

**The City of New York**

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**Commission to Combat Police Corruption**

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**Fourth Annual Report  
of the Commission**

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## **I. OVERVIEW**

The Fourth Annual Report of the New York City Commission to Combat Police Corruption ("Commission") marks a review of the Commission's ongoing role during the last year as an external monitor of the anti-corruption efforts of the New York City Police Department ("Department"). Established by Mayor Rudolph W. Giuliani on February 27, 1995, through Executive Order No. 18, the Commission has continued in the past year to fulfill its mandate by monitoring open corruption investigations as well as undertaking studies and audits of the various policies and procedures put in place by the Department to uncover, investigate, punish, and prevent corruption among its members.

Based upon the Department's overall performance related to its anti-corruption programs as reflected in ongoing corruption investigations and in other areas, the Commission finds that the Department remains committed to building and maintaining a Department that is intolerant of corruption. While the Department has performed well in various areas, the Commission's work as monitor has also identified several areas where changes would further the Department's anti-corruption goals. The Commission has addressed these issues in formal studies completed during last year and in informal meetings with Internal Affairs Bureau ("IAB") executives and other representatives of the Department.

## **II. PUBLISHED REPORTS**

The Commission completed six substantive reports in the past year. While generally finding the Department committed to its anti-corruption efforts, the Commission identified a number of areas for improvement by the Department B among them, enhancing the background investigations of candidates to the Department, continuing the training of officers who handle the intake of corruption and misconduct complaints, reforming certain policies related to serious off-duty misconduct and enhancing implementation of the Department's policy relating to terminating officers found to have lied during the course of their official duties. The various reports released by the Commission are discussed below.

Since its inception, the Commission has now published four annual reports and eleven reports on specific subjects. (See Appendix B for a listing of those reports.) In these reports, the Commission has made over 65 recommendations. (See Appendix A for a summary of these recommendations.) Various of these recommendations have been implemented by the Department. In other circumstances, the Department has determined that particular recommendations of the Commission had already been implemented by the Department or that it was otherwise unnecessary to do so. As part of its work in the coming year the Commission will be reviewing with the Department various of the Commission's recommendations to assess the manner in which those that have been adopted have been implemented, and to identify others that have not been implemented and the Department's rationale for not following the particular recommendation.

The following is a synopsis of reports issued by the Commission during the past year.

**A. THE NEW YORK CITY POLICE DEPARTMENT'S DISCIPLINARY SYSTEM: HOW THE DEPARTMENT DISCIPLINES ITS MEMBERS WHO ENGAGE IN SERIOUS OFF-DUTY MISCONDUCT ("OFF-DUTY MISCONDUCT STUDY")**

**1. Purpose of the Off-Duty Misconduct Study**

The NYPD's commitment to disciplining officers who have engaged in misconduct is a critical component in the Department's overall anti-corruption effort. Having previously undertaken a comprehensive study of the Department's policies, procedures and actions relative to the discipline of officers who made false statements during the course of their official duties,<sup>1</sup> the Commission turned to a review of the discipline of officers who engaged in serious off-duty misconduct. The Commission's study was partly motivated by a recognition that much of the misconduct committed by police officers occurs off-duty. In selecting cases to review as part of this study, the Commission focused on the most serious instances of off-duty misconduct B those cases involving discharge or display of a firearm, domestic abuse, or other violent behavior. As the Commission proceeded with its review, it became apparent that a significant number of off-duty misconduct cases involved officers who committed these acts while intoxicated. The Commission therefore also focused on cases involving alcohol, including driving while intoxicated ("DWI") cases and cases of officers so affected by their alcohol consumption that, whether or not they were driving, they were found by a ranking officer to be unfit to carry out their duties as police officers.

**2. Findings**

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<sup>1</sup> *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements*, December 12, 1996. Also, see below at p.17.

The Commission concluded that although the Department had appropriately handled the majority of cases reviewed and is committed to disciplining officers who have engaged in off-duty misconduct, several areas warranted changes in Departmental policy. These areas included the discipline of officers who wrongfully discharged their weapons or engaged in unjustified acts of violence, or who committed serious misconduct while armed and intoxicated, and the Department's methods and policies related to determining when officers are unfit for duty due to excessive consumption of alcohol and the guidance given to officers as to whether they should carry weapons off duty when drinking.

### **3. Recommendations**

Based upon both its review of off-duty misconduct cases and its interviews of Department personnel, the Commission recommended the following:

#### ***a. Relating to Offenses Involving the Use of Alcohol***

The Department should employ stronger language to discourage officers from consuming alcohol while carrying a weapon,<sup>2</sup> and should consider banning drinking altogether while armed. Those officers who are nevertheless unfit for duty while armed should receive significant penalties and be treated more severely than officers who are unfit and not armed. Where the officers are not terminated, any penalties should include the imposition of mandatory counseling and dismissal probation.

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<sup>2</sup> Under the Department's Patrol Guide ("PG"), officers are expected to be armed at most times, even while off-duty.

The Commission also concluded that officers who continue to engage in alcohol-related misconduct, despite having received counseling, should generally be discharged, and that where an officer is unfit due to intoxication, but is unarmed and commits no other act of misconduct, the Department should consider whether charges or alcoholism evaluation is appropriate.

***b. Relating to Determinations of Unfitness***

Duty captains should base fitness-for-duty findings upon an officer's condition *at the time of the alleged misconduct*, as well as at the time a duty captain personally observes the officer, and draw upon all available evidence in making that determination, including testimonial and scientific evidence such as the subject's blood alcohol content. Where there is objective evidence of possible intoxication, the Department should use a breathalyzer test to determine fitness, at least in cases involving driving or the commission of violent acts with or without a weapon. Furthermore, the Commission recommended that an officer's refusal to submit to a breathalyzer test be routinely offered as evidence in the Department's case-in-chief in all prosecutions for driving under the influence and other acts of misconduct where an officer has been found unfit for duty.

***c. Relating to Acts of Serious Misconduct***

In general, officers who deliberately and unjustifiably discharge their weapons off-duty, as well as officers who discharge their weapons under any circumstances and fail to report it to the Department, should be terminated, absent exceptional circumstances, whether or not the incident involved alcohol. In general, officers who engage in more than one (or even one, depending on the nature of the violence) unjustified act of violence should likewise be

terminated.

*d. Miscellaneous Recommendations*

All appropriate charges involving sufficiently discrete offenses should be included when a disciplinary action is commenced against an officer, and the Department should, in appropriate cases, be more willing to impose consecutive sentences for discrete charges. In addition, the Commission recommended that New York City's Administrative Code be amended to allow Trial Commissioners to require officers found guilty of misconduct to undergo counseling, where appropriate.

**4. The Department's Response**

In response to the Commission's findings and recommendations, the Department made a number of changes in its policies. The Department agreed with the Commission's recommendation that a charge of unfitness should be brought against any officer who has engaged in misconduct if there is scientific evidence of the officer's intoxication and with other recommendations involving officers who are unfit for duty. As a result, the Department instituted various changes in policy regarding the determination of unfitness by duty captains, including the creation of a specialized form that directs duty captains to consider a number of physical indicia of intoxication as well as witness statements and breathalyzer evidence, and makes clear that the officer's fitness at the time of the incident is not just at the time of the duty captain's observation of the officer but is relevant. In addition, a new administrative charge, "armed while unfit for duty," was created in response to the Commission's concerns that officers who are armed and unfit should be punished more severely than those unfit for duty but not armed.

The Department put in writing its pre-existing policy of referring to the Alcohol Counseling Unit those officers found to have committed misconduct while unfit for duty and added stronger language to its Patrol Guide, to more forcefully discourage the consumption of alcohol by off-duty officers so long as they have their weapons.<sup>3</sup> In driving while intoxicated cases, the Department also will use evidence that an officer refused a breathalyzer test in the presentation of its case and will charge all officers with unfitness for duty who have been charged with DWI.

**B. THE NEW YORK CITY POLICE DEPARTMENT'S DISCIPLINARY SYSTEM:  
HOW THE DEPARTMENT DISCIPLINES PROBATIONARY POLICE  
OFFICERS WHO ENGAGE IN MISCONDUCT (“PPO STUDY”)**

**1. Purpose of the PPO Study**

Upon joining the Department, all police officers are subject to a two-year probationary period during which they may be summarily terminated, so long as the termination is not based on bad faith, based on a constitutionally impermissible reason, or otherwise in violation of the law.<sup>4</sup> The Commission examined the Department's treatment of probationary officers who engaged in misconduct to determine whether the Department was appropriately and expeditiously terminating such officers.

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<sup>3</sup> See below at p.47.

<sup>4</sup> After this period expires, the Department must formally charge a police officer and provide an administrative hearing of the case before he or she may be terminated.



## **2. Findings**

The Commission reviewed all 34 cases adjudicated between July 1, 1996, and June 30, 1997, in which a probationary police officer engaged in misconduct. In 17 cases, the officer was terminated. Thirteen officers resigned, and the remaining four negotiated pleas with the Department that allowed them to retain their positions. The Commission determined that five to six months had typically elapsed between occurrence of the misconduct and the effective termination date. The majority of these cases involved officers who had tested positive for drugs, engaged in off-duty misconduct, or misused a firearm. Departmental policies require termination for drug use, and the Commission found that in such cases, dismissals were effected speedily. The Commission found that several cases not involving drug use were adjudicated only after the passage of a substantial amount of time – up to 11 months.

In the four cases in which officers received a penalty short of termination, the Commission did not object to the penalties imposed by the Department. However, the Commission believes that in all such cases, the officer's probationary period should be extended, thus allowing the Department more time to assess the officer's conduct and performance before completion of the probationary period. In two of these four cases, the Department did not do so.

## **3. Recommendations**

Given Departmental delay in reaching a determination in some of the cases in its sample, the Commission recommended that the Department take steps to speed resolution of cases against probationary officers. The Commission also concluded that suspensions without pay should be imposed on a probationary officer whenever it becomes clear that the Department is

likely to terminate the officer, and that where termination is warranted, to the extent possible it should be imposed before the 30-day limit on such suspensions is reached. This will preserve resources for the Department and ensure that such officers are unable to commit further misconduct, at least while on-duty.

**C. PERFORMANCE STUDY: A REVIEW OF THE NEW YORK CITY POLICE DEPARTMENT'S BACKGROUND INVESTIGATION PROCESS FOR THE HIRING OF POLICE OFFICERS (“HIRING STUDY”)**

**1. Purpose of the Hiring Study**

Given the significance of background investigations in building and maintaining a Department of the highest integrity, the Commission evaluated a sample of background investigations of candidates to the Department conducted by the Department's Applicant Processing Division ("APD").<sup>5</sup>

**2. Findings**

The Commission reviewed the background investigations of 95 candidates hired for the Department's April 1997 class of new officers, as well 20 candidates who were deemed not qualified. The Commission reviewed both the preliminary eligibility requirements and disqualifiers<sup>6</sup> necessary to become a New York City police officer, as well as "in-house" criteria<sup>7</sup> and internal investigative standards<sup>8</sup> applied by the Department. The Commission found that all

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<sup>5</sup> APD is the unit responsible for performing background investigations of candidates for the NYPD.

<sup>6</sup> Certain criteria must be met by all incoming officers, including minimum age, residency, citizenship, driving and education requirements. Additionally, individuals with felony convictions or with dishonorable discharges from the military are not eligible for hire.

<sup>7</sup> The Department's "in-house" criteria state that if a candidate has a certain number of misdemeanor convictions, criminal summonses, or driving violations within a specified period of time, or if the candidate was terminated from tenured government service, that candidate can be disqualified from employment.

<sup>8</sup> These standards are found in APD's Investigative Guide ("Guide"). The Guide provides investigators with guidelines as to specific documents related to the candidate that must be obtained and investigative steps and follow-up that must be performed during the background investigation process.

hired candidates within its sample had met the preliminary requirements for eligibility as well as (with the exception of one candidate) the Department's in-house criteria. However, the Commission also determined that key steps in these investigations had not been taken prior to the hiring of many of the candidates in the Commission's sample, and that other steps had not been taken at all.

The Commission determined that while the investigative guidelines are adequate, in practice investigators relied too heavily on written correspondence, including investigative forms, rather than personal contact with a candidate's neighbors, school officials, and former employers. The Department did not establish personal contact with neighbors, employers, or schools attended by the candidate, as required by the APD Guide, except where an investigator learned of derogatory information about the candidate.

### **3. Recommendations**

- Although none of the candidates in the Commission sample should have been disqualified based on the current Department standards, the Department should review certain of its hiring criteria and determine whether they should be more restrictive.
- Greater emphasis should be placed on establishing personal contact with individuals and institutions with knowledge of the candidate. The Department should ensure that investigators establish more meaningful personal contact with a candidate's neighbors, employers, schools, and local law enforcement agencies.
- The Commission concluded that by enhancing several of the forms provided to employers, schools, and others, the Department could secure broader and more comprehensive information about the candidate, and would encourage individuals or institutions who had contact with the candidate to be more forthcoming.
- The hiring process should be staggered to allow for smaller classes, thus permitting the completion of background investigations prior to hiring. Additionally, the Department should consider out-sourcing some background investigations to private contractors B a method that the Commission learned is used by other law enforcement agencies B thus freeing up valuable resources and enhancing the quality of the background investigations.
- The Department should make a determination whether to use pre-employment polygraph

screening as part of the background investigation process, as is done by a number of law enforcement agencies throughout the state and country.

#### **4. The Department's Response**

While the Department reported that it believes that personal contact with neighbors is unlikely to provide meaningful information, it stated that it will, at least on a trial basis in future hiring classes, have investigators speak directly to persons who have personal knowledge of the candidate. The Commission intends to follow up on the Department's efforts in this area.

The Department informed the Commission that it supports staggered hiring and that the Personnel Bureau and the Commanding Officer of APD will review the Commission's recommendation that many of the investigative forms be amended to include language releasing the candidate's reference from liability,<sup>9</sup> as well as to make clear the option of making personal contact with the investigator to discuss the candidate's background.

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<sup>9</sup> The Commission recognizes that former employers, and school officials may feel vulnerable to litigation should they provide derogatory information about a candidate.

## **PERFORMANCE STUDY: A FOLLOW-UP REVIEW OF THE INTERNAL AFFAIRS BUREAU COMMAND CENTER ("COMMAND CENTER STUDY")**

### **1. Purpose of the Command Center Study**

IAB's Command Center operates 24 hours a day as an intake desk for all allegations received by the Department against members of the service. The Command Center thus plays a critical role in the Department's efforts to investigate corruption and other misconduct within its ranks. Because many of these investigations begin with calls directly to the Command Center from civilians, on two prior occasions the Commission studied the performance of the Command Center operators in handling such calls, and with this follow-up study, the Commission again assessed this unit's performance.

### **2. Findings**

In a sample of calls by civilian complainants to the Command Center from May to July 1998, the Commission found a higher standard of overall professionalism in the handling of such calls as compared to samples gathered in prior years.<sup>10</sup> The Commission concluded that the Command Center's operators generally performed well in handling callers' complaints, and in maintaining a respectful attitude and demeanor. The Commission believes that IAB's management remains committed to achieving a high level of professionalism in the Command Center, and that the materials used in training Command Center operators reflect this commitment.

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<sup>10</sup> The Commission's first broad study in this area assessed samples of Command Center calls drawn in July 1997, and in spring and summer 1996. In addition, the Commission's first Annual Report, released in March 1996, included an audit of such calls.

While overall proficiency has increased, certain problems were identified in the sample. There were calls during which the Command Center operator inappropriately challenged a caller regarding the validity of the caller's allegations. Such demeanor on the part of the Command Center operator could potentially inhibit a caller from reporting his allegations in detail, and might cause the caller to expedite his call by skipping over those details that could disclose genuine corruption on the part of the subject officers. There also were lapses in questioning that resulted in key areas of callers' allegations remaining unexplored. Although the interviews were, for the most part, well conducted, full and complete questioning is an area in which there is room for continued improvement. The Commission also noted that operators placed callers on "hold" for extended periods of time.

### **3. Recommendations**

These findings led the Commission to make several targeted recommendations aimed at addressing the deficiencies. They included the following:

- The Commission recommended that formal re-training sessions be held on a regular basis, as a way of discussing with operators ways in which performance can be improved, and addressing routine problems found by the Commission.
- The Commission recommended that the Command Center training guide be made more accessible, and that the guide, as well as all other training materials and guidelines issued by IAB, be consolidated in one binder for easy reference by Command Center operators, enhancing its value as both an orientation tool and a reference source.
- The Commission supports recent efforts by the Department to staff some Command Center positions with civilian operators experienced in handling telephone complaints and recommended that the Department continue to explore assigning civilians to the Command Center.
- After a review of 19 calls analyzed by IAB's Investigative Review Unit ("IRU"),<sup>11</sup> the

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<sup>11</sup> IRU functions as an internal quality control unit, responsible for the review and evaluation of open and closed corruption investigations and monitoring the performance of the Command Center. The Commission has undertaken

Commission recommended IRU identify and more fully comment on weak areas (if any) in their monthly call samples, and explain to operators in detail any areas in which they can enhance their handling of complaints.

**E. A REVIEW OF THE NEW YORK CITY POLICE DEPARTMENT'S METHODS FOR GATHERING CORRUPTION-RELATED INTELLIGENCE ("INTELLIGENCE REPORT")**

**1. Purpose of the Intelligence Report**

The development of corruption-related intelligence is critical to the proper functioning of any internal investigations agency, including IAB. Intelligence information can provide IAB with investigative leads, give context to known facts of a pending investigation, and identify new subjects and areas for inquiry. In undertaking a study of the Department's intelligence-gathering approach, the Commission sought to determine whether IAB had in place viable mechanisms for gathering corruption-related intelligence.

**2. Findings**

The Commission reviewed and evaluated numerous mechanisms IAB uses for evaluating and gathering intelligence information: the IAB Corruption Prevention Division ("CPD"), the Voluntary Assistance ("VAU") and Operative Units ("OU"), the IAB debriefing program, and IAB's "policy of inclusion." The Commission met with key IAB and Departmental personnel, and analyzed various documents prepared by IAB. Based upon its review of these programs, the Commission determined that IAB has in place a viable intelligence gathering system. As noted above, this system includes the following components: CPD is responsible for the compilation and distribution of intelligence information that comes into IAB and can assist with

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a comprehensive study of IAB's Investigative Review Unit. This study will address, in part, IRU's oversight of the Command Center.

investigations.<sup>12</sup> CPD publishes three major reports during the course of each year comparing the number and frequency of corruption complaints over time and within each command, as well as several smaller reports on various corruption-related topics. The Commission found that the IAB group captains and the precinct Commanding Officers ("COs") interviewed were generally satisfied with the depth and quality of the information contained in CPD reports, and noted that the graphics allowed for quick identification of areas with increased allegations, either at particular locations or within a particular command.

The Voluntary Assistance Unit ("VAU") and the Operative Unit ("OU") oversee members of the NYPD who voluntarily assist the Department in obtaining and reporting information regarding corruption. The Commission conducted a review of these programs and found that they are functioning adequately and providing valuable information to the Department. The Commission's specific findings have been reported to the Mayor and the Police Commissioner.<sup>13</sup>

Known by the acronym "EDIT" (Enforcement, Debriefing, Intelligence and Testing), this pro-active enforcement program relies on the arrest and debriefing of prisoners to gather corruption-related intelligence information that can initiate a new investigation, enhance an existing one, or develop a basis for a targeted integrity test of a member of the NYPD. The Commission found that EDIT's approach to developing intelligence has yielded tangible benefits in furthering investigations.

The purpose of the policy of inclusion, whereby COs are informed about open corruption investigations, is to promote an informational flow both from IAB to non-IAB personnel and

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<sup>12</sup> Such intelligence can provide information about corruption prone areas; be used as an aid in detecting patterns of possible corruption; focus investigative efforts, including integrity tests and debriefing operations; help establish a profile of a suspect officer; or, identify appropriate subjects for investigation.

<sup>13</sup> Because of the sensitivity of these units, the Commission is constrained from publicly reporting the details of how they operate; disclosure of precise methods and operations would undermine their effectiveness and value to the Department's anti-corruption effort.



from precinct and bureau commanders to IAB. While the formal policy is more all-encompassing, the Commission found that group captains' decisions as to which specific information to include in consultations with non-IAB personnel are made on a case-by-case basis, motivated by a concern that their investigations may be compromised. The group captains noted that precinct commanders are sometimes informed of integrity tests carried out within their commands, and that integrity control officers ("ICOs") can provide assistance in structuring a test with respect to the targeted officer's schedule and specific assignment.

The COs felt that the policy promoted better relations with IAB and allowed commanders to take a more active role in integrity issues affecting their commands. Among state and federal prosecutors, several opposed the policy, because they believed it creates unacceptable risks to the integrity of investigations. Other prosecutors, however, supported the policy, conditioned on an understanding that IAB, in practice, does not engage in the sharing of all information about corruption investigations with non-IAB commanders. Most prosecutors shared the belief that a case-by-case application of the policy of inclusion is better than a policy requiring the sharing of information in all cases.

### **3. Recommendation**

For the reasons above, the Commission recommended that the Department reassess the policy of inclusion in order to more clearly implement the practice of case-by-case disclosure of information. Decisions on whether to disclose information to COs should be made by IAB on a case-by-case basis, depending, most importantly, on the sensitive nature of the investigation, but also on other relevant facts. In short, each investigation should be assessed individually in order to determine what level of disclosure to non-IAB personnel is appropriate.

## **F. NEW YORK CITY POLICE DEPARTMENT'S DISCIPLINARY SYSTEM: A REVIEW OF THE DEPARTMENT'S DECEMBER 1996 FALSE STATEMENT POLICY**

### **1. Purpose of the Study**

This past year the Commission completed its second comprehensive review of disciplinary cases in which members of the Department made false statements in the course of their official duties. In connection with the release of the Commission's prior report on this subject in December 1996 that recommended stricter and more consistent penalties for making false statements, the Police Commissioner announced a policy of terminating, absent exceptional circumstances, officers found to have made false statements. The Commission's latest report set out to study all Department false statement cases adjudicated in 1998 to evaluate the Department's on-going implementation of the false statement policy.

### **2. Findings and Recommendations**

The Commission found, in general, that the manner in which false statements are dealt with in the Department has improved since the Commission's 1996 study, although the Commission did not agree with all of the Department's decisions not to terminate officers who had made false statements. Nonetheless, the Commission found that, in general, the Department is taking seriously its December 12, 1996, policy of terminating, absent exceptional circumstances, officers who make false statements. The Commission also found however that the Department needs to better document, where applicable, its reasons for finding exceptional circumstances that allow officers who have been found to have made false statements to retain their jobs, and for dismissing false statement charges or not bringing them in the first place.

The Commission also believes that the Department should apply the policy to all cases in which the officer lies in a PG-118.9 interview<sup>14</sup> - even if the underlying offense is less serious - and, absent exceptional circumstances, terminate the officer. In his response to this report the Commissioner concurred with this view and stated he had corrected the misinterpretation of those responsible for administering the disciplinary system who had taken a different view during the study. The Commission recommended further that the Department more closely monitor police officer testimony in criminal and civil proceedings as well as instances where motions to suppress were granted. Through the establishment of a formal protocol whereby prosecutors and attorneys representing New York City can notify the Department about officers

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<sup>14</sup> Under Section 118.9 ("Interrogation of Members of the Service") of the Department's Patrol Guide, a member of the service must answer questions at a formal interview pertaining to the performance of his duties, or else face Departmental charges. Failure to answer questions posed pursuant to this section is a terminable offense. See below at p. 51.

who may have lied during such proceedings, who had contraband suppressed because of unconstitutional searches, or created liability for the City because of the use of excessive force or other misconduct, the Department may then take appropriate disciplinary or training measures. The Commissioner responded to the draft of this report by sending a letter to prosecutors requesting some of this information.

The Commission has already begun reviewing 1999 adjudications of false statement cases and will continue to monitor these cases in light of their serious implications for creating a police department intolerant of corruption and to ensure that the Department remains dedicated to removing, absent exceptional circumstances, those of its members who make false statements.

### **3. Officers “A” and “B”**

The Commission's false statement report separately discussed a serious case in which the Department failed to charge two officers with making false statements. The case involved an allegation by a civilian that he had been severely beaten by two officers inside a precinct station house. The officers initially denied the charges, claiming that the man had injured himself while falling. However, they ultimately plead guilty and admitted to having lied in their PG-118.9 interviews and in Departmental records; they each lost 20 vacation days as a penalty.

The Commission's most significant concerns involved the Department's failure to charge Officers “A” and “B” with lying given the evidence corroborating the victim's account and the implausibility of the officers' statements in their PG-118.9 interviews and the failure to terminate the officers given the seriousness of the assault and the officers' efforts to cover up their misconduct.

#### **4. The Department's Response**

In response to the Commission's recommendation that the Department better document its decisions in false statement cases, the Department stated that it is adequately documenting its decisions but was prepared to discuss improvements in this area with the Commission. Further, the Police Commissioner has reiterated that the December 1996 policy applies to all false statement cases, regardless of the underlying misconduct, and that the Department should now apply the policy consistent with that understanding. Finally, the Department informed the Commission that it has taken a number of steps to improve the performance and efficiency of the DAO.

### **III. UNIT TO PROTECT FROM RETALIATION MEMBERS OF SERVICE WHO HAVE COME FORWARD WITH ALLEGATIONS OF CORRUPTION OR MISCONDUCT**

As discussed in its Third Annual Report, the Commission recommended that the Department form a unit to protect those members of the service who come forward with allegations of corruption or who provide assistance in an internal investigation. The Commission's proposal came after several members of service contacted the Commission seeking assistance for what they believed to be acts of retaliation against them for having made allegations to the Department regarding misconduct or corrupt activity on the part of other officers. The Commission made specific recommendations which included that the Department articulate a clear policy that retaliation against "whistle blowers" and all who cooperate with

internal investigations is prohibited and that the Department create a high-level office to monitor the treatment of those members of service who provide information.

In response to the Commission's concerns, on November 16, 1998, the Department announced the creation of a committee comprised of the First Deputy Commissioner, the Chief of Personnel, and the Chief of IAB, and issued Interim Order 70, "Investigation of Incidents of Retaliation against Members of the Service" ("I.O. 70"). While I.O. 70 does not establish a separate unit for the protection of members who assist in internal investigations, as recommended by the Commission, it does articulate a clear policy that the "success of the Department's efforts to eliminate misconduct and corruption relies heavily on its ability to encourage members to come forward to report such activities."<sup>15</sup> Rather than create a separate unit, I.O. 70 provides guidelines for the investigation of allegations of retaliation made by members of service who have voluntarily reported corruption or misconduct.

Given the importance of this issue, the Commission followed-up on the status of the Department's program subsequent to the issuance of I.O. 70. The program currently operates out of the Employee Relations Section ("Employee Relations") of the Personnel Bureau and is directed by unit's CO. The CO personally interviews all members who seek the assistance of the program. The Department placed the program in Employee Relations because of the sensitive nature of the personnel issues that this unit handles.<sup>16</sup> As such, Employee Relations is perceived as a trusted area of the Department which provides anonymity to members as necessary.

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<sup>15</sup> I.O. 70, at p. 1.

<sup>16</sup> Employee Relations handles members who are need of alcohol counseling, counseling for members who have been exposed to line-of-duty deaths and other sensitive matters.

Since the issuance of I.O. 70, the program has handled three individuals who have sought assistance because they believed they were being retaliated against after reporting misconduct on the part of other officers. In one case, a member of service claimed that he was being harassed by other officers because it was perceived that he had encouraged a civilian to make a complaint to the Civilian Complaint Review Board.<sup>17</sup> After the CO interviewed this member, the matter was referred to IAB for investigation. Although the results of IAB's investigation were inconclusive, the harassment ceased after IAB interviewed potential subjects.

The Commission believes that the steps taken by the Department are positive. At the same time, however, the unit as envisioned by the Commission also would have been more systematically proactive and reached out to officers who have cooperated in internal investigations and monitored their situations to try to assure that they receive an appropriate positive Departmental response to their assistance and, at a minimum, suffer no adverse consequences. The Department should consider whether its programs meet this goal. The Commission also will continue to monitor the progress of this potentially important program.

#### **IV. THE MONITORING FUNCTION**

##### **A. HISTORICAL (CLOSED CASE) MONITORING**

While the Commission recognizes the inherent difficulty in evaluating the completeness of an investigation after the fact, closed case monitoring still is one of the cornerstones of its efforts to assess both IAB's efficacy and the Department's commitment to fighting corruption. In a previous study, the Commission reviewed a sample of more than 80 corruption cases that were

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<sup>17</sup> The alleged harassment included phone calls in the middle of the night, graffiti in the precinct's bathroom calling him "a rat," and other actions.

closed between 1995 and 1996.<sup>18</sup> This report contains a follow-up review of closed IAB investigations.<sup>19</sup>

Outside of these comprehensive reviews of large groups of closed investigations, including the one below, the Commission also conducts individual reviews of closed investigations that come to its attention in the course of its monitoring work. While these reviews do not generally lead to written reports, the Commission shares its findings and recommendations with IAB and Department leadership.

**B. FOLLOW-UP REPORT TO COMMISSION'S FIRST MONITORING STUDY:  
A REVIEW OF CLOSED INVESTIGATIONS CONDUCTED BY IAB**

**1. The Commission's Previous Monitoring Study**

Central to IAB's mission is the investigation of corruption allegations. It has been an ongoing priority for the Commission, therefore, to assess the overall quality of IAB's cases, both pending and closed investigations. The Commission previously examined the quality of closed IAB investigations in its October 1997 report evaluating a sample of IAB investigations closed between January 1 and October 15, 1996.<sup>20</sup> The report, Monitoring Study: A Review of

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18 *Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau*, October 1997.

19 Rather than release the findings related to this review in a separate report, the Commission has included its findings in this year's Annual Report.

20 The Commission's sample consisted of 78 cases closed by IAB in 1996. These 78 cases were drawn from a sample of 117 investigations cases selected on both a random and targeted basis.



Investigations Conducted by the Internal Affairs Bureau, concluded that the majority of IAB investigations in the Commission's sample were conducted competently and professionally.

While the overall quality of IAB investigations reviewed in its 1997 study was basically good, the Commission identified various specific cases that suffered from insufficient investigation. The broad investigative areas where problems in varying degrees were found included: the adequate debriefing of arrestees and interviewing of potentially key witnesses to enhance an investigation and assist in the identification of subjects; adequate interrogation pursuant to PG-118.9 and interrogation of all relevant subject officers; and the completion of certain critical investigative steps. In addition to discussing these broad areas both in the context of identified insufficient cases and as general issues, the Commission also noted that IAB should assure that investigators are adequately supervised.

## **2. Methodology of the Commission's Current Closed Case Study**

In preparing its review of closed IAB investigations, the Commission evaluated a significant number of cases closed by IAB between October 1996 and September 1997. The majority of the cases were chosen randomly from a list of closed investigations from each of the IAB investigative groups, without reference to the substance of the allegation or outcome of the investigation. A total of 121 cases were evaluated through this selection process. These groups spanned all geographic areas of the city as well as specialized groups with city-wide

jurisdiction.<sup>21</sup> In the selection process, the Commission made every effort to ensure an equal distribution amongst the investigative groups.

While the initial sample included some narcotics cases, since narcotics allegations make up the largest category of IAB's cases, and because narcotics allegations represent some of IAB's most serious allegations, a smaller number of cases were also selected from a list of all investigations involving a narcotics allegation that were closed during the same time period of October 1996 to September 1997.<sup>22</sup> From the initial list, the closing memoranda of approximately 80 cases were requested and reviewed. Initially, all cases involving summary arrests either by IAB or outside law-enforcement agencies with no IAB involvement pre-arrest, and random drug-testing failures (again, where there was no IAB involvement prior to the test's administration), were eliminated.<sup>23</sup>

From the remaining group of cases, a sample of investigations was then selected according to distribution amongst each of IAB's geographic groups, as well as city-wide jurisdiction groups investigating OCCB and force allegations. The final criterion for selection was based upon case disposition. Every case disposed of with a substantiated, partially substantiated, or exonerated result was chosen. Finally, approximately equal distribution of the other possible case dispositions was chosen.<sup>24</sup> A total of 33 cases drawn from the list of

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21 The specialized groups are Group 1 ("Special Investigations Unit") (allegations regarding members of the service of the rank of captain or above, IAB personnel and other highly sensitive cases); Group 41 (allegations involving detectives and other members of the Organized Crime Control Bureau); Group 52 (integrity testing); Group 54 (force allegations); and Group 56 (allegations involving traffic enforcement agents).

22 These allegations included claims that an officer used or sold drugs, or associated with, or provided protection for, narcotics dealers.

23 A total of 15 cases fell into this group.

24 Unsubstantiated and unfounded findings made up the remaining dispositions.

narcotics cases were ultimately evaluated and included in the final sample. With the addition of the initial 121 cases, which also included a number of narcotics-related investigations, a total of 154 cases comprised the Commission's sample from which it reviewed in great detail the investigative folders.

The goal of the evaluation included both specific and general concerns: Did IAB satisfactorily handle the specific investigation? Did the investigation raise broader issues warranting discussion?

Commission staff devoted considerable time to reviewing all documents contained in the investigative folders, including worksheets summarizing investigative steps taken, witness interviews, tapes and all other relevant documents.<sup>25</sup> Follow-up meetings were then held with IAB to discuss any cases where questions existed.

After reviewing the case files, Commission staff identified certain investigations that were handled especially well, and problematic ones. Attention was paid to the overall thrust of the investigation, not whether IAB took every conceivable investigative step. Commission staff asked these questions when evaluating a file: Did IAB adequately pursue all warranted investigative leads given the nature of the allegation and the available information? Were surveillance, EDIT and integrity tests used, if warranted, and were they performed satisfactorily? Were adequate efforts made to identify all relevant subjects? Were critical witnesses and informants interviewed in a timely fashion? Were relevant documents obtained and reviewed?

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<sup>25</sup> In addition to these documents, files also typically contained Central Personnel Index printouts (a summary of personnel-related items including shield and tax registration numbers; current assignments; and prior corruption and misconduct allegations), duty rosters, property vouchers, and a case summary that outlined the allegations, investigative steps taken, and IAB findings.

### **3. Discussion Overview**

The initial goal was to determine whether IAB is, in fact, accomplishing its primary investigative mission -- whether opportunities to identify and thoroughly investigate corruption are being exploited. Based upon the sample group, the Commission found that the vast majority of cases were appropriately pursued. The Commission found that IAB employed a range of investigative techniques in furtherance of its mission. These included: surveillance of subject officers; EDIT activities to enhance intelligence related to corruption allegations; in one significant case, the use of a cooperating officer to gain further evidence against fellow officers; and thorough and timely interviewing of witnesses and informants.

While based on the Commission's broad sampling of closed IAB investigations from 1996 to 1997 the overall proficiency of IAB's work was basically good, the Commission did identify 18 cases where it believed that the overall investigation was insufficient. The Commission has discussed each of these cases with IAB, and based upon these discussions, IAB has reopened nine of the cases.<sup>26</sup> Although the issues discussed below are not pervasive, the shortcomings in these 18 cases fell in several areas.

These areas included failure to interview a key witness or informant, or to do so in a timely manner; failure to attempt to gain the cooperation through EDIT or other means of an accomplice or individual knowledgeable of the subject's corruption; and failure to take certain critical investigative steps including obtaining and reviewing relevant documents. In addition to these areas, there were several issues that arose in the Commission's sample that warrant

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<sup>26</sup> Problems with the most significant cases were raised with IAB as soon as they were identified so that IAB could re-open the cases on a more timely basis without awaiting the completion of the study. The Commission also raised with IAB four additional cases identified as insufficient. After discussing these cases and learning from IAB that certain investigative steps had been taken that were not documented in the files, the Commission agreed that the investigation of these cases was sufficient.

additional discussion. These areas include the use of surveillance and photo arrays; integrity testing and interrogation pursuant to PG-118.9. Each of these areas is discussed below.

### ***Interviewing Critical Witnesses and Timely Contact with Confidential Informants***

In developing a case, it obviously is critical to interview potential witnesses who will be of value to the investigation. Of course, if an investigator determines that the interview of a witness will not advance an investigation, investigative resources should be used elsewhere. Once an individual is identified as a witness of value to the investigation, however, careful attention must be paid to the timing of the interview. In general, and certainly where confidential informants are involved, information about the alleged corruption may be lost unless witnesses are contacted as soon as possible. This is particularly true both because a witness' memory may fade over time and because a witness may become uncooperative. In addition, intelligence gathered from confidential sources must be current to avoid staleness. Of course, if a witness has a relationship with the subject officer, the investigator must balance the need for information with the necessity of safeguarding the confidentiality of the investigation.

In general, in the closed cases in the Commission's sample, IAB investigators properly identified valuable potential witnesses and conducted interviews in an effective manner. In the cases described below the IAB investigators interviewed key witnesses to gain information

critical to the investigation. Furthermore, the investigators increased the effectiveness of the interviews by remaining sensitive to the timing and circumstances of the interviews.

In one case reviewed by the Commission, members of a Drug Enforcement Task Force observation unit observed the subject officer visiting a drug location. The target of the Task Force's investigation had visited the building and had made phone calls to one of two apartments at the location. The IAB investigator determined that the subject officer was visiting a female resident at the location. Rather than conduct an immediate interview of the female and risk raising the subject officer's awareness of the investigation, the investigator continued to develop the case. Through a review of Department records, the investigator discovered that the Department had received an anonymous complaint from a female caller at the location alleging that drug dealers were calling her. With this information, IAB was able to interview the female resident the officer had visited under the pretense of investigating the anonymous complaint. The interview revealed an innocent explanation for the officer's presence; the female had recently changed apartments, the subject officer was her ex-boyfriend and the father of her child, and she was the source of the anonymous complaint.

In a second case an arrestee/confidential informant was interviewed regarding an allegation that an unknown member of the service was living with a drug dealer. First, after the arrest, the informant was immediately debriefed by members of IAB. During this interview, the informant provided IAB with a description of the subject officer and a brief rendition of the facts. On the day the case was received, the assigned IAB investigators also showed the informant a photo array and conducted a canvass of the neighborhood with the informant during which the

informant identified the subject officer's residence, car, and ultimately the subject officer who arrived on the scene. The result of this timely investigation was the prompt identification of the subject officer. While the allegations were eventually substantiated, during the pendency of the lengthy investigation the subject officer moved. If the identity of the subject officer had not been established at the outset, the investigation would never have been viable.

In nine cases in the Commission's sample, however, a failure to interview a critical witness, combined with other shortcomings, resulted in an insufficient investigation. In some instances, the lack of timely contact with a confidential informant occurred because the potential source of the investigation was an informant of another bureau and was not made available to IAB on a timely basis. Because confidential informants are often developed through non-IAB sources, especially in the narcotics enforcement area, IAB in these situations must rely on other investigative units in the Department to make contact with the informant. Recognizing that informants must be handled sensitively, IAB must go through the informant's "handler." While the Commission acknowledges that an informant's "handler" generally must be relied on for arranging debriefings, interviews, and other forms of cooperation, the Department needs to improve procedures for facilitating these meetings so that IAB investigators can work with informants in a timely fashion. Several of the instances where the investigator failed to interview witnesses or failed to interview witnesses in a timely manner are described below.

In one investigation, a confidential informant who had provided information leading to a successful search warrant informed his non-IAB handler that he was told by a woman that her father, an officer in the precinct, provides her with information concerning upcoming narcotics

enforcement activity and that she then shares that information with dealers. Given the allegation, interviewing the informant was the key investigative step that needed to be taken to identify the subject officer, determine whether the allegation potentially had merit and, if so, develop an investigative plan. In spite of the critical importance of the informant, approximately seven months elapsed before the informant was interviewed. The delay in interviewing the informant lay both in difficulties in reaching the informant through the handler, and later, in the Department losing track of the informant's whereabouts. Rather than pushing the handler early in the case history to arrange a meeting with the informant, or later, running the criminal history of the informant in order to locate him, the investigation languished for months. Ultimately the case was closed as unsubstantiated.

In another case, IAB received an allegation from a police officer who had recovered several stolen cars from a parking garage. At the time of their recovery, a parking attendant informed the officer that the stolen cars belonged to a detective. The attendant gave the name of the detective to the officer. Given the importance of the attendant's information, IAB needed to interview the attendant as soon as possible in order to proceed with the investigation. IAB responded accordingly and sent investigators out on the very day the allegation was received to interview the attendant. However, when the attendant was interviewed he informed IAB that he did not remember speaking with the original police officer and that it was the manager of the garage who had actual knowledge of the subject detective. Before making any attempts to locate and interview the manager, the original police officer, or each of the owners of the stolen cars, IAB closed the investigation. After the Commission brought this case to the attention of IAB,



the case was reopened and efforts were made to locate and interview potential witnesses. IAB's efforts in locating and interviewing potential witnesses proved unsuccessful, and the case was again closed as unsubstantiated.

A third problematic case in this area involved an allegation from a confidential informant that a police officer was leaking information about narcotics enforcement activity to drug dealers. The informant had provided accurate information about narcotics dealing on prior occasions to his handlers within the Department and, thus, had an established track record. In connection with the allegation, the informant named an individual who had specific information about the officer. IAB additionally learned that there had been enforcement activity at the location cited in the complaint. This enforcement activity had led to the arrest of a number of individuals for narcotics sales and possession. Given the importance of these arrestees in potentially providing information about the subject officer, as well as the information that could be provided by the individual named by the confidential informant, it was critical to the investigation to interview these individuals. However, no attempts were made either to locate and interview the individual or to debrief the narcotics arrestees. When this case was brought to its attention, IAB re-opened the case.

Another investigation that displayed shortcomings in the area of interviewing key witnesses involved an allegation from a complainant that money was stolen from him by a police officer who was part of a gambling enforcement unit of the Police Department. During the course of the investigation, and through interviews with the complainant, investigators developed a list of employees of the complainant who were present during the police raid. Although

investigators had these names, and also knew the names of the officers who were also part of the raid team, IAB failed to interview any of the employees or the other officers and closed the case as "unsubstantiated." When this investigation was brought to its attention, IAB re-opened to the investigation in order to interview the store employees. After re-opening the investigation, IAB learned that the subject store was no longer in business, and efforts to locate former employees proved unsuccessful.

As illustrated above, civilian witnesses with knowledge of corrupt activities of members of the service can be indispensable sources of information about an investigation. The civilian informant may be privy to information and sources that an investigator would not otherwise have access to. Thus, debriefing arrestees and conducting EDITs can yield potent information in an investigation. In some instances IAB questioned the motivation of an informant in providing information, and this concern contributed to a decision not to conduct further inquiries, although in the cases reviewed by the Commission there was no indication that this factor led to the improper closing of a case. While consideration of an informant's motivation is an appropriate aspect of assessing credibility, sources of information in criminal investigations often are not motivated by the noblest of causes. Thus, because of the potential importance of the information, an investigator should seriously consider all useful information provided by informants regardless of the informant's motivation for coming forward.

An exemplary use of cooperating witnesses to build a corruption case involved an allegation that officers were stealing narcotics from drug dealers at a specific apartment building. After learning that a jailed drug dealer possessed information about his police officer relative

(who was one of the officers named in the allegation), IAB interviewed the dealer and gained his cooperation. The dealer faced a significant term of imprisonment in connection with his narcotics business and cooperated in order to reduce his prison sentence. Based on the cooperation provided, IAB developed sufficient information to covertly arrest the police officer. Upon confrontation with evidence that he aided his relative's narcotics business, the subject officer agreed to cooperate with IAB and wore a recording device to gather information against other corrupt officers. The resulting evidence led to the indictment of several officers and the conviction of one officer for insurance fraud.

In another narcotics allegation, the informant was the subject officer's civilian girlfriend. She gave IAB only very vague information and then refused to cooperate. In spite of these problems with the informant, IAB conducted a full investigation of the allegations, including vigorous surveillance and observation of the subject. Unable to substantiate the allegations, IAB closed the case. Months later, and over a year after she initially came forward, the civilian girlfriend again alleged that the subject was using drugs. This time, the girlfriend gave very detailed information and cooperated with investigators. Notwithstanding the romantic nature of the relationship between the subject and the informant, and the informant's refusal to cooperate with IAB following her initial complaint, IAB re-opened the case and immediately utilized the informant to gain evidence against the subject resulting in the subject's arrest for drug possession and removal from the Department.

***b. Obtaining and Reviewing Critical Documents***

Obtaining and reviewing relevant documents is a crucial element of an effective investigation. A good investigator will acquire information from relevant documents before utilizing more cumbersome and at times less effective resources. Police Department records such as the subject officer's personnel file, precinct roll call and other records, search warrants and witness records of arrests and prosecutions are examples of documents which are readily available to the IAB investigator. Furthermore, additional critical documents which may be subpoenaed by the investigating officer include, but are not limited to, records from public utilities, financial institutions, and hospitals.

In general, the cases reviewed in the Commission's sample revealed that IAB investigators obtained relevant records in a timely and organized manner, thereby yielding significant information. In an exemplary case described below, as well as another not discussed in this report so as to avoid disclosing IAB methods, the assigned IAB investigators successfully utilized basic and secondary records to obtain information critical to the investigation. The IAB investigators then applied practical and creative investigative techniques to capitalize on the information revealed in the different documents.

In a case involving an allegation of stolen property, the IAB investigator made exceptional use of several different police and other records. The complainant stated that at the precinct, during the processing of his arrest for drunk driving, the subject officer stole the complainant's personal property including a cellular telephone. After reviewing property records with negative results, the investigator turned to other records at his disposal. The complainant

alleged that his cellular telephone had been in his pocket during the videotaped breathalyzer and coordination test at the Intoxicated Driver Testing Unit and that after being transported to the precinct he had used his phone in the holding cell. Upon review of the videotape, the IAB investigator was unable to determine whether there was a heavy object in the complainant's pocket, so the investigator had the quality of the videotape enhanced. In addition, the IAB investigator obtained other records that corroborated that the complainant possessed a cellular telephone at the time of his arrest. Absent a review of the records accessed by this investigator, the only source of evidence in this case would have been the complainant's word.

As illustrated by the above case, adequate review of relevant and critical documents and records related to a corruption allegation is central to the effective investigation of the allegation. By contrast, when an investigator fails to utilize this investigative tool the results can seriously undermine the adequacy of the investigation. In six of the closed investigations reviewed in its sample, the Commission found that IAB had failed to adequately research various aspects of the allegation or adequately prepare the case by failing to obtain and/or review important records. In the case discussed below, the omission of these steps, combined with other investigative shortcomings, proved detrimental to the overall quality of the investigation.

In a case involving an allegation that an unidentified officer was being paid off by drug dealers, an anonymous complainant provided IAB with an address and telephone number associated with the dealers' business. Based upon a review of telephone records, investigators developed information regarding the phone number, including the exact apartment where the phone was located and the subscriber's name. After identifying the specific location, through

further investigation IAB learned that the apartment had been the subject of three prior narcotics complaints and that the subscriber to the telephone number had been arrested for possession of narcotics with the intent to sell. Additionally, IAB discovered that a search warrant had been executed in connection with the subscriber's arrest.

While critical records had been obtained and reviewed by the investigator to identify the possible location of the dealers who were allegedly paying off police officers, IAB closed the case with an unfounded finding without analyzing the phone records of the subject phone number for possible leads to police officers or other witnesses and without reviewing the search warrant to obtain the name of the officer-affiant. Given the significant investigative steps that were not completed in this case, IAB has re-opened the investigation to follow-up on this allegation. After reopening the case, IAB has taken various investigative steps, including reviewing the search warrant for further leads regarding possible drug dealers. Currently, the investigation remains open.

***c. Other Areas Warranting Discussion***

In addition to these areas, there were several cases that raised other issues regarding IAB's use of certain investigative tools. These areas involved the use of surveillance, adequate interviewing under PG-118.9, and integrity testing.

***i. Surveillance***

Surveillance of a subject officer and/or location can, in some instances, be one of the most effective information gathering techniques at an investigator's disposal. Although

surveillance can often be time-consuming, the value of first-hand observations by investigators cannot be overstated. For example, when allegations involve activity that takes place in public venues, the failure to conduct surveillance may result in missed opportunities to actually observe the subject officer committing the misconduct. Surveillance can also help to identify additional witnesses and locations that can be further investigated. It is clear that IAB recognizes both the importance of surveillance and the difficulty in providing effective surveillance on an extended basis. Thus, in the event that in-depth surveillance is necessary, investigators may rely on a specialized group within IAB (Group 55) devoted to providing surveillance support.

In one case involving an allegation that the subject officer was purchasing drugs at a particular location, the investigator employed the specialized group to observe the subject officer. Because of their ability to provide continuous surveillance of the subject, Group 55 observed the subject officer at the subject location engage in what they believed to be a drug transaction. Although the subject officer was lost at the scene, the surveillance was the basis for conducting a targeted drug test which the subject officer failed.

A second case provides an example of an investigation where IAB failed to appropriately utilize surveillance. In this case, IAB received an anonymous allegation that various police officers were involved in operating a boat cruise company off-duty and that narcotics were being sold during the company's boat cruises. Although various attempts were made to follow the subject officers, investigators were unable to keep an eye on their subjects and definitively determine whether any of them ran an off-duty company. Moreover, information developed through surveillance, such as automobile license plates, was not followed-up on by the IAB

investigators. Based on these shortcomings, and the fact that little investigation was conducted into whether the company named in the complaint existed, IAB agreed to re-open the investigation.

**ii. Targeted Integrity Tests**

Integrity testing is potentially a critical component of the Department's overall anti-corruption program and a valuable tool in the detection and elimination of corruption. In conducting both random and targeted tests, IAB investigators endeavor to create a realistic scenario where police intervention is required. In certain instances, integrity tests provide the sole means of developing a provable case against an officer who has committed acts of corruption. In order to fairly and effectively test a subject officer, IAB must design a test that is directed at the alleged misconduct. The degree of success of an integrity test is directly influenced by the quality and quantity of information in the possession of the investigators formulating the test.

A particularly effective test scenario involves the use of cooperating informants. In contrast to tests where undercover IAB officers are used, there is little or no danger that the subject will recognize the participant as an IAB operative, and thus it is less likely that the subject will be aware that the scenario is a test. Furthermore, a subject is more likely to exhibit corrupt behavior in the presence of a civilian cooperator who has established a relationship with the subject in the area of the subject's corrupt behavior. This technique was successfully utilized in a case involving an allegation of drug use. A confidential informant participated in an



integrity test as an operative working with IAB. The subject officer purchased placebo drugs from the operative and was arrested and removed from the force.

In one of the cases reviewed, IAB tested the subject officer but improperly closed the case before conducting an integrity test that was compatible with the allegations made against the officer. In this case, the New York City Department of Investigation received an anonymous complaint by telephone that a traffic enforcement agent was selling cocaine at his workplace, driving with a suspended license, and selling New York City parking "plaques"<sup>27</sup> to vendors. Recognizing the potential value of an integrity test, IAB began developing a scenario designed to "sting" the agent in connection with his alleged sale of parking plaques. During an integrity test unrelated to the original subject agent, he happened upon the "set" of the test. Rather than cancel the test, IAB rightfully allowed the test to go forward in view of the investigative resources that had been devoted. The test however had been designed to "sting" an agent who was allegedly receiving bribes during enforcement actions. After the completion of the test, IAB closed the case against the subject traffic agent despite the fact that the test scenario did not involve any of the allegations brought against the subject officer. Rather than close the case, IAB should have tested the officer again at the appropriate time using a test tailored to the allegations.

Because of the importance of integrity testing to IAB's investigation of corruption cases, the Commission has undertaken a follow-up study of integrity testing by IAB.

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<sup>27</sup> Cars displaying such plaques are entitled to park, without restriction, in most zones.

### **iii. Interrogations Under PG-118.9**

A final area that arose during the course of the Commission's review is the interrogation of subject officers under the provisions of PG-118.9. Given the important tool that this can provide in developing inconsistencies in an officer's statements and other evidence, a sufficient interrogation may be critical to the advancement of an investigation. This was not always the case. In one case examined by the Commission a complainant alleged that he had been beaten by four officers with flashlights and nightsticks. In spite of evidence that blood was present in the vestibule of the apartment building where the man alleged he was beaten, several of the officers were permitted to provide accounts during the PG-118.9 interview without meaningful confrontation with inconsistencies in their statements as established by other witnesses, including one of the four officers.

Because of the importance of adequate questioning under PG-118.9, the Commission is undertaking a study of this issue.

### **4. Recommendations**

In discussions with IAB concerning the Commission's evaluation of closed cases, the Department has stressed that it exercises its managerial discretion in determining what level of resources to commit to a given investigation. While the Commission agrees that each case should be assessed for its strengths and weaknesses, including the likelihood of substantiating the allegation, the cases in the Commission's sample that were deemed insufficient did not require a tremendous commitment of resources.

In addition to the ongoing need of rigorous supervision by group commanders and investigative team leaders, the Commission offers several recommendations to help improve the quality of IAB investigations. These include:

1. As discussed above, confidential informants are often developed through non-IAB sources, most especially in the area of narcotics enforcement. IAB investigations involving informants cannot move forward until the informant is interviewed. In various cases reviewed by the Commission, investigations were delayed by IAB's inability to contact informants through their handlers. To address this issue, IAB needs to develop a stricter protocol with non-IAB bureaus, especially narcotics, for the sharing of these informants;<sup>28</sup>
2. In various cases reviewed by the Commission there was substantial delay in interviewing key witnesses. Such delay, as discussed above, can undermine an investigation. Over time, investigators may lose the ability to contact a witness, a witness' memory may fade, or a witness may become reluctant to cooperate with an investigation. Given these concerns, efforts should be made by IAB investigators to consistently interview informants and other potential witnesses in a timely manner; and
3. In several cases reviewed in the Commission's sample interrogations of subject officers were made less effective by the investigator's apparent failure to adequately prepare for the interview. Adequate preparation, including the review of all relevant investigative reports, therefore should be conducted before subject officers are interviewed under the provisions of PG-118.9. As noted above, given the ongoing importance of how interrogations under PG-118.9 are conducted the Commission has begun a formal study of this topic.

### **C. OPEN (PENDING) CASE MONITORING**

An additional means by which the Commission assesses the work of IAB is its monitoring of the Department's open and pending investigations into corruption allegations. Through such monitoring, the Commission is able to follow through on the developments in

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<sup>28</sup> In a review of the Commission's draft report, the Department has noted that in certain cases involving the use of informants IAB must defer to the Departmental or agency unit responsible for handling the informant. While the Commission agrees that at times IAB's ability to gain access to an informant may be hindered by the needs of the primary investigation, this was not the case in those investigations discussed in this report.

particular cases and monitor IAB's commitment, efficiency and allocation of resources. There are several ways by which the Commission has undertaken open case monitoring: attendance at IAB Steering Committee meetings, attendance at IAB briefings of the Police Commissioner, daily review of corruption logs, ongoing discussions with group captains and other high-ranking IAB officials about specific cases, and periodic on-site review of non-steering cases.

### **1. IAB Steering Committee Meetings**

Throughout the year, all IAB investigative group captains present updates on their most significant open cases to a steering committee made up of IAB's executive staff and chaired by the Chief of IAB. Additional meetings each year provide for a more intensive review process, in which group captains brief the committee on not only their "steering" cases but all other open cases as well. In 1998, IAB held 102 steering meetings. These meetings serve to keep IAB leadership informed of developments in open IAB cases and also provide advice for group captains on how best to proceed with their investigations. Such advice, coming as it does from highly experienced investigators, can be especially valuable to the group captains, who are responsible for day-to-day oversight of all investigations within their geographic or specialized areas.

The Commission's Executive Director and staff have attended IAB Steering Committee meetings for the purpose of monitoring open cases and assessing the role of IAB's executive staff in guiding corruption investigations. The Commission has found that the Steering Committee has made significant contributions to the quality of IAB investigations and that shortcomings in supervision and personnel have been directly addressed as a result of these presentations.<sup>29</sup>

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<sup>29</sup> Of the 18 cases where the Commission found insufficiencies in IAB's investigation (see above discussion of monitoring cases at pp. 27-28), only one was a steering case. This may suggest that the Steering Committee process promotes the effectiveness of IAB investigations.

## **2. IAB Briefings to the Police Commissioner**

On a biweekly basis IAB briefs the Police Commissioner on some of its most sensitive investigations. Each briefing typically focuses on a particular borough, allowing the Commissioner to get an in-depth perspective on the most serious of IAB's open cases. In addition to the Commissioner, the First Deputy Commissioner, and a small number of other Department leaders, the Commission's Chair and Executive Director attend these briefings. These briefings are informational and generally not used as an occasion to discuss strategy.

## **3. Daily Log Review**

On a daily basis, the Commission receives and reviews copies of all complaint logs, city-wide, generated by the IAB Command Center. In 1998, IAB logged 22,257 corruption and misconduct-related complaints. The Commission maintains its own files of the logs and follows up with investigators to obtain further information and updates on investigations arising from these logs.

## **4. Ongoing Discussions with IAB Representatives**

In addition to attending internal IAB meetings, Commission staff also maintain contact with high-ranking IAB officials and with individual group captains. The Commission frequently

follows-up on information obtained at Steering Committee meetings or Police Commissioner briefings, or on allegations found in its daily log review. Such contact offers a means of closer monitoring of individual cases that are of particular concern to the Commission.

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

In addition to the bi-annual intensive Steering Committee meetings at which all open cases are discussed, the Commission also conducts its own periodic review of certain non-steering cases. For each IAB group, the Commission selects a small number of open cases to discuss at length with the group captain and the investigators assigned to the cases. These reviews, held at the various offices of IAB's geographic groups, allow the Commission to assess the quality of non-steering cases, to ensure that these investigations are likewise carried out effectively, and to interact with the detectives and sergeants who are investigating the cases.

### **D. OTHER TYPES OF MONITORING ACTIVITIES**

In furtherance of its monitoring function, the Commission also monitors various other Departmental groups, activities and committees that are integrity-related.

#### **1. Disciplinary Task Force Meetings**

The Disciplinary Task Force ("DTF") focuses on those members of the service who have had repeated suspicious sick-leave problems, multiple misconduct allegations, or consistently low performance evaluations. The overall objective of DTF is to "utilize all available information to ensure identification and accountability of members of the service who have established a pattern of behavior detrimental to the Department."<sup>30</sup> These meetings, chaired by the Commander of the Disciplinary Assessment Unit ("DAU"), are used both to re-familiarize

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<sup>30</sup> First Deputy Commissioner's Disciplinary Assessment Unit, First Annual Report, June 1995-June 1996, p. 25.

those in attendance with the individuals currently being monitored by DTF and to update DTF members on the current status of those individuals within the Department. The meetings are also used as a collective forum in which ideas and suggestions about various ways of dealing with chronic offenders are shared.

The DTF is composed of representatives of the First Deputy Commissioner, the Chief of Department, the Chief of Patrol, the Chief of Personnel, the Chief of Internal Affairs, the Special Prosecutor's Office, the Department Advocate's Office and the DAU. Commission staff also attend each meeting.

The Commission finds the meetings to be a useful Departmental tool as they foster the development of investigative and management strategies by drawing from the experience and expertise of DTF members. Further, the DTF provides a means by which individual chronic offenders B whose actions might not necessarily merit continued scrutiny by any particular existing monitoring unit (e.g., IAB, or the absence-control unit) – will remain under careful oversight by the members of the DTF. Since the issuance of the Commission's Third Annual Report, DTF meetings were held only three times.<sup>31</sup>

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<sup>31</sup> The Department stated that despite the infrequency of DTF meetings they have been continually monitoring officers on the DTF list.

### **Interim and Operations Orders**

The Commission has received all interim and operational orders issued by the Department since the last reporting period. These orders reflect all changes in Departmental policy and procedures, and while not all orders address corruption-related issues, Commission staff review each order to keep apprized of broader Departmental policies and procedures.

Included in these orders are several that were promulgated by the Police Department in response to recommendations made by the Commission. For example, Patrol Guide Section 105-01(3), issued on January 14, 1999, entitled "Consumption of Alcoholic Beverages by Armed, Off-Duty Uniformed Members of the Service," provides that members of the service should not carry their firearms if there is any possibility that they will become unfit for duty. This change in the Patrol Guide was a direct result of the recommendation contained in the Commission's off-duty misconduct study.<sup>32</sup>

### **3. IAB Resources**

As a result of the merger of Traffic Enforcement and School Safety units into the Department, the number of Department personnel subject to IAB scrutiny has increased during the last year. In response, IAB increased its previous level of personnel of approximately 635 members (approximately level with the previous year) to approximately 645 members. The Commission will continue to assess the overall adequacy of IAB resources and whether additional investigative personnel are needed in light of actual caseloads.<sup>33</sup>

### **4. IAB Training**

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<sup>32</sup> See above discussion at pp. 3-7.

<sup>33</sup> Over the past several years there has been a downward trend in corruption complaints.



IAB administers an on-site training program for officers who have recently joined IAB. The course runs for two weeks and is conducted approximately six times throughout the year. The goal of the training is to introduce new IAB members to the techniques and objectives of internal investigations. Interactive lectures are presented by senior members of IAB, as well as representatives from state and federal agencies, and other related organizations. A broad array of topics is introduced during the course, and at its conclusion, students are required to complete an examination covering the highlighted topics. The Commission makes a presentation at each of these training courses.<sup>34</sup>

Staff members of the Commission have also given lectures as part of the IAB training program for new investigators. These presentations give the Commission an opportunity to engage in a dialogue about the Commission's role and about police corruption in general with incoming officers in IAB. Attendees – primarily IAB personnel, but also investigators from other law enforcement agencies inside and outside of New York City – are introduced to the work of the Commission, and the various projects carried out by Commission staff are outlined. The investigators are encouraged to ask questions about the Commission and the forum provides the opportunity for the Commission to interact with new IAB members whom they might otherwise not have occasion to meet.

In addition, Commission staff periodically attend parts of the training course in order to assess the quality of IAB training. While it has noted unevenness in the quality of the lectures,

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<sup>34</sup> See discussion below at p. 49.

the Commission is satisfied overall with the substance of the material presented. The courses also appear to be conducted in a timely manner and that new IAB staff are indeed being trained for their roles in internal investigations.

## **V. OTHER COMMISSION FUNCTIONS**

In addition to the foregoing, the Commission performs other functions, as part of its mandate to monitor the Police Department.

During the past year, the Chair, and/or Executive Director and staff of the Commission attended several Community Board meetings across the city, making presentations about the Commission's role and engaging in discussions with members of the community. These meetings are important in communicating directly with the public and learning about the public's perceptions of police corruption and the Police Department. It is the Commission's intention to continue its outreach to Community Boards through personal contact and through the inclusion of Community Boards on its mailing list for new reports issued by the Commission.

Occasionally, individuals will contact the Commission, either by telephone, by letter, or in person, to make allegations against the Police Department. In such instances, Commission staff obtain all relevant information concerning the allegation and then forward that information immediately to IAB's Command Center so that a log may be entered and appropriate investigatory steps taken. In 1998, the Commission received approximately 128 allegations. In order to track the follow-up of IAB to the allegations that it referred, the Commission assigns

each complaint its own internal log number, and Commission staff may then monitor IAB's handling of certain allegations.

The Police Commissioner's Advisory Board on Courtesy, Professionalism, and Respect ("CPR") consists of community members who offer input on the Department's efforts to improve police-community relations. It seeks to accomplish its mission through dialogue on issues such as communications, community responsibility, and cultural sensitivity, recruitment, training, and discipline of officers. Commission staff were included in the CPR Advisory Board from its outset, and the Commission has continued to participate in the Board's frequent meetings.

As part of its monitoring function, the Commission maintains regular contact with federal and state prosecutors responsible for the investigation and prosecution of police corruption. Through these relationships, the Commission is kept apprized of issues or concerns that these law enforcement agencies have in this area, and of their general perceptions about IAB and the quality of its work. During the last year Commission representatives, including the Chair, met with each of City's five District Attorneys and two United States Attorneys to discuss the Commission's work and issues regarding the Department's anti-corruption efforts.

In order to enhance dialogue between IAB and corruption prosecutors, the Chief of IAB recently met with representatives from each of the five district Attorney offices to discuss mutual concerns and issues. The Commission has been informed by several prosecutors and by IAB that the meeting was informative and productive and that such meetings will be held on a periodic basis.

Commission staff will continue to meet with prosecutors to discuss IAB's work and the Department's overall efforts in creating an organization that is intolerant of corruption.

## **VI. ONGOING PROJECTS/OTHER STUDIES**

### **A. INTEGRITY TEST STUDY**

The NYPD utilizes both random and targeted integrity tests as tools to discover and eliminate corruption. In 1996, the Commission undertook a study of the effectiveness of the Department's integrity testing program.<sup>35</sup> The Commission concluded that the integrity testing program was a positive part of the Department's anti-corruption strategy but had the potential to serve an even greater role in discovering and eliminating corrupt officers from the force. To that end, the Commission recommended that the Department refocus the allocation of resources committed to the integrity testing program by increasing the number of targeted tests and decreasing the number of random tests. In addition, the Commission suggested ways to fashion more effective integrity tests including, among other things, enhanced use of information from Integrity Control Officers and other available intelligence information.

To assess the Department's response to the Commission's findings and the current effectiveness of the Department's integrity testing program, the Commission has embarked on a review of both random and targeted integrity tests performed by the Department in 1998 and 1999. The Commission anticipates that this study will be completed and released within three months.

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<sup>35</sup> *The New York City Police Department Random Integrity Testing Program*, December 9, 1996.

## **B. PG-118.9 STUDY**

Patrol Guide Section 118.9 ("PG-118.9") sets forth the guidelines for the interrogation of a member of the service in the context of an official Department investigation. A member of the service must submit to the interrogation and answer all questions truthfully or face suspension from duty and possible termination. In light of these serious consequences, the PG-118.9 interrogation is a potentially powerful tool at an IAB investigator's disposal.

In the course of its various studies, the Commission has had occasion to question the adequacy of certain of these interrogations and thus has initiated a study of recent PG-118.9 interviews to determine in a systematic manner whether the interviews have been utilized in an effective manner and whether IAB's training program in this area has successfully elevated the general level of performance of investigators at PG-118.9 interviews. The Commission anticipates that this study will be completed and released within three months.

## **C. INVESTIGATIVE REVIEW UNIT STUDY**

Because IAB is obligated to investigate allegations of corruption and serious misconduct Department-wide, it is equally important that IAB monitor its own investigations to ensure that the investigations are completed in a reasonably timely manner, each component of the allegation investigated sufficiently, and the ultimate disposition of the case appropriate. The Commission is currently completing a thorough examination of the practices and procedures used by IAB to review its own corruption investigations. The central focus of this study is a review of the work performed by the Investigative Review Unit ("IRU"). IRU staff members review open and closed IAB investigative cases, monitor Command Center calls and perform self-inspections throughout IAB. The Commission has selected a sample of 25 closed

investigations reviewed by IRU between July 1997 and July 1998. The Commission anticipates that this study will be completed later this year.

**D. SURVEY OF FORMER IAB MEMBERS**

The Commission has commenced a survey of former members of IAB. Given the importance that IAB recruit and retain talented personnel, the Commission will explore the experiences of former IAB members and their views of how IAB can be improved. One focus of this study is to determine whether, and how, tours within IAB can be extended.

**E. DEPARTMENT PROSECUTION FUNCTION**

Since the Commission's inception it has criticized in particular cases the effectiveness of the Department's prosecutions. The Commission thus intends to conduct a study of the performance of the Department Advocate's Office ("DAO") and Special Prosecutor's Office ("SPO"). These offices act as the Department's prosecutor, preparing the case against an officer, negotiating potential plea agreements, and presenting the case at trial. As such, they perform a crucial role in deterring corruption and other misconduct. The effectiveness of these offices in prosecuting cases – leading to the discipline of officers, including termination where appropriate – has a direct bearing on the effectiveness of the Department as a whole in rooting out corruption where it exists and in deterring it before it arises. This study should be completed sometime next year.

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## APPENDIX A

Recommendations that have been made by the Commission since its inception include the following:

### *First Report of the Commission* (March 1996)

1. The supervision, staffing, training and record-keeping of the IAB Action Desk (Command Center) can be improved;
2. A mechanism for the formal conduct of command accountability review should be established;
3. A comprehensive plan to improve the credibility of police witnesses and to prevent perjury should be adopted and speedily implemented;
4. The statistical analysis prepared by IAB which reports the types of allegations of corruption should be revised to include a separate category for perjury allegations;
5. Utilization of computerized, pin mapping technology to sharpen corruption controls should be put in place as previously announced;
6. A high priority should be given to perfecting and employing the delayed PRIDE computer system;
7. Consultation with prosecutors in the preparation and design of integrity tests should be expanded and made more timely;
8. The role-playing aspects of the training given to IAB investigators should be made more relevant and realistic;
9. Consideration should be given to using experienced IAB investigators and managers as instructors of the integrity portions of Police Academy training;
10. Advocates responsible for prosecuting administrative charges should receive more comprehensive training in trial techniques from experienced prosecutors;
11. The feasibility of establishing a program to utilize volunteer prosecutors to present Department cases should be explored;
12. The extent to which arrested persons are questioned as to knowledge of police corruption should be monitored and the practice more rigorously enforced;
13. The Intelligence Section of IAB should consider ways to attract more volunteer assistants

- and operatives, perhaps by offering greater career enhancement opportunities;
14. Consideration should be given to making random drug tests more effective by using hair analysis as is now done in tests given for cause;
  15. A comprehensive review should be made of the extent to which alcohol abuse is present within the Department, the role it may have in the incidence of corruption, excessive force and police suicide and a more effective program to deter, detect and treat the problem should be developed;

***The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements*** (December 1996)

16. Absent exceptional circumstances, any officer who is found, through a decision by a Trial Commissioner or by a guilty plea, to have made a false statement should be terminated from the Department. This includes, among other things, false statements made during an official Department investigation, false statements to other law-enforcement agencies, the submission of false information in Departmental reports, false reports of crimes, false statements made to conceal the misconduct of fellow officers, and any other false statement that implicates the officer's integrity;
17. The Department should increase penalties for failure to report the misconduct of another officer, especially where that failure is accompanied by affirmative acts of concealment. The Department should also review the sufficiency of penalties in other areas, particularly with regard to cases involving off-duty misconduct where a weapon was involved or the blatant use of excessive force;
- \$18. The Department should better coordinate with other law enforcement agencies when officers face criminal charges so that, to the extent possible, Departmental and prosecutorial objectives are achieved;
- \$19. Legislation requiring that suspension of an officer without pay who has been charged with a crime be extended to a maximum time period of six months should be enacted. Prosecutors should give such cases priority;
- \$20. The Department should further explore the possibility of adopting written penalty guidelines for all disciplinary charges;

***The New York City Police Department: The Role and Utilization of the Integrity Control Officer*** (December 1996)

21. Integrity control officers (ICOs) should not be asked to perform duties unrelated to



- integrity issues. For example, ICOs should investigate allegations of overtime abuse, while general overtime management should be assigned to others. Targeted precinct inspections, based upon information developed in the command and suggesting the existence of corruption, should be conducted by ICOs, while routine inspections should be conducted by others;
22. Investigations into alleged misconduct by precinct supervisors should not be conducted by ICOs, because they might put an ICO into the awkward position of investigating individuals whom the ICO must cultivate as a source for critical information;
  23. The Department should develop more-efficient means of addressing orders that unnecessarily involve ICOs, so that they do not become overburdened and distracted from their primary duties;
  24. ICOs should develop command profiles highlighting specific precinct officers and conditions that require field observations, as well as monitoring strategies based on these profiles. Self-initiated field investigations, monitoring such targeted officers, should be conducted regularly, and ICOs should share their documented findings with IAB and borough inspection units. In addition, ICOs should meet regularly with commanding officers to discuss self-initiated integrity programs and other issues affecting precinct conditions, as well as information received from IAB and borough inspection units;
  25. ICOs should be mandated to patrol their precincts, generally during at least 50% of their work week, and to observe all three "tours" (or shifts) of officers. To assist them, they should have a vehicle available for such observations throughout the precinct. ICOs should use this time to develop sources of information among police officers and community residents, making strong efforts to cultivate regular sources of information on precinct activities;
  26. ICOs should be encouraged to offer candid recommendations regarding disciplinary issues within the precinct, as well as appropriate penalties, and these recommendations should be carefully considered in ultimately fashioning penalties;
  27. IAB meetings with ICOs and commanding officers should include discussion of open cases whenever possible -- and closed cases in greater detail, regardless of the outcome of the investigation -- focusing on target officers. IAB investigative groups should conduct monthly group meetings with ICOs to promote frequent contact between investigators and ICOs, and ICOs should provide regular reports to IAB of their self-initiated monitoring activities, especially when substantial information is developed;
  28. Borough meetings should focus on command profiles more than administrative issues and should be structured to encourage open discussion of monitoring and surveillance. Investigators in borough units should regularly discuss their cases with ICOs, to facilitate an exchange of information;
  29. Quarterly borough inspections of the ICO program should evaluate the ICOs' efforts

towards pro-active integrity control, focusing more on ICOs' time on patrol, self-initiated field work, targeted officers, and those activities that resulted in referrals to IAB or borough inspection units, or in the exchange of information. ICOs who do not make significant efforts in pro-active integrity control should be identified and removed;

30. ICOs should receive formal training, focusing on pro-active integrity control and conducting investigations. Exemplary ICOs should be identified to share their expertise at these training sessions. ICO offices should be adequately staffed in proportion to the number of officers in their commands, and assistant ICOs -- in the rank of sergeant -- should be assigned to each command, with duties to be outlined in the Patrol Guide. ICOs should have ready and convenient access to computer data relevant to their functions;
31. The Department should recognize the significance of the ICOs' role in integrity control with rewards and benefits for performing above standards;

***The New York City Police Department Random Integrity Testing Program*** (December 1996)

32. In order to improve the program's effectiveness in identifying and weeding out corrupt officers, the Department should refocus its approach to random integrity tests and reassess (among other issues) the level of resources, both in manpower and in financial terms, which it dedicates to the program. As part of this reassessment, the Department should consider placing greater emphasis on its targeted integrity tests;
33. The Department should determine, through cost-benefit analysis, whether its random testing program is appropriately constructed to provide a measure of corruption levels within the Department, whether it should be modified to provide a more accurate measure, or whether such resources could be better assigned to other means of detecting corruption;
34. The Department should consider whether a reduced program could be as successful in instilling a sense of IAB's omnipresence among the patrol force as a whole;

***Performance Study: The Internal Affairs Bureau Command Center*** (October 1997)

35. The Department should evaluate Command Center staffing and consider replacing a substantial number of its operators with civilians, who could refer particularly serious calls to detectives in the Command Center;
36. Command Center operators should be trained in sensitivity and professionalism toward callers. The Commission also recommended several other points that should be covered

in training classes, and suggested that, as part of the training, operators should listen to recordings of actual calls that were handled in either an exemplary or an unsatisfactory manner;

37. To assist in investigations, IAB should provide case investigators with tapes of the calls relevant to their cases, and with worksheets detailing the initial information Command Center operators input into their databases upon taking a complaint;
38. Supervisors should review all intake worksheets to ensure that Command Center operators are obtaining all required information from callers;

***Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau***  
(October 1997)

39. The Department should maintain an intensive level of supervision by group commanders and investigation team leaders, to quickly uncover and remedy any investigatory errors or lapses, and case worksheets and closing memos should accurately and completely summarize both the investigatory steps taken and possible steps that were not taken, as well as the reasons for such omissions;
40. IAB should focus on improving its investigators' interview techniques and addressing any potential difficulties they may face in questioning fellow officers;
41. Investigators should not disclose the identity of complainants or witnesses when disclosure can be avoided, unless the investigators are confident that no harm will result and that such disclosure is necessary to advance an investigation. This may require revision of an internal Departmental directive requiring that, in most circumstances, an officer being formally interviewed during the course of an investigation be informed of the identities of witnesses and complainants;
42. IAB should conduct audits of its caseload on a more regular basis, to ensure that all of its cases have been assigned and are either on track to completion or have been completed and closed. This should be done at least annually on a bureau-wide basis, and more frequently by individual group commanders;

***Third Annual Report of the Commission*** (August 1998)

- d. The Department should create a unit within the Department dedicated to providing all members of the service with guidance and support when they believe they have received adverse treatment for having reported misconduct or corruption or assisted in an internal investigation;
- e. A clear, unambiguous policy that retaliation against "whistle blowers" is prohibited and will be punished should be articulated by the Department;

- f. A “whistle blowers” unit should be equipped to affirmatively review and monitor evaluations of those members of the service who have come forward;
- g. IAB should publish data regarding “M” cases in its Annual Report or another appropriate division of the Department should publish this information and release it contemporaneously with the issuance of the IAB report;

***The New York City Police Department’s Disciplinary System: How the Department Disciplines Probationary Police Officers Who Engage in Misconduct*** (August 1998)

- 47. The Department should take steps to speed resolution of cases against probationary officers;
- 48. Suspensions without pay should be imposed on a probationary officer whenever it becomes clear that the Department is likely to terminate the officer, and where termination is warranted, it should be imposed before the 30-day limit on such suspensions is reached, to the extent that this is possible, thus preserving resources for the Department and ensuring that such officers are unable to commit further misconduct, at least while on-duty;

***The New York City Police Department’s Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct*** (August 1998)

- 49. The Department should employ stronger language to discourage officers from consuming alcohol while carrying a weapon, and should consider banning drinking altogether while armed. Those officers who are nevertheless unfit for duty while armed should receive significant penalties and be treated more severely than officers who are unfit and not armed. Where the officers are not terminated, any penalties should include the imposition of mandatory counseling and dismissal probation;
- 50. Officers who continue to engage in alcohol-related misconduct, despite having received counseling, should generally be discharged, and where an officer is unfit due to intoxication, but is unarmed and commits no other act of misconduct, the Department should consider whether charges or alcoholism evaluation is appropriate;
- 51. Duty captains should base fitness-for-duty findings upon an officer's condition *at the time of the alleged misconduct*, as well as at the time a duty captain personally observes the officer, and draw upon all available evidence in making that determination, including testimonial and scientific evidence such as the subject's blood alcohol content. Where there is objective evidence of possible intoxication, the Department should use a breathalyzer test to determine fitness, at least in cases involving driving or the commission of violent acts with or without a weapon. Furthermore, an officer's refusal to submit to a breathalyzer test should be routinely offered as evidence in the Department's

case-in-chief in all prosecutions for driving under the influence and other acts of misconduct where an officer has been found unfit for duty;

52. In general, officers who deliberately and unjustifiably discharge their weapons off-duty, as well as officers who discharge their weapons under any circumstances and fail to report it to the Department, should be terminated, absent exceptional circumstances, whether or not the incident involved alcohol. In general, officers who engage in more than one (or even one, depending on the nature of the violence) unjustified act of violence should likewise be terminated;
53. All appropriate charges involving sufficiently discrete offenses should be included when a disciplinary action is commenced against an officer, and the Department should, in appropriate cases, be more willing to impose consecutive sentences for discrete charges. In addition, New York City's Administrative Code should be amended to allow Trial Commissioners to require officers found guilty of misconduct to undergo counseling, where appropriate;

***Performance Study: A Review of the New York City Police Department's Background Investigation Process for the Hiring of Police Officers*** (January 1999)

54. The Department should make greater efforts to have personal contact with individuals who actually know a police officer candidate, rather than relying on written forms or contacts with neighbors who do not know the candidate;
55. Hiring of new police officers should be staggered over the course of the year, creating more, but smaller, classes of recruits, and thus smoothing the applicant investigation process;
56. The Department should consider out-sourcing some of its background investigations to a private contractor, as is done by various other law-enforcement agencies;
57. The Department's in-house criteria for candidates' character standards should be re-evaluated to determine whether they are too permissive, especially in the areas of driving records and arrests and summonses;
58. These same automatic disqualifiers should be expanded to allow for review of candidates who were adjudicated as youthful offenders for prior criminal misconduct. To make this process easier for the Department, New York State's Criminal Procedure Law should be amended to allow the Department access to all official documents related to such cases;
59. The Department should consider using polygraph ("lie-detector") tests as part of its screening procedure, as is done in other police departments surveyed by the Commission -- whether as a routine step in background investigations, or only on a discretionary basis;
60. Various forms used by the Department in its background investigations -- most notably

the "Personal History Questionnaire" completed by all applicants and the forms sent to all of an applicant's schools and former employers -- should be modified and expanded, to elicit more information about applicants and to encourage a better response from schools and employers with whom an applicant has had contact;

***A Review of the New York City Police Department's Methods for Gathering Corruption-Related Intelligence*** (August 1999)

61. The Department should review its "policy of inclusion" in corruption investigations, to consider formally revising the policy to make clear that, while it is beneficial to share certain information with non-IAB commanders, each investigation should be assessed individually;
62. Information catalogued by the Department in its various monthly corruption-complaint reports should be presented in the form of running 12-month totals, rather than simply in the form of year-to-date totals, thus offering a fuller and clearer picture of current trends in corruption complaints;

***Performance Study: A Follow-Up Review of the Internal Affairs Bureau Command Center*** (August 1999)

63. Formal re-training sessions for Command Center operators should be held on a regular basis, as a way of discussing ways in which performance can be improved, and addressing some of the routine problems found by the Commission in its study;
64. The Command Center training guide should be made more accessible, and the guide, as well as all other training materials and guidelines issued by IAB, should be consolidated in one binder for easy reference by Command Center operators, enhancing its value as both an orientation tool and a reference source;
65. The Department should continue to explore the option of assigning civilian operators, experienced in handling telephone complaints, to the Command Center;
66. IAB's Investigative Review Unit (IRU) should identify and more fully comment on problematic areas (if any) in their monthly call samples, and explain to operators in detail any areas in which they can enhance their handling of complaints;

***The New York City Police Department's Disciplinary System: A Review of the Department's December 1996 False Statement Policy*** (August 1999)

67. In false statement cases, the Department should support its decisions with documentation explaining its reasoning, in light of the Commissioner's false statement policy, whenever:

the Department Advocate chooses not to bring false statement charges where such charges might be supported by the facts, as alleged; false statement charges are dismissed -- whether by the Department Advocate, the Trial Commissioner, or the Police Commissioner; a plea agreement is reached with a subject officer in which the officer pleads guilty to some or all false statement charges in exchange for a penalty short of termination; or a subject officer is found guilty of a false statement charge at trial and receives a penalty short of termination;

68. False statement charges should be brought against members of the service who lie in PG-118.9 interviews, regardless of the seriousness of the underlying conduct, and unless exceptional circumstances exist, such conduct should result in termination; and
69. The Department should establish formal protocol whereby prosecutors and Corporation Counsel attorneys would report to the Department instances where an officer may have lied, or where suppression motions are granted based on an officer's conduct, or where the City has incurred civil liability because of excessive force or other misconduct, so that the Department can take appropriate disciplinary or training measures.