



The City of New York

Commission to Combat Police Corruption

Fourteenth Annual Report of the Commission

February 2012

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I. OVERVIEW

The Commission to Combat Police Corruption (the Commission) was established by Executive Order No. 18 in 1994.¹ In addition to specifying the make-up of the Commission, Executive Order No. 18 mandated that the Commission monitor the efforts of the New York City Police Department (NYPD or the Department) to gather information, investigate allegations, and implement policies designed to deter corruption.² The Executive Order also gave the Commission the responsibility to maintain liaisons with the community and authorized the Commission to accept complaints or information regarding corruption, which the Commission would then forward to the NYPD or another agency, as appropriate.³

One way the Commission fulfills its mandate to monitor the Department's performance is through its review of pending and closed investigations conducted by the Internal Affairs Bureau (IAB).⁴ The Commission also reviews all of the closed disciplinary cases involving uniformed members of the service that are prosecuted by the Department Advocate's Office (DAO)⁵ in the Department's Trial Rooms. The Commission presents its findings from these reviews in its Annual Report. The Commission also conducts studies on particular units, policies, or systems within the Department in order to gauge the effectiveness of the NYPD's efforts to prevent and uncover corruption. To date, the Commission has published 25 of these studies.

¹ Executive Order No. 18 is included as [Appendix 1](#) to this report.

² Towards the end of the period covered by this Report, two of the Commissioners resigned. David Acevedo resigned on January 13, 2012, during the drafting of this report, due to time constraints based on the complexity of his practice with the United States Commodity Futures Trading Commission. Edgardo Ramos resigned after he was appointed as a United States District Court Judge in the Southern District of New York.

³ Executive Order No. 18, Section 2(c) (February 27, 1995).

⁴ IAB is the bureau within the Department responsible for investigating allegations of corruption and serious misconduct against members of the service.

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

This report, *The Fourteenth Annual Report of the Commission*: (1) summarizes the Commission's monitoring of Department activities including its findings⁶ after reviewing 127 pending and closed IAB investigations and 614 closed disciplinary cases; (2) describes the Commission's ongoing, day-to-day operations; and (3) discusses the Commission's plans for 2012.

⁶ The Commission staff reviews the IAB investigative files and the Department paperwork it receives in conjunction with the closed Department disciplinary cases. The staff performs an analysis on these cases, which is then reviewed by the Commissioners in connection with their review of the draft of this report. If the Commissioners do not agree with any analysis, the issue is discussed and the report is edited to reflect the opinion of a consensus of the Commissioners. Judge Ramos and David Acevedo did not participate in the review process for this report.

II. MONITORING IAB INVESTIGATIONS

When the Commission examines IAB's pending and closed cases, its staff reviews the full contents of each investigative file. These files include worksheets completed by the assigned investigator, which describe the investigative steps performed, and attachments that are either produced or obtained by the investigator. These attachments can be in the form of documents, audio recordings, photographs, or video recordings. Staff members review each file to determine whether the investigation proceeded expeditiously and whether all necessary investigative steps were taken. In closed investigations, staff members evaluate whether, given the evidence collected, a correct disposition⁷ was reached with respect to each allegation. At the conclusion of each review, the Commission staff has the opportunity to confer with case investigators or their supervisors regarding any questions or concerns.⁸ Throughout the review process, Commission staff members confer with the Commissioners and report their findings and concerns to the Commissioners as the Annual Report is prepared.

Overall, the Commission staff found that IAB is conducting thorough and diligent investigations. Recent media reports have placed emphasis on the origins of certain allegations to suggest that IAB is not doing its job. However, many of the reported corruption cases actually originated through allegations made directly to and acted upon by IAB, and in all cases, IAB participated to the appropriate extent. Even when the allegations first came to light during unrelated investigations by other law enforcement agencies, such as the Federal Bureau of Investigation or a District Attorney's office, IAB either conducted the entire investigation or acted in conjunction with the other law enforcement agency to bring

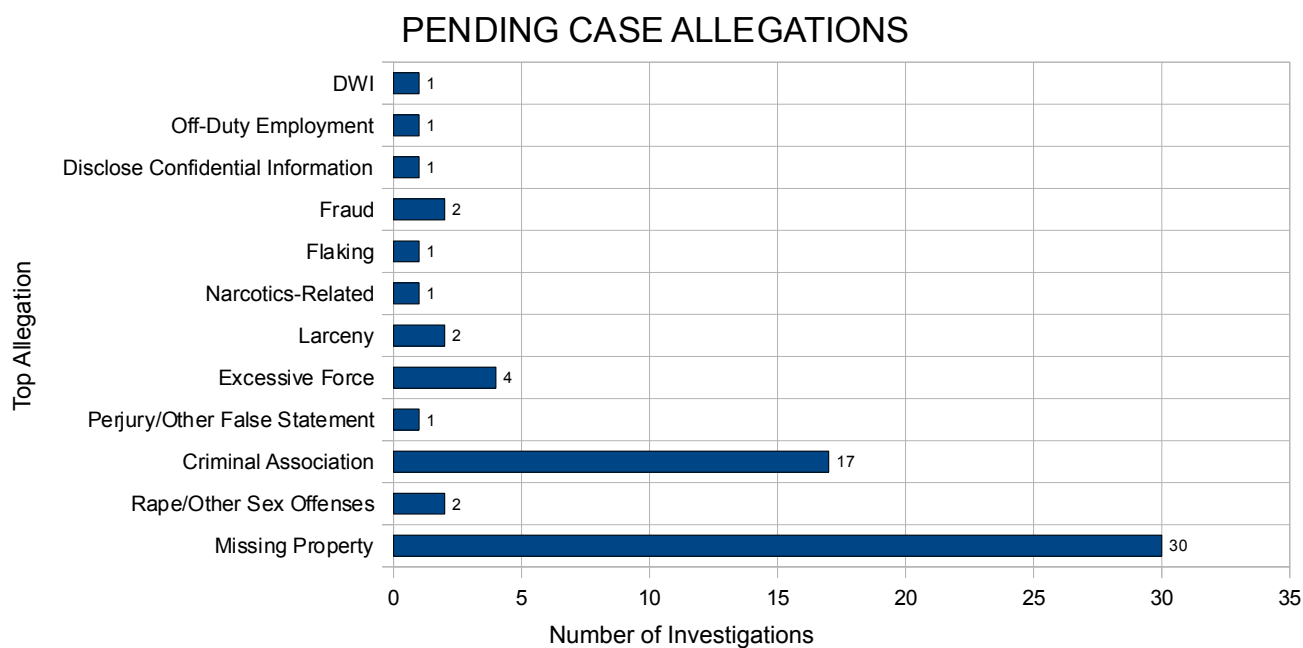
⁷ An investigation can result in one of five dispositions. If the disposition is "substantiated," the investigation found that "the accused employee has committed ALL of the alleged acts of misconduct." If the disposition is "partially substantiated," the investigation found that the "employee has committed PART of the alleged act(s) of misconduct." If the disposition is "unsubstantiated," the investigation found "insufficient evidence to clearly prove OR disprove allegations made." If the disposition is "exonerated," the investigation found the "subject employee(s) clearly NOT INVOLVED in ANY MISCONDUCT. Incident occurred, but was lawful and proper." If the disposition is "unfounded," the investigation found that "act(s) complained of DID NOT OCCUR or were NOT COMMITTED BY MEMBERS OF THIS DEPARTMENT." A.G. 322-11, "Official Communication – Preparation." (Emphasis in original.)

⁸ If these discussions do not sufficiently answer the Commission's concerns, the Commission may meet with IAB's highest tier of management.

the investigation to a fruitful conclusion. The Commission was briefed by IAB executives on each of these cases before the arrests of the officers; indeed, in many instances, IAB briefed the Commission from the inception of the investigation and provided regular updates until the arrests of those members of the service. It is the Commission's opinion, based on its knowledge of the investigations, that IAB's work contributed to the arrests of all of the members of the service reported in the media.

A. Pending IAB Investigations

The Commission examines pending IAB cases to monitor the progress of these investigations so that any recommendations can be given to IAB at a time when they can be of most use. This year,⁹ the Commission reviewed 63 pending IAB investigations. A breakdown of the most serious allegation in each case reviewed is displayed below.¹⁰



⁹ For the purposes of its review of IAB investigations, the Commission followed the calendar year of January 1 through December 31.

¹⁰ This table lists only the most serious allegation. Often, investigations contained multiple allegations.

In the *Thirteenth Annual Report of the Commission*,¹¹ the Commission reviewed 45 pending investigations. The most prevalent allegations reviewed were also those involving missing property and criminal association.

To conduct the current review, the Commission chose cases randomly from lists of all pending cases provided by IAB. The only information on these lists was the case number and the specific IAB group that investigated the case.¹² Therefore, the Commission did not have any information about the nature of the allegation or the subject officer when each case was selected. The Commission selected at least three cases from almost every IAB group. Thirty-five of these cases closed during the course of the Commission's review. When a case closed, a new investigation from the same IAB group was randomly chosen to replace it for the subsequent round of reviews.

The Commission did not find systemic deficiencies in these investigations. Investigators and their supervisors were generally receptive to Commission suggestions.

One observation the Commission made concerned investigators' efforts to locate video footage of alleged incidents. The Commission has repeatedly heard IAB executives stress the importance of conducting an immediate search for video cameras in the vicinity of an incident location in order to determine if there is video that captures the incident. Although this type of search was performed at the outset of the investigation in most of the cases the Commission reviewed, there were some cases where this investigative step was taken later in the investigation. The Commission encourages investigators to conduct these canvasses for video cameras in the immediate aftermath of receiving an allegation.

The Commission will continue to follow the remaining 28 cases that are still pending in the coming year, and will select new investigations to review to replace the investigations that have closed.

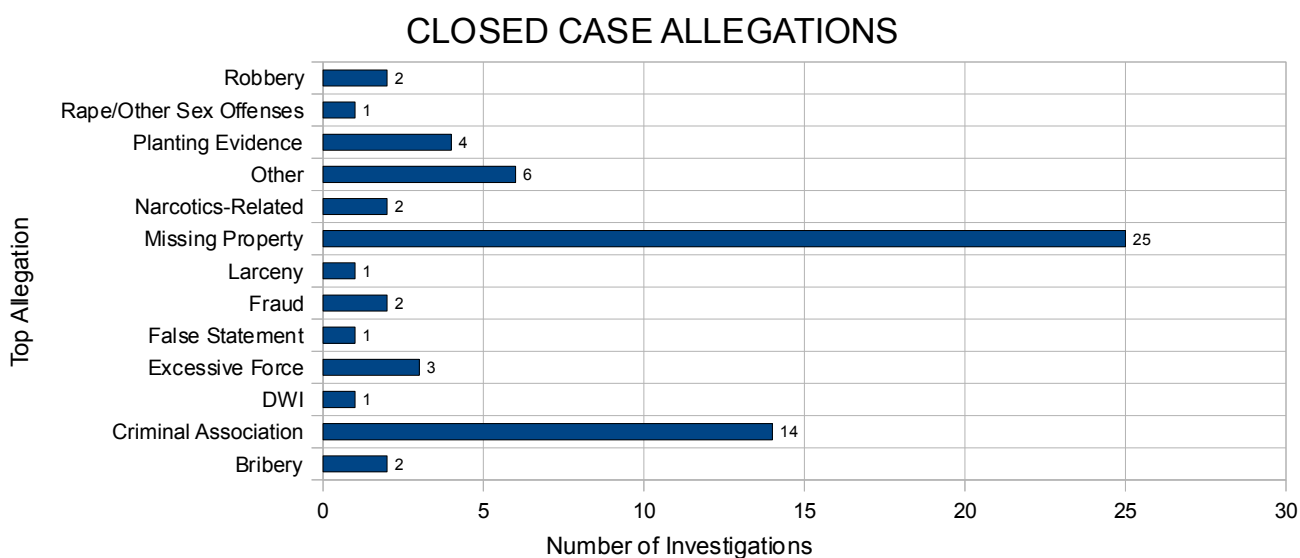
¹¹ March 2011 at p. 2-3.

¹² IAB is divided into 23 investigative groups that are divided based on geography or specialty. The Commission does not review investigations conducted by Group 2 (the Financial Investigations Unit), Group 7 (the Computer Crimes Unit), Group 9 (the group responsible for overnight, call-out investigations), Group 51 (the Police Impersonation Unit), Group 52 (the Integrity Testing Unit), and Group 55 (the Surveillance Unit). With the exception of Group 51, these groups primarily provide investigative support to IAB's remaining groups. Most of the cases investigated by Group 51 do not involve uniformed members of the service, so the Commission does not conduct file reviews of these investigations. While Group 7 conducts some of its own investigations, these generally do not involve allegations of corruption or serious misconduct.

B. Closed IAB Investigations

Reviewing closed cases allows the Commission to assess the efficacy of IAB investigations and to make general recommendations that can be applied to future investigations.

For this report, the Commission randomly selected cases to review from lists of all the closed cases that were regularly supplied by IAB. These lists only contained the case number (which also identified the year the allegation was received) and the identity of the IAB group that investigated the case. The Commission selected between three to four cases from each IAB investigative group.¹³ By the end of 2011, the Commission reviewed a total of 64 closed cases. The following is the breakdown of the most serious allegations in the 64 cases reviewed.¹⁴



In the *Thirteenth Annual Report of the Commission*,¹⁵ Commission staff reviewed 60 closed investigations. Although a different methodology was employed to review 16 of those cases, missing property and criminal association were also the most prevalent allegations reviewed. In last year's

¹³ *Id.*

¹⁴ *See supra* at p. 6, fn. 10.

¹⁵ March 2011 at pp. 3-5.

report, the Commission also reviewed a higher number of narcotics-related allegations, although this may have been a result of staff's specifically selecting cases to review to avoid limiting the review to missing property allegations. In both the current and prior year's reports, the Commission found that IAB generally conducted thorough and diligent investigations and the Commission did not find any systemic¹⁶ deficiencies in the investigations it reviewed. Furthermore, the Commission agreed with the disposition in all of the cases it audited.

In the *Thirteenth Annual Report of the Commission*,¹⁷ the Commission reported that in some cases, investigators failed to adequately document all of the investigative steps performed. Soon after the publication of that report, the Commission's Executive Director spoke about the Commission's findings at an IAB Commanding Officers' meeting to explain the Commission's concerns and provide case examples demonstrating why this could be an issue. In this year's review, the Commission observed better documentation of investigators' steps.

However, review of the records of the periodic meetings between investigators and supervisors indicates that in some cases, the same suggestion was being made repeatedly without being acted upon (which seems unlikely), or that the same suggestion was being made repeatedly even after it had been acted upon (which seems even more unlikely). The Commission notes that its suggestion of record keeping was never intended to simply generate another document for the file. We have been assured by IAB executives that investigators consult constantly with their supervisors. We continue to believe that such consultations are valuable to the efficient and expeditious resolution of the cases, and would much prefer that time be spent on an exchange of ideas between supervisor and investigator rather than rote recitation on a report. Dates of conferrals without a description of the specific ideas exchanged is adequate for record keeping purposes; the important thing is for officers to have the discussions.

¹⁶ Any specific concerns that arose in isolated investigations were discussed with the investigator, his supervisor, or his commanding officer at the conclusion of the review.

¹⁷ March 2011 at p. 5.

C. Review Of IAB Training Initiatives

As part of its monitoring responsibilities, the Commission periodically attends and evaluates IAB training sessions.¹⁸

In the *Thirteenth Annual Report of the Commission*, the Commission reported that some of its staff had participated in the first of a series of IAB-sponsored focus groups, hosted by the Office of Professional Development, which sought to produce a best practices guide to interrogating members of the service.¹⁹ The stated objective of this focus group was to brainstorm and identify the most effective techniques to use during official interviews.²⁰

In May 2011, Commission staff attended the first training session on the subject of official interviews since the convening of the focus groups. This training, also conducted by IAB's Office of Professional Development, was provided to new members of IAB as well as to members of outside law enforcement agencies. In addition to placing a priority on maintaining professionalism during these interviews, this training also discussed possible courses of action when a member of the service refuses to answer a question or intentionally answers a question falsely. The revamped training also covered the roles of accompanying investigators and the interrogated officer's attorney and delegate. Staff found this training to be more instructive and more substantial than past trainings it had observed on this issue. Commission staff believes that additional training on how to address defense attorney efforts to coach the interrogated officer or to disrupt the hearing would be useful.

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

¹⁹ March 2011 at p. 6.

²⁰ Patrol Guide Section 206-13 authorizes the Department to interrogate officers during an official Department investigation. Members of the service who refuse to answer questions during these interviews face suspension, and members found to have made false statements during these interrogations are subject to termination from the Department, absent exceptional circumstances, which are determined by the Police Commissioner on a case-by-case basis. *See infra* at pp. 30-33 for a more extensive discussion of the Department's policy regarding members of the service who make false statements during PG interviews. Members of the service are entitled to have a union representative present during the interview, and subjects of the investigation are permitted to obtain counsel if either "a serious violation is alleged" or sufficient justification is presented for an attorney despite the alleged violation being a minor one.

III. REVIEW OF CLOSED DISCIPLINARY CASES

The Department Advocate's Office (DAO) prosecutes the administrative cases against members of the service based on substantiated investigations conducted by various internal investigatory bodies within the Department²¹ and from the Civilian Complaint Review Board (CCRB).²² The Department Trial Commissioner participates in plea negotiations, tries cases where no plea agreement is reached, and recommends administrative penalties to the Police Commissioner. The Police Commissioner is responsible for the final decision in all cases.

The Commission reviews all disciplinary cases that involve uniformed members of the service.²³ The Commission reviews these cases to evaluate whether, in its view, the Department imposes proportionate and adequate penalties and pays the appropriate amount of attention to misconduct.²⁴ It is understood that the Commission's review of these cases does not result in any adjustment to the penalty

²¹ In the Department, internal investigations into corruption or misconduct fall under the jurisdiction of IAB or one of the Department's borough or bureau investigation units. Borough and bureau investigation units usually investigate cases that range from landlord-tenant disputes and domestic violence complaints, when there is no serious physical injury, to allegations that officers have stolen property, when that property does not consist of money, credit or debit cards, or valuable jewelry. The units are divided by geography or speciality. The decision about what group will investigate a case is based on where the subject officer is assigned. If the subject officer is not identified, the case is assigned based on the location of the incident.

Less serious infractions may be investigated by the subject officer's command. These command-level investigations can also result in charges being brought by DAO against the subject officer.

²² Through a revision in the City Charter in 1993, the handling of civilian complaints against police officers was restructured and CCRB was created. CCRB has concurrent jurisdiction to investigate allegations against police officers for the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language.

²³ The paperwork the Commission reviews includes: the charges that were levied against the subject officer; the disposition sheet, noting the final disposition against the subject officer; and Department memoranda prepared by the commanding officer of the investigative entity that substantiated the allegations. If there was a plea agreement, a plea memorandum prepared by DAO is included. If there was a trial or mitigation hearing where the subject officer admitted to the misconduct, but testified in an effort to explain his behavior and justify a lesser penalty, the Trial Commissioner's decision is included. This decision consists of a summary of the testimony and other evidence presented and the Trial Commissioner's findings and recommendations. If the Police Commissioner did not agree with either the Trial Commissioner's factual findings or his recommended penalty, a memorandum from the Police Commissioner explaining his reasoning is also included.

²⁴ The Commission reviews the discipline imposed in these cases but not the factual findings or determinations of guilt. The paperwork reviewed by the Commission contains a summary of the facts of each case, statements by witnesses and the subject officer, the subject officer's disciplinary history and recent performance evaluation ratings, and the rationale given by either the Assistant Advocate or the Trial Commissioner in recommending the proposed penalty. The Commission believes that this is sufficient information to enable it to opine on the given penalty. Since the Commission is not privy to the entire investigation and is not present during the courtroom testimony, the Commission does not have the information necessary to offer its opinion regarding whether DAO presented sufficient evidence to prove its case in those cases in which a trial was held.

in any particular decided case. The review is offered for guidance in future cases.

For this report, the Commission reviewed 614 disciplinary cases adjudicated between October 2010 and September 2011. The Commission focused its analysis on two categories of cases that have been the subject of prior Commission reports:²⁵ serious off-duty misconduct cases and false statement cases. The Commission continues to pay specific attention to these categories of cases because of the seriousness of these allegations and their potential consequences, including the possibility that other officers will cover up for their colleagues. The Commission is specifically concerned with alcohol-related misconduct because the effects of an intoxicant on the officer's judgment can lead to further misconduct and potential injuries to the officer or others. Similarly, the firearm-related misconduct and allegations involving domestic incidents occur in situations where the potential for violence is high. The serious off-duty misconduct cases included 61 alcohol-related cases, 19 firearm-related cases, and 84 domestic incident-related cases.

The Commission reviews the discipline imposed in false statement cases because an officer who has committed perjury, made an official false statement, or falsified documents has impaired his credibility. Not only does this negatively affect his usefulness as a witness in court, but when civilians learn of instances where officers have engaged in some type of falsehood, their perception of the Department can be altered and the Department's overall integrity may be affected. Also, in this category of cases, sufficiently severe discipline can serve as a deterrent for officers lying to cover up for the misconduct of their colleagues, therefore, piercing “the blue wall of silence.” There were 128 cases involving a false statement or a potential false statement, which were reviewed.

In addition to its focused analyses, the Commission reviewed all 614 cases to determine whether the penalties imposed were appropriate given the misconduct committed, the officer's disciplinary and performance history, and the evidence that was available to the Department for its prosecution of the

²⁵ See *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998) and *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements* (December 12, 1996).

case. In assessing the adequacy of the imposed discipline, the Commission also considered the penalties received by officers who were found guilty of similar misconduct.

A. General Cases

The Commission disagreed with the penalty imposed in four cases²⁶ from the general group, aside from the two areas of particular focus, serious off-duty misconduct and false statements.²⁷

In the first such case, the subject officer²⁸ owned two buildings and employed a convicted felon as the superintendent for one of those buildings. This superintendent was a known drug dealer in the neighborhood where the building was located. The subject officer did not have permission from the Department to engage in the off-duty employment of being a landlord for these buildings. In addition to employing and associating with the superintendent, the subject officer also used Department computers to conduct an unauthorized inquiry after this person was arrested. The officer then provided information about the arrest, including the name of the arresting officer and the evidence recovered, to the superintendent's brother. The subject officer had a disciplinary history, which included a previous period of dismissal probation²⁹ and the forfeiture of thirty suspension days five years earlier for leaving the scene of an accident. The subject officer had received three command disciplines³⁰ and been placed on Level II discipline monitoring³¹ since these incidents. The subject officer also had two other pending

²⁶ The Commission only mentions those cases where it believed that discipline should have, but did not, include either placement on dismissal probation, described below, or separation from the Department. The Commission chooses not to comment on those cases where the sufficiency of the number of days suspended or vacation days forfeited was the only issue.

²⁷ See *infra* at pp. 18-45.

²⁸ When discussing the disciplinary cases, the Commission uses the words subject officer and respondent both to mean the officer who is being charged with the misconduct.

²⁹ An officer who is placed on dismissal probation is considered to be dismissed from the Department, but that dismissal is held in abeyance for a one-year period, which is extended by any time the officer is not on full-duty status. During this period, the officer will continue his employment with the Department. If the officer engages in further misconduct or other, prior misconduct is discovered by the Department, the officer's employment may be terminated without the need for an administrative hearing into the veracity of the newly discovered allegations. Once an officer completes his dismissal probation period without incident, he is restored to his former status.

³⁰ Command disciplines are adjudicated at the subject officer's command and are not prosecuted by DAO unless the subject officer chooses to contest the command discipline. Penalties for command disciplines range from a warning to the forfeiture of ten vacation days. Only certain misconduct can be addressed through a command discipline.

³¹ The Department has a central monitoring unit that receives regular reports on officers who are placed in one of its programs. These monitoring programs range from Levels I to III, with III being the most highly monitored. The programs

disciplinary cases.³² Although the subject officer had received three medals in his sixteen-year career, he was rated only average by his Commanding Officer. For all three pending cases, the subject officer was placed on dismissal probation and forfeited a total of 60 suspension and vacation days combined. The subject officer had already served a period of dismissal probation and demonstrated his allegiance to a convicted drug dealer by divulging information to that person's brother, possibly endangering the arresting officer or compromising an investigation or prosecution. The Commission believes that this officer should have been separated from the service.

In the second case, the subject officer used his Department computer code to access a federal database to conduct a query on the husband of his female friend. Based on this query, the subject officer learned that the target of the query was on a terrorist watch list.³³ The subject officer provided computer printouts of this information to his female friend who later produced them in court during a custody proceeding with her husband. Because of his misuse of the federal database, the subject officer was arrested and sentenced in federal court, after his guilty plea, to one year of probation and a \$500 fine. Although the Department requested that the subject officer be forced to file for retirement, after a mitigation hearing, the Trial Commissioner found that separation was not necessary because the subject officer did not intend to disturb national security or interfere with a criminal investigation. Additionally, the prosecutor and the federal judge presiding over the respondent's criminal case did not object to the respondent remaining employed by the NYPD. The respondent had no prior disciplinary history in his eleven-year tenure, received above-average evaluations, and was awarded three Department medals. The Police Commissioner approved the Trial Commissioner's recommended penalty of dismissal probation and the forfeiture of 60 suspension and vacation days.

are also categorized based on whether the officer's issues involve force-related misconduct, performance issues, or disciplinary issues. For further information about these monitoring programs and the Performance Monitoring Unit, see the Commission's report, "*The New York City Police Department's Non-IAB Proactive Integrity Programs*," (December 2001) and the Commission's report, "*A Follow-Up Review of the New York City Police Department's Performance Monitoring Unit*," (April 2006).

³² One case was for allowing a subordinate to leave the command to conduct personal business without requesting personal time to do so. The second case was for the possession of unauthorized duplicates of his parking placard.

³³ The subject officer also had a second case involving an expired parking permit.

The Commission agrees with the Department's original recommendation. Regardless of whether the subject officer's purpose was to disturb national security or otherwise interfere with a criminal investigation, he should have known that his disclosure of these printouts could have had those results, yet decided to divulge this information anyway. In fact, he should not have conducted the query at all.

In the third case, the subject officer, a 17-year veteran, forfeited 35 vacation days for the following misconduct. After observing the complainant driving a motorcycle with a broken windshield, the subject officer and his partner stopped the complainant. The subject officer was his partner's supervisor. The complainant was unable to produce the ownership documents for the motorcycle, which the subject officer and his partner had requested. They also noticed that the vehicle identification number on the motorcycle appeared to be altered. The officers did not arrest the complainant at that time for unauthorized use of a vehicle despite having probable cause to do so, nor did they seize the motorcycle to conduct an investigation to determine if it had been stolen. The complainant, to avoid arrest, was required to provide information to the subject officers about a person with a gun.³⁴ Additionally, the subject officer took possession of the complainant's cellular phone, did not vouch for it, and locked it in his desk drawer. The complainant did not provide the officers with any information. Three days later, the subject officer's partner arrested the complainant for the unauthorized use of the same motorcycle while the subject officer sat in a nearby Department vehicle.

Although the subject officer was rated at the highest levels by his Commanding Officer and received above average evaluations, he had a prior disciplinary history, including a command discipline that resulted in the forfeiture of one vacation day fifteen years earlier for failing to vouch for a prisoner's property and a period on dismissal probation with the forfeiture of thirty vacation days from five years earlier for falsifying business records on five occasions by improperly recording charges on Department complaint reports. He had also been placed on Level II discipline monitoring based on his overall record

³⁴ While the subject officer and his partner both stated that the complainant volunteered to provide this information in exchange for his release, the complainant stated that he was told that he had to provide information of this caliber or he would be arrested.

approximately three and a half years prior to the adjudication of this matter and three months before the date of this incident. The subject officer abused his authority by bartering the justifiable arrest of the complainant in exchange for information and then allowing the complainant to be arrested for the same conduct when he failed to provide the information. He used a shortcut to avoid Department mandates for registering and using confidential informants, which are in place for the protection of the informants as well as for the protection of the Department's members. As a member of the service for 17 years and as a supervisor, the subject officer should have been fully aware of the Department's requirements for using confidential informants. The respondent also involved his subordinate in this misconduct. Finally, based on the Commission's belief in progressive discipline, that is, that more severe discipline should be imposed when the respondent continues to engage in misconduct,³⁵ the Commission asserts that a more severe penalty, including a period of dismissal probation, was warranted in this situation.

In the final case where the Commission believed that the penalty levied should have been more severe, the subject officer was a supervisor who had been with the Department for 11 years. He and two of his subordinates were conducting business inspections in the early morning hours. They went to a club which was known for allowing underage drinking, conducting after hours business, and creating an obstructed view of the club by having heavily tinted windows. According to the subordinate officers, they saw one to two people inside of the establishment when they tried to gain entry. The subject officer stated he saw several people inside and it looked “cloudy” leading him to believe there was a smoke condition. Neither of his subordinates gave statements that they observed this “cloudy” condition. The owner refused the officers entry to observe the premises and told them the business was closed and they should return during operating hours. After several attempts to gain entry, the officers left the location. As they left, the subject officer told one of his subordinates to make a report to the Fire Department. According to the subordinate, the subject officer told him to call 911 and report that there appeared to be a smoke condition inside the location and that there were patrons present. The subordinate stated that he

³⁵ See *Seventh Annual Report of the Commission* (March 2004) at p. 73 and *Tenth Annual Report of the Commission* (February 2008) at p. 18.

questioned this directive as he knew it was wrong but the subject officer told him to “just do it.” The subject officer denied this conversation.³⁶ The subordinate called 911 anonymously from a payphone,³⁷ and fire trucks responded. The officers returned to the scene and were informed that there was no fire condition. No summonses were issued to the owner. At this point, the officers did not try to gain entry into the club to conduct an inspection. The subject officer also did not record in his memo book that he attempted to conduct a business inspection at this club.

The subject officer was charged with failing to give proper instruction to a subordinate, failure to adequately investigate whether there was a smoke condition, and failure to document the attempted business inspection in his memo book. For this misconduct, he forfeited a combination of 50 suspension and vacation days.³⁸ The subject officer had forfeited thirty suspension days seven years earlier for altercations with two other members of the service. He was placed in Level II discipline monitoring on two separate occasions. The subject officer received above average evaluations and was awarded 26 Department medals over his career. The Commission believes that, although the number of days forfeited was high, a period of dismissal probation would have been appropriate for this officer. He had a prior disciplinary history, and from all of the evidence, it appears that the call to the Fire Department was made purely to harass the club owner in retaliation for his refusal to allow the subject officer entry, and not for any legitimate purpose. The subject officer also involved his subordinates in this misconduct, failing to adequately perform his role as a supervisor. Finally, his actions led to the misdirection of Fire Department resources to an unnecessary location, with the possibility that they would have been diverted from a real emergency. For all of these reasons, a period of monitoring that provided the possibility of summary termination in the event of future misconduct was warranted.

³⁶ The third officer was in the back seat and stated he could not hear the conversation.

³⁷ The two subordinate officers stated that the one who called 911 had been having problems with his cellular phone. The subject officer stated he did not know why his subordinate used a payphone.

³⁸ Charges and specifications were also filed against the two subordinates, however, their files had not been reviewed at the time this report was drafted.

B. Serious Off-Duty Misconduct

The Commission reviewed those cases where an officer was charged with committing off-duty misconduct in circumstances involving alcohol, the display or discharge of a firearm, or domestic incidents with a family member or other intimate associate of the officer.³⁹

The Commission examined these cases to determine whether the penalties were proportionate to the misconduct; were sufficiently severe to deter future, similar misconduct; and to ensure that the Department followed its stated policies.

1. Alcohol-Related Off-Duty Misconduct

In its last Annual Report,⁴⁰ the Commission reported on 62 cases where alcohol played some role in the incident that resulted in a disciplinary case. Thirty-eight of those cases included alcohol-related charges, while twenty-four did not. Twenty of those cases included charges for Driving While Under the Influence⁴¹ or Driving While Ability Impaired. For the current report, the Commission assessed 61 cases where alcohol use was implicated. In 36 cases, the charges alleged the misuse of alcohol. In the other 25 cases, the administrative charges did not include alcohol-related misconduct even though alcohol use was involved in some way. In 12 of these 25 cases, the misconduct occurred in a setting where alcohol was being served or where its misuse by another participant may have contributed to the course of events. In

³⁹ There was some overlap of cases between these categories of misconduct. There was also overlap between these categories and officers charged with making a false statement or engaging in other types of falsehoods. Eight cases were counted in both the alcohol-related and the domestic incident categories. Six cases were counted in the alcohol-related and false statement categories. Two cases were included in both the alcohol-related and firearms-related categories. Four cases were included in both the firearm-related and domestic incident categories. Ten cases were included in both the domestic incident and false statement categories. Two cases were counted in both the firearms-related and false statement categories. There were two additional cases that were included in the alcohol-related, firearm-related, and domestic incident categories, two additional cases which were included in the alcohol-related, domestic incident, and false statement categories, and one additional case which was examined in connection with the firearm-related, domestic incident, and false statement categories. Finally, one case was included in all four categories.

⁴⁰ *Thirteenth Annual Report of the Commission* (March 2011) at pp. 10-12.

⁴¹ In New York State, the relevant criminal offense is Driving While Intoxicated. This charge is analogous to the Department's administrative charge of Driving Under the Influence. If there is not enough evidence to prove that the subject officer was Driving Under the Influence, he may be found guilty of the lesser offense of Driving While Ability Impaired. The Department usually includes both Driving Under the Influence and Driving While Ability Impaired in the administrative charges.

six⁴² cases, the subject officer consumed alcohol prior to or during the alleged incident but was ultimately found fit for duty.⁴³ In two cases, the subject officer was charged with failure to comply with an order to attend alcohol rehabilitation. In five cases, alcohol was involved, but the subject officer was not charged with drinking to excess.⁴⁴ In all but one of these cases, the Commission agreed that the reported circumstances supported DAO's decision not to bring an alcohol-related charge.⁴⁵ In three cases, the Commission did not have the necessary paperwork to determine whether alcohol-related charges would have been appropriate.⁴⁶

Driving While Under the Influence (DUI) or Driving While Ability Impaired (DWAI) was charged in 18⁴⁷ of the 36 cases where alcohol was implicated. In all of these cases, the subject officer was also charged with being Unfit for Duty. Subject officers were requested to submit to a breathalyzer or blood test in 17 of these cases.⁴⁸ In 11 cases, the subject officer refused a breathalyzer or blood test.

⁴² In one of these six cases, the subject officer was observed the morning after the incident and the fitness finding was made at that time. The subject officer, when officially interviewed, stated that after a domestic incident, he drank beers and liquor shots and passed out. Based on his statements, a charge of Unfit for Duty could have been brought against this officer.

⁴³ Officers are prohibited from consuming alcohol to the point where they become unfit for duty and Department regulations require an officer to be "fit for duty at all times, except when on sick report." New York City Police Department Patrol Guide §203-04, "Fitness for Duty."

⁴⁴ In two of these cases, the subject officers were at the same wedding and engaged in a physical altercation with some of the wedding guests. Both subject officers left the scene prior to the arrival of the police and it was not clear how long after the incident they were identified. These subject officers both admitted to consuming two alcoholic beverages during the wedding reception. In a third case, the subject officer was involved in a physical altercation while he was outside of the state of New York. Although the subject officer was reported to be intoxicated at the time of the incident, an Unfit for Duty charge was not levied. In two more cases, the subject officers left the scene of motor vehicle accidents and were not identified until the following day. In one of those cases, the subject officer was a passenger in a vehicle driven by another member of the service who was ultimately terminated for driving under the influence. In the second case, the complainant, with whom the subject officer had an accident, alleged that the subject officer was intoxicated but as the subject officer was not identified until the following day, the Department was unable to prove that he was unfit for duty.

⁴⁵ See *supra* p. 19, fn. 42 for the Commission's reasoning about this case.

⁴⁶ In these three cases, the subject officers opted for trials on the administrative charges. When a case is tried, the Commission receives a copy of the Trial Commissioner's decision, the disposition sheet, and a brief summary of the officer's personnel history. Since these officers were not charged with any alcohol-related misconduct, it is highly unlikely that any evidence would be presented at trial regarding their fitness-for-duty. Therefore, in these three cases, the Commission was unable to determine whether there was a fitness for duty evaluation and the officer was found fit for duty, or whether Department personnel failed to assess the officer's fitness for duty in the first instance.

⁴⁷ In one of these cases, the subject officer was found not guilty of DUI after an administrative trial but was found guilty of DWAI.

⁴⁸ In the final case, the respondent was taken to the emergency room after being involved in a single car accident. His medical records were later subpoenaed by a grand jury which indicated a blood alcohol level above the legal limits. There was also one additional case that did not involve a DUI situation, where the subject officer was requested to and did submit to a breathalyzer test while vacationing in another state. He was charged with being Unfit for Duty.

In all of those cases, the subject officer received an additional charge for refusing to submit to this examination.⁴⁹ In the remaining six cases, the subject officers all received an additional charge based on their breathalyzer results. In 16 of the 18 cases,⁵⁰ the subject officer received the Department's standard penalty of dismissal probation, the forfeiture of at least 30 vacation or suspension days, ordered breath-testing,⁵¹ and cooperation with counseling programs.

The Commission agreed with the penalties imposed in 17 of the 18 cases where DUI or DWAI was involved. In the remaining case, the Commission believes that the subject officer should have been separated from the Department because he concocted a story in his official Department interview in order to deny his misconduct. He had sideswiped a vehicle containing three occupants and left the scene, running a red light while doing so. One of the occupants of the vehicle recorded the license plate number, while another reported the incident to 911. They then drove around the vicinity of the accident and saw the respondent outside of his vehicle, which was parked but protruding into traffic. The driver of the other vehicle and one of his passengers confronted the subject officer. One of the occupants of the other vehicle flagged down two on-duty members of the service as they responded to the prior 911 complaint. The respondent denied his involvement in the accident to one responding supervisor but admitted that he was involved to another police officer at the scene. The subject officer was found to be unfit for duty while armed and had a blood alcohol level of .152%. He was arrested, pled guilty to Driving While Impaired, and was sentenced to a conditional discharge with the conditions that he attend

⁴⁹ Since the publication of its report *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998) wherein the Commission suggested that officers who refused to submit to breathalyzer testing be given a distinct disciplinary charge based on that refusal, the Commission has monitored whether the Department follows that recommendation. In its most recent reports, the Commission has found that the Department has been including a separate charge for the refusal to submit to a breathalyzer or blood alcohol test. See *Thirteenth Annual Report of the Commission* (March 2011) at p. 11; *Twelfth Annual Report of the Commission* (February 2010) at pp. 25-26; *Eleventh Annual Report of the Commission* (February 2009) at p. 24; and *Tenth Annual Report of the Commission* (February 2008) at p. 22.

⁵⁰ In the final two cases, the subject officers were directed to file for retirement as part of their plea negotiations. Their penalties also included a period of dismissal probation and the forfeiture of at least 30 suspension or vacation days. In one of these cases, the officer was involved in an accident where another party suffered torn ligaments requiring surgery and physical therapy. In the other case, the DUI case was one of five disciplinary cases that was adjudicated against the subject officer. The four other cases did not involve alcohol.

⁵¹ As a condition of plea agreements to settle DUI charges, officers must submit to random, quarterly breath-testing to demonstrate that they are abstaining from using alcohol. If an officer tests above a proscribed level of 0.04, he can be summarily terminated.

an alcohol treatment program and pay a \$500 fine.

In his official Department interview, the respondent stated that he was driving from a restaurant where he consumed two to three glasses of wine. As he was parking at a friend's house, the complainant knocked on his car window. The car was not running. The complainant accused the respondent of scratching his car, which the respondent denied to the complainant. The complainant then stated that the respondent smelled like alcohol and demanded \$100 to refrain from calling the police. The complainant called the police and the respondent told the responding officers that the complainant tried to extort money from him.

When questioned by investigators, neither of the responding police officers confirmed that the respondent had reported that the complainant made a demand for money. Also, the supervising officer observed damage to the respondent's car that was consistent with the complainant's version of events. Although the respondent had no prior disciplinary history, received high ratings on his performance evaluations, and was well-liked by his commanding officer, the Commission believes that the respondent's failure to accept responsibility for his actions and his attempt to cover up his misconduct by accusing the complainant of a crime required his separation from the Department. The respondent was placed on dismissal probation, forfeited a combination of 45 suspension and vacation days, and was directed to comply with ordered breath-testing and directions to complete counseling. He was also placed in Level II discipline monitoring soon after this incident

In the 36 cases⁵² where one of the charges against the officer was Unfit for Duty, the Commission reviewed the Department paperwork to determine if investigators established whether the respondent was armed with a firearm at the time of the incident.⁵³ If the respondent was carrying a firearm, the Commission next ascertained whether the respondent was charged with being Unfit for Duty While Armed. The Commission also compared the severity of the penalties imposed for those officers found

⁵² These include the 18 cases where DUI and/or DWAI was one of the charges.

⁵³ Department regulations specifically prohibit officers from being unfit for duty while armed. *See* New York City Department Patrol Guide §206-12. This charge is supposed to carry a greater penalty than Unfit for Duty alone.

guilty of being Unfit for Duty While Armed with officers who were not found guilty of this offense.⁵⁴

There were ten cases where the subject officer was in possession of a firearm at the time he was unfit for duty.⁵⁵ The separate charge of Unfit for Duty While Armed was levied in all of these cases and nine of the subject officers received greater than the standard penalty.⁵⁶

The Commission next examined the discipline levied in all of the alcohol-related cases. The Commission only disagreed with the penalties imposed in one additional case. In this case, there was no alcohol-related misconduct charged. The subject officer was involved in a motor vehicle accident. The complainant called the police, and the respondent waited for between ten and twenty-five minutes and then left the scene. The complainant alleged that the respondent was intoxicated and stated that the respondent was slurring his words, did not appear to understand English, and was not aware that he had struck the complainant's vehicle. The complainant also alleged that he noticed that after the complainant called 911, the respondent reached into his vehicle and rinsed his mouth with a clear liquid. The complainant's sole passenger was the complainant's wife who was four months pregnant and had to be taken to the hospital for neck and back pain.⁵⁷ The respondent reported the accident the next day to his supervisor. The respondent's explanation for leaving the scene was that there was a language barrier and he believed that the complainant and his passengers, whom he described as three males, had waved him away. The respondent denied that he had been drinking, and did not recall seeing a pregnant woman

⁵⁴ The Commission considered a penalty of dismissal probation, 30 vacation or suspension days, random and quarterly breath-testing, and cooperation with all Department counseling programs deemed appropriate as the standard penalty for those cases involving DUI or DWAI. In those cases where the behavior solely encompassed being unfit for duty, the Commission considered a standard penalty of the forfeiture of 30 vacation or suspension days and the direction to cooperate with Department counseling programs.

⁵⁵ There were eight additional cases where the Department paperwork did not indicate whether the subject officer was armed and there was no other information in the paperwork that enabled the Commission to make this determination. All but three of these cases, though, received more than the standard penalty, but they also all had other aggravating circumstances such as the refusal to submit to a breathalyzer examination. In one of the remaining three cases, the subject officer retired. The remaining two cases involved the same incident where both officers were out of state together. In addition to being unfit for duty, they were charged with the failure to comply with the orders of another law enforcement agency. For this misconduct, they both forfeited 15 vacation days.

⁵⁶ In eight of these cases, however, there were other, aggravating circumstances that may have accounted for the increased penalty. These circumstances included the failure to safeguard a firearm, discharging a firearm, refusing to take a breathalyzer examination, possessing an unauthorized duplicate parking permit, and having a prior disciplinary history in which the subject officer was found guilty of being Unfit for Duty.

⁵⁷ The complainant's wife was released from the hospital after an examination.

inside of the vehicle.

The respondent forfeited a combination of 40 suspension and vacation days and was directed to cooperate with Department counseling. The respondent had to be aware that he had a duty to remain at the scene of the accident until a police report was taken. His failure to do so, coupled with his delay in reporting his involvement in the accident until the next day, suggests that the respondent was intoxicated, as alleged by the complainant, and left the location to avoid detection. For these reasons, the Commission believes that a period of dismissal probation would have been appropriate.

In conclusion, with certain limited exceptions, the Department is following its policies regarding the treatment of alcohol-related allegations. This has been the conclusion that the Commission has reached in its past several Annual Reports.⁵⁸

2. Firearm-Related Off-Duty Misconduct

For its last Annual Report,⁵⁹ the Commission reviewed thirteen cases involving the display or discharge of a firearm: ten involved a display, while three involved a discharge. While the Commission agreed with the penalties imposed in those three cases involving the wrongful discharge of a firearm, the Commission disagreed with one of the three cases involving the display of a firearm where the subject officer did not either retire from the Department or receive a penalty including placement on dismissal probation. In that report, the Commission found that the Department imposed a penalty that included dismissal probation more often in those cases where the subject officer unjustifiably displayed his firearm than it had in prior years.⁶⁰ The Commission approved of the greater use of dismissal probation in these cases. The Commission continued to see the increased use of dismissal probation in conjunction with the loss of vacation or suspension days in cases involving a display of a firearm in this year's report.

During this reviewed period, the Department adjudicated 19 cases that involved the display or

⁵⁸ See *Tenth Annual Report of the Commission* (February 2008) at pp. 19-23; *Eleventh Annual Report of the Commission* (February 2009) at pp. 19-26; *Twelfth Annual Report of the Commission* (February 2010) at pp. 20-30; and *Thirteenth Annual Report of the Commission* (March 2011) at pp. 10-12.

⁵⁹ *Thirteenth Annual Report of the Commission* (March 2011) at pp. 12-14.

⁶⁰ See *Tenth Annual Report of the Commission* (February 2008) at pp. 26-27; *Eleventh Annual Report of the Commission* (February 2009) at pp. 26 and 29; and *Twelfth Annual Report of the Commission* (February 2010) at pp. 31 and 33-34.

discharge of a firearm by a uniformed member of the service.⁶¹ The Commission examined these cases to determine whether the Department made the required fitness-for-duty findings, levied charges of Unfit for Duty While Armed when appropriate, and imposed penalties designed to deter future misconduct by the subject officer and by other members of the service.

Of the nineteen cases reviewed, the Commission found that a fitness-for-duty determination was specified in the Department paperwork for six cases.⁶² In five of the remaining thirteen cases, the subject officer was not identified or the incident was not reported until a significant amount of time had passed, rendering it impossible to make a fitness-for-duty finding. In five cases, because of the path the case took, either through trial or the subject officer's resignation or retirement, the Commission did not receive the paperwork that would normally contain the fitness-for-duty finding. In the remaining three cases, it was not clear from the paperwork whether such a finding was, in fact, made.

Of the 19 cases reviewed, 11 involved the display of a firearm. In the remaining eight cases, the officer discharged a firearm. Of those 11 cases where the firearm was displayed, one officer was terminated from his employment; one officer resigned; three officers retired; three officers received dismissal probation in addition to forfeiting vacation and/or suspension days; and two officers received a penalty involving only the forfeiture of vacation and/or suspension days.⁶³ One officer was found not guilty of wrongfully displaying his firearm after a trial. The Commission agreed with the penalties imposed in all of the 11 cases involving the display of a firearm. In the two cases where the subject officer forfeited only vacation days or was suspended and there was not a period of dismissal probation imposed, the Commission agreed with the penalty because neither of these officers actually raised their firearms to anyone.

In the eight cases that involved the discharge of a firearm, three of these cases were deemed

⁶¹ Five of the cases involving a discharge, though, did not have charges specifically to address the discharge itself. Instead the officers were given charges such as failing to safeguard a firearm and/or failing to notify the Department of the discharge.

⁶² In three of these cases, the officer was found fit for duty. In one of the remaining cases, the subject officer's fitness was questioned based on his psychological state and not based on the use of intoxicants.

⁶³ Officers forfeited between 31 and 40 vacation or suspension days in these cases.

accidental. Two of these three did not result in charges against the subject officer for the actual discharge. In another case, the officer was not charged with the discharge but with failing to safeguard the firearm, which resulted in its discharge.⁶⁴ In a fourth case, the subject officer was charged only with failing to notify a patrol supervisor after the discharge. In a fifth case, the subject officer did not receive charges for the discharge because the Department was unable to come to a conclusion regarding whether the discharge was within Department guidelines. In summary, only three of the eight cases involving a discharge resulted in charges for the wrongful discharge. The following penalties were imposed in these eight cases: two officers were terminated; one officer retired; three officers were placed on dismissal probation and forfeited between forty-five and sixty suspension and vacation days; and two officers forfeited between ten and twenty suspension and/or vacation days. In both of the cases where the officer received only the loss of suspension or vacation days, the officer had been loading or unloading his firearm when the accidental discharge occurred. The Commission agreed with the penalties imposed in all eight of these cases.

In conclusion, the Commission notes with approval that the Department is imposing a period of dismissal probation more often in cases involving the wrongful display of a firearm than in prior years. The Commission continues to agree with the penalties levied in those cases involving the unjustifiable discharge of a firearm. Finally, the Commission notes that there is still room for improvement in the documentation of fitness-for-duty findings in these cases.

3. Domestic Incidents

Last year the Commission reviewed 73 cases where the officer's alleged involvement in a domestic incident led to charges being levied against the officer based on the domestic incident or some other misconduct discovered during the ensuing investigation. The Commission found, in that report, that the Department diligently prosecuted and penalized officers who were involved in domestic incidents, even in those instances when a complainant was not cooperative with the investigation or

⁶⁴ The officer was found not guilty after a Department trial on this charge, but was terminated for failing to report the discharge to the Department.

prosecution of the officer. Generally, the Commission agreed with the penalties imposed in those cases.⁶⁵

For this report, Commission staff reviewed the penalties imposed in 84 cases where the subject officer was involved in a domestic situation. The Department considers an incident domestic in nature if it occurs with the subject officer's spouse, domestic partner, child(ren), other family member(s), or person whom the subject officer was dating or had dated in the past. The Department includes within this category of misconduct: violations of court orders of protection, verbal arguments, stalking, physical altercations, damage to property, sexual assaults, and harassment.

There were thirty-eight cases that involved the use of physical force, altercations, or disputes⁶⁶ between parties;⁶⁷ six cases involved the violation of an order of protection; four involved simple and aggravated harassment; five involved miscellaneous situations;⁶⁸ ten involved verbal disputes and menacing;⁶⁹ and twenty-one involved a domestic situation that ultimately did not result in charges.⁷⁰ Twenty-six of the allegations⁷¹ involved the officers' spouses,⁷² seventeen involved boyfriend/girlfriends,⁷³ seven involved former boyfriend/girlfriends,⁷⁴ six involved the other parent of a child in common, and two involved children (including step-children). In four cases, although there was

⁶⁵ *Thirteenth Annual Report of the Commission* (March 2011) at pp. 14-17.

⁶⁶ The force in these cases ranged from pulling hair, to pushing, assault, and discharging a firearm in the direction of the complainant.

⁶⁷ When cases contained charges that could fit in more than one category, they were only included in the most serious category. For example, if a case involved a physical dispute and a verbal dispute, it would be included in the category of physical force or dispute only.

⁶⁸ These five cases involved merely displaying a firearm without any accompanying verbal threats, failing to adequately safeguard a firearm, thereby, endangering the welfare of a child, eavesdropping on a spouse by placing recording devices on her telephone, grabbing property out of the complainant's hand, and attempting to pry open the front door to the complainant's residence with a crowbar and a screwdriver.

⁶⁹ Three of these cases alleged that the subject officer menaced the complainant with a firearm.

⁷⁰ In these cases, the investigation began because of domestic allegations, which were ultimately unsubstantiated or unfounded, but other misconduct was discovered during the course of the investigation, which led to the instant charges.

⁷¹ In one of these cases, although the victim was the subject officer's spouse, the spouse was uncooperative with the investigation, and the 911 operator was the actual reporter of the incident. In two cases, the spouse was estranged at the time of the incident. In one case, the complainants also included the subject officer's step-children; in a second case, the subject officer's mother-in-law was also a complainant.

⁷² There were three cases involving the same subject officer and his spouse and two cases involving another subject officer and his spouse.

⁷³ In two of these cases, the parties also had a child in common. Since they were still in a relationship at the time of the incident, these cases were included in this category. Two other cases involved the same officer and his girlfriend.

⁷⁴ Two cases involved the same subject officer and his ex-girlfriend.

no direct familial or domestic relationship between the subject officer and the complainant, the complainant was dating or had dated the subject officer's current or ex-partner. In 22 cases,⁷⁵ there was no victim, but the subject officer's misconduct, usually the failure to notify the Department of his⁷⁶ involvement in an unusual incident, was uncovered during the course of the investigation into domestic allegations.⁷⁷

The Commission evaluated the penalties in these cases to determine their adequacy. This evaluation included determining whether the complainant sustained any physical injuries and the nature of those injuries; the strength of the evidence against the subject officer, including whether the complainant was cooperative with the investigation and administrative prosecution; who was the primary aggressor; and whether the subject officer had any prior, formal allegations involving domestic issues.⁷⁸

Of the eighty-four cases, seven subject officers⁷⁹ were separated from the Department by termination, retirement, or operation of law.⁸⁰ In 34 cases,⁸¹ vacation days or days served while on suspension were forfeited.⁸² Dismissal probation was included in penalties levied in 11⁸³ cases.⁸⁴ In 26 cases, the subject officers were found not guilty of the domestic charges⁸⁵ but may have received

⁷⁵ Two of these cases involved the same officer. The subject officer in one other case in this category had three other sets of charges involving domestic incidents with his wife.

⁷⁶ For simplicity, the masculine pronoun “he,” “his,” and “him” will be used to refer to all officers and other individuals regardless of their gender unless specifically noted otherwise.

⁷⁷ Other charges that fell into this category included Failure to Safeguard a Firearm, Unauthorized Off-Duty Employment, and Unfit for Duty.

⁷⁸ The Commission considered an allegation to be formal if it had been previously reported to a law enforcement agency or had led to a complaint being filed in a criminal or family court. Allegations that were considered informal were those that the complainant mentioned for the first time during the investigation of the current allegations.

⁷⁹ One of these officers had four cases, and two of these officers each had two cases. Two other officers had other administrative cases that were also covered by the imposed penalty but did not involve domestic issues. There were 11 cases which were resolved by the subject officers's separation from the Department.

⁸⁰ If an officer is criminally convicted of a felony or a crime that violates his oath of office, he cannot be employed as a police officer pursuant to Public Officers Law section 30(1)(e).

⁸¹ There were two sets of two cases that involved the same subject officers.

⁸² This ranged from between five and forty-five days.

⁸³ Two of these cases involved the same officer.

⁸⁴ In these cases, the officers also forfeited between 30 and 76 vacation and/or suspension days.

⁸⁵ This included those cases where the domestic charges were dismissed prior to adjudication.

discipline for other non-domestic allegations.⁸⁶ In one other case, charges were filed because the subject officer retired from the Department prior to the adjudication of the charges.⁸⁷ In the last case, the subject officer received a reprimand. In that case, the subject officer engaged in a verbal argument with his girlfriend and was overheard using profanity when she called 911.

The Commission disagreed with the penalties imposed in two cases. The Commission's disagreement in those cases did not stem from a disagreement over the substance of the domestic charges. Rather, aggravating factors led to the Commission's conclusion that more severe penalties were warranted. In the first case, the subject officer's girlfriend had a criminal history, which dated back to 1991. When the girlfriend was arrested during their relationship for criminal possession of a controlled substance, the respondent visited her in a correctional facility on multiple occasions without the required permission from the Department. He was also, based on his own testimony, aware that his girlfriend had a substance abuse history. Despite being ordered to stay away from this woman by a Lieutenant from IAB, the respondent continued to see her. During the course of his relationship with her, and after being ordered to refrain from associating with her, the respondent was involved in four incidents with his girlfriend or with her ex-boyfriend where a police response was required.⁸⁸ The Trial Commissioner, agreeing with DAO, recommended a penalty of dismissal probation and the forfeiture of 30 vacation days. The Trial Commissioner reasoned that the subject officer knowingly violated the Department's rules regarding associating with those engaging in criminal behavior when he learned that his girlfriend had a criminal history shortly after he began dating her and did not end the relationship, and again when he continued to see his girlfriend after being ordered to cease all contact by a higher-ranking officer. The Police Commissioner changed the penalty to the forfeiture of 40 vacation days based on the totality of

⁸⁶ These cases included the 22 cases specified above where there were no domestic charges. Many of these respondents received penalties in connection with the charges which were levied against them. Since the Commission was concerned with the penalties imposed for off-duty domestic incidents, the penalties for these cases are not included in this section.

⁸⁷ Charges are filed in these cases in the event the officer attempts to reinstate his employment. If that occurs, the statute of limitations for the alleged misconduct will not have expired, and the officer's alleged misconduct can still be addressed upon his return to the Department.

⁸⁸ There was not much detail about the nature of these incidents in the Trial Commissioner's decision.

the circumstances and the respondent's 11-year service record.⁸⁹ The Commission agrees with the Trial Commissioner that a period of dismissal probation would have been more appropriate in this case. If the respondent continued to have contact with this woman, the Department would then have the option of summarily terminating his employment instead of conducting further proceedings on the matter.

In the second case, the subject officer forfeited 20 vacation days after pleading guilty to failing to identify himself as a member of the Department to officers who responded to a domestic incident, impeding an official investigation by providing those responding officers who responded to a domestic incident with a name that was not the one he was known by in the Department, and causing false entries to be made in Department records by providing the responding officers with this other name. The respondent's misconduct was discovered when the respondent was the victim of a domestic incident with the mother of his child, who was ultimately arrested. During the investigation, the Department learned that there had been a prior domestic incident⁹⁰ between the parties to which police had responded. When police responded to that first incident, the respondent gave an incorrect name to responding officers and did not identify himself as a member of the service, as required. No one was arrested at that incident as both parties stated that they did not need the intervention of the police. A domestic incident report, though, was completed with the false name. In his official interview, the respondent denied knowing how the responding officers got the name, which he explained had previously been his surname before the respondent legally changed it. His girlfriend told investigators that the respondent had told her not to tell the responding officers that he was a member of the service so he could avoid getting into trouble. The respondent had a minor disciplinary history and had been rated highly competent on his prior three performance evaluations. The Commission believes a more severe penalty was warranted given that the respondent provided false information to the Department in an effort to avoid discipline.

In conclusion, the Commission finds that the Department continues to diligently pursue the

⁸⁹ The respondent had no prior disciplinary history and had received highly competent, extremely competent, and competent ratings on his most recent performance evaluations.

⁹⁰ This domestic incident was unsubstantiated.

prosecution of these cases and imposes sufficiently severe penalties on officers involved in domestic matters.

C. False Statement Cases

Since its inception, the Commission has emphasized the importance of appropriately disciplining officers who make false statements. The Commission's initial examination of this topic contributed to the Department's adoption of its false statement policy in 1996. The directive announcing this policy provided that termination was the appropriate penalty for false official statements unless the Police Commissioner found that exceptional circumstances existed that justified a less severe form of discipline. In 2005, the Department modified the policy to mandate termination only in those cases that involved an intentional false official statement regarding a material matter. The Department also excluded those false statements that could be characterized as a mere denial of misconduct without the fabrication of a false version of events.

The Department's false statement policy only addresses false statements made in an “official setting” e.g. a PG hearing,⁹¹ CCRB interview, or under oath. This section of the Commission's report additionally examines false statements that were made under less formal circumstances. These include, but are not limited to, false entries in Department records, false statements made to other law enforcement agencies, and fraud. The Commission addresses both official and non-official false statements because it believes that both types of fabrications negatively impact the officer's and Department's integrity. Mere denials of misconduct in both the official and non-official scenarios are not included in the Commission's review.

In its last report, the Commission initially reviewed 142 cases involving a falsehood, but after excluding those cases involving a mere denial or time and leave issues, the Commission only reported on 93 cases.⁹² The Commission also excluded from its review last year those cases where it believed a false

⁹¹ *See supra* at p. 10, fn. 20 for a definition of PG hearings.

⁹² *Thirteenth Annual Report of the Commission* (March 2011) at pp. 18-25.

statement charge should have been brought by DAO but was not because these cases were reviewed for a separate report.⁹³

For this report, the Commission initially reviewed 157 cases where it appeared that the subject officer made some type of false statement. The Commission then excluded from its analysis 23 of the 157 cases because they seemed to constitute mere denials of wrongdoing,⁹⁴ and therefore, did not fall within the ambit of the Department's definition of a false statement warranting dismissal. While the Commission does not believe that a mere denial should excuse the individual officer from the application of the false statement policy and the penalty of termination, the Commission chose to comment on only those false official statement cases that would fall within the Department's application of the policy. The mere denials, in the context of a PG 206-13 hearing or an official interview with CCRB should, in the Commission's opinion, result in a penalty of termination, unless there were adequate exceptional circumstances specified. Since the Commission is only determining whether the Department is imposing discipline consistent with its own policies, the Commission excluded these cases. The Commission also excluded six cases because the falsehood involved time and leave issues that did not indicate a pattern, or did not involve the alteration or forgery of written documents. The Commission considers this type of falsehood a personnel issue, which does not involve the same credibility issues as do other instances of false statements.

⁹³ See *infra* at p. 51 for a description of the Commission's upcoming report on the Department's treatment of false statements.

⁹⁴ There were some cases where it was unclear if the statement at issue constituted a mere denial of guilt without embellishment as the Commission did not have access to the entire statement. In these situations, the Commission counted these statements as "mere denials."

1. Charges Involving Official False Statements

There were 11 cases that constituted an official false statement subject to the Department's false statement policy. The breakdown of these cases is illustrated below:

<i>Type of False Statement</i>	<i>Total Number of Cases</i>	<i>Guilty and Separated⁹⁵ from the Department</i>	<i>Charges Filed⁹⁶</i>	<i>Guilty and Not Separated from the Department</i>	<i>Not Guilty or Charges Dismissed Prior to Trial</i>
In a PG Hearing	5 ⁹⁷	0	2 ⁹⁸	2	1
Court Testimony	2	1	1 ⁹⁹	0	0
Deposition	0	0	0	0	0
Court Documents¹⁰⁰	4	0	1 ¹⁰¹	2	1
CCRB Interviews	0	0	0	0	0

The Commission disagreed with the penalty imposed in one of these cases. In that case, the subject officer, while off-duty, called another member of the service who was on-duty and asked her to check a license plate number in Department computer databases. He told that officer, in response to her query, that he was on-duty but was unable to run the plate himself because his radio was dead. The on-duty officer checked and when she learned that the respondent was off-duty, she refused his request. The respondent later, while on-duty, called a second on-duty member of the service and made the same request. That officer queried the license plate information, but the respondent never followed-up on his request. During the investigation into this matter, the respondent was officially interviewed twice. During the first interview, the respondent initially denied making the alleged requests, but later remembered that he made the request but denied asking the second officer. In his second interview, the

⁹⁵ The Commission did not differentiate between cases where the officer separated from the Department either through retirement, resignation, or termination. The Commission believes that the important factor is that the subject officer is no longer employed by the Department and not on the manner of separation.

⁹⁶ *See supra* at p. 28, fn. 87.

⁹⁷ Two of these cases involved the same officer.

⁹⁸ These cases involved the same officer.

⁹⁹ This officer was terminated by operation of law after being convicted of a felony.

¹⁰⁰ This category includes sworn supporting depositions, criminal court complaints, and affidavits.

¹⁰¹ This officer was terminated by operation of law after being convicted of a felony.

respondent stated he did not recall making the request to the second officer and that he never wrote down the license plate number. A week later, the respondent faxed the investigator an explanation for why he had requested that the plate be run and indicated that he had, in fact, written down the license plate number.

The Trial Commissioner found the respondent guilty, among other charges, of making an intentional false statement during an official Department interview. The Trial Commissioner noted that this did not constitute a mere denial and instead described it as a scheme designed to keep investigators from determining why the subject officer requested that the plate be run. In recommending the penalty of termination, the Trial Commissioner specifically noted that members of the Department “are not allowed to impede investigations into their misconduct by concocting false stories about their actions.” The Trial Commissioner also cited that in the same year as this incident, the respondent had forfeited 20 vacation days for making an unjustified off-duty car stop and repeatedly removing Department computer equipment from a Department facility and using this equipment to make unauthorized queries.

The subject officer had been employed by the Department only four years at the time of this decision and before his third anniversary with the Department, committed two instances of very serious misconduct, including making false statements and using Department computers to conduct inquiries not related to Department business. He also tried to involve other members of the service in his misconduct by asking them to make these unauthorized inquiries. The respondent testified at his Department trial, and the Trial Commissioner noted that his testimony was not credible and was designed to continue to cover up the reasons the respondent made the requests to have this inquiry conducted. Despite the Trial Commissioner's recommendation, the Police Commissioner levied a penalty that consisted of placement on dismissal probation plus the forfeiture of 30 suspension days without pay and an additional waiver of all prior suspension periods without pay. The Police Commissioner did not cite any exceptional circumstances that justified mitigating the prescribed penalty of termination. The only rationale provided was that the Police Commissioner was not persuaded that termination was necessary.

2. Charges Involving False Statements Other Than Official False Statements

The Commission reviewed 84 cases involving falsehoods that did not constitute an official false statement governed by the Department's policy. These cases breakdown as follows:

<i>Type of False Statement</i>	<i>Total Number of Cases</i>	<i>Guilty and Separated from the Department</i>	<i>Charges Filed</i>	<i>Guilty and Not Separated from the Department</i>	<i>Not Guilty or Charges Dismissed</i>
False Entries in Department Records¹⁰²	48 ¹⁰³	3 ¹⁰⁴	0	43 ¹⁰⁵	1
False Statements to an Investigative Body¹⁰⁶	13	3	1	8	1
Fraud	17	2	0	15	0
Other¹⁰⁷	6	2	0	4	0

The Commission disagreed with the penalties imposed in four¹⁰⁸ of these cases. Two of these cases involved false entries in Department records. In the first case, the subject officer was part of a team that was investigating a complaint of prostitution in the area of a motel. In order to close the complaint, the respondent obtained telephone numbers of women offering sexual services from an internet website. The respondent had these women travel from another borough to meet him at the target location. Once they arrived, another officer arrested them. The respondent, in his complaint follow-up form, stated that he obtained the telephone numbers for these women from a man that he and another undercover had encountered in the vicinity of the motel. The man described by the respondent in this report did not actually exist. The respondent also made false entries in his memo book regarding the

¹⁰² This category includes false statements made in line of duty forms, roll calls, precinct command logs, memo books, paid detail assignments, out of residence logs, overtime reports, summonses, and other investigative reports.

¹⁰³ Two of these cases involved the same subject officer.

¹⁰⁴ One of these officers had another case that was not included in this section.

¹⁰⁵ There was one penalty that covered two cases involving the same officer.

¹⁰⁶ These included statements to Department investigators, responding officers, Borough Commanders, and law enforcement officers from other agencies and jurisdictions.

¹⁰⁷ These included statements to civilians, submitting false information to a credit union, forging a credit card application, and false statements to the subject's supervisor.

¹⁰⁸ There were two other cases involving fictitious summonses where the Commission was unable to judge the sufficiency of the penalties because it did not have any of the information beyond the general charges and the penalties imposed.

investigation. Four other members of the respondents' team received discipline as a result of the respondent's actions. Although the respondent had no prior disciplinary history, he was only a member of the service for four and half years. For this misconduct, he was placed on dismissal probation and forfeited 45 vacation days. The Commission believes that the seriousness of the respondent's misconduct and his willingness to involve other members of the service in his wrongdoing demonstrates that he should no longer be a police officer.

In the second case, the Commission also disagreed with the penalty because of what DAO did not charge. In that case, the subject officer was placed on dismissal probation and forfeited 30 vacation days after he completed an arrest report, a complaint report, a stop, frisk and question report, and a sworn Family Court affidavit that indicated that he personally recovered a knife from the shorts of the juvenile defendant. In fact, the knife was recovered by another officer from a trash can. In his official interview, the respondent admitted that he did not recover any property from the juvenile. He had been assigned the arrest, but he failed to ask the officers who made the arrest about the surrounding circumstances. When completing the paperwork, the respondent filled in the information he did not have based on statements made by the juvenile. The respondent claimed that his failure to complete the Department paperwork correctly was due to his sloppy police work, not on an intent to deceive the court.

The respondent was not charged with making a false statement under oath for signing the Family Court affidavit. Instead, he was charged¹⁰⁹ with signing a sworn Family Court Affidavit that contained inaccurate and/or misleading information. However, this was not a situation where the respondent misread or misunderstood the affidavit or where information was provided by another person that the respondent signed without reading. The respondent provided this information, not only on the court paperwork, but also on the Department paperwork. This act, itself, was the making of a false statement, whatever the reason. Unless applicable exceptional circumstances could be cited, this respondent's

¹⁰⁹ This was one of five charges. There were also charges for submitting inaccurate Department paperwork, causing false entries to be made in Department records, failing to gather and review complete and accurate information regarding the recovery of the knife prior to submitting documents to court, and failing to maintain complete activity logs.

employment should have been terminated.

Of the remaining two cases where the Commission disagreed with the penalties imposed, one involved the subject officer providing a name that was not his legal one to officers responding to a domestic incident and is described earlier in this report.¹¹⁰ In the final case, the subject officer, a supervisor, recreated the handwritten complaint and arrest reports for a defendant when an Assistant District Attorney requested these reports. The actual officers who generated the original reports were not available, and the respondent could not obtain copies of the reports. In addition to recreating the reports, the respondent signed the names of both of the officers, forging their signatures, and signed his own name as the approving supervisor, even though he was not present when the original reports were prepared. The respondent, in his official interview, told investigators that the Assistant District Attorney was insistent that she required these reports in order to prosecute the defendant. When the respondent told the Assistant District Attorney that he was unable to access the reports, she asked him if there was anything he could do. When the respondent offered to recreate the reports, the Assistant District Attorney agreed with this plan of action. The Assistant District Attorney, though, did not share the same version of events and stated that she called the respondent four times requesting these documents. She only became aware of the respondent's actions when one of the officers was shown the handwritten report and denied that the signature was his. This occurred before the trial, and the criminal prosecution of the defendant was not adversely affected. The respondent was charged with causing false Department records to be generated. Typically, these documents are given to defense counsel as material to use in their cross-examination of witnesses. There are times when the handwritten copy has information that is not included on the typed copy or the reverse is true. In justifying a penalty of 30 vacation days, the Assistant Advocate cited precedent where 30 vacation days had been levied in similar cases. The Commission had previously addressed the need for dismissal probation in one of the cases relied upon by the Assistant Advocate where an officer signed supporting depositions to criminal complaints on behalf

¹¹⁰ See *supra* at p. 29.

of other members of the service and/or allowed other members of the service to sign depositions on his behalf for the purpose of expediting arrest processing.¹¹¹ Although in these cases, the respondent had signed other members of the services names under oath, unlike here, given the integral nature of this material to the fair operation of the criminal justice system, the Commission believes a penalty that included dismissal probation would have been more appropriate. Furthermore, while the Commission understands that the Department has made efforts to train its members on handling paperwork that may be utilized in connection with a criminal proceeding, this officer may have benefitted from additional training.

¹¹¹ This past case was one of several cases with similar charges stemming from the same command. The Commission had disapproved of a penalty of solely vacation days and opined that dismissal probation was appropriate in all of these cases. See *Eleventh Annual Report of the Commission* (February 2009) at pp. 41-42 and accompanying footnotes; *Twelfth Annual Report of the Commission* (February 2010) at pp. 56-57; and *Thirteenth Annual Report of the Commission* (March 2011) at p. 20. See also *infra* at p. 42.

3. Uncharged False Statements

In its examination of this type of misconduct, the Commission also evaluated 39 cases where the officer committed some type of falsehood that would appear to fall within the ambit of the false statement policy, yet no such charge was brought.¹¹² The following table indicates the types of false statements that were made, whether there was a charge levied that captured the misconduct but was not a Making a False Statement or Perjury charge, and when there was a less serious charge, whether the Commission agreed with the charge levied:

<i>Type of False Statement</i>	<i>Total Number of Cases</i>	<i>Alternate Charge Levied</i>	<i>Commission Agreed with the Charge Levied</i>
In a PG Hearing	22	13	8
Court Testimony	2	2	1
Court Documents	7	7	4 ¹¹³
Other¹¹⁴	8	3	3

The Commission believed a charge that would implicate the Department's false statement policy appeared appropriate in eight cases.¹¹⁵ One of these cases were previously described in this report.¹¹⁶

Two cases arose out of the same set of circumstances. An investigation was conducted at a specific command which resulted in findings that six officers¹¹⁷ were misusing department time, signing

¹¹² In some of these cases, charges were brought of a lesser nature. Five of these cases were included in the false entries in Department records category. One such case was included in the false statement to another investigative body category. Since the falsehood that was not charged in these six cases appeared more serious and would, theoretically, receive greater penalties than the charge that was actually levied, the Commission also included them in this category. Two other cases involved the same officer.

¹¹³ There was one additional case where, since the officer resigned prior to the adjudication of the charges, the Commission did not have sufficient information to make a determination.

¹¹⁴ This included statements to supervisors or responding officers that did not take place in the context of an official interview and statements made in Department paperwork.

¹¹⁵ The Commission recognizes that its sole source of information regarding the officer's actions were the plea memorandum, decisions by the Trial Commissioners, and Department internal memos describing the misconduct. The Commission acknowledges that it did not review the entire file or listen to the officer's recorded statements in many of these cases. Some of the underlying investigations were reviewed for the Commission's upcoming report about how the Department disciplines officers who make false official statements. *See infra* at p. 51 for a brief description of that report.

¹¹⁶ *See supra* at pp. 35-36.

¹¹⁷ One other member of the service received charges for failure to supervise. Two other members also received charges for improprieties within the command.

in and out for each other on roll calls, and falsifying Department records.¹¹⁸ Four of these officers received penalties ranging from the forfeiture of 15 to 60 vacation days and the deduction from their time and leave balances of all hours they falsely claimed that they had worked.¹¹⁹ This misconduct was detected through an audit performed by another Department unit. Detective A and Detective B, as well as other team members, had been granted permission to stay overnight at the command and to change their tour for the next day so it would begin at 4:30 a.m. instead of later in the day as originally scheduled. There was approximately two and a half hours between the time they were granted this permission and the beginning of the next tour. Detective A then decided to go home instead of working the earlier tour, but did not tell anyone. A Lieutenant from the other Department unit came to the command to conduct an inspection. While there, he inquired about the whereabouts of Detective A. When no one was able to locate Detective A, Detective B, who had left the command to get something to eat, was called and questioned as to Detective A's whereabouts. This inquiry occurred at approximately 5:00 a.m. Detective B told the Lieutenant from the other Department unit that he had taken a nap until 4:00 a.m. When he woke up, he saw Detective A and they decided to go out together to get something to eat. As they were leaving, Detective A received a telephone call and told Detective B to go on without him. In fact, none of this was true as Detective B had not seen Detective A since 2:00 a.m. when Detective A had left the command. Sometime after this incident, Detective B informed Detective A of the account that he had given supervisors on the night of the incident. Both Detectives were officially interviewed by Department investigators less than a month after the incident. Both reiterated the lie originally told by Detective B. In his second official interview, which took place approximately five months after the first, Detective B again set forth this version of events. Detective A was officially interviewed three days later and admitted that he had changed his mind about working the early tour and left the command at 2:00 a.m. without telling anyone. He also admitted that Detective B had informed him of his initial response on the night of the incident. A third official interview with Detective B was

¹¹⁸ All of these cases were included in the prior section in the false entries in Department records category.

¹¹⁹ Some of these officers were also transferred from the command although this was separate from the discipline imposed.

held approximately one week later. At this interview, Detective B admitted that he had not seen Detective A since 2:00 a.m. on the night in question.

In addition to receiving other charges,¹²⁰ these officers both received charges for providing a misleading account of Officer A's whereabouts during an official Department interview. Officer A was placed on dismissal probation and forfeited 45 vacation days. There was also time deducted from his time and leave balances. Officer B was placed on dismissal probation and forfeited 45 vacation days.¹²¹ Both should have been charged with Making False Statements. Officers should not cover up the misconduct of other officers, no matter how minor. That is part of the rationale underlying the false statement policy. The extreme penalty of termination, if consistently applied, would serve as a deterrent as every officer would know that by lying to provide a cover for a colleague, they are putting their own employment at serious risk.

In the fourth case, the subject officer was charged with not revealing her true involvement in an incident and describing the incident in a way to hide her involvement and to impede an investigation. That officer was summoned to an interview at CCRB where she told the truth but presented a memo book page that was altered, which indicated that she and her partner were in a different Department vehicle than the one they had actually been using. When questioned by Department investigators, the subject officer wavered but ultimately stated that she had been in the vehicle written in her memo book. She reiterated this during her second Department interview. Yet, she was not charged with Making a False Statement.¹²²

¹²⁰ These charges included misuse of Department time and signing in and out for other officers and also allowing other officers to sign in and out for them.

¹²¹ This penalty also covered a second set of charges against Officer B for failing to safeguard a civilian's property, failing to properly invoice the property, and failing to notify IAB of an allegation of missing property.

¹²² The Trial Commissioner ultimately found the subject officer not guilty of impeding an investigation by not revealing her true involvement in an incident because there was not sufficient evidence presented to demonstrate that she was involved in the CCRB incident and therefore lied to try to hide that involvement. She was found guilty of providing a memo book with a false entry during both the CCRB interview and the Department interview. She also pled guilty to charges on a separate case. Although the Department Advocate requested termination, the Trial Commissioner recommended a period of dismissal probation plus the forfeiture of 40 days because of the length of time which passed between the incident with CCRB and the adjudication of the case without further disciplinary infractions by the subject officer. The Police Commissioner accepted the Trial Commissioner's recommendation.

In the fifth case, the subject officer was charged with impeding an investigation based on her statements in an official Department interview where the subject officer denied knowledge of her boyfriend's criminal history. Not only did she deny that she was aware of his past arrests, the subject officer also denied that she had socialized with this man in the past and stated that once they started dating, they never spoke about his criminal history. The subject officer married the boyfriend a week after this official Department interview.¹²³ The Trial Commissioner found the respondent's denials lacked credibility but found the respondent not guilty because there was no evidence that her statements impeded an investigation. A "Making a False Statement" charge would not have required this element in order to find the respondent guilty and could have resulted in a more severe penalty than the 15 vacation days that she forfeited.¹²⁴

In the sixth case, the respondent forfeited 26 vacation days after pleading guilty to being absent without leave from his assignment, improperly utilizing a Department vehicle for his personal use, engaging in a loud argument with his wife, failing to safeguard his firearm, failing to notify the Department of his involvement in an unusual police occurrence, and impeding an official Department investigation by stating to Department investigators that on the date of the above acts, he spoke with two Assistant District Attorneys while in court. In fact, the respondent left his partner at court so he could travel to his residence where he engaged in the argument with his wife. Again, he made false statements during an official interview so he could hide his own misconduct. This particular officer also had been on dismissal probation approximately nine years earlier for impeding an investigation and making false statements. The Assistant Advocate justified a penalty that did not involve dismissal probation because there had been no subsequent domestic incidents since the respondent and his wife had filed for divorce. The respondent had also indicated that he intended to retire. The Department Advocate never addressed why a system of progressive discipline was not utilized in this case and why the officer's false statements

¹²³ Since the Department cannot prohibit its members from associating with their family, even those with criminal backgrounds, this insulated the respondent from further disciplinary action for her continued association with this man.

¹²⁴ This penalty was based on the subject officer being found guilty of associating with someone who had a criminal history.

deserved a downward departure from the prescribed penalty of termination.

In the seventh case, the subject officer signed the shield number of an undercover officer to the supporting depositions, made under oath, of multiple criminal court complaints for prostitution arrests.¹²⁵ He was charged with improperly completing supporting depositions by falsely signing these depositions on behalf of another member of the service as well as allowing other members of the service to sign on his behalf. The entire unit would split up the processing of prostitution arrests to expedite the completion of paperwork. Although the subject officer might not have intended to deceive anyone, he still was aware that he was falsely signing a document. As such, a Perjury or Making a False Statement charge was appropriate. The reasons behind the false statement could then have been considered in determining whether exceptional circumstances existed to justify a penalty short of termination. The subject officer was placed on dismissal probation, forfeited a combined penalty of 70 days, and agreed to submit to ordered breath-testing and to cooperate with any counseling deemed necessary by the Department to cover both cases.

In the eighth and final case, the subject officer testified during a Family Court pre-petition hearing¹²⁶ that she observed a juvenile engaged in smoking and passing a lit marijuana cigarette. In fact, the subject officer did not make this observation and refused to sign a supporting deposition prepared by the prosecutor that stated she had made this observation. As a result, the delinquency case was dismissed. The prosecutor, when interviewed, stated that the subject officer had told her, prior to testifying, that she had observed the juvenile engage in the criminal behavior. The subject officer, in her official Department interview, stated that she believed, when questioned by the prosecutor, that “you” meant *her and her partner*, not her specifically. The subject officer also denied that the prosecutor ever presented her with an affidavit to sign, apparently in an effort to cover up her misconduct. The subject officer was charged with failing to give truthful testimony. The Assistant Advocate noted that the

¹²⁵ The subject officer also had another case for DUI where he denied witnessing an incident that was described in connection with another case cited earlier in this report. *See supra* at pp. 20-21.

¹²⁶ In a pre-petition hearing, the prosecutor need only prove that the Court has jurisdiction to hear the matter. The purpose of the hearing is to detain a juvenile when a petition has not yet been filed by the prosecuting agency.

respondent's explanation was not plausible, but there was no evidence that the subject officer tried to deceive anyone. However, the Commission believes that by its very nature, giving testimony under oath demonstrates the subject officer's intent to deceive a judge in circumstances when a civilian youth's liberty was at stake. The respondent was placed on dismissal probation, forfeited 28 vacation days, and was ordered to undergo retraining in courtroom testimony. The Commission believes the officer's employment should have been terminated.

In all of these cases, the Commission believed that the subject officer should have been charged with making a false official statement and the provisions of the Department's false statement policy should have been applied. If the penalty imposed was short of termination, exceptional circumstances should have been set forth to explain the reason why the subject officer was given the lesser penalty.

The following table indicates the breakdown of discipline in those cases where the officer was held responsible for some type of falsehood:

<i>Type of False Statement</i>	<i>Total Number of Cases</i>	<i>Guilty and Separated from the Department</i>	<i>Charges Filed</i>	<i>Guilty and Not Separated from the Department</i>	<i>Not Guilty or Charges Dismissed</i>
In a PG Hearing	13	2	1	8	2 ¹²⁷
Court Testimony	2	0	0	2	0
Court Documents	7	0	1	6	0
Other	3	0	0	3	0

The Commission disagreed with the penalties in one additional case where it agreed with the levying of a charge that was not Perjury or Making a False Statement. In that case, the subject officer was penalized 30 vacation days. The subject officer, an 18-year veteran, failed an integrity test¹²⁸ by failing to voucher found property, including a wallet and its contents. At her first official Department interview, the subject officer denied that she saw some of the items located inside of the found wallet. In

¹²⁷ In both cases, although the subject officers were found not guilty after a trial of the charges involving the falsity noted by the Commission, the officers were found guilty of other charges and received discipline.

¹²⁸ In an integrity test, investigators create an artificial scenario that simulates a situation the subject officer might encounter. This scenario tests the officer's response to the situation to determine if the subject officer performs as the Department requires.

her second official interview, the subject officer admitted to seeing these items. The officer was charged with impeding an investigation by making false or misleading statements to Department investigators when questioned about the facts and circumstances surrounding the missing property. The Commission did not believe that the alternate charge was incorrect because the statement could have been construed as a mere denial. Recognizing that the subject officer made false statements during her official Department interview, coupled with her chronic sick history, a mediocre rating from her Commanding Officer, and the fact that she failed an integrity test, the Commission believed a more severe penalty was warranted.

Additionally, there were also nine cases¹²⁹ where it appeared that the subject officer made false statements during his official Department interview, but no charge was directed to that particular misconduct.¹³⁰ Based on the information available to the Commission, Making False Statement charges would have been appropriate in these cases.

In this section, the Commission summarized a number of cases where it appeared, based on

¹²⁹ There were also five other cases where the officers appeared to have made false statements, but not in an official context. There was no alternate charge brought in these cases.

¹³⁰ Of these nine cases, the Commission disagreed with the penalties imposed based on the charges that were levied in two of these cases. The Commission describes these cases in a footnote as its disagreement did not specifically pertain to a false statement, but was due to a belief that based on the facts of the case, a more severe penalty was warranted. In one case, a Captain instructed a Sergeant to falsify his memo book entries to indicate that a robbery complainant recanted his allegations. The Captain also prevented a complaint report and other Department paperwork for this robbery from being entered into Department computer systems. In his official Department interview, the respondent stated that the Sergeant had not properly interviewed the complainant, and the Sergeant, after conducting a further interview, told the Captain that the complainant had recanted the allegations. The respondent also denied that he ever had possession of the complaint report and accompanying paperwork although another Sergeant reported seeing the respondent in possession of these items. The respondent was not charged with Making False Statements and forfeited 40 vacation days. Given the importance of the integrity of criminal statistics, as well as the fact that the respondent involved a subordinate in his misconduct, a more severe penalty was warranted.

In the second case, the subject officer was a nine-year member of the service with no disciplinary history and an excellent rating by his Commanding Officer. The subject officer participated in a group assault of a 52-year-old man who was standing outside of the store that was owned by the father of one of the subject officer's friends. When the man did not move from in front of the store when requested, between seven and nine men assaulted the man. One of these men, who was not the subject officer, hit the complainant with a baseball bat. The assault continued even when the complainant was lying on the ground, unconscious, until a civilian intervened. At that point, the subject officer left the scene and failed to return, despite knowing that police had been called to respond. In his official Department interview, the subject officer denied being involved in the altercation except as a mere observer. He only became physically involved at the point a bat was used, and this was to break up the altercation. The subject officer was not charged with Making a False Statement but was charged with Engaging in a Physical Assault, Failing to Take Police Action, Failing to Render Aid, and Failing to Notify the Department of his Involvement in the incident. The respondent was placed on dismissal probation and forfeited 30 suspension days. The Commission believed that the respondent's employment should have been terminated based on the sheer brutality involved as well as his failure to take responsibility for his misconduct.

descriptions of the cases provided by DAO or by summaries of the evidence presented in Department trials, that Making False Statement or Perjury charges would have been appropriate, but instead either there was no charge or a substitute charge levied that did not expose the subject officer to the penalties mandated by the False Statement policy. It is important to have consistency in the application of the False Statement policy, from the charges brought to the penalties imposed. Consistency enables members of the Department to know what they can expect when they make false official statements and helps ensure the deterrent effect that was originally intended. Consistency can also increase public confidence in the Department's unwillingness to tolerate false statements from its members and in turn, increase the public confidence in the truthfulness of any particular officer's testimony.

IV. ONGOING WORK OF THE COMMISSION

A. Log Review

IAB maintains several hotlines that connect to its Command Center, a central information center open twenty-four hours a day, seven days a week. These hotlines are staffed by IAB personnel who input details of complaints, updates on internal investigations, and Department-mandated notifications. Calls from civilians or members of the service are either assigned a log number, a unique identification number, or attached to a pre-existing log number when information relates to a prior call. Additionally, all corruption and misconduct allegations received by the Department, by mail or in-person, are reported to IAB's Command Center and similarly assigned a log number. Each day's logs are sent to the Commission via encrypted e-mail. The Commission uses the information in the logs to keep informed about trends in corruption allegations.

B. Steering Committee Meetings

Throughout the year, Commission staff and the Commissioners attend IAB steering meetings. These meetings are led by the Steering Committee. The Steering Committee consists of IAB's Executive staff including the Executive Officer, two Deputy Chiefs, and three Inspectors and is chaired by the Chief of IAB. At these meetings, commanding officers of each IAB group present their group's most serious cases and some of the longest-pending cases¹³¹ and receive investigative recommendations. The Commission tracks these recommendations and has observed that investigators are following the recommendations of the Steering Committee and that such recommendations serve to promote thorough investigations and timely closures.

¹³¹ This describes the basic steering meeting. There are other steering meetings where cases that are older than a certain date or that include an analysis of the corruption complaints in each of the commands within the specific group's jurisdiction are discussed. There are, less frequently, other specialized steering meetings where specific issues, such as an increase in complaints within a particular command, are discussed.

C. Intensive Steering Committee Review

Each year, between June and September, extended steering meetings are held. The Commission attends these meetings. At these intensive meetings, each IAB group's commanding officers present their entire caseload, excluding those cases they present at regular steering meetings. This provides the Commission and the Steering Committee the opportunity to acquaint themselves with cases that would not receive the same attention as those normally presented. The Commission observed that at times, the Steering Committee used this as an opportunity to reassess cases, sometimes requiring commanding officers to present them at the main steering meetings, where those cases would receive more direct attention and be followed until the cases are concluded.

D. IAB Briefings To The Police Commissioner

On a monthly basis, the Chief of Internal Affairs meets with the Police Commissioner to brief him on significant cases. Also in attendance is the First Deputy Commissioner, the Chief of Department, the Deputy Commissioner for Legal Matters, the Special Counsel to the Police Commissioner, the Department Advocate, and IAB's Executive Officer. The Commissioners, the Executive Director, and the Deputy Executive Director of the Commission also attend. At these briefings, IAB group commanders present cases selected by the Commission's Executive Director.¹³² This past year, briefings covered investigations of perjury, transporting stolen property and guns, criminal association, theft, fraud, identity theft, altering summonses, and other illegal activities. These presentations describe the investigative steps, the results of those steps, and any anticipated investigative actions. Commissioners have the opportunity to address each presenter and speak directly with the Police Commissioner about the progress of the case.

¹³² The Executive Director chooses the cases for these presentations from cases highlighted by IAB and from cases she has heard about through either the staff's attendance at steering meetings or through case review.

E. Meetings With IAB Executives

This year the Commissioners and Commission staff held meetings with the top level executives of IAB to be briefed about significant investigations involving multiple members of the service. The Commissioners and staff also held a meeting with IAB executives to discuss the findings of this Annual Report and to discuss various issues raised in the media. The Commission intends to continue an open dialogue with IAB through similar meetings.

F. Meetings With District Attorneys And Union Officials

The Commission further fulfills its mandate to monitor corruption by conferring with Federal and State prosecutors responsible for the investigation and prosecution of police corruption. These meetings allow the Commission to explore any concerns these agencies have and their perceptions about the Department, particularly IAB, their working relationship with IAB, and their opinions regarding the quality of IAB's investigations and proactive measures to detect corruption. This past year, the Commission met with four of the five city District Attorneys and representatives from the units in their offices responsible for prosecuting criminal allegations involving police corruption.¹³³

The Commission also met with representatives from the Police Benevolent Association, the Lieutenants' Benevolent Association, and the Captains' Endowment Association.¹³⁴ The purpose behind these meetings was to discuss integrity-related issues of concern to the membership of each union as well as to learn whether and how each union addresses these concerns. The Commission also listened to each union's suggestions on ways to prevent corruption and misconduct among its members.

¹³³ The Commission was unable to arrange a meeting with the Bronx District Attorney but intends to meet with representatives from this office in the coming year.

¹³⁴ The Commission contacted the Presidents of the Sergeants' Benevolent Association and the Detectives' Endowment Association and left several messages. As of the time of the drafting of this report, no one from these organizations had returned the Commission's telephone calls.

G. Interim And Operation Orders

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

H. Corruption And Misconduct Comparison Reports

On a monthly basis, the Commission receives a copy of IAB's Corruption and Misconduct Complaint Comparison Report. This report presents a statistical analysis of corruption allegations, which compares annual and monthly statistics by allegation, borough, and bureau. This analysis enables the Police Commissioner, the Chief of IAB, and IAB's senior staff to identify corruption trends. Each year, the Commission also receives a copy of IAB's Annual Report. Included in this report is a discussion of the proactive measures that IAB has taken to detect corruption or serious misconduct.

I. Complaint Logs

Occasionally, the Commission receives complaints against members of the Department from the public. From November 19, 2010 through December 15, 2011, the Commission received 185 complaints.¹³⁵ Below is breakdown of those complaints.

Complaint	No.
Abuse of Authority	13
Accepting a Bribe	4
Alcohol-Related	2
Criminal Activity	2
Criminal Association	1
Disagreement with Department Policies/Actions	6
Disputed Arrest/Summons	17
Disputes with NYPD Discipline	3
Domestic Dispute	5
Downgrade Crimes	3

¹³⁵ Many of the complaints received during this time period concerned the Department's treatment of the protestors involved in the Occupy Wall Street movement.

Complaint	No.
Force, Abuse of Discretion, Discourtesy, and/or Obscene Language	51
Failure to Take Police Action	24
False Statement/Falsifying Business Records	3
Fraud	3
Harassment	9
Missing Property	5
Misuse of Placard	2
Misuse of Time	2
Narcotics Allegation	2
Other/Misc. ¹³⁶	19
Sexual Misconduct	4
Stop and Frisk	3
Unauthorized Employment	2

The Commission refers all of these complaints to IAB or the appropriate investigative authority and keeps a record in the event that any follow-up is necessary.

¹³⁶ Other categories included complaints involving law enforcement members from other city agencies, computer crimes, theft, and facilitating illegal activities.

V. FUTURE PROJECTS

The Commission is concluding reviewing data for a report it expects to publish in 2012. Three years ago, the Commission began observing an increase in false statement allegations against officers for perjuring themselves in court, signing false documents under oath, or lying during their official Department interviews and interviews with other investigative bodies, including CCRB. Only in the last year have these allegations seen any significant decline. The Commission's report will focus on how the Department: (1) trains its members to testify in court; (2) investigates allegations of perjury and other allegations of making false statements; (3) levies charges against its members accused of making false statements or committing perjury; and (4) disciplines its members who have been found guilty of these types of allegations.

In the coming year, the Commission intends to hire four experienced attorneys to better enable it to monitor the Department. The Commission is in the process of determining how to modify its current operations to utilize the new personnel to better monitor the Department's efforts to detect, investigate, and deter corruption.

VI. COMMISSIONER BIOGRAPHIES

Michael F. Armstrong

Chairperson

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

David Acevedo

David Acevedo is a Chief Trial Attorney in the Enforcement Division of the United States Commodity Futures Trading Commission. There, he supervises a team of attorneys and investigators who conduct investigations of trade practice fraud, solicitation fraud and market manipulation, and in enforcing the Commodity Exchange Act. From 1988 to 1999, Mr. Acevedo served as an Assistant District Attorney at the New York County District Attorney's Office, where he investigated and prosecuted a wide range of cases including homicides. Mr. Acevedo earned his J.D. from Boston College Law School. Mr. Acevedo resigned from the Commission in January 2012.

Vernon S. Broderick

Vernon S. Broderick is a litigator at Weil, Gotshal & Manges, where he concentrates on complex commercial litigation. He represents corporations and executives in matters related to white collar crime and government investigations. Mr. Broderick served as an Assistant United States Attorney for the Southern District of New York for eight years. While at the United States Attorney's Office, he served as Chief of the Violent Gangs Unit and, investigated and prosecuted cases involving organized crime, international narcotics trafficking and, violent crimes including murder, kidnapping, assault and robbery extortion. Mr. Broderick was also a recipient of the Justice Department Director's Award for Superior Performance as an Assistant United States Attorney in both 1997 and 1998. Mr. Broderick earned his J.D. from Harvard Law School.

Kathy Hirata Chin

Kathy Hirata Chin is a litigation partner at Cadwalader, Wickersham & Taft. Ms. Chin served as a Commissioner on the New York City Planning Commission from 1995 to 2001. She has also served on the Federal Magistrate Judge Merit Selection Panel for the Eastern District of New York, on Governor Mario M. Cuomo's Judicial Screening Committee for the First Judicial Department, on the Gender Bias Committee of the Second Circuit Task Force regarding Gender, Racial, and Ethnic Fairness, and on Judge Judith S. Kaye's Commission to Promote Public Confidence in Judicial Elections. Ms. Chin

earned her J.D. from Columbia University School of Law.

Edgardo Ramos

The Honorable Edgardo Ramos was a partner in the White Collar and Internal Investigations Practice Group at the law firm of Day Pitney LLP. Judge Ramos was an Assistant U.S. Attorney in the Eastern District of New York for eight years, serving as the Deputy Chief of that office's Narcotics Unit and the Organized Crime/Drug Enforcement Task Force. Judge Ramos earned his J.D. from Harvard Law School. Judge Ramos was appointed as a United States District Judge to the Southern District of New York in December 2011. Judge Ramos resigned from the Commission after his appointment to the Southern District bench.

James D. Zirin

James D. Zirin is Senior Counsel at Sidley Austin LLP. He has been a trial lawyer for over 40 years, handling a wide variety of white collar criminal and complex commercial litigation. Mr. Zirin is a former Assistant U.S. Attorney for the Southern District of New York. He is also a fellow of the American College of Trial Lawyers, a trustee of New York Law School, a member of the advisory board of the Woodrow Wilson School of Public and International Affairs at Princeton University, a former director and member of the executive committee of the Legal Aid Society, and a past vice president and trustee of the Federal Bar Council. He is a member of the Council on Foreign Relations. Mr. Zirin earned his J.D. from the University of Michigan law School.



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

EXECUTIVE ORDER NO. 18

February 27, 1995

ESTABLISHMENT OF COMMISSION TO COMBAT POLICE CORRUPTION

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

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

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

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

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

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

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

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

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

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

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

Section 1. Establishment Of Commission.

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

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

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

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

Section 2. Duties.

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

and analyses regarding the following:

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

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

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

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

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

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

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

Section 3. Investigations.

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

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

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

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

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

Section 4. Reporting to the Police Department.

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

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

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

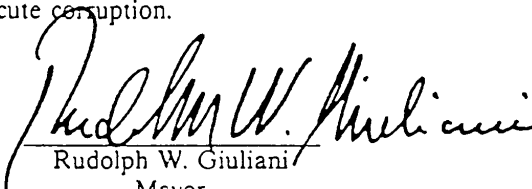
Section 5. Reporting to the Mayor.

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

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

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

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


Rudolph W. Giuliani
Mayor



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

Executive Order No. 39

August 12, 2003

AMENDMENT OF EXECUTIVE ORDER NO. 18, DATED FEBRUARY 27, 1995,
RELATING TO ESTABLISHMENT OF COMMISSION TO COMBAT POLICE
CORRUPTION

By virtue of the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. Subdivisions a and b of section one of Executive Order No. 18, dated February 27, 1995, are amended to read as follows:

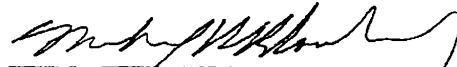
Section 1. Establishment of Commission.

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

b. Of the members first appointed, the Chairperson shall be appointed for a term ending December 31, 1998; two of the members shall be appointed for terms ending December 31, 1997; and two of the members shall be appointed for terms ending

December 31, 1996. The initial sixth member of the Commission shall be appointed for a term ending December 31, 2006. Upon the expiration of such initial terms, all members shall be appointed for a term of four years. Vacancies occurring otherwise than by expiration of a term shall be filled for the unexpired term.

§ 2. Effective Date. This order shall take effect immediately.



MICHAEL R. BLOOMBERG
MAYOR