

# **NYCLU**

## **Special Report**

**Five Years of  
Civilian Review:**

**A Mandate Unfulfilled  
July 5, 1993-July 5, 1998**

**New York Civil Liberties Union, 125 Broad Street, NYC 10004**

# **NYCLU SPECIAL REPORT**

## **Five Years of Civilian Review: A Mandate Unfulfilled July 5, 1993 – July 5, 1998**

New York Civil Liberties Union

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New York City

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## **I. Summary of Findings**

- From its inception New York's all-civilian review board has been implemented in a manner that virtually ensured it would not provide the oversight called for in the City Charter. The agency, until just recently, has been significantly understaffed and under funded.
- The institutional weakness of New York's CCRB is, in important part, a function of the mayor's authority to influence the agency's operations through budgetary allocations and appointments of board members and chairperson. A chief executive without commitment to the civilian review mission can effectively neutralize the CCRB's effectiveness. In opposing almost any external check on police conduct, Mayor Giuliani has articulated a view of policing that seems to place police officers above the law.
- With the exception of its record of performance reported in 1997, the CCRB has failed to conduct complete investigations into the overwhelming majority of police misconduct complaints received. In its five years of operation the CCRB has received approximately 25,800 complaints. Of the 24,300 complaints disposed of by the CCRB, only about 36 percent have been fully investigated. Of the 8,700 complaints that have received a full investigation, 60 percent have resulted in a record insufficient to support a finding. In other words, only about one in seven complaint investigations have resulted in a finding based on the merits.
- The CCRB has substantiated only about 5 of every 100 complaints filed. While the substantiation rate is not necessarily the decisive measure of performance of a civilian review agency, given the total number of complaints filed and the severity of complaints, a 5 percent substantiation rate indicates a failed effort.
- After five years of civilian review, only 1.5 percent of all complaints disposed of led to imposition of discipline. (This statistic is based on an assumption each police misconduct complaint includes allegations against only one police officer. In fact, complaints sometimes include allegations against more than one police officer.)
- Under a new administrative team the CCRB began to conduct more rigorous complaint investigations in 1997. The CCRB's status report for 1997 indicates that despite significant political, fiscal and institutional obstacles, the agency was able to investigate a greater number of complaints and to conduct more thorough investigations. The substantiation rate for 1997 was double the average substantiation rate reported by the CCRB for the years 1994 through 1996.
- Police Commissioner Howard Safir has in effect nullified the CCRB's findings and recommendations. Between January 1996 and July 1998, the police commissioner has acted on substantiated complaints against 635 police officers.

No disciplinary action was imposed in 447 cases. The police commissioner rejected the CCRB findings of police misconduct in 66 percent of those cases that were not time barred and that were adjudicated.

- The number of claims brought against the city for police brutality – and damages paid in settlements and judgments – has been increasing steadily. Police action claims filed in 1997 represented a 45 percent increase over the number of claims filed in 1993. Between 1994 and 1997 the city paid out nearly \$97 million to the victims of police actions, an increase of 59 percent as compared with the prior four-year period.

- The report includes six recommendations, including proposals to

Amend the City Charter to give the CCRB's thirteen mayoral appointees (of whom five members are designated by the City Council, and three by the police commissioner) authority to appoint the agency's chairperson.

Create a CCRB legal unit to prosecute police officers against whom charges have been filed as a result of a CCRB complaint.

Institute monthly meetings between representatives of the CCRB and the police commissioner, with a report to the public at the CCRB's monthly meeting of board members.

Report disciplinary action recommended and actually imposed for every complaint the CCRB substantiates.

## II. Introduction

A news account published on August 31, 1998 reported that Police Commissioner Howard Safir had questioned the competence and judgement of the members of the Civilian Complaint Review Board (CCRB).<sup>1</sup> The police commissioner's harsh criticisms, included in a letter to the outgoing chairman, Mel Barkan, appears to have been preemptive; for the CCRB was about to release its 1998 mid-year report, which questioned the *police commissioner's* judgment and conduct. The CCRB report stated

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<sup>1</sup> William K. Rashbaum, "Safir Rips CCRB and its Findings," *Daily News*, August 31, 1998, p. 6.

emphatically that Commissioner Safir had not been taking disciplinary action on a significant number of complaints that had been substantiated by the agency, and that when he did act, it was more often than not to dismiss the complaint.<sup>2</sup>

To many observers of the CCRB, this back and forth may have seemed all too familiar. Throughout its brief history, the independent, all-civilian agency has been a source of ceaseless controversy – accused of failing in its mission by the advocates of civilian review, and dismissed by Mayor Giuliani, who has refused to accept that civilians have the authority or competence to monitor police practices.<sup>3</sup> However, what may appear to be another sign of the failure of civilian review may, in fact, have signaled the first tentative sign of the CCRB's viability.

For until this moment, the CCRB has been largely irrelevant to the discussion of police practices in New York. In its 1997 annual status report, however, the CCRB's board members distinguished the agency's performance from prior years, observing that it had produced an investigative record in 1997 that was complete and dispositive regarding a significantly greater number of misconduct allegations reviewed.

What's more, in its 1998 mid-year status report the board for the first time directly addressed the police commissioner's rejection of CCRB findings. The report notes that the commissioner had dismissed without apparent reason significant numbers of substantiated complaints, and that he had failed to provide a complete or timely accounting regarding the overwhelming majority of complaints referred for disciplinary action. Although the board members do not explicitly charge Commissioner Safir with

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<sup>2</sup> See CCRB Status Report, January-June 1998, pp. 27-28. The report notes that of 102 substantiated complaints referred to the police commissioner, 57 were dismissed. Forty-three were dismissed for "unspecified reasons." Another 14 were dismissed for lack of *prima facie* evidence, even though, the report states, the "board found sufficient evidence to substantiate the complaint."

<sup>3</sup> The New York Civil Liberties Union has long been, and remains, an advocate of an effective civilian oversight agency. However, since the independent Civilian Complaint Review Board came into existence, on July 4, 1993, the NYCLU has been one of the CCRB's most outspoken critics. Notwithstanding these criticisms, the NYCLU has consistently argued that if allowed to operate as intended under the provisions of the City Charter, the CCRB could play an effective role in bringing greater accountability for the use, and misuse, of police power.

acting in bad faith, it is clearly their view the police commissioner is frustrating the will of the board and impeding its ability to perform its obligation under the law.<sup>4</sup>

Thus, some five years after it came into existence as a new civic institution, the CCRB has come to a defining moment. The institutional standoff precipitated by the police commissioner puts to the test the proposition, as set out in the City Charter, that civilians have a role in establishing the standards by which they are policed.<sup>5</sup> It may, therefore, be instructive to consider briefly the public policy interest that led to creation of the CCRB and the obstacles the fledgling agency has had to address in attempting to fulfill its mandate.

### **Why civilian review?**

The idea that civilians can and should play a role in determining the appropriate exercise of police power is based on fundamental notions of fairness and accountability. Police derive their authority from the citizenry, which accepts certain limited constraints upon its freedom in the interest of securing the public safety. The proponents of civilian oversight of policing contend it is appropriate, and necessary, that in vesting police power in a law enforcement agency and empowering police officers to use lethal force, civilians must have a role in determining the standards by which they are policed.

Civilian oversight of policing is hardly a radical proposition. The investigative and review functions are straightforward. They involve no elaborate legal procedures. As regards its investigations and findings, the authority of New York's CCRB is purely advisory. The CCRB's jurisdiction stops at the police commissioner's door. The City Council created the CCRB not to usurp the commissioner's disciplinary authority; but rather in response to civilians' need for some street-level understanding of policing, along with some meaningful measure of accountability that starts right there: in the street, at the moment a police officer and civilian engage each other. This would seem to be a

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<sup>4</sup> See CCRB Status Report, January–June 1998, pp. 27-28. See also Section IV, herein: "Stonewalling the CCRB."

<sup>5</sup> New York City Charter, Chapter 18-A, § 440.



reasonable proposition in a democratic society, which makes all the more remarkable the mayor's and police commissioner's unyielding opposition.

Civilian review of policing in the United States has its origins in a specific historical reality. Three decades ago, following its study of the urban riots of the early 1960s and the racial conflict that gave rise to that violence, the National Advisory Commission on Civil Disorders (known as the Kerner Commission) recommended that "police departments should be subject to civilian review."<sup>6</sup> The Commission found deep distrust between police and the residents of racially segregated communities, with almost no channels of redress when complaints of police misconduct were alleged. Its report set out the basic principles and functions of a civilian review entity, which included the authority to investigate complaints, hold hearings, and recommend policies and practices, along with the responsibility to make full and prompt disclosure as to the outcome of investigations.<sup>7</sup>

Civilian review, then, was proposed as a means of ameliorating conflict between police and minority communities in America's urban centers.<sup>8</sup> That legacy is apparent in New York today, where the CCRB consistently reports that three of every four complaints of police misconduct are brought by African Americans and Latinos, and where Mayor Giuliani's "quality of life" campaign has fomented tension and mistrust between police and New York's minority communities.<sup>9</sup>

The call for civilian review of policing may also be seen as a response to the legal conundrum that make's it so difficult to hold a police officer liable for civil damages or to prosecute a police officer's criminal conduct – and that is what police brutality is, a crime. The same crime that would, as a matter of course, lead to arrest and indictment by

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<sup>6</sup> *Report of the National Advisory Commission on Civil Disorders* (New York, Bantam Books 1968) pp. 311-312.

<sup>7</sup> *Ibid.*

<sup>8</sup> Jerome Skolnick and James J. Fyfe, *Above the Law, Police and the Excessive Use of Force*, (New York, Free Press, 1993), pp. 217-220 [Hereinafter "Above the Law"]

<sup>9</sup> A 1997 poll conducted by NY1 News, a local television channel, found that "81 percent of blacks and 73 percent of Hispanics" believe police brutality is a serious problem in the city. Cited in *Humans Right Watch, Shielded from Justice, Police Brutality and Accountability in the United States* (New York, 1998), p. 27. [Hereinafter "Shielded from Justice"]

a district attorney, is rarely if ever prosecuted when the criminal conduct is committed by a police officer.<sup>10</sup> Prosecutors must rely on police officers in pursuing criminal prosecutions; by bringing charges against a police officer, a district attorney may place his or her career in jeopardy.

Nor will the victim of police misconduct very often find vindication of their civil rights in the court. For example, a police officer who without justification uses force in the course of making a search without a valid warrant may avoid liability upon a showing that he was acting in good faith; that any reasonably trained officer would have acted in the same manner.<sup>11</sup> This qualified immunity doctrine can serve to legitimize extra-legal police conduct that violates constitutional rights. What's more, the victim of a police officer's use of excessive force would also have a heavy legal burden in bringing a claim against the municipality for the police officer's conduct. Absent a showing that the police officer's unconstitutional conduct was undertaken pursuant to an official department policy, this remedy would also fail.<sup>12</sup>

Given the legal constraints that militate against prosecution of miscreant police officers, it should be no surprise that police department's internal procedures for disciplinary review are typically less than fair or rigorous. In the view of two leading police scholars, Jerome Skolnick and James F. Fyfe, "police professional review typically, and exclusively, is internal to the organization involved. Hence it is inherently laden with conflicts of interest and affords much room for speculation that bureaucratic interests override objective fact-finding."<sup>13</sup>

In the eyes of many police insiders as well as advocates of civilian review, conflicts of interest and lack of objectivity in the New York Police Department's internal disciplinary system are more than a matter of mere speculation.<sup>14</sup> A detailed *New York Times* report

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<sup>10</sup> *Shielded from Justice*, pp. 85-86.

<sup>11</sup> See David Rudovsky, "Police Abuse: Can the Violence Be Contained?" 27 *Harvard Civil Rights-Civil Liberties Law Review*, 465, 472-92 (1992).

<sup>12</sup> See *Monell v. New York Dep't. of Social Servs.*, 465 U.S. 658 (1978).

<sup>13</sup> *Above the Law*, p. 197.

<sup>14</sup> David Kocieniewski, "System of Disciplining Police Assailed From Inside and Out," *New York Times*, December 19, 1997, p. A1.

described the system as lacking rigor, objectivity and clearly defined standards. Police officers charge the process is corrupt, subject to favoritism and collusion.<sup>15</sup> However, violations of administrative rules and regulations appear to be enforced far more rigorously than are acts of police misconduct against civilians.<sup>16</sup>

Some twenty-five years after the Kerner Commission recommended civilian oversight as one response to abuse of police power, a videotape of Los Angeles police engaged in the horrific beating of Rodney King was broadcast over national television networks. A report of the Independent Commission on the Los Angeles Police Department (known as the "Christopher Commission" Report) convened in response to the Rodney King incident, called for a new standard of police accountability to address a problem that it described as national in character.<sup>17</sup> Once again a close examination of the problem of police misconduct led to the recommendation of a system whereby the police chief is "accountable to civilian officials" for the department's performance and "ranking officers are responsible for the conduct of those they lead."<sup>18</sup>

As Skolnick and Fyfe have observed, there are two fundamental reasons that in seeking a workable system for checking the abuse of police power, analysts look outside the police department, to civilian review. Those reasons are trust and credibility.<sup>19</sup> Police investigation of police, they point out, cannot be impartial. As a long-term solution, civilian review can best serve the interests of civilians and police officers. "[O]nly an independent investigative body can allay public suspicions of the police and render a convincing exoneration of police who have been accused of misconduct."<sup>20</sup>

Perhaps, then, it is time to give the principle of civilian review a fair test. It is so commonplace as to be axiomatic that upon its introduction a civilian review agency faces

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<sup>15</sup> *Ibid.*

<sup>16</sup> Dan Barry and Deborah Sontag, "Safir Dismissed 106 Officers, 8 for Brutality," *New York Times*, October 6, 1997, p. A1. ("Officers, the records show, are most often dismissed not for brutality, but for overt, non violent acts of criminality or corruption[.]")

<sup>17</sup> Report of the Independent Commission on the Los Angeles Police Department (1991) p. i.

<sup>18</sup> *Ibid.*, p. iv.

<sup>19</sup> *Above the Law*, p. 227.

<sup>20</sup> *Ibid.*, p. 230.

immediate and powerful opposition.<sup>21</sup> The effectiveness of the new civilian agency is very often compromised, as in New York, by poor management decisions, by political opposition, and by the adversarial posture of police department officials. Everyone, civilian and police officer alike, is a loser in this political contest. This is only too apparent in New York. Complainants have been badly served by the CCRB; and the honor of all police officers is tainted by the violent police officer whose abuse of authority goes undisciplined.<sup>22</sup> Instead of opposing civilian review, Skolnick and Fyfe conclude,

[P]olice would be better advised to insist that it be as fair as possible. Moreover, although there is no substitute for a first-rate, progressive police administrator, there is also no inconsistency between civilian review and accomplished police administration. The best police chiefs, even if not enthusiastic about civilian review, will not be antagonistic to it; they will support it as long as civilian review demonstrates that it can be impartial and effective.<sup>23</sup>

### **Subverting the Civilian Review Process**

In 1992 the New York City Council approved by a vote of forty-one to nine the creation of an independent civilian review board, replacing the oversight agency located within the police department. In moving the oversight function outside the police department and vesting civilians with that responsibility, the members of the City Council were reflecting a consensus emerging among citizens and municipal officials in large cities across the country. By 1992, thirty-three of the country's 50 largest cities had adopted civilian review of policing in some form.<sup>24</sup>

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<sup>21</sup> See New York Civil Liberties Union, *Civilian Review of Policing: A Case Study Report* (1992).

<sup>22</sup> See Vivian S. Toy, "Confidence in Police Has Fallen, a Poll Finds," *New York Times*, October 3, 1997, p. B7. The report analyzed the results of a poll, conducted by Quinnipiac College's Polling Institute, which showed a drop from 61 percent to 48 percent in the number of respondents in New York who approved of the way police were doing their job. Sixty-two percent of respondents polled felt that police were tougher on blacks than on whites, and 54 percent believed police lie or break the law to obtain convictions.

<sup>23</sup> *Above the Law*, p. 230.

<sup>24</sup> Samuel Walker with Vic W. Bumphus, "The Effectiveness of Civilian Review: Observations on Recent Trends and New Issues Regarding the Civilian Review of Police." (This paper was presented at the annual meeting of the American Society of Criminology on November 7, 1992.)

However, from its inception New York's all-civilian review board has been implemented in a manner that virtually ensured it would not provide the oversight called for in the City Charter. The agency, until just recently, has been significantly understaffed and underfunded. The CCRB's budget for fiscal year 1997 was \$5.2 million, 13 percent below the budget allocated to the police department in 1992; and yet the police force increased by approximately 27 percent – to approximately 38,000 – during the years after the agency came into existence. In late 1997, following Abner Louima's highly publicized allegations of police torture, Mayor Giuliani and the City Council allocated an additional \$1.5 million to the agency.<sup>25</sup>

The CCRB was plagued by numerous administrative blunders in its first years of operation, including the transfer of a significant number of former police department investigators to the agency, some with an outspoken contempt both for complainants and for the new civilian unit, significantly compromised the investigative operation. Virtually all investigator hires were entry-level employees, who were overwhelmed by a large case back log and a manual record-keeping system.<sup>26</sup>

However, the institutional weakness of New York's CCRB is, in important part, a function of the mayor's authority to influence the agency's operations through budgetary allocations and appointments of board members and chairperson. A mayor without commitment to the civilian review mission can effectively neutralize the CCRB's effectiveness. Given that the CCRB's first five years of operation have nearly coincided with Mayor Giuliani's tenure, the character of the board -- to which the mayor appoints

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<sup>25</sup> This capital infusion still leaves the CCRB significantly underfunded. The CCRB's current \$6.7 million budget must be measured against the base line of \$6 million allocated to the CCRB's predecessor agency within the police department. Given the 27 percent increase in police personnel in the intervening years, the CCRB needs a proportionate increase. (The investigative function drives the oversight operation; it is the CCRB's single largest budget item. Any increase in the number of police monitored requires a corresponding increase in the investigative staff.) By this measure, the CCRB requires a budget of approximately \$7.6 million budget, nearly \$1 million short of its current allocation, to maintain budget parity with the former police department review board.

<sup>26</sup> For a more detailed discussion of the factors that undermined the CCRB in its first years of operation, see "Testimony of Norman Siegel on Behalf of the NYCLU before the City Council's Public Safety Committee Regarding the Performance of the Civilian Complaint Review Board," November 4, 1994; and NYCLU Report, A Second Anniversary Overview of the Civilian Complaint Review Board, July 5, 1993 - July 5, 1995. These documents are available from the NYCLU.

all thirteen members as well as the chairperson -- bears the political stamp of Mayor Giuliani, who rejects the very premise of civilian review.<sup>27</sup> It is not entirely surprising, then, that there has been no consistent, outspoken and visible advocate within the CCRB who has been as determined to see the CCRB fulfill its mission as the mayor has been to see that it remains unfulfilled. The absence of such a leader at the CCRB, committed to the principle of civilian review of policing, has been perhaps the critical factor in the CCRB's failures.

As a consequence of this political dynamic, the CCRB has also had to cope with the premature departure of its chairpersons. As it begins its sixth year of operation, the CCRB has its fourth chairperson. The discontinuity in the CCRB's leadership is unsurprising. Should he serve the mayor's interests, the CCRB's chairperson will fail those New Yorkers who look to the CCRB for justice and accountability; and should he serve those interests, by fulfilling the CCRB's legal mandate, he will act in opposition to the mayor. As the NYCLU has noted in its analysis of the CCRB, the agency's operational problems are top down; at the top is the mayor.

Finally, in opposing almost any external check on police conduct, the mayor has articulated a view of policing that seems to place police officers above the law. It is his position that in incidents involving conflict with civilians, the police officer gets the benefit of the doubt. Whereas the presumption of innocence certainly applies to police officers accused of wrongdoing, the mayor's benefit-of-the-doubt presumption comes dangerously close to the granting of an extra-legal prerogative when police conduct is in question.<sup>28</sup>

*Howard*  
*Police Commissioner Safir has echoed this*  
Indeed, this view of policing is consistent with the mayor's view that the essence of freedom is the willingness to surrender to authority.<sup>29</sup> Police Commissioner Safir has

<sup>27</sup> The City Charter provides that the City Council designates five members of the board and that the police commissioner nominates three board members. The mayor, however, has the ultimate authority to appoint board members.

<sup>28</sup> See Ed Morales, "Benefit of the Doubt?" *Village Voice*, April 19, 1997, p. 28; and Nat Hentoff, "Safir Protects His Cops – Not You," *Village Voice*, May 26, 1998, p.22.

<sup>29</sup> In comments delivered on March 16, 1994, at a forum sponsored by the *New York Post*, the mayor expressed the opinion that "[f]reedom is about authority. Freedom is about the willingness of every single

~~echoed this view of law and liberty, stating that~~ the “Number one civil right in my book is the right to be free from crime.”<sup>30</sup> Not surprisingly, the commissioner too subscribes to the double standard implicit in the mayor’s extension of the benefit of the doubt to police officers who engage in questionable conduct. He has repeatedly formulated a false distinction between various types of police brutality, suggesting that a relatively less brutal form of excessive force when employed by a police officer is not criminal.<sup>31</sup>

Perhaps these views of policing express a view of police accountability so profoundly hostile to civilian oversight that the benefits of civilian review – both to police officers and civilians – cannot be appreciated. Nevertheless, the Civilian Complaint Review Board is a creation of the legislative process: civilian oversight of policing is the law. And to the extent the mayor and police commissioner undermine the CCRB’s effectiveness, they place themselves above the law they purport to value above all else.

### **When civilian review fails**

A weak civilian review agency emboldens police officers with a propensity to abuse their power, and gives false assurance to civilians who file a complaint of police misconduct with the expectation justice will be done. And by any measure the civilian oversight process has failed to deter such conduct.

With the exception of its record of performance reported in 1997, the CCRB has failed to conduct complete investigations into the overwhelming majority of police misconduct complaints received. Nor, until recently, has the agency made a meaningful effort to pursue the disposition of its findings to a just conclusion. In a sense, the agency has yet to take itself seriously. For whatever reason, undue deference to the mayor, lack of commitment to the principle of civilian review, or lack of cooperation by the police

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human being to cede to lawful authority a great deal of discretion about what you do and how you do it." (The quotation is taken from a verbatim transcript of the proceedings.)

<sup>30</sup> Jeffrey Goldberg, "Sore Winner," *New York Times Magazine*, August 16, 1998, p. 33.

<sup>31</sup> *Ibid.*, Police Commissioner Safir states the following: "Police brutality by definition is, I go to arrest you, and you resist, I can use reasonable force. But after you're down, I hit you on the head five times. That's

department, the CCRB's leadership has been unable to establish itself as a credible monitor of policing.

Analysis of data reported by the CCRB over the last five years lead inevitably to this conclusion. During that period the CCRB received approximately 25,800 complaints.<sup>32</sup> Of the 24,300 complaints disposed of by the CCRB, only about 36 percent have been fully investigated. About 54 percent of these investigations have been truncated or administratively closed due to the complainant's unavailability or non-responsiveness. (See Table II.) Of the 8,700 complaints that have received a full investigation, 60 percent have resulted in a record insufficient to support a finding. In other words, only about one in seven complaint investigations lead to a finding based on the merits.

The bottom line: the CCRB has substantiated only about 5 of every 100 complaints filed. While the substantiation rate is not necessarily the decisive measure of performance of a civilian review agency, given the total number of complaints filed and the severity of complaints, a 5 percent substantiation rate indicates a failed effort. As discussed below, the CCRB's performance in 1997 was far more creditable.

As troubling as the agency's investigative record is the police commissioner's failure to take meaningful disciplinary action regarding those substantiated complaints referred for disciplinary action, or to provide an accounting for his action, or inaction. The overwhelming majority of substantiated police misconduct complaints referred to the police department result in no disciplinary action. (See Table V-A.) In the unlikely event a police officer is disciplined, the punishment is typically light – the loss of a few vacation days.<sup>33</sup>

The consequences of this dynamic have become quite clear. Police misconduct, often of a severe and brutal nature, is a recurring narrative in the life of New York City. The abuse and injury that follow from police misconduct are visited most frequently upon

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brutality. But taking someone 30 minutes after an event, taking them into a room and brutalizing them the way it allegedly happened [in the Abner Louima case], that's criminal."

<sup>32</sup> CCRB statistics cited in this paragraph have been rounded to the nearest hundred.



people of color, and upon those in the city's low-income communities. In documenting this phenomenon, Amnesty International has reported a pattern of widespread and persistent police brutality in New York City.<sup>34</sup> A 1997 Human Rights Watch report analyzed the systemic failure of the city's procedures for addressing the abuse of police power in New York City.<sup>35</sup> The release of these findings followed the 1994 report of the Mollen Commission, which found that brutality was often a concomitant of police corruption and that among certain police officers the use of brutal force was "rite of passage" to other forms of illegal conduct.<sup>36</sup>

These formal reports have been introduced in the context of press accounts that have made police misconduct a regular and routine news item. A small sampling of the headlines tell a troubling story about policing in New York: "Disrespect as a Catalyst for Brutality,"<sup>37</sup> "Young and in Fear of the Police,"<sup>38</sup> "Tough Cops, Thin Skin,"<sup>39</sup> "Safir Protects His Cops – Not You."<sup>40</sup> "New Yorkers Tell Congressmen of Suffering They Attribute to Police,"<sup>41</sup> "U.S. Trial Evidence Shows How Police Protect Their Own."<sup>42</sup> The mayor and police commissioner have routinely dismissed such reports as distorted, unfounded, or politically motivated – except for some belated expressions of contrition and indignation following the alleged police torture of Abner Louima.<sup>43</sup> However, the accumulation of anecdote, trial evidence, testimony at public hearings, and sworn complaints constitute an indictment of police practices as compelling as any prosecutor's brief.

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<sup>33</sup> See Section IV, herein: "Stonewalling the CCRB."

<sup>34</sup> Amnesty International, *United States of America, Police Brutality and Excessive Force in the New York City Police Department* (June 1996).

<sup>35</sup> *Shielded from Justice*. (See note 9, herein.)

<sup>36</sup> *Ibid.*, citing *New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department* [Mollen Commission Report] (New York, 1994), p. 47.

<sup>37</sup> Deborah Sontag and Dan Barry, "Disrespect as Catalyst for Brutality," *New York Times*, November 19, 1997, p. A1.

<sup>38</sup> Felicia R. Lee, "Young and Fear of the Police," *New York Times*, October 23, 1997, p. B1.

<sup>39</sup> "Tough Cops, Thin Skin," *New York Times* (editorial) November 22, 1997, A14.

<sup>40</sup> Nat Hentoff, "Safir Protects His Cops -- Not You." *Village Voice*, May 26, 1998, p. 22.

<sup>41</sup> Michael Cooper, "New Yorkers Tell Congressman of Suffering They Attribute to Police," *New York Times*, November 19, 1997, p. B7.

<sup>42</sup> David Kocieniewski and Benjamin Weiser, "U.S. Trial Evidence Shows How Police Protect Their Own," *New York Times*, June 26, 1998, p. B6.

<sup>43</sup> Joe Conason, "Rudy's Police Need A Closer Inspection," *New York Observer*, August 25-September 1, 1997, p. 5.

There is one further piece of information that must be considered in assessing the seriousness of the police brutality problem in New York: monetary damages paid by the city to settle a claim or to satisfy a judgment arising from a “police action,” typically police brutality. Notwithstanding the high legal threshold that precludes many police misconduct lawsuits, the city has been paying record damages in settlements and judgments. Between 1994 and 1997 the city paid out nearly \$97 million to the victims of police actions, an increase of 59 percent as compared with the previous four-year period.<sup>44</sup> And the number of such claims has been increasing steadily. Police action claims filed in 1997 represented a 45 percent increase over the number of claims filed in 1993.<sup>45</sup> Aside from the human injury and suffering reflected in these statistics, they also represent a staggering fiscal toll: 10 cents of every dollar paid by the city in 1997 to satisfy a personal injury claim went to the victim of a police action.

### **III. The CCRB's Disposition of Police Misconduct Complaints**

Complaint investigation is the single most important function of the CCRB. The investigative record is the basis for determining whether alleged misconduct has occurred. That record is also the basis for identifying patterns of alleged misconduct, which may indicate the need for new or revised policing policies and practices. However, without a substantial and credible investigative record, the CCRB's policy and practice recommendations carry little authority.

In its first three and one-half years of operation the CCRB's investigative performance was, by any measure, dismal. Of approximately 18,300 police misconduct complaints filed with the CCRB between July 5, 1993 and December 31, 1996, only 28 percent of the complaints disposed of received a full investigation. Of those cases fully

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<sup>44</sup> *New York City Comptroller's Annual Claims Report*, Fiscal Year 1997, August 1998, Table 3: Dollar Amount of Settlement & Judgments by Claim Type.

investigated, only 30 percent resulted in a record insufficient to support a finding. And only 4 percent of all complaints disposed of were substantiated. However, under a new administrative team the agency began to conduct more rigorous complaint investigations. The CCRB's status report for 1997 indicates that despite significant political, fiscal and institutional obstacles, the agency was able to investigate a greater number of complaints and to conduct more thorough investigations.

But following hard upon this apparent invigoration of the CCRB's investigative unit, the agency appears to have retreated, or relapsed, in the first six months of 1998. The implications of the 1998 data, although not entirely clear, raise troubling questions. In addressing these questions, however, the significance of the 1997 record should not be overlooked. Following is a summary overview of the CCRB's performance data in 1997 as compared with the data reported for prior years. (See Table II.)

### **Substantiated Complaints of Police Misconduct**

In 1997 New Yorkers filed 4,816 complaints of police misconduct with the CCRB. In that year the agency disposed of 5,579 complaints (including complaints filed prior to January 1, 1997), finding that there was "sufficient credible evidence" to rule 448 complaints were "substantiated."<sup>46</sup> As a percent of complaints received, this reflects a substantiation rate of 9.3 percent, or as a percent of complaints disposed of, a substantiation rate of 8 percent. By either measure, the substantiation rate for 1997 is double the average substantiation rate reported by the CCRB for the years 1994 through 1996.<sup>47</sup>

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<sup>45</sup> *Ibid.*, Table 1, Number of Claims Filed by Claim Type, 1998-1997.

<sup>46</sup> If the record indicates a police officer committed the alleged misconduct, the complaint is "substantiated." If the record is inconclusive, the complaint is classified "unsubstantiated." If the investigation discloses that the alleged act of misconduct never occurred, the complaint is ruled "unfounded." If the alleged act is found to have occurred, but is determined to have been "lawful and proper," the accused police officer is "exonerated." See CCRB Status Report, January-June 1997, p. 5.

<sup>47</sup> The CCRB calculates the substantiation rate based on the number of complaints fully investigated. However, this measure fails to account for a significant majority of complaints received by the CCRB that are not fully investigated. During its five years of operation the CCRB in effect dismissed approximately half of all complaints without a full investigation; to ignore these complaints when calculating the substantiation rate is to grossly misrepresent the agency's disposition of its case load.

### **Complaints Given a "Full Review" by the CCRB**

The CCRB makes a determination regarding the validity of a police misconduct allegation when an investigation provides evidence sufficient to support a finding. The CCRB was able to create an investigative record sufficient to support a finding in 3,077 cases, or 55 percent, of all cases disposed of by the CCRB in 1997. While this record still leaves an unacceptably large number of cases unresolved, the CCRB doubled the percentage of cases fully reviewed in 1997 as compared with the number of cases fully reviewed in the years 1994-1996. Of the complaints disposed of by the CCRB during that period, the CCRB fully reviewed, on average, only 27 percent.

### **Unsubstantiated Complaints**

An important measure of the CCRB's investigative rigor is the number of instances in which an investigation is ruled inconclusive -- that is, where there is insufficient evidence upon which to base a finding as to whether or not the alleged misconduct occurred. Such cases are ruled "unsubstantiated." Of all cases given a full review (see above) by the CCRB in the three-year period 1994-1996, approximately 70 percent were ruled unsubstantiated. In 1997, the number of cases ruled "unsubstantiated" dropped to 50 percent of complaints fully reviewed.

### **Complaints "Truncated" or "Administratively Closed"**

Another important measure of the CCRB's investigative operation is the number of police misconduct complaints that are terminated prior to completion of an investigation. If, for example, a complainant "fails to agree to an interview date or cannot be contacted by telephone," or if the complainant fails to appear for a scheduled interview, the complaint investigation may be "truncated" or "administratively closed."<sup>48</sup> In the years 1994 through 1996, the CCRB terminated prior to conclusion between 57 percent and 73 percent of all complaint investigations undertaken. In 1997, the number of complaint investigations truncated or administratively closed dropped to 38 percent of all complaint investigations.

The NYCLU, in criticizing the CCRB regarding the significant number of incomplete investigations has noted that a complainant's lack of cooperation or availability is, in part, a function of the extent to which the investigators on intake personnel are cooperative or available. While the CCRB's 1997 status report indicates the agency is undertaking more aggressive investigations, the report also makes clear the agency must develop the capability to conduct complete investigations of a far greater number of complaints.

In its 1997 status report the CCRB reports that 1,634 complaints were administratively closed because the complainant was uncooperative or unavailable. However, the CCRB also reports that these cases were closed out, on average, in 55 days.<sup>49</sup> This is a brief period of time in which to write off a complainant as uncooperative or unavailable. If unable to contact a complainant, the CCRB sends a letter notifying the complainant that failure to respond within 10 days of its receipt will result in termination of the investigation. Allowing for mail delivery and the 10-day response period, the 1,635 administratively closed cases were active for only about 42 days. Discounting weekend, this leaves 30 workdays prior to administrative closure. Such an abbreviated investigation of so large a number of complaints raises questions as to how aggressively the CCRB pursued contact with complainants and witnesses in these cases.

The import of the data reported by the CCRB in 1997 should not be lost in the current political contest over the role of civilians in monitoring police. The number of investigations completed by the CCRB was up significantly; the number of inconclusive investigations was down dramatically, as was the number of cases closed due to complainants' unavailability or lack of cooperation. The number of complaints substantiated in 1997 represents an increase of 100 percent as compared with complaints substantiated in the years 1994 through 1996. As a function of complaints received, the CCRB substantiated approximately one of every eleven complaints in 1997. If each of these substantiated complaints led to meaningful discipline, the civilian review process might begin to deter the abuse of police power.

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<sup>48</sup> See CCRB Status Report, January-June 1997, p. 126.

<sup>49</sup> *Ibid.*, p. 126.

### **The 1998 Data: Backsliding**

From the perspective of a civilian review advocate, the CCRB's investigative performance in 1997 provides some confirmation that the beleaguered agency can right itself; that civilian review of policing can work in New York City. However, the CCRB's status report for the first half of 1998 must give pause. Complaint activity is up 22 percent as compared with the first half of 1997, but the CCRB's productivity is down. Of the complaints disposed of in the first half of 1998, the CCRB fully reviewed 47 percent. In the preceding six-month period, by way of comparison, 60 percent of complaint investigations resulted in a full review. The number of cases truncated or administratively closed prior to a complete investigation increased to 46 percent of complaints disposed of; the comparable number for the latter half of 1997 was 39 percent. The most dramatic statistic in the 1998 mid-year report is the substantiation rate. The CCRB substantiated 4.8 percent of complaints received in the first half of 1998, or 5.2 percent of complaints disposed of -- a 35 percent drop as compared with the 1997 substantiation rate based on the number of complaints disposed of by the CCRB.

These data reflect complaints reviewed over a brief period of time. Definitive explanations are not possible. However, certain obvious and troubling questions need to be addressed: Has the police commissioner's attacks on the competence of the CCRB's staff and board inhibited investigators or board members from making findings that support substantiation of complaints? Have board members adopted a stricter standard of proof than the preponderance-of-the-evidence standard called for under the City Charter? Has the high rate of turnover among the investigative staff led to less rigorous complaint investigations?<sup>50</sup>

The CCRB has not addressed these questions, or it has not done so publicly. Much is at stake, however, for the agency's credibility and for the public safety. The CCRB's response to these questions will determine the answer to a larger question: Was the

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<sup>50</sup> The CCRB reported a 13 percent "rate of attrition" among investigators in the last six months of 1998. See CCRB Status Report, January-June, 1998, p. 28.

CCRB's performance in 1997 an aberration, or indication of a reinvigorated investigative function?

#### **IV. Stonewalling the CCRB: The Police Commissioner's Failure to Act on Substantiated Complaints**

If as a matter of public policy Mayor Giuliani has rejected civilian oversight of policing and marginalized the CCRB as an agency of government, which he has clearly done, then Police Commissioner Howard Safir has proved to be more than an able administrator of that policy. Between January of 1996 and June of 1998, the CCRB referred 834 substantiated complaints to the police commissioner for disciplinary action. As of June 30, 1998, disciplinary recommendations regarding 528 police officers are still pending -- awaiting action by the police commissioner. These include 54 cases referred in 1996 and 349 cases referred in 1997. (See Table V.) If the mayor expected timely action by Police Commissioner Safir regarding substantiated acts of police misconduct, this expectation would certainly have been conveyed, and acted upon. Indeed, the CCRB reports that the police commissioner's dilatory conduct violates an explicit executive order issued by the mayor, which has been honored only in the breach.<sup>51</sup>

Police Commissioner Safir has in effect nullified the CCRB's findings and recommendations. Between January 1996 and July 1998, the police commissioner and in some cases administrative trial judges have acted on substantiated complaints against 635 police officers. No disciplinary action was imposed in 447 cases. (See Table V-A.) Three hundred and twenty-six cases were dismissed at or prior to a departmental trial. Another 41 cases were dismissed or concluded with a not-guilty finding at a departmental trial. Eighty cases were terminated because the 18-month statute of limitation had expired. Thus, the police commissioner rejected the CCRB's findings of police misconduct in 66 percent of those cases that were not time barred and that were adjudicated.

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<sup>51</sup> CCRB Status Report, January-June 1998, p. 27.

What's more, even in the relatively small number of cases that resulted in disciplinary action during this two and one-half year period, it was notably lax. Nearly 60 percent of the cases referred for discipline resulted in "instructions" or "command discipline," the most lenient disciplinary measures available to the police commissioner.<sup>52</sup> Instruction involves a review of proper procedures with respect to the incident giving rise to the misconduct complaint; command discipline is also an informal procedure that may involve nothing more than a verbal warning and admonishment or, at worst, a forfeiture of up to ten vacation days.<sup>53</sup>

It is difficult to explain these data except by concluding that the police commissioner has adopted a policy of nullifying the findings and disciplinary recommendations of the CCRB. The CCRB itself appears to suggest as much. Its status report for 1997 noted that investigators were conducting "increasingly rigorous" investigations, enabling the board to make "definitive decisions" as to whether or not alleged misconduct had occurred.<sup>54</sup> Nevertheless, Police Commissioner Safir appears to have rejected the CCRB's authority. In a letter to the police commissioner, the NYCLU asked that he publicly address his apparent rejection of the CCRB's disciplinary findings and recommendations. In a perfunctory return letter, the commissioner explained that the police misconduct complaints substantiated by the board were not supported by an "appropriate level of evidence, as required by law."<sup>55</sup> (See Attachments.)

It appears, however, that Police Commissioner Safir's threshold of proof is of his own making, one that would preclude many more cases than the evidentiary test adhered to by his peers. For a police commissioner designee sits on almost every CCRB panel that reviews a complaint; and current board members include a former police commissioner

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<sup>52</sup> CCRB Status Report, January-June 1996, pp. 36-38; CCRB Status Report, July-December 1996, pp. 45-46; CCRB Status Report, January-December 1997, p. 130; CCRB Status Report, January-June 1998, p. 98.

<sup>53</sup> CCRB Status Report, January-June 1998, pp. 5-6.

<sup>54</sup> CCRB Status Report, January-December 1997, p. 29.

<sup>55</sup> It is noteworthy that the police commissioner has never expressed concern that legitimate complaints of police misconduct may go undisciplined due to what he characterizes as "insufficient evidence." (See Attachments)



and two first deputy police commissioners, one of whom served under Police Commissioner Safir.<sup>56</sup> Each of these former police department commissioners now serving with the CCRB had been responsible for disciplinary procedures at the NYPD.

In its 1998 mid-year report the CCRB has put the public and the police commissioner on notice that in dismissing substantiated complaints without apparent justification, and in failing to fully apprise the public as to his disposition of complaints, the police commissioner is subverting the work of the CCRB:

The CCRB has been unable to provide timely and meaningful notice to the public concerning the result of referred cases. Despite our repeated requests, the Department has not yet provided us with complete information concerning the precise penalties of CCRB referrals resulting in guilty dispositions.... Eighty-eight cases that the Board substantiated were dismissed by the Police Commissioner, even though panels of the Board almost always substantiate a case with the concurrence of a Police Commissioner designee.<sup>57</sup>

## **V. Educating the Public and Monitoring Police Department Policies and Practices**

### **Educating the Public**

The CCRB reports it has significantly expanded its community outreach effort in fiscal year 1998, making presentations before 115 community groups and before students at 22 New York City high schools.<sup>58</sup> The enhanced outreach effort -- including mailings, posters, and planned public service announcements for radio and television -- is commendable. However, there is ample evidence the CCRB needs to reconsider the purpose and focus of its communications with community members.

In its presentations before community boards and student groups, CCRB staff members provide an overview of the CCRB's operations and procedures. The discussion might

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<sup>56</sup> CCRB Status Report, January-June 1998, p. 27.

<sup>57</sup> *Ibid.*

<sup>58</sup> CCRB Status Report, January-June 1998, p. 12.

also address the nature and scope of police officers' authority, as well as civilians' rights and responsibilities in an encounter with police officers. However, the CCRB's outreach and education initiatives seem not to take account of and respond to the specific weaknesses in the civilian review process as it exists.

As a preliminary matter, the CCRB has to overcome the quite reasonable presumption held by many New Yorkers that the CCRB is powerless and that filing a complaint is a futile exercise. There is also considerable evidence that civilians who believe they have been the victims of police misconduct need to know how to become advocates in their own behalf; that is, they need explicit, step-by-step instructions in documenting and filing complaints. The CCRB's own data make apparent the need for the CCRB to undertake this type of training and education.

Between January 1996 and June 1998, approximately 3,200 police-misconduct complaints were closed without sufficient evidence on which to base a finding. During this same period, 575 complaints were dismissed because the complainant could not identify the name or badge number of the police officer involved in the alleged misconduct. What's more, the CCRB reports a significant increase in the number of persons who filed a complaint with the police department,<sup>59</sup> while news accounts confirm that police department personnel are not only openly hostile to such complainants, but actively obstruct the efforts of civilians who attempt to file a complaint.<sup>60</sup> These data suggest that to comply with its education mandate under the City Charter, the CCRB must institute a more rigorous public education program.<sup>61</sup>

Following is an outline of such a program. The intent here is not comprehensiveness. These proposals are intended to identify the objectives of a public education program,

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<sup>59</sup> *Ibid.*, p. 16.

<sup>60</sup> The NBC television network program "Dateline" documented such conduct in New York City police precincts. The segment aired in August of 1998.

<sup>61</sup> New York City Charter, Chapter 18-A, § 440 (c) (7). ("The board shall have the responsibility of informing the public about the board and its duties, and shall develop and administer an on-going program for the education of the public regarding the provisions of its chapter.")

which if realized, would produce a more complete and accurate accounting of the alleged misuse of police authority.

1. Urge civilians who believe they have been the victim of police misconduct to file a complaint with the CCRB -- and explain the importance of doing so. A well-documented complaint is not only entered into a police officer's record; complaints also reveal patterns of alleged misconduct in a particular precinct or as related to a specific police practice, such as use of an illegal chokehold or racial slurs. Community advocates can employ reliable evidence of such complaint patterns in pursuing disciplinary action as well as adoption of police practices that are more respectful of community members. This component of a public education campaign might also involve the use of carefully scripted hypothetical scenarios, based on closed complaints, which illustrate police conduct that has been ruled improper or proper by the CCRB.
2. Offer specific steps civilians can take to document and corroborate the allegations of police misconduct: establish police officers' identity; obtain contact information from eyewitnesses; seek medical treatment when appropriate; and obtain medical records.
3. Pledge to each community member that the CCRB will notify a complainant as to disciplinary action taken or not taken by the police commissioner.
4. Invite representatives of a community board or other community organization to appear at the CCRB's monthly public meeting. Such invitations should be extended, in particular to community groups representing areas that generate a high incidence of police-misconduct complaints filed with the CCRB. The board's public meetings are largely unknown to the public, and are sparsely attended. The meetings are primarily concerned with administrative matters or with more substantive matters that have been resolved behind closed doors. These meetings represent a lost opportunity. Representatives of the city's diverse population must become participants in the civilian review process. It is the board's obligation to extend the invitation.
5. Create more opportunities for public meetings to be held at easily accessible sites that afford *community members* an opportunity to educate the CCRB staff as to the nature of police misconduct and the effectiveness of the CCRB in responding to it. As important as it is to inform the public, it is equally important that board members are willing to be informed by the public.

There are those who will interpret the foregoing as an attempt to encourage the filing of police-misconduct complaints. A fair reading of these proposals, considered in the context of the CCRB's performance over the last five years, suggests otherwise. In the five-year period beginning July of 1993, the CCRB has received approximately 25,800

complaints. Of these, the agency has disposed of approximately 24,300. However, only one in three of these, about 8,700, have been fully investigated; and only 15 percent or about 3,500 complaint investigations have produced a record sufficient to support a finding.

The significant number of complaints that are terminated prior to completion or ruled inconclusive is attributable in important part to the CCRB's inability to involve civilians in the review process. Clearly, the CCRB must become more effective in pursuing complete, thorough and objective investigations into allegations of police misconduct. To accomplish this, civilians must be better prepared to participate in the process. As Professor Samuel Walker, a nationally recognized policing expert has observed, police unions have been extremely effective in securing thorough due-process protections for police officers accused of misconduct; but civilians have not been nearly as successful in protecting their rights when abrogated by the police.<sup>62</sup> Writing in a police union newsletter, Mr. Walker advised,

[P]olice officers have to face the fact that what is good for one side is good for the other. If the accused officer has a right to a full and fair hearing, so does the aggrieved citizen.<sup>63</sup>

#### **Monitoring Police Department Policies and Practices**

- (A) Central to the Board's mission is its authority to monitor and report on matters of policing policy and practice.<sup>64</sup> The effectiveness of this function is dependent upon effective complaint investigation. For it is through the investigation of individual allegations that patterns of misconduct emerge involving, for example, specific police conduct or police officers in certain precincts.

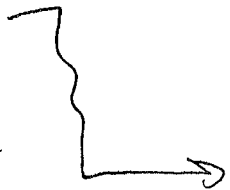
- (B) (C) Recognizing that the validity of CCRB policy recommendations is dependent upon rigorous investigation, the analysis of police practices represents the civilian review

<sup>62</sup> See Samuel Walker, "Civilian Review: Facing the New Reality," *Police Union News*, Vol. II, No. 5 (December 1991).

<sup>63</sup> *Ibid.*, p. 7.

<sup>64</sup> CCRB Status Report, January-June 1998, p. iii.

CCRB to  
Policy +  
Practice  
review



board's highest purpose. One well-thought-out change in police methodology can prevent conflict from arising in hundreds of interactions between police officers and civilians. This has been demonstrated in cities throughout the United States. For example, the Police Review Commission in Berkeley, California, recommended the creation of a rape victim unit within the police department, which became a model adopted throughout the country. Chicago's Office of Professional Standards was responsible for creation of a special domestic violence unit within the Chicago Police Department. Cincinnati's investigator of police misconduct complaints recommended specialized training in the use of firearms following a series of unintended weapon firings, which went unreported until the civilian agency recognized a pattern in the mishaps.<sup>65</sup>

In its analysis of policing practices in New York, the CCRB has demonstrated civilian review at its best, and worst. In response to a 50 percent increase in the number of complaints arising from police use of pepper spray to subdue civilians, the CCRB examined the phenomenon and published the results of its analysis in a formal report released in May of 1997.<sup>66</sup> The report recommended guidelines for deployment of pepper spray and provision of medical attention to those exposed. These measures were intended to prevent the use of the spray in circumstances that could exacerbate conflict (for example, when directed at persons with mental disabilities) or cause serious harm (for example, when the person exposed is under the influence of drugs).

Although the police department formally adopted the CCRB's recommendations in February 1998, the incidence of excessive force allegations dropped by 58 percent in 1997 following significant increases in 1995 and 1996. This is not to suggest the drop in complaints arising from police use of pepper spray has been solely a function of the CCRB's investigation. However, it is unlikely the issue would have received the attention it did absent the CCRB's initiative.

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<sup>65</sup> See NYCLU, *Civilian Review of Policing: A Case Study Report* (January 1993), pp. 13-14.

<sup>66</sup> Civilian Complaint Review Board, *Report of the Pepper Spray Committee of the CCRB* (May 14, 1997).

There is, unfortunately, a counter example that illustrates the CCRB's abdication of its oversight responsibility in monitoring police department policies and practices. On July 8, 1998, the CCRB Committee on Hollow Point Bullets issued a report endorsing a proposal to issue hollow point bullets to New York City police in place of full metal jacket bullets. The report was released on the day Police Commissioner announced the police department had decided to proceed with the transition to hollow point ammunition. The conclusion that the committee's primary purpose was to provide political cover to the police commissioner is difficult to avoid. The committee, in existence for a year, had been silent until the release of its recommendation. It had sponsored no public hearings. Its report consisted of three pages, attached to voluminous technical documents, on which the committee didn't bother to comment. The other board members were asked to endorse the committee's conclusions without the opportunity to read the report or debate the issue. In fact the debate on what should have been the key issue -- whether the use of hollow point bullets might *increase* the risk of harm to police officers and civilians as compared with full metal jacket bullets -- was never joined.<sup>67</sup>

The hollow point bullet report is a startlingly superficial piece of work, in which the committee members confess their ignorance of the technology whose use they unanimously endorse. In place of analysis, they relate their experiences during a day at the police department shooting range, which becomes the basis for what the committee acknowledges is a "life or death" decision. Given what is at stake in the deployment of a lethal piece of ordnance, the committee's "report" should never have been released.

The CCRB is well deserving of criticism for its facile and conclusory position on the deployment of hollow point bullets. The very same sort of criticism was heard when the CCRB released a recent report that appeared to find a correlation between overtime and police-misconduct complaints in two precincts, but in fact reached no such conclusion.

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<sup>67</sup> There are experts who disagree with the committee's conclusions. See, for example, W. Urey Patrick, *Handgun Wounding Factors and Effectiveness* (Federal Bureau of Investigation, 1989), p. 12. ("The concern that a bullet would pass through the body of a subject and injure an innocent bystander is clearly exaggerated. Any review of law enforcement shootings will reveal that the great majority of shots fired by officers do not hit any subject at all. It should be obvious that the relatively few shots that do hit a subject are not somehow more dangerous to bystanders than the shots that miss the subject entirely.")

The CCRB seriously compromises its authority when making recommendations lacking a sound empirical rationale. Given the time and expertise required to address the range of issues that might present themselves, the CCRB would be well advised to draw on the extraordinary pool of scholars, police professionals and legal practitioners in the New York metropolitan area who might assist the board in its work. The CCRB needs to take a more affirmative role in analyzing the policing practices; not, however, if this would mean becoming a rubber stamp for the consensus opinion prevailing within the police department or the mayor's office.

(D)

## VI. Recommendations

- Amend the City Charter to give the CCRB's thirteen mayoral appointees (of whom five members are designated by the City Council, and three by the police commissioner) authority to appoint the agency's chairperson. With the power to designate five board members and to appoint all board members, the mayor exercises extraordinary control over an agency created with the express legislative intent of providing independent oversight of police conduct and practices.

Should a mayor oppose the very mission of the CCRB, as does Mayor Giuliani, the chairperson is placed in an untenable position, bound to advance the interests of the mayor, but also charged with a duty to lead the agency and its board members.<sup>68</sup> For this reason, the CCRB and the principle of civilian review would be better served if the agency's appointed board members were given authority to select the CCRB's chairperson.

- Create a CCRB legal unit to prosecute police officers against whom charges have been filed as a result of a CCRB complaint. Complaints referred to the police commissioner may be adjudicated at the OATH or within the police department. As demonstrated above, the police department's internal disciplinary system does not give civilian complaints a fair hearing.<sup>69</sup> This apparent rejection of CCRB findings and recommendations is

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<sup>68</sup> See Randy Kennedy, "Giuliani Favors Internal Police Inquiries Over Review Boards," *New York Times*, July 14, 1997, p. B3. (In response to criticism he had undermined the CCRB, Mayor Giuliani stated, "An independent body has a hard time effectively investigating an organization of 38,000 people that is expert at investigating itself. A much better way to improve the police department is to get it to investigate itself.")

<sup>69</sup> See Section IV, herein: "Stonewalling the CCRB."

occurring even as the CCRB reports it is creating a more complete evidentiary record in support of its findings.<sup>70</sup> The rights of accused police officers are also violated by police department hearing and disciplinary procedures that are reportedly subject to cronyism, manipulation and bias.<sup>71</sup> Why should police officers cooperate with the CCRB, no matter how fair or thorough its investigation, when the charges may be adjudicated in a police department administrative trial that has little or no credibility. As one judicial expert has observed,

If an investigating body cannot conduct its own prosecutions, the entire process will suffer from a lack of accountability. . . . If the [CCRB's] attorneys knew while they were investigating a complaint that they would ultimately have to present evidence at a disciplinary hearing, their investigations would probably be more thorough, and their judgments on what was provable would be more reliable. In short, there would be far more accountability.<sup>72</sup>

- Institute monthly meetings between representatives of the CCRB and the police commissioner, with a report to the public at the CCRB's monthly meeting of board members. These meetings, if entered into in good faith, could improve understanding regarding such matters as evidentiary standards as well as patterns of misconduct, which the police commissioner could address with affirmative measures, such as a directive or policy guideline.

There is no conflict inherent between the roles of the police commissioner and the CCRB. The CCRB's function is purely advisory. However, assuming there is a shared interest in identifying and deterring police misconduct, the CCRB can strengthen the police commissioner's hand in disciplining police officers who abuse their authority. In so doing, the civilian oversight process acknowledges and reinforces the professionalism of the great majority of police officers who do their jobs with professionalism and sound judgment.

- Hold public town hall meetings sponsored by the CCRB on a monthly basis. It is not sufficient merely to inform community

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<sup>70</sup> *Ibid.*

<sup>71</sup> See notes 14 and 16, herein.

<sup>72</sup> Robert H. Tembeckjian, *New York Times* (Letter to the Editor, Week in Review), September 7, 1997, p. E16.



members as to the CCRB's purpose and function. The agency must also create a forum whose primary purpose is to elicit the observations and experiences of community members regarding the nature of police conduct. These discussions can make the CCRB and the police department more responsive to a community's needs and concerns.<sup>73</sup>

- Report disciplinary action recommended and actually imposed for every complaint the CCRB substantiates. The record should indicate the nature of the complaint. CCRB status reports provide only information regarding the relative severity of its disciplinary recommendations (which, in order of increasing severity, are instructions, command discipline, and charges and specifications). Disciplinary actions taken by the police commissioner are also reported only in certain disciplinary categories. Without specific information as to the discipline actually imposed upon each police officer against whom a complaint has been substantiated, the review function is fatally flawed. It is not sufficient for the CCRB to report the "police department would not provide the CCRB with more detailed information concerning penalties imposed."<sup>74</sup> The City Charter requires that the police commissioner "report to the board on any action taken," regarding its findings and recommendations with respect to complaints.<sup>75</sup> The police commissioner is clearly not in compliance with this provision, and if necessary the CCRB must take action to compel such compliance.

- Develop a uniform and consistent method of categorizing police misconduct complaints. The police department and CCRB categorize the disposition of complaints differently. What's more, terminology used to report on complaint dispositions has changed with virtually every CCRB report. The lack of clarity and consistency in reporting further compromises the effort to establish accountability for police misconduct.

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<sup>73</sup> See Section V, herein: "Educating the Public and Monitoring Police Department Policies and Practices."

<sup>74</sup> CCRB Status Report, January-June 1998, p. 28.

<sup>75</sup> New York City Charter, Chapter 18-A, § 440 (d) 3.

# **TABLES**

## Table I

### Complaint Substantiation Rates, 1986-1992

	1986	1987	1988	1989	1990	1991	1992	Total
<b>Substantiated Complaints</b>	109	122	157	157	108	143	162	958
<b>Total Complaints Received</b>	5120	4755	4178	3515	3376	3379	3437	27,760
<b>Rate of Substantiation</b>	2.13%	2.57%	3.76%	4.47%	3.20%	4.23%	4.71%	3.45%

Sources            1987 CCRB Annual Report p.25 (for 1986 data)  
                          1988 CCIB\* Annual Report p.12 (for 1987 data)  
                          1989 CCIB Annual Report p. 14 (for 1988 data)  
                          1990 CCIB Annual Report p. 16 (for 1989 data)  
                          1991 CCIB Annual Report p.15 (for 1990 data)  
                          1992 CCIB Annual Report p.15 (for 1991 and 1992 data)

\*Civilian Complaint Investigation Bureau, a unit of the CCRB

## Table I-A

### Complaint Substantiation Rates, July 1993-June 1998

	July-December 1993	1994	1995	1996	1997	Jan-June 1998	TOTAL
<b>Substantiated Complaints</b>	51	111	269	259	448	127	1265
<b>Total Complaints Received</b>	2095	4936	5709	5596	4816	2649	25,801
<b>Rate of Substantiation</b>	2.43%	2.25%	4.71%	4.62%	9.3%	4.79%	4.9%

**SOURCES for Substantiated Complaints:**

July-December    1993 CCRB Report p.46  
 January-June     1994 CCRB Report p. g Section III  
 July-December    1994 CCRB Report p. 44  
 January-June     1995 CCRB Report p.56  
 July-December    1995 CCRB Report p.47  
 January-June     1996 CCRB Report p. 51  
 January-December 1996 CCRB Report p. 63  
 January-December 1997 CCRB Report p. 64  
 January-June     1998 CCRB Report p. 58

**for Total Complaints Received**

p.34  
 p. b Section III  
 p. 33  
 p.47  
 p.38  
 p. 44  
 p. 51  
 p. 35  
 p. 31

## Table II

### CCRB Disposition of Complaints, July 1993-June 1998

	July-December 1993	1994	1995	1996	1997	Jan-June 1998	TOTALS
Complaints Received	2095	4936	5709	5596	4816	2649	25,801
Complaints Disposed of <sup>1</sup>	601	2152	7858	5716	5579	2431	24,337
Complaints Fully Reviewed	243	471	2113	1689	3077	1143	8,736
Complaints Truncated/ Administratively Closed	334	1564	4843	3231	2127	1126	13,225
Complaints Substantiated	51	111	269	259	448	127	1265
Complaints Unsubstantiated	155	255	1567	1176	1557	501	5211
Complaints Referred for Conciliation	0	65	705	745	309	159	1983

<p>SOURCES For Substantiated Complaints</p> <p>July-December 1993 CCRB Report p.46</p> <p>January-June 1994 CCRB Report p.g Section III</p> <p>July-December 1994 CCRB Report p.44</p> <p>January-June 1995 CCRB Report p. 56</p> <p>July-December 1995 CCRB Report p. 47</p> <p>January-June 1996 CCRB Report p. 51</p> <p>January-December 1996 CCRB Report p. 63</p> <p>January-December 1997 CCRB Report p. 64</p> <p>January-June 1998 CCRB Report p. 58</p>	<p>for Total Complaints Received</p> <p>p.34</p> <p>p.b Section III</p> <p>p.33</p> <p>p.47</p> <p>p.38</p> <p>p. 44</p> <p>p. 51</p> <p>p. 35</p> <p>p. 31</p>
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<sup>1</sup> Complaints disposed of include complaints fully reviewed, complaints truncated and administratively closed, and complaints referred for conciliation.

## Table III

### Police Misconduct Allegations, 1986-1992

	1986	1987	1988	1989	1990	1991	1992
<b>Total Allegations</b>	7075	7158	6457	5722	5608	5654	5703
<b>Total Excessive Force Allegations</b>	3303	3109	2885	2417	2379	2372	2270

Sources:

1986: CCRB Report 1987 p.5  
 1987: CCIB\*\* Annual Report 1988 p.6a  
 1988: CCIB Annual Report 1989 p.7  
 1989: CCIB Annual Report 1990 p.9  
 1990: CCIB Annual Report 1991 p.8  
 1991: CCIB Annual Report 1992 p.7  
 1992: CCIB Annual Report 1992 p. 7

## Table III-A

### Police Misconduct Allegations, 1993-1997\*

	1993	1994	1995	1996	1997
<b>Total Allegations</b>	5487	7648	8776	8869	7183
<b>Total Excessive Force Allegations</b>	2173	3079	3528	3139	2626

Sources:

1992: CCIB\*\* Annual Report 1992 p.7  
 1993: CCRB Report July-December 1993 p.34  
 1994: CCRB Report 1994 January-June p.B Section III and July-December p.33  
 1995: CCRB Report 1995 January-June p.47 and July-December p.38  
 1996: CCRB Report 1996 January-December p. 51  
 1997: CCRB Report January-December 1997 p. 35

\*Each complaint contains one or more allegations of misconduct.

\*\*Civilian Complaint Investigation Bureau, a unit of the CCRB

**Table IV\***

**Complaints Substantiated by the CCRB that Result in  
Disciplinary Action by the Police Department**

	<b>July '93- Dec. '93</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>Jan-June 1998</b>	<b>Total July '93- June '98</b>
<b>Complaints Received</b>	2095	4936	5709	5596	4816	2649	25,801
<b>Substantiated Complaints</b>	51	111	269	259	448	127	1265
<b>Cases Leading to Discipline* (Guilty After Trial, Guilty Plea, Command Discipline, Instructions)</b>	N/A	62	126	51	89	48	376

\*In reporting disciplinary action, the police department uses the term "case" to refer to action taken against an individual police officer. A CCRB complaint may involve allegations against more than one police officer.

## Table V

### CCRB Substantiated Complaints and Their Status At the Police Department January 1996-June 1998\*

	1996	1997	Jan-June 1998	TOTAL
CCRB Substantiated Complaints	257	448	127	832
PD Open Cases (Police Officers)	54	349	125	528

\*The police department uses the term "case" to refer to a substantiated complaint against an individual police officer, whereas a CCRB "complaint" may include allegations against more than one police officer.

Source: CCRB Status Report, January-June 1998, p. 96.

## Table V-A

### Police Department Dispositions of Substantiated Complaints Against Police Officers: January 1996-June 1998\*

	1996	1997	Jan-June 1998	Total
Disciplinary Action Taken	51	89	48	188
No Disciplinary Action Taken	181	170	96	447
Total Cases Closed**	232	259	144	635

\* See CCRB Status Report, January-June 1998, p. 98; CCRB Status Report, January-December 1997, p. 130; CCRB Status Report, January-June 1996, pp.36-38; CCRB Status Report, July-December 1996, pp. 45-46.

Note: An additional 43 cases resulted in termination or resignation for reasons other than the complaint filed with the CCRB and before charges related to the complaint could be adjudicated.

\*\* The police department uses the term "case" to refer to a substantial misconduct complaint against an individual police officer. A CCRB "complaint" may include allegations of misconduct against more than one police officer.

# **ATTACHMENTS**





New York Civil Liberties Union, 125 Broad Street, 17<sup>th</sup> Floor, New York, NY 10004 Telephone (212) 344-3005 Fax (212) 344-3318

Norman Siegel  
Executive Director

April 27, 1998

Howard Safir  
Police Commissioner  
1 Police Plaza  
New York, New York 10038

Dear Commissioner Safir:

I write to express our concern regarding information disclosed in the Civilian Complaint Review Board *Semi-Annual Status Report*, January-December, 1997.

The report states that in 1997 you disposed of substantiated complaints of misconduct involving 276 police officers. These are complaints in which the CCRB has made a finding that "there is sufficient credible evidence to believe that the subject officer committed the act of misconduct contained in the allegation." The report further states that you dismissed substantiated complaints involving 138 police officers before trial. What's more, of the 276 police officers charged by the CCRB with misconduct and referred to you in 1997, only 89 police officers were, in fact, disciplined.

If the above numbers are correct, you dismissed 50% of the cases you disposed of in 1997. Half of these cases were dismissed because, in your opinion, there was no prima facie evidence even though the CCRB had substantiated the complaints.

Furthermore, the CCRB's report states that 256 substantiated complaints were sent to you in 1996, and that 79 of those cases, or 31 percent, were still open as of December 31, 1997. Of the 448 substantiated complaints referred to you for disciplinary action in 1997, 399 cases, or 89 percent were still open at year's end. Notwithstanding the significant number of case referrals in 1997, due to the CCRB's efforts to reduce its case back log, your failure to dispose of cases in a more timely manner indicates that, for both complainants and accused police officers, justice is being unduly delayed and, therefore, denied.

We believe the above information, if correct, raises a serious and substantial question concerning whether you have been taking meaningful action on police misconduct complaints

Police Commissioner Howard Safir

Page 2

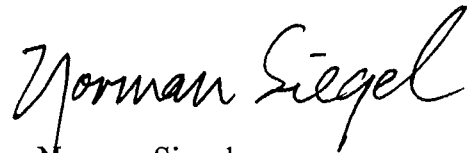
that have been substantiated by the CCRB and referred to you for disciplinary action. The numbers, if accurate, demonstrate why many New Yorkers do not have confidence or faith in the current system of disciplining police officers.

We ask that you publicly explain:

- a) why so few police officers are disciplined;
- b) why so many CCRB substantiated cases are dismissed by you;
- c) why so many CCRB substantiated cases are dismissed by you as lacking prima facie evidence; and
- d) why so many 1996 and 1997 CCRB substantiated cases were still open as of December 31, 1997.

We await your response.

Sincerely,

A handwritten signature in black ink that reads "Norman Siegel". The signature is written in a cursive, flowing style.

Norman Siegel  
Executive Director  
New York Civil Liberties Union

PLM-124110

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THE POLICE COMMISSIONER  
CITY OF NEW YORK

May 26, 1998

Norman Siegel, Esq.  
Executive Director  
New York Civil Liberties Union  
125 Broad Street, 17th Floor  
New York, New York 10004

Dear Mr. Siegel:

I am in receipt of your letter of April 27, 1998 regarding the adjudication of cases referred to the New York City Police Department by the Civilian Complaint Review Board.

As I have stated on many occasions, I am committed to exacting appropriate discipline in all substantiated cases referred to the Department which are accompanied by an appropriate level of evidence as required by law. Unfortunately, a significant number of cases substantiated by the Civilian Complaint Review Board do not reach this threshold of proof.

In regards to case backlog, the Department has taken steps to reduce the time necessary to adjudicate cases and will continue efforts in this area.

Sincerely,

Howard Safir  
POLICE COMMISSIONER

