

I. OVERVIEW

The Commission to Combat Police Corruption (the “Commission”) was created by Executive Order 18¹ in February 1995 in response to recommendations made by the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, chaired by Judge Milton Mollen. The Commission functions as an outside monitor which analyzes and reports on the anti-corruption systems and policies of the New York City Police Department (“the Department”). The Commission fulfills this monitoring responsibility through the review of Department anti-corruption efforts, including investigations conducted by the Department into allegations of corruption and the discipline meted out by the Department when a member of the service is found to have violated the penal laws or Department rules. In addition, the Commission inquires into other discrete areas and units within the Department which might affect whether members of the service deviate from Department directives or the penal law.

Since its inception, the Commission has published twenty-five reports addressing discrete Departmental systems and policies ranging from the Department’s centralized monitoring systems, whose purpose is to oversee officers with demonstrated disciplinary issues, to the recruitment problems experienced by the Internal Affairs Bureau (“IAB”).² Additionally, the Commission has published ten Annual Reports describing the studies and audits it has conducted and any other work performed since the publication of the prior Annual Report.

This report, the *Eleventh Annual Report of the Commission*,³ covers the Commission’s

¹ Executive Order No. 18 is reproduced as Appendix A to this report.

² IAB is the unit within the Department responsible for investigating allegations of corruption or serious misconduct.

³ This report covers the work performed by the Commission between December 2007 and November 2008. It does not cover the Commission’s work between December 2008 and the publication of the report in

work during the last twelve months and constitutes a summary of the Commission's daily operations. This work included an ongoing review of pending and closed IAB investigations and a review of the penalties meted out to members of the service through the Department's administrative, disciplinary system. This report also includes a summary of the Commission's report: *Monitoring Study: A Review of Investigations Conducted by the NYPD's Borough And Bureau Investigative Units* published in January 2009.

The Commission will begin work on two projects discussed in its *Tenth Annual Report*⁴ in the coming year: a follow-up to the Commission's 2000⁵ and 2004⁶ reports on the Department's disciplinary system and an examination of the safeguards the Department has in place to prevent and detect claims for fraudulent overtime. Further details about these and other planned projects are provided in the conclusion of this report.

II. SUMMARY OF MONITORING STUDY: A REVIEW OF INVESTIGATIONS CONDUCTED BY THE NYPD'S BOROUGH AND BUREAU INVESTIGATION UNITS

The Commission reviewed cases handled by the Department's Borough and Bureau Investigation Units, which are units that investigate the majority of allegations involving less serious misconduct. These allegations are designated as "M" cases by the Department.⁷ There are thirty-five Borough and Bureau Investigation Units. Borough Investigation Units are divided based on geography. There are also citywide Bureau

February 2009 as this time was used for the editing and the publication process. That time period will be covered in the *Twelfth Annual Report of the Commission*, expected to be published in February 2010.

⁴ See *Tenth Annual Report of the Commission* (February 2008) at pp. 44-45.

⁵ *The New York City Police Department's Prosecution of Disciplinary Cases* (July 2000).

⁶ *Follow-up to the Prosecution Study of the Commission* (March 2004).

⁷ See *Monitoring Study: A Review of Investigations Conducted by the NYPD's Borough And Bureau Investigation Units* (January 2009) at pp. 2-3 for an explanation of the different types of case designations.

Investigation Units which are dedicated to investigating allegations concerning members of the service who belong to specialized groups, including school safety, traffic, support services, training, and detectives.

The Borough and Bureau Investigation Units investigate various allegations, including domestic incidents; missing property other than money, valuable jewelry or credit or debit cards; unauthorized off-duty employment; and unlawful gratuities. The Commission chose to examine this less serious category of investigations because they sometimes involve more significant misconduct, such as criminal association, which can only be uncovered by a thorough examination of the original allegations. Additionally, committing less serious offenses can be an indicator of a willingness to commit future, more serious misconduct. Thorough investigations that lead to discipline, where appropriate, may act as a deterrent to prevent the commission of future offenses by the subject officer and by other members of the Department and further demonstrate to the public that the Department seriously investigates all allegations of misconduct.

In 2007, thirty-five Borough and Bureau Investigation Units conducted two thousand eight hundred and twenty-five investigations. The Commission reviewed ninety-two cases from twenty-five investigation units for this study.⁸ As a general matter, the Commission concluded that investigators were taking all of the necessary investigative steps in a timely and thorough manner. In addition, the Commission concluded that almost all of the case dispositions were appropriate. However, the Commission identified certain areas in which investigations could be improved. For example, most cases did not have formal, supervisory reviews. There was also a delay in

⁸ See *id.* at pp. 3-5 for further discussion on the methodology associated with case selection.

the assignment of the investigations to the appropriate investigative group in a significant number of cases. The Commission also observed that in many cases, complainants were not being interviewed early in the investigation and complete background checks were not performed on all parties to the incident. To address these and other issues, the Commission made the following recommendations:

1. Supervisors should conduct regular, written reviews of the investigative files to determine that the investigators are diligently investigating the cases and not missing any important investigative actions. Although the Department maintains that these reviews are conducted on an informal basis, the Commission recommends that such informal discussions be memorialized.
2. It is important that cases be assigned quickly so complainants and witnesses can be contacted when their memories of the incident are more recent. Although the Department maintained that most cases are assigned to the appropriate investigative entity within one week from the receipt of the allegations, the Commission found that more than half of the cases were assigned over two weeks after receipt of the allegation. Although call-out interviews⁹ help preserve witnesses and evidence, often the call-out interview is not conducted by the investigator or the investigation unit to whom the case is ultimately assigned and not all of the necessary questions are answered during this preliminary investigation. In those situations, a delay in assigning the case may mean that the investigator is forced to rely on another investigator's interpretation of interviews and other evidence. This is especially true when the interviews conducted during the call-out investigation are not recorded.
3. Upon receipt of a case, an investigator should promptly interview the complainant. Witnesses should be interviewed as soon as feasible after learning their identity.
4. Complainant and witness interviews should be conducted in-person whenever possible. Personal interviews allow the investigator to observe the complainant's environment during the interview, prevent the complainant or witness from being influenced by other people who may be present, and allow the investigator to observe the

⁹ After the complaint is received by the Command Center, IAB's twenty-four hour hotline for receiving complaints, IAB supervisors will decide whether there should be an immediate response to a location and whether other immediate investigative steps are required. This sometimes includes conducting witness interviews and gathering any information that may be useful in the investigation. After this initial, call-out, investigation is completed, a file is created that encompasses what was done during this initial investigatory stage, and that file is transferred to the investigator who will handle the case until closing. Interviews with the complainant or other witnesses during this initial investigation are call-out interviews.

complainant's or witness' demeanor and make a determination about his¹⁰ credibility. If investigators are too busy or lack the necessary resources to conduct personal interviews, one solution might be to assign investigators to a particular day of the week where they can conduct all of their interviews. One of the unit's vehicles could also be reserved strictly for the purpose of conducting interviews. In short, in-person interviews should be more of a priority.

5. All interviews of civilians and members of the service should be recorded unless there is a specific reason why the interview cannot be recorded. A recording is the best evidence about what was said. In the event that a case is transferred to another investigator, that investigator would have the ability to review the interview instead of having to rely on the initial investigator's summary of the interview.

6. Investigators should analyze the allegations against the subject officer and examine the subject officer's Central Personnel Index¹¹ to determine whether the subject officer has prior, similar allegations against him or has an otherwise extensive disciplinary history. In these circumstances, the Commission encourages the borough and bureau investigators to take full advantage of their IAB counterparts. Investigators can consult with IAB to obtain more information about the subject officer. When appropriate, investigators should also review prior, relevant investigations concerning the subject officer. If the subject officer has many prior, similar allegations, the investigator should request that IAB perform an integrity test on the subject officer. IAB has a group which is devoted to performing integrity tests and a group that only conducts surveillances. If an investigation can benefit from surveillance and the borough or bureau investigator is not having success observing the target, IAB could be contacted for assistance.¹²

7. When a civilian is involved in a case either as a witness or as the complainant, the investigator should conduct background checks, including criminal background checks on the individual. Criminal checks could disclose that the subject officer is socializing with someone who has a criminal history in violation of Department regulations. If this type of association is uncovered, the investigator should report it to IAB immediately so a new log can be generated and an appropriate IAB group can be assigned to the investigation.

¹⁰ For simplicity, the masculine pronoun "he," "his," and "him" will be used to refer to all officers and other individuals regardless of their gender unless specifically noted otherwise.

¹¹ This document describes the allegations, disciplinary events, negative evaluations, and background checks performed on the subject officer throughout his career.

¹² If it is decided that an integrity test would be useful, the borough or bureau investigator is instructed to contact IAB to conduct the test. The assigned investigator is invited to observe the test during its execution by IAB.

8. Patrol Guide hearings (“PG hearings”) or (“PG interviews”)¹³ present a unique opportunity to compel members of the service to answer questions regarding the allegations against them. This opportunity is lost, however, if the investigator does not ask all essential questions or does not permit the officer to fully explain his answers. The Commission recognizes that the quality of these hearings will vary with the skill of the investigator. To enhance these hearings, the Commission recommends that additional training be given to these investigators in proper questioning techniques¹⁴ by either IAB’s Office of Professional Development or the Department Advocate’s Office (“DAO”).¹⁵

9. Investigators should document every investigative action that is performed in a case. If investigative actions are not documented, supervisors may be unable to provide adequate guidance. Also, with proper documentation, if the case must be transferred, the new investigator will not unwittingly duplicate steps which have already been performed.

In response to this report, the Department announced that it has implemented steps to provide increased training to all personnel in the Bureau and Borough Investigation Units in an effort to address these issues. Furthermore, the Department is in the process of determining the reasons behind the delay in the assignment of cases to the appropriate investigation unit.

III. MONITORING OF PENDING IAB INVESTIGATIONS

A. Introduction

In 2007, the Commission, which has reviewed IAB’s closed investigations since 1995, also began to monitor IAB’s pending cases. In deciding to do so, the Commission

¹³ Patrol Guide § 206-13 allows the Department to interrogate officers during an official Department investigation. Members of the service who refuse to answer questions during these interviews are suspended, and members who are found to have been untruthful during the interviews are subject to termination from the Department, absent exceptional circumstances.

¹⁴ Since the publication of this report, many of the personnel assigned to the Borough and Bureau Investigation Units have attended the basic two-week training course and some specialized training courses.

¹⁵ DAO is the Department bureau responsible for prosecuting internal disciplinary cases. See the Commission’s reports *The New York City Police Department’s Prosecution of Disciplinary Cases* (July 2000) and *Follow-up to the Prosecution Study of the Commission* (March 2004).

noted that once an IAB investigation is closed, any comments or critiques made by the Commission can usually be applied only to other pending or future cases, not the case that is being critiqued. When the Commission reviews open case investigations, however, it is afforded the opportunity to speak with individual case investigators, their supervisors, or their commanding officers, to ask questions, and to make suggestions. Therefore, when the Commission reviews open cases in addition to closed cases, its recommendations can impact pending cases as well as future IAB investigations.

Introducing the monitoring of open IAB case investigations has increased the total number of IAB cases reviewed by the Commission on a yearly basis. Specifically, between the months of December 2007 and November 2008, in addition to the reviewed closed cases, the Commission followed between three to nine¹⁶ open case investigations from each of fifteen IAB groups.¹⁷ A total of seventy-three cases were reviewed by the Commission. These cases were reviewed on a regular basis,¹⁸ and monitored through their conclusion to determine whether any interim recommendations made to the investigators had been addressed.

B. Methodology

The Commission selected open cases from each of the fifteen IAB groups to monitor, creating a total of four open cases for each group at any given time. In making its selections, the Commission randomly chose open investigations from all these groups,

¹⁶ A portion of the open case investigations were still ongoing from the previous year of open case monitoring by the Commission.

¹⁷ IAB has twenty-one groups, which are categorized based upon geography or specialty. The six groups that did not have open cases reviewed by the Commission were: Group 1, Group 9 (overnight, call-out investigations), Group 25, Group 51 (police impersonation), Group 52 (integrity testing), and Group 55 (surveillance), in part because of the nature of the cases carried by these particular groups.

¹⁸ Within three to five months lapsed between each open case review.

using the open case monitoring lists provided by IAB. These lists contained the identifying case number and the number of the group conducting the investigation. Therefore, the Commission was not aware of the allegations, subject officer, or facts of any of the chosen cases prior to their selection.

Since the IAB investigators need to have ready access to ongoing investigations, the Commission reviewed each of the open cases at the office of the respective IAB group. Throughout the Commission's past year of open case reviews, the Commission noted that most of the newly opened investigations predominantly involved allegations of criminal association, missing/stolen property, and disclosure of confidential Department information.

C. Findings

The Commission's regular review of open IAB cases, from the beginning to the end of the investigation, affords both the Commission and the case investigators the opportunity to communicate about the cases before they are closed. Further, the Commission's review adds another layer of oversight to the ongoing cases, beyond the case investigator, his supervisor, and his commanding officers. In several of the reviewed cases, the Commission asked questions or made suggestions to case investigators, which were responded to or incorporated into the investigations.

Although the Commission reviews the open case files at each IAB borough field office, it is not always feasible for the Commission to speak with the individual case investigator.¹⁹ This undermines the effectiveness of open case monitoring. Though the Commission can speak with the investigator's commanding officer, it is reasonable to

¹⁹ The case investigator may work a tour that does not coincide with the Commission's visit or the investigator may be following up, in the field, on a different case.

note that the case investigator has, by his very role, the closest association with the case and the strongest grasp of its nuances. The Commission and IAB are exploring ways to rectify this issue.

IV. CLOSED CASE MONITORING

A. Introduction

Every year, the Commission reviews closed IAB investigations, pursuant to Executive Order No. 18, wherein the Commission is charged with analyzing “the effectiveness of the Department’s systems and methods for investigating allegations of corruption.”²⁰ In fulfilling its mandate, the Commission reviews a portion of the cases that have been closed by IAB which involve allegations of serious misconduct or criminal activity. This past year, the Commission examined forty-nine IAB investigations that were closed in either 2007 or 2008. These investigations were conducted by sixteen of IAB’s investigative groups.²¹

B. Methodology

The Commission reviewed randomly selected “C” cases²² from lists of closed IAB cases, which are provided to the Commission on a bi-monthly basis. These lists contain the IAB cases that were closed during the previous two months but do not contain any information regarding the allegations in the case, the identity of the subject officer, or the final disposition. The Commission makes selections solely based upon the case number and the group handling the investigation.

²⁰ See Executive Order 18 2(a) (ii).

²¹ The five remaining groups did not have their cases reviewed by the Commission due to the nature of the cases they carry. See *supra* at p. 7, fn. 17.

²² “C” cases denote allegations involving serious misconduct or criminal activity. These cases are investigated exclusively by IAB.

In its evaluation of the closed IAB investigations, the Commission reviewed all of the paperwork in each case file along with any accompanying taped interviews, where available, in order to determine the sufficiency of each investigation and the appropriateness of the disposition. Specifically, the Commission, taking into account the type of allegation as well as the course of the investigation, determined whether the investigative steps taken and the investigative tools utilized were appropriate and complete. The Commission further reviewed the quality of taped interviews and also determined whether additional charges could have been supported by the investigator's findings. Finally, the Commission assessed whether there were undue lapses in the investigation that contributed to the case being held open for a longer time period than necessary.

After the Commission reviewed the closed IAB investigations, its members met with IAB executive staff several times to address any issues observed by the Commission during its review. These meetings afforded the Commission the opportunity to voice concerns and IAB the opportunity to respond to these concerns and provide explanations that may not have been readily apparent in reviewing a case file. The Commission recognizes the benefit of maintaining an open dialogue with IAB to effectively pursue its monitoring function.

C. Findings

Overall, the Commission found that the majority of the forty-nine closed IAB investigations that it reviewed were sufficiently investigated, with effective interviews, timely follow-up, and appropriate dispositions.

In its prior reports, the Commission has commented on delays in investigations, the efficacy of conducting PG interviews, and the effectiveness of investigative plans, surveillance techniques, and integrity tests. In recent years, the Commission has additionally commented that these areas of concern had been evidently addressed, as the Commission began to see steady improvement in all these areas.²³

In the most recent set of closed IAB investigations reviewed, the Commission noted further improvements in its findings and found most of its critiques to be isolated to only one investigation and not systemic throughout IAB investigations. Specifically, PG interviews are increasingly used only in cases where they will likely aid the investigation and the quality of the questioning has improved as well. Further, of the forty-nine cases reviewed, the Commission agreed with the overall case disposition in all of the cases.²⁴ As a general matter, the Commission continues to observe an overall high quality in the closed investigations of IAB that it has reviewed.

As the Commission is concerned with issues which are pervasive and not isolated to a single case, the Commission only reports here on those issues that arose in more than one case within its sample. The one issue that arose on more than one occasion was delays in the investigation.

In two of the closed cases reviewed by the Commission, there were unexplained lapses of over one month in the investigations, which naturally led to a delay in the

²³ See *Eighth Annual Report of the Commission* (February 2005) at pp. 16, 20; *Ninth Annual Report of the Commission* (February 2006) at p. 8; *Tenth Annual Report of the Commission* (February 2008) at p. 7-14.

²⁴ There was one case where the Commission disagreed with the disposition of one allegation. For that particular allegation, the Commission believed a more definitive disposition of exonerated was justified. IAB found the allegation to be unsubstantiated. This did not affect the overall disposition of the case. In response to a draft of this report, IAB stated that the unsubstantiated disposition was consistent with IAB's guidelines for determining dispositions for this type of allegation.

closing of the case.²⁵ Both cases were open over the course of more than fifteen months. Two other cases were open longer than necessary; one because the investigator completed, on average, only two investigative steps per month and the other because the investigator was hospitalized for several months and in the interim, there was no action on the case for over six months. The first case was open for over fourteen months and the second case was open for over twenty-five months.²⁶ While the Commission recognizes that there are lapses that can occur in a case that are beyond the investigator's control, such as hospitalization or a high-priority caseload, it recommends that a case should be reassigned if such a lapse severely delays the investigation of a case. It is also important to close IAB investigations in a timely manner, whenever feasible, so that when a member of the service acts in violation of Departmental rules and/or the penal law, discipline will closely follow the wrongful action. Further, for members of the service who are ultimately found to have committed no wrongdoing, it protects their interests to close pending allegations as soon as reasonably possible.²⁷

²⁵ In one of the two cases, some of the lapses were explained while others were not.

²⁶ In a response to a draft of this report, the Department noted that the IAB groups handling these four cases had very high caseloads at the time and were experiencing a turnover in personnel. For a further discussion about IAB's personnel turnover, see the Commission's report *Internal Affairs Bureau Recruitment and Retention* (February 2005).

²⁷ Since the preparation of the draft report, the Department has noted that "IAB commanding officers have been instructed to reassign investigations given to an investigator who is expected to be absent for a prolonged period of time so as to avoid an unnecessary delay in the future. Furthermore, IAB executives will continue to stress to commanders the importance of expediting each case assigned to an IAB group. While every step will be taken to avoid unnecessary delays in the future, it should be noted, that certain delay are unavoidable, such as from a District Attorney hold. When these types of delays do occur, however, IAB investigators have been instructed to clearly document the circumstances."

V. TRAINING IN PG INTERVIEWS

In response to the Commission's last *Annual Report*,²⁸ the Chief of IAB invited Commission staff to give feedback to IAB investigators and supervisors about observations that had been made by the Commission staff and commented on regarding PG interviews.²⁹ Commission staff was encouraged to provide suggestions to IAB investigators and supervisors to help improve the overall quality of the PG interviews. In addition, the Commission was asked to present descriptions of some PG hearings that contained examples of the criticisms that it made in the *Annual Report*. In March 2008, in response to this invitation, a Commission staff member observed and participated in a training lecture on PG interviews that was given to IAB investigators and supervisors by IAB's Office of Professional Development.

After a brief introduction that described the Commission's monitoring responsibilities, the Commission spoke in general about the quality of the PG interviews that had been reviewed and noted areas for improvement.

During the training lecture, the Commission encouraged investigators to prepare for the hearing by deciding in advance what type of information they sought to elicit in the PG hearing. They were reminded to think about why they were interviewing the member of the service, what they wanted to gain from the interview, and to set the tone for the interview with this information in mind.

²⁸ *Tenth Annual Report of the Commission* (February 2008) at pp. 9-12.

²⁹ In the *Tenth Annual Report of the Commission* (February 2008), it was noted that investigators could improve their official PG interviews by developing a strategy for the interview, asking necessary follow-up questions, confronting officers when the answers provided did not make sense, and seeking more details from the questioned officers. See pp. 9-12 of the *Tenth Annual Report* for a complete discussion about the Commission's findings on this topic.

In addition, participants were advised to have questions prepared in advance of the interview, but also to be ready in the event that an interview took an unexpected turn and the previously prepared questions were no longer applicable. In addition, investigators were instructed to use questions that were not too narrow in order to allow the subject officer to provide their own details.

Finally, the Commission presented several descriptions of some PG hearings that it believed could have been conducted more effectively. After the example was given, investigators and supervisors were given the opportunity to comment on how the interview could have been improved. Feedback was then encouraged from other participants in the class. The most common areas noted in the examples included cases where unnecessary leading questions were used, interviewers missed the opportunity to ask essential follow-up questions, and subjects were not confronted with inconsistencies in their accounts.

The Commission concluded the lecture by reminding investigators about the benefits that accompany the ability to compel members of the service to answer questions regarding allegations. The Commission also stressed that investigators should be confident in their interviewing skills and ability to maintain control of their interviews.

VI. CLOSED DISCIPLINARY CASES

An additional way in which the Commission fulfills its mandate to monitor the Department is through its review of the closed administrative, disciplinary cases which are heard in the Department's Trial Rooms. While the main focus of this review is on particular

categories of off-duty misconduct³⁰ and those cases involving the making of false statements, the Commission also reviews every disciplinary case that it receives to determine if the penalty imposed is adequate and consistent with that applied in similar cases. Adequate penalties are necessary to demonstrate that the Department is willing to penalize its members and will not allow misconduct to go unpunished.

A. Review of Closed Disciplinary Cases

The Commission receives the paperwork from the Department's closed disciplinary cases on a monthly basis. These cases include those where trials were held, where there was a negotiated plea between the subject officer³¹ and the Department, where the case was dismissed after a motion by the Assistant Advocate,³² where a mitigation hearing was held,³³ or where there was no ultimate disposition on the charges because the subject officer was separated³⁴ from the Department prior to the adjudication of the charges.³⁵ The paperwork that was reviewed for this study included the charges and specifications,³⁶ dispositions of the

³⁰ These categories are discussed more fully below. *See infra* at pp. 17-18 for the specific categories that the Commission examines and the criteria which the Commission uses when reviewing those cases.

³¹ In this section on closed disciplinary cases, the terms "subject officer" and "respondent" are used interchangeably.

³² The Assistant Advocate is the attorney from DAO responsible for prosecuting the administrative case in the Department's Trial Rooms.

³³ In a mitigation hearing, the officer admits his guilt to the charges but does not want to accept DAO's recommended penalty. The officer then testifies to explain his conduct and present any factors that would support a less serious penalty.

³⁴ The officer can be separated from the Department through resignation, retirement, death, or termination due to another matter.

³⁵ Charges are filed in these cases in the event the officer tries to reinstate his employment at some point in the future. In that event, the statute of limitations for the alleged misconduct will not have expired, and the officer's alleged misconduct can still be addressed.

³⁶ The "charge" designates the name of the offense, and the "specification" describes the specific misconduct charged.

charges, and Department memoranda prepared by the case investigators. If the case proceeded to a trial or mitigation hearing, or if the Assistant Advocate moved to dismiss the charges, the Trial Commissioner's decision was also reviewed. If the case was settled through the respondent pleading guilty to all or part of the charges, the Assistant Advocate's plea memorandum was reviewed. In those instances when the Police Commissioner overturned the Trial Commissioner's factual findings or recommended disposition, the Police Commissioner's reasoning for this determination was also evaluated.

For this report, the Commission reviewed all of the cases adjudicated between October 1, 2007 and September 30, 2008. In total, the Commission reviewed four hundred and thirty-five cases. Allegations included collecting overtime for hours that were not worked, sexual misconduct, receiving child pornography, associating with criminals, as well as other types of misconduct. While the Commission scrutinized most closely those cases involving serious off-duty misconduct and those cases involving making false statements, the Commission also evaluated the penalties, where imposed,³⁷ in the remainder of the cases. Excluding those cases discussed separately in each of the following sections, the Commission believed a more serious penalty was warranted in three of the cases.³⁸ The sufficiency of these penalties was judged by balancing the severity of the charges against the evidence that was available to DAO or presented to the Trial Commissioner, the officer's disciplinary history, and whether the penalty was consistent with precedent for similar misconduct.

³⁷ Cases where charges were filed, charges were dismissed, or where the officer was found not guilty after trial did not have a penalty.

³⁸ In some cases, while the Commission did not necessarily agree with the penalty, it believed that the Department was not unreasonable in its assessment of the appropriate penalty. The Commission did not count these cases where reasonable minds could differ as cases where it disagreed with the adequacy of the penalty.

B. Serious Off-Duty Misconduct

1. Introduction

Since the publication of its initial report in 1998 regarding the adequacy of the discipline levied against those officers involved in serious off-duty misconduct,³⁹ the Commission has continued to monitor the discipline imposed on officers who have engaged in specific categories of off-duty misconduct or who are on some form of probation at the time the misconduct is committed or adjudicated.⁴⁰

2. Methodology

The Commission initially reviewed all of the administrative, disciplinary cases that were adjudicated between October 2007 and September 2008 where at least one of the charges involved misconduct committed by a uniformed member of the service⁴¹ while he was off-duty. The Commission then further examined those cases where the off-duty misconduct was determined to fall into categories of alcohol-related misconduct, the display or discharge of a firearm, domestic incidents, or where the subject officer was a Probationary Police Officer⁴² or on Dismissal Probation.⁴³

The Commission examined these cases in order to determine if the discipline imposed on

³⁹ *The New York City Police Department's Disciplinary System: How the Department Disciplines its Members who Engage in Serious Off-Duty Misconduct* (August 1998).

⁴⁰ *See Fifth Annual Report of the Commission* (February 2001); *Sixth Annual Report of the Commission* (December 2001); *Seventh Annual Report of the Commission* (March 2004); and *Tenth Annual Report of the Commission* (February 2008).

⁴¹ In this context, the Commission uses the term “uniformed member of the service” to mean those members of the service who are not civilians. Civilian members of the service have the option of a different, less formal disciplinary process. The Commission does not receive closed disciplinary cases involving civilian members of the service.

⁴² *See infra* at pp. 35-36 for an explanation of the probationary period to which all new appointees to the Department are subjected.

⁴³ *See infra* at p. 36 for a definition of Dismissal Probation.

the subject officer was appropriate. This determination was made after the Commission reviewed all of the documents it received in connection with the closed cases.⁴⁴

The Commission evaluated the appropriateness of the penalty in one of two ways. If the Department had a specific policy that covered the misconduct at issue, the Commission checked whether the Department followed its own stated guidelines,⁴⁵ and if it did not, whether the Department provided reasons for not doing so. If there was no governing policy, the Commission considered whether the totality of the circumstances, based upon the gravity of the disciplinary infraction and the subject officer's disciplinary history, supported the penalty imposed. The Commission examined cases involving probationary officers or officers on Dismissal Probation to determine whether the Department was summarily terminating those officers or, if the decision was made to levy a less severe form of discipline, whether that discipline was adequate based upon the misconduct committed. When these officers were summarily terminated, the Commission also reviewed the length of time that passed before this penalty was invoked.

The Commission did not judge whether any factual findings regarding an officer's guilt were appropriate. As the Commission was not present during the proceedings that resulted in these findings, it believed that these determinations were appropriately decided by the Trial Commissioners who had the opportunity to observe all of the witnesses and to review all of the evidence presented.

⁴⁴ See *supra* at pp. 15-16 for a description of the documents reviewed by the Commission.

⁴⁵ Many of these Department guidelines resulted from past Commission recommendations.

3. Findings

a. Alcohol-Related Off-Duty Misconduct

In its current review of cases, the Commission reviewed forty-five cases⁴⁶ in which off-duty alcohol use played a role in the case. In some of these cases, while the charges did not directly reflect the officer's alcohol usage, the Commission included them in its review because there were indications in the facts of the case that the officer or another participant may have been drinking prior to or during the alleged misconduct.

The Department's official policies regarding alcohol-related misconduct primarily revolve around charges of either "Driving Under the Influence" ("DUI")⁴⁷ or "Driving While Ability was Impaired." When either of these charges is involved, the charge of "Unfit for Duty" should be included unless there is a specific reason why that charge could not be proven.⁴⁸ If an officer is found guilty of either "DUI" or "Driving While Ability was Impaired," Department policy dictates that the penalty imposed is to consist of placement on Dismissal Probation, cooperation with counseling, the forfeiture of either vacation days or suspension days,⁴⁹ and the officer is directed to submit to random breath-testing on a quarterly

⁴⁶ Cases were counted by sets of charges and specifications brought against a member of the service. Of the forty-five cases, two officers had two sets of charges and specifications pending against them, a second officer had three sets of charges and specifications pending against him, and a third officer had four sets of charges and specifications pending against him. Therefore, only thirty-eight officers were involved.

⁴⁷ In New York State, the relevant criminal offense is called "Driving While Intoxicated" ("DWI"). This charge is analogous to the Department's administrative charge of "DUI."

⁴⁸ For example, if the Department learns that an officer is arrested for DUI in another state at a time far removed from the arrest, the Department will not be able, absent scientific evidence, to make a fitness for duty finding.

⁴⁹ For simplicity, the Commission refers to the loss of vacation days or the imposition of a period of suspension as the forfeiture of those days. In fact, discipline against any officer can include the loss of vacation days, placement on suspension where the officer forfeits the pay and benefits for every day included in the suspension, and/or the loss of any time, and the attendant salary and benefits, that the officer served on suspension after the Department received the allegation but before the matter was adjudicated.

basis.⁵⁰ At the time an officer is stopped for “DUI” or “Driving While Ability was Impaired,” the officer should be given a breathalyzer test. If the officer refuses to submit to the test, an additional charge of “Conduct Prejudicial to the Department” based on this refusal should also be levied.⁵¹ In those cases where an officer is found guilty of “DUI” or “Driving While Ability was Impaired” and another individual incurred a serious physical injury, the Department’s policy dictates that the officer be terminated absent exceptional circumstances. Whether these exceptional circumstances exist is a decision made by the Police Commissioner.

Other Department policies that apply in alcohol-related cases are relevant regardless of whether the officer was driving at the time of intoxication. Departmental regulations require an officer to be “fit for duty at all times, except when on sick report”⁵² and prohibit officers from consuming alcohol to the point that the officer becomes unfit for duty.⁵³ When investigators or responding officers are called to the scene of an incident involving a member of the service, a Duty Captain is supposed to be notified. Among the Duty Captain’s responsibilities is the determination of whether the officer is intoxicated or otherwise unfit for duty. According to Department policy, the Duty Captain should make the fitness determination close in time to the incident using scientific or other evidence⁵⁴ of the officer’s intoxication. Therefore, the determination should not be made hours after the original incident when the officer might no longer be unfit for duty. Also, to discourage officers from carrying

⁵⁰ See Interim Order 9-1, c.s., Conducting Ordered Breath Testing of Uniformed Members of the Service for the Presence of Alcohol, (December 26, 2002).

⁵¹ This charge would also apply if the officer refused to submit to a blood test to determine the level of alcohol in his system.

⁵² See New York City Police Department Patrol Guide Section 203-04, “Fitness for Duty,” 1.

⁵³ See New York City Police Department Patrol Guide Section 203-04, “Fitness for Duty,” 2.

⁵⁴ Other evidence could consist of the officer’s physical appearance or witness statements.

their firearms in situations where they may drink alcohol, the Department created a charge of “Unfit for Duty, While Armed.”⁵⁵ This charge is supposed to carry a more severe penalty than one where the subject officer was merely “Unfit for Duty.” Finally, the penalty for any member of the service who is found to have misused his firearm while he was unfit for duty is termination.⁵⁶

The Commission found that the Department is generally following its stated policies regarding off-duty misconduct involving alcohol. Of the forty-five cases reviewed, twenty-two of the cases did not have alcohol-related charges. In seven of these cases, three officers were charged with failing to obey an order to attend alcohol counseling.⁵⁷ Of the remaining fifteen cases, the Commission only disagreed with the failure to bring an alcohol-related charge in three cases. In twelve cases, the Commission agreed that the Department lacked the necessary evidence to sustain a charge such as “Unfit for Duty,” despite indications that the respondent may have been drinking around the time of the incident.

Of the forty-five cases reviewed, sixteen cases contained charges of either “DUI” or “Driving While Ability was Impaired.” In fourteen of these cases, there was an additional charge of “Unfit for Duty.”⁵⁸ In eleven of these sixteen cases, the respondent was placed on

⁵⁵ See New York City Police Department Patrol Guide Section 206-12, “Unfit for Duty, While Armed.”

⁵⁶ This policy is discussed in more detail in the next section of this report. See *infra* at pp. 26-31.

⁵⁷ Two officers each had three separate sets of charges and specifications pending against them for the failure to obey an order to attend counseling. One of these officers also had a fourth set of charges and specifications pending against him which included allegations of “DUI.” Both officers were separated from the Department: one through termination and one through retirement. The third officer had one case alleging that he refused to obey an order to attend counseling. This officer also had two other cases pending against him, one of which seemed to involve alcohol use by the subject officer which was not charged. This officer died before the charges pending against him could be adjudicated.

⁵⁸ The Commission understands the reason why there was not an “Unfit for Duty” charge in one case as the respondent was in California when he was arrested for “DUI.” Therefore, there would not be witnesses available who could testify to his unfitness at a Department trial. In a second case, the incident occurred in 1998 and may have been prior to the Department’s institution of the policy of routinely charging “Unfit for

Dismissal Probation and ordered to submit to random breath-testing and to cooperate with counseling. In three of the cases, two of which involved the same respondent, the subject officer was directed to file for retirement. In the third case, the respondent was placed on Dismissal Probation, forfeited a combination of forty-two suspension and vacation days, and was directed to submit to random breath-testing. The order to cooperate with Department counseling, however, was not part of the disposition.⁵⁹ In the final case, while the subject officer was placed on Dismissal Probation, forfeited a combination of forty-five days, and was directed to submit to quarterly random breath tests, the officer was not ordered to cooperate with counseling. This penalty, however, was dispensed after a trial and counseling was not, therefore, an available penalty.⁶⁰ There were two cases where a civilian received a serious physical injury as a result of an accident involving an officer who was driving while intoxicated.⁶¹ In one of these cases, the officer was permitted to retire by the Police Commissioner after termination had been recommended by the Trial Commissioner. The Commission has always emphasized that it places significance on whether the officer is separated from the Department and not in the manner of the separation, so the Commission agrees with this penalty.⁶² In the second case, the officer was involved in an accident with a

Duty” with “DUI” and “Driving While Ability was Impaired” charges. However, in that case, responding officers determined that the subject officer was fit for duty without even attempting to have the subject officer take a breathalyzer test.

⁵⁹ In that case, the incident had occurred in 2002, and the subject officer completed counseling services before the final adjudication of the case.

⁶⁰ Because it is not one of the dispositions available by law after an administrative trial, the Department’s Trial Commissioners cannot recommend that an officer found guilty of misconduct undergo counseling.

⁶¹ In a third case, two civilians received broken bones but did not suffer permanent physical impairment. The Commission agreed with a penalty short of termination in that case.

⁶² The Commission notes, however, that this officer also had a second case where he was found guilty of “DUI” among other charges. The first incident which resulted in serious physical injury to a civilian occurred in 1998, and the case was not adjudicated until 2008. Much of the delay was due to legal

motorcyclist. The motorcyclist died as a result of this accident. As noted above, the subject officer received a penalty of placement on Dismissal Probation, a combination of forty-two suspension and vacation days, and an order to cooperate with random breath-testing. As there was some indication in the file that the motorcyclist may have been at fault in the accident and the respondent was acquitted after criminal proceedings on these charges, the Commission agrees that this disposition was appropriate.⁶³

Twenty of the forty-five cases reviewed contained charges of “Unfit for Duty.” In the remaining twenty-five cases, the Commission agrees that the Department lacked the necessary evidence to prove this charge in sixteen of the cases, and therefore, deemed its omission appropriate. Determinations of fitness for duty appeared to have been made based on reports of the respondent’s appearance and behavior at the time of the incident, as well as, based on the responding supervisor’s observations of the respondent.⁶⁴ There was one case, however, referenced above, where responding officers found the subject officer fit for duty despite failing to give him a breathalyzer test. A “DUI” charge was eventually proven, after an investigation by IAB, based on hospital records which contained the subject officer’s blood alcohol content.⁶⁵

maneuverings in the attempt to subpoena the respondent’s hospital records and due to the criminal proceedings against the subject officer. The Commission notes, however, that the charges for the 1998 incident were not filed until 2004. In a response to a draft of this report, the Department stated that it did not become aware of the allegation until 2002. The subject officer was acquitted of all criminal charges. The second incident occurred in 2002, and charges were filed in 2002. However, that case was adjudicated at the same time as the 1998 incident despite the fact that the respondent pled guilty in the administrative case.

⁶³ The Commission notes that the charges in this case were levied in 2002 and not finally adjudicated until 2008. Although the paperwork in the Commission’s possession did not specify the reasons for this delay, presumably, some of it was attributable to the criminal proceedings against the respondent.

⁶⁴ There were ten cases where it was unclear whether and when the Department made a finding concerning the respondent’s fitness for duty.

⁶⁵ See *supra* fn. 62 and accompanying text at p. 22.

Breathalyzer or blood tests were attempted in fourteen of the cases. The respondent refused to submit to the test in twelve of these cases,⁶⁶ eleven of which resulted in a separate charge against the respondent for the refusal to submit to this test.⁶⁷

In eight cases, the respondent was armed with a firearm at the time he was found unfit for duty.⁶⁸ Of the remaining twelve cases where the officer was charged with “Unfit for Duty,” the Commission could not ascertain from the paperwork whether there had been a determination made regarding whether the respondent was armed in two of the cases. Of the eight cases where the respondent was found to be armed, the Department failed to bring a separate charge of “Unfit for Duty, While Armed” in only one case. In the seven remaining cases where there was a separate charge levied, more severe penalties were imposed against the respondent in six of those cases. In one of those six cases, there was the additional aggravating factor that the respondent was also found guilty of another administrative case of “DUI” which resulted in a serious physical injury, while in a second case; the respondent had voluntarily waived time while he was suspended during the pendency of his criminal case. In

In its response to a draft of this report, the Department noted that in the 1998 case, the police officers who responded to the scene of the vehicle accident failed to conduct a proper investigation and failed to notify a supervisor, as required. These responding officers were subsequently disciplined. The Department did not become aware of the 1998 “DUI” allegation until 2002 and could not charge the subject officer with being “Unfit for Duty” and/or “Unfit for Duty, While Armed” due to the expiration of the eighteen month statute of limitations for administrative charges.

⁶⁶ In another case, the paperwork indicated that the respondent agreed to take a blood test at the hospital; however, the plea memorandum stated that one of the charges that the respondent was convicted of after his criminal trial was for refusing to take a chemical test. There was no separate, administrative charge for this refusal. Since from the paperwork it was unclear whether the respondent refused the test, the Commission did not count this case as one where the respondent refused a chemical test or should have been charged for refusing such a test.

⁶⁷ In the final case, the respondent agreed to an initial breathalyzer but when asked to take a second, official breathalyzer subsequent to his arrest, he refused.

⁶⁸ There was one other case where the officer was obviously unfit for duty as he was charged with “DUI” among other specifications, however, “Unfit for Duty” was not one of the specifications levied. This officer was armed at the time of the incident. There was also no separate charge of “Unfit for Duty, While Armed.” As the incident occurred in 1998, though, this may have been before the Department created that charge.

a third case, the respondent was also found guilty of leaving the scene of the accident.

The respondents did not have prior disciplinary history regarding an alcohol-related offense in any of the cases examined. In one case, the respondent had two pending cases in which he was charged with “DUI” which resulted in his retirement from the Department under the threat of termination. In another case, the respondent had a previous alcohol-related arrest, but it had occurred thirteen years before the incident, eighteen years before the adjudication of this case, and prior to the respondent being appointed to the Department. The Commission noted, however, that the respondent forfeited slightly more vacation days than other respondents found guilty of similar charges.

There were two cases where a respondent was found unfit for duty and found guilty of wrongfully discharging his firearm. The respondent was not terminated in either of these cases. Instead, each respondent was placed on Dismissal Probation, forfeited a combination of vacation and suspension days, and was ordered to cooperate with random breath-testing and Department counseling. There was no explanation given to justify a departure from the penalty of termination in either of these cases.⁶⁹

The Commission has found that the Department continues to apply its official guidelines for alcohol-related misconduct. The Commission also applauds the Department’s increased use of Dismissal Probation, ordered breath-testing, and ordered cooperation with counseling in cases involving alcohol use where “DUI” or “Driving While Ability was Impaired” were not charged. In five of the six cases falling into this category, the respondent received this form of discipline. However, the respondent was additionally found guilty of

⁶⁹ See *infra* at fn. 84 and fn. 85 at pp. 30-31 for a more detailed discussion about these cases.

other misconduct which could have been the basis for this penalty.⁷⁰ In the twenty-three cases where the respondent was not charged with some alcohol-related misconduct, the respondent received a penalty which included placement on Dismissal Probation, ordered breath-testing, and cooperation with counseling in three of those cases.⁷¹ The Commission is pleased to observe that the Department appears to be taking measures to prevent alcohol abuse in those situations where there were indications that alcohol might be involved but insufficient evidence to support such a charge existed.

b. Misconduct Involving Firearms

Of the cases reviewed by the Commission, there were fifteen cases of misconduct by members of the service that involved firearms. These cases did not include the accidental loss of a firearm or other charges involving the subject officer's failure to safeguard a firearm. Instead, the Commission focused on those cases involving the off-duty discharge or intentional display of a firearm. The Commission recognizes the inherent danger in the misuse of a firearm by Department members, and it previously recommended that even the unauthorized display of a firearm to a civilian should result in a minimum sentence which includes placement on Dismissal Probation so the officer's future behavior can be monitored.⁷² The Department has elected not to adopt this policy recommendation and has stated that Dismissal Probation cannot be used solely for the

⁷⁰ The Commission also notes that two of those five cases were the ones where the respondents discharged their firearms while unfit for duty. *Id.*

⁷¹ In a fourth case, the respondent was placed on Dismissal Probation, forfeited suspension days, and was ordered to cooperate with counseling. In another three cases involving the same respondent, the respondent was terminated. In two other cases involving the same respondent, the respondent died prior to the adjudication of the charges. In three cases, the respondent was also charged in a fourth matter with "DUI" and other related charges. That respondent was allowed to retire.

⁷² See the *Tenth Annual Report of the Commission* (February 2008), at pp. 26-27.

purpose of monitoring conduct and is only appropriate when the penalty of termination is deserved.⁷³

In its previous reviews of these types of cases,⁷⁴ the Commission has consistently stressed the necessity of determining, whenever possible, a subject officer's fitness for duty at the time of the incident. Further, though the Commission has generally agreed with the disposition and penalty imposed in firearm cases, in the instances where it has disagreed, the Commission has recommended a more severe penalty.

The Department has instituted policies over the years designed to address the correlation between the use of alcohol and firearm misuse. Specifically, in January of 1999, the Department mandated that "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," unless exceptional circumstances exist justifying a less severe penalty.⁷⁵ Further, on September 30, 2007, the Police

⁷³ In a response to a draft of this report, the Department also noted that it has its own "multi-tiered monitoring system, where the actions and behavior of uniformed officers in need of greater scrutiny are carefully tracked" and the Commission's recommendation that Dismissal Probation be used to monitor the future behavior of an officer found to have wrongfully displayed his firearm to a civilian "does not take into proper account the existence of the Department's monitoring system."

The Commission has written two reports about the Department's monitoring system. See *The New York City Police Department's Non-IAB Proactive Integrity Programs* (December 2001) at pp. 59-100 and *A Follow-Up Review of the New York City Police Department's Performance Monitoring Unit* (April 2006). While the placement of a subject officer who has wrongfully displayed his firearm in one of these monitoring systems may also be appropriate, placement in the system does not carry the same consequence as the imposition of Dismissal Probation does for the subject officer. Specifically, placement within the Department's monitoring system does not expose the officer to the possibility of termination without further proceedings should he continue to engage in misconduct in the future. The Commission does not object to the simultaneous placement of the officer in the Department's monitoring system.

⁷⁴ See the Commission's Reports: *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998) at pp. 8, 50-59; the *Fifth Annual Report of the Commission* (February 2001) at pp. 34-37; the *Sixth Annual Report of the Commission* (December 2001) at pp. 49-51; the *Seventh Annual Report of the Commission* (March 2004) at pp. 89-100; and the *Tenth Annual Report of the Commission* (February 2008) at pp. 23-27.

⁷⁵ Patrol Guide §203-04.

Commissioner issued Interim Order No. 52, which stated that “uniformed members of the service involved in firearm discharges, which result in injury or death of a person, will be subject to Department administered alcohol testing.”⁷⁶

Of the fifteen cases reviewed, ten of these cases involved the intentional display of a firearm, while five cases included the discharge of a firearm. The Commission examined these cases to determine whether the subject officer was found fit for duty at the time of the incident since a finding that the officer was also unfit for duty would justify a separate charge of “Unfit for Duty, While Armed”⁷⁷ and require a more severe penalty than if the officer had not been unfit for duty. In fact, if the officer discharged his weapon while unfit for duty, termination, absent exceptional circumstances, would be required. In one case, a fitness for duty finding did not appear to have been made.⁷⁸ In one case, a fitness determination could not be made as the incident was reported after a significant amount of time had passed before the incident was reported. In a second case, it was unclear whether a fitness finding could have been made as the respondent was apprehended in another state after discharging his weapon. The subject officer was found fit for duty in one of the cases, and in three cases, it was determined that the subject officers were unfit for duty.⁷⁹ In two of the three cases, a separate charge of “Unfit for

⁷⁶ Of the cases where this rule has been applied, only one subject officer did not pass the breathalyzer test. That shooting, though, was determined to be justified and within Department guidelines, so no discipline was imposed on the officer. The Commission has not, therefore, reviewed any disciplinary cases involving the application of this policy.

⁷⁷ *See supra* at pp. 20-21 and 24-25 for a discussion about the charge of “Unfit for Duty, While Armed” and its appropriate penalties.

⁷⁸ In eight other cases, the paperwork which would normally indicate whether the subject officer was found fit for duty was not included with the case file.

⁷⁹ All of these cases were also included in the alcohol-related off-duty misconduct section. *See supra* at pp. 19-26.

Duty, While Armed” was levied against the subject officer, although all of the officers were placed on Dismissal Probation in conjunction with the loss of vacation days and/or suspension days and the agreement to submit to quarterly random breath-testing.⁸⁰

The Commission generally found that it agreed with the penalties imposed in these fifteen cases, but thought that the penalty should have been more severe in three of the cases it reviewed. As noted earlier, the Commission previously recommended that, at minimum, the penalty for the unjustified display of a firearm include placement on Dismissal Probation. Of the ten cases involving the display of a firearm, Dismissal Probation was part of the penalty in four of those cases. In four cases, where the subject officer only forfeited vacation days, the Commission agreed with that result because the officers’ display of the firearm appeared justified due to a perceived threat.⁸¹ In the remaining two cases, the Commission believed that a period of Dismissal Probation should have been a part of the discipline imposed. Instead, one officer forfeited fourteen vacation days, and the other officer forfeited twenty-five vacation days. Both officers displayed their respective firearms during traffic disputes. The Commission believed that a period of monitoring was justified in these cases.⁸²

⁸⁰ See *infra* at pp. 30-31 for a discussion about the adequacy of the penalties imposed in these cases.

⁸¹ In fact, in those four cases, the officers were not charged with the wrongful display of the firearm.

⁸² In one case, the officer pointed his firearm at the driver of another vehicle. The officer was driving at the time and had three children in his car. In addition to the danger and poor judgment involved in this situation which could have ended in tragedy, the officer was on Level II Disciplinary Monitoring at the time of the negotiation and had a poor sick record. There was also a prior substantiated allegation against the respondent for leaving the scene of an accident six years before this incident although there was no information regarding what, if any, discipline was imposed. The Assistant Advocate, in his plea memorandum described the respondent as having a “mediocre record.” The original offer on the case was for the forfeiture of fifteen vacation days, but the Department agreed to decrease this penalty by one day because the respondent coached little league football for ten years.

For a description of the Department’s disciplinary monitoring system see the Commission’s Reports *The New York City Police Department’s Non-IAB Proactive Integrity Programs* (December 2001) at pp. 59-68

There was one case where Dismissal Probation⁸³ was imposed, but the Commission believed that the subject officer's misconduct required a more severe penalty. In that case, a four-year member of the service found a firearm in a park behind a high school and kept it, failing to notify the Department or voucher the firearm. The officer then sent two photographs of himself to his incarcerated brother. In one of the photographs, the officer wore his Department uniform and pointed his Department firearm toward the camera lens. In the other photograph, the officer displayed both his Department firearm and the firearm he found in the park, while employing a gang-like stance. Based upon the facts, this officer kept for his own use a firearm that he happened upon in a park. This firearm could have constituted evidence in a pending criminal matter, but the officer did not disclose his discovery to the Department. The officer further compounded this misconduct by taking pictures of himself in a gang-like pose with not only this weapon, but also his Department firearm, and sent those photographs to an incarcerated criminal. Based upon the severity and the circumstances of the offense, the Commission believes that termination would have been an appropriate penalty in this matter.

As noted earlier, there were two cases involving the discharge of a firearm in which the subject officer was found to be unfit for duty. While the Commission did not disagree with penalties short of termination in these cases, the Department's policy

and *A Follow-Up Review of the New York City Police Department's Performance Monitoring Unit* (April 2006) at pp. 6-10.

In the second case, the officer also pointed his firearm at a civilian during a traffic dispute where he and the civilian cut each other off and exchanged obscenities. The subject officer denied displaying his firearm during his PG hearing. The respondent had previously forfeited twenty vacation days for a 2000 assault on his girlfriend. The respondent also had a poor sick record.

⁸³ The respondent was also suspended for thirty-two days.

requires a finding of exceptional circumstances to avoid this harsh punishment. In both cases, the officer was placed on Dismissal Probation, ordered to cooperate with random breath-testing, and forfeited vacation and/or suspension days. In one of the cases, although not specified, it was clear that exceptional circumstances existed.⁸⁴ In the second case, however, there were no circumstances specified to justify a departure from the policy.⁸⁵

In conclusion, the Commission continues to urge the Department to make clear fitness for duty findings for officers who are alleged to have displayed or discharged a firearm while off-duty. Better documentation of extraordinary circumstances to justify a downward departure from a penalty of termination for those officers found to have unjustifiably discharged their firearms while unfit for duty is also essential.

c. Domestic Incidents

One of the largest categories of off-duty misconduct cases are those involving domestic incidents. The Department defines this category as misconduct between family members, spouses, children, or people who are dating or have dated in the past. These types of incidents encompass physical assaults, verbal altercations, threats, harassment, violations of orders of protection, sexual assaults, and endangering the welfare of a minor. Strong penalties are necessary for this type of misconduct to demonstrate that it will not be tolerated and to deter members of the service from engaging in this type of behavior. Since domestic incidents are often not an anomaly but a recurring issue in familial relationships, it is also important that the

⁸⁴ The subject officer was under severe emotional stress at the time of the discharge and was determined to be suicidal. He was also alone, so he did not risk injuring anyone else.

⁸⁵ In that case, the respondent became intoxicated during a Fourth of July party and discharged his firearm into the air. The respondent did not report this discharge, as required. Instead, another member of the service reported the misconduct.

Department impose more severe penalties on those members of the service who have been previously disciplined for domestic incidents. In this situation, a penalty that includes placement on Dismissal Probation is appropriate, and if the respondent had been disciplined for a domestic incident in the past which included placement on Dismissal Probation, a more severe penalty, such as termination, may be in order.

In this current review, the Commission examined thirty-nine cases where a domestic dispute was involved.⁸⁶ The allegations included making verbal threats; engaging in screaming matches; physical assaults that included punching, slapping, pushing, and striking the complainant with an object; and a violation of an order of protection.

To determine whether the penalty imposed in each of these cases was sufficient, the Commission focused on the nature of the allegations, particularly whether the complainant received any injuries, and if so, the severity of those injuries. Also considered was the respondent's disciplinary history, especially whether the respondent had been disciplined for any prior domestic misconduct. When it evaluated the adequacy of the penalties, the Commission also took into account whether the complainant was uncooperative⁸⁷ with the administrative prosecution, thereby jeopardizing the likelihood of a guilty finding after a trial. The Commission additionally weighed whether the respondent expressed remorse and cooperated with counseling prior to the adjudication of the charges.

In this review, despite the large number of cases where the complainant refused to cooperate with the administrative prosecution, the Commission found no cases where the

⁸⁶ Nine of these cases were also examined in the section for alcohol-related misconduct. *See supra* at pp. 19-26. This number does not represent the total officers who were accused of involvement in domestic disputes as one officer had more than one case involving domestic issues.

⁸⁷ In nineteen of the cases, the Commission was able to discern that the complainant would not cooperate with the Department's prosecution. In an additional three cases, it was unknown whether the complainant was willing to cooperate.

Advocate moved to dismiss all of the charges due to the complainant's failure to cooperate. Instead, either the case was negotiated or the Advocate relied on the hearsay statements of the complainant supplemented by testimony of the responding officers and photographs of the complainant's injuries.⁸⁸

In two cases, the subject officer received prior discipline for a previous allegation involving a domestic incident. In both of these cases, the respondent accepted a penalty that included placement on Dismissal Probation and an order to cooperate with Department counseling.⁸⁹ Neither respondent had been placed on Dismissal Probation as a result of the earlier allegations. In ten other cases, prior incidents were not reported by the complainant or the respondent until the current incident, so discipline had never been formally imposed for this behavior.⁹⁰ In two cases, there had been prior allegations levied against the subject officer, but these had been unsubstantiated⁹¹ after the complainant recanted, resulting in no discipline. In another case, the respondent had four reported incidents but they all occurred with someone who was not the present complainant.⁹²

⁸⁸ There was one case in particular which served as a commendable example of the Department's attempt to pursue disciplining an officer despite the complainant's lack of cooperation. In that case, the original charges and specifications documented four separate incidents of threats and physical violence by the respondent. Unfortunately, when the complainant refused to cooperate, there was no independent evidence to support her hearsay statements at a trial, so these allegations were dismissed. DAO conducted a further review of the investigative file and determined that there was other misconduct that could be proven and amended the charges. In his plea memorandum, the Assistant Advocate noted that the evidence indicated an ongoing domestic situation and that "it was important that the Department create a permanent record of the respondent's misconduct." A guilty plea to the amended charges ensured that a record had been made of the respondent's involvement in this domestic incident.

⁸⁹ In both of these cases, the prior discipline was for an incident involving a different complainant. In one of these cases, the complainant in the present case also alleged prior acts of physical aggression that had not been previously reported.

⁹⁰ Two of these cases involved the same respondent.

⁹¹ When an allegation is unsubstantiated, there is insufficient evidence to prove or disprove its veracity.

⁹² This respondent retired nine days after the allegations surfaced with the present complainant. Therefore, the instant allegations were not adjudicated.

In twenty of the cases, the subject officer either voluntarily completed or was mandated to cooperate with domestic violence counseling.⁹³ Of the remaining nineteen cases, the Commission found that counseling was not imposed for reasons that were legitimate in ten of the cases.⁹⁴ These reasons included that the officer was no longer employed by the Department or the officer was found guilty after a Department trial.

The Commission agreed with the penalty imposed on the subject officer in thirty-two of the cases reviewed.⁹⁵ Of the five cases where the Commission believed a more serious penalty was warranted, two involved the same officer. The Commission believed that since this respondent caused injury to the complainant in one of the cases, placed the complainant at risk of a serious physical injury in the second case, and there was testimony about a third, unreported incident, a period of monitoring should have been imposed. In the remaining cases, the Commission also believed that Dismissal Probation would have been appropriate.⁹⁶

⁹³ In another case, the respondent was sent to counseling prior to the adjudication of the disciplinary matter, but it was unclear from the paperwork whether the respondent completed that counseling.

⁹⁴ In another case, the respondent was ordered to participate in EEO training in connection with a separate case.

⁹⁵ In two other cases, the respondents were found not guilty of the domestic allegations after trials.

⁹⁶ In the first case, one of the allegations was that the respondent threatened to kill the complainant. The respondent had been disciplined in 2006 for wrongfully displaying his firearm during a traffic incident and had only been employed with the Department for three and a half years. Although he pled guilty, at his official Department interview, the respondent denied culpability. Finally, the respondent was in the Department's level II disciplinary monitoring system indicating that the respondent had other disciplinary issues as well.

In the second case, although the respondent was only charged with slapping her husband, also a member of the service who was also charged for the same misconduct, the respondent stated that she lied about the slap to 911 so that officers would respond. Either the respondent made a false statement to the 911 operator or to responding officers and in her PG interview regarding the misconduct. Given the serious consequences that could result from lying to the 911 operators and the Department's false statement policy, the Commission believes that a period of monitoring was warranted. *See infra* at pp. 37-44 for a discussion about the Department's false statement policy.

In the final case, after an argument with her husband, also a member of the service, the respondent broke three windows and slashed all four tires on his car. Her husband called the local police department. Upon their arrival, the respondent refused immediately to comply with the police's orders to come out of the

In conclusion, it appears that the Department is sufficiently disciplining those officers who become involved in domestic incidents, thereby sending a message that this type of misconduct will incur severe penalties. Counseling continues to be mandated as a part of almost all plea agreements involving this category of allegation. Given the number of cases where complainants reported prior, unreported domestic incidents with the respondent,⁹⁷ the Commission encourages the Department to reach out, when possible, to civilians who are involved with members of the service to advise them about reporting such incidents and how the Department will investigate and respond to these allegations. This may give present and future victims of domestic abuse the support they need in order to come forward early and to cooperate with the criminal justice system and the Department's disciplinary proceedings.

d. Dismissal Probation and Probationary Police Officers

In the majority of the cases in the Department disciplinary system, members of the service who receive charges are entitled to administrative hearings for the purpose of determining whether or not the officer is guilty. However, there are two categories of probationary status that can revoke the officer's right to the administrative hearing and provide the Police Commissioner with the discretion to terminate the officer at will. The first category is that of probationary police officer. When a member of the service begins his career with the Department, he is put on probation for the first two years of duty.

house. When the respondent did leave her home, she refused to comply with the police's directions to get on her knees. Given the respondent's reaction to a disagreement with her husband and her refusal to cooperate with local police, the Commission believes that counseling and a period of monitoring would have been appropriate.

⁹⁷ Of the thirty-nine cases reviewed by the Commission, the complainant disclosed prior domestic incidents that had not previously been reported in eight of the cases. In three other cases, it was unknown from the documents reviewed whether there had been a previous domestic incident history. Finally, in seven cases, there were indications that there was a prior domestic incident although details were not provided.

During that time period, an officer can be terminated without an administrative hearing provided that the decision to terminate is not made in bad faith, made upon a constitutionally impermissible basis, or in violation of statutory or decisional law.⁹⁸

The second category allowing for summary termination is when the subject officer is already being monitored through his placement on Dismissal Probation. When a subject officer is placed on Dismissal Probation, he is terminated from his employment with the Department, but his termination is stayed for one year.⁹⁹ During that one-year time period, the subject officer's performance and behavior is monitored closely, and if the officer conforms to Department standards and no future charges are brought against the officer, he is then restored to his former status after the probation period ends. If charges are brought against the officer during the one-year time period, even if the underlying misconduct was committed before the imposition of the Dismissal Probation, the officer can be terminated without the benefit of an administrative hearing. The Commission examines both types of cases to determine if officers on probation are being summarily terminated and, if not, whether they should have been. The Commission also determines whether, in the instances where the officer has been summarily terminated, the termination is accomplished in a timely manner.

In the cases reviewed by the Commission, it did not find any cases that specified that the respondent was a probationary police officer. There was one case from the Commission's review that included an officer who was already on Dismissal Probation

⁹⁸ According to the New York City Personnel Rules and Regulations §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."

⁹⁹ Both probationary periods are extended by any time the officer is out sick, on vacation, or otherwise not on full duty status.

when charges were brought against him.¹⁰⁰ Prior to the new charge being adjudicated, the Department terminated the subject officer. Over nine months passed between the date of the incident until the date the decision was made to terminate the officer. The Commission agrees with the decision to terminate, especially since one of the charges against the subject officer was a replicate of the charge for which he was originally placed on Dismissal Probation. The Commission reiterates its prior recommendation that the Department should terminate subject officers in an expeditious manner once it has accumulated all the facts necessary to make that determination.¹⁰¹

C. False Statement Cases

In response to one of the Commission's early reports,¹⁰² the Department promulgated a policy to address the discipline of those officers who were found to have made false official statements. This policy declared that any member of the service found to have made a false statement in a PG interview¹⁰³ or other official context, such as at trial or otherwise under oath, would face termination unless exceptional circumstances existed which mitigated against this severe penalty. These exceptional circumstances were to be determined by the Police Commissioner on a case-by-case basis. The Commission has continued to review how the

¹⁰⁰ The officer was originally placed on Dismissal Probation because of discourtesy to a supervisor. In the current incident, the officer was operating a horse-drawn carriage in Central Park, without authorization to engage in off-duty employment. An ASPCA officer noted that the subject officer was not operating the carriage with its requisite lights. When approached, the subject officer refused to identify himself or provide his address. The subject officer then struck the ASPCA officer and fled when the ASPCA officer attempted to effect an arrest. The subject officer was then discourteous to a responding sergeant.

¹⁰¹ See *Sixth Annual Report of the Commission* (December 2001) at pp. 59-62 and *Seventh Annual Report of the Commission* (March 2004) at pp. 117-122.

¹⁰² See *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements* (December 12, 1996).

¹⁰³ See *supra* at p. 6, fn. 13 for a definition of an interrogation conducted pursuant to PG §206-13.

Department has applied its false statement policy¹⁰⁴ and, in the past, has found that the Department consistently followed the policy in cases where members of the service were found to have made a false statement under oath or during a PG hearing. Those officers' employment with the Department was terminated. In cases where there was a penalty short of termination, the exceptional circumstances were enumerated that justified a departure from the policy. The policy, though, did not appear to be applied in situations where officers were found to have made false statements in other contexts such as oral statements made to supervisors or other investigative bodies, written statements including making false entries in Department paperwork, or other fraudulent conduct. In some of these reviews, the Commission also noted that the Department was not including charges of "Making a False Statement" in all cases where it was appropriate.

Through the years, the Commission has noted that exceptional circumstances were increasingly becoming standardized, instead of being considered in light of the facts in each individual case. The Commission, though, reviewed each case and determined whether it agreed that exceptional circumstances existed to justify a departure from the penalty of termination. The false statement policy was further diluted, in 2005, when the Department removed mere denials of guilt from the policy's reach. The Commission did not support this modification and explained that "[t]he denial of guilt, when it is a false denial, is still a lie and, therefore, directly erodes the credibility of the officer and indirectly affects the public's

¹⁰⁴ See *Third Annual Report of the Commission* (August 1998), at pp. 12-15; *The New York City Police Department's Disciplinary System: A Review of the Department's December 1996 False Statement Policy* (August 1999); *Fifth Annual Report of the Commission* (February 2001), at pp. 42-55; *Sixth Annual Report of the Commission* (December 2001), at pp. 62-87; *Seventh Annual Report of the Commission* (March 2004), at pp. 122-150; *Ninth Annual Report of the Commission* (February 2006), at pp. 30-35; and *Tenth Annual Report of the Commission* (February 2008), at pp. 31-38.

confidence in the integrity of the Department.”¹⁰⁵ The Department has continued to support this change and has stated its belief that a denial without any embellishment is a less serious offense that does not warrant termination.

Despite the fact that the Commission continues to disagree with the Department’s revised false statement policy, for the purposes of this report, the Commission has only included those cases where the false statement consisted of more than a mere denial of participation in the alleged misconduct.¹⁰⁶ The Commission has also excluded all cases where the false statement involved time or leave issues that did not involve a pattern or practice of behavior,¹⁰⁷ unless the Department included a specification charging that the subject officer made or caused to be made false entries in Department records as a result of this misconduct. After removing those cases that did not belong in the sample, the Commission reviewed fifty-nine disciplinary cases.¹⁰⁸ In nine of these fifty-nine cases, the Commission believed that a false statement charge was warranted, but no such charge was brought. In one other case, although the respondent was charged with making false entries in Department records and interfering with a Department investigation, he also should have been charged with making false statements during an official PG interview.

The Commission divided the cases into two categories: those involving official

¹⁰⁵ See *Ninth Annual Report of the Commission* (February 2006) at p. 32.

¹⁰⁶ There were some cases where it was unclear if the statement at issue constituted a mere denial of guilt without embellishment, as the Commission did not have access to the entire statement. In these situations, the Commission counted these statements as mere denials unless the respondent was charged with “Making a False Statement.”

¹⁰⁷ The Commission has always considered isolated time and leave issues, such as exaggerating one’s illnesses to a Department Surgeon, to be an administrative, personnel matter rather than one affecting the credibility and the integrity of the Department.

¹⁰⁸ Some of these cases were also reviewed in the Serious Off-Duty Misconduct section, *supra* at pp. 17-37.

statements¹⁰⁹ and those which did not.¹¹⁰ In this review, thirteen cases involved an officer making a false statement in an official context. Seven of these officers were charged with making a false statement during a PG interview. Four officers signed false accusatory instruments for criminal proceedings. One officer testified falsely under oath at a suppression hearing. In the final case, the officer, in addition to lying during his PG interview, testified falsely as a subject at a Department of Motor Vehicles hearing and submitted false documentation to support his alibi claims. Of the thirteen cases, the officer was separated from the Department in only seven of the cases. This separation only occurred as the result of a forced separation by the Department in one case.¹¹¹ In this case, however, the subject officer pled guilty to other, serious charges as well.¹¹² In the remaining six cases, the officer resigned or died prior to the charges being adjudicated. In one of these cases, the officer was about to be terminated when he resigned without permission of the Police Commissioner.¹¹³ Therefore, there is no way for the Commission to determine whether the Department would have followed its policy in these cases. In the remaining cases, the Department failed to follow its false statement policy. Three of these officers received a combination of the forfeiture of vacation days and Dismissal Probation. Exceptional circumstances were provided in two of these cases.

¹⁰⁹ Official statements include those made during PG interviews and under oath.

¹¹⁰ When a subject officer had more than one false statement charge, the Commission only counted the case in the more serious false statement category. The one exception was that if the Commission believed that there were additional false statement charges which should have been brought, the case was also counted as one where a false statement should have been charged.

¹¹¹ As part of a plea negotiation, the subject officer had to file for immediate retirement. As the Commission believes that the importance lies with the fact that the officer is no longer employed with the Department, the Commission does not object to an immediate retirement in lieu of termination.

¹¹² The other charges included the theft of a firearm and falsely alleging that a civilian possessed that firearm.

¹¹³ The officer, though, had other serious charges against him including sexually soliciting an underage child over the internet.

In one case, those exceptional circumstances were that the respondent “merely downplayed his observations,” while in the second case, the qualifying factors included that the incident had occurred many years prior to the imposition of discipline, and the subject officer had performed well since the misconduct occurred. The Commission did not agree with any of these dispositions and believed that all of these officers should have been terminated.¹¹⁴ In the final three cases, the respondents signed criminal court documents under penalty of perjury which contained falsehoods. The respondents each received a penalty of the forfeiture of thirty vacation days. No extraordinary circumstances were set forth to support these downward departures. While the Commission believed that the respondents did not have an ill intent when they completed these documents, possibly justifying penalties short of termination, it does believe Dismissal Probation would have been appropriate given the seriousness of the

¹¹⁴ In one case, the subject officer was found to have been running personal errands while on Department time. During his PG hearing, the officer stated that he had been visiting and addressing medical issues concerning his dying father. The investigator asked for documentation to demonstrate his father’s condition and held the investigation open to receive that documentation. After making further inquiry, the subject officer admitted that he was actually addressing estate issues, and his father had died prior to the time period alleged.

In the second case, the respondent was one of several officers at a party when a fellow officer who was intoxicated, discharged his firearm into the air. The respondent was sitting at the same patio table as the intoxicated officer. Soon after the discharge, the respondent, a second officer, and two other people left the party. In the car ride home, according to one of the respondent’s civilian friends, there was a discussion about the firearm discharge. The respondent did not report the incident. At his official interview, the respondent claimed he was not facing the intoxicated officer and, although he heard a loud noise that startled him, he believed it to be fireworks. He also insisted that there was no discussion in the car about the preceding events. These denials were obviously given to cover up the respondent’s wrongdoing as well as the intoxicated officer’s dangerous behavior. This is exactly the type of false statement that the policy is designed to deter.

In the third case, the subject officer swore in a criminal complaint that he was present at a defendant’s arrest when he was not. He compounded this falsehood by reiterating it during his PG hearing despite being confronted with his team members’ statements which contradicted the respondent’s version of events. During this hearing, the respondent also insisted that he personally handcuffed the defendant. In the plea memorandum, the Assistant Advocate acknowledged that the respondent’s misconduct “could have a significant future impact upon his effectiveness as an active member of the Department.” Given the respondent’s adherence to his initial falsehood, the Commission believes that termination, despite the respondent’s lack of misconduct during the lengthy investigation and administrative prosecution for this incident, was appropriate.

offenses.¹¹⁵

In those cases where the falsehood was not made under oath, the Department was unlikely to terminate when the allegation was one of making false entries in Department records. However, the penalty of mandated retirement in combination with Dismissal Probation and the forfeiture of vacation days was often negotiated in those cases involving false statements to an investigative body that were not made under oath and those cases involving fraud. The Commission examined thirty-seven cases where there was a falsity involved which did not consist of a statement made under oath or during a PG hearing. In twenty-four of these cases, the officer caused false entries to be made in Department records. Six of these cases involved false entries made when officers claimed to have checked license plates but had not. The remaining cases included false entries in daily activity reports, false overtime, and false entries regarding signing in and out. Of these twenty-four cases, in only three of the cases were officers separated from the Department. One of these officers retired prior to the charges being adjudicated. Although the other officers were separated, they both also had other serious charges pending against them. Of the remaining twenty-one cases, the Commission agreed with the penalty imposed in nineteen of the cases based on the totality of the circumstances. However, the Commission believed that in two of these cases, while termination may not have been warranted, a period of Dismissal Probation should have been imposed.

In eight cases, the subject officer provided false information to either responding police

¹¹⁵ In one of the cases, it appeared that the criminal case against the arrestee was dismissed, possibly as a result of the respondent's carelessness. In a second case where the officer signed another officer's undercover shield number to a supporting deposition, several criminal cases were dismissed due to his and his team members' actions. In that case, DAO and the Trial Commissioner had initially recommended a period of Dismissal Probation be imposed; however, the Police Commissioner only penalized the subject officer thirty vacation days. However, this officer was seeking disability retirement and would be leaving the Department shortly.

officers, a parole officer, or the Federal Bureau of Investigations. Three of these officers were separated from the Department.¹¹⁶ In one case, the subject officer was found not guilty of the falsehood after a trial. Of the remaining four cases, the Commission agreed with the penalties that were negotiated in three of the cases. In the remaining case, the subject officer either lied to the 911 operator or to responding officers and during her PG hearing regarding the severity of a domestic dispute in which she was involved. Given the consequences of lying to 911, including the possible delay of other calls which may have been more serious, the Commission believes that this officer should have received Dismissal Probation.

There were five cases where the subject officer was alleged to have committed some type of fraud. Three of these involved registering an automobile at an address which was not where the respondent lived in order to receive a lower insurance premium. The remaining two cases involved opening a Con Edison account with false information and collecting money to which the officer was not entitled from the Department of Housing and Urban Development. The Commission agreed with the outcome in all of the fraud cases. Three of these officers were separated from the Department.¹¹⁷

The Commission also found an increase in the number of cases where the specification of “Making a False Statement” was not levied, while another charge that did not mandate termination such as “Interfering with an Investigation” was substituted.

In conclusion, the Commission agreed with the penalties that were given in almost all of the cases involving unofficial falsehoods. However, the Commission believed that the

¹¹⁶ One of these officers also had other serious charges filed against him including the failure to comply with an order to stay away from an individual with a criminal history and threatening to kill this individual.

¹¹⁷ One of these officers had been terminated on another matter prior to the adjudication of the present fraud case. In the remaining two cases, the officers registered their vehicles at addresses which were not their residences in order to receive lower insurance premiums. These officers forfeited ten and eight vacation days respectively.

Department was departing from its policy of termination for those false statements made in an official context without sufficient explanation to justify this deviation. The Commission believes that in order to maintain the integrity of the Department and the credibility of its officers, it is important that the Department adhere to this policy. When there is a decision to grant a penalty that does not remove the subject officer from the Department, the reasons supporting that decision must be clearly stated.

V. THE COMMISSION'S ONGOING WORK

A. Open/Pending Case Monitoring

In addition to its review of pending IAB cases,¹¹⁸ the Commission also monitors open IAB investigations through its review of daily logs of complaints received by the Department, attendance at IAB Steering Committee meetings, and attendance at IAB briefings to the Police Commissioner and other high-ranking officials in the Department. In the past year, Commission staff additionally attended a special briefing regarding IAB's investigation of several officers in the Brooklyn South Narcotics Unit in order to learn about the allegations and the investigative steps that took place. This investigation resulted in the arrests of several of the involved officers.

This type of monitoring enables the Commission to stay apprised of the latest corruption trends and allegations and evaluate how the Department investigates and responds to allegations of corruption. The various ways in which the Commission remains informed about open IAB investigations are discussed below.

1. Log Review

All corruption and misconduct allegations received by the Department by mail,

¹¹⁸ See *supra* at pp. 6-9.

telephone, or in-person are reported to IAB's Command Center, which is open twenty-four hours a day, seven days a week. This information is entered into the Command Center's computer system. Logs consist of these computer entries and are forwarded to the Commission for review. The Commission's review of the logs allows it 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 review of these logs also alerts the Commission to current corruption trends.

2. Steering Committee Meetings

Throughout the year, Commission staff and the Commissioners 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 Committee meetings is to examine the most serious cases or the oldest cases handled by each IAB group so a strategy can be developed or modified to best obtain evidence as well as to ensure that cases are not being unnecessarily delayed. On a regular basis, each investigative group presents their most significant or their oldest cases to the Committee and reviews the investigative steps which have been taken as well as future investigative plans. Attendance at these meetings allows the Commission to observe how IAB responds to and investigates allegations of corruption. Commission participation is encouraged by the Executive staff of IAB. The Commission keeps a record of all recommendations that the Steering Committee gives the specific group in order to determine whether the investigator follows those recommendations in the future. Generally, the Commission has observed that the investigators are following the suggestions of the Steering Committee.

3. Intensive Steering Committee Review

Each year, between June and September, the Steering Committee conducts intensive reviews of all open IAB cases. The Commission attends all intensive Steering Committee meetings which provide an overview of IAB's entire open caseload and allows Commission staff to hear about all of IAB's pending investigations.

4. IAB Briefings to the Police Commissioner

In order to keep the Police Commissioner fully apprised of significant cases and corruption trends, on a monthly 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 Executive Director and Commissioners attend each of these meetings. At these briefings, IAB group Captains present selected cases and describe the investigative steps that have been taken, the results of those steps, and any anticipated investigative actions. The Commission continues to select the cases for IAB to present to the Police Commissioner. These cases are chosen from those suggested by the Chief of IAB and from cases which the Commission learns of through its attendance at Steering Committee meetings and its pending case monitoring. In this past year, briefings have included the case where an officer is alleged to have sodomized a complainant in a subway station while others are alleged to have attempted to cover up the misconduct, the case where officers are alleged to have falsified the arrest of four men by claiming that they engaged in drug transactions with these men when video surveillance demonstrated that they did not, allegations of criminal association, and allegations of various illegal activity including theft, robbery, home invasions, and assault.

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. Interim and Operations Orders

The Commission receives 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.

2. Department Reports

On a monthly basis, the Commission receives a copy of the Department's Corruption and Misconduct Complaint Comparison Report. This report presents a statistical analysis of corruption allegations which compares annual and monthly statistics by category of allegation, borough, and bureau. This analysis enables the Police Commissioner and Executive staff of the Department to identify corruption trends. The Commission also receives and reviews a copy of IAB's Annual Report which presents statistics about the various types of complaints and the dispositions of these complaints for the preceding year. Also included in this report is a discussion of the proactive measures that IAB has undertaken to detect corruption or serious misconduct.

3. IAB Training Observations

This year, the Commission was invited to attend a two-week training for investigators and lieutenants who had recently been assigned to IAB. This training was conducted by IAB's Office of Professional Development. The Commission chose to observe those lectures and workshops which were relevant to its monitoring function. Staff members observed

lectures about topics including computer crimes, integrity testing, surveillance, PG hearings, confidential informants, case files, sex crimes, and the function of DAO. Staff also observed three workshops where new investigators tested their surveillance and interrogation skills and planned and acted out an integrity test. The Commission found that this training was well conducted and informative although some of the training on specific types of allegations appeared very basic. This level may be appropriate for new draftees. The skill level in communicating information and engaging the class varied with the instructors.

C. Additional Commission Functions

The Commission periodically receives allegations of police corruption or misconduct by individuals who wish to lodge complaints against the Department. The Commission is not empowered to conduct its own investigations except in very limited circumstances. Upon request of the complainant, Commission staff obtains all relevant information concerning the allegation and then forwards that information to IAB's Command Center so that a log may be created and the appropriate investigative steps taken. In order to track IAB's handling of these allegations, the Commission assigns each allegation its own internal log number, and Commission staff then monitors IAB's handling of certain allegations.

VI. FUTURE PROJECTS OF THE COMMISSION

In the *Tenth Annual Report of the Commission*,¹¹⁹ the Commission outlined four projects on which it intended to work in the future. One of these projects, a review of the cases investigated by the Department's various Borough and Bureau Investigation Units, was

¹¹⁹ February 2008.

completed, and the report on that project is summarized earlier in this report.¹²⁰ The Commission expects to complete two of the remaining projects and hopes to begin two more projects in the future.¹²¹ A synopsis of the Commission's planned projects is provided below.

A. The Commission has issued two prior reports on the Department's disciplinary system.¹²² These reports focused on the delays in the progress of the disciplinary cases from the request for charges and specifications to each case's conclusion and the approval of its outcome by the Police Commissioner. These reports also reviewed the performance of DAO and the sufficiency of the preparation and case enhancement by the Assistant Advocates. After the Commission's first report on this topic, the Department adopted several of the Commission's recommendations contained therein. Improvements were noted by the Commission when it conducted its second study on this issue; the Commission believed, however, that the Department could perform even better. Since that report was published, a new Deputy Commissioner in DAO and a new Deputy Commissioner of Trials has been appointed. The Commission has met with both the Deputy Commissioner of DAO and her Commanding Officer and the Deputy Commissioner of Trials and his Commanding Officer to discuss the changes they have made to the system and their perception of the strengths and weaknesses of DAO. The Commission intends to determine if cases are progressing through the system in a more expeditious manner than in past reports. Additionally, the Commission has begun to attend Department trials and negotiations to evaluate the performance of the Department's Assistant Advocates and to observe the changes that have

¹²⁰ See *supra* at pp. 2-6.

¹²¹ The Commission is currently restructuring the make-up of its staff in order to obtain more staff members. This change should enable the Commission to conduct multiple projects simultaneously.

¹²² *The New York City Police Department's Prosecution of Disciplinary Cases* (July 2000) and *Follow-up to The Prosecution Study of the Commission* (March 2004).

been made since its last report on this issue.

B. The Commission intends to report on the safeguards the Department has in place in order to detect and prevent overtime abuse by its members. In 2004, the Commission became concerned regarding the issue of overtime abuse based upon the large number of disciplinary cases that were adjudicated in the Department's Trial Rooms involving officers who submitted false overtime reports. Additionally, in the Commission's daily review of complaints made to the Department, there were numerous allegations of overtime abuse. These sources confirmed that this abuse appears to be systemic and involves uniformed officers as well as supervisors. The Commission believes that the submission of false overtime reports is a classic form of corruption in that it involves the preparation of fraudulent reports in order to collect unearned money from the City. The completion of these false reports certainly erodes the credibility of officers and undermines their effectiveness in criminal investigations. The Commission intends to review the mechanisms the Department has implemented to prevent fraudulent overtime claims to determine if they are sufficient to deter this type of corruption from reoccurring. Specifically, the Commission will examine how the accuracy of overtime reports is verified, how personnel are held accountable for their reports, the manner in which false reports are being detected, as well as, the general procedures employed by the Department to prevent the submission of false reports at the outset. While disciplinary cases for overtime abuse do not appear to be as prevalent as they were five years ago, there are still a significant number of officers who are disciplined for their receipt of overtime pay for work that they did not perform.

C. The Commission intends to review the Department's current policy regarding its members' association with people who have criminal histories or who are presently involved in criminal enterprises. Criminal association poses a significant problem for the Department for many different reasons. These reasons include the most obvious -- the officer, himself, could be involved in criminal activities or could be helping criminals by divulging information such as when enforcement activity is going to be taken. Other less apparent issues also exist. An officer can try to use his position to influence the arrest or prosecution of an associate. Similarly, a criminal can try to use the officer's name to influence arresting officers. This type of association also affects the public's perception of the Department when an officer is seen behaving in a friendly manner with criminals and also may affect morale within the Department when veteran officers are working with people who they have arrested or who are associating with known criminals. The Commission intends to discern how the Department screens for this type of behavior when appointing new recruits and what the Department does to discourage these relationships. Furthermore, the Commission plans to compare the Department's policy and its implementation to that of other law enforcement agencies to determine if there is more the Department can do to prevent these relationships and interactions.

D. Since the Commission drafted its last *Annual Report*,¹²³ there have been a series of serious allegations reported in the media involving members of the service from various specialized Department units. Two recent ones involve the Brooklyn South Narcotics Unit and the Queens Narcotics Unit. In the Brooklyn South Narcotics Unit

¹²³ *Tenth Annual Report of the Commission* (February 2008).

investigation, members of the unit were allegedly stealing drugs from arrestees and giving these drugs to confidential informants.¹²⁴ In the case involving members of the Queens Narcotics Unit, three officers are alleged to have falsely arrested four innocent men for selling drugs. Only surveillance video showing that the officers did not buy drugs from these men prevented the arrestees from being criminally prosecuted for and possibly convicted of crimes that they did not commit. The Commission intends to examine investigations involving other members of these specialized units to look for similarities or patterns and to discuss with IAB investigators the issues that they believe exist within these units that permitted these events to occur. Commission staff also would examine the previous assignments of the officers directly implicated in these corruption allegations to see if there were prior indications of similar corrupt activity in their preceding assignments. It is possible that if one unit engages in misconduct, when that unit is broken up and transferred, officers will bring this type of behavior to their new environments and team members. This would then contaminate other units. The Commission will examine the level and quality of supervision within these units to determine if supervision needs to be increased or otherwise strengthened.

¹²⁴ This case and the acts leading up to it occurred prior the publication of the Commission's *Tenth Annual Report*. The facts of the investigation and subsequent arrests were not reported in the media until after that report was drafted and in the editing process.