

The City of New York

Commission to Combat Police Corruption

**Monitoring Study: A Review of
Investigations Conducted by the
Internal Affairs Bureau**

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I. INTRODUCTION

As a central part of its mandate, the Commission to Combat Police Corruption (“Commission”) must review and assess the quality of the New York City Police Department Internal Affairs Bureau’s investigations and recommend changes or improvements to its investigatory methods, if necessary.¹ Accordingly, in its First Annual Report (issued in March 1996), the Commission announced its intent to evaluate a significant sample of concluded IAB investigations to assess the diligence, competence and effectiveness of the investigations. The results of that evaluation are contained in this Monitoring Study (“Study”).

The New York City Police Department Internal Affairs Bureau (“IAB”) was created on January 4, 1993, pursuant to Police Department (“Department”) Interim Order 93-1. That order upgraded the former Internal Affairs Division to a bureau answering directly to the Police Commissioner. The transition has encompassed many structural and cultural changes within the Department, but IAB’s primary mission can be simply stated: to aggressively and effectively investigate allegations of corruption and serious misconduct by members of the Department.

In this regard, Department Interim Order 93-1 sets forth the types of cases to be investigated by IAB and those to be handled by Patrol Borough and Bureau Investigations Units:

- a. Allegations dealing with criminal activity and serious misconduct will be assigned to the Internal Affairs Bureau for investigation[;]

¹ See 1995 New York City Executive Order No. 18 at § 2(a)(ii), which provides that the Commission shall “perform audits, studies and analyses to assess the quality of the Police Department’s systems for combating corruption,” including “the effectiveness of the Police Department’s systems and methods for . . . investigating allegations of corruption.”

b. Allegations of non-criminal violations of Department regulations, and lesser misconduct may be referred to the appropriate borough/bureau Inspections Unit² for investigation at the discretion of the Chief, Internal Affairs Bureau. Furthermore, specific cases in which a criminal act has occurred but no further investigation is required (i.e., arrest for off duty Driving While Intoxicated, arrest for off duty domestic disturbance, etc.) the misconduct may be referred to the Inspection Unit concerned for further appropriate attention.

In July 1994, the Department released its Re-engineering Team Report on Integrity, which found that police officers were unclear about the types of misconduct investigated by IAB. Accordingly, the Re-engineering team made the following recommendations:

The Department should issue a Patrol Guide amendment that defines corruption and serious misconduct. . . . Corruption should be defined as follows: 'A member of the service is guilty of corruption by engaging in criminal or other misconduct, on or off-duty, associated with the performance of official duties or the exercise of discretion in relation thereto and which is intended to result in personal or financial gain or other benefit to the member of the service or to another person.'

Serious misconduct should be defined as follows: 'A member of the service is guilty of serious misconduct by engaging in an activity or conduct, on or off-duty, that would tend to demean or destroy public confidence in the Police Department and in the member's integrity, honesty, judgment or fitness to be employed in a position of public trust. Serious misconduct can consist of criminal conduct that has no relation to employment or job duties.'

To fulfill its mandate of investigating corruption and serious misconduct, IAB relies on

2 The Department has recently changed the name of the Inspections Units to Investigations Units as well as the priorities of their functions and operations. See 1997 Departmental Interim Order Number 12-2. The change, however, has not altered IAB's mandate and is not material to this Study.

3 Notably, IAB may use a somewhat different definition for corruption and misconduct. IAB investigates all complaints against members of the Department which are categorized as "C" cases (see n. 5, at p.5 for an explanation of IAB's complaint categories). According to an "editor's note" on page 5 of IAB's 1996 Annual Report, however, "[c]orruption complaints ('C' cases) are defined as any allegation of criminal activity which would likely result in criminal prosecution and/or dismissal of a member of the Department." This definition is clearly more narrow than the Re-engineering team's recommended definition, since it excludes all non-criminal conduct and includes only that criminal conduct which would result in criminal prosecution or dismissal. The Commission intends to report separately on these classification issues.

the skill of its investigators and supervisors to ensure that individual cases are pursued in a thorough and timely manner; that corrupt officers are brought to account; and that officers who have been mistakenly or falsely accused are exonerated. Thus, IAB investigations, while only one of several components in the Department's anti-corruption efforts, are the front line of the Department's continuous fight against corruption.

Meeting these investigative responsibilities is no easy task. In 1996, IAB commenced over 2000 investigations involving many types of allegations, including theft from prisoners, the sale or use of narcotics, perjury, leaking information, gambling, and bribe receiving. Inevitably, given its caseload, IAB must prioritize its investigations and seek to allocate its resources effectively. As with any investigative agency, supervisors and line investigators must decide which cases require greater attention than others, which investigative steps are likely to yield results, which steps may be fruitless, and when an investigation has reached its end. In making these decisions, IAB's personnel must be afforded reasonable discretion. While it is easy to second-guess the exercise of that discretion after a case is closed or new facts come to light, investigative decisions should be judged by whether they were reasonable at the time they were made, in light of the facts at hand.

At the same time, given the importance of IAB's investigations, high standards must apply to the quality of those investigations. It is both reasonable and necessary to expect that, while not every conceivable investigative step need be taken in every case, those investigative steps that are required to instill confidence in the outcome of an investigation cannot be overlooked. In most cases, this will require nothing more than performing the type of activities that are common to all kinds of criminal inquiries: collecting statements, checking background

information and pursuing obvious leads with an eye for details that may shed light on an allegation. In other cases, especially where the allegation is particularly serious, the necessary investigative steps may require extra patience, doggedness or creativity. In all cases, the essential components of a successful investigation are based upon common sense and dedication.

As discussed more fully in the first section of the Study, the Commission reviewed in exhaustive detail a sampling of seventy eight cases closed by IAB in 1996. After completing its review of the case files and meeting with the IAB supervisors and investigators involved in many of the cases, the Commission ultimately designated each case as either satisfactorily or insufficiently investigated because at least some additional investigative steps would have been warranted. In the final analysis, the Commission found that the majority of IAB's investigations were handled appropriately and the number of cases which fell short of the Commission's expectations was not significant. Moreover, the problems the Commission found in the insufficient cases can be corrected by enhanced training or supervision of IAB personnel. In short, while there is room for improvement, the shortcomings the Commission found in a portion of its sampling are not cause for lack of confidence in IAB's overall standard of performance.

The Study discusses both an exceptionally good investigation IAB performed in a lengthy case and each of the cases which the Commission concluded that at least some additional investigative steps would have been warranted. Following these case summaries and analyses, the report addresses several specific issues which emerged in the course of preparing the report and, in its concluding section, offers several recommendations to further improve the quality of

IAB's investigations.⁴ Specifically, the Commission recommends that IAB maintain rigorous supervision of its investigators by their immediate supervisors and group commanders; enhance its interview and interrogation training; and conduct more regular internal audits of its caseload to ensure that cases are being assigned and resolved in a timely manner.

II. METHODOLOGY

In preparing this Study, the Commission collected 117 closed IAB case files for its initial sampling. Fifty-nine of these cases were specially selected and the remainder were randomly selected.

Cases were specially selected by Commission staff for a variety of reasons, including the nature of the allegation, the number or type of prior allegations against the subject officer, or potential inadequacies of investigation identified by the Commission in the course of its monitoring of investigations while they were pending. Some of these cases were originally requested by the Commission because of particular issues arising from its daily review of corruption complaints ("logs") received by IAB⁵ or review of the memoranda IAB prepares when

⁴ This report does not include an analysis of the 48th precinct cases which were announced in May, 1995. The Commission intends to review those cases following their completion.

⁵ IAB assigns a "log" number to every allegation it receives of corruption or misconduct by members of the Department. While complaints originate on a city-wide basis from both civilian and Departmental sources, all are funneled through IAB's Command Center (formerly known as the "Action Desk"), which is staffed 24 hours a day, 7 days a week. Officers assigned to the Command Center may undertake some preliminary investigative steps, including computer checks to assist in identifying the officer who is the subject of the allegation and in gathering all prior allegations against the subject officer. The current allegation combined with this background information constitutes the IAB "log".

Every day, the Command Center compiles the logs generated during the preceding twenty-four hours and forwards them to an IAB assessment unit which, among other possible categories not relevant
(continued...)

closing an investigation. Other cases came to the Commission's attention during Steering Committee presentations.⁶

To supplement its pool of closed cases for this Study and obtain a more representative sampling, the Commission also selected fifty cases for review at random. To make this selection, the Commission obtained a list of the IAB investigations which had been closed between January 1 and October 15, 1996. This list contained 2260 cases identified only by case ("C") number, log number, and the date the case was closed. From this list, the Commission requested the files for the first case (the oldest on the list), the last case (the most recent investigation), and forty-eight additional cases which were selected at random from the remainder of the list.

Finally, the Study includes the ten oldest cases on the closed case list. Apart from reviewing the quality of the investigations in these particular cases, the Commission included a sampling of the oldest cases to assess whether the time taken to complete these particular cases --

5 (...continued)

to this discussion, classifies each allegation as a "C" if it involves corruption or serious misconduct or an "M" if it involves less serious misconduct. "C" cases are assigned to IAB for investigation, and all but a few "M" cases are assigned to the Investigation Units. Approximately 40 logs are generated by the Action Desk each day. For calendar year 1996, 14,110 logs were generated by IAB and forwarded to the Commission for review.

6 The Steering Committee ("Committee") consists of nearly all of the principal officers in IAB, including the Chief of IAB, the Executive Officer, the Chief of the Criminal Investigations Division, the Chief of the Support Services Division, and the IAB Zone Commanders. Each week, on a rotating basis, investigative groups discuss the progress of their most significant investigations with the Committee. While the number varies, approximately 7 to 15 cases are presented each week for review by the Committee. Commission staff attend Steering Committee meetings on a regular basis.

It should be noted that cases which were targeted throughout the year also involve many which were selected to insure the examination of a variety of offenses and a widespread geographic sampling, thus reducing the overall number selected solely because of the seriousness of the allegations or the complexity of the investigation.

an average of four years -- was attributable to legitimate complications or delays. Since two of the ten oldest cases were already part of the random selection, an additional eight oldest cases were added to the sample of 59 targeted cases and 50 random cases, for a total sample of 117 cases.

After the initial pool of cases for this Study was collected, a number of cases were dropped from the Study because they did not provide an adequate basis to evaluate IAB's investigative efforts. For example, a case was dropped if it involved a Transit Police Department or Housing Police Department corruption investigation because, for all intents and purposes, these investigations were completed before those departments merged with the New York City Police Department.⁷ Since these cases were not investigated by IAB personnel, they could not provide any insight into the quality of IAB's investigations and were not included in the Study.

In addition, several cases were dropped from the Study because they were generated upon the arrest of an officer for conduct unrelated to any pending IAB investigation or an officer's failure to pass a drug test. When such an arrest or drug test failure occurs, IAB properly assigns a case number to track the event and includes it in the Department's corruption statistics. However, the case is essentially closed as soon as it is opened since no investigation by IAB is required.⁸ Accordingly, these types of cases do not reveal anything about the quality of IAB's investigations and therefore were not included in the Study.

⁷ The New York City Transit Police Department merged with the Department on April 2, 1995, followed by the merger of the Department with the New York City Housing Police Department on April 30, 1995.

⁸ While IAB does not conduct an investigation in these cases, disciplinary action against the officers may still be taken.

Several of the oldest cases originally selected for the Study were also dropped because the Commission learned that they were part of IAB's extensive investigation of the 30th Precinct. Since that investigation was unusually complicated and time-consuming, and many cases overlapped and merged with other cases, none of the 30th Precinct cases could fairly be evaluated in isolation. Rather than incorporate the entire investigation into the Study, which was intended to review a sampling of IAB's typical caseload rather than focus on cases which commanded exceptional attention, the 30th Precinct cases were set aside.⁹

The remaining 78 targeted, random and oldest cases were subjected to detailed evaluation by the Commission. This evaluation was designed ultimately to classify the cases as either "satisfactory" or "insufficient." The Commission deemed a case satisfactory if all essential investigatory steps were performed by IAB. Conversely, a case was deemed insufficient if IAB failed to perform one or more important investigatory steps or there was a significant shortcoming in the performance of those steps.

As the first part of the evaluation process, Commission staff devoted hundreds of hours to reviewing all of the worksheets, documents, tapes and other investigatory materials contained in the closed case files collected for the Study. Most of the files contained approximately a dozen or so worksheets; accompanying records, such as Central Personnel Index printouts,¹⁰ duty rosters, and property vouchers; and a case summary which outlined the allegations, the

⁹ Five additional cases from the random selection were not provided to the Commission by IAB in time for their inclusion in the Study. The Commission will include those cases in its next Monitoring Study.

¹⁰ The Central Personnel Index ("CPI") is stored on a Department computer database and contains a variety of information about every member of the Department, including shield and tax registration numbers; current assignments; and prior corruption or misconduct allegations.

investigative steps taken, and IAB's findings.¹¹ Some of the case files, however, were far more voluminous, arising from multiple allegations against a single officer or several officers and containing scores of worksheets.

After reviewing all of the case files, Commission staff identified certain investigations which were not as thoroughly investigated as warranted. The Commission's evaluations were not based on whether IAB performed every conceivable investigatory step that might have yielded information in a case. Rather, in each case the Commission sought to determine whether IAB performed the steps which were warranted given the nature of the allegation and the available information. When these steps were not taken or were performed inadequately, the investigation was designated as "insufficient". The Commission then identified these cases for IAB and met with the IAB investigative groups which had handled the cases to discuss their underlying facts and the problems perceived by the Commission. Over the course of those meetings, Commission staff spoke with approximately twenty-five IAB supervisory officers and investigators and, in several instances, their explanations for an apparent shortcoming made plain that no shortcoming had occurred. Accordingly, those cases were reclassified as "satisfactory." In other cases, however, IAB conceded that there were errors in the investigation or the Commission was unpersuaded by IAB's reasons for not performing an investigative step or not performing it adequately. The results of this process were then discussed with the Chief of

¹¹ At the conclusion of an investigation, IAB may find that an allegation of misconduct is "substantiated" (supported by sufficient credible evidence); "unsubstantiated" (not supported by sufficient credible evidence); or "unfounded" (the act which is the basis of the complaint never occurred). IAB may also find that the officer accused of misconduct is "exonerated," which indicates that the act which is the basis of a complaint occurred but that the act was proper.

Internal Affairs.¹²

In reaching its conclusions, the Commission was sensitive to the fact that IAB must investigate every allegation of corruption or serious misconduct which is received by the Department. The Commission was also sensitive to the fact that IAB, like any organization, has finite resources, and must allocate its resources accordingly to ensure that each case is investigated adequately. The Commission's primary goal was to determine whether IAB is completing its investigations in a thorough and reliable manner without imposing unrealistic expectations on IAB investigators. With the exception of several cases discussed below, the Commission has found that IAB can be credited for the general reliability of its work.

III. DISCUSSION

A. The Case Distribution

The Commission reviewed a number of targeted and random cases for each IAB investigatory group.¹³ The distribution of cases among the groups was not equal but, taken as a

¹² After presenting our findings to the Chief of Internal Affairs, the Chief of Internal Affairs was informed that several investigative steps which the Commission had determined were not taken were in fact taken, but were simply not documented. These facts were not provided during the initial Commission discussions with the individuals who had conducted the particular investigations. In the majority of cases, however, the undocumented steps were only one of several steps not pursued and consequently did not affect the Commission's overall evaluation of the case.

¹³ Most of IAB's investigative groups are assigned jurisdiction over specific geographic regions of the city and the precincts within those areas. Thus, for example, IAB Groups 10, 11 and 12 cover, roughly speaking, Midtown Manhattan, Manhattan North and Manhattan South respectively. In addition, several groups are assigned responsibility for certain types of investigations, regardless of geographic considerations. For example, IAB's Group 54 handles cases involving allegations of excessive force and the Special Investigative Unit handles allegations involving members of IAB. Finally, one investigative group has responsibility for allegations against members of the Department's Organized Crime Control Bureau, who are assigned throughout the city.

whole, the sampling provided a broad distribution of cases with each investigative group represented by at least one case and most groups contributing three or more cases.¹⁴ More significant than any numerical breakdown of satisfactory versus insufficient cases are the reasons cases were deemed insufficient. As the discussion below sets forth, the insufficient cases did not demonstrate any particular patterns which might lead the Commission to believe that the shortcomings were symptomatic of pervasive problems in IAB or of any desire on the part of IAB investigators not to accurately assess allegations. Rather, the insufficient cases demonstrated shortcomings which were most likely attributable to individual instances of oversight, inexperience, or lack of supervision. Although the Commission believes the problems in the insufficient cases should have been recognized and corrected during the course of the investigations, these problems are consistent with the type of errors which can be expected to arise in a portion of any investigatory agency's cases. Obviously, IAB should continue to attempt to reduce the number of errors which occur.

B. An Exemplary Investigation

Case 1

Before discussing the cases in which the Commission believes additional investigative steps were appropriate, a brief summary and analysis of an exemplary investigation is helpful. This case, while more complex and protracted than any of the insufficient cases, provides some standards against which the insufficient cases can better be measured.

¹⁴ The identity of the investigative groups have not been disclosed in this Study because the Commission does not believe that conclusions can be drawn about any particular group's general quality of performance from the Commission's sampling because the sample represents a small percentage of the number of cases each particular group investigates annually.

In December 1993, an IAB Group was assigned the investigation of a rape complaint against Officer A.¹⁵ Elaborating on her initial allegation, the complainant also claimed that Officer A was paid by a dealer named "X" to deliver drugs and that Officer A and his partner, Officer B, "ripped off" other dealers. The complainant also reported that Officer A had bragged about how his partner had beaten a prisoner.

The complainant in the case had ended a relationship with Officer A earlier in the year, had tried to commit suicide several months before making her allegation, and was characterized as "vindictive" and untruthful by members of her family. Investigators checked addresses supplied by the complainant where Dealer X supposedly lived and also checked the Department's narcotics intelligence database and other sources of information to try to identify and locate the dealer, without success. They also looked for other complaints which mentioned the subject officers' nicknames, but had no success with those efforts either.

In the months following the initial allegation, there was reason to believe that the complainant was unreliable. Among other things, the complainant reported in January 1994, that Officer A approached her on a subway platform, held a gun to her head, and told her she was "talking too much." However, the complainant claimed that Officer A held the gun in his left hand and had cocked its hammer, when in fact he was right handed and his off-duty revolver was hammerless. Soon after this alleged incident, the complainant told investigators she did not want to pursue her rape allegation.

¹⁵ The names of subject officers, investigators and witnesses have been concealed throughout this Study in the interest of confidentiality. In addition, for the same purpose, masculine and feminine pronouns have been mixed in the report to conceal, where possible, the sex of the individuals involved in the case summaries.

Despite these difficulties with the complainant, investigators continued to look into various aspects of her allegations. First, during one interview, the complainant had mentioned that she had recently overheard a third officer, Officer C, tell Officer A that IAB was investigating Officer C and her boyfriend. When investigators checked IAB records, they found an open drug investigation against Officer C. Further, investigators went to the Department's Employee Management Division and examined Officer A and Officer B's entire personnel files. In doing so, they noted that the officers had been appointed to the Department on the same date; assigned to the same precinct on the same date; and served on the same tours. This information prompted a meeting with the Integrity Control Officer ("ICO") for the precinct where the subject officers were assigned. The ICO told investigators that the two officers had been transferred to different shifts because they had many "patrol irregularities"; that Officer B wore a beeper; and that the "command gossip" was that Officer B had a cousin named "X" who was a drug dealer. Investigators also learned that Officer B was the subject of numerous brutality complaints.

At this point, investigators consulted with the District Attorney's Office and learned that it would not prosecute the complainant's rape allegation. Evidently concluding that the rape allegation could not result in a provable departmental administrative case either, the investigators turned their full attention to the complainant's drug allegations. This entailed proceeding on a number of different investigative fronts at the same time. First, investigators met with the complainant again, enlisted her help in the drug investigation (including her agreement to wear a tape recorder, if necessary), and elicited more information about Dealer X. In addition, investigators conducted numerous canvasses of the subject officers' precinct as well as license plate checks to try to locate cars and drivers which matched the complainant's general

descriptions of Dealer X and his vehicles. Eventually, New York State Department of Motor Vehicles ("DMV") checks using a possible real first name for Dealer X yielded a photograph and positive identification by the complainant.

With the identification, investigators began searching for arrestees or informants who could put them in contact with Dealer X and, by the summer of 1994, they succeeded in locating and enlisting one of his former associates. Less than a month after investigators registered the associate as a confidential informant with the District Attorney's Office he introduced an undercover police officer ("undercover") to Dealer X. Over the next several months, the undercover made several substantial purchases of heroin from Dealer X and his gang and, by the end of 1994, investigators had purchased enough heroin from Dealer X to charge him with an A-1 felony. In short order, Dealer X was arrested, debriefed, and began working as an informant against Officer A.

Following his arrest, Dealer X had admitted that he "occasionally" gave Officer A money and agreed to make contact with Officer A and wear a tape recorder. Within about two weeks of his arrest, Dealer X was not only in contact with Officer A but had recorded a conversation in which the Officer offered to clone cellular phones. At a subsequent meeting, Officer A provided a clone to Dealer X in exchange for \$200 and also agreed to look through departmental records for an assault complaint which the dealer said he wanted to know about. Within a few days, Officer A reported to Dealer X that the complaint had been closed but, for good measure, divulged the complainant's home address. Officer A then agreed to run a DMV check to determine if Dealer X's license was suspended.

Around the time these events were unfolding, Dealer X accidentally met Officer C on the

street. Officer C volunteered that a recent arrestee had accused Dealer X of being a drug dealer and told the dealer to “watch his back” because he was being “ratted out.” Officer C also described the arrestee to Dealer X, who in turn informed investigators of the conversation. Investigators then checked precinct arrest records, found an arrestee matching the description provided by Officer C, and confirmed that the officer was on duty when the arrest was being processed. Dealer X was then supplied with a tape recorder, video surveillance was arranged, and Officer C was recorded repeating her warning to the dealer.

Officer A was arrested soon after investigators recorded Officer C’s warning. Although he denied any wrongdoing at the time of his arrest, Officer A admitted to several crimes after listening to the tapes of his conversations with Dealer X. Apart from the phone cloning, Officer A admitted that he and Officer B perjured themselves at several trials involving drug and gun arrests; that on two occasions he and Officer B delivered bags of crack vials to a drug dealer; and that he and his former partner skimmed “lunch money” from the cash they found on dealers they frisked or arrested. Officer A then agreed to wear a tape recorder and attempt to elicit inculpatory statements from Officer B. In two recorded conversations, Officer B discussed a case in which he and Officer A had lied under oath about finding a gun on a man they had arrested inside a store. In the course of these conversations, Officer B reminded Officer A that “we’ve done worse things” and so long as they “stick with the same story, what are they going to do?”

Eventually, investigators succeeded in tracking down the man who had been falsely arrested by Officers A and B. The man told investigators that prior to his arrest the officers had regularly harassed him, frisked him, and taken cash from him. The arrest occurred after he was

stopped by the officers, found to have only \$15, and told that he would be arrested if he did not have more money on him the next time the officers stopped him.

Ultimately, Officer A was indicted for Perjury in the First Degree, Filing a False Instrument, and Forgery; Officer B was indicted for Perjury and Filing a False Instrument; and Officer C was charged with Hindering Prosecution.

Case Analysis:

The investigators in this case deserve credit for not disposing of the case when the complainant proved less than reliable. Rather than rely on apparent weaknesses in her story or her seeming lack of credibility to recommend closing the investigation, the investigators worked various aspects of her allegations to find meaningful information. To this end, they properly concluded that the complainant's rape allegation was unlikely to yield a provable case against Officer A and focused their energies on the complainant's drug allegations.

Further, the investigators were consistently in control of their information. The case worksheets are very detailed and the investigators did not allow information they collected to grow stale. Throughout the investigation, leads were followed as soon as they developed and, while the case took two years to complete, there was little or no time when some aspect of the investigation was not moving forward.

Not surprisingly, given the steady progress the investigators made, they also deserve credit for showing initiative. As one small but revealing example, early in the case the investigators went through all of the records stored by the Employee Management Division for Officers A and B and made special note of their identical appointment dates and assignments. This type of detail, while seemingly insignificant, apparently led the investigators further to

question the officers' relationship when there was little other information that might corroborate the complainant's allegation that they were corrupt.

In short, this case is a good example of an excellent investigation because the investigators were thorough, detail-oriented, and diligent. These qualities, while easy enough to recite, are less easy to put into practice on a consistent basis.

C. The Insufficient Cases

Case 2:

On August 27, 1995, officers from the Vice Enforcement Division ("VED") raided an unlicensed social club and arrested four men who worked there for violation of state licensing laws. The VED officers spotted a fifth employee at the club but he eluded arrest. While processing the social club arrestees, a VED sergeant was approached by the owner of the building where the club operated. The owner reported that Officer D worked off-duty as a security guard at the club and was also paid by the club operators to prevent police raids. The owner also described Officer D's car, provided its vanity plate registration, and offered a description of Officer D which was generally consistent with the appearance of the employee who had eluded arrest at the club. The VED sergeant contacted the Command Center (see note 5 supra at p. 5) the same night, and IAB opened a "C" case naming Officer D as the subject.

The case was assigned to an investigator who immediately ran a DMV check on the vanity plate provided by the building owner and confirmed that the plate was registered to Officer D and that the registered car matched the complainant's description of the car Officer D drove to and from the social club.

Two months after the initial raid by VED, four undercover investigators from IAB and

VED went to the club, where they paid twenty dollars and had their hands stamped to enter the premises. On their way inside, the undercover officers saw Officer E immediately outside the club entrance. The undercover officers stopped Officer E, but he refused to answer any questions. However, the VED officers noticed that Officer E did not have a stamp mark on his hand. The undercover officers then looked for Officer D without success and arrested nine people for criminal nuisance and violation of state licensing laws. Later the same night, one of the IAB investigators contacted the IAB Action Desk and initiated a "C" case against Officer E. Although the log noted that Officer E was not seen inside the club, his presence in the area was reported "for further investigation at a later date."

Despite these enforcement activities, the social club continued operations. On November 7, 1995, VED sent IAB a flier advertising an upcoming party at the club which boasted "security N.Y.P.D. style." On the night of the party, undercover IAB investigators returned to the club, but did not see either Officer D or Officer E on the premises. The IAB investigators did see a former N.Y.P.D. officer who operated a security service and was providing security for the party. When questioned, she denied knowing either of the subject officers.

After a few additional investigative steps, including re-interviewing the owner of the building where the club operated, IAB determined that it had exhausted its leads and the case was closed as unsubstantiated against both Officer D and Officer E.

Case Analysis:

At the outset of this case, the allegation that Officer D had off-duty employment at an illegal club and was being paid to alert the club operator of police raids was sufficiently strong to merit serious investigation. The building owner had not only identified the officer, but

accurately described the officer's car and registration and also provided a physical description. That description apparently matched the general appearance of an employee who eluded the police during the first raid on the club, although it is impossible to tell to what extent it matched because investigators failed to record in their worksheets the description provided by the owner, the employee's physical appearance or the subject officer's appearance.¹⁶ As for Officer E, he was stopped by investigators outside the club while it was operating and, while he was entitled to refuse to answer questions at the time, his failure to volunteer a credible, innocent explanation hardly counted in his favor.

No doubt substantiating the allegations against either Officer D or E was not an easy task. After all, it was unlikely that the officers would ever return to the club after VED had made arrests there. While Officer E was seen outside the club and common sense dictates that he was there either as an employee or patron, as a technical matter he could not be charged with misconduct unless he was seen on the club's actual premises. And, as for Officer D, the only information connecting him to the club was provided by a single witness, the building owner.

Under these circumstances, it became all the more important to seek out additional witnesses who could place the subject officers inside the club. The most promising means of doing this was debriefing employees or patrons who were arrested by VED. Although four people were arrested during the first VED raid in August and nine more people were arrested during the second raid in October, none of these arrestees were questioned about police officers

¹⁶ One of the VED officers involved in that raid was shown a photo array which included a picture of Officer D, but she could not positively identify him as the person who eluded her and her fellow officers. Unfortunately, the worksheets fail to indicate whether any other VED officers saw the unapprehended club employee or were shown a photo array.

working at or patronizing the club or shown photo arrays of the subject officers. Nor did investigators attempt to interview employees or customers of the club who were not arrested about security personnel on the club premises. Having failed to debrief these potential witnesses, IAB sacrificed its best chance of making a case against the subject officers. Moreover, the investigators did not require the subject officers to submit to formal Departmental interviews and answer questions about their potential employment at or patronage of the social club.¹⁷ The investigators' failure to take these elementary and essential steps renders the investigation insufficient.

Case 3:

In July 1996, police officers executed a search warrant at an apartment and seized three ounces of cocaine and two shotguns. A copy of a Department publication was found in the apartment addressed to Principal Administrative Aide ("PAA") F, and subsequent inquiries revealed that the PAA had listed the address with the Department as his permanent residence. However, while the search was underway, PAA F appeared at the apartment and stated that his mother lived in the apartment and that he only visited the apartment with his son. PAA F stated that he lived on Long Island. PAA F did not try to interfere with the search, although his mother was in the apartment at the time and his sister was arrested after the drugs and guns were discovered. A search of the residence did not reveal any evidence that PAA F resided there.

¹⁷ Police Department Patrol Guide ("PG") section 118.9 provides for "interrogation of members of the service" in official departmental investigations. Under the provision, members of the Department who are witnesses or subjects in an investigation are obligated to answer questions "specifically directed and narrowly related to official duties." Failure to answer such questions can result in the member's suspension from duty. PG section 118.9(13).

Two days after the search, PAA F took a drug test and passed. The IAB investigator who was assigned to the case also contacted a supervisor at the PAA's precinct, who reported that the subject was competent and reliable. The case was then closed as unfounded, with other misconduct noted in that PAA F lived outside New York City in violation of his employment residency requirements.

Case Analysis:

All that was required to complete this investigation satisfactorily was for the investigator to confirm that PAA F in fact lived on Long Island, as he claimed when he spoke to the officers who executed the search warrant. This could easily have been done with a visit to the PAA's home or even, at a minimum, a request that he produce evidence of his Long Island residency, such as a lease or canceled rent checks. However, the investigator not only failed to confirm the subject's address but, more basically, failed even to interview PAA F and obtain a specific address. IAB's failure to take these elementary steps, which would have required minimal additional effort, renders the investigation insufficient. This is especially true in light of IAB's finding that the allegations were unfounded, a finding which is only warranted if investigators affirmatively determine that misconduct did not occur.

Case 4:

In August 1995, IAB investigators interviewed a confidential informant who claimed that he worked for a drug dealer who was receiving information from two police officers. Although the informant could offer little information to identify the officers, he did provide their likely last names, the precinct where they were assigned, and the precincts where they may have previously been assigned. Searching personnel records for the entire borough where the precincts

mentioned by the informant were located, investigators found that there were six officers working in the borough with one of the last names provided by the informant and nine officers with the second name. However, none of these officers were currently assigned to the precinct identified by the informant.

The informant subsequently provided additional information which became the basis of three narcotics search warrants. When the warrants were executed, IAB investigators accompanied the warrant teams to look for evidence that police officers were connected to the drug operation (such as PBA cards, telephone numbers for members of the Department, etc.). Following the searches, eleven people were arrested for narcotics possession and related offenses, including the drug dealer who purportedly received information from the subject officers. All of the defendants were debriefed by IAB investigators and denied knowledge of police misconduct. IAB then closed the case for information and intelligence.¹⁸

Case Analysis:

The investigators' initiative in accompanying execution of the narcotics warrants to search for signs of corruption was laudable, and their debriefing of the defendants arrested as a result of the searches was also very thorough. Unfortunately, while taking some worthwhile investigatory steps, the investigators overlooked others that were appropriate to disposing of the informant's allegations.

Specifically, IAB narrowed the pool of potential subjects to approximately fifteen (six

¹⁸ IAB will close a case for "information and intelligence" when there is insufficient evidence to conclude a case was substantiated or unsubstantiated. A permanent record is maintained of this disposition for investigators to refer back to in the event a subsequent allegation is lodged against the subject officer.

with one last name and nine with the other), but failed to take any additional steps that might have yielded identifiable subjects. These missed steps included contacting the integrity control officer at the precinct where the informant said the officers worked to determine if any officers who fit the informant's information had recently transferred from the precinct; reviewing prior assignments of the fifteen possible officers to determine whether any of them had been assigned to that precinct or the two other precincts the informant had identified; and attempting to match one or more of those officers to the informant's physical description. Given that the informant had provided reliable information for search warrants which yielded eleven arrests, it was an oversight that IAB did not take these limited additional steps to follow up on his information about the identity of the officers.¹⁹

Case 5:

In August 1995, a woman arrested for an outstanding warrant on a drug offense reported that on several occasions she had seen a man who wore a silver shield around his neck frequent a bar where drugs were sold and receive money from the bar owner. The woman provided a description of the owner, the address of the bar, and a description of the van driven by the man with the shield. The woman also reported that the bar opened on Thursdays through Sundays at about 2:00 a.m. and provided the bar owner's nickname. The woman had originally been arrested at the bar a couple of months earlier with four other people and, while there were no complaints about drug activity at the location since then, the bar was identified in several complaints from

¹⁹ During the Commission's meetings with the case investigators to discuss these criticisms, no reference was made to having contacted anyone in the precinct. The Chief of Internal Affairs was subsequently advised that such discussions had taken place with the precinct Commanding Officer. To the extent such timely discussions did take place, that would largely cure the defects in this investigation.

the months preceding the arrests.

At 2:00 a.m. on a Saturday morning about one week later, investigators conducted surveillance of the bar. The bar was closed and DMV checks of cars parked in the area yielded no leads. Interviews with people in the neighborhood revealed that the bar had stopped operating. Investigators confirmed this information during an interview with one of the current owners of the building where the bar was located, who reported that it had shut down when he and his partner had purchased the building shortly after IAB received its allegation. Subsequent attempts by investigators to re-interview the complainant were unsuccessful because she was no longer living at the address she had provided to police. At this juncture, IAB closed the case for “information and intelligence.”

Approximately nine months after the closure, this particular case was also the subject of review by the Department’s Quality Control Unit (“QCU”). See § IV(A) *infra* at p. 37 (discussing QCU and its review of IAB closed cases). The QCU, noting that the Commission was also reviewing the file, identified a number of additional investigative steps which should have been performed. First, QCU wanted investigators to find the prior owner of the building where the bar was located. In response, an investigator interviewed the partner of the new owner who had previously been interviewed and learned that the partner had purchased the building from a bank and that a bank employee had told the partner that the property was repossessed after the previous owner had died.

Second, QCU suggested that investigators obtain the arrest records for the four people arrested with the complainant in June 1995. Apparently, this suggestion was made so that IAB could locate and interview the arrestees for further information. Investigators obtained the

records, but efforts to contact the four individuals were unsuccessful.

Finally, QCU suggested that investigators consult the Department's nickname file for possible identification of the bar owner. Nothing in IAB's records indicates whether this was ever done.

Case Analysis:

There were several shortcomings in this investigation. To begin, IAB should have obtained the arrest records of the four people arrested with the complainant at the outset of the investigation. Since these people were arrested in the bar and may still have had charges pending against them when the investigation got underway, they were promising sources of information about a member of the Department frequenting the bar and may have been inclined to cooperate. By the time QCU suggested locating the potential witnesses, however, more than a year had elapsed since the case was opened, the arrestees were no longer in the criminal justice system, and they could not be found at the addresses they had provided when arrested.

In addition, investigators should have contacted the bank which had sold the building (where the bar was located) to its new owners to confirm that the prior owner had died. All that may have been required to make this confirmation was a phone call to the bank's loan department and, if it turned out that the new owner was mistaken and the prior owner could be contacted, investigators might have developed a lead.

Finally, there is nothing in IAB's file which indicates that investigators consulted the Department's nickname file to try to identify the bar owner. And, even if it was done at QCU's prompting, that step should have been taken at the outset of the investigation.

Case 6:

In September 1995, a beauty salon owner called "911" to report that her salon's security gate had been broken and the salon had been burglarized. During the call, Mr. Y, who lived in an apartment above the salon, spoke to the "911" operator and reported that he had seen two police officers leaving the salon at about 4:00 a.m. and drive away in a marked police car. This information was relayed by the "911" operator to the Action Desk.

Investigators subsequently interviewed Mr. Y, who confirmed that he had seen two uniformed police officers walking away from the salon after he was awakened by loud noises -- including someone banging on the salon's security gate -- and looked out his apartment window. The witness described the general height and build of the officers, one officer's hair color, and explained that he saw one of the officers carrying some sort of object. Investigators then reviewed precinct records to determine whether there was any patrol activity in the salon's area on the night of the burglary and reviewed photos of the officers who were assigned to motor patrol that night. While there was no report of activity in the area of the salon, investigators identified several officers who fit the description provided by Mr. Y. Investigators then checked the Department's CPI for background information on the possible subjects and found that none of them had "similar allegations." Shortly after this the case was closed as unsubstantiated.

Case Analysis:

According to the investigators' case closing memorandum, they recommended that the case be closed unsubstantiated "[d]ue to [Mr. Y's] lack of credibility, no identifiable subjects and no physical evidence." An analysis of the steps taken by the investigators reveal that while

arguably Mr. Y may not have been entirely credible²⁰, additional investigative steps were warranted.

The investigators concluded that there were “no identifiable subjects” of the investigation even though thirteen officers were identified who generally matched the description given by Mr. Y. Instead of showing Mr. Y photo arrays, the investigators rejected all of them as possible subjects merely because none had prior “similar allegations.” While the existence of prior similar allegations provides a basis to intensify the scrutiny of a subject officer, the absence of such allegations here was not sufficient enough reason to refrain from having the witness view photos. Moreover, the investigators failed to canvass the neighborhood around the salon to locate additional witnesses who might have identified the subjects. Given that Mr. Y was awakened by a loud noise, there was a reasonable possibility that someone else living in the area may have heard or seen something of value.

Finally, the case summary cites a lack of physical evidence as an additional reason to close the case, but the investigators made no attempt to collect physical evidence. Specifically, the burglary scene was not processed for fingerprints or other evidence which may have linked officers to the location, despite the fact that the salon’s gate had been broken open and the burglars had removed an air conditioner to gain access to the interior of the salon. Plainly, the gate and the air conditioner, if nothing else on the premises, were promising sites for the

20 During the initial “911” call placed by Mr. Y, he stated he did not see anything in the officer’s hands because it was “too late” to see anything and at that point the officers were getting into their car to leave. During a subsequent interview with Mr. Y, however, he stated he saw one of the officers carrying an unidentified object. According to the owner, the property that was stolen consisted of a pay phone and some cash.

recovery of fingerprints.

Case 7:

Officer G owned a building which contained six apartments and a ground floor store. In January 1995, a building tenant complained to the local precinct that a social club was operating in the building and further alleged that Officer G allowed the club to operate. The Borough Inspections Unit was apparently notified of the allegation against Officer G shortly after it was received, and a Command Center log was generated in July. Soon thereafter, IAB took over the case.

Upon investigation, IAB learned that in February 1995, VED had arrested the store owner for maintaining an illegal "joker poker" gambling machine in his store and a pool table and two additional gambling machines in the basement beneath the store. During an interview with the investigating officer the complainant stated that on several occasions she had complained about gambling in the basement to Officer G's father, who collected rent and made repairs in the building. The investigator then scheduled and conducted a PG-118.9 interview of Officer G. See note 17 supra at p. 20. According to the investigator's worksheet for the interview, Officer G stated that he is a part owner of the building, along with his father and brother, and has limited contact with the building or its tenants because he does not collect rent or make repairs in the building. Further, while Officer G recalled that someone had complained about neighborhood kids playing pool in the basement, he did not know that there was gambling in the basement or store. Based on these statements, the investigator concluded that Officer G was not aware of any illegal activity in the building. Soon after the interview, IAB closed the case as unsubstantiated.

Case Analysis:

While the allegation against Officer G was not on its face particularly serious, it is impossible to know where an investigation may lead by the time all appropriate investigatory steps have been completed.²¹ Certainly, IAB must prioritize its cases and allocate its resources accordingly. In this case, however, there was sufficient reason to believe that Officer G might be ignoring an illegal situation in his building to warrant reasonable inquiries. Simply put, once the allegation against the officer was deemed sufficiently serious to merit an IAB investigation, the few steps required to complete the investigation should have been done properly.

Unfortunately, while the investigator personally interviewed the complainant, he made no attempt to interview the store owner or other tenants in the building to determine how frequently Officer G visited the building; whether he was ever in a position to see the gambling machines in the store or basement; and whether other tenants complained about the situation to the officer. These interviews would not have required significant additional effort, since the investigator could at least have attempted to speak with these other potential witnesses when he visited the complainant.

The investigator's efforts during Officer G's PG-118.9 interview were equally insufficient. There, Officer G offered several vague or inconsistent statements which should have triggered questions from the investigator to pin down the subject's story. For example, Officer G initially claimed that he was unsure whether he knew the complainant, but later

²¹ The case discussed at pp. 11-17 is a good example of initially weak allegations which developed into a major case.

recalled, in passing, that the complainant lived in a first floor apartment.²² Officer G was also inconsistent about his contact with the building, first claiming that his father handled repairs but then admitting that he, not his father, handled major repairs. And, more significantly, Officer G admitted that he had gone into the basement during the preceding winter, around the time that VED confiscated gambling machines from the store and basement.

Unfortunately, the investigator failed to pursue any of these questionable statements. While none of Officer G's vague or inconsistent statements were dramatic and he may have offered reasonable clarifications if asked to do so, the fundamental purpose of the interview was for the investigator to seek out inconsistencies in the officer's account and try to resolve them in a manner which indicated either culpability or innocence. To do this would have required no more than some additional attention to details and a few focused follow-up questions. Without that follow-up however, the interview was a pro forma exercise.²³

Case 8:

An anonymous caller to the Command Center alleged that Officer H associated with "mafia" figures and provided a general location where the meetings took place. The assigned investigator's review of Officer H's CPI revealed that he was the subject of a prior corruption allegation in which a sergeant assigned to the Organized Crime Intelligence Division ("OCID") reported that Officer H had been overheard on a wiretap of a gambling location. During that

²² See pp. 42-44 for a discussion of issues surrounding disclosure of the identity of complainants and witnesses to subject officers and the Commission's recommendations regarding disclosure.

²³ In furtherance of its monitoring function, the Commission has reviewed other PG-118.9 interviews conducted by IAB investigators and has noted similar weaknesses.

conversation, Officer H was recorded discussing a gambling debt.²⁴ In addition, Department intelligence indicated that there was a limousine service owned by a member of an organized crime family in the area identified by the anonymous caller.

Having developed this background information, the investigator requested surveillance of Officer H. Although surveillance was conducted of Officer H while he was off-duty on at least nine occasions, no misconduct or suspicious activity was noted. In addition, the subject was never seen near the limousine service. No further investigative action was taken and the case was closed as unsubstantiated.

Case Analysis:

In this case, the subject officer's prior connection to a gambling location and corroboration of part of the information supplied by the anonymous caller (the existence of a business connected to organized crime in the area identified by the caller) placed the subject's integrity squarely in doubt. The officer may simply have been a gambler who placed bets with the wrong people, but a thorough investigation was required for IAB to determine the extent of the problem. While surveillance of Officer H was certainly appropriate, it should not have been the only investigative step IAB took before closing the case. This is especially true since surveillance is very time consuming and there were equally promising avenues of inquiry which could have been explored with minimal effort.

Specifically, IAB should have obtained copies of the subject's phone records to determine if he was calling known organized crime or gambling locations. In addition, IAB

²⁴ The Commission requested IAB's case file which resulted from OCID's report of this event, but IAB has been unable to locate the file.

should have prepared a "financial profile" of the officer consisting, among other things, of information about his credit, property, and bank accounts. In this way, investigators may have been able to determine whether he was having serious financial problems. To obtain the necessary records, IAB could have requested subpoenas from the Department's legal bureau and reviewed the records after they were produced.²⁵ If examination of several months of the subject's phone records revealed no contact with suspect locations and he had no recent, unusual financial activity, it would have been reasonable to conclude that the allegation against him was probably meritless. Absent the record reviews, however, the investigation was incomplete.

After bringing these concerns to the attention of the Chief of Internal Affairs, the Chief directed that a review of Officer H's telephone and financial records be undertaken.

Case 9:

Officer I and eleven other officers executed a search warrant at an apartment where drugs had been purchased by a confidential informant. As a result of the search, the officers seized drugs and guns, several people were arrested, and approximately \$8000 in cash was vouchered. Officer I was the vouchering officer, which means that he completed the paperwork to record the cash seizure but was not necessarily the officer who discovered the cash or handled it before it reached the precinct.

About two months after the search, the attorney for the people arrested in the apartment

²⁵ As a general matter, banks will notify customers if their account records are subpoenaed and investigators are justifiably circumspect about seeking bank records. However, some banks will honor requests by investigative agencies not to disclose the existence of a subpoena and, if a bank is unwilling to honor such a request, the Department can enlist the assistance of a District Attorney's Office to obtain a court order precluding disclosure of the subpoena. Moreover, a substantial financial profile can be drawn from more readily available records, with no risk of alerting the subject that a financial examination is underway.

reported to the District Attorney's Office that, according to his clients, there had been \$15,000 in the apartment and the police had stolen approximately \$7000. Upon receiving the allegation, IAB identified Officer I as the subject of its investigation. According to IAB's worksheets, Officer I was deemed the subject solely because he was the vouchering officer. After protracted and unsuccessful attempts by investigators to interview the complainants and other appropriate investigative steps, the case was closed as unsubstantiated.

Case Analysis:

In many respects, IAB resolved this case competently. However, it had one basic flaw: IAB identified the subject officer as the sole target of its investigation without considering whether other members of the warrant team should have been investigated as well. Given the nature of the allegation, there was nothing that distinguished Officer I from the other officers who had access to the cash at issue other than the fact that Officer I completed the vouchering paperwork. And, while Officer I's involvement in the vouchering process indicates that he handled the cash at some point between the time it was discovered and the time it was secured at the precinct, there is no reason to believe that Officer I was the only officer who had access to the money or an opportunity to steal. Under these circumstances, IAB should have included the other members of the warrant team in its investigation.

To do this, IAB need only have taken limited additional steps. Since the complainants did not want to cooperate with IAB it was extremely unlikely that the investigation would yield any meaningful results. As a result, it would be an inefficient use of IAB's resources if it devoted substantial efforts to investigating every officer involved with the search at issue. At the same time, however, the investigator assigned to the case could easily have reviewed the CPI's

of each officer on the warrant team to determine whether any officer had a pattern of similar allegations or the team as a whole was implicated in an unusual number of complaints.²⁶ In this way, IAB could have had an opportunity to identify patterns of complaints that might otherwise escape notice, and pursued the case further if indicated.²⁷

Case 10:

The complainant was arrested by Officer J for drug possession. At the time, Officer J was working with a supervising sergeant and several other officers as part of a team to make drug arrests. About two weeks after his arrest, the complainant reported to IAB that he had been carrying \$25 in cash, a leather backpack and a beeper when he was arrested by Officer J and that none of the property had been vouchered by the officer or returned to the complainant.

The assigned investigator reviewed the arrest paperwork, interviewed the complainant, and scheduled a PG-118.9 interview of Officer J. During the interview, Officer J stated that he arrested the complainant for drug possession after another officer saw him ingesting drugs on the street. At the time of his arrest, the complainant was carrying a packet of heroin and, according to Officer J, did not have any cash, a backpack, or a beeper. Officer J also denied taking any of the complainant's property. The case was subsequently closed by IAB as unsubstantiated.

²⁶ The Commission collected and reviewed the CPI's for each of the officers on Officer I's warrant team and found that none of the other officers had recent or similar allegations of corruption which would suggest that he or she might have been an appropriate subject in the instant case. Nonetheless, this is a step IAB should have performed while the investigation was open.

²⁷ Two other cases reviewed by the Commission also involved allegations of theft of money during the execution of a search warrant. In the first case, the United States Attorney's Office and Drug Enforcement Administration were involved in the investigation and all members of the warrant team were investigated. In the second case, investigated by IAB alone, only the vouchering officer was identified as a subject. However, the case was quickly closed by IAB when the amount of money the complainants had claimed was stolen was found to have been properly vouchered.

Case Analysis:

Allegations involving theft of prisoner property often come down to the word of the complainant against the word of the arresting officer. Here, the investigator collected the relevant arrest paperwork and interviewed the complainant and subject officer, but failed to take the equally obvious steps of interviewing the sergeant who was present at the complainant's arrest or follow-up on significant information that should have been gleaned from Officer J's paperwork.

More specifically, Department procedures require the presence of a supervisor when property is taken from a prisoner during a drug arrest. The purpose of the policy, according to IAB, is to ensure that prisoner property is properly accounted for and, if an allegation of theft arises, ensure that a third party was present at the time of arrest to vouch for the subject officer's conduct. In this case, the investigator knew the name of the sergeant who was assigned to Officer J's team on the day the complainant was arrested and Officer J himself claimed, during his PG-118.9 interview, that the sergeant was present when the complainant was stopped. Under these circumstances, interviewing the sergeant was plainly warranted. Indeed, even if the investigator was inclined not to credit the complainant's allegation and felt that interviewing the sergeant was unlikely to yield any information that would inculcate Officer J, the investigator should have pursued the interview to confirm that the sergeant would not corroborate the allegation or, conversely, offer information that might help exonerate the officer.²⁸

²⁸ IAB investigators should pursue information that may exonerate an officer no less diligently than information that may reveal guilt. The sergeant's statements and an evaluation of his credibility would have assisted in this effort.

The investigation in this case was insufficient for the additional reason that the investigator failed to question Officer J about an obvious and material inconsistency in his version of events. During his interview, Officer J denied that he removed any money or property from the complainant apart from a packet of drugs. Yet, according to the prisoner property envelope cover sheet that Officer J filled out at the time of the arrest, the officer also removed an unknown amount of "USC" (United States currency). While there may have been an innocent explanation for this inconsistency, the investigator's failure to question Officer J about the contradiction between his statement and his own paperwork was a serious oversight. This is especially true given that Officer J was the subject of several prior allegations of corruption. Although none of those allegations were substantiated, the number of allegations suggest that Officer J may be a problem officer.

Case 11:

The Commission determined that an additional closed case was insufficient for failure to conduct official departmental interviews of the subject officers relating to allegations of using departmental resources, for personal gain, in furtherance of criminal conduct. IAB advised the Commission that the officers were not interviewed because it may have compromised the identity of an undercover informant who was being utilized by another law enforcement agency. Commission staff pointed out that there had been no effort on the part of IAB investigators to communicate with that agency to determine the status of the informant's cooperation and whether such cooperation had ceased. Based upon its own inquiries, Commission staff determined that the informant was no longer working with the other agency. Based upon the submission of its critique to the Department, the Department formally re-opened the

investigation. IAB investigators confirmed that the informant was no longer cooperating with the law enforcement agency. Insofar as the investigation is currently active, the Commission will not discuss the case in any further detail so as not to compromise the integrity of the inquiry.

IV. ADDITIONAL OBSERVATIONS AND ISSUES²⁹

A. The IAB Quality Control Unit

As part of its own efforts to monitor and improve the quality of its investigations, IAB maintains a Quality Control Unit ("QCU") which, among a variety of duties, reviews and critiques closed IAB cases.³⁰ Between January 1 and March 31, 1997, the QCU reviewed 134 closed cases drawn from all of IAB's investigative groups. According to information supplied to the Commission by QCU, any deficiencies found during QCU's closed case reviews are handled in the following manner:

Significant deficiencies or discrepancies noted by the Quality Control Unit investigators during the course of reviewing particular cases are brought to the attention of the case investigator. Additional investigative steps and/or other

²⁹ In addition to the observations set forth in this section, the Commission noted that in some cases, at the conclusion of an investigation, IAB has determined that there are sufficient facts to substantiate an allegation but, at the same time, the Department's internal prosecutors conclude, based on reasons including evidentiary and other legal issues, that the charge can not be proven by a preponderance of the evidence at an administrative trial. The question then arises, what happens to the subject officer and her departmental record when IAB concludes that an allegation should be substantiated but the Department's administrative prosecutor declines to prosecute the case? After bringing these issues to the attention of the Department, the Commission has been informed that in cases where consensus cannot be achieved, IAB will present its position to the First Deputy Commissioner for resolution.

³⁰ Apart from closed case reviews, QCU also monitors the performance of the IAB Command Center, which receives and processes complaints against members of the Department; maintains the Prosecution Monitoring File Report, which tracks criminal and administrative proceedings against Department personnel; conducts periodic "self-inspections" of IAB; and undertakes research and special projects for the Chief of IAB.

corrective measures are then taken, as appropriate. Administrative errors or omissions such as database entries are noted and rectified.

Common errors and inconsistencies are referred to the Internal Affairs Bureau Training Unit for dissemination during future training sessions or are addressed in the Quality Control Unit Bulletin, which is periodically issued.³¹

In performing its reviews, QCU evaluates whether case investigators have met “basic investigative standards,” including whether they were able to “identify and address all allegations, locate and interview complainants and witnesses, conduct canvasses, surveillance and integrity tests,” and employed other “appropriate techniques” to either prove or disprove the allegations.³²

The Commission believes that IAB’s internal quality controls and coordination between QCU and IAB’s training unit are essential to achieving a consistently high standard of performance within IAB. In the course of preparing this report the Commission saw several cases in which QCU had critiqued the performance of IAB investigators and in each of those cases QCU’s suggestions or criticisms seemed appropriate. This report, however, was not designed to evaluate QCU’s performance or whether it is having a meaningful effect on the overall performance of IAB. Accordingly, apart from noting QCU’s functions and endorsing its role in enhancing the quality of IAB’s investigations, the Commission cannot further comment on QCU at this time.

B. A Missing Case

One case reviewed by the Commission involved an allegation that a police officer had

31 March 26, 1997 letter from QCU’s commanding officer to the Commission.

32 Id.

falsely reported his car stolen and defrauded an insurance company. Although the complaint was received and logged by IAB in June 1992, IAB did not initiate an investigation until January 1996. Given the three and one-half years which elapsed between the time the complainant contacted the Department and the time IAB made its inquiries, the investigator who was assigned the case did a satisfactory job of investigating the allegation and did not uncover any information to implicate the subject officer. However, most of the information provided by the complainant was stale and there was little the investigator could do to develop new information. Under these circumstances, it is impossible to be confident in the disposition of the case, which was eventually closed as unsubstantiated.

According to IAB, this case had simply "fallen through the cracks" and IAB accepted full responsibility for the error. The Commission has encountered no other IAB cases which have suffered similar neglect, either in the course of preparing this Study or at any other time, and the Commission recognizes that, given IAB's caseload, this may be a rare instance when a case was inadvertently lost in IAB's case management system. At the same time, IAB must ensure that its case management system is adequate and that there are sufficient safeguards to ensure that allegations are consistently and accurately tracked from intake to disposition. To this end, IAB periodically conducts internal audits to ensure that its case assignments are current and that all pending investigations are accounted for. In fact, it was through such an audit that the instant case was found. The Commission will periodically review the results of IAB's audits as they are completed.

V. CONCLUSIONS

The Commission has found that the overall quality of IAB's investigations is satisfactory and that a number of its cases are handled in an exemplary manner. At the same time, this report found that ten of the seventy-eight cases reviewed in depth by the Commission had shortcomings. As the case analyses demonstrate, most of the shortcomings in IAB's cases could have been avoided or remedied with a nominal amount of extra effort or preparation by investigators. Under these circumstances, although the number of cases which had shortcomings does not seem unusually high, the Commission offers several recommendations to help ensure the highest possible standards for IAB investigations.

A. Rigorous Supervision

Most broadly, the Commission has found that many investigatory errors could be quickly discovered and remedied by maintaining an intensive level of supervision by group commanders and investigation team leaders. Intensive supervision throughout the chain of command is already the norm in IAB, and the Commission encourages IAB to continue to demand that its supervisors and commanders have complete familiarity with each of the cases assigned to them and ensure that investigators under their supervision carry out all appropriate investigative steps.

Consistent with this, IAB must also continue to demand that case worksheets and closing memoranda accurately and completely summarize not only the investigative steps which were taken by investigators but also possible steps that were not taken and the reasons those steps were omitted. Even in cases reviewed by the Commission for this report which were deemed satisfactory, IAB's worksheets were often very cursory, especially compared to the type of detail that went into worksheets for the exemplary case discussed on page eleven. The success of that

investigation is perhaps the best proof of the benefits which can arise from the careful accumulation and recording of information. In this regard, the Commission is not suggesting that IAB return to the type of overly formalized investigation check-lists that were employed by the old Internal Affairs Division before it was reconstituted into IAB. That would be a mistake. Rather, IAB should continue only to require its investigators and supervisors to make case worksheets sufficiently detailed so as to be able to determine what was and was not done.

B. PG-118.9 Interviews

The Commission further recommends that IAB assess the effectiveness of the interrogation techniques employed by its investigators during PG-118.9 interviews. If properly utilized by investigators, PG-118.9 interviews can be one of the more effective tools at IAB's disposal. Careful questioning of a subject officer can reveal weaknesses and inconsistencies in the subject's version of the facts. In cases where subjects offer false statements to conceal their own or another officer's misconduct, investigators can probe and develop these false statements sufficiently so that the officer can be prosecuted for making such false statements. Indeed, lying at a PG-118.9 interview is an independent offense which itself should regularly result in the subject officer's termination.³³ If not used effectively, however, the PG-118.9 interview is merely a perfunctory exercise to obtain either denials from the subject or statements consistent with innocence to close a case, as demonstrated by Case Numbers Seven and Ten, discussed above.³⁴

³³ Police Commissioner Howard Safir issued a Policy Statement on December 12, 1996, which provides that any officer who makes a false official statement, including lying during an official departmental investigation, will be terminated, absent exceptional circumstances.

³⁴ When a thorough investigation has not yielded substantial evidence of misconduct, despite indications that misconduct has occurred, a PG-118.9 interrogation may be warranted either as a last
(continued...)

Given that PG-118.9 interviews are not only an instrument to uncover guilt but also a potential means of establishing innocence, these interviews plainly are important.

Accordingly, IAB should focus on improving its investigators' interview techniques and particularly address the difficulties which investigators may encounter when interrogating fellow officers. When the Commission brought these concerns to the attention of the Chief of Internal Affairs, he commenced a comprehensive training program to address these issues. IAB is already providing some training for PG-118.9 interviews and is in the process of developing enhanced training. The Chief of IAB has also instructed supervisors who are experienced interviewers to meet with investigators, review their cases, and offer guidance on how to proceed in cases where PG-118.9 interviews are required. The supervisors will then report on these meetings and their case reviews and the information will be used by IAB to help improve its training. The Commission will continue to monitor IAB's efforts to determine whether it is meeting the need to elevate the general level of performance of investigators at PG-118.9 interviews.

C. Disclosure of Witnesses/Complainants

In regard not only to PG-118.9 interviews but all aspects of an internal investigation, the Commission believes that investigators should not disclose the identity of complainants or witnesses whenever disclosure can be avoided, unless investigators are confident that no harm

34 (...continued)

resort to make a case or simply an appropriate means of closing an investigation. In certain contexts, the PG-118.9 interrogation may also serve as a warning to the subject of IAB's concerns regarding the officer's integrity or conduct. Conversely, IAB may elect not to interview a subject to avoid arousing his or her suspicions in anticipation of future investigation or integrity testing.

will result from the disclosure, and disclosure is necessary to advance an interrogation or other aspects of the case. For example, in Case Number Seven discussed at pages 28-30, the investigator disclosed during the subject officer's PG-118.9 interview the name of the tenant who had complained about a "social club" in the officer's building. This disclosure was not required to interview the officer effectively and, while the investigator may have thought it unlikely that the complainant would experience any adverse repercussions, it is possible that the tenant could have been harassed or otherwise suffered as a result of her landlord's knowledge of her complaint.

The investigator's disclosure, however, was made because PG-118.9(3)(f) provides that officers who are formally interviewed by the Department must be informed of the "[t]he identities of witnesses or complainants (address need not to be revealed) except those of confidential source or field associate (sic) unless they are witnesses to the incident" (emphasis in original). The appropriateness of this kind of formalistic requirement is questionable, particularly given the fears that witnesses have as to retaliation. Therefore, the Department should review this directive.

Of course, even under the existing directive, complainants or witnesses who express a desire to have their identities withheld from the subject officer can (and should) be considered "confidential sources", and IAB investigators should routinely ask complainants and witnesses if they prefer to remain confidential. If, as is likely, most witnesses and complainants request confidentiality, disclosure in many cases can be avoided.

Moreover, PG-118.9(3)(f) distinguishes between "witnesses" and "complainants," and only the identities of those confidential sources who are "witnesses" to an "incident" must be

disclosed. Even though a complainant may have witnessed an incident of corruption or misconduct, a reasonable construction of the disclosure provision allows that the identity of the complainant need not be revealed under any circumstances prior to an administrative trial, although the names of independent witnesses may have to be disclosed.³⁵ Even where witnesses are concerned, however, PG-118.9(3)(f) provides that their identities must be revealed only if they have witnessed a specific incident of corruption or misconduct; individuals who provide general information or allegations to investigators would not be covered by this language.

In short, the safest course of action is to leave the disclosure of complainant and witness identities until an administrative proceeding against a subject officer commences, if it ever does, when disclosure plainly is required to allow a subject officer to defend herself effectively.

D. Caseload Audits

Finally, IAB should perform more regular audits of its caseload to ensure that all of its cases have been assigned and are either on track to completion or have been completed and closed. At a minimum, the Commission believes that a bureau-wide caseload audit should be done on an annual basis, with regular monitoring by group commanders of cases assigned to their individual groups. IAB is already conducting caseload audits but, as the missing case discussed in section IV(B) above indicates, IAB may need to conduct the audits with greater frequency.

³⁵ In other words, if the provision was intended to include disclosure of complaining witnesses to an incident, it would have stated that investigators must disclose "witnesses to the incident *and complainants*", regardless of their wish to remain confidential. As it is written, a fair reading of the provision provides that the Department should never reveal, prior to trial, the identity of complainants who wish to remain confidential sources.

COMMISSION TO COMBAT POLICE CORRUPTION

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

COMMISSIONERS

Richard J. Davis, Chair

Currently, Mr. Davis is a partner with the law firm of Weil, Gotshal and Manges. He was Assistant Secretary of the Treasury (Enforcement and Operations) between 1977 and 1981, where he supervised the activities of the Secret Service, the Customs Service, the Bureau of Alcohol, Tobacco and Firearms and the Federal Law Enforcement Training Center. He had previously served as an Assistant United States Attorney in the Southern District of New York from 1970-73 and as an Assistant Special Prosecutor for the Watergate Special Prosecution Force. In 1987 he was appointed to a Commission to review the operations of the Philadelphia Police Department. In 1993 he served on a panel of experts appointed by the Justice and Treasury Departments to provide advice in addressing situations which may occur in the future similar to those which took place in Waco, Texas.

Charles M. Carberry

Mr. Carberry is currently a partner with the law firm of Jones, Day, Reavis & Pogue. He is a former federal prosecutor, having served from 1979 through 1987 as an Assistant United States Attorney in the Southern District of New York (including service as Chief of the Securities and Commodities Fraud Unit and Deputy Chief of the Criminal Division). Pursuant to his appointment by the federal district court, from 1989 to the present, Mr. Carberry oversees investigations and administrative prosecutions of allegations of corruption and dishonesty involving the Teamsters Union. Mr. Carberry is on the boards of editors of the White Collar Crime Reporter, Business Crimes Bulletin, and the Money Laundering Law Report. He has written numerous articles and has spoken frequently at seminars on white collar crime, securities fraud, and money laundering.

Rhea Kemble Dignam

Ms. Dignam currently is a Vice President and Deputy General Counsel at New York Life Insurance Company. She is a former federal and state prosecutor, having served from 1976 through 1988 as an Assistant United States Attorney in the Southern District of New York (including service as Chief, Narcotics Unit; Chief, Public Corruption Unit; and Executive Assistant United States Attorney). From 1988-1989 Ms. Dignam was the Chief Assistant District Attorney in Kings County and served as the Executive Deputy Comptroller, City of New York from 1990-1993 in which position she gained extensive experience monitoring the work of City agencies.

Hon. Dennis Edwards

Judge Edwards was appointed to the New York City Criminal Court in 1965 and served until 1982. Between 1975 and 1982 he was assigned to the Supreme Court of the State of New York as an Acting Supreme Court Justice. In 1982, Judge Edwards was appointed to the New York State Court of Claims, and was assigned to the Supreme Court of the State of New York, hearing primarily felony matters. He retired from the bench in 1989.

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