

Power to Prosecute Police Goes to Civilians. Again.

By AL BAKER

On Thursday, Police Commissioner Raymond W. Kelly gave lawyers from the Civilian Complaint Review Board, the independent agency that investigates allegations of police abuse, authority to prosecute police officers in cases now handled exclusively by the department's lawyers. But it was not the first time such powers have been proposed.

The changes are similar in spirit to a plan from 2001, when the Giuliani administration and Mr. Kelly's predecessor, Bernard B. Kerik, sought to reinforce the public's confidence in the department at a turbulent time.

But that plan was never put into place, and its stillborn fate is a cautionary tale today: It died after a battle with the Patrolmen's Benevolent Association led to an unfavorable split decision from the state's Appellate Division in 2003. While that decision merely struck down where the trials could take place, it also lessened the resolve of public officials in their push to give the review board the power to prosecute police officers at all. When the public spotlight moved on, the plan was forgotten.

Patrick J. Lynch, the association's leader, immediately criticized the new plan, suggesting a new fight this time around. "This change is nothing more than a cynical public relations stunt, designed to placate the usual police critics," he said in a statement.

Outside watchdogs of the Police Department said they were skeptical for different reasons. Some, including City Council Speaker Christine C. Quinn, wonder if the board's new prosecutorial responsibilities will go far enough, since it is unclear whether board lawyers will have a say in picking which cases to bring to trial — a crucial ability for any prosecutor. (A spokesman could not say Friday if board lawyers would be involved in decisions on what cases to bring to trial.)

And a lawyer with the Center for Constitutional Rights said it was "an inherent problem" that the police commissioner would retain final say over whether to punish guilty officers.

The timing of the announcement has also come under question, since Mr. Kelly and others could have acted at any time in recent years, but moved at a period in which department budgets are declining because of the economic crisis. It also is being proposed at a time when record numbers of New Yorkers are being stopped and questioned by the police and as the city is paying increasing amounts to settle court claims against the police.

"This change in practice is the partial implementation of a policy adopted by the N.Y.P.D. nine years ago, but never implemented," said Dick Dadey, the executive director of Citizens Union, which endorsed Mayor Michael R. Bloomberg for re-election last fall in part because he was open to such a move.

"I think City Hall and the N.Y.P.D. feel vulnerable on this issue," Mr. Dadey said. "People on the street, they get stopped and frisked and they feel like they got unfairly treated and they are encouraged to go to the C.C.R.B., but the word on the street is, 'You know what, don't even bother because your complaint will get buried.' So there is a need to change how the city handles police misconduct."

Paul J. Browne, the Police Department's chief spokesman, responded: "It sounds like Dick cannot take 'yes' for an answer."

Mr. Browne said the changes were made by Mr. Kelly and Ernest F. Hart, the chairman of the Civilian Complaint Review Board, after analysts for the Police Department told Mr. Kelly that any downside was negligible. He said changes would come "within months," but that the details were being worked out.

It was with great promise that

Mr. Kerik and Mr. Giuliani announced their plan nine years ago.

In February 1999, Amadou Diallo, an unarmed West African immigrant, died in the Bronx in a volley of 41 police bullets. Separately, federal prosecutors were finding problems in how the department handled complaints of brutality. Also, a study found that black and Hispanic New Yorkers were disproportionately subject to the department's so-called stop-and-frisk tactics; the findings led to a law, enacted in 2001, requiring police officers to note and report every time they stopped someone in public for questioning.

Some of those same issues are being debated today.

The number of street stops of civilians rose to a record high of 575,304 in 2009, as did the number of complaints from civilians to the board, 7,674. Most of the complaints have to do with officers stopping, questioning and frisking people. Yet the department is both increasingly dismissing cases referred to it by the board and imposing lenient sanctions when officers are found guilty, according to Donna Lieberman, the executive director of the New York Civil Liberties Union.

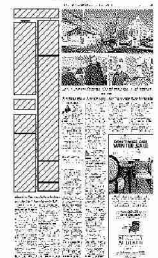
Ms. Lieberman and others have numerous questions about the new plan. They wonder how many board lawyers will do the new job and what kind of cases, and how many, they will handle.

Mr. Browne said cases involving board complaints would be handled by board lawyers at trial, to the degree the board had adequate staffing.

Last year, 20 of the 130 administrative trials of police officers stemmed from complaints that had been made to the board.

The success of the proposal, Mr. Dadey said, would be linked to resources.

After spending \$11.3 million last year, the board is projected to spend \$10.1 million this year, and is budgeted for \$9.6 million next year, according to the mayor's management report. The board employed 178 people last year, has 168 employees now, and is slated to have 156 next year, it said.



The 2001 proposal would have given board lawyers prosecutorial power and changed the venue for trials: moving them to the city's Office of Administrative Trials and Hearings from the department's trial rooms at Police Headquarters. The court struck that part down, Ms. Quinn said.

"It's an issue that has come up several times over the last eight years," said Peter F. Vallone Jr., the chairman of the City Coun-

cil's Public Safety Committee. "I'm not sure why they are pulling the trigger now, but it is something that many good-government groups have wanted for a long time."

A new plan sounds much like one from nine years ago, which went nowhere.