

Mission Failure:

Civilian Review of Policing in New York City

1994-2006



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Contents

| | |
|---|----|
| Introduction and Summary of Findings | 1 |
| I. New York City’s Civilian Oversight System | 9 |
| II. New York City Police Department Disposition of Substantiated Complaints: Condoning Police Misconduct | 19 |
| III. Gaming the System: How the New York City Police Department Subverts Civilian Oversight | 29 |
| IV. Extraordinary Deference to the New York City Police Department | 39 |
| V. When Civilian Review Fails | 45 |
| Recommendations | 49 |

| | |
|---|----|
| Appendix A: Tables | 52 |
| Table 1: CCRB disposition of complaints, 1994 – 2005 | |
| Table 2: Substantiated complaints, 1994 – 2005 | |
| Table 3: Unsubstantiated complaints, 1994 – 2002 | |
| Table 4: Complaints with one or more excessive force allegations, 1998 – 2005 | |
| Table 5: NYPD disposition of substantiated complaints that resulted in no discipline: force vs. non-force, 1998 – 2004 | |

| | |
|--|----|
| Appendix B: Letters | 54 |
| Civilian Complaint Review Board to New York City Police Department, May 9, 2006 | |
| New York City Police Department to Civilian Complaint Review Board, May 10, 2006 | |
| New York Civil Liberties Union to New York City Police Department, May 15, 2006 | |

| | |
|---|----|
| Appendix C: Other Documents | 61 |
| Executive Order No. 40, Oct. 21, 1997 | |
| Table 6: Disposition of substantiated CCRB cases at trial, 1997-1999: Cases tried by NYPD Deputy Commissioner of Trials vs. Cases tried by Office of Administrative Trials and Hearings | |

Appendices

List of Figures

Figure 1 – Increase in civilian misconduct complaints filed with the CCRB against uniformed members of the NYPD, and increase in complaints per NYPD officer, 2000 - 2005

Figure 2 – Number of allegations in CCRB complaints by allegation type, 1993 - 2005

Figure 3 – Increase in allegations contained in CCRB complaints by allegation type, 2000 - 2005

Figure 4 – Dispositions of civilian complaints filed with the CCRB, 1996 - 2005

Figure 5 – Rate at which CCRB substantiates civilian complaints, 2005 - 2006

Figure 6 – Rate at which CCRB closes civilian complaints without an investigation, 2005 - 2006

Figure 7 – CCRB substantiation rates for force allegations vs. other allegations, 2003 - 2006

Figure 8 – Discipline imposed by NYPD on officers with substantiated CCRB complaints, 2000 - 2005

Figure 9 – Discipline imposed by NYPD on officers with substantiated CCRB complaints: instructions vs. other discipline, 2000 - 2005

Figure 10 – Discipline imposed by NYPD on officers with substantiated CCRB complaints: instructions vs. other discipline, 2005 - 2006

Figure 11 – NYPD disposition of cases substantiated by the CCRB and referred to an administrative trial, 1998-2004 (based upon year of referral to NYPD)

Figure 12 – Discipline imposed on officers named in substantiated CCRB cases that were referred to NYPD administrative trial, 1998 - 2004 (based upon year of referral to NYPD)

Figure 13 – CCRB allegations charging that police officer used unlawful physical force or another form of force, 1998 - 2005

Figure 14 – Rate at which NYPD imposes no discipline in substantiated force and non-force CCRB cases, 1998 - 2004 (based upon year of referral to NYPD)

Figure 15 – Examples of police department discipline in substantiated CCRB cases that involve serious misconduct

Figure 16 – CCRB allegations charging that police officer refused to provide name or shield number, 1998 - 2005

Figure 17 – Allegations of question and/or stop; frisk and/or search; and threat of arrest, 1998 - 2005

Figure 18 – Liability incurred by New York City for police misconduct directed at civilians, 2000 - 2004

DEDICATION

This report is dedicated to the memory
of Officer John William Perry.

John was an attorney, a champion of
civil liberties and civil rights, an athlete,
an actor, a linguist, and a generous and
loyal friend.

As a member of the New York City
Police Department, he worked in
pursuit of police accountability and
advocated for a strong and independent
Civilian Complaint Review Board.

John was a friend of the New York
Civil Liberties Union and a member
of its Nassau Chapter board.

He responded as a police officer to the
emergency at the World Trade Center
on September 11, 2001, and perished
while assisting in rescue work.

Introduction and Summary of Findings

In commenting on his 2005 Management Report, Mayor Bloomberg suggested that “New York City is the safest big city in America.”¹ It was a pre-election report card that gave city government very good grades. The mayor’s presentation on the state of the city was documented with a plethora of statistics.

New York may be the nation’s safest large city when it comes to certain index crimes, but perhaps not when it comes to acts of police misconduct directed at civilians. Since 2000 there has been a steady, significant increase in police-misconduct complaints filed with the Civilian Complaint Review Board (CCRB). In 2005 civilians filed 6,796 CCRB complaints – a 65 percent increase over the 4,116 complaints filed in 2000.² Complaints filed in 2006 jumped again, to 7,669 – a 13 percent increase relative to 2005.³

A 2005 *New York Times* story stated that police misconduct complaints filed with the CCRB “do not rise to the level of a crime.”⁴ The assertion is demonstrably untrue. It reflects, however, a common misperception regarding the nature of police misconduct in New York City.⁵

Half of all complaints filed with the CCRB charge that a police officer used excessive force. The unjustified use of force is a crime; it is no less a crime if committed by a police officer.

In 2005 alone, civilians filed 6,264 complaint allegations of excessive force with the CCRB.⁶ (A complaint may include more than one allegation of misconduct.) The use of force by police is a common occurrence. And, accord-

Half of all complaints filed with the CCRB charge that a police officer used excessive force. The unjustified use of force is a crime; it is no less a crime if committed by a police officer.

ing to the thousands of New York City residents who filed complaints with the CCRB, police officers engage in the unlawful use of force every day, many times a day.

Other than allegations of excessive physical force, the allegations most frequently filed involve serious “abuse of authority” – such as improper stop, frisk or search; unauthorized entry or search of premises; threat of arrest; threat of force – police actions that could provoke conflict between a civilian and a

¹ Michael R. Bloomberg, Mayor of the City of New York, *Mayor’s Management Report - Fiscal 2005*, September 2005, p. 160.

² New York City Civilian Complaint Review Board Status Report, January-December 2005 (Hereafter, “CCRB Status Report”), p. 43; and CCRB Status Report, January-December 2004, p. 41. Note: Data published in the CCRB’s status reports are not finalized until several years after they are first reported. Statistical reporting of allegations and complaints may be re-categorized upon review and closure. Therefore in this report a statistic regarding complaint activity or disposition in a particular year may be cited in a CCRB report published several years later. As a general rule, the data cited are taken from the latest published CCRB status report.

³ CCRB, Executive Director’s Report, February 2007 (“Total Complaints Received Year-to-Date – January-December 2005 v. January-December 2006”).

⁴ Michael Wilson, “Top Officers Are Said to Ignore Complaint Board’s Inquiry,” *New York Times*, September 15, 2005.

⁵ The assertion that police misconduct complaints within the CCRB’s jurisdiction “do not rise to the level of a crime” has become boilerplate copy in the *New York Times*. This language has appeared verbatim in five news stories in as many years. Notwithstanding its repetition in news accounts, the statement is factually incorrect, and is incorrect as a matter of law. See *New York Times*, “Top Officers Are Said to Ignore Complaint Board’s Inquiry,” Sept. 15, 2005; “Civil Liberties Group Sees No Need for Police Panel,” Nov. 6, 2004; “Police Create Panel on Abuse Claims at Convention,” Nov. 5, 2004; “Report Finds Police Abuse Unpunished,” Dec. 7, 2000; “More Police Officers Being Punished, but Not More Severely,” July 28, 2000.

⁶ CCRB Status Report, January-December 2005, p. 43.

police officer. Such conduct may also violate the penal code.

If documented incidents of this nature were attributed to any other sector or group, the incident reports would set off alerts in the New York City Police Department's (NYPD's) Compstat system. And in response the police department would mobilize a special anti-crime task force. But city officials – the mayor, City Council members, police officials – become unusually circumspect when the unlawful conduct is attributed to police officers. Compstat computer screens seem to go dark.

There has been an abdication of leadership on the issue of police accountability. The civilian-oversight agency has been left by the city's political leaders to fight its own battles with the police department. In this political contest the CCRB is badly outclassed. The mayor, police commissioner, City Council members, and the CCRB's board are collaborators in this failure. Its cost is reflected in harm suffered by the victims of police misconduct, in violations of fundamental rights and liberties, in diminished respect for police.

This report analyzes complete CCRB data for the years 1994-2005. It includes 2006 updates for certain data categories. These data indicate that police misconduct is systemic – and that in certain communities it is routine. The problem bears the unmistakable signs of racial animus. In 2005, eight of every ten complainants who filed a police-misconduct complaint were black or Latino.⁷ This is not news. Year in and year out, blacks represent more than 50 percent of all complainants – two times their representation in the general population.⁸

⁷ CCRB Status Report, January-December 2005, p. 49.

⁸ Ibid.

But even as complaints of police misconduct have increased sharply, the CCRB has been closing more than half of all complaints without an investigation. And of those complaints the CCRB has substantiated, the police commissioner has been rejecting the CCRB's disciplinary findings and recommendations with great frequency. (Police commissioners have routinely rejected the findings and recommendations of the civilian-run CCRB; the problem is a matter of degree.)

Of the more egregious cases of misconduct that have been substantiated by the CCRB and referred to the NYPD for disciplinary action between 2000 and 2004 – the last year for which complete data are available on disciplinary action – the police commissioner has rejected the CCRB's findings in 63 percent of those cases.⁹ When discipline was imposed, it was strikingly lenient in light of the severity of the misconduct that has been documented by the CCRB.

The record compiled in this report allows for no other conclusion than this: the city's civilian oversight system has failed. It has been subverted and co-opted by the police department. This has occurred for the same reason the CCRB was created in the first instance: the police department as an institution of government is defiant of independent oversight, particularly as regards police misconduct directed at civilians.

The oversight agency has been a party to its own fecklessness. It has ceded its statutory authority to the NYPD and has deferred to police officials as they nullified findings and recommendations regarding both the imposition of discipline and the reform of policing policies and practices.

This is not to say that the principle of civilian oversight is invalid or that the structure of the city's civilian review model is fatally flawed. It is widely recognized by police pro-

⁹ See Figure 11. Complaints substantiated and referred to the NYPD for discipline in any given year may not be disposed of by the NYPD until a subsequent year. Therefore 2004 is the last year for which nearly all complaints referred by the CCRB for disciplinary action have been disposed of by the police department.

professionals and criminal justice scholars that independent civilian oversight is essential to establishing accountability for the use, and misuse, of police authority.¹⁰ In New York City this may require amendments that give the agency greater authority and autonomy. No civilian review system can function effectively, however, without a strong advocate in the offices of the mayor and legislative leaders – and without the police commissioner’s respect for the mandate with which the oversight agency is charged under law.

The CCRB lacks a strong advocate. There has been an abdication of leadership on the issue of police accountability. The civilian-oversight agency has been left by the city’s political leaders to fight its own battles with the police department. In this political contest the CCRB is badly outclassed. The mayor, police commissioner, City Council members, and the CCRB’s board are collaborators in this failure. Its cost is reflected in harm suffered by the victims of police misconduct, in violations of fundamental rights and liberties, in diminished respect for police.

And there are financial costs. The city’s failure to establish accountability for police misconduct may well rise to the level of deliberate indifference – a standard that has legal significance regarding the city’s financial liability for acts of police misconduct.

Between 2000 and 2004 New York City taxpayers have paid more than a quarter of a billion dollars in damages to compensate the victims of police misconduct, and to pay the legal costs incurred by the city in defending law suits brought against police officers charged with acts of brutality.¹¹

Summary of Findings

- **The CCRB is failing to fulfill its mission as mandated in the City Charter.**

¹⁰ See Samuel Walker, *Police Accountability: The Role of Civilian Oversight* (Belmont: Wadsworth Group, 2001), p. 15; and Jerome H. Skolnick, James Fyfe, *Above the Law, Police and the Excessive Use of Force* (New York: The Free Press, 1993), p. 230. (“In the long run, only an independent investigative body can allay public suspicions of the police and render a convincing exoneration of police who have been accused of misconduct.”)

The New York City Charter mandates that the CCRB undertake “complete, thorough and impartial” investigations of police-misconduct complaints brought by civilians, and that these investigations are conducted in a manner in which both the public and the police have confidence.¹² The CCRB fails to meet this standard. The agency investigates fewer than half of all complaints that it reviews, and it produces a finding on the merits in only three of ten complaints disposed of in any given year. The agency has failed to win the confidence of the city’s residents; the police department is largely dismissive of CCRB findings and recommendations.

- **The CCRB has been unable to establish an effective investigative operation.**

The CCRB has historically closed about 50 percent of police-misconduct complaints without initiating an investigation; between 2002 and 2005 the “truncation” rate increased to 55 percent. In 2006 the CCRB closed 60 percent of all complaints without undertaking an investigation.

The CCRB has conducted a full investigation in fewer than half of the complaints it has reviewed and disposed of. In 2002-2005 the CCRB closed only 42 percent of complaints with a full investigation.

Of complaints fully investigated by the CCRB, the agency has disposed of approximately one-third as unsubstantiated – or inconclusive.

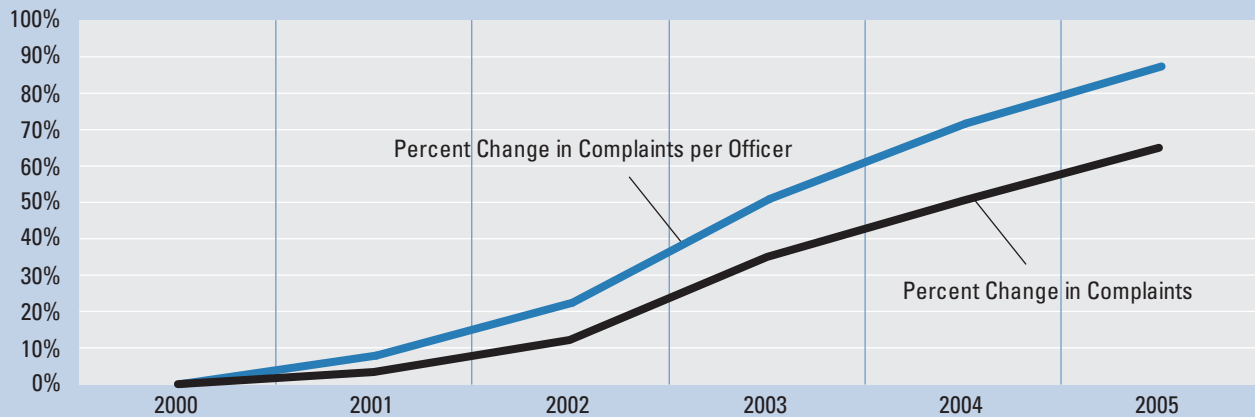
The CCRB has substantiated, on average, 5.2 percent of complaints closed – far below the substantiation rates reported by civilian oversight agencies nationally.

- **The CCRB has failed to advocate effectively for reform of police practices that pose a risk to public safety.**

¹¹ See Figure 18, herein. William C. Thompson, Comptroller of the City of New York, *Claims Report: Fiscal Year 2004*, Appendix C, Tables 1 and 3, November 2005.

¹² New York City Charter, Chapter 18-A, §440(a).

FIGURE 1 – Increase in civilian misconduct complaints filed with the CCRB against uniformed members of the NYPD, and increase in complaints per NYPD officer, 2000-2005



Source: Complaints received – CCRB Status Reports, January-December: 2004, p. 41; 2005, p. 43. Complaints per officer – Comptroller of the City of New York, William C. Thompson, *Comprehensive Annual Financial Report of the Comptroller for Fiscal Year Ended June 30, 2005*, p. 301.

The CCRB has done little to identify patterns of police misconduct and to recommend reforms in police practices that pose an undue risk of harm to civilians. The CCRB has failed to address effectively patterns of police misconduct related to racial profiling, the execution of “no-knock” warrants, and the policing of lawful public demonstrations.

Even when the CCRB has documented a pattern of misconduct, and recommended reforms, the agency has often been silent when the department failed to act on the recommendations.

- **Civilian complaints of police misconduct have been rising sharply.**

Complaints filed with the CCRB have increased 65 percent between 2000 and 2005 – from 4,251 complaints in 2000, to 6,796 filed in 2005. In 2006 civilians filed 7,669 complaints with the CCRB – an increase of 13 percent relative to the number filed in the preceding year. (See Figure 1.)

The number of allegations made in CCRB complaints has increased by more than 100 percent between 2000 and 2005 – from 9,387 allegations made in 2000, to 19,041 in 2005.

(A complainant may allege that a police officer or police officers engaged in more than one act of misconduct.)

- **CCRB complaint data indicate that the more serious forms of police misconduct occur with significant frequency.**

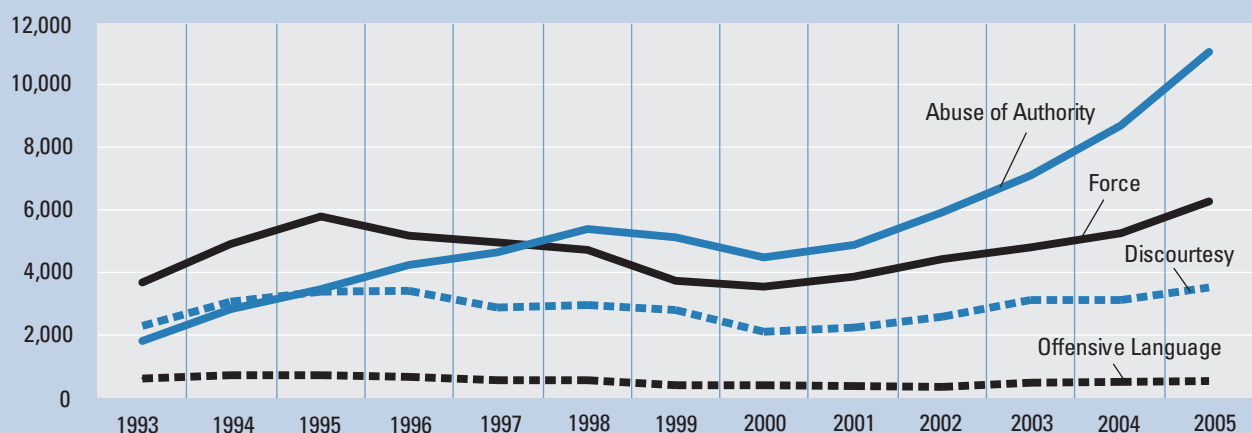
Half of all complaints filed with the CCRB include an allegation of excessive force. The ratio of force complaints to total complaints has been consistent since the independent CCRB was established.

In 2006, however, the number of allegations of excessive force increased by 26.8 percent as compared with 2005 – nearly double the increase in complaints filed.

The most frequently filed allegations involve serious abuse of authority – improper stop, frisk or search; unauthorized entry or search of premises; threat of arrest; threat of force – police actions that could provoke a confrontation between a police officer and a civilian.

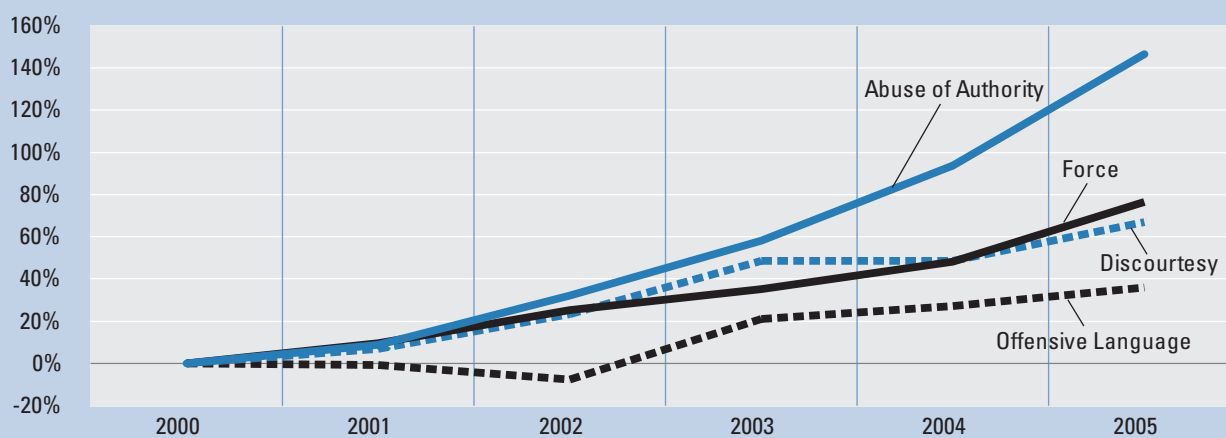
- **Complaints that accuse police officers of using excessive force rarely result in discipline.** The CCRB substantiates approximately one-third as many force allegations as compared with non-force allegations.

FIGURE 2 – Number of allegations in CCRB complaints by allegation type, 1993-2005



Source: CCRB Status Reports, January-December: 2001, p. 45; 2002, p. 41; 2003, p. 45; 2004, p. 41; 2005, p. 43.

FIGURE 3 – Increase in allegations contained in CCRB complaints by allegation type, 2000-2005



Source: CCRB Status Reports, January-December: 2004, p. 41; 2005, p. 43.

Of those police officers who face potential disciplinary action for the use of excessive force, relatively few are actually disciplined. Between 2000 and 2004 the NYPD closed about three times as many substantiated CCRB force cases without imposing discipline as compared with substantiated non-force cases.

- **The NYPD condones acts of police misconduct by nullifying CCRB findings and recommendations.**
The department takes no disciplinary action against almost 30 percent of police

officers named in substantiated CCRB complaints. Between 2000 and 2005 the NYPD disposed of substantiated complaints against 2,462 police officers: 725 received no discipline. When discipline was imposed, it was little more than a slap on the wrist. Of the 1,607 police officers who were disciplined in this time period, 534 received instructions regarding the misconduct.

Another 717 police officers received command discipline – which at the discretion of the precinct commander may involve nothing

more than a verbal admonishment. The most severe sanction imposed under command discipline is a loss of ten vacation days.

In recent years it appears that the NYPD has adopted a radically more lenient disciplinary standard as regards acts of police misconduct directed at civilians. In 2004 the police department ordered instructions in approximately 30 percent of all disciplinary actions related to a substantiated CCRB complaint. In 2005 instructions represented nearly 60 percent of such disciplinary actions; and in 2006 instructions rose to 72 percent of all disciplinary actions related to police misconduct directed at civilians. Suspension of a police officer has become an extraordinarily rare occurrence, even when egregious acts of misconduct are involved.

Of the 1,076 police officers who were referred to an administrative trial to face charges between 1998 and 2004, approximately 63 percent received no discipline. (2004 is the last year for which complete data are available on disciplinary action taken by the NYPD, based on the year CCRB complaints were referred for discipline.) In most of those cases, the administrative trial judge dismissed the charges or found the police officer not guilty. During this time period, cases were dismissed against 198 police officers against whom the CCRB had substantiated misconduct complaints. In another 363 cases administrative judges issued non-guilty findings.

- **The NYPD has co-opted the civilian oversight system.**

Commenting on the independent CCRB five years after it had been established, a leading scholar on policing stated, “the police are doing . . . their best to make [the CCRB] as ineffective as they can.”¹³ There is considerable evidence that indicates this assertion is still accurate.

The police department has consistently and persistently withheld documents or delayed the production of documents needed by the CCRB to investigate police-misconduct complaints. This problem has been documented in reports published by the New York City Comptroller’s office in 1998 and 2002.

The CCRB’s investigators report that the police department’s delay-and-deny tactics in response to records requests hobbles the operations of the oversight agency. Investigation of serious misconduct runs up against the eighteen-month statute of limitations, which results in the premature curtailment of CCRB investigations.

Investigators also report that on any given day approximately half of all police officers scheduled for an interview at the CCRB – including witnesses and those named in a complaint – fail to appear, further compromising investigators’ ability to conduct timely investigations.

The police department’s Internal Affairs Bureau conducts investigations of certain serious complaints (for example, complaints that include excessive-force allegations) concurrently with the CCRB. This practice further delays the production of documents that the CCRB requires to complete its investigations.

- **The NYPD’s prosecution of substantiated CCRB cases fails to meet minimum standards of competence.**

The New York City Commission on Police Corruption has published comprehensive reports (in 2002 and 2004) on the Department Advocate’s Office (DAO), the NYPD unit that prosecutes officers who face administrative charges related to substantiated CCRB complaints. These reports find that the DAO conducts little if any case preparation. Complainants and witnesses are not contacted, and

¹³ Paul G. Chevigny, “Police Violence: Causes and Cures,” *Journal of Law and Public Policy*, Vol. 7, p. 90 (1998).

documentary evidence is not requested. Prosecutors' trial skills, according to the Commission's reports, fail to meet minimum standards of professionalism.

The CCRB's investigators state that the office of the Deputy Commissioner of Trials employs an improperly heightened standard of proof in adjudicating substantiated CCRB complaints. The New York City Commission to Combat Police Corruption has made the same observation in a published report. If the Deputy Commissioner of Trials requires a showing greater than a preponderance of the evidence to establish that misconduct has occurred, then the city's civilian oversight system is fundamentally compromised.

- **The CCRB demonstrates extraordinary deference to the police department.**

Agencies charged with providing oversight of policing face stiff resistance from law enforcement. Political officials are often silently complicit in this standoff. Faced with this political dynamic, the oversight agency's board members and top administrators often defer to the police. This dynamic has undermined the civilian-review function in many United States cities, and this is the case in New York City as well.

The CCRB has failed to analyze the police department's frequent rejection of the oversight agency's findings and disciplinary recommendations; nor has the agency analyzed or objected to the extraordinarily lenient disciplinary action taken by the department, even in cases that involve serious misconduct.

The CCRB has failed in its reporting to address the fact that the NYPD rarely disciplines police officers for acts of excessive force: a police officer against whom the CCRB has substantiated a complaint involving excessive force is 70 percent less likely to receive discipline than a police officer with a substantiated complaint that does not involve force.

In more than one instance the CCRB has documented a troubling pattern of misconduct allegations and forwarded a policy recommendation to the police commissioner – only to fall silent as the police commissioner blatantly disregards the agency's recommendation. The agency has failed to address persistent police misconduct involving strip searches, stop-and-frisk activity, and police officers' failure to identify themselves to civilians.

- **The failure of the city's civilian oversight system has had serious harmful consequences – for the victims of police misconduct and for law enforcement.**

The failure of the civilian oversight system has created grave risks to public safety and to individual liberty. In the name of law enforcement, police officers have inflicted serious physical, psychological and financial harm on many thousands of the city's residents.

The city's failure to hold police officers accountable for acts of misconduct directed at civilians undermines confidence in law enforcement and discourages cooperation with criminal investigations.

Without meaningful oversight there is no accountability. Police officers commit misconduct without facing discipline and without consequence for their employment status.

The CCRB has failed to discover, or has ignored, patterns of police misconduct; and the NYPD has therefore failed to adopt reforms – in police training, tactics, policies and practices – that could prevent foreseeable risks of harm.

New York City taxpayers also incur significant financial costs as a consequence of the failure to deter police misconduct. Between 2000 and 2004 the city has expended more than a quarter of a billion dollars to resolve lawsuits brought against police officers for

Officer Docked Ten Vacation Days after Kicking, Punching, and Rupturing Spleen of Handcuffed Arrestee

The following is paraphrased from the CCRB's 2005 status report.

On May 7, 2003, a plain-clothes sergeant and a patrol officer from Manhattan's 23rd Precinct Tracer Unit approached a man on Third Avenue near East 115th Street after the man bought two "dime bags" of cocaine.

The man tossed the bags into his mouth. The patrol officer – according to accounts that the man later gave to the CCRB – responded by grabbing the man's throat and choking him in an attempt to stop him from swallowing the bags. The patrol officer and the sergeant then tackled the man, handcuffed him, and repeatedly punched and kicked him in the torso.

The officers arrested the man and took him to the 23rd Precinct, where he immediately informed NYPD personnel that he had been injured. He was taken to a hospital and diagnosed with muscle strain. Officers returned him to the

precinct, where the patrol officer issued him a summons for disorderly conduct and released him.

Two days later, the man returned to the same hospital complaining of pain to his left rib cage area; five days after that he called 911 and was taken to another hospital, which determined that his spleen had been severely shattered. The hospital also determined that the man had a non-displaced fracture of two ribs and that a third was probably fractured as well. A surgeon removed the man's spleen.

After the man filed a complaint with the CCRB, the patrol officer and the sergeant told a CCRB investigator that they had never choked, hit or kicked the man and that he must have sustained his injuries when he fell to the ground. But an expert in forensic pathology at the city's Office of the Chief Medical Examiner concluded that the man's injury had been caused by the May 7, 2003, altercation with the sergeant and patrol officer; that the week of

lag time between the incident and the 911 call made sense given that there is a normal delay period before a spleen rupture becomes clinically manifest; and that an individual would not have sustained such an injury by falling onto a flat surface such as a sidewalk. Such an injury, the medical examiner said, could only have been caused by a focal blow to the man's spleen by some type of hard protruding object.

The CCRB concluded in 2004 that the sergeant (the patrol officer had left the force) had used excessive force against the man. The department accepted the board's disciplinary recommendation and filed charges against the sergeant; in April 2005 an assistant deputy commissioner of trials conducted a hearing about the incident.

In August 2005 the sergeant was found guilty of using excessive force. By way of punishment, the department stripped the sergeant of ten vacation days.

egregious acts of misconduct. (Not included in this calculation are those lawsuits that are filed and litigated, but that do not result in a judgment or settlement.)

- **The city has failed to establish meaningful accountability for police misconduct.**

City officials have been silent in the face of voluminous evidence that the civilian oversight system is failing. There has been an abdication of responsibility and effective leadership by the mayor, the police commissioner, the City Council and the appointed members of the CCRB. As a consequence the city is failing to comply with the City Charter's mandate that the

CCRB provide independent oversight and accountability for acts of police misconduct directed at civilians. ■

I. New York City's Civilian Oversight System

Effective July 1993, by amendment to its Charter, the City of New York mandated that civilian complaints of police misconduct would be subject to investigation and review by an independent oversight agency administered and staffed by civilians.¹⁴ Prior to the enactment of this local law, a civilian who wished to report police misconduct was required to file a complaint with the NYPD. Complaints were investigated by police department investigators and then reviewed by the Civilian Complaint Review Board, which was located within the police department. Proponents of an independent civilian oversight agency protested that the NYPD could not be expected to conduct impartial investigations of police officers charged by civilians with acts of misconduct. Civilians, it was argued, were reluctant to take their complaints to the agency that employed the police officer against whom disciplinary action was sought.

Complaint activity in the first years after the new, independent CCRB opened its doors in 1993 appeared to support the theory that civilians did not trust the NYPD to police itself. In 1991 and 1992, civilians filed an average of 3,408 complaints each year with the police department's Civilian Complaint Investigation Board.¹⁵ In 1994, the first full calendar year after the independent CCRB was created, the all-civilian unit received 4,877 complaints – an increase of 43 percent as compared with the number of complaints filed in 1991 and 1992.¹⁶

Between 1994 and 2005, the CCRB received a total of just under 62,000 complaints.¹⁷ (See Appendix A, Table 1.) An analysis of these

complaint data offer important insights into the nature of police misconduct in New York City. The CCRB's presentation of data also conceals much; but the manner in which the

The Civilian Complaint Review Board: Mission and Mandate

The New York City Charter mandates that the CCRB "receive, investigate, hear, make findings and recommend action" upon complaints filed by members of the public against members of the police department. "It is in the interest of the people of the city," the Charter reads, that investigations of such complaints are "complete, thorough and impartial" and that these investigations are "conducted fairly and independently, and in a manner in which the public and the police have confidence."

The agency is administered and staffed entirely by civilians. Staff investigators conduct complaint investigations. A thirteen-member board, appointed by the mayor, reviews the findings and recommended dispositions prepared by the staff. (The City Council designates, for appointment by the mayor, five board members; the police commissioner designates three board members.)

When a complaint is substantiated, based upon a preponderance of the evidence, the board refers its findings and disciplinary recommendation to the police commissioner. The Board also makes recommendations regarding policing policies and practices.

The CCRB's jurisdiction is limited to the investigation and review of police-misconduct complaints that allege "excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability."

Sources: New York City Charter, Chapter 18-A, §440 (c1); Rules of the Civilian Complaint Review Board, Title 38A, Chapter 1, Subchapter D, §1-33(b).

¹⁴ New York City Charter, Chapter 18-A, §440(a).

¹⁵ CCRB Status Report, January-December 2001, p. 45.

¹⁶ *Ibid.*

¹⁷ CCRB Status Reports, January-December: 2001, p. 45; 2002, p.41; 2003, p. 45; 2004, p. 41; and 2005, p. 43.

agency presents (or withholds) information offers equally important insight into the nature of the city’s oversight system.

What is striking about the CCRB’s disposition of complaints over this time period is the relatively small number of complaints that are investigated, the even smaller number of investigations that result in a finding on the merits, and the far, far smaller number of complaints that are upheld, or substantiated.

Accounting for police misconduct: a weak investigative operation

The City Charter directs that the CCRB undertake “complete, thorough, and impartial [investigations] in a manner in which the public and the police have confidence.”¹⁸ If thoroughness and impartiality is the standard – and public confidence, the test as to whether the standard is met – the CCRB is failing in its mission.

● Complaints closed without an investigation

The CCRB closes about one of every two police misconduct complaints without even initiating an investigation. The CCRB terminates a complaint when investigators determine (with board members’ review) that a complainant is “unavailable” or “uncooperative” or when the complainant withdraws the complaint. The case is then disposed of as a “truncated” complaint.¹⁹

The CCRB truncates most complaints because the complainant cannot be contacted or because he or she is unable or unwilling to appear at the CCRB for an interview, the first step in an investigation. When this occurs, investigators are instructed to recommend closure. There is no further investigation. A panel of board members

summarily adopts the recommendation to truncate the complaint.

In 1994, the CCRB’s first full year of operation, the agency terminated 57 percent of all complaints prior to investigation.²⁰ That percentage dropped to an average of 42 percent in 1997-1998.²¹ In 1999 the truncation rate jumped to 50 percent,²² and remained constant at that rate through 2001.²³ In more recent years the rate of pre-investigation complaint closure has been on the rise. In 2003 through 2005 the CCRB truncated, on average, 55 percent of complaints disposed of annually.²⁴ (See Appendix A, Table 1.) In 2006, according to preliminary data, the truncation rate climbed to 60 percent.²⁵

How the CCRB Rules on a Complaint

Following the investigation of a complaint, the CCRB’s investigative staff refers its findings and a recommended disposition to the agency’s board members. Sitting in three-member panels, the board issues one of the following dispositions regarding each complaint:

SUBSTANTIATED. At least one allegation of police misconduct is found to have occurred. (A complaint may have more than one allegation of misconduct.)

UNFOUNDED. The alleged police misconduct is found not to have occurred.

EXONERATED. The conduct complained of did occur, but it is deemed to have been lawful and appropriate.

UNSUBSTANTIATED. The investigative record is insufficient to support a finding as to the merits of the complaint.

Source: CCRB Status Report, January-December 2005, p. 7.

¹⁸ New York City Charter, Chapter 18-A, §440(a).

¹⁹ CCRB Status Report, January-December 2005, p. 6.

²⁰ CCRB Status Report, January-December 1998, p. 115.

²¹ CCRB Status Reports, January-December: 2001, p. 118; and 2002, p. 96.

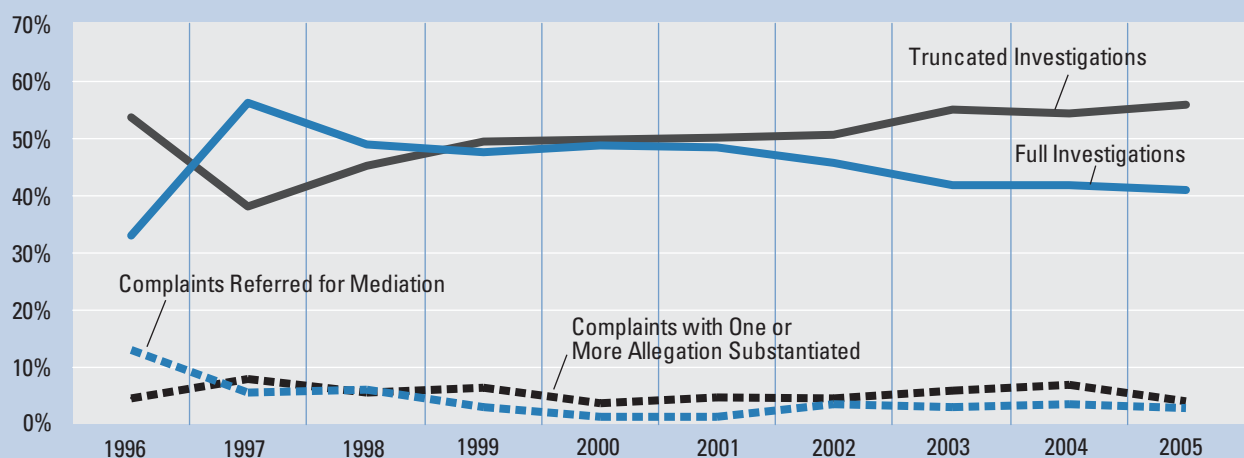
²² CCRB Status Report, January-December 2003, p. 97.

²³ CCRB Status Report, January-December 2005, p. 85.

²⁴ Ibid.

²⁵ CCRB, *Executive Director’s Report*, February 2007 (“CCRB Disposition of Cases”).

FIGURE 4 – Dispositions of civilian complaints filed with the CCRB, 1996-2005



Source: CCRB Status Reports, January-December: 2000, Table 49; 2001, p. 118; 2002, p. 95; 2003, p. 97; 2004, p. 83; 2005, p. 85.

The CCRB does not report the types of allegations that are truncated. But given the predominance of allegations that involve excessive force and abuse of authority, it is reasonable to conclude that police-misconduct complaints involving serious charges drop out of the civilian-review process in large numbers.

● “Fully investigated” complaints

The CCRB reports that it conducts “full investigations” of all complaints other than those that are truncated, as described above, or referred to mediation.²⁶ Following a full investigation, the CCRB makes one of the following dispositions. The complaint is “substantiated” if at least one allegation is upheld. If it is determined that the alleged misconduct did not occur, the complaint is ruled “unfounded.” The police officer is “exonerated” if the CCRB determines the conduct complained of was lawful and appropriate. And if the investigative record lacks sufficient evidence to support one these three findings, the complaint is ruled “unsubstantiated.”

A full investigation is not necessarily a thorough investigation. For example, the

CCRB counts as fully investigated those complaints that are closed because the accused police officer could not be identified. The number of these cases is not insignificant: between 2002 and 2005 the CCRB reported that more than 500 fully investigated complaints were closed because it was not possible to identify the police officers responsible for the alleged misconduct.²⁷

And a far greater number of fully investigated complaints were closed with a record that was insufficient to reach a finding on the merits. The CCRB’s status reports indicate that about one in three fully investigated complaints were inconclusive as to what happened.²⁸

The CCRB, at its best, has conducted what it considers full investigations in about half of all complaints closed in any given year. In 2001-2002, the agency conducted a full investigation in 47 percent of complaints disposed of.²⁸ There was a 5 percent drop in the number of complaints fully investigated in 2003-2005. (Truncated complaints in 2003-2005 increased 5 percent relative to the preceding two years.²⁹) (See Figure 4.) The percentage

²⁶ CCRB Status Report, January-December 2004, p. 6. The CCRB also reports as fully investigated those complaints referred to the police department’s Internal Affairs Bureau.

²⁷ CCRB Status Report, January-December 2005, p. 85.

²⁸ *Ibid.*

²⁹ *Ibid.*

of complaints fully investigated in 2006 dropped to 36 percent.³⁰

● Unsubstantiated complaints

Of those complaints that the CCRB considers fully investigated, approximately one-third are closed without sufficient evidence to make a conclusive finding. These complaints are closed with a disposition of “unsubstantiated” – a finding of “no finding.”

Between 1998 and 2002 the CCRB made determinations that 4,071 complaints – more than 800 per year – were unsubstantiated.³¹ (See Appendix A, Table 3.) Thus after closing, or truncating, approximately half of all complaints before undertaking an investigation, the CCRB closed about one in three of those that remained after concluding there was insufficient evidence to determine what occurred between the complainant and the accused cop. The bottom line: the CCRB is able to make a finding on the merits in only three of every ten complaints.

It appears that the CCRB has continued to close at least one-third of fully investigated complaints with a disposition of unsubstantiated.³² However, as of 2003 the CCRB’s public status reports no longer report complaints closed with such a disposition. The CCRB status reports are silent on this large subset of fully investigated complaints closed without a finding on the merits. (See below: “Discounting Inconclusive Investigations.”)

● Substantiated complaints

The CCRB substantiates a complaint when it finds that at least one allegation has been proved (a complaint may include several alle-

gations). Only a small fraction of the complaints the agency reviews each year are substantiated. Between 1994 and 2005 the CCRB has substantiated each year, on average, 5.2 percent of complaints closed.³³ That is, following an investigation and a subsequent review by board members, the CCRB determined that of every 100 civilians who filed complaints against police officers, only about five individuals had actually been the victim of verifiable misconduct. The substantiation rate has ranged from a low of 3.4 percent, in 1995,³⁴ to a high of 6.9 percent in 2004.³⁵ (See Appendix A, Table 2.)

Two competing theories are advanced to explain a consistently low substantiation rate: The first posits that police rarely engage in acts of misconduct against civilians; the second, that the civilian oversight system lacks investigative rigor. Analysis of the substantiation rate in the context of the other data reported by the CCRB strongly supports the latter theory – as do the first-hand accounts of CCRB investigators. (See herein, Section III: “Investigators Perspectives.”)

There are no recognized criteria for determining an acceptable substantiation rate.³⁶ However, civilian oversight agencies in the United States substantiate police-misconduct complaints at an average rate of between 12 and 13 percent.³⁷ The Police Foundation has found that municipal police departments substantiate about 10 percent of all complaints filed by citizens.³⁸ Measured by these standards, the rate at which the CCRB substantiates civilian complaints of police misconduct is far below national norms.

While the substantiation rate is a meaningful indicator, the substantiation rate alone is

³⁰ CCRB, *Executive Director’s Report*, February 2007 (“CCRB Disposition of Cases”).

³¹ CCRB Status Report, January-December 2002, p. 95.

³² When the CCRB stopped reporting the complaint “unsubstantiation” rate, it was 37.5 percent of fully investigated complaints. (CCRB Status Report, January-December 2002, p. 95) The unsubstantiation rate for allegations (a complaint may include more than one allegation) has remained virtually unchanged since that time. It is reasonable to assume therefore that the rate at which complaints are disposed of as unsubstantiated approximates the rate reported in 2002.

³³ CCRB Status Reports, January-December: 1997, p. 117; 1998, p. 115; 1999, p.

126; 2000, p. 109; 2001, p. 118; 2002, p. 95; 2003, p. 97; 2004, p. 83; and 2005, p. 85.

³⁴ CCRB Status Report, January-December 1999, p. 126.

³⁵ CCRB Status Report, January-December 2005, p. 85.

³⁶ Samuel Walker, *Police Accountability: The Role of Civilian Oversight* (Belmont: Wadsworth, 2001), p. 120.

³⁷ *Ibid.*

³⁸ Anthony M. Pate and Lorie A. Fridell, *Police Use of Force* (Washington, DC: The Police Foundation, 1993), p.114 (cited in Samuel Walker, *Police Accountability: The Role of Civilian Oversight*, p. 120, *supra*, note 36).

not sufficient to provide an adequate assessment of performance. There are other indicia of performance that may be relevant in appraising the effectiveness of an oversight agency. It has been widely observed that a civilian review agency can be most effective by identifying ineffective or harmful policing practices, and by recommending reforms that address systemic problems.³⁹

However, patterns and practices of police misconduct will not become apparent without the rigorous investigation of individual complaints. Absent thorough investigation it is unlikely that discipline of an individual police officer or reform of flawed policing practices will occur. Complaint investigation is therefore the critical function of an oversight agency.

The CCRB has substantiated many complaints, including those alleging serious misconduct. (See Figure 15.) It appears, however, these are well-documented complaints that do not require extensive investigation.

Why so few complete investigations?

There are multiple factors that explain why the CCRB truncates high numbers of police-misconduct complaints – and why it produces findings on the merits in such a relatively small number of complaints.

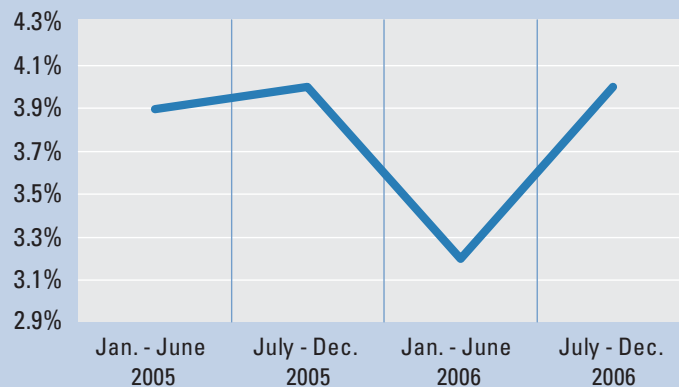
These factors include complainants’ difficulty getting to the CCRB’s office in lower Manhattan for an intake interview; CCRB investigators’ limited efforts (at the direction of management) to conduct vigorous outreach in an effort to contact complainants and witnesses; and the city’s failure to allocate the resources and staffing that the CCRB needs to hire and retain skilled and productive investigators.

For many victims of police misconduct, the first obstacle in pursuing a complaint is the remoteness of the CCRB’s location. A person

³⁹ See Samuel Walker, “The New Paradigm of Accountability: The U.S. Justice Department ‘Pattern or Practice Suits in Context.’” *St. Louis University Public Law Review*, Vol. 22 No.1, pp. 3-52, (2003).

CCRB data indicate that in the period January 2005 through December 2006 the quality and thoroughness of the agency’s investigations remain poor or continue to decline.

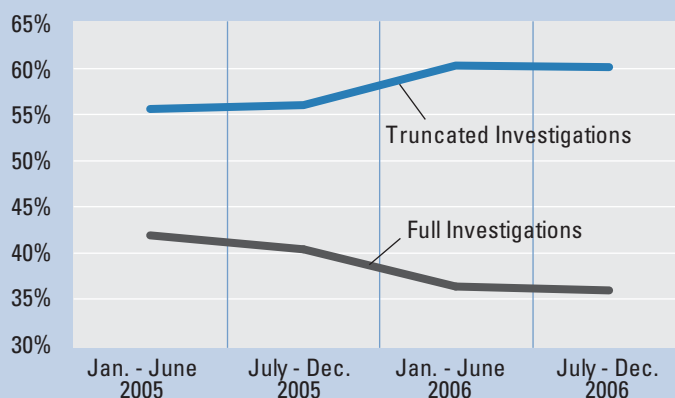
FIGURE 5 – Rate at which CCRB substantiates civilian complaints, 2005-2006



Source: CCRB Executive Director’s Report: July 2005, July 2006, February 2007 (CCRB Disposition of Cases); CCRB Status Report, January-December 2005, p. 85.

The rate at which the CCRB substantiates complaints remains at or below 4 percent.

FIGURE 6 – Rate at which CCRB closes civilian complaints without an investigation, 2005-2006



Source: CCRB Executive Director’s Report: July 2005, July 2006, February 2007 (CCRB Disposition of Cases); CCRB Status Report, January-December 2005, p. 85.

The rate at which the CCRB closes complaints without initiating an investigation has increased to 60 percent.

who wishes to file a complaint must appear at the CCRB's downtown-Manhattan office during business hours on a weekday. This can mean losing pay or jeopardizing one's employment. Police officers face no such obstacles. A police officer called to appear at a CCRB interview is given leave from regular duties and use of a NYPD vehicle.

The difficulty a complainant has in getting to the CCRB is compounded by the CCRB's limited efforts to conduct outreach and field investigations. As the number of police-misconduct complaints has increased in recent years, the CCRB's investigative outreach has declined. The agency attributes this to budget constraints. As a consequence, ". . . investigators no longer routinely make time-consuming field trips simply to interview complainants and alleged victims who have not expressed an interest in following up on their complaints."⁴⁰

The combined effect of complainants' difficulty reaching the CCRB and investigators' limited outreach is clearly reflected in the large numbers of truncated complaints. The CCRB reports that it closes about 54 percent of all complaints because the complainant is uncooperative, unavailable, or because the complainant withdraws.⁴¹ However, the degree to which CCRB investigators are available or cooperative certainly plays a role in these premature complaint closures.

CCRB investigators interviewed for this report confirmed that field visits are increasingly infrequent. (See herein, Section III: "Investigators Perspectives.") Even so-called full investigations are in most instances "desk investigations." These interviews also provided support for the proposition that rigorous field investigations can yield a more complete evidentiary record. Investigators told of a CCRB supervisor who had made it a policy that investigators in his unit conduct at least one field visit before truncating a complaint. These investigators reportedly had the highest substantiation rate of any unit in the

agency – approximately 20 percent of complaints fully investigated.

These observations and findings recommend several measures that could reinvigorate the CCRB's investigative operation: (1) establish community offices in all five boroughs; (2) maintain office hours in the evenings and on weekends; and (3) allocate the resources required to hire, train, retain and motivate a highly skilled team of investigators in sufficient numbers to conduct rigorous, thorough investigations.

Finally, the CCRB must develop a public education program that supports the agency's mission. The CCRB is still unknown to many residents of communities with a high incidence of police misconduct. Those who do know of the CCRB are often skeptical that filing a complaint will lead to a meaningful investigation that holds police accountable for acts of misconduct. (See herein, Section V: "When Civilian Review Fails.") To become a viable oversight agency, the CCRB must establish credibility in the communities it serves.

Efficiency trumps effectiveness: understating the problem of police misconduct

The CCRB states that the performance objectives for its investigations are quality, thoroughness and timeliness. In its 2005 status report the agency gave itself high marks for "continu[ing] to improve productivity by every measurable standard" – cases closed, cases fully investigated, and cases concluded with a finding on the merits.⁴² As a practical matter, however, productivity seems to mean efficiency: cases closed in a timely manner.

The rigor and thoroughness of investigations are open to serious question. And in some instances the manner in which the CCRB has categorized,

⁴⁰ CCRB Status Report, January-December 2005, p. 24. The CCRB provided the same budgetary rationale for diminished outreach to complainants in 2003 and 2004. See CCRB Status Report, January-December 2004, p. 25; and CCRB

Status Report, January-December, 2003, p. 40.

⁴¹ CCRB Status Report, January-December 2005, p. 85

⁴² CCRB Status Report, January-December 2005, p. 23.

counted and reported the disposition of complaints has misrepresented and concealed important information about both police misconduct and the CCRB's performance.⁴³

- **Less is more: misrepresenting the number of full investigations**

The CCRB's 2005 productivity report is upbeat. The agency reports that it closed "more full investigations than it had since 1997, and more total cases than it had in ten years."⁴⁴ The CCRB's administrators consider the number of fully investigated complaints an important performance indicator. (Mayor Bloomberg's 2005 Management Report states that the percentage of full investigations conducted by the CCRB remains steady – a "performance highlight."⁴⁵)

What is not stated is that the CCRB truncated (closed without undertaking an investigation) more complaints in 2005 than it had in any year since 1993, when the independent CCRB was established.⁴⁶ The agency also failed to note that only 41 percent of all complaints were fully investigated in 2005⁴⁷ – the lowest number of full investigations relative to cases closed since 1997. On this performance measure the CCRB has demonstrated a steady decline since 2001.⁴⁸ (See Figure 4.)

- **Little merit in "findings on the merit"**

The CCRB's "finding on the merits" disposition is similarly misleading. These are com-

plaints in which the misconduct allegation is substantiated or, alternatively, complaints in which it is determined that the alleged misconduct did not occur – or that the police action was lawful and appropriate.

The CCRB's 2005 annual status report states that the agency continues to produce "findings on the merits in fully investigated cases" at a steady rate of 65 percent.⁴⁹ But this rate is arrived at by excluding all truncated complaints from the calculation. If these complaints are considered, it becomes clear that the CCRB only infrequently produces a finding on the merits. In 2005 the CCRB closed 19,041 allegations, but only 6,541 of these allegations – just 34 percent – were resolved on the merits.⁵⁰

- **Discounting inconclusive investigations**

The CCRB has further confused the issue of inconclusive complaint investigations by removing from its reported data the number of complaints (as opposed to allegations) closed with a disposition of unsubstantiated. A police-misconduct complaint may include more than one allegation – for example, a complainant may allege that a police officer uttered a racial slur while using excessive force. The investigator may determine that there is evidence to prove one allegation, but that the evidence is inconclusive as to the other. The complaint is substantiated based upon the one allegation that is upheld. But if the investigation

⁴³ Prior to 2003, for example, the CCRB's status reports included a table that identified the number of police officers who had been the subject of multiple misconduct complaints. Policing experts recommend that law-enforcement agencies employ "early warning systems" to identify problem officers, who are often the subject of multiple complaints filed by civilians. (See National Institute of Justice, *Early Warning Systems: Responding to the Problem Police Officer* (U.S. Department of Justice: July 2001).) As of 2003, however, the CCRB stopped reporting on police officers with multiple complaints even as the incidence of such complaints was rising dramatically. Between 2000 and 2002 the number of police officers with two complaints increased by 62 percent; police officers with three complaints increased by 219 percent; and those with four or more complaints increased 250 percent. (CCRB Status Report, January-December 2002, p. 86)

The CCRB's status reports often adopt public-relations rhetoric, based upon misrepresentations of data, to promote the CCRB's performance. In 2001, 2002 and 2003, for example, the CCRB reported that the NYPD had been disciplining greater numbers of police officers against whom complaints had been substantiated – and that this was due to the "improved quality and timeliness of CCRB investigations." (CCRB Status Report, January-December 2003, p. 32) But this

assertion was inaccurate and misleading. Between 20 percent and 45 percent of complaints substantiated by the CCRB from 2000 to 2003 had been pending for one year or more from the date the complaints were filed. (CCRB Status Report, January-December 2003, p. 94) In 1998 and 1999, however, only 15 to 17 percent of substantiated complaints were pending for a year or more. (CCRB Status Report, January-December 2002, p. 91) As to the suggestion the police department was exhibiting a tougher disciplinary posture, the reality was quite different. The NYPD's disciplinary actions related to substantiated CCRB complaints had become significantly more lenient during this period. (See Figure 8.)

⁴⁴ CCRB Status Report, January-December 2005, p. 23.

⁴⁵ Michael R. Bloomberg, Mayor of New York City, *Mayor's Management Report - Fiscal 2005*, September 2005, p. 191.

⁴⁶ CCRB Status Report, January-December 2005, p. 85.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, p. 23.

⁵⁰ CCRB Status Report, January-December 2005, p. 86.

of a complaint with a single allegation of excessive force is found to be inconclusive, the complainant is told, in effect, that the CCRB found no wrongdoing. Case closed.

There are many factors that militate against the creation of an investigative record sufficient to support a finding on the merits. It is important, however, both to account for these complaints and to analyze the factors that led to an inconclusive investigation. As of 2003 the agency no longer reports the number of complaints that are closed with a disposition of “unsubstantiated,” but combines in a single category all complaints closed with a finding of exonerated, unfounded, or unsubstantiated.⁵¹

This is a peculiar conflation of data. Complaints that result in a disposition of unfounded or exonerated are based on the merits. (A finding of unfounded means the alleged misconduct did not occur. A police officer is exonerated if the conduct complained of did occur, but was deemed lawful and appropriate.) Unsubstantiated complaints, on the other hand, lack a record on which to make a finding as to what happened. By conflating unsubstantiated complaints with complaints that are unfounded and exonerated, the CCRB conceals an important category of investigations, making it more difficult to assess the rigor and thoroughness of the investigative process.

● Inflating the substantiation rate

The CCRB also employs a formula for calculating the substantiation rate – the percentage of complaints that are upheld – that grossly exaggerates the actual number of complaints substantiated. The

CCRB substantiates, on average, about 5 percent of all complaints closed annually.⁵² The CCRB, however, calculates the substantiation rate based not upon the numbers of complaints disposed of in any given year, but rather based upon the number of complaints that are given a “full investigation.”

This formulation obscures more than half the picture. For example, in 2005 the CCRB reported that it closed 260 complaints with at least one substantiated allegation. The agency completed full investigations of 2,679 complaints. This ratio – 260 substantiated complaints out of 2,679 fully investigated complaints – yields a substantiation rate of 9.7 percent. But the CCRB closed 6,522 complaints that year, and 3,650 of those closed complaints were terminated without an investigation.⁵³ These truncated complaints were not counted in the CCRB’s calculation of the substantiation rate for 2005.

Placing the 260 substantiated complaints in a ratio with 6,522 complaints yields a substantiation rate of 4 percent – less than half the rate reported by the CCRB, but a more accurate representation of the board’s disposition of complaints. Only if all or nearly all of the CCRB’s truncated complaints are completely without merit is the reported substantiation rate meaningful.⁵⁴

● Police brutality disappears

Police brutality complaints drop out of the oversight system – at the CCRB and at the police department – in great numbers. The CCRB, however, has not attempted to analyze this phenomenon; indeed the agency’s public statements fail even to acknowledge there is an issue to be addressed.

⁵¹ The CCRB reports complaint allegations that are unsubstantiated. But this does not permit an assessment of how many *complaints* are closed without a finding on the merits. Without this assessment it cannot be determined how many complainants have their complaints closed with an inconclusive finding.

⁵² CCRB Status Reports, January-December: 1997, p. 117; 1998, p. 115; 1999, p. 126; 2000, p. 109; 2001, p. 118; 2002, p. 95; 2003, p. 97; 2004, p. 83; and 2005, p. 85.

⁵³ CCRB Status Report, January-December 2005, p. 85.

⁵⁴ The CCRB has used alternative formulas to calculate the substantiation rate when those formulas appear to reflect a more vigorous investigative performance. The CCRB’s reported 2005 substantiation rate of 9.7 percent reflected a significant drop from the 16.3 percent substantiation rate reported for 2004. (CCRB Status Report, January-December 2005, p. 85) But through clever accounting the Mayor’s Management Report put a sharp upward spin on the

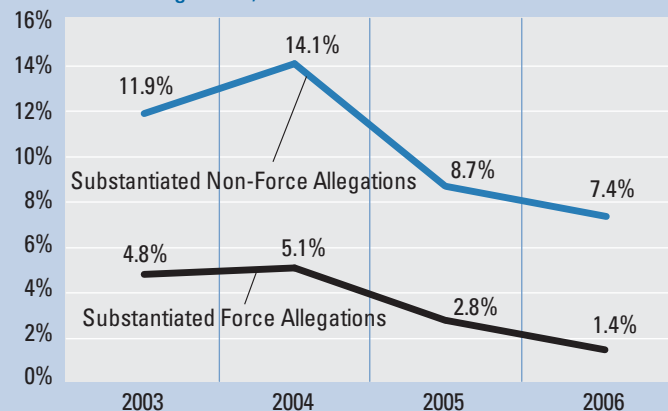
For example, in December 2002 the CCRB issued a news release with a headline that read, “Discourteous words and improper frisks and searches by NYPD officers top the list of misconduct allegations the CCRB most frequently substantiated.”⁵⁵ Buried in the dense, page-long paragraph was a statement that “unnecessary physical force accounted for 13 percent of allegations substantiated.” Technically speaking, these statistics are accurate. Taken alone, the data would seem to suggest that “unnecessary physical force,” or police brutality, is not a significant problem in New York City.

When placed in context, however, it is clear that a far more important story was left out of the news release. Since the establishment of the all-civilian CCRB, approximately 50 percent of all complaints filed annually have included an allegation of excessive force. (See Appendix A, Table 4.) And the numbers of complaints had risen almost 25 percent between 2000 and 2002⁵⁶ – the period just preceding the release of the CCRB’s December 2002 news release.

No news release announced that the CCRB substantiated fully investigated force allegations at one-fifth the rate the agency substantiated non-force allegations in 2006. (See Figure 7.) Nor did the CCRB issue a public statement regarding the fact that in 2006 the NYPD closed nearly five times as many substantiated CCRB force cases without imposing discipline as compared with non-force cases.

While the NYPD’s failure to adequately discipline police officers for acts of brutality has received scant attention in CCRB status

FIGURE 7 – CCRB substantiation rates for fully investigated force allegations vs. other fully investigated allegations, 2003-2006



Source: CCRB Executive Director’s Report, January: 2004, 2005, 2006, 2007 (Disposition of Force, Abuse of Authority, Discourtesy, and Offensive Language Allegations).

reports, board members are not unaware of the issue. At a public forum on police violence sponsored by Brooklyn Law School, William Kuntz, a veteran member of the agency’s board, participated in a discussion regarding the police department’s rejection of the CCRB’s findings and recommendations in favor of far more lenient (or no) disciplinary action.⁵⁷ His views would have had greater effect if further developed in an analysis, joined by his colleagues, that was made public in a letter or report to the mayor and the police commissioner; or at the very least included in the chairman’s letter that introduces the CCRB’s semiannual reports.⁵⁸

The coda to this story appeared in a news account announcing a spike of 34 percent in excessive force allegations filed in the first three months of 2006 compared with the same period a year earlier.⁵⁹ The CCRB’s spokesperson commented in the article that

⁵⁴ Continued

agency’s performance stats – citing the CCRB’s 2005 substantiation rate at 14 percent. (Michael Bloomberg, Mayor of the City of New York, *Mayor’s Management Report – Fiscal Year 2005*, September 2005, p. 192) This was accomplished by calculating the substantiation rate based on allegations (as opposed to complaints) closed after full investigations. That this is a misleading presentation of data is clear if truncated complaints (and allegations) are brought back into the picture. Of the 19,041 allegations disposed of by the CCRB in 2005, only 709 allegations were substantiated. (CCRB Status Report, January-December 2005, p. 86) In other words the 2005 substantiation rate based upon all allegations closed was 3.7 percent.

⁵⁵ CCRB Press Release, “Discourteous Words and Improper Frisks and Searches by NYPD Officers Top the List of Misconduct Allegations the CCRB Most Frequently

Substantiated,” December 2, 2002.

⁵⁶ CCRB Status Reports, January-December: 2005, p. 43; and 2004, p. 41.

⁵⁷ See Hon. Milton Mollen, “Police Violence: Causes and Cures, Edward V. Sparer Public Interest Law Fellowship Forum, Brooklyn Law School,” *Journal of Law and Policy*, Vol. 7, p. 99 (1998).

⁵⁸ When the CCRB does report on the police department’s disposition of CCRB complaints, the commentary is typically brief, lacks analysis, and is buried in a lengthy status report. See, e.g., CCRB Status Report, January-December 2004, p. 36.

⁵⁹ Philip Messing, “Complaints Vs. City Cops Soar,” *New York Post*, April 18, 2006.

“. . . the more rapid increase in force complaints is something new.”⁶⁰ While the dramatic spike in force allegations might have been new, the high frequency with which complainants charge police officers with brutality was not. Between 2000 and 2005, allegations involving a police officer’s use of excessive force had increased by 77 percent, with significant increases from year to year.⁶¹ (See Figure 3.) The CCRB spokesperson suggested “further statistical analysis might be required” if the rise in force allegations continued. He added, “This is something we haven’t done statistical runs on, but we may, if it continues into the future.”⁶²

The need for better performance measures – and an Inspector General

The criteria used by the CCRB to assess its performance are too narrow. An audit of the CCRB conducted in 1998 by the New York City Comptroller made a similar observation.⁶³ The audit recommended that the CCRB “convene a panel of experts . . . to develop and recommend a comprehensive set of relevant performance indicators.”⁶⁴ In rejecting this proposal, the CCRB stated that “the single most telling measure of effectiveness does not lie in a complicated statistical formula but in the quality of investigations.”⁶⁵

But this response begged the question; the comptroller was not calling for more data sets, but for a more meaningful assessment of the agency’s operations.⁶⁶ Based upon a reading of its published status report, it appears the CCRB undertakes no qualitative assessment of its operations.⁶⁷ This is a common limitation of oversight agencies. And it is for this very reason that legal scholars have proposed an audit procedure or the appointment of an Inspector General. What is envisioned is a process mediated by an appointed official who would conduct independent audits and analyses of the civilian oversight agency – and who would also serve as an advocate for police accountability and reform of police practices.⁶⁸

This type of scrutiny might have shed light on the police department’s rejection of the CCRB’s investigative findings and on the increasing leniency of the NYPD’s disciplinary sanctions. The office of the Inspector General might also have pressed the CCRB to pursue important policing reforms it had recommended but abandoned, even as a pattern of misconduct persisted. (See herein, Section IV: “Extraordinary Deference to the NYPD.”) ■

⁶⁰ Ibid.

⁶¹ CCRB Status Reports, January-December: 2004, p. 41; and 2005, p. 43.

⁶² Philip Messing, “Complaints Vs. City Cops Soar,” *New York Post*, April 18, 2006.

⁶³ Alan G. Hevesi, Comptroller of the City of New York, *Audit Report on the Case Management Policies and Procedures of the Civilian Complaint Review Board*, June 25, 1998.

⁶⁴ Ibid., p. 71.

⁶⁵ Ibid., p. 72.

⁶⁶ In 2002, New York City Comptroller William C. Thompson dropped the recommendation that the CCRB develop more effective performance indicators. The comptroller did so on the grounds that the oversight boards in five major cities had no “meaningful measures to evaluate . . . operational effectiveness.” (William C. Thompson, Comptroller of the City of New York, *Follow-up Audit Report on the Case Management Policies and Procedures of the Civilian Complaint Review Board*, May 21, 2002, p. 24) But the earlier Hevesi report made clear that just because meaningful performance measures were not in use did not mean they were incapable of design. He stated that the CCRB had misunderstood his recommendation regarding the need for better performance appraisal. The key point, according to Hevesi’s 1998 audit, was this: “[M]easuring the effectiveness of the CCRB is a complex issue and as such it requires a

sufficient framework of well-thought out performance indicators that are comprehensive, clearly designed, and measurable.” (Alan G. Hevesi, Comptroller of the City of New York, *Audit Report on the Case Management Policies and Procedures of the Civilian Complaint Review Board*, June 25, 1998, p. 72)

⁶⁷ A meaningful assessment of the CCRB requires an examination of the substantiation rate in the context of other quantitative performance measures – for example, the number of investigations that lead to a finding on the merits and the types of allegations (e.g., force versus non-force) that are substantiated. Analysis of quantitative data alone, however, can lead to serious distortions and misconceptions about the civilian oversight system. Qualitative analysis is required to ensure that interpretation of data takes into account the experiences and insights of complainants, investigators, police officers and other who have had direct experience with the civilian oversight system.

⁶⁸ See, e.g., Samuel Walker, *Police Accountability: The Role of Civilian Oversight* (Belmont: Wadsworth, 2001), pp. 164-172; and Paul G. Chevigny, “Police Violence: Causes and Cures,” *Journal of Law and Public Policy*, Vol. 7, pp. 85-91 (1998). (“More than an effective auditor, we need . . . [a]n Inspector General [who] acts as a conveyor belt, a vector, who will get on the Commissioner’s back and say, ‘You’ve got to do these things, you can’t just be talking about them, you have to do them. What are we going to report to the auditor that we have done to carry out these reforms?’”)

II. NYPD Disposition of Substantiated Complaints: Condoning Police Misconduct

The independent CCRB came into existence in July of 1993. And within the next year, following the election of Rudolph Giuliani as mayor, New York City would adopt a new law enforcement strategy characterized by the aggressive policing of minor crimes and violations – “quality-of-life” policing. This new policing strategy was based upon a philosophy of law and order that has come to be known as the “broken windows” theory, which posits that low-level “disorder” is a correlative or precursor of more serious criminal activity.⁶⁹ Arrest the minor disorder, according to this theory, and prevent more serious crime problems.

The NYPD’s implementation of this new policing philosophy has been facilitated by Compstat, a computer-driven policing tool that collects, tracks and monitors crime statistics in minute detail. Through the rigorous analysis of these data sets – a new job responsibility of every precinct commander – the NYPD would “ensure that . . . every available police capacity is considered in order to promptly address what has been identified as a significant crime problem.”⁷⁰

New York City pioneered this new crime-fighting model in the 1990s. The NYPD’s aggressive zero-tolerance police tactics have subsequently been adopted by police departments throughout the United States and abroad.⁷¹ Mayor Bloomberg has ratified this philosophy of law and order. He has renewed and expanded the Giuliani administration’s policy of aggressively prosecuting violations and minor offenses, such as loitering, panhandling, and turnstile jumping.⁷²

The New York City policing paradigm has been widely acclaimed, but it has also been the subject of a critique by a growing number of criminal justice scholars.⁷³ John Q. Wilson, one of the theory’s originators, has distanced himself from the premise that serves as a rationale for quality-of-life policing. In a *New York Times* article Mr. Wilson stated that law enforcement professionals have drawn questionable conclusions from what he considered speculative observations regarding the relationship between disorder and crime.⁷⁴

New York City in particular has been harshly criticized for promoting a philosophy of

⁶⁹ James Q. Wilson and George L. Kelling, “The Police and Neighborhood Safety: Broken Windows,” *Atlantic Monthly*, Vol. 127, pp. 29-38, (1982).

⁷⁰ Philip B. Heymann, “The New Policing,” *Fordham Urban Law Journal*, Vol. 28 No. 2, p. 431 (December 2000).

⁷¹ Benjamin B. Tucker, “How Do We Reduce Crime and Preserve Human Decency? The Role of Leadership in Policing for a Democratic Society,” *Fordham Urban Law Journal*, Vol. 28, pp. 611-612 (December 2000).

⁷² See Jarrett Murphy, “Big Crackdown on Little Crime: Bloomberg Out-Rudys Rudy When it Comes to NYPD’s “Quality of Life” Enforcement,” *Village Voice*, April 25, 2006; William K. Rashbaum, “Mayor Extending Focus on Crime Hot Spots,” *New York Times*, July 2, 2003; “Anti-Graffiti Initiative,” NYPD CARES (electronic mail newsletter of the NYPD), January 25, 2005.

⁷³ See Bernard E. Harcourt, *Illusion of Order – The False Promise of Broken Windows Policing* (Cambridge: Harvard University Press, 2001); Robert J. Sampson and Stephen W. Raudenbush, “Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods,” *American Journal of Sociology*, Vol. 105 No. 3, pp. 603-651 (November 1999); and Ralph B. Taylor, *Breaking Away from Broken Windows: Baltimore Neighborhoods and the Nationwide Fight Against Crime, Grime, Fear, and Decline* (Boulder: Westview Press, 2000).

⁷⁴ Dan Hurley, “On Crime as Science (A Neighbor at a Time),” *New York Times*, Jan. 6, 2004, pp. F1, F2. In the article Professor Wilson is quoted as follows: “I still to this day do not know if improving order will or will not reduce crime. People have not understood that this was a speculation.”

policing that conflates crime, race and poverty.⁷⁵ Critics of the “broken windows” paradigm have observed that police officers are more likely to perceive disorder in low-income communities, and that highly aggressive policing tactics have been used disproportionately in the city’s minority communities.⁷⁶ As a consequence, what was intended as an approach to community policing has become, as a practical matter, the racially biased “policing of poor people in poor places.”⁷⁷ There is compelling evidence that substantiates this charge. (See herein, Section IV: “Racial Profiling.”)

What is the relevance of quality-of-life policing to an assessment of the CCRB? It is this: however sound its objectives, this law-enforcement strategy can lead to overzealous police tactics that actually provoke conflict between police and law-abiding persons. What’s more, the city’s policing model fails to account for police misconduct directed at

However sound its objectives, “quality-of-life” policing can lead to overzealous police tactics that provoke conflict between police and law-abiding persons.

civilians. Serious acts of police misconduct that have been substantiated by the CCRB – use of excessive force, false arrest, strip search without justification, unauthorized entry and search of a residence – are not addressed with anything even

approaching the rigor and aggressiveness directed at low-level quality-of-life infractions committed by civilians. Either police officials are not capturing critical information about police misconduct, or they are capturing the data but are not paying attention to it.

NYPD Disciplinary Action against Police Officers with a Substantiated CCRB Complaint

The CCRB refers substantiated complaints of police misconduct to the police commissioner for disciplinary action, which may involve one of the following sanctions.

CHARGES AND SPECIFICATIONS. The commissioner may order the filing of administrative charges against the accused police officer, who is then subject to prosecution in the police department’s trial room. If found guilty, the police officer “may face loss of vacation time, suspension or termination from the department.”

COMMAND DISCIPLINE. Disciplinary action is delegated to the precinct or unit commander, who may issue an “oral warning and admonishment” or order the “forfeiture of up to ten vacation days or accrued time.”

INSTRUCTIONS. Alternatively, the police commissioner may order that the police officer who is the subject of the complaint receive instructions regarding the conduct that gave rise to the substantiated misconduct.

Sources: CCRB Status Report, January-December 2002, p. 9; CCRB Status Report, January-December 2003, pp. 8-9.

Optimal tolerance for police misconduct

The CCRB refers each substantiated CCRB complaint, along with a disciplinary recommendation, to the police commissioner. In cases that involve the more serious acts of

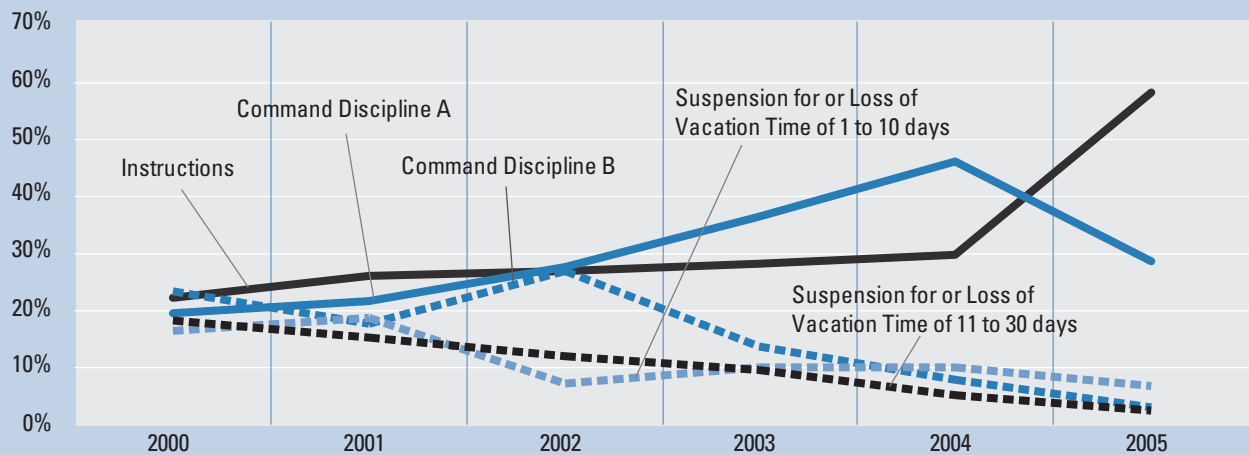
⁷⁵ Jeffrey Fagan and Garth Davies, “Street Stops and Broken Windows: Terry, Race, and Disorder in New York City,” *Fordham Urban Law Journal*, Vol. 28 No. 2, pp. 457-504 (December 2000) (Hereafter, “Street Stops and Broken Windows”).

⁷⁶ *Ibid.*, p. 462. Recent research has also demonstrated that all persons, regardless of their race, perceive higher levels of disorder and crime in neighborhoods with greater concentrations of black residents even when actual disorder and

crime are held constant. See Lincoln Quillian and Devah Pager, “Black Neighbors, Higher Crime? The Role of Racial Stereotypes in Evaluations of Neighborhood Crime,” *American Journal of Sociology*, Vol. 107 No.3, pp. 717-767, (November 2001); and Robert J. Sampson and Stephen W. Raudenbush, “Seeing Disorder: Neighborhood Stigma and the Social Construction of ‘Broken Windows,’” *Social Psychology Quarterly*, Vol. 67 No. 4, pp. 319-342, (2004).

⁷⁷ Street Stops and Broken Windows, p. 496.

FIGURE 8 – Discipline imposed by the NYPD on officers with substantiated CCRB complaints, 2000-2005



Source: CCRB Status Reports, January-December: 2004, p. 92; 2005, p. 93.

misconduct – those, for example, that involve excessive force, retaliatory arrest or unauthorized entry of premises – the commissioner may order the filing of charges and specifications against the police officer, who as a result “may face loss of vacation time, suspension, or termination from the police department.”⁷⁸ Administrative charges are adjudicated by the office of the NYPD’s Deputy Commissioner of Trials.

The police commissioner may elect to impose “command discipline,” a less severe disciplinary sanction, in which case disciplinary action is delegated to the precinct or unit commander, who has discretion to issue “an oral warning and admonishment” or to order the “forfeiture of up ten vacation days or accrued time.”⁷⁹ Alternatively, the police commissioner may order that the police officer receive instructions regarding the conduct that gave rise to the substantiated misconduct.⁸⁰

The NYPD’s disposition of substantiated complaints demonstrates that the department does not take seriously the CCRB’s findings

or recommendations. The department takes no disciplinary action against nearly 30 percent of police officers named in those complaints.⁸¹ Between 2000 and 2005 the NYPD disposed of substantiated complaints against 2,462 police officers: 725 received no discipline. When discipline was imposed, it was little more than a slap on the wrist. Of the 1,607 police officers who were disciplined in this time period, 534 received instructions.⁸²

Another 717 police officers received command discipline.⁸³ The NYPD does not report to the CCRB on the final disposition of Command Discipline cases.⁸⁴ As a practical matter these cases disappear. There is no accounting, no accountability.

In recent years it appears that the NYPD has adopted a radically more lenient disciplinary standard as regards acts of police misconduct directed at civilians. Between 2004 and 2005 the percentage of substantiated cases that resulted in the mildest sanction – instructions – almost doubled. In 2004 the police department

⁷⁸ CCRB Status Report, January-December 2003, p. 9.

⁷⁹ Ibid.

⁸⁰ Ibid., p. 8.

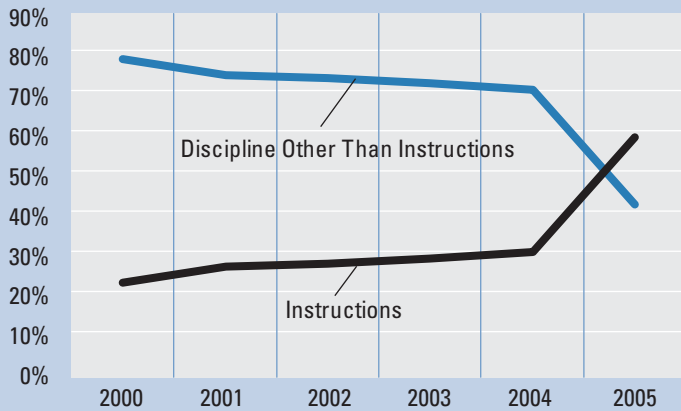
⁸¹ CCRB Status Report, January-December 2005, pp. 93-94.

⁸² Ibid., p. 94; and CCRB Status Report, January-December 2004, pp. 91-92.

⁸³ Ibid.

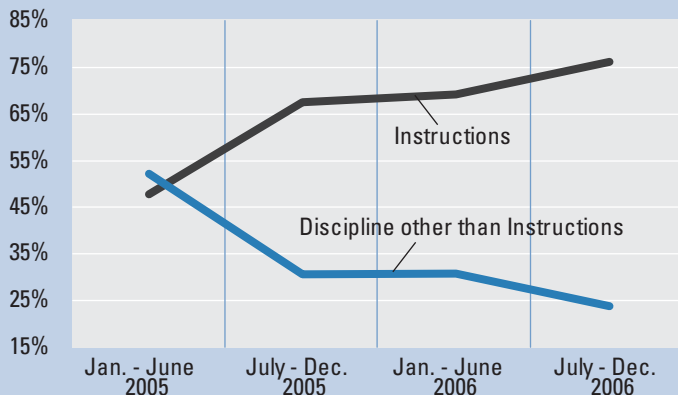
⁸⁴ CCRB Status Report, January-December 2005, p. 35.

FIGURE 9 – Discipline imposed by NYPD on officers with substantiated CCRB complaints: instructions vs. other discipline, 2000-2005



Source: CCRB Status Reports, January-December: 2004, p. 92; 2005, p. 93.

FIGURE 10 – Discipline imposed by the NYPD on officers with substantiated CCRB complaints: instructions vs. other discipline, 2005-2006



Source: CCRB Executive Director's Reports, July 2005, p. 15; August 2006, p. 17. CCRB Status Report, January-December 2005, p. 93

ordered instructions in approximately 30 percent of all disciplinary actions related to a substantiated CCRB complaint.⁸⁵ In 2005 instructions represented nearly 60 percent of such disciplinary actions;⁸⁶ and in 2006

police officer not guilty. During this time period, cases were dismissed against 198 police officers against whom the CCRB had substantiated misconduct complaints. In

instructions represented close to 72 percent of all disciplinary actions related to police misconduct directed at civilians.⁸⁷ Suspension of a police officer has become an extraordinarily rare occurrence, even when egregious acts of misconduct are involved. (See Figures 8, 9 and 10.)

The NYPD trial room: misconduct gets a pass

It is disciplinary action taken against police officers charged with the more serious forms of misconduct – those who are subject to an administrative trial – that would seem to offer a meaningful measure of the standard of accountability to which police officers are held. The data on the police department's final disposition of these cases indicates the standard is a low one. (See Figures 11 and 12.) (Note: A CCRB complaint may name more than one police officer. The police department reports as a "case" each police officer against whom a CCRB complaint has been substantiated.)

Of those police officers who were referred to the trial room to face charges between 1998 and 2004, approximately 63 percent resulted in no discipline.⁸⁸ In most of those cases, the administrative trial judge dismissed the charges or found the

⁸⁵ CCRB Status Report, January-December 2005, p. 94.

⁸⁶ *Ibid.*

⁸⁷ CCRB Executive Director's Report, *Police Department Disciplinary Penalties Imposed by Year of NYPD Closure* (February 2007).

⁸⁸ Data were compiled from NYPD cases summaries for substantiated complaints reported in CCRB Status Reports, January-December: 2002, Table 52; 2003, Table 49B; 2004, Table 48A; and 2005, Table 48A.

⁸⁹ *Ibid.*

FIGURE 11: NYPD disposition of cases substantiated by the CCRB and referred to an administrative trial, 1998-2004* (based upon year of referral to NYPD)

| | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 |
|--|------------------------|------------------------|-----------------------|-----------------------|------------------------|------------------------|------------------------|
| Cases Referred to Administrative Trial | 228 | 185 | 98 | 92 | 175 | 157 | 141 |
| Outcome of Cases Referred to Trial | | | | | | | |
| Dismissed | 43 (18.9%) | 16 (8.6%) | 12 (12.2%) | 14 (15.2%) | 39 (22.3%) | 38 (24.2%) | 36 (25.5%) |
| Found or Pled Guilty | 87 (38.2%) | 71 (38.4%) | 41 (41.8%) | 42 (45.7%) | 72 (41.1%) | 51 (32.5%) | 38 (27.0%) |
| Not Guilty After Trial | 68 (29.8%) | 91 (49.2%) | 30 (30.6%) | 25 (27.2%) | 57 (32.6%) | 52 (33.1%) | 40 (28.4%) |
| No Discipline in Cases Administratively Tried | 111 (48.7%) | 107 (57.8%) | 42 (42.9%) | 39 (42.4%) | 96 (54.9%) | 90 (57.3%) | 76 (53.9%) |
| NYPD Unable to Prosecute | 25 | 1 | 8 | 7 | 5 | 5 | 18 |
| Statute of Limitations Expired | 5 | 6 | 7 | 4 | 2 | 11 | 9 |
| Total Cases Referred to Trial: No Discipline | 141 (61.8%) | 114 (61.6%) | 57 (58.2%) | 50 (54.3%) | 103 (58.9%) | 106 (67.5%) | 103 (73.0%) |
| Pending Cases | 0 | 0 | 0 | 0 | 2 | 5 | 55 |
| Other** | 26 | 14 | 11 | 14 | 19 | 22 | 27 |

* Complaint dispositions were compiled from police department data as reported in CCRB Semi-Annual Reports, 2002-2005. The last year for which complete data are available on disciplinary action based on the year substantiated complaints were referred to the NYPD is 2004.

** Category refers to cases in which NYPD employee was unidentified and cases in which NYPD employee retired, resigned, or died prior to final case disposition.

Source: Data on trial outcomes were compiled from CCRB Status Reports ("Police Department Discipline and Punishment on CCRB Cases Substantiated in [2003-2005]"), January-December: 2002, Table 52; 2003, Table 49B; 2004, Table 48A; and 2005, Table 48A.

another 363 cases administrative judges issued non-guilty findings.⁸⁹ (See Figure 11.)

These data raise troubling questions. Is the NYPD rejecting CCRB findings and recommendations without good cause?⁹⁰ Are the administrative trial judges who oversee the police department's trial room fair and impartial? Are the NYPD personnel who prosecute CCRB misconduct complaints competent to do so?⁹¹ (See herein, Section III: "Incompetence in the NYPD trial room.")

Is the excessive length of time that a case is pending at the NYPD before closure – 250 days, on average, following referral by the CCRB⁹² – causing complainants and witnesses to withdraw from the process?

Neither the CCRB nor the police department has been inclined to undertake a serious inquiry into these matters. The silence provokes a larger question: is the police department, due to bias, incompetence, hostility to the CCRB – or as consequence of all these factors – nullifying

⁸⁹ In testimony presented before the City Council on March 9, 2007, Chief Charles Campisi stated that "in a significant number" of substantiated CCRB cases there was "insufficient evidence to proceed with an administrative trial." In addition, he added, "there are times we observe the investigation to be complete, but the evidence does not support the conclusion reached." (Statement of Chief Charles Campisi, Chief of Internal Affairs, NYPD, Before the New York City Council Public Safety and Civil Rights Committees, pp. 9-10) The NYPD has

advanced no findings to support these conclusions. There is a considerable body of evidence, however, that police personnel do not competently prepare CCRB cases that are adjudicated in the police department's trial room. (See herein, Section III: "Incompetence in the NYPD trial room.")

⁹¹ See The City of New York Commission to Combat Police, *Follow-up to the Prosecution Study of the Commission*, March, 2004.

⁹² CCRB Status Report, January-December 2005, p. 95.

Six of ten police officers that the NYPD refers to an administrative trial for acts of misconduct received no discipline at all

Between 1998 and 2004 police commissioners ordered the filing of charges and specifications against 1,076 police officers for acts of misconduct that had been substantiated by the CCRB. As a consequence the accused police officers faced prosecution in an

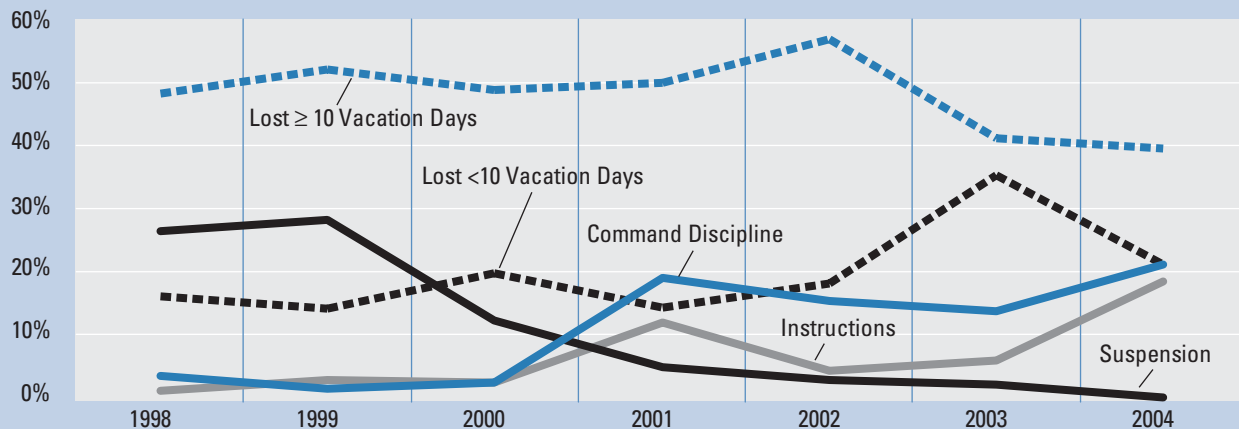
administrative trial, which could result in suspension or dismissal.

These cases included allegations of the more serious acts of police misconduct – such as use of excessive physical force, threat of arrest or threat of force, strip

search, pointed gun, unauthorized entry and search of premises.

Of the 1,076 cases referred to trial, 63 percent resulted in no disciplinary action.

FIGURE 12 – Discipline imposed on officers named in substantiated CCRB cases that were referred to NYPD administrative trial, 1998-2004 (based upon year of referral to NYPD)



Source: 2004 is the last year for which complete data are available on disciplinary action. Data were compiled from NYPD case summaries for substantiated CCRB complaints published in CCRB Status Reports, January- December: 2002, Table 52; 2003, Table 49B; 2004, Table 48A; 2005, Table 48A.

well-documented complaints of police misconduct? A closer analysis of the police department's disposition of excessive force cases gives credence to this charge.

When assault is not a “quality of life” crime

The CCRB reports that about half of all complaints filed with the CCRB charge police offi-

cers with the unlawful use of force.⁹³ The high number of force allegations has been a statistical constant throughout the ten-year period 1994-2005. In recent years, as the number of police-misconduct complaints has increased, so has the number of excessive force allegations.⁹⁴ In 2002, complainants filed 4,439 excessive-force allegations.⁹⁵ That number increased by 41 percent, to 6,264 force allegations, in 2005.⁹⁶ (See Appendix A, Table 4.)

⁹³ CCRB Status Report, January-December 2005, p. 43.

⁹⁴ Ibid.

⁹⁵ CCRB Status Report, January-December 2004, p. 41.

⁹⁶ Ibid.; CCRB Status Report, January-December 2005, p. 43.

The 6,264 excessive force allegations filed in 2005 included 4,442 allegations of unlawful use of “physical force,” which, according to the CCRB, involves a charge that a police officer “dragged/pulled, pushed/shoved/threw, punched/kicked/kneed, slapped [or] bit” the complainant.⁹⁷ Another 1,822 allegations charged other types of excessive force, including “gun fired or pointed; nightstick or gun used as a club; police shield or vehicle [used] as club; other blunt instrument [used] as club; hit [complainant] against inanimate object; chokehold; pepper spray; radio or flashlight [used] as club; [use of] non-lethal restraining device.”⁹⁸ (See Figure 13.)

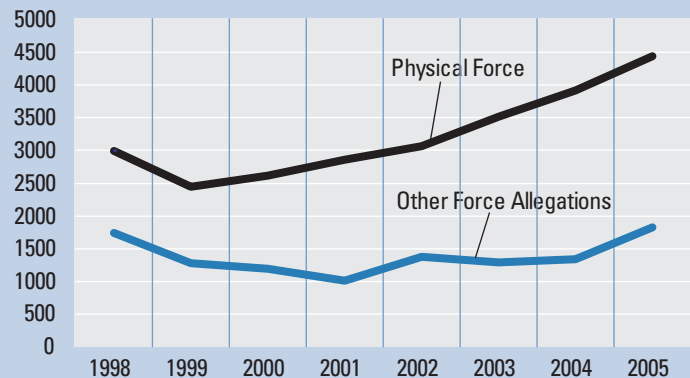
These statistics suggest that the police department has a significant problem with police officers’ use of unlawful force. There is typically little or no consequence, however, for

A police officer’s chance of facing discipline are reduced by almost 70 percent when excessive force is involved, as compared with other forms of misconduct.

the police officer who uses excessive force against a civilian – even if the CCRB substantiates the complaint. A perverse rule of accountability seems to apply. The police department is far less likely to impose discipline when a substantiated complaint involves a police officer’s use of excessive force.

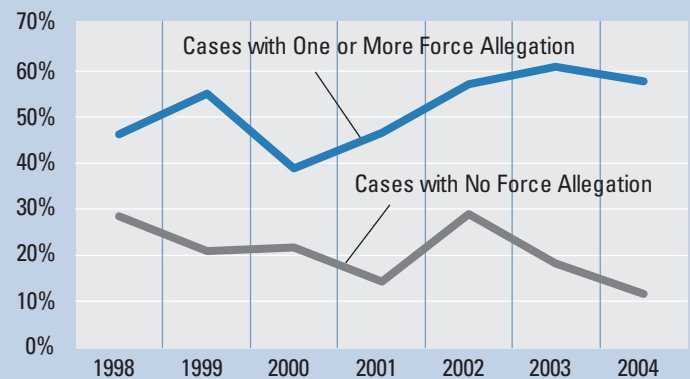
Between 2002 and 2004, the department imposed no discipline on 59 percent of police officers against whom the CCRB had substantiated a complaint involving use of excessive force. But the department imposed no discipline on just 18 percent of those police officers against whom the CCRB substantiated a complaint that did not include an allegation of excessive force.⁹⁹ (See Figure 14.)

FIGURE 13 – CCRB allegations charging that police officer used unlawful physical force or another form of force, 1998-2005



Source: CCRB Status Reports, January-December: 2002, p. 42; 2003, p. 46; 2004, p. 42; 2005, p. 44.

FIGURE 14 – Rate at which NYPD imposes no discipline in substantiated force and non-force CCRB cases, 1998-2004 (based upon year of referral to NYPD)



Source: 2004 is the last year for which complete data are available on disciplinary action. Data were compiled from NYPD case summaries of substantiated CCRB complaints published in CCRB Status Reports, January-December: 2002, Table 52; 2003, Table 49B; 2004, Table 48A; and 2005, Table 48A.

These data are instructive, and not only to analysts of the police department. Police officers have certainly learned that the odds of avoiding discipline are in their favor when it comes to the use of excessive force.

⁹⁷ CCRB Status Report, January-December 2005, p. 44.

⁹⁸ Ibid.

⁹⁹ Data were compiled from the NYPD cases summaries for substantiated CCRB complaints located in CCRB Status Reports, January-December: 2002, Table 52; 2003, Table 49B; 2004, Table 48A; and 2005, Table 48A.

When “zero tolerance” does not apply: NYPD discipline of police misconduct

The CCRB’s semi-annual reports include a summary of the police department’s disposition of substantiated misconduct cases – including a terse but evocative narrative of the facts in each case. These case summaries offer persuasive evidence that unlawful acts for which a civilian would be subject to serious criminal charges and, quite possibly, incarceration are a matter of the most minor consequence when committed by a police officer. Consider these examples from the CCRB’s status reports for the years 2003-2005.

FIGURE 15: Examples of police department discipline in substantiated CCRB cases that involve serious misconduct*

| SEQUENCE NUMBER | PRECINCT/COMMAND | SUBSTANTIATED ALLEGATIONS | NYPD DISPOSITION | NYPD CLOSURE DATE |
|-----------------|---|--|--------------------------|-------------------|
| 142 (2005) | 75 Precinct | Excessive Physical Force, Threat of Force, Refusal to Obtain Medical Treatment | Command Discipline ‘B’ | 11/28/05 |
| 137 (2005) | Brooklyn Narcotics North | Excessive Physical Force, Strip-Searched | Instructions | 10/28/05 |
| 125 (2005) | 113 Precinct | Questioned and/or Stopped, Premises Entered and/or Searched, Retaliatory Arrest | Instructions | 10/28/05 |
| 125 (2005) | 113 Precinct | Pepper Spray, Premises Entered and/or Searched | Instructions | 10/28/05 |
| 96 (2005) | 96 Precinct | Questioned and/or Stopped, Frisked and/or Searched, Threat of Force, Threat of Arrest | Command Discipline ‘B’ | 7/28/05 |
| 85 (2005) | 52 Precinct | Strip Searched, Vehicle Stopped, Vehicle Searched | Instructions | 10/28/05 |
| 75 (2005) | 101 Precinct | Questioned and/or Stopped, Frisked and/or Searched, Property Damaged, Retaliatory Summons | Instructions | 6/28/05 |
| 21 (2005) | Patrol Borough Brooklyn North Anti-Crime Unit | Excessive Physical Force, Frisk and/or Search, Vehicle Search, Threat of Arrest, Property Damage, Discourteous Word | Loss of 10 Vacation Days | 12/28/05 |
| 344 (2004) | 47 Precinct | Frisk and/or Search, Retaliatory Summons | Instructions | 10/28/05 |
| 294 (2004) | 44 Precinct | Excessive Physical Force, Questioned and/or Stopped, Refusal to Obtain Medical Treatment | Instructions | 1/28/05 |
| 290 (2004) | 34 Precinct | Hit Against Inanimate Object, Retaliatory Arrest | Command Discipline ‘A’ | 1/28/05 |
| 239 (2004) | 48 Precinct | Pepper Spray, Refusal to Obtain Medical Treatment | Instructions | 8/28/05 |
| 225 (2004) | 67 Precinct | Excessive Physical Force, Questioned and/or Stopped, Frisked and/or Searched, Refusal to Give Name or Shield Number, Discourteous Word | Loss of 10 Vacation Days | 9/28/05 |
| 31 (2003) | 47 Precinct | Premises Entered and/or Searched; Threat of Arrest; Threat of Force. Discourteous Word. | Instructions | 10/31/03 |
| 40 (2003) | 77 Precinct | Excessive Physical Force, Questioned and/or Stopped, Frisked and/or Searched, Retaliatory Summons. | Command Discipline ‘A’ | 1/31/04 |
| 68 (2003) | 84 Precinct | Excessive Physical Force, Discourteous Word. | Command Discipline ‘B’ | 12/31/03 |

* Command Discipline may involve the loss of up to five vacation days (Command Discipline A); up to ten vacation days (Command Discipline B); or a verbal admonishment without the loss of any vacation time.

The disciplinary double standard is striking: the chances of facing discipline are reduced by almost 70 percent when excessive force is involved, as compared with other forms of misconduct. The lesson is this: the department is soft on the unjustified use of force. In other words, “Don’t sweat the serious stuff.”

These findings only corroborate what has been well documented elsewhere: that the NYPD infrequently disciplines serious misconduct, such as acts of brutality, directed at civilians. Virtually every analysis of police misconduct in New York City has concurred in this finding. A study by Human Rights Watch has documented “cycles of scandal” that have exposed widespread corruption and brutality among members of the New York City police force.¹⁰⁰ The study also found that these police officers were rarely held accountable by the NYPD, even when a jury had awarded millions of dollars in damages to the victims of rogue cops.¹⁰¹ The Mollen Commission report found that tolerance of brutality existed deep within the culture of the NYPD and that supervisors exhibited a “willful blindness” to police officers’ use of excessive force.¹⁰²

A report published by the New York City Public Advocate’s Office in 2000 concluded that police officers’ use of excessive force was no impediment to advancement within the NYPD.¹⁰³ The report included case examples in which police officers with records of substantiated complaints of excessive force had received promotions, or had been awarded medals and awards.¹⁰⁴

The data compiled in this section demonstrate that serious forms of police miscon-

Officer Forfeits Twenty Vacation Days for Repeatedly Slamming Handcuffed Man’s Head against Van

The following is paraphrased from the CCRB’s 2002 status report.

A civilian driving a van set out to make a left turn — and accidentally collided with an unmarked police vehicle. Two officers jumped out of the police car. One, a sergeant, approached the civilian driver, who remained seated inside his van. The sergeant banged his police radio on the van and cursed at the driver. “Get the fuck out of the van!” the sergeant yelled. “Are you fucking crazy? Did you want to kill me?”

The driver emerged from the van, and the sergeant searched, handcuffed, and arrested him. Then, although the man was already handcuffed and was neither resisting arrest nor refusing to comply with the officers’ instructions, the sergeant repeatedly slammed the man’s head against the van.

Five eyewitnesses observed the event; three of those individuals lodged separate complaints with the CCRB. The eyewitnesses gave consistent accounts of the officers’ abuses. But when a CCRB investigator approached the officers, they told a different story. The man, the officers said, had banged his own head against the van in an attempt to incite a riot.

Based on the consistency of the reports given by the eyewitnesses and the civilian driver, the CCRB determined on December 27, 2000, that the sergeant had committed misconduct by cursing at the man and using unnecessary force against him. The sergeant’s punishment — part of a negotiated plea to which the sergeant agreed in September 2002 — was the forfeiture of 20 vacation days.

¹⁰⁰ Human Rights Watch, *Shielded from Justice – Police Brutality and Accountability in the United States* (Human Rights Watch: New York, 1998), p. 271.

¹⁰¹ *Ibid.*, pp. 304-307.

¹⁰² Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, “Commission Report” (Hereafter, “Mollen Commission Report”), July 7, 1994, p. 49.

¹⁰³ Office of the New York City Public Advocate and The Accountability Project, *Disciplining Police: Solving the Problem of Police Misconduct*, July 27, 2000, pp. 62-69.

¹⁰⁴ *Ibid.*

duct directed at civilians – including use of excessive physical force – drop out of the oversight system in great numbers. The CCRB substantiates only about 5 of every 100 complaints filed. Of the 5 percent of complaints that are referred to the NYPD for disciplinary action, many involve dangerous and harmful forms of police misconduct. Few result in serious discipline. And even when police officers are found guilty following an administrative trial, the punishment is often shockingly disproportionate in its leniency given the severity of the misconduct. (See Figure 12 and sidebar: “When ‘Zero Tolerance’ Does Not Apply”) ■

III. Gaming the System: How the NYPD Subverts Civilian Oversight

In November 1992 members of the City Council cast their votes to establish an independent CCRB. That legislative enactment owes its existence to an extraordinary collective act of misconduct by thousands of police officers who had gathered at City Hall to rally against the creation of an independent civilian agency charged with oversight of policing.

The police demonstration took place on September 16, the day preceding a hearing on the bill before the City Council’s Public Safety Committee. The “rally” quickly devolved into what more closely resembled a police riot.¹⁰⁵ Thousands of off-duty police officers, many clearly inebriated, stormed City Hall. They blocked traffic in the street, taunting drivers and passengers. The *New York Times* reported that the police protesters “swarmed through NYPD barricades . . . blocking traffic on the Brooklyn Bridge for nearly an hour.”¹⁰⁶ On the bridge the police officers assaulted several news reporters.¹⁰⁷ The officers’ shouts and chants, laced with racial invective, were directed at Mayor David Dinkins, the city’s first African-American mayor and a supporter of the legislation creating the independent civilian oversight agency.¹⁰⁸

On that day proponents of the CCRB legislation estimated they were six votes shy of the twenty-six needed to pass the bill and make the oversight agency an independent entity. However the media accounts of the police offi-

cers’ conduct at City Hall dramatically altered the political calculus overnight. The police had inadvertently provided the key legislative finding – police officers engaged in brazen lawlessness – that made independent civilian oversight of the NYPD politically tenable.

This history is instructive. It is not possible to understand the CCRB’s performance over the last thirteen years without understanding the political street fight precipitated by police officers on September 16, 1992. On display that day was defiant outrage at the very notion civilians have a role in reviewing the manner in which police offices exercise their authority. That the police department in recent years has been less overt in its opposition to civilian oversight does not mean that opposition has diminished.

This opposition is reflected in the police department’s delay in producing (or in refusing to produce) records and documents to the CCRB; and in the department’s failure to present police witnesses for CCRB interviews. This unwritten policy of non-cooperation is also reflected in the police department’s refusal to adopt reforms in police practices as recommended by the CCRB; in the dilatory pace at which the department reviews and adjudicates substantiated complaints; in the dismissal or non-prosecution of substantiated CCRB cases referred to an administrative trial; and in the many trials

¹⁰⁵ James McKinley, “Officers Rally and Dinkins is Their Target,” *New York Times*, September 17, 1992.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

that result in not-guilty findings at the hands of police department prosecutors and administrative trial judges.

The record indicates a pattern and practice of conduct on the part of police officials that has effectively neutralized the CCRB's role in holding police officers and the police department accountable for acts of misconduct directed at civilians. This record is analyzed below, beginning with an account of the CCRB's investigative operations from the perspective of the agency's investigators.

Investigators' perspectives

The NYCLU has, since the creation of the independent CCRB, issued eight reports and numerous letters and articles that address the operation of the city's civilian oversight system.

Investigators report that requests for police department records are routinely met with delays of many weeks – and often, months.

In monitoring the civilian review process, the NYCLU has analyzed the experiences and views of public officials, CCRB complainants, as well as investigators and persons who have served on the

agency's board. For the purpose of this report, the NYCLU conducted more formal interviews of former CCRB investigators.¹⁰⁹

The investigator's perspective is an important one. Effective investigation is critical to the success of a civilian oversight system. Absent a competent investigative unit that is capable of conducting rigorous and timely investigations,

the system must fail. The observations of investigators interviewed for this report bear directly on the viability of the CCRB. And on a number of issues the investigators were notably consistent. Following is a summary of their observations.

● Access to police department records

The key to efficient and thorough complaint investigation is timely access to police department records: roll calls, 911 reports, police radio transmissions, criminal history records, medical reports, photographs. CCRB administrators have repeatedly, over many years, objected that lack of timely access to police department records has seriously undermined complaint investigations. Two New York City comptrollers have documented the problem¹¹⁰ – which, nevertheless, persists.

Investigators report that requests for police department records are routinely met with delay. Such requests are passed through the police department's Internal Affairs Bureau (IAB). It can take many weeks – and often, months – for the police department to produce records. In the early stages of a complaint investigation – when records are needed to evaluate the complaint and identify the subject officer and possible witnesses – delay can be fatal. Delay occurs at each stage of the investigation.¹¹¹

In 2002 the police department provided the CCRB with direct access to certain police department databases. But protracted delay in obtaining access to police

¹⁰⁹ Between November 2003 and December 2006, the NYCLU conducted in-depth interviews with eleven CCRB investigators who were with the agency for a period of two to six years in the period 1996-2006. Each was asked to address the same set of issues related to the CCRB's operations: overall effectiveness, quality of investigations, access to NYPD records, interaction with police department's Internal Affairs Bureau, supervision and training. Most of the interviews were conducted in person, with follow-up telephone interviews for purposes of clarifying comments made during the in-person interviews. The investigators came to the attention of NYCLU staff through informal introductions that occurred in the course of the organization's work. There was no formal procedure undertaken to solicit interviews with CCRB investigators.

¹¹⁰ A 1998 audit of the CCRB conducted by the New York City Comptroller quoted the CCRB's Deputy Executive Director for Investigations saying that it "generally takes 2-3 months minimum" for the police department to produce records

necessary to complete a CCRB investigation, adding that that this was "'without a doubt' the biggest obstacle that the CCRB faced" in completing timely investigations." (Alan G. Hevesi, Comptroller of the City of New York, *Audit Report on Case Management Policies and Procedures of the Civilian Complaint Review Board*, June 25, 1998, pp. 57-58) A follow-up audit, published in 2002, found that "limited access to police department information" was "a major factor" contributing to the delay in its timely completion of CCRB investigations. (William C. Thompson, Comptroller of the City of New York, *Follow-up Audit Report on Case Management Policies and Procedures of the Civilian Complaint Review Board*, May 21, 2002, pp. 21-22)

¹¹¹ In 1997 Mayor Rudolph Giuliani issued an executive order directing the police commissioner and the CCRB to establish standards for the "timely processing and resolution of civilian complaints and the sharing of necessary information between the agencies." The directive, which is reprinted in every CCRB annual status report, has done little to address the CCRB's lack of timely access to police department records. See Appendix C: Executive Order No. 40, October 21, 1997.

records is still the norm. Electronic records available to investigators must be requested from two police employees who operate computer terminals at the CCRB's offices. The CCRB's nearly 150 investigators must submit a written records request to the gatekeepers, who then conduct a computer search. This burdensome procedure undermines both the efficiency and rigor of investigations. (One investigator interviewed stated that the incremental improvement in efficiency may be outweighed by the loss of quality control in the execution of the records search.)

What's more, most records that are relevant and necessary to CCRB investigations are not computerized – approximately 80 percent, according to investigators. It is requests for these records that are subject to the NYPD's delay-and-deny tactics, which hobble the CCRB's investigative operation. As a consequence witnesses disappear; memories fade. Complainants withdraw in frustration. The investigation of serious misconduct runs up against the eighteen-month statute of limitations, which results in the premature curtailment of the CCRB investigation.¹¹² Delay, however, works to the advantage of the police officer who is the subject of a complaint. And, according to CCRB investigators, IAB employees are masters at running the clock.

● Conflict with Internal Affairs investigations

The IAB undertakes investigations concurrent with the CCRB's investigation into complaints involving excessive force, and into certain complaints that allege abuse of authority. CCRB investigators report that the IAB may withhold records during the pendency of the IAB investigation. (The CCRB, however, will not close an investigation until the IAB has completed its investigation and turned over its file.) This practice can, and often does, put the

CCRB's investigation in jeopardy because of the time constraints created by the statute of limitations. CCRB investigators view the inaccessibility of records under these circumstances as an obstruction of the agency's investigations. The CCRB's investigators do not reciprocate. At any time IAB investigators can subpoena the complete investigative file in a complaint pending before the CCRB; the agency complies.

The CCRB investigators also charge that there is often a correlation between the seriousness of the charges alleged and the police department's level of resistance to the production of records. The more serious the complaint, the greater the resistance to releasing records. As to the quality of the IAB investigations, the CCRB investigators interviewed were consistent in the view that the police department's investigations are superficial and, in many instances, reflect a bias in favor of the accused police officer. The investigators cited IAB officials' use of leading interview questions to elicit answers that justified the alleged misconduct; failure to contact witnesses who could corroborate complainants' allegations; and key records left unexamined.

● Police department's failure to cooperate with CCRB investigations

The CCRB's investigators interview police officers daily at the agency's offices. The interrogation of police officers named in a complaint, and of police officer witnesses, is critical to an effective investigation. And yet the CCRB's investigators report that on any given day almost half of all police officers scheduled for an interview fail to appear. The CCRB schedules many interviews each day, based upon police officers' and investigators' availability, and upon the availability of interview rooms.

¹¹² The New York Civil Service Law, Section 74(4) states that "... no removal or disciplinary proceedings shall be commenced more than eighteen months after the occurrence of the alleged incompetence or misconduct complained of ..."

A cancelled interview must be rescheduled for the next available opening in the schedule; and it is not uncommon for a police officer to cancel and reschedule interviews repeatedly. The inability to interview police officers in a timely manner further compromises investigators' ability to conduct a thorough investigation within a time frame that permits subsequent review and disciplinary action before the statute of limitations expires.

Investigators perceive police officers' failure to appear as another manifestation of the department's contempt for the civilian oversight agency and its staff. This contempt, investigators say, is manifest in other ways as well: open hostility to investigators conducting an interview and overly aggressive and sometimes disruptive advocacy by members of the Patrolmen's Benevolent Association, who are typically present when police officers are interviewed by CCRB investigators.

● Standard of proof

The Rules of the CCRB state that in order to substantiate a police-misconduct complaint, the CCRB's investigative record must demonstrate that the alleged misconduct occurred based upon a preponderance of the evidence.¹¹³ Under this standard, the burden of proof requires a showing that the alleged misconduct occurred based on 51 percent of the evidence. (Put another way: the weight of the evidence makes it more likely than not that the misconduct occurred.) CCRB investigators assert that civilian complainants are held to a higher standard, one that requires a showing, at a minimum, of clear and convincing evidence that the alleged misconduct occurred. According to one investigator, "the burden of proof is 80 percent, not 51 percent."

The investigators contend that the police department's Deputy Commissioner of Trials applies this heightened standard in adjudicating substantiated CCRB complaints. This standard, based on a burden of proof that is greater than a preponderance of the evidence, has been adopted by the CCRB, say the investigators. And, as a consequence, the prosecution of police officers accused of misconduct is subject to a more rigorous burden of proof than the law prescribes.¹¹⁴

If these observations are accurate, an erroneous legal standard has been incorporated into the procedures by which allegations of police misconduct are investigated, reviewed and judged. And if so, the city's civilian oversight system is critically compromised. An inquiry into this issue would require an independent investigation of the police department's trial records, as well as the reasoning reflected in the rulings of the department's administrative trial judges. Absent this inquiry, the credibility of the civilian oversight system remains suspect.

Operation Blue Wall

The police department has demonstrated repeatedly that it has little tolerance for independent, objective investigation of alleged misconduct or corruption by police officers. When faced with a probing investigation by an external entity, the department simply pre-empts the inquiry.

In the late 1990s the police department began "reinvestigating" substantiated complaints on grounds that CCRB investigations had not been conducted in a competent manner. A study by New York City Public Advocate Mark Green found that the police department had been rejecting the CCRB's findings without any "reinvestigation."¹¹⁵

¹¹³ Rules of the Civilian Complaint Review Board, Title 38A, Ch. 1, Subchapter D, §1-33(b).

¹¹⁴ See below: "Incompetence in the NYPD trial room." A CCRB status report indicates that the Deputy Commissioner of Trials employs a heightened standard of proof when ruling on CCRB cases and that this explains the CCRB's

low rate of substantiating complaints that include allegations of excessive force. (CCRB Status Report, January-December 2004, p. 30)

¹¹⁵ Office of the New York City Public Advocate and The Accountability Project, *Disciplining Police: Solving the Problem of Police Misconduct*, July 27, 2000, p. 23.

In 1997, as the CCRB began to expand its investigative staff, the police department announced it would no longer refer to the CCRB persons who attempted to lodge a complaint with the police department. Instead Police Chief Charles Campisi, then-commander of the Internal Affairs Bureau, issued a directive that police employees would refer the complaint, not the complainant – in other words, the police were instructed to take the

When faced with a probing investigation by an external entity, the department simply preempts the inquiry.

complaint information and send it on to the CCRB. The objective of this policy was to “allow[] senior officers to . . . decide which [complaints] are serious enough to warrant a

police investigation.”¹¹⁶ There was no reason to accept this rationale at face value. It had been well documented that police officials actively discouraged and interfered with the filing of complaints by civilians at police precincts.¹¹⁷ There is good reason to believe that Chief Campisi’s directive facilitated that interference.

More recently the NYPD refused to cooperate with the CCRB’s investigations into allegations of police misconduct on the occasion of the Republican National Convention, which was held at Madison Square Garden in August of 2004. The arrests of some 1,800 political demonstrators became the subject of controversy and heightened public attention.

The police department announced it would bypass the CCRB and, instead, set up internal police department procedures for investigating these complaints.¹¹⁸ The CCRB proceeded with its investigations, but without the cooperation of the NYPD. Police officials refused to appear at the CCRB for interviews related to the investigations.¹¹⁹

The police department’s defiance of independent oversight is not limited to the investigation of matters that fall within the jurisdiction of the CCRB. The department has assumed the same posture toward investigations undertaken by the New York City Commission to Combat Police Corruption, which was established by Mayor Rudolph Giuliani in 1995. At a City Council hearing in April 2005 the chair of the Commission testified that the NYPD was withholding documents without which the Commission’s investigations could not proceed.¹²⁰ To declare in a public forum that the NYPD is undermining the investigation of wrongdoing by police is to jeopardize one’s political viability. It appears that Mr. Pomerantz was well aware of this. He resigned two weeks after presenting his testimony before the City Council’s Public Safety Committee.¹²¹

When police officials signal a policy of non-cooperation so clearly, there is no need for it to be entered in the NYPD’s Patrol Guide. There are CCRB data that indicate police officers understand and actively enforce this policy.

¹¹⁶ Michael Cooper, “New York Undercounted Civilian Complaints About Police,” *New York Times*, December 11, 1997, pp. B1, B2.

¹¹⁷ The 1994 Mollen Commission Report included testimony that told of what could be expected when filing a police misconduct complaint at a police precinct:

The [Desk Officer] would give [the complainant] the paperwork to fill out. Then [the complainant] would ask him for a pen. [The Desk Officer] would tell [him], ‘Listen, there’s a bodega across the street, go there and buy it. I’m not helping you.’ [...]

Then if the [complainant] went through all the aggravation to fill out the complaint report . . . they’d tell [him], ‘Listen, we have to get it typed now. There’s a waiting line for the typing. It’s going to be about three hours, so sit right there and wait.’ Half the time [...] people would [...] leave. As soon as they left, [the Desk Officer] would crumple [the complaint] up and throw it right in the garbage.” (Mollen Commission Report, p. 59)

In August of 1998, not long after the police department’s new complaint-intake procedure was announced, the NBC Television news program *Dateline* aired a segment that depicted the very conduct described in the above testimony excerpted from the Mollen Commission Report. (NBC *Dateline*, Aug. 18, 1998)

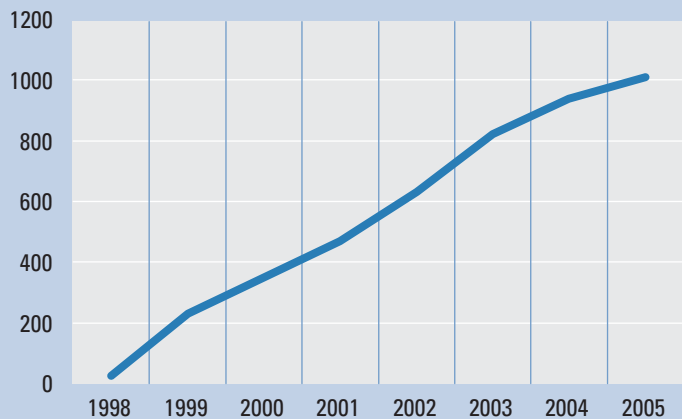
¹¹⁸ William K. Rashbaum, “Police Create Panel on Abuse Claims at Convention,” *New York Times*, November 5, 2004.

¹¹⁹ Michael Wilson, “Top Officers Are Said to Ignore Complaint Board’s Inquiry,” *New York Times*, September 15, 2005.

¹²⁰ William K. Rashbaum, “Panel Wants to Obtain Police Data by Subpoena,” *New York Times*, April 19, 2005.

¹²¹ William K. Rashbaum, “Police Corruption Panel is Losing its Chairman,” *New York Times*, April 22, 2005. Neille Itel, “NYPD Anti-Corruption Chair Quits; Blames Lack of Subpoena Power,” *Queens Chronicle*, April 28, 2005.

FIGURE 16 – CCRB allegations charging that police officer refused to provide name or shield number, 1998-2005



Source: CCRB Status Reports, January-December: 2002, p. 43; 2003, p. 47; 2004, p. 43; 2005, p. 45.

● Hiding behind the police badge

Between 2000 and 2002 there was an increase of 80 percent in the numbers of civilians who alleged a police officer refused to provide a name or shield number: 349 such allegations were made in 2000; 468 in 2001; and 631 in 2002.¹²² (See Figure 16.)

One of the first questions a CCRB investigator asks of a complainant to the CCRB is the identity of the police officer who is the subject of the complaint. Failure to make that identification can seriously impede a subsequent investigation. And this occurs frequently. In 2002 the CCRB issued a formal recommendation that the department clarify its requirement that police officers provide name or shield number upon request from a civilian. The police commissioner subsequently issued an interim order directing police officers to “clearly state name, rank, shield number and command, or otherwise provide them, to anyone who requests you to do so.”¹²³

It appears that little attention was given to the police commissioner’s directive. Between 2003 and 2005 the number of allegations charging that a police officer refused to identify himself nearly doubled relative to the preceding three years: 821 such complaints were filed in 2003; 937 in 2004; and 1,010 in 2005.¹²⁴ The police department has been silent regarding police officers’ non-compliance with the new rule.

● Covering up evidence of misconduct

Between 2000 and 2005, the CCRB substantiated 367 instances of police conduct that might have covered up possible wrongdoing, such as intentional false statements or failure to complete a “stop, question, and frisk report.”¹²⁵ The CCRB categorizes these police actions as “other misconduct.” This type of misconduct was discovered through the investigation of related allegations brought against the police officers named in the underlying complaint.

The CCRB’s data indicate that police frequently engage in conduct that may frustrate CCRB investigations. The agency reports one instance of “other” misconduct for approximately every five police officers against whom a complaint has been substantiated.¹²⁶

● Lying under oath

The CCRB is not the first to document police officers’ efforts to undermine investigations of possible misconduct. In its 1994 report the Mollen Commission observed that perjury is the most pervasive form of police misconduct.¹²⁷ However, based upon its response to the CCRB’s findings, the police department appears not to take the issue seriously. In 1996, acting on a recommendation of the Commission to Combat Police

¹²² See CCRB Status Reports, January-December: 2003, p. 47; 2004, p. 43; and 2005, p. 45.

¹²³ Interim Order of the NYPD Police Commissioner, Revision to Patrol Guide Procedures 203-09, “Public Contact – General,” June 27, 2003. The CCRB recommendation appeared in the January-December Status Report, pp. 34-35.

¹²⁴ See CCRB Status Reports, January-December: 2004, p. 43; and 2005, p. 45.

¹²⁵ CCRB Status Reports, January-December: 2004, p. 94; and 2005, p. 47.

¹²⁶ *Ibid.*; and CCRB Status Reports, January-December: 2004, pp. 88, 94; and 2005, pp. 90, 96.

¹²⁷ Mollen Commission Report, p. 36.

Corruption,¹²⁸ Police Commissioner Howard Safir issued an order directing that police officers who make a false statement in the course of a misconduct investigation would be terminated.¹²⁹ The policy was rarely enforced.¹³⁰

The CCRB subsequently substantiated false statements made by 134 police officers between 1999 and 2003.¹³¹ The CCRB has made no mention of a police officer being terminated for making a false statement. However, in its 2003 annual status report the agency notes that “the police commissioner has not notified the CCRB of the action it takes” with respect to willful false statements

When a civilian objects to a police officer’s conduct, or expresses an intention to file a complaint against the police officer, a retaliatory arrest or summons may follow.

unless the complaint has been substantiated based on an allegation other than the false statement.¹³² In other words, if a police officer’s falsehood is successful in preventing the substantiation of a complaint, the department seems to ignore it.

Retaliation

Police also use direct threats to deter civilians from filing a complaint with the CCRB. The CCRB has not analyzed this issue; however it appears, by way of reference, in the agency’s summary of substantiated allegations. When a civilian objects to a police officer’s conduct, or expresses an intention to file a complaint against the police officer,

a retaliatory arrest or summons may follow. The CCRB reports that between 2001 and 2005, civilians filed 1,171 allegations that charged police officers with this form of retaliation. Allegations of this nature filed in 2004-2005 increased by 47 percent relative to the preceding two-year period.¹³³

A police threat of retaliation for filing a misconduct complaint is a more common occurrence than indicated in the CCRB’s reporting. In 2000 the NYCLU conducted in-depth interviews with eighty-nine individuals who had filed complaints with the CCRB. There were many reports of intimidation by police officers; and several cases in which police threatened a complainant to withdraw a complaint.

At public hearings held in New York City, the United States Civil Rights Commission heard about an individual who entered a precinct to file a complaint and was thrown down a flight of stairs by a police captain. Another testified that after filing a police-misconduct complaint, a detective threatened him with arrest if he didn’t withdraw the complaint. He refused, and a police detective arrested the complainant and his wife.¹³⁴

The 2001 documentary film *Justifiable Homicide* depicts the police department’s hostility to CCRB’s investigations.¹³⁵ The documentary examines the police shooting of two men in a Bronx apartment. The shootings are the subject of a misconduct complaint that was filed with the CCRB. There is reason to believe the shooting victims had stumbled upon a criminal scam that involved police corruption. As CCRB investigators

¹²⁸ New York City Commission to Combat Police Corruption, *The New York City Police Department’s Disciplinary System: How the Department Disciplines its Members Who Make False Statements*, December 12, 1996, pp. 2, 11-12.

¹²⁹ New York Police Department Patrol Guide, Section 203-08. See Mark Green, New York City Public Advocate, *Disciplining Police: Solving the Problem of Police Misconduct*, July 2000, p. 32.

¹³⁰ See Dan Barry, Deborah Sontag, “New York Dismisses Police, but Rarely for Brutality,” *New York Times*, October 6, 1997. (Police Commissioner Safir announced the dismissal of eighteen officers for making false statements; police department documents showed that few were dismissed for that offense alone; those who were dismissed also faced other charges.)

¹³¹ CCRB Status Reports, January-December: 2003, p. 106; 2004, p. 94; and 2005, p. 96.

¹³² CCRB Status Report, January-December 2003, p. 34.

¹³³ CCRB Status Report, January-December 2005, p. 45.

¹³⁴ United States Commission on Civil Rights, *Police Practices and Civil Rights in New York City*, August 2000. The Vera Institute relates an incident in which an individual filed but subsequently withdrew a police-misconduct complaint. He was called at home by the police officer who was the subject of the complaint. “You’re a dead mother fucker,” he said to the complainant. Michele Sviridoff and Jerome E. McElroy, *Processing Complaints against Police: The Complainant’s Perspective* (Vera Institute, 1989), p. 77.

¹³⁵ *Justifiable Homicide*, directed by Jon Osman and Jonathan Stack, Reality Films, 2002.

conduct an investigation in the apartment that was the scene of the shooting, an extraordinary show of police force assembles outside the apartment building.

There, New York City police officers, including a detective, shout threats at CCRB investigators inside the apartment. The taunts of the NYPD officials can be heard by the investigators who are literally uncovering forensic evidence (concealed by a hasty renovation of the apartment) that suggests the facts of this shooting depart in important respects from the version of events provided to a grand jury. The CCRB investigators turn a video camera on the police officers, who, upon realizing they are under surveillance, quickly turn their backs and exit the scene.

The scene is emblematic of New York City's civilian oversight system. What is extraordinary is not the blatancy of the police officials' attempts to intimidate CCRB investigators, but that the strong-arm tactics were caught on film.

Incompetence in the NYPD trial room

The barriers a civilian faces in seeking to hold a police officer accountable for misconduct do not disappear once the CCRB substantiates the complaint. It is then referred to the police department for disciplinary action. And, particularly if the complaint alleges a more serious form of misconduct, such as excessive force or false arrest, the complainant's ordeal has only begun.

In these cases the CCRB recommends that the police department file charges and specifications against the police officer who is the subject of the complaint. If the police department accepts the CCRB's recommendation, the case is referred to the Department Advocate's Office

(DAO) for prosecution. Departmental trials are administered by the office of the Deputy Commissioner of Trials. A report published in 2000 by the Commission to Combat Police Corruption determined that the NYPD's prosecution of disciplinary cases failed to meet minimum standards of professionalism and competence.¹³⁶ The Commission concluded that DAO personnel did little or nothing to prepare cases for trial.¹³⁷

In 2004 the Commission published an update of its earlier study.¹³⁸ Little had changed. Advocates were failing to subpoena records necessary to prove a case at trial; to contact witnesses; to develop evidence beyond that pre-

A report published in 2000 by the Commission to Combat Police Corruption determined that the NYPD's prosecution of disciplinary cases failed to meet minimum standards of professionalism and competence. A 2004 update of the study found that little had changed.

sented in the initial investigation.¹³⁹ The report also found that training and supervision were inadequate and that the police department's prosecutors lacked legal qualifications and basic trial skills.¹⁴⁰ What's more, the Commission found extensive delays in the adjudication of CCRB cases, 50 percent of which were open at the police department for more than sixteen months.¹⁴¹

These findings are reflected in the police department's disposition of CCRB cases that were referred to trial between 1997 and 1999. (Since 2001 nearly all police officers subject to charges for CCRB complaints have had their cases adjudicated by the police department.¹⁴²)

¹³⁶ See generally, New York City Commission to Combat Police Corruption, *New York Police Department's Prosecution of Disciplinary Cases* (July 2000).

¹³⁷ *Ibid.*, pp. 46-89.

¹³⁸ New York City Commission to Combat Police Corruption, *Follow-up to the Prosecution Study of the Commission*, March 2004, p. 60.

¹³⁹ *Ibid.*, p. 15.

¹⁴⁰ *Ibid.*, pp. 11-12, 14, 32, 33.

¹⁴¹ *Ibid.*, p. 64.

¹⁴² This is a consequence of litigation that resulted in an order prohibiting the Office of Administrative Trials and Hearings from conducting hearings in all police misconduct cases. (*Lynch v. Giuliani*, 301 A.D.2d 351 (1st Dept. 2003))

Officer Falsifies 911 Calls to Justify Illegal Stops, Frisks, and Searches

The following is paraphrased from the CCRB's 2004 status report.

On an October night in 2000, an anonymous caller reported to 911 that he had seen a man in a red jacket with a gun. The man, the caller said, had entered a barbershop in the Bronx where drugs are sold.

The police responded quickly. Soon after the call, a man standing near the barbershop was approached by a uniformed officer and his partner. The officer frisked the man and searched his pockets. Upon finding no gun, the officer demanded that the man get off the block, threatening to issue him a summons if he did not leave immediately.

Three nights later, 911 received another report from an anonymous caller. The caller said that while driving in that same area of the Bronx he had seen a black man flash a gun. Within a few minutes, the same uniformed officer responded to the call by stopping, frisking, and searching the same individual the police officer had stopped three days earlier.

The uniformed officer had not filed a stop-and-frisk report about the first stop. But he did file a report about the second stop, stating that he had stopped, frisked, and searched the man in response to the 911 call.

Within an hour of the second incident, the man who had been twice stopped, frisked, and searched called the Internal Affairs Bureau to complain. The IAB referred the complaint to the CCRB. An investigator interviewed the man and then the officer who had stopped him. The officer told the CCRB that the complainant was a drug dealer stationed on the block where the barber shop was located, and that he had stopped him only in response to 911 calls.

The investigator sought records of both 911 calls. Upon listening to the recording of the second call, the investigator recognized the caller's voice. The anonymous caller had been the responding officer himself. In fact – according to records that the investigator then obtained by subpoena from cellular phone providers and building

managers – the officer had been calling 911 frequently from two cell phones registered in his wife's name. The officer had placed sixteen calls to 911 between April 2000 and May 2001 – including both calls about the man he had stopped on the block with the barbershop.

Falsely reporting a crime is a criminal offense. The CCRB referred the case to the Bronx District Attorney's office, which investigated the case but declined to prosecute. The CCRB concluded that the officer had unlawfully stopped, frisked, and searched the complainant; had made a false 911 call; had falsified police records; and had made a false official statement to the CCRB.

In Fall 2003 the officer pleaded guilty to disciplinary charges that he made false 911 calls, falsified a stop and frisk report, and without proper legal justification stopped, frisked, and searched the complainant on both dates. As punishment he received a forty-five-day suspension without pay and was placed on probation for one year.

In this period police department hearing officers dismissed 43.8 percent of CCRB cases and issued guilty findings in 24 percent of CCRB cases. In the same time period the New York City Office of Administrative Trials and Hearings dismissed only 9.4 percent of CCRB cases, and issued guilty findings in 61.5 percent of CCRB cases.¹⁴³ (See Appendix C, Table 6.)

This analysis completes the picture of the city's oversight of policing: the CCRB conducts thorough investigations that lead to a

finding on the merits in relatively few complaints involving serious misconduct; those that are substantiated are prosecuted by a police department unit that is less than competent. The Commission's findings constitute a serious indictment of the police department's prosecution unit.

The failings of the department's adjudication of CCRB cases, however, may be even greater than they appear. The CCRB has suggested in a 2004 status report that the office of the

¹⁴³ The Commission to Combat Police Corruption has also published data that appear to support the view that bias, incompetence, or both, enter into the adjudication of CCRB complaints in the police department's trial room. In its 2004 report the Commission found that the police department's prosecution of non-

CCRB cases resulted in a guilty finding in 63.9 percent of cases; whereas the department's prosecution of CCRB cases led to a guilty finding in 36.9 percent of those cases. (New York City Commission to Combat Police Corruption, *Follow-up to the Prosecution Study of the Commission*, March 2004, pp. 11-12)

Deputy of Commissioner of Trials employs a heightened standard of proof when ruling in CCRB cases, particularly in cases involving a police officer’s use of force.¹⁴⁴ The status report states that, “administrative tribunals have continually set a stringent standard when considering whether force by a police officer constitutes misconduct.”¹⁴⁵ The CCRB report adds that the agency applies this “stringent” standard in the investigation and review of complaints – and that this explains, in part, the low rate at which excessive force complaints are substantiated.¹⁴⁶

In publishing these comments, the CCRB indicates that hearing officers in the police department’s trial room require more than a preponderance of the evidence, the appropriate legal standard, to prove an allegation of police misconduct. The published comments also make clear that the CCRB has adopted this heightened standard of proof in conducting its investigation and review of police misconduct complaints.

In its 2004 report on the police department’s trial room, the Commission to Combat Police Corruption seems to confirm that the NYPD requires a greater showing of proof to find a police officer guilty of misconduct than would be the case in a CCRB investigation. In criticizing police prosecutors’ failure to develop evidence beyond what had been provided by CCRB investigators, the Commission’s report expressed concern that the failure to develop a strong evidentiary record would undermine prosecutions “because evidence which is sufficient for [a CCRB] investigator to close an investigation may, at times, be insufficient to legally sustain charges due to the higher burden of proof in the Trial Room.”¹⁴⁷

Even if CCRB investigations and police department prosecutions were executed expertly – which is clearly not the case – the entire undertaking would be fatally

compromised if predicated upon an improperly heightened evidentiary standard that is subject to selective application. If that is the case, the city’s oversight system is not merely fundamentally flawed; the system is inherently irrational. ■

¹⁴⁴ CCRB Status Report, January-December 2004, p. 30.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ New York City Commission to Combat Police Corruption, *Follow-up to the Prosecution Study of the Commission*, March 2004, p. 60.

IV. Extraordinary Deference to the NYPD

In 1993 the NYCLU conducted a study of police oversight agencies in seven United States cities.¹⁴⁸ The published report, which analyzed the implementation of local legislation mandating civilian oversight of policing, was informed by interviews with agency administrators, law enforcement officials, civil rights lawyers and police professionals. Of the insights offered in these interviews, one was particularly prescient in anticipating the future of an independent all-civilian police oversight board in New York City. Speaking of the myr-

CCRB deference to the NYPD is often cloaked in the rhetoric of cooperation. But there is no mistaking what is going on: capitulation, within the universe of municipal governance, to a superior force.

riad obstacles to effective implementation of a civilian review system, Alfreda Davis Porter, director at the time of San Francisco’s Office of Citizen Complaints, observed that it would take a decade for such an agency to achieve operational competence.¹⁴⁹

Ms. Porter’s forecast was corroborated by the NYCLU’s report, which related a strikingly familiar narrative about the effort to create a civilian review agency. In each city studied an under-funded and under-resourced review board was caught in a political power play that shaped up as a mismatch. The police unions opposed every effort of the oversight entity to exercise its statutory authority. Police officials refused to cooperate with civilian investigators; delayed the production of docu-

ments and records; and challenged the validity of police misconduct complaints that had been substantiated by the civilian agency.

In the face of overwhelming resistance from police officials and elected officials allied with the police, the administrators of the civilian oversight agency deferred. In the words of one authority on police accountability, “Civilian officials are sometimes reluctant to become advocates for the oversight process.”¹⁵⁰ This reluctance is sometimes cloaked in the rhetoric of cooperation. But there is no mistaking what is going on: capitulation, within the universe of municipal governance, to a superior force.

This is what has transpired between the CCRB and the police department in New York City. Alfreda Davis

Porter was essentially correct as regards the obstacles to establishing a competent oversight agency. Her prediction underestimated, however, the extent to which those negative influences have compromised the civilian oversight mission in New York City.

Condoning flawed and dangerous police practices

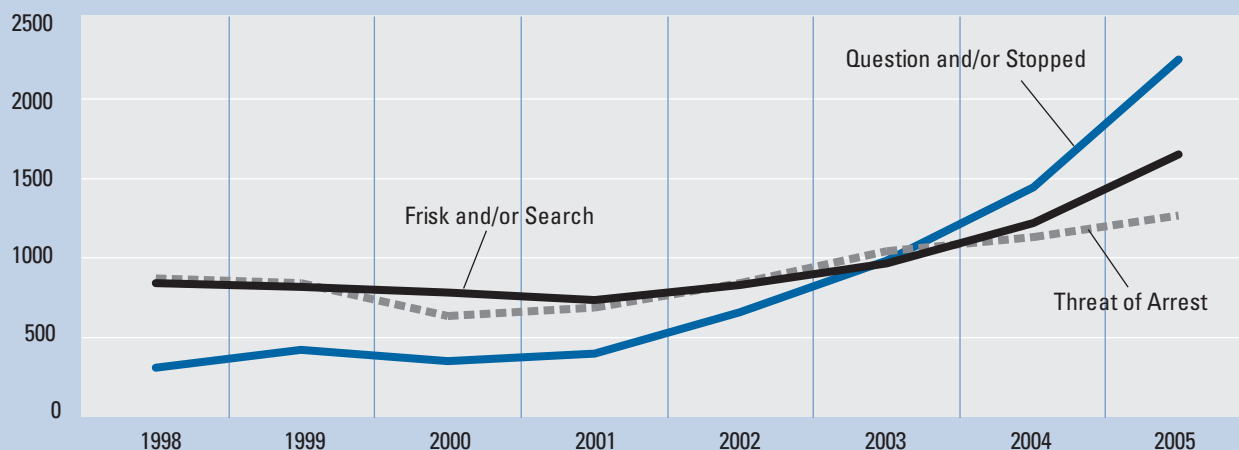
In the opening pages of its biannual status reports the CCRB publishes a statement of its “mission and values.” The statement pledges the agency to report to the police commissioner regarding patterns of police misconduct as well as policy matters related to the investigation and review of misconduct complaints. Professor Samuel Walker writes that “policy review is the

¹⁴⁸ New York Civil Liberties Union Foundation, *Civilian Review of Policing: A Case Study Report*, January 1993.

¹⁴⁹ *Ibid.*, p. 63.

¹⁵⁰ *Ibid.*, p. 64. The comment was made by John Crew, who was the director of the Police Practices Project of the ACLU of Northern California at the time the NYCLU published its 1993 case study report.

FIGURE 17 – Allegations of question and/or stop; frisk and/or search; and threat of arrest, 1998-2005



Source: CCRB Status Reports, January-December: 2002, p. 43; 2003, p. 47; 2004, p. 43; 2005, p. 45.

one [oversight activity] most likely to produce organizational change and thereby achieve long-term improvement in policing.”¹⁵¹

The CCRB has not demonstrated much conviction in pursuit of this aspect of its mission. At its worst, the agency has actively ignored or chosen not to report patterns of police misconduct. In more than one instance the CCRB documented a pattern of misconduct allegations and forwarded a policy recommendation to the police commissioner – but then did little to hold the commissioner accountable for not acting on the recommendation. The consequences of this nonfeasance can be grim.

In his letter to the public that introduced the CCRB’s 2004 status report, board chairman Hector Gonzalez stated that in May of that year the agency asked the police department to “enhance its training of officers regarding . . . strip search procedures.”¹⁵² (In 2002 New York City paid \$50 million in damages to settle a lawsuit related to police officers’ execution of unlawful strip searches.¹⁵³) “The Police Commissioner,” Mr. Gonzalez adds, “has acted

on the recommendation.”¹⁵⁴ Later in the report the CCRB explains what the police commissioner’s action consisted of. The police department had “issued a statement that it was developing a police training videotape . . . on proper strip search procedures.”¹⁵⁵

Five months later, in October of 2004, the department issued “a directive” on these procedures. As of February 2005, however, the department had not yet completed the training video.¹⁵⁶ And in its 2005 annual status report the CCRB reported that the police department had “not completed the training video or altered its training procedures” regarding strip searches.¹⁵⁷ This same report included new data on strip-search complaints – 248 individuals charged they had been subjected to an unlawful strip search in 2005, an increase of 77 percent as compared with the number of such complaints filed in 2003.¹⁵⁸ As of December 2006 the NYPD had not produced the training video.¹⁵⁹

Following are three case examples in which patterns of misconduct indicate the need for

¹⁵¹ Samuel Walker, *Police Accountability: The Role of Civilian Oversight* (Belmont: Wadsworth, 2001), p. 93.

¹⁵² CCRB Status Report, January-December 2004, p. xv.

¹⁵³ *Tyson v. City of New York*, No. 97 Civ. 3762 (S.D.N.Y. Dec. 2000). See William C. Thompson, Comptroller of the City of New York, *Claims Report: Fiscal Year 2001-2002*, p. 27, July 2003.

¹⁵⁴ CCRB Status Report, January-December 2004, p. xv.

¹⁵⁵ *Ibid.*, p. 2.

¹⁵⁶ *Ibid.*

¹⁵⁷ CCRB Status Report, January-December 2005, p. 2.

¹⁵⁸ CCRB Status Report, January-December 2005, p. 45.

¹⁵⁹ On April 10, 2007, Police Commissioner Kelly announced that the training video on proper strip-search procedure had been produced. (Letter from Police Commissioner Raymond Kelly to Franklin H. Stone, Chairperson, Civilian Complaint Review Board, April 10, 2007)

reform of policing practices. In these examples the CCRB is silent, or it is silenced. Patterns of misconduct are ignored. When this occurs, the danger to individual liberty and public safety can be especially great.

● Racial profiling

In a televised debate among the candidates seeking the Democratic Party’s nomination for mayor in 2005, Manhattan Borough President C. Virginia Fields decried the “number of young people who are rounded up every night, taken into central booking for things that they might not have even been involved with. . . . Young people out there in those communities – I cannot go to one community, especially black or Latino communities, without those complaints being made.”¹⁶⁰

The complaints made to the borough president on the campaign trail are consistent with those filed with the CCRB. The pattern is longstanding. Over the last decade nearly 80 percent of complaints to the CCRB have been filed by persons of color. African Americans have filed approximately 50 percent of all police misconduct complaints; Latinos filed approximately 24 percent of CCRB complaints during this period.¹⁶¹ (In this timeframe, African Americans and Latinos represented approximately 25 percent and 23 percent, respectively, of the New York City population.)

That race and ethnicity are factors that enter inappropriately and unlawfully into New York City police practices is irrefutable. A 1999 study by the Office of New York State’s Attorney General offered compelling evidence that as com-

pared with whites, African Americans and Latinos were disproportionately stopped and frisked by the police – and that the disparity existed even when statistics were adjusted for race-specific crime rates and the racial make-up of communities.¹⁶²

The CCRB has contributed to an understanding of the phenomenon of racial profiling. In a 2001 report the CCRB found that African Americans filed nearly six times the number of street-stop complaints filed by whites.¹⁶³ The report also found that, as compared with whites, African Americans were approximately twelve times more likely to have been stopped by an officer using physical force, and approximately forty times more likely to have been stopped by an officer using a gun.¹⁶⁴ The CCRB was almost twice as likely to substantiate complaints related to street stops

Street stop complaints filed by African Americans and Latinos were more likely to be substantiated, and less likely to be exonerated or unfounded, than street stop complaints filed by whites.

as it was to substantiate other types of complaints,¹⁶⁵ and street stop complaints filed by African Americans and Latinos were more likely to be

substantiated, and less likely to be exonerated or unfounded, than street stop complaints filed by whites.¹⁶⁶

But since publishing that report, the CCRB has been virtually silent on the issue of race, ethnicity and police practices – even as the number of complaints alleging an unlawful stop and frisk, or search has spiked sharply.

¹⁶⁰ Patrick D. Healy, “Debate Clock Clips Answers, and Drama,” *New York Times*, Sept. 8, 2005, p. B5.

¹⁶¹ CCRB Status Reports, January-December: 1997, p. 76; 2000, Table 33; and 2005, p. 49.

¹⁶² Eliot Spitzer, Attorney General of the State of New York, *The New York City Police Department’s ‘Stop & Frisk’ Practices: A Report to the People of the State of New York from the Office of the Attorney General*, December 1, 1999. The study, which involved the analysis of 175,000 UF-250 forms – police are required to fill out this form after various “stop” encounters – found that across all crime categories blacks were stopped 23 percent more often than

whites, and that Latinos were stopped 39 percent more often than whites (p. x). In precincts in which blacks and Hispanics each represented less than 10 percent of the total population, individuals identified as belonging to these racial groups accounted for more than half of all police stops (p. viii).

¹⁶³ CCRB, *Street Stop Encounter Report: An Analysis of CCRB Complaints Resulting from the New York Police Department’s ‘Stop & Frisk’ Practices*, June 2001, p. 4.

¹⁶⁴ *Ibid.*, pp. 37-38.

¹⁶⁵ *Ibid.*, p. 22.

¹⁶⁶ *Ibid.*, p. 23.

(See Figure 17.) When the City Council introduced legislation to address the problem of racial profiling by the New York City Police Department, the CCRB's administrators and its board members were no-shows. At the hearing City Council Member Phil Reed asked aloud, in a rhetorical aside, about the CCRB's absence. In responding to his own question Mr. Reed stated that the CCRB's absence was due to opposition by the police department.¹⁶⁷

The demographics of police misconduct tell a story of complainants who are typically black and Latino alleging misconduct against police officers, more than 60 percent of whom are white.¹⁶⁸ The CCRB cannot adopt a practice of willful blindness to the ways in which race and ethnicity enter into police practices. To do so is to abandon the mission of civilian oversight.

● No-knock warrants

At 6:15 in the morning of May 16, 2003, members of the 25th Precinct's Street Narcotics Unit executed a "no knock" warrant at the Harlem apartment of Alberta Spruill, fifty-seven years old. The NYPD's standard procedure in executing such warrants was to detonate a concussion grenade upon breaking into the premises identified in the warrant. The warrant to break into Ms. Spruill's apartment had been issued, and executed, solely upon information provided by a confidential informant, a con-

victed drug dealer who had been arrested days before the raid.¹⁶⁹

It turned out that the informant's information was erroneous. Alberta Spruill, whom the police had handcuffed after breaking into her apartment, died as she was being taken to the hospital. The medical examiner attributed her death to fear and stress. The circumstances that led to the police raid of Alberta Spruill's apartment were not unusual. She became the fifth victim of a botched "no-knock" raid in little more than six months.¹⁷⁰

The police department had been executing no-knock raids routinely in drug-crime investigations. Police Commissioner Raymond Kelly testified before the City Council that of approximately 13,000 no-knock warrants executed in the two years preceding the Alberta Spruill incident, 10 percent may have been "bad."¹⁷¹ The department's own analysis established a riot of police errors in the Spruill incident, each mistake precipitated by a breach of basic police protocol – and in a number of instances, common sense.¹⁷²

CCRB administrators and investigators were well aware of the problem. Investigators had brought to the attention of the director and supervisors evidence of gross negligence in the procedures by which no-knock warrants were obtained and executed.¹⁷³ The CCRB received 150 complaints in 2002 that charged the police had abused their authority in executing search warrants.¹⁷⁴

¹⁶⁷ Robert A. Perry, an author of this report, was present at the City Council hearing, which was held on February 23, 2004. In a telephone interview Mr. Perry conducted with Mr. Reed on February 12, 2007, he said that the remarks attributed to him accurately reflected his thoughts regarding the CCRB and the police department, although he could not recall the specific comments he had made at the hearing.

¹⁶⁸ CCRB Status Report, January-December 2005, p. 50.

¹⁶⁹ William K. Rashbaum, "Report by Police Outlines Mistakes in Ill-Fated Raid," *New York Times*, May 31, 2003.

¹⁷⁰ Sean Gardiner and Daryl Kahn, "Raid Goes Bad," *Newsday*, May 17, 2003.

¹⁷¹ "Statement of Police Commissioner Raymond W. Kelly before the New York City Council Public Safety Committee," June 4, 2003. See also, Sean Gardiner, "Kelly Defends Warrant Policy, Denies Allegations of Racial Targeting," *Newsday*, June 5, 2003, p. A16.

¹⁷² NYPD, "Police Department's Examination of the Circumstances Surrounding the Death of Ms. Alberta Spruill Following the Enforcement of a Search

Warrant on May 16, 2003," May 30, 2003. Rocco Parascandola, "NYPD Says Mistakes, Lapses Led to Death in Harlem Raid," *Newsday*, May 31, 2003; William K. Rashbaum, "Report by Police Outlines Mistakes in Ill-Fated Raid," *New York Times*, May 31, 2003, p. A1.

¹⁷³ Graham Rayman, "Cops in the Clear: Ex-investigators: Board Policy Absolves Police in Bad Raids," *Newsday*, June 9, 2003. See also, "Testimony of William Aquino before the New York City Council Public Safety Committee," June 4, 2003 (on file with the NYCLU). William Aquino was an investigator with the Civilian Complaint Review Board from September 1998 to June 2002. Commissioner Kelly was also well aware of the problem with the execution of no-knock warrants long before the Spruill incident. See Leonard Levitt, "Kelly's Take on the Truth," *Newsday*, June 2, 2003, p. A2.

¹⁷⁴ Graham Rayman, "Cops in the Clear: Ex-investigators: Board Policy Absolves Police in Bad Raids," *Newsday*, June 9, 2003, pp. A3, A13. The CCRB was not publicly reporting allegations related to search warrant executions at the time the article was written.

In January of 2003, some four months prior to Alberta Spruill’s death, the CCRB issued a letter to the police commissioner recommending that the department develop a database to “track . . . search warrant executions.”¹⁷⁵ The letter was not made public; its subject matter did not appear on the agenda of the CCRB’s monthly public meetings. Had the matter become public on either occasion, the attention might have led to a change in the police practices that caused the demise of Alberta Spruill. A CCRB board member conceded as much, commenting anonymously to a news reporter: “[w]here we may have dropped the ball is that we were so concerned about individual cases that we haven’t been on top of issues where we perceived a trend There was a problem and it existed for a while.”¹⁷⁶

In light of what was known regarding the department’s execution of no-knock warrants, Florence Finkle, the CCRB’s executive director, offered a legalistic defense of its failure to act in a more timely manner, or to make public what it knew about the police department’s execution of search warrants. The agency, she demurred, could not and should not question the validity of a court-ordered warrant.¹⁷⁷ The CCRB, she explained, did not publicly disclose its letter to the police commissioner because the agency’s recommendations were “more likely to be implemented if we [worked] cooperatively with the police department.”¹⁷⁸

The implication is clear: for the CCRB to state publicly that police department practices may constitute an undue risk to public safety would be to engage in conduct that is uncooperative – and therefore may well lead to the police department’s dismissing the public safety concerns.

As framed by Ms. Finkle, this situation created a conundrum for an oversight agency. But she misstated the problem. Misguided deference to the NYPD, rationalized as cooperation, undermines aggressive investigation of alleged misconduct and promotes the bureaucratic cover-up of bad policing.

● Policing public demonstrations

Policing of public demonstrations has been a source of recurring conflict and litigation in New York City. In recent years the policing of political protest activity has led many hundreds to the CCRB with complaints of police misconduct. Nevertheless, CCRB monitors have been nowhere to be seen at these events, and the oversight agency has been reluctant to address the NYPD’s policing of protected First Amendment activity.

In recent years the policing of political protest activity has led many hundreds to the CCRB with complaints of police misconduct. Nevertheless, CCRB monitors have been nowhere to be seen at public demonstrations.

Familiar and predictable tensions flared at the massive peace demonstration on the eve of the Iraq War. On that day, February 15, 2003, police tactics were particularly heavy handed: unjustified use of physical force against peaceful demonstrators; reckless use of horses as a crowd-control tactic; unwarranted use of pepper spray.¹⁷⁹ Many were falsely arrested and, subsequent to arrest, were denied access to legal counsel as the police queried arrestees about their past political activities. Conflict between police and demonstrators led to hundreds of CCRB complaints and hun-

¹⁷⁵ CCRB Status Report, January-December 2003, p. xviii. Letter from CCRB Executive Director Florence Finkle to Police Commissioner Raymond Kelly, January 2003, (on file with the NYCLU).

¹⁷⁶ Graham Rayman, “Cops in the Clear: Ex-investigators: Board Policy Absolves Police in Bad Raids,” *Newsday*, June 9, 2003, pp. A3, A13.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ See New York Civil Liberties Union Foundation, *Arresting Protest: A Special Report of the New York Civil Liberties Union on New York City’s Protest Policies at the February 15, 2003 Antiwar Demonstration in New York City*, April, 2003. See also, Robert D. McFadden, “Threat and Responses: Overview; From New York to Melbourne, Cries for Peace,” *New York Times*, Feb. 16, 2003.

dreds more lawsuits – still, no examination of policing practices by the CCRB.

It was not surprising then that, some eighteen months later, during the Republican National Convention, nearly 1,500 persons were arrested for minor violations and detained without charges for up to three days in squalid conditions at an abandoned industrial facility. Ninety-one percent of these arrests were dismissed or terminated with a not-guilty verdict after trial.¹⁸⁰

In 2006, following its investigation of complaints related to mass arrests of demonstrators, the CCRB substantiated complaints against two deputy chiefs, the commanding officers at the Fulton Street and Herald Square demonstration sites. The agency also recommended that the police department review its training of officers charged with policing public demonstrations. (See Appendix B: Letter from Civilian Complaint Review Board to New York City Police Department, May 9, 2006.)

What is perhaps most instructive about the CCRB's findings is Police Commissioner Raymond Kelly's response. He fired off a letter harshly rebuking the CCRB. The letter charged the CCRB with soliciting media attention and the approval of "special interests." (See Appendix B: Letter from New York City Police Department to Civilian Complaint Review Board, May 10, 2006.) The commissioner provided his own account of the arrests (which were executed in violation of department guidelines), notwithstanding extensive videotape evidence that contradicted his version of events.¹⁸¹ He characterized the Board's

carefully reasoned findings as "unbalanced," and closed by stating that he expects a "more straightforward and productive relationship with the Board."

In this relationship the CCRB is clearly the inferior party whose exercise of its oversight function, pursuant to statutory authority, is subject to unilateral override by the police commissioner. The CCRB's attempt to investigate complaints related to the policing of the RNC illustrates how this relationship functions. It is well documented that police officers engaged in highly questionable, if not unlawful, conduct in the policing of the RNC. Court records demonstrate that police provided false statements in criminal complaints and withheld exculpatory evidence.¹⁸²

Complaints related to the policing of the RNC involved a number of senior police officials, who had supervised hundreds of arrests during the convention. The NYPD, however, refused to produce senior officials for interviews.¹⁸³ The department resisted the CCRB's investigation for nearly a year.¹⁸⁴ The stonewall tactics worked. The CCRB could not complete investigations in at least seven RNC cases until after the statute of limitations had expired.¹⁸⁵ Nevertheless, the CCRB adopted a position of collegial capitulation as to this outcome. "I don't feel thwarted," said the Board's chairman. "I think we have a very good relationship with the [police] department."¹⁸⁶ ■

¹⁸⁰ Jim Dwyer, "Videos Challenge Hundreds of Convention Arrests," *New York Times*, April 12, 2005.

¹⁸¹ See Robert Polner, "Cuffed Bystanders: We're Not Criminals," *Newsday*, September 4, 2004; Sabrina Tavernise, "Student's Arrest at G.O.P. Convention Puts His Life in Limbo," *New York Times*, April 15, 2005; Jim Dwyer, "Videos Challenge Hundreds of Convention Arrests," *New York Times*, April 12, 2005; Jim Dwyer, "Bicyclist's Convention Arrest is Undercut by a Videotape," *New York Times*, May 3, 2005; Al Baker, "F.B.I. Is Seeking to Interview Jailed Activists," *New York Times*, May 17, 2006; and Al Baker, "City Settles Some Suits Over Arrests During '04 Convention," *New York Times*, July 21, 2006.

¹⁸² Jim Dwyer, "Videos Challenge Hundreds of Convention Arrests," *New York Times*, April 12, 2005; and Jim Dwyer, "Bicyclist's Convention Arrest is Undercut by a Videotape," *New York Times*, May 3, 2005.

¹⁸³ Michael Wilson, "Top Officers are Said to Ignore Complaint Board's Inquiry," *New York Times*, September 15, 2005.

¹⁸⁴ Jim Dwyer, "Charges, but No Penalty, for a Chief's Role in a Convention Arrest," *New York Times*, March 9, 2006.

¹⁸⁵ *Ibid.*

¹⁸⁶ Jim Dwyer, "Charges, but No Penalty, for a Chief's Role in a Convention Arrest," *New York Times*, March 9, 2006.

V. When Civilian Review Fails

The City Charter provisions that established the CCRB as an independent entity speak to certain principles of civilian oversight: transparency of process, fairness and objectivity, accountability.¹⁸⁷ The record compiled in this report demonstrates that New York City’s oversight system does not reflect these principles. The reasons for this are fundamental – lack of support from public officials, obstructionism by the police department, inadequate human and financial resources.

The chairperson of the City Council’s Public Safety Committee has acknowledged that the CCRB is “a stepchild of the [Bloomberg] administration.”¹⁸⁸ It is not only the executive branch that has neglected the CCRB. No public official has been an advocate of the agency’s mission. And there is considerable skepticism among the city’s residents that the CCRB is doing its job.

Residents living in communities that are most vulnerable to acts of police misconduct have long expressed cynicism regarding the CCRB. The United States Commission on Civil Rights heard from members of those communities at public hearings in May of 1999.¹⁸⁹ A parade of witnesses from neighborhoods populated by people of color described the CCRB as irrelevant. They spoke of a police culture that was hostile to the civilian oversight system. A number of witnesses testified that police officers were immune to discipline or accountability, even when extreme brutality was involved.¹⁹⁰

A 2004 study, which elicited the views of students on policing and the CCRB, produced findings similar to those published by the Civil

Rights Commission. The study involved interviews at five large high schools in Brooklyn and Manhattan with ethnically and racially diverse student populations.¹⁹¹ Only 20 percent of the students surveyed had even heard of the CCRB, and an even smaller number of the students understood the agency’s purpose or its operations.¹⁹² The students expressed anger over what they perceived to be racial bias and contempt on the part of the police, particularly as

The City Charter speaks to certain principles of civilian oversight: transparency of process, fairness and objectivity, accountability. The record demonstrates that New York City’s oversight system does not reflect these principles.

related to stop-and-frisk activity.¹⁹³

A community activist with the Lower East Side Call for Justice said she encouraged students who believed they had been the victims of police misconduct to file a

CCRB complaint. The students, she said, “just laugh because from what they have heard [the CCRB is] totally ineffective and it’s not going to change anything. Their feeling is that as long as you have the kind of police department that we have, nothing’s going to change. They’re very cynical and they’re very hostile. They’re also very vulnerable.”¹⁹⁴

Notwithstanding their negative views of policing and the civilian oversight agency, the students offered this recommendation: to be effective, the

¹⁸⁷ New York City Charter, Chapter 18-A, §440(a).

¹⁸⁸ Al Baker, “Police Shooting Led Mayor to Bolster Review Board,” *New York Times*, January 19, 2007.

¹⁸⁹ United States Commission on Civil Rights, *Police Practices and Civil Rights in New York City*, August 2000.

¹⁹⁰ *Ibid.*, pp. 70-72.

¹⁹¹ Rachel Lippman, Jadhira Rivera, Sylvia Shweder, *Policing the Police: A Report*

on Community Perceptions of the Civilian Complaint Review Board and Police Misconduct, April 28, 2004. Surveys on which the report is based were conducted by Fordham University Law School students who were involved in the Community Oversight of Policing Project, under the auspices of the New York Lawyers for the Public Interest.

¹⁹² *Ibid.*, pp. 56-62.

¹⁹³ *Ibid.*, pp. 51-53.

¹⁹⁴ *Ibid.*, p. 30.

Public Education: Improving Policing Practices and Police-Community Relations

The CCRB must establish its credibility in the communities it serves. The agency is all but invisible in the neighborhoods in which it is most needed.

Following is an outline of a public education program that could produce a more complete accounting of the alleged misuses of police authority – and engage community members as agents of reform.

- 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 complaint is entered into a police officer's record. It may help to reveal a pattern of misconduct – and the need for corrective action.
- Offer specific steps civilians can take to corroborate a misconduct complaint: establish police officers' identity; obtain contact information from eye witnesses; seek medical treatment when appropriate; and obtain related medical records.
- Pledge at every public-education event that the CCRB will notify complainants regarding the disposition of a complaint, including disciplinary action taken, or not taken, by the police commissioner. Fulfill this pledge.
- Invite representatives of community organizations to appear at the CCRB's monthly public meetings. Such invitations should be extended, in particular, to groups representing communities that generate many police-misconduct complaints.
- Conduct more community meetings that afford residents the opportunity to educate CCRB staff regarding problems with police misconduct. As important as it is to inform the public, it is equally important that the agency's board members are willing to be informed by the public.

CCRB must establish greater credibility in the communities it serves.¹⁹⁵

Taking Public Education Seriously

The CCRB reports that it conducts regular public education sessions on the agency's oper-

ations and procedures. These education initiatives, however, are not responsive to the known weaknesses in the CCRB's operations. More than half of all CCRB complaints are closed without an investigation, and half of those complaints are terminated because, according to the CCRB, the complainant is either uncooperative or unavailable.¹⁹⁶ Fewer than one-third of all investigations undertaken lead to a conclusive finding on the merits.¹⁹⁷

These data suggest that the CCRB cannot comply with its mandate under the City Charter without instituting a more rigorous public education program. Such a program would help civilians determine when police conduct is lawful, and when it is not. This program would also engage civilians in the oversight process. Civilians who believe they have been victims of police misconduct need to know how to become advocates in their own behalf. That is, they need clear, step-by-step instructions in how to file a complaint; how to document and prove complaint allegations; and how to ensure a complaint is pursued.

The cost of a failed oversight system

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 with the expectation that police will be held to account for misconduct. By any measure, New York City's civilian oversight system is failing to deter such misconduct. This is not merely an issue of failure to discipline individual police officers. Patterns of misconduct are missed or ignored. Dangerous practices are perpetuated without comment or review. As a consequence there is a failure to adopt systemic reforms – in police training, tactics, policies and procedures – that could prevent foreseeable risks of future harm.

When the CCRB fails, there is effectively no legal constraint upon police officers who commit even violent acts of misconduct against civilians. It is

¹⁹⁵ *Ibid.*, pp. 62-64.

¹⁹⁶ CCRB Status Report, January-December 2005, p. 85.

¹⁹⁷ See "Unsubstantiated Complaints" in Section 1 herein: "New York City's Civilian Oversight System."

an extraordinary occurrence for a district attorney to bring criminal charges against a police officer for an act of misconduct against a civilian. The CCRB in the last five years has reported only two instances in which it referred a police brutality case to a district attorney for criminal prosecution, and in each instance the district attorney declined to prosecute.¹⁹⁸

What's more, the tort system operates in a manner that places a police officer above accountability even when a jury has found the officer guilty of brutality and civil rights violations in a civil lawsuit. Taxpayers pay the damages to the victims; the city indemnifies the police officer for the liability attributable to his wrongdoing. There is no subsequent review of the underlying conduct that gave rise to a judgement against the officer. And there are typically no adverse employment consequences for the cop who has seriously harmed a civilian. The laws, rules and procedures designed to deter police from committing acts of misconduct against civilians have been utterly subverted.

Over the last fifteen years the city's fiscal watchdogs have called for monitoring police-misconduct complaints – both CCRB complaints and civil lawsuits – in order to hold individual police officers and the police department accountable for acts of misconduct against civilians. In 1992, Comptroller Elizabeth Holtzman recommended that the NYPD analyze legal claims, lawsuits and CCRB complaints for purposes of imposing discipline and identifying and correcting problems with police department policies and practices.¹⁹⁹ The city failed to act on her recommendations.²⁰⁰

Five years later, in 1997, Comptroller Alan Hevesi restated the problem and made the same recommendations, “remark[ing] that ‘there is a total disconnect’ between the settlements of civil

claims and police department [disciplinary] action.”²⁰¹ Such matters are ordinarily not even noted in an officer's personnel file.²⁰² As a consequence the NYPD cannot effectively monitor police-officer misconduct, and therefore is unable to identify patterns of wrongdoing that might demonstrate the need for reform.²⁰³

This absence of accountability gives tacit approval to dangerous police practices. A report issued in 2000 by a committee of the Association of the Bar of the City of New York concluded that “the city consistently misses opportunities to increase the protection of the rights of persons in the city and to reduce injuries that poison the relations between police and citizen, and in doing so saving millions of dollars.”²⁰⁴

It is not surprising, then, that complainants continue to file excessive-force allegations in half of all complaints filed with the CCRB or that thousands of lawsuits are filed against the city every year charging police brutality. Nor is it surprising that the city continues to pay out tens of millions of dollars every year to the victims of police misconduct.

Between 2000 and 2004 New York City taxpayers paid out \$224 million in damages pursuant to judgments or settlements in police-brutality lawsuits. The legal costs incurred by the city in defending these lawsuits amounted to approximately \$45 million. Over the five-year period the city has expended more than a quarter of a billion dollars to resolve the terrible human damage that lay in the wake of police officers who engage in egregious misconduct. (See Figure 18.)

The abject failure to establish accountability for police misconduct exposes the city to ever greater financial liability. Federal courts have articulated minimum standards for assessing the

¹⁹⁸ CCRB Status Report, January-December 2004, pp. 10, 32.

¹⁹⁹ Association of the Bar of the City of New York, Committee on New York City Affairs, “The Failure of Civil Damages Claims to Modify Police Practices, and Recommendations for Change,” *The Record*, Vol. 55, No. 4, July/August 2000, p. 535 (Hereafter, “Report of the Association of the Bar of the City of New York”).

²⁰⁰ *Ibid.*, p. 536.

²⁰¹ *Ibid.* The internal quotation appears in a news account by Deborah Sontag and Dan Barry, “The Price of Brutality: A Special Report,” *New York Times*, September 17, 1997.

²⁰² Debora Sontag and Dan Barry, “The Price of Brutality: A Special Report,” *New York Times*, September 17, 1997.

²⁰³ Former New York City Public Advocate Mark Green documented serious flaws in the NYPD's program for monitoring “problem officers,” including a lack of standards by which to evaluate the monitoring program. (Office of the New York City Public Advocate & The Accountability Project, *Disciplining Police: Solving the Problem of Police Misconduct*, July 27, 2000, pp. 130-134)

²⁰⁴ Report of the Association of the Bar of the City of New York, p. 536.

FIGURE 18: Liability incurred by New York City for police misconduct directed at civilians, 2000-2004

| | 2000 | 2001* | 2002 | 2003 | 2004 | TOTAL |
|--|--------|---------|--------|--------|--------|---------|
| Number of Settlements/Judgments | 835 | 788 | 563 | 613 | 693 | 3492 |
| Claims Paid (in millions) | \$38.0 | \$89.0 | \$21.7 | \$32.9 | \$42.6 | \$224.2 |
| Estimated Legal Costs[†] (in millions) | \$7.6 | \$17.8 | \$4.3 | \$6.6 | \$8.5 | \$44.8 |
| Total Liability (in millions) | \$45.6 | \$106.8 | \$26.0 | \$39.5 | \$51.1 | \$269.0 |

* Claims paid in fiscal year 2001 include a \$50 million settlement of a class action civil rights claim against the police department for damages related to illegal strip searches (*Tyson v. City of New York*, No. 97 Civ. 3762 (S.D.N.Y. Dec. 2000)). This is the type of claim that is typically included in the Comptroller's Claims Report as a police action; therefore it is included as such in this table.

† Estimate of legal costs is based upon the ratio of legal costs to claims payouts for all claims against the NYPD in 2005. For each dollar spent on claims the city paid twenty cents in legal costs. (Mayor of the City of New York, Michael Bloomberg, *Executive Budget Fiscal Year 2007: Message of the Mayor*, May 4, 2006, p. 135) It is assumed that this ratio, which applies to total claims, also holds for tort claims.

Source: William C. Thompson, Comptroller of the City of New York, *Claims Report: Fiscal Year 2004*, November 2005, Table 3.

systems and procedures used to review police-misconduct complaints. “[C]ourts expect independent and thorough investigations within a system which functions efficiently and results in prompt corrective action.”²⁰⁵ The failure of New York City to create an oversight system that provides for the adequate investigation and review of civilians’ complaints of police misconduct may demonstrate “deliberate indifference” to the foreseeable violation of constitutional rights.²⁰⁶ Municipalities have been held accountable, and liable, when such deliberate indifference has been demonstrated.²⁰⁷

Judge Milton Mollen has observed a deep and insidious harm to public safety posed by the city’s failure to constrain abuses of police authority: jury nullification.²⁰⁸ In a public forum on policing, Judge Mollen made the following observations.

In the last few years . . . there has been case after case where there is strong testimony, but it is a police officer’s testimony. The jurors are skeptical, and they don’t trust the police.

That is a very unfortunate impact arising from the fact that, at times, police officers do use brutality or are corrupt. It causes cynicism about the criminal justice system, and our society suffers as a result

It is so important that the police respect the members of the community, and members of the community respect the police. A great deal of effective law enforcement results from information provided by members of the community, and, to the extent that there is a lack of confidence in the police department, the result is less effective law enforcement.²⁰⁹ ■

²⁰⁵ Hazel Glenn Beh, “Municipal Liability for Failure to Investigate Citizen Complaints Against the Police,” *Fordham Urban Law Journal*, Vol. 25, pp. 249 (1988).

²⁰⁶ *Ibid.* p. 210. See *Canton v. Harris*, 489 U.S. 378 (1989); *Board of the County Commissioners of Bryan County, Oklahoma v. Brown, et al.*, 520 U.S. 397 (1997). See also, *Vann v. City of New York*, 72 F.3d 1040, 1045 (2d Cir. 1995) (“with respect to police officers who had a known history of abusive conduct and had been reinstated to full duty, none of the [monitoring] units on whose existence [the city] relied [to prevent future misconduct] made any meaningful effort to take heed of new civilian complaints filed against those officers”).

²⁰⁷ *Ibid.*

²⁰⁸ A similar concern was expressed by Lorna Bade Goodman, a senior attorney with the city’s Law Department. Ms. Goodman said that “In a climate where there is so much publicity about police cases, we are more reluctant to take cases to juries.” See Kevin Flynn, “Record Payout in Settlements Against the Police,” *New York Times*, Oct. 1, 1999.

²⁰⁹ Hon. Milton Mollen, “Police Violence: Causes and Cures, Edward V. Sparer Public Interest Law Fellowship Forum, April 15, 1998,” *Journal of Law and Public Policy*, Vol. 93, pp. 100-101 (1998).

Recommendations

New York City’s civilian oversight system is failing to fulfill its mission as mandated by the City Charter. The CCRB’s performance falls far short of the prescribed standards: thoroughness and impartiality, fairness and independence. As a consequence, there is little accountability for individual acts of police misconduct, for inadequate training, or for flawed police policies or practices.

The failure of the CCRB constitutes an immediate risk to public safety. It is therefore incumbent upon the mayor and legislative leaders to address this crisis with the seriousness it deserves.

The NYCLU recommends the following measures to ensure that the city provides independent civilian oversight of policing as mandated by the City Charter.

Create greater accountability for policing in the office of the mayor and in the City Council.

- **Establish the Office of the Inspector General for Law Enforcement Integrity.** Charge the Inspector General with responsibility to monitor and audit police policies and practices, as well as all city departments and agencies that are involved in the investigation and review of police misconduct complaints, and in the related adjudicative and disciplinary procedures.

Lack of cooperation by the police department has been an important factor in the CCRB’s ineffectiveness. The department has also stymied the work of the city’s Commission to Combat Police Corruption. The Inspector General, reporting directly to

the mayor, would provide independent analysis of civilian oversight; mediate conflict between the NYPD and oversight entities; and advocate for reform of policing policies and practices.

- **Institute meaningful City Council oversight of the CCRB and the police department.** The City Council has done little to assure that the CCRB is fulfilling its mission, even as complaints have been rising sharply between 2002 and 2006. Oversight committees of the Council have been silent in the face of the police department’s refusal to cooperate with the CCRB and in the face of the department’s rejection of CCRB disciplinary findings and recommended policing reforms. The City Council must institute regular police-misconduct oversight hearings.
- **Promote leadership among the mayoral appointees to the CCRB.** The mayoral appointees to the CCRB are intended to provide a strong public voice for accountability and reform. Board members have not fulfilled this role. The CCRB’s leaders must act as advocates for rigorous investigation of misconduct complaints and for thorough review of policing policies and practices. It is incumbent upon the mayor and the City Council to hold CCRB appointees to this standard of performance.

Evaluate and assess the CCRB’s structure and operations.

- **The city must conduct a comprehensive evaluation of the financial and human resources that are required to staff and administer an effective civilian oversight system.** In 1993 the CCRB was made an independent agency, with a broadened

mission; the CCRB's budget, however, was reduced relative to the budget of its predecessor agency within the police department. The CCRB's budget has been increased incrementally (and, on occasion, decreased), but it has been calculated in relation to a baseline for which there is no sound rationale.

- **A critical first task in evaluating the CCRB's operations is a comprehensive analysis of the CCRB's investigative operation.** This analysis must address hiring, promoting and retaining investigators; training and supervising; establishing performance standards and measures. This evaluation must be undertaken with the objective of identifying management strategies that will give the CCRB the capability to conduct rigorous, thorough and timely investigations of police-misconduct complaints.

Allocate the human and financial resources needed to make the CCRB productive and effective.

- **If the civilian oversight system is to accomplish its objective, it must be allocated sufficient resources.** The agency has a demonstrably weak investigative function. This is due, at least in part, to inadequate resources – including investigators, support staff, office facilities, training professionals, public education materials.
- **Establish CCRB units in every borough, staffed by in-take personnel and investigators who are available after business hours and on weekends.** An agency whose lower-Manhattan office is open during business hours cannot well serve the city's residents, most of whom will require reasonably convenient access to the CCRB's staff after business hours in order to file a

complaint. (Police officers are paid for their time spent responding to a CCRB investigation. A complainant may lose a day's pay and jeopardize his or her employment by taking time to meet with investigators at the CCRB's offices.) Satellite offices in each borough would help establish the credibility and effectiveness of civilian oversight.

- **Establish procedures for independent review of complaints brought against school safety agents.** Since September of 1998 the NYPD has had responsibility for safety in the city's public schools. Students citywide have complained of inappropriate and unlawful conduct by school safety agents and police officers.²¹⁰ The City Council should establish review procedures for addressing complaints related to the alleged misconduct of school safety agents. With expanded jurisdiction the CCRB could undertake the investigation of such complaints.

The CCRB must create a unit dedicated to analyzing patterns of police misconduct – and to recommending reforms in policing policies and practices that can ameliorate tension and conflict between civilians and the police.

- **Create a CCRB unit responsible for recommending reforms in policing policies and practices.** Recognizing that the validity of CCRB policy recommendations is dependent upon rigorous investigation, the analysis of police practices represents the civilian review board's highest purpose. One well-thought-out reform in policing methodology can prevent conflict from arising in hundreds of interactions between police officers and civilians.

²¹⁰ See Elora Mukherjee, *Criminalizing the Classroom, The Over-Policing of New York City Schools*, (New York Civil Liberties Union, American Civil Liberties Union, March 2007).

The CCRB leadership has objected that the agency lacks the resources to perform this function. This objection is shortsighted. Within the New York City metropolitan area there is a wealth of expertise on the full range of policing issues that arise in the course of reviewing misconduct complaints. The CCRB would be well advised to recruit experts from this community of scholars, police professionals and legal practitioners who would assist, pro bono, in analyzing policing policies and practices.

Develop a public education and outreach program that involves the public in improving police practices and police-community relations.

- **The CCRB must create and implement a more ambitious and effective public education program – one that is more responsive to the needs of New York City residents.** The CCRB reports that a significant cause of the high truncation rate is the unavailability or uncooperativeness of complainants. Civilians who believe they have been the victims of police misconduct need to become advocates in their own behalf – to do so, they need instruction and guidance in documenting and filing complaints. The CCRB’s data on truncated and inconclusive investigations make apparent the need for the CCRB to undertake a more rigorous public education program.
- **The CCRB must conduct outreach in communities citywide.** Civilian oversight of policing is based on the principle that community members are entitled to have a voice in establishing the standards by which they are policed. By engaging the residents of the city in a discussion about policing, the CCRB can bring important insight and information to the review and analysis of police policies and practices.

Provide for independent, competent adjudication of charges against police officers who are the subject of substantiated CCRB complaints.

- **Transfer authority to prosecute substantiated police misconduct from the NYPD to the CCRB.** Mayor Bloomberg must fulfill the commitment made by his predecessor, Mayor Rudolph Giuliani, to establish and fund a CCRB litigation unit that prosecutes police officers against whom administrative charges are recommended by the CCRB.²¹¹ Mayor Giuliani’s directive authorizing the CCRB to prosecute substantiated cases was issued following the horrific police shooting of Amadou Diallo. Failure to implement that reform is emblematic of the city’s complacency regarding the problem of police misconduct.
- **Remove from the police department the authority to conduct administrative trials of police officers accused of misconduct.** As documented by the New York City Commission to Combat Police Corruption, the prosecution of police wrongdoing by the Department Advocate’s Office is little more than a charade of justice. (See herein, Section III: “Incompetence in the NYPD trial room.”) The adjudication of CCRB complaints should be transferred to the Office of Administrative Trials and Hearings or to another administrative tribunal that is independent of the NYPD. ■

²¹¹ See William Rashbaum and Kevin Flynn, “Giuliani to Shift Police Discipline to Civilian Board,” *New York Times*, January 27, 2001, p. A1.

Appendix A: Tables

TABLE 1: CCRB Disposition of Complaints, 1994 – 2005

| | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | TOTAL |
|--|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|
| Complaints Received | 4,877 | 5,618 | 5,361 | 4,768 | 4,931 | 4,812 | 4,116 | 4,251 | 4,612 | 5,556 | 6,196 | 6,796 | 61,894 |
| | 1994† | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | TOTAL† |
| Complaints Disposed of by the CCRB | 2,152 | 7,858 | 5,713 | 5,580 | 5,293 | 4,287 | 4,948 | 3,683 | 4,831 | 4,883 | 5,818 | 6,522 | 59,416 |
| Complaints Truncated | 1,229 | 4,661 | 3,075 | 2,127 | 2,391 | 2,120 | 2,468 | 1,849 | 2,446 | 2,691 | 3,164 | 3,655 | 30,647 |
| Percentage of Complaints Truncated | 57.1% | 59.3% | 53.8% | 38.1% | 45.2% | 49.5% | 49.9% | 50.2% | 50.6% | 55.1% | 54.4% | 56.0% | 51.6% |
| Complaints Fully Investigated | 557 | 2,492 | 1,893 | 3,142 | 2,577 | 2,038 | 2,416 | 1,783 | 2,213 | 2,042 | 2,444 | 2,679 | 25,719 |
| Percentage of Complaints Fully Investigated | 25.9% | 31.7% | 33.1% | 56.3% | 48.7% | 47.5% | 48.8% | 48.4% | 45.8% | 41.8% | 42.0% | 41.1% | 43.3% |
| Complaints Substantiated | 111 | 269 | 256 | 449 | 299 | 274 | 189 | 175 | 224 | 294 | 399 | 260 | 3,088 |
| Complaints Unsubstantiated* | 255 | 1,567 | 1,176 | 1,557 | 1,080 | 780 | 780 | 603 | 828 | n/a | n/a | n/a | n/a |
| Unfounded* | 59 | 151 | 158 | 400 | 513 | 506 | 732 | 509 | 555 | n/a | n/a | n/a | n/a |
| Exonerated* | 46 | 126 | 96 | 346 | 304 | 251 | 489 | 355 | 410 | n/a | n/a | n/a | n/a |
| Complaints Referred for Mediation | 65 | 705 | 745 | 311 | 325 | 129 | 64 | 51 | 172 | 150 | 210 | 188 | 3,050 |
| Percentage of Complaints Referred for Mediation | 3.0% | 9.0% | 13.0% | 5.6% | 6.1% | 3.0% | 1.3% | 1.4% | 3.7% | 3.1% | 3.6% | 2.9% | 5.1% |

† The numbers of Complaints disposed of reported by the CCRB for 1994 (2,152) is greater than the total cases fully investigated (557) and truncated (1,229). Therefore, these numbers are assumed to be unreliable and they have been excluded from the Total column.

*CCRB status reports published after 2002 conflate in a single category complaints closed with a disposition of unsubstantiated, exonerated, and unfounded.

Source: All disposition data - CCRB Status Reports, January-December: 1998, p. 115; 1999, p. 126; 2000, p. 109; 2001, p. 118; 2002, p. 95; 2003, p. 97; 2004, p. 83; 2005, p. 85.

Complaints received - CCRB Status Reports, January-December: 2001, p. 45; 2002, p. 41; 2003, p. 45; 2004, p. 41; 2005, p. 43.

TABLE 2: Substantiated Complaints, 1994 – 2005

| | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | TOTAL |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Substantiated Complaints | 111 | 269 | 256 | 449 | 299 | 274 | 189 | 175 | 224 | 294 | 399 | 260 | 3,088 |
| Total Complaints Closed | 2,152 | 7,858 | 5,713 | 5,580 | 5,293 | 4,287 | 4,948 | 3,683 | 4,831 | 4,883 | 5,818 | 6,522 | 59,416 |
| Percentage of Complaints Substantiated | 5.2% | 3.4% | 4.5% | 8.0% | 5.6% | 6.4% | 3.8% | 4.8% | 4.6% | 6.0% | 6.9% | 4.0% | 5.2% |

Source: CCRB Status Reports, January-December: 1998, p. 115; 1999, p. 126; 2000, p. 109; 2001, p. 118; 2002, p. 95; 2003, p. 97; 2004, p. 83; 2005, p. 85.

TABLE 3: Unsubstantiated Complaints, 1994 – 2002

| | 1994† | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | TOTAL† |
|---|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Complaints Fully Investigated | 557 | 2,492 | 1,893 | 3,142 | 2,577 | 2,038 | 2,416 | 1,783 | 2,213 | 18,554 |
| Complaints Unsubstantiated | 255 | 1,567 | 1,176 | 1,557 | 1,080 | 780 | 780 | 603 | 828 | 8,371 |
| Percentage of Complaints Unsubstantiated | 45.8% | 62.9% | 62.1% | 49.6% | 42.1% | 38.3% | 32.3% | 33.8% | 37.4% | 45.1% |

† The numbers of Complaints disposed of reported by the CCRB for 1994 (2,152) is greater than the total cases fully investigated (557) and truncated (1,229). Therefore, these numbers are assumed to be unreliable and they have been excluded from the Total column.

The CCRB last reported the unsubstantiation rate in 2002. After then it only reported the aggregate number of complaints that were unsubstantiated, unfounded, and exonerated. It is no longer possible to determine the number of complaints in any of these three categories from the CCRB's reported data.

Source: CCRB Status Reports, January-December: 1998, p. 115; 1999, p. 126; 2000, p. 109; 2001, p. 118; 2002, p. 95.

TABLE 4: Complaints with One or More Excessive Force Allegations, 1998 – 2005

| | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | TOTAL |
|--|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Complaints with an Excessive Force Allegation | 2,439 | 2,065 | 2,086 | 2,154 | 2,336 | 2,767 | 3,006 | 3,373 | 20,226 |
| Total Complaints Received | 4,931 | 4,812 | 4,116 | 4,251 | 4,612 | 5,556 | 6,196 | 6,796 | 41,270 |
| Excessive Force Allegations Received | 4,731 | 3,726 | 3,546 | 3,875 | 4,439 | 4,796 | 5,256 | 6,264 | 36,633 |
| Percentage of Complaints with an Excessive Force Allegation | 49.5% | 42.9% | 50.1% | 50.7% | 50.7% | 49.8% | 48.5% | 49.6% | 49.0% |

Source: CCRB Status Reports, January-December: 2002, p. 41; 2003, p. 45; 2004, p. 41; 2005, p. 43.

TABLE 5: NYPD Dispositions of Substantiated Complaints that Result in No Discipline: Force Versus Non-Force, 1998 – 2004 (based upon year of referral to NYPD)

| | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 |
|--|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| Total Substantiated Cases | 408 | 365 | 244 | 233 | 296 | 394 | 554 |
| Total Cases with Force Allegation(s) | 171 | 118 | 54 | 58 | 91 | 92 | 104 |
| NYPD Resolution of Force Cases: No Discipline | 79 (46.2%) | 65 (55.1%) | 21 (38.9%) | 27 (46.6%) | 52 (57.1%) | 56 (60.9%) | 60 (57.7%) |
| Total Cases without Force Allegation(s) | 211 | 233 | 180 | 161 | 187 | 280 | 368 |
| NYPD Resolution of Non-Force Cases: No Discipline | 60 (28.4%) | 49 (21.0%) | 39 (21.7%) | 23 (14.3%) | 54 (28.9%) | 51 (18.2%) | 43 (11.7%) |

Source: Data was compiled from the NYPD cases summaries for substantiated CCRB complaints located in CCRB Status Reports, January-December: 2002, Table 52; 2003, Table 49B; 2004, Table 48A; & 2005, Table 48A.

Appendix B: Letters



MICHAEL R. BLOOMBERG
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
40 RECTOR STREET, 2ND FLOOR
NEW YORK, NEW YORK 10006 ♦ TELEPHONE (212) 442-8833
www.nyc.gov/ccrb

HECTOR GONZALEZ
CHAIR
FLORENCE L. FINKLE
EXECUTIVE DIRECTOR

May 9, 2006

Police Commissioner Raymond W. Kelly
New York City Police Department
One Police Plaza, room 1400
New York, NY 10038

Dear Commissioner Kelly:

The board's evaluation and closure of six of the 63 complaints stemming from the Republican National Convention raised concerns regarding the clarity and specificity of orders issued by deputy chiefs in two separate incidents. The board believes that if the deputy chiefs had employed different tactics, the police department may possibly have avoided arresting a large number of individuals. The board recommends that the department review the training it provides officers in the context of existing procedures for policing demonstrations. All officers, particularly high-ranking supervisors, should ensure that in policing demonstrations they give protestors audible and unambiguous notice as to what behavior is expected of them and an opportunity to comply before they are arrested.

In the first incident, a deputy chief authorized the arrest of 227 individuals participating in a march on Fulton Street during the afternoon of August 31, 2004. Though the group did not have the required permit for a march, police commanders decided to try to accommodate the group and allow them to march under certain conditions. As video footage shows, an inspector announced to the group via bullhorn that it planned a "march without a permit" and ordered participants to walk on the sidewalk in "single or double file" so as not to obstruct pedestrian traffic and to "comply with the lights." The inspector concluded by stating, "Have a safe march." About two minutes later, a deputy chief ordered that the march stop and yelled, without the assistance of a bullhorn, "You are all blocking the sidewalk. If you do not disperse you will be placed under arrest." Within one minute the deputy chief ordered officers to arrest all the marchers standing on the block-long sidewalk.

Later the same day, another deputy chief supervised the arrest of at least 15 individuals taking part in a demonstration on a sidewalk near Herald Square. Video footage reveals that the deputy chief repeatedly spoke without a bullhorn, telling the group that it was "blocking pedestrian traffic" and warning participants to "clear the streets" or be arrested. Six minutes after issuing these warnings, the deputy chief ordered officers to arrest all the remaining protestors.

In both incidents, deputy chiefs gave orders for a crowd to disperse without the use of a bullhorn or other amplification device. Giving such an order without amplification to a large crowd raises the possibility that police arrested civilians who might have obeyed police commands had they heard them.

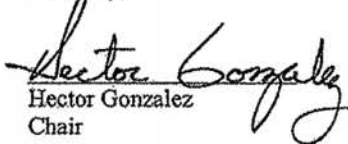
Video footage of the two incidents also revealed other problems with the deputy chiefs' orders. On Fulton Street, the deputy chief ordered officers to arrest marchers just 50 seconds after he instructed them to disperse. In addition, marchers who wanted to comply with the order had limited means by which to leave the area: they were blocked by a wrought iron fence on their left, a line of police officers on

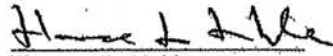
bicycles on their right, and other marchers in front of and behind them. The only realistic departure route for those who wished to leave—and the footage suggests that many marchers did not want to be arrested—would have been through the line of officers, some of whom did not hear the chief’s dispersal order and therefore prevented civilians from passing.

Though officers at Herald Square gave demonstrators the time and opportunity to disperse, the language the deputy chief used in his dispersal order created uncertainty. The deputy chief told civilians standing on a wide sidewalk to clear the “streets.” The deputy chief told the CCRB that he used the word “street” to include the sidewalks, and he later ordered the arrest of all demonstrators who remained on the sidewalk. However, the footage captures demonstrators questioning whether the sidewalk was synonymous with the term “street.” Without a precise directive, individuals who might have left the area did not do so and subsequently found themselves under arrest.

It was the department’s own policy—as reflected in its Legal Guidelines for the Republican National Convention—“to accommodate ... marches, whether planned or unplanned, in order to minimize disruption.” To reasonably accommodate such marches, it is imperative that police deliver orders in a manner that civilians can hear and understand and with which they can comply. It is the board’s hope that after reviewing these two incidents, the department can improve and/or reinforce its training to avoid similar situations in the future.

Sincerely,


Hector Gonzalez
Chair


Florence L. Finkle
Executive Director

c: Board members



THE POLICE COMMISSIONER
CITY OF NEW YORK

May 10, 2006

Hector Gonzalez
Chairman
Civilian Complaint Review Board
40 Rector Street – 2nd Floor
New York, New York 10006

Dear Chairman Gonzalez:

I'm writing to express my surprise and dismay at the letter I received from you and Executive Director Finkle yesterday afternoon, after already having received inquiries about it from the New York Times. It seems to be a remarkable coincidence that your letter to me appears in the press on the morning of the Board's public meeting, in scarcely enough time for the ink to dry.

Beyond the unprofessional manner of the letter's release, I am further dismayed by the letter's substance. I view the NYPD's policing of the 2004 Republican National Convention and the scores of demonstrations that accompanied it as one of the Department's finest hours. As you well know, the Convention served as a magnet for groups publicly committed to its disruption and to the disruption of life and commerce throughout the city. One needs only to look to prior demonstrations in Seattle, Philadelphia, Washington, D.C. and Miami to appreciate the risk to New York. Further, the Convention brought with it the very real risk of a major terrorist attack. Again, one needs only to consider the Herald Square subway plot currently at trial to appreciate that risk as well.

Nevertheless, the convention, an essential element of American democracy, was able to proceed unhindered, while hundreds of thousands of others were able to dissent freely and openly. It's disturbing that your letter concerning the Department's actions during the convention ignores this larger context. Your letter also fails to note the extensive pre-convention outreach efforts by the CCRB to some 700 groups and websites in order to make the filing of complaints as easy as possible.

1 Police Plaza, New York, NY 10038 • 646-610-5410 • Fax: 646-610-5865
Website: <http://nyc.gov/nypd>

Despite the Board's best efforts to facilitate complaints, only 63 were received. More remarkable, only 3 were substantiated. Yet despite this insignificant complaint volume, the Board has felt the need to generate substantial media interest in its recommendation that Deputy Chiefs should have been equipped with bullhorns. It would be appropriate for the Board to reconsider the facts of the two instances cited.

Regarding the Fulton Street demonstration:

1. the group had no permit
2. bullhorns were used to convey instructions to the demonstrators
3. the demonstrators did not follow those instructions
4. the group was offered a route northbound on Church Street (with the flow of traffic), but instead turned east on Fulton Street and moved to march north on Broadway (against the flow of traffic)
5. the Deputy Chief gave orders to disperse in a loud and authoritative voice, loud enough to be picked up by video cameras filming the events.

Regarding the Herald Square demonstration:

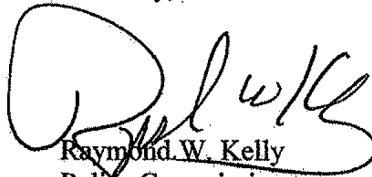
1. a bullhorn is unnecessary to address a group of about 15 people (as estimated in your letter).
2. there is little ambiguity in the term "street" when being ordered to disperse.

The Board would do well to consider the realities of policing large demonstrations. When probable cause for arrest exists, there is no legal requirement for a warning. When a warning is provided, after a crowd has failed to follow lawful directions, there is no obligation or practical way of polling each member of the crowd to clarify their intent.

As always, the Department seeks to learn from experience. We continuously strive to improve our policies and practices. Good faith recommendations from the CCRB and others are always welcome. What is not helpful is the Board's unbalanced treatment of the RNC issue, seemingly in an attempt to get media attention and to satisfy the protestations of special interests.

I look forward to a more straightforward and productive relationship with the Board in the future.

Sincerely,



Raymond W. Kelly
Police Commissioner



NYCLU

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BY FACSIMILE AND FIRST CLASS MAIL

May 15, 2006

Raymond Kelly
Commissioner
New York City Police Department
1 Police Plaza
New York, N.Y. 10038

Re: CCRB Report About Dispersal Orders

Dear Commissioner Kelly:

On behalf of the New York Civil Liberties Union, I write in response to the May 9 letter from the CCRB to you about problems with dispersal orders during the Republican National Convention and your May 10 letter responding to the CCRB's letter. In particular, we write to express our concern about the Department's refusal to confront problems that may have resulted in the unnecessary and unlawful arrest of hundreds of political protesters.

At the outset, we were surprised by your attack on the CCRB for having released the letter publicly on the morning of its public meeting last week "in scarcely enough time for the ink to dry." Though your letter implies you received the CCRB letter only after it was given to the New York Times last week, we understand in fact that the CCRB provided your office with an unsigned draft on Friday, May 5, four days before the CCRB released it. If anything, the CCRB might be faulted for giving you advance notice (and presumably an opportunity to influence the letter before it was finalized). Your attack on the CCRB, in addition to being unfair to the agency, therefore appears intended to divert attention from the substance of its letter.

As for its substance, your letter first seeks to defend the NYPD's performance during the Convention by pointing to threats of a terrorist attack and concerns about civil disorder. While those concerns might well have been legitimate as a general matter, we continue to be troubled by the Department's insistence on equating political demonstrations with threats of terrorism and civil disorder. As is typically the case, the political demonstrations during the Convention were almost entirely peaceful and lawful. We do not think it productive to continue to speak about demonstration policing in terms of terrorism.

You next chastise the CCRB for criticizing Convention policing practices despite having received only a modest number of formal complaints and despite having substantiated only a

The New York Affiliate of the American Civil Liberties Union | Claudia Angelos, President | Donna Lieberman, Executive Director

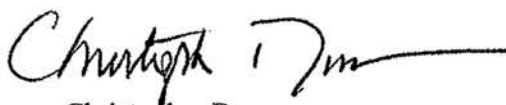
handful of them. Setting aside the role the Department's unlawful refusal to cooperate in CCRB investigations may have played in the outcome of those investigations, the CCRB's letter did not purport to stand on the number of complaints it received or substantiated. Rather, it dealt with a serious problem that surfaced in the investigations it conducted, a problem that contributed to the unlawful arrests of hundreds of lawful protesters.

As for that problem and the issue of dispersal orders, your letter responds to the CCRB by suggesting people were only arrested after adequate dispersal orders were given and adequate opportunity to disperse was afforded. This of course is the position the Department has taken from the outset, but the available evidence shows otherwise. With respect to the Fulton Street mass arrest, the Manhattan District Attorney's Office took the extraordinary step of dismissing all 227 cases after reviewing video tape showing that, after being told by the NYPD they could march, every person on the block was surrounded and arrested within one minute after a deputy chief shouted an order at the front of the march. And at the Convention's largest mass-arrest site – East 16th Street near Union Square – we now have sworn testimony from the commanding officer that, despite his attesting otherwise in Criminal Court affidavits, no order to disperse was given at all before nearly 400 people were arrested.

Since the Department has always defended its mass arrests during the Convention by contending it gave adequate dispersal orders, the additional claim in your letter that the arrests were proper because no such warnings were required is puzzling. Moreover, it cannot be squared with the Legal Guidelines the NYPD itself developed for the Convention, which called for the giving of dispersal orders prior to making arrests for disorderly conduct associated with marches. (I enclose the relevant portion of the Legal Guidelines.)

Rather than attacking the CCRB, we think it would be more productive if the Department addressed the legitimate policy and practice issue raised by the agency's letter. In that respect, we urge you to consider additional training that would assure, in those circumstances in which dispersal orders are appropriate, that Department personnel provide clear and audible warnings and further assure that people are given a genuine opportunity to comply with those orders. If this is done, the Department could greatly reduce the likelihood of unnecessary and unlawful arrests at future large-scale demonstrations.

Sincerely,



Christopher Dunn

c: Hector Gonzalez, Chair, CCRB
Florence Finkle, Executive Director, CCRB
John Feinblatt, Criminal Justice Coordinator
Peter Vallone, Jr., Chair, New York City Council Public Safety Committee

Appendix C: Other Documents

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

EXECUTIVE ORDER NO. 40

October 21, 1997

NOTIFICATION AND PROCESSING OF CIVILIAN COMPLAINTS

WHEREAS, the Civilian Complaint Review Board is charged with the legislative mandate to fairly and independently investigate certain allegations of police misconduct toward members of the public; and

WHEREAS, it is of the utmost importance that members of the public and the New York City Police Department have confidence in the professionalism and impartiality of the Civilian Complaint Review Board; and

WHEREAS, pursuant to the Charter, and the Rules of the CCRB the individuals who have filed complaints with the Civilian Complaint Review Board have the right to be kept apprised of both the status and results of their complaints brought against members of the New York City Police Department; and

WHEREAS, it is important to investigate and resolve civilian complaints in a timely manner; and

WHEREAS, the sharing of information between the Civilian Complaint Review Board and the New York City Police Department is essential to the effective investigation of civilian complaints;

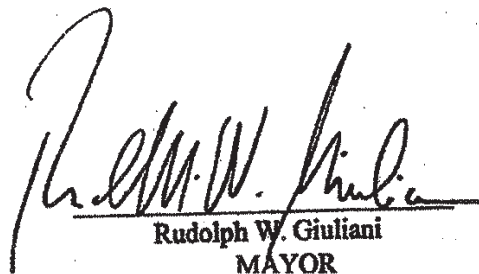
NOW THEREFORE, by the power invested in me as Mayor of the City of New York, it hereby is ordered:

Section 1 - Notice to Civilian Complainants. The Commissioner of the New York City Police Department and the Civilian Complaint Review Board shall expeditiously:

- A. Establish standards for providing timely written notice to civilian complainants regarding the status of civilian complaints during the stages of the Civilian Complaint Review Board's review and investigation process, including final Board action on the pending complaint.
- B. Establish standards for providing timely written notice to civilian complainants regarding the disposition of all cases referred for disciplinary action by the Civilian Complaint Review Board to the Commissioner for the New York City Police Department, including the result of all such referred cases.
- C. The standards established shall require that complainants be given a name, address and telephone number of an individual to contact in order to give or obtain information.

Section 2. The Police Commissioner and the Civilian Complaint Review Board shall establish standards for the timely processing and resolution of civilian complaints and the sharing of necessary information between the agencies.

Section 3. This order shall take effect immediately.



Rudolph W. Giuliani
MAYOR

TABLE 6: Disposition of Substantiated CCRB Cases at Administrative Trial, 1997-1999*

**Cases Tried at NYPD Office of Deputy Commissioner of Trials (DCT)
vs.
Cases Tried at NYC Office of Administrative Trials and Hearings (OATH)**

| | 1997 | | 1998 | | 1999 | | Total | |
|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|
| Charges Dismissed | | | | | | | | |
| DCT | 129 | 62.0% | 38 | 36.5% | 17 | 15.7% | 184 | 43.8% |
| OATH | 26 | 17.2% | 3 | 3.4% | 0 | 0.0% | 29 | 9.4% |
| Plead Guilty | | | | | | | | |
| DCT | 14 | 6.7% | 7 | 6.7% | 10 | 9.3% | 31 | 7.4% |
| OATH | 66 | 43.7% | 27 | 31.0% | 15 | 21.1% | 108 | 35.0% |
| Guilty After Trial | | | | | | | | |
| DCT | 27 | 13.0% | 21 | 20.2% | 22 | 20.4% | 70 | 16.7% |
| OATH | 31 | 20.5% | 27 | 31.0% | 24 | 33.8% | 82 | 26.5% |
| Guilty Total | | | | | | | | |
| DCT | 41 | 19.7% | 28 | 26.9% | 32 | 29.6% | 101 | 24.0% |
| OATH | 97 | 64.2% | 54 | 62.1% | 39 | 54.9% | 190 | 61.5% |
| Not-Guilty After Trial | | | | | | | | |
| DCT | 38 | 18.3% | 38 | 36.5% | 59 | 54.6% | 135 | 32.1% |
| OATH | 28 | 18.5% | 30 | 34.5% | 32 | 45.1% | 90 | 29.1% |
| Total Cases | | | | | | | | |
| DCT | 208 | 100% | 104 | 100% | 108 | 100% | 420 | 100% |
| OATH | 151 | 100% | 87 | 100% | 71 | 100% | 309 | 100% |
| Conviction Rate | | | | | | | | |
| DCT | 41.5% | | 42.4% | | 35.2% | | 42.8% | |
| OATH | 77.6% | | 64.3% | | 54.3% | | 67.9% | |

*The number of CCRB cases referred for adjudication to the Office of Administrative Trials and Hearings (OATH) dropped significantly beginning in 2000. This was due to pending litigation that challenged the authority of OATH to conduct trials in cases that could lead to termination of the accused police officers. (See Lynch v. Giuliani, 301 A.D.2d 351 (1st Dept. 2003) (prohibiting OATH from conducting hearings in all police misconduct cases).

Source: Data were compiled from the NYPD cases summaries for substantiated CCRB complaints as reported in CCRB Status Reports, January-December: 2002, Table 52; 2003, Table 49B; 2004, Table 48A; and 2005, Table 48A.

Mission Failure:

Civilian Review
of Policing
in New York City
1994-2006



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