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Civilian Complaint Review Board

New York City Charter Revision Commission

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Civilian Complaint Review Board

For your review

At the end of the June 27 meeting of the Charter Revision Commission, members of the Commission requested information concerning the history, composition, and operations of the civilian complaint review board established pursuant to Section 440 of the Charter. This memorandum responds to that request. Part I examines the history and composition of the Civilian Complaint Review Board. Part II discusses the Board's operations, including its caseload, procedures, and the dispositions of complaints. Part III addresses briefly some of the professional literature concerned with the structure of police complaint review boards, particularly with the issue of whether such boards ought to be all-police ("internal"), all-civilian ("external"), or, like New York's a joint police-civilian institution ("hybrid").

I. History and Structure of the Civilian Complaint Review Board

The first civilian complaint review board in New York was established within the Police Department in 1953. It was composed entirely of uniformed members of the service. In July 1966, Mayor Lindsay appointed to the board four civilians employed outside of the Police Department; the Lindsay board also consisted of three members of the Police Department who were appointed by the Police Commissioner. Mayor Lindsay's action was strenuously opposed by police officers and became the focus of a polarizing debate about crime, "law and order," and criminal justice. In November 1966,

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after an emotional and divisive campaign, a Charter amendment to undo Mayor Lindsay's action was adopted by the voters.

The 1966 amendment added section 440 to the Charter. As adopted in 1966, §440 declared it to be "the public policy of the city of New York in order to preserve the independence and integrity of the police service, that civilian complaints against members of the police department of the city of New York shall be investigated and dealt with fully and fairly by the appropriate officials regularly charged with the governance and discipline of the police department without interference by any person or group of persons not regularly in police service."

The 1966 version of §440 required that any board created to review civilian complaints had to consist solely of full-time members or full-time administrative employees of the Police Department. Subsequently, the Police Commissioner created a civilian complaint review board composed of seven -- later expanded to nine -- civilian employees of the Police Department.

In the mid-1980's, the composition of the civilian complaint review board again became an important political issue. The Report issued by United States Representative John Conyers in 1984 on Hearings on New York City Police Misconduct was sharply critical of the police-only composition of the board. Several incidents of physical force and questionable arrests by the police officers became the focus of considerable media and public attention.

In 1985, the late city council member Fred Samuel introduced a bill to create a ten-member board, with five private citizens

(one from each borough) appointed by the Mayor, and five civilian Police Department employees appointed by the Police Commissioner. The Mayor endorsed the bill, and with amendments the bill passed the council in the fall of 1986 and became effective in February 1987. The first appointments to the new civilian complaint review board were made in September 1987.

As amended, section 440 of the Charter now provides for a twelve-member board -- six "public representatives" and six appointed by the Police Commissioner. The six public members are appointed by the Mayor with the advice and consent of the council for two-year terms, and consist of one resident of each borough and one "citywide representative." The six members appointed by the Police Commissioner are required to be full-time members or full-time administrative employees of the police department.

In addition, new subdivision (d) authorizes the board to establish its own rules of procedure, including the creation of panels to recommend action on civilian complaints against members of the police department. Panels are to consist of not less than three members, and must include at least one public representative and at least one police department representative.¹

The first appointments to the board were made in September 1987, and there have been some minor changes in membership since. Currently, the Mayor's appointees include four lawyers, an

¹ The 1986 amendment also amended §440's declaration of public policy to provide that it is New York's public policy that civilian complaints against the police be "reviewed fairly and impartially by the review board established in this section."

economist and a clergyman. Three are white, two are black, and one is Hispanic. The Police Commissioner's appointees, who are all civilian employees of the department, include two whites, three blacks, and one Hispanic. Overall, the board consists of five whites, five blacks, and two Hispanics, and also includes three women among its twelve members.

II. Operations of the Civilian Complaint Review Board

A. Caseload

The Civilian Complaint Review Board ("CCRB") has jurisdiction over four categories of complaints: force, abuse of authority, discourtesy, and ethnic slurs.²

According to the Mayor's Management Report, the CCRB (including its predecessor) received 5372 complaints in 1984, 7328 complaints in 1985, 5924 complaints in 1986, 5135 complaints in 1987, 4463 complaints in 1988, and, based on figures for the first four months of the current year is likely to receive approximately 4300 complaints in 1989.

A complaint will often contain more than one allegation, so that, for example, the 5135 complaints in 1987 included 6836 allegations. In that year, nearly half the allegations fell into

² "Force" refers to the excessive use of force, ranging from the least serious but most common complaints which involve allegations of a push or a shove, to cases involving claims of a punch or kick, or these use of a stick, club, or service revolver. "Abuse of authority" cases involve claims of wrongful enforcement actions (improper arrest or improper summons), unwarranted search (of persons, premises or vehicles) and the improper seizure of property.

the category of "force", and most of the remainder were either "abuse" or "discourtesy." There were 267 allegations of ethnic slurs, or about 4% of the total.

The most common situations giving rise to complaints were traffic cases (29%); crime reports (19%); interpersonal disputes (landlord-tenant, neighbors, family members, barrooms, etc) (18%) and patrol (16%).

One study in 1984 found that where the ethnicity of the complainant was recorded, 38% were white, 39% black, 20% Hispanic, and 3% other.

With respect to the officers who are the subjects of complaints, the most distinctive feature is their relative lack of experience on the force. More than half of all complaints involve officers with three years' experience or less; and nearly three-quarters involve officers with five years' experience or less.

B. CCRB Procedures

(1) Intake -- Civilian complaints are received by the civilian complaint investigative bureau of the police department. Complaints may be made by letter, telephone, or in person. A downtown office is available to receive complaints 24 hours a day, seven days a week. Complaints can also be filed at local station houses. In addition, the bureau maintains satellite offices in the boroughs. Each satellite office is open one day a week; although their principal purpose is to facilitate investigations, complaints can be made at those offices when they are open.

Intake personnel are primarily civilian employees of the

police department who have received training to ask initial questions concerning details of the allegation incident of police misconduct, the listing of witnesses, and the identification of the subject officers.

(2) Investigation -- The civilian complaint investigative bureau utilizes six teams of investigators -- one for each borough and a sixth for major cases. The teams consist of eleven to fourteen professionals, including a captain, lieutenants, sergeants, police officers, and civilian investigators. The investigative process includes contacting and interviewing complainants and witnesses, canvassing for additional witnesses, obtaining photographs of injuries, identifying subject officers, reviewing the prior complaint records of subject officers, gathering other relevant official records, and, after all other evidence has been gathered and a determination has been made that there is no possibility of a criminal prosecution, interviewing the subject officer.³ All interviews are tape-recorded and the records are maintained. Interviews will be conducted in the borough satellite offices for the convenience of witnesses.

Part of the investigators' work involves establishing contact with complainants or the victims of alleged police misconduct. Particularly in cases where there is no arrest or summons, information concerning complainants is often scanty. Investigators

³ The subject officer is informed of the right to representation by the PBA or a private attorney, but participation in the CCRB investigatory process is required.

generally make at least three efforts over a two week period to contact a complainant. Other aspects of the investigation involve efforts to establish specific details of the incident alleged, to obtain evidence, and to find and interview witnesses not connected to either the complainant or the subject officer.

The Board's stated goal is to complete its investigation within 90 days of the receipt of a complaint. In the 1988 fiscal year, the 90 day goal was reached in 94% of cases; but only 79% of cases were completed in 90 days in the first four months of fiscal 1989. The Mayor's Management Report suggests that this decline was in part due to the Tompkins Square Park disturbance, which dramatically increased the Board's workload of force cases -- which are often the most serious and time-consuming cases -- and affected the number of investigations completed.

The Tompkins Square Park investigation involved the efforts of the eleven-member Major Case Team, supplemented by two other investigative teams. The CCRB, in its April 1989 Report on the matter, estimated that the investigation entailed 12,000 hours of investigators' time, including interviews with nearly fifteen hundred witnesses. The Tompkins Square Park investigation involved the efforts of the eleven-member Major Case Team, supplemented by two other investigative teams. The CCRB, in its April 1989 Report on the matter, estimated that the investigation entailed 12,000 hours of investigators' time, including interviews with nearly fifteen hundred witnesses.

One important result of the Tompkins Square Park investigation

was the CCRB's recommendation that more civilian investigators be added to the police department's civilian complaint investigative staff and that those investigators be given a distinct career path in order to maintain their tenure. On April 18, 1989, Commissioner Ward announced he agreed with the CCRB's recommendation and was in the process of hiring additional investigators. He also stated that he would develop promotional opportunities for the civilian investigators subject to civil service regulations and Office of Management and Budget approval.

(3) Review -- Upon completion of the investigation, the investigator prepares a report and makes a recommendation for the disposition of the complaint. The recommendation is reviewed by the investigator's immediate superior, the team's captain, and the executive staff of the civilian complaint investigative bureau before it is forwarded to a panel of the CCRB for review. On occasion, as in the Tompkins Square Park case, the panel recommendation, accompanied by the investigator's report and the findings of the investigators and executive staff are presented to the full twelve-member CCRB for a final recommendation.

Each CCRB panel receives 50-75 cases a month, usually meeting two or three times a month in order to consider its case load. Panel members consider only the written record submitted by the investigator; they do not interview the complainants or the subject officers. The principal functions of the panel are to review the thoroughness of the investigation, and the sufficiency of the evidence in support of the investigator's recommended disposition.

The panel, for example, may question the investigator's failure to reach an identified witness, or the investigator's characterization of a witness as "unavailable" or "uncooperative." The panel may disagree with the investigator's recommended disposition or find that the disposition is not justified by the evidence presented in the report. The panel can affirm the report, modify it, or send it back to the investigator for further work. In a small number of major cases, the entire CCRB and not just a three-member panel will review the conduct of the investigation and the proposed disposition.

C. Dispositions

A number of complaints do not go through the full investigation and review process. Some complaints do not fall within the CCRB's jurisdiction, either because they do not involve members of the Police Department (e.g., the complaint is against a transit or housing police officer) or because they involve issues other than force, abuse, discourtesy, or ethnic slurs (e.g., corruption, which goes to the internal affairs division), or because they involve criminality and are handled in cooperation with the district attorney.

(1) Drop outs -- Of those that fall within the CCRB jurisdiction a large number appear to simply drop out. In some cases, the complainant formally withdraws the complaint. In others the complainant is unavailable or uncooperative, e.g., the complainant fails to keep appointments or respond to letters. In other cases there was either no officer identification, or the

officer identification provided was insufficient or inaccurate to identify a particular officer. Dropout cases may involve less serious and less specific allegations, with less support from witnesses or other evidence than cases that went further in the investigative process.

(2) Conciliation -- Another large fraction of CCRB cases are conciliated. Conciliation is a term of art in the CCRB setting. It does not involve a meeting or any mediation between the complainant and subject officer. Rather, it is a procedure offered to complainants for the resolution of certain cases after a preliminary review and short of a full investigation.

Conciliation may be offered only in those cases where the investigator makes an initial determination that there is not likely to be sufficient evidence to permit a definitive disposition (e.g., there are no independent witnesses), the complaint is a less serious one, and the subject officer does not have a lengthy history of prior complaints. It is particularly common in discourtesy cases and in cases arising in traffic situations.

Complainants are told that if they agree to conciliation the subject officer would be interviewed by CCRB staff in a non-disciplinary setting. At that meeting, the incident is discussed, the officer may present his version of what occurred, and the interviewer will present the complainant's allegations as a hypothetical situation and instruct the officer in what conduct would be appropriate in a setting that corresponds to the allegations. If the complainant does not agree to conciliation, the

complaint is fully investigated and formally disposed.

(3) Full Investigation -- Approximately 20% of complaints receive a full investigation. There are four possible dispositions of fully investigated cases:

(a) unfounded -- it is determined that the behavior alleged did not occur;

(b) exonerated -- it is determined that the behavior alleged occurred but was justified;

(c) substantiated -- it is determined that the behavior alleged occurred and was not justified;

(d) unsubstantiated -- it cannot be determined if the behavior occurred or it cannot be determined if it was justified.

Most fully investigated cases result in a disposition of unsubstantiated -- about 60%. About 15% are determined to be substantiated, and about 15% are disposed of as exonerated. Fewer than 10% fall into the category of unfounded.

Students of the civilian complaint review process have found that the high proportion of unsubstantiated complaints results from the lack of evidence and the nature of the claims. Most cases involve an allegation by a complainant, a denial by the subject officer, and an absence of objective evidence clearly supporting either party. Either witnesses were not identified, or the witnesses refused to participate in the investigation, or the witnesses were connected to the complainant or the subject officer. Moreover, many cases involve an evaluation of officer discretion in settings where it is inherently difficult to reach definitive

determinations.

Substantiated cases often differ from unsubstantiated ones because of the availability of witnesses or of medical evidence or because the subject officer violated a technical requirement which was readily subject to definitive determination.

The large number of unsubstantiated cases may also be a product of the CCRB's burdens of proof, that is, a finding in favor of either the complainant or the subject officer must be based on a preponderance of the evidence. Where the evidence does not come down clearly in favor of either side, the case will be deemed unsubstantiated. Moreover, unsubstantiated is not the equivalent of exonerated. A disposition as unsubstantiated will remain in the subject officer's file.

(4) Tompkins Square Park -- In the Tompkins Square Park matter, the CCRB reported that 118 civilian complaints fell within its jurisdiction. These were disposed of as follows: in 17 cases the CCRB found the allegations "substantiated" and recommended to the Commissioner that formal disciplinary action be undertaken; in 29 cases the allegations of civilian complaint were found to be substantiated by sufficient evidence but disciplinary action could not be brought because there was insufficient evidence to identify the officer or officers responsible; 9 cases were found "unsubstantiated"; 2 cases were resolved as "exonerated;" in 41 additional cases the officer could not be identified; and in 18 cases the victims or complainants were uncooperative, unavailable, or withdraw their complaints. Two cases remain under investigation.

With its 17 recommended proceedings, the CCRB was the principal source of recommendations for disciplinary proceedings growing out of Tompkins Square. Nine other departmental disciplinary proceedings were the result of investigations conducted by the Investigation/Evaluation Section of the Chief of Patrol's office dealing with removal or covering of badges and identification tags -- allegations outside the CCRB's jurisdiction. Six additional cases involve criminal proceedings initiated by the New York County District Attorney concerning the same incidents and officers involved in the CCRB's recommendations to the police commissioner.

Although the principal function of the CCRB is reviewing investigations and making recommendations with respect to individual civilian complaints, in the Tompkins Square matter the Board, in its Report, made policy recommendations, as well. As previously stated, the Board called for a doubling of the number of civilian investigators, and the Police Commissioner.

In addition, noting "the failure of members of the police service to cooperate in attempts to identify offending officers," the Board urged the police department to "develop new procedures that would allow officers at major demonstrations to be more easily identified." The Board suggested two approaches to the problem: "easily visible prenumbered armbands or vests that can be keyed to assignment rosters and the maintenance of more current personnel photos including profile views and larger clearer photos updated

frequently enough to reflect changes in hair length and facial hair." On June 29, 1989, the Police Department issued orders concerning new Disorder Control Safety Helmets and new shield number decals which are intended to improve shield new visibility.

The Board also endorsed several actions already taken by the police commissioner, including the revision of police officer training for the handling of crowds and disorderly groups; the revision and implementation of management training in tactics and procedures for dealing with major disturbances; the discipline or transfer of superiors who, collectively, performed poorly during the incident.

(5) Discipline -- The CCRB does not impose discipline but in cases found to be substantiated it makes a recommended disciplinary referral. There are three possible disciplinary referrals:

(a) instructions -- the commanding officer instructs the subject officer on appropriate police procedures;

(b) command discipline -- the commanding officer imposes a sanction not more severe than the loss of five vacation days;

(c) charges and specifications -- the subject officer is brought before a departmental trial where, if convicted, there is a range of sanctions up to dismissal. In addition, an officer referred to command discipline has the right to request a departmental trial to clear his name.

The principal factors affecting the disciplinary disposition are the seriousness of the complaint; the strength of the evidence;

and the prior complaint history of the subject officer.

III. Professional Studies of the Structure of the Civilian Complaint Review Board

With respect to the roles of police department and non-police department personnel, there are three types of civilian complaint review boards: all-police ("internal"), all non-police⁴ ("external") and a mix of police and non-police personnel ("hybrid").

A 1987 study by the Mayor's Advisory Committee on Police Management and Personnel Policy ("the Zuccotti Report") found all three types of boards in use. Internal boards are used in San Diego, Cleveland, Houston, Los Angeles, San Antonio, and Seattle. External boards are used in Washington, D.C., Oakland, Milwaukee, and Berkeley. Hybrid boards are used in Atlanta, Baltimore, Hartford, Kansas City, Minneapolis, Miami -- and, starting in 1987, New York.

The advantages and disadvantages of internal and external boards have been the subject of considerable debate among criminal justice specialists. Internal boards are better situated to utilize the superior abilities of a trained investigative staff; have greater access to police personnel files; are more likely to enjoy

⁴ These are some times referred to as all-civilian. The use of the term "civilian" in this context may be confusing since in police parlance non-uniformed employees of the police department are also civilians. The term "non-police" is intended to clarify that these boards do not include any police personnel, whether uniformed or non-uniformed.

the cooperation of police officers; tend to function as a form of peer review and form a part of the police structure and the socialization process for officers; and are less likely to arouse police officer resentment for subjecting them to non-professional judgments.⁵

Although it has been suggested that internal boards are less likely to sustain complaints or discipline officers for aggressive performances of their duties,⁶ the Zuccotti Report cited studies of experiences in Philadelphia, Berkeley and New York which found that internal boards have higher levels of substantiation and that external review is less likely than police internal review to find officers guilty of misconduct and is more lenient in its disciplinary recommendations when it does find them guilty.⁷

The principal criticism of internal boards and the strongest justification for a non-police role stems from public perceptions. Commentators note that internally controlled boards have limited credibility with the public. Despite the evidence which apparently cuts the other way, the public generally believes that external boards are more likely to be sympathetic to citizen complaints and less likely to "whitewash" misconduct. As the Zuccotti Report put

⁵ See, e.g., Kerstetter, "Who Disciplines the Police? Who Should?" in Police Leadership in America: Crisis and Opportunity (W. Geller ed., 1985).

⁶ See, e.g., Schwartz, "Reaching Systemic Police Abuses -- The Need for Civilian Investigation of Misconduct: A Reply to Wayne Kerstetter," in Police Leadership in America: Crisis and Opportunity (W. Geller ed. 1985).

⁷ See also Kerstetter, supra, at 162.

it, "if one concedes that an underlying purpose of a review board is to give the citizenry a sense of assurance against the threat of arbitrary or uncontrolled police authority, then it is not difficult to understand the plea of some community groups for an independent board."

The desire to combine the superior investigative skills, the greater departmental cooperation, and the professional review benefits of internal boards with the greater public legitimacy of external boards has led many commentators to urge the adoption of hybrid boards. Relying on this literature, and the models provided by other cities with hybrid boards, the Zuccotti Report endorsed the 1987 Charter amendment that resulted in the creation of the current CCRB.

Although the composition of the CCRB has been an important and at times heated political issue in New York, much of the scholarly literature suggests that it may not be that significant in terms of affecting the ability of civilian complaint review boards to substantiate cases or deter police misconduct.

In addition to the studies that indicate that internal boards have higher substantiation rates than external ones, the literature suggests that the principal obstacles to substantiation have nothing to do with the composition of the reviewing board but rather derive from the difficulties inherent in the cases -- the lack of objective witnesses or of other evidence that will corroborate either the complainant or the subject officer, and the inability to draw clear guidelines that will demarcate the

permissible from the impermissible in areas subject to officer discretion. It will always be difficult to distinguish necessary from excessive force, especially when the determination is made three months later and in situations where there evidence is unclear. No matter what the structure of the reviewing board these will be difficult cases.

With respect to the deterrence of misconduct, scholars suggest that individual adjudications by a civilian complaint review board may be less significant than the instillation of command accountability for misconduct within the police department. Thus, New York Police Department rules require that the CCRB inform line commanders on a monthly basis concerning all complaints filed against their officers, although they are instructed to use the information on the complaint for notification and training and not discipline.

Precinct commanders whose commands receive any significant increase in the number of complaints are required to submit reports to their borough commanders explaining the reasons for the increase and measures taken to reduce further complaints. Precinct, division and borough commanders are also required to conduct annual reviews and assessments of each patrol command's complaint experience for the previous year, including an examination of the causes of civilian complaints and of the procedures instituted for the reduction of future complaints.