NYC

COMMISSION TO COMBAT POLICE CORRUPTION

A REVIEW OF THE NEW YORK CITY POLICE DEPARTMENT'S IMPLEMENTATION OF THE RECOMMENDATIONS MADE IN 'THE REPORT OF THE INDEPENDENT PANEL ON THE DISCIPLINARY SYSTEM OF THE NEW YORK CITY POLICE DEPARTMENT'

March 2024

Commissioners
Kathy Hirata Chin, Acting Chair
Jabbar Collins
Howard Master
Randall Jackson
Freya Rigterink
Benjamin Rosenberg

Executive Director
Marnie L. Blit

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INTRODUCTION

The Commission to Combat Police Corruption ("the Commission"), created in 1995 by Mayoral Executive Order No. 18, is mandated to monitor the efforts of the New York City Police Department ("NYPD" or "the Department") to gather information, investigate allegations, and implement policies designed to detect, control, and deter corruption among its members.[1] The Commission issues annual reports regarding the adequacy of investigations conducted by the Internal Affairs Bureau ("IAB")[2] and the disciplinary outcomes for charges involving uniformed members of the service. From time to time, we issue reports on specific topics. This is one of those reports.

In June 2018, then-Police Commissioner James O'Neil requested that an outside panel ("the Panel") examine the Department's disciplinary system to determine whether it was fair and sufficient. At this time, New York Civil Rights Law §50-a[3] ("Civil Rights Law §50-a") was still in effect, and the Department's disciplinary system was largely kept confidential from the public.[4] The purposes of the Panel were to bring transparency to the Department's disciplinary system, to assure the public that officers who engaged in misconduct were being appropriately

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1 The Executive Order specifically withheld authorization from the Commission to conduct its own investigations into allegations of corruption against members of the Department, except in specific, narrowly-defined circumstances. Executive Order No. 18, §3(b) (February 27, 1995). (The Executive Order is attached as Appendix A.)

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

3 New York Civil Rights Law §50-a prohibited the government from releasing personnel records of police officers without their consent unless there was a court order directing the disclosure of the records. The Department's position, adopted by several court rulings, was that personnel records included disciplinary records.

4 While this Commission's annual reports included our determinations on the sufficiency of penalties that resulted from charges and specifications, we did not name the officers who were the subjects of discipline. We also did not report on any misconduct that did not reach the threshold for charges and specifications to be brought.

disciplined, and to make recommendations to strengthen the Department's disciplinary system.[5]

Before the Panel's report was completed, Commissioner O'Neil committed to implementing the Panel's recommendations. The Panel, made up of three prominent lawyers, published its report, *Report of the Independent Panel of the Disciplinary System of the New York City Police Department*, on January 25, 2019.[6] The Panel reported that although the disciplinary system itself was generally robust and fair, there were areas that could be improved. The thrust of the Panel's recommendations included increasing transparency to the public, strengthening disciplinary policies that covered members of the service who engaged in domestic violence or made false official statements, and decreasing the time between the commission of misconduct and the imposition of a penalty. To achieve these goals, the Panel concluded its report with 13 recommendations, the final of which was that "the Department retain external experts to conduct periodic audits of the Department's disciplinary system."[7]

To implement this final recommendation, the Department requested that this Commission fulfill the role of the external auditor. The Department and the Commission entered into a Memorandum of Understanding ("MOU") in November 2019 to formalize this arrangement. In addition to the disciplinary audit, the Department also requested that we publish an interim report regarding the Department's implementation of each of the 13 recommendations made by the Panel. This is the interim report.

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5 In its report, *Report of the Independent Panel of the Disciplinary System of the New York City Police Department* ("*Independent Panel Report*") January 25, 2019, the Panel stated it was appointed to "conduct a review of the internal disciplinary systems of the New York City Police Department … and to propose recommendations to improve it." at p. 1.

6 The Panel was comprised of the Chair Mary Jo White, a former United States Attorney for the Southern District of New York; Robert Capers, a former United States Attorney for the Eastern District of New York; and Barbara Jones, a former United States District Judge in the Southern District of New York.

7 *Independent Panel Report* at p. 56.

To prepare for this Report, we met with Department executives monthly to discuss their efforts to execute the Panel's recommendations. Those meetings began in November 2019. Initially, the focus of those meetings was on the Department's efforts to amend Civil Rights Law §50-a so more transparency could be brought to the disciplinary system. These monthly meetings were interrupted by the COVID-19 pandemic and did not resume until July 2021. By then, Civil Rights Law §50-a had been repealed and the Department had announced that with its January 2021 publication of the disciplinary matrix ("the Matrix") it had fulfilled all of the Panel's recommendations.

This Report discusses how the Department has addressed those recommendations. Each recommendation is set forth with the Panel's underlying reasoning followed by the initial information the Department provided regarding how they implemented that recommendation. We conclude each section with a discussion of our findings regarding how each recommendation was implemented and, when applicable, our suggestions for improvements.

Following the body of this Report and our recommendations, we have included Appendices A through E. Appendices D and E were added to this Report after we first circulated a draft to the Department for their review. Appendix D is the Department's response to the Report, and Appendix E is our reply to that response. The text of the Report, aside from this final paragraph of the introduction, is unchanged from the text reviewed by the Department.

RECOMMENDATION #1:
THE DEPARTMENT SHOULD SUPPORT AMENDMENTS TO §50-A TO INCREASE TRANSPARENCY AND ENHANCE ACCOUNTABILITY

RECOMMENDATION #2:
THE NYPD MUST GUARD AGAINST UNWARRANTED EXPANSION OF THE SCOPE OF §50-A

Prior to June 2020, Civil Rights Law §50-a was successfully used by the NYPD and other City agencies to deny disclosure of disciplinary cases against uniformed members of the service.[8]

The Panel found that the law, while protecting individual officers' privacy, decreased transparency in the disciplinary system and fostered widespread mistrust that the NYPD was appropriately addressing the misconduct of its members. In its first recommendation, the Panel proposed several possible reforms to Civil Rights Law §50-a, and in its second recommendation, the Panel advised the Department to interpret Civil Rights Law §50-a as narrowly as possible.

On June 12, 2020, Civil Rights Law §50-a was repealed. Therefore, these two recommendations are moot.

[8] *See* *In the Matter of Justine Luongo v. Records Access Appeals Officer, NYPD*, 160232/2016 (N.Y. Sup. Ct. 2017) *aff'd* NY A.D. 2017); *Luongo v. CCRB Records Officers and Daniel Pantaleo*, 150 A.D.3d 13 (1st Dep't 2017); *Matter of New York Civil Liberties Union v. New York City Police Department*, 2018 WL 6492733.

RECOMMENDATION #3:
THE NYPD SHOULD ALSO ENHANCE ITS PUBLIC REPORTING IN LINE WITH THAT OF OTHER AGENCIES

The Panel found that several outside agencies -- including the Civilian Complaint Review Board ("CCRB"), the NYPD Office of the Inspector General ("OIG-NYPD"), the Federal Monitor,[9] and this Commission -- published statistical information about the disciplinary system that the Department did not. Reasoning that Civil Rights Law §50-a did not prohibit the publication of anonymized statistical information, the Panel indicated that the Department's failure to publish this type of analysis made it seem that the Department was trying to keep this information hidden from public view.

To modify that impression without running afoul of Civil Rights Law §50-a, the Panel recommended the Department publish a "comprehensive statistical overview of discipline initiated and concluded during the calendar year," broken down by precinct.[10] The Panel recommended that the statistical overview should include: (1) the number of times that the Police Commissioner increased or decreased the penalty recommended by either the Trial Commissioner, the Department Advocate's Office ("DAO"),[11] or CCRB, (2) personal observations from the Police Commissioner regarding the disciplinary process, training, and policy changes that should be considered by the Department, and (3) updates on the status of any recommendations made by outside agencies. The Panel further suggested that the Police

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[9] The Federal Monitor was established as a result of three class action lawsuits that challenged the Department's policies regarding stopping and/or frisking civilians as well as the Department's patrols in residential and New York City Housing Authority buildings that often resulted in stops and arrests for criminal trespass. The Monitor was created to track the Department's implementation of court-ordered reforms. The current Federal Monitor is Mylan Denerstein. *See* https://www.nypdmonitor.org.

[10] *Independent Panel Report* at p. 47.

[11] DAO is the Department's internal prosecutorial office. This unit prosecutes disciplinary matters that are addressed either through schedule C command disciplines (*see infra* at pp. 28-30) or charges and specifications.

Commissioner present a summary of the report's findings and conclusions at public "town halls" where members of the public could pose questions.

The Department informed us that it had implemented this recommendation through the publication of statistical reports, along with updates regarding discipline and police reform, on the Department website located on NYC.gov, the website of the New York City government.[12] Those statistics were analyzed by various divisions of the Department, including Risk Management and DAO. Statistics were also shared via press releases and social media. With the repeal of Civil Rights Law §50-a, the Department also expanded its publications with a separate website called NYPD Online, which included statistical data on crime, traffic, use of force, personnel, and hate crimes.[13] Department executives demonstrated each page of both websites that had information connected to internal discipline at meetings with the Commission. The Department stated that this secondary website, NYPD Online, was intended to be a resource for the public. NYPD Online's personnel section contains information relevant to NYPD discipline for individual cases and other personnel information. The Department explained that the information on this second website could not be published on the official NYPD website that was part of the NYC.gov website, which had certain content constraints.

In our review of the websites identified by the NYPD, we found that while they technically fulfilled the Panel's recommendation, due to the extensive amount of information contained in each, important information may remain hidden from members of the public. The next two sections describe the websites, and the third section sets forth our suggestions for how they should be reorganized to be more user-friendly.

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[12] This Department website can be found at https://www.nyc.gov/site/nypd/index.page.
[13] The new website is located at https://nypdonline.org.

1. NYPD's NYC.gov Website

This website has a "stats" tab, which is comprised of four different sections: crime statistics, traffic data, reports and dashboards, and research. The "reports and dashboards" section has numerous reports dealing with various topics, including the number of complaints of various crimes to data regarding the use of force.[14] Also included are links to annual disciplinary reports ("the Annual Discipline Reports") for the years between 2016 and 2021 and Police Commissioner deviation data indicating the number and percentage of deviations from the Matrix for calendar years 2021 and 2022. Users have the ability to view deviation letters which explain the Police Commissioner's reasoning for imposing a penalty outside of the range specified in the Matrix.

There are multiple avenues to access the Annual Discipline Reports on the website. While navigating the website, accessible links will bring the user to the Panel's report, the NYPD Disciplinary System Penalty Guidelines ("the Matrix"), the Annual Discipline Reports, the Disciplinary Trial Calendar, and the NYPD Discipline database.[15] The Annual Discipline Reports include an introductory "Executive Summary," a glossary of terms, a brief description of the types of discipline available for the Department, the process involved when charges and specifications are brought against a member of the service, and all of the Police Commissioner's deviation letters issued during the calendar year.

The Annual Discipline Reports cover the number of cases sent to DAO for review, and whether those cases were investigated by a Department unit or by CCRB. Statistical sets are

[14] This section also contains hyperlinks to view personnel demographics, officer profiles, and dashboards including those involving hate crimes, force, and survey results.

[15] Other links are also located on this page that are not relevant to the Panel's recommendations. The NYPD Discipline Database link brings the user to the Officer Profile page on NYPD Online.

presented throughout the report and include cases for which charges and specifications were preferred, recidivism among uniformed members of the service, and timeliness of discipline, overall and separated by prosecuting agency.

The Annual Discipline Reports also examine the number of trials held during the year, along with the outcomes. The guilty findings are then broken down into various case categories similar to those used by this Commission in its annual reports.[16] Other statistical sets address the types of penalties imposed during the calendar year.[17] The number of forced separations from the Department is depicted in a separate chart with a distinction made between uniformed and civilian members of the service. In all of the statistics, a comparison is made with prior years. The final statistical section of the reports provides a demographic breakdown for those members of the service whose charges and specifications were resolved during the calendar year. These are also separated by uniformed and civilian members of the service.[18]

2. NYPD Online

This website contains information including officer profiles, trial decisions, statistics and dashboards, the Police Commissioner's deviation letters,[19] and links to CCRB and the Law Department. Some information, such as the trial calendars, can be viewed at both NYPD Online and NYC.gov. Officer profiles, however, can only be viewed on NYPD Online. These profiles only include active members of the service. They are searchable by name, precinct, or shield

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[16] *See Nineteenth Annual Report of the Commission* ("*Nineteenth Annual Report*") (December 2019) at pp. 8-10 for the Commission's current list of case categories. https://www.nyc.gov/assets/ccpc/downloads/pdf/Annual-Nineteen-Report.pdf. There are some differences between the categories used by the Department and those used by the Commission.

[17] These penalties range from instructions to dismissal probation (defined *infra* at p. 19, fn. 39), with some cases counted multiple times to reflect the imposition of a combination of penalties.

[18] The demographic information provided includes the race/ethnicity, gender, and rank of the disciplined member of the service along with the percentage of each race/ethnicity, gender, and rank employed by the Department.

[19] *See infra* at pp. 19-20.

number. The information provided includes the officer's current command, rank, and race; a rank and shield number history; department recognition and awards; disciplinary history when the member of the service has been the subject of charges and specifications or a schedule C command discipline;[20] a history of arrests broken down by felony, misdemeanor, and violations; and other additional documents.[21] Disciplinary history records only include those that resulted in a guilty or *nolo contendere* finding and only go back as far as 2010.[22] Both Department-investigated and CCRB-investigated cases are included.

Similarly, the trial decision library only has trial decisions dating back to 2008. More are expected to be added. The trial decision library includes all trial decisions regardless of whether the subject was found guilty or not guilty and includes decisions regarding officers who are no longer employed by the Department. For those officers who are still active members of the service, there are links in the library to the officer's online profile.

3. Recommendations

In its effort to be transparent, the Department has released a wide variety of information that is contained within two separate websites. While the Department cannot place all of this information on the NYC.gov website due to technical/content constraints, the release of all of this information in a format that is not always organized by Member of the Service along with crime statistics, traffic statistics, and career opportunities, on the NYPD Online website is

[20] After this Report was drafted, we revisited NYPD Online and found that in a sampling of officers' profiles, the website indicated that there were no entries for their disciplinary histories. As we chose officers whom we knew to have been the subjects of discipline, we knew this was incorrect. We brought this to the attention of the Department; however, as of the publication of this Report, only very recent disciplinary histories are included in the officer profiles. Discipline that was imposed prior to mid-2023 does not appear to be included.

[21] Not included in the disciplinary history in these officer profiles are schedule A and schedule B command disciplines, minor rules violations, instructions, and any allegations that have not been substantiated.

[22] When there is a *nolo contendere* finding, the subject does not admit to guilt but accepts the Department's discipline.

overwhelming. For example, Trial Decisions and memoranda concerning deviations by the Police Commissioner from discipline recommended by DAO or APU are not searchable by officer. Finding specific information regarding an officer can be difficult unless the user knows where to look and is willing to devote substantial time and effort to finding it. The end result is that key information is essentially obscured from the public, undermining the very purpose for which the website was created. The Commission recommends that all disciplinary information about officers be included in one place, or that the NYPD Online website include a navigation tutorial to show the user how to efficiently find desired information.

The Trial Decisions library is not searchable. The decisions are listed chronologically by year and month in reverse order with the date of adjudication, officer's name, and document number. Users looking for the outcome for a specific officer have to navigate through at least 16 pages to look for the officer's name. Those looking for trial decisions for specific types of misconduct have to read every trial decision, or at least look through the charges to see if the decision is applicable. The Department should add a method for the user to search by the officer's name, the officer's command, and by a general case category. This will enable users to find relevant information more efficiently.

Part of the Panel's overall recommendation was that in the Annual Discipline reports, the Police Commissioner provide an overview of their impression of the disciplinary system and the types of trainings or policy changes that should be considered. This has not been done, but it should be done. In this overview, the Police Commissioner could highlight changes made to the disciplinary system during the calendar year, and preview changes that are under consideration.

RECOMMENDATION #4:
THE NYPD SHOULD PUBLISH TRIAL ROOM CALENDARS

Members of the service have due process rights to contest substantiated allegations of misconduct. There are two trial rooms at One Police Plaza where hearings for charges and specifications brought by both DAO and the CCRB's Administrative Prosecution Unit ("APU") are presented before administrative law judges, more commonly known as Trial Commissioners. These hearings are open to the public. The Panel recommended that the NYPD publish a trial calendar that includes the officer's name, the date of the trial, and the trial room number, so that members of the public who had an interest in a particular officer's case would have notice regarding when the case would be heard.

The Department advised the Commission that it began posting the trial room calendar on March 4, 2019, on the first Monday of every month. Our review confirmed that the trial calendar is posted on both the NYPD.gov website and the NYPD Online website.

The published trial calendars initially posted only the information suggested by the Panel. At our suggestion, the posted calendar now also includes a case type based on the most serious charge as well as the start time for the trial.

RECOMMENDATION #5:
THE DEPARTMENT SHOULD APPOINT A CITIZENS' LIAISON

The Panel recommended the creation of a liaison position that would be a source of information regarding the disciplinary process for civilians (or their family members) who were harmed by police use of force. The liaison would provide "much-needed sensitivity and understanding to victims and family members who currently do not have a sympathetic and dedicated ear in the Department."[23] The Panel recommended that the liaison should be a senior Department executive to ensure both that victims are adequately informed about the progress of the investigation into their complaints, the findings, and any disciplinary process that is initiated as a result of their allegations.

The Department reported to us that a senior member of DAO was appointed as the Civilian Liaison ("CL") on July 27, 2020. The Commission met with the CL in December 2021. The CL informed us that she first contacts victims of police misconduct by sending them a letter, which contains contact information for the Assistant Advocate assigned to the victim's case. When the victim is interviewed by the assigned Assistant Advocate, the CL is often present. The CL will also attend any trial dates when the victim testifies to provide support and discuss what will occur next. At the time of our interview, the CL had worked with approximately 50 victims.[24] Most of those victims were cooperative; however, as many were victims of domestic violence cases, some were more hesitant. The CL explained that the Department Advocate[25] had created a distinct Special Victims team ("SV team"), made up of five Assistant Advocates, who

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[23] *Independent Panel Report* at p. 52.

[24] The CL had sent letters to 131 civilians impacted by police misconduct as of the drafting of this Report.

[25] All references to the Department Advocate refer to the most recent former Department Advocate, Amy Litwin. During the drafting of this Report, Ms. Litwin left the NYPD and a new Department Advocate has not yet been appointed.

were trained to work with this type of victim.[26] The CL facilitated victims' cooperation in administrative prosecutions by providing support and making the victims more comfortable with the process. The CL used the Matrix to manage victims' expectations regarding the penalty ranges available in their cases.

In August 2023, we met with the Department Advocate who provided further information on the SV team. She explained that most of the members of the SV team are former assistant district attorneys who have prior experience in domestic violence or sex crimes bureaus and have advocated for these types of victims. The SV team becomes involved early during the investigations and establishes contact with these victims earlier in the process as well. The Department Advocate believed that the SV team has been instrumental in obtaining cooperation from those victims who otherwise might not want to participate in the process. The SV team also provides victims with referrals for services outside of the Department. The Department Advocate informed us that she had requested a victim advocate be added to the SV team who would manage service referrals for victims, thereby relieving the attorneys of this responsibility. As of the drafting of this Report, that position has not been created.

Part of the impetus for the recommendation for a civilian liaison was to keep victims and their families updated regarding investigations into allegations regarding the excessive or unjustified use of force or a death of a civilian in police custody. The Department Advocate informed us that their office and the CL do not typically reach out to this population as they believe it would be inappropriate for DAO attorneys to make contact prior to receiving a determination from the Force Investigation Division (or other investigative entity) that the use of

[26] The Special Victims team handles cases involving domestic violence, sex crimes, incidents involving the wrongful use of force, Equal Employment Opportunity cases, and cases involving minors.

force was wrongful and a request for discipline to address it. The Commission agrees. However, there is still a need for these families to get information on the status of investigations. Therefore, the Commission recommends that a liaison be created outside of DAO that individuals whose claim of excessive force are under investigation and their families can contact for information including updates on the investigation and disciplinary process, as well as for explanations when investigations and outcomes do not meet the victims' and/or their families' expectations.

RECOMMENDATION #6:
THE POLICE COMMISSIONER SHOULD ENHANCE THE DOCUMENTATION OF VARIANCES FROM DISCIPLINARY RECOMMENDATIONS

Noting that the Police Commissioner has the final decision regarding appropriate discipline when a member of the service is charged with wrongdoing, the Panel recommended that when the Police Commissioner changed the penalty previously agreed upon or recommended,[27] they prepare a memorandum explaining the reasons for the change. (Prior to the Panel's report, the Police Commissioner prepared "variance memoranda" for only those cases prosecuted by APU when the Police Commissioner *decreased* the recommended penalty.)[28] The Panel rationalized that by providing explanations for all changed penalties, the reasoning for these changes would be clear to the participants. Furthermore, written justification for the Police Commissioner's decision would determine whether any particular case or factor had precedential value.

The Panel further recommended that these "variance memoranda" have "more robust and meaningful reasoning" and "reflect all relevant inputs that the Commissioner received during the life of the case, whether formal or informal."[29] The Panel envisioned these explanations would include all relevant facts, including performance and disciplinary information about the subject, and any precedent relied upon by the Police Commissioner when changing the recommended penalty. The Panel additionally recommended that the Police Commissioner refrain from commenting on or contacting DAO about any pending disciplinary matters to avoid the

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[27] The penalty could have been the product of a negotiation between either DAO or APU and a subject officer or could have been recommended by the presiding Trial Commissioner who evaluated all of the evidence presented during a hearing.

[28] There were also written explanations when the Police Commissioner changed discipline in negotiated settlements, in cases prosecuted by DAO, and when he increased the penalty, however, these explanations were often vague and conclusory, typically stating only that based on the totality of the circumstances, the Police Commissioner was either increasing or decreasing the penalty.

[29] *Independent Panel Report* at p. 49.

appearance of external influence or the suggestion that DAO did not function independently of the Police Commissioner.

The Department reported to us that enhanced variance memoranda were prepared for any case in which the Police Commissioner departed from the disciplinary decision beginning in March 2019.[30] Furthermore, in February 2021, after the publication of the Matrix, the Department and CCRB signed a MOU that required any departure from the Matrix to be explained in writing and accessible to the public. These are the deviation letters that can be found on the NYPD Online website, under the "Personnel" tab, under the heading "Deviation Letters".

1. Variance Memoranda for Changes to Recommended Discipline

We reviewed all charges and specifications involving uniformed members of the service that were fully adjudicated since the publication of the Panel's report.[31]

Prior to April 2019, the Police Commissioner often did not include any reasoning when changing the negotiated or recommended penalty. There were cases where the First Deputy Commissioner, when noting his own disapproval of the proposed penalty (or with the finding of

[30] The terms variance memoranda and deviation letters refer to two different documents. Variance memoranda are written explanations provided by the Police Commissioner to explain their imposition of a penalty that differs from the penalty recommended by either DAO or APU, in the case of a negotiated settlement, or by the Trial Commissioner, in the case of a trial. The Police Commissioner sets forth a variance memorandum regardless of whether the ultimate penalty is greater or lighter than the recommended penalty. These memoranda would also be used to explain those instances where the Police Commissioner overturns a finding of guilty or not guilty. Only those memoranda that follow a trial decision are publicly available as they precede the trial decision in the trial decision library on NYPD Online. Documentation for negotiated settlements are not publicly available. In a deviation letter, the Police Commissioner explains their reasons for departing from the penalty ranges set forth in the Matrix. The penalty imposed may or may not be the penalty that was recommended by the prosecuting agency or Trial Commissioner.

[31] Any decision by the Police Commissioner to reject a recommendation from CCRB that a command discipline or charges and specifications be imposed was not included in this review, as those recommendations would not be available for our review. Further, the decision to reject a recommendation to issue a command discipline or charges and specifications would not necessarily be addressed by a variance memorandum as those memoranda address the disposition of charges and imposed penalties.

guilt), would include an explanation for that disapproval. These explanations usually included the facts about the incident that the First Deputy Commissioner believed relevant to support the change. In many cases, the Police Commissioner approved the change recommended by the First Deputy Commissioner, possibly adopting the First Deputy Commissioner's reasoning.

The following chart contains the number of times the Police Commissioner altered the recommended penalty since March 2019 and whether information was provided to explain this change.[32]

Dates of Adjudication	Number of Cases Changed[33]	Explanation for Change
March 2019-December 2019	26	18[34]
January 2020-December 2021	150	140[35]
January 2022-December 2022	53	53

For calendar years 2020 and 2021, many of the explanations for the change in penalty were perfunctory and of limited value to the parties and future decision makers. Many of them simply state, without explanation, that the Police Commissioner found the proposed penalty to be excessive and unwarranted based on the misconduct. When increasing the penalty, the Police Commissioner stated only that based on the egregious nature of the misconduct, a higher penalty was warranted. Even after implementation of the Matrix, the Police Commissioner did not list

[32] The Commission does not comment on whether we agree with any of the Police Commissioners' penalty changes for the purposes of this Report. Our thoughts on those changes will be discussed in our upcoming audit of the Department's disciplinary system.

[33] In this context, cases actually refer to subject officers who could have multiple sets of charges and specifications against them that were all resolved with one penalty.

[34] There were two additional cases where the Commission could not evaluate the sufficiency of the explanation as the relevant paperwork was not included when sent to the Commission.

[35] There were three cases in which part of the paperwork was missing, so the Commission could not tell whether there was any justification provided for the Police Commissioner's departure from the original recommended penalty.

mitigating or aggravating circumstances in most penalty modifications, except for the presence or absence of a disciplinary history and the subject officer's performance history.

Of those cases adjudicated in 2022, 12 had only general, cursory explanations. These included assertions that the subject had "an exemplary career prior to" the incident or that the misconduct was not egregious enough to warrant dismissal or any monitoring. The rest of the cases had longer explanations, some of which had very detailed reasoning.

To ensure that variance memoranda are sufficiently detailed and useful, the Commission recommends that the Police Commissioner (or their designee) indicate the facts in each case and the aspects of the subject's performance and/or disciplinary history that have led the Police Commissioner to modify the outcome. The Police Commissioner should avoid overly broad terms to support their changes such as "based on the totality of the circumstances," the conduct was egregious, or "based on the details of the incident." The Police Commissioner should articulate the specific facts relied upon to change the penalty.

Furthermore, none of the variance memoranda that we reviewed contained any information about whether the Police Commissioner had received any informal or outside information about the case. When outside information affects the Police Commissioner's decision to adjust the outcome of a disciplinary case, the variance memorandum should indicate this and specify what outside information was considered.

2. Deviation Letters for Departures from the Disciplinary Matrix

These deviance letters are found on the NYPD Online website. To date, only 14 of these letters have been published.[36] Seven were from cases adjudicated in 2021 under former Police Commissioner Shea, the first year that the Matrix was in effect.[37]

All of the remaining letters were written by former Police Commissioner Sewell.[38] Former Police Commissioner Sewell decreased the penalty in all of the cases below the lowest available penalty in the Matrix. In two of the cases, former Police Commissioner Sewell approved a negotiated settlement between DAO and the subject. In the five remaining cases, she rejected the Trial Commissioners' recommended penalties of termination, and instead imposed a less severe penalty that included dismissal probation.[39] In four of these cases, former Police Commissioner Sewell provided adequate reasoning for departing from the Matrix, However, in one case, the reasons given by the Police Commissioner were too general, relying on the officer's performance history, positive reviews from supervisors, and the prior demotion of the officer due to the misconduct.[40]

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[36] A table with information about each case, including the charges, the applicable Matrix penalty ranges, and the imposed penalty can be found in Appendix B of this Report.

[37] Two of those seven involved the same incident. Six of the seven cases were investigated by CCRB. At the conclusion of its investigatory process, CCRB recommended specific discipline which was less than the penalty ranges in the Matrix. Former Police Commissioner Shea, citing the specific facts of the case that he found persuasive, along with a statement regarding the officer's employment history, approved CCRB's original recommendations. The final case was investigated internally and prosecuted by DAO. A penalty was negotiated with the subject prior to the implementation of the Matrix, however, after the Matrix was in effect, former Police Commissioner Shea increased the negotiated penalty. However, the final penalty was still below the minimum penalty set forth in the Matrix.

[38] Five cases were investigated by Department personnel. Two of these cases involved the same incident. In the most recent two entries, the user is unable to access the deviation letters. The Commission has brought this to the Department's attention.

[39] When an officer is placed on dismissal probation, their employment is terminated, however; that termination is held in abeyance for a period of 12 months, which is exclusive of any time the officer is not on full duty status. During this period, the officer can be terminated summarily without any further hearings for any reason except one that is constitutionally impermissible. If the officer satisfactorily completes the monitoring period, the officer will be restored to the duty status they occupied prior to their placement on dismissal probation.

[40] While we found that the former Police Commissioner provided sufficient reasoning in four cases, this is not meant to indicate our position with respect to the imposed penalties.

In conclusion, only one of the 12 reviewable deviation letters provided an insufficient explanation for why the Police Commissioner departed from the Matrix penalties. All of the deviation letters for cases investigated by CCRB adopted the penalties CCRB recommended, which were below the penalty ranges set forth in the Matrix.

RECOMMENDATION #7:
THE NYPD SHOULD ADOPT PROTOCOLS TO INSULATE DECISION MAKERS FROM EXTERNAL PRESSURES AND MINIMIZE THE APPEARANCE OF INAPPROPRIATE INFLUENCE OVER THE DISCIPLINARY PROCESS

This Recommendation had two components:

1. **The Department Should Design and Implement Training and Policies Addressing and Memorializing Informal Communications Concerning Disciplinary Cases**

The Panel found that because people outside of the disciplinary process could contact the Department Advocate, the First Deputy Commissioner's Office, or the Police Commissioner's Office to discuss individual cases, opportunities existed for external factors to influence the disciplinary process. Even in cases where external contact did not actually affect the penalty, there could still be the perception that this influence existed. Furthermore, DAO might receive informal inquiries about specific cases from the First Deputy Commissioner's Office or the Police Commissioner's Office, which could lead to pressure to recommend different penalties than what DAO considered appropriate.

To protect against these outside influences, the Panel recommended that all relevant personnel undergo training and that the Department develop guidelines regarding informal discussions about cases. The objective of the training and guidelines would be to stress the importance of the perception that the disciplinary process is free of undue influence, and to alert personnel regarding what should be considered before they participate in events that might lead to these external, informal discussions. The Panel also recommended that the Department keep logs of all informal communications regarding cases, which would be made available for inspection by the NYPD-OIG.

The Department did not address how they implemented this part of the recommendation. However, the Department Advocate informed us that logs of this type are not kept. The Department Advocate reported that while her office considers all information presented to her either from the various unions or from defense attorneys, she is rarely contacted by individuals advocating for a specific member of the service. Most contacts are memorialized in the Disciplinary Administrative Database System ("DADS"). The Department Advocate indicated that she wanted the disciplinary process to be fair and equitable, ran her office with integrity, and believed that discipline should not be based on the relationships subject officers had with others in the Department. During the drafting of this Report, the Department Advocate with whom we had spoken left the Department.

Regardless of the former Department Advocate's efforts to maintain the integrity of that office, a new Department Advocate could simply reverse all of the prior policies. While this is something we will attempt to monitor going forward, the best way to prevent undue outside influence on the disciplinary process would be to create a requirement that all outside contacts regarding each case be documented with the name of the person who contacted DAO or APU, the substance of that contact, and any action taken as a result of the contact. This information should be readily available to our Commission so we can evaluate whether the contact influenced the final outcome of any disciplinary matter. Further, the Department should adopt a policy to prevent the discussion of the merits of the case by persons outside of DAO or APU with these prosecutors. This policy should exempt discussions with witnesses that might be used during any trial.

2. The Department Should Consider Adopting A Recusal Policy in Certain Disciplinary Cases

The Panel recommended the adoption of a recusal policy when personnel responsible for disciplinary decisions have personal or familial relationships with individuals involved in specific disciplinary cases as another way to guard against appearances of impropriety and possible conflicts of interest.[41]

In response to this recommendation, the Department adopted Administrative Guide §318-18 "Discipline Process Recusal Guidelines" in January 2020.[42] This policy sets forth steps a member of the service should take if they identify a possible conflict of interest with a case due to the involvement of a person with whom they have a personal or familial relationship. When that occurs, the member of the service is to immediately notify their commanding officer or executive officer. If the member of the service is unsure if there is a conflict, they are to consult with the Department's Legal Bureau. Once a commanding officer receives notification of a conflict of interest, they are directed to notify their bureau chief or deputy commissioner who will then decide if recusal is necessary. That decision must be documented in the appropriate Department record.

This policy appears to implement the Panel's recommendation. We were informed that during the tenure of the former Department Advocate, DAO never had to use this policy.

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[41] The Panel suggested the Department consider a policy in effect at the Department of Justice, which prohibited employees from being involved in investigations and prosecutions of people with whom they had personal, familial, or political relationships.

[42] This provision has since been moved to Administrative Guide §318-27.

RECOMMENDATION #8:
THE DEPARTMENT SHOULD STUDY AND CONSIDER ADOPTING A DISCIPLINARY MATRIX

The Panel recommended that the Department examine the feasibility of implementing a disciplinary matrix. The Panel believed that there would be three benefits to adopting a matrix. First, it would instill confidence in the fairness and legitimacy of the disciplinary system among the public and also among the members of the service, who would know the approximate penalties that they were facing. Additionally, use of a matrix could allow the Department to detect trends that pointed to inconsistencies in penalties, favoritism, or bias. Second, it would provide transparency and inform the public as to the appropriate penalties for serious misconduct. Finally, if adhered to, it could expedite resolution of cases through negotiations as all parties would be aware of the probable penalties.

The Department published its first version of the Matrix on January 15, 2021, after receiving comments from stakeholders, including this Commission, and members of the public.[43] Soon after, there were references to Matrix penalties and mitigating and aggravating factors in trial decisions and negotiation memoranda.

Since its inception, the Matrix was conceived as a "living document" that would undergo regular reviews and modifications. One year later, the Department published an updated Matrix,[44] which added some categories of misconduct and also included our recommendation that the maximum aggravated penalty range for failure to take police action should be increased

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[43] *See Twentieth Annual Report of the Commission* ("*Twentieth Annual Report*") (June 2022), Appendix B and Appendix C, for the written comments we sent to the Department. https://www.nyc.gov/assets/ccpc/downloads/pdf/Annual-20-FINAL-6-23-22.pdf.

[44] New York City Police Department Disciplinary System Penalty Guidelines (February 15, 2022). https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-disciplinary-penalty-guidelines-effective-2-15-2022-final.pdf.

from the forfeiture of 30 penalty days to termination.[45] During the drafting of this Report, the Department released a new draft version of the Matrix for public comment. This version added a penalty range for the failure to report suspected corruption or serious misconduct to IAB, as well as penalty ranges for fraternization and the addition of a category of misconduct for engaging in a relationship beyond the scope of an officer's official duties. We previously recommended all of these additions.[46]

While the Department has implemented this Panel recommendation, the Commission believes that further changes are desirable. A list of our recommended changes that have not yet been adopted is included as Appendix C to this Report. In our upcoming audit of the disciplinary system, the Commission will evaluate the application of the Matrix penalties to disciplinary cases to determine whether the Department is generally following the Matrix. Based on that review, we may have further recommendations for changes.

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[45] *Report on Matrix Penalties for Failure to take Police Action* (October 2021) at p. 15. https://www.nyc.gov/assets/ccpc/downloads/pdf/Report-on-Matrix-Penalties-for-Failure-to-Take-Police-Action-October-2021.pdf.

[46] *Id.* at p. 17. *See also Twentieth Annual Report* at pp. 69-70. However, we note that we recommended higher presumptive penalties both for the failure to report misconduct or corruption to IAB as well as for engaging in a relationship beyond the scope of an officer's official duties. For further detail about our proposed presumptive penalty for the latter misconduct, *see Twenty-First Annual Report of the Commission* ("*Twenty-First Annual Report*") (July 2023) at pp. 61-63. https://www.nyc.gov/assets/ccpc/downloads/pdf/2021-Annual-Report-with-Executive-Order.pdf.

RECOMMENDATION #9:
THE DEPARTMENT SHOULD TAKE MEASURES TO EXPEDITE DISCIPLINARY ADJUDICATIONS

This recommendation had three components.

1. DAO Should Hire Additional Attorneys and Fill Vacancies on the Executive Staff

The Department Advocate serving at the time the Panel's report was published was reassigned shortly thereafter. The report stated that the then-Department Advocate's policy of making all final decisions on disciplinary cases contributed to the delay in the resolution of cases. The Panel also noted that every disciplinary team in DAO was understaffed and supervisors often would have to handle time-sensitive, high-priority cases. The Panel recommended hiring four additional paralegals, ten additional attorneys, filling the executive staff positions, and giving the executive staff decision-making authority.

In 2020, after the reassignment of the former Department Advocate, a new Department Advocate was appointed. (As noted previously, that Department Advocate left the NYPD during the drafting of this Report.) The First Deputy Commissioner's Office informed us that in order to implement this recommendation, the Department conducted a comprehensive review of the workflow process, prioritized the hiring of additional attorneys, and hired 13 new attorneys.

When we initially met with the most recent Department Advocate, she told us that ten new attorneys were hired, two new executive attorney positions were created, and there were four new paralegal positions. By 2023, the office had made significant progress in filling its vacancies. There were 44 total attorney spots, with only six vacancies that the Department Advocate was seeking to fill.[47] The office itself was structured into four teams: a civilian team

[47] This count did not include the Department Advocate herself, who is also an attorney.

which handled cases against civilian members of the service, a CCRB team, the team to handle cases involving special victims,[48] and an all-purpose trial team. Each team was overseen by an Executive Agency Counsel.[49] There were also team managers on each team.

In 2021, the Department Advocate explained the steps she was taking to expedite the disciplinary process. Certain cases would be prioritized, including those where her office was seeking termination, cases where the subject officer was suspended with pay pending the outcome of the disciplinary process, cases that had received attention in the media, and cases pending for more than two years. DAO was working with IAB in order to reduce delays and trying to establish relationships with the District Attorneys' Offices to avoid lengthy delays in the disciplinary process while waiting for the conclusion of any criminal prosecution. Finally, the Department Advocate described a more active role for the office's supervisors, including more frequent meetings with the staff attorneys to track the progress of their cases and to try to prevent avoidable delays.

As of 2023, the former Department Advocate reported progress in decreasing the length of time that disciplinary cases were pending. Her goal was to resolve most cases within six months.[50] In addition to a new database described later in this Report,[51] the former Department Advocate prepared checklists of required investigatory evidence for different common case categories for investigators that would reduce requests for further investigative steps after the case was referred to DAO. DAO also began a pilot program to expedite cases involving subjects accused of driving while intoxicated by eliminating the requirement for official Department interviews of the subjects

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[48] *See supra* at pp. 12-13.

[49] One of these positions was vacant at the time of the drafting of this Report, as was the position of Department Advocate.

[50] This would not include the time the allegations were being investigated or the time taken by the First Deputy Commissioner and Police Commissioner to review the case and make final decisions about the penalty.

[51] *See infra* at p. 58.

unless there was a specific need to have one. The office was examining other categories of cases they could similarly process more quickly.

One concern from the Panel was the over centralization of decision making by the actual Department Advocate. The Panel urged giving other executives in the office authority to make final decisions on routine disciplinary matters. The Department Advocate created two new executive positions: Executive Director and Director, and there is also the position of Assistant Deputy Commissioner. The Assistant Deputy Commissioner and the Executive Director each oversee two of the teams, while the Director works with the Department Advocate on special projects. The Assistant Deputy Commissioner approves the penalties for all civilian members of the service. If the Department Advocate is unavailable for more than a few days, the Assistant Deputy Commissioner or the Executive Director can also approve penalties for other cases. The Department Advocate, though, still maintains responsibility for approving the majority of penalties.

2. The Department Should Implement a "Fast Track" Review for Certain Disciplinary Cases

The Panel recommended there be an alternate disciplinary process available for cases involving less serious misconduct where a settlement could be reached. This disciplinary process would not require review of the penalties by the First Deputy Commissioner and the Police Commissioner, which could significantly reduce the amount of time these cases were pending, while also conserving resources for more serious misconduct. However, the Panel also recommended routinely reporting all disciplinary matters addressed in this way to the Police Commissioner (or their designees) so that if there were troubling trends detected, this alternate tool could be modified.

The Department reported that it addressed this recommendation through the addition of schedule C command disciplines. The Department already had less formal discipline available through schedule A and schedule B command disciplines. In schedule A command disciplines, a subject can receive a penalty ranging from a warning to the forfeiture of five vacation days.[52] Schedule A command disciplines are purged from the subject's disciplinary records after one year, if there have been no further disciplinary issues. Schedule B command disciplines have similar penalty options, but have a maximum penalty of the forfeiture of 10 vacation days. Schedule B command disciplines can be sealed, upon written request, after three years, assuming there is no further disciplinary action against the subject.[53] If a subject disputes involvement in the misconduct, charges and specifications will be preferred by DAO.[54]

The schedule C command discipline can only be issued by the Department Advocate's Office, as opposed to the subject's command or an investigative entity within the Department, and there must be no significant aggravating factors or additional misconduct. It is not available as an alternative to a schedule A or B command discipline that has been rejected by the subject officer. If the subject declines either the finding or penalty attached to the schedule C command discipline, charges and specifications will be brought.[55] While, in theory, a schedule C command discipline can carry a warning instead of a penalty, in practice, DAO provides a penalty range from which the Commanding Officer can choose that always has a minimum penalty. The

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[52] Administrative Guide §318-01 "Command Disciplines and Authorized Penalties" describes the types of misconduct that can be addressed by the three types of command disciplines. Regarding schedule A command disciplines, this section also sets forth other penalties, such as temporarily changing a subject's assignment or revocation of permission to engage in off-duty employment for up to 30 days, as possible penalties. These alternate penalties are also available for schedule B command disciplines.

[53] Administrative Guide §318-12 "Sealing Disciplinary Records".

[54] There is an alternate procedure if the subject admits to committing the misconduct but does not agree with the penalty. Administrative Guide §318-02 "Issuance of Schedule A and Schedule B Command Disciplines".

[55] Administrative Guide §318-03 "Preparation of Charges and Specifications or Schedule C Command Discipline".

maximum penalty available for a schedule C command discipline is the forfeiture of 20 vacation days. The Matrix sets forth the types of misconduct that can be addressed by any form of command discipline.[56] Misconduct that can be handled with a schedule C command discipline includes computer misuse with dissemination of information, conducting personal business while on duty, and unauthorized off-duty employment.[57]

The former Department Advocate was seeking to expand the types of misconduct that could be addressed by a schedule C command discipline. The Commission will review whether schedule C command disciplines are used instead of charges and specifications in appropriate cases during its upcoming audit on the Department's disciplinary system.

3. DAO Should Limit Reconsideration Requests

The Panel noted that the concentration of decision-making in the Department Advocate was a cause of delay. This was particularly applicable to reconsideration requests made to CCRB. In that process, DAO can request that the CCRB Board reconsider its findings and/or recommendations for substantiated allegations. Reconsideration requests are made when the Department believes either CCRB was not aware of additional facts or evidence that could have led to a different outcome or that the CCRB board misunderstood or misapplied the law to the facts of the case. DAO has 30 days from the receipt of CCRB's charges to make this request. The Panel noted that individual Assistant Advocates would prepare their requests, but delay

[56] New York City Police Department Disciplinary System Penalty Guidelines (February 15, 2022) at pp. 52-53 (schedule A command disciplines); p. 54 (schedule B command disciplines); and pp. 54-55 (schedule C command disciplines.)

[57] The Commission has objected to some types of misconduct being addressed by command disciplines. These include computer misuse with dissemination of confidential information, misclassified complaint reports, vehicle pursuits that are outside of Department guidelines, when a physical injury results from the pursuit, and failure to supervise. *See Twentieth Annual Report* at pp. 58-59, 75-76, 109, and Appendix B at p. 23. *See also Twenty-First Annual* at Appendix C, pp. 78-79.

occurred waiting for the Department Advocate to approve them.[58] The Panel also reported that CCRB did not have a corresponding deadline to respond to a reconsideration request, which also delayed the progress of the case. This was particularly of concern for more minor misconduct that could be readily addressed through a command discipline. To expedite the process, the Panel recommended that DAO limit the number of reconsideration requests to those cases involving requests for charges and specifications. The Panel also recommended that CCRB and the Department adopt a 90-day deadline for CCRB to respond to requests for reconsideration.

At the end of 2022, CCRB informed us that requests for reconsideration had significantly decreased since Police Commissioner Sewell was appointed. In 2019, there were 88 requests for reconsideration, while in 2020, there were only four such requests. In its annual reports, CCRB reported that the reconsideration process was not used in 2021 and their subsequent reports also indicated that this process was not used in 2022. In 2023, the former Department Advocate also confirmed that her office had not requested reconsideration of any CCRB-recommended discipline.

4. Outcomes

We examined the duration cases were pending prior to and after the publication of the Panel's report to determine whether the steps taken by the Department have been effective in decreasing the amount of time that cases are pending prior to discipline. The duration of these cases was taken from our *Nineteenth* and *Twentieth Annual Reports*.[59] We compared the times these cases were pending with those reported in the Panel's report. To make this comparison, we

[58] This referred to the employee who was the Department Advocate at the time the Panel's report was published.
[59] *Nineteenth Annual Report* at pp. 48-50. *Twentieth Annual Report* at pp. 43-46.

converted the length of time in days included in the Panel's report to months, which was the time by which the Commission has measured the amount of time cases were pending.[60]

Nineteenth Annual Report: Cases Adjudicated between October 2016 – September 2017

Cases	Investigative Period	Adjudication Period	Overall[61]
All (270)	8.7	14.1	23.3
Plea (170)	7.5	12.7	20.5
Mitigation[62] (6)	8.7	16.3	25.8
Trial (94)	11.1	16.6	28.0
DAO (173)	7.2	12.1	19.7
DAO Plea (104)	6.6	11.2	18.2
DAO Mitigation (6)	8.7	16.3	25.8
DAO Trial (25)	10.2	16.2	26.8
APU (97)	11.5	17.8	29.7
APU Plea (28)	11.8	20.4	32.7
APU Mitigation (0)	–	–	–
APU Trial (69)	11.4	16.7	28.5

[60] *Independent Panel Report* at pp. 33-36. While the Panel calculated cases by number of days elapsed, we calculated our cases by number of months elapsed. For purposes of comparison, we used a 30-day month to transform the Panel's calculations into months. Besides this approximation, another possible reason for any differences between the Panel's calculations that overlap with our calculations is that our reviews are limited to charges and specifications that are brought against uniformed members of the service. There is a different disciplinary process for civilian members of the service, which might result in longer periods prior to the conclusion of each case. This factor would not account for CCRB-investigated/prosecuted cases as they do not address misconduct involving civilian members of the service. We also exclude from our calculations cases involving multiple charges and specifications as DAO often holds onto earlier disciplinary cases when they are aware of another investigation into an officer so that the cases can be resolved together with one penalty. Since this could unfairly skew the length of time cases are pending, we do not include them when we calculate the duration of the disciplinary matters.

[61] The overall period runs from the beginning of the investigative period, when the allegation is first received, to the final adjudication of the charges and specifications, when the findings and penalties are approved by the Police Commissioner. The separate numbers may not add up because we used to compute these time periods to a second place after the decimal, but have modified that in recent reports. A second reason for any discrepancy is that at times there is overlap between the investigation period and the disciplinary period. We counted the disciplinary period from the "date of charges" but that date may precede the conclusion of the investigation.

[62] In a mitigation hearing, the member of the service pleads guilty to the charges but presents evidence before the Trial Commissioner in support of a lower penalty than that recommended by the prosecuting agency.

Nineteenth Annual Report: Cases Adjudicated between October 2017 – September 2018

Cases	Investigative Period	Adjudication Period	Overall
All (243)	7.6	14.6	22.6
Plea (180)	7.0	14.2	21.5
Mitigation (2)	9.0	15.0	24.5
Trial (31)	10.8	12.3	23.7
DAO (190)	7.5	12.6	20.5
DAO Plea (157)	6.9	12.6	19.8
DAO Mitigation (2)	9.0	15.0	24.5
DAO Trial (31)	10.8	12.3	23.7
APU (53)	7.6	22.0	30.1
APU Plea (23)	7.5	25.0	32.9
APU Mitigation (0)	–	–	–
APU Trial (30)	7.7	19.7	27.9

Independent Panel Report: January 2016 – September 2018

Cases	January 2016 – December 2016 (570)	January 2017 – December 2017 (489)	January 2018 – September 2018 (250)
All (1309)	17.9	20.1	18.0
Plea (903)	17.1	20.9	18.9
Trial (406)	19.7	18.7	16.2
APU Plea (143)	21.7	29.1	24.9

Twentieth Annual Report: Cases Adjudicated between October 2018 – September 2019

Cases	Investigative Period	Adjudication Period	Overall
All (150)	7.7	13.9	22.6
Plea (113)	6.5	13.3	19.8
Mitigation (7)	6.3	13.8	20.1
Trial (30)	12.4	16.2	28.6
DAO (126)	6.8	13.2	20.0
DAO Plea (104)	6.1	13.0	19.1
DAO Mitigation (7)	6.3	13.8	20.1
DAO Trial (15)	11.8	14.5	26.3
APU (24)	12.4	17.6	30.0
APU Plea (9)	11.4	17.3	28.7
APU Mitigation (0)	–	–	–
APU Trial (15)	13.0	17.8	30.9

Twentieth Annual Report: Cases Adjudicated between October 2019 – December 2020

Cases	Investigative Period	Adjudication Period	Overall
All (211)	7.3	16.3	24.0
Plea (157)	5.9	15.5	21.7
Mitigation (6)	8.8	16.0	25.3
Trial (48)	11.7	19.1	31.1
DAO (162)	5.9	15.7	30.7
DAO Plea (148)	5.5	15.3	21.3
DAO Mitigation (6)	8.8	16.0	25.3
DAO Trial (8)	11.0	20.6	31.8
APU (49)	11.7	18.6	30.7
APU Plea (9)	11.1	18.2	29.6
APU Mitigation (0)	–	–	–
APU Trial (40)	11.1	18.8	30.9

As can be seen, it seems that the Department and CCRB were making progress on moving cases more quickly through the system until 2020, when the COVID-19 pandemic appears to have affected the length of time that it took to adjudicate cases.

While we have not yet calculated the average duration of disciplinary cases for 2021 and 2022, we intend to do so for our upcoming audit on the disciplinary system. In 2021, the Department Advocate stated that the average duration of a DAO case was 500 days, or approximately 16.7 months.

In the Department's 2021 Annual Discipline Report, they report their statistics slightly differently than the manner in which both we and the Panel have previously calculated the average duration. The Department reported that the duration of disciplinary charges for uniformed members of the service when there were no potential concurrent criminal charges had increased each year between 2019 and 2021. The average duration in 2019 was 400 days (approximately 13.3 months); 453 days in 2020 (approximately 15.1 months); and 483 days in

2021 (approximately 16.1 months).[63] We suspect the pandemic was partially responsible for the increased duration of cases in 2020 and 2021. However, the Department also explained in its report that its increased efforts to close cases that had been pending for three or more years also skewed the average duration of its disciplinary cases.[64]

The Department's 2021 Annual Discipline Report also separated cases by prosecuting agency. Cases prosecuted by DAO had average durations of 431 days (approximately 14.4 months), 504 days (approximately 16.8 months), and 609 days (approximately 20.3 months) in 2019, 2020, and 2021, respectively. APU's disciplinary cases were pending longer than the DAO-prosecuted cases in each of these three years: 703 days (approximately 23.4 months) in 2019; 644 days (approximately 21.5 months) in 2020; and 652 days (approximately 21.7 months) in 2021.

Given the impact of the pandemic and the Department's prioritization of the resolution of longer-pending cases, it is not possible to definitively determine whether the use of schedule C command disciplines and the addition of more personnel to DAO have achieved the desired result of expediting the disciplinary process. More recently, the former Department Advocate reported to us that in 2022, 23% of DAO-prosecuted cases were completed within six months, 45% were completed within one year, 21% were completed within two years, and 11% took more than three years.[65] As of the beginning of August 2023, 43% of DAO-prosecuted cases

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[63] When there was a corresponding criminal prosecution, the average duration of cases was higher because at times, the Department will delay its administrative prosecution until the criminal matter is resolved. In 2019, the average duration of formal disciplinary cases that had corresponding criminal prosecutions was 523 days (approximately 17.4 months); 576 days (approximately 19.2 months) in 2020; and 542 days (approximately 18.1 months) in 2021.

[64] *See* 2021 Discipline Report, https://www.nyc.gov/assets/nypd/downloads/pdf/analysis and planning/discipline/discipline 2021 v8.pdf, at p. 5.

[65] These timeframes only include the duration of the case within the control of DAO and do not include any time that the matter is under review by the First Deputy Commissioner's Office and the Police Commissioner's Office. This is also true for the cases completed in the first seven months of 2023.

were completed within six months, 44% were completed within one year, and 10% were completed within two years.

While we will look further into the average duration of disciplinary cases in our upcoming audit, it appears that there is some progress in expediting the resolution of disciplinary cases, at least those handled by DAO. However, we will examine whether there is similar progress in APU-prosecuted cases and the timeframes for the review process by the First Deputy Commissioner and the Police Commissioner in all disciplinary cases to determine if that process unreasonably delays the adjudications of charges and specifications. When investigations take 12 to 18 months to complete, and then charges are pending for more than another year before discipline is imposed, the deterrent effect of discipline is less powerful than when the penalty is imposed close in time to the misconduct.

RECOMMENDATION #10:
THE DEPARTMENT SHOULD STRENGTHEN ENFORCEMENT OF FALSE STATEMENT DISCIPLINARY POLICIES

Multiple sources, including this Commission, informed the Panel that the Department failed to adequately discipline officers who made false statements during the course of performing their job duties. In its report, the Panel agreed with our previously stated concern regarding the Department's charging decisions in false statement cases.[66] As we noted in more than one annual report, the Department would routinely charge officers who lied with "engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department" ("Conduct Prejudicial") instead of charging them with "making false official statements."[67] This allowed the Department to avoid the presumption of termination that was part of the Patrol Guide provision that addressed false statements.[68] In practice, this meant that subjects were often charged with Conduct Prejudicial and allowed to remain employed by the Department without any explanation rather than charged with making a false official statement, which would result in their termination unless there was a finding of exceptional circumstances.

To address the under-prosecution of false statements, the Panel recommended that the Department issue guidance to investigators in IAB as well as attorneys in DAO regarding when an intentional, material false statement should be charged under the Department's false statement policy and when it should be charged under another provision that did not carry the presumptive

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66 *Independent Panel Report* at pp. 38-40.

67 The first Patrol Guide provision was found under Patrol Guide §203-10(5) while the false statement policy was located at Patrol Guide §203-08. The false statement policy has since been moved to the NYPD's Administrative Guide.

68 *See Sixteenth Annual Report of the Commission* ("*Sixteenth Annual Report*") (October 2014) at pp. 81-100, https://www.nyc.gov/assets/ccpc/downloads/pdf/Sixteen-Annual.pdf; *Seventeenth Annual Report of the Commission* (November 2015) at pp. 102-105, https://www.nyc.gov/assets/ccpc/downloads/pdf/Seventeenth-Annual.pdf; *Eighteenth Annual Report of the Commission* ("*Eighteenth Annual Report*") (August 2017) at pp. 113-117, https://www.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf; *Nineteenth Annual Report* at pp. 101-104; and *Twentieth Annual Report* at pp. 76-80.

penalty of termination. The Department indicated that it met this recommendation through the revision and adoption of its new false statement policy, which is currently located at Administrative Guide §304-10. This policy provision separates untrue statements into three categories: false, misleading, or inaccurate. These three categories are included in the Matrix with different penalty ranges. Intentionally making a false official statement has a penalty range of forced separation (mitigated) to termination (presumptive). Intentionally making a misleading official statement has a penalty range of 20 penalty days (mitigated) to termination (aggravated). The presumptive penalty is dismissal probation plus 30 penalty days.[69] Making an inaccurate official statement has a penalty range of five penalty days (mitigated) up to 15 penalty days (aggravated).[70] The presumptive penalty is ten penalty days. Thus, the manner in which the untrue statement is categorized and charged can have a significant effect on the type of penalty and whether the subject will be able to retain employment with the Department.

1. Guidance

In early 2019, we began corresponding with IAB personnel who were given responsibility for revising this provision and creating the guidelines. When the revised provision was published, it included our recommendations to retain the presumptive penalty of termination for making a false official statement and changed the factors that would justify a lesser penalty from exceptional circumstances to extraordinary circumstances.[71] However, there were still parts of the policy with which we disagreed.

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[69] Penalty days refers to either vacation days that are forfeited by the subject or days that the subject is suspended.

[70] This category also includes causing an inaccurate official statement to be made by another.

[71] We suggested the change from exceptional circumstances after being told by a senior executive in the Department that "exceptional" circumstances just meant any factors that would create an exception to the presumption of termination. We suggested the change to "extraordinary" to demonstrate that the instances when the Police Commissioner decides not to terminate a subject found guilty of making a false official statement should be unusual and rare.

The presumption of termination was included in the Matrix, which has a section addressing false, misleading, or inaccurate official statements. Guidelines, for which we also provided suggestions, were developed and are included in the introductory language to the applicable penalty ranges.[72]

The following are the main points regarding the guidelines that we have previously made to the Department, but which have not been implemented:[73]

a. Limiting the scope of the guidelines to those statements made during "official investigations" creates an unnecessary loophole because it leaves out false statements made in the context of court proceedings, written documents, Department records, and other similar circumstances. We recommend that the guidelines' scope not be limited in this fashion.

b. While the guidelines describe other terms such as "intent" and "material fact," there is no definition of "official." We advocate a broad definition to cover all statements made in the course of police-related duties or responsibilities.

c. The Matrix and Administrative Guide §304-10 characterize the false assertion that the subject does not remember or does not know as a misleading statement. While the presumptive penalty of dismissal probation plus 30 penalty days is significant, officers who use this tactic to avoid admitting to their own misconduct or disclosing the misconduct of their colleagues should be terminated, as this helps to maintain "the blue wall of silence" and keep misconduct from being addressed.[74]

d. The definition of a material fact in both the Matrix and Administrative Guide §304-10 is too narrow as it requires that the fact be essential to the determination of the issue. If strictly construed, an officer who intentionally lies would escape termination when that lie does not affect the ultimate result of the proceeding or investigation.[75] We continue to recommend that this requirement be removed.

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[72] *See* New York City Police Department Disciplinary System Penalty Guidelines (February 15, 2022) at pp. 31-33.

[73] As we have covered these recommendations extensively in our *Twentieth Annual Report*, we only provide a summary of our recommendations here. *See* pp. 89-91, 104-107, Appendix B at pp. 13-21, and Appendix C at pp. 1-5.

[74] *See Twentieth Annual Report*, Appendix B, pp. 16-17.

[75] *See Twentieth Annual Report*, Appendix B, pp. 17-18 for hypothetical situations that demonstrate how this part of the definition could help officers avoid false statement charges and the presumptive penalty of termination.

e. The policy of not bringing false statement charges when the subject "merely pleads not guilty in a criminal matter, or merely denies a civil claim or an administrative charge of misconduct" includes the subject's denials of fact or allegations at official Department or CCRB interviews or other substantive denials. We believe that this inclusion is improper.[76] While it is appropriate not to bring false statement charges based on denials made as part of a procedural requirement such as at a criminal arraignment or a denial of liability to a civil claim, it should not extend further.

f. In the definition of a misleading statement in both the Matrix and Administrative Guide §304-10, one possible misleading statement is the omission of a material fact. Depending on the circumstances and the statement in question, the omission may constitute a lie.[77] We recommend changing the definition to indicate that "a misleading statement can be made by omitting material facts from a statement when doing so does not actually make the statement false."

g. While the Matrix is clear that each false statement should be charged separately, it does not indicate whether the penalties for each false statement will be calculated consecutively or concurrently.[78]

h. The Matrix appears to require investigators to disclose contradictory evidence to subjects in order to bring a false statement charge. In our opinion, whether to reveal such evidence should be made on a case-by-case basis depending on whether it may affect the outcome of the investigation. Whether an investigator discloses that evidence or not should not dictate whether or not a false statement charge is appropriate.

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[76] *See Twentieth Annual Report* at pp. 90, 105-106 and Appendix B at pp. 18-19. *See also Ninth Annual Report of the Commission* (February 2006) at pp. 35-36, https://www.nyc.gov/assets/ccpc/downloads/pdf/Ninth-Annual-Report-February-2006.pdf; *Tenth Annual Report of the Commission* (February 2008) at p. 34, https://www.nyc.gov/assets/ccpc/downloads/pdf/Tenth-Annual-Report-February-2008.pdf; *Eleventh Annual Report of the Commission* (February 2009) at p. 38, https://www.nyc.gov/assets/ccpc/downloads/pdf/Eleventh-Annual-Report-February-2009.pdf; *Twelfth Annual Report of the Commission* (February 2010) at p. 53, https://www.nyc.gov/assets/ccpc/downloads/pdf/Twelfth-Annual-Report-February-2010.pdf; *Thirteenth Annual Report of the Commission* (March 2011) at p. 18, fn. 61, https://www.nyc.gov/assets/ccpc/downloads/pdf/13th annual report.pdf; *Fourteenth Annual Report of the Commission* (February 2012) at p. 41, https://www.nyc.gov/assets/ccpc/downloads/pdf/14th annual report.pdf; *Fifteenth Annual Report of the Commission* (September 2013) at p. 60, https://www.nyc.gov/assets/ccpc/downloads/pdf/15th annual report.pdf; and *Sixteenth Annual Report* at pp. 82-83.

[77] *See Twentieth Annual Report*, Appendix B, at pp. 19-20 for hypothetical situations that demonstrate that whether an omission would be misleading or false may depend on the questions posed by investigators.

[78] The New York City Police Department Disciplinary System Guidelines (February 15, 2022) at p. 31.

i. One of the potential mitigating factors applicable to false and/or misleading statements is that the underlying "[m]isconduct itself is not a presumptive termination act and the nature of the statement is such that it was made with the intent to avoid embarrassment (particularly in the context of interpersonal relationships or health conditions.)"[79] We do not believe that this should be a mitigating factor in every instance and recommend the removal of this as a mitigating factor. Instead, if this was the sole reason for the false or misleading statement, the Police Commissioner could consider it an extraordinary circumstance that would support a penalty that allowed the subject to continue in their employment.

j. An overall mitigating factor in the Matrix is the "[p]ositive employment history including any notable accomplishments, Departmental recognition and positive public recognition."[80] We do not believe that these factors should mitigate the penalty for making false or misleading statements. Rather, these should only be considered to reduce the presumptive penalty when there are also "other unusual circumstances that specifically mitigate the seriousness of the particular false or misleading statement."[81]

k. There are inconsistencies between Administrative Guide §304-10 and the Matrix regarding the characteristics of a retraction that will forestall a false statement charge.[82] We support the definition of a retraction that is in the Matrix. Under this definition, the retraction must occur within the same interview or proceeding as the false statement, must be made before the fact-finder has been deceived or misled to the harm and prejudice of the investigation or proceeding, and must be made before the subject has reason to believe that the fact-finder is aware of the falsity of the original statement. Subsequently providing the truth will not negate a false (or misleading) statement charge if the subject has been confronted with evidence that demonstrates that the original statement was false.[83] We recommend that the definition of retraction in Administrative Guide §304-10 be amended to conform to the definition in the Matrix.

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79 *Id.* at p. 34.
80 *Id.* at p .9.
81 *Twentieth Annual Report*, Appendix B, at p. 21.
82 *See id.*, Appendix C at pp. 3-5 for a description of the inconsistencies.
83 The New York City Police Department Disciplinary System Guidelines (February 15, 2022) at p. 32.

2. Adverse Credibility Committee

As part of recommendation ten, the Panel also advocated that the Department continue reviewing criminal prosecutorial referrals regarding adverse credibility findings and other evidentiary rulings that negatively assessed officers' credibility. They also recommended that the Department continue its use of its Risk Assessment Information Liability System ("RAILS") to collect data on the outcomes from civil lawsuits brought against individual officers.

The Commanding Officer of the Risk Management Bureau[84] explained to us that the Department formed the Adverse Credibility Committee ("the Committee") in 2016.[85] This Committee is made up of representatives from the Police Commissioner's Office, Legal Bureau, the Risk Management Bureau, and the Chief of Detectives Office. One of the Committee's responsibilities is to provide training for officers to improve their testimony in court proceedings.[86] The Committee also reviews judicial adverse credibility findings made against members of the service. The Committee reviews the judicial decision, transcripts for the proceeding, and other court records. If the Committee determines the adverse credibility finding is due to factors other than insufficient preparation of the officer by the assistant district attorney, then the Committee may refer the case to IAB for further investigation. If IAB does not conclude that the officer committed misconduct, then the matter is returned to the Committee. Upon review of the documentation, the Committee might recommend transferring the officer to a

[84] During the drafting of this Report, the Commanding Officer of the Risk Management Bureau retired from the Department.

[85] The Risk Management Bureau has various responsibilities such as making recommendations regarding whether probationary officers who are alleged to have committed misconduct be terminated without any further proceedings and whether there should be non-disciplinary interventions for officers who appear to be at-risk for engaging in misconduct. These responsibilities are not addressed in this Report.

[86] This training is discussed further *infra* at pp. 50-51.

different assignment within the Department. A separate unit within the Department maintains a list of officers whom judges have determined not credible.

One continuing issue is the lack of notification to the Department when judges find members of the service incredible. The Commanding Officer of the Risk Management Bureau stated that the Office of Court Administration was supposed to provide the Department with reports of any officers found not credible, but that procedure was not properly set up. Currently, the Department is dependent on notifications from each District Attorney's Office. This is not a perfect system, and the Department has not received every possible notification. The Commission recommends that the Department explore more formal notification systems, either with the Office of Court Administration, each District Attorney's Office (or United States Attorney's Office), and/or with the administrative judge from each borough.

3. Charging Decisions

The Panel recommended that when officers make false statements, charges and specifications should be brought pursuant to Patrol Guide §203-08 and not be reduced to avoid the presumptive termination penalty. The Commission reviewed 83 cases involving either perjury or false, misleading, or inaccurate official statements that were adjudicated during calendar years 2021 and 2022.[87] Of these 83 cases, in 37 the officer was charged with the catchall Conduct Prejudicial charge located in Patrol Guide §203-10(5).[88] However, in 23 of those 37 cases, the charges were drafted prior to both the Panel's report and the implementation

[87] The Commission confined its examination to these two years as charges adjudicated prior to 2021 would have involved false or misleading statements made prior to the adoption of the revised policy, and were most likely drafted prior to the adoption of that policy and the guidance for false or misleading statements in the Matrix.

[88] Often, the individual specifications will list multiple Patrol Guide or Administrative Guide provisions that cover the alleged violation. While there were cases in which officers were charged pursuant to both Patrol Guide §§203-10(5) and 203-08, in these 37 cases, the officers were not charged with violating Patrol Guide §203-08 or the successor provision at Administrative Guide §304-10.

of the new false statement policy.[89] There were also 14 cases which involved false, misleading, or inaccurate entries in Department records, which were charged pursuant to Patrol Guide §203-05 or Administrative Guide §304-05.[90]

In 71 cases that were brought subsequent to the Panel's report[91] that involved untrue statements, the appropriate Patrol Guide/Administrative Guide provision was used in 29 cases.[92] While this is an improvement from our observations in prior reports, there continues to be room for improvement in bringing charges pursuant to Administrative Guide §304-10, and additional efforts to achieve consistency in charging in all cases seems warranted.

In 14 of the 29 cases where the charge was brought under Patrol Guide §203-08 or Administrative Guide §304-10, the Department appeared to be violating its own guidelines as set forth in the Matrix.

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[89] However, in two cases brought prior to 2020, the subject officers were charged pursuant to Patrol Guide §203-08. There were an additional three cases for which we could not determine which Patrol Guide or Administrative Guide provision was used.

[90] Patrol Guide §203-05 "Performance On Duty-General." Paragraph 4 of this provision required that members of the service "[m]ake accurate, concise entries in Department records in chronological order, without delay, using black or blue ink." This provision has since been moved to Administrative Guide §304-05 "Performance On Duty." Other cases from the 83 reviewed also involved false, misleading, or inaccurate entries in Department records, but were brought pursuant to Patrol Guide §203-08 and §203-10(5) either alone or in conjunction with §203-05. This demonstrates an inconsistency in charging and possible penalties and further supports the recommendation we made in our *Twenty-First Annual Report* at pp. 35-39 for a separate penalty range for false entries in Department records. It also supports our prior recommendation that the guidelines define what qualifies a statement as "official." *See supra* at p. 39 and *Twentieth Annual Report* at pp. 89, 104, and Appendix B at pp. 15-16.

[91] Some of these cases were brought after the publication of the Panel's report but prior to the adoption of the revised false statement policy.

[92] Oftentimes, this charge was also made along with Patrol Guide §203-10(5). There were also four other cases where charges were initially brought pursuant to Patrol Guide §203-08 for misleading statements or false statements. However, prior to the adjudication of these cases, the charges were amended to modify the statements to "inaccurate" and the charges were brought pursuant to Patrol Guide §203-10(5). While we do not comment on the appropriateness of the amendment of these charges for this Report, we note that there were other cases in which the subject officers were charged with making inaccurate statements, and those charges were brought pursuant to Patrol Guide §203-08.

According to the Matrix:

> Each allegation of a false, misleading or inaccurate statement shall be charged *separately*. For example, if the investigator believes a statement to be both false and misleading, the investigator will make a charge of false statement and another charge of misleading statement. (Emphasis added.)[93]

If there were separate charges and there was a determination that the subject officer was not guilty of making false statements, but was guilty of making misleading statements, either the administrative prosecutor or the Trial Commissioner would provide an explanation regarding why the subject officer made misleading rather than false statements. Charges including combinations of false, misleading, and/or inaccurate statements, allows a determination that the officer committed the charged misconduct, but the statement can then be characterized in a manner that avoids the presumption of termination without requiring any explanation as to why the statements were misleading or inaccurate rather than false.

The chart on the following page sets forth the breakdown of charges in the 26 cases that were levied pursuant to Patrol Guide §203-08/Administrative Guide §304-10.[94] When there was more than one charge to address the false statement, we only counted the case in the category with the more significant presumptive penalties, i.e. if the case had a charge for making a false statement and a separate charge for making a misleading statement, we placed the case in the false statement category.[95]

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[93] New York City Police Department Disciplinary System Guidelines (February 15, 2022) at p. 31. This paragraph also states that each statement that is false or misleading should be charged separately, with the exception that if the statements are all about the same fact, they can be included in one charge. From our review, it does not appear that this is being followed and we will examine this issue further in our upcoming audit of the disciplinary system.

[94] There were also three cases that were not included in this chart because the charges did not readily fit into any category.

[95] There were three cases in which there were separate charges brought for false statements made in an official Department interview, and for misleading or inaccurate statements in an official Department interview. We note that in one case, the false statement charge was brought pursuant to Patrol Guide §203-08, while the misleading or inaccurate charge was brought pursuant to Patrol Guide §203-10(5). While this is still not technically correct

False	Misleading	Inaccurate	False and/or Misleading	Misleading and/or Inaccurate[96]	False, Inaccurate, or Misleading	False and/or Inaccurate[97]
7[98]	6	2	2	7	1	1

Another concern that we had is that cases that should be charged as false statements are instead charged as misleading, possibly to avoid the presumption of termination. In the 29 cases examined, only seven had charges for making a false statement, while 13 cases had charges for making misleading or misleading and/or inaccurate statements. While determining whether a false statement charge was more appropriate in these cases is beyond the scope of this Report, in our upcoming audit of the disciplinary system, we will examine these types of cases in greater detail in an effort to determine whether the Department is foregoing charging false statements and instead charging misleading statements as a way of circumventing the presumption of termination.

according to the guidelines in the Matrix, the Commission is less concerned because a dismissal of the false statement charge would still require an explanation.

[96] This category also includes those cases charged as misleading, inaccurate, and/or incomplete.

[97] This category also includes those cases charged as false, inaccurate, and/or incomplete.

[98] One case also had a separate charge for "false or misleading" statements. Given that there was a charge for false statements alone, we did not have the same concerns that this could be used to avoid the presumption of termination. Two of these cases were charged as "impeding an investigation by making false statements in an official Department interview." While in both of these cases, the subject officers were separated from the Department, we disapprove of charging making of false official statements in this manner as impeding an investigation has a presumptive penalty of dismissal probation and the forfeiture of 30 penalty days. While termination (or forced separation) is available when there are aggravating factors, the final penalty can also be decreased to the forfeiture of 20 penalty days in the presence of mitigating factors.

4. Penalties

The Panel made the following recommendations regarding penalties imposed in false statement cases:

- The Department should investigate potential false statement cases aggressively, including by looking beyond an officer's explanation to determine whether any statements were intentionally false rather than merely mistaken;[99]

- The Department should enforce the termination provision in Patrol Guide §203-08 when an officer has been found guilty of intentionally making a material false statement;

- If the Police Commissioner elects not to terminate under Patrol Guide §203-08, they should meaningfully explain in writing the exceptional circumstances justifying a lesser punishment, and;

- Dismissal probation should be a part of the punishment in every false statement case, regardless of which provision of the Patrol Guide was violated.

[99] Whether the Department examined the circumstances around the making of statements rather than merely relying on the subject's denial of intent to deceive or mislead will be examined in our audit of the disciplinary system.

The following tables shows the penalties imposed on subjects who made false or misleading statements:[100]

Type of Statement	Termination	Forced Separation[101]	Dismissal Probation and Penalty Days	Penalty Days Only	Not Guilty or Charge Dismissed Prior to Adjudication	Total Cases
False Statement	4[102]	6[103]	3[104]	-	-	**13**
Misleading Statement[105]	3[106]	8[107]	14[108]	7[109]	4	**36**
False and/or Misleading Statement[110]	2[111]	1	2	1[112]	-	**6**

[100] This table does not include cases in which we believed that there should have been a specification to address false statements made in official Department interviews, yet there was no charge brought to address that misconduct. This table includes all charges involving false, misleading, and inaccurate statements regardless of the Patrol or Administrative Guide Section that was used.

[101] Forced separation refers to either a full-service retirement or a vested retirement, in which the subject officer only receives a partial pension. Both types of separation are usually accompanied by a period of dismissal probation and the forfeiture of penalty days.

[102] One of these officers had a second set of charges also covered by this penalty. Those charges included a specification for making misleading statements during an official Department interview. A second officer also had two other sets of charges and specifications that were covered by this penalty.

[103] One officer had two additional sets of charges and specifications that did not involve false statements, which were resolved as part of this penalty.

[104] Two of these officers were involved in the same incident. Both testified falsely in a Grand Jury that one of the officers was present at the scene when a firearm was recovered, when that officer was not present. Although the presiding Trial Commissioner recommended termination as the appropriate penalty for both officers, the Police Commissioner found mitigating circumstances and allowed the officers to remain employed with the Department. These officers were charged pursuant to Patrol Guide §203-10(5).

[105] This category includes those statements charged as "misleading or inaccurate."

[106] One of these officers had two additional sets of charges and specifications that did not involve false statements that were also resolved with the officer's termination. Another officer was also caught transporting women he believed to be sex workers to and from hotels in exchange for money. We believed this was the underlying reason for his termination.

[107] One of these officers was also found guilty of stealing property, which we believed was the basis for forcing his retirement. Another officer had another case covered as part of the forced separation.

[108] Two of these officers also had a second set of charges that was covered by this penalty. One of these officers was also charged with making a false statement, which was dismissed prior to trial.

[109] In three cases, the Police Commissioner found mitigating circumstances and removed dismissal probation from the imposed penalty.

[110] This category also includes false, misleading, and/or inaccurate statements or false and/or inaccurate statements.

[111] One officer also had a second set of charges and specifications that was also covered by this penalty.

[112] This case actually charged that the officer failed to review a complaint which contained false, misleading, or otherwise inaccurate statements.

Type of Statement	Termination	Forced Separation	Dismissal Probation and Penalty Days	Penalty Days Only	Not Guilty or Charge Dismissed Prior to Adjudication	Total Cases
Inaccurate Statement	2[113]	-	5[114]	6[115]	-	**13**
False Entries in Department Records[116]	-	1	3[117]	1	-	**5**
Total	11	16	27	16	3	**73**

The Police Commissioner set forth her reasoning for allowing two of the officers who testified falsely to remain employed by the Department.[118] Of the subjects who did not lose their positions and were found guilty of making either misleading or false statements (or both), dismissal probation was part of the penalty in 19 of 28 cases. There were eight cases in which the officer was found guilty of making a false or misleading statement and was neither separated from the Department nor placed on dismissal probation. In four of those cases, the Police Commissioner or the First Deputy Commissioner set forth their reasons why monitoring was not necessary.

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[113] One officer was also found guilty of using unjustified force against a prisoner. We believe that was the reason for his termination. The other officer was also found guilty of criminal association and unauthorized off-duty employment for providing security for a political figure. We believe that the officer's association with this person was the underlying reason for his termination.

[114] In one case, the Police Commissioner increased the penalty to add dismissal probation in light of the officer's prior disciplinary history.

[115] Two officers who were involved in the same incident were originally charged with making false and misleading statements in their official Department interviews pursuant to Patrol Guide §203-08. However, those charges were amended two times. The first time, they were amended to include Patrol Guide §203-10(5) in addition to Patrol Guide §203-08 as the violated Patrol Guide provisions. In the second amendment, the charges were modified to read that the subject officers provided an inaccurate statement and the references to Patrol Guide §203-08 were eliminated. Another officer was initially also charged with making misleading statements pursuant to Patrol Guide §203-08, but this charge was dismissed prior to trial. The charge of making inaccurate statements was added and brought pursuant to Patrol Guide §203-10(5).

[116] As the Matrix does not have a category for false entries in Department records, the Commission included all incorrect entries in Department records in this category regardless as to whether the Department charged these entries as false, misleading, or inaccurate.

[117] One of these officers had a second set of charges which was also covered by this penalty.

[118] The Commission expresses no judgment as to the adequacy of the explanations or the appropriateness of the penalties. We will explore these issues in greater detail in our audit of the disciplinary system.

5. Training

In the final part of this recommendation, the Panel agreed with our position that there should be more and regular training for officers regarding the need to tell the truth in various contexts that arise when performing the functions of their jobs.[119] The Panel also explicitly stated that this training should indicate that procedural perjury—when officers provide false information about their observations to justify a stop, frisk, or search that results in the recovery of evidence in order to avoid suppression of that evidence—is not acceptable, not benign, and will result in termination.

The Commanding Officer of the Risk Management Bureau stated that the Adverse Credibility Committee provides courtroom testimony training at the Police Academy. They began providing this training because of the belief that many adverse credibility findings occurred because the subject had not been adequately prepared to testify by the assigned assistant district attorney and not out of any intent on the part of the officer to deceive.

In this training, members of the service are taught how to handle questions about past findings of adverse credibility and how to testify without relying on police jargon. The Commanding Officer stated that the Adverse Credibility Committee has trained thousands of officers. Many officers who have gone through the training have provided positive feedback. According to the Commanding Officer, some officers who have had past adverse credibility findings and have gone through the training have since been found credible by judges. The training is provided to recruits and more tenured officers, but has been found to be most effective

[119] These contexts include but are not limited to: testifying in court proceedings; providing information to assistant district attorneys; signing criminal complaints; and providing testimony in depositions that support criminal complaints.

for officers who have been employed by the Department for a few years. The training occurs twice a week for approximately 40 members of the service at a time.

Commission staff attorneys observed this training, which was led by attorneys from the NYPD Legal Bureau Training Unit at the Police Academy. The purpose of the training was to prevent officers from receiving adverse credibility findings, particularly in suppression hearings. There were 20 to 30 officers in attendance. The training lasted a full day and involved a half-day presentation on courtroom testimony, which explained the negative consequences of an adverse credibility finding and recommended that officers prepare on their own as well as with the assistant district attorney by reviewing all paperwork and looking for any inconsistencies. There were also practice exercises in a mock courtroom where officers were chosen at random to testify about actual gun arrests that they had recently made, with the trainers playing the part of assistant district attorneys and defense attorneys and pointing out common issues that may come up in a suppression hearing.[120] Our staff found that this training was a thorough overview of common pitfalls that officers may encounter when testifying that might lead to adverse credibility findings even when the officers intended to testify truthfully. While this was not exactly the training recommended by the Panel, we found this training beneficial.

[120] According to the facilitators, there was a backlog of gun cases that accumulated during the pandemic and many of these gun cases were now being set for suppression hearings, which had led to an increase in adverse credibility findings due largely to lack of preparation and experience by both the presenting assistant district attorneys and officers.

RECOMMENDATION #11:
THE DEPARTMENT SHOULD ADOPT PRESUMPTIVE PENALTIES IN DOMESTIC VIOLENCE CASES AS RECOMMENDED BY CCPC

Noting that domestic violence victims and members of the general public could be at risk for harm from officers who engage in acts of domestic violence, the Panel recommended that the Department adopt a written policy that set forth presumptive penalties for officers who are primary aggressors in these incidents.[121] The Panel believed that the Department should carefully consider whether officers who committed acts of domestic violence were suitable to be members of the Department.

The Panel recommended that the Department follow previous penalty recommendations that we made for this category of misconduct. The recommendations they specifically mentioned were:

- For those members of the service who were found to have committed a physical act of domestic violence for the first time and were the primary aggressor, the penalty should include dismissal probation in addition to the forfeiture of penalty days and the direction to comply with recommended counseling.

- Termination should be the presumptive penalty when there was clear and convincing evidence that a subject officer had a history of domestic violence; and

- Termination should be the penalty for any officer who was found guilty of committing a domestic violence offense in a criminal proceeding, regardless of whether there was a history of domestic violence.[122]

The Panel reasoned that including dismissal probation as the presumptive penalty in first offenses would demonstrate to the public and to officers that the Department took domestic

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[121] Prior to the adoption of this policy, the Department typically penalized an officer found to have engaged in domestic violence with the forfeiture of 30 penalty days and the direction to cooperate with all Department counseling deemed necessary by the Department. However, this was not memorialized and the Department deviated from this penalty when so inclined.

[122] For further details about these recommendations, *see Sixteenth Annual Report* at pp. 51-53. *See also Eighteenth Annual Report* at pp. 69-71.

violence seriously while also providing offending officers with the opportunity for rehabilitation. Furthermore, given the likelihood of re-offense, placement on dismissal probation would enable the Department to easily terminate an officer who continued to engage in this type of conduct.

The Department indicated that it fulfilled this recommendation by adopting presumptive penalties for physical acts of domestic violence in April 2019. These penalties were incorporated into the Matrix when it was published in 2021. The presumptive penalty for a physical act of domestic violence or a family offense is a suspension for 30 days, dismissal probation, and cooperation with a 24-week power and control program that is certified by the New York State Office of Addiction Services and Supports (OASAS).[123] The aggravated penalty is termination. There is no mitigated penalty. These higher penalties apply when either 1) there is a previous determination by the Department that the subject officer had committed other acts of domestic violence or 2) there is clear and convincing evidence that the subject officer engaged in previous physical acts of domestic violence whether or not those acts were previously reported or substantiated. Additionally, separation from the Department is the penalty if the subject officer is found guilty of a domestic violence crime in a criminal proceeding. The Department, to its credit, also added four additional factors that would increase the penalty to separation from the Department in the first instance of engaging in a physical act of domestic violence. These factors are 1) the act results in a serious physical injury; 2) the act results in significant physical injuries and/or injuries generally indicative of sustained or prolonged physical acts; 3) the act occurs in the course of a violation of an order of protection; or 4) strangulation is involved.[124]

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[123] Cooperation with this program is a condition attached to the dismissal probation and applies regardless of whether the subject officer has completed other domestic violence counseling programs.

[124] New York City Police Department Disciplinary System Penalty Guidelines (February 15, 2022) at p. 35.

Since the Panel's report, the Department has generally punished domestic violence offenders appropriately. In our *Twentieth Annual Report*, there were eight cases that were adjudicated after adoption of these penalties, and in all eight cases, the Department followed their policy (and our recommendations) for discipline.[125] Since that report, we examined 75 cases[126] that were adjudicated between October 2019 and December 2022, that involved physical acts of domestic violence.[127] In 57 cases, this was the only physical domestic violence incident in the officer's history[128] and in 47 of those, the officer received either the presumptive penalty consisting of dismissal probation and the forfeiture of penalty days, or an aggravated penalty that included separation from the Department.[129] In nine other cases, the subject officers had corroborated indications of past acts of physical domestic violence and all were separated from the Department, either through retirement or termination. Our examination shows that the Department is following its stated policy regarding physical domestic incidents.

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[125] *Twentieth Annual Report* at pp. 61-62.

[126] There were 74 officers with charges involving physical domestic incidents, however, some officers actually had multiple sets of charges and specifications that were addressed with one penalty.

[127] There were four additional cases that fit these criteria, but in two, the subject officers resigned and two subject officers retired and charges were filed in their personnel folders.

[128] In 15 of these cases, there was either some uncorroborated allegations of physical domestic incidents in the past or the current charges against the subject contained allegations regarding physical domestic incidents on more than one date. When past allegations were uncorroborated without any finding of wrongdoing by the officer, we did not believe that this rose to a level of clear and convincing evidence that the subject officer engaged in past acts of domestic violence. We also did not determine that officers who were charged with engaging in more than one physical act of domestic violence in their current disciplinary matters deserved a penalty of separation from the Department as in our prior recommendation, we referred to clear and convincing evidence that the officer had a prior history of engaging in physical acts of domestic violence. *See Sixteenth Annual Report* at p. 53. *See also Eighteenth Annual Report* at p. 73. As the acts charged were not viewed as historical, we did not believe that the presumption of termination would apply. However, we recommend that the Department explore and provide guidance regarding how multiple separate acts of domestic violence should affect the penalties imposed pursuant to the Matrix.

[129] In the remaining cases, the subject officer was either found not guilty of engaging in the domestic incident, terminated by operation of law, or resigned. In two additional cases, we could not determine whether the officer had prior domestic incidents. In one of these two cases, the officer was placed on dismissal probation and in the other, the officer was forced to retire.

In ten cases, the subject officers were charged with separate physical altercations, either with the same person or with another person. The Commission did not address this scenario in our prior recommendations, and the Panel only recommended that the Department adopt our recommendations. We now urge the Department to include an enhanced presumptive penalty for each additional physical domestic altercation. In the ten cases identified during this review, all of the subject officers received greater than the presumptive penalty. Four of the ten officers were either forced to retire or were terminated outright.

One other issue was that in some cases, the subject officer made threats of using physical force but did not actually use force. In one case, the threat was accompanied by the subject officer pointing his firearm at the complainant. While that subject officer was terminated, it is unclear whether their actions counted as a physical act of domestic violence. The Commission previously recommended that the Department define "physical act of domestic violence" in the Matrix.[130] We continue to adhere to that recommendation.

[130] *See Twentieth Annual Report,* Appendix B at p. 21. *See also Twenty-First Annual Report,* Appendix C, at p. 77.

RECOMMENDATION #12:
THE DEPARTMENT SHOULD UPGRADE AND INTEGRATE ITS CASE MANAGEMENT SYSTEM

The Panel noted that the Department did not have an integrated, centralized case management system and found that the lack of a system accessible to IAB, DAO, and the Risk Management Bureau was detrimental to the efficiency of the disciplinary process. Since Assistant Advocates could not access investigative files maintained by IAB, IAB investigators downloaded and hand-delivered cases to DAO. The Assistant Advocate would then manually input information from the file into its own case management system. There was also no efficient manner to track the progress of cases through the disciplinary process, which hindered the identification of stages in the process that caused delays in adjudications.

The lack of a centralized system also had the potential to impede the Department's ability to identify risk factors among its members that could indicate the potential to commit misconduct. The Department's RAILS system triggers alerts when members of the service reach thresholds based on events such as CCRB cases, command disciplines, civil litigation, and dismissal probation.[131] But because there is no single case management system, RAILS cannot track information pertaining to ongoing disciplinary cases.

To remedy these issues, the Panel recommended that the Department create a centralized, integrated case management system that had the ability to track cases throughout the disciplinary process. Additionally, the Panel recommended that this system "capture all relevant case criteria" including the subject officer's rank, disciplinary history, demographic information, the type of misconduct, mitigating or aggravating factors, the case disposition, the age of the case,

[131] *See supra* at p. 42 for further explanation of the RAILS system.

the length of time the case spent in each stage of the disciplinary process, the various penalty recommendations, and the final outcome of the case. Ideally, this management system would be able to track a case's progress through the disciplinary system and provide notice to DAO when a case failed to progress within expected time limits. The Panel envisioned that the case management system would require explanation for any delays beyond those time limits and provide anticipated time frames for the case to progress. The Panel also recommended that additional resources be given to the Risk Management Bureau to allow it to identify and monitor risk factors beyond those that were already being collected.

The First Deputy Commissioner's Office informed us that the Department had streamlined internal workflows within the Disciplinary Administrative Database System ("DADS"). The Department created "working groups" to find ways to improve the communication between the various "discipline platforms." In 2021, the Department Advocate described an antiquated and inefficient case management system, and reported that resources were being devoted to create a more data-driven internal case management system that was more user-friendly and was more searchable. However, improvements to that system were dependent on the outside vendor who created the current system. In order to improve efficiency in guiding cases through the disciplinary process, the Department Advocate had created a best practice model which set forth how long each phase of the case should take. The purpose of this model was to clarify her expectations and provide guidance for the Assistant Advocates. There were also monthly meetings held between the managers in the office and the Assistant Advocates for the purpose of setting goals for each case, establishing the next steps necessary to resolve the case, and to identify those steps in the process that were causing delays.

In 2023, the former Department Advocate informed us that her office had employed city research scientists to create an electronic milestone data tracking system. Each stage of the case had a target completion date, which she and other DAO supervisors could track and learn when a goal date was approaching. This would allow DAO executives to discern if cases were experiencing delays at particular points in the process, or whether individual attorneys were having issues moving cases through specific stages. The former Department Advocate credited this database with decreasing the length of time that cases were pending in her office. She hoped to have this database integrated into a new case management system.

Unfortunately, the progress on a new integrated case management system had been slow. As of the writing of this Report, the actual development of this system had not begun. While the former Department Advocate believed that it made sense to have an integrated system that would allow connections between case management systems in other divisions in the Department, such as IAB, she wanted privacy protections in place to restrict access to some materials. The former Department Advocate did not see the development of this type of system occurring in the near future. Therefore, she had been more focused on getting a new case management system for DAO that would be user-friendly and would allow for more efficient retrieval of data.

We support the Panel's original recommendation that an integrated case management system be created. We recommend that all appropriate safeguards for confidential information be included in this system.

RECOMMENDATION #13:
THE DEPARTMENT SHOULD RETAIN EXTERNAL EXPERTS TO CONDUCT PERIODIC AUDITS OF THE DISCIPLINARY SYSTEM

As the Panel was not able "to conduct a systemic audit of the disciplinary outcomes due in part to limitations in the Department's data collection and maintenance practices,"[132] it recommended that the Department engage outside experts to conduct "periodic audits of the disciplinary system in order to ensure that is functioning fairly and efficiently."[133] The Panel believed the Department could benefit from having reviews of the disciplinary system from an independent entity. This entity could conduct analyses across case types to determine whether the system was operating without bias and help detect trends in misconduct for the Department. It was also believed that these periodic audits would enable the Department to have a more consistent and fair disciplinary process.

As a result, the Department requested that this Commission conduct the first audit, as well as this interim report. In November 2019, the Department and the Commission entered into a MOU in which the Commission agreed to perform an audit of the disciplinary system and the Department agreed to provide us with the materials and information necessary to conduct a thorough audit. The Commission originally planned to examine at least two years of disciplinary cases, but may extend that to three years as there is a newly-appointed Police Commissioner. We anticipate publishing a report detailing the results of our review in 2025.

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[132] *Independent Panel Report* at p. 56.
[133] *Id.*

RECOMMENDATIONS

In this Report, we have discussed and analyzed the Department's progress in implementing the 13 recommendations made by the Panel. Throughout, we provided suggestions for strengthening and improving the Department's current policies and practices as they pertain to each Panel recommendation. Below, we provide a compilation of our suggestions.[134]

Independent Panel Recommendation #3: Enhancement of Public Reporting

1. Finding specific information regarding an officer can be difficult unless the user knows where to look as there is a wealth of information across two websites: NYPD Online and NYC.gov. We recommend that all disciplinary information about officers be included in one place or that the NYPD Online website include a navigation tutorial to show the user how to efficiently find desired information.

2. The Trial Decisions library is not searchable. The Department should add a method for the user to search this library by the officer's name, the officer's command, and by a general case category. This will enable users to find relevant information more efficiently.

3. Part of the Panel's overall recommendation was that in the Annual Discipline reports, the Police Commissioner provide an overview of their impressions of the disciplinary system and what types of trainings or policy changes should be considered. This has not been done, but should be done. In this overview, the Police Commissioner could highlight changes made to the disciplinary system during the calendar year and preview changes that are under consideration.

Independent Panel Recommendation #5: Appoint a Citizens' Liaison

1. The Department should create a victim's advocate, housed in DAO, who can connect victims of domestic violence or sexual crimes with services that will help them find and maintain physical safety, pursue legal remedies available, and provide psychological support. The former Department Advocate had suggested the creation of this position, and we support that recommendation.

[134] Not included in this list is the recommendations we have previously made for changes to the Disciplinary Matrix and its accompanying guidelines. A complete list of those recommendations can be found in Appendix C to this Report.

2. The Department should assign an executive, or appoint a new executive, outside of DAO to act as a liaison that individuals whose claim of excessive force are under investigation and their families can contact for information including updates on the investigation and disciplinary process, as well as for explanations when investigations and outcomes do not meet the victims' and/or their families' expectations.

Independent Panel Recommendation #6: Enhanced Documentation when Police Commissioner Changes the Penalty

1. As many of the explanations provided by past Police Commissioners contained conclusory terms to support the modifications of recommended penalties (or less frequently, a change in findings regarding whether the subject officer even committed misconduct), the Commission recommends that the Police Commissioner (or their designee) indicate the facts in each case and the aspects of the subject's performance and/or disciplinary history that led the Police Commissioner to modify an outcome.

2. The Commission supports the Panel's recommendation that if the Police Commissioner receives outside contact about a case, and that contact affects the Police Commissioner's decision to adjust the outcome of a disciplinary case, the variance memorandum should indicate this and specify what outside information was considered.

Independent Panel Recommendation #7: Adoption of Protocols to Insulate Decision Makers from Outside Influence

1. The Department should require that all outside contacts made to disciplinary prosecutors regarding individual cases be documented with the name of the person who contacted DAO or APU, the substance of that contact, and any action taken as a result of the contact. This information should be readily available to our Commission so we can evaluate whether the contact influenced the final outcome of any disciplinary matter.

2. The Department should adopt a policy to prevent the discussion of the merits of disciplinary cases by persons outside of DAO or APU with these prosecutors. This policy should exempt discussions with witnesses that might be used during any trial.

Independent Panel Recommendation #10: Strengthen Enforcement of False Statement Disciplinary Policies

1. The Matrix should clarify whether multiple false statements will be penalized consecutively or concurrently.[135]

2. The Department should explore with the Office of Court Administration, each District and United States Attorney's Office, and the administrative judge in each borough, methods for notifications when judges make adverse credibility findings against members of the service that are more consistent and result in more reliable notifications.

3. When bringing charges for making false, misleading, and/or inaccurate statements, DAO should try to achieve consistency in charging decisions. Charges for false, misleading, and/or inaccurate statements should be brought separately and not combined into one charge. Any charges that capture the identical misconduct that have less serious penalty ranges can be dismissed as lesser, included charges if the subject is found guilty or has admitted guilt for the more serious charge. If a more serious charge is dismissed, either prior to a negotiation or a trial, or after the subject is found not guilty by a Trial Commissioner, the reasoning for the dismissal of that charge in favor of a charge with less serious consequences should be provided.

Independent Panel Recommendation #11: Adopt CCPC's Recommendations Regarding Presumptive Penalties in Cases involving Physical Acts of Domestic Violence

1. The Department should explore whether the presumptive penalty range should be increased to include separation when subject officers do not have a clear and convincing history of engaging in physical acts of domestic violence, but are found guilty of multiple separate physical acts of domestic violence.

2. As previously recommended by this Commission, the Department should include in its Matrix a definition of physical acts of domestic violence. Specifically, the Department should indicate whether a threat of force accompanied by some action such as displaying a firearm or making a fist would constitute a physical act of domestic violence.[136]

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[135] We have repeatedly made multiple recommendations regarding amending the Department's false statement policy, the Matrix section that addresses false official statements, and the guidance preceding that section. Many of these can be found *supra* at pp. 39-41. These recommendations are not repeated in this section but can be found in Appendix C to this Report.

[136] The Matrix already indicates that verbal threats alone are characterized as non-physical acts of domestic violence.

Independent Panel Recommendation #12: Upgrade and Integrate DAO's Internal Case Management System

1. We reiterate the Panel's recommendation that the Department develop a new integrated internal case management system. At the very least, an updated system should be built for DAO that is more efficient and allows DAO to readily retrieve data or information about their own caseloads. This will provide more time for the personnel in that office to perform work on the disciplinary cases, which will help to reduce time that cases are pending in the system.

2. We agree with the former Department Advocate that when an integrated system is developed, there should be privacy protections in place that can limit the access that each division or bureau in the Department has to other divisions' cases. Often investigations involve sensitive and confidential information that should not be available to anyone with access to the system.

AFTERWORD

During the drafting of this Report, two people who were valuable sources of information for this Report left the Department: the Department Advocate, Deputy Commissioner Amy Litwin, and the Commanding Officer of Risk Management, Chief Matthew Pontillo. The Commission thanks both Ms. Litwin and Chief Pontillo for their cooperation with our examination of these issues and recognizes the changes they made to their respective offices. It is our hope that whomever is appointed to lead the Department Advocate's Office and the Risk Management Bureau continue the progress made by Ms. Litwin and Chief Pontillo to implement these recommendations, bring more transparency to the disciplinary system, expedite the resolution of disciplinary matters, and improve accountability for individual members of the service.

COMMISSIONER BIOGRAPHIES

Commissioners

Kathy Hirata Chin, Acting Chair

Kathy Hirata Chin is a Partner at Crowell & Moring LLP, where she is a member of the healthcare and litigation groups. Ms. Chin graduated from Princeton University magna cum laude and Columbia Law School, where she was Editor-in-Chief of the Journal of Transnational Law. She served as Commissioner on the New York City Planning Commission from 1995 to 2001 and has served as a Commissioner on the New York City Commission to Combat Police Corruption since August 2003. She has served on the Federal Magistrate Judge Merit Selection Panel for the Eastern District of New York, Governor Mario Cuomo's Judicial Screening Committee for the First Department, the Gender Bias Committee of the Second Circuit Task Force, former Chief Judge Judith Kaye's Commission to Promote Public Confidence in Judicial Elections, the Board of Directors of the New York County Lawyers Association, and the Board of Directors of New York Lawyers for the Public Interest, a non-profit that advocates for marginalized New Yorkers. She currently serves on the Attorney Emeritus Advisory Council and the Commercial Division Advisory Council, appointed to both by former Chief Judge Jonathan Lippman of the New York State Court of Appeals, and as Vice Chair on the Board of Directors of the Medicare Rights Center, a national nonprofit organization dedicated to helping older adults and people with disabilities get affordable health care. In April 2016, she was appointed by Governor Andrew Cuomo to the First Department Judicial Screening Committee.

Jabbar Collins

Jabbar Collins is a former adjunct professor at St. John's Law School and President of Horizon Research Services, a consulting firm providing legal research and writing for appellate, civil rights, and criminal defense attorneys, particularly with respect to municipal liability based on police and prosecutorial disciplinary practices. A frequent lecturer on criminal justice issues, Mr. Collins is also an Instructor for Continuing Legal Education courses on the New York Freedom of Information Law, federal habeas corpus, and post-conviction litigation. In 1995 Mr. Collins was wrongfully convicted of murder and spent 16 years in prison before he was exonerated in 2010, largely due to his own legal work. A federal judge dismissed all charges against him and barred a retrial through a rare unconditional writ of habeas corpus, finding his conviction resulted from egregious prosecutorial misconduct. His resultant civil litigation exposed systemic misconduct and resulted in one of the largest wrongful conviction settlements in New York City history. While incarcerated Mr. Collins worked as a Legal Research Instructor, assisted several men in successfully challenging their convictions, and established a Second Circuit precedent recognizing prisoners' Fourteenth Amendment right to information necessary to make informed decisions regarding medical treatment. His legal work following his exoneration resulted in several wrongfully convicted men being freed, including a man who served 27 years in prison for a crime he did not commit.

Howard S. Master

Howard Master is a Partner, Managing Director, and Counsel to the CEO at Nardello & Co., the global investigations firm. Mr. Master supports the firm's anti-corruption and fraud investigations as well as its criminal defense, civil litigation and arbitration, and monitorship and compliance practices. He also advises the firm on major strategic initiatives. Mr. Master has been recognized by Chambers and Partners (2023) for his work. Mr. Master previously served

as a leader, investigator, and trial lawyer in federal, state, and local prosecutors' offices. At the U.S. Attorney's Office for the Southern District of New York (SDNY), where Mr. Master served as a public corruption prosecutor and as Deputy Chief of the Criminal Division, he investigated and prosecuted individual and corporate wrongdoers responsible for significant corruption offenses and financial crimes. Notable SDNY cases included his prosecution of those responsible for defrauding the City of New York out of hundreds of millions of dollars on the CityTime information technology project and his prosecution of the Speaker of the New York State Assembly for taking millions of dollars in bribes. Mr. Master later served as Senior Enforcement Counsel at the New York State Office of the Attorney General and as Special Counsel to the District Attorney of Suffolk County. In the latter role, Mr. Master supervised all of the office's official corruption investigations, founded its Conviction Integrity Bureau, and led a conviction integrity investigation that exonerated a man who served 33 years in prison for a murder he did not commit. Mr. Master serves as an Adjunct Professor at the University of Pennsylvania Carey Law School, where he teaches an advanced seminar on corruption law, and is a frequent writer and speaker on corruption- and investigation-related topics. He is a graduate of Yale University and New York University School of Law, and a former law clerk to the Hon. Victor Marrero of the U.S. District Court for the Southern District of New York and the Hon. José A. Cabranes of the U.S. Court of Appeals for the Second Circuit.

Randall W. Jackson

Randall W. Jackson is a Partner in the Litigation Department at Wachtell, Lipton, Rosen & Katz. Mr. Jackson graduated from Harvard Law School, where he was a Senior Editor of the Harvard Civil Rights Civil Liberties Law Review, and Morehouse College. Randall focuses on government and internal investigations, white collar criminal defense, complex civil litigation and regulatory compliance. Randall is ranked by Chambers USA (2022) as one of the leading attorneys in the area of Litigation: White-Collar Crime & Government Investigations and recognized as a "Litigation Star" in the 2023 edition of Benchmark Litigation. Prior to working in private practice, Randall was an Assistant U.S. Attorney for the Southern District of New York, where he was a senior member of the Securities Fraud, Public Corruption and Terrorism and International Narcotics Unit. Randall has served as lead or co-lead attorney in over 20 federal trials, including some of the longest and most complicated in recent history. In 2022, he co-led the defense to a complete acquittal of client Thomas Barrack, founder of Colony Capital, in a highly publicized trial in the Eastern District of New York alleging illegal foreign lobbying, obstruction of justice and other charges. In 2019, Randall co-led the successful defense against securities fraud charges brought by U.S. Department of Justice against shipbuilding executive Jean Boustani, securing a complete acquittal on all counts after a two-month long jury trial in the Eastern District of New York. In 2013, as a prosecutor, Randall successfully co-led the six-month long prosecution of five lieutenants of Bernard L. Madoff. Randall has also briefed and argued numerous appeals before the U.S. Courts of Appeals. He was awarded the U.S. Department of Justice's Distinguished Service Award in 2011 and the John Marshall Award in 2014 for his work as a prosecutor on the Times Square Bomber and Madoff cases, respectively.

Freya Rigterink

Freya Rigterink is the Chief Operating Officer and Director of Public Safety Partnerships at the Policing Project at NYU School of Law. She has a background in municipal government and oversight. Previously, Ms. Rigterink served as Chief of Staff to the First Deputy Mayor for New York City, where she focused on public safety and the City's pandemic response, among other areas. Prior to that, she served the Senior Advisor for Criminal Justice to the First Deputy Mayor,

overseeing the City's plan to close the jails on Rikers Island and other initiatives to build a smaller, safer and fairer justice system. Before joining the New York City Mayor's Office, Ms. Rigterink worked as an Assistant Inspector General for the City of Chicago Office of the Inspector General, where she focused on investigations, agency performance, and police accountability. Earlier in her career, she co-founded a start-up that works to expand educational and engagement opportunities for incarcerated people. Prior to that, she held a variety of policy and legislative roles at the New York City Council. Ms. Rigterink is also a member of the New York City Board of Correction and the Brooklyn Public Library Board. Ms. Rigterink holds a BA from Wesleyan University and a JD from Northwestern University.

Benjamin Rosenberg

Benjamin E. Rosenberg has been a partner at Dechert since 2005. He focuses his practice on white collar criminal defense and securities litigation, with a specific emphasis on defending executives and corporations in connection with governmental investigations, and proceedings of federal grand juries and offices of the United States Attorney, the Securities and Exchange Commission, the Attorney General of New York, and the New York District Attorney. He has appeared in federal and state appellate and trial courts, and before administrative tribunals, in civil, regulatory, and criminal matters. In 2013, he was ranked by The Legal 500 U.S. for his white-collar criminal defense practice, and was recognized by The International Who's Who of Business Crime Defense Lawyers. Mr. Rosenberg twice left Dechert to serve in government. He took an eighteen-month leave of absence from Dechert beginning in 2007 to serve as the Chief Litigation Counsel of the New York State Attorney General. He was in charge of the Office's most high-profile investigation, and led the AG's team investigating unlawful student lending practices. He also represented the Office in successfully defending the constitutionality of New York's lis pendens statute. From 2014 through 2016, Mr. Rosenberg served as the General Counsel to the Manhattan District Attorney, where he represented the District Attorney in both trial-level and appellate courts, and was deeply involved in the District Attorney's cyber-related initiatives, as well as his forfeiture and conviction integrity programs. Following graduation from Harvard Law School, Mr. Rosenberg clerked for the Honorable Judge Edward R. Becker of the United States Court of Appeals for the Third Circuit, and from 1990 to 1994 he was an Assistant United States Attorney in the criminal division in the Southern District of New York, where he tried and investigated cases involving narcotics trafficking, identification theft, perjury and obstruction of justice, and gang violence. Mr. Rosenberg teaches as a Lecturer in Law at Columbia Law School, and as a Lecturer in American Studies at Columbia University. He has written extensively, including articles about grand jury practice, conspiracy law, discovery under the Federal Rules of Criminal Procedure, petit jury instructions, sentencing matters, and harm and loss calculations in financial cases. Several of the articles have been cited in federal and state courts. Mr. Rosenberg was twice nominated (in 2015 and 2016) to serve on New York's Court of Appeals.

Commission Staff

Marnie L. Blit, Executive Director
Murad Agi, Examining Attorney
Christina Arno, Examining Attorney
Kathy Barrett, Examining Attorney
Tamela Gaither, Examining Attorney
Agnes Kusmierska, Examining Attorney
Uyen Tang, Examining Attorney
Cristina Stuto, Office Manager

APPENDIX A

EXECUTIVE ORDER

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

EXECUTIVE ORDER NO. 18

February 27, 1995

ESTABLISHMENT OF COMMISSION TO COMBAT POLICE CORRUPTION

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

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

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

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

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

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

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

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

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

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

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

Section 1. Establishment Of Commission.

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

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

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

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

Section 2. Duties.

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

and analyses regarding the following:

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

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

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

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

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

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

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

Section 3. Investigations.

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

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

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

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

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

Section 4. Reporting to the Police Department.

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

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

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

Section 5. Reporting to the Mayor.

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

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

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

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

Rudolph W. Giuliani
Mayor

APPENDIX B

DEVIATION LETTERS FOR CASES ADJUDICATED IN

2021 and 2022

Cases with Deviation Letters that Indicate the Imposed Penalty was not within the Penalty Range set forth in the Disciplinary Matrix

CASES ADJUDICATED IN 2021

Case	Investigating Agency	Guilty Charges	Imposed Penalty	Sufficient Reasoning Set Forth	Did PC Deviate from Recommended Penalty
1	CCRB	Discourtesy	Command level instructions	Yes	No. This was what CCRB recommended.
Matrix Penalty Range:[137] M: 1 day, P: 5 days, A: 10 days					
2	CCRB	Using a chokehold	10 v.d.	Yes	No. This was what CCRB recommended.
Matrix Penalty Range: M: forced separation, P: termination					
3	CCRB	1) Improper search of vehicle 2) Improper issuance of 2 summonses	2 v.d.	Yes	No. This was what CCRB recommended.
Matrix Penalty Range: Search: M: training, P: 3 days, A: 15 days; Summonses: M: 10 days, P: 20 days, A: termination; Total: M: 20 days, P: 43 days, A: termination					
4	CCRB	Failed to process a civilian complaint report	Formalized training	Yes	No. This was what CCRB recommended.
Matrix Penalty Range: M: 5 days, P: 10 days, A: 20 days					
5 (with 6 below)	CCRB	Physical Force Discourtesy	Formalized training	Yes	No. This was what CCRB recommended.
Matrix Penalty Range: Force (non-deadly and no injury): M: 5 days, P: 10 days, A: termination, Discourtesy: M: 1 day, P: 5 days, A: 10 days, Total: M: 6 days, P: 15 days, A: termination					
6 (with 5 above)	CCRB	Discourtesy	Formalized training	Yes	No. This was what CCRB recommended.
Matrix Penalty Range: M: 1 day, P: 5 days, A: 10 days					
7	NYPD	Unfit for Duty	Dismissal probation + 15 v.d. + ordered breath testing + cooperation with counseling	Yes	Yes. This was still an increase from the DAO recommended penalty of 7 days served on pre-trial suspension + 3 v.d. + cooperation with counseling
Matrix Penalty Range: P: dismissal probation + 30 days + ordered breath testing + cooperation with counseling, A: termination (no mitigated penalty)					

[137] M stands for mitigated, P stands for presumptive, and A stands for aggravated. Day is a penalty day and can be either a suspension day (s.d.) or a vacation day (v.d.).

CASES ADJUDICATED IN 2022

Case	Investigating Agency	Guilty Charges	Imposed Penalty	Sufficient Reasoning Set Forth	Did PC Deviate from Recommended Penalty Range?
1	NYPD	Unfit for Duty	30 days + cooperation with counseling	Yes	Yes. DAO recommended the presumptive penalty.
Matrix Penalty Range: P: dismissal probation + 30 days + ordered breath testing + cooperation with counseling, A: termination (no mitigated penalty)					
2	NYPD	Displaying a firearm during a domestic argument	Dismissal probation + 30 pre-trial s.d. + cooperation with 24-week domestic violence counseling	No	No. The TC recommended termination.[138]
Matrix Penalty Range: M: forced separation, P: termination (no aggravated penalty)					
3	NYPD	1) Engaged in physical altercation with his brother. 2) Failed to remain at the scene of the altercation and request a NYPD supervisor to respond.	30 pre-trial s.d. + 5 v.d.	Yes	Yes. This was the penalty recommended by DAO.
Matrix Penalty Range: Domestic Physical Altercation: P: 30 s.d. + dismissal probation + 24-week domestic violence counseling program, A: termination (no mitigated penalty) Fail to remain at the scene and notify a Department supervisor: This is an aggravating factor that carries an additional 5-day penalty. Total: P: dismissal probation + 35 days + cooperation with 24-week domestic violence counseling program, A: termination (no mitigated penalty)					

[138] TC stands for Trial Commissioner. The First Deputy Commissioner recommended that the finding of guilt should have been reversed.

Case	Investigating Agency	Guilty Charges	Imposed Penalty	Sufficient Reasoning Set Forth	Did PC Deviate from Recommended Penalty Range?
4 (with 5 below)	NYPD	1) Failed to make proper memo book entries 2) Testified falsely under oath (charged as Conduct Prejudicial, Patrol Guide §203-10(5).)	Dismissal probation + 30 v.d.	Yes	No. The TC recommended termination.
Matrix Penalty Range: Memo book: Can be addressed with a schedule B command discipline which carries a penalty of up to 10 v.d., False Testimony: M: forced separation, P: termination (no aggravated penalty), Total: termination					
5 (with 4 above)	NYPD	1) False Statement to an Assistant District Attorney (charged as Conduct Prejudicial, Patrol Guide §203-10(5).) 2) Signed a criminal court complaint with false information (charged as Conduct Prejudicial, Patrol Guide §203-10(5).) 3) Omitted memobook entries 4) Testified falsely under oath (charged as Conduct Prejudicial, Patrol Guide §203-10(5).)	Dismissal probation + 30 v.d.	Yes	No. The TC recommended termination.
Matrix Penalty Range: False Statement to ADA: Not addressed in Matrix Criminal Court Complaint: M: forced separation, P: termination (no aggravated penalty) Memobook: Can be addressed with a schedule B command discipline which carries a penalty of up to 10 v.d. False Testimony: M: forced separation, P: termination (no aggravated penalty)					

APPENDIX C

MATRIX RECOMMENDATIONS

MATRIX RECOMMENDATIONS

The following are the recommendations we previously have made to the Department regarding modifications to their Disciplinary Matrix. These recommendations have not yet been adopted. All page numbers refer to pages in the *New York City Police Department Disciplinary System Penalty Guidelines* effective February 15, 2022.

General Principles

- The definition section, currently found on pp. 15-16 of the guidelines, should be moved earlier in the document as many of the terms in this section are used before their definitions appear.

- Positive employment history should not be available as a mitigating factor for any misconduct so serious that the guidelines specify a presumptive penalty of forced separation or termination.

- In addition to the nature or extent of any actual injury or endangerment to another, the obvious potential for such injury or endangerment should also be an enumerated aggravating factor.

- All prior discipline should presumptively be considered when imposing a penalty. Prior discipline should only be disregarded if, after considering all the facts of a given case, the prior misconduct and penalties are so far in the past, dissimilar, and/or minor that they are not relevant.

- The guidelines indicate that when the total number of penalty days calculated is greater than 90 days, the presumed penalty shall be termination or forced separation (p. 13). We believe the 90+ day threshold is too high.

- On p. 14, under dismissal probation, the guidelines state that "[I]f there is further misconduct during the probationary period, the Department *may* summarily dismiss the member of the service without a formal hearing, including for offenses that would not ordinarily result in termination for a member not on Dismissal Probation." (Emphasis added). We believe there should be a strong presumption that termination will result from further misconduct committed by a member of the service who is on dismissal probation. Therefore, we suggest that the language be modified to read, "[I]f there is further misconduct during the probationary period, regardless of the penalty that would be imposed on a member of the service who is not on dismissal probation, the presumptive penalty is dismissal. The Department may summarily dismiss the member of the service without a formal hearing. If the presumption of termination is overcome, a member of the service may be required to submit to an additional period of dismissal probation as a condition of remaining with the Department."

- On p. 15, under "Effect of Precedent," the section should be modified to state, "Penalties resulting from settlement negotiations do not necessarily have the same weight of precedent as penalties imposed following trials, because factors such as expediency or resolution and the strength of evidence may affect the calculation and warrant a lesser penalty. However, negotiated settlements will be given precedential weight to the extent other cases involve such factors."

- In the definitions section of the guidelines, under forced separation, (p. 16) a footnote explaining terminal leave could be helpful.

Abuse of Authority Presumptive Penalties

- In the presumptive penalties for abuse of authority, discourtesy, and offensive language, (p. 27) it might be helpful to indicate that improper sexual interactions with other members of the service are covered by either the Equal Employment Opportunity provisions or by a newly created section specifying penalty ranges for fraternization. (See next comment.)

- As the Department issued a written policy in April 2022 regarding fraternization between members of the service, as well as with civilians encountered in the course of performing their police duties, the guidelines should be updated to address sexual or intimate relationships that are not obviously non-consensual.[1] This should include: Categories for engaging in a sexual or romantic relationship with a supervisor or subordinate and failing to report that relationship as set forth in Administrative Guide §304-06. The penalties for a supervisor who engages in a relationship with a subordinate without making the necessary notifications should be higher than for the subordinate.

- The Department should add categories with penalty ranges for fraternizing with a witness, complainant, or confidential informant. The presumptive penalty for these categories should include dismissal probation because we have noticed that this pattern of behavior often repeats.[2] The imposition of dismissal probation would provide monitoring and send a strong message to the subject officer. The Department should also list any mitigating and aggravating factors that will be considered in increasing or decreasing the penalties in these cases. Some of these factors could include the type of fraternization, the length of the relationship, who initiated the relationship, whether a criminal investigation or prosecution was negatively impacted, and whether the civilian claims that the relationship was nonconsensual.* If there is a second similar offense regarding relationships with witnesses,

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[1] This replaces our prior recommendation that the sexual misconduct category in the abuse of authority section include categories of victims in the text or a footnote to put officers on notice that engaging in, or attempting to engage in, sexual conduct or a sexual relationship with an arrestee, witness, complainant, or victim is prohibited.

[2] In May 2023, the Department published proposed changes to the Matrix for public comment. One such change was the addition of a category, "Engage in a relationship beyond the scope of official duties" to address violations of the prohibition on fraternization. This misconduct has a proposed presumptive penalty of 20 penalty days, with a range between 10 penalty days and 30 penalty days with dismissal probation. As discussed in here and in the *Twenty-First Annual Report* at pp. 62- 63, we believe violation of this prohibition should presumptively include a period of dismissal probation. As of the publication of this Report, the proposed changes were not yet adopted.

complainants, or confidential informants after a first offense is penalized, termination is the appropriate penalty, absent extraordinary circumstances. Finally, the Department should add a category with penalty ranges for fraternization with a suspect, arrestee, or defendant in a criminal case. The presumptive penalty for these cases should be termination because of the inherently coercive nature of the relationship.

- In the abuse of authority, discourtesy, and offensive language section, we continue to recommend more significant penalties, including the imposition of dismissal probation when the constitutional rights of civilians have been intentionally violated.

- The penalty of an unlawful entry into premises is currently assessed according to the extent of the entry, instead of according to the officer's state of mind. Even a *de minimus* entry is a violation of constitutional rights and should be penalized by more than the presumptive three to five days that is currently in the guidelines when such entry is made intentionally, recklessly, and/or in bad faith.

- We believe the penalty ranges for both interfering with a recording/recording device and deleting information from a recording device should be the same and should have the presumptive penalty of 30 penalty days plus dismissal probation.

False, Misleading and Inaccurate Statements

- The first sentence of the guidelines appears to limit the scope of these penalties to false, misleading, and inaccurate statements made during an official investigation. This is too limiting. The phrase "made during an official investigation" should be deleted.

- The term "official" should be defined. This definition should be broad enough to include all statements made in the course of police-related duties or responsibilities and not just limited to those statements made under oath or in a formal setting such as an official Department interview.

- To the extent that the definition of "official" does not include false, misleading, or inaccurate statements in Department reports or other paperwork, we believe that a penalty range should be established for making or causing to be made false statements in Department records. While the Department may not believe that the presumption of termination is warranted for certain documentary entries, such as providing incorrect information to the Medical Division regarding a member of the service's whereabouts while on sick leave or submitting a small number of overtime requests with hours the member of the service did not actually work, this type of misconduct appears sufficiently often in Department disciplinary charges to justify its own penalty range.

- When a denial of recollection is provably false, it should be met with the same presumptive penalty as an official false statement--termination. Denials of recollection should be included under false statements, not misleading statements.

- The definition of "material fact" on p. 31 should be amended to delete the second sentence, which inappropriately narrows the false official statements that would be subject to the presumption of termination.

- Denials made in the course of official Department interviews and CCRB interviews as well as in other official contexts where the denial is a substantive denial (as opposed to a procedural denial, such as entering a plea of not guilty in a criminal proceeding) should not be exempted from the application of the false statement provisions and the presumption of termination.

- The definition of denial on p. 32 states that members of the service can be charged with a false statement if after afforded the opportunity to recollect, they deny specific facts that are proven by credible evidence to have occurred. The inclusion of the phrase "after being afforded the opportunity to recollect" appears to place a requirement on an investigator to show their evidence to the member of the service who is clearly lying. No such requirement should be implied and this phrase should be removed.

- Under the definition of "misleading statement" on p. 32, we recommend that the first bullet point be amended to read, "Intentionally omitting a material fact or facts, as long as the statement, viewed in context, is not false, …."

- The apparent discrepancy between the definition of an inaccurate statement, the definition of impeding an investigation, and the significantly divergent penalties for both should be reconciled.

- The introduction to the False, Misleading and Inaccurate Statements section indicates that each allegation of a false, misleading or inaccurate statement should be charged separately. (p. 31) There should be clarification regarding whether penalties for each false, misleading or inaccurate statement will be calculated consecutively or concurrently.

- On p. 34, an additional mitigating factor to consider when imposing discipline for false, misleading or inaccurate statements is that the misconduct about which the member of the service is being questioned does not have a presumptive penalty of termination itself, and the false, misleading or inaccurate statement was made to protect the member of the service from embarrassment, especially when the question would call for revelations about interpersonal relationships or health conditions. We recommend modifying this factor to read, "… that the statement was made solely with the intent to avoid personal embarrassment (particularly in the context of interpersonal relationships or health conditions), and not for the purpose of avoiding the discovery of any member of the service's misconduct or the imposition of discipline." Alternatively, we suggest removing this factor from the list, and if such a situation arises, the Police Commissioner could consider it an extraordinary circumstance to justify a penalty short of termination.

Domestic Violence Incidents

- A definition of "Physical Act of Domestic Violence" should be included.

- For a first intentional violation of an order of protection, dismissal probation should be imposed as part of the penalty.

Driving While Ability Impaired/Intoxicated Incidents

- There should be a higher penalty enhancement for driving with a child in the vehicle than the additional ten-day suspension currently set forth.

- Termination should be the penalty when a member of the service leaves the scene of an accident when the accident could have resulted in serious injury or death, and the member of the service fails to check on the well-being of other persons who were involved in the accident.

Firearm-Related Incidents

- The presumptive penalty for failing to immediately report an improper firearms discharge should be termination unless there are extraordinary mitigating circumstances.

- The penalty range for failing to promptly report a lost firearm should be greater than the 10- to 20-day penalty range currently in effect.

- A presumptive penalty range should be added for the unjustified off-duty display of a firearm and the presumptive penalty should include dismissal probation. The aggravated penalty should be termination or forced separation.

Violations of Department Rules and Regulations

- The presumptive penalty of 20 days for the purposeful failure to record a prescribed event with body-worn camera is too low. The starting point for this misconduct should be 30 penalty days plus dismissal probation.

- A category should be added for failing to report to IAB the alleged misconduct or corruption of other members of the service. The presumptive penalty for this failure should be between 15 and 20 penalty days.[3]

[3] In May 2023, the Department published proposed changes to the Matrix. One such change was the addition of the misconduct category of "Fail to report misconduct to Internal Affairs." This misconduct has a proposed presumptive penalty of 10 penalty days, which can be decreased to five penalty days if mitigating factors are present or increased to 20 penalty days if aggravating factors are present. As of the publication of this Report, this change had yet to be adopted.

- The guidelines should identify a non-exhaustive list of factors that might warrant an aggravated penalty that includes either dismissal probation or termination for failing to take police action. This list could include: whether the failure resulted in or had the potential to result in injury or death to a person; whether the incident involved an individual who was particularly vulnerable; whether the incident involved a domestic offense, a violent crime, or was part of a pattern; whether there were repeated duty failures; whether the incident involved a supervisory failure; and whether the failure involved a member of the service's effort to hide their own misconduct or the misconduct of another member of the service. We are recommending the addition of "incidents involving domestic offenses" to the list of aggravating factors due to the potential for these types of incidents to escalate quickly with severe consequences and to reinforce the necessity for officers to respond to these incidents appropriately at their outset.

- The guidelines should have specific presumptive penalties added for failing to request the response of a supervisor when required and failing to notify a supervisor of an incident when required.

- The guidelines currently prescribe a penalty range of three to ten days for failing to prepare a required report, with five days as the presumptive penalty. While this may be generally sufficient, we believe that the failure to prepare a complaint report should have a more significant penalty. This report initiates investigations and without the preparation of the report, the appropriate Department unit will not have knowledge of the alleged crime, negating the possibility of an investigation and an arrest. Additionally, commanding officers may not become aware of patterns within their commands and may not deploy their personnel in the most effective manner. On a large scale, failure to prepare complaint reports also obscure the true crime rate.*

- While a schedule C command discipline may be appropriate for vehicle pursuits that are outside Department guidelines and related policy violations in some cases, (p. 55) there should also be a category in the guidelines with an attached penalty range. Often, there is other misconduct associated with unauthorized vehicle pursuits and the pursuit is included with other specifications. Further, a command discipline is not sufficient when the unauthorized vehicle pursuit results in injury to another person. We would recommend that when a pursuit is unauthorized and a person is injured as a consequence of the pursuit, that penalties similar to those for the use of less-lethal physical force be set forth. Aggravating factors could include failing to put the pursuit over the radio, failing to terminate a pursuit when ordered to do so, the consequences of any pursuit, and whether the pursuit was initiated and continued for an insufficient reason given the risk to the public.

Off-Duty Misconduct & Prohibited Conduct Generally

- The presumptive penalty range for causing the incorrect rate of vehicle insurance to be applied should be greater than the 5- to 15-day penalty currently in effect.

- While the guidelines have a category for Unfit for Duty that has a presumptive penalty of 30 penalty days, dismissal probation, ordered breath testing, and cooperation with counseling that can be increased up to termination, that misconduct is contained in the Off-Duty Misconduct & Prohibited Conduct section. Another category should be added for Unfit for Duty while On-Duty that has a more severe presumptive penalty.

Equal Employment Opportunity Division and the Discipline System

- The terms "suggestive sexual touching" and "overt sexual touching/intimate physical contact" should be defined.

- The presumptive penalty for sexual harassment with suggestive touching should be increased from the current 25 penalty days to include a period of dismissal probation.

Command Disciplines

- Schedule C command disciplines should not be available for computer misuse and the dissemination of confidential Department information except in limited circumstances.

- Schedule C command disciplines should also not be available for misconduct involving the misclassification of complaint reports and failing to supervise.

APPENDIX D

DEPARTMENT'S RESPONSE

THE POLICE COMMISSIONER
CITY OF NEW YORK

February 26, 2024

Commissioners
Kathy Hirata Chin, Acting Chair
Jabbar Collins
Howard S. Master
Randall W. Jackson
Freya Rigterink
Benjamin Rosenberg

Executive Director
Marnie L. Blit

Commission to Combat Police Corruption
17 Battery Place
New York, New York 10004

Dear Executive Director Blit:

The New York City Police Department ("NYPD" or "the Department") submits its response to the draft 2024 Report of the Commission to Combat Police Corruption ("CCPC" or "Commission") titled "A Review of the New York City Police Department's Implementation of the Recommendations Made in the 'Report on the Disciplinary System of the New York City Police Department'" (the "Report").

At the outset, the Department appreciates the effort and work that the Commission conducted in order to draft this interim report. The Commission performed a substantial number of interviews of key Department officials, convened a number of meetings, and attended various Department trainings and other events to perform their assessment.

Each and every day, the members of the New York City Police Department work tirelessly to fulfill its vital public safety mission. NYPD officers have a sworn duty to put the safety of others above their own, in a collective effort to drive down crime, quell disorder, and ensure public confidence in the safety and well-being of the community. The NYPD remains committed to building trust and understanding with those we serve through professionalism, transparency, and accountability. While the Department has addressed each of the Panel's recommendations since its 2019 report, the NYPD's effort to create great transparency remains a continual work in progress. It is ever-evolving to reflect the Department's high standards for the policing profession.

CCPC Suggestions Regarding Panel Recommendation 3: The NYPD Should Also Enhance ***its Public Reporting in Line with That of Other Agencies.***

The Department notes that several data points concerning NYPD discipline are readily available through NYC.gov and NYPD Online - most of which was posted in response to the Panel's recommendation. While the Commission assessed that it takes a substantial amount of time to navigate these websites, the Department is happy to work with the Commission and the New York City Office of Technology and Innovation regarding ways to help streamline the user experience.

The Commission stated that one component of the Panel's recommendation - that each Police Commissioner provide an overview in the Department's Annual Discipline Report of their impressions of the disciplinary system and what trainings or policy changes should be considered - has not been done. The Department publishes an annual report regarding discipline in the NYPD.[1] This annual report consolidates data from various NYPD bureaus involved in the disciplinary process. This report features an executive summary which describes the pillars that the disciplinary system is built upon, and the views shared by current Department leadership -- specifically that discipline be imposed fairly and equitably. While these views may be shared by previous Police Commissioners and administrations, they nonetheless capture the current impressions of the disciplinary system. Additionally, the executive summary does provide an overview of the previous year's changes and revisions to the disciplinary system.[2]

CCPC Suggestions Regarding Pane/ Recommendation 5: The Department Should Appoint a Citizen's Liaison.

The Commission suggested that the Department should an assign an executive, or appoint a new executive outside of the Department Advocate's Office (DAO), to act as a citizen liaison in cases involving excessive force that are under internal investigation. Aside from continued efforts to maintain contact with victims, DAO's special knowledge concerning the disciplinary process has sensitized them to the prospective legal concerns regarding making victim inquiries before determinations of wrongdoing by members of the service are made. As such, the Department believes that liaison duties related to disciplinary process should remain housed within DAO.

CCPC Suggestions Regarding Panel Recommendation 7: ***The NYPD Should Adopt Protocols to Insulate Decision Makers from External Pressures and Minimize the Appearance of Inappropriate Influence Over the Disciplinary Process.***

The Commission expressed skepticism that the Department has implemented this recommendation. The Department notes that the Commission credited the former Department Advocate's statement that it is rare for an individual to make contact in effort to advocate for particular members of the service going through the disciplinary process. Nonetheless, DAO personnel do engage in a number internal and external conversations regarding disciplinary

[1] Links to the annual reports can be found at: https://www.nyc.gov/site/nypd/stats/reports-analysis/discipline.page.
[2] For example, see the executive summary contained in the 2022 DISCIPLINE IN THE NYPD REPORT, https://www.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/discipline/discipline-report-2022.pdf.

matters on a formal and informal basis. These conversations often involve providing guidance and advice regarding a discipline inquiry, fact-finding on a particular matter, or to confirm if a member of the service involved in a disciplinary matter may also be the subject of other external, judicial proceedings. The Department believes that requiring informal communications concerning cases be logged is unnecessary. Personnel within DAO should be able to have informal conversations to ask for advice, solve problems, and otherwise conduct their duties without having to log each time that occurs. Instances where pressure may be exerted either from an internal or external source to sway a particular case, would be appropriately logged by a DAO attorney in their current case management system.

CCPC Suggestions Regarding Panel Recommendation 9: The Department Should Take Measures to Expedite Disciplinary Adjudications.

The Department notes at the outset that it is constantly assessing ways to expedite disciplinary adjudications and that the Commission itself states that the NYPD has been reducing the length of its disciplinary investigations since 2014.[3] Additionally, a working group, chaired by the Department's First Deputy Commissioner, was established in 2023 to develop ways to further streamline disciplinary adjudications. The working group has since concluded and is currently in the process of implementing recommendations that intend to expedite disciplinary adjudication times - including expanding the range of misconduct that would eligible for a "C" command discipline and amend the Disciplinary Matrix to reflect this change.

CCPC Suggestions Regarding Recommendation 10: The Department Should Strengthen Enforcement of False Statement Disciplinary Policies.

The Department recognizes that the Commission has performed significant work and analysis on the subject of false statements. The Department's current false statement policy was significantly revised following the Panel's 2019 recommendations. The goal of any internal investigation is to get to the truth. False, misleading and inaccurate official statements are contrary to this goal. The justice system relies on members of the service to provide truthful and accurate information in a wide variety of contexts and circumstances. The functioning of that system, and the public's trust in that system, are both severely undermined by false, misleading and inaccurate statements. Therefore, the penalty for members of the service who are found guilty of making false official statements will be presumed to be termination, absent extraordinary circumstances. as determined by the Police Commissioner on a case by case basis.

While the Department has not adopted every suggestions from the CCPC's extensive work, it continues to strengthen enforcement and guidance surrounding false. misleading, and inaccurate official statements. This is evidenced by the diligent work of the Department's Adverse Credibility Committee as well as courtroom testimony training performed by the NYPD Legal Bureau's Training Unit both of which were credited by the Commission in its report.

[3] New YORK CITY COMMISSION TO COMBAT POLICE CORRUPTION: TWENTY-FIRST ANNUAL REPORT, at 7 (2023), hltps://www.nyc.gov/asscts/ccpddownloads/pdf/2021-Annual-Rcport-with-Exective-Ordcr.pdf.

Conclusion.

The Department is committed to improving the disciplinary process and working with the Commission, and further thanks the Commission for its work in assessing the Department's efforts to implement the Independent Panel's 2019 recommendations.

Best regards,

Edward Caban
Police Commissioner

APPENDIX E

REPLY TO THE DEPARTMENT'S RESPONSE

We thank the NYPD for submitting their written response letter ("NYPD Response" or "Response") dated February 26, 2024 to this Report. What follows is our reply to the Response, which follows the format of the NYPD Response. Any aspect of the Response that is not addressed here should not be interpreted as agreement with the Response; rather, we rely on what we have previously stated in the Report.

Recommendation 5: The Department Should Appoint a Citizens' Liaison

Our suggestion that a liaison be created outside of DAO when the allegations involve the excessive or unjustified use of force or death of a civilian in police custody originated from our conversations with the former Department Advocate. We understood from those conversations that DAO and the Citizen's Liaison do not reach out to the complainant or the complainant's family in these situations prior to receiving a request for charges and specifications as they believe that such contact would be inappropriate before there is a determination that the use of force was wrongful. We agree with DAO's position, but these investigations often take many months. Our suggestion was intended to address the need for this vulnerable population to receive information in a timely fashion.

Recommendation 7: The NYPD Should Adopt Protocols to Insulate Decision Makers from External Pressures and Minimize the Appearance of Inappropriate Influence Over the Disciplinary Process

The Independent Panel recommended that conversations between members of the DAO and anyone outside of the DAO about specific cases before the DAO should be documented.[1] Our Report notes that this recommendation has not been implemented.

The NYPD Response states that requiring the DAO to memorialize even informal communications regarding a case would be extremely burdensome, and further states that DAO personnel do engage in a number of internal and external conversations regarding disciplinary matters on a formal and informal basis. The Response also states that "[p]ersonnel within DAO should be able to have informal conversations to ask for advice, solve problems, and otherwise conduct their duties without having to log each time that occurs."

We continue to believe that further efforts are necessary to implement the Independent's Panel's recommendation. The Independent Panel's stated concerns about external influences, or the perception of external influences,[2] are real and would be effectively addressed with a requirement that

[1] *Independent Panel Report* at p. 50.

[2] *Independent Panel Report* at p. 50. The Panel also noted favorably that the Department Commissioner of Trials had established training for the Trial Commissioner in that office to caution them regarding attending NYPD and other events that might give the appearance the Trial Commissioners were subject to improper influence and required other staff from the office to accompany the Trial Commissioners to such events they attend. *Id*.at fn. 125.

communications between DAO and outsiders about particular cases be documented. We note this recommendation does not require documentation of *internal* conversations among the staff in DAO about particular cases, despite the Response's suggestions to the contrary.

The NYPD Response suggests that "[i]nstances where pressure may be exerted, either from an internal or external source to sway a particular case, would be appropriately logged by a DAO attorney in their current case management system." We do not believe that this is a sufficient substitute for logging all conversations regarding specific cases that occur with individuals outside of DAO because: 1) the Assistant Advocate assigned to the case might not be aware that their supervisor's directions regarding a case were influenced by a source outside of DAO and therefore may not include those conversations in the case management system; 2) this method depends on the Assistant Advocate's subjective belief that they are the subject of pressure to influence a case; and 3) DAO's internal case management system is not open to review by personnel outside of DAO or any outside monitors who review the disciplinary process.

The Independent Panel believed that it was important that members of the service, as well as the public, believe that there is fairness and consistency in the discipline imposed on members of the service. Noting the people who have contact with the DAO regarding specific cases or members of the service, with a brief summary of the nature of that contact, will further this important goal, and will not be unduly burdensome