

THE CITY OF NEW YORK

COMMISSION TO COMBAT POLICE CORRUPTION

**EIGHTH ANNUAL REPORT
OF THE COMMISSION**

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I. OVERVIEW

In February 1995, the Commission to Combat Police Corruption (the “Commission”) was created by former Mayor Rudolph Giuliani through Executive Order 18¹ for the purpose of monitoring the anti-corruption efforts and systems of the New York City Police Department (the “Department”). Throughout its tenure, the Commission has published 27 reports which examined various aspects of the Department’s anti-corruption policies and procedures. In this report, the Commission summarizes the three reports it has released since its *Seventh Annual Report*.² These three reports are: *Police Reporting in “Death in Custody” Cases*;³ *Internal Affairs Bureau Recruitment and Retention*, and *Review of the Background Screening Process of New Recruits*.⁴ The Commission also reports on its findings on its review of 42 closed IAB investigations. This report concludes with a summary of the Commission’s daily operations and an outline of the Commission’s planned projects for the coming year.

II. PUBLISHED REPORTS

Since the publication of its *Seventh Annual Report* in March 2004, the Commission has released three new reports. *Police Reporting in “Death in Custody” Cases* examined whether the Department was able adequately to investigate its own members when their actions resulted in the death of a civilian. The Commission’s interest in this issue stemmed from the Department’s inability to compel these officers, at

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

2 See *Seventh Annual Report of the Commission* (March 2004).

3 (November 2004).

4 (February 2005).

the time of the incident, either to make a statement or prepare a detailed report describing the circumstances surrounding the resultant death. In the *Internal Affairs Bureau Recruitment and Retention* report, the Commission discussed the issues IAB faces in recruiting and retaining officers in the Bureau. The Commission described the Department's strategies to recruit investigators into IAB and explored the economic obstacles and possible solutions to preventing these officers from leaving the Bureau. Our third report, *Review of the Background Screening Process of New Recruits*, revisited an issue that the Commission has explored in two previous full-length reports: the quality of the background investigations of candidates for the Department.⁵ These background investigations are conducted by the Department's Applicant Processing Division ("APD"). Unlike the past reports on this issue, the Commission did not limit its focus in this report to background investigations for recent recruits. Instead, the Commission also examined the background investigations for officers who had been terminated, had resigned, or had been otherwise disciplined after their appointment to the Department. The purpose behind examining these files was to see if there was any information contained in the files that could have predicted the candidate's propensity to engage in the misconduct for which he was ultimately disciplined.

A. Police Reporting in "Death in Custody" Cases

The Commission was concerned that officers who are involved in the deaths of civilians are not currently required to make immediate statements or prepare reports recording their version of the events leading up to the death of a civilian due to legal

⁵ See *Performance Study: A Review of the New York City Police Department's Background Investigation Process for the Hiring of Police Officers* (January 1999) and *Review of the New York City Police Department's Recruitment and Hiring of New Police Officers* (December 2001).

obstacles. Because such statements could have a negative impact on future criminal prosecutions of the officer, local prosecutors often ask the Department to refrain from obtaining such statements. The Commission examined whether a change in the Patrol Guide or current law would be feasible to overcome these legal obstacles. The Commission's interest was two-fold. First, there was concern that the Department might not be able adequately to investigate these cases without the statements of the involved officers. A second concern was that without the requirement that the involved officers provide immediate statements, officers would have time to collude and conform their versions of events in an effort to hide culpable conduct.

The courts have recognized the need for government entities to be able to require employees to answer questions directly related to their job performance for administrative purposes or face the threat of termination. Since such statements are perceived as being given under coercion, the law protects employees by granting these statements use and derivative use immunity. This immunity prevents the statements from being used in a criminal investigation or prosecution.

Consequently, prosecutors often ask the Department not to develop an administrative case until the conclusion of the criminal matter out of the concern that the criminal case will be tainted. Once a public employee has been required to give a statement, the prosecutor in any related criminal prosecution bears the onus of proving that all evidence and strategies utilized in preparing and presenting the case were derived independently of the statement.

After reviewing the current state of the law, the Commission interviewed representatives from several law enforcement agencies for large cities across the country

and the Federal Bureau of Investigation to determine their practices in death in custody situations. In these interviews, the Commission learned that with the exceptions of Los Angeles and Houston, all of the other law enforcement agencies did not compel officers to make statements or prepare reports when a civilian died until any criminal investigation was concluded. Los Angeles, which is governed by a judicial consent decree, is required to institute two separate but parallel investigative teams, one for the criminal investigation and one for the administrative one, so each investigation will not taint the other one. The administrative team is allowed to compel a statement from an officer, but this cannot be utilized in the criminal investigation or prosecution. In Houston, an officer is required to prepare a report or face insubordination charges which can result in his termination. The officer's union official is usually present during the preparation of these reports, so in the majority of the cases, the reports lack specificity.

The New York City Police Department's current practice regarding this issue is to forego taking a statement or requiring a report until the local prosecutor approves speaking with the responsible officers. Commission staff spoke with Department Executives and local prosecutors to determine whether they would support a requirement for an immediate statement. Both entities did not support a change in policy unless there was a preceding change in the law, but prosecutors are unwilling to jeopardize one of their own criminal prosecutions in an effort to overturn current case law. Moreover, neither the Department nor local prosecutors embraced the system that is being used in Los Angeles, as they believed that this would require too many resources and the results that would be achieved would not sufficiently enhance the administrative or criminal investigations. Both the Department and the local prosecutors believed that investigators

are able adequately to investigate the events leading up to the death of a civilian without an immediate statement from the officer. This assertion was supported by the Commission's own review of 21 cases involving a death of a civilian while in police custody or as a result of police action. The Commission found that the Department was able adequately to investigate these cases through interviews with civilian eyewitnesses and with police witnesses who were present at the scene but not directly implicated in the civilian's death.

While the Commission found the investigations were adequately conducted under the constraints of existing law, the Commission also stressed the importance of public accountability of police officers for their job-related conduct. Toward this end, the Commission recommended that officers be asked voluntarily to provide a statement and/or prepare a detailed report describing what transpired, but should they refuse, the Department should continue to defer to the requests of the local prosecutor and not compel such statements.

B. Internal Affairs Bureau Recruitment and Retention

This review was commenced after several local District Attorneys' Offices expressed concern about the effect that the constant rotation of investigators into and out of IAB had on their cases. Chief among them was the delay engendered when cases were transferred and new investigators needed additional time to familiarize themselves with the cases. New investigators also often lacked the investigative skills and insight of the more experienced investigators whom they replaced. Finally, since investigators and local prosecutors regularly work on cases together, the constant turnover of IAB personnel affected the continuity of investigations and subsequent prosecutions. The

Commission has also noted these issues in its past reviews of IAB investigations. Given the importance of its mission, it is imperative that IAB be staffed by the most experienced and qualified investigators possible so that investigations are resolved in an expeditious and appropriate manner. Corrupt officers must be disciplined as quickly as possible and innocent officers exonerated without undue delay.

The Commission recognizes that IAB encounters a number of challenges in its efforts to recruit and retain personnel. Most notably, officers are reluctant to volunteer for this assignment due to the nature of the work and the stigma associated with investigating fellow officers. This stigma, at times, has caused IAB personnel to be ostracized by fellow officers, which has affected their interaction and relationships with other members of the Department both during and after their assignment to IAB. Given the nature of police work and the need for officers to rely on each other for safety and assistance, this perception has been a cause for concern for many officers considering an assignment in IAB. Consequently, IAB has not always been able to recruit its choice of personnel.

An equally significant problem is the economic impact an assignment to IAB has on the individual officer. The nature of IAB's work and the role of investigators within the Department prevent them from having the same overtime opportunities⁶ that they would have if assigned to another Bureau, which results in a significant loss of income.

1. Recruitment

In 1993, in recognition of the difficulties inherent in recruiting officers to IAB, the Department developed a draft system in which the Chief of IAB was given priority in

⁶ When an officer works overtime, he receives 1 ½ times his hourly pay in addition to his normal salary.

selecting officers who apply for supervisory positions in investigative bureaus.⁷ The rationale behind this system was the belief that IAB should have access to the most skilled officers in the Department. After the implementation of this policy, some supervisors became reluctant to apply for an investigative position due to the possibility that they would be assigned to IAB instead of receiving their preferred assignment. This resulted in a decrease in applicants to the promotion board and a shortage of supervisors in the other Bureaus. In recognition of this problem, the current administration slightly modified the selection process. Presently, after an officer has been approved for a supervisory position, the Chiefs of the Detective Bureau, Organized Crime Control Bureau and IAB select interviewees on a rotating basis with IAB having the first choice in each round. All officers assigned to IAB as a result of this selection method are required to spend a minimum of 24 months in this assignment.

This drafting method has been a constructive and effective change in Department policy. It appears to have eliminated the problem of recruiting skilled officers into IAB, and IAB has benefited by gaining access to experienced candidates who would not voluntarily apply for an IAB assignment. This assignment system has also helped change the perception of members of the service towards IAB personnel. The recognition that most officers are drafted into the Bureau and did not volunteer for the assignment has diminished the stigma of working for IAB.

2. Retention

While the Department has developed a sound strategy for staffing IAB with skilled officers and diminishing the IAB stigma, it has not resolved the economic impact

⁷ IAB is staffed primarily by Sergeants and Lieutenants who perform the bulk of the investigative work.

that this assignment can have on officers. Many officers rely on overtime pay to supplement their normal salary and the lack of overtime opportunities for an officer assigned to IAB can result in a monetary loss of up to \$15,000 dollars annually. In addition to the immediate economic effect, the loss of overtime pay can also negatively impact an officer's pension.⁸ Consequently, for many officers, a long-term assignment to IAB is not economically desirable or feasible. This economic loss limits IAB's ability to retain investigators once their two-year term has ended.

The Department faces several obstacles in eliminating this economic disparity. First and foremost are the budgetary constraints of New York City due to its current economic condition. The Department also cannot provide extra compensation to IAB officers because the pay scale for officers is negotiated between the City and each police union and is set forth in contracts with the individual unions. In the past, the unions have opposed the Department's efforts to provide extra money to specific groups of officers rather than provide pay raises to all officers. While the Department does provide a number of non-monetary benefits to IAB investigators, these incentives do not negate the economic hardship of this assignment.

At the conclusion of this report, the Commission recommended that the Department and police unions engage in discussions on ways to provide additional monetary compensation to IAB investigators. More progress is needed in this area because until the Department eliminates the economic penalties that IAB investigators incur upon their assignment to the Bureau, it is unlikely that it will be able to improve its ability to retain experienced investigators.

⁸ An officer's pension is based on his last year's salary. Therefore, for officers approaching retirement, an assignment to IAB can have a significant long-term economic impact.

C. Review of the Background Screening Process of New Recruits

The Commission chose to review background investigations conducted by APD because the Commission believes that those candidates for employment with the Department who demonstrate dishonesty, violent behavior, or a history of disregarding authority figures and/or the law may be more likely to engage in corrupt activities in the future. The general goals of this study were to determine the adequacy of the Department's screening process and whether APD followed its own stated guidelines when conducting these screenings. Additionally, the Commission sought to determine if certain types of negative information discovered during background checks were indicators of future misconduct. To make these determinations, the Commission examined the background investigations for three different categories of officers. "Sample A" consisted of 37 files of Probationary Police Officers ("PPOs") who were terminated or otherwise disciplined between November 2002 and February 2004. In "Sample B", the Commission reviewed the files of 50 officers who were terminated or otherwise disciplined for "opportunistic" misconduct or misconduct involving the officers' family or friends from the neighborhoods where they live or grew up. The Commission also reviewed 53 background investigation files from the January 2003 Police Academy ("Academy") class.⁹

In this review, the Commission evaluated the adequacy of the investigative steps taken by the APD investigators and placed particular emphasis on the residence checks, academic records, and employment records that were collected. The Commission

⁹ The Commission chose this class rather than the July 2004 graduating class because the 2004 class was too recent when the study began, and therefore, the Commission expected that many APD investigations would not be completed.

focused on this information because it is provided by people who have interacted with the candidate on an extended basis. Consequently, this information can provide an insight into a candidate's character that other investigative actions cannot. The Commission also examined the timeliness of the investigative steps to determine whether adequate information about the candidates was obtained prior to their appointment to the Department.

At the conclusion of its review, the Commission made the following findings. Although a few candidates did not meet the mandatory requirements¹⁰ or possessed discretionary disqualifiers,¹¹ they were still appointed. There was no documentation in the files, however, explaining the reasons that these appointments were approved, and the Commission recommended that, in the future, the basis for the decision to hire a candidate in this situation should be explained and maintained in the file. The Commission also found that in a substantial number of investigations, investigative steps were not completed prior to the candidate's appointment. At times, some investigative

¹⁰ All candidates must be between the ages of 21 and 35 upon their appointment to the Academy, be citizens of the United States, have a high school degree or a General Equivalency Diploma, reside in one of the five boroughs of New York City or in either Nassau, Suffolk, Westchester, Rockland, Putnam, or Orange County. Each candidate must possess an active New York State Driver's license. Finally, each candidate must have completed at least one of the following: 60 college credits with at least a 2.0 grade point average; two years of active military service; or two years of employment as a Traffic Enforcement Agent or School Safety Agent. A candidate cannot be appointed if he has been convicted of any felony or any crime of domestic violence. Furthermore, a candidate who has been dishonorably discharged from any branch of the United States armed services will be barred from appointment.

¹¹ A candidate is presumptively disqualified if he was dismissed from tenured government or public employment, has extensive contacts with the criminal justice system, or possesses a driving history with an excessive number of moving violations, hazardous moving violations, license suspensions, or license revocations. See the Commission's Report: *Performance Study: A Review of the New York City Police Department's Background Investigation Process for the Hiring of Police Officers* (January 1999) at pp. 18-22 for a more detailed explanation of the discretionary disqualifier process and the specific presumptive disqualifiers that the Department uses. When a candidate is presumptively disqualified based on one or more of these criteria, his strengths are supposed to be weighed against the disqualification and any additional derogatory information revealed during the investigation to determine whether the presumption is sufficiently outweighed to permit the appointment of the candidate despite the presence of discretionary disqualifiers.

steps were not even initiated until the candidate was close to graduation or had graduated from the Academy.

APD's investigative standards require that the investigator speak with three neighbors from the candidate's current residence to obtain information about the candidate's reputation in the neighborhood. The Commission found that in a substantial number of cases, investigators failed to complete these residence checks. While APD investigators were more diligent about sending out the required School Inquiry Forms¹² and Employment Verification Forms,¹³ there were several files where the investigator failed to follow-up and contact the relevant entity when a form was not returned.

The Commission also noted follow-up issues when derogatory information was revealed. In many of these instances, the APD investigator did not initiate personal contact with the source of the derogatory information to learn more about the situation. Instead, the investigator relied on the candidate to explain the negative information. The Commission recognizes that the gains from contacting some employers, schools or other entities need to be evaluated on a case-by-case basis and that APD needs to allocate their time and resources efficiently due to high caseloads. The Commission recommended that if a decision is made not to contact a school, employer or other source of derogatory information, the investigator should document the reasons underlying that decision.

The Commission also found that in many instances, the school and employment forms that were returned contained only minimal information about the candidate, such as his attendance or employment dates and salary. Many schools and employers, due to

¹² School Inquiry Forms are supposed to be sent to every school the candidate attended since the ninth grade.

¹³ Employment Verification Forms are supposed to be sent to each of the candidate's employers for the five years prior to his appointment. The candidate can ask that his present employer not be contacted if he fears that it will jeopardize his continued employment.

their own policies, did not complete the sections of the forms which requested character assessments. This minimizes the usefulness of these forms as investigative tools. The Commission suggested that the Department explore alternative methods for gathering the requested information from schools and employers, such as through personal interviews. Alternatively, the Commission recommended that the Department require the candidate to provide the names and contact information for three references who possess actual knowledge about him. At least one of these references should be a former employer or teacher, and at least one should be a neighbor. APD investigators should be trained in interviewing techniques so they can obtain insightful information from these references.

The Commission examined the files of PPOs and disciplined officers in an effort to determine whether there were correlations between issues that were uncovered during the background investigation and the misconduct for which the candidate was ultimately disciplined or terminated. Direct indicators of the specific future misconduct were found in only a small percentage of both samples. These indicators usually involved accusations of domestic violence, prior drug use, or family members who had prior involvement with the criminal justice system. What was more common, though, was that several of the investigations revealed multiple factors that the Commission believed called into question the candidate's general suitability to be a police officer. For these candidates, the investigation revealed derogatory information which when considered alone might not have precluded a candidate from being appointed. The Commission believes that in these situations, the information uncovered warranted a more thorough investigation than mailing forms and conducting computer checks on the applicant. In these types of investigations, more personal, face-to-face contacts with people familiar

with the candidate are necessary.

In addition to the above conclusions and suggestions to address these findings, the following are some other recommendations included in this report.

- ☒ When a candidate was married, separated, divorced, lived with a significant other, or had a child in common with another, Department investigators usually did not speak with the candidate's spouse¹⁴ about the candidate's suitability for appointment. While a spouse may provide only information beneficial to the candidate, or an ex-spouse may be vengeful and provide false information to portray the candidate poorly, a savvy investigator should be able to obtain substantive information about the candidate. If a spouse expresses concern about a candidate becoming a police officer, friends and neighbors can be contacted to corroborate or dispel this concern.¹⁵ There should be special attention and additional investigation through personal contacts when allegations of domestic violence arise. Further, in those situations, the candidate's resident police precinct should be contacted to determine whether any domestic incident reports involving the candidate have been filed and, if possible, whether there have been radio runs to the candidate's home as a result of domestic violence. If the spouse resides within the confines of another police precinct, that precinct should also be contacted.
- ☒ When a candidate misrepresents or omits requested answers on his personal history questionnaire or in any other information he submits to the Department, he is given the opportunity to supplement his application and explain the reason for the omission or misrepresentation. In past investigations, once the candidate provides an explanation, the APD investigator has not taken any further action. The Commission agrees that a candidate should be given the opportunity to explain his failure to accurately provide information. Explanations such as forgetfulness or a sincere mistake are excusable. There are some explanations, however, that the Commission considers equivalent to lying and, as such, directly impact on the candidate's integrity and therefore, his suitability for appointment as a police officer. One such example would be the candidate who fails to disclose an arrest because he did not believe it would show up on his record. In this type of situation, that candidate should not be hired. The Commission recommends that if APD learns that a candidate has provided false information or has failed to disclose requested information, the present practice of asking the candidate to explain the reason for his failure to disclose accurate

14 For simplicity, spouse is used here to denote any of the persons referred to in the beginning of the sentence.

15 According to the APD Manual, the candidate's spouse is supposed to be interviewed at the time of the residence checks. Further, the investigator is supposed to request that the spouse indicate how he/she feels about the candidate becoming a police officer on the Personal Reference Report used for interviewing neighbors.

information should continue. A determination should then be made as to whether the candidate intentionally did not provide accurate information. If it is determined that the candidate's actions were intentional and not based merely on a mistake or misunderstanding, the candidate should be disqualified for appointment.

- ☒ Presently, APD investigators request computer record checks from the candidate's local police department and local police departments for the candidate's prior residences. These computer checks should disclose whether the candidate was ever arrested within the confines of those precincts. While this practice may be sufficient in most background investigations, more personal contact is necessary in the questionable cases. This is particularly important in cases where the candidate has been arrested or the APD investigator has information that the candidate has been involved in domestic incidents or has family members who have been arrested for serious crimes. In those investigations where information casts doubt upon a candidate's general suitability for appointment, APD investigators should personally contact the local police departments for all towns where the candidate has lived since high school. Investigators should inquire whether the candidate was known to the police department, whether any domestic violence complaints were filed against him, or whether the candidate was ever a suspect in criminal activity in the neighborhood.
- ☒ Another issue the Commission believes needs to be further explored is the appropriate manner in which to conduct the investigation when a family member of the candidate has been arrested for a crime. While the Commission agrees that the candidate should not be held responsible and penalized for a family member's illegal actions, loyalties that the candidate may feel toward the family member should not be entirely ignored. Currently, the Department questions the candidate only about the reasons for the arrest. The candidate should also be questioned about his relationship with the family member, his feelings about the manner in which the arrest was handled by the police and the courts, and the frequency of his current contact with the family member. The investigator should contact the police precinct where the criminal incident occurred to see if they have any further information about the family member and the candidate. The police may be able to provide insight as to whether this was an isolated occurrence or whether the family member, other relatives, or the candidate himself was a suspect in other crimes or had a poor reputation in the neighborhood. The family member's criminal records should also be checked to verify the information provided by the candidate. The police reports describing the circumstances that led to the arrest may also be relevant for they can lend clarity as to what occurred as well as provide information as to whom the arrested person contacted subsequent to his arrest. At times, it may be appropriate to interview the relevant family member as well as other family members about the relationship between the arrestee and the candidate, the

events leading to the arrest, and the manner in which the arrested person has conducted himself since the arrest.

- ☒ All investigative background steps should be completed prior to the candidate's appointment to the Department. When forms cannot be obtained in a timely manner, APD investigators must make personal contact with employers and schools or document their reasons for not obtaining this information. This personal contact should be recorded in the APD file including to whom the investigator spoke, the date of the contact, whether the contact was by telephone or in person, and the substance of the contact.

III. THE COMMISSION'S MONITORING OF CLOSED IAB INVESTIGATIONS

A. Introduction

As part of its on-going responsibility to monitor IAB, the Commission reviews various "C" cases¹⁶ closed by IAB.¹⁷ For this report, the Commission examined 42 closed IAB investigations conducted by 10 separate IAB investigative groups.¹⁸ The cases examined in this review were closed between 2003 and 2004.

B. Methodology

The Commission randomly selected "C" cases from a list of closed cases maintained by IAB. The Commission did not focus on any particular type of misconduct during its selection. After a case was selected for review, the Commission examined the investigative file, including audio and video tapes, where applicable, in an effort to ascertain the quality of that particular investigation. Furthermore, the Commission evaluated, on a case-by-case basis, whether appropriate investigative steps were

¹⁶ IAB classifies cases as "C" cases when allegations of either serious misconduct or criminal activity have been made.

¹⁷ See the Commission's reports, *Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau* (October 1997); *Fourth Annual Report of the Commission* (November 1999), at pp. 22-42; *Fifth Annual Report of the Commission* (February 2001), at pp. 18-28; and *Sixth Annual Report of the Commission* (December 2001), at pp. 20-40.

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

performed. The Commission is aware that investigative steps vary depending on the allegation and the specific facts of each case. Specifically, the Commission looked at whether complainants and witnesses were interviewed in a timely manner as well as the quality of those interviews, whether IAB investigators obtained and reviewed documents critical to the case, and whether necessary investigative techniques, such as surveillance were used, and if so, their effectiveness. The Commission also looked at the overall quality of PG § 206-13 interviews (“PG interviews”).¹⁹ In addition to examining specific investigative techniques, the Commission reviewed the totality of the investigative work carried out by IAB in determining the quality of the investigation.

C. Findings

Overall, the Commission found that IAB adequately investigated the vast majority of the cases it reviewed, and the Commission is satisfied that investigators are generally handling investigations in an appropriate manner. Investigators contacted and interviewed witnesses in a timely manner, obtained and reviewed pertinent documents and in most cases, effectively utilized investigative techniques such as surveillance and integrity tests. The Commission agreed with the closing disposition in all 42 cases reviewed.

In past reports, the Commission has criticized IAB for not closing cases in a timely manner as well as not documenting all investigative events in the case file. The Commission noted an improvement in these areas during this review. Most cases did not have lengthy gaps between investigative steps, which resulted in cases being closed in a

¹⁹ Patrol Guide § 206-13 (formerly PG § 118-9) allows the Department to interrogate officers within the context of an official Department investigation. Officers that refuse to answer the questions during these interviews are suspended while officers that are found to have been untruthful during the examination will be, absent exceptional circumstances, dismissed from the Department.

more expeditious manner. Furthermore, when gaps did occur, investigators appropriately documented the reason for the delay.

Of the 42 cases reviewed, the Commission only had minor issues with some cases where it believed that the investigation could have been augmented. These issues did not affect the overall disposition of the cases. The two areas where issues arose were in the development of case specific investigative plans and the use of certain investigative techniques. The issues noted in these cases may, in part, stem from the high turnover rate of IAB personnel in and out of the Bureau which often results in cases being transferred to new inexperienced investigators during the course of the investigation. Given the relatively short duration of an assignment to IAB, these investigators often lack the investigative experience of more seasoned personnel.²⁰

1. Investigative Plans

The Commission believes that an individualized approach to each case will develop more evidence and foster more efficient and targeted investigations. While the majority of cases did have a defined investigative plan, there were a few investigations which could have benefited from a more specific strategy. In these instances, it appeared investigators did not have distinct goals in mind when they employed various investigative techniques. Some of these investigative steps were time-consuming which resulted in cases remaining open for an extended period of time with little or no beneficial information being obtained.

The Commission has observed that there tends to be a generic investigative plan for most types of cases, which is generally appropriate at the onset of an investigation. These plans often employ a routine variety of investigative strategies such as surveillance

²⁰ See *supra*. pp. 5-9.

and the ordering of telephone records. The Commission recognizes that in an effort to cover all aspects of an allegation, investigators often employ all tenable investigative techniques at their disposal, and the Commission commends the motives and diligence of investigators in this regard. Investigators may, however, more efficiently utilize their time and resources by regularly evaluating the benefit that an investigative strategy will likely yield, versus the amount of time and effort it requires to complete that particular step.

For example, surveillance is a commonly used investigative technique which in appropriate circumstances can produce valuable information or insight into a person's activities. Surveillance can be time consuming since it requires the correct determination of a subject's location and several successful observations of him. Furthermore, surveillance needs to be conducted during times when the subject is most likely to commit the misconduct he is suspected of committing. Given these factors and the workload of investigators, it often takes multiple attempts over the course of many months for surveillance to be completed. Therefore, the decision to surveil a subject officer should be made within the context of the case after determining what evidence surveillance would likely produce. The Commission has noted at times that investigators appear routinely to conduct surveillance in situations where it is unlikely that the investigator will observe conduct that would prove or disprove the allegation. Furthermore, in some instances, the investigator did not make informed determinations about the subject's schedule or conducted surveillance at odd times which resulted in negative sightings and the need for additional surveillances. This naturally delays the closing of the case and prevents the investigator from working on other matters.

IAB also should refine its approach to the routine procurement of telephone records. While telephone records can be a valuable method of obtaining evidence to connect a subject officer with a certain person, or to disprove a complainant's allegation, these records can also be difficult to obtain and time-consuming to analyze. In a few cases, investigators improperly prepared and submitted subpoenas and, in some cases, subpoenas were delivered to the wrong telephone service provider. These errors often took several months to correct. To avoid unnecessary delays, investigators should determine whether the receipt of telephone records will advance the investigation and, if so, the investigator should first verify who the service provider is and then prepare a subpoena accordingly. The Commission recommends increased oversight of this investigative step by team leaders²¹ to ensure that subpoenas are accurately prepared and submitted to the right provider.

The Commission believes that a more focused approach would be beneficial in all case investigations, and ideally, every investigative technique should have value and help to achieve the appropriate disposition. Before implementing a specific investigative step, the utility and expected value of that step should be assessed according to the specific case facts.

2. Evidentiary Leads

In the vast majority of cases, investigators appropriately spoke with all necessary witnesses and obtained all pertinent documents. In a few minor instances, however, investigators could have been more thorough in obtaining information or speaking to witnesses.

The need for better follow-up was also observed in several PG interviews. The

²¹ Team leaders are typically Lieutenants that provide supervision to several case investigators.

Commission believes that the overall quality of PG interviews conducted by IAB is high and there has been a steady improvement in this area over the years. Investigators are familiar with the facts of the case and generally prepare questions in advance of the interview. In a few cases, however, investigators had difficulty following up on unexpected answers and pursuing new lines of questioning. The Commission recognizes that the ability to depart from written questions and follow-up on new information is usually gained through experience and time. It appears that IAB is aware of this issue, and the Commission has noted that senior investigators are often present with inexperienced investigators during interviews to provide assistance if necessary.

One improvement the Commission has observed over the years is the use of regular case reviews by team leaders. Team leaders meet with investigators on a regular basis to discuss their caseload and help provide direction in investigative tactics. The Commission feels that this has been a positive change that has increased the quality of investigations. The Commission believes that team leaders should continue to use case reviews as a way to assess the progress of a case, probe the viability of the investigative plan, and ensure that all evidentiary leads are appropriately explored. These reviews can provide guidance to less experienced investigators, which should help to eliminate the minor issues noted in this examination of closed IAB investigations.

IV. THE COMMISSION'S ONGOING WORK

A. Open/Pending Case Monitoring

Monitoring open IAB investigations is another means by which the Commission accomplishes its mandate to ensure that the Police Department is effectively and expeditiously investigating corruption allegations. This type of monitoring enables the Commission to keep up-to-date with corruption trends and allegations and evaluate how the Department investigates and responds to allegations of corruption. Open case monitoring is accomplished by various means, including: daily review of corruption logs received from the Department, attendance at IAB Steering Committee meetings, attendance at IAB briefings to the Police Commissioner, periodic on-site review of non-steering cases, and ongoing discussions with Group Captains and other high-ranking officials in IAB. All of these monitoring activities are discussed below.

1. Log Review

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

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

2. Steering Committee Meetings

Throughout the year, Commission staff attend IAB Steering Committee meetings. The Steering Committee is comprised of IAB's executive staff and is chaired by the Chief of IAB. The purpose of the Steering meetings is to examine the more serious cases handled by each investigative group and discuss new developments to ensure that all appropriate investigative steps have been taken. On a regular basis, each investigative group presents their most significant cases to the Committee and reviews the investigative steps which have been taken as well as future investigative plans. Attendance at these meetings allows the Commission to observe how IAB responds to and investigates allegations of corruption. Additionally, this review of cases enables Commission staff to remain up-to-date on all pending IAB investigations.

3. Intensive Steering Committee Review

Each year between June and September, the Steering Committee conducts intensive Steering where all open cases in each group are reviewed. The Commission attends all intensive Steering meetings which provide a comprehensive overview of IAB's entire open caseload.

4. IAB Briefings to the Police Commissioner

In order to keep the Police Commissioner fully apprised of significant cases and corruption trends, on a regular basis, IAB's executive staff meets with the Police Commissioner and certain members of his executive staff, including the First Deputy Commissioner and the Chief of the Department, for briefings. The Executive Director of the Commission attends each of these meetings. At these briefings, IAB investigative Group Captains present their most serious cases and describe the investigative steps that have been taken. Additionally, periodically the Commanding Officer of IAB's

Corruption Prevention and Analysis Unit presents a statistical analysis of corruption allegations which compares annual and monthly statistics by category of allegation, borough, and bureau. This analysis enables the Commissioner and executive staff to identify corruption trends and provides information as to the facts underlying the data being presented.

B. Other Types of Monitoring Activities

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

1. Monthly Monitoring Lists

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

2. Interim and Operations Orders

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

C. Additional Commission Functions

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

The Commission periodically receives allegations of police corruption or misconduct by individuals who wish to lodge complaints against the Department.

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

Another way that the Commission fulfills its mandate to monitor corruption is through regular contact with Federal and State prosecutors responsible for the investigation and prosecution of police corruption. Through these relationships, the Commission is kept informed of issues or concerns of these law enforcement agencies and of their general perceptions about IAB and the quality of its work.

V. FUTURE PROJECTS OF THE COMMISSION

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

A. In its review of corruption cases handled by the Department, the Commission has examined a number of cases where allegations were made against civilian members of the Department. Although the Commission has examined the background investigations conducted by APD for members of the service, we have yet to explore the hiring requirements and standards that are used to ensure the suitability of civilian employees hired by the Department. The Commission, therefore, will be examining a number of background investigations conducted on Traffic Enforcement Agents and School Safety Agents who were hired in the past two years to determine if the appropriate screening standards are in place and if the Department is following its own procedural guidelines

for hiring these civilian employees.

B. To encourage officers to come forth with information about corruption, the Department needs to have a system that provides a secure means for officers to report corrupt activity and enables officers to feel safe when reporting it. To achieve this, there must be a strong policy prohibiting retaliation against “whistle-blowers.” The Commission plans on reviewing the mechanisms the Department currently has in place to promote this type of reporting, the protection it provides to these officers, and the manner in which these mechanisms are publicized to the rank and file officers and civilian employees whom they are supposed to protect.

C. The Commission believes that the Department can help maintain a corruption-free environment by instilling and regularly reaffirming the message that corrupt behavior will not be tolerated. The Commission plans on examining the quality of the on-going integrity training provided by the Department to members of the service after their graduation from the Police Academy and throughout their careers.

D. As a follow-up to its prior two reports on this issue, the Commission intends to continue monitoring the Department Trial Rooms and the Department Advocates Office to determine if improvements have been made to the disciplinary system.²²

²² See The Commission’s Reports: *The New York City Police Department’s Prosecution of Disciplinary Cases* (July 2000) and *Follow-up to the Prosecution Study of the Commission* (March 2004).