



The City of New York

Commission to Combat Police Corruption

Sixteenth Annual Report

of the Commission

October 2014

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OVERVIEW

In 1994, the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, chaired by Judge Milton Mollen (the Mollen Commission) recommended the establishment of an external, independent “Police Commission” to monitor the anti-corruption systems of the New York City Police Department (NYPD or the Department) and to act as a “watchdog of the public.”¹ This recommendation followed extensive public hearings that demonstrated that the Department’s anti-corruption machinery had broken down, facilitating serious, if sporadic, corruption and actual criminal behavior on the part of some police officers.

As a result of the Mollen Commission’s recommendations, the Commission to Combat Police Corruption (CCPC or the Commission) was established by Mayoral Executive Order No. 18 in 1995.² This Executive Order mandated that the Commission monitor the efforts of the Department to develop and implement policies designed to investigate, detect, control, and deter corruption among its members. It also authorized the Commission to accept complaints regarding corruption, which the Commission would then forward to the NYPD’s Internal Affairs Bureau (IAB)³ or another investigative agency.⁴

¹ *Mollen Commission Report* (July 7, 1994) at p. 153.

² Appendix A of this Report. The order provides for five unpaid Commissioners removable for cause and a paid full-time staff. The number of unpaid Commissioners was increased to six by Executive Order No. 39 (August 12, 2003).

³ IAB is the bureau within the Department responsible for investigating allegations of corruption and serious misconduct against members of the service. See *infra* at pp. 3-7 for a more detailed discussion about IAB.

⁴ Executive Order No. 18, §2(c) (February 27, 1995). The Commission was not provided with the power to conduct its own investigations into allegations against members of the Department, except in specific, narrowly defined circumstances. Executive Order No. 18, §3(b) (February 27, 1995).

The Commission fulfills its basic mandate primarily through its examination of pending and closed investigations conducted by IAB and its review of all closed disciplinary cases involving uniformed members of the service that are prosecuted by the Department Advocate's Office (DAO) in the Department's Trial Rooms.⁵ The Commission reports its findings based on this work in its Annual Reports. The Commission also conducts studies of particular issues and of particular Department units, policies, or systems to gauge the effectiveness of the NYPD's anti-corruption efforts. In these studies, the Commission makes recommendations to address corruption-related issues or observed patterns of corruption.⁶ When appropriate, the Commission prepares reports suggesting improvements in the implementation of existing policies. To date, the Commission has published 25 reports dealing with specific issues. The Commission has also published fifteen prior Annual Reports.

⁵ DAO is the division within the Department responsible for the majority of the prosecutions of administrative disciplinary charges against members of the service.

⁶ In using the term "corruption," the Commission includes acts that, if prosecuted, would constitute serious crimes as well as acts that would constitute serious misconduct. There is some subjectivity in deciding what constitutes serious misconduct.

MONITORING IAB INVESTIGATIONS

Introduction

One way the Commission fulfills its role as an external, independent monitor of the Department's anti-corruption systems is by providing oversight to IAB. To create a Department culture that is intolerant of corruption, it is imperative that each corruption investigation be diligently pursued and brought to an appropriate disposition. IAB investigations and operations are, necessarily, not open to public scrutiny; however, the Commission provides a level of transparency by reporting its findings after reviewing a sample of those investigations.

The following section includes an overview of IAB and the Department's complaint process and describes the Commission's review of IAB investigations.

The Internal Affairs Bureau

IAB's main role within the Department is the detection and investigation of corruption and serious misconduct by uniformed and civilian members of the service. IAB is divided into 24 investigative groups; each group is assigned a geographical or specialty area. The majority of IAB investigators are sergeants, the Department's first line supervisors; most of the remaining investigators are detectives, but a limited number are police officers. Groups are subdivided into teams, and lieutenants act as team leaders within most groups. Captains, Deputy Inspectors, or Inspectors command a majority of

the groups. The Chief of Internal Affairs commands IAB and is assisted by an executive staff.⁷

In addition to its investigative responsibilities, IAB also employs proactive anti-corruption measures. For example, IAB undercover investigators engage in integrity testing in which they create situations typically faced by police officers to determine if their responses are lawful and consistent with Department guidelines. The testing can be random or targeted at an individual member of the service or unit. Other proactive measures include intelligence gathering through “E.D.I.T.” and “A.W.A.R.E.” operations.⁸ In E.D.I.T. operations, IAB investigators target areas where complaints of corruption or misconduct have been received, and effect arrests for observed criminal activity. The arrestees are then interviewed with the goal of uncovering information on police corruption, misconduct, and any other criminal behavior. Any information gathered is forwarded to appropriate Department personnel for follow-up. In A.W.A.R.E. operations, IAB executes arrest warrants in targeted areas and interviews arrestees to gather information. In addition, IAB investigators debrief persons arrested by other units within the Department.⁹

⁷ During the drafting of this report, Chief Charles Campisi of IAB retired, and Deputy Commissioner Joseph Reznick was appointed. Additional personnel changes were being made while this report was being prepared.

⁸ E.D.I.T. stands for enforcement, debriefing, intelligence gathering, and testing. A.W.A.R.E. stands for active, warrant, address, review, and enforcement.

⁹ Additional proactive anti-corruption measures are not included here due to the sensitive nature of their operations.

The Complaint Process

The responsibility to investigate allegations of on-duty or off-duty misconduct is shared among many Department units.¹⁰ In addition to IAB, Borough and Bureau Investigation Units are tasked with investigating a wide variety of misconduct. Complaints can also be investigated at the command (precinct) level by commanding officers or other supervisors and integrity control officers (ICOs).¹¹

IAB serves as the Department's conduit for all allegations of misconduct involving NYPD personnel. IAB's Command Center operates 24 hours a day, 7 days a week. Members of the public and Department personnel can contact IAB via the telephone, email, mail, or in person at any Department facility. The Department also has a non-recorded anonymous tip line.

Contacting IAB	
Telephone:	(212) 741-8401
Email:	IAB@NYPD.ORG
Mail:	Occupant P.O. Box 1001 New York, NY 10014
In Person:	IAB's Offices at 315 Hudson Street New York, NY 10013 or any Police Department Facility

Once a complaint is received, it is analyzed by IAB and assigned to an IAB investigative group or, for lesser misconduct allegations, to another unit within the Department.¹² IAB has a classification scheme, which designates most cases, based on

¹⁰ The following is not an exhaustive list of all units with the responsibility for conducting internal inquiries of misconduct complaints.

¹¹ ICOs are lieutenants who are members of each command's management staff. They are primarily responsible for deterring corruption and misconduct at the command level and reporting misconduct to IAB. *See* Patrol Guide (P.G.) §202-15 for the responsibilities of ICOs. The Department's Patrol Guide specifies the proper practices and required procedures for members of the service to follow.

¹² Certain types of allegations are referred to the Civilian Complaint Review Board (CCRB) or other appropriate agencies for further investigation. CCRB is a separate city agency that has jurisdiction to conduct primary investigations of complaints against uniformed members of the service that allege excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language. IAB may conduct concurrent investigations into these allegations as well. The Commission does not review CCRB investigations.

the most serious complaint alleged, as “corruption,”¹³ “misconduct,” or “outside Department guidelines.” Corruption cases contain the most serious allegations, misconduct cases are less serious and are typically referred to the relevant Borough or Bureau Investigation Unit to handle, and outside Department guidelines cases are the least serious allegations and can be investigated at the command level.¹⁴ The Commission typically limits its review to cases containing allegations of corruption or serious misconduct.¹⁵

Possible Complaint Dispositions

At the conclusion of an investigation, the responsible unit usually assigns one of five dispositions to each allegation and to the case overall.¹⁶ They are:

Substantiated: The investigation determined that 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.¹⁷

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

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.

¹³ This category includes allegations of serious misconduct as well as those considered “classic” corruption.

¹⁴ Misconduct and outside Department guidelines cases can also be investigated by IAB.

¹⁵ Details describing the investigative process are provided at pp. 15-26.

¹⁶ These are the typical dispositions given to allegations, but this is not an exhaustive list. Other dispositions include *Other Misconduct Noted*, which indicates that other minor misconduct was uncovered during the investigation, and *Information and Intelligence*, which indicates that the conduct alleged is being tracked for intelligence purposes.

¹⁷ A *Partially Substantiated* disposition would only apply to an entire case, not an individual allegation.

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

Members of the service against whom allegations are substantiated after investigation are subject to administrative discipline by DAO, IAB, or by the subject officer's command.

At the conclusion of an investigation, the investigator prepares a closing report detailing the investigation's findings. IAB investigations are then reviewed at each level of IAB's command structure. At any point during this review process, the investigation may be returned for further investigation or to address any administrative issues. The following glossary defines the possible participants in complaints and investigations:

Actors Involved in the Complaint/Investigative Process
Complainant – The person who reported an act of misconduct or violation of policy.
Subject Officer – The member of the service (uniformed or civilian) who is alleged to have committed an act of corruption, misconduct, or violation of Department policy or procedure.
Witness Officer – A member of the service who witnessed an incident involving the subject officer, or otherwise has relevant information.
Civilian Witness – A member of the public with knowledge of, or information about, the incident.
Investigator – A uniformed member of the service assigned to investigate the allegations. In IAB, most investigators are sergeants or detectives.
Team Leader – A supervisory uniformed member of the service that oversees a squad of IAB investigators.
Steering Committee – A committee within IAB consisting of the executive staff and led by the Chief of Internal Affairs that meets regularly with each investigative group to discuss the most serious and longest pending cases within the group.
Assistant Department Advocate – A Department attorney who prosecutes disciplinary cases administratively before one of the Department's Trial Commissioners.
Prosecutor – A member of one of the City's District Attorney's Offices or U.S. Attorney's Offices. Cases of misconduct that may constitute a crime are presented to these offices for possible prosecution.
CCPC – The Commission reviews a sample of IAB investigations to ensure they are conducted in a fair, thorough, accurate, and impartial manner.

Best Practices for the Complaint Process

The International Association of Chiefs of Police (IACP) and the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) have identified four principles for an effective complaint process for allegations against members of law enforcement:¹⁸

Comprehensive: All complaints are investigated, regardless of their source. The Commission on Accreditation for Law Enforcement Agencies (CALEA) affirms this principle in Accreditation Standard 52.1.1, which requires that all complaints, including anonymous complaints, against a law enforcement agency or its employees be investigated.¹⁹

Accessible: Civilians and employees should understand and have easy access to the complaint process. CALEA Accreditation Standard 52.1.4 states that information on filing complaints must be made available to the public through the media and community outreach.

Fair & Thorough: The investigations into allegations of misconduct must be in accordance with high standards.

Transparent: The complainant should be kept apprised of the status of his or her complaint. The Department should keep the community apprised of the civilian complaint process through summary reports. CALEA Accreditation Standard 52.1.5

¹⁸ International Association of Chiefs of Police, *Protecting Civil Rights: A Leadership Guide for State, Local, and Tribal Law Enforcement*. Alexandria, Virginia: Office of Community Oriented Policing Services, U.S. Department of Justice, September 2006, pp. 86-89. *See also* International Association of Chiefs of Police, *Building Trust Between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement*. Alexandria, Virginia: Office of Community Oriented Policing Services, U.S. Department of Justice, October 2009, p. 21.

¹⁹ CALEA is a credentialing authority created through the joint efforts of the IACP, the National Organization of Black Law Enforcement Executives (NOBLE), the National Sheriff's Association (NSA), and the Police Executive Research Forum (PERF). *See* www.calea.org.

states that statistical summaries based upon internal affairs investigations should be made available to the public and agency employees. CALEA Accreditation Standard 52.2.4 states that agencies should keep the complainant informed of the status of his or her complaint and, at a minimum, this should consist of verification that their complaint has been received, periodic status updates, and notification of the outcome of the investigation.

The Commission finds that the Department is largely compliant with the suggested standards but can make improvements in accessibility and transparency.

IACP/COPS Principle	NYPD Complaint Process	CCPC Comment
<p><u>Comprehensive:</u></p> <p>All complaints are investigated regardless of their source.</p> <p>CALEA Accreditation Standard 52.1.1</p>	<p>All allegations of misconduct are investigated.</p> <p>-External/internal complaints. -Anonymous complaints. -On-duty and off-duty misconduct.</p>	<p>The Department is in full compliance with this principle. IAB continues to investigate even if a complainant ceases to cooperate or withdraws a complaint.</p>
<p><u>Accessible:</u></p> <p>Civilians and employees should understand and have easy access to the complaint process.</p> <p>CALEA Accreditation Standard 52.1.4</p>	<p>The Department accepts complaints:</p> <p>-By telephone -By email -By mail -In person</p>	<p>The Department is compliant with this principle; however, improvements can be made by placing information regarding the complaint process in a more prominent area on the Department’s website.²⁰ The Department should also consider making the complaint form available on the website.</p>
<p><u>Fair & Thorough:</u></p> <p>Misconduct investigations should be conducted in accordance with the highest investigative standards.</p>	<p>IAB utilizes every investigative tool available to law enforcement in its investigations.</p>	<p>The Commission has found that the vast majority of IAB investigations it has reviewed are conducted in a fair and thorough manner.</p>
<p><u>Transparent:</u></p> <p>Complainants should be kept apprised of the status of their complaints. The Department should keep the community informed of the complaint process through regular summary reports.</p> <p>CALEA Accreditation Standard 52.1.5; 52.2.4</p>	<p>IAB consistently reaches out to complainants, often multiple times during an investigation, to verify complaints and gather information and evidence. Generally, IAB also reports the outcome of investigations to complainants in writing.</p> <p>Currently, the Department does not issue periodic, public reports regarding IAB investigations or the complaint process.²¹</p>	<p>The Department can improve transparency by making available for public view periodic statistical reports regarding complaints and the resolution of those complaints.</p>

²⁰ Currently, users have to navigate to the site’s FAQ section on Police Administration to determine how a complaint can be made. In response to a draft of this Report, the Department agreed to reconfigure its website to more prominently display information about the complaint process.

²¹ IAB produces monthly statistical reports as well as annual reports; however, these reports are not released to the public. For a further description of both of these reports, *see infra* at p. 103. In response to a draft of this Report, the Department agreed to work on publishing statistical reports about IAB

Monitoring IAB Investigations

The Commission is given full access to entire investigative files when reviewing pending and closed IAB investigations. These files include worksheets completed by the assigned investigator describing 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 for each allegation.

The Commission reviews IAB investigations to ensure that they are fair, thorough, accurate, and impartial. When reviewing closed investigations, the Commission also evaluates whether, based upon the information available in the file, a correct 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.

For this Annual Report, the Commission reviewed a total of 130 IAB investigations, including 56 pending investigations and 74 closed investigations.²² These reviews are discussed in more detail below.

complaints and investigations.

²² All of the statistics cited in the remainder of this section are based on information obtained from these case reviews.

A. Commission's Review of Pending IAB Investigations

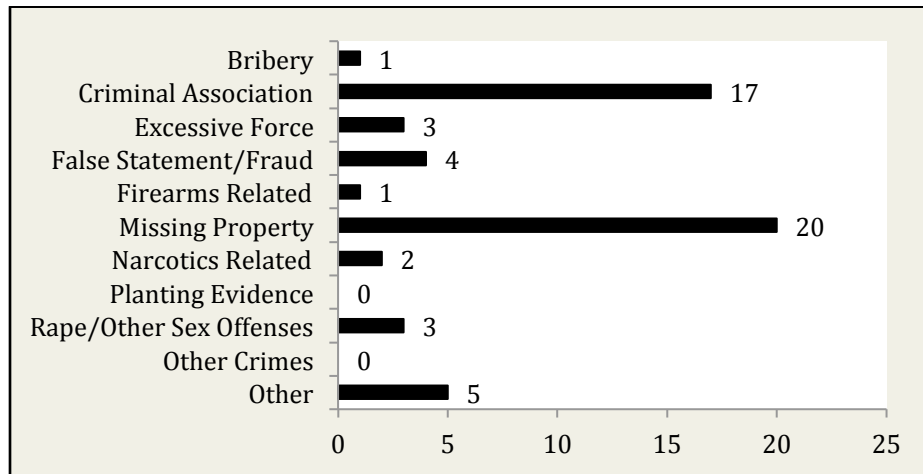
The Commission reviews pending IAB cases so that any recommendations or concerns can be communicated to IAB while the case is still being actively investigated. The Commission reviewed pending investigations from all of IAB's geographic groups and the following specialty groups: Organized Crime Control Bureau/Vice (Group 41), School Safety (Group 53), Force (Group 54), and Traffic (Group 56). This type of review, which takes place within each group's offices, allows Commission staff to interact directly with investigators and their supervisors. Such interaction provides valuable insight into the day-to-day operations of IAB.

As was done for prior Annual Reports, most of the 56 pending cases selected for review were randomly chosen from pending case lists provided by IAB that contained only the case number and the assigned group. This year, on a trial basis, the Commission also selected a limited number of "steering cases" for review. These cases are generally a group's most serious cases and are regularly presented to the IAB Steering Committee, which is chaired by the Chief of IAB and is comprised of his executive staff.²³

²³ See *infra* at p. 101 for a further description of IAB Steering Committee meetings.

A breakdown of the most serious allegation in each pending case analyzed for this report is displayed in the table below:²⁴

IAB Pending Cases – Most Serious Allegations²⁵



The Commission’s staff had positive interactions with each group’s investigators, supervisors, and group commanders. During the pending case reviews, the Commission did not find any recurring issues.

The pending case reviews allowed the Commission’s staff to see IAB’s new case management software in action. IAB began using the Internal Case Information System (ICIS) in January 2013. This paperless system allows the investigators and supervisors to have virtually an entire investigation at their fingertips. IAB worksheets are linked to other case documents, including uploaded audio, video, and photographic evidence, allowing the user to view and analyze the material on their computer screen. Among the system’s benefits is the ability for supervisors to add comments below each worksheet.

²⁴ The Commission chose these categories of allegations based on allegations it has examined in past reports and in the closed case section of this report. *See infra* at p. 14. Therefore, the categories of “Other Crimes” and “Planting Evidence” were included here despite there having been no cases with these allegations in the Commission’s pending case review during the 2013 calendar year.

²⁵ The “Other” category includes cases where the most serious allegations were: disclosure of confidential information, fraternization with a student, acceptance of gratuities, prisoner injured in custody, or improper tow/body shop association.

The Commission has previously reported on the importance of team leader reviews,²⁶ and believes that ICIS enhances the ability of supervisors to guide investigations. In addition, the section provided for supervisory comments enables documentation of case strategy and decisions regarding the investigation should the case be reassigned or reviewed.

B. Commission's Review of Closed IAB Investigations

As noted earlier, the Commission reviews closed cases to assess whether they were investigated in a fair, thorough, accurate, and impartial manner. The purpose is not necessarily to focus on problems with individual investigations that have already been closed; rather, this process allows the Commission to evaluate the general quality of IAB investigations and to make recommendations that can be applied to future investigations.

1. Methodology

While conducting reviews, the Commission staff focused primarily on five areas: timeliness; identification and interviews of complainants, witnesses (both civilians and members of the service), and subject officers; evidence collection and analysis; the case closing report; and whether the case disposition (including the disposition assigned to each allegation) was consistent with the information gained during the investigation. The staff also noted other less readily-categorized issues, and tracked data concerning the allegations, sources of complaints, and whether the case raised issues related to Department training, supervision, and/or policy.

For this review, cases were randomly chosen from among IAB's closed case lists. At the time of selection, the Commission was only aware of the case number, which

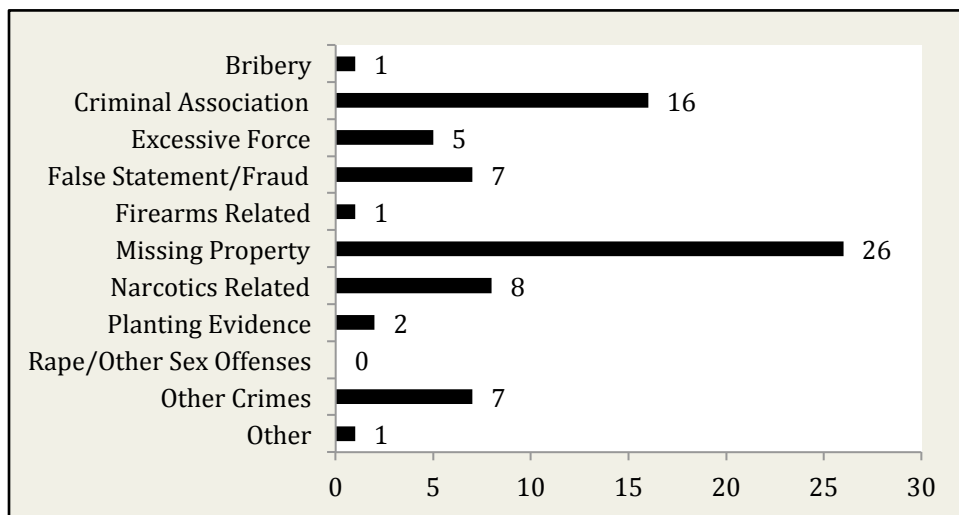
²⁶ *Fourteenth Annual Report of the Commission (Fourteenth Annual Report)* (February 2012) at p. 9 and *Fifteenth Annual Report of the Commission (Fifteenth Annual Report)* (September 2013) at pp. 17-18.

identified the year the allegation was received, and the group that conducted the investigation. In 2013, for the first time, the Commission reviewed closed investigations from the Financial Investigations Unit (Group 2), the Computer Crimes Unit (Group 7), the Police Impersonation Unit (Group 51), and the Integrity Testing Unit (Group 52).²⁷

2. General Analysis of Closed Investigations

In 2013, the Commission reviewed 74 closed cases. The breakdown of the most significant allegations in those cases follows:

IAB Closed Cases – Most Serious Allegations²⁸



As noted in the Commission’s three most recent Annual Reports,²⁹ the two most frequent serious allegations were missing property and criminal association.

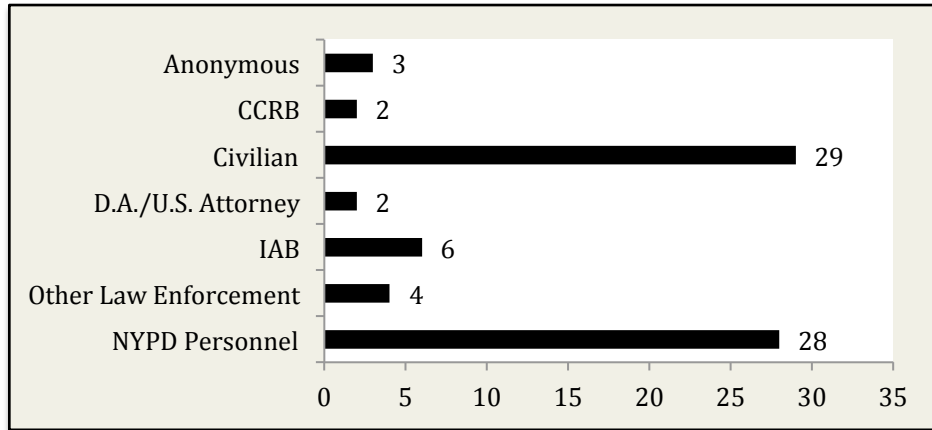
²⁷ The Commission did not review cases from Group 9 (the group responsible for overnight, call-out investigations), Group 55 (the Surveillance Unit), and the Court Monitoring Unit. These groups primarily provide investigative support to IAB’s remaining groups.

²⁸ The “Other Crimes” category includes cases where the most serious allegations were larceny (three cases), extortion, assault, robbery, and child pornography. The “Other” category includes a case where the most serious allegation was computer misuse.

²⁹ *Thirteenth Annual Report of the Commission (Thirteenth Annual Report)* (March 2011) at p. 4; *Fourteenth Annual Report* at p. 8; and *Fifteenth Annual Report* at p. 6.

An analysis of the sources of the reviewed complaints shows that 39% of the cases were initiated upon a report from a civilian, while 38% of the cases were based upon a complaint by another member of the NYPD, with supervisors reporting 86% of those cases.³⁰ The chart below shows the sources of the reviewed complaints.

IAB Closed Cases - Source of Complaints³¹



NYPD internal investigations have an administrative statute of limitations (SOL) of 18 months.³² The SOL is measured from the last date the alleged misconduct took place.

Length of Investigations Reviewed		
	Case Total	%
6 Months or Less	20	27
7 - 12 Months	19	26
13 - 18 Months	16	22
19 - 24 Months	7	9
25 Months or More	12	16
Total	74	100

Therefore, administrative charges must be brought against a subject officer within 18 months of that date. The SOL does not apply in cases where the alleged misconduct would constitute a crime if proven in a court proceeding.³³ In its review of closed cases,

³⁰ P.G. §207-21, “Allegations of Corruption and Other Misconduct Against Members of the Service,” requires that members of the service report corruption or misconduct, or allegations of corruption or misconduct, to IAB.

³¹ Members of the service may make anonymous complaints, so that category includes anonymous complaints made by civilians and members of the service, if any.

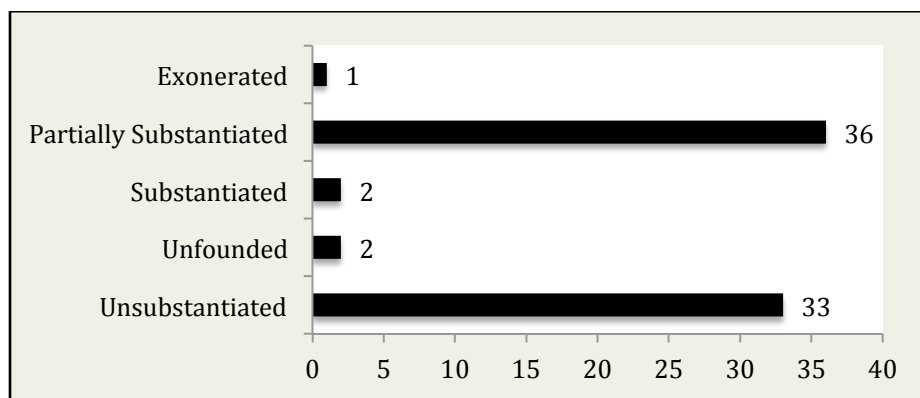
³² N.Y. Civil Service Law §75(4).

³³ *Id.*

the Commission analyzed the length of IAB investigations³⁴ and found that the average investigation lasted 15.2 months, with the shortest taking 2 months, and the longest 81 months.³⁵

As described earlier in this report, IAB assigns a disposition to each allegation and an overall case disposition at the conclusion of its investigation.³⁶

A breakdown of the overall closed case dispositions in the reviewed cases is depicted in the following chart:



³⁴ The Commission measured the length of each investigation from the date IAB was notified of an allegation of misconduct to the date the investigation was closed. The Commission found that in 78% of the cases reviewed, the incident was reported to IAB within a week of the alleged misconduct, while 5% of the reviewed cases were reported to IAB more than 18 months after the alleged date of occurrence. In only 2 of the 19 cases open beyond the SOL, subject officers avoided discipline due to the length of the investigation. It appears that in both cases, IAB made a strategic decision to allow the SOL to pass so the larger investigation into more serious allegations would not be compromised.

In one of the cases, the investigator was conducting surveillance to determine whether the subject officer was associating with someone who had a criminal history. During one observation, the subject officer was observed using his private automobile to go to an assignment, which is not permissible. The Commission believed that the SOL on this violation was allowed to pass so as not to reveal the ongoing surveillance to the subject officer. He ultimately received a letter of instruction for the violation.

The second case involved allegations of extortion, fraud, and civil rights violations. Non-criminal, minor violations by members of the service who were not the main target of the investigation were observed. The Commission believed that IAB, with guidance from federal authorities, did not request discipline for these minor violations so as not to compromise the investigation against the main subject officer. That subject officer was ultimately criminally prosecuted and received a lengthy prison sentence.

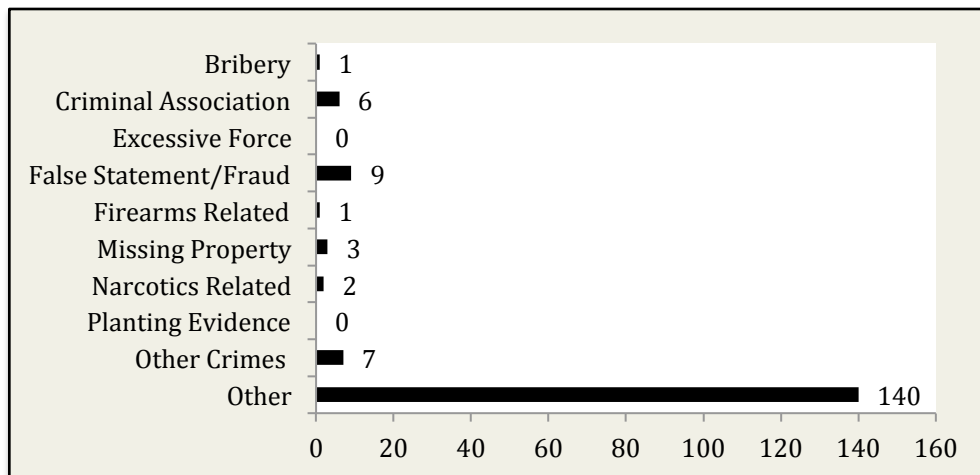
³⁵ This case involved a joint investigation conducted by IAB and the Federal Drug Enforcement Task Force. The Commission did not note any deficiencies attributable to IAB, and as it involved the investigation of criminal activity, the SOL did not apply.

³⁶ See *supra* at pp. 6-7.

Approximately 53% of the reviewed IAB cases were closed with at least one substantiated allegation: 2 cases were substantiated (the subject officers were found to have committed all of the conduct alleged), 36 cases were partially substantiated (the subject officer(s) was found to have committed the conduct described in at least one allegation), and 1 case was closed with a disposition of unsubstantiated with other misconduct noted.³⁷ All of these 39 cases included multiple allegations, and 69% involved more than one subject officer.³⁸

The substantiated allegations of the closed cases reviewed by the Commission are depicted in the chart below:

IAB Closed Cases - Substantiated Allegations³⁹



³⁷ The Commission reviewed substantiation rates from various police investigative agencies located throughout the United States and found the rates ranged from 6% to 24%. New York City’s CCRB (*see infra* at p. 5, fn. 12) has a 14% substantiation rate.

³⁸ In total, these 39 investigations involved 156 subject officers.

³⁹ Some cases reviewed had multiple substantiated allegations and multiple subject officers.

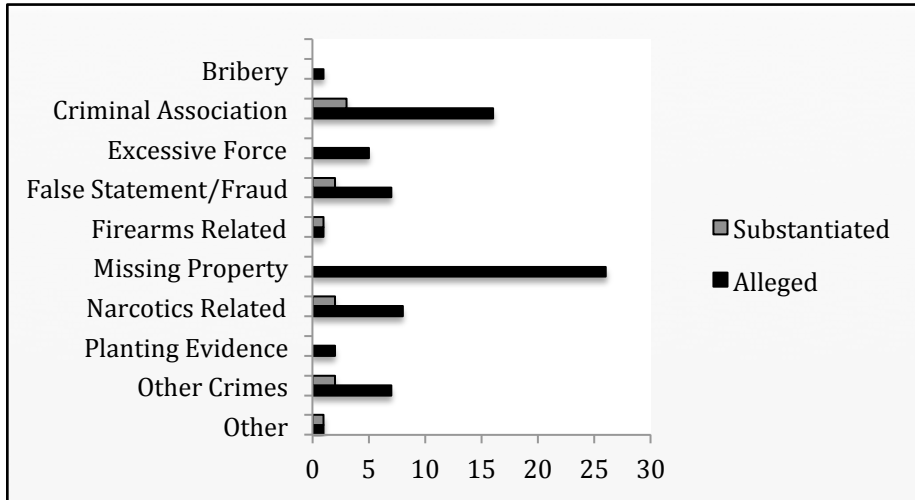
The 'Other' category included a wide variety of less serious allegations that are further itemized below:

Description of Allegation	Total # of Allegations
Abuse of Authority/Disputed Arrest	2
Auxiliary Impersonation of NYPD	1
Computer Misuse	8
Disclose Confidential Information	3
Dispute – Off-Duty	2
Duplicate Shield	2
Emails to Correctional Facility	1
Failure to Identify Self (as a member of the service)	1
Failure to Maintain Proper Records	1
Failure to Make Command Log Entry	2
Failure to Make Proper Notifications of Address Change	3
Failure to Notify IAB	16
Failure to Prepare Stop & Frisk Report	2
Failure to Provide Testimony	1
Failure to Remain at Scene of Unusual Occurrence (Off-Duty)	3
Failure to Request Supervisor at Off-Duty Incident	1
Failure to Safeguard Computer Code	1
Failure to Safeguard Department/Prisoner Property	3
Failure to Safeguard Firearm	1
Failure to Secure Prisoner w/ Safety Belt	2
Failure to Supervise	6
Failure to Take Police Action	1
Failure to Voucher Property	1
Gratuity	1

Impede Investigation	6
Improper Return of Prisoner Property	1
Improper Search	1
Inappropriate Business Dealings with Subordinate	1
Incomplete/Inaccurate Report	1
Memo book Incomplete/Improper	42
Misuse of Time	2
Obtain Information for Personal Use	1
Off-Duty Inmate Visit	1
Off-Post/Unauthorized Post Change	2
Other Dept. Rules/Regs – Improper Charge on Arrest Report	1
Sale of NYPD Logo Items	1
Suspended Driver’s License	1
Unauthorized Contact with Court	10
Unauthorized Radio Transmission	2
Unauthorized Use of Department Uniform	1
Unauthorized Use of Private Vehicle	1
Total	140

The chart below sets forth the dispositions of the most serious allegations contained in each of the reviewed cases.⁴⁰

**IAB Closed Cases - Most Serious Allegations
Alleged vs. Substantiated**



In the chart above, the substantiated allegations depicted were only the most serious allegation in each investigation that was reviewed by the Commission.⁴¹ For example, while there were three cases where missing property allegations were substantiated, as noted on the prior page, these were not the most serious allegations investigated in those cases.⁴²

3. CCPC Analysis of Selected Trends

For this year’s Annual Report, in its closed case reviews, the Commission specifically focused on five general areas that had been highlighted in previous reports: timeliness; identification and interviews of complainants, witnesses, and subject officers;

⁴⁰ These correspond to the allegations depicted in the chart appearing on p. 14.

⁴¹ This was consistent with the substantiation rates cited at p. 17, fn. 37.

⁴² Two of these allegations involved a missing driver’s license or a missing police union card. The final allegation involved missing currency, but the subject officer in that case was found to have committed a larceny. Therefore, this case is included in the “Other Crimes” category.

evidence collection and analysis; the case closing report; and case disposition. In addition, the Commission included commentary on the quality of IAB interviews. The table below shows the compliance rate in the general areas of the Commission’s focus.

Description	Compliance %	Number of Cases
CCPC Agrees with Disposition	99%	73/74
Accurate Summaries of Recorded Interviews	96%	71/74
Interview of Available Witnesses	93%	69/74
Team Leader Reviews	86%	64/74
Documentation of Investigative Steps	96%	71/74
Timely Search for Video Evidence	91%	67/74
Adequate Interview Quality	88%	65/74

3.1 Dispositions

Based on the information available in the case file, the Commission agreed with the disposition in 99% of the closed cases reviewed in 2013. This is a positive reflection on IAB’s command structure. Every case is subjected to a multi-layer review from team leaders up through at least one member of the executive staff before it is closed. At times, cases are sent back to the investigator for additional investigative steps or information.

In the single case in which the Commission disagreed with the disposition, IAB closed the case as unsubstantiated. The Commission determined that one of the four allegations, discourtesy, should have been substantiated and the case closed as partially substantiated.⁴³ In that case, multiple civilian witnesses provided accounts of the subject

⁴³ The other three allegations were unnecessary force, prisoner injured in police custody, and failure to provide name and shield.

officer's unprofessional and discourteous conduct. In the Commission's view, these statements were sufficient to substantiate the allegation.

3.2 Summaries of Recorded Interviews

Interviews are an integral part of most IAB investigations, and an interview of the complainant can frame an entire investigation. Interviews of both civilian and police witnesses may lead to important information used to corroborate or rebut the allegations. Most IAB interviews of civilians are recorded, and all official interviews of witness and subject officers are supposed to be recorded.⁴⁴ The case investigator summarizes each interview on a worksheet. While summaries of interviews are not transcripts, they should include details from the interview that are material to the investigation, and the summaries should accurately reflect the recorded interviews.

The Commission found that 96% of the cases reviewed had satisfactory summaries of recorded interviews. In three cases, the summaries of two recorded official Department interviews and one recorded civilian interview were either inaccurate or incomplete in material respects.⁴⁵ The summaries related interview statements but did not accurately reflect the substance of what was said in the interviews. In addition, one of the cases involving a criminal association allegation contained an incomplete summary of the interview, in that the investigator failed to describe a telephone conversation the subject officer had with an alleged criminal associate, and failed to note that the subject

⁴⁴ P.G. §206-13 authorizes the Department to interview officers during an official Department investigation (official Department interview or P.G. interview). Members of the service who refuse to answer questions during these interviews face suspension. Members of the service found to have made false statements during these interviews are subject to termination from the Department, absent exceptional circumstances, which are determined by the Police Commissioner on a case-by-case basis. *See infra* at pp. 81-83 for a more extensive discussion of the Department's policy regarding members of the service who make false statements during official Department interviews.

⁴⁵ Two of the cases involved criminal association allegations, and one involved an allegation of excessive force.

officer identified other members of the service who might have known the alleged criminal associate. The relationships between the other members of the service and the alleged criminal associate were not examined during this investigation, as we believe would routinely be done in similar investigations. Because this information was material to the investigation, it should have been included in the worksheet.

3.3 Interviews of Available Witnesses

Civilian and police witnesses are potential sources for valuable, relevant information, and the best practice would be to interview all readily available witnesses in a timely manner. In many instances, it is difficult to ascertain what information a potential witness has and how it could potentially alter the course of an investigation without speaking to that person.

The Commission found issues regarding the timely interviewing of witnesses in five cases, or seven percent of the closed cases reviewed.⁴⁶ In the Commission's view, IAB failed to interview some witnesses who might have possessed relevant information and easily could have been contacted by the investigator.

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

⁴⁶ In each case, the most serious allegation was missing property.

According to IAB, team leader reviews should be conducted and documented every 30 days. The reviews typically list investigative steps directed by an investigator's supervisor. The Commission found issues related to team leader reviews in 14% of the cases reviewed. In seven cases, team leader reviews were not documented on a monthly basis; two cases contained team leader reviews that repeated the same directions for the investigator two or more months in a row; and one case included a commanding officer's review with a directive that was not followed. In three of these cases, commanding officers pointed out these deficiencies to the investigating officers before the investigation concluded, and in one additional case, the commanding officer issued discipline to the team leader for failing to monitor the progress of the investigation. The Commission appreciates that some of these issues are being identified by IAB itself, and encourages increased vigilance in this area. As mentioned previously, IAB's ICIS system should enhance the ability of team leaders to document their case supervision.⁴⁷

3.5 Documentation of Investigative Steps

Proper, contemporaneous documentation of investigative steps prevents new investigators from duplicating steps if a case is transferred, and allows supervisors to properly assess the progress of the case. Only 3 of the 74 cases reviewed were found to have documentation issues. In one case involving a "flaking" allegation, the investigator referred to an interview with a patrol supervisor in the closing report that was never documented.⁴⁸ The other two cases were investigations into the excessive use of force. In the first case, the investigator failed to document how he obtained contact information for a complainant whom he had difficulty locating previously. In the second, the

⁴⁷ See *supra* at pp. 12-13.

⁴⁸ "Flaking" occurs when an officer plants contraband on a person in order to effect an arrest.

investigator omitted relevant details from both the closing report and the summary of an interview with a civilian witness.

3.6 Search for Video Evidence

Video can be the best evidence to support or refute an allegation. Unfortunately, it is often available for only a short period of time before it may be overwritten.

Therefore, it is important to conduct a search for video as early as possible.

Nine percent of the cases reviewed by the Commission lacked a timely search for video evidence. In these cases, either no search for possible video evidence was conducted, or there was a delay in excess of 30 days in conducting a search, which may have resulted in a loss of relevant evidence. IAB's executive staff often reminds group commanders and team leaders of the importance of searching for video evidence as soon as is practicable, and in two of these cases, commanding officers pointed out the failure to search for video to the investigating officers prior to closing the case. While we appreciate IAB's effort to identify the issue itself, it would have been preferable to identify the issue at a much earlier stage of the investigation.

3.7 Interview Quality

Investigators conducting interviews must be well prepared with a strategy in place to obtain all relevant information. As the Commission noted in a previous Annual Report:

An effectively conducted PG Hearing would include one where all of the major issues are covered, open-ended questions are asked, the interviewer maintains control of the interview, and the interviewer is flexible enough and familiar enough with the facts of the case to ask appropriate follow-up or clarifying questions when necessary.⁴⁹

⁴⁹ *Seventh Annual Report of the Commission (Seventh Annual Report)* (March 2004) at p. 34.

Interview quality was again an issue in some of the closed cases reviewed. The Commission found that the majority of the closed cases reviewed contained interviews that were effectively conducted. However, in nine cases, the Commission concluded that some of the interviews could have been more effective. In these cases, the investigating officer failed to address specific allegations, failed to ask appropriate follow-up questions seeking more detail, failed to use available contradictory evidence to challenge the statements of the subject officers, or failed to provide witnesses with the opportunity to view photograph arrays when appropriate.

C. Conclusion

IAB conducts the vast majority of its investigations in a fair, thorough, accurate, and impartial manner. The Commission agreed with the disposition in all but one of the closed investigations reviewed. The nature of the Department's self-policing dictates that internal investigations be held to an extremely high standard. The inner workings of IAB are hidden from public view and even from the rest of the Department, a necessary precaution, which could lead to distrust of its investigations and findings. Criticisms contained in the Commission's review of IAB investigations serve to reinforce the integrity of the Department's self-policing efforts. The overwhelming majority of the Commission's observations are not critical of IAB, and the Commission's findings should bolster confidence in IAB's investigations.

REVIEW OF IAB TRAINING

As part of its monitoring responsibilities, the Commission periodically attends and evaluates IAB training sessions.⁵⁰ During the past year, the Commission's Executive Director, Deputy Executive Director, Staff Attorneys, and Confidential Investigators attended different IAB training courses and lectures including: 1) sections of IAB's Office of Professional Development's (OPD) Internal Investigations Course (IIC); 2) OPD's ICOs Course; 3) OPD's Bureau/Borough Investigations Course; 4) OPD's seminar for IAB team leaders; 5) a lecture by the Chief of IAB to NYPD recruits held at the Police Academy; and 6) OPD's training for IAB personnel on special victims investigations.⁵¹

OPD's IIC is required for all newly assigned IAB investigators. This CALEA-certified course is presented with the dual goals of providing an overview of IAB's organization and operations and an overview of IAB's investigation process. The lecture topics include Case Management: Principles of Internal Investigations; Crime Scene/Evidence Collections; Use of Force Investigations; Financial Investigations; and Driving While Intoxicated Investigations. There are also lectures and a workshop on preparing for and conducting official Department interviews.

After observing the IIC, the Executive Director and Commission staff met with the Chief of IAB, IAB executive staff, and the Commanding Officer of the Corruption Prevention Division who oversees OPD and offered suggestions to enhance the training, including the recommendation that OPD more strongly emphasize areas of the course

⁵⁰ Executive Order No. 18, §2(a)(iii) (February 27, 1995).

⁵¹ Special victims investigations include investigations of sex crimes committed against adults and children and physical abuse of children.

relevant to new investigators and connect lecture topics directly to the performance of investigators' job responsibilities. Additional student exercises and real-life examples of the work of IAB investigators also should be further incorporated into the IIC. This would both enhance the value of the course and may improve the student experience.⁵²

The OPD courses for ICOs and Bureau/Borough investigators train non-IAB NYPD personnel who investigate lower level misconduct cases. These courses include some lectures offered in the IIC course as well as others in areas more relevant to these commands' investigations. While this is a valuable course, including more lecturers with direct experience performing or overseeing the roles of ICOs and Bureau/Borough investigators would more effectively teach students about the actual practices and policies of these commands. This may also alleviate some complaints by student investigators that the IAB instructors did not understand the demands they faced, or how investigations proceeded in their commands. Although there may be many similarities between investigating allegations referred to IAB and those referred to the Bureau/Borough Investigation Units, there are also differences, including restricted access to some computer systems and competing responsibilities that could better be addressed by instructors with experience working as ICOs or in the Borough/Bureau Investigation Units.

A lieutenant in IAB's OPD, who was previously a team leader, led the IAB Team Leader Seminar. The trainer reinforced certain team leader responsibilities including: participation in official Department interviews; reviewing recordings and worksheets from interviews in which the team leader was unable to participate; when to categorize

⁵² In response to a draft of this Report, the Department announced that it would reexamine the IIC for the purpose of enhancing the relevance of the course to incoming IAB investigators.

complainants as uncooperative; video retrieval; certain case management issues; and criteria for case closing reports. The lieutenant specifically reviewed recommendations made by IAB executive staff, DAO, and CCPC. Seminars such as this are an important component of oversight and training for supervisory staff.

The Special Victims Investigations training was an advanced and specialized refresher course on the role of IAB investigators in sex crime or child abuse investigations in which a member of the service is the alleged perpetrator. IAB supervisory staff, the Commanding Officer of the NYPD's Special Victims Division, and supervisory staff from the New York County District Attorney's Office's Sex Crimes Unit lectured on the unique complexities of these investigations, key investigative steps, and the collaboration between their offices.

The Commission commends IAB's efforts to provide ongoing and advanced level training in a wide variety of investigation topics to IAB personnel.

REVIEW OF CLOSED DISCIPLINARY CASES

Introduction

DAO prosecutes the administrative cases against members of the service based on substantiated investigations.⁵³ The Department Trial Commissioners participate in plea negotiations, preside over trials in cases where no plea agreement is reached, and recommend administrative penalties to the Police Commissioner. The Police Commissioner is responsible for the final decision regarding guilt and the penalty in all cases.

The Commission reviews every disciplinary case that involves a uniformed member of the service to evaluate whether the Department appropriately addresses misconduct.⁵⁴ It is understood that the Commission's review of these cases cannot result in any adjustment to the penalties, rather the review is conducted to offer guidance in

⁵³ See *supra* at p. 5 for a description of the Department's internal investigative entities. In addition to federal authorities, city prosecutors, and other law enforcement agencies that often work in conjunction with IAB to investigate criminal allegations against members of the service, CCRB (discussed *supra* at p. 5, fn. 12) is also an external agency that conducts investigations into police misconduct. In the past, DAO prosecuted cases that were investigated and substantiated by CCRB. During the past year, however, CCRB began prosecuting its own cases before the Department's Trial Commissioners.

⁵⁴ The paperwork the Commission reviews includes the charges that were levied against the subject officer and the disposition sheet, which notes the final disposition against the subject officer. If there was a plea agreement, the plea 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 officer's actions was usually this paperwork. The Commission does not generally review the entire file or listen to the officer's recorded statements. Some of the underlying investigations, however, were previously reviewed as part of the Commission's general review of IAB cases. There were also some instances where the Commission reviewed the underlying investigation when there were questions regarding the facts of the case.

future cases. The Commission examines whether the penalties imposed seemed proportionate and adequate given the following factors: the misconduct committed, the officer's disciplinary and performance history, and the strength of the case. In assessing the adequacy of the imposed discipline, the Commission also compares penalties that have been imposed in similar cases.

For this report, the Commission evaluated 860 disciplinary cases adjudicated between October 2012 and September 2013.⁵⁵ The Commission focused particular attention on two categories of cases, serious off-duty misconduct involving allegations of the display or discharge of a firearm (Firearm-Related cases) and cases in which members of the service were alleged to have made false statements or committed a fraud (False Statement cases).⁵⁶ These categories have been the subjects of prior Commission reports.⁵⁷ The Commission continues to pay special attention to Firearm-Related cases because of the serious consequences that may accompany this behavior. The Commission continues to focus on False Statement cases for several reasons: 1) false statements obviously call into question the outcome of particular cases; 2) officers who commit perjury, make official false statements, or falsify documents create a credibility

⁵⁵ Although there were 860 cases reviewed, there were several officers who were the subjects of multiple sets of charges and specifications. Usually, these multiple charges would be resolved with a single penalty. In total, cases against 689 officers were reviewed.

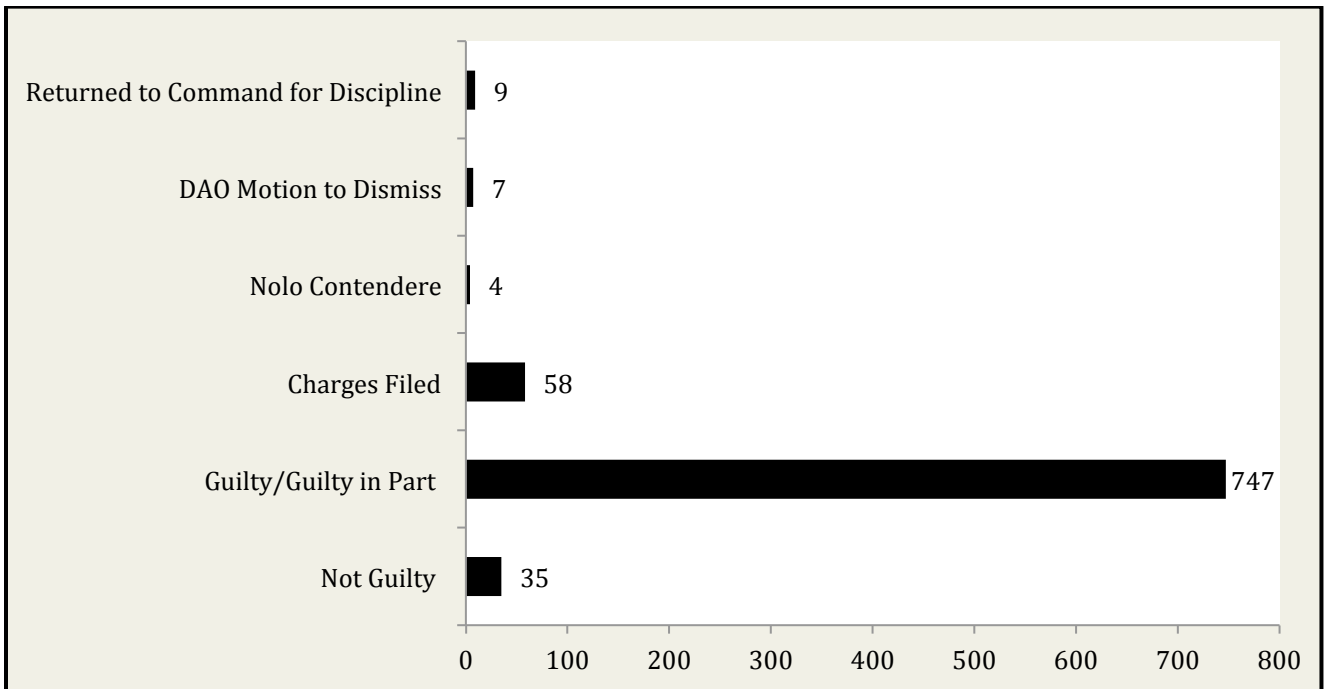
⁵⁶ In prior years, the Commission examined two additional categories of serious off-duty misconduct: domestic incidents and alcohol-related misconduct. However, as we stated in our *Fifteenth Annual Report*, at pp. 45 and 60, the Commission concluded that the Department has generally imposed sufficient penalties in these cases. Therefore, the Commission discontinued its specific focus on those two categories. In drafting this Report, the Commission found that there were seven cases involving domestic incidents where we believed that more severe penalties were warranted. Given the number of cases, representing approximately 8% of the domestic cases reviewed, the Commission discusses these cases in a separate subsection of this Report. See *infra* at pp. 40-53.

⁵⁷ See *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998) and *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements* (December 12, 1996).

issue that can negatively affect an officer’s utility as a witness in other cases; and 3) false statements made by police officers can significantly undermine the public’s confidence in the integrity of the entire Department and in our criminal justice system. Additionally, sufficiently severe discipline may deter officers from lying to cover up the misconduct of colleagues and dismantle “the blue wall of silence.”

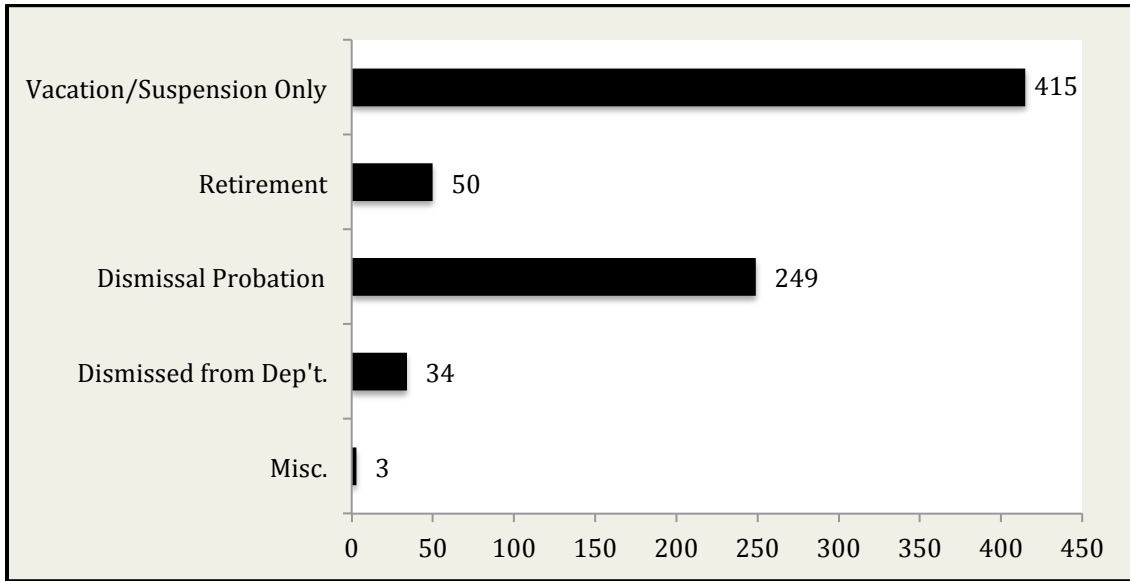
Below is a breakdown of the dispositions imposed in the 860 cases reviewed and a separate breakdown of the penalties imposed:

DAO Case Dispositions⁵⁸



⁵⁸ “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. “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. In the event the subject officer is reinstated to the Department, the administrative prosecution of the charges can then proceed against him or her.

DAO Case Penalties⁵⁹



General Disciplinary Cases

General disciplinary cases (for purposes of this report, all disciplinary cases that were not Firearm-Related or False Statement cases) ranged widely from criminal association to misuse of pepper spray. The Commission reviewed 707 general disciplinary cases and concurred with the vast majority of the penalties imposed by the Department.⁶⁰ The Commission disagreed with the penalties in 29 of those cases.⁶¹

⁵⁹ The miscellaneous category consisted of reprimands, warnings, or no discipline imposed.

⁶⁰ These 707 cases include 13 cases excluded from the False Statement review because they contained mere denials. *See infra* at p. 82-83.

⁶¹ These 29 cases involved 26 subject officers, as 3 subject officers each had 2 disciplinary cases adjudicated against them.

A. Excessive and/or Unnecessary Force Against Civilians

In the Commission's view, four subject officers deserved greater penalties based, in part, on the excessive and/or unjustified force that they used against civilians.⁶² In these cases, either the civilians suffered from head injuries as a result of the force used or the potential for serious injury was significant.

The first subject officer in this category perpetrated one physical assault and assisted in a second against two different arrestees. In January 2009, at the time of the first incident, he had been employed by the Department for four years and had no disciplinary history. The subject officer and his partner responded to a fight between the complainant and three other individuals.⁶³ The subject officer arrested the complainant without investigating the underlying incident, calling the patrol supervisor to verify the arrest, or requesting medical attention although the complainant was injured. The complainant was not cooperative during the arrest, requiring the subject officer and his partner to use force to subdue him. After transporting the complainant to the stationhouse, as the handcuffed arrestee exited the patrol car, the subject officer struck him on the head with a baton. The complainant needed 12 staples to close the wound. An auxiliary officer stated that the bleeding from the complainant's head was so severe that he had to use a mop to clean up the blood.

The second incident occurred approximately one year later, in January 2010. The subject officer and several other members of the service responded to a call reporting a shooting.⁶⁴ During that response, the subject officer held a handcuffed prisoner, while

⁶² Two of these subject officers each had two disciplinary cases covered by the imposed penalty.

⁶³ The subject officer's partner also received Departmental charges in relation to this incident.

⁶⁴ Many of these members of the service also received Departmental charges in relation to this incident

another police officer stepped on the prisoner's head.⁶⁵ The subject officer failed to notify IAB and interfered with the official Department investigation by providing the investigators with incomplete and inaccurate information. During his official Department interview, the subject officer denied that he observed anyone use physical force against the complainant.⁶⁶

In relation to the first incident, the subject officer pled guilty to failure to conduct an investigation, failure to obtain medical attention for an injured person, failure to request the response of a patrol supervisor after being involved in an unusual police occurrence, and abuse of authority for striking the arrestee with no legitimate police purpose. In relation to the second incident, the subject officer pled guilty to failing to timely notify IAB of another member of the service using unnecessary physical force against a prisoner, failing to make entries into his activity log, impeding or interfering with an official Department investigation by providing inaccurate or misleading answers during an official Department interview, and having unnecessary contact with a civilian. For his misconduct in both cases, the subject officer forfeited 45 vacation days and was placed on dismissal probation.⁶⁷

including the subject officer's partner from the first incident.

⁶⁵ The police officer who was caught using the excessive and unnecessary force against the civilian was separated from the Department after the incident. As a result of this interaction, the complainant filed a lawsuit against the City of New York.

⁶⁶ As the Commission considered this a mere denial, this case was not included in the False Statement section of this report.

⁶⁷ 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, or if the Department discovers any prior misconduct, the member of the service's employment may be terminated without an administrative hearing regarding the newly discovered allegations. At the successful conclusion of the dismissal probation period, the member of the service is restored to his or her former status.

This subject officer should have been terminated. He pled guilty to involvement within a one-year-period in two separate incidents in which significant, unnecessary physical force against civilians was used. These incidents occurred during his first four years of employment, suggesting that he lacked the temperament necessary to be a police officer.

The subject officer in the next case involving the unnecessary use of force was an eight-year veteran at the time of the alleged misconduct. In January 2012, the complainant attempted to flee from an arrest for possession of a controlled substance by punching a police officer. The officers on the scene subdued the complainant, after a struggle involving the use of batons, and were able to handcuff him. One officer then placed the complainant on the ground. The subject officer arrived on the scene while the complainant was rear handcuffed and lying face down on the ground. Upon her arrival, without any provocation from the complainant, she kicked him once in the back and pepper sprayed him in the face.

In her official Department interview, the subject officer stated when she arrived at the scene, she saw another officer bleeding from the face and did not know the complainant was handcuffed, although she acknowledged that he was on the ground. She explained that although she did not know whether he was the person responsible for the other officer's injuries, she felt he might have been and, therefore, considered him a threat. She admitted that the complainant was not resisting or attempting to flee when she kicked or pepper sprayed him. She additionally stated that she knew that her actions were wrong after she took them, but had "tunnel vision" at the time.

The subject officer had two prior disciplinary incidents. In 2005, she received charges for filing a false complaint and being out of residence while on sick report without the Department's permission. Because she was a probationary police officer at the time, she received a six-month extension of her entry-level probation.⁶⁸ She also forfeited 15 vacation days and was ordered to cooperate with Department counseling. Charges were again brought against the subject officer in 2010 for associating with a criminal and making incomplete memo book entries. For this misconduct, she forfeited 30 vacation days. Two years later, she was placed on Level II Discipline Monitoring.⁶⁹ Additionally, she was only rated a 5 out of 10 by her commanding officer and had three chronic sick designations.

For the misconduct at issue, the subject officer was charged with four specifications: abuse of authority for kicking the complainant without police necessity; abuse of authority for improperly using force by pepper spraying the complainant without police necessity; abuse of authority for improperly using pepper spray against the complainant (which was charged under a different provision of the Patrol Guide); and having incomplete entries in her memo book. After pleading guilty, the subject officer was placed on dismissal probation and forfeited 40 vacation days. Based on her

⁶⁸ During the first two years of a police officer's employment with the Department, he or she is on entry-level probation. During this period, the officer can be terminated summarily without any administrative proceedings for any reason except one that is constitutionally impermissible.

⁶⁹ 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).

gratuitous use of force and her significant disciplinary history, the Commission believed she should have been terminated.

The third subject officer had been employed by the Department for six years at the time of the incident and had no prior disciplinary history. According to the complainant, in July 2011, the subject officer and another police officer chased him after they observed him in the vicinity of an assault. After the officers caught and handcuffed him, the subject officer asked the complainant why he ran. When the complainant did not give him a satisfactory answer, the subject officer punched him in the left eye with a closed fist. An independent witness corroborated the fact that the subject officer punched the complainant. The officers then drove the complainant to the location of the initial assault and released him without issuing him a summons.⁷⁰ The complainant suffered a loss of vision in his left eye, a fracture to his left orbital wall, and a fractured finger.

During his official Department interview, the subject officer denied engaging in any physical altercation with the complainant. The subject officer later pled *nolo contendere* to using physical force against the complainant without having police necessity and forfeited 12 vacation days. The Commission disagreed with that penalty. The complainant did not pose any danger to the subject officer, his partner, or anyone else. In their official Department interviews, both the subject officer and his partner agreed that the complainant was cooperative prior and after being handcuffed, making the subject officer's actions unjustifiable. His behavior demonstrated a lack of judgment, impulse control, and a propensity for violence. The subject officer should have, at minimum, been placed on dismissal probation.

⁷⁰ The subject officer and his partner explained that they released him because the victim of the assault, although identifying the complainant as the perpetrator, did not want to press charges. There was no indication in the paperwork reviewed that investigators spoke with the victim of the assault.

The next subject officer, a sergeant with 16 years of experience, forfeited 25 vacation days as a penalty for two disciplinary cases.

In the first case, the Department alleged that the subject officer did not document or supervise the re-assignment of an arrest from one police officer to another. In October 2009, the assigned police officer, who was not present at the incident, filled out a complaint affidavit that was submitted to the District Attorney's Office in which he stated that he personally made observations pertaining to the arrest. The assigned officer was criminally charged with Perjury and Offering a False Instrument for Filing. Although these charges were ultimately dismissed, he was found guilty administratively. He was placed on dismissal probation, he forfeited 30 vacation days, and he was suspended for 45 days. As that police officer's immediate supervisor, the subject officer signed off on his arrest paperwork, which indicated her approval of its accuracy.

In the second case, the subject officer and her partner observed a physical altercation in the street in July 2010. As additional units responded, other members of the NYPD broke up the fight. The subject officer assumed the responsibility for crowd control and pepper sprayed a female bystander after she ignored an order to step back. This was an improper use as pepper spray is only authorized to be used to protect the officer or other individuals from physical force or to physically restrain or exercise control over a person being arrested.

In light of her extensive prior disciplinary history, the Commission concluded that a penalty of 25 vacation days was insufficient for this supervisory subject officer. Ten years earlier, she had been charged with acting discourteously to a civilian and failing to submit a stop, question, and frisk report. After being found guilty, she was suspended for

50 days, forfeited 60 vacation days, and was placed on dismissal probation. She also pled guilty in two other disciplinary cases, in which charges were levied seven years earlier, and was again placed on dismissal probation.⁷¹ In her current cases, she pled guilty to failing to supervise a subordinate in the first case and to inappropriately using her Department-issued pepper spray against a civilian and failing to make entries in her memo book in the second. Had the subject officer properly supervised her subordinate, the criminal and administrative charges against that officer might have been avoided. Given her disciplinary history and the seriousness of the current charges against her, the subject officer should have been placed on dismissal probation again.

B. Domestic Incidents

In prior Annual Reports, the Commission has written about the adequacy of the penalties imposed in cases ranging from verbal disputes to violations of orders of protection to physical assaults when the incidents occurred between a subject officer and either a family member or someone with whom the officer had a present or past intimate relationship.⁷² This year, the Commission reviewed 88 cases in which subject officers were charged with misconduct in connection with domestic incidents.⁷³ Forty-three of these cases involved the subject officer's use of physical force. The Commission

⁷¹ The subject officer pled guilty to: 1) operating an unregistered and uninsured motor vehicle from 1997 through 1998, for which she was placed on dismissal probation and forfeited 25 vacation days; and 2) engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department from 2000 through 2001, for which she was again placed on dismissal probation and forfeited 30 vacation days.

⁷² See *Sixth Annual Report of the Commission* (December 2001) at pp. 52-55; *Seventh Annual Report* at pp. 100-107; *Tenth Annual Report of the Commission (Tenth Annual Report)* (February 2008) at pp. 27-31; *Eleventh Annual Report of the Commission (Eleventh Annual Report)* (February 2009) at pp. 31-35; *Twelfth Annual Report of the Commission (Twelfth Annual Report)* (February 2010) at pp. 35-46; *Thirteenth Annual Report* at pp. 14-17; *Fourteenth Annual Report* at pp. 25-30; and *Fifteenth Annual Report* at pp. 52-60.

⁷³ Some officers had multiple cases involving domestic incidents. There were 72 subject officers charged in these 88 cases.

believed more severe penalties were appropriate in seven cases,⁷⁴ five of which involved the subject officer's use of physical force against the complainant.⁷⁵

The first domestic case involved a subject officer who had been employed by the Department for five years at the time of the incident. He pled guilty to misconduct relating to a violent domestic dispute with his girlfriend in 2011. At approximately 3:00 a.m., after consuming alcohol, the subject officer went to his girlfriend's apartment. An argument between them ensued and escalated. The subject officer threw his girlfriend's telephone against the wall, threw her on the couch, covered her mouth while on top of her, placed his hand around her neck, and briefly choked her. He then left the residence without notifying the Department of the incident.⁷⁶ His girlfriend made a complaint four days later. The subject officer was not arrested, although a Domestic Incident Report (DIR) was prepared.⁷⁷ The victim did not seek medical treatment, and no injuries to her person were observed when she reported the assault. To settle the administrative proceeding against him, the subject officer pled guilty to engaging in a physical altercation and a verbal dispute with his girlfriend, and failing to notify the Department about the incident. He forfeited 45 vacation days and was placed on dismissal probation.

⁷⁴ One subject officer had three separate cases involving domestic violence incidents but was found not guilty in two of those cases; therefore, they were not included in the seven cases where the Commission disagreed with the imposed penalty.

⁷⁵ The subject officer was the same in the two cases that did not involve the use of physical force.

⁷⁶ Members of service have a duty to report all unusual police occurrences to the Department. Specifically, P.G. §212-32 provides that when an off-duty uniformed member of the service becomes involved in an unusual police occurrence to which the uniformed member of the service is either a participant or a witness, the uniformed member of the service must: 1) remain at the scene of the incident when feasible and consistent with personal safety; and 2) request the response of a patrol supervisor, precinct of occurrence. According to P.G. §212-09, an unusual occurrence is one that is "substantially more than an ordinary occurrence because of its seriousness, peculiarities, sensationalism, vastness, differences, newsworthiness, or potential to affect police-community relations involving interracial/ethnic conflict or community unrest."

⁷⁷ Members of the service are obligated to complete a DIR every time a domestic incident is reported, even if no arrest is made. It includes the allegations made by the complainant.

This was not the subject officer's first documented domestic dispute. In 2010, the subject officer pled guilty to engaging in a physical and verbal dispute with a different woman in which he punched her three times in the face causing a laceration, bruising, swelling, and a chipped tooth. He was suspended for 30 days, agreed to cooperate with Department counseling, and was placed on modified assignment.⁷⁸

The subject officer was appointed in July 2006. He was placed on modified assignment due to the earlier case from November 2009 through September 2010, and also suspended for 30 days. A little over one year after the subject officer was restored from modified duty, he engaged in the second physical dispute. The subject officer was again modified from October 2011 until at least April 9, 2013, and was placed on 12 months of dismissal probation in May 2013. As a result of these two cases, the subject officer spent nearly a third of his five-year tenure on modified assignment, suspension, or dismissal probation. The counseling that the subject officer underwent as a result of the first domestic dispute plainly was not effective, and his apparent propensity for violence makes it likely that the subject officer will engage in similar misconduct in the future. Therefore, this subject officer should have been terminated.

The second subject officer involved in a domestic incident had been employed by the Department for almost eight years at the time of the incident and had no prior disciplinary history. The subject officer was charged administratively with engaging in

⁷⁸ When an officer is placed on modified assignment, he is assigned to non-enforcement duties pending a determination of his fitness to perform police duties. Modified members of the service are not authorized to possess any firearms or shields. (P.G. §206-10). Uniformed members of the service may be placed on modified assignment for a variety of reasons, including, but not limited to, indictment by a grand jury, arrest, being found unfit for duty, and being served with charges and specifications that allege serious misconduct. (P.G. §206-07).

conduct prejudicial to the Department by becoming involved in a physical altercation with his wife.

While visiting his wife in another state, the subject officer became involved in a verbal dispute with her over the telephone, while she was at work. When his wife arrived home, the dispute continued, and she asked the subject officer to leave the residence after he threw her to the ground. He did, but when he returned a short time later, the argument became more violent after his wife refused to comply with his demand for her car keys. The subject officer grabbed a kitchen knife and held it to her throat. Next, he threw his wife onto her bed, straddled her, and proceeded to strangle her. His wife stated that she passed out as a result of the subject officer's actions and awoke to the subject officer trying to give her a drink. He then poured cold water over her head to try to awaken her. His wife was taken to the hospital where she was diagnosed with injuries consistent with strangulation. The subject officer was arrested by local law enforcement and charged with Strangulation, a felony offense.

Although in his official Department interview the subject officer claimed that his wife was the initial aggressor, and that he had acted in self-defense in order to prevent her from stabbing him, he pled guilty to the misdemeanor charge of Domestic Assault and Battery one month after the incident. He received a 12-month jail sentence, 11 months of which were suspended on the condition that he would not have "hostile contact" with his wife, be "in uniform good behavior" for one year, not possess a firearm in that state for two years, and complete a batterer's and anger management counseling program.

Administratively, the subject officer was placed on dismissal probation and forfeited the 32 days he had been suspended immediately following the incident. He also

agreed to cooperate with Department counseling programs. Because of the severity of his conduct, including the potential deadly consequences, and his criminal conviction, the Commission believed he should not be a police officer and consequently should have been terminated.

The third subject officer, a six-year veteran of the Department with no disciplinary history, was found guilty in one of the three separate cases brought against him by DAO. All three cases related to the subject officer's physical disputes with his girlfriend. In the first case, the subject officer grabbed his girlfriend's hair, slapped her face, and then slapped her again in June 2010. A video of the incident clearly showed a physical altercation; therefore, the Trial Commissioner found the subject officer guilty of engaging in a physical dispute and failing to report the incident to the Department.

The Trial Commissioner found the subject officer not guilty of the domestic incident allegations in the two remaining cases after the subject officer's girlfriend "vehemently" refused to testify. In the first of these cases, the subject officer's girlfriend had alleged that in September 2010, the subject officer slapped her, bit her on her thigh, and flipped her over causing her to strike her head and foot on a dresser. The subject officer was arrested for Assault in the Third Degree, but his criminal case was adjourned in contemplation of dismissal.⁷⁹ An order of protection, in effect for approximately six months, was also issued against him. In the remaining case, the subject officer's girlfriend alleged that he threatened her with kitchen knives, choked her, and pulled her hair on different dates between July and September 2011. The District Attorney's Office

⁷⁹ An adjournment in contemplation of dismissal occurs when the judge adjourns the case for a period of six months, after which time the case will be dismissed if the defendant has not violated any laws and has complied with any court-ordered conditions. It is neither a form of probation, nor a conviction.

declined to prosecute the subject officer for these incidents. The Trial Commissioner found the subject officer not guilty in these two cases, mainly because he was reluctant to make findings that depended on the credibility of the girlfriend, who did not testify and therefore, could not be cross-examined.

For the misconduct of which he was found guilty, the subject officer forfeited the 95 days that he served on pre-trial suspension.⁸⁰ At the very least, the subject officer should have been placed on dismissal probation. Within 15 months, he had numerous domestic violence allegations made against him, one of which was captured on video. Dismissal probation would enable the Department to terminate the subject officer should he become involved in another serious incident.

The subject officer in the next domestic case had a history of domestic incidents. In November 2011, at the time of the misconduct, he had been a police officer for three years. This subject officer pled guilty to engaging in a physical altercation with his fiancée by twisting her arm while attempting to remove her from their bedroom. According to the fiancée, she sustained minor injuries to her arm and lip and alleged that the subject officer broke the remote control, pushed her in the stomach, damaged property in the bedroom, and threw a glass table against the wall. When she called 911, the subject officer threatened to kill her. The subject officer was arrested and charged with Assault in the Third Degree. The fiancée was also arrested and charged with Assault in the Third Degree, but her case was later dismissed. The subject officer's criminal case was adjourned in contemplation of dismissal with a condition that he

⁸⁰ For the misconduct in all the cases against him, DAO originally requested dismissal probation in addition to 95 days that he had served on pre-trial suspension. The Trial Commissioner recommended a penalty of 30 days served on pre-trial suspension plus the restoration of 65 suspension days. The Police Commissioner determined that none of the suspension days already served should be restored.

completes a batterer's program. A one-year order of protection was also issued against him, which prohibited him from using any firearms through January of 2013.⁸¹

This was not the first documented allegation against the subject officer. His former domestic partner also made allegations against him in 2009. As a result, he was placed on modified assignment from August 2009 until July 2010. That incident also resulted in an order of protection.

For his misconduct in the instant case, the subject officer was suspended for 30 days and required to participate in Department counseling. In the Commission's view, this subject officer should also have been, at the very least, placed on dismissal probation. The subject officer had a history of domestic allegations that twice resulted in restrictions on the use of his firearm, which affected his ability to carry out his duties. The fact that two different women made allegations of domestic violence against him indicated that he did not experience a single lapse of judgment and that being placed on modified assignment after the first incident did not alter his behavior. Unlike the first case cited in this section, this subject officer did not receive formal Department discipline for the prior domestic allegations; therefore, the Commission believed a period of dismissal probation might be sufficient in lieu of outright termination.⁸² If the Department had put this subject officer on dismissal probation, it would have been able to terminate him summarily if he became involved in another serious altercation during the term of his probation.

⁸¹ This prohibition extended to carrying a firearm while he was on duty.

⁸² See *supra* at pp. 41-42.

The multiple allegations against the fifth subject officer, an 11-year veteran, related to a troublesome relationship with his married live-in girlfriend. The allegations arose out of 6 different incidents over an 11-month period.

The first incident resulted in a guilty plea to engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department. The subject officer visited his girlfriend's husband's residence in April 2011 with knowledge that the husband was at home and that the subject officer possessed a valid order of protection that prevented the husband from having contact with the subject officer.

The most serious incident occurred in February 2012. While parked in his car, the subject officer and his girlfriend engaged in an argument so heated that a passerby intervened on her behalf. The subject officer exited his car and confronted the passerby, who fled to a nearby diner and requested that someone call 911. The subject officer followed the passerby into the diner and tackled him. The passerby's girlfriend, also present at the scene, claimed that she twisted her knee trying to get away from the subject officer.

During his official Department interview, the subject officer stated that he tackled the passerby because the man had menaced him with a gravity knife. However, while speaking with the police officers that responded to the incident location, the subject officer did not inform them that the passerby had a weapon, and there was no evidence of a knife at the scene. The police did not arrest the passerby because his "demeanor was one of innocence." The Department charged the subject officer with engaging in a physical altercation with the passerby.

The subject officer further pled guilty to engaging in a physical altercation with his girlfriend in March 2012, during which she sustained visible bruising to her arm and neck. His girlfriend called her friends to help her leave the residence, and they took her to her estranged husband's house. When he saw her injuries, he called 911. However, the girlfriend denied that the subject officer struck her and claimed that her bruises were caused by a fall. When interviewed by investigators, at least one of the girlfriend's friends and her husband stated that immediately following the incident, the girlfriend had told them that the subject officer had caused her injuries. As a result of this domestic incident, the subject officer was placed on modified assignment.

Finally, the subject officer pled guilty to failing to notify the Department, as required, about two separate unusual police occurrences in March 2012. In the first, occurring on the same day as the physical altercation with his girlfriend, the girlfriend told the subject officer that her husband had violated an order of protection by driving past their house; however, the subject officer failed to notify the Department. In the second, two days later, the girlfriend called the subject officer from her husband's house, claiming that her husband was preventing her from removing property and court documents. The subject officer called 911 several times to request assistance at the husband's residence, but failed to identify himself as a member of the service. As a result, he was suspended. While he had no disciplinary history, the subject officer was placed on Level II Discipline Monitoring due to the issuance of these charges.

For all six incidents, the subject officer forfeited 15 vacation days and was suspended for 30 days. The Commission disagreed with that penalty. Given the frequency of these incidents and the subject officer's willingness to implicate a civilian to

cover up his own misconduct, this subject officer should at least have been placed on dismissal probation.⁸³

The next subject officer, a detective with seven years of experience and no disciplinary history, was involved in two unrelated instances of misconduct. During the first incident, in May 2011, the subject officer and his girlfriend, while picking up his children, punched his estranged wife about the head, causing lacerations to her lip, bruising, and pain. She called 911, and the police issued both the subject officer and his girlfriend summonses for Harassment. The subject officer was later served with a temporary order of protection that included a provision prohibiting him from carrying any firearms. About two weeks later, he was issued a full order of protection, which included the same clause. The subject officer and his girlfriend both pled guilty to Harassment in the Second Degree and paid fines. The subject officer also completed domestic incident training.

During the investigation, it was also discovered that in August 2010, about one year prior to the above misconduct, the subject officer had conducted an unauthorized computer inquiry on his girlfriend, which showed that she had been convicted of Grand Larceny in July 2009. In September 2011, the subject officer's commanding officer instructed him to cease any contact with his girlfriend. During his April 2012 Department interview, he admitted that he disobeyed his commanding officer's order and continued to see his girlfriend.

The subject officer pled guilty to engaging in a physical altercation with a civilian, criminal association, computer misuse, failure to comply with an order to cease

⁸³ This case was not included in the False Statement section of this report because no charges were levied against the subject officer regarding his allegation that the civilian menaced him with a knife.

contact with a convicted felon, and failure to notify the Department about the first incident. He was penalized a total of 40 vacation days. The Commission disagreed with the penalty in this case.⁸⁴ Given the serious nature of the subject officer's girlfriend's prior conviction in addition to the physical altercation with his wife, the Commission believed that he should have been placed on dismissal probation. This would have allowed the Department to terminate him summarily if, while on probation, he either engaged in further acts of domestic violence or continued his association with his girlfriend.⁸⁵

The final subject officer in this section pled guilty to misconduct in two separate cases. At the time of the misconduct, the subject officer had been employed by the Department for five years and had no disciplinary history. In the first case, she sent a message to her 16-year-old stepdaughter in May 2009, in which she stated, "Ur mom says u r mentally depressed why don't u follow in her footsteps and maybe you would be the

⁸⁴ By its disapproval of the imposed penalty, the Commission does not purport to evaluate the Department's policy prohibiting criminal association and may choose to conduct a study on that topic for a separate report.

⁸⁵ The danger that these types of relationships will continue despite Department orders to the contrary is illustrated by another case discussed in the Commission's *Fourteenth Annual Report* at pp. 28-29. There, the Commission recommended dismissal probation as a penalty for a lieutenant with ten years of experience who continued to associate with his girlfriend after an IAB lieutenant ordered him to cease all contact. The subject officer forfeited 40 vacation days for that misconduct.

In 2013, in a second case against the same lieutenant, he pled guilty to criminal association with the same woman with whom he was previously ordered to cease all contact. The subject officer's girlfriend had one felony conviction for Driving While Intoxicated, and five misdemeanor convictions including Petit Larceny, Criminal Possession of a Controlled Substance in the Seventh Degree, and Driving While Ability Impaired by Drugs. For the felony, she was sentenced to five years probation. In connection with driving under the influence of drugs and possession of a controlled substance, she was sentenced to five months in jail. For another instance of possession of a controlled substance, she was sentenced to eight months in jail. The subject officer visited her while she was incarcerated.

The subject officer was placed on dismissal probation for his misconduct in the subsequent 2013 case, in addition to forfeiting 45 vacation days. Had the subject officer been placed on dismissal probation for his first case and had it then been discovered during that probationary period that he continued his association with this woman, the Department would have been able to terminate him summarily, not only for his continued criminal association but for his continued refusal to obey orders from his superiors.

one to succeed, and the world would be a better place without you around! So give it a try.” The teenager’s mother and sister had both previously attempted to commit suicide. As a result of this message, Child Protective Services investigated the subject officer in the beginning of 2010.

In the second case, also in May 2009, the subject officer sent a harassing e-mail to her husband’s ex-wife, the mother of the stepdaughter, in which she called the ex-wife a “psycho suicidal bitch” and used other profane language. The subject officer failed to notify the Department about these incidents and about a second 2010 Child Protective Services investigation. In the first case, the subject officer pled guilty to endangering the welfare of a child by sending a threatening email message and to failing to notify the Department about her involvement in an off-duty incident. In the second case, she pled guilty to failing to notify the Department that she was the subject of an investigation and Aggravated Harassment in the Second Degree, a criminal act. She forfeited 30 vacation days for both cases. In the Commission’s view, this disposition was inappropriately lenient. Sadly, news reports of teenagers who commit suicide after being encouraged to do so or after being bullied by peers or even strangers are far too common. Such a suggestion should certainly not come from a parental figure, much less from one who also has a function in society to protect the safety of others. Given the seriousness of the subject officer’s misconduct and the potential tragic consequences of her message, the Commission believed that a greater penalty was warranted.

The Commission has reviewed a total of 468 domestic violence cases over the last six Annual Reports. The prevalence of these types of incidents suggests that the Department should establish clear guidelines for the adjudication of disciplinary cases for

acts involving physical violence in a domestic situation where the subject officer is believed to be the primary aggressor. In researching this issue, the Commission reviewed a model policy developed by IACP for addressing officers involved in domestic violence incidents.⁸⁶ This policy advocates the termination of any member of the service who is found guilty of an act of domestic violence, after either a criminal or administrative proceeding. It also recommends that police departments comply with federal law that prohibits anyone convicted of a misdemeanor domestic violence crime from possessing firearms.⁸⁷

As with any model policy, the difficulty is in its application. Although the Commission agrees with the IACP's firm approach to officers found guilty, either administratively or criminally, of domestic violence offenses, we recognize possible unintended consequences of the implementation of such severe penalties. For example, most cases that go through the Department's disciplinary process, including domestic violence cases, result in a plea by the officer. A policy that mandates termination for any officer found guilty of an act of domestic violence would likely result in an increase in the number of Department trials for domestic violence cases, which might in turn, result in a decrease in the number of officers found guilty in these types of cases. The Commission has observed that many domestic violence complainants hesitate to come forward and testify at a Department trial. As a result, DAO often has to present a case based upon hearsay in front of Trial Commissioners who may require additional corroboration because of the severity of the penalty.

⁸⁶ International Association of Chiefs of Police (IACP) (2003). *Domestic Violence by Police Officers: A Policy of the IACP Police Response to Violence Against Women Project*. (IACP Model Policy).

⁸⁷ IACP Model Policy §IV (E)(3)(b).

In light of these factors, and based upon the Commission’s review of cases for this and prior Annual Reports, the Commission recommends the Department consider amending its policies regarding the penalties for physical acts of domestic violence. The Commission recommends that a period of dismissal probation be imposed in addition to the forfeiture of vacation or suspension days for a member of the service’s first offense and that any subsequent offense be punishable by termination. If there is clear and convincing evidence of a prior physical domestic history, regardless of whether there was prior discipline imposed, the Commission believes there should be a presumption that termination is the appropriate penalty. The Commission also recommends the adoption of a general policy that any member of the service found guilty in a criminal proceeding of committing any physical act of domestic violence be terminated from the Department, regardless of whether there was any prior domestic history. The Police Commissioner could choose to depart from these significant penalties upon a finding that exceptional circumstances existed, which justified a less severe penalty. These exceptional circumstances should be specifically set forth to inform members of the service of the penalties that they face in this context.

The Commission also recommends that the Department accepts and follows any court order or federal/state law prohibiting the possession of firearms by members of the service involved in domestic violence related incidents.

C. Acts Committed While on Dismissal Probation

As a general policy, and in keeping with the Commission's support of progressive discipline,⁸⁸ the Commission recommends a penalty of at least dismissal probation in any case where a subject officer commits new misconduct while already serving dismissal probation for previous misconduct. Based on this recommendation, the Commission disagreed with the penalty in three cases.

In the first case, a detective with 20 years of experience was found guilty of misuse of Department computers, printers, and related supplies for non-Departmental purposes.⁸⁹ From January 2009 through October 2010, the subject officer used Department resources and equipment to produce materials for a not-for-profit charitable organization and used a Department computer to access the Internet for non-Departmental purposes on 33 occasions.

For at least part of the time that she was printing these materials, the subject officer was on dismissal probation after pleading guilty in two previous disciplinary cases. In the first case, from December 2005, while on duty, she escorted an unauthorized person, a relative,⁹⁰ into a restricted grand jury witness room and a prosecutor's office, accompanied her relative to a bail hearing, and failed to submit a change of address form. In the other case, the subject officer pled guilty to leaving her residence without permission while she was on sick report in February 2007. In 2010, as

⁸⁸ See *Seventh Annual Report* at p. 73; *Tenth Annual Report* at p. 18; and *Fourteenth Annual Report* at p. 16.

⁸⁹ The subject officer was also charged with, but found not guilty of, unauthorized off-duty employment.

⁹⁰ Her relative was a defendant in a criminal possession of a firearm case. The area where she escorted her relative was one where undercover officers waited before testifying.

a penalty for both prior cases, the subject officer forfeited 45 vacation days and was placed on dismissal probation from January 2010 through July 2011.⁹¹

For the instant case, the subject officer forfeited 25 vacation days. The subject officer should have been placed on dismissal probation again as she was not deterred from continuing her prohibited actions by her initial period of dismissal probation.

The purpose of dismissal probation is to grant members of the service the opportunity to conform to Department standards and follow its rules, while the Department retains the ability to terminate them for the slightest additional infraction if such action is deemed appropriate. If members of the service are to take the stated consequences of being placed on dismissal probation seriously, then there should be a presumption that serious consequences – including termination – will flow from additional infractions. Here, the subject officer did not take advantage of the opportunity she was given, and continued to disregard the Patrol Guide and other Department policies. Therefore, there should be more serious consequences for her violation than a forfeiture of vacation days. Because her misconduct was relatively minor, and because it apparently related to a charity function (rather than being for personal gain), the Commission agreed with the Department's decision not to terminate her employment but believed that another period of dismissal probation should have been imposed.

The second subject officer failed an integrity test in 2012 while he was on dismissal probation resulting from his 2011 guilty plea on a different case.⁹² At the time of the test, he had been employed by the Department for 11 years. A female undercover

⁹¹ The subject officer was also placed on Level II Discipline Monitoring from May 2007 to February 2010 and again from July 2011 through at least February 2013. *See supra* p. 35, fn. 67 for the possible reasons that a dismissal probation period might exceed one year.

⁹² The subject officer pled guilty to driving while intoxicated and refusing to submit to a breathalyzer test.

police officer approached the subject officer and his partner and pointed out that a male parked in a nearby car might drive away while intoxicated. The subject officer asked whether the undercover wanted the male arrested, and when she replied in the affirmative, the subject officer told the undercover that he would speak with the male. However, after the undercover walked away, both officers failed to investigate and drove away. For his misconduct, the subject officer pled guilty to failing to take any police action to investigate an allegation and failing to make activity log entries.⁹³ As a result, he forfeited 25 vacation days.

The Commission disagreed with that penalty. Unlike the prior case, this violation went to the heart of the subject officer's police duty. For dismissal probation to have meaning, when an officer's subsequent misconduct is serious enough, the presumption should be to terminate the officer. At the very least, his period of dismissal probation should have been extended.

In the final case, the subject officer, a four-year veteran, had been placed on dismissal probation and forfeited 45 vacation days to settle two sets of charges and specifications filed in 2008. These charges concerned the subject officer's failure to safeguard a prisoner and a domestic incident.⁹⁴ At least six months prior to the end of his dismissal probation, the subject officer engaged in conduct that resulted in an additional set of charges that contained two specifications.

In the first, the subject officer was charged with failing to safeguard his Department radio on a date in December 2010. He claimed to have lost the radio while

⁹³ His partner was also charged with failing to take police action and with failing to make activity log entries. DAO requested that she forfeit 20 vacation days for this misconduct, but upon recommendation of the Trial Commissioner, she forfeited 10.

⁹⁴ The Commission had no further information about either incident. In addition to dismissal probation, the subject officer forfeited 45 vacation days.

pursuing a perpetrator. The subject officer failed to report the loss of the radio to the Department for six days, although he was not charged with failing to report the loss in a timely manner. The subject officer explained that he was injured while apprehending the perpetrator and believed he had placed his radio in his locker upon his return to the precinct. He then was taken to the hospital for an evaluation of his injuries. The following day, he realized his radio was missing but failed to make the required notifications. He was not on duty for the next three days. When he returned to work, he searched for his radio again. When he failed to locate it, he reported the loss.

The second incident occurred in January 2011. The subject officer and his partner, who had been assigned to transport a prisoner, were observed by a captain from another precinct standing near an entrance to a park at approximately 9:08 p.m. on a cold winter night. The captain questioned the officers who stated that they were returning from Central Booking. The captain left the location, but returned at approximately 9:44 p.m. Upon his return, the captain again observed the two officers in the park, but by a different entrance. The officers again responded to his queries with the statement that they were returning from Central Booking.⁹⁵ In his official Department interview, the respondent did not provide an explanation for why he had not immediately returned to his command.

In his first five years with the Department, the subject officer received three sets of charges and specifications against him. His placement on dismissal probation for the first two sets did not sufficiently deter his misconduct. While his loss of the Department radio did not appear to be intentional, there was also the incident of being off-post.

⁹⁵ His partner received discipline at the command level for being absent from his assignment without permission.

Based on the limited information the Commission had and the unanswered question concerning what the subject officer was doing in a park at 9:08 p.m. on a cold winter night, the Commission believed this officer should have been given another period of dismissal probation.

D. Failure to Investigate

The Department has consistently imposed penalties on members of the service who failed to investigate criminal allegations. For this Annual Report, the Commission evaluated 37 cases that dealt with failures to conduct proper investigations. The average penalty in these cases was the forfeiture of 15 vacation days. The Commission disagreed with the penalties the Department imposed on five officers where the acts of the subject officers appeared to be sufficiently serious to warrant a greater penalty.

The first two subject officers failed to adequately investigate a stabbing incident. When the misconduct occurred in July 2010, they had four and five years of experience as police officers. The four-year officer had received a command discipline earlier in the year for helping another member of the service in preventing the adjudication of a summons, while the five-year officer had no disciplinary history.⁹⁶

The officers responded to a radio call regarding a male stabbed in the head. When they arrived at the scene, they learned that Emergency Medical Services had already removed the victim to the hospital. A lieutenant on the scene found a knife handle, a knife blade, and a hat at the location, and directed one of the subject officers to secure that evidence. The subject officers then proceeded to the hospital to identify the victim.

⁹⁶ Command disciplines are generally issued at the subject officer's command and are not prosecuted by DAO unless the subject officer chooses to contest the matter. Penalties for command disciplines range from a warning to the forfeiture of 10 vacation days. Only certain misconduct can be addressed through a command discipline.

While there, the subject officers informed the lieutenant that they could not establish the name of the victim because he was in a coma and had no identifying documentation. The lieutenant directed the subject officers to “mark the job”⁹⁷ and resume patrol. The senior subject officer gave the incident a final disposition of “unnecessary,” and the more junior subject officer threw the knife away. A few hours later, the subject officers were ordered to return to the scene to review surveillance video that captured the assault. After they viewed the footage, the subject officers resumed patrol without taking any other investigative steps. Other officers were able to identify the victim through his fingerprints and were able to apprehend the perpetrator because he had stolen and used the victim’s cellular telephone.

Both subject officers pled guilty to failing to prepare required Department reports and failing to conduct a proper investigation. The four-year subject officer also pled guilty to failing to invoice evidence, while the five-year subject officer pled guilty to providing the Department with an improper disposition. Both forfeited 20 vacation days, and the lieutenant forfeited 30 vacation days for failing to supervise the two subject officers.

At a minimum, the subject officers should have been placed on dismissal probation. The subject officers not only failed to investigate a life-threatening stabbing incident, but also actively obstructed an investigation by disposing of potentially critical evidence; the victim could have been seriously injured or died, and the evidence could have held fingerprints that conclusively linked the perpetrator to the crime. Their failure

⁹⁷ This involves transmitting over the radio how the assignment was completed.

to preserve obviously important evidence, even after being directed by their lieutenant to do so, warranted a more serious penalty.

The third officer in this subsection was a sergeant with 14 years of experience and no disciplinary history at the time he failed to take any action regarding information he learned about a missing 14-year-old girl. The girl had a history of running away from her parents, who lived apart from each other, and had been diagnosed with bi-polar disorder. In May 2012, the mother, with whom the girl resided, filed a missing person report for her. The subject officer responded to the girl's father's residence and requested entry to search for the child. The father denied entry. He later claimed to investigators that he did not understand the purpose for the request.

Approximately one week later, the father encountered the subject officer, who was assigned to the desk, when he went to the precinct. The father was accompanied by a caseworker from the Administration for Children's Services. The father stated that he learned that his daughter was being held against her will in a specific housing project by a man who wanted \$300.00 in exchange for the girl's release. A meeting location had been arranged in the confines of a different precinct. The caseworker confirmed that she overheard the father provide the subject officer with this information.

The subject officer told the father that there was nothing that he could do and recommended that the father go to the location and call 911. Instead, the father went to the precinct that covered the location where the meeting was to take place. Officers from that precinct contacted another Department unit, which responded to the location and arrested the man.

In his official Department interview, the subject officer acknowledged the encounter with the father but stated the father only provided vague information about the whereabouts of his daughter, became uncooperative, and left when the subject officer tried to obtain more detailed information. The subject officer also stated that he spoke with a member of the detective squad after the father had left. He denied that the father stated the child was being held against her will or that money was demanded for her release, but admitted that he had instructed the father to contact 911 if he got any further information about his daughter's location.

For his misconduct, the subject officer forfeited 15 vacation days. The Commission believed that this was insufficient. While it was not clear, given the Department's policy, why this subject officer was not charged with making a false statement, particularly where there was corroboration of the complainant's version of events by the third-party caseworker, even without this charge, the subject officer's omissions jeopardized the well-being of a mentally unstable minor.⁹⁸ The Commission believed that the subject officer should have at least been placed on dismissal probation in addition to forfeiting vacation days.

The next case involved a sergeant with 27 years of experience. In September 2011, multiple male adult civilians flagged down the subject officer to report that a male, who appeared emotionally disturbed, had inappropriately grabbed a 12-year-old girl. The witnesses pointed out the perpetrator, who was passed out on a nearby bench. The subject officer instructed the witnesses and victim to remain at the location while he called to determine if a sector car would be able to respond. As a result of his call to the

⁹⁸ See *infra* at pp. 81-83 for a description of the Department's false statement policy.

Department, the subject officer learned that a sector car already had been dispatched. The subject officer informed the witnesses that he could not remain at the scene and that other members of the service were on the way. He then left the crime scene.

On the way to his Department vehicle, the subject officer encountered the responding officers and pointed out the alleged perpetrator but told them that the minor victim and the witnesses had all left. The subject officer informed them about the incident, but did not instruct them to arrest the male. The officers who arrived at the scene knew the alleged perpetrator because he had a reputation for being emotionally disturbed. The perpetrator was ultimately arrested for Sexual Abuse in the Second Degree after the victim arrived home from school and reported the incident to her mother.

During his official Department interview, the subject officer acknowledged that he did not speak to the victim or obtain any pedigree information from anyone at the location. He stated that he asked the adults who were present what they wanted him to do. When they responded that they just wanted the perpetrator taken care of, the subject officer directed them to the local precinct if they had any questions. The subject officer had a duty to ensure the safety and well-being of the minor, preserve the crime scene, and identify the witnesses. He did not determine if the victim needed medical assistance or call an ambulance.

The subject officer forfeited 20 vacation days for his failure to prepare a complaint report, failure to investigate, failure to supervise other members of the service, and failure to make memo book entries about this incident. In recommending this penalty, DAO relied on precedent in cases of subject officers with no prior disciplinary history. The subject officer in the instant case had been previously disciplined twice.

Almost ten years earlier, the subject officer received a command discipline for abuse of authority and forfeited one vacation day. In 2011, the subject officer forfeited 15 vacation days for registering his automobile at an address where he did not reside in order to benefit from lower insurance rates. Based on his history and his failure to investigate a sexual offense against a minor, the subject officer should have been placed on dismissal probation.

In the final case, the subject officer had three years of experience and no disciplinary history at the time he failed to take a report regarding alleged child abuse. In December 2012, a 12-year-old girl called 911 because her father, who was babysitting her siblings and the girl, had hit her 16-year-old brother in the face with a belt, causing a cut to his nose. The 16 year old was mentally disabled. After the altercation, the father left the scene. When the subject officer and his partner arrived, they interviewed the girl. The girl later told investigators that she had confirmed the physical altercation to the responding officers and also had informed them that her father had hit both her and her brother with a belt on previous occasions. In the course of interviewing the girl, the officers noticed a picture of the children's mother in a police uniform. When the girl explained that her mother was a police officer, the responding officers asked her to telephone her mother at work.

According to the mother, her daughter told her about the incident that led her to call 911. She then handed the telephone to one of the officers. That officer told her that the 16 year old had sustained a small scratch to his nose. The mother told the officer she would take care of it later, but did not ask the officer to refrain from making any reports. The officers did not complete a DIR, request the response of a patrol supervisor to the

mother's home, or contact Child Protective Services. The 16 year old returned to school four days later. The school noticed the boy's injury and questioned him about it. School personnel contacted Child Protective Services.

During their official Department interviews, both responding officers claimed that the girl told them that there was only a verbal dispute. The subject officer's partner stated that when they called the mother, they informed her that her daughter had "described facts indicating that the father had a history of domestic violence" but he could not remember whether the mother indicated she was aware of this history. Both officers further stated that the children did not seem to have any injuries and since a member of the service was not present at the incident location, they did not believe it was necessary to request the response of a patrol supervisor.⁹⁹ The subject officer also stated that the girl told the officers that nothing had really happened except for an argument between her brother and her father. He denied that either child appeared to be injured or complained of any injuries. The subject officer further stated that he received the call as a dispatch for information and not as a possible child abuse, which was not true and not confirmed by his partner.

For his omissions, the subject officer forfeited 15 vacation days.¹⁰⁰ In light of the fact that this case involved the apparent favorable treatment of a police officer in circumstances where children were in possible danger, the Commission believed that the penalty should have been greater and a period of dismissal probation should have been considered.

⁹⁹ A patrol supervisor is required to respond to any incident that involves a member of the service.

¹⁰⁰ The subject officer's partner did not receive discipline, as he was deceased when the case was adjudicated.

The mission of the Department is “to enhance the quality of life...by working in partnership with the community and in accordance with constitutional rights to enforce the laws, preserve the peace, reduce fear, and provide for a safe environment.”¹⁰¹ One way in which the Department carries out this core function is by investigating complaints of criminal misconduct. Officers are permitted to exercise discretion in deciding whether to take a report or conduct an investigation. Generally, deference is accorded to the decision made by a responding officer.

However, in instances where the victim is particularly vulnerable or there is credible evidence that a serious crime has been committed, an officer should always take a report and conduct an investigation. In the cases cited in this section, the victims were minors, had limited mental capacities, or were in a comatose state. Nearly all the incidents alleged felony criminal acts, and there was sufficient, credible, and corroborating evidence in each case. Furthermore, none of the subject officers provided a reasonable explanation to justify their failure to investigate. Accordingly, in each of these situations, the officer’s failure to investigate warranted a greater penalty.

E. Miscellaneous General Cases

The following seven cases were not readily categorized into particular types of misconduct.¹⁰² In the Commission’s view, the penalty imposed in each of these cases was not adequate based on the misconduct committed and/or the officer’s disciplinary history.

¹⁰¹ NYPD. *Mission: NYPD*. <http://www.nyc.gov/html/nypd/html/administration/mission.shtml>. (accessed May 22, 2014.)

¹⁰² Two cases involved the same subject officer, while an additional two cases involved different subject officers participating in the same incident.

In the first case, the subject officer pled guilty to touching two female members of the service in a sexual, inappropriate, and harassing manner. The majority of this unwanted touching occurred while the subject officer was still a probationary police officer. A female colleague, Complainant A, reported that the subject officer grabbed and fondled her breast while they were posing for a group picture at their command's holiday party in December 2009. Complainant A further stated that the subject officer had also made sexually suggestive comments to her on at least two prior occasions.

After learning about Complainant A's allegations, the subject officer's former partner, Complainant B, confided to Complainant A and, later, Department investigators, that the subject officer had requested sexual favors from her several times during each shift when they were partnered together. The subject officer also touched her ears, inner thighs, and buttocks. Complainant B also reported to Department investigators that the subject officer had admitted to fondling Complainant A during the holiday party, and tried to enlist Complainant B to approach Complainant A on his behalf. This misconduct occurred between September 2009 and February 2010.

Two other officers stated that the subject officer made inappropriate sexual comments in the locker room and spoke to Complainant B in a sexually suggestive manner. A third officer corroborated these allegations and reported that he overheard the subject officer trying to convince Complainant B to engage in sexual activity with him.

When questioned in an official Department interview about the complainants' claims, the subject officer denied engaging in any of the alleged misconduct.¹⁰³

¹⁰³ The subject officer was not charged with making a false statement or impeding an investigation by making false and misleading statements in his official Department interview. Therefore, this case was not included in the False Statement section of this report. *See infra* at pp. 81-100.

This subject officer pled guilty to wrongfully touching two female officers while on duty, and repeatedly making sexual comments and propositions to his partner and subjecting her to unwanted physical contact, creating a hostile work environment. As a penalty, he was placed on dismissal probation, forfeited 30 vacation days, served 30 days on suspension, and had to attend Department counseling and re-training provided through the Office of Equal Employment Opportunity and any other Department training deemed necessary.

This case was reminiscent of a case cited by the Commission in its *Fifteenth Annual Report*.¹⁰⁴ In that case, a lieutenant pled guilty to exposing his genitals to a female subordinate and sending images of male genitals to this subordinate and a civilian member of the service on multiple occasions. He also sent several text messages with a sexual undertone to his subordinate. As his penalty, the lieutenant was placed on dismissal probation, forfeited 45 vacation days, served 15 days on suspension, and was directed to cooperate with Department counseling and training programs.¹⁰⁵ He was also transferred. The Commission disagreed with that penalty and recommended termination due to the lieutenant's supervisory status, the fact that he had exposed himself to his subordinate while on duty, and the unsupported perception that the lieutenant treated the complainant more favorably than other officers. The Commission stated, "[T]his kind of behavior required a particularly strong response as it often goes unreported because of fear of retaliation."¹⁰⁶

¹⁰⁴ At pp. 34-38.

¹⁰⁵ The Department cited the case involving the lieutenant exposing himself to his subordinate as precedent in support of the penalty imposed in this case.

¹⁰⁶ *Fifteenth Annual Report* at pp. 35-36.

Much of the same reasoning applied in the instant case. Such matters must be dealt with severely to make it absolutely clear that “good old boy” permissiveness cannot be the standard in a department with an increasing number of female officers. While this subject officer was not a supervisor harassing his subordinate, he touched both complainants in a sexual manner. His former partner was subjected to his unwanted physical contact and sexual requests on many occasions. Sexual comments were made to and about Complainant B in front of her colleagues, most likely causing her embarrassment and discomfort. While in the lieutenant’s case there were text messages between the lieutenant and one complainant that could have been evidence of consent to some of the behavior, in this case there was no indication that either complainant consented to any of the behavior. Additionally, this subject officer falsely denied his actions.

While he did not have a formal disciplinary history, he had since been placed on Level II Force Monitoring due to the number of CCRB complaints lodged against him. When the misconduct was discovered and during part of the investigation, this subject officer was a probationary police officer. The Department had the authority to extend his probationary status while both complaints were fully investigated so that he could be terminated without formal disciplinary proceedings at the conclusion of the investigation. The Department chose not to do so. The Department should have a zero tolerance policy towards sexual harassment this severe. The subject officer’s actions were not merely misconduct, but a crime and indicative of his personality. Allowing this subject officer to tenure, and then failing to terminate him, demonstrates a level of tolerance for serious

sexual misconduct that is troubling. The Commission firmly believed that this subject officer should have been terminated.

The following three subject officers abused their authority by issuing baseless summonses to people they believed were civilians. The first case involved one police officer while the second one involved a sergeant and a police officer. Both scenarios were actually integrity tests in which the purported civilians were in fact IAB undercover officers.¹⁰⁷

The first of these cases involved a police officer with five years of experience. The integrity test took place in March 2010. During this test, an IAB investigator called 911 alleging that an individual was selling drugs on a walkway near public housing. An IAB undercover officer stood at the location provided during the 911 call. The subject officer approached the undercover and questioned him about his presence. He then searched the undercover officer and issued him a summons for Disorderly Conduct-Obstructing Pedestrian Traffic.

The video of the integrity test showed that the undercover was not disorderly and that there was ample room for others to pass by the undercover on the walkway. The subject officer's partner testified that he did not see the undercover blocking or impeding traffic. During his official Department interview, the subject officer explained that he issued the summons because the undercover gave him "evasive answers." The subject officer pled guilty to wrongfully issuing a summons without legal authority and failing to prepare a stop, question, and frisk report. He forfeited 20 vacation days, and was ordered to receive instruction on the legal requirements of Disorderly Conduct.

¹⁰⁷ See *supra* at p. 4 for a definition of IAB's integrity tests.

The Commission disagreed with that penalty. Although the subject officer had been with the Department for five years with no disciplinary history, he issued a summons for an offense that did not occur. As the Commission stated in its *Fifteenth Annual Report*, “[b]ecause the [subject officer] invented a set of circumstances designed to penalize an innocent person, he should have been terminated.”¹⁰⁸

The next two cases involved a similar scenario that resulted in the discipline of a sergeant with nine years of experience and a police officer with six years of experience. While neither had been the subject of prior charges and specifications, the sergeant received a command discipline and forfeited four vacation days in 2004 for storing arrest evidence in her locker overnight and failing to maintain her activity log. The police officer had no disciplinary history but had been placed on Level II Force Monitoring due to the high number of CCRB complaints made against him.

In June 2012, IAB conducted an integrity test directed at the police officer. In that test, an IAB undercover officer approached the police officer, who was working with the sergeant, and stated that another person was following her around while smoking marijuana. This undercover pointed out that person, who was another IAB undercover officer. The police officer and sergeant approached the second undercover. That undercover only gave evasive answers to their questions and claimed to only be able to provide his social security card in response to the subject officers’ request for

¹⁰⁸ At p. 71. In the case described in the *Fifteenth Annual Report*, the subject officer issued a summons for Disorderly Conduct to an undercover IAB officer for obstructing pedestrian traffic when, in fact, the undercover was simply standing next to a fence. The Commission disagreed with the penalty of dismissal probation and forfeiture of 30 vacation days, and recommended termination. Although the facts in these cases were similar, in the prior case the subject officer was charged with two counts of causing false entries in Department records: one for the false events listed on the summons, and one for the description of those events that he placed in his memo book. There was no obvious reason for the differences in charges and penalties in these two cases.

identification. The sergeant directed the police officer to handcuff the undercover. He was then transported to the stationhouse. While the sergeant conducted a warrant check on the pedigree information provided by the undercover, the police officer issued the undercover a summons for Disorderly Conduct for obstructing vehicular/pedestrian traffic. In the narrative, the police officer wrote that the undercover had been causing public alarm by blocking pedestrian traffic. This was not true.

In the sergeant's official Department interview, she stated that she had the undercover moved to the stationhouse to conduct background checks. If his record had been clean, she intended to release him with a summons for Disorderly Conduct based on his failure to obey a lawful order to provide identification with a photograph. She stated that she did not order the police officer to write the summons, which the police officer confirmed in his official Department interview. She also stated that she was not aware of what the police officer wrote in the narrative and conceded that the narrative was not an accurate description of the events. For her misconduct, she received charges for: abuse of authority for authorizing an improper arrest without sufficient legal basis for that arrest; abuse of authority for supervising the improper issuance of a summons without sufficient legal basis for that summons; conduct prejudicial to the Department in that she supervised the police officer's issuance of the summons wherein he had not obtained proper identification from the individual; and failing to make entries in her activity log regarding this incident. She forfeited 30 vacation days and was directed to receive further instruction from the Police Academy in the requirements of the Disorderly Conduct section of the Penal Law.

In his official Department interview, the police officer also admitted that this was not an accurate version of what transpired. He added that when he wrote the summons, he believed that if a person was standing on a sidewalk for no apparent reason, the requirements for a Disorderly Conduct violation were fulfilled. The police officer pled guilty to specifications for: causing false entries to be made in Department records in that he indicated on a summons for Disorderly Conduct that he personally observed the individual causing public alarm and annoyance by blocking pedestrian traffic when this did not occur; abuse of authority for issuing a Disorderly Conduct summons without sufficient legal basis; and issuing a criminal court summons without obtaining proper identification.¹⁰⁹ For his misconduct, the police officer forfeited 20 vacation days and, like his sergeant, was directed to receive instruction from the Police Academy.

As these subject officers' actions resulted in a false summons being issued to a person they believed to be a civilian, the Commission believed a greater penalty was warranted. Consistent with the Commission's recommendations in the prior case and in past reports, the Commission believed that termination should have been considered and the officers should have been placed on dismissal probation, at a minimum.¹¹⁰

The next subject officer was with the Department for only three years at the time of the misconduct, in November 2009, and had no disciplinary history.¹¹¹ While on duty, he met the complainant, an 18-year-old girl, inside a subway station. Later that night, the subject officer picked her up from her residence for what he believed was a date.

¹⁰⁹ The police officer's disciplinary case was also counted in the False Statement section of this report. *See infra* at p. 95.

¹¹⁰ *See supra* at pp. 69-70 and accompanying footnotes.

¹¹¹ Subsequent to the incident, the officer received five minor violations and a command discipline.

Although the subject officer knew that the complainant was underage, he provided her with alcohol in his car, took her to a nightclub, and saw her consume alcohol there.

After they left the nightclub, the complainant believed that the subject officer was taking her home. Instead, he took her to his apartment. The complainant alleged that the subject officer then forced her to have sexual intercourse. After the alleged rape, the subject officer fell asleep, and the complainant left. The complainant confided the incident to a friend, who reported it to the police.

Several days later, the subject officer was arrested for Rape in the First Degree and Unlawfully Dealing with a Child.¹¹² He denied the rape charges, which were ultimately dismissed for lack of evidentiary support and the complainant's refusal to cooperate. The subject officer pled guilty to Unlawfully Dealing with a Child, for which he received a conditional discharge. Additionally, an order of protection was issued against him, which mandated that he stay away from the complainant for a period of five years.

In March 2010, while the criminal rape case was still pending, and after a temporary order of protection had been issued, the subject officer encountered the complainant at a club.¹¹³ The complainant alleged that the subject officer approached her, touched her on the shoulder, and asked to speak with her. She told him to leave her alone, which he did after a friend of the complainant joined them. The complainant reported the incident to the police, and as a result, the subject officer was arrested for Criminal Contempt in the Second Degree. This criminal allegation was later dismissed because the complainant refused to cooperate with the criminal prosecution.

¹¹² This charge appeared to be based on providing alcohol to a person under the age of 21.

¹¹³ An order of protection is routinely issued upon the commencement of a criminal rape case.

In the Department's administrative proceeding, the subject officer pled guilty to providing alcoholic beverages to a person under 21 years of age and violating an active order of protection.¹¹⁴ As a penalty, he forfeited the 65 days that he served on suspension prior to trial and was ordered to cooperate with Department counseling.

The Commission concluded that, in addition to this penalty, the subject officer should have been placed on dismissal probation. He was arrested twice in connection with his misconduct, and was the subject of a five-year order of protection. Although the rape allegation against the subject officer was dismissed, the fact that he provided alcohol to an underage person and that he violated an order of protection warranted a period of dismissal probation.

The subject officer in the next case was a member of the service for two and half years at the time of the misconduct and had no disciplinary history.¹¹⁵ This officer created a company that was used to deposit and transfer money that his brother had obtained by fraudulent means. In October 2009, the subject officer's brother began working for Y Corp., a company that was later found to have defrauded over 5,000 of its clients of millions of dollars. Y Corp. ceased its operations in March 2010. In July 2010, federal authorities indicted the brother for his participation in the company's scheme, and he pled guilty to Conspiracy to Defraud. The brother was sentenced to six months incarceration and three years of supervised release. He also received financial penalties: forfeiture of the \$122,016.52 that he received from the company and restitution to the fraud victims. His liability was capped at approximately \$489,000.00.

¹¹⁴ Initially, the Department also charged the subject officer with engaging in sexual intercourse with another person by forcible compulsion. However, that charge was later dismissed.

¹¹⁵ Subsequent to the misconduct, the subject officer received discipline at the command level for incomplete memo book entries.

In December 2009, about two months after the brother had joined Y Corp., he and the subject officer incorporated their own company, X Corp. The incorporation certificate and bank records designated the subject officer as the President. The brother was not named in any of X Corp.'s documents and, on paper, had no relation to the company. Officially, the purpose of X Corp. was restoring and selling antique cars. However, X Corp. never conducted any business related to that stated purpose. In fact, the main activity of X Corp. was depositing money that the brother obtained from Y Corp. and then transferring that money to either the brother or the subject officer's mother.

In January 2010, the subject officer opened a bank account for X Corp. Between January 2010 and April 2010, the subject officer and his brother deposited approximately \$110,000.00 into the account. Federal investigation traced this money to Y Corp. However, between March and April 2010, the subject officer wrote several checks to his mother from X Corp., totaling \$76,000.00, and along with his brother made other withdrawals.

On the day of his brother's sentencing, while on duty, the subject officer traveled to the courthouse, which was outside of the confines of his command, to testify on his brother's behalf.

In interviews conducted during the investigation, the subject officer denied any knowledge of Y Corp.'s fraudulent scheme. He stated that his brother handled all of the financial aspects of X Corp. He also denied retaining any of the money he had withdrawn from X Corp.'s bank account and explained that the withdrawals were made at the request of his brother, who used them to repay loans that he had incurred from their

mother. The United States Attorney's Office and the District Attorney's Office both declined to prosecute the subject officer.

DAO alleged that the subject officer engaged in conduct prejudicial to the good order and efficiency of the Department because monies from a fraudulent financial company were deposited into X Corp.'s bank account by his brother and then subsequently withdrawn by the subject officer and given to his mother for purposes unrelated to X Corp. The subject officer pled guilty to this charge as well as failing to notify the Department regarding the incorporation of X Corp., testifying at his brother's sentencing hearing and invoking the name of the Department without prior notification, and being absent from assignment without permission. As a penalty, he forfeited 30 vacation days.

In the Commission's view, the subject officer also should have been placed on dismissal probation. A preponderance of evidence showed that the company that he created with his brother was set up for illicit purposes. The brother received a total of \$122,000 from Y Corp. Approximately \$110,000 of that amount was deposited in X Corp., before Y Corp. collapsed, and then most of it was funneled through X Corp. and forwarded to either the brother's account or the mother's account. X Corp. did not execute a single transaction related to its stated business. The subject officer, as President of X Corp., should not escape liability by turning a blind eye to clear evidence of a fraud committed by his brother, and should be penalized accordingly.

The charges against the final subject officer in this section, a 12-year veteran of the Department with no disciplinary history, centered on his off-duty encounter with a

motorist in September 2011.¹¹⁶ The complainant stated that while driving on a highway, the subject officer cut him off and abruptly stopped in front of the complainant's car, causing the complainant to also stop. The subject officer then walked to the complainant's car, displayed his shield, and ordered the complainant to show his driver's license. The complainant initially refused, but the subject officer threatened to have him arrested, so the complainant complied. The subject officer took the license along with a police union card that the complainant displayed and drove away. The complainant followed him, causing the subject officer to stop and return the driver's license but not the police union card. The complainant called 911 and reported the incident.

The subject officer compounded his misconduct by impeding the Department investigation.¹¹⁷ During his official Department interview, four months after the incident, the subject officer repeatedly asserted that he did not recall the encounter. However, the subject officer was able to recall other details about that specific date, such as traffic conditions and his route of travel.

The subject officer pled guilty to conducting a stop and driving away with the property of the complainant, failing to notify the Department about the incident, and impeding an investigation. As a result, he forfeited 30 vacation days. The Commission disagreed with that penalty. The subject officer caused a potentially hazardous condition when he abruptly stopped his car in front of another motorist. All his actions raised serious questions regarding his integrity, judgment, and professionalism. He should have received a greater penalty to address his misconduct adequately.

¹¹⁶ Subsequent to the incident, the subject officer received a command discipline for having incomplete/improper memo book entries.

¹¹⁷ This case is also included in the False Statement section of this report. *See infra* at p. 93.

F. Fraternalizing with Complainants or Arrestees

There were some cases in which subject officers received discipline because they entered into romantic relationships with people they encountered during the course of performing their job duties, typically victims of crime or individuals whom they had arrested. The Commission questioned the penalties imposed and whether the penalties were based on an existing Department policy regarding associations with victims or arrestees. These cases raise issues about whether there is a need for a clear policy to inform officers about which relationships are prohibited and which are permissible.

G. Conclusion

The Commission agreed with the vast majority of disciplinary penalties imposed in the 707 cases it reviewed. Of those cases, nine officers were terminated from employment with the Department,¹¹⁸ and four officers were terminated by operation of law after being found guilty following a criminal prosecution of a felony or a crime involving their oath of office.¹¹⁹ The Department is clearly making an effort to impose penalties that are proportionate to the charges and designed to deter misconduct.

Of the 29 cases where the Commission disagreed with the penalty imposed, 7 involved domestic incidents. More significant penalties were warranted in the noted cases either because the subject officer had a domestic incident history for which he was already provided with counseling, had multiple domestic incidents while domestic

¹¹⁸ Some of these subject officers had multiple cases adjudicated against them. The 9 officers were subjects in 19 cases. In addition, 39 officers, the subjects in 66 cases, were also separated from the Department. Three of those officers resigned while an additional 29 officers retired, either prior to the adjudication of the charges or in settlement of the charges against them, and 7 were terminated from the Department prior to the adjudication of their charges. There were an additional 40 officers who were subjects in 50 cases that are included in the Firearms-Related and False Statement sections of this report who were also separated from the Department.

¹¹⁹ These officers were subjects in six of the cases reviewed.

investigations were pending against him, or exhibited behavior so extreme that it raised doubts about his or her ability to be a police officer. The Commission will continue to monitor this type of serious misconduct to determine if further study is appropriate.

The Commission also found five cases where the officers' failure to investigate potential criminal misconduct was so serious -- either due to the nature of the crime alleged or the vulnerability of the victim -- that higher penalties were deserved. The Commission recommends that in situations where a member of the service abdicates his police responsibilities, and puts the victim at risk of further harm and/or jeopardizes the apprehension and criminal prosecution of the perpetrator, the Department include dismissal probation as part of the penalty.

Several of the cases that appear in this section seem to have disproportionately low penalties when compared to the discipline imposed in other less serious cases. The Commission intends to study this issue in a future report.

Firearm-Related Off-Duty Misconduct

The Commission reviewed 10 cases involving off-duty Firearm-Related misconduct committed by a uniformed member of the service.¹²⁰ Nine of these cases involved the display of a firearm, while one involved an accidental discharge.¹²¹ The Commission examined these cases to determine whether the Department imposed sufficiently severe penalties.

¹²⁰ One of these cases was also included as part of the total number of false official statements in the False Statement section of this report. *Infra* at p. 93.

¹²¹ In two of these cases, the subject officer was not charged with the unjustified display of a firearm, but with failing to safeguard his firearm. The Commission counted the two cases among those involving the unjustified display of a firearm because there was some evidence that a firearm was displayed, although it was unclear whether there was sufficient evidence to sustain a guilty finding on that charge. In one of the cases, the subject officer's firearm was discharged by a civilian after the officer displayed it and it fell to the ground.

A. Display

Of the penalties imposed in the 9 cases involving the off-duty display of a firearm, 3 subject officers were dismissed from the Department; 2 were placed on dismissal probation and forfeited 30 days;¹²² 1 forfeited 40 vacation days and was required to cooperate with Department counseling; 2 received no penalty because they were found not guilty after administrative trials; and 1 was found not guilty of displaying his firearm, but received a penalty of 25 suspension days for failing to safeguard his firearm.

In past reports, the Commission has recommended that dismissal probation be imposed in addition to suspension or forfeiture of vacation days due to the tragic consequences that can result from an impulsive firearm display.¹²³ This year, there were four cases where the subject officer was not separated from the Department or placed on dismissal probation.¹²⁴ In one of these cases, the subject officer was not charged with wrongfully displaying his firearm, and in the remaining three cases, the subject officer was found not guilty of the firearm-related misconduct.

¹²² One subject officer forfeited 30 vacation days; while the other forfeited the 30 days he had spent on pre-trial suspension.

¹²³ See *Tenth Annual Report* at pp. 26-27; *Eleventh Annual Report* at pp. 26 and 29; and *Twelfth Annual Report* at pp. 31, 33-34.

¹²⁴ There was one case where the subject officer was placed on dismissal probation although DAO only sought the forfeiture of 30 vacation days. The Trial Commissioner and First Deputy Commissioner found that settlement inadequate and recommended that the subject officer also be placed on dismissal probation based on the subject officer's disciplinary history and the poor judgment he exhibited by introducing his firearm into a volatile situation instead of calling 911. The Police Commissioner adopted this recommendation. In that case, the subject officer became involved in a physical altercation with his estranged wife's boyfriend in the presence of his two children. During the altercation, the subject officer removed his firearm from his waistband and pointed it at the boyfriend. Apparently thinking better of this, the subject officer put his firearm away, but at some point, it fell to the ground. The boyfriend seized the firearm and fired five rounds, two into the air and three at the subject officer's vehicle. The boyfriend was arrested and charged with Attempted Murder, Criminal Possession of a Weapon, Reckless Endangerment, and Assault in the Second Degree. The subject officer was charged administratively with engaging in a physical altercation and failing to safeguard his firearm. He was not charged with wrongfully displaying the firearm.

B. Discharge

In the sole case involving the discharge of a firearm, the subject officer retired from the Department prior to the adjudication of the charges.¹²⁵ Therefore, charges were filed, but no penalty was imposed.

False Statements

Since the Commission's inception, it has emphasized the importance of appropriately charging and adequately disciplining officers who make false statements. The Commission's initial examination of this topic contributed to the Department's adoption of its false statement policy in 1996. That policy required termination for making any false official statement unless the Police Commissioner found "exceptional circumstances" justifying a less severe penalty.

In 2007, the Department modified its policy by mandating termination only in those cases that involved an intentional false official statement regarding a material matter. Mere denials of misconduct, without creating a false version of events, were excluded from the false statement policy.

¹²⁵ In this case, it appeared that the discharge was accidental. The subject officer was charged with failing to safeguard his firearm instead of wrongfully discharging it.

The Department's revised false statement policy, P.G. §203-08, states:

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.

This section of the report includes an analysis of disciplinary cases involving false official statements, as well as cases in which false statements were made under less formal circumstances (false unofficial statements). False unofficial statements include false entries in Department records, false statements made to prosecutors and other investigative bodies, and fraud. Both categories of false statement cases were reviewed because the Commission believes that any false statement by a police officer is a serious matter. The intentional making of a false statement negatively impacts perceptions of the integrity of both the officer and the Department.

In keeping with the Department's current false statement policy, mere denials of misconduct were not reviewed as false statement cases. However, the Commission believes that denials in the context of an official Department interview or an official

interview with CCRB should result in termination unless exceptional circumstances exist, and therefore recommends that the Department revisit its position of excluding denials from its current policy.

For this report, the Commission initially reviewed 157 cases in which it appeared that the subject officer had made some type of false statement. Of the 157 cases, 13 were excluded from further analysis, as they appeared to constitute mere denials of wrongdoing.¹²⁶

A. False Statements in an Official Setting

1. False Statement P.G. §203-08: Inadequate Penalty

The Commission found one case in which the subject officer was charged with misconduct under P.G. §203-08, but the imposed penalty was inadequate. The case involved a lieutenant with 12 years of service and no disciplinary history who was assigned to IAB at the time of the misconduct.¹²⁷ He was charged with: making false and misleading statements regarding the circumstances surrounding his interaction with a school safety agent; divulging official Department business to the target of a random integrity test; attempting to prevent the Department from determining what transpired at the scene of the integrity test; and creating a false description of the integrity test in his paperwork. After pleading guilty to these charges, he forfeited 60 vacation days.

In December 2011, the subject officer was the leader of a team conducting a random integrity test in which an IAB undercover officer posed as a civilian who claimed

¹²⁶ The Commission did not have access to the entire statement in some cases, making it unclear whether the statement at issue constituted a mere denial of guilt without embellishment. The Commission treated the statements in these cases as "mere denials."

¹²⁷ As a result of this misconduct, the subject officer was transferred out of IAB.

to have found lost or abandoned marijuana and a wallet. The items were handed over to a school safety agent to determine whether he would comply with Department protocol.

The school safety agent did not voucher the items as required. Instead, he discarded the property and continued with his duties.¹²⁸ When investigators interviewed the school safety agent, he told them that he had received a telephone call later in the day from a male who only identified himself by a first name. The male asked the school safety agent why it was taking him so long to voucher the property and instructed him to do so. He also told the school safety agent that he should consider this gesture an early Christmas present. The school safety agent informed the caller that he had already discarded the items.

The school safety agent's account was corroborated by another lieutenant who said the subject officer called him on the day of the incident, admitted calling the school safety agent, and admitted directing him to voucher the property.

When investigators questioned the subject officer about the incident at an official Department interview, he admitted calling the school safety agent while the integrity test was still active. However, his version of events differed significantly. The subject officer claimed that when he spoke to the school safety agent, he identified himself by a false name as the civilian who had turned over the property and asked the agent whether his pedigree information was needed. The school safety agent responded that the items had been discarded. After some further conversation, including telling the school safety agent that he hoped he would have a good Christmas, the subject officer hung up. The subject officer explained that he and his team were waiting an unusually long time for the

¹²⁸ At the time the subject officer's case was adjudicated, the investigation into the school safety agent's misconduct was still ongoing.

school safety agent to take action, so he called the agent to ascertain whether he was still at his assigned post. Team members confirmed that after returning from making a telephone call, the subject officer announced that the school safety agent had failed the integrity test.

The investigation also revealed that the subject officer had failed to videotape the integrity test or record his conversation with the school safety agent. He also made false entries in his worksheet regarding the integrity test.

As an IAB supervisor, the subject officer should be held to a higher standard than other members of the service. Although he had above average ratings on his performance evaluations and no disciplinary history, his actions were egregious. In suggesting to the school safety agent that he had been a target of a random integrity test, the subject officer compromised the identity of the undercover officer. He then attempted to cover up his misconduct by creating false entries in his worksheet and obstructed an investigation by lying. Furthermore, the reliability of other integrity tests supervised by this subject officer is now called into question. While ordinarily termination would be the appropriate penalty for this misconduct, there was some indication that the subject officer made the telephone call to expedite the completion of the integrity test rather than to sabotage it. However, as he still pled guilty to making false statements during his official Department interview, the Commission believed that the subject officer, at a minimum, should have been placed on dismissal probation.

As cited above, under P.G. §203-08, absent exceptional circumstances, a subject officer must be terminated if found to have made a material false official statement. In this case, exceptional circumstances that justified deviating from the termination penalty

were not set forth in the documents provided to the Commission. The Department has maintained that because the Police Commissioner determines exceptional circumstances on a case-by-case basis, these findings need not be specifically set forth. The Commission recommends that a finding of exceptional circumstances and the basis for those findings should be made part of the record in order to promote transparency.

2. Prohibited Conduct P.G. §203-10(5): Inadequate Penalty

P.G. §203-10 “Public Contact – Prohibited Conduct” lists an array of proscribed conduct and activities, including discourtesy, criminal association, patronizing an unlicensed premise, and divulging official Department business. Prohibited conduct that is not explicitly defined is captured under P.G. §203-10(5), which prohibits “conduct prejudicial to the good order, efficiency or discipline of the Department,” and is commonly referred to by members of the service as “conduct prejudicial.”

The “conduct prejudicial” section is often used when misconduct falls short of “making false official statements” as defined under P.G. §203-08, or constitutes making false unofficial statements. Making misleading or inaccurate statements, causing misleading or inaccurate entries to be filed or entered in Department or public records, or impeding an investigation are often charged under P.G. §203-10(5).¹²⁹ Unlike P.G. §203-08, a charge of violating P.G. §203-10(5) generally does not carry a presumption of termination.

The focus of the Commission’s analysis in this subsection is whether the imposed penalties were appropriate and sufficient. The Commission did not review the investigative files in their entirety, and therefore does not comment on the Department’s

¹²⁹ Unofficial false statements are discussed in more detail in the next section. *See infra* at pp. 94-97.

charging decisions.¹³⁰ Of the 50 cases where false statements were made in an official context but the subject officer was charged with violating P.G. §203-10(5), the Commission disagreed with the penalties imposed in 5 cases.

The first case involved a 13-year veteran of the Department who was charged with “conduct prejudicial” for attempting to alter a property voucher and making misleading statements during her official Department interview, which took place in February 2009.

The subject officer’s colleague arrested a motorist and vouchered his vehicle’s license plates as “investigatory evidence.” Months later, the subject officer approached the arresting officer and asked him to change the designation on the voucher to “safekeeping.”¹³¹ This would have permitted the property owner to retrieve the plates prior to the resolution of the criminal case.¹³² The arresting officer refused the subject officer’s request.

During the subject officer’s official Department interview, she disclosed that the vehicle’s owner, through her son’s godfather, had sought her assistance in retrieving his plates. However, she denied approaching her colleague or asking that the voucher be altered. Instead, the subject officer claimed that she called her colleague to obtain information about the arrest and that when he refused to disclose any information to her she made no further attempts. She stated that her colleague was one of the many officers

¹³⁰ The Department maintains that after a careful and thorough review, the decision regarding what to charge is based on whether there is sufficient evidence to prove every element of the misconduct.

¹³¹ For failing to notify IAB of the subject officer’s misconduct, the arresting officer was disciplined at the command level and forfeited three vacation days.

¹³² The motorist had been arrested for driving with a suspended license, possessing an out-of-state dealer’s plate, and failing to show documentation that he was a dealer.

in the command who did not get along with her, thereby implying that her colleague embellished what occurred to get her into trouble.

After her denials, the subject officer admitted guilt to both specifications and forfeited 20 vacation days. A review of her disciplinary history revealed that 5 years prior to this incident, she had forfeited 30 vacation days and had been placed on dismissal probation for discourtesy and failing to comply with an order.

The Commission believed that dismissal probation also should have been imposed for this incident. The subject officer engaged in misconduct and tried to involve a fellow officer in her transgression. More importantly, when confronted in an official Department interview, she was not forthcoming.

The subject officer in the next case, a 17-year veteran with no disciplinary history, was interviewed in February 2011 during an investigation into her daughter, a Department traffic agent. Investigators were attempting to determine whether the traffic agent violated the Department's residency requirement. Based on the subject officer's responses during her official Department interview, she was charged with and pled guilty to giving misleading answers and forfeited 15 vacation days.

The traffic agent claimed that she resided in Staten Island despite overwhelming evidence indicating that she resided in upstate New York with the subject officer. Investigators interviewed a resident at the agent's Staten Island address as well as neighbors of the upstate New York home where she was suspected of residing. The witness statements supported the conclusion that the traffic agent resided with her mother in upstate New York, a violation of Department policy. The traffic agent was placed under surveillance and was observed on multiple occasions commuting to work by car

from the upstate New York home she shared with the subject officer to her assigned post in Manhattan.

At the subject officer's official Department interview, she insisted that her daughter lived in Staten Island and would only occasionally visit her at her upstate residence. She also provided a false explanation as to why her daughter's car was registered at her address and lied about how her daughter commuted to work. When confronted with the evidence gathered by investigators, the subject officer continued to insist that her daughter resided in Staten Island.

Although the information the subject officer sought to protect was of minor significance, she was still required to truthfully answer the questions asked by investigators. In refusing to do so, the subject officer colluded with another member of the service to conceal wrongdoing. Therefore, a penalty greater than a forfeiture of 15 vacation days was warranted.

The next case involved a moving violation summons that was altered with incorrect information and inaccurate and misleading statements given by the subject officer at his official Department interview.¹³³ The officer had been a member of the service for 13 years at the time of the misconduct and had a minor disciplinary history in which he was issued a command discipline 7 years earlier for losing his Department shield. In September 2010, the subject officer, who was working alone, stopped a civilian female for driving her automobile while talking on her cellular telephone. This stop occurred at approximately 10:40 a.m. Two minutes later, the subject officer conducted a computer query on the civilian's license plate number from inside of his

¹³³ A summons for a moving violation is a sworn document as it is signed under penalty of perjury.

Department vehicle. Four minutes after that, the subject officer conducted a computer inquiry on the civilian's client identification number, which would have disclosed her date of birth, her address, and the expiration date of her New York State driver's license. The subject officer completed a summons with the correct information that was obtained from these computer inquiries. Six minutes after the inquiry by client identification number, the subject officer performed another computer check using the civilian's name but with an incorrect date of birth.

When the summons was processed, it contained incorrect information written over the correct information. Specifically, the incorrect date of birth previously queried by the subject officer was used along with an incorrect address, client identification number, and expiration date for the civilian's license. The incorrect date of birth and client identification number was also found in the subject officer's memo book entries that described the stop. The civilian did not pay the ticket; instead, she appeared in Traffic Court after receiving a letter that notified her that her driver's license had been suspended because of the unpaid summons. During this visit, the civilian told the court clerk that some of the information on the summons was incorrect. The clerk informed the civilian that since the information appeared to have been altered, she was still responsible for the summons. At this point, the civilian stated that she was not concerned as her ex-fiancé was a detective. In a subsequent interview with IAB investigators, the civilian denied that she ever received this summons and also denied ever losing her driver's license. Although her ex-fiancé was identified, he had retired from the Department. He was nonetheless interviewed and denied any contact with the subject officer. Thereafter, both he and the civilian refused to cooperate with the investigation. Telephone records

disclosed calls between the civilian and the retired detective during the time that the stop was being conducted.

In his first official Department interview in April 2011, the subject officer stated that he did not recall issuing the summons to the civilian, but acknowledged that the copy shown to him appeared altered, that it was in his handwriting, and that he had signed it. Although the subject officer stated that someone else could have altered his summons after he issued it, he was unable to provide his copy of the summons because he had lost it. In his second official Department interview, in September 2011, the subject officer again denied altering the summons but was unable to explain why the altered date of birth was queried using his computer code from the computer terminal in his Department vehicle at the time he issued the summons.

The subject officer was administratively charged with engaging in conduct prejudicial by submitting a summons that contained inaccurate and incomplete information; failing to make an entry in his activity log contemporaneously with the activity he documented; failing to safeguard his copy of the summons that he had issued; failing to safeguard his activity log resulting in it being damaged; and impeding an investigation by providing inaccurate and misleading answers to questions posed to him at an official Department interview regarding the summons he prepared. After pleading guilty, the subject officer forfeited 45 vacation days. The Commission believed that a period of dismissal probation was also warranted. As noted by the Assistant Department Advocate, although the subject officer “denied altering the summons issued [to the civilian], the evidence clearly established that he did so.” His refusal to provide truthful information during his official Department interviews prevented IAB from discovering

whether the alteration of the summons was done at the behest of another member of the service. The subject officer also clearly made false statements during his official Department interview.

In the next case, an investigation arose from a civilian complaint to CCRB. In January 2009, the subject officer arrested a male for Resisting Arrest and Disorderly Conduct inside a residential apartment building. After the subject officer conferred with the assigned prosecutor, the criminal complaint charged Resisting Arrest and Obstructing Governmental Administration. The subject officer stated that the male yelled obscenities, refused to be handcuffed, flailed his arms, and interfered with the arrests of other individuals by standing in between the arrestees and the subject officer. The subject officer signed the criminal complaint under the penalty of perjury.

Recovered videos of the incident did not depict the facts that the subject officer swore to in the criminal complaint. The video revealed that the subject officer never tried to handcuff the arrestee, and the arrestee never flailed his arms. In fact, the footage showed the arrestee following the subject officer. The criminal case against the male was subsequently dismissed.

The subject officer had been employed with the Department for 8 years and had 1 prior disciplinary matter, from 2 years earlier, for failing to submit leave of absence reports on 62 occasions. The subject officer was found guilty of failing to provide complete and accurate information to the prosecutor, signing a Criminal Court complaint that contained inaccuracies, and causing an inaccurate complaint to be filed. He forfeited 30 vacation days for his misconduct. However, because the subject officer signed

documents that contained false information under penalty of perjury, he should have been placed on dismissal probation, at minimum.

The final case in this category where the Commission disagreed with the imposed penalty involved the subject officer’s off-duty encounter with a motorist, which was discussed earlier in this report.¹³⁴

A breakdown of the 68 disciplinary cases involving false official statements, including those charged pursuant to either P.G. §203-08 or P.G. §203-10(5), and their dispositions follows:¹³⁵

Context of False Official Statements [68]¹³⁶	Filed¹³⁷	Guilty and Separated from the Department¹³⁸	Guilty and Not Separated from the Department	Not Guilty or Charges Dismissed Prior to Trial
PG Hearing [45]	5 ¹³⁹	11	28	1
CCRB Interview [4]	0	1	3	0
Sworn Testimony¹⁴⁰ [9]	2	4	3	0
Sworn Documents¹⁴¹ [10]	1	2	7	0

¹³⁴ See *supra* at pp. 76-77.

¹³⁵ When a subject officer had more than one false statement charge, the Commission only counted the case in the more serious false statement category.

¹³⁶ Numbers inside brackets represent the total number of cases in each category.

¹³⁷ See *supra* at p. 32, fn. 58.

¹³⁸ For purposes of this section, separation from the Department encompasses retirement, resignation, or termination.

¹³⁹ Two of these cases involved the same subject officer.

¹⁴⁰ This category included testimony given in court or at a deposition.

¹⁴¹ This category included affidavits, criminal court complaints, or summonses.

B. False Unofficial Statements

Seventy-six disciplinary cases involving false statements outside the scope of P.G. §203-08 were reviewed by the Commission and separated into the following categories:¹⁴²

Context of False Unofficial Statements [76] ¹⁴³	Filed	Guilty and Separated from the Department	Guilty and Not Separated from the Department	Not Guilty or Charges Dismissed Prior to Trial
False Entries in Department Records [40]	4	6	30	0
False Statements to an Investigative Body [15]	0	6	9	0
Fraud [14]	3	2	9	0
Other ¹⁴⁴ [7]	0	1	6	0

Of those 76 cases, the Commission disagreed with the penalties imposed in 3 of them.

1. False Entries in Department Records

In the first case, the subject officer, a nine-year veteran, was charged with falsely reporting on his monthly activity report that he issued summonses on five occasions between March and August 2011 and with reporting that he was at two separate locations at the same time, on eight occasions on the same day in September 2011. The subject officer forfeited 45 vacation days for the various false and inaccurate entries.¹⁴⁵

¹⁴² When a subject officer had multiple false statement charges, the Commission only counted the case in the more serious false statement category.

¹⁴³ Numbers inside brackets represent the total number of cases in each category.

¹⁴⁴ This category included false statements made to Department personnel, including supervisors; making false radio transmissions; and false entries in non-Department paperwork.

¹⁴⁵ The penalty also addressed another pending disciplinary matter against the respondent for failing to prepare and submit a complaint report in October 2010.

At his official Department interview, the subject officer acknowledged never having issued the five summonses reflected on his monthly activity reports. He also admitted that the eight entries in Department paperwork were incorrect. His only explanation for the improper entries was that they were mistakes.

The subject officer had received prior discipline for failing to make complete entries in his activity log. It was extremely unlikely that the 13 false entries were all mistakes. Additionally, the subject officer's commanding officer stated in his evaluation of the subject officer that he had "misrepresented facts of certain events in the past." In taking the above into consideration, the Commission believed that dismissal probation, at least, was warranted.

The second case where the Commission disagreed with the penalty, which involved an officer making false entries in Department records by issuing a false summons for disorderly conduct, was discussed earlier in this report.¹⁴⁶

2. False Statements Made to an Investigative Body

The subject officer in the final case was a sergeant with ten years of service. He was charged with placing a false 911 call and instructing a subordinate to conduct an unauthorized computer query. As a result of a guilty plea, the subject officer was placed on dismissal probation, suspended for 34 days, and forfeited 26 vacation days.

In April 2012, while off duty and in another jurisdiction, the subject officer placed an anonymous call to 911 and reported observing a female being struck by a male and dragged into a car. The subject officer described the vehicle and provided its license plate number. Approximately 90 minutes later, he called 911 again to correct the

¹⁴⁶ See *supra* at pp. 70-72.

information he initially provided on the license plate. Days later, the subject officer instructed a subordinate to conduct a query on the same license plate using a Department computer. After investigators identified the female as the subject officer's former girlfriend and a member of the service, they interviewed her. She confirmed that the report was entirely false except that the license plate provided by the subject officer belonged to her vehicle.

The subject officer was questioned at an official Department interview. He admitted to making the two 911 calls and fabricating the entire incident, and explained that he was "not thinking right." He also admitted that he instructed a subordinate to run the license plate because he believed that the vehicle belonged to the female's new boyfriend.

While the subject officer was never criminally prosecuted, his misconduct was a crime. He caused valuable resources to be wasted in responding to and investigating a possible kidnapping that never occurred¹⁴⁷ and, given the nature of the false report, set into motion a sequence of events that could easily have resulted in grave consequences.¹⁴⁸ In addition, based upon the subject officer's direction, a subordinate unwittingly became involved in the subject officer's misconduct by conducting a computer query that served no legitimate law enforcement purpose.¹⁴⁹

The subject officer's disciplinary history included two prior cases. In one case, three years earlier, he received a command discipline and forfeited two vacation days for

¹⁴⁷ For other examples in which the Commission has commented disapprovingly on the waste of government resources due to the misconduct of a subject officer, see *Fourteenth Annual Report* at pp. 16-17; and *Fifteenth Annual Report* at p. 32-34 and pp. 55-56.

¹⁴⁸ The Commission has previously cited this factor in recommending greater penalties. See *Fifteenth Annual Report* at pp. 71-72.

¹⁴⁹ The subordinate did not receive any discipline due to the fact that he was following the order of a superior.

failing to notify IAB of misconduct by another member of the service. In the second, more serious case, a year prior to this incident, the subject officer forfeited 35 vacation days for failing to: supervise 10 members of service while assigned as patrol supervisor; remain alert while on duty; and immediately respond to and direct activities at radio runs involving weapons, serious crimes, burglaries, and emergencies. A recent evaluation by his commanding officer gave the subject officer a mediocre rating (5 out of 10).

Taking the subject officer's disciplinary history into account and the serious nature of his misconduct, the Commission believed that this subject officer should have been terminated.

C. Conclusion

The Commission was encouraged to find fewer inadequate penalties in false statement cases than it has in its most recent reports.¹⁵⁰ In fact, three related cases deserve special mention because more severe penalties were imposed in these cases than in two similar cases discussed in the *Thirteenth Annual Report*.¹⁵¹

These cases arise from a single incident involving three subject officers. On the night in question, Subject Officer A, a six-year veteran,¹⁵² permitted his girlfriend to drive his father's vehicle to a party.¹⁵³ She was involved in a serious accident, which

¹⁵⁰ See *Twelfth Annual Report* at pp. 56-61; *Thirteenth Annual Report* at pp. 19-25; *Fourteenth Annual Report* at pp. 32-37; and *Fifteenth Annual Report* at pp. 62-74.

¹⁵¹ In those cases, one subject officer falsely portrayed herself as the driver of a vehicle involved in an accident in order to protect her boyfriend from being arrested. The second subject officer listed the first as the driver on the accident report, even though he was aware this was not accurate. Neither officer was separated from the Department. For a more detailed case synopsis, see *Thirteenth Annual Report* at pp. 24-25.

¹⁵² Prior to the adjudication of this matter, the subject officer received a command discipline for improper memo book entries. This was his only disciplinary history.

¹⁵³ Although the vehicle was registered and insured to Subject Officer A's father, Subject Officer A was listed as an additional driver. His girlfriend, however, was not.

caused extensive damage to the automobile. Fearing that his girlfriend would face criminal charges and that his father's insurance rates would increase, Subject Officer A responded to the scene and claimed to Subject Officer B that he was the driver. Subject Officer B had been a member of the service for three and half years and had no disciplinary history. Subject Officer A also summoned one of his best friends and his precinct delegate, Subject Officer C, to the scene. Subject Officer C had 16 years of service and no disciplinary history.

When Subject Officer C arrived, he and Subject Officer B engaged in a private discussion, which led to Subject Officer C telling Subject Officer A, "You're good." Subject Officers A and B then exchanged contact information that night to ensure that the police accident report was "correct." Neither Subject Officer A nor his girlfriend was arrested.

A day or two after the accident, Subject Officers A and B met in person to review the accident report.¹⁵⁴ During the meeting, Subject Officer B showed Subject Officer A the report, which listed Subject Officer A as the driver.

Soon thereafter, Subject Officer A filed a false insurance claim on behalf of his father relaying that he was the driver of the vehicle on the night in question. His father subsequently received an insurance check totaling over \$14,000.

In their official Department interviews, none of the three subject officers were forthcoming regarding what transpired that night. Subject Officer A maintained that he was driving his father's vehicle until confronted with evidence to the contrary. Subject Officer A subsequently pled guilty to official misconduct, impeding an investigation,

¹⁵⁴This is not standard Department operating procedure.

causing false entries in Department records, and fraud. He forfeited 60 suspension days, 30 vacation days, and was required to file for retirement.¹⁵⁵

During Subject Officer B's official Department interview, he offered a different account of the events. At a Department trial, Subject Officer B was found guilty of causing false entries to be made in Department records and official misconduct, but not guilty of impeding an investigation.¹⁵⁶ He forfeited 30 vacation days and was required to retire from the Department.

At his official Department interview, Subject Officer C claimed that he responded to the scene because of his friendship with Subject Officer A and because providing moral support to officers was one of his responsibilities as a delegate. He claimed to have never spoken with Subject Officer B, even stating that he had no independent recollection that Subject Officer B was at the scene. After a Department trial, Subject Officer C was found guilty of failing to notify IAB and impeding an investigation.¹⁵⁷ He forfeited 14 suspension days, 30 vacation days, and was required to retire from the Department.

Two officers in two disciplinary cases previously reviewed in the Commission's *Thirteenth Annual Report* were charged with similar misconduct as the above subject officers. Neither of those officers was required to separate from the Department as was warranted and instead received dismissal probation and forfeited days.¹⁵⁸ The Department made the correct decision in the more recent case by separating the three subject officers from the Department.

¹⁵⁵ The subject officer was not criminally prosecuted.

¹⁵⁶ Subject Officer B also had another matter in which he pled guilty to two additional specifications.

¹⁵⁷ Subject Officer C also had another matter in which he pled guilty to three additional specifications.

¹⁵⁸ *Thirteenth Annual Report* at pp. 24-25.

The Commission continues to closely monitor allegations of making false official and unofficial statements because of the negative impact this misconduct has on the public's perception of the integrity of all members of the service. If doubts about individual integrity become generalized to all police officers, securing criminal convictions will become more difficult and respect for the authority of police officers will be diminished. In addition, strong, consistent penalties in this area will hopefully deter officers from being untruthful.

ONGOING WORK OF THE COMMISSION

Steering Committee Meetings

Throughout calendar year 2013, members of the Commission attended IAB steering meetings. These meetings were led by IAB's Steering Committee, consisting of IAB's executive staff, including the Executive Officer, three Deputy Chiefs, and three Inspectors.¹⁵⁹ The meetings were chaired by the Chief of IAB. At these meetings, commanding officers from each IAB group presented their group's most serious and the longest-pending cases, and received investigative recommendations.¹⁶⁰ In tracking these investigations, the Commission observed that investigators were following the recommendations of the Steering Committee, and that such recommendations served to promote thorough investigations and timely case closures. These meetings also enabled the Commission to follow the progress of the most serious corruption investigations.

Intensive Steering Committee Review

Each year between May and September, the Commission staff has attended intensive steering meetings. At these meetings, each IAB group commanding officer presented the group's entire caseload, excluding those cases presented at regular steering meetings. The Steering Committee may reassess these cases and have them presented at the main steering meetings, where the cases receive more direct and frequent attention.

¹⁵⁹ See *supra* at p. 4, fn. 7.

¹⁶⁰ This describes the basic steering meeting. There were other steering meetings where cases that were older than a certain period were discussed or that included analyses of the corruption complaints in each of the commands within the specific group's jurisdiction. Members of the Commission also attended these meetings.

This process has helped to ensure that the Commission and IAB’s executive staff are kept apprised of the progress of significant investigations and that serious allegations are diligently investigated.

IAB Briefings to the Police Commissioner

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 Deputy Executive Director of the Commission also attend. The group commanders present cases selected by the Commission’s Executive Director.¹⁶¹ Presenters describe the allegations, the investigative steps taken, the results of those steps, and any anticipated investigative actions. Commissioners have the opportunity to discuss the case with the presenters and with the Police Commissioner. This past year, briefings covered racial profiling, criminal association, sex crimes, perjury, tampering with evidence, and other illegal activities.

Interim and Operation Orders

The Commission receives all Interim and Operation Orders issued by the Department. All orders are reviewed and archived to monitor any changes in Department policies or procedures related to the Commission’s mandate.

¹⁶¹ The Executive Director chooses the cases for these presentations from cases highlighted by IAB and from cases she has heard about through either the staff’s attendance at steering meetings or through case reviews.

Corruption and Misconduct Comparison Reports

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 Chief of IAB, IAB's senior staff, and the Commission to identify corruption trends. Each year, the Commission also receives a copy of IAB's Annual Report, which describes the proactive measures that IAB has taken to detect corruption or serious misconduct.

Complaint Logs

Occasionally, the Commission receives complaints from the public against members of the Department. The Commission refers these complaints to IAB or to the appropriate non-Departmental investigative entity, and keeps a record in the event any follow-up is necessary.

From January 1, 2013 through December 31, 2013, the Commission received 375 complaints. The breakdown of those complaints appear below:

Nature of Allegation	Number of Complaints
Abuse of Authority Non-F.A.D.O. ¹⁶²	13
Alcohol-Related	1
Criminal Association/Criminal Activity	16
Disagrees with Department Policy or Actions	15
Disputed Arrest or Summons	40
Domestic Dispute	5
Downgrade of Crime Statistics	6
Equal Employment Opportunity Complaint	2
F.A.D.O.	34
Failure to Take Police Action	51
False Statement/Falsifying Business Records/Falsifying Arrest Report	7
Harassment/Menacing	4
Impersonation	6
Larceny	1
Missing Property	8
Misuse of NYPD Computer	5
Misuse of NYPD Placard	3
Misuse of Time	3
Off-Duty Misconduct	2
Other - Non NYPD	25
Other - Miscellaneous ¹⁶³	66
Refused to take Report	9
Retaliation	1
Stop and Frisk	7
Unable to Determine the Exact Nature of Complaint	43
Unauthorized Employment	2

¹⁶² F.A.D.O. stands for allegations of wrongful or excessive force, abuse of authority, discourtesy, or offensive language. The Commission usually refers these complaints to CCRB.

¹⁶³ These complaints were from chronic callers known to the Commission and the Department.

CONCLUSION

In its role as independent overseer of the anti-corruption efforts of the Police Department, the Commission focuses its resources chiefly on its primary responsibility, monitoring the day-to-day functioning of IAB and DAO. In 2013, the Commission found that IAB and DAO performed their duties with the same high levels of professionalism, competence, and dedication, as has been the case in recent years.

Two years ago, the Commission was given the funding to hire four experienced attorneys, doubling the size of the staff. Within weeks of the conclusion of the lengthy process of selecting, vetting, and employing the new staff, super-storm Sandy severely damaged the building that housed the Commission's office, rendering it uninhabitable. The Commission staff was only able to return to its offices as 2013 concluded. With a larger staff, and offices in which to work, the Commission plans to conduct more targeted studies and refocus efforts to gather information regarding corruption trends from various organizations and members of the community.

Thus, in 2014, the Commission will continue to perform its basic function of monitoring IAB and DAO, continue its meetings with prosecutors and police organizations, and make use of its increased staff to concentrate on other projects within its jurisdiction. For example, the Commission intends, by the end of the year, to complete an in-progress written review of the Department's treatment of false official statements. This review will examine how the Department, through the end of 2013, trained its members regarding testifying, how it investigated allegations of

perjury and other false statements, and how it penalized those officers who made false official statements. This analysis will assist the Commission in conducting studies into specific areas of false statements in greater detail, and in making comparative evaluations in future reports.

The Commission will also resume its daily examination of all complaints lodged with IAB's Command Center to look for patterns among allegations or commands. The Commission also plans to study the topics of its prior reports, including the background investigations conducted into new recruits, other investigative entities within the Department, and the Department's intelligence – gathering programs. The Commission will be able to determine whether its past recommendations were adopted, and if so, whether they are working as intended, and whether other changes may be beneficial.

Last year, the Commission instituted a pilot project where staff members attended, and at times made presentations at, Precinct Community Council meetings.¹⁶⁴ Staff attended meetings in each of the five boroughs. Although most of the information gathered at the time did not address corruption issues, the Commission hopes either to expand its attendance at these meetings to determine if this would be an effective means of gathering information or to develop lines of communication with the Precinct Community Council Presidents to learn about the NYPD-related complaints within their communities. The Commission may also

¹⁶⁴ Precinct Community Councils are organizations that provide ongoing communication between the police and the community they serve. Typically, each council holds meetings on a regular day once per month where members of the community can attend and express their concerns to Precinct Commanders.

reach out to local high schools to learn from students what issues they encounter, and interview former members of the service, including former IAB officers, to gain their insights. While collecting information from these sources, the Commission will be in a position to explain to members of the community the complaint and investigation process and to encourage them to make appropriate complaints to IAB. Finally, the Commission is considering meeting with those attorneys who regularly bring lawsuits against the City, in which they accuse members of the Department of mistreating their clients. This outreach could yield information about recurring complaints and observed deficiencies in the way the Department investigates complaints.

Other projects under consideration involve examining the supervision, selection, and training of members of some specialized units within the Department that due to their relationship to the public are particularly vulnerable to corruption e.g. the Street Crimes, Conditions, and Narcotics Units. Another area constituting a corruption hazard is the use of confidential informants. The Commission would like to study how these informants are cultivated, registered, and compensated to determine whether there is a way to reduce opportunities for wrongdoing when working with informants. The Commission is also exploring a study into the operations and investigations of the Firearms Discharge Review Board, the unit responsible for determining whether police shootings violate Department guidelines. This unit operates similarly to IAB in that members of the service conduct the investigations, and is, therefore, subject to criticisms that investigations may be influenced by the natural tendency to protect colleagues.

In 1994, the Mollen Commission observed that, historically, since the 19th Century, the Department experienced 20-year cycles of recurring corruption scandals. The Commission to Combat Police Corruption was created at that time to help break this cycle by functioning as an independent body, with the task of reporting to the Mayor – and to the public - about the Department’s efforts to prevent and deal with corruption, and to detect patterns that could develop into the next significant corruption outbreak. It has now been another 20 years. The Commission concludes that the Department is dealing well with its always-present potential for corruption and that no cyclical condition of scandalous graft exists. Continued vigilance is, of course, necessary to keep it that way.

COMMISSIONER BIOGRAPHIES

Michael F. Armstrong

Chairperson

Michael F. Armstrong is a partner 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. Ms. Chin earned her JD from Columbia University School of Law.

Deborah E. Landis

Deborah E. Landis 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 has also taught Trial Advocacy at 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 Senior Counsel 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 best selling 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

Joanna Berlin, Examining Attorney
Cynthia Kao, Examining Attorney
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Christopher Tellet, Confidential Investigator
Cristina Stuto, Office Manager

APPENDIX

Executive Order



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.

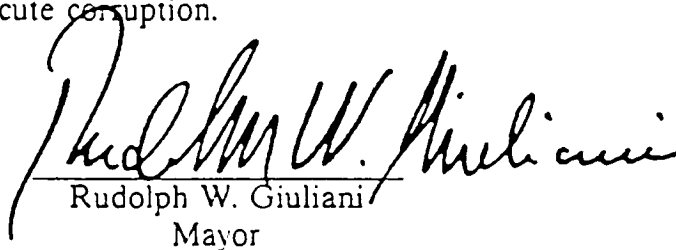
Section 5. Reporting to the Mayor.

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

