

The City of New York

Commission to Combat Police Corruption

**PERFORMANCE STUDY: A REVIEW
OF INTERNAL AFFAIRS BUREAU
INTERROGATIONS OF
MEMBERS OF SERVICE**

**Richard J. Davis
Chair**

Charles M. Carberry

Rhea Kemble Dignam

Ann Hayes

**Emery E. Adoradio
Executive Director**

**Julie Block
Deputy Executive Director**

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I. INTRODUCTION

Under its mandate, the Commission to Combat Police Corruption (“Commission”) is empowered to monitor and evaluate the investigations of the New York City Police Department’s Internal Affairs Bureau (“IAB”).

One important investigative tool at IAB’s disposal is the ability to compel members of the Department to appear for interviews regarding allegations of corruption. Interviews of this nature must be conducted pursuant to the guidelines of Section 118.9 of the Department’s Patrol Guide (“PG-118.9”) (“Interrogation of Members of the Service”).¹ (See Appendix A.) This report reviews how IAB has performed PG-118.9 interviews.

A PG-118.9 interview may be the sole opportunity for the Department to interrogate a subject officer (*i.e.*, an officer against whom an allegation is made) regarding a corruption allegation, or to interview police witnesses who were present at or who may have knowledge about the events in question. As such, it is an instrument that can help obtain an account of events from an interviewee that could aid the Department either in building an administrative case against the subject officer or in exonerating that officer. In discussions over the years with the Commission, the Department has stressed the importance of PG-118.9 interviews.²

¹ At the time of this writing, the Patrol Guide had recently undergone a reorganization and is now consolidated with the Department’s Administrative and Organizational Guides into a single Department Guide. In this new guide, PG-118.9 has been renumbered and is now found under section 206-13.

² According to IAB, interviews are conducted more frequently in certain types of investigations, such as

In a previous study the Commission examined the overall quality of IAB investigations,³ and determined that formal Departmental interrogations were not always being utilized to their full potential. The Commission recommended that IAB focus on improving its investigators' interviewing techniques and address the problems that investigators may encounter when interrogating fellow officers. In response to the Commission's concerns, IAB reported that it had commenced a comprehensive training program to deal with these issues.⁴

Given the potential importance of PG-118.9 interviews within an investigation, the Commission undertook this study to review and evaluate the quality of these interviews in a more comprehensive way than was done in its prior reports. As discussed more fully below,⁵ the Commission reviewed 26 investigations in which at least one PG-118.9 interview was conducted. In all, 62 interviews conducted in 1998 and 1999 were evaluated. In each case, the file was reviewed before the Commission examined the PG-118.9 interview(s) associated with it, in order to determine the investigative context for the interrogation.

In the past, the Commission has undertaken comprehensive monitoring studies in which samples of investigations were analyzed from start to finish. The focus of this

those involving allegations of excessive force.

³ *Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau*, October 1997.

⁴ *Ibid.*, p. 42.

⁵ See discussion below at pp.10-29.

study, however, was primarily on the quality of the interviews, and not on the overall performance of the investigation. While the overall investigation informed the Commission's analysis of the interviews, the intent of the study was to evaluate the quality of the interrogations alone, identify broad patterns in IAB interviews, and offer recommendations for overall improvement.

During its review of the PG-118.9 interviews in its sample, the Commission focused on such questions as:

- *Were the interviewers knowledgeable about the investigation and prepared in their questioning?*
- *Was the appropriate information elicited during the course of the interview?*
- *Did the questions adequately probe the allegations, and were follow-up questions asked when necessary?*

Based on the Commission's evaluation of its sample and a review of IAB's policies and procedures related to PG-118.9 interviews, the Commission determined that while IAB generally has appropriate programs and policies in place regarding interviews, and while most IAB investigators in the Commission's sample conducted the interviews in a competent manner, the interrogations need to be conducted more effectively, through better preparation, more detailed probing, and, in at least some cases, exercise of greater control over the questioning on the part of the interviewers. The Commission recognizes that an effective PG-118.9 interrogation can be done in various ways, utilizing different interviewing styles and techniques. However, in order to be effective, the interview must

meaningfully probe the subject matter involved and adequately address the allegations. To assist in achieving this goal, the Commission makes several recommendations, including continuing its emphasis on the training of interviewers, increased interaction with Departmental prosecutors in preparing for interviews in those cases that proceed administratively, and, perhaps most importantly, systematic internal review of PG-118.9 interviews by experienced IAB supervisors.

II. BACKGROUND

Official Department investigations into allegations of misconduct, whether serious or minor, often involve interviews of the subject officer and other police witnesses, and these interviews must be conducted under the guidelines of PG-118.9. If conducted properly, PG-118.9 interviews can potentially be one of the more effective tools at IAB's disposal and can be utilized in various ways within an investigation.

Careful and thorough questioning of an officer can test the officer's version of events and thereby help determine whether the officer did or did not commit the offenses being charged or has evidence relevant to an investigation. An effective interrogation can also reveal weaknesses and inconsistencies in a subject's version of the facts, and can "lock" the officer into a version of events so that his or her position cannot be changed later without explanation.

In cases in which subjects or witnesses seem to be offering false statements to

conceal their own or another officer's misconduct, investigators can probe and develop these possible false statements sufficiently so that the officer can be administratively prosecuted for making any such false statements. Pursuant to a policy statement issued by the Department on December 12, 1996, any officer who makes a false official statement, including lying during a PG-118.9 interrogation, will be terminated, absent exceptional circumstances.⁶

PG-118.9 enumerates the rights that all Department personnel are entitled to during a compelled Departmental interview (*See Appendix A*). These include: the right to counsel if a serious violation is alleged or sufficient justification is presented although the alleged violation is minor; the right to adequate notice of the interview;⁷ and the right to be informed of the charges against them, along with the names of witnesses and complainants making the allegation unless they are confidential sources.⁸ Additionally,

⁶ The Department's policy, formalized as Interim Order 65 of 1997, states that "[a]bsent exceptional circumstances, the making of a false official statement will result in dismissal from this Department. Examples of a false official statement include, but are not necessarily limited to, lying under oath during a criminal or civil trial, *as well as during an official Department interview conducted pursuant to Patrol Guide Section 118-9*" (emphasis added) See also the Commission's two reports on this topic: *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements*, December 1996, and *The New York City Police Department's Disciplinary System: A Review of the Department's December 1996 False Statement Policy*, August 1999.

⁷ Subject officers generally must be given at least two business days' notice prior to the date of an interview, in order to obtain and confer with counsel (the so-called "48-hour rule"), while police witnesses must have at least four hours' notice. This rule, however, has been eliminated from all union contracts except that for patrol officers. The City has indicated an intention to remove it from the next patrol officers' contract.

⁸ Confidential sources include participants in the Department's "field associates" program. However, under PG-118.9, if the confidential source who made the complaint was a witness (rather than a complainant), the name of that witness must be disclosed to the subject officer.

the Patrol Guide provides that the questions and answers resulting from the interview are confidential and cannot be used in any subsequent criminal proceeding, although they may be used against the interviewee in connection with a subsequent Departmental prosecution.⁹ Interviewees are also informed that a refusal to testify or answer questions relating to their official duties will subject them to Departmental charges and could result in their dismissal from the Department.

III. METHODOLOGY

In preparing this study, the Commission sought to review a cross-section of PG-118.9 interviews conducted by each of IAB's borough-wide geographic and specialized city-wide groups. In furtherance of this goal, the Commission obtained a list of all "C" cases closed between November 1, 1998, and February 28, 1999.¹⁰

In total, 384 cases were closed during those four months.¹¹ From a list of these cases -- denoted by case number only and listed according to the IAB investigative group to which each case was assigned and the month in which it was closed -- the Commission

⁹ As a matter of constitutional law members of the Department subject to compelled interrogations under the provisions of PG-118.9 receive use-immunity with respect to their statements made during these interrogations.

¹⁰ Allegations of corruption or serious misconduct that IAB receives are classified as "C" cases and retained by IAB for investigation. More minor investigations may be assigned to Borough Investigations units. Although these units conduct PG-118.9 interviews as well, the Commission's study focused exclusively on interviews by IAB.

¹¹ All cases selected for the Commission's sample appeared on the Department's original list of 384 cases closed during the time period requested. However, upon review of the files, the Commission noted that one case in its sample had been closed after that time period, in August 1999. This case was retained in the sample nevertheless, though it is not directly cited in this report.

selected 131 cases, chosen to include closed cases from throughout those four months and reflecting a cross-section of IAB's investigative groups. The Commission asked IAB to determine in which of these cases PG-118.9 interviews had been conducted.

The Commission initially sought a sample of approximately 25 investigations to review and ultimately selected 26 of the 131 cases cited by IAB -- this sample representing each of IAB's borough-wide geographical groups and city-wide specialized groups. Only then were audio tapes of the interviews and underlying case files reviewed by the Commission. In those 26 cases, 62 PG-118.9 interviews of subject officers and witnesses were conducted, and the Commission listened to audio tapes of all of these interviews.

While this study thus does not represent a scientifically selected sample, based upon its review the Commission believes that these 62 interviews are sufficiently representative to allow meaningful conclusions to be drawn. The findings of this study also are consistent with the observations by the Commission of PG-118.9 interviews in other studies.

IV. CASE ANALYSIS

As discussed above,¹² the Commission's analysis of the PG-118.9 interviews in its sample covered a number of issues. The Commission found, in general, that:

¹² See discussion at p.3.

- *many interviewers failed, during questioning, to adequately explore all aspects of the allegations in the case, or to properly follow up on any unclear or unresponsive answers given by interviewees;*
- *most interviewers appeared to have prepared written questions in advance of the interview, yet a number seemed to lack an overall strategy or goal for the interview that would have allowed them to move beyond prepared questions in response to an interviewee's answers; and*
- *some interviewers did not adhere to an appropriate demeanor throughout the interview, either by not maintaining control over the questioning and allowing the interviewee's representatives to conduct a portion of the interview, or by adopting an overly friendly and helpful stance toward the interviewee.*

Each of these points is addressed below.

A. Background Issues

IAB and the Commission both recognize that, from an investigative standpoint, it is not always necessary to conduct an official Departmental interview. Some allegations, for example, will be exposed as conclusively groundless through initial investigative steps. IAB informed the Commission (and the Commission agrees) that it may not always conduct an interview in such a case.¹³

Certain allegations, while they may prove impossible to substantiate, can nevertheless serve to put IAB on notice as to possible on-going misconduct by an officer.

IAB believes that rather than pursuing one particular investigation that will likely prove fruitless, it would be better served by closing the investigation (without interviewing the

¹³ In some circumstances, of course, there may be value nonetheless in conducting a PG-118.9 interview to obtain a formal denial of the charge by the subject officer. See further discussion of this issue below at p. 44.

subject), filing the information for later use, and either subsequently re-opening the investigation on its own initiative, or waiting for better intelligence to be developed about the officer's misconduct. If the subject is unaware that IAB is even alert to his improper activities, he may continue to engage in them, whereas a PG-118.9 interview would tip IAB's hand and, in all likelihood, cause the subject to either curtail only temporarily his actions or take steps toward concealing them from IAB scrutiny, thus making more difficult the development of further intelligence.

In some cases, ordering a subject officer to appear for an interview -- while it may be important in demonstrating that IAB has been thorough in its investigation of the allegation -- could draw unwanted attention to the complainant who brought the allegation or to others the officer believes may be the complainant. Therefore, to maintain the integrity of the investigation, and to thwart potential negative repercussions (including a possible chilling effect on officers coming forward with misconduct allegations), IAB may choose not to interview a subject officer. Since, under the terms of the Patrol Guide, the Department must provide the subject officer with the name of the complainant if the case goes to an administrative trial, this issue typically arises where IAB believes it is unlikely to be able to substantiate an allegation.

Another reason IAB might choose not to conduct an interview is the existence of a criminal investigation of the subject officer. If a local or federal prosecutor is engaged in a parallel investigation, IAB may be asked by that office not to interview the subject

officer during the pendency of the criminal matter so as not to risk conferring immunity or otherwise jeopardize a successful prosecution. IAB informed the Commission that, outside extreme cases,¹⁴ it will generally accede to a prosecutor's request by either delaying a PG-118.9 interview or completing its internal investigation without conducting one. Where it conducts an interview in these circumstances, IAB will "screen off" its administrative case by creating an investigative team separate from the criminal investigative team and restrict access to immunized statements to the administrative team. Through this method, the Department believes it can move ahead with an administrative prosecution without jeopardizing the criminal case.

IAB advised the Commission that it considers these factors, among others, in its case-by-case decisions whether to conduct a PG-118.9 interview. The Commission also was informed that IAB would not conduct an interview that would otherwise add nothing substantive to an investigation, and that IAB had no mandatory "checklist" of items to be done in an every case. While obviously the facts of each particular case need to be assessed, the Commission agrees with this general approach.

¹⁴ Because it faces an 18-month statute of limitations on its administrative cases, and because it is also limited in its ability to withhold salary for longer than 30 days from officers facing Departmental charges, the Department may decide not to delay its administrative prosecution of an officer in a case of egregious misconduct, in an effort to ensure that the officer is removed from the force as expeditiously as possible. On occasion, this may mean that a subject officer is interviewed by the Department even as a criminal investigation is on-going.

B. Failure to Probe Adequately

Nearly a quarter of the PG-118.9 interviews the Commission analyzed revealed a failure on the part of the interrogating officer to adequately probe for details in questioning a member of the service. Typically, this took one of three forms:

- *the interrogating officer failed to fully explore the allegation(s) by asking questions with enough detail,*
- *the interrogating officer did not ask appropriate follow-up questions in response to information elicited during the course of the interview, or*
- *the interrogating officer failed to address at least one discrete allegation in any way.*

There are circumstances where not probing a particular area may be part of a deliberate strategy. For example, IAB may wish to conceal part of its investigation if it believes the officer is unaware that IAB has knowledge of some aspect of possible misconduct. By summoning the officer for an official Departmental interview incident to an investigation, but not mentioning one allegation that has been made against the officer, IAB may in a particular case lull the officer into a false sense of security by giving him confidence that while IAB investigators have some information on the officer, they do not see the whole picture. This in particular cases would allow IAB to continue its observations of the officer or return to the investigation later, and perhaps build a stronger case against him as a result.

The Commission agrees with IAB that in appropriate cases this is a valid

investigative technique. However, in some of the interviews it reviewed, the lack of detailed questioning on allegations did not appear to be an investigative strategy, because even where interrogators failed to probe adequately, interviewers included all the allegations in their case descriptions at the outset of each interview.

Additionally, in a few cases in the Commission's sample, initial investigations by IAB proved the allegations groundless, yet PG-118.9 interviews were held nevertheless. These interviews appeared to have been conducted in a perfunctory fashion. In one representative example, thorough initial investigative work indicated that the allegations were groundless: the "victim" identified by the third-party complainant told investigators that the subject officer had engaged in no misconduct and independent investigative work demonstrated that the complainant's second allegation -- that the officer had lied on her application to join the Department -- was also false.¹⁵ Thus, no new information could have been gained from interviewing the subject officer. It appeared instead that investigators already intended to close the case as partly exonerated (on the first allegation) and partly unfounded (on the second),¹⁶ and this was reflected in the lack of probing that went on in the course of the interview.

Consistent with IAB's policy described above, this plainly is the type of case in which IAB did not have to conduct an interview at all, particularly if the interview was

¹⁵ In some examples in this study, the sex of an individual has been changed, in an effort to preserve confidentiality.

¹⁶ A disposition of exonerated indicates that the alleged conduct occurred but was entirely justified. A disposition of unfounded indicates that the alleged conduct never occurred.

held merely as a last step before closing the investigation. While the Commission does not fault IAB for interviewing the subject officer in the instant case, the Commission believes, however, that once the decision is made to conduct an interview, the interview should be carried out in a thorough and effective manner.

The Commission took note of the brevity of a large number of the interviews in its sample; in a significant number of cases, the substantive portion of the questioning lasted less than five minutes.¹⁷ While time alone is not a measure of the quality of an interview, it is nevertheless generally difficult to conduct a meaningful examination of an interviewee in such a short period.

An even more common problem the Commission found in its sample was a lack of follow-up questions after information was elicited from an officer. In a number of cases, an interviewee's answers raised new questions about the subject matter being discussed, offered new information previously unknown to the interviewer, or simply failed to respond clearly, or in a relevant manner, to the interviewer's specific question.

In each case, the interviewer ought to have pursued this line of questioning -- either by asking questions not previously contemplated or by repeating or rephrasing a question until obtaining a satisfactory answer. Instead, what the Commission often noted was that in these cases interviewers appeared unable or unwilling to be flexible and creative in exploring information gleaned at the interview. Rather, they seemed intent on

¹⁷ In calculating the substantive portion of the questioning, the Commission excluded the preliminary statements made by interrogators at the start of every interview, including the reading of PG-118.9 and the False

asking only their prepared questions, regardless of the information they produced, and appeared to lack a general strategy or goal for the interview that could guide them in asking additional questions, where appropriate.

In one instance, for example, an officer was alleged to be committing fraud relating to her residence in a subsidized apartment. The initial interview of another officer who may have been improperly subletting the apartment showed a failure to meaningfully probe the key issue. When the subject officer was questioned, that interview lasted less than five minutes, and interviewers did not apply the information they had gained from the other officer, which could have allowed them to ask more targeted questions of the subject officer.¹⁸

Case Study One

An example of failing to adequately probe on the part of the interviewer arose in an excessive force case in the Commission's sample. There, officers responding to a report of an emotionally-disturbed man who was threatening to kill himself, took the man into custody and brought him to a hospital for treatment. The emotionally-disturbed man claimed to be infected with HIV/AIDS and was threatening to infect the officers. While officers attempted to subdue him, and the man attempted to flee the hospital, he spit directly into the mouth of the subject officer, who responded by striking the man with his

Statement Policy.

¹⁸ IAB informed the Commission that the lead interrogator on these interviews was relatively new to IAB at the time of this investigation.

hand.

The man alleged he had been punched in the face several times, and the case file indicates that the key issue in the investigation was the manner in which the officer hit the individual -- and whether his actions were necessary as part of an effort to subdue the man, who was flailing his arms and struggling with the police and hospital personnel, or came merely as retaliation. The case disposition was exonerated because investigators concluded that the officer had not wrongfully assaulted the man.

The subject officer stated during his PG-118.9 interview that he had been attempting to push the man's face away when he struck the man with an open hand, in an effort to prevent him from spitting again, and that he repeated this action several times. The interviewer appeared to adopt this version of events in his questioning too readily, without adequately probing the subject officer. The PG-118.9 interview of the officer's partner also showed a similar lack of probing or follow-up questioning. This was so even though according to documents in the file, at least one other credible witness stated that the subject officer had hit the man with a closed fist, rather than an open hand, as the officer told investigators.

The file showed that the man had sustained injuries as a result of the incident -- including a bloodied nose and small fracture to his cheekbone -- and investigators asked no questions specifically regarding the nature of the injuries -- questions that would have tested the officer's version of the incident. In addition, the subject officer had a prior

history of excessive force allegations, although each was unsubstantiated, and had been on a Department force monitoring list from 1992 - 1995.

While the Commission recognizes how repugnant the conduct of the complainant was in this case, it believes that more should have been done to explore the allegation before determining that no excessive force was used.

Case Study Two

Prompted by an allegation from a confidential source, IAB undertook an investigation into a football betting pool in which a number of members of the Department may have participated. IAB investigators discovered the names of several participants, including the pool's organizer, and ordered these officers to appear for PG-118.9 hearings. The Commission noted, though, a serious failure to follow up on answers given by interviewees throughout these hearings.

For example, a number of interviewees were asked whether they could name any other officers who took part in the pool. However, rather than answer the question directly, one interviewee responded evasively, saying he could not state specifically which officers' names were connected to which boxes in the grid that made up the pool. Another officer also re-formulated the question, answering that he couldn't name all the participants, rather than attempting to name any. A third officer was asked whether any "high-ranking" officers were either involved in the pool or had knowledge of its

existence; the officer first said “no” but then interjected, “Correction” and stated only that he knew of none who were “involved” -- explicitly skirting the question of awareness of the pool. In each instance, the interviewer neglected to follow up his question, and an opportunity to obtain information about the pool’s participants was lost.

Aside from the possibility that Departmental regulations may have been violated by any officer who exchanged money for gambling purposes on Department property, or posted information about the pool publicly, a more serious issue was raised by the allegation. Under New York State law, promotion of gambling is a criminal offense if anyone benefits from operating the pool, and in the large dollar amounts involved in this particular pool, such conduct might have constituted a felony.¹⁹ Yet this issue was never the focus of the interviews IAB conducted, and investigators made little effort to determine whether someone had received monies for conducting the pool. In fact, none of the interviewees -- including the organizer of the pool -- was ever specifically asked whether all proceeds of the pool had been paid out, or whether the organizer had retained some for himself.²⁰

Another such case of failure to probe involved an officer alleged to be accepting

¹⁹ See New York State Penal Law, § 225 et seq.

²⁰ In discussing this case with the Department, IAB stressed that it was the interviewer's deliberate strategy not to ask this question based on a view that the football pool monies were all accounted for. The Commission disagrees with this approach, however, and notes that the subject officer could have been paid for operating the pool outside of the pool amount and in any case, questions remained as to the exact amounts contributed to the pool.

kickbacks for his role in procuring supplies for a Department unit. Although the investigator had familiarized himself, before interviewing the subject officer, with the basic details of the unit's purchase procedures, the interviewer failed to follow up with meaningful questions about the subject's role, and the roles of others, in that process. An instance of failure to ask questions about a discrete allegation arose in the case of an officer accused of sexual abuse and theft of money from a prisoner in the course of what was alleged to have been an improper strip search. The PG-118.9 interview of the subject officer, although satisfactory as far as it went, was limited only to the nature of the search itself, and whether there might, in fact, have been any sexual abuse. No questions were asked addressing the issue of whether a theft might have occurred as well.

Case Study Three

One officer interviewed in the Commission's sample faced a variety of allegations, ranging from stock fraud and other financial wrongdoing to participation in arson to attending to personal matters while on duty. Although the interviewers appeared to have been familiar with each allegation in this complex case and used certain records in questioning the subject officer, numerous answers given by the officer called for follow-up questioning that was not pursued.

In general, the interviewers' questions also only scratched the surface of the allegations they were intended to explore. For example, the officer was asked about his

relationship with the owner of the property where the arson took place, but the interviewers did not probe his statements that he had not discussed the arson with the man (with whom he was in regular contact) and that he had provided security to the man on his property as a favor -- not in return for payment.

As for the fraud allegations, the officer's financial dealings were quite tangled, yet the interviewers did not pin him down to precise answers that could have assisted their investigation. While each allegation was dealt with in turn, none was explored in enough depth. This case also raised a preparation issue since had the interviewers confronted the officer with records as to his financial history, they might have elicited responses that are more detailed and fewer claims of "I don't recall."²¹

In another case, an interviewer asked leading questions that offered facts to the subject officer, rather than calling on the officer to tell the story herself. At one point, the interviewer stated, "[The complainant] alleges that someone hit him and knocked him to the floor of the van -- did you do that?" In addition to being less effective in gathering the details of the incident than they might otherwise have been, such questions can also offer the interviewee a better opportunity to provide an exculpatory account of events, whether true or not. A better approach might have been to have the officer explain to the

²¹ In discussing the quality of the interview, IAB leadership stressed that because the District Attorney's Office with jurisdiction over the case had declined to prosecute it, the outcome of the Department's case would not have been different if the questioning had been more thorough. The Commission believes that while this decision by a District Attorney's office may help guide IAB in its case, it should not be dispositive with respect to an IAB investigation and possible Department prosecution.

investigator the entire arrest process of the complainant and then follow up depending on the responses.²²

In almost all of the interviews in the Commission's sample, two representatives from IAB were present, with one leading the interview and the other posing questions only occasionally, if at all. However, the Commission did observe a small number of cases in which the two interviewers did not appear to have coordinated their approaches to the interview in advance. To the extent that the interviewers may have different ideas going into an interview, this likely will detract from its investigative value.

C. Preparation for Interviews

For an interview to be successful, it is crucial that the interviewer prepare in advance, by both familiarizing herself with the facts of the case and by drawing up a list of questions to be asked and information to be gathered during the interview. The Commission found that, for the most part, the interviewers it reviewed did appear to have prepared questions but sometimes appeared to lack sufficient familiarity with the facts of the investigation to be able to do appropriate follow-up during the interview.

IAB informed the Commission that PG-118.9 interviews are typically conducted by the lead investigative officer on the case; this is done specifically to allow the officer who, presumably, has the best working knowledge of the case to interrogate the

²² IAB leadership acknowledged to the Commission that the interviewer in this case was tentative in his questioning but pointed out that he had been with IAB for only about five months at the time, and that a more

interviewee. This approach should produce questions and follow-up that are as thorough and effective as possible, and in general yield the most valuable information from the investigation.

According to IAB policy, before an interview, the interrogating officer should meet with a superior -- either a supervisor directly overseeing her work, or the group captain responsible for all cases assigned to that investigative group -- to discuss the proper approach to the interview. This provides an opportunity to plan strategies and goals for the interview, and helps ensure that all appropriate questions are asked of the officer.

Interviewers for the most part appeared to be working from a prepared list of questions, because generally the questions were framed coherently and seemed to have been rehearsed. However, while the Commission found that many of those interviewers it heard appeared to closely follow the prepared questions, they then sometimes seemed unable to go outside those parameters when interviewees provided new or unexpected information.

The Commission also found some problems with an apparent lack of a coherent goal or theory of the investigation. In these cases interviewers appeared to be either unprepared in their questions and/or insufficiently familiar with the background to the allegations, which resulted in their failure to appropriately question the subject officer.

experienced investigator was assigned to sit in on the interview, to assist him.

In one such instance, an allegation was made that money and property had been taken from a store by one or more police officers. The complainant stated that upon opening his shop, he found damage to the store and money and property missing. Because he was told by neighbors that police officers had been seen inside the premises the night before, he concluded that at least one of the responding officers was responsible.²³

It was critical for investigators, in investigating the case, to determine exactly which officers responded to the store on the night in question. Yet the interviewer appeared unfamiliar with the location and apparently had not reviewed Department documents that would have indicated which officers had responded to the scene at the time. In addition, rather than sufficiently probing to determine which officers had been inside the store, the interviewer strictly adhered to a prepared list of questions. This rendered the interviewer unable to ask the proper questions regarding the movements and actions of other officers in the store that night in an effort to draw out new details, or to assess the officer's version of events -- and challenge it, if necessary. To conduct an effective interview, it was necessary for the investigators to learn in advance what the location looked like and who was there at the time of the alleged theft, yet they appeared not to have done this.

The Commission also reviewed a few cases in which lack of adequate preparation

²³ The police were responding to reports of a burglary, though the owner told investigators he had made no such report himself.

may be to blame for problems noted with some of the questions posed to interviewees. One case involved an arrestee who complained of being beaten by arresting officers. The investigator interviewed several officers who had been at the scene, in an effort to get statements from all officers involved. Nonetheless, each officer interviewed was asked the same set of questions, and the interviewer made little endeavor to go beyond the prepared questions to probe each officer individually. The questions that were asked did not sufficiently probe the details of the incident and left an unclear record of the incident.

For example, one of the two officers who physically subdued the complainant upon his arrest, was asked confusing questions, and his answers were not sufficiently followed up, in an interview whose substantive portion lasted less than five minutes. The other officer of the two was asked leading questions based on a conclusion as to how the complainant sustained injury rather than asking a series of neutral questions designed at developing a complete factual record of what happened. In addition, one of the arrestee's three allegations -- that the officers had planted drugs on him -- was never addressed in the questioning. Fuller preparation and greater oversight by superiors in advance of this interview might have improved the quality of questioning and averted the problems.

D. Inappropriate Control and Tone on the Part of the Interviewer

A PG-118.9 interview is by its nature adversarial. Usually, it is conducted by a representative of IAB who is in the midst of an official investigation of the interviewee or another member of the service about whom the interviewee may have information. Under the terms of the Patrol Guide, an interviewee faces automatic suspension from duty for failing to answer any question,²⁴ and the Department's policy on false statements makes termination the default penalty for any officer who lies during an official Departmental interview. Partly for these reasons, the Patrol Guide requires that any member of the service be allowed to have legal representation present during a PG-118.9 interview.²⁵

Given the context and importance of these interviews, having counsel present at the election of the interviewee is plainly appropriate. However, interrogating officers must understand their role -- and that of an interviewee's representative -- and must maintain proper control over the course of the interview and proper demeanor toward the interviewee at all times. This means that while the interviewee's representative can be provided with the opportunity to object to any question, or to offer additional information for clarification of certain issues, she must not be allowed to propose questions on substantive matters to the interviewee. Further, while it is not necessary that the interview be openly confrontational, it is likewise inappropriate for the interviewer to

²⁴ None of the 62 members of the service interviewed in the Commission's sample explicitly refused to answer any question, though some gave evasive answers that went unchallenged.

²⁵ See discussion above at p.6. Also see discussion below at p.37.

take a conciliatory, supportive, or outwardly sympathetic tone toward the interviewee, except to the extent that this is part of a deliberate strategy.

IAB made clear to the Commission that it concurs in the view that while an officer's representatives have an appropriate role to play in protecting the officer's rights at the interview, they must not be allowed to seize control of the questioning, and that the interviewer must be willing to cut off the representative when necessary. IAB, and the Commission, acknowledge that new Departmental interviewers may be overwhelmed by the presence of an attorney with many years of experience in both PG-118.9 interviews and criminal trials. This issue cannot always be controlled or eliminated through training alone.²⁶

In the overwhelming majority of the cases in the Commission's sample interviewers did maintain control and showed an appropriate demeanor. In those instances when an interviewee's representative attempted to intervene in the questioning, the interviewer in almost all cases was able to re-assert authority over the interview, not allowing him to ask his own questions of the interviewee.

In a few cases, however, the interviewee's representative inappropriately intervened in the interview. Indeed, in one case, the subject's attorney was allowed to interject at least ten times in the course of a 15-minute interview.²⁷

That case involved an allegation by an arrestee that he had been beaten by

²⁶ See recommendation of greater use of "hands-on" training of interviewers, below at p. 42-43.

arresting officers. Time after time in that interview, the attorney attempted to add his own comments to the officer's answers (such as, "It's fair to say that only necessary force was used"), supplied answers to the officer (prompting him by saying, "You knew you could get better control of him if you could get him back on the ground, right?"), or simply speculated on behalf of his client (offering, at one point, his own opinion as to why the arrestee may have tried to flee).

The interviewer should have been forceful in asserting control over the questioning and should not have allowed the attorney to interfere with the subject officer's substantive answers. Again, IAB's concern about the issue of maintaining control over PG-118.9 interviews was made clear in discussions with the Commission, and it is important to note that this was not a problem that appeared very often in the Commission's sample.

The interviewer's manner in the above case also was inadequate in other ways. The interviewer went so far as to finish several of the subject officer's sentences for him. Like the officer's attorney, the interviewer also offered speculation about the events in question and supplied possible answers to the officer; at several points, he appeared to simply adopt the officer's given explanation of events.

The problem of inappropriate demeanor on the part of the interviewer arose in two additional interviews as well. One case involved an investigation of a sexual-abuse

²⁷ This case was also discussed above at p. 25 in the context of inadequate preparation.

complaint that arose in the context of an allegedly improper strip-search of an arrestee. There, the subject officer's representative offered an exculpatory version of the incident on behalf of the subject officer -- explaining why the strip-search was not improper -- to which the interviewer replied, "Exactly."

V. MISCELLANEOUS OBSERVATIONS

In addition to its findings on the key issues it set out to explore, which are discussed in the Analysis section above, the Commission also identified other issues that emerged in its review of the interviews in its sample and of IAB's policies and procedures in this area. These are discussed below.

A. Training Issues

1. IAB Training

IAB is making a real effort to enhance training in PG-118.9 interviews. IAB offers a two-hour class dedicated to conducting PG-118.9 interviews as part of its basic two-week "orientation" course for staff newly assigned to IAB. Another two hours are spent on general interviewing and communication skills; while this class is useful to investigators who will be conducting interviews of police officers, it is not specifically focused on PG-118.9 interrogations.

In addition, investigators attending the training course receive "hands-on" practice

in conducting PG-118.9 interrogations through a mock interview that is staged as part of a three-hour class devoted to a role-play exercise. There, investigators are given an allegation to “investigate” step-by-step, culminating in a PG-118.9 interview. Another class that touches on issues relating to PG-118.9 involves an exploration of critical investigative “do’s and don’ts,” led by an experienced investigator and interrogator. Other segments of the training course may also present opportunities to educate investigators on the unique considerations involved in interrogations of other police officers.

However, because IAB believes -- as does the Commission -- that there are limits to how comprehensively interviewing techniques can be taught in a classroom setting, much of the training for interviewers is, by necessity, acquired on the job. This is done by observing other officers leading interviews, and conducting interviews themselves with an experienced officer present. Because they are in the best position to know the interviewing skill levels among their staff, commanding officers decide which of their interrogators to have new staff members observe, as part of their on-the-job training.

The Commission was informed by IAB that, in addition to the introductory training course, informal training in PG-118.9 interviews is conducted at times throughout the year. Unlike the established training course, which has a prescribed syllabus, these sessions appear to be dictated by problems or issues in interviewing that come to the attention of IAB leadership. Following the commencement of the

Commission's study, IAB scheduled four additional training sessions in 1999.

These sessions included: (1) two compulsory training seminars relating to PG-118.9 interviews attended by IAB supervisors; (2) a session on developing case review strategies that included a discussion of what to look for in reviewing tapes of such interviews, attended by all lieutenants and above; (3) a two-hour lecture focusing exclusively on PG-118.9 interviews presented for all IAB captains and above in June; and (4) for all IAB members below the rank of captain, a similar mandatory training session, held in the spring of 1999, pertaining solely to interrogation techniques.

In addition, Commission staff were present at a recent lecture on PG-118.9 interviews given by the Department's Deputy Commissioner for Trials, who drew on her extensive experience in overseeing Departmental administrative trials. The lecture was widely attended by both supervisors and investigators from IAB, and the Commission noted that the advice given -- as well as the manner in which it was offered -- made the lecture a potentially valuable one for improving IAB's investigative interviews. Indeed, many of the observations and recommendations made in the course of the lecture closely tracked those of this report.

While training is necessary, it is recognized not always to be sufficient to produce effective interviewers. IAB is aware, for example, that one difficulty it faces in training its interviewers is that officers appearing for a formal interview can draw on their Departmental training on giving courtroom testimony. For this and other reasons,

regardless of the skill of the interviewer or the strategy employed, not all interviewees will be completely forthcoming no matter how good the interviewer. Indeed, according to IAB, it is rare to elicit a confession of misconduct from an interviewee; rather, the goal is to gather details and lock the officer into a story (even if it is only “I don’t recall”) that cannot be altered later without undermining his credibility.

Another problem is that each interviewer must feel comfortable in her own “style” of questioning, which is something that can be acquired only through experience. Similarly, there is no one specific strategy suitable for all interviews; individual strategies depend on such factors as the nature of the allegation, the quality of information available to IAB, and the stage of the investigation at which the interview takes place.

2. Matching Interrogating Officers to Interviews

In its discussions with IAB, the Commission was told that although a member of the investigation team is usually the officer responsible for the interrogation in a PG-118.9 interview, another officer may be assigned that task in the most serious cases. When IAB leadership believes an interview is crucial to an important investigation, it may call in an officer who is especially skilled at conducting such interviews, brief him on the case, and either have him conduct the interview or merely sit in on the interview (interjecting where appropriate), to ensure its effectiveness.

Similarly, IAB may allow a less-experienced interrogator to take the lead on a

less-important interview.²⁸ IAB recognizes -- and the Commission appreciates -- that some interviewers will naturally tend to be more skilled at the practice of conducting PG-118.9 interviews than others.

One case in particular demonstrates IAB's use of a highly-skilled interrogator with a less-experienced partner for the PG-118.9 interview of a suspect in an off-duty assault investigation. There, some of the subject officers had also been indicted in a criminal case. The two interviewers worked together in questioning the interviewee, with the experienced interrogator allowing his less-seasoned partner to take the lead, but interjecting his own questions wherever appropriate.

B. Representation of Multiple Subjects/Witnesses in One Investigation

In at least three cases reviewed by the Commission, the same attorney, and union delegate represented several of the officers who were interviewed by IAB under the provisions of PG-118.9. While it is appropriate for interviewees to have representation during an interview, the Commission believes that, depending on the facts of the case, it will often be problematic for the same attorney and union delegate to represent more than one officer *in the same case*.

²⁸ Cases of minor misconduct -- which can present complexities and detailed allegations akin to more serious investigations, but with lower stakes -- may provide a good training opportunity for inexperienced interviewers.

The appearance of one attorney representing various subject officers is particularly troublesome in one of these cases, because IAB was concerned enough about the integrity of its investigation that it asked each of the officers it interviewed not to discuss the nature of the interview with any of several other officers who were considered either witnesses or potential targets. As each of the officers made use of the same representatives, it is questionable how effective this warning could be. However, IAB lacks the authority to order a change in an interviewee's attorney or union delegate to avoid such a situation. Therefore, this issue represents another difficulty for IAB in performing PG-118.9 interviews.

IAB recognizes the significance of this issue and while it does not have the authority to prevent single attorneys to represent multiple subjects in the same investigation, it has taken specific steps, where possible and appropriate, to help minimize this problem.²⁹

C. Procedural Issues

1. *Scheduling Consecutive Interviews*

The Commission believes that in cases involving several subjects and witnesses who are in contact with one another, it is highly beneficial for these officers to be interviewed consecutively in the same day, if possible. These can serve to prevent the

²⁹ Given that Department measures in this area involve IAB tactical methods, the Commission is not reporting the specific steps taken.

officers from meeting to discuss the questions being asked, the information investigators have gathered, the strategy being employed by IAB in the case, and possible responses the officers might employ in the investigation.

The Commission observed that IAB did schedule this type of consecutive interview in some, though not all, of these cases in its sample. The Commission recommends that this approach be used wherever practicable, recognizing that -- because of availability and scheduling conflicts, as well as evidentiary issues that may affect each interviewee differently -- this will not always be possible. In addition, there may be cases in which such an approach is not advisable, strategically, since investigators will want to sift through one officer's responses, and revise their prepared questions accordingly, before interviewing the next officer.

2. Recitation and Waiver of the False Statement Policy

Under the terms of the Patrol Guide, interrogators must make a number of disclosures to interviewees before formal PG-118.9 questioning can begin. The Department also has a policy of reading its false statement policy³⁰ to members being interviewed under the provisions of PG-118.9.

³⁰ See footnote 6 at p. 6 above.

In the Commission's sample, many interrogators allowed the interviewee's legal representative to waive the reading of the false statement policy. Others insisted upon reading the statement regardless of any effort to waive it on the part of the interviewee.

The Commission believes that all interviewers should at least read the Department's policy on the making of false statements, whether or not the interviewee is willing to waive it. This would more forcefully make clear to the interviewee, just before the questioning commences, that an officer who lies at a PG-118.9 interrogation faces termination.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Formal Internal Review of Interviews

According to IAB, reviews of PG-118.9 interviews are typically done by the case supervisor and/or the interviewer's commanding officer (usually a group captain), at their discretion. Certain red flags -- like a change in the case's anticipated disposition or a change in the course of an investigation after an interview -- can trigger a review, or a commanding officer may wish to single out a particular interviewer for review. Major cases are also more likely to get reviewed (as well as being prepared for in advance) by superior officers. At times, a supervisor will even sit in and observe an interview as it is being conducted.

The Commission concluded that formalizing the process for internal review of IAB's PG-118.9 interviews could improve their effectiveness. Within IAB, a mechanism already exists for internal review of a number of aspects of the Bureau's investigative functions. The Investigative Review Unit ("IRU") operates as a quality-control unit, responsible for the review and evaluation of IAB investigations.³¹ By monitoring the quality of IAB's investigations and identifying areas in which IAB management can take necessary corrective action, IRU assists IAB in maintaining and improving the quality of its investigative work.

The Commission learned from IAB that while IRU may from time to time look into the quality of PG-118.9 interviews, it has never done so on a formal, continual basis as part of its work. In fact, IRU does not receive tapes of interviews as a matter of routine, even in the course of reviewing investigations. The Commission believes that IRU is in a unique position to assess these interviews and to offer, on the basis of its own findings, targeted suggestions as to possible improvements in training and possible areas for supplemental training -- whether for all IAB interviewers, those within a particular command, or only specific individuals.

While the Commission was engaged in this study, IRU formally recommended that all tapes of PG-118.9 interviews be included in case folders -- which would allow IRU to review such tapes as part of its analysis of selected investigations. IRU also

³¹ For a discussion of IRU, see Commission report, *Performance Study: The Internal Affairs Bureau Investigative Review Unit*, March 2000.

reiterated that each group commander is responsible for the overall quality of interrogations conducted by group investigators.

Just as the Commission believes that supervisors should prepare for all interviews in advance with the interrogating officer, the Commission recommends that supervisors also review tapes of all interviews afterward on a more systematic basis. This would highlight possible areas for individual or group training, and it would give commanding officers and case supervisors a better sense of the relative interviewing talents among their staffs.³²

During the course of this study, the Commission was informed by IAB that it had implemented a policy to enhance its internal review of PG-118.9 interviews. While this policy is not in writing, the Commission was told that team leaders are now instructed either to take part in interviews led by new interrogators, or to review them as soon as possible after they are conducted -- so that, if necessary, an officer may be called back for further questioning before an investigation is closed. The Commission believes that this procedure can be highly beneficial to performance of Departmental interviews by IAB, and that it should be formally established as a written policy.

B. Better Preparation for Interviews

The Commission found that in certain instances, the interrogators conducting an

³² IAB stated that such reviews are currently left to the discretion of the commanding officer.

interview could have been better prepared for the interview, both in terms of their working knowledge of the substance of the allegation and the facts of the case, and in terms of an overall goal or strategy of the interview.³³

For this reason, the Commission recommends that meetings between the interrogating officer and either the commanding officer or the case supervisor be made mandatory prior to any interview. The length and scope of the meeting will, of course, be dictated by the importance and complexity of the interview and overall investigation at hand. In any event, the Commission believes that it is crucial, in all cases, for such a dialogue to take place in advance. IAB informed the Commission that this is generally done, though it is not a formal policy.

Together with a supervisor, the interviewer should develop not only a list of questions to be asked (which the Commission concluded was done in advance of virtually all the interviews in its sample) but also a general strategy that will guide the interviewer and allow her to move beyond the prepared questions when new information or unexpected answers emerge during the interview. Unlike the questions themselves, such a strategy need not be in written form, but it should encompass the investigative goals of the interview (what it is intended to accomplish), as well as how the interview fits into the investigation as a whole.

The issue of preparation also extends to the choice of which IAB investigators to

³³ See discussion above at p.23-26.

conduct an interview. As in any organization, it is crucial that IAB marshal its resources appropriately, so that its most adept interviewers are assigned to the most critical interviews; the Commission was informed that this is the current practice within IAB. The Commission's sample includes examples of this, which demonstrate its effectiveness, and the Commission recommends this policy continue.³⁴ In addition, allowing new interviewers to sit in and observe these experienced interrogators conduct major PG-118.9 interviews on a more regular and formal basis could offer ideal "hands-on" training opportunities.

C. Greater Use of "Hands-On" Training

Because of the continual turnover of investigators in IAB,³⁵ it is especially important that training programs be effective and structured. In conjunction with the above recommendation, the Commission recommends that training for PG-118.9 interviews be expanded to include more role-playing sessions that would demonstrate a variety of situations that may arise -- as well as techniques that could be used -- in the course of an interview. Trainees should be given the opportunity to conduct more mock interviews and receive immediate feedback from supervisors. To the extent that these sessions are undertaken with the interviewee's "counsel" present, new interrogators can

³⁴ See discussion above at p. 33.

³⁵ In the Commission's survey of former IAB members, it found that on average IAB investigators remained in IAB for approximately two years. See Commission Report, *The Internal Affairs Bureau: A Survey of Former IAB Members*, March 2000.

also learn that regardless of how experienced and intimidating an interviewee's representative may be, the interrogator has the right, and the obligation, to maintain control over the questioning at all times.

In addition, actual examples -- both positive and negative -- could be drawn upon to generate discussion and to illustrate what types of approaches are appropriate to given interview contexts. While such hands-on training is given to new IAB investigators during their two-week training course, the Commission believes that such training may prove even more valuable after investigators have had an opportunity to conduct some PG-118.9 interrogations.

In this connection, IAB should consider using experts on interviewing technique from outside the Department to offer supplemental training sessions for all its investigating officers, who can be expected to routinely conduct PG-118.9 interviews.³⁶

It may also prove valuable for IAB to make use of criminal prosecutorial expertise in interviewing techniques by inviting representatives of local and federal prosecutor's offices to become more involved in IAB training. While these offices currently make presentations to IAB staff in the basic two-week training course, the Commission recommends that they also take part in the more formal interview training sessions that it has recommended in this report.

³⁶ IAB informed the Commission, before this study was undertaken, that it was currently considering such a program.

D. Determination of When to Interview

The Commission believes that IAB should decide on a case-by-case basis whether or not to conduct a PG-118.9 interview. Although it looked only at cases in which at least one such interview was done, the Commission concludes -- based on investigations it has analyzed in the course of prior studies, as well as its attendance at IAB's steering meetings on major cases³⁷ -- that IAB generally does weigh the potential value of each interview against its potential drawbacks before deciding on conducting it. Still, some interviews appear to have been conducted merely as a last step before closing an investigation.

The Commission believes that an interview should be done whenever it would be beneficial to create a record of a subject officer's version of events,³⁸ or to demonstrate that IAB asked the important investigative questions before closing a case.³⁹ In addition, where an investigation appears -- after all other steps have been taken -- to be leading to a classification of "unsubstantiated," yet an interview might produce information that could

³⁷ For cases that do not rise to the level of steering review, IAB informed the Commission that this decision rests with the investigative group's commanding officer.

³⁸ One case of this type could involve an investigation about to be closed with an "I&I" classification. Such "information and intelligence" investigations are filed for potential later use, when and if IAB decides to re-open the case.

³⁹ IAB might do so, for example, where it has determined that a very serious allegation against an officer lacks merit, yet it does not want to close the case before all possible investigative avenues have been pursued and does not want to appear to have failed to take the allegation seriously.

result in the designation being changed to either “substantiated” or “unfounded,” then it is also appropriate to conduct a PG-118.9 interview.⁴⁰

However, when IAB does decide to conduct an interview, it should prepare for and question interviewees with the same intensity in every case. The Commission noted that in a number of instances, it appeared that investigators had all but concluded that an allegation was groundless before the interview took place, and that this conclusion may have been reflected in the manner in which the interview was conducted -- that is, with a rote recitation of a prepared list of questions, with few, if any, follow-up questions asked.⁴¹

On the other hand, in a case involving an officer who had been accused of failing to make court-ordered child support payments and, because the child had been born to a minor, statutory rape, IAB had enough evidence at the time of PG-118.9 interview to substantiate the allegations against the officer yet decided to interrogate the subject officer nonetheless. Given that IAB decided to interrogate the officer, interviewers could have used the PG-118.9 interview as an opportunity to explore the allegations and create a record should the case proceed to an administrative trial. The interview, during which the officer acknowledged paternity of the child, lasted only 90 seconds, and when it appeared that the officer was claiming that he provided support for his child, interviewers failed to ask narrow follow-up questions related to this claim and relevant to penalty.

⁴⁰ For some reasons that IAB might decide *not* to conduct an interview, see discussion above at p.10-13.

Still, both charges against the officer were substantiated and an administrative case was filed against the officer, which proceeded to trial. Though a criminal prosecution was barred by the statute of limitations -- because of passage of time before the Department learned of the allegation -- the administrative case resulted in an unusually long suspension (113 days).⁴²

E. Improved Interaction Between IAB and Department Prosecutor's Offices

Within the Department, the Department Advocate's Office ("DAO") and the Special Prosecutor's Office ("SPO") are responsible for prosecuting officers who have engaged in misconduct.⁴³ An IAB investigation that substantiates evidence of wrongdoing will eventually be turned over to the DAO or SPO, which will then bring an administrative case against the subject officer within the Department's internal disciplinary system. The Commission's study did not incorporate a formal analysis of the nature of the working relationship between IAB and these offices.⁴⁴ However, the Commission believes, based upon its review of interviews and its discussions with IAB

⁴¹ See discussion above at pp. 15-16, including the three case studies on p. 17, p.18, and p.21.

⁴² It should also be noted that IAB informed the Commission that two inexperienced interrogators were assigned to the interview because investigators determined that they had already established their case against the officer.

⁴³ DAO handles the majority of administrative prosecutions, while SPO is assigned the most complex and/or serious cases.

⁴⁴ The Commission is currently engaged in a study of both of these prosecutorial offices, to be released at a later date. This study will explore more closely the relationship between the Departmental Advocates and IAB, including the conduct of investigations.

management, that a closer cooperation in preparing for PG-118.9 interviews could result in more effective interrogations and, by extension, greater success in Departmental prosecutions that result from IAB investigations. In addition, the Commission believes that, in certain appropriate cases, coordination with local or federal prosecutors can also prove beneficial, such as where a prosecutor has declined to pursue a case but retains an interest in seeing the administrative case brought, or where an officer who has been the subject of a PG-118.9 interview may later testify at a criminal trial involving a civilian defendant, and the officer's PG-118.9 statement may be used for impeachment purposes.

IAB made the point that DAO/SPO interaction is not essential in every case, and the Commission agrees. In situations in which it appears unlikely that any administrative charges will result from an investigation, there is little reason for a Departmental Advocate to expend resources assisting in the development of the investigation. Furthermore, input from Departmental Advocates would not be necessary in planning the more straightforward of PG-118.9 interviews.

However, in preparing for the more serious interviews, discussions between the lead interrogating officer and a representative from one of the Departmental prosecutor's offices can be very helpful in ensuring the effectiveness of the interview.

The Departmental Advocate, who bears the burden of legally proving the allegation through detailed presentation of that evidence before an administrative judge, brings a unique perspective and a different set of goals to a case, and these can be

valuable to the investigator as she prepares for a PG-118.9 interview. The assistance offered could range from general strategic tips to advice on framing questions to actually sitting in on an interview.⁴⁵ The Commission believes that, regardless of the form it takes, cooperation between Departmental Advocates and investigators should occur whenever it might be beneficial to the investigation.

* * *

⁴⁵ No representative from either of the Departmental prosecutor's offices was present for any of the interviews in the Commission's sample. The Commission is aware, however, of instances in which Department prosecutors have assisted IAB in preparing, and conducting, PG-118.9 interviews.