

NYC

COMMISSION TO COMBAT POLICE CORRUPTION

Seventeenth Annual Report

of the Commission

November 2015

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OVERVIEW

The Commission to Combat Police Corruption (CCPC or the Commission) was established by Mayoral Executive Order No. 18 in 1995¹ following the recommendation of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department chaired by Judge Milton Mollen (Mollen Commission). The Mollen Commission called for 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 act as a “watchdog of the public.”² The resulting Executive Order mandated that the Commission monitor the efforts of the Department to gather information, investigate allegations, and implement policies designed to detect, control and deter corruption among its members. The Commission is not authorized to conduct its own investigations into allegations of corruption against members of the Department, except in specific, narrowly defined circumstances.³

The Commission fulfills its mandate through its examination of investigations conducted by the Internal Affairs Bureau (IAB)⁴ and its review of all closed disciplinary cases involving uniformed members of the service that are prosecuted by the Department Advocate’s Office (DAO)⁵ in the Department’s Trial Rooms. The Commission reports its

¹ Appendix C of this report.

² Mollen Commission Report (July 7, 1994) at p. 153.

³ Executive Order No. 18, §3(b) (February 27, 1995).

⁴ 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. 3-6 for a more detailed discussion of IAB.

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

findings from these reviews in its Annual Report. Moreover, the Commission, from time to time, conducts studies of particular issues and Department units, policies, or systems to gauge the effectiveness of the NYPD's efforts to prevent and uncover corruption. In these studies, the Commission sets forth, as needed, recommendations to enhance or develop new Department policies to address corruption-related issues or observed patterns of corruption.⁶ The Commission also suggests improvements in the implementation of existing policies, when appropriate. To date, the Commission has published 25 of these independent performance studies.

This report, *The Seventeenth Annual Report of the Commission*, covering the work performed by the Commission in calendar year 2014, presents the Commission's findings based on its review of 129 IAB investigations and 540 disciplinary cases. It concludes with a description of the Commission's ongoing operations and a brief summary of the Commission's current projects, which may result in future published reports.

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

MONITORING IAB INVESTIGATIONS

Introduction

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

The Internal Affairs Bureau⁷

In 2014, IAB underwent significant changes affecting both personnel at the executive level and the structure and policies of the Bureau. Many of the cases reviewed by the Commission in 2014 were initiated under the previous administration and closed under the new administration. This enabled the

⁷ See *Sixteenth Annual Report of the Commission (Sixteenth Annual Report)* (October 2014) at p. 3 for a detailed description of IAB and the NYPD's complaint process.

Commission to observe some of the changes and strategies of IAB's new administration.

Changes at IAB that have been observed by the Commission in 2014 include:

- A reduction in the total number of personnel assigned to IAB, a reorganization of IAB's command structure, and a decrease in the average number of cases per investigator.
- A new policy requiring that minor department rule violations uncovered during IAB investigations, when not directly related to the alleged misconduct, be forwarded to the subject officer's commanding officer for follow up and discipline, when warranted.⁸
- The disbanding of the Court Monitoring Unit, with court attendance and testimony once again being overseen by each officer's command.⁹
- The disbanding of the Vehicle Identification Unit and the Vehicle Enforcement Unit.¹⁰
- A change in the procedure for closing criminal association cases involving a family member.¹¹ Cases previously closed as *Unsubstantiated* are now being closed as the less pejorative classification of *Information & Intelligence* unless there is an indication that the subject officer is involved in or aware of criminal activity, or has engaged in related misconduct, such as visiting a correctional facility without making proper notification to the Department.¹²

⁸ The Deputy Commissioner of Internal Affairs has instructed IAB commanding officers to follow up on these violations to ensure that they are not being ignored at the command level.

⁹ The Court Monitoring Unit was formed as a result of an IAB ticket-fixing investigation. *See Fifteenth Annual Report of the Commission (Fifteenth Annual Report)* (September 2013) at pp. 76-77 for a more detailed description of this investigation. The purpose of the unit was to keep an IAB presence in the various traffic courts to monitor officer attendance and testimony. The prior administration planned to expand the unit to cover the Transit Adjudication Bureau and the criminal courts.

¹⁰ The Vehicle Identification Unit and the Vehicle Enforcement Unit were originally formed during the previous administration to address the alleged widespread abuse of official parking placards.

¹¹ NYPD Patrol Guide (P.G.) § 203-10(2) (c) (Public Contact-Prohibited Conduct) prohibits members of the service from associating with people who are reasonably believed to be engaged in, likely to engage in, or have engaged in criminal activities.

¹² *See infra* pp. 19-20, for a more detailed description of IAB case dispositions.

- An increase in the use of *Exonerated* and *Unfounded* case dispositions,¹³ both in the investigations reviewed by the Commission and the cases discussed at Steering Committee meetings.¹⁴
- An increased tailoring of *EDIT* and *AWARE* operations to specific allegations.¹⁵ This may decrease the number of operations, but is thought to achieve a more desired outcome by gathering information that is more relevant to specific allegations. In fact, IAB has all but ceased conducting *AWARE* operations, having concluded that the intelligence collected generally does not justify the expenditure of resources.
- An increased emphasis on conducting investigations as expeditiously as possible to reduce the length of time cases are pending.

In its *Sixteenth Annual Report*, the Commission made two recommendations to improve accessibility and transparency of the Department's complaint process.¹⁶ First, the Commission recommended that the Department place information regarding the procedure for making complaints against members of the service in a more prominent area on the Department's website. Second, the Commission recommended the Department provide, for public view, periodic statistical reports regarding internal investigations and the resolution of those investigations. In response to a draft of the *Sixteenth Annual Report* sent to the Department, the Police

¹³ *Id.*

¹⁴ For example, in 2013, 4% of the closed cases reviewed by the Commission were closed with a disposition of either exonerated or unfounded. In 2014, 12% of the closed cases reviewed contained one of these dispositions. *See infra* at pp. 63-64 for a description of the IAB Steering Committee.

¹⁵ *EDIT* is an acronym for enforcement, debriefing, intelligence gathering, and testing. In these operations, IAB investigators effect arrests for observed criminal violations and debrief the arrestees. *AWARE* is an acronym for active, warrant, address, review, and enforcement. In these operations, IAB investigators execute arrest warrants in targeted areas and debrief arrestees in an effort to uncover information regarding corruption or misconduct involving members of the service.

¹⁶ *Sixteenth Annual Report* at p. 9.

Commissioner agreed that improvements could be made and that the Department would begin working on changes immediately. To date, the Department has not made these changes. The Commission continues to recommend improvements in the areas of accessibility and transparency in the complaint process and looks forward to seeing the results of the Department's changes.

In response to a draft of this report, the Department informed the Commission that it was in the process of creating a computer application that would ease the reporting of allegations of corruption. Once that application is finalized, the Department will consider what data regarding its investigations should be disclosed to the public.

Monitoring IAB Investigations

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

The Commission reviews a representative sample of IAB investigations to ensure that they are fair, thorough, accurate, and impartial. The Commission also evaluates whether, based upon the information available in the file, a correct disposition was reached with respect to each allegation in a timely fashion. In the Annual Report, the Commission typically reports on issues that are found in

multiple cases, and significant issues that appear in isolated cases. Minor, isolated errors in individual cases are generally not highlighted. However, all perceived areas for improvement that the Commission notes in its reviews are discussed with IAB group and zone commanders.

For this Annual Report, the Commission reviewed a total of 129 IAB investigations, including 35 pending investigations and 94 closed investigations. These reviews are discussed in more detail below.¹⁷

A. The Commission's Review of Pending IAB Investigations

The Commission reviewed pending investigations from six of IAB's geographic groups and four of its specialty groups.¹⁸ This type of review, which took place at each group's offices, allowed Commission staff to interact directly with investigators and their supervisors. As was done for prior Annual Reports, the 35 pending cases selected for review were randomly chosen from case lists provided by IAB that contained only the case number and the assigned group.

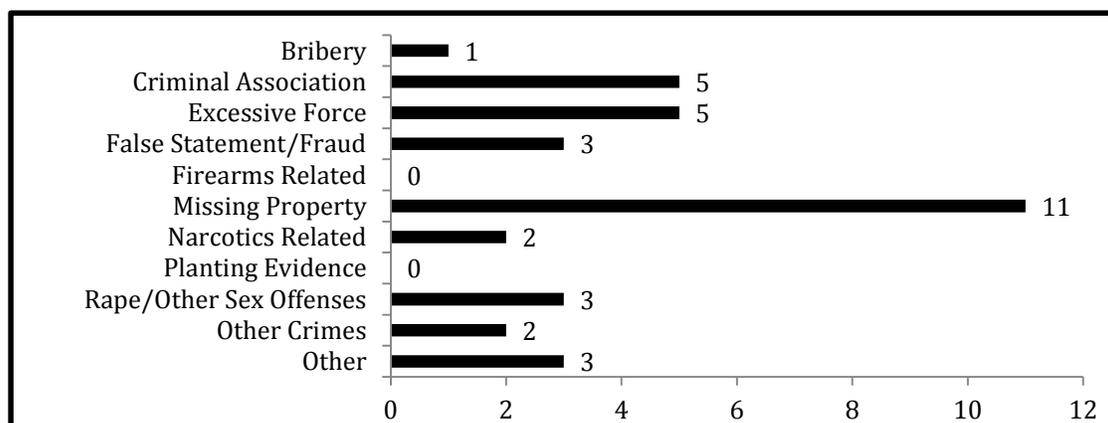
The breakdown of the most serious allegation in each pending case analyzed for this report appears on the next page:¹⁹

¹⁷ In November 2014, the Commission instituted a new form of pending case review. *See infra* pp. 8-10, for a detailed description of this review.

¹⁸ IAB has a total of 17 investigative groups and 3 groups that mainly provide support services but also maintain a small number of their own investigations. The Commission reviewed pending investigations from IAB groups: 26 and 27 (Queens); 31, 32, 33 and 34 (Brooklyn/Staten Island); 41 (Organized Crime Control Bureau); 53 (School Safety); 54 (Force); and 56 (Traffic).

¹⁹ 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. 12. Therefore, the categories of "Firearms Related" and "Planting Evidence" were included in this table despite there having been no cases with these allegations in the Commission's pending case review during the 2014 calendar year.

CCPC Open Investigation Review – Most Serious Allegations²⁰



During 2014, the Commission changed the procedure for reviewing pending investigations. The Commission, in collaboration with IAB’s executive staff, developed a program whereby Commission staff members conduct visits of IAB field offices and attend case reviews of all active investigations. Members of the Commission staff, IAB zone commanders and executive officers, the group’s commanding officer, and group supervisors are present for the review. During the review, a group’s entire active caseload, including all Corruption, Misconduct, and Outside Guidelines cases, is discussed.²¹ If the Commission learns of a case that raises questions or concerns, it retains the ability to review the entire investigative

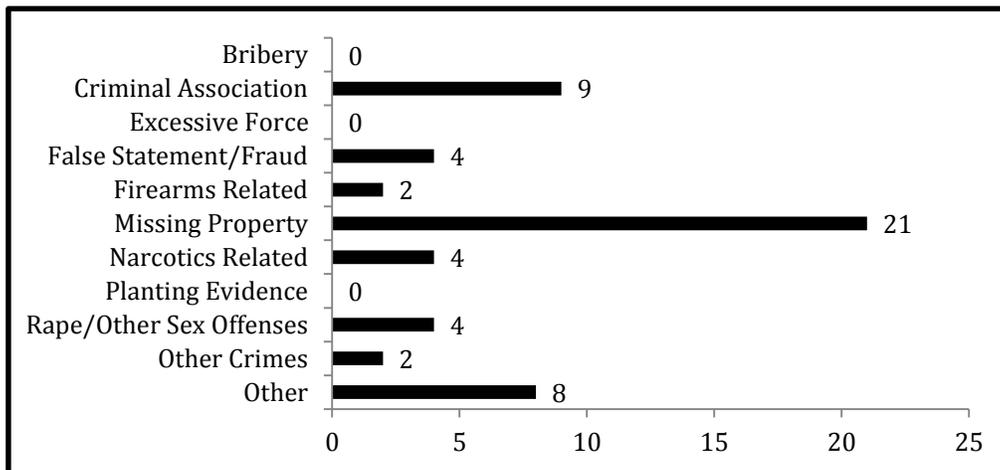
²⁰ In the two cases listed under the category “Other Crimes,” the most serious allegations were grand larceny and patronizing a prostitute. In the three cases listed under the category “Other,” the most serious allegations were accepting a gratuity, improper search, and fraternization with a student. (IAB has a group that investigates allegations against School Safety Agents and other members of the service who are assigned to New York City Schools. The allegation of fraternization with a student is usually investigated by this group.)

²¹ IAB investigations are typically classified in one of three categories depending on the seriousness of the allegations. Corruption (C) cases involve allegations of corruption or serious misconduct. Misconduct (M) cases contain less serious allegations of misconduct. Outside Guidelines (OG) cases involve allegations of minor infractions or violations of the Department regulations. Other typical case classifications include Self-Initiated (SI) cases and Programmatic Review (PR) cases. In SI cases, IAB initiates an investigation based upon information that it developed. In PR cases, IAB revisits a closed investigation to determine if further inquiry is needed. PR and SI cases are also discussed during case reviews.

file and discuss the case in detail with IAB. In addition, the Commission has the ability to choose the case to be presented at monthly briefings with the Police Commissioner and CCPC’s Commissioners.²²

In 2014, the Commission staff was briefed on 54 pending IAB investigations during these case reviews.²³ The most serious allegations of the cases discussed are detailed in the chart below:²⁴

IAB Full Pending Case Review – Most Serious Allegations²⁵



The current case review process provides the Commission with the opportunity to be briefed on a greater number of pending investigations without losing the ability to review entire investigative case files when circumstances indicate more information is needed to evaluate the progress of an investigation.

²² See *infra* at p. 64 for a description of these monthly briefings.

²³ The 54 cases were from two IAB Groups: Group 10 in Manhattan and Group 26 in Queens.

²⁴ See p. 7, fn 19.

²⁵ Both cases in the “Other Crimes” category were assault investigations. The “Other” category included cases where the most serious allegations were: ticket-fixing, unauthorized use of a Department automobile, unauthorized off-duty employment, improper association with a tow/body shop, failure to invoice narcotics, member of the service’s property was found during execution of a search warrant, vehicle owned by the brother of a member of the service was used in a crime, and an IAB self-initiated case.

In addition, it facilitates increased interaction between Commission staff and each group's supervisors and commanders. This initiative began in November 2014 and has continued in 2015.

B. The Commission's Review of Closed IAB Investigations

The review of closed IAB cases allows the Commission to evaluate the general quality of IAB investigations and to make recommendations that can be applied to future investigations. In addition, the Commission strives to ensure that investigations are conducted in a consistently thorough manner.

1. Methodology

While conducting reviews, the Commission staff primarily assesses IAB's performance in five areas:²⁶

- **Timeliness:**
 - Was the length of the investigation reasonable?
 - Were there unexplained gaps in the investigation?
 - Did the statute of limitations for any misconduct expire during the course of the investigation?²⁷

- **Identification of and interviews with complainants, witnesses (both civilians and members of the service), and subject officers:**
 - Were reasonable steps taken to identify and interview witnesses and subject officers in a timely manner?
 - Were appropriate background checks completed?
 - Were interviews recorded?
 - Were complete and accurate summaries of interviews written on worksheets?
 - Were interviews thorough and unbiased?

²⁶ The descriptions in each area are for illustrative purposes and do not constitute an exhaustive list of all areas analyzed by the Commission.

²⁷ See *infra* at p. 15 for a more detailed discussion about the statute of limitations.

- Evidence collection and analysis:
 - Were reasonable, timely efforts made to obtain evidence?
 - Was any relevant evidence overlooked?
 - Was evidence analyzed properly?
 - Were all investigative steps documented?
 - Were Team Leader Reviews effective?

- Case closing report:
 - Was the closing report objectively written?
 - Were all of the allegations addressed?

- Case disposition (including the disposition assigned to each allegation):
 - Does the evidence in the file support the finding(s)?

The Commission also notes other, less readily-categorized issues and tracks data concerning the allegations, sources of complaints, and whether the misconduct raised concerns related to Department training, supervision, and/or policy.

For this review, the Commission randomly chose cases from IAB's closed case lists. At the time of selection, the Commission knew only the case number, which identified the year the allegation was received, and the group that conducted the investigation.

2. General Analysis of Closed Investigations

In 2014, the Commission reviewed 94 closed cases, a 27% increase over the previous year's review.²⁸ These cases represented 7% of the total number of cases closed by IAB in calendar year 2014,²⁹ involved 267 officers, and contained 562 allegations.³⁰

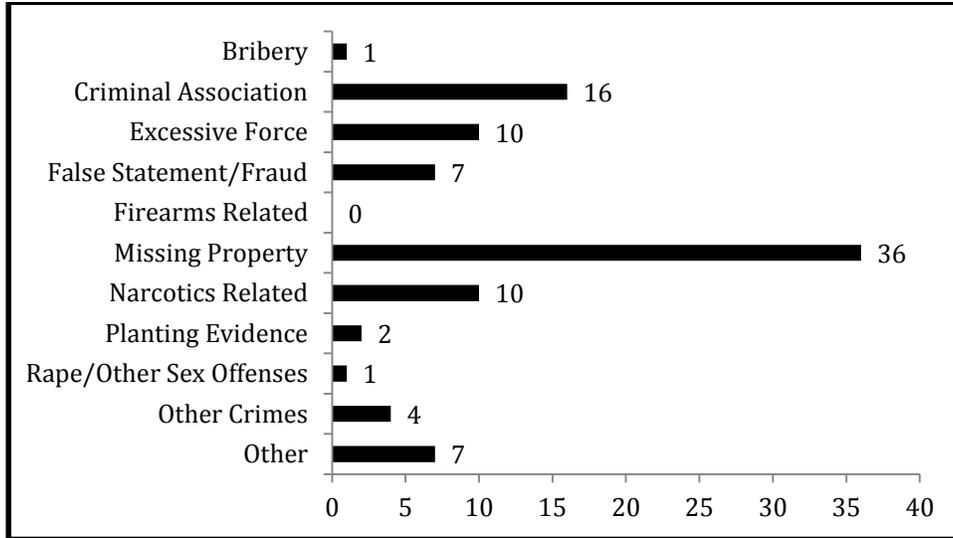
²⁸ The Commission typically limits its review of closed cases to IAB C cases. In order to review cases from all IAB investigative groups, in the 2014 review, 3 of the 94 cases were classified as M cases.

²⁹ During calendar year 2014, IAB closed a total of 1,316 C cases.

³⁰ The Commission did not include allegations that were added to a case for purely administrative purposes.

The breakdown of the most significant allegations in the reviewed cases appear below.

IAB Closed Cases – Most Serious Allegations³¹



As noted in the Commission’s four most recent Annual Reports, the two most frequent allegations in the randomly selected cases reviewed by the Commission are missing property and criminal association.³²

2.1 Source of Complaint

An analysis of the sources of the reviewed complaints³³ shows that 45% of the cases were initiated upon a complaint from a civilian, while 32% of the cases

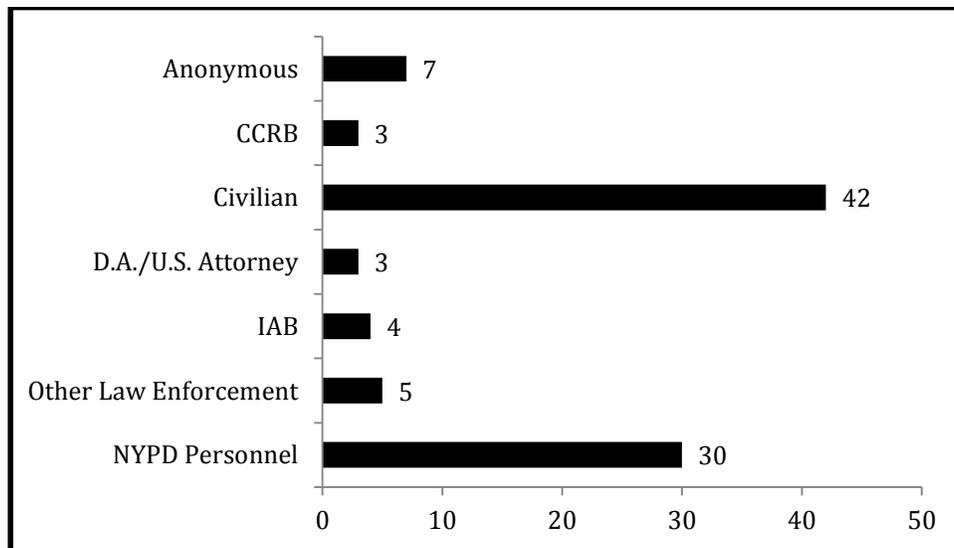
³¹ In the four cases listed in the category “Other Crimes,” the most serious allegations were vehicular manslaughter, official misconduct, patronizing a prostitute, and criminal possession of stolen property. In the seven cases listed in the category “Other,” the most serious allegations were disputed arrest (two cases), computer misuse, disclosing confidential information, unfit for duty, an integrity test failure for failing to make/take a report, and an integrity test failure for discarding narcotics.

³² *Thirteenth Annual Report of the Commission (Thirteenth Annual Report)* (March 2011) at p. 4; *Fourteenth Annual Report of the Commission (Fourteenth Annual Report)* (February 2012) at p. 8; *Fifteenth Annual Report* at p. 6; and *Sixteenth Annual Report* at p. 14.

³³ The source of complaint refers to the individual or entity that provided information that initiated the investigation, not necessarily the source of information that led to the substantiation of a particular allegation.

were based upon a report by a member of the NYPD.³⁴ Of the 30 cases in which the reporting party was a member of the service, 25 were supervisors. The charts below show the sources of the reviewed complaints, the most serious allegation by source of complaint, substantiated allegations by source of complaint, and a comparison between the sources of complaints in the investigations reviewed by the Commission in 2013 versus 2014.

IAB Closed Cases - Source of Complaints³⁵



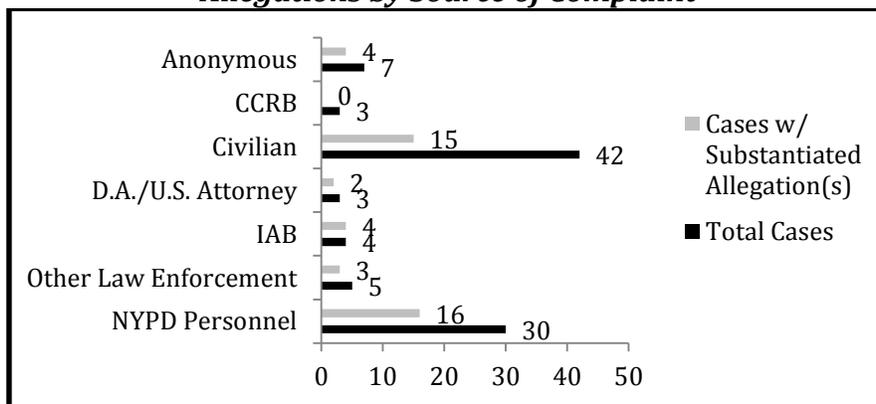
³⁴ P.G. §207-21 (Allegations of Corruption and Other Misconduct Against Members of the Service) requires that uniformed members of the service report corruption or misconduct, or allegations of corruption or misconduct, to IAB.

³⁵ Members of the service may make anonymous complaints, so that category includes anonymous complaints made by civilians and members of the service, if any. *See infra* at p. 37, fn. 83 for a definition of CCRB. D.A. refers to a member of a District Attorney’s Office.

IAB Closed Cases – Most Serious Allegations by Source of Complaint

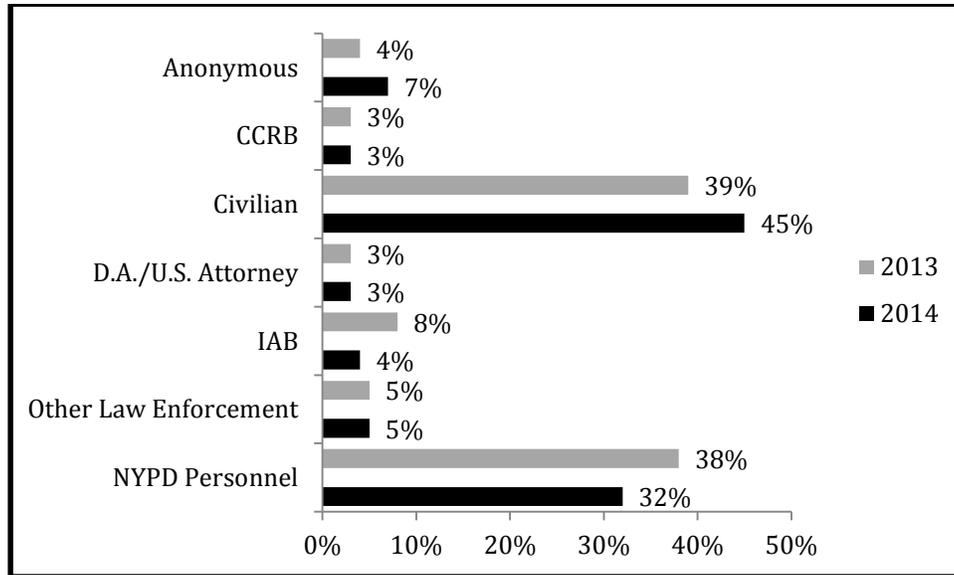
	<i>Anon.</i>	<i>CCRB</i>	<i>Civilian</i>	<i>A.D.A./ A.U.S.A.</i> ³⁶	<i>IAB</i>	<i>Other L.E.</i>	<i>NYPD</i>	<i>Total</i>
Bribery	-	-	1	-	-	-	-	1
Criminal Association	1	-	1	2	1	3	8	16
Excessive Force	-	-	4	-	-	-	6	10
False Statement/Fraud	-	-	1	1	1	2	2	7
Firearms	-	-	-	-	-	-	-	0
Missing Property	-	2	30	-	-	-	4	36
Narcotics	2	-	-	-	-	-	8	10
Planting Evidence	-	1	1	-	-	-	-	2
Rape/Sex Offenses	-	-	1	-	-	-	-	1
Other Crimes	2	-	1	-	-	-	1	4
Other	2	-	2	-	2	-	1	7
Total	7	3	42	3	4	5	30	94

IAB Closed Cases – Cases with Substantiated Allegations by Source of Complaint



³⁶ A.D.A. refers to an Assistant District Attorney. A.U.S.A. refers to an Assistant U.S. Attorney.

IAB Closed Cases - Sources of Complaints: 2013 v. 2014³⁷



2.2 Investigation Length

NYPD internal investigations have an administrative statute of limitations (SOL) of 18 months.³⁸ The SOL is measured from the last date that the alleged misconduct took place. Therefore, administrative charges must be brought against a subject officer within 18 months of that date, regardless of when the Department learns of the allegations. The SOL does not apply in cases where the alleged misconduct would constitute a crime if proven in a criminal proceeding.³⁹

<i>Length of Investigations Reviewed</i>		
	Case Total	%
6 Months or Less	24	26%
7 - 12 Months	29	31%
13 - 18 Months	22	23%
19 - 24 Months	10	10%
25 Months or More	9	10%
Total	94	100

³⁷ The percentages may not add up to 100% due to rounding.

³⁸ N.Y. Civil Service Law §75(4).

³⁹ *Id.*

The Commission analyzed the lengths of the IAB investigations reviewed in 2014 and found that the average investigation lasted 13 months, with the shortest taking 1 month, and the longest 55 months.⁴⁰ This represents a 14.5% decrease in the average length of the investigations reviewed as compared to those investigations reviewed in 2013.⁴¹

IAB Closed Cases – Length of Investigation by Source Type

<i>Source</i>	<i>Months</i>
Anonymous	23.0
CCRB	5.7
Civilian	11.6
D.A./A.U.S.A.	15.0
IAB	19.0
Other L.E.⁴²	26.2
NYPD	10.0

⁴⁰ 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 67% of the cases reviewed, the incident was reported to IAB within a week of the alleged misconduct. This finding is consistent with the 13.7-month average length of investigation for all C cases closed by IAB in 2014. For all investigations closed by IAB in 2014 (C, M, and OG), the average length of investigation was 11.3 months.

⁴¹ The average length of the investigations reviewed in 2013 was 15.2 months. *Sixteenth Annual Report* at p. 16.

⁴² In four of the five cases listed in the Other Law Enforcement category, the length of the investigations exceeded 18 months. Two of those four cases were delayed due to concurrent federal investigations.

IAB Closed Cases – Average Length of Investigation by Allegation Type

<i>Allegation</i>	<i>Months</i>
Bribery	11.0
Criminal Association	15.4
Excessive Force	8.5
False Statement/Fraud⁴³	26.3
Firearms	-
Missing Property	10.8
Narcotics	11.2
Planting Evidence	6.5
Rape/Sex Offenses⁴⁴	20.0
Other Crimes	12.5
Other	15.6

IAB Closed Cases – Length of Investigation by Disposition⁴⁵

<i>Disposition</i>	<i>Months</i>
Exonerated	5.6
Partially Substantiated	15.9
Substantiated	7.8
Unfounded	10.8
Unsubstantiated	13.2
Information & Intelligence	2.5

In two cases reviewed by the Commission in 2014, there were possible substantiated allegations that were lost due to the expiration of the SOL. In the first case, the administrative investigation was temporarily suspended at the request of criminal prosecutors. As a result, a charge could not be brought against the subject officer for a minor, administrative violation,⁴⁶ and a letter of instruction was issued

⁴³ In five of the seven cases listed in the False Statement/Fraud category, the length of the investigations exceeded 18 months; three of those cases were delayed due to the activities of outside agencies related to the investigations.

⁴⁴ The one case in the Rape/Sex Offense category was delayed due to criminal and administrative prosecutorial activity related to the investigation.

⁴⁵ See *infra* pp. 19-20, for a description of IAB dispositions.

⁴⁶ However, this subject officer was charged with failure to supervise.

instead.⁴⁷ In the second case, IAB received the investigation eight months prior to the administrative deadline. The nature of the allegations, consisting of fraud, required a detailed analysis of financial records. In addition, an official Department interview of the subject officer was delayed at the request of an outside investigative agency that was considering a criminal case against him. As a result of the delay, the SOL expired and the Department was unable to impose discipline for the subject officer's unauthorized off-duty employment that was discovered during the investigation.

Investigations completed well before the 18-month statutory limit provide the Department ample time to determine if charges or other discipline are appropriate for the officers involved. In addition, both the complainants and the subject officers benefit from a speedy resolution of the complaint. As the U.S. Department of Justice has noted:

Statutory limits on investigative duration should be the minimum standard. Consideration should be given to the broader principles of the policy. It is valuable, for example, to complete investigations promptly out of respect to employees, recognizing that they suffer stress awaiting the disposition of their case. It is also valuable to the development of public trust when citizens are notified that their complaints have been investigated promptly. There is value in taking swift corrective action to help a wayward employee avoid further problems.⁴⁸

⁴⁷ A letter of instruction is a written warning of a Department rule violation.

⁴⁸ U.S. Department of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice*, Washington, D.C.: Office of Community Oriented Policing Services, August 21, 2009.

Based upon the cases reviewed, the Commission concluded that IAB has been largely successful in closing cases well before the expiration of the SOL. IAB also investigated and closed most of the cases reviewed by the Commission in an expeditious and diligent manner.

2.3 Disposition Type

At the conclusion of an investigation, IAB typically assigns one of six dispositions to each allegation and to the overall case.⁴⁹ They are:

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

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

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

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

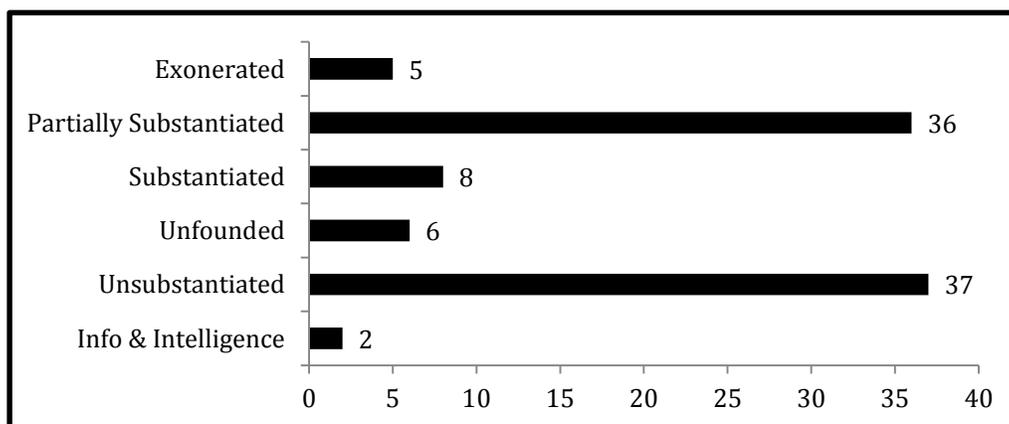
Unfounded: The investigation found that the alleged misconduct did not occur or was not committed by members of the NYPD.

⁴⁹ These are the typical dispositions given to allegations, but this is not an exhaustive list. Another possible disposition includes Other Misconduct Noted (OMN), which indicates that other minor misconduct, not directly related to the original allegations, was uncovered during the investigation.

Information & Intelligence: The investigation found insufficient evidence to substantiate the allegation, but the conduct alleged is being tracked by IAB for intelligence purposes.

A breakdown of the overall closed case dispositions for the cases reviewed by the Commission for this report and the dispositions by source of complaint are depicted in the following charts:

Closed Case Dispositions⁵⁰



Dispositions by Source of Complaint⁵¹

	Exonerated	Partially Substantiated	Substantiated	Unfounded	Unsubstantiated	Info. & Intel.
Anonymous	-	4	-	1	2	-
CCRB	-	-	-	1	2	-
Civilian	1	15	-	3	22	1
D.A./A.U.S.A.	-	2	-	1	-	-
IAB	-	1	3	-	-	-
Other L.E.	-	3	-	-	2	-
NYPD	4	11	5	-	9	1
Totals	5	36	8	6	37	2

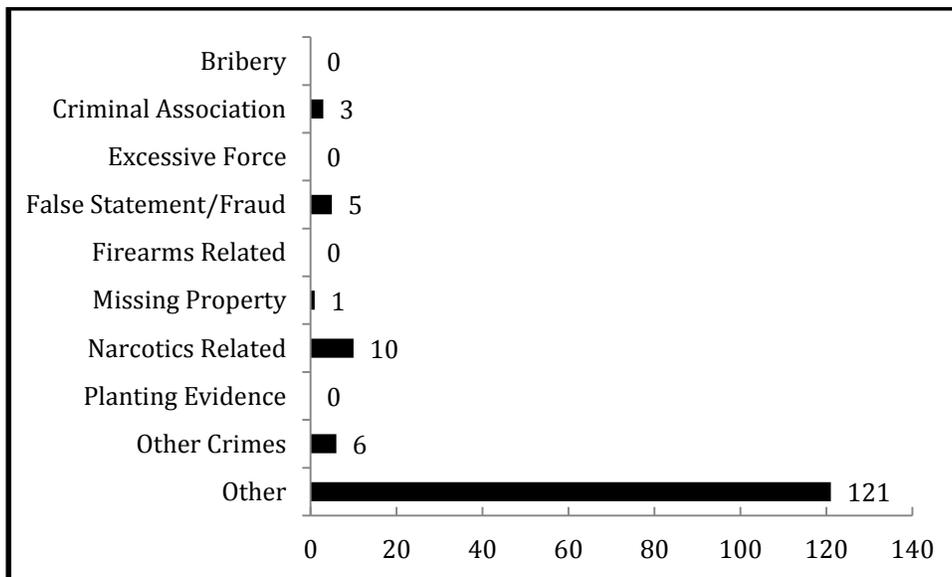
⁵⁰ An analysis of all 1,316 C cases closed by IAB in 2014 showed the following dispositions: Exonerated-74, Partially Substantiated-350, Substantiated-75, Unfounded-114, Unsubstantiated-68, Info & Intelligence-19. Four cases in the Commission’s review were not categorized because the overall disposition could not be determined. Seventy-three cases had an additional designation of OMN.

⁵¹ See *supra* p. 13, fn. 35.

Approximately 53% of the IAB cases that the Commission reviewed were closed with at least one substantiated allegation: 8 cases were substantiated, 36 cases were partially substantiated, and 6 cases were closed with a disposition of unsubstantiated but other minor misconduct was noted during the investigation.⁵² In total, these 50 cases involved 87 subject officers with 146 substantiated allegations.

The chart below summarizes the substantiated allegations of the closed cases reviewed by the Commission:

IAB Closed Cases - Substantiated Allegations



⁵² In the cases reviewed by the Commission, IAB investigated 562 allegations of misconduct, and substantiated 146, or 26%. In the cases reviewed for the *Sixteenth Annual Report*, the substantiation rate was 33% based upon 511 allegations investigated by IAB, with 169 allegations substantiated. The lower substantiation rate observed in the cases the Commission reviewed in 2014 may be due, in part, to the change in policy, discussed previously, in which minor misconduct is sent back to the officer's commanding officer to address. See *supra* at p. 4.

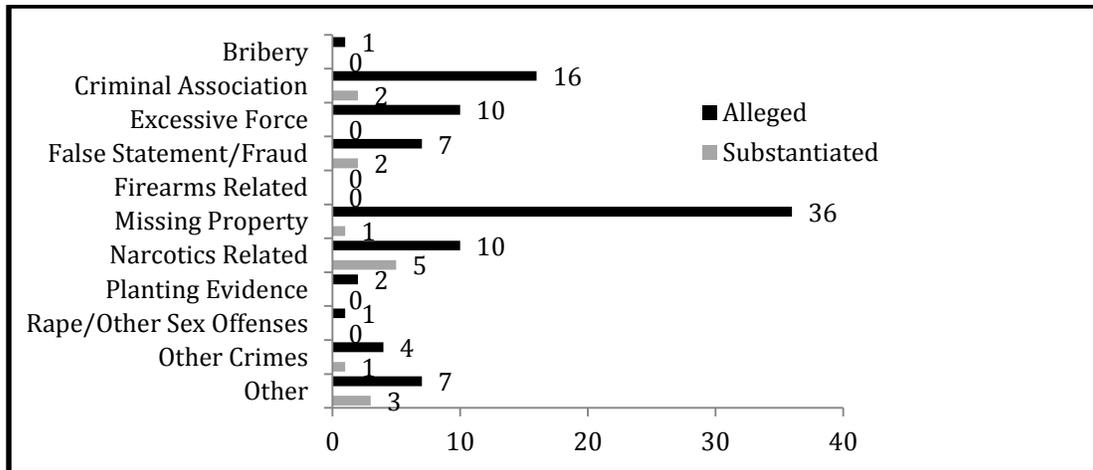
The 'Other' category included a wide variety of less serious allegations that are further itemized below:

<i>Description of Allegation</i>	<i>Total # of Allegations</i>
Absent from Assignment	2
Acted Outside the Scope of Employment	1
Administrative Firearms Violation	4
Computer Misuse	7
Discarded Narcotics	1
Disputed Arrest	1
Failure to Complete Department Paperwork	10
Failure to Comply with Order	3
Failure to Follow Turnover Arrest Procedure	1
Failure to Indicate Return Date on Summons	1
Failure to Notify - Address Change	3
Failure to Notify IAB	17
Failure to Notify Supervisor	1
Failure to Review Arrest Paperwork	1
Failure to Safeguard Evidence/Property	8
Failure to Safeguard Firearm	2
Failure to Supervise	4
Fraternization w/ Student	2
Impede Investigation	2
Improper Financial Dealings w/ Subordinate	1
Improper Search	1
Incomplete/Improper Investigation	1
Incomplete/Inaccurate Report	1
Integrity Test Failure for Failing to Voucher Narcotics ⁵³	1
Memo book Incomplete/Improper	28
Off-Duty Employment	2
Operated Dep't Vehicle w/out Permission	1
Personal Business On-Duty	7
Refused DWI Coordination Test	1
Unauthorized Contact w/ Court	3
Unauthorized Residence	1
Unfit for Duty	1
Wrongfully Threatened Police Action	1
Total	121

⁵³ In integrity tests, IAB creates artificial situations typically faced by police officers to determine if their responses are lawful and consistent with Department guidelines.

The chart below sets forth the dispositions of the most serious allegations contained in each of the reviewed cases.⁵⁴

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



The substantiated allegations shown in this chart were for the most serious allegations in each investigation reviewed by the Commission. The substantiation rate for the most serious allegations of the cases reviewed by the Commission was 15%.⁵⁵

As noted earlier in this report, there has been an increase in the use of the exonerated and unfounded case dispositions by IAB.⁵⁶ Of the five exonerated cases, excessive force was the most serious allegation in four of these and criminal association was the most serious allegation in one. Of the unfounded cases, two had

⁵⁴ These correspond to the allegations depicted in the chart appearing on p. 12

⁵⁵ The substantiation rate for the most serious allegations in the closed cases reviewed for the *Sixteenth Annual Report* was also 15%.

⁵⁶ See *supra* at p. 5. An analysis of all IAB C cases closed in 2014 showed that 74 were closed as exonerated and 114 were closed as unfounded, representing 14% of all of the C cases closed. (One case was closed as Exonerated/Partially Substantiated and was not included in these results due to the multiple dispositions.) This is consistent with the Commission's finding of a 12% exonerated/unfounded rate among the sample of cases reviewed by the Commission in 2014.

missing property allegations; the remaining cases had allegations of criminal association, narcotics, planting evidence, and excessive force.

3. CCPC Analysis of Selected Trends

As noted earlier in this report, the Commission primarily assesses five areas when conducting a case review: 1) timeliness; 2) identification and interviews of complainants, witnesses, and subject officers; 3) evidence collection and analysis; 4) the case closing report; and 5) the overall case disposition. Within these five areas, the Commission has tracked seven individual components either because of their importance, such as CCPC’s agreement with the overall case disposition, or the Commission’s comments regarding these components in previous reports. The table below shows the percentage of outcomes with which the Commission agreed (the compliance rate) with these individual investigative areas.

<i>Description</i>	<i>Compliance %</i>	<i>Number of Cases</i>
CCPC Agrees with Disposition	99%	93/94
Accurate Summaries of Recorded Interviews	95%	89/94
Interview of Available Witnesses	89%	84/94
Team Leader Reviews	82%	77/94
Documentation of Investigative Steps	91%	86/94
Timely Search for Video Evidence	98%	92/94
Adequate Interview Quality	91%	86/94

3.1 Dispositions

Based on the information available in the case file, the Commission agreed with the disposition in 99% of the closed cases it reviewed. Every case is subjected to a multi-layer review by IAB, from team leaders up through group commanding

officers and zone commanders, before it is closed and the disposition is finalized.⁵⁷ At times, these reviews result in cases being sent back to the investigator for additional investigative steps or information. In making its determination regarding an investigation's disposition, the Commission only considered whether the disposition was supported by the information collected by the investigator and included in the case file. The Commission recognizes that in cases where it suggests that additional investigative steps should have been taken, it is impossible to determine whether the disposition would have been appropriate had those steps been taken.

The Commission disagreed with the disposition in one case where an allegation was closed as unfounded.⁵⁸ In that case, the Commission believed that the information in the file did not adequately support a conclusion that the alleged misconduct did not occur, and believed that an unsubstantiated disposition would have been more appropriate. During this year's review, the Commission found no allegations that it believed should have been closed as substantiated, but were not.

3.2 Summaries of Recorded Interviews

Interviews are an integral part of most IAB investigations. 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 NYPD interviews of Department witnesses and subject officers are supposed

⁵⁷ The investigative groups in IAB are divided into three zones, each commanded by an Inspector or Deputy Inspector. Cases that have been monitored by the IAB Steering Committee are reviewed by at least one member of IAB's executive staff. *See infra* at pp. 63-64 for a description of the IAB Steering Committee.

⁵⁸ The Commission agreed with the disposition for the most serious allegation, narcotics use, but disagreed with the disposition for a lesser allegation of residing outside the resident counties.

to be electronically recorded.⁵⁹ The case investigator summarizes each interview on a worksheet. While these summaries are not transcripts, they should include details from the interview that are material to the investigation, and should accurately reflect the recorded interviews.

The Commission found that 5% of the cases reviewed had unsatisfactory summaries of recorded interviews.⁶⁰ In three cases, the summaries of interviews were inaccurate in material respects; two involved a mischaracterization of the nature of responses to an investigator's questioning, and one contained information in the summary of the interview that was not on the recording.⁶¹ Three cases contained interview summaries that did not include relevant information from the interviews.⁶²

3.3 Interviews of Available Witnesses⁶³

Civilian and police witnesses are potential sources for valuable, relevant information, and, obviously, the best practice would be to interview all readily available witnesses in a timely manner. In many instances, it is difficult to ascertain

⁵⁹ P.G. §206-13 (Interrogation of Members of the Service) 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.

⁶⁰ The most serious allegation in each of the four cases was: missing property (two cases), disputed arrest, and fitness for duty.

⁶¹ The three cases involved two civilian interviews and one official Department interview of a member of the service.

⁶² Two cases involved an official Department interview of a member of the service, and the other case involved a civilian interview. One case had both an inaccurate interview summary and an incomplete interview summary.

⁶³ In 5 of the 11 cases, IAB supervisors documented that the investigator should have interviewed additional witnesses within the case file.

what information a 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 10 cases, or 11% of the closed cases reviewed.⁶⁴ In six cases, IAB did not interview a civilian witness. Three cases involved a failure to interview members of the service; and one case involved a failure to interview both civilian witnesses and members of the service. In the Commission's view, these witnesses should have been interviewed as they might have possessed relevant information and easily could have been contacted by the investigator.

A related issue involves the identification of potential subject officers and civilians or witnesses who are members of the service. In three of the reviewed investigations, the Commission found that further efforts should have been made by the investigator to identify members of the service who may have witnessed, or been involved in, the incident being investigated.⁶⁵

3.4 Team Leader Reviews⁶⁶

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 for subsequent reviewers.

⁶⁴ The most serious allegation in each of the 11 cases was: missing property (5 cases), criminal association (2 cases), narcotics, disputed arrest, fitness for duty, and false statement/fraud.

⁶⁵ In all three cases, IAB supervisors documented this issue within the case file.

⁶⁶ In one case, an IAB supervisor documented this issue within the case file.

IAB guidelines provide that 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 19% of the cases reviewed.⁶⁷ In 11 cases, team leader reviews were not documented on a monthly basis, and in 6 cases, the team leader or another supervisor directed that certain investigative steps be taken multiple times before they were performed (3 cases), or the step was not performed at all (3 cases).

The Commission found a higher rate of team leader review issues in 2014 than in 2013.⁶⁸ In discussions with several IAB groups regarding the Commission's findings, IAB suggested that the increase in team leader review issues may be related to the Bureau's conversion to the Internal Case Information System (ICIS).⁶⁹ When this case management system first debuted in January 2013, there was no way to generate a specific worksheet for a team leader to document a formal review of an investigation. Therefore, it was unclear to investigators that written documentation of these reviews needed to be completed. This deficiency in the system was recognized by IAB in the months following the ICIS rollout, and team leader reviews can now be generated within the system. The Commission does note that IAB's position on team leader reviews has been, and continues to be, that team

⁶⁷ The most serious allegations in each of the 18 cases were: missing property (5 cases), criminal association (4 cases), excessive force (3 cases), narcotics (2 cases), other crimes (patronizing a prostitute), bribery, planting evidence, and false statement/fraud.

⁶⁸ In 2013, the Commission reported on issues related to team leader reviews in 14% of the cases reviewed. *Sixteenth Annual Report* at p. 24.

⁶⁹ The Internal Case Information System is a paperless system that gives investigators and supervisors access to an entire case file. IAB worksheets are linked with other case documents, including uploaded audio, video, and photographic evidence, allowing the user to view and analyze the material on their computer screen. *See Sixteenth Annual Report* at pp. 12-13.

leaders are intimately familiar with the investigations carried out by the investigators assigned to them and informal case reviews and discussions regarding case strategy are frequent between team leaders and investigators. Thus, in IAB's view, lack of documentation should not be assumed to mean lack of supervision.

More significant than the Commission's finding of the failure to document team leader reviews was the failure of investigators to follow the investigative steps directed by team leaders. This occurred in 7 of the 21 cases with a team leader review issue. In each of these cases, the investigator was directed multiple times to complete the step before doing so, or did not complete the step at all. In order for this type of review to have a meaningful effect, steps directed by a team leader must be carried out in a timely manner, or an explanation must be provided as to why they were not completed.

3.5 Documentation of Investigative Steps⁷⁰

Accurate, contemporaneous documentation of investigative steps allows supervisors to properly assess the progress of the case and prevents new investigators from duplicating steps if a case is transferred. The Commission found documentation issues in 9% of the cases it reviewed.⁷¹ In each of these cases, the investigator either did not document certain actions that were taken during the course of the investigation, or did not document them in a timely manner.

⁷⁰ In two cases, IAB supervisors documented that investigative steps were not properly documented within the case file.

⁷¹ The most serious allegation in each of the eight cases was: missing property (two cases), false statement/fraud (two cases), criminal association, disputed arrest, rape/sex offense, and narcotics.

3.6 Search for Video Evidence⁷²

Video can be the best evidence to support or refute an allegation of misconduct. Unfortunately, it is often available for only a short period of time before it is overwritten. Therefore, it is important to conduct searches for videos as early as possible.

Two percent of the cases reviewed by the Commission (two cases), lacked a timely search for video.⁷³ In one case, potential video of the incident was lost due to a delay in conducting a search for it. In the other case, based upon the information in the case file, it did not appear that a search was ever conducted.

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.⁷⁴

The Commission found that the closed cases reviewed generally contained interviews that were effectively conducted. However, in 9% of the cases reviewed

⁷² In one case, an IAB supervisor documented that the investigator did not conduct a timely search for video evidence within the case file.

⁷³ Missing property was the most serious allegation in both cases.

⁷⁴ *Seventh Annual Report of the Commission (Seventh Annual Report)* (March 2004) at p. 34. These suggestions would be equally important in the interview of civilian witnesses.

(8 cases), the Commission concluded otherwise.⁷⁵ In these cases, the investigating officer failed to address specific allegations, failed to ask questions in order to elicit information needed for the investigation, failed to ask appropriate follow-up questions seeking more detail, interviewed witnesses in the presence of other witnesses, or interrupted or otherwise impeded a witness' ability to provide a full statement. In addition to the above, the Commission also stresses the need for investigators to avoid appearing biased in favor of the subject officer who is being investigated. Questions or statements explaining or defending an officer's actions, particularly to civilians and particularly at the beginning of an investigation, may undermine the public's confidence that allegations of misconduct are being impartially investigated.

4. CCPC Analysis of Miscellaneous Issues

4.1 Surveillance

IAB uses every investigative tool available to law enforcement in its investigations into corruption and misconduct. Among those tools is the use of surveillance.⁷⁶ Surveillance can be an effective tactic in corruption and misconduct investigations, particularly if paired with photographic or video evidence. Testimony describing direct observation of misconduct is some of the most powerful evidence that can be presented to a criminal or administrative tribunal. However, for surveillance to be effective it must be uniquely tailored to the

⁷⁵ The most serious allegation in each of the eight cases was: missing property, excessive force (2 cases), criminal association, disputed arrest, criminal possession of stolen property, fitness for duty, and false statement/fraud.

⁷⁶ For the purposes of this section, the Commission is referring to the physical observation of people, places, or vehicles by IAB investigators.

allegations and must be undertaken with careful preparation. Proper surveillance is labor intensive and, therefore, should be used judiciously.

In 2014, the Commission met with a number of IAB commanders and discussed the use of surveillance and its effectiveness in specific investigations. The Commission recognizes that IAB commanders are in the best position to determine if and when valuable resources should be used for a particular surveillance. The Commission suggests that this is an area where team leader reviews could be used to document case strategy and determine the way to conduct surveillances that will most likely produce results. For example, often, a team leader's instruction to an investigator may simply state, "Conduct surveillance." Although the target and purpose of surveillance may be obvious, this is a perfect opportunity for a team leader to reinforce a case's focus and insure the proper use of resources. The instruction to conduct surveillance could include not only the target of the surveillance, but proposed days, times, locations, and, most importantly, the goal the surveillance is trying to achieve. These descriptions are already included in written requests from IAB investigative groups to IAB's surveillance group, and implementing this type of formal analysis within each group would not be difficult. After reviewing a draft of this report, IAB agreed with this recommendation and has begun providing more direction to those investigators who perform surveillance.

4.2 Recording of Interviews⁷⁷

The Commission noted in 9% of the cases reviewed (8 cases) that the investigator did not record an interview.⁷⁸ Considering that each investigation

⁷⁷ In two cases, IAB supervisors noted that interviews were not recorded.

⁷⁸ In discussing this issue with IAB, the Commission was informed that in three of the cases the

typically involves multiple interviews, the Commission recognizes that this amounts to a small percentage of all interviews conducted; nevertheless, the Commission encourages the continued practice of recording interviews unless there are exigent circumstances, which should be documented.

4.3 EDITS/AWARES/Canvasses

In several cases reviewed, the Commission questioned the effectiveness of EDITs and AWAREs used in the investigations, as there appeared to be no meaningful connection between the allegations being investigated and the executed warrants and arrests. In the debriefings that followed the arrests, based upon the information in the file, IAB sought general information regarding police corruption, not specific information relevant to the investigation.⁷⁹ The Commission understands that a balance must be maintained between questioning that is too specific that may compromise a confidential investigation and targeted questions that are more directly related to the subject of the investigation. As noted above, the Deputy Commissioner of Internal Affairs, on his own volition, has already addressed this issue with IAB group commanders.⁸⁰ The Commission will continue to monitor the effectiveness of these operations.

interview was recorded; however, the recording was lost due to technical issues when it was being uploaded into ICIS.

⁷⁹ Prisoner debriefings are not recorded.

⁸⁰ *See supra* at p. 5.

C. Conclusion

The Commission notes that IAB commanders identified a number of the issues discussed in this report during their final reviews of investigations submitted for closing. Where possible, IAB made corrections or took additional investigative steps before closing the cases. Ideally, these deficiencies would be discovered at a lower supervisory level and as early as possible in the investigation. In some of these cases, that did not occur. As IAB continues to work toward reducing its caseload, supervisors and commanders up the chain of command should be able to address these issues well before the cases are submitted for closing. The Commission recognizes that IAB is investing more resources during the initial callout phase of an investigation in an effort to gather the information and evidence needed to close cases earlier.⁸¹

The Commission recommends that IAB institute a command level case review of most cases that are open for longer than six months.⁸² The purpose of this review would be to identify any deficiencies in the investigation so that the corrections or additional steps can be completed while the case is still viable. After reviewing a draft of this report, IAB has begun establishing a “stale” report system for those M and OG cases that are pending for more than six months, which will

⁸¹ Typically, upon receipt of an allegation of corruption or serious misconduct, IAB will immediately send out a team of investigators to gather evidence, locate and interview witnesses, and identify the subject officers involved. IAB refers to this initial phase of the investigation as a “callout.” Once the callout is completed, usually within a few hours to three days, the allegations are reassessed and the investigation is either assigned to an IAB group or other Department unit for further investigation or, it is administratively closed.

⁸² The Commission recognizes that this type of review would not be necessary for investigations in which prosecutors are either actively participating or directing, or for major investigations where it would be expected that commanding officers are more deeply involved. Some of IAB’s commanding officers already conduct their own interim reviews.

require group commanders to provide explanations for why these cases are still being investigated. The Commission hopes that this process will also be extended to those C cases that are pending for similar lengths of time.

When a police department is charged with policing itself, it carries the extra burden of demonstrating that internal investigations are thorough, carried out with the utmost integrity, and taken seriously by the investigators. Transparency is one way to build trust in this area, but the confidential nature of IAB investigations make it unwise to “open the books” of IAB to the general public. The Commission’s job is to represent the public in this regard by inspecting IAB investigations so as to ensure that the Department’s anti-corruption programs are fair, accurate, and effective. For the period under review, the Commission found that IAB conducted the considerable majority of the investigations reviewed by the Commission in this manner. Further, where the Commission found deficiencies, IAB was fully open to discuss these issues with the Commission in an atmosphere of cooperation. The two entities did not always agree on the issues presented, but the open dialogue fostered an attitude of transparency and collaboration.

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REVIEW OF CLOSED DISCIPLINARY CASES

Introduction

The Department Advocate's Office (DAO) prosecutes the majority of the administrative cases against members of the service after the allegations against them are substantiated by NYPD investigators. The Administrative Prosecution Unit (APU) of the Civilian Complaint Review Board (CCRB)⁸³ also prosecutes administrative cases against members of the service based on substantiated CCRB investigations of allegations involving force, abuse of authority, discourtesy, or offensive language.⁸⁴ All of these administrative cases are prosecuted in the Department's Trial Rooms and are presided over by Department Trial Commissioners. The Trial Commissioners participate in plea negotiations, preside over administrative trials, and recommend factual findings and administrative penalties to the Police Commissioner. The Police Commissioner, pursuant to the New York City Administrative Code, is responsible for final decisions regarding guilt and the imposition of penalties in all cases.⁸⁵

The Commission reviews every disciplinary case involving uniformed members of the service, in order to evaluate whether the Department appropriately addressed misconduct. Discipline must be imposed fairly and consistently to act as a deterrent to future misconduct and be an effective component of the Department's

⁸³ 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 is not authorized to review CCRB investigations.

⁸⁴ Collectively abbreviated as FADO

⁸⁵ N.Y.C. Administrative Code §14-115(a).

anti-corruption efforts. Each penalty is examined to determine if it was proportionate and adequate to address the misconduct, using the following factors: the nature of the offense committed, the officer's disciplinary history, and the strength of the case. In assessing the adequacy of the discipline, the Commission also compares penalties that have been imposed in similar cases.⁸⁶

For this report, the Commission evaluated 540 disciplinary cases adjudicated between October 2013 and September 2014 involving 493 uniformed members of the service.⁸⁷ As reported in the Commission's *Sixteenth Annual Report*, DAO adjudicated 860 cases involving 689 uniformed members of the service between October 2012 and September 2013. The significant drop of 320 cases is of interest to the Commission. Although the Commission does not know what caused this 37% decrease from the prior year, one factor may be that training or less formal avenues of discipline are being utilized for minor violations instead of proceeding to the

⁸⁶ The paperwork the Commission reviews includes the charges that were levied against the subject officer and the disposition sheet, which notes the final outcome of the case against the subject officer. If there was a plea agreement, the memorandum describing the misconduct, the officer's disciplinary and performance history, and the rationale behind the penalty offered is included. If there was a trial or mitigation hearing where the subject officer admitted to the misconduct, but testified in an effort to explain his behavior and justify a lesser penalty, the Trial Commissioner's decision is included. This decision consists of a summary of the testimonial and physical evidence presented, along with the Trial Commissioner's findings and recommendations. If the Police Commissioner did not agree with either the Trial Commissioner's factual findings or his recommended penalty, a memorandum from the Police Commissioner explaining his reasoning is also included. When conducting its analyses of these cases, the Commission's sole source of information regarding the subject officers' actions is usually this paperwork. The Commission does not generally review the entire investigative file or listen to the officers' recorded statements. Some of the underlying investigations, however, were reviewed as part of the Commission's general review of IAB cases in prior years. There were also some instances where the Commission reviewed the underlying investigation when it wanted additional information regarding the facts of the case.

⁸⁷ Although 540 cases were reviewed, there were members of the service with multiple cases involving separate charges and specifications. Usually, these multiple cases would be resolved with a single penalty. In the few instances where members of the service had multiple disciplinary cases that were not combined, each case was counted separately.

adjudication of charges and specifications in the Department's Trial Rooms. This could allow the Department to use those resources to more expeditiously pursue matters involving significant wrongdoing. The Commission intends to continue to monitor this issue to determine whether serious misconduct or corruption is being vigorously prosecuted and adequately penalized.

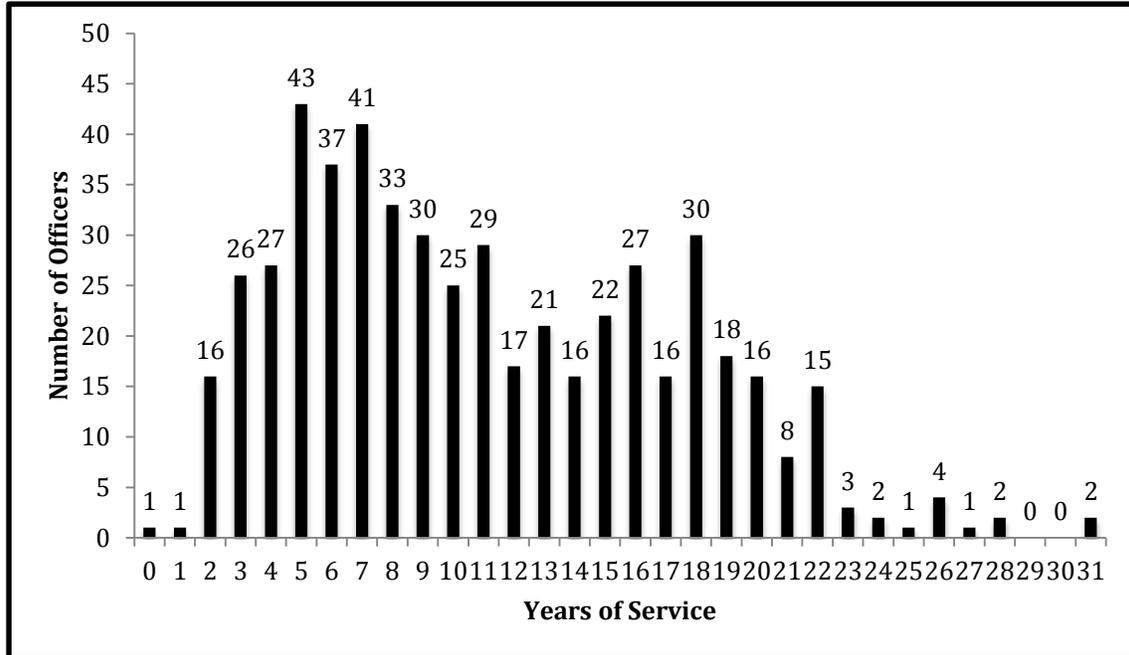
General Analysis of Disciplinary Cases

In an effort to increase transparency of the Department's disciplinary system, the Commission is providing more detailed information regarding the disciplinary cases reviewed in this report than previously. Included are statistics regarding years of service of the subject officers, types of disciplinary cases, off-duty versus on-duty misconduct, as well as case dispositions and penalties.

At the date of the underlying incident, the average years of service for members of the service with cases adjudicated during this time period was 11 years.⁸⁸ Forty-nine percent of the disciplinary cases reviewed involved officers with 10 years or less experience with the Department at the time the underlying misconduct took place.

⁸⁸ In cases where there were multiple incident dates, the Commission used the latest date specified in the charges.

Years of Service⁸⁹



This statistic is to be expected.⁹⁰ Officers with less seniority are more likely to be assigned to patrol duties and have more public contact than officers assigned to investigative, administrative, or supervisory duties.⁹¹

The Commission also analyzed whether the misconduct charged occurred on or off duty in each disciplinary case. For cases where multiple acts of alleged misconduct occurred both on and off duty, the Commission generally used the status as of the time of occurrence for the more serious charge. The Commission then assigned one of the following categories to each disciplinary case:⁹²

⁸⁹ The appointment dates and/or incident dates in ten cases were not available and are not included here.

⁹⁰ This is based on the assumption that most police officers serve the full 20 years required for retirement.

⁹¹ In addition to the above, there are a myriad of other factors that could increase the chances of less experienced officers entering the Department's formal disciplinary system. For example, less experienced officers may be more likely to commit procedural errors.

⁹² The Commission based these categories upon those described in "Exploring Career Ending Conduct in the NYPD: Who, What, and How Often." Kane, Robert J., and White, Michael D. in "Jammed Up Bad Cops, Police Misconduct, and the New York City Police Department." New York:

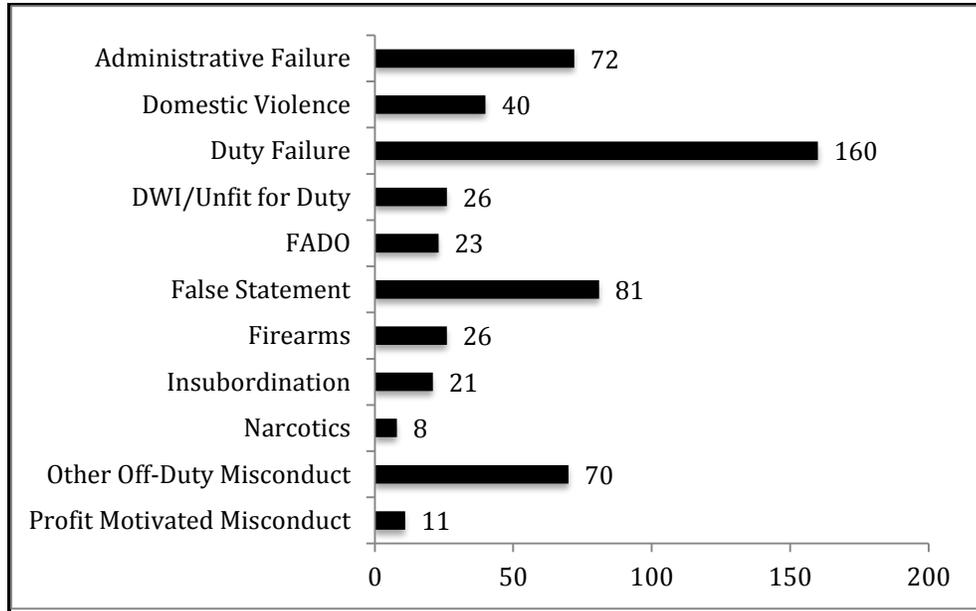
- ***Administrative Failure:*** Failure to abide by Department regulations, including those related to time and attendance, paperwork requirements, court attendance, and general behavior while on-duty. This category does not include conduct specifically described in other categories.
- ***Domestic Violence:*** Misconduct involving a member of the service and a family member or someone with whom the member of the service had a present or past personal relationship. This category includes verbal disputes requiring the intervention of law enforcement, harassment, physical assaults, stalking, and violations of protective orders.
- ***Duty Failure:*** Nonfeasance of duty. This category includes failure to investigate, failure to report, failure to respond, failure to supervise, and “ticket-fixing.”
- ***DWI/Unfit for Duty:*** Off-duty driving while intoxicated or impaired, or being intoxicated to the extent that the member of the service is unfit for duty.
- ***FADO:*** On-duty excessive force, abuse of authority, discourtesy (to civilians), and offensive language.
- ***False Statement:*** False statements including false official statements, false entries in Department records, false statements to prosecutors or other investigative bodies, and impeding Departmental investigations and interviews.

New York University Press, 2012. Changes were made from the authors’ categories based upon the Commission’s experience in its review of disciplinary cases in past reports. These categories are only being used to describe the general types of cases adjudicated through the Department’s formal disciplinary process. The Department may internally categorize such cases differently. The examples used in each category are for illustrative purposes and are not intended to be an exhaustive list of all possible charges included in a particular category.

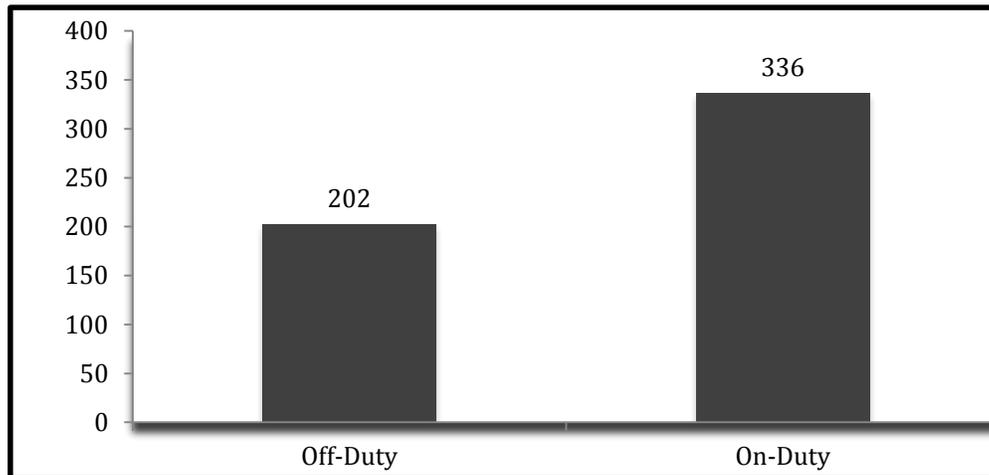
- **Firearms:** Firearms-related misconduct including improper display (off-duty), improper discharge (on or off-duty), failure to safeguard (on or off-duty), and possession of unauthorized firearms.
- **Insubordination:** Defiance of a supervisor's authority, discourtesy toward a supervisor, and failure to obey a lawful order.
- **Narcotics:** Possession, use, or trafficking of illegal drugs, or the improper possession, use, or sale of prescription medication. This category includes charges related to a Department drug test failure or the refusal to take such a test.
- **Profit-Motivated Misconduct:** On or off-duty misconduct, other than drug trafficking, committed with the intention of achieving personal financial gain, including receipt of bribes or unlawful gratuities.
- **Other Off-Duty Misconduct:** The commission of any off-duty crime or other misconduct not otherwise categorized, including criminal association.

The following charts reflect the reviewed disciplinary cases by: 1) type; 2) whether the alleged misconduct was committed on duty or off duty; and lastly, 3) years of service.

Disciplinary Cases - Case Type⁹³



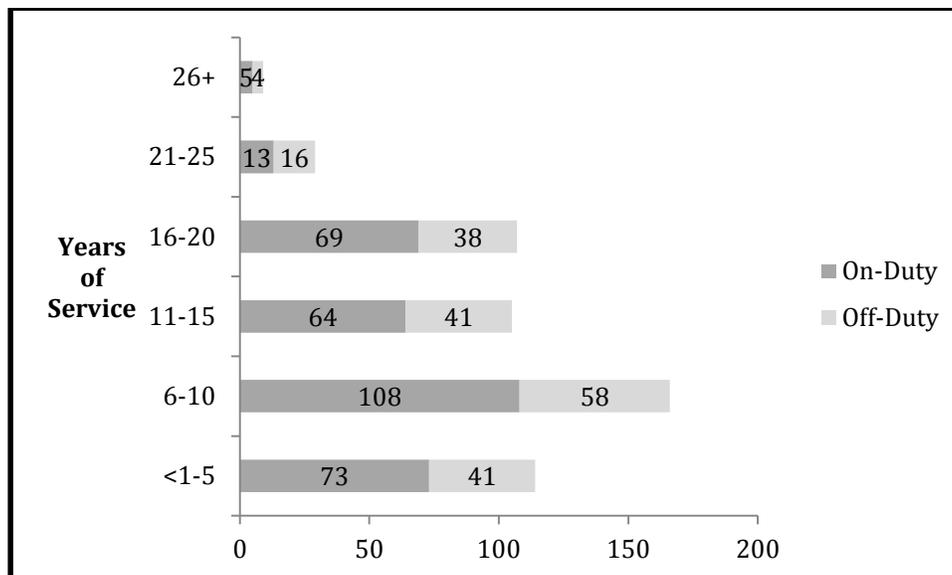
Disciplinary Cases – On-Duty v. Off-Duty⁹⁴



⁹³ Two cases could not be categorized due to a lack of information.

⁹⁴ For this analysis, the Commission assessed individual cases. As noted above, some officers had multiple cases adjudicated during the review period. The Commission was unable to assess two cases due to limited available information. In instances where off-duty and on-duty misconduct were charged in the same disciplinary case, the Commission selected the more serious charge.

Disciplinary Cases – On-Duty v. Off-Duty by Years of Service⁹⁵



Disciplinary Cases – Case Type by Years of Service⁹⁶

	<1-5	6-10	11-15	16-20	21-25	26+	Unk
Administrative Failure	18	15	18	16	4	-	1
Domestic Violence	7	15	6	8	1	1	2
Duty Failure	35	56	26	37	4	1	1
DWI/Unfit for Duty	6	10	5	2	3	-	-
FADO	5	11	5	2	-	-	-
False Statement	15	18	21	17	6	2	2
Firearms	7	9	3	2	2	3	-
Insubordination	4	6	1	6	3	1	-
Narcotics	1	3	-	3	-	-	1
Other Off-Duty Misconduct	16	20	15	12	6	1	-
Profit Motivated Misconduct	-	3	5	2	-	-	1
Totals	114	166	105	107	29	9	8

⁹⁵ The years of service in 10 cases could not be determined due to a lack of information.

⁹⁶ Of the 10 cases where the years of service could not be determined; 8 are categorized above in the 'Unk' column, and 2 cases could not be categorized due to a lack of information.

In the cases reviewed for this Annual Report, 70% of the 493 members of the service disciplined held the rank of police officer. There were no cases adjudicated during the time period involving members of the service above the rank of captain.

Rank	No. of MOS	%⁹⁷
Police Officer	345	70%
Detective	57	12%
Sergeant	67	14%
Lieutenant	20	4%
Captain	4	1%
Total	493	

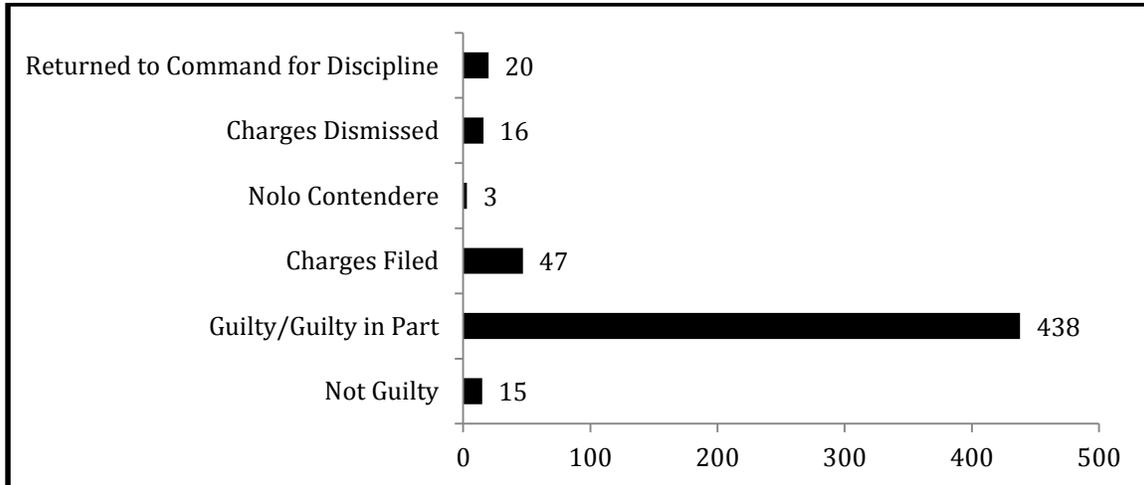
The average number of days elapsed from the date of the incident to the date of a final disposition was 734 days. The average number of days elapsed from the date of charges to the date of the final disposition was 477 days.⁹⁸ Cases that went to Department trial took an average of 988 days from the the date of the incident to the date of the final disposition and 710 days from the date of the charges to the date of the final disposition. For cases where a mitigation hearing was held, the average number of days between the date of the incident and the date of the final disposition was 1,068 days; 761 days was the average time between the date of the charges and the final disposition. Cases that resulted in plea agreements averaged 691 days from the date of the incident to the date of the final disposition and 439 days from the date of the charges to the date of the final disposition.

⁹⁷ The percentages exceed 100% due to rounding.

⁹⁸ In cases where there were multiple dates of occurrence, the Commission used the latest date specified in the charges. Eighty cases were removed from these calculations because they involved members of the service with multiple disciplinary cases. Inclusion of these cases would cause skewed higher results. DAO has typically delayed disciplinary cases when additional charges are brought against the same member of the service so that all of the charges can be adjudicated at the same time. In addition, DAO may hold cases in the adjudication process while additional allegations are investigated before any charges are levied; if such an investigation does not result in formal discipline, there is nothing in the DAO materials reviewed by the Commission that would indicate this fact.

Eighty-one percent of the disciplinary cases resulted in a guilty/guilty in part finding. The chart below depicts the dispositions of the cases reviewed:⁹⁹

DAO Case Dispositions¹⁰⁰



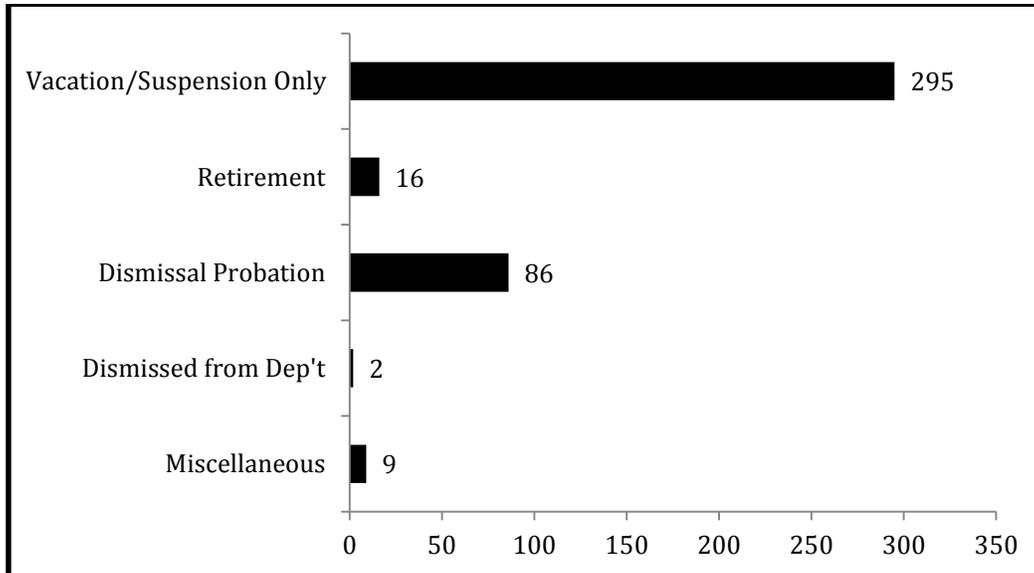
Discipline was meted out to 408 members of the service in 441 cases. This includes the 438 guilty/guilty in part dispositions and the 3 *nolo contendere* dispositions. The discipline ranged from a reprimand to dismissal from the Department. The chart on the following page reflects the penalties imposed on each of the 408 members of the service disciplined during the reporting period:¹⁰¹

⁹⁹ These are the dispositions in 539 cases. One case was not adjudicated due to a court-ordered stay.

¹⁰⁰ These dispositions are for individual cases; as noted above, there were members of the service with multiple cases. “*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. See *supra* at p. 15 for a discussion of the statute of limitations in administrative cases. In the event the subject officer is reinstated, the Department can then pursue the prosecution of the charges. A “Not Guilty” disposition would only come at the conclusion of a Department trial.

¹⁰¹ Members of the service receiving discipline may be given a combination of penalties, particularly for more serious matters. For example, dismissal probation, defined *infra* at pp. 50-51, usually is imposed with a forfeiture of vacation days or with suspension days where the officer loses his pay

DAO Discipline¹⁰²



Separations

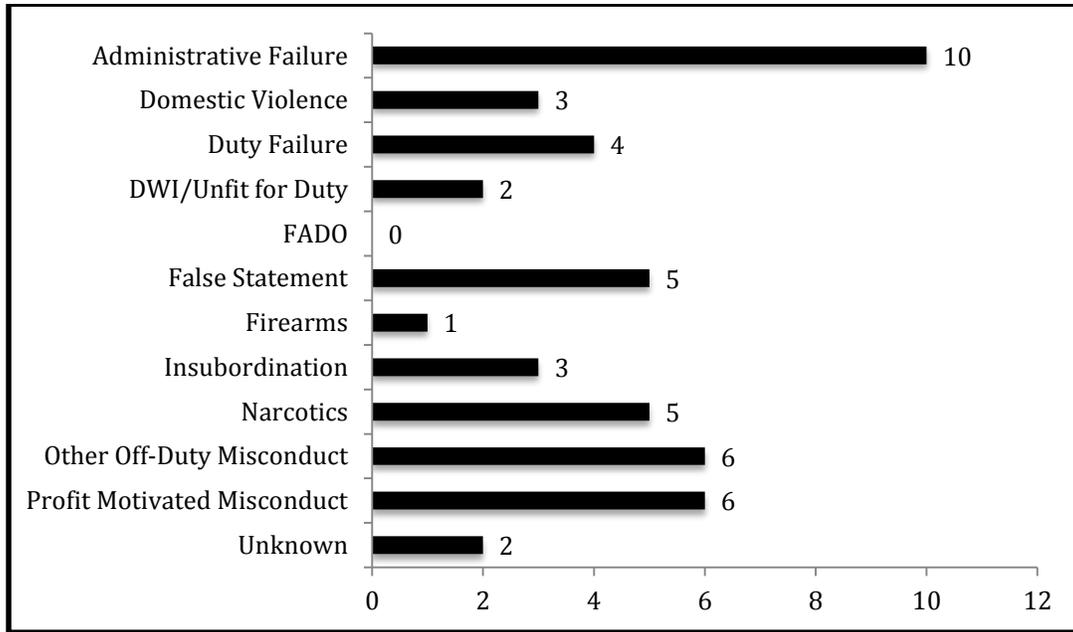
As noted above, 47 disciplinary cases were closed as charges filed. The 36 officers involved in the 47 cases were separated from the Department while their disciplinary cases were still pending.¹⁰³ The types of the cases closed as charges filed are reflected on the following page.

and benefits for the suspension period. The chart reflects the most serious form of discipline imposed for each officer. As noted above, officers with multiple disciplinary cases typically have the cases adjudicated at the same time with the penalty imposed covering all of the cases. This accounts for the difference in numbers between the DAO Case Dispositions chart and the DAO Discipline chart.

¹⁰² The miscellaneous category consisted of two letters of instruction, six reprimands, and one "warn and admonish."

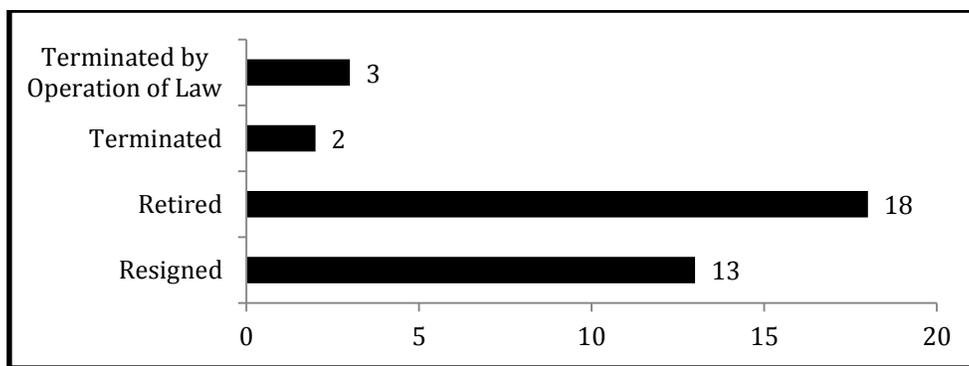
¹⁰³ Nine of the thirty-six officers had multiple cases that were disposed of as charges filed.

Charges Filed – Case Types¹⁰⁴



The separations were either through termination, typically the result of another disciplinary case; resignation; retirement; or termination by operation of law.¹⁰⁵ The chart below reflects the type of separation for members of the service whose disciplinary cases were closed as charges filed.

Separations with Discipline Pending – Charges Filed¹⁰⁶



¹⁰⁴ The case type categories were based upon the most serious charge in a particular disciplinary case.

¹⁰⁵ See *infra* at p. 49 for further discussion.

¹⁰⁶ The two members of the service who were dismissed from the Department were previously terminated at the conclusion of separate disciplinary proceedings but still had pending disciplinary cases, which were closed with the filing of these charges.

Members of the service are terminated from the Department by operation of law upon conviction of a felony or a crime involving a violation of the officer's oath of office.¹⁰⁷ These terminations are exercised separately from the Department's disciplinary process; therefore, any pending disciplinary cases in this scenario are typically disposed of with the filing of charges. For this reporting period, three members of the service were terminated by operation of law while disciplinary charges were pending.¹⁰⁸ The first officer was convicted of two felonies, Obstruction of Justice and Conspiring to Obstruct Justice. The second officer pled guilty to two felony counts of Attempted Sexual Battery. The third officer pled guilty to Offering a False Instrument for Filing.

Separations via Discipline

A total of 18 members of the service were separated from the Department as a result of the disciplinary process.¹⁰⁹ The disciplinary penalty for 16 members of the service included some form of retirement,¹¹⁰ and 2 members of the service were terminated from the Department. One termination was the result of a drug test failure. The other officer was terminated for refusing to answer questions during an

¹⁰⁷ N.Y. Public Officer's Law §30(1)(e).

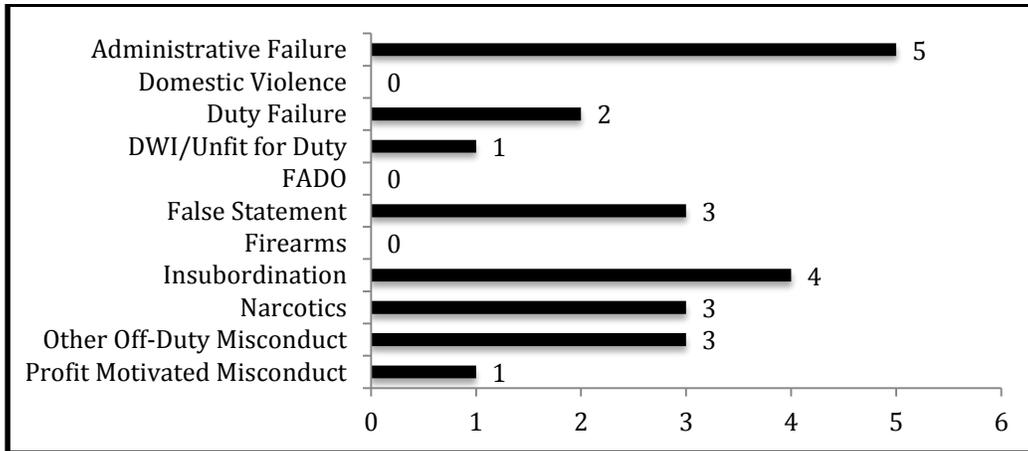
¹⁰⁸ Two of the three members of the service had multiple disciplinary cases pending at the time of their termination; one had two pending cases and the other had three pending cases.

¹⁰⁹ A total of 22 cases were adjudicated in this category as 3 members of the service had multiple disciplinary cases combined and disposed of with the same penalty.

¹¹⁰ A forced retirement is not an option under the N.Y.C. Administrative Code; however, retirement can be included in a negotiated settlement as part of the penalty. For example, in one case, the member of the service was found guilty after an administrative trial and the Trial Commissioner recommended termination; the Police Commissioner then allowed a negotiated penalty that included retirement.

official Department interview after being ordered to do so.¹¹¹ These case types are detailed below:

Separations Through Discipline – Case Types¹¹²



Dismissal Probation¹¹³

The Police Commissioner may impose a period of dismissal probation upon a member of the service who has been found guilty of, or pled guilty to, an administrative charge.¹¹⁴ 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

¹¹¹ This officer had another pending disciplinary case for which charges were filed after the termination.

¹¹² The case type categories were based upon the most serious charge in each particular disciplinary case.

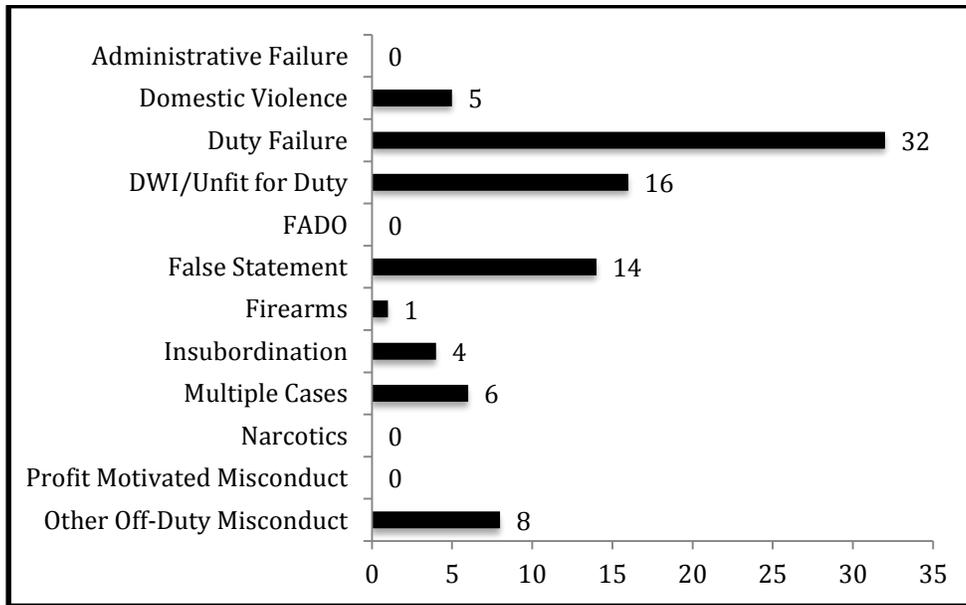
¹¹³ The Commission has questions regarding the practical effects of dismissal probation and is exploring this issue. See *infra* at p. 69 for a more detailed description of that inquiry.

¹¹⁴ N.Y.C. Administrative Code §14-115(d).

Department discovers any prior misconduct, the member of the service’s employment may be terminated without an administrative hearing. In addition, a member of the service on dismissal probation may be terminated for any constitutionally permissible reason.¹¹⁵ At the successful conclusion of the dismissal probation period, the member of the service is restored to his or her former status.

During this year’s review of disciplinary cases, 86 members of the service were placed on dismissal probation.¹¹⁶ This represents 21% of the officers who were found guilty or pled guilty or *nolo contendere* to at least one charge. The chart below depicts the case types that resulted in dismissal probation:

Dismissal Probation – Case Types¹¹⁷



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

¹¹⁶ Ten other members of the service received dismissal probation but also separated from the Department via retirement.

¹¹⁷ The case type categories were based upon the most serious charge in each particular disciplinary case.

A more detailed analysis of the misconduct that was penalized with dismissal probation is outlined below according to the type of case.

Domestic Violence

- Three cases in which subject officers engaged in physical altercations with an intimate partner or family member.
- One case in which the subject officer violated an order of protection.
- One case in which the subject officer engaged in harassing behavior.

Duty Failure

- Twenty-nine cases in which subject officers engaged in “ticket-fixing.”¹¹⁸
- One case in which the subject officer failed to respond to an assignment.
- One case in which the subject officer failed to perform investigative duties.
- One case in which the subject officer failed to turn in summonses for processing on numerous occasions and failed to account for eight summonses when ordered to do so.

DWI/Unfit for Duty

- Fifteen cases in which subject officers drove while intoxicated or while their ability to drive was impaired.¹¹⁹
- One case in which the subject officer was unfit for duty.

¹¹⁸ See the Commission’s *Fifteenth Annual Report* at pp. 76-77 for a more detailed description of this investigation. The members of the service disciplined above were not among those who were charged criminally as part of the same investigation.

¹¹⁹ In addition to the normal conditions related to dismissal probation, officers found guilty of alcohol-related misconduct and placed on dismissal probation are typically required to submit to quarterly random breath testing. If the breath test results in a blood alcohol content greater than .04%, the officer faces summary termination.

False Statement¹²⁰

- Thirteen cases in which the subject officers made some type of a false statement related to their official duties.
- One case in which the subject officer made a false statement to an insurance company regarding an off-duty motor vehicle accident.

Firearms

- One case in which the subject officer discharged his firearm while on duty, resulting in an injury to a civilian

Insubordination

- Two cases in which subject officers were discourteous towards supervisors.
- One case in which the subject officer failed to obey an order.
- One case in which the subject officer engaged in a physical altercation with a supervisor.

Other Off-Duty Misconduct

- Two cases in which subject officers committed larcenies.
- One case in which the subject officer engaged in criminal association.
- One case in which the subject officer obstructed governmental administration.
- One case in which the subject officer engaged in a physical altercation.
- One case in which the subject officer criminally possessed stolen property.
- One case in which the subject officer left the scene of a motor vehicle accident.
- One case in which the subject officer engaged in a physical altercation with an on-duty police officer.

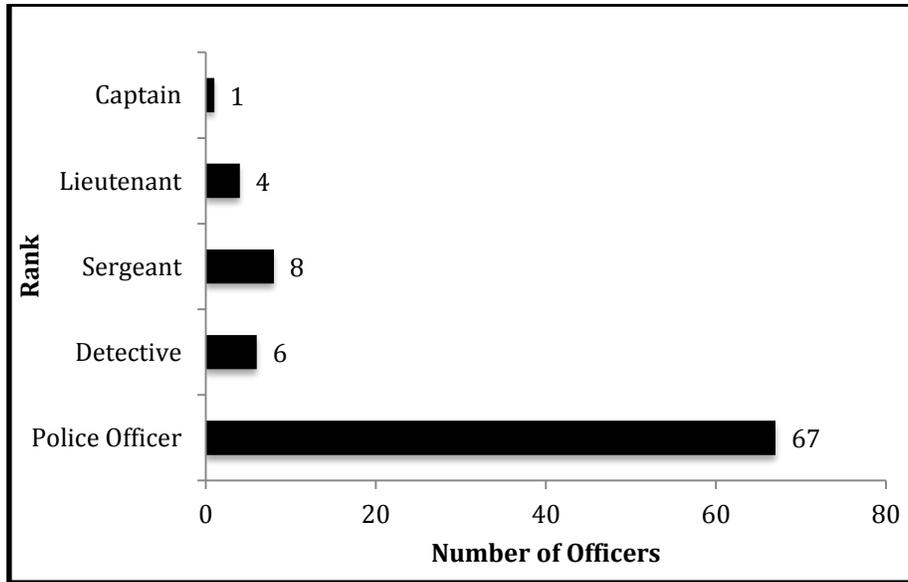
¹²⁰ This does not include members of the service who the Commission felt should have been charged with making a false statement but were not. For a more detailed discussion on false statements, see *infra* Appendix A at pp. 102-139.

The following six members of the service had multiple cases and were placed on dismissal probation as a result.

- Officer #1 had two cases: reckless driving while off-duty and discarding contraband during the course of an arrest while on-duty.
- Officer #2 had two cases: ticket-fixing and falsely indicating that certain job duties were completed.
- Officer #3 had two cases: failing to follow the Department's guidelines regarding the towing of vehicles and driving while intoxicated.
- Officer #4 had four cases: arguing with on-duty members of the service and discourtesy toward a supervisor; excessive force; a false statement to the NYPD's Medical Division; and fraud.
- Officer #5 had two cases: computer misuse and a physical domestic violence incident.
- Officer #6 had two cases: excessive force and domestic incidents involving harassment.

The charts on the following page depict the imposition of dismissal probation by rank and by years of service:

*Dismissal Probation by Rank*¹²¹



Dismissal Probation by Years of Service



¹²¹ The chart represents the rank these members of the service were at the time they were placed on dismissal probation. In isolated instances, a member of the service may be promoted between the time the misconduct took place and the date of a final disposition.

Overall, the Commission agreed with the penalty imposed at the conclusion of 94% of the disciplinary cases reviewed. The table below shows the rate at which the Commission agreed with the penalty for each of the disciplinary case categories.

<i>Case Type</i>	<i>CCPC Agreed</i>	<i>Number of Cases</i>
Administrative Failure	97%	70/72
Domestic Violence	83%	33/40
Duty Failure	97%	155/160
DWI/Unfit for Duty	100%	26/26
FADO	96%	22/23
False Statement	85%	69/81
Firearms	92%	24/26
Insubordination	95%	20/21
Narcotics	100%	8/8
Profit Motivated Misconduct	82%	9/11
Other Off-Duty Misconduct	100%	70/70

The Commission used three general categories to classify areas of disagreement with the penalties imposed. In 19 cases, the Commission believed that dismissal probation should have been included as part of the penalty due to the seriousness of the incident(s) or the subject officer's poor disciplinary history. In 11 cases, the Commission believed that the subject officers should have been terminated from the Department due to the serious nature of the conduct that gave rise to the disciplinary proceeding. Finally, in two cases, the Commission believed that the discipline was too severe based upon the conduct described.

The following are descriptions of the types of cases with which the Commission disagreed. A description of each of the cases, categorized by case type, can be found in Appendix A. A list of all of the disciplinary cases with their corresponding penalties can be found in Appendix B.

Administrative Failure

The Commission disagreed with the penalty in two Administrative Failure cases. In one case, the Commission believed that dismissal probation should have been included as part of the discipline. In the second case, the Commission believed that the penalty imposed was inexplicably severe based on the totality of the circumstances.

Domestic Violence

The Commission disagreed with the penalty in seven Domestic Violence cases. In five cases, the Commission believed that the subject officers should have been placed on dismissal probation. In the remaining two cases, the Commission believed that the subject officers should have been terminated from the Department.

Duty Failure

The Commission disagreed with the penalty in five Duty Failure cases. In these cases, three of which involved

the same incident, the Commission believed that dismissal probation was warranted.

DWI/Unfit for Duty

The Commission agreed with all the penalties imposed in the cases that involved subject officers driving while intoxicated or being unfit for duty.

FADO

The Commission disagreed with the penalty imposed in one case that involved the use of force. In that case, the Commission believed that dismissal probation should have been imposed due to the serious nature of the incident, combined with the misleading statements made by the subject officer in his official Department interview.

False Statement

The Commission disagreed with the penalty in 12 of the 81 false statement cases.¹²² In three cases, the Commission believed that dismissal probation should have been imposed. In the remaining nine cases, the Commission believed that the subject officers should have been terminated from the Department.

¹²² One of the subject officers had three cases, including the false statement case, adjudicated at the same time. The Commission is basing its disagreement with the penalty on the false statement case and is therefore counting our disagreement as one case; however, the multiple cases were taken into consideration when determining if dismissal probation was more appropriate for the officer.

Firearms

The Commission disagreed with the penalty in two cases involving firearm misconduct. The Commission believed that in one incident, involving the unjustified display of a firearm, dismissal probation was warranted. The Commission believed that in the second case, where the subject officer failed to promptly report an off-duty accidental discharge of his firearm, termination was the appropriate penalty, absent the existence of exceptional circumstances.

Insubordination

The Commission disagreed with the penalty in one case that involved insubordination. The Commission believed that the penalty meted out should have been less severe.

Narcotics

The Commission agreed with the penalties in all of the Narcotics cases.

Profit Motivated Misconduct

The Commission disagreed with the penalties in two of the Profit Motivated Misconduct cases. The Commission believed at a minimum, these officers should have been placed on dismissal probation.¹²³

Other Off-Duty Misconduct

The Commission agreed with the penalties in all of the Other Off-Duty Misconduct cases.

¹²³ The two cases involved two members of the service involved in the same incident.

Conclusion

This year, the Commission analyzed 540 cases. It found that most of the officers disciplined held the rank of Police Officer and were members of the Department for 11 years or less. Most cases involved misconduct that occurred on duty. The Commission agreed with the penalties imposed in 94% of the cases. One of the largest type of case where the Commission disagreed with the penalties consisted of domestic violence cases. In response to a draft of this report, the Department Advocate stated that it had recently increased the imposition of dismissal probation as part of the penalty in those cases involving domestic violence.

The Commission also disagreed with the penalties in a significant number of cases in the false statement category.¹²⁴ After reviewing this report, the Department explained that some of the misconduct, while serious, did not rise to the level of termination-worthy false statements or the Department lacked sufficient evidence to prove that the subject officer made a false statement. The Commission considers the making of a false statement by an officer in an official capacity to be an extremely serious offense and deserving of termination unless there are exceptional circumstances to justify a less severe penalty. The Commission will address this issue in more detail in its upcoming report on the Department's treatment of false statements.

¹²⁴ The Commission is in the process of drafting a report regarding how the Department addresses false statements made by members of the service. For further information about this report, see *infra* at p. 69.

The Commission intends to keep monitoring the discipline imposed in these case categories. Additionally, the Commission will examine whether the number of disciplinary cases adjudicated each year continues to decline. A further analysis of all of the cases in which the Commission disagreed with the penalty can be found in Appendix A.¹²⁵

¹²⁵ See *infra* at pp. 71-149.

ONGOING WORK OF THE COMMISSION

Log Review

IAB's Command Center is open twenty-four hours a day, seven days a week. It is accessible to the public through several hotlines that are staffed by IAB personnel who input details of complaints, updates on internal investigations, and Department-mandated notifications. Calls from civilians or members of the service are either assigned a log number, which is a unique identification number, or attached to a pre-existing log number when information relates to a prior call. All corruption and misconduct allegations received by the Department by mail, e-mail, or in-person are reported to IAB's Command Center and similarly assigned a log number.

Each day's logs are sent to the Commission via encrypted e-mail. The Commission uses the information in the logs to watch for trends in corruption allegations.

Steering Committee Meetings

Throughout calendar year 2014, members of the Commission attended IAB steering committee meetings (steerings). These steerings were led by IAB's Steering Committee, consisting of IAB's executive staff, including the Executive Officer, and three Deputy Chiefs. The steerings were chaired by the Commanding Officer of IAB, the Executive Officer of IAB, or the IAB Chief of Criminal Investigations. At steerings, commanding officers from each IAB group presented

their group's most serious and longest-pending cases, and received investigative recommendations. Commanding officers also reported on any corruption or serious misconduct patterns they observed in the commands that they covered. The Commission noted that the Steering Committee maintained a written record of any instructions given, and would periodically check at subsequent steerings whether their directives were followed. Steerings also enabled the Commission to follow the progress of the most serious corruption investigations.

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 Commission staff also attend. The group commanders present cases selected by the Commission's Executive Director.¹²⁶ 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 cases with the presenters and with the Police Commissioner. This past year, briefings covered investigations of perjury, fraud, drug use, bribery, larceny, unnecessary force, and other serious misconduct.

¹²⁶ The Executive Director chooses the cases from cases highlighted by IAB or from cases the Commission has heard about during steerings or case reviews.

Meetings with District Attorneys

The Commission further fulfills its mandate to monitor corruption by conferring with federal and state prosecutors responsible for the investigation and prosecution of police corruption. These meetings allow the Commission to explore any corruption concerns prosecutors have, their perceptions about the Department, particularly IAB, their working relationship with IAB, and their opinions regarding the quality of IAB's investigations and proactive measures to detect corruption. In 2014, the Commission met with four of the five city District Attorneys and/or with representatives from the units in their offices responsible for prosecuting criminal allegations involving police corruption.¹²⁷

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 Deputy Commissioner of IAB, IAB's senior staff, and the Commission to identify corruption trends. This year, the Commission has also received a copy of the results from a survey prepared by the Deputy Chief of IAB's Support Services regarding common factors in cases where prisoners alleged they were missing property after their interactions with members of the service.

¹²⁷ The Commission plans to meet with representatives from the New York County District Attorney's Office and the United States Attorneys' Offices for the Southern and Eastern Districts of New York in 2016.

Additionally, the Commission received data regarding the number of complaints against members of the service in various precincts.

Complaint Logs

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

From January 1, 2014 through December 31, 2014, the Commission received 139 complaints. The breakdown of those complaints appears below:

<i>Nature of Allegation</i>	<i>Number of Complaints</i>
Abuse of Authority Non-FADO ¹²⁸	1
Accepting a Bribe	1
Criminal Association/Criminal Activity	2
Disability Fraud	2
Disagrees with Department Policy or Actions	1
Disputed Arrest or Summons	10
Domestic Dispute	5
Downgrade of Crime Statistics	1
FADO ¹²⁹	8
Failure to Take Police Action	8
False Statement/Falsifying Business Records/ Falsifying Arrest Report	1
Improper Gratuity	1
Misuse of NYPD Computer	1
Misuse of NYPD Placard	6
Other – Non NYPD	17
Other – Miscellaneous ¹³⁰	22
Racial Profiling	1
Refused to take Report	6
Request for Information	20
Retaliation	1
Stop and Frisk	2
Unable to Determine the Exact Nature of Complaint	21
Unauthorized Employment	1

¹²⁸ See *supra* at p. 37, fn. 84 and accompanying text.

¹²⁹ The Commission usually refers these complaints to CCRB.

¹³⁰ These complaints were from chronic callers known to the Commission and the Department.

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CURRENT PROJECTS

Report on the Department's False Statement Policy

The Commission has reviewed 130 investigations over a period of five years, involving false statements made by members of the service in a variety of different contexts, including sworn testimony, sworn court documents, and official Department and CCRB interviews. While analyzing the Department's treatment of false statements from investigatory and disciplinary standpoints, the Commission has noted many ambiguities and issues with the current false statement policy as set forth in the Patrol Guide. Accordingly, the Commission has decided to report on the areas of the written policy that can be changed to reduce commonly reoccurring problems with its implementation. It will also focus on ways to improve the execution of that policy. The Commission is currently drafting this report and expects to publish it shortly.

Study on the Practical Effects of Dismissal Probation

Dismissal Probation is considered a serious penalty, reserved for only those subject officers who have committed misconduct that warrants termination, but who the Department believes deserve a second opportunity to conform their behavior to Department guidelines. After reviewing several disciplinary cases in which officers were currently on dismissal probation and not terminated for further misconduct, or were previously on dismissal probation, sometimes on multiple occasions, the Commission wanted to determine the practical effects of the imposition of this penalty. To do so, the Commission reviewed the Central Personnel Indices (CPIs) of all 528 uniformed members of the service placed on dismissal probation, but not terminated, from October 2009 through September 2014. The Commission is currently gathering and analyzing data on the number of members of the service who were terminated while on dismissal probation during that five-year period as well as those who were not terminated.

Study on the Department's Disciplinary System

During its review of closed administrative disciplinary cases against uniformed members of the service, the Commission repeatedly noted the length of time between the date of the misconduct and the date discipline was ultimately imposed. Years often pass before the administrative matters are resolved. The Commission believes that the longer it takes to discipline guilty members of the service, the less deterrent effect the penalty will have. Furthermore, such members remain employed and paid until their cases are finally adjudicated. For those members of the service who are ultimately acquitted, the pending charges can affect their chances at promotions or desired assignments. Another issue the Commission found is the apparent lack of proportionate discipline across different types of cases. While the officer who abuses sick leave may be placed on dismissal probation, the officer who unjustifiably uses excessive force against a prisoner may only forfeit 10 vacation days. The Commission is examining how other jurisdictions impose discipline and will continue its discussions with the Department regarding ways to make the system more expedient, consistent, and fair.

Audit on Training that Probationary Police Officers Receive Regarding Integrity and Corruption

With the future addition of almost 1300 new police officers announced this past summer by the Mayor and City Council, training and instructions to address corruption temptations and hazards are important. The Commission has examined the integrity-related training of new recruits during prior administrations, but has not done so since the Department training has been revamped under Police Commissioner Bratton. The Commission is currently making inquiries regarding the corruption-related topics covered during the training and intends to review the written materials and conduct classroom examinations during the coming year.

APPENDIX A

CASE DESCRIPTIONS

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Case Descriptions

Following are summaries of the administrative cases in which the Commission disagreed with the penalty that was imposed. The Commission recognizes the limitations inherent in its review which is based on DAO's summaries of the available evidence. Due to the limited information available, the Commission focused on cases involving the most significant penalties (separation from the Department or dismissal probation). The Commission did not comment on less serious penalties even if it believed the quantity of vacation days forfeited or days suspended should have been greater.¹³¹

Additionally, the Commission does not comment on factual determinations regarding guilt as set forth by the Trial Commissioners, as it is not in a position to evaluate the evidence presented.¹³² The Commission's judgment in the disciplinary cases is limited to whether or not the imposed penalty seemed to adequately address the misconduct of which the officer was found guilty as described in the Department paperwork.

The cases that follow are grouped into categories set forth earlier in this report: administrative failures, incidents involving domestic violence, duty failures, FADO occurrences, incidents constituting false statements, misconduct involving firearms, insubordination, and profit motivated misconduct.¹³³ It should be noted

¹³¹ When an officer is suspended, he loses his salary and benefits for each day suspended, and suspension days are not counted towards his tenure with the Department.

¹³² While the Commission observed a small number of proceedings in the Department's Trial Rooms in 2014, none of the cases are discussed in this Appendix.

¹³³ See *supra* at pp. 41-42. There were three categories not listed here where the Commission agreed

that the Commission’s review does not have any effect on cases that have already been decided. These views are offered as suggested guidance for future dispositions.

A. Administrative Failure

The Commission disagreed with the penalty imposed in two cases involving “administrative failures.” In the first, the Commission believed that the subject officer should have been placed on dismissal probation based on the repeated nature of his misconduct. In the second, the Commission believed that since the subject officer pled guilty to purely administrative violations, his penalty was too severe.

In the first case, the subject officer was an 18-year veteran when, in January 2012, he wrongfully utilized a Department computer to conduct an inquiry that was unrelated to Department business. Approximately 20 months prior to the incident, the subject officer had received a command discipline¹³⁴ and forfeited 5 vacation days for the same conduct.¹³⁵

Both inquiries were conducted about the same individual, a person whom the subject officer described as a friend.¹³⁶ When questioned in an official

with the disciplinary outcomes in all of the cases: DWI/unfit for duty, narcotics, and other off-duty misconduct.

¹³⁴ 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 command disciplines.

¹³⁵ The subject officer had one prior command discipline in his disciplinary history from four years earlier for failing to make an entry in his activity log.

¹³⁶ In the earlier case, the subject officer conducted unauthorized computer checks on this friend as well as on the friend’s brother and himself.

Department interview in October 2012, the subject officer claimed that he did not recall running his friend's name in Department computer systems in January 2012, and that he had run over 50 names that day in the course of his duties. However, the subject officer's superior stated that the subject officer's assigned task for that day did not require him to conduct any name checks or use the specific Department computer program in which the subject officer ran his friend's name.

DAO recommended a penalty of the forfeiture of 10 vacation days. Noting that this was well above the standard penalty of a command discipline, DAO found it appropriate in light of the subject officer's previous penalty for the same misconduct.

The Commission had two concerns with this case. First, if the subject officer's supervisor was accurate about the subject officer's assignment, the subject officer provided false information during his official Department interview. Nevertheless, the subject officer did not face charges for making a false statement. Second, this was the subject officer's second instance of the same misconduct. Because the initial penalty did not deter the subject officer from wrongfully utilizing Department computers, he should have been placed on dismissal probation for repeating the offense.

In the second case, the Commission believed that the penalty was inappropriately severe. In August 2010, the subject officer, a 5-year member of the Department, was on his way to get fuel for his Department vehicle when he observed a woman near a traffic accident. He stopped and learned from the woman

that her daughter, who was in the vehicle involved in the traffic accident, had experienced an asthma attack in the park, and was not breathing. The mother had tried to drive to get assistance but needed the officer's help. The officer observed the child in the backseat with others around her trying to provide assistance. A woman yelled at the subject officer to give the child CPR. The subject officer felt unqualified to perform CPR, so instead he offered to help escort the car to the nearest hospital. He also attempted to request assistance by radioing to Central Dispatch, but the dispatcher did not acknowledge his transmission. When the dispatcher later answered, the subject officer allegedly did not appropriately follow-up.¹³⁷ The subject officer also did not notify the Department about his involvement in this incident.

The subject officer instructed the child's mother to drive, and he followed her to the hospital with his lights and sirens activated. They traveled against traffic to the hospital and, once there, the child's mother exited her car and began yelling for help. The subject officer observed an Emergency Medical Services (EMS) worker go to the car and help the child. That EMS worker called that he was assisting the child. At this time, the subject officer, who had not left his vehicle upon arrival at the hospital, drove to his assigned precinct without documenting his activities. The young girl died several hours later while receiving medical treatment.¹³⁸

¹³⁷ There was no further information in the Department paperwork concerning what follow-up was required.

¹³⁸ Upon review of the young girl's autopsy report, the NYPD's Supervising Chief Surgeon determined that administering CPR would not have been adequate treatment for the girl's condition.

The subject officer was charged with two counts of engaging in Conduct Prejudicial to the Department for both: 1) his failure to make appropriate radio transmissions of both his pick-up of an aided case and the escort of that individual to the hospital; and 2) his failure to remain at the hospital to record the identity of the aided individual and to conduct further investigation into the circumstances surrounding the incident.¹³⁹ He was also charged with one count of failure to maintain proper activity logs for not documenting that he went to get fuel and picked up an aided case, and one count of failure to notify his supervisor that he was leaving the confines of his assigned precinct to obtain fuel.

The subject officer, who had no prior disciplinary history, pled *nolo contendere* to all the charges. He forfeited 30 pre-trial suspension days, including all time, pay, and benefits. He also forfeited all time and benefits for an additional 305-day suspension period.

The Commission fully realized the tragedy of a young girl's death, but nevertheless believed this penalty was too severe for the charged misconduct.

As precedent, DAO cited cases described as "involving similar misconduct," including one in which the subject officer forfeited 15 vacation days. In that case, the subject officer responded to a 911 assault call at a construction site. Upon learning that the site was within the confines of another precinct, the subject officer made no attempt to enter the construction site and did not notify his own patrol supervisor or the platoon commander of the correct precinct. This subject officer

¹³⁹ P.G. §203-10(5) prohibits members of the service from "[e]ngaging in conduct prejudicial to the good order, efficiency, or discipline of the Department" (Conduct Prejudicial).

also made no activity log entries regarding his actions. A dead body was later discovered in the construction site. The subject officer was charged with failure to render necessary police services, failure to report immediately to appropriate supervisors, and failure to make activity log entries.

In the present case, there were no charges against the subject officer for failing to render police services, the most serious charge in the precedential case. Yet his penalty was much more severe. The present subject officer's penalty was, in the Commission's opinion, unwarranted in light of his attempts to render aid. A penalty should be consistent with the charges to which the subject officer has pled guilty. In this case, it appeared that the subject officer was being penalized because the case attracted negative media attention.

B. Domestic Violence

Domestic violence incidents committed by members of the service and the subsequent administrative disciplinary process continued to be an important area of examination for the Commission.¹⁴⁰

¹⁴⁰ In the Commission's *Sixteenth Annual Report*, the Commission suggested that the Department adopt a new standard for penalizing physical acts of domestic violence (at p. 53). The first offense would result in the imposition of dismissal probation and any subsequent offense would be punishable by termination. If there was clear and convincing evidence of a prior physical domestic history, the Commission recommended that there be a presumption that termination was the appropriate penalty.

As of the drafting of this report, the Commission had no information that the Department has decided to adopt these recommendations. The Commission continues to advocate their implementation. It is necessary to strongly penalize members of the service found to have engaged in physical acts of domestic violence, absent exceptional circumstances, in order to send a clear message that the Department will not tolerate such behavior.

The majority of the cases reviewed for this Annual Report were adjudicated prior to the release of the Commission's recommendations. The Commission has again evaluated the outcomes of cases based on the severity of the misconduct, the subject officer's disciplinary history, and the availability of evidence in support of the charges.

In this reporting period, the Commission reviewed 40 domestic cases. This is a 55% decrease in cases compared to the same reporting period last year.¹⁴¹ Cases involving the subject officer's use of physical force also decreased from 43 to 28.

The Commission disagreed with the penalties in seven cases involving domestic incidents. The Commission believed that those penalties should have been more severe, given either the seriousness of the misconduct or the subject officer's prior disciplinary history.

The first subject officer was a five-and-a-half year veteran, with no prior disciplinary record, at the time of the incident. In February 2013, this officer was involved in a physical altercation with his wife while she was holding their 11-month old child. The child had pulled the wife's hair. Although there was a disagreement regarding the wife's response,¹⁴² the parties agreed that a dispute followed. The wife stated that the subject officer grabbed her by the hair, threatened to kill her, punched her in the face and head with a closed fist, and placed his hand over her face and nose, which prevented her from breathing. The subject officer stated that after removing his wife's cellular telephone to prevent her from throwing it at him, she dug her nails into his chest. In response, he struck her in the face and placed his hand over her mouth to prevent her from screaming. The subject officer's wife called 911, and the subject officer was arrested and subsequently charged criminally with Assault in the Third Degree and Harassment

¹⁴¹ Although the number of domestic violence cases dropped significantly, as a percentage of all the disciplinary cases reviewed, the decrease was only three percent. For this year's Annual Report, domestic violence cases accounted for 7% of the 540 cases reviewed compared to 10% of the cases reviewed in the *Sixteenth Annual Report*.

¹⁴² The wife claimed that she told the child to stop, and the subject officer claimed that his wife slapped the child.

in the Second Degree. After the altercation, the wife received treatment at the hospital for a laceration to her cheek and bruising and swelling to her eyelid, face, and the bridge of her nose. The subject officer eventually pled guilty to Disorderly Conduct, a violation. He was required by the court to complete a 24-week Batterers Intervention Program and was the subject of a two-year order of protection that prohibited him from possessing firearms while off-duty.

In the Department administrative proceedings, the subject officer pled guilty to three specifications of engaging in Conduct Prejudicial: 1) for his involvement in the physical altercation with his wife; 2) his involvement in this altercation while in the presence of their child; and 3) threatening to harm his wife. For this misconduct, the subject officer forfeited the 31 suspension days he had served prior to trial¹⁴³ and 4 vacation days. He was also directed to cooperate with all counseling programs that the Department determined were necessary.

The Commission believed that this penalty was insufficient. The fact that the subject officer pled guilty to threatening to harm his wife lent credence to her claims. Even accepting his version of events, he struck his wife causing physical injury while she was holding their infant child. The subject officer could have left the home or called the police rather than continue to participate in the altercation, or perhaps even escalate it. As a police officer, he was well aware of these alternatives. Dismissal probation would have allowed the Department to monitor

¹⁴³ The Department terms pre-adjudication suspensions as “pre-trial” regardless of whether the subject officer pleads guilty or is found guilty after Department trial.

the subject officer and summarily terminate him if he engaged in further misconduct demonstrating a propensity for domestic abuse.

The second domestic case involved a detective who had one prior minor disciplinary event in his ten-year career.¹⁴⁴ In August 2011, the NYPD Psychological Evaluation Unit informed the subject officer that he might have to retire due to a mental disability.¹⁴⁵ Nine days after this communication, the subject officer was on vacation out of the state with his wife and four-year-old daughter. According to both the subject officer and his wife, the subject officer, feeling anxious about being separated from the Department, as well as financial issues and an impending hurricane, decided to take his daughter to a nearby tourist site. The subject officer's wife objected due to concerns about his mental state. While his wife was holding their daughter, the subject officer grabbed his daughter's arm and attempted to pull her away from his wife. A bystander and local police intervened, and a physical confrontation between the subject officer and police ensued. The subject officer was subdued with a Taser and was subsequently arrested and charged with Disorderly Conduct, Resisting Arrest, and Harassment. He received an "Accelerated Rehabilitative Disposition" under Pennsylvania law,¹⁴⁶ a disposition that required the subject officer not to commit a violation of the law for two years.¹⁴⁷

¹⁴⁴ In 2006, the subject officer was issued a command discipline with a two-vacation day penalty for failing to secure a Department camera.

¹⁴⁵ The Department submitted a retirement application on behalf of the subject officer. The subject officer, who wanted to retire, disputed the Department's determination that his mental disability was unrelated to line-of-duty events.

¹⁴⁶ Accelerated Rehabilitative Disposition (ARD) is a pre-trial disposition in which the defendant is under supervision and may have to comply with certain conditions. At the end of the ARD period, the defendant can move to have his case expunged or the charges dismissed. If the defendant does not successfully complete the ARD period, the case is restored to the trial calendar.

¹⁴⁷ Immediately after the incident, the subject officer voluntarily admitted himself for in-patient

The subject officer pled guilty to three specifications of engaging in Conduct Prejudicial for: 1) his involvement in a physical altercation with the local police; 2) resisting arrest; and 3) endangering the welfare of a child. The settlement proposed by DAO required the subject officer to forfeit 31 suspension days and continue to cooperate with counseling programs deemed necessary by the Department. The Trial Commissioner who oversaw the settlement process did not favorably recommend this settlement, and the First Deputy Commissioner recommended adding one year of dismissal probation to the penalty. The Police Commissioner approved the original settlement agreement.

While the Commission recognized that the subject officer's mental health issues factored into the incident, the Commission believed that the penalty was insufficient. The Commission agreed with the First Deputy Commissioner that a period of dismissal probation was appropriate. Given that the subject officer apparently had a psychiatric episode, the Commission was concerned about his ability to handle the stress of his employment and the possibility that he might suffer another episode. Although the Department removed his firearm, if the subject officer also had been placed on dismissal probation, the Department would have had the ability to immediately terminate him if he experienced another violent episode or failed to cooperate with his psychological treatment. It is of primary importance that the Police Commissioner be able to summarily terminate members of service

psychological treatment and continued to receive medication and counseling at the time of the disciplinary process.

who pose a danger to family members, other members of law enforcement, or the public.

The third subject officer was a detective who had been a member of the service for nine years when the incidents occurred. Three months prior to the first incident for which he received charges, the subject officer was given a command discipline and forfeited two vacation days for pushing his wife, the complainant in the case at issue, and failing to notify the Department about the response of another law enforcement agency to their domestic dispute. In the current matter, the subject officer's wife had filed for divorce in August 2012. The subject officer responded by demanding that she withdraw the divorce complaint. Over the course of the next week, the subject officer pleaded with and harassed his wife. He continued to demand that she stop divorce proceedings, threatened to injure her, took her cellular telephone and keys, and sent flowers with a card that suggested the flowers should be an impetus for her to withdraw the divorce complaint. After another dispute, the subject officer changed the codes for the lock on the couple's front door, which prevented his wife from entering their residence. Just six days after the subject officer learned of the divorce proceedings, he returned to their residence intoxicated and demanded that his wife again give him her keys. His wife, who was holding their daughter at the time, refused. The subject officer pulled his wife's hair and pinched her. The subject officer's wife called the police, and he left. But he returned the next day, grabbed his wife's car keys, and threw them at her.

The subject officer's wife then moved to her parents' home and obtained an order of protection against the subject officer. In December 2012, the subject officer violated this order by yelling and cursing at his wife in front of her parents and child at her parents' home. When the subject officer's wife recorded this interaction on her cellular telephone, the subject officer then tried to grab the telephone away from her.

In his official Department interview, the subject officer admitted that he argued with his wife and told her to end the divorce proceedings, but denied any physical altercations or taking his wife's keys. He admitted coming to his wife's parents' home after he had been served with an order of protection, but explained that the argument was only about child car seats. He stated that he did not remember if he attempted to grab his wife's cellular telephone.

The subject officer's criminal case was adjourned in contemplation of dismissal¹⁴⁸ and a limited order of protection was issued against him.¹⁴⁹ Administratively, the subject officer was charged with one count of violating an order of protection by engaging in a verbal and physical altercation; two counts of engaging in Conduct Prejudicial to the Department by 1) participating in a physical altercation with his wife, and 2) participating in this physical altercation while his

¹⁴⁸ An adjournment in contemplation of dismissal involves an adjournment of the case for a period of six months, or one year if a family relationship exists, 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.

¹⁴⁹ A limited order of protection includes conditions as ordered by a judge but usually does not include a condition that the defendant/respondent "stay away" from the holder of the order. It may include that the defendant/respondent refrain from various types of physical abuse, sexual abuse, stalking, harassment, and other criminal and non-criminal behaviors against the holder of the order of protection.

wife was holding their infant child; and one count of failing to notify the NYPD of an off-duty incident. The subject officer pled guilty to all charges, forfeited 32 suspension days, and agreed to participate in all counseling deemed appropriate by the Department.

The Commission found this penalty insufficient in light of the subject officer's repeated inappropriate conduct, including a violation of a lawfully issued court order. The Commission believed that a period of dismissal probation should have been part of the settlement agreement. The subject officer was unable to refrain from acts that violated an order of protection and committed these acts while he was the subject in a Department investigation. His conduct demonstrated his inability to abide by terms that limited his behavior. Placing the subject officer on dismissal probation, with the ability to terminate him summarily if he was unable to conform his conduct, would have been a fair and appropriate penalty.

The fourth subject officer was a detective with more than eight years of service when the incidents occurred. She had no disciplinary history prior to this misconduct and received two unrelated minor violations and one unrelated command discipline between the incidents and the adjudication of her case. Between September and October 2011, the subject officer engaged in multiple verbal disputes with her husband. During one of these confrontations, the subject officer's husband asked her why she punched and pushed him and she responded, "Because you made me do it." She then threatened to kill him. In another incident,

the subject officer told her husband that she had thoughts about killing herself and their two-year-old daughter.¹⁵⁰

The subject officer's husband also told IAB investigators that his wife had displayed her firearm during three previous incidents and that she had threatened to kill herself on numerous occasions.¹⁵¹ During her official Department interview, the subject officer conceded that she had pushed her husband but denied punching him. She also admitted that she had threatened to kill herself in an effort to gain empathy or a reaction from her husband but did not intend to act on the threats.

The subject officer was charged with and pled guilty to two specifications of engaging in Conduct Prejudicial for: 1) threatening to kill herself and her child, and 2) for striking her husband in the head. For this misconduct, she forfeited 20 vacation days.¹⁵²

The Commission believed that this penalty was insufficient. The subject officer's multiple threats to harm herself and her child, coupled with the physical aggression towards her husband, warranted a more severe penalty that included a period of monitoring to determine if she was, in fact, psychologically fit to remain a police officer. Dismissal probation would have enabled the Department to

¹⁵⁰ The subject officer's husband recorded several disputes between them, thus providing independent corroboration of his statements.

¹⁵¹ There were no charges brought against the subject officer with respect to the allegation that she displayed her firearm to her husband.

¹⁵² DAO initially recommended the forfeiture of 10 vacation days. The Police Commissioner disapproved the initial penalty and directed the matter be renegotiated for the forfeiture of 20 vacation days. In determining the appropriate penalty for the misconduct, the Department's First Deputy Commissioner noted that the subject officer had been recently evaluated and cleared by the Department's Psychological Evaluation Section.

summarily terminate the subject officer if she made any attempts to harm her child, her estranged husband, or herself.¹⁵³

The fifth domestic case involved a police officer who had been with the Department for almost 17 years at the time of the incident. The subject officer was home watching television in the early morning hours. After being awakened by the television, his wife asked him to turn the volume down and a verbal argument ensued. When his wife tried to walk away, the subject officer ran up behind her, pulled her hair, placed his hands around her neck and began choking her. The subject officer's wife was able to get away and locked herself in the bedroom. The subject officer repeatedly threatened to break the door down. When the wife opened the door, the subject officer struck her in the face and bit her hand.¹⁵⁴ The couple's 9 year-old son witnessed much of the incident and called 911 twice. A responding police officer observed the bite mark on the wife's hand, redness, and a cut to her chin. The responding police officer also heard the son say that his father kept hitting his mother.

During his official Department interview, the subject officer claimed that his wife initiated the physical altercation. In explaining his teeth marks on his wife's hand, he stated that her hand got into his mouth while she was smacking him. The responding sergeant who filled out paperwork determined that the subject officer was fit for duty and did not observe any injuries on him.

¹⁵³ According to the subject officer, prior to the plea agreement, she and her husband had separated and were sharing joint legal and physical custody of their daughter.

¹⁵⁴ The subject officer's wife stated to Department investigators that she opened the door because the subject officer had broken the bathroom door several days prior to this incident and she did not want another broken door.

The subject officer was arrested for Assault in the Third Degree. He later pled guilty to a Disorderly Conduct violation and received a one-year conditional discharge with a two-year order of protection.¹⁵⁵ He also completed the Department's Domestic Incident Education Program and was participating in a Department anger management course at the time of the plea. Administratively, he was charged with one count of engaging in Conduct Prejudicial to the Department for the physical altercation with his wife in the presence of their child. This was the first time the subject officer received discipline in his career. He pled guilty and agreed to forfeit 30 days that he had already served on pre-trial suspension.¹⁵⁶

The Commission believed that the agreed-upon penalty was not appropriate in light of all the circumstances. The subject officer's wife stated that this was not the subject officer's first domestic offense. She stated that the subject officer had broken down a door in their home days before and that police had responded to the home on two other occasions. In the present incident, the subject officer potentially endangered his wife's life by choking her, caused physical injury, and committed his actions in the presence of his young child. The subject officer should have received a greater penalty that included dismissal probation. The Department would then have been able to terminate him if he continued his abusive behavior.

The sixth subject officer was a captain who had been employed by the Department for sixteen years and had no disciplinary history. He was also a

¹⁵⁵ A conditional discharge is a sentence under which "the defendant shall be released with respect to the conviction for which the sentence is imposed without imprisonment or probation supervision but subject, during the period of the conditional discharge, to such conditions as the court may determine." N.Y. Penal Law §65.05(2).

¹⁵⁶ The subject officer also had two days that he had served on pre-trial suspension restored to him.

supervisor in IAB at the time of this incident. While on sick leave in January 2013, the subject officer left his home without Department permission and went to the home of his girlfriend, a NYPD sergeant. He waited outside her residence until she arrived. When his girlfriend drove up, the subject officer demanded to know where she had been, called her derogatory names, and kicked her car door. The sergeant, fearful of the subject officer, drove away from him to park in front of her building near where her doorman was stationed. The subject officer followed her while continuing to yell at her and demanded that she return his keys. The sergeant told the subject officer that she had thrown the keys away. In response, the subject officer punched the sergeant in her face, causing her to lose consciousness. She also sustained "bruising, a contusion, and a laceration to the left side of her face." When the doorman came out and began to call 911, the subject officer immediately left the location and made no notification of the occurrence to the Department, as required.

The subject officer was arrested and charged criminally with Assault in the Third Degree, Criminal Mischief in the Fourth Degree, and Harassment in the Second Degree. He pled guilty to a harassment violation after completing a Batterers Intervention Program and 10 days of community service. A two-year limited order of protection was issued against him.

In the Department's administrative proceedings, the subject officer pled guilty to: two counts of engaging in Conduct Prejudicial to the Department for: 1) participating in the physical altercation, and 2) kicking the car door causing damage; one count of failing to report the incident or remain at the scene; and one

count of wrongfully being out of his residence without permission while on sick report. The settlement required the subject officer to forfeit 30 suspension days and 10 vacation days. He was also placed on dismissal probation and required to cooperate with any counseling programs deemed necessary by the Department.

The Commission believed the penalty was not sufficient and that this subject officer should have been terminated because of his failure to live up to the standards of the special position he held. The subject officer was a captain in the NYPD whose assigned duty was to oversee investigations into police misconduct. As an IAB captain, he was fully aware of the law and of his obligations as a member of the service. He failed to abide by Department rules by physically assaulting his girlfriend and causing her to lose consciousness. His actions made him unfit to work for the Department, and his continued employment sent an unfortunate message that even serious domestic violence will be tolerated.

In the final case, the subject officer had been a member of the Department for almost seven years at the time of the incidents. His one previous disciplinary case was for his involvement in a physical altercation with his wife, in front of their one-year old daughter. Specifically, he had been charged with pointing his firearm at his wife and threatening to kill her, and with being in possession of his firearm without his shield. This prior case was resolved in the spring of 2012 with the subject officer pleading guilty, forfeiting the 33 days he had served on suspension, and being placed on dismissal probation for one year. He was also required to cooperate with appropriate Department counseling. The subject officer remained on full duty after

this misconduct and continued to possess his service weapon.¹⁵⁷ He was still on dismissal probation when he engaged in the misconduct in the present case.

In December 2012, while an order of protection was in effect prohibiting him from engaging in any acts of harassment or aggravated harassment towards his wife, the subject officer threatened to kill his wife if she did not terminate her pregnancy. Fearing for her safety, the wife left their shared residence and moved in with her mother. Six days after the first incident, within a two-hour period, the subject officer called his wife 39 times and sent her approximately 20 text messages. According to DAO, the messages were not threatening but included one in which the subject officer wrote that he hoped his wife was having an abortion at that moment.

The subject officer was arrested for Criminal Contempt for violating the order of protection and later pled guilty to a Disorderly Conduct violation. In the Departmental disciplinary proceedings, he pled guilty to engaging in Conduct Prejudicial to the Department while on dismissal probation for both threatening to kill his wife and repeatedly calling and texting her in violation of the order of protection. The subject officer forfeited 32 days served on pre-trial suspension, forfeited 28 vacation days, was ordered to continue to cooperate with counseling, and was again placed on dismissal probation.

The Commission believed that the subject officer should have been terminated. The present case occurred less than a year after the subject officer pled guilty to his prior misconduct and was placed on dismissal probation. The subject

¹⁵⁷ Had the subject officer been modified, his service weapon and any off-duty firearms would have been removed from his possession.

officer's repeated threats to kill his wife and violations of an order of protection showed his unwillingness to obey the law and follow a judicial order. His commission of new offenses while on dismissal probation demonstrated that he was unable to refrain from prohibited conduct even while he understood he was in jeopardy of losing his job. Taken as a whole, the subject officer's actions demonstrated he was unfit to be a law enforcement officer. The purpose of dismissal probation is to give the Department the ability to terminate a member of service summarily who repeatedly violates the law or the Department's rules. The Department's decision to continue to employ this subject officer undermines both the specific and general deterrent effects of dismissal probation.

Members of the service who engage in acts of physical violence against their spouses, partners, or other members of their families should be closely monitored. They present a specific danger to those individuals and, in addition, they may not have the appropriate temperament to act as law enforcement officers with access to firearms during negative interactions with members of the public. Such interactions require them to maintain professionalism and control. In two of these cases, officers repeatedly broke the law by violating orders of protection, demonstrating their unwillingness to obey the law and thereby undermining their ability to remain police officers. In two other cases, the officers' mental health appeared to be an issue that called for closer supervision. When an officer continues to engage in similar violent or illegal behavior, despite already having been disciplined, the Department should terminate their employment.

C. Duty Failure

The Duty Failure category focuses on subject officers' inadequate performance of job responsibilities. One of the core values of the Department is "to fight crime both by preventing it and by aggressively pursuing violators of the law."¹⁵⁸ These values are achieved primarily by prompt and effective investigation of complaints. Failure to meet this responsibility renders an officer subject to discipline.

The Department's Patrol Guide does not contain a general provision for failing to conduct an investigation. Instead, uniformed members of service who are delinquent in this respect are either charged with failing to take a specific law enforcement action, such as preparing a missing persons report, or they are charged under the catchall provision of Conduct Prejudicial. For purposes of this analysis, the Commission characterized disciplinary cases where officers failed to take required law enforcement actions as "duty failure" cases regardless of the charged Patrol Guide section.

Of the 540 disciplinary cases reviewed by the Commission for the *Seventeenth Annual Report*, 160 contained formal charges based on subject officers' failure to perform their job duties adequately. The usual penalty was forfeiture of 15 vacation days. In five of those cases, the Commission disagreed with the penalty imposed because the nature of the omissions evinced a disregard for the officers' primary responsibilities as members of law enforcement.

¹⁵⁸ New York City Police Department. "Mission."
<http://www.nyc.gov/html/nypd/html/administration/mission.shtml> (Accessed September 11, 2015).

The first three cases involved two police officers and their sergeant. Both police officers had been employed by the Department for nine years. The sergeant had a 17-year tenure. None of the subjects had a disciplinary history, but they were all rated 5 out of 10 by the commanding officer.

In March 2012, a woman called 911 and reported that she had an order of protection against “a guy” who was at her window, harassing her. She also provided a description of the individual. The subject police officers responded to the call.¹⁵⁹ According to the two subject police officers, upon their arrival, the woman informed them that a motion sensor light in her yard had been triggered and she asked them to search the area. Although the police officers were aware that the assignment involved an order of protection, it was not shown to them, and they did not inquire about it. One subject police officer canvassed the building perimeter, but there was no sign of anyone. As the two subject police officers were leaving, the subject sergeant arrived. The sergeant failed to ask the police officers any questions about the assignment, but signed their activity logs.¹⁶⁰ The three subjects then left the location, marking the case as “unnecessary.” Later that day, the woman was shot and killed by her ex-boyfriend.

In their official Department interviews, all three subject officers admitted to being aware that they were responding to a call involving an order of protection. The subject police officers were each charged with two specifications for failing to

¹⁵⁹ The woman had a valid order of protection against her ex-boyfriend. The physical description she had provided to the 911 operator was not transmitted with the assignment. As a result, the 911 operator forfeited 30 vacation days and was sent for retraining.

¹⁶⁰ Sergeants are required to sign the activity logs of their subordinates during their tours.

conduct a complete investigation: one for failing to prepare and complete a complaint report, and one for failing to prepare and complete a domestic incident report. Due to the sergeant's failure to question his subordinates about the details of their response, he was charged with failing to ensure that a proper investigation was conducted and that the required paperwork was completed. All three pled guilty and were penalized 15 vacation days.

The Commission did not believe this penalty was sufficient for two reasons. First, the Commission believed that, as a supervisor, the sergeant had a particular duty to make sure that his subordinates performed their job responsibilities properly. He was obliged to make an inquiry as to what these officers did to investigate the allegations, and he failed to take even that minimal action. Therefore, he should have received a greater penalty than his subordinates. Moreover, the Commission believed that all three subject officers should have been placed on dismissal probation, due to their failure to perform more than the bare minimum in this case. In the notification about the original call, they were informed that there was an order of protection and the complaint involved a dispute. Even if the complainant did not mention the order of protection when they responded, they should have at least asked her about the statements she made to 911. That may have led her to produce the order of protection, which would have had her ex-boyfriend's name on it. She also could have provided a description of her ex-boyfriend. This information would have allowed the officers to search for the suspect and, perhaps, prevent the woman's death. Given the complete dereliction of

their duties, combined with their mostly mediocre performance evaluations and ratings from their commanding officer, the Commission believed that a period of dismissal probation to monitor the manner in which they perform their duties in the future would have been appropriate.¹⁶¹

In the next case, a sergeant with no formal disciplinary history directed an officer in his command to downgrade a felony robbery complaint. In November 2010, the complainant was walking down the street when an unidentified perpetrator struck him on the arm and face, knocked him to the ground, and caused him to drop his cellular telephone. The attacker then ran away. When the complainant got up, he noticed that his cellular telephone was missing. He went home and called 911.

A police officer assigned to Operation Impact responded to his residence, determined that a robbery had taken place, and began preparing a report.¹⁶² The police officer then called the subject officer, the assigned Patrol Supervisor. When the subject officer arrived at the complainant's residence, he took the police officer's report and directed her to prepare two new separate reports: one for misdemeanor assault and one for lost property. The subject officer also directed the police officer

¹⁶¹ In justifying the 15-day penalty, the Assistant Department Advocate cited as precedent a case that the Commission criticized in its last Annual Report. In that case, the subject officers failed to take necessary investigative steps and discarded evidence after responding to a complaint where a male was stabbed in the head and was in a coma, but had no identification. The Commission believed that those officers, at minimum, should have been placed on dismissal probation. See *Sixteenth Annual Report* at pp. 58-60.

¹⁶² Operation Impact deployed most members of the graduating classes of NYPD's recruit-training academy to carefully selected "hot spots" in precincts around the City, where the probationary police officers operate under close monitoring and supervision. They are directed to focus on particular times, places, and types of crime that have been found to be concentrated in those locations. Impact teams may also include more senior members of the service.

to record the complainant's home address as the incident location, which he was aware, was not accurate.

The subject officer gave those orders despite becoming familiar with the facts of the incident by interviewing the complainant. In his official Department interview, the subject officer explained that at the time of the incident he "debated" whether the incident was in fact a robbery "due to the fact that the complainant did not actually see the perpetrator remove the cellular telephone and because there were no statements made by the perpetrator."

The subject officer pled guilty to two specifications for failing to maintain his activity log and for wrongfully causing false entries to be made in Department records in that he instructed the police officer to reclassify a robbery complaint as two separate reports that did not include robbery. He forfeited 15 vacation days, a standard penalty for downgrading a criminal complaint.

The Commission found the penalty inadequate in this case for several reasons. The subject officer had 12 years of experience at the time of the incident. As a supervisor, he was entrusted with the responsibility of training and guiding his subordinates. Instead, he directed a subordinate, who as a member of the service assigned to Operation Impact and was likely a recent graduate of the Police Academy, to downgrade a correctly prepared criminal report and enter a factually incorrect report in Department records. This not only set a poor example, it may also have supported the view that the police purposely underreport serious crime. He also failed to make activity log entries about this incident, which may have been

an effort to cover up his reclassification. Due to these aggravating factors, the subject officer should have been placed on dismissal probation in addition to forfeiting vacation days, an upward departure from the standard penalty.

In the final case, the subject officer, a detective with no disciplinary history, pled guilty to causing inaccurate entries in Department records between December 2011 and December 2012 by failing to investigate cases and inaccurately documenting his activity. A Department investigation unit conducted a one-year review of the subject officer's activity by selecting 22 cases at random, the majority of which involved automobile thefts.¹⁶³ In those 22 cases, the subject officer documented in Department reports that he conducted canvasses at 121 locations as part of his follow-up investigations. The audit showed that 48 of the locations that he claimed to have canvassed were false addresses. The other 73 locations did exist; however, for 40 of them, the subject officer entered names of witnesses that either did not live there or were never interviewed by him. Of the remaining 33 locations, the audit was only able to confirm that 6 locations and the corresponding witness names were valid; the audit was unable to verify the information the subject officer provided regarding the remaining 27 locations.

The subject officer pled guilty to failure to maintain his activity log and to engaging in Conduct Prejudicial in that he failed to investigate cases properly and document activity accurately, resulting in inaccurate entries in Department records. As a penalty, he forfeited 20 vacation days.

¹⁶³ The reason for the investigation was a complaint filed with IAB alleging that the subject officer failed to properly investigate a domestic violence incident. That matter was unsubstantiated; nonetheless, the Department investigation unit conducted a random audit of the subject officer's cases.

The Commission believed the penalty imposed was insufficient. In 22 cases selected at random, the subject officer was proven to have lied about his activity at least 88 times over a period of one year. He made up addresses that he purportedly visited, failed to interview witnesses in automobile theft investigations, and then lied about those interviews in Department reports. It is probable that an audit of his other cases would reveal similar falsifications. The subject officer demonstrated a refusal to perform basic tasks required of his job, and a propensity to falsify department records to hide his misconduct. In addition to the forfeiture of the 20 vacation days, the subject officer should have been placed on dismissal probation, enabling the Department to terminate him summarily if he continued to ignore his job responsibilities.

D. FADO

FADO is an acronym for misconduct related to the excessive or unnecessary use of force, abuse of authority, discourtesy, and offensive language. CCRB investigates most FADO allegations, although IAB may also conduct concurrent investigations. Usually, parallel investigations occur when there is a complaint of a serious physical injury during an interaction with the NYPD, or when the case has received media attention. Most of the cases that are prosecuted in the Department's Trial Rooms, whether by DAO or APU, involve the wrongful or excessive use of force against a civilian or an abuse of authority in the form of making a stop, conducting a frisk or search, or threatening an arrest or summons without the requisite legal basis.¹⁶⁴

¹⁶⁴ See *supra* at p. 37 for a more detailed discussion about APU.

Patrol Guide §203-11 instructs uniformed members of the service regarding the proper use of force. While no bright line rules exist for what constitutes the appropriate use of force in any given situation, members of the service are required to exercise “only the amount of force necessary to overcome resistance...to effect an arrest or take a mentally ill or emotionally disturbed person into custody.”¹⁶⁵

In the sole case in this category where the Commission disagreed with the penalty, the subject officer, a seven-year veteran, forfeited 15 vacation days for his use of unnecessary physical force against an arrestee. In May 2012, the subject officer and his partner were alerted by a civilian that another individual, who later made the complaint against the subject officer, had just stolen his cellular telephone.¹⁶⁶ The subject officer and his partner chased the complainant, who ran into an apartment building where the outer door locked after him. The subject officer removed his firearm from his holster with his right hand as he knocked on the door with his left one. The complainant attempted to run back out the door, past the officers, but the subject officer’s partner immediately grabbed the complainant by his right arm. The subject officer also grabbed the complainant’s left arm and struck the complainant in the head with his firearm, although the complainant was not behaving in an aggressive manner. As a result of this contact, the complainant required four staples to his head. According to the complainant, he asked the

¹⁶⁵ P.G. §203-11 (Use of Force). During the drafting of this report, the Department announced that it was adding a new section to the Patrol Guide to address the use of force by members of the service.

¹⁶⁶ As the perpetrator of the cellular telephone theft was the person injured in the interaction with the subject officer, he was the complainant for purposes of the administrative disciplinary case.

subject officer at the scene why he hit him, and the officer stated that he believed the complainant was reaching for his firearm.

In his official Department interview, the subject officer stated that as the complainant was going down to the ground, his hand touched the subject officer's gun belt, causing the subject officer instinctively to grab the complainant's head. He admitted that his firearm was still in his hand and he allowed that it could have come into contact with the complainant's head, but he said he was unsure what had occurred. However, surveillance video contradicted the officer's version, demonstrating that while initially grabbing the complainant by the arm, the subject officer swung his hand in a "wind-up" motion and struck the complainant on the head with the firearm.

The subject officer had a prior disciplinary history. He had been penalized 20 vacation days to cover two separate sets of charges and specifications. The first set involved an incident in 2009, in which the subject officer failed to provide his name and shield number upon request and failed to make an entry in his activity log. The second set was levied in 2010 and charged that the subject officer failed to notify a desk officer about a juvenile who was being detained in a supermarket, failed to prepare a juvenile report, and gave an improper disposition for the assignment. He also had received two prior command disciplines for minor misconduct. In each instance, he forfeited five vacation days.

Although the conduct at issue in the most recent matter appeared more serious than the subject officer's prior misconduct, the penalty the subject officer

received here was less serious than the penalties imposed for his past charges. Furthermore, although not charged with making a false statement, the subject officer's explanation of inadvertently and unknowingly making contact with the complainant's head with the firearm was contradicted by the video showing the subject officer intentionally striking the complainant. For these reasons, combined with the subject officer's gratuitous use of force, the Commission believed that a period of dismissal probation should have been imposed to determine if the subject officer possessed the necessary temperament to remain a member of the service.

It is worth noting that this case was adjudicated in October 2013, prior to the change in the Department's executive administration. On October 2, 2014, Commission staff attended the Department's executive conference at which both IAB and DAO pledged to implement new approaches to investigating allegations of unnecessary force, and to pursue violators more aggressively.

E. False Statements

Since its inception, the Commission has emphasized the importance of appropriately charging and adequately disciplining officers who make false statements.¹⁶⁷ 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.

¹⁶⁷ Due to the Commission's historical and present interest in this topic, as well as the significance of the impact of this misconduct on the general perception of the integrity of the Department, the Commission has included a more detailed analysis of this category of cases than the other case-type categories.

In 2007, the Department modified its policy. It is set forth in Patrol Guide §203-08, and 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.

The Commission found that the Department rarely brought charges under this provision. Instead, the Department used other Patrol Guide sections to allege misconduct relating to false statements. The Patrol Guide provision most commonly charged was Conduct Prejudicial pursuant to Patrol Guide §203-10(5). This section was frequently used in lieu of "making false official statements," and was also commonly used when incorrect or false statements were made in official Department proceedings. Unlike the false statement provision, a charge of Conduct Prejudicial does not carry a presumption of termination.¹⁶⁸ For this review period,

¹⁶⁸ Other charges utilized by the Department during this reporting period to capture falsehoods included P.G. §§203-10 (2)(d) (Public Contact-Prohibited Conduct), 203-05(2) (Performance on

the Conduct Prejudicial section was charged 68 times, making it the most frequently charged provision in the false statement category.

This section of the Annual Report includes an analysis of disciplinary cases that involve false official statements, as well as false statements made under less formal circumstances. These “false unofficial statements” include false entries in Department records, false statements made to prosecutors and other investigative bodies, and fraud. False unofficial statements may seem less serious than false official statements, such as those made under penalty of perjury. Nonetheless, adequately penalizing untruthful officers is an imperative part of creating a culture within the Department that does not tolerate false statements or fraudulent conduct.

The focus of the Commission’s analysis in this subsection was whether the imposed penalties were appropriate and sufficient.¹⁶⁹ The Commission initially reviewed 113 cases in which it appeared that the subject officer had made a false statement. In keeping with the Department’s current false statement policy, the Commission excluded from its analysis two cases where officers merely denied misconduct. The Commission also found that in 17 cases it appeared that false

Duty), 203-05(4) (Performance on Duty), 211-01 (Duties and Conduct in Court), 211-14 (Investigations by CCRB), 202-14 (Desk Officer), 206-13 (Interrogation of Members of Service), 202-17 (Patrol Supervisor), and 207-01 (Complaint Report System). There were also two cases where the subject officers were only charged with violations of the Penal Law and not with violating a section of the Patrol Guide.

¹⁶⁹ Because the Commission has not reviewed all of the investigative files pertaining to these cases, it does not comment on the Department’s decisions to bring alternate charges in lieu of the making false statement charge. There were three cases reviewed where the subject officer made a false statement in an official context and was charged with violating the Department’s false statement policy, P.G. §203-08. The Commission agreed with the dispositions in these three cases. One of these cases resulted in termination, one in resignation, and one in the forfeiture of vacation days and dismissal probation.

statement-related misconduct occurred, but the Department did not charge the subject officer with any specification addressing that misconduct. As the Commission had not reviewed the underlying investigations for most of these cases, it excluded them from this analysis.¹⁷⁰

The Commission's analysis of the remaining 94 cases is set forth below. It is divided between false official statements that are subject to the false statement policy, and false unofficial statements that are not clearly subject to that policy.¹⁷¹

1. False Statements in an Official Setting

The Commission reviewed 28 disciplinary cases that involved false official statements.¹⁷² The types of false statements and the penalties imposed are set forth in the chart located on the next page.¹⁷³

¹⁷⁰ Also excluded from this review were those cases involving falsehoods pertaining to time and leave issues that did not rise to a pattern of abuse. The Commission believes that these are personnel matters that, unless indicating a pattern of dishonesty, should not be subject to the penalties set forth in the current false statement policy.

¹⁷¹ The total number of false statement cases in this section differs from the total number in the false statement category defined on p. 56 *supra* and in Appendix B because, in labeling the disciplinary cases, the Commission used the most serious specification in the disciplinary case for which the subject officer was found guilty; or if the case was dismissed in its entirety, the most serious specification charged. In this section of the report, the Commission counted every case in which a false statement specification was levied.

¹⁷² As noted on pp. 103-104, the Commission included in this category statements that were not charged as making false statements by DAO when evaluating the sufficiency of the penalty and not the actual charge levied by DAO.

¹⁷³ When a subject officer had more than one false statement charge, the Commission only counted the case in the more serious false statement category.

<i>Context of False Official Statements [28]¹⁷⁴</i>	<i>Charges Filed¹⁷⁵</i>	<i>Guilty and Separated from the Department¹⁷⁶</i>	<i>Guilty and Not Separated from the Department</i>	<i>Not Guilty or Charges Dismissed Prior to Trial</i>
PG Hearing [13]	1	0	10	2
CCRB Interview [2]	0	0	2	0
Sworn Testimony¹⁷⁷ [3]	0	0	1	2
Sworn Documents¹⁷⁸ [9]	1	0	6	2

The Commission disagreed with the penalties imposed in the following eight cases.

1.1 False Statements in P.G. Hearings and CCRB Interviews

The four officers in this category each lied in official interviews conducted by either the Department or CCRB during investigations into the propriety of their conduct. In two of the cases, the Commission believed that the underlying misconduct was sufficiently severe to warrant the imposition of dismissal probation or termination. In the remaining two cases, while the subject officers would have faced discipline for the underlying misconduct, the false statements to investigators significantly compounded the original wrongdoing. Yet, the penalties imposed for all of these cases did not appear to differ significantly from the penalties that would have been imposed for the underlying misconduct alone. When the Department

¹⁷⁴ Numbers inside brackets represent the total number of cases in each category.

¹⁷⁵ See *supra* at p. 46, fn. 100.

¹⁷⁶ Separation from the Department includes retirement, resignation, or termination.

¹⁷⁷ This category included testimony given in court.

¹⁷⁸ This category included affidavits, criminal court complaints, and summonses.

fails to severely discipline officers for lying in order to mislead investigators, it undermines the work of investigators, weakens the utility of Department interviews, and sends a message to members of the service that lying to cover up their own misconduct will be tolerated. The Commission believes that these cases should be judged with particular severity in light of the official Department position that intentional false official statements about material matters warrant dismissal, absent exceptional circumstances.

The first subject officer pled guilty to making misleading statements regarding an off-duty car accident that occurred in November 2011. The subject officer was on her way to work when she rear-ended another car, causing neck and back injuries to its passenger. Without stopping to check on the occupants of the other vehicle, she fled the scene of the accident by driving around that car, through a steady red light. She never reported the incident, as required. The vehicle that she hit was operated by an off-duty police officer who recorded the subject officer's license plate as she drove away. When she arrived late at the stationhouse, the subject officer confided in her partner that she had been in an accident, and showed her partner the damage to the car, consisting of a bumper hanging off the vehicle.

More than a year later, during her official Department interview, the subject officer stated that she was not involved in a car accident and denied leaving the scene. She fabricated a story to explain the damage to her car, stating that it was a result of a collision with a taxi, that the taxi fled the scene, and that she did not remember the date or place of that collision. The Department charged the subject

officer with two specifications, both alleging that she engaged in Conduct Prejudicial for 1) leaving the scene of the accident and 2) providing “misleading” statements to investigators.

For her misconduct, the subject officer forfeited 20 vacation days. The Commission believed that penalty was insufficient. At the time of the accident, she had been with the Department four years and had been rated a 5 out of 10 by her commanding officer, but had no disciplinary history. The subject officer not only neglected her own training as a police officer, but also committed an illegal act by fleeing the scene of an accident without requesting that the police respond. Despite the fact that the force of the collision was strong enough to leave the front bumper hanging off of her car, she made no attempt to determine whether she had caused damage to the other vehicle, whether she had injured anyone, and whether the occupants of the other vehicle required help. As she drove away, she ran a steady red light, which could have caused another accident. Then, adding to the sheer callousness and illegality of her actions, she lied to investigators to hide her involvement in the accident, and fabricated another accident, placing blame on a phantom vehicle. Given all these factors, at a minimum, she should have been placed on dismissal probation in addition to the forfeiture of vacation days.

The second case involved a subject officer who was charged with making inaccurate statements during her official Department interview regarding her involvement in an altercation at a party.¹⁷⁹ In May 2011, the subject officer was

¹⁷⁹ Although the Commission was not able to review the underlying investigation in most cases, in this case, in connection with its ongoing examination of the Department’s false statement policy, the Commission reviewed the underlying investigation of this subject officer. *See supra* at p. 69.

present in a residence when shots were fired outside. Despite the gunshots, she did not remain at the scene, did not identify herself as a police officer, and failed to take appropriate police action. At the time, she had been a member of the service for 13 years.

Later that same day, the subject officer was questioned in an official Department interview about what had transpired at the party, particularly regarding her knowledge of the gunshots. She denied being present when the shots were fired and stated that she only learned about the shooting when her fiancé called her after she had arrived home. Her fiancé and another partygoer contradicted her statement. In a second Department interview, over a year after the first one, the subject officer admitted that she was present at the location when she heard popping sounds, but stated that she did not think that they were gunshots. However, she admitted having learned that shots were fired while she was still at the location, prior to the arrival of the police. She explained that she used “poor judgment” in not leaving the house and identifying herself to the responding officers and then leaving the location.

The subject officer’s disciplinary history included three command disciplines.¹⁸⁰ As a result of this incident, she was transferred back to patrol, and her new commanding officer rated her 4 out of 10. After the conclusion of this

¹⁸⁰ Two of the command disciplines were from seven years prior, one for computer misuse and one for misconduct involving a summons issued to her personal vehicle. The final command discipline was issued in the same year as the instant misconduct for failing to safeguard her Department identification and shield. After the misconduct at issue, but prior to the adjudication of these charges, the subject officer received a fourth command discipline for failing to appear at the Traffic Violations Bureau.

investigation, she was also placed on Level 2 Disciplinary Monitoring for reasons that were not specified in the Department paperwork.¹⁸¹

The subject officer was charged with wrongfully impeding an investigation by making untruthful or misleading statements regarding the party and the shots fired. She was also charged with two other specifications: 1) wrongfully impeding an investigation by hiding inside the house until the responding officers left the scene; and 2) failing to remain at the scene of an incident, failing to identify herself, failing to request the response of a patrol supervisor, or failing to take any police action. The subject officer forfeited 25 vacation days as a penalty.

The Commission believed that penalty was insufficient. The subject officer impeded an investigation into shots fired by either deliberately removing herself from the scene or hiding while the NYPD arrived. Moreover, she made false statements regarding the shooting during her official department interview on the same day as the incident to cover up her presence at the party and escape any discipline for her failure to comply with Department directives. While her subsequent recantation may have served as a mitigating factor, she should have at least been placed on dismissal probation in addition to forfeiting the specified vacation days.¹⁸²

¹⁸¹ 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).

¹⁸² The Commission notes that although the subject officer may have been truthful in her second official Department interview, this was not a true recantation as she did not request the second

The third case in this subsection involved an eight-year veteran of the Department with no disciplinary history who falsely inflated his report of the amount of money paid to an informant. In June 2012, the subject officer was assigned to a buy-and-bust operation with two detectives and the informant. As part of the operation, the subject officer conducted two money transactions with the informant. First, he handed the informant cash to buy the drugs. The subject officer told the detectives that he gave the informant \$160 to make that purchase. He also told the detectives that he paid \$495 for the informant's services. However, one detective had observed the subject officer give the informant \$40 to make the purchase and \$400 for the informant's services. The detective also overheard the subject officer say, "I'm even" after he paid the informant.

Three days later, when asked by the subject officer to sign a document as a witness to payments of \$160 and \$495 to the informant, the detective refused to sign. The detective confronted the subject officer about the discrepancy, which led the subject officer to inform another detective that the amounts on the document were incorrect, and admit having paid the informant \$40 and \$400.

The investigation revealed that Respondent had been "short in his expense account." Respondent had a duty to maintain an activity sheet and keep track of the monies he paid to informants for buy-and-bust operations. His account had been short for at least two months.¹⁸³ The informant corroborated that he only received

interview, but was required to attend by Department investigators. This was not a case where the subject officer independently recanted.

¹⁸³ It is the Commission's understanding that there is no Patrol Guide provision that sets forth rules of maintaining informant expense accounts. However, the practice is standardized through the Department. Members of the service, especially detectives in Narcotics Units, receive money from the Department to pay informants, and keep open expense accounts. When a member of the

\$40 and then \$400 for this particular operation. Furthermore, the subject officer's activity log entries for that day had been altered. Initially, he indicated the amounts of \$495 and \$40, and then wrote over the numbers and indicated \$400 and \$160.

In March 2013, the subject officer made a series of misleading statements during his official Department interview. He gave different accounts to explain the inaccurate buy report. At one point, he even blamed the discrepancy on his copying erroneous information recorded by one of the other detectives. Towards the end of the interview, the subject officer admitted that he intentionally inflated the reports to try to make up the money he was short in his expense account. He denied that he attempted to keep the money for any personal gain.

The subject officer pled guilty to 1) attempting to submit reports with inaccurate information, 2) failing to properly maintain an expense account, 3) writing over entries in his activity log, and 4) Conduct Prejudicial in that he provided "inaccurate" statements during an official Department interview. As a penalty, he forfeited 30 vacation days.

The Commission believed that this penalty was inadequate. The subject officer made false statements to two detectives regarding how much he had paid the informant immediately after making the payment and again at the command. It was only after one of the detectives specifically confronted him with the falsity of those statements and refused to sign a form that contained false information that the

service pays an informant, there must be a witness. Both the witness and the informant sign the form detailing the amounts paid. The members of the service keep expense reports, in which they document all the transactions, including names, types of operations, dates, and case numbers. The expense accounts are not audited during the year. However, by the end of fiscal year, each member of service must close out the account, close the books, and return any unused money.

subject officer corrected the amounts that he reported. The subject officer admittedly attempted to inflate this particular transaction. At best, this was done to balance his account and hide his failure to accurately document his expenses. At worst, the subject officer was stealing money from the Department. The subject officer then compounded his prior misconduct by making false statements during his official Department interview to hide his misconduct. The Commission believed that he should have been terminated.

The final case involved a sergeant who had been a member of the service for 10 years.¹⁸⁴ The sergeant had nine specifications levied against him, five of which were not sustained after trial, including a charge that he failed to fully and truthfully cooperate with a Department investigation by providing incomplete, inaccurate, or misleading answers to the investigator during an official Department interview. He was found guilty of: 1) abuse of authority for entering or authorizing the entry of two apartments without sufficient legal authority; 2) abuse of authority for searching or authorizing the search of two apartments without sufficient legal authority; 3) failing to ensure that Stop, Question, and Frisk Reports were completed during encounters with two civilians; and 4) failing to cooperate fully and truthfully with an investigation by CCRB by providing incomplete, inaccurate or misleading answers to the CCRB investigator.

The misconduct began in April 2011 when a woman entered the subject officer's precinct to report that her iPhone had been stolen. Using the "Find my

¹⁸⁴ Although a police officer was also charged in this matter, that police officer was found not guilty of all of the specifications levied against him, including those involving making false statements and impeding an investigation.

iPhone” application on the precinct’s computers, the subject officer tracked the missing iPhone to a building that contained only single room occupancy units. The subject officer and two other members of the service entered the building. According to a building employee who monitored the entrance and exit of the building residents, at 3:11 a.m., the subject officer informed her of the stolen cellular telephone and demanded to see the building surveillance video, stating that there was a “24-hour protocol” for making such a demand. The employee complied. After viewing the video, the subject officer insisted that the building employee accompany the officers and open rooms so the officers could look for the suspects and the cellular telephone.¹⁸⁵ When the employee informed them that they needed a warrant, the subject officer threatened to arrest her.

The employee again complied. According to the employee, the subject officer and his subordinate entered three apartments and searched two of them without the residents’ consent. In one of the apartments, the subject officer and his subordinate also forcibly frisked the resident and his guest. These residents were later escorted to the lobby for a show-up identification procedure with the larceny victim. No one was positively identified and the missing cellular telephone was not located. The required Stop, Question, and Frisk forms were not completed by any of the officers on the scene.

In August 2011, an investigator from CCRB interviewed the subject officer. The subject officer was asked to describe what occurred on the incident date. He stated that after arriving at the location, he spoke with the building employee’s

¹⁸⁵ As part of her job responsibilities, this employee had keys to all of the residences in the building.

supervisor, who gave him permission to bring the suspected tenants down to the lobby for a show-up identification. According to the subject officer, one resident opened the door to her apartment and the subject officer interviewed her from the doorway. The subject officer insisted that he did not step into this apartment at all, despite the fact that the resident supposedly gave him consent to search it. Rather, he merely looked around the room from the hallway. Regarding the apartment in which the resident and his guest were allegedly searched, the subject officer stated that he stood at the doorjamb while he looked inside trying to locate the second suspect. He denied frisking the residents of that room.

In his Department trial testimony, the subject officer maintained that the building employee voluntarily allowed the officers to view the surveillance video and opened the apartment doors without protest. He also repeated his denials of entering the first resident's apartment and testified that, at most, he stuck his foot in the second resident's apartment. The Trial Commissioner found these denials incredible and found him guilty of the four specifications listed above.¹⁸⁶

While the subject officer had high performance evaluations and no disciplinary record, the Commission believed that, at least, he should have been placed on dismissal probation in addition to forfeiting vacation days. The subject officer was a supervisor who brought one of his subordinates along with him as he

¹⁸⁶ The subject officer made similar statements during his official Department interview, but the Trial Commissioner found him not guilty of failing to fully and truthfully cooperate with the Department's investigation based on these statements. The Trial Commissioner explained that the interview was not an open narrative, but rather an interrogation, and that the nature of the questions therefore caused the subject officer's statements to constitute "mere denials" of an administrative claim, which were not actionable misconduct under the Department's false statement provision. *See* P.G. §203-08.

entered and searched at least two apartments without the requisite authority to do so. He then failed to ensure that another subordinate filled out the required Department reports that would have memorialized this incident. Finally, when an investigation was conducted into this incident by CCRB, the subject officer misled the CCRB investigator and obstructed the investigation by lying about what had happened. Although he was found not guilty of making a false statement based on the narrow language of the relevant provision of the Patrol Guide, the subject officer continued telling these same lies at two official Department interviews with IAB investigators. The subject officer had a duty to cooperate with these investigations and answer the questions asked of him truthfully. His failure to do so, as well as his adherence to these lies during his sworn trial testimony, directly undermines his credibility, reveals that he is not an effective supervisor to other members of the service, and fails to deter other members of the service from similar misconduct.

Although the Assistant Advocate requested a 30-day penalty, the Trial Commissioner recommended that the subject officer forfeit only 20 vacation days after finding the subject officer not guilty of five of the specifications. The Police Commissioner approved this penalty. The Commission believed that the penalty was insufficient. Based on the subject officer's false statements to the CCRB investigator, his continued incredible testimony at the trial, his willingness to infringe on at least two civilians' rights by entering their apartments and conducting searches without warrants or the existence of an applicable exception to the warrant requirement, and his failure to supervise his subordinates properly, at

minimum, this subject officer should have been placed on dismissal probation in addition to the forfeiture of vacation days.

1.2 False Statements in Sworn Documents

The Commission disagreed with the penalties imposed on four subject officers in this category. Lies or inaccuracies in sworn documents may result in either civil or criminal prosecution of innocent civilians, or the dismissal of cases against civilians who actually committed crimes. Therefore, it is especially important to treat these cases seriously.

The first subject officer, a lieutenant employed 22 years with the Department, had three sets of charges pending against him, one of which involved a false official statement. In that case, the subject officer pled guilty to failing to maintain his activity log and engaging in Conduct Prejudicial to the Department by signing an affidavit, filed in Criminal Court, which contained factually inaccurate information.

In March 2012, the subject officer was alone when he observed an individual in the driver's seat of a vehicle. After questioning the individual, the subject officer believed he was intoxicated and requested that other officers respond to the scene to make the arrest. The police officer who was assigned the arrest (the arresting officer) indicated in the arrest paperwork, including the affidavit that was filed with the Criminal Court complaint, that he was informed by the subject officer that the subject officer had observed the individual attempt to park his car five times prior to being approached by the officer. The subject officer signed the affidavit, attesting to

its accuracy. The District Attorney's Office later determined that this information was incorrect and dismissed the criminal charges.

When questioned by Department investigators, the subject officer claimed he could not recall what specific facts he had told the arresting officer, or whether he reviewed the arrest paperwork prepared by that police officer. After reviewing the paperwork, the subject officer admitted that the statement regarding his observations of the individual's five parking attempts was not accurate. He added that he would not have signed the affidavit without reviewing it, and he must have "overlooked" that particular statement. The subject officer also did not have any activity log entries regarding this stop. The arresting officer stated in his official Department interview with IAB that the information in the criminal court complaint was given to him by the subject officer. As there was no apparent reason for the arresting officer to falsely assert that the subject officer claimed to have observed these parking attempts personally, the Commission believed that this was not merely a matter of the subject officer having failed carefully to review the document he signed.

When this incident occurred, the subject officer had two other pending disciplinary matters from incidents that occurred in 2009 and 2011. In the 2011 incident, a civilian member of the service called 911 after having a verbal dispute with his neighbor's boyfriend. The civilian member of the service properly identified himself to 911 and to the responding police officers. Consistent with Department requirements, the responding police officers notified their switchboard

operator that the assignment involved a member of the service. The switchboard operator notified the subject officer. The subject officer incorrectly determined that no further notifications were necessary. In his Department interview, the subject officer explained that he did not believe that notifications were required as the member of the service was not a uniformed member of the service and was the victim of the dispute. This was not proper procedure, and as a lieutenant, the subject officer should have known this. The subject officer was charged with failing to notify the commanding officer of the civilian member of the service's involvement in a police incident.

The 2009 case against this subject officer involved two specifications of engaging in Conduct Prejudicial by 1) conducting personal business while on Department time and 2) after having become aware that a sergeant, assigned as the desk officer, was intimately involved with an arrestee, failing to reassign the sergeant to other duties not associated with the arrest processing, or failing to notify a supervisor of the conflict of interest.

In February 2009, one of the subject officer's colleagues, a sergeant, was dating a civilian woman, the complainant, who had contentious relationships with some of her neighbors. The subject officer arrested one of these neighbors for violating an order of protection in favor of the complainant. Several hours after the arrest, the subject officer arrived at the complainant's residence. The complainant alleged that the subject officer sexually abused her. The subject officer denied this allegation, although he admitted that he went to the complainant's home and was

there for an extended period of time. When questioned, the subject officer claimed that he could not recall the specifics of that visit. The Department charged the subject officer with conducting personal business while on Department time because he could not justify the length of time spent at the complainant's residence. The sexual abuse allegations against the subject lieutenant were unsubstantiated.

Two days later, the complainant was arrested for a dispute with her neighbor. Despite knowing that the desk sergeant had a relationship with the complainant, the subject officer allowed this sergeant to supervise her arrest processing.¹⁸⁷ The complainant was ultimately released from the precinct with a desk appearance ticket.¹⁸⁸

For all three cases, the Assistant Advocate requested that the subject officer forfeit 45 vacation days, citing the subject officer's highly competent performance evaluations and his Department awards. The Assistant Advocate explained that this appeared "to be an anomaly to an otherwise exemplary" career. The First Deputy Commissioner disapproved the negotiated penalty and recommended that the subject officer forfeit 60 vacation days because his actions were "troubling, and raise serious questions concerning his judgment and professionalism." The Police Commissioner ultimately imposed a penalty of 40 vacation days. Despite the subject

¹⁸⁷ The subject officer admitted that when he went to the complainant's home for the purpose of notifying her about the neighbor's arrest, he was aware that she was involved in an intimate relationship with the desk sergeant.

¹⁸⁸ The sergeant claimed that the subject officer instructed him to release the complainant on the desk appearance ticket. There was no indication in the Department paperwork whether this release was improper.

officer's accomplishments, the Commission did not believe that any of these penalties was sufficient.¹⁸⁹

In the most recent incident, at best, the subject officer's failure properly to review his subordinate's work resulted in the dismissal of Driving While Intoxicated charges against an arrestee. More likely, he made an intentional false statement to his subordinate that was used specifically to commence the criminal prosecution of a civilian. Taken together with his prior supervisory failures, the Commission believed that, at minimum, a period of dismissal probation should have been imposed.

The next two cases involved subject officers who failed integrity tests conducted by IAB.¹⁹⁰

In May 2011, the first subject officer issued a factually baseless summons to an IAB undercover officer.¹⁹¹ The subject officer was off-duty near his command when he became involved in an IAB integrity test that was directed at another police officer. An IAB investigator, acting in an undercover capacity, approached that officer and told him that a suspicious male, a second undercover officer, was looking into cars. The subject officer decided to help by questioning the second undercover officer. The second undercover officer was walking back and forth when the subject officer approached him. The subject officer removed a large bottle of alcohol from

¹⁸⁹ In addition to the three cases at issue, the subject officer had a prior disciplinary matter 13 years earlier for which he received a command discipline and forfeited three vacation days for creating a hostile work environment by making ongoing comments of a sexual nature over a period of seven months.

¹⁹⁰ For a definition of an integrity test, *see supra* at p. 22, fn. 53.

¹⁹¹ The Commission reviewed the underlying investigation into this matter as part of its closed IAB case review.

the undercover officer's pocket and threw it on the ground. The subject officer and the other police officer then handcuffed the undercover officer and brought him to the stationhouse, where the subject officer filled out a pedigree sheet stating that he had arrested the undercover officer for Disorderly Conduct. The subject officer issued the undercover officer a summons for having an open container and released him an hour later.

The undercover officer arrested by the subject officer reported to IAB that he had three bottles of alcohol on his person, and that all of the bottles had been sealed. Later, the police officer who was the initial target of the integrity test admitted to IAB that there was no justification for handcuffing or issuing a summons to the undercover officer.

In his official Department interview, the subject officer stated that the arrested undercover officer had been walking back and forth near the stationhouse for ten minutes and looking through a fence at parked cars. When the subject officer approached him, the undercover officer told the subject officer that he was waiting for a friend. The subject officer explained that he tossed the bottle for safety reasons, and patted down the undercover officer because his story did not make sense. The subject officer claimed to have brought the undercover to the stationhouse to conduct an investigation.

The subject officer had been with the Department almost 11 years at the time of the incident. He pled guilty to three specifications of Conduct Prejudicial for: 1) issuing a summons without legal authority, 2) for his falsification of Department records based on the false entries he made on the pedigree sheet and, 3) false

entries on the summons.¹⁹² He also pled guilty to failing to safeguard the bottles of alcohol and failing to make activity log entries. For all five specifications, the subject officer forfeited 15 vacation days.

The Commission disagreed with that penalty. Here, the subject officer issued a baseless summons and held the arrestee for one hour for no lawful reason. His statements during his official Department interview were also troubling. The subject officer stated that he believed one of the undercover's bottles containing vodka was "open because when he turned the cap off, he did not hear a popping sound." He further explained that he patted down the undercover officer because his story did not make sense, which is not a legal justification for a frisk. For creating a summons based on a fictitious violation, the subject officer should have been terminated, or at least placed on dismissal probation.¹⁹³

The next subject officer failed an IAB integrity test in February 2011, which led to the discovery of other misconduct involving administrative and duty failures. In this integrity test, an undercover officer called 911 to report drug use and drug sales from a vehicle located in the vicinity of a specific address. The subject officer and his partner responded to the location and observed a different undercover officer, who was merely sitting in a car. The subject officer and his partner searched, handcuffed, and transported this undercover officer to the stationhouse where he was issued a Disorderly Conduct summons and released. Specifically, the

¹⁹² It was not clear to the Commission why the subject officer was not charged with making a false official statement or perjury as he signed the summons under penalty of perjury.

¹⁹³ This recommendation is consistent with recommendations made by the Commission in past reports. See *Sixteenth Annual Report* at pp. 69-72; *Fifteenth Annual Report* at p. 71; and *Thirteenth Annual Report* at p. 20.

Disorderly Conduct alleged was “obstructing vehicular or pedestrian traffic” and “congregating with other persons in a public place and refuses to comply with a lawful order of the police.” A video of the integrity test showed that the undercover officer did not engage in any conduct that would qualify as disorderly, nor did he congregate with others or obstruct traffic.

As part of the investigation, IAB also reviewed one year of summonses issued by the subject officer. The subject officer failed to conduct license, identification, and/or warrant checks for 49 people to whom he issued criminal court summonses.

During his first official Department interview, the subject officer explained that on the day of the incident he wrote five or six summonses and confused the facts of the undercover officer’s arrest with one of the other arrests from that day. IAB, thereafter, pulled those summonses, and determined that none of the fact patterns reflected what had occurred during the integrity test. Thus, his statements to IAB were false. During his second official Department interview, the subject officer reviewed the summonses he had issued and could not identify any that he would have confused with the facts of the integrity test. He was not charged with making false statements relating to the official Department interviews.

At the time of the misconduct, the subject officer had been with the Department for 17 years. He pled guilty to Conduct Prejudicial for: 1) his falsification of Department records by issuing a summons to the undercover officer, and 2) issuing a summons without having the requisite legal authority. He was also charged with: 1) failure to conduct license, identification, and warrant checks for

49 individuals; 2) failure to maintain an activity log; and 3) failure to write legible summonses. He forfeited 25 vacation days.

The Commission did not believe that the penalty was adequate. In the Department paperwork, the Assistant Advocate cited a case in which a 5-year member of the service, with no prior disciplinary history, forfeited 30 vacation days and was placed on dismissal probation for writing a Disorderly Conduct summons to an undercover officer, and for making false entries in his activity log. It was unclear why, after citing this case, DAO recommended five fewer vacation days in this case. Although he had no formal disciplinary history, the subject officer issued a false and baseless summons, and then tried to explain his misconduct in an official Department interview by falsely citing confusion. Moreover, the subject officer appeared to have committed other misconduct on 49 other occasions. The Commission believed that the subject officer should have been terminated, or at least placed on dismissal probation.

The final subject officer also issued a summons containing a false narrative and signed two false affidavits under penalty of perjury.¹⁹⁴ At the time, she had been with the Department for three years and had no disciplinary history. In June 2011, the subject officer and an 18-year-old auxiliary officer patronized a bar to test whether the establishment would serve the underage auxiliary officer alcohol.¹⁹⁵ Later that same day, at the stationhouse, the auxiliary officer filled out an affidavit

¹⁹⁴ The Commission reviewed this investigation in connection with its project regarding the Department's false statement policy. *See supra* at p. 69.

¹⁹⁵ Auxiliary officers are citizens who volunteer to help their local precincts by performing patrol while in uniform so they can report conditions that require attention by the police. They are trained and equipped by the Department and are not supposed to make arrests or perform hazardous duties.

stating that he ordered two beers at the bar. The subject officer reviewed that affidavit, signed off on it, and issued a summons in which she stated that the bar sold alcohol to a minor. Twenty days later, the subject officer signed an affidavit, under penalty of perjury, in support of a closing order for the bar. In that affidavit, she attested that she observed the auxiliary officer purchase an alcoholic beverage at the establishment.

Video footage of the undercover operation produced by the bar contradicted both affidavits. The video revealed that it was actually the subject officer who ordered the drinks from the bartender, not the auxiliary officer. In fact, the auxiliary officer was not in the video, presumably in the restroom, at the time. After the subject officer purchased the alcohol, she and the auxiliary officer sat down at a table, pretended to sip their drinks, and then left the locale. The subject officer was shown the video after being notified by the State Liquor Authority that there was a problem with the affidavit. At that time, she admitted that she made a mistake. The case against the bar was ultimately dismissed.

During her mitigation hearing, the subject officer explained that she believed the grounds for issuing the summons to the bar existed because the bouncer allowed the auxiliary officer to enter the locale without checking for identification.¹⁹⁶ Additionally, the subject officer explained that on the day of the operation, she investigated other locations before she returned to the command, and felt “rushed” to sign the affidavit, which caused her to make a mistake.

¹⁹⁶ See *supra* at p. 38, fn. 86 for a description of a mitigation hearing.

The Trial Commissioner found specifically that there was “no question that Respondent signed an affidavit containing materially false statements.” The subject officer pled guilty to presenting a written instrument for filing while “knowing” that the instrument contained false information and making false entries in Department records. She was put on dismissal probation, forfeited 30 vacation days, and was suspended for 10 days.

The Commission disagreed with that penalty. The subject officer made false statements that could have resulted in the closure of a business. She then claimed to have done so by mistake. She did not admit to these falsehoods until she was confronted with video evidence. As correctly noted by the Trial Commissioner, the subject officer’s “conduct damaged her own credibility but it also damaged the credibility of every officer in the Department. It also set a horrendous example for the underage auxiliary officer she was working with.”¹⁹⁷ The Commission believed that the subject officer should have been terminated because her conduct amounted to perjury.

2. False Unofficial Statements

The Commission reviewed 67 disciplinary cases that involved false unofficial statements and categorized them as follows:¹⁹⁸

¹⁹⁷ The Auxiliary program refused to terminate the auxiliary officer for his misconduct since the Department did not terminate the subject officer.

¹⁹⁸ *See supra* at p. 105, fn. 173.

<i>Context of False Unofficial Statements [67]</i>	<i>Charges Filed</i>	<i>Guilty and Separated from the Department</i>	<i>Guilty and Not Separated from the Department</i>	<i>Not Guilty or Charges Dismissed Prior to Trial</i>
False Entries in Department Records [34]	0	2	32	0
False Statements to an Investigative Body [12]	1	1	10	0
Fraud [6]	0	1	5	0
Other¹⁹⁹ [15]	0	0	15	0

The Commission disagreed with the penalties imposed in 4 out of the 67 cases that it reviewed, one involving the completion of false police reports, two regarding false statements to members of law enforcement, and the final one involving false statements to an insurance provider. The Commission believed that in all four cases, the subject officers' conduct was so severe that separation from the Department was the only appropriate penalty.

2.1 False Entries in Department Records

In the only case in this category, the false statements originated with a car accident in which the subject officer was involved while on-duty in May 2012. At the time, he was a lieutenant with 14 years of experience and two prior disciplinary cases.²⁰⁰ The subject officer was the passenger in a marked police vehicle when he

¹⁹⁹ This category included false statements made to a firearms salesperson, an insurance provider; employees of Canadian customs, employees of a movie theater, and Department personnel, including investigators and surgeons from the Medical Division.

²⁰⁰ One month prior to the incident in this case, the subject officer forfeited 25 vacation days to cover two cases filed the year before. In one, he engaged in an off-duty altercation and failed to request the response of a patrol supervisor. In the second, he failed to conduct a proper investigation at the scene of an alleged child abuse incident and failed to make entries in his activity log. He had also received a command discipline and forfeited six vacation days four years earlier for entering

observed an assault in progress. The police officer driving the vehicle immediately stopped the car, put it in reverse, and backed into a minivan driven by the complainant. The minivan was at a complete stop when the police officer hit it. The police officer got out of the car and apologized to the complainant, who happened to be a high-ranking member of the military. The complainant's wife and four other passengers in the minivan witnessed the accident.

The subject officer did not speak to any of the witnesses in the minivan, and did not speak with his own driver about the accident. Nonetheless, he prepared the Police Accident Report ("PAR") and the Accident Report-Police Department Vehicle ("PDV"). He made numerous false statements in both reports. On the PAR, the subject officer wrote that the minivan driver stated that he was distracted by the fight and unable to stop in time and that he had rear-ended the Department vehicle. The subject officer also checked "No" in response to questions asking whether the Department car operator's actions contributed to the accident and whether the Department car operator was at fault. In the "Name of Witness" section, he put "N/A." On the PDV form, the subject officer again wrote that the minivan operator stated that he was distracted by the fight and unable to stop in time, and drew a line through the section "Names of all Involved."

The complainant brought these false statements to the Department's attention after he received a copy of the PAR. He became concerned because, as a military pilot, he was required to report all accidents for which he was at fault, and these reports, as completed, impacted negatively on his credibility. IAB interviewed

the female police officers' locker room without legitimate cause.

all of the minivan passengers, and their statements contradicted the information in the accident reports.

In his official Department interview, the subject officer explained that he did not include the passengers from the van as witnesses on the PAR form because “[t]hey are not witnesses if they’re in the van . . . because they’re involved in the accident.” The subject officer also made other statements that were contradicted by the witnesses at the scene. For example, he maintained that he spoke with the complainant, who told him that he saw the fight and could not stop the car in time, and that the department car did not contribute to the accident. The subject officer stated that he interviewed his own driver and every occupant of the minivan about the accident, and that based on his investigation, the complainant was at fault.

Regarding the false statements, the subject officer later pled guilty to two specifications of engaging in Conduct Prejudicial, one for the inaccurate statements on the PAR and the other for the inaccurate statements on the PDV form. The Department also charged him with 1) wrongfully preparing those reports himself, 2) failing to obtain witness information, 3) failing to promptly report the accident to the Department, 4) failing to investigate the assault, and 5) failing to make complete activity log entries. He was placed on dismissal probation and forfeited 45 vacation days.

The Commission believed that this penalty was insufficient. The subject officer apparently tried to cover up an accident caused by his driver by blaming the complainant, which could have resulted in discipline against the complainant by his

military employer. In the process, he manufactured a witness statement. The subject officer continued to maintain that the complainant was at fault for the accident during his official Department interview.²⁰¹ His explanation as to why he did not include witnesses from the van in the accident report was either disingenuous or revealed that, as a lieutenant with 14 years of service in the Department, he lacked the basic knowledge necessary to perform his duties. In addition, his commanding officer rated him a 5 out of 10 and described him as a “marginal employee” who “puts minimal effort into motivating his subordinates as well as addressing crime conditions, patterns, and quality of life issues during his tour.” The Commission believed that this subject officer should have been terminated.

2.2 False Statements Made to an Investigative Body

In this category, the Commission disagreed with the penalties in two cases. Both involved subject officers who caused car accidents and then impeded the investigations of those accidents by leaving the scene and by failing to be forthcoming with members of law enforcement. The Commission believed that both subject officers should have been terminated.

In October 2013, the first subject officer and his girlfriend were on their way home from a night out at a bar when, at approximately 3:00 a.m., the subject officer drove his car into two parked vehicles. Instead of remaining at the scene, the subject officer and his girlfriend called a taxicab and left his damaged car behind.

²⁰¹ The Department did not bring any specifications against the subject officer for his statements during his official Department interview. The paperwork reviewed by the Commission failed to reveal any apparent reason for the lack of false statement charges.

When other officers responded to the accident, they were unaware that the driver of the car was a member of the service.²⁰² Since the subject officer was not present, the responding officers could not, of course, administer any tests or make any observations to determine whether anyone had been driving while under the influence of alcohol.

The following day, the subject officer located and picked up his towed car. He also called his union delegate and the Trustee to speak to them about the accident. They both advised the subject officer to make the proper notifications to his command.²⁰³ According to the Trustee, the subject officer stated that he left the scene because he was concerned with the health of his pregnant girlfriend, and took the taxicab to his mother's residence.

Two days after the accident, the subject officer appeared at the stationhouse and personally reported his involvement in the accident. He explained to the investigators that he had to leave the scene because he had to take his pregnant girlfriend to the hospital.

In his official Department interview, conducted in January 2014, the subject officer admitted that on the night of the accident he had been in a bar for several hours prior to the incident. He denied drinking any alcoholic beverages. The subject officer stated that on his way home, an unknown driver cut him off, causing him to swerve and collide with the parked cars. His girlfriend corroborated this

²⁰² An independent witness to the accident confirmed that the subject officer was the driver and tried to drive away from the scene, but could not due to the damage to his car. The witness tried to prevent the driver from leaving the scene, but was unable to do so.

²⁰³ Both the delegate and the Trustee failed to notify IAB about the calls they received from the subject officer. As a result, they were issued command disciplines.

version of events. The subject officer also admitted that neither he nor his girlfriend was injured, and that he did not call 911. He explained that he did not make notifications about the accident because he was upset and his girlfriend became very frantic and wanted to go home. He observed a passing police van in the far distance, but claimed he was unable to get its attention, so he left his car behind and took a taxicab to his mother's house. He stated that he attempted to call the command to notify them of the accident, but no one answered.

The subject officer was charged with four specifications of engaging in Conduct Prejudicial by: 1) impeding an investigation two days after the accident by giving conflicting statements regarding his failure to remain at the scene; 2) becoming involved in a motor vehicle accident and failing to remain at the scene and report the accident; 3) leaving his vehicle at the scene of the accident; and 4) failing to locate his metro-card. At the time of the incident, he was a 13-year veteran of the Department with no disciplinary history. He was placed on dismissal probation, penalized with 30 suspension days, and required to forfeit ten vacation days.

The second subject officer was also involved in a car accident involving a parked car. However, this accident occurred after she admittedly had several drinks at a bar in April 2013. The impact from the crash caused the subject officer's car to flip over. The subject officer and her friend, who was a passenger in the car, crawled out of the car's windows and fled the scene. When NYPD officers arrived, they found the subject officer's identification card, shield, and a 9-millimeter magazine in the

car. They located the subject officer at her home and took her to a hospital. Officers tried to question her about the accident, but the subject officer became evasive in her answers and would not say who drove the vehicle. As a result, the NYPD conducted a criminal investigation.

In June 2013, the subject officer was criminally charged with Criminal Mischief in the Fourth Degree, Driving While Intoxicated, Driving While Ability Impaired, and Leaving the Scene of a Motor Vehicle Accident. In February 2014, she pled guilty to Driving While Intoxicated, paid a \$500 fine, attended an anti-drunk driving program, had her driver's license revoked for six months, and was given a one-year conditional discharge. The subject officer completed the Department's alcohol treatment program in July 2013. In her official Department interview, she seemed forthcoming about the facts preceding the accident; she admitted she was so drunk she did not remember what happened after she left the bar.

The Department charged the subject officer with being unfit for duty and with five additional violations relating to the accident: 1) wrongfully operating a motor vehicle while impaired; 2) wrongfully operating a motor vehicle while under the influence of an intoxicant; 3) leaving the scene of a car accident; 4) causing property damage to a parked vehicle; and 5) failing to safeguard her shield, identification card, and a loaded 9-millimeter magazine. She was also charged with wrongfully impeding a Department investigation by being evasive about who was driving on the day of the accident.

At the time of the accident, the subject officer had been with the Department less than three years, and had no disciplinary history. As a penalty, she was placed

on dismissal probation and suspended for 55 days.²⁰⁴

The Commission disagreed with the penalties in both cases. These subject officers caused car accidents and fled the scenes without calling police, in violation of the law. Those facts alone warranted penalties of dismissal probation and forfeiture of vacation days. In the second case, the subject officer also left behind her Department identification card, shield, and a magazine to a firearm, all of which could have been obtained and used unlawfully. Additionally, both subject officers pled guilty to impeding investigations by making statements that were either not true or deliberately evasive. This lack of cooperation with law enforcement, which caused additional investigation into these accidents, distinguishes these cases from cases that did not involve such additional misconduct, and therefore, warranted termination.

2.3 Other False Statements

The final case in the false statement category where the Commission disagreed with the imposed penalty also stemmed from the subject officer's involvement in an off-duty car accident with a parked vehicle.²⁰⁵ In November 2011, the subject officer, a five-year veteran with no disciplinary history, underwent a cosmetic medical procedure. She had been accompanied to her doctor's office by a friend, as she was not medically permitted to be alone for 24 hours following the surgery. Her doctor's office arranged for her to be driven home. The doctor also

²⁰⁴ She also agreed to submit to quarterly breath testing and to continue to cooperate with any counseling the Department deemed necessary.

²⁰⁵ The Commission reviewed the underlying investigation into this incident to obtain further information about what transpired.

provided her with a prescription for Oxycodone. Upon arriving home, the subject officer received a telephone call from her 10-year-old daughter requesting to be picked up. The subject officer, despite the presence of her friend, decided to drive to pick up her child. The friend accompanied her. According to the subject officer's testimony, she might have taken some of the Oxycodone pills prior to leaving home, but she felt able to drive. However, while en route, the subject officer fell asleep and was awakened by her friend yelling that she had just hit a parked car. At that point, she allowed her friend to drive, and returned home.

Once home, she called her insurance company and falsely reported that she had driven to get some food and parked her car, and that while she was away from the vehicle, an unknown driver had hit her car. In her later testimony before the Trial Commissioner, the subject officer explained that she had been under the influence of either the Oxycodone or the drugs used by her doctor, and this caused her to have "an altered state of mind" when she called the insurance company. She added that after the effects of the drugs subsided, she realized she had been driving and withdrew her insurance claim. However, when questioned about whether she only withdrew her claim after learning that her friend had called both 911 and IAB to report her false claim, the subject officer was evasive and stated, "Whatever order it happened in, I am not aware of."

The subject officer pled guilty to three specifications for Conduct Prejudicial for: 1) making false and misleading statements to her insurance company; 2) leaving the scene of an accident and not reporting the accident to the Department;

and 3) operating a motor vehicle while her ability was impaired by the use of pain medication. After a mitigation hearing where the subject officer sought a less severe penalty than the period of dismissal probation, 30 suspension days, and 15 vacation days sought by DAO, the Trial Commissioner issued a decision agreeing with the suggested penalty. The Police Commissioner approved this penalty.

Despite the Trial Commissioner's decision, it was for the reasons stated by the Trial Commissioner that the Commission believed termination was the appropriate penalty for this subject officer. Although her impairment was caused by pain medication, the effects of which she was unaware, she was admittedly on notice from the doctor that she should not drive a car, and did so anyway. After hitting the parked car, she did not remain at the scene and call the Department. She did not even leave a note for the owner of the other car. As noted by the Trial Commissioner, "these actions reflect poorly on her personal integrity and demonstrate an unwillingness to take responsibility for her mistakes." She then concocted a story for her insurance company so they would pay for the damages to her automobile. The Trial Commissioner noted that her invention of this plausible, detailed story demonstrated that she was aware of what she was doing. Finally, when cross-examined about her awareness of her friend's calls to 911 and IAB, and whether that knowledge had caused her to call the insurance company to recant her original claim, the subject officer falsely stated that she was not aware of the order in which these events occurred. The Trial Commissioner stated, "This disingenuous answer leads to the inference that Respondent only withdrew her false claim

because she knew that [her friend] had reported her.” He went on to explain that the subject officer’s testimony that she withdrew her claim after she realized the truth, demonstrated that the subject officer was “still unwilling to acknowledge that the false statements she made to her insurance carrier were knowingly and intentionally made.”

In fact, what actually transpired was even more egregious than the evidence presented in the mitigation hearing. In her call to the insurance company on the night of the accident, the subject officer admitted to being under the influence of pain medication and reported that her friend had driven and parked the car. Later that night, the subject officer pleaded with her friend not to tell anyone that she had been driving. Two days later, the friend went to the hospital due to injuries sustained in the car accident. She sent text messages to the subject officer about these injuries. She continued to text the subject officer the following day, as she wanted the subject officer to pay for her hospital bills. The subject officer did not respond to any of the texts. Four days after the accident, the friend called the insurance company and told them about the subject officer’s lies. The next day, the friend alerted the subject officer that she was going to report her to IAB. Three days later, the insurance company contacted the subject officer about her friend’s claims. At that time, the subject officer shifted responsibility to her friend and told the insurance company that her friend had given her the version of events that she gave to the insurance company on the night of the accident, and claimed she did not remember what happened.

This entire incident demonstrated that the subject officer was not prepared to tell the truth about her role until she had no choice but to do so. Even then, she continued to claim that she was unaware of what transpired and to place responsibility with her friend. Based on all the facts, the Commission did not believe this individual is fit to be a police officer.

3. Conclusion

The Commission continues to monitor closely allegations of making false statements because the loss of police credibility contributes to the loss of public trust, not only in the Department, but also in the criminal justice system. An effective disciplinary system must adequately penalize members who make false statements, to deter such conduct in the future. The Department must divest itself of those offenders whose conduct is sufficiently serious to raise questions as to their credibility as law enforcement officers.

G. Firearms

The Patrol Guide recognizes that “[t]he power to carry and use firearms in the course of public service is an awesome responsibility.”²⁰⁶ It further admonishes that firearms should only be used as a last resort and only for the protection of life. The Patrol Guide section addressing the use of firearms provides guidelines for the on-duty use of these weapons. However, members of the service, in most instances, regularly have their firearms with them while they are off-duty. In fact, another provision of the Patrol Guide requires that members of the service be armed at all

²⁰⁶ P.G. §203-12 (Deadly Physical Force).

times while in New York City, except in limited, delineated circumstances.²⁰⁷

Unfortunately, there are some officers who misuse their firearms, either by unjustifiably displaying those firearms, usually in an effort to intimidate or menace another person, or in more rare circumstances, by actually discharging their firearms. In these cases, either the discharge itself could be unjustified, or the discharge could be consistent with Department guidelines, but the officer could fail promptly to report the discharge in violation of Department policy. Also included in this category is the failure of a member of the service to safeguard either his or her service or off-duty firearm. The failure to safeguard a firearm constitutes serious misconduct because, although usually not intentional, it can result in firearms being found by children or stolen by people who have no firearms training or have criminal intentions.

Given that the possible consequences of the misuse of a firearm include death and serious bodily injury or impairment, the Commission believes that it is imperative that severe penalties follow such misconduct. The Commission has advocated that in addition to the forfeiture of vacation days or a suspension period, subject officers who unjustifiably display a firearm be placed, at a minimum, on dismissal probation, unless exceptional circumstances support a less serious penalty.²⁰⁸ In most instances involving the unjustified discharge of a firearm or the failure to promptly report the discharge of a firearm, the Commission believes that

²⁰⁷ P.G. §§204-08(1) and 204-08(2) (Firearms-General Regulations).

²⁰⁸ See *Tenth Annual Report of the Commission* (February 2008) at pp. 26-27; *Eleventh Annual Report of the Commission* at pp. 26 and 29; *Twelfth Annual Report of the Commission (Twelfth Annual Report)* (February 2010) at pp. 31, 33-34; *Thirteenth Annual Report* at pp. 13-14; *Fourteenth Annual Report* at pp. 23 and 25; *Fifteenth Annual Report* at pp. 46 and 51; and *Sixteenth Annual Report* at p. 80.

termination is the appropriate penalty.²⁰⁹ The Department usually penalizes subject officers with the forfeiture of approximately 20 vacation days for their failure to safeguard a firearm. The Commission believes this penalty is appropriate.

The Commission reviewed 26 cases involving Firearm-Related misconduct committed by uniformed members of the service. Two of these cases involved the unjustified display of a firearm, four involved a discharge, one involved the improper possession of a modified firearm, and eighteen involved the officer's failure to safeguard the firearm.²¹⁰ The Commission disagreed with the penalties imposed in two of these cases described in more detail below.

The first case involved a display of a firearm. The subject officer had been with the Department for six years and had no disciplinary history. Prior to the incident, he had hired a general contractor to renovate a property he owned. The contractor had sub-contracted some of the renovations to another individual. In January 2013, there was a dispute between the original contractor and the subject officer regarding who was responsible for paying the sub-contractor. Believing that they would not be paid, the sub-contractor and general contractor went to the property to retrieve their tools. The subject officer appeared, and according to both civilians, he was irate, used profanity, and physically bumped the general contractor with his shoulder causing the sub-contractor to intervene. The subject officer then threatened multiple times to shoot the men and withdrew his firearm from his

²⁰⁹ See the Commission's report *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998) at p. 8.

²¹⁰ Often, when a firearm was accidentally discharged, there was a charge for failing to safeguard the firearm as well as a charge regarding the discharge. In these cases, the Commission counted the case in the discharge category, as it considered this type of misconduct more serious.

holster. After he was separated from the general contractor, the subject officer put away his firearm but threatened to go to the contractor's house. The two contractors drove away and witnessed the subject officer pass them and drive to the contractor's residence.

The contractor called 911 to report that the officer had threatened him with a firearm. Although the subject officer left the location before police arrived, he was later arrested and charged with Assault in the Third Degree and Menacing in the Second Degree.

In his official Department interview, the subject officer denied engaging in any altercation or displaying his firearm, and the criminal case against him was resolved when he pled guilty to Disorderly Conduct. He received a conditional discharge that required him to complete two days of community service and attend an anger management course.²¹¹

In the administrative proceeding, the subject officer pled guilty to:

1) Conduct Prejudicial due to his involvement in a verbal and physical dispute with both men, during which time he displayed his firearm; 2) failing to report his involvement in an off-duty incident to a patrol supervisor; 3) failing to remain at the scene of an off-duty incident when he was able to do so without risk to his personal safety; and 4) carrying an unauthorized holster. For his actions, the subject officer forfeited the 30 days he had been suspended immediately following the incident.

²¹¹ Once the subject officer met those conditions, his guilty plea was withdrawn and his case was adjourned in contemplation of dismissal. A six-month order of protection was issued against him.

The Commission believed dismissal probation was appropriate in addition to the forfeiture of the pre-trial suspension days. This officer drew his firearm while threatening to shoot two men over a monetary dispute, in a situation that clearly did not involve the protection of life. He then continued the argument by driving to the complainant's home. Based on his behavior, the Commission questioned whether this officer possesses the necessary temperament to handle the duties and stresses of a police officer, and therefore believed his behavior should have been monitored.

In the second case, the subject officer wrongfully discharged a firearm. At the time, he was an eight-year veteran with a minor, prior disciplinary matter.²¹² The subject officer accidentally discharged his off-duty firearm in his bedroom in August or September 2012. The bullet went through his mattress and lodged in the beam of his bedroom wall. No one was injured as a result of the discharge. If this had been all that occurred, the Commission would not take issue with the imposed penalty of the forfeiture of 25 vacation days.

However, the subject officer failed to report the discharge of his firearm until November 2012. The impetus that led him to make the report was fear that his parents would notify the Department about the accidental discharge after an argument. Immediately after the subject officer made the report, he was placed on modified assignment and his firearms were removed. The Department recovered 14 firearms, four of which were illegal to possess in New York City.²¹³ In his official

²¹² The subject officer had received a command discipline a year prior to the accidental discharge for having an incomplete activity log while testifying at the Traffic Violations Bureau, and he forfeited three vacation days.

²¹³ The subject officer was not criminally prosecuted for possession of these weapons, at least partly because he forfeited his rights to ownership of those firearms.

Department interview, the subject officer stated he did not realize that possession of those four firearms was prohibited.

The subject officer was charged with: 1) failing to properly safeguard his firearm when he accidentally discharged it; 2) failing to timely report an accidental firearm discharge to the Department; and 3) wrongfully possessing four firearms in violation of the New York City Administrative Code. In recommending the forfeiture of 25 vacation days, DAO cited four prior disciplinary cases as precedent. In three of the four prior cases, there did not appear to be a charge for failing to report the firearm discharge, only for the accidental discharge.²¹⁴

The Commission previously recommended that in general, officers who discharge their weapons, accidentally or otherwise, should be terminated if they fail to report that discharge to the Department.²¹⁵ Prompt reporting of a discharge is necessary for a thorough and adequate investigation into the propriety of the discharge. Delaying or failing to report the discharge can result in the loss of physical evidence and witness statements. This may then lead to unreliable conclusions about how the discharge occurred and whether anyone was injured. As previously noted by the Commission, the failure to report a discharge might also affect or taint the investigation of subsequent discharges.²¹⁶ Because this subject officer failed promptly to notify the Department about the discharge, and probably

²¹⁴ In the fourth case, the officer was injured when he accidentally shot himself and was driven to the hospital by his father. It is possible the specific circumstances factored into the 20-day penalty imposed in that case.

²¹⁵ *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998) at pp. 8, 27-28. See also *Seventh Annual Report* at p. 91; and *Twelfth Annual Report* at p. 32.

²¹⁶ *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998) at p. 28.

never would have notified the Department but for the argument with his parents, the Commission believed that he should have been terminated.

The Commission continues to evaluate the penalties imposed in cases of firearm-related misconduct due to the potential consequences of this behavior.

H. Insubordination

The Department is a paramilitary organization and, as such, requires that all subordinates obey lawful orders and behave in a courteous manner to their supervisors. The failure to do so risks significant penalties, often including dismissal probation. In almost all cases, the Commission does not comment on the severity of these penalties as it recognizes the Police Commissioner's need to have discretion to maintain control over the Department. However, in the following case, the penalty appeared disproportionate to the subject officer's misconduct, given what the Commission viewed as extenuating circumstances.

The subject officer, a 16-year veteran with no disciplinary history, usually worked the day tour at her precinct. She was a single mother of a young daughter with no immediate family in New York. She was notified at work one morning in June 2013 that she was being transferred to a new detail where her tour hours would be different, and that she was expected to report there immediately. The subject officer explained to her superiors that she would work the detail but would not be able to do so immediately because of child care issues. Various conversations ensued between the commanding officer of the precinct, the ICO,²¹⁷ the roll call

²¹⁷ 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 P.G. §202-15 for the responsibilities of ICOs. See also the Commission's reports: *The New York City Police Department's Non-IAB Proactive Integrity Programs* (December

supervisor, the subject officer's union delegate, and the subject officer. At the end of these conversations, the commanding officer ordered the subject officer to report to the detail and informed her that if she did not go, she would be suspended for failing to comply with a lawful order. The subject officer explained that she understood but still refused to go.

All parties agreed that the subject officer was respectful during all of these interactions and was in no way discourteous to her superiors. The ICO also shared with investigators that, under ordinary circumstances, a member of the service is given 24 hours' notice prior to a transfer. During her official Department interview, the subject officer explained that she needed a couple of days to teach her daughter how to get to and from school on her own, and would have reported to the assignment as soon as she put these provisions in place. She further stated that she understood why she was suspended but, considering that these were non-emergency circumstances and that officers were regularly given accommodations, she did not understand why this immediate transfer was necessary.

The subject officer pled guilty to failing to comply with a lawful order to report to her detail. She forfeited 30 pre-trial suspension days, including all time, pay, and benefits, and also forfeited all time and benefits for an additional 122-day suspension period. She was also placed on dismissal probation.

The Commission recognizes the gravity of officers failing to comply with orders given by their superiors, and also recognizes that the Department must have

2001) and *The New York City Police Department: The Role and Utilization of the Integrity Control Officer* (December 1996).

the ability to order officers to respond to critical and needed assignments. However, this penalty was much harsher than the penalties cited by DAO as precedent in which there appeared to be no extenuating circumstances. Those cases involved officers with no prior disciplinary history who refused orders from superiors to: process two arrests (penalty: forfeited 30 pre-trial suspension days and an additional 56 suspension days); perform a prisoner transport (penalty: forfeited 33 pre-trial suspension days); and disobeyed court notifications repeatedly (penalty: forfeited 30 vacation days and placed on dismissal probation.) In the Commission's view, these cases did not support the penalty imposed here, but instead demonstrated how unfairly disproportionate it was.

It was also of concern to the Commission that DAO used the "poor" rating of the subject officer by the commanding officer whom the subject officer disobeyed as an important factor in determining the penalty. The subject officer's failure to comply with her rater's order and subsequent suspension were noted in the rater's review commentary. When a subject officer's charges directly relate to negative interactions with the superior who provides that officer's evaluations, there should be some consideration of the circumstances that may have led to the low rating.²¹⁸

I. Profit Motivated Misconduct

The final two cases where the Commission disagreed with the penalty that was imposed involved off-duty misconduct by two subject officers who were

²¹⁸ This was notable because, with a speed that is rare in the disciplinary process, the same commanding officer immediately sought charges and specifications against the subject officer. Those charges were filed on the same day she failed to comply with his order.

involved in the same incident that involved conduct that could be described as either off-duty employment or the acceptance of a gratuity.

The two subject officers were 14 and 16-year veterans of the Department at the time of the misconduct.²¹⁹ A business owner contacted one of the subject officers in February 2010 and asked him to attend a company board meeting where an employee would most likely be voted off the board. The business owner, knowing that there were contentious relationships between many of the planned attendees, wanted the officer present to facilitate a police response if one was necessary. He contacted the subject officer to serve this function because he had known the officer for many years due to his participation in the local Precinct Community Council,²²⁰ donations to police charities, and activities in the community in general. The subject officer contacted the second officer about this request and both attended the meeting, which lasted several hours, while off-duty. After the meeting, both officers were presented with and accepted envelopes containing \$100. Neither subject officer notified his commanding officer about this incident.²²¹

The first subject officer, who spoke with the business owner directly, was charged with one count of engaging in Conduct Prejudicial in that he accepted an envelope from the business owner and thereafter learned that it contained a sum of United States currency but failed to notify his commanding officer, as required. The

²¹⁹ The Commission reviewed the underlying investigation of these officers to obtain further information before evaluating the imposed penalties.

²²⁰ 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.

²²¹ The Department investigation began when an attendee notified the Department that there had been a police presence at the meeting.

second subject officer was charged with improperly accepting a monetary gift for performing a duty as a result of or in conjunction with his duty as a public servant. This charge was based on his accepting an envelope containing \$100 for performing a security-related function for a private business organization within the precinct he worked, and failing to notify his commanding officer as required. Both subject officers pled guilty and forfeited ten vacation days.

The Commission believed that the forfeiture of ten vacation days was grossly insufficient. The acceptance of a monetary payment in exchange for a prompt police response, even if that payment was unexpected, and the later failure to report the payment to proper NYPD personnel, does not just create the appearance of impropriety, as stated by the Assistant Advocate, but is an impropriety that demands more serious punishment. This type of misconduct raises the ugly specter of police corruption from the past, when accepting envelopes of cash from local business owners was common, when cash was sometimes even demanded in exchange for police services, and when such conduct was often over-looked by the Department. The Department must take a stronger stand on this kind of behavior to ensure that a clear message is sent that this conduct will not be tolerated. At minimum, a period of dismissal probation would have been appropriate, in addition to the forfeiture of vacation days.

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APPENDIX B

DISCIPLINARY CASES OCTOBER 2013 – SEPTEMBER 2014

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DP - Dismissal Probation
 LOI - Letter of Instruction
 NG - Not Guilty
 SR - Service Retirement
 S - Days Served on Suspension

STC - Sent to Command for Discipline
 V - Forfeiture of Vacation Days
 VR - Vested Retirement
 W&A - Warned and Admonished

*- Additional Charges Levied

†- Indicates a charge under the Department's false statement provision, P.G. § 203-08

Administrative Failure

Case #	Charges & Specs	Penalties	Additional Cases
1	Absent from assignment.	SR	False Statement #17 Insubordination #5
2	Absent from assignment.*	10V	
3	Absent from assignment.*	10V	
4	Absent from NYC or resident counties without permission from the Medical Division.	W&A	
5	Absent from NYC or the resident counties while on sick report.	Charges Filed	
6	Absent from residence while on sick report.	Charges Filed	
7	Absent from residence while on sick report.	10V	
8	Absent from residence while on sick report.*	15V	
9	Absent from residence without permission from the Medical Division.	10V	
10	Absent without leave.*	25V	
11	Absent without leave.*	Charges Filed	
12	Absent without leave.*	10V	
13	Asleep on duty.	10V	
14	Asleep on duty.	Charges Filed	
15	Asleep on duty.	15V	
16	Computer misuse.	31S	Off-Duty #37
17	Computer misuse.	DP, 30S	Domestic Violence #32
18	Computer misuse. (See Appendix A, pp. 74-75)	10V	
19	Computer misuse.	30S	Domestic Violence #35
20	Computer misuse.	Charges Filed	
21	Computer misuse.*	10V	

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22	Computer misuse.*	5V	
23	Discourteous to subordinate.*	NG	False Statement #52
24	Duplicated a Department parking permit.*	21S	
25	Duplicated and altered a Department parking permit.	4V, 21S	Off-Duty #31
26	Failed to account for damage to Department auto.*	STC	
27	Failed to ensure proper assignments of personnel.	STC	
28	Failed to ensure property was accounted for at the command.	30S	Duty Failure #63
29	Failed to follow aided case procedures.* (See Appendix A, pp. 75-78)	335S	
30	Failed to follow attendance procedures.*	10V	
31	Failed to follow Department tow procedures.	STC	
32	Failed to follow Department tow procedures.*	25V	
33	Failed to follow Department tow procedures.*	25V	
34	Failed to follow Department tow procedures.*	STC	
35	Failed to follow Department tow procedures.*	STC	
36	Failed to follow Department tow procedures.*	STC	
37	Failed to follow Department tow procedures.*	STC	
38	Failed to follow Department tow procedures.*	STC	
39	Failed to follow Department tow procedures.*	DP, 29V, 31S	DWI-Unfit for Duty #11
40	Failed to follow leave of absence guidelines.*	10V	
41	Failed to follow undercover operation policies.*	15V	
42	Failed to maintain confidentiality of photos taken while on-duty.*	15V	

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43	Failed to maintain control of Department radio.	10V	
44	Failed to make proper memobook entries.	30V	
45	Failed to make proper memobook entries.	1V	
46	Failed to make proper memobook entries.	Reprimand	
47	Failed to make proper memobook entries.	Reprimand	
48	Failed to notify command of return to full-duty status.*	Charges Filed	
49	Failed to notify supervisor of an incident.	STC	
50	Failed to report back to command after medical appointment.	Charges Filed	Duty Failure #72 False Statement #44
51	Failed to reside within NYC or one of the resident counties.	15V	
52	Failed to reside within NYC or one of the resident counties.	SR, DP	
53	Failed to reside within NYC or one of the resident counties.	VR, 30S	DWI-Unfit for Duty #9
54	Failed to reside within NYC or one of the resident counties.*	25V	
55	Failed to reside within NYC or one of the resident counties.*	40V	
56	Failed to reside within NYC or one of the resident counties.*	25V	
57	Failed to safeguard Department property.	STC	
58	Failed to safeguard Department property.*	20V	
59	Fraternization with a police recruit.	15V	
60	Improper deployment of personnel.	Charges Dismissed	
61	Personal business on-duty.	30V	
62	Personal Business on-duty.*	15V	
63	Personal business on-duty.*	10V	
64	Physical altercation with another	Charges Filed	

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	member of the service.		
65	Physical altercation with another member of the service.	Charges Filed	
66	Physical altercation with another member of the service.	15V	
67	Threatened another member of the service with a knife.	Charges Filed	
68	Unauthorized leave.*	VR, 30S	
69	Unauthorized radio transmission.*	13V	
70	Unprepared for court.	15V	
71	Unprepared for court.	VR, 30S	
72	Violated pursuit policy.*	35V	

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Domestic Violence

Case #	Charges & Specs	Penalties	Additional Cases
1	Aggravated harassment.*	DP, 20V, 32S	False Statement #5
2	Disregarded order to refrain from contact with estranged spouse.	42S	Domestic Violence #18
3	Endangered the welfare of a child.* (See Appendix A, pp. 81-83)	31S	
4	Endangered the welfare of a child.*	10S	
5	Engaged in a verbal dispute with co-parent.	30S	Duty Failure #76
6	Harassment.*	DP, 30S	
7	Physical altercation with family members.*	10V	
8	Physical altercation with ex-spouse.	50S	Duty Failure #134 Domestic Violence #37, #38
9	Physical altercation with spouse.	Charges Dismissed	
10	Physical altercation with spouse.	Charges Filed	False Statement #66
11	Physical altercation with spouse.	15V	
12	Physical altercation with spouse.	22S	
13	Physical altercation with spouse.	22S	
14	Physical altercation with spouse. (See Appendix A, pp. 87-88)	30S	
15	Physical altercation with spouse.*	30S	
16	Physical altercation with spouse.* (See Appendix A, pp. 79-81)	4V, 31S	
17	Physical altercation with spouse.*	30S	

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18	Physical altercation with spouse.*	42S	Domestic Violence #2
19	Physical altercation with spouse.*	20S	
20	Physical altercation with spouse.*	DP, 10V, 30S	
21	Physical altercation with spouse.*	32S	
22	Physical altercation with spouse.*	31S	
23	Physical altercation with spouse.* (See Appendix A, pp. 83-85)	32S	
24	Physical altercation with spouse.*	10V, 30S	
25	Physical altercation with spouse.* (See Appendix A, pp. 85-87)	20V	
26	Physical altercation with spouse.*	25V	
27	Physical altercation.	20S	
28	Physical altercation.*	DP, 30V, 32S	
29	Physical altercation.*	Charges Filed	DWI-Unfit for Duty #6
30	Physical altercation.*	Charges Filed	
31	Physical altercation.* (See Appendix A, pp. 88-90)	DP, 10V, 30S	
32	Physical altercation.*	DP, 30S	Admin #17
33	Physical altercation.*	31S	
34	Physical altercation.*	10V	
35	Physical altercation.*	30S	Admin #19
36	Threatening phone calls/messages.*	34S	

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37	Violated a temporary restraining order.	50S	Duty Failure #134 Domestic Violence #8, #38
38	Violated a temporary restraining order.	50S	Duty Failure #134 Domestic Violence #8, #37
39	Violated an order of protection.	NG	
40	Violated an order of protection. (See Appendix A, pp. 90-92)	DP, 28V, 32S	

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Duty Failure

Case #	Charges & Specs	Penalties	Additional Cases
1	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	STC	
2	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
3	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
4	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
5	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
6	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
7	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
8	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
9	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	

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10	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
11	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
12	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
13	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
14	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
15	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
16	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
17	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	Charges Filed	
18	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
19	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	25V	Duty Failure #70, #121 Off-Duty #29

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20	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
21	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	20V	Duty Failure #74
22	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
23	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
24	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
25	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
26	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
27	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
28	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	
29	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.	DP, 25V, 5S	

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30	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.*	DP, 25V, 5S	
31	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.*	DP, 30V, 10S	
32	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.*	DP, 25V, 5S	
33	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.*	DP, 40V, 5S	False Statement #10
34	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.*	DP, 25V, 5S	
35	Assisted and/or requested the assistance of other officers to prevent the processing and adjudication of summonses.*	NG	
36	Directed misclassification of a crime report.	15V	
37	Directed misclassification of a crime report.	15V	
38	Directed misclassification of a crime report.* (See Appendix A, pp. 96-98)	15V	
39	Failed to appear in court.	25V	Duty Failure #104
40	Failed to appear in court.	8V	
41	Failed to appear in court.*	15V	
42	Failed to appear in court.*	15V	
43	Failed to appear in court.*	15V	

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44	Failed to appear in court.*	30S	Duty Failure #58
45	Failed to conduct a proper investigation.*	15V	
46	Failed to conduct a proper investigation.*	15V	
47	Failed to conduct a proper investigation.*	15V	
48	Failed to conduct a proper investigation.*	15V	
49	Failed to conduct a proper investigation.*	Reprimand	
50	Failed to conduct a proper investigation.*	NG	
51	Failed to conduct a proper investigation.*	NG	
52	Failed to conduct a proper investigation.*	NG	
53	Failed to conduct a proper investigation.*	NG	
54	Failed to conduct a proper investigation.*	NG	
55	Failed to conduct a proper investigation.* (See Appendix A, pp. 94-96)	15V	
56	Failed to conduct a proper investigation.* (See Appendix A, pp. 94-96)	15V	
57	Failed to conduct a proper investigation.*	10V	
58	Failed to conduct a proper investigation.*	30V	Duty Failure #44
59	Failed to conduct a proper investigation.*	10V	
60	Failed to conduct a proper investigation.*	15V	
61	Failed to conduct a proper investigation.*	5V	
62	Failed to conduct a proper investigation.*	5V	

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63	Failed to conduct a proper investigation.*	30S	Admin #28
64	Failed to conduct a proper investigation.*	STC	
65	Failed to conduct a proper investigation.* (See Appendix A, pp. 98-99)	20V	
66	Failed to conduct a proper investigation.*	12V	
67	Failed to follow Department auto accident procedures.*	5V	
68	Failed to follow Department auto accident procedures.*	15V	
69	Failed to follow Department auto accident procedures.*	VR, 30S	
70	Failed to follow voided arrest procedures.*	25V	Duty Failure #19, #121 Off-Duty #29
71	Failed to investigate a crime report.	STC	
72	Failed to notify IAB.	Charges Filed	Admin #50 False Statement #44
73	Failed to notify IAB.	25V	
74	Failed to notify IAB.	20V	Duty Failure #21
75	Failed to notify IAB.	40V	Duty Failure #127 False Statement #79
76	Failed to notify IAB.*	30S	Domestic Violence #5
77	Failed to notify IAB.*	10V	
78	Failed to notify IAB.*	35V	
79	Failed to notify IAB.*	Charges Filed	
80	Failed to notify IAB.*	15V	
81	Failed to notify IAB.*	5V	

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82	Failed to notify IAB.*	5V	
83	Failed to notify IAB.*	5V	
84	Failed to notify IAB.*	10V	
85	Failed to notify IAB.*	15V	
86	Failed to notify IAB.*	10V	
87	Failed to notify IAB.*	10V	
88	Failed to notify IAB.*	10V	
89	Failed to notify IAB.*	10V	
90	Failed to notify IAB.*	15V	
91	Failed to notify IAB.*	15V	
92	Failed to perform duties.	DP, 30S	Profit Motivated #6
93	Failed to perform duties.*	Charges Filed	
94	Failed to prepare a complaint report.*	15V	
95	Failed to prepare a report.*	15V	
96	Failed to prepare a required police report.	Reprimand	
97	Failed to prepare a required police report.	Reprimand	
98	Failed to prepare a required police report.*	10V	
99	Failed to prepare a required report.*	10V	
100	Failed to prepare a required report.*	10V	
101	Failed to prepare a required report.*	15V	

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102	Failed to prepare a required report.*	10V	
103	Failed to prepare a required report.*	10V	
104	Failed to properly process numerous summonses.	25V	Duty Failure #39
105	Failed to properly process numerous summonses.	DP, 30V	
106	Failed to render police services.*	15V	
107	Failed to report to assigned command.	20V	
108	Failed to respond to an assignment.	Charges Dismissed	
109	Failed to respond to an assignment.	Charges Dismissed	
110	Failed to respond to an assignment.	20V	False Statement #63
111	Failed to respond to an assignment.*	10V	
112	Failed to respond to an assignment.*	DP, 30V	
113	Failed to scan summonses into the summons tracking system.	5V	
114	Failed to secure a crime scene.*	15V	
115	Failed to secure a crime scene.*	20V	
116	Failed to submit summonses for processing.	25V	Firearms #8
117	Failed to supervise.	15V	
118	Failed to supervise. (See Appendix A, pp. 94-96)	15V	
119	Failed to supervise.	20V	
120	Failed to supervise.	NG	
121	Failed to supervise.	25V	Duty Failure #19, #70 Off-Duty #29

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122	Failed to supervise.	30V	
123	Failed to supervise.	5V	
124	Failed to supervise.	15V	
125	Failed to supervise.	20V	
126	Failed to supervise.*	15V	
127	Failed to supervise.*	40V	Duty Failure #75 False Statement #79
128	Failed to supervise.*	20V	
129	Failed to supervise.*	20V	
130	Failed to supervise.*	12V	
131	Failed to supervise.*	10V	
132	Failed to supervise.*	20V	
133	Failed to supervise.*	10V	
134	Failed to take police action.*	50S	Domestic Violence #8, #37, #38
135	Failed to take police report.*	VR, 30S	
136	Failed to timely notify supervisor re: fleeing suspect.*	STC	
137	Failed to timely obtain medical treatment for suspect in custody.*	STC	
138	Failed to voucher contraband.*	DP, 40V	Off-Duty #55
139	Failed to voucher evidence.*	15V	
140	Failed to voucher evidence.*	10V	
141	Misclassification of a crime report.	15V	

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142	Misclassification of a crime report.	5V	
143	Misclassification of a crime report.	10V	
144	Misclassification of a crime report.*	15V	
145	Misclassification of a crime report.*	15V	
146	Misclassification of a crime report.*	8V	
147	Misclassification of a crime report.*	15V	
148	Prisoner escape.	7V, 20S	
149	Prisoner escape.	40S	FADO #22
150	Prisoner escape.	NG	
151	Prisoner escape.	20S	
152	Prisoner escape.	20S	
153	Prisoner escape.	10V	
154	Prisoner escape.	10V	
155	Prisoner escape.	15S	
156	Prisoner escape.	2V, 20S	
157	Prisoner escape.*	20S	
158	Unprepared for court.	STC	Duty Failure #159
159	Unprepared for court.	STC	Duty Failure #158
160	Unprepared for court.	5V	

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DWI-Unfit for Duty

Case #	Charges & Specs	Penalties	Additional Cases
1	DWI.*	DP, 7V, 33S	
2	DWI.*	DP, 4V, 31S	
3	DWI.*	DP, 44V, 31S	
4	DWI.*	DP, 4V, 31S	
5	DWI.*	DP, 15V, 30S	
6	DWI.*	Charges Filed	Domestic Violence #29
7	DWI.*	DP, 30V, 30S	
8	DWI.*	DP, 15V, 30S	
9	DWI.*	VR, 30S	Admin #53
10	DWI.*	Charges Filed	Profit Motivated #5
11	DWI.*	DP, 29V, 31S	Admin #39
12	DWI.*	DP, 10V, 30S	
13	DWI.*	DP, 10V, 31S	
14	DWI.*	DP, 15V, 30S	
15	DWI.*	DP, 10V, 30S	
16	DWI.* (See Appendix A, pp. 133-135)	DP, 55S	
17	DWI.*	DP, 10V, 30S	
18	DWI.*	DP, 15V, 30S	

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19	DWI.*	DP, 20V, 30S	
20	Unfit for duty while armed.*	20V	
21	Unfit for duty.	30S	
22	Unfit for duty.	20S	
23	Unfit for duty.	DP, 20V	
24	Unfit for duty.	15V	
25	Unfit for duty.*	30V	
26	Unfit for duty.*	30V	

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FADO

Case #	Charges & Specs	Penalties	Additional Cases
1	Discourteous to civilian.	Charges Dismissed	
2	Discourteous to civilian.	10V	
3	Discourteous to civilian.	5V	
4	Discourteous to civilian.*	5V	
5	Failed to provide name and shield number.	3V	
6	Improper questioning of civilian.	Charges Dismissed	
7	Improper search.	10V	
8	Improper search.	10V	
9	Improper search.	NG	
10	Improper search.	Charges Dismissed	
11	Improper search.	LOI	
12	Improper search.*	5V	
13	Improper search.*	8V	
14	Improper stop.	LOI	
15	Improper stop.	Charges Dismissed	
16	Improper stop.	NG	
17	Improper stop.*	Charges Dismissed	
18	Unauthorized entry into a residence.	Charges Dismissed	

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19	Unnecessary and/or excessive force.*	10V	
20	Unnecessary and/or excessive force.	DP, 62S	Off-Duty #22 False Statement #19, #81
21	Unnecessary and/or excessive force. (See Appendix A, pp. 100-102)	15V	
22	Unnecessary and/or excessive force.	40S	Duty Failure #149
23	Unnecessary and/or excessive force.	3V	

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False Statements

Case #	Charges & Specs	Penalties	Additional Cases
1	Directed another to provide false information to a 911 operator while off-duty.*	10V, 30S	
2	Entered false information on a NYC employee log at a private business.*	15V	
3	Entered false information on a NYC employee log at a private business.*	15V	
4	Entered false information on a NYC employee log at a private business.*	15V	
5	Failed to fully cooperate during CCRB interview.*	DP, 20V, 32S	Domestic Violence #1
6	False and misleading statements to Department investigators.*†	30V	
7	False and misleading statements to Department investigators.*	DP, 40V	
8	False and misleading statements to Department surgeon.*	30V	
9	False and misleading testimony at an administrative hearing.*	DP, 30V, 10S	
10	False entries in Department records.	DP, 40V, 5S	Duty Failure #33
11	False entries in Department records.*	45V	
12	False entries in Department records.*	20V	
13	False entries in Department records.*	15V	
14	False entries in Department records.*	DP, 60V	
15	False entries in Department records.*	DP, 45V	
16	False entries in Department records.*	15V	
17	False entries in Department records.*	SR	Insubordination #5 Admin #1

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18	False entries in Department records.*	23V	
19	False entries in Department records.*	DP, 62S	Off-Duty #22 FADO #20 False Statement #81
20	False entries in Department records.*	20V	
21	False entries in Department records.*	DP, 45V	
22	False entries in Department records.*	STC	
23	False entries in Department records.*	DP, 30V	
24	False entries in Department records.*	20V	
25	False entries in Department records.*	SR, 30V	False Statement #55
26	False entries in Department records.* (See Appendix A, pp. 121-123)	15V	
27	False entries in Department records.*	15V	
28	False entries in Department records.*	20V	
29	False entries in Department records.*	15V	
30	False entries in Department records.*	DP, 25V	
31	False entries in Department records.* (See Appendix A, pp. 123-125)	25V	
32	False entries in Department records.*	8V	
33	False entries in Department records.*	8V	
34	False statement in a police report.* (See Appendix A, pp. 128-131)	DP, 45V	
35	False statement to an insurance company.* (See Appendix A, pp. 135-139)	DP, 15V, 30S	
36	False statement to Medical Division.*	DP, 30V	

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37	False statements to federal investigators.*†	Charges Filed	
38	False testimony.*	DP, 20V, 30S	
39	Falsely reported being present for duty.*	Charges Filed	False Statement #62
40	Falsely reported the loss of Department property.*	30V	
41	Falsified address for auto insurance.*	10V	
42	Falsified criminal court summons.	Charges Dismissed	Insubordination #3
43	Impeded Department investigation with conflicting statements.* (See Appendix A, pp. 131-133)	DP, 10V, 30S	
44	Inaccurate memobook entries.*	Charges Filed	Duty Failure #72 Admin #50
45	Inaccurate memobook entries.*	20V	
46	Inaccurate memobook entries.*	20V	
47	Inaccurate statements to Department investigators.*	20S	
48	Inaccurate statements to Department investigators.*	20S	
49	Inaccurate statements to Department investigators.* (See Appendix A, pp. 111-113)	30V	
50	Incomplete, inaccurate, or misleading statements to CCRB.*	NG	
51	Incomplete, inaccurate, or misleading statements to CCRB.* (See Appendix A, pp. 113-117)	20V	
52	Interfered with a Department investigation.*	30V	Admin #23
53	Interfered with a Department investigation.*	30V	
54	Interfered with a Department investigation.*	NG	
55	Misleading statement to Assistant District Attorney.*	SR, 30V	False Statement #25

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56	Misleading statements in a Department interview.*	20V	
57	Misleading statements to Department investigators.	15V	
58	Misleading statements to Department investigators.*	20V	
59	Misleading statements to Department investigators.*	40V	
60	Misleading statements to Department investigators.*	45V	
61	Misleading statements to Department investigators.*	30V	
62	Misleading statements to Department investigators.*	Charges Filed	False Statement #39
63	Misleading statements to Department investigators.*	20V	Duty Failure #110
64	Misleading statements to Department investigators.*	30V	
65	Misleading statements to Department investigators.*	10V	
66	Misleading statements to Department investigators.*	Charges Filed	Domestic Violence #10
67	Misleading statements to Department investigators.* (See Appendix A, pp. 107-108)	20V	
68	Misleading statements to Department investigators.* (See Appendix A, pp. 108-110)	25V	
69	Misleading statements to Medical Division.*	DP, 30V	
70	Misleading statements to Medical Division.*	20V	
71	Misleading statements to Medical Division.*	25V	
72	Offered a false instrument for filing.*	NG	
73	Perjury.*	Charges Dismissed	
74	Presented a written instrument containing a false statement.* (See Appendix A, pp. 125-127)	DP, 30V, 10S	

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75	Provided false information to a 911 operator.*	10V	
76	Provided false information to a supervisor.*	10V	
77	Provided incomplete or misleading information to desk officer.*	30V	
78	Signed a criminal court complaint that contained factually inaccurate information.	20V	
79	Signed a supporting affidavit that contained factually inaccurate information.* (See Appendix A, pp. 117-121)	40V	Duty Failure #75, #127
80	Signed statement of correction for a vehicle that was not inspected.	20V	
81	Submitted a false written instrument to a City agency.	DP, 62S	Off-Duty #22 FADO #20 False Statement #19

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Firearms

Case #	Charges & Specs	Penalties	Additional Cases
1	Displayed firearm during a physical altercation.* (See Appendix A, pp. 141-143)	30S	
2	Failed to notify supervisor of an accidental discharge.	10V	
3	Failed to report an accidental discharge.* (See Appendix A, pp. 143-145)	25V	
4	Failed to safeguard firearm resulting in discharge.*	Charges Filed	
5	Failed to safeguard firearm.	10V	
6	Failed to safeguard firearm.	15V	
7	Failed to safeguard firearm.	20V	
8	Failed to safeguard firearm.	25V	Duty Failure #116
9	Failed to safeguard firearm.	10V	
10	Failed to safeguard firearm.*	20V	
11	Failed to safeguard firearm.*	20V	
12	Failed to safeguard firearm.*	20V	
13	Failed to safeguard firearm.*	20V	
14	Failed to safeguard firearm.*	30V, 10S	
15	Failed to safeguard firearm.*	25V	
16	Failed to safeguard firearm.*	15V	
17	Failed to safeguard firearm.*	15V	

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18	Failed to safeguard firearm.*	STC	
19	Failed to safeguard firearm.*	18V	
20	Failed to safeguard firearm.*	25V	
21	Failed to safeguard firearm.*	20V	
22	Failed to safeguard firearm.*	10V	
23	Failed to safeguard firearm.*	20V	
24	Firearm discharge outside Department guidelines.	DP, 30V	
25	Improper display of firearm while off-duty.	20V	Off-Duty #20
26	Possessed a modified firearm without authorization.*	22S	

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Insubordination

Case #	Charges & Specs	Penalties	Additional Cases
1	Discourteous to a supervisor.	15V	
2	Discourteous to a supervisor.*	40V	
3	Discourteous to a supervisor.*	DP, 30V, 30S	False Statement #42
4	Discourteous to a supervisor.*	20V	
5	Discourteous to a supervisor.*	SR	False Statement #17 Admin #1
6	Discourteous to a supervisor.*	20V	
7	Discourteous to a supervisor.*	15V	
8	Discourteous to a supervisor.*	15V	
9	Discourteous to a supervisor.*	DP, 60V, 30S	
10	Failed to comply with an order,	Charges Dismissed	
11	Failed to comply with an order.	Charges Filed	
12	Failed to comply with an order.	Charges Filed	Narcotics #2
13	Failed to comply with an order.	30S	
14	Failed to comply with an order.	Terminated	
15	Failed to comply with an order.*	15V	
16	Failed to comply with an order.*	SR, 30S	
17	Failed to comply with an order.* (See Appendix A, pp. 145-147)	DP, 154S	
18	Failed to comply with an order.*	Charges Filed	
19	Failed to comply with an order.*	VR	
20	Failed to comply with an order.*	10V	
21	Physical altercation with a supervisor.*	DP, 30V, 112S	

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Narcotics

Case #	Charges & Specs	Penalties	Additional Cases
1	Allowed another to store narcotics at residence.*†	Charges Filed	
2	Improperly obtained controlled substances via prescription.*	Charges Filed	Insubordination #12
3	Possession and use of steroids.	Charges Filed	
4	Possession of amphetamines.*	Terminated	
5	Possession of marijuana.	Charges Filed	
6	Provided assistance for narcotics sale.*	VR, 30S	
7	Removed prescription drugs from the locker of another member of the service.*	Charges Filed	
8	Use of steroids.	VR, 30S	

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Profit Motivated Misconduct

Case #	Charges & Specs	Penalties	Additional Cases
1	Accepted gratuity. (See Appendix A, pp. 147-149)	10V	
2	Accepted gratuity. (See Appendix A, pp. 147-149)	10V	
3	Bribery. *	Charges Filed	Off-Duty #35
4	Bribery. *	Charges Filed	DWI-Unfit for Duty #10
5	Bribery. *	Charges Filed	
6	Burglary	Court ordered stay.	Duty Failure #92
7	Illegal export of firearms. *	Charges Filed	
8	Mortgage fraud. *	VR, 31S	
9	Profited from illegal gambling. *	30V	
10	Robbery. *	Charges Filed	
11	Stole property while displaying firearm. *	Charges Filed	

DP - Dismissal Probation
 LOI - Letter of Instruction
 NG - Not Guilty
 SR - Service Retirement
 S - Days Served on Suspension

STC - Sent to Command for Discipline
 V - Forfeiture of Vacation Days
 VR - Vested Retirement
 W&A - Warned and Admonished

*- Additional Charges Levied

†- Indicates a charge under the Department's false statement provision, P.G. § 203-08

Off-Duty Misconduct

Case #	Charges & Specs	Penalties	Additional Cases
1	Arranged the purchase of stolen property.*	Charges Dismissed	
2	Assault.*	20V, 30S	
3	Attempted to influence a crime victim.	20V	
4	Computer hacking.*	SR, 31S	
5	Criminal association.	STC	
6	Criminal association.	8V	
7	Criminal association.	20V	
8	Criminal association.	25V	
9	Criminal association.*	20V	
10	Criminal association.*	SR, 30V, 10S	
11	Criminal association.*	DP, 45V	
12	Criminal association.*	20V	
13	Criminal association.*	20V	
14	Criminal association.*	10V	
15	Criminal association.*	15V	
16	Disclosed information from an unauthorized search of Department records.*	15V	
17	Discourteous and inappropriate remarks on social media.	10V	

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18	Discourteous and inappropriate remarks on social media.	10V	
19	Discourteous and inappropriate remarks on social media.	10V	
20	Discourteous to captain while off-duty.	20V	Firearms #25
21	Discourteous to captain while off-duty.*	30V	
22	Discourteous to on-duty members of the service.	DP, 62S	FADO #20 False Statement #19, #81
23	Displayed a copy of a Department parking permit in private vehicle.*	20S	
24	Displayed an invalid registration plate on personal vehicle.*	15V	
25	Endangered the welfare of a child.*	4V, 31S	
26	Engaged in illegal gambling.	25V	
27	Failed to identify self as a member of the service to a 911 operator while off-duty.	Reprimand	
28	Failed to identify self as a member of the service to an on-duty police officer.*	10V	
29	Failed to notify the Department of an unusual occurrence.	25V	Duty Failure #19, #70, #121
30	Failed to remain at the scene of a police incident.*	5V	
31	Failed to request a supervisor to an off-duty incident.	4V, 21S	Admin #25
32	Improperly received utilities at a reduced rate.*	30V	
33	Larceny.*	DP, 45V, 45S	
34	Larceny.*	DP, 6V, 34S	
35	Larceny.*	Charges Filed	Profit #3
36	Left the scene of an accident.*	Charges Filed	

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37	Left the scene of an accident.*	31S	Admin #16
38	Left the scene of an accident.*	DP, 30V	
39	Obstructed governmental administration.	DP, 35S	
40	Operated an unregistered, uninsured vehicle.*	10V	
41	Physical altercation with on-duty police officers.*	SR, 30S	
42	Physical altercation with on-duty police officers.*	20V, 30S	
43	Physical altercation with on-duty police officers.*	20S	
44	Physical altercation.*	30V	
45	Physical altercation.*	10V, 30S	
46	Physical altercation.*	Charges Dismissed	
47	Physical altercation.*	30V	
48	Physical altercation.*	DP, 35S	
49	Physically interfered with on-duty police officers.*	30S	
50	Physically interfered with on-duty police officers.*	30S	
51	Possession of child pornography.*	Charges Filed	
52	Possession of stolen property.	DP, 13V, 32S	
53	Posted allegations of misconduct on social media.*	15V	
54	Purchased an uncertified salvaged airbag system.	Charges Dismissed	
55	Reckless driving.*	DP, 40V	Duty Failure #138
56	Resisted arrest.*	DP, 31S	

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57	Sexual misconduct.*	Charges Filed	
58	Tax evasion.	10V	
59	Unauthorized off-duty employment while on sick report.*	20V	
60	Unauthorized off-duty employment.	5V	
61	Unauthorized off-duty employment.	10V	
62	Unauthorized off-duty employment.	10V	
63	Unauthorized off-duty employment.*	20V	
64	Unauthorized off-duty employment.*	Charges Filed	
65	Unauthorized off-duty employment.*	5V	
66	Unauthorized off-duty employment.*	10V	
67	Unauthorized off-duty employment.*	15V	
68	Used Department E-ZPass on personal vehicle.	15V	
69	Used emergency lights on personal vehicle while off-duty.*	10V	
70	Violated an order of protection.	Charges Filed	2 Unknown Cases

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APPENDIX C

EXECUTIVE ORDER

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THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EXECUTIVE ORDER NO. 18

February 27, 1995

ESTABLISHMENT OF COMMISSION
TO COMBAT POLICE CORRUPTION

WHEREAS, an honest and effective police force is essential to the public health, safety and welfare; and

WHEREAS, the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, chaired by Milton Mollen, (the "Mollen Commission") has recently concluded an investigation of the nature, extent and causes of police corruption today; and

WHEREAS, the Mollen Commission's Report finds that the vast majority of New York City police officers are honest and hard-working, and serve the City with skill and dedication every day, and that the current leadership of the Police Department has a firm commitment to fighting police corruption among those few officers who betray the public trust and tarnish the Police Department in the eyes of the public; and

WHEREAS, the Mollen Commission determined that the primary responsibility for combatting corruption in the Police Department rests with the Police

Department, and that the Police Department must be the first line of defense against police corruption;

WHEREAS, the Mollen Commission has recommended the establishment of an independent monitor, in the form of a Police Commission, to monitor and evaluate Police Department anti-corruption measures and to ensure that the Police Department remains vigilant in combatting corruption; and

WHEREAS, such a Police Commission provides the public with assurance that the Police Department is implementing and maintaining an effective anti-corruption program; and

WHEREAS, the Mayor and the Police Commissioner are accountable for combatting police corruption; and

WHEREAS, the establishment of a Police Commission can assist the Mayor and Police Commissioner in assessing the effectiveness of the Police Department's implementation and maintenance of anti-corruption efforts; and

WHEREAS, the District Attorneys, the United States Attorneys, and other government departments and agencies have committed resources and personnel to the investigation and prosecution of police corruption, and it is desirable that a Police Commission not supplant such investigative efforts;

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it hereby is ordered:

Section 1. Establishment Of Commission.

a. There hereby is established a Police Commission (the "Commission") which shall consist of five members appointed by the Mayor, who shall be residents of the City of New York or shall maintain a place of business in the City of New York. Each of the members shall serve without compensation. The Commission shall include among its members persons having law enforcement experience. The Mayor shall appoint the Chairperson from among the members. -

b. Of the members first appointed, the Chairperson shall be appointed for a term ending December 31, 1998; two of the members shall be appointed for terms ending December 31, 1997; and two of the members shall be appointed for terms ending December 31, 1996. Upon the expiration of such initial terms, all members shall be appointed for a term of four years. Vacancies occurring otherwise than by expiration of a term shall be filled for the unexpired term.

c. Each member shall continue to serve until the appointment of his successor.

d. Any member shall be removable for cause by the Mayor, upon charges and after a hearing.

Section 2. Duties.

a. Monitoring the Performance of Anti-Corruption Systems. The Commission shall perform audits, studies and analyses to assess the quality of the Police Department's systems for combatting corruption, including but not limited to audits, studies

and analyses regarding the following:

(i) the Police Department's development and implementation of anti-corruption policies and procedures;

(ii) the effectiveness of the Police Department's systems and methods for gathering intelligence on corrupt activities and investigating allegations of corruption;

(iii) the effectiveness of the Police Department's implementation of a system of command accountability, supervision and training for corruption matters;

(iv) the effectiveness of the procedures used by the Police Department to involve all members of the Department in combatting corruption; and

(v) such other policies and procedures, without limitation, of the Police Department relating to corruption controls as the Commission deems appropriate.

b. Monitoring Agency Conditions. The Commission shall perform audits, studies and analyses of conditions and attitudes within the Police Department that may tolerate, nurture or perpetuate corruption, and shall evaluate the effectiveness of Police Department policies and procedures to combat such conditions and attitudes. In the performance of this function, the Commission shall maintain liaison with community groups and precinct councils and shall consult with law enforcement agencies of federal, state and local government and others, as appropriate, to provide the Police Department with input about their perception of police corruption and the Department's efforts to combat police corruption.

c. **Corruption Complaints from the Public.** The Commission shall be authorized to accept complaints or other information from any source regarding specific allegations of police corruption and, subject to the provisions of Section 4, shall refer such complaints or other information to the Police Department and such other agency as the Commission determines is appropriate, for investigation and/or prosecution. The Commission may monitor the investigation of any such complaints referred to the Police Department to the extent the Commission deems appropriate in order to perform its duties as set forth herein.

Section 3. Investigations.

a. The Police Commissioner shall ensure and mandate the full cooperation of all members of the Police Department with the Commission in the performance of audits, studies or analyses undertaken pursuant to this Order, and shall provide that interference with or obstruction of the Commission's functions shall constitute cause for removal from office or other employment, or for other appropriate penalty. The Police Department also shall provide to the Commission upon request any and all documents, records, reports, files or other information relating to any matter within the jurisdiction of the Commission, except such documents as cannot be so disclosed according to law.

b. The Police Department remains responsible for conducting investigations of specific allegations of corruption made against Police Department personnel, and the Commission shall not investigate such matters except where the

Commission and the Commissioner of the City Department of Investigation (the "DOI"), with the approval of the Mayor, determine that exceptional circumstances exist in which the assessment of the Police Department's anti-corruption systems requires the investigation of an underlying allegation of corruption made against Police Department personnel.

c. The Commission, in cooperation with the DOI, shall take all reasonable measures to ensure that any hearings or investigations held pursuant to this Executive Order do not inappropriately interfere with ongoing law enforcement matters being undertaken by other law enforcement agencies.

d. Any hearings or investigations undertaken by the Commission may include the issuance of subpoenas by the DOI in accordance with the DOI's powers under Chapter 34 of the New York City Charter, to the extent that the Commission and the DOI Commissioner jointly determine is appropriate.

Section 4. Reporting to the Police Department.

a. The Commission shall promptly notify the Police Commissioner of all allegations of corrupt police activity or other police misconduct and of any investigations undertaken pursuant to this Order. The Commission also shall make regular reports to the Police Commissioner regarding its activities, including the progress of audits, studies and analyses prepared pursuant to this Order.

b. The Commission may exclude a matter from the notifications and reports required by this Section and Section 2(c) only where the Commission and the DOI Commissioner, with the approval of the Mayor, determine either that the matter concerns

the activities of the Police Commissioner or would create an appearance of impropriety, and that reporting on the matter would impair the Commission's ability to perform its duties under this Order.

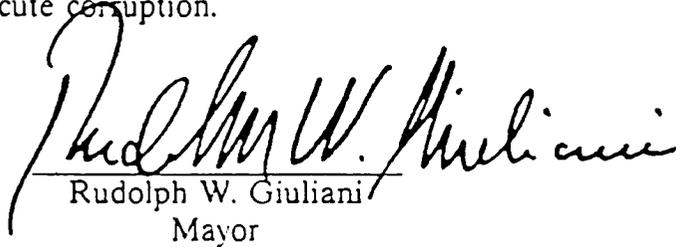
Section 5. Reporting to the Mayor.

a. The Commission shall report to the Mayor as to all its activities, without limitation, at such times as the Mayor may request, and as otherwise may be required by this Order.

b. The Commission shall provide the Mayor no later than each anniversary of the Commission's establishment an annual report which shall contain a thorough evaluation of the effectiveness of the Police Department's systems for preventing, detecting and investigating corruption, and the effectiveness of the Police Department's efforts to change any Department conditions and attitudes which may tolerate, nurture or perpetuate corruption, including any recommendations for modifications in the Police Department's systems for combatting corruption. The annual report further shall contain any recommendations for modifications to the duties or the jurisdiction of the Commission as set forth in this Executive Order to enable the Commission to most effectively fulfill its mandate to ensure that the Police Department implements and maintains effective anti-corruption programs.

Section 6. Staff. The Commission shall employ an Executive Director and other appropriate staff sufficient to organize and direct the audits, studies and analyses set forth in Section 2 of this Order from appropriations made available therefor. The Commission from time to time may supplement its staff with personnel of the DOI, including investigatory personnel as may be necessary, to the extent that the Commission and the DOI Commissioner determine is appropriate.

Section 7. Construction With Other Laws. Nothing in this Order shall be construed to limit or interfere with the existing powers and duties of the Police Department, the DOI, the District Attorneys, the United States Attorneys for the Southern and Eastern Districts of New York, or of any other department or agency of federal, state or city government to investigate and prosecute corruption.


Rudolph W. Giuliani
Mayor

COMMISSIONER BIOGRAPHIES

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Michael F. Armstrong Chairperson

Michael F. Armstrong is of counsel at McLaughlin & Stern LLP, where he focuses on complex civil litigation, white-collar criminal and regulatory matters, and internal corporate investigations. Mr. Armstrong has served as an Assistant United States Attorney in the Southern District of New York where he was Chief of the Securities Fraud Unit, Chief Counsel to the “Knapp Commission,” which investigated allegations of police corruption in the New York City Police Department, and District Attorney for Queens County, New York. He also has served as Counsel to the New York Urban League and Advisor to New York Attorney General Andrew Cuomo regarding the investigation of allegations of political influence in the State Police. Mr. Armstrong earned his LLB from Harvard Law School and his BA from Yale University.

Kathy Hirata Chin

Kathy Hirata Chin is a partner at Cadwalader, Wickersham & Taft, where she is the senior litigation partner in the firm’s healthcare/not-for-profit practice group. Ms. Chin served as a Commissioner on the New York City Planning Commission from 1995 to 2001. She has also served on the Federal Magistrate Judge Merit Selection Panel for the Eastern District of New York, on Governor Mario M. Cuomo's Judicial Screening Committee for the First Judicial Department, on the Gender Bias Committee of the Second Circuit Task Force regarding Gender, Racial, and Ethnic Fairness, and on Chief Judge Judith S. Kaye’s Commission to Promote Public Confidence in Judicial Elections. She is currently a member of the Attorney Emeritus Advisory Council and of the Commercial Division Advisory Council, appointed by Chief Judge Jonathan Lippman. She also currently serves as a member of the Board of Directors of the Medicare Rights Center and of New York Lawyers for the Public Interest. In December 2012 and again in December 2014, she was nominated for appointment to the State Court of Appeals by the New York State Commission on Judicial Nomination. In June 2015, she was honored by the New York City Bar Association as a 2015 Diversity and Inclusion Champion. Ms. Chin earned her JD from Columbia University School of Law.

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Deborah E. Landis

Deborah E. Landis, an attorney, is a consultant who provides investigative assistance and litigation support to other attorneys. She focuses primarily on white-collar criminal and regulatory matters. Ms. Landis served as an Assistant United States Attorney for the Southern District of New York for more than twenty years, investigating and prosecuting cases involving police corruption, perjury, narcotics trafficking, racketeering, money-laundering, tax fraud, and other fraud on the government. As Chief of the General Crimes Unit and as Senior Litigation Counsel, she also had responsibility for supervising and teaching other prosecutors. During 2000, Ms. Landis served the Department of Justice in Washington, D.C., acting as an Associate Deputy Attorney General and as DOJ's Special Counsel for Health Care Fraud. Ms. Landis received many awards for her work as a prosecutor, including the Henry L. Stimson Medal for Outstanding Contributions to the Office of the United States Attorney, which was awarded by the Association of the Bar of the City of New York (1999), and the Attorney General's John Marshall Award for Trial of Litigation (2000). Ms. Landis also taught Trial Advocacy at the Harvard Law School for many years. Ms. Landis earned her JD from the University of Wisconsin Law School.

James D. Zirin

James D. Zirin is at Sidley Austin LLP. He has been a trial lawyer for over 40 years, handling a wide variety of white-collar criminal and complex commercial litigation. Mr. Zirin is a former Assistant United States Attorney for the Southern District of New York. He is also a fellow of the American College of Trial Lawyers, a trustee of New York Law School, a member of the advisory board of the Woodrow Wilson School of Public and International Affairs at Princeton University, a former director and member of the executive committee of the Legal Aid Society, a member of the Council on Foreign Relations, and a past vice president and trustee of the Federal Bar Council. Mr. Zirin is the host of the critically acclaimed cable TV talk show "Conversations in the Digital Age" and author of the bestselling book "The Mother Court--Tales of Cases That Mattered in America's Greatest Trial Court." Mr. Zirin earned his JD from the University of Michigan Law School.

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