



**NYC**

**COMMISSION TO COMBAT POLICE CORRUPTION**

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# **Eighteenth Annual Report**

## of the Commission

AUGUST 2017

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# OVERVIEW

The Commission to Combat Police Corruption (“CCPC” or “the Commission”) was established by Mayoral Executive Order No. 18 in 1995 based upon a recommendation of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department chaired by Judge Milton Mollen (“Mollen Commission”).<sup>1</sup> The Mollen Commission recommended the creation of an external, independent “Police Commission,” whose purpose would be to monitor the anti-corruption systems of the New York City Police Department (“NYPD” or “the Department”). The resulting Executive Order mandated that the Commission monitor the efforts of the Department to gather information, investigate allegations, and implement policies designed to detect, control, and deter corruption among its members. That Executive Order also specifically withheld authorization from the Commission to conduct its own investigations into allegations of corruption against members of the Department, except in specific, narrowly defined circumstances.<sup>2</sup>

The Commission fulfills its mandate largely through examining a sample of investigations conducted by the Internal Affairs Bureau (IAB)<sup>3</sup> and reviewing all of the closed disciplinary cases involving uniformed members of the service that are prosecuted in the Department’s Trial Rooms. The Commission reports its findings from these reviews in its Annual Report. This report, *The Eighteenth Annual Report of the Commission*, covers the work performed by the Commission for calendar year 2015 and the first eight months

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<sup>1</sup> Executive Order No. 18 is attached as Appendix A to this Report.

<sup>2</sup> Executive Order No. 18, § 3(b) (February 27, 1995).

<sup>3</sup> IAB is the bureau within the Department responsible for investigating allegations of corruption and serious misconduct against members of the service.

of 2016, to coincide roughly with the end of former Police Commissioner Bratton's term.<sup>4</sup>

The Report begins with a discussion of the Commission's three primary approaches for monitoring IAB's efforts to detect and investigate corruption. The Commission briefly describes the first two, which are its attendance at Steering Committee meetings and at case reviews. In these meetings, Commission staff are present as IAB supervisors describe the progress of their cases with high-ranking members of IAB. The remainder of the IAB section is devoted to discussing the Commission's review of 139 closed IAB investigations and its evaluation of those investigations. After describing the overall areas on which it focuses during its review of individual cases, the Commission sets forth multiple analyses of the closed investigations reviewed. In these analyses, the Commission compares the most serious allegations in each case with the source of those allegations. The Commission also examines the overall length of the investigations and compares the amount of time investigations were open to those investigations it reviewed in 2013 and 2014. Next, the Commission compares the average length of investigations based on three factors: the source of the complaint, the most serious allegation, and the eventual disposition of the case. After defining the dispositions utilized by IAB, the Commission sets forth the number of cases in its review that had substantiated allegations and provides a list of the allegations that were substantiated. The section concludes with the Commission's review of seven components in these cases. These are the Commission's assessment of whether: 1) the dispositions of all of the allegations were supported by the evidence; 2) IAB interviewed all available witnesses; 3) investigators accurately summarized, in their worksheets, the civilian witness and subject/witness officer interviews; 4) interviews were conducted in an

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<sup>4</sup> Former Police Commissioner Bratton left that position on September 16, 2016. The Commission's review runs through August 31, 2016.



adequate manner; 5) investigators documented all of the investigative steps taken; 6) video evidence was sought in a timely manner; and 7) supervisors reviewed the case and provided guidance in a consistent and meaningful manner.

The second section of this Report is a discussion of 1395 disciplinary cases that were adjudicated by the Department during the reporting period. These were comprised of all of the cases involving uniformed members of the service that were prosecuted by either the Department Advocate's Office (DAO) or the Administrative Prosecution Unit (APU) of the Civilian Complaint Review Board (CCRB).<sup>5</sup> This section begins with a description of 13 case types that the Commission used to categorize cases for the purpose of conducting statistical analyses and making recommendations regarding penalties. Next, the Commission sets forth its findings regarding the prevalence of cases in each category, the ranks of the members of the service who faced discipline during the period (including a comparison with the penalty and length of the disciplinary process for higher-ranking members of the service), and a breakdown of the dispositions of the cases. The Commission then explains four of the possible outcomes: 1) charges were filed because the subject officer had left the Department prior to the adjudication of the case; 2) the subject officer was separated from the Department, either through retirement as a product of a negotiation or termination after a hearing; 3) the subject officer was placed on dismissal probation to monitor his performance;<sup>6</sup> and 4) the charges against the subject officer were dismissed and returned back to his command for a determination about the appropriate penalty. Brief descriptions of the cases that were resolved with the termination of the subject officer, the placement of the subject officer on dismissal probation, or the dismissal

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<sup>5</sup> See *infra* at p. 37 for descriptions of DAO, APU, and CCRB.

<sup>6</sup> See *infra* at pp. 52-53 for a definition of dismissal probation.

of the charges for action at the command level are also included.

The majority of this section sets forth the Commission's evaluation of the penalties imposed for each case category. Although the Commission agreed with the outcomes in 90% of the disciplinary cases, in all but three categories, the Commission disagreed with the penalties imposed in one or more cases. The Commission includes case examples to demonstrate its disagreement and explain its reasoning underlying that disagreement for each of these case types. The Commission particularly focuses on the categories with which it disagreed with the largest percentage of penalties: those involving false statements, domestic incidents, and serious on-duty misconduct, typically involving sexual harassment or inappropriate relationships with victims, defendants, or civilian witnesses.

In the third section of this Report, the Commission provides brief descriptions of other ways in which it monitors how the Department addresses corruption. These include; reviewing summaries of complaints that are reported to IAB's central repository for allegations of wrongdoing; attending monthly briefings with the Police Commissioner and his Executive staff; maintaining and reviewing monthly IAB reports that provide information on the number of corruption and misconduct complaints; and accepting complaints directly from members of the public.

The final section of this Report summarizes the Commission's recommendations that resulted from its reviews. These recommendations are related to 1) those directed towards IAB investigations and 2) the appropriate penalties and charges for specific disciplinary case types.

This Report does not discuss the ongoing federal criminal investigation into several high-ranking former and current members of the NYPD. That investigation, which was the subject of press coverage in 2016 and which to date, has led to the indictments of a Police

Officer, Sergeant, Deputy Inspector, and Deputy Chief, has focused on members of the NYPD who allegedly performed services for businessmen from a community in Brooklyn in exchange for expensive gifts. The Commission has been briefed about the investigation on an ongoing basis by the NYPD's Deputy Commissioners of Internal Affairs and Legal Matters. The Commission has also discussed general aspects of the investigation with the United States Attorney for the Southern District. The Commission, which does not interfere with criminal investigations, has not involved itself with the case, beyond these briefings. At the conclusion of the cases against members of the NYPD, the Commission intends to conduct a review to determine what, if any, policies can be implemented to prevent this type of corruption in the future. Due to the existence of the federal investigation, the Commission initiated a closer examination of certain relevant topics in this Report, including the discipline imposed on members of the service in higher-ranking positions as well as those disciplinary cases categorized as profit-motivated.<sup>7</sup> The Commission intends to continue to analyze these subjects going forward.

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<sup>7</sup> See *infra* at pp. 42-45 and 158-159.

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# MONITORING IAB INVESTIGATIONS

## Introduction

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As the external, independent monitor of the Department's anti-corruption systems, the Commission provides civilian oversight to IAB's investigations, practices, and policies. The NYPD, through IAB, bears the primary responsibility for policing itself. Therefore, in order to foster a culture that is intolerant of corruption or other misconduct, it is imperative that IAB diligently pursue investigations and bring them to appropriate dispositions. It is also critical that these investigations be open to external scrutiny, while maintaining the confidentiality of individual cases and IAB practices. In reviewing and reporting on IAB investigations, the Commission provides City officials and the public with information regarding the quality of these confidential investigations, increasing transparency and building trust in the Department's anti-corruption programs.

The Commission monitors IAB's investigations in three primary ways. First, the Commission staff attend each IAB group's Steering Committee meetings.<sup>8</sup> Second, the Commission staff attend case reviews in the IAB field offices. The third, and most active manner in which the Commission monitors IAB, is through its in-depth review of closed investigations.

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<sup>8</sup> In 2015, IAB was comprised of 22 groups. These groups were divided among three divisions within IAB: Criminal Investigations, Support Services, and Special Operations. Twenty-one of these twenty-two groups presented at Steering Committee meetings. In mid-2016, one of these groups was divided into two separate groups.

## ***A. The Commission's Attendance at Steering Committee Meetings***

Throughout the reporting period, members of the Commission attended IAB Steering Committee meetings (“steerings”) that were led by IAB’s Steering Committee, which is composed of IAB’s Executive staff. The steerings were chaired by the Commanding Officer of IAB, the Executive Officer of IAB, or the IAB Chief of Criminal Investigations. Three times during the year, commanding officers from each IAB group presented the most serious and their longest-pending investigations from their caseloads, and received investigative recommendations from the Steering Committee.<sup>9</sup> Commanding officers also reported on any corruption or serious misconduct patterns they observed in their commands and discussed the proactive measures taken by their groups to uncover corruption, serious misconduct, or other criminal activity. The Steering Committee maintained a written record of any instructions given, and checked periodically during subsequent steerings whether their directives were followed. Attendance at these meetings allowed the Commission to learn about new IAB investigations and to follow the developments in the investigations of the most serious cases over the course of the reporting period. The Commission also had the opportunity to observe the oversight that IAB’s Executive staff provided to each group.

## ***B. The Commission's Attendance at Case Reviews***

In 2014, the Commission, in collaboration with IAB’s Executive staff, developed a program whereby Commission staff members conduct visits to IAB field offices and attend

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<sup>9</sup> Group 9 is IAB’s overnight call-out group that responds to allegations that are received during night hours, which require immediate attention. This group does not carry its own caseload and, therefore, does not present to the Steering Committee.

case reviews of all active investigations. In 2015, the Commission conducted at least one case review with every investigative IAB group within the Criminal Investigations Division.<sup>10</sup> As of September 2016, the Commission had conducted an additional 13 case reviews.<sup>11</sup> Members of the Commission staff, IAB zone commanders and executive officers,<sup>12</sup> the group's commanding officer, and group supervisors were present for each review.

During the review, a group's entire active caseload, including all Corruption, Misconduct, and Outside Guidelines cases, was discussed.<sup>13</sup> If the Commission learned of a case that raised questions or concerns, it had the ability to review the entire investigative file and discuss the case in detail with IAB. In addition, the Commission had the ability to choose the case to be presented at monthly briefings with the Police Commissioner and CCPC's Commissioners.<sup>14</sup> The Executive Director and Commission staff also asked questions about the investigations and made suggestions regarding investigative steps. These case reviews allowed the Commission to remain abreast of the majority of IAB's investigative caseload on a

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<sup>10</sup> This division is comprised of the majority of IAB groups that conduct investigations. The Commission did not conduct case reviews with the Special Investigation Unit and Group 25 because these groups present their entire caseloads at steerings and have a different command structure. The Commission also did not conduct case reviews with Groups 2, 7, 52, and 55. These groups primarily provide support services to the investigative groups and do not carry large caseloads. The Commission also did not attend case reviews with Group 51, which investigates police impersonations.

<sup>11</sup> The Commission attended case reviews for all but one investigative group in the first eight months of 2016. There was a case review with the remaining investigative group after the reporting period.

<sup>12</sup> IAB's Criminal Investigations Division is divided into three zones. Each zone is led by a zone commander and an executive officer.

<sup>13</sup> IAB investigations are typically classified in one of three categories depending on the seriousness of the allegations. Corruption ("C") cases involve allegations of corruption or serious misconduct. Misconduct ("M") cases contain less serious allegations of misconduct. Outside Guidelines ("OG") cases involve allegations of minor infractions or violations of Department regulations. Other typical case classifications include Self-Initiated ("SI") cases and Programmatic Review ("PR") cases. In "SI" cases, IAB initiates an investigation based upon information that it developed. In "PR" cases, IAB revisits a closed investigation to determine if further inquiry is needed. "PR" and "SI" cases are also discussed during case reviews. The majority of IAB's caseload consists of "C" cases. The majority of "M" and "OG" cases are handled by other investigative personnel within the Department.

<sup>14</sup> See *infra* at p. 163 for a description of these monthly briefings.

continuing basis. They also facilitated increased interaction between Commission staff and each group's supervisors and commanders. Finally, case reviews alerted the Commission to the prevalence of various allegations throughout each borough as well as the entire city.

### ***C. The Commission's Review of Closed IAB Investigations***

#### **1. Introduction**

When reviewing an IAB investigation, the Commission is given full access to the entire investigative file. IAB files include worksheets completed by the assigned investigator that describe the investigative steps performed and evidentiary attachments such as documents, photographs, and audio and video recordings. Closed cases also include a closing report, which summarizes the entire investigation and the disposition of each allegation.

The Commission reviews a representative sample of IAB investigations to ensure that they are fair, thorough, accurate, and impartial. The Commission also evaluates whether, based upon the information available in the file, a correct and timely disposition was reached with respect to each allegation. In the Annual Report, the Commission typically reports on issues that are found in multiple cases, and significant issues that appear in isolated cases. Minor, isolated errors in individual cases are generally not highlighted. However, the Commission discussed all perceived areas for improvement with IAB group and zone commanders. For this Annual Report, the Commission conducted in-depth reviews of 139 closed IAB investigations.<sup>15</sup>

The review of closed IAB cases allows the Commission to evaluate the general quality of IAB investigations and to make recommendations that can be applied to future

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<sup>15</sup> The Commission completed 84 reviews in 2015 and 55 reviews through August 2016.



investigations. In addition, the Commission strives to ensure that investigations are conducted in a consistently thorough manner.

## 2. Methodology

The Commission primarily assesses IAB's performance in five areas:<sup>16</sup>

- **Timeliness:**
  - Was the length of the investigation reasonable?
  - Were there unexplained gaps in the investigation?
  - Did the statute of limitations for any misconduct expire during the course of the investigation?<sup>17</sup>
  
- **Identification of and interviews with complainants, witnesses (both civilians and members of the service), and subject officers:**
  - Were reasonable steps taken to identify and interview witnesses and subject officers in a timely manner?
  - Were appropriate background checks completed?
  - Were interviews recorded?
  - Were interviews completely and accurately summarized in worksheets?
  - Were interviews thorough and unbiased?
  
- **Evidence collection and analysis:**
  - Were reasonable, timely efforts made to obtain evidence?
  - Was any relevant evidence overlooked?
  - Was evidence analyzed properly?
  - Were all investigative steps documented?
  - Were team leader reviews effective?<sup>18</sup>
  
- **Case closing report:**
  - Was the closing report objectively written?
  - Were all of the allegations addressed?
  
- **Case disposition (including the disposition assigned to each allegation):**
  - Does the evidence in the file support the finding(s)?

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<sup>16</sup> The descriptions in each area are for illustrative purposes and do not constitute an exhaustive list of all areas analyzed by the Commission.

<sup>17</sup> See *infra* at p. 15 for a more detailed discussion about the statute of limitations.

<sup>18</sup> See *infra* at pp. 31-32 for a more detailed discussion about team leader reviews.

For this review, the Commission randomly chose cases from IAB's closed case lists.<sup>19</sup> At the time of selection, the Commission knew only the case number, which identified the year the allegation was received, and the group that conducted the investigation. The Commission did not have prior knowledge concerning the type of allegations, the disposition of those allegations, or the identities of the subject officers. The Commission tried to review between four and eight cases from each investigative group.<sup>20</sup>

### **3. General Analysis of Closed Investigations**

The 139 cases reviewed by the Commission involved 367 members of the service, and contained 733 allegations.<sup>21</sup> The "C" cases<sup>22</sup> reviewed represent 11% of all of the "C" cases closed by IAB in calendar year 2015 and the first eight months of 2016.<sup>23</sup> As noted in the Commission's most recent Annual Reports, the two most frequently observed allegations were missing property and criminal association.<sup>24</sup> The breakdown of the most significant allegations in the reviewed cases appear on the following page.

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<sup>19</sup> The Commission regularly received a list of all IAB investigations that are opened or closed each month.

<sup>20</sup> Some groups did not have four closed cases when the Commission requested cases for those groups. For those groups, the Commission reviewed all of the group's cases that were closed in the month from which the request was made.

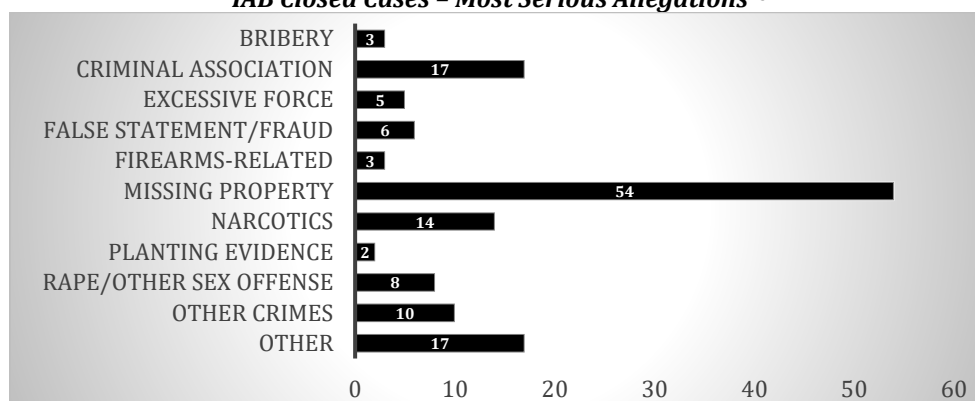
<sup>21</sup> The Commission did not include allegations that were added to a case for purely administrative purposes, such as to denote that a subject officer received charges and specifications.

<sup>22</sup> The Commission typically limits its review of closed cases to IAB "C" cases. In the current review, 8 of the 139 cases were classified as "M" cases.

<sup>23</sup> During the review period for this Annual Report, IAB closed a total of 1,177 "C" cases.

<sup>24</sup> *Thirteenth Annual Report of the Commission* ("Thirteenth Annual Report") (March 2011) at p. 4; *Fourteenth Annual Report of the Commission* ("Fourteenth Annual Report") (February 2012) at p. 8; *Fifteenth Annual Report of the Commission* ("Fifteenth Annual Report") (September 2013) at p. 6; *Sixteenth Annual Report of the Commission* ("Sixteenth Annual Report") (November 2014) at p. 14; and *Seventeenth Annual Report of the Commission* ("Seventeenth Annual Report") (November 2015) at p. 12.

### IAB Closed Cases – Most Serious Allegations<sup>25</sup>



### 3.1 Source of Complaint

An analysis of the sources of the reviewed complaints<sup>26</sup> shows that 30% of the cases were initiated by a complaint from a civilian, while 42% of the cases were generated by a report from a member of the NYPD.<sup>27</sup> The charts on the following pages indicate the most serious allegation by source of complaint, dispositions by source of complaint, and a comparison between the sources of complaints in the investigations reviewed by the Commission from 2013 to the end of August 2016.

<sup>25</sup> Among the 10 cases listed in the category “Other Crimes,” the most serious allegations were: trademark counterfeiting, possession of child pornography, grand larceny of an automobile, petit larceny (2 cases), criminal possession of stolen property (2 cases), reckless endangerment, and criminal possession of a weapon (2 cases). Among the 17 cases listed in the category “Other,” the most serious allegations were: being unprepared for the Traffic Violations Bureau (TVB) (5 cases), interfering with an investigation, improper search, disputed arrest (2 cases), domestic incident, theft of time, excessive tour changes, unauthorized off-duty employment (2 cases), disclosure of confidential information, unauthorized off-duty inmate visit, and the unauthorized removal of Department property.

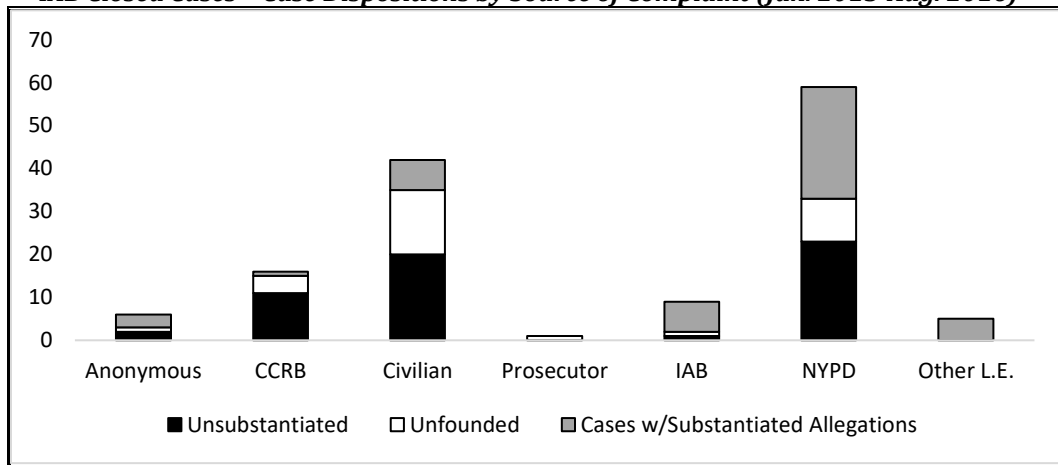
<sup>26</sup> The source of complaint refers to the individual or entity that provided the information that initiated the investigation to IAB, not necessarily the source of information that led to the substantiation of a particular allegation. The source of the complaint, as used in these charts, may not have been the original complainant. For example, when a civilian made a complaint to CCRB and that agency referred the allegations to IAB, CCRB was deemed the source of the complaint. *See infra* at p. 37, fn. 77 for a definition of CCRB.

<sup>27</sup> Patrol Guide § 207-21 (Allegations of Corruption and Other Misconduct Against Members of the Service) requires that uniformed members of the service report corruption or misconduct, or allegations of corruption or misconduct, to IAB.

***IAB Closed Cases – Most Serious Allegations by Source of Complaint (Jan. 2015-Aug. 2016)***

	<i>Anon</i> <sup>28</sup>	<i>CCRB</i>	<i>Civilian</i>	<i>Prosecutor</i>	<i>IAB</i>	<i>Other L.E.</i> <sup>29</sup>	<i>NYPD</i>	<i>Total</i>
<b>Bribery</b>	-	1	-	1	-	-	1	3
<b>Criminal Association</b>	2	-	4	-	1	1	9	17
<b>Excessive Force</b>	-	-	2	-	-	-	3	5
<b>False Statement/Fraud</b>	1	3	-	-	1	-	1	6
<b>Firearms-Related</b>	-	-	1	-	-	1	1	3
<b>Missing Property</b>	-	8	30	-	-	-	16	54
<b>Narcotics</b>	1	1	1	-	-	1	10	14
<b>Planting Evidence</b>	-	1	1	-	-	-	-	2
<b>Rape/Sex Offenses</b>	1	1	1	-	-	1	4	8
<b>Other Crimes</b>	-	-	1	-	-	1	8	10
<b>Other</b>	1	1	1	-	7	-	7	17
<b>Totals</b>	6	16	42	1	9	5	60	139

***IAB Closed Cases – Case Dispositions by Source of Complaint (Jan. 2015-Aug. 2016)*<sup>30</sup>**

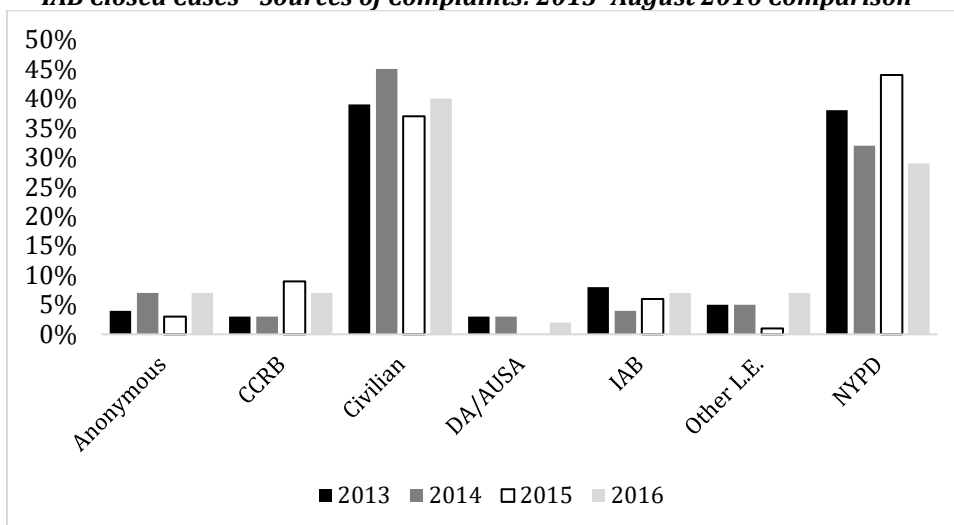


<sup>28</sup> Because members of the service may make anonymous complaints, that category includes anonymous complaints made by civilians and members of the service, if any.

<sup>29</sup> “Other L.E.” refers to a member of another law enforcement agency.

<sup>30</sup> The “Cases w/ Substantiated Allegations” category includes one case that was closed with an overall disposition of unsubstantiated and one case that was closed with an overall disposition of unfounded, even though one or more allegations were substantiated. There was also one case reported by a member of the service that was closed as Information & Intelligence. This case is not reflected in the table. See *infra* pp. 18-19, for a description of IAB dispositions.

***IAB Closed Cases - Sources of Complaints: 2013–August 2016 Comparison***<sup>31</sup>



### **3.2 Investigation Length**

NYPD internal investigations have an 18-month administrative statute of limitations (SOL).<sup>32</sup> The SOL is measured from the last date that the alleged misconduct took place. Administrative charges must be brought against a subject officer within 18 months of that date, regardless of when the Department actually learns of the allegations. The SOL does not apply in cases where the alleged misconduct would constitute a crime if proven in a criminal proceeding.<sup>33</sup>

The Commission analyzed the length of the IAB investigations it reviewed during this reporting period. This period was measured from the start of the investigation, when the Department was notified about the allegations, until the conclusion, when the case was closed and each allegation was given a disposition and approved by Executive members of IAB. In its analysis of the investigation length, the Commission determined whether the Department lost the opportunity to impose discipline for any misconduct due to the

<sup>31</sup> The percentages may not add up to 100% due to rounding.

<sup>32</sup> N.Y. Civil Service Law § 75(4).

<sup>33</sup> *Id.*

expiration of the SOL. The Commission also determined whether an investigation was open for a longer period of time than necessary based upon the allegations and the investigative steps that were conducted.

The table below compares the length of investigations reviewed by the Commission over the last four years.

Length of Investigations Reviewed								
	2013		2014		2015		2016 <sup>34</sup>	
	Cases	%	Cases	%	Cases	%	Cases	%
6 months or less	20	27%	24	26%	27	32%	19	35%
7-12 Months	19	26%	29	31%	28	33%	19	35%
13-18 Months	16	22%	22	23%	12	14%	9	16%
19-24 Months	7	10%	10	11%	10	12%	4	7%
25 Months or More	12	16%	9	10%	7	8%	4	7%

The Commission analyzed the lengths of the IAB investigations it reviewed in 2015 and found that the average investigation lasted 12 months, with the shortest taking less than a month, and the longest 54 months.<sup>35</sup> This represented an 8% decrease in the average length of the investigations reviewed as compared to those investigations reviewed by the Commission in 2014.<sup>36</sup> The Commission found that 80% of the investigations reviewed were completed within 18 months. Of particular interest to the Commission was the increase of reviewed investigations that were closed by IAB within 12 months of receiving the complaint. In the 2015 review, the Commission found that 66% of the cases were closed within 12 months, an increase from the 2014 (56%) and 2013 (53%) reviews.

<sup>34</sup> The 2016 cases cover January 1, 2016 to August 30, 2016.

<sup>35</sup> The finding for the average length of the investigation was consistent with the 11.5-month average length of investigation for all “C” cases closed by IAB in 2015. For all investigations closed by IAB in 2015 (“C”, “M”, and “OG”), the average length of investigation was nine months.

<sup>36</sup> The average length of the investigations reviewed in 2014 was 13 months, a decrease from the 15-month average from the Commission’s review in 2013. *Seventeenth Annual Report* at p. 16.

In the first eight months of 2016, the Commission found that the average investigation lasted 10 months with the shortest lasting 1 month and the longest 29 months.<sup>37</sup> The Commission found that 86% of the cases reviewed were completed within 18 months, and 69% of the cases were closed within 12 months.

***IAB Closed Cases – Average Length of Investigation by Source Type (in months)***

<b>Source</b>	<b>2015</b>	<b>2016</b>
Anonymous	20	15
CCRB	6	5
Civilian	12	8
Prosecutor	-	18
IAB	9	9
NYPD	13	12
Other L.E.	16	13

***IAB Closed Cases – Average Length of Investigation by Allegation Type (in months)***

<b>Allegation</b>	<b>2015</b>	<b>2016</b>
Bribery	29	18
Criminal Association	18	14
Excessive Force	10	10
False Statement/Fraud	12	9
Firearms-Related	16	-
Missing Property	9	8
Narcotics	8	9
Planting Evidence	5	5
Rape/Other Sex Offenses	18	15
Other Crimes	27	17
Other	9	7

<sup>37</sup> The finding for the average length of investigation was consistent with the 9.6-month average length of investigation for all “C” cases closed by IAB in the first eight months of 2016. For all investigations closed by IAB in that same time period (“C”, “M”, and “OG”), the average length of investigation was seven months.

***IAB Closed Cases – Average Length of Investigation by Disposition (in months)***<sup>38</sup>

<b>Disposition</b>	<b>2015</b>	<b>2016</b>
Exonerated	-	-
Partially Substantiated	18	17
Substantiated	12	10
Unfounded	8	7
Unsubstantiated	12	9
Info & Intelligence	2	-

The Commission concluded that IAB has been largely successful in closing cases expeditiously and well before the expiration of the SOL. However, in 11 cases, the Commission believed that given the nature of the allegations, the actual investigative steps taken, and the evidence collected as a result of those steps, the investigations could have been concluded in significantly less time.<sup>39</sup>

### **3.3 Disposition Type**

At the conclusion of an investigation, IAB typically assigns one of six dispositions to each allegation and to the overall case.<sup>40</sup> They are:

**Substantiated:** The investigation determined that the accused member of the service committed the act of misconduct alleged. As applied to the overall case, the accused member of the service committed all of the acts of misconduct alleged.

**Partially Substantiated:** The investigation determined that the accused member of the service committed some of the acts of misconduct alleged. A *Partially Substantiated* disposition only applies to an entire case, not individual allegations.

**Unsubstantiated:** The investigation was unable to clearly prove or disprove that the alleged misconduct occurred.

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<sup>38</sup> See *infra* at pp. 18-19 for a description of IAB dispositions.

<sup>39</sup> Significant gaps between investigative steps were noted by IAB Commanders in five of these cases.

<sup>40</sup> These are the typical dispositions given to allegations, but this is not an exhaustive list.

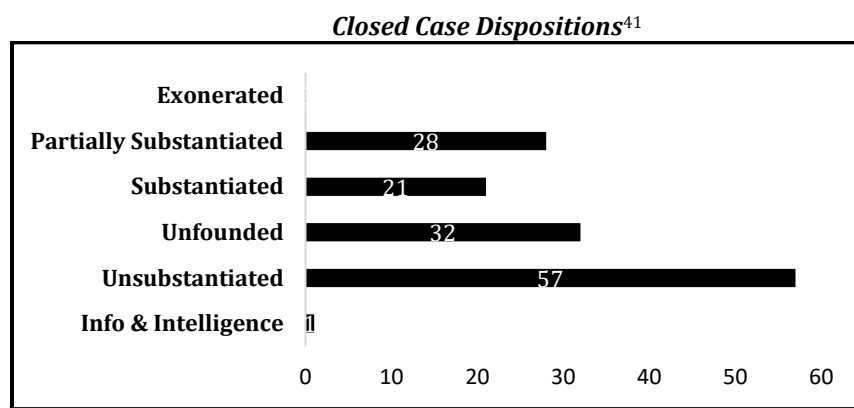


**Exonerated:** The investigation clearly proved that the accused member of the service was involved in the incident, but his or her conduct was lawful and proper.

**Unfounded:** The investigation found that the alleged misconduct did not occur or was not committed by members of the NYPD.

**Information & Intelligence:** The investigation found insufficient evidence to substantiate the allegation, but IAB is tracking the conduct alleged for intelligence purposes. During part of the reporting period, this disposition was also used for minor violations that were discovered during the course of the investigation and referred back to the subject officer's command. During the latter part of the reporting period, the minor violations that were referred back to the subject officer's command were given the disposition of "MPV" to indicate a minor procedural violation.

A breakdown of the overall closed case dispositions for the cases reviewed by the Commission for this Report is depicted in the chart below.

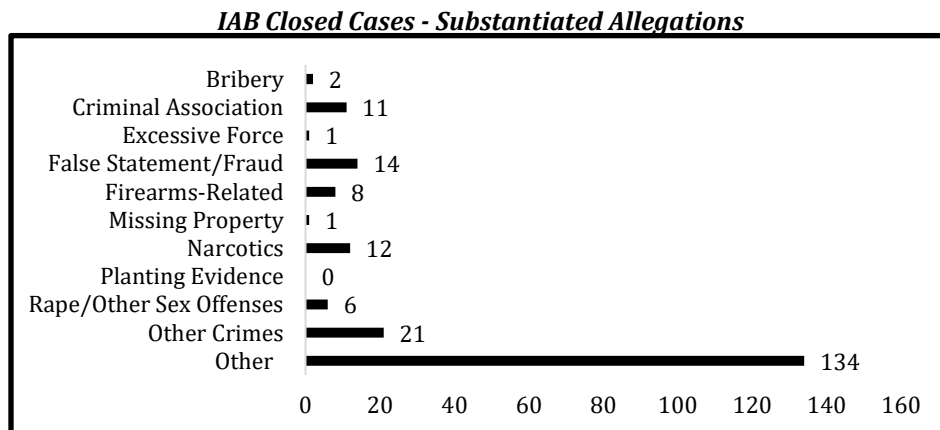


<sup>41</sup> An analysis of all 1,177 "C" cases closed by IAB during the review period showed the following dispositions:

Exonerated-32, Partially Substantiated-194, Substantiated-100, Unfounded-228, Unsubstantiated-598, Information & Intelligence-24. One case in the Commission's review was not categorized because the overall disposition could not be determined. Sixty-seven cases had an additional designation of "Other Misconduct Noted" (OMN) or "Minor Procedural Violation" (MPV).

Approximately 37% of the IAB cases that the Commission reviewed for this Report were closed with at least one substantiated allegation: 21 cases were substantiated; 28 cases were partially substantiated; 1 case was closed as unfounded but had 1 substantiated allegation closed with a letter of instruction to the subject officer and another allegation that was closed as substantiated against a retired officer;<sup>42</sup> and 1 case was closed as unsubstantiated but had substantiated allegations that were dealt with by the issuance of letters of instruction. In total, these 51 cases involved 85 subject officers<sup>43</sup> with 210 substantiated allegations.<sup>44</sup>

The chart below summarizes the substantiated allegations of the closed cases reviewed by the Commission. Of the 51 cases that had substantiated allegations, 40 contained multiple substantiated allegations and 12 cases had multiple subject officers with substantiated allegations.



<sup>42</sup> As the subject officer was retired, no discipline could be imposed.

<sup>43</sup> One member of the service was a subject in three separate investigations and was counted separately for each instance.

<sup>44</sup> In the cases reviewed by the Commission, IAB investigated 733 allegations of misconduct, and substantiated 210, or 29%. There were five additional allegations that were closed as OMN (3 allegations of failing to notify IAB) or Information and Intelligence (2 letters of instruction issued for: accepting a gratuity and an incomplete/improper memo book). In the cases reviewed for the *Seventeenth Annual Report*, the substantiation rate was 26% as IAB substantiated 146 out of the 562 allegations that were investigated.

The 'Other' category included a wide variety of allegations that are further itemized below.

<b>Description of Allegation</b>	<b>Total # of Allegations</b>
Absent from Assignment	2
Absent from Residence while on Sick Leave	1
Allowed Unauthorized Use of Vehicle	1
Breath Test Refusal	2
Computer Misuse	6
Drinking on Duty	7
EEO Violation	7
Entered Female Locker Room w/out Permission	1
FADO-Abuse <sup>45</sup>	1
FADO-Discourtesy	1
Failed to Activate Camera	2
Failed to Await Arrival of Supervisor	1
Failed to Comply with an Order	4
Failed to ID Self as Member of the Service	2
Failed to Make/Take a Report	6
Failed to Notify Central of a Pickup Job	2
Failed to Notify IAB	7
Failed to Notify Supervisor of Whereabouts	1
Failed to Offer Adequate Testimony	1
Failed to Safeguard Property/Voucher Property/or Narcotics	9
Failed to Search Confidential Informant	1
Failed to Secure Prisoner	2
Failed to Supervise	7
Failed to Take Police Action	2
Failed to Update Address	2
Impeded an Investigation	1
Inaccurate Statements/Paperwork	2
Inappropriate Comments to MOS	1
Inappropriate Contact with Victim/Arrestee	2
Integrity Test Failure - Criminal	1
Memo book Incomplete/Improper	14
Opened Another's Locker without Permission	1
Possessed/Removed MOS Property	3
Provided Department Reports to Third Party	1
Returned Incorrect Amount for Voucher	1
Sell/Disclose Confidential Information	2
Time & Leave Violation	1

<sup>45</sup> FADO refers to excessive or unnecessary force, abuse of authority, discourtesy, or offensive language. These allegations are within the jurisdiction of CCRB (defined *infra* at p. 37 fn. 77). The allegations referenced in this chart were investigated by IAB. IAB no longer investigates allegations that are labeled as FADO.

Tour Change Violation	2
Unauthorized Duplicate Shield	2
Unauthorized Off-Duty Employment	6
Unauthorized Overtime	1
Unauthorized Recording of Arrestee	1
Unauthorized Visit to Correctional Facility	3
Unfit for Duty	4
Unprepared for Traffic Violations Bureau (TVB)	6
Violation of Social Media Policy	1
<b>Total</b>	<b>134</b>

The chart below sets forth the dispositions of the most serious allegations contained in each of the reviewed cases.<sup>46</sup>

Disposition of Most Serious Allegations						
Case Type	Exonerated	Substantiated	Unfounded	Unsubstantiated	Info & Intel	Total
Bribery		1	2			3
Criminal Association		3	2	11	1	17
Excessive Force		1	1	3		5
False Statement/Fraud		2		4		6
Firearms-Related		2		1		3
Missing Property			24	30		54
Narcotics		7	1	6		14
Planting Evidence			2			2
Rape/Other Sex Offenses		4		4		8
Other Crimes		4		6		10
Other	2	9	3	2	1	17
<b>Total</b>	<b>2</b>	<b>33</b>	<b>35</b>	<b>67</b>	<b>2</b>	<b>139</b>

The substantiation rate for the most serious allegations among the cases reviewed by the Commission was 24%.<sup>47</sup> In 50% of the cases reviewed, IAB was able to assign a definitive disposition for the most serious allegations resulting in either a substantiated, unfounded, or

<sup>46</sup> These correspond to the allegations depicted in the chart appearing on p. 13.

<sup>47</sup> The substantiation rate for the most serious allegations in the closed cases reviewed for the *Seventeenth Annual Report* was 15%. See *Seventeenth Annual Report* at p. 23.

exonerated disposition. In 48% of the cases, IAB was unable to prove or disprove the most serious allegation and therefore assigned an unsubstantiated disposition.<sup>48</sup>

#### 4. CCPC Analysis of Selected Trends

As noted earlier in this Report, the Commission primarily assesses five areas when conducting a case review: 1) timeliness; 2) identification and interviews of complainants, witnesses, and subject officers; 3) evidence collection and analysis; 4) the case closing report; and 5) the overall case disposition. Within these five areas, the Commission has tracked seven individual components, either because of their importance (such as CCPC's agreement with the overall case disposition), or because of the Commission's comments in previous reports (such as the quality of investigators' interviews with civilians and members of the service). The tables below show the percentage of outcomes and investigative steps that the Commission found satisfactory (the "satisfaction rate") in these individual investigative areas for this Annual Report, and a comparison of satisfaction rates over the last three Annual Reports. Overall, these statistics reflect that the satisfaction rate was higher in 2016 than in 2015, but was lower during this reporting period than in 2013 and 2014.

*CCPC Satisfaction Rate – Current Review Period*

<b>Description</b>	<b>2015</b>		<b>2016</b>	
	<b>Cases</b>	<b>Rate</b>	<b>Cases</b>	<b>Rate</b>
CCPC Agrees with Disposition	79/84	94%	52/55	95%
Interview of Available Witnesses	67/84	80%	48/55	87%
Accurate Summaries of Recorded Interviews	75/84	89%	51/55	93%
Adequate Interview Quality	59/84	70%	43/55	78%
Documentation of Investigative Steps	73/84	87%	52/55	95%
Timely Search for Video Evidence	74/84	88%	54/55	98%
Team Leader Reviews	58/84	69%	44/55	80%

<sup>48</sup> The totals do not equal 100% due to rounding.

**CCPC Satisfaction Rate – Year-over-Year Comparison**

Description	2013	2014	2015	2016
CCPC Agrees with Disposition	99%	99%	94%	95%
Interview of Available Witnesses	93%	89%	80%	87%
Accurate Summaries of Recorded Interviews	96%	95%	89%	93%
Adequate Interview Quality	88%	91%	70%	78%
Documentation of Investigative Steps	96%	91%	87%	95%
Timely Search for Video Evidence	91%	98%	88%	98%
Team Leader Reviews	86%	82%	69%	80%

#### **4.1 Dispositions**

IAB conducts a multi-layer review, from team leaders up through group commanding officers and zone commanders, of every case before it is closed and the disposition is finalized.<sup>49</sup> At times, these reviews result in cases being sent back to the investigator for additional investigative steps or information. In making its determination regarding an investigation's disposition, the Commission only considered whether the disposition was supported by the information collected by the investigator and included in the case file. The Commission recognizes that in some cases where it suggested that additional investigative steps should have been taken, it was impossible to determine whether the disposition was appropriate in the absence of those steps.

The Commission disagreed with the dispositions in eight closed cases reviewed for this Annual Report.

- In a false statement case, although IAB requested charges from DAO for making false statements, DAO declined to bring these charges.<sup>50</sup> At the case's conclusion, it was closed as unsubstantiated and no charges were brought. Department policy dictates that in most instances, substantiated allegations result in discipline being imposed and the subject officer is provided with the opportunity to challenge the substantiation. The Commission disagreed with the decision not to bring charges and with the allegation being closed as unsubstantiated.

<sup>49</sup> During this reporting period, cases that were monitored by the IAB Steering Committee were reviewed by at least one member of IAB's Executive staff.

<sup>50</sup> DAO is the division within the Department responsible for the majority of the prosecutions of administrative disciplinary charges against members of the service. *See infra* at p. 37.

- In a missing property case, a missing property allegation was closed as “Unsubstantiated-OMN.” However, a review of the case revealed no indication that any other misconduct had occurred. Following its discussion with the Commission, the IAB group indicated that this was an error and the disposition would be corrected to reflect simply “Unsubstantiated.”
- The Commission did not agree with the unfounded disposition in three missing property cases and one domestic assault case. In two of these cases, the overall case disposition was unfounded, and in the other two cases, individual allegations were unfounded. In each instance, the Commission did not believe that there was sufficient evidence to prove that the misconduct did not occur and believed these allegations should have been unsubstantiated.
- In an “other crimes” case, the allegation of receipt/delivery of stolen property was closed as unsubstantiated. The complainant in the case ultimately recanted, and the Commission believed the allegation and the overall case should have been closed as unfounded.
- In a narcotics case that was closed as unfounded, the Commission believed that there was insufficient evidence to prove that the conduct did not occur, and therefore, believed an unsubstantiated disposition was more appropriate.

#### **4.2 Interviews of Available Witnesses**

The best practice obviously is to interview all readily available witnesses, whether police or civilian, in a timely manner. For this Report, the Commission found issues in 24 cases related to the failure to interview witnesses.<sup>51</sup>

- Ten cases involved a failure to interview civilians.<sup>52</sup>
- Eleven cases involved a failure to interview members of the service.
- Three cases involved a failure to interview both civilians and members of the service.

In the Commission’s view, these witnesses should have been interviewed as they might have possessed relevant information and easily could have been contacted by the investigator.

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<sup>51</sup> The case types for these 24 cases were: missing property (16 cases), criminal association (2 cases), firearms-related (1 case), excessive force (1 case), narcotics, (1 case), rape/other sex offenses (2 cases), and other (1 disputed arrest case).

<sup>52</sup> In one case, the Commission believed an interview should have been conducted during the call-out phase of the investigation (defined *infra* at p. 30, fn. 66). This interview was completed by the IAB group assigned to the case soon after the call-out investigation was completed.

A related issue involves the identification of potential subject officers and witnesses who were either members of the service or civilians. In 16 cases, the Commission found that there should have been further efforts to make these identifications.<sup>53</sup>

- Six of the reviewed cases involved members of the service who should have been identified as possible subject officers.
- Two of the reviewed cases involved members of the service who should have been identified to determine if they were possible witnesses or subjects.<sup>54</sup>
- Four cases involved a delay in identifying subject officers.<sup>55</sup>
- Three cases involved both a delay in identifying a subject officer and a failure to identify a possible subject officer.
- One case involved civilians who were at the scene of the incident but were not identified by the investigating officer.<sup>56</sup>

#### **4.3 Summaries of Recorded Interviews**

Most IAB interviews of civilians are recorded, and all official NYPD interviews of Department witnesses and subject officers are supposed to be electronically recorded.<sup>57</sup> The case investigator then summarizes each interview on a worksheet. While these summaries are not transcripts, they should include details from the interview that are material to the investigation and accurately reflect the recorded interviews.

The Commission found 13 cases in which the worksheet summaries of interviews were 1) inaccurate, 2) incomplete, or 3) both.<sup>58</sup>

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<sup>53</sup> The case types for these 16 cases were: missing property (12 cases), criminal association (2 cases), excessive force (1 case), and other (1 disputed arrest case). IAB supervisors noted a deficiency in identifying a possible subject officer in one case.

<sup>54</sup> In one of these cases, IAB also failed to identify a possible civilian witness.

<sup>55</sup> In two of these cases, IAB supervisors documented this issue.

<sup>56</sup> An IAB supervisor also documented this issue.

<sup>57</sup> Patrol Guide § 206-13 (Interrogation of Members of the Service) authorizes the Department to interview officers during an official Department investigation (“official Department interview”). Members of the service who refuse to answer questions during these interviews face suspension and possible termination.

<sup>58</sup> The case types for these 13 cases were: bribery (1 case), criminal association (1 case), firearm-related (1 case), missing property (7 cases), narcotics (2 cases), and rape/sex offenses (1 case).



- In seven cases, the written summaries of interviews did not accurately reflect what was heard on the recordings. Four cases involved inaccurate summaries of what was said by civilians to investigators in that portions of statements were omitted, thereby altering their meaning, or what was said during the interview was described inaccurately. Three cases included information in the summary that was not on the recording; two were civilian interviews and one was a member of the service interview.
- In four cases, the written summaries of interviews with four civilians and one officer did not include relevant information identified by the Commission on the interview recordings.
- Two cases contained both inaccurate and incomplete summaries of interviews. In one case, IAB attributed statements to the interviewed civilian that were not on the recording, but did not include in that same summary, a material portion of the civilian's description of events that was on the recording. In the other case, a summary of a civilian interview did not include material statements concerning the incident being investigated and had a summary of an officer interview that did not accurately describe certain statements made by the officer.

A related issue involves the recording of interviews. IAB's current practice is to record all interviews of both civilians and members of the service unless exigent circumstances are present. In the current review, the Commission noted in 27 cases that the investigator either did not record an interview, did not record the whole interview, or there was no recording available for review.<sup>59</sup>

- In twenty-one instances, civilian interviews were not recorded.<sup>60</sup>
- In four instances, civilian interviews were partially recorded; including two interviews where only the investigator could be heard on the recording, and in one

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<sup>59</sup> The case types for these 27 cases were: criminal association (4 cases), excessive force (1 case), firearms-related (1 case), missing property (12 cases), narcotics (2 cases), planting evidence (2 cases), rape/other sex offenses (2 cases), other crimes (1 possession of child pornography case), and other (1 disputed arrest case and 1 off-duty employment case). IAB supervisors noted the lack of recordings in 11 of these cases.

<sup>60</sup> IAB supervisors themselves noted the failure to record in eight of these cases. In response to a draft of this Report, IAB expressed that it was its policy not to record contacts with civilians that were mere attempts to schedule interviews at a later time. The Commission believes that all contacts with witnesses should be recorded as there are times when witnesses may provide information relevant to the investigation that is not anticipated when the investigator makes contact. If the contact, in fact, solely consists of scheduling attempts, to save resources, the Commission would not object to IAB refraining from uploading the recording into its computer system.

instance, an interview of a civilian member of the service was partially recorded.<sup>61</sup>

- In one instance, an informal interview of a member of the service was not recorded.<sup>62</sup>
- In one case, there was a failure to record a civilian interview and an informal interview of a member of the service.

Considering that each investigation typically involves multiple interviews, the Commission recognizes that these deficient ones amount to a small percentage of all interviews conducted. The Commission encourages the continued practice of recording interviews unless there are exigent circumstances, which should be documented. In addition, the Commission recognizes that sometimes interviews begin before the investigator is able to start the recording. The Commission recommends in these situations that the investigator document in the written summary of the interview any information that was collected prior to the start of the recording and clearly note that this information was obtained outside of the portion of the interview that was recorded. A better practice would be to start the recording prior to initiating contact with the interviewee and continue the recording until the investigator is no longer in his or her presence.

#### **4.4 Interview Quality**

Investigators conducting interviews must be well prepared, with a strategy in place, to obtain all relevant information. It is equally important for interviewers to know the investigation well enough to be able to conduct a fluid interview by asking open-ended questions and appropriate follow-up or clarification questions, while covering all of the issues that are relevant to the investigation. A thorough interview can eliminate the need to conduct multiple interviews of the same person and avoid situations where additional information is

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<sup>61</sup> IAB supervisors themselves noted the failure to record in one of these cases.

<sup>62</sup> This instance was noted by an IAB supervisor.

needed but persons can no longer be located or have ceased cooperating.

The Commission has identified other issues during its reviews of recorded interviews that are worth noting. As a general rule, witnesses should not be interviewed together. Doing so may influence the information that is given, either consciously or subconsciously. In addition, it may lead to difficulty in identifying which witness is providing the information. Another potential pitfall for an investigator is failing to identify documents or other items used during the interview. This situation typically involves photograph arrays that are shown to witnesses in an effort to identify subject or witness officers. If the document or other item is not identified during the recording, it could lead to questions regarding what was actually shown to the interviewee if the case were to be presented (at a later time) in the Department's Trial Rooms or in a criminal court proceeding.

The Commission found issues regarding the quality of interviews in 37 cases it reviewed during this reporting period.<sup>63</sup> These issues included:

- In one case, the interviewer did not address specific allegations, and there did not appear to be any strategic reason for not doing so.
- In twenty-eight cases, the interviewer failed to ask obvious questions that may have elicited information helpful to the investigation.<sup>64</sup>
- In four cases, witnesses were interviewed in the presence of other witnesses.
- In two cases, the interviewer failed to identify documents or other materials used during an interview.
- In two cases, the interviewer used close-ended or leading questions.

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<sup>63</sup> The case types for these 37 cases were: bribery (1 case), missing property (17 cases), criminal association (6 cases), excessive force (2 cases), firearms-related (1 case), narcotics (3 cases), rape/other sex offenses (3 cases), other crimes (1 possession of child pornography case and 1 reckless endangerment case), and other (1 interfering with an investigation case and 1 domestic assault case). IAB supervisors noted an issue with interview quality in three cases.

<sup>64</sup> An IAB supervisor noted this issue in three cases.

## 4.5 Documentation of Investigative Steps

Accurate, contemporaneous documentation of investigative steps allows supervisors to properly assess the progress of the case and prevents new investigators from duplicating steps if a case is transferred. The Commission found documentation issues in 14 of the cases it reviewed.<sup>65</sup>

- In two cases, the investigator documented investigative steps that had occurred weeks, and in one case months, before. This is an issue because relevant details can be forgotten or remembered incorrectly.
- In four cases, interactions and/or information regarding civilian witnesses or complainants were not properly documented. In two cases, the investigator did not document specific attempts to interview witnesses. In one case, the call-out investigator did not document that the complainant was arrested immediately following the IAB interview;<sup>66</sup> and in a subsequent interview, the case investigator seemed unaware of the arrest. In one case, the investigator did not document an interview with the complainant.
- In one case, the investigator did not document the receipt and review of telephone records and did not attach relevant documents to the case file.
- In one case, the investigator did not document several conferrals with another investigative unit within the Department.
- In one case, there was no documentation as to why a letter of instruction was issued to the subject officer.
- Three cases involved documentation in closing reports. In one, the closing report did not include relevant information from the investigative worksheets. In the other two cases, the closing report referred to information that was not documented in any worksheet.

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<sup>65</sup> The case types for these 14 cases were: missing property (9 cases), other (1 disputed arrest case and 1 theft of time case), narcotics (2 cases), and other crimes (1 child pornography case). Two of the cases had more than one documentation issue. IAB supervisors noted a failure to document investigative steps in three cases.

<sup>66</sup> After a complaint is received by the Command Center, IAB supervisors decide whether there should be an immediate response to a location and whether other immediate investigative steps are required. This sometimes includes conducting witness interviews and gathering any available information that may be useful in the investigation. This is the call-out investigation (“call-out”). There may be many investigators assigned to perform the various investigative actions in a call-out. These investigators may be assigned to a different IAB group than the group that is ultimately assigned the investigation, and the investigator who eventually is assigned the investigation may not have been involved in the initial call-out.

- In one case, a written statement was referred to in a worksheet, but there was no documentation as to how the statement was obtained.
- In one case, the dispositions of allegations for two subject officers were not consistent with the comments for each finding.<sup>67</sup>

#### **4.6 Search for Video Evidence**

The availability and use of video evidence has increased substantially over the last few years. Video captured by the Department's own systems, commercial and residential closed circuit television, and video taken by cellular telephones can be the best evidence to prove or disprove a misconduct allegation. A search for possible video evidence should be conducted in the early stages of an investigation, along with the initial interview with the complainant, as the availability of video is often fleeting.

The Commission found 11 cases that lacked a timely search for video evidence.<sup>68</sup>

- In six cases, there were delayed searches for video evidence.
- In two cases, there was either no search for video or the search was not documented by the investigator.
- In two cases, specific locations that may have been sources of video evidence were not checked.
- In one case, there was a delayed search for video evidence at one location and a lack of a search for video at another location.<sup>69</sup>

#### **4.7 Team Leader Reviews**

Team leader reviews are used to assess information already gathered during an investigation and to plan future investigative steps. These reviews are an important supervisory tool and can provide the investigator with a blueprint for the course of the

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<sup>67</sup> IAB advised the Commission that this discrepancy would be corrected.

<sup>68</sup> The case types for these 11 cases were: missing property (7 cases), criminal association (1 case), firearm-related (1 case), other (1 domestic assault case), and narcotics (1 case). IAB supervisors noted a failure to search for video in two cases.

<sup>69</sup> An IAB supervisor noted this issue.

investigation. In addition, they provide documentation of case strategy for investigators newly assigned to the case or for subsequent reviewers.

IAB guidelines provide that team leader reviews should be conducted and documented every 30 days. The reviews typically list investigative steps directed by a supervisor. The Commission found issues related to team leader reviews in 37 cases reviewed for this Report.<sup>70</sup>

- The Commission found that team leader reviews were not documented in 21 cases.<sup>71</sup>
- In 11 cases, steps directed by a team leader were either not completed without any explanation, the directives were repeated multiple times before completion, or there was a delay in completion of the steps.<sup>72</sup>
- Five cases had both a lack of documented team leader reviews and investigative steps that were directed but not completed, or not completed in a timely manner.

## **D. Conclusion**

The Commission noted a decrease in the length of IAB investigations. The average length for investigations reviewed by the Commission in 2015 and 2016 (through August) were 12 months and 10 months, respectively. A review of all “C” cases closed by IAB in 2015 showed an average length of investigation of 11.5 months. This is down from 13 months for cases reviewed by the Commission for the *Seventeenth Annual Report* and 13.7 months for all “C” cases closed by IAB in 2014.<sup>73</sup> The Commission stated in the *Seventeenth*

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<sup>70</sup> The case types for these 37 cases were: missing property (17 cases), criminal association (10 cases), narcotics (3 cases), firearms-related (1 case), excessive force (2 cases), rape/other sex offenses (1 case), and other crimes (1 criminal possession of stolen property case, 1 possession of a weapon case, and 1 larceny case). IAB supervisors noted deficient team leader reviews in nine of these cases.

<sup>71</sup> IAB supervisors identified this issue in five of the cases. The Commission did not include those investigations where only a small percentage of team leader reviews were missing when there were overall consistent team leader reviews throughout the investigation.

<sup>72</sup> An IAB supervisor documented this issue in four of the cases.

<sup>73</sup> *Seventeenth Annual Report* at p. 16.

*Annual Report*, and reiterates here, that promptly closed investigations benefit public trust as citizens know that their complaints are investigated without undue delay. Diligence in bringing an investigation to a prompt conclusion also benefits the accused members of the service whose cases will be disposed of in a timely manner.<sup>74</sup> Of course, quality should not be sacrificed in the pursuit of quicker investigations.

Although the Commission continued to find that, as a rule, IAB investigations were thoroughly investigated and the allegations received appropriate dispositions based on those investigations, the Commission found a greater number of issues in the investigations it reviewed in 2015 and the first eight months of 2016, than in 2013 and 2014. The areas that the Commission believed were most susceptible to improvement were the dispositions assigned to allegations in the cases, the interviews of available witnesses, the quality of the investigators' interviews, and the team leader reviews.

The Commission agreed with the dispositions assigned to allegations in approximately 94% of the cases. This was down from 99% over prior years. There was also a decrease in the satisfaction rate of cases where the Commission believed investigators did not interview or make sufficient attempts to interview both civilian and law enforcement witnesses. The Commission felt that in 27% of the cases reviewed, one or more interviews that were conducted by investigators could have been conducted in a better manner. This was an increase from 9% of the cases in 2014. Although the number of investigations with consistent and adequate team leader reviews has consistently been an area of concern noted by the Commission, during this reporting period, there was an even larger percentage of cases with team leader review issues, 27% of the investigations. This represented an increase from 18% of the investigations in 2014. On the positive side,

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<sup>74</sup> *Id.* at p. 18.

when separated into the years 2015 and 2016, the Commission was more satisfied with the cases in 2016 in all areas. Finally, the substantiation rate for the most serious allegations of the cases reviewed increased significantly from 15% in 2014 to 24% for this reporting period.

One of the Commission's ongoing areas of concern is missing property cases. These continue to be the largest category of cases investigated by IAB and reviewed by the Commission, and are a classic example of corruption.<sup>75</sup> However, in most circumstances, the allegation that a member of the service stole property is extremely difficult to prove or disprove. The challenges to substantiating missing property allegations are many and varied. Complaining witnesses often become uncooperative during the course of these investigations. In some cases, the complainant was intoxicated or even unconscious when the property allegedly disappeared. Often there are no independent witnesses to the interaction between complainants and the police, and when there are witnesses, they also may fail to cooperate. In many instances, several people have access to the property, including people outside of the NYPD, and the complainant is unable to identify who removed the property. Unlike other police/civilian encounters, these scenarios are not usually captured on clear video. In addition, the complainant may not discover that his property is missing until several days or more after the incident, upon being released from custody, when the opportunity to obtain video has been lost.

In some instances, IAB can prove that the property existed and that a specific officer handled the property. However, without definitive evidence of intent, it is often impossible to prove that the subject officer stole the property. In those cases, IAB is only able to substantiate that the subject officer failed to safeguard the property, resulting in its loss.

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<sup>75</sup> See *supra* at p. 12, fn. 24.



Failure to safeguard property, while subject to discipline, typically does not result in the subject officer's termination.

The Department does take proactive steps to identify members of the service who may be inclined to steal property. However, even if IAB suspects that an allegation against a particular officer is credible and targets the officer for an integrity test, the officer's failure of such a test cannot prove the officer's guilt of the original allegation. Thus, even though the officer may then be subject to discipline, the original allegation will go unsubstantiated.

Many of the investigations the Commission reviewed that contained issues noted in this Report were those cases in which missing property was the most serious allegation. This was not all together unexpected given that 39% of the cases reviewed by the Commission fell in this category. For all the reasons cited above, even in those cases where the Commission noted issues with respect to thoroughness, those issues were unlikely to have affected the ultimate disposition of the missing property allegations. However, given the seriousness and prevalence of these allegations, and the possibility that some officers -- relying on the evidentiary difficulties of proving their guilt -- may be emboldened to take property, the Commission believes that the Department must remain vigilant and employ available investigative techniques in a timely and careful manner. Furthermore, IAB should continue to use, and perhaps increase the use of, proactive measures such as integrity tests to identify officers who may be inclined to steal property.

IAB shares the Commission's concern about the large percentage of missing property cases in its caseload. These cases consume limited IAB resources that could be used to root out other provable misconduct. IAB has found that in some cases, officers have taken procedural shortcuts (in collecting and vouchering prisoner property, for example), that may have created

opportunities for property to go missing. The Commission notes that IAB has taken steps to identify those shortcuts, speak with precinct commanders, and implement procedures to tighten the vouchering process so as to reduce these allegations. The Commission encourages IAB to continue this effort and to announce its findings to all Department supervisors. The Commission looks forward to working with IAB and the Department in an effort to decrease missing property complaints.

The Commission makes several recommendations regarding IAB investigation techniques at the end of this Report.<sup>76</sup>

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<sup>76</sup> See *infra* at pp. 167-169.

# REVIEW OF CLOSED DISCIPLINARY CASES

## Introduction

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The Department Advocate’s Office (DAO) prosecutes the majority of the administrative cases against members of the service after allegations against them are substantiated by NYPD investigators. The Administrative Prosecution Unit (APU) of the Civilian Complaint Review Board (CCRB) also prosecutes administrative cases against members of the service based on substantiated CCRB investigations into excessive or unnecessary force, abuse of authority, discourtesy, or offensive language (FADO).<sup>77</sup> All of these administrative cases are prosecuted in the Department’s Trial Rooms. Department Trial Commissioners preside over administrative trials and recommend factual findings and administrative penalties to the Police Commissioner. The Police Commissioner is responsible for final decisions regarding guilt and the imposition of penalties in all cases.<sup>78</sup>

The Commission reviews all disciplinary cases involving uniformed members of the service to evaluate whether the Department appropriately addressed misconduct.<sup>79</sup>

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<sup>77</sup> CCRB is a separate city agency that has jurisdiction to conduct investigations of FADO complaints against uniformed members of the service. NYPD investigators may conduct concurrent investigations into these allegations as well. The Commission does not review CCRB investigations.

<sup>78</sup> N.Y.C. Administrative Code § 14-115(a).

<sup>79</sup> The paperwork the Commission reviews includes the charges that were levied against the subject officer and the disposition sheet, which notes the final outcome of the case against the subject officer. If there was a plea agreement, the memorandum describing the misconduct, the officer's disciplinary and performance history, and the rationale behind the penalty offered is included. If there was a trial or mitigation hearing where the subject officer admitted to the misconduct, but testified in an effort to explain his behavior and justify a lesser penalty, the Trial Commissioner's decision is included. This decision consists of a summary of the testimonial and physical evidence presented, along with the Trial Commissioner's findings and recommendations. If the Police Commissioner did not agree with either the Trial Commissioner's factual findings or his recommended penalty, a memorandum from the Police Commissioner explaining his reasoning is also included. When conducting its analyses of these cases, the Commission’s sole source of information regarding the subject officers’ actions was usually this paperwork. The Commission generally did not review the entire investigative file or listen to the officers’ recorded statements. Some of the underlying investigations, however, were reviewed as part of the Commission’s general review of IAB cases in prior years. There were also some instances where the

The Commission examines each penalty to determine if it was proportionate and adequate to address the misconduct, using the following factors: the nature of the offense committed, the officer's disciplinary and performance history, and the strength of the case. In assessing the adequacy of the discipline, the Commission compares penalties that have been imposed in similar cases. For this Report, the Commission evaluated 1,395 disciplinary cases adjudicated between October 2014 and August 2016, involving 1,225 uniformed members of the service.<sup>80</sup>

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Commission reviewed the underlying investigation when it wanted additional information regarding the facts of the case.

<sup>80</sup> Although 1,395 cases were reviewed, 135 members of the service had multiple cases involving separate charges and specifications. Typically, multiple cases against the same subject officer were resolved with a single penalty.

## General Analysis of Disciplinary Cases

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### A. Case Categories

The Commission used 13 case categories to describe the most serious allegation in each disciplinary case.<sup>81</sup> The categories are:

**Administrative Failure:** Failure to abide by Department regulations, including being present for duty when required, adherence to post assignments, paperwork requirements, computer misuse, and general behavior while on-duty. This category does not include conduct specifically described in other categories.

**Domestic Violence:** Misconduct involving a member of the service and a family member or someone with whom the member of the service had a present or past intimate or familial relationship. This category includes verbal disputes requiring the intervention of law enforcement, harassment, physical assaults, stalking, and violations of protective orders.

**Duty Failure:** Nonfeasance of duty. This category includes failure to investigate, failure to report, failure to respond, failure to supervise, failure to appear in court, and “ticket-fixing.”<sup>82</sup>

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<sup>81</sup> The case categories were introduced in the *Seventeenth Annual Report* at pp. 41-42 to provide a way to conduct statistical analyses on the disciplinary cases. The “False Statement Time & Leave” and “Other On-Duty Misconduct” categories have been added for this year’s Report. These categories were added to provide more accurate descriptions of cases. Since the Commission generally considers time and leave issues to be personnel issues best addressed by the Department, the Commission often refrains from commenting on the discipline in those cases in which officers made false statements for the purpose of taking annual or sick time from the Department, unless there was a pattern of misconduct or the statement was made in the course of an official Department interview. Because of this difference in the Commission’s treatment of these cases, for this Report, we have removed them from the general category of “False Statement” cases. The Commission added the “Other On-Duty Misconduct” category because there was no category that adequately captured the seriousness of some misconduct that was committed while the subject officer was on duty, including sexual harassment and fraternizing with defendants, victims, and witnesses. Prior to this addition, these cases would have been labeled as “administrative” misconduct, which the Commission has usually reserved for more minor misconduct.

<sup>82</sup> Ticket-fixing involves an officer seeking or giving assistance to have a case, typically involving a motor vehicle infraction, dismissed.

**DWI/Unfit for Duty:** Driving while intoxicated<sup>83</sup> or impaired, or being intoxicated to the extent that the member of the service is unfit for duty.

**FADO:** On-duty excessive or unnecessary force, abuse of authority, discourtesy to civilians, and offensive language.

**False Statement:** False, inaccurate, or misleading statements, including those made under oath or in an official Department or CCRB interview, false or inaccurate entries in Department records, false statements to prosecutors or other investigative bodies, and impeding Department investigations and interviews.

**False Statement Time & Leave (T/L):** False statements related to time and leave, reporting sick, and interactions with the Medical Division.

**Firearms:** Firearms-related misconduct including, improper display (off-duty) improper discharge (on or off-duty), failure to safeguard (on or off-duty), and possession of unauthorized firearms.<sup>84</sup>

**Insubordination:** Defiance of a supervisor's authority, discourtesy toward a supervisor, and failure to obey a lawful order.

**Narcotics:** Possession, use, or trafficking of illegal drugs, or the improper possession, use, or sale of prescription medication. This category includes charges related to a Department drug test failure or the refusal to take such a test.

**Other On-Duty Misconduct:** Any on-duty misconduct or misconduct that is related to an officer's job performance that is not readily classified in another category. This category includes sexual harassment and fraternizing with defendants, victims, and witnesses.<sup>85</sup>

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<sup>83</sup> The administrative charge is driving under the influence of an intoxicant.

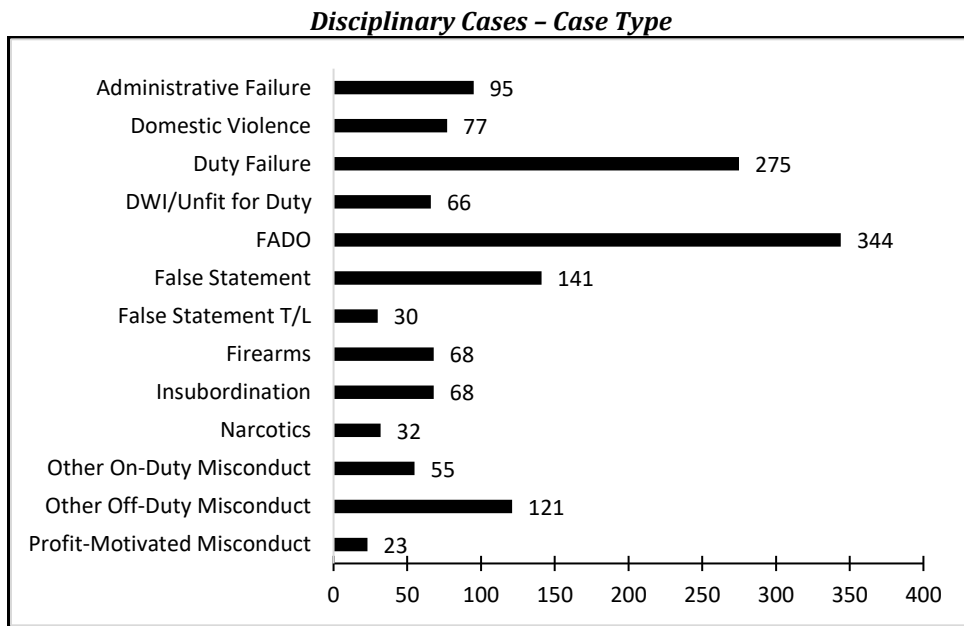
<sup>84</sup> The improper display of a firearm while on-duty would be categorized as a FADO incident.

<sup>85</sup> The Commission included fraternization in this category even when it occurred off-duty, as the subject officers initially encountered the other person in the course of the performance of their job duties.

**Other Off-Duty Misconduct:** The commission of any off-duty crime or other off-duty misconduct not otherwise categorized. This category includes associating with people known to have a criminal history or known to be engaging in criminal activities.

**Profit-Motivated Misconduct:** On or off-duty misconduct, other than drug trafficking, committed with the intention of achieving personal financial gain, including stealing property, receipt of bribes, or unlawful gratuities.

The table below reflects the categories assigned to each of the cases reviewed by the Commission for this Report.<sup>86</sup>



<sup>86</sup> The Commission assigned a case category based upon the most serious allegation.

The table below reflects the number of disciplinary cases for each rank in the Department.

Rank	No. of MOS	%
Police Officer	780	64%
Detective	185	15%
Sergeant	173	14%
Lieutenant	67	5%
Captain	16	1%
Deputy Inspector	2	<1%
Inspector	0	0%
Chief	2	<1%
<b>Total</b>	<b>1,225</b>	<b>100%</b>

***B. Discipline By Rank***

**1. Discipline for High-Ranking Officers**

Due to certain events concerning high-ranking members of the service that were disclosed during the reporting period covered by this Annual Report, the Commission looked more closely at the disciplinary cases involving officers at the ranks of Captain and above. The Commission sought to determine if there was any difference in the penalties imposed between these officers and lower-ranking officers. The Commission compared the average penalties across each rank. Although the penalties appeared within the standard range for each offense, we were unable to draw any definitive conclusions, as there were too few cases involving subjects with these high-level ranks.

Cases by rank of Captain and above, and the penalties imposed, are set forth in the chart on the following page:<sup>87</sup>

<sup>87</sup> Cases that resulted in 'Not Guilty' findings are not included in this chart.



Rank	Case Type	Most Serious Charge	Penalty <sup>88</sup>
Chief	Profit-Motivated	Accepted gratuity	Charges Filed-Retired <sup>89</sup>
Chief	Profit-Motivated	Accepted gratuity	Charges Filed-Retired
Deputy Inspector	Domestic Violence	Operated a Department vehicle with spouse on hood	15 Vacation Days
Deputy Inspector	Duty Failure	Failed to ensure that a proper complaint report was prepared	5 Vacation Days
Captain	Domestic Violence	Physical altercation with spouse	15 Suspension Days
Captain	Other On-Duty Misconduct	Sexual harassment	30 Vacation Days
Captain	DWI/Unfit	DWI	Dismissal Probation, <sup>90</sup> 29 Vacation Days, 31 Suspension Days
Captain	Profit-Motivated	Accepted gratuity	10 Vacation Days
Captain	Profit-Motivated	Accepted gratuity	Charges Filed-Retired
Captain	Duty Failure	Improperly changed complaint reports to reclassify incidents as misdemeanors	15 Vacation Days
Captain	Firearms	Firearm discharge at moving vehicle	15 Vacation Days
Captain	Firearms	Improperly displayed firearm to civilian	Service Retirement, Dismissal Probation, 40 Vacation Days
Captain	Other Off-Duty Misconduct	Left the scene of a motor vehicle accident	31 Suspension Days
Captain	Other Off-Duty Misconduct	Displayed firearm during verbal dispute; discourteous to on-duty police officers	Dismissal Probation 50 Vacation Days
Captain	FADO	Improperly pointed firearm at civilian; improper stop of civilian; discourtesy	30 Vacation Days
Captain	FADO	Improper entry into a residence	7 Vacation Days

<sup>88</sup> Penalties consisting of a determinate number of vacation days means that the subject officer forfeited those vacation days.

<sup>89</sup> "Charges Filed" refers to cases where the subject officer ceased to be employed by the Department for any reason prior to the adjudication of the charges. In these instances, the charges are filed in the subject officer's personnel folder for the purpose of tolling the statute of limitations. (*See supra* at p. 15 for a discussion of the statute of limitations in administrative cases.) In the event the subject officer is reinstated, the Department can then pursue the prosecution of the charges.

<sup>90</sup> *See infra* at pp. 52-53 for a detailed discussion of dismissal probation.

The Commission also examined whether the cases brought against high-ranking officers appeared to be resolved either more quickly or more slowly than those against lower-ranking members of the service.<sup>91</sup>

**Rank Comparison – Elapsed Time in Days<sup>92</sup>**

Rank	Date of Incident to Final Disposition	Date of Charges to Final Disposition	Cases
PO - LT	806	491 <sup>93</sup>	1,068
CAPT - CHIEF	844	493	20

**Average Elapsed Time in Days by Rank**

Rank	Date of Incident to Final Disposition	Date of Charges to Final Disposition	Cases
PO	795	499 <sup>94</sup>	682
DET	843	496 <sup>95</sup>	171
SGT	789	443	157
LT	870	517	60
CAPT	786	462	16
DI	1,392	1,158	2
INSP	-	-	-
CHIEF	760	74	2

<sup>91</sup> A significant difference in the length of time that a disciplinary case was pending could indicate advantages for the higher-ranking members of the service. If the cases were generally resolved more expeditiously, the member of the service would receive a decision more quickly and the unresolved case would not delay any promotions or desirable assignments. A disciplinary case that was held back without action could be delayed for the purpose of allowing the higher-ranking member of the service to achieve the necessary length of service so he could retire, without receiving any discipline. Charges would then be filed against him.

<sup>92</sup> The charts reflect the average number of days rounded to the nearest whole number. Three hundred five cases were removed from these calculations as they involved members of the service with multiple disciplinary cases. In cases where there were multiple dates of occurrence, the Commission used the latest date specified in the charges. *See infra* at p. 45, fn. 96 for the reason the adjudication of multiple cases against a subject officer could skew the length of time a set of charges was pending.

<sup>93</sup> Two cases were removed from this calculation because the date of charges could not be determined.

<sup>94</sup> One case was removed from this calculation because the date of charges could not be determined.

<sup>95</sup> One case was removed from this calculation because the date of charges could not be determined.

As with its examination of penalties, because there were only 20 cases against higher-ranking members of the service, the Commission was unable to draw any definitive conclusions, although the Commission noted that the time frames for adjudication appear similar. The Commission will continue to monitor whether there are disparities according to rank.

## **2. Disciplinary Cases for All Officers**

When examining all of the disciplinary cases without regard to the rank of the subject officer, the Commission determined that the average number of days elapsed from the date of the incident to the date of a final disposition was 801.<sup>96</sup> (For those cases prosecuted by DAO, the average number of days elapsed was 731, while for those cases prosecuted by APU, the average number of days elapsed was 994.)<sup>97</sup> The average number of days elapsed from the date of charges to the date of the final disposition was 491.<sup>98</sup> (For those cases prosecuted by DAO, the average number of days elapsed was 475, while for those cases prosecuted by APU, the average number of days elapsed was 536.) Cases that went to Department trial took an average of 1,007 days from the the date of the incident to the date of the final disposition and 594 days from the date of the charges to the date of the

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<sup>96</sup> For all of the days elapsed results, calculations were rounded to the nearest whole number. Three hundred five cases were removed from all of the calculations because they involved members of the service with multiple disciplinary cases. Inclusion of these cases would have skewed results higher. DAO and APU have typically delayed disciplinary cases when additional charges are brought against the same member of the service so that all of the charges can be adjudicated at the same time. In addition, DAO may hold cases in the adjudication process while additional allegations are investigated before any charges are levied; if such an investigation does not result in formal discipline, there is nothing in the DAO materials reviewed by the Commission that would indicate this fact.

<sup>97</sup> The Commission acknowledges that the length of some investigations and disciplinary cases was increased by the pendency of criminal proceedings against the subject officers. The Department often does not proceed with their cases so the criminal cases are not affected.

<sup>98</sup> Two cases were removed from this calculation because the date of the charges could not be accurately determined.

final disposition. (For those cases prosecuted by DAO, the average number of days elapsed from the incident date to the disposition date was 1030, and from the date of the charges to the disposition date was 691. For those cases prosecuted by APU, the average number of days elapsed from the incident date to the disposition date was 994 and from the date of the charges to the disposition date was 539.) For cases where a mitigation hearing was held, the average number of days between the date of the incident and the date of the final disposition was 878; 608 days was the average time between the date of the charges and the final disposition.<sup>99</sup> Cases that resulted in pleas averaged 673 days from the date of the incident to the date of the final disposition (634 days for DAO-prosecuted cases and 1015 for APU-prosecuted cases) and 416 days from the date of the charges to the date of the final disposition (402 days for those prosecuted by DAO and 541 days for those prosecuted by APU).

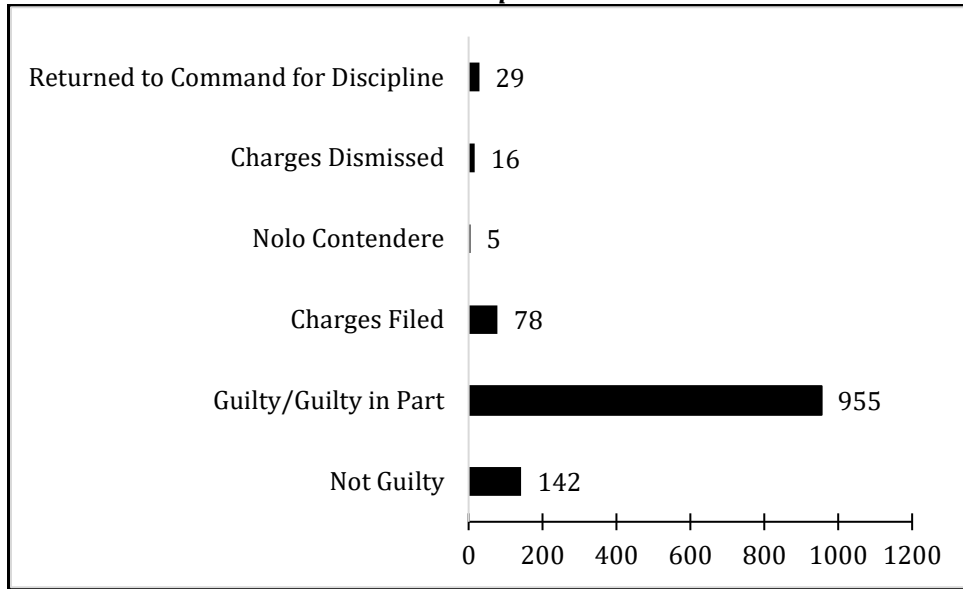
Seventy-eight percent of the dispositions resulted in a guilty, guilty in part, or *nolo contendere* finding.<sup>100</sup> The chart on the following page depicts dispositions for each member of the service:

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<sup>99</sup> DAO prosecuted all of these cases.

<sup>100</sup> “*Nolo contendere*” refers to a plea of “no contest.” It has the same effect as a guilty plea; however, under a plea of *nolo contendere*, the subject officer neither admits nor disputes the charged misconduct. This type of plea is typically accepted when a civil lawsuit is pending and the subject officer’s admission of guilt would expose him and the Department to civil liability.

**DAO Case Dispositions<sup>101</sup>**



Discipline was meted out to 960 members of the service.<sup>102</sup> The discipline ranged from reinstruction to dismissal from the Department. The chart on the following page reflects the penalties imposed on the 960 members of the service disciplined during the reporting period:<sup>103</sup>

<sup>101</sup> These dispositions reflect case outcomes for individual members of the service; as noted above, there were members of the service with multiple cases. A “Not Guilty” disposition would only come at the conclusion of a Department trial. The guilty/guilty in part category includes those officers with multiple cases who were found not guilty of some charges and guilty of other charges.

<sup>102</sup> This does not include the cases that were returned to individual commands for discipline.

<sup>103</sup> Members of the service receiving discipline may be given a combination of penalties, particularly for more serious matters. For example, dismissal probation, defined *infra* at pp. 52-53, usually is imposed with a forfeiture of vacation days or with suspension days (where the officer loses his pay and benefits for the suspension period.) Retirement included service retirement, when the subject officer had reached 20 years of employment with the Department, and vested retirement, when the subject officer had been employed less than 20 years but was still eligible to collect a portion of his or her pension. The chart reflects the most serious form of discipline imposed for each officer. As noted above, officers with multiple disciplinary cases typically have the cases adjudicated at the same time with the penalty imposed covering all of the cases. This accounts for the difference in numbers between the DAO Case Dispositions chart and the DAO Discipline chart.

### DAO Discipline<sup>104</sup>



## 2.1 Separations

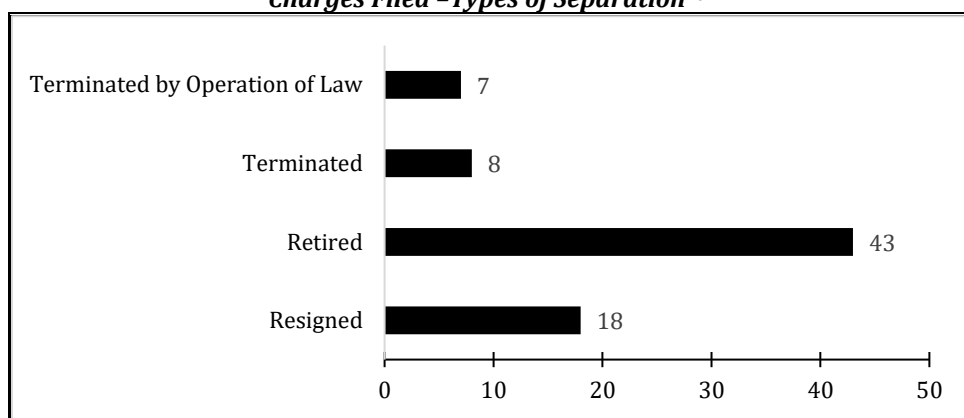
Seventy-eight members of the service had their one hundred sixteen cases disposed of with “charges filed.” These members of the service were separated from the Department while either the investigations or their disciplinary cases were still pending.<sup>105</sup> The separations were through termination, typically the result of another disciplinary case, resignation, retirement, or termination by operation of law.<sup>106</sup> The chart on the following page reflects the type of separation for members of the service whose disciplinary cases were closed as charges filed.

<sup>104</sup> The miscellaneous category consisted of 1 guilty finding with no discipline, 4 instances of re-instruction/training, and 18 reprimands. The retirement category only included those cases where the subject officers were required to file for retirement as part of a negotiated settlement.

<sup>105</sup> Twenty-five of the seventy-eight officers had multiple cases that were disposed of with charges filed.

<sup>106</sup> Members of the service are terminated from the Department by operation of law upon conviction of a felony or a crime involving a violation of the officer’s oath of office. N.Y. Public Officer’s Law § 30(1)(e). See *infra* at p. 49 for further discussion about termination by operation of law.

**Charges Filed –Types of Separation<sup>107</sup>**



Terminations by operation of law are exercised separately from the Department’s disciplinary process; therefore, any pending disciplinary cases in this scenario are typically disposed of with the filing of charges. For this reporting period, seven members of the service were terminated by operation of law after being convicted of the following criminal charges:<sup>108</sup>

- *Officer #1:* Bribe Receiving.
- *Officer #2:* Official Misconduct, Patronizing a Prostitute, and Conspiracy.<sup>109</sup>
- *Officer #3:* Attempted Grand Larceny, Attempted Robbery, and Attempted Criminal Possession of a Controlled Substance.
- *Officer #4:* Official Misconduct.
- *Officer #5:* Assault, two counts of Coercion, Riot, and Criminal Mischief.
- *Officer #6:* Attempted Grand Larceny, Attempted Robbery, and Attempted Criminal Possession of a Controlled Substance.<sup>110</sup>
- *Officer #7:* Falsifying Business Records.

<sup>107</sup> The chart reflects the method of separation for 76 members of the service whose administrative charges were closed as being filed. In the two remaining cases, the subject officers died while charges were pending.

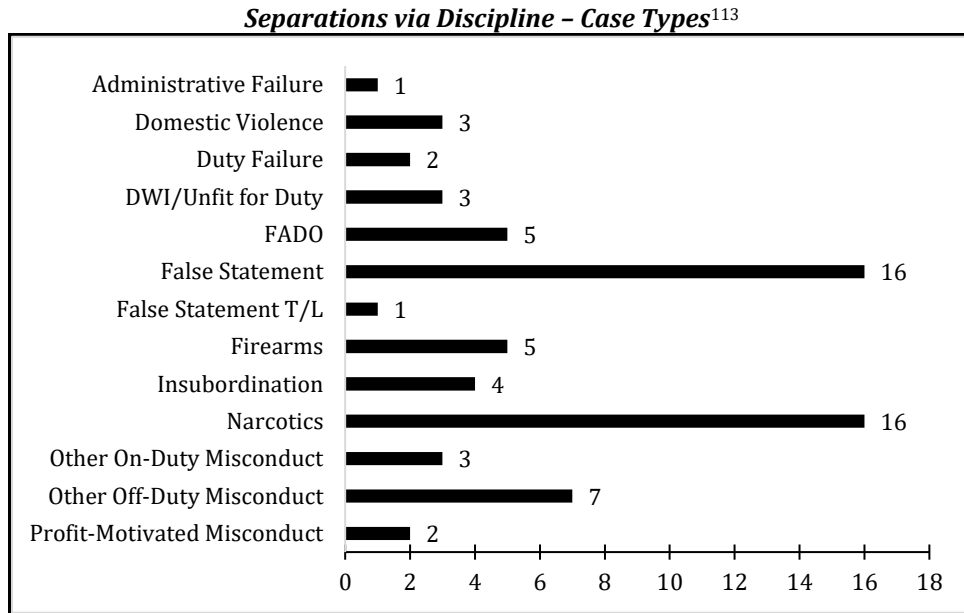
<sup>108</sup> Two of the seven members of the service had multiple cases pending at the time of separation from the Department.

<sup>109</sup> This member of the service also had a false statement case that was disposed of with the filing of charges.

<sup>110</sup> This member of the service also had two other disciplinary cases that were disposed of with the filing of charges: an unauthorized off-duty employment case and a criminal association case.

### a. Separations via Discipline

A total of 68 members of the service were separated from the Department as a result of the disciplinary process.<sup>111</sup> Of those, 39 members of the service accepted some form of retirement<sup>112</sup> and 29 members of the service were terminated from the Department. The case types for these members of the service are detailed below.



### b. Terminations

Twenty-nine members of the service were terminated from the Department during this review period. Details regarding their cases are described on the following pages and are grouped by the most serious allegation in each case.

<sup>111</sup> A total of 95 cases were adjudicated in this category as 17 members of the service had multiple disciplinary cases combined and disposed of with the same penalty.

<sup>112</sup> A forced retirement is not an option under the N.Y.C. Administrative Code; however, retirement can be included in a negotiated settlement as part of the penalty.

<sup>113</sup> The case type categories were based upon the most serious charge in each particular disciplinary case. For the 17 members of the service with multiple cases, the Commission used the most serious charge to determine an overall case type.



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### ***Domestic Violence***

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- One member of the service was found to have assaulted an intimate partner, held that person against her will, and failed to secure his firearm.
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### ***FADO***

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- Two members of the service used excessive force on individuals who were handcuffed.
  - One member of the service kicked an individual in the head while the individual was being taken into custody.
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### ***False Statements***

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- Two members of the service were found to have made false statements in Department paperwork, court documents, and court testimony.
  - One member of the service made false and/or misleading statements to a supervisor.
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### ***Firearms***

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- One member of the service, while off-duty, discharged his firearm in the air after being involved in a verbal dispute, and in another case, threatened an individual.
  - One member of the service discharged her firearm during an off-duty altercation.
  - One member of the service discharged his firearm during an off-duty altercation, pointed the firearm at several individuals, and after the incident, gave the firearm to another off-duty member of the service prior to being stopped by on-duty police officers.
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### ***Insubordination***

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- One member of the service refused to comply with an order to appear at an official Department interview and report to a particular command while on suspension.
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### ***Narcotics***

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- Seven members of the service tested positive for marijuana use.
- Three members of the service tested positive for cocaine use.
- One member of the service tested positive for oxycodone.
- One member of the service was determined to be in possession of an illegal steroid.

- One member of the service was found to be in possession of, and tested positive for, suboxone.

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### ***Other Off-Duty Misconduct***

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- One member of the service endangered the welfare of a child, tampered with a witness, and violated an order of protection.
- One member of the service downloaded and possessed child pornography.
- One member of the service committed a larceny.

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### ***Other On-Duty Misconduct***

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- One member of the service was found to have thrown semen on another Department employee.

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### ***Profit-Motivated Misconduct***

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- One member of the service was found guilty of larceny and accepting a loan from a business in the officer's patrol area.

## **2.2 Dismissal Probation**

The Police Commissioner may impose a period of dismissal probation upon a member of the service who has been found guilty of, or pled guilty to, an administrative charge.<sup>114</sup> A member of the service who is placed on dismissal probation is considered dismissed from the Department, but that dismissal is held in abeyance for a one-year period, which could be extended by any time that the member of the service is not on full-duty status. During this period, the member of the service continues to be employed by the Department. While on dismissal probation, if the member of the service engages in any further misconduct, his or her employment may be terminated without an administrative

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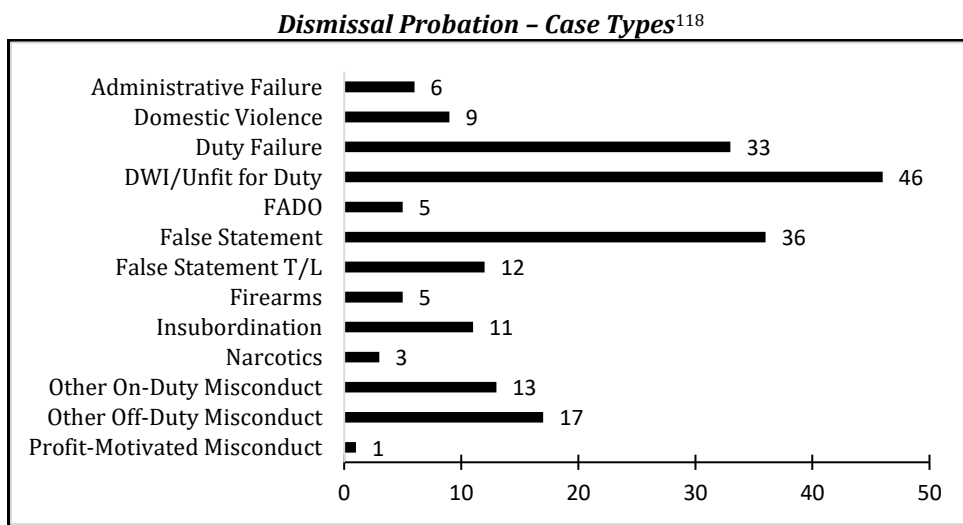
<sup>114</sup> N.Y.C. Administrative Code § 14-115(d).

hearing. In addition, a member of the service on dismissal probation may, at the discretion of the Police Commissioner, be terminated for any constitutionally permissible reason that is not arbitrary or capricious.<sup>115</sup>

At the successful conclusion of the dismissal probation period, the member of the service is restored to his or her former status.

During this year’s review of disciplinary cases, 197 members of the service were placed on dismissal probation.<sup>116</sup> This represents 21% of the officers who were found guilty or pled guilty or *nolo contendere* to at least one charge.<sup>117</sup>

The chart below depicts the case types that resulted in dismissal probation.



<sup>115</sup> A probationary police officer also can be summarily terminated for any constitutionally permissible reason.

<sup>116</sup> These 197 members of the service accounted for 241 cases as 38 had multiple cases. Thirty-nine other members of the service received dismissal probation but also separated from the Department via retirement.

<sup>117</sup> This is consistent with the Commission’s finding in the *Seventeenth Annual Report* where 21% of officers who were found or pled guilty, guilty in part, or pled *nolo contendere* to at least one charge were placed on dismissal probation. *Seventeenth Annual Report* at p. 51.

<sup>118</sup> The case type categories were based upon the most serious charge in each particular disciplinary case. For the 38 members of the service with multiple cases, the Commission used the most serious allegation to determine an overall case type. There were two members of the service with two cases each, however, they were both found not guilty in one of their cases.

A more detailed analysis of dismissal probation cases is outlined below by type.<sup>119</sup>

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### ***Administrative Failure***

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- One case in which the subject officer improperly used a Department parking placard.
- One case in which the subject officer failed to follow Department tow procedures.
- One case in which the subject officer failed to remain on post.
- One case in which the subject officer conducted hundreds of unauthorized computer inquiries.

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### ***Domestic Violence***

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- Five cases in which the subject officers were involved in physical altercations.
- One case in which the subject officer threatened another person.

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### ***Duty Failure***

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- Eleven cases in which the subject officers engaged in “ticket-fixing.”<sup>120</sup>
- Two cases in which the subject officer was sleeping on-duty.
- Two cases in which the subject officers failed to supervise.
- Four cases in which the subject officers failed to conduct proper investigations.
- One case in which the subject officer failed to inform the arresting officer that a firearm was recovered during a vehicle search.
- One case in which the subject officer failed to transport an arrestee to a hospital as required.
- One case in which the subject officer improperly intervened in investigations by on-duty members of the service for the benefit of a friend.
- One case in which the subject officer operated a Department vehicle in a reckless manner.

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<sup>119</sup> Only the most serious allegation as determined by the Commission will be described.

<sup>120</sup> See the Commission’s *Fifteenth Annual Report* at pp. 76-77 for a more detailed description of this investigation. The members of the service disciplined above were not among those who were charged criminally as part of the same investigation. The Department includes dismissal probation as part of the standard penalty for “ticket-fixing” cases involving multiple summonses. One of the eleven subject officers had a second disciplinary case that concluded with a not guilty finding after a trial.

- One case in which the subject officer failed to secure a duplicate shield and other Department equipment that led to its unauthorized use by another.

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### ***DWI/Unfit for Duty***

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- Thirty-two cases in which the subject officers were driving while intoxicated or driving while their ability was impaired.<sup>121</sup>
- Five cases in which the subject officers were unfit for duty due to alcohol.

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### ***FADO***

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- Five cases in which the subject officers used excessive force.

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### ***False Statement***

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- Sixteen cases in which the subject officers made false, misleading, and/or inaccurate statements in official Department interviews.
- Five cases in which the subject officers made false, misleading, and/or inaccurate statements in Department paperwork.
- Two cases in which the subject officers interfered with an official Department investigation by making misleading statements.
- One case in which the subject officers made false, misleading, and/or inaccurate statements in court documents.
- Five cases in which the subject officers made false, misleading, and/or inaccurate statements during sworn testimony.
- One case in which the subject officer made an inaccurate statement to an Assistant District Attorney.
- One case in which the subject officer made misleading statements to IAB investigators.
- One case in which the subject officer made inaccurate statements to a member of the service that led to the arrest of a civilian and made misleading statements in an official Department interview regarding the incident.

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<sup>121</sup> See *infra* at p. 105.

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### ***False Statement T/L***

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- Nine cases in which the subject officers made false, misleading, or inaccurate entries in Department records regarding their presence for duty.
  - One case in which the subject officer made misleading statements to the Medical Division regarding line of duty injuries.
  - One case in which the subject officer provided false information to the Medical Division.
  - One case in which the subject officer made an inaccurate statement to a Department surgeon.
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### ***Firearms***

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- One case in which the subject officer improperly discharged a firearm at a moving vehicle.
  - One case in which the subject officer failed to safeguard a firearm.
  - One case in which the subject officer improperly displayed a firearm during an off-duty incident.
  - One case in which the subject officer failed to safeguard a firearm resulting in its discharge.
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### ***Insubordination***

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- Six cases in which the subject officers failed to comply with an order.
  - Two cases in which the subject officers were discourteous to a supervisor.
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### ***Narcotics***

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- One case in which the subject officer used/possessed steroids.
  - Two cases in which the subject officers possessed drug paraphernalia.
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### ***Other On-Duty Misconduct***

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- One case in which the subject officer had inappropriate contact with a complainant.
- One case in which the subject officer attempted to meet an underage arrestee for non-Department purposes.

- One case in which the subject officer failed to report a found firearm.
- One case in which the subject officer, while on duty in his personal vehicle, failed to comply with the directions of other on-duty officers and struck one of them with his vehicle.
- One case in which the subject officer wrongfully took possession of another officer's helmet.
- Two cases in which the subject officers had improper contact with the subjects of investigations.
- One case in which the subject officer used his authority to attempt to influence a private civil matter.
- One case in which the subject officer exchanged telephone numbers with a domestic violence complainant and contacted her outside his official duties.
- One case in which the subject officer misrepresented his position within the Department to state investigators and attempted to intervene in the investigation of a friend.

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#### ***Other Off-Duty Misconduct***

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- Five cases in which the subject officers had contact with persons with a criminal history or who were engaged in criminal activities.
- Three cases in which the subject officers engaged in physical altercations that were not domestic in nature.
- Three cases in which the subject officers worked unauthorized off-duty employment.
- Two cases in which the subject officers left the scenes of motor vehicle accidents.
- One case in which the subject officer failed to identify himself as a member of the service to a 9-1-1 operator and failed to request a supervisor to the scene of an off-duty incident.
- One case in which the subject officer engaged in a verbal dispute while intoxicated and was discourteous to on-duty police officers.

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#### ***Profit-Motivated***

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- One case in which the subject officer possessed and sold counterfeit merchandise.

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### *Dismissal Probation for Officers with Multiple Disciplinary Cases*

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The following 36 members of the service had multiple cases and were placed on dismissal probation as a result.<sup>122</sup>

- Officer #1 had two cases (**Administrative Failures**): **failed to notify the Department of an overpayment from payroll** and failed to safeguard a Department metrocard.
- Officer #2 had two cases (**Administrative Failures**): failed to properly document monthly activity and **failed to submit issued summonses**.
- Officer #3 had three cases (**Domestic Violence**/Administrative Failures): **damaged property of another**, failed to safeguard Department property, and was absent from residence while on sick report.
- Officer #4 had two cases (**Domestic Violence**): **violated an order of protection coupled with engaged in a physical altercation** and engaged in a physical altercation related to a domestic dispute.
- Officer #5 had two cases (**Domestic Violence**/Duty Failure): **threatened a civilian related to a domestic dispute** and failed to conduct a proper investigation.
- Officer #6 had two cases (**Duty Failure**/Administrative Failures): **failed to appear in court** and was absent from residence while on sick report.
- Officer #7 had two cases (**Duty Failure**/Other On-Duty Misconduct): **failed to maintain case folders** and wrote an improper letter of recommendation for a firearms license.
- Officer #8 had two cases (**Duty Failure**/Administrative Failure): **failed to timely document investigative steps** and failed to report for three tours of duty.
- Officer #9 had three cases (**Duty Failure**/Administrative Failure/Insubordination): **failed to conduct a proper investigation**, was absent from assigned post, and was discourteous to a supervisor.
- Officer #10 had two cases (**Duty Failure**/Other Off-Duty Misconduct): **engaged in “ticket-fixing”** and displayed an inappropriate license plate on personal vehicle.

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<sup>122</sup> Bold typeface generally indicates the most serious charge as determined by the Commission and reflected in the chart on p. 41. When determining the most serious charge, the Commission considered charges where there was a finding of guilt and looked at the specific details of each charge, rather than the general case types. When the subject officer had a case that would have been penalized with dismissal probation as a standard penalty, the Commission bolded that case, regardless of whether it believed it was the more serious charge. Specifically, the Commission bolded “ticket-fixing” cases and DWI cases, as those cases generally include dismissal probation as part of the penalty.



- Officer #11 had three cases (**Duty Failures**): **engaged in “ticket-fixing,”** failed to appear in court, and was late for court.
- Officer #12 had two cases (**Duty Failure/Other Off-Duty Misconduct**): **failed to keep a prisoner under constant observation** and operated a personal vehicle with an improper registration.
- Officer #13 had two cases (**Duty Failures**): **failed to properly handle a domestic violence call** and failed to prepare a complaint report.
- Officer #14 had four cases (3 **Duty Failures/Other Off-Duty Misconduct**): failed to timely prepare a property voucher, **engaged in “ticket-fixing,”** failed to follow Department tow procedures, and associated with someone who had a criminal history.
- Officer #15 had two cases (**DWI/Domestic Violence**): **drove while intoxicated** and engaged in a physical altercation related to a domestic dispute.
- Officer #16 had two cases (**DWI/Domestic Violence**): **drove while intoxicated** and engaged in a physical altercation related to a domestic dispute.
- Officer #17 had two cases (**DWI/Duty Failure**): **drove while intoxicated** and failed to conduct a proper investigation.
- Officer #18 had two cases (**DWI**): **drove while intoxicated** in both cases.
- Officer #19 had two cases (**DWI/Other Off-Duty Misconduct**): **was unfit for duty** and failed to notify the Department about off-duty incidents.
- Officer #20 had two cases (**DWI/Administrative Failure**): **drove while intoxicated** and was absent from residence while on sick report.
- Officer #21 had three cases (**DWI/Other Off-Duty Misconduct/False Statement T/L**): **drove while intoxicated**, engaged in an off-duty physical altercation, and made a false statement to the Absence Control Unit.<sup>123</sup>
- Officer #22 had two cases (**DWI/Duty Failure**): **drove while intoxicated** and failed to conduct a proper investigation.
- Officer #23 had two cases (**DWI/Other Off-Duty Misconduct**): **drove while intoxicated** and engaged in a physical altercation.

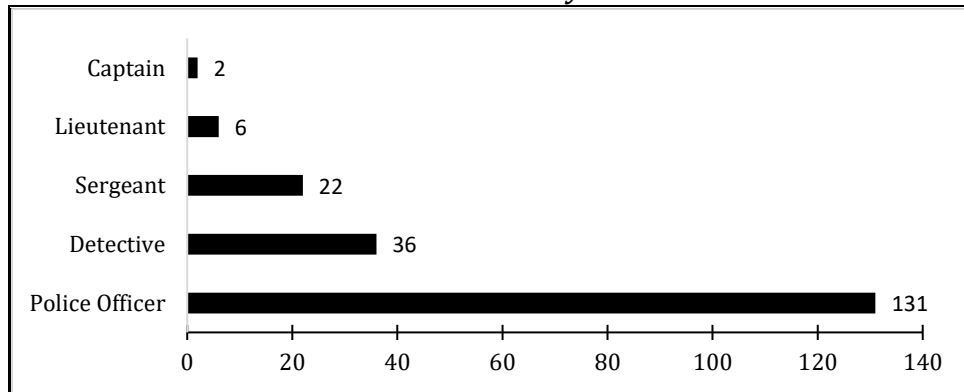
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<sup>123</sup> The Department’s Absence Control Unit is tasked with ensuring compliance with sick leave policies and procedures, and investigates allegations of sick leave abuse.

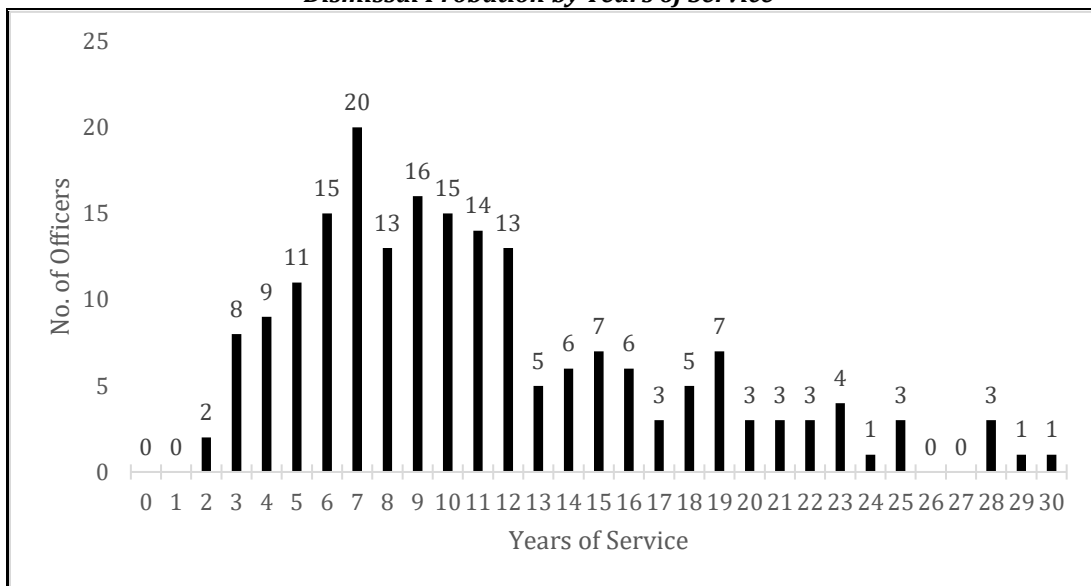
- Officer #24 had two cases (**False Statements**): **provided misleading statements during an official Department interview** and provided inaccurate/misleading statements to a supervisor.
- Officer #25 had two cases (**False Statement/Duty Failure**): **made false statements during testimony at TVB** and was unprepared for court.
- Officer #26 had two cases (**False Statements**): **provided misleading/inaccurate statements during an official Department interview** and provided misleading/inaccurate information to criminal prosecutors.
- Officer #27 had two cases (**False Statement/Duty Failure**): **provided false/misleading statements during an official Department interview** and failed to remain on post.
- Officer #28 had two cases (**Firearms**): **failed to safeguard a firearm** in both cases.
- Officer #29 had two cases (**Insubordination/Other Off-Duty Misconduct**): **was discourteous to a supervisor** and operated an unregistered vehicle.
- Officer #30 had two cases (**Insubordination**): **failed to comply with an order** and was discourteous to a supervisor.
- Officer #31 had two cases (**Insubordination**): **failed to comply with an order** and was discourteous to a supervisor.
- Officer #32 had two cases (**Other On-Duty Misconduct/Duty Failure**): **disclosed confidential information** and failed to supervise.
- Officer #33 had two cases (**Other On-Duty Misconduct/Duty Failure**): **attempted to initiate a relationship with an arrestee** and failed to perform assigned duties.
- Officer #34 had two cases (**Other On-Duty Misconduct/Administrative Failure**): **had an inappropriate relationship with a complainant in a case he was assigned to investigate** and operated a Department vehicle with a suspended driver's license.
- Officer #35 had two cases (**Other Off-Duty Misconduct**): **engaged in a physical altercation with another** and was involved in an off-duty incident after which the subject officer attempted to contact the complainant.
- Officer #36 had two cases (**Other Off-Duty Misconduct/Administrative Failure**): **failed to comply with the orders of on-duty police officers** and absent from residence while on sick report.

The charts below depict the imposition of dismissal probation by rank and by years of service:

*Dismissal Probation by Rank<sup>124</sup>*



*Dismissal Probation by Years of Service<sup>125</sup>*



<sup>124</sup> The chart represents the rank held by these members of the service at the time they were placed on dismissal probation. This was not necessarily their rank at the time of the incident.

<sup>125</sup> The chart represents complete years of service at the time the underlying misconduct took place. The Commission used the incident date of the most serious charge for the 38 members of the service with multiple cases that resulted in dismissal probation.

## 2.3 Returned to Command for Discipline

During the review of disciplinary cases for this Annual Report, 32 disciplinary cases involving 29 members of the service were sent from DAO to each subject officer's command for adjudication.<sup>126</sup> Commanding officers can impose penalties ranging from warnings, re-instruction, and reprimands, up to the forfeiture of 10 vacation days. In at least three cases, the Police Commissioner directed that a certain number of forfeited vacation days, or a range of days, be imposed. In 23 cases, the Police Commissioner directed that a copy of the adjudicated discipline from the command be delivered to the Police Commissioner's office.

Following is a brief description of the types of cases that were returned to individual commands.

- Nineteen subject officers had cases involving failing to appear or be prepared for appearances at TVB.<sup>127</sup>
- Two cases involved a failure to conduct follow-up home visits involving domestic violence investigations.
- Two FADO cases. One case involved a failure to provide the subject officer's name to a complainant over the telephone. The second case involved inappropriate contact with a civilian.
- One case in which the member of the service was late for work.
- One case in which the member of the service failed to update a required monthly report.

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<sup>126</sup> One member of the service had two cases pending; however, the charges in one case were dismissed and the remaining case was sent to the officer's command for adjudication.

<sup>127</sup> The 19 members of the service accounted for 21 cases, as 2 members of the service had 2 cases each. Over the course of the Commission's review period, the Department introduced changes to the level of discipline for TVB-related cases. Currently, the Department protocol is for TVB cases to be handled entirely at the command level unless a member of the service has engaged in TVB-related misconduct 5 or more times within a 12-month period.

- One case in which the member of the service failed to submit leave of absence reports on multiple occasions.<sup>128</sup>
- One case in which the member of the service sent a text message with derogatory language in an incident unrelated to Department business.<sup>129</sup>
- One case in which the member of the service was first alleged to have been off-post/out of precinct, then to have submitted an overtime form for time not worked, and then to have made misleading/inaccurate statements in an official Department interview.<sup>130</sup>
- One case in which the member of the service failed to notify IAB of an allegation of corruption, but did notify a direct supervisor.

### ***C. CCPC Analysis of Disciplinary Case Penalties***

Overall, the Commission agreed with the penalty imposed in 90% of the disciplinary cases it reviewed.<sup>131</sup> The table below shows the rate at which the Commission agreed with the penalty for each of the disciplinary case categories.<sup>132</sup> As reflected on the following page, the Commission’s most frequent disagreement occurred with respect to false statement cases and domestic violence cases.<sup>133</sup>

<sup>128</sup> This type of case is normally adjudicated within the formal disciplinary system, however, the Department determined that it was a systemic issue within the command that needed to be addressed.

<sup>129</sup> There were also allegations of domestic violence; however, the Department concluded that the complainant was untruthful, and therefore pursued only the inappropriate text message allegation.

<sup>130</sup> In this case, DAO entered into a plea agreement with the subject officer for the disciplinary case to be handled at the command level. DAO explained that it would have been difficult to prove that the officer’s explanation was inaccurate.

<sup>131</sup> In its *Seventeenth Annual Report*, the Commission agreed with the penalties in 94% of the cases. *See Seventeenth Annual Report* at p. 56.

<sup>132</sup> The case categories reflect the most serious charge as determined by the Commission. For members of the service with multiple cases, the Commission used the most serious charge to determine an overall case type.

<sup>133</sup> These have generally been the areas with which the Commission had the largest disagreement with the imposed penalties. In the *Seventeenth Annual Report*, at p. 56, the Commission stated it agreed with only 82% of the penalties in domestic violence cases and 84% of the penalties in false statement cases. That was the first report in which the Commission assigned cases to different categories and calculated the percentage of agreement with the imposed penalties.

<i>Case Type</i>	<i>CCPC Agreed</i>	<i>Number of Cases</i>
Administrative Failure	98%	62/63
Domestic Violence	66%	46/70
Duty Failure	92%	223/242
DWI/Unfit for Duty	97%	60/62
FADO	98%	317/322
False Statement	66%	89/134
False Statement T/L	100%	26/26
Firearms	94%	61/65
Insubordination	100%	49/49
Narcotics	100%	28/28
Other On-Duty Misconduct	75%	38/51
Other Off-Duty Misconduct	91%	83/91
Profit-Motivated Misconduct	91%	20/22

The Commission disagreed with the penalties imposed on 123 subject officers due to the seriousness of the incident(s) or the subject officer’s poor disciplinary history. In 67 cases, the Commission believed that dismissal probation should have been imposed. In 53 cases, the Commission believed that the subject officers should have been terminated (or otherwise separated) from the Department.<sup>134</sup> Finally, in three cases, the Commission believed that dismissal probation was not necessary but the forfeiture of more vacation and/or suspension days should have been imposed.<sup>135</sup>

Following are descriptions of cases in which the Commission disagreed with the imposed discipline. For each case type where the Commission disagreed with multiple disciplinary outcomes, the Commission set forth one or more illustrative cases.

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<sup>134</sup> Because an officer could only be placed on dismissal probation or terminated once, if the officer had multiple cases covered by one penalty, the Commission only counted these as one case. One member of the service received separate penalties for multiple cases; the Commission counted these penalties separately. *See infra* at pp. 86-92.

<sup>135</sup> While reviewing disciplinary cases, the Commission generally limits its focus to the question of whether dismissal probation or separation should have been the imposed penalty. While the Commission might have believed, in some cases, that more or fewer days would have been more suitable, it generally does not attempt to identify a specific number of vacation days that should have been forfeited or a specific number of suspension days. In the three cases mentioned here, the Commission believed that the penalty was plainly insufficient. However, based on the actual misconduct and the subject officer’s disciplinary and performance history, the Commission did not believe a period of monitoring or termination was required.

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### *Administrative Failure*

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The Commission disagreed with the penalty given to one subject officer for administrative failures that led to two cases. Typically, the Commission categorized as an administrative failure instances of minor misconduct for which it usually deferred to the Department regarding the appropriate penalty. The charges against this subject officer, however, demonstrated a pattern of misconduct that when coupled with her involvement in an off-duty dispute and her behavior toward the responding officers, caused the Commission concern about her ability to be a member of the service.

The subject was a police officer with less than two years of employment at the time she committed her first act of misconduct, although it was not discovered until after she had reached her two-year anniversary with the Department. Although she had no disciplinary history, the penalty imposed here covered two cases. The main acts of misconduct in both cases were conducted within six weeks of each other.

In the first case, occurring in July 2014, only four days after the subject officer's two-year anniversary with the Department, (and possibly while she was still a probationary police officer), the subject officer accessed Department databases to examine an arrest report for her brother from two weeks earlier. In her official Department interview, the subject officer stated that she looked at the report because she "wanted to know what was going on" and denied providing information from the report to anyone.

The second case also involved the subject officer's brother and computer misuse. The main incident in that case occurred in August 2014. Police were called to respond to a report of a person with a firearm. When they arrived, the police did not see anyone with a firearm; however, they observed a group of people engaged in a heated dispute. The dispute had begun when a woman confronted the subject officer's family about a domestic violence

incident that had occurred between her daughter and the subject officer's brother. The woman later reported to investigators that the subject officer, who was on-duty, had jumped out of a vehicle with a wooden stick and threatened her daughter prior to the arrival of the responding officers.

The responding members of the service described the subject officer as "aggressive and belligerent." The on-duty sergeant overheard the subject officer state, "These chicks came for a fight and they will get one." The sergeant also reported hearing the subject officer state, "My brother is not going to get locked up," and she directly told the sergeant that he was not going to arrest her brother. While the subject officer was initially aggressive with the sergeant, she did eventually comply with his orders, although she could not produce her Department identification upon request.<sup>136</sup> During the investigation into this incident, investigators discovered the subject officer's first incident of misconduct: the subject officer had conducted a warrant inquiry on her brother in November 2013, while still on probation.<sup>137</sup> She had also conducted warrant checks on her friends on seven occasions between November 2013 and November 2014.

In her official Department interview, the subject officer admitted to engaging in a verbal dispute with civilians on the scene, but denied threatening anyone with a stick. She also acknowledged continuing the argument despite the presence of on-duty members of the service. She admitted to the computer misuse.<sup>138</sup>

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<sup>136</sup> The sergeant stated that the subject officer complied upon being given the order to step back. Another officer reported that initially, the subject officer did not comply with the sergeant's orders.

<sup>137</sup> This predated the computer misuse covered in the first set of charges.

<sup>138</sup> The disciplinary paperwork did not indicate whether the subject officer provided any reason for the computer misuse that was the subject of the second disciplinary case. While it could be reasonably inferred that the subject officer sought this information in order to disclose it to her brother and her friends, she also could have accessed the information to satisfy her own curiosity. There was no evidence to discern her motives either way, other than her statement, regarding the allegations in her first case that she looked up her brother's arrest to determine what was happening.



For the first case, she was charged with utilizing a Department computer to access Department records, which were not related to her assignment. In the second case, the subject officer was charged with: 1) utilizing a Department computer on eight occasions to access Department records which were not related to her assignment; 2) engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department (“engaging in Conduct Prejudicial”)<sup>139</sup> for engaging in a verbal dispute with several individuals resulting in the response of uniformed members of the service and for continuing to engage in the verbal dispute with uniformed members of the service on the scene; and 3) failing to present her Department identification card upon request to a New York City Police Department sergeant. The subject officer pled guilty to all of the charges against her and forfeited 20 vacation days.

The Commission did not believe this penalty was sufficient. The subject officer had barely started her career when she became the subject of two disciplinary cases. In one of these cases, the misconduct occurred over the course of a year. Her misconduct was repeated, even after she was under investigation for her involvement in the dispute with the civilians. Regarding that dispute, responding officers reported that the subject officer was looking for a fight and behaving in an aggressive manner, not only to the civilians, but also to her fellow members of the service. The subject officer, in her short time in service, demonstrated that she did not have control of her temper and she was willing to break Department rules for her own purposes. The Commission, therefore, believed that this subject officer should have been placed on dismissal probation in addition to forfeiting 20 vacation days.

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<sup>139</sup> “Engaging in Conduct Prejudicial,” a catch-all provision that encompasses a wide variety of prohibited conduct, is discussed more fully in the false statement section of this report. *See infra* at pp. 114-115.

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## *Domestic Violence*

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The Commission disagreed with the penalties assessed against 24 members of the service with cases involving domestic incidents (“domestic violence cases”).<sup>140</sup>

Domestic violence committed by members of the service has been an area of examination for the Commission for over 15 years. The Commission has regularly analyzed whether the imposed penalties were adequate to address this type of misconduct. For this Report, the Commission reviewed 81 domestic violence cases involving 78 members of the service.<sup>141</sup>

To differentiate between different types of domestic violence cases, the Commission divided the cases into two categories: cases in which the subject officer was primarily charged for engaging in a physical altercation and cases in which the subject officer was not charged with engaging in a physical altercation.<sup>142</sup> In the review period, 57 subject officers were charged with engaging in a physical altercation in 58 separate cases.<sup>143</sup> Twenty-one subject officers faced other types of domestic violence charges in a total of twenty-two cases.

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<sup>140</sup> As noted in the description of the domestic violence category, *supra* at p. 39, these cases do not always include acts of physical violence. Two members of the service each had two domestic violence cases, but received one penalty to cover both cases.

<sup>141</sup> A relationship meets the definition of “domestic” for the Department if the incident occurs between a member of service and a current or former spouse or domestic partner, child, other family members, or a person who the subject officer was dating or had previously dated. For the purposes of this Report, the Commission will categorize relationships between the subject officer and a current or former spouse, domestic partner, or boyfriend or girlfriend, as partners. Eight subject officers had domestic violence charges and/or cases that the Commission placed in other case categories based upon the most serious charge.

<sup>142</sup> The Department regularly charges subject officers with being involved in a physical altercation when they are the only aggressor, the primary aggressor, or a co-aggressor. When the evidence shows the subject officer was solely a victim of another’s physical aggression, charges are usually not brought.

<sup>143</sup> For the purposes of this Report, the Commission included one case in the physical altercation sub-category, in which the subject officer was charged with engaging in Conduct Prejudicial for striking her daughter with an electrical cord. One subject officer in the physical altercation sub-category had two physical altercation cases, and another subject officer also had a non-physical domestic violence case.

## **1. Range of Penalties in Physical Altercation Cases**

The penalties for those found guilty of being involved in a physical altercation varied significantly. This wide range may have been partly because several of the subject officers faced multiple additional charges, some of which involved misconduct unrelated to domestic violence.

Penalties in cases involving a physical altercation ranged from the forfeiture of 10 vacation days to termination. In the case where the subject officer was terminated, he was found guilty of unlawful imprisonment, assault, harassment, and the failure to safeguard his firearm after restraining the mother of his child in her apartment against her will for several hours. During this time period, the subject officer also hit and choked the complainant, causing her physical injuries. Finding that the subject officer's actions were "egregious and could not be condoned," the Trial Commissioner recommended termination, which was implemented by the Police Commissioner. This was an extreme case. Most of the domestic cases reviewed by the Commission did not rise to this level.

From the Commission's examination of the cases, it appeared that the standard penalty issued by the Department in physical altercation cases was a loss of approximately 30 days, through either a suspension period, the forfeiture of vacation days, or a combination of the two. This penalty typically matched the penalties in cases that DAO cited as precedent to justify the recommended penalty in physical altercation cases.

## **2. The Commission's Recommendation for the Appropriate Penalty in Physical Altercation Cases**

In the *Sixteenth Annual Report*, the Commission suggested that generally, a higher penalty than the apparent 30-day standard utilized by DAO was necessary to appropriately

penalize subject officers who were the aggressors in domestic physical altercations.<sup>144</sup> The Commission came to this determination after its reviews of NYPD domestic disciplinary cases over many years and an evaluation of the International Association of Chiefs of Police's (IACP) model policy. IACP recommends the termination of any member of the service who is found guilty of an act of domestic violence in a criminal or administrative proceeding.<sup>145</sup>

The Commission determined that a policy mandating termination would not be appropriate for the NYPD, and might have unintended consequences in its application.<sup>146</sup> The Commission also believed that subject officers who commit one domestic violence offense, in most circumstances, should be given the opportunity to rehabilitate themselves and conform their behavior to the standards required of law enforcement officers. To achieve this result, the Commission recommended that dismissal probation be imposed, along with a period of suspension and/or a forfeiture of vacation days, for all officers administratively guilty of engaging in a physical altercation for the first time, unless exceptional circumstances existed that justified a more or less severe penalty. The Commission believed that these subject officers require a period of monitoring so that if they commit a second domestic violence offense or other types of egregious misconduct, the Department has the ability to terminate them without additional proceedings. For subject officers found guilty of committing physical acts of domestic violence in criminal proceedings, the Commission recommended termination regardless of whether it was a

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<sup>144</sup> See *Sixteenth Annual Report* at pp. 51-53.

<sup>145</sup> *Id.* at 52.

<sup>146</sup> *Sixteenth Annual Report* at p. 52. See *infra* at p. 71 for a more detailed discussion regarding the unintended consequences that could occur.

first offense.<sup>147</sup> The Commission also suggested that if subject officers had a prior history of committing physical acts of domestic violence, a presumption in favor of termination should apply.<sup>148</sup> The Commission believed that members of the service who commit repeated physical acts of violence lack the character or temperament needed to serve as law enforcement officers. If their families are not safe, these subject officers cannot properly carry out the NYPD's mission to protect the public and keep it safe.

One factor that led the Commission to disagree with the IACP's presumptive termination recommendation in all domestic violence cases was concern that strict adherence could result in an increase in administrative domestic violence trials, with a corresponding risk of increased not guilty findings. In many of these cases, the victims refused to participate in administrative proceedings, increasing the challenges faced by Department prosecutors when attempting to secure a guilty finding.<sup>149</sup>

During this reporting period, the Commission determined that the likelihood of a successful prosecution should also factor into the decision whether the Commission's recommended penalty was appropriate or whether a less severe penalty would be an acceptable alternative. Factors that would make administrative prosecution of a case challenging, therefore, were viewed as grounds for penalty deviations.

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<sup>147</sup> In the reviewed domestic violence cases, 54 of the subject officers were arrested. None of the 54 were convicted of criminal offenses, although 19 officers were guilty of either the violations of Disorderly Conduct or Harassment. These numbers only capture the arrested/convicted officers if the arrests or outcomes of the criminal proceedings was included in the disciplinary paperwork.

<sup>148</sup> The Commission determined that the standard of clear and convincing evidence should be used to determine if prior acts of physical domestic violence had been committed by the subject officer.

<sup>149</sup> While hearsay is admissible at Department trials and the burden of proof is the preponderance of the evidence, (defined *infra* at p. 155, fn. 255) the Commission has reviewed cases in which subject officers were found not guilty due to the Trial Commissioner's refusal to rely solely on the credibility of a hearsay witness who was not subjected to cross-examination.

The Department imposed the Commission's recommended standard penalty in only nine of the physical altercation cases.<sup>150</sup> The Commission agreed with the imposed penalties in each of these cases.<sup>151</sup> Three officers with a prior domestic history were placed on dismissal probation, although two of these officers' prior domestic cases did not involve physical altercations.

The Department imposed a penalty of only a suspension period and/or a forfeiture of vacation days in 36 physical altercation cases.<sup>152</sup> In 15 cases, the Commission determined that a penalty without a period of dismissal probation was appropriate based on the subject officer's role in the incident and/or the evidence available to Department prosecutors.<sup>153</sup>

In addition, the Commission reviewed some physical altercation cases in which the physical force was so minor or unlikely to be repeated, that the Commission did not believe the threat of summary termination was required. There were also instances in which subject officers denied in their official Department interviews either that any physical altercation occurred or that if there was a physical altercation, that they were the aggressors, yet later accepted negotiated settlements that included findings of guilt for engaging in Conduct Prejudicial for their roles in a physical altercation (without specifically describing the acts for which they were accepting responsibility). Because officers do not provide a verbal admission of guilt in administrative proceedings, these findings made it

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<sup>150</sup> In one of the nine cases, the penalty also covered another case.

<sup>151</sup> The Commission also agreed with the termination of the subject officer from the case described *supra* at p. 69.

<sup>152</sup> There were 11 members of the service who were not found guilty of domestic charges, both physical and nonphysical, because those charges were either dismissed prior to trial, or the charges were filed without a determination of guilt, or the officers were found not guilty of those charges after an administrative trial.

<sup>153</sup> In three additional cases, the physical altercation allegations were either dismissed prior to trial or the subject officer was found not guilty after the trial. In those cases, no penalty was imposed for the domestic allegations.

impossible to determine the specific actions for which the subject officers were receiving discipline. While the Commission understood that this general phrasing might alleviate evidentiary issues for DAO, it also had the effect of obscuring whether the individual was someone likely to repeat the misconduct, and therefore, someone who should be closely monitored in order to deter repetition.

Due to these concerns, the Commission now modifies its previous recommendations regarding the treatment of these domestic violence cases. The Commission continues to recommend that as a general rule, members of the service who engage in physical acts of domestic violence be placed on dismissal probation in addition to forfeiting vacation days or being suspended as well as being directed to cooperate with counseling programs. However, factors such as evidentiary issues, the severity of the force employed, and the nature of the exact circumstances of the altercation should all be considered when the Department determines an appropriate penalty. In order to implement the most appropriate penalty in cases involving a physical altercation, the subject officer should be required to state verbally the specific acts to which he or she is admitting and for which he or she is accepting discipline. The Commission reiterates its prior recommendation that members of the service who are found guilty of engaging in domestic physical altercations, after having engaged in a prior domestic incident involving physical force be terminated, absent exceptional circumstances.

Using this guidance, the Commission disagreed with the penalties the Department imposed on 23 members of the service who were disciplined for the use of physical force.<sup>154</sup> The Commission believed that for 20 of these subject officers there should have been a

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<sup>154</sup> There was one additional case where the officer was charged with domestic-related misconduct and the Commission disagreed with the penalty, however, the disagreement was based on a false statement charge against the subject officer.

period of dismissal probation imposed in addition to the forfeiture of vacation or suspension days. The Commission believed, based on the subject officer's history or the seriousness of the offense, that three subject officers should have been terminated or otherwise separated from the Department. Below are the descriptions of two cases in which the Commission disagreed with the imposed penalties.

**Illustrative Case One:  
A police officer allegedly slammed his pregnant girlfriend's  
head against a door and damaged her property**

The subject officer in the first case had been employed by the Department for 19 years at the time of the incident. During his tenure, he had received discipline for a variety of misconduct and performance issues. The subject officer received a negative evaluation in 1997 for low performance. He was found guilty of unauthorized off-duty employment and possession of a fake shield in 1998 and was placed on dismissal probation and forfeited 45 vacation days as a result. In 2004, the subject officer forfeited 15 vacation days for operating a motor vehicle in a reckless manner, using unauthorized NYPD gear while off duty, harassing a complainant, and failing to request a patrol supervisor. Based on the subject officer's overall record, he was placed on Level II discipline monitoring in May 2014, possibly as a result of this incident.<sup>155</sup>

In February 2014, the subject officer was arguing with his pregnant girlfriend about ending their relationship. During this argument, the subject officer asked for the return of a cellular telephone that he had bought for her. The girlfriend responded by throwing the

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<sup>155</sup> The Department has a central monitoring unit that receives regular reports on officers who are placed in one of its programs based on concerns about their behavior or performance. These monitoring programs range from Level I to Level III, with III being the most highly monitored. The programs are also categorized based on whether the officer's issues involve force-related misconduct, performance issues, or disciplinary issues. For further information about these monitoring programs and the Performance Monitoring Unit, see the Commission's report, "*The New York City Police Department's Non-IAB Proactive Integrity Programs*" (December 2001) and the Commission's report, "*A Follow-Up Review of the New York City Police Department's Performance Monitoring Unit*" (April 2006).



cellular telephone to the floor. The subject officer then threw a 50-inch television to the floor, damaging it. When the girlfriend asked the subject officer to leave, the subject officer grabbed her and banged her head against a door causing pain, redness, and swelling. The subject officer only left when the girlfriend threatened to call the police.

For this conduct, the subject officer was charged with two counts of engaging in Conduct Prejudicial for: 1) engaging in a physical altercation and 2) damaging personal property belonging to his girlfriend. He was also charged with failing to remain at the scene and failing to notify a patrol supervisor of his involvement in this incident. He pled guilty and forfeited 32 days that he had served on pre-trial suspension immediately following the incident and 3 vacation days. He was also directed to comply with Department counseling programs. Although the subject officer had received high evaluations between 2011 and 2013, the Commission believed that the penalty in this case was insufficient based on the totality of the circumstances, particularly his girlfriend's pregnancy and his prior disciplinary history, which included a prior placement on dismissal probation. The Commission believed the Department additionally should have imposed a period of dismissal probation, during which the subject officer's conduct could be monitored and he could be terminated summarily if there were further domestic incidents (or other misconduct) during the dismissal probation period.

**Illustrative Case Two:  
A police officer and her boyfriend allegedly beat her teenage  
daughter, and the police officer later married her boyfriend,  
although she was aware of his criminal history**

The subject officer, an 11-year veteran with a minor disciplinary history, was the subject of two sets of charges: a domestic violence case in which her child was the victim and a second case regarding actions taken in relation to her boyfriend. The subject officer had received a

command discipline in 1996 for losing her shield and Department identification card.<sup>156</sup>

In January 2014, the subject officer discovered that her 15-year-old daughter had used a credit card belonging to the subject officer's father, without permission, to buy a calculator after hers had been stolen at school. The subject officer repeatedly beat her daughter on the legs with an electrical cord while the subject officer's boyfriend held her daughter down. As a result, the daughter suffered bruising and bleeding, and her legs were swollen with welts. The subject officer then required her daughter to live in their unheated, unfinished, and unfurnished basement for 12 days, until the daughter was able to contact her own father, who reported the matter to the police.<sup>157</sup> For this misconduct, the subject officer faced two charges of engaging in Conduct Prejudicial for: 1) striking her daughter repeatedly with an electrical cord and 2) endangering the welfare of a minor by forcing her daughter to reside in the basement.

In the second case, the subject officer was alleged to have associated with a criminal after the Department learned that her boyfriend had a criminal history. The subject officer's boyfriend had been arrested on at least four prior occasions between 1993 and 2013 for both misdemeanor and felony offenses. He was convicted after at least two of these arrests for crimes that included Attempted Endangering the Welfare of a Minor, Kidnapping/False Imprisonment, and Domestic Battery. The subject officer, admittedly

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<sup>156</sup> Command disciplines are generally issued at the subject officers' commands and are not prosecuted by DAO unless the subject officer chooses to contest the matter. During this reporting period, penalties for command disciplines ranged from a warning to the forfeiture of 10 vacation days. Only certain misconduct can be addressed through a command discipline. Command disciplines can be removed from officers' personnel files, upon request, after a specified period of time has passed.

<sup>157</sup> The subject officer admitted that she planned to require her daughter to live in the basement for one day for each dollar she had taken. Had this been carried to completion, the daughter would have lived in the basement for almost half a year. The daughter was permitted in the main house to shower and was permitted to leave home to attend school.

aware of that history, nevertheless received 136 calls from her boyfriend and visited him twice while he was incarcerated, in violation of Department policy.<sup>158</sup> On the same day the subject officer was scheduled to attend an official Department interview regarding her association with her boyfriend (and approximately nine months after the incident with her daughter), the subject officer married him. As the Department is unable to prohibit family members from having relationships with each other, by marrying her boyfriend, the subject officer was able to maintain an ongoing relationship with a criminal offender without further consequences. For the case that existed prior to the marriage, the subject officer received charges for: 1) associating with a person she knew to have engaged in criminal activity and 2) visiting an inmate in a correctional facility without the approval of her commanding officer.

The subject officer pled guilty to both cases and received a 30-day suspension, forfeited 20 vacation days, and was required to cooperate with Department counseling. The Commission disagreed with the penalty and believed this subject officer should have been terminated. Her judgment and behavior when disciplining her daughter raised serious questions about her ability to conform to the standards necessary to be a member of the service and effectively represent the NYPD in the community. This behavior was compounded by her act of maintaining a relationship with her boyfriend, with full knowledge of his significant criminal history, in total disregard of Department rules.

### **3. Domestic Cases That Did Not Involve a Physical Altercation**

In the cases that did not involve a physical altercation, subject officers faced charges for a range of misconduct. Common charges included making threatening statements

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<sup>158</sup> The subject officer's boyfriend was arrested and incarcerated as a result of the prior case involving the subject officer's daughter.

towards others, violating lawfully issued court orders (including orders of protection), and wrongfully entering or attempting to enter another's residence.

Twenty-one officers were charged in twenty-two non-physical altercation cases; eighteen involved incidents between the subject officer and an intimate partner, one involved the subject officer and a sibling, one involved an unspecified relationship,<sup>159</sup> and in one, the subject officer was a victim. Nineteen of these twenty-one officers were found guilty of at least one of the charges against them.<sup>160</sup> Their penalties varied widely. The Commission disagreed with the penalties in three of these cases. Two of the cases, involving the same officer, are described below. In the third case, involving the subject officer's misuse of Department resources to harass his ex-girlfriend and her new boyfriend, the Commission believed the subject officer should have been separated from the Department.

**Illustrative Case:  
A police officer allegedly violated court orders on two  
separate occasions**

The subject officer was a six-year veteran with a minor disciplinary history consisting of two command disciplines: one for failing to notify IAB about an incident and failing to notify the Department about a change of address or social condition, and the second for being unprepared for a TVB hearing.<sup>161</sup> He was also placed on Level II discipline monitoring as a result of the two separate domestic cases at issue here. The penalty discussed here covered both cases. While the cases were pending, the subject officer also received a command discipline for lateness.

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<sup>159</sup> In this case, charges were filed against the subject officer after he separated from the Department. While the nature of the charges indicated that this was a domestic incident as it involved the violation of an order of protection, the relationship between the subject officer and the complainant was not specified.

<sup>160</sup> As one of these officers had two cases, these nineteen officers were found guilty in twenty cases. Of the remaining subject officers, one had one charge against her dismissed prior to a trial and was found not guilty of the second charge after a trial; and one retired before the disciplinary case was adjudicated.

<sup>161</sup> The disciplinary paperwork did not indicate the dates that these command disciplines were issued.

The subject officer and his daughter's mother had a custody order in place. In March 2014, the subject officer went to the mother's home to pick up his four-year-old daughter for visitation. His daughter's grandmother opened the door and reminded the subject officer that he was "not allowed any visitation pending a court hearing because he had violated the existing visitation order." She then closed the door. In response, the subject officer banged on the door and repeatedly rang the doorbell while his daughter and her mother ran upstairs and locked themselves in a bedroom. The subject officer then kicked in the front door of the home, ran upstairs, and forced open the locked bedroom door, behind which the daughter and her mother were hiding. The subject officer was told to leave, and he did. As a result, the subject officer was arrested for Criminal Mischief, Criminal Trespass, and Harassment. An order of protection, prohibiting him from being in the presence of his daughter's mother, was also issued against the subject officer.

Less than two months later, while this order of protection remained in effect, the subject officer went to a nightclub where his daughter's mother was already present. Although aware that his daughter's mother was at the location, the subject officer remained at the club. At one point during the evening, the subject officer approached his daughter's mother, made eye contact with her, and laughed.

In his official Department interview, the subject officer claimed that he went to pick up his daughter but no one answered the front door. He then saw his daughter unattended at a window, screaming and crying. The subject officer stated that he believed something had happened to his daughter, so he kicked in both the front and bedroom doors. Regarding the second incident, the subject officer denied seeing his daughter's mother at the nightclub. He stated that he learned she had been present at the nightclub only after she had left. These versions of events were contradicted by his daughter's mother and

grandmother in the first case, and the manager of the nightclub in the second.<sup>162</sup>

For the first case, the subject officer was charged with two counts of engaging in Conduct Prejudicial for: 1) wrongfully entering or remaining unlawfully in a residence by kicking in the front door, causing damage to the door and 2) wrongfully entering a bedroom by forcing open a door, causing damage to the door. He was also charged with failing to remain at the scene of an unusual domestic occurrence after being informed that police were called and failing to request the response of a patrol supervisor. For the second case, the subject officer was charged with engaging in Conduct Prejudicial by wrongfully violating a valid criminal court order of protection. The subject officer pled guilty to all of the charges against him. Although the subject officer had been suspended for a total of 60 days prior to the commencement of the trial, DAO recommended that as a penalty for both cases, he forfeit only 45 of those suspension days and have 15 days restored to him.

By his actions, this subject officer demonstrated that he was unable to refrain from conduct prohibited by lawfully-issued court orders. The Department's First Deputy Commissioner shared the Commission's concerns. In his review of the proposed penalty, he stated, "The actions on the part of the [subject officer] raise serious questions regarding his judgment, integrity, and professionalism. The [subject officer] exhibited a disregard for the law, especially when he violated the order of protection." But, even recognizing the subject officer's grave misconduct, the First Deputy Commissioner only recommended a 60-day suspension, which, along with a mandate to cooperate with Department counseling programs, was the penalty ultimately imposed by the Police Commissioner.

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<sup>162</sup> Although the subject officer's version of events was contradicted by multiple witnesses, the Department did not charge the subject officer with making a false or misleading statement.

Because this subject officer demonstrated an inability to modify his behavior even when ordered by a judge to refrain from specific actions, the Department should have seriously considered whether it was appropriate to retain him. The Commission believed, at a minimum, that dismissal probation was appropriate to ensure that the Department could terminate him if he continued in this manner.

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The Department states that it is intent on ensuring the safety of domestic violence victims and arresting perpetrators of domestic violence crimes. However, the Commission continues to be concerned that the Department does not consistently view domestic violence as misconduct that raises serious questions about an individual's capacity to serve as a police officer. This appears to be the case despite the fact that the actions of many of the subject officers charged with domestic misconduct meet the elements of criminal conduct, such as assault, menacing, aggravated harassment, criminal mischief, and endangering the welfare of a child. An officer who endangers the well-being and physical safety of family members may be incapable of responding appropriately to the needs of New Yorkers, and is not a positive representative of the Department. Therefore, the Department should generally, at a minimum, place these members of the service on dismissal probation, which would allow the Department summarily to terminate those who are unable to refrain from additional acts of violence or other misconduct.

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### ***Duty Failure***

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The Commission disagreed with the penalties assessed against 19 members of the service with duty failure cases.<sup>163</sup> Ten of these cases involved subject officers who failed to

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<sup>163</sup> The Commission disagreed with the penalties imposed on 18 members of the service. One of these

conduct investigations or take police action in even a minimal manner, often resulting in serious consequences.<sup>164</sup> One case involved the subject officer's failure to provide aid to his partner. Eight cases involved supervisors who failed in their supervisory role.<sup>165</sup> These failures resulted in discipline imposed against their subordinates, and in some cases, in the violations of civilians' rights. In the remaining cases, the misconduct itself was not so serious as to deviate from the penalties that were imposed. However, the subject officer's prior placement on dismissal probation served as an aggravating factor that led to the Commission's disagreement.

### **1. Cases Involving Failures to Investigate**

Police officers have a duty to conduct effective and thorough investigations of the public's complaints. Officers who fail to meet this responsibility are subject to Department discipline. Accordingly, for the last two Annual Reports, the Commission has examined the adequacy of the penalties imposed when officers failed to fulfill this fundamental obligation.<sup>166</sup> Based on our review, it appears that officers usually forfeit approximately 15 vacation days as a penalty when they fail to take necessary investigative steps. While this standard penalty may have been sufficient in cases where the subject officer's dereliction of duty was due to a good faith mistake or was the result of a single lapse in judgment, other cases warranted greater penalties. When the subject officer's conduct demonstrated a complete abdication of responsibility, caused severe negative repercussions in the

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members of the service received separate penalties for multiple cases, so the Commission counted the latter case and penalty separately. Two officers each had two cases.

<sup>164</sup> Three of these cases involved the same subject officer. That subject officer received one penalty to cover two of the cases, while the third case was addressed with a separate penalty. These three cases are described *infra* at pp. 86-92.

<sup>165</sup> One subject officer had two cases involving the failure to provide supervision to subordinates.

<sup>166</sup> See *Sixteenth Annual Report* at pp. 58-65 and *Seventeenth Annual Report* at pp. 93-99.



investigation, or comprised multiple instances of failing to perform adequately, the Commission believed that at minimum a period of dismissal probation was required. For this Annual Report, the Commission reviewed 34 cases<sup>167</sup> where subject officers failed to conduct proper investigations, and disagreed with the penalties imposed in 10 of those cases, involving 8 members of the service.<sup>168</sup> Following are descriptions of seven of those cases. In three of the remaining cases, the Commission believed the penalty should have included a period of dismissal probation.<sup>169</sup>

**Illustrative Cases:  
Three members of the service failed to take action after  
receiving a report of a missing intoxicated person**

These three cases involved two police officers and a sergeant who failed to investigate the same missing person incident. The two police officers had been employed by the Department for five and six years respectively. The sergeant had been with the Department for seven years. The police officer with five years of experience was the only subject officer who had a prior disciplinary history. He had received two command disciplines earlier in 2013 for: 1) failing to appear at a TVB hearing and 2) failing to safeguard summonses and omitting entries in his activity log. He had received a third command discipline for conduct that occurred in 2011, when he used his cellular telephone to circulate photographs of a homicide victim.<sup>170</sup>

In February 2013, the two subject police officers responded to a 9-1-1 call regarding

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<sup>167</sup> Two subject officers each had two cases.

<sup>168</sup> Seven subject officers each had one case, and one subject officer had three cases.

<sup>169</sup> There was one additional case in which the penalty against the subject officer also covered a separate non-physical domestic violence case. The Commission believed that termination of the subject officer's employment was the appropriate penalty to address the two cases.

<sup>170</sup> This command discipline was the negotiated penalty after charges were brought against the subject officer.

a missing female.<sup>171</sup> When they arrived at the scene, the six-year police officer used Language Line<sup>172</sup> to communicate with the missing female's friends, who advised him that their friend had been missing for two days, was intoxicated at the time she disappeared, and was not wearing a coat. He was also informed that she was visiting from Korea, did not know anyone else in the United States, and did not speak English. The officers declined to take a missing person report. The six-year officer marked the call as unnecessary and indicated in his activity log that the complainant refused to make a report.

The following day, the missing female's two friends returned to the precinct and spoke to the subject sergeant.<sup>173</sup> While in the waiting area, the friends disagreed about the exact location from which the female went missing.<sup>174</sup> The subject sergeant, who spoke Chinese, overheard them and accused them of lying.<sup>175</sup> They reiterated the sequence of events, including their attempts to have a report prepared. Nevertheless, the subject sergeant refused to file a report. He also allowed a senior police administrative aide to determine that the victim did not qualify as a missing person, although civilian employees are not responsible for making such determinations.<sup>176</sup> The subject sergeant also

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<sup>171</sup> The victim went missing at approximately 10:00 p.m. after she told her friends she wanted to leave a restaurant where they had been dining. Her friends told her to wait by the door while they gathered their things, but she was gone when they returned. She left behind her purse, winter coat, wallet, and cellular telephone. At about 1:00 a.m., her friends went to the precinct after not being able to locate her on their own. Officers told them they had not received any reports matching their friend's description and suggested they check the local hospitals. They returned at 10:00 p.m., at which time a civilian employee suggested they return to the location where their friend went missing or to their residence and call 9-1-1 for assistance. The friends called 9-1-1 the following afternoon.

<sup>172</sup> Members of the service can use Language Line for translation services if a language barrier exists.

<sup>173</sup> The friends went to the Korean Embassy to seek assistance and were advised to return to the precinct and ask to speak to a ranking officer.

<sup>174</sup> The two locations were across the street from each other.

<sup>175</sup> The disciplinary paperwork stated that the deceased was visiting from Korea and that her friends visited the Korean embassy. It also specified that the subject sergeant spoke Chinese. There was conflicting information in the paperwork regarding whether the deceased's family lived in Korea or China.

<sup>176</sup> Police administrative aides perform clerical work, including word processing and data entry, in a precinct or Department unit.

<http://www1.nyc.gov/site/nypd/careers/civilians/civilians-landing.page>

wrongfully told the friends that they needed a certified letter from the victim's family, who lived in Korea, before a missing person's report could be filed.

The next day, the missing victim's body was discovered less than one mile from where she disappeared. An autopsy revealed the cause of death was hypothermia and acute intoxication.

The subject police officers each pled guilty to three specifications: 1) failing to conduct a proper investigation; 2) failing to prepare a missing person's report; and 3) failing to make proper notifications regarding the missing person to a patrol supervisor. The six-year subject police officer also pled guilty to making inaccurate entries in his activity log for his notation that the victim's friends refused to make a missing person's report. The subject sergeant pled guilty to: 1) failing to conduct a proper investigation; 2) failing to prepare a missing person's report; and 3) engaging in Conduct Prejudicial for misinforming the victim's friends that a certified letter was required prior to making a missing person's report. Both subject police officers forfeited 15 vacation days, while the subject sergeant forfeited 20 vacation days.

The Commission believed that all three penalties were insufficient. The five-year subject officer basically did nothing in response to the 9-1-1 call, and the only explanation he provided was that he could not hear the translated conversations between his partner and the victim's friends. Based on his excuse, plus his prior disciplinary history, the Commission believed that he should have forfeited more vacation days than the standard penalty.

The Commission believed that the six-year subject officer and the subject sergeant both should have been placed on dismissal probation. The six-year subject officer acknowledged that he interviewed the victim's friends, was made aware of the

circumstances surrounding her disappearance, and was specifically asked by one of the victim's friends if they could file a police report. Nonetheless, he advised them that the victim did not meet the criteria for a missing person and falsely indicated in his activity log that the complainant refused to make a report. When confronted with this entry at his official Department interview, his only explanation was that "it was a poor choice of words." Because this officer completely abdicated his law enforcement responsibilities and may well have squandered the only chance to find the victim when she could still have been saved, the Commission believed at minimum, that a period of dismissal probation to punish this officer and to oversee his future performance was fully justified.

At his official Department interview, the subject sergeant had no explanation for why he was discourteous to a group of concerned friends and placed unnecessary obstacles in their path. He was in a supervisory position, he failed to perform the very core of his duties, and he failed to set a good example for his subordinates. Based on his failures, the Commission believed a period of dismissal probation was warranted to punish his misconduct and to monitor his future performance.

**Illustrative Cases:  
Two police officers failed to take any action to arrest a  
perpetrator who had violated an order of protection**

The next two cases involved two subject police officers' lack of an adequate response to a domestic incident. Officer A and Officer B had nine and five years of experience with the Department. Officer A had no disciplinary history. Officer B had another case that was resolved at the same time as this one and was placed on Level II discipline monitoring in August 2012, most likely due to the incidents described here.<sup>177</sup>

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<sup>177</sup> The subject officer's second case is described in further detail *infra* at pp. 90-91.

In March 2012, the two subject officers responded to a 9-1-1 call. The victim told the officers that the night before, her ex-fiancé, against whom she had an order of protection, had thrown a liquid on her and caused injuries to her arm, thigh, and torso. She showed the officers her injuries. The victim told the subject officers that the Domestic Violence Unit (DVU) officers visited her daily, she had been assaulted in the past, and had bruises on her body from her ex-fiancé. The subject officers told her to contact DVU and then closed the job as “Unnecessary.” Although the victim declined the subject officers’ offers to call an ambulance, she went to the hospital with a friend and was diagnosed with second and third degree acid wounds. As instructed, she contacted DVU, who took her statement and photographs of her injuries, and filed reports. The victim’s ex-fiancé was arrested and charged with felony assault.

Both subject officers acknowledged that they did not take photographs of the victim’s injuries, did not seek to verify that she had a valid order of protection, and did not prepare any reports. At the administrative trial, they stated that, based on what they were told, they used the proper radio code disposition because they had no reason to believe a crime had occurred and, therefore, had no reason to take any further action on the matter.

In an attempt to justify why they failed to photograph the victim’s injuries, the subject officers both claimed that the victim had no visible injuries. They claimed the scabs on her arm did not appear to be recent, and that they were unable to take “intimate” pictures of the victim’s body because they were male officers. The Trial Commissioner found these assertions to be incredible. Both subject officers admitted seeing the injuries on the victim’s forearm and had no medical training that would enable them to determine when the injuries occurred. Moreover, the officers never asked the victim when she had sustained the injuries, and contrary to what they claimed to believe, they were not

prohibited from taking pictures of the victim's injuries because they were near her stomach rather than in any intimate area. The Trial Commissioner highlighted the fact that the subject officers clearly were aware that the victim was injured because they offered to summon an ambulance for her several times.

According to the Trial Commissioner, both subject officers wrongfully placed the burden on the victim to provide them with the details about her order of protection, when in fact; it was their affirmative obligation under the Patrol Guide to ascertain the relevant information.<sup>178</sup> Subject Officer A testified at trial that the victim did not mention an order of protection. However, in his official Department interview, he admitted, “[s]he mentioned that she had one, but she didn’t provide a copy or a number or anything that we could have probably made a further phone call.” Subject Officer B acknowledged that the victim was not required to show them the order of protection and that he had the ability to search for the order by her name or the offender’s name.<sup>179</sup> Yet, he did not even attempt to search for the order, nor did he ask the name of the offender or why it was issued.

The Trial Commissioner also found that based on all the information the victim provided; it was not believable that the officers failed to recognize that a crime had been committed. The fact that the subject officers instructed the victim to contact DVU demonstrated that, at the very least, they recognized something had happened that should be reported. Essentially, the subject officers attempted to relieve themselves of their own obligation to file the proper reports by directing the victim to contact DVU.

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<sup>178</sup> Patrol Guide § 208-36 requires that members of the service who respond to an assignment involving individuals who have been in an intimate relationship determine whether the complainant has a valid order of protection.

<sup>179</sup> It is unclear from the Trial Commissioner’s decision whether Subject Officer B made this statement at his official Department interview, trial, or both.

Both subject officers were found guilty of: 1) failing to take photographs of the victim's visible injuries; 2) failing to determine whether the victim had a valid order of protection; 3) failing to use a proper radio code disposition to finalize the incident; 4) failing to prepare a domestic incident report; 5) failing to prepare a complaint report; and 6) failing to prepare an aided report.<sup>180</sup> Despite DAO's recommendation that Subject Officer A forfeit 30 vacation days and be placed on dismissal probation, the Trial Commissioner recommended only the forfeiture of 30 vacation days because the subject officer had no previous disciplinary history. The forfeiture of 30 vacation days was the penalty that was imposed. Subject Officer B forfeited 45 vacation days and was placed on dismissal probation as a joint resolution for this case and a subsequent disciplinary case.<sup>181</sup> The Commission found these penalties inadequate.

As an officer with nine years of experience, Subject Officer A certainly knew how to perform an investigation, yet utterly failed to perform his duty. When confronted with his failure, he tried to shift the responsibility to provide additional evidence to the complainant, and provided incredible reasons to justify his dereliction. By failing to handle the assignment in an appropriate manner, he delayed the apprehension of a criminal and exposed the complainant to further danger. For these reasons, the Commission believed that a period of dismissal probation was appropriate.

Although Subject Officer B forfeited 45 vacation days and was placed on dismissal probation as a penalty, the penalty was a joint resolution of this case and a subsequent

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<sup>180</sup> Both subject officers were also charged with but found not guilty, after a trial, of failing to obtain medical assistance for the complainant.

<sup>181</sup> This second disciplinary case is more fully discussed *infra* at pp. 90-91. This second disciplinary case factored into the Commission's conclusion that dismissal probation and the forfeiture of 45 vacation days did not adequately address Subject Officer B's misconduct and that he should no longer be a member of the service.

case, which involved two separate incidents. This second case contained six specifications: 1) failing to complete a proper preliminary investigation by failing to complete a complaint report worksheet and instead directing the complainant to another command; 2) failing to comply with a sergeant's order to complete a complaint report; 3) failing to use a proper radio code disposition to finalize a job; 4) failing to report sick at least two hours before the start of his scheduled tour; 5) being absent without leave (AWOL) for over four hours; and 6) engaging in Conduct Prejudicial in that he sent a message to a sergeant indicating that he was in Suffolk County, which was not true.

The first incident covered by Subject Officer B's subsequent case occurred in May 2012. A robbery had occurred earlier that day in Brooklyn, and a sergeant had initially responded to the complaint. The sergeant interviewed the robbery victim at her home in Queens. Subject Officer B and his partner arrived after the sergeant had concluded his interview of the victim, and he left them in charge.<sup>182</sup> After Subject Officer B spoke to the victim and determined the robbery had occurred in Brooklyn, he instructed the victim to go to the Brooklyn precinct to file her complaint, and marked the job as a "non-crime corrected." Later that day, the sergeant learned that the other precinct had called to find out why the officers had sent the victim to that location rather than forward the report. The sergeant also learned that the victim took public transportation to the other precinct and arrived in tears.

In an attempt to justify his actions, Subject Officer B denied that the sergeant directed him to prepare a complaint report, claimed that the victim wanted to go to the

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<sup>182</sup> The partner, who retired from the Department, was not charged by DAO for any misconduct because the sergeant could not remember if the partner was present when he gave Subject Officer B instructions.



Brooklyn precinct to file the complaint herself, and said that he marked the job as “non-crime corrected” because the crime did not occur in his precinct.<sup>183</sup> However, at the trial, the sergeant testified that he had instructed Subject Officer B to prepare a complaint report and a lost/stolen property form. He also stated that the proper procedure had always been to “refer the complaint, not the complainant.” Thus, even if the sergeant had not given this direction and the complainant had wanted to go to the precinct herself, the subject officer was still required to follow proper procedure and prepare the complaint. The Trial Commissioner found Subject Officer B’s claims incredible. The second incident occurred in November 2012 and involved Subject Officer B’s failure to follow proper Department procedures to request sick leave.<sup>184</sup> He was found guilty of all six specifications.

The Commission believed that the penalty of dismissal probation and the forfeiture of 45 vacation days was insufficient based on Subject Officer B’s repeated pattern of misconduct. He provided incredible excuses in an attempt to minimize his misconduct and displayed a serious lack of consideration for the civilians it was his job to serve. Furthermore, while Subject Officer B’s charges for these two disciplinary cases were pending, he committed additional acts of misconduct that resulted in a third disciplinary case. In the third case, he was charged with 1) failing to appear for training on three occasions after being properly notified; 2) failing to take a walk-in report; and 3) being discourteous to a Captain. The subject officer pled guilty to all three charges and forfeited an additional 20 vacation days. In recommending this penalty, DAO relied on precedents in which subject officers had no prior disciplinary history.

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<sup>183</sup> It is unclear from the Trial Commissioner’s decision if Subject Officer B made these statements at his official Department interview, trial, or both.

<sup>184</sup> These were charges 4, 5, and 6 as stated *supra* at p. 90.

The Commission strongly disagreed with this penalty because this subject officer committed this misconduct while his two other cases were pending. Similar to his two other pending disciplinary cases, he provided inadequate excuses for his failure to attend three trainings and failure to assist a walk-in complainant. In addition, consistent with his apparent overall attitude toward Department procedure, he was disrespectful to his supervisor when questioned about why he had not taken the complaint.

During a two-year time period, this subject officer acquired three disciplinary cases involving seven separate incidents of misconduct and received two below standard evaluations. He was also rated only a 5 out of 10 by his commanding officer, and was placed on Level II performance monitoring. Given that the threat of two pending disciplinary actions did not motivate him to improve his performance and behavior, there was no reason to believe that a period of dismissal probation would result in improvement either. Based on all of these aggravating factors, the Commission believed that this subject officer should have been terminated.<sup>185</sup>

## **2. Failure to Aid Partner**

A basic responsibility of police officers is to provide backup and support to their partners. The Commission disagreed with the penalty in one case where the subject officer failed to provide this support and allowed his partner to fend for herself in a dangerous situation.

This case involved a police officer with 11 years of experience and a disciplinary history. In 2008, the subject officer was charged with failing to safeguard a prisoner and failing to report the loss of that prisoner in a timely manner. As a result, he forfeited 17

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<sup>185</sup> There was a pending application for ordinary disability retirement for the subject officer that had been requested by the Police Commissioner. The disciplinary paperwork contained no further information about this application.

days that he had served on pre-trial suspension. Additionally, in 2014, the subject officer was placed on Level II discipline monitoring, possibly as a result of the incidents that led to the instant charges.

The first incident occurred in July 2014 after a male walked into a convenience store and threatened the woman behind the counter. During this interaction, the male became enraged and struck the woman with a baseball bat multiple times, causing injuries to the back of her head that required five staples. He also struck another woman in the back. After he left the store, the police were called to the scene.

The two women who had been struck observed the subject officer and his female partner approach the belligerent man who was still wielding the bat. While his partner began struggling with the man, the subject officer simply walked behind them. When the two victims yelled at the subject officer to aid his partner, he did nothing. A video of the incident, filmed by another civilian who was disturbed by the subject officer's lack of action, corroborated the victims' version of events. The video also showed that the subject officer began to help his partner only after he saw a patrol supervisor arrive.

The subject officer's partner explained that they both initially made attempts to subdue the perpetrator; however, after she began struggling with the culprit, she was unable to see what the subject officer was doing. Another officer and a lieutenant both stated that after they arrived at the scene, they observed the partner struggling with a man, while the subject officer was simply walking behind them. It was not until the subject officer looked in the direction of the lieutenant's car that he began to take action. In his official Department interview, the subject officer stated that he initially struggled with the perpetrator; however, he claimed that he became stunned and was hurt when the perpetrator gained control of the subject officer's asp and struck him on the hand.

The above incident was adjudicated together with another one in which the subject officer also failed to take police action. In October 2014, the complainant was parking his car when the engine started smoking. The subject officer noticed the smoke, advised the complainant not to raise the hood of the vehicle, and walked away without taking any further action. The complainant informed the subject officer's lieutenant about this incident. When the lieutenant questioned the subject officer about it, he became agitated and yelled at the lieutenant. Another officer who actually assisted the complainant stated that the car looked as if it had an engine fire.

The subject officer was charged with two counts of engaging in Conduct Prejudicial for: 1) failing to assist his partner while she was involved in a struggle with a perpetrator and 2) failing to take police action with respect to a car fire. He was additionally charged with one count of being discourteous to a lieutenant for his reaction to the lieutenant's questions about his response to the car fire. The subject officer pled guilty to all of the charges and forfeited 30 vacation days.<sup>186</sup>

The Commission believed that the subject officer also should have been placed on dismissal probation. His actions evinced an unwillingness to perform his duties on two occasions, and dismissal probation would have provided the Department with the opportunity summarily to terminate him in the event that his performance remained inadequate.

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<sup>186</sup> DAO recommended the forfeiture of 20 vacation days, but this was disapproved by the First Deputy Commissioner. The Police Commissioner accepted the First Deputy Commissioner's recommendation of a 30-day penalty.

### **3. Failure to Supervise**

Supervisors are responsible not only for their own actions, but also for the actions of their subordinates, as they directly impact their subordinates' performance and behavior. A supervisor's failures can lead to subordinates making mistakes that can lead to discipline and affect their careers. A supervisor's unwillingness to take corrective action or to conform his own conduct to Department standards can also cause subordinates to emulate bad behavior, believing it to be appropriate. Accordingly, failures of supervisors to discharge their responsibilities should receive significant penalties, especially when these failures result in subordinates' avoidable misconduct.

The Commission disagreed with the penalties imposed in eight cases, involving seven officers, in this category. Two of these cases are described below.

**Illustrative Case One:  
A sergeant failed to intervene when a subordinate used  
excessive force against an arrestee**

The subject was a sergeant and a nine-year veteran of the Department with no disciplinary history.

In July 2012, the subject sergeant was supervising a narcotics enforcement operation. He was in the passenger seat of an unmarked police van with two other members of the service when the operator of the van advised him that he just witnessed a hand-to-hand narcotics transaction between two males.<sup>187</sup> The van followed the suspected purchaser who later became the complainant, while another police vehicle was radioed to apprehend the seller.<sup>188</sup> Upon exiting the police van and approaching the complainant, all three members of

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<sup>187</sup> All three officers involved in the arrest of the complainant were served with charges for misconduct by DAO. The detective who punched the civilian was placed on dismissal probation and forfeited 30 vacation days. The other detective forfeited 20 vacation days. The Commission agreed with those penalties.

<sup>188</sup> The seller was apprehended by another vehicle and found to be in possession of heroin.

the service observed the complainant place his cupped hand to his mouth. The officers believed that he had ingested narcotics. The subject sergeant grabbed the complainant's left arm, while one of the other detectives grabbed his right arm. The remaining detective then punched the complainant in the mid-section. After the first punch, the complainant doubled over. After a second punch to the mid-section, he fell to the ground, where the detective then continued to strike him in the face and torso area. During this encounter, all three members of the service instructed the complainant to spit out whatever was in his mouth.

The subject sergeant did nothing to stop this wrongful use of force. Eventually, the complainant was handcuffed and placed inside the police van. The entire incident was captured on video. The complainant was transported to the precinct and then to the hospital, where he was diagnosed with a broken right orbital bone. The complainant brought an action against the City of New York, and a settlement of \$225,000 was reached. In his official Department interview, the subject sergeant stated that the complainant was non-compliant when they approached him and that, after initially grabbing his arm; the sergeant passed him off to the other two officers so he could look around to see if the complainant had dropped any evidence on the ground. He said he then observed the van operator attempt to handcuff the complainant and saw the other officer punch him. The same officer continued to punch the complainant a few more times in the face and torso area as he fell to the ground. Although the subject sergeant admitted he observed the officer punch the complainant, he stated that his main focus was searching the ground for any possible narcotics that the complainant might have dropped. After the complainant was handcuffed, the subject sergeant noticed a cut under the complainant's eye.

The subject sergeant was charged with: 1) failing to properly supervise, in that, after observing an arrestee swallow an object he believed to be a controlled substance, the

subject sergeant failed to direct and ensure that the arrestee was transported to the nearest hospital facility and 2) failing to notify the Department after observing the use of unnecessary force by a subordinate member of the service against an arrestee. He forfeited 25 vacation days as a result.

As a sergeant, the subject was responsible for the acts of his subordinates, making his conduct unacceptable. He failed to adequately supervise his subordinates; failed to intervene to stop the use of excessive force; failed to notify the Department of the incident; and failed to call for an ambulance or immediately transport the complainant to the nearest hospital.<sup>189</sup> The Commission was also concerned that no charges were brought against the subject sergeant for his failure to intervene to stop the detective's assault on the complainant.<sup>190</sup> By turning the proverbial "blind eye," the subject sergeant essentially condoned the use of excessive force. The Commission believed a period of dismissal probation should have been imposed in addition to the forfeiture of vacation days, and that the Department should have brought an additional charge against the subject sergeant for failing to maintain control and intervene in a case of clear excessive force.

**Illustrative Case Two:  
A sergeant neglected a key piece of evidence in an assault  
investigation**

This case involved a sergeant with 13 years of experience. The subject sergeant had a disciplinary history. In 2003, she forfeited 30 vacation days and was placed on dismissal probation for failing to conduct a proper investigation, failing to make an arrest in a domestic incident involving a valid order of protection, and making false statements

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<sup>189</sup> Irrespective of the obvious physical injuries, pursuant to Patrol Guide § 208-02, the complainant should have immediately been transported to the nearest hospital based upon the fact that all three members of the service believed the complainant ingested narcotics.

<sup>190</sup> Patrol Guide § 203-11 explicitly states that "Members of the service are required to maintain control or intervene if the use of force against a subject clearly becomes excessive."

concerning the incident during her official Department interview. Additionally, the subject sergeant had previously been on Level I force monitoring from September 2005 through September 2006.

In October 2012, police officers responded to a radio run of an assault in progress involving a baseball bat. When the police officers arrived on the scene, the 9-1-1 caller pointed to the victim, who was laying on the ground. A long piece of wood was also on the ground, between four and seven feet from the victim. Although the victim appeared conscious, he was not responsive to questions from the police officers. The victim smelled of alcohol and vomited when he attempted to speak.

The subject sergeant was assigned as the precinct patrol supervisor and arrived minutes after the responding police officers. Emergency Medical Technicians (EMTs) arrived shortly thereafter and physically inspected the victim. The EMTs concluded that the victim had sustained injuries consistent with an assault. The subject sergeant did not recover, direct anyone else to recover, or safeguard the piece of wood. She did not instruct officers to interview bystanders, including the 9-1-1 caller who had remained at the scene, or to canvass for any witnesses. Nor did she conduct any interviews or canvasses herself. When the responding officers reported that the victim could not be identified, the subject sergeant told them to prepare an aided report<sup>191</sup> and to resume patrol. She did not direct them to prepare a complaint report or a missing/unidentified persons report, nor did she direct them to notify the precinct desk officer or detective squad about the incident.<sup>192</sup>

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<sup>191</sup> Aided reports record occurrences when an individual is injured (not involving a motor vehicle) or becomes sick or lost, and service is rendered by the NYPD.

<http://www1.nyc.gov/site/nypd/services/law-enforcement/record-requests.page>

<sup>192</sup> Both responding officers pled guilty to failing to conduct a proper investigation, failing to prepare a missing/unidentified person report, and failing to complete the aided report accurately. One of the responding officers pled guilty to an additional charge of wrongfully reporting the assignment as “routine sick at home-no crime committed.” Both responding officers forfeited 10 vacation days.



The victim died from his injuries six days later. The Medical Examiner determined that the victim was struck on the right side of his head with a blunt object, which caused a skull fracture, and suffered injuries to his shoulder and face. As of the date this disciplinary case was negotiated, no one had been arrested for the victim's homicide.

During her first official Department interview, the subject sergeant claimed that the EMTs told her that the victim was "just an intoxicated male who injured himself falling to the ground." She said that she did not direct any officers to secure the wooden stick that was near the victim because even without touching it, she determined that it did not contain any evidence that indicated it was used as a weapon against the victim. She also stated that she was never told the 9-1-1 caller or any witnesses were at the scene. In her subsequent official Department interview, when confronted with EMT reports that contradicted her prior statements regarding the EMTs' representations, she was adamant that the EMTs told her the victim was "just an intoxicated male." Furthermore, she stated that the EMTs did not complete any of their paperwork in her presence, and may have given her their initial diagnosis on the scene, but changed it upon arriving at the hospital.

The subject sergeant pled guilty to: 1) failing to supervise; 2) failing to conduct a proper investigation; 3) failing to prepare a missing/unidentified person report; and 4) making false or misleading statements during official Department interviews regarding the EMTs' representations. She was placed on dismissal probation and forfeited 35 vacation days.

The Commission believed that this penalty was insufficient. The subject sergeant was responsible for guiding subordinate officers on how to properly handle the situation. She not only failed to direct the responding officers to gather and safeguard evidence, she caused them to receive Department discipline because she failed to instruct them to prepare the

proper reports.<sup>193</sup> The subject sergeant's failure to conduct any investigation resulted in the loss of evidence that could have potentially identified the assailant. The 9-1-1 caller or other potential witnesses could have provided a description of the attacker, the wooden stick could have been tested for DNA, and the location could have been declared a crime scene and thoroughly examined for evidence. The subject sergeant also made false statements during her official Department interviews regarding the EMTs' statements to her. Because the subject sergeant made this false statement in her official Department interview, termination was the appropriate penalty absent a finding of exceptional circumstances.<sup>194</sup> Moreover, she was previously disciplined for failing to conduct a proper investigation and making false statements regarding that failure, and had been put on dismissal probation for those violations. Based on these numerous aggravating factors, the Commission believed this sergeant should have been terminated. Going forward, the Commission urges the Department to continue to monitor her, even after the conclusion of her dismissal probation period.<sup>195</sup>

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<sup>193</sup> One of the responding officers stated that he knew that a missing persons report and complaint report detailing an alleged felony assault should have been prepared, but he was just following the subject sergeant's direction to treat the job as strictly an intoxicated male, with no crime committed.

<sup>194</sup> DAO noted that the scene of the incident was "somewhat chaotic" and in the confusion, the subject sergeant may not have fully heard the police officers tell her about the eyewitnesses who were present at the scene and may have either misheard or misinterpreted what the EMTs told her about the victim's physical condition. The Commission does not believe that these speculative reasons for the subject sergeant's dereliction of her responsibilities would constitute exceptional circumstances. This is especially true in light of her plea of guilty to making false or misleading statements concerning what the EMTs had told her.

<sup>195</sup> See *Sixteenth Annual Report* at pp. 58-59, for a similar case where the Commission disagreed with the 20-day penalty given to two subject police officers. In that case, the two officers failed to investigate a life-threatening stabbing and actively obstructed an investigation by disposing of key evidence, a knife. The officers were not supervisors. One officer had no disciplinary history, and the other had a minor disciplinary history for unrelated misconduct. The Commission believed that those officers, at a minimum, should have been placed on dismissal probation.

#### 4. Penalizing Officers who are on Dismissal Probation

In general, the Commission believes the Department should terminate subject officers who are found guilty of misconduct that occurred while they were serving a period of dismissal probation. If the new misconduct is not very serious and is dissimilar to the original charges, the Department should at least impose another period of dismissal probation. If the subject officer had been placed on dismissal probation in the past, then even if the original dismissal probation period is over, the penalty for any new misconduct, especially if it is comparable to the misconduct that was previously penalized with dismissal probation, should at least include another period of dismissal probation. This would allow the Department summarily to terminate repeat offenders who fail to follow Department rules.

Based on these recommendations, the Commission disagreed with the penalties in four cases. Two of these cases fell within the duty failure category and involved officers who were serving a period of dismissal probation at the time they committed the new misconduct. Those two cases are described below. The other two cases involved subject officers who had been placed on dismissal probation in the past, and although the new misconduct did not occur during the dismissal probation period, the seriousness of their actions warranted more severe penalties. One of these cases is discussed in the DWI/unfit for duty section,<sup>196</sup> and the final case is discussed in the off-duty misconduct section of this Report.<sup>197</sup>

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<sup>196</sup> See *infra* at pp. 105-107.

<sup>197</sup> See *infra* at pp. 156-157.

**Illustrative Case One:  
An officer on dismissal probation failed an integrity test<sup>198</sup>**

The subject officer was a 10-year veteran at the time of the instant misconduct. In September 2012, he had been placed on dismissal probation and forfeited 32 pre-trial suspension days and 8 vacation days for driving under the influence of an intoxicant, driving while his ability was impaired by the consumption of alcohol, consuming an intoxicant to the extent that he was unfit for duty, and engaging in Conduct Prejudicial for refusing to submit to a Breathalyzer examination. The subject officer's period of dismissal probation ended in September 2013.

In June 2013, an integrity test was conducted in which a female undercover officer approached the subject officer and informed him that her son's father had failed to return their son in violation of a court order. The subject officer refused to take a domestic incident report and told the undercover officer to file the report at the precinct of her residence. During his official Department interview, the subject officer admitted that he should have prepared the documents, but explained he did not do so because he did not have the required report forms.<sup>199</sup>

The subject officer was charged with failing to: 1) take a report from an undercover police officer regarding a domestic incident and 2) prepare memo book entries regarding a domestic incident complaint. The subject officer pled guilty to both counts and forfeited 15 vacation days.

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<sup>198</sup> In an integrity test, IAB creates an artificial situation typically faced by police officers to determine if the officer's response is lawful and consistent with Department guidelines.

<sup>199</sup> Members of the service are obligated to complete a domestic incident report every time a domestic incident is reported, even if no arrest is made. It includes the allegations made by the complainant. Patrol Guide § 208-36. In this situation, the subject officer could have written down all of the relevant information in his activity log and then prepared the domestic incident report when he returned to his command.

The Commission believed that penalty was insufficient given the subject officer's disciplinary history. Fifteen vacation days is a common Department penalty for the administrative failure of an integrity test. In this case, the subject officer was on dismissal probation when he failed to take the required report and should therefore have been particularly diligent in performing his duties in accordance with Department rules. For dismissal probation to have any meaning, he at least should have received a second period of dismissal probation.

**Illustrative Case Two:  
Officer on dismissal probation failed to safeguard  
prisoner property**

Similarly, this subject officer engaged in misconduct for which his penalty might have been appropriate if it was not for the fact that he was on dismissal probation from a prior disciplinary case when it occurred. The subject officer had less than seven years of experience at the time of the misconduct. In 2011, he received charges relating to an off-duty dispute with a motorist, during which he caused damage to that person's property and failed to cooperate with the police investigation into the incident. He was suspended for 30 days, forfeited 5 vacation days, and was placed on dismissal probation from June 2011 to June 2012. After completing his period of dismissal probation, he was placed on Level II monitoring.<sup>200</sup> That monitoring continued through the adjudication of the case at issue.

In January 2012, the subject officer transported a prisoner from his precinct to a court section for processing. There, during a search, other members of the service recovered United States currency from the prisoner. They allegedly gave \$700 to the

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<sup>200</sup> The disciplinary paperwork did not specify whether the monitoring was performance, force, or discipline. As the monitoring began as dismissal probation, which is considered Level III monitoring, ended, the Commission believed it was most likely for disciplinary reasons.

subject officer to voucher back at his precinct.<sup>201</sup> The subject officer took the cash back to the precinct, but only handed \$600 to a second officer to voucher. Instead of calling a supervisor to the scene due to the missing \$100, the subject officer went home.

The subject officer was found guilty of failing to: 1) safeguard prisoner property consisting of \$100 and 2) request a supervising officer to respond to the scene after becoming aware of an allegation of corruption against himself. He forfeited 25 vacation days for this misconduct.

The Commission believed that this penalty was insufficient given the subject officer's disciplinary history. The subject officer was on dismissal probation at the time of the misconduct. Having been given an opportunity to retain his employment, the subject officer should have complied with all Department rules and been extremely cautious in performing his job responsibilities. It appeared that DAO did not believe it was able to prove that the subject officer intentionally stole the money, and elected to proceed on the theory that he merely misplaced it. The fact that the subject officer failed to report the loss of this money suggested that he was insufficiently concerned about a prisoner's property (and following Department rules), and did not report it in hopes that it would not be discovered. This was not an appropriate response, especially for an officer already on dismissal probation. If dismissal probation is to mean anything, the Department should have terminated this subject officer or at minimum, imposed another period of dismissal probation.

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<sup>201</sup> The officers at the court section stated that they had found \$802 on the complainant, \$102 of which was returned to him. The remaining \$700, all in \$20 bills, was given to the subject officer to voucher. The complainant also claimed that he possessed approximately \$800.

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## *DWI/Unfit for Duty*

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The Commission disagreed with the penalty assessed against one member of the service with a DWI/unfit for duty case.<sup>202</sup> When members of the service are found to have driven while under the influence of alcohol, the Department typically imposes dismissal probation, the loss of approximately 30 days in the form of a suspension or forfeiture of vacation days,<sup>203</sup> quarterly random breath-testing,<sup>204</sup> and a direction that the subject officer cooperate with all appropriate Department counseling programs.

In the case where the Commission disagreed with the imposed penalty, the subject officer had been a member of the service for six years when he was involved in the motor vehicle accident that led to the instant charges. The year prior to this accident, the subject officer had been placed on dismissal probation, forfeited 32 pre-trial suspension days, forfeited 3 vacation days, and had to cooperate with quarterly random breath-testing and Department counseling for driving under the influence of an intoxicant.<sup>205</sup> He had also received a command discipline in 2008 for discourtesy and wrongfully damaging an individual's vehicle and forfeited five vacation days.

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<sup>202</sup> There was one other DWI/unfit for duty case with which the Commission disagreed with the imposed penalty, but that was primarily because the subject officer had a second case, which received the same penalty, involving a domestic physical altercation. That case was among the three cases where the Commission believed termination was the appropriate penalty. *See supra* at p. 74.

<sup>203</sup> The number of days that members of the service may lose can significantly exceed 30 days when aggravating circumstances are present. Examples of aggravating circumstances include leaving the scene of an accident, refusing to take a Breathalyzer test, and being armed while unfit for duty.

<sup>204</sup> As a condition of plea agreements to settle administrative driving under the influence charges, subject officers must submit to random, quarterly breath-testing to demonstrate that they are abstaining from using alcohol. Any officer who tests above the level of 0.04% can be summarily terminated.

<sup>205</sup> The DAO documents reviewed by the Commission did not include the specific date of the first DWI or any details about the case.

In the case at issue, in March 2013, the subject officer, while driving under the influence of alcohol, struck a parked vehicle, injuring two people inside of it. He left the scene and was arrested after two other officers observed him driving erratically down the street. He was transported to the precinct where he refused to submit to a Breathalyzer test. As a result, in October 2014, the subject officer was found guilty of violating the Vehicle and Traffic Law for driving while his ability was impaired and had his license suspended for six months.<sup>206</sup>

This March 2013 incident occurred two months after the subject officer completed his dismissal probation for his first DWI. The subject officer was charged with: 1) wrongfully operating a motor vehicle under the influence of an intoxicant; 2) wrongfully operating a motor vehicle while his ability was impaired by the consumption of alcohol; 3) engaging in Conduct Prejudicial for refusing to submit to a Breathalyzer test; 4) consuming an intoxicant to the extent that he was unfit for duty; and 5) leaving the scene of an accident knowing that personal injury had been caused to another person due to an incident that involved a motor vehicle operated by him, without stopping and exhibiting his license and the insurance identification card for the vehicle.

As a penalty for the new misconduct, the subject officer was again placed on dismissal probation and forfeited 25 vacation days, 30 pretrial suspension days, and had to undergo alcohol counseling. When reviewing the negotiated settlement, the First Deputy Commissioner rejected this penalty and recommended that the subject officer be required to immediately file for retirement with the forfeiture of all time and leave balances. This was rejected by the Police Commissioner, and the subject officer was given the penalty recommended by DAO.

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<sup>206</sup> He was also directed to wear a bracelet that monitored his blood alcohol concentration, attend a substance abuse program, attend a victim impact program, and pay a \$500 fine.



Apparently, the penalty for the earlier DWI incident, as well as the prior alcohol counseling, did not deter the subject officer from driving while intoxicated again. The Commission regards the continual abuse of alcohol by an officer as a serious offense. By continuing to employ an officer who is unable or unwilling to control his alcohol intake, the Department risks this subject officer causing additional harm to himself, to other officers, or to civilians while in the Department's employ, which, in addition to the actual injuries, can also result in civil lawsuits and financial liability for the City. The Commission believes that the First Deputy Commissioner's recommendation was the correct outcome for this subject officer. In the event that he refused to accept that penalty, the Department should have brought the case to trial and sought the subject officer's termination.

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***FADO***<sup>207</sup>

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The Commission disagreed with the penalties assessed against five members of the service with FADO cases. Three of these cases involved the excessive or unnecessary use of force by the subject officers, one case involved an abuse of authority when the subject sergeant and his team conducted an illegal search of the complainant's motor vehicle and home, and the final case involved allegations of unnecessary force and abuse of authority for an illegal entry and search of a private residence. One of the three cases involving unnecessary force and the case involving illegal searches of an automobile and home are described below.

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<sup>207</sup> The Commission does not customarily take issue with the outcome of the cases prosecuted by APU as these cases were investigated and prosecuted by an agency outside of the Department, and CCRB was in a better position to determine what penalty the evidence supported. Additionally, unlike DAO, IAB, and Department investigation units, CCRB does not investigate and prosecute its own employees, and therefore, presumably would not be in any danger of downplaying misconduct to protect their own interests. The Commission disagreed with four cases prosecuted by APU because they involved particularly compelling facts. The Police Commissioner has the obligation to ensure that an appropriately severe penalty is imposed.

**Illustrative Case One:  
A sergeant used unnecessary force against  
a handcuffed prisoner**

In the first case, the subject was a sergeant and a 16-year veteran with no disciplinary history.

In November 2013, the subject sergeant and his partner responded to a dispute. Upon arriving on the scene, the subject sergeant observed two other members of the service chasing two individuals into an apartment building. The officers chased the individuals up to the third floor. When one of the pursuing officers attempted to enter the apartment the individuals had entered, a third individual, the complainant, grabbed that officer's bulletproof vest. As a result, the complainant was arrested for Obstructing Governmental Administration and was handcuffed. As the complainant was being escorted out of the building, the subject sergeant entered the building, approached from the rear, and punched the complainant in the side of the face. The incident was captured on surveillance video.

In his official Department interview, the subject sergeant indicated that he observed a member of the service escorting the complainant, who was handcuffed but acting belligerently, down to the first floor. The subject sergeant maintained that he was trying to help make the complainant comply. After being shown the video, the subject sergeant stated he made a bad decision and was embarrassed by his actions. The subject sergeant pled guilty to using unnecessary force against a handcuffed prisoner and forfeited 30 vacation days.<sup>208</sup>

A sergeant is tasked with the responsibility of instructing, leading, and mentoring subordinate officers. A sergeant should, and must, lead by example. This subject sergeant's

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<sup>208</sup> The original plea agreement with DAO called for the forfeiture of 15 vacation days. The Police Commissioner, however, rejected the agreed upon penalty and increased it to 30 vacation days.

conduct not only set a bad precedent for all members of the service present at the scene, but it also undermined the Department's effort to foster better relations with members of the community. This subject sergeant should be monitored to make sure that he remains in control of his emotions and does not use unwarranted force again. The Commission believed that the subject sergeant should have been placed on dismissal probation.

**Illustrative Case Two:  
A sergeant allowed and directed two improper searches**

This case involved a sergeant with 12 years of experience at the time of the incident. He had been subjected to a command discipline in 2001 for failing to prepare a missing person's report for a special category-missing person and failing to make proper Department notifications.

In the case at issue, the complainant, a security guard, alleged that in December 2012, shortly before Christmas, he was pulled over for making a U-turn by three police officers and the subject sergeant, all part of an anti-crime team.<sup>209</sup> According to the complainant, after he turned over his security guard license, one police officer asked if he owned or had any firearms in the car. The complainant answered both questions in the negative, but the police officer asked him to step out of his car and searched it, with the subject sergeant's help, for approximately one minute. During that time, one of the other police officers at the scene told the complainant to turn around. When the complainant refused, he felt multiple punches striking him in the back, and he was pushed against his car. The complainant did not know which officer struck him. His only injury was a bruised left shoulder.

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<sup>209</sup> The disciplinary paperwork did not indicate if the police officers at the scene received any discipline for their involvement in this incident, although CCRB did recommend charges against one other police officer.

The complainant was handcuffed and taken to the stationhouse, despite no contraband having been found in his car. According to the complainant, the police officer who first questioned him about the firearms presented him with paperwork and told him he had to sign it. The complainant could not recall exactly what the document said, but believed it was an authorization to search his house. Although not explicitly warned of the consequences if he refused to sign, the complainant signed the document because he believed that he would be kept in jail until after Christmas if he refused.

The complainant's wife reported that the subject sergeant and three other officers searched her house that night. When they arrived, the subject sergeant told her they had a search warrant, although she never closely examined the document he was holding.<sup>210</sup> The police found no firearms or other contraband. The subject sergeant advised her to come to the stationhouse, stating that otherwise her husband's arrest would be processed. At the stationhouse, the subject sergeant handed her a summons issued to her husband for Disorderly Conduct. This summons was later dismissed.

In his interview with a CCRB investigator five months after the incident, the subject sergeant explained that he and his team had stopped the complainant for a broken tail light. After the complainant pulled over, one of the police officers spoke to him out of earshot of the subject sergeant. The police officer then told the subject sergeant that the complainant had admitted having a firearm at home, but denied having one in the vehicle.

The subject sergeant and the police officer searched the car, while the complainant stood at the rear of the vehicle with two other officers. The subject sergeant heard a commotion and observed that one of the other officers had already handcuffed the

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<sup>210</sup> There was no search warrant, and the Commission assumed the document was the complainant's signed consent form.

complainant for attempting to strike her. The complainant was taken to the stationhouse, where he denied possessing a firearm. Nonetheless, based on his initial statement to the contrary, he was asked to sign a consent form to search his residence. The subject sergeant denied that anyone coerced the complainant to sign the consent form, and stated that he and three other officers searched the residence. The subject sergeant also denied that he represented to the complainant's wife that he had a search warrant. Although there were minor differences in some of the details, the interrogations of the three other officers involved supported the subject sergeant's version of the events.

For the instant matter, the subject sergeant faced two charges of engaging in Conduct Prejudicial for: 1) searching a vehicle without sufficient legal authority and 2) entering and searching a residence without sufficient legal authority. The subject sergeant pled *nolo contendere* to both charges and was penalized three vacation days. In reviewing the proposed penalty, the First Deputy Commissioner concluded that the complainant signed a consent to search form under duress, and that the subject sergeant's actions were highly troubling and raised serious questions regarding his integrity, judgment, and professionalism. Therefore, he recommended a penalty of 15 vacation days. The Police Commissioner imposed the lesser penalty, which had originally been requested by APU.

The Commission believed the penalty should have been higher. While it is desirable to locate and seize illegally possessed firearms, the police are prohibited from violating an individual's constitutional rights to recover these weapons. In this matter, a simple traffic infraction resulted in the complainant's arrest and the search of his car and home. There was no reasonable suspicion present (or even articulated by the officers involved in the car search) to justify this abuse of authority. These searches occurred under the direction and supervision of the subject sergeant, who had the responsibility to alert his subordinates

that these searches were not justified. This is precisely the type of rogue policing the Department should be strongly discouraging, and it could not have occurred without the subject sergeant's approval. It is unlikely that the forfeiture of a mere three vacation days will deter any of these officers from infringing on the constitutional rights of others in the future when weighed against the possible accolades that result from making illegal firearms arrests. Therefore, to prevent this subject sergeant from engaging in such questionable tactics, the Commission believed that he should have been placed on dismissal probation in addition to the penalty he received. At the very least, the penalty recommended by the First Deputy Commissioner should have been imposed.

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### ***False Statement***

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The Commission disagreed with the penalty assessed against 45 members of the service in false statement cases.<sup>211</sup> Because misconduct of this type can greatly diminish the public's confidence in the Department if not properly checked, the Commission has continuously emphasized the importance of appropriately charging and strongly disciplining officers who make false statements in the course of their official duties. Accordingly, the Department's false statement policy and its application have been a consistent focal point of the Commission's analysis.<sup>212</sup> In fact, the Department's present false statement policy was developed, in significant part, based on the findings and recommendations the Commission advanced in its first published report on the subject more than 20 years ago.<sup>213</sup>

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<sup>211</sup> In two of these cases, the Commission disagreed with the penalties for reasons that were aggravated by the false statements. One member of the service had two false statement cases that were covered by one penalty.

<sup>212</sup> Because the Commission has a historical interest in this topic, a more detailed analysis of the cases falling within this category typically have been featured in the Annual Reports.

<sup>213</sup> *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements* (December 12, 1996).

The policy, set forth in Patrol Guide § 203-08, mandates termination for any member of the service found to have intentionally made a false official statement, unless the Police Commissioner makes a discretionary determination that “exceptional circumstances” justify a less severe penalty. Since its 1996 introduction, the Department’s false statement policy has undergone some revisions. In 2005, the Department exempted “mere denials” from the ambit of the policy. In 2007, language was added to the provision requiring that false statements be material in addition to intentional for mandatory termination to apply.

### **1. Charging False Statements under the Patrol Guide**

In its present form, the Department’s false statement policy, articulated in Patrol Guide § 203-08, states the following:

The intentional making of a false statement is prohibited, and will be subject to disciplinary action, up to and including dismissal. Intentionally making a false official statement regarding a material matter will result in dismissal from the Department, absent exceptional circumstances. Exceptional circumstances will be determined by the Police Commissioner on a case-by-case basis. Examples of circumstances in which false statements may arise include, but are not limited to, lying under oath during a civil, administrative, or criminal proceedings [sic] or in a sworn document; lying during an official Department interview conducted pursuant to Patrol Guide 206-13, “Interrogation of Members of the Service” or an interview pursuant to Patrol Guide 211-14, “Investigation by Civilian Complaint Review Board;” and lying in an official Department document or report. The Department will not bring false official statement charges in situations where, as opposed to creating a false description of events, the member of the Department merely pleads not guilty in a criminal matter, or merely denies a civil claim or an administrative charge of misconduct.

In numerous Annual Reports, the Commission has criticized the Department for charging officers with making false official statements in far fewer instances than facts and

circumstances seem to warrant.<sup>214</sup> Often, the circumstances in reviewed cases leave little doubt that the subject officer made statements that were false, official, more elaborate than “mere denials,” and, by any reasonable estimation, both intentional and material. Yet, the Department appears to routinely employ other Patrol Guide sections to address the misconduct, bypassing the mandatory termination penalty in the process. Perhaps for this precise reason, by levying an alternate charge, the Department need not find that exceptional circumstances exist to retain those officers.

In the most recent review period, the Department continued to utilize alternative Patrol Guide sections to address false statements in the vast majority of cases, regardless of the content of the false statement or context in which it was made.

<b>Officers Found Guilty of Misconduct Involving False Statements<sup>215</sup></b>	<b>Officers Found Guilty of False Statement Charges Under Patrol Guide § 203-08</b>	<b>Officers Found Guilty of False Statement Charges Under Alternative Patrol Guide Sections</b>
<b>161</b>	<b>20 (12.4 %)</b>	<b>141 (87.6 %)</b>

Overall, the Patrol Guide section most commonly utilized to charge officers with misconduct involving false statements is the catch-all “Conduct Prejudicial” provision contained in § 203-10(5). Allegations charged under this provision are typically framed as the officer “engaging in conduct prejudicial to the good order, efficiency or discipline of the Department” by making “inaccurate” or “misleading” statements in sworn courtroom testimony, a sworn complaint or affidavit, a Department interview or report, or some other

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<sup>214</sup> See *Tenth Annual Report of the Commission (“Tenth Annual Report”)* (February 2008) at p. 33; *Eleventh Annual Report of the Commission (“Eleventh Annual Report”)* (February 2009) at p. 39; *Twelfth Annual Report of the Commission (“Twelfth Annual Report”)* (February 2010) at pp. 53-55; *Thirteenth Annual Report* at p. 19; *Fourteenth Annual Report* at pp. 39-45; *Fifteenth Annual Report* at pp. 73-74; *Sixteenth Annual Report* at pp. 86-87; and *Seventeenth Annual Report* at pp. 103-104.

<sup>215</sup> This includes those cases in which the false statement did not appear to be intentional but rather was made in error or due to carelessness.



official capacity. Unlike the false statement provision, a charge of engaging in Conduct Prejudicial does not carry a presumption of termination, although a small number of the subject officers charged with engaging in Conduct Prejudicial were, in fact, dismissed from the Department.

For this review period, out of 161 subject officers found guilty of allegations involving false statements, 78 were found guilty under the Conduct Prejudicial section. Another 38 subject officers were found guilty solely with making false entries in Department records under Patrol Guide § 203-05, typically in cases involving timesheet abuses and other fabrications on administrative forms. In comparison, only 20 subject officers were charged with, and found guilty of, making false statements under Patrol Guide § 203-08.<sup>216</sup> The Commission recognized that, in some of these cases, the alternative charge may have been appropriate, as there appeared to be evidentiary issues regarding the officer's intent, the materiality of the statement, or whether the statement constituted a mere denial. In the descriptions of cases in this section, the Commission disagreed with the penalty regardless of the specific charges that were brought.

The Commission acknowledges that during this reporting period, there was an increase in the number of charges brought pursuant to Patrol Guide § 203-08, the false statement provision. Yet, even when the false statement provision was utilized, the mandatory termination clause did not appear to factor into the Department's deliberative process when formulating a penalty. In each of the 20 cases from the current review

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<sup>216</sup> The remaining 25 cases include 19 cases charged pursuant to Patrol Guide § 203-10(5) and § 203-05, 1 case charged pursuant to Patrol Guide § 203-10(5) and another Patrol Guide provision, 3 cases charged pursuant to other Patrol Guide provisions to cover the false statement-related misconduct, and 2 cases where the specific Patrol Guide provisions charged could not be determined. There were three additional cases where officers were charged pursuant to Patrol Guide § 203-08, but those officers separated from the Department prior to the adjudication of the charges, resulting in those charges being filed.

period where officers were found guilty of making false statements under Patrol Guide § 203-08, the Department's Trial Commissioners and assistant department advocates made discretionary decisions to recommend either separation or a less severe penalty. These decisions appeared to be based solely on the severity of the misconduct and the service history of the officer, without reference to the mandatory termination provision or any exceptional circumstances to exclude application of that provision. In other words, in articulating a rationale for the discipline imposed, the mandatory termination provision of Patrol Guide § 203-08 - - to which exceptions can only be approved by the Police Commissioner - - appeared to have been completely ignored.

## **2. Case Types**

The charts on the next page, detail the context in which the false statements occurred and whether the officers' employment was terminated as a consequence of their disciplinary cases.<sup>217</sup>

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<sup>217</sup> Where a subject officer received more than one charge addressing multiple false statements that were made in different contexts, the Commission referenced the most serious charge for the purpose of placing the case in one of the four designated categories of sworn testimony, sworn documents, Department (or CCRB) interviews, and Department records.

<b>Found Guilty of False Statements Charged Under Patrol Guide § 203-08, by Context (20 total)</b>	<b>Found Guilty and Separated from the Department<sup>218</sup> 7 (35%)</b>	<b>Found Guilty and Permitted to Remain with the Department 13 (65%)</b>
<b>Sworn Testimony:<sup>219</sup> 2</b>	2 (100%)	0 (0%)
<b>Sworn Documents:<sup>220</sup> 1</b>	0 (0%)	1 (100%)
<b>Department Interviews:<sup>221</sup> 15</b>	4 (27%)	11 (73%)
<b>Department Records: 2</b>	1 (50%)	1 (50%)

As discussed above, subject officers were charged under alternate Patrol Guide sections far more frequently in all contexts:

<b>Found Guilty of False Statements Charged Under Alternative Patrol Guide Sections, by Context (141 total)<sup>222</sup></b>	<b>Found Guilty and Separated from the Department 14 (9.9%)</b>	<b>Found Guilty and Permitted to Remain with the Department 127 (90.1%)</b>
<b>Sworn Testimony: 9</b>	4 (44.4%)	5 (55.6%)
<b>Sworn Documents: 11</b>	1 (9.1%)	10 (90.1%)
<b>Department Interviews: 53</b>	6 (11.3%)	47 (88.7%)
<b>Department Records: 67</b>	0 (0%)	67 (100%)

### 3. Sworn Testimony

The Commission reviewed 11 cases in which a subject officer's most serious misconduct involved making false statements while testifying under oath in court.<sup>223</sup> In six of the cases, the subject officer was dismissed or forced to retire from the Department as part of a negotiated settlement. Among the remaining six cases in which a lesser penalty

<sup>218</sup> Separation from the Department included retirement, resignation, or termination.

<sup>219</sup> This category included testimony given in grand jury proceedings and court hearings.

<sup>220</sup> This category included sworn affidavits, depositions, complaints, and summonses.

<sup>221</sup> This category included statements made to investigators in official Department interviews, as well as statements made to supervisory or investigative personnel, such as Integrity Control Officers (ICOs), in connection with misconduct-related matters. In addition, although not technically a Department interview, this category included statements made to investigators from CCRB and other law enforcement agencies.

<sup>222</sup> One additional case was not included in any of these categories. That case involved including inaccurate information on a Customs form.

<sup>223</sup> These 11 cases only included those cases in which the subject officer was found guilty of making false, misleading, or inaccurate statements while testifying under oath in court.

was imposed, the Commission disagreed with the outcome of three, believing those officers should also have been dismissed. In total, the Commission disagreed with the penalties in three of eleven cases (27%) in this category. Two of these cases are described below.

**Illustrative Case One:  
A police officer testified falsely in a grand jury  
proceeding that he initiated a traffic stop when,  
in fact, he was not present**

The subject officer, an eight-year member of the service with no disciplinary history,<sup>224</sup> was implicated in two separate, unrelated false statement incidents. The more serious of the two involved a fabrication in a criminal court complaint that persisted all the way to the grand jury, and eventually resulted in the dismissal of a criminal case.

In September 2010, two officers stopped a car with a broken tail light and subsequently observed illegal, untaxed cigarette cartons in plain view inside. The subject officer, who arrived several minutes after the car stop had occurred, was assigned to process the arrest. Rather than explain in the criminal court complaint that a different officer had seen the broken tail light and initiated the traffic stop, the subject officer claimed that he had witnessed the events and made the stop. In later discussions with the Assistant District Attorney about the case, the subject officer again stated that he had initiated the car stop himself after seeing the arrestee's broken tail light. He later testified twice in the grand jury that he stopped the car after observing its broken tail light and that he saw the untaxed cigarettes in plain view inside the arrestee's car.

Had the case not proceeded to trial, the subject officer's false statements likely would not have been uncovered. During trial preparation, the officer who had actually conducted the car stop and found the cigarettes informed the Assistant District Attorney of

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<sup>224</sup> In 2011, subsequent to the incident at issue, the subject officer received a command discipline for failing to make complete entries in his memo book.

the correct information. Confronted with his sworn statements, the subject officer changed his story and claimed not to remember who had conducted the car stop. As a consequence, the District Attorney's Office dismissed the criminal case against the arrestee. In his official Department interview, the subject officer admitted that his statements in the criminal court complaint, which he had later repeated in the grand jury, were inaccurate, although he maintained that whatever falsehoods he uttered had not been "intentional."

The second case arose in May 2011 while the investigation into the first incident was pending. On that occasion, the subject officer conducted a traffic stop and gave a fake name, "Johnson," when asked by the motorist to identify himself. The motorist complained to CCRB, providing CCRB with cellular telephone video of the encounter that verified his allegations. In the CCRB and Department interviews that followed, the subject officer claimed that he neither heard nor recalled the motorist asking him to provide his name. He stated that, as he was walking away, he said "Good night, Mr. Johnson" to the motorist, mistakenly thinking that was the motorist's name. It was not.

To address the subject officer's false statements at various stages in the untaxed cigarettes case, DAO charged him with one count of engaging in Conduct Prejudicial for having "provided inaccurate or misleading information" to the District Attorney's Office and the grand jury. DAO also charged the subject officer with two counts of failing to cooperate fully with an official investigation in the second case, based on the misleading or inaccurate information he provided to CCRB and IAB investigators regarding the allegations that he gave a fake name to a motorist, in addition to one charge of failing to clearly and accurately provide his name to a civilian upon request. Acknowledging that false testimony before the grand jury constitutes "very serious misconduct," the assistant advocate nevertheless concluded that there was "no evidence that [the subject officer]

intentionally provided inaccurate testimony, or received a personal benefit as a result of the inaccuracy.” Noting that the officer engaged in “similar misconduct” when he made inaccurate statements to CCRB and IAB investigators in the accompanying case, the assistant advocate recommended a forfeiture of 35 vacation days and dismissal probation. The Police Commissioner enhanced the penalty to a forfeiture of 40 vacation days with dismissal probation.

The Commission believed the subject officer should have been terminated. Even under the unlikely assumption that the “inaccuracies” in his original criminal court complaint were “mistakes,” the subject officer had numerous opportunities to correct them. Yet, at each juncture, he chose to repeat the statements and thus compound his misconduct, culminating in perjured testimony before the grand jury.

The subject officer’s apparent attempt to evade appropriate punishment by claiming that his false statements were unintentional should not have provided a basis for leniency; to the contrary, these statements constituted aggravating factors. The subject officer’s assertion that he did not recall the events when confronted by the Assistant District Attorney was itself demonstrably false; he admitted in his official Department interview that he did not see the broken tail light or initiate the car stop, and that his statements to the contrary at various points were all “inaccurate.” Collectively, his conflicting explanations were completely incompatible with any conclusion that his “inaccuracies” were unintentional.<sup>225</sup> Whether viewed alone or in combination with evidence in the

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<sup>225</sup> The Commission also disagreed with the assistant advocate’s conclusion that the subject officer received no “personal benefit” from his inaccurate statements. At a minimum, his false testimony before the grand jury served to cover up the false statements in his criminal court complaint, and thus shielded him, at least temporarily, from having to admit his wrongdoing with respect to the preparation and filing of that official document.

accompanying case, his integrity and trustworthiness were irreparably compromised, demonstrating a lack of fitness to serve as a law enforcement officer.

The Commission believes that the sequence of events in the first case demonstrates the need for ongoing training regarding perjury and making false statements. The facts here could be used as a training tool to reinforce officers' obligation to provide truthful renditions of their observations to prosecutors, as well as their obligation to read criminal complaints thoroughly and correct any errors before signing these documents, and their absolute responsibility to testify truthfully in all court proceedings.

**Illustrative Case Two:  
A police officer issued false summonses to his former  
girlfriend's name, made false entries in his memo book to  
document the issuance of those summonses, testified falsely  
in a TVB hearing, and then lied about the circumstances  
surrounding the issuance of the summonses in his official  
Department interview**

This case involved a police officer who was employed with the Department for seven years at the time the investigation into his conduct was initiated. He had a disciplinary history. In September 2013, the subject officer had forfeited 20 vacation days to cover two cases. Both of those cases involved his failure to appear at TVB, once in 2011 and again in 2012, resulting in the dismissal of 21 summonses.

The investigation into this case began in May 2013, after the subject officer appeared at TVB and gave testimony regarding three summonses issued to one motorist in June 2010. During the hearing on these summonses, the subject officer testified before the administrative law judge that he did not have copies of these summonses and that further, he had never issued the summonses to the named defendant in the case. Yet, 15 minutes after the conclusion of the hearing, the subject officer was questioned by a sergeant

assigned to the TVB.<sup>226</sup> He told the sergeant present at TVB that he did have copies of the summonses and he had recognized the defendant to be an ex-girlfriend he dated from 1995 through 2000.

A review of the subject officer's memo book for the summons date indicated that he conducted a car stop at a specific location for a motorist with his ex-girlfriend's first and maiden names, with an address close to where his ex-girlfriend had resided when they were dating. The memo book also displayed the license plate of the vehicle, but a check of that plate with the Department of Motor Vehicles revealed that this license plate number did not exist. The summonses also reflected this license plate number and the same name and address. The summonses also indicated that the motor vehicle stopped was a red Mercury.

In an interview with investigators, the ex-girlfriend stated that she learned about the summonses when she tried to renew her husband's driver's license online and learned that her license had been suspended for failing to pay the three summonses. As she had never received the summonses, she requested a court hearing. She also told investigators that she never possessed a red Mercury and that she was nowhere near the location where the subject officer allegedly issued summonses to her on the relevant date. Furthermore, she had gotten married in 2003 and therefore used a different last name on the summons date. According to both the subject officer and the ex-girlfriend, they had not had any contact since their relationship ended.

The subject officer was provided the opportunity to explain what had happened in an official Department interview. He told investigators that on the date of the car stop, he

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<sup>226</sup> After an IAB investigation revealed an organized system of ticket-fixing, a unit was established in IAB to monitor the traffic courts for any suspect testimony of members of the service that could be indicative of ticket-fixing. This unit was disbanded in 2014.



had stopped the motor vehicle as indicated in his memo book, and issued three summonses to a person with the same name as his ex-girlfriend. He said that he took the information from the motorist without verifying the person's identity or conducting a license plate check. He admitted that it was his handwriting on the summonses and on the relevant memo book entry, but denied having falsified any summonses. Regarding his false testimony in court, the subject officer stated that when he appeared at the TVB, he saw his ex-girlfriend and knew that he had never issued her any summonses. He panicked and told the administrative law judge that he did not have copies of the summonses or his memo book, but realized that he had made a mistake by testifying in this manner.

The subject officer pled guilty to four specifications: 1) engaging in Conduct Prejudicial by falsely telling the hearing officer that he was not in possession of his applicable summons copies when in truth, he did possess those summonses; 2) falsifying business records in the second degree for making a false entry in the business records of an enterprise by writing false information in his activity log pertaining to three traffic summonses; 3) offering a false instrument for filing in the second degree for presenting a written instrument (traffic summonses) to a public officer or public servant knowing that the written instrument contained a false statement or false information with the knowledge or belief that it would be filed with, registered or recorded in or otherwise become a part of the records of such public officer or public servant; and 4) wrongfully making false and misleading statements during an official Department interview in that he stated he conducted a car stop in June 2010 during which he issued three summonses to a motorist, when in truth he did not. This last specification was charged pursuant to Patrol Guide § 203-08. The subject officer was placed on dismissal probation and forfeited 45 vacation days.

The Commission believed that the subject officer's conduct in telling repeated lies over the course of three years demonstrated his lack of integrity and called into question any future testimony that he might be called upon to give. The subject officer issued three summonses to a fictitious automobile, using the name of a former girlfriend with false pedigree information.<sup>227</sup> This false information was also recorded in his memo book. At the time the subject officer created these false summonses and corresponding memo book entries, he had only been employed by the Department for four years.

The submission of these false summonses resulted in the suspension of his ex-girlfriend's license. As she was also unaware of this suspension, this could have resulted in an arrest for driving with a suspended license. Between the summons date and the TVB hearing, the subject officer also failed to appear at two other TVB court dates, resulting in two sets of charges and specifications against him. While those were pending resolution, the subject officer appeared in TVB and when he saw that his ex-girlfriend had also appeared, lied to the administrative law judge, knowing that his lies would result in a dismissal of the three summonses.

Once his deliberate falsehoods were uncovered, the subject officer created another set of lies in his official Department interview, insisting the stop had occurred as recorded in both the summonses and his memo book but implying that another motorist falsely used the same name as his ex-girlfriend, and that he did not discover that falsehood because he did not conduct the required computer checks. That was not credible and accordingly, the Department charged the subject officer with intentionally making a false statement in his official Department interview. That charge alone should have resulted in termination

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<sup>227</sup> While there was no reason given for these fabricated summonses, there was some implication in the disciplinary paperwork that this may have been done so the subject officer could accumulate enough numbers of summonses to receive overtime assignments.

absent a finding of exceptional circumstances by the Police Commissioner. As the Police Commissioner did not set forth any circumstances to justify the lesser imposed penalty, and no such circumstances were apparent from the paperwork reviewed by the Commission, this subject officer should have been terminated.

#### **4. Sworn Documents**

The Commission reviewed 10 cases in which a subject officer's most serious misconduct involved false statements that appeared in sworn documents such as criminal court complaints, affidavits, and supporting depositions.<sup>228</sup> The subject officer was separated from the Department in only one of the ten cases. The Commission disagreed with the penalty in four of the nine cases in which the subject officer was permitted to remain with the Department. In two of these cases, the Commission believed that the subject officer should have been terminated, while in the remaining two cases, the Commission believed that the subject officer should have received a penalty that included placement on dismissal probation. One illustrative case is described below. In total, the Commission disagreed with the Department in 44% of the cases in this category.

**Illustrative Case:  
A narcotics detective fabricated events in a  
criminal court affidavit to conceal an unlawful search**

The subject was a detective with 20 years of experience and no disciplinary history who submitted a criminal court affidavit containing a narrative that falsely described the events surrounding an unlawful search of a residence.<sup>229</sup>

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<sup>228</sup> These 10 cases only included those where the subject officer was found or pled guilty or *nolo contendere* to charges involving a false statement in a sworn document.

<sup>229</sup> The subject detective received two command disciplines subsequent to the incident at issue, one for misconduct that occurred only four months prior to this incident. In August 2012, the subject detective failed to properly document in his memo book the detention of a civilian during the search of his residence and failed to prepare a Stop, Question and Frisk report. He received the command discipline in February 2014 and was warned and admonished. The other command discipline was issued in October 2013 and was also for failing to make complete memo book entries and failing to make/take a report.

In December 2012, after receiving an anonymous tip about drug sales at a building, the subject detective conducted surveillance of the location. According to his sworn affidavit, he saw the complainant exit the building carrying an envelope with a green, leafy substance sticking out of it. The subject detective stopped and arrested the complainant. The subject detective summoned another detective and a sergeant to the scene after the complainant gave verbal consent to search his home. Together, the officers searched the residence, recovering narcotics and \$6,000 in cash.

In fact, this was not what had occurred. After he was released, the complainant contacted IAB and provided them with video surveillance footage establishing that nobody had exited his building carrying an envelope on the date in question. The complainant reported that the detective and his team simply came to his building and knocked on his door, which the video corroborated. They then arrested him and searched his home without his consent or a search warrant.<sup>230</sup> The criminal case against the complainant was ultimately dismissed.<sup>231</sup>

In his official Department interview, the subject detective reiterated the sequence of events that he had described in his affidavit. After he was advised about the existence of the surveillance video, he admitted that he had not seen anyone exit the residence carrying an envelope. He acknowledged that the affidavit he had prepared and signed was “not accurate.” The subject detective then claimed that he had signed a number of affidavits around the same time he signed the inaccurate one,

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<sup>230</sup> The other detective and the sergeant were charged separately with numerous acts of misconduct, some of which were separate from this incident. The cases against both resulted in guilty pleas and penalties of 45 vacation days, dismissal probation, and an agreement that the officers immediately file for service retirement. The Commission agreed with those penalties.

<sup>231</sup> The District Attorney’s Office, having been informed of the issues surrounding the search and having been provided the video, elected not to proceed with the prosecution of the complainant out of concern that the subject detective, if called to testify, would perjure himself.

and that fatigue might have been the reason for the error.

For this misconduct, the subject detective was charged with: 1) knowingly providing the District Attorney's Office with a criminal court affidavit that contained inaccurate information; 2) conducting an improper search of a residence without consent or a warrant; and 3) failing to notify the Administration for Children's Services that a minor was present at the incident location.<sup>232</sup> In formulating an appropriate penalty, the assistant advocate reasoned that it could not be definitively determined whether the incorrect information was intentional or due to fatigue, but that the subject detective's mistake led to an improper arrest and search of the complainant's home. The subject detective accepted the forfeiture of 45 vacation days and dismissal probation as a penalty.

The Commission disagreed with that penalty and questioned the rationale employed to justify it. This was not a case where a detective, in theory, could have mistakenly jumbled the authentic facts of one valid search with those of another valid search. Here, there was only an improper search on the one hand, and a fabricated story on the other. Nor did a mistaken description of the events lead to an improper arrest and search of the complainant's home. Clearly, the sequence operated in the reverse: first, the subject detective and his team arrested a man at his front door before unlawfully searching his residence; second, the subject detective drew up a false criminal court affidavit that covered up all impropriety. To even consider the subject detective's claim that his detailed fabrications were merely the unintentional result of "fatigue," it must be assumed that he intended all along to report the events as they actually happened, even if that meant invalidating the arrest and subjecting himself and his team to potential disciplinary action.

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<sup>232</sup> There was no information about the facts underlying this charge in the paperwork reviewed by the Commission.

The Commission could not credit such an improbable and logically flawed premise. The evidence here provided ample basis to terminate this detective for his purposefully unlawful search and his intentional false statements.

## **5. Department Interviews**

The Commission reviewed 68 cases in which a subject officer's most serious misconduct involved false statements made in the context of an interview, whether an official Department or CCRB interview or in less formal circumstances, such as an informational inquiry by a supervisor or Integrity Control Officer regarding suspected misconduct.<sup>233</sup> Ten subject officers were separated from the Department. Among the 58 cases in which the subject officer was permitted to remain with the Department, the Commission disagreed with the outcome in 32 instances. Three of these cases are described below. In total, the Commission disagreed with the Department in 47% of the cases in this category.

**Illustrative Case One:  
After pursuing and deliberately ramming another motorist in  
an off-duty road rage incident, a police officer concocted an  
elaborate story, shifting blame to an imaginary mechanic's  
assistant that he falsely claimed had possession of his car  
when the incident happened**

In a strikingly brazen display of dishonesty and irresponsibility, a 13-year veteran police officer with no disciplinary history instigated a road rage incident with another motorist, and later told Department investigators a detailed and entirely false story in an attempt to cover up his criminal conduct.

In April 2013, the subject officer, off duty and driving his personal vehicle, swerved into oncoming traffic, nearly colliding head-on with another car. The female motorist in

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<sup>233</sup> Although IAB or other Department personnel have no direct involvement in CCRB investigations, the false statements that officers made in CCRB interviews were also counted in this category based on their contextual similarities.

that car slammed her brakes and honked her horn. The subject officer responded by stopping, cursing at the motorist and her female passenger, and displaying his upright middle finger. When the women drove away, the subject officer turned around, followed them, and then deliberately rammed their car with his SUV. The subject officer continued on, made a right turn, and disappeared. The motorist and her passenger observed the SUV's license plate number and immediately reported the incident and the plate number to two officers who were parked in front of a nearby precinct.

At the precinct, officers checked the license plate number of the SUV and identified the registered owner. They went to the owner's residence, and she indicated that the subject officer, her husband, had been driving the SUV that day, had come home and left the SUV there, and had gone out again in a different car approximately an hour before the officers arrived. After the officers left, she called her husband and informed him that two uniformed officers had been to the residence. She later repeated this information to IAB investigators.

Following the call from his wife, the subject officer went to the local precinct and identified himself as a member of the service to the desk sergeant. The subject officer inquired whether anyone from the precinct was looking for his car, stating that he had been told by his wife that uniformed officers had visited his home. He claimed that he had entrusted his vehicle to his mechanic during the time period that any incident might have occurred. While the subject officer was at the precinct, the motorist and her passenger also arrived, and immediately recognized the subject officer as the driver of the SUV. During the investigation, they told the IAB investigators that the subject officer had a distinctive face and that they were completely certain that he was the person who had verbally accosted them before ramming their car and fleeing the scene.

In his official Department interview, the subject officer elaborated on his earlier claims. Contrary to the information originally provided by his wife, he stated that, after completing his tour, he went home and then brought the SUV to his mechanic, “Junior’s,” residence for brake repairs. Junior introduced the subject officer to his assistant named “Mike.” Mike drove the officer home in the SUV and dropped him off, with the understanding that Mike would drive the SUV back to Junior’s residence to complete the repairs. The subject officer then went out again to meet friends, using a different car. En route, he was informed by his wife that uniformed officers had visited his residence. Returning home, he found his SUV parked with the keys left on the seat and no damage. He went immediately to the precinct, and from there, called Junior and asked him to meet him at that location. While he was outside the precinct speaking with Junior, a woman he did not know arrived and asked him if she was permitted to park there, and went inside. The woman returned moments later with the desk sergeant, and identified him as the perpetrator in a hit-and-run incident involving his SUV.<sup>234</sup>

IAB also interviewed Junior, the mechanic, who corroborated the subject officer’s story, but could not provide any information about “Mike” except to describe his physical appearance. He claimed not to have seen “Mike” since the incident and did not have any contact information for him.

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<sup>234</sup> Separate from the Department’s disciplinary case, the officer was charged in Criminal Court with leaving the scene of an accident with property damage. The court dismissed the charge against the officer after the NYPD sergeant who issued the summons called in sick and failed to appear on the scheduled court date. The disciplinary paperwork did not indicate whether an investigation was conducted to determine if the sergeant failed to appear in court to help facilitate the dismissal of the criminal case, or if his reported sickness was genuine; this paperwork also contained no information to suggest any complicity on the part of the sergeant.



Finding that the subject officer had “concocted an elaborate story in order to divert responsibility and liability from himself,” DAO charged him with two counts of engaging in Conduct Prejudicial for: 1) leaving the scene of an accident and 2) the false and misleading responses to questions asked of him during an official Department interview. (It is not clear from the DAO paperwork why the officer was not charged with making a false official statement pursuant to Patrol Guide § 203-08, as his conduct appeared to meet all the required elements of a charge under that provision.) The subject officer pled guilty to both charges and was penalized with the forfeiture of 30 vacation days and dismissal probation.

The Commission disagreed with that penalty and believed the subject officer should have been terminated. In the first instance, his underlying conduct was criminal, dangerous, and inexcusable. Even if his act of intentionally ramming another car with two occupants in a fit of road-rage did not warrant dismissal on its own, his attempt to cover up his criminal and administrative misconduct by telling lies about a mechanic’s assistant who did not exist and then engaging a civilian to corroborate his false alibi, demonstrated that the officer was fundamentally unfit to serve as a member of the service.

**Illustrative Case Two:  
A police officer lied in one official Department interview  
about the identity of an associate that he visited, and when  
confronted about his earlier lies in a second interview,  
refused to answer any further questions**

This case involved a police officer with eight years of experience and no disciplinary history. The underlying investigation commenced after IAB received an anonymous letter accusing the subject officer of having an inappropriate romantic relationship with a sergeant at his command. The letter contained an accusation that the officer and the sergeant were cohabitating in an apartment at a specific address, which they had not

provided to the Department, as required. In his first official Department interview, conducted in May 2013, the subject officer denied having an inappropriate relationship with the sergeant, and denied residing at the specific address at issue. He admitted that he visited the building described in the anonymous letter, but claimed that he had gone there to see a childhood friend. IAB interviewed the friend, also a member of the service. He confirmed that he lived at the location but reported having seen the subject officer only briefly in recent years. The friend further reported that the subject officer had never visited him at his residence.

IAB conducted a second interview in July 2013, during which the subject officer admitted that his claim to have visited his childhood friend was false. Asked who he had been visiting, the subject officer stated he was entitled to a personal life and flatly refused to disclose the identity of the person he had actually visited. In February 2014, IAB conducted a third interview. This time, the officer disclosed the identity of the friend that he had actually visited.<sup>235</sup>

For this conduct, the officer was charged under Patrol Guide § 203-08 with making false and misleading statements in his May 2013 interview. He was also charged with impeding an investigation under Patrol Guide § 203-10 for making additional misleading statements and refusing to answer questions in the second interview. The officer pled guilty to both charges (as well as charges in a second case) and was penalized with a suspension of 30 days and the forfeiture of 10 vacation days, along with placement on

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<sup>235</sup> The disciplinary paperwork did not indicate the reason that the subject officer, during his first and second interviews, refused to provide the name of the friend he had visited. IAB found no basis to suspect the friend was a criminal associate or that the subject officer violated any Department rules by interacting with this person. The subject officer was not found to have engaged in any misconduct in connection with the case other than making misleading statements and refusing to answer questions in official Department interviews.

dismissal probation.<sup>236</sup>

The Commission believed that the subject officer should have been terminated based on the sequence of his false statements and refusals to answer questions. Because members of the service are compelled by the strict provisions of Patrol Guide § 206-13 to answer questions in official Department interviews, the subject officer could have been terminated outright, solely for his refusal to reveal the identity of the person he visited at the specific address at issue. Even if the Department were to conclude that the refusal to answer questions under circumstances not indicative of other wrongdoing would be insufficient to warrant dismissal, the subject officer's unwillingness to cooperate was much more pronounced than a simple assertion of his privacy.

The Commission advocates that members of the service who are caught in a lie, and then challenge the Department's ability to hold them accountable by refusing to answer follow-up questions, be separated from the Department as a matter of sound policy. If "exceptional circumstances" exist to mitigate this policy, it is up to the Police Commissioner to invoke them.

**Illustrative Case Three:  
A sergeant conducting a misconduct investigation  
incorporated erroneous information in her case reports,  
implied that her supervisors altered her original paperwork  
when confronted with her mistakes, and then created fake  
worksheets to corroborate that false excuse**

The subject officer in this case was a sergeant with 20 years of experience and no disciplinary history. At the time of the incident, she was assigned to a unit that investigated allegations of misconduct by civilian members of the service.

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<sup>236</sup> In the separate case, the subject officer pled guilty to charges that, in February 2012, he: 1) failed to remain at his post; 2) failed to make proper log entries; 3) appeared in uniform with facial hair; and 4) failed to maintain his memo book.

This case arose out of the subject sergeant's assignment to investigate a school safety agent (SSA) who had been arrested for shoplifting after a store security guard witnessed the SSA place merchandise in a bag and exit the store without paying. Surveillance video failed to capture the SSA placing the merchandise in the bag but did record him exiting the store with the stolen item. A captain misstated what was on the video in an internal memorandum describing the circumstances surrounding the SSA's arrest by indicating that the video had captured the SSA placing the merchandise in the bag.<sup>237</sup>

Between November and December 2011, the subject sergeant prepared worksheets for the investigation in which she claimed to have spoken to the store security guard and viewed the surveillance video depicting the SSA placing the stolen merchandise in the bag. After the investigation into the SSA's arrest was completed and forwarded to DAO, the assistant advocate viewed the surveillance video himself and discovered that it did not depict the whole theft, contrary to the subject sergeant's worksheets. The assistant advocate contacted the store security guard, who confirmed having told the subject sergeant that he saw the SSA place merchandise into a bag, but having also informed her that this step had not been recorded on video.

The assistant advocate confronted the subject sergeant about her inaccurate reports. She conceded that, contrary to what she had written, she had not seen any store surveillance video depicting the SSA placing items in a bag. Rather than admit that she had copied the captain's inaccurate information into her own report without checking it herself, or otherwise acknowledge making some type of mistake, she asserted that somebody else must have inserted the incorrect information in her worksheets. She then insinuated that

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<sup>237</sup> The disciplinary case paperwork did not indicate whether the captain was investigated or charged in connection with his erroneous paperwork.

her lieutenant or her captain must be to blame by pointing out that they were the only other individuals who could have accessed and reviewed her worksheets. She repeated this suggestion during her first official Department interview. Shortly thereafter, she sent the assistant advocate two worksheet printouts that did not contain the factual errors, which supposedly documented her collection of evidence in this case. These worksheets purportedly proved that the source of the erroneous information was someone other than herself.

IAB's investigation revealed that the subject sergeant had generated the purportedly error-free worksheets after speaking to the assistant advocate. IAB conducted a forensic analysis of the subject sergeant's computer and interviewed her lieutenant; both steps confirmed that none of the questionable documents had been altered or edited by anyone other than her. Confronted with these new findings in a second official Department interview, the subject sergeant changed her story, admitting that the mistakes in the worksheets were hers and that nobody had altered her original work.

The subject sergeant received two charges: 1) failing to perform her assigned duties by wrongfully incorporating inaccurate or misleading information in Department investigative files and worksheets and 2) engaging in Conduct Prejudicial by wrongfully impeding an official Department investigation by making inaccurate or misleading statements during an interview. (It is unclear why the subject sergeant did not also receive a charge for presenting the error-free worksheets she created later to the assistant advocate and representing them as the original worksheets she had prepared.) She contested those charges and opted for a Department trial.

During her Department trial, the subject sergeant reversed herself yet again, reverting back to her original denial and insisting that she had not written the lines in the worksheets that inaccurately described the video as depicting the entire theft. Attempting to explain her admissions in her second official Department interview, she claimed that the questions confused her and that she had not meant to admit fault for the mistakes. She acknowledged redrafting the two error-free worksheet copies, although her reasons for doing so were not clear. The Trial Commissioner noted in his analysis of the trial testimony that the subject sergeant's "sudden inability to comprehend simple questions on [cross examination,] like the meaning of worksheets," detracted from her credibility.

The Trial Commissioner found the subject sergeant guilty of both charges. Noting that "impeding an investigation" cases routinely resulted in penalties of dismissal probation or outright termination, the Trial Commissioner instead recommended a penalty, later approved by the Police Commissioner, of the forfeiture of 25 vacation days. The Trial Commissioner explained that the subject sergeant had "lost her investigatory position over the incident and [had] returned to a patrol assignment," which he viewed as a significant sanction.

While the transfer to a patrol unit may have been an undesirable outcome for the subject sergeant, the penalty imposed was not sufficient to address her misconduct. Granted, the initial inaccuracies in her worksheets may have resulted from carelessness and inattention rather than a malicious intent. However, her subsequent attempt to avoid responsibility for those errors by falsely implicating her immediate supervisors was impermissible conduct for a member of the service whose job assignment was to investigate the misconduct of other officers. Even in her trial testimony, after substantial evidence of her misconduct had been presented, she refused to take responsibility for her shoddy work and wrongful deflection of blame, continuing to insist that the errors in her

worksheets were the fault of somebody else. In the Commission's view, this sergeant demonstrated that she has no credibility as a law enforcement officer, regardless of the nature of her assignment, and she should have been terminated.

## **6. Department Records**

The Commission reviewed 69 cases in which a subject officer's most serious misconduct involved false statements that were entered into a Department record. One of these subject officers were separated from the Department. Among the 68 cases in which the subject officers remained with the Department, the Commission disagreed with the outcome in 5 instances. One of these cases is described below. In total, the Commission disagreed with the Department in 7.2% of the cases in this category.

**Illustrative Case:  
A detective made no attempt to contact a  
complainant in an assault case, but falsely reported  
speaking to him, and closed the case**

This case involved a detective with over 17 years of experience and no disciplinary history. In July 2012, a civilian complainant reported to the Department that he had been assaulted. Due to a procedural glitch, two separate incident reports were generated, and assigned separately to the subject detective and another detective ("Detective D"). The subject detective received the less detailed of the two complaint reports, which contained only the complainant's name and information that he had been assaulted by unidentified perpetrators.

Detective D promptly contacted the complainant, who recalled the incident and described the assault. One day after Detective D's factually accurate complaint follow-up report was entered into the Department's records, the subject detective generated and entered her own complaint follow-up report, in which she indicated that she had interviewed the complainant and he had said he could not recall the incident. The subject

detective recommended that the case be closed due to an uncooperative victim. The complainant later informed investigators that only Detective D had contacted him, and that he had not spoken to any other detectives about the incident. Moreover, NYPD internal telephone records confirmed that only Detective D had called the victim. In her official Department interview, the subject detective maintained that she had contacted the complainant by telephone and that the report she prepared was accurate, despite all the records and evidence indicating otherwise.

For reasons not explained in DAO's paperwork, the subject detective was not charged with making false statements in her official Department interview. Instead, she was charged with one count of making false entries in Department records to address her false claim to have contacted the complainant in her complaint follow-up report, and one count of engaging in Conduct Prejudicial for failing to conduct an investigation into the assault complaint. The subject detective pled guilty to both charges and forfeited 10 vacation days.

The Commission found this penalty insufficient. Had only one complaint report been generated and had the subject detective's false entries gone undetected, an assault involving a cooperative victim likely would have gone uninvestigated and unprosecuted. Although she was not charged with making false statements in her official Department interview, the subject detective's refusal to acknowledge her actions long past the point when her misdeeds were exposed is also troubling. For these reasons, the Commission believed in addition to the imposed penalty, dismissal probation, at a minimum, was warranted.



The Commission also believed it was appropriate to bring an additional specification addressing the subject detective's readily provable false statements to investigators covering her continued insistence that she had spoken with the complainant and that her follow-up report was accurate. While there might have been a belief that the subject detective's falsehoods did not warrant termination, she should still have been charged appropriately. If she pled or was found guilty of making a false statement, the Police Commissioner could have examined the circumstances surrounding the misconduct as well as other information about her service to the Department to determine whether there were mitigating factors, constituting exceptional circumstances sufficient to justify a penalty short of termination. That would have been the proper approach under Patrol Guide § 203-08.

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***False Statement T/L***

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The Commission agreed with all the penalties assessed in the False Statement T/L cases.

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***Firearms***

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The Patrol Guide recognizes that “[t]he power to carry and use firearms in the course of public service is an awesome responsibility.”<sup>238</sup> It further admonishes that firearms should only be used as a last resort and only for the protection of life. The Patrol Guide section addressing the use of firearms provides guidelines for the on-duty use of these weapons. However, members of the service regularly have their firearms with them while they are off-duty. In fact, another provision of the Patrol Guide requires that

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<sup>238</sup> Patrol Guide § 203-12 (Deadly Physical Force).

members of the service be armed at all times while in New York City, except in limited, specific circumstances.<sup>239</sup> Unfortunately, there are some officers who misuse their firearms, either by unjustifiably displaying them, usually in an effort to intimidate or menace another person, or in more rare circumstances, by actually discharging them. Also included in the firearms category is the failure of a member of the service to safeguard either his or her service or off-duty firearm. The failure to safeguard a firearm constitutes serious misconduct because the weapon could be found by children, taken by people with no firearms training, or stolen by people with criminal intentions.

The Commission disagreed with the penalties assessed against four members of the service involving firearm misconduct. Two involved the wrongful display of a firearm, one involved an unjustified discharge and the subject officer's failure to safeguard his firearm, and the final case involved the subject officer's failure to safeguard his firearm.<sup>240</sup> Two illustrative cases are discussed below.

### **1. Unjustified Display of Firearm**

The Commission has repeatedly recommended that, due to the possible serious consequences involving the misuse of firearms, those officers who unjustifiably display their firearm while off-duty be placed on a period of dismissal probation.<sup>241</sup> In one of the firearm cases with which the Commission disagreed with the penalty, the subject officer displayed his firearm at passing cars after another vehicle had crashed into a fence outside

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<sup>239</sup> Patrol Guide §§ 204-08(1) and 204-08(2) (Firearms-General Regulations).

<sup>240</sup> The Commission disagreed with penalties in three other cases, two in the Domestic Violence category and one in the Off-Duty Misconduct category, which also included charges addressing the subject officers' failure to safeguard their firearms.

<sup>241</sup> See *Tenth Annual Report* at pp. 26-27; *Eleventh Annual Report* at pp. 26 and 29; *Twelfth Annual Report* at pp. 31, 33-34; *Thirteenth Annual Report* at pp. 13-14; *Fourteenth Annual Report* at pp. 23 and 25; *Fifteenth Annual Report* at pp. 46 and 51; *Sixteenth Annual Report* at p. 80; and *Seventeenth Annual Report* at pp. 140-143.

of his home. That officer forfeited 15 vacation days. The Commission believed a period of dismissal probation was warranted. In the remaining case in this category, described below, the subject officer was placed on dismissal probation, but his actions were so serious that the Commission believed he should be terminated.

**Illustrative Case:  
After taking a car service home, a police officer  
displayed his firearm to the driver when the driver  
attempted to collect the promised fare**

The subject was a police officer with only three years of experience at the time of the misconduct. He had no disciplinary history.

In April 2013, the subject officer attended a concert in Brooklyn. Following the concert, at approximately 2:45 a.m., he agreed to pay the driver for a car service company \$90 to drive him back to his home on Long Island. The subject officer did not have cash on him but told the driver he would retrieve money for the fare from an ATM along the way, or from inside his house. On that basis, the driver agreed to drive the subject officer from Brooklyn to Long Island.<sup>242</sup>

Prior to reaching the subject officer's home, the driver stopped at a bank. However, the subject officer was unable to retrieve any money from the bank's ATMs and claimed they were not working. The driver then took the subject officer to his home on Long Island, at which time the subject officer exited the vehicle, entered his home, and failed to return to pay his fare.

After approximately eight minutes had passed, the driver left his vehicle and knocked on the subject officer's door. The door, which was slightly ajar, opened further. The driver stood in the doorway, waiting for the subject officer. Within moments, the

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<sup>242</sup> During the hour-long drive, the subject officer never identified himself as being a police officer.

subject officer appeared holding a firearm at his side and said, “Why are you touching my [explicative] door?” The driver attempted to explain that he was just trying to collect the fare. The subject officer ordered the driver to leave while still holding his firearm in his hand. The driver immediately turned around, returned to his car, and went to the local police department for assistance.<sup>243</sup>

The subject officer was charged with two counts of engaging in Conduct Prejudicial for: 1) failing to pay a \$90 taxi fare and 2) displaying a firearm and telling the cab driver to get out of his residence. He was also charged with and pled guilty to failing to notify the Department of his involvement in an off-duty incident/unusual police occurrence and failing to notify the Department that he was residing at a specific address.

At trial, the subject officer testified the reason that he retrieved his firearm was because he thought the driver was an intruder. The Trial Commissioner found the subject officer’s testimony to be incredible, illogical, and lacking common sense, noting that the subject officer had just spent over an hour in the car with the driver and, therefore, should have recognized him. The Trial Commissioner also questioned why the subject officer did not identify himself as a police officer and try to apprehend the driver or call 9-1-1 if he really believed that the driver was an intruder.

The Trial Commissioner found the subject officer guilty, found this was an intentional act to avoid payment, and recommended that the subject officer’s employment be terminated. The Police Commissioner disapproved of the penalty without providing any specific explanation.<sup>244</sup> He placed the subject officer on dismissal probation, suspended the subject officer for 30 days, and deducted 45 of the subject officer’s vacation days.

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<sup>243</sup> The complainant did not want to press criminal charges, but stated that he merely wanted his fare.

<sup>244</sup> The Police Commissioner only stated that based on the totality of the circumstances, he found reason to impose a less severe penalty than dismissal.

The Commission believed, in the absence of any articulation by the Police Commissioner of mitigating circumstances, that the subject officer should have been terminated. His misconduct was criminal. At the very least, the subject officer evinced a complete lack of maturity, integrity, and trustworthiness, qualities necessary for a law enforcement officer. By involving a firearm in the incident, he created an additional serious (and completely unnecessary) risk. Furthermore, the Commission recommends that in situations where the Trial Commissioner has recommended termination, but the Police Commissioner believes that a subject officer should remain employed with the Department, the Police Commissioner should set forth his specific reasons for making this allowance. When these decisions are explained, they offer guidance to members of the service regarding what behavior will result in termination, and therefore, can have a deterrent effect. Without any explanation, the Police Commissioner may create the impression that the conduct is not serious.

## **2. Unjustified Discharge of Firearm**

Typically, the misconduct involved in an unjustified discharge of a firearm is the subject officer's failure to make a timely report of the discharge. The Commission does not usually recommend termination for the discharge alone because it is often accidental. In the case described below, however, the Commission believed that the subject officer's actions were so reckless and had the potential to cause such harm that he should have been monitored to see if he was fit to remain a member of the Department.

**Illustrative Case:  
On Halloween night, a detective fell asleep with his firearm  
at his side and then discharged that firearm seven times  
when he was awakened by glass breaking**

The subject was a detective with 23 years of experience at the time of this shooting. He had the following remote disciplinary history. In 1992, he had received a command discipline for the loss of his Department identification and shield. In 1999, he had forfeited 20 vacation days for failing to maintain his New York State driver's license, failing to notify his commanding officer that his driver's license was suspended, operating a motor vehicle while uninsured, and operating a motor vehicle with improper license plates.

In connection with the instant case, the subject detective gave the following sequence of events to explain why he discharged his firearm. On Halloween night 2013, his daughter informed him that there was a stranger standing in their driveway. The subject detective retrieved his service firearm from his locked safe and confronted this man. The man stated he was looking for someone named "Brandon." When the subject detective stated that he knew of no one named Brandon, the man confirmed the address and then left. After taking his nine-year-old son to the bedroom, the subject detective sat down on his couch and placed his firearm on the couch armrest. While watching television, the subject officer began to fall asleep. He stated that, shortly after midnight, he was awakened by popping sounds that he believed were gunshots. There was also the sound of glass breaking, and he was hit by glass fragments. This startled him awake. He looked through the swaying blinds of his living room window and saw a male silhouette. Believing that he was being fired upon, he picked up his firearm and discharged seven rounds through the window. After hearing a car motor starting, he ran outside and saw a car speeding away. Upon investigation, he found two chunks of asphalt in his house and realized that he had not been fired upon, but that the asphalt must have broken the window. The subject

detective told responding officers and members of the Department that he fired at the car, but clarified in his official Department interview that he shot at the silhouette.

The Department investigators deemed parts of the subject detective's story implausible. The investigators did not believe that the subject detective would have been able to observe a silhouette through swaying blinds. The investigators also found it unbelievable that the piece of asphalt crashed through the window and landed in the kitchen. The investigators also discovered the remnants of an egg in the subject detective's living room window. Further complicating this case was that the assistant advocate found the Department investigation was insufficient to determine whether the subject detective's version was actually incredible.

The subject detective pled guilty to: 1) wrongfully failing to safeguard his service pistol by placing the firearm unsecured on the arm of his sofa while his nine-year-old son and wife were present in the residence and 2) engaging in Conduct Prejudicial in that he wrongfully discharged seven rounds from his service firearm through the front window of his residence without a clear understanding of the identity of his target or the necessity for the use of deadly force. He forfeited 30 vacation days.

Putting aside the likelihood that the subject detective provided false statements to investigators about what actually occurred, the Commission believed that a 30-day penalty was not sufficient. At the time of this incident, the use of deadly physical force was governed by Patrol Guide § 203-11, which stated that, "deadly physical force will be used ONLY as a last resort and consistent with Department policy and law." Patrol Guide § 203-12 noted that firearms were to be used as a "last resort, and then only to protect human life." It also noted that "deadly force is never justified in the defense of property." Included in the prohibition against using deadly physical force were provisions that it should not be

used unless the member of the service had probable cause to believe that he must protect himself or another person from imminent death or serious physical injury and that a firearm should not be discharged when doing so would “unnecessarily endanger innocent persons.”<sup>245</sup> The subject detective was experienced and his training should have led him to proceed in a more cautious manner despite being startled. Instead, he immediately reached for his firearm and discharged seven shots out into the dark on Halloween night without determining what actually had caused his window to break. This created a dangerous situation that could have resulted in tragic consequences. If the subject detective was that anxious and nervous, then he may not have the temperament necessary to remain a police officer, and he should have been, at minimum, placed on dismissal probation.

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***Insubordination***

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The Commission agreed with all of the penalties assessed against members of the service with insubordination cases.

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***Narcotics***

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The Commission agreed with all of the penalties assessed against members of the service with narcotics cases.

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***Other On-Duty Misconduct***

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The Commission disagreed with the penalties assessed against 13 members of the service in the other on-duty misconduct category. Three of the cases concerned supervisors’ inappropriate interactions with their subordinates. Six involved the subject

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<sup>245</sup> The current governing provision of the Patrol Guide is § 221-01. This section dictates that deadly physical force should only be used to protect members of the service and/or members of the public from imminent serious physical injury.



officers' inappropriate interactions with civilians they encountered in the course of the performance of their duties. Two cases involved sergeants who interfered with law enforcement actions in order to wrongfully protect civilian acquaintances. The remaining two cases could not be readily categorized.

### **1. Inappropriate conduct at the workplace**

Inappropriate conduct consists of unwelcome behavior that has the purpose or effect of unreasonably interfering with an individual's work or creating an intimidating, hostile, or offensive work environment. It may occur regardless of the intention of the person engaging in the conduct, and can include sexual harassment,<sup>246</sup> or racially or ethnically disparaging remarks.<sup>247</sup>

The aggravating factor in all three cases in this sub-category was that the offenders were higher-ranking members of the service who harassed their subordinates. This not only displayed an inappropriate example for lower-ranking officers, but also presumably made it more difficult for the victims to report the acts for fear of retaliation. The Commission recommends that in cases such as these, the Department either place the subject officers on dismissal probation or terminate their employment.<sup>248</sup> One of these cases is described on the following page.

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<sup>246</sup> The Department's sexual harassment policy states that "conduct which can, in certain circumstances, be considered sexual harassment includes, but is not limited to, sexually suggestive remarks, pictures, gesturing, verbal harassment or abuse of a sexual nature, subtle or direct propositions for sexual favors, and any unnecessary or unwanted touching, patting, or pinching." Patrol Guide § 205-36.

<sup>247</sup> Department policy prohibits ridicule and disparaging remarks against another based on their national origin, race, color, alienage, citizenship status, religion, creed, gender, gender identity, disability, age, military status, unemployment status, consumer credit history, familial status, caregiver status, prior record of arrest or conviction, marital status, partnership status, genetic information, sexual orientation, or status as a victim of domestic violence, stalking, or sexual offense. Patrol Guide § 205-36.

<sup>248</sup> The Commission has recommended termination in the past for similar misconduct. See *Fifteenth Annual Report* at pp. 34-36.

**Illustrative Case:**  
**A sergeant harassed a subordinate officer on multiple occasions by subjecting her to unwanted physical contact and making disparaging remarks about her ethnicity**

The subject was a sergeant who had been employed with the Department for 18 years at the time of the misconduct. She had no disciplinary history, although she had been placed on Level II discipline monitoring due to the conduct that resulted in the charges against her.

The complainant was a police officer who worked under the direct supervision of the subject sergeant. The harassment started in April 2012, when the subject sergeant, while in a van with other officers, grabbed the complainant's leg and said "nice calves." It continued when the subject sergeant entered a female locker room, sat down next to the complainant, and stroked her hair. Four months after the first incident, in August 2012, the subject sergeant directed the complainant into a room and then prevented her from leaving while making a request to work overtime together. The following day, during roll-call, the subject sergeant slapped the complainant's buttocks and walked away. Later the same day, in front of the complainant and another police officer, the subject sergeant referred to Dominican people as "Dumb-inicans." The complainant was Dominican.

Following the complainant's allegations, but prior to the administrative trial, the subject sergeant was transferred from her command. She was also ordered by the Office of Equal Employment Opportunity (OEEO) to notify that office before she re-entered the complainant's command for any reason. In September 2012, the subject sergeant disregarded that order when she went inside the command to make copies of documents without notifying OEEO.

The subject sergeant received one charge for failing to obey the lawful order of a supervising officer by entering the complainant's command without the requisite notification. She also received five charges for engaging in Conduct Prejudicial for: 1) making disparaging remarks to the complainant regarding her ethnicity; 2) touching the complainant's buttocks with her open hand; 3) touching the complainant's leg area and stating, in sum and substance, "nice calves;" 4) touching or stroking the complainant's hair without her permission; and 5) attempting to prevent the complainant from exiting a room at the command.

During the Department trial, the complainant testified that the various incidents made her feel very uncomfortable and awkward, and that she never gave permission to the subject sergeant to touch her. The subject sergeant also testified and explained her actions as "joking around." She apologized "for putting the complainant through discomfort and pain." The subject sergeant was found guilty of all the charges and forfeited 25 vacation days.

The subject sergeant's conduct in this case was egregious. The harassment occurred on multiple occasions over a period of time and was aggravated by the fact that the subject sergeant was the complainant's supervisor. The subject sergeant's violation of the OEE0 order, on top of the underlying harassment, reflected her inability or unwillingness to conform her behavior to the Department's requirements. The Commission believed she should have been terminated.

## **2. Inappropriate interactions with victims, prisoners, and witnesses**

The Department treats as Conduct Prejudicial inappropriate intimate contact between members of the service and the witnesses, victims, and defendants with whom they come in contact as a result of their job assignments. Due to the authoritative power inherent in a law enforcement position, these interactions can be implicitly, if not explicitly, coercive to, for

example, a complainant seeking the resolution of allegations or to a defendant seeking a favorable conclusion to a criminal case. If the complainant alleges that this misconduct is forcible or coercive, the subject officer may also face criminal charges, such as rape or sexual assault.

These types of personal interactions may also affect the underlying criminal case, as they can impact on the officer's credibility and motive for making an arrest. As a result, the District Attorney's Office may refuse to prosecute or the complainant may choose to pursue civil litigation against the City of New York, the NYPD, and the subject officer. The Commission disagreed with the penalty in six cases involving members of the service who engaged in this type of misconduct. Three cases, one of which is described below, involved inappropriate contact with arrestees. One case involved a sergeant's contact with the wife of an arrestee. One case involved the victim in a domestic violence incident, and the final case involved a participant in a domestic dispute where no arrest was made.

**Illustrative Case:  
A detective exchanged contact information with two  
underage arrestees and tried to entice one of them to meet  
him in a hotel room with the promise of alcohol**

The subject was a detective who had been employed by the Department for approximately 10 years at the time of the incident. While he had no prior disciplinary history, approximately two years after the incident, while these charges against him were pending, he received a command discipline for failing to make entries in his memo book.

In March 2011, the subject detective was assigned the arrest of two females, both under the age of 21 (the complainants) after marijuana and a firearm were recovered from their temporary residence. According to the complainants, upon meeting the subject detective, he introduced himself as their arresting officer, and over the course of the night, escorted the two complainants to the bathroom from their holding cell. One complainant

stated that during one of these trips, the subject detective touched her buttocks and stated, “that feels good.” He also gave her his cellular telephone number, invited her to lunch, and kept on insisting they should get together. He further informed both females that things would turn out “okay” and that he would speak with the prosecutor on their behalf.

In the morning, the subject detective and another detective transported the two complainants to another holding location. On the way, they stopped for breakfast and allegedly discussed partying naked and getting into bars, despite the age of the two complainants. After the arraignment, the subject detective and his partner drove to the complainants’ temporary residence and exchanged telephone numbers with the complainants. The subject detective proceeded to contact the females via telephone.

Later that month, the subject detective planned to meet at night with one of the complainants at a hotel and told her that he had beer and had been “drinking all night.”<sup>249</sup> When questioned during his official Department interview, the subject detective denied flirting with the two complainants but admitted saying that one of the arrestees had nice buttocks. However, he “could not recall” touching her buttocks.

The subject detective also acknowledged sending text messages to one complainant and inviting her to have drinks with him, despite his knowledge that she was not yet 21 years old. He also admitted that he had a few telephone conversations with her pertaining to her court case. He explained that he provided his personal cellular number to the complainant for the purpose of signing her up as a confidential informant. He gave the same explanation for his attempt to meet her at a hotel room. This was not, as conceded by the subject detective, standard practice when cultivating a confidential informant.

The subject detective received two charges for engaging in Conduct Prejudicial for

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<sup>249</sup> Although the reviewed paperwork was not clear, this exchange appeared to occur via text messages.

his inappropriate conversations with two minor females whom he had arrested in that: 1) he discussed getting the females entry into licensed premises and getting the females out of tickets and 2) he discussed their pending criminal cases with the females and attempted to provide them with legal advice. He also faced a third charge of engaging in Conduct Prejudicial for attempting to meet with at least one of the minor females, while her criminal case was pending, for non-Department purposes. The subject detective pled guilty, was placed on dismissal probation, and forfeited 30 vacation days. He was also transferred to another command.

In the Commission's view, the subject detective should have been terminated. He planned to meet at a hotel and consume alcohol with an underage girl whose arrest he had processed. Although he was not charged with making a false statement during his official Department interview, he provided an incredible explanation for his attempt to meet with this girl. His statement that he was seeking to sign her up as a confidential informant did not make sense given the detailed procedures set forth in the Patrol Guide for registering confidential informants, which he concededly did not follow.<sup>250</sup>

Although the Department does not condone inappropriate interactions between officers and the parties in the cases they investigate, there are no uniform guidelines in this area. The Commission continues to recommend that the Department set forth a list of explicit rules to put members of the service on notice that this behavior is not acceptable.<sup>251</sup> A strict prohibition against engaging in social and intimate conduct with victims, defendants, or witnesses in cases to which members of the service are assigned, at least during the

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<sup>250</sup> Patrol Guide § 212-68 details the procedures for registering confidential informants with the Department, including notifying a supervisor immediately after developing a relationship with an informant and interviewing the informant in conjunction with a supervisor.

<sup>251</sup> See *Sixteenth Annual Report* at p. 78.

pendency of the investigation and criminal prosecution, would protect these victims, witnesses, and defendants from feeling powerless to refuse this contact, and could significantly limit the liability of the City, the NYPD, and the subject officers themselves.

### **3. Attempting to Impede Law Enforcement Effort**

Two cases in this section involved sergeants who tried to convince other members of the service to refrain from taking lawful police action against their civilian acquaintances. In both cases, it appeared that the subject sergeants also relied upon other members of the service to refrain from reporting their misconduct and to go along with their efforts to disrupt a proper investigation or enforcement. It was only because police officers refused to do so that this misconduct was discovered and substantiated. One of these cases is described below.

#### **Illustrative Case: A sergeant attempted to influence a police officer who issued a summons to his friend**

The subject was a sergeant who had been appointed approximately 15 years prior to the incident. He had no disciplinary history, but had been transferred for cause and had also received a command discipline for losing his Department identification after this incident occurred.<sup>252</sup>

In April 2012, the subject sergeant introduced himself to a police officer as a sergeant who worked at “Police Headquarters.” The subject sergeant offered to take the police officer to lunch to discuss a summons the police officer had issued to a friend of the subject sergeant. The police officer refused and told the subject sergeant he would not jeopardize his career for a summons.<sup>253</sup>

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<sup>252</sup> While this Report was being drafted, this sergeant was promoted to a supervisor of a detective squad.

<sup>253</sup> Later, the police officer reported to IAB that he believed the subject sergeant wanted him to either lose, or otherwise take care of the summons, although the subject sergeant did not explicitly ask him to do that.

On the summons court date, the subject sergeant called the police officer's stationhouse several times. The police officer ignored the calls. Later, while at the courthouse, the police officer encountered the subject sergeant, who reminded him about the summons. The subject sergeant also mentioned that he could help the police officer achieve a transfer to the Highway Unit, which was the police officer's preferred assignment, and again invited the police officer to lunch. After the police officer declined the invitation and stated that he planned to testify about the summons, the subject sergeant left to speak with his friend's attorney. The attorney then approached the police officer and stated, "This is the sergeant's case. He told me you were going to take care of it." The police officer adjourned the hearing and then contacted IAB to report the subject sergeant's misconduct.

When IAB officially interviewed the subject sergeant about these incidents, he provided a series of excuses for his attempts to speak with the police officer, including his supposedly altruistic attempts to aid the police officer's transfer to a more desirable assignment. The subject sergeant received charges for engaging in Conduct Prejudicial for: 1) improperly speaking to a police officer regarding a summons that was issued to a civilian acquaintance of the subject sergeant; 2) telephoning the police officer's precinct multiple times to speak with him in advance of the police officer's appearance at TVB in relation to the summons; 3) appearing at TVB and improperly seeking to speak with the police officer about the summons prior to his appearance; 4) offering to take the police officer out to a meal at a restaurant in order to discuss the police officer's career along with the summons; and 5) providing an incomplete account, during an official Department interview, of his attempts to speak with the police officer regarding the summons. The subject sergeant pled guilty to all five charges and forfeited 30 vacation days as a penalty.



DAO did not recommend the standard penalty for ticket-fixing here due to the lack of an explicit request by the subject sergeant for help getting the ticket dismissed.<sup>254</sup> The Commission believed that, by a preponderance of the evidence,<sup>255</sup> the facts demonstrated that the subject sergeant attempted to engage in ticket-fixing. Furthermore, these actions took place after it was publicly exposed that there was a widespread criminal investigation into ticket-fixing by other members of the service. It was only because of the police officer's integrity that the Department was alerted to the subject sergeant's misconduct. The subject sergeant should have been placed on dismissal probation in addition to forfeiting vacation days.

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### ***Other Off-Duty Misconduct***

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The Commission disagreed with 9 penalties assessed in 10 other off-duty misconduct cases.<sup>256</sup> Six of the ten cases involved assaults or threats of assaults against civilians with whom there was no pre-existing relationship. Four of these occurred in the context of traffic incidents. One of the remaining cases involved the subject officer's relationship with a drug user and his failure to take police action after discovering that she was in possession of controlled substances. Another case involved a captain who left the scene of an off-duty traffic accident and deflected responsibility for his misconduct during his official Department interview. The final two cases involved the subject officer's involvement in intimate relationships with partners who had been engaged in criminal activities. One of these two cases is described on the following page.

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<sup>254</sup> *See supra* at p. 54, fn. 120.

<sup>255</sup> Preponderance of the evidence is the standard of proof that applies in the Department's administrative disciplinary proceedings. To meet this standard, the Department has to present sufficient evidence to demonstrate that it is more likely than not that the misconduct occurred.

<sup>256</sup> One member of the service had two cases that were resolved with one penalty. Another member of the service also had a second domestic case that was covered by one penalty. These cases are described in the Domestic Violence section of this Report. *See supra* at pp. 75-77.

**Illustrative Case:  
A police officer dated an individual although aware of his  
arrest, and accompanied him while he photographed a  
Department vehicle's license plate**

This case involved a five-year member of the service who had a prior disciplinary case. The subject officer had pled guilty to charges filed in 2009 for failing an integrity test by issuing a false summons to an undercover investigator and for falsely stating that the undercover investigator had refused to sign the summons. The subject officer had been placed on dismissal probation and forfeited 30 vacation days. In its *Thirteenth Annual Report*, the Commission disagreed with the penalty in that case and stated that there were no exceptional circumstances cited to justify a penalty short of termination.<sup>257</sup> In 2013, after the misconduct in the instant case, and while these charges were pending, the subject officer received charges and specifications for being unprepared for a TVB case which caused the dismissal of one summons. These charges were ultimately resolved with a command discipline and the forfeiture of three vacation days. At the time of the adjudication of this matter, the subject officer also had a pending investigation regarding her non-appearance at TVB despite receiving proper notification. This non-appearance resulted in the dismissal of one summons and the adjournment of another.

In the case at issue, from approximately June through September 2011, the subject officer dated a male with a criminal record. The Department learned about this relationship in June 2011 when the NYPD Auto Crime Division executed a search warrant on the boyfriend's residence and discovered that the subject officer kept her motorcycle inside his garage. The subject officer's boyfriend was arrested for charges relating to stolen motorcycle parts.<sup>258</sup>

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<sup>257</sup> *Thirteenth Annual Report* at p. 20.

<sup>258</sup> The subject officer's boyfriend also had a past arrest for the aggravated unlicensed operation of a motor vehicle.

In July 2011, about a month after this arrest, the subject officer and her boyfriend went to the subject officer's precinct. While she was standing next to him, he photographed the license plate of an unmarked NYPD car that was assigned to the Auto Crime Division. When questioned about this incident during her official Department interview, the subject officer explained that her boyfriend wanted to take pictures of the car because he felt he had been harassed by a member of the service. The subject officer admitted that she never reported this allegation of police harassment to anyone. Furthermore, the subject officer admitted she knew about her boyfriend's June 2011 arrest but continued their relationship despite that knowledge.

The subject officer was charged with: 1) associating with a person believed to engage in, likely to engage in, or to have engaged in criminal activities and 2) failing to immediately report an allegation of corruption or serious misconduct involving a member of the service to IAB. The subject officer pled guilty and forfeited 30 vacation days as a penalty for this case.<sup>259</sup>

In addition to the subject officer's misconduct, which might have endangered the officers who arrested her boyfriend, she was rated a 5 out of 10 by her commanding officer. At the time of the misconduct she had been with the Department for five years, and in that short period had already been the subject of three disciplinary matters and been placed on dismissal probation. The Commission believed this subject officer should have been terminated.

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<sup>259</sup> DAO and the Trial Commissioner originally recommended that the penalty be the forfeiture of 25 vacation days. The First Deputy Commissioner recommended that the penalty be increased because he did not believe the original recommendation adequately addressed both the seriousness of the subject officer's misconduct and her disciplinary history. This recommendation was ultimately accepted by the Police Commissioner.

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## ***Profit-Motivated Misconduct***

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The Commission disagreed with the penalties assessed against two members of the service in profit-motivated misconduct cases. One case involved a detective who failed an integrity test when he inflated the purchase price of narcotics he bought from a supposed drug dealer during what he understood to be an undercover operation. Presumably, he inflated the price so he could pocket the difference between the amount he said he had paid for the drugs and the amount he had actually paid. Faulting the integrity test operation, DAO negotiated a settlement requiring the forfeiture of 25 vacation days. The Commission believed the subject detective should have been terminated. The second case is described next.

**Illustrative Case:  
A captain accepted gifts, including meals and outings from a  
company doing business with the Department**

The subject officer was a captain with almost 20 years of service at the time the misconduct began. He had no disciplinary history.

The subject captain and two chiefs accepted gifts from a company engaged in business with the Department.<sup>260</sup> These gifts included meals, alcohol, golf outings, tickets to sporting events, and gift baskets. The subject captain admitted to attending the meals with company representatives and stated that he contributed a monetary payment for a portion of each meal. The misconduct continued over the course of four years.

The subject captain was charged with wrongfully accepting gifts or other compensation for any service performed as a result of, or in conjunction with, his duty as a public servant. He pled guilty and forfeited 10 vacation days. Additionally, an enforcement

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<sup>260</sup> The two chiefs retired prior to the completion of the investigation. Charges were filed against them. The subject captain had submitted an application for retirement, but withdrew it during the pendency of the disciplinary case.

action was commenced by the Conflict of Interests Board, which concluded with a negotiated settlement that required the subject captain to pay a fine of \$7500.

The Commission believed this penalty was insufficient. This type of behavior leaves the impression that vendors who provide gifts to the Department's decision makers will be awarded Department contracts. The forfeiture of 10 vacation days is inadequate to deter the acceptance of valuable gifts. Furthermore, the acceptance of these gifts by high-ranking members of the service sends the message to their subordinates that receiving gifts from vendors, and possibly from members of the public, is an acceptable practice. This subject captain, at minimum, should have been placed on dismissal probation, if not terminated.

## **Conclusion**

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During the period covered by this Report, the Commission analyzed 1395 disciplinary cases involving 1225 uniformed members of the service. These cases were prosecuted by either DAO or APU. The case category that had the largest percentage of disciplinary cases for the reporting period was the FADO category, with 344 (25%). Approximately 20% of the disciplinary cases involved subject officers failing to perform their job responsibilities in an adequate manner. The third highest category of disciplinary cases, approximately 10%, involved officers making false statements in varying contexts, although another 2% of the cases involved officers making false statements regarding time and leave issues. Only 1.6% of the disciplinary cases involved allegations that the subject officer committed misconduct for financial gain. More than 60% of the members of the service charged with misconduct held the rank of police officer while only 1.6% were a captain or higher-ranking officer.

In reviewing DAO cases, the Commission found that, on average, 475 days elapsed from the date charges were served until final adjudication. When measuring the cases from the date of misconduct to the date of the final adjudication, the average number of days elapsed was 731, more than two years. The Commission is concerned with the amount of time it takes to investigate and adjudicate the allegations of corruption and misconduct.

Seventy-eight percent of the cases resulted in some finding of liability on the part of the charged officer. Approximately 13% of the officers charged with misconduct received no form of discipline as their charges were either dismissed prior to trial or they were found not guilty after a trial. Of the 960 officers who received discipline, 5.5% were forced to separate from the Department, either through termination or retirement. Of the 68 members of the service who were forced to separate, 47% were either charged with some form of making a false statement or for using or possessing an illegal substance.

Almost 21% of the officers who received discipline were placed on dismissal probation in addition to the forfeiture of vacation days or a suspension. This enabled the Department summarily to terminate those members of the service if it was discovered that they engaged in further misconduct during the probationary period. The largest number of cases, 23%, that were resolved with the imposition of dismissal probation involved the officers driving while intoxicated or being unfit for duty. Seventeen percent of the subject officers involved some form of duty failure, 41% of these duty failures were due to officers engaging in ticket-fixing. In both the DWI and ticket-fixing cases, dismissal probation is part of the standard penalty imposed. Almost 17% of those officers placed on dismissal probation had made some form of false statement, more than half of these involved false information provided during an official Department interview.

The Commission evaluates the penalties that were imposed in these cases to determine if they are sufficiently severe to deter future misconduct by the specific subject officer as well as by other members of the service. The Commission agreed with 90% of the penalties imposed during the review period. The categories in which the Commission had the largest percentage of disagreements over penalties were domestic violence, (32%), false statement, (27%), and the other on-duty misconduct (21%) category. Most of the Commission's disagreements with the penalties imposed in domestic violence cases reflected its 2014 recommendation that members of the service who engage in physical altercations in a domestic context be placed on dismissal probation. In the false statement cases, the Commission had the largest percentage of disagreements with penalties for making a false statement to the Department or CCRB personnel.

The Commission agreed with more than 95% of the penalties imposed in the cases in which the most serious charges involved administrative failures, DWI or unfitness for duty, FADO,<sup>261</sup> insubordination, narcotics, and profit-motivated misconduct. In disciplinary cases with which the Commission disagreed with the imposed penalty, it believed that 67 officers should have been placed on dismissal probation and another 53 officers should have been separated from the Department. More than half of the officers whom the Commission believed should have been terminated were found guilty of making some form of false statement.

The Commission's recommendations regarding the adjudication of disciplinary cases and the penalties imposed are set forth at the end of this Report.<sup>262</sup>

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<sup>261</sup> The high level of agreement in the FADO category was not unexpected as the Commission generally deferred to APU's recommendations regarding appropriate penalties.

<sup>262</sup> See *infra* at pp. 169-174.

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# ONGOING WORK OF THE COMMISSION

## Log Review

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IAB's Command Center is open twenty-four hours a day, seven days a week. It is accessible to the public through several hotlines that are staffed by IAB personnel who input details of complaints, updates on internal investigations, and Department-mandated notifications. Calls are either assigned a log number, which is a unique identification number, or attached to a pre-existing log number when information relates to a prior call. All corruption and misconduct allegations received by the Department by mail, e-mail, or in-person are reported to IAB's Command Center and similarly assigned a log number.

Each day's logs are sent to the Commission. The Commission uses the information in the logs to watch for increases or patterns in corruption allegations.

## IAB Briefings to the Police Commissioner

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On a monthly basis, commanding officers from IAB's investigative groups brief the Police Commissioner and other high-ranking Department personnel on significant cases. The Commissioners, the Executive Director, and the Commission staff also attend. The group commanders present cases selected by the Commission's Executive Director.<sup>263</sup> Commissioners have the opportunity to discuss the cases with the presenters and with the Police Commissioner. During this reporting period, briefings covered investigations of perjury, fraud, drug use, transporting prostitutes across state lines, and other serious misconduct.

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<sup>263</sup> The Executive Director chooses cases that were highlighted by IAB or cases that the Commission has learned of during steerings or case reviews.

## **Corruption and Misconduct Comparison Reports**

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On a monthly basis, the Commission receives a copy of IAB's *Corruption and Misconduct Complaint Comparison Report*. This report compares annual and monthly statistics by allegation, borough, and bureau. This analysis enables the Police Commissioner, the Deputy Commissioner of IAB, IAB's Executive staff, and the Commission to identify corruption trends. These statistics are also discussed in steering meetings with each group.

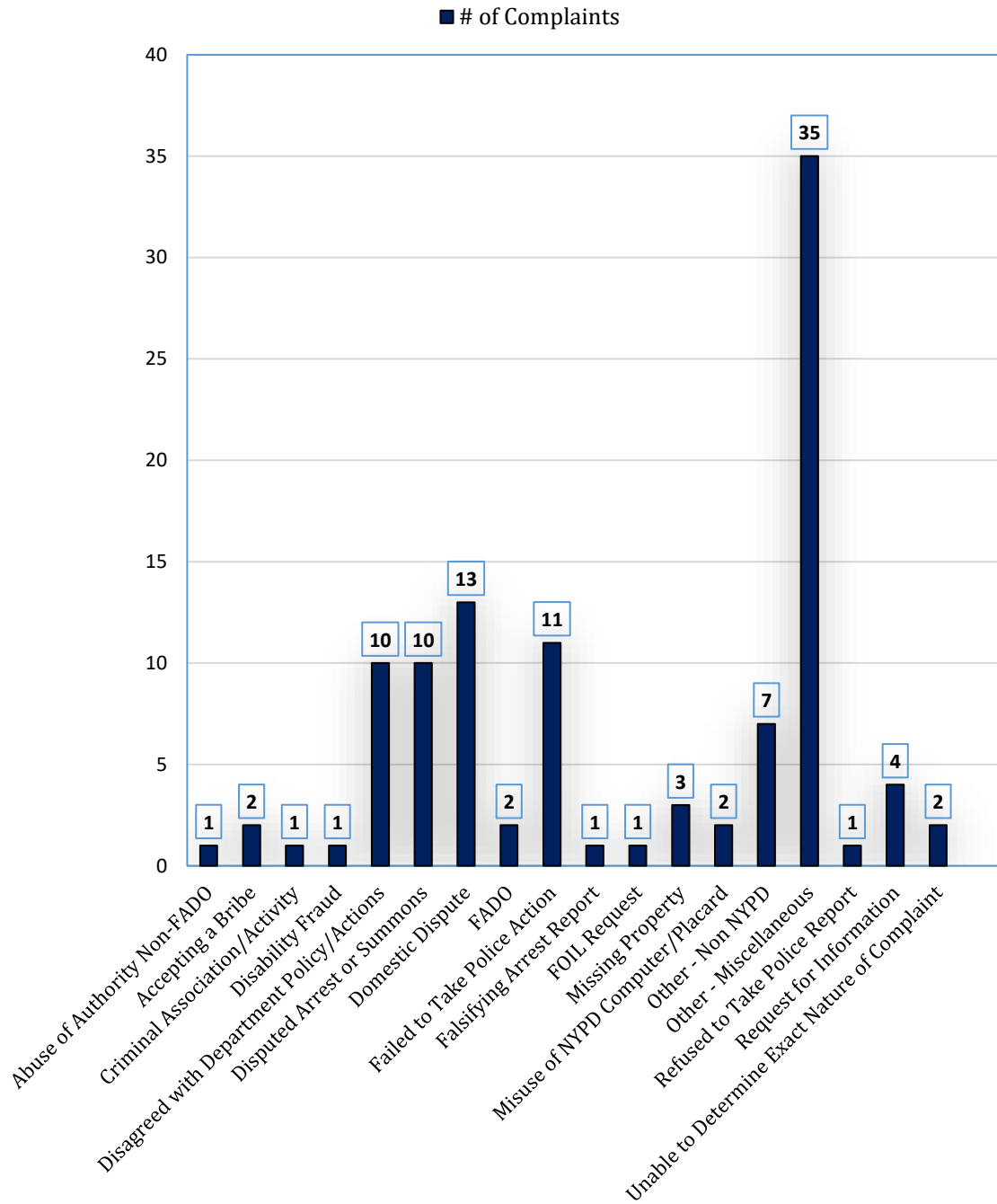
## **Complaint Logs**

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Occasionally, the Commission receives complaints made directly by the public against members of the Department. The Commission refers these complaints to IAB or to one of the appropriate non-Departmental investigative entities. The Commission keeps a record in the event any follow-up is necessary.

From January 1, 2015 through August 31, 2016, the Commission received 107 complaints. The breakdown of those complaints appears below:

### Complaints January 1, 2015 - August 31, 2016



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# RECOMMENDATIONS

## IAB

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Based on our review of 139 investigations conducted by IAB, the Commission makes the following recommendations:

### **Interviews:**

- IAB should provide in-service interview techniques training about both civilian and member of the service interviews. Currently, interview techniques are covered during IAB's Internal Investigations Course.<sup>264</sup> A workshop tailored to refining interview skills would build on the initial training and improve the quality of IAB interviews.
- IAB investigators should consider taking a recess prior to concluding official Department interviews to assess whether all avenues of inquiry have been addressed. This step may alleviate the need to conduct a second official Department interview with the same member of the service.
- IAB supervisors should require the recording of every interaction with witnesses, whether civilians or members of the service. Recordings should begin prior to contact, when feasible, and continue until the contact ends, so that the entire interaction is captured. If an interview, or any part thereof, is not recorded, the investigator should document the circumstances that prevented the recording and identify in the interview summary those statements made during the interview that were not captured on the recording.

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<sup>264</sup> The Internal Investigations Course is the IAB training provided to incoming IAB investigators. See *Sixteenth Annual Report* at pp. 27-28 for a further description of this course.

- On the recording, investigators should identify any documents or other evidence shown to the witness, particularly photograph arrays or anything used to identify subject officers. These identifications should contain enough details so that at a future time, the investigator can confidently identify the evidence if the case proceeds to a trial.
- Supervisors should listen to interview recordings to ensure that worksheet summaries are accurate and contain all information that is material to the investigation.

### **Video Evidence**

- Investigators should search for video evidence during the call-out phase of the investigation, with relevant follow-up conducted as soon as possible after the case is assigned to an investigator. Due to the potential importance of video evidence, the Commission recommends that IAB team leaders and/or commanding officers verify that searches for video evidence have been completed within the first 14 days of the investigation.
- The use of body worn cameras is still in the testing stage; however, it is expected that the availability of video evidence will greatly increase as a new pilot project is instituted and more cameras are utilized. The Commission suggests that a mechanism be established to search for video by location, date, and time as well as by member of the service.

### **Missing Property**

- Given the seriousness and prevalence of missing property allegations combined with the substantial difficulty in proving that an officer has stolen property, the Commission recommends that IAB should continue to use all possible proactive measures to identify officers who are inclined to steal property.

### **Identification of Members of the Service**

- The Department should explore methods to identify more accurately all officers that are present during a particular incident. The issuing of Department smart phones to all members of the service may be useful in obtaining this information, using the telephone's location data.

### **Supervisory Reviews**

- The Commission reiterates its recommendation from its *Seventeenth Annual Report*, that IAB institute a command level case review of most cases that are open longer than six months, so that commanding officers can offer directions to investigators regarding necessary investigative steps while the investigation is still viable.<sup>265</sup>

## **The Disciplinary System**

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### **Domestic Violence Cases**

- The Commission continues its recommendation from its *Sixteenth Annual Report* that as a general rule, members of the service who engage in physical acts of domestic violence be placed on dismissal probation for a first offense in addition to being suspended or forfeiting vacation days.<sup>266</sup> When determining whether to apply this general rule, DAO should consider factors such as evidentiary issues, the severity of the force employed, and the nature of the exact circumstances of the altercation.
- When accepting a negotiated settlement in cases involving a physical altercation, the subject officer should be required to state verbally the exact acts to which he or she is admitting and for which the subject officer is accepting discipline. This will better inform the Police Commissioner about whether the recommended penalty is appropriate, and can be referred to, if the subject officer is involved in subsequent domestic incidents.

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<sup>265</sup> *Seventeenth Annual Report* at pp. 34-35.

<sup>266</sup> *Sixteenth Annual Report* at p. 53.

- A member of the service who has either previously been disciplined as the result of a prior administrative proceeding for a domestic incident involving the use of physical force or who has been found guilty in a criminal proceeding for an act constituting domestic violence should be terminated, unless exceptional circumstances exist that justify allowing the subject officer to retain his or her position.

### **Duty Failure Cases**

- It appears that the Department usually imposes a penalty of the forfeiture of 15 vacation days for those members of the service who fail to conduct adequate investigations, or otherwise do not adequately discharge their on-duty responsibilities. The Commission believes that in many cases involving a single dereliction of duty, a 15-day penalty is sufficient. The Commission recommends that dismissal probation be included in the penalty when the subject officer fails to adequately discharge his duties in multiple instances or when a single instance was so serious as to either possibly cause severe negative repercussions in the investigation or demonstrate a complete disregard for the officer's job responsibilities. Dismissal probation, in these instances, would allow the Department to monitor the officer to determine if there is an improvement in his or her job performance. If the subject officer continues to fail to meet even minimal standards, the Department would then be able to terminate his or her employment expeditiously.
- Supervisors who fail to provide adequate guidance to their subordinates, leading to avoidable derelictions of the subordinates' job performance, should face more significant penalties than the forfeiture of 15 vacation days. This would encourage supervisors to take corrective action against subject officers who fail to perform in an adequate manner. It would also discourage supervisors from ignoring the misconduct of lower-ranking officers in an effort to protect them from receiving discipline.



- Because their behavior can serve as an example to lower-ranking officers, those supervisors who engage in the same misconduct as their subordinates should receive significantly higher penalties than their subordinates.

### **Officers on Dismissal Probation**

- The purpose of dismissal probation is to provide an officer who has committed serious misconduct, worthy of separation from the Department, with an opportunity to demonstrate that he or she can conform to Department standards. Subsequent misconduct, especially when occurring while the officer is on dismissal probation, should result in significant penalties. If the misconduct is minor or dissimilar from the conduct which originally earned the subject officer dismissal probation, the Commission recommends that the officer be given a subsequent period of dismissal probation. If the misconduct is similar to the original misconduct, or more serious, the Commission believes that the Department should exercise its prerogative to terminate summarily the officer's employment.
- If a subject officer has completed a term of dismissal probation and then commits misconduct, the Commission recommends that the penalty for any subsequent misconduct, especially if similar to the past misconduct, at least include another period of dismissal probation. This would allow the Department to terminate summarily any repeat offenders who fail to adhere to Department rules.

### **False Statement Cases**

- In deciding the appropriate charges to bring against officers who fail to provide accurate and complete statements, the Department should look beyond the subject officers' stated reasons for not being truthful and closely examine the circumstances that led to the falsehood to determine whether the false statements were made intentionally or due to confusion or a mistake.

- The Department should provide ongoing training to members of the service to emphasize the requirements that they testify truthfully in all court proceedings. Training should also stress that members of the service must provide complete and truthful accounts of their observations to Assistant District Attorneys, and thoroughly read sworn criminal complaints and the supporting depositions to those complaints in order to correct any errors in the paperwork prior to signing these documents.
- When the Department charges a member of the service with making a false statement pursuant to Patrol Guide § 203-08, the provisions of that policy should be followed. The appropriate penalty if the member of the service is found guilty of intentionally making a material false statement is termination. If the Police Commissioner decides to exercise his discretion and allow the member of the service to retain his job, the exceptional circumstances that justify the less severe penalty should be explicitly stated. In most, if not all, of those instances when the officer is not separated from the Department despite being found guilty of making a false statement, dismissal probation should be included as part of the imposed penalty.
- In all cases, charges should be brought pursuant to Patrol Guide §203-08 when appropriate. Such charges should not be downgraded for the purposes of avoiding the penalties of § 203-08.
- When a member of the service refuses to answer follow-up questions after being confronted with evidence that refutes his prior answers, the subject officer's employment should be terminated. Allowing a subject officer to refuse to answer follow-up questions negates the purpose and effectiveness of the Department's ability to require officers to answer questions put to them by investigators. If there

are factors that mitigate the subject officer's refusal to answer questions, the Police Commissioner should specify those mitigating circumstances.

### **Firearms Cases**

- The Commission continues to recommend that, due to the possible serious consequences involving the misuse of firearms, members of the service who unjustifiably display their firearms while off-duty be placed on a period of dismissal probation in addition to forfeiting penalty days.<sup>267</sup>

### **Other On-Duty Misconduct Cases**

- When superior officers create an intimidating, hostile, or offensive work environment for one or more subordinates due to sexually harassing behavior, discrimination based on an individual's membership in a protected group, or disparaging remarks made based on an individual's status in a protected group, they display an inappropriate example for lower-ranking officers. The nature of the supervisor/subordinate relationship also can make it more difficult for a victim of this type of misconduct to report the offensive behavior, for fear of retaliation. For these reasons, the Commission recommends that higher-ranking members of the service found guilty of this type of offensive misconduct either have their employment terminated or be placed on dismissal probation, depending on the severity of the misconduct and the length of time during which the misconduct occurred. The imposition of severe consequences will demonstrate that the Department will not tolerate this type of environment.

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<sup>267</sup> See *supra* at p. 140, fn. 241.

- Due to police officers' inherent authority and the possible coercive nature of any relationship between a member of the service and the civilians with whom he or she comes in contact during the course of his or her job performance, these types of relationships can negatively affect criminal cases and incur civil liability for the City of New York. Although the Department disapproves of these types of contact, there are currently no uniform guidelines detailing what is impermissible. The Commission continues to recommend that the Department should set forth a list of rules to put members of the service on notice that engaging in social and intimate relationships with victims, defendants, or witnesses in cases to which they are assigned, at least during the pendency of the investigation and the criminal prosecution, are strictly prohibited.<sup>268</sup> If there are permissible forms of contact, outside the scope of the investigation, these should also be specified.

**Overall**

- The Commission recommends that in disciplinary cases where the Trial Commissioner has recommended that a member of the service's employment with the Department be terminated and the Police Commissioner imposes a penalty that allows the member of the service to remain employed, the Police Commissioner should set forth his specific reasons for making this allowance. When these decisions are explained, they offer guidance to members of the service regarding what behavior will result in termination, and therefore, can have a deterrent effect.

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<sup>268</sup> See *Sixteenth Annual Report* at p. 78.

## COMMISSIONER BIOGRAPHIES

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**Michael F. Armstrong**  
**Chairperson**

Michael F. Armstrong is of counsel at McLaughlin & Stern LLP, where he focuses on complex civil litigation, white-collar criminal and regulatory matters, and internal corporate investigations. Mr. Armstrong has served as an Assistant United States Attorney in the Southern District of New York where he was Chief of the Securities Fraud Unit, Chief Counsel to the “Knapp Commission,” which investigated allegations of police corruption in the New York City Police Department, and District Attorney for Queens County, New York. He also has served as Counsel to the New York Urban League and Advisor to New York Attorney General Andrew Cuomo regarding the investigation of allegations of political influence in the State Police. Mr. Armstrong earned his LLB from Harvard Law School and his BA from Yale University.

**Kathy Hirata Chin**

Kathy Hirata Chin is a partner at Cadwalader, Wickersham & Taft, where she is the senior litigation partner in the firm’s healthcare/not-for-profit practice group. Ms. Chin served as a Commissioner on the New York City Planning Commission from 1995 to 2001. She has also served on the Federal Magistrate Judge Merit Selection Panel for the Eastern District of New York, on Governor Mario M. Cuomo's Judicial Screening Committee for the First Judicial Department, on the Gender Bias Committee of the Second Circuit Task Force regarding Gender, Racial, and Ethnic Fairness, and on Chief Judge Judith S. Kaye’s Commission to Promote Public Confidence in Judicial Elections. She is currently a member of the Attorney Emeritus Advisory Council and of the Commercial Division Advisory Council, appointed by Chief Judge Jonathan Lippman. She also currently serves as a member of the Board of Directors of the Medicare Rights Center and of New York Lawyers for the Public Interest. In December 2012 and again in December 2014, she was nominated for appointment to the State Court of Appeals by the New York State Commission on Judicial Nomination. In June 2015, she was honored by the New York City Bar Association as a 2015 Diversity and Inclusion Champion. Ms. Chin earned her JD from Columbia University School of Law.

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## **Deborah E. Landis**

Deborah E. Landis, an attorney, is a consultant who provides investigative assistance and litigation support to other attorneys. She focuses primarily on white-collar criminal and regulatory matters. Ms. Landis served as an Assistant United States Attorney for the Southern District of New York for more than twenty years, investigating and prosecuting cases involving police corruption, perjury, narcotics trafficking, racketeering, money-laundering, tax fraud, and other fraud on the government. As Chief of the General Crimes Unit and as Senior Litigation Counsel, she also had responsibility for supervising and teaching other prosecutors. During 2000, Ms. Landis served the Department of Justice in Washington, D.C., acting as an Associate Deputy Attorney General and as DOJ's Special Counsel for Health Care Fraud. Ms. Landis received many awards for her work as a prosecutor, including the Henry L. Stimson Medal for Outstanding Contributions to the Office of the United States Attorney, which was awarded by the Association of the Bar of the City of New York (1999), and the Attorney General's John Marshall Award for Trial of Litigation (2000). Ms. Landis also taught Trial Advocacy at the Harvard Law School for many years. Ms. Landis earned her JD from the University of Wisconsin Law School.

## **James D. Zirin**

James D. Zirin is at Sidley Austin LLP. He has been a trial lawyer for over 40 years, handling a wide variety of white-collar criminal and complex commercial litigation. Mr. Zirin is a former Assistant United States Attorney for the Southern District of New York. He is also a fellow of the American College of Trial Lawyers, a trustee of New York Law School, a member of the advisory board of the Woodrow Wilson School of Public and International Affairs at Princeton University, a former director and member of the executive committee of the Legal Aid Society, a member of the Council on Foreign Relations, and a past vice president and trustee of the Federal Bar Council. Mr. Zirin is the host of the critically acclaimed cable TV talk show "Conversations in the Digital Age" and author of the bestselling book "The Mother Court--Tales of Cases That Mattered in America's Greatest Trial Court." Mr. Zirin earned his JD from the University of Michigan Law School.

### **COMMISSION STAFF**

Murad Agi, Examining Attorney  
Joanna Berlin, Examining Attorney  
Kevin King, Examining Attorney (Former)  
Agnes Kusmierska, Examining Attorney  
Christopher Soules, Examining Attorney  
Uyen Tang, Examining Attorney  
Caren Wean, Examining Attorney  
Cristina Stuto, Office Manager

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# APPENDIX A

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## EXECUTIVE ORDER

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THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

EXECUTIVE ORDER NO. 18

February 27, 1995

ESTABLISHMENT OF COMMISSION  
TO COMBAT POLICE CORRUPTION

WHEREAS, an honest and effective police force is essential to the public health, safety and welfare; and

WHEREAS, the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, chaired by Milton Mollen, (the "Mollen Commission") has recently concluded an investigation of the nature, extent and causes of police corruption today; and

WHEREAS, the Mollen Commission's Report finds that the vast majority of New York City police officers are honest and hard-working, and serve the City with skill and dedication every day, and that the current leadership of the Police Department has a firm commitment to fighting police corruption among those few officers who betray the public trust and tarnish the Police Department in the eyes of the public; and

WHEREAS, the Mollen Commission determined that the primary responsibility for combatting corruption in the Police Department rests with the Police

Department, and that the Police Department must be the first line of defense against police corruption;

WHEREAS, the Mollen Commission has recommended the establishment of an independent monitor, in the form of a Police Commission, to monitor and evaluate Police Department anti-corruption measures and to ensure that the Police Department remains vigilant in combatting corruption; and

WHEREAS, such a Police Commission provides the public with assurance that the Police Department is implementing and maintaining an effective anti-corruption program; and

WHEREAS, the Mayor and the Police Commissioner are accountable for combatting police corruption; and

WHEREAS, the establishment of a Police Commission can assist the Mayor and Police Commissioner in assessing the effectiveness of the Police Department's implementation and maintenance of anti-corruption efforts; and

WHEREAS, the District Attorneys, the United States Attorneys, and other government departments and agencies have committed resources and personnel to the investigation and prosecution of police corruption, and it is desirable that a Police Commission not supplant such investigative efforts;

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it hereby is ordered:

Section 1. Establishment Of Commission.

a. There hereby is established a Police Commission (the "Commission") which shall consist of five members appointed by the Mayor, who shall be residents of the City of New York or shall maintain a place of business in the City of New York. Each of the members shall serve without compensation. The Commission shall include among its members persons having law enforcement experience. The Mayor shall appoint the Chairperson from among the members. -

b. Of the members first appointed, the Chairperson shall be appointed for a term ending December 31, 1998; two of the members shall be appointed for terms ending December 31, 1997; and two of the members shall be appointed for terms ending December 31, 1996. Upon the expiration of such initial terms, all members shall be appointed for a term of four years. Vacancies occurring otherwise than by expiration of a term shall be filled for the unexpired term.

c. Each member shall continue to serve until the appointment of his successor.

d. Any member shall be removable for cause by the Mayor, upon charges and after a hearing.

Section 2. Duties.

a. Monitoring the Performance of Anti-Corruption Systems. The Commission shall perform audits, studies and analyses to assess the quality of the Police Department's systems for combatting corruption, including but not limited to audits, studies

and analyses regarding the following:

(i) the Police Department's development and implementation of anti-corruption policies and procedures;

(ii) the effectiveness of the Police Department's systems and methods for gathering intelligence on corrupt activities and investigating allegations of corruption;

(iii) the effectiveness of the Police Department's implementation of a system of command accountability, supervision and training for corruption matters;

(iv) the effectiveness of the procedures used by the Police Department to involve all members of the Department in combatting corruption; and

(v) such other policies and procedures, without limitation, of the Police Department relating to corruption controls as the Commission deems appropriate.

b. Monitoring Agency Conditions. The Commission shall perform audits, studies and analyses of conditions and attitudes within the Police Department that may tolerate, nurture or perpetuate corruption, and shall evaluate the effectiveness of Police Department policies and procedures to combat such conditions and attitudes. In the performance of this function, the Commission shall maintain liaison with community groups and precinct councils and shall consult with law enforcement agencies of federal, state and local government and others, as appropriate, to provide the Police Department with input about their perception of police corruption and the Department's efforts to combat police corruption.



c. **Corruption Complaints from the Public.** The Commission shall be authorized to accept complaints or other information from any source regarding specific allegations of police corruption and, subject to the provisions of Section 4, shall refer such complaints or other information to the Police Department and such other agency as the Commission determines is appropriate, for investigation and/or prosecution. The Commission may monitor the investigation of any such complaints referred to the Police Department to the extent the Commission deems appropriate in order to perform its duties as set forth herein.

Section 3. Investigations.

a. The Police Commissioner shall ensure and mandate the full cooperation of all members of the Police Department with the Commission in the performance of audits, studies or analyses undertaken pursuant to this Order, and shall provide that interference with or obstruction of the Commission's functions shall constitute cause for removal from office or other employment, or for other appropriate penalty. The Police Department also shall provide to the Commission upon request any and all documents, records, reports, files or other information relating to any matter within the jurisdiction of the Commission, except such documents as cannot be so disclosed according to law.

b. The Police Department remains responsible for conducting investigations of specific allegations of corruption made against Police Department personnel, and the Commission shall not investigate such matters except where the

Commission and the Commissioner of the City Department of Investigation (the "DOI"), with the approval of the Mayor, determine that exceptional circumstances exist in which the assessment of the Police Department's anti-corruption systems requires the investigation of an underlying allegation of corruption made against Police Department personnel.

c. The Commission, in cooperation with the DOI, shall take all reasonable measures to ensure that any hearings or investigations held pursuant to this Executive Order do not inappropriately interfere with ongoing law enforcement matters being undertaken by other law enforcement agencies.

d. Any hearings or investigations undertaken by the Commission may include the issuance of subpoenas by the DOI in accordance with the DOI's powers under Chapter 34 of the New York City Charter, to the extent that the Commission and the DOI Commissioner jointly determine is appropriate.

#### Section 4. Reporting to the Police Department.

a. The Commission shall promptly notify the Police Commissioner of all allegations of corrupt police activity or other police misconduct and of any investigations undertaken pursuant to this Order. The Commission also shall make regular reports to the Police Commissioner regarding its activities, including the progress of audits, studies and analyses prepared pursuant to this Order.

b. The Commission may exclude a matter from the notifications and reports required by this Section and Section 2(c) only where the Commission and the DOI Commissioner, with the approval of the Mayor, determine either that the matter concerns

the activities of the Police Commissioner or would create an appearance of impropriety, and that reporting on the matter would impair the Commission's ability to perform its duties under this Order.

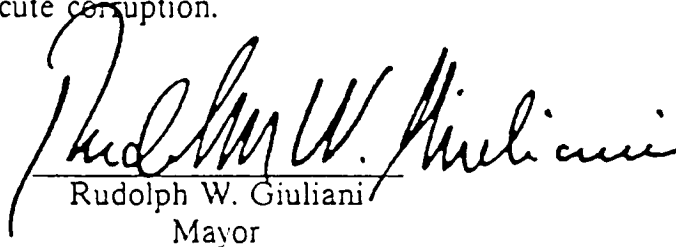
Section 5. Reporting to the Mayor.

a. The Commission shall report to the Mayor as to all its activities, without limitation, at such times as the Mayor may request, and as otherwise may be required by this Order.

b. The Commission shall provide the Mayor no later than each anniversary of the Commission's establishment an annual report which shall contain a thorough evaluation of the effectiveness of the Police Department's systems for preventing, detecting and investigating corruption, and the effectiveness of the Police Department's efforts to change any Department conditions and attitudes which may tolerate, nurture or perpetuate corruption, including any recommendations for modifications in the Police Department's systems for combatting corruption. The annual report further shall contain any recommendations for modifications to the duties or the jurisdiction of the Commission as set forth in this Executive Order to enable the Commission to most effectively fulfill its mandate to ensure that the Police Department implements and maintains effective anti-corruption programs.

Section 6. Staff. The Commission shall employ an Executive Director and other appropriate staff sufficient to organize and direct the audits, studies and analyses set forth in Section 2 of this Order from appropriations made available therefor. The Commission from time to time may supplement its staff with personnel of the DOI, including investigatory personnel as may be necessary, to the extent that the Commission and the DOI Commissioner determine is appropriate.

Section 7. Construction With Other Laws. Nothing in this Order shall be construed to limit or interfere with the existing powers and duties of the Police Department, the DOI, the District Attorneys, the United States Attorneys for the Southern and Eastern Districts of New York, or of any other department or agency of federal, state or city government to investigate and prosecute corruption.

  
Rudolph W. Giuliani  
Mayor