

## PART I

### OVERVIEW

In recognition of the need for an independent monitoring agency of the New York City Police Department, the New York City Commission to Combat Police Corruption (“the Commission”) was established by Mayor Rudolph W. Giuliani on February 27, 1995, through Executive Order No. 18. The Commission, mandated to monitor and assess the anti-corruption policies and practices of the New York City Police Department (“the Department”), has reviewed various aspects of the Department’s anti-corruption efforts and continues to do so. In addition to focusing on how the Internal Affairs Bureau (“IAB”) investigates allegations of corruption and serious misconduct, the Commission has also conducted numerous studies focusing on general departmental policies relating to corruption and misconduct.<sup>1</sup> This is another such study.

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<sup>1</sup> See the Commission’s Reports, *The New York City Police Department: The Role and Utilization of The Integrity Control Officer* (December 1996); *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 Probationary Police Officers Who Engage in Misconduct* (August 1998); *The New York City Police Department’s Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998); *Performance Study: A Review of the New York City Police Department’s Background Investigation Process for the Hiring of Police Officers* (January 1999); *The New York City Police Department’s Disciplinary System: A Review of the Department’s December 1996 False Statement Policy* (August 1999); *The New York City Police Department’s Prosecution of Disciplinary Cases* (July 2000).

It is often, and appropriately, said that the vast majority of New York City's ("the City") 40,000 police officers are honest, hardworking men and women, and that wrongdoing is limited to a small minority. The actions of that minority -- whatever its size -- all too often, however, define the Department for the citizens whom it seeks to serve. Identifying and dealing with these officers is therefore important to the Department, and, as has been accepted by the Department, cannot be left solely to the efforts of IAB.

The Department thus recognizes, and the Commission agrees, that in order to maximize the Department's ability to identify and deter misconduct and corruption, proactive measures need to be in place at all levels of the Department. Therefore, while IAB is charged with identifying and investigating the most serious allegations of corruption and misconduct, it is but one element of the Department's overall anti-corruption effort. Various other units and personnel at other levels within the Department also have the responsibility of identifying, investigating, and affirmatively dealing with potential wrongdoing. This Report reflects the Commission's analysis of such non-IAB groups both at the headquarters level and at the command and borough levels.

Two headquarters-based units undertaking proactive efforts to address potential police misconduct are the Profile and Assessment Committee ("the Committee") and the Performance Monitoring Unit ("PMU"). The Profile and Assessment Committee is composed of a group of high ranking personnel in the Department who are responsible for identifying and dealing with officers who have an unacceptable number of Civilian Complaint Review Board ("CCRB")<sup>2</sup> allegations

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<sup>2</sup> The Civilian Complaint Review Board ("CCRB") is a city agency that has jurisdiction to conduct primary investigations of complaints against police officers that allege excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language.

made against them. While not a monitoring unit, this Committee plays a unique role in proactively developing strategies to improve or supervise more closely those officers' behavior and/or to expedite disciplinary proceedings pending against them. The Commission reviewed the operations of the Committee and a number of its files.

The primary function of PMU is identifying and monitoring officers whose records indicate that they have varying degrees of disciplinary problems. PMU is responsible for proactively monitoring these officers who are in need of increased supervision. PMU is supposed to provide such supervision by coordinating efforts with other units, such as the officer's command, to effectively deal with and/or, where possible, improve a problematic officer's behavior. PMU was studied in order to determine how it performs its assigned responsibilities, and to evaluate the extent to which it acts proactively and coordinates efforts with other units in the Department to effectively address problem officers.

At the borough and precinct levels, in varying degrees, Precinct Commanders, Integrity Control Officers ("ICOs") and Borough Investigations Units<sup>3</sup> are responsible for developing strategies to identify and deal with problem officers and locations, and for investigating certain types of alleged misconduct that are determined not to warrant investigation by IAB.<sup>4</sup> The Commission

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<sup>3</sup> Prior to 1993, these units were denominated "Inspection Units."

<sup>4</sup> IAB is responsible for investigating allegations of serious misconduct or corruption.

sought to evaluate what strategies and resources are being utilized to perform their functions and how effectively these functions are carried out.

In general, the Commission concluded that the Department should be credited for recognizing the importance that these groups must play in its anti-corruption efforts. Indeed, recognition that an effective IAB is necessary, but not sufficient, to minimize the susceptibility of the Department to corruption and other misconduct was the basis for its 1995 “policy of inclusion.”<sup>5</sup> Improvements can and should be made, however, in how these units operate.

While making some suggestions as to how its functioning can be improved, the Commission found that the Profile and Assessment Committee performs a valuable “hands on” role in providing senior level oversight over selected problem officers. Indeed, one of the Commission’s recommendations is that the Committee’s responsibilities be expanded to provide oversight for officers who are monitored by other entities in the Department.

The concept behind the creation of PMU -- the active monitoring of problem officers -- is an important and positive one. At the same time, however, it is clear that the Department can do a better job in implementing this concept. PMU, for example, should act in a more proactive, and less mechanical manner. More specifically, while PMU did gather information about officers on its monitoring lists, this information was often obtained on an untimely basis and was not always substantive in nature. Furthermore, PMU does not appear to be fulfilling its central mandate of

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<sup>5</sup> This “policy of inclusion” was outlined in *Police Strategy No. 7: Rooting Out Corruption; Building Organizational Integrity in the New York Police Department* (June 1995). The report itself outlined an overall program for the Department’s corruption fighting mechanisms and one of the core principles of the strategy was this new policy whereby IAB would more systematically and comprehensively include Precinct Commanders and ICOs in the integrity-control process.

developing proactive strategies to monitor officers by making recommendations to the commands and coordinating monitoring efforts with other units within the Department. The Department itself has recognized various of these problems and, under new leadership, PMU has been making changes during the past year.

Similar observations can be made about the Borough Investigations Units and the ICOs. They are not operating proactively enough in dealing with the individual needs of the commands for which they are responsible, and most are spending a limited amount of time on proactive duties. For instance, they are not performing some function monitoring duties<sup>6</sup> such as patrol monitoring frequently or systematically enough. While it is fair to note that this inadequacy often was a function of a lack of time and resources because these units also have other responsibilities, function monitoring is an essential key to identifying and monitoring problem officers and locations and should be undertaken on a more consistent basis.

In sum, the Commission believes that all these entities play an important part in maintaining integrity and deterring misconduct and corruption, but could work more aggressively and proactively.

Finally, a note about the timing of this Report, *The New York City Police Department's Non-IAB Proactive Integrity Programs*. The Commission sent a draft of it to the Department in August, 2001. It was in the midst of discussing with the Department its comments when the attack on the World Trade Center took place. Given these circumstances, the Commission, while

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<sup>6</sup> Function monitoring is any type of proactive monitoring technique designed to identify and/or prevent misconduct. For a discussion of function monitoring, *see infra* at pp. 7-8.

continuing its own work on the Report, determined it was appropriate to defer its discussions with the Department, and to release this Report in December. We are also cognizant of the fact that in the current situation it may take more time for the Department to respond to various recommendations in this report. This is particularly true where added personnel would be required.

**PART II**  
**MONITORING EFFORTS**  
**AT THE COMMAND AND BOROUGH LEVEL**

**I. INTRODUCTION**

The responsibility for identifying and deterring corruption is not solely delegated to IAB.

In recent years there has been increased emphasis on the role of others within the Department, including the Patrol Borough/Bureau Investigations Units, Precinct Commanding Officers, and ICOs in dealing with these issues. Therefore, as part of this study, the Commission analyzed how these groups perform their responsibilities in this area. As part of this analysis, the Commission spoke to Commanding Officers of Investigations Units, Commanding Officers of precincts<sup>7</sup> and their corresponding ICOs.<sup>8</sup>

**A. Investigations Units**

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<sup>7</sup> To differentiate between Commanding Officers of precincts and Commanding Officers of Investigations Units, Precinct Commanding Officers will be referred to as Precinct Commanders.

<sup>8</sup> More specifically, Commission staff interviewed Lieutenants, Captains and Deputy Inspectors. Throughout this Report, they will be referred to collectively as officers.

Investigations Units are units within Patrol Boroughs and specialized bureaus.<sup>9</sup> They have both investigative and inspection and function monitoring type responsibilities. Their investigative responsibilities include investigation of allegations of non-criminal violations of Department regulations, and other lesser misconduct,<sup>10</sup> firearm discharges by Members of the Service, other than the most serious domestic disputes involving officers, on/off-duty incidents involving officers which may result in the removal of their firearms, and where officers report bribe attempts.

Investigations Units also are responsible for assisting each Patrol Borough/Bureau Commander in maintaining standards of integrity within his<sup>11</sup> command primarily by identifying and correcting potential issues and misconduct. According to the Department, the primary method of

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<sup>9</sup> Patrol Boroughs are broken down by the five boroughs in the City. The larger boroughs are further broken down into Patrol Boroughs North and South and each borough contains its own Investigations Unit. Specialized bureaus are city-wide units which cover all bureaus pertaining to that specialized function.

<sup>10</sup> These allegations are classified as “M” cases. All allegations of corruption and misconduct are initially routed through IAB’s Command Center and after classification by IAB, they are either kept by IAB or forwarded to the Chief of Department’s Office which sends them to the appropriate investigative group. IAB investigates most allegations dealing with criminal activity and serious misconduct which are classified as “C” cases. Violations of Departmental regulations which do not rise to the level of misconduct are classified as Outside Guidelines or “OG” cases and may be investigated by either Investigations Units or ICOs.

<sup>11</sup> Throughout this Report, officers will be referred to using the male pronoun.

achieving the objectives of the Investigations Units is through function monitoring.<sup>12</sup> Function monitoring is any type of proactive monitoring technique designed to identify and/or prevent misconduct. Department guidelines state that the main components of function monitoring are patrol monitoring, personnel monitoring, quality assurance, and any other self-initiated activities or programs.<sup>13</sup>

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<sup>12</sup> See New York City Police Department Interim Order No. 12-2, dated February 11, 1997.

<sup>13</sup> See *id* at p. 1.

Patrol monitoring involves the observation of officers on patrol to determine how they are conducting themselves while on-duty. Personnel Monitoring consists of more specific monitoring of individual officers due to poor performance or other substandard behavior. Quality assurance is the review of internal reports and paperwork, and the inspection of command facilities and personnel inside the commands. Self-initiated cases are investigations into possible misconduct and/or corruption that are initiated after observing potential misbehavior by an officer.<sup>14</sup>

Investigations Units also act as a liaison between the borough/bureaus and the precincts by conferring regularly with, and providing assistance to, ICOs within their command, and auditing internal command paperwork and civilian complaints.

## **B. Precinct Commanders**

According to the New York City Police Department's Patrol Guide §202-09, the Commanding Officer of a precinct is responsible for the day-to-day operations of the precinct which involves everything that occurs within the command.

One of the fundamental duties of a Precinct Commander, as well as of the ICO, is maintaining the integrity of the command. While they are not supposed to be "investigators" of corruption, this duty includes the responsibility to detect possible corruption and misconduct by the officers assigned to their command. The Precinct Commander, with the assistance of an ICO and other supervisors, is also responsible for devising strategies to address on a proactive basis any

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<sup>14</sup> Self-initiated cases may only be conducted after conferral with the local IAB group commander to avoid compromising on-going IAB investigations.

potential integrity issues within his particular precinct or command, which may involve problematic officers or “corruption risk” areas or assignments.<sup>15</sup>

### **C. Integrity Control Officers**

In 1973, in response to the Knapp Commission’s Report on Police Corruption, and in recognition of the need to have integrity controls at every level of the Department, the Department implemented a strategy whereby an ICO is assigned to each police precinct in the City. The ICO, with the rank of Lieutenant, was to become an integral member of the Precinct Commander’s management staff with the primary assignment of deterring corruption and misconduct at the precinct level and reporting misconduct to IAB, when appropriate. This program was initiated to reduce the opportunities for corruption and to eliminate misconduct before it spread to other officers or became ingrained within the command.

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<sup>15</sup> Some assignments may afford greater opportunity for misconduct and/or corruption due to the nature or location of the job and the Department recognizes that these assignments should be more closely supervised. Examples of such situations include arrests which entail the vouchering of large quantities of narcotics or currency, or indoor locations which contain property or currency.

At present, the duties and responsibilities of the ICOs are numerous and relate to both the active prevention and/or detection of corruption and misconduct, as well as administrative functions. The integrity functions include developing intelligence sources within the precinct and community, developing integrity control programs, and patrol monitoring. In addition to the above integrity functions, ICOs are also responsible for training members of the Department on how to identify and report corruption, conducting investigations into low level misconduct allegations, submitting reports to IAB and Patrol Borough Investigations, and debriefing peddlers who have been arrested. Further, ICOs are responsible for numerous administrative duties, a number of which are only marginally related to corruption.<sup>16</sup>

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<sup>16</sup> See Patrol Guide §202-15 for the responsibilities of ICOs.

An earlier study of the role of ICOs conducted by the Commission in December of 1996<sup>17</sup> found, among other things, that ICOs were overburdened with administrative duties and that these administrative duties effectively precluded the ICOs from fulfilling their primary function of investigating corruption and/or misconduct at the precinct level. Therefore, the Commission also examined the current role of the ICO as a follow-up to the findings of that study.

## **II. METHODOLOGY**

### **A. Selection of Investigations Units and Commands**

The Commission interviewed the Commanding Officers of seven Investigations Units. These Units were chosen to include two specialized bureaus and one Patrol Unit from each borough. The Commission also examined all paperwork documenting the patrol monitoring and quality assurance activities of these Units for the time period of January 1, 2001 through March 31, 2001.

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<sup>17</sup> See *The New York City Police Department: The Role and Utilization of the Integrity Control Officer* (December 12, 1996).

With respect to commands, the Commission selected precincts with both high and low numbers of corruption and misconduct allegations in relation to the number of officers assigned to those precincts and/or the number of arrests generated within the precinct.<sup>18</sup> Thus, precincts with high numbers of allegations and high arrests and low numbers of allegations with low numbers of arrests were selected, as well as precincts with high numbers of allegations and low arrests numbers and precincts with a low number of allegations and high arrest activity. Ultimately, eleven commands were chosen for inclusion in this study and the Precinct Commander and ICO of each command were interviewed.

The purpose of these interviews was to examine what types of proactive strategies were being employed at the borough/bureau and command level and how various Investigations Units and precincts were responding to the individual integrity needs of their commands.

## **B. Interviews**

For the interviews, the Commission developed three separate questionnaires, one each for Investigations Units Commanding Officers, Precinct Commanders, and ICOs. Although these questionnaires focused on similar areas, they also took into account the different functions that these individual entities were responsible for carrying out. In general, the interviews focused on how problematic officers, corruption, and misconduct were being identified and what methods were utilized to confront these issues and problems. Additionally, the Commission explored how these

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<sup>18</sup> The Commission obtained this information from IAB's internal Corruption Comparison Report, which tracks corruption and misconduct allegations received by the Department.

distinct groups of officers were working separately, and in conjunction with each other, to prevent corruption and misconduct and how their time and resources were being allocated.

After selecting the officers the Commission wished to interview as part of this study, the Department was notified, and Commission staff arranged interview times with the individual officers. Initially, the majority of officers agreed to be interviewed by Commission staff. However, upon learning about these interviews, the Captains Endowment Association and the Lieutenants Benevolent Association, the labor organizations representing officers of the rank of Lieutenant and above, took the position that its members should not speak with the Commission without having a union representative and attorney present. This position was communicated to all members of both associations who then declined to be interviewed.

Executive Order 18 which created the Commission in 1995 empowers the Commission to perform audits, studies and analyses to assess the quality of the Police Department's systems for combating corruption. It further states that the Police Commissioner shall ensure and mandate the full cooperation of all members of the Department with the Commission in the performance of such studies.<sup>19</sup> Pursuant to this mandate, and after consultation with the Commission, the officers were ordered by the Police Commissioner to cooperate with the Commission's interview requests and were allowed to bring representation. Consequently, all interviews were conducted at the Commission's office with a union representative and attorney for the officer present.

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<sup>19</sup> See Executive Order 18, attached as Appendix A.

This is the first time that Commission interviews were conducted in this manner. The result from the Commission’s perspective was decidedly mixed. While the officers certainly cooperated and were honest, many responses, particularly among the Precinct Commanders, tended to come off as “form answers,” based upon advanced preparation by the union representatives and attorneys. While there is nothing wrong with appropriate counseling --lawyers do it all the time -- given that parts of this Report are based upon the self-reporting assertions of the individuals being reviewed, the Commission, in certain areas discussed below, did not feel comfortable in drawing conclusions based upon these interviews. This is particularly the case with respect to evaluating how the Precinct Commanders who were interviewed are carrying out integrity functions at the command level. Consequently, this Report does not make definitive findings or recommendations regarding these Precinct Commanders’ performances.

### **III. INVESTIGATIONS UNITS**

#### **A. Patrol Monitoring and Proactive Initiatives**

Investigations Units perform patrol monitoring as part of their function of assisting commands in detecting and deterring misconduct and corruption. Patrol monitoring consists of patrolling within their geographic area of responsibility to ascertain the performance of the assigned officers in their day-to-day activities. Patrol monitoring may be accomplished either by surveillance of officers or by more direct supervision and oversight.

The surveillance of officers on patrol provides an opportunity for investigators<sup>20</sup> to observe and critique how officers are responding to jobs, effecting arrests, and interacting with the public. These observations can be a valuable source of intelligence and may help investigators identify problem officers or those who need supplemental training or supervision. The fact that officers are unaware when and if they are being observed allows the investigators to more accurately assess an officer's behavior. This kind of patrol monitoring not only can potentially uncover officer misconduct, it may also serve as a deterrent to potential misconduct while on patrol.

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<sup>20</sup> Most investigators assigned to Investigations Units are of the rank of Sergeant or Lieutenant.

Direct supervision and additional oversight of officers is also an important component of patrol monitoring. This may be achieved in a number of ways including having investigators appear at arrest scenes to supervise an officer or by interviewing officers in the field as to their assignments and the events of the day.<sup>21</sup>

In addition to monitoring personnel, investigators also monitor problem locations such as potential “cooping”<sup>22</sup> and off-limits locations.<sup>23</sup> Lists of these locations are kept by the investigators and the information is shared with the Precinct Commanders and ICOs and updated regularly.

Monitoring officers and problematic locations is valuable in deterring misconduct. If officers believe that they may be observed by investigators, they may be less likely to commit misconduct. Further, if officers are aware that investigators may be regularly inspecting locations where they are prohibited from visiting, officers may be less inclined to frequent those locations.

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<sup>21</sup> After talking to the officers, the investigator will make a notation in the officer’s memo book indicating that this supervision took place.

<sup>22</sup> These are locations where officers have been found sleeping or avoiding assignments.

<sup>23</sup> These are establishments that officers are prohibited from patronizing in a non-law enforcement capacity. Officers may be forbidden to frequent certain establishments because they do not comply with Department regulations or because illegal activity has occurred there. For example, establishments that violate liquor laws or which promote illegal gambling are considered unlawful locations. Off-limit locations can also include businesses which disregard Department regulations by offering officers free meals or discounts on merchandise. Each Investigations Unit is required to compile a list of such locations and patrol them on a regular basis.

Thus, patrol monitoring can both serve as a deterrent and be an important management tool by providing information concerning possible trouble spots and which tours or officers need additional supervision or retraining. Therefore, it is important that the Investigations Units have both the time and resources needed to patrol aggressively and initiate investigations when appropriate.

The potential scope of the Investigations Units' patrol monitoring responsibilities are enormous. Investigators are responsible for all three tours of duty each day,<sup>24</sup> seven days a week.

Consequently, Investigations Units are responsible for thousands of officers and potentially hundreds of locations.<sup>25</sup>

Despite the importance of these responsibilities, the majority of the Investigations Units are not spending a significant amount of time patrol monitoring. Further, the Commission found that these Units, when they do patrol monitor, do not do so on a consistent basis and do not regularly monitor all three tours of duty.

The Investigations Units' paperwork, which documented all patrol monitoring activities for the months of January through March 2001, revealed that three of the seven Investigations Units did not perform any meaningful amount of patrol monitoring.<sup>26</sup> Two of these units, however, were

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<sup>24</sup> Each precinct in the Department is open twenty-four hours a day and is divided into three separate tours: (1) the day tour which is from approximately 8:00 a.m. to 4:00 p.m.; (2) the late or night tour which lasts from 4:00 p.m. until 12:00 a.m.; and (3) the midnight tour which is from 12:00 a.m. until 8:00 a.m. the next morning. Each tour is actually longer than 8 hours. This is to ensure that there is "overlapping" at the end of each tour and that the precinct is being patrolled at all times.

<sup>25</sup> The number of officers for whom the interviewed Commanding Officers of Investigations Units were responsible varied between approximately 1100 and 4,180 officers.

<sup>26</sup> Although these Units did not do any patrol monitoring, two of them did perform quality assurance inspections of the commands within their jurisdiction.

non-patrol specialized Units where this kind of monitoring is more difficult.<sup>27</sup> And, as discussed below, one of these Units performed other proactive activities.

Of the four Units which did perform patrol monitoring, three of the Units shared the monitoring responsibility among all investigators in the Unit. Due to staffing issues, several Commanding Officers indicated that patrol monitoring was often combined with individual investigators' other responsibilities. For instance, an investigator might stop and observe an off-limits location on his way to or from another assignment. One Unit assigned an Investigator solely to patrol monitoring duties. While the Commission recognizes the value of allowing one investigator to focus mainly on patrol monitoring activities, a review of the paperwork from this particular Unit revealed the problem when only one person performs such duties. In this instance, the assigned officer was given other duties for a total of five weeks and then was on vacation for one week. As a result, this Unit performed no patrol monitoring for six weeks and only one day in March.

In addition, of the four Units which documented patrol monitoring, three performed patrol monitoring less than six hours a week, with one Unit patrolling just 35 minutes during the month of January. Finally, only one Unit, situated in a low crime borough, consistently managed to patrol all three tours of duty on a regular basis.

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<sup>27</sup> These were OCCB and the Detective Unit. The third Unit has a large investigative caseload. Between the dates of January 1 and May 30, 2001, this Unit conducted approximately 225 investigations. In addition, the Unit's Patrol Borough also has a Quality Assurance Unit. For a discussion of why the non-patrol specialized Units do not perform patrol monitoring, *see* p. 18.

In the other three Units, all three tours were not consistently monitored, and the midnight shift was monitored far less than other tours. For example, one Unit monitored just one midnight shift a month on average while another only monitored the midnight shift from 6:00 a.m. to 8:00 a.m.

The Commission also noted spans of 26 and 30 days between patrol monitoring in two Investigations Units. The fact that on some occasions Units fail to patrol for almost a one-month period demonstrates that patrol monitoring is not being done on a consistent basis.

Lastly, of the four Units that did perform patrol monitoring, the Investigations Units paperwork showed that only two Units consistently patrol monitored “cooping” and “off-limit” locations. Again, these types of locations need to be monitored on a sufficiently consistent basis to deter and detect misconduct and/or corruption that may occur.

In discussing the amount of time spent patrol monitoring by the Units with their Commanding Officers, Commission staff was told that the Units’ officers were limited in the amount of time that they could allocate to perform these duties because of their other responsibilities. Specifically, the Commanding Officers stated that the investigation of “M” cases<sup>28</sup> and responding to call-outs<sup>29</sup> took up a significant amount of their time. According to the Commanding Officers, the investigation of “M” cases can be time consuming and may require the investigator to go to

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<sup>28</sup> For a discussion of “M” cases, *see* fn. 10 and accompanying text.

<sup>29</sup> Call-outs are situations in which investigators are required to respond to the scene of an incident and

various locations, interview witnesses, and obtain documents pertinent to the case. Further, depending upon the facts of the case, this may necessitate multiple trips and interviews.<sup>30</sup>

Situations requiring call-outs include when an officer has discharged his weapon and domestic violence incidents involving officers. Depending upon the complexity of the situation and the number of witnesses with whom to speak, a call-out may take anywhere from several hours to an entire day to complete and may require the assistance of several investigators.

In addition to lacking the time necessary to patrol monitor, several Investigations Units Commanding Officers also reported that the assignments of the officers in their commands did not lend themselves to monitoring. For example, officers assigned to patrol are easier to monitor because they are assigned to a specific area during a specific time period. Other officers that are assigned to specialized bureaus, such as detectives or narcotics officers, have more fluid assignments and may operate over a larger geographical area than officers on patrol. This makes it more difficult for investigators to determine their exact location at any given time. Therefore, Investigations Units Commanding Officers stated it is more difficult and time consuming to patrol monitor officers assigned to specialized bureaus.

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conduct a preliminary investigation.

<sup>30</sup> The average caseload per year of individual investigators ranged from approximately 10 to 60 while the overall number of cases handled per year by each Unit ranged from 100 to 600.

The Commanding Officers interviewed also stated that the hours of operation for the Units also limited the time they had available to complete most of their assignments, including patrol monitoring, particularly on the midnight and weekend tours. Six of the seven Investigations Units interviewed stated that the Unit is closed at least part of every weekend<sup>31</sup> and further, six of the seven Units interviewed are closed at least a portion of each midnight shift during the week and longer on weekends.<sup>32</sup> This assignment pattern thus is one of the reasons that the majority of the Investigations Units are not consistently engaged in patrol monitoring.

Overall, the majority of Commanding Officers stated that the bulk of their investigators' time was spent on duties other than function monitoring and that, given their current workload, the difficulties in monitoring specialized bureaus, their hours of operation, and their lack of resources, they are unable to devote more time to patrol monitoring activities. Because of heavy workloads and other responsibilities, chance also plays a role in who is monitored in that investigators will monitor officers and locations while traveling to or from a separate assignment or monitor jobs that

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<sup>31</sup> Four of the Units are closed during the weekend, one Unit is open on Sunday while another is partially staffed during part of Saturday. Investigators of these Units are available for call-outs, if needed, and can be reached by beeper.

<sup>32</sup> The hours of operation are as followed: three of the Units operate from early morning to 12:00 a.m. and are closed after midnight and on the weekends, one Unit operated from 5:30 a.m. to 2:35 a.m. and is closed on weekends, a separate Unit is open 24 hours a day but closed on weekends, another is open from 6:00 a.m. to 12:00 a.m. seven days a week, and finally, one Unit is open from 4:00 a.m. to 12:00 a.m. and closed Saturdays.

are in close proximity to their location. Finally, the Commanding Officers stated that when their investigators did patrol monitor, they attempted to focus their monitoring on potentially problematic areas, particularly radio runs where officers are responding either to indoor locations where accusations of missing property could arise as well as to certain off-limits locations.

One of the specialized Bureau Investigations Units, which did not do patrol monitoring, did do other meaningful proactive activities. According to their records, this Unit supervised the execution of approximately 59 search warrants during the time period studied. This was done because a number of missing property allegations stemmed from the execution of search warrants.<sup>33</sup> This Unit also helped debrief in excess of 100 prisoners during the three month period. This was done in an attempt to gather information regarding any criminal activity including any corruption and/or misconduct being committed by police officers.

## **B. Personnel Monitoring**

Personnel monitoring consists of additional surveillance and/or supervision of certain problem officers who have been brought to the Investigations Units' attention. According to the Commanding Officers, these officers may be brought to the Units' notice either because of their placement on various monitoring lists<sup>34</sup> or through discussions with Precinct Commanders or ICOs about whether there are any officers who are posing a problem, or officers that they feel merited

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<sup>33</sup> The officers assigned to this particular Unit execute search warrants on a daily basis and therefore, the Unit attempts to monitor as many search warrants as possible.

<sup>34</sup> There are various units within the Department that maintain lists of officers who require extra attention or supervision. *See* Part III for a discussion of some of these lists.

additional observation. The Investigations Units Commanding Officers also stated that their Units examined requests for sick and emergency days off to determine if there was any pattern of abuse by individual officers. Additionally, they stated that three of the Units either compiled their own internal monitoring lists of officers or created profiles of problematic officers based upon the above information and/or results of their own patrol monitoring.

A review of all the Units' paperwork for the months of January through March 2001 confirmed that little, if any, personnel monitoring was being done. These records did not contain any notations that any officers were being specifically observed as a result of inclusion on a monitoring list or as a result of a request for such supervision. In addition, the paperwork did not reveal any officers that were monitored more frequently than others, or who had been brought to the Units' attention by either a Precinct Commander or ICO. Moreover, the paperwork did not reflect that the officers monitored during the above time period were on a disciplinary list and, more importantly, whether the Units affirmatively sought to monitor any of the officers on the disciplinary lists.

### **C. Quality Assurance**

Another integrity function assigned to the Investigations Units is conducting quality assurance checks in the commands under their jurisdictions. Quality assurance is the review of internal reports and paperwork and the inspection of command facilities and personnel. These reviews are designed to ensure that departmental regulations and standards are being followed.

Reviewing internal paperwork entails reviewing various logs and police reports generated by the precinct. The Units are also directed to conduct audits and tests of various police practices to ascertain patterns, and identify specific problematic commands and/or officers.<sup>35</sup> In addition, they are also required to inspect Department facilities and officers in their command.

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<sup>35</sup> See New York City Police Department Interim Order Number 12-2, dated February 11, 1997, at p. 2.

A review of the paperwork documenting each Units quality assurance activities showed that almost all Investigations Units were regularly performing some type of quality assurance audit or inspection.<sup>36</sup> The most common types of audits included certain Courtesy, Professionalism, and Respect testing,<sup>37</sup> Crime Classification audits,<sup>38</sup> Driving While Intoxicated arrest audits,<sup>39</sup> and Radio Run Disposition audits.<sup>40</sup> As with patrol monitoring, the effectiveness of these quality assurance checks is dependent upon investigators devoting the appropriate amount of time to them so that they are done in a meaningful manner.

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<sup>36</sup> The Borough Investigations Unit that did not patrol monitor stated they also did not conduct quality assurance functions due to the large number of “M” cases they were assigned.

<sup>37</sup> This test, a “CPR” test, is accomplished by calling various commands and determining whether the police employee who answers the call acts in a professional manner and with a proper demeanor consistent with the standards set by the Department.

<sup>38</sup> Crime Classification audits are inspections of arrest paperwork to determine if charges are properly classified and whether the offense and details section of the on-line booking sheet are in agreement.

<sup>39</sup> These audits are done to determine whether the Department’s vehicle forfeiture proceedings are being complied with after arrest.

<sup>40</sup> These audits ensure that complaint reports are prepared for each radio run assignment that requires a complaint report.

The Commission questioned the Borough Investigations Commanding Officers about the percentage of time that they spent on inspections and other quality assurance functions. Although two Units stated that they had certain personnel within the Unit whose primary function was to patrol monitor and/or perform quality assurance, the Commanding Officers were unable to break down the amount of time their investigators spent performing specific quality assurance functions. The five other Units combined the time spent conducting inspections with the time spent on patrol monitoring and indicated that they could not break it down more specifically. The amount of time they said they spent on the combination of these two activities ranged from fifteen-to-forty percent.

It is clear from the paperwork provided by these Units that audits and inspections are regularly being conducted. However, because this paperwork does not indicate the amount of time that Investigations Units are spending on these duties, the Commission was unable to determine if a sufficient amount of time was being spent on quality assurance functions and if they are being conducted in a meaningful manner.

#### **D. Self-Initiated Cases**

As stated earlier, self-initiated cases are investigations into possible misconduct and/or corruption that are initiated after observing potential misbehavior by an officer.<sup>41</sup> Developing self-initiated cases is one of the responsibilities of the Investigations Units. According to the Commanding Officers, none of the Units had initiated such cases during the Commanding Officers'

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<sup>41</sup> Investigations Units' self-initiated cases can only be conducted after conferral with the local IAB group commander to avoid compromising on-going IAB investigations.

tenure. However, one Commanding Officer did state that his Unit had aided an ICO in the investigation of a case initiated at the command level.

## **E. Staffing and Resources**

The Commission questioned each Commanding Officer about whether his Investigations Unit was adequately staffed and possessed the resources needed to fulfill their assignments. On average, each Unit had fifteen-to-sixteen officers and investigated approximately 230 cases each year while responding to approximately 110 call-outs and seventeen firearm discharges. While the majority of the Units were responsible for covering a similar number of officers,<sup>42</sup> each geographic area varied in size and several Units had unique responsibilities. One Unit, for instance, monitors search warrants<sup>43</sup> while three others respond to incidents which occur in counties outside of the City.<sup>44</sup>

Not surprisingly, five of the seven Investigations Units Commanding Officers felt that the Units were understaffed and desired more personnel assigned in order to enhance the Unit's

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<sup>42</sup> Five of the seven units were responsible for approximately 2500-3000 officers while the remaining two covered 1100 officers and 4100 officers.

<sup>43</sup> Because of the number of allegations of missing property resulting from the execution of search warrants, OCCB investigators monitor the execution of search warrants whenever possible.

<sup>44</sup> Some Units are responsible for responding to and investigating domestic disputes which occur both within their geographical area and in surrounding counties outside of the City. Patrol Borough Bronx responds to incidents which occur in counties north of the City while Patrol Borough Queens North and Queens South handle incidents which occur in Nassau and Suffolk counties. The Department has recently changed how domestic disputes are assigned. Formerly, the incident was assigned to the Unit which was responsible for the area where the incident occurred. Under the new policy, the Unit which covers the command where the officer works is responsible for responding to and investigating the incident wherever it occurs. The Commission recognizes that this will change the workload and resource needs of many of the Investigations Units.

productivity and ability to patrol monitor. While it is important that Investigations Units have the resources to perform the kinds of proactive responsibilities described above, the Commission does not believe it has sufficient information to assess whether more officers need to be assigned to these Units or whether there are alternative ways to accomplish this result. We believe, however, the Department should review the resource needs of the Units.

During the Commission's interviews, three of the Commanding Officers stated that a shortage of cars, at times, affected their ability to perform all their duties. As noted above, Investigations Units are responsible for conducting preliminary investigations of certain incidents, and also investigating the bulk of "M" cases in addition to their function monitoring and quality assurance responsibilities. On average, the Investigations Units had approximately three cars assigned to them. Three Commanding Officers stated that their Units needed additional cars. They believed that more cars would be beneficial because most of their assignments require the use of a car and the cars assigned to the Unit must be shared among all the investigators.

In this connection, it does appear that many of the assignments performed by these Units are time consuming and can monopolize a car for a significant amount of time. As one Captain explained, call-outs may take many hours to complete and often necessitate the use of more than one car. This is problematic because call-outs must be responded to immediately and take priority over other duties of the unit. If all or the majority of cars are being used on a call-out, this may leave the Unit with no cars available to carry out patrol monitoring, conduct inspections, or investigate cases. Several Captains noted that the officers in their Units were at times forced to use their own cars for official duties because the Units had no cars available.

Given the workload described above and that these Units, on average, were assigned just three vehicles, it does appear that these Units do require additional cars so that they can fulfill all of their responsibilities and provide regular integrity control coverage within their borough/bureau.

#### **IV. PRECINCT COMMANDERS AND INTEGRITY CONTROL OFFICERS**

##### **A. Patrol Monitoring**

According to the New York City Police Department's Patrol Guide,<sup>45</sup> the primary duties of an ICO are to "develop an Integrity Control Program suitable and responsive to command conditions" and "observe command conditions and visit corruption prone locations frequently, at irregular hours." Many of these duties are accomplished through patrol monitoring.

Each ICO is responsible for monitoring hundreds of officers<sup>46</sup> and numerous problem locations within his command such as "cooping" and "off-limit" locations. Also, like the Investigations Units, this patrol monitoring responsibility encompasses all three tours of duty each day, seven days a week. Thus, the ICOs are facing a daunting task, to effectively patrol monitor these officers and locations on an around-the-clock basis.

Despite the language of the Patrol Guide and the recognized importance of patrol monitoring, the majority of the ICOs interviewed stated that they patrolled less than ten hours a week with several stating that they patrolled less than ten hours a month. Clearly, this amount of

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<sup>45</sup> See Patrol Guide § 202-15.

<sup>46</sup> The number of officers assigned to the precincts of the ICOs interviewed contained between approximately 240 and 480 officers.

patrol monitoring is insufficient to monitor hundreds of officers and numerous locations over three separate tours of duty per day. Indeed, the majority of the ICOs acknowledged that it would be beneficial if they could spend more time on patrol, and many cited factors which affected their ability to devote additional time to patrol monitoring. These factors included the amount of administrative and other duties assigned to them and the lack of vehicles. These factors are discussed below.

## **B. The ICOs Administrative Responsibilities**

The Commission recognizes that the administrative functions of the ICO are an important part of their overall responsibilities since many of the administrative duties contain at least some integrity component. Nonetheless, since their job time is finite, that time needs to be allocated appropriately. Generally, the Commission found that the majority of the ICO's time is spent on the administrative portion of the assignment, to the detriment of more proactive integrity functions such as patrol monitoring.

The Commission's earlier study of ICOs in December of 1996 found that, on average, 75 to 80 percent of the ICOs time was spent on "administrative and . . . only marginally integrity related duties" which hampered the ICOs efforts at integrity control.<sup>47</sup> This year's re-examination of this issue shows that not much change has been made in this area.

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<sup>47</sup> See *The New York City Police Department: The Role and Utilization of the Integrity Control Officer* (December 12, 1996), at p. 15.

In fact, since that report, the duties of the ICO as set out in the Patrol Guide have increased.<sup>48</sup> While arguably having some anti-corruption relationship, these additional duties are mainly administrative in nature and include: conducting investigations when a member of the service in the military fails to provide appropriate military drill schedules to precinct timekeepers; physically inspecting all departmental radios assigned to the command monthly to ensure accountability; and identifying all radios assigned outside of command on a permanent basis and ensuring they are appropriately allocated. One new responsibility which plainly is more proactive is, when possible, debriefing peddlers arrested and/or summoned by peddler enforcement personnel concerning corruption.

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<sup>48</sup> See Patrol Guide § 202-15.

As part of their administrative duties, ICOs must respond to various requests for information sent by the borough, IAB, and the CCRB, and must prepare a variety of reports each month. These reports deal with such topics as officers' traffic court appearances, chronic sick<sup>49</sup> lists, CCRB profile and variance reports,<sup>50</sup> and overtime incurred by officers in the command. In fact, almost all the ICOs stated that the various overtime reports are the single largest administrative task they face and are extremely time consuming.<sup>51</sup> For instance, one of the ICOs interviewed stated that "50 percent" of his administrative duties involve overtime paperwork.

While the Commission agrees that overtime management is important and that the ICO should be aware of how overtime is being accrued and by whom, it appears that completing these reports consumes a large portion of the ICO's time and limits the amount of time they have available for "hands on" monitoring of officers. Indeed, the ICOs that were interviewed stated that the overall administrative aspect of the assignment remains very time consuming. According to the ICOs, anywhere from 50% to almost 100% of their days are spent on administrative tasks. Further, the majority of the ICOs stated that these administrative functions prevented them from

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<sup>49</sup> The Department designates officers who have excessive sick-leave absences as "chronic sick." For each period of time the officer is designated as such, this classification is entered in the officer's CPI and his medical history record.

<sup>50</sup> CCRB variance reports document officers that have had a predetermined number of CCRB complaints made against them within a specified period of time.

<sup>51</sup> ICOs are responsible for numerous overtime reports which include daily, weekly, bi-monthly, monthly, and quarterly reports. In addition, there are variance overtime reports to be completed if the command exceeds its allotted overtime, and overtime reports to be filed when officers make more than 35 hours in overtime in a specified period. In addition, there are reports to be filed if an officer makes more than \$3,500.00 and then \$5,000.00 of overtime in a specific time period and additional overtime reports to be filed when overtime is incurred by an officer with 19 years of service.

spending the necessary time on proactive integrity control functions, particularly patrol monitoring and self-initiated investigations.

In addition to their other duties, ICOs are also responsible for quality assurance duties which include inspecting time cards, property records, the minor violations log, the tow truck log, the precinct vending machine logs, and other similar duties.<sup>52</sup> Though these duties are not in themselves all encompassing, cumulatively they do increase the number of hours spent each day on administrative matters, and again reduce the time that the ICOs are able to spend on proactive activities in the field.

Even as to these quality assurance type duties, several ICOs stated that they were only able to spot check some logs once or twice a month while other records were only given a cursory look. For example, when one ICO spoke about his auditing of the precinct vending machines regarding theft or missing money or property, he stated that he is not “counting candy bars” while another stated that he merely scans the books looking for any improprieties. If the ICO is unable to devote the appropriate amount of time to thoroughly review and audit logs and other documents, an issue arises as to the overall effectiveness of these inspections. Since the Department has made the determination that auditing and inspecting these various logs and records is an integrity function for

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<sup>52</sup> The logs are written records of each action taken with respect to the activity monitored (i.e. the tow truck logs keeps a record of which tow truck company was assigned what job). The precinct club books keep track of funds raised through vending machines and other ventures which are used for collective purchases on behalf of the officers assigned to the precinct.

the ICO, then it must insure that the ICO -- or someone else -- has the necessary time and/or staff to perform these inspections in a meaningful manner.

One area that does not appear to be taking too much time is the investigation of “M” cases referred to the ICOs for investigation by the Investigations Units.<sup>53</sup> The Commission found that the number of “M” cases assigned to ICOs has been significantly reduced since this issue was last studied<sup>54</sup> and that the ICOs are not overburdened with these cases. Overall, the Commission found that the Investigations Units have limited the number of cases referred to the precincts in recognition of the high workload of the ICOs.

In sum, it appears that the ICOs administrative duties consume a large portion of their time to the detriment of more proactive function monitoring activities.

### **C. Resources**

It is essential that each ICO have adequate resources to perform his or her job competently. The majority of ICOs interviewed stated that the lack of regular access to a car stymied their ability to perform their function monitoring duties as thoroughly as possible.

Nine of the eleven ICOs interviewed were not assigned their own vehicles and either shared a car with a superior officer or were forced to use their own personal vehicle to patrol.

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<sup>53</sup> The decision to assign “M” cases to an ICO, including the number of cases assigned, rests with the discretion of the Investigations Units and is determined by a number of factors including the workload of both the Investigations Units and the ICO, the investigative experience of the ICO, the size of the ICO’s command, the resources available to the ICO, and the complexity of the case. In general, the cases sent to the ICOs are the simpler misconduct cases which are better suited for investigation at the precinct level.

<sup>54</sup> See *The New York City Police Department: The Role and Utilization of the Integrity Control Officer* (December 1996), at p. 19.

Furthermore, although all ICOs who shared a car stated that the officer with whom they shared the car tried to give it to them whenever possible, they also noted that these superior officers often had assignments which required use of a vehicle.

Many of the ICOs stated they are only able to patrol monitor after they had completed their other duties, and then only if a car was available. For example, one ICO stated that at times he was forced to patrol monitor on foot or on a bicycle for want of a car while a second stated that he was only able to patrol monitor on Sunday mornings due to the large number of administrative duties and lack of access to a vehicle.

Obviously, not having regular access to a vehicle makes it more difficult strategically to monitor officers or locations and forces the ICO to patrol on an opportunistic basis whenever the car is available. Furthermore, if officers in the command are aware that the ICO does not have use of a car and therefore is unable to be on patrol, his ability to project himself as someone capable of being present on the street at any time is restricted thereby limiting the deterrence value of the ICO's role. The inability to monitor officers and locations on a regular basis also curtails the ICO's opportunities to gather information and observe the performance of officers in his command. Finally, not making vehicles available to ICOs may well be taken by them as a signal that their patrol monitoring functions are not important. All ICOs and Precinct Commanders spoken with agreed that providing the ICO with his own car would enhance their ability to perform patrol monitoring and allow them to fulfill their assignment in a more effective manner.

As to other resources necessary to fulfill the duties of an ICO, only one of the ICOs interviewed stated that he had all the resources needed to perform his tasks while the remainder of

the ICOs stated that in addition to vehicles and staff, as discussed below, they would also like immediate access to Department databases such as CPIs<sup>55</sup> and Sick Records. This would assist them in more efficiently retrieving needed information to complete reports and maintain records. This access would enable the ICOs and their staff to complete administrative tasks in a more timely fashion thus freeing the ICO to spend additional time patrol monitoring. Further, the ICOs and Investigations Units stated that they could also use cellular telephones when patrol monitoring so that they could communicate with the precinct without other officers listening to the conversation.

#### **D. Staff**

The Commission also examined whether the ICOs had adequate staff. Overall, the Commission found that the staff allocated to the majority of the ICOs was not sufficient to complete both the administrative tasks assigned as well as the proactive monitoring functions. Further, this assertion was voiced not only by the ICOs interviewed, but also by a number of the Investigations Units Commanding Officers and Precinct Commanders as well.

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<sup>55</sup> A Central Personnel Index, “CPI,” contains a summary of allegations made against an officer as well as certain personnel-related information.

Almost all of the ICOs interviewed as part of this study were assigned Assistant ICOs, usually with the rank of Sergeant.<sup>56</sup> The Assistant ICOs were largely responsible for assisting the ICO with administrative duties and worked predominately day tours in order to communicate with the different bureaus involved with the administrative work (i.e., payroll, etc.), and seldom, if ever, performed patrol monitoring. Further, a majority of them were also staffed with either an officer or a Police Administrative Assistant (“PAA”)<sup>57</sup> to assist with clerical details. The majority of the officers and PAAs also worked day tours to assist the Assistant ICO with the paperwork.

The majority of the ICOs interviewed for this report, including five of the seven ICOs with both an Assistant ICO and clerical aide, stated that their staff was inadequate to handle all of the administrative tasks assigned and still allow the ICO sufficient time to patrol monitor and conduct self-initiated investigations. This assertion was corroborated by a number of Precinct Commanders and Commanding Officers of the Investigations Units. In fact, as discussed earlier, in recognition of the large workload of the ICOs, the Borough Investigations Units are limiting the number of investigations they send to the ICOs and some Investigations Units do not send any investigations to the busier precincts.

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<sup>56</sup> The one ICO that is not assigned an Assistant ICO stated that his Commanding Officer is currently attempting to have an Assistant ICO assigned.

<sup>57</sup> PAAs are civilian employees of the Department.

The Commission also found that the larger commands and the commands with a higher number of corruption and/or misconduct allegations were allotted staffs similar to the smaller and less problematic commands.<sup>58</sup> In addition, regardless of the number of allegations or officers assigned to a precinct, no precinct had more than one Assistant ICO and either an officer or PAA assigned to assist with administrative and clerical responsibilities. The inability of the Department to provide additional staff to the larger and busier commands may lessen the effectiveness of their ICOs because the amount of administrative and integrity control duties increase exponentially as the size of the command increases. Thus, the number of staff assigned to the ICO needs to take into account the number of officers assigned to the command, the administrative duties associated with the command, and the number of corruption/misconduct allegations that the precinct receives.

Finally, increased staff allocated to ICOs need not be police officers. Given the nature of some of the administrative assignments assigned to the ICOs, it appears that particular assignments could be completed by civilian police employees. There simply seems to be no particular reason why a fully trained police officer needs to be the person fulfilling many of these administrative tasks.

In sum, in order to make the ICO function more effectively, either there needs to be a decrease in administrative functions or the assignment of additional personnel which in many instances could be civilian employees.

## **E. Tours Worked**

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<sup>58</sup> The ICO's staff is determined by the Precinct Commander. However, many of the Precinct Commanders explained that they are lacking the additional supervisors and manpower needed to increase the ICO's staff.

It is important that the monitoring of officers and locations occur “around the clock” so that all three tours of duty are supervised and ICOs, as well as investigators, can learn about the different problems associated with each tour. Several Precinct Commanders interviewed indicated that historically in their commands, the night and the midnight tours have been more problematic in terms of corruption and/or misconduct allegations. Consequently, while it is important that all tours are monitored, it appears that the night and midnight tours would benefit from additional scrutiny.

The ICOs interviewed stated that their tours of duty are flexible, and that the tours they work are determined by the needs of the assignment. For instance, the majority of the ICOs stated that they work a number of day tours a month in order to attend meetings and complete various administrative assignments. The remainder of their tours are scheduled at their discretion, and many work “overlap” tours in order to be present for two tours of duty.<sup>59</sup> Further, those ICOs who are assigned Assistant ICOs stated that they tried to work tours different than their Assistants so that a larger number of hours are covered.

Because Assistant ICOs generally work day tours, it appears that this tour does have constant “in-house” coverage, although, as noted above, the Assistant ICO rarely, if ever, goes out on patrol. The late tour also seems to be receiving some coverage in that all of the ICOs reported that they worked at least part of this tour several times a week. However, only half of the ICOs reported that they worked three-to-five full midnight tours a month while the remainder did fewer

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<sup>59</sup> For example, an ICO may work from 6:00 p.m. to 2:00 a.m. so that he is present for part of the late tour as well as the midnight tour.

full midnight tours. Thus, while many ICOs stated that they worked part of the midnight tour on a regular basis, the entire tour seems to have limited ICO presence.

Furthermore, even though an ICO is working during a particular tour, that does not necessarily mean that he is able to leave the precinct and go out on patrol. As stated above, administrative duties may necessitate that the ICO remain in the command or an ICO may be unable to patrol because a car is not available. This may be especially problematic for those tours which are worked a limited number of times a month. For example, the fact that half of the ICOs work three-to-five full midnight shifts per month does not necessarily mean that they actually patrol on those shifts. Thus, this tour may be monitored and observed far less than three-to-five times a month.

In general, it appears that the day and late tours have regular ICO oversight, however there appears to be a gap in coverage on the midnight tour because ICOs are not regularly working this entire tour. Additionally, since most Investigations Units are closed between midnight and 4:30 a.m., they are also providing little to no oversight on these tours. The lack of monitoring on this tour may be especially problematic because many Precinct Commanders indicated that the midnight tour has historically been more corruption prone. Therefore, the Department should reexamine how the various tours are being monitored, and ensure that all tours receive regular, comprehensive coverage. In fact, the Department has indicated that it recognizes this problem and is committed to resolving it.

## **F. Precinct Initiatives**

Due to the amount of administrative duties and lack of resources, only a few of the ICOs interviewed had generated proactive initiatives of their own.<sup>60</sup> The majority of the proactive measures that the ICOs were able to develop themselves consisted mainly of in-house retraining of officers regarding how to secure prisoners and altering procedures relating to the vouchering of prisoner property in order to lessen the number of missing property allegations received by the command.<sup>61</sup>

A large number of allegations received each year by the Department involve persons claiming that they are missing property that was taken from them by the police during the arrest process. The majority of these cases are investigated by IAB or the Investigations Units due to the seriousness of the allegation. Although IAB or the Investigations Units are responsible for investigating these accusations, these bureaus also relay information to the Commanding Officers and ICOs of the precincts about the types of allegations they are receiving. This information is valuable because some problems may be correctable at the command level.

Several of the Precinct Commanders cited instances where allegations were made that property had been stolen from prisoners only to later find that the property had been vouchered but that the prisoner was not informed of this fact or did not understand that the property was

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<sup>60</sup> Proactive Initiatives are strategies which address specific issues which are unique to the ICO's command.

<sup>61</sup> In addition, one ICO interviewed stated that he randomly called complainants while the responding officer was present to monitor the officer's performance. Another ICO aided in prostitution "sting" operations and then attempted to debrief the prisoners.

vouchered as arrest evidence and would not be returned until the conclusion of the criminal case. Further, some allegations stemmed from the inaccurate vouchering of property. For example, the proper amount of currency was vouchered but was added incorrectly on the voucher, property was mislabeled on the voucher, or a license reported as stolen was later found in the pocket of a pair of vouchered pants.

To combat the allegations of stolen or missing property, several of the precincts have implemented similar strategies regarding property. One of the actions taken has been to have supervisors more closely monitor arrests and the removal of property from arrestees to ensure that property is not mishandled or vouchered incorrectly. Further, several of the commands have retrained officers in the correct vouchering of property, and have stressed the importance of providing prisoners with a receipt, along with an explanation of where the property is vouchered and how to retrieve it, and/or having the prisoner sign a receipt for the property which acknowledges what had been taken from him. The Precinct Commanders stated that these procedures have decreased the number of stolen property allegations received by their commands.

In another effort to decrease missing property allegations, several Precinct Commanders are now decreasing the time narcotics and currency remain at the precinct. Property seized from prisoners and crime scenes is first vouchered at the precinct and safeguarded in the property clerks office until transported to a police laboratory, a bank, or the central property clerks office. According to some Precinct Commanders, keeping narcotics and property in the precinct property room has at times been problematic because such property has to be safeguarded and various records and inventories of the property must be maintained. Additionally, in some commands

multiple people have access to the property which may make it difficult to keep track of property or trace property that is missing. Precinct Commanders have stated that reducing the amount of time property remains in the precinct by ordering that the property be transported as quickly as possible has limited the opportunities for corruption.

Several Precinct Commanders also stated that when first appointed to their commands, narcotics were being found in the back of patrol cars or in holding cells at the precinct. To correct this problem, the Precinct Commanders have retrained and lectured officers on the importance of properly searching prisoners.<sup>62</sup> The Precinct Commanders and ICOs reported that these actions have reduced the number of allegations of narcotics being found within patrol cars or inside the precinct.

Developing strategies to meet the individual needs of the command is one of the central components of the ICOs' assignment and of the overall role of the Precinct Commander. The above retraining and changed vouchering procedures reportedly decreased the number of stolen property and found narcotics allegations, but it was the only example of this kind of proactive effort provided during the interviews.

## **G. Problem Officers and Locations**

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<sup>62</sup> The Precinct Commanders stated that they have stressed to the officers that if a prisoner can conceal narcotics on his person, he could also conceal a weapon which could injure an officer. Therefore, the officers' searches of prisoners must be more thorough for their own safety.

Consistent with maintaining integrity standards, it is important to identify problem officers and locations. Early and timely identification of problem officers can reduce a precinct's level of corruption and/or misconduct by confronting potentially troublesome situations before they can escalate.

The identification of potentially troublesome locations and trends is also an important tool in the overall effort to reduce corruption and/or misconduct allegations at the precinct level. The knowledge of which locations are likely to generate problems, as well as any trends in allegations at the precinct level, allows the Precinct Commander and his ICO to focus their resources on these problematic areas. Thus, this information can reduce and deter corruption and/or misconduct in the command.

The Precinct Commanders, their ICOs, and the Investigations Units utilize various means to gather information to help identify problem officers. Obviously, officers identified as being on a monitoring list are officers that a Precinct Commander and/or ICO knows requires special attention. Precinct Commanders and ICOs stated that they looked at several additional factors to identify officers who may be experiencing difficulties. The factors they considered included: (1) the number of the officer's sick days or E-days taken,<sup>63</sup> and the number of latenesses; (2) the officer's CPI; (3) the officer's activity and productivity while on patrol; (4) the number of violations and command disciplines ("CDs")<sup>64</sup> the officer has accumulated; (5) the officer's general appearance

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<sup>63</sup> E-days are also known as Emergency Days or Emergency Excusals. These are days or portions of tours taken for personal reasons.

<sup>64</sup> A command discipline is a "[n]on-judicial punishment available to a commanding/executive officer to correct deficiencies and maintain discipline within the command." *See* Patrol Guide § 206-02. *See also* §§ 206-03 and

and attitude; (6) the officer's interaction with others including any requests for a change of partner or of tour; (7) the officer's evaluations by his immediate supervisors; and (8) precinct gossip.

In general, once problem officers were identified, all Precinct Commanders stated they received some type of additional attention. This additional attention came in various forms, such as, speaking with the officer and his supervisor, changing his tour, reassigning him to a strong supervising Sergeant, transferring him to a different precinct, conducting additional patrol monitoring on him, or contacting IAB<sup>65</sup> and asking it to target the officer for an integrity test.<sup>66</sup>

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206-04 for violations subject to command discipline and authorized penalties under command discipline, respectively.

<sup>65</sup> Discussions with IAB officers by the Commission confirmed that IAB interacts regularly with the ICOs assigned to their group and discuss problem officers.

<sup>66</sup> Integrity tests are artificial situations created by the Department which are designed to test various aspects of an officers performance.

Changing an officer's assignment was another method utilized by some commands. Several Precinct Commanders and ICOs stated that placing officers in undesirable assignments was an effective means of getting them to improve their performance. Further, officers who are experiencing problems are not typically chosen for choice assignments until their performance has improved. Other means of addressing problem officers include issuing CDs, administrative transfers,<sup>67</sup> and, where warranted, recommending that charges and specifications be brought against the officer.<sup>68</sup> Several Precinct Commanders and ICOs further stated that if they were uncomfortable with an officer they would speak to IAB and/or the Investigations Unit and discuss additional ways to monitor the officer.

In regard to problem locations, all ICOs, as well as the Investigations Units, stated that they regularly kept a list of "illegal," "off limit," and "cooping" locations in their command and this list was regularly updated. The majority of ICOs and the Investigations Units Commanding Officers stated that they tried to regularly visit these locations when they patrolled. However, as discussed above, the ICOs perform patrol monitoring on a limited basis which raises the issue of how often these locations are being observed given the large numbers of personnel and locations that need to be monitored.

Thus, it appears that both the Investigations Units and the commands have many sources of information to identify problem officers and a variety of methods to address and rectify the

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<sup>67</sup> Administrative transfers are transfers into a command located in a different borough, usually for some type of misconduct, and are noted on an officer's CPI.

<sup>68</sup> Charges and specifications are formal charges brought by the Department which can result in the loss of vacation days, the officer being placed on dismissal probation, or termination from the Department.

problems. It is difficult, however, to determine the effectiveness with which this is being done. As to problematic locations, it appears that the ICOs and Investigations Units are in possession of the needed information but are unable to monitor these locations on a consistent basis.

## **H. Information Gathering and Sharing**

In order to develop information about what is happening inside and outside of the command it is desirable that, to the extent possible, Precinct Commanders and ICOs develop sources within the local community and the precinct. Although they appear to be putting a significant amount of effort into becoming familiar with people in the community, all Precinct Commanders and ICOs acknowledged that they did not get significant information about misconduct or corruption from community sources.

All of the Precinct Commanders spoken with stated that they regularly attended Community meetings and events and most maintained regular contact with the business and clergy leaders in their commands. In addition to going to meetings which may also be attended by other personnel in the precinct, several Precinct Commanders were also involved with the community in other ways. One Precinct Commander distributed his direct telephone number to members of the community and clergy in case they needed to speak with him on any community matter, while another had his rookie officers attend church functions to meet the community.

It plainly is important, both from a broader community relations perspective and as a way to create an environment in which information can be shared, to participate in community events and get to know the neighborhood. While the comments they receive from the community usually

involve general complaints about too many summonses and discourtesy,<sup>69</sup> not one Precinct Commander stated that he had been informed of any acts of corruption and/or other forms of misconduct by members of the community. How realistic it is to expect that community members will be a source of this kind of information is, of course, a legitimate question.

The majority of the ICOs stated that developing sources within the precinct, particularly among non-supervisors, was a challenging task as the officers are reluctant to speak to supervisors, particularly ICOs. The majority of non-supervising officers did not speak to the ICOs because of the difference in their rank, concern of how fellow officers would perceive them because ICOs deal with integrity issues and discipline, and because officers may not have a personal relationship with or trust the ICO. In addition, one ICO stated that the officers in his command know that anything said to him regarding corruption or misconduct is “on the record” which therefore made them reluctant to speak to him.

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<sup>69</sup> The only proactive venture that the Precinct Commanders and ICOs mentioned they had with the community at large was that they would go out to local businesses during the holiday season and remind business owners that officers are not allowed to accept gratuities or gifts.

Moreover, although all Precinct Commanders and ICOs stated that they had an open door policy regarding speaking to any officer in the command and interacting with officers on a regular basis inside the command, they acknowledged that non-supervisory officers were unlikely to approach them with significant information and would be more likely to confide in their immediate supervisor. In fact, only three of the eleven ICOs said that they had ever received information from a non-supervisory officer and even then the information was only a general comment or reference to an officer not “pulling his weight” on the job. Consequently, all Precinct Commanders and ICOs agreed that they mostly relied on the other supervisors in the command for information about potential problems. In this regard, they stated they regularly met with supervisors to remind them of integrity issues and to discuss any problems they had identified.<sup>70</sup>

Given the importance of receiving information about potential problems, Precinct Commanders and ICOs should continue their efforts to gather as much information as possible from the community and non-supervisory officers, recognizing that they understandably are receiving limited results. The reality of how difficult it is to obtain such information underscores again the importance of proactive monitoring and intelligence gathering by the Investigations Units and ICOs through such means as function monitoring.

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<sup>70</sup> Some ICOs that were assigned to the precinct prior to becoming the ICO reported that they had received information regarding non-corruption/misconduct issues on occasion from non-supervising officers because of the prior relationship. The information they received consisted of MOS “holding jobs” or other conduct which effected the workload of the other officers on patrol. While this type of information does not relate to corruption or misconduct, it is valuable as a management tool to determine which officers need additional supervision. Further, it appears that some ICOs who have been assigned to the position for longer periods of time have also been able to develop relationships with some non-supervising officers and are able to gather information through “hints” or being “allowed” to overhear a conversation regarding another officer.

A proper relationship between the Precinct Commander and the corresponding IAB Group along with the Borough Investigations Unit responsible for the command also is essential. This relationship, if inclusive, will aid both the Precinct Commanders and ICOs as well as IAB and the Investigations Units in their mandate to detect corruption and/or misconduct.

The majority of the Precinct Commanders and ICOs interviewed stated that they were satisfied with both the amount of information they received, and the assistance they got from both IAB and the Investigations Units. For instance, several Precinct Commanders stated that IAB and Investigations were helpful in investigating, monitoring, or performing integrity tests on officers who the Precinct Commander felt needed additional scrutiny. Further, the Precinct Commanders stated that the Investigations Units at times provided the ICO with additional personnel or cars in order to assist in function monitoring duties.

## **I. Selection, Training, & Tenure of ICOs**

### **1. Selection**

Due to the high level of responsibility and the integrity required for the position of ICO, it is important that only clearly qualified and trusted Lieutenants be placed into this assignment. Therefore, the Commission looked at how Precinct ICOs were selected, and whether the training that the prospective ICO received was sufficient.

The decision as to whom to appoint to the position of ICO is important because it may impact upon the overall integrity of the command. A knowledgeable and hard-working ICO cannot only detect corruption and/or misconduct at the precinct level, but also may deter such behavior

in the officers assigned to the precinct. A competent ICO can also gather information from within the precinct and the community, focus his attention on problematic areas before such problems can fester, and effectively monitor and, where necessary, retrain the officers assigned to the precinct. Thus, the selection of the ICO has the potential to reduce corruption and/or misconduct allegations within a precinct.

Historically, the position of ICO usually fell upon the junior Lieutenant of a precinct as the more senior Lieutenants did not want the assignment for a variety of reasons. However, Precinct Commanders report that they now are attempting to be more selective in the choice of ICOs, and not simply appointing the junior Lieutenant. This is a positive development. Indeed, all of the ICOs interviewed were either former IAB investigators, had prior experience as either an ICO or Assistant ICO at an earlier command, or had a pre-existing relationship with the precinct and/or Precinct Commander. In addition, several of the ICOs interviewed volunteered for the assignment. Indeed, of the eleven ICOs interviewed for this study, only three had been the precinct's junior Lieutenant at the time of assignment.<sup>71</sup> The Precinct Commanders that chose these junior Lieutenants stated that they were chosen because they possessed the best qualifications for the position.

Specific qualifications, which can vary, obviously are more important than lack of seniority in selecting an ICO. The benefit of choosing a former IAB investigator as the ICO is that he will have prior investigative experience and will be familiar with the unique problems of investigating

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<sup>71</sup> The Commission realizes that being the junior Lieutenant does not, of course, necessarily mean that the officer is not the most qualified person for the assignment.

other officers. This experience cannot only aid in the investigative process, but can also serve as a deterrent to corruption and/or misconduct in the precinct because of IAB's reputation for investigating officer misconduct and/or corruption.

The benefit of having previously worked in the precinct in a different assignment is that the ICO is already familiar with both the officers assigned to the precinct and the problem locations. Further, the ICO may already have developed relationships with the officers which could aid in the development of information sources within the command. The benefit of the ICO having had a prior relationship with the Precinct Commander is that the ICO enters the position with a level of trust from the Precinct Commander and may have a more open and honest exchange of both ideas and information from the beginning of the assignment.

Provided that he is qualified, there are also benefits to choosing an ICO who has volunteered for the position. The ICO position, performed correctly, is a demanding assignment, and it is beneficial to have a person appointed who is enthusiastic about the assignment and wants to accept the responsibility.

## **2. Training**

Due to the distinct nature of the assignment and level of responsibility, it is important that the ICOs are well trained and familiar with all their duties before accepting the assignment. Overall, it appears that the ICOs are receiving adequate training for the investigative portion of the assignment and that they are receiving this training in a timely fashion. However, there is no formal training program regarding the administrative duties of the assignment. The ICOs are either

instructed in the duties by the outgoing ICO if there is an overlap of assignment or must teach themselves after taking the position.

Regarding investigative training, the ICOs stated that they attended a three-day course, given by IAB, which dealt mainly with self-initiated investigations and the investigation of corruption and/or misconduct cases. Further, this training program also taught the basics of surveillance and patrol monitoring techniques. All of the ICOs interviewed stated the training was thorough and sufficiently prepared them for their non-administrative responsibilities.<sup>72</sup> Further, the majority of the ICOs stated that they received this training just before or shortly after their appointment as ICO.

### **3. Tenure**

Length of time in the ICO position is important because it can affect the overall effectiveness of an ICO. An ICO with historic knowledge of both the problem officers and misconduct prone locations in a precinct can focus his resources on specific officers and areas. A high turnover rate can reduce effectiveness since it takes time for an ICO to learn the precinct and, where possible, gain the trust of both officers and the community in order to develop information about possible problems. Further, as with most assignments, the longer the ICOs perform their duties, the more proficient they become at them. Therefore, it can be advantageous in some respects that the ICOs and Assistant ICOs remain at the assignment for a reasonably extended period of time and that when transferred, they are not transferred simultaneously.

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<sup>72</sup> Three of the ICOs interviewed had already taken the course as part of a prior assignment and did not have to repeat the course.

Accordingly, the Commission looked at the turnover rates for ICOs. Within the sample of ICOs the Commission interviewed, the turnover rate appeared to be high, with six of the ICOs interviewed having been in the assignment for one year or less. Further, one of the ICOs interviewed is now in the process of retiring from the Department and had only been at the assignment for less than three months when interviewed. The longest tenure as ICO of the interviewees was eight years, the second longest being two and one-half years, for an average tenure of nineteen months, and a range stemming from one month to eight years.<sup>73</sup>

## **V. CONCLUSION**

In recognizing the importance of anti-corruption efforts at the precinct level, the Department has delegated various integrity control responsibilities to the Investigations Units, Precinct Commanders, and ICOs. In order to effectively fulfill their integrity functions, however, it is imperative that they act proactively to identify and deter corruption and misconduct. Further, the Department must provide them with sufficient resources so that they are able to fulfill all of their responsibilities and provide regular integrity control coverage within their jurisdictions. While their

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<sup>73</sup> The eight year tenure as an ICO was split between two different commands with the ICO at his present command for approximately six years. However, if the ICO with eight years tenure is not included in the calculations, the average tenure of the ICOs interviewed decreases to less than one year.

While these relatively short tenures are a problem which the Department should seek to correct, the Commission does realize that some turnover is inevitable. Indeed, the majority of the former ICOs that the interviewed ICOs replaced were either promoted out of the position or retired from the Department.

job descriptions require a range of proactive activities, the Commission found that, in general, the Investigations Units and the ICOs are not in practice devoting enough time to these activities. In fact, most Investigations Units and ICOs only spend a minimal amount of time on proactive activities such as patrol monitoring.

While the Investigations Units and the ICOs have different responsibilities, it appears that for similar reasons they are not providing regular and comprehensive coverage of personnel and locations within their command. With respect to the Investigations Units, their large workloads and limited access to cars prevent them from regularly conducting patrol monitoring and other proactive initiatives. Similarly, the Commission found that the majority of the ICO's time is spent on the administrative portion of the assignment to the detriment of function monitoring. While these administrative duties are important, they, especially the completion of overtime reports, consume a large portion of the ICOs' time and limit the amount of time they have available for "hands on" monitoring of officers.

Additionally, it appears that when patrol monitoring is being done, it is done opportunistically when the time and resources are available rather than on a strategic basis. As a result, all three tours of duty, and especially the midnight tour, are not being monitored on a regular basis. Specifically, it appears that while the day and late tours have regular ICO oversight, there is a gap in coverage on the midnight tour because ICOs are not regularly working this entire tour. Additionally, since most Investigations Units are closed between midnight and 4:30 a.m., they are also providing minimal oversight on these tours. The lack of monitoring on this tour may be

especially problematic because many Precinct Commanders indicated that the midnight tour has historically been more corruption prone.

Further, the Commission found that the staff allocated to the majority of the ICOs was not sufficient to complete both the administrative tasks assigned as well as the proactive monitoring functions. Given the nature of some of the administrative assignments assigned to the ICOs, it appears that particular assignments could either be completed by police officers outside of the ICOs staff or by civilian employees.

Due to the amount of administrative duties and lack of resources, few of the ICOs interviewed had generated either self-initiated investigations or proactive initiatives of their own. The majority of the proactive measures that the ICOs were able to develop themselves consisted mainly of in-house retraining of officers regarding how to secure prisoners and altering procedures relating to the vouchering of prisoner property in order to lessen the number of missing property allegations received by the command. While the retraining and changed vouchering procedures appear to have decreased the number of stolen property and found narcotics allegations, they are the only proactive strategies cited by any Precinct Commander or ICO. Consequently, it appears that the commands are not regularly generating such strategies or regularly developing self-initiated investigations.

The Commission found that almost all Investigations Units were regularly performing some type of quality assurance activities, such as audits or inspections. However, because the paperwork reviewed does not indicate the amount of time that Investigations Units are spending on these duties, the Commission was unable to determine if a sufficient amount of time was being

spent on quality assurance functions and if they are being conducted in a meaningful manner. With respect to the ICOs, administrative functions limit the amount of time the ICOs can spend performing quality assurance duties.

## **VI. RECOMMENDATIONS**

The following are the Commissions recommendations as they relate to borough and precinct level activities. As discussed above, the Commission recognizes that it may be difficult to implement all of these recommendations now, particularly if they involve adding personnel, given the pressure under which the Department is now operating. However, at the same time, the Commission believes that continuing to enhance the Department's proactive approach to addressing potential police misconduct should remain a high priority.

### **A. Investigation Units**

- Patrol monitoring should be done on a more consistent basis and all three tours should be regularly patrolled. To achieve this, Investigations Units should coordinate efforts with ICOs to ensure comprehensive coverage at all times.
- The Department needs to ensure that the Investigation Units have the necessary time and resources to devise and implement integrity control strategies which meet the individual needs of their command. All Units should have a sufficient number of cars and staff assigned to them so that

the Units can perform function monitoring duties, such as patrol monitoring on a regular basis in addition to performing their other responsibilities.

- When performing patrol and personnel monitoring, the Investigations Units should target specific officers placed on various disciplinary lists or labeled as problematic by their command.

Any information developed should then be shared with PMU.

## **B. Integrity Control Officers**

- The administrative responsibilities of the ICOs prevent them from spending a sufficient amount of time on more proactive integrity functions such as patrol monitoring. Therefore, these responsibilities need to be diminished or the staff of the ICO should be increased. Given the clerical nature of many of these administrative duties, the Department should consider utilizing civilian personnel to aid the ICO.

- ICOs should have regular access to a car so that patrol monitoring can be performed on a strategic rather than opportunistic basis. Furthermore, all three tours should be monitored on a regular basis.

- ICOs should have adequate time and resources available to conduct self-initiated investigations and/or develop proactive initiatives should the need arise in their command. Any such investigations should be coordinated with IAB or Borough Investigations, whichever is appropriate.

**PART III**  
**MONITORING EFFORTS**  
**AT THE HEADQUARTERS LEVEL**

**I. INTRODUCTION**

As discussed above, wrongful conduct by even a small minority of officers risks tainting the entire Department as well as adversely affecting public confidence in the Department and in its ability to weed out corruption and misconduct. In addition to punishing and, where appropriate, discharging officers who are found to have committed serious misconduct, when the Department identifies officers who, based on their records, appear to be high risk officers, such officers need to be closely supervised by the Department. Once identified, these officers, if appropriate, should be given opportunities to improve their performance and behavior to an acceptable level through increased supervision and guidance. However, those officers who do not do so after receiving such opportunities should, as appropriate, be given highly restricted assignments or be removed from the Department in the most expeditious way. The principal entity created within the Department to perform this kind of monitoring of potentially problematic members of the service, is PMU. The Commission examined this Unit and assessed what it was doing in order to monitor officers and prevent further misconduct.

**A. PMU**

PMU is a unit of the Performance Analysis Section of the Employee Management Division (“EMD”) within the Department, and was created in order to provide and coordinate increased

supervision for those officers who require such additional oversight. Initially, upon its creation, PMU was responsible for monitoring individuals with numerous force complaints.<sup>74</sup> Its responsibilities have continuously been expanded and modified, and currently it is designed to provide comprehensive monitoring for all officers in need of assistance, whether due to force allegations, poor performance, or other disciplinary difficulties.

PMU's responsibilities include the monitoring and supervision of individuals who have been placed on one or more of the Department's monitoring lists. These lists are maintained in order to ensure that individuals in need of increased supervision or guidance receive it. As discussed below, an officer may be placed on a monitoring list due to a number of triggering events such as receiving charges and specifications,<sup>75</sup> numerous force complaints, or negative performance evaluations. Once placed on one of these lists, depending on the type of list and the severity of the behavior being monitored, PMU, the officer's command, and other units in the Department have certain responsibilities regarding monitoring the officer. As of January 31, 2001, of the 320 officers on at

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<sup>74</sup> Force complaints consist of allegations that an officer used excessive or unnecessary physical force against another person.

<sup>75</sup> Charges and specifications are used to commence a disciplinary proceeding with the Department Advocate's Office, the prosecutorial arm of the disciplinary system. Charges designate the offenses that the officer is alleged to have committed while specifications describe the specific misconduct charged.

least one of the monitoring lists discussed below, 255 officers were on Level II or Level III monitoring.<sup>76</sup>

## **B. Staffing and Structure**

PMU is staffed by a Commanding Officer, two Lieutenants, six Sergeants, two Police Officers, and two PAAs. A new Commanding Officer was assigned to PMU in January 2001, the same time the Commission began its review. As discussed throughout this Report, the present Commanding Officer has implemented and is planning to implement various changes within PMU.

In general, the Commanding Officer of PMU oversees all activities of the Unit and maintains contact with the commands regarding officers who are on the various monitoring lists. The Commanding Officer personally interviews all individuals placed in the monitoring program and explains the ramifications of such placement. She also advises Borough Commanders and various units of the Department about the monitoring program and what it entails.

There are two Lieutenants in PMU who supervise and instruct the Sergeants. One Lieutenant works the day tour and the other, the night tour. The Lieutenants' responsibilities include evaluating officers' backgrounds to determine if they should be placed in the monitoring program.

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<sup>76</sup> PMU maintains files for officers on Level II or Level III monitoring only. Therefore, the Commission reviewed all 260 files maintained by PMU. There were 260 files because five of the 255 officers on these two levels were on more than one monitoring list concurrently.

Additionally, they review the PMU files, conduct case reviews with the Sergeants, make recommendations, and evaluate if removal from the program is appropriate.

Each Sergeant is responsible for monitoring officers assigned to a particular borough or bureau. The Sergeants are responsible for maintaining a case folder, and maintaining contact with the command and other units involved in monitoring in order to coordinate monitoring efforts. They are also responsible for documenting action taken on a case and making recommendations to the command regarding the officer's monitoring.

Additionally, two police officers are assigned to PMU. Their responsibilities include screening officers' records to determine if they fit PMU's criteria for placement on a monitoring list.<sup>77</sup>

## **II. METHODOLOGY**

Commission staff met with Department personnel responsible for the administration and supervision of the Department's monitoring system. Commission staff also reviewed hundreds of

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<sup>77</sup> In the past, a Lieutenant had been responsible for the initial screening of officers to determine if they fit the monitoring criteria. This is an example of a change implemented by the new Commanding Officer, and presently, while the police officers do the initial screening, the Lieutenant is consulted if there is a questionable case.

files and all the paperwork contained therein of all the individuals who were on the Department's Level II or Level III monitoring lists as of January 31, 2001.<sup>78</sup>

**A. Meetings with Department Heads**

Commission staff met with the Chief of the Personnel Bureau, the Director of EMD, and the Captain of the Performance Analysis Section/Performance Monitoring Unit. These supervisors discussed with Commission staff the different levels of monitoring and how an officer may be placed on a monitoring list. Further, they discussed the obligations of PMU and the officer's command once an officer is placed on a monitoring list, how resources are utilized, and how an officer is removed from the program. The meetings also included discussions with Commission staff about improvements and changes that the current Commanding Officer both intends to make and has begun to institute within PMU. These changes include administrative as well as substantive changes and will be discussed throughout this Report.

The Commission also reviewed and analyzed organizational charts and forms received from the Department that detail how the monitoring system operates, the responsibilities of PMU personnel, and the responsibilities of the officer's command. Finally, the Commission, as discussed above, interviewed a number of Precinct Commanders.

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<sup>78</sup> As discussed above, this file review encompassed solely Level II and Level III files because PMU does not keep files for individuals on Level I monitoring. *See infra* at p. 60 for a discussion of Level I monitoring.

## **B. File Review**

The Commission reviewed all the files of officers who were on the Department's Level II or Level III monitoring list at the time the Commission's review commenced on January 31, 2001. This included the review of 260 files.<sup>79</sup>

The Commission reviewed all the paperwork contained in the files in order to evaluate if PMU was monitoring the individuals on these monitoring lists in accordance with its stated guidelines and obligations. The Commission examined whether the appropriate documentation was received and reviewed by PMU, if it was received on a timely basis, and if it contained substantive, relevant information. The Commission also considered whether PMU was regularly updating its own paperwork, appropriately obtaining updated information from other units, and following-up with any relevant information gathered. In addition, the Commission sought to determine what, if any, changes needed to be made to improve the monitoring system and/or facilitate coordination between those involved in the process. Finally, the Commission evaluated PMU's role as a whole to determine whether it was functioning in a sufficiently proactive manner, or was acting in more of a mechanical manner as it gathered information received from other sources.

## **III. THE DEPARTMENT'S PERFORMANCE MONITORING SYSTEM**

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<sup>79</sup> As discussed above, at fn. 74, five officers were on more than one monitoring list. Three were on Level II monitoring and Level III Dismissal Probation Monitoring, and two were on Level III SMS and Dismissal Probation Monitoring.

## **A. Overview**

The Department places officers on different levels of monitoring, ranging from Level I to Level III, with Level III requiring the most supervision and Level I, the least. Within the system, individuals may be monitored for a variety of reasons. An officer may be placed on a particular list because of an accumulation of force allegations against him, substandard performance evaluations, or an unsatisfactory disciplinary record. Until recently, the Department referred to and classified individuals on monitoring lists solely according to the type of behavior that necessitated monitoring, either force, performance, or disciplinary monitoring. Now, rather than having lists based on the nature of the behavior, the lists are based on the three levels, although within each level there remain subcategories for force, performance, and discipline.

Once an officer is placed in the monitoring program, depending upon which level he is placed, he is subject to varying degrees of increased supervision. Level I monitoring responsibilities are left primarily to the command, and may include, in addition to greater oversight by supervisors, changing the officer's assignment or tour. If placed in Level II or Level III monitoring, PMU guidelines mandate that the officer be more closely supervised by his immediate supervisors and Precinct Commanders, and that periodic reviews be forwarded to PMU. These reviews, as well as any failures to comply with Department regulations and any negative behavior by the officer, are to be reported to PMU personnel and may affect future assignments and promotions. During the monitoring period, an officer generally is not promoted. As with Level I monitoring, the officer may be reassigned, his tour changed, or he may be transferred. Any change in the officer's status is to be reported to PMU. Also, PMU personnel report that while on Level II or III monitoring, the

officer may receive increased scrutiny from units in the Department, other than PMU, such as, IAB, the Medical Division, and the Absence Control Unit (“ACU”).<sup>80</sup> These units are utilized to ensure that the officer is complying with all rules and regulations of the Department. Any deviation from Department guidelines during monitoring may result in an extension of the monitoring period or an upgrade in the level of monitoring.

## **B. Level I**

The lowest level of monitoring is Level I and, as discussed above, it has three subcategories based on the reason underlying the monitoring: a high number of force allegations; disciplinary problems; or below average performance. Criteria for inclusion in Level I monitoring is virtually identical to the criteria discussed below which are employed to place an officer in the more structured Level II monitoring. The primary factor that determines whether an officer is placed in Level I monitoring or Level II monitoring is the recommendation of the officer’s Commanding Officer. Level I monitoring may also be used as a transition for the officer who has made improvements in his behavior after spending one-to-two years on Level II monitoring.

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<sup>80</sup> See *infra* at p. 91 for a discussion of ACU’s role in monitoring officers.

All the responsibilities of Level I monitoring are delegated to the command. The subject officer's Commanding Officer must interview the subject officer and explain the monitoring system, the ramifications of being placed on monitoring, and the consequences of future negative behavior.<sup>81</sup>

Such ramifications, as discussed above, include increased oversight by command supervisors, possible change in assignment or transfer to a different command, notification to PMU of any negative actions by or directed at the officer, and possible upgrade to Level II monitoring if the officer's behavior does not improve.<sup>82</sup> All monitoring is done by command supervisors and is conducted in whatever manner the command deems appropriate.

PMU does not maintain files on officers on Level I monitoring. PMU's responsibility is limited to maintaining the names of all officers on Level I monitoring and collecting a year-end report from the Commanding Officer detailing the officer's progress and recommendation as to whether continued monitoring is necessary. These reports are then used by PMU to determine whether the officer should be removed from monitoring, remain at Level I, or be upgraded to Level II monitoring. PMU is also available throughout the term of Level I monitoring to confer with, and advise, the Commanding Officer.

As of January 31, 2001 there were 65 officers on Level I monitoring.

### **C. Level II**

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<sup>81</sup> This interview between the Commanding Officer and the subject officer is required for all levels of monitoring.

<sup>82</sup> This also could include teaming the officer with strong supervisors and/or assigning the officer to different tours of duty or changing his responsibilities or assignments.

Level II also consists of three subcategories, although the names of the categories are slightly different to reflect the more serious nature of this level of monitoring -- Chronic Force Monitoring, Chronic Discipline Monitoring, and Substandard Performance Monitoring. When PMU determines that an officer meets the criteria associated with any of these categories of Level II monitoring, the officer's Commanding Officer is contacted to make a recommendation regarding whether Level I monitoring or Level II monitoring would better meet the officer's disciplinary needs.<sup>83</sup> While an officer may be placed directly into Level II monitoring, an officer also may be upgraded to Level II if he was the subject of Level I monitoring and there was no improvement in his performance.

Currently, the criteria for placement in Level II Chronic Force Monitoring is that the subject officer has to either have been found guilty of charges and specifications involving the use of excessive or unnecessary physical force within the last five years, or have received four CCRB

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<sup>83</sup> The Commanding Officer may also recommend that instead of being placed in the monitoring system, officers be referred to the Early Intervention Unit. This program is available for officers if it is determined that the officer's problematic behavior is a result of personal problems. Early Intervention personnel will evaluate the officer and refer him to the appropriate counseling services. The officer's involvement with this Unit and its services are kept confidential and no notification is entered on the officer's CPI.

physical force complaints within a two year period, or five CCRB physical force complaints within a four year period, irrespective of the outcome of the investigation by CCRB into these force allegations.<sup>84</sup>

If the subject officer has been found guilty of charges and specifications involving the use of excessive or unnecessary physical force, placement in Chronic Force Monitoring is mandatory. Thus, the officer's disciplinary record and record of complaints since the incident that formed the basis of the charges and specifications are not considerations. Also not taken into account in this circumstance are the opinions and recommendations of the subject officer's Commanding Officer regarding the necessity for placement in monitoring. For either of the remaining two discretionary categories involving a specified number of force allegations made within a discrete time period, PMU contacts a subject officer's Commanding Officer in order to assess the appropriateness of the subject officer's inclusion into Level II monitoring.

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<sup>84</sup> There are various possible outcomes of CCRB investigations. They include: the officer was exonerated of the charges (there was proof to demonstrate that the officer was not guilty); the allegations were unfounded (there was no proof to support the allegations); the allegations were unsubstantiated (while there was some evidence to support the allegations, there was not sufficient evidence to meet the required standard to demonstrate the officer's guilt), or the allegations were substantiated (there was sufficient evidence to demonstrate the subject officer's guilt of the allegations). In addition, there can be a settlement or conciliation of the case between the officer and the complainant, or the investigation may be closed because the complainant is uncooperative, withdraws the complaint, or cannot be located.

Criteria for placement in Chronic Discipline Monitoring includes being found guilty of two sets of charges and specifications in any area of misconduct within a five year period or being found guilty of any serious misconduct within a five year period which resulted in a penalty of at least twenty days, either through the loss of vacation days or through days on suspension. Placement of the subject officer in Chronic Discipline Monitoring is mandatory in these circumstances.<sup>85</sup> It appears from a review of the files that those officers who are placed on Chronic Discipline Monitoring generally are officers who have, throughout their recent careers, consistently performed in a substandard manner. This was evidenced by negative performance evaluations, a history of using excessive sick leave, administrative transfers or transfers for cause, or receipt of charges and specifications.

Substandard Performance Monitoring is utilized to monitor those members of the service who display below average performance in their work responsibilities. Level II monitoring for this reason is relatively uncommon. Inclusion in this category of Level II monitoring is directed by either the subject officer's Commanding Officer, the Chief of Personnel, the First Deputy Commissioner, the Disciplinary Assessment Unit ("DAU"),<sup>86</sup> or the Borough/Bureau Commander. An officer may

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<sup>85</sup> While a concurrence is still required in cases of mandatory placement, as discussed above, it is not substantively taken into account and therefore its completion seems to be a mere formality.

<sup>86</sup> DAU oversees all disciplinary matters. Its responsibilities involve gathering and reporting data on disciplinary cases, including maintaining the Department's database entitled the Case Analysis and Tracking System ("CATS"), which contains the chronological history of all disciplinary cases. Organizationally, DAU is under the auspices of Office of the First Deputy Commissioner.

also be placed in this monitoring category if he has received a negative overall performance evaluation and is rated below competent on his interim performance evaluation.<sup>87</sup>

For all categories of Level II monitoring a written concurrence from the command that the officer should be placed into this level is required, although as discussed above, in some circumstances there is no discretion. Even where defined criteria associated with Level II monitoring category has not been technically met, in some cases, the subject officer's Commanding Officer directly contacts PMU to request that the subject officer be placed in a specific category of Level II monitoring.

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<sup>87</sup> An interim performance evaluation is completed between annual performance evaluations. This type of evaluation is performed at the discretion of the Commanding Officer or upon another unit's request. Thus, for example, if an officer is being considered for inclusion in the monitoring system, PMU may request that an interim performance evaluation be completed to demonstrate the necessity for additional supervision.

At the time of the Commission’s review, there were 32 officers on Level II Chronic Force Monitoring, 34 on Level II Chronic Discipline Monitoring,<sup>88</sup> and four on Level II Substandard Performance Monitoring.

**D. Level III**

Level III monitoring represents the highest level of monitoring, and PMU asserts that it provides the most extensive oversight of an officer at this level. Level III monitoring is divided into two categories: Special Monitoring System (“SMS”) and Dismissal Probation.

An officer may be placed in SMS due to force-related misconduct, substandard performance, a poor disciplinary record, or a combination thereof.<sup>89</sup> In the majority of cases, an officer is placed in SMS after being monitored on Level II for at least one-to-two years without any improvement in performance. Typically, officers in SMS have long disciplinary histories including

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<sup>88</sup> During the Commission’s review of this category, one member was removed from the monitoring list resulting in 33 members. The Commission’s findings and statistics upon which its findings were based include information obtained from this file which is currently inactive. Additionally, one of the officers on Level II Chronic Discipline Monitoring was being considered for an upgrade to Level III Special Monitoring System. However, since at the time of the review, the increase in supervisory monitoring had not yet been finalized, this officer was counted among those members of the service on Level II Chronic Discipline Monitoring.

<sup>89</sup> Although SMS technically is divided into force, performance, and discipline subcategories based on specific criteria, in practice SMS is treated by PMU as one category on Level III and Dismissal Probation is considered a separate category on Level III.

the receipt of multiple charges and specifications, administrative transfers, poor sick records, negative evaluations, and/or other disciplinary infractions.

Although rarely seen, an officer may be directly placed on SMS Monitoring if he has been found guilty of two or more sets of charges and specifications involving force-related misconduct or of three or more sets of charges and specifications involving any type of misconduct within a reasonable period of time. The term “reasonable” is technically undefined by PMU, and is applied on a case-by-case basis. A senior level Department committee, the Special Monitoring Board,<sup>90</sup> also may direct that an individual be placed on Level III monitoring.

Distinct from SMS, but still part of Level III monitoring, is Dismissal Probation Monitoring. Dismissal probation is a potential penalty after an officer is found guilty of charges and specifications.<sup>91</sup> When imposed, the 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. An officer may be placed on dismissal probation as a penalty for many different types of misconduct. Of the cases reviewed, the underlying violations varied greatly, ranging from on-

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<sup>90</sup> The Special Monitoring Board, whose primary function is to determine what officers should be placed in SMS, is composed of the First Deputy Commissioner, the Chief of Personnel, the Chief of IAB, the Deputy Commissioner of Legal Matters, and the Chief of the Department.

<sup>91</sup> Dismissal probation may be imposed by itself or in conjunction with other penalties.

duty administrative violations to CCRB-originated violations to excessive force cases to off-duty domestic or alcohol-related incidents.<sup>92</sup>

At the time of the Commission's review there were 178 officers on Dismissal Probation Monitoring and twelve officers in the SMS category of Level III monitoring.

## **E. Removal from Monitoring Lists**

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<sup>92</sup> For a review of the most serious violations committed off-duty and how the Department disciplines members who engage in such conduct, see the Commission's Report, *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998). See also, *The New York City Police Department's Prosecution of Disciplinary Cases* (July 2000), for a comprehensive review of the Department's disciplinary system.

Once it has been determined that an officer has successfully completed a monitoring program, he will be removed from the monitoring list. According to the Department, to be removed or to be eligible for removal from any category of Level II monitoring, the subject officer has to no longer meet any of the criteria that was responsible for his placement in the monitoring system, and must not have any additional disciplinary incidents for the prior 18-to-24 months.<sup>93</sup> Additionally, the subject officer's Commanding Officer has to agree, in writing, that the subject officer should be removed from monitoring.

Once a decision is made to remove the subject officer from the monitoring list, the entry on the subject officer's CPI disclosing his inclusion in the monitoring system is removed, and the officer's personnel record is expunged to remove all indications of the monitoring.<sup>94</sup> Level III Dismissal Probation Monitoring automatically expires at the end of one year unless extended.<sup>95</sup> For

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<sup>93</sup> Such incidents may include: receiving charges and specifications; being the subject of CCRB or other misconduct allegations; receiving negative performance evaluations; or receiving command disciplines, depending on the number and nature received.

<sup>94</sup> Despite this expungement, the file still exists at PMU as the Commission was able to review several inactive files during its study. PMU personnel confirmed that the monitoring files are maintained at PMU and not destroyed.

<sup>95</sup> Dismissal probation is extended for time periods that the officer is on vacation, on sick leave, suspended, or on restricted or modified duty status.

removal from Level III SMS Monitoring, approval of the Special Monitoring Board is required.

Placement in Level III monitoring is never expunged from the officer's CPI or disciplinary records.

#### **IV. PMU RESPONSIBILITIES**

PMU Sergeants and supervisors have various responsibilities. These include creating and updating case folders, ensuring that the relevant officer's command complies with performance monitoring guidelines, coordinating monitoring with other units of the Department (i.e., IAB, The Medical Division, ACU, and the Department Advocate's Office ("DAO")<sup>96</sup>), and having regular contact with the command about the officer's progress while on monitoring. This section will discuss in depth those responsibilities and how PMU is fulfilling those responsibilities.

##### **A. Case Folder**

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<sup>96</sup> See *infra* at p. 94 for a discussion of DAO.

PMU establishes a case folder for each individual placed on any of the Department's monitoring lists. While the case folder is kept by PMU, a copy with similar paperwork, generated when the monitoring commences, is delivered to the officer's command. Paperwork found in almost all case folders included the officer's CPI, medical history record, and CCRB record. The officer's CPI describes disciplinary events involving the officer, including dispositions where available, throughout the officer's career.<sup>97</sup> The medical history record documents all the officer's sick leave during his career. All CCRB allegations with their dispositions are briefly listed on the CCRB record. Additional paperwork that was found in some files included the officer's performance evaluations, a letter from the officer's Commanding Officer concurring with the officer's placement in performance monitoring, and paperwork related to the underlying event that brought the officer to the attention of PMU. For example, where an individual was placed on Level III Dismissal Probation Monitoring, the paperwork for the underlying case, such as, the charges and specifications, the disposition of charges, and, where relevant, the plea agreement signed by the subject officer was generally in the file.

Worksheets are also included in the case folder. These worksheets are where PMU is supposed to document all of the actions taken on the case. Documentation should include contacts with the officer's command, recommendations made to the command to address problems displayed by the officer, contacts with other relevant Department units (e.g. the Medical Division), and contacts with investigative and disciplinary units (i.e., IAB, DAO, or CCRB). A majority of

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<sup>97</sup> Background checks are also included on the CPI. A background check may, for example, be conducted by a command supervisor if an officer is being considered for a transfer or a promotion.

files, however, had limited documentation of any interaction by PMU with the subject officer's command or with outside units also potentially involved in monitoring the officer.<sup>98</sup>

Apart from its role in providing information to supervisors and others as to how the monitoring of the officer has been implemented, documentation of contact and recommendations is important for two reasons. First, if the case is transferred to another PMU Sergeant, that Sergeant needs to have the information about these communications and be able to see how the officer is performing and what attempts have been made to assist the officer. Second, because each Sergeant has multiple cases, it is unlikely that the Sergeants can remember the details of every action taken on each case. The new Commanding Officer of PMU is addressing this issue and is placing a renewed emphasis on the requirement that case folders contain documentation of all contact with an officer's command or other personnel involved in the monitoring efforts.

PMU personnel assert that throughout any monitoring, additional material is periodically supposed to be added to the files and updated. This material includes: ongoing profiles of the officer, which are evaluations generated at the subject officer's command; documentation of disciplinary events that occur while the officer is on monitoring; and updated CPIs, CCRB allegations, and medical history records.

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<sup>98</sup> The Commission found that amount of documentation depended on which PMU Sergeant was handling the case. *See* fn. 110 and accompanying text.

According to PMU, new CPIs, CCRB records, and medical history records are supposed to be obtained every two to three months. The Commission found, however, that in the majority of files for both Level II and Level III monitoring, this was not the case. In 196 or 75% of the files,<sup>99</sup> the most recent CPI, CCRB History, or medical history was more than two-to-three months old. In 131 or 50% of the files, the most recent CPI, CCRB records, or medical history was more than six months old, and in 78 or 30% of the files, at least one of these records was more than a year old. Significantly, in 32 or 12% of the files, the most recent CPI, CCRB records, or medical history had been run more than two years prior to the Commission's initial review of the file. For example, in one case, the officer was placed on Level III SMS in April 1997. The most recent CPI, CCRB, and medical history record contained in the officer's file were obtained on March 24, 1998.<sup>100</sup>

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<sup>99</sup> All percentages cited in this Part of the Report have been rounded to the nearest whole number.

<sup>100</sup> There was a CPI run for this officer in March 2001 after the Commission's initial review of the files.

Other records that should be added to the file include command disciplines issued during monitoring.<sup>101</sup> A copy of the documents specifying the infraction and disposition of the command discipline should be forwarded with the periodic profiles and placed in the file. While the Commission is unaware if there were additional command disciplines where no reference to such an action exists in the file, in 32 of the 41 cases where the profile indicated that the officer, in fact, received at least one command discipline, the documents detailing the infraction and its disposition were not in the file. Furthermore, in 28 or 88% of those 32 cases, there were no documented efforts to obtain the underlying paperwork.

PMU should also be obtaining annual and interim officer performance evaluations that are completed during the monitoring period. Performance evaluations can provide useful information regarding an officer's progress during monitoring, and the Commission believes these evaluations should be kept in the PMU file in order for PMU to have comprehensive information regarding an officer. Presently, PMU routinely collects these evaluations only upon considering an officer's removal from monitoring. Instead, it is the Commission's view that PMU should be collecting them regularly throughout the entire monitoring period.

The importance of regularly updating personnel information cannot be over-emphasized. If a profile sent by the command does not contain information about new allegations of misconduct, corruption, or CCRB-related complaints, and if PMU is not contacted by the command or outside investigative units about new allegations, then PMU must rely on its own generated records for

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<sup>101</sup> See *supra* at fn. 63 for a definition of a command discipline.

accurate and up-to-date information about the officer's performance while on monitoring. In recognition of this problem, PMU has advised the Commission that it is updating officers' disciplinary records and requiring routine review of such records.

An illustration of the necessity of gathering updated information can be seen from the following example. An officer was placed on Level II Chronic Force Monitoring in September 1998 because he had received six force complaints within four years. His CPI was initially run on August 20, 1998 and was not run again until the subject officer, who was also on the Sergeant's list,<sup>102</sup> was being considered for removal from monitoring based upon his Commanding Officer's request in the subject officer's December 1999 annual evaluation. All prior quarterly profiles prepared by the command indicated that the officer had not received any further force complaints or disciplinary incidents. The subject officer's 1999 performance evaluation which had been sent to PMU as part of the officer's request for removal indicated that there had been no CCRB allegations against the subject officer in the prior year. In May 2000, when removal was being contemplated, PMU obtained new CPI and CCRB printouts. At this point, PMU learned that there had been another CCRB allegation made against the subject officer in April 1999. Moreover, the PMU Sergeant had visited the subject officer's command two days after the CCRB allegation had been made, and, while he was informed that the officer had passed an IAB integrity test, he was not informed about this force allegation.<sup>103</sup> Even though any potential harm was caught in this

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<sup>102</sup> While there is no express prohibition to the promotion or appointment to choice of assignments of officers on monitoring lists, monitoring is one factor taken into consideration when a promotion or assignment is decided.

<sup>103</sup> The PMU Sergeant did affirmatively address the ICO regarding his failure to include this information on the

instance prior to the officer's removal from the monitoring list, it demonstrates the need for PMU to update these records on a regular basis.

## **B. Interview with Subject Officer**

The Commanding Officer of PMU must interview the subject officer at the commencement of his placement on a monitoring list. The substance of this interview is to inform the subject officer both of the reasons for, and the consequences of, being placed on a monitoring list. These consequences include increased scrutiny by command supervisors and personnel from other units in the Department. The officer is also told about the consequences of future negative behavior while the officer is on monitoring, including increased penalties and possible termination. He is further informed about the possibility for the expungement of the monitoring from his personnel records if the officer is removed from the monitoring system.<sup>104</sup> The officer's questions about monitoring are also answered during this interview. Additionally, the subject officer is given a form to sign which indicates that the officer has been notified of his placement on a monitoring list and about the ramifications of future negative behavior.

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applicable quarterly profile. While one can debate this result, it also was decided by the Commanding Officer of PMU that even though this latest CCRB report was determined to be unfounded, under the Department's rules, removal from the monitoring list could not take place until at least two years from the date of the report.

<sup>104</sup> Expungement of inclusion in performance monitoring is only available for those officers on Level II monitoring.

While the Commanding Officer of PMU appears to be holding this interview in every case, the timeliness of this interview seems to be an issue. In 127 or 49% of the cases, this interview occurred more than a month after the officer was placed on monitoring.<sup>105</sup> This is problematic because PMU generally does not deliver the case folder to the officer's command until after the initial interview with the subject officer. As discussed below, without the case folder and a conference with PMU personnel, the command may be unaware that the subject officer is supposed to be monitored and/or of the circumstances which led to the monitoring. The result is that the officer may not be monitored during that period.

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<sup>105</sup> 42 or 33% of the officers were on suspension when their monitoring was commenced. Due to the suspension, it was arguably less important for there to be an immediate interview with the Commanding Officer of PMU. However, of these cases, 15 or 29% of the officers were not interviewed within a month from the end of their suspension. The 127 number also likely underestimates the number of cases where the subject officer was not interviewed within the first month of monitoring because some Level II notifications do not contain the date monitoring commences. If the CPI in the file did not contain an entry regarding the monitoring or there was not another indication in the file specifying when the monitoring commenced, the Commission used either the date of the initial interview with the subject officer, the first date of the reporting period indicated on the first profile, or the date that the records in the file were initially run, as the commencement date. There were at least 18 cases where the Commission utilized such an artificial commencement date, and in these instances, the interview notifying the subject officer of his status on monitoring would necessarily have appeared to have been within the first month of the date that monitoring commenced.

For example, in one case, the subject officer was placed on dismissal probation on June 6, 2000 after pleading guilty to driving while his ability was impaired by alcohol. At the time that his dismissal probation commenced, the officer was on modified status. On June 26, 2000, the officer was suspended as part of the penalty for this case, but was returned to active duty on July 11, 2000. He was not interviewed by PMU's Commanding Officer until November 14, 2000, four months into his probation. The case folder was not delivered to the officer's command until November 27, 2000. At the time the case folder was delivered and the command was made aware of the guidelines for Dismissal Probation Monitoring, there were only eight months remaining of the officer's one year probationary period.<sup>106</sup>

The initial interview appears to be the only contact between PMU personnel and the subject officer. Although there is no requirement that PMU personnel personally contact officers on monitoring other than during the initial interview, periodic contact may be beneficial. Personal contact with the officer on monitoring may further impress upon him the importance of monitoring and of compliance with its terms. Although the officer's command supervisors may periodically

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<sup>106</sup> The Department stated that the means by which PMU is notified of an officer's placement on dismissal probation is by DAO. In this case, PMU stated that DAO did not inform it of the officer's placement on dismissal probation until November 8, 2000, days before the interview and delivery of the folder. However, if months pass before DAO notifies PMU of an officer's status on dismissal probation, as occurred here, then the officer is not being monitored during that period. This case therefore also demonstrates the point discussed below at p. 94 regarding the need for greater communication and coordination between PMU and DAO.

confer with the officer regarding his status on monitoring, additional oversight from supervisors of a headquarters-based unit may have a greater impact upon the officer.

**C. Entry of Monitoring on CPI**

An important but mechanical function delegated to PMU is the placement of an entry on the subject officer's CPI indicating that the subject officer is on monitoring. The entry states the type of monitoring on which the officer is being placed, the date the monitoring began, and requests that anyone with further information contact PMU at a contact number provided in the entry. The entry of this monitoring on the officer's CPI serves a dual purpose. First, it informs anyone investigating the officer or inquiring about his history, that he is on monitoring and, in the most general sense, the conduct for which the officer is being monitored. Second, when a new incident or investigation arises, the person investigating the incident is supposed to notify PMU immediately about any new activity on the part of the subject officer. This allows PMU to track the officer's progress while on monitoring as well as coordinate efforts in a timely manner with other departmental units involved with the investigation or discipline of the subject officer. The Commission found that this entry was included on the significant majority of CPIs.

**D. Confer with Subject Officer's Commanding Officer and ICO**

Once a case folder is established, PMU is supposed to have a conference with the subject officer's Commanding Officer and ICO to explain the procedures and guidelines for the particular

monitoring system.<sup>107</sup> In the majority of the cases reviewed by the Commission, this conference appeared to occur at the time the case folder was delivered to the subject officer's command. Details of what was explained to the Commanding Officer and ICO were not documented in the files. However, in most of the files, there was a document explaining the guidelines associated with the particular monitoring system and what responsibilities belonged to the command supervisors.

The Commission found that the timeliness of this conference was an issue. As discussed above, the command is generally not notified by PMU that an officer is placed on monitoring until the delivery of the case folder. If the command is not informed of its responsibilities for monitoring the officer in a timely fashion, an officer who the Department has determined warrants monitoring, in effect, may work a period of time without being monitored. In 113 or 42% of the files reviewed by the Commission, the delivery of the case folder and conference took place after the subject officer had been in the monitoring system for longer than a month. This number could be significantly higher because it does not include the additional 93 or 36% of the files which contained no documentation indicating delivery of the case folder or a conference with the command.

For example, in one case, the subject officer was placed on dismissal probation on August 18, 2000 for a domestic incident with his common law wife. The officer was not interviewed by the Commanding Officer of PMU until October 11, 2000, seven weeks after his probation began.

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<sup>107</sup> In Level III SMS, there is an additional requirement that the Chief of Personnel meet with the subject officer's Commanding Officer to explain SMS and its requirements. The Commission found that this interview was documented in the majority of SMS files.

The folder was not delivered to the command and the guidelines explained to the ICO until seven weeks later on December 6, 2000. As a result of this delay, the monthly profiles covering August 18, through October 31, 2000 were not delivered to PMU until December 2000 and the profile covering the month of November was not delivered until January 23, 2001. This case highlights the problem that until the command receives the file, including the forms and blank profiles, it will not complete the profiles and evaluate the officer. Further, when the command completes the profiles, it will be months after the reporting period and the content of the profiles will be based upon recollections when the command was not closely monitoring the officer. It is unlikely therefore that the profiles will contain substantive information and thus, will be of limited value.

With respect to the initial conference with the officer's command and delivery of the case folder, the Department has advised the Commission that now the initial conferral will occur when the folder is delivered and that documentation of this conferral is required. In order to make certain that commands receive more timely notice of when officers are being placed on a monitoring list, such a notification will be made to the officer's command even before the conference and delivery of the case folder. This is a positive step, although the more detailed briefings remain important for the command to be able to perform its responsibilities under the monitoring program.

An additional issue arose when an officer was transferred while on monitoring. According to PMU officials, the responsibility for transferring the case folder and conferring with the Commanding Officer and the ICO in the subject officer's new command belonged to the PMU Sergeant handling the case. Often, the PMU file is also transferred to another Sergeant at this juncture. The newly assigned PMU Sergeant is responsible for speaking to the subject officer's

new Commanding Officer and ICO. Forty-three or 17% of the officers were transferred to a different command while being monitored by PMU. Because some officers were transferred more than once, the total number of transfers that took place was 58, and in only 13 or 22% of the case files, was it documented that the PMU Sergeant delivered the case folder to the new command and conferred with the Commanding Officer and/or ICO of that command. In 21 or 36% of the files, there was no documentation of any contact whatsoever with the new command. In the remaining 24 or 41% of the files, there was some documentation indicating that a folder was to be, or had been, delivered to the command, but there was no indication of any conference with the Commanding Officer or the ICO.

Further, in addition to routine transfers, an officer may be administratively transferred due to any number of difficulties with a particular command. If this type of transfer occurs while an officer is on monitoring, it is important that PMU ascertain why the transfer occurred in order to have updated information as to the officer's status and any problems he may be having with a particular assignment or command. This knowledge is also important if PMU is to accurately assess the officer's progress while on monitoring and make recommendations as to future monitoring efforts. The Commission found that when an officer was administratively transferred while he was the subject of monitoring, often the reason for the transfer and any reports prepared at the command that described the circumstances surrounding the transfer were not in the PMU file.

Of the 255 officers on monitoring at the time of the Commission's review, 11 or 4% were administratively transferred while on monitoring. Of these cases, only 4 or 36% of the files had reports detailing the reasons behind the request for an administrative transfer.

PMU's guidelines also mandate that the command confer with PMU when an officer is in either Level III SMS Monitoring or Level II Substandard Performance Monitoring and is to receive a command discipline. The command is required to discuss with the Commanding Officer of PMU the dispensation and adjudication of any command discipline to be issued before offering it to the officer. Despite this directive, in 7 of the 11 cases or 64%, where the file indicated the existence of a command discipline for an officer in SMS or Substandard Performance Monitoring, there was no documentation of any conferrals between PMU and the command regarding the appropriate penalty to be administered as a result of the command discipline. PMU officials, however, do maintain that they are routinely called upon to discuss and advise on the adjudication of command disciplines, even though this contact may not be documented.

PMU superior officers stated that PMU Sergeants have a good rapport with Commanding Officers and ICOs. Although PMU supervisors stated that the Sergeants maintain close contact with the command, there was little-to-no documentation of such contact in the case folders. Furthermore, the majority of Precinct Commanders and ICOs interviewed by the Commission for this Report also indicated they had minimal contact with PMU.

#### **E. Profiles**

As part of the monitoring system, the command completes profiles and delivers them to PMU. These profiles are similar to evaluations and contain information regarding the subject officer's arrest activity, summons activity, general demeanor, and attitude towards civilians, peers, and supervisors. Additionally, all profiles have a place where the Commanding Officer is supposed

to write substantive comments regarding the officer's progress on monitoring. These profiles are supposed to be sent to PMU at specified times, which vary with the level of monitoring.

### **1. Timeliness of Profiles**

In order to effectively monitor an officer's performance and identify the best strategies to monitor him, it is necessary for PMU to have immediate, updated information about the subject officer's behavior, complaints made against him, and disciplinary issues. In recognition of this need, the Department requires that profiles be completed and reviewed on a monthly basis for Level III monitoring, and on a quarterly basis for Level II monitoring. Therefore, one of the main responsibilities of PMU is to ensure the timely preparation and collection of these reports. In the written guidelines delivered to the subject officer's command, PMU dictates that profiles are to be prepared and delivered to PMU within fifteen days after the end of the period being reported. Quarterly profiles cover a three-month period, so it is even more important that these profiles be delivered on a timely basis, otherwise many months will pass without PMU receiving any information about the subject officer.

The Commission found that 193 or 74% of the files had at least one untimely profile.<sup>108</sup>

While the profiles should always be prepared and received in a timely fashion, the Commission is most concerned with those instances where three or more profiles were prepared on the same date

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<sup>108</sup> This percentage includes files that had several late profiles. Although the Department guidelines mandate that the profiles must be delivered to PMU within fifteen days after the end of the reporting period, the Commission used a more lenient time frame in calculating the above statistics. The Commission considered profiles late if they were prepared or delivered more than 30 days after the end of the reporting period.

and sent to PMU on the same date. In 47 or 18% of the cases, this occurred. This is especially problematic when an officer is on Level II monitoring and the profiles are completed on a quarterly basis. Consequently, if four profiles are prepared and delivered on the same date, this, in effect, means that PMU is not receiving any information about the subject officer for a year. Also problematic are those cases where profiles are prepared on separate dates, but are regularly prepared and delivered more than one month after the end of the period. The Commission found this occurred in an additional 11 or 4% of the cases.<sup>109</sup>

In other cases, the profiles appeared to be prepared in a timely fashion based upon the dates on the profile, but case notes indicated that they were not received by PMU until at least one month later. This occurred in 80 or 31% of all the cases reviewed. Additionally, in 28 or 11% of the cases, at least one profile was completely missing from the case folder. Although the command has the primary responsibility of delivering the profiles to PMU, PMU is ultimately responsible for obtaining the profiles.

PMU does not appear to be actively addressing this issue by pressing for overdue profiles. Documentation of any attempts to obtain late profiles by PMU was noted by the Commission in only 64 of the 193 files or 33% of the files which contained late profiles. Significantly, only one PMU Sergeant appeared to regularly document efforts to contact the command and obtain late

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<sup>109</sup> There is overlap between the number of cases where several profiles were prepared at the same time and those cases where profiles were prepared on separate dates but still routinely prepared late. Many cases contained both types of late preparation. Also, this number may be an underestimation because the Commission did not include profiles that did not contain a date of preparation or date of receipt.

profiles. If this one Sergeant's attempts to contact the command were excluded from the numbers and percentages referred to above, the calculation would be significantly lower.<sup>110</sup>

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<sup>110</sup> This conclusion also applies to PMU contact with the command and other units in the Department for other purposes, such as inquiring into the status of an investigation or disciplinary matter. These numbers and percentages, discussed below throughout the Report would significantly change if the efforts of this particular Sergeant were not taken into account.

Clearly, when many profiles are prepared on the same date, unless specific comments about an officer's performance or demeanor have been documented elsewhere, the ICO or whoever is preparing the profiles, may be unable to provide meaningful comments about the officer's performance during the monitoring period. General comments or profiles with no comments are of limited value. For example, in one case, the officer was placed on Dismissal Probation Monitoring in June 2000 due to a domestic incident and harassment of his attorney. He had an extensive sick record and was also on Chronic Discipline Monitoring at the time of the probationary period. The profiles were prepared and delivered to PMU in an untimely fashion, and PMU's oversight was non-existent. Specifically, six profiles, for the months from the outset of dismissal probation through November, were all prepared and delivered in December 2000. Not surprisingly, the remarks were repetitive and unsubstantial, stating that the officer "performs as indicated [in the checked areas]" and "no problems seen." The PMU file also contained no documented contact with the command regarding the overdue profiles.<sup>111</sup> PMU should have taken affirmative steps to expedite the preparation and delivery of the profiles and should have taken a more proactive role in monitoring the officer. This is especially true, where as here, the officer's disciplinary history was extensive, his sick record poor, and he was also on Chronic Discipline Monitoring.

Similarly, in another case, the officer's probation began in August 2000. The profiles contained in the PMU file covered the months through December 2000. All four profiles were prepared in late January 2001 and delivered to PMU the day after preparation. None of them

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<sup>111</sup> There was no indication of contact with the command whatsoever in the Chronic Discipline file.

contained any comments in the remarks section. Moreover, there was no indication in the file that PMU ever contacted the command to expedite the preparation and delivery of the profiles or to obtain substantive information regarding the officer.

## **2. Contents of Profiles**

Even when the profiles were obtained in a timely fashion, many contained little or no substantive information regarding the subject officer's performance.<sup>112</sup> In 102 or 39% of the cases, there were profiles that contained only brief, cursory comments and in another 28 or 11% of the cases, more than one profile contained no comments at all. While the Commission understands that it is the Commanding Officer's or the ICO's responsibility to complete the profile, PMU should be contacting the command when there is no meaningful information included in the profiles. There was no documentation in any of the files demonstrating that PMU contacted the command to request more substantive information.

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<sup>112</sup> The Commission considered comments to be substantive if the profiles included detailed information about: the subject's activity level; demeanor towards supervisors, peers, and civilians; sick leave; emergency excuse days; assignments; and performance of assignments.

In one case file, nine monthly profiles were photocopies with only the dates of the review changed. There was no indication that PMU sought to rectify the situation. In this particular case, the officer was not only on Level III monitoring, but also had a disturbing disciplinary history.<sup>113</sup> Yet, the only documented contact with the command during the eighteen months that the officer was being monitored was the delivery of the folder in September 1999.<sup>114</sup> PMU should have contacted the command at the first indication that the command was not fulfilling its responsibilities, spoken with the officer's supervisors and the person who prepared the profiles, investigated the officer's performance, and followed-up accordingly.

As discussed above, aside from a comments section, the remainder of the profile requests specific information about an officer's performance of his duties while on patrol. Listed duties, such as making arrests or issuing summonses, are, however, not relevant to an officer on restricted or modified duty or one whose assignment does not include patrol responsibilities. When, in such cases, no or very general comments are provided, PMU receives no meaningful information about the officer's performance. The new PMU Commanding Officer reported that she and her staff are in the process of designing a new profile specifically geared towards officers who are performing non-enforcement duties. This would help alleviate the problem by providing an opportunity for

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<sup>113</sup> The officer was placed on Dismissal Probation Monitoring due to driving while under the influence of alcohol and threatening police officers at the time of his arrest. He had previously been arrested for a domestic incident and while other allegations against him had not been substantiated, they included, associating with criminals, abusing his authority, and accepting bribes.

<sup>114</sup> This officer's probationary period was extended because he was out sick with a serious line of duty injury. However, during the nine-month period referred to in the example, the officer was on active duty.

comment on the work these officers are actually performing. The Commission views this as a positive improvement being undertaken by the new Commanding Officer.

### **3. Review of Profiles by Commanding Officer**

PMU has advised the Commission that Commanding Officers are required to review and sign all profiles. Such a review attempts to ensure that the Commanding Officer is notified of any problems with the subject officer and is being routinely updated as to the subject officer's progress or lack thereof in his performance. The Commanding Officer can then decide to take appropriate steps to confront the issues presented by the subject officer's behavior. In 49 or 19% of the cases, there were profiles that were not signed by the Commanding Officer and which may not have been reviewed by him or her. Of those cases that did not have the signature of the Commanding Officer, only 5 or 10% of these cases had documented efforts from PMU to obtain the Commanding Officer's signature.

### **F. Contact with the Command**

According to PMU guidelines, one of its primary responsibilities for those officers on Level III monitoring is to make recommendations to the officer's command supervisors to address the problems which led to the officer being placed on the relevant monitoring list and/or reported by the command in the monthly profiles. PMU may make recommendations to the command, for example, regarding the officer's assignment or tour of duty. For instance, an officer may repeatedly be late for work or take personal days due to child care issues while working the night tour. PMU

can therefore recommend that the officer be assigned to a day tour. Similarly, if an officer has difficulty interacting with the public, PMU can recommend that he be taken off patrol and assigned to a position where contact with the public is minimal. According to PMU executives, PMU can also recommend increased supervision, either by supervisors within the command or units outside the command. For instance, if an officer is repeatedly calling in sick, PMU can recommend that the ACU make increased visits to the officer's residence if he calls in sick in the future. Similarly, PMU can recommend that the Medical Division reexamine an officer's professed injury if PMU or the command believes it is suspicious in nature.

Making recommendations as to how to deal with officers on Level III monitoring is a significant part of PMU's mandate. Even in those instances where the commands did fill out substantive evaluations regarding an officer's poor performance, however, the documentary evidence indicates that PMU almost always failed to make any recommendations. Several cases reviewed contained very precise, negative information and complaints about an aspect of a subject officer's behavior. This information included listing several command disciplines imposed against an officer, stating that the officer's attitude or arrest activity was poor, or stating that the officer's performance was below standards. Specifically, 48 or 18% of the cases had these kinds of significant negative comments. Yet, in 38 or 79% of those cases, there was no evidence that PMU made any effort to follow-up on this information and/or provide any guidance to the command. When an ICO does complete the profile in a substantive manner and then does not receive any input from PMU, it also may make it less likely that the ICO will include detailed comments on future profiles, which will further diminish their value.

When officers already on monitoring receive evaluations which are poor or indicate a need for increased supervision, PMU should also be providing assistance to the command to improve the officer's behavior. Where such efforts fail and improvement does not occur, PMU should confer with the command and examine whether it would be appropriate to terminate the officer and whether it is feasible to do so. In one case, for example, the officer was placed in SMS in April 1998.<sup>115</sup> He had been chronic sick numerous times<sup>116</sup> and had been placed on dismissal probation in March 2000. During the SMS monitoring period, the officer also had received numerous command disciplines for violations including discourtesy to a supervisor, insubordination, failing to sign roll call, improper uniform, and failing to attend firearms training. He was repeatedly tardy, out sick numerous times, and was referred to counseling after an anxiety attack. All the above information was noted in the monthly profiles. The profiles also contained comments regarding the officer's poor attitude and agitated demeanor. PMU contacted the command in March 2000 for information about one adjudicated command discipline, spoke with the disciplinary unit in mid-1999 regarding pending charges and specifications, which were the result of four command disciplines being consolidated into charges and specifications, and spoke with the command regarding the officer's performance in mid-1999. Other communications with the command were solely to obtain monthly profiles.

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<sup>115</sup> This officer was on Dismissal Probation Monitoring at the time of the Commission's review. Information as to the officer's placement on both monitoring systems was contained in each file.

<sup>116</sup> See fn. 49 and accompanying text for an explanation of these designations.

Here, the profiles specifically delineated all the incidents in which the officer was involved, spanning from December 1998 through September 2000. Also, the officer was referred to counseling three times by the command, the most recent referral noted in the September 2000 profile.<sup>117</sup> However, there was no conferral by PMU with counseling services or the Medical Division. PMU did not contact the command to follow-up with the officer's situation. In addition, PMU failed to make any recommendations to the command concerning how they should continue to monitor and supervise this officer in light of his ongoing poor performance. Indeed, given the repeated problems with this officer, PMU should have been exploring the option of terminating the officer.

A primary function of PMU is to provide intensive supervision and monitoring of problematic officers in an effort to improve their performance. Alternatively, if the officer simply cannot conform his behavior to what is expected, he should be scrutinized by every available unit in the Department in order to facilitate his termination as soon as possible. As demonstrated in the case above, PMU's lack of intense supervision and scrutiny of the officer, and the failure to take any affirmative steps to correct the officer's behavior has contributed to the officer remaining in the Department's monitoring system for approximately three years with, at best, only nominal improvement.

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<sup>117</sup> In addition, while this referral was noted in the September profile, it was not prepared by the command and received by PMU until mid-December 2000.

In another case, one quarterly profile specified numerous problems with the officer's behavior, but PMU did not contact the command at all regarding either the outcome of any of the incidents or offer possible suggestions to deal with the officer's behavior. Specifically, the profile indicated that the officer received three command disciplines: for failing to make a required memo book entry; being off-post; and failing to monitor his radio assignment. Also, the preparer of the profile wrote in the comments section that the officer's attitude had not improved and he demonstrated a lack of respect. Moreover, the Commanding Officer added the additional comment that the officer needed to improve his attitude. Even after receipt of this profile, PMU did not consult with the command in an effort to make suggestions regarding the improvement of the officer's performance.

This failure of PMU to contact the command and make recommendations, even in light of negative information, may be a systemic problem. In reviewing 260 files, the Commission noted that only one file contained documentation of a recommendation made by PMU to the command on better methods for supervising or monitoring an officer. Additionally, the profiles did not contain any notations by the commands referencing recommendations made to them by PMU. However, in conversations with PMU executives, they maintained that recommendations were being made but were just not documented. The new Commanding Officer stated that one of the changes she was initiating was the requirement that in the future all contact with the subject officer's command, including recommendations for additional training, counseling, or supervision, be documented in the PMU case folder.

PMU has also stated that it is currently focusing on more expeditious referrals of officers for, where necessary, training and increased monitoring by ACU or IAB. When PMU receives negative information regarding an officer's sick history in a profile or otherwise, it reports that it will now promptly notify ACU. Also, any pertinent information in the profiles will now be forwarded to IAB and other units in the Department, where appropriate.

In addition to responding to specific information in the profiles, among their other reported responsibilities, PMU is also required to make field visits to the command. Field visits are designed for PMU personnel to discuss the officer's performance with the ICO and the Commanding Officer. There was, however, little documentation that such conversations occurred. Further, the Commission's review noted very few field visits except to pick up profiles. In only 64 or 25% of cases were any field visits documented and, of those cases, 36 or 56% appeared only to involve efforts to obtain late profiles. If there were conversations with the Commanding Officer and the ICO about the subject officer's performance at the time profiles were collected, for the most part, these conversations were not documented. The new Commanding Officer of PMU now requires that all field visits and the substance of any contact be documented.

**G. Coordination with Other Units**

One responsibility of PMU is to maintain close contact with other units involved in the monitoring or investigation of the officer. Such units include the ACU, the Medical Division, DAO, IAB, and the relevant Borough Investigations Unit.

## **1. ACU and the Medical Division**

One function of ACU is to investigate those officers who are suspected of abusing sick leave. It is Department policy that, absent permission, an officer absent from work due to sickness is expected to be at home. If the officer is found by ACU not to be home, disciplinary action can be taken. To monitor compliance with this policy, ACU on occasion telephones an officer's house when he calls in sick for an assigned tour of duty or travels to the subject officer's home to see if he is there. If ACU determines that an officer who is on sick leave is out of his residence without permission, charges and specifications can be brought against that officer or some other form of discipline can be imposed. For officers who are on Dismissal Probation Monitoring, and have a poor record in this area, termination is a potential penalty for such an infraction. ACU can therefore play a significant role in dealing with officers who have abused sick leave.

The Commission found that coordination between PMU and ACU would have been appropriate in a number of the cases reviewed. In determining what cases were appropriate for ACU investigation, the Commission considered the officer's past sick record, any charges and specifications that had been brought against the officer for abusing sick leave, and whether the number of sick days taken by the officer while on monitoring appeared excessive. The Commission determined that of the 255 officers on performance monitoring, 52 or 20% of the officers were appropriate candidates for supervision by ACU.<sup>118</sup> However, direct contact between PMU and ACU was noted in just 3 or 6% of those cases. While making referrals to ACU has always been

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<sup>118</sup> ACU may be independently investigating these officers and other officers on monitoring lists and documenting its efforts, but due to a lack of contact between ACU and PMU, PMU would not be aware of these investigations.

among PMU's purported responsibilities, the new Commanding Officer of PMU has stated that one of PMU's new operational changes is making these referrals on a more timely basis.

In one of the cases where contact with ACU was noted, the subject officer had 64 chronic sick designations on his CPI, had been suspended and then received dismissal probation for charges and specifications that included abuse of sick leave, and had been on Level III monitoring since 1996. Since being placed on monitoring, the monthly profiles indicated that the officer had used at least 187 sick days.<sup>119</sup> For the year 2000, the officer had used 92 sick days. The number of sick days did not include the significant number of emergency excuse days<sup>120</sup> taken by the subject officer. The PMU file noted one contact with an ACU officer where ACU indicated its awareness of the situation and assured PMU that regular visits to the subject officer's home were being made. However, PMU did not follow-up and maintain contact with ACU, and there is no indication that PMU was aware either of how often such visits took place or the results of these visits.

Similar findings emerged when the Commission reviewed PMU's contact with the Medical Division. The Commission considered PMU contact with the Medical Division desirable when the officer was on restricted duty, the officer was out sick for an extended period of time with a line of duty injury, or the officer had requested early retirement due to a medical disability. The Commission found that 29 or 11% of the officers met these criteria. PMU noted contact with the

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<sup>119</sup> The number of actual sick days used may have been higher since at times it is not the actual days that are measured but the sick events. A sick event is a continuous period of time when the officer has called in sick. So, for example, a sick event could encompass one day or any number of days.

<sup>120</sup> See fn. 63 for a definition of emergency excuse days.

Medical Division in its files for 2 or 7% of these officers. Only one file contained written medical documentation about the officer's condition. PMU should be acquiring information from the Medical Division when applicable not only because it may assist PMU in devising proactive means to monitor an officer, but because such information about an officer's injuries and status is important and relevant information which PMU should maintain in its file.

An example of insufficient contact by PMU with the Medical Division involved a case where PMU was notified in a monthly profile by the subject officer's Commanding Officer that he had spoken with the Medical Division because the subject officer was on sick leave with a suspicious line of duty injury. There was no substantive documentation about the nature of the line of duty injury and when this injury occurred. This officer was concurrently on Dismissal Probation, SMS, and DTF<sup>121</sup> monitoring. He also had an extensive chronic sick history. Furthermore, prior monthly profiles had also noted the officer's abuse of sick leave. Notwithstanding this officer's history, there was no follow-up by PMU with the Medical Division.

In another case, an officer on SMS Monitoring was on sick leave with a line of duty injury for over a year. Again, there was no communication by PMU with the Medical Division. PMU should be communicating with the Medical Division to determine the extent of any injury and the status of the officer.

## **2. Department Advocate's Office**

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<sup>121</sup> "DTF" is the Disciplinary Task Force and, as discussed below at p. 100, is an entity in the Department, independent from PMU, that conducts its own monitoring efforts of the most problematic officers in the Department.

DAO is the division of the Department's disciplinary system responsible for prosecuting internal disciplinary cases, and preparing and filing charges and specifications. When an officer is on dismissal probation, however, based on the existing probation, he may be terminated by the Department without charges and specifications being formally filed. Therefore, in these circumstances, when contemplating the serving of charges, DAO contacts PMU to obtain a recommendation from PMU on whether, without the need for formal proceedings, termination of the officer's employment due to the allegations would be warranted. Based upon information contained in the cases reviewed, five cases fit the criteria where consultation by DAO with PMU was appropriate. In all of these cases, this consultation occurred, although the timeliness of these consultations was an issue.

According to PMU executives, when contacted by DAO regarding the possible termination of an officer on dismissal probation, PMU evaluates whether the allegations warrant termination and makes a recommendation to DAO as to disciplinary action. In making this determination, PMU assesses, among other things, the severity of the new allegations, if the new charges are similar to prior misconduct, and the officer's overall disciplinary record. If PMU concludes that the officer should be terminated then, with the ultimate approval of the Police Commissioner, the officer will be terminated.

While these consultations are taking place, in the limited number of cases fitting this criteria, PMU appeared to be taking too long to respond to DAO's request for recommendations. For example, the Commission reviewed one file where the subject officer had been placed on dismissal probation in January 2000 for improperly preparing numerous summonses for parking violations

and failing to process vehicles for rotation tow<sup>122</sup> after observing that these vehicles had been stolen or apparently abandoned. While the monthly profiles prepared by the officer's command had initially been positive, with only weeks left on his dismissal probation, the subject officer was placed on modified status due to new allegations involving the same behavior that originally led to his placement on dismissal probation. These allegations ultimately resulted in the filing of charges and specifications. As a result of being placed on modified duty, the officer's probation was extended and did not expire while charges and specifications were being prepared. On January 9, 2001, a copy of the proposed charges and specifications was delivered to PMU with a memorandum requesting a decision by PMU regarding whether the charges and specifications should be served upon the subject officer or whether PMU planned to terminate him. An answer was requested within twenty days of receipt of the memorandum. This file was reviewed on February 15, 2001 by Commission staff and contained no evidence of an answer being provided to DAO. As of April 2001, there was still no evidence that an answer had been provided to DAO although the file was in the process of being reviewed by PMU superior officers.<sup>123</sup>

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<sup>122</sup> This term refers to the procedure by which tow companies within a precinct are systematically given tow assignments in order to prevent any particular tow company from receiving preferential treatment by the Department.

<sup>123</sup> Commission staff again reviewed the file on July 25, 2001. Although there was still no response by PMU in the file, the June 5<sup>th</sup> entry in the case notes indicated that the officer had been terminated, effective May 3, 2001. According to the notes, the officer's dismissal was discovered upon being noted in the last profile received by

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the command.

In a second case, the officer was placed on dismissal probation for a domestic incident in May 2000.<sup>124</sup> Five days prior to being placed on monitoring, the officer was involved in an off-duty assault. The investigation of this assault proceeded while the officer was on dismissal probation. During the investigation, the officer made a false statement at his PG 206-13 hearing<sup>125</sup> and in September 2000, in anticipation of serving charges and specifications, DAO contacted PMU for its recommendation regarding termination of the officer. Notably, the Department has a policy requiring dismissal of all officers who are found to have made false statements, absent exceptional circumstances. Therefore, the nature of the charge would have mandated seeking termination of the officer regardless of his status on dismissal probation.<sup>126</sup> However, even in this seemingly clear case that termination was the appropriate penalty, it took three months -- until December 2000 -- for the then Commanding Officer of PMU to forward his decision recommending termination. This delay is problematic because it delayed the internal disciplinary process and enabled the officer to remain with the Department.<sup>127</sup>

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<sup>124</sup> In addition, DAO has requested a recommendation regarding termination of three other officers. The decisions on these cases were still pending during the Commission's initial review. Upon its final review in July 2001, the three officers had all been separated from the Department, either by retirement or termination.

<sup>125</sup> Under Section 206-13 (formerly § 118-9) ("Interrogation of Members of the Service") of the Department's Patrol Guide, a member of the service must at a formal interview answer questions pertaining to the performance of his duties, or else face Departmental charges. Failure to answer questions posed pursuant to this section is a terminable offense.

<sup>126</sup> See the Commission's reports, *The New York City Police Department's Disciplinary System: A Review of the Department's December 1996 False Statement Policy*, (August 1999); *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements*, (December 1996); *Executive Summary*, December 12, 1996, at pp. 5-12.

<sup>127</sup> The officer has subsequently been terminated.

Even where dismissal probation is not involved, PMU should also be contacting DAO to determine the status of prosecutions against officers on monitoring lists, regardless of whether the charges and specifications are brought before or after the date that monitoring commences. At the time of the Commission's review, 46 or 18% of the officers had charges and specifications pending against them at some point during their tenure on a monitoring list.<sup>128</sup> However, there was documentation of contact between PMU and DAO in only 17 or 40% of these cases.<sup>129</sup>

### **3. IAB, Borough Investigations Units, and CCRB**

According to PMU guidelines, PMU is required to maintain close contact with IAB when an officer is on Level III monitoring. PMU is also supposed to refer negative information to IAB for investigation of officers on Level III SMS Monitoring. Although IAB is normally responsible for investigating corruption allegations against any officer, when an officer is on SMS Monitoring,

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<sup>128</sup> Twenty-seven or 11% of the officers had these charges and specifications pending at the time the officer was placed on monitoring, 7 or 3% of the officers had charges and specifications filed after they were placed on monitoring for incidents that occurred prior to the start of monitoring, and 13 or 5% of the officers had charges and specifications filed against them while they were on monitoring for incidents that occurred while they were on monitoring. In an additional six cases, there was documentation in the file indicating that charges and specifications may be filed.

<sup>129</sup> Furthermore, in many of these cases, copies of the pending charges and specifications were not in the case folder. Indeed in 14 or 70% of the cases where new charges and specifications were filed, PMU failed to get a copy of the charges and specifications from DAO.

IAB is responsible for investigating all allegations, those of misconduct as well as corruption, against the officer. Therefore, when any type of allegation arises against an officer on SMS Monitoring, or if PMU believes that an officer on any of the monitoring lists should be the subject of surveillance or an integrity test, PMU should contact IAB.

While Commission staff have observed IAB initiating its own efforts to target officers on monitoring lists and responding to requests from Precinct Commanders and ICOs regarding the officers on monitoring lists, the Commission did not find any documentation in the files that PMU had requested IAB to investigate or more closely scrutinize any officers on monitoring lists. Furthermore, there was no documentation that the Precinct Commanders or ICOs had made such requests to IAB on PMU's behalf.

In addition to IAB, Borough Investigations Units are responsible for investigating other lesser cases of misconduct.<sup>130</sup> These investigative units do not appear to be initiating contact with PMU regarding pending investigations. However, PMU may be notified of such investigations by the command profiles or CPI entries. Once made aware of these investigations, in general, PMU also is not contacting the Investigations Units to obtain information about the status of investigations or the nature of the allegations. While investigative units (or IAB) at times may not be in a position to disclose certain information on pending investigations, to the extent PMU is aware of an investigation, PMU should contact IAB or the Investigations Units and should, at the very least, be gathering all possible information and documentation prepared in connection with the investigation

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<sup>130</sup> This does not apply to officers on Level III SMS Monitoring because, as stated above, IAB is responsible for investigating all allegations regarding those officers.

when the investigation is completed. In 48 or 19% of the cases, there were investigations by IAB or other investigative units involving the subject officer during the monitoring period.<sup>131</sup> In 24 or 50% of these cases, there was no evidence of attempts by PMU to contact the investigative units or to obtain information or paperwork about the investigation.

In addition to IAB and Borough Investigations Units, CCRB investigates certain types of complaints made by civilians. Thus, when CCRB initiates an investigation, PMU should also be contacting the CCRB investigator to learn the status of the case, gathering the paperwork regarding the complaint, and documenting the investigation in the PMU file.

In its review, the Commission found 39 or 15% of cases where CCRB investigations were pending while the officer was being monitored.<sup>132</sup> In only 11 or 28% of those cases did PMU collect documents such as internal Department logs of allegations,<sup>133</sup> CCRB complaint reports, and

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<sup>131</sup> For 13 or 5% of the officers, these investigations were pending at the time the officer was placed on monitoring, while 36 or 14% of the officers had investigations initiated against them while they were on monitoring.

<sup>132</sup> Twenty or 8% of the cases were open at the time the subject officer was placed in the monitoring system, and in 24 or 9% of the cases, CCRB allegations arose during the course of monitoring.

<sup>133</sup> Logs are created by IAB's Command Center, where all the Department's corruption and misconduct allegations are received. Upon receipt of an allegation, 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.

investigative results from CCRB investigators. At a minimum, PMU should be obtaining the logs, which are generated by the Department, in order to ascertain the nature of the allegations. Additionally, in only 2 or 5% of these cases was there evidence of any communication between PMU and the CCRB investigator.

As discussed above, there are several purposes for monitoring officers, including keeping a record of their disciplinary patterns, being able to recommend appropriate preventive measures or penalties for misconduct, and ensuring that these officers understand that their actions have consequences. PMU cannot operate as effectively as intended without obtaining all relevant information about the monitored officer. In recognition of this fact, the new Commanding Officer of PMU is now requiring that PMU personnel regularly contact CCRB regarding pending investigations.

## **V. SENIOR LEVEL OVERSIGHT COMMITTEES**

The Department has two committees comprised of senior officials which also perform a type of monitoring. The first -- the Disciplinary Task Force -- has been in existence for a number of years, but in recent times appears to have been relatively inactive. The second group -- the Profile and Assessment Committee -- focuses on CCRB related problems and appears to be operating in a more active manner.

### **A. Disciplinary Task Force**

In addition to the monitoring system administered by PMU, a committee called the Disciplinary Task Force compiles another list of the most problematic officers in the Department and conducts its own monitoring efforts. The responsibility for monitoring these officers lies with the Disciplinary Assessment Unit<sup>134</sup> and is independent of PMU. DTF consists of representatives from the Offices of the First Deputy Commissioner, Chief of the Department, Chief of Patrol, Chief of Personnel, Chief of Internal Affairs, Department Advocate, and DAU. Officers who have been the subject of multiple allegations, low performance ratings, and/or who have abused sick leave over a defined period of time are subject to DTF monitoring. While DTF is supposed to meet periodically to review information on problematic officers and to select officers to include on this list, it has not met since November 1999. According to Department executives, even though DTF has not met in over one and a half years, officers are still being added to the list based on informal consultation among the members.

It is unclear what the precise intended difference is between PMU monitoring and DTF monitoring. According to DTF, its monitoring program is different in that DTF is designed to provide more comprehensive scrutiny of an officer. DTF is supposed to accomplish this by making recommendations on how individual officers could most effectively be monitored by various units in the Department. In many ways, however, this is how PMU is supposed to operate, albeit without the involvement of such senior Department officials.

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<sup>134</sup> See fn. 86 for DAU's function.

Since DTF monitors officers with the most serious disciplinary issues, there is a significant overlap between those officers being monitored by DTF and those officers being monitored by PMU. At the time of the Commission's review there were twelve officers on DTF Monitoring and simultaneously on Level III SMS Monitoring, one on Dismissal Probation Monitoring and DTF Monitoring, and one on Level II monitoring and DTF Monitoring. In addition, there were two officers who were on DTF Monitoring, but for some reason not on either Level II or Level III monitoring. PMU executives state that DTF and PMU meet to discuss who is on their respective monitoring lists in an effort to ensure that each system is monitoring all eligible officers.

In reviewing the files that DTF maintains for officers on its list, the Commission found that there did not seem to be much practical difference in the level of scrutiny given to these officers by DTF from the monitoring conducted by PMU. Although more contacts with ICOs and Commanding Officers of those officers on the DTF list were noted in DTF files, there were no documented recommendations by DTF personnel to these superior officers or other units in the Department regarding the monitoring of officers on the lists. Nor did there appear to be any prioritization of investigations or disciplinary proceedings involving the subject officers, or even any notations regarding the possible benefits of such prioritization.

## **B. The Profile and Assessment Committee**

In recognition of the need to proactively deal with officers who have received a high number of CCRB complaints,<sup>135</sup> the Department created the CCRB Profile and Assessment Committee (“the Committee”). Created in May 1997, the Committee, is chaired by the First Deputy Commissioner, and its members include, the Chief of the Department, the Deputy Commissioner of Legal Matters, the Chief of Patrol, the Chief of IAB, the Chief of Personnel, and the Commanding Officer of the Quality Assurance Division. Additionally, once an officer is identified for review by the Committee, the Chief of the borough/bureau where the subject officer is assigned is invited to attend the meeting. Unlike DTF, the relevant senior officials, rather than their representatives are supposed to attend Committee meetings.

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<sup>135</sup> The CCRB investigates allegations of force, abuse of authority, discourtesy, and offensive language.

The Committee operates independently from PMU and evaluates officers based on a specific set of criteria. To be considered for review, an officer must have received: (1) six or more CCRB complaints in five years;<sup>136</sup> (2) two or more CCRB allegations substantiated by DAO within five years;<sup>137</sup> (3) three or more CCRB complaints within one year; or (4) be so reviewed at the request of a Committee member. While these criteria are distinct from PMU's criteria, there may be officers who are reviewed by the Committee who are concurrently on one of PMU's monitoring lists, such as Level II Chronic Force Monitoring due to the overlapping criteria for this category of monitoring.<sup>138</sup>

The DAU -- which is also the administrator of this Committee -- is responsible for regularly reviewing Department data and identifying officers who fit the above criteria and notifying their command of their pending review by the Committee. Prior to the Committee's review, the Precinct Commander is instructed to interview the officer and his supervisors, and do an extensive written evaluation of the officer. During this interview, each CCRB complaint is reviewed with the view towards identifying any common patterns or problems with the officer's interaction with the public. The Precinct Commander and officer will discuss alternative ways to handle situations which were

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<sup>136</sup> This, as well as criteria (3), excludes cases that were found to be exonerated, unfounded, or mediated.

<sup>137</sup> These are cases that are substantiated by CCRB and forwarded to the Department, and then charges and specifications are filed.

<sup>138</sup> See pp. 62-63 for a description of the criteria for placement in this category of monitoring.

the basis of his CCRB allegations. The officer is also informed of the fact that his conduct is being reviewed by this Committee of high ranking officials.

In its written evaluation to the Committee, the Precinct Commander must describe for the Committee the officer's response to the interview and his willingness to identify any problems and address them. The Precinct Commander also reports to the Committee any remedial action that has been taken, and makes recommendations as to any further corrective action which may improve the officer's behavior. Such recommendations may include additional training,<sup>139</sup> a change in assignment (e.g. transferring the officer from enforcement to non-enforcement duties), or administratively transferring an officer to a different command.<sup>140</sup> The written evaluation also includes an analysis of the officer's activity level, sick leave history, annual evaluation ratings for the preceding three years, and history of the officer's civilian complaints.

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<sup>139</sup> Typically this training, referred to as verbal judo, involves learning how to deal with the public in a professional less aggressive manner.

<sup>140</sup> See p. 78 for a description of different types of transfers.

The Committee convenes approximately monthly and it reviews between twelve-to-fifteen officers at each meeting. Each officer's disciplinary history is reviewed as well as his interview and the evaluation by the Precinct Commander, including his suggestions for future corrective action.

Also, if an officer is on any other monitoring list, his status on that list may be brought to the Committees's attention. The Committee then makes recommendations about the officer's assignment and/or whether he should be subjected to additional Department scrutiny. For example, if a Precinct Commander feels that the officer is an asset to the command and should remain in his current assignment, the Committee may recommend that the officer remain in his current assignment with an increase in supervision. The Committee may also request that IAB perform an integrity test on the officer or that Quality Assurance perform a CPR<sup>141</sup> test on him. In addition to the above recommendations and actions that may be taken by the Committee, it also routinely requests that CCRB expedite the resolution of any pending CCRB cases.

After the Committee meets and a course of action has been determined, an officer may be reviewed again. In general, a re-review occurs in one of two circumstances. First, it may occur if an officer has been transferred from enforcement to non-enforcement duties as a result of the Committee's recommendation. In that case, after two years of performing in a non-enforcement capacity, the Committee will review the officer again in order to determine if he should be returned to enforcement duties. Second, an officer will be re-reviewed if he receives two CCRB complaints within a year after being initially reviewed or meets any of the original criteria.

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<sup>141</sup> See fn. 37 and accompanying text for a definition of a discussion of CPR testing.

The Commission found that the Committee serves an important and useful purpose. While not in the strict sense a monitoring entity, the Committee may have a significant impact upon an individual officer's behavior and on the behavior of other officers in the Department. First, the composition of the Committee and the fact that an officer is aware that such a senior level body is scrutinizing his conduct, standing alone, may impact the officer. Additionally, this process of proactive collaborating among the subject officer, his commander and senior level officials to identify and deal with underlying issues which may have been the basis for the complaints can only be helpful both from the perspective of the officer and the Department.

While the Committee does not perform an ongoing monitoring function, the Commission did review a number of the Committee's files. Specifically, the Commission examined the files of officers who had been the subject of Committee meetings since March 2001. This encompassed the review of the files of 44 officers, totaling a review of 60 files.<sup>142</sup> Based upon this review, the Commission found that the files compiled by the Committee are comprehensive and contain current information. The files contain updated personnel histories and up-to-date information about the status of any open or closed investigations. Additionally, the files contained all CCRB case narratives. Moreover, the files indicate an effort to implement recommendations made by the Committee. There are, for example, memos to training personnel directing a specified course of action and memos to CCRB to expedite the resolution of pending cases. Due to the fact that the Committee is designed as discussed above and not as a monitoring entity, the supervision and monitoring of the officer is left primarily to the command. Further, aside from the specified

instances when a re-review is triggered, there is limited follow-up with an officer's progress. For example, if an integrity test or CPR test has been requested, the results were not noted in the file.

Absent from receiving additional CCRB allegations (and unless transferred to non-enforcement duties), there is no Committee follow-up action taken. In a similar regard, the Committee may request that CCRB expedite cases, but there is no evidence of coordination with DAO in terms of proposing penalties or expediting cases in the Department's Trial Room.

## **VI. POSSIBLE USES OF MONITORING**

### **A. Prioritization of Disciplinary Cases and Investigations**

One possible way to proactively use the monitoring system is through the coordination of efforts with DAO, IAB, Borough Investigation Units, and CCRB to give priority to disciplinary proceedings and investigations that arise while an officer is the subject of PMU or DTF monitoring.

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<sup>142</sup> Sixteen of the 44 officers had more than one file because they were re-reviewed.

First, PMU and IAB or Borough Investigations should be cooperating with each other to ensure that investigations of misconduct or corruption involving a subject officer on monitoring are, where appropriate, given priority over other similarly-situated investigations.<sup>143</sup> Currently, it appears that this is not always being done. Although PMU executives state that it is not PMU's function to provide input to investigative groups as to how to prioritize their cases, the Commission believes PMU could and should provide this input. For instance, depending on the nature of the allegation, if a subject officer has been consistently performing in an acceptable manner, there might be less urgency associated with an investigation than if the subject officer continues to display problematic attitudes and behaviors.<sup>144</sup> This type of communication, coordination, prioritization, and gathering of relevant documentation should also, to the extent possible, be applied to CCRB investigations.

The Commission also believes that there should be dialogue between PMU and investigative groups, and coordination in gathering documentation, where available, when an officer on monitoring is the subject of an investigation. This would enable PMU to provide information to IAB or Borough Investigations regarding the subject officer's performance history and would assist both units in determining whether an investigation should be prioritized.

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<sup>143</sup> The Commission recognizes that the level of priority given to any investigation must be driven by the nature of the allegations involved and the investigative steps that need to be undertaken.

<sup>144</sup> This would, of course, depend on the nature of the allegation against the subject officer.

If an allegation against an officer on monitoring is substantiated, there should be consultation between PMU and DAO on how to best proceed with the case. In appropriate cases, DAO should draft and serve charges and specifications in an expedited manner and should attempt to prosecute these allegations more rapidly than other cases involving officers who are not being monitored.<sup>145</sup> Quicker prosecution would mean that an officer who is not adequately performing his job could be removed from the Police Department or punished sooner rather than later. Currently, DAO and PMU do not appear to be working together to prioritize cases involving officers who are on PMU or DTF monitoring lists.

## **B. Penalties**

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<sup>145</sup> The speed in which an officer is prosecuted is not solely a function of DAO's efforts. Trial Commissioner and defense attorney schedules also contribute to delays.

In general, the fact that an officer has been on performance monitoring appears to have minimal effect on the penalties that an officer receives as a result of being found guilty of new charges while on monitoring.<sup>146</sup> This raises a difficult question. While penalties should obviously be linked to the nature of the offense, where an officer has been on a monitoring list and has become a problem officer, there may be real value to the Department and to the public if the level of penalty was increased, even in appropriate cases to termination. This may be the case, regardless of whether the result is a harsher penalty than normally given for that offense. This is particularly true if the officer has been on dismissal probation.

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<sup>146</sup> Exceptions may be cases where the officer is placed on dismissal probation.

For example, one officer has been on at least one monitoring list since 1992.<sup>147</sup> This officer received dismissal probation and 20 days suspension as a result of three sets of charges and specifications before he was placed on SMS Monitoring in 1992. He then received dismissal probation and 159 suspension days as a result of the adjudication of two sets of charges and specifications while on SMS Monitoring. Then, in 1997, the officer received another penalty of dismissal probation and 60 days suspension for failing to report an allegation of misconduct and committing an act of domestic violence. In addition, the officer was the subject of three substantiated investigations<sup>148</sup> and received four poor annual evaluations. The penalty imposed in 1997 may have been, as an abstract matter, consistent with those imposed on officers found guilty of similar domestic incidents. It does not appear however, that this penalty adequately took into account the subject officer's inclusion in the monitoring system and his disciplinary history. Given this officer's overall record and his failure to redeem himself while on the Department's highest level of monitoring, the Commission believes, he plainly was a candidate for termination.

Similarly, the Commission recognizes that the Patrol Guide specifically sets forth violations that are subject to command discipline and the parameters of appropriate penalties allowed in these circumstances. However, where it is determined that a command discipline would be inappropriate, then charges and specifications may be served and the officer may be disciplined

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<sup>147</sup> This does not take into account that the officer may have been on Level II monitoring prior to 1992 since that would have been expunged from his personnel records.

<sup>148</sup> These are three unrelated allegations involving planting evidence, tampering with a civilian's telephone, and excessive force. At that time of the Commission's review, the excessive force allegation was dismissed and the remaining two allegations were still pending.

through the formal disciplinary process.<sup>149</sup> The presence on a monitoring list should be an aggravating circumstance that should be taken into account when determining if a command discipline adequately addresses the nature of the misconduct. Indeed, where an officer repeatedly violates Department guidelines while knowing he is on monitoring, command disciplines generally should not be imposed and charges and specifications should be served.

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<sup>149</sup> See Patrol Guide § 206-03.

In one case, for example, the officer was placed on Level III SMS Monitoring in August 1999. Prior to inclusion on Level III, he had been a subject of Level II Chronic Discipline Monitoring since February 1996. Placement in Level II was precipitated by a chronic sick history and four negative annual performance evaluations. While on monitoring, the officer continued to be chronic sick, received another negative performance evaluation, had his firearm removed after a confrontation with another member of the service, was administratively transferred, and lost ten vacation days after being found guilty of charges and specifications stemming from several command disciplines for failing to comply with Departmental guidelines. After being placed on Level III SMS Monitoring, he received another command discipline for failing to attend training. One month after receipt of this command discipline, the officer administratively failed a targeted IAB integrity test<sup>150</sup> when he failed to follow proper procedures to accept and voucher found property. Two months later, the officer received a command discipline and the loss of only one vacation day for this infraction. There was no documentation in the file that PMU was consulted regarding the appropriate penalty for this administrative failure. It appears that this penalty did not adequately take into account the officer's disciplinary history or his monitoring status.

### **C. Length of Time on Monitoring**

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<sup>150</sup> For information on integrity testing by IAB, see the Commission's Report, *Performance Study: The Internal Affairs Bureau's Integrity Testing Program* (March 2000).

With the exception of Dismissal Probation Monitoring, there is no definite time period set for an officer to be subject to monitoring. For Dismissal Probation, the monitoring period is by definition designed to last one year. The Commission found that over one-third of the officers subject to monitoring, other than dismissal probation, had been on monitoring for at least two years. The officer who has been on monitoring for the longest period of time has been on at least one monitoring list for a period of nine years. The long periods which officers spend on monitoring only reinforces the need for PMU to affirmatively update the files, evaluate the officer's records during the monitoring period, and act proactively to improve performance or remove the officer from the Department. This should include regular reviews to determine whether a change in the Level of monitoring or removal from the monitoring list is warranted. Absent such an evaluation on a periodic basis, officers may linger on monitoring lists for years. In response to this report, the Department has defined specific time periods for all levels of monitoring. If an officer commits no further misconduct, he may be removed from Level II monitoring after twelve-to-eighteen months. An officer on Level III monitoring may be removed after a minimum of 24 months, or until his performance improves and he no longer meets any criteria for Level III monitoring. In both situations, the concurrence of the officer's Commanding Officer is required.

Another improvement implemented by the new Commanding Officer of PMU, is the requirement of monthly case reviews by PMU supervisors. Although during the drafting of this report, PMU superior officers maintained that supervisors review the files every two-to-three months, the Commission found 134 or 52% of the files had no indication of being reviewed and only 12 or 5% of the files had documentation that demonstrated a review, on average, every two-

to-three months. Furthermore, there does not seem to be a consistent approach as to which files are reviewed and how often they are reviewed.

## **VII. CONCLUSION**

Performance monitoring is a valuable tool created by the Department to help avoid misconduct by ferreting out officers who can not or will not comply with the high standards associated with the Department. Accomplishing this requires proactive measures and coordination with other monitoring, investigative, and disciplinary divisions within the Department as well as the development of strategies and assignments to garner improvement in the performance of officers.

Based on the Commission's review of the manner in which monitoring currently operates, it remains a valuable system. However, performance monitoring has become too much the mechanical collection of information with too little follow-up action, rather than the more dynamic kind of proactive system envisioned when it was created by the Department.

The primary means by which PMU receives information about an officer's performance while being monitored is through the performance profiles completed by the command. During its review of those officers currently on Level II and Level III monitoring by PMU, the Commission found that in this regard, PMU's efforts to obtain timely, meaningful profiles were often inadequate.

In many cases, profiles were received late for nearly every reporting period, and in a significant number of cases, many profiles were prepared and delivered to PMU months after the covered period had ended. The Commission also found that many profiles did not contain any substantive information regarding the officer's performance, demeanor, attitude, and activity level. In most

cases, when profiles were late or contained insubstantial or inaccurate information, there was little documentation of efforts by PMU to remedy the situation. Also, at times, profiles were received without any indication that they had been reviewed by the Commanding Officer of the precinct.

Similarly, there was little documentation of contact between PMU and the commands beyond requesting overdue profiles. When profiles reported that an officer was performing negatively, there was minimal evidence that PMU made recommendations on how to more effectively supervise the officer. In fact, there was limited documentation in any files regarding recommendations for assignments, training, or counseling. Furthermore, in a majority of cases, there was no contact with other investigative and disciplinary units within the Department such as ACU, IAB, or DAO when such contact would have been appropriate. When there was contact, it generally was not sufficient. The Commission also found that while PMU was complying with its mandate to conduct an initial interview with the subject officers about the monitoring system, there were a significant number of cases where this interview was held more than a month after the officer's term on monitoring commenced. There was also often a delay in PMU delivering the case folder and speaking with the officer's command. This may be problematic since, if the command is unaware that an officer is on monitoring, it may not be giving him increased supervision.

While PMU initially established case folders that contained background information, PMU was often deficient in its efforts to maintain the files by documenting its communications with the officers' commands and outside units who were also investigating the officer. There was also no evidence to demonstrate that PMU was regularly updating background paperwork such as CPIs, CCRB records, and medical history records as often as PMU executives stated. In many cases,

PMU failed to obtain the reports and other documents generated in the course of investigations, transfers, or new disciplinary proceedings.

## **VIII. RECOMMENDATIONS**

Prior to the final release of this Report, the Commission gave a draft to the Department for review. In the Department's response to that draft and in connection with various recommendations made by the Commission, the Department discussed policy changes and improvements within PMU and its operations. Many of these changes are noted above throughout this part of the report and below in the recommendations made by the Commission.

In addition to stating a renewed effort and commitment to previously-reported policies, the new Captain of PMU initiated new policy changes that have been implemented or have been identified for future implementation. For example, the Department stated that there will be coordination with other units outside PMU and improved documentation of all contacts with these units as well as with the commands. PMU also indicated that there will be routine review of updated disciplinary records and that the case notes will document such reviews. All of the changes made by the new Captain are positive steps to ensure a meaningful and proactive monitoring system. As with policy changes due to Commission recommendations in other areas in the Department, the Commission in later reports may follow-up and revisit these issues to evaluate their progress and implementation.

- The Profile and Assessment Committee's role should be expanded to include other problematic officers and, in essence, provide senior level oversight for all officers in any monitoring program. During the Commission's review of the Department's monitoring efforts, it became clear that the same senior-level personnel were providing oversight for three different monitoring efforts -- the Special Monitoring Board, DTF, and the Profile Assessment Committee. In order to streamline the Department's monitoring efforts, one entity, comprised of these senior-level personnel, should be responsible for the oversight of all three of these monitoring programs. As the most active such group, the Committee should assume this responsibility, and oversee all officers on Level II or Level III monitoring. It should conduct the same type of review for these officers as it does for those falling within the Committee's current mandate. Currently the Committee focuses on officers with a specified number of CCRB allegations. While DTF still informally exists and identifies officers for monitoring, Department officials have stated that the Committee has basically subsumed DTF's responsibilities. DTF should thus be formally abolished. Similarly, the Committee should assume the responsibilities of the Special Monitoring Board, and it too should be abolished.

- PMU should be responsible for implementing and following-up on the recommendations made by the Committee. Many officers reviewed by the Committee are also being simultaneously monitored by PMU. In order to have the most complete information on the monitoring efforts directed at an individual officer, it is beneficial to have one unit coordinating all those efforts to ensure that they are being conducted in an efficient manner.

- Profiles should be prepared and collected in a timely manner. If profiles are not delivered within the specified time period then PMU should immediately contact the command and obtain them. Similarly, the profiles should contain substantive information and if not, then PMU should notify the command and get such information. In this regard, the preprinted portion of the profiles applicable to Level III officers should be modified and drafted to contain requests for more detailed substantive information regarding performance and behavioral issues. Similarly, because Level II profiles pertain to a three-month period, the profiles should be modified to provide for monthly breakdowns of performance activity and behavioral issues in order to enable PMU to more accurately assess the officer's progress. In the response to this Report, the Department stated that in addition to increased contact with the commands regarding the submission of profiles, new profile forms have been created to include more substantive information.

- In addition to collecting profiles in a timely manner, PMU should promptly collect paperwork regarding disciplinary matters which arise or are pending during the monitoring period including command disciplines, charges and specifications, and CCRB allegations. Further, PMU should regularly update its own paperwork by generating CPIs, medical history records, and CCRB records so that PMU files contain current information. As stated above, the Department indicated that this recommendation and has been adopted and PMU files will indicate such contact and review.

- PMU should be obtaining all annual and interim performance evaluations that are completed during the monitoring period. Performance evaluations can provide valuable information to the Sergeant in charge of the monitoring. These evaluations should be part of each officer's file so that PMU maintains comprehensive information on each individual it is monitoring. Presently, PMU only requests these evaluations when the officer is seeking to be removed from the monitoring list.

- There should be increased contact between the command and PMU. Specifically, PMU should have regular substantive contact with an officer's immediate supervisors, and Precinct Commander or ICO regarding the officer's progress on monitoring and his performance in general. In addition to PMU reaching out to the command, the command should be required to notify PMU of any potential issues with an officer at the earliest indication of such, and should not wait until delivery of a profile at the end of a reporting period. In cases where an officer's performance has not improved, PMU should discuss strategies with the command regarding additional and alternative ways to monitor the officer. In addition to conferring with the command, PMU should be initiating contact with and utilizing other units outside the command in order to formulate methods for dealing with officers who continue to display problematic behavior. They should be coordinating efforts with units such as ACU and IAB. Indeed, the concerted use of surveillance and integrity testing, in combination with increased penalties, could be a valuable tool for removing unfit officers from the Department.

In its response to this Report, PMU stated that it is increasing contact and coordination with the commands and other units involved in monitoring efforts.

- Level III monitoring requires PMU to formulate recommendations for Commanding Officers and ICOs after reviewing the monthly profiles. Such a requirement should apply any time negative information is conveyed to PMU, regardless of whether the officer is on Level II or Level III monitoring. Further, PMU should be consulting with the command any time a command discipline is being considered in order to make recommendations regarding the appropriateness of the imposition and adjudication of the command discipline. Presently, this conferral is only required when an officer is on Level II Performance Monitoring or Level III SMS Monitoring.
- As soon as the Department learns that a command discipline has been issued, or a CCRB complaint or any other allegation has been made against an officer on monitoring, PMU should be notified and such information should be noted in the PMU file. PMU responded that it now requires that this type of information be documented in the case folder.
- Outside investigatory units such as IAB or the Borough Investigations Unit should immediately notify PMU of any new allegations or investigations concerning the subject officer. Once notified of such information, PMU should maintain contact with these units to determine the progress and status of the investigation. Even where the sensitivity of an investigation warrants withholding certain information from PMU, it should still, at a minimum, seek in a general sense approximately when the investigation will be complete and/or the likelihood that the allegations will be substantiated. Mutual contact can benefit both PMU and the investigative units in that it will

enable PMU to obtain pertinent information about an officer on monitoring, and PMU may also be a resource for the investigatory units in that it could provide comprehensive information about an officer and his personnel history.

- All actions taken by PMU should be documented in the case folder. PMU personnel should document any contact with the command or other units outside the command, and detail the substance of that contact. Additionally, PMU should document the status of any open investigations or complaints and keep that information up-to-date in the case folder. Documenting the actions taken on a case will enable PMU to retain pertinent information and will aid supervisors in reviewing the progress of the officer. The current Commanding Officer of PMU stated that she is now requiring that all actions taken on cases and all pertinent information obtained about an officer be documented.

- The Commission believes that when an officer is on monitoring and is found guilty of a new disciplinary charge, he should be penalized progressively. The Department should consider the officer's disciplinary record, including any prior allegations that prompted the monitoring, as well as the fact that the misconduct occurred while the officer knew he was on monitoring when determining a penalty. The Commission recognizes that utilization of prior unsubstantiated allegations in fashioning a penalty may be problematic. However, where an officer has been the subject of numerous prior allegations, especially where they are similar in nature to pending charges, they should be considered and possibly factored into a penalty once the officer is found guilty.

Similarly, if an officer is on Dismissal Probation Monitoring, and continues to display problematic behavior, the Department should take advantage of its ability to bypass formal disciplinary procedures. It should immediately evaluate new disciplinary cases and, in appropriate instances, rapidly seek termination of the officer.

Additionally, if the officer has been on monitoring in the past, in certain cases, that prior monitoring should be taken into account when determining an appropriate penalty for current misconduct, even if the officer has been removed from monitoring prior to the current incident leading to the discipline. While monitoring that occurred remote in time from the current misconduct may be irrelevant in fashioning a penalty, factoring in prior monitoring, where appropriate, would provide for penalties greater than the customary penalty imposed for the misconduct in the first instance. Therefore, the Department would be differentiating between officers guilty of similar misconduct who had not been in the monitoring system.

- PMU should communicate and coordinate with IAB and other investigative groups in order to prioritize investigations where appropriate. If, based upon the officer's disciplinary record and the nature of the charges, PMU and the investigative group determine that an allegation of misconduct should be prioritized, then the investigation should be expedited. Similarly, once an investigation has been completed, DAO and PMU should cooperate with each other. In appropriate cases, DAO should attempt to prosecute the disciplinary case more expeditiously than other cases where the officer is not on monitoring.

- PMU executives assert that monitoring and its long-term negative connotations for an officer's career should be incremental. For instance, in terms of designations on an officer's permanent record, Level I monitoring is not entered on an officer's CPI; Level II monitoring is entered on the officer's CPI, but is expunged after successful completion of monitoring; and Level III monitoring remains on an officer's CPI throughout his career. With respect to Level II monitoring, by deleting any reference to it from the officer's CPI upon his removal from monitoring, he is given the opportunity to redeem himself and start anew, thereby demonstrating that placement in Level II monitoring does not have to affect the officer's career for the remainder of his tenure.

The Commission recognizes the Department's rationale behind expunging monitoring from the disciplinary records of those officers removed from Level II monitoring, and believes that an officer who has improved his performance should not continue to be penalized for the duration of his career. However, if the officer commits subsequent misconduct, then in certain circumstances his prior monitoring status should be taken into account when fashioning penalties, especially in light of the Department's practice of progressive discipline. The Department therefore should consider expunging the entry from the officer's CPI after a determined period of time has elapsed after removal from Level II monitoring. If the officer has no disciplinary events during that period of time, then the monitoring entry would be removed from the officer's record.

- PMU should interview officers placed on monitoring in a more timely manner. Upon being placed on monitoring, the officer should be informed about the ramifications of monitoring and the consequences of any future negative behavior. Similarly, PMU should meet with the officer's

command supervisors and deliver the case folder immediately upon the officer being placed in the monitoring system.<sup>151</sup> This is necessary in order for the command to understand what its obligations are during monitoring and provide the requisite supervision for the whole monitoring period.

- PMU should maintain periodic contact with the subject officer during the monitoring period. PMU should explain the Department's continued expectations, and communicate regularly with the officer to discuss his progress and any concerns that he may have. The Department stated that, when appropriate, conferral with the subject officer is now required. This additional headquarters-based oversight may provide an additional influence on the officer's behavior.

- There should be regular supervisory reviews of the case folders to ensure that all appropriate actions are being taken. Where proper documentation is not kept or frequent contact is not maintained, the PMU supervisor should instruct the PMU Sergeant and continue to verify that such documentation and contact takes place.

- During the course of its study, the Commission noted that at times officers were placed on monitoring lists or received corrective action based on incidents that had occurred years prior.

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<sup>151</sup> The Commission recognizes that PMU must wait until the completion of suspension before interviewing an officer, but officers may be, and should be, interviewed as expeditiously as possible, even if the officer is on modified assignment.

This, in part, was due to both the investigation and the lengthy disciplinary process. While the Commission understands the rationale for waiting until a case has been adjudicated to determine an appropriate course of action for dealing with an officer, in reality, years may lapse between the date of the allegation and its resolution. Therefore, any corrective action may be applied years after the allegation and may not be as applicable to the officer's situation at the present time, thereby making it less effective. Also, the delay and untimely action may negatively impact on morale. The Department should therefore explore what options are available to enable it to act in a more timely fashion.

## **APPENDIX**