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Fifty years after its creation, the Civilian Complaint Review Board has been granted the authority to perform independent investigations and prosecutions of civilian-alleged misconduct by police officers. A state court of appeals known as the Appellate Division, First Department has held that, for the first time, civilian complaints against police officers for misconduct may now be reviewed, investigated and prosecuted by an independent board comprised of civilians outside of the police department. The court, however, also ruled that the Office of Administrative Trials and Hearings, a distinct agency separate from the police department and the city's central independent tribunal, may not serve as the impartial adjudicator of the prosecutions. Instead, adjudication of police officer misconduct must continue to reside with the police department.

FIFTY YEARS IN THE MAKING

In 1953, the [Civilian Complaint Review Board](#) was created to be a place where people could file complaints of misconduct against New York City police officers. The original board had close ties to the [police department](#), the very agency whose employees it was to investigate. For example, the board was comprised of three police department employees, deputy police commissioners, and based its investigations on reports prepared by the police department.

The original board did not independently investigate nor prosecute complaints of misconduct and had no actual authority to discipline any officers. It was solely empowered to review the police department investigatory reports and forward its findings and recommendations to the police department, which had the sole responsibility for prosecuting, adjudicating and determining the appropriate disciplinary action.

Since the board's creation, every attempt to dislodge the police department from investigating and prosecuting police officer misconduct complaints and to create an independent review process has been met by a lawsuit filed by the various police unions.

After several unsuccessful attempts, the board took its first step towards separating complaints

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of police officer misconduct from the police department in 1987, when six private (non-police) individuals were added to the twelve-member board.

The union unsuccessfully sued.

Six years later, the city council amended the New York City [charter](#) to make the board the city's first independent, police oversight agency, separating it from the police department and giving it the authority to investigate. The union again unsuccessfully sued. The new board was comprised entirely of non-police civilians, operating outside the police department with the authority to receive, investigate and recommend discipline to the police commissioner on complaints of force, abuse of authority, discourtesy and offensive language. But the board members could not themselves prosecute these cases.

ATTEMPT AT INDEPENDENT PROSECUTION AND IMPARTIAL REVIEW

Following the 1993 changes, the board, after making its investigation, was required to forward to the police department's internal disciplinary system any claim of misconduct it found "substantiated" for prosecution. The police department's internal system, not the board, then determined whether and how to prosecute the claims. The claims were also heard before the police department's internal Office of the Deputy Commissioner for Trials. That office would then recommend penalties to the police commissioner. The Civilian Complaint Review Board did not participate in the review process.

In January 2001 the mayor and police commissioner made two significant attempts to further remove police officer misconduct complaints from the police department's review. First, prosecution of misconduct complaints were removed from the police department and given to the board, which was now granted the authority to not only investigate disciplinary actions against police officers, but also to prosecute "substantiated" claims. Included in this authority was the board's power to obtain police officer's employment history and to negotiate pleas with officers charged with misconduct. Under the 2001 changes the board would no longer forward "substantiated" claims to the police department for prosecution. Rather, the board would prosecute formal charges against the officers.

Second, the new rules sought to remove the hearings and review of the prosecutions from

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inside the police department. The new rules required the board to bring the prosecutions of police officer misconduct before an impartial administrative judge at the [Office of Administrative Trials and Hearings](#) (OATH). The OATH judges were charged with making recommendations of discipline to the police commissioner. In April 2001 the police department and the board agreed that the board would start prosecuting cases before OATH after July 25, 2001.

UNIONS SUE

Prior to July 25th, several police unions sued the mayor, police commissioner, chair and director of the board, OATH and OATH's Chief Administrative Judge. The unions challenged both the board's expanded authority to independently prosecute officer disciplinary actions and the hearing of those actions before the impartial OATH tribunal. In a decision entered on October 15, 2001 Justice Leland G. DeGrasse upheld the new rules with one exception. Justice DeGrasse ruled that the board was properly authorized to prosecute complaints of police officer misconduct. Justice DeGrasse, however, ruled that police disciplinary hearings could not be heard before an impartial OATH judge, when those hearings may result in termination. State law, Justice DeGrasse stated, specifically required that only police department employees preside over disciplinary hearings where termination is a possibility.

On appeal, the First Department affirmed Justice DeGrasse's ruling as it pertained to the board. The board, the court held, may be granted the authority to perform independent prosecution of complaints of police officer misconduct; may obtain personnel records of officers under investigation; and may pursue plea bargains with police officers under investigation.

The court, however, altered Justice DeGrasse's ruling by holding that OATH could not serve as the impartial tribunal presiding over officer disciplinary hearings. State law, the court held, completely barred OATH from presiding over any police disciplinary hearings, which must be conducted by an individual who is employed by the police department.

GREATER EFFICIENCY, TRUST UNDER CIVILIAN CONTROL

The Civilian Complaint Review Board, then, has been granted the authority to perform independent investigations and prosecutions of civilian complaints claiming police officer

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misconduct. Impartial hearings of those complaints, however, must wait. The board's prosecution of police officer misconduct will be performed before a police department employee, who will recommend whether or not to discipline the officer.

It is important to note that the few cases that did process through the board and OATH prior to the court's 2003 decisions were processed more efficiently than those prosecuted by the police department. They also resulted in similar disciplinary actions. For example, in 2001 the board averaged 274 days to investigate complaints, while the police department averaged 558 days to prosecute substantiated [claims](#) . Similarly, in 2002 OATH was able to make recommendations on prosecutions within 77 days, while the police department averaged over 500 days. Moreover, the police department [imposed](#) discipline against an officer in over 75 percent of the cases where the board found the complaint to be "substantiated". The police department imposed OATH's recommended disciplinary action against an officer in 78 percent of the cases in 2002 and 98 percent in 2001.

While these statistics begin to express the increase in efficiency and accuracy that would be afforded civilian complaints if separated from the police department, they do not account for the improved relationship between the public and police department that would occur upon separating investigation, prosecution and adjudication of civilian complaints against police officers from the police department. The public's perception of the police department can only be enhanced by allowing an outside independent investigation and impartial review of police misconduct complaints. There is an obvious skepticism among the public, particularly in minority communities, that the police department does not give civilian complaints proper review and is incapable of disciplining its own. As the city's brief before Justice DeGrasse stated "[s]uch public perceptions corrode the relationship between the police and the community." The unions' continued attempts to thwart the creation of an independent investigation and impartial review of complaints of police officer misconduct creates another level of mistrust between police officers and the constituents they protect and serve.

The cases are: Lynch v. Giuliani, 2003 N.Y.App.Div. LEXIS 68 (1st Dep't); Lynch v. Giuliani, Index No. 111436/01 (N.Y.Cty.Sup.Ct.) (DeGrasse, J.) (Attorneys: Michael T. Murray, Richard A. Dienst, for Lynch; Michael D. Hess, Alan G. Krams, Scott Shorr, NYC). As of this writing, the judgment had not been entered, which would give the parties thirty days to appeal to the state's highest court.

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