

Declaration of Julie Schwartz

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID FLOYD, *et al.*,

Plaintiffs,

- against -

THE CITY OF NEW YORK, *et al.*,

Defendants.
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**DECLARATION OF JULIE
L. SCHWARTZ**

08-CV-1034 (SAS)

JULIE L. SCHWARTZ, for her declaration pursuant to 28 U.S.C. § 1746, states:

1. I am currently employed by the New York City Police Department (“NYPD”) as the Deputy Commissioner of the Department Advocate’s Office. I make this declaration in support of defendants’ motion for summary judgment. This declaration is based on my personal knowledge and upon my review and knowledge of business records and documents of the City of New York.

Background

2. Complaints of alleged misconduct (hereafter “complaints”) against members of the NYPD may be made by any source, including members of the public, the media, supervisors, or by members of the service.

3. Complaints may be made (i) to the Civilian Complaint Review Board (hereafter “CCRB”), (ii) to the NYPD, (iii) or to 311 through any means of communication, including in-person, by phone, mail or by e-mail.

4. All complaints, even those made anonymously, are referred to the appropriate office for investigation.

CCRB

5. The Department Advocate's Office (hereafter "DAO") maintains an on-site presence to assist CCRB investigations by providing NYPD documents, answering general questions regarding NYPD procedures and coordinating investigator training. This is done through a Liaison Unit which is staffed by a lieutenant, a sergeant, and two police officers who are assigned full time to the CCRB Office.

6. When the CCRB substantiates a complaint, it forwards the case to the NYPD. In most instances, the CCRB will also forward a recommendation for disciplinary action at one of three levels: Instructions, Command Discipline or Charges and Specifications.

7. The DAO then conducts a comprehensive review of the case, including a thorough legal, procedural and factual analysis of the entire case file, as well as a review of the officer's CCRB history and disciplinary history, an evaluation and recommendation by the officer's commanding officer, and an examination of other similar cases.

8. As the Deputy Commissioner of the Department Advocate's Office, I will normally recommend one of the following options: Instructions for the officer, imposition of a Command Discipline, service of Charges and Specifications, or that the NYPD is unable to prosecute. That recommendation is forwarded to the First Deputy Commissioner and ultimately to the Police Commissioner for his final determination, in the exercise of his exclusive discretion over the discipline of the Police Department pursuant to the New York City Charter.

9. Prior to my arrival in the DAO in 2005, the DAO preferred charges against a higher percentage of officers against whom the CCRB had substantiated complaints, but a large proportion of these charges were dismissed because the Department Advocate could not prove the charges by a preponderance of the evidence. Since 2005, the DAO has conducted a more

thorough up-front analysis of substantiated cases, resulting in stronger cases, with more appropriate discipline. This means that charges are preferred against members of the service for substantiated CCRB complaints in fewer cases, but it also means that fewer cases are dismissed after filing.

10. The NYPD has worked closely with the CCRB to encourage members of the service to take part in mediation of complaints. In the last two years, as a result of these efforts, for complaints that were eligible for mediation, there has been an eighty-two percent acceptance rate for CCRB mediation.

NYPD Internal Investigations

11. The Internal Affairs Bureau (hereafter "IAB") investigates allegations of corruption and serious misconduct against members of the service.

12. IAB receives three different types of cases in the normal course: (a) "C" category cases, which involve corruption or serious misconduct and which are retained by IAB for investigation; (b) "M" category cases which involve misconduct that does not rise to the level of serious misconduct, and which are typically investigated by local Investigations Unit within Bureau or Borough Command, and (c) "OG" (outside guideline) category cases which are minor violations of Department rules or procedures, and which are typically referred to the officer's commander for investigation.

13. Approximately one thousand (1,000) officers are assigned to IAB and the disciplinary process.

14. In addition to the central Internal Affairs Bureau, each Patrol Borough or Department Bureau has an Investigations Unit, which is responsible for conducting

investigations of misconduct. Significant cases at the Patrol Borough or Department Bureau Investigations Unit are reviewed by IAB.

15. Investigators assigned to IAB, as well as those assigned to Bureau and Borough Investigations Units and Precinct Integrity Control Officers routinely attend training conducted by the IAB's Office of Professional Development (hereafter "OPD").

16. OPD is comprised of two sub-units, the Training Section and the Educational Resource Section.

17. The IAB's OPD curriculum is accredited by the N.Y.S. Board of Regents and the National Program of Non-Collegiate Sponsored Institutions. Recognized both nationally and internationally, it provides investigators with the knowledge and investigative tools necessary to conduct fair and thorough investigations.

18. The Chief of the Internal Affairs Bureau also personally conducts training sessions attended by every recruit at each the Police Academy class, after the recruits have received extensive training in their responsibilities including conducting themselves professionally at all times.

19. The IAB Steering Committee regularly reviews cases being investigated by the Internal Affairs Bureau. The Steering Committee is made up of the Chief of IAB, IAB executive staff, the Executive Director of the Commission to Combat Police Corruption, and occasionally District Attorneys.

20. The Steering Committee process is utilized by IAB executives to review cases and to ensure that cases are being investigated properly and effectively, and that knowledge is shared, alternative investigative paths are explored, and resources are assigned as necessary.

21. Complaints that implicate procedural violations and therefore do not fall within the jurisdiction of either IAB or CCRB are forwarded to the Investigative Review Section of the Office of the Chief of Department (“OCD”).

22. When OCD receives a complaint it logs the complaint in a central database, and then sends it out to the commanding officer of the bureau in which that officer currently works for investigation and appropriate attention. When OCD sends complaints to commands for investigation, if the investigation reveals that the conduct at issue requires disciplinary action it will be handled within the existing disciplinary framework of the NYPD.

23. The Department Advocate’s Office receives substantiated cases from the CCRB, IAB, the Office of Equal Employment Opportunity, from Investigations Units and occasionally directly from integrity control officers in commands or the Department of Investigation.

Discipline

24. The Department may impose various disciplinary options, ranging from verbal admonishment and instructions to command discipline and charges and specifications.

25. A member of service who commits a minor infraction of Department Rules and Procedures may receive a verbal admonition.

26. Instructions may be used in situations where a member of the service has committed misconduct, however the member acted in good faith and the error was not egregious.

27. Cases meriting Instructions often involve mistakes or misinterpretations of the law rather than intentional misconduct, and are usually addressed by training and direction from commanders or other appropriate units including the Police Academy or the Legal Bureau.

28. The use of Instructions may be particularly appropriate in an area such as stop, question and frisk encounters, where officers are asked to apply laws under circumstances that may require the officer to make decisions regarding reasonable suspicion and officer safety in a matter of seconds.

29. When the Department Advocate's Office recommends a disposition of Instructions, we follow through to ensure that the member of the service receives the directed Instructions. In my experience police officers who receive Instructions in a particular subject matter generally are not the subject of further complaints in the same area.

30. From January 1, 2007 to October 31, 2010, there were 1037 officers with substantiated CCRB allegations. Only two members of the service received subsequent complaints for the same misconduct for which they have previously received Instructions.

31. After an officer has received Instructions in a particular subject matter they will not be again eligible for Instructions should that misconduct reoccur. Discipline will likely be the appropriate disposition where an officer has committed the same misconduct after receiving Instructions.

32. A "Command Discipline" is discipline that is handled at the command level of supervision. It is available to a commanding officer or executive officer to correct deficiencies, and may stem from multiple minor violations or as a result of a single incident of misconduct. The penalties for command discipline range from a verbal admonishment to the loss of ten vacation days.

33. Formal discipline is initiated by the service of Charges and Specifications on an officer, and carries potential for the most serious penalties an officer may receive, including termination.

34. A member of the service may be given the opportunity to negotiate a plea before the Deputy Commissioner of Trials.

35. If the Department Advocate's Office chooses not to offer a plea, or a member of the service rejects a plea offered by the Department Advocate's Office, the member of the service will be entitled to a hearing, where the Department Advocate has the burden of proving the charges by a preponderance of the evidence.

36. After the trial, the Deputy Commissioner of Trials prepares a written report of his or her findings for the Police Commissioner called a "Report and Recommendation."

37. The report includes a finding of guilty or not guilty for each specification, and a penalty recommendation if the officer is found guilty of any charge.

38. The Police Commissioner makes the final determination as to both guilt and penalty.

39. The NYPD engages in progressive discipline which is a process of using increasingly severe steps or measures to deal with substandard work behavior and/or misconduct. It features the use of increasingly formal efforts to provide feedback to the employee so that he or she can correct a problem, with the goal of improving employee performance.

40. Progressive discipline, takes into account an officer's prior disciplinary and employment history in fashioning the appropriate remedy or penalty for misconduct.

41. However, there are exceptions to the progressive discipline approach in some cases involving serious misconduct, or corruption. Additionally there is misconduct that is characterized as "zero tolerance" offenses: which primarily applies the (a) use of illegal drugs, (b) making false official statements absent exceptional circumstances, and (c) operating a motor vehicle under the influence of alcohol causing serious physical injury.

42. Additionally, there are circumstances where the concept of progressive discipline is not used, e.g., commission of a felony or misdemeanor involving moral turpitude, *see* N.Y. Pub. Officers Law s. 30(1)(e), misdemeanor crime of domestic violence, *see* 18 U.S.C. 922(g) (cannot possess firearm), or in the case of entry level probationary officers or officers placed on “dismissal probation,” who may be terminated without a hearing.

Probationary Monitoring Programs

43. The Uniform Probationary Monitoring Unit is responsible for monitoring the performance of all entry-level police officers and all members of the service promoted to the rank of sergeant, lieutenant and captain, while on probation.

44. Newly hired police officers receive performance evaluations at their fourth, tenth, sixteenth, and twenty-second months of employment. In addition to their annual evaluations, newly promoted officers receive probationary performance evaluations at months four, ten, and sixteen following promotion to the rank of sergeant, lieutenant, or captain.

45. These probationary employees undergo three levels of successively serious probationary monitoring, based on the ratings in their performance evaluations or on a referral by the officer’s commanding officer.

46. The DAO will inform the Uniform Probationary Monitoring Unit of any complaints against probationary officers. A referral may result in an extended probationary period, a loss of the probationary rank, or termination.

Central Personnel Index

47. The Department maintains a “Central Personnel Index,” or “CPI”, which is a central repository of information from various administrative, disciplinary, and investigative

units throughout the Department, including for example, complaint allegations, substantiated allegations, firearms discharges, disciplinary history, poor evaluations, placement in monitoring and excessive sick time.

48. Every IAB complaint, whether substantiated or not is recorded in a member's CPI.

49. The CPI is used often and throughout an officer's career to help make informed decisions about assignments, transfers, promotions, positions of special trust, performance monitoring, and other administrative actions.

50. An officer's disciplinary history, including all CPI entries and placement in performance monitoring program may impact an officer's advancement and promotional opportunities within the Department.

I declare under penalty of perjury that the foregoing is true and correct. Executed in New York, New York, on November 10, 2010.



JULIE L. SCHWARTZ