

## I. INTRODUCTION AND OVERVIEW

The Commission to Combat Police Corruption was established by Mayor Rudolph W. Giuliani on February 27, 1995, through Executive Order No. 18.<sup>1</sup> The Commission is an ongoing board, independent of the Police Department, with a mandate to monitor and evaluate the anti-corruption policies and practices of the New York City Police Department (the “Department”). The Commission was established pursuant to recommendations made in the report of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (“Mollen Commission”) issued on July 7, 1994. The Mollen Commission found that the New York City Police Department had undergone alternating cycles of corruption and reform, and believed that the creation of an independent commission to monitor the anti-corruption activities of the Police Department would ensure that it remained vigilant in combating corruption, and would contribute to breaking these cycles of police corruption. Accordingly, the Mayor, with the support of the Police Commissioner, created the Commission to Combat Police Corruption to fulfill this role.

The Commission has now been in existence for over six years. Before discussing the work it has done in the past year, it thus seems appropriate in this, *The Sixth Annual Report of the Commission*, to, at least briefly, look back at its history and draw some conclusions about how the monitoring function has worked.

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<sup>1</sup> Executive Order No. 18 is reproduced as Appendix A to this report.

The creation of the Commission by the Mayor through an Executive Order followed the failure of the Mayor and the City Council to agree as to the precise way to implement the Mollen Commission's recommendation. There were two principal differences between the Mayor and the Council. First, the Council sought some form of official input into the selection of at least some members of the Commission. Second, the Council believed that the Commission should have more power to conduct investigations of the specific incidents of potential corruption independent of the Police Department.<sup>2</sup> The Mayor, joined by the various District Attorneys, believed that the Commission should be essentially a monitoring/auditing agency with little, if any, real investigative authority. They believed that an additional investigative agency was both unnecessary and would create inevitable tensions with the Department and with the numerous prosecutors involved in anti-corruption investigations.

As constituted, the Commission has the following principal attributes:

1. All five Commissioners are unpaid and are appointed by the Mayor.
2. The Commission's charter was limited to the anti-corruption efforts of the Department. It does not serve as an all-purpose monitor of the Department's activities. Nonetheless, as discussed below, because its responsibilities include monitoring and auditing Department policies which affect the culture of the Department as it relates to corruption, it has released reports which cover a wide variety of topics not directly related to the Internal Affairs Bureau ("IAB").

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<sup>2</sup> The Council passed its own bills creating a commission which was more consistent with its positions. Its versions of the Commission ultimately were held by the courts to violate the City Charter.

3. The Commission has broad authority to conduct audits and studies within the area of its jurisdiction, and the Department, generally speaking, is required to produce documents and witnesses that the Commission requests. The Commission also does some monitoring of ongoing IAB investigations. This is principally accomplished through the review of logs created by IAB to reflect the receipt of allegations of wrongdoing, attendance at regularly scheduled internal IAB meetings where the status of pending cases is discussed, attendance at meeting with the Police Commissioner (“the Commissioner”) where IAB presents selected major cases, and through occasional special briefings on major matters.
4. Its investigative power is extremely limited. It may only conduct investigations of specific incidents of potential corruption in exceptional circumstances with the approval of the Mayor. It also must rely on the subpoena power of the Department of Investigations to compel the production of documents or witnesses. The Commission has never exercised its limited investigative authority, and properly should be viewed as a monitoring/auditing agency, and not an investigative agency.

With the issuance of this Report, the Commission has now issued 24 reports. Six of these were *Annual Reports*, many of which reviewed specific aspects of the Department’s performance in addition to summarizing the Commission’s work during the preceding year. These *Annual Reports* also have been used by the Commission as an occasion to review how the Department has (or has not) implemented recommendations contained in earlier reports. The Commission has also issued separate follow-up reports analyzing the Department’s response to earlier reports. Indeed, one of the principal benefits of an ongoing entity is that it does not simply issue reports and go out of business. It has the ability in later reports to

review how the Department has responded to earlier recommendations. A summary of the Commission's public reports is attached as Appendix B to this Report.

The Commission's substantive reports fall into the following categories:

5. IAB Operations - The Commission has done numerous studies focusing on how IAB is performing its responsibilities. These include: several reports analyzing large groups of closed IAB cases; several reports on IAB's integrity testing program; several reports on the "Action Desk," where complaints about police misconduct are received and processed; a report evaluating IAB's performance when it interviews members of the Department; a report on IAB's intelligence function; a report on IAB's quality assurance unit; and a report on a survey of the attitudes of former IAB members.
6. The Disciplinary System - The Commission decided early in its existence that a strong disciplinary system is critical to addressing issues of police misconduct. Not only is it important because of its formal function of adjudicating guilt and innocence and assessing penalties, but how the disciplinary system operates sends important messages both inside and outside the Department as to the seriousness with which the Department views varying types of inappropriate behavior. Consistent with this view, the Commission has released two separate studies about how the Department disciplines officers who make false statements, one study about the discipline meted out in off-duty misconduct cases (which also dealt with the problem of alcohol abuse in the Department), one study about the disciplining of probationary officers and a major study critiquing how the prosecution function has been performed within the Department. Various *Annual Reports* also

included discussion about the disciplinary system. Many of the cases discussed in these studies were not corruption cases but involved other forms of police misconduct, including the use of excessive force.

7. Other Non-IAB Participants in the Department's Anti-Corruption Efforts - The Commission has also looked at other Department activities which affect its ability to deal with potential corruption. These include the role of precinct based Integrity Control Officers and the hiring system, with a particular emphasis on background investigations. Additionally, the Commission is releasing today a report which re-examines the anti-corruption role of the Integrity Control Officers, as well as, examines the roles of Precinct Commanders, Borough Investigations Units and those Headquarters Units which monitor so-called problem officers. It is also releasing today another report which again examines certain hiring practices of the Department.

Based upon our experience, certain observations about the structuring of the police oversight role seem appropriate. First, if this Commission had been given a meaningful instigative role, it would have hindered, not helped, its responsibilities as an auditor-monitor of the Department. The Department -- and particularly IAB -- generally has been open in providing information to the Commission, and the reality is that if the Commission was perceived as a potential rival corruption investigator, as a practical matter, access would inevitably diminish. Also, there arguably is some inherent conflict between an agency having the ability to investigate potential corruption within the Department when it is both monitoring the anti-corruption activities of the Department on an ongoing basis and performing after the fact audits of how corruption cases are being investigated by the Department. Finally, in this connection it should be

remembered that in addition to IAB, the City also has two United States Attorneys and five District Attorneys available now to investigate police corruption. Whatever the merits of periodic proposals to recreate a separate prosecutorial office dedicated to police corruption and misconduct, the Commission does not believe that the police monitoring/auditing entity should become another regular investigative agency.

Second, it also would be highly desirable for the Commission, or any modified entity, to be authorized by legislation approved by the City Council. This would not only reflect the ongoing nature of such an oversight entity, but would enhance its credibility with the public. Such enhanced credibility would also, the Commission believes, be to the benefit of the Mayor and the Department. After all, while the Commission has in various reports been critical of the Department, it has at other times found that the Department is performing its responsibilities in an effective manner.

Finally, the Commission is, as discussed above, not an all-purpose monitor of the department. Whether the Commission's monitoring/auditing responsibilities should be extended beyond anti-corruption activity is, the Commission believes, a more difficult issue involving balancing the need for oversight with the dangers inherent in creating an anointed "second guesser" on all types of policies adopted by the Commissioner.

In addition to providing an overview of the work accomplished by the Commission in the past year, this *Annual Report* will review some of the prior recommendations of the Commission and their impact upon Department policies. In the past year, the Commission completed a comprehensive study of how units outside of IAB identify, and proactively monitor problematic officers and deter potential misconduct. Specifically, the Commission analyzed the roles of Precinct Commanders, Integrity Control

Officers (“ICO’s”), Borough Investigation Units, and two headquarters-based units in the Department’s overall integrity program. The Commission also released a report analyzing the recruitment and background investigation process for new police officers. Additionally, as has been the Commission’s practice throughout its existence, the Commission undertook follow-up reviews of certain areas on which the Commission had previously reported, including the disciplining of officers who have committed serious off-duty misconduct or who have made false statements. Finally, this Report contains a review of a number of closed investigations conducted by IAB as well as a synopsis of the ongoing monitoring activities of the Commission.

The principal findings and recommendations made in this report as to these areas are:

- Based on its review of closed IAB investigations, the Commission believes that IAB is generally handling its investigations in an appropriate manner.
- While not agreeing with all the results, the Department is generally implementing the December 1996 False Statement when the false statement is made in the context of a formal interview by IAB. However, the Department appears to be applying the policy in a less consistent manner to non-testimonial false statements. Given the rationale underlying this policy, the Commission believes that it should also be applied in other contexts where false statements have been made, including false statements to investigating officers, falsifying police records, falsely reporting crimes, or fraud.
- While not agreeing with all the results, the Commission, in general, found the Department was more effectively dealing with incidents of off-duty misconduct than during the period before its August 1998 report. Further improvements should be made, however, in how the Department deals with officers found guilty of guilty of domestic violence.

## **II. PUBLISHED REPORTS**

The Commission is releasing two reports simultaneously with the release of this *Annual Report*.

The first report examines how Department units, outside of IAB, identify and deter misconduct and

corruption through the identification and monitoring of problematic officers and locations. The second report reviews how the Department recruits and investigates new police officers. Each of these reports is summarized below.

## **A. The New York City Police Department’s Non-IAB Proactive Integrity Programs**

### **1. Purpose of the Study**

In order for the Department to maximize its ability to identify and deter misconduct and corruption, proactive measures need to be in place at all levels of the Department. This function should not solely be delegated to IAB. In recognition of this, the Department has created and utilizes various sources outside of IAB to achieve these goals. Therefore, while IAB is charged with identifying and investigating the most serious allegations of corruption and misconduct, it is but one element of the Department’s overall anti-corruption effort. Various other units and personnel at other levels within the Department also have the responsibility of identifying, investigating, and affirmatively dealing with potential wrongdoing. In the report, *The New York City Police Department’s Non-IAB Proactive Integrity Programs*, the Commission analyzed such non-IAB groups both at the headquarters level and at the command and borough levels.

Two headquarters-based units that undertake proactive efforts to address potential police misconduct are the Profile and Assessment Committee (“the Committee”) and the Performance Monitoring Unit (“PMU”). The Committee is composed of a group of high-ranking personnel in the Department who are responsible for identifying and dealing with officers who have an unacceptable number of Civilian



Complaint Review Board (“CCRB”)<sup>3</sup> allegations made against them. While not a monitoring unit, this Committee plays a unique role in proactively developing strategies to closely supervise specific identified officers in an effort to improve their behavior and on-duty performance. The Commission reviewed the operations of the Committee and a number of its files.

Another headquarters-based unit, PMU, is responsible for identifying and monitoring officers whose records indicate that they have varying degrees of disciplinary problems. PMU is supposed to provide increased supervision through coordination with other Department units, such as the officer’s command, to effectively address and, where possible, try to improve an officer’s behavior. PMU was studied in order to determine how it performs its assigned responsibilities, and to evaluate the extent to which it acts proactively and coordinates efforts with other units in the Department to effectively deal with problem officers.

At the borough and precinct levels, in varying degrees, Precinct Commanders, ICOs and Borough Investigations Units are responsible for developing strategies to identify and deal with problem officers and locations, and for investigating certain allegations of misconduct that are determined not to warrant investigation by IAB. The Commission sought to evaluate what strategies and resources are being utilized at the borough and precinct levels to perform their functions and how effectively these functions are carried out.

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<sup>3</sup> The Civilian Complaint Review Board (“CCRB”) is a city agency that has jurisdiction to conduct primary investigations of complaints against police officers that allege excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language.

## **2. Findings**

In general, the Commission concluded that the Department should be credited for recognizing the importance these groups must play in its anti-corruption efforts. However, improvements can and should be made in how these units operate.

While making some suggestions as to how its functioning can be improved, the Commission found that the Committee performs a valuable “hands on” role in providing senior-level oversight over selected problem officers. Indeed, one of the Commission’s recommendations is that the Committee’s responsibilities be expanded to provide oversight for officers who are monitored by other entities in the Department.

The concept behind the creation of PMU -- the active monitoring of problem officers -- is an important and positive one. At the same time, however, it is clear that the Department can do a better job in implementing this concept. PMU, for example, should act in a more proactive and less mechanical manner. More specifically, while PMU did gather information about officers on its monitoring lists, this information was often obtained on an untimely basis and was not always substantive in nature. Furthermore, PMU does not appear to be fulfilling its central mandate of developing proactive strategies to monitor officers by making recommendations to the commands and coordinating monitoring efforts with other units within the Department. The Department itself has recognized various of these problems, and, under new leadership, PMU has been making changes during the past year.

Similar observations can be made about the Borough Investigations Units and the ICOs. They are not operating proactively enough in dealing with the individual needs of the commands for which they are

responsible, and most are spending only a limited amount of time on proactive duties. For example, they are not performing some function monitoring duties such as patrol monitoring frequently or systematically enough.<sup>4</sup> While it is fair to note that this inadequacy was often due to a lack of time and resources because these units also have other responsibilities, function monitoring is an essential key to identifying and monitoring problem officers and locations and should be undertaken on a more consistent basis.

In sum, while the Commission believes that all these entities play an important part in maintaining integrity and deterring misconduct and corruption, they should operate in a more aggressive and proactive manner.

### **3. Recommendations**

The Commission made various recommendations relating to borough-level, precinct-level, and headquarters-level units. Some of these recommendations are summarized below.

#### **a. Investigations Units & ICOs**

- Patrol monitoring should be done on a more consistent basis, and all three tours should be regularly patrolled. To achieve this, Investigations Units should coordinate efforts with ICOs to ensure comprehensive coverage at all times. In furtherance of this, the Department needs to provide all Units with a sufficient number of cars and staff so that they can perform function monitoring duties such as patrol monitoring on a regular basis in addition to performing their other responsibilities. When performing patrol and personnel monitoring, the Investigation Units should target specific officers placed on various disciplinary lists or labeled as problematic by their command. If information is developed about an officer through this type of monitoring, the information should be shared with PMU.

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<sup>4</sup> Function monitoring is any type of proactive monitoring technique designed to identify and/or prevent misconduct.

- With respect to ICOs, their administrative responsibilities need to be diminished or the staff of the ICO should be increased so that they may spend a sufficient amount of time on more proactive integrity functions such as patrol monitoring. Given the clerical nature of many of these administrative duties, the Department should consider utilizing civilian personnel to aid the ICOs. Additionally, ICOs should have regular access to cars so that patrol monitoring can be performed on a strategic, rather than opportunistic, basis and so that all three tours are regularly monitored. ICOs should also have adequate time and resources available to conduct self-initiated investigations and/or develop proactive initiatives should the need arise in their command. Any such investigations should be coordinated with IAB or Borough Investigations, whichever is appropriate.

#### **b. PMU & the Committee**

- The Committee's role should be expanded to include other problematic officers and, in essence, provide senior level oversight for all officers in any monitoring program. It should conduct the same type of review for these officers as it does for those falling within the Committee's current mandate.<sup>5</sup> PMU should be responsible for implementing and following-up on the recommendations made by the Committee and coordinating all monitoring efforts directed at an individual officer in order to ensure that they are being conducted in an efficient manner. The Department should also explore what options are available to enable it to take corrective action and monitor officers closer in time to the dates of the allegations that brought the officers to the Department's attention so as to maximize the effectiveness of any action taken.
- PMU should contact the commands to ensure that profiles are prepared and collected in a timely manner, and that information received therein is substantive in nature.<sup>6</sup> In addition to collecting profiles in a timely manner, PMU should promptly collect paperwork regarding disciplinary matters which arise or are pending during the monitoring period including command disciplines, charges and specifications, and CCRB allegations. Further, PMU should regularly update its own paperwork so that PMU files contain current information.
- There should be increased contact between PMU and the command. Specifically, PMU should have regular substantive contact with an officer's immediate supervisors, and Precinct Commander or ICO regarding the officer's progress on monitoring and his performance in general.

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<sup>5</sup> During the Commission's review of the Department's monitoring efforts, it became clear that the same senior-level personnel were providing oversight for three different monitoring units -- the Special Monitoring Board, the DTF, and the Committee. In order to streamline the Department's monitoring efforts, the Committee, comprised of these senior-level personnel should be responsible for the oversight of all three of these monitoring programs. The DTF and the Special Monitoring Board should thus be formally abolished.

<sup>6</sup> Profiles are evaluations of an officer which are completed by the command at specified intervals during the monitoring period.

PMU should also obtain all annual and interim performance evaluations that are completed during the monitoring period. In addition to PMU reaching out to the command, the command should be required to notify PMU of any potential issues with an officer at the earliest indication of such. In cases where an officer's performance has not improved, PMU should discuss strategies with the command regarding additional and alternative ways to monitor the officer. PMU should also be utilizing other units outside the command, such as the Absence Control Unit and IAB, in order to formulate methods for dealing with officers who continue to display problematic behavior.

- PMU should formulate recommendations for Commanding Officers and ICOs any time negative information about a monitored officer is conveyed to PMU in order to address such information. Further, PMU should be consulting with the command any time a command discipline is being considered in order to make recommendations regarding the appropriateness of its imposition and adjudication of it.
- All actions taken by PMU should be documented in the case folder. PMU personnel should document any contact with the command or other units outside the command, and detail the substance of that contact. Additionally, PMU should document the status of any open investigations or complaints and keep that information up-to-date in the case folder. Documenting the actions taken on a case will enable PMU to retain pertinent information and will aid supervisors in reviewing the progress of the officer. Regular supervisory reviews of the case folders should be conducted to ensure that all appropriate actions are being taken and documented.
- When an officer is on monitoring and is found guilty of a new disciplinary charge, the fact that the misconduct occurred while the officer knew he was on monitoring should be an aggravating circumstance when determining a penalty. If an officer is on Dismissal Probation Monitoring and continues to display problematic behavior, the Department should immediately evaluate new disciplinary cases and, in appropriate instances, rapidly seek termination of the officer. In cases where an officer is on monitoring, but not on dismissal probation, PMU and the investigative group should jointly determine whether the investigation should be prioritized and therefore expedited. Similarly, once an investigation has been completed, the Department Advocates Office ("DAO")<sup>7</sup> and PMU should cooperate with each other, and in appropriate cases, DAO should attempt to prosecute the disciplinary case more expeditiously than other cases where the officer is not on monitoring.

During the course of this study, PMU was assigned a new Commanding Officer who stated in discussions with Commission staff that, in addition to a renewed effort and commitment to PMU's current

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<sup>7</sup> DAO is the unit in the Department responsible for prosecuting administrative cases.

policies, she has initiated new policy changes in how PMU monitors officers. These changes address a number of the Commission's recommendations. For example, the Department stated that there will be increased coordination and contact between PMU, the commands, and other units. Investigators are now also required to document in the case folder all actions taken on a case and any recommendations made to the command. Further, they must regularly obtain updated Department records so that case folders contain current information about an officer.

## **B. Review of the New York City Police Department's Recruitment and Hiring of New Police Officers**

### **1. Purpose of the Study**

Since 1999, the Commission has studied the hiring practices of the NYPD through the review of the background investigation files completed and maintained by the Applicant Processing Division ("APD") of the NYPD. In its past reviews, the Commission found that more personal contact with each candidate's neighbors, academic institutions, and prior employers was desirable in combination with utilizing the written forms currently used by the Department to obtain information about the candidate's character.<sup>8</sup> The Commission also recommended that this information be gathered prior to the candidate being appointed to the Police Academy ("the Academy").

Given recent media reports regarding the recruitment difficulties experienced by law enforcement

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<sup>8</sup> These forms are sent to all current and prior employers of the candidate and all academic institutions that the candidate attended. These forms request information concerning the time period the candidate was associated with the recipient of the form and whether the candidate presented any disciplinary issues while associated with the recipient. Forms are also used to conduct the neighbor reference checks and request information concerning the length of time the neighbor has known the candidate and whether the neighbor knows how the candidate is employed, who the candidate's friends and family members are, how the candidate spends his time when not working, and if he is familiar

agencies across the country and the speculation that standards are being lowered in selecting candidates for appointment, the Commission, in its *Review of the New York City Police Department's Recruitment and Hiring of New Police Officers* (the "Report"), expanded its study beyond the review of APD background files to include a review of recruitment techniques utilized by the Department, observations of classes in integrity-related issues at the Academy, and comparisons of various statistics compiled and supplied by the Department regarding the academic and disciplinary performance of the last six Academy classes.

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with the candidate's reputation in the neighborhood.

To determine whether the recommendations from the Commission’s prior studies on this subject were implemented, Commission staff reviewed 93 APD background files. In reviewing these files, the Commission sought to determine whether the investigators were complying with the requirements set forth in the APD Manual for conducting these investigations.<sup>9</sup> Critical to this assessment was whether the investigators were obtaining information from third parties such as academic institutions and prior employers and whether the investigators were conducting further investigatory steps when derogatory information was learned about the candidate.

## **2. Findings**

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<sup>9</sup> The APD Manual specifies the requirements that APD investigators must follow when conducting background investigations of candidates.



While the candidates in this sample did meet the minimum mandatory requirements to become police officers with the NYPD,<sup>10</sup> the Commission also reviewed whether there was evidence in these files of the required contact with academic institutions, employers, and neighbors who knew the candidate. The Commission found that while, in the majority of the files, the appropriate steps were being taken by the APD investigators, there was a significant number of cases where written verification forms from third parties such as academic institutions or prior employers were not received until after the applicant was appointed to the Department and several cases where these forms were never received. Furthermore, when the forms were obtained, they usually only contained minimal information that did not provide any in-depth insight into the applicant's character. This type of information was usually limited to the dates that the candidate was associated with the organization and, in the case of employers, the position that the candidate held. Generally, in those cases where a returned form contained derogatory or inconsistent information about a candidate, there was little, if any, follow-up by the investigator to try to obtain more information.

Similar issues arose in the context of neighborhood reference checks. According to the APD Manual used at the time this class was selected, investigators were supposed to contact three neighbors from the candidate's current residence and three neighbors from every address where the candidate had resided during the five years immediately prior to appointment. The Commission found that in a significant number of cases these neighborhood reference checks were either not done or were completed after the

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<sup>10</sup> Minimum mandatory requirements are: the applicant must be between the ages of 21 and 35, must be a citizen of the United States, must have a high school degree or its equivalent, must have a New York State driver's license, and must reside within New York City or one of its six surrounding counties. Additionally, the applicant must either possess 60 college credits with a 2.00 grade point average, have completed two years of service with the United States Military, or served in the capacity of a Traffic Enforcement Agent or School Safety Agent for two years.

candidate was appointed to the Department. Furthermore, APD continued to count as reference checks those neighbors who did not know the candidate or who only had limited contact with the candidate.

As discussed in the Commission's prior studies, employers, academic institutions, and to some extent, neighbors are often reluctant to provide substantive information about the candidate. Employers often quote policies that only permit verification of the candidate's dates of employment and position within the organization without providing any insight into the candidate's character or any disciplinary issues the candidate may have presented during his tenure. Personnel who complete the verifications from academic institutions usually have no personal knowledge about the candidate, and therefore, in some cases, only a transcript is provided. While neighbors may know a candidate by sight or name, often they are unable to state how the candidate is employed and do not know the candidate's friends or family or how he spends his time when he is not at work. Although this inability to obtain information about the character of the candidate is not due to any lack of effort by the Department, it is still important information.

After the candidate is approved for appointment, he has to successfully undergo and complete training at the Academy. The Department provided the Commission with data concerning the last six classes that graduated from the Academy.<sup>11</sup> This data was examined in an effort to determine if there was any validity to recent media reports regarding the declining quality of recent recruits. Since only a small number of classes were compared, the Commission cannot extrapolate definitive conclusions from the data presented here, but there does appear to be a negative trend emerging.

While it is expected that approximately eighteen-to-twenty percent of those applicants appointed

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<sup>11</sup> The classes that were compared commenced in December 1997, July 1998, August 1998, July 1999, March 2000, and September 2000.

to the Department will not successfully complete the Academy training, the statistics revealed a slight but consistent decrease in the number of candidates who successfully graduated in each class since the 1997 class. One reason that a candidate may not graduate from the Academy is due to his academic failure.<sup>12</sup>

The statistics provided by the Department demonstrated that after the institution of the 60 credit requirement in 1998, the failure rate of the subsequent classes initially decreased. However, the last two Academy classes have seen a steady increase in the failure rate, and the failure rate for the September 2000 class was double that of the December 1997 class.

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<sup>12</sup> Cadets must attain an overall minimum grade score of 75% by the fourth quarter examination.

One component of Academy training is a 30-day period of field training under close supervision of field training officers. Some cadets, however, are held back from this training due to factors such as illness, disability, injuries, or pregnancy. Those cadets who experience academic difficulties are also kept from attending this training so they can attend mandatory academic tutorials.<sup>13</sup> The statistics provided by the Department demonstrate an overall increase in the percentage of cadets being held back from this training. In fact, the September 2000 graduating class, with nineteen percent, had the largest percentage of holdovers of all of the classes that were compared.

Disciplinary actions also significantly increased in the last two Academy classes. Both the March 2000 and September 2000 classes had significant increases in the number of demerits and command disciplines issued as compared to the prior classes.<sup>14</sup> Further, the number of charges and specifications filed against members of the last two graduating classes has also increased from those filed in previous years. Despite the increases seen in disciplinary actions taken against cadets, the statistics provided by the Department show a significant decrease in the number of cadets who were terminated.

As part of this report, the Commission also observed seven Academy training classes that specifically addressed integrity issues. Overall, the Commission found the instructors to be well-informed and enthusiastic about the subject matter. However, some of the material being used was dated. The Commission believes that the material should, if possible, involve recent events so that entering cadets, who are generally in their early twenties, are better able to relate to the material and place it within a frame of

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<sup>13</sup> Although individual cadets are held back from this 30-day period, all Academy graduates undergo a five-to-six-month period of field training after leaving the Academy.

<sup>14</sup> Demerits are the least serious form of disciplinary action. Command disciplines are issued when a cadet receives five demerits and can result in the loss of vacation days or time.

reference that they will understand.

### **3. Recommendations**

As a result of this study, the Commission recommended the following:

- All investigative background steps should be completed prior to the candidate's appointment to the Department. While the Commission recognizes that the Department faces obstacles in obtaining information when prior and present employers and academic institutions do not complete verification forms in a substantive manner and return them in a timely fashion, APD needs to be diligent and make further efforts, including personal contact in order to retrieve these forms or make personal contact with the employers and schools to obtain the requested information orally when it is not otherwise forthcoming.
- While the Commission recognizes that obtaining substantive information on a candidate can be difficult, given the importance of background checks, the Commission believes that the Department needs to expand its efforts to identify problematic applicants so that they do not become problem officers. The Commission continues to recommend that APD make personal contact with neighbors as well as with employers and academic institutions. This is especially critical when inconsistent or derogatory information is obtained. Personal contact may, in many cases, produce more substantive information than formal written responses.
- Often, APD investigators count people who do not know the candidate or are only vaguely familiar with the candidate as neighbor reference checks. Such references can only provide minimal, conclusory information, if they provide any information at all. In order for these reference checks to be meaningful, the Department should make personal contact with three neighbors who actually know the candidate and are familiar with his lifestyle.
- In recognition, however, of the problems in acquiring information, the Commission also recommends that each candidate be required to provide his APD investigator with three references who know the candidate and can answer in-depth questions about him. Through interviews of these people -- who undoubtedly will almost always provide positive information -- APD can attempt to go behind the initial comments of the reference and also obtain the names of others who actually know the applicant. At least one of these references should be a present or former employer of the candidate and at least one of these references should be a present or former neighbor of the candidate.
- In conjunction with the above recommendations, the APD investigators should receive additional training in interviewing techniques. This training should enable them to ask questions

beyond those that currently appear on the reference forms used by the Department. Furthermore, this training should instruct the investigators on how to ask appropriate follow-up questions and questions designed to gain substantive information.

- It is clear that many factors are contributing to the Department's difficulties in attracting qualified candidates. In light of this and the increasing number of candidates in recent classes who are experiencing difficulties in completing Academy training and the increasing number of disciplinary infractions which are being issued, the Commission recommends that the Department closely monitor future classes to determine whether a negative trend is emerging, and if so, determine what necessary changes in its hiring criteria and background investigations would be appropriate.

### **III. THE COMMISSION'S MONITORING OF CLOSED IAB INVESTIGATIONS**

#### **A. Closed Case Monitoring Review**

##### **1. Introduction**

As part of its ongoing responsibility to monitor the Department's IAB, the Commission has again, as in earlier reports,<sup>15</sup> reviewed a number of "C" cases closed by IAB.<sup>16</sup> In connection with this review, the Commission examined 79 closed IAB investigations conducted by 16 separate IAB investigative groups.<sup>17</sup> The cases examined by this review were closed between June 2000 and August 2001.

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<sup>15</sup> See the Commission's reports, *Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau* (October 1997); *Fourth Annual Report of the Commission* (November 1999), at pp. 22-42; and *Fifth Annual Report of the Commission* (February 2001), at pp. 18-28.

<sup>16</sup> IAB classifies cases as "C" cases when allegations of either serious misconduct or criminal activity have been made.

<sup>17</sup> IAB has nineteen investigative groups which are divided both geographically and by subject matter. The two groups that were not studied for this review are: Group 55, which provides the other IAB Groups with technical and surveillance assistance, as well as undercover officers, when required; and Group 56, which is responsible for investigating Traffic Enforcement Agents. Additionally, Group 9 was reviewed separately in subsection B, at p. 32, of this Report. Group 9 is assigned exclusively to "Nightwatch" which entails responding to call-outs during the midnight shift.

## **2. Methodology**

During the course of this study, the Commission reviewed at least two closed cases from each of the sixteen groups. The cases were randomly selected, not for any particular type of misconduct, from lists of closed cases supplied by IAB.

After a particular case was selected for review, the Commission examined the investigative file, including video and audio tapes, where applicable, in order to examine the quality of the investigations. Recognizing that the necessary investigative steps taken vary depending upon the allegation and the specific facts of each case, the Commission evaluated, on a case-by-case basis, whether appropriate investigative steps had been taken. Specifically, the Commission looked at whether complainants and witnesses were interviewed in a timely manner, whether IAB investigators obtained and reviewed documents critical to the case, and whether necessary surveillance techniques were used, and if so, their effectiveness. The Commission also looked at the various scenarios employed in integrity tests<sup>18</sup> and evaluated how prepared investigators were for PG § 206-13 interviews.<sup>19</sup> Thus, in assessing these cases, the Commission, after factoring in the nature of the allegation, looked at the totality of the investigative work carried out by IAB in determining whether the investigation was competently handled.

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<sup>18</sup> See p. 27 for a discussion of integrity tests.

<sup>19</sup> Patrol Guide § 206-13 (formerly PG § 118-9) allows the Department to interrogate officers within the context of an official Department investigation. Officers that refuse to answer the questions during these interviews are suspended while officers that are found to have been untruthful during the examination will be, absent exceptional circumstances, dismissed from the Department.

### **3. Findings**

Overall, the Commission found that IAB conducted thorough investigations in virtually all of the cases reviewed. Additionally, IAB closed 78 of the 79 cases in a timely manner. While there were occasional exceptions, overall, investigators contacted and interviewed witnesses in a timely fashion, adequately collected and reviewed relevant documents and records, and properly utilized investigative techniques such as integrity tests, surveillance, and E.D.I.T. programs,<sup>20</sup> when appropriate. Investigators also conducted competent interrogations of both police witnesses and subject officers. Thus, the Commission believes that IAB is generally handling investigations in an appropriate manner.

Effectively conducting investigations means that corrupt officers will be dismissed from the Department and other officers will understand that misbehavior will not be tolerated. Thorough investigations can also uncover intelligence about, or evidence of, other instances of misconduct that would not have been detected absent the initial investigation. Finally, conducting thorough investigations demonstrates that the Department will be persistent in the pursuit of misconduct regardless of time constraints or expense.

In addition to producing evidence of guilt, the effective investigation of cases also helps to expedite the resolution of cases where there is insufficient evidence to formerly accuse an officer of misconduct. For example, in one case a School Safety Officer allegedly stated to a teacher's aide that he had just smoked marijuana outside school grounds and was waiting to purchase additional marijuana. The corresponding

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<sup>20</sup> See fn. 27 and accompanying text for a discussion of the E.D.I.T. program.



IAB group began what would become a thirteen-month investigation of the subject. This investigation included, among other investigative steps, sixteen separate instances of surveillance, five separate E.D.I.T. operations, which resulted in the debriefing of approximately fifteen prisoners, and the execution of two integrity tests. Following this exhaustive investigation, it was determined that there was insufficient evidence to charge the officer with misconduct and the case was ultimately closed as unsubstantiated.

In other cases, IAB investigated beyond the initial allegation in an attempt to determine if additional misconduct was occurring. For example, in one case, Officer A called IAB and stated that the subject officer, Officer B, had asked him to “do the right thing” regarding a traffic summons because the recipient of the summons, a civilian, “takes care of a lot of guys on the job.” As part of its investigation into the initial allegation, after interviewing Officer A, the IAB Group taped a telephone conversation between an undercover officer, posing as Officer A, and Officer B regarding the summons. In addition, the Group identified the civilian who had received the above summons, and attached a body wire to Officer A on the day he testified in traffic court, in the event that Officer B or the civilian attempted to speak with Officer A about the summons. In response to Officer B’s statement that the civilian took care of guys “on the job,” IAB conducted a financial investigation into the civilian’s finances and business, and conducted surveillance of him and his business. IAB investigators also posed as plainclothes police officers to determine if they could receive a discount on merchandise at the civilian’s business because of their status as police officers. Lastly, the Group interviewed Officer B who admitted to being employed without authorization by the civilian who received the traffic summons. At the completion of the investigation, charges and specifications were filed against the subject officer. While ultimately IAB was unable to uncover additional wrongdoing, here, IAB’s investigation appropriately extended beyond the original allegation to determine if there was

additional misconduct.

**a. Timeliness of Closing Cases and Proper Dispositions**

The timely closure of cases is important because it allows the Department to exonerate innocent officers accused of committing misconduct as quickly as possible, while punishing officers who are guilty of misbehavior in a timely fashion. Therefore, it is important that cases are closed in as quickly a time frame as possible without compromising the investigation process. The Commission determined, factoring in the nature of the allegations, that in the 79 cases examined, IAB closed all but one in a timely manner.

It is obviously important that, in addition to a timely investigation being conducted, the proper disposition be reached at the conclusion of a misconduct investigation. Improper dispositions can effectively destroy an investigatory agency's reputation and effectiveness. Further, an improper disposition can erode the rank and file's confidence in IAB's ability, and generate concerns about its objectivity. Thus, it is imperative that IAB's dispositions be construed as fair and impartial. Here, the Commission believes that all the cases were closed by IAB with the correct disposition.

**b. Investigative Steps**

The Commission analyzed the investigative techniques utilized by IAB during its investigations. The Commission focused primarily on how and when IAB contacted witnesses and gathered relevant documentation. The Commission also looked at how IAB was conducting PG § 206-13 interviews, surveillance, integrity tests, and E.D.I.T. programs.

Overall, the Commission found that IAB was properly using a variety of investigative techniques

in its investigation of cases and utilizing them in an effective manner. However, the Commission found that there were a few cases which may have benefitted from either better or additional investigative steps.

### **1.) Interviews of Officers Under PG § 206-13**

An important investigative tool used by IAB is the interrogation of both subject officers and other officers who may be witnesses in an investigation. These officers can be interrogated pursuant to Patrol Guide § 206-13 which mandates that officers must answer all questions related to their duties as police officers. The information obtained from these interrogations may help resolve cases more rapidly and also helps determine the guilt or innocence of an officer. The fact that officers are aware that pursuant to Department policy, lying during a PG interview, absent exceptional circumstances, will result in their dismissal potentially enhances the likelihood that the information given is accurate.

Here, the Commission found that in 33 of the 35 cases containing PG hearings, IAB properly conducted interrogations of both subject and witness officers. Further, the Commission found that in those 33 cases, the investigators appeared to be well prepared, they asked questions designed to elicit substantive answers, and the questions appeared to have been prepared in advance of the interview.<sup>21</sup> In addition, the interviewers, when appropriate, asked follow-up questions which on occasion opened other avenues of investigation.

The Commission did, however, identify two cases where the interviews appeared to be conducted in a perfunctory fashion, in that the interviewer asked mostly leading questions which invited “yes” or “no”

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<sup>21</sup> This conclusion was based on a review of the audio tapes and that many of the files contained the list of questions asked during the interrogation.

answers. Additionally, the questions were not designed to elicit information and the subject's denial was presumed in the question. Further, in one of the cases,<sup>22</sup> it appeared that the interviewer was taken aback by the subject officer's attorney's objections and appeared hesitant in his questioning after the attorney's objections.<sup>23</sup>

With regard to the above mentioned cases, the Department, in response to a draft of this Report, stated that the PG interviews in these cases were conducted for reasons other than to further the investigation. Some reasons may include putting an officer on notice that the Department is aware of the allegation and is watching the officer, or memorializing an officer's response to the accusation. While the Commission formally understands that interviewing an officer may accomplish these goals, it also believes that if the Department makes the decision to conduct a PG interview, it should be done in a meaningful and non-perfunctory manner.

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<sup>22</sup> In another case, a probationary police officer was found inside the residence of a person arrested in connection with a robbery/homicide and the following day was observed driving the vehicle used in the crime. The original interviewer asked only "yes" or "no" questions and was then replaced by a second interviewer. The second investigator then failed to ask appropriate follow-up questions in response to several statements made by the subject. Despite this questioning, however, the PG interview of the subject officer did not detrimentally affect the outcome of the investigation as the allegation was substantiated.

<sup>23</sup> As per PG § 206-13, officers that are interrogated are permitted to obtain counsel if either "a serious violation is alleged" or "sufficient justification is presented although the alleged violation is minor."

In earlier reports,<sup>24</sup> the Commission was more critical of how IAB had conducted PG interviews.

Based upon the current review, the Department has improved in this area. However, continued improvement is possible. As pointed out by the Commission in its *March 2000 Performance Study*, this can be accomplished by reviewing the interview questions with a supervisor before the interrogation takes place, determining the strategy of the interrogation before the hearing, and having supervisors review the hearing tapes after the interview. These recommendations will improve investigators interviewing skills.

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<sup>24</sup> See *Performance Study: A Review of Internal Affairs Bureau Interrogations of Members of Service* (March 2000), hereinafter "*March 2000 Performance Study*." See also the Commission's *Third, Fourth, and Fifth Annual Reports*, dated August 1998, November 1999, and February 2001, respectively.

Finally, the Commission noted that in some investigations, a strategic decision was made by IAB not to interrogate the subject officer. This strategy generally was adopted when the investigator concluded that it was unlikely any further information would be obtained by interviewing the subject officer, and it was believed preferable not to alert the subject officer that he was being investigated. In other cases it was determined that it was to IAB's advantage not to alert the subject officer by questioning him in the event the case was reopened at a later date. In the cases reviewed, where this approach was followed, IAB exercised appropriate care in deciding which subjects to interview on a case-by-case basis. The Commission agrees with these investigative decisions believing that in those particular cases, interviewing the subject officer would not have enhanced the case. This discretion evidenced an improvement since previous reports on IAB's selective and strategic use of PG hearings.<sup>25</sup>

## **2.) Integrity Testing**

Another important investigative technique utilized by IAB is the integrity test. Integrity testing consists of IAB creating realistic scenarios in which officers are confronted with the opportunity to commit corrupt acts. The scenarios are supposed to be scripted to closely resemble the misconduct allegation. In all thirteen cases where integrity tests were conducted, the integrity tests devised were realistic and closely resembled the alleged misconduct. The tests also appeared to be well executed.

Recognizing that integrity tests utilize a great deal of time and resources, the Commission understands that IAB needs to make strategic decisions, on a case-by-case basis, whether to perform an

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<sup>25</sup> See *March 2000 Performance Study*, at p. 44.

integrity test. In determining whether to perform an integrity test, IAB must consider the feasibility of a test and also the likelihood that it will enhance the investigation. In this review, the Commission believes that an opportunity to conduct an integrity test was overlooked in one case. In that case, a prisoner alleged that the subject officer searched the prisoner, removed property from him, including his drivers license, jewelry, and currency, and did not return the property. The complainant also alleged that after filing a complaint about the property, the drivers license was mailed back to his home in an envelope without a return address. A review of the precinct's paperwork indicated that the subject officer had not vouchered any property. In addition, the investigation revealed that the mailed envelope containing the prisoner's drivers license contained a departmental postage stamp. The subject officer admitted during a PG hearing that he mailed the drivers license to the complainant's home, but denied taking jewelry and currency from the complainant. In this situation, the Commission believes that a property-related integrity test may have been appropriate.

In conclusion, IAB is effectively using integrity tests during investigations, the tests are conducted in a realistic manner and are compatible with the allegations being investigated. Furthermore, with only one exception, IAB appropriately conducted integrity tests in all cases which warranted one.

### 3.) Surveillance

Surveillance of a subject or location is another potentially useful investigative tool. For surveillance to be effective, the subject needs to be observed at times which are relevant to the allegation. For example, if it is alleged that a subject sells narcotics at night, the subject should be observed at night. Further, if the alleged activity is not alleged to have occurred on a particular day or time, the subject should then be observed on various days and times of the week. This will enable the investigator to obtain broader and more comprehensive information regarding the subject officer and the investigation.

In 31 of the reviewed cases, IAB effectively and strategically employed surveillance to the benefit of the investigation. Further, these observations were made at times conducive to observe the alleged misconduct and were staggered to cover a number of dates and times. For example, in one case where an officer was accused of using narcotics, fifteen separate surveillances were conducted of the subject at different times and places including, while the officer was traveling to work, during the officer's working hours, after the end of his tour, and on his days off. In another case, a civilian employee was accused by an arrested narcotics seller of running a drug ring. The subject was observed over a ten-month period at different times and locations including, while at his residence, while on- and off-duty, on weekends, and on his birthday as part of a life-style surveillance.<sup>26</sup> As illustrated by the above cases, the Commission believes that in the overwhelming majority of cases, IAB is properly employing surveillance techniques in furtherance of their investigations.

Arguably, in two cases, IAB could have conducted surveillances at a greater variety of times. By

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<sup>26</sup> Lifestyle surveillance consists of observing a subject at certain times which appear more conducive to "celebrating" or "partying" such as end of tours, weekend evenings when an officer is socializing, or when beginning a vacation.



staggering the times of the surveillances IAB may have obtained a more all-encompassing view of what was occurring at the observed locations. However, the outcome of these two cases did not appear to have been negatively impacted by how and when surveillances were conducted during the investigations.

#### **4.) E.D.I.T. Program**

Another proactive technique utilized by IAB to augment investigations is the E.D.I.T. program.<sup>27</sup>

E.D.I.T. is a pro-active enforcement program whereby IAB arrests people for criminal activity, debriefs them for any intelligence regarding corruption, and then utilizes this information as appropriate. This program is important because it allows investigators to gather information from sources which normally would not assist in investigations.

The Commission reviewed the cases that utilized the E.D.I.T. program as part of the investigation and found that the program was being used appropriately and effectively. For instance, in one case, a person was arrested for the sale of drugs. He stated to an undercover police officer that another police officer was supplying him with narcotics. As a result, several E.D.I.T. programs were conducted in the area with narcotic sellers and purchasers. This tactic eventually produced additional intelligence that helped the investigators identify the subject.<sup>28</sup>

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<sup>27</sup> The acronym E.D.I.T. stands for enforcement, debriefing, intelligence gathering, and testing.

<sup>28</sup> Subsequent investigation by IAB determined that the arrested dealer's "boss" was actually a former police cadet. Within six months of the above allegation, the subject was identified and interviewed by IAB during which he admitted to being friends with a known drug dealer. The case was closed as substantiated as to several of the allegations, and the Applicant Processing Division was notified of the subject's identity should he attempt to join the Department at a later date.

**c. Witness Contact**

It is important for investigators to interview case witnesses as quickly as possible at the start of an investigation. Timely interviews of witnesses can lead the investigator in the proper direction early in the investigation when the incident is still fresh in the witnesses's mind, and therefore can be recalled with more particularity and detail. Early witness contact is also important if identification procedures need to be conducted. The Commission found that in all the cases examined, IAB was properly contacting and interviewing the case witnesses in a timely fashion.

**d. Documentation**

The Commission found that in all cases reviewed, IAB collected the necessary documentation for each case at an early stage in the investigative process. The collection and digestion of documentation at the commencement of an investigation can expedite the process and therefore, ultimately decrease the time necessary to resolve a case. Additionally, documenting the investigative steps taken on a case and the corresponding results is important so that all information regarding the case is up-to-date and readily available.

In its review, the Commission found that in all cases, the subject's Central Personnel Index ("CPI")<sup>29</sup> and other relevant records were collected as soon as a subject was identified. Moreover, the complainant's background and criminal history were also obtained to ascertain any possible bias, (e.g. prior contacts between complainant and subject officer). In addition, in particular cases, IAB collected

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<sup>29</sup> A CPI contains a summary of allegations made against an officer as well as certain personnel-related information.

paperwork regarding the finances of subjects and witnesses, ballistic records and paperwork relating to the prior ownership of weapons, real estate transactions records, vehicle registrations and other automotive paperwork, and other documents pertaining to the investigation. The Commission concluded that IAB was collecting all relevant documents and doing so in a timely manner.

Lastly, the Commission determined that IAB is thoroughly documenting its investigative efforts in its files. As mentioned above, this documentation eases the transfer of investigations and memorializes any efforts taken. The current review indicates an improvement over earlier findings by the Commission in prior reports that investigators, at times, did not always document actions that had been completed on a case.

#### **4. Conclusions**

In conclusion, the Commission found that overall, IAB is conducting thorough investigations and closing virtually all of its cases in a timely manner. The Commission also found that the cases are being resolved appropriately. Investigators generally are properly utilizing integrity tests, surveillance, and the E.D.I.T. program when appropriate, and conducting competent interviews of both witnesses and officers. Finally, the Commission found that IAB is contacting and interviewing witnesses in a timely fashion and adequately collecting and reviewing relevant documents and records. Thus, the Commission believes that, overall, IAB is generally handling cases in an appropriate and effective manner.

### **B. Group 9 Investigations**

#### **1. Introduction**

During the course of its various closed case reviews, the Commission noted that in some instances the initial investigation was often completed by IAB's Group 9 rather than the assigned investigative group that handled the bulk of the investigation.<sup>30</sup> Group 9 is a specialty group within IAB whose function is to respond to and conduct preliminary investigations of incidents which occur between the hours of 11:00 p.m. and 7:00 a.m.<sup>31</sup> In recognition of the impact of the initial investigation on a case, the Commission examined a number of cases handled by Group 9. Specifically, the Commission sought to determine whether Group 9 obtained the necessary and available information during the initial early hours of investigations, documented such information correctly, and then communicated that information to the investigative group in a manner that facilitated the immediate investigation of the complaint.

Group 9 was created to ensure that IAB investigators are available during the evening and early morning hours when most investigative groups are not available. This permits IAB to respond 24 hours a day, 7 days a week, to allegations of police misconduct which are received at the Command Center.<sup>32</sup>

Unlike other IAB groups, Group 9 does not conduct long term investigations. It is only responsible for handling the initial investigation of complaints that originate during its hours of operation. The types of complaints to which Group 9 responds include excessive force, corruption or other misconduct by a member of the service, and cases involving prisoners who are injured while in police custody. The

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<sup>30</sup> Organizationally, IAB is divided into groups based on geographical area and groups are assigned those cases which occur within their jurisdiction. Therefore, there are IAB groups that handle investigations in the Bronx, Brooklyn, Queens, Staten Island and Manhattan. In addition to geographically based groups, IAB also has several non-geographical, specialty groups which handle specific types of allegations. Group 9 is one of the specialty groups.

<sup>31</sup> Most geographical groups are not open during these hours and Group 9 therefore responds to incidents which these groups usually handle during the day time hours. Group 9's initial investigation is referred to as a "call-out."

<sup>32</sup> The IAB Command Center is a 24 hour hotline which receives allegations of police misconduct from the general public and members of the service.

information and evidence gathered by Group 9 are then turned over to the appropriate investigative group so that it may continue any further investigation.

Specifically, Group 9 responds to the location of incidents or to precincts, interviews complainants and witnesses, and obtains necessary evidentiary documents. All information is then memorialized on worksheets and placed in a case folder along with any audio taped statements of witnesses and a recommendation from the investigator regarding how the case should be classified. Group 9's case folder is then forwarded to IAB's Assessment Committee which meets every morning to discuss and classify the allegations received by the Department during the previous 24 hours.<sup>33</sup> The Assessment Committee reviews each complaint and assigns each case, including those initially investigated by Group 9, to an appropriate geographic or specialized investigative group for further investigation.

## **2. Methodology**

The Commission obtained a list of all cases handled by Group 9 between January 1, 2000 and August 1, 2000, totaling 234 cases. From that list, and with a view toward selecting cases that spanned various geographical locations throughout the City, the Commission chose 25 "C" cases for examination. These cases encompassed a variety of allegations, involving officers from various geographical locations throughout New York City.

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<sup>33</sup> Cases which involve serious allegations of misconduct and/or corruption are classified as "C" cases and are investigated by IAB while allegations of minor misconduct/corruption are classified as "M" cases and are usually forwarded to Investigations Units outside of IAB.

Commission staff reviewed the paperwork and the audio taped interviews<sup>34</sup> contained in these case files to assess Group 9's overall performance. In examining these files, Commission staff specifically evaluated the overall quality of the information gathered and whether this information was documented in the case folder. The taped interviews were also reviewed to determine their effectiveness and appropriateness of the interviewers' questions and interviewing techniques. In addition to the above issues, the Commission looked at the timing of the complaint and Group 9's response time. Finally, the Commission examined whether necessary documents such as medical release forms had been obtained, and evaluated the general procedures and practices followed by Group 9 investigators. As a final step, the Commission examined, where possible, the subsequent investigative files that were developed by the assigned IAB group from the initial Group 9 investigation. When examining these files, the Commission looked at the time it took for the assigned investigative group to receive the case, and whether the information contained in the subsequent file differed significantly from that obtained by Group 9 investigators, or if the file contained information that could have been obtained during the call-out but was not.

### **3. Findings**

Group 9 appears to be fulfilling an important role in IAB's overall anti-corruption program. Having IAB investigators respond to and investigate allegations as soon as they are reported sends a message to civilians and uniform officers that the Department takes allegations of corruption and misconduct very

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<sup>34</sup> Twenty-three of the 25 Group 9 cases reviewed contained audio taped interviews. It is Group 9's policy to, whenever possible, make an audio tape of interviews conducted by their investigators.

seriously. Furthermore, having IAB personnel, rather than precinct personnel handle the intake and investigation of complaints may alleviate any concerns complainants might have if the allegation was investigated within the precinct itself, and also may prevent potential conflicts of interest which could arise if precinct officers had to investigate a co-worker within their own precinct.

In general, Group 9 appears to be conducting preliminary investigations in a satisfactory manner. Investigators appropriately questioned complainants and witnesses and, with only one exception, explored all the pertinent issues during the course of the initial interview. Group 9 responded in a timely fashion to call-outs and interviewed complainants and witnesses in an expedient manner. Further, investigators obtained the necessary paperwork and appropriately documented the information they gathered in the case file.

**a. Interviews of Complainants and Witnesses**

A key function of investigators during the initial investigation is to obtain as much information from complainants and witnesses as soon as possible so that an accurate assessment of the case may be made.

Once Group 9 has undertaken its investigation, the investigator must ensure that all pertinent data is documented in an investigative file so that subsequent investigators have the necessary information to continue the investigation. Pertinent information may include, but is not limited to: names, addresses and contact numbers for the complainant and any witnesses; descriptions and/or names of the officer(s) involved in the alleged wrongdoing; a summary of the allegation including relevant information about the pertinent location; or any other data that may be important in establishing the substance of the alleged wrongdoing.

Obtaining accurate and detailed information is important so that investigators may contact witnesses and focus the investigation on the appropriate subject officers.

All of the interviews examined by the Commission appropriately focused on acquiring the basic facts of the allegation, contact information for all complainants and witnesses to the event, and identifying information of the officer involved. In general, investigators explored all facets of the allegation and tried to elicit as much information as possible from the interviewees. Further, they also attempted, where appropriate, to reconcile any discrepancies in the interviewees' story.

In fact, in the majority of the cases examined, Group 9 had enough information at the conclusion of their interviews to identify the officer involved in the allegation. Even in those cases where no identification was made by Group 9, the Group 9 files reflected that investigators appropriately attempted to obtain enough descriptive information to identify a subject.

In interviewing complainants and witnesses it is imperative that the investigators ask the questions necessary to elicit all the relevant facts and information that the witness has to offer. To accomplish this, the investigator needs to probe the witness' statements to ensure that he gets an intelligible, chronological narrative of the occurrence. Since witnesses and complainants are often the main source of information in an investigation, the investigator needs to use an appropriate demeanor and tone during his questioning so that the witness does not feel alienated and feels secure about cooperating with the investigation.

Based upon the review of audio taped interviews, the Commission found that all the investigators used an appropriate demeanor and interviewing style. They also appeared to successfully adapt to different situations and use various techniques depending upon the needs and personality of the individual being interviewed. For example, in one case in which a young girl made a complaint of rape against an officer,



IAB used a female investigator whose gentle interviewing style helped put the complainant at ease so that she was comfortable speaking with the investigator and cooperating with the investigation. In another case, the complainant was being difficult during the interview, and therefore, the investigator used a blunter and more forceful interviewing technique to elicit information.

**b. Timing**

Within the sample of cases reviewed, Group 9 investigators were called out and responded to numerous locations both within and outside New York City.<sup>35</sup> In all instances, Group 9 responded in a timely manner. For example, in fifteen of the 24 cases reviewed, IAB investigators responded to complaints in one hour or less. In the remainder of the cases reviewed, the Commission found that responses that took longer than one hour were acceptable given the circumstances or location of the complainant.

In terms of the case transfer from Group 9 to the subsequent investigators, the Commission was able to determine the timing in only eleven of the cases.<sup>36</sup> Of those eleven, five were turned over to the subsequent investigative group within one day, five were turned over within nine days, and one was turned over in nineteen days. While some of these transfers should have occurred more quickly, any delay in the turnover of case files appeared to have no negative impact on the investigation carried out by the geographic or specialized investigative group.

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<sup>35</sup> Complaints were received from throughout the tri-state area.

<sup>36</sup> In the remaining 13 cases the Commission was unable to determine with specificity the date on which the file was provided to the subsequent investigator because this information was not noted in the file.

**c. Documentation**

Since Group 9's involvement with a case is limited only to its initial investigation, it is important that Group 9 investigators carefully document all of the interviews and investigative steps that have been completed so that the subsequent investigator has the correct and necessary information to proceed with the investigation. Based upon the review of the Group 9 files, the Commission found 24 of the 25 worksheets examined contained a comprehensive narrative of the incident along with contact information for complainants and witnesses. Further, these worksheets indicated that many of the interviews with complainants and witnesses were audio taped. Accordingly, the Commission ascertained that Group 9 case files given to the subsequent investigator contained audio tapes in those instances where tapes were made. Finally, the Commission determined that the worksheets accurately reflected the substance of the audio taped interviews. This is important because, while the tapes are available, an investigator may initially rely upon a worksheet for immediate information prior to listening to audio taped interviews.

Additionally, in those cases involving a complainant or witness who had received medical attention, Group 9 investigators obtained the necessary medical releases. This work streamlined the subsequent investigator's job as he did not need to spend time obtaining consent from the complainant for medical access, but instead could proceed with obtaining medical records.

#### **d. Impact of Group 9's Investigation on Subsequent Investigation**

The Commission reviewed the subsequent investigative files of thirteen of the 25 cases initially handled by Group 9. Overall, the information provided by Group 9 appears to have aided the assigned investigator in a variety of ways. First, it appears that the Group 9 investigators accurately obtained and documented the names and telephone numbers of critical complainants and witnesses. The subsequent investigative files indicated that investigators relied upon the Group 9 information to contact various individuals. Second, the value of Group 9's work was particularly apparent in subsequent investigations when witnesses and/or complainants became unavailable, changed their stories, or were unable to recall details of the incident. Group 9's worksheets, and particularly its audio tapes of complainants and witnesses, allowed the subsequent investigator to utilize the statements of these individuals despite these problems.

This material also aided investigators in pinpointing consistencies or inconsistencies in a complainant or witnesses' account of events which often helped shape the course of an investigation.

#### **4. Conclusion**

The Commission's review found that Group 9 is providing accurate and consistent information which provides a firm foundation on which subsequent investigators may rely. Specifically, the Commission found that Group 9 carried out skillful preliminary investigations and obtained all the necessary information from complainants and witnesses during call-outs. Importantly, the Commission found that Group 9 is also turning over their files in their entirety in a timely manner which allows for prompt follow-up investigation of these cases. Overall, the Commission believes the work of Group 9 provides a solid basis on which to

build investigative cases.

#### **IV. FOLLOW-UP ON PAST COMMISSION RECOMMENDATIONS**

##### **A. Serious Off-Duty Misconduct**

###### **1. Introduction**

In August 1998, the Commission released *The New York City Police Department's Disciplinary System: How the Department Disciplines its Members Who Engage in Serious Off-Duty Misconduct*, (“*Off-Duty Misconduct Report*”). That report examined the disciplinary process and the penalties imposed on officers who had been found guilty of serious misconduct which occurred off-duty. The type of misconduct focused on by the Commission involved the display or discharge of a firearm, other violent behavior, and misconduct that was alcohol related. As a result of that study, the Commission made various recommendations, some of which were implemented by the Department. Subsequently, in the Commission’s *Fifth Annual Report*, the Commission examined cases affected by the implementation of those new policies and procedures, and evaluated their effectiveness. This section of this Report will revisit some of the issues raised by the *Off-Duty Misconduct Report*.

###### **2. Prior Findings and Recommendations**

In its initial study, while raising questions about the disposition of some cases, the Commission found that the Department appropriately handled the majority of the cases it reviewed. It determined, however, that certain changes in Department policies were necessary both to enhance the effectiveness of the treatment of these types of offenses by the disciplinary system, and to address problems associated with

the misuse of alcohol.

Given the fact that instances of off-duty misconduct all too often are associated with abuse of alcohol, the Commission made a series of recommendations directed at the problem of alcohol abuse. Among these recommendations were: that the Patrol Guide more clearly discourage using alcohol off-duty while carrying a weapon; that officers who are unfit for duty while armed receive more significant penalties than officers who are solely unfit for duty, but not armed; that the Department require counseling and impose dismissal probation<sup>37</sup> where there is alcohol related misconduct; that it terminate officers who continue to commit wrongful conduct after having been afforded the opportunity for counseling; and, generally, that it use a more rigorous approach in determining whether officers involved in misconduct were unfit.

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<sup>37</sup> See p. 59 for a discussion of dismissal probation.

The Department implemented a number of policy changes in response to these recommendations. Among other things, it created a new administrative charge, “armed while unfit for duty,” thereby enabling the Department to punish officers who are found guilty of this charge more severely than if not armed.<sup>38</sup> It also stated that it would impose a charge of unfit-for-duty against all officers charged with driving under the influence of alcohol (“DUI”);<sup>39</sup> it added language to the Patrol Guide that more strongly discouraged the consumption of alcohol while carrying a firearm; and it changed procedures for determining whether an officer was unfit.

With respect to the Commission’s findings regarding misconduct involving a firearm or instances of extreme violence, the Commission recommended that, absent exceptional circumstances, officers be terminated if they: unjustifiably discharge their weapons; under any circumstances discharge their weapons and fail to report it to the Department; or commit more than one (or in certain cases even one) act involving improper violent behavior. While the Department did not adopt these recommendations, it did adopt a policy that, absent exceptional circumstances, an officer who intentionally discharges his weapon while unfit for duty would be terminated.

Additionally, there were more general findings and recommendations pertained to all types of misconduct. The Commission found that the Department was not consistently charging officers with all the relevant separate charges pertaining to a particular offense. Levying all applicable charges is important both to convey the Department’s disapproval of all aspects of the officer’s misconduct and to ensure that the

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<sup>38</sup> The maximum penalty that may be imposed for each offense upon a finding of guilt after trial is 30 days. The Department may however impose consecutive sentences for discrete charges.

<sup>39</sup> In New York State, the relevant criminal offense is called “Driving While Intoxicated” (“DWI”) while the analogous departmental charge is “Driving Under the Influence” (“DUI”). Both charges refer to the same conduct.

penalty imposed appropriately reflects the scope of the officer's actions. The Commission therefore recommended both that this routinely be done and that in appropriate cases, the Department be more willing to impose consecutive sentences for discrete charges.

In the Commission's *Fifth Annual Report*, it followed-up on many of the above findings and recommendations, looking specifically at misconduct involving the display or discharge of a firearm, violent behavior not involving a firearm, and offenses involving the use of alcohol. While the Commission questioned the ultimate outcome in certain cases, it found that the Department generally was imposing appropriate penalties in these areas.

In that report, the Commission also found a significant increase in the application of dismissal probation in conjunction with other penalties in alcohol related and domestic violence cases. Further, it found that the Department was more often charging officers with all discrete offenses. More specifically, the Department was generally charging an officer with being unfit for duty when he was charged with DUI. The Department, however, was not consistently making findings of whether an officer was armed while he was unfit for duty.

### **3. Methodology**

In this study, the Commission initially reviewed all disciplinary cases closed between May 2000 and July 2001 where subject officers committed misconduct while off-duty. Then the Commission excluded cases of misconduct committed by civilian members of the service<sup>40</sup> and cases that involved what the

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<sup>40</sup> Civilian members of the service are afforded the option of a different, less formal adjudication process than uniformed members of the Department. Cases may be resolved and penalties may therefore be imposed in forums outside, and independent from, the Department.

Commission deemed to be not serious off-duty misconduct -- cases involving non-criminal and administrative-type violations.<sup>41</sup> The Commission's ultimate review consisted of approximately 309 cases.<sup>42</sup>

The types of cases reviewed involved domestic incidents, alcohol related misconduct, wrongful use of a firearm, and other misconduct which constituted a criminal act and/or led to an officer's arrest. In addition, cases of misconduct committed by either probationary police officers or officers who had been on dismissal probation at the time of the off-duty misconduct were included.<sup>43</sup>

The domestic incidents reviewed involved allegations of assault, harassment by means of telephone, letter, or in person, trespass upon another's property, or the destruction of another's property. The alcohol related cases included officers driving while under the influence of alcohol as well as officers found unfit for duty while engaged in additional misconduct, such as assault or misuse of a firearm. The Commission's review of firearm cases involved the wrongful display or discharge of a firearm and the failure to safeguard a firearm accompanied by some other form of misconduct. Misconduct committed by probationary police officers and officers who were on dismissal probation for an unrelated previous act of misconduct at the time of the off-duty misconduct were also evaluated. Lastly, the Commission looked at misconduct that

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<sup>41</sup> For example, the Commission excluded cases involving officers who were found out of their residences while sick and unauthorized off-duty employment cases.

<sup>42</sup> Some officers had more than one set of charges and specifications against them. For the purposes of this review, the Commission counted such incidents as one case.

<sup>43</sup> Officers that join the Department are classified as probationary employees for the first two years of their employment. Because of their probationary status, these officers may be terminated by the Department without a hearing for either substandard performance or misbehavior. As with probationary police officers, officers on dismissal probation may be terminated without benefit of a hearing for any misconduct.

This study was expanded from the earlier review of off-duty misconduct cases, which encompassed a review of misconduct involving firearms, violent behavior, and alcohol related offenses. This study was intended to give a more comprehensive analysis of issues related to adjudication delays and a more encompassing picture of departmental charges and penalties. *See Fifth Annual Report.*



resulted in the arrest of an off-duty officer for any crime, such as sexual misconduct, fraud, or possession of narcotics.<sup>44</sup>

As part of this review, the Commission examined both the appropriateness of the penalty imposed in individual cases and the impact of recent policies implemented by the Department relating to off-duty misconduct. The Commission also looked at the amount of time taken by the Department to adjudicate these cases.

#### **4. Penalties**

When reviewing whether the Department imposed appropriate penalties, the Commission considered several different factors. For example, the Commission examined whether the Department was penalizing officers similarly situated consistent with each other and with prior penalties in the same area. Since officers with prior disciplinary problems should be dealt with more sternly than officers with no prior discipline problems, the Commission looked at this factor in assessing the appropriateness of the penalty. The Commission also looked at whether Department policies and guidelines were taken into account and followed.

##### **a. Alcohol Related Misconduct**

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<sup>44</sup> A number of the cases studied involve more than one category. For example, a probationary police officer may be charged with DUI by the Department while criminal charges are simultaneously pending. For the Commission's study, this officer would be included in all applicable categories that were examined. Therefore, the numbers throughout this section reflect that accounting.

For the present review, there were 59 cases that involved alcohol related misconduct which occurred after the implementation of the Department's policies regarding being unfit while armed.<sup>45</sup> As part of this policy, the Department stated that in all cases where it appeared that an officer was unfit for duty, it would make a finding of whether the officer was armed at the time that he was unfit. In general, while there is some inconsistency, the Commission found that the Department is now more routinely making findings about whether an officer was armed, and if so, adding an additional charge. In approximately 75% of the cases the file contained a finding of whether or not the officer was armed at the time he was unfit. In eighteen cases, there was a finding that the officer was armed and in all except three of those cases, the Department charged the officer with being unfit while armed.

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<sup>45</sup> While the Commission looked at this issue in its *Fifth Annual Report*, at that time there were relatively few cases which had been completed after the policy was in effect.

The Commission also sought to ascertain whether the Department was imposing greater penalties in cases where there was a charge of armed while unfit than in cases where officers were not armed. Based on the files reviewed, it was clear that the Department imposed greater penalties against these fifteen officers than it typically does against officers who are charged solely with DUI. However, it was difficult to ascertain if the increased penalties were a result of the officer being armed or due to other aggravating circumstances since virtually all the cases in the sample where an officer was found to be unfit for duty had accompanying aggravating factors. For example, in one case, two officers, driving separately appeared to have been in a car accident with each other. When on-duty officers attempted to investigate the damage to the vehicles, both subject officers failed to comply with the orders of the on-duty officers, and one subject officer was particularly combative and obstructive during the investigation.<sup>46</sup> Both subject officers were found guilty of various charges, including DUI and being unfit while armed. In addition to both being placed on dismissal probation, one officer received a 45-day penalty and the more discourteous officer received a 60-day penalty. While both of these penalties appropriately reflected the seriousness of the charges, one could reasonably argue that the greater than 30 day penalty<sup>47</sup> was imposed due to one or a combination of aggravating circumstances, such as, failing to comply with the officer's requests, being involved in an accident, physically resisting the officer, obstructing the investigation, or being armed while unfit. In any event, the Commission found that the Department appears to be taking into consideration aggravating circumstances when imposing penalties in alcohol related misconduct cases.

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<sup>46</sup> Both officers attempted to flee the scene and the more combative officer lied to investigating officers, stating that he was not armed at the time when in fact he was.

<sup>47</sup> The Commission had previously determined that generally, the penalty imposed upon an officer who had been found guilty of DUI, absent aggravating circumstances, is approximately 30 penalty days and dismissal probation.

The Commission also found that the Department is more regularly imposing penalties in excess of 30 days, in conjunction with dismissal probation, for alcohol related misconduct. In its *Off-Duty Misconduct Study*, the Commission found that the Department infrequently imposed penalties in excess of 30 suspension or vacation days. Because the Department is able to levy penalties of up to 30 days for each charge that the officer faces,<sup>48</sup> the Commission recommended that, where applicable, the Department should more often impose consecutive penalties for discrete charges. A review of alcohol related misconduct cases in this Report indicates that the Department has made a significant improvement in this area. In almost all cases where an officer was charged with DUI, he received a penalty in excess of 30 days in conjunction with dismissal probation. These cases generally involved officers who either refused to take a Breathalyzer test, were involved in an automobile accident while intoxicated, were armed while intoxicated, or resisted arrest in some manner while intoxicated. The increase in penalties appropriately varied depending on the severity of the accompanying misconduct and aggravating circumstances.

Additionally, the Department is continuing to utilize dismissal probation, in conjunction with counseling and other penalties in alcohol related misconduct cases. Of the 72 alcohol related misconduct cases reviewed, dismissal probation was imposed as part of the penalty in 38 cases and another 20 officers were separated from the Department by termination, resignation, or retirement. In most of the remaining fourteen alcohol related cases where the officer was not separated from the Department and dismissal probation was not imposed, the Commission did not determine that it was inappropriate for the Department

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<sup>48</sup> Additionally, as part of a negotiated settlement, the Department may impose a penalty without any limitation as to length.

not to impose it. Those fourteen cases typically involved officers with good disciplinary records being found unfit and disorderly in a public place. Finally, in all cases where the officer was found guilty of DUI, dismissal probation was imposed

The Commission has stated, and continues to believe, that dismissal probation can be an effective tool in modifying an officer's behavior and in expeditiously terminating officers who engage in subsequent misconduct while on dismissal probation. For example, one officer had been placed on dismissal probation in 1996 for improperly discharging his weapon at an occupied vehicle when he was unfit for duty. Subsequently, in August 2000, new charges were filed against him stemming from another incident in October 1999 where he had drawn his weapon on a group of individuals while he was intoxicated. He was on dismissal probation at the time of the second incident and was terminated without the necessity of a trial.

This case demonstrates the value of dismissal probation and how the Department is utilizing it to appropriately terminate officers.

With respect to counseling, Department policy requires that any officer who engages in alcohol related misconduct must confer with, and be evaluated by, the Alcohol Counseling Unit. Also, the officer must attend and successfully complete any counseling imposed as a condition of a Department penalty, and will be suspended for any failure to attend. The Department stated that such officers are also monitored by Counseling Services Unit for a period of two years after completion of the alcohol counseling. The documentation reviewed by the Commission revealed that counseling is still routinely being imposed as a condition of Department penalties in alcohol related cases of misconduct. However, due to the Department's policy of keeping counseling information confidential, certain information is redacted from the files and the Commission was therefore unable to report specifically how many officers were mandated to

complete alcohol counseling.

**b. Misconduct Involving Firearms**

The Commission reviewed 42 cases involving misconduct with a firearm. These cases ranged from the unintentional display of a firearm to the intentional discharge of a firearm. Although the Commission agrees with the majority of the punishments meted out for such misconduct, there were several cases where the Commission questioned the severity of the penalty. In these cases, the Commission felt that the penalty was too light in terms of the number of penalty days imposed, that the officer should have received dismissal probation, or that the officer should have been terminated. In addition to evaluating the penalties, the Commission also evaluated the Department's new policy regarding misconduct involving firearms. As discussed earlier, subsequent to the Commission's Off-Duty Misconduct Report, the Department instituted a policy that, absent exceptional circumstances, "misconduct involving a Member's misuse of a firearm" . . . "due to excessive consumption of, and intoxication from, alcohol will result in that Member's termination from the Department."<sup>49</sup>

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<sup>49</sup> See Patrol Guide § 203-04. This guideline, in the form of an interim order, was issued in January 1999 and the above revision became effective on July 28, 2000.

There were 28 misuse of a firearm cases that occurred after the policy was implemented. As stated above, the Commission first examined whether the Department was routinely making a finding of whether the officer was unfit for duty upon being involved in an off-duty firearm incident. Obviously, such a finding is necessary for the Department to apply its policy. Some of the files reviewed, however, did not contain a finding of whether or not the officer was fit.<sup>50</sup> In all cases involving the misuse of a firearm, the paperwork in the investigative file should be clear whether or not the officer was intoxicated at the time of the offense. This is necessary so that the Advocate, Trial Commissioner and the Police Commissioner can determine the proper penalty to be imposed.

In seven cases, officers were found to be unfit for duty at the time of the misconduct involving a firearm. All except two were separated from the Department, either by termination, resignation, or retirement. Three were terminated, two of whom were criminally charged with felony offenses and were terminated after they were convicted of the felony criminal charges by outside law enforcement agencies. Of the four remaining cases, one officer resigned,<sup>51</sup> one was permitted to retire, and two received dismissal probation and loss of vacation and/or suspension days.

In both cases where the officer was not separated from the Department, the menacing with a firearm charge was unsubstantiated by IAB, but DAO nonetheless charged the officers with menacing and

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<sup>50</sup> Because the Commission did not obtain the entire investigative file for all cases, it was difficult to ascertain the exact number of cases where this finding was omitted.

<sup>51</sup> This officer was also charged with criminal violations in Suffolk County and resigned from the Department before the completion of the criminal case.

they pled guilty to this charge. The closing memoranda completed by DAO, which sets forth the reasons for the plea offer, failed to address the termination policy and specify the exceptional circumstances which warranted a penalty other than termination. While it is unclear whether exceptional circumstances existed in these cases, for the Department to follow its defined policies, it must articulate the exceptional circumstances whenever the officer is not terminated so as to assure that its policy is being applied consistently.

In the one case where the officer was allowed to retire as part of a negotiated plea instead of facing departmental charges and possible termination, the Department also did not specify the reasons which warranted such action.<sup>52</sup> The officer was charged with being unfit, physically attacking and then pointing his weapon at a civilian, whom the officer later, without any foundation, claimed was a criminal. This officer was later convicted of third-degree assault in criminal court regarding the above incident. His disciplinary record also included a prior finding of unfitness for duty in 1995, involvement in a domestic incident in 1998, and poor evaluations and several chronic sick designations.<sup>53</sup>

The Commission also examined the off-duty firearm misconduct cases that were not alcohol related. Overall, the Department properly disciplined the officers involved in the majority of cases. However, in some cases, the Commission found that the imposed penalty was too lenient. For example, in one case, an officer was in a public park with a group of friends on the night of July 4<sup>th</sup>. Some of the individuals with the subject officer were drinking and received summonses, and they were all asked to leave the park by

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<sup>52</sup> The officer retired with a disability pension.

<sup>53</sup> The Department designates officers who have excessive sick-leave absences as “chronic sick.” For each period of time the officer is designated as such, this classification is entered in the officer’s CPI and his medical history record.



on-duty police officers. A short time later, during a dispute with another group of individuals, the subject officer fired four gun shots in the air. He received dismissal probation and the loss of 30 vacation days as a penalty. The Commission believes that this misconduct warranted termination.

**c. Domestic Incidents**

The Commission reviewed 99 cases involving domestic incidents. The facts of each case varied greatly, ranging from verbal threats by telephone to physical assaults causing serious injury. Other cases included allegations of trespass, destruction of property, and harassment. In reviewing these cases, the Commission looked at whether the penalties appropriately reflected the specific facts of the allegation and the officer's disciplinary history. Overall, the Commission found that while many cases were appropriately adjudicated, in approximately one-third of all the cases reviewed, the penalty was not sufficient. In these cases, the Commission believed either that the offense warranted termination, a greater number of penalty days, or dismissal probation in conjunction with penalty days. In evaluating the cases, the Commission considered the seriousness of the domestic act, (i.e., whether it involved physical violence or a physical injury, the extent of threatening behavior without physical injury, or the extent of any destruction of property), the officer's disciplinary history in general, and the officer's history with respect to domestic violence.

In the context of serious violent behavior, resulting in significant physical injury, the Department generally and appropriately terminated officers. In some cases, however, where the officer was not terminated, the Commission found that the Department should have levied more severe penalties than those imposed. In cases involving serious violent behavior, where the officer is not terminated, the Department, in addition to imposing a significant number of penalty days, should also, where appropriate, impose

dismissal probation and counseling. Due to the recurring nature and pervasive effects of domestic violence, it is important that the Department send a clear message that such misconduct will not be tolerated. Terminating officers who commit such acts or imposing dismissal probation are effective means of conveying this message. Dismissal probation may be especially effective where an officer has a history of domestic violence.

One case, for example, that warranted a harsher penalty due to the severity of the violence, involved an officer who choked his wife, slammed her head to the ground, causing a laceration which required stitches, and then continued choking her through the open window of a car. The officer received a penalty of 45 days and dismissal probation, with counseling. Due to the violent nature of the assault and the fact that the officer had a prior disciplinary record, the Commission believes that this penalty was too lenient. In another case, the subject officer was found guilty of assaulting his girlfriend on two separate occasions. The officer was found guilty after an administrative trial and received a penalty of 41 suspension days.<sup>54</sup> Due to the nature of the misconduct and the fact that it occurred on two separate dates, the Department, since it did not seek to terminate the officer, should have imposed a period of dismissal probation in addition to the suspension days.

As noted above, in addition to considering the severity of the misconduct, an officer's disciplinary record must be considered when fashioning a penalty. Indeed, the Department believes in, and generally follows, a policy of progressive discipline in all areas of misconduct. An officer without a history of domestic abuse should not be punished as severely as an officer with prior domestic problems. However,

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<sup>54</sup> The subject officer was also charged with threatening the victim by putting his firearm in her mouth, but he was found not guilty of that charge.

officers who commit misconduct on more than one occasion should incrementally receive more severe punishment, including termination when necessary. This conveys the message to subject officers and all members of the service that certain types of behavior will not be tolerated and that repeated acts of misconduct will be taken seriously.

In the Commission's review of cases in the context of domestic incidents, there did not appear to be an appreciable difference in the penalties given to those officers with prior domestic incidents in their background and officers involved in their first domestic incident. For example, one officer, assaulted his girlfriend with whom he lived. He threw a flashlight at her head during a verbal altercation and then when she attempted to call for help, he hit her hand, and punched her in the stomach, ribs and head, knocking her to the ground. She was treated at the hospital for a bump to her head and bruising to her hand and ribs. This officer had previously been involved in a domestic incident and was modified as a result of that incident in 1997. In the present case, the officer received a penalty of the forfeiture of 30 vacation days and dismissal probation. While this penalty may be significant, it was consistent with the penalties imposed against officers for similar misconduct and no prior domestic incidents on their records.

Similarly, even where an officer engages in threatening behavior which does not become physical and has been previously disciplined for a prior domestic incident, the Department should impose significant penalties. Verbal threats, particularly of serious bodily harm or death may be indicative of emotional issues that may become more physical in the future. Although generally the Department appropriately adjudicated these cases, some penalties were particularly light. In one case, the officer disrupted his daughter's kindergarten graduation ceremony because his former wife brought her fiancée to the graduation. He screamed profanities and threatened to kill his former wife and her fiancée. The officer had a prior domestic

incident with his present wife in 1998 which led to him being placed on restricted duty. At the time of this incident, he had been employed by the Department for five years, had received several low annual performance evaluations, and had been chronic sick. Yet, the officer received a penalty of only twenty vacation days, in conjunction with psychological counseling. This officer clearly should have, absent being terminated, received more penalty days and been placed on dismissal probation.

**d. Probationary Police Officers and Officers on Dismissal Probation**

Probationary police officers (“PPOs”) as well as officers on dismissal probation may be summarily terminated for any reason as long as the termination is not based on bad faith, based on a constitutionally impermissible reason, or in violation of statutory or decisional law.<sup>55</sup> While the rationale for this mechanism varies for these two groups of officers, for somewhat similar reasons, the Department may summarily terminate these officers without providing a due process hearing. The Commission therefore evaluated, in general, how these officers were disciplined and if they were terminated where appropriate. Also, because this mechanism is in place so that the Department may end an officer’s association with the Department as soon as it has good reason to question the officer’s fitness for service, the Commission looked at whether these officers were disciplined and terminated in a timely manner.

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<sup>55</sup> According to the New York City Personnel Rules and Regulations, Section 5.2.7, an agency head “may terminate employment of any probationer whose conduct and performance is not satisfactory after the completion of a minimum period of probationary service and before the completion of the maximum period of probationary service by notice to the said probationer and to the city personnel director.” See York v. McGuire, 63 N.Y.2d 760, 480 N.Y.S.2d 320, 469 N.E.2d 838, 839 (N.Y. 1984); Johnson v. Katz, 68 N.Y.2d 649, 505 N.Y.S.2d 64, 496 N.E.2d 223 (N.Y. 1986); Juan v. County of Suffolk, 209 A.D.2d 523, 618 N.Y.S.2d 833, 834 (2d Dep’t 1994) (stating that the Department’s determination to discharge the officer must not be arbitrary and capricious and must have a rational basis and be carried out in good faith).

## 1.) Probationary Police Officers

When police officers are first hired by the Department they are placed on a two year probationary period. This time period allows the officers to demonstrate to the Department their ability to perform as police officers as well as their ability to abide by the Department's code of conduct both on- and off-duty. It also enables the Department to terminate officers who are unable to perform appropriately during this probationary period without expending additional time and resources on them. As discussed above, during this period, these officers may be terminated by the Commissioner without serving charges or conducting an adjudicatory hearing.

In the Commission's report, *The New York City Police Department's Disciplinary System: How the Department Disciplines Probationary Police Officers Who Engage in Misconduct*, ("PPO Report"), released August 1998, the Commission examined the penalties imposed against PPOs and whether those penalties were imposed in a timely fashion. The Commission found that officers in the vast majority of cases reviewed received appropriate penalties. However, while many cases were adjudicated in a timely fashion, the Commission found that in some termination cases, the Department did not terminate the officer expeditiously.

The Commission revisited these issues in this Report and reviewed 42 cases involving PPOs. Over 75% of PPOs charged with serious off-duty misconduct were separated from the Department either by resignation or termination.<sup>56</sup> Typically, in cases involving charges of narcotics possession/ingestion,

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<sup>56</sup> Specifically, 33 of 42 officers charged with such misconduct either resigned or were terminated without an adjudication hearing. The remainder pled guilty to some type of misconduct in exchange for a negotiated penalty. In addition, in two of the cases where the PPO did not resign or was terminated, the original serious misconduct charge was dismissed or further investigation showed that the officer did not commit the misconduct alleged.

domestic incidents, alcohol related incidents, and the failure to safeguard firearms, officers either were terminated or resigned. Further, of those PPOs who were not separated from the Department, significant penalties were imposed including penalty days, dismissal probation, and extension of probation periods. These cases generally involved off-duty physical altercations.

While the Commission questioned the ultimate penalty imposed in a some cases, overall it appears that the Department is appropriately imposing penalties in the majority of misconduct cases involving PPOs.

In eight cases, however, the Commission believes that the penalty imposed against the PPO was inappropriate, either because it was too lenient or because the officer should have been terminated. For example, in one case, the officer was involved in a motor vehicle accident with property damage and then left the scene. The complainant reported to the precinct that the subject officer left his vehicle, identified himself as an police officer, and then drove away. The complainant also stated that the subject officer was intoxicated. Approximately two hours after the accident the officer was found sleeping in his vehicle on a public street near the location of the accident. During his official interview, he admitted drinking earlier in the evening. The officer received a penalty of dismissal probation, forfeiture of 30 vacation days, and an extension of the entry level probation term. As the Trial Commissioner noted, and the Commission agrees, this type of offense involving a PPO typically warrants termination and should have been the penalty in this case.<sup>57</sup>

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<sup>57</sup> The Trial Commissioner also noted that the officer's two PG interviews regarding the incident were inconsistent. The Commissioner, however, disagreed and credited the officer's version of the events that he and the other driver agreed to deal with the damage themselves and the officer had not improperly left the scene of the accident.

Although the Department is, in general, appropriately terminating PPOs in the majority of cases, there is an issue about the timeliness of adjudications. In nine of the sixteen cases where a PPO resigned, he did so within approximately one month of the alleged misconduct. The remaining seven officers resigned between approximately two to twenty-one months from the date of the misconduct. With respect to the termination cases, six of the sixteen PPOs were terminated within six months of the misconduct. In the remaining ten cases, four took approximately one year or more to adjudicate. In cases where the officer did not resign or was not terminated, seven of the nine cases took more than one year to adjudicate.<sup>58</sup>

In some cases, pending criminal charges contributed to the delay in the Department's adjudication of the case. As discussed at page 60, the Department generally and appropriately delays the Department's case until completion of the criminal case in deference to the request of prosecutors so as to not jeopardize the criminal case.<sup>59</sup> This is prudent and understandable in cases where an administrative trial may taint the evidence to be presented at the criminal trial. However, in cases involving PPOs, the Department need not proceed in the same fashion administratively. It solely needs to act in good faith. Therefore, the Department should evaluate each case where a PPO is charged with misconduct individually to determine if it should proceed with terminating the PPO notwithstanding the pending criminal case. It should examine whether good cause for termination is demonstrated by the paperwork or if conducting further investigation in order to appropriately discipline the officer would taint the criminal case.

In one case, for example, the subject officer was arrested out of state when he engaged in a car

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<sup>58</sup> In these cases, the officers received penalties ranging from the loss of vacation days to dismissal probation and an extension of the entry level probationary term in conjunction with penalty days.

<sup>59</sup> This is usually requested so as not to endanger the criminal case with additional statements and/or testimony of witnesses which may cause evidentiary problems.

chase with a DMV inspector, reaching speeds in excess of 100 mph and continuing for 13 miles. In this type of case, the facts may be readily determined by a review of the arresting officer's paperwork. Since he observed the incident, his report of the events should provide sufficient reliability to determine an appropriate penalty. In this instance, waiting until the resolution of a criminal case before adjudicating the administrative case may not be necessary.<sup>60</sup>

## **2.) Officers on Dismissal Probation**

Officers on dismissal probation, like PPOs, may be terminated by the Police Commissioner without serving charges or conducting an adjudicatory hearing. The rationale being that when an officer is placed on dismissal probation he has already in theory been dismissed by the Department, but that dismissal is held in abeyance for a period of one year. When placed on dismissal probation, the officer is told that if other misconduct occurs, he may be summarily terminated. Thus, dismissal probation is a tool that the Department can use to give officers a chance to redeem themselves while retaining the ability to quickly terminate them if they cannot modify their behavior. Therefore, the Commission sought to examine whether the Department appropriately disciplined officers who were on dismissal probation at the time of subsequent misconduct, and if the discipline was imposed in a timely manner.

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<sup>60</sup> In addition to the issue raised above, the Commission disagreed with the penalty in this case. Instead of being terminated, the officer received a penalty of dismissal probation and 30 days suspension.



In general, the Department appears to be appropriately terminating officers on dismissal probation who have been charged with additional serious misconduct. There were seven cases fitting this criteria. Of those seven officers, six were terminated for subsequent misconduct. In the remaining case, the charges against the officer were dismissed after the complainants could not be located.<sup>61</sup>

Additionally, most of these cases were adjudicated in a timely manner. Three of the six officers who were terminated, were terminated within three months from the date of the misconduct and a fourth officer was terminated within four months. However, the three remaining cases took substantially longer. From the date of incident, one case took over two years until the charges were dismissed and one case took approximately one year to terminate the officer. In the remaining case, the officer was terminated more than two years from the date of incident, and the case was not closed until another two years later.

As with other areas of misconduct, delays at times may be attributed to pending criminal charges. As discussed above, however, officers on dismissal probation, like PPOs, may be terminated without an adjudicatory hearing. For the same reasons discussed in the context of PPOs, therefore, the Department should evaluate on a case-by-case basis whether an officer should be terminated prior to the conclusion of the criminal case.

## **5. Delay/Adjudication Time Frames**

The Commission also reviewed the issue of delay in the adjudication process of off-duty misconduct cases. Clearly, the expeditious resolution of disciplinary cases is important for both officers and

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<sup>61</sup> This case involved an incident that occurred in April 1998.

the public. It demonstrates that misconduct will not be tolerated and that misbehavior will be quickly addressed. The Commission recognizes, however, there are several factors, some of which are beyond the Department's control, that may affect the speed at which a case can be adjudicated. Such factors may include the complexity of the underlying investigation, whether the officer is on dismissal probation or is a PPO, and whether there is a corresponding criminal investigation for the same misconduct. In the Commission's sample there was a substantial number of cases that involved criminal conduct and therefore had accompanying criminal cases. The Commission therefore sought to evaluate if the Department acted as expeditiously as possible in resolving these cases.

There were 116 off-duty misconduct cases in the Commission's review involving various categories of criminal conduct. In addition to the types of misconduct discussed throughout this section, cases involved, for example, narcotics violations, fraud, theft, and sexual misconduct.

The pendency of a criminal case generally delays the resolution of the Department's administrative case. Prosecution offices routinely request that departmental trials be delayed until after completion of the criminal case. This is done so as to not compromise the criminal case, and, absent exceptional circumstances, the request is usually honored by the Department. In these situations, the Department does not commence the adjudication of its own case until completion of the criminal proceedings.

Because a criminal case may take years to resolve, the viability of the Department's case at times may be affected by the passage of time. It is therefore imperative that the Department act as quickly as possible upon the resolution of the criminal case. In certain instances an officer may be terminated by the Department without a hearing, such as upon a conviction of a felony or another crime involving the oath of

office.<sup>62</sup> However, in most cases, the Department must proceed with an administrative trial or a negotiated settlement.

The Commission found that where an officer was convicted of a felony, the Department's administrative case was closed expeditiously. However, in many cases where the officer was disciplined administratively by negotiated settlement or after a hearing, there were significant delays between the closing of the criminal case and the start of the administrative proceedings. The Commission recognizes that upon proceeding with the administrative case at the resolution of the criminal case, the Department may have to do some additional investigation and prepare for negotiation or trial. Also, once the Department Advocate is ready to proceed, other delays are outside the Advocate's control, such as congestion of the court calendar and delays by defense attorneys. While some of the above delays are outside the Department's control, some delays may be minimized by the Advocate. Specifically, the Advocate should be in regular contact with the prosecutor and witnesses so that the Advocate remains informed about the status of the case and is prepared to proceed as quickly as possible after its conclusion.

## **6. Conclusion**

In general, the Department is appropriately disciplining officers who engage in serious off-duty

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<sup>62</sup> See Public Officers Law Section 30(1)(e). An officer may also be terminated without a hearing for other criminal convictions. According to Administrative Code, Section 14-115, the Police Commissioner has the discretion to terminate an officer upon conviction by "any court or officer of competent jurisdiction." Therefore, if an officer is convicted of a misdemeanor offense in criminal court that does not involve his oath of office, rendering Public Officers Law Section 30 (1)(e) inapplicable, the officer may still be terminated by the Police Commissioner.

misconduct. Specifically, in the context of alcohol related cases the Department is more frequently imposing all applicable charges against officers and imposing consecutive sentences. In the context of domestic incidents, however, the Commission found that some cases warranted a more significant penalty than that imposed due to the officer's disciplinary history or the nature of the charges. The Commission will continue to review and monitor these issues.

## **B. False Statement Cases**

### **1. Background**

Given its six-year existence, the Commission is in the unique position to follow-up on recommendations it has made in past studies and report on whether, and to what extent, the Department has implemented those recommendations. Since its inception, the Commission has regularly examined the appropriateness of the penalties imposed upon those members of the service found to have made false statements during the course of their employment. In its first report,<sup>63</sup> the Commission began this examination by focusing on those officers who committed perjury in judicial proceedings by providing false statements under oath. In that report, the Commission stated that the predominant and most widespread harmful effect that resulted from officers lying under oath was the erosion of the public's and the justice system's confidence in the general credibility of all police officers. Specifically, the Commission cited judges' and juries' skeptical views of police testimony, which potentially could result in the dismissal of those criminal cases where police officers were the sole prosecution witnesses.

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<sup>63</sup> See *First Report of the Commission* (March 1996), at pp. 72-79.

On December 12, 1996, the Commission published a more comprehensive study addressing how the Department disciplines officer who were accused of making false statements.<sup>64</sup> The cases reviewed by the Commission involved: false statements to other law enforcement agencies, whether or not these statements were made under oath; false statements made during official Department investigations; false statements to Department supervisors; false statements made to conceal the misconduct of other officers; filing false affidavits; submitting false information to other state agencies; and falsely reporting crimes.<sup>65</sup>

After examining cases and speaking with high ranking officials within the Department, the Commission found that, in general, the past discipline imposed upon those officers found guilty of making false statements had too often been inadequate. In addition to referring to the corrosive effects on the system when police officers lie, the Commission also referred to the fact that once an officer has been found to have lied, such a finding seriously undermined that officer's credibility. This largely eliminated that officer's usefulness in any situation where it was likely that testimony would be necessary. Based upon this premise, the Commission recommended that whenever an officer was found to have made a false statement, the appropriate penalty would be termination of his employment with the Department unless extenuating, mitigating factors existed. Simultaneous with the release of this report, a Department policy was announced stating that officers found to have made a false official statement would be terminated absent exceptional circumstances. The existence of these exceptional circumstances were to be decided upon by the Police

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<sup>64</sup> See the Commission's report, *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements* (December 12, 1996).

<sup>65</sup> *Id.* at p. 9.

Commissioner on a case by case basis. This policy was endorsed by the Commission as a positive step towards addressing those issues identified by the Commission in its report.

The Commission revisited this issue in its *Third Annual Report*<sup>66</sup> and conducted a follow-up study in 1999.<sup>67</sup> At the conclusion of the 1999 follow-up study, the Commission found that the Department was engaged in a good faith effort to implement the 1996 False Statement policy. However, the Commission also found that the Department was not adequately documenting the reasons behind its decisions in those situations where an officer was not terminated, even though he had been found guilty of making an official false statement. Documentation was also inadequate when the false statement charge was dismissed upon the Advocate's motion<sup>68</sup> and when the Department failed to charge an officer with making a false statement even though such a charge was supported by the facts of the case.

During these studies, the Commission identified additional issues that developed as a result of the implementation of the 1996 policy. In some cases, officers were not being charged with making a false statement though the charge was clearly applicable and instead were being charged with different charges which did not carry a potential penalty of termination.<sup>69</sup> Similarly, in some instances where the officer had been found to have made a false statement, but the underlying conduct about which the officer lied was not deemed serious enough to justify termination by itself, termination was not being sought or imposed. During

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<sup>66</sup> See *Third Annual Report of the Commission* (August 1998), at pp. 12-15.

<sup>67</sup> See the Commission's report, *The New York City Police Department's Disciplinary System: A Review of the Department's December 1996 False Statement Policy* (August 1999) ("*1999 False Statement Report*").

<sup>68</sup> The Advocate is a representative of the Department Advocates Office and is responsible for prosecuting charges and specifications against members of the service in the Department's trial rooms and in the Office of Administrative Trials and Hearings ("OATH").

<sup>69</sup> Officers were charged with charges such as impeding an investigation or filing false reports.

the Commission's 1999 study, the Department clearly reiterated that all false statements within the purview of the policy, regardless of the nature of the underlying misconduct, required termination of the officer unless exceptional circumstances existed.

In its *Fifth Annual Report*, the Commission again looked at this issue.<sup>70</sup> After reviewing 109 cases, the Commission concluded that the Department generally was appropriately terminating those members of the service found to have made false statements in the P.G. 206-13<sup>71</sup> context, but was less consistent when the officer was found to have lied in other circumstances. Additionally, the Commission reiterated that the Department, Trial Commissioners,<sup>72</sup> and the Police Commissioner were still not adequately documenting the reasons behind decisions to impose a penalty less than termination when the officer was found guilty of making a false statement, or documenting the reasons why they chose to not charge an officer with making a false statement even though the facts supported such a charge.

For this *Annual Report*, the Commission again followed-up on the Department's adherence to the 1996 False Statement policy. As in previous studies, the Commission found that while those members of the service who made false statements during P.G. 206-13 hearings or in other testimonial capacities generally were separated from the Department, the policy continued to be inconsistently applied in other

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<sup>70</sup> See *Fifth Annual Report*, at pp. 42-55.

<sup>71</sup> In a hearing conducted pursuant to P.G. 206-13, an officer is required to answer any questions directed towards him or risk termination. Because of the mandatory nature of these interrogations, any statements made by the officer cannot be used against him in any pending or future criminal proceedings. However, these statements can be used against the officer in administrative departmental disciplinary proceedings. Officers interviewed pursuant to this provision of the Patrol Guide can be targets of an investigation or witnesses.

<sup>72</sup> In this context "Trial Commissioner" also refers to the Administrative Law Judges ("ALJ") who preside over the hearings conducted at OATH. The Trial Commissioners adjudicate issues of guilt or innocence of the charges, evidentiary issues, and preside over plea negotiations. The Trial Commissioners also recommend penalties for disciplinary infractions to the Police Commissioner; however, the final decision concerning the appropriate penalty to be imposed belongs to the Police Commissioner.

circumstances.

## **2. Methodology**

In selecting cases for review, the Commission examined the documents provided by the Department for all of the cases adjudicated between January 1, 2000 and July 31, 2001.<sup>73</sup> This review encompassed 2100 cases. The Commission then more closely examined 179 cases involving any type of false statement. As it had done in previous studies, the Commission then excluded those cases which did not contain the type of false statements contemplated by either the Commission's 1996 report or the Department's 1996 policy. Those excluded cases involved false statements made to supervisors in non-investigatory circumstances, and those false statements involving time and leave issues that did not demonstrate a pattern or practice of making false statements. While serious and potentially warranting termination in some cases, this category of cases did not fall within the 1996 policy. The instant review resulted in 150 cases.

## **3. Analyses**

As set forth in the chart below, approximately one half of the 150 cases<sup>74</sup> reviewed involved false

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<sup>73</sup> These documents included the charges and specifications, Trial Commissioner's written decision, plea memorandum drafted by the Advocate, and any included memorandum prepared by those officers who investigated the allegations. These documents would set forth the facts surrounding the misconduct and the reasons underlying the decisions as to guilt and as to the appropriate penalty.

<sup>74</sup> If a case had two or more officers charged together, each officer was counted as a separate case. Further, if an individual member of the service had more than one case pending against him, those cases were counted as one case if the same disposition was imposed for all of the separate cases.



statements made in a testimonial setting.<sup>75</sup> The remainder of the cases involved unsworn false statements that were made to investigative bodies, false entries in official records, falsely reporting crimes, off-duty fraudulent conduct, and other miscellaneous false statements.

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<sup>75</sup> For the remainder of this report a “testimonial” or “sworn” setting refers to any proceedings in any civil or criminal courts, any departmental proceedings, any other statements made under oath, and P.G. 206-13 interviews.

Based on its analysis of this sample of cases, the Commission found that in the vast majority of cases where an officer was found guilty of making a false statement in a testimonial context, the officer was appropriately separated from the Department.<sup>76</sup> Making false statements in other contexts, whether during investigations or in written documents, is also damaging to the credibility of the officer. Yet, in non-testimonial contexts, the Commission found that the Department was more likely to impose a penalty consisting of a one year period of dismissal probation and the loss of vacation days or a period of suspension rather than terminate the officer.<sup>77</sup> This practice is problematic because it leads to a less consistent and predictable treatment of false statements made in non-testimonial settings. Given the rationale urged by the Commission in advocating the false statement policy, a distinction between testimonial and non-testimonial false statements does not seem justified, particularly if such statements are either in the investigative context or in connection with the officer's performance of his professional responsibilities.

As in prior studies, the Commission also noted nine cases where false statement charges would have been appropriate based upon the asserted facts of the case yet other charges which do not require

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<sup>76</sup> Separation from the Department included resignation, retirement, and summary termination based upon the officer's probationary status or conviction of a felony as well as outright termination of employment based upon the charged misconduct. For the purposes of this study, "termination" refers to any action which resulted in the officer no longer being employed by the Department unless otherwise specified in the body of this study.

<sup>77</sup> This appeared to be true across all categories of false statements not made in a testimonial context with the exception of most fraud cases.

termination were levied instead.

**Breakdown of False Statement Cases, by Classification:**

	<i>Total Number of Cases:</i>	<i>Guilty and Terminated</i>	<i>Filed<sup>78</sup></i>	<i>Guilty and Not Terminated</i>	<i>Not Guilty or Charges Dismissed</i>
<b>False Statements at a P.G. 206-13 hearing or other testimonial setting:<sup>79</sup></b>	74	21	11	8	34
<b>Other False Statements:<sup>80</sup></b>	67	12	19	30	6
<b>Failure to charge:</b>	9	N/A	N/A	N/A	N/A

**a. False Statements at a P.G. 206-13 Interview and Other Testimonial Settings**

In the Department’s 1996 False Statement policy, those false statements made in the context of a

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<sup>78</sup> When an officer is separated from the Department for any reason during the pendency of a disciplinary case, the Department typically “files” charges nonetheless to preserve its case against the officer in the event he reappplies to the Department. The Commission considers such cases to have positive outcomes because the officers involved are separated from the Department.

<sup>79</sup> This category includes false statements made during Federal and Criminal Court proceedings, in Grand Jury proceedings, in sworn affidavits, and during departmental hearings.

<sup>80</sup> See below at pp. 80-84 for further discussion of these cases.

P.G. 206-13 interview, during testimony at a criminal or civil trial, or under oath, are specifically enumerated as examples of false official statements requiring termination absent exceptional circumstances.

### **1.) Cases Where the Officer is Terminated**

As stated above, the Commission found that in the majority of those cases with testimonial falsehoods, the Department is appropriately terminating the officers' employment. Of the 74 cases in this category, 66 involved statements made during a P.G. 206-13 interview.<sup>81</sup> Of the 29 cases where the member of the service was found guilty of making a false statement in the P.G. interview, the resulting penalty in 21 cases was termination.

In one case involving two members of the service, the Trial Commissioner recommended that the officers be terminated after finding them guilty of lying during their P.G. interviews. This recommendation was made despite the officers' lack of any disciplinary history and their competent evaluations. In explaining this recommendation, the Trial Commissioner specifically relied upon the Department's 1996 False Statement policy and wrote:

I have examined the record for the existence of exceptional circumstances and can find none. It is evident that [Officer A] lied in an attempt to conceal inappropriate conduct. [Officer B] apparently lied for no other reason than to attempt to protect his co-Respondent. Neither of these motivations is of a mitigating nature. In fact, lying to conceal misconduct or to protect other police officers who have engaged in misconduct are two of the principal practices which the policy was designed to curtail.

The Commission agrees with this analysis and believes the dispositions for these officers were appropriate.

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<sup>81</sup> In some cases, there were multiple charges involving false statements made in different settings. For the Commission's statistical analysis, if a case involved a statement made in a P.G. interview or other testimonial setting, the case was included in that category and not in any other category that might have applied.

Not only did these officers make false statements during their P.G. interviews, they continued to make false statements, under oath, at their Department trials when they testified in their own defense. These actions represent precisely the type of conduct at which the 1996 policy was directed -- deliberate lying to cover-up potential police misconduct. By lying, these officers also effectively destroyed their future credibility if called upon to testify in connection with their official responsibilities. As noted by the Trial Commissioner, when people talk about "the blue wall of silence," this is the type of conduct to which they are referring.

While the majority of cases in this category concerned false statements made during a P.G. interview, eight cases involved false statements that solely occurred in other testimonial circumstances.<sup>82</sup> Seven cases involved charges of perjury by an officer.<sup>83</sup> In four of these cases, the officers were separated from the Department either through termination, resignation, or retirement, while the other three officers were found not guilty of the false statement charges. The remaining case addressed an issue previously identified by the Commission. In its prior reports, the Commission has commented on the Department's failure to pursue the possibility of bringing a separate false statement case based upon a Trial Commissioner's finding that the officer's testimony on his own behalf in a prior disciplinary proceeding was incredible or otherwise questionable in its veracity. In this case, the subject officer was originally charged with off-duty discourtesy. At his departmental trial on these charges, the subject officer denied participating in the altercation and asserted that another individual was present who had committed the offensive behavior

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<sup>82</sup> There was one other case where it was unclear in what setting the false statement was made as the Commission only had access to a copy of the charges and specifications, and no details surrounding the false statement were included in the charge.

<sup>83</sup> In this context, perjury also denotes making a false written statement under oath.

towards the complainant. After the ALJ found the subject officer guilty of these charges, the subject officer was charged with making a false statement based upon his testimony during the original discourtesy trial.

The Trial Commissioner, after hearing evidence, determined that the subject officer's testimony during his previous trial had been false. Finding no exceptional circumstances, termination was recommended and then implemented by the Police Commissioner. The Trial Commissioner concluded her decision by noting that due to the subject officer's false testimony at his original trial, "his ability to testify credibly at any other proceeding, which is a basic requirement for police officers, has been virtually negated."

The Commission found one other case involving two officers where their testimony at their departmental trial instigated a further investigation ordered by the Police Commissioner to determine whether the subject officers had testified falsely in their own defense.<sup>84</sup> While the Commission views the diligence on the part of the Department to enforce the False Statement policy in this context as positive, there were ten other cases where the Trial Commissioner clearly stated that the subject officer's testimony at trial was incredible.<sup>85</sup> In these cases, there was no evidence of any follow-up investigation into possible false statement charges.

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<sup>84</sup> This case was not included in the table at p. 69 because there was no false statement charge brought and apparently, after the subsequent investigation, not enough evidence to sustain such a charge. Additionally, the Advocate was unable to gather sufficient independent evidence to prove the false statements.

<sup>85</sup> This number was calculated from the 179 files that the Commission reviewed in depth. Cases where the officer was terminated after his original trial were also excluded from this calculation.

## 2.) Cases Where the Officer is Not Terminated

While the vast majority of those cases involving a false testimonial statement resulted in termination of the officer's employment, in its review, the Commission found eight cases where the officer, although found guilty of making a false statement in a P.G. interview, was given a less severe penalty than termination. The majority of these penalties were recommended by the Trial Commissioner after trial or negotiated by the Department Advocate. In only one of these cases was a recommendation of termination by the Trial Commissioner overturned by the Police Commissioner.<sup>86</sup> In four of the eight cases at issue, the Commission does not believe that exceptional circumstances existed justifying a departure from the False Statement policy.

In the Commission's *Fifth Annual Report*,<sup>87</sup> the Commission commented on the use of multiple P.G. interviews by officers to correct prior false statements upon the officers becoming aware of the evidence the Department possessed against them. The Commission subscribed to the view that an officer's correction of earlier misstatements at later P.G. interviews should not automatically mitigate against termination. In determining whether the recantation of the false statement at a subsequent P.G. interview should constitute an exceptional circumstance, the Department needs to look at the circumstances surrounding the second P.G. interview. Factors to be considered include: whether the subsequent P.G. interview was held at the request of the subject officer or for some other reason;<sup>88</sup> the time interval between

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<sup>86</sup> There was also, however, one case where a plea was negotiated between the Advocate and the subject officer that involved a term of dismissal probation and the loss of vacation days which was disapproved by the Trial Commissioner as being too lenient, but was accepted by the Police Commissioner.

<sup>87</sup> See *Fifth Annual Report*, at p. 48.

<sup>88</sup> Other reasons a subsequent P.G. may be held is so that investigators can gather further information, follow-up on new information received, or a new allegation has arisen during the course of the original investigation.

the first P.G. interview where the false statement was made and any subsequent P.G. interview where the subject recants the false statement; and the apparent motivation of the subject to recant, i.e., did he become aware that the Department had additional evidence against him.

In the Commission's present review of false statement cases, it appears that in the majority of those cases where multiple P.G. hearings were held and the subject officer then recanted his prior false statements, the Trial Commissioners, Advocates, and the Police Commissioner are not considering all the surrounding circumstances of the recantation and the prior false statements. Instead, they are giving undue weight to the subsequent recantation in deciding upon the appropriate penalty. In two of the four cases where the Commission disagreed with the outcome of the case, the fact that the subject officer admitted his misconduct in a later P.G. interview was considered an extraordinary circumstance justifying a penalty less than termination. This characterization of the recantation was made without specifying the surrounding conditions that differentiated it from other cases with similar recantations.<sup>89</sup>

In one case, the officer pled guilty to aggravated harassment in the second degree, making an inquiry into the Department computer system which was not related to official Department business, and making a false statement during a P.G. interrogation. The Trial Commissioner recommended a penalty of

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<sup>89</sup> One case where the Commission agreed with the Trial Commissioner's recommendation to dismiss a false statement charge based upon a recantation in a P.G. interview involved an officer who recanted his false statement during the same P.G. interview. There, the subject officer was charged with telling a civilian about a police investigation of his activities, knowingly associating with a person reasonably believed to have engaged in criminal activities, and making a false statement during a P.G. hearing when he stated that he only spoke with the civilian about the investigation after the subject officer was placed on modified assignment. In finding him not guilty of making a false official statement, the Trial Commissioner placed great emphasis on the fact that while the subject officer immediately stated that he did not inform the civilian about the investigation until after he was placed on modified duty, after a brief recess in the same P.G. interrogation, the subject officer retracted this statement and admitted to speaking with the civilian the day prior to his modification. The Trial Commissioner credited the subject's testimony that he was extremely nervous during the interview and found that there was no motive for him to lie. The Commission believes that this was an appropriate disposition as the subject officer came forward immediately to correct his misleading statement. This was not one of the eight cases referred to in this section of the report.



dismissal probation and the loss of sixty vacation days. While acknowledging that a false statement was a dismissible offense, the Trial Commissioner found that this subject officer's false statement did not merit dismissal because the statement was a mere denial of conduct which itself would not merit dismissal and the subject was forthcoming about all of his misconduct in his second P.G. interview.

In this example, the subject officer's second P.G. interview was held three months after his first P.G. interview. This interview occurred after a new allegation against the subject had arisen. Furthermore, even at this second P.G. interview, the subject did not change his initial false statement until he was confronted with actual documentary evidence that demonstrated the denied misconduct. (Additionally, however one views the seriousness of the alleged wrongdoing, as noted above, the Department has previously clarified that any false official statement requires dismissal absent the existence of exceptional circumstances regardless of the seriousness of the underlying conduct that is the subject of the false statement.) Therefore, neither of the Trial Commissioner's reasons should, on these facts, have qualified as exceptional circumstances.

In a second case, it was the Police Commissioner who found that a later recantation in a subsequent P.G. interview qualified as an exceptional circumstance. The Trial Commissioner cited the 1996 policy and recommended that the officer's employment be terminated. The charges in this case originated when a civilian was arrested for possession of a loaded firearm and a box of ammunition. Upon this arrest, the civilian alleged that the subject officer had forced him to sell guns and ammunition.<sup>90</sup> The ensuing

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<sup>90</sup> Although the officer was initially charged with this conduct and other offenses related to it, these charges were dismissed upon the Advocate's motion after the civilian, who was incarcerated, recanted and stated he would not testify without some benefit inuring to him. This left only the false statement charge described in the text accompanying this footnote.

investigation revealed that the ammunition that was possessed illegally by the civilian was connected to the subject officer. During his P.G. interview, the subject was asked whether he ever received ammunition through the mail or out of a catalog. The investigator had documentary evidence demonstrating that the subject officer had, in fact, obtained ammunition from a mail order catalog, but this evidence was not shown to the subject officer. He stated that he did not buy any ammunition and did not recall getting any ammunition through the mail. After this interview, the subject officer was immediately suspended. His lawyer, thereafter, turned over ammunition that the subject had in his apartment and stated that the subject officer had found the ammunition after the first P.G. interview. At a second P.G. interview, held over seven months later, the subject admitted receiving the ammunition when he ordered other items from a catalog. Citing the officer's testimony that he simply did not recall receiving the ammunition when he testified during the first interview, the Trial Commissioner found him guilty of making a false statement. The Trial Commissioner also wrote that the officer's testimony at trial was not credible and appeared tailored to explain the circumstances surrounding his encounter with the civilian and how he may have obtained the subject's ammunition. The Advocate recommended that the subject officer be fired and the Trial Commissioner concurred, specifically citing the Department's policy. However, upon review of the case, the Police Commissioner, although agreeing with the finding of guilt, imposed the lesser penalty of dismissal probation and a thirty day suspension. The exceptional circumstances referred to by the then Police Commissioner included that the subject officer turned over the ammunition to the IAB investigator after the first P.G. interview, candidly and truthfully admitted possession of the ammunition in a second P.G. interview,<sup>91</sup> and that the IAB investigators failed to disclose the documentary evidence they had to the

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<sup>91</sup> The circumstances that the subject officer described to explain how he came into possession of the

officer prior to the end of the first P.G. interview. The Police Commissioner explained that a continued denial after being confronted with the documentary evidence would have made the false statement case more compelling. Also taken into consideration were the officer's lack of prior disciplinary history and above average evaluation ratings. However, the Police Commissioner, in his decision to override the Trial Commissioner's recommendation to terminate this officer, failed to address the Trial Commissioner's finding that the officer was not credible in his recantation and was not credible in his testimony at trial.

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ammunition were confirmed by the IAB investigator.

Cases involving subsequent recantations, however, were not the only cases where the Commission disagreed with the decision to impose a penalty less than termination. There were also cases where the officer adhered to his false statement throughout the disciplinary proceeding, yet the Trial Commissioner only recommended a penalty of dismissal probation plus loss of vacation days without articulating what the Commission believes are exceptional circumstances. In one case, the subject officer had two disciplinary cases filed against him. The first charged him with menacing two individuals by displaying his firearm during a traffic dispute. The second matter charged the officer with making false statements at his P.G. interview when he denied his involvement in this altercation. After finding the subject officer guilty in both cases, the Trial Commissioner recommended a penalty of dismissal probation and a suspension for 30 days.<sup>92</sup> The Commission believes that this officer should have been terminated.

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<sup>92</sup> The Police Commissioner agreed with the Trial Commissioner's reasoning but not the penalty and increased the suspension period to 60 days.

In deciding upon the penalty, the Trial Commissioner relied upon two other cases as precedent. In one case, the officer was given dismissal probation and was suspended after he was found guilty of displaying his weapon to four people and falsely denying this misconduct during a CCRB interview. Immediate termination was not imposed based upon his seventeen year tenure, superior performance ratings, good disciplinary record, and lack of proof that he intended to discharge the firearm. In the second case cited by the Trial Commissioner, the officer received dismissal probation and lost twenty vacation days after pointing his firearm at a bicyclist and being discourteous. There was no separate charge of lying to the CCRB<sup>93</sup> or lying during a P.G. interview. The Department needs to ensure that the cases it cites as precedent are truly analogous to the case being decided and that they accurately reflect the Department's current policies.

In addition to the precedent cited by the Trial Commissioner, she also supported her recommendation through reliance on the officer's lack of disciplinary history, above average performance evaluations, and record of community service. While the Commission commends the Trial Commissioner for explicitly stating her reasons for recommending a penalty short of termination, the Commission does not agree that the lack of a prior disciplinary history and good performance evaluations alone constitute

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<sup>93</sup> The Trial Commissioner noted that in this case any interview would have occurred prior to the announcement of the 1996 policy.

exceptional circumstances. While possibly relevant in close cases, the circumstances which primarily must be examined in deciding upon a lesser penalty are those surrounding the false statement.<sup>94</sup>

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<sup>94</sup> A second case where the Commission believes that the subject officer should have been terminated involved a sexual harassment claim by an auxiliary police officer against the subject officer. Though the Trial Commissioner dismissed the sexual harassment claim and some false statement charges, she did find the subject guilty of other false statement charges. While the Trial Commissioner did not address the Department's false statement policy, she found that the lies told by the subject were basically mere denials of the alleged misconduct and his excellent service record weighed in his favor. The Commission believes that the subject officer should have been terminated pursuant to the Department's policy.

There were four cases where the Commission agreed with the conclusion that exceptional circumstances existed in cases involving false statements in the P.G. context. One case involved an officer who was out of his residence while on sick report without permission and lied about his whereabouts at his P.G. interview because he had actually been driving around contemplating suicide. At his mitigation hearing,<sup>95</sup> this officer testified that he lied at his P.G. interview to avoid embarrassment and a possible involuntary hospitalization. The Commission agrees that exceptional circumstances exist in this case to justify a departure from the penalty of termination, specifically, the subject officer's willingness to take responsibility for his actions by pleading guilty and the fact that he was forthright at the mitigation hearing as well as his state of mind at the time of the misconduct and when he made the false statement.<sup>96</sup>

The second case involved an officer who lied at his P.G. interview about a conversation he had with another officer who had perpetrated an act of excessive force upon a civilian. The following month during an interrogation by the Federal Bureau of Investigations, the subject officer admitted that he had lied during his P.G. interview. He also testified in the Federal criminal trial against this other officer. The exceptional circumstances relied upon by the Department in this case included the subject's voluntary and prompt cooperation with the Government's investigation, his admission to the prior lies without being confronted with any extrinsic evidence to induce that admission, and most critically, his willingness -- as attested to by an Assistant U.S. Attorney -- to testify at a federal criminal trial. The officer received a penalty of dismissal probation plus the forfeiture of ninety vacation days in exchange for his guilty plea to the false statement

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<sup>95</sup> A mitigation hearing is held before a Trial Commissioner after an officer has pled guilty to the offenses charged but wants to offer reasons to persuade the Trial Commissioner to recommend a less severe penalty than the penalty recommended by the Department.

<sup>96</sup> This officer received a penalty of dismissal probation and the loss of thirty vacation days.

charge. Although the Trial Commissioner did not approve of this negotiated settlement and the circumstances under which the subject officer made his false statement, this clearly demonstrates the necessity of the False Statement policy to deter lying to cover up the misconduct of other police officers.

The Commission believes that terminating this subject officer's employment would have caused a greater harm by deterring other potentially hesitant officers in later cases from coming forward, cooperating fully in investigations of their colleagues, and ultimately testifying.<sup>97</sup>

**b. Other False Statements**

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<sup>97</sup> In a third case, the Trial Commissioner imposed the loss of 40 vacation days after finding that the subject officer falsely denied having physical contact with officers who were trying to arrest her son. Mitigating factors cited by the Trial Commissioner included the emotionally charged situation about which the false statements were made, the fact that false statement charges were not added to the charges and specifications until 23 months after the statements were made without any explanation by the Department, and the officer's eighteen-year tenure with only a remote disciplinary history. Given the description of the arrest situation, the Commission believes that the Trial Commissioner was correct in her recommendation not to terminate the officer. In the final case, while the exceptional circumstances cited by the Advocate were equivocal, given the officer's lack of a disciplinary history, above competent ratings on his performance evaluations, and the ambiguity of the evidence proving the officer made a false statement, the Commission agrees with the negotiated penalty.



As discussed earlier, the Department is not as likely to terminate an officer who makes a false statement in a non-testimonial setting. In many of these cases, the specific charge of making a false statement is not brought against the officer, instead a different charge is brought that encompasses the same behavior a false statement charge would address.<sup>98</sup> The Commission does not take issue with the use of a similar charge instead of the exact wording of a false statement charge if the Department recognizes that the False Statement policy is still applicable.

In most of these types of cases, however, there is no reference to the False Statement policy in imposing a penalty or in negotiating pleas, and there is no specification of the exceptional circumstances that would justify a downward departure from the penalty of termination. Rather, the rationale usually provided is to justify imposing the penalty of dismissal probation. This rationale is often based upon the seriousness of the false action engaged in by the officer. An example of the Department's perception that false statements outside of the P.G. or sworn testimony context are not necessarily subject to the mandates of the False Statement Policy is demonstrated by the reasoning in a plea memorandum prepared by one Advocate to justify a penalty of dismissal probation plus loss of vacation days for conduct which included making false entries in Department records:

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<sup>98</sup> For example, an officer may be charged with causing false entries to be made in Department records instead of making a false statement.

[t]he [subject officer] is an integrity problem. The [subject officer's] lying should not be tolerated. However, he should not be dismissed for making false statements because, in recent cases, other [subject officers] (sic) have not been dismissed for making false statements when the false statement did not involve a Patrol Guide 118-9<sup>99</sup> hearing or sworn testimony.

Given that the rationales underlying the policy are to deter false statements, to deal with the attendant loss of the officer's credibility, and to prevent the use of false statements to hide police misconduct, the Commission believes that the False Statement policy should be consistently applied to falsities made in non-testimonial settings, since the same policy considerations apply. While the Commission does not suggest that termination is the only appropriate remedy in every one of these cases, the Commission believes that termination is the appropriate starting point and should be presumed to be the appropriate penalty unless exceptional circumstances are demonstrated.

These non-testimonial false statement cases can be divided into general categories of those involving false statements made to department or other investigative offices that were not made under oath or in P.G. interviews, falsifying police records or other business records, falsely reporting crimes, committing or inducing the commission of forgery, or engaging in various types of fraud. For the most part, the only one of these subcategories that consistently resulted in the officer's termination from the Department was engaging in fraud or making false statements to investigative bodies.<sup>100</sup> Generally, the officer was less likely to face the penalty of termination at the outset if the falsity involved making false entries in police department

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<sup>99</sup> As discussed above, Patrol Guide 118-9 is now known as Patrol Guide 206-13.

<sup>100</sup> Often, this termination was the result of the officer resigning or being terminated after being criminally convicted of a felony. However, an exception was for those cases where the subject officers committed automobile insurance fraud by using an address in counties that are associated with lower insurance premiums on their vehicle registrations instead of their actual resident addresses

records.

In total, 67 cases fell within the category of non-testimonial false statements. Of these, the breakdown is as follows:

	<i>Total Number of Cases:</i>	<i>Guilty and Terminated</i>	<i>Filed</i> <sup>101</sup>	<i>Guilty and Not Terminated</i>	<i>Not Guilty or Charges Dismissed</i>
<b>False Statement to Investigative Body:</b>	12	3	5	3	1
<b>Fraud:</b> <sup>102</sup>	15	5	6	4	0
<b>False Entries in Police Records:</b>	26	2 <sup>103</sup>	5	15	4
<b>Other:</b> <sup>104</sup>	14	2 <sup>105</sup>	3	8	1

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<sup>101</sup> See *supra*, at fn. 78.

<sup>102</sup> This category includes fraud on housing applications, tax fraud, and insurance fraud.

<sup>103</sup> One of these officers actually resigned after the departmental hearing of the charges was completed.

<sup>104</sup> These cases included altering parking tickets, falsifying business records, and forgeries.

<sup>105</sup> In one of these cases, the officer was actually given a plea that included suspension days and an immediate vested retirement. Since this agreement resulted in the officer's ultimate separation from the Department, it is included in this category.

Of the 31 cases where the subject officer was found guilty of making this non-testimonial type of false statement and was not terminated, the Commission disagreed with twelve cases.

An example of the failure to terminate after making a false statement to an investigative body can be seen from the following case. The subject officer, a supervising Sergeant, and his partner arrested three civilians in a park for Trespassing, Possession of a Controlled Substance, and Possession of a Firearm. To justify the stop of these civilians, the officers told the Assistant District Attorney that the reason for the stop was because the civilians were trespassing in the park since it was after dusk. The Assistant District Attorney requested that the subject and his partner take photographs of the park sign that announced that the park closed at dusk. When the officers went to the park, they found there was no sign, so they took a sign from another park, relocated it to the park which was at issue, and photographed it. They then gave these pictures to the Assistant District Attorney. The partner testified as to the authenticity of the pictures. The subject officer did not testify, and in his P.G. interview, he candidly admitted to these actions. Over the disapproval of the Trial Commissioner who believed that there should be no plea negotiation, the subject officer pled guilty and was placed on dismissal probation, lost sixty vacation days, and was demoted from a Sergeant to the rank of police officer.<sup>106</sup> In approving this agreement, the Department and Police Commissioner made a distinction between the actions of the subject officer and the commission of perjury by the partner. While the subject officer's conduct was not as bad as the conduct of his partner who testified in the Grand Jury, given the seriousness of what he did, the subject officer should have been

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<sup>106</sup> The partner resigned from the Department in order to avoid a criminal perjury prosecution.

terminated. This officer, who was in a supervisory position, fabricated evidence which was then used in a criminal proceeding in an attempt to secure criminal convictions.

A case where the Commission agreed with the imposition of a penalty less than termination occurred in the context of the officer falsifying a police complaint report. The officer's friend brought his girlfriend's car to an acquaintance who was supposed to bring the car to a repair shop. The friend then went on vacation. When he returned, he learned that the repair shop was really a "chop shop"<sup>107</sup> which had been raided by the police. After making attempts to retrieve the car on his own, the friend requested assistance from the subject officer. He made numerous computer checks and telephone calls in an attempt to locate the vehicle. After speaking with an officer experienced in automobile theft, the subject officer concluded that the vehicle had probably been dismantled and the parts sold. To help his friend expedite the insurance claim, the subject prepared a false complaint report which stated that the automobile had been stolen while parked on a street. In fact, the vehicle had been recovered by the police but was not entered into department records so that if the vehicle was reported stolen, the claimant could be arrested for possible insurance fraud. When the friend submitted his insurance claim with the complaint report, the insurance company learned that the vehicle had been inventoried by the NYPD and the friend was arrested. When the subject learned of this turn of events, he immediately went to the IAB, waived his right not to incriminate himself, waived his right to union representation, and candidly confessed to falsely completing the accident report. The negotiated plea resulted in the imposition of dismissal probation and the loss of 60 vacation days. The reasons mitigating against termination were the officer's candor and his immediate

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<sup>107</sup> A chop shop is one where vehicles, often stolen, are illegally dismantled and their parts are sold.

response in reporting his misconduct since IAB acknowledged that the officer's misconduct would probably not have otherwise been detected. Additionally, the officer's intention in committing the misconduct was not to benefit himself or even to help his friend commit fraud since the officer legitimately believed the vehicle had been stolen. The Commission agrees that these factors constitute exceptional circumstances. Further, citing these factors as exceptional circumstances may encourage other officers who suffer a lapse of judgment to come forward and be honest instead lying to cover-up the misconduct.

**c. Failure to Include False Statement Charges**

As discussed above, it appears that the Department failed at times to charge officers with making false statements in cases where the facts support such a charge. The Commission identified nine cases<sup>108</sup> where the facts of the case supported a false statement charge yet none was brought.

In one example, the subject officer was confronted by Department investigators after there was a report that a male and female officer entered a bar while in uniform. The subject was immediately identified by investigators and questioned concerning whether he entered the bar with another member of the service who was in uniform. The subject repeatedly denied entering the bar with a female or any other member of the service wearing a uniform. After two canvasses of the bar, a female lieutenant wearing uniform pants and shoes was identified. Upon further investigation, this Lieutenant's identification card was found in the subject's vehicle. However, he was only charged with Interfering with an Official Department Investigation in addition to the charges regarding the underlying misconduct. He pled guilty, was placed on dismissal

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<sup>108</sup> This does not include those cases where a similar charge was brought instead of a false statement charge when the Commission considered this charge to be the equivalent of a false statement charge.

probation, was suspended for seven days, and forfeited 23 vacation days. Given that the False Statement policy was specifically devised to prevent members of the service from lying about the misconduct of themselves and their colleagues, it is clearly applicable to this case. While there may have been exceptional circumstances in this situation, the officer should have been charged with the false statement. Further, the False Statement policy should have been referenced in the Department's decision about the appropriate penalty to impose, and the exceptional circumstances, if they existed, should have been specified.

#### **d. Documentation**

In previous reports,<sup>109</sup> the Commission had commented on the lack of documentation in Department files regarding charging decisions, reasons for dismissing false statement charges, and the existence of exceptional circumstances. During this review, the Commission found that the Department and the Trial Commissioners are generally articulating their reasons for dismissing false statement charges or for imposing a penalty less than termination in cases where the subject officers were found guilty of making false official statements. This was especially true when the false statement was in a testimonial capacity. Inadequate documentation was only seen in two of the cases reviewed by the Commission when a false statement charge was brought.<sup>110</sup> However, less progress appears to have been made in documenting decisions not to charge the subject officer with making a false statement in a testimonial setting when such a charge appears appropriate. The Commission only saw such documentation in one of the eight files where this issue existed.<sup>111</sup>

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<sup>109</sup> See *Fifth Annual Report*, at pp. 46 and 55; see also, *1999 False Statement Report*.

<sup>110</sup> This number only applies to those false statements made in testimonial contexts. As noted at pp. 80-84, the

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Department does not appear to be consistently applying the 1996 policy to those false statements made in the non-testimonial context.

<sup>111</sup> One case of the nine cases where false statement charges could have been brought was not included in this analysis because the false statement arose out of the subject officer's testimony at the departmental hearing.



The Commission also believes that better documentation is needed in those cases where there is a false statement made in a non-testimonial setting and the subject officer is not charged with making a false statement. Such documentation should be in the form of a specific reference to the False Statement policy and reasons why the policy either does not apply or why a departure from the mandates of the policy is appropriate. This will help to establish precedent as to what actions the Department believes fall within the parameters of the policy and what is properly considered exceptional circumstances that justify a less severe penalty.

#### **4. Conclusions**

The Commission found that the Department has continued to apply the False Statement policy to those false statements specifically referenced within the policy: P.G. 206-13 interviews and those statements made in testimonial settings. The Department has also made significant progress in documenting reasons for dismissing these types of false statement charges or for offering a penalty short of termination. However, the Commission believes the Department needs to more consistently apply the policy to false statements made in non-testimonial settings. The Department also needs to better document its reasons for imposing penalties less than termination for non-testimonial false statements and when false statement charges in any context are not brought, although potentially supported by the facts of the case.

### **V. THE COMMISSION'S ONGOING WORK**

#### **A. Open/Pending Case Monitoring**

Monitoring open IAB investigations is another means by which the Commission accomplishes its

mandate to ensure that the Police Department is effectively and expeditiously investigating corruption allegations. This type of monitoring is meaningful because it enables the Commission to keep up-to-date with corruption trends and allegations and evaluate how the Department investigates and responds to allegations of corruption. Open case monitoring is accomplished by various means including: daily review of corruption logs received from the Department, attendance at IAB Steering Committee meetings, attendance at IAB briefings to the Police Commissioner, periodic on-site review of non-steering cases, and ongoing discussions with group captains and other high-ranking officials in IAB. All of these monitoring activities are discussed below.

### **1. Log Review**

The principal means by which IAB records new corruption allegations, as well as updates new information on past allegations, is through the creation of logs. All corruption and misconduct allegations received by the Department by mail, telephone or in-person are reported to IAB's Command Center which is open 24 hours a day, seven days a week. After receiving these allegations, Command Center personnel assign the allegation a number and create a log which includes a summary of the allegation, the time and place of occurrence, information regarding the complainant and where possible, background information on the subject officer. Each day the Command Center forwards all logs received during the previous 24-hour period to an IAB assessment team who assigns them for investigation to the appropriate IAB group or directs them to CCRB.

The Commission receives and reviews new IAB logs on a daily basis. This ongoing review of the logs allows the Commission to conduct immediate follow-up on allegations, obtain timely additional

information from IAB at the outset of the investigation, and select cases for long term monitoring. The most serious allegations are entered into a Commission database which records all pertinent information and allows Commission staff to retrieve case histories on subject officers and cross reference cases and allegations.

## **2. Steering Committee Meetings**

Throughout the year, Commission staff attend IAB Steering Committee Meetings. The Steering Committee is comprised of IAB's executive staff and is chaired by the Chief of IAB. The purpose of the Steering meetings is to examine the more serious cases handled by each investigative group and discuss new developments to ensure that all appropriate investigative steps have been taken. On a regular basis, each investigative group presents their most significant cases to the Committee and reviews the investigative steps which have been taken as well as future investigative plans. Because the Committee possesses a wealth of collective investigative experience, these meetings provide a forum for the reporting group to receive feedback from Committee members on investigative strategy. Additionally, Steering meetings often also address the role of state and federal prosecutors in IAB investigations, as well as interaction between IAB investigators and the Department's administrative prosecutors.

Commission staff attend Steering meetings for most IAB groups several times during the year, including a full review of each group's caseload once per year. Attendance at these meetings allows Commission to observe how IAB responds to and investigates allegations of corruption. Additionally, this review of cases enables Commission staff to remain up-to-date on all pending IAB investigations.

### **3. Intensive Steering Committee Review**

Each year between June and September, the Steering Committee conducts intensive Steering where all open cases in each group are reviewed. The Commission attends all intensive Steering meetings which provide a comprehensive overview of IAB's entire open caseload.

### **4. IAB Briefings to the Police Commissioner**

In order to keep the Police Commissioner fully apprized of significant cases and corruption trends, on a regular basis, IAB's executive staff meets with the Police Commissioner and certain members of his executive staff, including the First Deputy Commissioner and the Chief of the Department, for briefings. The Commission's Chair and/or Executive Director attend each of these meetings. At these briefings, IAB investigative group captains present their most serious cases and describe the investigative steps that have been taken. Additionally, periodically the Commanding Officer of IAB's Corruption Prevention and Analysis Unit presents a statistical analysis of corruption allegations which compares annual and monthly statistics by category of allegation, borough and bureau. This analysis enables the Commissioner and executive staff to identify corruption trends and provides information as to the facts underlying the data being presented.

## **5. Periodic On-Site Review of Non-Steering Cases**

In addition to attending intensive Steering Committee meetings where all pending cases are reviewed annually, the Commission also regularly selects a number of non-steering cases from each IAB group for on-site review. This type of review is constructive because it allows Commission staff to have in-depth discussions with the Group Captains and investigators assigned to specific cases. These discussions allow the Commission to evaluate the quality of investigations on non-steering cases and ensure that they are being carried out effectively. During the past year the Commission conducted such reviews for each of IAB's investigative groups.

### **B. Other Types of Monitoring Activities**

The Commission is also involved in a number of other monitoring activities that do not focus solely on evaluating case investigations.

#### **1. Monthly Monitoring Lists**

On a monthly basis the Commission receives several monitoring lists maintained by the Department for tracking purposes. These lists identify officers who have a history of misconduct. For instance, lists are generated which identify officers who are under heightened departmental scrutiny because of continued misconduct, such as excessive force allegations, or officers who are currently on dismissal probation as a result of a disciplinary penalty. Commission staff regularly review these lists to remain updated about officers being monitored and also to ascertain if any of the officers on the lists are subjects of investigations under the Commission's review.

## **2. Interim and Operations Orders**

The Commission also receives on a monthly basis all of the Interim and Operation Orders issued by the Department. The Commission reviews these and maintains an updated copy of the Patrol Guide in order to monitor any change in Department policies and procedures related to the Commission's mandate.

## **3. IAB Commander Conferences**

Commission staff periodically attend IAB Commander Conferences, meetings at which all IAB Commanding Officers and executive staff discuss business related to IAB, including potential corruption issues in the Department, corruption strategies, policy and procedural changes, administrative concerns, personnel issues, successful operations, and any information relevant to the ongoing operations of IAB.

## **C. Additional Commission Functions**

In addition to the above monitoring activities, the Commission also performs a number of other functions in carrying out its monitoring mission.

The Commission periodically receives allegations of police corruption or misconduct by individuals who wish to lodge complaints against the Department. Commission staff obtain all relevant information concerning the allegation and then forward that information to IAB's Command Center so that a log may be created and the appropriate investigative steps taken. In 2001, the Commission received approximately 42 allegations. In order to track IAB's handling of these allegations, the Commission assigns each allegation its own internal log number, and Commission staff then monitor IAB's handling of certain allegations.

Additionally, in 2001, the Commission's Chair and Executive Director met with senior Department

personnel and the lead investigator of a non-IAB group assigned to investigate an allegation of IAB misconduct. Department officials and Commission personnel discussed the progress and findings of the Department's investigation into allegations that IAB improperly handled certain allegations of corruption.

Another way that the Commission fulfills its mandate to monitor corruption is through regular contact with federal and state prosecutors responsible for the investigation and prosecution of police corruption. Through these relationships, the Commission is kept informed of issues or concerns of these law enforcement agencies and of their general perceptions about IAB and the quality of its work. In 2001, the Commission's Chair and Executive Director met with the District Attorneys or their representatives of New York, Queens, Bronx, and Kings Counties, and the United States Attorneys for the Southern and Eastern Districts of New York. Additionally, Commission staff met with and/or had telephone conferences with corruption prosecutors from both U.S. Attorney offices, and the five county District Attorney offices.

## **VI. NEW STUDIES**

The Commission has undertaken several new studies. A brief discussion of each is provided below.

### **A. Missing Property Allegations**

During the course of its review of open and closed IAB cases, the Commission noted that a significant number of these cases involved allegations that property was either taken from a prisoner or removed during the execution of a search warrant and not properly returned. The Commission is

undertaking a review of such missing property cases to examine the Department's procedures for executing search warrants and removing and safeguarding property taken from prisoners.

**B. Prosecution Study**

The Commission will continue to review the prosecution of cases throughout the Department's disciplinary system. This follow-up to the Commission's report, *The New York City Police Department's Prosecution of Disciplinary Cases*, will include the analysis of Department data and the observation of trials in the Department's Trial Rooms in order to evaluate issues previously identified by the Commission regarding delay and case presentation. The Commission will also continue to monitor any steps that have been taken or improvements that have been made by the Department to deal with issues raised by the Commission's study.

**C. Sexual Misconduct and Domestic Violence**

A number of cases handled each year by IAB investigators contain allegations of sexual misconduct or domestic violence committed by members of the service. Given the sensitive nature of these cases, the Commission will review how these types of allegations are investigated and how investigators interact with complainants.

**D. Firearm Review Board**

The Firearm Review Board is a Department committee which reviews all firearm discharges and makes a determination of whether an officer acted properly upon discharging his weapon. The Commission will examine the criteria the Board uses to make its determination and will review its investigations.