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

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CONSTITUTIONAL RIGHTS**

**January 22, 2019**

**JUSTICE TAKES A FIGHT.**

## I. Introduction

The Center for Constitutional Rights 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).

The Center for Constitutional Rights works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications. Since 1966, we have taken on oppressive systems of power, including structural racism, gender oppression, economic inequity, and governmental overreach.<sup>1</sup>

For nearly twenty years, we have been challenging abusive and discriminatory practices of the New York Police Department (NYPD or Department), the largest 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.”<sup>2</sup> We are currently in the remedial phase, working with a court-appointed monitor to see a vast number of changes to NYPD policies and practices to ensure they are in compliance with the law.

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

## I. Significance of CCRB’s Mandate

First, I want to underline the CCRB’s critical work, and mandate. The CCRB is one of the most powerful oversight agencies overseeing police misconduct in the nation. Despite this power, and opportunity, it can be hindered and challenged by a number of factors, which I will touch on today.

I also wish to draw the Committee’s attention to the relevance of this agency with regards to the work they do, shedding a light on the NYPD.

With regards to transparency and accountability, the work of the CCRB and its prosecution authority is crucial. By tracing the path of substantiated civilian complaints from the CCRB through final disposition by the NYPD, we have identified larger deficiencies and concerning

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<sup>1</sup> Learn more at [ccrjustice.org](http://ccrjustice.org).

<sup>2</sup> Learn more about *Floyd v. the City of New York* at [www.ccrjustice.org/floyd](http://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.

practices within NYPD internal disciplinary processes. As such, certain CCRB phenomena are relevant to NYPD's disciplinary system.

## 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 Understanding (MOU) with the NYPD.<sup>3</sup>

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.

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.

## III. NYPD Actions Hinder CCRB Meeting its Mandate

The Police Commissioner's exercise of his or her absolute disciplinary authority – that is, when deciding discipline will not be pursued, which penalties are ultimately imposed, or determining which cases in which he or she will retain oversight and authority, without necessary scrutiny and transparency, can ultimately hinder the CCRB from fulfilling its mandate and overall efforts for accountability.

## IV. Key Developments

### *a. Increased APU Reporting*

Since the last time I have testified before this Committee, we wish to commend the CCRB for its increased reporting on any modifications of pleas by the Commissioner. In particular, the Summer 2018 report on the APU's work is critical, and CCRB should report share the critical information contained therein regularly.

### *b. Development of CCRB and NYPD Disciplinary Framework*

While we commend the CCRB and the NYPD working to develop a disciplinary framework,<sup>4</sup> it is of the utmost imperative that *all* entities which oversee or have a role in discipline of members

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<sup>3</sup> 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.

of the NYPD follow a single, standard matrix to ensure uniformity and efficacy overall. That is, the NYPD should develop a single discipline matrix, one that is employed by the CCRB and the DAO, and other relevant Department entities and supervisors, when recommending and overseeing execution of penalties. We also seek more information about the use of this framework.

c. *NYPD Reconsideration Requests and Nonconcurrency on the Rise*

i. Reconsideration Requests

The NYPD should not hinder CCRB's ability to fulfill its mandate either by delaying reconsideration requests, by questioning the CCRB's findings of fact, and by, in any way, influencing the CCRB to recommend lower level penalties.

It is of the utmost importance that the NYPD officers are held accountable for substantiated unconstitutional conduct. The CCRB's work can be hindered by actions of the NYPD when recommended disciplinary penalties by the Board, as well as its credibility determinations and weighing of testimonial evidence are 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 FADO-related misconduct.

ii. NYPD Nonconcurrency

We are also deeply concerned about recent reports indicating that concurrence between the CCRB and the NYPD is at an all-time low. The concurrence rate (the percentage of the time that the discipline imposed by the NYPD aligns with the sanction recommended by the CCRB) for cases in which the CCRB recommended discipline other than Charges and Specifications declined from 65% to 42% in 2017.<sup>5</sup> The CCRB also flagged that concurrence declined in Administrative Prosecution Unit cases from 40% in 2016 to 27% in 2017.<sup>6</sup> The Ninth Status Report of the *Floyd* Monitor discussed this phenomenon extensively;<sup>7</sup> the New York Times also reported on this issue.<sup>8</sup>

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<sup>4</sup> See CCRB Semi-Annual Report: January – June 2018, December 21, 2018, accessed January 14, 2019 at 71, noting the development of “a pilot program of its Disciplinary Framework, a nonbinding matrix designed to guide Board Panel discussions on disciplinary recommendations on substantiated cases,” which has led to “more consistent recommendations of Charges and Specifications.” [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/annual\\_bi-annual/20181221\\_Semi-Annual%20Report.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/20181221_Semi-Annual%20Report.pdf).

<sup>5</sup> CCRB 2017 Annual Report, available at [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/annual\\_bi-annual/2017\\_annual.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf) [hereinafter “CCRB 2017 Annual Report”] at 4.

<sup>6</sup> *Id.* at 5, 35.

<sup>7</sup> Ninth Report of the Independent Monitor, *Floyd v. City of New York*, No. 1:08-cv-01034-AT, at 49–62, Jan. 11, 2019 (hereinafter “Ninth Monitor’s Report”).

<sup>8</sup> See Mueller, Benjamin, *Police, at Odds with Oversight Board, Reject More of Its Penalties*, NY TIMES, Apr. 12, 2018, <https://www.nytimes.com/2018/04/12/nyregion/police-at-odds-with-oversight-board-reject-more-of-its-penalties.html> (“The police commissioner, James P. O’Neill, is now reducing or rejecting the Civilian Complaint Review Board’s disciplinary recommendations in a substantial majority of cases, even though the board is pursuing more lenient penalties, according to an annual report the board released on Thursday.”).

This phenomenon is important. In particular, any cases in which the CCRB recommends “Charges and Specifications” and the penalty is ultimately downgraded by the NYPD will remove CCRB-initiated complaints, which would be normally prosecuted by the Board’s Administrative Prosecution Unit (APU) to be handed over to the NYPD DAO for resolution.

More importantly, the goal is not to have entire concurrence. Rather, it is that the NYPD must not hinder the CCRB from meeting its mandate and from holding their officers truly accountable, in a meaningful way, when they engage in misconduct.

*d. Lowering of Recommended Penalties*

Since 2015, the Board has issued more command discipline recommendations and fewer Charges and Specifications recommendations against officers.”<sup>9</sup> Moreover, in 2013, 66% of complaints led to recommendations for Charges and Specifications, in 2017, however, this penalty was only recommended 11% of the time.<sup>10</sup>

While officer conduct may have improved, we are concerned that this decline in the recommendation of stronger and proportional disciplinary penalties by the oversight authority could indicate that the Board is lowering such penalties in order to avoid future rejections by the NYPD.

V. Investigation of Civilian Racial Profiling Complaints

The Internal Affairs Bureau of the NYPD currently handles investigation of racial profiling and biased policing complaints. Given the CCRB's "FADO" mandate, we also believe this should include investigation of racial profiling complaints, particularly as we believe they fall under "abuse of authority." The CCRB should affirmatively has primary investigative responsibility for these cases, as part of its jurisdiction over such complaints as granted by statute.<sup>11</sup>

On a practical level, the CCRB may receive a complaint, which contains several allegations of misconduct, including profiling. Under current functioning, it may not make sense to have the IAB and the CCRB concurrently investigating separate allegations and potentially coming to completely different conclusions about the exact same officer conduct.

VI. Conclusion

We thank you for hearing our testimony today and urge the CCRB to continue to fulfill its critical mandate.

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<sup>9</sup> CCRB 2017 Annual Report, *supra* note 6.

<sup>10</sup> *Id.* at 31.

<sup>11</sup> N.Y. City Charter § 440(c)(1) (specifying that the CCRB has jurisdiction to investigate civilian complaints that “allege misconduct involving. . .abuse of authority”).