The City of New York

Commission to Combat Police Corruption

Follow-up to The Prosecution Study of the Commission

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PREFACE

This report, together with another report also being released today entitled "*Seventh Annual Report of the Commission*," represents the final product of the Commission to Combat Police Corruption as it was constituted during the mayoral administration of the Honorable Rudolph Giuliani. The staff of the Commission continued its work beyond the end of Mayor Giuliani's administration, with the informal assistance of Richard Davis, the Commission's former chairperson. The staff appreciates Mr. Davis's continued guidance and support, even after his formal term had expired, and the current members of the Commission are grateful to the staff for continuing their labors during the period that preceded the appointment of the present Commission in August 2003. These reports reflect the labor of the staff during 2002 and into 2003, prior to the appointment of the current members of the Commission.

In keeping with the practice of the Commission since its inception, draft copies of these reports were provided to the New York City Police Department well in advance of its publication. Past Commission reports have contained a response by the Department to the findings and the recommendations contained in the reports. In this instance, however, the Department did not provide a timely response[1]. The Commission therefore decided that these reports, already delayed from publication pending the appointment of new Commissioners, would be released without additional delay.

With the publication of these reports now behind it, the new Commission intends to change the nature of its work and the way in which it reports on the work that it has done. It is our view that the Department generally has effective mechanisms in place to detect and to deter police corruption. During the last decade, the Department has strengthened and improved its anti-corruption program to the point where, in many respects, it represents the "state of the art," and serves as a model for other law enforcement agencies in this country and elsewhere. Viewed as a whole, the Department's anti-corruption program is healthy and robust, and enjoys the full support of the current Police Commissioner and Department leadership.

Some problem areas, however, remain and have been identified in prior Commission reports and are addressed as well in today's reports. There continues to be considerable and unacceptable delay between acts of alleged corruption and either the exoneration of the officer or the imposition of appropriate administrative discipline. Innocent police officers should not have to endure an administrative process that may leave them under a cloud for some years, and guilty officers should not be allowed to remain on their jobs, undisciplined, for extended periods. Although we are advised that the Department has made recent efforts to address and to improve the administrative process, the Commission staff continues to observe lapses in the quality of preparation and presentation of cases in the administrative trial rooms.

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[1] The Commission provided drafts of these reports to the Department in early January 2004. Included with the reports was a letter advising the Department that the Commission intended to release the reports in late February and any comments needed to be provided within the month. As of March 5, 2004, when the reports were finalized, the Commission had not received any response from the Department.

Because the Department's anti-corruption effort is generally thorough, ongoing, and effective, this Commission intends for the immediate future to focus on discrete areas in which the Department's efforts may be strengthened or improved. We have begun to consider whether there are targeted, specific measures that the Department might implement to improve its ability to identify, discipline, and deter acts of police corruption. When the Commission identifies a specific item for improvement, we hope to analyze and address the issue more promptly than the Commission has done in the past. Therefore, Commission anticipates that we will be utilizing formats other than extensive reports to convey our findings.

As an example, the Commission believes that it is essential to get an immediate account of events from *all* officers who may be involved in, or witnesses to, high-profile events such as a fatal shooting or a death in custody. While such events do not involve acts of "police corruption," these events often give rise to complaints --founded or unfounded -- that there has been a "cover up," or a conspiracy to conceal all of the facts. Such complaints do relate directly to the perceived integrity of Department personnel, and therefore are of concern to the Commission. We believe that there may be particular measures that the Department can implement, consistent with applicable law, to get more timely, accurate, and complete information from officers who have been involved in high-profile incidents. We intend to address this issue and other particular issues, such as ways to equalize overtime opportunities for members of the Internal Affairs Bureau, in the near term.

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PART I

I. INTRODUCTION

The Commission to Combat Police Corruption ("The Commission") was established by Mayor Rudolph W. Giuliani on February 27, 1995 through Executive Order No. 18.[1] The Commission is an ongoing board, independent of the Police Department, whose mandate is to monitor and evaluate the anti-corruption polices and practices of the New York City Police Department ("the Department"). In accordance with its mandate, the Commission has undertaken numerous studies related to how the Internal Affairs Bureau ("IAB") and other non-IAB groups within the Department perform their anti-corruption responsibilities. The Commission has also examined numerous penalty aspects of the disciplinary process by looking at how the Department disciplines members of the service who engage in particular acts of misconduct.[2] Additionally, in 1999, the Commission conducted a comprehensive review of the disciplinary system and published a report with its findings.

That report, *The New York City Police Department's Prosecution of Disciplinary Cases* ("*The Prosecution Study*"), focused on the disciplinary process as a whole, as opposed to an examination of more particular facets of the disciplinary system which the Commission had studied in the past. The Commission evaluated numerous aspects of the Department Advocate's Office ("DAO") -- the unit within the Department responsible for the prosecution of disciplinary cases. The Commission conducted this review because of the important role that an effective disciplinary system plays in any department's efforts to deter and effectively deal with corruption and misconduct. A fair and expeditious system is necessary for instilling public confidence and the confidence of members of the service. From the public's

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

[2] *See* Appendix C for a list of the Commission's prior published reports.

perspective, it is important that the public believe that the Department is willing and capable of disciplining its members and will not tolerate misbehavior. From the perspective of police officers, if they do not believe in the system and mistrust grows, then morale falls and the system's ability to prevent future misconduct is diminished.

As a result, the Commission conducted an extensive study of the Department's disciplinary system and examined issues related to DAO.[3] Specifically, the Commission examined the qualifications, training, and supervision of the Advocates, the individuals responsible for prosecuting disciplinary cases. The Commission also looked at how cases were handled from intake to the ultimate sign off by the Police Commissioner, including how cases were prepared and presented by the Advocates in the Department's Trial Rooms and the hearing rooms of the Office of Administrative Trials and Hearings ("OATH").[4] This evaluation, therefore, also included to a certain extent analyzing the role and conduct of the judges responsible for hearing the cases. Finally, a significant portion of the report also assessed the nature and the extent of delays that were evident throughout the entire disciplinary process.

In undertaking this review, it is also noteworthy that the Commission has a unique and all-encompassing perspective in evaluating the disciplinary process. As part of its monitoring function, the Commission has the opportunity to view the system as a whole, both before and after DAO's involvement. First, the Commission routinely receives and reviews logs generated by the Department upon the receipt of an allegation of misconduct or corruption against a member of the service. Once an allegation is received, it is forwarded to IAB or other investigative unit for investigation. The Commission regularly

[3] The Commission also evaluated the effectiveness of the Special Prosecutor's Office ("SPO"), the other arm of the disciplinary system, which was responsible for prosecuting the most serious instances of misconduct and/or corruption. Since the release of *The Prosecution Study*, the two offices have been consolidated.

[4] OATH is a City Charter agency that is authorized to adjudicate some NYPD disciplinary cases.

reviews the subsequent IAB investigations which are then, at times, forwarded to DAO for prosecution. Commission staff also observes a significant number of trials and review a number of closed DAO files. Finally, the Commission receives and analyzes paperwork for all closed disciplinary cases, including decisions after trial and plea dispositions. Consequently, the Commission has the ability to see the system as a whole from the intake of a complaint through its ultimate resolution and, therefore, has comprehensive perspective in analyzing each step of the disciplinary system.

Both *The Prosecution Study* and this follow-up study were conducted prior to the appointment of the Commission's current Commissioners.

II. PRIOR FINDINGS & RECOMMENDATIONS

In *The Prosecution Study*, the Commission found and reported on various areas within the disciplinary system that needed improvement. First, the Commission found significant delay throughout the entire adjudication process. This delay occurred at all stages of the proceedings, commencing from the referral of a case to DAO upon the completion of an investigation through the final approval of the disposition. While delays occurred at all stages, some particularly significant delay occurred, for instance, from the filing of charges to the start of the administrative trial. More specifically, approximately half of the trial cases took eight months or more for the trial to begin, another 25% took over fourteen months, and an additional 10% took nearly two years or more until the start of the trial. The delay also affected all types of cases and was not exclusive to any particular type of case.

As a result, the Commission recommended that DAO develop a system whereby it track cases closely in order to identify and address specific areas of delay. Additionally, the Advocates should be responsible for providing to the First Deputy Commissioner a list of, and explanation for, cases that have

been pending for six months or longer. The Commission also recommended that Advocates more aggressively monitor corresponding criminal cases and expeditiously proceed with the Department's administrative case upon the completion of the criminal case.

With respect to the Department, the Commission recommended that it evaluate where additional personnel would help decrease delays throughout the system and explore ways in which cases could be reviewed more quickly by the First Deputy Commissioner so as to expedite the plea and trial process. In furtherance of this goal, the Commission also recommended that the Trial Commissioners manage cases more aggressively, giving particular attention to old cases and scheduling a greater number of trials each week.[5]

In addition to the issue of delay, the Commission found that many cases which lacked the proof necessary to succeed at trial lingered in the Department for extensive periods of time before ultimately being dismissed. While many of these cases were substantiated by the Civilian Complaint Review Board ("CCRB"),[6] this occurred with cases that originated in other Department investigative bureaus as well. The Commission therefore recommended, among other things, that Advocates contact witnesses, evaluate cases, and, where necessary, dismiss cases earlier in the process.

The Commission noted that the Department faced unique issues with cases which emanated from CCRB since it was responsible for substantiating charges against an officer while DAO was responsible

[5] The Commission found that one source of delay in the process appeared to be the inefficient use of the Trial Rooms. The Department's Office of the Deputy Commissioner - Trials ("DCT") is the unit responsible for scheduling and hearing disciplinary cases in the Department's Trial Rooms. The DCT consists of the Deputy Commissioner and four Assistant Deputy Commissioners who act as judges in the Trial Rooms. For the purposes of this Report and unless otherwise noted, the five judges will be referred to as "Trial Commissioners." For further discussion of the DCT, *see infra*, at page 36.

[6] Through a revision in the City Charter in 1993, the handling of civilian complaints against police officers was restructured and CCRB was created. CCRB has jurisdiction to conduct primary investigations of complaints against police officers that allege the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language. The CCRB Team of DAO refers to the group of Advocates who are responsible for prosecuting cases that have been referred to

for prosecuting the cases. This often led to a conflict between the two agencies with CCRB, at times, contending that the Department was not prosecuting these cases vigorously enough, and the Department asserting that the cases substantiated by CCRB could not be successfully prosecuted. Additionally, the process of having both CCRB and the Department working on these cases at different stages led to a delay in the time that it took to resolve them. Consequently, the Commission recommended that the prosecution of CCRB-generated cases should be handled in-house by CCRB. This type of system would provide an incentive to CCRB to substantiate only those cases which could be successfully prosecuted and would prevent the Department and CCRB from being able to blame each other for the failure of CCRB prosecutions. Furthermore, having one agency investigate and prosecute these cases should reduce the amount of time that it takes to adjudicate these cases.

The prior police and mayoral administrations announced their intention to implement this recommendation and entered into an agreement to expand CCRB's power to give it prosecutorial authority. This agreement envisioned that CCRB would prosecute its own cases at OATH rather than at the Department's Trial Rooms. The police unions, however, argued that this prosecutorial authority exceeded the power granted to CCRB pursuant to the City Charter and filed a lawsuit to prevent the change. In July 2001, the Supreme Court ruled against the unions and decided that the expanded authority would further, rather than violate, CCRB's mandate. However, the court found that only a member of the Department may hear cases where the penalty may be termination from the Department. Consequently, CCRB could prosecute these cases, but not at OATH where the administrative judges are not members of the Department. Both parties appealed. The Appellate Division then ruled that CCRB could prosecute misconduct cases, but all the cases, not merely termination cases, must be heard by Department officials.

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the Department from CCRB.

Due to current budget constraints, CCRB has reported that it is currently unable to take immediate action to affect this change. Also as a result of the decision, OATH has indefinitely suspended all trials of NYPD personnel.

Another Commission finding was that while some Advocates competently presented cases in the Trial Rooms, many Advocates did not possess sufficient trial advocacy skills and legal knowledge to successfully prosecute disciplinary cases. There was also a lack of case preparation and insufficient witness contact. The Commission found that these deficiencies in case preparation and trial presentation detrimentally impacted the viability of cases, just resolutions of cases, and the perception that the Department is committed to weeding out and deterring misconduct. Consequently, the Commission recommended that the Department hire qualified attorneys, preferably with trial experience. Advocates should also be required to contact witnesses earlier in the process to ascertain the viability of cases and should be required to document all work conducted on a case.

The Commission also found that some supervisors lacked the necessary legal knowledge and trial advocacy experience to properly supervise and train the Advocates. Therefore, the Commission recommended that supervisors with managerial and trial experience be hired and provide more extensive supervision and regular training for case preparation and trial presentation. The Department should also develop and utilize more trial advocacy programs as mandatory training for the Advocates.

More generally, the Commission found that the Department treated the disciplinary unit more as a police bureau than a legal bureau. This conclusion was based on how DAO was structured, staffed and managed. For example, supervisors were selected based on rank and police experience rather than on their legal experience, trial ability, and management skills. Further, during their tenure at DAO, Advocates were, at times, assigned to policing duties thereby interrupting their prosecutorial role and responsibilities

within DAO. In order to increase the efficiency and productivity of DAO, the Commission recommended that Advocates and supervisors be selected based on legal, trial, and management skills. Additionally, DAO should only permit members of the service who are committed to prosecuting cases to join DAO, and these officers should not be required to rotate out of the bureau for patrol duties.

The Commission also recommended that SPO, a separate unit of the Department with its most experienced attorneys,[7] and DAO be consolidated and headed by a Deputy Commissioner of Prosecutions to facilitate the sharing of caseloads and increase the stature of the office. During the pendency of writing *The Prosecution Study* the Department reported that it had consolidated the two offices and while Assistant Special Prosecutors still prosecuted cases, they were officially under the auspices of DAO. Then, while writing this Report, SPO was officially disbanded, and the remaining personnel from SPO became Advocates in DAO.

Further, the Commission found that, at times, there was visible tension between the Trial Commissioners and the Advocates in the Trial Rooms. The open nature of the lack of respect between these two entities risked tainting the perception of a fair, just, and professional disciplinary process. The Commission, therefore, recommended increased and regular contact between the Department Advocate and the Deputy Commissioner of Trials to discuss areas of mutual concern.[8]

Finally, as part of its study, the Commission examined the Department's conviction rates. While the Commission recognized that one could infer that an acceptably high conviction rate means that the system is working sufficiently, the Commission also found that conviction rates alone were not a sufficient measure of the effectiveness of the disciplinary system. In addition to the findings and recommendations

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[7] *See supra*, at footnote 3 for a discussion of SPO.

[8] Such issues may include the scheduling of cases in the Trial Rooms, inappropriate behavior by an Advocate, or

outlined above, the Commission found that the public and members of the service must have confidence in the disciplinary process and perceive it as fair and effective for it to deter and prevent misconduct. If members of the service believe that the Department's presentations in the Trial Rooms are weak or inadequate to secure convictions, they may believe the Department is not committed to deterring and preventing misconduct. Further, if convictions are nevertheless obtained, members of the service, and observers in general, may believe that the system is biased against Respondents. Also, if, as the Commission found in *The Prosecution Study*, the Trial Commissioners routinely assist the advocates in eliciting the evidence necessary to prove the charges, observers may similarly question the fairness of the system.[9] The Commission, therefore, found that, notwithstanding its conviction rates, the Department should implement changes recommended by the Commission to the extent possible and continue to explore what additional changes are necessary to improve the disciplinary process.[10]

Throughout this Report, the Commission will report on its current findings and discuss any changes the Department has made or has reported that it intends to make since *The Prosecution Study*.

III. CURRENT FINDINGS AND RECOMMENDATIONS

Based on this follow-up study, the Commission found that:

1. Significant delays still exist in the progression of all of the closed cases through the Department's disciplinary system. This overall delay may impact the viability of prosecutions, the

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evidentiary problems with the presentation of cases.

[9] Such assistance was common in the Trial Rooms. The Commission recognized, and continues to recognize, that as fact finders for the Department, the Trial Commissioners have a duty to elicit the facts in order to make those findings. However, as discussed throughout this Report, the Commission believes that Advocates must improve their presentations in order to better perform their function and should not rely on the Trial Commissioners' assistance.

[10] For an analysis of the Department's conviction rates calculated for this Report, *see* Table 7 at page 71.

deterrence value on future misconduct, the impression of fairness to members of the service who are ultimately exonerated, and the public's perception that the Department is willing to discipline its own members. For example, in the Commission's main sample, 50% of the cases took almost ten and one-half months to resolve.[11]

2. Even greater delays were found in this follow-up study when only those cases that went to trial were compared with the same category of cases from the original *Prosecution Study*. In fact, there was an increase of three months in the time the trial cases were pending for 50% of the cases, and an increase of six months for the next 25% of the cases. Lengthier delays, therefore, were observed for the entire time the cases were open. Contributing to this increase was the additional time it took to commence trials, for the Trial Commissioners to issue decisions after the conclusion of the trials, and even in the time between the issuance of the Trial Commissioners' findings and recommendations and the final closing dates. Particularly noteworthy was that in fourteen percent of the cases, there was at least a year delay between the conclusion of the trial and the Trial Commissioners' decision. This raises concerns about who is responsible for supervising the Trial Commissioners and ensuring their productivity. During the drafting of this report, a new Deputy Commissioner of Trials was appointed. He has created new time frames for the issuance of decisions.

3. There was still delay observed in the scheduling of trials, and cases were routinely adjourned for three-to-four months, many times reportedly due to the unavailability of space in which to try the case. However, based upon the Commission's observations that there were Trial Rooms that were not in use on

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[11] This statistic was based on the Commission's main sample, calculated from cases closed by the Department between January 2001 and November 2002. Subsequently, the Commission computed updated statistics covering the first two quarters of 2003, as further discussed at page 72. Unless otherwise specified, all statistics refer to the Commission's initial main sample.

an almost daily basis, it appears that the scheduling mechanism being used by the Department needs to be more accurate and efficient.

4. The Department dismissed significantly fewer cases prior to trial during this study than in the original *Prosecution Study*. This is a positive step as it could signify that cases are being reviewed more carefully before charges and specifications are filed. Further, of the DAO files reviewed by the Commission, all of the dismissals except one were found to be appropriate. However, lengthy delays still exist in those cases that are eventually dismissed prior to trial as half of the cases were pending for over thirteen months before they were dismissed.

5. There was improvement since *The Prosecution Study* in the category of cases which were adjudicated through a negotiated guilty plea in that they were progressing through the system in less time. While commending the Department's improvement in decreasing the delay in this category of cases, 50% of them were still pending for almost seven months before being resolved.

6. When comparing CCRB-generated cases to Department-generated cases, CCRB-generated cases were generally pending for longer periods of time. Even though CCRB-generated trials took less time, in general, to complete than Department-generated trials, in all but the 90th percentile, they were pending longer before the trial commenced than Department-generated cases. Furthermore, CCRB-generated trial cases were generally pending in the disciplinary system longer than those cases referred by Department sources. This is potentially problematic because when CCRB concludes its investigation and refers the case to DAO, there may have already been a lengthy delay since the date of the alleged misconduct. Further delay in prosecuting the case may hamper the Department's chances of obtaining a finding of guilt.

7. The Department mandates that those administrative trials that are expected to last more than one day be scheduled to be heard over continuous days. Therefore, when trials are scheduled, the Trial

Commissioners ask both parties for an estimation of the number of days that the trial will take in order to adhere to this scheduling directive. Many cases are, however, scheduled for trials before the Advocates have spoken with their witnesses and reviewed the evidence available to them. This often results in an overestimation of the number of witnesses an Advocate will be presenting and the length of time each witness' testimony will take to complete. This, in turn, leads to the actual trials concluding in less time than originally anticipated. Since it is not an option to schedule proceedings at the last minute, many times the consequence of this overestimation of the quantity and nature of the witnesses results in Trial Rooms not being utilized while cases are adjourned for periods of three-to-four months due to a lack of available space in which to hear these trials.

8. The Advocates are not contacting complainants and witnesses sufficiently early in the process, and at times, it appears that the Advocates are not contacting complainants and witnesses at any time during the pendency of a case. This lack of timely contact may have, in some cases, resulted in the Advocate's inability to produce a witness at trial, either because the witness' whereabouts were unknown or because the witness became uncooperative. In some cases, the failure to present live witness testimony may have necessitated the dismissal of the charges against subject officers or the presentation of hearsay cases which almost always resulted in not guilty findings. Furthermore, due to the often lengthy time period between the alleged misconduct and CCRB's referral of the case to DAO for prosecution, failure to contact the witnesses early on may contribute to the overall poor conviction rate of CCRB cases that is discussed in the following finding.

9. Guilty findings for those cases transferred from CCRB to the Department for prosecution were significantly lower than those in the cases that were investigated and substantiated by a Department investigative section. The Department-investigated cases concluded with a guilty finding either through

pleas or after trial in 63.9% of the cases while CCRB-generated cases ended with a guilty finding in only 36.9% of the cases. When only those cases that went to trial were compared, CCRB cases had a conviction rate of only 37.8% compared to their Department counterparts which had a conviction rate of 78.3%.[12]

10. Although the Department claims that it has a working Case Analysis Tracking System ("CATS") in place that the Advocates use to retrieve information and supervisors use to track cases, a random comparison of data provided on the CATS sheets with information contained in the closing paperwork for the disciplinary cases revealed that there were often discrepancies between the information in these sources. Further, many CATS sheets were missing relevant information or contained information that was obviously incorrect. The inaccuracies that the Commission found raise questions about whether the system is actually being used by the Advocates as an informational resource. Given the problems with the data in CATS, there are further concerns raised if the Department is relying on the information contained therein, at all.

11. DAO is staffed by too many inexperienced law students, recent graduates, and members of the service who do not possess significant trial experience. Consequently, many of the Advocates lack significant trial advocacy skills or legal experience that more experienced practicing attorneys would possess. During the pendency of this Report, however, in an attempt to raise the experience level of the Advocates, the Department hired civilian attorneys with trial experience to replace members of the service who have left DAO. Additionally, DAO reported that it does not intend to hire any more law students.

[12] As discussed below at page 70, it is the Department's policy to prosecute all cases substantiated by CCRB, notwithstanding proof problems. While this policy may be beneficial, it undoubtedly contributes to the difference in conviction rates, an issue that should be addressed.

12. Members of the service have unique issues with respect to their assignment to DAO. In the past, members of the service were only required to commit to a two-year term within the unit. They were then able to transfer out, depriving DAO of any experience that they gained during their assignment there. Although a time commitment is no longer required, the same issue is present. Further, if a member of the service assigned to DAO is promoted, he is transferred out of DAO and put into a patrol unit for up to six months without being replaced.[13] In addition to the disruption this causes DAO, this may be an issue in the future if these Advocates have to prosecute some members of the service with whom they worked while on patrol.

13. There has been an improvement in DAO's efforts to fill supervisory positions with experienced personnel. Supervisors are being chosen according to legal experience and leadership capabilities rather than police experience and rank. As a result, Team Leaders, the Managing Attorney, and the Training Coordinator have outside legal experience, and many are also former trial attorneys.

14. Even with the aforementioned improved staffing, however, after observing trial presentations and conducting a file review, it does not appear that the Team Leaders are performing their supervisory function in an adequate manner. Documentation of supervisory reviews or other supervisory instructions, which should be conducted regularly, was found in only slightly more than half of the files reviewed. When there was documentation, often it was some unclear notation with no date or follow-up information or was merely a sign-off by a supervisor regarding either the approval of charges or a change in the duty status of the subject officer. This lack of documentation raises concerns about whether or not supervisory reviews are being conducted at all, as well as how effective they are. Concerns are further raised about the level of supervision after observing some Advocates' presentations in the Trial Rooms. In 25% of the

[13] The male and female pronouns will be used interchangeably throughout this Report

trials observed, there were trial preparation issues which negatively affected the presentation of the cases. Overall, the supervision provided to the Advocates appears to be inadequate to compensate for their lack of experience.

15. A greater sporadic supervisory presence was observed in the Trial Rooms than had been observed during *The Prosecution Study*. Team Leaders and Managers were, at times, present in the Trial Rooms when they were second seating an Advocate. Their value in assisting Advocates, however, was, at times, limited because of the failure to include pre-trial preparation as part of the second seating role, and instead, limiting the function of second seating to providing assistance during the course of the trial.

16. The Managing Attorney is responsible for supervising all of the Advocates. She is involved with management decisions, tracking cases, and dealing with issues that arise in the Trial Rooms or with the preparation of cases. While the Commission recognizes the budgetary constraints that the Department is facing, given the Managing Attorney's numerous responsibilities, an additional Managing Attorney would be beneficial.

17. While the Department reports that it is more committed to providing training on trial advocacy skills, it appears that too many of the reported programs still focus on topics unrelated to trial skills and case preparation**.**

18. There has been some observed improvement in the trial skills of the Advocates. Additional improvement in this area, however, is necessary. Some Advocates continue to have difficulty conducting direct and cross examinations of witnesses and establishing the proper foundation to admit items into evidence. The weaknesses in trial skills appeared to affect the quality of many prosecutions.

19. When trial presentations were not conducted in a competent manner, often Trial Commissioners intervened. When Trial Commissioners intervene in order to help Advocates prove their

cases, it risks tainting the perception of the Trial Commissioners as fair and impartial decision-makers in the disciplinary process.

20. Insufficient case enhancement continues to be a considerable problem. Advocates, at times, did not appear to be: subpoenaing necessary records to help prove their case at trial; researching law applicable to the case; speaking to witnesses to clarify any gaps or inconsistencies within their interviews or between their statements and other extrinsic evidence; or further developing evidence beyond what was given to them by the initial investigator. Even when additional evidence that was needed to support the charges was readily available or easily obtained, some Advocates still failed to acquire it. This issue was even noted in trials that were conducted by DAO's most experienced attorneys, who generally handle the most serious cases. This calls into question the overall standard that DAO has set for its attorneys and the quality of their supervision.

21. In those cases reviewed where the officer was charged criminally with the same misconduct that formed the basis for the administrative charges, there was rarely information in the files regarding the strengths or weaknesses of the criminal case, evidentiary matters that arose during its pendency, or the availability of witnesses. There was also minimal documentation of any contact with the criminal prosecutor. Furthermore, there was generally too much delay between the conclusion of the criminal cases and the resolution of the disciplinary cases.

22. Overall, the atmosphere in the Trial Rooms has significantly improved. The Trial Commissioners' attitude of frustration is less apparent, and the general demeanor of the parties seems more professional and tolerant.

Consistent with these key findings, the following are recommendations that address the quality of prosecutions and the issue of delay in the Department's adjudication of disciplinary cases.

1. The Commission continues to support its recommendation from the original *Prosecution Study* that the responsibility for prosecuting those cases substantiated and referred by CCRB should be given to CCRB. However, the Commission recognizes that the immediate implementation of this recommendation may not be plausible due to the budgetary restraints that the City is currently facing.

2. The Trial Commissioners should develop a uniform scheduling system that is accurate and efficient so that Department trials can be conducted in both Trial Rooms on a daily basis. This may prevent cases from being adjourned for three-to-four months and, therefore, alleviate some of the delay that exists in the disciplinary system. One way to utilize the Trial Rooms in a more efficient manner would be to schedule a pre-trial conference approximately one month before the trial. Prior to this conference, the Advocate would speak with his witnesses and evaluate the other evidence in his case. At the pre-trial conference, a more realistic estimate of the time necessary to complete the trial would be given. Also, any stipulations or other legal arguments could be settled during this conference. Finally, any scheduling problems that have developed since the prior adjourn date could be addressed. This conference would permit the Trial Commissioner to more accurately ascertain the future availability of a Trial Room on the trial calendar. Since this space would be available approximately one month in advance, the Trial Commissioners could then schedule other cases to fill this space. Trial Commissioners should also prioritize older cases.

3. The Department should develop a computer system with the ability to track the progression of disciplinary cases through the administrative system while these cases are still pending. This system should have the ability to capture information about the delays routinely experienced during each case's

progression through the system. Furthermore, the Department should explore ways to increase the veracity of the data entered into and contained within its current informational system.

4. The Department should explore ways to enable the First Deputy's Office to review cases more quickly so plea offers can be made earlier in the process. If these reviews occurred earlier in the progression of the case, offers could be communicated to the Respondents' attorneys prior to the first negotiation date, thereby possibly alleviating the necessity of adjourning cases so the Respondents could consider these offers.

5. The Department should continue its new policy of hiring experienced civilian attorneys and not recruiting members of the service in law school, which had been done in the past. More experienced lawyers could, then, serve as mentors for those Advocates who have little or no experience.

6. DAO should continue its recently implemented practice of assigning personnel to supervisory positions based on legal and management skills, rather than on police experience. Also, at least one other Managing Attorney with similar outside trial experience and a supervisory or management background should be hired. If this were done, both Managing Attorneys could share the responsibility of supervising all of the Advocates, and, therefore, provide a greater and more substantial supervisory presence. The Commission further recommends that all Team Leaders similarly be required to have prior trial experience outside of DAO or a demonstrated record of excellence within DAO.

7. Team Leaders should be obligated to conduct more substantive reviews with the Advocates whom they supervise and to monitor their performance in the Trial Rooms more closely. Additionally, personnel from the First Deputy Commissioner's office should maintain a presence in the Trial Rooms to familiarize themselves with ongoing issues and areas in need of improvement.

8. Advocates should be provided with more extensive supervision and trial advocacy training. Supervisory reviews should be enhanced, and the Advocates should receive additional input about their case preparation from the supervisors. Supervisors should review, in advance, the questions that the Advocates plan to ask at trial to ensure that they are conducting productive examinations of witnesses. Supervisors should also determine whether there is any outstanding evidence that will be necessary to establish a legally sufficient case. Further, the Advocates should be required to document supervisors' instructions and their own follow-up actions so that the supervisors can ensure that their directives are being followed.

9. While there are some cases where dismissals are appropriate due to either a lack of sufficient evidence or the discovery of evidence which exculpates the officer or mitigates against formal discipline, the reasons for the dismissal should be documented in the case file, and a supervisor should review and approve these decisions in writing. Additionally, the underlying evidence that supports these dismissals should also be included in the Advocate's file. Finally, in most of these cases, the Advocates should move to dismiss charges in a more timely manner.

10. Training for Advocates should focus more on evidentiary issues and elementary trial matters rather than unrelated topics. The trial technique workshops reportedly provided by the Department should also be mandatory for all Advocates and not just those who are newly hired. Furthermore, to be effective, the workshops should be taught by experienced trial attorneys.

11. The increased practice of second seating inexperienced Advocates during trials is a positive trend and should continue. The attorneys who engage in second seating, however, should be familiar with the facts of the case. They should assist the Advocate with the pre-trial preparatory work as well as providing advice during the trial.

12. Witnesses should be interviewed as a matter of course upon receipt of the case, whether or not there is an expectation that the case will proceed to trial, so the Advocate can prepare and familiarize himself with the case. This may improve the likelihood that the witnesses will continue to cooperate with the Department and will provide more detailed and accurate accounts of the reported misconduct. These improvements, in turn, could decrease the dismissals of cases prior to trial or the necessity of presenting cases supported by hearsay evidence, thereby increasing the Department's level of success in the Trial Rooms. In the alternative, early contact with witnesses will enable the Advocates to determine whether cases are viable in a more timely manner.

13. The Advocates should engage in more pre-trial preparation of the Department's witnesses so they can become more familiar with the testimony that will be given. This would enable the Advocates to develop more meaningful examinations of their witnesses and prevent any undesirable surprises during the trial. The Advocates should become more familiar with the prior statements of all witnesses, both their own and the Respondents'. This would allow the Advocates to clarify any inconsistencies between their witnesses' current testimony and their prior statements and to conduct more focused and substantive cross-examinations of the Respondent's witnesses.

14. All steps such as supervisory reviews, witness contact, and other investigative steps should be documented on worksheets in the Advocate's file along with the dates on which these activities took place and any follow-up action that is required. This follow-up, once completed, should also be documented and dated.

15. When an officer who is the subject of a disciplinary hearing has a concurrent criminal case pending, the Advocate should personally keep abreast of the criminal case and any developments that occur during its pendency. The Department should also scrutinize cases closely so a decision may be

made on a case-by-case basis about whether the Department can proceed administratively without jeopardizing the criminal prosecution. Furthermore, in those cases where the subject officer is on a form of probation which enables the Department to summarily terminate him, and termination is possibly the appropriate remedy, DAO should remain vigilant about contacting the Employee Management Division and expeditiously obtaining its recommendations regarding whether to terminate the officer or serve the charges and specifications upon him.

IV. METHODOLOGY

As in *The Prosecution Study*, the Commission utilized various sources to conduct its study of DAO and the disciplinary process. First, the Commission compiled an extensive database of statistical information for 1532 cases in order to evaluate the issue of delay in the disciplinary system. Commission staff also met with Department officials regarding the daily operations of DAO and reviewed numerous case files prosecuted by DAO. Finally, Commission staff observed a significant number of negotiations and trials in the Trial Rooms since October 2000. For *The Prosecution Study*, the Commission had made observations at OATH as well as at the Department. However, due to the minimal activity at OATH during the early writing of this Report and its subsequent suspension of activity, the Commission focused on DAO more particularly for the current study.

A. Time Frames for Adjudicating Cases

In *The Prosecution Study*, the Commission assessed the issue of delay throughout various stages of the disciplinary process, from DAO's receipt of the case to its formal closing. To make this assessment, the Commission compiled statistical data based on information received from the Department. As a result

of that review, the Commission found significant delay existed throughout virtually all stages examined. Therefore, for this study, the Commission did a similar analysis in order to ascertain what, if any, improvements had been made in decreasing the delay during the process. In order to conduct this analysis, the Commission reviewed the data for all disciplinary cases closed between January 2001 and November 2002. The Commission, again, compiled an extensive statistical database from this information, for 1226 cases, to assess the delay during significant periods throughout the process. Then, due to the delay in the release of this Report, the Commission acquired more current data, for the first six months of 2003. Those 306 cases were separately analyzed and the statistics were compared with those of the main sample.

B. Meetings with Department Officials

Commission staff met with Department officials at DAO and with the Deputy Commissioner - Trials. These meetings addressed the structure, functioning, role and responsibilities of the respective entities. They also focused on the Advocates, and their case preparation, training, and supervision. During the writing of this Report, the Commission also routinely spoke with DAO personnel -- Advocates and supervisors -- about issues related to specific courtroom observations or cases.

C. File Review

Commission staff reviewed 103 closed disciplinary cases that were prosecuted by DAO. Some were selected randomly from lists of closed disciplinary cases, and others were selected due to the type of case or issue present.

First, cases were randomly selected from the 810 disciplinary cases received from the Department that had been closed between January 2001 and October 2001, inclusive. The Commission selected every

tenth case that involved allegations of misconduct against a uniform member of the service.[14] The Commission also sought to review cases where the officer had a criminal case pending simultaneously with the Department's administrative case. These cases were selected in order to ascertain what if any different substantive issues affected the adjudication of the administrative case as a result of the criminal case. The Commission also looked at the issue of delay as it related to the criminal prosecutions. The Commission, therefore, selected the first two cases within each applicable month where criminal charges were filed.[15] Finally, an additional twelve cases were chosen for review because Commission staff determined that they contained unusual or notable issues for examination, such as where the penalty appeared to be incompatible with the charges.

The files contained a variety of paperwork, depending on the type of case and its ultimate resolution. Paperwork ranged from documentary evidence necessary at trial, such as medical or telephone records, to background information on an officer, such as his personnel history. Generally, all files contained the Respondent's Central Personnel Index ("CPI") which records a summary of allegations made against an officer as well as certain personnel-related information. While this information would not necessarily be relevant evidence at trial, it is necessary in order to determine what, if any, negotiated penalty should be offered. Other files, such as cases that were ultimately dismissed, may also contain a written motion outlining the charges and the reasons for the dismissal. Commission staff reviewed all the documentation in each file to assess what, if any, case preparation was done, ascertain if all relevant paperwork was in the file, and evaluate if the case was disposed of properly.

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[14] The Commission also receives closed disciplinary files of civilian members of the service, who may avail themselves of a less formal disciplinary process than that of DAO. Therefore, when the tenth case pertained to a civilian member of service, the next case involving a uniformed member of the service was then selected for review.

[15] Where the case had already been selected for review by the random selection described above, the Commission selected the next case involving a criminal case for review. Additionally, there was one month when criminal charges had been

Subsequent to its initial selection of cases as outlined above, the Commission sought to review more current cases using the same methodology. However, the Department refused to provide the Commission access to the requested files.

D. Trial Room Observations

From October 2000 to the present Commission staff observed proceedings in the Department's Trial Rooms. While the Commission periodically attended proceedings from October 2000 to December 2001, it maintained an almost daily presence in the Trial Rooms since January 2002. Commission staff observed all types of proceedings, including plea negotiations, trials, mitigation hearings, and motions to dismiss charges and specifications. These observations included different Advocates, all Trial Commissioners, and a multitude of allegations. The Commission also maintained a daily log regarding the activity or lack of activity taking place in the Trial Rooms. In total, Commission staff was present in the Trial Rooms for 207 days and observed 105 trials -- mostly in whole, but some in part. On 43 other days, Commission staff was available to attend the Trial Rooms, but were informed that no activity was taking place there. These extensive observations in conjunction with statistical data and file reviews form the basis for the conclusions reached in this Report.

V. BACKGROUND\DESCRIPTION OF THE ADJUDICATION PROCESS

This section will describe how disciplinary cases proceed through the Department and, more specifically, the role of DAO in the disciplinary process.

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filed against only one police officer and another month where no criminal charges had been filed against any police officer

A. Consults

DAO may receive a case from a variety of investigative sources.[16] The most serious allegations of misconduct or corruption are investigated by IAB while investigations into more minor offenses may be conducted by Borough and Bureau Investigations Units or by an officer's patrol unit. Additionally, a case may be investigated by CCRB.

Generally, at the completion of an investigation when the allegations have been substantiated, DAO is contacted and determines what, if any, charges are to be brought against an officer. Additionally, in some non-CCRB cases, the Advocate may be contacted prior to the formal closure of an investigation in order to ascertain the legal sufficiency of the evidence obtained during an investigation or to discuss further investigative strategy.[17] These conferrals are called consults and are the first contact that an Advocate has with a particular case.[18]

During the consult, the Advocate prepares a consultation sheet which recommends what, if any, charges and specifications should be approved. DAO supervisors then either approve or disapprove the recommended charges. They may also direct that the investigator do additional work prior to the drafting of any charges. Until recently, the Advocates were assigned to conduct consults on a rotating basis and generally, the Advocate who conducted the consult was assigned the case.

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[16] Generally, investigations commence after a complaint is received by the Department, often through its Command Center. Then, based on the nature of the misconduct, any corresponding allegations, and/or the seriousness of any injuries sustained, a determination is made whether the Department keeps the case to investigate or whether CCRB is the more appropriate agency to conduct the investigation.

[17] When an Advocate conducts a consultation that does not result in charges, this is referred to as an "open consult." The case is still assigned to that Advocate, and during the period of the open consult, further investigation will be conducted by an investigator before additional review by the Advocate.

[18] CCRB investigations must be independent from the Department, and, therefore, there are no consults prior to closure of the investigation. *See* New York City Charter, Chapter 18-A (Civilian Complaint Review Board), § 440.

Department officials reported for this Report some recent changes in the consultation process. One change involves conducting more comprehensive and inclusive consults than in the past. Currently, the Advocate and his Team Leader determine the appropriate charges to levy. Additionally, in the more serious cases, during the consult, the investigator confers not only with the Advocate, but with the Team Leader, Managing Attorney, and Commanding Officer of DAO. Finally, whereas in the past, the Advocate who had conducted the consult was assigned the case, this has been modified. Now, as more fully discussed below, there is a group Advocates who conduct the consults.[19] Generally, the cases are then assigned to the applicable Team Leader who assigns the case to an Advocate on the Team, although for some less serious cases, the Advocate who conducted the consult may be assigned the case. This change is a positive step both to ensure that the most serious cases are adjudicated appropriately and to demonstrate that the Department is committed to the prosecution of the most serious instances of misconduct.

B. Charges and Specifications

After charges and specifications have been approved, the Advocate and the Team Leader draft the applicable charges and forward them to the Managing Attorney for final approval. The charges are then served on the officer at DAO.[20] In *The Prosecution Study*, the Commission recommended that in order to shorten the amount of time it takes to serve an officer, the Department should consider alternatives such as the service of charges at the officer's command. Since that report, no such change has occurred and an officer must still be served at DAO while he is on duty.

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[19] *See infra*, at page 29 for a description of DAO staffing.

[20] Patrol Guide § 206-06 mandates that charges and specifications be served on a subject officer within six weeks after receipt by the Department, absent exceptional circumstances. In *The Prosecution Study*, the Commission suggested that this time frame be shortened.

The DAO intake process is slightly different with respect to CCRB cases. Upon the completion of an investigation, the CCRB Board determines what allegations are to be substantiated, and the case is forwarded to DAO for prosecution. All CCRB cases are handled by a specific team of Advocates. When the Advocate receives the investigative folder and the recommendation for charges from CCRB, the Advocate evaluates the case and determines if the case is appropriate for "fast-tracking."[21] If the case is fast-tracked, then charges and specifications are not served. Instead, the case is referred to the officer's command for a command discipline to be imposed.[22]

C. Negotiations/Trial

After charges and specifications are served, the Advocate conferences the case with supervisors to determine what, if any, plea offer is appropriate. When deciding upon an appropriate offer, the Advocate is supposed to evaluate among other factors, the nature and severity of the charges and the officer's prior disciplinary history. Thereafter, the case is reportedly "steered" by a group led by the First Deputy Commissioner, and the steering committee makes a determination of what, if any, plea offer will be conveyed.[23] The case is then set down for a "negotiation," which is the first date that an officer appears in the Trial Room. If the Department is seeking termination, no offer will be conveyed and the case is then

[21] Cases eligible for fast-tracking are cases that allege relatively minor offensive language, discourtesy, or abuse of authority.

[22] A command discipline is "non-judicial punishment available to a commanding/executive officer to correct deficiencies and maintain discipline within the command." Patrol Guide §206-02. The maximum penalty that may be imposed for a command discipline is the forfeiture of up to ten vacation days. Command disciplines remain part of an officer's disciplinary record for up to three years. *See* § 206-03 & -04 for offenses subject to command discipline and applicable penalties.

[23] Department officials report that steering takes place approximately once a week. The Department Advocate and Commanding Officer also participate in the steering process.

set down for trial.[24] In all other cases, an offer is conveyed on the first negotiation date.[25] The Respondent may accept the plea offer and plead guilty to the charges on that date, or he may request another negotiation date in order to consider the proposed offer.

The Department's general policy is that if the Respondent has not accepted the negotiated penalty and pled guilty on the second negotiation date, the plea offer is withdrawn and the case is scheduled for trial. If the Respondent subsequently wishes to plead guilty, a "mitigation hearing" is conducted where the Respondent pleads guilty and presents evidence in mitigation of the Department's recommended penalty.[26]

After a mitigation hearing or a plea of guilty, the Trial Commissioner makes a recommendation as to the penalty. She may concur with or reject a penalty recommendation made by the Advocate. In either case, her recommendation is forwarded to the Police Commissioner for a final determination. The Police Commissioner may concur with the Trial Commissioner, overrule her recommended penalty, or may send the case back to DAO for further negotiation.

If the case proceeds to trial, the Advocate is required to prove the charges by a preponderance of the evidence.[27] Upon completion of the trial, the Trial Commissioner renders a decision, including a finding of the facts and a finding as to guilt with respect to each specification. She also recommends a

[24] In the interim, the officer may resign, thereby averting the need for a Departmental trial.

[25] One of the Commission's recommendations in *The Prosecution Study* was that the Advocates communicate offers to the Respondents' attorneys prior to the first negotiation date so that the Respondents may consider the offers prior to their initial court appearances.

[26] It was not uncommon during the Commission's courtroom observations for Respondents to accept plea negotiations after their cases had been pending for substantial periods of time. It, therefore, appears that Respondents are given some latitude in pleading guilty even after the second negotiation date. *See* page 60 for a further discussion of delay in this context.

[27] Essentially, the Advocate must establish that it is more likely than not that the Respondent committed each offense charged.

penalty to be imposed, if applicable. The decision is forwarded to the Police Commissioner who may accept, reject or modify the finding of guilt or penalty recommendation.

D. SPO

Prior to the release of *The Prosecution Study*, SPO was a separate entity in the Department which handled the most serious disciplinary cases, usually cases involving serious criminal charges or those in which the Department was seeking termination of the officer. During the pendency of this Report, SPO was disbanded. Now, DAO evaluates all the disciplinary cases, including the most serious ones, and assigns them accordingly. The two former Assistant Special Prosecutors who remain employed by the Department are currently assigned as Advocates in DAO.

VI. STRUCTURE AND OPERATIONS OF DAO

As discussed above, the Commission found in its prior report that the way in which DAO was staffed and operated contributed to many problems in case preparation and presentation. The Commission, therefore, looked at if any changes have been made since the release of *The Prosecution Study* in the way in which DAO was structured in order to improve its efficiency. The Commission found that while DAO had stated its intention to make some changes in DAO's staffing and operating procedures, as demonstrated below, many of those changes have not yet been made. Consequently, many of the same findings are still evident. The Commission recognizes that current budgetary constraints have contributed to the Department's inability to implement some of these changes.

A. Staffing

The Commission had previously found that DAO was staffed with too many law students and lawyers with insufficient trial experience. Many of these Advocates were members of the service who appeared to be in DAO on a temporary basis. The Commission had, therefore, recommended that DAO hire more civilian attorneys with prior trial experience. Additionally, while the Commission continues to recognize that members of the service may contribute valuable field and police experience, the Commission suggested that for members of the service to be hired into DAO, they should demonstrate a long-term commitment to the prosecutorial arm of the Department. During the initial stages of the writing of this Report, DAO was still staffed by too many inexperienced law students and members of the service who did not possess significant prior trial experience. More recently, however, during the final drafting stages of this Report, DAO hired additional civilian attorneys, many of whom have prior trial experience. This is a positive trend which should continue.

Presently, DAO is staffed by the Department Advocate, a Commanding Officer, a Managing Attorney, a Training Coordinator, and 24 Advocates.[28] Eight of the 24 Advocates are members of the service with only one of them having prosecutorial experience outside of DAO. Of the remaining sixteen civilian Advocates, nine are former prosecutors from District Attorney Offices.[29] Of the total DAO staff, approximately half (15 of 29) have prior legal experience outside the Department.[30] Six Advocates, however, are not admitted attorneys.

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[28] Additionally, DAO has a uniformed member of the service in charge of the Charges and Litigation Support Unit.

[29] In addition to the 10 Advocates who had worked as Assistant District Attorneys prior to their tenure at DAO, the Managing Attorney is also a former prosecutor.

[30] In addition to the former Assistant District Attorneys, the remaining four Advocates with prior legal experience have varying degrees of experience: two attorneys had been in private practice; one had been an Administrative Law Judge for the Taxi and Limousine Commission; and one had worked for the Department of Citywide Administrative Services.

In the past, DAO had engaged in a practice of recruiting and hiring members of the service who were attending law school. The result was, therefore, that DAO was staffed with too many members of the service who lacked trial advocacy skills or legal knowledge and expertise that may be acquired as a practicing attorney outside the Department. This conclusion was further borne out by the Commission's courtroom observations as discussed in Part III.

As stated above, during the pendency of this Report, DAO has begun implementing its previously-reported intention to hire experienced civilian attorneys. To date, seven new civilian Advocates, four of whom have prior trial experience, have been hired. These attorneys have replaced members of the service who have since left DAO. Additionally, DAO has stated that it is no longer hiring members of the service who are in law school. While the Commission believes that all new hires should have prior trial experience, these changes demonstrate a positive effort that will increase the level of experience in DAO.

With respect to members of the service, in addition to generally lacking legal experience, they have unique issues relative to a position in DAO. If during his or her tenure in DAO, a member of the service is promoted, he will then be transferred out of DAO and put into a patrol unit for up to six months. During this time, the Advocate is not replaced. Also troubling is the fact that these Advocates, attorneys who are responsible for prosecuting members of the service, may be working on patrol with the same individuals whom they have encountered or will prosecute in the Trial Room. Further, law school students and recent graduates take time off to study, take final exams, and take the Bar exam, interrupting their responsibilities within DAO.

More problematic is that some DAO supervisors are also lacking outside legal experience and trial practice. As described above, there are four top executive supervisors and until recently only one of them had any prior outside trial experience -- prosecutorial or otherwise. During the writing of this report, the

Special Operations Coordinator, the person in charge of all the training programs for the Advocates, was replaced. While the previous training supervisor was a member of the service who did not have any legal experience outside of DAO, the current training supervisor is a civilian and a former trial attorney.[31] This new assignment should help to improve the overall quality of training and trial presentations within DAO.

The Commission recognizes that it may be desirable to promote from within the Department and that members of the service may become qualified trial attorneys with the proper training and experience. As discussed below, however, the training programs and the supervision provided to date have not been sufficient to prepare Advocates who do not have outside trial experience to competently present their cases in the Trial Rooms. Without the proper training within DAO, members of the service who are promoted to supervisory positions within the unit will not obtain or augment the necessary trial and legal skills to effectively train incoming advocates. As discussed in the following section, these supervisory issues adversely affect the efficiency of DAO and the preparation of cases.

B. Supervision/Training

Due to the lack of experience of many Advocates, they must be given extensive supervision in conjunction with trial advocacy training. Overall, the Commission found that the Advocates would benefit from enhanced supervision and training to improve their trial technique skills.

DAO is comprised of different teams -- a Trial Team, the Negotiation/Consultation Team, the CCRB Team, and the Civilian Team. Prior to the writing of this Report, DAO was broken down and Advocates were assigned to teams based on geographic area. DAO officials report that this change was made in order to more equitably distribute caseloads.

[31] The prior training coordinator had been assigned to DAO since 1996 and was a Team Leader prior to his most recent

Each Advocate is assigned to one team, all of which have a "Team Leader." Team Leaders are responsible for reviewing the Advocates' caseloads, assisting them in case and trial preparation, and supervising trials. These case reviews, which are supposed to be conducted regularly, also occur during the consult and for steering. Consequently, the Team Leaders have the most direct and regular involvement with the training and supervision of the Advocates, and they oversee the preparation of cases. Additionally, Team Leaders carry their own caseloads. Team Leaders are currently selected according to their legal experience and management skills, rather than according to rank and police experience, as had been done in the past.

It appears that this selection process has been improved in that half of the Team Leaders are former trial attorneys. This practice should continue, and all Team Leaders should be required to have trial experience outside of DAO or a demonstrated record of excellence within DAO. As discussed below and throughout this Report, however, it does not appear that the Team Leaders are performing their supervisory function as intended. Although the Commission recognizes the difficulty in having Team Leaders review every case on a monthly basis, too often, case preparation, such as the pretrial preparation of witnesses, does not appear to be occurring, and cases are not presented in the Trial Rooms in a sufficiently acceptable manner.

In addition to Team Leaders, other supervisors include the Department Advocate, the Commanding Officer, the Managing Attorney, and the Special Operations Coordinator. The Department Advocate is responsible for the general oversight and management of DAO. He is an admitted attorney, but does not have legal experience outside of the Department. The Commanding Officer, who is responsible for daily management of DAO and supervision of the Advocates, is also an attorney with no legal experience

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assignment.

outside of the Department. The Managing Attorney is responsible for supervising all of the Advocates, making management decisions, tracking cases, and dealing with issues that arise in the Trial Rooms. Previously, there were two Managing Attorneys, but currently there is only one. She is a former prosecutor with trial experience. While her experience makes her well-suited for her position, the practicality of having only one Managing Attorney for 24 Advocates seems questionable considering the difficulty of managing so many cases and administrative duties. While budget issues may hinder the Department, it appears that there should be more than one individual supervising all the Advocates in this capacity. Additional Managing Attorneys should similarly have outside trial experience and a supervisory or management background, if possible.

In addition to hiring more experienced trial attorneys as supervisors and as Advocates, training programs must also be in place for new or inexperienced attorneys. In order to proficiently present a case at trial, the Advocate needs to learn fundamental trials skills as well as how to prepare a case prior to trial. Basic issues, such as how to prepare a witness for trial, how to effectively conduct direct and cross examinations, and how to enter documents into evidence are elementary and must be taught. Additionally, even attorneys with legal experience need to continuously refresh and hone their trial advocacy skills. Since *The Prosecution Study*, the Department has reported improvements in the trial and legal training programs available to Advocates. However, without qualified individuals teaching these basic skills, Advocates will continue to present cases in the same fashion with no improvement. This problem is also discussed in the Trial Observations section, where Commission staff reported observing Advocates who continuously had difficulty with the same basic trial techniques.

To address these issues, during the pendency of this Report, DAO officials reported changes in the Advocates' training and, more specifically, in the role of the Special Operations Coordinator. First, the

newly assigned head of training is a former prosecutor. The Department reports that he will be regularly evaluating all the Advocates in the Trial Rooms as they present their cases and will then individually critique each Advocate's performance. As of yet, Commission staff, however, has not observed his presence in the Trial Rooms on a regular basis. Also, the Special Operations Coordinator is to provide quarterly reports as to each Advocate's performance and will meet with the Advocate and the Team Leader to discuss the evaluations. The Commission recognizes that DAO has had a substantial decrease in staff since *The Prosecution Study* and recognizes the practical problems associated with the Team Leaders, who carry their own caseloads, regularly conducting intensive pretrial preparation with each Advocate. This new supervision and instruction provided by the training supervisor in the Trial Rooms, therefore, is a positive step to address the trial presentation issues observed by the Commission.

DAO officials have also stated that DAO is currently conducting ongoing training for new Advocates as well as for more seasoned attorneys. These classes are open to other units in the Department as well. DAO also stated that it conducts formal workshops where mock trials are conducted. Between eight and eleven Advocates attend each workshop. New Advocates are also required to attend lectures and reportedly participate in mock trial workshops. Additionally, DAO executives reported that they plan to conduct a two-week training program for all attorneys in which all major bureau executives will participate. They will instruct the Advocates on their respective areas of knowledge to give the Advocates a more comprehensive perspective of the system as a whole and teach the Advocates how to address specific issues that may arise during the disciplinary process.

Overall, since *The Prosecution Study* the Department reports that it is more committed to having training sessions focused on teaching trial advocacy skills. This is a positive step and should continue. The Commission found, however, that too many of the reported lectures and programs involved topics

unrelated to teaching trial skills and case preparation, such as lectures on drug testing and on various articles of the Civil Service Law. While not discounting the importance of these issues for all Department personnel, the training for the Advocates should focus more on basic evidentiary and trial issues. Also, the trial technique workshops should be mandatory for all Advocates rather than solely for those newly hired. The lack of adequate trial advocacy training within DAO necessarily impacts upon the ability of supervisors, some of whom do not have outside legal experience, to effectively teach trial advocacy skills and how to properly prepare cases for trial. For the workshops and other training methods to be effective, they must be taught by qualified trial attorneys.

In addition to these opportunities available from the Department, outside sources also provide some training opportunities. District Attorney offices have training courses which are available to some Advocates. However, this is not mandatory and attendance is limited.[32]

Second seating Advocates at trial is another training method that has been used continuously by the Department. The Team Leader or Managing Attorney is reportedly primarily responsible for second seating the Advocates. At the trial stage, the supervisor should be very knowledgeable about the case because of the reported extensive interaction with the Advocate and should be able to provide assistance, if necessary. When the Advocate's Team Leader or the Managing Attorney is unavailable, other senior level Advocates may be directed to second seat Advocates. The Commission noted during its trial observations an increase in the frequency of second seating. Although this is commendable and can aid the Advocate's presentation, the Commission also found that the personnel second seating the Advocates did not appear to be assisting them in preparing their cases or reviewing evidentiary matters in advance of trial.[33] Clearly, if the person performing the second seating is unfamiliar with the facts and proof in the case, second seating

[32] In 2001, for instance, only five Advocates participated in any of the District Attorney Office training programs.
[33] *See* page 123 for a further discussion of this issue.

is of limited value. Also of limited value is the practice of having Advocates with limited experience, themselves, second seating inexperienced Advocates. Equally important to providing guidance during the trial, the second seats should be assisting the Advocates in preparing the case and ensuring that all necessary legal and evidentiary issues have been addressed prior to trial.

C. DCT

The Department's Office of the Deputy Commissioner - Trials ("DCT") is the unit within the Department that hears disciplinary cases prosecuted by DAO. DCT is comprised of the Deputy Commissioner and four Assistant Deputy Commissioners. The five sit as judges in Department disciplinary cases, presiding over negotiations, hearings, and trials, and rendering decisions and making penalty recommendations to the Police Commissioner. Also, the Deputy Commissioner reviews and edits all written decisions of the Assistant Deputy Commissioners and handles the daily scheduling and assignment of cases.[34] The DCT also has two Law Clerks who assist the Trial Commissioners with responsibilities, such as digesting transcripts or drafting factual portions of decisions.

In *The Prosecution Study*, the Commission recommended that the Department hire more personnel, including an additional Trial Commissioner and support staff, in order to assist the Trial Commissioners in expediting the rendering of decisions. Since that study, the Department has hired an additional Trial Commissioner and Law Clerk. While the Department has reported that that it has imposed guidelines to

[34] The current Deputy Commissioner was hired in October 2002 to replace the former Deputy Commissioner. In addition to his other duties, he hears a limited number of cases in the Trial Rooms.

reduce the time frame for Trial Commissioners to issue decisions, the Commission believes that additional support staff, such as law-student interns, may facilitate this process.[35]

[35] *See* Table 2 at page 58 and accompanying text for delays in the issuance of decisions.

PART II - ADJUDICATORY DELAY

I. PRIOR FINDINGS IN THE DELAY OF THE ADJUDICATORY PROCESS

In *The Prosecution Study*, the Commission found that there were significant delays in the adjudication of cases in the Department's Trial Rooms. These delays occurred in all types of cases and were found at various points in the progression of the case. To demonstrate the significance of these delays, the Commission measured the time periods of eight key points in the progression of a case from its commencement to its conclusion.[36] The Commission found significant delays in all of these areas with the exception of the time period between when the Trial Commissioner issued her opinion and the closing of the case.

The Commission expressed concern regarding these lengthy delays due to the negative consequences that such delays could generate. Chief among these negative consequences was the diminishing viability of prosecutions due to the loss of witnesses, the failure of witnesses' memories, and the loss of evidence. When a case against an officer is lost either after trial or after the Advocate makes a motion to dismiss the case due to a lack of sufficient evidence to sustain the Department's burden of proof, an officer who may have engaged in misconduct receives no penalty for his actions. This negates any deterrence value on the individual officer and officers in general to refrain from engaging in misconduct in the future. If members of the service do not see their colleagues penalized for misbehavior, then those members who are otherwise inclined to misbehave may not see any reason to curb their own behavior.

[36] These eight key points were: the initial consultation to the filing of the charges and specifications; the initial consultation to the closing date; the filing of the charges and specifications to the service of the charges and specifications on the subject officer; the filing of the charges and specifications to the closing date; the filing of the charges and specifications to the start of the trial; the start of the trial to the end of the trial; the end of the trial to the Trial Commissioner's decision; and the Trial Commissioner's decision to the closing date. For a more detailed explanation of each of these periods and the delay found by the

Another effect is that those members of the service who are ultimately exonerated are often left in limbo for a substantial period of time when they cannot advance in their careers due to the pending charges against them. A final negative consequence cited by the Commission was that undue delays in the discipline of officers result in a public perception that the Department is either unwilling or unable to judge or discipline its members.

The Commission also noted the specific problems regarding delays in cases that were substantiated and referred by CCRB. Delays in these cases often resulted in the cases lingering in the Trial Rooms for significant periods of time before being dismissed due to evidentiary problems such as the lack of witnesses with direct knowledge of the incident.[37] The Commission suggested that often these delays and the resulting dismissals might have been avoided had the assigned Advocate contacted the witnesses soon after being assigned to the case.

Finally, the Commission found that the Department did not have a method of collecting data that allowed it to keep track of cases easily. Such a system would be useful in identifying the specific areas within the disciplinary process where cases were getting delayed. Although the Department had a Case Analysis and Tracking System ("CATS") in place,[38] it was noted in *The Prosecution Study* that the Department did not use this system to track delays in the prosecution of its administrative cases. Instead, the Department reported that this system was used as an information system by the Advocates and their supervisors.

Commission, *see The Prosecution Study* at pp. 19-25 and 28-44, Appendices D, E, and F.

[37] At times, due to the unavailability of eyewitnesses, the Department presents a hearsay case. Hearsay is defined as a prior out-of-court statement that is being admitted as evidence at trial to prove the truth of the matter stated. Therefore, when the Department proceeds with a hearsay case, it is relying on out-of-court statements made by witnesses who do not testify at trial in order to prove its case. *See infra*, at page 105 for a further discussion of these types of cases.

II. PRIOR COMMISSION RECOMMENDATIONS TO ADDRESS ADJUDICATORY DELAYS

At the conclusion of *The Prosecution Study*, the Commission made several recommendations to reduce the delays that were observed within the disciplinary system. While some of these recommendations were meant to address specific issues within the system, others were more general and made in an effort to have the Department explore alternative means of fulfilling its disciplinary function.

The first recommendation was to assign the prosecution of CCRB cases to CCRB. The Commission suggested that such a change would have two benefits. First, the delay in sending a case to the Department and having it reviewed by another agency's prosecutor who might need to conduct further investigation of the case would be eliminated. Second, CCRB would have an incentive to substantiate only those cases that could be successfully prosecuted. This would alleviate some of the congestion in the trial calendars and allow Department prosecutors to have more time to concentrate on their cases, perform trials, and conduct the necessary preparation for those trials. As discussed above, while the administration sought to implement this recommendation, such implementation has been halted due to current legal and budgetary constraints.[39]

The Commission also recommended that supervisors within DAO monitor more aggressively their Advocates' caseloads and provide increased supervision in the Trial Rooms in order to decrease delay. Closer monitoring would enable the managers to make sure that cases were being calendared before the Trial Commissioners in a timely manner. DAO executives assert that in addition to an automatic calendaring system which places cases of a certain age onto the trial calendar, the Team Leaders and the

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[38] *See infra*, at page 43 for a detailed explanation of CATS.
[39] *See supra*, at page 5 for further discussion on this subject.

Managing Attorney regularly review the Advocates' caseloads to ensure cases are proceeding expeditiously.

To alleviate the delay between the conclusion of a trial and the issuance of the Trial Commissioner's opinions and recommendations, the Commission suggested that the Department explore hiring additional personnel and obtaining other resources, including hiring an additional Trial Commissioner, clerks for the Trial Commissioners, Advocates, and paralegal staff for the Advocates. At the time the Commission began this follow-up study, another Trial Commissioner had been hired by the Department. However, during the course of this study, the former Deputy Commissioner of Trials resigned. While she was replaced by the Department, the current Deputy Commissioner of Trials is hearing only a limited number of cases. Furthermore, observations of the Trial Rooms by Commission staff for this Report demonstrated that on most days, both Trial Rooms were not in use. There is, therefore, still a delay in the scheduling of cases for trial, and, at best, only one Trial Commissioner is hearing cases on most days. This is especially troublesome because Commission staff have routinely observed cases adjourned for three-to-four months, many times reportedly due to the unavailability of space in which to try the case. Based on the observations that there are Trial Rooms that are not in use on an almost daily basis, it appears that the scheduling mechanism being used by the Department needs to be more accurate and efficient.

Since the Department did not have a system in place to track disciplinary cases and identify areas of delays, the Commission recommended that the Department develop such a system. As part of this system, the Commission suggested that cases that had been pending for six months or more be submitted regularly to the First Deputy Commissioner for review. To date, the Department has not implemented such a system. Since the publication of *The Prosecution Study*, the Department has announced its commitment

to the development of a system which would capture information about the delays in the adjudicatory process. The Department currently claims that DAO has a working CATS in place. However, as discussed in more detail below,[40] this system does not appear to be designed or used for tracking the progression of the cases through the administrative system.

The Commission's final two recommendations that explicitly addressed the delay in the system involved the speedy review of cases. First, the Commission suggested that the Department explore ways in which the First Deputy's Office could review cases more quickly so that plea offers could be made earlier. If this steering process was held more frequently or accomplished more speedily, then negotiation dates could be scheduled earlier and offers could possibly be communicated to the Respondents' attorneys prior to the first negotiation date. This would provide more time for the Respondents to consider the offers and could alleviate the necessity of adjourning cases for short periods of time for this purpose. In this follow-up study, the Commission noted during its trial observations numerous cases where short adjournments were requested because the Respondent's attorney had just learned of the penalty being offered on the day of the negotiation and, therefore, did not have the opportunity to discuss the penalty and any ramifications with the Respondent. Additionally, the Commission has observed that a number of cases are being sent back to the Trial Room for renegotiation after pleas have been taken. Therefore, it appears that a greater coordination between DAO and the First Deputy Commissioner's Office may decrease the overall delay in the system.

In its final recommendation that addressed the issue of delay, the Commission suggested that the Department should review older cases to determine their viability and take action to appropriately resolve them on an expedited basis in order to clear up the backlog of cases and make way for new procedures and

[40] *See infra*, at page 44.

policies. In examining the 1226 cases adjudicated by the Department since January 2001, the Commission found that 15% were more than two years old.[41]

III. METHODOLOGY

To evaluate the progress of disciplinary cases through the Department's system, the Commission examined all closed disciplinary cases from January 2001 until November 2002. These included cases with all types of dispositions. Only those cases involving uniformed members of the service were reviewed.[42] This encompassed 1226 cases in total. Dates for each of the eight key points were collected through examination of the Department's CATS.

When a disciplinary case is closed, the Department generates a history of the relevant dates and other information on a document referred to as a CATS sheet. These are summarized versions of the information contained in the Department's CATS database. The information contained on the CATS sheet includes the date the alleged incident occurred, specific dates when the case reached various stages in the disciplinary process, the specific charges, the penalty imposed, and other pertinent information relative to the individual case. From this data, for each case in its sample, the Commission extracted key dates that allowed it to track cases at significant points in the adjudicatory process. In calculating the statistics used for this Report, Commission staff collected information from the CATS sheets regarding the date the alleged incident occurred and the relevant dates used to measure the Commission's previously determined

[41] Seven of the cases in this sample were more than four years old.

[42] As discussed in footnote 14, civilian members of the service may avail themselves of a slightly different progression through the disciplinary system. Therefore, these cases were not examined. Cases where identifying information was redacted due to confidentiality issues, however, were included in the Commission's study and, therefore, some of these cases may have inadvertently included civilian employees.

eight key points in the progression of the case through the administrative system.[43] These dates were then examined to calculate the relevant time period between each key step. In those cases where there were obvious errors on, or information missing from, the CATS sheets, Commission staff requested further clarification from Department officials. When further clarification was not available, these cases were excluded from the Commission's calculations of delay for those statistics to which the incorrect or missing figures applied.

Although the Commission used information from the CATS sheets to track the progression of each case, the Department does not use this system in the same manner. Because all information is entered after the case is adjudicated and not while the case proceeds through the disciplinary system, the Department is unable to utilize CATS as a means to track a case's progress or monitor an Advocate's caseload. The Commission has concerns about how the present CATS is being used by the Department. Although, as noted above, the Department had represented that CATS was in place during the period of March 2000 through the summer of 2001, DAO could not provide data due to printing problems. The Commission only began receiving monthly CATS sheets in summer 2001 when the Department's printing problems were resolved. These included all of the CATS sheets dating back to March 2000. Further, while analyzing the data ultimately received, Commission staff randomly checked these sheets against paperwork received from the Department to determine the accuracy of the CATS data.[44] Often, the Commission found discrepancies between the dates contained on the CATS sheets and those dates found

[43] *See supra*, footnote 36 at page 38 for the description of the Commission's eight key points of progress of a case through the administrative system. In those cases that originated with CCRB, the date the Department received the case from CCRB was used, where available, instead of a consultation date, since there is no consultation date in CCRB cases.

[44] The Commission routinely receives paperwork after a disciplinary case is closed within the Department's administrative system. This paperwork includes copies of the charges and specifications, plea memoranda, trial decisions, and memoranda from the personnel responsible for investigating the allegations.

within the case closing paperwork. The Commission tried to reconcile these differences first by using the paperwork it had in its possession to obtain the correct information. When the Commission was unable to retrieve the information in this way, staff requested corrections in the information from the Department. When the Department was unable to provide the requested data, a staff member from the Commission went to the Department to attempt to access the data directly from CATS with the aid of a Department staff member who was familiar with the system. In those instances, where the data could not be obtained, the case was excluded when the Commission calculated the delay involving that information.

When a Commission staff member attempted to obtain missing data directly from the Department's CATS, it was noted that the system was unwieldy and there were extensive delays in retrieving information. These issues raise questions about whether the system is actually being used by the Advocates as an informational resource as Department executives have claimed. The Commission has further concerns about whether the Department is able to use this system as an informational tool given the number of inaccuracies the Commission found in the data and thereafter reported to the Department.

A. Delay Engendered by September 11, 2001

When the Commission first began collecting data and calculating the time delays discussed in the remainder of this section, it was thought that the events of September 11, 2001 may have been an outside factor that increased and caused additional delays in the system. For a period of approximately five weeks after the attacks, the Department's Trial Rooms were not in operation because all available personnel were needed to address the physical aftereffects. [45] To determine whether September 11th was a factor increasing the delay, initially, the Commission computed the statistics presented in this section on a

[45] Negotiations commenced on October 16, 2001, and trials began on October 17, 2001.

quarterly basis. The quarters immediately preceding September 11th, containing September 11th, and immediately following September 11th were compared so the Commission could assess the extent of its effect on the delays observed. This comparison did not demonstrate any significant differences in the time periods observed in each quarter. Furthermore, the Commission compared the quarter consisting of July, August, and September 2001 to the equivalent quarter in 2002 and found the time frames to be substantially similar. While September 11th may have had some effect on the progression of cases, the overall delays observed in the disciplinary system do not appear to be directly attributable to the terrorist attacks. Therefore, since September 11th and its aftermath did not appear to significantly change the results of the Commission's calculations, the key points of progression were calculated as one time period instead of separated into quarters to facilitate comparison with those delays that were identified in *The Prosecution Study*.

IV. PRESENT FINDINGS

A. Impact of Lengthy Delays

In *The Prosecution Study*, the Commission found significant delays throughout each of the eight key points in the system, with the exception of the time period from the date the Trial Commissioner's decision was issued or a plea was accepted to the date the Police Commissioner approved of the disposition. In its present evaluation, the Commission did not find any significant improvement in the time in which each step occurred, and, in fact, the Commission noted a distinct increase in time for the Trial Commissioners to issue opinions and the time it took the Police Commissioner to approve the outcome of the cases.

As noted in *The Prosecution Study*, significant delays in the discipline of members of the service impact the public's confidence in the ability and the determination of the Department to effectively discipline its members. Further, the officers' careers are affected, in most cases, detrimentally by these delays.[46] Officers, if originally placed on modified duty at the time of the incident, may remain on modified duty for lengthy periods of time while the case is pending,[47] and officers on promotion lists may lose their opportunity to advance. This is especially unjust when the officer is ultimately exonerated. As a result, officers who observe their colleagues progress through the system may lose confidence in the disciplinary process. Finally, when an officer who should be terminated lingers in the system and has the potential to engage in further misconduct, the Department may incur liability.

Furthermore, when the penalty for misconduct is delayed, it is unlikely to have a deterrent effect on future misconduct by the individual officer as the penalty will not be closely associated with the misconduct. Finally, when a penalty that includes monitoring of the subject officer, such as Dismissal Probation, is imposed, there is an additional problem with lengthy delays.[48] When the final adjudication of the case is delayed, the monitoring may commence and be in effect well after any misconduct occurred, and, possibly, after the officer has reformed his behavior on his own. Monitoring, then, may no longer be necessary or effective. Therefore, while the officer did not receive monitoring when it would have best served the needs of the Department, Department resources are now being used to monitor the officer who may have conformed his conduct to Department standards. This takes resources away from other areas

[46] In some cases, such as those cases where the Department is seeking termination of the Respondent, delays may actually benefit the Respondent since he will remain on the Department payroll until the resolution of the case.

[47] This is also detrimental to the Department as it loses a full-duty officer.

[48] When dismissal probation is imposed as a penalty for misconduct, 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.

where they may be needed. For these same reasons, delays in the disciplinary system will not have a significant deterrent effect for members of the service in general.

The Commission recognizes that not all delay is directly attributable to the Department. When a Respondent is arrested for the same misconduct that is the subject of the administrative proceedings and a criminal prosecution ensues, criminal prosecutors may request that the Department delay its investigation and own prosecution so as not to compromise the criminal case. The Department also has its own incentive to delay its investigation and/or prosecution because if the Respondent is found criminally liable, the need for further departmental proceedings in connection with that particular misconduct will be obviated, thus saving time and resources.

There are also cases where an officer is suspended without pay immediately upon the report of misconduct. When this happens, the Advocate may file charges and specifications against the Respondent although a Department investigation has not been completed. Since the Advocate will not prosecute the case until the investigation is completed, any delay in this situation may be attributable to the Department's investigative branch and not the prosecutorial branch. Similarly, during the pendency of a case, there may be allegations of further misconduct by the officer with much stronger evidence than the first case or that include more serious allegations than the first case. In these instances, for tactical reasons, the Advocate may wish to delay prosecution of the first case until the second case is fully investigated or resolved.

One other noteworthy source of delay is the other participants within the disciplinary system. Defense attorneys have scheduling conflicts as do Trial Commissioners. Often, cases are adjourned for lengthy periods of time because among the schedules of the Advocates, defense counsel, Trial Commissioners, the Respondent, and witnesses, a closer date cannot be found. Also, as there are only two

Department Trial Rooms, on certain days, space and/or personnel to try the case may not be available. Anecdotally, though, this reason does not appear to be much of an issue since, as noted below, of the207 days Commission staff monitored the Department Trial Rooms, in119 days at least one Trial Room was available a significant portion of the day when a trial could be commenced,[49] and in 46 days, both Trial Rooms were available for significant portions of the day.[50] It is understandable that if a trial is believed to require more than one day of testimony, the Trial Commissioner may prefer to reserve a Trial Room for a series of continuous days to avoid hearing the case in a piecemeal fashion. Even taking this preference into consideration, however, there were many continuous days where Commission staff observed that at least one Trial Room was not in use. Therefore, it appears that cases could be scheduled more expeditiously without having to hear the evidence over non-continuous dates.

V. FINDINGS AS COMPARED TO FINDINGS FROM *THE PROSECUTION STUDY*

When measuring the delay in *The Prosecution Study*, the Commission measured the number of days between various time periods. These statistics were divided into four categories of cases: all closed cases; cases in which a trial was held; cases in which the Respondent pled guilty; and cases which were

[49] These 119 days where at least one Trial Room was available for a trial does not include those days where trials were scheduled, but did not proceed or proceeded for a shorter period of time than originally anticipated. There were another 32 days where a Trial Room was available, but the reason for this availability appeared to be that a scheduled trial did not proceed. Within this figure of 119 days, though, the Commission counted those days where a trial was scheduled but did not proceed because the Advocate made a motion to dismiss the case prior to the commencement of the trial. These cases were included because the Commission believes that it is incumbent upon the Advocate to inform all parties and the Trial Commissioner of his intent to dismiss the charges as soon as this decision is made so another case can be scheduled to be heard.

[50] Days which the Commission considered open for a significant portion of the day were, generally, those days on which negotiations were held and nothing was scheduled to follow the negotiation. Negotiations are usually completed in less than an hour. Therefore, the Trial Room would be available for other proceedings once the negotiations were concluded

ultimately dismissed before trial.[51] The Commission calculated the delays for these four categories of cases for this follow-up study. Based on these calculations, the Commission found the following:

A. Delays in All Types of Cases

In this study, the Commission found significant delays still existed:

- ***from the filing of the charges against the subject officer to the closing of the case***[52]
    - 50% of the cases took almost ten and one-half months to close,[53]
    - 25% of the cases took at least nineteen months to close, and
    - 10% of the cases took over two years to complete.

In *The Prosecution Study*, when all cases were considered, 50% of them took at least one year from the filing of the charges until the case was closed, an additional 25% of these cases took at least seventeen months to complete, and a final ten percent took at least two years from the filing of charges until the close of the case.[54]

When all of the cases for this follow-up study were examined, using the same time markers used in *The Prosecution Study*, the Commission found some areas of improvement and some areas where the

[51] *See The Prosecution Study* at pp. 33-47 and Appendices C through F for a complete explanation of the Commission's findings regarding delay in the adjudicatory process.

[52] Data for this subset included 1218 cases.

[53] The Commission used a thirty-day month to determine all calculations expressed in months

[54] In *The Prosecution Study*, the close of the case was determined by the date the Police Commissioner approved the disposition in the case. In this study, the close of the case is the date that it is closed at DAO or SPO. Usually, this is the date that the Police Commissioner approved of the disposition, but in rare instances, it was a different date.

delays between key points in the process actually lengthened.[55] So, for example, in measuring the time between the charges and specifications being filed and the closing of the case, the Commission found improvement in 50% of the cases that were pending for shorter periods of time than the median. However, those cases that were open for lengthier periods of time than the median were pending for more time than their counterparts in *The Prosecution Study*. Specifically, the Commission found that 50% of the cases took ten and one-half months from the filing of the charges until the case was closed, an additional 25% took approximately nineteen months, while another 10% took at least twenty-seven months from the initiation of formal charges to the close of the case.

As Table 1, below, demonstrates, similar delays were found when the Commission measured the length of time from the consultation between the investigating officer who gathered evidence supporting the allegations and the Advocate and the completion of the case. This also represents an improvement in the 50% of the cases that were completed earlier, yet lengthier delays were seen in those cases that were pending for longer periods of time than the median. There was overall improvement in the time between the consult date and the actual filing of the charges. Except in ten percent of the cases, however, there was a slight increase in the amount of time between the filing of the charges and the service of these charges upon the Respondent.

[55] In drawing comparisons between *The Prosecution Study* and this study, the reader should note that in the original study, only a twelve-month period was analyzed. In this follow-up study, data was collected for twenty-three months. The Commission chose January 2001 as a starting point because this date was approximately six months after the publication of *The Prosecution Study* and would, therefore, have given the Department some time to address the issues raised in that first report.

Table 1: Delays in the Commission's key measures of case progression, broken down by percentiles[56]
(this table covers: 1226 cases. This represents all of the cases in the Commission's sample.[57])[58]

relevant time frame *(total of applicable cases)*	*10%*	*25%*	***50%*** ***(median)***	*75%*	*90%*	*100%*
consultation date *to* filing of charges (971)[59]	1 day (4)	5 days (10)	29 days (41)	96 days (96)	182 days (215)	569 days (1066)
consultation date *to* closing date of case (980)[60]	93 days (177)	191 days (247)	335 days (367 ½)	590 days (530)	828 days (772)	2151 days (1914)
filing of charges *to* service of charges (1057)[61]	1 day (1)	13 days (5)	22 days (13)	49 days (35)	78 days (61)	513 days (775)
filing of charges *to* closing date (1218)[62]	62 days (138)	146 days (203)	314 days (342 ½)	579 days (515)	836 days (713)	2142 days (2107)

[56] For the Commission's statistical analysis broken down by time ranges *see* Appendix B.

[57] Cases with dispositions of "filed" or "charges dismissed" were included in this sample. When an officer is separated from the Department for any reason during the pendency of a disciplinary case, the Department typically files charges nonetheless to preserve its case against the officer in the event he reapplies to the Department. Some cases are resolved by dismissing the charges either because there is insufficient evidence to prove the charges at trial or because the allegations are best addressed at the command level. As these two types of cases are not prosecuted to conclusion, they are, by their very nature, closed more quickly than those cases where pleas are taken or trials are held. Therefore, these cases may have an impact on the demonstrated delays by actually shortening the length of time between the key points in the progress of a case through the disciplinary system.

[58] The bottom number within the parentheses in each segment of the table represents the number of days between the same stages as calculated by the Commission for *The Prosecution Study*.

[59] As CCRB cases do not have a consultation date, these cases were not included in this calculation. Further, 22 cases were excluded from this calculation because one was not filed, fifteen did not have information on the filing date, and six had incorrect dates that the Department could not correct.

[60] For the reason stated in footnote 59, only cases that did not originate with CCRB were included here. Also thirteen cases were excluded because twelve were missing information and one contained incorrect information

[61] 156 cases were excluded from this calculation because either they were missing a date or the Respondent was separated from employment prior to the service of charges, and thirteen cases were excluded because they had incorrect dates

[62] Eight cases were excluded from this calculation: one because of an incorrect date and seven because a date was

B. Delays in Cases that Went to Trial

In calculating its own statistics, the Department considers mitigation hearings and motions to dismiss as trials.[63] While in *The Prosecution Study*, the Commission counted mitigation hearings as trials, in its current analysis, the Commission excluded all mitigation hearings and motions to dismiss from its calculations involving trials. Instead, the Commission concentrated on only those cases where the Advocate presented evidence to prove the charges. As demonstrated below, the delays in trial cases were greater in the current study than in *The Prosecution Study*.

For those cases where trials were held, the Commission found that lengthy delays still exist in all of the most important points of progression:

- ***from the filing of the charges against the subject officer to the commencement of the trial***[64]
    - 50% were open for at least ten months before the trial began,
    - 25% were pending for more than sixteen months, and
    - in 10%, twenty-seven months passed before the trial commenced.

- ***from the conclusion of the trial to the issuance of the Trial Commissioner's findings and recommendations***[65]
    - in 50% of the cases, over five months passed before a decision was issued,
    - 25% of the cases took over nine months, and

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missing.

[63] This is contrary to the Commission's view that a trial only includes those proceedings where the Department presents testimony and introduces other evidence to prove the Respondent's guilt.

[64] This included 392 cases.

[65] This included 365 cases.

- for 10% of the cases, over one year passed before a decision was rendered.

- ***from the Trial Commissioner's decision to the closing date***[66]
    - 50% of the cases took over one month,
    - 25% of the cases took almost two months, and
    - 10% of the cases took almost three months.

- ***from the filing of the charges against the subject officer to the closing date of the case***[67]
    - 50% of the cases were pending for approximately one and one-half years,
    - 25% of the cases were open for over two years, and
    - 10% of the cases were pending for over two and one-half years before a resolution was achieved.

These figures demonstrate that the delays in these stages of the disciplinary process have increased significantly since *The Prosecution Study*. Necessarily, this would increase the overall length of time that trial cases were pending in the disciplinary system.

In *The Prosecution Study*, the Commission found that 50% of those cases that went to trial took at least 242 days from the filing of the charges to the commencement of the actual trial. In this examination, an increase in the length of the delay was noticed in that in 50% of those cases that went to trial, the trial did not commence until at least 302 days after the filing of the charges against the Respondent. In *The Prosecution Study*, 25% of the cases took at least 425 days from the filing of the charges to the start of the

[66] This included 373 cases.

trial. Here, 25% of the cases did not begin a trial until at least 502 days had passed. In *The Prosecution Study*, 50% of those cases that went to trial were pending at least 444 days while 25% were pending at least 600 days from the filing of the charges to the closing of the case. In its current analysis, the Commission found that 50% of the cases were open at least 551days and 25% of those cases that went to trial took at least 781 days to close. This represents an additional three-month delay for 50% of the cases and six-month delay for 25% of the cases.

In *The Prosecution Study*, the Commission also found significant delay between the end of the administrative trial and the issuance of the Trial Commissioner's findings and recommendations. In 50% of the cases, there was at least a three-month delay before a decision was issued. In 25% of the cases, the delay was at least five and one-half months, and in 10% of the cases, the delay was over seven months. Lengthier delays were observed in this study in that in 50% of those cases in which there was a trial, the Trial Commissioners took at least five months to issue a decision and recommendations, and in 25% of these cases, the Trial Commissioners took over nine months after the conclusion of the trial to make their findings and recommendations. This represents a significant increase in the delay between the conclusion of the trial and a decision by the Trial Commissioners. In this study, the Commission also noted that in 14% of all cases examined, there was at least a one-year delay, while in 1% of the cases, there was at least a one-and-one-half-year delay before the Trial Commissioner issued a decision.

In reviewing the written trial decisions, the Commission noted that some Trial Commissioners were more adept at issuing decisions more quickly than their colleagues. Two Trial Commissioners took over six months to issue decisions in 50% of their cases.[68] This raises concerns for the Commission about who

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[67] This included 402 cases.

[68] It took over one year for these same two Trial Commissioners to complete the decisions for all of their cases. The

is responsible for supervising the Trial Commissioners and ensuring their productivity. The delays seen at this stage are even more significant given that the median age of the cases when reaching the trial stage is already ten months and the majority of the trials are concluded within the same day they start. In recognition of these issues, as discussed above, the current Deputy Commissioner of DCT has reportedly implemented new time frames within which the Assistant Trial Commissioners must render decisions. The Commission views this as a significant step in reducing delay in the disciplinary process.

The final point measured in *The Prosecution Study* was the time period between the issuance of the Trial Commissioners' findings and recommendations and the closing date, determined by the Police Commissioner's approval of the disposition of the case. In this category, in *The Prosecution Study*, the Commission did not find significant delay with 75% of the cases being closed within 45 days of the Trial Commissioner's decision. In its current study, the Commission found an increased delay with 75% of the opinions signed by the Police Commissioner within 74 days of the Trial Commissioner's decision. The Commission understands that the delays in this area may be due to the impact of additional responsibilities on the Police Commissioner immediately following September 11, 2001 and because there was an administrative change after the new Mayor took office in January 2002.

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remaining Trial Commissioners were able to issue all of their decisions in less than a year.

Table 2: Delays in the Commission's eight key measures of case progression, broken down by percentiles
(this table covers trial cases only: 405 cases[69])[70]

relevant time frame *(total of applicable cases)*	*10%*	*25%*	***50%*** ***(median)***	*75%*	*90%*	*100%*
consultation date *to* filing of charges (232)[71]	2 days (5)	7 days (9)	49 days (49)	122 days (112)	238 days (226)	475 days (1044)
consultation date *to* closing date of case (233)[72]	354 days (316)	431 days (378)	611 days (504)	858 days (693)	1052 days (915)	2151 days (1679)
filing of charges *to* service of charges (387)[73]	same day (2)	3 days (5)	12 days (13)	31 days (35)	56 days (57)	419 days (526)
filing of charges *to* closing date (402)[74]	290 days (241)	373 days (316)	551 days (444)	781 days (600)	1048 days (815)	2142 days (1673)
filing of charges *to* start of trial (392)[75]	136 days (97)	191 days (139)	302 days (242)	502 days (425)	810 days (685)	1705 days (1322)
start of trial *to*	same day	same day	same day	1 day	2 days	31 days

[69] For purposes of calculating this figure, each case adjudicated, whether it involved multiple Respondents or multiple cases against a single Respondent, was treated as a separate trial.

[70] The bottom number in parentheses in each segment of the table represents the number of days between the same stages as calculated by the Commission for *The Prosecution Study*.

[71] 164 cases that originated with CCRB were not included in this calculation because those cases do not have a consultation date. Nine additional cases were also excluded because eight were missing the consultation date and one had an incorrect date.

[72] 164 CCRB cases were excluded from this calculation because CCRB cases do not have a consultation date. Eight other cases were also excluded because they were missing the consultation date.

[73] Eighteen cases were excluded from this calculation: nine were excluded because either the filing date or the date the charges and specifications were served on the Respondent was missing; nine were excluded because the dates were incorrect.

[74] Three cases were excluded because the filing date was not provided.

[75] Thirteen trial cases were excluded because of missing dates.

end of trial[76] (390)[77]	(1)	(1)	(1)	(2)	(21)	(197)
end of trial *to* judge's decision (365)[78]	13 days (24)	54 days (49)	160 days (111)	281 days (168)	386 days (231)	648 days (312)
trial judge's decision *to* closing date (373)[79]	17 days (17)	25 days (25)	41 days (35)	74 days (54)	101 days (85)	1357 days (553)

C. Delays in Cases Which are Dismissed

In some cases, there is neither a negotiated plea of guilty nor a trial because the Advocate moves to dismiss the case prior to a trial. Motions to dismiss are usually made either because it has been determined that the misconduct is not serious enough to warrant formal discipline and is better addressed at the command level, usually through the imposition of a command discipline,[80] or because the Advocate, after reviewing the case, has determined that there is insufficient evidence to sustain the charges. Often, this occurs when witnesses cannot be located or refuse to cooperate, and there is no independent corroboration of the witness' hearsay statements or no manner in which to introduce these hearsay statements into evidence. The Commission believes that in those cases with longer delays, there would be more motions

[76] In this category, the amount of days does not necessarily represent the number of days that testimony was heard, or that the days are necessarily continuous. Instead, this figure represents the total number of days the trial record was held open. So, for example, in the last column of this time period, there was not actually a trial that had testimony for 31 consecutive days.

[77] Ten cases were excluded because the commencement date of the trial was missing, and five cases were excluded because the date the trial concluded was missing.

[78] 29 trials were excluded from this calculation because the date that the Trial Commissioner issued her decision was not included, seven were excluded because the date that the trial concluded was missing, and an additional four cases were excluded because the CATS sheets contained obviously incorrect dates.

[79] 32 cases were excluded from this calculation because three had obviously incorrect dates, and 29 were missing the date that the Trial Commissioner's decision was issued.

[80] *See* footnote 22 for the definition and implications of a command discipline.

to dismiss the charges due to the loss of crucial evidence. And, in fact, in *The Prosecution Study*, the Commission found that 50% of those cases which were dismissed by the Advocate had been open more than thirteen months prior to the approval of the dismissal by the Police Commissioner, and 25% of the cases were dismissed after being open for at least eighteen months.

In its current review of cases, the Commission found lengthy delays still exist.

- ***from the filing of the charges against the subject officer to the dismissal of the case***
    - 50% of the cases took over thirteen months to dismiss,
    - 25% of the cases were pending for more than 21 months before being dismissed upon motion by the Advocate, and
    - 10% of the cases took over two years before they were dismissed.

Table 3: Delay from filing of charges to closing date for dismissed cases
(this table covers: 46 cases)[81]

relevant time frame *(total of applicable cases)*	*10%*	*25%*	***50%*** ***(median)***	*75%*	*90%*	*100%*
filing of charges *to* closing date (46)	189 days (160)	262 days (256)	414 days (402)	649 days (566)	879 days (721)	1400 days (2107)

The Commission notes that the Department dismissed significantly fewer cases during this study than during *The Prosecution Study* and believes that this is a positive trend. In the 2000 study, 284 cases were dismissed, while in the current study, only 46 cases were dismissed. Due to the large disparity between the number of cases that were in this category in 2000 as compared to the number of cases now in

[81] The bottom number within the parentheses in each segment of the table represents the number of days between the

this category, the Commission believes that it would be unfair to draw comparisons between the two samples. However, in the current findings, the Department is still taking too long to dismiss these cases.

D. Delays in Cases Which Result in Guilty Pleas Only

According to Department policy, guilty pleas should be entered on the first or second negotiation date. By these dates, the Respondent has been notified of what penalty the Department is offering him to settle the case and has had a chance to discuss the consequences of pleading guilty with his attorney. If the Respondent has only been notified of the Department's offer on the first negotiation date, there is usually a short adjournment to allow the Respondent to consider the offer.[82] On the next date, the Respondent should accept the offer and plead guilty, or a date should be set for trial. After the second court date, according to DAO executives, if the offer is not accepted, it is withdrawn. Given DAO's stated policy, cases adjudicated by a negotiated plea should be resolved fairly quickly after the service of the charges.[83] DAO claims that once the charges are served, the Department's automatic calendaring system schedules the case's first court date within six weeks. In *The Prosecution Study*, however, the Commission still found lengthy delays even when there was a guilty plea. In 50% of the cases, it took at least seven and one-half months from the filing of the charges to the closing date, while 25% of the cases took at least thirteen months for the case to be closed.

In the present study, the Commission found that there were still lengthy delays when the case was

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same stages as calculated by the Commission for The Prosecution Study.

[82] In this context, short refers to within a month. During its observations, the Commission noted that most of these types of adjournments were for two weeks.

[83] The Commission, of course, recognizes that there would be exceptions such as when a trial commences and the Respondent pleads guilty during the trial or when the Respondent maintains that he wants a trial and changes his mind immediately prior to the start of the trial.

resolved by a negotiated guilty plea.

- ***from the filing of charges against the subject officer to the final closing date of the case***[84]
    - 50% of the cases took more than six months to close,
    - 25% of the cases took approximately one year to close, and
    - 10% of the cases took at least twenty months to close.

- ***from the filing of the charges against the subject officer to the date of the negotiation***[85]
    - 50% of the cases took at least four months before they were negotiated,
    - 25% of the cases took over nine months before they were negotiated, and
    - 10% of the cases took at least one and one-half years to be negotiated.

In its present study, the Commission found an improvement in that cases where the Respondent pled guilty to the charges and specifications were progressing through the system in less time.[86] Of those cases closed with the Respondent pleading guilty, 50% were open almost seven months after the charges were filed, while 25% were open at least one year. While the Commission commends this improvement, it believes that, given DAO's stated policy, these cases are still taking too long to complete.

Table 4: Delays in the Commission's key measures of case progression, broken down by percentiles

[84] This category includes 453 cases.

[85] This category includes 434 cases.

[86] These figures include mitigation hearings where a Respondent pled guilty to the charges and specifications and then offered evidence to persuade the Trial Commissioner that a downward departure from the Department's penalty recommendation was justified. Since there was some testimony on these cases, it is expected that they would take slightly longer to complete than a negotiated plea. However, mitigation hearings only comprise a small makeup of the total cases.

(this table covers negotiated guilty pleas only: 455 cases)[87]

relevant time frame *(total of applicable cases)*	*10%*	*25%*	***50%*** ***(median)***	*75%*	*90%*	*100%*
consultation date *to* filing of charges (429)[88]	2 days (5)	8 days (12)	47 days (44)	106 days (86)	182 days (192)	569 days (586)
consultation date *to* closing date of case (432)[89]	138 days (160)	199 days (200)	282 days (285)	435 days (396)	660 days (629)	1580 days (1914)
filing of charges *to* service of charges (447)[90]	5 days (2)	16 days (6)	42 days (21)	55 days (47)	90 days (64)	396 days (228)
filing of charges *to* closing date (453)[91]	70 days (117)	105 days (145)	207 days (228)	369 days (398)	617 days (620)	1394 days (1912)
filing of charges *to* negotiation date (434)[92]	46 days	70 days	139 days	279 days	554 days	1382 days

E. Adjudicatory Time in CCRB Cases

Although not specifically addressed in depth in *The Prosecution Study*, the Commission noted that

[87] The number in parentheses in the bottom row of each segment of the table reflects the number of days between the two stages that the Commission found in *The Prosecution Study*. The final row of the table does not have the 2000 statistics because this time period was not calculated for that report.

[88] All cases which originated with CCRB were excluded from this calculation because they do not have consultation dates. This comprised 22 cases. Additionally, two cases were excluded because the dates provided were incorrect, and two cases were excluded because the filing date was not provided.

[89] The 22 cases which originated with CCRB were excluded from this calculation because these cases do not have consultation dates. One further case was excluded because the date provided was incorrect.

[90] Six cases were excluded from this calculation because they were missing one of the relevant dates, and another two cases were excluded because the dates provided were incorrect.

[91] Two cases were excluded from this calculation because they were missing filing dates.

[92] Twenty cases were excluded from this calculation because one of the relevant dates was missing, while another case was excluded due to an incorrect date.

those cases that were sent to the Department for prosecution from CCRB encountered even longer delays when proceeding through the system than cases that were investigated by and originated within the Department. This was problematic because the period of time between the date of the incident and the date the case was transferred to the Department from CCRB for prosecution was often lengthy. The Commission had, therefore, recommended that CCRB be given the authority to prosecute its own investigations, in part so that it could shorten the delay in the adjudication of cases given that the disciplinary caseloads would be divided between two agencies.

Based on the data collected for this Report, the Commission separated out those cases that originated with CCRB[93] and conducted a similar analysis for the time periods for the key points in the disciplinary system for all CCRB cases and for those cases that went to trial.[94] In order to better determine whether there was additional delay when a case originated with CCRB, the Commission also analyzed those cases that were investigated by Department personnel only to determine whether the delays in the adjudication of these cases were similar, longer, or shorter.

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[93] The Commission used one of two methods to determine whether a case originated with CCRB. First, in checking the CATS sheets, if the sheet indicated either that the case was received from CCRB or if there was no consult date and the assigned Advocate was a member of CCRB team, the case was counted as originating with CCRB. The second method the Commission used was through examination of the paperwork received from the Department when a case was finally adjudicated. Usually this paperwork consisted of the charges and specifications, the disposition, the Trial Commissioner's opinion or a plea memorandum, memorandum from CCRB, and memorandum prepared during or immediately after the investigation of the case. When a case is investigated by CCRB, there is usually an indication of that in the above paperwork.

[94] Since the majority of applicable CATS sheets did not contain the date that the Department received the case from CCRB, the Commission was unable to calculate some time periods that would be comparable to those cases that originated within the Department. These time periods were those between the consultation date and the date of filing of the charges as well as the time period between the consultation date and the closing date of the case. The Commission requested the missing information from the Department, however, it was unable to provide the requested data for the majority of the cases. Therefore, these two key areas of progress were not calculated in this section of the Report.

Although calculations were done for those CCRB cases that were dismissed before trial and those cases that were disposed of with negotiated guilty pleas, the Commission did not include these figures in this Report for the following reasons. In those cases that were dismissed prior to trial, the Commission found that in all but the 75th percentile, CCRB cases were being dismissed in more timely manner than those cases that originated at and were investigated by the Department. In those cases that were resolved by a guilty plea, the sample sizes for CCRB cases and non-CCRB cases, 25 and 426, respectively, were too disparate to make a meaningful comparison.

When comparing all the cases with various dispositions, the Commission found that:

- ***from the filing of charges against the subject officer to the closing of the case***

    - 50% of the CCRB cases were open for more than sixteen months[95] while 50% of those cases investigated by the Department were pending for approximately nine months, [96]

    - 25% of the CCRB cases took over twenty-six months to adjudicate, while 75% of the Department's cases were adjudicated in slightly more than seventeen months, and

    - 10% of the CCRB cases were open for over three years, while 90% of the Department's cases were completed within twenty-five and one-half months.

This demonstrates that CCRB cases are generally taking between five and eleven months longer to close than those cases referred by the Department.

The following tables show the results of the Commission's calculations.

[95] This subset included 230 cases.

[96] This category included 976 cases.

Table 5: Delays in the Commission's key measures of case progression, broken down by percentiles
(this table covers all CCRB cases: 233 cases; and all non-CCRB cases: 980 cases)[97]

relevant time frame *(total of applicable cases)*	*10%*	*25%*	***50%*** ***(median)***	*75%*	*90%*	*100%*
filing of charges *to* service of charges CCRB: (215)[98] non-CCRB: (829)[99]	same day (3)	1 day (12)	7 days (37)	15 days (55)	32 days (86)	70 days (513)
filing of charges *to* closing date CCRB: (230)[100] non-CCRB: (976)[101]	175 days (54)	323 days (119)	503 days (268)	798 days (514)	1116 days (765)	1918 days (2142)

It is notable that the median time period that CCRB cases were pending was greater in this category than in any other previously examined category with the exception of all of the cases that went to trial.[102] This is potentially problematic because when CCRB concludes its investigation and refers the case to DAO, there may have already been a lengthy delay. Further delay in prosecuting the case may then

[97] The first number in each row is the length of time for CCRB cases. The second number, in parentheses, is the length of time for non-CCRB cases

[98] Eleven cases were excluded from this calculation because a date was not provided, and seven cases were excluded because an incorrect date was provided.

[99] 135 cases were excluded from this calculation because they either were missing the service date or the Respondent was separated from employment prior to the service of charges and specifications. An additional sixteen cases were not included because they had incorrect dates.

[100] Three cases were excluded from this calculation because the dates provided were incorrect.

[101] Four cases were excluded from this calculation due to missing dates, and one case was excluded because the dates provided by the Department were incorrect.

[102] *See supra*, Table 2 at page 57.

hamper the Department's chances of obtaining a finding of guilt as evidentiary problems may arise. As can be seen by Table 5, CCRB cases generally took longer to resolve than non-CCRB cases. This finding holds true for all except the few anomalous cases that were pending for extreme lengths of time.

When the Commission compared just those CCRB cases that went to trial with the cases that were investigated by the Department that went to trial, the following results were obtained.

- ***from the filing of the charges against the subject officer to the commencement of the trial***

    - 50% of the CCRB cases were open for almost one year before the trial commenced,[103] while 50% of the cases investigated by the Department were open for approximately nine months prior to the trial beginning, [104]

    - 25% of the CCRB cases were open for over seventeen months prior to the commencement of the trial, while 75% of the trials in the non-CCRB cases began within fifteen months, and

    - in 10% of the CCRB cases, the trial did not commence until twenty-eight months had passed, while 90% of the trials in the non-CCRB cases began within twenty-five months.

- ***from the conclusion of the trial to the issuance of the Trial Commissioner's findings and recommendations***

    - in 50% of the CCRB cases, over five months passed before a decision was issued, [105] while a decision was issued in 50% of the non-CCRB cases within approximately four and one-half months, [106]

    - 25% of the CCRB cases had decisions issued within nine months from the conclusion of the trial, while decisions were issued within ten months for 75% of the Department-investigated cases, and

[103] This included 169 cases.

[104] This included 226 cases.

[105] This included 132 cases.

[106] This included 227 cases.

- in 10% of the CCRB cases, decisions were issued within one year from the end of the trial, while in 90% of the non-CCRB cases, thirteen months passed before a decision was issued.

- ***from the filing of charges against the subject officer to the closing date***

  - 50% of the CCRB cases were pending for over nineteen months, [107] while 50% of the non-CCRB cases were open for almost eighteen months, [108]

  - 25% of the CCRB cases were open for almost twenty-eight months, while 75% of the non-CCRB cases were closed within approximately twenty-five months, and

  - 10% of the CCRB cases took over forty months to close, while 90% of the non-CCRB cases were closed within thirty-three and one-half months.

In general, while CCRB cases took longer to resolve than the entire case pool, the trials themselves were concluded in equal or less time. There was increased delay between the filing of the charges and the commencement of the trial for the majority of CCRB cases when compared to the non-CCRB cases.

[107] 166 cases were included in this calculation.

[108] 233 cases were included in this calculation.

Table 6: Delays in the Commission's six key measures of case progression, broken down by percentiles
(this table covers CCRB trial cases only: 169 cases; and non-CCRB trial cases only: 233 cases)[109]

relevant time frame *(total of applicable cases)*	*10%*	*25%*	***50%*** ***(median)***	*75%*	*90%*	*100%*
filing of charges *to* service of charges CCRB: (158) [110] non-CCRB: (225) [111]	same day (1)	same day (7)	6 days (21)	12 days (46)	20 days (74)	63 days (419)
filing of charges *to* closing date CCRB: (166)[112] Non-CCRB: (233)	294 days (239)	374 days (362)	589 days (532)	836 days (752)	1224 days (1004)	1918 days (2142)
filing of charges *to* start of trial CCRB: (169) non-CCRB: (226)[113]	151 days (134)	201 days (185)	352 days (275)	528 days (438)	842 days (727)	1284 days (1705)

[109] The first number in each row is the length of time for CCRB cases. The second number, in parentheses, is the length of time for non-CCRB cases.

[110] Eleven cases were excluded from this calculation because five had missing dates and six had incorrect dates.

[111] Four cases were not included in this calculation due to missing service dates, and four cases were excluded due to incorrect dates.

[112] Three cases were excluded from this calculation because the dates were missing.

[113] Seven of these cases were not included because they were missing the trial start date.

start of trial *to* end of trial CCRB: (165)[114] non-CCRB: (225)[115]	same day (same day)	same day (same day)	same day (same day)	1 day (1)	2 days (2)	123 days (31)
end of trial *to* judge's decision CCRB: (132)[116] non-CCRB: (227)[117]	22 days (8)	63 days (35)	160 days (138)	261 days (297)	353 days (390)	574 days (648)
trial judge's decision *to* closing date CCRB: (138)[118] non-CCRB: (230)[119]	17 days (16)	24 days (25)	42 days (45)	86 days (66)	101 days (101)	1357 days (337)

Once cases originating with CCRB were filed, the charges were served upon the Respondent more quickly than in non-CCRB cases in general, except for those cases that took the longest to adjudicate. CCRB cases, however, appeared to have lengthier delays to begin the trial and to resolve the case overall.

F. Conviction Rates in CCRB Cases

[114] Four cases were excluded from this calculation. Three were excluded because they were missing the date the trial ended, and one was excluded because it was missing the date the trial started.

[115] Seven of these cases were not included because they were missing the trial start date. One additional case was excluded because it was missing the date that the trial concluded

[116] 30 cases had a missing date, and seven cases had incorrect dates. Therefore, these 37 cases were also excluded from this calculation

[117] Five of these cases were not included due to missing dates, and one case was not included due to an incorrect date.

[118] 30 cases had a missing date, and one case had an incorrect date. Therefore, these 31 cases were also excluded from this calculation

In *The Prosecution Study*, lower conviction rates were noted in those cases that originated and/or were investigated by CCRB. Again, the Commission compared the conviction rates for those cases transferred from CCRB to the Department for prosecution with those cases that were investigated and substantiated by a Department investigative unit.

A significant difference was noted between these two categories of cases in that in non-CCRB cases the Department had a 63.9% conviction rate while they had only a 36.9% conviction rate in CCRB cases.[120] The difference in the conviction rates could be attributed to: the nature of the cases; the built-in delay associated with the transfer of the cases from CCRB after its investigation to DAO for the prosecution; the manner in which CCRB cases are prosecuted by the Department; that some cases were heard in a non-Departmental venue, OATH; and/or a combination of these factors. Also, the Department's policy with respect to pursuing all CCRB cases may contribute to this disparity. In Department-generated cases, DAO may dismiss a case when there are proof problems or if the interests of fairness would be furthered by the dismissal. Even when such issues exist in CCRB cases, however, the Department has a policy of going forward with all disciplinary cases substantiated by CCRB. The basis for this policy is that it allows the Trial Commissioner to be the final arbiter of the facts rather than DAO personnel. While this may be a laudable policy decision, it may contribute to the difference in conviction rates. In making the below comparison, the Commission examined all cases and separately analyzed cases in which there were trials.

In conducting these comparisons, the Commission found the following dispositions:

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[119] Three cases were excluded from this calculation. One was excluded for an incorrect date, while two were excluded because of missing dates

[120] This statistic was calculated by the number of guilty pleas or guilty findings after trial.

Table 7: Dispositions of all cases
(1214 cases[121])

	Dismissals Before Trial	*Guilty*[122]	*Not Guilty*	*Filed*
CCRB-generated cases (233)	34 (14.5%)[123]	86 (36.9%)	94 (40.3%)	19 (0.1%)
non-CCRB cases (981)	53 (5%)	627 (63.9%)	51 (5%)	250 (25.4%)
All cases: CCRB and non-CCRB (1214)	87 (7%)	713 (58.7%)	145 (11.9%)	269 (22%)

Table 8: Dispositions of trial cases
(394 cases)

	Guilty	*Not Guilty*
CCRB-generated cases (169) [124]	64 (37.8%)	105 (62.1%)
non-CCRB cases (236)	185 (78.3%)	51 (21.6%)

[121] Twelve cases were excluded from the universe of cases analyzed because Commission staff was unable to determine if these cases were CCRB-generated or Department-generated

[122] This category includes findings after a guilty plea or a trial.

[123] All percentages are rounded to the nearest tenth of a percentage, so percentages may not equal 100 when totaled.

[124] Thirteen cases were included in this pool because although the charges were dismissed upon a motion by the Advocate or the Trial Commissioner, the CATS sheets contained trial dates. Therefore, the Commission treated these cases as if the charges were dismissed at some point after the trial had commenced.

All cases: CCRB and non-CCRB (394)	249 (63.1%)	145 (36.8%)

Although unable to pinpoint the factors that cause the differences in conviction rates between those cases investigated by CCRB and those investigated by the Department and understanding that some factors are beyond the Department's control, the Commission believes that these significant differences raise concerns. The Department should be examining the causes underlying the much lower conviction rates in CCRB cases in an effort to determine if there are ways to improve them.

VII. ADDENDUM TO DELAYS IN ADJUDICATION

Originally, this follow-up study was going to report on those cases adjudicated between January 2001 and November 2002. Therefore, statistical databases were prepared and analyzed covering only that time period. Also, in the DAO file review, all of the Advocates' files that Commission staff examined were from cases which were completed during this time period. However, due to the delay in the release of this Report, the Commission tried to acquire more current data from the Department in order to analyze and present the most up-to-date information. The Commission requested to obtain more recent DAO files to see if any positive changes had occurred with the appointment of a new Department Advocate. The Department; however, refused to supply the Commission with the requested case files. Commission staff continued to attend disciplinary proceedings to observe the performance of the Advocates and continued to receive the CATS sheets which contained the information used to assess the progress of the disciplinary cases.

While the Commission's more recent trial observations are included within the main text of that

section, for the statistical analysis, the Commission recognized that analyzing the data as a whole might not accurately reflect the impact of the changes in the Department's administration and recent changes made by the Department to the disciplinary system. Some of the cases from the sample in the main text were decided under the former Department administration, and the Commission wanted to evaluate the progress of the disciplinary system under the most recent Department administration. Also, during the course of this study, the Department appointed a new Deputy Commissioner of Trials, and DAO hired several civilian attorneys. Commission staff, therefore, separated out the cases that were adjudicated during the first six months of 2003 and compared these calculated statistics with those computed for the main text to determine the impact of these newly implemented changes. In total, 306 cases that were adjudicated between January 2003 and June 2003 were separately analyzed. These cases included the same types of cases and were analyzed in the same manner as those in the main text of this report.[125]

After reviewing these statistics, the Commission found that there was a slight improvement in the rate that cases progressed through the Department's disciplinary system in the first quarter of 2003. This improvement, however, was not maintained, and the overall time period between the commencement and conclusion of most cases in the second quarter of 2003 was even longer than that observed in the main sample. For example, in the main sample, statistics demonstrated that 50% of the cases took almost ten and one-half months to close after the charges were filed. In the first quarter of 2003, 50% of the 115 cases in the sample took 9.8 months, an improvement of almost one month. In the second quarter, however, 50% of the 191 cases examined took one year to complete, one and one-half months longer than

[125] *See* pages 43-46 of the main text for further explanation of the methodology employed by the Commission to calculate the delay found in its eight key points of progress of a case from its commencement to its conclusion. Although the Commission routinely received the CATS sheets from the Department for the six months analyzed here, many of these CATS sheets continued to contain errors which had to be reconciled using other information or which could not be reconciled. When the errors could not be reconciled, these cases were not included in the calculations of the applicable time frames.

those cases in the original sample.[126] In the main sample, 25% of the cases took at least nineteen months to close after the charges and specifications were filed, while in the first quarter of 2003, 25% of the cases took slightly longer than fifteen months to close, an improvement of almost four months. Yet in the second quarter of 2003, this time period increased to almost twenty and one-half months. In the main sample, ten percent of the cases took over two years to close after being filed. In the first quarter of 2003, ten percent of the cases were open for almost nineteen and one-half months before being closed. In the second quarter of 2003, however, ten percent of the cases were open for over two and one-half years, six months longer than those in the original sample.

During the current series of calculations, the Commission noticed an additional, new source of delay in the final adjudication of many cases. Once completed in the Trial Rooms, cases are referred up the chain of command for the Police Commissioner's approval. In the past, cases were steered with the First Deputy Commissioner's office, and his input was received on any penalty prior to the negotiated plea. Presently, it appears that these steering conferences with the First Deputy Commissioner's office staff are not being conducted on a regular basis. This has resulted in cases where plea agreements are not pre-approved by the First Deputy Commissioner's office and are, therefore, sent back to the Trial Rooms for renegotiation. This results in further, substantial delays. These delays possibly could be eradicated if DAO and the First Deputy Commissioner's office resumed these steering conferences prior to offers being extended to the Respondents. Further, several cases have been delayed because the Police Commissioner did not agree with the Trial Commissioner's recommendations as to the findings of culpability or the appropriate penalty to be imposed when the Respondent was found guilty. It appears that there needs to be

[126] The reader should recognize, as the Commission does, that this is not a true comparison because of the widely divergent sample sizes, over 1200 compared to less than 150 in each quarter, as well as the manner in which the statistics were compared. In other words, the comparison made here is between a 23-month time frame and two sets of three-month time frames. For example, a few particularly lengthy or quick cases could skew the results in a particular quarter in either direction.

improved communication between DAO, the Trial Commissioners, and the Department's executive staff regarding Department policies on disciplinary matters.

Improvement was seen in one category of cases; those cases that went to trial were progressing through the disciplinary system more quickly. The gains seen in the first quarter of 2003, however, were not repeated in the second quarter in that the time it took to try cases, receive decisions from the Trial Commissioner, and receive approval from the Police Commissioner increased, at times, almost doubling. In general, though, these cases were still being heard and decided in a quicker fashion than those cases that were adjudicated in 2001 and 2002.

Comparisons for the data collected for the main sample with the first two quarters of 2003 for the eight key points in the progression of the cases can be seen in the following table:

What is more important to understand from this comparison is that unreasonable delays still exist.

Table 9: Delays in the Commission's key measures of case progression, broken down by percentiles
(this table covers: 1532 cases.[127] This represents all of the cases in the Commission's sample from January 2001 until June 2003.[128])[129]

relevant time frame *(total applicable cases)*	*10%*	*25%*	***50%*** ***(median)***	*75%*	*90%*	*100%*
consultation date *to* filing of charges (971)	1 day	5 days	29 days	96 days	182 days	569 days
(*80*)[130]	*same day*	*1*	*43*	*162*	*239*	*424*
(143)[131]	(same day)	(1)	(10)	(104)	(201)	(470)
consultation date *to* closing date						
(980)	93 days	191 days	335 days	590 days	828 days	2151 days
(*82*)[132]	*63*	*236*	*366*	*551*	*765*	*1793*
(144)[133]	(75)	(313)	(365)	(613)	(956)	(1942)

[127] 1226 cases were those examined in the main text from January 2001 until November 2002. 115 cases are from the first quarter of 2003, and 191 cases are from the second quarter of 2003.

[128] Due to the manner in which this Report was written and scheduled to be published, the cases that were adjudicated in December 2002 were not included in any of the samples.

[129] The top number represents the number of days between the stages in the main text 2001/2002 sample. The middle number in italics represents the number of days between the same stages in the first quarter of 2003. The bottom number in parentheses represents the number of days between the same stages in the second quarter of 2003.

[130] 30 cases were excluded because they originated with CCRB, and, therefore, did not have consultation dates. Five cases were excluded from this calculation because of erroneous data.

[131] 45 cases were excluded because they originated with CCRB, and therefore, did not have consultation dates. Three cases were excluded from this calculation because they were missing a relevant date.

[132] 30 cases were excluded as they originated with CCRB and did not have consultation dates, while three cases were excluded because the dates provided were apparently erroneous.

[133] 45 cases were excluded because they originated with CCRB, and two cases were excluded because the dates were erroneous.

filing of charges *to* service of charges						
(1057)	1 day	13 days	22 days	49 days	78 days	513 days
(*93*)[134]	*1*	*5*	*14*	*48*	*76*	*568*
(180)[135]	(1)	(7)	(16)	(55)	(74)	(991)
filing of charges *to* closing date						
(1218)	62 days	146 days	314 days	579 days	836 days	2142 days
(*115)*	*52*	*178*	*294*	*459*	*584*	*1786*
(191)	(63)	(211)	(365)	(613)	(956)	(1942)
filing of charges *to* start of trial						
(392)	136 days	191 days	302 days	502 days	810 days	1705 days
(*21*)[136]	*104*	*150*	*220*	*273*	*386*	*1507*
(73)[137]	(111)	(180)	(322)	(468)	(714)	(1173)

[134] 21 cases were excluded because they were not applicable as charges were not served, while one case was excluded due to a missing date.

[135] Ten cases were excluded because they were not applicable as charges were not served, while one case was excluded due to a missing date.

[136] Only 21 cases went to trial in this quarter.

[137] Only 73 cases went to trial in this quarter.

start of trial *to* end of trial (390) (*21*) (73)	same day *same day* (same day)	same day *same day* (same day)	same day *same day* (same day)	1 day *1* (1)	2 days *3* (7)	31 days *24* (29)
end of trial *to* judge's decision (365) (*21)* (72)[138]	13 days *12* (19)	54 days *34* (34)	160 days *83* (89)	281 days *158* (178)	386 days *204* (305)	648 days *284* (580)
trial judge's decision *to* closing date (373) (*21*) (72)[139]	17 days *24* (3)	25 days *32* (8)	41 days *36* (29)	74 days *44* (42)	101 days *47* (59)	1357 days *111* (76)

While there has been some improvement in the time in which cases are progressing through the disciplinary system, overall, cases are still pending for undue lengths of time. There is a continued need for improvement to reduce the delays that occur in this system.

VIII. CONCLUSIONS

As can be seen from the preceding section, the Commission found that substantial delay still existed in all of the key areas of case progression that were measured in *The Prosecution Study*. In fact, delay has appeared to have worsened in the areas of those cases that go to trial and of all cases as a whole.

[138] One case was excluded because it was missing a relevant date.

There has been some improvement, though, with the progression of negotiated cases through the disciplinary system, although the Commission still believes that these cases should be resolved more expeditiously.

As noted in *The Prosecution Study*, the main sources of delay were delays in the service of charges, failure to make offers to the Respondents at the earliest possible time, time between the filing of charges and the start of the trial, and the delays by the Trial Commissioners in issuing trial opinions after the conclusion of the trial. These were still major sources of delay in the data reviewed by the Commission for the twenty-three months that were the subject of this study.

To address these findings, the Commission has made several recommendations that can be found at the beginning of this Report.

[139] One case was excluded because it was missing a relevant date.

PART III - AN EVALUATION OF THE PROSECUTION FUNCTION

I. FILE REVIEW

As part of its study, the Commission reviewed 103 selected files involving cases prosecuted by DAO. These cases involved a myriad of allegations and included all types of dispositions -- negotiated pleas, trials, filed cases, and dismissals.

For each case, the Commission looked at the investigative steps and/or case preparation that was conducted and documented in the file. The Commission evaluated if the Advocates obtained all relevant evidence and contacted witnesses in a timely and substantive manner. The Commission also ascertained if supervisory reviews were conducted and documented in the files and if necessary follow-up was completed. Finally, the Commission assessed the nature of delays throughout the progression of the cases through the system.

Depending on the severity of the charges brought against an officer and a case's ultimate disposition, different types and degrees of case preparation are necessary. For instance, a case involving complex criminal charges that proceeds to trial will necessitate greater and more in-depth preparation than a case involving a relatively minor and straightforward administrative violation where the officer pleads guilty on the first negotiation date. In the first instance, the Advocate must speak with and prepare the witnesses for trial and must obtain and present at trial all the evidence that will prove the Respondent's guilt. On the other hand, for a relatively minor case that is quickly resolved, the Advocate may have to do little work. Obviously, certain cases will take longer to resolve and may require more supervisory input as well. Taking these and other considerations into account, the Commission evaluated the amount and nature of case preparation completed on each case.

A. Witness Contact

The most basic and important step in preparing a case for disposition or trial is speaking with the witnesses who are necessary to prove the charges. Again, the nature and frequency of the contact necessary will depend upon the complexity of the case and its ultimate disposition. However, in most cases, especially those involving civilian witnesses, the Advocate should at the earliest opportunity contact the complainant as well as other witnesses. It is important that the Advocate do so for many reasons. First, the Advocate needs to determine the viability of the case as early as possible so that unviable cases do not linger in the Department wasting Department resources and adversely affecting an officer's career. Also, the Advocate must evaluate the credibility of the witnesses and evaluate, based on the proof and the severity of the charges, what if any plea offer is appropriate. While the initial investigator speaks with the witnesses during his investigation, the Advocate has a different role in pursuing the case than the investigator. The investigator must determine if the proof demonstrates more likely than not that the allegations are true. On the other hand, the Advocate, as a prosecutor in the Trial Rooms, must determine if the proof is sufficient to make out a prime facie case at trial.[140] In recognition of the importance of these issues, Department officials reported that Advocates are currently contacting witnesses earlier in the process than had been done in the past. The Commission's analysis of the files and courtroom observations, however, demonstrate no significant improvement in this area in that limited contact with witnesses was documented in the case files and numerous witnesses indicated during their trial testimony that they were first contacted just prior to trial.

The Commission recognizes that witnesses are, at times, uncooperative or become unavailable

[140] This standard requires that by viewing the evidence in the light most favorable to the Department, the Trial

during the pendency of a case. The Department may also face a unique issue in getting a witness to cooperate when the basis of his allegation was a negative encounter with the police, as is typically the case in CCRB cases. In recognizing these issues, the earlier that a witness is contacted, the more beneficial it may be. Details are more likely to be fresh in the witness' mind and the witness may more willing to cooperate. Additionally, maintaining contact throughout the process demonstrates the Department's commitment to the prosecution of the case and enables the Advocate to continuously confirm or ascertain the witness' contact information and cooperation.

The Commission, therefore, looked at the amount and nature of witness contact conducted on each case. The Commission found that in most cases, the Advocate did not contact the complaining witness or any other witnesses at all during the entire adjudication of the case. In only 23 of 103 cases was there any documentation that the Advocate spoke with or attempted to speak with any of the witnesses at any time during the case's adjudication. Additionally, in many of the 23 files with witness contact, there was no indication of either at what stage of the case the witnesses were contacted, how often they were spoken with, or the substance of the conversation. Further, where there was some notation about the substance of the conversation, it merely indicated the witness' willingness to testify rather than any substantive information about the case. Finally, most of the documented contact appeared to be via telephone. While this is preferable to no contact, ideally, Advocates should be meeting with witnesses in person to better assess their credibility. Due to the limited activity in the Trial Rooms and that, at most, two advocates may be on trial at a given time, it appears that the advocates have ample opportunity to interview witnesses, in person or otherwise.

For the most part, only cases which proceeded to trial had any documented contact with witnesses.

Commissioner must be able to find that the Department has presented the minimal amount of evidence to establish every element of each offense charged.

In the vast majority of cases that did not proceed to trial, there was no documentation that witnesses were contacted at all throughout the adjudication of the case, regardless of when it was resolved.[141] Specifically, of the 23 cases where witnesses were contacted, fourteen of them were cases that proceeded to trial. Of the 85 case files that ultimately ended in a plea negotiation or other type of disposition, only nine had any indication that the advocate spoke with any witness. This suggests that Advocates may deem it only necessary to speak with witnesses when they believe a case will proceed to trial as opposed to routinely speaking with witnesses as a matter of course to prepare and familiarize themselves with their cases.

Further, while some of the files documented efforts made at the outset of the prosecution to contact witnesses, many of the files indicated that the Advocates either sought out or contacted the witnesses just prior to trial. Often, this was months, if not years, after DAO received the case. For example, in one case, the Respondent was charged with beating up a prisoner and then lying to investigators about the incident during his official PG interview.[142] The incident occurred in May 1998 and the case was referred to DAO in March 1999. The case eventually went to trial in November 2000. There were numerous witnesses to the incident, including the complainant and five members of the service, one of whom reported the incident. According to the file, the Advocate did not contact any witnesses until one-to-two weeks before the trial. This was over one year and one-half after the Advocate received the case. Additionally, the only indication of contact with the complaining witness prior to the trial was that he was sent a subpoena one month prior to the trial date to appear for the trial. This case was a termination case. While it is necessary

[141] *See* Table 4 and accompanying text for a discussion of delay in cases that resulted in a plea negotiation.

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

in all cases to maintain contact with trial witnesses, this is especially true in the most serious instances of misconduct where the Department is seeking termination. Here, the lack of timely contact and preparation of the witnesses may have contributed to the not guilty finding after trial.

Particularly problematic is the lack of timely contact in CCRB cases. While the Department has contended that CCRB, at times, does not substantiate provable cases, DAO does not appear to be contacting witnesses in a timely manner in order to accurately ascertain the viability of the cases. If DAO has decided to proceed with a case, irregardless of its viability, the Advocate still needs to present the best case possible so that the Trial Commissioner can truly decide the case on its merits. In the Commission's sample, eighteen cases were referred from CCRB. In four of these cases, there was no documented contact with any witness throughout disposition, and in an additional six cases, the earliest attempted or successful contact with any witness was at least three months after the case was received at DAO, with many contacts being significantly later. This lack of witness contact impacts upon the Department's success rate in prosecuting CCRB cases.[143] Given the limited amount of time that each advocate is on trial and their average caseloads, advocates should be contacting witnesses in a more timely manner in CCRB as well as non-CCRB cases.

In one case, the Respondent was charged with using excessive force against the complainant during his arrest in October 1998. DAO received the case from CCRB in September 1999, and it was scheduled for negotiation in the Trial Room in March 2000, five months later. An offer was conveyed, and the case was adjourned for two weeks. On that court date, the Respondent did not accept the negotiated penalty, and the case was scheduled for a trial control date at the end of June 2000. At that time, the case was adjourned for trial for November 2, 2000, then for January 24, 2001, when the trial commenced. The file

[143] Overall, the Department had a 36.9% conviction rate in CCRB cases. For a discussion of delay in prosecuting CCRB cases, *see* Table 5 at page 65 and accompanying text.

disclosed that the first time the Advocate attempted to contact the complainant and other witnesses -- all of whom's contact information was in the CCRB file -- was in June 2000, a few days before the trial control date. According to the few intelligible notes in the file, it appeared that these attempts were unsuccessful, yet the next indication of any attempt by the Advocate to reach the witnesses was not until January 9, 2001, approximately two weeks before the scheduled trial date.[144]

As discussed above, during steering, the Advocate presents to the First Deputy Commissioner and the steering committee the facts of the case, and they determine what if any plea offer should be conveyed to the Respondent. Consequently, the Advocate must at this point be familiar with the testimony of the witnesses, and convey the strengths and weaknesses of the case. Accordingly, by the time of steering, the Advocate should have spoken with the witnesses. The files reviewed, however, indicate that in only 25% of the time are witnesses contacted at any point during the pendency of the case. Further, even in these cases, it does not appear that substantive conversations are taking place, and most contact did not occur prior to the development of a plea offer. If the Advocates generally do not speak with the witnesses prior to the steering meeting, then the Advocates' analysis and input regarding the appropriate plea offer is limited. Additionally, issues of witness credibility, which necessarily affect the analysis of the merits of the cases, need to be discussed during steering so that the First Deputy Commissioner can make an informed decision about the case. Again, if the Advocate is making credibility judgments based on documentation contained in the file instead of on his own interviews and analysis, they are not going to be meaningful. Also, as further discussed below in this section and throughout the Trial Observation section,[145] the Department claims that supervisory reviews of cases occur on an ongoing basis. If

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[144] The Respondent was found not guilty of all charges after trial.

[145] *See infra*, at pages 91-94, 101.

Advocates have not spoken to witnesses in the vast majority of cases, it raises the question of how substantive these reviews are and what type of case preparation is deemed acceptable.

DAO officials assert that they are seeking to enhance these case reviews. In part due to budgetary constraints and a decrease in resources, including DAO's loss of a substantial number of Advocates,[146] these reviews are not being conducted as intended. The hiring of more experienced civilian attorneys has been reported and should aid in improving case preparation, thereby making these case reviews more substantive.

While Advocates are not required to document all actions taken on a case, documenting contact with witnesses is important for various reasons. First, if a supervisor or other Advocate looks at the file to determine the viability of the case, it should be in the file with whom the Advocate spoke and if they are willing and available to testify. Additionally, if an Advocate is asked about any of these issues, for his own recollection this should be documented in the files so that he can readily recount this information for a supervisor or anyone else. Each Advocate and Team Leader handles approximately 35-to-50 cases. Therefore, each has a great amount of information to recall and detailed documentation is practical as well as necessary. Finally, if the case is transferred to another Advocate, it is important that he be able to ascertain what has been done on the case.

B. Case Enhancement

In order to properly prepare their cases, Advocates may have to obtain documentary or other evidence in order to evaluate the cases' merits or prepare them for trial. Generally, the underlying investigative file will contain documentary and other evidence to support the charges. But, in addition to

[146] Since the current Department Advocate's assignment to DAO in May 2002, the number of Advocates has reportedly

obtaining and analyzing the contents of the entire investigative file at the outset of the prosecution, the Advocate must also acquire whatever other evidence is necessary to supplement the case, evaluate its merits, and determine if the allegations may be proven at trial. Because the standard of proof necessary in the Trial Room is different from that to substantiate a case, the Advocate must adequately enhance the case to prove the charges in the Trial Room by a preponderance of the evidence, the applicable legal standard.[147]

In cases involving allegations of force or assault, for instance, it may be necessary that the Advocate obtain and examine the medical records of the person claimed to be injured. Enhancing the case may further include obtaining case law regarding the level of physical injury sustained. In other cases, the Advocate may need to subpoena phone records, obtain photographs, locate additional witnesses, or research the law applicable to the case. Additionally, when discrepancies, gaps, or questions arise when evaluating witnesses' interviews and evidence contained in the case file, the Advocate must speak with the witnesses. He must clarify any issues and ascertain if all the elements of the charges can be proven in the Trial Room. Speaking with witnesses is necessary, not solely to determine their availability for trial, but to elicit detailed narratives in order to prepare the case and evaluate the case's viability. From a review of the files, the Commission found that these steps are not being conducted and that insufficient case enhancement still appears to be a considerable problem.

Although every case does not require that additional evidence be obtained, it is important in all cases that witnesses be contacted. However, only approximately 45% of the cases had any indication of

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decreased almost 25%.

[147] *See* footnote 27 for a definition of this legal standard.

any case preparation or enhancement, including witness contact.[148] Moreover, the Commission's trial observations further demonstrate that not only are Advocates failing to document such investigative steps, but that insufficient case enhancement is, in fact, occurring.[149] For instance, in one file reviewed, the Respondent's niece was arrested. The Respondent arrived at the station house, was discourteous to other members of the service, and allegedly followed her niece who was still in custody to the hospital after being directed by a supervisor not to do so. Consequently, the officer was charged with: failing to comply with an order; acting in a disruptive manner during the arrest processing of her niece; and failing to receive permission from the Desk Officer to visit a hospitalized prisoner as required. The Respondent was found not guilty of failing to comply with an order and failing to receive permission from the Desk Officer. She was only found guilty of being disruptive at the precinct. The file and the trial decision in the file made it evident that poor preparation of the case and the witnesses contributed to this outcome.

First, with respect to the first charge -- failure to comply with an order after being directed by a Sergeant not to go to the hospital where the prisoner was being treated -- the Sergeant who supposedly gave the directive testified at the Department trial that he did not recall ordering the Respondent not to go to the hospital. The Respondent testified that she was told not to go into the ambulance with the prisoner so she did not, but she then went to the hospital in another vehicle. The Sergeant could not refute this because he did not recall specifically telling her not to go to the hospital. The underlying investigative paperwork indicated that the Sergeant did, in fact, give this directive, but clearly he had not reviewed this paperwork or been prepped properly about what he specifically had said to the Respondent.

With respect to the last charge of failing to get the Desk Officer's permission before visiting the

[148] An additional 21 cases indicated that the only work that had been conducted on the case was merely obtaining the underlying investigative file, a step that DAO reports as routine.

[149] *See* pages 103-118.

hospitalized prisoner, the charge was improper. The Patrol Guide section under which this specification was charged did not apply to members of the service, but solely to civilians. Additionally, the section refers to prisoners that are, in fact, "admitted" to the hospital. Here, the Respondent's niece was merely in the Emergency Room and had not been admitted. There was no indication in the file that the Advocate researched any of these issues prior to the trial.[150]

As discussed and demonstrated above, Advocates must speak with witnesses as part of enhancing their cases and ensuring that Advocates can present the charges in a legally sufficient manner at trial. An essential component of case preparation is also preparing witnesses for testifying by going over the questions that he or she will be asked at trial. In only six cases, however, was there some notation that a witness was actually prepped for trial, as opposed to merely contacted.

In addition to ensuring that the charges against an officer are accurate, Advocates must also determine that the charges encompass all the misconduct. Without proper case analysis to determine what charges may be proven and if all applicable charges are appropriately levied against an officer, the officer may not be appropriately penalized for misconduct. For example, in one case an officer was involved in an automobile accident in the parking lot of a diner. The Respondent had been drinking and was arrested for Driving While Intoxicated ("DWI"). When he was given a Breathalyzer test, his Blood Alcohol Content ("BAC") was .05% -- below the legal limit for intoxication. Consequently, his arrest was voided. Administratively, the Department charged the officer with being Unfit for Duty, and the Respondent pled guilty to the charge. He received a penalty of seventeen days on suspension. The Respondent, however, should have been administratively charged with DWI and received a more significant penalty. Typically,

[150] Additionally, the Respondent reported to IAB that there was misconduct on the part of the officer who had transported her niece. The Respondent did not, however, identify herself as a member of the service as required under the Patrol Guide when she made the report. She was not charged with this misconduct, and there was no information in the DAO file to explain why this charge was not added.

where an officer is found guilty by the Department of DWI, it imposes a penalty of at least 30 days and a period of dismissal probation.

As noted in the DAO file, the Respondent took a Breathalyzer test almost four hours after the incident. Therefore, he had ample time for the effects of the alcohol to dissipate. Although the criminal charge may not have been sustained, the Department could have charged the Respondent with DWI and proved it under the common law. According to the underlying investigative file, the driver of the other car involved in the accident spoke with the Respondent at the time of the accident. Additionally, a witness told responding officers that the Respondent was intoxicated at the time. The police paperwork indicated that various officers responded to the scene and two supervisors found that the Respondent was intoxicated. Further, as indicated by the charge of Unfit for Duty, DAO believed that it could prove that the Respondent was intoxicated. If it could be proven that he was unfit then the Department only had to prove that he was driving at that time. As stated, there were various witnesses and the Respondent's own statements that could have proven this. DWI, however, was not charged.

Moreover, the Advocate did not speak with any of the witnesses -- civilian or uniform -- to ascertain if, in fact, the DWI charge could be proven and there was no indication in the file that the issue was considered or investigated at all. As part of enhancing the case, particularly given that the underlying file indicated that the responding officers merely spoke with the other driver, without any substantive notations regarding any conversation about the Respondent's condition, the Advocate should have spoken with this witness. He and the other witnesses should have been contacted in order to augment what was in the investigative file and determine what charges could have been proven.

The issue of case enhancement and preparation still appears to be a significant problem. Advocates

are not reaching out to witnesses in an effort to supplement what is contained in their case files. They are also not taking other investigative steps, such as obtaining necessary documentary evidence to ensure that the cases are adequately prepared and presented in the Trial Rooms. This conclusion is further illustrated by, as discussed below, the Commission's observations in the Trial Rooms.[151]

C. Supervisory Reviews

Department officials assert that supervisors regularly review an Advocate's caseload. These reviews occur at different phases of the process and for different purposes. For example, at the consult phase, the Team Leader and Managing Attorney will have their first contact with the case, reviewing the facts to determine the appropriate charges. Cases are then reviewed when determining a plea offer to present to the steering committee. Additionally, to the extent that workloads permit, case reviews are sometimes conducted to ensure that case preparation is being done and cases are proceeding in a timely manner. Since *The Prosecution Study*, and until recently, Department officials have reported that these periodic reviews occurred on an approximately monthly basis. Recently, however, due to a decrease in staffing and an increase in supervisory responsibilities, supervisory reviews are not taking place as often as initially intended. When the reviews do, in fact, take place, supervisors are supposed to document directives and conduct follow-up for any subsequent case reviews. Further, for trial cases, supervisors are supposed to conduct a pretrial meeting with the Advocate to discuss the proof to be presented at trial and how it is going to be presented. Overall, the Commission found minimal documentation in the case files that any types of supervisory reviews were actually occurring.

While the Commission understands that supervisors, particularly the Team Leaders who carry their

[151] *See* pages 103-122.

own caseloads, have additional responsibilities, it is important for them to provide guidance to the Advocates, especially to the more inexperienced ones. DAO supervisors are responsible for training Advocates so that they may, among other things, determine the legal sufficiency of charges, determine what relevant mitigating or aggravating factors are present, and prepare a case for trial. It is similarly important that these case reviews be documented. If, for instance, a supervisor requests certain information regarding a case which requires the Advocate to do some additional investigation, then the Advocate should document the request, the ascertained information, and the steps taken to obtain the information. This is important so that when the Advocate subsequently speaks with a supervisor, he will be able to recall in detail the information requested. Additionally, if the case is reassigned to another Advocate or if someone other than the initially assigned Advocate reviews the file, the new advocate should be able to readily assess any supervisory recommendations or opinions.

The Commission, therefore, looked at how often and to what extent supervisory reviews or conferrals were conducted and documented in the files. There was, however, little documentation of such reviews and where present, the indications of some type of supervisory conferral or recommendation often consisted of unclear notations that were generally undated with no follow-up information. Of the files reviewed, only slightly more than half (56 of 103) had any indication that a supervisor had been conferred with or had reviewed the case in some manner. This number also includes a significant number of cases where a supervisor merely signed off either regarding the approval of charges on the consult sheet or regarding the change of duty status of the officer.[152] This lack of documentation raises concerns regarding whether or not supervisory reviews are being conducted at all as well as how effective they are.

Similarly problematic is when a supervisory review is conducted and a supervisor recommends that

[152] When an officer is arrested or commits misconduct, the Department makes a determination whether the officer's status should be changed. He may be suspended, temporarily prohibiting him from performing policing duties; or he may be

some action be taken or some issue be investigated, and the advocate fails to document the recommendation and what follow-up action was taken in response. As discussed above, there were few such documented supervisory recommendations. In the cases where there were such indications, the Advocate often failed to clearly document what and when subsequent steps were conducted.

Further, one must also question the effectiveness of the supervisory conferences which are reportedly conducted prior to steering. If supervisors are substantively assisting Advocates with their case preparation, then they should realize early on that witnesses are not being contacted and supervisors should be directing the Advocates to do so. Additionally, considering that some supervisors may have had a limited amount of outside trial experience, this may impact upon what type of advice they are able to offer. It seems that DAO is beginning to address this issue in that supervisors are now being chosen based on the type of trial and legal skills they possess.

In sum, it appears that supervisory reviews are not being conducted as often as reported or as needed. If and when they do occur, the Advocates should be required to document the substance of that review, any supervisory recommendations, and any follow-up. Moreover, in light of the Commission's findings regarding case preparation, witness contact, and trial presentation, it is questionable what is discussed and how substantive these supervisors reviews are. The Commission has found, as discussed above and below, that problems noted include: relevant evidence is not obtained; fundamental foundation questions are not asked at trial; and witnesses are not contacted in a timely and substantive manner prior to trial. Given the insufficient amount of work being conducted on too many cases, it is clear that these reviews need to be enhanced and that the Advocates would benefit from additional input by experienced supervisors. The recent changes in how supervisors are selected, a process which should continue, should

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modified, assigned to non-enforcement duties pending a subsequent determination of his fitness to perform policing duties.

enhance the nature of the case reviews pretrial. Additionally, because the frequency of supervisory reviews is often dependent on other work obligations, the recently reported regular trial observations and quarterly evaluations by the training supervisor should assist in improving the overall quality of case preparation.

D. Dismissals

At times, cases have an insufficient amount of proof to succeed at trial. This may be for a number of reasons, such as witnesses become uncooperative or new evidence is discovered during the pendency of the prosecution that in some way exculpates the subject officer. In other circumstances, mitigating factors may be disclosed which make disciplinary action against an officer unnecessary or unjust. If any of these circumstances exist, it is obviously imperative that the case be dismissed as expeditiously as possible. Additionally, in order to determine if dismissal is appropriate, the Advocate should be documenting reasons justifying the dismissal. The Commission, therefore, looked at the dismissed cases in its sample to ascertain if cases were properly dismissed, if the basis for the dismissal was supported by documentation or evidence in the file, and if the cases were dismissed in a timely manner.[153]

Of the files examined, eleven were ultimately dismissed by the Department. The Commission found that all of the cases, except one, were appropriately dismissed by the Department.[154] The Advocates

[153] *See* Table 3 at page 59 for an analysis of delay in cases which resulted in dismissal.

[154] In that one case, the subject officer was accused of sexually abusing his child's 21-year-old tutor. There were no eyewitnesses other than the complainant, and she refused to testify. Consequently, the case was dismissed. The file, however, indicated that the complainant's report of the incident to investigators was audio-taped so the Department could have proceeded with a hearsay case. Moreover, the complainant had told the investigator that although she would not testify, her boyfriend, to whom she outcried immediately after the incident, was willing and available to testify. Inexplicably, there was no indication in the file that the Advocate ever spoke with, or attempted to speak with the boyfriend. There was also nothing in the file to indicate that the complainant's credibility was suspect, that she recanted the allegations, or that the allegation was somehow otherwise determined to be without merit. Under these circumstances, the complainant's tape-recorded statement along with the boyfriend's testimony may have been sufficient corroborative evidence to present a provable case at trial and should have been

generally articulated the basis for dismissal in the files, and the files contained some support for the dismissals. Some cases were dismissed because of a lack of witness cooperation, contradictory witness statements, or a recantation by the complaining witness. In those cases, the file generally contained documentation of attempts to contact the complainant or the substance of the new statements by the witness regarding the incident. In other cases, a review of the underlying investigative file by the Advocate resulted in the conclusion that the Department could not make out a legally sufficient case. In some of these cases, however, the information from the underlying investigation on which this conclusion was based was in the DAO file and should have been reviewed at an earlier stage for a more timely dismissal. Further, in most of the dismissed cases, (8 of 11; 73%), the Advocates should have moved to dismiss the cases in a more timely manner, and in two of these cases, the untimely contact or untimely attempts to contact witnesses may have contributed to the inability to prove the case.

Also, in some cases, while the basis for the dismissal was outlined in the file either in the form of a motion to dismiss or some other notes, the underlying information upon which the Advocate based the motion to dismiss was not in the file. Therefore, the Commission was unable to determine if the reasons for dismissal were accurately discerned. In one case that should have been dismissed in a more timely manner, the incident occurred in July 1999 and the charges were filed in May 2000. Not until December 2000, almost seven months later, were the charges dismissed based on information that should have been contained in the investigative file.[155] DAO should, therefore, have reviewed this information upon the case's referral to DAO. Further, the officers were officially interviewed by the Department in September

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explored. During the course of the Commission's trial observations, the Department presented many hearsay cases under similar circumstances. *See supra*, at page 105 for a further discussion of hearsay cases.

[155] The subject officer and his partner were charged with failing to get permission to take their patrol car out of their assigned sector to get gas and the failure to monitor their patrol car radio. The reasons for dismissal of the charges contained in the file were: that the tape-recorded radio transmissions from the officers' car indicated that the partner did, in fact, notify the radio dispatcher of their whereabouts; the gas pump in their sector was out of order on the applicable date; and the radio call that

1999, two months after the alleged misconduct, and justified their actions. Consequently, the Advocate should have been on notice at the outset of the case what the Respondents' position was and should have reviewed the applicable records and radio transmissions in a more timely manner to explore the defense set forth by the Respondents.

The above example also raises the issue of whether and how supervisors are verifying and evaluating the information conveyed by the Advocates. Here, the advocate should have reviewed the underlying investigative file and dismissed the case in a more timely manner.[156] The supervisory reviews may not be thorough enough in probing the Advocates' work-up on the cases, the basis for dismissals, and what those conclusions are based upon.

The lack of documentation in the files regarding supervisory reviews, comments, or recommendations, further calls into question the extent of these reviews. Only three of the eleven dismissed cases had any indication in the file of a supervisory recommendation approving the dismissal of the charges.

Documentation of the reasons for dismissal as well as of supervisory approval for the dismissal is beneficial for both DAO and the Department in general. First, Advocates and supervisors within DAO may be called upon to explain to other Department officials why a case was dismissed and documentation will enable DAO to readily provide the information. Additionally, if outside agencies review the file or if the officer subsequently participates in misconduct and the Department is questioned as to its prior actions, clear documentation of the basis for the dismissal will aid in justifying the Department's position.

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came in while they were outside the sector was answered so quickly by another patrol car that they did not have a chance to respond.

[156] Similarly, in the case involving the boyfriend as a potential witness, referred to in footnote 154, the case was dismissed although there was no indication in the file that he was ever contacted.

E. Criminal Cases

As discussed earlier, in some instances, officers face corresponding criminal charges while Departmental administrative charges are pending for the same misconduct. In these cases, the criminal prosecutors typically request that the Department refrain from pursuing its administrative case until the completion of the criminal case, and the Department generally complies with the request. This is done in order to protect the overall viability of the criminal case.

In most instances, therefore, it is appropriate to wait until the completion of the criminal case before proceeding with the administrative case. During the pendency of the criminal case, however, it is incumbent upon the Advocate to remain in contact with the criminal prosecutor in order to ascertain the status of the criminal case and remain informed of any evidentiary issues which may arise. Additionally, because criminal cases may take months or years to resolve, the Advocate should aggressively proceed with the Department's administrative case as soon as possible upon the closure of the criminal case so as not to greater jeopardize the Department's case. The Commission, therefore, looked at whether Advocates were maintaining contact with prosecutorial agencies and expeditiously proceeding with the administrative case after the completion of the criminal case.

There were 28 cases in the Commission's sample where the Respondent had a corresponding criminal case pending. While most files had the ultimate criminal disposition noted in the file, only seven cases contained any documented contact with the criminal prosecutorial agency during the prosecution regarding impending court dates or expected future activity in the criminal case. In some other cases, there was some indication in the file that the Advocate obtained this information from the investigating officer, who had ascertained the status of the criminal case himself. In only six cases was there information in the file regarding the strengths or weaknesses of the criminal case, evidentiary matters that arose during its

pendency, or the availability of witnesses.

When the Advocate fails to discover the disposition of the criminal case and proceed vigorously thereafter, cases may linger for months or years unnecessarily. Of the eleven cases where the dates of the criminal disposition and administrative disposition could be ascertained, DAO generally took too long to resolve the disciplinary case thereafter. In eight of these cases, on average, it took over nine months from the completion of the criminal case until the disposition of the case in the Trial Room.[157] In the remaining three cases, much of the delay appears to have been attributed to other units in the Department, such as the Employee Management Division ("EMD").[158] There were six files reviewed that did not contain the date of the criminal disposition so it was difficult to ascertain how quickly the cases were resolved after the criminal cases were closed. In four of the twenty-eight cases, the Respondent was convicted of a felony and, therefore, was terminated by operation of law upon being convicted criminally. In the remaining seven cases, it appeared that the criminal case was still pending at the time of the administrative disposition.

One case, for example, that should have been closed more quickly after the completion of the criminal case, involved a Respondent who was initially charged administratively with striking his ex-girlfriend after a verbal altercation and then threatening to kill her while pointing his firearm at her. The

[157] This time frame was calculated from the date of plea, motion to dismiss, or trial. The Commission recognizes that some delay may be attributed to adjournments made by defense counsel and DCT's scheduling cases in the Trial Rooms. However, the Commission found much of the delay attributed to the Advocates' failure to immediately take steps to calendar and dispose of the cases in the Trial Rooms after the completion of the criminal case. Additional delay, not attributed to DAO, then occurred after the disposition in the Trial Room until the Department's closing date.

[158] EMD is a unit within the Department, headed by the Chief of Personnel. One of its responsibilities is to evaluate whether or not to terminate an officer charged with misconduct while on Departmental probation. After charges are drafted, but before they are served, DAO contacts EMD for a recommendation, and the recommendation is forwarded to the First Deputy Commissioner and DAO. While the First Deputy Commissioner may override EMD's recommendation to terminate, if he does not, then DAO does not serve the charges and the officer is summarily terminated.

In two of the three cases referred to above, the Advocate was awaiting a recommendation by EMD. In the remaining case, the Advocate awaited a determination from the Department's Firearm Discharge Review Board as to whether the subject

incident occurred in November 1997, and the Respondent was arrested on the same date. In the DAO file, there were numerous notations through November 1999 regarding scheduled criminal court appearances, with the last entry noting that the Respondent pled guilty in criminal court to harassment, a violation. Yet, it was not until January 2001, over one year later, that the Advocate contacted the ADA to ascertain why the Respondent was given such a lenient plea deal. At that time the ADA notified the Advocate of the weaknesses in the case, i.e., that the complainant would not cooperate and that the content of the Respondent's allocution at the time of the plea was exculpatory and consistent with the other evidence in the case. The Advocate then amended the charges and the case was scheduled in the Trial Room in February 2001, at which time the Respondent pled guilty to the new charges. Here, the Advocate should have contacted the ADA prior to, and immediately after, the criminal disposition, and ascertained what, if any, proof problems existed throughout the case's pendency. Then, upon completion of the criminal case, the Advocate should have immediately amended the charges and scheduled the case in the Trial Room instead of letting it linger for over a year. This delay is particularly troubling here, where the incident occurred in 1997 and the case was, therefore, already two years old by the time the criminal case was resolved.

In certain circumstances, as the Commission has noted in the past, the Department need not wait for the criminal case to be resolved before it proceeds with its administrative case. For example, where an officer is on probationary status and can be dismissed summarily, the Department may be able to ascertain that dismissal is appropriate prior to the completion of the criminal case and may be able to proceed without jeopardizing the criminal prosecution. Indeed, in some cases the Department has proceeded with its administrative case while the criminal case was pending. From a review of the files, it appeared that,

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officer violated guidelines when he discharged his weapon.

seven of the twenty-eight criminal cases were still pending at the time of the disposition of the administrative case. [159] Of these seven cases, the officer resigned in four and was terminated in the remaining three The Commission believes that the Department should continue to evaluate and recognize on a case-by-case basis cases on which they may more forward administratively prior to the completion of the criminal case.[160]

In one case where the Department appropriately proceeded with its administrative case, an officer picked up two twelve-year-old girls in his private automobile while they were on their way to school and took them shopping and for breakfast. This occurred on seven separate occasions during June 2000, causing the girls to be late or absent from school. The officer was appointed July 1999 and was on entry level probation at the time of the incidents, which allowed the Department to summarily terminate him. He was charged departmentally with endangering the welfare of a child and official misconduct and was charged criminally for the same misconduct. The Department terminated the Respondent in February 2001, prior to the resolution of the criminal case. In this case, the Department made an appropriate decision. Investigative agencies had conducted numerous interviews, and the Department relied on that information to terminate the officer without jeopardizing the criminal prosecution.[161]

Similarly, it is imperative that EMD move as expeditiously as possible where there is a pending criminal case and the officer is on some type of Departmental probation. Clearly, if an officer is such a liability to the Department that he is to be terminated, all channels should move as quickly as feasible to

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[159] In some cases, it was definitively stated in the file that the criminal case was still pending. In others, the circumstances indicated that the criminal case was still pending. For instance, where an officer was charged with a felony and resigned within one month after his arrest, the Commission assumed the criminal case was still pending

[160] The Commission has seen an increase in the Department's use of Dismissal Probation to terminate officers engaged in subsequent misconduct. *See Seventh Annual Report of the Commission*, released March 2004.

[161] The delay in terminating this officer was a result of delay by EMD. The Advocate notified EMD of the allegations in July 2000, but EMD did not forward its recommendation to terminate to DAO until February 2001.

separate the officer from the Department. In the Commission's sample, there were eight cases where an officer who was on probationary status was charged with a crime. Five of these officers were terminated and three resigned. While in most cases, the Department expeditiously terminated probationary officers, in the above example, it took EMD over six months to make its recommendation. EMD should respond to DAO's requests and separate officers from the Department, where appropriate, in a more timely manner. Although it is clear that in some cases EMD contributes to the delay, DAO must also remain vigilant about contacting EMD and obtaining its recommendations expeditiously.

II. TRIAL ROOM OBSERVATIONS

A significant component of the Commission's review of the disciplinary system was the observation of trials, hearings, and negotiations in the Department's Trial Rooms. The purpose of these observations was to obtain an in-depth look into how cases were prepared and presented and to follow-up on prior recommendations. Specifically, the Commission focused on the trial skills of the Advocates and the overall quality of case and witness preparation. These issues were reviewed because the quality of presentations in the Trial Rooms and the resulting perception that observers have impact upon the Department's ability to effectively discipline officers and deter misconduct.

During the time period of from October 2000 to the present, Commission staff was present in the Trial Rooms on 207 days and observed 105 trials, hundreds of negotiations, and numerous mitigation hearings. In general, most trials took one day to complete although some complicated cases required several days.[162]

A. Prior Findings

In *The Prosecution Study*, the Commission evaluated and reported on the performance and trial presentations of Advocates which it had observed during the time period beginning November 1999 through June 15, 2000. The Commission made various observations related to, what the Commission found to be, inadequate pretrial preparation and trial presentations.

First, the Commission noted that although Advocates appeared to be knowledgeable about the basic facts of their cases which proceeded to trial, Advocates seemed to be doing little, if any, additional work to develop evidence necessary to support their cases. This often resulted in gaps in the presentation of cases which undermined the Department's position at trial.

One of the main problems with trial presentations was the apparent lack of witness preparation. This conclusion was based on the observations in the Trial Rooms as well as conversations with witnesses regarding the preparation they received for their testimony at trial and a review of closed case files. Consequently, the Commission recommended that the Advocates should contact and speak with key witnesses early on in the process so that they could more effectively present their cases in the Trial Rooms.

Another significant problem noted during these observations was that many Advocates were unfamiliar with basic rules of evidence. Often, Advocates were not prepared to elicit the information necessary to establish the foundation for the admission of documents into evidence or to impeach witnesses with prior testimony. Compounding this problem was a lack of supervision in the Trial Rooms and insufficient training of fundamental trial skills.

The Commission, therefore, made various recommendations related to the supervision and training of Advocates throughout the adjudication process. First, prior to litigation, trial preparation of cases

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[162] For further discussion on the average length of trials, *see* Table 2 at page 57 and accompanying text.

should be enhanced with increased supervisory reviews of case files to ensure that the necessary evidence to support the charges is obtained and presented by the Advocates. Additionally, there should be increased supervision of the Advocates in the Trial Rooms and DAO should conduct ongoing training on fundamental advocacy skills. Moreover, qualified managers with trial experience and, to the extent possible, supervisory and management experience should be responsible for the supervision and training of Advocates.

Finally, the Commission noted that the above shortcomings in the preparation and presentation of cases often resulted in the Trial Commissioners publicly displaying their frustration with the Advocates. On the other hand, it was clear that the Advocates felt the Trial Commissioners were at times inappropriately impatient or hostile, and Advocates responded disrespectfully. The result was an inappropriate atmosphere of mutual discourtesy in the Trial Rooms which undermined the perception of professionalism in the disciplinary process. The Commission, therefore, recommended, in addition to better case preparation by the Advocates, that DCT and DAO increase dialogue and meet on a regular basis to address issues of concern.

B. Current Trial Observation Findings

Observations of the Advocates' performances in the Trial Rooms for this current study show that while there has been some improvement in the preparation and presentation of cases, the Commission found that a significant number of cases were still inadequately prepared or presented. In approximately 43% of the trials observed, the Commission noted issues of concern. The main problematic areas, as further elaborated upon below, involved witness preparation, case preparation, and trial skills.

1. Witness Preparation

Maintaining contact with key witnesses during the pendency of a case is an essential step in the preparation of a case and is especially important when there is a large period of time between the incident and the trial. As discussed throughout this Report, cases in the Trial Rooms often involve incidents which occurred months or years prior. This delay, which at times occurs before a case is received at DAO, makes regular contact with witnesses even more critical in preparing cases for adjudication. The Commission, therefore, evaluated the nature and extent of witness contact and preparation by the Advocate as evidenced in the Trial Rooms.

Clearly, the earlier a witness is contacted, the more detailed and accurate his or her recollection will be. Having substantive conversations with a witness regarding an incident allows the Advocate to better familiarize himself with the facts which will result in a stronger presentation and a better understanding of the potential legal issues. Conversely, if the Advocate waits until just prior to trial to contact the witness and discuss the incident, his recollection may not be as clear and specific, and he may be unprepared to testify regarding all pertinent details. Another more practical reason for maintaining contact with witnesses, as discussed above, is to ensure that they are still available and willing to cooperate in the administrative proceeding. Additionally, witnesses who are kept updated about the status of their cases may be more inclined to cooperate because they will perceive that the Department is diligently pursuing the matter. On the other hand, when an Advocate fails to contact witnesses for months or even years, the Advocate faces the risk that he will be unable to locate witnesses or that they have become uncooperative or otherwise unavailable to testify. Based on the Commission's current review of proceedings in the Trial Room, it appears that many Advocates are still not contacting witnesses early enough in the process.

First, Commission staff was present in the Trial Rooms on a number of occasions when the Department could not produce a witness for a trial and the Trial Commissioners inquired about what efforts the Advocate had made to contact the witness. Often, the first attempt to secure a witness' appearance occurred just days before the trial, and consisted of attempts to reach the witness solely by telephone. Consequently, at times the Advocate was forced to dismiss the charges or present a hearsay case.

At times, the Department proceeds with a hearsay case when unable to produce essential witnesses. The Commission observed many hearsay trials where the witnesses had given prior statements that were recorded and the Department relied on those prior statements to prove the charges. In CCRB cases in particular, often the complainants have had a negative experience with the police during an arrest situation. As a result, they may be less inclined to participate in the Department's disciplinary process. Notwithstanding this, since the allegations were found to be substantiated by an outside entity, the Department generally proceeds administratively and presents the cases to the trier of fact rather than merely dismissing them due to a witness' unavailability or other evidentiary weaknesses in the case. While it is commendable that the Department is willing to go forward with hearsay evidence, having a live witness testify has greater evidentiary value.[163]

When testifying in-person, the Trial Commissioner is able to better assess the witness's credibility because, for instance, she will be able to view the witness' demeanor on the witness stand. Moreover, she will be able to consider any inconsistencies or credibility issues that are brought out during cross examination. Conversely, tape-recorded statements are generally made by investigators who are conducting initial inquiries in order to determine if a case should be substantiated. Investigators, therefore,

[163] An analysis of hearsay trials conducted by the Department from October 2000 to the present revealed that almost all

may not necessarily elicit the same detail needed to prove cases in the Trial Room and may not bring out issues related to the witness' motive to be less than truthful. Additionally, during initial interviews the witnesses are not subject to cross examination by another party as would be done at trial. Certainly, there are instances where the Advocate has little, if any, control over a witness' unavailability, such as where a witness is deceitful about his whereabouts and makes himself inaccessible. Often, however, it appeared that the Department was compelled to present a hearsay case because of the Advocates' failure to contact witnesses in a timely manner and remain in contact with them during the pendency of the case.

Where witnesses testified at trial, Commission staff had the opportunity to speak with many of them. In a number of these cases, witnesses either stated during their testimony or to Commission staff that they had been first contacted by the Advocate shortly before the date of trial and had only discussed the details of the case with the Advocate just prior to testifying. This failure to contact witnesses in a timely manner was further corroborated by the review of closed trial folders which indicated minimal witness contact in advance of trial, and as demonstrated below, had a negative impact upon many trial presentations.

As part of witness preparation, the Advocate should discuss with witnesses their testimony and review the questions the Advocate will be asking. The Advocate should also prepare witnesses for potential cross examination questions. Witnesses who are not sufficiently prepared to testify may be unable to answer questions posed by the Advocate and may be unprepared to handle cross examination. Witnesses who can not answer fundamental questions may appear to be evasive, and their credibility may be undermined by their inability to recall fundamental facts. More importantly, the Advocate may not be able to elicit evidence necessary to sustain the charges. The Commission noted issues regarding witness

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resulted in a not guilty finding.

preparation in approximately 28% of the trials it observed.

In addition to preparing witnesses regarding the questions they will be asked, Advocates should also have witnesses review their prior statements and any evidence they will need to identify during the trial.[164] Witnesses who have not reviewed their prior statements may be successfully impeached on cross examination thereby giving less weight to their testimony and weakening the Department's case. In the vast majority of trials where Department witnesses were confronted with prior statements, it was clear that the Advocate had not directed them to review these statements prior to testifying. This lack of preparation often resulted in the witnesses being unable to recall key details or giving inconsistent testimony which undermined the Department's case. Given the amount of time which often elapses between the time the prior statements have been made and the administrative trial, it appears that the Department could strengthen their presentations by having witnesses review their prior statements. In recent discussions with DAO executives, they have stated that reviewing prior statements with witnesses is now a mandated step in case preparation.

One case was particularly demonstrative of all the above issues and aptly demonstrated the consequences of such inadequate preparation. The Respondent was charged with using excessive force by throwing the complaining witness against a car during his arrest. First, the direct examination was disjointed, and the Advocate was compelled to repeatedly use leading questions throughout the examination in order to elicit any details from the witness, making it apparent that the Advocate had not prepared the witness for his testimony.[165] Also apparent was that the witness never read the transcript of his interview with CCRB. The Advocate repeatedly asked the witness during different points of the

[164] Witnesses at Departmental proceedings have often given prior statements in other forums such as a Grand Jury, a criminal trial, or at CCRB. Transcripts of these proceedings can be obtained by the Advocate.

[165] Consequently, the Administrative Law Judge ("ALJ") repeatedly admonished the Advocate for using leading

testimony about what the Respondent had said during the encounter, to which the witness answered "Nothing." The Advocate was referring to prior statements that the witness had made to CCRB regarding statements made by the Respondent. In fact, during her opening statement, the Advocate stated that the evidence would show that the Respondent was discourteous during the incident. Because the witness had not reviewed his prior testimony, however, he was unable to testify about any discourteous statements made by the Respondent. Moreover, the witness testified on cross-examination that he did not know if it was the Respondent or his partner who pushed him up against the vehicle, surprising everyone in the courtroom, including the Advocate. Apparently, the complaining witness told CCRB that the Respondent was the responsible officer, but the Advocate never spoke with the witness about this issue or confirmed the identity of the subject officer prior to the trial. During the proceeding, the Advocate represented that she had prepped the witness for trial on the preceding day. Not only was this preparation untimely, i.e., two years after the incident and the day before trial, it was apparent that whatever preparation did take place was not substantive and did not adequately prepare him for his testimony.[166] While this case demonstrated particularly poor witness contact and preparation, in many other cases, similar issues were present.

Untimely contact with witnesses is especially troubling in cases that have been pending in DAO for substantial periods of time before going to trial. Additionally problematic is the failure to contact witnesses in a timely manner when the case solely involves police witnesses, who are clearly accessible to the Advocates. For example, in one case, the incident occurred in April 1998, and charges were filed in October 1999. The Respondents and Advocate appeared in the Trial Room in April 2002, one week before

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questions, resulting in an even more ineffective examination.

[166] As a result of all these issues and the witness' lack of credibility, the ALJ dismissed the case after the Department rested its case.

the trial, to settle various legal issues. At that time, the Advocate was unable to answer fundamental questions posed by the Trial Commissioner about the case, making it very apparent that he had not yet spoken with the witnesses involved in the case.[167] This was further confirmed by the statements and testimony of the Department's witnesses at trial. Both testified that they were contacted by the Advocate a few days prior to the trial. Even more disturbing is that one of the two witnesses who testified at trial for the Department was an officer who worked in the same building as the Advocate.

While the Commission recognizes the difficulty that the Department may encounter in getting civilian witnesses to appear at the Department in advance for trial preparation, it appears that the Advocates are generally not even attempting to contact witnesses until shortly before the trial date. Moreover, at times, police witnesses who were readily available to the Department were also first contacted right before the trial and stated that they only received minimal trial preparation.

2. Case Preparation

One of the main problems evident during the Advocates' presentations in the Trial Rooms was the failure to sufficiently enhance the cases and prepare them for trial. While the Advocates appeared to be conversant with the basic facts of their cases as contained in the initial investigative folders, in many instances, Advocates were not developing evidence beyond what was given to them by the initial investigator. This is problematic because evidence which is sufficient for an investigator to close an investigation may, at times, be insufficient to legally sustain charges due to the higher burden of proof in the Trial Room. Therefore, the Advocate may need to obtain and develop additional evidence to support the Department's position. At times, even when the additional evidence needed to support the charges was

[167] For a further discussion of the facts of this case, *see infra*, at pages 113-115.

readily available through the Department, some Advocates still failed to acquire it.

For example, in one trial observed, the Respondent was charged with various violations while he was assigned to the Command and Control Center. One of the charges was that when he purchased a mini-disc player for personal use, he used the Department's tax identification number.[168] Contrary to the Department's position, the Respondent claimed that he purchased the equipment for the Department and that he routinely made such purchases for his command without prior authorization which were later reimbursed by the Department.

There were various fundamental issues in the case that were clearly not identified or addressed by the Advocate, seriously undermining the Department's position at trial. First, it was not until an investigator testified that the item in question was a mini-disc player, and not an MP3 player as the Department alleged in the charges, that the Advocate became aware of this. Consequently, the Department moved to amend the charges to reflect the correct item. While this motion was eventually granted, it caused an objection, ensuing argument, and made the Advocate appear unprepared and unknowledgeable about his case.[169] Next, the investigator testified that he had reviewed receipts for the electronic items that were submitted by the Respondent, and they contained a tax identification number which the investigator believed was the Department's. When questioned by the Trial Commissioner and the Respondent's attorney whether the witness had, in fact, determined that the tax identification number on the receipt belonged to the Department, the witness stated that he never investigated the issue and was speculating when he testified that he believed it was. Further, the investigator, who appeared in the Trial Room without his paperwork, was unable to state what the Department's tax identification number was. The

[168] The Department has tax exempt status, and it was, therefore, alleged that the Respondent improperly used the tax identification number in order to avoid paying sales tax.

[169] During its trial observations, the Commission observed that the untimely amendment of the charges on the day of

Advocate was also unable to do so. More disturbing was that after the Respondent provided the Trial Commissioner with the Department's correct tax number, it was not the number that appeared on the Respondent's receipt. Further indicative of the Advocate's lack of trial preparation was that neither the Advocate nor the witness could describe for the Trial Commissioner how the purchasing process worked and whether the Respondent was allowed to purchase equipment for his command. The Department offered no further evidence that the tax identification number which appeared on the receipt belonged to the Department.[170]

The above issues related to basic information that should have been ascertained prior to trial and which were necessary to present the case in an even marginally effective manner. The Advocate's failure here to take these basic steps to enhance the case resulted in the Department being unable to elicit necessary information regarding the Department's tax identification number to support the charges against the Respondent. Moreover, the Command and Control Center was located in the same building as DAO and, therefore, all of the missing information could have been readily obtained.

In another case, the Respondent was charged with using excessive force and improperly searching a civilian during a narcotic "buy and bust" operation. The Department's position was that the Respondent did not have probable cause to search the complainant and, therefore, the search was improper. The Respondent claimed that the complainant matched the description of a narcotics seller that the Respondent had received from an undercover officer. Consequently, the Respondent argued that he had probable cause

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trial was not uncommon.

[170] Nevertheless, the Trial Commissioner found the Respondent guilty of all except one of the specifications charged, relying mostly on the Respondent's self-serving incredible explanation of the events that had transpired. Among the charges of which the Respondent was found guilty was lying during his official PG interview about the circumstances of the purchase of the mini-disc player. The Trial Commissioner, therefore, recommended, pursuant to the Department's policy of terminating individuals found guilty of making false statements during PG interviews, that the Respondent be terminated. The Police Commissioner, however, disapproved of the recommended penalty and imposed a penalty of one-year dismissal probation and the forfeiture of 90 vacation days. The Commission believes that termination was appropriate in this case.

to search the complainant.[171] In support of the Respondent's theory, the defense called the undercover officer to testify. Arguments during the trial made it evident that the Advocate had never spoken with the undercover officer and had not even ascertained if and how a description of the seller had been transmitted to the rest of the narcotics team. Further, during the undercover's testimony, he requested to review his case folder in order to refresh his recollection regarding certain details of the operation. When the Respondent's attorney provided the witness with the folder, the Advocate objected and argued that the witness should not be allowed to look at the folder since the Respondent had not provided the Advocate with a copy of it. The Respondent and the Trial Commissioner correctly pointed out to the Advocate that the case folder was a Department document that he could have easily, and should have, obtained prior to trial. Therefore, not only had the Advocate failed to interview essential basic witnesses on the team to ascertain what had occurred, but he also failed to obtain and review the underlying paperwork related to fundamental issues in the case. The paperwork and a photograph of the actual seller contained in the folder indicated that the complainant closely matched the description radioed by the undercover and bore a strong resemblance to the seller, thereby corroborating the Respondent's contention that he had probable cause to stop and search the civilian.[172]

This issue of inadequate trial preparation and presentations was noted not only in trials conducted by inexperienced Advocates, but also in a number of cases handled by DAO's most experienced attorneys.[173] In one case, for example, the Advocate failed to speak with and prepare witnesses for trial, and failed to lay the foundation for the admission of evidence central to one of the charges. The trial took

[171] Shortly after the search and the arrest of others at the scene, the undercover officer informed the other officers at the scene that the complainant was not the seller, and he was then released.

[172] The actual seller was subsequently located and arrested after the complainant was stopped and released.

[173] The most serious cases prosecuted by the Department are routinely handled by a small group of DAO's most

place in April 2002, and the two Respondents were charged with obstructing an ADA from interviewing a police officer witness during an investigation in April 1998. On that date, a police officer was injured while involved in an automobile accident that caused a fatality. According to the Department, when the ADA went to the hospital to speak with the injured officer, the Respondents physically blocked the ADA from entering the officer's hospital room and refused to allow the ADA to speak with the officer.[174] Additionally, the Department alleged that one of the Respondents had made false entries in his memobook regarding the incident.[175] In the Trial Room, one week before the trial, the Respondents' attorneys informed the Advocate of their intention to call a specific member of the District Attorney's Office to testify at the trial. The Advocate, however, did not speak with that witness prior to trial, even though given such notice that he would be testifying.[176]

At trial, the Department presented two witnesses on its direct case, both of whom appeared unprepared for trial and did not recall significant details which were necessary to support the Department's case. For instance, the ADA who made the initial allegation to IAB denied that he ever spoke with a specified IAB investigator. The investigator, who testified as well, refuted this contention and stated that in addition to making a complaint, the ADA also alleged that there was a Department-wide cover-up about the incident, terminology which was memorialized in the investigator's worksheets. Several other witnesses who testified for the Respondents -- police personnel as well as personnel from the ADA's office

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experienced attorneys, (some of whom are former SPO attorneys). Often, in these cases the Department is seeking termination of an officer for particularly egregious conduct.

[174] The ADA wanted to speak about the accident and ascertain if the Respondent was under the influence of alcohol at the time of the incident.

[175] As discussed below, the Advocate presented no evidence regarding this charge. Therefore, the Commission is unaware of the specific factual allegations related to the false entries.

[176] It was also clear that the Advocate had not yet spoken with any of the witnesses even though the case had been pending for three years and the trial was one week away. As discussed below, this conclusion was further confirmed by the Advocate's trial presentation and statements made by witnesses on the date of trial.

-- also contradicted the ADA's testimony. It appeared from the defense witnesses' testimony that the Advocate had not spoken with any witnesses during the pendency of the case even though many of them were at the hospital on the night of the incident and were, therefore, potential witnesses.

Further, the ADA's supervisor, a Deputy Bureau Chief, testified regarding his conversation with the ADA when he had telephoned from the hospital on the night of the incident. The Deputy Bureau Chief's recollection completely contradicted that of the ADA's. First, the ADA testified that he had telephoned his supervisor from the hospital, told him about being obstructed from entering the officer's room, and was directed by the supervisor to just pursue other avenues of investigation. Conversely, the Deputy Bureau Chief testified that on the night in question, the ADA never informed him that the Respondents had obstructed him from speaking with the injured officer, and that had he been so informed, he would have taken immediate steps to rectify the situation. Notwithstanding that the Advocate was given advance notice that this witness would testify for the defense and refute the ADA's version of what had occurred, the Advocate still did not speak with him prior to trial. This resulted in the ADA's credibility being severely undermined by a high ranking member of his own office.

Finally, the IAB investigator, who was called to testify for the Department regarding the allegations involving false entries in the memo book, did not recall the basic facts relative to the false entries. He did not have his case folder with him and needed to be provided with his paperwork in order to recall details about the day of the PG interview, the day the investigator requested the memo book from the Respondent, and the day he received it. Further, in order to lay the foundation to get the memo book admitted into evidence, the Advocate needed to authenticate that the photocopy of the purported memo book to be admitted was, in fact, from the Respondent's memo book. Because the page had been faxed to the IAB investigator, he was asked about the circumstances under which it was received and how he could verify

that it was from the Respondent. The witness had minimal recollection of the circumstances and, therefore, could not authenticate the document.[177] The Trial Commissioner ruled that the Department did not establish the proper foundation for the document's introduction into evidence, and the Advocate did not further address the issue for the remainder of the trial.[178] Both Respondents were found not guilty after trial of all charges.

The Commission recognizes that in the interest of justice, at times, the Department may have to proceed with cases which have flaws and weaknesses. If the Department makes the decision to proceed with a case, however, the case should be reviewed to ensure that the evidence supports the charges, and the case should be prepared and presented in a meaningful manner. In this instance, the Department could not support the charges it brought against the Respondents. Those witnesses with whom the Advocate spoke were not interviewed early on in the pendency of the case to determine if they could establish a prima facie case. They were also not sufficiently prepared for their testimony, and key witnesses to the incident were not spoken to at all.

The lack of case preparation by DAO's most senior attorneys was not uncommon. In another case, the officer was tried in April 2002 and charged with numerous violations stemming from an incident which occurred in the summer of 1999. The Department sought to terminate the officer due to the severity of the charges, which included patronizing a prostitute and having sex with an individual under 18 years old. Notwithstanding the gravity of the charges, the Advocate failed to obtain the complete investigative file, provide discovery material to the Respondent, prepare witnesses for trial, and present the necessary

[177] Similarly problematic was that the Advocate did not have the original faxed copy of the memo book with him in the courtroom, and the Trial Commissioner had to take a recess in order for the Advocate to produce it.

[178] In fact, inexplicably, the Advocate did not even ask the Respondent about the memo book when he testified.

documentary evidence to support the charges.[179]

In this case, the Department alleged that, the Respondent and his partner met with a confidential informant (CI), with whom they had been working. The CI brought two females, they all went to a hotel, and the officers allegedly had sex with the girls, one of whom was fourteen years old. It was alleged that the females were paid to have sex with the officers.

The Department presented a mainly hearsay case with only one witness, the IAB investigator, testifying for the Department.[180] The investigator, appeared at the Trial Room without her case file, and because she was unable to answer most questions posed to her, the Advocate had to supply her with the investigative paperwork to refresh her recollection.[181] It was only during the investigator's direct examination, when she pointed out that the Advocate's file was incomplete, that the Advocate became aware that he did not have the entire investigative file. It was missing many documents, including eleven audio tapes, 30 IAB worksheets, photographs, and other investigative paperwork, which the Advocate had never obtained. For instance, the witness testified about the conversations she had with the CI and the two females regarding the sexual encounter with the Respondent and his partner. When the Trial Commissioner asked the investigator if she had tape recorded these conversations, the witness stated that she believed she had. There was no indication of that in the Advocate's file. Legal arguments ensued as the defense had not been provided with any such recordings. The Advocate was ordered to determine if

[179] Notwithstanding the Advocate's trial presentation, the Respondent was found guilty of all of the charges except one. The Trial Commissioner recommended that the Respondent be terminated from the Department, but the Police Commissioner rejected that recommendation and imposed a penalty of dismissal probation and the forfeiture of 90 vacation days.

[180] At the start of the trial, the Advocate sought to amend the charges from a specific date in July 1999 to July or August 1999. The Advocate requested the amendment because in the Respondent's PG interview, conducted in September of 2000, he stated that the incident took place in August 1999. The charges on this case were pending for approximately fifteen months before the Advocate sought this amendment.

[181] At one point during the direct examination, the Trial Commissioner recessed the trial so that the witness could review her paperwork in an effort to facilitate the examination.

any tapes existed and, if so, to provide copies of them with transcripts to the Respondent.[182]

Because the Advocate had failed to turn over significant evidence to the Respondent, the trial was adjourned for six weeks.[183] Upon recommencement, the Department was allowed to recall the IAB investigator in order to admit the audio tapes into evidence. Notwithstanding an additional six weeks to prepare, however, the Advocate could not lay the proper foundation for two of the tapes because he failed to translate one into English and did not have the investigator listen to the other one.[184]

As the above cases illustrate, at times, even experienced Advocates are not adequately preparing cases for trial and completing basic case preparation steps such as obtaining the necessary documentary evidence to support the charges and adequately speaking with all potential witnesses. When experienced attorneys, generally handling the most serious cases, are not adequately preparing and presenting cases, it brings into question the quality of supervision received from Managing Attorneys and the overall standard that DAO has set for its attorneys. Further, one of the training methods which DAO relies upon in training new attorneys is having them second seated by the experienced attorneys who are expected to provide guidance and assistance in preparing and trying cases. If these experienced attorneys are unable to provide meaningful guidance, then their value as legal mentors is diminished and DAO's second seating program becomes an ineffective training method.

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[182] During this direct examination, the Advocate also failed to elicit from the witness that the Respondent was working at the time of the incident, knew that one female was underage, or knew that his partner had given money to the female he had sex with. Further, on cross examination, the witness testified that neither female stated that she had been paid by the CI to have sex with the Respondent or his partner.

[183] The morning after the first day of the trial, the Advocate turned over the remaining discovery material to the Respondent. However, a number of the tapes were in Spanish, and the Advocate had not had them translated or transcribed. The Trial Commissioner granted the Respondent an adjournment to review these materials.

[184] The Respondent later stipulated to the admittance of the tape that was in Spanish.

3. Trial Skills

In order to effectively present a case, an Advocate should possess certain trial advocacy skills. Fundamental trial skills include being able to conduct coherent and strategic direct and cross examinations, successfully impeaching witnesses, and laying the appropriate foundations to admit items into evidence. Knowledge and utilization of these basic foundational evidentiary skills are essential in order to be able to prove a case.

While the Commission has seen some improvement in the skill level of the Advocates since *The Prosecution Study*, DAO needs to continue to enhance their skills. The most common problems observed include ineffective examinations of witnesses and the inability to establish the proper foundation to place items into evidence. As demonstrated by some of the examples above, as well as in the text below, inadequate trial skills still appear to affect many prosecutions.

One fundamental trial skill required for an effective presentation is the ability to conduct coherent and strategic examinations of witnesses. This is necessary so that witnesses testify in a intelligible fashion and provide all necessary evidence to sustain the charges. One of the most basic rules of evidence is that the examiner must use non-leading questions when questioning his own witnesses. Clearly, this type of questioning necessitates pretrial preparation, which is going through the questions and answers prior to trial so that the witness is aware of what will be asked and what needs to be elicited while testifying.

While it appeared that most Advocates were preparing questions for witnesses in advance of trial, due to insufficient witness contact and preparation, many Advocates did not appear to be conversant with the testimony the witness would be offering which made the development of these examinations more difficult and less productive. Some Advocates had difficulty leading witnesses through direct examinations utilizing non-leading questions so that the testimony flowed in a logical narrative fashion

which often resulted in disjointed testimony. Additionally, questions were sometimes inarticulately phrased, and it appeared unclear what information Advocates were attempting to elicit from witnesses. If Advocates were more familiar with the witness' testimony, it would aid them in developing meaningful examinations.

Similarly, better case preparation and familiarity with witness' prior statements would allow Advocates to conduct more focused and substantive cross examinations.[185] The objective of a productive cross examination is to bring out specific information which either supports the case or undermines the adversary's case. Advocates often did not appear to have a strategy attached to their questioning and were not focused on undermining a witness' credibility or eliciting corroborative evidence. Consequently, Advocates often failed to make substantive points during these examinations.

Another basic trial skill with which many Advocates had difficulty was laying the foundations to admit items into evidence. Often, the Advocates were unaware of what questions needed to be asked or what information needed to be elicited in order to establish the proper foundation. In some of these instances, the Trial Commissioner or the second seat was forced to intervene and assist the Advocate. In other instances, the Respondent's attorney stipulated to the entry of the item into evidence. Advocates, however, should not rely on a third party, and should be capable of competently presenting their cases themselves. During its observations, the Commission found that both inexperienced and experienced attorneys had similar difficulties in this regard.

In one case, for example, the Advocate sought to admit into evidence an audio-taped CCRB interview with a complaining witness. First, the Advocate, an attorney assigned to DAO for a number of years, tried to move the tape into evidence through a CCRB investigator who was not present during the

[185] In the majority of cases the Respondent and other police witnesses have made prior statements about the incident at PG hearings.

interview and, therefore, could not authenticate the voices on the tape. The ALJ correctly ruled that the proper foundation had not been established and told the Advocate what she would have to establish in order to get the tape admitted into evidence. The Advocate then attempted to locate the CCRB investigator who had conducted the interview. Instead of calling the witness to testify as directed by the ALJ, the Advocate merely represented to the court that she had spoken with the investigator outside the courtroom and the tape was the complaint she had received. The ALJ reiterated the steps necessary to authenticate the audio-tape for it to be admitted into evidence. The Advocate, again, located the investigator, put her on the witness stand and then asked her about the tape. At that time, the witness testified that she only listened to part of the tape, as instructed by the Advocate. The Advocate did not appear to understand what was required and that the ALJ was directing her to elicit from the witness that the tape was a fair and accurate representation of the conversation she had with the complaining witness.[186] The ALJ again informed the Advocate to what the witness would have to testify and directed the witness to listen to the entire tape. The court then took another recess for the witness to do so. When the witness returned to testify, the Advocate still did not ask the pertinent questions to lay the foundation for the entry of the tape into evidence. Finally, the ALJ himself asked the questions, and the tape was admitted.

When Advocates fail to introduce necessary evidence due to insufficient trial skills, at times, it results in the Department's inability to sustain the charges. Alternatively, Trial Commissioners are often forced to intervene and assist the Advocates in clarifying issues and establishing a legally sufficient case. It appears that some Advocates may be, in turn, relying on this assistance and do not feel the impetus to properly prepare and present their cases. When Trial Commissioners help the Advocates prove their cases,

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[186] In order to do this, the advocate needed to ask a witness who could authenticate the tape if: (1) the witness recognized the audio-tape as a tape-recording of the conversation she had with the complaining witness; (2) how the witness recognized the tape as such; and (3) if the content of the audio-tape was a fair and accurate representation of the conversation the

the Respondents' perception that the Trial Room is a fair forum will certainly be lessened. Similarly, outside observers may question the Department's willingness to prosecute its own members. Also problematic is when, after what may be perceived as a poor trial presentation, the Respondent is nevertheless found guilty. This will further diminish the public's confidence in the system, and the disciplinary process will be viewed as a mere formality with a predetermined outcome, regardless of the proof presented at trial.

When a guilty finding is rendered, the trial decision also raises another issue in that the decisions generally do not address the Advocate's trial performance. Once a decision is rendered, it is forwarded to the First Deputy Commissioner's office for approval. The First Deputy Commissioner and the Police Commissioner rely on the Trial Commissioner's written decision to evaluate whether the specifications were proven and if the penalty is appropriate. If the decisions do not reflect the difficulties encountered in the Trial Rooms, then the executive personnel, as well as the DAO supervisors who did not observe the trial, will not have any knowledge about how poor the trial presentations was and Advocates will continue to present cases in the same manner. To become aware of and deal with these issues, DAO supervisors, as well as personnel from the First Deputy Commissioner's office, should maintain a presence in the Trial Rooms.

Moreover, the Department should provide increased training on fundamental trial skills. Further, supervisors should review, in advance, the Advocates' questions to ensure that they are conducting productive examinations of witnesses and are able to establish a legally sufficient case.

4. Supervision

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witness had with the complaining witness.

In *The Prosecution Study*, the Commission recommended that supervisors more aggressively monitor the Advocates' caseloads and provide increased supervision in the Trial Rooms in order to increase the quality of trial presentations. While there has been an increase in supervisory presence in the Trial Room, it is still too limited to thoroughly assess the Advocates' performances and provide meaningful feedback. Based upon its current observations, the Commission believes that the level and extent of supervision by Team Leaders and Managers should be further improved.

As discussed throughout this Report, Team Leaders reportedly conduct periodic case reviews with the Advocates. During these conferences the Team Leaders are supposed to review the preparation completed on a case and review the case to ensure that all necessary documentary evidence has been obtained and all pretrial preparation has been conducted. Based on its trial observations, however, (as well as on its file review), the Commission believes that these reviews may not be thorough and substantive enough. As demonstrated throughout this section, too often, Advocates failed to: obtain the necessary evidence or discovery materials by the time of trial; speak with and prepare witnesses for trial; question witnesses effectively at trial; and lay the proper foundations for the admission of evidence. Consequently, these issues raise concerns about what type of instruction and guidance supervisors are providing and what level of case and trial preparation is deemed acceptable. It is troubling that a case will be deemed as sufficiently prepared when the Advocate has not spoken with witnesses and/or obtained all the necessary documentary evidence. The case reviews, therefore, need to be conducted in a more meaningful manner.

In addition to conducting more substantive case reviews prior to trial, DAO Team Leaders and managers need to maintain a stronger supervisory presence in the Trial Rooms when Advocates are conducting trials. Providing feedback to Advocates on their trial presentations is an effective means of trial training which the Department does not appear to be utilizing to its advantage. During the course of

the Commission's observations, Team Leaders and managers were only occasionally present in the Trial Rooms during trials except when they were second seating individual Advocates. If a Team Leader is present to observe the trial skills of an Advocate, he may be better able to assess the Advocate's strengths and weakness and provide additional training and guidance if necessary. While many of the Advocates have sufficient trial skills, the Commission observed a number of Advocates who consistently had the same problems with fundamental trial techniques such as identifying and entering items into evidence. Without receiving feedback and training on how to improve these skills, Advocates will be unable to learn from their mistakes and improve upon their skills. Additionally, having supervisors present in the Trial Rooms will help them identify Advocates who need assistance in preparing cases and those Advocates who would benefit from having a second seat.

Since *The Prosecution Study*, the Commission has observed an increase in DAO's use of second seats to assist inexperienced Advocates. The Commission believes that this is a positive trend and DAO should continue to utilize experienced attorneys as trainers for new Advocates. In order for second seats to be effective, however, they must be familiar with the facts of the case and they should be assisting the Advocates in preparing their cases prior to trial and developing questions for witnesses. Too often when second seats were present, the Advocates were still unable to execute fundamental trial steps such as putting documents into evidence. While second seats were able to offer assistance when this occurred, they should be ensuring, before, not during, trial, that the Advocates have the necessary information and questions to present their cases.

In one case observed, an inexperienced Advocate was trying a case where the Department was seeking to terminate the Respondent for a series of on- and off-duty violations.[187] The Advocate was

[187] In addition to the issue of second seating discussed here, the Commission also questions why such an inexperienced Advocate was assigned to try such a serious case.

second seated throughout the trial, first by a more-senior Advocate, and then by the Team Leader. The Advocate, however, failed: to lay the foundation to admit items into evidence; to obtain and provide to the defense an audio-taped interview of the complainant; to ask pertinent non-leading questions of the Department's witnesses; and to effectively cross-examine the Respondent. The first second-seat had clearly not reviewed the Advocate's preparation and questions for the witnesses, as evidenced, for instance, by the Trial Commissioner interjecting and laying the proper foundations himself. Additionally, the next second-seat had not observed the first portion of the trial and was, therefore, unfamiliar with the testimony of the prior witnesses. As a result, the second-seat was unable to constructively advise the Advocate regarding appropriate areas of cross examination for the Respondent. This trial and others call into question the effect of second seating without continual participation in the pretrial preparation of cases. The Commission believes that second seating Advocates should continue, but only so long as the supervisors' involvement is substantive and not merely a presence in the Trial Room.

5. DCT & DAO

In *The Prosecution Study*, the Commission reported on the somewhat antagonistic relationship between DCT and DAO in the Trial Room and the ensuing atmosphere that this created. The Commission found that this reciprocal disrespect stemmed from a legitimate frustration by the Trial Commissioners about the quality of the Advocates' presentations. In return, the Advocates appeared to express irritation regarding a perceived lack of patience by the Trial Commissioners.

In addition to the unprofessional courtroom atmosphere created by these dynamics, the relationship between the Trial Commissioners and the Advocates resulted in the perception of an unfair forum in two

respects. First, when Advocates were unable to adequately present their cases, the Trial Commissioners often intervened to facilitate the presentations of the cases. The Trial Commissioners asked questions of the witnesses and admitted items into evidence by establishing the foundations themselves. This created the perception that the DCT was assisting the Department and was not impartial.

Second, when Advocates incompetently presented their cases and Trial Commissioners berated the Advocates, Respondents had a legitimate expectation that the cases were not proven and they would be found not guilty of the charges. When Respondents were subsequently found guilty, which occurred often, Respondents, courtroom observers, and members of the service in general, may have perceived that DCT and DAO were working together against Respondents and that regardless of the amount of proof presented in the Trial Room, they would have been found guilty. The Commission, therefore, recommended increased dialogue in order to facilitate resolving issues of mutual concern. While the Commission has not found a significant improvement in trial presentations by the Advocates, it has found that the atmosphere in the Trial Rooms has significantly improved. At times, Trial Commissioners still express frustration and interfere with the proceedings by questioning witnesses. The attitude of frustration is less demonstrative, however, and the general demeanor of the parties seems more professional and tolerant.

PART IV - CONCLUSION

Based on this follow-up Report to *The Prosecution Study*, the Commission determined that many of the same findings are still evident. Although the Department has taken steps to make some improvements in the disciplinary process, further improvement is necessary. Following is a summary of the Commission's recommendations contained throughout this Report.

First, to expedite the resolution of cases, the Trial Commissioners should develop a uniform scheduling system that is accurate and efficient so that Department trials can be conducted in both Trial Rooms on a daily basis and cases are not routinely adjourned for three-to-four months. One option would be to schedule a pre-trial conference approximately one month before the trial. Prior to this conference, the Advocate would speak with his witnesses and evaluate the other evidence in his case. At the pre-trial conference, a realistic estimate of the time necessary to complete the trial would be given. Also, any stipulations or other legal arguments could be settled during this conference. Finally, any scheduling problems that have developed since the prior adjourn date could be addressed. This conference would permit the Trial Commissioner to more accurately ascertain the future availability of a Trial Room on the trial calendar. Since this space would be available approximately one month in advance, the Trial Commissioners could then schedule other cases to fill this space. Trial Commissioners should also prioritize older cases.

Because CCRB-generated cases were generally pending for longer periods of time and had a significantly lower conviction rate than Department-generated cases, the Commission continues to support its recommendation from *The Prosecution Study* that CCRB be responsible for prosecuting those cases substantiated and referred by CCRB. The Commission recognizes, however, that the immediate

implementation of this recommendation may not be plausible due to the budgetary restraints that the City is currently facing.

Also in an effort to combat delay, and given the problems encountered with the Department's tracking system, the Commission believes that the Department should develop a computer system with the ability to track the progression of disciplinary cases through the administrative system while the cases are still pending. This system should have the ability to capture information about the delays routinely experienced during each case's progression through the system. Furthermore, the Department should explore ways to increase the veracity of the data entered into and contained within its current informational system.

To address the issue of insufficient case enhancement, Advocates should be required to interview witnesses as a matter of course upon receipt of the case, whether or not there is an expectation that the case will proceed to trial. This may improve the likelihood that the witnesses will continue to cooperate with the Department and be able to provide more detailed and accurate accounts of the reported misconduct. In turn, these improvements could decrease the dismissals of cases prior to trial or the necessity of presenting cases supported by hearsay evidence, thereby increasing the Department's level of success in the Trial Rooms. In the alternative, early contact with witnesses will enable the Advocates to determine whether cases are viable in a more timely manner and, where appropriate, move to dismiss charges more expeditiously.

While there has been some observed improvement in the trial skills of the Advocates, additional pre-trial preparation of the Department's witnesses is necessary for the Advocates in order to develop more meaningful examinations of their witnesses and prevent any undesirable surprises during the trial.

In order to further improve the Advocates' preparation and presentation of cases, Team Leaders should conduct more regular and substantive case reviews with the Advocates whom they supervise and monitor their performances in the Trial Rooms more closely. Supervisors should review in advance the questions that the Advocates plan to ask at trial to ensure that they are conducting productive examinations of witnesses. Supervisors should also determine whether there is any outstanding evidence that is necessary to establish a legally sufficient case.

When an officer is charged criminally with the same misconduct that forms the basis for the administrative charges, the Advocate should personally keep abreast of the criminal case and any developments that occur during its pendency. The Department should also scrutinize cases closely so a decision may be made on a case-by-case basis about whether the Department can proceed administratively without jeopardizing the criminal prosecution. Furthermore, in those cases where the subject officer is on any form of probation which enables the Department to summarily terminate him, and termination is possibly the appropriate remedy, DAO should remain vigilant about contacting the Employee Management Division and expeditiously obtaining its recommendation regarding whether to terminate the officer or serve the charges and specifications upon him.

With respect to training for the Advocates, it should focus more on evidentiary issues and elementary trial matters. Also, the trial technique workshops reportedly provided by the Department should be mandatory for all Advocates and not just those who are newly hired. Furthermore, to be effective, the workshops should be taught by experienced trial attorneys.

With respect to DAO's staffing, the Department should continue its new policy of hiring experienced civilian attorneys and not recruiting members of the service who are in law school, which had

been done in the past. More experienced lawyers should, then, serve as mentors for those Advocates who have little or no experience.

Additionally, DAO should continue its recently implemented practice of assigning personnel to supervisory positions based on legal and management skills, rather than on police experience. Also, at least one other Managing Attorney with outside trial experience and a supervisory or management background should be hired. The Commission further recommends that all Team Leaders similarly be required to have prior trial experience outside of DAO or a demonstrated record of excellence within DAO.

The increased practice of second seating inexperienced Advocates during trials is a positive trend and should continue. The attorneys who engage in second seating, however, should be familiar with the facts of the case. They should assist the Advocate with the pre-trial preparatory work as well as providing advice during the trial. Additionally, personnel from the First Deputy Commissioner's office should maintain a presence in the Trial Rooms to familiarize themselves with ongoing issues and areas that are in need of improvement.

All steps such as supervisory reviews, witness contact, and other investigative steps should be documented on worksheets in the Advocate's file along with the dates on which these activities took place and any follow-up action that is required. Once completed, this follow-up should also be documented and dated.

In sum, while there have been certain areas of improvement within the disciplinary system, in addition to the Commission's recommendations contained in this Report, the Department should continue to explore where additional improvements throughout the disciplinary process should be made.

APPENDIX A

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

EXECUTIVE ORDER NO. 18

February 27, 1995

ESTABLISHMENT OF COMMISSION TO COMBAT POLICE CORRUPTION

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

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

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

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

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

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

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

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

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

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

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

Section 1. Establishment Of Commission.

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

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

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

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

Section 2. Duties.

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

and analyses regarding the following:

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

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

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

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

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

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

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

Section 3. Investigations.

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

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

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

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

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

Section 4. Reporting to the Police Department.

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

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

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

Section 5. Reporting to the Mayor.

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

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

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

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

Rudolph W. Giuliani
Mayor

APPENDIX B

STATISTICAL TABLES OF ANALYSIS BY TIME RANGES

Tables 1a-1e: Delays in the Commission's key measures of case progress, broken down by time ranges

1a. Consultation date *to* closing date (1226 cases):

time range	*# of cases in this range (cumulative percentage)*
up to 90 days[1] (*about 3 months*):	96 cases (9.79%)
up to 180 (*6 months*):	229 cases (23.36%)
up to 270 (*9 months*):	381 cases (38.87%)
up to 360 (*12 months*):	527 cases (53.77%)
up to 450 (*15 months*):	598 cases (61.02%)
up to 540 (*18 months*):	698 cases (71.22%)
up to 630 (*21 months*):	765 cases (78.06%)
up to 720 (*24 months*):	836 cases (85.30%)
721 or more:	980 cases (100%)
total cases applicable:	980 cases[2]

[1] All time periods given include the day at the outermost level. So, for example, up to 90 days actually means up to and including 90 days.

[2] 245 cases were not included in this calculation because they were missing a date, and one of these cases was excluded because its date was incorrect.

1b. Filing of charges *to* closing date:

time range	*# of cases in this range (cumulative percentage)*
up to 90 days (*about 3 months*):	188 cases (15.43%)
up to 180 (*6 months*):	372 cases (30.54%)
up to 270 (*9 months*):	532 cases (43.67%)
up to 360 (*12 months*):	598 cases (49.09%)
up to 450 (*15 months*):	796 cases (65.35%)
up to 540 (*18 months*):	879 cases (72.16%)
up to 630 (*21 months*):	964 cases (79.14%)
up to 720 (*24 months*):	1026 cases (84.23%)
721 or more:	1218 cases (100%)
total cases applicable:	1218[3]

1c. Filing of charges *to* start of trial:

time range	*# of cases in this range (cumulative percentage)*
up to 90 days (*about 3 months*):	13 cases (3.31%)
up to 180 (*6 months*):	84 cases (21.42%)
up to 270 (*9 months*):	177 cases (45.15%)
up to 360 (*12 months*):	230 cases (58.67%)
up to 450 (*15 months*):	275 cases (70.15%)

[3] Eight cases were excluded because one had an incorrect date and seven were missing dates.

up to 540 (*18 months*):	312 cases (79.59%)
up to 630 (*21 months*):	330 cases (84.18%)
up to 720 (*24 months*):	342 cases (87.24%)
721 or more:	392 cases (100%)
total cases applicable:	392 cases[4]

1d. Trial end *to* trial judge's decision:

time range	***# of cases in this range (cumulative percentage)***
up to 90 days (*about 3 months*):	131 cases (35.89%)
up to 180 (*6 months*):	213 cases (58.35%)
up to 270 (*9 months*):	271 cases (74.24%)
up to 360 (*12 months*):	311 cases (85.20%)
up to 450 (*15 months*):	356 cases (97.53%)
up to 540 (*18 months*):	360 cases (98.63%)
up to 630 (*21 months*):	364 cases (99.72%)
up to 720 (*24 months*):	365 cases (100%)
721 or more:	0 cases
total cases applicable:	365 cases[5]

[4] Trials were held in 405 cases, but 13 cases were excluded due to missing dates.

[5] Although 405 cases were applicable to this category, 36 cases were excluded because a relevant date was missing, and another four were excluded because the CATS sheets contained obviously incorrect dates.

1e. Trial judge's decision *to* closing date:

time range	*# of cases in this range (cumulative percentage)*
up to 90 days (*about 3 months*):	312 cases (83.64%)
up to 180 (*6 months*):	363 cases (97.31%)
up to 270 (*9 months*):	368 cases (98.65%)
up to 360 (*12 months*):	370 cases (99.19%)
up to 450 (*15 months*):	372 cases (99.73%)
up to 540 (*18 months*):	372 cases
up to 630 (*21 months*):	372 cases
up to 720 (*24 months*):	372 cases
721 or more:	373 cases (100%)
total cases applicable:	373 cases[6]

Tables 2a-2e: Delays in the Commission's key measures of case progress, broken down by time ranges
(these charts cover trial cases only: 405 cases)

2a. Consultation date *to* closing date:

time range	*# of cases in this range (cumulative percentage)*
up to 90 days (*about 3 months*):	5 cases (2.14%)
up to 180 (*6 months*):	7 cases (3.00%)

[6] Although 405 cases fit in this category, 29 cases were excluded due to missing dates, and three cases were excluded due to incorrect dates.

up to 270 (*9 months*):	14 cases (6.00%)
up to 360 (*12 months*):	26 cases (11.15%)
up to 450 (*15 months*):	62 cases (26.60%)
up to 540 (*18 months*):	92 cases (39.48%)
up to 630 (*21 months*):	120 cases (51.50%)
up to 720 (*24 months*):	151 cases (64.80%)
721 or more:	233 cases (100%)
total cases applicable:	233 cases[7]

2b. Filing of charges *to* closing date:

time range	***# of cases in this range (cumulative percentage)***
up to 90 days (*about 3 months*):	5 cases (1.24%)
up to 180 (*6 months*):	14 cases (3.48%)
up to 270 (*9 months*):	36 cases (8.95%)
up to 360 (*12 months*):	93 cases (23.13%)
up to 450 (*15 months*):	154 cases (38.30%)
up to 540 (*18 months*):	197 cases (49.00%)
up to 630 (*21 months*):	245 cases (60.94%)
up to 720 (*24 months*):	278 cases (69.15%)
721 or more:	402 cases (100%)
total cases applicable:	402 cases[8]

[7] 172 cases were excluded from this calculation because these cases were missing relevant dates.

[8] Three cases were excluded due to missing dates.

2c. Filing of charges *to* start of trial:

time range	*# of cases in this range (cumulative percentage)*
up to 90 days (*about 3 months*):	13 cases (3.31%)
up to 180 (*6 months*):	84 cases (21.42%)
up to 270 (*9 months*):	177 cases (45.15%)
up to 360 (*12 months*):	230 cases (58.67%)
up to 450 (*15 months*):	275 cases (70.15%)
up to 540 (*18 months*):	312 cases (79.59%)
up to 630 (*21 months*):	330 cases (84.18%)
up to 720 (*24 months*):	392 cases (100%)
721 or more:	0 cases
total cases applicable:	392 cases[9]

2d. Trial end *to* trial judge's decision:

time range	*# of cases in this range (cumulative percentage)*
up to 90 days (*about 3 months*):	131 cases (35.89%)
up to 180 (*6 months*):	213 cases (58.35%)
up to 270 (*9 months*):	271 cases (74.24%)
up to 360 (*12 months*):	311 cases (85.20%)
up to 450 (*15 months*):	356 cases (97.53%)

[9] 13 cases were excluded from this calculation because they were missing relevant dates.

up to 540 (*18 months*):	360 cases (98.63%)
up to 630 (*21 months*):	364 cases (99.72%)
up to 720 (*24 months*):	365 cases (100%)
721 or more:	0 cases
total cases applicable:	365 cases[10]

2e. Trial judge's decision *to* closing date:

time range	***# of cases in this range (cumulative percentage)***
up to 90 days (*about 3 months*):	312 cases (83.64%)
up to 180 (*6 months*):	363 cases (97.31%)
up to 270 (*9 months*):	368 cases (98.65%)
up to 360 (*12 months*):	370 cases (99.19%)
up to 450 (*15 months*):	372 cases (99.73%)
up to 540 (*18 months*):	373 cases (100%)
up to 630 (*21 months*):	0 cases
up to 720 (*24 months*):	0 cases
721 or more:	0 cases
total cases applicable:	373 cases[11]

[10] Of the 405 applicable cases, four were excluded from this calculation due to incorrect dates, and 36 were excluded because relevant dates were missing.

[11] 29 cases were excluded from this calculation due to missing dates, while three were excluded due to incorrect dates.

Tables 3a to 3e: **Delays in the Commission's key measures of case progress, broken down by time ranges**
(these charts cover "dismissed" cases only: 46 cases)

3a. Consultation date *to* closing date:

Time range	*# of cases in this range (cumulative percentage)*
up to 90 days (*about 3 months*):	0 cases
up to 180 (*6 months*):	0 cases
up to 270 (*9 months*):	1 case (3.44%)
up to 360 (*12 months*):	6 cases (20.68%)
up to 450 (*15 months*):	9 cases (31.03%)
up to 540 (*18 months*):	16 cases (55.17%)
up to 630 (*21 months*):	22 cases (75.86%)
up to 720 (*24 months*):	24 cases (82.75%)
721 or more:	29 cases (100%)
total cases applicable:	29 cases [12]

3b. Filing of charges *to* closing date:

time range	*# of cases in this range (cumulative percentage)*
up to 90 days (*about 3 months*):	0 cases
up to 180 (*6 months*):	2 cases (4.34%)

[12] 17 cases were not included in this calculation because they originated with CCRB and, therefore, had no consult date.

up to 270 (*9 months*):	11 cases (23.91%)
up to 360 (*12 months*):	20 cases (43.47%)
up to 450 (*15 months*):	23 cases (50.00%)
up to 540 (*18 months*):	28 cases (60.86%)
up to 630 (*21 months*):	33 cases (71.73%)
up to 720 (*24 months*):	36 cases (78.26%)
721 or more:	46 cases (100%)
total cases applicable:	46 cases

Tables 4a-4e: Delays in the Commission's key measures of case progress, broken down by time ranges
(these charts cover "negotiated" cases only: 455 cases)

4a. Consultation date *to* filing of charges:

time range	***# of cases in this range (cumulative percentage)***
up to 90 days (*about 3 months*):	298 cases (69.46%)
up to 180 (*6 months*):	385 cases (89.74%)
up to 270 (*9 months*):	413 cases (96.27%)
up to 360 (*12 months*):	421 cases (98.13%)
up to 450 (*15 months*):	424 cases (98.83%)
up to 540 (*18 months*):	427 cases (99.53%)
up to 630 (*21 months*):	429 cases (100%)
up to 720 (*24 months*):	0 cases
721 or more:	0 cases

total cases applicable:	429 cases[13]

4b. Consultation date *to* closing date:

time range	*# of cases in this range (cumulative percentage)*
up to 90 days (*about 3 months*):	12 cases (2.77%)
up to 180 (*6 months*):	90 cases (20.83%)
up to 270 (*9 months*):	195 cases (45.13%)
up to 360 (*12 months*):	286 cases (66.20%)
up to 450 (*15 months*):	330 cases (76.38%)
up to 540 (*18 months*):	355 cases (82.17%)
up to 630 (*21 months*):	378 cases (87.50%)
up to 720 (*24 months*):	402 cases (93.05%)
721 or more:	432 cases (100%)
Total cases applicable:	432 cases[14]

4c. Filing of charges *to* closing date:

time range	*# of cases in this range (cumulative percentage)*
up to 90 days (*about 3 months*):	76 cases (16.77%)
up to 180 (*6 months*):	194 cases (42.82%)

[13] 22 cases were not included in this calculation because they were generated by CCRB and, therefore, had no consultation date. Another four cases were also excluded: two had an incorrect date and two were missing a date.

[14] 22 cases were not included in this calculation because they were generated by CCRB and, therefore, did not have a consultation date. One further case was excluded because it had an incorrect date.

up to 270 (*9 months*):	277 cases (61.14%)
up to 360 (*12 months*):	335 cases (73.95%)
up to 450 (*15 months*):	370 cases (81.67%)
up to 540 (*18 months*):	394 cases (86.97%)
up to 630 (*21 months*):	411 cases (90.72%)
up to 720 (*24 months*):	430 cases (94.92%)
721 or more:	453 cases (100%)
total cases applicable:	453 cases[15]

4d. Filing of charges *to* negotiation date:

time range	***# of cases in this range (cumulative percentage)***
up to 90 days (*about 3 months*):	150 cases (34.56%)
up to 180 (*6 months*):	249 cases (57.37%)
up to 270 (*9 months*):	319 cases (73.50%)
up to 360 (*12 months*):	350 cases (80.64%)
up to 450 (*15 months*):	371 cases (85.48%)
up to 540 (*18 months*):	389 cases (89.63%)
up to 630 (*21 months*):	411 cases (94.70%)
up to 720 (*24 months*):	418 cases (96.31%)
721 or more:	434 cases (100%)

[15] Two cases were excluded from this calculation because relevant dates were not provided.

total cases applicable:	434 cases[16]

4e. Negotiation date *to* closing of case:

time range	*# of cases in this range (cumulative percentage)*
up to 90 days (*about 3 months*):	337 cases (78.19%)
up to 180 (*6 months*):	399 cases (92.57%)
up to 270 (*9 months*):	420 cases (97.44%)
up to 360 (*12 months*):	425 cases (98.60%)
up to 450 (*15 months*):	427 cases (99.07%)
up to 540 (*18 months*):	429 cases (99.53%)
up to 630 (*21 months*):	429 cases (99.53%)
up to 720 (*24 months*):	429 cases (99.53%)
721 or more:	431 cases (100%)
total cases applicable:	431 cases[17]

[16] 20 cases were excluded from this calculation because they were missing a relevant date, while one case was excluded because it had an incorrect date.

[17] 18 cases were excluded from this calculation because they were missing a relevant date, while six cases were excluded because they had incorrect dates.

APPENDIX C

PUBLISHED REPORTS OF THE COMMISSION

First Report of the Commission	April 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: The Role and Utilization of The Integrity Control Officer	December 1996
The New York City Police Department Random Integrity Testing Program	December 1996
Second Annual Report of the Commission	October 1997
Performance Study: The Internal Affairs Bureau Command Center	October 1997
Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau	October 1997
Third Annual Report of the Commission	August 1998
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
A Review of the New York City Police Department's Methods for Gathering Corruption-Related Intelligence	August 1999
Performance Study: A Follow-up Review of the Internal Affairs Bureau Command Center	August 1999
The New York City Police Department's Disciplinary System: A Review of the Department's December 1996 False Statement Policy	August 1999
Fourth Annual Report of the Commission	November 1999
Performance Study: A Review of the Internal Affairs Bureau Interrogations of Members of the Service	March 2000
The New York City Police Department's Internal Affairs Bureau: A Survey of Former IAB Members	March 2000
Performance Study: The Internal Affairs Bureau's Investigative Review Unit	March 2000
Performance Study: The Internal Affairs Bureau's Integrity Testing Program	March 2000
The New York City Police Department's Prosecution of Disciplinary Cases	July 2000
Fifth Annual Report of the Commission	February 2001

The New York City Police Department's Non-IAB Proactive Integrity Programs	December 2001
Review of the New York City Police Department's Recruitment and Hiring of New Police Officers	December 2001
Sixth Annual Report of the Commission	December 2001
Follow-up to The Prosecution Study of the Commission	March 2004
Seventh Annual Report of the Commission	March 2004

COMMISSION TO COMBAT POLICE CORRUPTION

The Commission to Combat Police Corruption was created pursuant to Executive Order No. 18 of 1995. The Commission is mandated to monitor the New York City Police Department's anti-corruption systems. To accomplish this, the Commission conducts audits, studies, and analyses regarding the Department's anti-corruption policies and procedures. This includes studies to determine the effectiveness of the Department's systems and methods for: investigating allegations of corruption; gathering intelligence; implementing a system for command accountability, supervision, and training for corruption matters; and other policies and procedures relating to corruption controls as the Commission deems appropriate.

COMMISSIONERS

Mark F. Pomerantz, Chair

Mr. Pomerantz is a partner in the Litigation Department of Paul, Weiss, Rifkind, Wharton & Garrison LLP. He is a nationally known trial lawyer and senior litigator with extensive public and private experience in criminal and regulatory matters. From 1997 to 1999, Mr. Pomerantz served as Chief of the Criminal Division in the United States Attorney's Office for the Southern District of New York, in which he oversaw all of that office's criminal prosecutions, and was the recipient of the Distinguished Service Award from the United States Attorney General. He has also taught at Harvard and Columbia Law Schools. Mr. Pomerantz earned his J.D. from the University of Michigan Law School.

David Acevedo

Mr. Acevedo is a Chief Trial Attorney in the Enforcement Division of the United States Commodity Futures Trading Commission. There, he supervises a team of attorneys and investigators who conduct investigations of trade practice fraud, solicitation fraud and market manipulation, and in enforcing the Commodity Exchange Act. From 1988 to 1999, Mr. Acevedo served as an Assistant District Attorney at the New York County District Attorney's Office, where he investigated and prosecuted a wide range of cases including homicides. Mr. Acevedo earned his J.D. from Boston College School of Law.

Vernon S. Broderick

Mr. Broderick is a litigator at Weil, Gotshal & Manges, where he concentrates on complex commercial litigation. Mr. Broderick served as an Assistant United States Attorney for the Southern District of New York for eight years. While at the United States Attorney's Office, he served as Chief of the Violent Gangs Unit and, investigated and prosecuted cases involving organized crime, international narcotics trafficking and, violent crimes including murder,

kidnapping, assault and robbery extortion. Mr. Broderick was also a recipient of the Justice Department Director's Award for Superior Performance as an Assistant United States Attorney in both 1997 and 1998. Mr. Broderick earned his J.D. from Harvard Law School.

Kathy Hirata Chin

Ms. Chin is a partner at Cadwalader, Wickersham & Taft. Ms. Chin served as a Commissioner on the New York City Planning Commission from 1995 to 2001. She has also served on the Federal Magistrate Judge Merit Selection Panel for the Eastern District of New York, on Governor Mario M. Cuomo's Judicial Screening Committee for the First Judicial Department, and on the Gender Bias Committee of the Second Circuit Task Force regarding Gender, Racial, and Ethnic Fairness. Ms. Chin earned her J.D. from Columbia University School of Law.

Edgardo Ramos

Mr. Ramos is a partner in the Governmental Investigations Practice Group at the law firm of Day, Berry & Howard. Mr. Ramos served as an Assistant United States Attorney in the Eastern District of New York for eight years, serving as the Deputy Chief of the Narcotics Unit and the Organized Crime/Drug Enforcement Task Force. Mr. Ramos is vice-chair of Aspira of New York, Inc., and serves on the criminal law committee of the Association of the Bar of the City of New York. Mr. Ramos earned his J.D. from Harvard Law School.

James D. Zirin

Mr. Zirin is a partner at Sidley, Austin, Brown & Wood. He has been a trial lawyer for over thirty years and has handled a wide variety of white collar criminal and complex commercial litigation. Mr. Zirin is a former Assistant United States Attorney for the Southern District of New York. He is also a fellow of the American College of Trial Lawyers, a trustee of New York Law School, a former director and member of the executive committee of the Legal Aid Society, and a past vice president and trustee of the Federal Bar Council. Mr. Zirin earned his J.D. from the University of Michigan Law School.

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