

CITIZENS UNION | ISSUE BRIEF AND POSITION STATEMENT

## Public Oversight of Police Misconduct

### INTRODUCTION

*Citizens Union of the City of New York is an independent, non-partisan civic organization of members dedicated to promoting good government and political reform in the city and state of New York. For more than a century, Citizens Union has served as a watchdog for the public interest and an advocate for the common good. Founded in 1897 to fight the corruption of Tammany Hall, Citizens Union currently works to ensure fair elections, clean campaigns, and open, effective government that is accountable to the citizens of New York. We do so by informing the policy debate and influencing the policy outcomes that affect the lives of all New Yorkers.*

*Believing that an informed citizenry is the cornerstone of a thriving local democracy, Citizens Union Foundation—the non-profit research, education, and advocacy organization affiliated with CU—publishes GothamGazette.com, a front row seat to New York City policies and issues.*

In the early 1990s, the city government took steps to address the issue of public oversight of police misconduct by establishing a more accountable process with the reconstitution of the Civilian Complaint Review Board (CCRB). Since then, there have been subsequent calls for further change that draw upon the thirty-five years of civic groups and fact-finding commissions that have called for reform in how the New York Police Department's (NYPD) disciplinary system responds to claims of police misconduct, and ensures that an effective and meaningful civilian oversight system exists.

Citizens Union historically has not taken a position on issues of police conduct, although it reviewed the issue on two occasions: first in the mid-1980s and again when the CCRB was being reestablished in the early 1990's. In consideration of the importance of this issue to the public, Citizens Union has reviewed the City's policies and procedures governing the handling of alleged misconduct of officers of the NYPD and the subsequent internal disciplinary action. Though some important changes have been made, many previous recommendations of the Knapp and Mollen commissions, and by Mayor Giuliani's Commission to Combat Police Corruption (the CCPC, sometimes referred to as the Davis Commission) have not been implemented. It is because of this lack of action and flaws in the current system of oversight that CU is stepping forward.

Citizens Union believes it can lend an important voice to discussions about the need for greater transparency, stronger procedures, and even-handed fairness in the accountability and oversight of the city's system of police discipline. How the NYPD handles these matters is critical to the effectiveness of the operations of the Department and the public's confidence in it. Both the officers and the public are entitled to have a clear, definitive and open system of rules and disciplinary consequences that is fair, measured and consistent with the violation. The Department is entitled to an oversight system that can, when appropriate, validate the policies and programs it has implemented. Moreover, the public is also entitled to a transparent and effective civilian oversight system that reports on important issues in a meaningful and timely manner.

## ISSUE OVERVIEW

Citizens Union believes that a healthy democratic society must have a citizenry that has confidence in, and actively supports, its police department if it is to be fully effective in providing public safety.

Citizens Union believes that the vast majority of police officers are honest, hard-working individuals who perform the vital and dangerous function of protecting our city. The city is safer from crime and terrorism because of how the force has been led as well as how the tens of thousands of New York City police officers have carried out their work courageously. And while the value and importance of its work and contributions are generally recognized, the Department has not yet achieved in

the many diverse communities throughout the city, the full confidence and cooperation it needs to maximize its effectiveness. Citizens Union believes this is due in significant measure to the NYPD and City's handling of police misconduct allegations.

**CITIZENS UNION BELIEVES**  
the best way to ensure greater support of the police is through providing a more transparent and independent system of oversight, prosecution, and adjudication when allegations of misconduct arise.

Citizens Union believes that the NYPD would garner additional public confidence and support if more transparent and different procedures were in place to swiftly and fairly investigate complaints of misconduct.

Citizens Union believes that even though the NYPD maintains it has improved its internal handling of allegations of police misconduct under its current leadership, a more independent system of oversight, prosecution and adjudication is required to maximize public trust and ensure integrity in the process.

Most organizations prefer to be self-regulating. The NYPD is no different. There is a culture within the Department of wanting to deal with alleged misconduct "in-house" rather than in view of the public. We believe that this approach has hindered the Department's ability to effectively perform its broader mission of providing a sense of safety and well-being for all citizens. It has also engendered, in some communities, an unnecessary atmosphere of mistrust and added to the perception that there is "a blue wall of secrecy." As a result, when incidents involving alleged misconduct by the police occur, they are not channeled through a system of justice in which the public has confidence, and instead disappear into a process where the disciplinary handling and outcome take place out of the public realm. This process, hidden from public view and scrutiny, results in little, if any, long-term structural reform to reduce future acts of misconduct and further alienates the NYPD from the public.

The recommendations that follow are not meant to be panaceas. Meaningful efforts to investigate, prosecute and punish those who engage in misconduct are key factors in deterring improper behavior, but prevention has the greatest ability to have a lasting impact. Increased oversight of the police disciplinary process is one step in a comprehensive effort to reduce incidents of police misconduct and improve community relations. Citizens Union is aware of, and applauds, the positive measures that are being implemented to ensure that cadets gain more community familiarization and are trained on innovative and proven ways to diffuse conflicts and build trust. To forge better trust and reduce incidents of misconduct, a paradigm shift in how the police officers interact with the public is imperative. Such a shift must focus not only on the training of cadets in the academy, but also reshaping the attitudes and skills of veterans on the force.

CU recognizes that the police are in a unique position in our society. Not only are they accorded the most power of any set of city employees, they are also often placed in circumstances where they are expected and required to enforce the law by using force, including stops, frisks, searches, arrests, and the potential use of deadly force. Citizens Union believes that precisely because of these circumstances, the best way to ensure greater support of the police is through providing a more transparent and independent system of oversight, prosecution, and adjudication when allegations of misconduct arise.

We believe that the measures set forth below, many of which have been previously proposed by non-partisan expert panels, are essential to maximizing public support and confidence in the police and strengthening the social fabric of our City.

## RECOMMENDATIONS TO ENSURE GREATER ACCOUNTABILITY AND PUBLIC CONFIDENCE IN THE NEW YORK POLICE DEPARTMENT

Citizens Union recommends the following measures to improve public confidence and support for the NYPD. These measures together seek to: a) improve public oversight of police conduct, b) strengthen the system of accountability, and c) ensure a more fair and independent procedure for handling complaints of misconduct.

### *1. Create a More Effective and Independent Civilian Complaint Review Board*

The Civilian Complaint Review Board (CCRB) is an autonomous civilian-oversight body of thirteen members appointed by the Mayor (five upon the recommendation of the City Council and three upon the recommendation of the Police Commissioner). It is empowered to investigate, issue findings, and recommend actions on complaints and allegations of the use of excessive or unnecessary force, abuse of authority, discourteous actions, or the use of offensive language against civilians by NYPD police officers. As such, it plays a key role in ensuring the public has confidence that civilian allegations of police misconduct will be handled fairly, judiciously, and most importantly, independently.

The CCRB currently needs more financial resources, greater independence, and stronger authority to live up to its mission. The Mayor and the City Council need to work together to create a more effective and independent CCRB. To accomplish the goals set forth for the CCRB, Citizens Union recommends the following legislative and administrative changes:

#### **a) Enable the CCRB to Try Cases It Substantiates**

CCRB lawyers, instead of NYPD lawyers from the Department Advocate's office, should file and handle the prosecution of complaints substantiated by the CCRB with the recommendations of charges and specifications. The CCRB should be given the authority and responsibility for developing its own team of qualified and experienced lawyers to litigate the substantiated cases.

This recommendation mirrors previous recommendations of Mayor Giuliani's Commission to Combat Police Corruption, and a Memorandum of Understanding (MOU) signed in April of 2001 between the NYPD and the CCRB during the Giuliani Administration which followed an investigation by the U.S. Attorney's office in Brooklyn and the Justice Department's Civil Rights Division in Washington, D.C. To date, these recommendations and agreements have not been implemented.

When several police unions challenged the 2001 MOU, the court ruled that these types of cases cannot be brought before the Office of Administrative Trials and Hearings (OATH), which is arguably the most preferable venue. But the court did affirm that the CCRB had the authority under the MOU to prosecute its cases if they were heard in front of an NYPD administrative judge. CCRB prosecutors should be granted customary powers of prosecutorial discretion, including the power to conduct plea negotiations and reach agreements with officers and their attorneys. As is the current practice and required by the City Charter, the Commissioner retains the authority and discretion to make final disciplinary determinations, including agreements reached through plea negotiation.

In order to ensure a greater level of independence and combat the perception that the NYPD may exercise a bias in the execution of substantiated cases by the CCRB, the City should without delay transfer prosecutorial function to the CCRB and provide the CCRB with sufficient funds to hire the necessary staff of prosecutors.

Citizens Union recognizes that in response to past criticism with regard to the internal handling of charges and specifications, the NYPD has recently made efforts toward professionalizing its staff by acquiring talent that comes from outside its ranks and creating a greater level of prosecutorial independence. These attorneys and prosecutors (as well as the Police Department Trial Room Administrative Law Judges), however, still ultimately serve within the institution of the NYPD and under the authority of the Police Commissioner, which is the basis for Citizens Union's concern.

In order to ensure a greater level of independence and combat the perception that the NYPD may exercise a bias in the execution of substantiated cases by the CCRB, the City should without delay transfer prosecutorial function to the CCRB and provide the CCRB with sufficient funds to hire the necessary staff of prosecutors.

Citizens Union believes that the transfer of prosecutorial power to the CCRB could be accomplished in one of three possible ways:

1. The current Mayor could order the implementation of the same MOU Mayor Giuliani authorized in 2001 affecting this change, or alternatively issue an Executive Order pursuant to City Charter § 11 a., or
2. The City Council could transfer the prosecutorial function to the CCRB as a legislatively-enacted Charter amendment<sup>1</sup>, or
3. A Charter Revision Commission, such as the one slated to be convened by Mayor Bloomberg to broadly examine the structure of City government, could submit this proposal as a referendum in 2009 to allow voters to determine whether to add it to the City Charter (though this would delay action until 2009).

Concurrently, the City and the State should explore ways through legislation or other means that would allow CCRB complaint hearings to go through OATH, or an alternative independent body, to create a needed level of independence and impartiality. One possible approach would be to enact legislation specifying that hearing officers be appointed for fixed terms, removable only for cause. At present, the hearing officers are a deputy commissioner and assistant commissioners who serve at the pleasure of the Commissioner.

Citizens Union also supports the argument put forward in July 2000 by the Commission to Combat Police Corruption that there should be a system in which the CCRB is given the responsibility and the power to prosecute cases because it would put greater onus on the CCRB to strengthen its cases. As the CCPC then wrote, "Such a system would provide an incentive to CCRB to substantiate only cases that can be successfully prosecuted and prevent the Department and CCRB from being able to blame each other for the failure of CCRB prosecutions. Increasing accountability and eliminating the reciprocal finger pointing which often takes place currently should also enhance public confidence in how these complaints are being addressed."<sup>2</sup> The finger pointing mentioned in that July 2000 report has unfortunately been played out time and again, most recently at a public hearing held in March 2007 held by the City Council Committee on Public Safety.

Citizens Union believes that in administering justice in cases of alleged police misconduct, too much authority currently resides in the Police Department to prosecute, hear, adjudicate, and decide penalties. Investing so much authority in a single entity to handle essentially four different, major parts of the police disciplinary process – the same entrusted with the right to use force to provide public safety and enforce the law – does not provide for an appropriate level of public oversight or separation of powers in a democratic society.

#### **b) Provide the CCRB with the Authority to Prosecute Officers Found Guilty of Lying During CCRB Investigations**

The City Council should pass and the Mayor should sign legislation clearly granting the CCRB the authority to file

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<sup>1</sup> In upholding the legality of the Giuliani Administration's transfer of the prosecutorial function by MOU, *Lynch v. Giuliani*, 301 A.D.2d 351 (1st Dept. 2003), the Appellate Division said nothing that would preclude the transfer by a Council-enacted Charter amendment. As the Court observed, the transfer of the prosecutorial function simply "reallocate[s] the division of duties" between two Mayoral agencies (the NYPD and the CCRB), does not accord any new "substantive" powers to the CCRB, and preserves the Police Commissioner's authority "to make the final determinations as to the appropriate disciplinary sanctions." 351 A.D.2d at 358. Accordingly, Citizens Union believes that a Council-enacted Charter amendment on this subject does not have to be submitted to the voters as a referendum, because it is not a change that "abolishes, transfers or curtails" the powers of the Mayor in any respect (Charter Sec. 38 (5)).

<sup>2</sup> Commission to Combat Police Corruption July 2000 report, *The New York City Police Department's Prosecution of Disciplinary Cases*, [http://www.nyc.gov/html/ccpc/downloads/pdf/prosecution\\_study\\_july2000.pdf](http://www.nyc.gov/html/ccpc/downloads/pdf/prosecution_study_july2000.pdf)

charges and specifications against police officers who are believed to have made false statements to CCRB investigators during the course of their investigations. As noted in 1 (a) above, Citizens Union also believes that the CCRB should be the agency that prosecutes such cases before the hearing officers in NYPD disciplinary proceedings. At present, if a CCRB investigation finds that an officer intentionally provided a false statement to the CCRB, the incident is labeled as “other misconduct” that the NYPD deems not within the CCRB’s jurisdiction and board panels must merely “refer their determinations of other misconduct not only to the police commissioner but also to various other law enforcement entities.”<sup>3</sup> However, according to its 2003 annual status report, “the police commissioner has not notified the CCRB of the action it takes” with respect to willful false statements unless that complaint has been substantiated based on other allegations.<sup>4</sup>

In other words, independent of other findings, there is no publicly known action against officers who lie under oath to the CCRB. The failure to prosecute those officers who lie under oath, (CCRB interviews of police officers and witnesses are conducted under oath) has ramifications that extend beyond the isolated incident of a false statement. It sends a signal to members of the Department and the public that making false statements is tolerated and permissible. In 1999, 70 officers were determined to have made a false statement to the CCRB; this number has decreased since that time, with only 18 found to have lied each year from 2000 to 2003, 10 officers in 2003, 8 officers in 2005, and only 2 officers in 2006.<sup>5</sup> In many of these determinations, findings of false statements were absent other allegations, meaning that the Police Department would not take up the complaint and no known action was taken. While findings of false official statements have dropped, this could be illustrative of decreasing attention paid to false official statements. Furthermore, the lack of action by the CCRB and NYPD against this form of misconduct without the presence of other allegations of misconduct provides no deterrent to lying under oath. This serves to undermine the public’s confidence in the integrity of the system of police discipline and the NYPD.

#### **c) Maximize the Use of Mediation for Disputes between the Public and the NYPD**

To reduce the CCRB’s workload, and increase communication and understanding between the public and the NYPD, both bodies should increase their outreach and education efforts to make complainants aware that they can choose to go through mediation in lieu of going to trial to adjudicate their case. The total percentage of complaints referred to mediation averaged only 5.1% over the period of 1994 through 2005, with only about 3 to 4% referred each year from 2002 to 2005. <sup>6</sup> However, the CCRB reports that during 2006, its Mediation Unit closed more cases than ever before, with 130 cases closed due to successful mediation, representing an increase of 44% over the 90 successful mediations conducted in 2005 and a 78% increase over the 73 cases mediated in 2002.<sup>7</sup> We commend the CCRB and the NYPD for taking positive steps in this direction and encourage them to dedicate even more necessary resources to increase these efforts.

#### **d) Increase CCRB’s Resources and Expand Teams of Investigators and Support Staff**

With more than 8,000 cases to process per year, an increase of more than 65% between 2000 and 2005, and an additional 13% increase in 2006 over 2005, the CCRB cannot handle quickly or effectively its growing caseload, causing interminable delays and frustration for all parties involved.<sup>8</sup> More specifically, the lack of speedy attention (although improved in recent years), undermines public confidence in the proceedings and presents occurrences where the Board is not able to thoroughly conduct investigations. The City should provide the necessary resources for the CCRB to hire additional investigators and other staff as is necessary for the agency to carry out its currently mandated functions as effectively and efficiently as possible, and thereby improve public confidence in the system of police discipline.

<sup>3</sup> CCRB 2006 Annual Status Report, Pages 11 and 212. <http://www.nyc.gov/html/ccrb/pdf/ccrbann2006.pdf>

<sup>4</sup> CCRB 2003 Annual Status Report, Page 34. <http://www.nyc.gov/html/ccrb/pdf/ccrbann2003.pdf>

Also Cited in New York Civil Liberties Union report, *Mission Failure: Civilian Review of Policing in New York City, 1994- 2006*.

<sup>5</sup> CCRB 2003 and 2006 Annual Status Reports, Tables 33 and 34, respectively.

<sup>6</sup> New York Civil Liberties Union, *Mission Failure: Civilian Review of Policing in New York City, 1994- 2006*, Appendix A.

<sup>7</sup> CCRB Website, <http://www.nyc.gov/html/ccrb/html/about.html>

<sup>8</sup> New York Civil Liberties Union, *Mission Failure: Civilian Review of Policing in New York City, 1994- 2006*, Page 1.

**e) The CCRB Should More Aggressively Exercise its Subpoena Power for Documents and Witnesses to Ensure Timely Investigations**

The City Charter explicitly requires the NYPD to provide the CCRB with records necessary for the CCRB's investigations and complaints, and to ensure that officers and employees of the NYPD appear before the CCRB and respond to inquiries by the CCRB.<sup>9</sup> Yet CCRB investigators report that "on any given day approximately half of all police officers scheduled for an interview at the CCRB—including witnesses and those named in a complaint—fail to appear, further compromising investigators' ability to conduct timely investigations" and "it can take weeks—and often months—for the Police Department to produce records"<sup>10</sup> (if the complainant does not have a name or shield number, the paperwork is crucial in determining the identity of the officer or officers involved). The Department also has not been as cooperative as it should be in responding to information requests related to investigations conducted by the CCRB. Consequently, the NYPD has been criticized by the leadership of the CCRB for not cooperating fully and attempting to subvert the investigatory process. For the process to be effective, the NYPD must be more cooperative and forthcoming with informational and appearance requests from the CCRB.

To encourage the NYPD's cooperation, it is important that the CCRB be more persistent in its efforts to compel the appearance and testimony of police officers and the production of documents requested as part of its investigation by use of subpoena powers. The City Charter explicitly provides that "The Board, by majority vote of its members, may compel the attendance of witnesses and require the production of such records and materials as are necessary for the investigation of complaints submitted pursuant to this section."<sup>11</sup> Without being subpoenaed, the NYPD historically has been slow or outright opposed to providing requested documents and compelling officers to show up in cases involving allegations of police misconduct.

**2. Expand the Range of Penalty Options for, and the Responsibilities of, the Police Commissioner in Handling Cases of Misconduct**

Pursuant to the City Charter, the Police Commissioner retains the final authority over discipline within the NYPD ranks. This is appropriate and necessary to manage effectively the department, and to promote accountability for dealing with misconduct and corruption within the Department. To exercise effectively this control, while fostering greater public confidence in the disciplinary system of the NYPD, Citizens Union recommends the following:

**a) The City Should Enact Legislation Providing the Police Commissioner with a Greater Range of Disciplinary Options for Dealing with Cases of Misconduct**

The current penalty structure if an officer is found guilty in department disciplinary proceedings provides for nothing between (i) a maximum of thirty days suspension without pay and one year termination probation, and (ii) discharge from the service (however, in practice, the Commissioner reports that he has sometimes reached other agreements as a result of plea negotiations for penalties that are between these two extremes). The Mollen Commission<sup>12</sup> in 1994 and the Knapp Commission<sup>13</sup> in 1972 called for a greater range of discipline options to promote a more effective disciplinary system and a stronger message that the Police Department is not permissive of misconduct. Indeed, the Knapp Commission observed thirty-six years ago (report, p. 229) that this was "the most troublesome issue in the disciplining of policemen." Mayor Giuliani introduced an administration program bill before the City Council that would have implemented this recommendation<sup>14</sup>, and his Commission to Combat Police Corruption subsequently endorsed the proposal. Even though these recommendations have been endorsed by various police commissioners, including the present Commissioner, they have

<sup>9</sup> New York City Charter, Chapter 18-A, Sec. 440 (d) (1) and (2).

<sup>10</sup> Ibid, Page 6.

<sup>11</sup> New York City Charter, Chapter 18-A, Sec. 440 (c) (3)

<sup>12</sup> The Mollen Commission was formed in July 1992 and formally known as *The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*.

<sup>13</sup> The Knapp Commission was formed in April 1970 and formally known as *The Commission to Investigate Alleged Police Corruption*.

<sup>14</sup> Introduction No. 250. Introduced in the City Council on March 16, 1994.

never been actively treated as priorities. Whatever the reason, the time has come to enact them without further delay. The CCRB reports that in 2005 fewer than 5% of CCRB substantiations resulted in suspensions without pay of 11-30 days - down from nearly 20% in 2000.<sup>15</sup> In accordance with these numerous past recommendations, the City should amend the New York Administrative Code<sup>16</sup> to allow the Police Commissioner to impose the following penalties in addition to suspensions for up to thirty days or dismissal from the Department:

- i. suspension without pay for up to one year for officers who have been found guilty of or pleading guilty to charges and specifications;
- ii. a monetary fine of up to \$25,000 with no option to substitute vacation or compensatory days of equivalent work;
- iii. a demotion in grade, title or rank with a commensurate reduction in salary.

**b) Reinstate “Zero Tolerance” Penalty for False Official Statements**

Following the recommendation of the Commission to Combat Police Corruption (CCPC), former Police Commissioner Howard Safir enacted in 1996 a policy of zero tolerance towards officers found to have made false statements, requiring dismissal of any officer who makes a false official statement absent “exceptional circumstances.”<sup>17</sup> The Safir policy of zero tolerance covered all false statements without exception, and explicitly included “lying under oath during a civil, administrative or criminal proceeding,” which would include CCRB investigative interviews. Although it was a step in the right direction, the CCPC determined in an August 1999 review that it was not being enforced sufficiently in some cases.

Instead, the Safir policy was revised and weakened effective January 13, 2005. The revised § 2-308 of the Patrol Guide now specifies that the policy does not apply where the officer “merely ... denies a civil claim or an administrative charge of misconduct.” This exception is subject to misinterpretation, potentially allowing officers to deny with impunity misconduct in CCRB interviews. It should be narrowed to apply solely to pleas of not guilty in administrative proceedings or Answers in civil cases denying paragraphs of Complaints.

The revised policy also specifies that dismissal absent exceptional circumstances applies solely to false statements that are “intentional” and “material.” The change adding the words “intentional” and “material” arose from an agreement in *Latino Officers Association v. City of New York*, 99 CV 9568, ¶ 19 (SDNY Sept. 15, 2004), an employment discrimination lawsuit alleging that Latino officers had been discriminated against in the disciplinary process. On its face, this change was unexceptional.

However, application of the change is subject to varying interpretations and can easily be misused to avoid punishment. False statements about such matters as the physical layout of the site of the incident and the civilians and officers present could seriously thwart an investigation. The investigator questioning the officer is often in the best position to determine whether a false statement was made intentionally. It is for this reason that Citizens Union believes the CCRB must have jurisdiction to charge and prosecute where it believes that officers’ false statements were intentional and material in the context of its investigations (Recommendation (1) (b)).

Noting the link between tolerance of false statements and more egregious acts of impropriety, reenactment of the zero tolerance policy for officers who lie, and strict adherence to it, is essential to instill community confidence in the integrity of the police force and prevent future transgressions.

Noting the link between tolerance of false statements and more egregious acts of impropriety, such as the use of excessive force, abuse of authority and outright corruption as the Mollen Commission and others described, reenactment of the zero tolerance policy for officers who lie, and strict adherence to it, is essential to instill community confidence in the integrity of the police force and prevent future transgressions.

<sup>15</sup> CCRB Status Reports reproduced as figure 8 in NYCLU Report, n. 2 *supra*, at p. 21.

<sup>16</sup> Section 14-115

<sup>17</sup> Patrol Guide § 2-308.

### c) Require Full Explanation of Commissioner's Deviations from Trial Judge Recommendations

While the number of complaints and allegations filed per year has been on the rise recently, due to factors such as increased ease of reporting and filing made possible by the availability of 311, many citizens are left with the impression that even if they file complaints, little will be done to discipline officers or improve police conduct. Only a tiny percentage of complaints are substantiated by the CCRB — an average of 5.2% from 1994-2005.<sup>18</sup> Most of those are handled by the NYPD with little, if any, discipline or corrective action or explanation of the reason why no action was taken. In fact, historically the NYPD has taken no disciplinary action at all against approximately 20-30 % of all police officers named in “substantiated” CCRB complaints.

“Instructions” are the most minor of the available sanctions in which the officer is merely cautioned not to repeat the misconduct. Yet the NYPD has been using the sanction extensively in cases where the CCRB has substantiated complaints and recommended charges and specifications. The use of “instructions” has increased over the past several years and in many ways undermines the effectiveness of the disciplinary system. According to the CCRB’s 2006 annual report “instructions” were used in 73.8% of the cases substantiated by the CCRB in 2006, a substantial increase from 58.3% in 2005. And “command discipline,” the second most minor penalty, which also bypasses formal discipline and results in the loss of very few vacation days, accounted for approximately another 20% of CCRB substantiated cases in 2006. Fewer than 10% of all CCRB substantiated cases received more substantial discipline in 2006.<sup>19</sup>

As the ultimate supervisor and disciplinarian of all members of the Department, the Commissioner is understandably not required to abide strictly by the report and recommendations of the CCRB or NYPD trial judges. Given the critical nature of the judgments of the Commissioner as to the Department operations and public confidence, it is appropriate and necessary that when deviating from the findings or recommendations of either the CCRB or Police Department trial judges, the Commissioner should by formal written decision state plainly and in a timely manner the reasons for such deviations. Likewise, the authority the Commissioner exercises in this regard should also be subject to review and monitoring by an independent commission like the Commission on Police Corruption, which can then evaluate the systemic use of penalties by the Department and the Commissioner and report its findings and evaluations to the public.

### 3. Create a Stronger and More Effective Commission to Combat Police Corruption (CCPC)

The City should enact legislation recreating the Commission to Combat Police Corruption (it is currently conceived only through Executive Order) and expanding its mandate to serve as a permanent monitoring commission. The “reconstituted” CCPC should be granted the clear authority to monitor all aspects of the Police Department’s disciplinary system, including not only oversight of the NYPD Internal Affairs Bureau, but also all the policies and procedures which influence the culture of the Department as it affects misconduct. This should include reporting on all aspects of the disciplinary system. While it is important that the Commissioner maintain the final say on matters pertaining to internal discipline, how that authority is exercised should be subject to review and monitoring by an independent entity, such as the recreated CCPC, to instill greater public confidence.

The NYPD has not been as cooperative historically as it should be in responding to requests for information from the CCPC, primarily because the CCPC has no power to back up its requests by subpoena. To best accomplish the goals of an expanded mandate, the CCPC should be afforded greater resources and the power to issue subpoenas when appropriate.

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<sup>18</sup> CCRB Status Reports reproduced as Table 2 in NYCLU Report at 52.

<sup>19</sup> CCRB Status Reports reproduced as Figure 8 in NYCLU 2006 Supplement, p. 4.

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