

I. HISTORICAL BACKGROUND

In 1994, the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (“Mollen Commission”), chaired by Milton Mollen, published a report describing its findings and recommendations after a twenty-two month investigation conducted into “the nature, extent and causes of police corruption in the New York City Police Department”¹ (“NYPD” or “the Department”). Among its recommendations,² the Mollen Commission proposed the formation of another, permanent commission to address the twenty-year cycle of corruption that it observed within the NYPD. In this cycle, which was also previously noted twenty-two years earlier by the Knapp Commission, the Department was beset by a corruption scandal approximately every twenty years. In the wake of each scandal, the Department executed institutional reforms to address the conditions that permitted corrupt officers to operate successfully. As time passed and public attention to the Department waned, conditions within the Department again developed that enabled corruption to grow.

While the Mollen Commission asserted that the Department should retain the primary responsibility for policing itself,³ it also recommended the establishment of an independent, external monitor. This monitor would maintain pressure on the Department to discover and rid itself of corruption rather than relax and attempt to avoid negative publicity by turning a blind eye to corrupt and possibly corrupt conditions. The Mollen Commission envisioned “the creation of a permanent external Police Commission,

¹ Commission Report of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (“Mollen Commission Report”) (July 7, 1994), at p. 1.

² See *Id.* at pp. 110-157 for all of the recommendations proposed by the Mollen Commission.

³ See *Id.* at p. 149.

independent of the Department,” which among other responsibilities, would “perform continuous assessments and audits of the Department’s systems for preventing, detecting, and investigating corruption.”⁴ This would be implemented through periodic reports to the Mayor and Police Commissioner, complete with recommendations to improve the Department’s integrity.

In response to the Mollen Commission’s recommendations, Executive Order 18 was signed in February 1995.⁵ This order created the Commission to Combat Police Corruption (“the Commission”). One of the primary responsibilities charged to this Commission was to conduct audits, studies, and analyses of the Department’s anti-corruption policies and practices. The Commission fulfills this mandate principally through its review of open and closed investigations conducted by the Department’s Internal Affairs Bureau (“IAB”),⁶ its review of the adjudicated cases heard in the Department’s Trial Rooms, its attendance at Police Commissioner briefings,⁷ and its review of all complaints recorded by IAB’s Command Center.⁸ Additionally, the Commission also chooses particular areas and issues within the Department on which to conduct more detailed analyses. To date, the Commission has published twenty-five reports on specific Department units or policies. The Commission has also published eleven Annual Reports.

⁴ See *Id.* at p. 152.

⁵ Executive Order No. 18 is reproduced as Appendix A to this report.

⁶ IAB is the unit within the Department responsible for investigating allegations of corruption and serious misconduct.

⁷ See *infra* at pp. 62-63 for a description of Police Commissioner briefings.

⁸ The Command Center is IAB’s twenty-four hour hotline for receiving complaints from the public and members of the service.

Although the Mollen Commission recommended that the Commission be staffed by “ten to fifteen people with varied expertise, including attorneys, investigators, police management experts and organizational and statistical analysts,”⁹ the initial staff of the Commission consisted of five individuals, including three attorneys, a confidential investigator, and an office manager. Following the *First Report of the Commission*,¹⁰ the Commission was exclusively staffed by attorneys and an office manager. At its largest, the Commission was staffed with six attorneys.¹¹

The budget of the Commission has not increased significantly since its inception. As a result, the staff had been reduced to an Executive Director, three staff attorneys, and an office manager. In this past year, facing a decreased budget and work that is not inherently legal in nature, the Executive Director and Commissioners¹² decided to restructure the makeup of the Commission by replacing departing staff attorneys with investigative analysts.¹³ To date, the Commission has hired and trained two investigative analysts. The Commission intends to hire a third investigative analyst shortly.

This is the *Twelfth Annual Report of the Commission*. As in previous reports, the Commission summarizes its findings and recommendations after reviewing a percentage of IAB’s investigations and reviewing all of the Department’s closed disciplinary cases.

⁹ See Mollen Commission Report at p. 154.

¹⁰ March 1996.

¹¹ This included the Executive Director, Deputy Executive Director, and four staff attorneys. There was also an Office Manager.

¹² In addition to its paid staff, the Commission is comprised of six Commissioners who provide their services to the Commission on a pro bono basis. The Commissioners are responsible for major policy decisions about the course of the Commission’s work, but, for the most part, are not involved in the day-to-day operations of the Commission.

¹³ The remaining staff attorney was promoted to the position of Deputy Executive Director.

During the reporting period,¹⁴ the Commission reviewed fifty-three completed IAB investigations involving various allegations of corruption. The Commission also reports on the discipline levied against members of the service in five hundred and ninety-three disciplinary cases that were adjudicated in the Department's Trial Rooms. In the final sections of this report, the Commission describes its ongoing daily responsibilities and provides a brief account of proposed future projects.

II. THE COMMISSION'S MONITORING OF PENDING IAB ALLEGATIONS

Two years ago, the Commission began monitoring cases that were in the process of being investigated by IAB. The Commission randomly chose files to review early in the investigations and then reviewed on a quarterly basis the progress made in each case until the case was closed. The intent behind this review was to allow the Commission staff to discuss any recommendations with case investigators at a time when those recommendations might make a difference in the outcome of the case. During the past year, due to the internal restructuring, discussed previously,¹⁵ the Commission lacked sufficient staff to continue this type of monitoring.¹⁶ The Commission intends to resume this monitoring, with modifications to enhance its usefulness. Specifically, the Commission and IAB will schedule these reviews so that the individual investigators are available to discuss the cases either at the time of the review or soon thereafter.

¹⁴ This report covers the work performed by the Commission between December 2008 and November 2009. It does not cover the Commission's work between December 2009 and the publication of the report in February 2010 as this time was used for the editing and the publication process. That time period will be covered in the *Thirteenth Annual Report of the Commission*, expected to be published in February 2011.

¹⁵ See *supra* at p. 3.

¹⁶ To conduct this monitoring, Commission staff travel to the individual field offices of each IAB group so that the investigator has access to the file if there is a development in the case.

The Commission monitored pending cases through its attendance at IAB's Steering Committee meetings. At these meetings, the Commanding Officer of each IAB investigative group¹⁷ presents the facts of his¹⁸ group's most serious cases and describes the investigative actions taken to date.¹⁹ The Steering Committee, chaired by the Chief of IAB, is also composed of IAB's Assistant Chief, a Deputy Chief, and several Inspectors. Each member of IAB's Executive staff brings his individual investigative experiences to the discussion of these cases. Each group presents its cases approximately once every six weeks.²⁰ The purpose of these meetings is to ensure that cases are consistently investigated, provide updates to the Executive staff regarding the progress of the cases, and offer the opportunity for the Executive staff to share their knowledge and experience through the recommendations of investigative actions, which provide direction to investigators. Either the Commission's Executive Director or Deputy Executive Director attends each of these meetings.²¹ While the Commission attends in the capacity of observers in order to learn about the progress of the cases, occasionally, staff will contribute to the discussion.

¹⁷ Group 2 (the Financial Investigations Unit) and Group 9 (the group responsible for the immediate, overnight investigation that usually occurs following the receipt of the allegations) do not hold Steering Committee meetings.

¹⁸ 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.

¹⁹ This describes the basic Steering Committee meeting. There are other Steering Committee meetings that discuss cases that are older than a certain date, all of the group's active cases, or that include an analysis of the corruption complaints in each of the commands within the specific group's jurisdiction. There are, less frequently, other specialized Steering Committee meetings to discuss specific issues such as an increase in complaints within a particular command. Commission staff also attends these Steering Committee meetings.

²⁰ Some groups do not present their cases that often. These include the Special Investigations Unit, the Chief of Internal Affairs Unit, and the Computer Crimes Unit. When these groups do present their cases, however, they present all of their pending cases.

²¹ The Commissioners also attend some of these meetings.

Steering Reports are provided at most meetings. These reports describe the facts of the case, the actions taken in the investigation, and the steps the group anticipates taking in the future. The Commission's Executive Director and Deputy Executive Director read the reports to determine whether the investigative group is following the recommendations of the Steering Committee. In almost all of these cases, the investigative group follows the recommendations and reports the results of these steps at the next meeting.

As a general matter, the IAB Commanding Officers demonstrate an admirable grasp of their cases during these presentations. The Commanders or their lieutenants, who supervise case investigators, usually have the ability to answer questions posed to them about their cases. It is only the rare occasion when a question cannot be immediately answered. Similarly, the Steering Committee members also appear to be knowledgeable about each group's major cases.

This past year, the Commission attended the Steering Committee meetings for twenty-one IAB groups. The Commission heard presentations for approximately five hundred and forty-one investigations.²² These presentations included allegations of criminal association, perjury, fraud, firearms sales, theft, sexual misconduct, excessive and unjustified use of force, collecting bribes, and falsifying summonses. Among the cases the Commission followed, several cases received media attention, including: the case involving the alleged sodomy of a civilian by officers on a Brooklyn subway platform; the case involving the use of a taser on an emotionally disturbed man who was

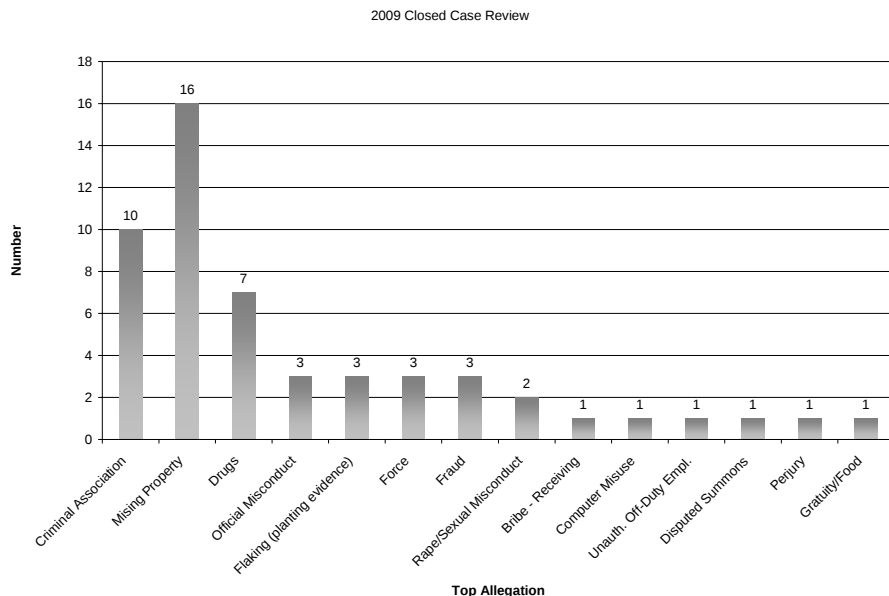
²² This does not include the investigations presented at the extended Steering Committee meetings that are generally held in the summer. See *infra* at p. 64 for further information about extended Steering Committee meetings. This figure also does not include the cases presented at the Steering Committee meetings for Groups 1, 25, 51, 52, and 55. The Commission does not receive Steering reports for Groups 1 and 25 so it was unable to tally the number of investigations it followed in these meetings. Groups 52 and 55 do not handle their own investigations. Since Group 51 primarily handles police impersonations, the Commission did not include these cases.

on a ledge that resulted in his fall and subsequent death; a case involving an officer's divulging information about a federal investigation to two confidential informants; and several related cases involving the Brooklyn South Narcotics Unit.

III. CLOSED CASE MONITORING

A. Introduction

Pursuant to its mandate, the Commission reviewed fifty-three closed IAB investigations. Each of the reviewed cases had at least one allegation of serious misconduct or criminal activity. These allegations were investigated by seventeen of IAB's twenty-three investigative groups.²³ The fifty-three cases reviewed by the Commission breakdown as follows:²⁴



²³ IAB has twenty-three groups, which are categorized based upon geography or specialty. The Commission does not review investigations conducted by Group 2 (the Financial Investigations Unit), Group 7 (the Computer Crimes Unit), Group 9 (the group responsible for overnight, call-out investigations), Group 51 (the Police Impersonation Unit), Group 52 (the unit which devises and assists in integrity testing and enforcement operations), and Group 55 (the unit which assists the other investigative groups with surveillance). With the exception of Group 51, the other groups primarily provide investigative support to IAB's remaining groups. Most of the cases investigated by Group 51 do not involve uniformed members of the service, so while the Commission hears about some of these cases at Steering Committee meetings, it does not conduct file reviews of these investigations. While Group 7 does conduct some of its own investigations, these generally do not involve allegations of corruption or serious misconduct.

²⁴ In those cases that involved multiple allegations, these statistics reflect only the top allegation.

B. Methodology

In selecting cases for review, the Commission chose randomly from lists provided by IAB of recently closed investigations. When it selected cases, the Commission did not have any information regarding the subject officers involved, the allegations investigated, or the disposition of the case. The only information the Commission had when making its selections was the case number,²⁵ the month the case was closed, and the IAB group that investigated the case. In addition to reviewing the actual case file, the Commission listened to or viewed audio and video tapes associated with a given case.²⁶

The Commission's mandate requires it to evaluate "the effectiveness of the Department's systems and methods ... for investigating allegations of corruption."²⁷ In order to review the effectiveness of the investigations conducted by IAB, the Commission employs a method of analysis that focuses on answering several inquiries. Specifically, the Commission reviews whether the case investigators took all of the appropriate investigative steps; whether they conducted interviews properly that were designed to gather relevant information; whether the techniques employed by the investigators proved useful; and whether the investigators performed these techniques in a manner that would achieve the maximum benefit. The Commission notes any omissions of investigative steps that it believed were important to the investigations, and any significant gaps in the investigations. To that end, the Commission staff reviews the

²⁵ Based on the case number, the Commission could also determine the year in which the complaint was lodged.

²⁶ The Commission's staff listens to audio tapes in order to evaluate the investigators' interviews of both civilians and members of service.

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

investigators' recorded actions and any documents that were collected by the investigators.²⁸

The chronological examination of the case file allows the Commission staff to determine whether the investigation proceeded in a timely manner, without any undue lapses, whether the complainant was interviewed early in the investigation, and whether the investigator's supervisor regularly reviewed the case and recommended investigative actions based on this review. The Commission also evaluates the progress of each investigation using the case's own evidence. Based on the investigative steps taken by the investigator and the results obtained from those steps, the staff considers what logical actions should have been taken. The Commission also weighs the likelihood that any particular investigative step or technique will produce evidence that can be used to support a definitive disposition.²⁹ At the conclusion of a case review, the Commission staff notes any concerns or questions they had about a case, and these issues are subsequently discussed with the IAB Executive staff and each group's Commanding Officer. In some cases, IAB was able to explain its rationale for certain actions or the reasons why it did not take a particular investigative step. Another purpose of these meetings is so IAB can apply the Commission's comments to future investigations, where appropriate.

²⁸ IAB investigators record their investigative steps on worksheets. These worksheets, compiled chronologically, sometimes have attachments, including any supporting documentation the investigator obtains. The worksheets, their respective attachments, and other evidence, such as recorded interviews, make up a case file.

²⁹ An investigation can receive one of four basic dispositions. If the investigation is "Substantiated," sufficient evidence has been found to prove the allegations against the subject officer. If the investigation is "Unfounded," there is sufficient evidence to demonstrate that the complained of action never occurred. If the investigation is "Exonerated," the evidence establishes that the action occurred, but it was justified and did not constitute misconduct. These are the dispositions the Commission considers definitive. The fourth disposition is that the allegations are "Unsubstantiated" which means that IAB can neither prove nor disprove the allegation. There are also other dispositions that a case may receive that are not relevant to this discussion.

C. Findings

The Commission generally found that IAB conducted thorough and complete investigations. For the purposes of this report, the Commission comments only on those issues that arose in multiple cases within the sample because the Commission does not usually comment on issues that appear in only one case.

Investigators asked relevant questions during interviews, and in most cases, they made sufficient attempts to interview important witnesses. When investigators believed that interviews conducted pursuant to Patrol Guide Section 206-13 (“PG hearings” or “PG interviews”)³⁰ of subject and witness officers would provide useful, germane information, they conducted those interviews. In instances where PG interviews would only elicit a denial, investigators usually and appropriately refrained from conducting them. This has allowed IAB to use its resources more efficiently. The Commission also notes that investigators scheduled surveillance operations at the appropriate times and conducted integrity tests that closely mimicked allegations. Finally, the Commission agreed with the case disposition in each case it reviewed during closed case monitoring.

The Commission noted two areas for improvement. The Commission urges that the assigned investigators should continue to make attempts to interview complainants and civilian witnesses as early as possible in the investigation. In addition, the Commission recommends that investigators review the contents of past cases where the

³⁰ Patrol Guide Section 206-13 entitles the Department to interrogate officers during an official Department investigation. Members of the service who refuse to answer questions during these interviews face suspension, and members found to have made false statements during these interrogations are subject to termination from the Department, absent exceptional circumstances, which are determined by the Police Commissioner on a case-by-case basis. *See infra* at pp. 51-58 for a more extensive discussion of the Department’s policy regarding members of the service who make false statements during PG interviews. Members of the service are entitled to have a union representative present during the interview, and subjects of the investigation are permitted to obtain counsel if either “a serious violation is alleged” or sufficient justification is presented for an attorney despite the alleged violation being a minor one.

subject officer was previously under investigation for similar allegations, when it is feasible to do so.

1. PG Interviews

IAB can compel members of the service to appear for interviews with its investigators regarding allegations where they are a subject of the allegations or may have information as a witness. In this review, the Commission found that in almost all of the relevant investigations, the investigators conducted such interviews whenever they could elicit useful information. The Commission observed that the investigators strategized with their supervisors to determine whether a PG interview would elicit only a denial; and in those circumstances, the investigators and their supervisors made the appropriate decision not to interview the subject officers. The Commission continues to see a significant improvement in the efficiency of using this fact-finding tool. The Commission found that when investigators conducted PG interviews, they were focused, asked the necessary follow-up questions, and maintained a proper adversarial approach when appropriate.

2. Time Lapses

In four of the fifty-three cases reviewed, the Commission found time lapses of more than one month for which there was no documented explanation.³¹ Although the Commission does not believe that such lapses affected the dispositions in these specific cases, lapses in general may affect the timely discipline of those members of service who are found to have engaged in misconduct, or the exoneration of those who have not engaged in any wrongdoing. Overall, the Commission believes that IAB investigated its

³¹ The Commission did not count lapses that were unavoidable, had reasonable explanations, or where the investigation was near completion.

cases in a diligent and thorough manner.³² The Commission nonetheless encourages investigators to make a concerted effort to minimize delays between investigative steps.

The Commission met with IAB's Executive staff to discuss these four cases. IAB provided explanations for these lapses. As a result of this meeting, IAB and the Commission agreed that in the future, Commission staff will contact the IAB investigator directly to determine if there is an explanation for any noted lapse.

3. Surveillance and Integrity Testing

IAB investigators often use surveillance and observations in their investigations to gather intelligence about a particular person or location. Surveillance can also be utilized to observe the officer engaging in the alleged or other misconduct. Similarly, targeted integrity tests, where investigators create an artificial scenario in an attempt to reveal if an officer is willing to engage in misconduct, are also useful to gain evidence of wrongdoing. Integrity tests are most effective when they mirror the complained of conduct as closely as possible.

The Commission found that IAB investigators used surveillance and integrity tests effectively to further investigations. Investigators conducted integrity tests when practicable. The Commission did not find any cases where an integrity test was overlooked as an investigative step. All integrity tests appeared realistic and well executed.

4. Other Investigative Actions

In evaluating closed cases, the Commission reviewed whether case investigators used traditional investigative techniques in a manner that most benefited fact-finding and

³² The Commission notes that three of the four cases mentioned were open for less than one year and one case remained open for one year and four months.

information-gathering. The Commission reviewed whether investigators obtained all of the documents relevant to the investigation. These documents included, but were not limited to:³³ the subject officer's Central Personnel Index ("CPI"),³⁴ the subject officer's Internal Affairs Professional database ("IA-PRO") history,³⁵ the subject officer's relevant prior cases, complainant and witness criminal histories, medical records, telephone records, precinct property indices, and command log entries.³⁶ There were isolated cases where a relevant document was not obtained, but the Commission did not find that IAB investigators were systemically failing to obtain any particular document.

The Commission noted that in ten instances,³⁷ there was not a review of prior or pending investigations involving similar allegations against the subject officer. In these cases, the investigator reviewed only the IA-PRO summaries of past allegations and updates by the investigators that were made to the Command Center. Since these summaries may not detail all of the specific circumstances of the alleged wrongdoing, a pattern of behavior of suspected officers may remain undetected. The Commission believes that in cases where a similarity exists between a prior case and the pending matter, investigators should request and review the entire contents of the past case.

³³ Not every case required that each of these documents be obtained. In some cases, these documents would not even exist, let alone be relevant.

³⁴ The CPI describes the allegations, disciplinary events, negative evaluations, background checks, and chronic sick designations that the subject officer has accumulated throughout his career.

³⁵ An officer's IA-PRO history will contain a summary of every allegation where the officer's name is mentioned. The officer is not necessarily the subject of the allegation and may instead be a complainant, witness, or reporter.

³⁶ The Commission found that in some cases, investigators reported consulting particular documents, but the actual paperwork was not included with the case file reviewed by the Commission. When this occurred, the Commission accepted that investigators gained the relevant information necessary since the worksheets contained a synopsis of the information contained in the document or described the investigator's receipt of the document.

³⁷ Nine of these ten cases involved allegations of missing property, where the subject officer had prior property-related allegations against him. One case involved allegations of association with criminals. In four of the nine cases involving missing property, at least one of the subject officers had multiple, prior cases containing allegations of missing property.

Similarities that would justify a complete review might include: the same type of allegations, especially when the officer has multiple past substantiated or unsubstantiated investigations with the same specific type of allegation; a commonality of participants; the same officers being present at the scene of the prior incident; and a prior or pending investigation involving the same type of misconduct that has been alleged close in time to the instant misconduct.³⁸ The Commission believes that a brief description of the allegation in the officer's IA-PRO history may not be as informative as a review of information gained from a past investigation.

After receiving a draft of this report, the Department responded that the IA-PRO database contains a wealth of information that is sufficient, in most cases, to determine if there are any commonalities or patterns between prior cases and the instant allegations. The Department added that in those cases where a determination is made that more information is needed, the existing policy is for the case investigator to request a copy of the prior case's closing report³⁹ and/or the actual investigative file.

The Commission also reviewed whether investigators made timely attempts to interview complainants. In many investigations, IAB immediately sends investigators out to interview the complainant and any available witnesses and to gather any evidence that is on hand. These are referred to as call-out interviews. Since these interviews are often done by a different investigator than the one ultimately assigned to the case, the Commission believes that it is important that each investigator conducts his own

³⁸ The Commission acknowledges that there may be times where the Department may be justified in not obtaining an entire case file of a prior, similar allegation. Examples would be when the subject officer only had one or two prior allegations of a similar nature which were far removed in time or when it was apparent that the subject officer was included as a subject of the prior investigation merely because the nature of his assignment brought him to the location of either the prior or the instant incident.

³⁹ At the conclusion of the case, the IAB investigator prepares a closing report which summarizes the allegations, the investigative steps taken, and the disposition of the case. This report is then approved by the investigator's immediate supervisor, Commanding Officer, Borough Commander, and Zone Commander.

interview with the complainant in order to introduce himself and to evaluate for himself the complainant's version of the events. A prompt interview by the assigned investigator also assures the complainant that his allegations are being addressed and provides the complainant with correct contact information should the complainant remember any further details about his allegations.

In six cases, the Commission noticed a delay of at least one month in reaching complainants for interviews after the callout investigation was completed. Callout interviews were conducted in five of the six cases⁴⁰ within days of receipt of the allegations. Five of the initial interviews with assigned investigators occurred over a month after the call-out interview was conducted but within three months of the assigned investigator receiving the case. In the final case, the initial interview with the assigned investigator did not occur until five months after the investigator received the case. In three of these six cases, prior, unsuccessful attempts were made to contact the complainant. There was, however, at least a three week delay before the first attempt was made.⁴¹ In the remaining three cases, investigators made no attempts to contact the complainants prior to the actual interview being conducted.

The Commission continues to stress the importance of speaking with complainants as early as possible. Interviewing the complainant early in the investigation allows the investigator to gather information from that person before his memory fades.

⁴⁰ In one of the cases, the call-out investigator was done by a different investigative group. In all of the five cases where there was a call-out interview, the investigator who conducted the call-out interview was not the investigator who was later assigned to the case.

⁴¹ In one case, the investigator took three weeks to make an attempt to contact the complainant. In another case, the investigator's first attempt to interview the complainant occurred slightly over a month after the case was received. In the final case, the investigator waited four and half months after his receipt of the investigation before trying to contact the complainant.

In addition, if a complainant has physical evidence to offer the investigator, it may no longer exist if too much time passes prior to the interview.

The Department explained its disagreement with the Commission's position on this issue in its response to a draft of this report. The Department stated that in those cases where there was a call-out interview with the complainant, that interview is recorded and provided to the assigned investigator for inclusion in the case file. The Department added that "[s]ince investigative resources should always be utilized in the most efficient manner possible, a follow-up interview that is not needed to clarify or elicit additional information offers no discernable benefit." As stated above, the Commission believes that there is a discernable benefit, at the very minimum a prompt interview with the complainant will allow the investigator to make his own credibility assessment and will provide the complainant with an introduction to and contact information for the investigator so he can reach the correct person should there be further developments.

5. Conclusion

The Commission found in the closed investigations that it reviewed that IAB continues to conduct thorough investigations into allegations of corruption and serious misconduct. The Commission agreed with the disposition imposed in all of the cases it reviewed and found the use of specific investigative techniques to be well conducted. The Commission noted that, in some cases, complainants could have been interviewed by the assigned investigator earlier in the investigation. The Commission also recommends that IAB review prior investigations involving similar misconduct against subject officers, when appropriate.

IV. CLOSED DISCIPLINARY CASES

In order to fulfill its monitoring function, the Commission reviews all of the closed, administrative cases that are adjudicated in the Department's Trial Rooms and prosecuted by the Department Advocate's Office ("DAO"). Although the Commission focuses on specific categories of misconduct when conducting its review, the Commission also examines every case involving non-civilian members of the service to determine whether the penalty imposed was sufficient. The Commission believes that consistent and fair penalties are necessary in order to deter future misconduct by the individual member of the service as well as to instill an expectation of the consequences for particular categories of misconduct for the entire Department.

A. Review of Closed Disciplinary Cases

Disciplinary cases are resolved in one of five ways: through a trial before one of the Department's Trial Commissioners; through a negotiated plea agreement; through a hearing where the respondent⁴² admits his guilt to the misconduct but testifies as to factors mitigating against the penalty recommended by the Department; through a motion to dismiss made by the Department; or through the filing of charges and specifications⁴³ against the respondent officer under circumstances where he was separated⁴⁴ from the Department prior to the adjudication of the allegations.⁴⁵ The Police Commissioner must approve all findings of fact and makes the final decision regarding the appropriate

⁴² In this section on closed disciplinary cases, the terms "subject officer" and "respondent" are used interchangeably.

⁴³ The "charge" designates the name of the offense, and the "specification" describes the specific misconduct charged.

⁴⁴ The officer can be separated from the Department through resignation, retirement, death, or termination due to another matter.

⁴⁵ Charges are filed in these cases in the event the officer tries to reinstate his employment 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.

penalty to be levied in those cases where there is a finding of guilt for some or all of the alleged misconduct.⁴⁶

The paperwork the Commission reviewed in connection with these cases included the charges and specifications, disposition of the charges, and Department memoranda prepared by the case investigators or Commanding Officers. In cases that resulted in a negotiated plea, the Commission also reviewed the plea memorandum prepared by the Assistant Advocate.⁴⁷ If there was a hearing or a motion to dismiss that was heard by the Trial Commissioner, the Commission reviewed the Trial Commissioner's decision, which includes a summary of the testimony and other evidence presented at the proceeding. In those cases where the Police Commissioner departed from the Trial Commissioner's findings of fact or recommended disposition, the Commission also reviewed the memorandum prepared by the Police Commissioner explaining his decision.

For this report, the Commission reviewed five hundred and ninety-three cases adjudicated between October 2008 and September 2009. The Commission's analysis of these cases focused on specific categories of off-duty misconduct,⁴⁸ cases that involved officers on probation,⁴⁹ and cases where the officer was alleged to have made a false statement. All of the disciplinary cases were reviewed to determine whether the imposed penalty, where there was one, was sufficient. The Commission determined whether a penalty was adequate based upon the nature of the allegation, the officer's formal

⁴⁶ Cases where charges were filed, charges were dismissed, or where the officer was found not guilty after a trial do not have a penalty.

⁴⁷ The Assistant Advocate is the attorney from DAO responsible for prosecuting the administrative case in the Department's Trial Rooms.

⁴⁸ These categories were alcohol-related misconduct, misconduct involving the unauthorized discharge or display of a firearm, and misconduct involving allegations of domestic incidents.

⁴⁹ For a description of the two types of probation and its effects on the disciplinary process, see *infra* at pp. 46-47.

disciplinary history where available,⁵⁰ the evidence available in support of the charges, and whether the penalty was consistent with penalties imposed in other, similar cases. Excluding those cases reviewed separately in the following sections,⁵¹ the Commission believed that the penalty imposed was insufficient in ten of the remaining cases.⁵²

B. Serious Off-Duty Misconduct

In August 1998, the Commission published *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* ("1998 Off-Duty Misconduct Report"). The Commission chose to examine this topic because "an effective disciplinary system serves as a deterrent to misconduct and acts as a direct means of communicating to both the Department's members and the public that police corruption and misconduct will not be tolerated."⁵³ In its review of complaints made about police officers, the Commission noted that many of these complaints concerned behavior by officers while they were off-duty. The Commission, therefore, chose to review cases that involved serious instances of off-duty misconduct. Initially, these cases were limited to those involving the display or discharge of a firearm or involving the commission of acts of violence. In reviewing the sample of cases, the Commission noted that in many of these incidents, the officers involved were intoxicated at the time they committed the misconduct. Consequently, the Commission expanded its sample to include those cases where alcohol played a role. The

⁵⁰ The Commission only received the disciplinary history of the subject officer when the case was resolved through a negotiated plea.

⁵¹ See *infra* at pp. 20-61.

⁵² 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.

⁵³ *1998 Off-Duty Misconduct Report*, at p. 1.

Commission believed “that if officers engaged in such misconduct while off-duty, this behavior either might be repeated while on-duty or, in the case of alcohol misuse, might adversely affect [the officers’] ability to function effectively as police officers.”⁵⁴

After examining these categories of cases, the Commission made recommendations, several of which were implemented by the Department.⁵⁵ Since the publication of that report, the Commission has continued to examine how the Department disciplines its officers who have committed misconduct that involve alcohol, the display or discharge of a firearm, and domestic incidents.⁵⁶ The Commission continues to examine these categories of cases to determine whether the penalties imposed are sufficiently severe to deter such misconduct and whether the Department is following its own guidelines when adjudicating these cases. The Commission believes it is important to examine cases that involve some of the most serious forms of misconduct to ensure that the Department is not concealing the wrongdoing of its members by failing to impose adequate discipline.

1. Alcohol-Related Off-Duty Misconduct

The importance of examining this category of misconduct was illustrated in September and October 2009 when two members of the service were arrested for “Driving While Intoxicated” (“DWI”) and “Vehicular Manslaughter.” This topic has also

⁵⁴ *Id.* at p. 3.

⁵⁵ *Id.* at pp. 7-10. For further discussion about these recommendations, see *infra* at pp. 21-23 and 30-31.

⁵⁶ See *Fifth Annual Report of the Commission* (February 2001), at pp. 29-42; *Sixth Annual Report of the Commission* (December 2001), at pp. 40-62; *Seventh Annual Report of the Commission* (March 2004), at pp. 70-122; *Tenth Annual Report of the Commission* (February 2008), at pp. 16-31; and *Eleventh Annual Report of the Commission* (February 2009), at pp. 17-35.

received extensive coverage recently in the press.⁵⁷ Within a couple of weeks of each other, two pedestrians died from their injuries after being struck by automobiles driven by a police officer and a detective respectively. It is alleged that both members of the service were intoxicated at the time of the collisions, and as a result, both are facing criminal charges.⁵⁸ Sandwiched between these two incidents,⁵⁹ a Sergeant was indicted on assault and vehicular assault charges for an accident in which he was involved in June 2009. In that case, another pedestrian suffered serious injuries after being struck by the Sergeant's car. The Sergeant's blood alcohol level registered at .11 percent,⁶⁰ more than six hours after the accident.⁶¹

The Commission has continually examined whether the Department has followed its own policies regarding alcohol misconduct since the publication of the Commission's 1998 report, which contained policy recommendations on this topic.⁶² The recommendations that were made in that report, which the Department adopted as policy, include the following. When an officer is charged with either "Driving Under the

⁵⁷ See The New York Post, "'DWI' Cop Horror," (September 28, 2009); The Daily News, "DWI rap for cop in hit," (September 28, 2009); Newsday, "Cop charged in fatal crash," (September 28, 2009); and New York Times, "Woman Killed Hailing Cab; Officer Held in Accident," (September 28, 2009.) See also The New York Times, "Officer Indicted in Accident That Killed Brooklyn Woman," (October 15, 2009); The New York Post, "Grand jury indicts 'DWI' cop," (October 15, 2009); The Daily News, "Cop indicted in fatal DWI case," (October 15, 2009). Articles concerning the second alleged DWI case included The Daily News, "Another cop in fatal DWI," (October 31, 2009); "Cop indicted in deadly DWI," (December 3, 2009); The New York Post, "Partying 'DWI' Cop Kills Bx. Grandma," (October 31, 2009); The New York Times, "Detective Faces D.W.I. Charge in Fatal Accident," (October 31, 2009); and Newsday, "NYPD cop charged in fatal DWI crash," (October 31, 2009). These articles are by no means an exhaustive list of the news coverage of these two accidents.

⁵⁸ For the purposes of this report, the Commission does not comment on the evidence against these two members of the service.

⁵⁹ Immediately prior to the publication of this report, two more officers were arrested for DWI.

⁶⁰ The legal limit in New York State that will sustain a conviction for "Driving While Intoxicated" is .08 percent.

⁶¹ See The New York Times, "Police Sergeant Indicted on Assault Charges After Striking Pedestrian," (October 23, 2009).

⁶² *1998 Off-Duty Misconduct Report*, at pp. 8-9.

Influence” (“DUI”)⁶³ or “Driving While Ability was Impaired,” he should also be charged with being “Unfit for Duty,”⁶⁴ unless there is a specific reason why this charge could not be proven. If an officer is stopped for “DWI,” and refuses to submit to a breathalyzer test when requested, an additional charge of “Prohibited Conduct,” based on this refusal, should be included. Prior to the Commission’s report, an officer’s fitness for duty was determined at the time he was observed by the Duty Captain,⁶⁵ which could be several hours after the alleged incident when the member of the service might no longer be under the influence. The Commission’s *1998 Off-Duty Misconduct Report* recommended, and the Department adopted, making this determination based on evidence available at the time of the alleged incident. This evidence could include scientific evidence, the officer’s physical appearance, or witnesses’ statements. Another recommendation made by the Commission that the Department implemented was that a separate charge of “Unfit for Duty While Armed” be created to discourage officers from carrying their firearms with them where they faced the possibility of becoming unfit for duty due to alcohol consumption.⁶⁶ Officers found guilty of this charge are supposed to receive more severe penalties than officers found guilty of simply being “Unfit for Duty.”

⁶³ 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.” If there is not enough evidence to prove that the subject officer was “DWI,” he may be found guilty of the lesser offense of “Driving While Ability was Impaired.” The Department usually includes specifications of both “DUI” and “Driving While Ability was Impaired” in the administrative charges.

⁶⁴ Departmental regulations require an officer to be “fit for duty at all times, except when on sick report.” New York City Police Department Patrol Guide Section 203-04, “Fitness for Duty,” 1. Officers are prohibited from consuming alcohol to the point where they become unfit for duty. See New York City Police Department Patrol Guide Section 203-04, “Fitness for Duty,” 2.

⁶⁵ When on-duty officers respond to the scene of an incident involving a member of the service, the Captain on duty is supposed to be notified. This Duty Captain makes the proper notifications regarding the alleged misconduct and prepares a report regarding the circumstances surrounding the misconduct and his initial investigation. The Duty Captain also has the responsibility of determining the involved officer’s fitness for duty.

⁶⁶ See New York City Police Department Patrol Guide Section 206-12, “Unfit for Duty, While Armed.”

The Department also implemented the Commission's recommendation that when an officer is found guilty of "DUI" and causes a serious physical injury to another person as a result of his misconduct, the proper penalty is termination.⁶⁷

The Commission has also recommended that those officers who repeatedly experience difficulties relating to alcohol abuse be terminated once efforts at rehabilitation have failed.⁶⁸ While the Department has not adopted any official policy regarding these circumstances, the Commission has observed some cases where the Department has dismissed officers who continue to abuse alcohol. The Department, on its own, also changed its policy regarding the appropriate penalty to be imposed when an officer is found guilty of "DUI" or "Driving While Ability was Impaired" when there is no serious physical injury to another. That penalty consists of placement on Dismissal Probation,⁶⁹ cooperation with counseling, the forfeiture of either vacation days or suspension days,⁷⁰ and the submission to random breath-tests to check for alcohol use on a quarterly basis during the period of Dismissal Probation.⁷¹

⁶⁷ There was another policy implemented based on the Commission recommendation that any member of the service who is found to have misused his firearm while he was unfit for duty should be terminated, absent exceptional circumstances. This policy is discussed in the next section of this report. *See infra* at p. 30.

⁶⁸ In most cases, the Commission does not, however, advocate terminating the employment of officers who abstain from alcohol abuse for lengthy periods of time but suffer a relapse without first offering them another chance for rehabilitation.

⁶⁹ *See infra* at p. 47 for a description of Dismissal Probation.

⁷⁰ 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.

⁷¹ *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).

In the Commission's last *Annual Report*,⁷² the Commission discussed forty-five cases where alcohol was involved in some manner. Twenty-three of these cases contained alcohol-related charges.⁷³ Sixteen of those alleged that the subject officer drove while under the influence of alcohol. For this report, the Commission reviewed sixty-one cases where alcohol appeared to have some role in the misconduct.⁷⁴ In twenty-eight of these cases, there were no alcohol-related charges against the subject officer. In seven of these cases, charges against the subject officer involved his failure to obey a Department directive to attend counseling or his failure to comply with the rules once he was participating in rehabilitation. In four cases, another participant in the alleged incident was actually the person who was intoxicated. In six cases, the officer was specifically found fit for duty by the responding Duty Captain. In six cases, although there was an indication that the officer had consumed alcohol just prior to or during the alleged incident, a significant amount of time passed before the Department was informed of the officer's involvement, so no fitness-for-duty finding at the time of the incident could be made. Finally, in five cases, the Commission was unable to determine, based on the paperwork it received, whether there was a fitness-for-duty finding. The Commission agreed with the decision not to include charges of "Unfit for Duty" in all but the five cases where it was unclear whether a fitness finding had been specifically made.

⁷² (February 2009).

⁷³ The Commission explained that it included cases in its review where there was some indication that the officer or another participant in the alleged incident may have been drinking alcohol prior to or during the charged misconduct. Often, though, there was insufficient evidence to charge the respondent with being unfit for duty.

⁷⁴ Some subject officers had more than one case adjudicated against them. For this pool of cases, four officers each had two alcohol-related cases that were decided against them, one officer had four alcohol-related cases decided against him, and one officer had five alcohol-related cases decided against him. Some of these officers also had disciplinary cases that did not include alcohol-related misconduct that were adjudicated concurrently with these cases. Twenty-nine cases in this section are also included in either categories involving misconduct involving a firearm, domestic incidents, or allegations involving a falsity. One additional case involved a probationary police officer. Therefore, these cases were also included in the applicable sections of this report.

The Commission is unable to comment on the failure to include the relevant charges in those cases, as it did not have sufficient information to form an opinion about the subject officer's fitness for duty.

Of the remaining thirty-three cases, in twelve of the cases,⁷⁵ approximately thirty-six percent of the cases with alcohol-related charges,⁷⁶ the subject officer was charged with either "DUI" or "Driving While Ability was Impaired." Only one of these twelve cases lacked an "Unfit for Duty" charge. In that case, the subject officer was arrested in another state, so a fitness-for-duty finding could not be made. In ten of these cases, the Department followed its stated policy and instituted a penalty, which included a period of Dismissal Probation, cooperation with counseling, submission to quarterly, random breath-testing, and the forfeiture of vacation or suspension days. In the remaining two cases, the officer was separated from the Department.⁷⁷ None of these incidents resulted in a serious physical injury to another person. No officers, therefore, were terminated based on this Department policy.

Submission to a breathalyzer or other tests to measure alcohol content was requested in all⁷⁸ but one of the twelve cases.⁷⁹ In two of the cases, the respondent

⁷⁵ There were another five cases where "DUI" or "Driving While Ability was Impaired" charges may have been appropriate but a delay in reporting the incident resulted in insufficient evidence to support such charges.

⁷⁶ While these cases were adjudicated between October 2008 and September 2009, most of the actual incidents occurred in 2007 and 2008.

⁷⁷ In one case, the officer was terminated by operation of law after his criminal conviction for Assault in the Second Degree. See Public Officers Law Section 30(1)(e). In the second case, the negotiated plea included a direction that the respondent immediately file for retirement.

⁷⁸ There was one other case where the respondent was asked to take a breathalyzer test after he was observed drinking a beer in a parked car. The respondent submitted to the test and tested at 0.00. Therefore, "DUI" or "Driving While Ability was Impaired" was not charged.

⁷⁹ In that case, there was a delay in apprehending the respondent because the Department pursued someone else who they thought was the perpetrator. The respondent was eventually located because a civilian witness recorded his license plate number.

agreed to the breathalyzer test. In another two cases, the respondent submitted to the initial breathalyzer test, but refused to take a second test at the precinct. This resulted in a separate charge of “Prohibited Conduct,” based on the officer’s refusal to submit to the test. In the remaining seven cases, where the subject officer refused to submit to the breathalyzer, he received an additional specification of “Prohibited Conduct” based on that refusal.

Of the original sixty-one cases examined, the subject officer was charged with being “Unfit for Duty” in thirty-one of the cases. Of the thirty-one cases, the subject officer was found to be in possession of a firearm in seven of those cases.⁸⁰ In all seven cases, a separate charge of “Unfit for Duty While Armed” was included. More severe penalties⁸¹ were imposed in all seven of these cases.

There were ten cases⁸² where the respondent had a prior, formal history⁸³ of alcohol-related misconduct.⁸⁴ In five⁸⁵ of these cases, the subject officer was separated

⁸⁰ There were three other cases where the paperwork did not specify whether the respondent was armed. There was also a fourth case where the incident took place in the respondent’s home and there were firearms in the respondent’s home at the time of the incident, however, there was no further information in the paperwork regarding the location of these firearms in relation to the location of the respondent during the incident. The Commission did not include this case as one where the respondent was in possession of a firearm while unfit for duty for the purposes of this analysis.

⁸¹ For the purposes of this analysis, the Commission considered the standard penalty to be one that included the forfeiture of thirty vacation or suspension days.

⁸² Three of these cases involved the same subject officer. Two other cases also involved the same subject officer.

⁸³ By formal history, the Commission found some notation of either criminal or administrative charges involving alcohol that were brought against the respondent. In one case, an order of protection was issued against the respondent which prohibited him from being intoxicated near his wife, their children, or while at their residence.

⁸⁴ There were also five cases where there were reports or other indications that the subject officer had misused alcohol in the past but there were no adjudications or charges filed against the officer to that effect. For the purposes of this analysis, the Commission did not include those cases in this statistic.

⁸⁵ Three of these cases involved the same subject officer. This officer had a total of four pending cases involving alcohol-related misconduct at the time the cases were adjudicated. The remaining two cases also involved a single subject officer.

from the Department. In the remaining five cases, the Commission agreed with the decision not to terminate these officers.⁸⁶

The Commission agreed with the penalty meted out by the Department in thirty-two of the thirty-three cases where alcohol-related misconduct was charged. In the remaining case, the respondent was found “Unfit for Duty.” For this, he forfeited fifteen vacation days. Because the respondent was an admitted alcoholic who was in treatment through the Department’s peer counseling program, the Commission believes that random, quarterly breath-testing should also have been ordered.⁸⁷

From the review of the cases adjudicated during this past year, the Commission found that the Department continues to adhere to its official policies regarding discipline in those situations where there is a misuse of alcohol. In the *Eleventh Annual Report of the Commission*,⁸⁸ the Commission commented positively on the Department’s increased use of the penalty of placement on Dismissal Probation, cooperation with counseling, and random, quarterly breath-testing, in conjunction with the forfeiture of vacation or suspension days in cases where the officer was not charged with “DUI” or “Driving

⁸⁶ In one case the subject officer was found not guilty of the charges against him, so termination was not an option as no penalty was required. In the second case, the subject officer had another pending case involving alcohol and the Commission believed that he should be offered the opportunity to attend and complete rehabilitation. In the third case, the respondent had a “DWI” conviction from before he became a member of the Department. Therefore, that respondent did not have the opportunity to take advantage of Department counseling programs. In the fourth case, although an order of protection was previously issued against the respondent prohibiting him from being intoxicated around his wife and children, he had completed alcohol counseling, and was attending Alcoholics Anonymous and NYPD counseling at the time this disciplinary case was adjudicated. The Commission believed this officer should have the opportunity to conform his behavior to Department standards. In the final case, the subject officer had two other pending cases. One of these was for “Driving While Ability was Impaired” based on the subject officer’s consumption of prescription medication. In his PG hearing, the subject officer admitted to abusing alcohol. The Department originally sought to terminate this officer, but at the time of the final negotiation, the subject officer had been sober for over one year. For being “Unfit for Duty” in this case, the officer ultimately received Dismissal Probation, forfeited a combination of one hundred vacation and suspension days and agreed to cooperate with random quarterly breath-testing and counseling.

⁸⁷ In response to a draft of this report, the Department explained that to be effective, compulsory breath-testing can only be utilized in conjunction with dismissal probation. Since the officer’s action in this case did not rise to a level justifying termination, the imposition of dismissal probation would be inappropriate.

⁸⁸ February 2009.

While Ability was Impaired,” and even in cases where the facts suggested that alcohol was involved, but there was insufficient evidence to support the inclusion of an alcohol-related charge.⁸⁹ Of the twenty-one cases analyzed for this report where there was an alcohol-related charge that did not include “DUI” or “Driving While Ability was Impaired,” seven of the officers were placed on Dismissal Probation and ordered to cooperate with counseling and random, quarterly breath-testing, in addition to their loss of vacation or suspension days. All of these officers were charged with being “Unfit for Duty.” Four of these seven officers also had specifications related to domestic incidents included in the charges against them.⁹⁰ In a single case, the subject officer was charged with being “Unfit for Duty” and was placed on Dismissal Probation, and ordered to cooperate with random, quarterly breath-testing, but was not directed to cooperate with counseling.⁹¹ In another three cases where the subject officer was charged with being “Unfit for Duty” without further aggravating charges, the penalty included that the subject officer cooperate with counseling.⁹² In response to a draft of the report provided to the Department prior to its publication, the Department stated that counseling is mandated in all cases where alcohol-related misconduct is alleged regardless of whether the plea agreement indicates that counseling was ordered. According to the Department, officers who are accused of having committed misconduct involving alcohol are ordered to attend counseling immediately following the Department’s discovery of the alleged

⁸⁹ *Id.* at pp. 25-26.

⁹⁰ In two of the remaining cases, the officers had additional specifications of menacing and an unauthorized display of a firearm included against them.

⁹¹ The plea memorandum indicated that this officer completed counseling prior to the entry of the plea.

⁹² There were two other cases where although not ordered as part of the penalty, the plea memoranda indicated that the officers completed counseling prior to the entry of the plea.

transgression. The Department further explained that if there was not an order to cooperate with counseling as part of the final adjudication, this may be due to the fact that the officer completed counseling while the disciplinary matter was pending. The Department also added that it believes that counseling is not a form of discipline but decided to include this information in disciplinary paperwork to properly reflect all the action that the Department took regarding that particular officer.

Of the twenty-eight cases in which there were no alcohol-related specifications brought against the subject officer, in four cases, in addition to the forfeiture of vacation and/or suspension days, the subject officer was also placed on a period of Dismissal Probation, and directed to cooperate with random, quarterly breath-testing.⁹³ Two of these cases involved charges that the respondents failed to comply with an order to attend rehabilitation or other counseling. The other two cases involved the same subject officer. One incident occurred in a bar, and the second incident occurred at a party where the officer had played a drinking game.⁹⁴ There were also five cases where a condition of the settlement was the officer's cooperation with counseling. All of these cases involved some domestic infraction.

The Department's development and adherence to policies designed to address the issue of alcohol misuse, while providing rehabilitative opportunities for officers who need help in dealing with their problems with alcohol, demonstrates that rather than

⁹³ The paperwork for two of the cases involving the same subject officer contained indications that cooperation with counseling was supposed to be a part of the plea agreement. This condition was not included in the settlement paperwork. The subject officer completed alcohol counseling prior to the settlement. In the remaining two cases, cooperation with counseling was a formal condition of the plea agreement.

⁹⁴ In the first case, the subject officer was involved in a physical altercation in a bar. For his participation in this fight, the subject officer received a disorderly conduct summons that was later dismissed. The subject officer was specifically found fit for duty. In the second case, the subject officer was attending a graduation party where he participated in a drinking game which escalated into a physical dispute. The subject officer also failed to immediately notify the Department of his involvement in this incident, as required. It is unclear whether the Department was able to make a fitness-for-duty finding in this case.

covering up this category of offense, the Department takes it very seriously. It is the Commission's view that the consistent application of serious penalties, coupled with mandatory rehabilitation, can serve as an effective deterrent.

2. Misconduct Involving a Firearm

Since the publication of the *Eleventh Annual Report*, the Commission reviewed fifteen cases⁹⁵ involving officers who engaged in the unauthorized display or discharge of a firearm. For both types of offenses, the Commission determined whether the Department made a fitness-for-duty finding at the time of the incident,⁹⁶ and whether the Department levied appropriate penalties against the subject officer.

After the publication of the Commission's *1998 Off-Duty Misconduct Report*, the Department promulgated two policies to address firearm-related misconduct. The first policy announced that termination was the appropriate penalty for any officer found guilty of misusing his firearm while intoxicated. This penalty could only be avoided if the Police Commissioner found exceptional mitigating circumstances. The second policy implemented based on the Commission's report was that if an officer was found to be unfit for duty and in possession of a firearm, a separate specification of "Unfit for Duty While Armed" would be included in the charges. This charge would carry a greater penalty than the charge of "Unfit for Duty" alone.⁹⁷ In addition to these changes, in 2007, the Department implemented a new policy that required any member of the service who was involved in a firearm discharge that resulted in the injury or death

⁹⁵ Four of these cases were also included in the domestic incidents section of this report. *See infra* at 35-46. Four cases were also included in the false statement section of this report. *See infra* at pp. 51-61. Three of these cases were also included in the alcohol-related misconduct section of this report. *See supra* at pp. 20-30.

⁹⁶ *See supra* at pp. 22 and 24-25 for a more detailed discussion about fitness-for-duty findings.

⁹⁷ *See supra* at pp. 22 and 26 for further discussion about the application of this policy.

of a person, be subjected to a breathalyzer or equivalent test for alcohol use.⁹⁸

The Commission has also made recommendations that have not been adopted by the Department. One recommendation is that the appropriate penalty for any officer found to have discharged his firearm who also failed immediately to report the discharge to the Department is termination. This penalty should be imposed regardless of whether the discharge was purposeful or accidental. The Commission believes that termination is the appropriate penalty for this type of misconduct because the failure to make a prompt report of the discharge can result in the loss of forensic and eyewitness evidence. Such evidence is, of course, valuable for determining the circumstances surrounding the discharge, and whether the officer committed any misconduct when he fired his weapon. Another Commission recommendation, first made in its *Tenth Annual Report*,⁹⁹ was that those officers who unjustifiably displayed a firearm should, at minimum, be placed on a period of Dismissal Probation¹⁰⁰ in addition to forfeiting vacation and/or suspension days. The Department disagreed with this recommendation, stating that Dismissal Probation cannot be used solely to monitor officers' conduct,¹⁰¹ but the Commission continues to adhere to its view. While the Commission is aware that the Department has other ways to monitor these officers,¹⁰² the unjustified display of a firearm has deadly

⁹⁸ Interim Order 52 (September 30, 2007).

⁹⁹ *Tenth Annual Report of the Commission* (February 2008), at pp. 26-27.

¹⁰⁰ See *infra* at p. 47 for a discussion regarding the penalty of Dismissal Probation.

¹⁰¹ *Tenth Annual Report of the Commission* (February 2008), at p. 27, fn. 63. See also *Eleventh Annual Report of the Commission* (February 2009), at pp. 26-27. In that report, the Department explained that it had a "multi-tiered monitoring system, where the actions and behavior of uniformed officers in need of greater scrutiny are carefully tracked" and stated that the Commission's continued recommendation "does not take into proper account the existence of the Department's monitoring system."

¹⁰² For a description of the Department's various monitoring systems, see the Commission's reports *The New York City Police Department's Non-IAB Proactive Integrity Programs* (December 2001), at pp. 54-124 and *A Follow-Up Review of the New York City Police Department's Performance Monitoring Unit* (April 2006).

potential and merits a strict response. Placement on Dismissal Probation, where the officer can be terminated for future misconduct without an administrative hearing, may have a greater deterrent effect on the individual officer. It could also avert this type of misconduct by other members of the service, as the penalty for the wrongful display of a firearm would be certain. A further consequence is that placement on Dismissal Probation, unlike almost all of the monitoring programs, remains as an entry in the officer's permanent record.

It is these Department policies and Commission recommendations that the Commission used to evaluate the adequacy of the penalties the Department imposed in the cases reviewed for this report. For the *Tenth Annual Report*, the Commission reviewed nine cases that involved the off-duty display or discharge of a firearm. For the *Eleventh Annual Report*, it reviewed fifteen of these cases. In this report, the Commission reviewed fifteen cases. These numbers indicate that the Department continues to have members of the service who engage in this inherently dangerous conduct. In fact, in October 2009, the press reported that a member of the service was arrested after he allegedly waved his firearm on a crowded train in an apparent effort to assert his authority over a group of rowdy passengers. That officer is facing felony charges and possibly dismissal from the Department.¹⁰³

Prior to separating the cases into the categories of the display or discharge of a firearm, the Commission examined all fifteen cases to determine whether the Department made the requisite fitness-for-duty finding in each case. The Commission found that in

¹⁰³ See *Newsday*, "Officer on LIRR faces charges," (October 13, 2009), "DA: Officer on LIRR broke law," (October 14, 2009), "Cop's LIRR story disputed," (October 15, 2009); *The New York Post*, "Cowboy cop 'pulls gun' on LIRR riders," (October 13, 2009); and *The Daily News*, "Cop suspended in LIRR threat," (October 13, 2009). Again, the Commission does not comment on the evidence in this case or the accuracy of these news reports. The case is still under investigation.

four of the fifteen cases, the Department made a determination regarding the subject officer's fitness for duty. In five of the remaining cases, the Commission found that there was a reasonable explanation for the Department's inability to make a fitness determination. In those cases, there was a delay between the time of the incident and the time the Department became aware of the conduct.¹⁰⁴ In the remaining six cases, due to a lack of information provided with the case,¹⁰⁵ the Commission was unable to determine if a fitness-for-duty finding was made. Of the four cases where a fitness-for-duty finding was specifically noted, the officers were found to be unfit for duty in three of the cases.¹⁰⁶ In all three of these cases, a separate charge of "Unfit for Duty While Armed" was levied. In one case involving the display of a firearm, the officer was found to be fit for duty.

Of the fifteen cases the Commission reviewed, eleven involved only the display of a firearm, and four involved a firearm discharge.¹⁰⁷ In its review of the eleven cases that involved the display of a firearm,¹⁰⁸ the Commission found that the Department

¹⁰⁴ This delay was not due to any action of the Department but rather to the failure of the subject officer to notify the Department in a timely manner.

¹⁰⁵ See *supra* at p. 18 for a description of the paperwork the Commission receives in connection with the closed disciplinary cases that it reviews. Previously, in those cases involving a negotiation, the Commission received internal Department memoranda describing the initial Department response after being notified about an incident. This was typically where a fitness-for-duty finding would be noted by the Department. Increasingly, over the last two years, however, the Commission has received, in lieu of these memoranda, the memoranda used to request the charges and specifications against the subject officer. Unless a charge of "Unfit for Duty" or a similar alcohol-related charge was requested, this paperwork would not be expected to contain a discussion concerning the fitness-for-duty finding.

¹⁰⁶ In one of these three cases, however, according to the internal department memorandum describing the initial investigation into the allegations as well as the justification for the subject officer's suspension, the officer was actually initially found fit for duty. Given that the officer was charged with "Unfit for Duty While Armed" and "Unfit for Duty," the Commission counted this case as one where the respondent was found to be unfit for duty.

¹⁰⁷ The Commission did not include in its review cases involving the failure to safeguard a firearm, resulting in its loss or accidental use by another individual.

¹⁰⁸ In two of these cases, the subject officer was not charged with misconduct based upon his display of a firearm. Based on the paperwork reviewed, the Commission agrees that the circumstances justified the officer displaying his firearm and therefore, the Commission agrees with the lack of a charge pertaining to the display of the firearm in these cases. One of these subject officers received Dismissal Probation as part of his penalty for the specifications that were levied against him. In another case, the officer was also not charged with the display of a firearm as the allegation was

included a period of Dismissal Probation as a penalty in six cases. Of the remaining cases that did not include a penalty of Dismissal Probation, the subject officer resigned prior to the adjudication of the charges in two of the cases. In a third case, the officer was not charged with unjustifiably displaying his firearm, so he was not found guilty of this misconduct. In the remaining two cases, the Commission believed that a period of Dismissal Probation was warranted.¹⁰⁹

The Commission examined four cases involving an unauthorized off-duty firearm discharge. The Commission could not determine, based on the paperwork contained in the file,¹¹⁰ whether there were any fitness-for-duty findings¹¹¹ made in these cases.¹¹² In three of the four cases, the respondent was separated from the Department. In the final case, the respondent was placed on a period of Dismissal Probation, and forfeited a

part of a variety of domestic allegations and was not made until two years after the alleged incident. That officer was also placed on Dismissal Probation after being found guilty of several of the specifications that were levied against him.

¹⁰⁹ In one case, the officer engaged in a physical altercation with a motorist over a parking spot and during the dispute, improperly displayed his firearm and repeatedly bumped the motorist's vehicle with his vehicle. An independent witness corroborated the complainant and complainant's wife account. The officer forfeited thirty days previously served on suspension and five vacation days. In the second case, the subject officer held his firearm to the complainant's head to force the complainant to remain at the scene to await police response because the subject officer believed that the complainant's shopping cart had hit his car, causing minor damage. The officer also threatened to shoot the complainant. Although an independent witness corroborated the complainant's version of the events, the subject officer claimed that he only pointed his firearm at the ground and that the complainant had hit him with the complainant's vehicle. The subject officer was already on Level II monitoring at the time the instant case was adjudicated. This officer forfeited the thirty days that he previously served on suspension.

¹¹⁰ See *supra* at p. 18 and p. 33, fn. 105.

¹¹¹ In two of the cases, there was a delay in the Department being informed about the discharge. This delay would have prevented the Department from making fitness-for-duty findings.

¹¹² In one case, the plea memorandum prepared by the Assistant Advocate stated that "there was no evidence to prove that alcohol played a role in Respondent's misconduct or that Respondent was unfit for duty at the time of the incident." There was, however, no indication in the paperwork received by the Commission that the subject officer was specifically found fit for duty.

combination of sixty vacation and suspension days. The Commission believes that this subject officer should have been terminated.¹¹³

Misconduct involving a firearm has the potential for the most serious of consequences—the death, physical impairment, or serious physical injury of civilians. It remains essential that the Department make fitness-for-duty findings in these cases because the impairment or intoxication due to alcohol abuse can affect an officer’s judgment and exacerbate the seriousness of the misconduct. The Commission also continues to recommend the most severe penalties for this category of cases: termination in those instances where the officer discharges his firearm while intoxicated, whether the discharge is purposeful or accidental, and at minimum, the imposition of a period of Dismissal Probation when the officer wrongfully displays his firearm. The Commission believes that these standard penalties should be departed from only upon a clear showing of exceptional circumstances based on the particular facts of the case.

3. Domestic Incidents

In January 2009, a Lieutenant from the NYPD stabbed and shot his wife, killing her, and then committed suicide. According to the media coverage,¹¹⁴ there were no prior calls to the police regarding domestic issues and neighbors were unaware of any violence between the couple. Also during the time period covered by this report, two

¹¹³ In that case, the respondent called 911 after seeing several teenagers attacking another juvenile. After calling 911, the respondent approached the teenagers and sometime during this encounter, his firearm was discharged. The Department did not learn that the discharge was from the Respondent’s weapon until almost a year later when the respondent was involved in a legitimate police shooting and ballistic testing matched his firearm to a bullet that was found at the scene of the earlier incident. At his PG hearing, the respondent denied that he was aware that he discharged his firearm at the time of the first incident but gave inconsistent explanations for when he realized his firearm had been discharged. The respondent finally stated that he discovered that the firearm had been discharged the day after the incident. Yet, he did not report the discharge and probably never would have had the Department not discovered it on its own. The Commission believes that the failure immediately to report the discharge of a firearm to the Department has great potential for interfering with an investigation and deserves a penalty of termination.

¹¹⁴ See The Daily News, “Cop’s Suicide-Slay,” (January 13, 2009); Newsday, “Cop murder-suicide,” (January 13, 2009); and The New York Post, “Cop In Murder Suicide,” (January 13, 2009).

officers were convicted for the homicides of their fiancées.¹¹⁵ One officer pled guilty to Manslaughter in the First Degree and was sentenced to ten years in prison.¹¹⁶ The other officer was found guilty of Murder in the Second Degree and was sentenced to twenty-five years to life in prison.¹¹⁷ These occurrences emphasize the potentially severe consequences of domestic violence and the attendant need to take these allegations seriously.

When police officers are involved in domestic incidents, there are additional issues that increase the potential for harm. The officer usually has access to a firearm, which can turn any dispute into a deadly one. Another important consideration is that the complainant may be reluctant to report any incidents of domestic violence to the police. Victims of domestic violence often recant their allegations or fail to report them for reasons including fear of their abuser or a desire to reconcile with their partner. When the perpetrator is a member of the service, the victim may also fear reporting him¹¹⁸ due to the belief that other officers will protect the abuser and threaten the victim in the process of covering for their colleague. There are also economic considerations because reporting a partner who is a member of the service can lead to the loss of income through suspension or even separation from the Department. All of these issues require the Department to send the message that it will not tolerate actions of domestic violence. This intolerance can be demonstrated through conducting thorough investigations into the

¹¹⁵ The Commission is not aware of any prior allegations of domestic misconduct against either of these two officers.

¹¹⁶ As part of his sentence, the officer also must submit to five years of post release supervision.

¹¹⁷ See The New York Post, “Fiancée slayer gets life,” (November 7, 2009); and The Daily News, “25 years for fiancée slay,” (November 7, 2009).

¹¹⁸ As noted earlier, the use of the male pronouns “him,” “he,” and “his” are for purposes of simplicity. The Commission recognizes that both males and females commit acts of domestic violence and both genders can be victims of this type of violence.

allegations of domestic violence, encouraging complainants to cooperate with investigations, and through the imposition of severe discipline when an officer is found to have engaged in such misconduct.

The Department includes within this category of misconduct: verbal arguments, physical altercations, harassment, stalking, threats, sexual assaults, and violations of orders of protection. These actions are defined as occurring between spouses or other domestic partners, family members, including the subject officer's children, or with people whom the officer is dating or has dated in the past. As of October 2009, the Department investigated over seven hundred allegations of varying degrees of domestic incidents. Only a small percentage of these allegations were substantiated. The Commission recognizes that a significant number of these allegations are made in the context of ending a relationship or in retaliation for some perceived slight or other wrongdoing and may therefore be exaggerated or even fictional. There are, however, also a significant number of these incidents where the harm is real, and when that occurs, adequate penalties must be imposed.

In its *Eleventh Annual Report*, the Commission reviewed the penalties imposed in thirty-nine cases where a domestic situation was involved. The Commission believed that the Department issued appropriate penalties in all but five of the cases. The Commission also noted that in a number of cases, the civilian complainant mentioned prior domestic incidents that had never been formally reported, and encouraged the Department to reach out to the civilian partners of its members in order to advise them on reporting this type of allegation and to explain the nature of the investigation that would ensue in an effort to encourage cooperation with a Department investigation.

For this report, the Commission examined eighty-three cases¹¹⁹ which fell within this category. Allegations included violations of orders of protection, leaving derogatory messages on the complainant's answering machine, menacing with a weapon, reckless endangerment, damaging property, physical assaults, and murder. Complainants included spouses, girlfriends and boyfriends, adult and minor children, ex-partners, prior dates, and the current partners of former love interests. While many of the complainants were civilians, there were a significant number of complainants who were also employed by the Department. In eight cases, there were no formal specifications regarding the domestic incident, but a domestic incident instigated the charges at issue.¹²⁰

When reviewing these cases, the Commission examined whether the respondent was directed to cooperate with counseling in order to address the issues that led to the misconduct in an effort to prevent future occurrences. The Commission further evaluated whether the sanctions imposed were appropriate and sufficiently severe to deter future misconduct of this nature and to indicate the seriousness with which the Department considers this type of behavior. In determining the sufficiency of the punishment, the Commission considered the nature of the offense, whether the respondent caused the

¹¹⁹ Of these eighty-three cases, four officers had more than one case in this category adjudicated against them. This accounted for nine cases. Twenty-two of these cases are also included in the alcohol-related misconduct section of this report. *See supra* at pp. 20-30. Five cases are included in the misconduct involving firearms section of this report. *See supra* at pp. 30-35. Seven cases are also counted in the false statement section of this report. *See infra* at pp. 51-61. Two cases also involved officers on entry level or Dismissal Probation and therefore, those cases are also included in that section of this report. *See infra* at pp. 46-51.

¹²⁰ In four cases, the respondent was charged with failing to report his involvement in an unusual police occurrence, the domestic incident, or that he was served with an order of protection, as required by the Department. In one case, the respondent was charged with failing to notify the Department of his purchase of two firearms. However, the evidence which supported this charge was discovered due to an investigation which began when the subject officer's estranged wife called 911 stating that the subject officer had threatened to kill her. In two other cases, the subject officer was charged with being out of his residence while on sick report without permission from the Department's Medical Division. In one of these two cases, the initial allegation which led to the investigation was that the subject officer had engaged in a verbal dispute with his girlfriend and sent harassing messages to his girlfriend's ex-boyfriend. These actions were not charged. In the second case, the initial allegation of a verbal dispute was closed after the investigation as unsubstantiated. In the final case, the subject officer was charged with failing to safeguard his weapon after his wife discharged the firearm immediately following a verbal dispute. The domestic allegations were unsubstantiated at the conclusion of the investigation.

complainant physical injury, and if so, the severity of that injury. The Commission also weighed whether the complainant cooperated with DAO, and if not, what other evidence was available to sustain the charges against the subject officer. Additional factors that the Commission took into account were whether the subject officer expressed remorse and whether this appeared to be an isolated incident or part of an ongoing pattern, even in those cases where prior incidents were not reported. Finally, the Commission also weighed the respondent's disciplinary history, especially if he had received prior discipline for a domestic incident. Because domestic altercations usually recur throughout a relationship, the Commission continues to advocate that the Department levy more severe penalties against those members of the service whom it has previously disciplined for this type of misconduct. The Commission believes that when an officer has a disciplinary history that includes prior domestic incidents, he should be monitored through his placement on Dismissal Probation.¹²¹ If the respondent has previously served a period of time on Dismissal Probation due to a prior domestic incident, termination may be the only appropriate discipline.

As noted earlier, one obstacle in the prosecution of these cases is that often the complainant is unwilling to cooperate. Although the complainant's hearsay statements¹²² are admissible evidence at a Department disciplinary hearing,¹²³ the Trial Commissioners have been reluctant to find a subject officer guilty of the charges against him based solely on hearsay evidence. Therefore, DAO must either present evidence that corroborates the

¹²¹ See *infra* at p. 47 for a further explanation about Dismissal Probation.

¹²² Hearsay statements are those statements made outside of the courtroom admitted for their truth and are placed into evidence for the purpose of proving the allegations against the subject officer.

¹²³ Ayala v. Ward, 170 A.D.2d 235 (1st Dept. 1991).

complainant's hearsay statements, or include charges against the subject officer for which there is non-hearsay evidence. Of the eighty-three cases reviewed by the Commission, the complainant was unwilling to cooperate with the administrative prosecution of the respondent in thirty-three.¹²⁴ In only one of those cases were the allegations dismissed after the Assistant Advocate made a motion stating that he could not prosecute due to lack of independent evidence.¹²⁵ There were four cases tried by DAO despite the complainant's refusal to testify that resulted in not guilty findings for the respondent, and two other cases in which DAO did not have the complainant's cooperation where, after the trial, all of the specifications relating to the domestic incident were dismissed by the Trial Commissioner.

There were twenty-one cases¹²⁶ where the respondent had some prior, formal allegations involving a domestic incident. Twelve of these formal allegations resulted in previous discipline¹²⁷ against the officer, five were unsubstantiated after an investigation or filed for information and intelligence, and four resulted in an order of protection being issued by a family court or in the completion of a domestic incident report.¹²⁸ In eight of these cases, the subject officer was placed on a period of Dismissal Probation to monitor

¹²⁴ There were twelve additional cases where it was unclear from the paperwork provided by the Department whether the complainant was willing to cooperate.

¹²⁵ This respondent, however, had another disciplinary case pending against him where he was penalized. That disciplinary case did not involve domestic allegations.

¹²⁶ Three of these cases involved the same respondent. Two other cases also involved one respondent.

¹²⁷ Seven of these prior cases resulted in charges and specifications while five resulted in discipline at the Command level. Three of the cases which had prior discipline imposed by the Command involved the same respondent.

¹²⁸ One of the respondents in the latter category also had other domestic charges pending against him.

his behavior.¹²⁹ The Commission did not agree with this disposition in three of the eight cases. In one case, the Commission believed that counseling should also have been imposed.¹³⁰ In the second case, although the respondent was found guilty of only slashing his ex-wife's tires, the respondent had been placed on Dismissal Probation for two prior cases, one of which was a domestic case. The respondent also made false statements in his PG hearing,¹³¹ which had not been charged in the instant case, was described by a prior supervisor as "lazy and lacking in work ethic," and had attempted to convince the complainant to drop the criminal charges against him. The Commission believed that termination was the appropriate resolution for this case. In the final case, the subject officer left harassing voicemail messages on his ex-wife's cell phone and on the cell phone of the current husband of the respondent's other ex-wife. Both marriages had ended more than five years before the present incidents. The respondent had previously been placed on Dismissal Probation and suspended for fifty-eight days for two sets of charges from 2004 and 2005 for domestic incidents.¹³² The respondent was also on Level III disciplinary monitoring at the time of the negotiation. DAO requested a penalty consisting of twenty-five vacation days and cooperation with counseling. The First Deputy Commissioner disapproved this penalty and recommended that the subject officer file for immediate retirement. The Police Commissioner ultimately imposed a period of Dismissal Probation, the forfeiture of twenty-five vacation days, and a direction

¹²⁹ In four of these eight cases, the respondents, one of whom was the respondent referenced in footnotes 126 and 127, were directed to file for immediate vested retirement. The period of monitoring would only cover the time period until the effective date of these officers' retirements.

¹³⁰ See *infra* at pp. 45-46 for the Department's explanation regarding the inclusion of counseling as part of the imposed penalty in domestic cases.

¹³¹ See *supra* at p. 10, fn. 30 for the definition of a PG hearing or PG interview.

¹³² The respondent also had other disciplinary events that did not involve domestic allegations.

to cooperate with counseling. The Commission believes that based on the respondent's failure to conform his behavior after his previous placement on Dismissal Probation and his continual harassment of his former spouses, he should have been separated from the Department.

Of the remaining thirteen cases where the respondent had prior, formal domestic allegations, the Commission believed that a period of Dismissal Probation should have been imposed in two of the cases.¹³³ In one case, the respondent struck his wife about the head with a cell phone causing bruising and pain. There was a prior domestic incident from 2006 for which the respondent received discipline at the Command level for failing to report a domestic incident to the Department. During the instant investigation, the complainant also alleged that the respondent had pointed a firearm at her and threatened to kill her, although that conduct was not charged. In the second case, the respondent placed his hands around his girlfriend's neck. This action did not cause physical injury. The respondent had a 2004 domestic allegation with a different complainant that was merely recorded. The respondent originally agreed to forfeit twenty-five vacation days. The Police Commissioner reduced the penalty to fifteen vacation days, without any explanation for the reduction. No condition of counseling or monitoring was included.

One officer had two pending cases involving allegations of a domestic nature. This officer did not receive a period of Dismissal Probation. Since there was no prior

¹³³ In the remaining eleven cases, either the complainant was not cooperative with the prosecution thereby jeopardizing any discipline being imposed if a settlement could not be reached or there were no physical injuries inflicted on the complainant by the subject officer. There was one case in which the Commission agreed that the imposed disposition was sufficient to address the domestic charges, however, the case also included a guilty finding against the officer for making a false report claiming that her ex-husband injured her. Based on this false report, the Commission believed the subject officer should have been terminated.

discipline imposed for domestic reasons, the Commission did not disagree with the penalty that was imposed.

There were fourteen cases where during the investigation, prior unreported allegations of domestic abuse were revealed, but the officer had no prior, formal reports of domestic incidents on record. In two of these cases, the subject officer was separated from the Department prior to the resolution of these matters. Of the remaining twelve cases, a period of Dismissal Probation was imposed in four cases. The Commission only disagreed with the disposition in one of the remaining cases. In this case, the respondent had made a cross complaint against another member of the service. The Commission disagreed with the forfeiture of six vacation days¹³⁴ that was imposed due to the severity of the charged behavior.¹³⁵

There were four cases where the respondent had previously served time on Dismissal Probation for a domestic incident.¹³⁶ In one case, discussed immediately above, the respondent was placed on Dismissal Probation; forfeited thirty-two days previously served on suspension, and was directed to cooperate with all Department counseling programs after slashing his ex-wife's tires. In another case, also discussed above, the respondent forfeited twenty-five vacation days, was placed on Dismissal

¹³⁴ The respondent was also required to cooperate with counseling.

¹³⁵ The respondent failed to notify the Department of a suicide threat by the complainant, hit the complainant in the face with a baby bottle while he was holding their fifteen-month-old child, failed to notify the Department of her involvement in this incident, and engaged in a public verbal dispute that escalated into a police incident.

In the case against the complainant, that subject officer pled that he failed to promptly notify the Department after he was hit in the face with the baby bottle while he was holding their child, called the first respondent nine times on her cell phone in a period of thirty-seven minutes for the purpose of harassing her, attempted to prevent the first respondent from leaving her residence by blocking her vehicle with his vehicle, and failed to notify the Department about this incident. In the Commission's opinion, this case, included in the above category of cases with prior, formal allegations, also deserved a harsher penalty.

¹³⁶ There were two other cases where the respondent was on Dismissal Probation at the time the case was concluded, however, this period of monitoring was not imposed in response to a domestic incident.

Probation, and was directed to cooperate with counseling after leaving harassing messages containing profanity and offensive remarks for his ex-wife and the husband of his other ex-wife. In the third case, the respondent forfeited thirty-two days previously served on suspension, with a direction to cooperate with all indicated Department counseling programs. The Commission agreed with this disposition because the complainant refused to cooperate with the investigation. Further, there had been three prior domestic reports made by the respondent and his present girlfriend about the complainant.¹³⁷ In the final case, the respondent was allowed to file immediately for vested retirement. The Assistant Advocate specifically recommended this penalty based upon the respondent's prior placement on Dismissal Probation in connection with a domestic incident.

In the remaining forty-six¹³⁸ cases where the subject officer had no indication of a prior domestic incident history, in seven cases, Dismissal Probation was imposed as part of the penalty for the subject officer.¹³⁹ Of the remaining thirty-nine cases, no penalty was imposed in six cases as the charges were dismissed on motion by the Assistant Advocate or the respondent was found not guilty of all of the charges after trial.¹⁴⁰ In one case, the officer was separated from employment with the Department by operation of law after he pled guilty to Manslaughter in the First Degree during his criminal

¹³⁷ In fact, three other specifications against the subject officer were dismissed as part of the negotiation.

¹³⁸ In thirteen of these cases, the Commission did not have the paperwork to determine whether the respondent had prior reports of domestic incidents against him.

¹³⁹ In two of these cases, the period of Dismissal Probation was part of a settlement that included immediately filing for vested retirement. In one of those two cases, the officer had seven other cases pending against him, including two cases with alcohol-related charges. In a third case, the officer was on Dismissal Probation at the time, however it was not for a domestic incident and the officer had no prior domestic allegations against him. Two of the remaining cases involved the same subject officer.

¹⁴⁰ In two of these cases, the respondent was disciplined in connection with other, pending matters that were not domestic in nature.

case.¹⁴¹ In most of the remaining thirty-two cases, the penalty imposed consisted of the forfeiture of vacation or suspension days coupled with a direction to comply with Department counseling. The Commission agreed with the disposition in thirty of the cases. In one of the remaining two cases, the Commission believed that a period of Dismissal Probation would have been appropriate as a weapon was involved in the incident and the respondent had a prior, non-domestic disciplinary history. In the second case, the Commission's disagreement was with the failure to order the respondent to cooperate with Department counseling programs.

The importance of counseling in these cases cannot be overstated. The failure to address this behavior and any underlying issues can lead to a continued cycle of violence and an escalation in the severity of the misconduct. In forty-nine of the cases, counseling was mandated as part of the plea agreement or the subject officer completed counseling during the pendency of the case. The subject officer attended alcohol rehabilitation in two other cases. In nineteen cases, the Department was unable to order the respondent to undergo counseling because there was a trial, the respondent's employment with the Department had ended, or the allegations concerning the domestic incident had been unsubstantiated or dismissed after being charged. In response to a draft of this report, the Department explained that counseling is ordered in all cases involving domestic incidents regardless of whether the plea agreement explicitly directs the respondent to cooperate with Department counseling programs. According to the Department, the respondent is directed to cooperate with counseling early in the case whenever domestic allegations are

¹⁴¹ In two other cases, the respondent was no longer employed by the Department at the time the charges were filed.

present. Therefore, even those respondents who choose to have a trial will undergo counseling or face suspension. The Department also does not consider counseling to be a form of discipline.

The penalties that the Department imposed in cases involving allegations of domestic disputes continue to be sufficient in most instances. The Commission again notes the significant number of cases where allegations of prior, unreported domestic violence were discovered during the investigation and urges the Department to reach out to the civilian spouses of its members and advise them on ways to report this type of behavior and obtain support while cooperating with the investigation against their partner.

C. Dismissal Probation and Probationary Police Officers

According to the New York City Personnel Rules and Regulations Section 5.2.7, an agency head “may terminate employment of any probationer whose conduct and performance is not satisfactory and after 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.” This section applies to those officers designated as Probationary Police Officers (“PPOs”)¹⁴² and those on Dismissal Probation.

PPOs are newly hired officers. Once appointed to the Department, they are placed on a two-year probationary period¹⁴³ where they are given the opportunity to

¹⁴² The Department needs to act in good faith, with a constitutionally permissible basis for its decision to terminate and not violate a statutory or decisional law.

¹⁴³ A probationary period may be extended during time periods where the officer is out sick, on vacation or otherwise not employed in a full-duty capacity. The probationary period may also be extended for up to six months for disciplinary or performance reasons.

demonstrate their ability to fulfill their responsibilities as police officers. This includes being able to perform policing duties while adhering to the Department's code of conduct, on and off duty. During this probationary period, an officer may be terminated without the formal service of charges outlining the alleged misconduct and a subsequent administrative hearing. At an administrative hearing, the Department would have the burden of presenting witness testimony and other evidence to prove the allegations, and the subject officer would have the opportunity to present a defense. This at-will discretion to terminate lies with the Police Commissioner.¹⁴⁴

An officer who is placed on Dismissal Probation is considered to be dismissed from the Police Department but that dismissal is held in abeyance for a one-year period.¹⁴⁵ During this period, the officer will continue his employment with the Department. If the officer engages in further misconduct or other, prior misconduct is discovered by the Department, the officer's employment may be terminated without the need for an administrative hearing into the veracity of the newly discovered allegations.¹⁴⁶

The Commission reviews those cases involving PPOs and officers on Dismissal Probation to determine whether the Department decided appropriately against termination.¹⁴⁷ When an officer on either form of probation was not separated from the

¹⁴⁴ The Police Commissioner will usually make the decision whether to terminate an officer on either form of probation based on an evaluation conducted by the Employee Management Division. This unit will review the charges against the officer and the officer's disciplinary history and performance evaluations in order to make this recommendation.

¹⁴⁵ The Dismissal Probation period is extended by any time the officer is not on full-duty including if the officer is on suspension, modified assignment, restricted duty, limited duty, sick leave, annual leave, or any other leave of absence.

¹⁴⁶ Once an officer completes his Dismissal Probation period without incident, he is restored to his former status.

¹⁴⁷ The Commission does not receive the relevant Department paperwork when a PPO or officer on Dismissal Probation is summarily terminated.

Department, the Commission reviewed the Department's reasoning, when provided, to evaluate whether there was sufficient justification for not terminating the officer. The Commission reviewed six cases¹⁴⁸ that involved PPOs¹⁴⁹ who committed misconduct during their probationary period. In three of those cases, the Department charged the officers while they were still PPOs. In the three remaining cases, the charges were not levied against the officers until after their probationary periods had expired.¹⁵⁰ In these three cases, the option to summarily terminate these officers expired with the end of their probationary periods. The Commission assessed the penalties levied by the Department based upon the nature of the misconduct, the disciplinary history of the involved officer, and the presence of any mitigating factors.

Of the six cases it reviewed, the Commission disagreed with the penalties the Department imposed in the three cases where the respondents were still on probation at the time the charges were levied. Two of the cases involved one officer. The first set of charges involved the officer using an address in an upstate county to register his vehicle, when he lived in Kings County, presumably in order to pay a lower insurance premium. The second set of charges stemmed from a dispute the officer had with an individual in a night club. In that incident, while off-duty, the respondent had a verbal dispute with a

¹⁴⁸ One of these cases was also included in the domestic incident section. *See supra* at pp. 35-46. Another of these cases was also included in the false statement section of this report. *See infra* at pp. 51-61.

¹⁴⁹ One PPO had two cases against him, therefore, only five officers were involved in these cases.

¹⁵⁰ In one of these cases, the allegations were not reported until after the expiration of the respondent's probationary period. In another case, the Civilian Complaint Review Board conducted the investigation, and it is unknown exactly when the Department received the case for prosecution. In the third case, the respondent was involved in a minor on-duty altercation with another member of the service three months before his probationary period expired. The investigation by the applicable investigation unit was not completed until after the expiration of the respondent's probation.

See infra at p. 55, fn. 172 for a discussion regarding the Civilian Complaint Review Board.

See the Commission's report: Monitoring Study: A Review Of Investigations Conducted By The NYPD's Borough And Bureau Investigative Units (January 2009) for a discussion of the Department's various investigative units.

security guard in a night club and challenged him to a fight. The following day, while on duty, the respondent returned to the night club, in uniform and in a Department vehicle, confronted the security guard and asked for his identification. The respondent also brought his partner with him. In this instance, the Commission believes that the Department should have, at a minimum, extended the officer's probationary status. Instead, the Department negotiated a penalty where the respondent forfeited a combination of fifty suspension and vacation days. The Commission's concern is that this officer left his assigned post to continue a dispute from the night before and used his uniform, and therefore his position as a member of the NYPD, in an apparent effort to intimidate the security guard. The respondent also contributed to his partner being absent from his assigned post.

In the other case where the Commission believed that the subject officer's probationary period should have at least been extended, the subject officer and another officer went out to a nightclub. The second officer decided to secure his firearm in the respondent's glove compartment. After leaving the club and driving the respondent home, the non-respondent officer¹⁵¹ remembered that he had left his firearm behind. He called the respondent and asked the respondent to safeguard the firearm. The respondent did not check on the firearm. The non-respondent officer called the respondent the following day. Still, the respondent did not remove the firearm to a more secure location. When the respondent did check the glove compartment, two days after the non-respondent officer's first message, the firearm was missing. The respondent did not notify the Department of the missing firearm at that time. Instead, two days passed

¹⁵¹ A separate administrative case was brought against this officer.

before the non-respondent officer notified the Department. The Commission believes that the respondent's lackadaisical attitude towards the whereabouts of the firearm demonstrated his failure to understand the importance of safeguarding this weapon¹⁵² and the dangers that could ensue from neglecting this responsibility.¹⁵³

There were three cases where an officer on Dismissal Probation committed misconduct during the probationary period, but was not terminated by the Department. The Commission agreed with the penalties imposed in these cases. In two of the cases involving domestic misconduct,¹⁵⁴ the complaining witness later recanted or refused to cooperate. In the first case, the complainant's recantation cast doubt on the veracity of the allegations. In the second case, although the complainant had refused to cooperate, his hearsay statements, plus photographs of his injuries, could have been submitted to prove the allegations. The Department noted, however, that the respondent was not summarily terminated because the present case did not allege similar misconduct to the case for which he originally received Dismissal Probation¹⁵⁵ and he had received very good evaluations from his current Commanding Officers. In the third case, the officer accepted a plea that required him to file for retirement.

¹⁵² The Department paperwork does not indicate that the firearm was ever located.

¹⁵³ In response to a draft of this report, the Department stated that "duty status is a personnel matter that falls under the purview of our Employee Management Division. Whether or not an officer's probationary status was removed or extended would not be reflected in the disciplinary paperwork contained in the files of the Department Advocate's Office." While the Department states that the Commission is engaging in speculation in this matter, specifically absent from its response is whether the probationary periods of these two officers were actually extended.

¹⁵⁴ These two cases are also included in the domestic incident section of this report. *See supra* at pp. 35-46.

¹⁵⁵ In that case, the respondent pled guilty to failing to safeguard a Department parking plaque, failing to report the loss of Department property, interfering with a Department investigation, and working off-duty, for an unauthorized amount of time per week, without permission from the Department. The Commission has no further information about the facts of this case. In the instant case, the respondent was psychologically evaluated by a Department Psychologist who found him fit to perform police work. The respondent also completed a parenting workshop and had no other incidents of misconduct in the three years it took to adjudicate this case. In addition to Dismissal Probation, the respondent forfeited a combination of sixty suspension and vacation days and agreed to cooperate with all counseling programs the Department decided were necessary.

While the Commission believes that the Department should continue to use its discretionary authority to summarily terminate those police officers on probation who have engaged in misconduct, it realizes and appreciates that the Department reviews each case individually, especially in cases where the subject officer is not charged criminally. When the officer on probation does, however, engage in several instances of misconduct, the Commission believes that separation from the NYPD would almost invariably serve the Department and the community.

D. False Statement Cases

One of the first topics reported on by the Commission subsequent to its creation was how the Department disciplined officers found to have made false official statements,¹⁵⁶ either in court testimony, in court paperwork sworn to under oath, or in PG hearings.¹⁵⁷ The rationale for studying the discipline imposed for this particular misconduct was that the failure to address such false statements adequately would create “a dangerous sense that dishonesty within a police department is not that serious. Tolerance of false statements of any kind also undermines the Department’s ability to restore and ensure necessary public confidence in our police department.”¹⁵⁸ The Commission explained that if the public believed officers were willing to lie, this could lead juries to discredit officers’ testimony in criminal proceedings, which could result in acquittals of guilty suspects. Further, when it is found that an individual officer has lied, his credibility is forever damaged. The officer, as a direct consequence of his falsehood,

¹⁵⁶ *The New York City Police Department’s Disciplinary System: How the Department Disciplines Its Members Who Make False Statements* (December 12, 1996).

¹⁵⁷ *See supra* at p. 10, fn. 30 for the definition of a PG hearing.

¹⁵⁸ *The New York City Police Department’s Disciplinary System: How the Department Disciplines Its Members Who Make False Statements* (December 12, 1996), at p. 10.

will be subject to cross-examination about the lie at any future proceeding at which his testimony is required. This would impact on his usefulness in performing enforcement duties where he may be called upon to testify. Finally, in 1996, the Commission explained that tougher penalties for lying in official contexts would aid in dismantling the “blue wall of silence,” where officers remain silent or lie to cover their colleagues’ transgressions.

In 1996, the Commission met with the Police Commissioner and other members of the Department to discuss the issue. The discussions resulted in the Department’s 1996 False Statement policy. This policy warned members of the Department that absent exceptional circumstances,¹⁵⁹ any officer found to have made a false official statement would be terminated.

Subsequent reports of the Commission examined how effectively the Department was executing this policy. In a subsequent analysis of these cases, the Commission reported that the Department was failing to charge officers with making a false statement when that statement was collateral to other misconduct about which the officer was being questioned, and the underlying conduct, standing alone, would not require a penalty of termination.¹⁶⁰ In response, the Police Commissioner stated that he had discussed the policy with members of the Department’s disciplinary section and explained that the false statement policy applied to all cases no matter how trivial the original misconduct.

¹⁵⁹ The existence of exceptional circumstances is decided by the Police Commissioner on a case-by-case basis.

¹⁶⁰ See *The New York City Police Department’s Disciplinary System: A Review of the Department’s December 1996 False Statement Policy* (August 1999), at pp. 27-28.

In later reports,¹⁶¹ the Commission noted that the Department seemed to be finding exceptional circumstances that allowed the respondent to escape termination for reasons that did not, in fact, seem to mitigate the seriousness of the initial falsehood. Examples of these “exceptional circumstances” included recanting the original falsehood at a later PG interview, having good evaluations, and having a distinguished career in the Department. The Commission believes that exceptional circumstances that would justify a departure from termination should be based on the individual facts of each case. The most recent setback to the application of the False Statement policy was a 2005 modification that excluded “mere denials” of misconduct without further elaboration as terminable false statements and entirely removed this category of falsehoods from the ambit of the False Statement policy.

As the Department has expanded the exceptions to the application of the policy, the Commission has enlarged its review of cases it believes involve a false statement subject to the policy to include those false statements made in Department records, to other investigating agencies that are not made under oath, that constitute fraud, and the false reporting of crimes.¹⁶² The Commission supports the application of the policy in non-testimonial and non-official circumstances because the same credibility issues for the individual officer are still implicated. In its past reviews on this topic, the Commission has found that the Department was more likely to apply the policy and terminate those

¹⁶¹ See *Fifth Annual Report of the Commission* (February 2001), at p. 48; *Sixth Annual Report of the Commission* (December 2001), at pp. 73-79; and *Seventh Annual Report of the Commission* (March 2004), at pp. 131-138.

¹⁶² See *Sixth Annual Report of the Commission* (December 2001), at pp. 80-84.

members of the service found to have made a false statement either under oath or in a PG hearing than in a non-testimonial setting, except when fraud was involved.¹⁶³

For this report, the Commission reviewed one hundred and seven cases¹⁶⁴ where the subject officer committed some category of falsehood. Though the Commission is not in agreement with the Department policy that a “mere denial” does not constitute a false statement requiring the application of the false statement policy, the Commission excluded from further review nine cases where the false statement was a denial of wrongdoing without further elaboration.¹⁶⁵ Also, as the Commission has always considered time and leave issues to be administrative, personnel matters rather than an issue of credibility, the Commission excluded all cases where the false statement was about time or leave issues that did not involve a pattern or practice of behavior or the alteration or forgery of written documentation. This eliminated seven more cases from inclusion in the Commission’s final tally of cases.

Of the remaining ninety-one cases, the Commission found twenty-three cases¹⁶⁶ where, based on the Department’s paperwork, it believed a false statement charge or its functional equivalent was appropriate, yet the Department failed to include this charge.¹⁶⁷

¹⁶³ See *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; *Tenth Annual Report of the Commission* (February 2008), at pp. 31-38; and *Eleventh Annual Report of the Commission* (February 2009), at pp. 37-44.

¹⁶⁴ Thirteen of these cases were also reviewed in the Serious Off-Duty Misconduct section, *supra* at pp. 19-46.

¹⁶⁵ 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.”

¹⁶⁶ Two of these cases were also included among the cases where subject officers were alleged to have made false entries in Department records.

¹⁶⁷ The Commission stresses that it only had the plea negotiation memorandum or trial decision when making the determination that it appeared that a false statement charge would have been appropriate. The Commission did not have access to DAO’s file or the underlying investigative file. The Commission is considering as one of its future projects a more in-depth review of the Department’s application of the False Statement policy where the Commission

In seventeen¹⁶⁸ of these cases, the false statement¹⁶⁹ occurred in the context of a PG hearing.¹⁷⁰ Two cases involved false statements made to 911. Two cases involved false statements made to officers responding to the scene of a police incident in which the respondent was involved. One case involved a false statement made to a supervisor.¹⁷¹ The final case involved a false statement made during a hearing with the Civilian Complaint Review Board¹⁷² (“CCRB”) personnel.

In response to a draft of this report, the Department stated, “...in deciding whether to bring these types of cases, DAO is diligent in reviewing not only the transcripts but the actual audio tapes of these proceedings as well.” The Commission acknowledges that it relies on the Assistant Advocate’s description of the case in the plea memorandum or the Trial Commissioner’s description of the evidence summarized in his decision when it states that it appears that a false statement charge was appropriate.

would examine the underlying files and recordings as well as discuss the reasons why charges were or were not levied with DAO Executives. *See infra* at p. 68.

¹⁶⁸ Two of these cases involved the same subject officer.

¹⁶⁹ Eight of these officers were charged with Impeding an Investigation to address their misconduct at the PG hearing. Impeding an Investigation does not, by itself, carry a penalty of termination, and none of these officers were terminated. Seven of these officers were placed on Dismissal Probation in addition to forfeiting at least thirty vacation or suspension days. The Commission believes that termination, however, was the appropriate penalty for these officers. The remaining officer retired.

¹⁷⁰ In three cases, two of which involved the same subject officer, the respondents were nevertheless separated from the Department despite the lack of a “Making a False Statement” charge.

¹⁷¹ In response to a draft of this report, the Department noted that false statements to 911 or to a supervisor are not included within the provisions of the False Statement policy. The Commission acknowledged earlier in this section that it has over the years, expanded its review to include those falsehoods it believes should be covered by the policy. *See supra* at p. 53. The Commission also notes that in these cases, there was no charge whatsoever to address the officer’s falsehoods. The Department does not necessarily have to include a charge pursuant to the policy.

¹⁷² Through a revision in the City Charter in 1993, the handling of civilian complaints against police officers was restructured and the Civilian Complaint Review Board was created. This Board has jurisdiction to conduct primary investigations of complaints against police officers that allege the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language.

The Commission divided the remaining seventy cases into categories of those that involved a false statement made under oath¹⁷³ or in a PG hearing, and those that did not constitute official false statements.¹⁷⁴ In this review, there were only ten cases that included allegations of making an official false statement. Four of these false statements occurred in the context of PG interviews. One false statement was made by the officer while testifying in Traffic Court. Two cases involved officers testifying falsely during criminal proceedings. The remaining three cases involved officers signing another person's name under penalty of perjury to documents that were being filed in court. Of these ten cases, only one of those involving an officer who testified falsely during a criminal proceeding resulted in that officer's termination. As that officer was convicted of a felony, he was terminated by operation of law.¹⁷⁵ Therefore, it is impossible to determine if the Department would have followed its False Statement policy in this case. Charges were filed against another respondent who was no longer employed by the Department for reasons not related to these allegations. One officer was found not guilty of making a false statement during his PG hearing after his administrative trial, therefore, no penalty was imposed for this allegation.¹⁷⁶ In two cases, officers were placed on a period of Dismissal Probation in addition to forfeiting vacation days. Neither case set forth any exceptional circumstances that justified a downward departure from the penalty

¹⁷³ Statements under oath include statements made during an officer's in-court testimony, in a Grand Jury proceeding, and during a deposition as well as written statements which the officer signed under penalty of perjury.

¹⁷⁴ 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. Two cases, therefore, were counted in this manner. *See supra* p. 54, fn. 166.

¹⁷⁵ Public Officers Law Section 30(1)(e).

¹⁷⁶ The respondent in that case was found guilty of another specification for which he was penalized with the forfeiture of five vacation days.

of termination. The Commission agreed with a penalty short of termination in one of those two cases, despite the lack of a written explanation. In the remaining five cases, the subject officers only forfeited vacation or suspension days and no exceptional circumstances were presented to justify the less severe penalties. Three of these cases involved the subject officer signing another person's name to court documents. While the Commission does not necessarily believe that these particular officers should have been terminated because their intent did not appear to be one of dishonesty but rather one of expediency, given the seriousness of the misconduct, the Commission believed a period of Dismissal Probation was warranted.¹⁷⁷ In the remaining cases, DAO recommended the imposition of a period of Dismissal Probation in one and immediate retirement in the other. The First Deputy Commissioner recommended that the respondent be directed to file immediately for vested retirement in both, and the Police Commissioner directed a penalty that included neither Dismissal Probation nor separation from the Department.¹⁷⁸

¹⁷⁷ In two of these cases, the subject officers were part of a group of officers who belonged to the same unit and who also committed this misconduct. None of these officers whose cases were previously adjudicated were terminated or placed on Dismissal Probation. The Commission recognizes that the Department is bound to impose the same or similar penalties in all of these cases, unless there was a specific reason not to do so. Three of these cases were discussed in the Commission's *Eleventh Annual Report* (February 2009), at pp. 41-42. In that report, the Commission, though, had also recommended that periods of Dismissal Probation be imposed in those three cases. *Id.*

¹⁷⁸ In the first case, the subject officer was being questioned in a PG hearing about his patronage at a club deemed off-limits to members of the service and his use of a Department computer for non-Department business. In response to the inquiries into his computer misuse, the respondent produced a voucher showing that a gun and ammunition were recovered in connection with a 1986 arrest and claimed that he ran the arrestee's surname at the direction of his supervisor before the firearm was to be destroyed. This launched an investigation which revealed that the respondent's explanation was not true. The Police Commissioner imposed a penalty requiring the respondent to forfeit thirty vacation days and thirty suspension days. No exceptional circumstances were set forth.

In the second case, the officer testified during a suppression hearing that he recovered drugs from a defendant, when he did not. He also indicated that he personally recovered drugs from the defendant in the paperwork he signed for the criminal complaint. After testifying, the officer told the Assistant District Attorney that he might have mixed up the facts of the case with those of the co-defendant's case. The criminal case against the defendant was dismissed. At the direction of the Police Commissioner, the subject officer forfeited thirty vacation days. DAO and the First Deputy Commissioner had recommended a penalty which included Dismissal Probation, the immediate filing for retirement, and the forfeiture of thirty vacation days. As it is unclear whether the subject officer's false testimony was intentional or a mistake, the Commission believed that a period of Dismissal Probation could have been appropriate.

The Commission disagreed with the penalties that were levied in both.

Sixty cases involved false statements that did not qualify as testimonial or otherwise official. Twenty-six of these cases involved the causing to be made or actually making of false entries in Department records. These false entries included, but were not limited to, those made in the sign-in or sign-out log, false memo book entries, forgeries of supervisors' signatures, and false statements made on paid detail applications. Six of these officers were separated¹⁷⁹ from the Department.¹⁸⁰ Two officers were found not guilty after trial. Of the remaining eighteen cases, the Commission agreed with the penalty imposed in all but three of the cases. In one of those cases, the subject officer was placed on Dismissal Probation and forfeited a combination of ninety suspension and vacation days. This officer also made false statements at his PG hearing,¹⁸¹ requiring, in the Commission's opinion, termination. In the second case, the officer lied to his supervisor and made false entries in his activity log. The Commission believed that he should have been placed on Dismissal Probation in addition to losing a combined total of forty vacation and suspension days. In the final case, in addition to making a false entry in his memo book, the officer altered a summons to include incorrect information so that the summons would be dismissed. For this misconduct, the officer forfeited forty-five vacation days.

Of the remaining thirty-four cases, nine cases charged the officer with making false statements to an investigative body. These investigative bodies included federal

¹⁷⁹ 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 or resignation in lieu of termination.

¹⁸⁰ One of the six officers was terminated by operation of law after being found guilty of Official Misconduct in a criminal case against him.

¹⁸¹ The subject officer was not charged with "Making False Statements" for his answers during the PG hearing. Specifications against this officer included "Impeding an Investigation" based upon his statements during the PG hearing.

agents, NYPD officers responding to the scene of an incident, police from other jurisdictions, and 911. Only one of these officers was terminated, and this termination occurred by operation of law because the respondent was criminally convicted of the felony of lying to federal agents. Another officer was directed to file for immediate retirement. The Commission disagreed with the disposition in all but two of the remaining cases. The Commission believed that termination was the appropriate penalty in the remaining five cases.

Twenty-one cases involved some category of fraud, nineteen of which involved the officer registering his automobile at an address where the officer did not reside in order to receive a lower automobile insurance premium. The Commission has never suggested that officers who engage in this form of fraud be terminated. Two of these nineteen officers were found not guilty of this fraud after a trial. Sixteen of the remaining seventeen forfeited between eight and fifty suspension or vacation days, depending on whether there were other charges pending against them. The Commission agreed with all of these dispositions.¹⁸² In the last case, the officer was directed to file for vested retirement, but he also had more serious larceny charges pending against him. Of the remaining two fraud cases, one involved the officer falsely reporting his automobile as stolen in order to collect the insurance proceeds. That officer was found not guilty after the Department trial. One officer defrauded a municipal credit union. That officer was convicted of a felony and was terminated from the Department by operation of law.

¹⁸² In one of the cases, the subject officer was a probationary police officer who also had another case pending against him. The Commission believed that officer should have received more severe discipline on the other case which was not at issue here. *See supra* at pp. 48-49.

See supra at pp. 46-47 for a definition of probationary police officers.

Four cases involved false statements that were not included in any of the previous categories. The Commission agreed with the penalties imposed in three of these cases. In the final case, the officer forged signatures of fifteen other members of the service using personal information that he obtained through his position as the training sergeant. The purpose of these forgeries was to complete applications to enroll these officers, without their knowledge, in the Combined Municipal Campaign program. The enrollment of the officers in this charitable cause resulted in a fifty-cent deduction from their paycheck each pay period. This officer was penalized twenty-seven vacation days. The Commission believes that, despite his good intentions, it appears that a more severe penalty may have been appropriate. Not only did this officer abuse his position to obtain information he needed to falsify documents, this falsehood resulted in an economic loss to several of his colleagues.

This past year, the issue of false statements by members of the service has received prominent media coverage.¹⁸³ Members of the service have been arrested¹⁸⁴ and lost their jobs for testifying falsely in court proceedings. The Commission has seen an increased number of perjury cases in the Steering Committee meetings.¹⁸⁵ Many of the perjury allegations appear to result from officers taking shortcuts when processing arrests. For example, the arresting officer will claim in court documents and, at times, while testifying, that he directly witnessed a criminal act, when actually, the action was

¹⁸³ See The New York Post, “NYPD in a Liar Storm,” (October 26, 2009); and The Chief, “For The Record,” (November 20, 2009) (The latter article notes that active perjury cases in the Department have increased.) See also The Daily News, “Judge rips NYPD on false arrests,” (December 1, 2009).

¹⁸⁴ See The New York Times, “Detective Gets 4 Months In Jail for Lying on the Stand,” (September 23, 2009); The New York Post, “Lie cop gets 4 mos. Jail,” (September 23, 2009); The Daily News, “Liar cop gets 4 months,” (September 23, 2009); “Perjury charges for Bronx Officer,” (October 20, 2009); and The Chief, “Cop Admits Perjury On Bronx Burglary,” (November 27, 2009).

¹⁸⁵ See *supra* at pp. 5-7 for a discussion of Steering Committee meetings.

witnessed by another officer. The arresting officer's false statement usually saves the witnessing officer from having to testify as well. IAB is attempting to address this situation through meetings with the various police unions to send the message to all members of the service that this type of false statement is subject to criminal sanctions as well as administrative discipline.

There continues to be allegations of false testimony regarding the circumstances surrounding the stops and searches of individuals. Without proper justification, evidence recovered after such a stop would be excluded from admission at a trial, risking dismissal of the criminal case or acquittal of the criminal defendant. In a recent case, two undercover officers were indicted for the false arrest of four innocent men.¹⁸⁶ When officers are found to have made false statements, the public's confidence in the integrity of the police may be affected. In order to prevent the tarnishing of the Department's credibility, those officers who have lied must, in all but the most exceptional circumstances, be separated from the Department. The Commission urges the Department to strengthen the execution of its false statement policy and send a message to its members that lying, falsifying documents, and engaging in fraudulent behavior will not be tolerated.

¹⁸⁶ See Newsday, "Officers indicted in questionable cocaine bust," (January 16, 2009); and The New York Times, "2 Undercover Narcotics Officers Are Accused of Faking Charges Against 4 Men," (January 16, 2009).

V. ONGOING WORK OF THE COMMISSION

A. Log Review

IAB receives complaints twenty-four hours a day, seven days a week at its Command Center.¹⁸⁷ IAB personnel receive and input information regarding the allegation into the Department's computer system, which generates a case-specific log number. Log entries contain a synopsis of the allegation, the time and place of the occurrence, a complainant's contact information, witness information, and where applicable, the background information of an identified subject.¹⁸⁸ Each day's logs are hand-delivered to the Commission's office. After reviewing the logs, the Commission has the ability to request additional information on specific cases from the Chief of IAB. The Commission also uses the information in the logs to keep informed about trends in corruption allegations.

B. IAB Briefings to the Police Commissioner

Each month, the Commission's Executive Director selects two investigations for IAB to present to the Police Commissioner.¹⁸⁹ This monthly briefing is attended by the Police Commissioner, the First Deputy Commissioner, the Chief of the Department, the Deputy Commissioner of Legal Matters, the Chief of IAB, the Assistant Chief of IAB, and representing the Commission, the Commissioners, Executive Director, and Deputy Executive Director. During these briefings, the Commanding Officers of the IAB group that investigated the case give a presentation, which includes the identification and

¹⁸⁷ Complaints come in via telephone, mail, e-mail, or in person. Complaints can be made anonymously, from identified civilians, or from other members of the service.

¹⁸⁸ Sometimes logs contain additional information on a previously reported allegation. In this case, reference would be made to the prior log, and the additional information would be recorded.

¹⁸⁹ In addition to the two cases selected by the Commission, all suicide cases involving members of the service are presented.

background of the subject officer, pedigree information and criminal histories of any persons of interest, the allegations and how they were received, and the investigative steps taken and the results of those steps. The presentation concludes with IAB's anticipated investigative actions. The Commissioners have the opportunity to ask questions of the Commanding Officers and speak directly with the Police Commissioner about the progress of the case. Commissioners may also recommend investigative actions.

The Executive Director chooses the cases for these presentations from cases highlighted by IAB and from cases she has heard about through either the staff's attendance at Steering Committee meetings¹⁹⁰ or through case review. This past year, the Commission has chosen several investigations that involved perjury, false statements, offering false instruments for filing, or falsifying business records. These cases were chosen because the staff has observed an increase in this type of allegation at IAB's Steering Committee meetings.

C. Interim and Operation Orders

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

D. Department Reports

On a monthly basis, the Commission receives a copy of IAB's Corruption and Misconduct Complaint Comparison Report. This report presents a statistical analysis of

¹⁹⁰ See *supra* at pp. 5-7 for a more detailed discussion of Steering Committee meetings.

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. Each year, 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.

E. Extended Steering Committee Review

Beginning each summer, each investigative group within IAB presents their entire open caseload to the Chief of IAB and his Executive staff. The Commission attends these steering meetings, which gives its staff an opportunity to hear a synopsis of all of IAB's ongoing investigations.

F. IAB Lecture and Training Observations

Commission staff had the opportunity to observe the Chief of IAB's lecture to NYPD recruits, which was held at the Police Academy in October 2009. During this presentation, the Chief emphasized topics relating to stop and frisk procedure, integrity testing, drug screening, and IAB's mission to "root out" corruption within the Department. In addition, Commission staff will attend IAB's Office of Professional Development's training for new IAB investigators in December 2009. The course is expected to cover topics including surveillance, interrogation skills, integrity testing, computer crimes, and legal issues.

G. Complaint Logs

Occasionally, the Commission receives complaints via its website, mail, or telephone¹⁹¹ where individuals report allegations involving members of the Department.¹⁹² Beginning November 18, 2008 and ending November 18, 2009, the Commission received ninety-eight complaints. Below is breakdown of the type of complaints received:

Stop and Frisk	4
Domestic Dispute	5
Unauthorized Employment	2
Failure to Take Police Action	20
Disputed Arrest /Summons	13
False Statement/Falsifying Business Records	7
Racial Profiling	1
Abuse of Authority – Harassment	7
Sexual Misconduct	2
F.A.D.O. ¹⁹³	7
Overtime Abuse	2
Downgrade Crimes	1
Misuse of Placard	3
Accepting a Bribe	2
Missing Property	3
Criminal Association	3
Embezzlement	1
Excessive Force	2
Other / Misc ¹⁹⁴	13

¹⁹¹ The Commission does not accept walk-in complaints.

¹⁹² Some complaints are made against other government employees not associated with the NYPD.

¹⁹³ F.A.D.O. stands for allegations of wrongful or excessive force, abuse of authority, discourtesy, or offensive language. The Commission usually refers these complaints directly to CCRB.

¹⁹⁴ Other categories included complaints involving law enforcement members from other city agencies, computer crimes, and facilitating illegal activities.

When it receives a complaint, the Commission staff informs the complainant that the Commission does not conduct investigations. Rather, complainants are encouraged to forward their complaints directly to IAB's Command Center. If a complainant asks the Commission to forward a complaint on their behalf, the Commission will draft a letter to the Commanding Officer of the Command Center that describes the alleged misconduct and any identifying information the complainant reports regarding the subject officer. This letter will also include contact information for the complainant and any witnesses. The Commission keeps a record of all cases forwarded to IAB in the event that any follow-up is necessary.

There were three cases this year, included in the chart above, where a complainant contacted the Commission after filing a complaint with IAB. In two of these cases, the Commission followed up on the complaints by requesting updates from IAB and conferring with case supervisors regarding the progress of the investigations.¹⁹⁵ In these cases, the Commission found that IAB conducted a thorough investigation and reached an appropriate disposition.

VI. FUTURE PROJECTS OF THE COMMISSION

Due to the restructuring of the Commission, we intend to re-evaluate the projects that were previously under consideration and prioritize them according to the current relevancy of these issues. The Commission will be re-examining the following projects:

A. The Commission has issued two prior reports on the Department's disciplinary system.¹⁹⁶

¹⁹⁵ The final case was still pending and put on hold due to current civil litigation, so the Commission was unable to evaluate the investigation.

¹⁹⁶ *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).

These reports focused on the delays in the progress of the disciplinary cases from initiation to conclusion, and the approval of the outcomes by the Police Commissioner. These reports also reviewed the performance of DAO and the sufficiency of the preparation of cases by the Assistant Advocates. A follow-up study is being considered to determine if cases are being handled more efficiently, to evaluate the performance of the Department's Assistant Advocates, and to observe any changes that have been made since the Commission's last report on this issue.

B. Explore how the Department prevented and detected overtime abuse by its members.

This study was proposed because of the significant number of fraudulent overtime report cases the Commission observed in the Department's Trial Rooms in prior years. These cases, along with the number of complaints reflected in the daily logs of the IAB Command Center¹⁹⁷ regarding this type of misconduct, confirmed that this abuse appeared to be systemic and involved supervisors as well as uniformed officers. The Commission planned to assess the efficacy of the mechanisms the Department had in place to prevent and detect fraudulent overtime claims.

C. Review the Department's current policy regarding criminal association. The Commission believes this is an important area of inquiry due to the number of ways in which such association can affect the Department and its image, including the individual officer's possible involvement in criminal activities. In addition, there are less obvious consequences including the effect this type of association has on the morale of other members of the service and on public perception of the Department. The Commission planned to examine how the Department investigates new applicants regarding criminal associations and what the Department does to discourage these relationships.

¹⁹⁷ See *supra* at p. 62 for further discussion about the Commission's review of the logs from the Command Center.

Furthermore, the Commission planned to compare the Department's policy to that of other law enforcement agencies to determine if there is more the Department could do to prevent these relationships.

D. Perform in-depth reviews of the corruption investigations that were conducted on members of specialized units within the Department, based on media attention that the Department received in 2008 regarding the arrests and prosecution of a few of its members who committed crimes or otherwise engaged in corrupt behavior.¹⁹⁸ The purpose of the more detailed analyses of these investigations was to search for similarities, patterns, or other issues that may have existed within these units that provided the opportunities for the alleged misconduct to occur. The Commission was particularly interested in the level and quality of supervision within these units.

E. In addition to these projects, the Commission is also considering follow-up reports to the application of the Department's False Statement policy¹⁹⁹ based on the apparent recent increase in perjury cases involving members of the service. The Commission may also conduct a follow-up study on the background investigations conducted on new applicants to the Department. Finally, the Commission intends to meet with the five District Attorneys' offices and the two U.S. Attorneys' offices to discuss their relationship with and perception of the Department.

¹⁹⁸ When describing this proposed study in its last Annual Report, the Commission specifically referred to the Brooklyn South Narcotics Unit and the Queens Narcotics Unit. In the Brooklyn South Narcotics Unit investigation, members of the unit were allegedly stealing drugs from arrestees and giving these drugs to confidential informants. In the case involving members of the Queens Narcotics Unit, four officers were accused, and two were later indicted, for falsely arresting four innocent men for selling drugs.

¹⁹⁹ The Commission would examine these disciplinary cases in greater detail than it does for the Annual Report.