I. INTRODUCTION

Each year since its inception in 1995, the Commission to Combat Police Corruption, ("Commission") has assessed the way in which the New York City Police Department's ("Department") Internal Affairs Bureau ("IAB") investigates allegations of corruption and serious misconduct.[1] In these analyses, the Commission has focused on individual investigations in their totality. In its first seven years, the Commission examined specific issues encountered in many IAB investigations. These issues included the timeliness of the contact with the complainant and other civilian witnesses; the quality of interviews of members of the service;[2] the collection of necessary documentary evidence such as medical records and police reports; the use of investigative techniques that include integrity testing,[3] EDIT operations,[4] and surveillance; and the adequacy of the documentation of investigative steps that have been completed during the investigation. Beginning with the Eighth Annual Report, the Commission changed its focus to examine the length of time it takes for investigations to be completed, whether appropriate investigative leads were followed, and whether investigators effectively adjusted strategies based on the evidence that was obtained as the investigation progressed. The Commission's decision to report on a more general review of the IAB cases instead of focusing on specific issues was based on observations that the IAB investigators were satisfactorily performing the specific investigative actions listed above.

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[1] *See* the Commission's Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau (October 1997); Second Annual Report of the Commission (October 1997) at p. 21; Third Annual Report of the Commission (August 1998) at pp. 23-24; Fourth Annual Report of the Commission (November 1999) at pp. 22-42; Fifth Annual Report of the Commission (February 2001) at pp. 18-29; Sixth Annual Report of the Commission (December 2001) at pp. 20-32; Seventh Annual Report of the Commission (March 2004) at pp. 12-70; Eighth Annual Report of the Commission (February 2005) at pp. 15-20; Ninth Annual Report of the Commission (February 2006) at pp. 7-13; and Tenth Annual Report of the Commission (February 2008) at pp. 5-14.

[2] Patrol Guide § 206-13 entitles the Department to interrogate officers during an official Department investigation. Members of the service who refuse to answer questions during these interviews are suspended, and members who are found to have been untruthful during the interviews are subject to termination from the department, absent exceptional circumstances. Exceptional circumstances are determined on a case-by-case basis by the Police Commissioner. Members of the service are entitled to have a union representative present during the interview, and the subjects of the investigation are permitted to obtain counsel if either "a serious violation is alleged" or sufficient justification is presented for an attorney despite the alleged violation being minor.

[3] Integrity testing is conducted by creating artificial situations that are designed and closely monitored by IAB in order to test a member of the service's adherence to the law and Departmental guidelines.

[4] E.D.I.T. is an acronym for enforcement, debriefing, intelligence gathering, and testing. During these operations, IAB investigators will make arrests of certain individuals who are suspected of criminal activity and interview them regarding their knowledge of police corruption. At times, IAB enlists other Department units to make the arrest. Interviews regarding an individual's knowledge can be general or specific to a particular subject of an allegation.

The Commission has noted a steady improvement in the quality of IAB's investigations over the years. However, IAB is not responsible for every investigation of alleged wrongdoing by members of the service. All allegations against members of the service, regardless of their source, are reported to and recorded by IAB's Command Center, a twenty-four hour, seven-day-a-week hotline that accepts complaints from the public as well as from members of the service.[5] Once a complaint is received by the Command Center, a decision is made whether an immediate, or "call-out", investigation is required. A call-out investigator will typically conduct an interview with the complainant and any identified witnesses in the hours following the receipt of the allegation. Depending on the nature of the allegation, this investigation might also include taking photographs of crime scenes or injuries, obtaining arrest-related paperwork, obtaining medical releases, constructing photograph arrays, and conducting canvasses of the location of the incident.

Within hours after an allegation is received, IAB's assessment team reviews the allegation and the available results of any call-out investigation to determine how the allegation should be classified. This assessment team is comprised of a Sergeant and four Detectives. Their initial recommendation is then forwarded to the Chief of IAB and other high-ranking members of IAB. The IAB executives may request further information, but they will ultimately make a determination about how the case should be classified.[6] Although there are many possible classifications, the three principal classifications that will result in an investigation are "C" cases, "M" cases, and "OG" cases. "C" cases are those that involve allegations of corruption or serious misconduct. These allegations typically involve missing money or jewelry, weapons, criminal association, and drugs. "M" cases are those allegations that do not constitute a serious crime, corruption, or other significant misconduct. Cases denoted as "OG" involve minor infractions or violations of Department regulations.[7] An "M" or "OG" allegation can, during the course of an investigation, be upgraded to a more serious classification, but an allegation is never downgraded to a less serious one. After an assessment of an allegation is made, the case is referred to the appropriate entity for any further investigation. IAB investigates all cases classified as "C" cases.

"M" cases are generally investigated by one of the Department's Borough or Bureau Investigation Units.[8] Allegations sent to these units for investigation range from landlord and tenant disputes and domestic violence complaints when there is no serious physical injury, to allegations that officers have stolen property when the property does

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[5] For more information about the Command Center, *see* the Commission's Report "Performance Study: The Internal Affairs Bureau Command Center" (October 1997).

[6] If there are disagreements among the IAB executives, the final decision about the classification will be made by the Chief of IAB.

[7] Examples of "OG" allegations are disputes over summons or allegations that an officer failed to properly take a report.

[8] In some instances, IAB will also investigate "M" cases and even "OG" cases.

not consist of money, credit or debit cards, or valuable jewelry. There are thirty-five of these investigation units, which are divided by geography or specialty. The decision about which group will be assigned to investigate a case is based on where the subject officer[9] is assigned. If he[10] is not identified, the case is assigned based on the location of the incident.[11] IAB receives a copy of the closing report for all "M" cases. The closing report and disposition of each "M" investigation is kept by IAB's records unit and the disposition is recorded in the subject officer's permanent records.

As the Commission believes that some types of less serious misconduct that are investigated by Borough or Bureau Investigations Units can be indicators of a proclivity to commit more serious offenses, the investigations into this type of wrongdoing are important for detecting and deterring future corrupt acts and can uncover other misconduct by the subject officer. Investigations which are substantiated and result in the imposition of discipline on the subject officer can serve as a deterrent to future, more serious transgressions and send a message to other members of the service that even the most minor misconduct will not be tolerated and will result in discipline. Thorough investigations can also exonerate officers from false allegations, and in the process, instill faith in the investigations by those employed by the Department. Satisfactory investigations can also affect the public's perception of the Department's willingness and ability to investigate and discipline those officers who have engaged in wrongdoing. For all of these reasons, the Commission chose to learn more about the Borough and Bureau Investigation Units and to evaluate a number of cases investigated by these units.

II. METHODOLOGY

In 2007, the Borough and Bureau Investigation Units conducted two thousand eight hundred and twenty-five investigations. This was a slight increase from the two thousand six hundred and seventy-nine investigations conducted by these units in 2006. The Commission chose a random sample of these cases to review.

Initially, the Commission requested a list of all of the cases that had been closed by these units between June 1, 2006 and June 30, 2007. This list contained three

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[9] Subject officer refers to any member of the service including civilian members of the service. Therefore, the investigations reviewed included those involving civilian members of the service such as School Safety Agents, Traffic Enforcement Agents, Police Administrative Aides, Electricians, Custodial Assistants, Building Managers, Executive Counsels, and even Horse-Shoers.

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

[11] Generally, "OG" cases are sent to the Chief of Department who will forward the allegations to the Chief of Patrol who will assess whether to keep the investigation, send it to a Borough or Bureau Investigation Unit, or send it to the Integrity Control Officer in the subject officer's command. Where the investigation is sent depends on the nature of the allegations.

thousand one hundred and four log numbers.[12] To narrow down the number of cases, the Commission excluded those cases which were initiated before 2006. The rationale for excluding the older investigations was to focus on more recent data which would be more relevant to this study. The Commission also wanted to minimize the effects of investigator turnover and the consequent reassignment of investigations on its analysis. Furthermore, in the last two years, IAB has been conducting meetings twice a year with each investigation unit in an attempt to enhance and achieve consistency in these units' investigations.[13] The Commission believed that cases which were investigated prior to the initiation of these bi-annual meetings would not be indicative of the way borough and bureau cases are currently investigated.

After excluding those investigations which were initiated prior to 2006, two thousand one hundred and thirty-four cases remained in the Commission's pool. The Commission aimed to review approximately five percent of these cases. To achieve this goal, the Commission randomly selected three to five cases from each of twenty-seven investigation units.[14] One hundred and ten cases were finally selected for review. When selecting these cases, the Commission did not have any information about the allegations, the disposition of the case, or the identity of the subject officers. Of these one hundred and ten cases, the Commission actually reviewed ninety-two cases from twenty-five investigation units.[15] Allegations involved domestic disputes, failure to safeguard weapons, misuse of time, unauthorized off-duty employment, and other, similar misconduct.

When reviewing an investigation, the Commission examined the entire case file including any documents obtained in connection with the investigation and listened to all of the available recordings of interviews with complainants, witnesses, and subject officers. The Commission focused particularly on specific issues in the investigations such as complainant and witness contact, collection of documentary information, interviews of officers conducted pursuant to PG §206-13, and the use of specific investigative techniques, such as surveillance and integrity testing. The Commission also

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[12] A log number is assigned when an allegation is called into the Command Center. If multiple allegations against a subject officer or concerning a particular incident are made at different times, a case may have more than one log number associated with it.

[13] If during these Steering Committee meetings, information is revealed that indicates that more serious misconduct is involved than was originally alleged, IAB will take over the investigation. The Commission observed that this occurred in one of the investigations reviewed for this report.

[14] The Commission did not review cases from the remaining investigation units as they either did not close any cases during the requested time period that also originated after December 2005, or the cases originally chosen by the Commission from some groups were actually assigned to other groups. See *infra* fn. 15.

[15] The Commission was unable to review all of the originally requested one hundred and ten cases because some cases were still open, since additional allegations had been received after the Commission made its selections. In addition, some cases were assigned to different units than were originally noted on the list of the closed cases. Since cases had previously been chosen from those units, the Commission did not try to locate the reassigned cases for review.

examined whether all necessary investigative steps were completed and whether the investigations were completed in a timely manner.

Additionally, to complete this study, the Commission spoke with high-ranking Department executives about the manner in which the cases were assessed and assigned, and about how the investigations were conducted. From these discussions, the Commission sought to determine what resources were available to the Borough and Bureau Investigation Units and what, if any, policies these units followed when conducting an investigation.

Commission staff also attended two days of a week-long training conducted by IAB's Office of Professional Development for investigators who were newly assigned to an investigation unit. This training consisted of lectures on investigations into allegations of Domestic Violence, how to enhance a bribery arrest through obtaining additional recorded evidence of the bribe, and investigations of officers accused of driving while intoxicated. More general investigative topics such as interactions with the Civilian Complaint Review Board[16] and the Department Advocate's Office[17] were also covered. Commission staff reviewed the written materials that were distributed during this training.

III. GENERAL FINDINGS

Most of the cases reviewed for this study involved less complex investigations than IAB investigations that have customarily been reviewed by the Commission because the offenses alleged are generally not as serious and, therefore, do not require the same level of investigative resources as IAB investigations.

In general, the Commission found that most borough and bureau investigators were conducting all of the necessary investigative steps in a timely and thorough manner. Most cases were investigated and closed expeditiously, and the Commission generally concurred with the case dispositions. There were, however, several areas of concern.

There was one case in which the Commission disagreed with the disposition after reviewing the case file.[18] There were also four cases where, although the Commission

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[16] The Civilian Complaint Review Board was created in 1993 to investigate civilian complaints against members of the service. This entity has jurisdiction to conduct investigations of complaints that allege the excessive or unnecessary use of force, abuse of authority, discourtesy, or the use of offensive language.

[17] The Department Advocate's Office is the unit within the Department that is responsible for prosecuting internal disciplinary cases against members of the service.

[18] In this case, the subject officer, a cadet, was alleged to have been discourteous to the complainant while in uniform and off-duty. The allegation was unsubstantiated, and the subject officer received an instruction on courtesy, professionalism, and respect. Four members of the service and the subject officer were officially interviewed pursuant to PG §206-13. The complainant was also interviewed. All of the members of the service witnessed the discourtesy, though it was denied by the subject officer, making the case one of

did not disagree with the disposition based on the investigative steps taken, it believed that further investigative action might have affected the disposition.[19]

One major difference that the Commission found between IAB investigations and those investigations conducted by the Borough or Bureau Investigations Units was the lack of team leader reviews. In IAB investigations, the investigator's supervisor usually reviews cases on a monthly basis to determine what investigative steps should be taken based on the results of past investigative steps. Separate worksheets are prepared documenting these reviews and listing the steps the supervisor wants the investigator to perform. These worksheets are included in the investigative file. In the Borough and

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credibility. Given the number of witnesses, the Commission believed that this case should have been substantiated.

The Department received a draft of this report prior to its publication. In response to the report, the Department reviewed this case and changed its disposition to substantiated.

[19] In the first case, the subject officer was alleged to have accepted a gratuity from a civilian. The subject officer claimed that he tried to refuse the gratuity, but when his back was turned, the civilian left the envelope on his desk. After discovering the envelope, the subject officer tried to notify his supervisors by telephone, but was unsuccessful in his attempts to reach them. The subject officer reported the receipt of the gratuity the following business day. The allegation was unsubstantiated. There was no attempt to interview the civilian who left the envelope regarding whether the subject officer did, in fact, refuse the gratuity. Speaking with this civilian may have either lent credence to the subject officer's version of events or refuted it.

In the second case, the subject officer was accused of striking his teenage daughter. During an official Department interview, the subject officer explained that he had found a bag with marijuana, a "roach," and beer caps. He was never asked what he did with these items. Had he not properly vouchered the marijuana, another allegation with a substantiated disposition may have been appropriate.

In the third case, a business owner alleged that the subject officer was giving improper tickets to his clients. Although surveillance of the officer and observation of the business owner's store showed that there were automobiles that were illegally parked during the investigator's surveillance, the investigator did not review any of the subject officer's past summonses. An examination of the past summonses may have disclosed past irregularities or may have supported the subject officer's actions.

After a review of this case, the Department maintained that several observations of the business owner's shop were conducted. These observations confirmed that cars were routinely parked illegally. The Department maintained that a review of the prior summonses would have served no investigative purpose.

In the final case, the wife and young son of the subject officer claimed, among other allegations, that the subject officer had handcuffed the wife to a chair and threatened her two years prior. The case was unsubstantiated. In the closing, the investigator noted that he believed that the wife had coerced her son to provide a version of events consistent with hers. The closing report did not explain why the investigator believed the son had been coerced. The wife had also stated that after this incident occurred, she told her sisters and pastor about it. There was no attempt to identify and interview these witnesses to determine if the wife had actually told them what happened immediately following the incident.

After reviewing this case, the Department denied that the investigator stated he believed that the son had been influenced by the complainant. The Department also stated that as the witnesses identified by the Commission were not eyewitnesses, their statements would not have altered the case disposition.

Bureau Investigation Unit investigations, the Commission observed that formal, written team leader reviews were not being conducted in a significant number of cases. Of the ninety-two cases reviewed, the Commission only found fifteen cases with a formal, verifiable team leader review, and only three of these cases had documented that these reviews were occurring on a regular basis.[20] These reviews are an important part of the overall investigation since a supervisor has the opportunity to ensure that the case does not languish and that the investigator is pursuing the proper leads. In addition, at the time of review, evidence may be synthesized and investigative strategies may be adjusted if necessary. While the Department maintains that these regular reviews are occurring on an informal basis, maintaining a written record creates less likelihood that there will be a misunderstanding between the supervisor and investigator and decreases the chances that an important investigative step will be overlooked.

Another area of concern for the Commission was the fact that delays were observed throughout the investigations. One particular delay noted by the Commission was in the time it took to assign cases to an appropriate investigative group. Delays in assignment are problematic since evidence may cease to exist, witnesses become difficult to locate as time passes, and memories become stale. Additionally, in twenty-six cases, the Commission observed at least one unexplained lapse in between investigative steps.[21] The Commission counted a lapse as those periods that were longer than one month without any documentation that any investigative steps were taken. In twelve of these twenty-six cases, there was more than one lapse in the investigation. The Commission maintains that it is important to continue to conduct investigations in an expeditious manner and perform investigative steps at the appropriate time to ensure that all necessary witnesses and evidence remain available and that appropriate disciplinary action is taken promptly. It is also important that those officers who are found to be not guilty can continue to advance in their careers without fear that an ongoing investigation will impede promotions or requests for specific assignments.

The Commission also found that while the borough and bureau investigators were appropriately employing most investigative steps, background checks were not always being conducted on civilian witnesses, subject officers, and other involved members of the service. Department officials explained that the investigation groups had access to databases that provide useful background information on members of the service and civilians. However, the Commission observed that despite having the ability to do so, investigators were not always accessing such databases for information.

Based on the Commission's review of recorded interviews, as a general matter, interviews of civilians and members of the service were appropriately and effectively

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[20] In one of the three files which contained regular supervisor reviews, the review consisted of the supervisor signing the file index on certain dates. While this is not an ideal supervisor review, since the Commission was able to verify that supervisor reviews were occurring, the Commission counted the case for the purposes of this inquiry.

[21] The Commission did not include in this category those cases where the lapse was at the closing or the investigator appeared to be awaiting action by another Department unit or another agency.

conducted. However, in a significant number of cases, more effective interviews could have been conducted. In many cases, interviews with complainants were not conducted in a timely manner, and interviews with civilians were conducted over the telephone. Formal Patrol Guide ("PG") hearings were also held in a majority of cases.[22] The Commission observed that inappropriate leading questions were sometimes asked during these PG hearings, and at times, investigators failed to ask vital follow-up questions. The Commission believes that the investigators' inexperience in conducting these hearings may be responsible for these issues. Generally, the Commission noted that all essential witnesses were interviewed during the investigations. However, there were seven cases where the Department did not interview members of the service who may have been able to offer information that would have aided the investigation. Since the Department has the ability to compel its members to submit to a PG hearing, the Department should take full advantage of interviewing members of the service, where appropriate.[23]

In reviewing the steps taken in each case, the Commission observed that only a few of the cases warranted the use of investigative tools such as surveillance and integrity tests. In the cases where surveillance was used, it appeared to be an appropriate investigative step, given the type of allegation that was made.

IV. CASE ASSIGNMENT

As noted above,[24] when an allegation is received at the Command Center, a decision is made about whether the complaint will be investigated by IAB, by a Borough or Bureau Investigative Unit, or by some other entity. This decision is based on the nature of the allegations. The case is forwarded by IAB to the appropriate investigative entity within one business day of the receipt of the allegations at the Command Center. The Commission agreed with the decision to assign the case to an investigation unit instead of IAB in the vast majority of the cases it reviewed, but in some cases, the decision could have been implemented more promptly. When a case is assigned to a Borough or Bureau Investigation Unit, a particular unit is chosen based on the officer's assignment or the location of the incident if there is not an identified subject officer. The case is then forwarded to the appropriate unit. It is important that the unit be able to initiate its investigation as close in time to the alleged incident as possible so that witnesses can be located and recollections are not altered by time or outside influences. The Commission was told by Department officials that cases are generally transferred to the appropriate Borough or Bureau Investigation Unit within one week of their receipt at

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[22] *See infra* p. 1, fn. 2 for a definition of a formal Patrol Guide hearing.

[23] In response to a draft of this report, the Department stated that all personnel assigned to the investigation units would receive additional, ongoing training and standardized training for all investigators was being considered. The Department also responded that many of the issues noted by the Commission are routinely addressed during each investigation unit's bi-annual meetings with IAB.

[24] *See supra*. at pp. 2-3.

the Command Center. Of eighty-seven cases[25] that were reviewed by the Commission, forty-two were assigned to the appropriate Borough or Bureau Investigation Unit within two weeks. Another twenty-nine cases were assigned to the appropriate unit within one month. Sixteen cases took over one month to be assigned.[26]

V. CIVILIAN INTERVIEWS

It is important that complainants and witnesses be contacted as soon as possible after an allegation is made. As part of its overall review of these cases, the Commission examined whether the complainant was contacted in a timely manner. The Commission considered an interview to be untimely if more than three weeks passed since the unit investigator received the case before contact was made with the complainant.

In many instances, a call-out investigation will provide an almost immediate response to a complainant. In many investigations though, follow-up interviews are necessary to ask additional questions and obtain further information. The Commission recognizes that, at times, an investigator may want to delay interviewing a witness for strategic reasons. For example, an investigator may decide to wait to interview a witness who associates with the subject officer in order to maintain the confidentiality of the investigation. Delays in interviews may also be due to an inability to locate a witness or because the person to be interviewed refuses to cooperate.

Of the forty-eight cases where a civilian complainant was interviewed by the case investigator,[27] the Commission found that investigators interviewed complainants in a timely manner in twenty-eight of the cases. There were ten cases in which the investigator did not interview the complainant at any time during the investigation. In three of those cases, attempts were made to interview the complainant, but the complainant was uncooperative. In five of the cases, the complainant was interviewed during the call-out investigation. In the final two cases, the complainant was never interviewed, and there were no documented attempts by the investigator to do so. Of the twenty cases where more than three weeks passed before the investigator interviewed the complainant, there was a prior interview of the complainant by the initial, call-out investigator or other responding officers in six cases. In nine of the remaining cases, the complainant was initially uncooperative or did not respond to the investigator's prior

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[25] For the purposes of this statistic, five cases were excluded from the calculation because they did not arrive at the investigative unit through the route described above.

[26] In response to a draft of this report, the Department stated that IAB would establish new protocols to ensure that cases are referred as quickly as possible. Case assignment would also be more carefully tracked in the future, and IAB would also explore the possibility of referring cases to the appropriate investigation unit electronically.

[27] The Commission did not include in this calculation those cases where the complainant was a member of the service, was anonymous, or where there was no complainant.

attempts to make contact. In six of those cases, the investigator documented more than one attempt to interview the uncooperative individual.

In twenty-one cases, the investigator failed to interview a witness whom the Commission believed could have information that would have aided in the investigation of one or more of the allegations.

When reviewing investigative contacts with witnesses, the Commission also tried to determine whether the investigator interviewed the complainant and witnesses in person or over the telephone. Personal interviews of civilians are preferable for several reasons. First, a personal interview allows the investigator to observe the complainant's environment and ensures that no one else is present who may influence the complainant's answers while the complainant is being interviewed. This is especially important in cases involving domestic disputes. During a telephone interview, the complainant may not be able to speak freely because the subject officer is in the immediate vicinity of the complainant or listening on another extension. A visit to the complainant's home could reveal evidence of violence such as holes punched in walls or injuries to the complainant, children, or pets. A second reason why interviews in person should be the standard approach is that it facilitates the investigator's ability to judge the credibility of the witness. The investigator can observe the witness' demeanor while describing the incident. Finally, in-person interviews tend to last longer than those conducted over the telephone. Therefore, more information is gathered, which could possibly alleviate the need for future interviews. The Commission acknowledges that there are situations where an in-person interview is not possible. Also, a telephone interview is appropriate for brief follow-up questions. However, in most situations, the Commission believes that initial interviews of substantive witnesses should be conducted in person. Of the fifty-six cases that had interviews with complainants or other civilian witnesses, in only nine cases were the complainant and the civilian witnesses[28] interviewed in person. Of the forty-one cases where interviews were conducted over the telephone,[29] this telephone contact appeared justified in only sixteen cases.

Department executives acknowledged that investigators should interview civilians in person when able to do so and asserted that investigators were instructed to conduct face-to-face interviews. Lack of resources, such as vehicles, may bear some responsibility for failures to conduct in-person interviews. Department officials also stated that investigators may legitimately be too busy with their cases to have the time to travel back and forth to perform personal interviews.

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[28] In three of these nine cases, one or more witnesses were interviewed via the telephone, but at least one civilian witness interview was done in person. In another eleven cases, the Commission was unable to discern from the descriptions of the interview whether the interview occurred in person or over the telephone.

[29] Some cases were included as both having in-person and over the telephone interviews because different witnesses were interviewed by different methods.

During its review, the Commission also noted that in the one hundred and one civilian interviews conducted, recordings were made in only thirty-nine.[30] Investigators are directed to record interviews unless there is some documented reason why they cannot.[31] In those interviews where there was no recording, in only seven cases was there a reason given to explain the lack of the recording.

VI. DOCUMENT COLLECTION

The collection of documentary evidence is, of course, important to any investigation. Investigators obtained the appropriate documentary evidence in seventy-six of the ninety-two cases reviewed.[32] However, in twenty-five cases, although the investigator's worksheets indicated a particular document or recording was obtained, this evidence was not found in the file.[33] Moreover, there were three types of documentary evidence which were not routinely being obtained. First, investigators were not regularly conducting background checks, including criminal history checks, on complainants and other civilian witnesses. These checks are important in order to discern whether there is any possible bias motivating the statements given by these individuals. For example, if the criminal checks disclose that the subject officer has arrested the complainant previously, there is the possibility that the complainant is making the allegation to retaliate against him. These checks are also essential because in certain cases, they may disclose that a subject officer is associating with civilians who have been convicted of crimes. An allegation of criminal association is considered corruption or serious misconduct. This type of allegation would be designated a "C" case necessitating a separate investigation by IAB. Of the sixty-eight cases where there were civilian witnesses or complainants, the investigator did not obtain a criminal background check on at least one of the civilians in thirty-nine cases. The Department maintains that it instructs its investigators to perform these checks as a matter of course.

Secondly, the Commission noted that investigators did not obtain full background checks on the subject officers in a significant number of cases. These checks are warranted because they could inform the investigator whether the subject officer had any

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[30] As the Commission understands that recording those telephone interviews when the witness initiates the call to the investigator may not be possible, those interviews were not included in this calculation.

[31] Interviews should be recorded regardless of whether they are conducted in person or over the telephone. The Commission believes that if an interview is conducted over the telephone, the person who is being interviewed should be told that the interview is being recorded. Of course, if the person objects to the recording, the investigator should respect that objection.

[32] This number does not include those cases where the investigator failed to obtain background checks on civilian complainants, witnesses, and subject officers. This also does not include those cases where the investigator failed to obtain domestic incident histories for the subject officer and the complainant. Each of these circumstances is discussed in greater detail below.

[33] Also included in this category were those investigations where recordings were made by the investigator but were not included in the file.

prior or current similar allegations against him, which could establish a pattern of behavior. Investigators routinely obtained the subject officer's Personnel Profile.[34] This document, however, does not have any information about other allegations against the officer. While investigators do not have access to all Department databases,[35] investigators are able to request a copy of the subject officer's Central Personnel Index ("CPI"). This document describes the allegations, disciplinary events, negative evaluations, and background checks performed on the subject officer throughout his career. Of the eighty-eight cases with at least one identified subject officer, the borough or bureau investigator did not obtain the subject officer's CPI in twenty-three cases. The Commission also learned that Bureau and Borough Investigation Unit investigators are encouraged to speak with their respective IAB counterparts if they need more information about a particular subject officer. The Commission only found one investigation where this type of contact was noted. Investigators should continue to be encouraged to confer with their respective IAB Commanding Officers when appropriate.

The final area where the Commission found that the collection of relevant documents was deficient was in the investigations of domestic disputes. Of the ninety-two cases reviewed by the Commission, thirty-six contained at least one domestic allegation. A domestic allegation involves a verbal or physical altercation between spouses, domestic partners, family members, or someone whom the subject officer was dating or had dated in the past. In eight of these cases, the investigating officer did not obtain a Domestic Incident Report history, although he was able to do so. A Domestic Incident Report history discloses all of the prior domestic incident reports which were filed by or against the parties. It is important for the investigator to obtain these reports for several reasons. First, it allows the investigator to evaluate whether the present incident under investigation is isolated or part of a pattern. If it is found that there are other prior reports, the investigator can then determine if the behavior alleged is more serious than in past reports or occurring more frequently. Also, the resolutions of these reports might provide insight into the complaining party's credibility or the likelihood that the complaining party will recant in the future. If it is learned that a complainant has recanted in the past, the investigator can try to take steps to make the complainant more comfortable in proceeding with the present allegation. Also, if the subject officer has past Domestic Incident Reports with individuals other than the complainant, these individuals could be interviewed as well. The reports themselves may also provide pedigree or contact information that the investigator has been unable to locate elsewhere. Finally, a subject officer has a duty under the Patrol Guide[36] to report to the Department any unusual police occurrence in which he is involved. If there are past Domestic

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[34] The Personnel Profile contains the subject officer's pedigree information, duty status history, appointment date, special skills, arrest history, medical history, medals, and recent evaluation ratings.

[35] Borough and Bureau Investigation Unit investigators do not have access to those computer queries that contain allegations against officers. The reasoning behind this denial of access is that this type of information is limited to a select group of members of the service so as to decrease the possibility of compromising investigations. The Commission agrees that this is a valid rationale.

[36] Patrol Guide §212-09.

Incident Reports on file which the subject officer did not previously report, he may face discipline for the failure to comply with Department rules and procedures.[37]

VII. PATROL GUIDE HEARINGS

As in IAB investigations, borough and bureau investigators utilize PG hearings to interview members of the service about allegations against them. In addition, members of the service who are not subjects may be compelled to submit to interviews as part of the information gathering process. An investigator may interview a subject officer in order to secure his version of the events and prevent him from adjusting his account in the future to conform to the evidence against him. The interview can also be used simply as a fact-finding device, or an investigator may use this formal interview to confront an officer with damaging evidence in order to elicit an admission.

Out of the ninety-two cases reviewed, seventy-eight investigations included at least one PG hearing. In total, the Commission listened to tape recordings of one hundred and nine PG hearings.[38] In reviewing the PG hearings, the Commission observed some areas which could be improved. In thirteen cases, interviewers asked leading questions where open-ended questions would have been a better alternative.

The Commission also encountered PG hearings where the investigator missed the opportunity to ask appropriate and essential questions. The Commission found thirteen cases where investigators either did not question the subject officer about part of the allegations or failed to ask questions to clarify and expand on the subject officer's answers.[39] In another five cases, the Commission believed that the overall interrogation was ineffective.

The Commission recognizes that newer investigators may struggle with PG hearings and that experience and training can aid in improving their interviewing skills.[40]

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[37] If a subject officer did not identify himself as a member of the service to officers who responded to the scene of an incident or did not notify the Department of his presence at the scene of the incident, the Department might not be aware of the officer's involvement. This is especially true if the incident occurred outside of the confines of New York City.

[38] The Commission reviewed nineteen cases where there was an indication that a PG hearing was conducted, but the tape recording was not included in the file. Therefore, the Commission was unable to review these PG hearings and comment on them in this study.

[39] In these thirteen cases, there was no indication that the investigator refrained from asking questions as part of his overall strategy in questioning the officer.

[40] According to Department officials, borough and bureau investigators receive a one or two week course taught by IAB's Office of Professional Development. This class is given two times per year to new investigators. Refresher courses are not offered. Aside from this classroom type of instruction, the remainder of an investigator's training consists of "hands-on" instruction where they observe and learn from more experienced investigators. This training includes how to conduct PG hearings. There is usually a supervisor observing an investigator's PG hearing, and the opportunity for feedback is also present.

Continued feedback from more experienced supervisors can assist new investigators in their interrogations of members of the service.

In all but one case, the Commission agreed with the investigation unit's decision to officially interview the subject officer. However, in seven cases, the Commission believed that the investigator did not interview an officer or officers who may have had useful information to add to the investigation.

VIII. INTEGRITY TESTING

During its review of IAB investigations, the Commission has observed the usefulness of using both targeted and random integrity tests. In this review, the Commission found no cases where an integrity test was utilized. As a matter of general practice, investigators from the Borough and Bureau Investigation Units do not conduct integrity tests. It seems that, occasionally, it may be appropriate to conduct an integrity test on a subject officer. In this situation, the investigator should work with IAB to stage an integrity test scenario.

The Commission was informed by Department officials that borough and bureau investigators do not conduct their own integrity tests. If it is decided that an integrity test would be useful, these investigators are instructed to contact IAB to conduct the test. The assigned investigator is invited to observe the test during its execution by IAB. In 2006, the investigation units requested that IAB conduct integrity tests on four occasions, and IAB conducted those four tests. In 2007, two requests for integrity tests were made. IAB conducted one of these tests. In the other case, the subject of the test was out on long-term sick leave. So far in 2008, there have been four requests for integrity tests. IAB has conducted one of these tests and, at the time of this report, was working on two others. The final test was not conducted because the subject officer was on military leave.

IX. SURVEILLANCE

Investigations of certain allegations can benefit from the use of surveillance of a location or of a person. However, for surveillance to be useful the subject of that surveillance must be observed a sufficient number of times and at a variety of times and days of the week, unless the allegation is that the subject officer engages in the misconduct on a specific day of the week or at a specific time. The Department has stated that in those borough or bureau investigations where surveillance is appropriate, a minimum of ten observations are conducted. Furthermore, to have any benefit to the investigation, the subject must actually be observed during the surveillances.

In nineteen cases reviewed by the Commission, surveillance was utilized. The Commission believed that the surveillance was conducted in an effective manner in fifteen of these cases. In those cases where the Commission believed better surveillance could have been conducted, the investigator did not canvass all of the relevant locations,

failed to observe the subject officer, or did not conduct the surveillance to fully cover the time period provided in the original allegation. There was only one case where the Commission believed that surveillance could have aided the investigation, but it was not utilized.

X. DOCUMENTATION OF ACTION

The Commission observed that in twenty of the ninety-two cases reviewed investigators were not adequately documenting the steps that were completed during the investigation. A comprehensive documentation of steps is essential to ensure that the information on a case is up-to-date and readily available. Furthermore, when a case is transferred to a new investigator, thorough documentation of investigative steps can minimize the duplication of steps already performed and aid in a smooth transition from one investigator to another. In addition, improved awareness of what investigative steps have been taken and the results of those steps can enable the supervisor to provide more useful direction to the investigator. Finally, in the event that a particular investigation unit needs to confer with another unit, they can provide clear and accurate information about what has happened.

XI. RECOMMENDATIONS

1. Supervisors should conduct regular written reviews of the investigative files to determine that the investigators are diligently investigating the cases and not missing any important investigative actions. Although the Department maintains that these reviews are conducted on an informal basis, the Commission recommends that such informal discussions be memorialized.

2. It is important that cases be assigned quickly so complainants and witnesses can be contacted when their memories of the incident are more recent. Although the Department maintained that most cases are assigned to the appropriate investigative entity within one week from the receipt of the allegations, the Commission found that more than half of the cases were assigned over two weeks after receipt of the allegation. Although call-out interviews help preserve witnesses and evidence, often, the call-out interview is not conducted by the investigator or the investigation unit to whom the case is ultimately assigned and not all of the necessary questions are answered during this preliminary investigation. In those situations, a delay in assigning the case may mean that the investigator is forced to rely on another investigator's interpretation of interviews and other evidence. This is especially true when the interviews conducted during the call-out investigation are not recorded.

3. Upon receipt of a case, an investigator should promptly interview the complainant. Witnesses should be interviewed as soon as feasible after learning their identity.

4. Complainant and witness interviews should be conducted in-person whenever possible. Personal interviews allow the investigator to observe the complainant's environment during the interview, prevent the complainant or witness from being influenced by other people who may be present, and allow the investigator to observe the complainant's or witness' demeanor and make a determination about his credibility. If investigators are too busy or lack the necessary resources to conduct personal interviews, one solution might be to assign investigators to a particular day of the week where they can conduct all of their interviews. One of the unit's vehicles could also be reserved strictly for the purpose of conducting interviews. In short, in-person interviews should be more of a priority.

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

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

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

8. PG hearings present a unique opportunity to compel members of the service to answer questions regarding the allegations. However, this opportunity is lost if the investigator does not ask all essential questions or does not permit the officer to fully explain his answers. The Commission recognizes that the quality of these hearings will vary with the skill of the investigator. To enhance these hearings, the Commission recommends that additional training be given to these investigators in proper questioning techniques by either IAB's Office of Professional Development or by the Department Advocate's Office.

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

XII. CONCLUSION

The Commission believes that it is important for borough and bureau investigations to be conducted in a prompt and professional manner. Failure to so proceed with respect to allegations against an officer would send the wrong message to the police and the public. The Commission was, therefore, pleased to find that the overall quality of the investigations surveyed was good, although with room for improvement, as detailed in the recommendations above. The Commission was also pleased that IAB has already taken steps to enhance unit investigations, and hopes that IAB's twice yearly meetings with units will continue. It is the Commission's intention to revisit this subject at regular intervals in the future.