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**Testimony of Chair Maya Wiley and Executive Director Mina Q. Malik
of the Civilian Complaint Review Board before the Public Safety Committee
of the New York City Council**

October 21, 2016

Chairperson Gibson, members of the Public Safety Committee, thank you for the opportunity to appear before you today. On July 18, 2016, Mayor Bill de Blasio appointed me Chair of the Civilian Complaint Review Board (“CCRB”). It is a critical time for police oversight in New York and the nation. The last two years have been marked by devastating videos of police involved shootings across the nation and the disturbing murders of police officers simply for wearing the badge. We have not been immune in New York City. Names roll off the tongue all too easily of names of residents and police officers alike killed in the last few years. It is with great sadness and sense of purpose that the Board and staff of the CCRB tackle the task of police oversight and accountability and support for improved police and community relationships. Public safety requires it.

The CCRB is the largest civilian police oversight agency in the country, one of the oldest, and has become a model for other jurisdictions. And in these times of greater scrutiny of Police Departments and the increased attention to the need for reforms that can improve public safety and police community relationships, we have an obligation to support a safe and fair city and continue to serve as a model for the nation. We take that obligation very seriously.

As you know, the City Charter Charges the Board with fair and independent investigation of civilian complaints against sworn members of the New York City Police Department (“NYPD”), make findings and, where the evidence supports disciplinary action, the Board makes a recommendation of discipline to the Commissioner of the NYPD. Our jurisdiction includes allegations involving the use of force, abuse of authority, discourtesy and the use of offensive language. By far the largest unit in the CCRB is its Investigations Unit. We take very seriously our responsibility to fully and fairly investigate complaints. It is the Board that determines whether misconduct has occurred and may recommend various levels of discipline, including Instructions, Formalized Training, Command Discipline, or most seriously, Charges and Specifications.

If the Board recommends Charges, the CCRB's Administrative Prosecution Unit ("APU") prosecutes these cases before the NYPD Deputy Commissioner of Trials. For all other disciplinary recommendations, the Department Advocate's Office handles the case. In all cases, the Police Commissioner makes the ultimate determination for discipline. Today, you will hear the impressive improvements the agency has made in these and other areas of the CCRB's work.

While investigations is the best known function of the Agency, we also make public data and analysis on trends in complaints we receive. This helps us help the Police Department and the public identify opportunities to improve policing. We issue a lot of data and reports. You will hear more about our increased production, but we are not stopping there. We will continue to look for opportunities to increase the public's understanding of trends we see and recommended reforms. We also recognize that the NYPD has instituted new training and other policy reforms to improve policing. We will work to identify how these reforms are being implemented based on a review of our data. And it is critical that when we see improvement, we share the good news, not just the areas where attention is needed. If we only report the bad news and not any positive trends, we may unintentional impede the improvement of police community relations. But we also want to continue to build our understanding of where the Police Department must do more. We have the ability to build on the successful outreach the agency has engaged in over the past year to build more dialogue with communities on policing, their experiences with policing. The capable and committed staff here with me today, and the almost one hundred and eighty employees they supervise have worked hard for the impressive improvements you will hear today. And we know that we can and must continue to build on these successes to create increased visibility of the agency, effectiveness of its operations and relationships with stakeholders to support reform efforts.

Chair Gibson, members of the Public Safety Committee, my name is Mina Q. Malik and I am the Executive Director of the Civilian Complaint Review Board ("CCRB"). We will describe CCRB's case processing times, outreach efforts, and new procedures.

The Agency has undergone a tremendous transformation and implemented new policies and procedures to ensure that investigations and prosecutions are more effective, that the CCRB is interacting with the community it serves, and that all divisions of the Agency are performing at or close to their top level.

Greater Transparency and Public Education

The Policy Unit has made additional data more accessible to the public. For example, the Agency now has a new and improved website launching the Data Transparency Initiative (DTI). The DTI provides descriptive data on complaints against New York City police officers alleging the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language. Visitors can view, interact with and download CCRB data on four key areas of the Agency's work: (a) complaints; (b) allegations; (c) victims and alleged victims; and (d) members of service.

The DTI presents 10 years of CCRB data covering more than 66,000 complaints, 192,000 allegations of police misconduct, 86,000 victims and alleged victims, and encompasses the approximate 36,000 current NYPD officers over their entire career.

Reports

This year the Policy Unit published three issue-based reports in addition to our Semi-Annual and Annual Reports. These include a report on searches and entries that was published in March entitled, *“Crossing the Threshold: An Evaluation of Civilian Complaints of Improper Entries and Searches by the NYPD from January 2010 to October 2015.”* Search and entry is one of the most common forms of Abuse of Authority that the Agency deals with each year.

Following our search and entry report, in May 2016, the Agency released a short report on cases with juvenile victims as a separate section of the 2015 Annual Report. During Pride Month in June of this year, the Agency published a report specific to the LGBTQ community entitled, *“Pride, Prejudice and Policing: An Evaluation of LGBTQ-Related Complaints.”*

Record-Breaking Increase in Outreach Presentations

The Agency has dramatically increased its community outreach. As of October 19, 2016, the Outreach Unit has already held 801 Outreach presentations, compared to 272 in 2015, 311 in 2014 and 159 in 2013. We hope to conduct 900 presentations by this year’s end, which will represent a two hundred and thirty percent (230%) increase from the previous year a four hundred and sixty-six (466%) increase from 2013.

Outreach is a vital and essential means of communicating with the public about what CCRB does and how we as an Agency serve the community. Outreach presentations include information about the CCRB, its complaint process and jurisdiction, and provide de-escalation tactics, as well as frequently asked questions regarding officer-civilian interactions.

The Agency’s increased visibility is also due to the consistent and concerted efforts to focus on a variety of specific groups that have been disenfranchised and disproportionately subject to police misconduct and abuse. These groups include LGBTQ members, probationers, the homeless, formerly incarcerated individuals and residents of public housing, to name a few. For example, on June 15, 2016, the CCRB hosted a one-day symposium entitled, *“The Rainbow Crossing: Police Accountability and the LGBTQ Community”* at the Lesbian, Gay, Bisexual, Transgender Community Center in New York City. The symposium was an extension of a CCRB forum event in November 2014 entitled, *“Let’s Talk It Out: Working Together to Improve LGBTQ-Police Encounters,”* which was a candid conversation between the CCRB leadership and members of LGBTQ advocacy groups.

The Agency has also expanded the Community Partners Initiative (CPI) in collaboration with the New York City Council. The CCRB now holds special evening office hours in participating Council Members’ district offices across the five boroughs to accommodate individuals who do not have access to our main office during regular business hours. Participating Council Members include Speaker Melissa Mark-Viverito and Council Members Vanessa Gibson, Donovan

Richards, Debi Rose, Carlos Menchaca, and Robert Cornegy. We are happy to work with any Council Members who might be interested in participating.

Increased Number of Successful Mediations

The Mediation Unit provides a valuable alternative method of resolving civilian complaints of police misconduct, and is a win-win scenario for both the civilian and the member of service. Mediation sessions focus on fostering discussion and mutual understanding between the civilian and the subject officer. After a successful mediation, the complaint is closed as “mediated,” meaning that there will be no further investigation and the officer will not be disciplined. If the mediation is not successful, the case returns to the Investigations Division for a full investigation. Successful mediations can benefit communities because a measure of trust and respect often develops between the parties. That, in turn, can lead to better police-community relations.

The CCRB has simultaneously increased the number of successful mediations it handles while also decreasing the number of days that the process takes. For example, the average number of days to mediate a case has steadily declined from 274 days in 2013, to 191 days in 2014, and 115 days in 2015. The number of successful mediations has also increased over time from 132 in 2013, to 182 in 2014, and 192 in 2015. Mediations had a 90% success rate in 2015.

Enhanced Investigations and Improved Investigative Times

In the last 20 months, the CCRB has improved investigations and dramatically decreased the amount of time it takes the Agency to investigate complaints and allegations. From January through September, 2016, 95% of complaints were four months old or less, compared to 59% at the end of 2014, despite only a very minor decrease (6%) in the total number of complaints that CCRB receives.

With regard to how quickly the Agency is closing cases, looking only at days spent within the Investigations Division, it took an average of 101 days to complete a full investigation in Q1 2016, compared to the average 222 days in Q1 2015, and the average 278 in Q1 2014.¹ These numbers include cases which have longer investigative times that are outside of our control, such as: cases on hold as requested by a District Attorney, those with subpoena actions, or those that have been reopened. These types of cases tend to take more time. Excluding cases on DA hold, with subpoena actions, or those that have been reopened, it took an average of 84 days to complete a full investigation in Q1 2016, compared to the average 196 days in Q1 2015, an 80% decrease. The average was even higher in Q1 2014 at 262 days.²

The Agency has been able to conduct better and faster investigations due to improved cooperation with the New York City Police Department, the availability of more video evidence, and new processes that were implemented after March 2015.

¹ For substantiated investigations these numbers are an average of 113 days in Q1 2016, 273 in Q1 2015, and 355 in Q1 2014.

² For substantiated investigations these numbers are an average of 95 days in Q1 2016, 254 in Q1 2015, and 335 in Q1 2014.

The CCRB has also improved investigations by providing better training to investigative staff and being more proactive in investigating civilian complaints. Our new training consists of an in-house, competency-based, multi-week training program for all new investigators, which include topics such as: the NYPD Patrol Guide, investigative and interviewing techniques, evidence gathering, and substantive issues surrounding the types of cases that fall within our jurisdiction under FADO.

Furthermore, investigations are generally more fruitful when an investigator strikes while the iron is hot, and begins a proactive investigation as soon as possible after a complaint is filed. Our relatively new Field Evidence Collection Team is able to collect evidence in the field in a timely manner and ostensibly before evidence is destroyed. Such evidence includes: video from commercial or privately-owned surveillance cameras, cell phone video taken by private citizens, or NYPD surveillance cameras. In addition, our investigators are better-equipped to canvass for witnesses and obtain witness statements in the field. By being more proactive and better-trained, we are able to investigate citizen complaints more effectively and efficiently, thereby improving both investigations and investigative times, as well as improving confidence in the CCRB by officers and civilians alike.

Increased Substantiation Rate

Along with faster and more effective investigations, the Agency has seen a greater number of substantiations and increasing video evidence. The case substantiation rate increased to 24% in 2015 from 14% in 2012, 15% in 2013, and 17% in 2014. Remembering that a CCRB complaint can have more than one allegation, our data shows that the number of officers with substantiated allegations has increased over time since 2011. The number of officers with substantiated allegations has increased by 69% compared to 2014.

Number of Officers with Substantiated Allegations	
2011	213
2012	243
2013	463
2014	467
2015	790

Increased Prosecutions before the NYPD Deputy Commissioner for Trials

The Administrative Prosecution Unit (APU), which processes the Agency’s most serious cases, has conducted more trials and closed more cases in the past year. As you may know, all charges and specifications recommended by the Board are prosecuted by the APU. Comprised of attorneys, the APU prosecutes misconduct before the NYPD Deputy Commissioner for Trials (“DCT”). The APU closed 186 cases in 2015, compared to 112 in 2014 (a 66% increase). Year to date, the APU has closed 196 cases. Finally, the APU completed trials against 130 officers in 2015, compared to trials against 82 officers in 2014 (a 59% increase).

NYPD Disciplinary Decisions, Discipline Rates, and Department Unable to Prosecute Rate

When the CCRB recommends Instructions, Formalized Training, or Command Discipline against a member of service, that recommendation is sent to the Department Advocate's Office (DAO). All substantiated cases where the Board recommends Charges and Specifications are prosecuted by the CCRB's APU. In 2015, the Police Department reported its final disciplinary decisions for 440 subject officers, comprising both cases that were prosecuted by the APU and cases that were handled by the DAO. The Police Department imposed some form of discipline — forfeiture of vacation, command discipline, instructions, or formalized training in 350 cases, resulting in an 80% disciplinary action rate for APU and non-APU cases together.

In 2015, the DAO's disciplinary action rate for non-APU cases was 92%, much higher than in previous years. For example, it was 70% in 2014. In 2015, the DAO declined to seek discipline in fewer cases over time. That dropped to 8% in 2015, from 21% in 2014. The discipline rate for APU cases in 2015 was 61%, similar to the prior year (65%).

New Initiatives

As an agency, we have strived to do more and become better in what we do and will continue to do so. The Agency has also implemented several exciting new initiatives in the past year and a half. For example, to reduce the number of people missing their interview appointments, the CCRB enabled a text messaging service on October 7, 2015. Additionally, in order to continue work harder to include NYC's diverse communities, optional questions related to sexual orientation and gender identity were added to the complaint forms in late 2015. This year, the Agency also made complaint walk-in forms available in five additional languages: Arabic, Chinese, Haitian Creole, and Russian, which help to round out the Agency's language access and complement forms that have been traditionally available only in English and Spanish. Finally, the Agency has brought itself into modern times by creating its own Twitter account, which was launched in September 2016.

Conclusion

We are in a better position to meet our objectives in fulfilling the CCRB's mission to provide thorough, quality, and fair investigations into police misconduct for the citizens of New York. We are grateful that the Administration and the Council are committed to ensuring that the Agency has all the assistance needed for the future success of the CCRB. Thank you for your time and continued support.

Chair Wiley, members of the Executive and Senior Staff, and I will be happy to answer any questions you may have.

NEW YORK CITY COUNCIL PUBLIC SAFETY COMMITTEE
HEARING - October 21, 2016
Examining the New York City Civilian Complaint Review Board

My name is Roy Richter and I am the President of the NYPD Captains Endowment Association. My police union is the official bargaining unit for the 760 uniformed members of the New York City Police Department in the rank of Captain, Deputy Inspector, Inspector, Deputy Chief and Police Surgeon.

I am here today to talk about a section of the City Charter that created the Civilian Complaint Review Board and language contained in that section that reflects a legislative bias against law enforcement when determining the makeup of the Board that reviews complaints from the public against police officers. When this language was originally passed into law a balancing provision existed to allow for the Police Department to review recommendations of the CCRB Board and prevent officers being charged for actions that were in fact consistent with their training, the law, and made in good faith. Non-legislative changes agreed upon in 2013 altered the manner in which complaints against officers by the CCRB Board were processed and removed this legislative safeguard from the review process and has eroded confidence in the fairness of the overall process by uniformed members of the Police Department.

First, I would like to go over briefly the section of the City Charter and provisions that create the Civilian Complaint Review Board. The members of the CCRB Board consist of thirteen individuals appointed from our communities by the City Council, Police Commissioner and Mayor. This Board reviews investigations and recommendations made by CCRB investigative staff who are charged with investigating complaints by New Yorkers against New York City Police Officers involving use of force, abuse of authority, discourtesy and use of offensive language.

In the past CCRB staff would forward their investigative results and recommendation to the CCRB Board who would vote to approve the recommendation and forward the case to the Police Department. The Police Department would review and consider the appropriateness of the case folder for issuance of Charges and Specifications against the officer or other some other form of remedial action. In many cases, the Department would take no action if it was determined that the action committed by the officer fell within Department guidelines and was not appropriate for disciplinary proceedings.

As I previously stated the CCRB Board consists of thirteen members, only three of which, who are appointed by the Police Commissioner, are legislatively permitted to have any law enforcement experience. The remaining ten CCRB Board members, the ones appointed by the City Council and Mayor, are statutorily forbidden from having any law enforcement experience – in either a local, city, state or federal law enforcement occupation, or having ever been employed by the New York City Police Department in any capacity.

In 2013 the procedures pertaining to the investigation, review, issuance of discipline and prosecution of subject officers were substantially modified by an agreement between the then Police Commissioner and CCRB. This agreement removed the level of review practiced by the Police Department to determine whether an officer's actions were in fact within Department guidelines before the issuance of Charges and Specifications against a subject officer. The agreement also removed from the Police Department the authority to prosecute the subject officer in an administrative forum. This authority to prosecute police officers was given to CCRB staff attorneys. The modifications provided for in this 2013 agreement took

effect in 2014 and now provide for a civilian complaint that is investigated by CCRB staff to be forwarded to the CCRB Board, who review and approve the recommendation and direct the Police Department to issue Charges and Specifications against an officer, with the case prosecuted by a CCRB staff attorney. There no longer exists a safeguard of preliminary review of the facts and circumstances surrounding the complaint by Police Department officials.

In the two years since these new practices have gone into place I have observed prosecutions of subject officers of all ranks to increase dramatically, even while overall numbers of complaints by the public against police have remained at historical lows. CCRB has also broadened their definition of authority under the "abuse of authority" provision in the empowering City Charter provision to impose adverse employment action against officers who they feel stopped, searched, or arrested a person beyond their legal authority, or, while executing a judicially approved warrant to search or arrest an individual, exceeded their legal authority contained in that court approved warrant. In many of these types of incidents, the officers feel wrongly accused, having acted in good faith in accordance with their training, Department policy and at the direction of Police Department commanders. As you can imagine, many of these cases have gone to trial, with many officers being found not guilty at the conclusion of a process that takes 12 to 24 months to complete.

Although I am mentioning it, I am not here to talk about the internal process of CCRB, as I am hopeful I can engage in future constructive discussion with the new Chair of the CCRB and resolve many of my concerns by means of a productive dialogue. I am here to bring to your attention and ask you to change a plainly worded bias in the law that limits your, and other elected leaders' ability, to choose persons appropriate for appointment to the CCRB Board. Uniformed officers of the NYPD are looking for fairness. When a subject officer is charged with abuse of authority for violating the constitutional rights of an individual and review of the facts reflect that the officer acted in good faith, consistent with their training, Department policy and the law, these officers should not have to put their careers on hold while defending themselves in a prolonged administrative prosecution. A prosecution such as this by itself is a wrong outcome. When it is exacerbated by a knowledge that the charge emanates from a Board who is statutorily barred from having any law enforcement background, or having ever worked for the Police Department in any capacity, there is a clear feeling by the officer that the system is unfair and the officer is being persecuted, not prosecuted.

Police Officers are professionals who draw upon years of training and experience when they place themselves in harms way protecting the rights and safety of New Yorkers. An analogy of the current CCRB review process is to a person who has a complaint about medical treatment rendered to them by a medical professional. How fair would the process be if the Board who is charged with reviewing the appropriateness of the medical care rendered is banned from having any background in a medical field when rendering a determination on the complaint?

Thank you for the opportunity this hearing affords to bring this matter to your attention and I am hopeful you can review this legislation and modify it accordingly.

Relevant Section of Law:

NEW YORK CITY CHARTER CHAPTER 18-A
CIVILIAN COMPLAINT REVIEW BOARD

§ 440 Public complaints against members of the police department.

(b)(2) "No member of the board shall hold any other public office or employment. No members, except those designated by the police commissioner, shall have experience as law enforcement professionals, or be former employees of the New York City police department. For the purposes of this section, experience as a law enforcement professional shall include experience as a police officer, criminal investigator, special agent, or a managerial or supervisory employee who exercised substantial policy discretion on law enforcement matters, in a federal, state, or local law enforcement agency, other than experience as an attorney in a prosecutorial agency."

My name is Michael McKeown and I am a student in the Legislative Advocacy Clinic at New York Law School. This year, the clinic has been researching ways to improve the accountability and transparency of the NYPD. Thank you for giving me the opportunity to talk to about the Civilian Complaint Review Board (“CCRB”).

The CCRB encourages members of the community to file complaints when they feel they have been victims of police misconduct. As a civilian body, the CCRB is an important alternative for people who are afraid or intimidated to complain directly to the police department or who feel their allegations would fall on deaf ears. In our current social climate, with so much unrest surrounding police use of force, the CCRB is a crucial tool to the people of New York. By reviewing the investigative file, determining the merits of each case, and recommending a disciplinary action the CCRB is a megaphone for victims. It is also an important signal by the City of New York that police misconduct will not be tolerated or ignored.

Unfortunately, though, the CCRB is so limited in its role and impact, as it is the sole responsibility of the New York City Police Commissioner to discipline the officer in any manner, which he deems appropriate—including no discipline at all. There is no requirement that the Commissioner follow the recommendations of the CCRB.

While we recognize that state law is very restrictive in this area, the resources of the CCRB are being wasted if their efforts and determinations are overlooked and under-considered. Not to mention there is a serious negative impact on community members

who go through the process only to be denied justice, accountability, and finality. The people of New York look to the CCRB to address their grievances, but every time the Commissioner ignores a discipline recommendation, its purpose is undermined, and it communicates to both police officers and New Yorkers that police are not accountable to citizens for their actions. We have heard about the City's renewed focus on police-community interactions, but without true transparency and accountability, trust will suffer.

Since civilian members of the CCRB cannot hold individual officers accountable under state law, we recommend creating additional ways to hold the *Commissioner* accountable for his or her decisions and to promote transparency. Our suggestion is to require the Commissioner to justify his or her disciplinary decisions and to make those decisions available to the public. This requirement falls squarely into the City Council's oversight authority over the police department. The Commissioner should be required to issue a timely report discussing the disciplinary actions taken and how the CCRB's recommendations factored in. This report could consist of the number of CCRB recommendations, the number of cases where the Commissioner departed from the recommended discipline, and the reasons for the departure. The people of the City deserve to know the reasoning behind the Commissioner's decisions—particularly where they deviate from the reasoned recommendations of the investigating body.

In addition, the recent action by the NYPD and the mayor's office to conceal police discipline decisions further frustrates transparency. We urge the City Council to use its

oversight authority to ensure we aren't going backwards on issues of police accountability, including the overly broad application of Civil Rights Law 50-a. The people of this city deserve better, especially those who have been victims of police misconduct. Thank you for your dedication to this important issue.

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**HEARING ON THE CIVILIAN COMPLAINT REVIEW BOARD
BEFORE THE PUBLIC SAFETY COMMITTEE OF THE NEW YORK CITY COUNCIL**

TESTIMONY OF NAHAL ZAMANI,
ADVOCACY PROGRAM MANAGER OF THE CENTER FOR CONSTITUTIONAL RIGHTS

FRIDAY, OCTOBER 21, 2016

The Center for Constitutional Rights (CCR) would like to thank the Public Safety Committee of the New York City Council for holding this important hearing on the Civilian Complaint Review Board (CCRB or Board).

CCR is dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change. CCR has been on the front lines in advancing advocacy and legal work to challenge unlawful and inhumane government practices.¹

For over fifteen years, we have been challenging abusive and discriminatory practices of the New York Police Department (NYPD or Department), the largest² and most influential municipal police department in the United States, through litigation and advocacy. In 2013, the federal judge in our landmark civil rights lawsuit, *Floyd v. City of New York*, found the NYPD liable for a widespread practice of unconstitutional and racially discriminatory “stop and frisks.”³

In this written submission, we address several aspects of Board’s operations and mandate, as well as challenges and opportunities.

¹ Learn more, www.ccrjustice.org

² The NYPD’s current uniformed strength is approximately 34,500. See http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml#1.

³ Learn more about *Floyd v. the City of New York* at www.ccrjustice.org/floyd. See also *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (“Liability Opinion”). Currently the NYPD is under the oversight of a court-appointed independent monitor to implement a series of concrete reforms to the NYPD’s policies, training, supervision, disciplinary systems, among other things, to ensure that individuals are stopped only based on the constitutionally required standard of “reasonable suspicion” and that the police no longer no longer systemically use race as a criteria for law enforcement actions. The court also ordered the City to engage in a “Joint Remedial Process,” currently underway, bringing together affected communities, elected officials, the NYPD, and other stakeholders to collaboratively develop reforms to the Department’s stop and frisk practices – and to provide a forum for a broader conversation about unfair policing practices.

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I. Civilian Oversight of Law Enforcement

It is of the utmost importance that police departments are subject to independent oversight. The CCRB, like many other similar bodies across the United States, plays a critical role with regards to ensuring independent oversight of police departments and in documenting and studying the complaints of civilians with regards to police misconduct.

In particular, the Board's mandate to investigate, substantiate, and in some limited circumstances, prosecute cases of police misconduct is crucial. The analysis of the Board with regards to the nature of complaints received and the larger issues of police misconduct it investigates under its mandate is key. For example, the CCRB's historical concerns around the NYPD's discriminatory and unlawful stop and frisk practice, among other issues it has highlighted in its tenure, were and continue to be incredibly beneficial to the public discourse.

However, despite its critical role, the CCRB, like many city agencies, faces challenges which complicate its reputation, efficacy, and ability to fulfill its mandate.

I. Robust Interpretation of Mandate

The CCRB's mandate to investigate allegations of police misconduct⁴ under the following rubric of "excessive use of force, abuse of authority, discourtesy, or use of offensive language"⁵ understandably covers a large breadth of allegations of misconduct.

However, we would urge the CCRB to take a robust and engaged interpretation of the mandate afforded to it. For example, the Board should share whether and how it investigates and substantiates allegations of racial profiling or racially-motivated pedestrian or traffic stops, searches, arrests, summonses, and other law enforcement actions, which, under any reasonable interpretation of the Board's mandate set forth in Chapter 18-A of the City Charter, clearly falls under "abuse of authority." While the NYPD recently announced court-ordered improvements within its internal investigations of civilian complaints related to racial profiling or bias, this does not obfuscate the role of the CCRB to also independently investigate similarly themed allegations included in civilian complaints that are filed with the CCRB. We also encourage the CCRB to robustly include new and additional investigatory and substantiation factors with the respect to the expanded prohibition on discriminatory law enforcement actions which was added to NY City Administrative Code § 14-151 in 2013 by Local Law 71.⁶

II. Prosecution of Substantiated Police Misconduct Cases

Notably, the Board also plays a critical role with regards to administratively prosecuting substantiated cases of misconduct following the implementation of a 2012 Memorandum of

⁴ New York City Charter, Chapter 18-A, Section 440, "Civilian Complaint Review Board"

⁵ *NY City Charter § 440*

⁶ Local Law 71, Protecting New Yorkers from Discriminatory Policing by the NYPD was signed into law in January 2014. Learn more at <http://changethenypd.org/community-safety-act>.

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Understanding (MOU) with the NYPD.⁷ This role of the CCRB cannot be understated, given the NYPD's own longstanding and well-documented inadequate disciplinary policies and procedures, which routinely fail to meaningfully discipline and deter officers who have committed incidents of misconduct, either by imposing no discipline at all or imposing penalties that are rarely in proportion with the misconduct in question, and offering no explanations for such disciplinary decisions.⁸ In fact, it is through the authority of the 2012 MOU and the work of the CCRB's Administrative Prosecution Unit (APU), that the public is afforded a limited opportunity to learn more about the NYPD's disciplinary processes, the Department's implementation of disciplinary penalties, and the Commissioner's discretion under his afforded disciplinary authority.

Notably, the APU's relationship with the NYPD and in particular, with the Department Advocate's Office has greatly improved in recent years, allowing for a more necessary cohesion. However, despite this increased cohesion a number of concerns remain.

a. Modification of Pleas

The matter of the resolution of cases by the APU is also at stake given the retention of exclusive disciplinary authority by the NYPD Police Commissioner.⁹ With regards to any modification of any pleas by the Commissioner,¹⁰ we encourage the CCRB to make public the following information related to these and all future cases where pleas are modified: any written explanations for modification of pleas by the Commissioner, as well as relevant information about the case, including the type of misconduct, demographic information about the individual(s) and the subject officer(s), the precinct and location of the incident, the original plea and penalty agreed to and the new modified plea and penalty, and any other relevant information. While some of this information is contained in quarterly APU reports, we urge the Board to release as much information as possible so that the public may assess any trends or areas of concern.

⁷ See 2012 Memorandum of Understanding Between the Civilian Complaint Review Board (CCRB) and the Police Department (NYPD) of the City of New York Concerning the Processing of Substantiated Complaints, at paragraph 8 [noting, "The Police Commissioner shall retain in all respects the authority and discretion to make final disciplinary determinations"] (hereinafter "2012 CCRB MOU"). This MOU authorized the CCRB to prosecute administrative cases against officers who they recommended "charges and specifications," becoming the first civilian oversight agency in the U.S. with prosecutorial power.

⁸ Communities United for Police Reform, *Priorities for the New NYPD Inspector General: Promoting Safety, Dignity and Rights for all New Yorkers*, June 2014, pages 9-11, available: <http://changethenypd.org/resources/priorities-new-nypd-inspector-general-promoting-safety-dignity-and-rights-all-new-yorkers>

⁹ The NYPD Police Commissioner is granted exclusive control over disciplining officers who have been found to engage in misconduct against civilians. This authority is granted to the NYPD Police Commissioner under the following codes of the New York City Charter and the Administrative Code: Sections 434(a) of the New York City Charter and 14-115(a) of the New York City Administrative Code.

¹⁰ CCRB, 2015 Annual Report, published May 2016, available:

https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2015_annual.pdf, noting, "In 2015, APU resolved 41 cases through a guilty plea by the subject officer. The APU negotiated pleas in which officers agreed to penalties ranging from instructions to a forfeiture of 30 vacation days. In four cases where there was originally a plea, the plea was set aside by the Police Commissioner and the charges dismissed. Of these cases, the officer received a penalty in all four cases."

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III. Reconsideration Process

The Board recently opened up a period for public comment related to its proposed rules regarding the reconsideration process for substantiated CCRB cases.¹¹ Concerns related to this process, through which the NYPD can seek reconsideration of the CCRB's substantiated findings of officer misconduct a findings and recommended penalties for substantiated misconduct were expressed in a letter that CCR, the NAACP Legal Defense and Educational Fund and the Legal Aid Society sent to the Board in June 2016.¹² In that communication, we underlined concerns that the process would be used to essentially perpetuate problematic Departmental disciplinary mechanisms that were identified by the federal court in *Floyd*, and to potentially undermine important and court-mandated disciplinary reforms in the *Floyd* case.

As we shared in our letter, it is of the utmost importance that the NYPD officers are held accountable for substantiated unconstitutional conduct. The recommendation of disciplinary penalties by the Board, as well as its credibility determinations and weighing of testimonial evidence cannot be contested by the Department through the reconsideration process. Moreover, the reconsideration process cannot be employed in order to contravene the rulings of the federal court in the *Floyd* litigation or otherwise prevent NYPD officers from being held truly accountable for unconstitutional stops-and-frisks, trespass arrests, or other misconduct.

Furthermore, the reconsideration process, as currently contemplated, could potentially undermine the independence of the Board in substantiating and prosecuting allegations of misconduct overall. It is not unreasonable to think that the Board will begin or has already begun to recommend lower disciplinary penalties for misconduct it previously recommended to be punished at higher levels, or even to not substantiate allegations it may have in the past substantiated in order to avoid future NYPD requests for reconsideration.

As this matter may still be under consideration by the Board, we urge the CCRB to consider our June 2016 letter and the recommendations contained therein as it finalizes the rules.

IV. Opportunities for Collaboration

Further, we underline CCR's continued interest in working collaboratively with the CCRB moving forward, particularly in the joint reform process ordered by the federal district court in August 2013 in *Floyd*.

In conclusion, we sincerely hope that this hearing will help usher in the continued engagement by the CCRB to meet its mandate and to make concrete steps towards addressing the challenges it faces.

¹¹ CCRB Proposed Rule Amendments, Comment period ended June 10, 2016, available: <http://rules.cityofnewyork.us/content/ccrb-proposed-rule-amendments>

¹² CCR et al., Letter to Civilian Complaint Review Board, Comments on Proposed Rules of the Civilian Complaint Review Board, June 10, 2016.



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Nick Malinowski

BROOKLYN DEFENDER SERVICES

**Presented before
The New York City Council
Committee on Public Safety
Oversight Hearing on
Examining the New York City Civilian Complaint Review Board**

October 21, 2016

My name is Nick Malinowski, I am here on behalf of Brooklyn Defender Services, which provides high-quality multi-disciplinary criminal, family and immigration defense, civil legal services such as housing, benefits, education and social work support to more than 40,000 indigent Brooklyn residents every year. Each of our clients, by definition, has had an interaction with the New York City Police Department and its officers, giving us a front row seat from which we can consider mechanisms of police accountability in New York City. We thank the City Council Committee on Public Safety, and Chair Vanessa Gibson, for holding this important oversight hearing on the Civilian Complaint Review Board, and for inviting us to attend.

Background: The Importance of Police Accountability and Legitimacy

Never before in the history of our organization has police accountability been so prominently an issue of popular national importance. Just four years ago drag-net Stop & Frisk was being defended as an essential policing tactic, responsible for saving tens of thousands of lives despite research that questioned this causality and obvious constitutional concerns. While we welcome the national, progressive attention on these issues, to which our clients are often at the receiving end, we must acknowledge how we got here: long-standing police abuses coming into the light due to lawsuits, civilian documentation and protest. The deaths of Eric Garner and Ramarley Graham at the hands of the New York Police Department, and the public's perception of a lack of accountability for the officers involved, especially as compared to the extensive punishment regimes for civilians in criminal court, have driven a significant interest in this topic both locally, nationally, and even internationally.

There is a growing interest in the role of civilian oversight to address the crisis of police accountability. While the administration has stressed opportunities for the NYPD to, as they say,

“reform itself from within,” history has not proven this to be the most expedient path to progress. Rather, anti-corruption commissions from the 1970s (Knapp Commission) and the early 1990s (Mollen Commission), followed by law suits including *Floyd v. City of New York*, *Ligon v. City of New York*, *Raza v. City of New York* have generated the biggest wins for civil rights and policing reform. The CCRB is generally considered a national model for civilian bodies, yet the question as to whether it actually deters police misconduct remains an open one; in fact, the CCRB suggested in its 2015 annual report that it would be studying this very question. We anxiously await the results.

While much of the national focus is on deaths in police custody, or at the hands of law enforcement, it is through non-fatal daily punitive interactions, nearly 1 million each year, that most people experience the police in New York City. One of the major changes in the courtroom resulting from the massive influx of arrests accompanying the shift towards broken windows policing is the reality that most cases rely on the testimony of a single police officer alone, rather than a civilian-generated complaint. Deference to prosecutorial power and discretion and sentencing guidelines that mandate long prison sentences have made trials nearly extinct, and thus the integrity of the police officer has become paramount to our system of criminal justice in New York City.

The importance of, and challenges of, accountability become even more apparent as we learn more about the importance of perceptions of legitimacy and how trust in the police drives down violence of all kinds. A recent study in Milwaukee showed that some people, particularly in areas of high police involvement, stopped calling 911 to report crimes after high-profile examples of police misconduct¹. We need to cease considering police misconduct as a case of “bad apples” and look towards systemic reforms and accountability measures. The racial gap in perceptions of policing is widening, along with other forms of polarization in our country. Nationally, confidence in the police is at an all-time low².

Current Holes in Accountability

The city needs to do more to protect the public from problem officers. New York City is home to one of the most secretive regimes in the country when it comes to police transparency. It is all but impossible for the public, or defense attorneys, to see police disciplinary records or any administrative actions resulting from alleged or substantiated misconduct. Compare these privacy protections to those experienced by our clients in criminal court, who are accused sometimes of serious offenses but much more frequently of minor behaviors less damaging to a sense of public order than police misconduct. Is it more important for the public to know which of their neighbors has stolen hygiene products from a chain pharmacy, or which officers in their communities carry substantiated claims of false arrest, brutality or other abuses of authority? Unfounded and unsubstantiated claims of gang involvement are used against our clients

¹ <http://www.asanet.org/sites/default/files/attach/journals/oct16sarfeature.pdf>

² <http://www.gallup.com/poll/183704/confidence-police-lowest-years.aspx>

routinely, yet we are unable to include substantiated claims of misconduct against their accusers. Recently the Office of Court Administration sought corrections for 36,000 records where criminal histories meant to be sealed were left open; the state sells these records to third-party vendors who sell the information, even when it's inaccurate, to landlords, bankers, anyone who asks. Sealed information from RAP sheets is also regularly leaked to news outlets by law enforcement personnel, in violation of state law. When the names and photographs of our young clients are distributed to the media, our City has already done them grievous lifetime harm that cannot be undone by findings of innocence, youthful offender adjudications, or subsequent rehabilitation. As a general rule privacy has been greatly degraded in all areas except for police misconduct and discipline. Why?

Because the City has no apparatus for publicly collecting and disseminating these data and records, community groups are left tracking police officers in their precincts in order to try to produce some semblance of accountability. While the public, especially with cell-phone video, have done tremendous public good as a result, the city should be concerned that what is really a government obligation has been filled by community members as a public safety necessity. What is left is a well-founded public perception that the City will only act on police reforms when it is forced to do so. **The CCRB should be tasked with providing the public with greater access to the performance and disciplinary backgrounds of officers in local precincts. We cannot hide behind state laws that seem to frustrate this task.**

To the agency's credit, the CCRB has attempted to gain access to some police records, but has been blocked by the City Law Department, which the City Charter provides with final say over areas of litigation pursued by the CCRB. This is an obvious conflict of interest and disrupts any claims of the CCRB being an independent agency. **The Council should look into ways to make the CCRB independent of the Law Department, which, of course, defends the City in Civil Law suits stemming from police misconduct.** As a civilian oversight body, the CCRB should be accountable to the people of New York, and specifically to those people who have been victimized by police misconduct.

In keeping with this premise, the Council could consider changing the City Charter to allow the CCRB to have final disciplinary say over police officers, rather than deferring this responsibility to the police commissioner. The CCRB has itself acknowledged that it does not know if the penalties resulting from substantiated misconduct claims have any deterrent effect. Troublingly, for the most problematic officers, complaints stacked up after five or more years of service time, perhaps indicating that as they were disciplined they grew more comfortable with misconduct than before.

Brooklyn-Specific Concerns

Brooklyn was the borough with the most CCRB complaints in 2015. Specifically, the 75th and 73rd precincts were among the top two precincts in the City for CCRB complaints, with Brooklyn North Headquarters continuing to be another problematic command. The 75th precinct is also the precinct that generates the highest number of civil lawsuits against the City related to police misconduct, and with the most civil forfeiture claims as well. With the benefit of the CCRB's recent move toward more precise record keeping, we have also learned, unfortunately, that based

on the number of complaints, Brooklyn is home to five of the six worst precincts for LGBTQ New Yorkers. While the Brooklyn District Attorney has won accolades for his conviction integrity unit, these successes expose a history of police and prosecutorial misconduct in the borough that extends back decades.

We ask City Council today, what is being done to reverse these trends, many of which have gone wholly unchecked for years? The CCRB should have the power to recommend officers be transferred to a different precinct following substantiated misconduct. Advocates for police accountability, which include our clients and constituents, rightly seek the dismissal of problematic officers; however, historically this has been all but impossible to achieve. In one of our precincts, civilian video-tape has led to the substantiation of misconduct by several officers who nevertheless remain in the community. It is truly a slap in the face to people victimized by City employees of the Police Department when they are forced into repeated interactions with the same officers. At the very least, the City could explore getting problematic officers off the street, especially in the precincts and communities where they have victimized people.

The Glaring Absence of CCRB in the Courtroom

In its 2015 annual report, the CCRB acknowledged doing no outreach in criminal courts around the City. Roughly 600,000 people a year are summonsed or arrested by the NYPD; all of these people by definition have had contact with a police officer and thus an interaction that has the potential to include police misconduct. Just as the City uses targeted outreach to promote the services of 311 to tenants whose landlords might be illegally denying them heat in winter, we ask the City Council to push CCRB to make outreach in the courts a priority.

Last year a BDS client won his criminal case after a judge found that officers from the 67th precinct in Flatbush were not trustworthy. This was a case where a gun was planted on one of our clients. But what has the city done to curb the authority of these officers who nevertheless may be making arrests even today? How would the public even know? The Brooklyn District Attorney's Office said he would launch an investigation into the precinct, but more than a year later we have heard nothing. Similarly, the CCRB has found 60 police officers guilty of making false statements during CCRB hearings, though the agency has not published any disciplinary reports relating to these officers. If these officers made false statements to the CCRB, it warrants an investigation into whether they made false statements to courts as well. Does the CCRB have authority to consider cases dismissed or otherwise adjudicated in court with evidence of officer misconduct? If not the CCRB, who should be looking at these types of issues?

More recently a client was falsely arrested; his case was finally dismissed once surveillance video of the arrest was recovered. We knew initially that the officer involved in the arrest had been involved in misconduct due to newspaper articles, alone, but did not have enough facts about the resolution of the initial case to make a persuasive argument to a judge about the instant matter. Eventually our client was vindicated in his claims to innocence by video, but the City should have an interest in preventing cases like this from ever occurring in the first place, and resolving them immediately rather than having to wait for surveillance video. At least this client wasn't waiting in jail, but of course that happens as well.

Historically our office has been hesitant to work with the CCRB because of the potential negative impact on open criminal matters. Currently we are working with the CCRB to implement a new process for encouraging clients to make complaints of misconduct first to us, and then to the CCRB, so that we can protect their rights as they pertain to the criminal case. The CCRB's interest in case processing times can conflict with appropriate concern for the rights of people facing criminal charges. Our clients have been told by CCRB that their cases will be closed as "non-compliant" after we advised them to delay testifying due to complicated criminal court matters. People should not be forced into such a choice. To the extent that attorneys serve as reporting non-witnesses to a CCRB complaint, **the CCRB should update its rules to provide counsel with all information that is provided to the police and other parties to traditional cases.** We hope that by working with CCRB we can develop a process for people with pending criminal cases that works for everyone, and will help the CCRB to collect complaints from our clients.

In speaking with our clients about these issues, the reactions have been decidedly mixed. While some have expressed interest in filing complaints, others have declined, telling us that the CCRB process is unsatisfactory because nothing ever happens to the police officer. It's hard to explain to someone that at most an officer who has been found to have engaged in serious misconduct could lose a couple vacation days. There is not much incentive for our clients to spend a lot of time following up on these complaints if the outcomes will not be satisfactory. Meanwhile, the CCRB has emphasized mediation as a desired result to reach understanding between police officers and civilians. We agree that a great deal of good can come from this type of conflict resolution, but wonder why the City has prioritized this only in cases of civilians making complaints about police misconduct. We would like to see the City Council look into expanded the use of mediation in the criminal court context as well.

General Concerns for Greater Policing Accountability

The CCRB's 2015 annual report raises significant issues related to stops and searches and civilian filming of police activity that should prompt action by the City Council. Documented Stop and Frisks have dropped in New York City from 685,724 in 2011 to 22,563 in 2015; however the ratio of complaints to recorded stops has skyrocketed, while the racial make-up of people in reported stops exposes serious questions about racial equity. In 2011, there were 1,655 CCRB complaints related to Stop and Frisk, making the complaint to stop ratio 1:414. In 2015 there were 888 CCRB complaints related to Stop and Frisk, a decline, but one that puts the new complaint to stop ratio at 1:25. This shockingly steep increase combined with the findings of Peter Zimroth, the federal Stop and Frisk monitor, that officers are not always reporting stops is concerning. Similarly we do not always see UF-250s or other paperwork describing stops in arrest information provided to the court, all of which leads us to question whether the decline in stop and frisks has perhaps been overstated.

Similarly, in 2011 there were 58,363 documented searches, which drew 981 CCRB complaints for a ratio of 1:59. In 2015, there were just 4,204 documented searches, leading to 485 complaints, for a ratio of 1:9. Again these numbers lead us to question whether or not searches are occurring without being properly recorded. These issues point for a need for greater City

Council oversight of the NYPD as a general matter. Intros 182 & 541, otherwise known as the Right to Know Act, would perhaps mitigate some of these concerns.

Conclusion

Thank you for your consideration of our comments. We look forward to continuing to work with the Council to create meaningful police accountability in our City. Please do not hesitate to reach out to me with any questions about these or other issues at (718) 254-0700 (ext. 269) or nmalinowski@bds.org.



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FOR THE RECORD

**Testimony of New York City Anti-Violence Project
Beverly Tillery, Executive Director
to the
Public Safety Committee
New York City Council
Hearing on Oversight – Examining the New York Civilian Complaint Review Board
October 21, 2016**

Good morning. My name is Beverly Tillery, I am the Executive Director at the New York City Anti-Violence Project (AVP).

I want thank the City Council's Public Safety Committee for the opportunity to speak with you today and offer this testimony about Oversight of the New York Civilian Complaint Review Board (CCRB). This Oversight is necessary to enhance the CCRB's ability to address complaints from all New Yorkers and I want to talk specifically about complaints from lesbian, gay, bisexual, transgender, queer (LGBTQ) community members.

AVP empowers, LGBTQ and HIV-affected communities and allies to end all forms of violence through organizing and education, and supports survivors through counseling and advocacy. We envision a world in which all LGBTQ and HIV-affected people are safe, respected, and live free from violence.

AVP coordinates the National Coalition of Anti-Violence Programs (NCAVP) which releases two reports annually: one on anti-LGBTQ hate violence and one on intimate partner violence in LGBTQ communities. These reports are the only national data of their kind and both highlight the deep impact police violence and misconduct have on LGBTQ communities here in New York City as well as nationally. In addition, AVP routinely trains NYPD officers during promotion trainings and AVP's Director of Organizing and Advocacy is a member of the LGBT Advisory Committee to Police Commissioner O'Neill. AVP is also a member of Communities United for Police Reform.

In the 2015 NCAVP Hate Violence report, only 41% of hate violence survivors reported that they had interacted with the police after the incident of violence. A majority of survivors indicated and regularly tell us that the reasons they don't engage with the police are that they fear they will not be believed or that they will be re-victimized by the police. Unfortunately, the mistrust that many survivors feel is validated by actual police response and behavior. Of survivors who reported to us that they did engage with the police after an incident of violence, 41% said the police were indifferent and 39% indicated that police were hostile toward them. Additionally, of survivors who reported negative police behavior, 33% experienced verbal abuse, 16% experienced physical violence, 8% experienced the police using slurs or biased language against them, and 3% experienced sexual violence. A majority of these survivors of violence are members of our community who are already marginalized: people of color, transgender and gender non-conforming people, immigrants and youth.

Our findings indicate that there is still a lot more work to do to address police violence and misconduct and to ensure appropriate police response to LGBTQ survivors of violence and the LGBTQ community overall. While training is one aspect of the addressing the epidemic of police misconduct against all New Yorkers, it will be inadequate to ensure change without timely and serious consequences for police misconduct, which the CCRB can greatly influence.

We urge the Public Safety Committee to make every effort to ensure the CCRB is working to implement the recommendations in their own report released earlier this year entitled "Pride, Prejudice and Policing: An Evaluation of LGBTQ-Related Complaints from January 2010-December 2015." While the CCRB has greatly improved its response and relationships with LGBTQ New Yorkers in recent years, the Review Board has a long history of lack of engagement and attention to the LGBTQ community.

The report highlighted that 466 complaints were filed from 2010-2015 involving an LGBTQ person and those complaints included a total of 1,959 allegations. Of the 466 complaints, only 192 were fully investigated and those investigations resulted in the CCRB substantiating 74 (8%) allegations of misconduct. The report recommendations include: that the CCRB should continue to expand its investigative and outreach capacity to better serve the LGBTQ community, and that an audit should be conducted by the Office of the Inspector General in collaboration with experts in the field of the Departments to ensure that the 2012 changes in the Patrol Guide regarding the treatment of transgender individuals are being properly and consistently implemented. ability for people to report claims of misconduct from the NYPD anonymously, and increased outreach to communities as well as on-going sensitivity trainings for CCRB staff to better serve all New Yorkers especially LGBTQ New Yorkers.

Implementation of these recommendations will help increase LGBTQ survivor's ability to trust the CCRB and ensure greater accountability when police misconduct occurs. We feel strongly that CCRB has made major improvement under new leadership in the past two years and while they have a long way to go to truly hold officers accountable when misconduct occurs, they are increasing trust with directly impacted communities. We need to ensure that that trend continues.

Thank you for your time and consideration regarding this critical and life-saving matter.

Very truly yours,
Beverly Tillery
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TESTIMONY

The Council of the City of New York
Committee on Public Safety

Examining the New York City Civilian Complaint Review Board

The Legal Aid Society
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October 21, 2016

Good morning. I am Cynthia Conti-Cook, Staff Attorney of the Legal Aid Society's Special Litigation Unit in the Criminal Practice, a specialized unit dedicated to addressing systemic problems caused by the criminal justice system. I am joined by Angel Harris from the NAACP Legal Defense and Educational Fund, which is co-counsel with the Society in Davis et al v. City of New York et al., a federal class action that was filed in 2010 to challenge the systemic practice of illegally stopping and arresting individuals for purported trespass violations on New York City Housing Authority ("NYCHA") property. This case settled last year and, as part of the settlement, the Davis team is part of the federal court ordered monitoring of the New York City Police Department ("NYPD") intended to institute substantive reforms in police training, supervision, disciplining, and monitoring in the areas of stop-and-frisk and trespass enforcement. For the past several months, we have worked in collaboration with the Court-Ordered Monitor, the NYPD, the City Law Department, and Plaintiffs' counsel in the related cases, Floyd v. City of New York and Ligon v. City of New York, on developing these reforms.

We thank this Committee for the opportunity to provide testimony about the Civilian Complaint Review Board.

ORGANIZATIONAL INFORMATION

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles about 300,000 cases for low income families and individuals. By contract with the City, the Society serves as the primary defender of indigent people prosecuted in the State court system. In this capacity, and through our role as counsel in the Davis case, the Society is in a unique position to testify about policing in New

York City. We represent many of those who are arrested and have spoken with them about the circumstances of their arrests.

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is a civil rights law organization founded in 1940 by the late U.S. Supreme Court Justice Thurgood Marshall. As the nation’s first civil rights and public interest law organization, LDF has engaged in pioneering and long-standing advocacy for racial justice in the criminal justice system. As counsel in the Davis case, LDF seeks to reform police policies and practices that target NYCHA residents and their guests, who are overwhelmingly Black and Latino. LDF believes that the collection and evaluation of civil actions and other complaints alleging police misconduct is vital for improving police practices and providing the transparency and accountability that is necessary to build trust and legitimacy within the diverse and vibrant communities in New York City that are served by the NYPD.

Our testimony will address two substantive areas: first, the ongoing collaborations between the CCRB and NYPD including whether and to what extent they benefit New Yorkers seeking accountability for police misconduct; and second, the lack of transparency regarding police accountability in these collaborations and elsewhere.

At the outset, however, we want to acknowledge that over the past 3 years, the CCRB has made many improvements. The length of time required for CCRB investigations has shortened, CCRB’s substantiation rate has increased, the quality of the prosecutions pursued by the CCRB’s Administrative Prosecution Unit prosecution unit has increased, and the agency has improved its outreach both to community groups and New Yorkers.¹ We are also encouraged by CCRB’s

¹ Civilian Complaint Review Board, “Semi-Annual Report: January – June 2016”, x-xi, xiii, available at http://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2016_semi-annual.pdf.

publication of two substantive reports this year – on improper entries and police encounters with the LGBTQ community – especially given that, in previous years no issue-based reports were published.² These are significant steps in the right direction, as a fully functioning and independent police accountability system that investigates incidents with certain and swift outcomes undoubtedly improves public trust in government and gives citizens an outlet for redress beyond seeking money damages in lawsuits.

The Reconsideration Process

Our first concern is about the “Reconsideration Process”, a collaboration between the CCRB and the NYPD which allows the NYPD’s Advocate’s Office (DAO) to ask the Board to reconsider findings and/or penalty recommendations in substantiated cases based on new evidence or reasons not known during the investigation. We believe that this process has the potential to critically undermine urgently needed public trust.

Time and again, the CCRB has concluded that the more the NYPD adopts CCRB recommended penalties, the more effective the CCRB is. While it is unquestionably true that the CCRB needs the ability to prosecute and pursue penalties for misconduct on behalf of the New Yorkers who come to it for justice, it is not clear that the “Reconsideration Process” has increased the rate at which the NYPD adopts CCRB penalties or if, instead, the CCRB reduces the penalties it seeks in order to secure more NYPD approvals.

² See Civilian Complaint Review Board, “Issue-Based Reports”, available here: <http://www1.nyc.gov/site/ccrb/policy/issue-based-reports.page>.

A comparison of Tables 30-32 in the statistical appendices to its Annual Reports from 2010 to 2015 suggests it is the latter. In 2010, 2011, and 2012, the CCRB recommended charges against 68-70% of officers it substantiated complaints against.³ At the time, the CCRB could not prosecute officers on its own and these recommendations meant that the DAO would make the final decision of whether or not an officer was charged. Not surprisingly, the DAO either did not prosecute officers in a timely manner, let the cases expire or reached conclusions that diverged from those of the CCRB, such as choosing Command Discipline or Instructions rather than the filing of charges.

After the MOU allowing the CCRB to prosecute its own cases was initiated and the agency began moving forward, there was little change. In 2013, the CCRB still recommended charges for 67% of officers involved in substantiated cases.⁴ However, after the “Reconsideration Process” was introduced in 2014 by former Chairman Richard Emery, the percentage of officers with substantiated complaints where the CCRB recommended charges dropped to 54% in 2014.⁵ Most recently, in 2015, the percentage dropped to only 25% of substantiated cases being pursued by the CCRB.⁶ That’s a drop from 67% in 2013 to 25% in 2015. Under these circumstances, the fact that the NYPD now adopts more of the CCRB’s recommendations is hardly impressive. Rather than the NYPD becoming more open to justice

³ See Civilian Complaint Review Board, “Annual & Bi-Annual Reports” available here: <http://www1.nyc.gov/site/ccrb/policy/annual-bi-annual-reports.page>

⁴ See Civilian Complaint Review Board “Annual Report 2013 Statistical Appendix”, at Tables 30B, available here: http://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2013_annual-appendix.pdf

⁵ See Civilian Complaint Review Board “Annual Report 2015 Statistical Appendix” at Table 30B, available here: http://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2015_annual-appendix.pdf

⁶ Id.

demanding by aggrieved New Yorkers, it appears that the CCRB has become less rigorous and, indeed, has adopted the NYPD's rubrics for how to prosecute and penalize misconduct.

Additionally, former Chairman Emery repeatedly mentioned the adoption of a rubric, matrix, or guideline between the NYPD and CCRB for determining how to decide which officers are prosecuted and penalized, but it has never been disclosed to the public.⁷ Any such matrix should be made publicly available. Requests for reconsideration from the NYPD should also be made public (with applicable redactions), as should the CCRB's responses, if and when a modification is made in response to an NYPD request. We are concerned that if this collaboration is exclusively done in secret, it will threaten the public trust in the CCRB as an independent agency.

Transparency-NYC Open Data Portal

The CCRB has not updated its raw data in the NYC Open Data portal since 2009. While its Data Transparency Initiative certainly stands as a stark improvement to the flat chart in a PDF file as the CCRB previously used, open data is the rule for transparency, not the exception. The agency should make its anonymous data sets available through the NYC portal for analysis by journalists, academics, policy think-tanks and all New Yorkers.

Transparency-NYPD Officer Complaint and Disciplinary Records

Transparency of police officers' complaint and disciplinary records is also vitally important. Multiple people of color, including Ramarley Graham and Eric Garner, have been

⁷ See "CCRB Public Hearing Transcripts", October 8, 2014, at 55 and November 16, 2015, at 8 and 11 available at <http://www1.nyc.gov/site/ccrb/about/board/board-meeting-transcripts.page>

killed by police who remain on active duty in the NYPD for years after use of unjustified deadly force. Without public access to complaints about officers, the public is left to speculate about how dangerous these officers were known to be by the NYPD and how many deaths could have been prevented.

Two Supreme Court judges, previous NYPD administrations, and even Governor Cuomo agree that summaries of police officers' complaint and disciplinary records should be public under New York State Civil Rights Law 50-a.⁸ However, the DeBlasio administration has interpreted the law to mean that these records are confidential. For example, in August, the NYPD ended its decades long practice of giving media access to summaries of administrative proceedings.⁹

The CCRB also stopped disclosing summaries of CCRB complaint histories in October 2014. Legal Aid brought a successful lawsuit against CCRB for the substantiated complaint history of the officer who killed Eric Garner. In that case, the court ordered disclosure based on a finding that the summaries were not covered under state law 50-a.¹⁰ This is because Civil Rights Law 50-a, -- while poorly written and in need of reform -- does not prevent the release of summaries of officers' disciplinary conduct. Nonetheless, the DeBlasio administration appealed, claiming that the summaries of administrative proceedings are confidential under state law. This

⁸ See *Luongo v. Records Access Officer & Daniel Pantaleo*, 49 Misc.3d 708, 720 (N.Y. Cty, 2015)(pending appeal), *Luongo v. Records Access Officer & Jason Maccaron*, Index No. 7617/2015 (Queens, 2016)(pending appeal); Rocco Parascandola and Graham Rayman, "Exclusive: NYPD suddenly stops sharing records on cop discipline in move watchdogs slam as anti-transparency," *The New York Daily News*, August 24, 2016 (discussing decades long practice of making these records available under previous administrations) available here: <http://www.nydailynews.com/new-york/exclusive-nypd-stops-releasing-cops-disciplinary-records-article-1.2764145>; Jillian Jorgensen, "Cuomo Says Releasing NYPD Records Is a 'Decision for New York City'", *The Observer*, September 8, 2015, available here: <http://observer.com/2016/09/cuomo-says-releasing-nypd-records-is-a-decision-for-new-york-city/>.

⁹ See FN8, Parascandola, et al.

¹⁰ See FN8, *Luongo v. Records Access Officer & Daniel Pantaleo*.

interpretation reflects a stricter view of state law than that which was applied by any prior administration, and a drastic divergence from long-standing standards of transparency. That appeal will be heard in November. The announcement about the Mayor's 50-a reform principles last week that outlined how the state law must be modified before the Mayor believes his administration can publicly disclose any public information about discipline coincided with the filing of their reply brief in that lawsuit, which cited the announcement.

Because both the NYPD and the CCRB have simultaneously stopped disclosing summaries of disciplinary information, it appears that the CCRB's interpretation of the law comes from the DeBlasio administration and the City's law department. There is a conflict of interest where the law department that defends hundreds of officers, and the NYPD, against civil rights lawsuits also determines the CCRB's responsibilities with respect to publicly disclosing summaries of substantiated complaints. Indeed, the very reason the CCRB exists is because an oversight agency must have independence to appear capable of rendering justice. Plainly, CCRB should have sought conflict counsel from an independent law firm.

Thank you for the opportunity to testify and we're happy to take any questions.

Same Panel

THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/21/16

(PLEASE PRINT)

Name: Angel S. Harris

Address: 40 Rector St.

I represent: NAACP Legal Defense Fund

Address: 40 Rector St.

Same Panel

THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/21/16

(PLEASE PRINT)

Name: Cynthia Conti-Cook

Address: _____

I represent: Legal Aid Society

Address: _____

THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Roy Richter - President

Address: 40 Peck Slip

I represent: NYPD Captains Endowment Association

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/21/16

(PLEASE PRINT)

Name: Nick Malinowski

Address: _____

I represent: Brooklyn Defender Services

Address: 177 Livingston St, 7th Fl, Brooklyn 11201

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/21/2016

(PLEASE PRINT)

Name: Nahal Zamani

Address: 666 Broadway

I represent: Center for Constitutional Rights

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10-21-16

(PLEASE PRINT)

Name: Michael Mckeown

Address: 143 Acorn Drive Clark NJ 07066

I represent: Legislative Advocacy Clinic

Address: 185 West Broadway New York Law School

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: 10/21/16

(PLEASE PRINT)

Name: Beverly Tillery

Address: 381 Malcolm X Blvd., 4D

I represent: New York City Anti-Violence Project

Address: 116 Nassau St, 3rd Fl.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Mina Malik

Address: Executive Director, CCRB

I represent: Civilian Complaint Review Board

Address: 100 Church Street, NY NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Maya Wiley, Chair CCRB

Address: _____

I represent: CCRB

Address: _____

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Thomas Kim

Address: Chief of Investigations

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Robin Charles

Address: Deputy Exec. Dir. Policy and Statistic Initiatives

I represent: Civilian Complaint Review Board

Address: 100 Church Street, NY, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jonathan Darche

Address: Chief ~~Adm.~~ Prosecutor

I represent: Civilian Complaint Review Board

Address: 100 Church Street, NY, NY

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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Date: 10/21/16

(PLEASE PRINT)
Name: MATTHEW KADUSHIN ^{GENERAL} _{COUNSEL}

Address: CCRB 100 Church St

I represent: CCRB

Address: 100 Church Street

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)
Name: Raniece Medley

Address: Director of Outreach - CCRB

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: Nick Malinowski (PLEASE PRINT)

Address: _____

I represent: BROOKLYN DEFENDER

Address: SERVICES

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: Chris Dunn / NYCLU (PLEASE PRINT)

Address: _____

I represent: New York Civil Liberties Union

Address: 125 Broad Street / NYC 10004

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