

The fact that an investigator has a case-list of ten could mean that an investigator has a caseload of ten investigations, or it could mean nothing of the sort. Some of those investigations might already be closed, except for "tracking" purposes. Other listings might simply be duplicate listings of the different names for the same investigation. And some of those investigations might actually belong to another investigator -- although neither of the investigators nor any of the supervisors has noticed that fact.

LACK OF EXPERIENCED PERSONNEL

Mr. Sofarelli is a former prosecutor, with investigative experience, having served as an assistant district attorney in Kings County under former District Attorney Eugene Gold. Aside from the Inspector General himself, however, the office suffers from a dearth of lawyers with any experience in directing investigations, building or trying criminal cases, or even practical experience cross-examining or questioning hostile witnesses.

The Deputy Inspector General in charge of legal matters, for example, is a former high school teacher. He had no prior criminal investigative experience, and, indeed, no experience in criminal law or in courtrooms at all. The only other attorney in the office -- the head of the Legal Unit -- is a former teacher with no prior criminal experience and no investigative background.

A background as a pedagogue, or even as an education lawyer, may be useful to the Inspector General's Office, but is hardly a substitute for the type of forensic training that an effective investigative agency requires. Even Mr. Sofarelli recognizes that the office should have more attorneys with criminal experience (Sofarelli: 165). He did not offer any explanation, however, for his failure to hire anyone with this kind of experience during his years as head of the office.*

Furthermore, excluding Mr. Sofarelli, almost all of the high-ranking administrators in his office have little or no investigative experience outside the Inspector General's Office. And, while a few of the office's supervisors have

* This failure is particularly puzzling, since the Board of Education Office of Legal Services has been able to attract former criminal defense counsel and former prosecutors to its staff.

academic credentials in criminal justice, most lack any prior, practical investigative experience.

For example, the First Deputy Inspector General had no prior investigative experience at all. While he did spend twenty-seven years in the New York City Police Department, he spent all of that time as a patrolman. He was never in the Detective Division or any investigative unit, or even in any position in which he supervised other officers. Actually, he was involved in union activities.*

The State Education Department brought these critical deficiencies to light in its report in 1989. And, Mr. Sofarelli recognizes that this lack of practical investigative experience is a severe handicap (Sofarelli: 396). The two ways to solve this problem, of course, would be to have a unit of police officers with investigative skills assigned to the Board of Education, or to hire retired police officers with that kind of talent and experience.

The assignment of even a small squad of police officers to work with the Inspector General's Office would greatly enhance its power and its prestige. The officers would be able to make arrests. The officers would be armed. The officers would have access to the Police Department's vast resources. The officers would have undergone extensive training at the Police Academy. And, would-be criminals would know the office meant business.

Nor should it be difficult to obtain a small squad like this from a mayor and police commissioner committed to rooting out corruption in the city school system. For example, in 1989, with Mayor Koch's blessing, Police Commissioner Ward assigned a lieutenant, two sergeants, four detectives, and a police officer to the Commission, as well as a group of young officers for a special undercover operation in the high schools. There is no reason to believe that Mayor Dinkins and Commissioner Brown are any less committed to ending corruption in the system.

Mr. Sofarelli himself recognized what a priceless addition to his staff a squad like this would be, and commented that he "would love" to have a police unit assigned to work with his office (Sofarelli: 96-97). On the other hand, six months after the State Education Department report was issued, and eight years after taking the helm at his agency, Mr. Sofarelli had yet to take any steps to accomplish

* Curiously, Mr. Sofarelli did not seem familiar with his first deputy's background (Sofarelli: 57-62).

this goal; in fact, he had never even proposed the idea of such a squad to anyone (Sofarelli: 97).

In addition, as Mr. Sofarelli acknowledged (Sofarelli: 397), retired detectives, many of whom are quite young, are also an invaluable pool of seasoned investigators. Many federal, state and local agencies, including the District Attorneys, the State Investigation Commission, and the State Organized Crime Task Force, have tapped this highly qualified pool. The Commission also took advantage of this precious resource in hiring its Director of Investigations and two of its investigators.

There is, of course, an obstacle in hiring retired officers: mayoral policy has prohibited officers from receiving a city salary at the same time they received a city pension, except when an agency is unable to find anyone of comparable experience and ability. However, the experience of the Commission and the other state and local law enforcement agencies demonstrate that it is hardly impossible to make the necessary showing.

In fact, if the District Attorneys, with their large squads of detectives, have managed to make this showing, how much greater is the need for the Inspector General, who only has one retired police officer and no squad of detectives on his staff. Clearly, the Inspector General could make a strong case for hiring a few people with this kind of background, and, presumably, a committed Mayor would listen sympathetically to a well-reasoned request of this type.

What few efforts Mr. Sofarelli has made to explore the possibility of hiring from this pool can, at best, be described as desultory (Sofarelli: 144-145, 308-311). He has apparently discussed the matter with the Board's personnel people and has written a letter recently to the City's personnel people to discuss the idea in the abstract (Sofarelli: 144-145). The City replied by spelling out the fact that the city's long-standing policy simply required that the Inspector General advertise for the positions and be able to defend each specific hiring decision in an objectively demonstrable way (Sofarelli: 309).

Significantly, when Mr. Sofarelli brought this letter to the Commission's attention, he treated this essentially favorable response -- and the standard hiring procedures it laid out -- as if it were an almost insuperable barrier to the hiring of qualified retired officers (Sofarelli: 310-311). And, while he has discussed the idea of hiring former police personnel in the abstract, he has apparently never taken the necessary steps and put forward a request for the hiring of any specific, talented individual.

Mr. Sofarelli also recognizes that the Inspector General's office should have the capacity to investigate financial crimes (Sofarelli: 206-207). At present, there is only one investigator available for this function and he is used more as a liaison with the Auditor General than as an actual forensic investigator (Sofarelli: 203).

Mr. Sofarelli attempted to excuse this void in expertise on his staff by saying that he had -- until some point -- been under the impression that the Auditor General's Office was doing the Board of Education's forensic auditing work. He was not particularly clear about when he had realized the Auditor General was not performing this task. First, he testified he had realized only in "the last several months" that the Auditor General was not doing forensic auditing work (Sofarelli: 205). However, he also said this realization had prompted him to request funds to hire auditors of his own "in the last year or two" (Sofarelli: 205).

At a later session of his hearing, Mr. Sofarelli changed tack. Since his last session, he stated, he had researched the matter, and had concluded that the Board of Education by-laws conferred the mandate for criminal financial investigation on the Auditor General (Sofarelli: 305-306). The by-laws he had unearthed, however, were adopted thirty years earlier, when there was no Inspector General's Office (Sofarelli: 306-307).

These gaps in the experience and expertise of the personnel in the Inspector General's Office, in large part, reflect the Inspector General's misdirected priorities. The office has not made serious criminal investigation its top priority, and has not hired people with the skills to make serious criminal investigations a success.

LACK OF ACCOUNTABILITY

One important way to judge the effectiveness of any organization is to look at its results. With an investigative agency, therefore, one critical way of gauging its productiveness and usefulness would be to look at general caseload figures and statistics showing the number of criminal prosecutions and successful disciplinary proceedings that result from its work.

Of course, the investigative agency does not bear sole responsibility if a prosecution is ultimately unsuccessful or if the Board does not prevail at a disciplinary hearing. However, while these figures cannot paint the entire picture of the competence of the

investigative agency and the quality and quantity of its work, statistics like these will, at the very least, provide a concrete starting point for any evaluation of the agency's investigative performance.

In fact, simply by publishing a concrete record of its performance prominently and often the Inspector General's Office could begin to inspire a measure of public confidence in its commitment to carrying out its mandate free from political influence. At the very least, the Inspector General could send a clear signal to the public and to the people within the system that, in his view at least, the office should be judged by how much wrongdoing it has been able to uncover. Then, the public could begin to believe that the office's real desire is to expose whatever crimes are being committed by whoever might be committing them.

It is, therefore, significant that Mr. Sofarelli has not, and apparently cannot, pull together any kind of statistics about his staff's work-product in a consistent, accurate, or reliable way. By making it impossible for this kind of evaluation of its work to occur, Mr. Sofarelli has fostered the fear that the very people who should be exposing crime would rather help the "system" pretend that there is none to be found.

Moreover, what little information Mr. Sofarelli was able to provide about the results of his office's work seems to establish that the quantifiable "output" of the Inspector General's Office in this area has been remarkably slim during recent years.

General Caseload

Even on such an essentially straightforward matter as general caseload, the office seems unable to generate consistent figures. When Mr. Sofarelli first testified about the number of new cases the office received a year (Sofarelli: 523), he provided the following figures:

<u>Fiscal Year</u>	<u>New Cases Received</u>	<u>Investigators</u>
1985-1986	1764	41
1986-1987	1463	67
1987-1988	1611	67
1988-1989	2160	67

Afterward, Mr. Sofarelli was asked for a breakdown to illustrate what portion of these cases represented actual investigations and what portion represented referrals to other agencies. Instead, he returned --less than a week later -- with an entirely new set of statistics, explaining that some of his earlier figures had not included "referral" cases at all. His new numbers, "correcting" this mistake, altered the statistics for two years of the four years drastically.

<u>Fiscal Year</u>	<u>New Cases Received</u>	<u>Investigators</u>
1985-1986	2032	41
1986-1987	2040	67
1987-1988	1611	67
1988-1989	2160	67

The "correction" involved is obviously a critical one, because the two sets of figures give an entirely different sense of the trend in the Inspector General's caseload. The figures, after all, seemed to indicate that the caseload had been growing in the last three years. The ostensibly more accurate figures he provided later showed that the caseload had dipped substantially one year, but otherwise had remained relatively stable.

Nor was this mistake the result of some momentary confusion. On the contrary, when the Department of Investigation had studied the Inspector General's caseload about a year before this testimony, the figures they received were very similar to the erroneous numbers originally provided to the Commission. Thus, for at least a year, the office was laboring under a rather startling misapprehension about its own caseload.

Criminal Prosecutions Resulting From the Inspector General's Work

In November of 1989, Mr. Sofarelli was asked to testify at a private hearing about the functioning of his office, and was told, at that point, that one area of examination would be the office's statistics. Mr. Sofarelli later acknowledged that he "should be able" to put his hands on data about the numbers of arrests and criminal prosecutions that resulted from his Office's work, and that he "should be able" to compile information about the results of those criminal cases and the types of charges involved (Sofarelli: 818).

At the same time, he has never collected that information. He has not put together this kind of data on a yearly basis for his own internal purposes, such as evaluating the effectiveness of his operations and investigators or allocating resources more effectively. Even more significant, he has never put this type of information together for the public and for those who appointed him so that they can evaluate his effectiveness in rooting out crime and corruption.

Furthermore, Mr. Sofarelli was forced to revise the statistics repeatedly, since the numbers were not accurate or were simply inexplicable. And, as his unsuccessful efforts to gather this information stretched on and on, Mr. Sofarelli acknowledged that he would not really be "comfortable" with the accuracy and reliability of any of the data he would receive from his staff about the results of the cases he referred to the criminal justice system (Sofarelli: 819-820).

The murkiness of the data about this critical aspect of the office's work quickly became apparent. For example, the first figures Mr. Sofarelli provided to illustrate his office's role in triggering criminal prosecutions were a set of statistics, compiled by his Chief of Operations, that were supposed to represent the number of "DA referrals" each year (Sofarelli: 562):

<u>Calendar Year</u>	<u>Referrals</u>
1986	14
1987	14
1988	21
1989	38

Mr. Sofarelli said at first that these were "cases that we investigated and completed and referred to the D.A.'s office for whatever action they deemed appropriate" (Sofarelli: 562). Later, however, he agreed he should, and would, double-check to see whether these numbers might also include "joint" investigations conducted by the District Attorney's Offices with the assistance of his investigators (Sofarelli: 566).

It also quickly became apparent that his understanding of what these figures represented was shaky in other areas as well. For instance, asked what had happened to these cases after they were referred for prosecution, Mr. Sofarelli began with an explanation of the 1989 cases, and stated that "we had three indictments" (Sofarelli: 563).

However, he did not know whether "three indictments" meant three people had been indicted in a single case, three people had been indicted in three cases, one person had been indicted in three cases, or some other number of people had been indicted in three different indictments (Sofarelli: 563).

Mr. Sofarelli's explanation of the rest of the 1989 results was:

There are eleven active cases going on. There has been one arrest that pled guilty. That may have been a summary arrest on a misdemeanor that may not have required an indictment. There's one in the Grand Jury right now, one. There were four that were declined prosecution, and three open that we have not been notified as to any action as of yet (Sofarelli: 563).

Mr. Sofarelli said "active" cases were those in which "[t]hey are still either investigating it or evaluating it" (Sofarelli: 564), a category somewhat difficult to separate from "open" cases, about which his office has not yet been notified. He did not explain the discrepancy between his statement that there were 38 "referrals" for the year and the fact that he listed "results" for only 23 cases.

Things became even more confused when Mr. Sofarelli began to give his figures for 1988. He had originally stated that there were 21 "referrals" during that year, but he then provided "results" for 25. Specifically, he stated:

A 1988, active, five. One was arrested on a bench warrant.

Q What does that mean?

A I have to check on that. That does not make sense. A bench warrant should only be issued after an arrest or indictment. I'll have to check on that. I believe it should read arrest warrant. Fourteen were declined prosecution, and we have five so far with no notification (Sofarelli: 564).

Moving on to 1987, Mr. Sofarelli stated:

A 1987, we have one convicted after trial. I assume that was as a

result of a summary arrest and indictment.

Q Would that be a 1987 summary arrest and indictment, or an earlier one that matured and went to trial in '87?

A I don't know. I am assuming, based on the way these are prepared, it was probably '87. However, I have to check on that, because if it did happen in one year, that's unusual ... We have one person pleading guilty. Again, Mr. Ekland didn't break it down as to whether he pled guilty as a result of an indictment or summary arrest. We have one active case for 1987 (Sofarelli: 564-565).

At that point, it appeared that the following chart represented the concrete results of his office's "DA referrals":

<u>Calendar Year</u>	<u>Referrals</u>	<u>Results</u>
1987	14	1 guilty plea and 1 conviction after a trial
1988	21	1 arrest on a bench warrant
1989	38	3 indictments and 1 summary arrest

However, given all the unanswered questions raised about these statistics, Mr. Sofarelli agreed that he should check on the accuracy of these figures and obtain some information about what they meant.

On that same day, Mr. Sofarelli read into the record "a printout that indicates number of arrests as a result of OIG investigations" (Sofarelli: 567).

<u>Fiscal Year</u>	<u>Arrests</u>
1985-1986	32
1986-1987	31

1987-1988	15
1988-1989	24
1989-1990 (to date)	5

Like the previous numbers, these figures were supposed to represent the results of cases in which the office had handled the case entirely on its own (Sofarelli: 567-568). Specifically, Mr. Sofarelli stated:

These are investigations completed by my office and then referred, in total, to the D.A.'s Office, who either then took the arrest, or, based on our investigative work, made an arrest (Sofarelli: 567).

However, according to the first set of figures there was only one arrest during calendar year 1988. According to these new figures, there were 39 arrests for the two fiscal years that encompassed that calendar year.

Mr. Sofarelli was nonplussed by this "inconsistency," which he agreed was a "dramatic" one. He agreed that he would have to have all these statistics checked and return with an explanation (Sofarelli: 569-570). He also said he would bring some kind of summary about the nature of the cases involved on these lists, which he believed had already been prepared for some of the years (Sofarelli: 570).

A week later, Mr. Sofarelli reported that he had managed to track down one source of some of the discrepancies between the two sets of figures. In compiling his figures, Mr. Ekeland was "concentrating on referrals to D.A.'s" (Sofarelli: 624). In contrast, the other, much larger, arrest statistics included "all arrests that came out of all kinds of cases" (Sofarelli: 624). These statistics, therefore, included all joint investigations (Sofarelli: 624).

These larger numbers also included all arrests related to cases handled by the office's sex crimes and narcotics units (Sofarelli: 624). These units did sometimes do investigations on their own, but they sometimes conducted "joint" investigations by being present during police interviews and interrogations, and sometimes simply functioned in a "support role" for the police, by getting documents for them (Sofarelli: 625-627).

As of that point, Mr. Sofarelli had asked his staff to clarify how many cases resulted from his office's work and how many from joint investigations, what the results were of

these criminal cases and referrals, and to provide some kind of summary of the nature of the case or charges. Over the next month, Mr. Sofarelli appeared for two more private hearing sessions without providing any more information about criminal cases arising from his office's work.

Finally, on February 9, 1990, he sent the Commission a new list of "arrests" for the last three fiscal years. By that point, more than two and a half months had elapsed since the Commission originally notified him that its study of the effectiveness of the office would require this kind of statistical evidence. The information on this chart indicates the following results:

<u>Fiscal Year</u>	<u>People Indicted</u>	<u>People Arrested</u>
1986-1987	26	4
1987-1988	1	7
1988-1989	11	14

No results of the criminal cases were included, however, and there was no information at all about the nature of the charges and little or no information about the identity of the people charged. A call to Mr. Ekeland revealed that all 26 indictments listed for the 1986-1987 fiscal year resulted from an investigation by the Brooklyn District Attorney and the Inspector General's Office into the Board's building inspectors.

This listing is significant for two reasons. First, in the only Inspector General's Office annual report the Commission has been able to obtain, these very same cases and arrests are listed as the results of a 1984/1985 fiscal year investigation. The theory for listing them again as 1986/1987 cases is that the arrests were made during this fiscal year. Of course, this kind of double counting would necessarily give an incredibly inflated view of the work-product of the office to someone who did not think to ask whether the same arrest might appear in more than one year under more than one number.

Second, the listing of the building inspector cases raises interesting questions about what kind of investigations are considered "joint" investigations. The annual report, for instance, states that the office conducted a "preliminary investigation" and then contacted the District Attorney. It also states that the indictments that followed were the result of "a joint investigation" conducted over the next few years.

This description is a little difficult to reconcile with Mr. Sofarelli's previous statement that these figures

represented "investigations completed by my office and then referred, in total, to the D.A.'s Office, who either then took the arrest, or, based on our investigative work, made an arrest" (Sofarelli: 567).

The peculiarity of this definition of a "joint" investigation is also apparent from a "note" to the final arrest list. That note states that some of the earlier figures included cases "conducted jointly with NYPD and District Attorney Offices after arrests which were not initiated by OIG investigations." It is, to say the least, difficult to imagine what kind of significant investigative role the Inspector General's Office might play after someone else had already made the arrest.

Thus, after more than two months of trying, the Inspector General's Office was incapable of producing the kind of information that would enable an observer to assess the quantity and quality of its criminal investigative work. In fact, Mr. Sofarelli could not explain the various inconsistent figures he did provide. And, the final numbers of arrests, to the extent they can be interpreted, do not demonstrate that the Inspector General's office played a vigorous or particularly effective role in a very significant number of serious criminal investigations.

Disciplinary Proceedings Resulting From the Inspector General's Work

Since Mr. Sofarelli believes that triggering "internal discipline" is a more important goal for his office than producing criminal prosecutions, one might expect that he and his staff would keep better track of the disciplinary proceedings that result from the office's work. In fact, though, the office was just as incapable of providing comprehensible information from which it would be possible to determine the degree to which the Inspector General's work has resulted in effective disciplinary action.

In the first place, the only figures the Inspector General's office has been able to provide are numbers supposedly representing disciplinary results covering a three year period between July 1, 1986 and June 15, 1989, a peculiar period, since it does not quite match the fiscal year period covered by the "arrest" statistics provided. It was necessary for the staff to compile these figures at the Commission's request, since they had never been compiled before, and, for that reason as well, Mr. Sofarelli did not provide a breakdown by individual fiscal year (Sofarelli: 815-816).

As with the arrest figures, Mr. Sofarelli tried several times to produce these disciplinary statistics, but was never able to understand the figures he brought or to provide answers to the relatively straightforward questions his charts raised.

For example, the first set of statistics listed the disciplinary results for the almost-three year period as follows:

Terminations	66
Resignations	41
Suspensions	120
Charges Preferred	109

Mr. Sofarelli did not know, though, what these figures represented. They might, for instance, be the ultimate results of all the investigations conducted during this period. On the other hand, these figures might also include the results of far older investigations as well, simply because the disciplinary process took so long that the sanction was not imposed until this period (Sofarelli: 572-573). The difference, of course, is critical, since the disciplinary process can drag out for years.

Furthermore, if cases that went through the criminal justice system were also included in these figures, the numbers would probably include many even older investigations, since the criminal process would necessarily add its own measure of delay before the disciplinary process could be finished.

Mr. Sofarelli testified originally that these figures represented "cases that didn't lead to arrests, but basically appeared to go through our disciplinary procedures" (Sofarelli: 571). In other words, he initially implied that these represented cases in addition to those that had led to arrest and criminal prosecution. Examined more closely, however, he appeared to change his view:

Q Does it not include cases that led to arrests?

A I assume that they did. If the person is arrested, it would go through our disciplinary procedures. They would be dismissed based on the nature of the arrest (Sofarelli: 571).

After thinking about it further, Mr. Sofarelli said he thought that, perhaps, the same case might appear twice:

once on the "arrest" list and a second time on the "discipline" list. He was not really sure in his own mind whether the cases would be double-counted or not (Sofarelli: 571, 574).

There were a few other issues that he could not resolve. He stated that the figure for "resignations" included all people who resigned "while under investigation, or prior to charges being preferred" (Sofarelli: 569). He did not, however, state whether the resignations came about as a result of the investigation or simply during the time the investigation was on-going.

And, he had no idea what was meant by the term "charges preferred." It could mean cases in which charges had been preferred but were still pending, cases in which charges had been preferred but found not to be substantiated, cases in which charges had been preferred but the sanction was something less than suspension, or any or all of these cases (Sofarelli: 572).

About a month later, Mr. Sofarelli returned with a new set of disciplinary statistics. The time period was still the same, July 1, 1986 to June 15, 1989. This time, though, the figures were as follows:

Terminations	66
Resignations	41
Suspensions	118

The original 120 "suspensions" had mysteriously dropped to 118. The "charges preferred" category had disappeared completely, and Mr. Sofarelli did not recall ever finding out what it had represented (Sofarelli: 817-818). In its place were two new categories, with the following breakdowns:

Suspensions	
<u>to Charge</u>	<u>27</u>

Guilty	9
Not Guilty	1
Pending	17

Charges-no	
<u>prior action</u>	<u>31</u>

Guilty	14
Not Guilty	4
Pending	13

When Mr. Sofarelli attempted to explain these new statistics, however, he again became confused. In discussing the 118 suspensions, for instance, he stated:

A ... That could have been as a result of punishment or a hearing that later came about -- a suspension pending a hearing. It gets a little confusing. And then she broke it down suspension to charge. What she means is that these are people who were suspended pending charges (Sofarelli: 811).

* * *

Q What does the 118 figure represent?

A It wasn't quite clear to me, either, this morning, but as best as I can decipher it from the way she broke it down, these were people who may not be entitled to a hearing and were suspended as a punishment right away, or settled their case with the Law Office ...

Q If I added up the three numbers, 66, 41 and 118, would that give me the total number of matters brought to a conclusion?

A Well, I think you would also have to add in the 27 and the 31 to those figures, too, because I think these suspensions to charges were not included in the suspensions up here.

Q You think the suspension to charges is what? Tell me again. I didn't understand.

A These were individuals that were suspended pending charges. I believe the 118 does not include that category. We'll double-check. That was the question I had when the figures were given to me. We are double-checking on that (Sofarelli: 812-813).

Asked whether these disciplinary actions included all the cases already listed on his "arrest" list, Mr. Sofarelli "remembered" that this issue had been raised in his previous session (Sofarelli: 814). However, he commented:

A ... I am not sure now. I may know the answer, but I don't want to give it to you. I would assume some of those terminations -- some of them had to be criminal cases that led to arrests, but I am not sure. That's another question that arose that I will have to check on. I just don't want to go on the record to say I am sure it is. I would have to check it out (Sofarelli: 814-815).

Mr. Sofarelli also stated that he would have to check to see if these figures included cases in which his office had "worked with a D.A. or with the police" (Sofarelli: 815).

On February 9, 1990, he sent the Commission another set of statistics, supposedly representing his "disciplinary statistics." This time the figures were as follows:

Total Terminations	87	
After Hearing		25
Without Hearing		37
Prior to Hearing		11
Due to Arrest		14
 Total Resignations	53	
During Investigation		14
After Investigation		32
Prior to Hearing		5
After Hearing		2
 Total Suspensions	159	
During Investigation		73
After Investigation		35
Due to Arrest		25
Suspensions Pending Charges		26
 Charges Substantiated		9
Charges Unsubstantiated		1
Pending		16
 Charges Filed without Prior Action	31	
Charges Substantiated		14
Charges Unsubstantiated		4
Pending		13

Like the previous charts, this one raises as many questions as it answers. This time, for instance, there was a footnote commenting that "Suspension means reassignment outside of job title," a curious, and unexplained, phrase.

Nor is there any explanation for the categories given. What is the difference, for example, between terminations that occur "without hearing" and those that occur "prior to hearing"? Do resignations that occur "during investigation" include people who simply happen to resign while they are being investigated, or only those who resign because they know they are being investigated? How is this distinction made, if it is made, and how do all these people learn that they are being investigated?

What does "Charges filed without prior action" mean -- prior action by the Inspector General, or by someone else?

If there were, in fact, fifty-four Board employees arrested during this three year period, as the "arrest" statistics purport to show, why are there only thirty-nine disciplinary actions that appear to result from arrests on this chart?

Furthermore, how much of this discipline really arose from investigative work by the Inspector General's Office, rather than joint investigations in which they simply assisted? How many of these investigations took place long before this three year period, but are included simply because the criminal proceedings and the disciplinary process stretched on and on?

Without answers to these questions, it is quite simply impossible to get any sense of how much of the Inspector General's investigative work ended in a successful disciplinary conclusion during this period. And, the fact that the Inspector General cannot provide the answer to that ultimate question, and does not use that answer to evaluate his office's work and his allocation of resources is an indictment, in itself, of the quality of the office's administration.

LACK OF CONFIDENTIALITY

Another frequent complaint about the Inspector General's Office is that it does not protect the confidentiality of its sources or of the information it receives. Last year, the State Education Department's audit team reported this widespread fear (SED Report at 3). The

same anxiety was voiced repeatedly in the responses to this Commission's survey and by a large number of witnesses who contacted the Commission.

In one striking example, Colman Genn, the superintendent of Community School District 27, spent several months agonizing about what to do in the face of the corrupt forces in his district, because he feared that the Inspector General's Office would leak his cooperation to the very people under investigation, making a successful conclusion impossible.

Rather than acknowledging this problem and taking steps to correct it, Mr. Sofarelli responded to the State Education Department report by asking for the names of the people who had raised the complaint (IG Response at 13). This response also implied that all or most of the people who spoke to the audit team may have been lying about his office's inability to preserve the confidentiality of its informants -- and about its performance in general -- because they may themselves have been targets of Inspector General investigations (IG Response at 13).

In his testimony before the Commission, however, Mr. Sofarelli grudgingly acknowledged the existence in some quarters of this fear that his office breached confidentiality (Sofarelli: 798). But, he again assumed a defensive posture, insisting that there was no basis for this fear. Instead, he seemed to blame the people who voice this concern, implying that they simply raise this fear as an excuse for their failure to come forth. That rationalization, however, cannot explain away the very real fears of someone like Mr. Genn, who did come forward to another organization he had no reason to believe would leak. Moreover, Mr. Sofarelli again failed to suggest steps to deal with the problem.

Mr. Sofarelli insisted that the only time people might feel that his office had betrayed their trust were in minor matters that were referred back to a supervisor to handle. In these cases, he conceded, that although his office did not mention the name of the person who had raised the complaint, the supervisor was often able to divine which of his employees complained (Sofarelli: 798-799).

So, in his attempt to minimize the importance of the cases in which people felt their identities had been compromised, Mr. Sofarelli admitted that his office's institutionalized practice of making referrals, without consulting the complainant, did contribute to the very climate of fear that the State audit team and the Commission found so prevalent. Far better to file those complaints away, if they are so minor, than to deter people from coming forward

later with information his office might consider important enough to act on.

Moreover, like the State Education Department team, the Commission has learned of instances in which, by pure ineptness, investigators have revealed the names of their complainants. In one instance, an investigator called a school, asked for the complainant, and left a message that the complainant should call him back. The complainant was understandably distressed to learn that that message identified the caller as an investigator for the Inspector General and left the number of the Inspector General's Office.

In another case, a person was called to the Inspector General's Office, and interviewed in a room adorned with a lightly-erased blackboard on which he could clearly read a list of investigations, including the names of the people involved in the cases. He was understandably troubled to think that the next person in that room might read a lightly-erased list that included his name.

Even a single instance of carelessness like this can easily frighten off everyone who hears the story. Coupled with the office's current referral practice -- which even Mr. Sofarelli admits is likely to alert everyone involved to the identity of the person who raised the complaint -- the lack of care and caution evidenced in these instances has plainly created an understandable sense of distrust and doubt among the very people who should be coming forward with information and cooperation.

More important, Mr. Sofarelli's responses -- denying the existence of the problem, minimizing the problem, blaming people who have this fear, offering other rationalizations, and refusing to take steps to correct the problem -- will not solve the crisis of confidence. On the contrary, that attitude can only intensify the sense that the Inspector General's Office does not really care about the dangers faced by people who come forward to cooperate and will not act -- competently and thoroughly -- to safeguard those people during the course of the investigation.

LACK OF INITIATIVE

Another major deficiency in the Inspector General's Office is its tendency not to act, but to react. This essentially passive mindset lurks behind any number of decisions Mr. Sofarelli makes or fails to make, and prevents

the office from taking effective "pro-active" steps on its own initiative.

Election Investigations

For instance, in one of his earliest conversations with Commission staff, Mr. Sofarelli commented that one serious problem his office faced when investigating claims of school board election irregularities was that the Board of Elections routinely destroyed all the documents pertaining to these elections within a year after the election. Mr. Sofarelli presented this practice as an insuperable obstacle to effective investigation.

After only a single conversation with counsel for the Board of Elections, and a single follow-up letter, the Commission was able to arrange for the purchase of these documents for a nominal sum. Consequently, after the most recent election the ballots and petitions will not be destroyed, but will instead be available for any investigative or scholarly use that might arise.

The Lack of Subpoena Power

Mr. Sofarelli's reaction to his lack of subpoena power reveals a similar tendency to treat a problem as insurmountable (and to offer it as an excuse for inaction and delay) rather than to search for a solution.

The office does not have the power to subpoena documents from non-Board of Education sources, and instead must ask the Department of Investigation to issue the subpoena when one is needed.

It is difficult to believe, however, that the lack of subpoena power has been a major obstacle. First, the Inspector General already has the power to demand most documents the office needs. Not only does the office have complete and unlimited access to all documents kept by Board of Education employees (Sofarelli: 393), it also has the power to recommend sanctions against anyone doing business with the Board who does not deliver documents needed for an investigation (Sofarelli: 393).

The Commission -- whose powers over Board employees and those doing business with the Board are identical to the Inspector General's -- has always been successful in obtaining documents. Presumably, the Inspector General has as well, since Mr. Sofarelli did not cite a single instance in which his office urged that sanctions be brought against anyone who

failed to cooperate in delivering needed documents. Thus, cases in which the lack of subpoena power actually is a hindrance to an on-going investigation must be few and far between. Indeed, during the last four years, his office has made only 128 subpoena requests, an average of thirty-two requests a year (Sofarelli: 392).

Contrary to Mr. Sofarelli's suggestion, the process for obtaining a subpoena is not particularly "cumbersome" (Sofarelli: 435). The Department of Investigation simply requires the Inspector General to draft a letter "outlining the entire investigation, outlining the need for the subpoena, and basically outlining the probable cause as to why we need one" (Sofarelli: 435).

Many of these requests are relatively routine, involving bank records or phone records (Sofarelli: 393). And, presumably, in many instances, more than one subpoena will be needed for the same case, so that the follow-up letters need not be particularly elaborate.

While Mr. Sofarelli did not mention a single instance when one of his requests had been denied, he did testify that the process could take "a week to two weeks, three weeks, sometimes even four weeks, depending on the volume. And if any are lost, and they have gotten lost, it takes longer" (Sofarelli: 436).

He offered no data about the average time it takes to obtain approval, or about the number of times his subpoena requests have been "lost" at the Department of Investigation. He also conceded that delays generally occurred while a Department of Investigation attorney was drafting the subpoena, and agreed that his office could prevent these delays entirely by drafting the subpoena and attaching it to the initial request (Sofarelli: 436).

Under these circumstances, thirty-two letters a year does not seem to pose an insurmountable burden on the office's resources. More important, there is no indication that the Inspector General has ever attempted to streamline this process or replace these formal letter requests with some other system that would be simpler or more expeditious. Moreover, at no point during the last eight years has the Inspector General drafted a bill to grant his office subpoena power.

In other words, the Inspector General has consistently offered the lack of subpoena power as an excuse for the lack of effectiveness of his office, but has not taken any discernible, practical steps to alleviate this perceived problem.

The Lack of Arrest Power

The Inspector General's office has no police officers assigned to it and none of its investigators have "peace officer" status. Accordingly, none of the 100 employees of the Inspector General's Office is armed (Sofarelli: 87), and none of them has any more "arrest power" than any citizen (Sofarelli: 599). Mr. Sofarelli conceded that this lack of arrest power diminishes his office's effectiveness (Sofarelli: 600-601).

For example, he stated that even general surveillance in drug cases was simply too dangerous for his people to handle: "They are not trained for that. If they wanted to do that, they could have gone on the police department" (Sofarelli: 87). Mr. Sofarelli also believed that it might not be possible to ground a narcotics arrest on evidence gathered during surveillance conducted by his investigators. Even if they saw an employee buying drugs on the street, it would mean nothing, according to Mr. Sofarelli, since his investigators have no special expertise or special training in how to recognize drugs and drug transactions (Sofarelli: 746).

Mr. Sofarelli agreed that there were at least two ways of dealing with this lack of arrest power: (1) arrange for the assignment of regular City police officers to work with the Board of Education Inspector General, or (2) obtain "peace officer" status for some of his investigators, so that they can make arrests, under specified circumstances, the way school guards and store detectives do. Mr. Sofarelli also agreed that either of these courses would increase the effectiveness of his office (Sofarelli: 97, 98, 99, 600-601).

However, although Mr. Sofarelli initially agreed that it would be very helpful for at least some of his investigators to be peace officers, he had not taken steps to obtain this authority at any point during the first eight years he was Inspector General. After the "peace officer" question was raised by the Commission, he began "looking at the requirements under the law, and ... trying to put together a package, in the last month or so, what it would take in the way of training to qualify as a peace officer under the law" (Sofarelli: 602).*

As of that point, however, Mr. Sofarelli still did not know whether the "package" he was thinking of putting

* The issue was first raised in a private hearing session on November 20, 1989, and this answer was given, about a month later, during another session on December 29, 1989.

together would permit his investigators to be armed; nor was he sure what requirements they would have to meet, aside from approximately 60 to 100 hours of training (Sofarelli: 603-604). By that point, he was also having "serious reservations" about whether his investigators should be empowered to make arrests in drug cases, since they might end up in "turf wars" with the Drug Enforcement Administration or the Police Department about who should handle these surveillances (Sofarelli: 605).

Since he was unable to resolve these questions in his own mind, he planned to iron out the details of his package and then "go to the Board and say, here are the options, here are the drawbacks, here are the pluses; do you want some of the Board of Ed employees with peace officer status carrying weapons to make arrests out on the streets?" (Sofarelli: 604-605).

As of the date of this report, however, the Inspector General has still not brought this proposal to the Board of Education.

On the other hand, Mr. Sofarelli consistently stated, without reservation, that he would "love" to have a unit of five or six police officers assigned to his office, especially to work on drug and other special cases (Sofarelli: 96, 438, 601). Nevertheless, during the nine years he has run the office, he has never spoken to anyone in the Police Department about the possibility of setting up that kind of drug unit to work on Board of Education cases with his investigators (Sofarelli: 97).

Asked why he had never discussed the idea of this kind of police unit with anyone, Mr. Sofarelli replied:

Mainly because I thought prior to this it was unworkable. I didn't think that they would consider such a consideration (Sofarelli: 97).

In other words, he did not make the request, because he did not know that it would be granted.

The Inspector General's "Outreach" Program

One of the findings of the State Education Department Audit team was that the Inspector General had not ever effectively communicated its existence or its mandate to "the audience it is intended to serve" (SED Report at 11),

and, in fact, that the role of the Inspector General was "unknown, misperceived or not understood" (SED Report at 7).

This lack of information and resultant confusion on the part of the Board's employees should hardly have come as a surprise: in the preceding eight years under Mr. Sofarelli's leadership the Inspector General's Office had had no formal "outreach" program of any kind. Mr. Sofarelli had attended principals' meetings in "several" districts during those years and "several" superintendents' meetings (Sofarelli: 656). However, there had been no organized effort to communicate with the rank and file or with the parents or the public about the Inspector General's role and mandate.

Similarly, in those years, the Inspector General's Office had sent out only a single "Field Advisory" to explain how allegations of wrong-doing should be handled. Furthermore, that memorandum, issued in September of 1988, was addressed only to school board members, superintendents and their deputies, and principals. Teachers and non-pedagogical employees were not included in the distribution.

The State Education Department study did provoke a response: three more "advisories" were sent out. The State Education Department draft report had noted that there was no "hotline" number for the Inspector General's Office. Shortly afterward, a small poster was sent to each school, and it did list the office's phone number. A third advisory -- basically an amendment of the first -- was sent to a limited audience of "Executive Directors and Directors, [and] Head of Offices." Finally, in January of 1990, a fourth advisory, discussing disclosure forms for superintendents, was sent to Community School Board Presidents.

Aside from these three pieces of paper, the office sent out a flyer in each employee's pay envelope, either "prior to or after the State Education audit began" (Sofarelli: 656-657),* and another in late February, 1990, as this report was being drafted.

After the State Education Department Report, Mr. Sofarelli and one of his deputies also stepped up their attendance at meetings somewhat; over the course of the next six or seven months, they attended principals' meetings in about 20 of the 32 local community school districts (Sofarelli: 656). Mr. Sofarelli also appeared on Channel 25 to be interviewed once or twice (IG Response at 16).

* Almost immediately after the Commission was formed in January, 1989, the Commission sent out a flyer with the paychecks of every Board of Education employee.

Other than these efforts, though, the "outreach" program is still primarily in the "thinking" stage. Mr. Sofarelli noted that he and his staff "were even considering" the possibility of commercials on the radio (Sofarelli: 657). They also "even considered posters on public transportation" (Sofarelli: 657). However, nine months after the draft audit report, these ideas were still simply ideas (Sofarelli: 657-658).*

More surprisingly, Mr. Sofarelli found it "hard to believe" that his prior efforts to publicize the office -- lackadaisical as they were -- had not succeeded in alerting everyone to his office's role (Sofarelli: 657). He commented, for instance, that, at the principals' meetings he attended no one told him that they had not known about his office or his advisories (Sofarelli: 502, 658). Mr. Sofarelli also reasoned that everyone must know how to call his office, because his office gets many calls (Sofarelli: 502).

Mr. Sofarelli's logic on this point is somewhat obscure. The fact that some people call the office hardly rules out the possibility that a great many more people would call if they knew how. And, of course, even people who are confused about their reporting obligations or the role of the Inspector General may be reluctant to admit their ignorance in a public meeting.

Significantly, though, there was apparently a widespread feeling -- even at these principals' meetings -- that a "desk reference" book outlining the reporting obligations would be an enormous asset (Sofarelli: 503-504). The Inspector General's Office has accordingly been "drafting" a desk reference book for the last several months, but it has yet to be finalized and sent to the principals who expressed the need for clarification about when and how and to whom to report.

Equally important, Mr. Sofarelli's impression that everyone is reporting to his office as they should is belied by the experience of his own investigators. Mr. Sofarelli, for instance, believed that all principals know about Field Advisory #1 and they all do contact his office immediately whenever an allegation of sexual abuse was received (Sofarelli: 502). He also explained that this universal compliance had made it unnecessary for his office ever to

* By contrast, the Commission decided, in July, to publicize its role and its hotline number on the subways, and had the posters designed, printed, and posted in time for the beginning of the school year.

recommend sanctions against anyone for a failure to comply with the rule (Sofarelli: 502, 681).*

The investigator in charge of sexual abuse cases, however, told a different story: violations of the field advisory are a constant problem (Sotomayor: 28) and "a major frustration" in her work (Sotomayor: 120). Principals consistently tell her that they have never seen the advisory (Sotomayor: 120). And, principals not only fail to call her in a timely way, but in "a lot of cases" neither the Inspector General's Office or anyone else is notified at all, so that complaints of sexual abuse of children simply fall through the cracks completely (Sotomayor: 35).

Thus, Mr. Sofarelli's confidence that his "outreach" program has been effective is at odds with the facts known to the State Education Department team and to his own staff. His failure to come to grips with these facts and a design a more aggressive and thorough "outreach" program is a serious obstacle to detecting and combating of corruption and impropriety within the schools.

LACK OF INDEPENDENCE

The Inspector General is appointed by the Board of Education and is answerable directly to it. He is charged to investigate the local community school boards and the operations they run, and the Chancellor and the operations he runs, but does not investigate the members of the Board or their small personal staffs (Sofarelli: 581).

Technically, therefore, the Inspector General is independent of the people he investigates. And, according to Mr. Sofarelli, no member of the Board has ever attempted to interfere with his operation or influence the course of an investigation (Sofarelli: 585). Thus, in his mind, he has always functioned with a completely free rein.

* This testimony is strangely at odds with the Inspector General's repeated insistence that the office "has always sought penalties for those who fail to report" (IG Response at 5, 7). The Response does not provide any specific example of a case in which sanctions were recommended. Mr. Sofarelli mentioned a case that supposedly involved a Bronx principal arrested for a cover-up of some kind, who "[t]heoretically" could be brought up on charges (Sofarelli: 175). The Commission requested more details, or even the name of the principal, but no further information has been forthcoming.

On the other hand, it is understandably difficult for people in the field, who see that political connections in the local districts create firm alliances between the local boards and the people they are supposed to supervise, to put their trust in fine distinctions between Central Board staff and the Central Board itself. To many, "Central" is perceived as a monolith -- a single entity they fear will have far more interest in making the "system" look good than in exposing its corrupt or criminal members.

Not surprisingly, therefore, people frequently express misgivings about whether the Inspector General is independent enough of the "powers that be" within the school system to be forceful and aggressive in rooting out corruption within the system. For example, many people responding to the Commission's survey pinpointed a lack of independence as one of the critical weaknesses of the Inspector General's Office.

Mr. Sofarelli's reaction to this anxiety is curious. While conceding that there are people who feel this fear, he would not agree that it was a serious problem.

Q Do you agree that the perception exists and that it's not an isolated perception, and that it exists among more than one or two people?

A I would not agree with that blanket statement. How many people are you talking about; 100, 200, 4,000? I believe that it's out there ... but I don't know if it's there to the level that you are trying to intimate ... I would say there are two people out there [who feel this way]. I wouldn't agree to four. I don't know. That's a number you can use (Sofarelli: 597-598).

In addition to minimizing the problem, rather than focusing on changes that might alleviate it, Mr. Sofarelli evinced an almost hostile attitude toward these frightened people whom he should be encouraging to come forward and cooperate, commenting that he thought they "would be very suspect, credibility-wise" (Sofarelli: 595).

Mr. Sofarelli did not approve of the idea of having the Department of Investigation, the Mayor, the Regents, the Attorney General, or the Governor appoint the Inspector General, so that it would be clear he did not answer to anyone inside the New York City public school system (Sofarelli: 579-599). Asked for ideas of his own about how to combat the fear

that the office was not independent enough, Mr. Sofarelli concluded, initially, that "the system as it is now, is probably the best" (Sofarelli: 580).

At his next hearing session, he reported that it had "dawned on" him that it would be a good idea to make him a contract employee, who could be dismissed only "for cause" after review by an independent panel, so that he would know that he could not be "fired" on the basis of which investigations he conducted or the way he handled investigations he did conduct (Sofarelli: 652-653).

However, aside from guaranteeing a measure of job security to the individual holding the title of Inspector General, he had no other suggestions about increasing the actual and perceived independence of his office.

In contrast, the Commission is convinced that some change in the appointing system is crucial if we are to instill in potential witnesses and complainants a measure of faith that the Office's decisions about what, whom, and how vigorously to investigate will not be influenced by any political considerations or any fear that a particular course will embarrass the Inspector General's "bosses."

It is plainly not enough for Mr. Sofarelli to know that the members of the Board have never tried to influence him. Frightened people making difficult choices that could affect their careers or their children have no way of knowing that, and should not even have to wonder if it might be so. The very structure of the Office should make it plain that the Inspector General has no personal or professional stake in protecting the system or the reputations of anyone in it.

The Inspector General could -- and should -- take steps to decrease this fear and increase the perceived independence of his office. In fact, however, over the years, he has done just the opposite, permitting all too many facets of his operation to become intertwined with those of the very people he is investigating.

For instance, as Mr. Sofarelli commented, "the way you control an operation is control their budget, and control their personnel" (Sofarelli: 390-391). And yet, his budget and his personnel matters have all been handled by "the Chancellor's people" and subject to their rulings and their "restrictions and limitations" (Sofarelli: 390-391).

This arrangement inevitably fosters the impression that the Inspector General is not really independent of the Chancellor and his staff, as Mr. Sofarelli himself recognizes. During his testimony, therefore, he suggested -- to the

Commission -- that his budget and personnel matters should instead be handled directly by the Central Board of Education's "fiscal control office" (Sofarelli: 391).

This idea was apparently one of the notions that "dawned" on him only under the provocation of the Commission's questioning, for he did not suggest that he had ever raised this possibility with anyone else. Nor did he provide the Commission with any memoranda or written proposals requesting such a change.

Mr. Sofarelli also conceded that the fact that his office is located inside Board of Education premises must inevitably detract from any sense that his Office is independent of the people they are intended to investigate. Asked what he had done about this problem, he said that for years he had been writing "memos to the Division of School Buildings" about his space problems (Sofarelli: 386). He also said he had talked to more than one Chancellor about his space and had mentioned the problem to Mr. Wagner, the President of the Board (Sofarelli: 387).

The memoranda he had sent over the years, however, are very revealing, because, while he consistently asked for more space because he was obtaining more staff, he never even mentioned the need to move the office in order to increase its independence. On the contrary, when the idea of moving does arise, it is raised only because he has been told, categorically, that there is no internal space available.

It is not only in terms of physical location that the current administration has permitted the lines between the investigator and those under investigation to become blurred. Instead, the Inspector General has routinely allowed his staff to participate in Board operations in a manner guaranteed to confuse those on the outside about the role the Inspector General is playing and to whom he is reporting.

For example, the Inspector General's Office has for years provided the staff and space for the Chancellor's Conflict of Interest Committee (Sofarelli: 151). The Committee is comprised of one representative from the Chancellor's Office of Legal Services, one representative from the Chancellor's Division of Human Resources, and one superintendent from a Community School District (Sofarelli: 153). The Inspector General is himself a non-voting member, as is one of his deputies (Sofarelli: 153).

At some point, Mr. Sofarelli apparently proposed that the cost of this Committee's work should be borne by the Chancellor and not come out of the Inspector General's budget (Sofarelli: 151, 153). Otherwise, though, he is content to

remain a part of the Committee and to continue to do its background work (Sofarelli: 152-153). In fact, he believes that the work of the Committee has had a "widespread impact" in publicizing the role of the Inspector General's Office over the years (IG Response at 2).

If this Committee is really one of the main ways people at the local level have learned about the Inspector General's role, it is no wonder they do not believe that his office is distinct from the rest of the Chancellor's staff. This is, after all, a group that reports to the Chancellor; in Mr. Sofarelli's words, the Chancellor plays "an appellate function" in relation to the Committee (Sofarelli: 154). The Inspector General's participation on this Committee cannot help but send a confused and ambivalent message about the relationship between the Inspector General and the Chancellor's staff.

In other major areas, as well, the Inspector General has consented to procedures, and fallen into habits, that dilute any image of independence on his part. In the disciplinary area, for example, he and his staff are regular participants in "committee" meetings at which proposed charges are discussed.

Again, the group is comprised of one representative of his office, one representative from the Chancellor's Office of Legal Services, one representative from the Chancellor's Division of Human Resources, and one representative of the local school district or the division for which the employee works.

Even worse, he is not a non-voting member of the group, or even a voting member. Instead, the goal at these "technical assistance conferences" is to reach a "consensus" about what should be done. Thus, no one from the outside can ever truly discern what recommendations any of the participants have made or who should be held accountable for the decision.

Similarly, when the Inspector General's Office writes up formal reports recommending that an employee be disciplined, these reports often simply state that "appropriate disciplinary action" be taken, without specifying the nature of the charges or spelling out what discipline the Inspector General believes would be appropriate. Again, by this practice, the Inspector General's Office avoids committing itself to a position in any way for which it might be held accountable.

If, on the other hand, the Inspector General's Office wanted to establish its independence in this area, it

could do so easily enough. In contrast to its current practice, it would refer the results of its investigations to the Chancellor's staff, with a clear recommendation of its own about precisely what charges should be brought and what disciplinary sanction the Inspector General thinks would be appropriate.

By allowing his office, instead, to become part of this group and to strive for a "consensus" with the rest of the staff members involved, Mr. Sofarelli has permitted precisely the wrong signal about his role and his independence to be sent to all the people who attend these meetings and receive these reports.

THE GHOST CLASSES AT STEVENSON HIGH SCHOOL

A Second Case Study

Beginning sometime in the 1985-1986 school year, the English Department at Stevenson High School began to offer courses that were a sham. The Reading Tutor course, for instance, was supposed to be a course in which honors students interested in teaching careers would tutor fellow students in need of remedial help in English. One teacher was to work with the tutors and coordinate the program.

In fact, for several semesters in a row, no students were tutored at all; instead, the students assigned to be tutors did gofer work for the teacher and the English Department. According to students involved in this scam, they were recruited by the promise of the fake, but impressive, academic credit they would receive. The teacher, too, got "credit" for this course: she was assigned to teach fewer courses than her fellow teachers.

By the fall of 1987, the success of this phony course inspired the creation of a second. According to the course listing, "Literature and Art" was an independent study course for honors students who would spend the semester working on a project that would be the basis of their grade. In fact, like their fellow students in the Reading Tutor course, the students in the "Literature and Art" class did secretarial work and errands, and came no closer to studying than shelving books in the English Department Office.

Word of these fraudulent courses was brought to the Inspector General's Office by two other teachers at the school. The story of the Inspector General's investigation of

the matter illustrates how many of the deficiencies in the office affect its investigations. The subsequent recommendations, and the lessons Mr. Sofarelli drew from the case, form a paradigm about the weaknesses of the office and its currently misdirected energies.

The Investigation

In January of 1988, a teacher at Stevenson High School called the Inspector General's Office to report the existence of the ghost classes in the English Department at his school. He was invited to come to the Inspector General's Office in early February, 1988. To his surprise, after this February interview in which he told his story and gave what evidence he could, he was told that he was simply speaking to the office's "intake" officer and that this report did not constitute an official "complaint."

Instead, he was given a "phone/walk in" complaint number and told it usually took about two weeks before an investigator was assigned and would begin to work on the case. He was also told that since the President's Day holiday was coming up, it might take longer in his case.

This prediction proved to be correct. In fact, it was not until March 4, 1988, that an investigator actually assigned to the case called the complainant. When he did, he called him at the school, left his name, identified himself, and asked that the teacher call the Inspector General's Office. And, it was not until March 15, 1988, that the investigator met the complainant and interviewed him -- again -- to find out what he knew about the phony classes being held at the school.

In other words, it took two months for an investigator to be assigned the case and take even the most elementary step to investigate it, a time lag that did little to inspire any confidence in the two teachers who had looked to the Inspector General's Office to expose these fraudulent practices and put a stop to them.

Worse, no one told the complainants how critical it was not to rock the boat in any way in the meantime. Not surprisingly, therefore, given their sense that nothing was happening and not realizing how it might jeopardize a later investigation, they began to seek other avenues of redress, by bringing grievances and complaints to the principal.

The Inspector General's investigation finally did get off the ground, and investigators ultimately reviewed class rosters and transcripts, and spoke to several of the

students who had taken the ghost courses. The investigators did not get to the point of interviewing the teacher, the assistant principal, and the principal, however, until the fall of 1988.

The standard -- and only effective -- way of conducting a series of interviews like these would be to call in all three people in a row to prevent them from meeting in between, comparing notes, and tailoring their stories. Instead, the investigators conducted their interviews over a three month period, conducting one in September, second in October, and the third in November.

These interviews were conducted by the investigators themselves, rather than by an investigative attorney. Without in any way denigrating the skills of investigators, it is obvious that they cannot bring to bear the legal knowledge or the techniques of cross-examination that a skillful criminal attorney would bring to a critical interrogation of this type.

Not surprisingly, therefore, the questioning they did was diffuse and open-ended, without any real follow-up. It might have worked well to extract information from a cooperating witness. It was, however, precisely the wrong technique to use with hostile witnesses or targets, and was hardly designed to pin anyone down to a story or to lay the groundwork for a later prosecution.*

During their interviews, the teacher, the department head, and the principal all left the impression that the students on the class list actually tutored other students and received credit for that work. However, at the time of these interrogations, neither the teacher nor the department head provided any details about the names of the teachers who supposedly had tutors assigned to teach students in their class. A month after the last interview, the department head finally sent a memo with the names of four teachers who supposedly had tutors in their classrooms.

These teachers were interviewed after the targets: three said they had had no tutors in their classes and the fourth said she had had only two tutors in the fall of 1985. One might suppose, therefore, that the targets had committed perjury when they misled the investigators about these facts, or at least that they could be sanctioned for their wilful

* In addition, only one of the three interviews was conducted under oath -- for the peculiar reason that only the department head was considered a "target" by the Inspector General's investigators.

failure to cooperate truthfully with the Inspector General's Office.

In fact, however, the answers they were allowed to get away with were so rambling and vague that criminal prosecution would be impossible and even the imposition of the disciplinary sanctions would be difficult.

After the fall of 1988, when these interviews were conducted, the complainants waited for some kind of report or finding to be made by the Inspector General's Office. The report was not written, however, until October 10, 1989. The Inspector General's Office concluded that the majority of the students assigned to these courses did nothing but act as secretaries and clerks for the English Department. The teacher did not teach, but got paid just the same. The students did not learn or study, but received credit just the same.

The most the Inspector General would recommend, however, was that the High School Division "should take appropriate disciplinary action" against the teacher, against the department head, and against the principal. As is apparently general practice, however, the Inspector General's Office did not pin itself down to specifying an opinion about what type of "disciplinary action" it believed would be "appropriate."

The results of the investigation were referred to the High School Division on October 5, 1989, as were a number of new, similar allegations about courses offered in Stevenson and in other schools. When the Commission asked about the matter, at the end of January, 1990, the Inspector General's Office had received no word at all back from the High School Division. After the Commission's inquiries, the office sent a follow-up letter asking about the "status" of these referrals.

Mr. Sofarelli later testified that he did not believe that the findings during this investigation amounted to a finding of corruption or even impropriety.* He could not even imagine any criminal charges that might be brought in this type of situation (Sofarelli: 848). Furthermore, in his view, so long as a student was assigned to the course and a teacher was assigned to teach, the course "existed." The fact that the teacher did not teach anything and the student did errands rather than independent study, or shelved books rather

* Mr. Sofarelli thought that there might be something corrupt or improper if the teacher was "paid extra" for teaching the course (Sofarelli: 846).

than tutored, amounted, in his mind, to no more than a "curriculum abuse" (Sofarelli: 848).

As a result, Mr. Sofarelli concluded that his office should not have got involved, and would no longer get involved, in this type of investigation (Sofarelli: 847). Besides, this type of investigation is difficult for his staff and "time-consuming" (Sofarelli: 847). Accordingly, his view is that allegations of this type -- of which the office has received half a dozen -- will simply be referred to the High School Division so that the pedagogues there can "monitor" the "curriculum" situation (Sofarelli: 844, 851).

This conclusion is -- quite simply -- shocking. In fact, it is difficult to imagine any kind of fraud that could cut more deeply into the very heart of the educational system. Of course, the teachers involved in this kind of scam are guilty of cheating their fellow teachers and bilking the system: they are being paid for teaching, but are not. And, of course, the students who receive fake credits in return for gofer work are defrauding the colleges and potential employers that later review their misleading transcripts and grade point averages, and cheating the other students applying to those colleges or for those jobs.

Worse, though, the teachers are cheating the students they lure into this kind of scam. Because those students are not learning about literature or art, and they are not gaining practical experience as tutors that might stand them in good stead in a later career.

But they are learning one lesson: that their educational system is so corrupt that their teachers are willing to toss learning out the window to make their own administrative day a little easier.

That the Inspector General can view a situation like this as a curriculum abuse too minor to warrant investigation by his staff reveals a critical distortion of priorities.

A NEW OFFICE

The Board of Education has a conventional inspector general's office, charged not only with investigating crime, but also with disposing of a host of internal management matters. As it has been run, the Inspector General's Office has devoted far too much energy toward those internal matters and handled criminal investigations in a lethargic and not particularly effective way.

More important, by misdirecting its resources and misconceiving its goals, the office has alienated itself from the people who should trust it and work with it to accomplish its goals. The office has left the public and the people in the system afraid to come forward: afraid that the Inspector General will not protect them and their information, afraid that the Inspector General will not care to pursue their information thoroughly and energetically, and afraid that the Inspector General will not be able to carry through his investigation of the allegations in a professional way to a successful conclusion.

The Inspector General considers disciplinary action his main goal and treats criminal prosecution almost as a fortuitous by-product of his office's work.* Because of that attitude, the office has squandered its resources on carping, trivial, snivelling complaints that do not allege criminal wrongdoing, or allege matters that are so trivial that it is "criminal" to spend time on them. That attitude must change. For, while these matters may be of enormous interest to the distraught complainants, they are all but meaningless to the integrity of the system itself.

Because of that attitude, the Inspector General's Office has consistently allowed itself to be drawn away from criminal investigation into management matters that should be entrusted to the Chancellor's staff, who are responsible for administration and should be accountable for it as well. As Mr. Sofarelli admitted, "[w]e have been used as a dumping ground for problem areas" (Sofarelli: 398). And, as he admits, he must "take sole responsibility for" the fact that for years the office has been "taking on too many" "responsibilities" (Sofarelli: 348), instead of setting serious priorities and devoting its efforts to rooting out serious crime and corruption. This lack of focus must change.

Because of this long-standing confusion about the office's role, the office has been structured and staffed in a way that is almost designed for failure in the area of criminal investigation. Three lawyers, only one of whom has criminal investigative experience, "supervise" the work of about sixty investigators, few of whom have real criminal investigative experience. That structure must change and the

* Mr. Sofarelli testified that he thought the office was "mandated to look into wrongdoing that may lead to criminal prosecution," but added, "I think my first goal is to look for an internal disciplinary unit. That's not to say I minimize the first one. We'll look into those allegations" (Sofarelli: 577-578).

office must attract the kind of talented people who can bring a serious criminal investigation to a successful conclusion.

Fortunately, it should be fairly easy to decide how to reconstitute the office and how to redefine its goals to make it an effective and forceful presence. In fact, the City already has three successful models from which to learn: the Department of Investigation, the Rackets Bureaus of the various District Attorney's Offices, and this Commission.

These organizations vary widely in size, each has its own jurisdiction, and, of course, the District Attorneys' bureaus prosecute as well as investigate. Yet, the critical fact is that each of these entities is structured to conduct precisely the kinds of investigations that the public school system needs, and to conduct them professionally and successfully.

Drawing on these models, it is clear that the Inspector General's Office must be redesigned from top to bottom, in its mandate, in its goals, in its staff, even in its physical location. And, the new office's leader should be appointed in a new way and the office should even be given a new name, to underscore the magnitude of the changes and to help overcome the crisis in confidence that has contributed to crippling this office.

First, until the system gains faith in the new office, it must be independent, and must be perceived to be independent, of the Board of Education. People are obviously less likely to complain about wrongdoing within the central bureaucracy to an Inspector General answerable to the Board or to the Chancellor.

Furthermore, some of the wounds of decentralization still persist. Many community school district personnel perceive the Central Board and the central bureaucrats as hostile forces, to be defied, fended off, or ignored. Rightly or wrongly, the Inspector General is perceived as just another of Central's hostile troops.

Conversely, many central bureaucrats came from and still have ties to community school districts. Time and again, complainants have told the Commission's staff that they would not bring their information to the Inspector General, because whatever they told his investigators would be leaked to other Central bureaucrats who, in turn, would leak to their old friends and colleagues in the districts.

Currently, the Inspector General is part of the system about which they want to complain. Too many people

believe the Inspector General's mission is to cover for the Board of Education rather than to catch wrongdoers.

The fact that the Inspector General is accountable to the Board of Education has probably also contributed to the office's disarray. Board members are presumably chosen because of their interest and expertise in educational matters, not criminal law and police work. In any event, whether the problem is a systemic one or not, it is clear that, up to now, leaving oversight of the office to the Board simply has not created an effective corruption fighter.

Moreover, the educational bureaucrat has a different mind-set from that of an effective investigator and the pace at which the former operates is slower. An effective investigator moves swiftly, forcefully, decisively, but fairly. The bureaucrat operates more tentatively and at a more relaxed pace. An effective investigator does not need reams of paper and a continuum of interminable meetings to reach his goals. But, too often, those are the major components of the central bureaucrat's approach to a problem. A bureaucrat can, and perhaps, should strive to achieve a consensus among all the people potentially affected by his acts. An effective investigator must be willing to make an immediate decision on his own and let the chips fall where they may.

Until now, this bureaucratic mind-set and method of operation has infected the Inspector General's operation and maimed its effectiveness. If for no other reason, the schools' investigators must be separated from the central bureaucracy to insulate them from the massive lethargy that, at least until recently, pervaded the bureaucracy.*

Of course, the office might not need to be independent of the Board of Education or of the Chancellor permanently. In fact, in the abstract, entrusting the appointment and supervision of the investigative agency to the Board or the Chancellor might increase accountability.

* The difference in attitudes between lawyers involved in education and criminal attorneys was highlighted in private hearings that focused on what should happen to teachers and principals caught using narcotics. The Board lawyers, while deploring drug use, supported giving the miscreants at least a second chance. The Commission staff, made up of criminal attorneys and investigators with police backgrounds, believed people caught violating the Penal Law should be arrested and prosecuted, an attitude far more appropriate for the group charged with rooting out crime and corruption in the public school system.

However, at the moment, there is such a pervasive perception that nothing can or will be done to root out corruption that, at least temporarily, the office must be independent of those whom it is called upon to investigate.*

At this point, what the system needs is a dramatic gesture that inspires the belief that the power structure at the highest levels of government is committed to an all-out attack on those who would steal an education from the City's children. Giving the same kind of special treatment in the 1990's to the City's public schools that was given in the 1970's to the City's criminal justice system would send precisely the right message of commitment.

The Governor -- with or without the consent of the Senate -- the Attorney General, or the State Department of Education could appoint the head of the new investigative agency. Another approach would create a new City department to investigate the school system and authorize the Mayor -- with or without the consent of the City Council -- to appoint its head. Any of these solutions would alert the public to this new direction, and allay long-standing fears that the investigators are really out to protect the system, not to cure it.

The difficulty with these solutions is that they would have to be put on hold during the time-consuming legislative process, and, unfortunately, the school system simply does not have that kind of time to spare.

A more expeditious solution would be for the Mayor to create a Special Commissioner to Investigate the Public Schools. Commissions of this kind have a long and well-respected history: Mayor Lindsay created the Knapp Commission to deal with the crisis in the criminal justice system; Mayor Koch created the Special Commission to Investigate New York City Contracts (the Martin Commission), and, of course, this Commission as well.

* Once that perception is eradicated and a tradition of investigative excellence is established, consideration could be given to placing the agency back under the aegis of the Board of Education or the Chancellor. The Knapp Commission, for instance, found conditions in the criminal justice system so intolerable that the Special Prosecutor was created at its recommendation and was made independent of those it was mandated to investigate. During the ensuing years, however, conditions and attitudes changed enough that an independent prosecutor is no longer necessary.

The current Mayor, who has a proven history of interest in the educational system and who is certainly no foe of decentralization,* is in an excellent position to appoint such a Commissioner, whose motives and whose ties will be above the kind of suspicions that have dogged the system until now. And, since the Mayor's Office would fund the Commissioner's work, neither the Chancellor nor the Board of Education would be perceived to be influencing the office -- even indirectly -- through the power of the purse.

As was the case with previous mayoral Commissions, the Mayor would appoint the Special Commissioner and would, of course, have the power to remove the Special Commissioner.** The Special Commissioner should also be required to make formal annual reports to the Mayor and the public. On the other hand, as was the case with previous investigative commissions, the Mayor should not compromise the Special Commissioner's independence, and, aside from these annual reports, the Special Commissioner should report to the Mayor when the Commissioner deems reporting appropriate.

Once established, the Special Commissioner would function, in essence, as a Department of Investigation for the City school system. Like the Department of Investigation, the Special Commissioner would have no need for prosecutorial powers and would not hold public hearings. On the other hand, the Special Commissioner could be made a deputy commissioner of the City's Department of Investigation, so that the office would have subpoena power, the power to obtain sworn testimony, and the power to grant use immunity.*** And, the

* See Improving the Odds: Making Decentralization Work For Children, For Schools and For Communities, the First Report of the Manhattan Borough President's Task Force on Education and Decentralization (1987); People Change Schools, the Second Report of the Manhattan Borough President's Task Force on Education and Decentralization (1989).

** Of course, adopting the expeditious solution the Joint Commission recommends as an interim measure does not preclude later consideration of these other approaches. For instance, the Council could subsequently make the Special Commissioner more permanent by legislation.

*** This device was used by Mayor Koch when he created this Commission. His executive order made the Chief Counsel a deputy commissioner of the Department of Investigation. However, the Chief Counsel did not, and the Special Commissioner would not, report to the Commissioner of the Department.

Board of Education would presumably grant the Special Commissioner the same powers it granted to this Commission when it was formed.

With strong mayoral backing, the Special Commissioner would be able to obtain the services of a squad of police officers, and thereby obtain the power to make arrests, which would enormously enhance the office's prestige and make it a much more credible threat to would-be criminals. With mayoral backing, the Special Commissioner could also hire a few outstanding retired police personnel, in order to infuse the office immediately with the kind of talent and expertise that a professional investigative agency cannot do without. And, with mayoral backing, the Special Commissioner could work out whatever problems there might be to acquiring a staff of skilled investigative attorneys to supervise the Commissioner's criminal investigations.

The Commission has considered and rejected suggesting the transfer of the functions of the Inspector General to the Department of Investigation. The Commission's concern is that, as exigencies evolve, the Department will inevitably move resources that should be dedicated to eradicating corruption in the school system to whatever the target of the hour may be. For the same reason, the District Attorneys cannot be expected to devote on an ongoing basis all the resources that are necessary to investigating the school system to the exclusion of everything else within their broad mandate.

In addition to making this new office independent, its mission should be redefined and made clear to the public and to its staff as well. This new office should focus all of its attention and energy on serious criminal wrongdoing. Its overriding mission should be to root out corruption, to arrest drug abusers who have not sought rehabilitation, to lock up employees who subject children to sex abuse, to make criminal cases against thieves -- in short, to build solid criminal cases against real criminals.*

Moreover, the Special Commissioner should set up an office in which experienced criminal attorneys work directly with teams of investigators to ferret out crime and corruption. This restructuring would necessitate revising the

* Of course, the Special Commissioner should also have a mandate to investigate systemic flaws that allow criminality and corruption to exist, and to publicize those flaws and recommendations for improvements in reports, whenever the Special Commissioner deems it in the best interests of the system.

lawyer/investigator ratio by increasing the number of attorneys. In addition to its police squad and investigative experts, the Special Commissioner's Office -- unlike the current Inspector General's Office -- should have a group of expert financial crimes investigators.

This new office also should cease to participate in the system's internal management affairs. This criminal investigative agency should not be spending its time obtaining records needed by other investigative agencies, doing background employment checks on former personnel, or reviewing personnel disclosure forms. It should not be doing the work of the Chancellor's conflict of interest committee, or even participating in that kind of committee.

Instead, a small portion of the Inspector General's current staff -- whether called the "inspector general's office" or something else -- should continue to deal with these matters and should be under the direct control of the Chancellor who is directly responsible for the daily management of the system. But that entity should be completely separate from the new office so that responsibilities, authority, and mandates are clear.

And, while the Special Commissioner's staff should serve as a clearinghouse for all complaints, the less significant matters -- which often are really management or administrative issues, such as allegations of time abuse, questions of contract compliance, and complaints about per session violations -- should be referred to this internal group or to the appropriate part of the system.

The office's internal structure should be redesigned to have investigative subunits or bureaus that focus on particular boroughs or divisions. If the same investigators and lawyers repeatedly work on matters in the same borough, they will get to know the cast of characters and be better able to evaluate allegations and complaints. They will also be able to develop informants whom they can trust and who have confidence in them. They will have their fingers on the pulse of their borough.

Of course, there will still be a need for specialty units to deal with special victims, such as the victims of sex crimes. And, from time to time one unit may need to borrow personnel from another unit, for example, to conduct surreptitious physical surveillances, where one unit's personnel may be too well known in the borough. But the benefits of this organization far outweigh those inconveniences.

To symbolize its new approach and its independence, the Special Commissioner's Office should be relocated away from the Board of Education complexes on Livingston and Court Streets in Brooklyn. Moving the office physically would underscore its separateness and independence from the Board. It would also lessen the concern some employees of the system now have about bringing complaints to the office.

Finally, the Commission recognizes that organizations and structures are only as effective as the persons who work in them. Needless to say, the Commission recommends that Special Commissioner be someone with a first-rate record of accomplishment in law enforcement who will, in addition to leading a top-flight strike force, command the respect of law enforcement and educational professionals.

With cooperation between the Mayor and the Board of Education, these recommendations can be accomplished with the stroke of a pen. And, with that same stroke of the pen, the Mayor and the Board could inspire the people in the system and the public as well with a new sense of confidence that this new Special Commissioner's Office would launch an effective attack on the corruption and crime that still exist in the schools and find effective ways to prevent their recurrence.