

The City of New York

Commission to Combat Police Corruption

**THE NEW YORK CITY POLICE DEPARTMENT'S
DISCIPLINARY SYSTEM: HOW THE DEPARTMENT
DISCIPLINES ITS MEMBERS WHO MAKE
FALSE STATEMENTS**

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As it moves assertively to reduce crime, disorder, and fear in the city it serves, the New York Police Department will empower, instruct, galvanize, and hold accountable management, supervision, and personnel at all levels to create a police agency of unparalleled integrity that is thoroughly and effectively intolerant of corruption and brutality throughout its ranks.¹

I. INTRODUCTION

Since 1994 the New York City Police Department ("Department") has continued its efforts to achieve the highest level of integrity possible among its members.² These efforts began earlier after reports of significant corruption in various precincts contributed to a decrease in the confidence of the public in the Department.³ During this time there have been significant improvements in the Department's overall program to ensure that it is an effective crime fighting force which safeguards the citizens of New York by reducing crime and fear, and does so with integrity. An important element to any successful anti-corruption program also involves a strong disciplinary system.⁴ This report will make recommendations designed to strengthen this system and the message it sends both within the Department and to the public at large.

The New York City Commission To Combat Police Corruption ("Commission"),⁵ pursuant to its mandate to monitor and assess the Department's anti-corruption efforts, conducted a study of the Department's disciplinary system which administratively prosecutes and punishes officers who violate Departmental rules and regulations and engage in misconduct ranging from minor offenses to serious improprieties and corruption.

¹ Police Strategy No. 7: Rooting Out Corruption: Building Organizational Integrity in the New York Police Department, ("Strategy No. 7"), June 14, 1995, pp. 2-3.

² In March 1994, the Department commenced a "broad-based, formal reengineering process to redesign every major organizational system to support the Department's new mission." Twelve reengineering teams addressed the Department's core issues, including: training, supervision, discipline, rewards, and integrity. More than 600 recommendations were made, over 80% of which were eventually accepted. Strategy No. 7, the Department's blueprint to address internal corruption, was developed as a result of these efforts. See Strategy No. 7, p. 2.

³ On July 7, 1994, the Mollen Commission, formally named the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, published its findings. The Mollen Commission determined that, "where certain narcotics and high-crime conditions exist, serious corruption is likely to appear in various degrees of frequency and scope." The Mollen Commission concluded that, in such areas, "pockets of corruption" are likely to exist in varying degrees of seriousness, frequency and size. Additionally, the Mollen Commission found that the Department's own internal mechanisms for investigating corruption had failed. See The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department Commission Report, July 7, 1994 ("Mollen Commission Report"), pp. 11, 14, 85-90.

⁴ The Department agrees with the Commission's view as to the importance of the disciplinary system. As stated in Strategy No. 7, "How effectively and fairly the disciplinary system does its job is one measure of organizational integrity." p. 67.

⁵ The Commission To Combat Police Corruption is an independent agency which was created on February 27, 1995 by Executive Order Number 18.

An effective disciplinary system must mirror the overall goals of the criminal justice system. It must adequately punish members for misbehavior to deter such conduct in the future; it must remove from the organization those offenders whose conduct is sufficiently serious to raise questions as to their continuing as "law enforcement" officers; it must act with sufficient dispatch; and it must levy penalties that are fair and appropriate and are considered so by both members of the Department and the public it serves.

The penalties the Department imposes for certain types of misconduct also communicates how seriously it views certain types of behavior. The Department recognizes that among the most important attributes of a police officer is "truth-telling":

...only a Department whose members tell and write the truth in legal documents and proceedings, can and will engender trust and reduce fear among all the law-abiding populations it serves.⁶

However, after examining over one hundred cases which were processed through the Department's disciplinary system, the principal finding of the Commission is that the Department needs to impose tougher penalties when officers are found to have made false statements. As discussed below, given the corrosive effect that such lying can have on the overall integrity of the Department, the failure to adequately punish acts of lying communicates the wrong message to the community, to the Department's own members, and to the Department's investigative units charged with discovering and eliminating corruption. The principal remedy proposed by the Commission is to create a new standard in the Department concerning the punishment of the variety of false statements discussed in this report. To accomplish this, the Commission presented its findings to the Department. Following this review, the Police Commissioner determined to issue a new policy statement that any officer found to have made official false statements, whether within the Department or in connection with criminal or civil proceedings, will be terminated absent exceptional circumstances. The Commission endorses this new policy, which will complement other positive enhancements the Department has made to the disciplinary system.

The majority of officers serving the public are honest and embrace the Department's efforts to remove from its ranks officers who fail to share their commitment to integrity. Since most officers would undoubtedly support a change in policy that would enhance public trust by punishing dishonesty more severely, their confidence in the system is diminished when the Department's actions fail to support its stated purpose.⁷

⁶ Strategy No. 7, p. 11.

⁷ Nearly 7,000 uniformed members responded to a questionnaire distributed by the Department. Among the top four activities these officers considered most important to themselves was to "gain public confidence in police integrity." Strategy No. 7, p. 18-19.

II. THE DISCIPLINARY SYSTEM: AN OVERVIEW

The Department's disciplinary system consists of both an informal and formal process for punishing the misconduct of officers. The informal process allows for minor, less serious violations of the Department's rules and regulations to be handled at the command level by the administration of a Command Discipline. A Command Discipline is a "non-judicial punishment available to a commanding/executive officer to correct deficiencies and maintain discipline within the command."⁸ The informal disciplinary process is not the subject of this report, except to the extent that some officers who were charged with more serious conduct were offered an opportunity to accept a Command Discipline as punishment for the offense.⁹

The formal disciplinary process originates when charges and specifications are brought against an officer for more serious violations.¹⁰ While charges and specifications are initiated by various divisions within the Department, for the purposes of this study the Commission focused predominantly on charges brought upon the request of the Internal Affairs Bureau ("IAB"). IAB is primarily responsible for investigating allegations of serious misconduct and corruption, and gathers evidence against corrupt officers. Once IAB substantiates an allegation of serious misconduct or corruption, it requests the rendering of charges and specifications by the Department Advocate's Office ("DAO").¹¹

A. THE DEPARTMENT ADVOCATE AND THE SPECIAL PROSECUTOR OFFICES

The DAO and the Special Prosecutor's Office ("SPO")¹² are the prosecutorial arms of the Department. The responsibilities of these offices include: determining the legal sufficiency

⁸ The New York City Police Department's Patrol Guide ("Patrol Guide"), Section 118-3.

⁹ The maximum penalty that may be imposed for a Command Discipline is the forfeiture of up to ten vacation days. Other penalties include the revocation of permission to engage in outside employment for a limited period of time and the restriction of out-of-command assignments which pay "portal-to-portal" and overtime for up to five assignments. Patrol Guide Section 118-4. Importantly, a Command Discipline may be expunged from an officer's record or sealed in one to three years, depending on the seriousness of the violation and any additional Command Disciplines received by the officer.

¹⁰ While the Department may also bring charges and specifications against an officer who refuses to accept a finding and penalty under the informal disciplinary process, such cases were not reviewed by the Commission.

¹¹ Investigations by IAB will result in a finding that the allegations are either unfounded, exonerated, unsubstantiated or substantiated. Only substantiated allegations are considered to merit possible discipline of an officer. Inspectional Services is the second principal division within the Department which investigates misconduct, and examines allegations of misconduct not under review by IAB. Inspectional Services also may request charges and specifications for substantiated charges. A portion of the disciplinary cases reviewed by the Commission resulted from investigations by Inspectional Services.

¹² Although the SPO was created in June, 1995, subsequent to the time period selected for the majority of cases reviewed by the Commission, several cases reviewed by the Commission were prosecuted by the SPO.

of the allegations; drafting the charges and specifications; serving the officers with the charges and specifications; determining plea offers where appropriate; negotiating plea agreements; and proceeding to trial.¹³ In order to secure a conviction at trial, the DAO and SPO must prove the charges based upon a preponderance of the evidence.

The DAO prosecutes the majority of disciplinary cases. The SPO was created specifically to expedite the administrative prosecution of the most serious cases to ensure the swift termination of an officer whose continued employment generates a potential liability and financial burden for the Department.¹⁴ The SPO reviews all cases in which an officer is arrested and charged with criminal conduct and, with the approval of the First Deputy Commissioner, proceeds with administrative disciplinary action in selected cases. The SPO may also prosecute officers charged with other serious misconduct, whether or not pending criminal charges exist, at the discretion of the Police Commissioner and the First Deputy Commissioner. Both the DAO and the SPO report directly to the First Deputy Commissioner.

B. TRIALS

The Deputy Commissioner of Trials and two Trial Commissioners¹⁵ preside over administrative trials brought by the DAO and the SPO.¹⁶ These Commissioners conference cases; schedule trial dates; listen to the testimony of witnesses; decide procedural issues and motions by the parties; make fact-finding determinations; make legal findings; render written decisions; and recommend the penalties to be imposed. The Trial Commissioners forward their findings and penalty recommendations to the Police Commissioner for his approval. In addition, since September 26, 1996, the Deputy Commissioner of Trials actively participates in the plea

¹³ The DAO also has the discretion to direct the issuance of a Command Discipline in lieu of charges and specifications, and to ensure that all necessary investigative steps were completed prior to the approval of charges and specifications. Patrol Guide Section 118-5. These functions became effective on October 13, 1995, after the time period selected for the majority of cases reviewed by the Commission (see p. 7).

¹⁴ The Department is only allowed to suspend an officer from service without pay for a maximum of thirty days per offense (see pp. 5-6). After this thirty day suspension, the Department must reinstate the officer's pay regardless of the misconduct with which he is charged. For serious misconduct, it is in the Department's interest to terminate the officer as quickly as possible to prevent him from remaining on the payroll and creating a liability if his conduct is believed to have impaired his ability to serve as a police officer.

¹⁵ For the purpose of this report, all references to the Commissioner who presided over a specific administrative trial will be to a Trial Commissioner without distinguishing whether it was the Deputy Commissioner of Trials or one of the Trial Commissioners who actually heard the case.

¹⁶ Disciplinary cases involving police officers which originated from and were substantiated by the Civilian Complaint Review Board are generally heard by the Office of Administrative Trials and Hearings ("OATH"). No adjudications by OATH were reviewed by the Commission.

bargaining process.¹⁷ The Deputy Commissioner of Trials reports directly to the Police Commissioner.

C. FINAL APPROVAL PROCESS

The First Deputy Commissioner has overall supervisory responsibility for the disciplinary process and approves every plea agreement made by the DAO and SPO. As of early September, 1996, he became actively involved in structuring the initial plea offers that are made by the DAO.¹⁸ He also performs a principal role in determining the selection of cases to be prosecuted by the SPO. However, the Police Commissioner is the ultimate arbiter. The Police Commissioner approves and issues all penalties levied as a result of negotiated plea agreements and administrative trials.

D. AVAILABLE PENALTIES

Upon a finding of guilty, after a plea or administrative trial, the Department may impose one or more of the following penalties: reprimand; probation; forfeiture of vacation days;¹⁹ suspension without pay;²⁰ and termination.²¹ The maximum amount of time the Department may suspend an officer without pay is thirty days per offense.²² However, an officer may consent to a longer period of suspension without pay if mutually acceptable to the parties.

An officer may also be suspended without pay prior to the resolution of the charge (i.e. immediately following the offense or upon an arrest). This suspension is also subject to a

¹⁷ This recent change in the disciplinary system is discussed herein, pp. 37-38.

¹⁸ This recent change in the disciplinary system is discussed herein, p. 37.

¹⁹ An officer who loses vacation days will be affected in the following manner: 1) the officer will not be able to take vacation time off during the year, unless the officer has accumulated additional vacation time by carrying accrued time from year to year, an opportunity available to all officers; or 2) at the conclusion of the officer's service to the Department, the officer may have a shorter terminal leave, which is when the officer is allowed to take owed vacation time off prior to his official leave date.

²⁰ Suspension without pay includes the loss of all benefits for the time on suspension, including loss of health benefits and accrual of service time applicable to an officer's pension. In practice, officers suspended for thirty days or less have not had their health benefits interrupted.

²¹ Prior to trial, the DAO may refer the case to the officer's local command for adjudication as a Command Discipline where penalties will be imposed in accordance with a Command Discipline (see footnote 9 and accompanying text). A Command Discipline, while an informal adjudication, is still considered an admission of wrongdoing.

²² The Administrative Code Of The City Of New York ("Administrative Code") Section 14-115 (a). This thirty day maximum suspension applies to the combined total of days on suspension and/or forfeiture of vacation days.

maximum period of thirty days under the law.²³ Upon disposition of the charges, the amount of time an officer already served on suspension may be applied to any sentence of suspension which is imposed.²⁴

In conjunction with other penalties, the Department also may place individuals on dismissal probation for a period of time not to exceed one year.²⁵ When sentenced to dismissal probation, an officer is actually terminated from the Department but the penalty is held in abeyance until the expiration of the probation period, after which the officer is restored to his prior status. While on dismissal probation, the officer may be summarily terminated, without any further due process proceeding, for any misconduct at the discretion of the Police Commissioner. The Police Commissioner also has the discretion to summarily terminate probationary police officers. When an officer enters the Department he is classified as a probationary employee and remains on probationary status for two years. While a probationary employee, a police officer may be terminated without a hearing.²⁶ Also, an officer is terminated from the Department without a hearing upon conviction of a felony or another crime involving the oath of office.²⁷

For all other officers, termination from the Department, the ultimate penalty, is within the Police Commissioner's discretion after an administrative hearing for any violation of rules, disobedience of orders, conduct injurious to the public peace, neglect of duty, absence without

²³ Administrative Code Section 14-123 and New York State Civil Service Law Section 75 (3-a).

²⁴ In all of the cases reviewed by the Commission, officers who were suspended before the disposition of the charges and who subsequently received penalties of suspension also received credit toward their sentence for the time already served on suspension. For a discussion of the Department's efforts to expand the number of available penalties, including the amount of time an officer may be suspended prior to the resolution of the charges, see pp. 34-36.

²⁵ Administrative Code Section 14-115 (d). The Department also placed officers on disciplinary probation until the practice was discontinued in the beginning of 1996. The intent of this change was to facilitate the ability of the Commissioner to dismiss those on probation in the event of future misconduct. In 1995, thirty-four officers were placed on disciplinary probation and none of these officers were ultimately terminated while on probation. In that same time period, thirty-three officers were placed on dismissal probation and four were ultimately terminated.

²⁶ According to the New York City Department of Personnel Rules And Regulations, Section 5.2.7, an agency head, "may terminate the employment of any probationer whose conduct and performance is not satisfactory after the completion of a minimum period of probationary service and before the completion of the maximum period of probationary service by notice to the said probationer and to the city personnel director."

²⁷ Public Officers Law Section 30(1)(e). An officer may also be terminated without a hearing for other criminal convictions. According to the Administrative Code, Section 14-115, the Police Commissioner has the discretion to terminate an officer upon a conviction by "any court or officer of competent jurisdiction". Therefore, if an officer is convicted of a misdemeanor offense in criminal court that does not involve his oath of office, rendering Public Officers Law Section 30(1)(e) inapplicable, the officer may still be terminated by the Police Commissioner.

leave, conduct unbecoming a police officer, or breach of any discipline.²⁸

The Department also may allow officers to plea nolo contendere to charges. Consistent with how such pleas are treated in the criminal context, a plea of nolo contendere means that without pleading guilty an officer is not contesting the charges but is subject to the same penalties as if the officer had been found guilty. Interviews with members of the Department indicate that a plea of nolo contendere is still considered an acknowledgement of wrongdoing by the officer. Unlike Command Disciplines, a nolo contendere plea becomes a permanent part of an officer's record and may not be expunged or sealed.

E. RECENT CHANGES IN THE DISCIPLINARY SYSTEM

Effective October 13, 1995, the Department made several changes to the disciplinary system in an effort to increase its effectiveness, efficiency, and fairness. Two primary objectives of this reform were to: 1) reduce the number of less serious violations processed through the formal disciplinary system; and 2) expedite the prosecution of cases.

In an effort to reduce the level of resources devoted to adjudicating less serious violations in the formal disciplinary process, the Department: expanded the number of violations that could be appropriately adjudicated by Command Discipline; extended the Command Discipline penalty options in an attempt to ensure appropriate punishment; and provided the DAO with the discretion to direct the issuance of a Command Discipline in lieu of charges and specifications.²⁹ Prior to these changes, the DAO had devoted time to preparing charges and specifications in many cases where the ultimate disposition was a Command Discipline. By reducing the number of "minor" violations in the formal disciplinary process, the Department sought to enable the DAO to allocate greater resources to the more serious cases within the system.

The Department also implemented additional reforms to decrease some of the lengthy delays incurred during the prosecution of the cases. These included mandating certain time frames to expedite processing certain aspects of the administrative process, including the preparation of charges and specifications.³⁰

²⁸ Administrative Code Section 14-115 (a).

²⁹ Patrol Guide Sections 118-3, 118-4, and 118-5.

³⁰ Due to these recent reforms of the disciplinary system, the Commission decided not to focus its study on the length of time involved in the administrative prosecution of cases. However, the Commission strongly believes that for the administration of justice to be fair and effective it must be dispensed swiftly. Therefore, the Commission anticipates reviewing the timing of dispositions after an appropriate period has elapsed to determine the effectiveness of these recent changes.

III. METHODOLOGY

The Commission sought to review all disciplinary cases referred to the DAO by IAB during a four month period from January 1, 1995 through April 28, 1995. The Department produced the documents contained in the files of the DAO and SPO for eighty cases which constituted all of the closed cases from this time period which were referred by IAB.

After reviewing these cases, the Commission requested the documents for twenty-one additional cases where charges and specifications were brought shortly before June 30, 1996 and which included charges of either false statements, false filings, or false testimony. This request included all cases with these charges, whether or not they were referred by IAB. The Commission also specifically selected for this study twelve cases, where charges and specifications were brought outside these time periods, due to the subject matter of the cases. Finally, the Department itself brought certain recent disciplinary decisions to the Commission's attention.³¹

The substance of the Commission's findings and observations are based on the examination of all of the documents provided by the Department for these one hundred and thirteen cases, which consisted of thousands of pages.³² The Commission read every trial transcript available, as well as all other transcripts of official department interviews of the officers and witnesses, and reviewed the officers' Central Personnel Index ("CPI") which describes the officers' entire work histories, including disciplinary action taken and sick reports.³³ Where appropriate, the Commission requested and reviewed officers' FADO reports which list all civilian complaints made about the officers to the Civilian Complaint Review

³¹ While these cases are not part of the Commission's formal study, the Commission has reviewed and considered these decisions which reflect examples of the levying of more severe penalties during 1996.

³² It is worth noting that while the Commission requested every document contained in both the DAO and SPO files, the files themselves were inconsistent with regard to whether they contained the universe of information relied upon by the advocate during the prosecution of the case. The Commission has learned that the Department does not currently have a standard procedure regarding what documents ought to remain in their possession once a case is completed. For example, some of the advocates will return documents to IAB after the disposition of a case, such as the notes of the investigators, while other prosecutors will retain a set in their folders. The Department was very cooperative with the Commission and made efforts to produce all of the documents available. However, the Department may want to consider developing an internal procedure to insure the adequacy of file maintenance.

Also, three of the one hundred and thirteen cases involved civilian members of the Department rather than officers.

³³ The CPI is a comprehensive abstract of an officer's work history, including his disciplinary record. It contains: the dispositions of all investigations conducted by IAB or Inspectional Services; incidents where the officer has been cited for excessive sick leave usage; investigations for the discharge of a weapon; automobile accidents; and background inquiries.

Board.³⁴ In addition, the Commission listened to available tapes of the official interviews of officers. The final disposition dates of the cases reviewed by the Commission ranged from 1994 to the third quarter in 1996.

In order to complete its study, the Commission met with many members of the Department as well as individuals who interact with the Department and have particular interest in its disciplinary system. Those met with included: the Police Commissioner; the First Deputy Commissioner; the Department Advocate; the Special Prosecutor; the Deputy Commissioner of Trials; the Commanding Officer of the Disciplinary Assessment Unit; the President of the Patrolmen's Benevolent Association; the Chief of the Internal Affairs Bureau; and various state and federal prosecutors.

IV. DISCUSSION

During the course of this study, the Commission focused on the Department's adjudication of cases involving allegations of false statements.³⁵ Sixty of the cases reviewed involved at least one false statement allegation covering a variety of false statement charges: false statements made during an official Department investigation into allegations of official misconduct; false statements made to other law enforcement agencies, such as the offices of the District Attorneys and the United States Attorneys; the filing of false information with other state agencies; the filing of false affidavits; false testimony during criminal, civil and administrative proceedings; the submission of false information in police department reports; false statements to supervisors; false reports of crimes; and false statements made to conceal the misconduct of fellow officers.³⁶

The motives for the false statements varied: some were made to "improve" the facts surrounding an arrest or search (i.e., perjury to make a search "stick"), while others involved denials of an officer's own misconduct or attempts to conceal the misconduct of other officers

³⁴ A FADO report, an acronym for the subject areas investigated by CCRB: Force, Abuse of authority, Discourtesy and Offensive language, records all civilian complaints lodged with the CCRB against the officer and their disposition.

³⁵ The making of a "false official statement" is prohibited conduct under the Department's own rules. Patrol Guide Section 104-1, PROHIBITED CONDUCT (11). In the forward to the Patrol Guide it states that its primary purpose is to be "a guide for ALL members of the service. As in the past, officers will be held accountable for their actions within the context of the Department's mission, values, objectives, policies and procedures."

³⁶ Eleven officers associated with twelve of the sixty cases involving false statements had criminal charges pending at the same time of their administrative charges. Six were terminated from the Department on the basis of their criminal convictions (see footnote 27 and accompanying text) and three resigned, all prior to the resolution of their administrative charges. These nine officers are not discussed in this report. The report does review the cases of the remaining two officers, who were acquitted of their criminal charges and subsequently punished through the disciplinary system. Additionally, for five other officers associated with seven of the sixty cases, all of the false statement charges against them were dismissed. Three of these officers were found guilty of other misconduct.

(i.e., denials of misconduct during official investigations).

The majority of the cases comprising this study do not involve false statements associated with major incidents of corruption, such as those relating to the 30th Precinct prosecutions which followed the Mollen Commission Report. Many of those incidents included officers' attempts to disguise their own illegal criminal activity, including participation in the drug trade for individual profit and gain. Rather, most of the cases in the Commission's study involve what, for want of a better word, may be described as "routine" false statements. These include the lies that get told to cover up off-duty misconduct, the lies that get told to avoid the consequences of an improper search or the excessive use of force, the lies that get told to cover up one's own misconduct and the lies that are told to protect other officers. These are the lies that often are unrelated to personal financial gain by the officer.

The destruction of public confidence in the Department and the accompanying distrust of the criminal justice system is obvious when major corruption scandals are uncovered. Over the long term, however, equally devastating, is the corrosive effect that "routine" false statements have on both the police force and on society as a whole. If such false statements are not adequately addressed, it creates a dangerous sense that dishonesty within a police department is not that serious. Tolerance of false statements of any kind also undermines the Department's ability to restore and ensure necessary public confidence in our police department.

The honesty and integrity of police officers is also critical to the workings of the criminal justice system. Society relies on this integrity in entrusting the police with the power to enforce the laws and safeguard the community, and with the right to deprive individuals of their liberty. Individuals are detained, incarcerated, and convicted of crimes, often on the sole testimony of police officers. And, if there is a public perception that perjury among police officers is common, then we also risk having the guilty set free by a suspicious public. Also, in particular cases, once an officer has been found to have lied, his or her credibility in future cases is seriously undermined.

The Department has also recognized the need to address what is sometimes referred to as the "blue wall of silence", the perception that officers remain silent or affirmatively misrepresent and otherwise conceal each other's misconduct.³⁷ Reversing this climate, however, requires that a strong message of intolerance towards lying be communicated throughout the Department. An organization whose members understand that "routine" lying is unacceptable is an organization that will have an environment where corruption will be less able to flourish.

³⁷ Strategy No. 7, pp. 22 and 24. For a discussion of the Department's "blue wall of silence" see the Mollen Commission Report, pp. 53-58.

In the end, the integrity of police officers is the backbone of the Police Department.³⁸ For all of these reasons, the Department must communicate the fact that false statements of all kinds are inconsistent with the Department's own mission, and that it will impose appropriately severe punishments on those making them. Sufficient punishments will communicate the message that "routine" false statements will not be tolerated and, hopefully, provide a deterrent for the future.

The Commission believes that the punishments traditionally meted out for false statements have been inadequate to meet the needs of the Department. Two cases, involving four officers, are representative of the various types of false statements found in the majority of the cases in the study. Officers in these cases made false statements in official Department investigations, provided false information on Department reports, made false statements to supervisors, and made false statements to conceal the misconduct of others. Three of the officers' cases were adjudicated at an administrative trial and the fourth officer entered a plea of guilty. All four of the officers received punishments that the Commission believes are insufficient given the conduct involved.

The first case involved three separate officers and arose from their conduct in one incident:

CASE EXAMPLE

Officers A, B and C

Three officers involved in a drug "buy and bust" operation observed their suspect run into a building and close the door behind him. The officers used a ram to break down the locked front door. Upon entering the building, Officer A struck an innocent bystander on the head with a blunt object. The victim of this attack was an individual who lived in the building and had stepped in the hallway because of the commotion he had heard. This individual received a laceration above his left eye which required six stitches. Officer A then refused to give his name to a witness present on the scene and left the scene without rendering medical aid to the person he hit. Officer A proceeded to fill out an Aided Report for the incident. In the report, he falsely stated that an apparently intoxicated person fell and struck his head on a wall in the hallway when he and others entered the building.

During an official investigation into the incident by IAB, Officer A lied to an IAB investigator, saying that he observed an unidentified male run into a wall and fall to the floor. Officer B similarly lied when he told an IAB investigator that when they entered the building he saw a male inside the hallway look at them, turn, and strike his head on the wall and fall to the floor. Officer C related the same false story.

³⁸ "Integrity lies at the core of the Police Department's mission." The Re-engineering Team Report on: Integrity, ("Report on Integrity") July, 1994, p. 6. The Department believes, "that continuing success against general crime cannot be sustained if the police officers betray their trust or if the public mistrusts the police." Strategy No. 7, p. 78.

At their administrative trials, the officers repeated these lies. The Trial Commissioner found that all three officers provided false statements during the official investigation of this case, and that Officer A made false entries in the Aided Report regarding how the injury occurred. The judge concluded that Officer A, "...showed extremely poor judgement and a disturbing lack of integrity. By acting in this manner, he raised serious questions about his suitability for continued employment with this Department."³⁹

Officer A received twenty days suspension and was placed on disciplinary probation for one year. Officers B and C each received a loss of 15 days of vacation.

CASE ANALYSIS

Both Officers B and C were found by a Trial Commissioner to have lied to IAB investigators during the course of an official investigation in interviews conducted pursuant to the provisions of Section 118-9 of the Patrol Guide.⁴⁰ Since these officers were charged with no other wrongdoing, their false statements were made for only one purpose: to cover up the misconduct of their fellow officer who unjustifiably assaulted an innocent bystander. How the Department deals with behavior like that of Officers B and C sends a clear message as to how lying to protect others is viewed. It also sends a message as to whether officers can believe that they can engage in serious misconduct or corruption with the comfort that their colleagues in the Department will lie to protect them from punishment. Given these considerations, the Commission believes that the penalties imposed on these officers were insufficient.

Officer A assaulted an individual for no justifiable reason, refused to provide medical assistance to the victim, refused to identify himself, and then attempted to cover up his misconduct with false statements in a Department record and during an official investigation. He was found guilty of: making false statements during an official investigation; striking an individual about the head; writing false entries in Department records; failing to render aid to an injured person; refusing to give his name and shield number when requested by a citizen; and failing to make a Stop and Frisk Report. For all of these actions, Officer A was suspended from his position for a period of twenty days, losing all attendant pay and benefits for that period.⁴¹

³⁹ Quote taken from the Trial Commissioner's decision.

⁴⁰ For a discussion of an official investigation held in accordance with Section 118-9 of the Patrol Guide, as well as a full discussion of the perils of allowing false statements during this investigation, see pp. 14-19.

⁴¹ While he also received a penalty of one year disciplinary probation, the Commission believes that this probation did not sufficiently add to the penalty imposed. See footnote 25 and accompanying text.

The Commission learned that when making penalty recommendations the Trial Commissioners will not consider charges that were substantiated by the Department if no formal disciplinary action was taken, while the DAO will consider the officer's entire record, including such unadjudicated charges. While a number of the officers highlighted in this report had prior substantiated charges on their CPIs, to preserve the confidentiality of these records the Commission has not commented on them. Additionally, both the DAO and the Trial Commissioners will consider the positive aspects of an officer's record when determining appropriate penalties. These, too, have been omitted from this report.

Officer A continues to work as a police officer today. Again, the Commission believes the penalty imposed on Officer A in this case to be seriously deficient.

CASE EXAMPLE

Officer D

While off-duty, Officer D was patronizing a restaurant owned by his friend, when the owner got into a verbal altercation with one of his employees. Officer D intervened in the argument and a pushing and shoving match ensued between Officer D and the employee. Officer D struck the employee in the face with his gun which subsequently discharged. No injury resulted from the gunshot.

The employee ran out of the restaurant and called 911 from a nearby pay telephone. Officer D then pulled him off of the telephone abruptly ending the call. Once outside, Officer D paid the employee \$80 to forget about it. Officer D then proceeded to lie during the ensuing official investigation.

Officer D plead guilty to eight charges, including: striking a person while off-duty causing injury; wrongfully discharging a round from his off-duty firearm; wrongfully pointing his firearm at another person placing the person in fear for his safety; failing to report said firearm discharge to investigators responding to the location; wrongfully offering a person money; and two counts of making false and misleading statements during an official investigation.

Officer D received a penalty of 30 days on suspension: twelve to be served after his guilty plea, with credit to be given for the eighteen days he had already served when he was immediately suspended following the incident.

CASE ANALYSIS

This case raises serious concern about the sufficiency of punishments imposed in the Department's disciplinary system. The investigation of the case, and the subsequent guilty plea, reveal that the officer wrongfully discharged his gun (even if the discharge was accidental) and, then, attempted to cover up his conduct with false statements during an official investigation. The underlying incident for Officer D's false statements are serious: while off-duty he hit an individual in the head with his gun, threatened the individual with his gun by pointing it at him, discharged his weapon, stopped the victim from seeking police assistance, and then sought to bribe the victim in a desperate attempt to avoid disciplinary action for his conduct.

During the official investigation of the case, Officer D gave two false statements: 1) he stated that he never discharged the gun; and 2) he stated he did not exit the restaurant in pursuit of the victim. Thus, as is generally the case with false statements, the officer's wrongdoing was not a momentary lapse in judgment, but involved deliberate ongoing misconduct.

The plea offer here minimized the gravity of both the underlying offense and of providing

false statements about one's own misconduct to supervisors and during an official investigation by the Department. Of particular concern is the fact that the officer lied to investigators about the wrongful discharge of his weapon, the seriousness of which cannot be overstated. A thirty day suspension for such conduct fails to communicate sufficient intolerance for covering up one's own misconduct.

Another aspect of the Officer D case is the letters offered in his support by current and former supervisors that attest to his character. While the Commission believes that an officer's past record and performance should of course be a factor in determining appropriate penalties, those writing supportive letters, particularly if they are senior supervisors, need to recognize that their doing so can send the wrong message. Out of five letters received by the Department Advocate's Office on Officer D's behalf, four appropriately provided information about his character. However, the fifth letter from his Commanding Officer stated that the matter could best be addressed at a command level and requested the withdrawal of charges and specifications. While this request was denied by the Department Advocate's Office, that the Commanding Officer could make such a request in the first place reveals a fundamental failure to appreciate the seriousness of Officer D's misconduct. Withdrawing the charges and specifications and meting out a Command Discipline at the command level would result in Officer D being exposed to a maximum penalty of a loss of ten vacation days, the record of which could be expunged or sealed. On these facts, such a result would be blatantly insufficient, and the Commanding Officer's request to withdraw the previously served charges which had been substantiated by IAB undermines the legitimacy and credibility of the Department's overall disciplinary system. In cases like this, it leads to a confused message from the Department as a whole, suggesting that a precinct commander does not believe that off-duty misconduct involving discharging a weapon and an attempt to bribe a witness, accompanied by persistent lying, is particularly serious.

We now turn to some additional examples.

A. OFFICIAL INTERVIEWS IN ACCORDANCE WITH THE PATROL GUIDE SECTION 118-9

Official Department investigations into allegations of misconduct, whether serious or minor, often involve the interviewing of the subject officer and witnesses. Interviews of any member of the service, uniformed or civilian, are held in accordance with Section 118-9 of the Patrol Guide (See Appendix A). This section lists the officers' rights at the interview, including the right to counsel in certain circumstances and the right to adequate notice of the interview. Additionally, the Patrol Guide provides that the questions and answers resulting from the interview are confidential.

Upon participation in an interview under Section 118-9 of the Patrol Guide, an officer is advised that his refusal during the interview to answer questions relating to the performance of his official duty will subject him to departmental charges which could result in his dismissal from the Department. The officer is further advised that while his statements, or any

information or evidence gained by reason of such statements, may not be used against him in a criminal proceeding, these statements may be used against the officer in departmental proceedings.⁴²

In addition to officers who are the subjects of investigations, officers who are witnesses to the alleged misconduct of other officers are also interviewed under the provisions of Patrol Guide Section 118-9. Witnesses thus are afforded similar rights and protections to those of subjects under the Department's rules.⁴³

The importance of truthfulness and honesty at these interviews is obvious. These official interviews are critical steps in the Department's own investigation of officers charged with misconduct or corruption. They are one of the many investigative techniques the Department utilizes when examining whether misconduct occurred and whether charges and specifications should be levied against an officer.

At its most basic level, false statements during a Patrol Guide interview thus can frustrate the Department's attempts to uncover corruption. Also important, however, is that if it is perceived that lying in this context is not too serious, it is difficult for the Department to convince its officers that it is serious generally about corruption. Such an attitude also undermines support for the Internal Affairs Bureau, the division of the Department whose sole purpose is to fight corruption. Tolerance of false statements during Patrol Guide interviews thus impedes the Department's overall efforts to detect and prevent corruption.

Thirty-three of the sixty cases involving false statement charges included at least one charge against the officer for providing false statements at the Patrol Guide interview.⁴⁴ Almost all of these cases included additional charges and some involved companion cases.⁴⁵ The penalties imposed in these cases ranged over a broad spectrum. Two officers resigned and one officer retired during the pendency of their cases, two probationary officers were summarily

⁴² Patrol Guide Section 118-9. The granting of this "use" immunity in these circumstances, where the officer is required to testify, is constitutionally required.

⁴³ The major difference is the requisite time period for notification of the interview. An officer who is the subject of an official investigation is afforded notice of two business days prior to the date of the interview, while an officer who is serving as a witness in an investigation is only entitled to up to four hours.

⁴⁴ Four of these cases involved false statements by officers who worked for the New York City Housing Police Department prior to that agency's merger with the Police Department on April 30, 1995. In these four cases, the officers made false statements during official investigations by the Housing Police Department in interviews governed by the New York City Housing Police Department's Patrol Guide Section 119-8, which contains nearly identical language to the Department's Patrol Guide Section 118-9. After the merger, these officers were subsequently charged and prosecuted under the Department's disciplinary system.

⁴⁵ In fact, only four officers were charged solely with making false statements at an official interview and had no companion cases.

dismissed,⁴⁶ and only two officers were terminated after trial upon the recommendation of the Deputy Commissioner for Trials. The other penalties ranged from a sentence of a Command Discipline to a penalty of one hundred days on suspension in conjunction with one year on dismissal probation.⁴⁷

Most of the thirty-three cases involving false statements during official investigations resulted from officers lying about their own involvement in alleged misconduct. In many of the cases, the officer's false statements were clear cut lies in direct contradiction to observations made by Department investigators. Making false statements to cover up one's own misconduct, or the conduct of another, requires more severe treatment than we observed. Such conduct obstructs internal investigations, devalues anti-corruption efforts, decreases the officer's credibility in future cases and, if not adequately punished, creates an environment which seems too accepting of misconduct.

CASE EXAMPLE

Officer E

IAB surveillance revealed that Officer E left his command and while on Department time engaged in his private business (customizing automobiles).

When questioned under the provisions of the Patrol Guide, he stated, contrary to the investigators' personal observations, that he did not work on Department time for his off-duty employer, and offered an alternate false location for his whereabouts on the relevant date.

Officer E plead guilty to three charges, including lying during his official interview that he did not work in his off-duty employment while on duty. A plea bargain with the Department Advocate's Office resulted in a loss of ten vacation days.

⁴⁶ See footnote 26 and accompanying text.

⁴⁷ The following is a complete list of the penalties for the cases involving a charge of making a false statement at an official interview: Command Discipline (four officers); forfeiture of 5 vacation days (two officers); forfeiture of 7 vacation days; forfeiture of 10 vacation days (five officers); forfeiture of 15 vacation days (two officers); forfeiture of 20 vacation days (two officers); forfeiture of 30 vacation days (25 to be taken immediately and 5 held in abeyance); forfeiture of 25 vacation days and 1 year on dismissal probation; forfeiture of 30 vacation days and 1 year on dismissal probation; 20 days on suspension and 1 year on disciplinary probation; 30 days on suspension; 30 days on suspension and 1 year on dismissal probation; 60 days on suspension and 1 year on dismissal probation; 100 days on suspension and 1 year on dismissal probation; resignations (two officers); retired; and terminations (four officers). (Only thirty-one penalties are listed because one officer who was terminated was charged with making false statements during an official interview in two separate cases, and one case against another officer was dismissed.) For a complete list of penalties imposed in all cases involving false statement charges see Appendix B.

CASE ANALYSIS

In this case, Officer E's statements were blatantly untrue in light of the Department's own surveillance. Officer E apparently felt no compunction about lying to Department investigators.

CASE EXAMPLE

Officer F

The Internal Affairs Bureau conducted surveillance of Officer F which revealed that he entered a restaurant/bar located on his post after his tour ended. He used keys to unlock an illegal gambling machine and removed cash, which was placed in a bag held by another individual who worked at the bar. They both proceeded with the money into a nearby office.

On a second occasion, investigators observed the officer in the bar in civilian clothes playing the illegal gambling machine for approximately 20 minutes. While the officer played the machine, another individual removed the cash and placed it in a bag. The officer helped the other man lock the machine, and they both then proceeded into a nearby office.

During an interview of the officer in accordance with the provisions of the Patrol Guide, he denied unlocking or assisting anyone in removing money from the gambling machine, as well as playing it, in direct contradiction to the investigators' observations.

CASE ANALYSIS

Officer F was found guilty after trial of making false statements during an official interview about his activities in the restaurant on the dates he was surveilled by the Internal Affairs Bureau. He was also found guilty of: wrongfully removing money from and exercising control over a gambling device; wrongfully assisting another by removing money from and exercising control over a gambling device; wrongfully engaging in illegal gambling; and knowingly associating with persons likely to be engaged in, likely to engage in, or to have engaged in criminal activities.

The Trial Commissioner who heard this case found that it was "close", but did not recommend termination of the officer as he had already filed for retirement after twenty years of "service unblemished by prior disciplinary adjudications" and his conduct did not justify taking away his pension.⁴⁸ The officer was sentenced to seventy days suspension, with credit given for the seventy days previously served during his pre-trial suspension period, on the

⁴⁸ Quotes taken from the Trial Commissioner's decision. While this may have been the first conviction of the officer, the nature of this offense makes it unlikely that this was the first time that he had committed this type of misconduct.

condition he retire as scheduled.⁴⁹ If he failed to retire, an additional penalty of 30 days suspension and one year dismissal probation was to be imposed. The Commission has ascertained that this officer did in fact withdraw his retirement papers, serve the additional thirty days on suspension, and continue to work for the Department.

Another example of an officer making false statements at an official interview involved an officer who was still on probation at the time of the interview.⁵⁰ In this instance the officer was not under surveillance, but gave two directly contradictory accounts of his actions during two separate interviews.

CASE EXAMPLE

Officer G

This probationary police officer was with four other individuals in the early morning when he used his police shield in an attempt to gain entry into a closed bar. When the owner of the bar refused to allow them in a fight ensued and the owner of the bar and one of his employees were injured. (There were no allegations that the officer himself was one of the assailants.) When the fight occurred, the officer called 911 anonymously and then did not remain on the scene to assist the arriving officers and explain what he witnessed (including the identity of the assailants).

CASE ANALYSIS

Officer G provided irreconcilable statements at two of his official interviews as to whether he had been present when the police arrived. He also denied using his shield to gain entry to the bar and maintained in three different interviews that he did not know the identity of the perpetrators of the assault on the bar owner and the bar employee, as he had only met the individuals a few hours before.

Officer G plead guilty to three counts of making false statements during an official interview: for denying that he attempted to gain access to the bar; for denying that neither he nor anyone with him identified themselves as police officers in an attempt to gain access to the bar; and for stating that he saw the police arrive at the scene. He also plead guilty to six other charges including: wrongfully attempting to use his position as a police officer to gain entrance to the bar; failing to take proper police action upon seeing a fight take place in front of the bar; failing to render aid when he knew or should have known that a person needed medical assistance; failing to remain at the scene of a police incident after reporting the incident; and

⁴⁹ The Trial Commissioner in this case apportioned the seventy days on suspension over the three offenses: the two different offenses observed by the Internal Affairs Bureau and the false statements at the official interview. The Commissioner did give the maximum suspension allowed for the third offense of lying during the official interview: she apportioned thirty of the seventy day suspension to that offense.

⁵⁰ See p. 6 herein for an explanation of probationary police officers.

failing to take proper police action upon becoming aware of a man with a gun on his person.⁵¹ Officer G was previously a transit police officer employed by the New York City Transit Police⁵² and was appointed to the Police Department less than one month prior to this incident. The two official interviews referred to above occurred within ten months of his entry into the Department. While certain cases may create a tension between the Department's need to punish misconduct and its interest in retaining good officers, this is not the case here: Officer G received only an average evaluation from his Commanding Officer and his performance was rated a five on a scale of one to ten. Because of his status as a probationary officer, the Department had the prerogative to summarily terminate him in accordance with the Personnel Rules and Regulations.⁵³ Officer G received a penalty of a loss of thirty vacation days and the imposition of one year on dismissal probation.⁵⁴

Two cases discussed above, Officer B and Officer C,⁵⁵ involve situations where the only charges against the two officers were for making false statements during the Patrol Guide hearings. The officers were charged with making false statements at a Patrol Guide hearing in order to cover up the conduct of a fellow officer and plainly sought to obstruct the IAB investigation. These two officers served as witnesses to an incident where their fellow officer assaulted an innocent bystander and then engaged in a course of deception to cover up his actions. This case thus raises the fundamental question: would these officers have been as likely to lie to cover up the serious misconduct of another officer if they knew that making false statements during an official investigation was considered an offense where termination was likely, and that such lies therefore would have placed their continued employment at risk? At the time of the incident, Officer B had eight and one-half years invested in the job, and Officer C had been an officer for almost seven years. As discussed below, the Commission believes that making the risk of termination in these cases real will have a positive effect. In reaching this conclusion, the Commission also reviewed other examples of officers providing false statements during official interviews.

⁵¹ One of the four persons who was with the officer was involved in the fight and took off his shirt which revealed a gun in his waistband. During Officer G's interview, he stated that he believed the individual who had the gun may have been a police officer. This raises some question as to whether Officer G sincerely could not identify the four individuals who assaulted the bar owner and employee, as he maintained, or whether he was covering up the identity of some other officer(s).

⁵² On April 2, 1995, the New York City Transit Police merged with the New York City Police Department.

⁵³ See footnote 26.

⁵⁴ Initially, the Department Advocate's Office offered Officer G a penalty of a loss of twenty vacation days, fifteen to be taken immediately and five to be held in abeyance for one year, and one year on disciplinary probation. This offer was rejected by the Police Commissioner.

⁵⁵ See pp. 11-12 herein.

B. FALSE STATEMENTS MADE AT OFFICIAL INTERVIEWS INVOLVING POLICE MISCONDUCT WHICH OCCURRED DURING THE COURSE OF IAB ADMINISTERED INTEGRITY TESTS

A series of cases arising out of two incidents are included in the Commission's study because of the relatively minor penalties received by all of the officers in relation to the egregiousness of the offenses. In these cases, officers lied about their official conduct. Unbeknownst to these officers, however, their actions took place during the course of an integrity test administered and videotaped by the Internal Affairs Bureau.⁵⁶ In none of these cases did the penalty exceed a loss of thirty vacation days. All nine officers involved either plead guilty or were found guilty of making false and misleading statements during their official interviews. Both incidents were covertly videotaped by IAB.

CASE EXAMPLES

IAB initiated two integrity tests which targeted a Public Morals Division of the Department and its raids of brothels. Teams from Public Morals Commands routinely engage in undercover stings of brothels to determine whether prostitution is occurring. Typically an officer, posing as a customer, will enter the brothel and pay for service. Prior to engaging in any sexual activity, the undercover officer determines whether there is sufficient evidence to effect an arrest, leaves the premises, and notifies his back-up team. This team, based upon the evidence communicated by the undercover, enters the brothel and effects lawful searches and arrests. Here, IAB placed video cameras in the brothel, to determine the integrity of the Public Morals Team.

1. First Integrity Test

During the first test, the officer posing as a customer, entered the brothel, paid a cover charge, received a ticket, and chose a prostitute. Once in a bedroom with the prostitute, the officer undressed, and allowed the prostitute to initiate oral sex before he pushed her away. He left a sum of money on her bed and exited the location.

After the officer left the premises, his back-up team entered the brothel to conduct a search and make arrests. Video cameras captured the officers, among other things, unlawfully searching private lockers and closed containers, strewing trash on the floor and destroying property.

2. Second Integrity Test

The second test was similar, but a different enforcement team from the Public Morals Division responded. The officer posing as a customer entered the location, paid a sum of money and selected a prostitute. Once in the bedroom with the prostitute, the officer undressed and the prostitute performed oral sex on him for several minutes until the field team entered the location and another officer entered the bedroom, at which point the undercover officer hit the prostitute in the head.

⁵⁶ An integrity test is a covert exercise conducted by the Department whereby the Internal Affairs Bureau creates a realistic scenario requiring police intervention in order to assess the integrity of the responding officer(s).

The back-up team claimed to have recovered the pre-recorded "buy money", which was a fabrication. During the course of the operation, the madam who had received the money from the officer posing as a customer, surreptitiously handed it to an IAB investigator. The officer who led the team was captured on videotape tampering with United States currency, after which another officer announced that he had found the pre-recorded buy money when in fact he did not.

CASE ANALYSES

All nine officers involved in these incidents were charged with making false and misleading statements during their official interviews. Some of these false statements were denials of the officers' own misconduct while others were made to conceal the misconduct of their fellow officers. Six officers received penalties totaling the forfeiture of ten or less vacation days, two officers forfeited twenty vacation days, and the most severe penalty was a loss of thirty vacation days, twenty-five to be forfeited immediately and five to be held in abeyance for twelve months.⁵⁷ All of the false statements were contradicted by videotapes of the incidents.

The First Integrity Test

1. Officer H

Officer H supervised the field team in the first integrity test. Officer H was found guilty after an administrative trial of falsely stating during her interview that she did not see anyone search lockers in the hallway, nor was she aware that another officer destroyed a pay telephone. A videotape of the test shows her standing near another officer who was opening a locker, and she is seen talking to the officer as he searched clothing from the locker. The videotape also shows that she was in a position where she would have at least heard the loud banging noise created when a telephone was destroyed with a sledgehammer by another officer. Additionally, she is seen afterwards walking through the area and kicking a piece of the broken telephone with her foot. She was also found guilty of failing to report the misconduct of others.

Penalty: The forfeiture of seven vacation days.

2. Officer I

Officer I plead guilty to making false statements at the official interview and for wrongfully destroying a pay telephone and house plants. During his interview he denied

⁵⁷ When the loss of vacation days is held in abeyance it means that at the end of the stated period (in this case twelve months), upon the written recommendation of the officer's Commanding Officer and approval of the Chief of Personnel, all or any part of this deferred penalty may be waived.

destroying the telephone with a sledgehammer, although he was videotaped in the act.

Penalty: The forfeiture of ten vacation days.⁵⁸

3. Officer J

Officer J was found guilty after an administrative trial of falsely stating at his official interview that he did not witness Officer I break the telephone, even though he is seen on videotape emptying the contents of a garbage pail onto the floor a few feet away from where Officer I was destroying the telephone with a sledgehammer. He provided the following information at his interview:

Q: ...Did you observe a member of your team destroy that phone with an ax in your presence...sledgehammer?

A: No, sir.

Penalty: The forfeiture of five vacation days.⁵⁹

4. Officer K

Officer K plead guilty to falsely denying at his official interview that he observed any of his fellow officers conduct searches and destroy or damage property.

Penalty: The forfeiture of 10 vacation days.⁶⁰

5. Officer L

Officer L served as the undercover. He plead guilty to: wrongfully engaging in an act of sexual misconduct while on-duty; wrongfully becoming completely undressed while acting in an undercover capacity; wrongfully providing false information to an arresting officer regarding the events that transpired during the incident; and making false statements during an official interview. His false statements included the assertion that he was never completely naked, which is not what is obvious in the videotape.

Penalty: The forfeiture of twenty vacation days.

The Second Integrity Test

6. Officer M

Officer M was found guilty after an administrative trial of denying during an official interview that the undercover's cover was compromised. The officer was videotaped in

⁵⁸ This was actually a renegotiated plea. An earlier plea agreement offered by the DAO was for the forfeiture of ten vacation days with five days forfeited immediately and five held in abeyance for twelve months. That plea agreement was disapproved by the Police Commissioner.

⁵⁹ Quotes taken from the Trial Commissioner's decision.

⁶⁰ An earlier plea negotiation of ten vacation days, with five forfeited immediately and five held in abeyance, was disapproved by the Police Commissioner.

the office when the undercover was participating in the search for pre-recorded buy money with the other officers, as opposed to remaining in his role of a "john". She was also nearby when the undercover threatened the madam if they could not find the pre-recorded money.

Penalty: The forfeiture of five vacation days.

7. Officer N

Officer N plead guilty to making false statements at his official interview. These statements included the false claim that the undercover was not completely undressed when the officer entered the room.

Penalty: The forfeiture of ten vacation days.

8. Officer O

This officer was the supervisor for the team responding to the second integrity test. He was also responsible for substituting money for the pre-recorded buy money they were unable to locate. He plead guilty to: failing to properly supervise while on-duty by failing to prevent the wrongful tampering with evidence by subordinate officers; failing to properly report misconduct; wrongfully conducting and allowing to be conducted an illegal warrantless search of the location; wrongfully tampering with evidence by fabricating and substituting currency taken from the location for misplaced pre-recorded buy money; and making false and misleading statements during an official interview.

Penalty: The forfeiture of twenty vacation days.⁶¹

9. Officer P

Officer P was the undercover officer during the second integrity test. He plead guilty to all of the charges against him: wrongfully engaging in sexual misconduct while on-duty; striking a person about the face and head; wrongfully providing inaccurate information; and making false statements during an official interview. His false statements during the official interview included his denial that he received any sexual favors from the prostitute.

Penalty: The forfeiture of thirty vacation days, twenty-five to be forfeited immediately and five to be held in abeyance for twelve months.

These nine cases provide a stark example of the consequences that can result in a disciplinary system which fails to treat false statement charges seriously. The officers' false statements made to conceal their own misconduct and to cover up the conduct of their fellow officers are contradicted by videotapes of their actions. All of them lied about the incidents in a group effort to hide behavior which they knew was improper. The punishments imposed were

⁶¹ Officer O's Commanding Officer suggested in a report to the DAO that a Command Discipline would be appropriate in this case. This is another example where actions by a supervising officer reflected total lack of understanding of the Department's integrity efforts.

wholly inadequate, and thus failed to send a message that such conduct will not be tolerated. The officer who received the greatest penalty of a loss of twenty-five to thirty vacation days not only lied, but had sex with a prostitute while acting in his official capacity as an undercover officer and assaulted her upon the entry of the ranking officer leading the team.

The Trial Commissioner who presided over the trial of Officers H, J and M stated in her opinion that "Lying at an official interview is a serious offense that carries heavy penalties."⁶² However, she noted her reluctance to impose more serious penalties on these three officers since Officers P and O had already plead guilty to more serious charges and received their respective twenty-five to thirty and twenty days of forfeited vacation time. The insufficient penalties afforded the officers who plead guilty thus resulted in inadequate penalties for the officers who proceeded to trial. This understandable concern over precedent supports the need for a clear policy change regarding the level of penalty appropriate for false statements.⁶³

C. FALSELY REPORTING CRIMES

Three of the cases reviewed in the study concerned officers who falsely reported crimes for either personal gain or to harm another person. Two of the officers left the Department: one resigned and one was terminated. The officer who was terminated was a probationary police officer who called 911 and falsely reported that she was raped at gunpoint by another officer in the Department. She recanted the next day and was terminated within one week. The officer who resigned falsely reported that jewelry was stolen from his home in an attempt to defraud and steal from an insurance company. He was indicted and eventually convicted of a felony. He resigned from the Department approximately six months after his arrest.

The third officer, whose case is discussed below, is currently still employed with the Department.

CASE EXAMPLE

Officer Q

The officer made a false report in order to harass a process server who was attempting to serve papers on one of the officer's neighbors. The process server was sitting in an automobile on the street outside the officer's home. The officer called 911 anonymously and falsely reported that there was an individual seated in a car loading a gun. He described the physical characteristics of the process server and described his car.

As a result of his 911 call, four officers responded to the location and approached the parked car with their guns drawn. Of course no gun was recovered from the process server because the officer had fabricated the entire situation.

⁶² Quote taken from the Trial Commissioner's decision.

⁶³ See Recommendations, pp. 39-40 herein.

CASE ANALYSIS

This officer created a dangerous, potentially deadly, situation. In addition, the officer misused police resources as he knowingly invented a phony situation which required on-duty police officers to respond. The officer then lied during his official interview about the incident.

Officer Q plead guilty to all of the charges against him: wrongfully making a false and misleading 911 telephone call; wrongfully making false and misleading statements during his official interview; and an unrelated charge of leaving his assignment without permission. He also had a prior adjudicated charge where he lost fifteen days of vacation.⁶⁴ Officer Q received a penalty in the instant case of a loss of twenty-five days of vacation and the imposition of one year on dismissal probation.

D. FALSIFYING THE CIRCUMSTANCES OF THE SEARCH AND ARREST OF A DEFENDANT IN OFFICIAL DOCUMENTS AND TESTIMONY

Ten officers in the study were charged with making false statements surrounding the circumstances of the arrest of an individual or the search of an individual or location. In some of these cases officers fabricated testimony and records in an apparent attempt to ensure that the individuals were successfully prosecuted, including when they believed their search or arrest was legally defective. In other cases, the officers were motivated by their own greed as they stole money and property during the course of their duties and subsequently lied to cover up their own theft.

Of these ten officers, five were terminated from the Department after they were convicted in criminal proceedings for their behavior and two resigned who had criminal charges pending in addition to their administrative charges. The three remaining officers, whose cases are discussed below, received administrative penalties for their false statements.

CASE EXAMPLE

Officer R

Officer R was the subject of an integrity test conducted by the Internal Affairs Bureau. The test involved the search of a car driven by an IAB investigator posing as a drug courier. The car contained drugs, money, and a gun. Officer R arrested the "courier" and told an assistant district attorney that he saw him with his hands inside the wheel-well of the vehicle and that he recovered from the wheel-well a quantity of crack cocaine. He also stated that he recovered a bag containing additional crack cocaine, money and a semi-automatic gun from the floor of the vehicle. Officer R signed an affidavit for submission in criminal court which attested to these facts.

⁶⁴ In that case the officer was charged with: failing to issue a summons; failing to take police action; wrongfully grabbing the right breast of a female; and improper attire.

In fact, Officer R's statements were false. The "defendant's" hands were not in the wheel-well and Officer R did not actually recover all of the evidence himself, only the crack cocaine which was in the wheel-well. Another officer had recovered the evidence from inside the vehicle.

CASE ANALYSIS

Officer R admitted his false statements during his official interview. The affidavit he signed also contained a legally authorized notice that false statements made in the document were punishable as a class A misdemeanor pursuant to Section 210.45 of the Penal Law. Officer R plead guilty to the administrative charges, and received a penalty of twenty days loss of vacation and six months on dismissal probation.

Information in the file indicates that Officer R's Commanding Officer requested that the charges be adjudicated at a command level with the administration of a Command Discipline. This request was based on the Commanding Officer's belief that termination was not appropriate because the false statements were made for reasons of expediency, not to steal property or justify an illegal arrest. While IAB deserves credit for designing this integrity test, the Commission believes that the penalty imposed here was not adequate to demonstrate a determination by the Department that falsifying the circumstances of searches and arrests is totally unacceptable. It must be remembered that this type of behavior has the possible consequence of wrongfully depriving an individual of his liberty. Also of concern is the apparent lack of awareness at a supervisory level of the extreme importance of an officer's credibility as a participant in the criminal justice system, and within the Department itself, and the message that lack of concern sends.

The following two cases also involve charges that officers falsified the circumstances of the search and arrest of an individual.

CASE EXAMPLE

Officers S and T

Officers S and T responded to a radio run that an individual had a gun. Upon reaching the location, they were escorted into the building by two private security guards. The officers searched the defendant but did not find the gun. One of the private security guards recovered the gun from a closed bag carried by the defendant.

Officer S falsely told an Assistant United States Attorney for the Southern District of New York that he personally seized the gun from the defendant's waistband. He also made false statements under oath to a United States Magistrate Judge in the Southern District of New York, informing him that when the defendant began to reach for his waistband he frisked him and recovered the gun. He also lied in the Grand Jury when he falsely testified about the recovery of the gun.

Officer T falsely stated to an Assistant United States Attorney for the Southern District

of New York that he did not see who retrieved the gun or from where it was retrieved when in fact he knew the handgun was recovered by the private security guard.

CASE ANALYSIS

Both officers were indicted for criminal offenses in federal court for lying about the circumstances surrounding the recovery of the gun and were ultimately acquitted by a judge. While the judge found there was conflicting testimony among some of the witnesses, the disciplinary files indicate that despite the inconsistencies of some of the witnesses, all of the witnesses agreed that the gun that was recovered came from a bag on the floor that had been removed from the possession of the arrestee, and none of the private security guards described the gun as having been physically removed from the arrestee. Both officers were allowed to plead nolo contendere and received a penalty of sixty days suspension (with credit for 30 days time already served on suspension) and the imposition of one year dismissal probation.

The disciplinary files indicate that the Department accepted these pleas because of concern that the same credibility problems of the witnesses found by the District Court Judge would affect a department trial, and that the case did not involve perjury for personal benefit or for a corrupt purpose such as bribery or of venal motivation to cover up police misconduct such as physical abuse of a prisoner or other unlawfulness. Rather, the Department files noted that the theory of prosecution would be that a lie was tailored and structured to overcome possible constitutional objections regarding search of the closed bag.

Documents produced by the Department do not reflect any discussion of the different levels of proof required for conviction in a federal criminal trial (proof beyond a reasonable doubt) and a Department administrative trial (a preponderance of the evidence). Nor do these documents reflect consideration of the seriousness of lying under oath to United States Magistrates and committing perjury before a federal Grand Jury. Further, there is no indication why a guilty plea was not required of the officers as opposed to offering them a nolo contendere plea.⁶⁵ While the documents contain discussion of the officers' high approval ratings from their superiors, they do not discuss the fact that Officer S was a probationary police officer who made these false statements within two months of entering the Department.

While this may have been a difficult case, the Commission believes that the Department's offer of nolo contendere pleas and the level of punishment imposed once again sends an insufficient message that lying will not be tolerated, even for supposedly non-venal motives. We should note that under recently adopted Departmental procedures this may be the kind of case that would be tried and no plea bargain offered.

⁶⁵ If these officers did not issue false statements as alleged, then they would have an opportunity to have a Trial Commissioner so decide after an administrative trial.

E. FALSE STATEMENTS IN CIVIL AND CRIMINAL PROCEEDINGS

One case we reviewed involved false statements made during both civil and criminal proceedings.

CASE EXAMPLE

Officer U

This officer gave false statements at a deposition where he was a defendant represented by the New York City Office of the Corporation Counsel. The statements he made concerned whether he was friends with one of his co-defendants, had discussed the case with him, and had met at the house of the co-defendant. The attorneys representing him confronted him about his false statements and told him they knew they were false.⁶⁶ Officer U admitted he had in fact lied.

Officer U was allowed to correct his answers in a continuation of the deposition where he admitted he had not previously testified truthfully.

Subsequently, Officer U testified as a witness in an unrelated criminal case. The defense attorney cross-examined him about his making false statements during his first deposition and having to correct them on a subsequent date. During the criminal proceeding, Officer U stated that he actually told the truth when he was first deposed, but lied at the subsequent deposition on the advice of his attorneys.

During a subsequent official Department interview, Officer U maintained his most recent story that he originally told the truth but lied at the second deposition on the advice of his attorneys.

CASE ANALYSIS

Despite the incontrovertible evidence of Officer U's lies, the Department offered and allowed him to plead nolo contendere. Officer U received a sentence of thirty days suspension and one year dismissal probation even though he compromised both a criminal and civil proceeding.

F. FAILURE TO REPORT MISCONDUCT

In all of the cases discussed so far, where officers affirmatively misrepresented the misconduct of other officers, rather than simply failed to report it, the penalties imposed involved only the forfeiture of vacation days. Additional cases were reviewed by the Commission where officers did not make false statements to actively conceal the conduct of others, but, rather, failed to report misconduct through their silence. The Department's rules

⁶⁶ An Assistant Corporation Counsel had personal knowledge which directly contradicted Officer U's sworn testimony.

in this regard state:

A member of the service having or receiving information relative to corruption or serious misconduct has the responsibility to report such information to his commanding officer or directly to the Internal Affairs Bureau, Action Desk....

Failure to report corruption or serious misconduct is in itself an offense of serious misconduct and will be charged as such when uncovered during an investigation. Conduct designed to cover up acts of corruption...will be charged as an obstruction of justice or other criminal act with the consent of the prosecutor who has criminal jurisdiction.⁶⁷

The mandate to report serious misconduct or corruption is critical to the Department's efforts to change a culture where it is perceived that the officers adhere to a code of silence to protect one another, and that officers who violate this code are harassed, ostracized by their fellow officers, threatened, and placed in fear that their fellow officers will not assist them in times of crisis on the streets.⁶⁸ The Department itself recognizes the need to reform the police culture:

In order for the Police Department to establish and maintain the highest levels of integrity, it is imperative that individual employees, whether police officers, supervisors, managers or civilians, understand their obligation to report incidents involving criminal behavior or serious misconduct on the part of their fellow employees.⁶⁹

CASE EXAMPLE

Officer V

An off-duty police officer was in a traffic dispute with two civilians when she improperly held her gun to the head of one of the individuals causing physical injury. Officer V responded to the scene and directed the off-duty officer to leave the location. Officer V was informed by the civilians of the alleged misconduct but failed to report the incident to the Commanding Officer or notify the IAB Action Desk that an off-duty officer allegedly menaced two civilians with her firearm.⁷⁰

⁶⁷ Interim Order Three, Allegations Of Corruption And Serious Misconduct Against Members Of The Service, issued January 4, 1995 revising Patrol Guide Section 108-21.

⁶⁸ Mollen Commission Report, pp. 51-58.

⁶⁹ Report On Integrity, p. 6.

⁷⁰ In fact, charges and specifications were brought against the off-duty officer who plead nolo contendere to the charges of menacing and assault and received a penalty of twenty days on suspension.

CASE ANALYSIS

Officer V plead guilty to failing to report misconduct and received a penalty of a loss of five vacation days. The advocate prosecuting the case did not believe that Officer V deliberately tried to cover up the misconduct. This case was negotiated long after the Department stated the importance of holding officers responsible for failing to report the serious misconduct of others.

CASE EXAMPLE

Officer W

Officer W was informed that a person arrested for burglary claimed to have paid off another police officer. Officer W, rather than reporting this to his Commanding Officer or to the Internal Affairs Bureau, told the officer, who the arrestee allegedly paid off, that the arrestee had made such a claim and even showed the officer a photograph of the arrestee. The officer who allegedly received the pay-off recorded a conversation where Officer W told him about the arrestee's allegation.

CASE ANALYSIS

Officer W was allowed to plead guilty to the charge of failing to report serious misconduct in exchange for a penalty of twenty days suspension. While he received a more severe penalty than Officer V, his conduct consisted of more than failing to report misconduct. Officer W affirmatively engaged in behavior that would encourage and support the corrupt activities of another officer and, potentially, endanger the safety of the witness. It is clear that his only motive in informing the officer of the identity of the arrestee who made the allegation was to put the officer on guard and enable him to avoid further apprehension.⁷¹

If the Department is to achieve its stated objective of achieving the highest level of integrity possible, officers who conceal the misconduct of other officers -- as was the case in both these situations -- must receive more severe penalties, even if, depending on the facts, these penalties do not have to involve termination. Here, for example, an appropriate penalty for Officer V might be less than termination. Officer W's conduct, however, is the kind of misconduct, involving both a failure to report and affirmative actions designed to prevent allegations from being investigated, for which termination plainly would be appropriate.

⁷¹ An interesting aspect of this case, which appears undeveloped from the records made available to the Commission, is the fact that Officer W did not actually hear this information directly from the arrestee, but from other officers who were transporting the arrestee and then told Officer W about the conversation. No charges were brought against the two officers who originally learned of the bribery allegation.

V. ADDITIONAL OBSERVATIONS

During the course of its study of the Disciplinary system, the Commission noted other areas of concern that merit further attention.

A. DELAY IN ADMINISTRATIVE PROCEEDINGS AND PARALLEL CRIMINAL PROSECUTIONS

When an officer is charged with a crime, there is often a long delay before his criminal case is resolved. The Department will often wait for the outcome of the criminal case before proceeding administratively. Frequently, this is based on the request of the criminal prosecutor who fears that an administrative prosecution will hinder the ability to proceed with the criminal case. Other times the Department itself decides to defer acting while criminal cases are pending. In all these circumstances, since the maximum suspension allowed pending the resolution of any offense is thirty days, once an officer is suspended for that time he must receive full pay regardless of the work he is able to perform.⁷²

The Department has a compelling interest to terminate a corrupt officer sooner rather than later. Indeed, conversations with prosecutors reveal that it is often also in the prosecutor's interest for officers with pending criminal charges to be terminated. Prosecutors communicated to the Commission that some officers try to stay on the payroll for as long as possible knowing they will be discharged once they are convicted. This results in them using every tactic to prolong their criminal case. There are instances where an officer refused to plead guilty to criminal charges, but did so immediately upon being terminated from the Department.

In other cases, however, prosecutors -- fearful that their cases will be severely prejudiced -- strongly object to the Department proceeding while criminal cases are pending. This can create problems as a significant delay in a case may also result in the expiration of the statute of limitations for administrative misconduct.⁷³

The Department, through the establishment of the SPO, has begun to work with the prosecutors to develop methods to enable the Department to proceed more regularly with disciplinary cases while criminal cases are pending. Since this can be beneficial to both the Department and the prosecutors, the Commission will monitor the further utilization and development of these procedures.

⁷² For example, an officer may be on modified assignment pending the resolution of the charges which means he is not permitted to perform the full functions of a police officer.

⁷³ While charges that constitute criminal conduct are not subject to the administrative statute of limitations, other misconduct is subject to the eighteen month statute of limitations from the date of the incident. If the Department waits to administratively prosecute a case because the officer is being prosecuted criminally, the Department will be time barred from bringing charges for administrative misconduct after eighteen months.

B. INSUFFICIENT PENALTIES IN OTHER TYPES OF CASES

While reviewing the false statement cases, the Commission noticed that there were other areas of conduct where there are at least issues about the adequacy of the penalties imposed. Some examples of these cases are described in the report. These areas include charges of blatant excessive use of force, as well as charges for off-duty misconduct, particularly where a weapon is either drawn or discharged. While the Commission has not undertaken sufficient review of these categories of cases to warrant specific recommendations in these areas, the Department should examine how it is dealing with these cases.

VI. CONCLUSIONS

The Commission believes that the penalties imposed for lying are insufficient. In one instance, an advocate recommended that an officer's suspension pending his perjury trial be lifted because he believed the case, which involved lying to enhance the prospects for a criminal conviction, did not implicate the officer's ability to perform police duties. The Commission disagrees. The credibility of police officers is the linchpin of the criminal justice system and the bedrock of the Police Department's overall integrity. If false statements by police officers are not treated as extremely serious offenses the effects will be to undermine the Department's anti-corruption efforts as well as efforts to enhance the confidence of the public in the honesty of the police force. And, over the long run, no police department lacking such confidence can be successful.

We are not unmindful of the views of members of the department that existing penalties have real consequences for the officers. The Commission recognizes that officers who are suspended from the Department suffer shame, humiliation and economic loss. They are summoned before a supervisory officer where they are stripped of their shield, gun, and identification card. Officers may also appear at their home to remove all of their firearms. They lose all benefits and pay while on suspension, which can create great financial pressures for some officers and concern about the loss of health benefits for themselves and their dependents. The less severe penalty of forfeiture of vacation days is viewed by officers as a financial penalty: every day of vacation forfeited is viewed as the equivalent of one day's salary.⁷⁴

The Commission also can imagine the trepidation and concern which accompanies the imposition of dismissal probation. Officers must work with the knowledge that the Police Commissioner has the power to summarily terminate them for any misconduct. Moreover, a finding that an officer made a false statement will have a negative impact on the officer's career and potential for advancement within the Department. Police officers have extraordinarily difficult jobs. Each day they risk their lives to protect the communities in which they serve.

⁷⁴ The financial consequences of this punishment, however, may not actually be felt until the officer leaves the Department some years later. See footnote 19.

Because of the trust invested and power given to these officers, the communities' expectations of them are high. As a result, they are held to the highest standard of integrity and are subject to greater penalties than other City employees. In fact, officers often state that they are disciplined more severely than any other participant in the criminal justice system.

Accepting all these points, however, the Commission still believes that more severe penalties generally are warranted in false statement cases, and that, absent exceptional circumstances, termination is the appropriate penalty. Not only does lying by police officers have the corrosive effects on the Department which are described above, but a police officer who has lied in one of the various ways described in this report becomes an ongoing liability for the Department because the officer's credibility is forever tainted. The importance of an officer's credibility cannot be overstated. It is inextricably entwined in every aspect of police work and criminal prosecution, including arrest, search and seizure, interrogation, identification, forensic analysis, etc.... Each time that officer testifies as a witness at a criminal trial, the prosecution and the Department relies on that officer's ability to testify in a reliable, truthful, and convincing manner so that the officer is believed by the fact finder, be it judge or jury. Should an officer, however, have a prior Departmental conviction for lying, that fact may properly be exposed by the defense and be the subject of legitimate cross examination. By continuing to employ an officer who no longer maintains this fundamental credibility, the Department thus undermines its own mission and compromises the ability of the prosecutor to convict the guilty.

The ultimate arbiter of disciplinary penalties is the Police Commissioner who approves every penalty that is imposed on an officer following disposition of the charges and specifications. Since the Police Commissioner has the ability to disapprove any negotiated plea agreement or penalty recommended after trial, it is within the Police Commissioner's purview to structure a penalty system that more appropriately reflects the seriousness of the charges and to make it clear that absent exceptional circumstances, termination is the appropriate consequence of particular misconduct.

The Department has such a system in place when charges involve narcotics use, possession, or sale. The Department's policy of "zero tolerance" for these types of cases results in the successful termination, or forced resignation, of officers charged with this conduct. This was evident from the cases reviewed by the Commission. Seven cases were examined in which an officer was charged with failing a drug test given by the Department, and an eighth case was reviewed where an officer was charged with possession of marijuana. In all of these cases the officers resigned prior to the adjudication of the charges. This can be attributed to the fact that the Department has made its policy well known: the Department will successfully terminate any officers charged with offenses involving narcotics.

The Commission is not advocating that false statement charges be handled identically to cases involving narcotics. False statement cases differ and there can be potential mitigating circumstances that must be considered; not every case will merit termination. However, the Department's stance on narcotics cases is instructive as to the Department's ability to establish

a definitive approach toward treating a category of cases within the disciplinary system, as well as the Department's capability and will to execute such a policy. Developing a method for processing false statement charges within the disciplinary system which unequivocally communicates the Department's intolerance for false statements can be achieved in a similar manner.

Strengthening the disciplinary system to actively prosecute and seriously penalize officers who make false statements is critical to the perceived strength of the Department's efforts to enhance the culture of honesty within the Police Department, to eliminate the "blue wall of silence", and to promote public confidence in its integrity. To accomplish these goals officers must be aware that absent exceptional circumstances, false statements, including false statements made to cover up the misconduct of other officers, will result in termination from the force, not a forfeiture of vacation days. The potential deterrence that will result from providing serious penalties to officers making false statements cannot be underestimated. Once officers are aware that a strong, effective disciplinary system is an integral component of the Department's integrity program, they hopefully will ultimately reconsider making false statements to conceal the misconduct of themselves and others.

VII. DEPARTMENT INITIATIVES

The Department is committed to strengthening and increasing the overall integrity of the Department.⁷⁵ The Department made recent improvements to the disciplinary system and continues to advocate for legislation that will enhance its ability to prosecute officers on administrative charges and impose more severe penalties. The Department also has reported that it recently has increased the severity of penalties being imposed for a variety of offenses.

A. LEGISLATIVE PROPOSALS

The Department has proposed many legislative changes to both state and local laws that will increase the Department's ability to fight corruption. These proposals will remove some of the limitations that currently encumber the Department's capacity to penalize officers convicted of wrongdoing. As discussed below, with one minor exception the Commission endorses the Department's proposals.

1. Expand Available Penalties

The Department has recognized the need to expand the existing range of penalties to enable them to subject officers to greater punishments. The currently available maximum sentence, other than termination, is thirty days suspension per offense and the imposition of dismissal probation. The Department has proposed an amendment to Section 14-115 of the New

⁷⁵ See Strategy No. 7.

York City Administrative Code that will provide the Police Commissioner with additional penalties when an officer is found guilty in a disciplinary proceeding. These penalties include:

- i. Suspension without pay for up to one year.
- ii. The imposition of a monetary fine not to exceed twenty-five thousand dollars.
- iii. The demotion in grade, title or rank, with a commensurate reduction in salary.

2. Extend Statute Of Limitations

The Department seeks to amend Civil Service Law Section 75(4) to extend the statute of limitations for the disciplinary prosecution of non-criminal misconduct to three years from eighteen months.⁷⁶ Since some of the most serious allegations of misconduct necessitate lengthy investigations, prosecutions for administrative misconduct may be time barred.

3. Pension Forfeiture

The Department seeks to amend Public Officers Law Section 30(e) to provide that when an officer is convicted of a felony or other crime involving the oath of office, the officer is deemed to have vacated the office on the date of the first act or omission constituting an element of the felony or other crime. This amendment will prevent a police officer convicted of a serious crime, while serving as an officer, from receiving lifetime pension benefits by retiring prior to the date of the conviction.

4. Extend Pension Application Filing Dates

Currently a minimum period of thirty days notice to the Department is required before an officer is permitted to retire. If an officer is not terminated within the thirty days from the time of the filing of the application, pension benefits must be granted. This time period, however, is sometimes too short for the Department to complete a disciplinary proceeding. Thus, the Department proposes to amend Section 13-246 of the New York City Administrative Code to provide for a minimum period of ninety days notice to the Department before an officer is permitted to retire.

The purpose of this proposal is to ensure that officers who have engaged in serious wrongdoing do not benefit by retiring from the Department prior to the resolution of their charges and receiving a lifetime pension.

⁷⁶ In 1983 the State Legislature reduced the statute of limitations to eighteen months from three years.

5. Access To Sealed Records

The Police Commissioner currently has access to the sealed records of police applicants who have been the subject of criminal proceedings, but does not have similar access to sealed records for sworn police officers.⁷⁷ The Department therefore advocates the amendment of Criminal Law Sections 160.50 and 160.55 to provide the Police Commissioner with access to all official records relating to the arrest and prosecution of a police officer which would otherwise be sealed, and amendment of Executive Law Section 296(16) to exempt from the definition of unlawful discriminatory practices under the New York State Human Rights Law the access and use of these records in furtherance of a Departmental investigation or disciplinary proceeding.

6. Extend Pre-Trial Suspensions

When an officer is arrested and charged with a crime, the Department can suspend the officer, without pay, for a maximum of thirty days. After thirty days, the officer is restored to full pay whether or not he is restored to full duty status. The Department seeks to amend Civil Service Law Section 75 (3-a) to provide for the suspension of a police officer without pay during the pendency of the criminal action in which the officer is a defendant.

All of these legislative initiatives were re-stated in the Department's Strategy No. 7 and, except for the extension of pre-trial suspensions, were endorsed by the Mollen Commission.

B. RECENT DEPARTMENT IMPROVEMENTS IN THE DISCIPLINARY PROCESS

Within the past year, and during the Commission's study, the Department has initiated several improvements to the disciplinary system. These improvements have great potential to increase the effectiveness of the disciplinary system. They seek to include in the penalty negotiations process from the commencement of the prosecution top ranking members of the Department and they establish mechanisms to protect against inconsistent penalties for similar misconduct. While it is too early to assess the effect of many of these changes, they demonstrate that the Department is moving in the right direction. Additionally, the Commission was advised by the Department that in recent months penalties have increased and the Department is levying more severe penalties in a variety of contexts, including for false statements.

⁷⁷ In fact, in the recent case of The People of the State of New York v. Officer Francis X. Livoti, Officer Livoti was acquitted of criminally negligent homicide after he placed an individual in a chokehold who subsequently died. After the acquittal, the Department requested the minutes of the Grand Jury who voted the initial indictment to assist in its disciplinary proceedings against the officer. The Department was denied access to these records as to witnesses who did not testify at trial.

1. Early Involvement Of The First Deputy Commissioner In Plea Offers

Beginning in September 1996, the First Deputy Commissioner is consulted before the DAO makes a negotiated plea offer. Previously, the Department Advocate's Office would design a plea agreement, negotiate with the officer's representatives, agree to settle the case, and then seek approval of the agreement by the First Deputy Commissioner. Under the new procedure, the Department Advocate and the Managing Attorney of the Department Advocate's Office meet with the First Deputy Commissioner on a weekly basis in order to discuss each case for which an offer will be made the following week. The Department Advocate and the Managing Attorney discuss with the First Deputy Commissioner the facts of the case and the officer's disciplinary and work history.

Prior to the implementation of this new system, there were instances where the First Deputy Commissioner, and the Police Commissioner, would disapprove a negotiated plea agreement. The new procedure should, at minimum, reduce the delays that resulted from reaching an agreement that was ultimately disapproved, as well as reduce the unnecessary work involved in structuring a plea agreement that is then disapproved.

The new procedure, however, has even greater potential to guarantee that appropriate penalties are meted out. The First Deputy Commissioner can ensure from the outset of the case that the only plea agreement offered reinforces the Department's policies towards certain conduct.

2. Consistency Of Penalties

Another procedure which began within the past two months includes the participation of the Deputy Commissioner of Trials ("DCT") in the plea bargaining process.⁷⁸ Until then, the Department Advocate's Office would negotiate plea agreements with the officers without any input or oversight from the Trial Commissioners.

Under the new system, the DCT is present when the case is conferenced on the record with the Department Advocate's Office and the respondent. A plea offer is made and the DCT has full access to the investigative folder, the Department Advocate's Office folder, and the respondent's prior record.⁷⁹ During this conference the DCT may help to clarify the issues, comment on the viability of a defense, and advise the respondent of kinds of penalties imposed for similar misconduct.

⁷⁸ This new procedure began on September 27, 1996.

⁷⁹ Because of this unlimited access to the case folder, the DCT will not try a case she has conferenced, since unsubstantiated prior bad acts by the respondent are not as a matter of course introduced before the Trial Commissioner hearing the case during the DAO's case in chief. The Trial Commissioner will usually only learn of these prior bad acts after a decision has been rendered on the merits and before a penalty is recommended. Even then the Trial Commissioners only consider charges which were adjudicated.

If an agreement is reached between the parties and approved by the DCT, the case is forwarded to the First Deputy Commissioner for his approval. If the DCT disapproves of the penalty she will ask the Department Advocate's Office to consider a different penalty range. The Department Advocate's Office may then ask for an adjournment to consult with the First Deputy Commissioner. If the advocate instead maintains his original position, the case is forwarded to the First Deputy Commissioner with notification of the DCT's disapproval. If at any time the respondent does not accept a plea, the case is scheduled for trial with no further adjournments granted.

This new procedure enables the DCT to provide input into all of the plea negotiations and provide oversight. This improvement will help to ensure the consistency of penalties resulting from pleas and disciplinary trials, and will serve the Department's interest in having a unified voice in communicating its position on misconduct. The system may also further shorten the amount of time within which cases are resolved.

The DCT is involved in another improvement to the disciplinary system that seeks to ensure similar penalties for similar misconduct. Within the past year, the DCT has created a database for all cases that proceed to trial in order to track the penalties that were rendered. The DCT has begun to expand the database to include negotiated plea agreements she has presided over under the new procedure. Computerization of this information will be a useful tool in reaching the objective of having comparable penalties for like misconduct.

3. Serious Charges Necessitate A Disciplinary Trial

The Police Commissioner recently instituted a new policy with regard to "serious charges". There will be no plea negotiations based on perceived evidentiary weaknesses in any case where the charges are "serious".⁸⁰ The Commission was advised that in such cases the Department would rather lose at trial in an effort to terminate the officer than offer a more lenient sentence. The following case demonstrates the justification for such a policy change: Officer X assaulted an alleged prostitute while on-duty by beating her around her head and legs with his nightstick, and then denied all of the allegations at his official interview. Because the Department Advocate's Office characterized the evidence as weak, the Department Advocate's Office recommended that the case be adjudicated at the command level. Officer X plead guilty to all of the charges and received a Command Discipline with a loss of one vacation day. The penalty was so plainly inconsistent with the severity of the misconduct that the system would have been better served by trying the case and losing rather than accepting this result.

⁸⁰ This new policy was instituted by the current Police Commissioner and First Deputy. The Commission was informed that this policy of proceeding to trial may apply in cases where: 1) the officer's background demonstrated an extensive record of misconduct; 2) the alleged violation constituted criminal conduct and a prosecutor had declined prosecution or was unable to sustain their burden of proof; and 3) the officer engaged in a serious departure from Departmental procedure which could discredit the Department.

4. Procedural Changes To The Disciplinary System

As described in the first section of this report, the Disciplinary System underwent many changes effective October 13, 1995.⁸¹ The purpose of these reforms were to reduce the length of time necessary to process cases and to expand the command discipline system so that minor infractions could be handled by the local command and the Department Advocate's Office could focus its resources on more serious cases.

Since the changes of the disciplinary system took effect, there are fewer cases entering the system.⁸² Individuals in the Department who were interviewed for the report also stated that the majority of cases proceeding to trial contained more serious charges, and they have observed an increase in the level of penalties.

5. Increased Use Of Dismissal Probation

It was brought to the attention of the Commission that there has been a greater use of dismissal probation as a penalty since the appointment of the current Police Commissioner. It appears that while the penalty used to be applied sparingly, it is now increasingly used as part of the plea bargaining process.⁸³

VIII. RECOMMENDATIONS

A. TERMINATION ABSENT EXCEPTIONAL CIRCUMSTANCES

While termination has always been a potential penalty for the making of a false statement, the Commission endorses the new policy announced by the Police Commissioner that whenever an officer is found to have made a false statement in a disciplinary proceeding, through a decision by a Trial Commissioner or by a guilty plea, the officer will be terminated from the Department absent exceptional circumstances. By punishing those who make false statements in a clear, unambiguous manner, the Department sends a message which enhances the credibility of the overwhelming percentage of officers who perform their responsibilities with courage and integrity.

All false statement charges should be subject to this new policy, including: false statements made during an official Department investigation; false statements made to other law

⁸¹ See Recent Changes In The Disciplinary System, p. 7.

⁸² The First Deputy Commissioner's Disciplinary Assessment Unit, First Annual Report, June 1995 to June 1996, p. 27.

⁸³ In 1995 there were thirty-three officers on dismissal probation as compared to the one hundred and three officers already on dismissal probation thus far in 1996.

enforcement agencies; the filing of false information in other state agencies; the filing of false affidavits; false testimony during criminal, civil and administrative proceedings; the submission of false information in police department reports; false statements to supervisors; false reports of crimes; false statements made to conceal the misconduct of fellow officers; and any other false statement that implicates the integrity of the officer.

This policy of termination, absent exceptional circumstances, can serve a critical role in the Department's efforts to achieve the highest levels of integrity. In connection with its implementation, the Department can, if it desires, coordinate a short campaign which will place all officers on formal notice of this policy change.⁸⁴ This campaign can include the showing of videotapes at roll call, posted announcements, and presentations from high ranking officers.

The recent improvements made by the Department to enhance its disciplinary system, specifically the active role of the First Deputy Commissioner in making plea offers and the participation of the DCT in plea negotiations, will facilitate the rapid implementation of this change in policy as the new procedures now allow for these Commissioners to provide input at the commencement of the process.

B. OTHER OFFENSES

The Department should increase the penalties where there is a failure to report the misconduct of another officer. Where that failure is accompanied by affirmative acts of concealment by the non-reporting officer, a particularly strong response from the Department is required. Also, while the Commission does not believe that it has adequate information to make specific recommendations in connection with other categories of offenses, based on the cases it has reviewed the Commission believes it to be important that the Department review the sufficiency of the penalties in other areas, particularly with regard to cases involving off-duty misconduct where a weapon was involved or the blatant use of excessive force.

C. COORDINATION WITH OTHER LAW ENFORCEMENT AGENCIES

The Department sometimes has needs that conflict with outside law enforcement agencies. When an officer is charged with a crime, the Department may seek to proceed with the case administratively so that the officer is terminated quickly, if appropriate, and does not continue to receive full salary (especially when the officer's conduct prevents him from working on full-duty status). Both federal and state prosecutors, however, share concerns that in some circumstances an administrative prosecution poses risks to the criminal case.

⁸⁴ Obviously, officers are already on notice that false statements are prohibited and, in appropriate cases, this can lead to being discharged. Therefore, even apart from this policy change, false statement cases often should result in termination.

While various issues remain, the Department has been increasingly successful in working with prosecutors in order to develop procedures which enable them to proceed more regularly with disciplinary cases while criminal cases are pending. The Commission will monitor the progress being made in this regard.

D. LEGISLATIVE INITIATIVES

With one limited exception, the Commission supports all of the legislation proposed by the Department in order to increase the effectiveness of the disciplinary system and recommends approval of these proposals by the State Legislature and City Council where appropriate.⁸⁵

E. WRITTEN PENALTY GUIDELINES

While recognizing the difficulties that are created in developing written penalty guidelines, since some of the factors that are considered include differences in the nature of the alleged misconduct as well as the history of the officer with regard to work, disciplinary actions, and civilian complaints, the possibility of such guidelines merits further investigation. Written penalty guidelines can benefit all parties to the disciplinary system, including the officers who will be on notice of the consequences of their actions. The Commission intends to review further this issue with the Department.

⁸⁵ The Commission's only proposed modification to the City's proposals, listed pp. 34-36, is to limit the City's proposal that an officer charged with a crime be suspended from the Department, without pay, during the pendency of the case in which he is a defendant. The Commission believes that this is too open ended and proposes that this suspension be limited to a maximum time period of six months. Prosecutors should give these cases priority so as to be able, in as many cases as possible, to complete their prosecutions within this time period.

APPENDIX A



PATROL GUIDE

PROCEDURE No.

118-09

INTERROGATION OF MEMBERS OF THE SERVICE

DATE ISSUED 3-9-90	DATE EFFECTIVE 3-16-90	REVISION NUMBER 90-3	PAGE 1 of 3
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Misc. 1953-F (10-91)-h2

PURPOSE

To protect the rights of the member of the service (uniformed or civilian) in an official department investigation.

PROCEDURE

Prior to questioning a member of the service (uniformed or civilian) who is the subject or a witness in an official investigation:

INTERROGATING OFFICER

1. Permit member to obtain counsel if:
 - a. A serious violation is alleged, OR
 - b. Sufficient justification is presented although the alleged violation is minor.
2. Notify member concerned two (2) business days prior to date of hearing to permit member to obtain and confer with counsel.

NOTE

A uniformed member of the service in the rank of police officer who is the subject of an official investigation will be given two (2) business days prior to the date of a hearing, if a serious violation is alleged or sufficient justification is presented even though the alleged violation is minor, to obtain and confer with counsel. In addition, a police officer who is a witness in an official investigation is entitled to a period of time, up to four (4) hours, to confer with counsel.

3. Inform member concerned of:
 - a. Rank, name and command of person in charge of investigation
 - b. Rank, name and command of interrogating officer
 - c. Identity of all persons present
 - d. Whether he is subject or witness in the investigation, if known
 - e. Nature of accusation
 - f. Identities of witnesses or complainants (address need not be revealed) except those of confidential source or field associate unless they are witnesses to the incident
 - g. Information concerning all allegations.
4. Permit representative of department line organization to be present at all times during interrogation.
5. Conduct interrogation at reasonable hour, preferably when member is on duty during daytime hours.
6. Insure that interrogation is recorded either mechanically or by a department stenographer.
 - a. The Department Advocate will determine if a transcript is required in non-criminal or minor violation cases.



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INTERROGATING OFFICER (continued)

7. DO NOT use:
 - a. "Off the record" questions
 - b. Offensive language or threats (transfer, dismissal or other disciplinary punishment)
 - c. Promises of reward for answering questions.
8. Regulate duration of question periods with breaks for meal, personal necessity, telephone call, etc.
9. Record all recesses.

NOTE

Interrogations may be conducted before or after CHARGES AND SPECIFICATIONS (PD468-121) have been served. An interrogation conducted after service of charges must be completed at least ten (10) days prior to the date of Department trial except as directed by the Deputy Commissioner-Trials.

DEPARTMENT ADVOCATE

10. Conduct interrogation within a reasonable time after disposition of criminal matter, when member was arrested, indicted or under criminal investigation.
11. Furnish member with copy of tape of interrogation no later than twenty (20) days after service of charges.
 - a. If interrogation was conducted after service of charges, tape must be furnished to member no later than five (5) days after interrogation
 - b. Furnish transcript, if one was prepared, by 1000 hours on trial date, in all cases.

NOTE

When the Department trial date is scheduled immediately after CHARGES AND SPECIFICATIONS are served, the Deputy Commissioner-Trials will grant the department reasonable time to conduct an interrogation. In any event, a copy of the tape and a copy of the transcript must be furnished as indicated above, if appropriate.

COMMANDING OFFICER OF MEMBER

12. Assign member to 2nd Platoon, if possible.

MEMBER OF THE SERVICE

13. Answer questions specifically directed and narrowly related to official duties. (Refusal shall result in suspension from duty).
14. Submit OVERTIME REPORT (PD138-064) if lost time accrues as result of investigation.

SUPERVISOR IN CHARGE OF INVESTIGATION

15. Notify the desk officer immediately when member of the service is directed to leave his post or assignment to report for an official investigation.

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SUPERVISOR IN CHARGE OF INVESTIGATION

16. Insure that notifications concerning official investigations are properly recorded in appropriate department records when made to or recorded from:
- a. Complainants
 - b. Witnesses
 - c. Lawyers
 - d. Respondents
 - e. Other interested parties.

DESK OFFICER

17. Record in appropriate department records and notify the investigating command immediately of notifications or messages received from:
- a. Lawyers
 - b. Witnesses
 - c. Complainants
 - d. Other interested parties involved in the subject investigation.

ADDITIONAL DATA

If a member of the service (uniformed or civilian) is under arrest or is the subject of a criminal investigation or there is a likelihood that criminal charges may result from the investigation, the following warnings shall be given to the member concerned prior to commencement of the interrogation:

"I wish to advise you that you are being questioned as part of an official investigation by the Police Department. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of New York, the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties, you will be subject to departmental charges which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent departmental charges."

The questions and answers resulting from the interrogation conducted pursuant to this procedure are confidential. They are not to be revealed nor released to any person or agency outside the department without prior written approval of the Deputy Commissioner-Legal Matters. If a subpoena duces tecum is received for any such questions and answers, the Legal Bureau should be contacted immediately.

APPENDIX B

The following is a complete list of dispositions for all officers who were found guilty or pleaded to at least one charge of making a false statement.¹

<u>DISPOSITION</u>	<u># OF MOS</u>	<u>TRIAL OR PLEA</u>
Command discipline	4	4 pleas
Forfeiture of 5 days vacation	2	2 trials
Forfeiture of 7 days vacation	1	trial
Forfeiture of 10 days vacation	6	5 pleas; 1 trial
Forfeiture of 15 days vacation	2	2 trials
Forfeiture of 20 days vacation	3	3 pleas
Forfeiture of 20 days vacation and 6 months dismissal probation	1	plea
Forfeiture of 25 days vacation and dismissal probation	1	plea
Forfeiture of 30 days vacation	2	2 pleas
Forfeiture of 30 days vacation and dismissal probation	1	plea
30 days suspension	2	1 trial; 1 plea
100 days suspension	1	trial
20 days suspension and disciplinary probation	1	trial
30 days suspension and dismissal probation	2	2 pleas (1 <u>nolo contendere</u>)
60 days suspension and dismissal probation	3	3 pleas (2 <u>nolo contendere</u>)
Resigned	5	
Retired	2	
Terminated	12	6 terminated after criminal convictions; 3 PPOs terminated without a hearing; 3 terminated after an administrative trial. ²

¹ The Commission reviewed sixty cases, associated with fifty-six officers, which involved at least one false statement charge. In seven of these cases, related to five officers, all of the false statement charges were dismissed. While three of these officers were found guilty of other misconduct, the dispositions for these five officers are not included on this chart since they were not found guilty of any false statement charges.

² Of the three officers who were terminated after an administrative trial: one officer forged a judgement of divorce, enabling him to remarry; another was charged with in excess of fifty counts of misconduct including the lying charges; and the underlying circumstances of the case against the third related to his potential involvement in a plot to kill his wife.

COMMISSION TO COMBAT POLICE CORRUPTION

The Commission to Combat Police Corruption was created pursuant to Executive Order No. 18 of 1995. The Commission is mandated to monitor the New York City Police Department's anti-corruption systems. To accomplish this, the Commission conducts audits, studies, and analyses regarding the Department's anti-corruption policies and procedures. This includes studies to determine the effectiveness of the Department's systems and methods for: investigating allegations of corruption; gathering intelligence; implementing a system for command accountability, supervision, and training for corruption matters; and such other policies and procedures relating to corruption controls as the Commission deems appropriate.

COMMISSIONERS

Richard J. Davis, Chair

Currently, Mr. Davis is a partner with the law firm of Weil, Gotshal and Manges. He was Assistant Secretary of the Treasury (Enforcement and Operations) between 1977 and 1981, where he supervised the activities of the Secret Service, the Customs Service, the Bureau of Alcohol, Tobacco and Firearms and the Federal Law Enforcement Training Center. He had previously served as an Assistant United States Attorney in the Southern District of New York from 1970-73 and as an Assistant Special Prosecutor for the Watergate Special Prosecution Force. In 1987 he was appointed to a Commission to review the operations of the Philadelphia Police Department. In 1993 he served on a panel of experts appointed by the Justice and Treasury Departments to provide advice in addressing situations which may occur in the future similar to those which took place in Waco, Texas.

Arnold I. Burns

Since 1988, Mr. Burns has been a senior partner in the corporate and litigation departments of the law firm of Proskauer Rose Goetz & Mendelsohn. Mr. Burns was a deputy Attorney General at the United States Department of Justice where he supervised the F.B.I., Immigration and Naturalization Service, Drug Enforcement Administration, Bureau of Prisons and Marshal's Service. He is Vice Chairman of the National Board of Directors of the Boys and Girls Club of America and has served as a member of the boards of other national not-for-profit organizations.

Charles M. Carberry

Mr. Carberry is currently a partner with the law firm of Jones, Day, Reavis & Pogue. He is a former federal prosecutor, having served from 1979 through 1987 as an Assistant United States Attorney in the Southern District of New York (including service as Chief of the

Securities and Commodities Fraud Unit and Deputy Chief of the Criminal Division). Pursuant to his appointment by the federal district court, from 1989 to the present, Mr. Carberry oversees investigations and administrative prosecutions of allegations of corruption and dishonesty involving the Teamsters Union. Mr. Carberry is on the boards of editors of the White Collar Crime Reporter, Business Crimes Bulletin, and the Money Laundering Law Report. He has written numerous articles and has spoken frequently at seminars on white collar crime, securities fraud, and money laundering.

Rhea Kemble Dignam

Ms. Dignam currently is a Vice President and Deputy General Counsel at New York Life Insurance Company. She is a former federal and state prosecutor, having served from 1976 through 1988 as an Assistant United States Attorney in the Southern District of New York (including service as Chief, Narcotics Unit; Chief, Public Corruption Unit; and Executive Assistant United States Attorney). From 1988-1989 Ms. Dignam was the Chief Assistant District Attorney in Kings County and served as the Executive Deputy Comptroller, City of New York from 1990-1993 in which position she gained extensive experience monitoring the work of City agencies.

Hon. Dennis Edwards

Judge Edwards was appointed to the New York City Criminal Court in 1965 and served until 1982. Between 1975 and 1982 he was assigned to the Supreme Court of the State of New York as an Acting Supreme Court Justice. In 1982, Judge Edwards was appointed to the New York State Court of Claims, and was assigned to the Supreme Court of the State of New York, hearing primarily felony matters. He retired from the bench in 1989.

COMMISSION STAFF

Joseph E. Gubbay, Executive Director
Rhea N. Mallett, Deputy Executive Director
Holly Catania, Examining Attorney
Rita M. Cumming, Confidential Investigator
Colin Fieman, Examining Attorney
Linda Lo-Gerry, Special Investigator