

The City of New York

Commission to Combat Police Corruption

Thirteenth Annual Report of the Commission

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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. 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.²

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).³ 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)⁴ 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.

This report, *The Thirteenth Annual Report of the Commission*, describes the Commission's findings after reviewing 105 pending and closed IAB investigations and 572 closed disciplinary cases, describes the Commission's ongoing, day-to-day operations, and discusses possible studies the Commission is considering conducting in 2011.

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

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

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

⁴ DAO is the division within the Department responsible for the prosecution of administrative disciplinary charges against members of the service.

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, 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 further evaluate whether, given the evidence collected, a correct disposition⁵ 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.⁶

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,⁷ the Commission reviewed 45 pending IAB investigations. A breakdown of the most serious allegation in each case reviewed is displayed below.⁸

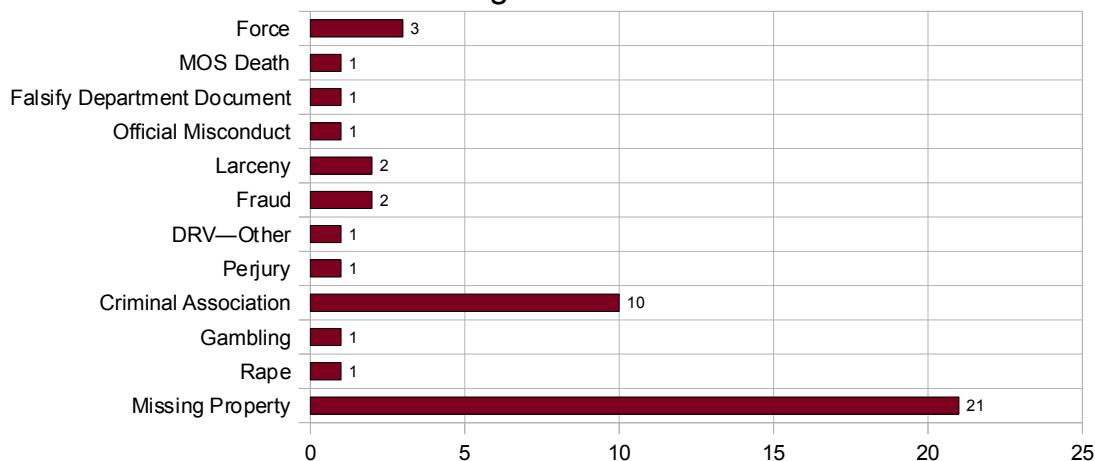
⁵ An investigation can result in one of five dispositions, as set forth by the Department. If the disposition is "substantiated," the investigation found that "the accused employee has committed ALL of the alleged acts of misconduct." If the disposition is "partially substantiated," the investigation 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."

⁶ If these discussions do not sufficiently answer the Commission's concerns, the Commission may meet with IAB's highest tier of management.

⁷ For the purposes of its review of IAB investigations, the Commission followed the calendar year of January 1 through December 31.

⁸ For the purposes of this report, the Commission only notes the most serious complaint alleged. Often, investigations contained multiple allegations.

Pending Case Review



To conduct this review, the Commission chose cases randomly from lists of all pending cases provided by IAB.⁹ The only information on these lists was the case number and the specific IAB group that investigated the case.¹⁰ 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 chose at least three cases from each IAB group.

Approximately six months after the initial review, the staff returned for a second round of reviews. As of the drafting of this report, Commission staff had conducted a follow-up review at one field office. The Commission staff was well-received in each borough office and found that investigators were receptive to suggestions made by the staff.

CLOSED IAB INVESTIGATIONS

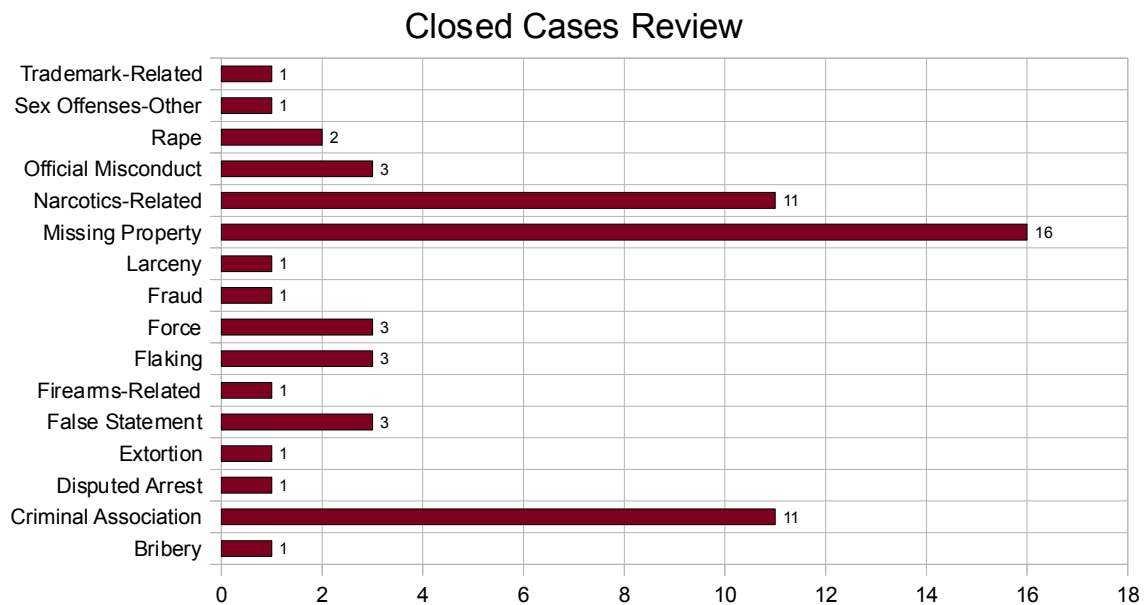
Reviewing closed cases allows the Commission to assess the efficacy of IAB investigations and

⁹ While the Commission selected pending cases for review, there were two instances where by the time the Commission reviewed the case, it had been closed. In these situations, the closed case was reviewed. New cases will be chosen to replace the closed cases at the Commission's next follow-up review.

¹⁰ IAB is divided into 23 investigative groups. These groups 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.

to make general recommendations that can be applied to future investigations.

For this report, the Commission employed two methods of closed case selection. The majority of cases were randomly selected from lists of all the closed cases that were regularly supplied by IAB. These lists contained the case number and the identity of the IAB group that investigated the case. Since the most prevalent allegation that IAB investigates involves missing property, and since such investigations generally follow a similar course and result in an unsubstantiated disposition, the Commission tried to diversify its review to examine other allegations. To achieve this, the Commission selected a second set of cases on a non-random basis. The selected cases did not include an allegation of missing property and had a subject officer who was identified by name.¹¹ These cases were chosen from reports prepared by IAB groups for steering meetings.¹² The Commission reviewed a total of 60 cases. Of those, 44 were chosen randomly. The remaining 16 were selected from steering reports. The following is the breakdown of the top allegations in the 60 cases reviewed.



¹¹ The Commission sought to review cases with identified subject officers because it has found in the past that when no officer has been identified in connection with the conduct alleged, there usually was insufficient information available to provide investigative leads for IAB that would result in any disposition other than unsubstantiated.

¹² See *infra* at p. 26 for a discussion of Steering Committee meetings. Steering reports are provided at most meetings. These reports describe the facts of each case, the actions taken in the investigation, and the steps the group anticipates taking in the future. The Commission chose cases to review from the portion of the reports which listed the cases the group had closed since the last steering meeting.

The Commission found that IAB investigated these closed cases thoroughly, diligently, and without undue delay. Investigators effectively utilized appropriate investigative tools such as surveillance, interviews, and integrity tests.¹³ In those cases where there was a probability that misconduct was more widespread than the precinct in which it occurred, investigators expanded their investigation to neighboring precincts.¹⁴ The Commission agreed with the disposition in all of the cases it audited.

The only issue of concern the Commission noted in more than one investigation¹⁵ was that investigators sometimes failed to document their investigative steps.¹⁶ Documentation of all investigative steps close in time to the date they are taken is important. If the file is transferred, a new investigator can proceed with the investigation without duplicating prior actions. Complete documentation is also important so that those who review the file, including the investigator's supervisors, have an adequate sense of what the investigator did to arrive at the disposition and can assess the investigation accordingly.

¹³ In an integrity test, the investigator creates 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.

¹⁴ For example, the Commission followed an investigation where it was alleged that named officers were writing fictitious summonses in a specific precinct. The investigator extended the investigation to neighboring precincts by sampling random summonses to see if the same misconduct was occurring.

¹⁵ Any concerns that arose in isolated investigations were discussed with the investigator, his supervisor, or his commanding officer at the conclusion of the review.

¹⁶ In most of these instances, the Commission would find an attachment in the file with no corresponding worksheet to explain when it had been obtained. There were also some instances where the closing report, which summarized the investigation, would describe an action taken but there was no worksheet that discussed that action in the file.

REVIEW OF IAB TRAINING INITIATIVES

The Commission attends and evaluates IAB training sessions.¹⁷ In December 2009, the staff attended IAB's two-week Internal Investigations Course. Administered by IAB's Office of Professional Development for the purpose of training investigators newly assigned to IAB, this course included lectures and presentations on corruption-related matters, including the fundamentals of internal investigations. Topics included Driving While Intoxicated (DWI) investigations, financial investigations, computer crimes investigations, police shooting investigations, force investigations, evidence collection, investigative interviewing, and case management. Attendees participated in interactive exercises in surveillance, integrity testing, conducting interrogations pursuant to Patrol Guide §206-13 (PG interviews or PG hearings),¹⁸ and other interviews of members of the service. Commission staff found that presenters were well-prepared, and the Commission believes course topics were appropriate.

In November 2010, Commission staff also participated in an IAB-sponsored focus group, hosted by the Office of Professional Development, which sought to produce a best practices guide to interrogating members of the service. Attendees included IAB team leaders¹⁹ and commanding officers. The goal of this focus group was to brainstorm and identify the most effective techniques to use during PG interviews. Presenters were effective in stimulating conversation among the team leaders, which yielded suggestions the Commission believes will, if implemented, refine and improve the training program for future investigators.

¹⁷ Executive Order No. 18 2(a) (iii) (February 27, 1995).

¹⁸ New York City Police Department Patrol Guide §206-13 permits 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. Members of the service are entitled to have legal and union representation present during these official interviews.

¹⁹ Team leaders are the first-line of supervisors who oversee a team of investigators and usually hold the rank of lieutenant. They often review questions prepared for a PG interview, are present during interviews, and/or review the recordings after the interview.

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 bodies²⁰ within the Department and from the Civilian Complaint Review Board (CCRB).²¹ 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 receives and reviews all disciplinary cases that involve uniformed members of the service.²² The Commission reviews these cases to ensure that the Department imposes proportionate and adequate penalties and does not protect its members by ignoring misconduct.

For this report, the Commission reviewed 572 disciplinary cases adjudicated from October 2009 through September 2010. The Commission focused its analysis on two categories of cases that have been the subject of prior Commission reports:²³ serious off-duty misconduct cases and false statement

²⁰ 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.

²¹ 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.

²² 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 describing the misconduct, the officer's disciplinary and performance history, and the rationale behind the offered penalty 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.

²³ See *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements* (December 12, 1996) and *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998).

cases. The serious off-duty misconduct cases included 62 alcohol-related cases, 13 firearm-related cases, and 73 domestic incident-related cases. There were 93 false statement cases.

In addition to its focused analyses, the Commission reviewed all 572 cases to determine whether the penalties imposed appeared to be 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 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. The Commission disagreed with the penalty²⁴ imposed in one case²⁵ that is not included in one of the categories discussed below.²⁶ In that case, during a lengthy investigation into an illegal gambling operation resulting in 17 arrests, the respondent was overheard on a wiretap having conversations with one of the individuals who ultimately was arrested. This individual was a former member of the service. These conversations indicated that the respondent was aware of the illegal gambling operation, which he did not report to any law enforcement agency, and that the respondent occasionally participated in the illegal gambling operation. The respondent had placed bets and indicated that he would provide account and password information to other individuals so these people could gain access to an illegal gambling web site. The respondent also engaged in off-duty employment which had not been authorized by the Department. For this misconduct, the respondent forfeited 30 vacation days.

²⁴ Since the Commission was not present during the Department hearings and, therefore, was not in a position to judge the evidence that was presented for the Trial Commissioner, the Commission did not make any evaluations regarding the Trial Commissioner's factual findings.

²⁵ For the purposes of this report, the Commission only mentions those cases where it believed that discipline should have included either placement on dismissal probation or separation from the Department. The Commission does not comment on cases where issues involving lesser disciplinary measures, such as more or less vacation or suspension days, were involved.

²⁶ See *infra* at pp. 10-25.

The Commission agreed with the recommendation made by the First Deputy Commissioner, which requested that the subject officer be placed on a period of dismissal probation²⁷ in addition to the forfeiture of vacation days. The First Deputy Commissioner cited the seriousness of the respondent's misconduct but acknowledged that the respondent's above average employment record justified a penalty short of termination.

The Police Department was given a draft of this report prior to publication. In response to the Commission's disagreement with the penalty imposed in the case described above, the Department stated:

In not imposing a period of dismissal probation, [the Police Commissioner] noted that this officer had a long tenure with the Department, was given an outstanding background evaluation by his Commanding Officer, was awarded 38 medals, effected 319 arrests, and had no prior, formal disciplinary penalties. Dismissal Probation is not used by the Police Department as a monitoring tool. Rather, it is an actual dismissal from the department, held in abeyance for one year, to give an officer the opportunity to prove he or she should remain a member of the Department. The factors cited above mitigated in favor of a punishment without the imposition of dismissal probation.

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.²⁸

²⁷ 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.

²⁸ 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. Fourteen cases were counted in both the alcohol-related and the domestic incident categories. Three cases were counted in the alcohol-related and false statement categories. Three cases were included in both the firearm-related and domestic incident categories. Eleven cases were included in both the domestic incident and false statement categories. There was one additional case that was included in the alcohol-related, firearm-related, and false statement categories, one additional case which was 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.

The Commission concentrates on this misconduct because of the seriousness of the potential consequences. 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.

ALCOHOL-RELATED OFF-DUTY MISCONDUCT

The Commission assessed 62 cases where alcohol use was implicated. In 38 cases, the charges alleged the misuse of alcohol. In 24 cases, the administrative charges did not include alcohol-related misconduct. In 16 of these 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 five cases, the subject officer consumed alcohol prior to or during the alleged incident but was ultimately found fit for duty.²⁹ There were also three miscellaneous cases where alcohol was involved but the subject officer was not charged with drinking to excess.³⁰ In all but four of these cases, the Commission agreed that the reported circumstances supported DAO's decision not to bring an alcohol-related charge. In the remaining four cases, the Commission did not have the necessary paperwork to determine whether alcohol-related charges would have been appropriate.³¹

Driving while Under the Influence³² (DUI) or Driving While Ability Impaired (DWAI) was charged in 20 of the 62 cases where alcohol was implicated. In all 20 cases, the subject officer was also charged with being Unfit for Duty. Subject officers were requested to submit to a breathalyzer or blood

²⁹ 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."

³⁰ Two of these cases involved the subject officer allegedly providing alcohol to a minor. In the third case, the subject officer had been wrongfully arrested for Driving While Intoxicated (DWI). DWI was not one of the administrative charges against the subject officer.

³¹ In these cases, based on the paperwork provided by the Department, there was no obvious delay that would have prevented a fitness-for-duty finding and whether the officer was found fit for duty was not specified.

³² In New York State, the relevant criminal offense is DWI. This charge is analogous to the Department's administrative charge of DUI. If there is not enough evidence to prove that the subject officer was DWI, he may be found guilty of the lesser offense of Driving While Ability Impaired (DWAI). The Department usually includes both DUI and DWAI in the administrative charges.

test in 18 of these cases.³³ In 14 cases, the subject officer refused a breathalyzer or blood test.³⁴ In all of those cases, the subject officer received an additional charge for refusing to submit to this examination.³⁵

The Commission agreed with the penalties imposed in all 20 cases where DUI or DWAI was involved. In all but one case,³⁶ 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,³⁷ and cooperation with counseling programs.

In the 38 cases where one of the charges against the officer was Unfit for Duty, the Commission reviewed the Department paperwork to determine if responding investigators established whether the respondent was armed with a firearm at the time of the incident.³⁸ 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 guilty of being Unfit for Duty While Armed with officers who were not found guilty of this offense.³⁹ There were 10 cases where the subject officer was in possession of a firearm at the time he was unfit for duty.⁴⁰ The separate charge of Unfit for Duty While Armed was levied in all of these cases.

³³ In one of the remaining cases, there was no request made. In the second case, the subject officer was injured in an accident and was taken to the hospital where blood was obtained pursuant to a warrant.

³⁴ In two of these cases, the subject officers initially submitted to an Alco-Sensor (breath test), however, subsequent requests to submit to a breathalyzer (chemical test) were refused and charges were levied based on that refusal against both subject officers.

³⁵ 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.

³⁶ In the final case, the subject officer's employment with the Department was terminated.

³⁷ 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 the officer tests above a prescribed level of 0.04, he can be summarily terminated.

³⁸ Department regulations specifically prohibit officers from being unfit for duty while armed. See New York City Department Patrol Guide §206-12. This charge is expected to carry a greater penalty than Unfit for Duty alone.

³⁹ The Commission used a penalty of dismissal probation; 30 vacation or suspension days; random, 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 used a standard penalty of the forfeiture of 30 vacation or suspension days and the direction to cooperate with Department counseling programs.

⁴⁰ There were six additional cases where the Department paperwork did not specifically indicate whether the subject officer was armed and there was no other information in the paperwork that enabled the Commission to make this determination.

The subject officers received more than the standard penalty in seven of these cases.⁴¹

The Commission next examined the discipline levied in all of the alcohol-related cases. The Commission agreed with the penalties imposed in all but one case. In that case, the subject officer was charged with Unfit for Duty, Unfit for Duty While Armed, and Failure to Safeguard a Firearm. After going to several bars and consuming several alcoholic beverages, the respondent was found unconscious, lying on the ground in a parking lot. The respondent's off-duty firearm was located in his waistband. As a penalty, the respondent forfeited 30 vacation days and was directed to cooperate with Department counseling. Despite the respondent's superior employment history, the Commission believes a period of dismissal probation would have been appropriate as the respondent's misconduct could have resulted in the theft of his firearm and its use in a criminal act.

In response to a draft of this report, the Department noted that the respondent had "not been the subject of any prior, formal discipline and the off-duty incident was apparently a one-time event, with no prior alcohol-related misconduct on the part of the officer." The Department also stated that the Commission's opinion that the respondent's conduct provided an opportunity for his firearm to be stolen and subsequently used in a criminal act "was speculation and, standing alone, did not warrant dismissal probation ... especially in light of this respondent's history." Finally, the Department also cited the agreement among DAO, the Deputy Commissioner, Trials, and the First Deputy Commissioner regarding the appropriate penalty.

FIREARM-RELATED OFF-DUTY MISCONDUCT

During the reviewed period, the Department adjudicated 13 cases that involved the display or discharge of a firearm by a uniformed member of the service. The Commission examined these cases to determine whether the Department made the required fitness-for-duty findings, levied charges of Unfit

⁴¹ In five of these cases, however, there were other, aggravating circumstances that may have accounted for the increased penalty. These circumstances included the officer's failure to safeguard his firearm, discourtesy to a captain, leaving the scene of a police incident, and operating a vehicle in a reckless manner. In one other case, the respondent was found not guilty after a trial, therefore, no penalty was imposed.

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 13 cases reviewed, the Commission found that a fitness-for-duty determination was specified in the Department paperwork for two cases.⁴² In the other cases, it was not clear from the paperwork whether such a finding was made.

Of the 13 cases reviewed, 10 involved the display of a firearm. In the remaining three cases, the officer discharged a firearm.⁴³ Of those 10 cases where the firearm was displayed, in one case the officer was not charged with the display because there was a lack of evidence to support that the subject officer possessed a firearm at the scene, while in two cases, the display charge was dismissed on the motion of DAO.⁴⁴ In the remaining seven cases, two officers retired; two officers received dismissal probation in addition to forfeiting vacation and/or suspension days; and three officers received a penalty involving only the forfeiture of vacation and/or suspension days.⁴⁵ In one of those three cases, the Commission disagreed with the penalty, and believed that dismissal probation should have been imposed.⁴⁶ The display of a firearm has the potential for tragic consequences and is a most serious matter. The Commission believes that dismissal probation is appropriate to ensure that the officer abides

⁴² In one case, the officer was found fit for duty. In the second case, the officer was found unfit for duty and was charged appropriately. That charge of Unfit for Duty While Armed was later dismissed on the motion of DAO because a subsequent investigation failed to substantiate the presence of a firearm.

⁴³ In two of these cases, the discharge was characterized as accidental. In one of these, the subject officer was not charged with wrongfully discharging a firearm.

⁴⁴ When the Department suspends an officer prior to charges being levied, charges must be filed in the immediate aftermath of the suspension. This often results in charges pending prior to the completion of the investigation. Charges can be later dismissed, added, or amended if necessary. In the two cases referenced in the text, the subsequent investigation failed to produce sufficient, credible evidence that the subject officer unjustifiably displayed a firearm, therefore, the initial charges regarding the wrongful display of a firearm were dismissed.

⁴⁵ Officers forfeited between 15 and 31 vacation or suspension days in these cases.

⁴⁶ In that case, the subject officer, a passenger in his fiancée's car, pointed his firearm at the occupants of another vehicle during a road rage incident. For this misconduct, the subject officer forfeited 30 vacation days. In the remaining two cases, the subject officers' respective displays seemed justified, therefore, the Commission did not oppose a penalty which was limited to the forfeiture of vacation days.

In response to a draft of this report, the Department justified its decision not to place the aforementioned respondent on dismissal probation by citing that the respondent had expressed a perceived fear for his family's safety after observing the actions of one complainant in this matter, the respondent reported the incident to the Department, and he admitted to the display of his firearm and Department shield. Also, the respondent's Commanding Officer had given him an outstanding background evaluation, and the respondent had no prior, formal disciplinary history or complaints made to CCRB. The Department also noted the agreement among DAO, the Deputy Commissioner, Trials, and the First Deputy Commissioner regarding the penalty.

by Department rules and regulations. The Department continues to maintain that dismissal probation is not a tool used to monitor officers' conduct and is a disciplinary alternative to be used instead of termination. The Commission believes that termination is justified in these cases. Although we acknowledge that officers can make mistakes and, ordinarily, a second opportunity should be provided, if the officer fails to abide by Department standards, the Department should have the ability to terminate his⁴⁷ employment summarily.

In the three cases⁴⁸ that involved the discharge of a firearm, the Commission agreed with the penalties imposed.⁴⁹

DOMESTIC INCIDENTS

The Commission reviewed the penalties imposed in 73 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 forty cases that involved the use of physical force, altercations, or disputes between parties;⁵⁰ four involved the violation of an order of protection; ten involved simple and aggravated harassment; two involved miscellaneous situations;⁵¹ four involved verbal disputes and menacing; and thirteen involved a domestic situation that ultimately did not result in charges. Nineteen of the

⁴⁷ 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.

⁴⁸ In one of these cases, the subject officer was not charged with the wrongful discharge because it was deemed accidental.

⁴⁹ One case resulted in the subject officer's termination by operation of law. The remaining two cases involved accidental discharges. In one of these two cases, the officer was terminated by operation of law after he was found guilty of the felonies of Assault in the Second Degree and Reckless Endangerment. In the final case, the subject officer forfeited 20 vacation days.

⁵⁰ The force in these cases ranged from hitting with an open hand, to throwing, pushing, assault, and murder.

⁵¹ These two cases involved damaging the victim's property and a car chase.

allegations⁵² were lodged by spouses,⁵³ nineteen by boyfriend/girlfriends, one by a domestic partner, one by an ex-spouse, eight by former boyfriend/girlfriends,⁵⁴ four by the other parent of a child in common,⁵⁵ two by children (including step-children), one by a parent, and two by siblings. In seven cases, although there was no direct familial or domestic relationship between the subject officer and the complainant, the complainant was dating or had dated the subject officer's family member or current or ex-partner. In two cases involving the same parties, the subject officer was a friend of the complainant who wanted a romantic relationship with her. In four cases, involving the same officer, the nature of the relationships between the officer and the complainants were unclear although they appeared to be domestic relationships. In three cases, there was no victim but the subject officer was alleged to have either failed to notify the Department of an order of protection or of a domestic occurrence or was the victim of a domestic incident when other misconduct was discovered.

The Commission evaluated the penalties in these cases to determine their sufficiency. This evaluation included determining whether the complainant sustained any physical injuries, the strength of the evidence against the subject officer, and whether the subject officer had any prior, formal allegations involving domestic issues.⁵⁶

Of the seventy-three cases, six subject officers were separated from the Department by termination, retirement, or operation of law. In 35 cases, vacation days or days served while on suspension were forfeited. Dismissal probation was included in penalties levied in eight cases.⁵⁷ In 21 cases, the subject officers were found not guilty of the domestic charges or there were no domestic

⁵² These include allegations that were unsubstantiated after an investigation but resulted in other, non-domestic charges against the subject officer.

⁵³ Two cases involved the same subject officer and his spouse.

⁵⁴ Two cases involved the same subject officer and his ex-girlfriend.

⁵⁵ Two of these cases involved the same subject officer and the same complainant.

⁵⁶ 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 included as informal were those that the complainant mentioned for the first time during the investigation of the current allegations.

⁵⁷ In these cases, the officers also forfeited vacation and/or suspension days.

charges levied against the subject officer.⁵⁸ In three other cases, charges were filed because the subject officer was otherwise separated from the Department prior to adjudication of charges.⁵⁹

The Commission disagreed with the penalties imposed in three cases. In the first case, the subject officer had two children in common with a former member of the service. Their relationship had ended five months prior to the alleged incident. While the children's mother was walking with the children, ages two and three, the subject officer drove by and began to argue with the complainant. This culminated with the subject officer demanding custody of the children and grabbing them and placing them in his car. The car was not equipped with child safety seats, and one child was placed on the respondent's lap. When the complainant protested and tried to get in the car, the respondent pushed her against the car door until the door opened. The respondent closed the car door on the complainant when she was only halfway out of the vehicle. For this misconduct, the respondent forfeited 15 vacation days. The Commission believed that a greater penalty was warranted despite the respondent's above average employment history. Not only could the respondent have caused serious physical injury to the complainant by his actions, he also endangered the safety of his children by driving them in a car which was not outfitted with child safety seats. Furthermore, his children were a witness to this altercation with their mother. Finally, the respondent made false statements in his PG hearing including attempting to shift the blame to the complainant instead of acknowledging his misconduct. Although there were no false statement charges brought against the respondent, the Commission believes that his misstatements should be considered in evaluating the severity of his punishment.

The other two cases involved the same subject officer and the same complainant. In the first incident, the subject officer had a verbal dispute with his wife which became physical. During that

⁵⁸ These 21 cases included the 13 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 report.

⁵⁹ 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.

dispute, the subject officer placed his hand around his wife's neck and started to choke her and used his other hand to twist her wrist, resulting in it being sprained. When the complainant tried to call 911 for assistance, the subject officer unplugged the telephone, preventing the call. The second incident occurred approximately seven months after the first. At that time, the respondent and the complainant were separated. The respondent called the complainant on her cell phone approximately 15 to 20 times after he learned she had informed the Department about his romantic relationship with another member of the service. The subject officer left three messages that contained profanity and threats of financial harm. For both cases, the subject officer forfeited 40 vacation days and was ordered to cooperate with counseling. Given the ongoing nature of the respondent's contact with the complainant and the fact that he threatened the complainant while under Department investigation for the first incident, the Commission believes that a period of dismissal probation was warranted.

The Department justified not imposing a period of dismissal probation in the first of these three cases based on the positive background evaluation provided by the respondent's Commanding Officer and the fact that, "unbeknownst to the Commission," the respondent was transferred "from a coveted assignment to a patrol command." The Department also explained DAO's decision not to bring false statement charges against the subject officer based on its review of the transcripts and audio tapes of the interviews. The Department further noted that "misstatements" clearly do not fall within the Department's false statement policy. As justification for the penalty imposed in the two domestic cases involving the same respondent, the Department stated that there was unanimity among DAO, the Deputy Commissioner, Trials, and the First Deputy Commissioner in the penalty imposed. The Department further reasoned:

The two parties had also filed for legal separation, the respondent was given a positive background evaluation from his Commanding Officer, the respondent had no prior, formal disciplinary history, and he had completed the Department's Domestic Incident Education counseling course. The imposed penalty, consisting of the forfeiture of 40 vacation days, is not insubstantial, as such constitutes nearly 1½ years of allotted vacation time for this officer. These factors mitigated against the imposition of dismissal probation.

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 establishing 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.

Although the Department's false statement policy only addresses false statements made in an official setting, e.g. a PG hearing,⁶⁰ CCRB interview, or under oath, this section of the Commission's report additionally examines non-testimonial false statements. 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-testimonial false statements because it believes that both types of fabrications negatively impact the officer's and Department's integrity. Mere denials of misconduct, both official and non-testimonial, are not included in the Commission's review.

For this report, the Commission initially reviewed 142 cases where it appeared that the subject officer made some type of false statement. The Commission then excluded from its analysis 19 of the 142 cases because they seemed⁶¹ to constitute mere denials of wrongdoing, and therefore, did not fall

⁶⁰ See *supra* at p. 6, fn. 18 for a definition of PG hearings.

⁶¹ 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." 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 should, in the Commission's opinion, result in a penalty of termination, unless there were adequate exceptional circumstances specified.

within the ambit of the Department's definition of a false statement warranting dismissal. The Commission also excluded five 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. Finally, the Commission removed from its review 25 cases where it believed a false statement charge may have been appropriate but was not levied by DAO.⁶²

There were 19 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 Separated⁶³ from the Department</i>	<i>Filed</i>	<i>Guilty and Not Separated from the Department</i>	<i>Not Guilty or Charges Dismissed Prior to Trial</i>
In a PG Hearing	10	1	0	2	7
Court Testimony	0	0	0	0	0
Deposition	0	0	0	0	0
Court Documents⁶⁴	7	0	2	1	4
CCRB Interviews	0	0	0	0	0

The Commission disagreed with the penalty imposed in three of these cases. In the first case, the respondent and two other members of the service were alleged to have handcuffed and placed a civilian in the back seat of their Department vehicle, driven him to another location, and released him without arresting him or giving him a summons. During this encounter, the members of the service questioned the civilian about his knowledge concerning guns and drugs in the neighborhood. At the end of the encounter, the officers accidentally retained the complainant's keys and driver's license. They returned these items to his mailbox. Two of the respondents admitted that the complainant had been placed in

⁶² The Commission will address these cases in a future report, which it expects to publish in 2011. *See infra* at p. 29 for a brief description of the Commission's in-depth review of the Department's current treatment of false official statements.

⁶³ 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.

⁶⁴ This category includes sworn supporting depositions, criminal court complaints, and affidavits.

their vehicle and that they forgot to return his personal property. The third respondent denied that the complainant was ever removed from his vehicle, handcuffed, and placed in the Department automobile. This officer also stated he had prepared a Stop, Question, and Frisk form and handed it to a supervisor, whom he could not name. That form could not be located. For this misconduct, the respondent was placed on a period of dismissal probation and forfeited 45 vacation days. Although the Assistant Advocate characterized the respondent's statements during his PG hearing as "a blatant effort to avoid discipline," there were no exceptional circumstances set forth to explain why the officer was not terminated.

In the second case, the officer pled guilty to forging his supervisor's tax identification number⁶⁵ on six separate supporting depositions that were filed in criminal court. Although DAO requested that the respondent be placed on dismissal probation in addition to forfeiting the 30 days he served on pre-trial suspension, the Trial Commissioner recommended that the subject officer only forfeit the suspension days. Again, no exceptional circumstances were delineated to justify a penalty short of termination.⁶⁶

In the final case, the respondent issued a disorderly conduct summons to an undercover officer in which he falsely stated that this individual was blocking pedestrian traffic. The respondent also stated that the individual refused to sign the summons, when in fact, the respondent never requested that the individual sign it. In his PG hearing, the respondent maintained that the individual was blocking pedestrian traffic but acknowledged that he never asked the individual to sign the summons. The respondent falsely claimed that the individual was acting irrationally to explain why he did not request a signature. The respondent had been a member of the service for two years. For this misconduct, the respondent was placed on dismissal probation and forfeited 30 vacation days. There were no exceptional circumstances provided that warranted a departure from the penalty of termination.

⁶⁵ This number is used in lieu of a signature when the deponent is acting as an undercover officer in order to protect the undercover status of that officer by keeping his identity a secret.

⁶⁶ The Commission agreed with DAO that a period of dismissal probation was warranted in this case.

In response to a draft of this report, the Department cited that each of the above respondents had no prior, formal disciplinary history and each was rated positively by their respective Commanding Officers. In response to the first case described by the Commission, the Department noted the unanimity in the penalty imposed among DAO, the Deputy Commissioner, Trials, and the First Deputy Commissioner. The Department further noted that the penalty of 45 vacation days and dismissal probation amounted to the loss of almost two years of vacation time. In the second case described by the Commission, the Department noted that presiding trial judge did not recommend termination. The Department also stated that based on the circumstances of this case, deficiencies in training and various prosecutorial forms were recognized and addressed. Finally, in the third case, the Department cited the respondent's relative inexperience. The Department noted that the imposed penalty of dismissal probation plus 30 vacation days was the maximum permitted by law, short of termination.

The Commission reviewed 74 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 Records⁶⁷	26 ⁶⁸	3 ⁶⁹	1	20	2
False Statements to an Investigative Body	8	1	0	7	0
Fraud	34	0	3	31	0
Other⁷⁰	6	1	0	4	1

⁶⁷ This category includes false statements made in line of duty forms, roll calls, precinct command logs, memo books, paid detail assignments, parking permit applications, property vouchers, out of residence logs, and reports relating to the use of confidential informants.

⁶⁸ Two of these cases involved the same subject officer.

⁶⁹ Two of these cases involved the same subject officer.

⁷⁰ There are six cases that fall into this category. Three related cases involved a statement made on an accident report. The remaining cases involved a summons, a vehicle theft supporting deposition, and a false statement made to a police officer acting in a non-investigatory capacity.

The Commission disagreed with the penalties imposed in five of these cases. Two of the cases involved an officer making false entries in Department records.⁷¹ In the first of these cases, the subject officer responded to a school where a school safety agent had recovered four bags of a substance believed to be marijuana from a student. The subject officer examined these bags and returned two of them to the school safety agent with the direction to voucher only these two bags. According to the subject officer, when questioned, he discarded the remaining two bags because he did not believe that they contained actual marijuana. This caused false entries to be entered into Department records as it was indicated that only two bags of alleged marijuana were recovered, not four. Of course, only the officer's word was available to determine the actual disposal of the missing two bags. Although DAO, the Trial Commissioner, and the First Deputy Commissioner all agreed that a period of dismissal probation would be appropriate, the subject officer was penalized 35 vacation days at the direction of the Police Commissioner. The Commission believes that, at a minimum, the officer should have been placed on dismissal probation.

The Department's responded that "rather than acting with malice aforethought or intent to obtain a personal gain, this respondent's misconduct appeared to be more the result of carelessness and complacency." The Department noted that the respondent had no prior, formal disciplinary history and had received a positive evaluation from his Commanding Officer. The Department stated that there were no other factors to indicate that dismissal probation was necessary in this matter.

In the second case, the subject officer submitted requests for overtime which he did not perform. The subject officer's partner, who was a probationary police officer, was terminated for the same misconduct. This officer, who had been a member of the service for less than two years when the misconduct commenced, was placed on dismissal probation, forfeited 90 penalty days, and had to make

⁷¹ There were three other cases where the respondents were charged with causing false entries to be made in Department records. Each respondent prepared between 17 and 20 summonses with fictitious information. For this misconduct, the respondents were placed on dismissal probation and forfeited between 60 and 80 penalty days. Although based on the charges, it appeared that more severe penalties were warranted, because the Commission had incomplete paperwork, it can not evaluate the adequacy of the imposed penalties.

restitution for the overtime for which he was paid but did not work. There were no exceptional circumstances set forth.

To justify the imposed penalty, the Department, in response to a draft of this report, noted that this penalty was very substantial. The Department stressed that the respondent's partner, who was terminated, was probationary. The Department also cited the unanimity in the negotiated penalty, the positive rating provided by the respondent's Commanding Officer, and the respondent's lack of a prior, formal disciplinary history. Finally, the Department noted that the respondent had been transferred to another patrol command.

One⁷² of the cases where the Commission disagreed with the imposed penalty involved a member of the service making false statements to other members of the NYPD. In that case, the subject officer appeared at a NYPD precinct after his half-brother was arrested for driving with a suspended license. This half-brother had been deported from the United States in 1996 after committing several violent crimes. Thereafter, the half-brother entered the country illegally and assumed the identity of a deceased family member. When the subject officer appeared at the precinct of arrest, he identified his half-brother to several supervisors as the deceased and did not disclose his true identity or that he was in the country illegally. He also requested that the supervisors issue his "cousin" a summons instead of arresting him. When the half-brother was arrested, he was carrying two police union cards given to him by the respondent. The respondent forfeited 30 vacation days. The Commission believes that a greater penalty was warranted.

In response to a draft of this report, the Department noted that DAO, the Deputy Commissioner, Trials, and the First Deputy Commissioner all agreed with the penalty that was imposed. Further, the respondent had no prior, formal disciplinary history, had received a positive rating by his Commanding Officer, had a minimal sick history, and had a strong performance history. The Department also noted that the respondent was "transferred from his coveted assignment to a patrol command."

⁷² There was a second case where the Commission believed that a penalty of 30 vacation days for an officer who lied to federal agents regarding his association with a fugitive may have been inappropriate, however, the Commission did not have the full paperwork and therefore, did not know the full circumstances regarding the officer's misconduct.

The final two cases where the Commission disagreed with the penalties involved one incident. The boyfriend of respondent A was driving her car and got into an accident with another vehicle. When the boyfriend called respondent A, she arrived at the scene of the accident. Respondent B was one of the officers who investigated the accident at the scene.⁷³ Concerned that the boyfriend did not have a valid driver's license and had an open warrant for a case involving domestic violence, respondent A presented herself as the driver of her vehicle at the time of the accident. Respondent B spoke with the driver of the other vehicle, the complainant, and without listening to her version of the accident, told her to sit in her car and wait. In his PG hearing, respondent B falsely stated that the complainant informed him that the female was the driver of the other vehicle. Respondent B also denied that he told the complainant to sit in her vehicle and wait. In the accident report, respondent A was listed as the driver of her vehicle, and respondent B later admitted that he knew that this was not true at the time the report was prepared. Respondent B was not charged with making a false statement during a PG hearing, instead, he was charged with impeding an investigation for making misleading statements during this interview.

Respondent B was placed on dismissal probation and forfeited 30 vacation days. No exceptional circumstances were presented to justify a penalty that was not termination. Respondent A was arrested for Offering a False Instrument for Filing in the First Degree and pled guilty to Offering a False Instrument for Filing in the Second Degree. Recognizing that respondent A's credibility as an officer was destroyed and that she was no longer an asset to the Department, DAO negotiated a penalty that included retirement. This was approved by the Trial Commissioner and the First Deputy Commissioner. Without any explanation, the Police Commissioner allowed the subject officer to retain her position with the Department and placed her on dismissal probation with the forfeiture of 90 penalty days. The Commission believes that the respondent should have been separated from the Department.

The Department provided its reasoning for not terminating these officers in its response to a draft

⁷³ There was a third respondent whose charges were dismissed after an administrative trial.

of this report. The Department stated:

Taking many factors into consideration, regarding respondent A, she had no prior, formal disciplinary history, she was given an outstanding background evaluation by her Commanding Officer (*who described her as, "...extremely competent, dedicated, highly respected and goes above and beyond"*) and her Commanding Officers lauded her, in part, for "outstanding police enforcement and sustained contribution toward crime reduction." Further, that she was, "instrumental in training newly assigned officers and sergeants." Respondent A was also awarded a Commander's Day for exceptional performance and was recognized for being instrumental in the arrest of a serial rapist (*an individual she had been observing via NYPD closed-circuit surveillance cameras deployed at a housing development.*) As a result of this matter, [the Police Commissioner] also directed that respondent A be transferred from her coveted assignment to a patrol command. Although short of termination, her penalty is very substantial. (Emphasis in original.)

Regarding respondent B, the Department noted:

The approval of this penalty [30 vacation days plus dismissal probation] resulted from several factors. It was noted that respondent B's radio car partner, following a Department trial, was found not guilty for similar misconduct charged against respondent B (*the trial judge had noted there was a lack of credible evidence to establish guilt.*) When coupled with respondent B's lack of prior, formal disciplinary history, in addition to her excellent sick history, strong performance history and being rated as outstanding by her Commanding Officer, a penalty short of termination was merited. (Emphasis in original.)

ONGOING WORK OF THE COMMISSION

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.

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 cases⁷⁴ 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.

⁷⁴ 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.

INTENSIVE STEERING COMMITTEE REVIEW

Each year between June and September, the Commission attends extended steering 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 ordinarily 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, which provides those cases with more direct attention.

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, and IAB's Executive Officer. The Commissioners and the Executive Director and Deputy Executive Director of the Commission also attend. At these briefings, IAB group commanders present cases selected by the Commission's Executive Director.⁷⁵ This past year, briefings covered investigations of perjury, gambling and narcotics operations, criminal association, theft, fraud, prostitution, 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 the presenter and speak directly with the Police Commissioner about the progress of the case.

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.

⁷⁵ 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.

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.

COMPLAINT LOGS

Occasionally, the Commission receives complaints against members of the Department from the public. From November 19, 2009 through November 18, 2010, the Commission received 84 complaints. Below is breakdown of those complaints.

Stop and Frisk	2
Domestic Dispute	1
Unauthorized Employment	1
Failure to Take Police Action	19
Disputed Arrest /Summons	12
False Statement/Falsifying Business Records	1
Sexual Misconduct	5
F.A.D.O. ⁷⁶	19
Misuse of Time	2
Downgrade Crimes	3
Misuse of Placard	4
Accepting a Bribe	1
Missing Property	8
Criminal Association	1
Narcotics Allegation	2
Other / Misc. ⁷⁷	3

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.

⁷⁶ F.A.D.O. stands for allegations of wrongful or excessive force, abuse of authority, discourtesy, or offensive language. The Commission usually refers these complaints directly to CCRB.

⁷⁷ Other categories included complaints involving law enforcement members from other city agencies, computer crimes, theft, and facilitating illegal activities.

FUTURE PROJECTS

The Commission is in the process of compiling data for a report it expects to publish in 2011. Over the last two years, the Commission has observed 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. The Commission's report will focus on how the Department: (1) trains its members to testify in court; (2) trains its members to complete court and Department records; (3) investigates allegations of perjury and other allegations of making false statements; and (4) disciplines its members who have been found guilty of these types of allegations.

In addition to this study, the Commission is currently considering the following two topics.

CRIMINAL ASSOCIATION – This report will consist of a review of the Department's policy regarding its members who associate with individuals who have criminal histories or who are presently involved in criminal activity. The Commission will focus on how the Department investigates new applicants and the deterrent effect of the Department's policies prohibiting these relationships. As part of the project, the Commission will survey other law enforcement agencies to determine how they address this issue.

DISCIPLINARY CASES THAT RESULTED FROM IAB INVESTIGATIONS – This report will consist of a review of cases IAB investigated that resulted in a dismissal of administrative charges or an acquittal after a Department trial. The Commission will examine the IAB investigations, DAO's trial files, and the trial decisions to determine if there were any commonalities that could explain why these charges were not sustained.

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 has served as Counsel to the New York Urban League and Advisor to then 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.

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 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

Edgardo Ramos is a partner in the White Collar and Internal Investigations Practice Group at the law firm of Day Pitney LLP. Mr. 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. Mr. Ramos is vice-chair of Aspira of New York, Inc. He earned his J.D. from Harvard Law School.

James D. Zirin

James D. Zirin is Senior Counsel at Sidley Austin LLP. He has been a trial lawyer for over 40 years, handling a wide variety of white collar criminal and complex commercial litigation. Mr. Zirin is a former Assistant 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.

APPENDIX 1



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.

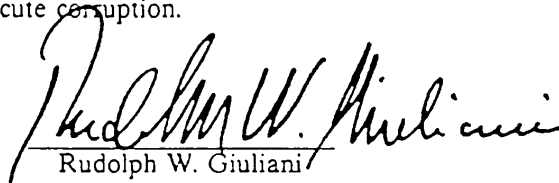
Section 5. Reporting to the Mayor.

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