



NYC

COMMISSION TO COMBAT POLICE CORRUPTION

Twenty-Second Annual Report

of the Commission

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PREFACE

During the drafting and editing process for this Report, there have been several changes to the make-up of the Commission and the Department. This Report does not address those developments except for a brief discussion in the last section, in which we acknowledge the appointment of four new Commissioners in 2023 and discuss certain concerns that we intend to explore further.

When we published the *Twenty-First Annual Report of the Commission*, former Police Commissioner Keechant Sewell had recently resigned from the Department, and her former First Deputy Commissioner, Edward Caban, was appointed as Police Commissioner. Tania Kinsella was appointed as the new First Deputy Commissioner. In September 2024, soon after a warrant reportedly was executed at his home by federal authorities, former Police Commissioner Caban resigned. Interim Police Commissioner Thomas Donlon was appointed immediately following Commissioner Caban's resignation but was replaced by Police Commissioner Jessica Tisch in November 2024. We have met with Commissioner Tisch recently and we believe that she will bring a strong sense of ethics and integrity to the Department as well as equity in treatment among members of the service. We welcome Commissioner Tisch.

With the appointment of Commissioner Tisch, several personnel changes were made within the Department. Former Chief of Department Jeffrey Maddrey announced his retirement as a civil lawsuit charging him with sexual harassment was announced and investigations reportedly were launched by the Southern District of New York, the New York County District Attorney's Office, and the Department of Investigation into allegations against Chief Maddrey, including trading overtime for sexual favors. Chief Miguel Iglesias, who was the Commanding Officer for the Internal Affairs Bureau, was removed from that position and announced his retirement. Soon after, his Executive Officer, Chief Chris Morello, was transferred out of the Internal Affairs Bureau. In addition, everyone assigned to the Special Investigations Unit, the group within the Internal Affairs Bureau that investigates high-ranking employees of the Department, other members of the Internal Affairs Bureau, Integrity Control Officers, and members of the service who are assigned to sensitive positions, were transferred out of the Internal Affairs Bureau.

Commissioner Tisch assigned two former members of the Internal Affairs Bureau, Chief Edward Thompson and Inspector Joseph DiBartolomeo, as the new Commanding Officer and Executive Officer of Internal Affairs respectively. We welcome them back and look forward to working with them again. Based on our past experience with them, we know that they will pursue the facts in every investigation, no matter who the subject is, and provide dispositions that are fair and evidence-based.

Among the changes that have occurred since the publication of our *Twenty-First Annual Report*, one of our long-tenured Commissioners, Jim Zirin, has left our Commission. We thank him for his years of service. A more recently appointed Commissioner, Freya Rigterink, resigned in June 2024. We thank her for her contributions and wish her the best of luck in her new endeavors.

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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 Since its creation, the Commission has accomplished its analysis of these efforts on an annual basis largely through (i) examining a sample of investigations conducted by the Internal Affairs Bureau (“IAB”)² and (ii) reviewing all closed disciplinary cases involving uniformed members of the service. The Commission reports its findings in these areas in its annual reports, noting changes from year to year when relevant. From time to time, we issue special reports on specific topics or at the request of the Mayor’s Office, and we also provide comments in writing with respect to proposed changes in Department policies of particular importance to the mission of the Commission.

This Report, *The Twenty-Second Annual Report of the Commission*, covers the work performed by the Commission with respect to a sample of IAB investigations reviewed during the 2022 and 2023 calendar years. The Commission is not reporting here on the closed disciplinary cases reviewed since January 2022 as we are currently working on an audit of the Department’s overall disciplinary system that will span multiple years. This audit is being conducted pursuant to a Memorandum of Understanding (“MOU”) between the New York City Police Department and the Commission that was executed in November 2019. This agreement

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.

followed a recommendation by the Independent Panel on the Disciplinary System of the New York City Police Department (“the Independent Panel”) that the Department retain external experts to conduct periodic audits of the disciplinary system.³ We hope to publish our findings from that audit in late 2025.

The Commission concludes this Report with descriptions of some of our other work conducted in 2022 and 2023. We also include further details regarding our multi-year disciplinary audit.

³ The Report of the Independent Panel on the Disciplinary System of the New York City Police Department (January 25, 2019) (“Independent Panel Report”) at p. 60.

CASE CATEGORIES

In analyzing IAB investigations and the disciplinary cases, the Commission utilizes the following categories of misconduct:

Bribery/Gratuities: Accepting or soliciting anything of value in exchange for favorable treatment, or accepting or soliciting any improper gifts, meals, merchandise, currency, or other item of value.

Computer Misuse: Unauthorized access to and/or dissemination of information from a Department or law enforcement database.⁴

Criminal Association: Associating with, and/or disclosing confidential information to, individuals known to have a criminal history or known to be engaging in criminal activities.

Domestic Incident: Misconduct involving a member of the service and a family member or someone with whom the member of the service had a present or past intimate or familial relationship.⁵ This category includes verbal disputes requiring the intervention of law enforcement, harassment, physical assaults, stalking, and violations of protective orders.

DWI/Unfit for Duty: Driving while intoxicated or impaired or being intoxicated to the extent that the member of the service is unfit for duty, regardless of whether the member of the service is on or off duty.

FADO: On-duty excessive or unnecessary force or threatening use of force, abuse of authority, discourtesy to civilians, and offensive language.

Failure to Report Misconduct/Corruption: Failure to report known or suspected allegations of wrongdoing to IAB as required in the Patrol Guide.⁶ This category also includes the failure to notify the Department of the officer's own involvement in an off-duty unusual police incident.⁷

Firearms: Firearms-related misconduct, including improper display (off-duty), improper discharge (on or off-duty), failure to safeguard (on or off-duty), and possession of unauthorized firearms.⁸

Harassment/Improper Contact: Workplace harassment between members of the service, or harassment of, and/or improper contact with victims, witnesses, or suspects.

⁴ The Commission excluded from this category using Department computer equipment to send personal e-mails or to conduct non-Department related internet searches. That type of misconduct is included in the Performance of Duties category, as the subject officer is improperly engaging in personal activities while on duty.

⁵ This category includes incidents involving the current "significant other" of an ex-romantic partner or the ex-partner of a current boyfriend/girlfriend.

⁶ Patrol Guide §207-21 "Allegations of Corruption and Other Misconduct Against Members of the Service."

⁷ Patrol Guide §212-32 "Off Duty Incidents Involving Uniformed Members of the Service."

⁸ The unjustified on-duty display of a firearm is included in the FADO category.

Insubordination: Defiance of a supervisor’s authority, discourtesy toward a supervisor, and failure to obey a lawful order.

Minor Rules Violation: Misconduct related to adherence to post assignments and paperwork requirements, including failing to maintain or record adequate memo book entries.

Narcotics: Possession, use, or trafficking of illegal drugs, or the improper possession, use, or sale of prescription medication. This category includes charges related to a Department drug test failure or the refusal to take such a test.

Performance of Duties: Nonfeasance of duty. This category includes failure to investigate, failure to respond, failure to supervise, failure to appear in court or offer adequate testimony, and failure to take police action.

Perjury/False Statements: False, misleading, or inaccurate statements, regardless of the intent of the member of the service, including those made under oath or in an official Department or CCRB interview, false or inaccurate entries in Department records, and false statements to prosecutors or other investigative bodies.

Property: Missing or stolen property. Broadly includes property missing/stolen/improperly released during any interaction with members of the public, or property missing/stolen from a Department facility, vehicle, etc. This category also includes allegations related to the handling of personal or Department property or evidence including failure to safeguard, failure to voucher, failure to secure, and damage to property.

Tow/Body Shop: Unauthorized business referrals and/or improper associations with tow or body shop businesses. Also includes allegations of not adhering to the Department’s Directed Accident Towing Program (“DARP”) procedures.

Unlawful Conduct: Unlawful acts not otherwise categorized.

Miscellaneous: Misconduct that does not readily fit into any of the other categories, including sick leave violations and engaging in unauthorized off-duty employment.

MONITORING IAB INVESTIGATIONS

A. Commission Oversight

The Commission's independent, external scrutiny of IAB's investigations provides City officials, Department executives, and the public with a detailed assessment of IAB's investigative competency. Equally important, the Commission's critiques of investigations can and do lead IAB to improve its practices, provide additional training to its investigators, and in particularly serious cases, re-examine its own thoroughness and take additional investigative steps.

The Commission provides its oversight in four main ways. First, the Commission's members and staff attend IAB's monthly briefings to the Police Commissioner and the Police Commissioner's executive staff.⁹ At these briefings, IAB typically presents details of two ongoing investigations. Until 2023, these cases were chosen by our Executive Director, who selected particular cases because of their overall significance, or to highlight corruption issues and trends that have been observed through our other monitoring efforts. Beginning in the middle of 2023, IAB has asked for suggestions from our Executive Director but has made the final decisions regarding which investigations are presented. During these briefings, Commissioners and Commission staff ask questions about the cases presented, make suggestions for further investigative action, and convey any concerns directly to the Police Commissioner. The Police Commissioner and other Department executives also pose questions and make investigative or disciplinary recommendations.

⁹ In 2022, with the appointment of a new Police Commissioner and a new Commanding Officer to IAB, these briefings occurred less frequently. In the second half of 2023, we were able to resume an approximately monthly schedule. The Police Commissioner's executive staff includes the First Deputy Commissioner, the Chief of Department, the Police Commissioner's special counsel, the Deputy Commissioner of Legal Matters, the Police Commissioner's Chief of Staff and other executive members of the Department.

Second, the Commission's staff (and occasionally Commissioners) attends IAB Steering Committee meetings at which each IAB group¹⁰ presents brief summaries of its most serious pending investigations. The Steering Committee is comprised of the executive staff of IAB, including the Commanding Officer of IAB, the Executive Officer of IAB, the Commanding Officer of IAB's Support Services Division, the Commanding Officer of IAB's Criminal Investigations Division, and the Commanding Officer of the Special Operations Division. In 2022, each IAB group presented at Steering Committee meetings three times per year. In 2023, the number of steering committee meetings for most groups was reduced to twice a year. The Steering Committee questions the commanding officer and their team regarding investigative steps and results and recommends future investigative actions. Commanding officers also identify patterns of corruption or serious misconduct within their areas of responsibility and discuss proactive measures to uncover corruption, serious misconduct, or other violations of Department rules. The Commission's presence at IAB Steering Committee meetings provides us with an overview of the most serious cases being investigated by IAB and the progress of those investigations. It also alerts the Commission to current concerns of IAB executives and upcoming investigative changes at IAB. We attended 54 Steering Committee meetings in 2022. In 2023, we attended 39 Steering Committee meetings.¹¹ We found the Steering Committee's oversight to be detailed, reflecting appropriate concern with detecting—and proving—corruption and wrongdoing by members of the service.

¹⁰ IAB is currently comprised of 23 investigative groups. Some of these groups cover a specific geographic area of New York City, while others investigate cases involving specific groups of members of the service or certain types of misconduct. Four of the groups primarily provide support services for the other investigative groups. Group 9, IAB's overnight call-out group, does not carry its own caseload and therefore does not make presentations to the Steering Committee.

¹¹ In 2023, the group that investigated Police Impersonations was disbanded and a new group was formed to investigate allegations of sexual misconduct made against members of the service. That group was not fully operational until the last quarter of 2023 and, as of the drafting of this Report, had not presented their cases at a Steering Committee meeting. The number of meetings we attended in 2023 decreased because IAB reduced the number of meetings for most of the investigative and support groups to twice per year.

The third method we use to monitor the work of IAB is attending case reviews, which are usually held once or twice per year for each IAB group at the individual IAB field offices. During these reviews, the group's commanding officer presents their entire active caseload to the zone supervisor¹² and Commission staff, who ask questions and provide investigative recommendations.¹³ Case reviews enable the Commission to keep abreast of almost the entire IAB caseload. Commission staff attended 19 case reviews in 2022 and 22 case reviews in 2023.

While Steering Committee meetings and case reviews provide the Commission with an important understanding of IAB's operations and investigations, these reviews usually do not reveal all of the details of those investigations, some of which the Commission finds significant. Therefore, as discussed in the next section, the Commission conducts more in-depth and independent reviews of IAB's investigations through our fourth method of monitoring: closed case monitoring.

B. The Commission's Review of Closed IAB Investigations

For this Report, the Commission reviewed 46 IAB investigations that were closed in 2022 and 35 IAB investigations that were closed in 2023 to evaluate whether they were fair, thorough, accurate, and impartial.¹⁴ We concentrated on whether adequate and appropriate

¹² IAB's investigative groups are divided into three zones: 1) the four investigative groups that cover Manhattan and the Bronx; 2) the six investigative groups that cover Queens, Brooklyn, and Staten Island; and 3) the five investigative groups that cover detectives (two groups divided by geography), traffic agents, school safety agents, and allegations concerning the wrongful use of force. Each zone has a zone commander who reviews most of the investigations prior to their closure. In addition to the three zones, there are also special investigation groups which consist of Groups 1, 25 and beginning in 2023, Group 51. Additionally, the four support groups, as well as IAB Intel, report to supervisors who are not in one of the three zones.

¹³ The Commission staff does not attend case reviews for Groups 2, 7, 9, 52, and 55, as these groups primarily provide support services for other investigative groups. The Commission staff also does not attend case reviews for the Special Investigations Unit and Group 25, as they present their entire caseloads at their specific Steering Committee meetings. Finally, the Commission staff does not attend case reviews for Group 51, which during calendar year 2022, investigated impersonations of members of law enforcement.

¹⁴ IAB considers a case closed after the investigation is completed, including reviews by supervisory IAB personnel. If allegations are substantiated and there is a determination that administrative charges are warranted, the case is referred to the Department Advocate's Office (DAO) for prosecution of those charges, but the IAB

investigative steps were taken, whether the results of those steps were properly analyzed, and whether the ultimate investigative findings were fair and proper based on the evidence obtained. Where an investigation involved multiple allegations of wrongdoing, we evaluated the disposition of each allegation.

We comment below on significant shortcomings that appear in individual cases, as well as more minor deficiencies found in multiple cases. Minor issues that are only found in a single case are not highlighted. As we prepare each annual report for publication, we meet with IAB executive staff to alert them to each of the areas for improvement that we plan to include in our report and also discuss those minor issues that we have noted in isolated investigations. We provide a draft of our Report to the Department for comment prior to its publication.

1. General Analysis of Closed Investigations

The Commission randomly chose investigations from IAB closed case lists that identified only the case number and the investigative group.¹⁵ The Commission reviewed investigations from multiple IAB groups to obtain an overall sense of the adequacy of IAB's operations across commanding officers, investigators, and case allegations.

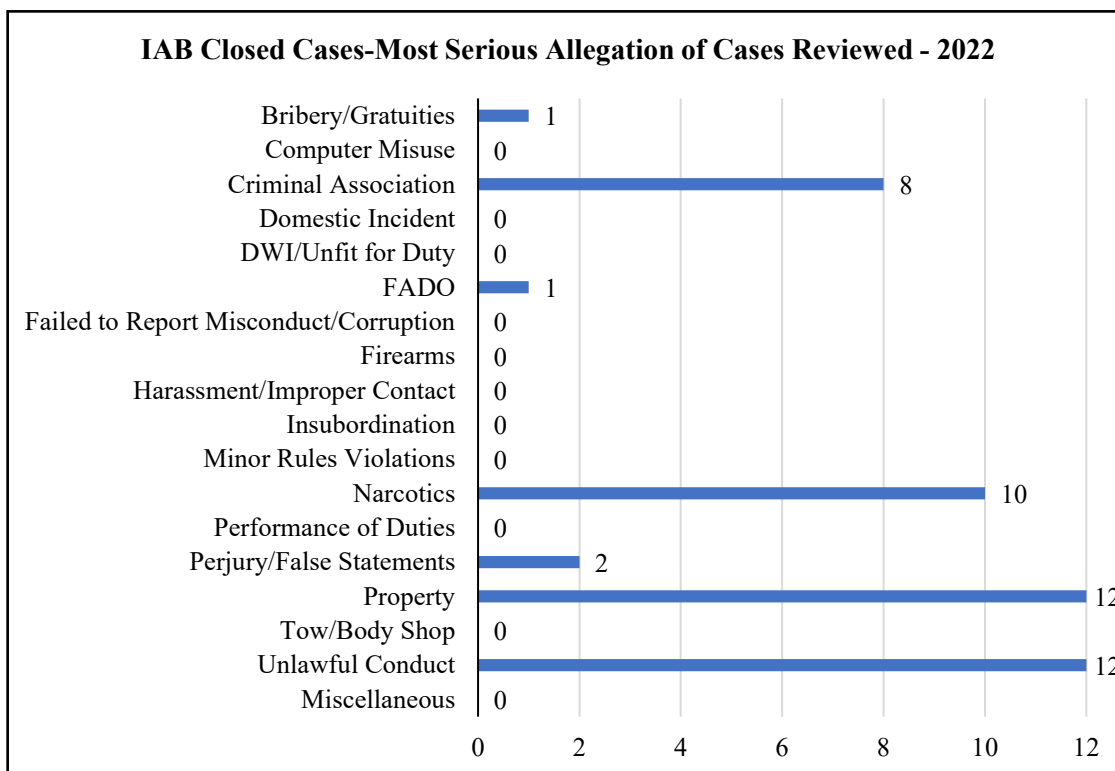
A majority of the cases we reviewed involved multiple members of the service and multiple allegations of misconduct. In 2022, the 46 cases reviewed involved 93 subjects and 222 separate allegations.

investigation will be closed. IAB investigations will also be closed when there is a determination that no further action by IAB is necessary. DAO is the bureau within the Department responsible for filing and prosecuting charges and specifications against officers accused of misconduct. Charges and specifications are the most serious form of discipline. If found guilty of (or if the subject pleads guilty to) any of the charges, the subject can be suspended, forfeit vacation days, be placed on probation, or be separated from the Department.

¹⁵ We also reviewed several cases that were not randomly selected for a study we are currently conducting. More information about that study can be found at *infra* at pp. 100-101. Those cases reviewed for this study were not included in the total number of investigations we reviewed for this Report.

In 2023, the 35 cases reviewed involved 76 subjects and 196 allegations. For each case, we identified one allegation for purposes of case categorization as the most serious allegation.¹⁶

A breakdown of the most serious allegations for cases reviewed in 2022 appears in the following chart.¹⁷



Consistent with the Commission’s observations in past years, property allegations represent the most common allegation that IAB investigates. The next two most common allegations were unlawful conduct, consistent with findings in our prior reports, and narcotics, which increased in prevalence from our most recent past reviews.¹⁸

¹⁶ See *supra* at pp. 3-4 for a complete list of case categories along with the types of cases included in each category.

¹⁷ Because only one allegation per case was identified as the most serious allegation, an indication of “0” on a chart does not necessarily mean that IAB did not investigate any such allegations, only that it was not the most serious allegation investigated in the case. Also, it should be noted that allegations of Domestic Incidents, DWI/Unfit for Duty, Firearms, and Insubordination are not typically investigated by IAB.

¹⁸ *Nineteenth Annual Report of the Commission* (“*Nineteenth Annual Report*”) (December 2019) <https://www.nyc.gov/assets/ccpc/downloads/pdf/Annual-Nineteen-Report.pdf> at pp. 15-16; *Twentieth Annual Report of the Commission* (“*Twentieth Annual Report*”) (June 2022) <https://www.nyc.gov/assets/ccpc/downloads/pdf/Annual-20-FINAL-6-23-22.pdf> at pp. 14-15.

As the number of narcotics investigations increased significantly from our prior reviews, we provide a brief analysis of these cases. There were 10 cases that we categorized as narcotics-related. Four of those cases involved members of the service failing drug tests. Three of these cases were substantiated: two of the officers tested positive for marijuana and one tested positive for Diazepam, a prescription drug for which the officer did not have a valid prescription. The fourth officer's allegations were closed as information and intelligence¹⁹ as the officer's positive test for alcohol and marijuana was conducted by a rehabilitation center whose tests were not aligned with Department standards. A test given the following day by the Department's Medical Division was deemed a pass.

Two officers were alleged to be under the influence of narcotics, marijuana, and/or alcohol while on duty. Both of those complaints were made anonymously and were eventually unsubstantiated by IAB. The Commission agreed with these dispositions. There was a third case, also initiated by an anonymous complainant, alleging that an officer smoked marijuana off-duty. That case was also unsubstantiated, and the Commission agreed with that disposition.

The final three cases all involved different scenarios. In one, a doctor in the Department's Medical Division was identified during a federal investigation into a former member of the service. This doctor had been prescribing narcotics to the former member of the service on a routine basis. The United States Attorney's Office, which was conducting the investigation in conjunction with IAB, determined that there was no criminality on the part of the doctor and the case was closed as unfounded.

In the second case, the complainants alleged a parolee and his brother sold narcotics and the subject officer provided information to aid them in escaping detection. In his official

¹⁹ See *infra* at p. 21. The descriptions of other possible dispositions can also be found on this page.

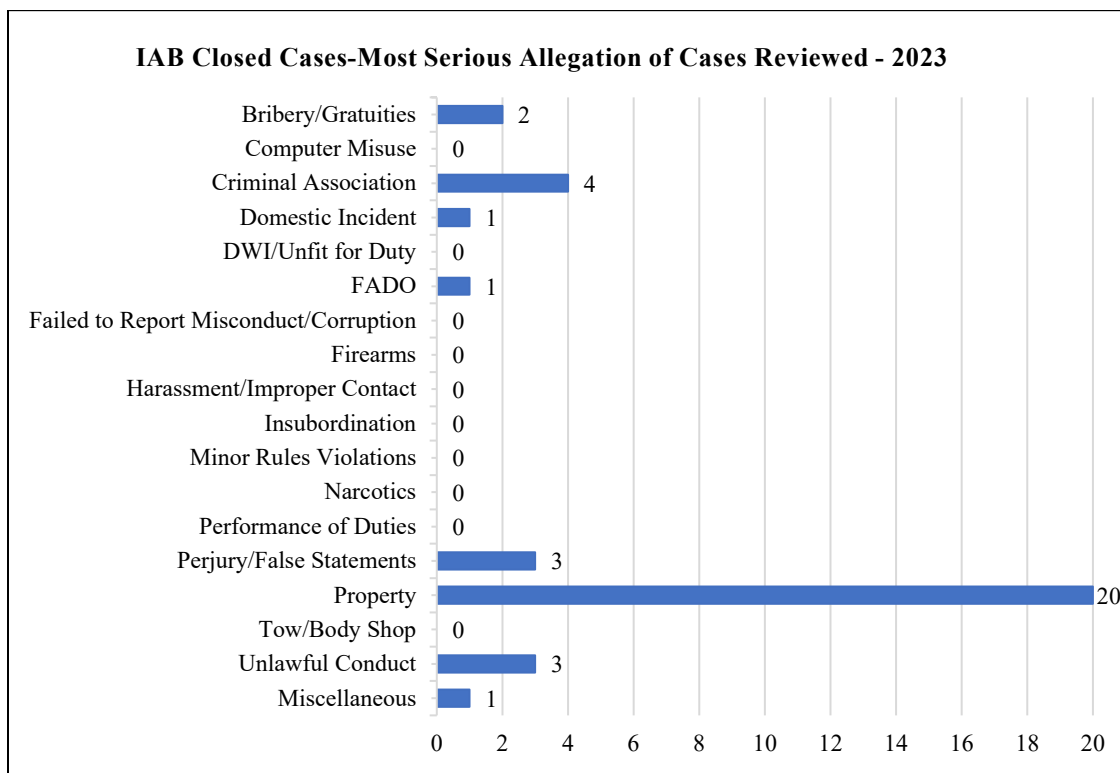
Department interview,²⁰ the subject officer identified the parolee and his brother as his wife's relatives but denied ever meeting them or engaging in the alleged misconduct, and the case was closed as unsubstantiated. The final case was reported to IAB after two law enforcement agencies working together executed a search warrant on the home where the subject officer had been living with her fiancé who was the target of their investigation. Among other items recovered were cocaine packaged for sale and equipment to press pills. The subject officer was not in the house when the warrant was executed but was alleged to have tried to leave the location with the fiancé's cell phone after she was alerted to the presence of law enforcement at the location. The subject, when interviewed, denied any knowledge of her fiancé's illegal activities and also denied knowing about the drugs or pill press that were recovered from the home. All but one of the allegations against the subject officer were substantiated at the conclusion of the IAB investigation; however, five of these allegations were dismissed by the Department Advocate's Office ("DAO") prior to the administrative trial. The subject officer pled guilty to failing to safeguard her firearm and failing to notify the Department of her address change and was forced to separate from the Department.

The Commission also examined the number of narcotics allegations made to IAB during the calendar years 2020 through 2023.²¹ While allegations involving narcotics decreased from 2020 to 2022, they slightly increased in 2023. Narcotics was the second most prevalent allegation made to IAB in 2020 through 2022 but fell to fourth most prevalent in 2023. Therefore, the increase of narcotics allegations that we observed in our 2022 review appears to have been an anomaly.

²⁰ Administrative Guide §318-11 requires members of the service to answer all questions posed to them in official Department interviews and warns that failure to do so can result in suspension and/or discipline including termination.

²¹ The Commission looked at these specific years because eight of the ten investigations reviewed began in either 2020 or 2021. The remaining two investigations began in 2018 and 2019.

This is further supported by our 2023 review, described below. A breakdown of the most serious allegations of the cases we reviewed in 2023:



Again, property was the leading allegation, followed by criminal association, perjury/false statements, and unlawful conduct. This is consistent with our prior reviews of closed investigations.²² Notably, there were no investigations that we reviewed in 2023 in which the most serious allegations involved narcotics. One reason for this substantial decrease is that in 2023, we decided to no longer include cases involving a failed Department drug test as part of our case sample. We chose not to do so because the investigations into these drug failures are straightforward, and we believed that their inclusion inflated the substantiation rate we reported. We did not believe that the substantiation of failed Department drug tests was an accurate reflection of IAB’s substantiation of its entire caseload.

²² *Twenty-First Annual Report of the Commission* (“*Twenty-First Annual Report*”) (July 2023) <https://www.nyc.gov/assets/ccpc/downloads/pdf/2021-Annual-Report-with-Executive-Order.pdf> at p. 6; *Twentieth Annual Report* at pp. 14-15; *Nineteenth Annual Report* at pp. 15-16.

The inclusion of these cases also inflated our satisfaction rate with investigations as in almost all of these investigations, the Commission was satisfied with the investigative steps performed.²³

a) Investigation Length

Pursuant to state statute, to impose discipline, the NYPD must administratively charge a subject officer within 18 months of the last date that the alleged misconduct occurred.²⁴ If charges are not served upon a member of the service within this statute of limitations (SOL), the opportunity to impose discipline for the misconduct is generally lost.²⁵ Therefore, it is important that investigations be conducted expeditiously to ensure that substantiated misconduct can be addressed in a meaningful manner.²⁶ Swift investigations are also important for other reasons. For discipline to have the greatest effect, it should be imposed as soon after the misconduct as possible. In addition, delays leave members of the service in limbo, with possible charges and discipline potentially affecting advancement opportunities. As a general matter, prompt investigations should also result in better, more definitive dispositions for most cases, as physical evidence is more likely to be preserved, and witnesses' memories are more likely to be accurate.

The Commission analyzed the length of the IAB investigations reviewed during both reporting periods from the start of each investigation (when the Department received notification of the allegations) until the conclusion (when the case was closed, each allegation was given a disposition, and the IAB supervisory review process was completed.) As part of its analysis of the investigation length, the Commission examined whether the Department had lost the

²³ See *infra* at pp. 27-28 for a discussion of the Commission's satisfaction rate.

²⁴ N.Y. Civil Service Law §75(4). This statute of limitations does not apply in cases where the alleged misconduct would constitute a crime if proven in a criminal proceeding.

²⁵ For less formal command disciplines, the discipline must be fully adjudicated prior to the SOL's expiration. See *infra* at p. 46, fn. 65 for further details regarding command disciplines.

²⁶ If the SOL expires prior to the service of charges and specifications or the imposition of other discipline, a letter of instruction can be placed in the individual's personnel file; however, no penalty can be imposed.

opportunity to impose discipline for any misconduct due to expiration of the SOL and assessed whether any investigation remained open longer than necessary based upon the allegations and the investigative steps conducted.

The investigations reviewed in 2022 averaged 8.9 months, with the shortest investigation lasting one month, and the longest lasting 36 months. All but four cases (92%) were completed within 18 months. The average length of investigation during this review period was shorter than any of our reviews during the last eight years. This is a notable improvement as cases appear to be more consistently investigated, with fewer periods of non-investigative activity, and call-out investigations are more in-depth and collect much of the evidence in the first days of the investigation.²⁷

The four investigations that were pending longer than 18 months involved either complex issues, multiple subject officers, numerous allegations of misconduct, ongoing criminal investigations, related criminal prosecutions, the potential for criminal prosecution, or a combination of these factors.²⁸ The Commission believed that the investigative lengths in three of these four cases were reasonable given the complexity of the cases, the number of complainants, and the concurrent criminal investigations that were conducted.

In one case, the original allegation against the subject officer was endangering the welfare of a child, based on the subject's sexual misconduct with a ten-year-old child. During the course of the 20-month investigation, seven other child victims were identified, and these

²⁷ A call-out investigation is a preliminary investigation conducted by IAB, usually by the group that will be assigned the investigation. In this preliminary investigation, the complainant and other witnesses are typically interviewed, video is collected, and Department paperwork is reviewed. At the conclusion of this preliminary investigation, IAB determines whether further investigative steps are necessary, or the case can be closed.

²⁸ Often IAB investigative delays are attributable to the relevant District Attorney's Office's delayed determination regarding whether the office will proceed criminally against a subject officer. In deference to the criminal prosecutors, IAB investigators may delay taking any investigative measures that could jeopardize a potential prosecution.

allegations were incorporated and investigated as part of the original allegations. IAB also worked with two separate District Attorneys' Offices as the crimes were committed within different jurisdictions. At the conclusion of the investigation, the allegations were substantiated, the subject officer was arrested twice, and he resigned from the Department.²⁹

A second case was pending for 30 months. In that case, the subject officer was alleged to have tried to determine the identity of a confidential informant with the objective of disclosing their identity to the family of an associate who had been arrested. Most of the investigation took place during the pandemic, which contributed greatly to the delay as IAB was working closely with a District Attorney's Office whose personnel were working remotely. Investigators relied on the assigned Assistant District Attorney to issue several subpoenas for financial records, which were then analyzed by a supporting IAB group. Several surveillances were also conducted on various people and locations. It took approximately 15 months from the start of the investigation to the arrest of the subject officer. IAB spent the following 13 months monitoring the criminal prosecution of the subject officer. There were numerous adjournments during this prosecution due to the ongoing pandemic. The investigation was closed approximately two months after the subject officer pled guilty to disorderly conduct and received a conditional discharge. The subject officer resigned prior to the conclusion of the investigation. One allegation of unauthorized off-duty employment had to be addressed with a letter of instruction because the SOL expired during the course of the investigation. All of the other more serious allegations were substantiated within the SOL period.

In the third case, the investigation into a Department Surgeon for overprescribing narcotics was part of a larger investigation conducted by federal law enforcement.³⁰ The

²⁹ After the IAB investigation was closed, the subject officer pled guilty to criminal acts involving four children and was sentenced to eight years in prison.

³⁰ This case was discussed *supra* at p. 10.

Department Surgeon was not the subject of that investigation, and the federal authorities believed that no wrongdoing was committed on his part. At the end of the three-year investigation, which resulted in arrests and convictions of other participants, IAB closed the allegation against the Department Surgeon as unfounded.

The last case involved a 25-month investigation that commenced when the subject officer was arrested after committing a burglary and stealing a duffle bag containing ten pounds of marijuana. There was a second subject officer with the sole allegation of criminal association, which was ultimately unsubstantiated. Although the first subject officer resigned from the Department on the day he was arrested, IAB continued working with federal law enforcement to gather evidence for the criminal prosecution and refrained from interviewing the second subject whose union courtesy card had been found in the possession of the first subject's co-defendant. The first subject was criminally prosecuted and sentenced to 84 months imprisonment, the statutory minimum, followed by two years of supervised release. Despite the successful outcome of this investigation, we believed that there were some gaps in the investigation that unnecessarily prolonged the case.

For the cases reviewed in 2023, the average length of investigations increased to 10.4 months; however, this increase in average length was caused by one investigation that was pending for 73 months. When this case was excluded from calculations, the average length of time that investigations were pending decreased to 8.6 months, which was shorter than the average length for 2022. The Commission notes that the new administration within IAB has stressed the need for investigations to be expeditious yet thorough, and it appears that message is being heeded by investigators.

In our 2023 review, the shortest investigation was two months. There were two investigations that were pending for longer than 18 months. One investigation was pending for 20 months. That case involved an officer who wrongfully prepared a report that contained false information. Though there was no criminal prosecution, the subject officer received charges and specifications for computer misuse, making inaccurate entries in a Department record, failing to make accurate entries in his memo book, violating the Department's paid detail guidelines, disclosing confidential information, and falsifying official records. He pled guilty to that case and another case involving violating Department motor vehicle rules and was placed on dismissal probation and forfeited 85 vacation days.³¹

The case that was pending for 73 months was not complicated on its face but involved a myriad of legal complications. In 2017, during preparation for a civil trial, the subject officer admitted to an attorney with the New York City Law Department that he had previously lied in Department reports, during Grand Jury testimony, and during a civil deposition regarding the exact circumstances surrounding his shooting of a civilian that had occurred in 2009. During the course of this investigation, several factors, including the pandemic, contributed to the length of the investigation. The most significant factor involved discovery issues between the New York City Law Department and the District Attorney's Office that prosecuted criminal charges against the subject officer. None of these issues were under the control of IAB. Prior to the conclusion of the investigation, the subject was terminated from the Department.³²

³¹ A member of the service placed on dismissal probation is nominally considered dismissed from the Department, but that dismissal is held in abeyance for at least one year. During this period, the member of the service continues to be employed by the Department; however, should they engage in any further misconduct, the Department has the discretion to terminate their employment without any further hearings. At the successful conclusion of the dismissal probation period, the member of the service is restored to their former status.

³² The criminal prosecution ended with a mistrial after the jury could not reach a unanimous decision. The District Attorney's Office stated its intent to retry the subject.

Even in those investigations that were concluded within the SOL period, we looked at whether there were lengthy gaps between investigative steps to determine whether these investigations could have concluded earlier. The longer an investigation continues without meaningful work being performed, the less likely it becomes that a definitive disposition will be reached. Additionally, the longer an investigation is open without significant progress, the more likely it is that the individual investigator's caseload will increase. In past reviews, gaps between investigative steps have been an area of concern and the Commission previously stressed the importance of this issue to IAB. Both the former and current Commanding Officers of IAB have agreed that these types of gaps in investigations are unacceptable and have stressed to investigators that they should not occur.

There was only one case we reviewed in 2022 for this Report that we believe had unnecessary and unexplained gaps. That case was open for 25 months and was discussed earlier in this Report.³³ Although that was the only case with lengthy gaps between investigative steps, there was also one other case in our 2022 review that we believed could have been concluded earlier. In that property case, most of the investigative steps were conducted during the preliminary call-out investigation, but the case was open for 16 months. We believe that had the remaining investigative steps been conducted in a more consistent manner, a disposition could have been reached much sooner. While the missing property allegations were unsubstantiated, discipline was imposed for failing to safeguard an arrestee's property, failing to properly activate body-worn cameras, and failing to properly complete a property clerk invoice.³⁴

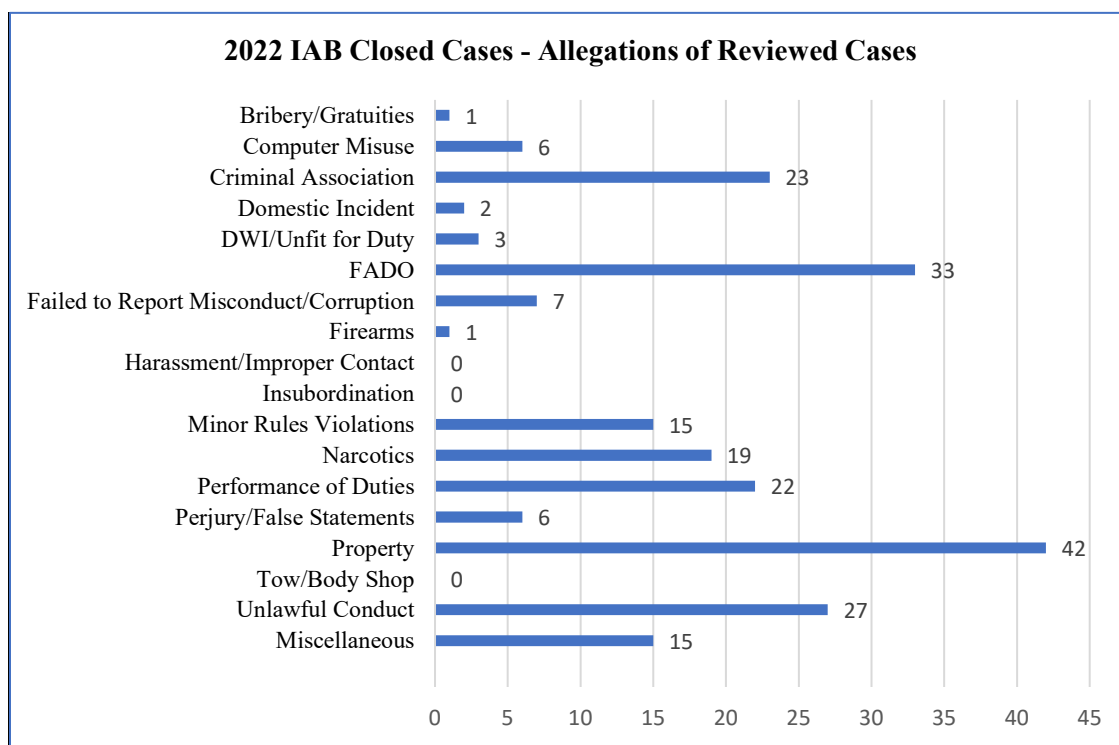
³³ See *supra* at p. 16.

³⁴ This was due to the subject officer failing to invoice all of the property found in the complainant's vehicle. Instead, the officer placed the property in a plastic bag and handed it to the complainant's son, without noting exactly what property was in the bag. This case is discussed in further detail *infra* pp. 60-61.

In 2023, the Commission witnessed IAB executives alerting group commanding officers about gaps that they found while reviewing pending investigations. While we hope that these reminders are effective in the future, there were eight investigations that we reviewed in 2023 that had unexplained gaps of longer than 30 days.

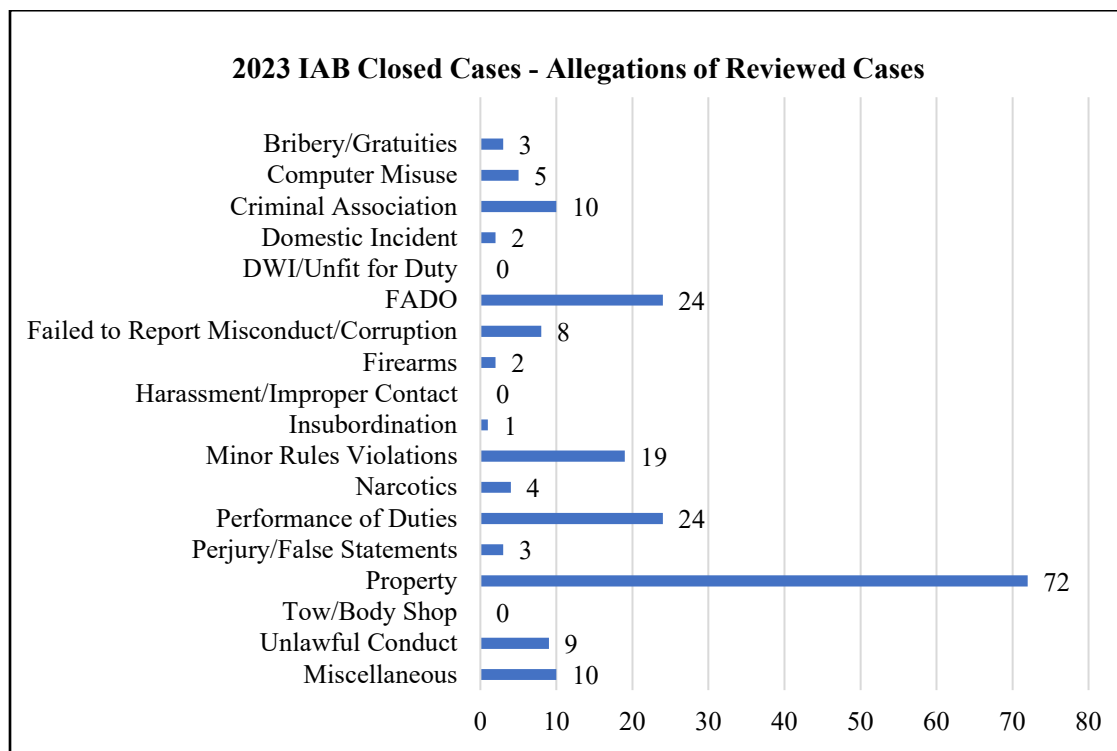
b) Types of Allegations

Of the 222 individual allegations of misconduct included in the cases the Commission reviewed in 2022, the three most prevalent allegations - as opposed to the most serious allegations - involved property, FADO,³⁵ and unlawful conduct. The allegation of performance of duty, which was one of the top three allegations in our 2021 case review, was the fifth most common allegation. A breakdown of all allegations investigated in the 2022 cases are set forth on the chart below.



³⁵ FADO is an acronym for Force (unnecessary or excessive), Abuse of Authority, Discourtesy, or Offensive Language. Of the 33 FADO allegations in the cases reviewed by the Commission, the majority, 20, involved abuse of authority. Eight involved allegations of the wrongful use of force, three involved offensive language, and the remaining two involved discourtesy.

Our 2023 review of closed investigations contained 196 total allegations, reflected by category in the table on the chart below:



The three most prevalent allegations during this review were property, performance of duty, and FADO allegations.³⁶ Unlawful conduct fell behind the categories of minor rules violations, (which in all but one case involved memo book issues), criminal association, and miscellaneous.

The number of allegations in each case category differs significantly from year to year because we review a random sample of cases, and these figures do not reflect the total number of each type of allegation made in a given year. Most of the allegations in each category in the cases we reviewed decreased,³⁷ which would be expected given that there was a decrease in the number of allegations in the 2022 cases reviewed and a further decrease in both the number of

³⁶ Twenty of the FADO allegations involved abuse of authority and four involved the wrongful use of force.

³⁷ The 46 investigations that we reviewed in 2021 contained 466 allegations in total.

cases and the corresponding allegations in the 2023 cases reviewed. A decline of note was in the perjury/false statements allegations. In our 2021 review, we observed 46 allegations of perjury/false statements, while in our 2022 review, there were only six, and in our 2023 review, there were only three. This may merely be a consequence of the random selection of investigations we reviewed, but it could also be that IAB did not perceive when officers made false, misleading, or inaccurate statements in official Department interviews and failed to add this particular allegation to the investigation.

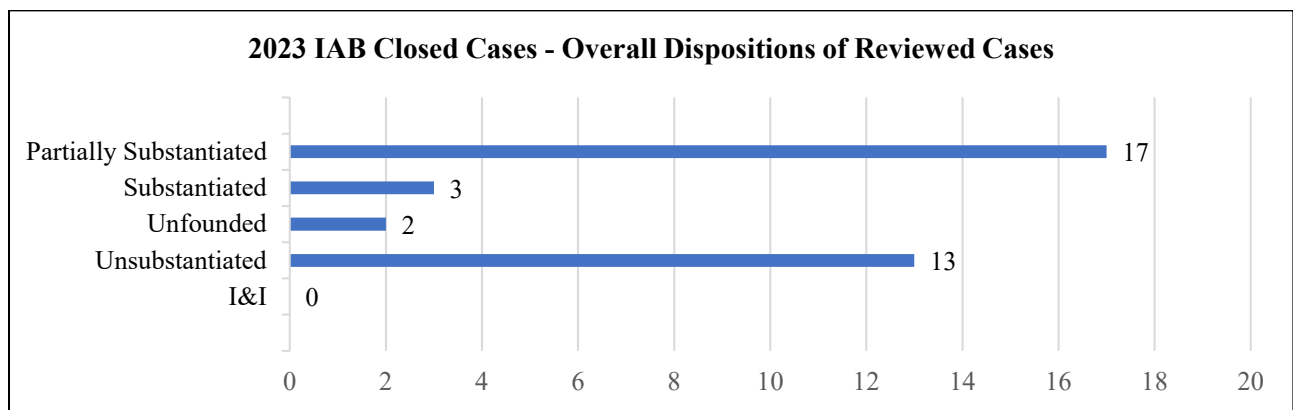
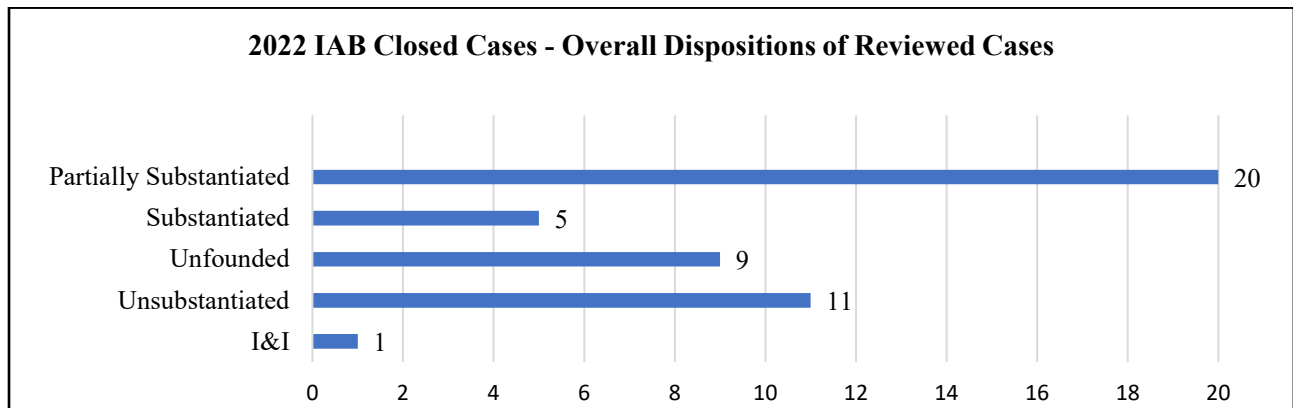
c) Dispositions

At the conclusion of an investigation, IAB typically assigns one of six dispositions to each allegation and another to the overall case.³⁸ They are:

- ***Substantiated:*** The investigation determined that the subject committed the act of misconduct alleged. As applied to the overall case, the accused member of the service committed all the acts of misconduct alleged.
- ***Partially Substantiated:*** The investigation determined that the subject committed some of the acts of misconduct alleged. A *Partially Substantiated* disposition only applies to the overall disposition of the case, not to individual allegations.
- ***Unsubstantiated:*** The investigation was unable to clearly prove or disprove that the alleged misconduct occurred.
- ***Exonerated:*** The investigation clearly proved that the subject was involved in the incident, but his or her conduct was lawful and proper.
- ***Unfounded:*** The investigation found that the alleged misconduct did not occur, was not committed by the subject of the allegation, or was not committed by members of the NYPD.
- ***Information & Intelligence:*** The investigation found insufficient evidence to substantiate the allegation, but IAB is tracking the conduct alleged for intelligence purposes, or the allegation constituted minor misconduct and the subject's command addressed the misconduct at IAB's request. All allegations investigated by CCRB, which the Commission does not analyze, also receive this disposition.

³⁸ These are the most common dispositions given to allegations, but there are other possible dispositions, such as substantiated-no further discipline, which are used less often.

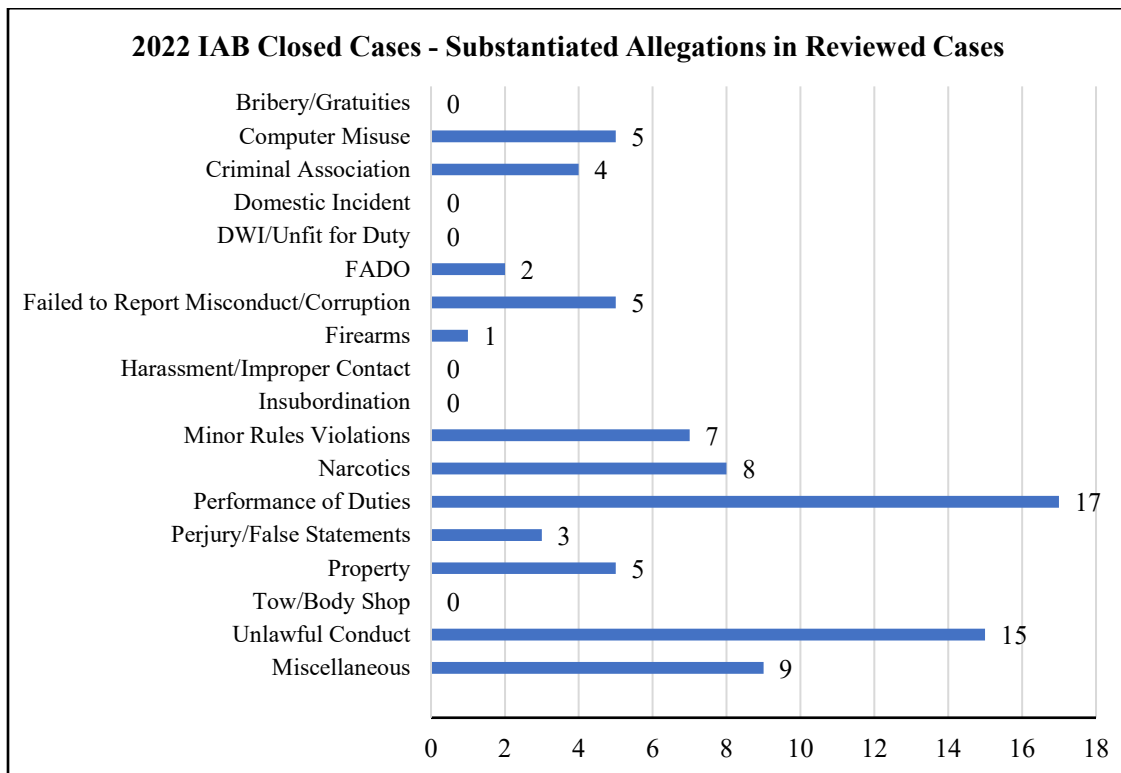
The charts below depicts the overall case dispositions for the cases we reviewed.



d) Substantiated Allegations

IAB closed investigations with at least one substantiated allegation in 25 of the 46 cases reviewed in 2022 (approximately 54%) and in 20 of the 35 cases reviewed in 2023 (approximately 57%). This is a decrease in IAB's substantiation rate for at least one allegation as compared to those cases reviewed for our prior report covering calendar year 2021 (67%), although it was still higher than prior years, when the rates were 35% (2017), 30% (2018), 42% (2019), and 52% (2020).

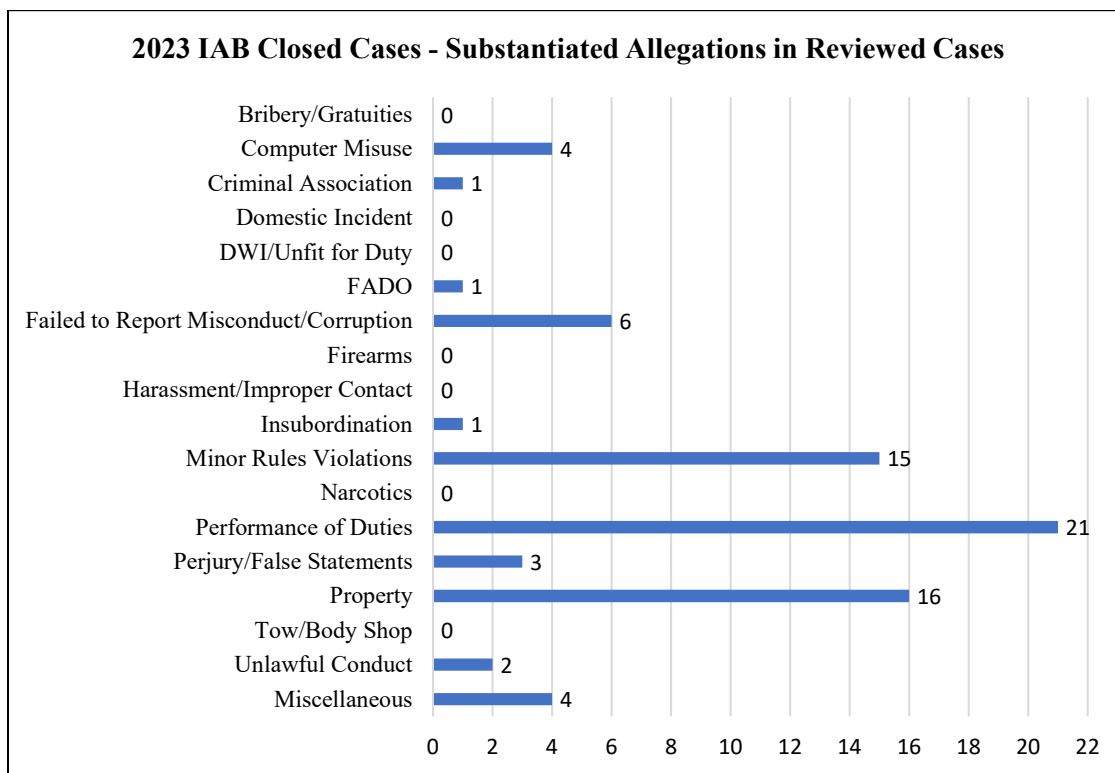
The chart breaks down, by individual allegation type, all of the allegations substantiated in the 2022 review group. The total number of substantiated allegations was 81.³⁹



When compared with the 2021 cases reviewed, the biggest percentage decrease in substantiated allegations were seen in the criminal association category (17.4% substantiation rate in 2022 versus 28.6% substantiation rate in 2021.) This decrease makes sense when considering that there was also a decrease in computer misuse allegations. To substantiate a criminal association, IAB must be able to prove that the subject had knowledge of their associate's criminal history or activity. Oftentimes, the evidence to prove this knowledge is found through computer audits that show that the subject has queried their associate's criminal history. In the 2022 review, there were fewer computer misuse allegations. Therefore, this avenue to gain evidence to prove the subject's knowledge was not available.

³⁹ The number of substantiated allegations is greater than the five substantiated dispositions and 20 partially substantiated dispositions listed in the chart on p. 22 because each case may have multiple allegations.

The chart below shows the number of each type of substantiated allegation for the cases we reviewed in 2023. There was a total of 74 substantiated allegations.



While most of the substantiated allegations by case type remained relatively stable from the year before, there was a notable increase in the substantiation of property allegations. Most of these were for the failure to safeguard prisoner property and the failure to voucher prisoner property or correctly prepare a property invoice. The reason for the greater substantiation rate most likely is due to the increased use of body-worn cameras. Footage from these cameras often proves the existence and possession by the subject of property claimed to be missing. This type of evidence was not generally available prior to the use of body-worn cameras. The highest number of substantiated allegations were in the performance of duty and minor rules violation categories. These were typically for body-worn camera and memo book issues, respectively.

Even when some allegations are substantiated, it does not necessarily follow that the original or most serious allegation is substantiated. In fact, the most serious allegation was still likely to be unsubstantiated. This makes sense given that the most prevalent case type involves property, which is very difficult to prove as there is usually no evidence to corroborate a claim that a member of the service stole the missing property. The following charts set forth the disposition of the most serious allegations in each of the reviewed cases.

2022 Disposition of Most Serious Allegations in the Cases Reviewed⁴⁰						
Case Type	Exonerated	Substantiated	Unfounded	Unsubstantiated	Info & Intel	Total
Bribery/Gratuities	-	-	-	1	-	1
Criminal Association	-	2	3	3	-	8
FADO	1	-	-	-	-	1
Narcotics	-	4	1	4	1	10
Perjury/False Statements	-	1	1	-	-	2
Property	-	1	5	6	-	12
Unlawful Conduct	-	6	2	4	-	12
Total	1	14	12	18	1	46

2023 Disposition of Most Serious Allegations in the Cases Reviewed						
Case Type	Exonerated	Substantiated	Unfounded	Unsubstantiated	Info & Intel	Total
Bribery/Gratuities	-	-	2	-	-	2
Criminal Association	-	1	1	2	-	4
Domestic Incident	-	-	1	-	-	1
FADO	-	1	-	-	-	1
Perjury/False Statements	-	3	-	-	-	3
Property	-	1	4	15	-	20
Unlawful Conduct	-	-	-	3	-	3
Miscellaneous	-	-	-	1	-	1
Total	0	6	8	21	-	35

⁴⁰ These were the most serious allegations that were depicted in the tables *supra* at pp. 9 and 12.

The substantiation rate for the most serious allegation was 30% for cases reviewed in 2022 and 17.8% for cases reviewed in 2023. This is a decrease from the 48% substantiation rate for the most serious allegation that we found in our 2021 review. Some of the decrease in 2023 may be attributable to our decision to no longer review cases involving Department drug test failures.⁴¹ The Commission will continue to monitor whether this decrease is an anomaly or the start of a downward trend.

Conversely, the most serious allegation was closed as unsubstantiated in only 39% of the cases in 2022, which compares as follows to the preceding years: 2021 (41%), 2020 (52%), 2019 (56%), 2018 (73%), and 2017 (57%).⁴² This indicates that more of the most serious allegations in our 2022 review were closed with allegations of unfounded or exonerated. However, the percentage of cases in which the most serious allegation was closed as unsubstantiated increased to 60% for our 2023 case review. Disposing of cases with more definitive findings is desirable, if those are the correct dispositions. We examine our agreement with the disposition for the cases reviewed in the following section.⁴³

2. CCPC Analysis of Selected Trends

Over the last nine years, the Commission has examined seven specific components when evaluating IAB investigations. We have focused on these components either because of their importance (such as our agreement with the overall case disposition), or because we note problems that recur (such as the quality of investigators' interviews of civilians and members of the service). The tables on the next page show the percentage of outcomes and investigative steps that the Commission found satisfactory (the "satisfaction rate") in each of these seven areas

⁴¹ See *supra* at pp. 12-13.

⁴² *Twenty-First Annual Report* at p. 14; *Twentieth Annual Report* at pp. 26-29; *Nineteenth Annual Report* at pp. 24-25.

⁴³ See *infra* at pp. 29-44.

for both the 2022 and 2023 reporting periods and a comparison of satisfaction rates with the previous four years.

We note here that in a small number of cases in the tables below, an indication of our “agreement” or “satisfaction” with a disposition is more of an indication that we have no solid basis on which to disagree with the result than an indication of our affirmative approval of that result. This is because, as discussed below, our review did yield some deficiencies with respect to overall thoroughness, and because we cannot always be confident that such deficiencies did not impact outcomes. If, for example, a delay in identifying a witness and/or a failure to conduct an interview resulted in a lost opportunity to obtain evidence, we could only speculate as to whether the missing evidence would have provided proof to support any disciplinary charges. Therefore, in assessing our statistical satisfaction rate, we necessarily rely on the evidence that was actually gathered during the course of an investigation, and we reserve our critiques for the discussion below. However, we have been tracking those investigations in which we believe a missed or inadequately performed investigative step may have affected the ultimate disposition and discuss those cases in the next section regarding our agreements with dispositions.⁴⁴

CCPC Satisfaction Rate

Description	2022 Cases	2022 Rate	2023 Cases	2023 Rate
CCPC Agrees with Disposition	43/46	93%	30/35	86%
Interview of Available Witnesses	34/46	74%	22/35	63%
Accurate Summaries of Recorded Interviews	44/46	96%	29/35	83%
Adequate Interview Quality	33/46	72%	22/35	63%
Documentation of Investigative Steps	42/46	91%	28/35	80%
Timely Search for Video Evidence	44/46	96%	32/35	91%
Presence of Team Leader Reviews	46/46	100%	32/35	91%

⁴⁴ See *infra* at pp. 36-44.

CCPC Satisfaction Rate – Year-over-Year Comparison

Description	2018	2019	2020	2021	2022	2023
CCPC Agrees with Disposition	98%	100%	99%	100%	93%	86%
Interview of Available Witnesses	82%	83%	77%	78%	74%	63%
Accurate Summaries of Recorded Interviews	82%	92%	95%	100%	96%	83%
Adequate Interview Quality	77%	78%	71%	67%	72%	63%
Documentation of Investigative Steps	91%	89%	95%	96%	91%	80%
Timely Search for Video Evidence	93%	89%	97%	100%	96%	91%
Presence of Team Leader Reviews	89%	94%	90%	100%	100%	91%

As described in these charts, in 2022, the Commission’s general satisfaction rate was relatively stable with mostly minor decreases in all areas but the quality of interviews with witnesses and subject officers. While our satisfaction rate increased in the quality of the interviews conducted, it is still below our satisfaction rates in 2018 and 2019. In 2023, our satisfaction rates decreased in all seven areas. This could be due to our decision to no longer review cases involving drug test failures, which tend not to raise issues. It could also be due to changes in 2023 to IAB’s executive staff and the transfer of many experienced group commanding officers; however, we note that many of the investigations that we reviewed in 2023 were commenced in 2021 and 2022, so responsibility does not solely lie with the new IAB administration. Rather, the frequent turnover at the top levels of IAB, with corresponding policy changes, may have contributed to some of the issues we observed. We note that it is also possible that this dip in satisfaction could just be an anomaly based on the random cases we reviewed in 2023; we will continue to monitor these numbers.

We discuss each component in the following pages.

a) Dispositions

The Commission assessed whether the information obtained by the investigator in each case we reviewed supported the overall disposition of the case, as well as the dispositions for each individual allegation when multiple allegations were involved. While the Commission agreed with most of the dispositions in the 46 investigations reviewed in 2022, there were three cases in which we disagreed with the overall disposition of the case.

Faulty dispositions can allow officers to escape discipline and, in particularly serious cases, remain employed by the Department when they are not fit to do so. Alternatively, officers who have not committed misconduct should not be wrongfully disciplined or have unsubstantiated allegations in their personnel records. A third concern is that public confidence in the Department's ability to investigate its own members could be eroded when investigations are concluded with inappropriate dispositions. For these reasons, we provide brief descriptions of the three cases reviewed in 2022 in which we disagreed with the disposition.

In the first case, we believed that an unsubstantiated disposition was the correct outcome for allegations of missing property against four members of the service instead of the unfounded dispositions assigned by IAB. The complainant had been arrested on an arrest warrant while in a store. There was a struggle during the arrest. During his transport back to the precinct, the complainant alleged that one of the officers took \$700 from his pants pocket. When investigators went to the store to retrieve the video, they interviewed a store employee who witnessed the arrest. She stated that she did not see the officers take any money from the subject. However, this interview was not recorded and there was no indication that investigators established the position of the employee during the arrest and what exactly she was able to see. In addition to the store employee's statement, IAB relied on video footage from the store to support the unfounded disposition. However, our review of the video showed that the incident

was partially obstructed during the struggle and while the video showed the subjects removing property from the complainant after he was handcuffed, the exact nature of that property was unclear. In our opinion, neither of these pieces of evidence conclusively established that the officers did not remove currency from the complainant. IAB did not disagree with our assessment of this case's disposition.

The second case originated when a NYPD lieutenant reported that he believed that the subject officer was associating with gang members and disclosing information regarding NYPD enforcement to those gang members. When investigators found no evidence to support the lieutenant's allegations, they closed the case with an overall disposition of unfounded. However, investigators found very little evidence to disprove the allegations and failed to have a comprehensive interview with the lieutenant to ask him for detailed reasons to support his allegations. Based on the evidence uncovered during the investigation, we believed a disposition of unsubstantiated was more appropriate. Unfounded might have been the appropriate disposition with a more detailed interview with the lieutenant that explored his reasons for suspecting the subject officer in greater depth. More surveillance of the subject officer that was able to determine with whom he socialized might have also supported an unfounded disposition.

The final case involved a civilian member of the service ("subject") who was arrested upon the complaint of her boyfriend's former girlfriend ("complainant"). The case was closed with an overall disposition of partially substantiated based on the complainant's allegations that the subject had sent her emails threatening to kill her and her baby after discovering that the subject's boyfriend was also still involved with the complainant. The subject was arrested by her local precinct.

While the local precinct was investigating the complainant's allegations, the subject showed her arresting officer that the emails which the complainant had provided did not come from the subject's email address. After a discussion with the criminal prosecutor, the criminal charges against the subject were dismissed. On two subsequent occasions, the complainant again alleged that the subject continued to harass her. The precinct officer did not arrest the subject of those complaints.

IAB was notified after the subject's initial arrest and suspended the subject. DAO preferred charges and specifications against the subject for harassment. As part of their investigation, IAB conferred with the arresting officer. The arresting officer told IAB that she believed that it was actually the complainant who was harassing the subject, and that she was building a case against the complainant for filing false police reports. IAB interviewed the subject, and she denied that the email address that the complainant had provided was hers, just as she had done with her arresting officer. IAB made no attempts to discover who was the owner of the email address at issue. IAB also did not interview the complainant.

Prior to the conclusion of the investigation, the subject resigned from the Department, stating that she had obtained other employment. IAB closed the case as partially substantiated based on substantiating the complainant's aggravated harassment allegation.⁴⁵ We believed that this allegation should have been unsubstantiated, which would have changed the overall disposition of the case to unsubstantiated with a minor procedural violation for the subject's failure to notify the Department of an address change.⁴⁶ Most concerning to us was that IAB

⁴⁵ There were other allegations that were investigated, the most serious of which was criminal association as the subject's boyfriend had a criminal history. The subject denied being aware of his criminal past, so that allegation was unsubstantiated.

⁴⁶ As will be discussed next, we believed that with additional investigative steps, the disposition for the aggravated harassment allegations possibly could have been unfounded. In that event, the overall case disposition would have been unsubstantiated due to the unsubstantiated criminal association allegation.

sent a letter to the Department's Candidate Assessment Division requesting that the subject not be rehired if she sought future employment with the Department. This directive seemed unfair given the evidence IAB had obtained at the time of the subject's resignation.

When we discussed this issue with IAB, they stated that if the subject had not resigned, DAO would probably have moved to dismiss the charges and specifications against the subject. In that event, IAB would have changed the disposition. If there was an indication that the subject had not committed aggravated harassment, this allegation should have been unsubstantiated and there should not have been a direction to deny her future employment opportunities.

In 2023, there were six investigations where we disagreed with dispositions of specific allegations. In an investigation involving an allegation that money was missing from the console of a vehicle after a traffic stop, there were two allegation dispositions with which we disagreed. The first involved the subject officer's premature deactivation of his body-worn camera. IAB closed that allegation as unfounded since the evidence showed that the subject officer accidentally deactivated and then immediately re-activated his body-worn camera. While we agreed that it was a proper disposition for that deactivation, IAB failed to consider a second deactivation by this subject officer during the incident. When questioned regarding this second premature deactivation, the subject officer was unable to recall why he deactivated his body-worn camera, therefore, we believed the allegation for premature deactivation of the officer's body-worn camera should have been different. A more significant issue, regarding an allegation against a second member of the service, was that he failed to safeguard the money that was claimed to be missing. Both IAB and DAO agreed that this allegation should be closed as unsubstantiated, reasoning that there was insufficient credible evidence to prove that the subject took the property or was responsible for the loss of the property. However, in his official

Department interview, the subject admitted that he had found the money in the vehicle. This was corroborated by body-worn camera footage that portrayed the subject with the money in his hand. The subject could not recall with certainty what happened to the money after he had it in his possession. His partner also admitted to handling the money and not knowing what happened to the money after he placed it in the vehicle's glove compartment. Given that these officers had possession of the money and did not vouch for it or otherwise keep track of its whereabouts, the Commission believed that the failure to safeguard allegation should have been substantiated. IAB agreed with our reasoning for both allegations.

In a case involving a sergeant's alleged excessive use of force against five civilians while trying to conduct enforcement action against fare evaders on the subway one night, IAB substantiated the excessive force allegations for the subject sergeant's actions towards two of the civilians. The remaining excessive force allegations were unsubstantiated. We believed that the force used against one of the other civilians, which involved dragging her from the platform through the emergency gate by her feet should also have been substantiated. The Chief of IAB also agreed with our assessment.⁴⁷

In another case, the complainant reported that she had been in negotiations to sell the assets of her establishment to two other civilians. Those negotiations ultimately failed, and she alleged that these civilians were using her liquor license without her authority. She made several reports to police officers, was dissatisfied with the actions they took in response, and believed that a Deputy Inspector was protecting the new owners. There were several subject officers in the investigation. One lieutenant was called to the establishment after the complainant called 911 to report that her liquor license was being used. The lieutenant told the complainant that he

⁴⁷ The subject sergeant received charges for his interactions with two of five complainants and pled guilty. He was placed on dismissal probation and forfeited 30 vacation days. At the time of our discussion of this case with IAB, the subject sergeant was no longer employed by the Department.

could not go into the premises to inspect the license as there was no report of a crime being committed inside. Part of this lieutenant's responsibilities in his assignment was to inspect licensed establishments, and his belief that he could not go inside to inspect the liquor license was incorrect. At the conclusion of his official Department interview, he was informed that he was permitted to enter the location to determine the validity of the license and his failure to do so on the night at issue hindered an ongoing State Liquor Authority investigation. Yet, the sole allegation against this lieutenant for failing to take a report was addressed with a minor procedural violation and the lieutenant received a letter of instruction. We believed that due to the effect on the State Liquor Authority investigation, and the lieutenant's employment history, which included prior allegations for failing to process civilian complaints, this allegation should have been substantiated and discipline should have been imposed.⁴⁸

The fourth investigation began when a businessman who had been involved in installing new gym flooring in several police precincts reported that two pallets of flooring, valued at \$28,000, were missing after being stored in a NYPD building maintenance facility. The facility where the pallets were stored had closed, and all storage containers were shipped to another building maintenance facility. During the investigation, IAB learned from the NYPD's office of the Deputy Commissioner of Management and Budget that their office believed that the flooring had actually been installed in two precinct gyms and was, therefore, not missing. When the IAB investigator spoke with the businessman, he stated that this could not be the case for one of the gyms, as he had installed the flooring in that location, so there was still one pallet that was missing. Based on the representations of the Deputy Commissioner of Management and Budget's office, IAB unfounded the allegation of missing property. We believed that since the

⁴⁸ The subject received a schedule A command discipline, *see infra* at p. 46, fn. 65 for a discussion regarding the various types of command disciplines. The Commission did not discuss this investigation with IAB, although we did notify them regarding the issues we observed in this investigation.

statements of the businessman were never addressed, an unsubstantiated disposition was more appropriate. In our discussions with IAB, they agreed.

In a property case where it was alleged that property was removed from a vehicle, IAB closed the allegation of missing property against one subject officer as unsubstantiated. Because that subject officer had his body-worn camera activated the entire time he drove the vehicle back to the precinct and then video from outside the precinct showed that this officer handed the property to another officer and never returned to the vehicle, we believed that this allegation should have been closed as unfounded. When we noted this issue for IAB, they agreed with us.

The final investigation with which we disagreed with an allegation disposition was a property case following a traffic stop. The allegation regarding the missing property was unsubstantiated although three officers received command disciplines and forfeited between one and two hours of vacation time for the failure to properly safeguard the missing property. We agreed with those dispositions. In addition to the complainant's allegations regarding his property, he also alleged that the reason for the car stop as well as the justification for the three summonses he received were false. The complainant reported that he was just driving straight when he was pulled over by the subject sergeant. The subject sergeant had the complainant brought back to the precinct to investigate the authenticity of his temporary license plates, which the sergeant suspected were fraudulent. After an investigation, officers learned that the plates were valid, and the complainant was released from the precinct with three summonses: two issued by the subject sergeant and one issued by one of his subordinates who was not at the scene.

During his official Department interview, the subject sergeant stated that he had observed the complainant double-parked in a bus stop. The complainant drove away from the location and made an illegal turn, which was when the subject sergeant pulled the complainant over. The

subject sergeant issued the complainant a moving violation summons for the illegal turn and a second summons for the complainant not having proof of insurance.

The subject sergeant also directed his subordinate, a probationary police officer, to issue the complainant a parking summons for parking in the bus stop. The probationary police officer was not present to observe this violation. Since personal observation is required to issue a summons, this summons was incorrect. The disputed summons allegation against the probationary police officer was closed as unfounded since he had been acting upon the orders of his supervisor. Regarding the improper turn, there was no evidence to corroborate either the sergeant's or the complainant's version of events. The sergeant did not have any body-worn camera footage to show the traffic violations. Since this was a situation where it was the complainant's version against the sergeant's version, we believed that the disputed summons allegation should have been unsubstantiated, however, IAB unfounded this allegation. When we discussed this issue with IAB, they stated that the sergeant's version of events had greater value than the complainant's as the sergeant had no motivation to lie about what had transpired. We do not agree that the sergeant's account should be given more credence than that of the complainant and we maintain that in this situation, where there was no evidence to support either version of events, unsubstantiated was the more appropriate disposition for this allegation.

In 2022, we began tracking cases where we believed there was a reasonable possibility that the disposition of the case, or of individual allegations, might have been different if IAB had taken additional investigative steps.⁴⁹ During the 2022 rating period, we identified three cases in

⁴⁹ In the *Twentieth Annual Report*, we noted that since we found investigations that had deficiencies, we could not confidently say that those deficiencies did not affect the disposition in the cases. Therefore, while we may have agreed or disagreed with dispositions, our assessments were based on the investigation that was conducted, not the investigation that we believed should have been conducted. We noted that in future reports, we would also track when we believed the dispositions could have been different if other investigative steps had been taken or had been conducted in a more effective manner. At p. 26. We reiterated this intent in our *Twenty-First Annual*

which we believed different dispositions were possible. Of the cases we reviewed in 2023, we believed that three cases might have had different outcomes with further investigative efforts. Brief summaries of those cases are discussed below.

The first case involved the civilian member of the service discussed above.⁵⁰ We believed that IAB might have been able to dispose of the aggravated harassment allegation as unfounded with some additional investigative steps. Specifically, IAB could have identified the email addresses used by the subject and subpoenaed information about the email address that was used to send the threats to determine who the owner of that address was. If the owner was identified as the complainant, which was a possibility given the arresting officer's belief that the complainant was making false reports, this allegation could have been disproved and therefore unfounded. Conversely, if the owner of the email address was the subject, IAB's substantiated disposition would have been the appropriate one.

In a second case, the adult daughter of the subject made a complaint that the subject had sexually molested her over a period of years, while she was a minor. IAB brought the case to the attention of the District Attorney's Office. Although an Assistant District Attorney found the complainant credible, that office declined to prosecute the officer, noting that they could not prove the case beyond a reasonable doubt. Prior to this determination, IAB had collected voluminous therapy records of the complainant from years earlier. In these records, the complainant consistently told the same version of events to her therapist. The Assistant District Attorney asked IAB investigators to speak with several outcry witnesses, former friends in whom the complainant confided, after she stayed in their homes when the subject threw her out of his home. That was never done. The investigators also never obtained the complainant's mother's

Report at pp. 14-15 as we had had reviewed many cases for that report by the time our *Twentieth Annual Report* was published.

⁵⁰ See *supra* at pp. 30-32.

employment records, which might have corroborated some of the complainant's allegations as she alleged that the abuse occurred during the night when her mother was at work. The Assistant District Attorney had indicated that she subpoenaed the employment records from the relevant time period, but IAB did not get these records from the Assistant District Attorney.

The complainant also stated that after she disclosed the abuse to her therapist, the therapist notified the local child protective agency because there were still minor children in the subject's home. After the child protective agency visited the subject's home, the subject turned off the complainant's cell phone service. There was corroboration of this in the therapy records; however, IAB did not try to verify this information independently. Finally, the complainant's younger sister agreed to participate in a controlled phone call with the subject, but IAB never followed up on this.

The case was closed with a final overall disposition of partially substantiated based on the subject's failure to notify the Department regarding his interview with the Assistant District Attorney. The allegation that the subject sexually assaulted the complainant was closed as unsubstantiated. We believe that this allegation might have been substantiated if investigators had taken the steps outlined above. In fact, one suggestion we made was that IAB confer with DAO prior to closing an investigation in those cases involving allegations of sexual misconduct because DAO would be better equipped than IAB to determine whether there was sufficient evidence to meet their lower burden of proof: a preponderance of the evidence as opposed to beyond a reasonable doubt. Although IAB maintained that the correct disposition was unsubstantiated, they consulted with DAO after our review. That office indicated that they would move forward with trying the subject officer for the sexual abuse as they believed they had sufficient evidence to meet their burden. Unfortunately, after their own interview with the complainant, DAO was unable to prosecute the case because they did not have exact dates for

the abuse and therefore, could not prove that any abuse occurred while the subject was actually a member of the service.

In a property case, officers responded to a call for a vehicle accident. Suspecting that the driver was intoxicated, they removed her from the scene for further testing. A tow truck was called to remove her vehicle, and two other officers safeguarded the vehicle until the tow truck arrived. After her arrest, the complainant alleged that she was missing approximately \$86 from inside of the vehicle. This missing property allegation was closed as unsubstantiated while the overall case was closed as partially substantiated due to the arresting officer's failures to make memo book entries, prepare a property clerk's invoice, activate his body-worn camera during an inventory search of the vehicle, and safeguard the complainant's property.⁵¹ IAB did not identify the tow truck driver, who was employed by the Department, or the two officers who safeguarded the complainant's vehicle, with the money inside of it, until late in the investigation and never interviewed these possible subjects.⁵² Nor was the body-worn camera footage of these two officers who stayed with the vehicle reviewed. Video from the precinct parking lot showed the tow truck driver entering the complainant's vehicle while alone but did not reveal what he was doing inside of the vehicle. IAB also did not look for surveillance video from the scene of the accident, which might have shown the subjects entering the vehicle.

In one case we reviewed in 2023, an allegation of criminal association against a civilian member of the service was unsubstantiated. The investigation began after the subject visited her ex-boyfriend in the hospital. While there, she was confronted by the ex-boyfriend's new girlfriend who screamed at her and threatened to assault her. The subject called 911 and police

⁵¹ Another member of the service also had a substantiated disposition for failing to activate his body-worn camera. This case was discussed earlier in this Report. *See supra* at p. 18 and *infra* at p. 60.

⁵² Prior to closing the investigation, an IAB Zone Commander identified the failure to interview the tow truck driver as a training issue.

responded. During the preliminary investigation, a background check was conducted on the ex-boyfriend and IAB discovered that he had been arrested 21 times and was on probation for Criminal Possession of a Controlled Substance in the Fifth Degree when the subject visited him in the hospital. During her first official Department interview, held three months after the hospital visit, the subject stated that she and her ex-boyfriend had ended their relationship only weeks before the visit and she denied knowledge of his criminal history. IAB put her on notice that he had a criminal history and that she could no longer associate with him.

IAB conferred with the ex-boyfriend's probation officer and learned the address he had given probation. That address belonged to the subject, however, IAB did not realize this and in the closing report it stated that the address the probation officer had did not have any connection to the subject. IAB also received the ex-boyfriend's phone number from the probation officer, but never interviewed the ex-boyfriend regarding his relationship with the subject and what, if anything, he had told the subject about his criminal history. The investigator's team leader had instructed the investigator to obtain a subpoena for the subject's phone records, but this was never done. Phone records could have established whether the subject had contact with her ex-boyfriend after her first official Department interview. There also could have been further questions posed to the subject during her first official Department interview regarding the ex-boyfriend's address and what she believed he did for a living. The subject was interviewed by IAB again, three months after the first interview. During this interview, the subject stated that she last had contact with her ex-boyfriend during the same month that she was initially interviewed by IAB. She was not asked whether this contact occurred before or after that first interview and how that contact occurred. She also stated that the probation officer had never contacted her to verify any information provided by her ex-boyfriend. IAB could have followed up with the probation officer to determine if that was accurate. Finally, IAB could also have

spoken to the other woman about her knowledge of the subject's relationship with her ex-boyfriend and whether contact had continued.⁵³ Any of these steps could have revealed information proving that the subject had knowledge of her ex-boyfriend's criminality or had contact with him after being ordered not to do so.

In a second case, the complainant alleged that her ex-boyfriend learned about allegations she had made in a domestic incident report about him and also learned that she was pursuing an order of protection against him. She believed that this information was provided to him by the subject sergeant, with whom he was friends. She stated that other than the responding officers who completed the domestic incident report, no one else knew about these allegations. She had requested that these officers escort her to her ex-boyfriend's home so she could retrieve her belongings. IAB did not interview the responding officers, who themselves might have told the ex-boyfriend what the complainant stated, which could have led to the main allegation of disclosing confidential information being closed as unfounded instead of unsubstantiated.⁵⁴ During the investigation, IAB conducted a computer audit on the subject and found that while he had conducted computer inquiries on both his friend and the complainant, he had not looked at the domestic incident report at issue. IAB did not, however, determine whether anyone else who was possibly connected to the subject looked at this report. Had they found a connection, this could have led to the substantiation of the disclosing confidential information allegation. Finally, IAB did not adequately question the subject during his two official Department interviews regarding his reasons for conducting computer inquiries on his friend and the complainant.

⁵³ An IAB supervisor also noted this issue during the closing process.

⁵⁴ An allegation of computer misuse was substantiated, and the officer was given a schedule A command discipline. See *infra* at p. 46, fn. 65 for a discussion regarding the types of command disciplines.

In the final case, the subject officer and five of his friends went to a bar. The bartender refused to serve them for unknown reasons. Also at the bar, was the complainant and two of his co-workers. As the subject officer's group was leaving the location, one man from the group tore down some yellow tape from a structure erected outside of the bar location. The complainant saw this and left the bar to confront the group. He was then punched and kicked by members of the group. One of his co-workers tried to intervene and she was also struck. Once the group left, the complainant tried to follow them and was chased by two of the men, one of whom was holding a shovel, neither of whom was the subject. The complainant removed his jacket and threw it on the ground and one of the men picked it up. In the jacket was his wallet and car keys. The subject officer's car was driven up to the two men and they got inside, and the car sped off. The complainant believed that his jacket was with the men in the car and called 911.⁵⁵ Police responded. When detectives were investigating, they were able to identify the car and learned that it was registered to the subject officer. It was at this point, five days after the incident, that IAB was notified.

IAB collected numerous videos from the vicinity of the bar. These videos showed almost everything that occurred except that actual physical altercation. When the subject officer was questioned by IAB investigators, he stated that when the complainant ran up to the group, the complainant threw the first punch. The subject officer tried to break up the fight, and when he could not, the subject left the scene as he did not want to get involved. The subject claimed to have no knowledge that his friends beat up the complainant and stated that they did not discuss the incident at all after it occurred. There was video though of the subject walking alone, heading into a doorway, and then leaving the doorway to speak with another of the men in the

⁵⁵ In fact, the man who picked up the jacket dropped it before the car arrived. It was picked up later in the morning by a civilian who had no connection to the original incident.

middle of the street. In his official Department interview, the subject also stated that when he picked up his two friends in his car, they drove to get some food. Video, showed, however, that his car stopped in the middle of the street, picked up the two men, drove around a car that was stopped at a red light, and ran the red light. Furthermore, license plate readers indicated that the subject officer and his friends drove into a different borough upon leaving the location. Video of the subject reporting for work the following day showed him wearing the same clothes as the night before. The complainant was unable to identify any of the men who were involved, so there were never any arrests despite concurrent investigations by IAB and the detective squad.

The subject was interviewed by the detective squad as well as by IAB. He made statements that were contradictory during these interviews and contradicted what was recorded on video, and IAB did not confront him with those contradictions. There were statements that the subject made, including that he and his group never discussed the incident afterwards, that were not believable, yet went unchallenged. This statement also contradicted what he told the detective squad as he told detectives investigating the incident that his friends informed him that they just got jumped. He also was not asked about his rush to get out of the neighborhood.

In addition to IAB's failure to challenge the subject's statements or gain further detail regarding what occurred, there were also at least two witnesses who could have been interviewed. IAB interviewed the co-worker who became involved in the altercation. However, the co-worker who did not get involved, but went outside and observed what occurred, was not interviewed, despite IAB getting her name and phone number from the other co-worker. This co-worker, as a non-participant, might have had a better view regarding what occurred and might have been able to say whether the subject officer participated in the altercation or walked away. IAB also interviewed an employee of the bar who was present for part of the incident, but not the bartender, who also left the bar and saw the altercation; he might have been able to provide

confirmation regarding whether or not the subject was a participant. IAB also did not get the 911 recordings from that night. These recordings might have contained further descriptions that were forgotten by the complainant and the other civilian in the aftermath. The allegation of assault was closed as unsubstantiated, however, in our opinion, with further investigative steps, sufficient evidence might have been obtained to substantiate the subject's participation in this assault.⁵⁶

b) Identifying and Interviewing Subjects and Witnesses

The Commission noted deficiencies related to the failure to interview witnesses in 12 of the cases reviewed in 2022.⁵⁷

- Seven cases involved the failure to interview available civilians. These cases were categorized as unlawful conduct (3),⁵⁸ property (2),⁵⁹ FADO (1) and bribery/gratuity (1).
- Four cases involved the failure to interview members of the service. These cases were categorized as criminal association (1),⁶⁰ property (2),⁶¹ and unlawful conduct (1).
- One case involved the failure to interview both a civilian witness and a member of the service. This case was categorized as property.

⁵⁶ The subject received a schedule A command discipline (defined *infra* at p. 46, fn. 65) for failing to remain on the scene and failing to notify a supervisor regarding an off-duty incident. The subject was warned and admonished.

⁵⁷ There were two additional cases in which we believed either a complainant should have been interviewed a second time after IAB collected evidence that conflicted with the complainant's version of events or that IAB could have attempted to reach a complainant by other methods. In the first case, the complainant was never interviewed in person. In the second case, while IAB tried to contact the complainant over the phone and by visiting his last known residence, they were never able to interview him. We believed that additional methods to reach the complainant could have been employed including interviewing the people with whom he was arrested and with whom he associated. Investigators also could have attempted to leave contact information with a store that the complainant was known to frequent. Both cases involved property allegations.

⁵⁸ In one of these cases, the failure to interview the civilian witness was noted by IAB. This is the case described *supra* at pp. 30-32 and p. 37. Another one of these cases was described *supra* at pp. 37-39.

⁵⁹ In one of these cases, this failure was noted by a Commanding Officer in IAB as a training issue.

⁶⁰ The criminal association allegation was substantiated at the conclusion of the investigation. However, body-worn camera footage showed that one of the officers who responded to a domestic violence call did not want to take a report and tried to encourage other members of the service on the scene to close the job and leave the location. We believed that this should have been investigated further, and the officer should have been interviewed about his statements that were made in front of the victim/subject's family members, and possibly have been made a subject.

⁶¹ One of these cases was described *supra* at p. 39.

In our 2023 review, the Commission noted deficiencies in interviewing civilians or members of the service in 13 cases.

- Seven cases involved failures to interview civilian witnesses. These cases were categorized as property (4);⁶² unlawful conduct (2); and criminal association (1).⁶³
- Six cases involved failures to interview a member of the service. These cases were categorized as property (5)⁶⁴ and disclosing confidential information (1).

When officers or civilians are not identified or considered subjects or witnesses, investigators are unlikely to interview them. It is important that identified officers be labeled as subject officers when appropriate, even if the final disposition is not substantiated, so there is a complete record of past allegations in each officer's personnel file. When IAB receives allegations, one of its first investigative steps is to conduct a background check on the subject officer. If an officer has prior similar allegations, the investigator can look for patterns in cases or decide to devote more resources to investigating that officer. Moreover, it is important to identify officers as subjects as early as possible in investigations. Not only can the failure to make a timely identification affect the direction of the investigation, it also can allow an undeserving officer to be promoted or given an elite assignment because executives are unaware of allegations that otherwise would have delayed or blocked such a move. Therefore, we also examined issues involving the failure to identify a member of the service, or unnecessary delays in identifying potential subject officers and civilian witnesses.

⁶² In one case, an IAB supervisor noted the failure to interview a civilian as an issue.

⁶³ An IAB supervisor noted the failure to interview a civilian as an issue.

⁶⁴ In two cases, IAB supervisors also identified this issue.

In our 2022 review of cases, there was one case in which investigators failed to identify a civilian in a criminal association case and there was another criminal association case in which investigators failed to designate a uniformed member of the service as a subject. In the first case, a confidential informant mentioned a business partner of an individual who operated illegal gambling sites and whom the confidential informant stated he observed having dinner with the subject officer. There was no follow-up on the business partner. In the second case, the officer who was not identified as a subject failed to notify IAB about an arrested person's claim that his fiancé was a member of the service, and that the arrestee was driving a vehicle registered to that member of the service. This officer was characterized as a witness, but her partner was labeled a subject and issued a command discipline⁶⁵ for failing to make a notification to IAB. Both the officer who was ultimately disciplined and the witness officer provided similar versions of what occurred, so we believed it was inconsistent that one be disciplined and not the other.

In our 2023 review, there was one case where we believed that a witness officer should have been made a subject. This case involved an allegation of missing money. The complainant had received a sum of money from her children's father. On the day of the incident, the complainant and the children's father got into a dispute in front of the daycare for one of the children. This dispute was captured on video. Both parties left the location without picking up the child as the daycare would not release the child. While driving away, the complainant intentionally side-swiped her children's father's car, which also contained her younger child.

⁶⁵ A command discipline is typically imposed by the officer's commanding officer and is used for misconduct that is considered less serious than wrongdoing addressed by charges and specifications. DAO, IAB, and the Civilian Complaint Review Board can also issue command disciplines that are classified as Schedule A or B. Schedule A command disciplines carry a penalty of the forfeiture of up to five vacation days and are removed from an officer's personnel file once a year has passed if there have been no further disciplinary incidents. Schedule B command disciplines carry a penalty of up to 10 days and can be sealed after a period of three years if the officer affirmatively requests this sealing. Schedule C command disciplines can be issued instead of charges and specifications in order to expedite the resolution of a disciplinary matter. Only DAO has the authority to issue schedule C command disciplines, and they cannot be removed from the officer's personnel records. These command disciplines carry a penalty of up to 20 vacation days.

The father returned to the daycare center and the police were already present as the daycare had called them. There was a lieutenant on the scene and while conducting the investigation, he went into the father's car which had the complainant's wallet in it. The father was arrested and removed from the scene. While police, including this lieutenant, continued their investigation at the scene, the complainant returned, parked her vehicle, and left it running. As she exited her vehicle, police approached her and arrested her. The lieutenant entered the complainant's vehicle to look for a car seat. In the vehicle there was a bag. This was the bag that the complainant later claimed held the missing money. As the lieutenant had access to the property that was alleged to be missing, whether from the wallet or from the bag in the complainant's vehicle, he should have also been the subject. The only subjects in the case were the arresting officer, who was not on the scene when the complainant arrived and initially had no contact with her car, and the officer who drove the complainant's car back to the precinct. This officer's body-worn camera was activated during the entire drive, and he was never observed handling the complainant's bag. Another issue we included in this category involved unjustified delays in conducting interviews of officers and/or civilians. Such delays may lead to an interviewee's failure to recall important details, especially when the topic of the interview involves a routine encounter that might not be otherwise memorable. Even when the encounter is not routine, the passage of time can allow outside influences or internal beliefs to color the way events are interpreted by the interviewee.

There were two cases from 2022 in which we identified a delay in interviewing relevant parties to the incident. One involved a civilian member of the service who was the victim of a domestic incident but was also the subject of an allegation of criminal association with her boyfriend. The incident that led to the criminal association investigation occurred in October 2020. The civilian member of the service was not contacted by IAB until her official

Department interview in April 2021. We believed that since she was also a victim, IAB should have contacted her soon after the incident to offer her appropriate services and to help ensure her safety. The second case with a delay was an unlawful conduct case. In that case, the complainant alleged that the subject, a civilian member of the service, had sexually assaulted her after they both used narcotics. Although detectives from the Special Victims Division were in contact with the complainant in September 2021 soon after the incident, the IAB investigator did not attempt to contact the complainant until close to a month after receiving the case. We believed, at the very least, the investigator should have attempted to introduce themselves to the complainant earlier.

There were also two cases from our 2023 review where we believed that there was an unreasonable delay in contacting the complainant. One case involved an allegation of disclosing confidential information.⁶⁶ Call-out investigators did not interview the complainant during their preliminary investigation.⁶⁷ Given that lack of contact and the fact that this involved a domestic situation, we believed that the two weeks the assigned investigator waited before attempting to contact the complainant was too long. The second case involved missing property after the execution of a search warrant. Although the complainant was interviewed during the call-out investigation, the assigned investigator waited over 30 days to contact the complainant. We continue to believe that even if a complainant is interviewed preliminarily, once an investigator is assigned to the case, that investigator should contact the complainant to introduce themselves, provide contact information, and make their own credibility determinations.

⁶⁶ This case was previously discussed *supra* at p. 41.

⁶⁷ The call-out investigation is a preliminary investigation conducted by IAB to gather as much information as possible while the incident is still recent and before evidence and witnesses disappear or memories fade. These investigations usually last no longer than 72 hours. While the IAB group that conducts the call-out investigation is usually the group that is assigned the investigation when the call-out investigation closes, this is not always the case. Also, the investigators who conduct interviews and gather evidence in the call-out investigation may not be the investigator who is ultimately responsible for the case.

c) Interview Quality

The quality of interviews conducted by IAB investigators continues to be an area of concern for the Commission, as we identified interview quality issues in 13 of the 46 cases we reviewed in 2022 and 13 of the 35 cases we reviewed in 2023. This is also the area in which we have consistently had the lowest satisfaction rate. The two most prevalent issues, as in past reviews, were failing to ask appropriate follow-up questions based upon evidence gathered either prior to or during the interview and failure to cover all issues relevant to a particular witness or subject (where the failure to do so was not the result of a deliberate investigative strategy).

Investigators should be clear in their questioning, vigilant in identifying evasive, incomplete and ambiguous answers, and persistent in asking all follow-up questions that are necessary to eliminate such problems. Especially in the context of official Department interviews, questioning at times appeared perfunctory, with insufficient effort made to obtain all relevant details. While the Commission has never advocated for unnecessarily prolonging interviews, in many investigations we continued to see questioning that seemed designed merely to elicit a denial, or that failed to follow up on incomplete, vague, and/or ambiguous statements, resulting in interviews that were unhelpful to the investigation.

Inadequate follow-up not only fails to further the objectives of the investigation, but also makes disciplining officers for making false or evasive statements more difficult, if not impossible. Officers can and frequently do claim to have misunderstood the investigator's question, and in some cases, what appears to be a false answer can be interpreted in a way that is literally true. Careful questioning should effectively prevent such claims. Moreover, the lack of vigorous follow-up questioning aimed at challenging incredible-sounding statements can result in IAB's failure to uncover evidence that would have been revealed through more competent and persistent questioning. Seemingly *pro forma* questioning may also send a message to the subject

officer and the union delegate present that IAB places no credence in the allegations or does not view them as sufficiently serious to merit a probing inquiry.

Similar problems arise with civilian witnesses. When investigators fail to ask all appropriate follow-up questions, credibility determinations are more difficult and allegations that might otherwise be concluded with a finding of substantiated, unfounded, or exonerated are ultimately left unsubstantiated.

One example involved allegations of the wrongful use of force, criminal association, and patronizing a sex worker that were made by the complainant who was a manager of a brothel and also a confidential informant. During the official Department interview of one subject officer whom the complainant alleged had kicked her, knocked her to the ground, and used offensive language towards her, the subject explained that he used the amount of force necessary to effectuate the arrest. There was no explanation sought regarding what that actually meant. As the interview was ending, the subject asked his representatives if he could add one more thing. There was a break called and when the interview participants returned, the interview ended without the investigators attempting to determine what it was that the subject wanted to state. In the same case, when the complainant was interviewed, she stated that she had some customers whom she thought were members of the service. In the worksheet summarizing the interview, the investigator noted that he was not sure whether the complainant was referring to customers whom she believed were acting in an undercover capacity or actual customers whom she believed were also members of the service. If the investigator had confusion on what the complainant meant by her statement, he should have attempted to clarify her meaning during the interview or as soon as he realized there was an ambiguity.

In another case, a man went to the hospital for a gunshot wound.⁶⁸ While there, he told the police that the car he had been driving belonged to his girlfriend who was a member of the service. The officers who interviewed this man located the vehicle, which contained a NYPD parking permit and was registered to the subject officer. The officers contacted the subject and received consent to search the car. A firearm was recovered inside the car, and the individual was placed under arrest for possession of a firearm.⁶⁹ IAB was notified about the incident due to the subject officer's association with someone who was engaged in criminal activity. During the investigation, IAB conducted a background check on the male and learned that he had a pending criminal case for criminal possession of a weapon for menacing another person with a firearm. At the time of that arrest, which occurred ten months earlier, the male was driving the same car, although it had a different license plate. The body-worn camera video from that arrest showed that the male informed the arresting officer and his partner that his fiancé was a member of the service. The partner later called the subject to inform her that her vehicle was in police custody. During this conversation, that officer told the subject that her boyfriend had been arrested for criminal possession of a firearm.

In her official Department interview, the subject admitted to being told of her boyfriend's earlier arrest for criminal possession of a firearm. She stated that while she knew that her boyfriend had a firearm, he had told her he had a valid carry permit. When the officer called her to notify her about his earlier arrest and to ask her to pick up the vehicle, she mentioned that her boyfriend had a firearm permit, and the officer informed her that this was not true. The subject did not confront her boyfriend about his lack of a permit when he returned home after his arrest. Investigators failed to ask her why she did not ask him about the permit or at least ask to see this

⁶⁸ This case was previously discussed *supra* at p. 46.

⁶⁹ He was also arrested for filing a false police report because he initially claimed that he was shot by another male during a dispute. Video disclosed that the male shot himself.

permit. She also stated that after that arrest, her boyfriend asked her to change the license plate on her vehicle. Investigators did not ask her whether she knew the reason for this request or whether she asked him for a reason.⁷⁰

In our 2022 review period, we found two cases where we believed that investigators demonstrated unnecessary hostility towards complainants, an issue that we have rarely observed in the past. Both cases involved property allegations and in both, the interactions occurred during the initial interviews with the complainants. In the first case, one of the investigators stated to the complainant multiple times during a ten-minute interview that if the complainant was lying, he would be in serious trouble. In the second case, the investigator was openly combative with the complainant, stating “[e]nough with your fairytales, [a passenger in the car] has your property.” During a second interview the investigator also told the complainant that he “straight up” didn’t believe the complainant’s “story.” While we believe that it is appropriate to ask questions that challenge the complainant’s version of events when they do not appear plausible, this can be done in a respectful manner. Needless hostility and accusations that a complainant is lying, especially during the first interview, increase the possibility that the complainant will not cooperate with later interview attempts and will not report allegations of police misconduct in the future. A complainant may also change their version of events as a result of this hostility, even if their initial version bears some truth.

We found a similar issue in our 2023 review. In one property case, the first investigator who interviewed the complainant told them that the entire incident was captured on body-worn camera and the missing property was never seen. Later in the investigation, the body-worn

⁷⁰ We note that despite not following up on these areas, the attorney who reviewed this investigation found this interview to be very detailed and thorough. All allegations against the subject officer were ultimately substantiated, and she received charges and specifications for criminal association and computer misuse. She pled guilty and forfeited 30 vacation days.

camera was slowed down and enhanced and the missing money was then visible. The initial investigator's statements, which were what they perceived as true, could have served to dissuade the complainant from continued cooperation. In a second case, the call-out investigator similarly told the complainant that they had reviewed all of the body-worn camera footage and no officers could be seen taking the complainant's money.⁷¹ The complainant stated that she wanted to see all of the videos and the investigator asked if she would withdraw the complaint if they showed her all of the videos from every possible angle. Prior to stating this, the investigator told the complainant that their job was to prove that the officers did nothing wrong. While all of this was said in a patient, calm manner, statements like these serve only to reinforce a common belief among civilians that police investigators will not work to uncover the misconduct of other uniformed members of the service. This, of course, leads to a lack of trust in IAB investigators and the outcomes of their investigations. Taken to an extreme, this can dissuade civilians from making reports of officer wrongdoing as they could believe that at best, this would be a waste of time, and at worst, they could face retaliation for their efforts.

The Commission found improvement during this review period for investigators following best practices when conducting interviews. Investigators routinely identified photographs and documentary evidence during recorded interviews.⁷² There was one case, however, where investigators interviewed a complainant and her 19-year-old son over the phone, while they were in the presence of each other.⁷³ Whenever possible, interviews should be

⁷¹ This case is discussed in further detail *supra* at pp. 46-47.

⁷² The Commission did review one investigation where the member of the service who was interviewed made a nonverbal gesture that was not described for the recording. The officers who were interviewed as part of this case were also shown videos prior to the interview that were referred to during the questioning. Those videos were not identified for the recording.

⁷³ We also note that the current IAB administration has stressed that interviews should be conducted in person unless there is a reason why the investigator cannot do so. We approve of this directive because in-person interviews allow investigators to observe body language and can encourage more thorough questioning that can lead to the collection of more information.

conducted separately so as to gather the most accurate accounting of events from each individual witness, free of influence from, or conferral with, other witnesses. If this is not possible, investigators should document the reasons why witnesses were interviewed in the presence of each other.

There were also two cases where interviews with civilian witnesses were not recorded, without any reason documented. Both of these cases involved property allegations.⁷⁴ According to the summaries of these interviews, the witnesses gave important information regarding the allegations. Yet, without the recordings, it is impossible to know with certainty what was asked and what was said.

Finally, in our 2022 review, we identified two official Department interviews in which investigators used leading questions, which supplied the appropriate answer to the members of the service, without giving those members the opportunity to provide answers on their own that may have differed from what the investigator anticipated. For example, in a case involving missing narcotics, in which an arrestee was placed in the holding cell while he still had narcotics secreted on his person, there was a question regarding why one of the officers did not conduct a separate search of the arrestee after watching another officer conduct a search. Instead of asking why that officer did not conduct his own search, the investigator asked, “And you felt the search was conducted properly that you didn’t physically need to?” While this might have been the reason, by providing the right answer, the investigator, in effect, told the officer what he should say.

⁷⁴ One of these cases was discussed *supra* at pp. 29-30.

When there is a good reason for departing from best practices, the Commission continues to recommend that the reason be documented in the interview worksheet. We also reiterate our previous recommendation that IAB provide training in interview techniques and best practices for new investigators, as well as ongoing interview training to all IAB investigators. While we have generally seen improvement in the use of best practices during interviews, the quality of the questions remains a significant area of concern for the Commission. In addition to regular interview training, we continue to recommend that experienced supervisors sit in on interviews and assist less-experienced investigators as needed. We have observed that this is happening more frequently, and supervisors are usually present for official Department interviews with members of the service. We also recommend that civilians be shown body-worn camera footage when their version of events is contradicted by the recording, unless there is a strategic or privacy-related reason not to do so. If the civilian can view what the investigator has viewed, the civilian can either indicate any areas of the recordings where they assert that something occurred, which the investigator might not have noticed. Alternatively, seeing the video, at a time and place removed from the incident can lead the civilian to re-evaluate his or her own perceptions regarding what occurred. This can increase trust in the investigation outcomes.

In our last two annual reports, we noted approvingly that the former Deputy Commissioner of DAO had indicated that she intended to have DAO lawyers participate in interviews with certain members of the service, particularly in the most serious cases.⁷⁵ DAO did not participate in any official Department interviews in the cases that we reviewed in 2022 and 2023. We would encourage the new Department Advocate to have DAO attorneys participate in interviews regarding the most serious allegations of corruption and misconduct in

⁷⁵ *Twentieth Annual Report* at pp. 31-32. *Twenty-First Annual Report* at p. 21.

those instances where a seasoned attorney may be able to follow-up on questions and obtain more relevant information.

d) Other Observed Investigatory Issues

In the 2022 review period, we saw slight decreases in our satisfaction rate with investigators' summaries of interviews, their timely search to obtain video footage that could be helpful to investigations, and their documentation of investigative steps. Our satisfaction rate in these areas decreased even more for the cases reviewed in our 2023 review period. While every investigation reviewed in 2022 also had regular team leader reviews, which help to provide supervisory direction to investigators, we noticed issues with investigators' follow up on these directives. There was a decrease in our satisfaction rate for the documentation of monthly team leader reviews, as well as the follow-up on those reviews, for the investigations we examined in 2023.

i. Accurate Summaries of Recorded Interviews

The Commission reviews audio recordings of civilian interviews and official Department interviews of members of the service and compares them to the summaries of these interviews prepared by IAB case investigators. While these summaries are not supposed to be transcripts of the interviews, we expect that they will include details that are material and relevant to the investigation and accurately reflect what was said.⁷⁶

There was a slight decrease in our satisfaction rate with investigators' summaries of recorded interviews in the cases we reviewed in 2022 from the satisfaction rate in our last report. In that report, we found that in all of the cases we reviewed, the information included in the

⁷⁶ This was the past position of IAB as well, however; after a recent meeting with IAB executives during which we discussed an interview summary that we did not consider complete, the Chief of IAB informed the commanding officers who were present that he expects all interviews to be transcribed and that he confirmed with the IAB training division that this was what was taught during their internal investigations course. For our purposes, we are satisfied if the summary contains all relevant information and is accurate.

interview summaries was accurate and was complete, and nothing of significance was omitted.⁷⁷ In our 2023 review, we saw a further decrease in our satisfaction rate with the summaries of interviews.

In one case that involved allegations of harassment, the summary of the official Department interview failed to include that the subject reported that the complainant had made false reports about her--that were ultimately unfounded--to the local child protective agency.⁷⁸ The summary also failed to include the circumstances that led to the subject's arrest. We believed this material should have been included given the subject's explanation that the complainant's allegations against her were false and the emails provided by the complainant were not sent from the subject's email address.

In a second case involving allegations that the subject sexually assaulted multiple minors, in an interview with the father of one of the victims, the worksheet summary indicated that the younger sister of the victim also stated that the subject had exposed his genitals to the younger sister.⁷⁹ While the younger sister did convey this allegation at a later interview, this was not what the father said in the telephone interview that was described in the worksheet summary. Also, during one of IAB's initial interviews with the mother who made the first complaint, the subject texted the cell phone of the minor victim. This was included in the summary as if the mother had stated it to the investigator and the worksheet included a screen shot of the text message. This receipt of this message was not discussed in the recorded interview. Also not discussed was the mother's agreement to conduct a controlled phone call with the subject, which was included in the interview summary. In this case, the subject was eventually criminally convicted of multiple allegations of sexual abuse and endangering the welfare of a child.

⁷⁷ *Twenty-First Annual Report* at p. 15.

⁷⁸ For further description about the facts of this case, *see supra* at pp. 30-32, 37, and 44.

⁷⁹ This case was also discussed *supra* at pp. 14-15.

He also resigned from the Department. While there was a satisfactory outcome to the investigation, in a case with less evidence, errors in interview summaries could serve as topics for cross-examination by defense attorneys and could be used to persuade a factfinder that police might also not have been accurate about other evidence in the investigation.

In one property case, during the subject officer's official Department interview, the subject related that another officer was present with him when the subject took possession of the envelope that contained the complainant's property and when the subject returned that property to the complainant.⁸⁰ The subject could not recall whether he had just handed the complainant the envelope or had emptied the contents from the envelope prior to returning the property. The complainant had alleged that a pair of earrings were missing. The worksheet summary omitted the presence of the other officer. Had the summary included that information, supervisors might have directed an interview with that officer, who might have had a better recollection. An interview of this second officer might have also determined whether that other officer handled the property, which could have led to that officer also being designated as a subject. This would have been followed by further investigative steps into that officer, including a background check.

ii. Timely Search for Video Footage

In previous annual reports, we have addressed IAB investigators' search for video recordings capturing alleged incidents.⁸¹ Video recordings often contain the most objective evidence of what occurred. However, video from neighborhood surveillance cameras and CCTV, as well as video captured on bystanders' cellphones, may be lost if investigators delay in

⁸⁰ This case was discussed *supra* at pp. 35-36.

⁸¹ See *Sixteenth Annual Report of the Commission* <https://www.nyc.gov/assets/ccpc/downloads/pdf/Sixteen-Annual.pdf> (October 2014) at p. 25; *Seventeenth Annual Report of the Commission* <https://www.nyc.gov/assets/ccpc/downloads/pdf/Seventeenth-Annual.pdf> (November 2015) at p. 30; *Eighteenth Annual Report of the Commission* <https://www.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf> (August 2017) at p. 31; *Nineteenth Annual Report* at pp. 31-32; and *Twentieth Annual Report* at pp. 33-35.

finding and retrieving it. With the exception of the cases reviewed for our *Nineteenth Annual Report*, we have seen an improvement in timely search for video evidence.⁸² In our last report, all of the investigations had timely searches.⁸³ Yet, in our 2022 review, there were two investigations where investigators did not search for all possible video and in our 2023 review, there were three investigations where there were delays in attempts to find and retrieve video and one case where investigators failed to obtain all relevant body-worn camera footage. One case involved a rape allegedly perpetrated by a civilian member of the service.⁸⁴ According to the complainant, after a date with the subject, she accompanied the subject to his home where both individuals used narcotics. The complainant stated that she began to feel unwell. She could not remember much of the incident but remembered the subject taking her clothes off. She used her cell phone to contact a friend and upon overhearing part of the conversation, the subject demanded the complainant leave his home and escorted her to a street corner. She claimed that once she was in the street, several people stopped and asked her if she was okay. One person called 911, and the complainant was taken to the hospital by ambulance. While it was unlikely that there would have been video from inside the subject's residence, we believed that IAB should have looked for video from outside the building to the location where 911 was called and the ambulance responded. This video could have corroborated some of the complainant's version of events and could have provided an indication regarding the complainant's physical condition at the time she and the subject parted.⁸⁵

⁸² *Nineteenth Annual Report* at pp. 31-32. This does not include search for body-worn camera footage which is addressed *infra* at pp. 74-79.

⁸³ *Twenty-First Annual Report* at p. 15.

⁸⁴ This case was also discussed *supra* at p. 48.

⁸⁵ All allegations against the subject were ultimately unsubstantiated, however; he resigned from the Department prior to being interviewed by IAB.

The second case arose after two officers responded to a vehicle accident.⁸⁶ When they responded, they believed that the driver of the vehicle was intoxicated and removed her to the precinct to undergo testing. Two other officers stayed with the complainant's vehicle until a tow truck arrived to transport the vehicle to the precinct. There, one of the subjects conducted an inventory search of the vehicle but did not activate his body-worn camera while doing so.⁸⁷ His actions were captured, albeit from a distance, by stationhouse cameras. On this footage, he could be observed placing property in a clear plastic bag and bringing that bag inside of the stationhouse. The subject vouchered some of the property, but returned some of it, still in the plastic bag, to the complainant's son. There was no documentation regarding what property was returned, and this transaction was not captured on video. The following day, the complainant alleged that she was missing \$112.00. While the body-worn camera footage from the officers who initially responded to the scene of the accident was reviewed, IAB did not look for body-worn camera footage from either of the officers who stayed with the vehicle awaiting the arrival of the tow truck. Those officers had an opportunity to go inside of the vehicle. IAB also did not look for video from the scene of the accident, which might have also disclosed whether anyone entered the vehicle prior to its removal to the precinct.⁸⁸

In our 2023 review, one case involved allegations of missing money after a vehicle pursuit and stop.⁸⁹ While all of the body-worn cameras of the officers were obtained in a timely manner, in the immediate days following the complaint, there was no canvass for video from the

⁸⁶ This case was further described *supra* at pp. 18 and 39.

⁸⁷ In an inventory search of a vehicle, the inside area of the vehicle is searched, and all loose property is removed. That property is supposed to be itemized and vouchered so that the officers know exactly what was recovered and the property is safeguarded until it is returned to the owner.

⁸⁸ The allegation of missing property against the officer who conducted the inventory search was unsubstantiated. He received discipline and forfeited five vacation days for failing to have complete memo book entries, failing to activate his body-worn camera, failing to safeguard prisoner property, and failing to prepare a property clerk's invoice. One supervisor was also disciplined for failing to activate his body-worn camera.

⁸⁹ This case was discussed *supra* at pp. 32-33 and 52-53.

location where the car was finally stopped after it collided with another vehicle, the driver was apprehended, and a passenger was removed from the vehicle that was pursued. A canvass was conducted almost three weeks after the incident and cameras were found outside some businesses in the vicinity of the collision. IAB was able to retrieve video footage from two businesses. One video showed the collision and the other captured the vehicle being towed as well as officers searching the vehicle, placing the property inside in a plastic bag, and giving that bag to the complainant's wife. Other businesses, however, had cameras that faced the location, but the relevant video had already been deleted. These cameras might have given different or better views of the search, as the footage that was obtained did not show what happened to the missing property and whether anyone else entered the vehicle after the officers searched it. The body-worn camera footage alone was not sufficient to provide this information, as several officers activated their cameras late, deactivated their cameras early, or had technical malfunctions in their cameras resulting in gaps in the video footage.

In another case, involving allegations of a missing necklace and shoelaces, there was a canvass for video at the arrest location during the preliminary call-out investigation. A camera was located, but there was no indication that investigators ever followed up to determine whether video footage existed.⁹⁰

In the final case, the complainant was arrested after he entered and drove a vehicle that officers were watching because it had been reported as stolen. After his arrest, the complainant alleged that all of his money was not returned to him. Body-worn camera footage did not show any officers recovering the money. Investigators went to the complainant's residence and spoke with his landlord, who had camera that recorded the incident, however; he did not know how to

⁹⁰ It is unclear whether video from this location would have produced any evidence relevant to the investigation as the complainant was observed wearing the necklace when she was brought to the precinct.

retrieve the footage. When investigators contacted the landlord again, he reported that his friend had retrieved the relevant videos to her cell phone and provided her contact information. When investigators contacted the landlord's friend, she stated that she would have her son send the video to investigators and confirmed that it captured the complainant's arrest by the subject officers. The video was not sent. Investigators did not follow up until a year later. Investigators had also located a camera at a neighbor's home but never followed up to see if that camera captured the complainant's arrest.

There was also another case involving missing property where investigators collected relevant body-worn camera footage from numerous officers at the scene.⁹¹ The property, which the complainant stated was located in a bag in her car, was never observed in this footage. The arresting officer, who was not present on the scene during the complainant's arrest and who did not transport the complainant's vehicle back to the precinct, indicated on the voucher for the vehicle that he had inspected the vehicle. There was no indication that IAB searched to determine whether this officer had body-worn camera footage of that inspection. Had there been footage, this could have been used to close the missing property allegation against this subject officer as unfounded instead of unsubstantiated. Also, this subject officer transported the vehicle belonging to the complainant's children's father back to the precinct following his arrest. The complainant's wallet was in that vehicle. Investigators did not determine if there was body-worn camera footage recorded by the subject during the transport. As there was some belief from IAB that the father had taken the money, this footage could have shown whether this subject had any contact with the complainant's wallet during the transport.

⁹¹ This case was discussed *supra* at pp. 46-47 and 54.

iii. Documentation of Investigative Steps

Accurate and timely documentation of investigative steps allows supervisors to gauge the progress of an investigation and prevents newly-assigned investigators from duplicating investigative steps. Similar to our findings regarding the timely search for video recordings, our satisfaction rate regarding IAB's documentation of investigative steps had been increasing, particularly in our 2020 and 2021 reviews. However, our review in 2022 saw a slight decline in that rate and there was a further decline in our 2023 review. In fact, our satisfaction rate for documentation of investigative steps was at its lowest level in our 2023 review from the five years prior.

In our 2022 review, there were four cases in which we believed there could have been better documentation of investigative steps or better documentation of the investigator's analysis of the evidence obtained. In two of these cases, the details regarding the background checks on subject officers were not sufficiently explained. One case involved the falsification of a police accident report, and the other was an investigation into criminal association.⁹²

One of the two remaining cases involved allegations of criminal association, narcotics, endangering the welfare of a minor, and obstructing an investigation. In this case, the subject officer had recently dropped her fiancé at his place of employment and was headed back to the home she shared with him, her teenaged child, and members of his family when she received a text from her child that law enforcement were at the location.⁹³ When she arrived at the location, she learned that a search warrant was executed by local law enforcement and federal authorities, as her fiancé ("the target") was suspected of participation in a narcotics trafficking ring. After answering some questions from law enforcement, the subject left the location and went to a

⁹² An IAB supervisor noted this issue in the criminal association case when the case was going to be closed.

⁹³ See *supra* at p. 11.

relative of the target. Law enforcement claimed that the subject left the location with the target's cell phone and refused to return it until she was threatened with an arrest. The subject claimed that the target had been picked up by this same relative from his job. According to the subject, the target left the cell phone at his relative's residence before he returned to his home to face the police. The subject denied that she ever had possession of the cell phone and stated that she told the law enforcement officers that she could not bring the cell phone to them because she was awaiting the arrival of IAB.

Although a conversation was documented with the law enforcement agent who had this interaction with the subject officer, details of that conversation were not included in the case file. When the file was reviewed, it appeared that IAB had not questioned this agent about the conversation he had with the subject and her demeanor at the time. As the details of this conversation went to the substance of the impeding an investigation allegation, it was important that those details be noted in this worksheet.⁹⁴ While IAB substantiated the allegation of impeding an investigation, this allegation was ultimately dismissed by DAO prior to trial.⁹⁵

In the final case, described earlier, the closing report contained information that was not documented anywhere in the investigative file.⁹⁶ This included evidence found on the subject's cell phone after a search warrant was executed. As criminal charges were brought against the

⁹⁴ The details described by law enforcement were noted in another worksheet describing a conferral with a member of law enforcement who was present but had not had the alleged interaction with the subject.

⁹⁵ Allegations of criminal association, failure to safeguard a firearm, failure to notify the Department of a change of address in a timely manner, endangering the welfare of a child, possession of a controlled substance, failure to notify IAB in a timely manner, and failure to notify the Operations Unit were all substantiated by IAB. However, prior to the subject's trial, all of the charges were dismissed except for failing to safeguard a firearm, failing to notify the Department of her address change, and endangering the welfare of a child. The subject was found not guilty of endangering the welfare of a child but pled guilty to the other two charges. She was forced to retire, was placed on dismissal probation to cover the time until her retirement took effect, was suspended for 60 days, and forfeited all of her time and leave balances.

⁹⁶ See *supra* at pp. 14-15 and 57-58 for more details about the facts in this investigation.

subject as a result of this investigation, it was important that all recovered evidence was adequately documented.

There were seven cases from our 2023 review where we found documentation issues. In one case, after IAB would not serve a subpoena on another City agency, the District Attorney's Office that was preparing to bring criminal charges against the subject officer told IAB that they would no longer update IAB on the progress of the Grand Jury.⁹⁷ A few weeks later, IAB arrested the subject officer. Under the circumstances, information had to have been shared with IAB that the subject officer had been indicted and the District Attorney's Office must have directed IAB to make the arrest. There was, however, no documentation of this information in the file. In another case, the complainant alleged that a sergeant who was friends with her ex-boyfriend disclosed information to that ex-boyfriend that she had provided for a domestic incident report.⁹⁸ The assigned investigator left several messages on the complainant's voicemail but was never able to make contact with the complainant. Near the conclusion of the investigation, the investigator used a different phone number, and the complainant answered. There was no indication in the file how the investigator found this phone number. In a third case, the investigator documented that they made multiple efforts to reach the complainant and had tried to contact a witness, but did not specify when or how those efforts were made.⁹⁹ In the fourth case, surveillance was conducted on the subject officer on four dates. While there were worksheets in the file that described the surveillance results for two dates, there were no worksheets describing the other two dates.

⁹⁷ This case was discussed *supra* at p. 17.

⁹⁸ This case was discussed *supra* at pp. 41 and 48.

⁹⁹ This case was discussed *supra* at pp. 42-44.

In three cases, information appeared in the closing reports, but there was no information in the investigative file regarding when or how this information or the investigative step was done. In one case, a complaint was made to the Civilian Complaint Review Board alleging that a traffic enforcement agent solicited a bribe to not write a ticket and smelled of marijuana. The case was referred to IAB as the Civilian Complaint Review Board does not investigate allegations of bribery or narcotics use and does not investigate allegations against civilian members of the service. IAB discovered that the name and address of the complainant were false. IAB later determined the identity of the complainant, but how investigators came to this conclusion was not explained until the closing report. In the second case, the closing report included statements by the complainant that were not located in any worksheet or on any audio recordings of interviews with the complainant. Due to the lack of documentation, we could not determine when this statement, which involved how the complainant came into possession of a mini-shield, was made or if it was even made.¹⁰⁰ In the last case, the closing report indicated that the investigator had reviewed precinct video from when the complainant was released and conducted a background check on a complainant's father, yet there were no worksheets in the file that described those investigative actions and neither the video at issue or the background checks were in the file.

During our attendance at Steering Committee meetings in 2023, we witnessed IAB executives instruct group commanders and their supervisors regarding the importance of documenting all investigative steps so that the investigations can be easily reviewed by IAB supervisors and executives. We are encouraged by their focus on this issue.

¹⁰⁰ In the recording of IAB's interview with the complainant, it sounded as if the complainant stated he had received the mini-shield from a family member, which was different from what was stated in the closing report.

iv. Team Leader Reviews

Team leader reviews are a separate worksheet in which the investigator's immediate supervisor documents that they have reviewed the progress of the investigation and provide guidance regarding future investigative steps. In investigations, there are also commanding officer reviews that are similar to team leader reviews but are completed by the investigator's commanding officer. IAB guidelines require that team leader reviews occur on a monthly basis. We have seen consistent improvement in the completion and documentation of these reviews, and in fact, in our 2021 review as well as this 2022 review, we have found that except for isolated missing reviews, team leaders generally were completing their reviews at least every 30 days. However, we found two cases where directions given by the team leader were not followed, and there was no indication that there had been an alteration to the strategy that eliminated the need for the investigative step. Nor was there any indication that the investigator's non-performance was addressed. One case involved allegations of patronizing sex workers.¹⁰¹ Three months into the investigation, the investigator's commanding officer provided directions to request surveillance of one of the subjects, and to request phone records for that subject's personal and Department cell phones. These steps were never performed. There were also insufficient attempts to comply with another direction to interview a possible witness.¹⁰²

In a case involving anonymous allegations that an officer was reporting for duty smelling like marijuana and alcohol, the team leader directed that surveillance be conducted prior to the start of the subject's tour to determine whether the subject displayed any indicia of alcohol or drug use. While surveillance was conducted, it was all performed either during the officer's tour

¹⁰¹ There were several subjects in the case with various additional allegations including excessive force, criminal association, and misuse of time. The team leader review directions at issue directly applied to one subject against whom the sole allegation was patronizing a sex worker. This case is described further *supra* at pp. 50.

¹⁰² The allegation against this subject was unfounded.

or after he left work. As the effects of intoxicants could dissipate later in the day, we did not believe that this surveillance was sufficient and believed that the investigator and the support group assigned to conduct the surveillance should have followed the team leader's instructions.¹⁰³

We saw a slight decrease in our satisfaction rate with the documentation of monthly team leader reviews in our 2023 case reviews. There were three cases where multiple team leader (or commanding officer) reviews were missing.¹⁰⁴ There were six cases in which team leaders directed specific actions to be taken, yet they were not, and no explanation was offered as to why.¹⁰⁵

In one case, discussed earlier, the team leader directed that phone records for the subject officer be subpoenaed but this was not done.¹⁰⁶ Phone records could have revealed that the subject officer spoke with his friends in the aftermath of the incident or following his interview with detectives. This would have cast doubt on the officer's assertions that he did not speak with his friends regarding the physical altercation with the complainant after it occurred. In a second case, the investigator also failed to subpoena phone records for the subject agent. These records could have shown contact between the subject and her ex-boyfriend after she was instructed to no longer associate with him.¹⁰⁷ In a property case, the team leader directed contact with the complainant to determine if they had picked up their vouchered property and interviews with members of the service who were characterized as witnesses. Neither step was done. In another property case, the team leader directed, in two separate reviews, that the investigator follow-up

¹⁰³ The allegations against this subject were unsubstantiated.

¹⁰⁴ Two of these cases were discussed *supra* at pp. 39-41 and 61-62. In one of these cases, the Zone Commander noted the lack of team leader reviews as a training issue prior to approving the closure of the investigation.

¹⁰⁵ Two of these cases also were missing multiple team leader reviews.

¹⁰⁶ See *supra* at pp. 42-44 and 65.

¹⁰⁷ See *supra* at pp. 39-41 and 68 for further discussion about this case.

to obtain video of the arrest of the complainant. While done, it was not done until months after the direction was given.¹⁰⁸ The final two cases also concerned property allegations. In one, the investigator did not locate a civilian witness who could have confirmed that he lent the missing money to the complainant. The investigator also failed to obtain a copy of the subject's memobook entries for the incident date. For the last case, discussed earlier in this Report, the investigator failed to follow the team leader's instructions to obtain any available information from a field associate assigned to the building management unit regarding the missing flooring.¹⁰⁹ In each of these investigations, the failure to perform the directed steps was never addressed in the file.

During our attendance at Steering Committee meetings in 2023, we have witnessed IAB's executive staff instruct group commanders and their lieutenants on the importance of regular team leader reviews as well as directing that group commanding officers conduct an initial review worksheet with directions upon receipt of the complaint. The executive staff have also stressed that the recommendations in these reviews must be followed by investigators and have questioned commanding officers regarding how they addressed investigators who failed to follow these directions.

v. Surveillance

In addition to the two surveillance issues noted in the previous section, there were two other investigations from our 2022 review in which we believed that surveillance could have been conducted in a more meaningful manner. In one case, discussed earlier in this Report, only one surveillance was conducted on the subject to determine if there were any indicia that he was using illegal narcotics.¹¹⁰ This surveillance occurred at the subject's place of work, which was

¹⁰⁸ This case was discussed previously at *supra* pp. 61-62 and 68.

¹⁰⁹ See *supra* at pp. 34-35 for further discussion about this case.

¹¹⁰ See *supra* at pp. 48 and 59.

police headquarters. As the alleged narcotics use occurred when he was off duty, surveillance while he was off duty may have been more effective in catching the subject engaging in narcotics use. The other case involved an allegation of criminal association.¹¹¹ Investigators conducted three surveillances to attempt to see the subject associating with her boyfriend. They only observed the subject in one surveillance when they followed her as she left her precinct. In the other two surveillances, they did not see anyone associated with the case. In her official Department interview, the subject admitted to continuing to live with her boyfriend for a period of time. If surveillance had been conducted on the subject's regular days off, investigators might have observed the two together. We did not find any similar issues in our 2023 review.

Surveillance can provide evidence of an officer committing misconduct, but it also consumes significant resources, including Department vehicles, and the time of investigators, which can prevent them from performing other work. Investigators should strategize ahead of time to determine the most likely times and days of the week when they will observe the subject officer and when the subject officer is most likely to engage in the alleged misconduct. Supervisors and investigators should discuss the objective of any surveillance and make their decisions regarding timing of the surveillance based on what evidence they are seeking to observe.

vi. Allegations

In past review periods, as well as this one, we have noticed and discussed with IAB executives some cases in which we believed that there were additional allegations made, or that were discovered during the course of the investigation that were not added into the case. These sometimes-involved minor violations of Department regulations that were not addressed, but

¹¹¹ See *supra* at pp. 46 and 51-52 for further information about the facts of this case.

should be, even if just by a notification to the subject's command. Other times, more significantly, it involved IAB not addressing possible false or misleading statements made to investigators by the subject. There have also been investigations in which complainants, during interviews, made additional allegations, which were not followed-up on by investigators. In these situations, only the original allegations were investigated. In our 2022 review period, there were two property cases in which we believed allegations should have been added and investigated.

In one case, the subject officer, who arrested the complainant and transported him to a precinct, failed to operate his body-worn camera prior to engaging with the complainant. He had suspected that the complainant was driving while intoxicated, so activation of his body-worn camera was mandatory as officers must activate their body-worn cameras when they intend to interact with someone whom they believe is engaged in criminal activity. The first images from the subject's body-worn camera footage showed the complainant already handcuffed. At that point, the jewelry that the complainant claimed was missing was not visible on his person. Had the body-worn camera been activated prior to the subject's initial approach, it might have demonstrated that the complainant was not wearing the jewelry he claimed was missing, and it might have been possible to close the allegation of missing property as unfounded as opposed to unsubstantiated. Alternatively, the body-worn camera footage might have revealed that the complainant was in possession of the jewelry, lending credence to his version of events, and more investigative measures may have been justified.¹¹² Yet, there was no allegation added for the subject's delayed activation of his body-worn camera.

¹¹² This case was also discussed *supra* at p. 52. Body-worn camera evidence and issues involving body-worn cameras are discussed in further detail in the next section, *infra* at pp. 74-79.

In the second case, a car accident resulted after the subject officers conducted a vehicle pursuit of the complainant's vehicle. Body-worn camera footage showed that the complainant's glasses were left on the street. One of the passengers in the vehicle told investigators that she collected items after they fell out of the complainant's vehicle and landed on the street. We believe that allegations for failure to safeguard property and/or failure to voucher property should have been added against the subjects. Additionally, when interviewed by investigators, the subject officers initially denied engaging in a vehicle pursuit. One subject first stated that after the vehicle drove off as they tried to stop it, the officers only followed at a distance. Another subject stated that the officers only followed the vehicle to try to get the license plate number. It was only when they were confronted with evidence of the speed at which their vehicle was traveling as well as with video of the vehicle accident, that both subjects admitted to engaging in a vehicle pursuit. We believed that since the subjects were not forthcoming when first questioned about the pursuit, allegations of making misleading statements in an official Department interview should have been added.¹¹³

In our 2023 review, there were eight cases in which we believed allegations should have been added. In four of those cases, subject officers either lacked or had entered inadequate memobook entries. Three of these cases involved allegations of missing property. In one of those cases, we also believed that there should have been a failure to supervise allegation against the subject sergeant as he instructed a probationary police officer to prepare a parking summons for a violation that was observed by the sergeant. Parking summonses must be observed by the person who issues the summons, so his directions to this new officer, who had only been on

¹¹³ This case was discussed *supra* at p. 52. The two subjects referred to here also did not have allegations of engaging in a vehicle pursuit, however; allegations against their supervisor for failing to provide notification regarding the vehicle pursuit and failing to terminate a vehicle pursuit were substantiated. That supervisor received a command discipline and forfeited 11 vacation days.

patrol for two months, were incorrect.¹¹⁴ In the fourth case with a missing memobook allegation, the subject officer had issued a summons to a car that was later towed. The complainant had alleged that officers in that precinct were summoning cars in order to give tow truck companies business in exchange for payment. The investigation disclosed that the car had been blocking a driveway and the occupant at the address called the police, who issued the summons, and then that occupant called a tow truck himself. While the officers did not commit any misconduct in relation to the issuance of the summons, one of the officers had no information regarding the summons in his memobook, which should have been addressed.

Three of the remaining four cases also involved allegations of missing property. In one, the subject officer prematurely deactivated his body-worn camera while searching a vehicle, which then prevented IAB from determining whether he encountered the missing property during that search. The officer returned to the vehicle a second time and conducted a search without activating his body-worn camera at all and according to video that captured the precinct parking lot, was in the vehicle for seven minutes. Had the officer activated the camera properly during both searches, it is possible that IAB could have determined whether the property existed and if so, whether this subject made contact with that property. In a second case, the complainant alleged that his earrings were missing after he was arrested and lodged in the holding cells. The earrings had been dropped during arrest processing. Later another officer found the earrings on the floor by the precinct desk. That officer vouchered the earrings as found property. The subject officer believed the earrings to be hers and told a supervisor, who authorized her to claim the earrings. Once the complainant alleged that the earrings were missing, the subject was contacted at home and realized that these were not her earrings and returned them to the precinct.

¹¹⁴ See *supra* at pp. 35-36 and 58 for further discussion about this case.

What was not included in the allegations was that the complainant had also alleged that he was missing an identification card that he needed for his employment. This was never investigated and was never addressed.¹¹⁵ The third property case was discussed earlier in this Report.¹¹⁶

While transporting the complainant's children's father back to the precinct, one of the officers who was not made a subject in this case drove the wrong way down a one-way street. This was captured by his body-worn camera. As there was no apparent need for this traffic violation, we believed that this should have been addressed.

The final case with a missing allegation was also discussed earlier in this Report and also involved a traffic violation.¹¹⁷ After the subject stopped his vehicle in the middle of the street and picked up two of his friends who had been involved in a physical altercation with the complainant, the subject drove away. As he drove away, he ended up behind a vehicle that was stopped at a red traffic light. The subject drove around this vehicle and through the red light. The subject was never asked for his reasons for doing so and this misconduct was never addressed.

C. Body-Worn Cameras

Valuable evidence in IAB investigations often comes from body-worn camera footage. In our last annual report, the Commission began tracking whether IAB investigators were searching for body-worn camera footage early in investigations, whether that footage provided evidence supporting the final dispositions of the allegations, and whether allegations were added to the investigation for improper activation and/or deactivation of body-worn cameras when applicable.¹¹⁸

¹¹⁵ This case was discussed previously *supra* at p. 68.

¹¹⁶ See *supra* at pp. 46-47 and 53.

¹¹⁷ See *supra* at pp. 42-44 and 65.

¹¹⁸ *Twenty-First Annual Report* at pp. 23-36. In that report, we discussed the roll-out of the NYPD's body-worn camera program.

Most members of the service are equipped with body-worn cameras.¹¹⁹ However, that camera is not always recording. In an attempt to balance the goals of the body-worn camera program with privacy concerns, the NYPD has delineated instances when members of the service are required to activate and deactivate their cameras. According to NYPD Patrol Guide §212-123, instances where activation is required include:

- ❖ All uses of force;
- ❖ All arrests and summonses;
- ❖ All interactions with people suspected of criminal activity;
- ❖ All searches of persons and property;
- ❖ Any call to a crime in progress;
- ❖ Some investigative actions; and,
- ❖ Any interaction with emotionally disturbed people.

Pursuant to NYPD policy, officers are prohibited from recording certain sensitive encounters, such as speaking with a confidential informant, interviewing a victim of a sex crime, or conducting a strip search.

Of the 46 cases we evaluated in 2022, body-worn camera footage was available and reviewed by investigators in 16 cases.¹²⁰ In 14 of the 16 cases, the recordings proved to be valuable for gathering evidence regarding the original allegations, or to alert investigators to other potential misconduct.¹²¹ In 10 of the cases, all involved officers properly recorded the enforcement action. However, in six cases, at least one officer did not properly operate their

¹¹⁹ There are still some units in the Department who do not have body-worn cameras. Among others, the Narcotics Units are not currently equipped with body-worn cameras.

¹²⁰ There were 30 cases that involved situations where body-worn camera footage would not exist. In the cases with body-worn camera footage, recordings came from subject officers engaged in enforcement action, and witness officers who captured relevant information on their body-worn cameras when conducting enforcement action or responding to calls for assistance.

¹²¹ In fact, in one of these cases, the body-worn camera was accidentally activated in response to a vehicle accident. An audit of the body-worn camera footage conducted by precinct personnel revealed that the subject officer provided a false narrative in a police accident report, which was then reported to IAB. That officer ultimately resigned from the Department.

body-worn camera. In three property cases, at least some of the subject officers failed to operate their body-worn cameras in a timely manner. In one case, discussed earlier in this Report, this deficiency was not addressed.¹²² In the other two cases, the officers received discipline either through receipt of a letter of instruction, or through a command discipline. There was no indication that any of these officers received penalties other than a warning, despite one of them having received a letter of instruction in the past regarding the improper activation of his body-worn camera.¹²³ In this case, investigators took a further step and viewed random samples of the two subjects' past body-worn camera recordings in an effort to determine if there were patterns of body-worn camera issues, but did not find any.

In three other cases, subject officers turned off their cameras too early. In one of these cases, involving the use of force, the subject's camera fell off during the interaction, so the deactivation was accidental, and no discipline was imposed. The second case involved property allegations, and the subject received a command discipline. The final case involved an integrity test.¹²⁴ During the test, the subject officers failed to voucher found property as required and received discipline for that failure. However, although the allegations regarding the early deactivation of their body-worn cameras were substantiated, they received no discipline for this deficiency.

For our 2023 review, there were 22 cases where body-worn cameras were required to be activated. In 17 of those cases, the activation was done properly. There were five cases in which at least one officer failed to properly activate his body-worn camera. Four of these investigations

¹²² See *supra* at p. 71.

¹²³ That officer received a command discipline in the reviewed case but if there was an imposed penalty, it was not included in the investigation.

¹²⁴ In an integrity test, IAB devises a fictional scenario designed to replicate an encounter officers could have during the course of their duties. IAB uses undercover officers to test how the officers respond to the scenario. Officers who fail to respond as required can face discipline and possibly, criminal charges.

involved property allegations arising from a car stop. In three of those cases, there were some officers on the scene who properly activated their body-worn cameras. In one of the three cases, several officers activated and deactivated their cameras during the interaction, which resulted in important pieces of information not being recorded. Those officers received the most significant form of command discipline and forfeited a total of eight vacation days for this and other infractions.¹²⁵ In the second case, one officer activated his body-worn camera late. He received a command discipline, but no penalty was noted in the investigation file. In the third case, one officer prematurely deactivated his body-worn camera while he was searching the vehicle at the precinct. He also did not activate his body-worn camera when he conducted a second search of the vehicle.¹²⁶ Allegations for this deficiency were not added to the case, the officer was not questioned about the deactivation and failure to reactivate the body-worn camera during his official Department interview, and the officer faced no discipline for these shortcomings. In the fourth property case, neither officer activated their body-worn cameras. When questioned during their official Department interviews, they both stated that the failure to do so was a result of an oversight as they typically did not conduct traffic stops. IAB notified their command about this failure but otherwise, no other discipline was requested or imposed by IAB.

The fifth investigation concerned an allegation that the subject wrongfully completed a report with false information regarding injuries he and other officers received after responding to a job involving an emotionally disturbed person. The officer placed himself at the scene of the encounter with the emotionally disturbed person and claimed that he, along with other officers, was injured and went to the hospital. There was no evidence to indicate that the subject was at the scene, and he admitted during his official Department interview that much of the report

¹²⁵ These penalties also included discipline for failing to notify the radio dispatcher about a vehicle pursuit and making incomplete or improper memo book entries.

¹²⁶ This case was discussed *supra* at p. 73.

contained false information. He had used the information in the report from another report for an incident that occurred on an earlier date to which he had previously responded. The subject officer failed to activate his body-worn camera during that previous incident. As the SOL had expired, the subject officer was issued a letter of instruction.¹²⁷

In most of the instances where officers failed to properly activate their body-worn cameras, they were instructed regarding proper operation of these devices during their official Department interviews and provided with copies of Patrol Guide §212-123. However, looking at the body-worn camera deficiencies in the cases reviewed, it did not appear that penalties beyond warnings were given in a majority of these cases. The Department's Disciplinary Guidelines set a penalty range of the forfeiture of between one and five penalty days when there is a negligent failure to record a prescribed event or there is an untimely activation or deactivation of the body-worn camera during the event, and the event is the subject of an investigation.¹²⁸ Body-worn camera footage can save the Department time and resources when investigating allegations of wrongdoing and can provide more definitive dispositions for allegations. However, these events must be recorded properly for the camera footage to have the best investigative value. To encourage proper and thorough recording, the Department should follow the Disciplinary Guideline penalty ranges in these cases.

Overall, the body-worn camera program has proven beneficial to IAB. The existence of body-worn camera footage, in some instances, helped streamline case investigations. At times, investigators were able to close investigations in their call-out phase due to the existence of body-worn camera footage.¹²⁹ Body-worn cameras capture critical moments of investigative and

¹²⁷ This case was discussed *supra* at p. 17.

¹²⁸ New York City Police Department Disciplinary System Penalty Guidelines (February 15, 2022) at p. 45.

¹²⁹ The Commission has not reviewed any of the cases in which the investigation was closed after the completion of the preliminary call-out investigation. We intend to conduct a review of a sample of these cases at a future time.

other encounters that otherwise would not have been recorded, and those recordings often play a critical role in assisting IAB investigators in determining the overall case disposition.

D. Recommendations

Throughout this section, we made various recommendations to improve IAB's investigative practices. These recommendations, many of which have been made in prior reports, are summarized below:

1. Investigations should be conducted promptly, without investigative lapses. However, the quality of the investigations should not be sacrificed in an effort to reach a disposition expeditiously. Since a new commanding officer was appointed to IAB, and new executives were assigned there, we have observed executives focusing on the amount of time investigators are spending on cases and pointing out when there are gaps or other delays between investigative steps. We are hopeful that with this focus, we will see a reduction in unnecessarily long investigations and in lengthy periods in investigations where no work is being performed. The commanding officer of IAB has directed each group's commanding officer to designate secondary investigators who can take over the cases in the event the primary investigator is out sick, on vacation, in training, or otherwise unavailable for case work for extended periods of time.
2. Subject officers should be identified as subjects as early as possible. In property cases, all officers who had access to the missing property should be identified as subjects unless there is a specific reason to exclude them. Just because the complainant provides the name of a specific officer does not mean that this is the only officer who had the opportunity to take property. Identifying all possible officers as subjects will allow investigators to determine if there is a pattern of similar cases when conducting background checks on these officers, and to conduct a thorough investigation of the allegations.
3. Interviews with civilian witnesses should be conducted without delay. Similarly, unless there are strategic reasons for a delay, official Department interviews with witness officers should be conducted close in time to the incident that is under investigation. We have observed progress with this recommendation as we have witnessed IAB executives stressing in Steering Committee meetings that official Department interviews be scheduled as soon as practicable. Furthermore, even if a complainant is interviewed preliminarily, once an investigator is assigned to the case, that investigator should contact the complainant to introduce themselves, provide contact information, and make their own credibility determinations.

Civilians should be shown body-worn camera footage when their version of events is contradicted by the recording, unless there is a strategic or privacy-related reason not

to do so. If the civilian can view what the investigator has viewed, the civilian can either indicate any areas of the recordings where they assert that something occurred, which the investigator might not have noticed. Alternatively, seeing the video, at a time and place removed from the incident, can lead the civilian to re-evaluate their own perceptions regarding what occurred. This can increase trust in the investigation outcomes.

4. When investigators have a reason for departing from best interview practices, that reason should be documented in the case file, preferably on the worksheet that summarizes the interview.
5. Training in interviewing techniques and best practices should be provided to newly assigned investigators and in refresher courses on a routine basis to all investigators. The former Department Advocate indicated her intent to have her office provide this type of training. The current Department Advocate should implement this training with the help of the attorneys assigned to that office.
6. Supervisors' adept at conducting interviews should assist less-skilled and less-experienced investigators. This should include preparation prior to the interview as well as with the questioning during the interview.
7. Investigators should include all allegations against subjects in every investigation, even if those allegations will be unsubstantiated. Subjects' commanding officers should be notified of any allegation that was not fully investigated or otherwise addressed by IAB.
8. Prior to conducting surveillance, investigators should discuss with their supervisors the objectives for surveillance and develop a plan to conduct the surveillance when they are most likely to observe what they want to see.
9. When summarizing interviews that have been recorded, investigators should include only material that can be heard on the audio in the worksheet summary. Information that is provided outside of the recorded interview should either be memorialized on a separate worksheet, noting the circumstances surrounding the additional statements, or clearly marked on the interview worksheet as occurring before or after the recorded statements. Supervisors should also confirm that the interview summaries are accurate, and that all relevant and material information is included.
10. Investigators should search for relevant video upon receiving the complaint. We reiterate our prior recommendation that supervisors check during the first one to two weeks that a video canvass was performed. If cameras were found but video could not be accessed, the investigators should follow up to retrieve video expeditiously.

11. Investigative action directed by supervisors in team leader or commanding officer reviews should be performed promptly. If there is a reason why an investigative step was not performed, that reason should be documented in the case file. If the non-performance of a step was not due to a change in strategy or another legitimate reason, the investigator should be admonished and possibly disciplined for the non-performance.
12. The Department should follow the ranges set forth in the Matrix for negligent failures to adequately activate body-worn cameras when the footage could have produced evidence that would be relevant to an allegation of misconduct. Instructions or command disciplines that result in warnings are likely inadequate to ensure that these officers will properly activate and record future encounters. If the Department disagrees with this recommendation, at the least it should monitor whether letters of instructions or command disciplines that result in only warnings are sufficient to remind members of the service to correctly activate their body-worn cameras in the future or whether discipline that adheres to the penalties in the Department's Disciplinary Guidelines would be more effective to achieve uniform body-worn camera operation in compliance with Department policy. We note that during the drafting of this Report, IAB began including the applicable penalty range set forth in the Matrix when sending command disciplines back to the subject's commanding officer for adjudication and imposition of a penalty.

E. Conclusion

In 2022 and 2023, the Commission observed the lowest average length of time IAB investigations were pending since we began tracking this metric. Our satisfaction rates for the cases we reviewed in 2022, remained relatively stable when compared to previous years. We saw minor declines in five areas and a slight improvement with our satisfaction rate in interview quality from our 2020 and 2021 reviews, but this rate was still below our 2018 and 2019 reviews. For our 2023 review, we saw significant declines in our satisfaction rates. This could be due to the sample of cases that we reviewed, our decision to no longer include Department drug test failures in our reviews, or possibly because of turnover in IAB. In our 2023 review, our lowest satisfaction rates were for IAB's interviews with available witnesses and in the quality of conducted interviews. Thus, interview quality remains the area where IAB can improve the most.

We disagreed with more overall dispositions of investigations in this review than we have had in the prior four years. In our 2022 review, we did not believe that any allegation that was not substantiated should have been substantiated. We did believe that there was not sufficient evidence to close two cases as unfounded and thought unsubstantiated dispositions would have been more appropriate. In a third case, we believed that the substantiated disposition assigned to the case was not supported by the evidence gathered at the time the investigation was closed, and in fact, with further investigation, we believed that an unfounded allegation might have been justified. There were also two other cases where we believed that had further investigative steps been taken or more thorough interviews been conducted, IAB may have been able to substantiate the allegations, although we agreed with the unsubstantiated dispositions based on the evidence that was actually collected and reviewed by IAB. In our 2023 review, there were three cases where we believed that specific allegations that were unsubstantiated should have been substantiated. In two of these investigations, the allegation that we believed should have been substantiated were not the most serious allegations investigated. In the third case, although allegations of excessive and wrongful use of force were substantiated for the subject's actions towards two civilians, we believed excessive force allegations should have been substantiated for a third civilian as well. Importantly, IAB agreed with our assessments in two of these cases. In two additional cases, we believed that there was not sufficient evidence to close allegations as unfounded and the more appropriate dispositions were unsubstantiated. There was one additional case where we believed that there was sufficient evidence to close a missing property allegation as unfounded instead of unsubstantiated. There were also four cases where we believed that some allegations could have received dispositions other than unsubstantiated if additional investigative steps were performed.

SUMMARY OF A REVIEW OF THE NYPD’S IMPLEMENTATION OF THE RECOMMENDATIONS MADE IN THE REPORT OF “THE INDEPENDENT PANEL ON THE DISCIPLINARY SYSTEM OF THE NEW YORK CITY POLICE DEPARTMENT”

In 2023, under new leadership, we witnessed IAB executives identify many of these same issues. As IAB leadership focuses on these issues with each investigative group, the prevalence of these issues will hopefully decline. It is also worth noting that all of our satisfaction rates, with the exception of interview quality and the identification and interviews of witnesses, remained above 80%.

In 2019, the Independent Panel on the Disciplinary System of the New York City Police Department (“the Independent Panel”) issued its report assessing the fairness and effectiveness of the NYPD’s disciplinary system. The Independent Panel was convened by former Police Commissioner James O’Neil, who committed in advance to adopting all the Independent Panel’s recommendations.

The Independent Panel’s report concluded with 13 recommendations, the last one being that the NYPD engage outside auditors to review the NYPD disciplinary system on a routine basis. We were asked to be those auditors. At the NYPD’s request, we also agreed to issue a report assessing the NYPD’s implementation of the Independent Panel’s recommendations.

Throughout the calendar years 2022 and 2023, we met with NYPD officials to collect information for this report. We published the report, *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”*, in March 2024. Because the work for the report was conducted during the period covered by our *Twenty-Second Annual Report*, we include a summary of our findings and recommendations and the Department’s response here. Our report covered disciplinary charges that were adjudicated

through December 2022. We include updates to our findings where applicable. The full report may be accessed on our website.

Independent Panel Recommendations #1 and #2:

#1: The Department Should Support Amendments to Civil Rights Law §50-A to Increase Transparency and Enhance Accountability

#2: The NYPD Must Guard Against Unwarranted Expansion of the Scope of Civil Rights Law §50-A

We found that since Civil Rights Law §50-A had been repealed on June 12, 2020, these recommendations were moot.

Independent Panel Recommendation #3:

The NYPD Should Also Enhance Its Public Reporting in Line with That of Other Agencies

We found that the NYPD met this recommendation by publishing information on two websites: the official NYC.gov website and NYPD Online. On the official NYPD site, the NYPD provided links to its Annual Discipline Reports. These reports include an introductory “Executive Summary,” a glossary of terms, a brief description of the types of discipline available for the Department, the disciplinary process, and various statistics including the number of trials, types of penalties, and the length of time that disciplinary cases were pending. Also provided are the deviation letters issued during that year that explained the Police Commissioner’s reasons for departing from the penalty ranges set forth in the NYPD’s Disciplinary Guidelines (“the Matrix”). The secondary website, NYPD Online, contained some of the same information found on the NYPD NYC.gov website. Additionally, this website contains officer profiles for active members of the service and a trial decision library dating back to 2008.

In analyzing these websites, we found that the information available across the two websites could be overwhelming and was not user-friendly.

Recommendations addressing the Third Recommendation of the Independent Panel:

- We recommended 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 the desired information.
- We recommended that the NYPD make it possible for users to search the Trial Decisions Library by the subject officer's name, their command, and by a general case category.
- We recommended that the NYPD include an overview by the Police Commissioner in the Annual Discipline Reports that includes the Commissioner's observations and assessment of the disciplinary system and the types of training or policy changes that should be considered.

Department Response: The Department noted that its Annual Discipline Reports featured 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.” The Department also stated that these executive summaries provided an overview of the previous year's changes and revisions to the disciplinary system.

Update: We note that since the publication of our report, none of the above recommendations have been adopted. However, in response to a draft of this Report, we were notified that the Department is currently creating and testing a search function for the Trial Decisions Library. The Department hopes this function will be launched in March 2025.

Furthermore, the last Annual Discipline Report published by the Department on the NYC.gov website covered the discipline imposed in 2022.

Independent Panel Recommendation #4: The NYPD Should Publish Trial Room Calendars

Beginning in March 2019, the NYPD began posting trial room calendars that included the name of the member of the service on trial, the date of the trial, and the trial room number.

These calendars are updated at the beginning of each month. At our suggestion, the calendars were modified to include a case type based on the most serious charge. A trial start time was also included.

**Independent Panel Recommendation #5:
The Department Should Appoint a Citizen's Liaison**

In June 2020, the Department appointed a senior member of the Department Advocate's Office ("DAO") as the Citizen's Liaison. The Citizen's Liaison's role is to provide support to victims of alleged police wrongdoing and to guide them through the administrative disciplinary process. We learned, however, that because the Citizen's Liaison is an executive within DAO, the Citizen's Liaison does not reach out to victims unless it is determined that charges will be brought against the subject officer(s). This leaves victims with no one other than the investigator to whom they can turn to provide updates or answer questions until the investigation is complete, a situation that can create tension between families and the investigator and possibly adversely affect the investigation.

Recommendation addressing the Fifth Recommendation of the Independent Panel:

To fulfill the intent of the Independent Panel's recommendation, we suggested that a Citizen's Liaison position be created *outside* of DAO. The person appointed to that position would be available to answer questions, provide updates on the investigation, and explain the disposition of allegations to those civilians who complained that officers used wrongful, unnecessary, or excessive force against themselves or family members.

Department Response: The Department maintained that the Citizen's Liaison should remain within DAO as persons within DAO have specialized knowledge of the disciplinary process. The Department also indicated that there were legal concerns regarding discussions with civilians prior to a determination of wrongdoing on behalf of an officer.

Update: We adhere to our original recommendation.

**Independent Panel Recommendation #6:
The Police Commissioner Should Enhance the Documentation of Variances from
Disciplinary Recommendations**

In our discussion of this recommendation, we addressed two separate types of documentation: variance memoranda and deviation letters.

Variance memoranda refer to written explanations by the Police Commissioner (or their designee) whenever the Police Commissioner changes the penalty agreed upon by the

prosecutor¹³⁰ and the subject officer. These memoranda are also prepared when the Police Commissioner departs from a Trial Commissioner's penalty recommendations after a trial or mitigation hearing.¹³¹ They are also used in the rare situations when the Police Commissioner changes a guilty or not guilty finding. Variance memoranda, unless attached to a trial decision, are not available to the public.

In contrast, deviation letters are letters written by the Police Commissioner to explain a departure from the penalty ranges set forth in the Matrix. This includes those cases in which the Police Commissioner approves a penalty recommendation that was either part of a negotiated settlement or made by a Trial Commissioner but was outside of the penalty ranges in the Matrix. The Police Commissioner provides their own justifications for departing from the penalty range for the misconduct. These deviation letters are available to the public on NYPD Online and in the Annual Discipline Reports on the NYC.gov website.

We found the variance memoranda prepared by the Police Commissioner (or their designee) between the years 2019 and 2021 were typically perfunctory and vague, with little to no precedential benefit. By contrast, for those cases adjudicated in 2022, approximately 77% had detailed explanations that could be used as guidance to future decisionmakers.

We also found that there had only been 12 reviewable deviation letters published on NYPD Online from the effective date of the Matrix until the end of 2022. We found the reasons in all but one letter to be adequately detailed.

¹³⁰ The prosecutor refers to either DAO or the Administrative Prosecution Unit of the Civilian Complaint Review Board.

¹³¹ In a mitigation hearing, the subject pleads guilty to all or some of the charges and offers evidence to try to convince the Trial Commissioner to impose a less severe penalty than that requested by the prosecution. Typically, mitigation hearings occur in the context of DAO-prosecuted cases.

Recommendation addressing the Sixth Recommendation of the Independent Panel:

We recommended that in both variance memoranda and deviation letters, the Police Commissioner should provide details of the specific facts in each case and any other aspects of the subject's career that led to the modification in the penalty or finding of guilt. We also stated that the Police Commissioner should avoid relying on overly broad terms such as "based on the totality of the circumstances" when justifying a change in the imposed discipline as this would have little precedential value and therefore would provide limited guidance in future cases.

Update: Since the publication of our report, we have reviewed those disciplinary cases that were finally adjudicated for approximately the first ten months of 2023. The variance memoranda for those cases in which penalties have been modified have consisted of mostly vague, broad statements that are of limited utility in explaining the reasons for the modification of the outcomes. Three deviation letters have been added to the NYPD Online website since our report was published. Two of those letters were authored by former Police Commissioner Keechant Sewell. In both cases, involving force used during the 2020 protests, the Police Commissioner adopted the reasoning given by CCRB in recommending a penalty below the lower end of the applicable penalty ranges for the wrongful use of force. The third letter, prepared by former Police Commissioner Caban, addressed a disciplinary case involving a fraudulent COVID-19 vaccination card and false statements made in an official Department interview. The Trial Commissioner had recommended termination, but the Police Commissioner found that the subject officer's nine-year tenure along with favorable performance evaluations and receipt of several medals mitigated against that penalty, and instead imposed a period of dismissal probation and the forfeiture of 85 vacation days. Whether or not one agrees with this outcome, the Police Commissioner provided his reasons for decreasing the penalty. Even in this instance, though, more details could have been provided, including the subject's evaluation ratings, the reasons the officer received the medals, as well as whether there were any facts in the case that provided mitigation for the subject officer's initial fraudulent act and attempted deception during the Department interview.

Independent 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

We found that the Department had implemented part of this recommendation by formally adopting a recusal policy now located at Administrative Guide §318-27. This policy sets forth the procedures to be followed when personnel responsible for disciplinary decisions have personal or familial relationships with individuals involved in specific disciplinary cases. The purpose of the policy is to prevent appearances of impropriety and possible conflicts of interest.

However, we also found that the Department had not created a formal process to address and memorialize informal communications with DAO personnel concerning specific disciplinary

cases. Such a process would underscore that NYPD discipline must in fact be, and must be seen to be, free of undue influence. Such process would also guide Department personnel when they attend events where such informal discussions could occur. While we noted that the then Department Advocate stated that her office would consider all information presented to them, “she wanted the disciplinary process to be fair and equitable,”¹³² and believed that discipline and penalties should not be influenced by the subject officer’s contacts or influence within the Department. She also indicated that most informal communication was recorded in the office’s Disciplinary Administrative Database System.

Recommendations addressing the Seventh Recommendation of the Independent Panel:

While we appreciated the Department Advocate’s emphasis on maintaining the integrity and professionalism of her office when we met with her in August 2023, we noted in our report that a new Department Advocate could reverse any policies that she put in place. We made the following recommendations:

- 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 the Administrative Prosecution Unit of the Civilian Complaint Review Board, 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 improperly influenced the final outcome of any disciplinary matter.
- The Department should adopt a policy to prevent the discussion of the merits of disciplinary cases by persons outside of DAO or the Administrative Prosecution Unit of the Civilian Complaint Review Board with these prosecutors. This policy should exempt discussions with witnesses that might be used during any trial.

¹³² *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) at p. 22.

Department Response: The Department responded that disciplinary prosecutors “engage in a number of internal and external conversations regarding disciplinary matters on a formal and informal basis. These conversations often involve providing guidance and advice regarding a disciplinary 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.”¹³³ The Department also indicated that it did not believe that it was necessary to keep a record of these informal conversations and that this would be burdensome. The Department noted that if an external party tried to influence a specific case, that would be memorialized in the current case management system.

Update: While our report was being edited, the Department Advocate left the NYPD. A new Department Advocate has only recently been appointed. We hope to meet with the new Department Advocate in the near future to learn about how they are addressing this issue. At this time, we continue to adhere to our recommendations.

**Independent Panel Recommendation #8:
The Department Should Study and Consider Adopting a Disciplinary Matrix**

In January 2021, the Department published the Matrix. The Matrix was meant to be a “living document” that would undergo regular reviews and modifications. A year after the initial publication, the Department published an updated Matrix, which added categories of misconduct and increased some penalty ranges. While we were drafting our report, the Department released a new draft version of the Matrix for public comment, which added new categories of misconduct, two of which (failure to notify IAB and fraternization) we had previously recommended be added.

Recommendation addressing the Eighth Recommendation of the Independent Panel:

At the end of our report, we included a list of recommendations we had made to the Department to modify the Matrix. Many of these recommendations have been given to the Department on multiple occasions beginning with our initial discussions during the development of the original version of the Matrix. We have included these recommendations in Appendix B to this Annual Report.

Update: While this Annual Report was being edited, the Department published its revised Disciplinary Matrix which set forth penalty ranges for failing to notify IAB of misconduct and for fraternization. Our other recommendations were not included in the latest version of the Matrix.

¹³³ *Id.* at pp. 94-95.

Independent Panel Recommendation #9: The Department Should Take Measures to Expedite Disciplinary Adjudications

Concerned with how long cases took to progress through the disciplinary system, the Independent Panel recommended that the Department explore ways to shorten the time that disciplinary cases were pending. Towards that end, the Independent Panel made the following suggestions.

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

We reported that ten new attorneys were hired for DAO, and the Department created four new paralegal and two new executive-level positions. In 2023, there were only six vacancies within DAO. We also reported that the then Department Advocate had structured the office into four teams: one handled cases against civilian members of the service; one handled cases involving investigations conducted by the Civilian Complaint Review Board; one handled cases involving special victims, including victims of sexual crimes, domestic violence, and minors; and the final team was an all-purpose trial team. Each team had team managers who were overseen by an Executive Agency Counsel.

The former Department Advocate also reported to us that she had created checklists of required investigatory evidence for specific categories of misconduct to reduce the instances in which DAO would have to direct investigators to gather additional information. She had also begun a pilot program for driving while intoxicated cases that eliminated the need for official Department interviews of subjects in most instances. The office was also examining other categories of misconduct where they might be able to eliminate these interviews and therefore decrease the time investigations were pending.

- The Department Should Implement a “Fast Track Review for Certain Disciplinary Cases”

To address this recommendation, the Department created a new category of command discipline, a schedule C command discipline. Only DAO can issue schedule C command disciplines, and these are used in lieu of charges and specifications. The Matrix lists the categories of misconduct that can be addressed by a schedule C command discipline, and there cannot be any aggravating circumstances or additional misconduct by the subject. Schedule C command disciplines carry a penalty of the forfeiture of a maximum of 20 vacation days, and DAO provides a recommended penalty range from which the subject’s Commanding Officer can choose. The former Department Advocate was seeking to expand the categories of misconduct that could be addressed by a schedule C command discipline.

- DAO Should Limit Reconsideration Requests

The Independent Panel recommended that DAO and the Department limit the number of cases for which they requested that CCRB reconsider its findings and/or recommendations for substantiated allegations as these requests often delayed the imposition of discipline. Both DAO and CCRB reported that the number of reconsideration requests made had decreased significantly since 2020.

We found that both DAO and CCRB appeared to be moving cases through the disciplinary process more quickly until 2020, when the COVID-19 pandemic hit. We also noted that we intended to look at the effects of the changes implemented by DAO in our upcoming audit of the disciplinary system.

Department Response: In response to a draft of our report, the Department indicated that in 2023, a working group, chaired by the First Deputy Commissioner, had been established to find ways to expedite the disciplinary process. That group had concluded its work and made various recommendations including the expansion of categories of misconduct that could be addressed by schedule C command disciplines. The Department also indicated that the Matrix was being modified to reflect this expansion. In the latest version of the Matrix, published in September 2024, the categories of misconduct that can be addressed by a schedule C command discipline remained the same.

Update: Since our report, the former Department Advocate left that position. She was not replaced for almost a year, and the office was run by the managing attorney. Since the publication of our report, many of the senior assistant advocates have also resigned. It is our understanding that due to the shortage of assistant advocates, some of the teams, particularly the one involving special victims, were disbanded as the office needed the remaining attorneys to handle any and all cases. Due to staffing shortages, there was also a period where DAO was unable to conference cases quickly with the investigative entities, leading to delays in closing investigations.

In his 2024 State of the City address, Mayor Adams vowed to implement measures to expedite the disciplinary process.

Recommendation #10:

The Department Should Strengthen Enforcement of False Statement Disciplinary Policies

The Independent Panel recommended that the Department issue guidance to IAB and DAO regarding when an intentional, material false statement should be charged under the Department's false statement policy, which carried a presumptive penalty of termination as opposed to other provisions that did not carry this presumption. To address this recommendation, the Department adopted a new false statement policy which created three categories of untrue statements: false, misleading, or inaccurate, which are defined and are included in the Matrix. Each type of statement has its own penalty range in the Matrix. Only false official statements carry a presumptive penalty of termination, although misleading statements could also be addressed with termination if aggravating factors were present. In discussing this revised policy and the corresponding Matrix revisions, we re-iterated revisions to

the policy that we had previously recommended.¹³⁴ To date, none of these revisions have been adopted. Also, the Department's Adverse Credibility Committee reviews criminal prosecutors' referrals of judicial adverse credibility findings against individual officers and other evidentiary rulings that reflect negatively on individual officers' credibility. This Committee is comprised of representatives from the Police Commissioner's Office, Legal Bureau, the Risk Management Bureau, and the Chief of Detectives Office. This Committee also provides training for officers to improve their testimony in court proceedings. Some of our staff members attended this training and found that it was a thorough overview of common pitfalls that officers may encounter when they testify that could lead to adverse credibility findings, even when the officer intended to tell the truth. We found that this training was beneficial, even though it was not precisely what was recommended by the Independent Panel.

The Adverse Credibility Committee reviews judicial decisions, transcripts, and other court records for those cases in which the presiding judge made an adverse credibility finding against a member of the service. In those instances where these reviews suggested that the testifying member of the service may have engaged in misconduct, the matter was sent to IAB for further investigation. If IAB did not substantiate misconduct, the case was returned to the Adverse Credibility Committee for further action. We found that an issue existed because there was no universal procedure for criminal prosecutors to report these judicial findings to the Department.

The Independent Panel adopted our prior recommendation that when a member of the service lied in an official context, that lie should be charged as an official false statement and not

¹³⁴ A complete list of these recommendations can be found at *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) at pp. 39-41. See also *Twentieth Annual Report* at pp. 89-91; 104-107, Appendix B at pp. 13-21, and Appendix C at pp. 1-5.

reduced to avoid the presumptive penalty of termination. In examining cases that were brought after the Independent Panel issued its report, we found some improvement in the number of cases in which the appropriate charge was brought; however, there continued to be a need for more improvement and consistency in charging decisions among cases. We also found that, at times, DAO appeared to be violating the guidelines set forth in the Matrix, which directed that each false, misleading, or inaccurate statement be charged separately. Instead, one charge was often brought that combined these terms to characterize the untrue statement. According to the Matrix, if a statement was believed to be both false and misleading, two separate charges, instead of one including both types of statements, are to be brought. Charges combining more than one type of untrue statement permit guilty findings without explanations as to why a fact-finder found a statement to be misleading or inaccurate rather than false and thereby allowed guilty officers to avoid the presumptive penalty of termination.

Like the improvement in charging decisions, we found some improvement in the penalties that were imposed for this category of misconduct; however, there were still cases in which members of the service were found guilty of making false official statements but were not terminated. In these cases, the Police Commissioner rarely memorialized the extraordinary circumstances they used to justify a penalty short of termination.

Recommendations addressing the Tenth Recommendation of the Independent Panel:

We made the following recommendations to the Department:

- The Matrix should clarify whether multiple false statements will be penalized consecutively or concurrently.
- The Department should explore with the Office of Court Administration, each District Attorney's 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.

- 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.

Department Response: The Department recognized that false, misleading, and inaccurate statements undermine the criminal justice system and internal and external investigations of police misconduct. The Department also reaffirmed that the presumptive penalty for members of the service who were found guilty of making false official statements was termination unless the Police Commissioner found that extraordinary circumstances warranted a lesser penalty. Determinations of extraordinary circumstances were to be made on a case-by-case basis. The Department stated that it continues to “strengthen enforcement and guidance surrounding false, misleading, and inaccurate official statements” and cited the work of its Adverse Credibility Committee and the courtroom testimony training as evidence of that work.¹³⁵

Recommendation #11:

The Department Should Adopt Presumptive Penalties in Domestic Violence Cases as Recommended by CCPC

We found that the Department adopted the recommendations of the Independent Panel and established the recommended presumptive penalties for physical acts of domestic violence.

These were later incorporated into the Matrix in the following ways:

- The inclusion of dismissal probation to the forfeiture of penalty days for a first instance of domestic violence in which the member of the service was the primary aggressor along with the direction to comply with recommended counseling;
- Termination as the presumptive penalty for a physical act of domestic violence when there was clear and convincing evidence that a subject officer had a history of domestic violence, and;

¹³⁵ *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) at p. 95.

- Termination as the penalty for any officer who was found guilty in a criminal proceeding of committing domestic violence, even if there was no prior history of domestic incidents.

We noted that in addition to adopting these penalty recommendations, the Department also mandated forced separation in the first instance of engaging in a physical act of domestic violence when 1) serious physical injury resulted from the act; 2) significant physical injuries and/or injuries generally indicative of sustained or prolonged physical acts resulted; 3) the act occurred in the course of a violation of an order of protection; or 4) strangulation was involved.

In our examination of disciplinary cases adjudicated since the publication of the Independent Panel's report, we found that the Department followed their domestic violence policy in all relevant cases.

Recommendations addressing the Eleventh Recommendation of the Independent Panel:

- The Department should explore whether the presumptive penalty range should be increased to include a forced separation or termination 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 that are addressed in one set of charges and specifications.
- 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 an action such as displaying a firearm or making a fist would constitute a physical act of domestic violence.

Recommendation #12:

The Department Should Update and Integrate Its Case Management System

The Independent Panel recommended that the Department create a centralized and integrated case management system to track the progress of investigations from the date of the complaint through the completion of the disciplinary process. This would increase efficiency since cases would no longer have to be manually input, investigators would not have to hand-deliver files to DAO, and this tracking would allow the Department to determine if cases were

experiencing delays and work to resolve them. This would also enable the Risk Management Bureau of the Department to keep apprised of risk factors for specific members of the service.

We found after speaking with members of the First Deputy Commissioner's Office and the former Department Advocate that a centralized case management system had not been created. The former Department Advocate independently developed a best practice model that sets forth time frames in which certain steps in the disciplinary process should be completed. She then engaged computer scientists to create an electronic tracking system that would notify her when assistant advocates were not meeting these milestones. The former Department Advocate credited this system with helping to decrease the length of time that disciplinary cases were pending and had hoped to have it integrated into a centralized case management system, when one was developed. At the time of the publication of our report, development of that system had not begun, although the former Department Advocate had been working on developing a new internal case management system accessible by members of DAO that would be more modern, efficient, and user-friendly.

Recommendations addressing the Twelfth Recommendation of the Independent Panel:

- The Department should develop a new, integrated internal case management system. We further recommended that at the very least, an updated system should be built for DAO that would increase efficiency and allow DAO to readily retrieve data or information about their own caseloads. This would provide more time for the personnel in that office to perform substantive work on the disciplinary cases, which could then help to reduce the length of time that cases were pending in the system.
- We also agreed with the former Department Advocate that when an integrated system was developed, there should be privacy protections in place that would 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 everyone who has access to the system.

Recommendation #13:**The Department Should Retain External Experts to Conduct Periodic Audits of the Disciplinary System**

We reported that the Department fulfilled this recommendation in November 2019 by entering into a memorandum of understanding with us. That agreement provides that we will conduct an audit of the Department's disciplinary system and issue a report on that topic. It also required us to evaluate the Department's implementation of the recommendations made by the Independent Panel, which is the report that we summarize here. We are currently working on the disciplinary audit.

OTHER WORK OF THE COMMISSION DURING THE REPORTING PERIODS

In 2022 and 2023, in addition to working on our *Twenty-First Annual Report*, we performed work towards fulfilling the MOU we entered into with the Department to conduct an audit of the disciplinary system and to provide an interim report.

We engaged in monthly meetings with senior Department officials to evaluate the Department's implementation of the 13 recommendations made by the Independent Panel. The purpose of these recommendations was to bring greater transparency to the Department's disciplinary system and to improve the system's fairness and consistency. In our monthly meetings, we met with different members of the Department who were responsible for implementing each recommendation, heard how they believed they executed those recommendations, asked questions regarding their implementation, and in one instance, received a slideshow presentation regarding the Department's publication of disciplinary data. We concluded these meetings in early 2023. At that point, we undertook our own analysis, where possible, and drafted the interim report. That report, *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'*, was published during the drafting of this Annual Report.¹³⁶ A summary of our findings and recommendations can be found in the previous section.¹³⁷

During 2022 and 2023, we also performed work towards the disciplinary audit itself. We reviewed all of the disciplinary cases arising from charges and specifications against uniformed members of the service for the last quarter of 2021, for all of 2022, and for the first third of 2023.

¹³⁶ [2024 FINAL REPORT.pdf](#)

¹³⁷ See *supra* at pp. 83-99.

When reviewing these cases, we analyzed whether the penalties imposed were within the ranges provided in the Department's Disciplinary Guidelines, whether the Police Commissioner was providing adequate explanation for their deviations from recommended penalties and from the penalty guidelines, and whether the Department's new false statement policy was being followed. Additionally, based on our review of these disciplinary cases, we examined whether the penalty ranges set forth in the Department's Disciplinary Guidelines were sufficient.

In addition to the charges and specifications adjudicated against uniformed members of the service, we will also be examining the Department's use of command disciplines to address officer misconduct. Due to the lack of a centralized system within the Department to keep track of command disciplines, our analysis will be limited to those command disciplines that originated with DAO, IAB, or the Civilian Complaint Review Board. One concern we have is that command disciplines may sometimes be utilized to avoid the penalty ranges in the Disciplinary Guidelines. We will also seek to determine whether the use of schedule C command disciplines, which are given instead of charges and specifications, has succeeded in decreasing the amount of time that disciplinary cases are pending before resolution. In connection with the length of time disciplinary cases are pending prior to their final adjudication, we will also be examining whether the Department has implemented other methods to reduce the time cases are pending.

One specific area that we will be looking at as part of our audit of the disciplinary system is whether high-ranking officers or those officers with apparent connections to influential members of the Department are receiving more favorable treatment when accused of wrongdoing. We are concerned with recent allegations that certain officers have received special treatment from the Department and intend to investigate these allegations during the audit. Due to the recent revelations of ongoing Federal investigations into several members of the

Department, we acknowledge some limitations in the manner in which we can conduct this analysis. We do not wish to interfere with the progress of these investigations.

We have one other project that we began at the end of 2022. Due to one of the investigations reviewed for this Report,¹³⁸ we had concerns regarding how IAB investigated cases where members of the service were accused of sexual misconduct. In addition to that case, we observed an increase in allegations involving sexual misconduct in 2022 and observed the former executive officer of IAB express his own concerns about IAB conducting interviews of victims of sexual misconduct when the investigators lacked specific training in this area. For all of these reasons, coupled with the joint pattern and practice investigation into the NYPD's investigations of sexual assaults announced by the Southern and Eastern Districts of New York, we decided to undertake a study regarding how IAB investigates allegations involving sexual misconduct by members of the service.

To gain information for this project, we have conducted research on best practices for sexual abuse investigations and listened to City Council testimony of victims regarding their experiences with the NYPD's Special Victims Division. During the period covered by this Report, we reviewed 15 closed IAB investigations involving this type of misconduct.¹³⁹ We have met with the former executive officer of IAB and the current commanding officer of IAB regarding their concerns with IAB investigations into sexual misconduct. During this meeting, we learned that the Chief of IAB was creating a group devoted to the investigations of alleged sexual misconduct by members of the service. That group underwent training in October 2023, and we reviewed some of the training materials that were used. We intend to look at a sample of

¹³⁸ See *supra* at pp. 37-39.

¹³⁹ We have continued to review cases in 2024.

this group's investigations and compare these to those investigations we have already reviewed. This is a long-term report, and we have no publication date set.

In 2023, the Mayor appointed four new Commissioners to CCPC.¹⁴⁰ As new Commissioners were appointed, we began meetings with each of the five District Attorneys' Offices. In these meetings we met with the District Attorneys, the chiefs of their public corruption or police accountability units, and other executive staff. In these meetings, we asked about trends they were noticing in police misconduct and corruption, their relationships with IAB and DAO, their attempts to detect when officers were not honest with them, and the most prevalent types of police misconduct they were prosecuting. In 2024, we met with representatives from the Southern and Eastern Districts of New York and the Civilian Complaint Review Board. We are in the process of scheduling meetings with the Special Narcotics Office, the Office of the Inspector General for the NYPD, the Law Enforcement Misconduct Investigative Office of the New York State Attorney General, the unions representing uniformed members of the service, and institutional public defenders as well as prominent civil rights attorneys.

Also, in 2023, IAB merged the Department's Investigation Units into its bureau. Prior to this merger, the Borough and Bureau Investigation Units still reported to IAB, although less frequently. These units handle the bulk of investigations into misconduct that is not categorized as corruption. Typical allegations they investigate include domestic incidents; driving while intoxicated when there is not a fatality; missing property that does not involve money, jewelry, credit or debit cards, or expensive electronics; force that does not consist of a prohibited act and

¹⁴⁰ One of our commissioners who was appointed by former Mayor DeBlasio resigned from the Commission at the end of June 2024.

does not result in serious physical injury; and misuse of time.¹⁴¹ Once merged, each Investigation Unit was reconfigured to correspond to an IAB investigative group. In 2024, we began attending the Steering Committee meetings for these “IU” groups, which are usually held in the same week as their IAB group counterpart. We will report on our attendance at these meetings, as well as any other monitoring activities we take with respect to these IUs, in our next annual report.

¹⁴¹ For further information about these units prior to their incorporation into IAB, see *Monitoring Study: A Review of Investigations Conducted by the NYPD's Borough and Bureau Investigative Units* (January 2009). <https://www.nyc.gov/assets/ccpc/downloads/pdf/Monitoring-Study-A-Review-Investigations-Conducted-by-the-NYPDs-Borough-and-Bureau-Investigative-Units-January-2009.pdf>

APPENDIX A

EXECUTIVE ORDER

APPENDIX B

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 September 9, 2024.

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.¹⁴² 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. While the Department has added a category of “Engage in a Relationship Beyond the Scope of Official Duties” (p. 46), this should be divided into relationships with civilians and relationships with other members of the service. As discussed in the next recommendation, the penalties for this misconduct, when it occurs in the context of certain situations, should be increased and the factors to be considered when determining the penalty should be enumerated.

¹⁴² 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.

- 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.¹⁴³ 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, 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.

¹⁴³ 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.

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.
- The presumptive penalty for failure to report misconduct to Internal Affairs should be between 15 and 20 penalty days.
- 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.

COMMISSIONER BIOGRAPHIES

Kathy Hirata Chin, Acting Chair

Kathy Hirata Chin retired on April 1, 2024, from Crowell & Moring LLP, where she was a partner in the healthcare and litigation groups. Previously she was a partner and then senior counsel at Cadwalader, Wickersham & Taft LLP. 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, serving as Acting Chair since the passing of Michael Armstrong in 2019. She has served on the Federal Magistrate Judge Merit Selection Panel for the Eastern District of New York, the Governor'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 Second Circuit Judicial Council Committee on Civic Education & Public Engagement; on the Attorney Emeritus Advisory Council and the Commercial Division Advisory Council, appointed to both by former Chief Judge Jonathan Lippman; as Co-Chair of the Board of Directors of the Medicare Rights Center, a national non-profit organization dedicated to helping older adults and people with disabilities get affordable health care; as a member of the Board of EmblemHealth, a national not-for-profit health insurer; and as Chair of the Board of Advisors of the Center on Asian Americans and the Law. In 2012, 2014, and 2021 she was nominated for appointment to the New York State Court of Appeals by the New York State Commission on Judicial Nomination. She has received the NYC Bar's Diversity and Inclusion Champion Award, the Women's Leadership Award of the Asian American Bar Association of New York, the inaugural Hong Yen Chang Awards from Columbia APALSA and the Columbia Law School Association, and the 2022 Daniel K. Inouye Trailblazer Award from the National Asian Pacific American Bar Association.

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.

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.

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.

Freya Rigterink (until June 30, 2024)

Ms. Rigterink is the Executive Director of the Policing Project. As Executive Director, Ms. Rigterink oversees the Policing Project's day-to-day operations and initiatives. She also leads the organization's Reimagining Public Safety portfolio. Ms. Rigterink came to the Policing Project with a background in municipal government and oversight. Most recently, 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, Ms. Rigterink served as 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, Ms. Rigterink co-founded a start-up that expands educational and engagement opportunities for incarcerated people. Ms. Rigterink has also held a variety of policy and legislative roles at the New York City Council. Ms. Rigterink holds a BA from Wesleyan University and a JD from Northwestern University.

Benjamin E. 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 18-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.

Marnie L. Blit, Executive Director

Marnie L. Blit is the Executive Director of the City of New York Commission to Combat Police Corruption. In this role, she manages a staff of four attorneys and an office manager who review and make recommendations regarding the New York City Police Department's policies to deter, detect, investigate, and discipline corruption and serious misconduct. Ms. Blit started her employment with the Commission as an Examining Attorney in 2001 and was promoted to Deputy Executive Director in 2004. She was named Executive Director in 2007. Fifteen Annual Reports and 11 independent studies were published during her employment with the Commission. Prior to joining the Commission, Ms. Blit was employed for five years by the Juvenile Rights Division of the Legal Aid Society. In this position, Ms. Blit represented children in child protective, Persons in Need Of Supervision, and juvenile delinquency proceedings. Ms. Blit also volunteered as a small claims court arbitrator for five years. Prior to that pro bono work, Ms. Blit volunteered at the New York County Lawyers Association's Legal Counseling Project for one year. Ms. Blit earned her J.D. from Columbia Law School.

COMMISSION STAFF

Murad Agi, Examining Attorney
Christina Arno, former Examining Attorney
Katherine Barrett, former Examining Attorney
Tamela Gaither, Examining Attorney
Vanya Hersh, Examining Attorney
Agnes Kusmierska, Examining Attorney
Uyen Tang, former Examining Attorney
Cristina Stuto, Office Manager