriate for handling by ERS. Commission staff reviewed the investigative files of all seven cases handled by the unit since its inception. Of the seven cases, three resulted in unsubstantiated outcomes, and the other four are currently open.

The Commission's review indicates that ERS is properly examining the cases it chooses to accept and officers are always given the option of transferring out of the unit/precinct where they allege they are being retaliated against, whether or not the allegations are found to be substantiated. However, the whistle-blower program of ERS has not developed into what the Commission envisioned and recommended in its prior reports.

As discussed in the Fourth Annual Report, the Commission recommended that the Department regularly follow-up with, and monitor the careers of, officers who have come forward regarding, or otherwise assisted in, internal corruption investigations to ensure that they do not become targets of retaliation and that their careers within the Department are not stymied as a result of coming forward with information. A review of the files indicated that the Department is not monitoring officers after the closure of the investigation. Furthermore, the Commanding Officer of ERS informed the Commission that such follow-up is not the normal practice of the unit. ERS also does not affirmatively monitor the careers of officers who do not complain.

The Commission also recommended that the services of the unit should be well publicized within the Department and career incentives should be offered to officers who provide assistance in investigations. While information about the unit was disseminated at roll call at all precincts on several consecutive days when I.O. 70 was issued, the Commission feels

that more information about the unit should be made available to members of the Department. Furthermore, although a few officers who provided information about corruption/misconduct did receive promotions or were fast tracked in their career, the Department does not as a matter of course appear to provide career incentives, support services, or counseling to officers who come forward with, or otherwise provide, such information.

While the seven cases handled by ERS were reviewed for the purpose of this report, the Commission did not review the 57 cases which were referred to ERS by IAB but which were rejected by the unit as not falling under the necessary criteria. The Commission plans on continuing to monitor the whistle-blowers unit in the coming year to ensure that they are appropriately accepting cases and handling allegations of retaliation and harassment.

V. THE COMMISSION'S ONGOING WORK

A. OPEN/PENDING CASE MONITORING

Monitoring open IAB investigations is another means by which the Commission fulfills its mandate to ensure that the Police Department is effectively and expeditiously investigating corruption allegations. This type of monitoring is important because it allows the Commission to keep up-to-date with corruption trends and allegations and evaluate the Department's response and allocation of resources. Open case monitoring is accomplished by various means including: daily review of corruption logs received from the Department, attendance at IAB Steering Committee meetings, attendance at IAB briefings to the Police Commissioner, periodic on-site review of non-steering cases and ongoing discussions with group captains and other high-ranking officials in IAB.

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. After receiving these allegations, Command Center personnel assign the allegation a number and create a log which includes a summary of the allegation, the time and place of occurrence, information regarding the complainant and where possible, background information on the subject officer. Each day the Command Center forwards all logs received during the previous 24-hour period to an IAB assessment team who assigns them for investigation to the appropriate IAB group or directs them to CCRB.

The Commission reviews new IAB logs on a daily basis. This constant 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 most serious allegations are entered into a Commission database which records all pertinent information and allows Commission staff to retrieve case histories on subject officers and cross reference cases and allegations.

2. Steering Committee Meetings

Throughout the year, Commission staff 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. Because the Committee possesses a wealth of collective investigative experience, these meetings provide a forum for the reporting group to receive feedback from Committee members on investigative strategy. Additionally, Steering meetings often also address the role of state and federal prosecutors in IAB investigations, as well as interaction between IAB investigators and the Department's administrative prosecutors.

Commission staff attend Steering meetings for most IAB groups several times during the year, including a full review of each group's caseload once per year. Prior to the past year, the Commission had attended all Steering Committee meetings. Because of concerns raised by the Chief of IAB that the Commission's presence at Steering Committee meetings could have a chilling effect on open dialogue and consequently require additional internal meetings, the Commission agreed to reduce the number of steering meetings it attends while continuing to attend reviews of all groups at least once each year. The Commission determined that this level of participation in the Steering Committee process was sufficient, and found that this monitoring method is working well.

3. Intensive Steering Committee Review

Each year between June and September, the Steering Committee conducts intensive Steering where all open cases in each group are reviewed. The Commission attends all intensive Steering meetings which provides a comprehensive 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 Commission's Chair and/or Executive and Deputy Executive Directors attend each of these meetings. At these briefings, IAB investigative group captains present their most serious 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.

5. Periodic On-Site Review of Non-Steering Cases

In addition to attending intensive Steering Committee meetings where all pending cases are reviewed annually, the Commission also periodically selects a number of non-steering cases from each IAB group for on-site review. This type of review is valuable because it allows Commission staff to have in-depth discussions with the Group Captains and investigators assigned to specific cases. These discussions allow the Commission to evaluate the quality of investigations on non-steering cases and ensure that they are being carried out effectively. During the past year the Commission conducted such reviews for each of IAB's investigative groups.

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 for tracking purposes. These lists identify officers who have a history of misconduct. For instance, lists are generated which identify officers who are under heightened Departmental scrutiny because of continued misconduct, such as excessive force allegations, or officers who are currently on Departmental probation as a result of a disciplinary penalty. Commission staff regularly review these lists to keep informed about officers being monitored and also to ascertain if any of the officers on the list are subjects of 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 Departmental policies and procedures related to the Commission's mandate.

3. IAB Commander Conferences

Commission staff regularly attend IAB Commander Conferences, meetings at which all IAB Commanding Officers and executive staff discuss business related to IAB, including potential corruption issues in the Department, corruption strategies, policy and procedural changes, administrative concerns, personnel issues, successful operations and any information

relevant to the ongoing operations of IAB.

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 1999, the Commission received approximately 89 allegations. In order to track IAB's handling of these allegations, the Commission assigns each allegation its own internal log number, and Commission staff then monitor IAB's handling of certain allegations.

Additionally, in 1999, the Commission met with several members of the service who were concerned with how the Department was handling cases in which they had reported allegations of corruption. As a result, Commission staff spoke with senior officers and executive management to determine if the Department was appropriately investigating the allegations. These cases were then closely monitored to ensure that they were being handled appropriately.

Another way that the Commission fulfills its mandate to monitor corruption is through 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. In 1999, the Commission's Chair and executive management met with the District Attorneys of New York, Queens, Bronx, and Kings Counties, and the

United States Attorneys for the Southern and Eastern Districts of New York. Additionally, Commission Executive staff met with and/or had telephone conferences with corruption prosecutors from both U.S. Attorney offices, and with representatives from the five county District Attorney offices.

Commission staff also attend the meetings of the Police Commissioner's Advisory Board on Courtesy, Professionalism, and Respect. This board is comprised of community members who offer input into the Department's efforts to improve police-community relations. It seeks to accomplish its goals through dialogue on issues such as cultural sensitivity, community responsibility, communications and recruitment, training and discipline of officers. The Commission has participated in these meetings since the inception of the Board and will continue to attend all meetings.

VI. ONGOING PROJECTS/NEW STUDIES

A. WEB SITE

The Commission to Combat Police Corruption is currently constructing an Internet web site. The site will feature information about the Commission such as how it was established and how it carries out its work. The site will also highlight the projects currently being carried out by the Commission, along with a listing of all twenty of the Commission's previously released reports.

The Commission to Combat Police Corruption web site will be accessible as part of the Official New York City Government Web Site. Visitors will be able to e-mail their comments and concerns directly to the Commission, request copies of all reports, and learn more about who sits on the Commission's Board. The site will also provide information and resources for those

who have complaints or comments concerning members of the New York Police Department.

B. NEW STUDIES

Presently the Commission has undertaken several new studies. A brief discussion of each is provided below.

1. Command Level Anti-Corruption Efforts

The Commission is currently examining efforts taken by police personnel outside of the Internal Affairs Bureau to combat corruption at the precinct level. The Commission seeks to determine how individual commands are employing anti-corruption tactics to meet the specific conditions of their geographic area. By looking at precincts with both high and low levels of corruption, the Commission intends to study different techniques and strategies to determine how various precincts deal with corruption issues, and which anti-corruption tactics are the most effective in dealing with potential and actual corruption issues at the precinct level.

2. Disciplinary Monitoring

The Department has developed a disciplinary monitoring system that identifies selected officers for heightened scrutiny. Within this system, the Department maintains several monitoring lists which categorize officers pursuant to different criteria such as: those who have been found guilty of using excessive force; those who have been the subject of multiple excessive force allegations; or those who have performed in a consistently negative way, as demonstrated by poor performance evaluations, sick leave abuse, or violations of Departmental rules resulting in charges and specifications. Officers on these lists are monitored by the

Department and may be subject to periodic evaluations, integrity tests or progressive penalties for any future disciplinary infractions.

The Commission is in the process of examining how officers on different lists are overseen and how different units within the Department coordinate efforts to monitor these officers in order to determine if the Department's current procedures sufficiently address the issues these individuals present to the Department.

3. Group 9 Review

IAB receives allegations of theft, shootings, force and other misconduct committed by members of the service outside the normal workday. Instead of waiting until the morning to meet with complainants or requiring the geographic groups to maintain coverage in the evenings, IAB runs a Night Watch Unit, designated as Group 9, which is staffed by experienced IAB personnel. They are responsible for handling the investigation of serious allegations that are received between the hours of 11:00 pm and 7:00 a.m.

The Commission is reviewing a sampling of the call-outs⁵⁷ handled by IAB's Group 9 during the early part of 2000. The Commission will be looking specifically at the response time of the call-outs, the handling of the complainants, the resources employed to deal with the complaints, and the overall quality of the investigations. This review will include examining the investigative files and listening to the audio tapes of interviews conducted with complainants, witnesses and others involved with the cases.

⁵⁷ A "call-out" is the terminology used when Group 9 responds to a crime scene or precinct to conduct an investigation.

4. Recruitment, Selection & Training

Through its selection processes, the NYPD has the means to ensure that individuals with the highest integrity are chosen to become members of the Department, thereby reducing the likelihood of their involvement in corruption or serious misconduct. Accordingly, the Commission will re-visit the issue of applicant screening and selection through the examination of selection criteria and background review, as well as issues related to the overall quality of recruits. In addition, the Commission will study how new recruits are introduced to the issue of integrity and corruption at the Academy level.

5. Prosecution Study

The Commission will continue to review the prosecution of cases throughout the Department's disciplinary system. This follow-up to the Commission's Prosecution Study will include reviewing case files and observing the presentation of trials in the Department's Trial Rooms in order to evaluate issues previously identified by the Commission regarding delay and case preparation. The Commission will also continue to monitor any steps that have been taken or improvements that have been made by the Department to deal with issues raised by the Commission's study.

APPENDIX



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EXECUTIVE ORDER NO. 18

February 27, 1995

ESTABLISHMENT OF COMMISSION
TO COMBAT POLICE CORRUPTION

WHEREAS, an honest and effective police force is essential to the public health, safety and welfare; and

WHEREAS, the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, chaired by Milton Mollen, (the "Mollen Commission") has recently concluded an investigation of the nature, extent and causes of police corruption today; and

WHEREAS, the Mollen Commission's Report finds that the vast majority of New York City police officers are honest and hard-working, and serve the City with skill and dedication every day, and that the current leadership of the Police Department has a firm commitment to fighting police corruption among those few officers who betray the public trust and tarnish the Police Department in the eyes of the public; and

WHEREAS, the Mollen Commission determined that the primary responsibility for combatting corruption in the Police Department rests with the Police

Department, and that the Police Department must be the first line of defense against police corruption;

WHEREAS, the Mollen Commission has recommended the establishment of an independent monitor, in the form of a Police Commission, to monitor and evaluate Police Department anti-corruption measures and to ensure that the Police Department remains vigilant in combatting corruption; and

WHEREAS, such a Police Commission provides the public with assurance that the Police Department is implementing and maintaining an effective anti-corruption program; and

WHEREAS, the Mayor and the Police Commissioner are accountable for combatting police corruption; and

WHEREAS, the establishment of a Police Commission can assist the Mayor and Police Commissioner in assessing the effectiveness of the Police Department's implementation and maintenance of anti-corruption efforts; and

WHEREAS, the District Attorneys, the United States Attorneys, and other government departments and agencies have committed resources and personnel to the investigation and prosecution of police corruption, and it is desirable that a Police Commission not supplant such investigative efforts;

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it hereby is ordered:

Section 1. Establishment Of Commission.

a. There hereby is established a Police Commission (the "Commission") which shall consist of five members appointed by the Mayor, who shall be residents of the City of New York or shall maintain a place of business in the City of New York. Each of the members shall serve without compensation. The Commission shall include among its members persons having law enforcement experience. The Mayor shall appoint the Chairperson from among the members.

b. Of the members first appointed, the Chairperson shall be appointed for a term ending December 31, 1998; two of the members shall be appointed for terms ending December 31, 1997; and two of the members shall be appointed for terms ending December 31, 1996. Upon the expiration of such initial terms, all members shall be appointed for a term of four years. Vacancies occurring otherwise than by expiration of a term shall be filled for the unexpired term.

c. Each member shall continue to serve until the appointment of his successor.

d. Any member shall be removable for cause by the Mayor, upon charges and after a hearing.

Section 2. Duties.

a. Monitoring the Performance of Anti-Corruption Systems. The Commission shall perform audits, studies and analyses to assess the quality of the Police Department's systems for combatting corruption, including but not limited to audits, studies

and analyses regarding the following:

(i) the Police Department's development and implementation of anti-corruption policies and procedures;

(ii) the effectiveness of the Police Department's systems and methods for gathering intelligence on corrupt activities and investigating allegations of corruption;

(iii) the effectiveness of the Police Department's implementation of a system of command accountability, supervision and training for corruption matters;

(iv) the effectiveness of the procedures used by the Police Department to involve all members of the Department in combatting corruption; and

(v) such other policies and procedures, without limitation, of the Police Department relating to corruption controls as the Commission deems appropriate.

b. Monitoring Agency Conditions. The Commission shall perform audits, studies and analyses of conditions and attitudes within the Police Department that may tolerate, nurture or perpetuate corruption, and shall evaluate the effectiveness of Police Department policies and procedures to combat such conditions and attitudes. In the performance of this function, the Commission shall maintain liaison with community groups and precinct councils and shall consult with law enforcement agencies of federal, state and local government and others, as appropriate, to provide the Police Department with input about their perception of police corruption and the Department's efforts to combat police corruption.

c. Corruption Complaints from the Public. The Commission shall be authorized to accept complaints or other information from any source regarding specific allegations of police corruption and, subject to the provisions of Section 4, shall refer such complaints or other information to the Police Department and such other agency as the Commission determines is appropriate, for investigation and/or prosecution. The Commission may monitor the investigation of any such complaints referred to the Police Department to the extent the Commission deems appropriate in order to perform its duties as set forth herein.

Section 3. Investigations.

a. The Police Commissioner shall ensure and mandate the full cooperation of all members of the Police Department with the Commission in the performance of audits, studies or analyses undertaken pursuant to this Order, and shall provide that interference with or obstruction of the Commission's functions shall constitute cause for removal from office or other employment, or for other appropriate penalty. The Police Department also shall provide to the Commission upon request any and all documents, records, reports, files or other information relating to any matter within the jurisdiction of the Commission, except such documents as cannot be so disclosed according to law.

b. The Police Department remains responsible for conducting investigations of specific allegations of corruption made against Police Department personnel, and the Commission shall not investigate such matters except where the

Commission and the Commissioner of the City Department of Investigation (the "DOI"), with the approval of the Mayor, determine that exceptional circumstances exist in which the assessment of the Police Department's anti-corruption systems requires the investigation of an underlying allegation of corruption made against Police Department personnel.

c. The Commission, in cooperation with the DOI, shall take all reasonable measures to ensure that any hearings or investigations held pursuant to this Executive Order do not inappropriately interfere with ongoing law enforcement matters being undertaken by other law enforcement agencies.

d. Any hearings or investigations undertaken by the Commission may include the issuance of subpoenas by the DOI in accordance with the DOI's powers under Chapter 34 of the New York City Charter, to the extent that the Commission and the DOI Commissioner jointly determine is appropriate.

Section 4. Reporting to the Police Department.

a. The Commission shall promptly notify the Police Commissioner of all allegations of corrupt police activity or other police misconduct and of any investigations undertaken pursuant to this Order. The Commission also shall make regular reports to the Police Commissioner regarding its activities, including the progress of audits, studies and analyses prepared pursuant to this Order.

b. The Commission may exclude a matter from the notifications and reports required by this Section and Section 2(c) only where the Commission and the DOI Commissioner, with the approval of the Mayor, determine either that the matter concerns

the activities of the Police Commissioner or would create an appearance of impropriety, and that reporting on the matter would impair the Commission's ability to perform its duties under this Order.

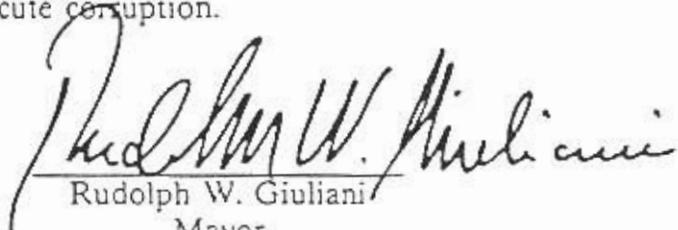
Section 5. Reporting to the Mayor.

a. The Commission shall report to the Mayor as to all its activities, without limitation, at such times as the Mayor may request, and as otherwise may be required by this Order.

b. The Commission shall provide the Mayor no later than each anniversary of the Commission's establishment an annual report which shall contain a thorough evaluation of the effectiveness of the Police Department's systems for preventing, detecting and investigating corruption, and the effectiveness of the Police Department's efforts to change any Department conditions and attitudes which may tolerate, nurture or perpetuate corruption, including any recommendations for modifications in the Police Department's systems for combatting corruption. The annual report further shall contain any recommendations for modifications to the duties or the jurisdiction of the Commission as set forth in this Executive Order to enable the Commission to most effectively fulfill its mandate to ensure that the Police Department implements and maintains effective anti-corruption programs.

Section 6. Staff. The Commission shall employ an Executive Director and other appropriate staff sufficient to organize and direct the audits, studies and analyses set forth in Section 2 of this Order from appropriations made available therefor. The Commission from time to time may supplement its staff with personnel of the DOI, including investigatory personnel as may be necessary, to the extent that the Commission and the DOI Commissioner determine is appropriate.

Section 7. Construction With Other Laws. Nothing in this Order shall be construed to limit or interfere with the existing powers and duties of the Police Department, the DOI, the District Attorneys, the United States Attorneys for the Southern and Eastern Districts of New York, or of any other department or agency of federal, state or city government to investigate and prosecute corruption.


Rudolph W. Giuliani
Mayor