

Police Practices and Civil Rights in New York City

August 2000

A Report of the United States Commission on Civil Rights

U.S. Commission on Civil Rights

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- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.
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Ruby G. Moy, *Staff Director*

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Letter of Transmittal

The President
The President of the Senate
The Speaker of the House of Representatives

Dear Sirs:

On May 26, 1999, the U.S. Commission on Civil Rights conducted a hearing in New York City to examine current police practices and their impact on civil rights in the community at large. The Commission had a strong interest in studying the methods used by the city to balance crime fighting with the exercise of appropriate restraint, particularly following the highly publicized tragedies involving Abner Louima and Amadou Diallo. This report is intended to offer insights into some of the tensions that exist between the New York Police Department (NYPD) and the communities that it serves.

In August 1997, the nation experienced shock and disbelief when reports emerged that Abner Louima had been beaten and brutally sodomized with a toilet plunger by a New York City police officer in the precinct where Mr. Louima was being held in custody. The Louima incident led to heightened tensions between the police department and many communities in and around New York City. In February 1999, these tensions increased when an unarmed man, Amadou Diallo, was shot and killed by four officers from the NYPD's Street Crime Unit. These officers fired 41 bullets at Mr. Diallo in the vestibule of his home. The officers involved were acquitted of all criminal charges filed against them; nonetheless, the death of Amadou Diallo is considered by all to be tragic and unnecessary.

Although these incidents are not the focus of this report, the Commission cannot dismiss or deny the significant impact that they have had on police-community relations in New York City. Indeed, it is obvious from the testimony and voluminous documents produced as a result of the New York hearing that this city and others around the country could benefit from an honest dialogue about police practices and civil rights.

In previous publications by the Commission on police practices, it has been established that most properly trained, culturally sensitive officers handle the difficult and life-risking challenges of policing with the level of professionalism required to protect lives, civil rights, and property within the boundaries of the law. Professionalism is the key to effective police strategies. Police officers must be willing to remain professional and uphold the duties of their office, even in the face of mounting public criticism. The Commission is concerned, therefore, that at the time this report was being approved, the NYPD was facing new allegations that in June 2000, several officers failed to respond to calls for help from women who were being sexually attacked at an event in Central Park. It is our hope that these allegations against a few officers are not a sign, as some critics have suggested, of a frustrated force, weary of official scrutiny. This report should help law enforcement officials to better understand that police officer professionalism and stronger ties with the community are inextricably connected.

This hearing report is legally and logically supported by facts secured from the sworn testimony of witnesses who appeared before the Commission at its public hearing. The witness testimony is bolstered by written evidence contained in more than 32,000 pages of subpoenaed documents and a statistical overlay presented with charts and graphs reflecting information contained in more than 100,000 individual records regarding "stop and frisk" encounters stored on CD-ROM by NYPD officials. The witnesses included the city's mayor, the police commissioner, the chair of the Civilian Complaint Review Board, other public officials, relig-

ious leaders, representatives of civic and civil rights advocacy groups, New York Police Department officers, and individuals describing personal encounters with the NYPD.

In its report, the Commission examined the city's policies and programs for police recruitment, for training cadets and officers, as well as how African American and Latino officers are treated within the NYPD. The Commission also explored how racial, ethnic, and immigrant communities are treated by the department. In addition, the Commission reviewed how police practices are monitored in New York City and how police misconduct, when it is established, is addressed in a systematic way.

The timeliness of the report's discussion of monitoring and disciplinary systems is underscored by the recent revelations of the Commission to Combat Police Corruption, which was created in 1995 by the mayor after he successfully blocked a City Council attempt to create an independent agency with wide-ranging authority to investigate police corruption. According to news accounts, the mayor's commission has strongly confirmed in its draft report that the current internal system for disciplining officers is slow and ineffective. The mayor's commission recommends that some internal disciplinary cases should no longer be prosecuted by NYPD lawyers. The points raised in that draft report appear to be consistent with the findings and recommendations found in our report. In order to ensure viable community support for the NYPD's crime-reduction strategies, it is crucial that a credible, independent monitoring and disciplinary mechanism be substituted for the current system.

As a result of its research, the Commission makes several findings of fact and recommendations concerning police practices in New York City. For example, the Commission finds that the NYPD does not reflect the diverse population of New York City and that most of its officers live outside the five boroughs. Because many residents have complained that the police force is not representative of the communities in which it serves, the Commission recommends that the NYPD revise its recruitment plans in order to attract more applicants and cadets from communities of color. Moreover, the NYPD should require all police officers to live in New York City, or at least increase the preference points for applicants from the city and add incentives for officers to move into one of the five boroughs.

The Commission also finds that cadets may not receive enough training time and experience, especially on the topics of diversity and sexual harassment. The Commission discovered that the NYPD uses training materials with offensive racial, ethnic, religious, sexual, and gender stereotypes. The Commission recommends that the NYPD enhance its training at the borough and precinct levels and include local community members in the development of courses. Furthermore, negative stereotypes embedded within training materials should be eliminated.

On the issue of police-community relations, the Commission finds that sustained community policing—in which officers work closely with neighborhood residents—can drive out crime *and* improve the relationship between the police and the communities they serve. Accordingly, the Commission recommends that the NYPD develop aggressive outreach programs to involve increased numbers of neighborhood residents in training and policy development. The department should also enhance its "Courtesy, Professionalism and Respect" training by placing more emphasis on diversity, conflict resolution, and interpersonal relations.

The Commission finds that the NYPD's widely criticized "48-hour rule," in which police officers suspected of wrongdoing are not required to speak to ranking officers until two days after they are identified as suspects, impedes investigations by the Civilian Complaint Review Board (CCRB). Additionally, the low number of substantiated complaints upon which the NYPD and the police commissioner have acted contributes to the pervasive public perception that the CCRB is an ineffective mechanism to control police abuse of authority. The NYPD would improve both future CCRB investigations and public confidence in NYPD handling of civilian complaints by providing explanations regarding the department's decision not to impose disciplinary measures in particular cases and eliminating the 48-hour rule. New York City should also establish an independent board to publicly disclose disciplinary actions taken against officers engaged in acts of misconduct and/or use of excessive force, in

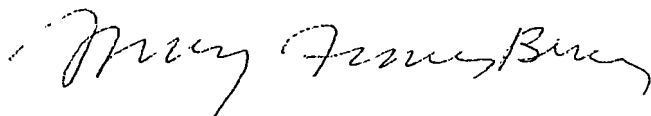
order to guarantee an additional measure of accountability and strengthen the public's relationship with the department.

Testimony at the New York hearing revealed a perception among some city residents that police misconduct cases place a tremendous strain on local government prosecutors, who rely routinely on the police to provide the evidence to prosecute criminal violations. Therefore, the Commission recommends that the City Council appoint an independent prosecutor in cases alleging serious police misconduct.

Finally, based on the analysis of data submitted by the NYPD, the department's use of "pattern descriptions" of alleged suspects is a possible indicator of racial profiling. Although the Commission finds that the NYPD's use of the COMPSTAT tracking system has proven to be an effective measure of crime rates in the city, the department must take aggressive steps to ensure that indicators of racial profiling do not occur. The NYPD should adopt and implement a written policy that carefully defines, expressly prohibits, and stiffly penalizes racial profiling as the sole motivation in the stopping and searching of individuals. The NYPD should also involve existing local organizations to begin or expand its efforts to educate local residents regarding the legal guidelines for a legitimate stop, search, and frisk. These efforts may help eliminate the public's concerns about the possibility of being stopped by the police, particularly in communities of color.

The report contains several other findings and recommendations to assist the NYPD in improving relations between local law enforcement and the community. The Commission hopes that the implementation of these recommendations will lead to a renewed commitment by all concerned persons in law enforcement to search for, find, and follow the best practices, with the understanding that the police can only do their jobs responsibly when the members of the communities they serve have confidence that their rights will not be violated.

Respectfully,
For the Commissioners,

A handwritten signature in cursive script, reading "Mary Frances Berry".

Mary Frances Berry
Chairperson

Acknowledgments

The hearing was organized and the report written at the direction of Ruby G. Moy, Staff Director, and under the supervision of Deputy General Counsel Edward A. Hailes, Jr. Prehearing research, investigation, and planning were conducted by project team leader Erik Brown* and attorney advisors Joseph Manalili, Deborah Reid, Jessica Roff,* and Maxine Sharpe.* Assistance in hearing preparation was also provided by attorney advisors Sicilia Chinn* and Peter Reilly, and staff support was furnished by legal secretary Pam Moye. Kimberley Alton and Lisa Kelly, special assistants to the Staff Director, also provided assistance during the prehearing and hearing phases of this project. The Office of the General Counsel staff drafted the hearing report and conducted the legal sufficiency review, with significant support from lawyers and legal assistants with the law firm of Wilmer, Cutler & Pickering.** Editorial policy review was performed by Bobby D. Doctor, John Dulles, and Peter Minarik.* Attorney advisors Kim Ball, Tricia G. Jefferson, Jenny Kim Park, and Joyce Smith also provided critical assistance in the final phases of this project. The report was prepared for publication by Dawn Sweet.

* No longer with the Commission.

** Pursuant to the terms of a contract with the Commission, Wilmer, Cutler & Pickering indexed, reviewed, and analyzed subpoenaed documents submitted by New York City officials. The firm created various databases, graphs, and charts reflecting the data in the documents and drafted detailed descriptions of their analyses for the report. The attorneys at the firm who reviewed the documents and assisted in the preparation of portions of the draft report are: John Payton, Eric J. Mogilnicki, Franca E. Harris, Michael A. Mckenzie, IJay Palansky, Joshua D. Weinberg, and William E. White.

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Executive Summary

In the world-class City of New York, the twin fears of street crimes and ugly episodes of police misconduct have created an uneasy tension between a police force compelled to lower crime rates and a concerned community that openly questions the fairness of aggressive police strategies. The U.S. Commission on Civil Rights has a long history of examining police practices and civil rights under its responsibility to appraise laws and policies governing the administration of justice. This commitment to investigating police conduct has involved a meaningful discourse on the duty of law enforcement to enforce the laws while respecting the civil rights of individuals.

The discourse, in turn, has produced a solid set of recommendations to meet the challenges posed by these related objectives. The Commission has in recent years completed reports on police-community relations in Chicago, the Mount Pleasant area of Washington, D.C., among Native Americans and police in South Dakota, and in Sonoma County, California. Just last year the Commission published a report on the Los Angeles Police Department (LAPD) and the Los Angeles Sheriff's Department. The report pointed to many of the problems that have just received renewed attention concerning the LAPD. The Commission will use the information it continues to gather to update its 1981 publication, *Who Is Guarding the Guardians? A Report on Police Practices*, in a national report this year.

The Commission conducted a day- and evening-long hearing in New York City almost a year ago and received hundreds of pages of sworn testimony from the mayor, the police commissioner, the chair of the Civilian Complaint Review Board (CCRB), other state and city officials, religious leaders, representatives of civic and civil rights advocacy groups, and a large host of individuals who testified that they were victimized by police misconduct. Over the last year, that testimony was analyzed by Commission staff along with more than 32,000 pages of other supporting documents secured by subpoenas from the agencies that testified at the hearing.

Among the documents are orders concerning the Internal Affairs Bureau of the police department; reports on complaints substantiated by the Civilian Complaint Review Board; materials used in the training and recruitment of police officers; forms used to process civilian complaints; documents concerning officers with excessive CCRB complaints and the use of performance monitoring systems to address the use of excessive force; information on cultural diversity training; use of force curricula; training guides and manuals used at all levels from the academy to precinct guides; all complaint procedures and practices; all dispositions by the CCRB; and statements, memos, and instructions generated by the department concerning crime reduction strategies. Additionally, thousands of individual UF-250 forms, which are designed to record important descriptions of "stop and frisk" encounters, were reviewed. Staff has also received more information from city agency representatives since the hearing. The hearing report has been reviewed and commented upon by affected agencies, including city agencies and officials in New York who testified at the hearing.

The report makes a number of important findings and recommendations. Most importantly, the New York Police Department (NYPD) has not involved affected communities sufficiently in the planning and implementation of strategies that could reduce tensions while controlling crime. The report recommends that the city should establish an independent monitor to monitor the police in New York City and that there should be an independent prosecutor who would be appointed to handle high-profile cases involving allegations that deadly force has been used inappropriately. The report notes that there is a proposal passed by the City Council that is under legal challenge at this time.

Recruitment

The NYPD continues to be largely unrepresentative of the diverse population of New York City. In fact, since 1994 African American hires have decreased; from recruitment to application there are major problems. This year's experience of half the number of 1996 applicants for the April exam portends worsening of the problem. The department does not utilize a number of community organizations and leaders who are willing to help in recruitment. Further, the department needs more officers to live in the boroughs they police.

Civilian Complaint Review Board data show that police with less than an associate degree are more likely to have substantiated misconduct complaints. The department ought to encourage new officers to have a baccalaureate degree and give officers time off to work on college credits to help professionalize the force. The promotions process needs reevaluation from top to bottom to address the paucity of high-ranking officers of color.

Training

The diversity training offered by the department reinforces stereotypes instead of undermining them. There is controversy about whether diversity training works, but bad training cannot work. Further, high-level officials do not involve themselves, therefore it does not appear to be a priority from the perspective of the rank and file officers.

Police-Community Relations

The NYPD seems to have avoided learning from the experiences in San Diego and Boston and in other places where officials employ approaches to policing that reduce crime and minimize racial tensions. Community involvement seems to be a key. The mayor and police commissioner need to release specific information to the public on compliance with the Mayor's Task Force on Community Relations recommendations. What has been released is spotty and incomplete, and the impression is they have been mostly ignored.

The Civilian Complaint Review Board and Internal Affairs Bureau

The CCRB has much improved in the last 2 years, in staffing and resources, but is given little credit because it still needs a lot of work and crises keep occurring. The rate of increase in discipline by the police when the CCRB substantiates a claim has risen from 20.7 percent in 1996 to 52.6 percent in 1999. The NYPD does not help to inspire public confidence by refusing to say what discipline was imposed upon a CCRB finding. CCRB semiannual reports on its own operations include major weaknesses. There are no reports on the type of misconduct alleged or why it was unsubstantiated for example. Further, the reports should include the officer's command to make it possible to monitor specific problem areas in the city. There should be monitoring by an independent watchdog that will review and report on NYPD disposition of substantiated complaints. CCRB needs more outreach, town hall meetings, and forums on a regular basis to inform the public and provide for an airing of public views on the police. High-level officers should be required to attend. The police union agreed that the 48-hour rule could be bargained away in collective bargaining. It should be abolished. Further, NYPD officers testified that no one ever asks or rewards them for enforcing the law while maintaining a record of no complaints filed and being a protector of the civil rights of civilians. In the evaluation of officers, complaint avoidance should be rewarded. There should also be some mechanism for prosecuting the most serious cases. This may include the alleged, unnecessary shooting of an individual. The idea is not that local prosecutors lack devotion to their duties but to reduce concern when prosecutors must work with the police on a routine basis.

“Stop and Frisk”

New Yorkers have stronger legal protection under state law against an unlawful stop and frisk than is available under the federal Constitution as interpreted by the Supreme Court. This protection is not abrogated because the police use a special unit such as the Street Crime Unit or a drug crime unit. NYPD policy is that a UF-250 form should be filed by an officer when a person is stopped forcibly or is frisked and searched, and is arrested or refuses to identify himself or herself. The officer is to submit the form to his desk officer. According to NYPD officials, this form was introduced in 1964 and amended to its present version in 1973. It was mandated as a rigorously enforced priority by Police Commissioner Howard Safir in 1997. However, testimony at the Commission’s hearing indicated that perhaps only in 1 out of 30 stop and frisk encounters resulted in a filed UF-250 form. This criticism was echoed recently in a preliminary report by the CCRB, whose investigators have determined, based on a study of hundreds of instances in which people had been stopped and frisked, that NYPD officers routinely fail to file the required paperwork after stopping and frisking people on the streets of the city.

The UF-250’s examined by the Commission were for the year 1998; 139,409 forms were completed. Everywhere, African Americans were stopped far out of their proportion in any of the communities policed. So were Hispanics but at somewhat reduced levels. Whites and Asians were stopped at far below their representations of the population in each area policed. While the mayor and the police commissioner attributed these disparities to suspects’ profiles as reported by crime victims, this claim is belied by police testimony that the Street Crime Unit and other specialized units root out crime by scouring neighborhoods and making stops with no complaints and no victim. They simply stop who they think they should stop. The NYPD needs to be careful not to engage in racial profiling of this sort, whether in regular or specialized units. It not only violates the law but undermines respect for the police and can cause deadly altercations, as in the tragic and unnecessary police shooting of Amadou Diallo.

The City of New York must maintain a world-class police force that provides protection against illegal activities, including civil rights violations by its own officers, for all of its diverse populations.

Introduction

[W]hatever gains we have achieved in fighting crime are minimized if the price is the trust and respect of the community we serve. If crime levels decline, but members of the community are reluctant to approach police for fear of a negative encounter, then we have not truly met our obligations to the public.¹

New York City is the largest metropolis in the United States. It is the center of world finance, business, and communications and the headquarters of the United Nations. There are more than 200 museums and 400 art galleries that provide a mecca for history and art lovers. New York City is the literary and publishing center for the nation and the quintessential venue for the performing arts. In essence, the city offers all of the trappings of a world-class city. However, this world-class city has recently been subject to mass demonstrations and racial strife because of a widespread belief that New York City police officers too often abuse their authority.

New, more aggressive police strategies have resulted in what appears to be an ever-widening divide between the city's residents of color and the New York City Police Department (NYPD). According to New York police officials, the use of deadly force by the city's police officers occurs less in New York than in other major cities, when measured in terms of fatal shootings per 1,000 officers. However, in the past 13 months, four unarmed men, three of them black, have been killed by New York City police officers.² There have also been complaints that residents of color are stopped more often than white resi-

dents on suspicion of committing a crime. While the NYPD has managed to reduce crime dramatically over the past 6 years, critics believe that it has been at the expense of residents' civil rights.

Part of the allure of New York City is the tremendous diversity of its residents. Unlike many Asian and European cities, where the population tends to have a common ethnicity, religion, and culture, New York is a city of migrants and immigrants. The police force must respect the attributes of the city's residents, so that residents, in turn, will respect the police and the laws that they seek to uphold. The police manual on the 1996 police strategy, *Courtesy, Professionalism and Respect (CPR)*, offers the following objective: "To live up to our reputation as 'New York's Finest,' it is imperative that we do not lose sight of the fact that law enforcement is a service profession. We must be constantly cognizant that we owe it to the communities we serve to treat every citizen with the same courtesy, professionalism, and respect we would expect to receive."³

On May 26, 1999, the U.S. Commission on Civil Rights conducted a factfinding hearing in New York City to examine police practices and civil rights. The Commission determined that a hearing should be held in New York City in the wake of the highly publicized tragedies involving Abner Louima and Amadou Diallo. Mr. Louima, a Haitian immigrant, was sodomized with a toilet plunger by an NYPD officer in August 1997. Mr. Diallo, an immigrant from Guinea, died when hit by 19 of 41 bullets fired by four plainclothes officers in February 1999. While the Commission recognized the potential impact these cases would have on this hearing, the pur-

¹ New York City Police Department (NYPD), *Courtesy Professionalism and Respect Handbook* (hereafter cited as *CPR Handbook*), 1996, p. 1.

² David Barstow, "Antidrug Tactics Exact Price on Neighborhood, Many Say," *The New York Times*, Apr. 1, 2000, p. A1.

³ *CPR Handbook*, p. 1.

pose of the hearing was to examine current police practices in New York City and their impact on civil rights. Specifically, the Commission examined the procedures for establishing and maintaining standards of police conduct and the manner in which they are monitored. The Commission also investigated the city's policies and programs for recruiting and training cadets and officers and the NYPD's treatment of officers and residents of color.

In its 1981 report *Who Is Guarding the Guardians?* the Commission emphasized that the responsibility of law enforcement officials to preserve the peace and enforce the law "carries with it the power to arrest and to use force—even deadly force. It is essential, therefore, that these sweeping powers be subject to constant scrutiny to ensure that they are not abused."⁴

The Commission has previously addressed the issue of police practices in a number of areas, including Chicago, Sonoma County, and the Mt. Pleasant area of Washington, D.C., in recent years. Just in the last year, the Commission published a report of its investigation into the resurgence of racial and ethnic tensions within and between law enforcement and the communities it serves in Los Angeles.⁵ That report supports the crucial work of police in reducing crime and at the same time makes clear the important need for the community to know that the police will not violate civil rights. In sum, the Commission's current interest in police practices and civil rights in New York City is a continuation of its long history of concern with these issues and its desire to promote a world-class police force for this diverse metropolis.

OVERVIEW OF NEW YORK CITY

Size and Geography

With a small portion of its land mass in the mainland, New York is a city of islands, covering a total area of 305.5 square miles. New York City comprises five boroughs, each of which constitutes a county of New York State: the Bronx (Bronx County), Brooklyn (Kings County), Manhattan (New York County), Queens (Queens

County), and Staten Island (Richmond County). The city consists of Manhattan and Staten Island, a part of Long Island, and the southernmost tip of the mainland of New York State. It is situated at the junction of the Hudson and East Rivers with New York Bay, an arm of the Atlantic Ocean.

Government Structure

The city of New York is an incorporated municipality with specific governmental powers granted to it by the State of New York under the home-rule provisions of the state constitution and the New York State Municipal Home Rule Law.⁶ New York City's governmental organization is set forth in the City Charter⁷ and in the city's administrative code. Additionally, the city government exists on two levels, municipal and borough.

New York City has a strong mayoral form of government, with the mayor serving as the chief executive officer in the city. The current mayor, Rudolph Giuliani, first took office in 1994 (and was re-elected) and is empowered to appoint heads of city departments, members of commissions, judges of the criminal court, and other officers not elected by the people. The mayor has the power to veto local laws passed by the City Council. The 51-member City Council is "vested with the legislative power of the city."⁸ As such, the Council enacts the city budget and all local laws.⁹ The Council consists of a president, who is elected on a citywide basis and known as the New York City ombudsman and public advocate. Additionally, one council member is elected to

⁶ N.Y. Mun. Home Rule Law § 1 *et seq.* (McKinney 1994).

⁷ The current charter was most recently revised in 1989 and represents the most sweeping change in New York City government since the five boroughs were consolidated in 1898. The revisions came on the heels of a unanimous United States Supreme Court decision holding that the old Board of Estimate—composed of the mayor, the president of the City Council, and the comptroller (each having four votes), and the five borough presidents (each with two votes, despite disparities in the size of each borough)—and charged with playing a role with the Council in adopting the expense and capital budgets, controlling city property, and planning and zoning, violated the constitutional principle of "one person, one vote." *Board of Estimate of New York v. Morris*, 489 U.S. 688, 689-703 (1989). The Board of Estimate was abolished in 1989 and its fiscal and planning authority transferred to the mayor, City Council, and other city officials. See *New York City Charter*, chap. 3 (Lenz & Riecker 1997).

⁸ *New York City Charter*, chap. 3, § 21.

⁹ *Ibid.*, §§ 28-31.

⁴ U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?* October 1981, Preface, p. v.

⁵ U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume V: The Los Angeles Report*, May 1999.

represent each district lying wholly within the city. Like the mayor, council members are elected for 4-year terms.¹⁰

Each of the boroughs that make up the city elects a president as its executive officer to a 4-year term.¹¹ The main function of the borough president is to represent his or her borough in fiscal matters, and to advise on boroughwide planning.¹² Since the county and borough boundaries are coterminous, the same government serves both. Under the City Charter, borough presidents are authorized to (1) work with the mayor in preparing the annual executive budget submitted to the City Council, and to propose borough budget priorities directly to the Council; (2) review and comment on major land use decisions and propose sites for city facilities within their respective boroughs; (3) monitor and modify the delivery of city services within their boroughs; and (4) engage in strategic planning for their boroughs.¹³

Demographics

As of 1990, New York City was home to approximately 7.3 million persons, an increase of 3.5 percent since 1980.¹⁴ This growth occurred because the positive natural increase of the population (number of births minus the number of deaths) outweighed the negative net migration (the number of persons who migrated to the city minus the number of persons who migrated out of the city).¹⁵

During the 1980s, the contemporaneous decline in the city's white population and increase in its people of color population resulted in the latter becoming the majority of the population. Fifty-seven percent of New York City residents are people of color, with non-Hispanic whites comprising the remaining 43 percent of the population.¹⁶ African Americans and Hispanics each constitutes roughly one-quarter of the population, and Asian Americans and Pacific Islanders comprise approximately 7 percent of the total population. The Hispanic and Asian American and Pacific Islander populations each experienced high rates of growth during the 1980s, with the Hispanic population growing by one-quarter, and the Asian American and Pacific Islander population more than doubling.¹⁷

A salient feature of New York City's demography is its large number of immigrants.¹⁸ Of all New York City residents, 28 percent were born outside the United States.¹⁹ Many are recent immigrants: between 1982 and 1991, almost 900,000 legal immigrants, or roughly 12 percent of the city's entire population, came to New York City.²⁰ In addition, a vast majority of the approximate 500,000 undocumented immigrants, estimated by the Immigration and Naturalization Service to be residing in New York State, live in New York City.²¹ Currently, a few cities in the country have a comparable percentage of immigrants, and only one, Miami, markedly

¹⁰ Ibid. § 25a.

¹¹ Ibid. § 81b.

¹² Ibid. § 82.

¹³ Ibid.

¹⁴ Bureau of the Census, 1990 Census of Population, *Social and Economic Characteristics: New York*, 1990 CP-2-34, sec. 1, table 7; Bureau of the Census, 1980 Census of Population, *General Social and Economic Characteristics: New York*, PC80-1-C34 N.Y., sec. 1, table 59. This section rests heavily on data from the 1990 census of population. It should be noted that, like all cities with large people of color communities and undocumented populations, New York probably suffered a serious population undercount in the 1990 census. The city's people of color and undocumented residents were the most likely to be undercounted. Therefore, what follows should be read with the awareness that the data most likely do not reflect the entirety of these populations.

¹⁵ New York City, Department of City Planning, Population Division, *Components of Population Change by Race and Hispanic Origin or Descent, 1980-1990: Population Change, Natural Increase, Net Migration, New York City by Borough*, DCP 1990 #13 (May 10, 1991), table 1.

¹⁶ 1990 Census, *Social and Economic Characteristics: New York*, table 7; 1980 Census, *General Social and Economic Characteristics: New York*, table 59.

¹⁷ Ibid.

¹⁸ A distinction should be drawn between New York's "new" immigrants and its "old" immigrants. New immigrants are usually considered to be those who have arrived since 1965, in contrast to old immigrants, who came in record numbers at the turn of the century. Moreover, old immigrants were overwhelmingly European, whereas today's new arrivals come mainly from the third world, especially the West Indies, Latin America, and Asia. Nancy Foner, ed., "New Immigrants and Changing Patterns," in *New Immigrants in New York* (New York: Columbia University Press, 1987), p. 2 (hereafter cited as Foner, *New Immigrants*).

¹⁹ Bureau of the Census, 1990 Census of Population and Housing, *Summary Social, Economic, and Housing Characteristics: New York*, p. 51, table 2.

²⁰ New York City, Department of City Planning, Population Division, *Estimates of Undocumented Aliens as of October 1992*, Sept. 2, 1993, table 2 (hereafter cited as NYC Dept. of Planning, *Undocumented Aliens*).

²¹ Ibid.

surpasses New York in its share of foreign born.²²

New York's immigrant population is not only notable for its size, but also its extreme heterogeneity.²³ New York is more ethnically diverse than any other immigrant city in the United States. Moreover, most of the various immigrant groups are represented in large numbers. New York draws immigrants from all regions of the world, although a significant share of the city's foreign born come from the Caribbean. Six countries account for one-half of all recent legal immigrants to New York City: the Dominican Republic, Jamaica, China, Guyana, Haiti, and the Soviet Union. In fact, more than one-quarter of all recent immigrants come from the Dominican Republic and Jamaica alone.²⁴

New York City's population is distributed across the five boroughs as follows: the Bronx, 16.4 percent; Brooklyn, 31.4 percent; Manhattan, 20.3 percent; Queens, 26.7 percent; and Staten Island, 5.2 percent.²⁵ The city's African Americans, Hispanics, and Asian Americans and Pacific Islanders are not evenly distributed across the boroughs. African Americans are concentrated in Brooklyn, which is home to more than 40 percent of African Americans in the city, but only 31 percent of all city residents. Hispanics are concentrated in the Bronx, where they constitute 44 percent of all residents, almost double their percentage in the city as a whole. Almost one-half of all Asian Americans and Pacific Islanders live in Queens, in comparison to about one-quarter of all city residents. Whites are overrepresented in Staten Island, where they make up four-fifths of the population, and are underrepresented in the Bronx.²⁶

Similarly, immigrants are not distributed across New York's boroughs in proportion to the city's general population. Immigrants are one-third more likely than the average city resident to live in Queens, where immigrants make up 36 percent of the population. Immigrants are also overrepresented in Manhattan, the Bronx, and

Staten Island, while they are underrepresented in Brooklyn.

OVERVIEW OF THE NYPD

The Department's History

For more than 150 years, the NYPD has been steeped in a history of rich tradition. The development of a modern police force in New York City closely paralleled the general American historical experience. According to a historical overview presented on the NYPD's official Web site, New York changed from the old constable system, which had policed New York since the days of the Dutch, to its modern police force by 1845.²⁷ The change occurred when the population of about 33,000 in 1790 grew to a metropolis of nearly 400,000 by 1845, presenting a new set of policing problems: growing slums, rising crime, and frequent rioting. These growing problems gave rise to a municipal police force in 1845. This new police force was based on the London model of a paramilitary organization with uniforms and a chain of command.²⁸ Police officers served 1- and 2-year appointments and often at the pleasure of politicians.

The early years of the department, marked by dissension, division, corruption, and reform, represented a period of challenge to bring public order. In his 2 years as president, Theodore Roosevelt reformed the New York Police Commission and set the standard for the current administration of the NYPD. Beginning in 1895, he stripped away political considerations for the selection of recruits, opened up admission to the

²⁷ See <<http://www.ci.nyc.ny.us/html/nypd/>>.

²⁸ The modern municipal police organization began its development in England and the United States during the first three decades of the 19th century. In both countries the appearance of police departments as arms of civil authority paralleled the emergence of the city as a population center on a scale previously unknown. In England large urban disorders associated with protests over London's food shortages and the economic turmoil of the 1820s led to passage of an act in 1829 to establish a police force. The act replaced the ad hoc use of the military with a regular, continuous police presence in all parts of London to ward off group violence by "dangerous classes." The military had employed violent tactics to suppress riots, and it was a conscious purpose of the 1829 act to reduce the level of force required to deal with civil disorder.

The American experience differs significantly. In this rough country of frontiersmen and immigrants, the police often had to maintain order and enforce the law by applying summary justice on the spot. This practice led to early justification of the use of force by police.

²² Ibid.

²³ Foner, *New Immigrants*, p. 6.

²⁴ NYC Dept. of Planning, *Undocumented Aliens*.

²⁵ Bureau of the Census, 1990 Census of Population and Housing, *Summary Population and Housing Characteristics: New York*, p. 107, table 4.

²⁶ Ibid.

department to people of color, and hired the first woman. Today, the NYPD is the largest police department in the United States.

Structure

There are more than 38,000 uniformed officers of all ranks and approximately 9,000 civilians on the force.²⁹ The police commissioner, who heads the agency, is appointed to a 5-year term and reports directly to the mayor. The other top two officials are the first deputy commissioner, who is a civilian, and the chief of the department, the highest ranking uniformed member of the service. Included in the organizational structure of the NYPD are eight major bureaus: Patrol Services Bureau, Detective Bureau, Organized Crime Control Bureau, Transportation Bureau, Criminal Justice Bureau, Internal Affairs Bureau, Personnel Bureau, and Support Services Bureau. Under the Patrol Services Bureau, New York City's five boroughs are divided into eight patrol borough commands, which are further subdivided into 76 precincts. Subways and large housing complexes are patrolled by 12 transit districts and nine housing police service areas.

New Police Strategies

In recent years, the NYPD has followed a strategy of aggressive policing with a focus on "quality of life" crimes.³⁰ These quality of life crimes, such as graffiti, squeegee windshield washing, and subway turnstile jumping, are pursued as a way to demonstrate control of the streets and to apprehend individuals who may have outstanding arrest warrants against them.³¹ The department now boasts that "[this] targeted approach to crime prevention has made the City the safest it has been for nearly the past three decades, and the safest large city in the United States according to FBI statistics."³² Serious crime in New York City has declined dramatically following the introduction of new po-

lice strategies implemented in 1994. Preliminary figures for 1999 show a 54.7 percent reduction in major felony crime in New York City since 1993.³³ For the same period, the number of homicides in the city has dropped 65.4 percent, from 1,927 to 667, while shooting incidents have dropped by 66.7 percent, from 5,282 down to 1,760.³⁴

Despite the decline in crime rates, a number of critics maintain that the NYPD has failed to balance aggressive policing with a respect for civil rights.³⁵ Statistics show that the number of civilian complaints against the police rose by 56 percent in 1994 and 1995, the 2 years following employment of the new policing strategies.³⁶ According to a review by Mark Green, public advocate for the City of New York,³⁷ of 283 cases of police misconduct substantiated by the Civilian Complaint Review Board, the NYPD has dismissed a majority of these complaints without further investigation.³⁸ In the cases where officers were disciplined, the punishment included loss of vacation days, temporary suspension,

²⁹ Ibid.

³⁰ Ibid.

³¹ See Rusty Ray, "ACLU Warns of a Dark Side of NY Police Plan," *Philadelphia Inquirer*, Dec. 16, 1997, p. B2. In the article, New York Civil Liberties Union director Norman Siegel warned of a "dark side" to the positive crime news in New York City: "The attitude seems to be that violating civil liberties is an effective trade-off for effective law enforcement."

³² *Human Rights Watch Report*, Civilian Complaint Review Board section (citing CCRB Status Report, July–December 1994, p. 42). By 1998, however, the CCRB reported that civilian complaints against police officers had declined: allegations of unnecessary force decreased 22.2 percent from 1994 levels, allegations of discourtesy were down 13.3 percent from 1994, and allegations of offensive language decreased 39.1 percent from 1994. In contrast, allegations of abuse of authority increased 30.5 percent from 1994 to 1998. New York City Civilian Complaint Review Board, *January–December 1998 Report*, p. 1 (hereafter cited as *CCRB Report, January–December 1998*).

³³ Under Section 24 of the Charter of the City of New York, the public advocate is the city's ombudsman with the power to "review complaints of a recurring . . . nature relating to services and programs . . . of city agencies." Elected by the voters of the city, the public advocate is first in line in succession to the mayor.

³⁴ Mark Green, public advocate for the City of New York, *Investigation of the New York City Police Department's Response to Civilian Complaints of Police Misconduct*, Interim Report, Sept. 15, 1999, p. iii.

²⁹ New York City Police Department Web site <<http://www.ci.nyc.ny.us/html/nypd/html/whoware.html>>.

³⁰ See Allyson Collins and Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States* (New York: Human Rights Watch, 1998) (hereafter cited as *Human Rights Watch Report*).

³¹ Ibid.

³² New York City Police Department Web site <<http://www.ci.nyc.ny.us/html/nypd/>>.

and, in one case, dismissal from the department.³⁹

Although civilian complaints did appear to increase with the introduction of new police tactics, they declined somewhat from their plateau in 1997.⁴⁰ In fact, a study conducted by the Vera Institute of Justice found that while there were citywide increases in civilian complaints following the change in police tactics, two precincts experienced major declines in crime reports.⁴¹ In fact, these two South Bronx precincts used the same crime-fighting techniques as the rest of the police force while practicing respectful policing.⁴² For example, the precincts' commanding officers reinforce departmentwide training within their precincts and impose sanctions on those officers receiving civilian complaints.⁴³

There is often a racial or ethnic component to police misconduct complaints in New York City, with many incidents also fueled by language barriers and miscommunication. In the Civilian Complaint Review Board's January–June 1997 report, African Americans and Latinos filed more than 78 percent of complaints against the police, and 67 percent of the subject officers were white.⁴⁴ In light of the many forces that may have conspired to drive up civilian complaints between 1993 and 1996, it is difficult to determine the primary cause of the increase in complaints.

OVERSIGHT OF THE NYPD

Civilian Complaint Review Board

In response to the increasing complaints of civil rights violations from residents, the NYPD has implemented various training programs to ensure that police recruits and veterans are educated in proper police conduct. In addition, there are several monitoring boards that are specifically charged to investigate police misconduct cases. The NYPD has its own monitoring programs, such as the Civilian Complaint Reduction program, which tracks officers who have accu-

mulated multiple civilian complaints within a specified timeframe. In addition, there is the Civilian Complaint Review Board (CCRB), which is independent of the NYPD. The CCRB is staffed entirely by civilian investigators and is empowered to investigate and make recommendations on citizen complaints against law enforcement officers.

In the past, various commissions and task forces have been created to address specific police concerns. In response to the public outrage surrounding the Louima case, Mayor Giuliani created a task force to examine police-community relations in the city and to make recommendations for improvements. Among the recommendations in the majority report were the elimination of the 48-hour delay allowed for officers under investigation to refrain from responding to questions related to their misconduct, enhanced screening of police recruits, and bi- or multilingual receptionists in precincts that have a large number of non-English-speaking residents.⁴⁵

Mollen Commission

The Mollen Commission was instrumental to uncovering serious police misconduct within the NYPD during the early 1990s. NYPD officers in several New York precincts were discovered selling drugs and beating suspects. This prompted then-mayor David Dinkins to appoint the Mollen Commission, headed by his former deputy mayor for criminal justice, Milton Mollen. During the commission hearings held in 1993–1994, police officers testified that they had formed a vigilante squad for financial motives. The Mollen Commission Report, published in July 1994, described a flawed internal accountability system. It also detailed the nexus between police corruption and brutality and recommended a plan to combat both.⁴⁶

FEDERAL INVESTIGATIONS AND TRIALS

There have been a number of high-profile cases involving New York police officers and residents of color that have stirred emotions and caused serious mistrust of the NYPD. The case involving Abner Louima shocked the nation, as this Haitian immigrant was allegedly beaten in

³⁹ Ibid., pp. iv–v.

⁴⁰ Robert C. Davis and Pedro Mateau-Gelabert, Vera Institute of Justice, *Respectful and Effective Policing: Two Examples in the South Bronx*, March 1999, p. 4.

⁴¹ Ibid.

⁴² Ibid., Executive Summary.

⁴³ Ibid.

⁴⁴ See *Human Rights Watch Report*.

⁴⁵ Ibid.

⁴⁶ Ibid., Background.

a police car by four officers after being arrested outside a Brooklyn nightclub on August 9, 1997. When he got to the stationhouse, it was charged, two officers sexually assaulted him. Four of the officers, Justin Volpe, Thomas Bruder, Thomas Wiese, and Charles Schwarz, were charged with aggravated sexual abuse and first-degree assault for their participation in the attack on Louima. The fifth officer, Sergeant Michael Bellomo, who was the patrol supervisor the night of the attack on Louima, was charged with attempting to cover up the alleged assault.

Originally, a state indictment was filed, but the U.S. attorney for the Eastern District of New York ultimately prosecuted the case, adding federal civil rights and conspiracy charges. Two weeks before the jury reached its decision, former officer Justin Volpe pleaded guilty to sodomizing Mr. Louima with a toilet plunger. He was subsequently sentenced to 30 years in prison. Later, the jury panel of seven men and five women convicted Officer Charles Schwarz on two counts of violating Mr. Louima's civil rights in the bathroom attack. The other named defendants, Thomas Wiese and Thomas Bruder, and Mr. Schwarz were acquitted of civil rights charges connected with the beating of Mr. Louima.⁴⁷ The jury also acquitted Sergeant Michael Bellomo of covering up the attack on Mr. Louima and the false arrest of a second man, Patrick Antoine.

Following the August 1997 attack of Mr. Louima, then-U.S. attorney Zachary Carter launched a civil investigation of the NYPD. The purpose of the investigation is to determine whether incidents of excessive force were the product of systemic deficiencies in police operations, including possible failures of complaint intake and investigation, discipline, and supervision. *The New York Times* reported in July 1999 that "secret talks" regarding a possible settlement were taking place between the U.S. attorney's office and Mayor Giuliani's office.⁴⁸ Fur-

⁴⁷ On Mar. 6, 2000, following subsequent federal charges, former officers Schwarz, Wiese, and Bruder were found guilty of conspiracy to obstruct justice because they had claimed that Schwarz was not present during the attack on Mr. Louima. Schwarz was sentenced to 15 $\frac{1}{2}$ years in prison for his part in the conspiracy, while Wiese and Bruder each received a 5-year sentence.

⁴⁸ Benjamin Weiser, "Federal Inquiry Criticizes Police in New York City," *The New York Times*, July 10, 1999, sec. A, p. 1.

ther, Mark Green, public advocate for the City of New York, wrote to Attorney General Janet Reno on August 18, 1997, asking to "direct the Civil Rights Division to commence an investigation, pursuant to 42 U.S.C. § 14141, of the New York City Police Department ('NYPD') to determine if it has engaged in a pattern of conduct that violates the legal and constitutional rights of New Yorkers."⁴⁹

To exacerbate the looming suspicion of the NYPD's practices, another incident arose that resulted in the death of a West African immigrant, Amadou Diallo.⁵⁰ On February 4, 1999, the 22-year-old Mr. Diallo was approached by officers Kenneth Boss, Sean Carroll, Edward McMellon, and Richard Murphy of the Street Crime Unit in front of his Bronx apartment building.⁵¹ The four police officers were scouring the neighborhood for a rape suspect and believed that Mr. Diallo fit the general description of the suspect. They also believed that he was acting suspiciously. The officers mistakenly believed that Mr. Diallo was reaching for a gun when they began shooting. The object Mr. Diallo was reaching for later turned out to be his wallet. Mr. Diallo had no prior criminal record and was not armed.

On March 31, 1999, the four officers were charged with second-degree murder of Mr. Di-

⁴⁹ Mark Green, public advocate for the City of New York, to Attorney General Janet Reno, Department of Justice, Aug. 18, 1997.

⁵⁰ The U.S. Commission on Civil Rights sent a letter on Feb. 17, 1999, to Attorney General Janet Reno asking the Department of Justice (DOJ) to investigate the shooting death of Amadou Diallo. On Apr. 1, 2000, DOJ responded that the FBI had opened an investigation into this matter. In addition, the letter stated that the FBI and the U.S. attorney's office in the Southern District in New York are assisting the Bronx County District Attorney's Office in its ongoing investigation. Bill Lann Lee, acting assistant attorney general, Civil Rights Division, Department of Justice, to Mary Frances Berry, chairperson, U.S. Commission on Civil Rights, Apr. 1, 2000.

⁵¹ The Street Crime Unit (SCU) is an elite unit of plain-clothes officers tasked to "hot spots" of concentrated criminal activity. The SCU's "mission" is to "effect the arrests of violent street criminals, with a particular emphasis on recovering illegal firearms." State of New York, Office of Attorney General Eliot Spitzer, *The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General*, 1999, p. 54, n. 32 (citing Statement of Police Commissioner Howard Safir before the New York City Council Public Safety Committee (Apr. 19, 1999)) (hereafter cited as OAG, *Stop & Frisk Report*).

allo.⁵² The jury, consisting of four black women, one white woman, and seven white men, ultimately acquitted the four officers of all charges, including the lesser-included offenses of first-degree manslaughter or criminally negligent homicide, and reckless endangerment of bystanders. The acquittals have upset many people and divided the city further on issues of race, politics, and public safety.

Following the acquittal of the four police officers charged with the shooting, the Justice Department announced that there will be a collaborative effort between its Civil Rights Division and the U.S. attorney for Manhattan, Mary Jo White, to determine whether there were any violations of the federal criminal civil rights laws. Deputy Attorney General Eric H. Holder, Jr., of the Department of Justice has cautioned that federal prosecutions after state trials happen only about once or twice a year.⁵³ Mr. Holder, however, indicated that the federal investigation of the facts would be conducted as thoroughly and expeditiously as possible.⁵⁴

In light of the Amadou Diallo case, Attorney General Janet Reno has expanded the general investigation into police misconduct by the U.S. attorney in Brooklyn to include examination of the Street Crime Unit. The Street Crime Unit is an elite unit of plainclothes officers tasked to "hot spots" of concentrated criminal activity. The unit's "mission" is to "effect the arrests of violent

street criminals, with a particular emphasis on recovering illegal firearms."⁵⁵ The new phase of the inquiry is to be conducted by the U.S. attorney in Manhattan. It will focus on whether members of the Street Crime Unit have systematically deprived minority citizens of their constitutional rights through stop and frisk tactics and other practices. Furthermore, in March 1999, New York State Attorney General Elliot Spitzer began a civil rights inquiry into the stop and frisk practices of the NYPD. The investigation preliminarily concluded (1) there is a strong statistical correlation between race and likelihood of being "stopped"; and (2) in one out of seven "stops" conducted by the NYPD, the facts articulated for making the "stop" failed to meet the legal threshold of "reasonable" suspicion.⁵⁶

The aforementioned trials and investigations illustrate that the allegations of police misconduct in the NYPD are an important issue that warrants further examination. The Commission is committed to investigating police conduct to provide meaningful discourse on the duty of law enforcement to enforce the laws while respecting the civil rights of individuals, and to proposing recommendations to meet these challenges. The remaining chapters of this report will discuss the following: (1) recruitment, selection, and training; (2) police-community relations; (3) monitoring of civilian complaints; and (4) stop and frisk, as they relate to the NYPD.

⁵² The case was alternately tried in Albany, New York, due to pretrial publicity, thus making it difficult to secure an impartial jury.

⁵³ Lorraine Adams and Petula Dvorak, "N.Y. Police Acquittals Protested," *The Washington Post*, Mar. 3, 2000, p. B2.

⁵⁴ *Ibid.*

⁵⁵ OAG, *Stop & Frisk Report*, p. 54.

⁵⁶ *Ibid.*, p. 89. Not surprisingly, the NYPD objects to much of the analysis and conclusions in the attorney general's report.

Recruitment, Selection, and Training

The effectiveness of the New York City Police Department can be evaluated by looking at several factors, including the quality of the officers recruited into the force, its ethnic and gender composition, and the type of instruction provided to allow good recruits to become good police officers. Although the NYPD dedicates substantial time and resources to recruiting and training people of color, especially those who reside within the NYPD's jurisdiction, they are still dramatically underrepresented in the force compared with the overall population of New York City. Moreover, the many flaws in the recruitment and training processes may contribute to race-related problems in the NYPD.

This section of the report discusses NYPD recruitment and training programs. It begins with a description of the department's recruitment efforts, focusing on the NYPD's efforts to increase diversity. Next, it reviews the several training programs currently used by the NYPD. This section concludes with recommendations addressing existing shortcomings in the NYPD's recruitment and training programs as they relate to diversity and race issues.

RECRUITMENT

An ideal recruitment policy would allow the NYPD to attract candidates capable of effectively policing all of New York City's diverse communities. Such a policy should consider factors including the educational level and psychological makeup of individual recruits and the diversity of the force as a whole, including adequate representation of people of color and women in ranking positions.¹

¹ See New York City Police Department, 1998 Innovations in American Government—Courtesy, Professionalism and Respect Strategy, p. 3 (hereafter cited as 1998 Innovations in American Government).

The U.S. Commission on Civil Rights emphasized these factors in a report published more than 20 years ago concerning the desirability of a diverse police force representing the ethnic makeup of the policed community.² The report notes the importance of "developing a [police] force that reflects the racial and ethnic composition of the community it serves. . . . It is axiomatic that a police force representative of its community will enjoy improved relations with the community and will, consequently, function more effectively."³ This remains true today.

New York City's mayor, Rudolph Giuliani, agreed. In his statement to the Commission, he wrote that officers need to understand and be representative of the communities they patrol.⁴ However, he testified that the NYPD actually "does not represent the diverse population of the city. It never has."⁵

Several witnesses agreed that diversity must be a goal for the NYPD. For example, Rev. Al Sharpton said that the lack of diversity is shameful.⁶ He went so far as to recommend that

² See U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?* October 1981.

³ *Ibid.*, p. 5.

⁴ Rudolph W. Giuliani, mayor of the City of New York, statement to the U.S. Commission on Civil Rights, New York, NY, May 26, 1999, p. 14 (hereafter cited as Mayor's Statement).

⁵ Rudolph W. Giuliani, mayor of the City of New York, testimony before the U.S. Commission on Civil Rights on *Police Practices and Civil Rights in New York City*, hearing, New York, NY, May 26, 1999, transcript, p. 40 (hereafter cited as New York Hearing Transcript).

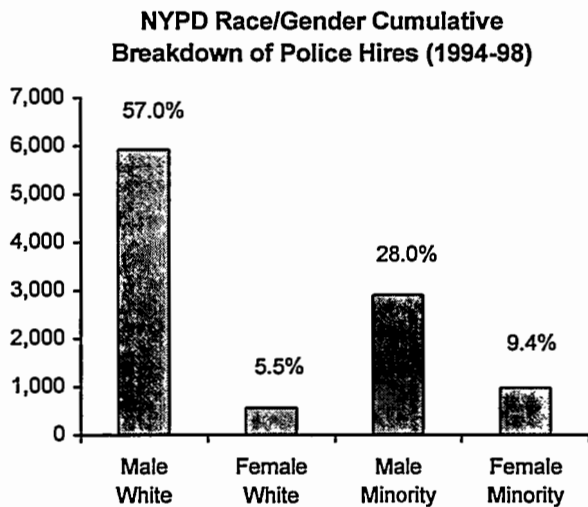
⁶ Sharpton Testimony, New York Hearing Transcript, p. 377. See 1990 Census, *Social and Economic Characteristics: New York*, table 7; 1980 Census, *General Social and Economic Characteristics: New York*, table 59; Peter F. Vallone, "The NYPD: Blueprint for Reform," speaker of the New York City Council, May 12, 1999, p. 9 (hereafter cited as Vallone, "Blueprint for Reform").

a federal monitor be placed to “take over” the New York Police Department “until there is a plan in place around the issues of diversity and police misconduct.”⁷

Ethnic and Gender Representation on the Force

Census statistics indicate that approximately 31.6 percent of the population in New York City is African American, 20.3 percent Hispanic, 9.7 percent Asian Pacific American, and 53 percent female.⁸ The NYPD minority population stands in stark contrast. Only 18 percent of the NYPD is Hispanic, 13 percent African American, 1.5 percent Asian Pacific American, and 13.8 percent female.⁹

FIGURE 2.1



⁷ Sharpton Testimony, New York Hearing Transcript, p. 380.

⁸ 1990 Census, *Social and Economic Characteristics: New York*, table 7; 1980 Census, *General Social and Economic Characteristics: New York*, table 59. Vallone, “Blueprint for Reform,” p. 9.

⁹ Ibid. The most recent Office of Equal Employment statistics provided to the Commission are from 1996. They indicate that 14.6 percent of NYPD uniformed personnel were Hispanic, 9.8 percent African American, 1.1 percent Asian, and 16.5 percent female. EEO Summary Table, Apr. 30, 1996. It has been suggested that the figures regarding underrepresentation of people of color on the force might be somewhat overstated, because a disproportionate number of minority residents of New York City are not citizens, precluding them from becoming police officers.

This disproportionate representation does not appear to be appreciably improving. Exacerbating the problem, as of April 5, 2000, only one-half the number of persons who applied in 1996 had signed up for the April 7 police examination.¹⁰ In fact, only 37.4 percent of all hires from 1994 through 1998 were people of color, and only 14.9 percent were women (9.4 percent minority women).¹¹ This time period also witnessed a substantial *decrease* in African American hires, from a high of 18.5 percent of all hires in 1995 to only 11.2 percent in 1998.¹² These statistics were cited as inadequate by the Task Force on Police/Community Relations, appointed by Mayor Giuliani, which observed that the “current representation of African Americans, Latinos, Asian-Americans and women is not impressive, especially when viewed in relation to the City’s racial, ethnic, and gender composition.”¹³

The disparity is even greater among ranking officers.¹⁴ Of the 472 captains, the NYPD has only promoted 10 African Americans (2.1 percent), 13 Hispanics (2.8 percent), 2 Asian Americans (0.4 percent), and 22 women (4.7 percent) to the rank of captain.¹⁵ Only 12.9 percent of

¹⁰ C.J. Chivers, “Poaching Adds New Hurdles to Police Recruitment Efforts,” *The New York Times*, Apr. 6, 2000.

¹¹ New York City Police Department, *Ethnic/Gender Breakdown of Police Officer Hires (1994-1998)*.

¹² New York City Police Department, *Police Officer Hires for Past Eight Years*. Attrition rates for people of color and women may also play a role in the underrepresentation of these groups. No data on attrition were provided by the NYPD.

¹³ *Task Force on New York City Police/Community Relations: Report to the Mayor*, March 1998, p. 50 (hereafter cited as *March 1998 Task Force Report*). Bucking the trend, far more minority women than white women have been hired recently. From 1994 through 1998, 981 minority women were hired, compared with 571 white women, a difference of almost 72 percent. New York City Police Department, *Ethnic/Gender Breakdown of Police Officer Hires (1994-1998)*.

¹⁴ The NYPD counters that, in fact, the opposite is true: “Minorities are appointed to discretionary ranks in greater proportion than their representation in the Department, and earlier in their careers than white officers” (emphasis omitted). Howard Safir, police commissioner, *New York City Response to the Draft Report of the United States Commission on Civil Rights—Police Practices and Civil Rights in New York City*, May 16, 2000 (page numbers omitted) (hereafter cited as *NYPD Response*).

¹⁵ New York City Police Department, *Count of Personnel*, Mar. 29, 1999.

FIGURE 2.2

Total NYPD Personnel in Rank by Race

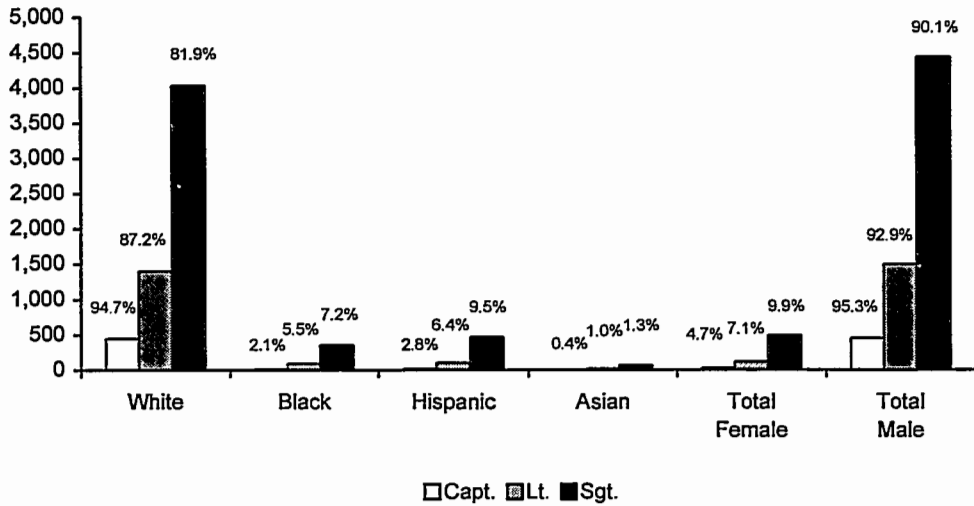
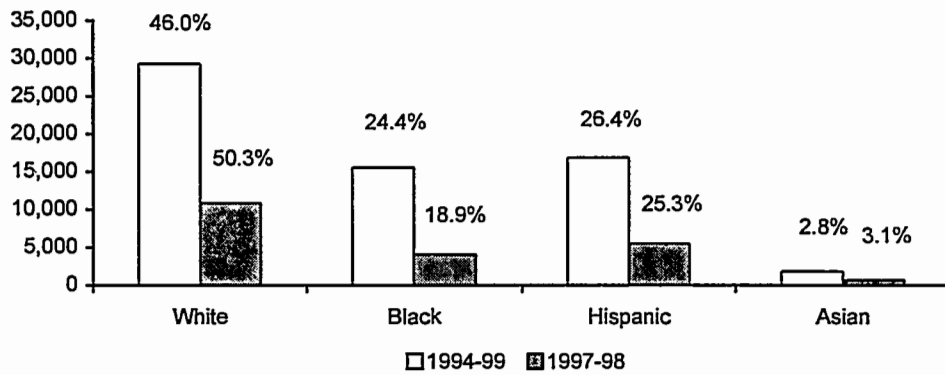


FIGURE 2.3

NYPD Comparison of Applicants, 1994-99 v. 1997-98



lieutenants and 18.1 percent of sergeants are people of color.¹⁶

Although the exact causes of the present disparity are unclear, the underrepresentation of people of color and women can be traced to the earliest stages of the recruitment process: NYPD officer applications. In 1997 and 1998, only 18.9 percent of applicants to the NYPD were African American, and only 23.3 percent were female.¹⁷ This represents a *decrease* in applications by individuals of color. According to a statement issued earlier this year by Police Commissioner Howard Safir, from 1994 to 1999, African Americans accounted for 24.4 percent and Hispanics accounted for 26.4 percent of applicants taking the police entrance exam—higher numbers than for 1997 and 1998 alone.¹⁸

Moreover, a significant disparity exists in the exam pass rate among racial and ethnic groups. From 1994 to 1999, the pass rate for white applicants was 85 percent, compared with 72.2 percent for Asian Pacific Americans, 65.7 percent for Hispanics, and 60.6 percent for African Americans.¹⁹ Statistics for the January 1999 exam are even more troublesome—only 43.7 per-

cent of minority candidates passed the exam, compared with 69 percent of white applicants.²⁰

Requirements for Becoming a Police Officer

Mayor Giuliani testified that the standards for recruitment have increased over the past 10 years.²¹ Changes include requiring candidates to have at least 60 college credits,²² making the exams more difficult, increasing the number of hours and intensity of training at the Police Academy, and instituting a field component for real-life situations.²³ Yet the requirements to become a police officer, although superficially neutral, may operate to further limit the number of people of color in the NYPD.

To become a police officer, an applicant must be a U.S. citizen,²⁴ between the ages of 22 and 35, living in New York City or the Counties of Nassau, Suffolk, Westchester, Rockland, Orange, or Putnam.²⁵ As stated earlier, applicants must also have accumulated at least 60 college credits with at least a 2.0 GPA, or have 2 years of active military experience.²⁶

¹⁶ New York City Police Department, Proportion of Personnel in Rank (NYP 002319), Mar. 29, 1999. This trend might not hold for ranks above captain where, according to statistics cited by Commissioner Safir, people of color are significantly *more* likely to be promoted than whites. For example, 31.3 percent of whites with the civil service rank of captain or above have been promoted to higher ranks, compared with 47.4 percent of African Americans, 45.8 percent of Hispanics, and 50 percent of Asians. For certain positions, including lieutenant, sergeant special assignment, commander/supervisor detective squad, and detective first and second grade, African Americans and Hispanics are promoted between 2 and 6 years more quickly, on average, than whites. Safir Testimony, New York Hearing Transcript, p. 15. Because there are so few such officers, however, it is difficult to reach a conclusion regarding the reasons for and importance of these statistics.

¹⁷ New York City Police Department, NYPD Recruitment Section: 1997–1998 Recruitment Drive, Final Report (NYP 000905) (hereafter cited as 1997–98 Recruitment Drive Report).

¹⁸ Howard Safir, New York police commissioner, statement to the New York City Council Public Safety Committee, New York, NY, Apr. 19, 1999, p. 14 (hereafter cited as Safir Statement to Public Safety Committee). Statistics are not provided for women.

¹⁹ Ibid. The NYPD now offers free tutorial classes to prepare applicants for the examination, which should help increase pass rates of those minority applicants taking the classes. *March 1998 Task Force Report*, p. 47.

²⁰ Ibid. The NYPD now offers free tutorial classes to prepare applicants for the examination, which should help increase pass rates of those minority applicants taking the classes. *March 1998 Task Force Report*, p. 47. Indeed, the NYPD reported that these efforts resulted in a 68.12 percent pass rate for minority candidates for the October 1999 exam. *NYPD Response*.

²¹ Giuliani Testimony, New York Hearing Transcript, pp. 69–71.

²² Ibid.

²³ Ibid., p. 71.

²⁴ Sergeant Anthony Miranda, president of the NYPD Latino Officers' Association, testified that the citizenship requirement should be eliminated in order to open the door for the larger community of permanent residents to begin to participate in the legal process. Miranda Testimony, New York Hearing Transcript, p. 319. The mayor, however, insisted that the citizenship requirement is a legal requirement and therefore, despite the large number of noncitizen residents, he would *not* do away with this requirement. Giuliani Testimony, New York Hearing Transcript, p. 74. He stated: "You start into a whole conceptual thing if you were to expand it to noncitizens." Ibid. Despite the difficulty and waiting requirements to become a citizen and then a police officer, the mayor insisted that "if you want to be a police officer, you should become a citizen and then become a police officer. That's a reasonable, sensible requirement of an orderly society." Ibid.

²⁵ <<http://www.ci.nyc.ny.us/html/nypd/html/misc/po-test.html>>.

²⁶ Ibid.

FIGURE 2.4

Applicants Disqualified on the Basis of Psychological Screening, 1997

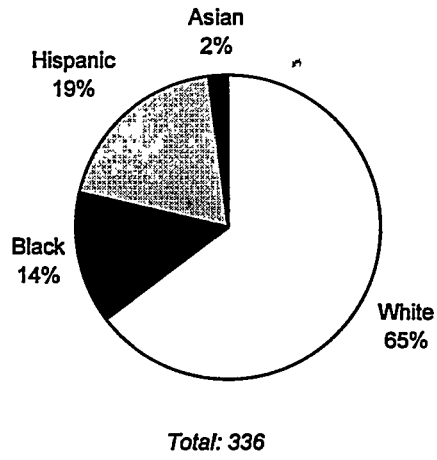
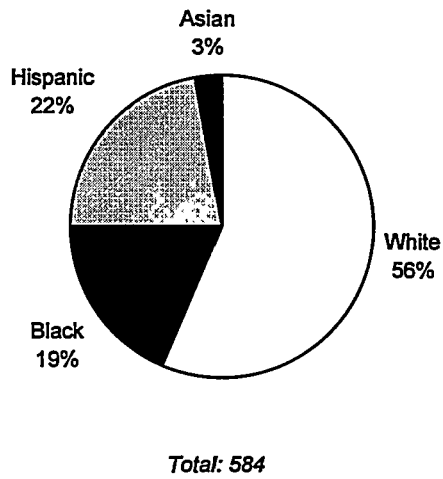


FIGURE 2.5

Applicants Disqualified on the Basis of Character Review, 1997



After satisfying these prerequisites, applicants must pass a written civil service examination administered by the Department of Citywide Administrative Services.²⁷ Applicants passing the written examination must also pass a medical examination, written and oral psychological examinations,²⁸ physical examination, and clear a background and character investigation.²⁹ Grounds for disqualification include conviction for a felony or domestic violence, or for an offense indicating lack of good moral character or a disposition toward violence or disorder, repeated convictions of an offense indicating "disrespect for the law," discharge from employment as a result of poor behavior or inability to adjust to discipline, or a dishonorable discharge from the U.S. military.³⁰

Police Commissioner Howard Safir testified that based on these stringent recruitment requirements, he dismisses the characterization of police officers as badly trained and insufficiently monitored.³¹ In fact, he believes that candidates are carefully screened and selected.³²

Critics have argued that the examinations and other requirements for becoming a police officer are arbitrary and unrelated to performance as a police officer. For example, Sergeant Anthony Miranda testified that although many qualified African American and Latino candidates apply, "the majority are eliminated through the psychological services," partly because of the lack of African American and Hispanic psychologists.³³ With regard to background checks, investigations for those living outside the city are usually completed within 12 months while those living within the city often must wait longer than 12 months for their background checks to be completed.³⁴ Therefore, according to

²⁷ <<http://www.ci.nyc.ny.us/html/nypd/html/chfpers/apd.html>>.

²⁸ Among the stated purposes of the psychological examination are "eliminat[ing] candidates who exhibit emotional, behavioral or psychological problems that make them unable to avoid bias, manage stress or interact with diverse cultures and communities." 1998 Innovations in American Government, p. 3.

²⁹ <<http://www.ci.nyc.ny.us/html/nypd/html/misc/po-test.html>>; <<http://www.ci.nyc.ny.us/html/nypd/html/chfpers/apd.html>>.

³⁰ <<http://www.ci.nyc.ny.us/html/nypd/html/chfpers/apd.html>>.

³¹ Safir Testimony, New York Hearing Transcript, p. 154.

³² Ibid.

³³ Miranda Testimony, New York Hearing Transcript, p. 320.

³⁴ Ibid.

Sergeant Miranda, if a candidate living in the city scored higher than a person living outside the city, the noncity candidate would get hired before the city resident because the former would be cleared first.³⁵ Sergeant Miranda stated in harsh terms that the recruitment and application process "is already prostituted and it's already corrupted."³⁶ Miranda opined that although there may be an increase in the number of applicants, it will likely not affect the number of candidates who actually become officers" because of the biases built into the process.³⁷ The Reverend Calvin Butts stated that education and the psychological evaluation of candidates are two areas worth changing.³⁸

The Commission did not review the civil service examination or the standards applied in connection with the character and psychological screenings. Therefore, it is unable to evaluate these assertions. The information the NYPD did provide to the Commission, however, suggests that people of color were not disproportionately disqualified for appointment to police officer on the basis of psychological and character screening in 1997. In that year, the only year for which statistics were made available, 218 of the 336 candidates (65 percent) disqualified on the basis of psychological screening were white, compared with 47 (14 percent) African Americans and 67 (20 percent) Hispanics.³⁹ On the basis of the character review, 329 (56.3 percent) of the 584 candidates disqualified were white, compared with 109 (18.7 percent) African Americans and 130 Hispanics (22.3 percent).⁴⁰

College Education Requirement

The NYPD instituted a college education requirement presumably to attract candidates who are better able to respond to difficult situations, especially in an increasingly complex city such as New York. The 60-credit requirement, however, may not be enough to professionalize the NYPD. Moreover, it may not restore public confidence in the police. A common thread among officers involved in inappropriate behavior was a

³⁵ Ibid.

³⁶ Ibid., pp. 320-21.

³⁷ Ibid., p. 321.

³⁸ Butts Testimony, New York Hearing Transcript, p. 98.

³⁹ March 1998 Task Force Report, Exhibit U.

⁴⁰ Ibid.

low level of education and experience before entering the Police Academy.⁴¹ One observer noted that the common scenario in police recruitment and training involved selecting young adults "right out of high school, rush them through a five-month, police-operated training academy, give them a gun, the authority to use deadly force and tell them to hit the streets."⁴² With the enormous amount of responsibility and public expectations placed on police officers, this college education requirement and the subsequent Police Academy training are inadequate.

Good officers possess not only physical courage but also sound judgment, the ability to reason, knowledge of the law, and maturity.⁴³ Adopting a college degree requirement, as opposed to requiring only 60 college credits without earning the degree, would allow the NYPD to hire well-educated, broad-minded officers who possess the maturity to deal effectively and in an even-handed manner with the public. Being a police officer means being part of a profession. Every major profession today educates its members through university-based education, except for the police.⁴⁴ A completed college education would expose officers to humanities, social sciences, modern technologies, ethical issues, and the knowledge of the multidimensional aspects of crime and its impact on society.⁴⁵ Additionally, a college degree requirement would help restore public confidence in the police by producing smarter and more mature police professionals with proper training and who are less likely to succumb to the temptations of deviant behavior.⁴⁶ With the many colleges in the City of New

York providing a criminal justice education and degree, including the John Jay College of Criminal Justice of the City University of New York, city residents and the NYPD have ample opportunities to fulfill this requirement.⁴⁷

Minority-directed Recruitment Efforts

Few disagree that the underrepresentation of people of color and women on the NYPD must be rectified. This sentiment was echoed in the first page of Commissioner Safir's Report on Recruitment for 1997-1998, which noted that a primary goal of the recruitment campaign was to "attract qualified applicants who more adequately represent the racial and ethnic diversity of the communities [the NYPD] serve[s]."⁴⁸

Many aspects of the NYPD's recruitment efforts appear directed to some extent toward increasing minority representation. However, the efficacy of these programs is questionable. Many have been in place for some time but have failed to correct the lack of diversity on the force. The NYPD should critically evaluate its recruitment programs and the substance of its recruitment message to determine whether its approach to recruiting minority candidates and women should be revised.⁴⁹ This process should recognize that the lack of minority officers might be due not only to the inadequacy of recruitment efforts, but also to the larger problem that both actual and alleged NYPD misconduct (including sexual harassment) has resulted in an adversarial posture between the NYPD and minority communities, discouraging many candidates of

⁴¹ Andrew Jacobs, "Bad Cop," *The New York Times*, Nov. 10, 1996, sec. 13, p. 1.

⁴² Gerald W. Lynch, "Make College a Cop Requisite," *Daily News* (New York), June 21, 1995, p. 25.

⁴³ Gerald W. Lynch, "College Degrees for Cops," *USA Today*, Feb. 5, 1996, p. 10A.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Lynch, "Make College a Cop Requisite," p. 25. There may be fears that instituting a college degree requirement would reduce the pool of applicants of color. However, Lynch found that the opposite was true. *Ibid.* "A study several years ago of active city police officers showed that people of color are more likely to have a college education than white officers (26% vs. 23%)." *Ibid.* In addition, the success of police training programs at the John Jay College of the City University of New York in recruiting officers of color provides ample evidence that a college degree requirement would improve diversity at the NYPD. *Ibid.*

⁴⁷ Roger Deitz, "The Honor Roll: CUNY's John Jay College of Criminal Justice," *The Ethnic Newswatch*, Sept. 25, 1998, p. 18. The college is a liberal arts institution dedicated to education, research, and service in criminal justice and fire science, and in related areas of public safety and public service. *Ibid.* According to its literature, it aims to develop graduates with the "intellectual acuity, moral commitment, and professional competence to confront the challenges of crime, justice, and public safety in a free society." *Ibid.* The college offers an undergraduate and graduate curriculum that "balances the arts, sciences, and humanities with professional studies, encouraging them to develop a continuing relationship with learning and service, and an awareness of the diverse cultural, historical, and political forces that shape society." *Ibid.*

⁴⁸ 1997-98 Recruitment Drive Report.

⁴⁹ Limited information on the recruiting "pitch" used to generate interest in minority candidates and women was provided to the Commission, making it difficult to analyze the deficiencies in the recruitment effort that have contributed to the underrepresentation problem.

color (and women) from entering what they perceive to be an inhospitable institution.

Affirmative Action

Many groups, including the mayor's Task Force on Police/Community Relations, advocate the introduction of an aggressive affirmative action program for the NYPD.⁵⁰ These groups argue that underrepresentation of people of color on the force impairs the ability of the police to function effectively, particularly in predominantly nonwhite neighborhoods, where an overwhelmingly white police force may be resented.⁵¹ They suggest that only a substantial increase in minority representation can be expected to improve public confidence in the police force, thereby improving police-community relations and increasing the effectiveness of the police.

Recruitment Drives

To increase the number of resident officers, Police Commissioner Safir instituted a comprehensive plan to attract more city residents via advertisement and projects.⁵² Among these projects included community outreach, youth career development, career enhancements and incentives, and training.⁵³

The NYPD's recruitment efforts also instituted several advertising initiatives that used a variety of media and were designed, in part, to target minority residents of the city. The 1998 recruitment drive focused on four separate initiatives:⁵⁴

1. *College Initiative.* Recruitment teams visited all CUNY, community, and private colleges at career fairs, classes, clubs, basketball games, and student events. "To attract qualified applicants from diverse populations," special emphasis was placed on recruiting at colleges with predominantly African Ameri-

can, Hispanic, or female student bodies, including John Jay College of Criminal Justice, York College, Medger Evers College, Borough of Manhattan Community College, and Bronx Community College.⁵⁵

2. *Advertising Initiative.* Advertising to attract candidates included (a) 5,000 posters inside buses and 1,200 subway car illuminated transparency posters; (b) recruitment advertisements run at Madison Square Garden, Yankee Stadium, and Javits Center; (c) advertisements in local media, including the *Amsterdam News*, *Daily News*, *WLIB Newsletter*, *New York Post*, and *El Puente*; (d) advertisements and articles in the *John Jay College Alumni Newsletter*, *Chief Newspaper*, *Chinese American Association Newspaper*, *DEA Newsletter*, *Housing Authority Journal*, *Irish Voice*, and *The Staten Island Advance*; (e) radio and television advertisements on KYS-FM, WBLN, and Crosswalks Cable Television; (f) poster distribution to community-based organizations and 1,000 neighborhood storefronts in all five boroughs; and (g) Internet Web page advertising. The multimedia advertising campaign was professionally developed and included, among other things, advertisements on the radio, television, print, billboards, subways, jumbo TV on Times Square, and mailing inserts in utility bills.⁵⁶
3. *Community-based Initiative.* Recruitment efforts targeted directly at minority community institutions included (a) recruitment outreach at the Kwanza Festival 1997 at Javits Center; (b) mailings to 400 clergy advertising upcoming police examinations; (c) presentations made at Rev. Flake's A.M.E. Church and Westside Baptist Church; (d) direct mailings of applications to qualified and interested individuals; and (e) outreach to Multi-Service Center directors to assist in reaching applicants from their communities.
4. *Subway Ridership Initiative.* Recruiting in designated subway stations. Recent recruitment campaigns have also included a "City Resident Recruitment Drive" designed specifically to encourage more city residents to join the force. This drive has included staff-

⁵⁰ *March 1998 Task Force Report*, p. 50. See also Michael Meyers, Margaret Fung, and Norman Siegel, *Deflecting Blame: The Dissenting Report of the Mayor's Task Force on Police/Community Relations* (New York Civil Liberties Union: March 1998), p. 65 (hereafter cited as Meyers et al., *Deflecting Blame*).

⁵¹ *March 1998 Task Force Report*, p. 50; Meyers et al., *Deflecting Blame*, p. 65.

⁵² Giuliani Testimony, New York Hearing Transcript, p. 43.

⁵³ Mayor's Statement, p. 14.

⁵⁴ 1997-98 Recruitment Drive Report.

⁵⁵ *Ibid.* Minority representation at these schools ranges from 69 to 96 percent. *Ibid.*

⁵⁶ Mayor's Statement, p. 14.

ing recruitment stations throughout the city at libraries, police stations, and recreation centers; addressing meetings of local fraternal organizations, including the Urban League and NAACP; extensive advertising; and using local clergy to serve as liaisons between the community and police department.⁵⁷ In fact, Rev. Calvin Butts appeared on posters to recruit police officers from the African American and Latino communities.⁵⁸ At the hearing, Rev. Butts testified that there was a need to “get more African Americans and Latinos on the force.”⁵⁹ The campaign also established recruiting stations in libraries, recreation centers, and police precincts so residents can obtain information on joining the NYPD and applications for the police examination.⁶⁰

Although impressive on paper, the 1998 drive does not appear to have been particularly successful, at least in the short term. As indicated above, applications by African Americans and women in 1997 and 1998 were low. These disappointing results may partly be due to the meager \$37,718 budget allotted for the 1997–1998 drive.⁶¹ In addition, the message communicated by the recruiters may not have been effective or appropriate for the target communities.⁶² One measure currently being considered to remedy this problem is to establish a permanent minority recruitment unit with a budget of \$1.7 million by 2001.⁶³

The NYPD reported that it had better success with the 1999 recruitment drive. The drive resulted in the “largest percentage of City residents and people of color ever applying to take the Police Officer exams, 67% City residents, 61% minorities, and 29.5% women.”⁶⁴ It included initiatives in four key areas: community out-

reach, youth career development, career enhancement and incentives, and training.⁶⁵

Large-scale Advertising Campaign

The NYPD initiated a \$10 million advertising campaign to increase minority recruiting.⁶⁶ Commissioner Safir believed that the \$10 million spent was appropriate and deemed the recruitment efforts and other measures “successful.”⁶⁷ Commissioner Safir received “a great response from young people in college to our new cadet program.”⁶⁸ He estimated that the department would add 1,200 cadets to the academy.⁶⁹

Many others do not believe the program succeeded. It received considerable criticism because the NYPD used a Soho-based advertising agency⁷⁰ to run the campaign rather than consulting with minority community groups or advertisers.⁷¹ Rev. Al Sharpton denounced the mayor’s and commissioner’s recruitment efforts. He testified that Commissioner Safir’s announcement of a multimillion dollar recruitment drive came only when Rev. Sharpton organized sit-ins.⁷²

Moreover, Sharpton argued that the City Council approved of the expenditure based on Safir’s request to recruit more people of color.⁷³ However, when Sharpton criticized Safir for not contacting communities of color to help in the planning or execution of the drive, Safir responded that the money was for a “city resident drive” rather than a “minority recruitment

⁵⁷ New York City Police Department, “City Resident Recruitment Drive.”

⁵⁸ Butts Testimony, New York Hearing Transcript, p. 136.

⁵⁹ Ibid.

⁶⁰ Mayor’s Statement, p. 15.

⁶¹ 1997–98 Recruitment Drive Report.

⁶² This possibility could not be evaluated by the Commission because information about the substance of the advertisements, presentations, and other NYPD recruitment efforts was not provided by the NYPD.

⁶³ Vallone, “Blueprint for Reform,” p. 9.

⁶⁴ *NYPD Response*.

⁶⁵ Ibid., p. 39.

⁶⁶ Howard Safir, police commissioner, Comments on the FY 2000 Executive Budget Presented before the New York City Council, May 20, 1999, p. 5.

⁶⁷ Safir Testimony, New York Hearing Transcript, pp. 211–14.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ The Arnell Group (now known as the Arnell Group Worldwide). *NYPD Response*. The Arnell Group provided its services pro bono as a gift to the city.

⁷¹ “Minority Media Snubbed in NYPD Recruitment Campaign,” *New York Amsterdam News*, May 20–26, 1999, p. 1; Sharpton Testimony, New York Hearing Transcript, pp. 377–90. The head of the Soho-based agency defended its actions by explaining that no contracts for performing the advertising had yet been entered, and that minority-owned media might be used.

⁷² Sharpton Testimony, New York Hearing Transcript, p. 377.

⁷³ Ibid.

drive," apparently contradicting Safir's own statement to the City Council.⁷⁴

Residency Requirement

NYPD officers must be residents of New York City or the Counties of Nassau, Suffolk, Westchester, Rockland, Orange, or Putnam.⁷⁵ Mayor Giuliani estimated that approximately 60 percent of NYPD officers currently reside in the city.⁷⁶ Approximately 70 percent of the last Police Academy graduating class were New York City residents.⁷⁷

The mayor testified that stereotypes about police officers and prejudice against them have been factors in the low numbers of city residents becoming police officers.⁷⁸ "[B]reaking down some of the stereotypes and some of the prejudices" will help recruitment.⁷⁹ In their testimonies, Mayor Giuliani and Commissioner Safir made some proposals to encourage city residents to apply and be selected to become police officers.⁸⁰

Mark Green, public advocate for the City of New York, similarly criticized the fact that half of all officers lived outside the city.⁸¹ He testified that the need for officers to be city residents stems from the need to achieve better policing: "Ideally, more would live in the city so they're living in the communities they're policing or in boroughs near the communities they are policing so they understand the texture of the city better, and frankly, they're available to the civilian [off-duty] to spot and deter crime."⁸²

Lorraine Cortes-Vazquez, president of the Hispanic Federation, believes that policemen should live in the city because "there is something about familiarity and knowing the environment in which you're working that will add to the familiarity between . . . the residents of this city" and the officers.⁸³ Rev. Al Sharpton, presi-

dent and chief executive officer, National Action Network, added, "We need residency laws . . . people tend to respect where they live, people tend to have better knowledge where they live."⁸⁴ However, Public Advocate Green did not believe that a residency requirement will be imposed in the near future.⁸⁵ Howard Katz, acting director, New York Region of the Anti-Defamation League of B'nai B'rith, felt that since most officers did not live in the city and did not live in integrated communities, these facts hampered officers' abilities to deal effectively with individuals from differing groups.⁸⁶ In other words, police officers reflected the values of communities in which they lived, not the ones they were hired to serve and protect.⁸⁷

Broad support exists for some form of a residency requirement or preference. Advocates argue that a residency requirement or preference will help to achieve a more diverse and racially representative police force.⁸⁸ It will also result in police officers who are knowledgeable about the communities they police and have a greater personal stake in safe neighborhoods.⁸⁹ The NYPD has emphasized recruiting city residents for these reasons.⁹⁰

Since 1993, applicants to the police department received a five-point bonus on their exam scores if they resided in one of the five boroughs.⁹¹ Officers are also encouraged to live in the city through eligibility for participation in the Federal Housing Administration's Officer Next Door and Resident Police programs, which allow officers to live in designated federally foreclosed properties or public housing within New York at a significant discount.⁹²

⁷⁴ *Ibid.*, pp. 377-78. The NYPD disputes this witness's testimony. *NYPD Response*.

⁷⁵ <<http://www.ci.nyc.ny.us/html/nypd/html/misc/po-test.html>>.

⁷⁶ Giuliani Testimony, New York Hearing Transcript, p. 14.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, p. 73.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.* p. 15; Safir Testimony, New York Hearing Transcript, p. 193.

⁸¹ Green Testimony, New York Hearing Transcript, p. 280.

⁸² *Ibid.*

⁸³ Cortes-Vazquez Testimony, New York Hearing Transcript, p. 368.

⁸⁴ Sharpton Testimony, New York Hearing Transcript, p. 381.

⁸⁵ Green Testimony, New York Hearing Transcript, p. 281.

⁸⁶ Katz Testimony, New York Hearing Transcript, p. 411.

⁸⁷ *Ibid.*, pp. 412-13.

⁸⁸ See New York Hearing Transcript, nn. 7-14.

⁸⁹ *March 1998 Task Force Report*, p. 48.

⁹⁰ See, e.g., New York City Police Department, CPR Courtesy Professionals and Respect Pamphlet, August 1997; New York City Police Department, City Resident Recruitment Drive Community Outreach Component; New York City Police Department, City Resident Recruitment Drive; Memorandum from Chief of Personnel to Police Commissioner of Apr. 23, 1999, Proposal for Police Trainee Program.

⁹¹ New York City Police Department, Personnel Borough Past, Present, and Future, September 1995, p. 5.

⁹² *March 1998 Task Force Report*, p. 46.

Many groups argue that these measures do not suffice.⁹³ Others propose providing a mortgage incentive for resident officers and providing residency bonuses on promotional exams.⁹⁴ Still other groups take an even stronger position, supporting an absolute residency requirement whereby all police officers hired in the future would have to reside in the five boroughs of New York City, in effect making residency a "non-negotiable condition of employment."⁹⁵

The most compelling reason advanced for instituting a strict residency requirement centers on enhancing public perception of the NYPD through the creation of a more diverse police force.⁹⁶ Improved perception would lead to improved relations between the police and the community, in turn improving the effectiveness of the NYPD. Additionally, a residency requirement "might have the added benefit of stemming white flight from the city" and thus "improving the racial diversity in the city's middle income neighborhoods."⁹⁷ Police officers would have a "personal stake in safe, stable neighborhoods."⁹⁸

This speculative improvement in community perception of the police should be balanced, however, against several shortcomings and possible negative consequences of adopting a strict residency requirement.⁹⁹ First, a residency requirement is poorly tailored to achieve a racially diverse police force. There is no evidence that the cause of minority underrepresentation is the ability of the NYPD to draw officers from outside the city. An affirmative action program (see above) would be a more direct, and presumably a more effective, mechanism for increasing minority representation.

Second, as the mayor's Task Force on Police/Community Relations report notes, a strict residency requirement could weaken the force by, for example, narrowing the field of qualified candidates.¹⁰⁰ Another possibility is that a residency requirement would cause the NYPD to

lose good officers who want to move out of the city into the suburbs.¹⁰¹

Third, there is no evidence that city residents make better police officers. In fact, resident officers have been slightly *more* likely to be suspended or dismissed from the police force for misconduct and are disproportionately the subjects of civilian complaints.¹⁰²

Despite these reservations, a residency requirement that is part of a larger scheme tied to an affirmative action plan may positively affect police-community relations and increase effective policing.¹⁰³

Cadet Corps and Explorers Programs

In his statement to the Commission, Mayor Giuliani proposed several ideas to help the NYPD's recruitment efforts. He suggested that a law enforcement high school be created that focused on specialized instruction about law enforcement.¹⁰⁴ At present, the NYPD has programs in place that are geared toward youth and young adults. The NYPD Cadet Corps and Explorers programs encourage community members to consider careers as NYPD officers by placing them in police facilities and exposing them to police work. Mayor Giuliani wanted to see these programs expanded from 200 to 1,200 people.¹⁰⁵

The NYPD Cadet Corps program functions as an apprenticeship for college students interested in joining the NYPD after graduation.¹⁰⁶ The mission statement of the Corps includes the goal of increasing diversity in the NYPD by actively recruiting people of color and women to the Corps and graduating them into the police force. Cadets work with the police, performing primarily administrative tasks full time during the summer and part time during the school year. Cadets are given approximately 1,800 hours of

⁹³ Meyers et al., *Deflecting Blame*, p. 57.

⁹⁴ Vallone, "Blueprint for Reform."

⁹⁵ *March 1998 Task Force Report*, p. 48; Meyers et al., *Deflecting Blame*, pp. 57-58.

⁹⁶ Meyers et al., *Deflecting Blame*, p. 57.

⁹⁷ *Ibid.*, pp. 57-58.

⁹⁸ *Ibid.*, p. 58.

⁹⁹ *March 1998 Task Force Report*, p. 48; Meyers et al., *Deflecting Blame*, pp. 57-58.

¹⁰⁰ *March 1998 Task Force Report*, p. 49.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.* Safir Statement to the Public Safety Committee, p. 90.

¹⁰³ Meyers et al., *Deflecting Blame*, p. 57.

¹⁰⁴ Mayor's Statement, p. 15. In fact, the NYPD reported that the law enforcement high school has been established. *NYPD Response*.

¹⁰⁵ Mayor's Statement, p. 15.

¹⁰⁶ See, e.g., New York City Police Department, *Cadet Corps Brochure*, revised May 1999 (hereafter cited as *Cadet Corps Brochure*); New York City Police Department, *Final Report of the Committee on the Future of the Police Cadet Corps*, Dec. 15, 1995 (hereafter cited as *Cadet Corps Report*).

training and actual work time over a 2-year period.¹⁰⁷ Much of the cadet training is similar to that received by officers at the Police Academy, including training regarding cultural diversity issues.¹⁰⁸

Cadets can earn up to \$20,000, including \$4,000 in tuition loans that are forgiven after 2 years of service as police officers.¹⁰⁹ Applicants to the Cadet Corps must

- be enrolled full time in an accredited college within New York City, Nassau, or Westchester;
- have between 45 and 80 credits toward a bachelor's degree by the time of hiring;
- reside in New York City at the time of appointment; and
- be a U.S. citizen or permanent resident who will become a citizen within 2 years from being hired.¹¹⁰

Admission criteria include a good academic record, character, employment history, number of college credits earned, and the potential to graduate within 2 years.¹¹¹ The applicant must also meet minimal physical standards.¹¹²

The Corps has historically been fairly successful in recruiting minority and women candidates. This stems, in part, from the program requirement that all participants be city residents.¹¹³ From 1985 to 1995, graduates from the program were 48 percent white, 20 percent African American, 27 percent Latino, 5 percent Asian Pacific American or other, and 31 percent female.¹¹⁴ For this reason, the mayor's task force and others have advocated reversing the NYPD's reduction in the Cadet Corps budget and enrollment, in support of expansion of the program.¹¹⁵

¹⁰⁷ Cadet Corps Report, p. 10.

¹⁰⁸ Ibid.

¹⁰⁹ New York City Police Department, Police Cadet Corps Loan Agreement.

¹¹⁰ Cadet Corps Brochure, p. 1.

¹¹¹ Cadet Corps Report, p. 2.

¹¹² Ibid.

¹¹³ Gerald W. Lynch, "Make College a Cop Requisite," *Daily News* (New York), June 21, 1995, p. 25.

¹¹⁴ Ibid., p. 2.

¹¹⁵ The mayor's task force report states that from 1995 to 1998 the Cadet Corps budget was reduced from \$1.4 million to \$900,000 and enrollment shrunk from 175 cadets to 51. *March 1998 Task Force Report*, p. 48.

Indeed, the fiscal year 2000 executive budget includes a substantial increase of funding in an effort to expand the Cadet Corps program by 1,200 students.¹¹⁶

The Cadet Corps program has the added benefit of providing the NYPD with an opportunity for long-term observation of cadets in academic and work settings.¹¹⁷ Cadets deemed not suited for police work can resign or be screened out before they are appointed to the department.¹¹⁸ Not only does this professionalize the ranks of police officers through the hiring of broadly educated men and women, it also emphasizes the service responsibilities of police officers who have direct ties to the communities they serve thus maintaining appreciation for the civilian perspective and reducing acculturation into the "blue wall of silence."¹¹⁹

A similar program for younger prospective officers has also been implemented by the NYPD in an attempt to encourage young New York City residents to become interested in becoming members of the NYPD.¹²⁰ The Explorers program, conducted in conjunction with the Boy Scouts of America, provides instruction in areas of law enforcement, including criminal law and criminal investigation, to young men and women aged 14 to 21.¹²¹ Explorers also participate in community service projects, dealing one on one with NYPD officers.¹²² The Explorers have an even greater proportion of minority and female members than the Cadet Corps. As of 1996, 47 percent of Explorers were Hispanic, 36 percent were African American, and 38 percent were female.¹²³

Promotion

The promotion of officers to the ranks of sergeant, lieutenant, and captain is based primarily

¹¹⁶ Vallone, "Blueprint for Reform," p. 10.

¹¹⁷ Lynch, "Make College a Cop Requisite," p. 25.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ New York City Police Department, *Law Enforcement Explorer Manual*.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Memorandum re: Breakdown of Law Enforcement Explorers, Apr. 16, 1996. In 1997 there were 2,600 Explorers; figures are not available for 1996. District Committee Meeting Minutes: Law Enforcement Exploring, July 10, 1997.

on a written exam.¹²⁴ The Mayor Giuliani testified that promotions in the management ranks did not occur by discretion, but rather by exam scores.¹²⁵ To be eligible to sit for the examination, applicants must have served for a designated time period at the next lower rank, passed a drug test,¹²⁶ and satisfied an education requirement (a bachelor's degree for captains, 96 college credits for lieutenants, and 64 college credits for sergeants).¹²⁷

An officer may be promoted based on scores attained in a written exam. The names of eligible applicants meeting all "requirements and conditions"¹²⁸ are placed on a list in order of exam score,¹²⁹ and individuals are considered for appointment when their name is reached on the list.¹³⁰

The multiple-choice exams test the abilities and technical knowledge believed by the NYPD to be important to perform the tasks of each rank: sergeant, lieutenant, or captain.¹³¹ Topics tested include technical knowledge of police procedures and policies, personnel management skills, writing ability, organizational skills, and judgment.¹³² Applicants receive additional credit based on seniority and departmental awards.¹³³

Although the promotion protocol appears objective on paper, the radical underrepresentation of women and people of color in the ranks of sergeant described earlier in this chapter suggests an element of bias in the promotion system.¹³⁴ This bias may be introduced through the types of examinations administered, the educational requirements for each position, the emphasis on the discretionary granting of departmental awards,¹³⁵ or the "requirements and conditions" that each applicant must satisfy.

It is unclear to what extent performance concerning equal employment opportunity issues is considered.¹³⁶ Consideration, or lack thereof, of this factor might also contribute to the overrepresentation of nonminority officers in ranking positions. Some witnesses testified that the evaluation process may even penalize officers who sacrifice arrests in favor of observing individual's rights.¹³⁷ James Savage, president, Patrolmen's Benevolent Association, testified that officers feel a significant amount of pressure to produce summonses and arrests.¹³⁸ He noted that the NYPD places quotas on these productions.¹³⁹ He stated that "cops never get a favorable evaluation from their superiors for protecting someone's civil rights, but they do get them for making large numbers of arrests, seizing

¹²⁴ Giuliani Testimony, New York Hearing Transcript, p. 41. According to the NYPD, the written examination is administered in accordance with the civil service law by the Department of Citywide Administrative Services (DCAS). Members of the NYPD write each examination under the supervision of the DCAS. *NYPD Response*.

¹²⁵ Giuliani Testimony, New York Hearing Transcript, pp. 41-42.

¹²⁶ The NYPD asserts that the drug test is not a requirement to sit for the exam, but the test is required to actually be promoted. *NYPD Response*.

¹²⁷ Notice of 6/19/99 Examination for Promotion to Captain; Notice of 5/22/99 Examination for Promotion to Lieutenant; Notice of 10/26/96 Examination for Promotion to Sergeant.

¹²⁸ The materials provided do not elaborate on what these "requirements and conditions" are.

¹²⁹ Notice of 6/19/99 Examination for Promotion to Captain; Notice of 5/22/99 Examination for Promotion to Lieutenant; Notice of 10/26/96 Examination for Promotion to Sergeant.

¹³⁰ *Ibid*.

¹³¹ *NYPD Response*.

¹³² Notice of 6/19/99 Examination for Promotion to Captain; Notice of 5/22/99 Examination for Promotion to Lieutenant; Notice of 10/26/96 Examination for Promotion to Sergeant.

¹³³ Notice of 6/19/99 Examination for Promotion to Captain; Notice of 5/22/99 Examination for Promotion to Lieutenant; Notice of 10/26/96 Examination for Promotion to Sergeant.

¹³⁴ The NYPD refuses to speculate on the reasons for underrepresentation of women and people of color but ventures to say that the pool of candidates for promotional exams is limited by the employees of the next lower level. *NYPD Response*. This suggests that underrepresentation occurs at these levels and that the NYPD has a serious problem with diversity.

¹³⁵ Officers earn departmental awards for "highly creditable acts of police service." Credit for these awards is added to the scores of candidates who have passed the written exam, thus affecting placement on the promotion list. *NYPD Response*.

¹³⁶ Interim Order AG303-19 requires EEO performance to be considered in evaluating members of service and deciding whether a member of service will receive a promotion. EEO factors considered include whether the member of service has violated department equal employment policy, Title VII of the Civil Rights Act, or other applicable employment opportunity laws. The manner in which these factors are considered and the impact of a negative evaluation on promotion prospects are not stated. Interim Order AG303-19, Sept. 16, 1998.

¹³⁷ Please note that the sworn testimony of the witnesses, particularly those employed by the NYPD, are relevant, in part, to provide an understanding of the perceptions and tensions within the NYPD involving officers of color.

¹³⁸ Savage Testimony, New York Hearing Transcript, p. 168.

¹³⁹ *Ibid*.

large numbers of guns, and seizing large amounts of narcotics, or issuing a large number of summonses."¹⁴⁰ These incentives, which have been widely criticized for putting undue pressure on police officers, may also lead to strained relationships between police and the communities they serve.¹⁴¹

Officer Noel Leader testified about this pressure in relation to the Street Crime Unit. He stated that where pressure is applied to the commanding officers of the Street Crime Unit, officers will engage in unlawful and illegal practices.¹⁴² They are pressured to produce numbers since the management has a "number fixation of percentage gained, a fixation on coming up with numbers and statistics and not deal with people and human beings and emotions and feelings."¹⁴³

Other officers testified that not only were officers not encouraged to protect someone's civil rights, as mentioned by Mr. Savage, but were actually retaliated against by other officers for reporting incidents of police misconduct.¹⁴⁴ Hiram Monserrate, a police officer for over 11 years and a member of the NYPD Latino Officers' Association, testified that he knows of several examples of officers who reported brutality and were rewarded with retaliation.¹⁴⁵ Indeed, he believed a "blue wall of silence exists in racial profiling."¹⁴⁶ Eric Adams, lieutenant and a member of 100 Blacks in Law Enforcement Who Care, identified some of the officer victims of retaliation and described certain allegations made against the NYPD: Sergeant Anthony Miranda who apparently had a heart attack after being harassed by fellow officers and Officer Yvette Walton who was terminated 30 minutes after testifying about another officer's misconduct.¹⁴⁷

¹⁴⁰ Ibid., p. 169.

¹⁴¹ Mr. Savage believed that this and other pressures have negatively affected officers' relationships with the very communities they served. Ibid. He stated: "As officers strive to satisfy this ever-increasing demand, they find themselves using up the reservoir of goodwill they had built up with the public." Ibid.

¹⁴² Leader Testimony, New York Hearing Transcript, p. 326.

¹⁴³ Ibid.

¹⁴⁴ Monserrate Testimony, New York Hearing Transcript, p. 294.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid., p. 297.

¹⁴⁷ Adams Testimony, New York Hearing Transcript, p. 323.

Many officers have discussed other reasons for the low number of captains of color. Officer Monserrate stated that three issues relate to the low number of captains of color.¹⁴⁸ First, "minority representation" in the force is low. Second, the civil service exam process should be revamped.¹⁴⁹ Third, there is little or no diversity among deputy commissioners who have authority over budgeting, recruitment, and community affairs.¹⁵⁰

Lieutenant Adams went further and accused the police department of deliberately not promoting officers of color to the rank of captain.¹⁵¹ He testified: "The primary task in the police department has always been to assure that people of color do not reach the rank of captain because once you reach the rank of captain, you reach a level where you are now appointed to positions. So you prevent [officers of color] from reaching the rank of captain."¹⁵² Moreover, he testified that he personally had "hard data" showing that although people of color pass the promotional exams, the department curves them out of promotional opportunities, especially at the rank of captain.¹⁵³

Lieutenant Adams believed that increasing the number of captains would help alleviate the tense police-community relationship.¹⁵⁴ This stems from the fact that "captains run precincts and set policies. That's crucial. When you have an Asian captain in Chinatown, you'd better believe you won't have abuses in Chinatown."¹⁵⁵

Hyun Lee, program director with the Committee Against Anti-Asian Violence, believed that drastic measures must be taken. She commented that "community policing must be realized in the true sense, not merely in the form of more sensitivity training and hiring of minority officers, but by putting the power to hire and fire officers in the hands of the community."¹⁵⁶

¹⁴⁸ Monserrate Testimony, New York Hearing Transcript, p. 337.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Adams Testimony, New York Hearing, p. 334.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid., p. 335.

¹⁵⁵ Ibid.

¹⁵⁶ Lee Testimony, New York Hearing Transcript, pp. 360-61.

EQUAL EMPLOYMENT PRACTICES

It may be difficult to assess the severity of employment discrimination and sexual harassment in the NYPD. Although some statistics exist regarding the number of cases brought before the Office of Equal Employment Opportunity (OEEO) by NYPD employees (discussed below), little detail was available on the nature and disposition of those complaints.¹⁵⁷ Even if such data were available, the reluctance of officers to lodge complaints for fear of retaliation may play a role.¹⁵⁸ Some police departments have conducted surveys to determine whether their officers have been discriminated against or sexually harassed.¹⁵⁹ It appears from the information provided to the Commission that the NYPD has elected not to conduct such surveys.¹⁶⁰

The scope and gravity of discrimination and harassment in the NYPD should be determined for several reasons. First, discrimination and harassment are, in themselves, illegal and harmful to victims. Furthermore, acceptance of systemic discrimination will affect the treatment by police officers of the community members they serve. Healthy attitudes of officers toward one another can increase officers' respect of people of color outside the force, and reduce prejudice. Widespread discrimination will also contribute to the underrepresentation of people of color and women on the force. These groups will be less likely to become officers (and more likely to leave), if the NYPD is, or is perceived to be, a racist or misogynistic institution.¹⁶¹

¹⁵⁷ *But see NYPD Response* (providing an OEEO Report of Dec. 31, 1999, that includes statistics for calendar year 1999).

¹⁵⁸ The NYPD counters that it has in place several measures to address retaliation within the department. *NYPD Response*.

¹⁵⁹ See U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume V: The Los Angeles Report*, May 1999, p. 77.

¹⁶⁰ According to the NYPD, the "OEEO has elected to conduct written confidential inquiries of controlled groups to ascertain if employment discrimination has occurred." *NYPD Response*. However, the NYPD failed to provide that information or the results of the inquiries to the Commission.

¹⁶¹ A crucial step toward recruiting more members of minority groups is "provid[ing] clear evidence that members of minority groups . . . will have equal opportunities regarding assignments and promotion." U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?* October 1981, p. 12.

Employment Discrimination

In September 1998, the NYPD issued Interim Order Patrol Guide 120-12 focusing on employment discrimination.¹⁶² The order defines employment discrimination as

[the] disparate treatment of employees regarding any terms, conditions or privileges of employment including hiring, assignments, working conditions, salary and benefits, evaluations, promotions, training, transfers, discipline and termination, based on a person's age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status. Sexual harassment is a form of gender discrimination.¹⁶³

The order also states that supervisory personnel who become aware of any discrimination problem or complaint *must* report the problem to the OEEO orally no later than the next business day, and in writing within 5 business days.¹⁶⁴ Nonsupervisory personnel are *strongly encouraged* to take the same actions, or report the problems to a supervisor.¹⁶⁵

Sexual Harassment

Sexual harassment is defined under the NYPD Interim Order 120-12 as "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature" which (1) are made a term or condition of employment, (2) are the basis of employment decisions, or (3) unreasonably interfere with an individual's work performance.¹⁶⁶ Like other forms of employment discrimination, sexual harassment is prohibited within the NYPD and, like other forms of employment discrimination, victims of sexual harassment can bring complaints to the OEEO, or take other action both within and outside the NYPD.¹⁶⁷

Overhaul of the NYPD's sexual harassment policies and procedures should result from the June 18, 1998, settlement between the NYPD and United States. This settlement resolved a civil complaint brought by the United States alleging that the NYPD violated Title VII of the

¹⁶² Interim Order PG120-12, Sept. 15, 1998.

¹⁶³ *Ibid.*, p. 2.

¹⁶⁴ *Ibid.*, pp. 4-5.

¹⁶⁵ *Ibid.*, p. 3.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*, p. 4.

Civil Rights Act by engaging in and permitting acts of sexual harassment against an individual during her employment with the NYPD and by failing to take "appropriate action" to stop the harassment or remedy the effects of the discriminatory treatment.¹⁶⁸ The settlement's stated purpose is to "ensure that the NYPD takes such affirmative steps as are reasonably necessary to effectively address and prevent discrimination in the NYPD."¹⁶⁹ Specific measures mandated by the agreement include:¹⁷⁰

- Enhancement of existing EEO training, including annual training on sexual harassment for every employee.
- Adding a 2-hour program to the executive development curriculum dealing with managing diversity and EEO issues.
- Granting the OEEO a greater role in training at the Police Academy, and participation in the training of Police Academy instructors.
- Reserving a portion of the Police Academy exam for EEO issues, including sexual harassment.
- Distributing annually to all employees an EEO policy book including information regarding the EEO and sexual harassment policy statements, the OEEO complaint procedure, and a sexual harassment pamphlet.
- Amending the procedures for handling OEEO complaints.¹⁷¹
- Increasing staffing of the OEEO from 20 to 30 employees.
- Compiling and maintaining computer records of all OEEO complaints and the entire case history of EEO cases.
- Conducting a survey of OEEO complainants to determine how the OEEO is perceived by employees of the NYPD.

The settlement appears to establish a framework for substantially reducing discrimination in the NYPD.¹⁷² Because of the lack of informa-

tion provided to the U.S. Commission on Civil Rights, however, the progress made by NYPD in implementing these measures and the degree of their effectiveness cannot be presently determined.

The OEEO

The Office of Equal Employment Opportunity, headed by the deputy commissioner for equal employment opportunity, was established as a separate unit within the NYPD in 1978 to ensure compliance with Title VII of the Civil Rights Act of 1964. Its purpose is to promote a workplace free of discrimination and sexual harassment, and to conduct "fair and thorough investigations into all complaints" of employment discrimination.¹⁷³

Officers who believe that they have been subjected to discrimination or sexual harassment may file a complaint with a supervisor, commanding officer, or the OEEO.¹⁷⁴ Upon receiving the complaint, the OEEO notifies the commanding officer or supervisory head of the complainant's unit as appropriate, to emphasize that reprisal or retaliation against complainants or witnesses is illegal and can lead to disciplinary action.¹⁷⁵ The OEEO then contacts and interviews the complainant, and counsels the complainant regarding options for handling the complaint. Options include meeting with an OEEO investigator or liaison counselor (whose duties involve advising complainants),¹⁷⁶ investigation by the OEEO or commanding officer, "conciliation" by the OEEO or commanding officer (a form of voluntary mediation), or filing a complaint with an outside agency.¹⁷⁷ Communications between the OEEO and the complainant remain confidential.¹⁷⁸

If the OEEO initiates an investigation, as required upon a determination "that the allegations in the complaint are sufficient to establish a case of unlawful discrimination,"¹⁷⁹ the OEEO

¹⁶⁸ Settlement Agreement between the United States of America and the New York City Police Department, June 18, 1998, p. 1 (hereafter cited as U.S.-NYPD Settlement Agreement).

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*, pp. 2-7, 27-30.

¹⁷¹ These changes appear to have been reflected in Interim Order PG120-12, discussed above and below.

¹⁷² Indeed, the NYPD has already implemented certain measures. *NYPD Response*.

¹⁷³ New York City Police Department, Equal Employment Opportunity Policy 1997 (NYP 000931); OEEO Transition Briefing for the New Police Commissioner, Apr. 1, 1996, p. 3.

¹⁷⁴ Interim Order PG120-12, Sept. 15, 1998, p. 4.

¹⁷⁵ *Ibid.*, p. 5.

¹⁷⁶ *Ibid.*, pp. 4-5.

¹⁷⁷ *Ibid.*, p. 6.

¹⁷⁸ *Ibid.*, p. 5.

¹⁷⁹ *Ibid.*, p. 7.

must notify the respondent in writing.¹⁸⁰ The respondent has the right to respond to the allegations in writing.¹⁸¹ If the matter is not conciliated, the OEEEO must prepare and send to the police commissioner a confidential written report of the results of the investigation, with recommendations for specific corrective action, if corrective action is deemed appropriate.¹⁸² The commissioner will make a final determination regarding the OEEEO report and any corrective action or discipline.¹⁸³ The complainant and respondent will also be notified of the outcome of the investigation and any corrective or disciplinary action taken.¹⁸⁴ According to the OEEEO, cases are generally completed within 90 days; however, this does not include the time taken by the commissioner to issue his final recommendations and findings.¹⁸⁵

In 1996, the most recent date for which the NYPD provided information, OEEEO investigators received 5 days of training provided by the New York City Department of Citywide Administrative Services, plus 9 days of training at Cornell University's New York State School of Industrial and Labor Relations.¹⁸⁶ Investigators also attended the Basic Methods of Internal Investigations course offered by the Internal Affairs Bureau, and received case management training from experienced ranking officers.¹⁸⁷

Investigators' ability to properly utilize this substantial training is questionable given the severe understaffing of the OEEEO. The OEEEO has complained of a lack of resources and short staffing at least since 1993.¹⁸⁸ With only 11 investigators on staff in 1996, it is difficult to be-

lieve that the OEEEO could properly investigate all claims filed by NYPD personnel. Indeed, the settlement agreement, discussed above, required the NYPD to increase staffing of the OEEEO by 50 percent.¹⁸⁹

In 1996, the most recent year for which figures were made available to the Commission, only 20 percent of all OEEEO complaints were determined to involve a prima facie basis for investigation.¹⁹⁰ In that year, 81 cases were brought to the OEEEO, including 21 allegations of sexual harassment and 83 allegations of discrimination.¹⁹¹ These numbers are down 33 percent, 63 percent, and 16 percent, respectively, from 1995, the first year for which figures are available since the merger of the NYPD with the Housing Authority. Because of the absence of relevant data except for 1995 and 1996, it is impossible to determine whether this decline is the result of an improved work environment or due to other factors. Furthermore, although complaints to the OEEEO decreased, formal complaints to outside agencies increased in 1996,¹⁹² possibly indicating that NYPD employees lack confidence in the OEEEO and prefer to take their complaints to independent external agencies.¹⁹³

Determining the effectiveness of the OEEEO complaint process is impossible without far more information than was provided to the Commission by the NYPD. First, although the OEEEO reports that only 20 percent of the complaints filed were determined to require investigation,¹⁹⁴ there is no information regarding the standards used by the OEEEO for making this determination. Because of the confidentiality of the find-

¹⁸⁰ *Ibid.*, p. 5.

¹⁸¹ *Ibid.*, p. 7.

¹⁸² *Ibid.*, p. 5.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ The Office of Equal Employment Opportunity, 1996 Annual Report, p. 13 (hereafter cited as OEEEO 1996 Annual Report).

¹⁸⁶ *Ibid.*, p. 14. According to the NYPD, all OEEEO investigators must be certified in EEO studies by Cornell University. They take courses in pursuit of this certificate that include: the law of EEO, EEO selection and performance management, data analysis for EEO professionals, and resolving EEO complaints. *NYPD Response*.

¹⁸⁷ *Ibid.*

¹⁸⁸ Memorandum from Deputy Commissioner, Equal Employment Opportunity, to Police Commissioner, Apr. 17, 1996.

¹⁸⁹ U.S.-NYPD Settlement Agreement, p. 28. The NYPD reports that in 1998, it complied with the settlement agreement by increasing the OEEEO staff to 35, including a captain and 2 lieutenants. *NYPD Response*.

¹⁹⁰ OEEEO 1996 Annual Report, p. 13.

¹⁹¹ OEEEO Annual Investigations Overview 1996, Jan. 2, 1997, p. 2.

¹⁹² OEEEO 1996 Annual Report, p. 13. No information on the magnitude of the increase in complaints to external agencies was provided to the Commission.

¹⁹³ The NYPD contends that other reasons exist explaining why employees resort to outside agencies rather than the OEEEO. Among them were the desire to receive a monetary reward rather than discipline of the offender and/or corrective measures. Moreover, the NYPD asserts that its efforts to enhance OEEEO policies and practices demonstrate its seriousness in addressing employment discrimination of all types. *NYPD Response*.

¹⁹⁴ OEEEO 1996 Annual Report, p. 13.

ings sent by the OEEO to the police commissioner, no information is available that discusses the factual settings in which the OEEO does or does not initiate an investigation, or the recommendations made by OEEO for various offenses.¹⁹⁵

Second, no statistics have been provided on the dispositions of OEEO complaints. The Commission does not know what percentage of claims resulted in corrective action or discipline, or what types of corrective action or discipline were imposed. Further, no statistics were provided regarding the consistency between the recommendations of the OEEO and the final resolutions decided by the police commissioner, or the amount of time taken by the commissioner to issue a decision after receiving the OEEO's report.

The OEEO has the potential to be an important tool to discourage employment discrimination and sexual harassment. Given the relatively few complaints received by the OEEO and the concomitant increase in complaints to outside agencies, however, it appears that the OEEO has not fulfilled this role. Without far more information regarding the investigatory process,¹⁹⁶ the actual conduct of investigations in specific cases, and the final dispositions of complaints, no concrete conclusions or recommendations can be made at this time.

TRAINING

Officer training is widely recognized as a critical element in developing effective policing. Consequently, the NYPD devotes significant time and resources to training its officers. Officers must complete 26 weeks of training before being assigned to active duty, including the Police Academy, in-service training, and other training discussed below.¹⁹⁷ This training is in-

tended to provide each officer with the necessary knowledge and skills to carry out his or her duties effectively and to meet the challenges faced by NYPD officers on a day-to-day basis—challenges intensified by the vast assortment of racial and ethnic groups, religions, and cultures that compose New York City, each with its own history, values, and (often) language.¹⁹⁸

Community leaders echoed these sentiments, particularly the notion that training was essential in developing good officers. Dennis Walcott, president of the New York Urban League, testified that the department must focus on four primary areas: leadership, training, community outreach, and accountability.¹⁹⁹ Howard Katz, acting director of the Anti-Defamation League, testified that had he the authority to decide what to do with the approximately millions of dollars used to fund the Courtesy, Professionalism and Respect (CPR) program, he would have put all of it into training.²⁰⁰

Police Commissioner Howard Safir testified that the police department devotes a considerable amount of time and energy to training of police officers.²⁰¹ In fact, as stated by Katherine Lapp, commissioner of the Criminal Justice Services for the State of New York, NYPD officers are "better trained, more educated, and more restrained at any time in the department's 150-year history when compared to other urban police forces."²⁰²

Applicants selected to become NYPD recruits undergo an extensive 7-month training at the department's Police Academy.²⁰³ Recruits spend 6 months in classroom and tactics training at the academy itself. Later, they spend 1 month in the field and are given "field experience" assignments, after which they return to the classroom

¹⁹⁵ The NYPD provided some information in its response. *NYPD Response*.

¹⁹⁶ Under the June 18, 1998, settlement agreement with the United States, the NYPD was supposed to develop an investigator's manual. U.S.—NYPD Settlement Agreement, pp. 18–20. That manual has not been provided to the Commission.

¹⁹⁷ Mayor Giuliani has described the NYPD as the "most professional and best-trained police department in the country . . . unified by a common theme: respect for human life and respect for the citizens of New York." *Ibid.* Mayor Giuliani noted that "New York City police officers receive a tremendous amount of training in areas of cultural sensitivity." Giuliani Testimony, New York Hearing Transcript, p. 7.

¹⁹⁸ There are an estimated 100 languages spoken by an estimated 210 ethnic groups in New York City. 1998 Webber Seavey—Courtesy, Professionalism and Respect Strategy.

¹⁹⁹ Walcott Testimony, New York Hearing Transcript, p. 107.

²⁰⁰ Katz Testimony, New York Hearing Transcript, p. 384.

²⁰¹ Safir Testimony, New York Hearing Transcript, p. 154.

²⁰² Lapp Testimony, New York Hearing Transcript, p. 171. In its response, the NYPD stated that "substantial data supports these assertions" and provided some additional information. *NYPD Response*.

²⁰³ State of New York, Office of the Attorney General Eliot Spitzer, *The New York City Police Department's "Stop and Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General*, 1999, p. 60.

for a debriefing period with teachers.²⁰⁴ Academy training covers four basic disciplines: law, behavioral science, police science, and physical training and tactics.²⁰⁵

All new recruits receive 5 days of firearms qualification training and 7 days of tactics training in the Police Academy.²⁰⁶ After graduation, all officers receive annual firearms training and must qualify in each 6-month cycle.²⁰⁷ Firearms training focused on developing sound judgment and tactical proficiency is stressed each day.²⁰⁸ The police commissioner testified that the "goal is to train officers to employ deadly physical force only as a last resort and to utilize the minimum number of shots necessary to achieve the goal of removing a threat of deadly physical force."²⁰⁹ In his judgment, this goal indicates that the NYPD "is one of the most restrained large police forces in the country with an average of 1 fatal shooting for every 2,000 officers in 1998."²¹⁰ He also noted that over the past 6 years, 468 officers who were fired upon did not return fire, resulting in 7 officer deaths and 50 injuries.²¹¹ He also stated that the department disciplines those acting improperly and tries to prevent misconduct.²¹²

In the classroom, recruits engage in 156 hours of instruction on legal principles, use of force, physical training and tactics, communications, and cultural awareness.²¹³ All operational commands conduct regular roll call in-service training for 1.5 hours a week using instruction cycles provided by the Police Academy.²¹⁴ Legal issues are frequent topics.²¹⁵ The cycle that began in June of 1998 provided specific legal training on stop, question and frisk, probable cause, and courtroom testimony to all patrol offi-

cers.²¹⁶ The Legal Bureau developed the curriculum, which focused much attention on handling complex questions of law that officers face when deciding when and how to conduct a stop.²¹⁷ Patrol officers also attend a 2-day course each year presented by the Police Academy that concentrates on diverse topics such as car stops, gangs, search and seizure, handling emotionally disturbed persons with weapons, use of lethal force, crime scene preservation, CPR, verbal judo, and Civilian Compliant Review Board issues.²¹⁸ More specialized training includes a plainclothes course, criminal investigations, domestic violence, leadership, executive development, and management courses.²¹⁹

Diversity Training

As the department's training materials emphasize, competent policing requires each officer to learn effective methods for dealing with all the diverse residents of New York City.²²⁰ To achieve this goal, the NYPD has instituted cultural diversity training alongside the more "traditional" forms of police training such as firearms training and self-defense. Diversity training for each recruit includes 100 hours of this cultural competence training—10 percent of their total training—plus 2-day precinct-based cultural awareness training for all newly assigned staff, designed to educate each arriving officer about the communities that she or he will be serving.²²¹ This training has led Mayor Giuliani to boast that "not only does the department already have [diversity] training, its training is the best there is."²²²

In his written statement to the Commission, Mayor Giuliani praised the NYPD as the "most professional" and "best trained" police department in the country.²²³ Although the training encompasses a wide variety of areas and subjects, it is "unified by a common theme: respect for human life and respect for the dignity of the

²⁰⁴ Ibid.

²⁰⁵ Ibid., p. 61.

²⁰⁶ *NYPD Response*.

²⁰⁷ Safir Testimony, New York Hearing Transcript, pp. 158–60.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid., p. 161.

²¹¹ Ibid.

²¹² Ibid., p. 163.

²¹³ Ibid., p. 158.

²¹⁴ Ibid., pp. 158–60.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ New York City Police Department, Behavioral Science Curriculum Student Materials, 1999 (hereafter cited as Behavioral Science Curriculum).

²²¹ Giuliani Testimony, New York Hearing Transcript, p. 8.

²²² Ibid.

²²³ Mayor's Statement, p. 7.

citizens of New York.”²²⁴ The mayor called these priorities “paramount in all NYPD training and goals.”²²⁵ According to the mayor, from firearms training to training on proper use of force to training in applicable and relevant laws, officers are taught to protect life and to respect citizens.²²⁶ They are given the best possible tools with which to make what are often difficult and split-second decisions.²²⁷ And their judgment and discretion are refined and honed so that the decisions they make will be the correct ones.²²⁸ He believed that as a result of this rigorous training, “the men and women of the NYPD are overwhelmingly committed to doing their jobs fairly, professionally, and lawfully. They are overwhelmingly committed to offering the public the very highest level of service.”²²⁹

Unfortunately, Mayor Giuliani’s representations may not be entirely accurate. Cultural diversity training and related materials designed to improve relations between police and their communities and reduce bias and stereotypes are themselves often laced with negative and potentially offensive stereotypes of minority ethnic and religious groups, and women.²³⁰ In addition, some question whether the diversity training is taken seriously by officers who are part of an institution that is often perceived to hold prejudices against people of color and women.²³¹

The NYPD’s cultural sensitivity training class and instructors approach cultural diversity issues from the premise that clear communication devoid of prejudice is essential to effective policing.²³² The training materials reinforce this belief that understanding the cultures, values, and histories of each major ethnic and religious group is important to achieve clear communication, an essential element in effective policing.²³³

The training begins with sophisticated discussions of the nature, forms, and barriers to

effective communication.²³⁴ Racial epithets and jokes are discussed, noting that using such language will “result in anything but friends.”²³⁵ The “insidious[ness]” of “stereotyping,” defined as “a one-sided, exaggerated and normally prejudicial view of a group, or class of people . . . normally associated with racism and sexism,” is highlighted.²³⁶

Later lessons directly address the development of personality, attitudes, and beliefs, the process of socialization, and the effect of heredity,²³⁷ attitudes, prejudice, stereotypes, and myths.²³⁸ These materials, geared toward helping officers consciously address and understand the origins of any negative stereotypes they might hold, are a significant step toward deconstructing the prejudice resulting from stereotypes.

Other lessons discuss racism, sexism, and homophobia, noting that these are all forms of oppression and exertions of power over less privileged groups.²³⁹ The curriculum then contains a series of lessons on specific minority communities in an effort to enhance officers’ understanding of the communities and break down stereotypes and prejudices, and to improve communication and understanding.²⁴⁰

Police Academy Training Materials

The foundation of officer training is the Police Academy. Included in the academy curriculum is a series of in-class lessons dealing with cultural diversity, including lessons about attitudes and prejudice, sexual harassment, diversity, and specific ethnic groups.²⁴¹ Although these materials clearly reflect a meaningful effort by the NYPD to address diversity issues, they are not without problems. For example, although they

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ See, e.g., Behavioral Science Curriculum, Lesson 13.

²³¹ Katz Testimony, New York Hearing Transcript, pp. 384–85.

²³² Behavioral Science Curriculum, pp. 1–5.

²³³ Behavioral Science Curriculum, Instructor Syllabus.

²³⁴ Behavioral Science Curriculum, pp. 1–5.

²³⁵ Ibid.

²³⁶ Ibid., pp. 16, 112.

²³⁷ Ibid., p. 83.

²³⁸ Ibid., pp. 105–18.

²³⁹ Ibid., pp. 119–48.

²⁴⁰ Behavioral Science Curriculum. A complete set of the materials used in 1999 was not provided for these lessons; however, the structure of the 1999 syllabus is identical to that used with earlier materials. The following discussion is partially based, therefore, on pre-1999 materials. In its response to a draft version of this report, the NYPD provided its overview of the curriculum. *NYPD Response*.

²⁴¹ Behavioral Science Curriculum, Student Syllabus.

emphasize that "an officer's private attitudes should not be permitted to influence his/her official decisions" and instruct officers to "try to show an attitude of neutrality and objectivity," the materials fail to train an officer regarding how to avoid acting on prejudice.²⁴²

Furthermore, although the materials often explicitly discuss the evils of stereotypes, prejudice, and bias, they also contain many prejudicial stereotypes themselves.²⁴³ Even if the stereotypes contained in the materials were generally accurate, and many feel strongly that they are not, their incompatibility with the morality and values of mainstream American culture (see examples below) may cause officers to hold the referenced groups in disdain, which can aggravate, reinforce, or result in additional prejudice. This is compounded by the explicit assumption that all groups should and do want to "assimilate" into American culture.²⁴⁴ A few examples among many are listed:

- Mexicans "[l]ive in cramped quarters with people sleeping in shifts."²⁴⁵
- In the Latino community, "*Machismo* is an integral part of every family. . . . While the degree of male dominance varies . . . , men are viewed as virile, aggressive and answerable only to themselves."²⁴⁶
- One of three "other facts about the Dominicans" is that "[m]en sometimes have more than one wife."²⁴⁷

²⁴² *March 1998 Task Force Report*, p. 53.

²⁴³ For example, the materials note that ethnic jokes are "demean[ing]," Behavioral Science Curriculum, p. 6; stereotypes are "insidious," *ibid.*, p. 16; and that "prejudice usually develops out of fear or ignorance," *ibid.*, p. 108.

²⁴⁴ See New York City Police Department, Courtesy, Professionalism and Respect, a Training Strategy for Organization Development, NYPD Police Academy 1996 ("The 'point' is that people are different; we try to fit into the main 'culture' but, some of us can't totally assimilate into the dominant culture, no matter how hard we may try." See also New York City Police Department, Social Science Department Student Syllabus, revised April 1997 (hereafter cited as 1997 Revised Student Syllabus). In its response to a draft version of this report, the NYPD stated that "assimilation" references that existed in the training materials were removed in May 1998. *NYPD Response*.

²⁴⁵ Behavioral Science Curriculum, Lesson # 13: The Latino Community, Mexican Immigrants.

²⁴⁶ Behavioral Science Curriculum, Lesson # 13: The Latino Community, p. 6.

²⁴⁷ Behavioral Science Curriculum, Lesson # 13: The Latino Community, Dominican Immigrants.

- A description of the Chinese community: "old woman in loose cotton shirts and baggy trousers carry silk clad baby grandsons in backslings as they shop for squid . . . every other storefront is a tea parlor, a noodle shop, or a restaurant . . . the strokes and daggers of Chinese characters cover movie theater billboards and march across the fronts of banks and everywhere you hear the chutes and ladder glides and glottal stops of spoken Cantonese."²⁴⁸
- Describing African American communities: "On a quiet summer night in the outskirts of Mobile, Alabama, everyone may be found sitting on a porch or stoop persistently conversing while the sweet sound of Gospel music softly floats past the hum of voices. On the south side of Chicago, Illinois, there is the sprawling sounds from the honkey-tonks that blends in with the drone of car engines and sirens racing along the streets beneath the line tenements. In Denver, Colorado, the only thing that identifies the 'Black' area of the city is the color of the residents. Then there is Harlem! It is the capital of African America, much as New York is the unofficial capital of America. . . . It was the center of New York's nightly festival of jazz, soul and rhythm at such hot spots as the Cotton Club and the Apollo Theater. And on the hard pavement outside the Polo grounds, youngsters played stickball with a local hero, Willie Mays of the New York Giants."²⁴⁹

The training materials also deliberately and explicitly highlight certain negative stereotypes, presumably in an attempt to allow for open discussion of any prejudices that the officers may hold, and to educate officers about attitudes and terminology that certain groups find offensive. Although theoretically a sound approach, in practice it is not clear whether these discussions serve to alleviate or to exacerbate prejudices. At the very least, the NYPD should be extremely careful about including these discussions in the training materials. Examples include:

²⁴⁸ 1997 Revised Student Syllabus, p. 95.

²⁴⁹ *Ibid.*, p. 103. In its response to a draft version of this report, the NYPD said these training materials were revised in May 1998. *NYPD Response*.

- Description of a survey showing that a group of military veterans believed that Jews were “clannish, money hungry, industrially powerful, underhanded in business and tight fisted.”²⁵⁰
- Description of a survey showing that a group of students believed that African Americans were “mentally inferior, morally primitive, emotionally unstable, over assertive, lazy and boisterous, religiously fanatic, occupationally unstable, gaudy dressers, given to crimes of violence with knives and razors.”²⁵¹
- Stereotypes include that “women are deemed weaker and incapable because they are naturally submissive, gay men and lesbians are said to be perverts and immoral, blacks are viewed as unmotivated and lazy.”²⁵²
- A list of derogatory terms of various groups: “the Irish as donkeys, paddies, or micks; to Italians as dagos, guineas, or wops; to Spanish-speaking Americans as spics or wetbacks; to Protestants as WASPS; to Catholics as papists; to Jews as kikes or sheenies; to African Americans as coons, darkies, niggers, or spades; to Caucasians as anglos, hillbillies, honkies, oakies or rednecks; and to Asians as chinks or gooks. . . .”²⁵³

Norman Siegel, executive director of the New York Civil Liberties Union, noted that the training materials contained culturally insensitive information.²⁵⁴ He documented some of those examples in the dissenting report of the mayor’s Task Force on Police/Community Relations.²⁵⁵ He argued that instead of confronting and undoing stereotypes, the reading material reinforced disparaging stereotypes about immigrants and their impact on the city.²⁵⁶ Hyun Lee, program director of the Committee Against Anti-Asian Violence, similarly characterized the

training materials as “really ludicrous [because] they reinforce stereotypes of immigrant communities, as foreign, as really different.”²⁵⁷

Mr. Siegel also criticized the material for being unbalanced.²⁵⁸ Some of the materials focused too often on certain communities while giving short shrift to others.²⁵⁹ For example, he noted that there are 11 pages about Jewish people but only three paragraphs about Dominicans, the fastest growing immigrant community in the city.²⁶⁰ In trying to find solutions for these problems, Mr. Siegel volunteered to start a class to undo stereotypes and present them at local police precincts.²⁶¹ Unfortunately, he reported that he was prevented from doing so because of “administration and . . . management” politics.²⁶²

Some may feel discussing prejudice and racism would be difficult in any context. In the context of training police officers to deal with a myriad of different ethnic and religious communities on a day-to-day basis in intense situations, this discussion would be extremely difficult. The training materials struggle to address these concerns. The NYPD has decided that instruction geared toward improving understanding of all the major cultures and religions of New York’s residents will assist officers in policing different communities. Because fully understanding each culture and religion could take years of instruction—years which the NYPD does not have to train its officers—this approach quickly becomes problematic. The materials are forced to oversimplify and generalize when discussing New York’s communities of color.²⁶³ The oversimplifications and generalizations are likely to be stereotypes. To their credit, the materials them-

²⁵⁰ 1997 Revised Student Syllabus, p. 57.

²⁵¹ Ibid.

²⁵² Behavioral Science Curriculum, p. 120.

²⁵³ Ibid., p. 21. In its response to a draft version of this report, the NYPD stated that these references in the training materials were removed in May 1998. *NYPD Response*. Moreover, this material was replaced by a book by Nancy Foner that includes an entire chapter on Dominican immigrants. *NYPD Response*.

²⁵⁴ Siegel Testimony, New York Hearing Transcript, p. 112.

²⁵⁵ Meyers et al., *Deflecting Blame*, pp. 44–46.

²⁵⁶ Ibid., p. 113.

²⁵⁷ Lee Testimony, New York Hearing Transcript, p. 338.

²⁵⁸ Siegel Testimony, New York Hearing Transcript, p. 113.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid., p. 115.

²⁶² Ibid.

²⁶³ For example, the training materials contain very brief lists of accomplishments of various ethnic groups, presumably to show that members of these groups have significant accomplishments, thereby casting the group as a whole in a positive light. These lists may insult those ethnic groups described and may exacerbate any prejudices held by officers because they imply that the listed items are all, or at least the most important, accomplishments of members of each group. Examples are a one-half page list of “Contributions of African American People” or a list of six “Famous Arabs.” Behavioral Science Curriculum.

selves acknowledge this.²⁶⁴ Some of the stereotypes used, like those listed above, however, are negative and of questionable relevance to the goal of training able police officers, and should, therefore, be removed.

In recognition of this problem, the materials caution officers against stereotyping individuals based on their identification with a given community. The materials candidly note that "[n]o one should rely on culture-specific 'guidebooks' or simplistic do's and don'ts lists. While such approaches to cultural awareness are tempting, they do not provide sufficient insight and are often counterproductive. . . . It is more useful to have a broad framework from which to operate when analyzing and interpreting any situation."²⁶⁵ This concept has been echoed by leading community members.²⁶⁶ Although recognizing these limitations may be commendable, the materials are internally inconsistent because they send a confusing message: Should officers treat each individual differently according to the training he or she has received about the individual's ethnicity, or should the officer treat everyone the same? Clarity on this point is crucial. The confusion generated by the present materials is, at the very least, counterproductive.

The NYPD should reconsider its approach to diversity training and should eliminate negative stereotypes embedded within the materials. This could improve consistency of the message delivered to trainees, while leaving no question in the minds of officers regarding how they should interact with all New York residents.

²⁶⁴ See, e.g., 1997 Revised Student Syllabus, pp. 46, 55.

²⁶⁵ 1997 Revised Student Syllabus, pp. 48-49. See also *ibid.*, p. 46; Behavioral Science Curriculum, p. 5 (noting that generalizations like "all blacks are good athletes" deny African Americans individual identities).

²⁶⁶ Lee Testimony, New York Hearing Transcript, p. 388 (stating that some of the training materials are "really ludicrous," because they imply that "there's something cultural that you have to figure out about them, that they're really different from us." And arguing that "the message should be . . . that officers need to just respect people and [not] violate their civil rights. . . .").

One technique useful for dealing with confrontational situations with all members of the public is "verbal judo," which is taught to all officers at the Police Academy. Behavioral Science Curriculum. Verbal judo trains officers to use verbal and nonverbal strategies to "retain emotional control, temper [their] reckless pride, and generate compliance," without allowing situations to escalate. New York City Police Department, Police Students Training Guide, revised June 1998.

Many in the New York community feel that the current training program needs improvement. The dissenters in the mayor's Task Force on Police/Community Relations advocated lengthening the training program to 1 year.²⁶⁷ James Savage, president of the Patrolmen's Benevolent Association, testified that the department should improve its stop and frisk policy, including "how we engage and disengage a stop and frisk of somebody who has not committed a crime where we have, in fact, made a mistake."²⁶⁸ Dennis Walcott of the New York Urban League testified that the department must constantly reinforce the cultural sensitivity training on officers serving communities of color.²⁶⁹ They must know the nuances, culture, and issues regarding immigrant populations and involve communities at local levels in the dialogue and discussion.²⁷⁰

Lorraine Cortes-Vazquez, president of the Hispanic Federation and a member of the NYPD's Board of Visitors, said that NYPD training should include "cultural and language sensitivity training for officers."²⁷¹ Further, she advocated doing a "massive training and a total turnaround around the way this police department deals with Latino youth, deals with youth of color as a whole."²⁷² Young people "feel as if their lives are in danger . . . [especially when] they're stopped unnecessarily."²⁷³ Ms. Cortes-Vazquez thought that there "needs to be an organizational shakedown in terms of respect, discourteous behavior, and abusive language."²⁷⁴ Trainers should be closely evaluated and reviewed.²⁷⁵ Some trainers only get a day's worth of training before they begin instructing.²⁷⁶

²⁶⁷ Meyers et al., *Deflecting Blame*, p. 69.

²⁶⁸ Savage Testimony, New York Hearing Transcript, p. 190.

²⁶⁹ Walcott Testimony, New York Hearing Transcript, p. 130.

²⁷⁰ *Ibid.*

²⁷¹ Cortes-Vazquez Testimony, New York Hearing Transcript, p. 364. In its response to a draft version of this report, the NYPD counters that it has a course called the Interactive Language Workshop and provides all new recruits with a book of Spanish phrases. *NYPD Response*.

²⁷² Cortes-Vazquez Testimony, New York Hearing Transcript, p. 368.

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*, p. 390.

²⁷⁶ *Ibid.* In its response to a draft version of this report, the NYPD maintains that each Police Academy instructor has

Training of trainers should be "totally modified" and expanded to ensure that quality is maintained.²⁷⁷ She recommended modifying the "substance of the training," including eliminating use of offensive training materials.²⁷⁸ In addition, she believed that "the way that information was communicated is quite scary in the sense that it is alarming."²⁷⁹

Ms. Cortes-Vazquez argued that since most abuses involve veteran officers, not new recruits, the former should be required to participate in these training sessions.²⁸⁰ In addition, such training should include language preparation, especially in those languages spoken where the officers are assigned.²⁸¹ Howard Katz, acting director of the Anti-Defamation League, agreed and stated, "When any officer reaches another level, gets promoted, whether it becomes a sergeant or detective or a commanding officer, they need to be retrained."²⁸² Further, he wanted this retraining requirement to be "systemic" throughout the NYPD.²⁸³

The NYPD should consult with community leaders from each ethnic and religious group discussed in the materials to help ensure that negative stereotypes and inflammatory language are removed.²⁸⁴ As discussed earlier, Norman Siegel

of the New York Civil Liberties Union and Rev. Calvin Butts volunteered to assist in teaching diversity and cultural sensitivity directly to cadets and officers. Although the concepts of cultural understanding and rejection of stereotypes are far from mutually exclusive, the materials must be sensitive to the tension inherent in these concepts. They must take steps to ensure that officers understand how good officers are supposed to behave and what the differences among cultures may be that are relevant to policing.

Other Diversity Training

Other examples of the continuing diversity training received by officers include "streetwise" language and culture training (African/Caribbean American, Spanish, Haitian/Creole, Russian, and Chinese);²⁸⁵ in-service training;²⁸⁶ OEEO orientation, describing key discrimination concepts and terminology and outlining the OEEO process;²⁸⁷ 8 hours of in-service reinstatement training dealing with employment discrimination and sexual harassment issues;²⁸⁸ precinct orientation; and the Precinct/Community Partnership

completed a 2-week method of instruction class and is certified by New York State Division of Criminal Justice Services, Bureau of Municipal Police. *NYPD Response*.

²⁷⁷ Cortes-Vazquez Testimony, New York Hearing Transcript, p. 390.

²⁷⁸ *Ibid*.

²⁷⁹ *Ibid.*, pp. 390-91.

²⁸⁰ *Ibid.*, pp. 391-92. In its response to a draft version of this report, the NYPD counters that veteran officers receive such training. *NYPD Response*. Additionally, "[w]e have trained over 30,000 in-service personnel in Verbal Judo." *Ibid*.

²⁸¹ Cortes-Vazquez Testimony, New York Hearing Transcript, pp. 391-92.

²⁸² Katz Testimony, New York Hearing Transcript, p. 386. The NYPD responded that "newly promoted sergeants are given a 27-day program that includes a field training component. New lieutenants and new captains receive 12 and 20 days of training, respectively. There is a cultural awareness component in every single course that we give." *NYPD Response*.

²⁸³ Katz Testimony, New York Hearing Transcript, p. 386.

²⁸⁴ It appears that the NYPD may already be instituting this proposal. Commissioner Safir testified that Dr. Manning Marable, director of the African American Studies Institute at Columbia University, is reviewing the curriculum, as are religious and community leaders. Safir Testimony, New York Hearing Transcript, pp. 194-95. In its response to a

draft version of this report, the NYPD listed some of its curriculum advisors. *NYPD Response*.

²⁸⁵ The Streetwise program includes several videotapes discussing the importance of respect, trust, and cultural understanding (including language skills) between officers and their communities. The videos address the problems of prejudice and stereotypes, and include interview segments with community members. Margaret Fung, executive director, Asian American Legal Defense and Education Fund, considered the inadequate number of bilingual police officers who speak an Asian language "a major problem." Fung Testimony, New York Hearing Transcript, p. 93. There are few bilingual officers who can be called upon to adequately deal with street encounters in Asian American neighborhoods. She advocated several solutions. *Ibid*. For a further discussion of the Streetwise program, see *NYPD Response*.

²⁸⁶ New York City Police Department, Precinct Level Training Instructor's Guide, 1998. This language training pales in comparison with the 89 hours of Spanish training for all Los Angeles Police Department officers. See *Racial and Ethnic Tensions in American Communities; Poverty, Inequality, and Discrimination, Volume V: The Los Angeles Report*, U.S. Commission on Civil Rights, May 1999, p. 168.

²⁸⁷ OEEO Orientation Lesson Cover Sheet, prepared September 1998. The OEEO Orientation is a 2-hour session. *Ibid*.

²⁸⁸ New York City Police Department, Reinstatement Program, prepared October 1998. All members of service receive this training pursuant to the June 18, 1998, settlement agreement with the United States.

program, which helps introduce new officers to the communities that they will be serving.²⁸⁹

Police Commissioner Safir particularly touted the NYPD's Streetwise Language, Culture and Police Work in NYC course.²⁹⁰ It is aimed at new graduates and lasts a full day.²⁹¹ This course provides in-depth information on language and culture for five groups: Hispanic, Chinese, African/Caribbean, Russian, and Haitian.²⁹² The course uses media, role plays, case studies, presentations by seasoned police officers, problem-solving exercises, and interactive language instruction.²⁹³ More than 3,100 newly graduated police officers received this training in 1999.²⁹⁴

Commissioner Safir also stated that cultural diversity training was done in collaboration with CUNY, St. Johns University, and Columbia University.²⁹⁵ Dr. Manning Marable, director of the African Studies Institute at Columbia, advises on the curriculum.²⁹⁶ Issues explored included relationships between the community and the police department, officer attitudes and their effect on how officers perform their duties, stereotypes, how to avoid stereotypical language, and dialogue between community leaders and the officers to discuss community concerns in a meaningful way.²⁹⁷

Ranking officers also receive training on diversity issues. The Leader Seminar Series, attended twice annually by sergeants and lieutenants, includes a 1-day lecture covering Courtesy, Professionalism and Respect strategy in the workplace and hostile work environment issues.²⁹⁸ All new precinct commanders are required to attend seven, 3-hour training sessions, including one session about CPR.²⁹⁹ Newly promoted sergeants and lieutenants attend a 4-hour Cultural Awareness Seminar defining and discussing culture, stereotypes, ethnicity, race,

prejudice, and diversity.³⁰⁰ The Executive Development program offers graduate-level seminars at the John Jay College of Criminal Justice, including mandatory courses on managing diversity, and the OEEEO, and optional courses on new immigrants, gays and lesbians, African and Caribbean Americans, Hasidics, Asians, and Hispanics.³⁰¹

Community leaders criticized these efforts as inadequate. Margaret Fung questioned the value of "1-day sensitivity training sessions which only touch the surface or public relations campaigns designed to promote the recruitment of minority police officers but fails to involve minority media in that process."³⁰² Rev. Calvin Butts insisted that there must be "substantial changes in the training of police officers that serve New York City."³⁰³ The dissenters on the mayor's Task Force on Police/Community Relations described the Executive Development program as "equally deficient as the cadet-training program."³⁰⁴ Programs relating to communities of color receive little or no attention, especially considering the dearth of programs focusing on handling police misconduct or excessive force.³⁰⁵

Sexual Harassment Training

Sexual harassment generally subjects offenders to the same penalties and complaint procedures as other types of discrimination. Officers receive sexual harassment training in several forms. One lesson in the Police Academy curriculum specifically addresses sexual harassment.³⁰⁶ As discussed above, a 1998 settlement agreement between the NYPD and United States required the NYPD to revise its sexual harassment training at the academy using input from the OEEEO.³⁰⁷ The academy's current sexual

²⁸⁹ *March 1998 Task Force Report*, p. 61.

²⁹⁰ Safir Testimony, New York Hearing Transcript, p. 159.

²⁹¹ *Ibid.*, pp. 159-60.

²⁹² *Ibid.*

²⁹³ *Ibid.*, pp. 158-60.

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*, p. 194.

²⁹⁶ *Ibid.*

²⁹⁷ *Ibid.*, pp. 158-60.

²⁹⁸ *March 1998 Task Force Report*, p. 64.

²⁹⁹ *Ibid.*

³⁰⁰ New York City Police Department, Cultural Awareness Seminar Instructors' Materials, prepared June 1995. Like the Police Academy materials, these materials contain stereotypes of certain groups. Examples of questions to ask to understand different cultures include, "Why do Asians eat a lot of rice?" and "Why do older Italian women wear black all the time?" *Ibid.*, p. 5.

³⁰¹ *March 1998 Task Force Report*, pp. 64-65.

³⁰² Fung Testimony, New York Hearing Transcript, p. 92.

³⁰³ Butts Testimony, New York Hearing Transcript, p. 98.

³⁰⁴ Meyers et al., *Deflecting Blame*, p. 46.

³⁰⁵ *Ibid.*

³⁰⁶ Behavioral Science Curriculum, pp. 163-88.

³⁰⁷ U.S.-NYPD Settlement Agreement, p. 1.

harassment materials define sexual harassment as “any repeated, or unwanted verbal or physical advance, sexually explicit derogatory statement, or sexually discriminatory remarks made by someone in the work place which is offensive or objectionable to the recipient or causes the recipient discomfort or humiliation that interferes with the recipient’s job performance.”³⁰⁸ A few specific examples of sexual harassment are listed, and the materials note that “[f]rankly, the recipient decides whether or not an act is considered sexual harassment.”³⁰⁹ A case study is also included.³¹⁰

The lesson focuses on the concepts of “adverse impact” of facially neutral policies, and “disparate treatment” of women because of their gender.³¹¹ The materials go on to describe the OEEEO complaint process, including Interim Order PG120-12.³¹² The NYPD Sexual Harassment Policy Statement, stating that harassment is a prohibited form of discrimination and urging victims of harassment to contact the OEEEO, is also included, as is a second interim order relating specifically to the display of offensive material in the workplace.³¹³ Other sexual harassment training includes:

- Two short videos outlining the OEEEO complaint procedure and describing types of conduct constituting sexual harassment, shown to all NYPD employees.³¹⁴ One of the videos contains a brief introduction by Commissioner Safir asking for an end to all employment discrimination and sexual harassment, and cautioning that such behavior will not be tolerated.³¹⁵
- Management training, including instruction regarding sexual harassment issues such as the definition of sexual harassment, supervi-

sors’ responsibilities under OEEEO procedures, and displays of sexually explicit materials.³¹⁶

- Eight hours of in-service training for all members of service discussing the definition and examples of sexual harassment (including role plays), the concept of a hostile work environment, and the OEEEO complaint process.³¹⁷
- An 8-hour Equal Employment Opportunity/Sexual Harassment Workshop, discussing key concepts and terminology, including examples of harassment; CPR requirements as they relate to harassment, and a discussion of sexual harassment laws.³¹⁸

Instruction

The quality of the materials used in training is irrelevant if the instructors are not qualified and if the training is delivered in an environment not conducive to learning. Based on review of the materials submitted, it appears that the quality of instructors of diversity and sexual harassment training is spotty.³¹⁹ This is particularly troubling because, when dealing with sensitive, complex, and nuanced issues like racism and prejudice, poor instruction can lead to harmful misunderstandings among trainees.

Low quality instruction also contributes to the apparent unreceptiveness of many officers to diversity training. This unreceptiveness is exemplified by the experience of a congressional caseworker sent to the NYPD as a diversity trainer. She described her experience as “abus[ive].”³²⁰ Officers slept, ate, carried on personal conversations, openly groaned, and threw things at her.³²¹ The absence of a ranking officer in the room to even introduce the instructor contributed to these problems.³²² Others had similar experiences. Even when members of the clergy, like Rev. Butts, went into police precincts to give

³⁰⁸ Behavioral Science Curriculum, p. 165 (emphasis in original).

³⁰⁹ *Ibid.*, p. 166.

³¹⁰ *Ibid.*, pp. 167–68.

³¹¹ *Ibid.*, p. 163.

³¹² *Ibid.*, pp. 180–87.

³¹³ *Ibid.*, pp. 172, 188B.

³¹⁴ New York City Police Department, In-Service Training, Video Cassette “EEO Message, 1996 EEO Sexual Harassment.”

³¹⁵ *Ibid.*

³¹⁶ New York City Police Department, Management Training: Equal Employment Opportunity.

³¹⁷ New York City Police Department, In-Service Training Lesson Plan, revised 2/99.

³¹⁸ New York City Police Department, In-Service Training, Sexual Harassment Workshop.

³¹⁹ Documents provided to the Commission on Civil Rights did not describe the training administered to the instructors.

³²⁰ Payne Testimony, New York Hearing Transcript, p. 437.

³²¹ *Ibid.*, pp. 437–38.

³²² *Ibid.*

sensitivity training, they had to endure the “abuse of the police officers sitting in front of us who would go to sleep, who would throw things at us, who would laugh, who would say, ‘Yeah, you need to come on patrol with us,’ who would just dismiss it altogether.”³²³ This behavior might be attributable to the general sense that diversity training is given with “a nod and a wink” and that ranking officers and instructors often convey the impression that the diversity training is less important than other training.³²⁴

Effective training requires that officers must take the training seriously or risk facing disciplinary action. This commitment to diversity training should come from ranking officers, and incentives and discipline should be tailored accordingly. Alternatively, each officer should be tested on his or her knowledge of the material.

The ethnic and gender makeup of the instructors may also contribute to the deficiencies noted earlier. As in the NYPD generally, Police Academy instructors are not representative of New York City. Of 127 instructors, 85 are white, 30 are black, 7 are Hispanic, and 30 are women.³²⁵ Improving the diversity of academy instructors is an important step toward increasing the effectiveness of NYPD’s diversity training.³²⁶

Stop, Question and Frisk Training

The NYPD equips its officers with training materials and provides a number of instructional opportunities relating to the department’s stop and frisk policies and procedures. While most of these materials capably instruct officers on the appropriate legal standards for conducting stop and frisk encounters, a handful of other materials take a more cavalier approach toward constitutional requirements, exalt officer safety over other important objectives or, worse still, provide officers with incomplete information. In particular, the NYPD’s in-service stop and frisk training may fail to instill respect for adherence to constitutional procedures. The following is a

³²³ Butts Testimony, New York Hearing Transcript, p. 135.

³²⁴ Katz Testimony, New York Hearing Transcript, pp. 384–85.

³²⁵ Meyers et al., *Deflecting Blame*, p. 43.

³²⁶ In its response to a draft version of this report, the NYPD provided a demographic breakdown in percentages of the Behavioral Science Department. *NYPD Response*. It further stated that the percentages of women and African American officers in the Police Academy are higher than in the NYPD as a whole. *Ibid.*

general overview of the NYPD’s principal stop and frisk training materials and mechanisms.

Recruit Training Manual

Chapter 5 of the Recruit Training Manual introduces new recruits to the legal circumstances that may justify stopping and frisking a suspect during a street encounter. The manual illustrates the *De Bour*³²⁷ sliding scale of police conduct by analogy to a thermometer:

The levels of proof are like a thermometer in that the more facts you have supporting your belief of criminal activity, the higher your level of proof . . . As your level of proof increases, your authority also increases. In other words, the more an officer knows—the more the officer can do.³²⁸

The manual instructs that “[r]easonable suspicion means more than a hunch . . . [It] requires facts (valid reasons) which officers must articulate to show why they were suspicious, otherwise their suspicions will not be considered reasonable.”³²⁹

Chapter 5 generally provides accurate descriptions of constitutional stop and frisk procedures and requirements through narratives and practice cases. In addition to the basic legal requirements for initiating a stop and frisk, the manual instructs recruits that “[h]aving valid grounds for a stop does not allow unreasonable police conduct. . . . Every part of [the] investigation must be reasonable.”³³⁰ That being said, portions of the Recruit Training Manual are inconsistent regarding the importance of respecting and protecting individual rights:

[I]n passing the Stop, Question and Frisk law . . . [p]olice safety was balanced against the individual’s right to be free from governmental abuse and harassment. A police officer should always remember that personal safety is paramount in all these situations.³³¹

These instructions correctly indicate that the law balances police safety and individual rights—and then suggest that officers may strike

³²⁷ See n. 332 of this chapter.

³²⁸ New York City Police Department, *Recruit Training Manual*, p. 2.

³²⁹ *Ibid.*, p. 9.

³³⁰ *Ibid.*, p. 14.

³³¹ *Ibid.*, p. 22.

a different balance that resolves all issues in favor of personal safety.

Patrol Guide Manual

The New York City Police Department Patrol Guide Manual also provides guidance to police officers on appropriate stop and frisk procedures. In particular, the guide features a nine-page section entitled "Practical Tips for New York Law Enforcement," which provides succinct, practical advice on *Terry* and *De Bour* procedures.³³² Practical Tips emphasizes the importance of officer credibility, restraint, and adherence to established constitutional standards. The guide instructs officers on the complex four-tiered approach of *De Bour*:

Initially, the officer must remember that he can only take official action which is reasonably related to the amount of information he possesses. . . . [T]he most minimal intrusion he can make is a request for information. This can be done as a "public service" function in situations where people are in distress.³³³

Moreover, the guide stresses that officers must be forthright regarding any and all events surrounding an arrest or other intrusion. For example, the guide warns that

there are many police officers who feel that they are fighting a war against the criminal and that it is a fight between the "good guy" and the "bad guy." . . . [A]s a result they feel that it is permissible to take whatever "steps" are necessary to win the war.

If winning the war means changing a few facts in a police report or during courtroom testimony . . . the officer believes the end justifies the means. Obviously, this line of reasoning has no place in . . . law enforcement.³³⁴

Section 116-33 in the main body of the Patrol Guide Manual details *Terry* stop and frisk pro-

³³² These procedures are the result of the landmark cases *Terry v. Ohio*, 392 U.S. 1 (1968) and *People v. De Bour*, 40 N.Y.2d 210, 386, N.Y.S.2d 375, 352 N.E.2d 562 (1976). In *Terry*, the Supreme Court held that the police must have "a reasonable suspicion" of some wrongdoing before stopping a person. In *De Bour*, the New York Court of Appeals established a four-tier approach to guide officers from their initial stop of a person to their arrest. For a complete discussion of these cases, see chap. 5 of this report.

³³³ New York City Police Department, "Practical Tips for New York Law Enforcement," *Patrol Guide Manual*, p. xxi.

³³⁴ *Ibid.*, p. xix (emphasis added).

cedures. In outlining relevant procedures, this section of the guide may also emphasize officer safety to the exclusion of other important law enforcement objectives. For example, the stated purpose of the section is to "protect uniformed members of the service from injury while conducting investigations involving stop and frisk situations."³³⁵ This mission statement fails to account for the other purposes of articulating departmentwide stop and frisk procedures, including the prevention of crime, the apprehension of criminals, and the protection of individuals' civil liberties. In addition, Section 116-33 provides a list of "reasonably suspicious" factors that may be cited in support of a stop, including demeanor of the suspect; gait and manner of the suspect; any knowledge of the suspect's background and character; whether the suspect is carrying anything and what he is carrying; manner of dress of suspect, including bulges in clothing; time of day or night; any overheard conversation of the suspect; particular streets and areas involved; any information from third parties; and proximity to scene of the crime. The guide should make clear that not all of these factors, standing alone, would suffice to establish reasonable suspicion of criminal activity. The mere fact that an individual is observed in a high crime area, for example, would generally not justify a stop under New York law, absent other evidence of criminal activity. Indeed, in *People v. Cornelius*,³³⁶ the Appellate Division concluded that "[t]he Constitutional protections against unwarranted intrusion by an agent of the State are not to be relaxed when an individual goes for a walk, or engages in otherwise innocent behavior, in a public area statistically known for a high incidence of crime."³³⁷

Legal Bureau Bulletins

The NYPD's Office of Deputy Commissioner publishes a series of Legal Bureau Bulletins on stop, question and frisk policies and procedures. Volumes 17 and 25 of that series, entitled "Stop, Question and Frisk" and "Street Encounters," instruct officers on basic *Terry* stop procedures. Volume 25, for example, instructs that

³³⁵ New York City Police Department, *Patrol Guide Manual*, p. 660.

³³⁶ 113 A.D.2d 666, 497 N.Y.S.2d 16 (N.Y. App. Div. 1986).

³³⁷ *Id.* at 671.

if the officer has a basis for suspicion that a person is engaged, has engaged or is about to engage in crime, and that belief would be shared by other prudent men given the same facts and circumstances known to the officer, then the officer has reasonable suspicion. At this level of suspicion, the officer may approach, question and forcibly detain the person.³³⁸

The bulletin further instructs officers that “investigative steps . . . must be reasonably related to the circumstances which justified the stop,” and that officers must be able to articulate reasons for fear of safety in order to conduct a frisk of the person stopped.³³⁹

In-Service Training

The NYPD’s in-service training consists of Police Academy “In-Tac” training, borough- and precinct-based training, and reinstatement training. The academy’s In-Tac training consists of two 6-hour modules. The first module primarily consists of interactive role-playing sessions that cover a variety of topics, including stop and frisk. The second module concentrates on tactical issues, review of legal precepts, and NYPD policy.³⁴⁰ The NYPD mandates such training for all officers and detectives under designated commands.³⁴¹ The NYPD also supports a borough-based training program and precinct-level training initiatives; however, from the materials provided by the NYPD, it is unclear whether (and to what extent) these programs train in-service officers on appropriate stop and frisk procedures.

Indeed, with the exception of the In-Tac training, the materials provided by the NYPD suggest that much of the “in-service” stop and frisk training officers receive is informal, sporadic, and of questionable benefit. Portions of stop and frisk training materials from the NYPD’s Reinstatement Training program, for example, take a cavalier attitude toward the relevant constitutional requirements. These materials derisively characterize the Supreme Court’s decision in *Terry* as follows:

³³⁸ New York City Police Department, Legal Bureau, Street Encounters (NYP 017631).

³³⁹ New York City Police Department, Legal Bureau, Street Encounters (NYP 017632).

³⁴⁰ See New York City Police Department, In-Service Training Section, “1998 In-Tac Training” Interim Order 1/4/95, p. 30.

³⁴¹ *NYPD Response*.

An officer in Ohio took immediate action . . . [the Court] pondered, researched, discussed, smoked a lot of cigars, and finally decided that the officer had acted properly. . . . The point is, a cop . . . [must] take action on the spot without benefit of law books or time to ponder.³⁴²

Moreover, there is a concern that the training boards located within certain NYPD precinct houses may encourage officers to stop and search individuals to achieve quotas irrespective of whether officers have reasonable suspicion for the search. During the May 1999 hearing before this Commission, Officer Hiram Monserrate testified about the existence of a training board at the 111th Precinct in Queens with the words “TOSS, TOSS, TOSS” written allegedly by the commanding officer.³⁴³ TOSS is police jargon, which means to stop and search individuals. This was with the absence of any legal training on search and seizures.

Such evidence suggests that much of the work the NYPD does in training new recruits and inexperienced officers on appropriate stop and frisk procedures may be eroded by sporadic, inadequate training, lackadaisical attitudes, and mixed messages once officers are active in the field.

Community Concerns

Howard Katz of the Anti-Defamation League felt that training should involve community-based organizations.³⁴⁴ The people who live in the city “need to be a part of these training programs so the law enforcement officials hear from the people that they’re going to be dealing with, working with, and sometimes interacting with, in sometimes hostile situations.”³⁴⁵ He suggested bringing training programs into local precincts taught by local community activists.³⁴⁶

Hyun Lee, program director of the Committee Against Anti-Asian Violence, felt strongly that change must come with introspection from the police department. She testified that before “the NYPD starts talking about cultural sensitivity

³⁴² New York City Police Department, In-Service Training Section, “Reinstatement Training” Justification Lesson, p. 2.

³⁴³ Monserrate Testimony, New York Hearing Transcript, p. 292.

³⁴⁴ Katz Testimony, New York Hearing Transcript, p. 384.

³⁴⁵ *Ibid.*, pp. 384–85.

³⁴⁶ *Ibid.*, p. 386.

and the culture of other races, it needs to seriously examine its own culture of racism and brutality," which she characterized as "deeply embedded" in the department's policies and practices.³⁴⁷ As an example, she discussed the "huge discrepancy" in the rates of indictments of civilian defendants in general and police officers accused of misconduct.³⁴⁸ Such a discrepancy "raises doubts in New York City about equal protection under the law."³⁴⁹ The problem of police brutality "resides with individual officers, the [officers] themselves are racists, and dealing with individual officers won't root out the problem."³⁵⁰

Ms. Lee also believed a "conspiracy of silence" existed.³⁵¹ She hoped the department would mandate protection of officers who testified against fellow officers.³⁵² She went further and recommended that the federal government "mandate punishment for officers who lie under oath to protect criminal and brutal officers."³⁵³

Effectiveness of Diversity Training/ Recommendations

The mayor's Task Force on Police/Community Relations concluded that the NYPD's training on diversity is

at least insufficient, if not detrimental, to providing student officers with the necessary skills to interact effectively with diverse communities. When education or training focuses on highly sensitive areas like cultural diversity, simply including the subject matter in a curriculum does not in any way assure that meaningful learning and growth occurs. In fact, wrongly presented training in these areas can be counter-productive.³⁵⁴

To remedy this, the mayor's task force report included a series of recommendations regarding training.³⁵⁵ First, the report suggested changing the cultural diversity program at the Police Academy to place more emphasis on the impor-

ance of understanding the sources of attitudes and prejudice held by officers, and to utilize lectures, group discussions, and role plays. Exploration of the meaning of racism, sexism, bias, oppression, stereotyping, peer pressure, and related concepts should be included.³⁵⁶ Second, the report recommended continuing the NYPD's collaboration with the New York State Regional Policing Institute, a group of law enforcement agencies, John Jay College of Criminal Justice, and community groups, which teaches officers and community leaders community-oriented policing skills.³⁵⁷ Third, the report urged enhancement of the field training component of the Police Academy, including expanding field training from 3 months to 6 months, and mandated participation by each officer in community-based activities.³⁵⁸ Fourth, the report proposed enhancing diversity training at the borough and precinct level, including creating precinct-specific source books with information about local communities and memo book inserts including language cards containing basic phrases of use to officers in dealing with their community, and enhancing in-service cultural diversity training for officers and in leadership training.³⁵⁹ Fifth, the report suggested creating a board of visitors for the Police Academy to review the curriculum.³⁶⁰

These proposals are a good start toward correcting the problems in NYPD diversity training.³⁶¹ This might help reduce the serious race-related problems in the NYPD, including but not limited to brutality such as the sexual torture of Abner Louima inside a police precinct house and the killing of Amadou Diallo, which are human tragedies in the life of the NYPD. The NYPD claims that such incidents are isolated, and perpetrated only by a few "bad apples." Even if this were true, one must ask what can be done to prevent such atrocities. Eliminating a relatively few ignorant sentences from a stack of training materials and implementing measures to force officers to take diversity training more seriously

³⁴⁷ Lee Testimony, New York Hearing Transcript, p. 350.

³⁴⁸ *Ibid.*, p. 351.

³⁴⁹ *Ibid.*

³⁵⁰ *Ibid.*, pp. 387-89.

³⁵¹ *Ibid.*, p. 352.

³⁵² *Ibid.*, pp. 352-53.

³⁵³ *Ibid.*, p. 353.

³⁵⁴ *March 1998 Task Force Report*, p. 53.

³⁵⁵ Many of these recommendations are in the process of being or have already been implemented.

³⁵⁶ *March 1998 Task Force Report*, p. 55.

³⁵⁷ *Ibid.*, p. 58.

³⁵⁸ *Ibid.*, pp. 59-60.

³⁵⁹ *Ibid.*, pp. 61-65.

³⁶⁰ *Ibid.*, p. 56.

³⁶¹ Indeed, in its response to a draft version of this report, the NYPD stated that it has made progress implementing some of these recommendations. *NYPD Response*.

are unlikely to prevent officers from torturing or killing people of color. Then again, perhaps the ignorance reflected in some of the training represents a deeper problem in the NYPD that can be slowly corrected by the substitution of proper training materials for deficient materials, and by better training new officers.

FINDINGS AND RECOMMENDATIONS: CHAPTER 2

Disproportionate Representation

Finding 2.1: The NYPD does not represent the diverse population of the City of New York. In New York, African Americans represent 31.6 percent of the population; Hispanics, 20.3 percent; Asian Americans and Pacific Islanders, 9.7 percent; and females, 53 percent. In contrast, in the NYPD, African Americans represent 15 percent of police force; Hispanics, 18 percent; Asian Americans and Pacific Islanders, 1.5 percent; and females, 13.8 percent. Hiring information from 1994 through 1998 suggested that diversity did not appreciably increase. In fact, African American hires decreased in this time period. Among NYPD ranking officers, few people of color have been promoted to these command levels.

Finding 2.2: The disproportionate representation of people of color and women on the NYPD stems, in part, from the application process. The NYPD receives fewer applications from people of color and women than white men. From 1994 through 1999, the passage rate for applicants of color was lower than for whites. Moreover, biases may exist in the system that eliminate candidates of color during the application process, including background checks and psychological testing.

Finding 2.3: The NYPD's recruitment campaign has specifically sought candidates who represent the racial and ethnic diversity of the communities it serves. The campaign has not adequately accomplished that goal despite millions of dollars spent. The NYPD's multimillion dollar advertising campaign failed to utilize local minority communities groups.

Finding 2.4: A large percentage of NYPD officers live outside the five boroughs, the very communities they are required to serve. Police officers who live in the borough might create familiarity between the residents and the officers. Officers might learn more about the local communities, have a greater stake in safe neighbor-

hoods, and gain understanding and respect from residents.

Finding 2.5: Negative public perceptions of the NYPD contribute to the disproportionate representation of people of color on the force.

Recommendation 2.1: The NYPD must evaluate and revise its recruitment plans. It must increase the numbers of applicants and cadets from local communities of color. An aggressive affirmative action program must be instituted. It should establish a permanent minority recruitment unit with adequate funding. At a minimum, the NYPD should increase its preference points for applicants from New York residents and add other incentives for officers to move into the city. Preferably, the NYPD should require all police officers to live in one of the four New York boroughs.

Professionalization of the NYPD

Finding 2.6: The NYPD requires that new cadets have at least 60 college credits with at least a 2.0 grade point average. Although laudable, a more stringent requirement should be instituted to professionalize the police force. A professional police force would develop officers who possess sound judgment, good reasoning abilities, knowledge of law, and the maturity to deal effectively with the people they serve. Further, Civilian Complaint Review Board data indicate that officers with less than an associate degree are more likely to have substantiated complaints of misconduct against them.

Finding 2.7: The NYPD Cadet Corps and Explorers programs have positively affected minority recruitment into the force.

Recommendation 2.2: The NYPD should encourage all new police recruits to have a college degree. Or, new recruits who do not possess a college degree should be given paid leave or time off until they earn a baccalaureate degree. The NYPD should also build closer ties with local colleges and universities to recruit cadets, provide career guidance, and utilize faculty in its training programs. Additionally, it should expand the Cadet Corps and Explorers programs.

Promotion

Finding 2.8: Having officers of color in command-level positions would improve police-community relations and decrease the likelihood of police misconduct. However, officers of color have difficulty reaching command levels. There

may be biases built into the process, such as pressuring officers to produce summonses, arrests, and seizures while neglecting to provide incentives for officers who protect individual civil rights. This encourages officers to engage in unlawful and illegal practices. Some retaliation by the NYPD against officers who report such misconduct may occur. Also, the pressure harms police relationships with local communities.

Recommendation 2.3: The NYPD should evaluate its promotion process to determine what biases exist in the system and seek ways to improve the promotion of officers of color. The department may look to the promotion policies used by the U.S. military, for example, as a helpful guide in the enhancement of its existing promotion policies. Claims of retaliation should be investigated.

Equal Employment Practices

Finding 2.9: The NYPD failed to survey officers regarding discrimination or sexual harassment to adequately determine the true scope of the problem. The Office of Equal Employment Opportunity (OEEO) lacks proper funding and is understaffed and undertrained.

Recommendation 2.4: The NYPD should survey its officers regarding discrimination and sexual harassment. It should quickly implement the settlement terms of the lawsuit brought by the United States under Title VII of the Civil Rights Act with regard to sexual harassment, including providing additional funds to properly run the OEEO, hire additional staff, and adequately train employees.

Diversity Training

Finding 2.10: Training is an essential element in developing good police officers. Cadets may not receive enough training time and experience, especially diversity training. The NYPD uses training materials with offensive and prejudicial racial, ethnic, religious, sexual, and

gender stereotypes. Such materials exacerbate racial and ethnic tensions by oversimplifying and generalizing facts about the communities that are served. Additionally, sexual harassment training is inadequate.

Finding 2.11: The quality of instructors conducting diversity and sexual harassment training and the number of instructors of color need improvement. Poor instruction leads to harmful misunderstandings among trainees. Further, trainees do not take such training seriously.

Recommendation 2.5: The NYPD should change its diversity training and sexual harassment programs, including enhancing such training at the borough and precinct levels. It should include members of the local communities in developing courses. More training time must be devoted to diversity training. Negative stereotypes embedded within training materials should be eliminated. Materials should explore the meaning of racism, sexism, bias, oppression, stereotyping, peer pressure, and related concepts. The mandates required under the settlement agreement with the United States should be implemented to address the inadequate sexual harassment training. Trainees should be tested on the material.

Stop and Frisk Training

Finding 2.12: The NYPD's in-service stop and frisk training occurred sporadically and is of questionable benefit. It also failed to instill respect for adherence to constitutional procedures. The training underemphasizes important law enforcement objectives in favor of officer safety and ease. The lack of regular continuing education courses on stop and frisk procedures contributes to misunderstanding by police officers.

Recommendation 2.6: Regular continuing education courses highlighting relevant constitutional requirements should be implemented for all officers regardless of rank.

Police-Community Relations

During the 1990s, the New York City Police Department began a “community policing” approach to crime fighting. Some major cities in which community policing and other community relations strategies have been used report increased public confidence in police, a reduction in crime, and the easing of racial tensions.¹ The goal of community policing is for community residents and police to work together, cooperatively addressing crime in the neighborhood.² Through effective police-community relations, community members learn about policing and how to prevent crime, and a police department can learn about neighborhood members and their policing needs. Community policing allows a police department and neighborhood residents to come together to combat crime. The lack of a community policing effort can doom the relations between the police and the community that it is designed to protect. As the NYPD has recognized,

whatever gains we have achieved in fighting crime are minimized if the price is the trust and respect of the community we serve. If crime levels decline, but members of the community are reluctant to approach

police for fear of a negative encounter, then we have not truly met our obligations to the public.³

Police Commissioner Howard Safir testified at the New York hearing that it is critical for the NYPD to do more community outreach because “[i]t is important to the person in the community that he or she perceives that she is safe from the police as well as from criminals. And the reality is people in this city . . . have very little to fear from the police. But if they perceive [otherwise], . . . it’s a real problem for us.”⁴

According to Mayor Rudolph Giuliani, there must be a balance between community or neighborhood policing and specialized units that investigate specific areas such as narcotics or homicide. These particular areas would not be investigated successfully through community policing.⁵ New York Police Commissioner Safir agrees with the mayor that community policing will not solve homicides, and therefore it is necessary to “balance community policing and crime reduction.”⁶

In his testimony, Police Commissioner Safir said that “when you look at the statistics . . . [citizens of New York] have very little to fear from the police.”⁷ Mayor Giuliani also painted a picture of a city with crime decreasing at a record rate and general community harmony with the NYPD. He added, however, that while the

¹ State of New York, Office of Attorney General Eliot Spitzer, *The New York City Police Department’s “Stop & Frisk” Practices: A Report to the People of the State of New York from the Office of the Attorney General*, 1999, p. 47; Fox Butterfield, “Cities Reduce Crime and Conflict without New York style Hardball,” *The New York Times*, Mar. 4, 2000, p. A1 (San Diego pioneered community and problem-solving policing, and Boston combines research, working with local ministers, and targeting the worst criminals).

² *Ibid.* (citing R.C. Trojanowicz and D. Carter, *The Philosophy and Role of Community Policing*, the National Center for Community Policing, Michigan State University, 1988), p. 4.

³ New York City Police Department, *Courtesy Professionalism and Respect Handbook*, 1996, p. 1 (hereafter cited as *CPR Handbook*).

⁴ Howard Safir, testimony before the U.S. Commission on Civil Rights on *Police Practices and Civil Rights in New York City*, hearing, New York, NY, May 26, 1999, transcript, p. 217 (hereafter cited as New York Hearing Transcript).

⁵ Giuliani Testimony, New York Hearing Transcript, p. 53.

⁶ Safir Testimony, New York Hearing Transcript, p. 215.

⁷ *Ibid.*, p. 217.

city has spent millions of dollars “training police officers . . . into acting respectful towards people,”⁸ civilians must play an “equally important”⁹ role in maintaining positive and respectful police-community relations:

This city needs improvement in terms of the people of the city being more respectful to police in the way in which they act toward the police. When police officers sit at home and they see signs describing them as animals, Nazis, as equating them to the KKK, as a group . . . it deteriorates the ability to get them to be respectful . . . on a human level. It does tremendous damage to them just thinking as a human being, right? And it's the same form of prejudice as the other prejudices that you're dealing with. It's assignment of group blame.¹⁰

On August 19, 1997, 10 days after Haitian immigrant Abner Louima was assaulted and sodomized by officers inside Brooklyn's 70th Police Precinct,¹¹ Mayor Giuliani created the Task Force on Police/Community Relations. The goal was to foster better communication and understanding among members of the police department and residents of the City of New York.¹² The mayor appointed 33 New York City residents to the task force.¹³ Among those selected were three longstanding critics from the civil liberties community, former high-ranking New York City Police Department administrators, three City Council members, a borough presi-

⁸ Giuliani Testimony, New York Hearing Transcript, p. 57.

⁹ *Ibid.*, p. 58.

¹⁰ *Ibid.*, pp. 58–59.

¹¹ Mr. Louima suffered severe internal injuries, including a ruptured bladder and colon, and spent 2 months in the hospital. Former officer Justin Volpe pleaded guilty to the attack and is currently serving a 30-year sentence. Former officer Charles Schwarz was convicted of violating Mr. Louima's civil rights by leading him into the bathroom of the 70th Precinct station and holding him down during the attack. Subsequently, Mr. Schwarz and former officers Thomas Wiese and Thomas Bruder were all found guilty of conspiracy to obstruct justice because they had claimed that Mr. Schwarz was not present during the attack on Mr. Louima. Schwarz was sentenced to 15½ years in prison, while Wiese and Bruder each received a 5-year sentence. See “Louima Jurors Finish 3rd Day of Deliberations,” *The Associated Press, Newsday*, Mar. 4, 2000, p. A16; and “Three Officers Convicted in N.Y. Torture Case,” *The Associated Press*, Mar. 6, 2000.

¹² See *Task Force on New York City Police/Community Relations: Report to the Mayor*, March 1998 (hereafter cited as *March 1998 Task Force Report*), p. vii.

¹³ *Ibid.*, pp. iii–vii.

dent, several media representatives, as well as civic, religious, and community leaders.¹⁴

In March 1998, after 6 months of work, the task force generated 91 specific recommendations to the mayor and the NYPD to improve police-community relations. According to the NYPD, more than 87 percent of the recommendations made by the task force have been fully or “partially” implemented. The NYPD provided the U.S. Commission on Civil Rights with a list of all the recommendations and the status of their implementation at the time of the Commission's May 1999 hearing.¹⁵ According to the NYPD, only 75 of the 91 recommendations pertain to the NYPD and, of those 75, only 5 were rejected, including (1) the recommendation to change the title of the deputy commissioner for community affairs to the deputy commissioner for community relations; (2) the recommendation to establish a program development and evaluation unit within the community affairs division; (3) the recommendation to require a 1-day field training program for police recruits at Rikers Island with the Department of Corrections; (4) the recommendation to create a sergeants' leadership institute; and (5) the recommendation to increase the size of the NYPD Youth Academy from 1,000 to 5,000 participants.¹⁶

Three members of the task force drafted a dissenting report entitled *Deflecting Blame: The Dissenting Report of the Mayor's Task Force on Police/Community Relations* in which they alleged that (1) Mayor Giuliani had failed to provide the task force with the full-time staff and

¹⁴ *Ibid.*

¹⁵ During its investigation, the U.S. Commission on Civil Rights requested specific and detailed information from the NYPD that would have allowed the Commission to determine the extent to which the task force recommendations were being implemented, and with what impact. Initially, the information provided to the Commission was conclusory—it lacked specificity with regard to scope, strategy, timeframe, cost, and impact. See NYPD Pamphlet, “Your Right and Responsibilities When Interacting With the Police” (attached as appendix). On Dec. 9, 1999, in a statement before the New York City Council Public Safety Committee, Police Commissioner Howard Safr gave examples of programs and procedures the department is using or is in the process of developing to implement some of the recommendations of the task force. Subsequently, this statement was provided to the Commission by the NYPD.

¹⁶ Letter from Steven M. Fishner, criminal justice coordinator, the City of New York, Office of the Mayor, to Mary Frances Berry, chairperson, U.S. Commission on Civil Rights, June 24, 1999.

\$12–15 million budget that had been promised;¹⁷ (2) that the mayor had failed to attend any task force functions, including the five town-hall-style public hearings;¹⁸ (3) that the mayor had been “intent on control”¹⁹ of the task force and had cut short the amount of time it was given to complete its work;²⁰ and (4) that the NYPD did not answer all the questions put forth by the task force, despite assurances from the mayor and Police Commissioner Safir that all questions would be answered.²¹ The dissenting report concluded:

Instead of urging us to investigate how police officers who have abused citizens were able to become cops in the first place; what kind of training they received; why officers who are accused of excessive force are rarely disciplined, and what can be done to break the blue wall of silence, Mayor Giuliani gave his Task Force the assignment of developing a curriculum for establishing a structured dialogue between the police and the community.²²

MAJOR NYPD COMMUNITY-POLICING INITIATIVES Courtesy, Professionalism and Respect Campaign

In June 1996, the New York City Police Department began implementing a program called the Courtesy, Professionalism and Respect (CPR) program as discussed earlier.²³ The CPR program promotes professionalism within the department, including the constant display of courtesy and respect toward the citizens of New York City.²⁴ The NYPD initiated the program in response to a rise in the number of complaints against the NYPD.²⁵ The mayor believes there is a problem in the relationship between the New York Police Department and the communities of

color in New York, which must be addressed from both sides of the problem.²⁶ Many of the complaints concerned discourteous conduct by members of the NYPD.²⁷ In order to improve the situation it is critical that officers understand the need for respectful treatment of the people of New York.²⁸ The program has been described by the mayor as

valuable because we invest, I can do it for you in terms of dollars, we invest \$15, \$20 million training police officers and retraining them into acting respectfully towards people. We train them to refer to people as Mr. and Ms. We train them to try to explain to people why they're doing what they do. We train them almost to go out of their way to be respectful, almost to the point of people laughing at what we're trying to do. But we do it in order to impress on them the need to be respectful to citizens of the community.²⁹

According to the NYPD, the ultimate goals of the CPR program include (1) a more productive relationship between the NYPD and residents; (2) improved officer safety through increased public support; (3) more success for all crime strategies; and (4) an image of members of the NYPD as law enforcement professionals.³⁰ To accomplish these goals, the NYPD provides its officers with in-service training as well as training at the Police Academy.³¹

Commissioner Howard Safir testified that if officers were more familiar with the communities in which they worked, it would help to ease the tensions between these communities and the police.³² For this reason, the CPR program includes cultural diversity workshops and issues of stereotypes, attitudes, and community relations; and focuses on language and culture of Chinese, Hispanic, Russian, African/Caribbean American and Haitian people.³³

¹⁷ Michael Meyers, Margaret Fung, and Norman Siegel, *Deflecting Blame: The Dissenting Report of the Mayor's Task Force on Police/Community Relations* (New York Civil Liberties Union: March 1998), p. 5 (hereafter cited as Meyers et al., *Deflecting Blame*).

¹⁸ *Ibid.*

¹⁹ *Ibid.*, p. 6.

²⁰ *Ibid.*

²¹ *Ibid.*, p. 5.

²² *Ibid.*

²³ See *March 1998 Task Force Report*, pp. 15–16; *CPR Handbook*, pp. 1–3; see also chap. 2 of this report.

²⁴ See New York City Police Department Nomination Memorandum, 1998 Innovations in American Government; *March 1998 Task Force Report*, pp. 15–16; *CPR Handbook*, pp. 1–5.

²⁵ *Ibid.*

²⁶ Giuliani Testimony, New York Hearing Transcript, p. 60.

²⁷ See Nomination Memorandum, 1998 Innovations in American Government; *March 1998 Task Force Report*, pp. 15–16; *CPR Handbook*, pp. 1–3.

²⁸ Giuliani Testimony, New York Hearing Transcript, p. 58.

²⁹ *Ibid.*, pp. 57–58.

³⁰ See Nomination Memorandum, 1998 Innovations in American Government; *March 1998 Task Force Report*, pp. 15–16; *CPR Handbook*, pp. 1–3.

³¹ See New York City Police Department, CPR Training Agendas for Patrol Boroughs; *March 1998 Task Force Report*, pp. 15–19; see also chap. 2 of this report.

³² Safir Testimony, New York Hearing Transcript, p. 215.

³³ *Ibid.*, pp. 159–60.

Testimony put forth at the New York hearing suggested that some members of the community do not view the CPR program as a success. As Dennis Walcott, president of the New York Urban League, testified, "I have a clear sense from the community that they have total disregard for CPR. They do not believe in it. They think it's a slogan. They think it's something that's just created to improve the public image of the department."³⁴ In fact, he points out, members of the NYPD violated Abner Louima's rights 2 months after the CPR committee report was released, effectively undermining its legitimacy.³⁵ Norman Siegel of the New York Civil Liberties Union views the CPR program as a public relations ploy.³⁶

Precinct Community Councils

Precinct Community Councils were first formed in New York City in 1943 to encourage cooperation between civilians and police. Currently there is a Precinct Community Council in operation in each precinct and patrol service area. The councils are open to all members of the public and include residents, business owners, clergy, and civil rights groups. They typically meet monthly with the precinct commander, and they present a constructive way for members of the public to interact with and let their views be known by local police officials.³⁷

The ultimate purpose of the Precinct Community Councils is to encourage community involvement and promote awareness of law enforcement efforts that enhance community relations. Any member of the community may attend the monthly meetings; they can vote on matters if they attended at least three meetings in the previous 12 months.³⁸ Both Public Advocate Mark Green and Dennis Walcott, president of the New York Urban League, agree that using Precinct Community Councils is an effective way to build stronger relationships between local precincts and communities.³⁹ Mr. Walcott goes

³⁴ See Walcott Testimony, New York Hearing Transcript, pp. 110-11.

³⁵ *Ibid.*, p. 111.

³⁶ Siegel Testimony, New York Hearing Transcript, p. 111.

³⁷ See New York City Police Department, Precinct Community Council Regulations.

³⁸ *Ibid.*

³⁹ Green Testimony, New York Hearing Transcript, p. 264; Walcott Testimony, New York Hearing Transcript, p. 129.

on to explain that, as president of the Greater Council of Churches Dr. Calvin Butts testified, there must be effective leadership at the local precinct level for such programs to be effective.⁴⁰

Citizens Police Academy

Conducted at the Police Academy by veteran instructors, the goal of the Citizens Police Academy is to promote better understanding and police-community relations. Classes take place 1 day each week for 13 weeks. After graduation, citizens may assist with such things as the Child Identification program (fingerprinting) at street fairs. More than 600 people have participated in the fingerprinting program.⁴¹

Cultural Diversity Workshops

Cultural diversity workshops were implemented in the NYPD in September 1998 to increase awareness of and tolerance toward New York City's multicultural communities. The workshops are composed of 1-day sessions. Police officers conduct open dialogues with supervisors and are shown videos dealing with the many ethnic cultures represented in their police districts. As discussed earlier, Norman Siegel, executive director of the New York Civil Liberties Union, was highly critical of the diversity training material used by the NYPD. He testified at the New York hearing that instead of confronting racial and ethnic stereotypes, the material "talk[s] in a pejorative way about immigrants and their impact on a city."⁴² He also suggests that some communities are barely mentioned in the materials, and other communities are portrayed in a negative fashion:

I am a proud Jewish American, so what I'm saying should [not be seen in a] negative way, but when you have 11 pages for [Jewish Americans] and the fastest growing immigrant community in the city, the Dominican community, especially in Washington Heights, they get three paragraphs, something is wrong. In the African American community section, which is about six pages, the implication is all black folk live where? In Harlem [T]he Puerto Rican community, implication where do they all live? East

⁴⁰ Walcott Testimony, New York Hearing Transcript, p. 130; Butts Testimony, New York Hearing Transcript, p. 130.

⁴¹ See New York City Police Department, Citizens' Police Academy/Alumni Association Promotional Flyer.

⁴² Siegel Testimony, New York Hearing Transcript, p. 113; see also chap. 2 of this report.

Harlem where "salsa music is playing through the evening." Now this is just a sampling. I can go on an on.⁴³

Mr. Siegel's testimony suggests that the training materials currently used by the NYPD are, at least in some ways, reinforcing negative and stereotypical images of racial and ethnic groups and communities rather than attempting to eradicate such stereotypes and instill cultural sensitivity

Model Block Program

The Model Block program is an effort by the NYPD to target and clean up crime-ridden areas. It is a cooperative effort among the Patrol Services Bureau, the Narcotics Division, and the Office of the Deputy Commissioner Community Affairs and is designed to strengthen, stabilize, and eliminate drug and criminal activity on proposed model blocks. The strategy combines the Deputy Commissioner Community Affairs Office's Model Block program with selective narcotics enforcement. The enforcement component is coordinated by the Patrol Services Bureau and the Narcotics Division. The Deputy Commissioner Affairs Office coordinates the community outreach component, which consists of helping residents organize tenant and block associations that will monitor, maintain, and improve the block.

One such effort involved an operation in the 33rd Precinct that targeted one block that allegedly had been overrun by drug gangs. The NYPD conducted an extensive 11-month investigation and then executed warrants on the area drug gangs. In addition, the police set up barriers around the block to prevent narcotic trafficking, helped organize community meetings, and helped to create tenant patrols and "block watchers" so that drug activity could be kept at bay.⁴⁴

Clergy Liaison Program

The Clergy Liaison program was initially designed to enhance the cooperation of the police and the clergy. The goal of the program was to utilize the clergy as advisors to local precincts. According to the Task Force on Police/Community Relations report, there are more than 400 active members of the program, which

is conducted in 75 precincts. The liaisons are designed to provide sensitivity training to the police and act as unofficial advisors to the police, as well as act in maintaining calm during times of community unrest.⁴⁵

RECOMMENDATIONS OF MAYOR GIULIANI'S TASK FORCE ON POLICE/COMMUNITY RELATIONS

As it is noted in the appendix, it has been difficult to assess the extent to which recommendations put forth by the mayor's Task Force on Police/Community Relations have been implemented, and with what impact.⁴⁶ Recognizing the importance of many of the task force's recommendations, the Commission summarizes below those that are most vital to improving police-community relations in New York City.

Courtesy, Professionalism and Respect Program

Police officer training on diversity issues continues throughout an officer's service and is included in the NYPD's high-profile Courtesy, Professionalism and Respect, or CPR, program. Commissioner Safir started the NYPD's CPR program in 1996.⁴⁷ The mayor describes CPR as both a regimen of training and a formal code of professional conduct that "addresses, in a comprehensive way, the manner in which police officers should handle every encounter with a member of the public."⁴⁸ The philosophy of CPR is summarized by the final words of the police department's formal code of conduct: "Every encounter with a member of the public is an opportunity to strengthen police/community relations. One unprofessional encounter negates the positive work performed daily throughout the Department."⁴⁹ This endeavor is described by the NYPD as a "complete philosophical makeover" addressing the "problem of alienation and misunderstanding between police officers and citizens,"⁵⁰ focusing on the importance of and meth-

⁴³ Ibid., pp. 113-14.

⁴⁴ See Various NYPD Model Block Program Memoranda.

⁴⁵ See New York City Precinct Community Council Regulations; *March 1998 Task Force Report*, pp. 37-39.

⁴⁶ See appendix.

⁴⁷ Rudolph W. Giuliani, mayor of the City of New York, statement to the U.S. Commission on Civil Rights, New York, NY, May 26, 1999, p. 7 (hereafter cited as Mayor's Statement).

⁴⁸ Ibid., pp. 7-8.

⁴⁹ Ibid., p. 8.

⁵⁰ New York City Police Department, 1999 Innovations in American Government—Courtesy, Professionalism and Re-

ods for cultivating a strong relationship between the NYPD and the community by “promoting a culture of professionalism and respect consistently applied in [the NYPD’s] interactions with each other and the people [it] serves.”⁵¹ CPR emphasizes “acknowledg[ing] the rights and dignity of those we come in contact with, . . . the diversity, traditions and cultures of others . . . [and] be[ing] cognizant of the manner in which we speak to others. . . .”⁵²

The mayor estimates that the CPR program costs \$15–20 million.⁵³ He believes this to be warranted.⁵⁴ “We train them almost to go out of their way to be respectful, almost to the point of people laughing at what we’re trying to do. But we do it in order to impress on them the need to be respectful to citizens of the community.”⁵⁵

The CPR training program is administered at the Police Academy to new recruits and is applied to every aspect of their training.⁵⁶ Techniques such as verbal judo teach officers how to avoid disputes with citizens and how to resolve potential problems with words rather than force.⁵⁷ Refresher courses and updates of this training are conducted on an in-service basis for NYPD veterans.⁵⁸

Accountability for supporting and implementing the CPR program lies with the commanding officers. In fact, the NYPD keeps statistics regarding “CPR indicators” for each commander.⁵⁹ Individual officers’ CPR performance is also monitored, based on a number of factors, including Civilian Complaint Review Board (CCRB) complaints and random testing of CPR

performance.⁶⁰ Members of the first deputy commissioner’s office pose as members of the public and perform scripted scenarios based on common types of interactions between the public and police, including telephone calls, street encounters, and visits to department facilities.⁶¹ Test subjects are rated on “initial contact, appearance and verbal introduction, demeanor, and accuracy of information.”⁶² Poor evaluations can result in retraining or discipline.⁶³ The performance of precinct commanders is also tracked, and negative performance can adversely affect a commander’s career.⁶⁴

Although the NYPD has proudly proclaimed that 99 percent of tested officers performed within acceptable CPR standards,⁶⁵ the program has not been well received by members of the public, who described it as nothing but a “slogan,” and “hold [the CPR program] in total contempt.”⁶⁶ Given the widespread complaints regarding police treatment of citizens, the slightly over 98 percent “acceptability rating,” more likely indicates a deficiency in the CPR standards than a successful “philosophical makeover” in the NYPD. In fact, the dissenting report by the mayor’s Task Force on Police/Community Relations found “no credible evidence to conclude that CPR has worked to reduce police-community conflict; indeed, the concept of CPR is undermined as long as it is not tied to a system of discipline and accountability.”⁶⁷

The majority report by the mayor’s task force concurred. The task force members believed that while the CPR campaign was at the core of improving police-community relations, they had concerns regarding how effectively the campaign was being implemented. The report stated:

spect Strategy (hereafter cited as 1999 Innovations in American Government).

⁵¹ New York City Police Department, 1998 Innovations in American Government—Courtesy, Professionalism and Respect Strategy.

⁵² 1998 Innovations in American Government, p. 2. Specific elements of CPR training include verbal judo, CPR values training, and 1-day CPR training sessions that involve meetings with members of the community to discuss problems and possible solutions. 1998 Innovations in American Government, p. 5.

⁵³ Giuliani Testimony, New York Hearing Transcript, p. 57.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Mayor’s Statement, p. 8.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ 1998 Innovations in American Government, p. 2.

⁶⁰ Ibid.

⁶¹ Ibid., p. 6.

⁶² 1999 Innovations in American Government.

⁶³ Ibid.

⁶⁴ Ibid., p. 219.

⁶⁵ 1999 Innovations in American Government.

⁶⁶ Walcott Testimony, New York Hearing Transcript, p. 110.

⁶⁷ Meyers et al., *Deflecting Blame*, p. 47. The NYPD reports that of the 173 test failures from October 1996 through March 2000, at least 90 officers have received formal written discipline. Additionally, NYPD states that accountability is reflected in the requirement that each failure be investigated by the officer’s commanding officer, and the commander must submit a written report on the findings of the investigation and include any corrective action taken.

[R]egardless of how well intentioned the strategy may be, without a structured and monitored implementation, we are confident that this strategy will fail. Therefore, proper citizen input and management review needs to occur on a regular basis to ensure that the true intention and deeper goal of CPR is accomplished. It is the Task Force's belief that this deeper goal reaches far beyond the promoting of a positive public image campaign.⁶⁸

The task force specifically recommended that the NYPD institutionalize in-service CPR training during specific times outside the precinct, in the same way that firearms training is mandated. The task force also recommended that the NYPD establish separate CPR academies and borough conferences for precinct commanders, captains, lieutenants, and sergeants. The purpose of the CPR academies would be to separately train each of the four uniform supervisory ranks in how to effectively manage or supervise compliance with the overall CPR strategy and practical application of specific CPR techniques. The purpose of the CPR borough conferences would be to provide each of the four uniform supervisory ranks with a separate forum to develop and share effective rank-specific techniques for managing or supervising compliance with all philosophic and operational aspects of CPR.

Enhance Precinct Community Councils

The Task Force on Police/Community Relations found that one of the most popular police-community relations programs was the Precinct Community Councils described above. The task force found:

During the various public forums, many community members were favorably disposed toward the concept and purported mission of the Precinct Community Councils, as a mechanism for civilian-police dialogue. However, they were especially critical that the Councils have generally failed to meet their potential in exacting improvements in the areas of quality of life, police/community relations and community-assisted policing.⁶⁹

The task force discovered that the Precinct Community Councils were not accountable to a centralized authority and were not governed by

⁶⁸ See *March 1998 Task Force Report*, p. 15.

⁶⁹ *Ibid.*, pp. 19-23.

a uniformly adopted mission statement, goals, scope of responsibilities, and scope of activities. As a result, the task force recommended that the NYPD adopt a mandated policy and procedure manual for Precinct Community Councils that would place very significant emphasis on defining a mission statement, goals, scope of responsibilities, and scope of activities that are specifically designed to ensure that the councils continuously and aggressively work to maximize improvements in the areas of quality of life, police-community relations, and community-assisted policing.⁷⁰

The task force identified additional problem areas in Precinct Community Council operations. For example, councils currently lack centralized technical support, they lack a mechanism for inter-council communication and idea sharing, and they lack centralized accountability for membership diversity and activities. Moreover, they do not have an annual budget, which makes it difficult to sponsor police-community forums and events.

To address the lack of inter-council communication and idea sharing, the task force recommended that the Precinct Community Councils be given personnel and resource funding to produce a monthly newsletter that would be circulated to all 76 councils.

Enhance Youth Program Services

Regarding the issue of police-youth relations, the Task Force on Police/Community Relations stated the following:

Of all the trends, which emerged across the different forums, held by the Task Force, perhaps, the most adamantly presented was the concern of degrading Police-Youth relations. Mothers and Fathers expressed fear that their children would fall victim to police brutality, while youth expressed outright contempt for police officers. Their concerns were not limited to police violence and misconduct, but also focused on the negative impact that attitudes have on the entire community. This includes the lost opportunity of police officers to play a positive role in the development of youth and the increased likelihood that

⁷⁰ Since the hearing in this matter, the NYPD has adopted a mandatory policies and procedures manual for Precinct Community Councils that addresses many of the points raised by the mayor's task force.

youth will be arrested when they encounter the police due to their disrespectful behavior.⁷¹

As discussed above, the NYPD operates eight programs specifically targeted at working with youth, including Drug Abuse Resistance Education (DARE), Gang Resistance Education and Training (GREAT), Youth Police Academy, Police Athletic League (PAL), the Youth Leadership program, the Mentoring program, Law Enforcement Explorer program, and the After School Program for Interactive Recreation and Education (ASPIRE).

The task force recommended that the Youth Academy be expanded from the current level of 1,000 youth participants per summer to 5,000 participants per summer. To reach more youths, the task force also recommended that the NYPD develop police-youth encounter workshops. These would consist of hands-on activities to familiarize young people with typical police-community interactions and encourage dialogue between police officers and youth. After an introductory portion, the students and officers would participate in role-play exercises depicting various police and community interactions such as stopping a person, questioning and frisking, arrest, and car stops. The youth would take the role of the police officer and the police officer would serve as the community member.⁷²

Implement Police-Community Dialogues

In order to effectively allow the police and the community to assess and understand each other, the Task Force on Police/Community Relations recommended that the NYPD significantly enhance its formal communication with its citizens. Specifically, the task force recommended that all precinct commanders develop and implement a citizen-police information seminar series to complement the Citizens Police Academy. The purpose of this seminar series would be to educate local citizens on both departmentwide and precinct-specific police training, policies, proce-

⁷¹ See *March 1998 Task Force Report*, pp. 23-24.

⁷² NYPD is currently conducting workshops in various schools that educate young people on their rights and responsibilities in dealing with the police and the job of police officers. A copy of the NYPD pamphlet, "Your Rights and Responsibilities When Interacting with the Police," is attached as an appendix. Additionally, the NYPD is in the process of developing a youth/police video and a high school curriculum to enhance youth-police relations.

dures, practices, strategies, and duties, as well as resources available to the immediate community. In addition, the seminar series would, by design, foster positive and constructive dialog between police and community members on the status of police-community relations in their respective precincts.

In light of the task force's recommendations the NYPD, to further advance its crime reduction gains and foster positive police-community relations, through the Office of the Deputy Commissioner Community Affairs expanded the CPR strategy to include the following new initiatives: borough forums, precinct open houses, outdoor range events, new booklet and brochures on community affairs in the NYPD, police fellowship conferences, firearms tactics range events, and an Islamic pre-Ramadan conference.⁷³

The task force also recommended that each of the 76 precinct commanders and Community Precinct Councils develop and institute "citizen-police town hall dialogues" to address police-related issues or concerns raised by citizens. Certainly, these forums would also be useful during times of heightened police-community tensions. Furthermore, all precinct commanders and Community Precinct Council presidents should receive facilitation skills training to more effectively and efficiently facilitate these dialogues. The purpose of these forums would be to provide an opportunity for community members to express openly their anger and concerns to uniform staff of the precinct, dispel untrue or unsubstantiated information on the part of the police and/or community members, and work toward easing tensions.

Reinvigorate the Clergy Liaison Program

The task force suggested that the Clergy Liaison program could be more effective if the NYPD adopted clear guidelines as to the use of the program, if commanding officers were required to convene quarterly meetings with the active clergy in each precinct, and if Clergy Liaison members were required to attend a biannual conference which would be held to discuss current clergy efforts.

⁷³ Descriptions of each new initiative are detailed in the *NYPD Response*, attached as appendix D.

Enhance the Cadet Corps

As described in chapter 2, the NYPD's Police Cadet Corps is an innovative apprenticeship program that introduces college students to the challenges and rewards of a career in law enforcement. The specific focus of the task force's recommendation was that the funding levels be dramatically increased. Not only does this program provide and promote greater understanding between the community and the police, but it also provides the NYPD with a pool of well-educated applicants that tends to reside in the city and to reflect a great diversity of racial and ethnic backgrounds.

Related to this recommendation, the task force also recommended that the NYPD take steps to impose a residency requirement on its officers. Currently, the racial and ethnic makeup of the NYPD is not reflective of the city's diversity. The city's population is approximately 61 percent nonwhite—31.6 percent African American, 20.3 percent Latino, and 9.7 percent Asian American/Pacific Islander—while the department's racial makeup is 68 percent Caucasian, 13 percent black, 18 percent Latino, and 1 percent Asian American/Pacific Islander. The task force believes a residency requirement would result in the hiring of more African Americans, Latinos, and Asian American/Pacific Islanders and, consequently, would enhance the public's perception of police officers.

FINDINGS AND RECOMMENDATIONS: CHAPTER 3

Finding 3.1: The NYPD has not been clear enough in articulating—both to the media and to the general public—the extent to which recommendations put forth by the mayor's Task Force on Police/Community Relations were being implemented, and with what impact.

Recommendation 3.1: The City of New York and the NYPD must reevaluate their compliance with the recommendations made by the mayor's Task Force on Police/Community Relations. Specific and detailed information should be released so that the media and the general public have an understanding of the extent to which the recommendations have been implemented, and with what impact. To help facilitate the dispersal of this information, the Commission has attached a list of the task force recommendations and their implementation by the NYPD as appendix A.

Finding 3.2: Mayor Giuliani's Task Force on Police/Community Relations began its factfinding process by convening a series of public forums that included both members of the community and members of the NYPD. These public forums provided civilians with direct contact with police officers in a constructive, nonconfrontational setting. Furthermore, testimony put forth at the New York hearing suggests that when such open dialogue does not take place on a regular basis, there is a resulting deterioration in police-community relationships, characterized by lack of trust and civility and by an unwillingness of civilians to share information about, and to collaborate against, crime problems.

Recommendation 3.2: Public forums involving both the police and the community should continue to take place at regular intervals throughout the year. This would allow everyone in attendance at the forums—community members, politicians, and police officials—to learn about and develop greater respect for the racial, economic, and cultural diversity of the citizens of New York. The increased dialogue would also allow problems and concerns to be aired and addressed before they become serious grievances, e.g., the perceived unwarranted use of force by police, the perceived unwarranted "stop and frisks" and interrogations by police, and the perceived targeting of people of color. Participation in Precinct Community Councils should be actively promoted within the department and throughout the community, with community members being given regular updates in newsletters or other communication from the department regarding issues of concern that the councils are addressing.

Finding 3.3: Testimony put forth at the New York hearing suggested that the NYPD training academy needs to be reformed. This is of particular concern because of the Police Academy's pivotal role in molding future officers' values, behaviors, and police practices.

Recommendation 3.3: We recommend the creation of a *temporary* independent commission which will undertake a thorough investigation and examination of the practices and training materials that are currently used by the academy.

Finding 3.4: It has been demonstrated that sustained community policing—in which officers work closely with neighborhood residents—can drive out crime and improve police-community relations.

Recommendation 3.4:

- The NYPD should have aggressive outreach programs to publicize the successful stories of community policing and to involve increased numbers of residential neighborhoods and communities in similar programs.
- In his testimony, Mayor Giuliani discussed the ongoing training being conducted under the Courtesy, Professionalism and Respect campaign. While the training the mayor described is vital for positive police-community relations, the Commission believes the program should place additional emphasis in the areas of diversity, conflict resolution, and interpersonal relations. Moreover, perhaps these training sessions could be opened up to members of the community, thereby increasing the community's trust of, and contact with, the police.
- The NYPD should work harder to include community members in planning and policy development. This could be done by broadening relationships with schools, universities, faith-based groups, and community organizations.
- When members of the NYPD receive academy training, they need to be prepared for developing community relationships and partnerships—including being taught specific strategies for developing such ties to the community. Further, when officers are evaluated, they need to be rewarded for developing community relationships and partnerships.
- Given the integral role that computers are now playing in society, the Commission suggests the creation of a Web site to provide the public access to data collected by both the NYPD and by the Civilian Complaint Review Board. Eventually, there could be links between the NYPD Web site and other local, state, national, and international law enforcement Web sites.
- While this report concentrates on the police practices of the NYPD, the Commission also encourages statewide studies and training on racial profiling, excessive use of force, and race and ethnic group relations. Moreover, the Commission supports the involvement of civil rights and community groups and coalitions in reviewing and formulating legislation to address issues of racial profiling, police misconduct, and excessive use of force. This could include the development of community surveys to assess police-community relations, to identify obstacles to community partnerships, and to help communities set priorities for addressing quality of life concerns.

Monitoring of Civilian Complaints

The New York City Police Department and external oversight entities share the responsibility of investigating and disciplining New York City police officers who are accused of police misconduct. The initial section of this chapter discusses monitoring responsibilities assigned to the NYPD, principally, detecting illegal activities through its Internal Affairs Bureau (IAB). Although the chief task of Internal Affairs is monitoring corruption, due to the lack of data provided to this Commission relating to the Internal Affairs Bureau, it is difficult to ascertain the exact role IAB plays in monitoring civilian complaints.

The subsequent section of this chapter discusses the Civilian Complaint Review Board (CCRB), which is the independent agency charged with oversight of the police for most categories of civilian complaints. This discussion of the CCRB begins with an overview of its history and jurisdiction over civilian complaints. It includes a description of each of the CCRB's major functions—investigation of civilian complaints, statistical tracking of civilian complaints, consideration of particular police abuses, and community outreach. Although the CCRB experienced difficulties during its first few years in operation, its record has improved significantly since 1996. This chapter then concludes by recommending changes that the CCRB, the NYPD, and the city government can make to improve monitoring of civilian complaints against the department.

INTERNAL MONITORING

Although much of the responsibility for investigating civilian complaints now lies with agencies that are independent of the NYPD, the department does remain responsible for investigating allegations of police corruption and negli-

gent conduct in the line of duty.¹ The department offices responsible for investigating these allegations, the Internal Affairs Bureau and the Office of the Chief of Department, therefore, are primary areas to analyze civilian complaints of police misconduct.

Internal Affairs Bureau

In 1993, the NYPD, in an effort to battle corruption and other serious misconduct by officers within the department more effectively, established the Internal Affairs Bureau and eliminated the Inspectional Services Bureau, Internal Affairs Division, and field internal affairs units.¹ The role of IAB is to investigate allegations of corruption and other "serious misconduct" by police officers, whether raised by civilians or members of the force.² As the NYPD is currently structured, the IAB appears to be concerned primarily with rooting out corruption and other related offenses such as bribery.³ The NYPD has authorized its Employee Relations Section to investigate allegations of retaliation against officers who volunteer evidence in misconduct investigations concerning other officers in certain cases.⁴

Any investigation of abuses of citizens by police officers is incomplete without at least some discussion of police procedures for preventing (and punishing) acts of police brutality. Investigating high-profile acts of police corruption in 1993 and 1994, the Mollen Commission noted

¹ See New York City Police Department, Interim Order 65 (June 24, 1994).

² See New York City Police Department, *Patrol Guide Manual*, § 118-07 (hereafter cited as *Patrol Guide*).

³ *Ibid.*, § 110-35.

⁴ See New York City Police Department, Interim Order 70, Investigation of Incidents of Retaliation Against Members of the Service (Nov. 16, 1998).

that police corruption and brutality are closely bound together.⁵ The Mollen Commission acknowledged that corruption-prone officers were more than five times as likely than other officers to have excessive force allegations filed against them.⁶ And, for many officers, commission of brutal acts toward innocent civilians is a critical step on the path toward corruption.⁷ Furthermore, the Mollen Commission found that often other police officers tolerate this brutality.⁸ Because of this link between brutality and corruption, the Mollen Commission concluded that the NYPD's efforts to combat corruption must play an important part in ensuring that NYPD residents are free from police brutality.⁹

Recognizing the importance of this link, the New York City Council has attempted to create a mechanism for citizen oversight of IAB.¹⁰ In 1995, the City Council authorized legislation to create an Independent Police Investigation and Audit Board (IPIAB).¹¹ The board would monitor the internal anticorruption efforts of IAB and the NYPD, conduct independent investigations of allegations of corruption, and formulate recommendations for conduct of anticorruption investigations by the NYPD.¹² The mayor has not implemented the IPIAB, and the New York

Court of Appeals held that the law, as initially drafted, violated the City Charter by giving the City Council, rather than the mayor, the power to appoint the members of the IPIAB.¹³ In response, the New York City Council redrafted the legislation to give the mayor the authority to appoint the members of the board, while retaining the authority to designate several of those appointees.¹⁴ The mayor, however, vetoed that legislation.¹⁵

Without thorough information describing IAB's structure, operations, and disposition of allegations it is charged with investigating, the Commission is unable to determine the role that IAB should play in combating police abuses.¹⁶

Office of the Chief of Department

Allegations of police misconduct that are neither within the purview of IAB nor within the CCRB's jurisdiction are referred to the Office of the Chief of Department (OCD) for resolution. These claims usually allege behavior such as insubordination, sleeping or hiding out while on duty, or other failures to act while on duty. Under the current protocol, the NYPD apparently has given local commanders the responsibility for investigating most complaints.¹⁷ These com-

⁵ See Milton Mollen et al., *Report of the Commission to Investigate Allegations of Police Corruption & the Anti-Corruption Procedures of the Police Department*, 1994 (hereafter cited as *Mollen Commission Report*), pp. 43-46.

⁶ *Ibid.*, p. 46.

⁷ *Ibid.*, p. 47.

⁸ *Ibid.*, pp. 47-49.

⁹ *Ibid.*, p. 50. The Mollen Commission expressly recommended that the NYPD Internal Affairs Bureau establish a civil rights division to investigate, among other things, allegations of police brutality. The commission also recommended that the Internal Affairs Bureau examine the relationship between its investigations of corruption and allegations of excessive force that civilians have filed with the CCRB. Although in the preparation of this report, the Commission's *subpoena duces tecum* that was issued to the mayor requested all documents related to allegations of excessive force, none was provided from IAB, and therefore, it is difficult to determine whether the NYPD adopted these recommendations, or what these measures revealed. *Ibid.*, p. 142.

¹⁰ See *ibid.*, p. 47.

¹¹ See also New York City Local Law 91 (McKinney, 1997). It provides a description of the refining authority and powers of IPIAB.

¹² Similar to the CCRB, the IPIAB would be an oversight body that would not have the authority to discipline officers on its own.

¹³ See Rob Seixas, "Can We Make the Blue Wall of Silence Crash?" *New York Amsterdam News*, Oct. 1, 1997, p. 1.

¹⁴ *Ibid.*

¹⁵ Although there has been no completely independent oversight of IAB, a mayoral commission does review IAB procedures. In 1995, Mayor Giuliani created the Commission to Combat Police Corruption (CCPC) to assess the police department's anticorruption efforts. Although critics have questioned the CCPC's effectiveness and independence in reviewing corruption cases, in its most recent annual report, the CCPC gave IAB only a "passing grade" in investigating officer misconduct. See *New York Law Journal*, Nov. 17, 1999, p. 1. More recently, the CCPC found that although IAB did a "reasonably good job" of investigating misconduct, IAB was an undesirable assignment that officers were "anxious" to leave. See "IAB Cops Can't Wait to Get Out, Study Says," *New York Daily News*, Mar. 24, 2000, p. 7. Although the CCPC has been criticized as ineffective, the department appears to have been somewhat responsive to CCPC reports. For example, in response to a CCPC report documenting the department's failure to punish officers who lie under oath, the department promised to terminate officers who lie. See "See-No-Evil Officers Should Pay," *The New York Times*, Aug. 24, 1997, sec. 4, p. 3.

¹⁶ As of this writing, the NYPD has not provided the Commission with any documents describing, in detail, IAB structure, operations, or disposition of allegations falling under its jurisdiction.

¹⁷ See Orientation to the Internal Affairs Bureau, sec. V. One exception to this general rule seems to be with regard

plaints are only referred back to the officer in charge of the subject officer's command, who is then required to conduct an appropriate investigation.¹⁸ When the investigation produces evidence to suggest that disciplinary measures may be warranted, the case may be referred to the Department Advocate's Office for further investigation or the development of charges as may be warranted.

Given the nature of these claims, complaints falling within the jurisdiction of OCD are less likely to implicate civilian civil rights concerns. However, the NYPD has provided little information on the exact structure of OCD, the requirements for conducting investigations, and the manner in which OCD cases have been handled. The production of such information would permit the U.S. Commission on Civil Rights to perform a meaningful review, and be useful in determining whether OCD reform is warranted to improve the handling of civilian complaints.¹⁹

EXTERNAL/CIVILIAN MONITORING AND OVERSIGHT

The majority of complaints raised by civilians against NYPD officers are within the jurisdiction of the city's main agency charged with oversight of civilian complaints of the police force, the Civilian Complaint Review Board. Although the CCRB was once a part of the NYPD, New York City officials consider it as an independent mayoral organization, charged with reviewing civilian complaints, making disciplinary recommendations to the NYPD, and identifying noteworthy trends in civilian complaints.²⁰

to civilian complaints against off-duty officers, which appears to fall within the purview of IAB. Ibid. "[T]he patrol supervisor (you) will handle less serious domestic violence cases, or perform summary arrests of members of the service." Ibid.

¹⁸ Ibid.

¹⁹ Although the mayor's office initially declined to provide the Commission with additional information concerning OCD investigations, some information has been provided to the Commission following the initial drafting of this report. In particular, the department noted that about 25 percent of civilian complaints are referred to the OCD for review. After being referred to the subject officer's borough command, the subject officer's commanding officer is then usually designated to conduct an investigation of the complaint. The NYPD also contends that dispositional data for all OCD claims are kept by the department. These data, however, have not been provided to the Commission.

²⁰ *But see* testimony in the "Determining the Need to Reform the CCRB" section of this chapter.

Perceptions of Police Misconduct

Number of Civilian Complaints

Varying estimates exist of the true scope of police misconduct in New York City. Witnesses who testified at the Commission hearing in May of 1999 similarly reflected a range of perceptions of the frequency of this problem. In order to determine the magnitude of police misconduct, several witnesses examined the number of public complaints against New York City police officers that have been filed with the Civilian Complaint Review Board.²¹ According to Mayor Giuliani, there was a decline in the number of CCRB complaints per police officer from 1984 to 1999, even though the current police complement has increased by about 8,000 additional officers since the beginning of this time period.²² Moreover, the mayor explained:

When . . . you look at the number of complaints per police officer last year and the year before, [they] were two of the lowest years that we've had in about 15 or 20 years. . . . [W]e divide our complaints into different categories, the most serious of which is the use of force when someone alleges that they were beaten or they were hit unnecessarily. In that area, there's been a really substantial decline in the number of complaints made against police officers and that goes back to before the [Civilian Complaint Review] Board was independent in 1993, 1994.²³

In contrast, some witnesses maintained that there are other ways to determine the scope of police misconduct. For example, Eliot Spitzer, attorney general for the State of New York, testified that the actual magnitude of police miscon-

²¹ New York City Civilian Complaint Review Board Web site (visited Nov. 8, 1999) <<http://www.ci.nyc.ny.us/html/ccrb/home.html>>. "The Civilian Complaint Review Board is an independent, non-police city agency with the authority to investigate allegations of police misconduct filed by members of the public against New York City police officers. The board receives, investigates, makes findings, and recommends discipline to the Police Commissioner on complaints alleging Force, Abuse of Authority, Discourtesy and Offensive Language." Ibid.

²² Rudolph W. Giuliani, mayor of the City of New York, testimony before the U.S. Commission on Civil Rights on *Police Practices and Civil Rights in New York City*, hearing, New York, NY, May 26, 1999, transcript, pp. 44-45 (hereafter cited as New York Hearing Transcript). See *ibid.*, p. 62; James Savage, president of the Patrolmen's Benevolent Association, Testimony, New York Hearing Transcript, p. 167.

²³ Giuliani Testimony, New York Hearing Transcript, p. 45.

duct is unknown. As a result, the Attorney General's Office, Civil Rights Bureau, is using various mechanisms, such as its own data collection form, to capture this information. He told the Commission:

It is our belief that there are a significant number of allegations that do not at this point end up either within the CCRB or any of the other institutions that exist to collect reports of alleged impropriety. . . . [I]t is our view that there are a sufficient number of such alleged incidents so that by reaching out into various communities at speak-outs, for instance, where we have listened to such allegations, if we'd reach out into various communities and distribute the [complaint] form, we will receive an important body of data, which we can then use to try to determine again the scope of the alleged incident and improper contact between police and citizens.²⁴

Similarly, the testimony of Rev. Calvin Butts, pastor of the Abyssinian Baptist Church, suggested that the CCRB may not have an accurate assessment of the magnitude of police misconduct in New York City:

[P]eople don't complain to the Civilian Complaint Review Board any more. They don't want to go to the precincts to be harassed. They complain more to us. They come into my office and they say, "I've been stopped by the police, I've been harassed, I've been pushed around, I've been cursed out, my apartment was broken into." Because they don't believe that the Civilian Complaint Review Board, based on past experience is going to do anything to help.²⁵

In addition, Rev. Butts indicated that in the past, the CCRB received fewer complaints due to the staffing changes in the city's administration and the Police Commission. However, he also noted that since then, there has been an increase in the number of complaints to the CCRB.²⁶

Another witness, Norman Siegel, executive director of the New York Civil Liberties Union, observed that while the crime rate has declined in New York City, there has also been a 39 percent increase in CCRB complaints.²⁷ He noted the following: "Between 1994 and 1998, there were 26,000 complaints containing 40,000 allega-

tions of police misconduct with almost 15,000 allegations of excessive force filed at the CCRB. . . . This is a pervasive problem, not the result of a few bad apples."²⁸ Moreover, Mark Green, public advocate for the City of New York, recognized that the crime rate has decreased during the past 6 years in New York City. However, he contended that between 1992 and 1998, there was a 44 percent increase in civilian complaints of police misconduct.²⁹ According to a 1997 Public Advocate study, this growth in the number of civilian complaints was concentrated in minority communities.³⁰ Mr. Green also explained that during former mayor David Dinkins' administration in 1993, there were 125 civilian complaints per 1,000 police officers. During the first year of Mayor Giuliani's administration, there were 160 complaints per 1,000 police officers. The current data indicate that there are 128 complaints per police officer.³¹

Possible Causes of Police Misconduct

There are numerous factors that may contribute to the incidence of police misconduct in New York City. Testimony elicited from several witnesses summarized these factors into several overall categories: an NYPD internal procedure, the "48-hour rule";³² racism; the lack of discipline for recalcitrant police officers; as well as little incentive to protect civilians' civil rights. In reference to the 48-hour rule, Rev. Al Sharpton, president and chief executive officer of the National Action Network, remarked that "no one is given 48 hours in this country to decide whether to answer a criminal allegation, a policeman that is trained should be able to describe it more quickly than a regular civilian. . . ." ³³ Margaret Fung, executive director of the Asian American Legal Defense and Education Fund, offered additional comments:

²⁸ *Ibid.*, pp. 100-01.

²⁹ According to the NYPD, there was a corresponding 40.5 percent increase in department's uniform staffing during this time.

³⁰ Green Testimony, New York Hearing Transcript, pp. 259-61.

³¹ *Ibid.*, pp. 277-78.

³² Tim Whitmire, "Panel on Police Brutality Urges Higher Pay, No '48-Hour Rule'" (visited Nov. 18, 1999) <<http://www.Bergen.com/region/louima199803259.htm>>. The 48-hour rule prohibits police officers from responding to questions relating to their actions in alleged police misconduct incidents for 2 days.

³³ Sharpton Testimony, New York Hearing Transcript, p. 381.

²⁴ Spitzer Testimony, New York Hearing Transcript, pp. 236, 239-40.

²⁵ Butts Testimony, New York Hearing Transcript, p. 145.

²⁶ *Ibid.*, pp. 144-45.

²⁷ Siegel Testimony, New York Hearing Transcript, p. 127.

[T]he 48-hour rule was secured through the union contract with the PBA [Police Benevolent Association] which permits police officers not to speak about incidents for which they're being questioned. It doesn't deal with the situations where a crime is being investigated and a police officer may wish to invoke his or her constitutional rights. The problem with the 48-hour rule and the reason why it's become such a big issue in communities is the clear perception that police officers are taking their time to get their stories together and you never have a clear understanding of what has occurred. That's why the community consistently will question why police officers are allowed to get away with incidents time and time again. Now it's obvious that the mayor had said in the past that he wants to eliminate the 48-hour rule in the next contract negotiations and that will be one step . . . in trying to be sure that police are held accountable for their actions, but it's only one small step I would say in security and restoring public confidence in the police as well as assuring that there's police accountability.³⁴

However, James Savage, president of the Patrolmen's Benevolent Association, maintained that the 48-hour rule is included as a negotiated clause in New York City police officers' employment agreement. According to Mr. Savage, this regulation facilitates the police union's and the NYPD's investigations of alleged administrative violations.³⁵ He also noted that the 48-hour rule serves as a mechanism to protect police officers' Fifth Amendment rights.³⁶

Secondly, some observers maintained that the presence of racism and bias are other possible factors in incidents involving police misconduct in New York City. In light of the Abner Louima, Amadou Diallo, and Anthony Baez cases, authorities and community groups have closely examined and questioned the NYPD's protocols and procedures. For example, according to Norman Siegel, executive director of the New York Civil Liberties Union, "[i]n 1988, African Americans, who represent about 25 percent of this city, filed 50 percent of the almost 5,000 complaints filed at the CCRB. For the 5-year period [of] 1994 to 1998 [it was] 51 percent. Three out of every four complainants are African American or Latino."³⁷ Another witness, Ser-

geant Anthony Miranda, president of the Latino Officers Association, also confirmed that blacks and Latinos register a disproportionate number of civilian complaints. Moreover, he contended that white police officers are often the subject of these allegations.³⁸

Other witnesses contended that additional factors may contribute to the incidence of police misconduct. For example, James Savage contended that positive performance evaluations are not issued to police officers when they protect civilians' civil rights.³⁹ Instead, they are rewarded for activities such as seizing sizable amounts of narcotics, issuing a significant number of summonses, and making a substantial number of arrests.⁴⁰ One witness testified that the NYPD rarely disciplines those police officers who have been involved in previous wrongdoing. Specifically, according to William Harrell, vice president of the National Lawyer's Guild and executive director the guild's National Police Accountability Project, three of the four officers who allegedly shot Amadou Diallo were previously involved in police misconduct incidents and had earlier complaints filed against them with the CCRB.⁴¹

Thus, there are differing perspectives of the actual level of police misconduct in New York City, which are derived from the number of complaints registered against police officers either with the CCRB or local community organizations. According to the collective perceptions of several witnesses at the hearing, factors such as the 48-hour rule, the possible presence of racism in the NYPD, infrequent discipline of officers involved in misconduct incidents, and little incentive for police officers to enforce civilians' civil rights, contribute to the incidence of police wrongdoing.

OVERVIEW OF THE CCRB

The CCRB as Part of the NYPD

The Civilian Complaint Review Board has overseen the investigation of civilian complaints

³⁴ Fung Testimony, New York Hearing Transcript, pp. 120-21.

³⁵ Savage Testimony, New York Hearing Transcript, pp. 188-89.

³⁶ *Ibid.*, p. 189.

³⁷ Siegel Testimony, New York Hearing Transcript, pp. 100-01.

³⁸ Miranda Testimony, New York Hearing Transcript, p. 291.

³⁹ Savage Testimony, New York Hearing Transcript, p. 169.

⁴⁰ *Ibid.*

⁴¹ Harrell Testimony, New York Hearing Transcript, p. 478. Since the initial drafting of this report, the NYPD has noted that prior to the Diallo shooting, none of the officers involved ever received charges and specifications or were the subject of any formal discipline.

against police officers in New York City since 1953.⁴² Originally, the board consisted of three deputy police commissioners who reviewed the reports of investigations by the board's staff. They provided the police commissioner with their recommendations for disciplinary action.⁴³ In 1966, four private citizens were appointed to the board, but that was eliminated later the same year, returning the CCRB to an entirely NYPD operation.⁴⁴

In 1986, then-mayor Ed Koch, in accordance with City Council legislation, appointed six civilians to the board, and the police commissioner appointed another six members. A year later, the CCRB's investigative unit, the Civilian Complaint Investigation Bureau (CCIB), began hiring civilian investigators. The CCRB staff, however, remained composed entirely of police department employees.

Creation of an Independent Civilian Review Board

In 1993, the New York City Council, working with then-mayor David Dinkins, voted to replace the internal police Civilian Complaint Investigation Bureau with an external monitoring Civilian Complaint Review Board.⁴⁵ This amendment to the City Charter became effective on July 5, 1993, the date on which an independent CCRB composed entirely of private citizens became a functioning agency. Since that time, the CCRB has been made up entirely of private citizens.

Jurisdiction and Authority of the CCRB

The CCRB is authorized to investigate allegations of police misconduct involving (1) force, (2) abuse of authority, (3) discourtesy, and (4) offensive language.⁴⁶ The agency has jurisdiction over

officers of all ranks who are members of the NYPD, with respect to these types of complaints.⁴⁷ However, the CCRB has no authority to impose discipline on an officer.⁴⁸ When the CCRB determines that an allegation in a substantiated case is meritorious, it refers that complaint to the NYPD for disciplinary action. The CCRB's authority is limited to recommending disciplinary action; only the department is empowered to discipline officers.

CCRB Function, Operations, Staffing, and Resources

As previously noted, the Civilian Complaint Review Board is charged with investigating allegations of police misconduct against civilians and recommending action. Frank H. Wohl, chairman of the Civilian Complaint Review Board, testified about the overall function and composition of the organization:

The board is comprised of 13 members. The mayor appoints members of the board who, as required by the authorizing statute, must be residents of New York City, must not work for any governmental agency, and must reflect the diversity of the city's population. The City Council designates five members of the board: one representative from each of the city's five boroughs. The police commissioner designates three members of the board, who are the only members who may have previously worked as law enforcement professionals. And the mayor designates the remaining five board members, including the chair. Board members serve for 3-year terms. The board hires the executive director, who, in turn, hires and supervises the agency's staff. The CCRB's staff is comprised solely of civilians.⁴⁹

⁴² New York City Civilian Complaint Review Board, *January-December 1998 Report*, p. 1 (hereafter cited as *CCRB Report, January-December 1998*). See Wohl Testimony, New York Hearing Transcript, pp. 175-76.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ See New York City Local Law 1 (McKinney, 1993) (amending § 440 of New York City charter).

⁴⁶ The CCRB and the NYPD frequently abbreviate the four major categories that constitute the CCRB's jurisdiction as FADO. The CCRB also tracks other police misconduct that it discovers as the result of its investigations; evidence of this misconduct is turned over to the police commissioner. See Wohl Testimony, New York Hearing Transcript, p. 227. Under this jurisdiction, the CCRB may also investigate complaints of hostile or disparaging language directed by one officer at another officer. See *Patrol Guide* § 118-07.

⁴⁷ See, e.g., *CCRB Report, January-December 1998*, p. 2.

⁴⁸ New York Civil Liberties Union, *Five Years of Civilian Review, A Mandate Unfulfilled*, 1998, p. 4. The CCRB does not usurp power of the police commissioner because authority to discipline police officers remains with the commissioner. Mark Green, public advocate for the City of New York, Office of the New York City Public Advocate, *Investigation of the New York City Police Department's Response to Civilian Complaints of Police Misconduct—Interim Report* (New York, 1999), p. ii (hereafter cited as Green, *Interim Report*). See also New York City Charter § 434.

⁴⁹ Wohl Testimony, New York Hearing Transcript, p. 176. *But see* *ibid.*, pp. 185-86. Mr. Wohl also stated: "I believe that there are two mayoral appointee vacancies or maybe one at the current moment and about to be an additional one because one member of the CCRB is leaving because he is moving outside New York City and you have to be a resident of New York City in order to be a member of the CCRB. And there is also a vacancy in one of the City Council designees, and I believe that that is a Bronx designee." *Ibid.* See

The CCRB currently employs a staff of 163 of an authorized complement of 171 positions. The agency has on staff 107 investigators of the 115 who have been authorized and an administrative and clerical staff which at full capacity number 56. By June 1999, we expect to bring the number of investigators up to the full authorized 115.⁵⁰

Further, the number of CCRB investigators has also risen from 87 to 115 since 1997. Chairman Wohl added, "Eight investigative team managers with substantial law enforcement experience have been hired as well as eight additional investigative supervisors. These improvements have allowed the number of cases per investigator to drop significantly from 85 cases in January 1994 to 22 cases per investigator in May of 1999."⁵¹ Moreover, Mayor Giuliani noted that his administration has increased the CCRB's financial resources by 30 to 40 percent.⁵²

Complaint Procedures

The CCRB investigates allegations of force, abuse of authority, discourtesy, and offensive language. It does not have the authority to discipline recalcitrant officers.⁵³ However, NYPD po-

lice officers of all ranks are subject to the CCRB's jurisdiction.⁵⁴ According to the agency, individuals who are victims of or witnesses to a police misconduct incident are urged to file a complaint with the Civilian Complaint Review Board in a timely manner. Complainants are encouraged to collect various types of information before filing a complaint, such as "any identifying characteristics of the police officers, the names, addresses, and telephone numbers of witnesses and/or victims, and the time, date, and location of the incident."⁵⁵ Civilians can file complaints through the CCRB's Internet complaint form; or its telephone hotline, which operates 24 hours a day and 7 days a week. Other methods include mailing the complaint; or presenting the allegations to the IAB, the CCRB's office, or at police precincts and facilities.⁵⁶ It is also not required for complainants to be New York residents or U.S. citizens, in order to register a complaint of police misconduct.⁵⁷

Once a complaint has been filed, the complainant meets with a CCRB investigator to review the details of the allegation. The investigator then begins to collect factual evidence relating to the complaint by interviewing victims as well as civilians and police officers who may have been possible witnesses to the incident, obtaining relevant police reports and records, observing the scene of an incident, and reviewing medical records.⁵⁸ If necessary, the CCRB can employ subpoenas to gain access to NYPD documents and police officers' testimonies.⁵⁹

New York City Local Law 1 (McKinney, 1993). See also *CCRB Report, January-December 1998*, p. 2.

The commissioner's designees are the only board members who are allowed to have previous experience as law enforcement professionals. The board hires an executive director, who is responsible for management of the investigative staff. That staff is composed entirely of nonpolice officers. *Ibid.* According to Chairman Wohl, two board vacancies have been filled since the Commission hearing, including a Bronx City Council designee and a mayoral appointee.

⁵⁰ *Ibid.*, pp. 176-77. See Giuliani Testimony, New York Hearing Transcript, pp. 45-46.

⁵¹ Wohl Testimony, New York Hearing Transcript, p. 184.

⁵² Giuliani Testimony, New York Hearing Transcript, p. 45.

⁵³ New York City Civilian Complaint Review Board, "What You Need to Know Before Filing a Complaint" (visited Nov. 8, 1999) <<http://www.ci.nyc.ny.us/html/ccrb/home.html>> (hereafter cited as CCRB, "Filing a Complaint"). The CCRB defines the following terms: *force*—"an act of unnecessary or excessive force, including deadly force"; *abuse of authority*—"the improper use of police powers to threaten, intimidate or otherwise mistreat a civilian"; *discourtesy*—"rude or profane gestures and/or language"; and *offensive language*—"a slur that refers to a person's race, ethnicity, religion, gender, age, disability, or sexual orientation." *Ibid.* Wohl Testimony, New York Hearing Transcript, pp. 178, 183. "Other matters of police misconduct that do not fall under the CCRB's jurisdiction are referred to the police department's Internal Affairs Bureau; if the officer determines that the complaint is within the jurisdiction of the CCRB, then he must forward that complaint directly to the CCRB." *Ibid.*

⁵⁴ Wohl Testimony, New York Hearing Transcript, p. 178.

⁵⁵ CCRB, "Filing a Complaint."

⁵⁶ New York City Civilian Complaint Review Board, "How to File a Complaint with the CCRB" (visited Feb. 4, 2000) <<http://www.ci.nyc.ny.us/html/ccrb/home.html>>; Wohl Testimony, New York Hearing Transcript, p. 177. Police departments send these complaints to the CCRB. *Ibid.*, p. 177. See *Patrol Guide* § 118-07; Interim Order 67 (Oct. 21, 1996). When a citizen raises an allegation against an officer by filing a complaint in a police precinct, the officer taking the complaint is charged with making the initial determination as to whether the complaint arises under the jurisdiction of the CCRB. *Ibid.*

⁵⁷ Wohl Testimony, New York Hearing Transcript, p. 177.

⁵⁸ New York City Civilian Complaint Review Board, "What Happens After You File a Complaint?" (visited Feb. 4, 2000) <<http://www.ci.nyc.ny.us/html/ccrb/home.html>> (hereafter cited as CCRB, "What Happens?").

⁵⁹ Wohl Testimony, New York Hearing Transcript, pp. 180-81. The NYPD's Interim Order 51 mandates that subpoenaed police officers must appear at the CCRB to answer all inquiries. *Ibid.*

The CCRB considers some cases as high-priority situations. In these instances, the NYPD promptly furnishes pertinent documents and records and forwards them to the CCRB. According to CCRB's chairman Frank Wohl, these situations are "cases involving serious force or cases in which the subject officer has six or more complaints in 5 years or cases which involve a subject officer appearing on the police department's CCRB profiling and assessment program."⁶⁰ Moreover, police officers involved in (or having knowledge of) alleged police misconduct incidents cannot rely upon the Fifth Amendment's constitutional protection against self-incrimination.⁶¹ Specifically, "[i]f an officer fails to answer a question, his or her failure can result in immediate suspension without pay from the police department and formal charges of insubordination. The officer's failure to cooperate with the CCRB could lead to the officer's termination."⁶²

Complaint Disposition

Once information pertaining to the complaint has been obtained, CCRB investigative staff submits the cases for disposition to a monthly case review panel. These panels are composed of representatives from the mayor's office, the New York City Council, and the police commissioner.⁶³ They examine "full investigation cases," "truncated investigation cases," and "alternative dispute resolution cases." Chairman Frank Wohl's testimony provided further information about these cases:

[*Full investigation cases*] begin as soon as the case is filed. The complaint is assigned directly to an investigative team. A supervisor then reviews the case and assigns it to an investigator, who must attempt immediately to contact the complainant within 24 hours

⁶⁰ *Ibid.*, p. 180.

⁶¹ U.S. CONST. amend. V. "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." *Id.*

⁶² Wohl Testimony, New York Hearing Transcript, p. 181.

⁶³ CCRB, "What Happens?"

of receipt to schedule an interview. When the complaint is made in person at the CCRB, an intake interview takes place immediately. During the interview, the complainant is asked to give a complete statement concerning the alleged misconduct. . . .

In its review of fully investigated cases, the board uses the preponderance of the evidence standard of proof. This standard simply means that the board must perceive the weight of the credible evidence as favoring its findings. The authorizing statute of the CCRB mandates that the board may not make any finding or recommendation based solely upon an unsworn complaint or statement, nor may the board base any present finding or recommendation based on prior unsubstantiated, unfounded, or withdrawn complaints.

The board notifies the parties to a complaint by letter of its findings and recommendations. Substantiated dispositions, those in which the investigation establishes to the board's satisfaction that the misconduct occurred, are forwarded to the police commissioner along with recommendations regarding disciplinary measures.

Truncated investigations are cases in which the investigations are started but do not reach completion. Beginning in January 1, 1998, the category of truncated cases incorporated cases that would have previously been disposed of as administratively closed. Since the new classification has been implemented, the CCRB has been in a better position to track reasons why investigations are not completed. . . . The truncated category distinguishes between cases in which complainants were uncooperative, those who were unavailable, and those who decide to withdraw their complaints.⁶⁴

⁶⁴ Wohl Testimony, New York Hearing Transcript, pp. 181-83 (emphasis added). *CCRB Report, January-December 1998*, p. 3. Of the 5,312 closed cases, 2,584 were fully investigated. *Ibid.* See *CCRB Report, January-December 1998*, p. 28. The category of truncated investigations includes administratively closed cases. These cases, which were phased out beginning in 1997, are cases that were closed before being assigned to an investigator, whether the complaint was withdrawn by the complainant or closed for some other reason. Because the CCRB initiated the practice of immediate assignment of cases to investigators in 1997, the administratively closed designation has been phased out and is not commonly used in recent cases. *Ibid.* See also *ibid.*, pp. 3-4. The CCRB determines a case should be closed only after the investigative staff has followed a set protocol and the board has reviewed the case. Investigators are required to send at least two letters and make a minimum of five telephone calls before a case may be truncated. At the conclusion of this process, if the investigator is unable to reach the complainant, a final letter is sent to the complainant attempting to set up an interview date. If no response is received within 10 business days, the case will be truncated. Similarly, if the

Alternative dispute resolution (ADR) is suggested for less serious cases that are amenable to resolution through either conciliation or mediation. Cases involving allegations of excessive force resulting in injury or property damage are not eligible for ADR, nor are cases involving allegations against an officer with a lengthy history of CCRB complaints.⁶⁵

During *mediation*, complainants and police officers attempt to settle their disputes.⁶⁶ The outcome of this voluntary and confidential process cannot be used in any subsequent judicial or administrative proceeding. In addition, only the complainant, the officer, and the mediator may be present in the mediation room, although the parties may have legal counsel available to them outside the mediation room.⁶⁷ If the parties can settle their differences, then a resolution agreement is signed.⁶⁸ In the event the parties agree that the matter is resolved, then the allegations are removed from the police officer's CCRB record. In 1998, 14 of 5,312 complaints (0.3 percent)

complainant fails to appear for the scheduled interview, a letter is sent promptly, advising the complainant, victim, or witness cannot be contacted, or refuses to cooperate without giving any specific reason. Such cases are also truncated, but the board may reopen the case. In certain other circumstances, the complainant may decide not to pursue a complaint. For instance, subsequent to the intake interview, a complainant may be advised by his or her attorney not to cooperate with the CCRB because of pending litigation. When a complainant elects to withdraw a complaint, the investigator obtains an initial verbal confirmation of this intent and then mails the complainant a withdrawal form. If the written consent to withdraw is not received within a 2-week waiting period, the case is nonetheless closed as complaint withdrawn. See Letter to Mary Frances Berry, chairperson, U.S. Commission on Civil Rights from Frank H. Wohl, chairman, CCRB, May 15, 2000, re: Affected Agency Review, p. 2 (hereafter cited as Wohl Letter). During 1998, 44.9 percent of the cases that the CCRB closed were truncated cases. Of the 5,312 closed cases, 2,384 were truncated. The CCRB does not take any further action in these cases. *CCRB Report, January–December 1998*, pp. 3–4.

⁶⁵ *CCRB Report, January–December 1998*, p. 9. An officer may be involved in only one mediation and one conciliation during a 12-month period. *Ibid.*

⁶⁶ Wohl Testimony, New York Hearing Transcript, p. 182.

⁶⁷ *CCRB Report, January–December 1998*, p. 9. Interpreters (as necessary) and parents/guardians of a minor child who is a complainant may also be present in the mediation room. *Ibid.*

⁶⁸ New York City Civilian Complaint Review Board, "Alternative Dispute Resolution" (visited Feb. 4, 2000) <<http://www.ci.nyc.ny.us/html/ccrb/home.html>> (hereafter cited as CCRB, "ADR").

were successfully mediated.⁶⁹ However, if mediation does not resolve the issue, then the CCRB can continue to investigate the complaint.⁷⁰

Conciliation attempts to reinforce proper police conduct and procedure without going through formal disciplinary mechanisms. The complainant must agree to resolve the complaint through conciliation, but the consent of the subject officer is unnecessary.⁷¹ The conciliation consists of a meeting between the subject officer and a senior member of the CCRB staff.⁷² The officer and staff member discuss the alleged incident and review proper police conduct in those circumstances. The conciliated complaint remains on the officer's record, along with a notation that the complaint was resolved through conciliation. In 1998, 5.8 percent of closed cases (309 of 5,312) were resolved through conciliation.⁷³

CCRB Findings and Standards of Proof

After an investigation is completed, the CCRB identifies each complaint as one of the following dispositions:

- *Substantiated*: There is sufficient credible evidence to believe that the subject officer engaged in misconduct.
- *Unsubstantiated*: There is insufficient evidence to determine whether an act of misconduct did or did not occur.
- *Exonerated*: The subject officer was found to have committed the act but it was determined to be lawful and proper.
- *Unfounded*: The act of misconduct did not occur.⁷⁴

⁶⁹ See *CCRB Report, January–December 1998*, p. 9. The low number of mediated complaints may be attributed, in part, to the newly implemented mediation program, which began in 1997. See also New York City Police Department, Interim Order 24 (Apr. 9, 1998). If allegations are removed from an officer's record, a notation of a successfully mediated complaint is then included. Successfully mediated allegations cannot be considered in future personnel reviews of an officer's performance. *Ibid.*

⁷⁰ CCRB, "ADR."

⁷¹ *CCRB Report, January–December 1998*, p. 9.

⁷² *Ibid.* The complainant is not present during the conciliation process.

⁷³ *Ibid.* The CCRB suspended the conciliation process on May 12, 1999.

⁷⁴ CCRB, "What Happens?"

Complaints and their dispositions usually remain on the subject officers' records, regardless of the board's resolution.⁷⁵ If the board (or panel of the board) concludes that an allegation is substantiated, the allegation is forwarded to the NYPD for possible disciplinary action. When the board refers such a case, it may also recommend a disciplinary measure.⁷⁶ Three types of discipline are possible:

- *Instructions.* The least punitive measure is requiring the subject officer's commanding officer to reinstruct the subject officer on proper conduct and procedures with respect to the substantiated allegations.⁷⁷ "Instructions" is considered akin to training and constitutes informal discipline—i.e., no formal administrative hearing is required before such discipline may be imposed. Instruction is noted in the officer's CCRB history.
- *Command discipline.* Command discipline, although still an informal discipline imposed by the commanding officer without an administrative trial is more punitive than instruction.⁷⁸ Command discipline penalties range from an oral warning to forfeiture of 10 days of vacation time, depending on the severity of the misconduct, the officer's past disciplinary record, and the officer's past performance record.⁷⁹
- *Charges and specifications.* Charges and specifications are the most serious disciplinary measure. These constitute formal administrative charges which, if adopted by the department, are prosecuted by the Department Advocate's Office. Recommended penalties in these proceedings can include ter-

mination; although loss of vacation time or pay are more common disciplinary actions.⁸⁰

Other than making a recommendation to the police department, however, the CCRB can take no action against the subject officer. Pursuant to the City Charter, the authority to discipline officers rests solely with the police commissioner.⁸¹ Moreover, in addition to the "substantiated," "unsubstantiated," "exonerated," and "unfounded" dispositions, the CCRB can also conclude that a complaint meets the criteria for an "other misconduct" category. In these instances, it is determined that a police officer provided false information during the CCRB's investigation, or neglected to complete required stop and frisk reports.⁸² The CCRB then forwards the names of police officers in these cases to the police commissioner for disciplinary action.⁸³

NYPD Responses to Substantiated Complaints

The NYPD's first deputy commissioner is administratively responsible for managing the disciplinary system of the police department.⁸⁴ The first deputy commissioner oversees the Disciplinary Assessment Unit, which is charged with ensuring that the NYPD's discipline system responds accurately and equitably.⁸⁵ Ultimately, substantiated allegations of police misconduct are referred to the NYPD's Department Advocate's Office (DAO):⁸⁶

The primary mission of the Department Advocate's Office is to prosecute disciplinary cases brought against members of the Department. . . . Each year, in excess of one thousand disciplinary cases are processed through the system. This includes both administrative trials and negotiated settlements. The goal

⁷⁵ CCRB Report, January–December 1998, p. 5.

⁷⁶ See *ibid.*

⁷⁷ *Ibid.* In 1998, the CCRB recommended instructional discipline for 30 cases involving 39 subject officers.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.* Command discipline is divided into two schedules. Schedule A, which applies to less serious misconduct, carries penalties of up to forfeiture of 5 days' vacation time. Schedule B, which applies to more serious misconduct, carries penalties of up to forfeiture of 10 days' vacation time. See *Patrol Guide* §§ 118-03, 118-21. Although these disciplinary measures carry permanent notations on an officer's record, they may be sealed if the officer receives no other discipline for a period of 1 to 3 years (depending on the severity of the conduct).

⁸⁰ See CCRB Report, January–December 1998, p. 6.

⁸¹ See New York City Charter § 434. This provision gives the police commissioner the authority to discipline officers.

⁸² Wohl Testimony, New York Hearing Transcript, p. 227.

⁸³ *Ibid.*

⁸⁴ New York City Police Department, "First Deputy Commissioner" (visited Mar. 12, 2000) <<http://www.ci.nyc.ny.us/html/nypd/html/1stdep/1stdepindex.html>>.

⁸⁵ New York City Police Department, "Commands of the First Deputy Commissioner: Special Prosecutor's Office, Disciplinary Assessment Unit" (visited Mar. 12, 2000) <<http://www.ci.nyc.ny.us/html/nypd/html/1stdep/1stdep4.html>>. The Disciplinary Assessment Unit also has a liaison relationship with the CCRB and the mayor's Commission to Combat Police Corruption. *Ibid.*

⁸⁶ Green, *Interim Report*, p. 9.

of the Department Advocate's Office is to maintain an efficient disciplinary system that effectively deters misconduct and corruption while remaining cognizant of individual member's rights.⁸⁷

In order to determine the specific course of action for substantiated complaints, the DAO also considers the CCRB Steering Committee's recommendations relating to disciplinary actions. This committee is composed of the first deputy commissioner, members of his staff, representatives from the DAO, representatives from the Disciplinary Assessment Unit, and the Special Prosecutor's Office.

The Administrative Officer, Managing Attorney, Commanding Officer, the Director of the DAO, and the Advocate all make recommendations as to what action should be taken, including whether charges should be brought and the reasons for the recommendation made. The Police Commissioner ultimately decides whether Charges and Specifications should be filed against the police officer.⁸⁸

Although the DAO is responsible for the "prosecution" of the complaint against the subject officer, the DAO also ensures that a sufficient legal basis exists for any charge brought against a police officer.⁸⁹ The NYPD contends that even at this point in the process, many of the complaints do not warrant disciplinary action because the evidence adduced is insufficient to support a *prima facie* case.⁹⁰ Howard Safir, commissioner of the NYPD, described his role in the disciplinary process in further detail:

If the [CCRB] substantiates a complaint, it is referred to me for further action. . . . I must work carefully within legal parameters established by the civil service law in the New York City Administrative Code, which provides for full evidentiary hearings to ensure that police officers accused of misconduct are disciplined in a fair and equitable manner. My staff reviews the cases. And if a *prima facie* case exists, the

⁸⁷ New York City Police Department, "Commands of the First Deputy Commission: Quality Assurance Division," Department Advocate's Office (visited Mar. 12, 2000) <<http://www.ci.nyc.ny.us/html/nypd/html/1stdep/1stdep3.html>>.

⁸⁸ Green, *Interim Report*, p. 9.

⁸⁹ See *Patrol Guide* § 118-05.

⁹⁰ See New York City Office of Management and Planning, "Civilian Complaint Statistical Summary" (hereafter cited as "Civilian Complaint Statistical Summary"). "In most cases, substantial enhancement and/or reinvestigation is necessary."

office, represented by counsel, has the option to demand the full administrative trial prosecuted by a department advocate. The trial commissioner makes a recommendation of finding and penalty, and I make the final decision. My decision must be supported by a preponderance of the credible evidence in order to satisfy applicable law. You can see from this description of the process that a substantiated complaint may not result in disciplinary action for many reasons, "including the difference in our statutory requirements."⁹¹

After referral to the DAO, therefore, a team of police investigators assigned to the CCRB unit of the DAO often conducts additional investigations to determine whether disciplinary action is appropriate.⁹² The DAO also reviews the charge to determine whether the allegation must be dismissed on other nonsubstantive grounds, such as expiration of the 18-month statute of limitations.⁹³

⁹¹ Safir Testimony, New York Hearing Transcript, pp. 155-56. "Note that the percentage of CCRB referrals which result in disciplinary dispositions has steadily risen over the last 3 years, from 20.7 percent in 1996 to 32.2 percent in 1997 to 47.1 percent in 1998. In fact, through May 5 of this year [1999], a total of 52.6 percent of CCRB referrals have resulted in a disciplinary disposition. We continue to work closely with the CCRB to improve the process in a frank and open dialogue." *Ibid.*, p. 157. See also *ibid.*, p. 226. Commissioner Safir established a zero tolerance policy for police officers who make false statements in administrative or judicial proceedings of misconduct. He testified that he has fired 54 police officers because of this policy since December of 1996. *Ibid.*

⁹² "Civilian Complaint Statistical Summary." The DAO prioritizes civilian complaints alleging use of excessive force and allegations of use of ethnic racial slurs. *Ibid.* Following the initial drafting of this report, the NYPD informed the Commission that the department discontinued its practice of reinvestigating substantiated complaints in September of 1999. The department contends that this change in policy is due to the improved quality of CCRB investigations. The department, however, did not produce any documents to substantiate these contentions.

⁹³ See below. Completing an investigation within the limitations has been a chronic problem for the CCRB, especially during the first 3½ years of CCRB operations. That problem has been reduced substantially, but not eliminated; through the first 4 months of 1999, only two referrals had to be dismissed due to expiration of the statute of limitations. In another two cases, less than 1 month remained in the statute of limitations. In those cases, the DAO prepared charges and specifications (which are similar to an informal indictment; see below) against the subject officer prior to expiration of the limitations period to extend the deadline for disciplinary action. See "Civilian Complaint Statistical Summary." The 18-month statute of limitations restriction controls in all cases except for cases alleging criminal activity.

After evaluating the referred complaint and any additional evidence gathered through additional investigation, the DAO's CCRB team makes a disciplinary recommendation to the department advocate, who may choose to implement discipline ranging from dropping the complaint to serious disciplinary action such as formal charges and specifications. If the complaint is dropped, no further action is taken. In the event that the department advocate maintains that informal discipline is appropriate, the subject officer is referred to his or her commanding officer for action. Lastly, if the department advocate contends that charges and specifications are warranted, then an administrative trial will be initiated.

New York City's Office of Administrative Trials (OATH) conducts formal administrative proceedings for accused NYPD staff who are not above the rank of police officer. OATH is not a part of the NYPD. The deputy commissioner also conducts formal disciplinary hearings. Once a trial has been conducted, those findings are reviewed by the department. If any of the accused are above the rank of officer, then the first deputy commissioner reviews the findings. The first deputy commissioner then refers his decision to the police commissioner for approval. In all cases, the commissioner has final authority to determine the discipline that will be imposed, if any.⁹⁴ In any event, the substantiated CCRB charge remains on the officer's record, along with any disciplinary determination.

CCRB COMPLAINT INVESTIGATION AND NYPD DISCIPLINARY PROCEEDINGS

During its initial years as an independent agency, the CCRB experienced difficulties in conducting efficient and effective investigations. In a number of cases, the CCRB failed to conduct complete investigations. Similarly, the NYPD's low rate of discipline issued to police officers in the CCRB's substantiated cases featured the CCRB as an ineffective entity.

In these instances, the applicable penal statute of limitations governs.

⁹⁴ See *Montella v. Bratton*, 93 N.Y.2d 424, 430 (1999). If the subject officer disagrees with the commissioner's disciplinary decision, he may institute an Article 78 proceeding (a review of administrative proceedings) in New York State Supreme Court to have that decision ruled invalid. It appears that statistics on the frequency with which officers opt for such an appeal are not kept.

Starting with changes made in 1997, however, the CCRB may be reversing that trend. After hiring more investigators, some of whom had extensive previous law enforcement experience, the CCRB completed more investigations—and substantiated more allegations of misconduct—than ever before. The NYPD has also stepped up its efforts since that time, as an increasing percentage of complaints that the CCRB deemed substantiated resulted in disciplinary action. Recent figures for both the CCRB and the NYPD, however, suggest that this reversal is far from complete.

Early CCRB Investigation Practices

Several problems plagued the CCRB during the first couple of years after the independent CCRB began its operations on July 5, 1993. Initially, the agency was understaffed, underfunded, its investigators were inexperienced, and the agency was burdened by various administrative barriers. Discontinuity in leadership roles also plagued the CCRB during its initial years, since the board had four different chairpersons in its first 6 years of existence.⁹⁵ The critical result of these problems may have been the ineffectiveness of investigations conducted during those years. For the vast majority of complaints, a full investigation was never conducted. For example, during the second half of 1996, only 773 of the complaints (27.4 percent) closed during that period received a full investigation.⁹⁶ Another 387 cases (13.7 percent) were resolved through alternative dispute resolution.⁹⁷ The majority of investigations, however, were either administratively closed (47 percent) or truncated (11 percent) for unspecified reasons.⁹⁸

⁹⁵ See New York Civil Liberties Union, *Five Years of Civilian Review*, p. 10.

⁹⁶ See New York City Police Department, Office of Management and Planning, *A Review and Analysis of the Civilian Complaint Review Board's January–December 1996 Report*, p. 7 (hereafter cited as *Review and Analysis, 1996*). Of those 773 complaints, 100 (13 percent) were found to be substantiated, 525 (68 percent) were found to be unsubstantiated, 99 (13 percent) were closed as unfounded, and the officer was exonerated in 49 cases (6 percent). The complainant must voluntarily agree to an ADR process before the CCRB pursues this route.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.* Administrative closure refers to cases closed due to the unavailability or uncooperativeness of the complainant. The separate categories of truncated and administratively closed cases reported in 1996 are no longer reported sepa-

In the relatively few cases where a complete investigation was conducted, that inquiry often lasted more than a year. In January 1996, a full investigation of a CCRB complaint took an average of 16½ months. This prolonged investigation time, which characterized CCRB complaints from its 1993 independence through the end of 1996, adversely affected the ability of the CCRB to substantiate complaints and refer them to the NYPD. As is the case with any inquiry, investigators are challenged by witnesses' fading memories and lost evidence. Any delay, therefore, will almost always result in a lower percentage of substantiated cases. Secondly, in cases where misconduct occurs, delays may provide police officers with the opportunity to ensure that their accounts are consistent.⁹⁹

Finally, the slow pace of CCRB investigations led to a very low percentage of complaints being substantiated by the CCRB. During the second half of 1994, less than 4 percent (3.8 percent) of civilian complaints closed were deemed substantiated.¹⁰⁰ During the first half of 1995, only 3 percent of civilian complaints closed during that period were deemed substantiated.¹⁰¹ Fewer than half of the cases considered during this period were investigated fully.¹⁰²

This trend continued through the end of 1996. For example, during the second half of 1995, 18.1 percent of fully investigated complaints were substantiated, suggesting that many of the filed complaints may have had merit.¹⁰³ In 68.5 percent of cases reviewed by the CCRB during this period, either the CCRB did not conduct an investigation or the investigation

rately. The CCRB now considers any case closed before receiving a full investigation or being resolved through ADR to be truncated.

⁹⁹ This is further exacerbated by the 48-hour rule, which allows an officer to decline to speak with interviewers for 48 hours from the time that he or she is identified as the subject of an investigation.

¹⁰⁰ See New York City Police Department, Office of Management and Planning, *A Review and Analysis of the Civilian Complaint Review Board's Semi-Annual Report for the Period July-December 1995 and Calendar Year 1995*, p. 11 (hereafter cited as *Review and Analysis, 1995*).

¹⁰¹ *Ibid.*

¹⁰² *Ibid.* In fact, 54.8 percent of cases reviewed during this period were not investigated fully.

¹⁰³ *Ibid.* For that period, there were 828 complete investigations, in which the CCRB concluded that 150 complaints were substantiated by credible evidence.

was closed prematurely.¹⁰⁴ However, the substantiation rate of complaints cannot be the only measure of the CCRB's success or failure. Such a low substantiation rate over an entire year and a half suggests that many complaints that should have been investigated more thoroughly received only cursory attention and an incomplete investigation.

This failure to substantiate large numbers of civilian complaints may reflect the CCRB's inability, as an institution, to effectively investigate large numbers of claims during the period from July 1993 through December 1996.¹⁰⁵ Over that time period, the CCRB received approximately 18,300 misconduct complaints. Only 28 percent of those complaints received a full investigation; the vast majority of complaints were either "administratively closed" due to the uncooperativeness of the complainant, or the investigation was ruled "inconclusive," that is, the investigation was concluded without substantial evidence to conclude either that misconduct had or had not occurred.¹⁰⁶ By the end of 1996, the CCRB had accumulated a backlog of 2,517 cases, in which the investigations had not been completed.¹⁰⁷ As a result, by any measure, the first

¹⁰⁴ *Ibid.* Of the 3,897 cases that the CCRB considered during this period, 2,670 were not investigated fully.

¹⁰⁵ According to Chairman Wohl, the report correctly states that "the slow pace of CCRB investigations led to a very low percentage of complaints being substantiated by the CCRB [page 146]" and "this failure to substantiate large numbers of civilian complaints may reflect the CCRB's inability, as an institution, to investigate effectively [page 147]." He states, however, that the CCRB has a slightly different view in that "the real issue is the dispositive disposition rate, which includes not only substantiate findings but also exonerated and unfounded findings." He further acknowledges that he agrees as the report states that the investigation time "has adversely impacted the ability of the CCRB not only to substantiate complaints but to exonerate and to unfound complaints when that is appropriate." In sum, Chairman Wohl states that "the CCRB attaches equal importance and value to substantiated, exonerated and unfounded cases because those are the cases decided on the underlying merits." See Wohl Letter, pp. 1, 2.

¹⁰⁶ See *CCRB Report, January-December 1993*, p. 11. In 1995, for example, the CCRB had truncated closings in 4,661 cases; in 1996, the number was 3,075.

¹⁰⁷ See *ibid.*, p. 27. The total number of cases before the CCRB at the end of the 1997 reporting period was 3,325; the vast majority of the CCRB's cases, therefore, were backlog cases.

3½ years of CCRB investigation produced unsatisfactory results.¹⁰⁸

NYPD Disposition of Substantiated Complaints through 1996

Accordingly, the CCRB's ineffectiveness in investigating claims influenced the amount of actual discipline imposed against officers with substantiated misconduct complaints. In 1996, for example, the police department disposed of only 176 substantiated complaints. One hundred and one of those complaints were dismissed on the grounds that the evidence against the officer was insufficient to support a prima facie case even though the CCRB had previously investigated the complaint and concluded that credible evidence supported it.¹⁰⁹

This low percentage of substantiated cases resulting in police officer discipline may have been, in part, a reaction by the NYPD to the relocation of the CCRB outside the police department.¹¹⁰ Before the creation of a wholly independent CCRB, the department dismissed relatively few substantiated charges. In 1992, for example, the last entire calendar year during which the CCIB resolved civilian complaints, Police Commissioner Kelly dismissed 30 of 176 substantiated complaints; previously in 1991, 26 substantiated complaints, out of a total of 183, were dismissed after the CCIB concluded that

evidence substantiated the charges at issue.¹¹¹ It appears, therefore, that the newly independent CCRB had a different view of the sufficiency of a complaint than the department did during the years immediately preceding the creation of the CCRB.

More significantly, the length of time that the CCRB was required to conduct investigations significantly reduced the department's ability to act on substantiated complaints. In 1995, for example, the CCRB referred 250 substantiated complaints to the DAO for disciplinary action. Of those referrals, the 18-month statute of limitations had already expired in 59, or 23.6 percent, of those cases.¹¹² Specifically, the NYPD was precluded from acting on almost one-quarter of the cases that the CCRB was able to substantiate. Furthermore, an additional 137 cases (54.8 percent of the total referred) were between 15 and 18 months old, leaving the DAO little time to investigate and prepare charges against the officers involved.¹¹³ In 1996, the CCRB reduced substantially the number of substantiated complaints lost on limitations grounds: 9.7 percent of substantiated referrals, or 28 out of a total of 290 referrals, were older than 18 months at the time of referral.¹¹⁴ However, 60.3 percent of all referrals (175 out of 290) were between 15 and 18 months old, leaving the NYPD less than 3 months to investigate and act on the referral.

Even in cases where the limitations period had not expired at the time of referral, however, the DAO and the NYPD often failed to take any

¹⁰⁸ The 3½-year period includes the time from July 5, 1993, through Dec. 31, 1996.

¹⁰⁹ See New York City CCRB *Semiannual Status Report, January-June 1996*, pp. 37-38; New York City CCRB *Semiannual Status Report, June-December 1996*, pp. 45-46.

¹¹⁰ See Captain George Grasso, letter to CCRB executive director Hector Soto, July 28, 1995. It is worth noting, however, that discipline often was not implemented against subject officers for complaints filed before the creation of the independent CCRB as well. For complaints registered during the first half of 1993, the last period in which the NYPD investigated civilian complaints, the NYPD disciplinary assessment unit noted that less than half of concluded referrals resulted in discipline (44 out of 96 referrals). The discipline for those officers ranged from referral of the officer to command for instructions or loss of 4 hours of vacation time to termination. Those punishments correspond to the range of punishments that officers received after being found guilty of charges substantiated by the independent CCRB. In more than half of the cases referred to the Disciplinary Assessment Unit, however, the complaint against the officer was either dismissed or the officer was found not guilty following a departmental trial. *Ibid.*

¹¹¹ See New York City Civilian Complaint Investigation Bureau, *1992 Annual Report*, p. 16; New York City Civilian Complaint Investigation Bureau, *1991 Annual Report*, p. 16.

¹¹² NYPD Disciplinary Assessment Unit, "C.C.R.B. Statistical Information" (rev. ed. May 12, 1999) (hereafter cited as CCRB, "Statistical Information").

¹¹³ *Ibid.*; CCRB *Report, January-December 1998*, p. 49. This high number of 15-month-old cases may explain why the DAO dismissed so many cases otherwise scheduled for an administrative trial. To prevent having too many cases dismissed on statute of limitations grounds, the DAO implemented a policy of automatically filing charges and specifications whenever it received a substantiated complaint more than 15 months old, as such an action effectively tolled the statute of limitations. See *Task Force on New York City Police/Community Relations: Report to the Mayor*, March 1998, p. 85 (hereafter cited as *March 1998 Task Force Report*). After filing charges, the DAO conducted its own investigation, from which it may have concluded that disciplinary action was unwarranted. In such a case, the DAO would have the charges dismissed.

¹¹⁴ See CCRB "Statistical Information."

disciplinary action against the subject officers. During the first half of 1996, for example, the DAO closed 98 cases involving 134 subject officers. The DAO dismissed the complaint with respect to 52 officers (38.8 percent), concluding that the evidence was insufficient to support a prima facie case. The DAO recommended that charges and specifications be brought against only 47 officers (35.1 percent).¹¹⁵ Even aside from the CCRB's problems, therefore, the NYPD may not have taken strong measures to ensure that proper discipline was meted out to officers who were guilty of misconduct.

The CCRB's Effectiveness: 1997 to the Present

After 1996, the CCRB improved both the quality and efficiency of its investigations. The most telling indication of early CCRB inefficiency may be the constantly rising rate of "affirmative" findings—that is, cases in which, following an investigation, the board concluded that a case was either substantiated, exonerated, or unfounded.¹¹⁶ For example, in 1995, the board reached an affirmative conclusion in only 21.9 percent of all fully investigated cases. This percentage rose to 26.9 percent in 1996, to 38 percent in 1997, and to 43 percent in 1998.¹¹⁷

Similarly, the reduced number of substantiated complaints dismissed by the NYPD due to expiration of the 18-month statute of limitations is another indicator that the CCRB has improved its operations over the past few years. In 1995, the DAO dismissed 52 complaints on limitations grounds, representing 19.5 percent of cases closed by the department that year.¹¹⁸ In 1998, however, that percentage dropped in half, as the number of dismissals dropped to 37, rep-

resenting 9.9 percent of cases closed by the department.¹¹⁹

These improvements are likely the direct result of better trained and more CCRB investigators. After complaints are registered with the CCRB, they are now assigned directly to an investigator, rather than being processed administratively before being assigned to an investigator. This allows investigations to proceed more quickly, before trails get cold or complainants become more difficult to track down. More importantly, the CCRB expanded its investigative staff. During the second half of 1996, the CCRB added 13 new investigators to its staff, resulting in a 50 percent reduction of the average investigator's caseload, from 46 to 23.¹²⁰ As a result, the CCRB improved on its late referrals in 1997.¹²¹ That year, 9.8 percent of all referred substantiated complaints were older than 18 months, while 23.2 percent of substantiated referrals were between 15 and 18 months old.¹²² That trend continued in 1998,¹²³ as only five referrals, or 2.5 percent of the pool, were past the limitations period, while six referrals, comprising 3 percent of the pool, were between 15 and 18 months old. By 1997, the CCRB reduced its backlog to 1,045 cases, which constituted 41.9 percent of its then-current docket.¹²⁴ Significantly more cases received a full investigation, as the number of truncated cases fell to 2,127 from 3,075 in 1996.¹²⁵ The CCRB reduced its

¹¹⁵ Ibid.

¹¹⁶ The CCRB considers these to be "affirmative" findings because they indicate that the evidence was sufficient for the board to reach an affirmative conclusion as to what happened and whether those events constituted an act of misconduct on the part of the subject officer. Complaints that are "unsubstantiated," by contrast, are those in which, after a full investigation, the board is still unable to reach a conclusion as to what happened.

¹¹⁷ See *CCRB Report, January–December 1998*, p. 29. Because some fully investigated cases are closed without any finding by the board, 1998 marked the first year in which the percentage of affirmative findings actually exceeded the number of unsubstantiated cases. Ibid., pp. 29–30.

¹¹⁸ See "Civilian Complaint Statistical Summary," Closing Comparison.

¹¹⁹ Ibid.

¹²⁰ See New York City Police Department, Office of Management and Planning, *A Review and Analysis of the Civilian Complaint Review Board's January–December 1997 Report*, p. 7 (hereafter cited as *Review and Analysis, 1997*).

¹²¹ See *CCRB Report, January–December 1998*, p. 27. The statistics for 1997 were consistent with a trend that saw the total number of cases that the CCRB closed decline each year from 1996 through 1998. Because the sheer number of cases closed indicates nothing about the quality of those closings—i.e., number of full investigations conducted, complaints substantiated, and discipline imposed—this statistic figures to be relatively insignificant.

¹²² Ibid. The precise numbers were 45 referrals older than 18 months and 109 referrals between 15 and 18 months out of a total of 471 substantiated referrals for 1997.

¹²³ Ibid. In 1998, however, the CCRB referred far fewer complaints to the DAO than in 1997 (201 in 1998, 471 in 1997).

¹²⁴ See *CCRB Report, January–December 1998*, p. 27. The previous year, backlog complaints had constituted 75.7 percent of the CCRB docket.

¹²⁵ Ibid.

backlog even more in 1998, lowering the number of backlog cases to 890, which constituted 42.2 percent of its docket.¹²⁶

Moreover, after the brutal attack on Abner Louima, the mayor's Task Force on Police/Community Relations was created in March of 1996.¹²⁷ The task force issued a report that included recommendations to improve the civilian complaint process.¹²⁸ As a result of the task force's guidance, the mayor provided a \$1.5 million budget increase in the CCRB's budget, and a 20 percent increase of its investigation staff.¹²⁹ Similarly, during the U.S. Commission on Civil Rights New York hearing, the chairperson of the CCRB also commented on the improved quality of the CCRB's investigations:

The quality of the CCRB's investigations . . . has improved dramatically, particularly since the increased funding of 1997 and '98, which . . . decreases the number of cases per investigator very significantly. . . . [A]s a consequence . . . the number of cases in which the police commissioner has accepted the . . . recommendation of the CCRB has increased dramatically, going from 32 percent of those cases referred by the CCRB in . . . 1995 or '96 to 58 percent in the second half of 1998, and 52 percent thus far this year [1999].¹³⁰

The additional allocation of funds, however, still left the CCRB underfunded, considering the size of the police department. In 1998, the CCRB's budget was \$6.7 million, which was \$700,000 more than the CCIB was allocated in 1992, its last full year of existence.¹³¹ That budget increase, however, fails to match the 27 percent increase in the size of the police force between 1992 and 1998. Assuming that the 1992 CCIB budget of \$6 million was adequate, a budget of no less than \$7.62 million was required for 1998. Hence, the CCRB should have

received at least 1 million additional dollars that year.

It appears that the 1999 budget came close to meeting this target; for fiscal year 1999, the CCRB operating budget was \$7,432,792.¹³² That budget increase allows the CCRB to increase the size of its investigative staff to 115, including 8 team managers with at least 15 years of law enforcement experience.¹³³ The new budget also allows the CCRB to retain highly trained personnel; the CCRB has promoted other investigators to assistant supervisor and to salary levels above the entry-level position.¹³⁴

The movement toward closing cases earlier continued in 1998, as only five of the cases (2.5 percent) referred during that year were past the limitations period, while another six referrals, constituting 3 percent of the substantiated complaints, were between 15 and 18 months old.¹³⁵ Furthermore, the percentage of cases that the CCRB referred to the NYPD with more than 6 months left on the statute of limitations increased from 47.5 percent in 1997 to 79 percent in 1998. Some critics have asserted, however, that after showing signs of improvement in 1997, the 1998 CCRB statistics indicate that trend has been reversed. The substantiation rate for all complaints dropped to 5.6 percent in 1998.¹³⁶ Norman Siegel, executive director of the New York Civil Liberties Union, also testified during the Commission's hearing about this problem:

In its almost 6-year existence, [the CCRB] has largely failed in its mission. From July 1993 when it opened its doors to December 1998 . . . there were 28,104 complaints filed at the CCRB. Only 10,177, which is 36 percent of the complaints, were fully reviewed. Only 1,438, which is 5 percent, were substantiated and only 504, 2 percent of the cases, led to a police officer being disciplined. . . . [C]ases are filed and they sit for months and months and sometimes years before the PC [police commissioner] acts on them. And then when the PC acts on them, more often than not,

¹²⁶ Ibid.

¹²⁷ Katherine Lapp, director and commissioner of Criminal Justice Services, State of New York, Testimony, New York Hearing Transcript, pp. 171-72. Previously, Commissioner Lapp served as the executive director of the Task Force on Police/Community Relations for 5 months. Ibid., p. 170.

¹²⁸ Ibid.

¹²⁹ Ibid., p. 174.

¹³⁰ See Wohl Testimony, New York Hearing Transcript, p. 185.

¹³¹ See also New York Civil Liberties Union, *Five Years of Civilian Review*, p. 9, n. 25.

¹³² See *CCRB Report, January-December 1998*, p. 7.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid. In 1998, however, the CCRB referred far fewer substantiated complaints to DAO than it had in 1997 (down from 471 in 1997 to 300 in 1998).

¹³⁶ See New York City Police Department, Office of Management and Planning, *A Review and Analysis of the Civilian Complaint Review Board's January-December 1998 Report*, p. 15 (hereafter cited as *Review and Analysis, 1998*).

he dismisses the case. That is an extremely important problem.¹³⁷

In addition, the number of closed cases in which the CCRB did not conduct a full investigation rose in 1998, reaching 2,405 cases.¹³⁸ At the same time, the number of fully investigated cases decreased from 3,141 in 1997 to 2,584 in 1998.¹³⁹ As a result, the percentage of cases that the CCRB investigated fully fell from 56.3 percent of all cases closed in 1997 to 48.6 percent of all cases closed in 1998.¹⁴⁰ The percentage of cases that the board substantiated also fell in 1998. While 14.3 percent (448) of all fully investigated cases were substantiated in 1997, only 11.6 percent (300) of fully investigated cases were substantiated in 1998.¹⁴¹ As a result, the board substantiated almost 150 fewer cases in 1998 than in 1997.¹⁴²

¹³⁷ Siegel Testimony, New York Hearing Transcript, pp. 101–02. See also Christine Quinn, member of the New York City Council, Westside of Manhattan, Testimony, New York Hearing Transcript, p. 566. “I was the original sponsor of the Civilian Complaint Review Board legislation, and have watched it in the recent years been ignored, diluted, weakened, and ridiculed, and am most unhappy about it.” Ibid.

¹³⁸ *Review and Analysis, 1998*. In 1997, there were 2,127 truncated cases.

¹³⁹ Ibid., p. 28. The numbers for both 1997 and 1998 were significantly higher than previous years. This suggests that the direct assignment of all complaints to investigators has been a very positive improvement for CCRB investigations.

¹⁴⁰ Ibid.

¹⁴¹ See *CCRB Report, January–December 1998*, p. 29.

¹⁴² Ibid., pp. 30–31. In many substantiated cases, the board also recommends the level of discipline that should be imposed. In 1997, following the directive of the City Council, the CCRB issued a disciplinary recommendation in 97.8 percent of all substantiated cases; in 1998 the CCRB made a recommendation in all substantiated cases. The severity of these recommendations has fluctuated over the past 4 years and does not appear to follow any discernible pattern. When broken down by category, however, it appears that the CCRB seems to recommend the most severe discipline where the primary allegation is unnecessary force. In such cases, the board was very likely to recommend charges and specifications. Allegations of abuse of authority were the next most serious; although the board recommended charges and specifications in some of these cases, a recommendation of command discipline was more common. Allegations of discourtesy and offensive language were considered less serious and generally carried a recommendation of command discipline or instructions. Ibid.

Improvements in Police Responses to Substantiated Referrals since 1997

During the Commission’s hearing, Mark Green, public advocate for the City of New York, stated that in January of 1997 the Public Advocate’s Office began to examine the number of cases that received discipline as a disposition.¹⁴³ He indicated that less than half of the civilian complaints that are substantiated by the Civilian Complaint Review Board resulted in discipline from the NYPD.¹⁴⁴ In his interim report, Mr. Green noted the decline in the number of disciplinary actions imposed by the CCRB:

During the first two years of the Giuliani Administration—which coincided with the first two full years of an independent CCRB—46% of police officers with substantiated complaints were disciplined. During the next two and a half years—which largely coincided with the first two and a half years under Commissioner Howard Safir—just 27% of all officers with substantiated CCRB complaints were disciplined, with a low of just 21% in 1996. *Consequently, in this two and a half year period, civilian complaints against police abuse led to disciplinary action in under 2% of all cases.*¹⁴⁵

Secondly, Mr. Green observed that often there is a lack of communication between the CCRB and the police commissioner regarding the particular reasons for the disposition of substantiated cases. He noted that often when the police commissioner disposes of substantiated complaints through either imposing discipline or not, he does not offer an explanation to the CCRB for the specific disposition (i.e., “[the] evidence was dated, . . . inadequate, etc.”)¹⁴⁶

¹⁴³ Green Testimony, New York Hearing Transcript, p. 258.

¹⁴⁴ Ibid.

¹⁴⁵ Green, *Interim Report*, p. 4 (emphasis in original). “In the last six months of 1998, only after the Abner Louima case and after the commencement of this investigation and others, the disciplinary rate increased to 58.4%.” Ibid., p. 4. For much of the first 2 years of the Giuliani administration, the department disciplined officers based on complaints substantiated by the “old” CCRB that was part of the department. The low percentages of cases in which discipline was imposed over the next 2 years may have been caused, in part, by untimely and relatively poor quality investigations from the newly independent CCRB.

¹⁴⁶ Green Testimony, New York Hearing Transcript, pp. 266–67. During 1999, however, the department did initiate the practice of providing the CCRB with disposition data pertaining to the specific penalties imposed on officers with complaints substantiated against them.

Over the past few years, the department has made some strides to improve its response to substantiated referrals from the CCRB.¹⁴⁷ The increased rate at which the department is taking disciplinary action on substantiated referrals suggests not only that the NYPD has taken a more serious view of substantiated complaints, but also that the quality of CCRB investigations has improved as well. Last year, the DAO dismissed far fewer substantiated referrals on the grounds that the evidence failed to present a prima facie case than had been dismissed for similar reasons in previous years. In 1995, the DAO dismissed 34 cases for failure to state a prima facie case, representing 12.8 percent of the substantiated cases referred to DAO that year. In 1998, on the other hand, only 24 cases, representing 6.4 percent of the substantiated cases, were dismissed for that reason.¹⁴⁸ In 1998, the department administered some type of discipline in 176 out of 374 substantiated cases disposed of during the year.¹⁴⁹ Internal NYPD documents also suggest that civilian confidence in the ability of the NYPD to resolve (or at least process) incidents of police misconduct is on the rise.¹⁵⁰

¹⁴⁷ Following the initial drafting of this report, the department informed the Commission that it had undertaken additional steps to assist the CCRB. In particular, the department has assigned a police lieutenant to serve as a full-time liaison to the CCRB, the department has instituted a 4-day training program for newly assigned CCRB investigators, and CCRB investigators now participate in the Internal Investigations course that IAB conducts.

¹⁴⁸ See *Review and Analysis, 1998*, p. 15.

¹⁴⁹ *Ibid.*, p. 16. An additional 24 cases were "filed" rather than reaching an ultimate disposition due to resignation, death of the officer, or other circumstances. No discipline was administered in 174 cases. *Ibid.* Following the initial drafting of this report, the department informed the Commission that the percentages of cases in which discipline was imposed rose significantly again in 1999. According to department statistics, 292 out of 482 officers (60.5 percent) received some form of discipline in cases closed last year.

¹⁵⁰ See "Civilian Complaint Statistical Summary." The statistics on which that conclusion is based seem to support that conclusion only indirectly. The NYPD Statistical Summary notes that civilian complaints filed with the NYPD in 1998 were up 84 percent over 1997, while complaints filed directly with the CCRB declined 26 percent over the same period. These statistics appear to suggest that civilians have not necessarily increased their confidence in the NYPD's ability to resolve civilian complaints, but that it is more convenient for a complainant to go to his or her local precinct instead of to the CCRB. However, these statistics also indicate that the CCRB has not adequately informed the public about what is the most efficient method for register-

Concomitantly, the NYPD has taken steps to more expeditiously and efficiently deal with CCRB complaints referred to the department for discipline. In December 1995, the Department Advocate's Office created a separate CCRB team with responsibility for dealing with complaints substantiated by the CCRB.¹⁵¹ That team is assigned its own investigators.¹⁵² During the same year, the police commissioner created a Disciplinary Assessment Unit to coordinate the disciplinary system and act as liaison to the CCRB.¹⁵³ Over the past 3 years, the DAO increased staffing within the CCRB unit of the DAO to help curb nonmerits dismissals as well as to deal with a large number of referrals that have come as the CCRB has dealt with a backlog of previously uninvestigated complaints.¹⁵⁴ Since its creation in December 1995, the CCRB team within the DAO team has grown from 7 members to 24 members. As of February 1999, the team included 1 attorney/team leader, 14 assistants, 1 supervisor investigator, 7 investigators, and 1 clerical worker.¹⁵⁵ In December 1996, Police Commissioner Safir also instituted a zero tolerance policy for officers lying in judicial or administrative actions.

As the mean time for investigating CCRB complaints has decreased, the percentage of substantiated complaints resulting in disciplinary action has increased, from a low of 20.7 percent

ing a civilian complaint—i.e., calling the CCRB directly. The NYPD maintains that police officers seem to have become more willing to accept and properly process a civilian complaint, as the sharp decrease in complaints concerning NYPD officers in the complaint-taking process illustrates. See *Review and Analysis, 1995*, p. 9. The NYPD's statistics also report that in 1998, nearly half (48.1 percent) of all civilian complaints were filed with the NYPD (before being referred to the CCRB), while only about one-quarter (27.2 percent) of all complaints were filed with the NYPD the year before. *Ibid.* That increase may be due, in part, to the fact that a low percentage of people seemed willing to file complaints in person at NYPD precincts the year before. See *March 1998 Task Force Report*, p. 95.

¹⁵¹ See New York City Police Department, Executive Development Program, "Disciplinary System Reforms," 1995.

¹⁵² See *ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ See "Civilian Complaint Statistical Summary." The NYPD notes that since its creation in 1995, the size of the CCRB unit has been increased from 7 to 24 officers. That increase in staffing allowed the CCRB unit to dispose of 136 referrals in the first 4 months of 1999. *Ibid.*

¹⁵⁵ See CCRB "Statistical Information," Department Advocate's Office CCRB Team Staffing.

in 1996 to 47.1 percent in 1998 and 52.6 percent for the first 4 months of 1999.¹⁵⁶ As a result, more officers appear to have been disciplined as the result of substantiated CCRB complaints.

These reforms, however, are far from complete. Even in cases where the limitations period has not yet expired, the DAO often fails to take action against the officers involved. During the latter half of 1998, for example, the department closed 78 cases that did not result in disciplinary action.¹⁵⁷

The NYPD continues to decline to provide the CCRB and the public with detailed information on its disposition of referred cases. In cases where disciplinary measures are imposed, the department often does not indicate the penalty imposed. For example, in the second half of 1998, the department imposed penalties in 128 cases. In 82 of these cases, the officers pled guilty and accepted command discipline. However, in none of these cases did the department reveal the specific penalty that was imposed.¹⁵⁸ The NYPD has provided less information in cases where it declined to take any disciplinary action. In 44 of the 78 substantiated cases that the department closed without imposing any discipline, the department did not identify any reason for that disposition.¹⁵⁹ As the CCRB notes, when a panel of the CCRB substantiates a complaint, it does so almost always with the consent of one of the police commissioner's designees to

the board.¹⁶⁰ The prevalence of these unexplained dismissals is disturbing because it undermines public confidence that officers who have committed misconduct are receiving appropriate discipline.

Furthermore, the DAO has not dealt with substantiated referrals in an expeditious manner. Cases referred to the DAO are usually not acted upon within the same year. For example, during the first half of 1997, only 2 of the 281 substantiated complaints referred to the DAO were resolved.¹⁶¹ The NYPD closed only 19, or 6.3 percent, of the 300 cases referred to the NYPD in 1998 during that same year.¹⁶² Although the department has indicated that it requires 3 months to investigate a referral and additional time to close it,¹⁶³ in practice, the department takes much longer to dispose of cases. In 1996, the CCRB referred 256 substantiated cases to the NYPD; by the end of 1998, 23 cases (9 percent) had not yet been closed.¹⁶⁴ While the NYPD has indicated that several months are necessary to close a case, it has offered no rationale for why it should take more than 2 years to close a case that the CCRB has already investigated fully. In addition to ensuring that officers who commit misconduct are disciplined, and explaining the reasons why discipline is not imposed when appropriate, the department should also make every attempt to resolve substantiated referrals as expeditiously as possible.

¹⁵⁶ See "Civilian Complaint Statistical Summary"; Safir Testimony, New York Hearing Transcript, p. 157. See *CCRB Report, January–December 1998*, pp. 29–30. CCRB data indicate that almost half of substantiated referrals in 1998 were met with discipline by the commissioner.

¹⁵⁷ This was the most recent half-year period for data available during the initial drafting of this report. Since that time, the department has provided the Commission with data stating that more than 60 percent (292 of 482) of closed cases in 1999 resulted in some form of discipline for the officer. Over the last several years, therefore, the department has shown significant improvement in prosecution of misconduct cases.

¹⁵⁸ See *CCRB Report, January–December 1998*, pp. 32–33. The department did agree to provide information on whether an officer received Schedule A or Schedule B command discipline. The NYPD has also agreed to provide information on penalties that result from cases where charges and specifications are filed in 1999.

¹⁵⁹ *Ibid.*, p. 33. The department declined to impose discipline for unknown reasons in 67 cases during the first half of 1998.

¹⁶⁰ *Ibid.* For the period ending December 1998, the commissioner's designees to the CCRB had all supervised the disciplinary process as members of the NYPD.

¹⁶¹ See New York City Police Department, Office of Management and Planning, *A Review and Analysis of the Civilian Complaint Review Board's January–June 1997 Report*, pp. 6, 11 (hereafter cited as *Review and Analysis, January–June 1997*). Neither of those cases resulted in any disciplinary action. *Ibid.*, p. 11. The recent progress that the CCRB has made in conducting timely and efficient investigations should alleviate NYPD criticisms that slow CCRB investigations make it more difficult to act on substantiated complaints.

¹⁶² See *CCRB Report, January–December 1998*, p. 32.

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*, p. 31. The percentage of 1997 cases open at the end of 1998 was even higher; 238 of 448 (53.1 percent) of 1997 referrals remained open at the end of 1998. *Ibid.*, pp. 31–32.

THE PUBLIC CONCERN ABOUT MISCONDUCT INVESTIGATIONS

CCRB Complaint Procedures

The ultimate indicator of effectiveness may lie in the local communities' opinion of the CCRB's ability to address their concerns of alleged police misconduct. According to Chairman Frank Wohl, most of the public's current dissatisfaction with the agency stems from its initial impressions of the CCRB as a fledgling and underfunded organization. These views of the CCRB as an ineffective agency are no longer accurate, due to the presence of additional funding and more investigators.¹⁶⁵ However, Chairman Wohl noted that several barriers exist which affect the organization's image and effectiveness. These include conflicting accounts of misconduct allegations, the public's failure to report incidents to the CCRB, and the intense disappointment of complainants when the CCRB does not substantiate their complaints.¹⁶⁶ Moreover, he maintained that the CCRB should improve upon responding to complainants in those situations where complaints are made in good faith, yet they are not substantiated due to the justified actions of the police officer(s) involved or the insufficiency of the evidence.¹⁶⁷

Similarly, other witnesses described their various impressions of the CCRB. Lorraine Cortes-Vazquez, president of the Hispanic Federation, reviewed survey findings in the organization's report, *Police and Quality of Life Issues*, and provided the following testimony to the Commission:¹⁶⁸

The thing that was the most alarming . . . for us was the number of Latinos who did not even know where to take their complaints about the police department. When . . . asked, "Do you know that there is a Civilian Complaint Review Board?" 73 percent said no. That is of serious concern because people do not even know

what the options are available to them. That is not to say that the police or the Civilian Complaint Review Board may be the most effective, but not even knowing that that option is available to you is of real concern to us.¹⁶⁹

Iris Baez, mother of Anthony Baez (who died as a result of being put in a choke hold by an NYPD officer in 1994) reiterated Ms. Cortes-Vazquez's observations:¹⁷⁰

[Police Commissioner] Safir did nothing until the community came out and started protesting, then he read the papers . . . after 15 complaints, and we proved that [then-officer Livoti] had done this before, he had choked other people, he had a history of choking people, he liked to take them by the neck. . . . Why do the victims have to prove anything when it is documented. . . . ? [T]he CCRB is a rubber stamp; that is number one. So nobody goes to the CCRB, because I didn't even go to the CCRB to report this [incident relating to the death of her son]. . . . It got to the CCRB, but I didn't even go to report it. So it is that the people don't have trust, anymore, in the commu-

¹⁶⁹ *Ibid.*, p. 366.

¹⁷⁰ *United States v. Livoti*, 196 F.3d 322 (2nd Cir. 1999), *cert. denied*, 120 S.Ct. 1961, 146, L.Ed.2d 793 (2000). The court summarized the events that led to the death of Anthony Baez: "At around 1:30 a.m. on Dec. 22, 1994, then-officer Francis Livoti of the New York City Police Department . . . , and three other officers parked their two patrol cars on a street near the South Bronx home of Anthony Baez. Baez and his three brothers were playing football in the street. After two errant passes struck the patrol cars, Livoti yelled and cursed at the brothers, ordering them to go home. After some discussion among themselves, the Baez brothers decided to continue their game, playing in the opposite direction. Before they could continue, however, Livoti again got out of the patrol car, cursing at the brothers and challenging them to a fight. The situation escalated when Baez's brother David openly defied Livoti's orders to leave. Livoti announced that David would be spending Christmas at Rikers Island [prison], cuffed him, and put him in the back of a patrol car.

Livoti then turned to Anthony Baez, who had been protesting his brother's arrest. Livoti pushed Baez across the street and attempted to cuff his hands behind his back. Baez resisted Livoti's efforts to handcuff him behind his back, holding his hands to his chest. Baez's father (who had come out of the house) and brothers then saw Livoti put Baez in a choke hold, hooking the crook of his arm around Baez's neck and pulling Baez upward and backward. Baez's father shouted at Livoti, pleading with him to stop choking his son. After some time, Livoti lowered the by then limp Baez to the ground and cuffed his hands behind his back. Meanwhile, four additional officers had arrived on the scene in two more patrol cars. Baez remained motionless on the ground until police officers carried him to a patrol car and drove him to a nearby hospital. He was pronounced dead shortly thereafter." *Id.* at 324-25.

¹⁶⁵ Wohl Testimony, New York Hearing Transcript, p. 205.

¹⁶⁶ *Ibid.*, pp. 205-06.

¹⁶⁷ *Ibid.*, p. 206.

¹⁶⁸ Cortes-Vazquez Testimony, New York Hearing Transcript, pp. 363-64. "The Hispanic Federation is a not-for-profit organization of 62 Latino community-based organizations throughout the New York/New Jersey area. . . . The Hispanic Federation has done a survey on Hispanic New Yorkers for the past 7 years. And for the first time since the Hispanic Federation began its annual survey in 1993, police brutality emerges as the most important problem facing New Yorkers according to Hispanic New Yorkers." *Ibid.*

nity, in the precinct. . . . And the other officers that lied to protect Livoti are not doing one minute of their time in jail, and they are still working in the city.¹⁷¹

Moreover, Andrea Payne, a congressional caseworker for Representative Gregory W. Meeks (D-NY, 6th District), indicated that factors such as inaccessible complaint forms and insensitive police staff inhibit the CCRB's efficacy:

I don't see how we could have an impartial Civilian Complaint Review Board when the forms are available at the local police precincts; when people are attacked, or they have experienced some brutality, and they go into the precincts to even ask for the form they are intimidated. In one case an evangelist went to a precinct to ask for such a form [and] she was shoved down a flight of stairs by a captain.¹⁷²

Ms. Payne also stressed that the lack of communication between the CCRB and community members is a lingering issue that should be addressed. Specifically, she asserted that when many serious cases of police misconduct are presented to the CCRB, they are often found to be unsubstantiated:

There was an egregious case where two pre-teenage youth were strip searched by police officers in a narcotics operation. Their parents were never notified that they were, first, taken into custody and, secondly, that they were strip searched. When the chil-

¹⁷¹ Iris Baez, South Bronx resident and mother of Anthony Baez, Testimony, New York Hearing Transcript, pp. 431-33. See *Livoti*, 196 F.3d at 325-27. Livoti was indicted for violating Baez's civil rights pursuant to 18 U.S.C. § 242. During the trial, the government presented evidence *inter alia*, that Baez died as a result of a choke hold; eyewitness accounts of Livoti's use of the choke hold; and Livoti's knowledge of the NYPD's policy prohibiting choke holds, due to previous complaints of excessive force against him and subsequent warnings from his superiors. The United States Court of Appeals affirmed the sufficiency of this evidence. *Id.* at 325-27. On Apr. 17, 2000, the mayor signed a bill (introductory no. 510) sponsored by City Council members Carrion, Henry, and Linaris that would name Cameron Place, between Jerome Avenue and Morris Avenue in the Bronx, as "Anthony Baez Place." In signing the bill, the mayor stated, "While nothing can compensate for the loss of a son or a brother, this small act in commemoration of Anthony's life will hopefully demonstrate the City's profound sorrow for the loss that the Baez family has suffered." Remarks by Mayor Rudolph W. Giuliani at Public Hearing on local laws, Press Office Release # 135.00, Apr. 17, 2000 <www.ci.nyc.ny.us>.

¹⁷² Payne Testimony, New York Hearing Transcript, p. 436. This particular anecdote is an unsubstantiated, second-hand account of an event.

dren complained to their parents, it was attempted to be covered up. And when they reported this to the Civilian Complaint Review Board, of course it was unsubstantiated. When we inquired to them as to what constitutes a substantiated versus an unsubstantiated complaint, we received no response. We are still awaiting that response, and this is more than a year now.¹⁷³

Additionally, Robert Feldstein, Esq., a tenants' rights advocate, informed the Commission that civilians also fear retaliation from the NYPD if they file any complaints of police misconduct with the CCRB.¹⁷⁴ For example, Mr. Feldstein repeatedly has been the victim of various misdemeanor crimes. When he attempted to inform the NYPD of these incidents, the police officers allegedly refused to receive his report of these crimes, and encouraged him to accept mediation.¹⁷⁵ In response, Mr. Feldstein filed a complaint with the CCRB:

I also embarrassed the police because of their inaction and ineffectiveness. I put up my own reward poster that if anyone was witness to the persons who were committing these misdemeanors, that there would be a reward. Only a few days after I met with the captain of the 61st Precinct, and I explained about my pending CCRB complaint. The captain said he would look into it. A few days later a detective came to my door and said, "You are making a lot of trouble for us with your complaint, and if you don't withdraw it, you and your wife are both going to be arrested." I refused to withdraw it, and he did, in fact, arrest both me and my wife.¹⁷⁶

In contrast, one witness maintained that in the past, the CCRB has done an admirable job in addressing and substantiating complainants' allegations of police misconduct. Antonio Rosario, a representative from Parents Against Police Brutality, testified before the Commission about the January 1995 shooting deaths of his son and

¹⁷³ *Ibid.*, pp. 435-36. See also Siegel Testimony, New York Hearing Transcript, p. 99. "The Civilian Complaint Review Board hears only 5 percent of all complaints and only 2 percent of all complaints lead to a discipline of a police officer. The police commissioner fails to act for months and in some instances, even years, on the substantiated CCRB complaints he receives." *Ibid.*

¹⁷⁴ Feldstein Testimony, New York Hearing Transcript, pp. 488-89.

¹⁷⁵ *Ibid.*, p. 489.

¹⁷⁶ *Ibid.*, pp. 489-90.

nephew by NYPD officers.¹⁷⁷ Mr. Rosario stated that the CCRB substantiated his family's complaint and determined that the police officers exhibited unnecessary force.¹⁷⁸ However, he maintained that former police commissioner William Bratton disregarded the CCRB's findings relating to this incident, and a significant number of the agency's staff and administrators were eventually forced to resign. As a result, the CCRB became more deferential to the NYPD's political philosophy.¹⁷⁹

Response of Local Authorities to Civilian Complaints

Local community residents were often disenfranchised with the responses of prosecuting authorities to their complaints of police misconduct.¹⁸⁰ According to Hyun Lee, program director of the Committee Against Anti-Asian Violence,

[m]ore than 90 percent of cases brought before grand juries result in indictments, but of the more than 60 cases of police killings in New York City since Giuliani took office in 1994, only 2 cases have resulted in indictments against the officers on murder charges. That's Baez and Diallo. Both indictments came only after mass protest and sustained public attention on the allegation of police misconduct. We have not yet seen any convictions. The huge discrepancy between the rate of indictments of civilian defendants and police officers raises doubts in New York City about equal protection under the law.¹⁸¹

¹⁷⁷ Rosario Testimony, New York Hearing Transcript, p. 548. See Juan Gonzalez, "4 Deaths But Few Answers," *New York Daily News*, Sept. 20, 1996, p. 8; Tom Hays, "Bronx Shooting Sparks Mother's Crusade Against Cops," *The Associated Press*, Aug. 6, 1995, Sunday A.M. cycle. Two detectives from the 46th Precinct shot Anthony Rosario and Hilton Vega during an alleged robbery in the Bronx. The medical examiner's findings indicated that Mr. Rosario and Mr. Vega were shot by a hail of bullets in their backs and sides, some of which occurred while they were on the ground. *Ibid.*

¹⁷⁸ Rosario Testimony, New York Hearing Transcript, p. 549.

¹⁷⁹ *Ibid.*; Juan Gonzalez, "CCRB's Big Majority of 1," *New York Daily News*, Aug. 27, 1996, p. 8.

¹⁸⁰ Gadsden Testimony, New York Hearing Transcript, pp. 469-70. Mr. Gadsden testified that prosecutors of the Queens, Brooklyn, Manhattan, and Staten Island district attorney's offices usually do not seek indictments of police officers for complaints of police brutality against people of color. He noted that from 1991 to 1999, the Bronx District Attorney's Office was the exception to this trend. *Ibid.*

¹⁸¹ Lee Testimony, New York Hearing Transcript, p. 351. In listing reasons why she believes the community she serves has lost faith in the integrity of past investigations in police-killing cases by district attorneys, Lee testified that

In reference to the Rosario and Vega incident, Antonio Rosario noted that the local Bronx prosecutor failed to indict the police officers who were responsible for the shooting:

They [the prosecution] presented a different picture to the grand jury. They withheld evidence from the grand jury, they did not let the key witness, Eddy Bonilla, the only survivor, testify in the grand jury. . . . And because my wife was fighting out in the street, giving out leaflets, she met the grand jurors, and they told her their agenda was not to indict the officers. And still the vote was 12 to 8—12 not to indict, and 8 to indict, because with the ballistic reports, alone, they said there is something wrong here. And they withheld the evidence from the grand jury.¹⁸²

Furthermore, in 1995, the U.S. Department of Justice began an investigation to determine whether the NYPD violated Anthony Rosario's and Hilton Vega's civil rights. In January 2000, Manhattan U.S. Attorney Mary Jo White informed the Rosario family that there was insufficient evidence to support these charges.¹⁸³ Ms. White's statement surmised that "after an extensive investigation, prosecutors concluded they could not prove beyond a reasonable doubt that the detectives acted 'with the specific intent to use unreasonable force.'" ¹⁸⁴ Hence, it is reported that the Rosario family will pursue a civil case that has been filed in the Bronx Supreme Court.¹⁸⁵

DETERMINING THE NEED TO REFORM THE CCRB Independent Structure

One of the most contentious issues in discussions designed to assist the CCRB in achieving its mission is determining whether the agency is actually an independent entity that is not af-

"[r]ecords at the Board of Elections show that all five New York City [district attorneys] received campaign contributions from the PBA or other police organizations during their election campaigns." *Ibid.*

¹⁸² Rosario Testimony, New York Hearing Transcript, pp. 550-51.

¹⁸³ Greg B. Smith, "No Charges vs. Cops in Fatal '95 Shooting," *New York Daily News*, Jan. 8, 2000, p. 5. *But see* Rosario Testimony, New York Hearing Transcript, pp. 551-52. "[T]he floorboards, evidence, key evidence is missing from the police department to [the] CCRB. But the CCRB has pictures and videotapes of the whole crime scene. . . ." *Ibid.*

¹⁸⁴ Rosario Testimony, New York Hearing Transcript, pp. 551-52.

¹⁸⁵ *Ibid.*

fectured by the influences of New York City politics. According to CCRB Chairman Frank Wohl,

I think it [the CCRB] absolutely is independent. There is no question about the fact that the members of the CCRB are not appointed by the police commissioner. They are appointed by the mayor. . . . The mayor is obviously directly elected by the City of New York. . . . [T]he closest to any impact on the CCRB that the police commissioner has is that three of the members are appointed by the police commissioner, but they are not current members of the police department. So once they are appointed, they are free to use their expertise and knowledge about the police department to assist in the mission of the CCRB. And the police commissioner has no control over them of any kind at all. . . . And the question I suppose of whether the entire and total disciplinary process is independent of the police department is a completely different question in my view from whether the CCRB is. If you wanted to entertain the idea of moving the entire disciplinary process out of the police department, that is an extremely different process from what we have and obviously one that would be something that people would have to think about and decide about.¹⁸⁶

Secondly, Mayor Giuliani stressed the need for a CCRB that has some reliance on the NYPD to uncover police misconduct:

I believe that in trying to obtain the political independence for the Civilian Complaint Review Board, you rob it of one of the things that it needs to effectively investigate something as complex as the police department, which is police officers. I at one time investigated and prosecuted over 70 police officers and convicted many of them and sent them to prison for selling drugs and for being involved in corruption. I would not have been able to make any of those cases without having police officers in the police department, not independent and outside, working with me to investigate the cases.¹⁸⁷

The mayor emphasized that although the public has more confidence in a truly independent civilian complaint process, it is difficult to

¹⁸⁶ Wohl Testimony, New York Hearing Transcript, pp. 200–02. Mr. Wohl did not have a position on whether the police misconduct disciplinary process should be removed from the NYPD. He indicated that his major duty as chairman of the CCRB entails substantiating civilian complaints and forwarding them to the police commissioner for the appropriate action. *Ibid.*, p. 204.

¹⁸⁷ Giuliani Testimony, New York Hearing Transcript, pp. 46–47.

effectively corroborate the large volume of misconduct allegations if preliminary investigations are impeded by the inability to penetrate the police department's domain.¹⁸⁸

In contrast to the mayor's views, Margaret Fung, executive director of the Asian American Legal Defense and Education Fund, maintained that restoring the public's confidence in the civilian complaint process is essential to the investigation of police brutality incidents. In order to accomplish this, Ms. Fung supported the establishment of an oversight procedure that is independent from the police department.¹⁸⁹ Additionally, both Eliot Spitzer, attorney general for the State of New York, and Mark Green, public advocate for the City of New York, endorsed the concept of an independent CCRB that has the authority to conduct investigations of police officers and to prosecute.¹⁹⁰ Further, NYPD Lieutenant Eric Adams, cofounder of 100 Blacks in Law Enforcement Who Care, testified that the presence of an investigation mechanism that is independent from the police department would minimize the likelihood of the NYPD mishandling or destroying evidence of police misconduct.¹⁹¹

CCRB STATISTICAL TRACKING

The second major function of the CCRB is tracking civilian complaints to determine particular areas of concern and to monitor the agency's progress. Semiannual reports are the

¹⁸⁸ *Ibid.*, pp. 47, 82.

¹⁸⁹ Fung Testimony, New York Hearing Transcript, pp. 96–97. See Frank Fenicio, legislative advisor to Bronx borough president Fernando Ferrer, Testimony, New York Hearing Transcript, p. 503; Dennis Walcott, president of the New York Urban League, Testimony, New York Hearing Transcript, p. 108.

¹⁹⁰ Spitzer Testimony, New York Hearing Transcript, pp. 245–46; Green Testimony, New York Hearing Transcript, p. 262. See Fenicio Testimony, New York Hearing Transcript, pp. 302–04. Mr. Fenicio suggested that the mayor should implement the recommendations of the Mollen and the Louima Commissions, which would establish the CCRB as an independent investigatory body with subpoena power and the jurisdiction over police corruption and brutality cases. *Ibid.* Rosario Testimony, New York Hearing Transcript, p. 550. The Mollen Commission recommended that the CCRB be formed and separated from the NYPD. *Ibid.*

¹⁹¹ Adams Testimony, New York Hearing Transcript, pp. 302–03. Following the initial drafting of this report, the NYPD informed the Commission that the CCRB keeps all originals of evidence of police misconduct that its investigators gather and that the department is only forwarded copies.

primary method of monitoring complaint and disposition activity.¹⁹² In addition to tracking the total number of complaints filed, these reports also monitor complaints according to the race and gender of the complainant and the subject officer(s), the type of misconduct that the complainant alleged, the location where the incident was alleged to have taken place (usually by precinct), and by the number of officers who have had more than one complaint filed against them.

Civilian complaints reached a peak in 1995, when civilians filed 5,618 complaints.¹⁹³ Civilians filed fewer complaints in each of the next 2 years: 5,550 in 1996 and 4,768 in 1997. The CCRB report for the last half of 1998, however, indicates an increasing rate of civilian complaints against NYPD officers. For the calendar year 1998, complaint activity rose 4.1 percent, to 4,877, when compared with complaints filed in 1997.¹⁹⁴ Furthermore, it is possible that many incidents go unreported, so that the number of complaints may be substantially lower than the number of persons who feel they have been aggrieved.¹⁹⁵

¹⁹² As a response to each of the CCRB reports, the NYPD produces a "Review and Analysis" of each CCRB report. These reports cite the same statistics found in the CCRB reports, and do make some useful suggestions on how the CCRB could more meaningfully track civilian complaints. The statistics that these NYPD reports cite, however, are selected so as to best maintain that civilian complaints are not a major problem. In fact, none of these semiannual NYPD documents concedes that any of these statistics show that problems exist within the NYPD; instead, they use statistics to maintain that any problems (if they exist) are attributable to other factors.

¹⁹³ See *CCRB Report, January–December 1998*, p. 20. That level marks the highest during the tenure of the independent CCRB, which came into existence on July 5, 1993. The high number of complaints recorded that year may also be attributable to the merger that year between the NYPD and the city's transit and housing police forces. The NYPD estimates that 400–600 complaints that might otherwise have been attributable to those divisions were included in the 1995 complaint statistics. See New York City Police Department, Office of Management and Planning, *A Review and Analysis of the Civilian Complaint Review Board's Semi-Annual Report for the Period July–December 1995 & Calendar Year 1995*, p. 2.

¹⁹⁴ See *CCRB Report, January–December 1998*, pp. 13, 15. The number of uniformed police officers rose 2.3 percent over the same period. In addition, the number of individual allegations of misconduct declined in 1998 to 7,443, from 7,933 in 1997 and 8,060 in 1994. *Ibid.*, p. 20.

¹⁹⁵ See Spitzer Testimony, New York Hearing Transcript, p. 240. New York Attorney General Elliot Spitzer, for example, has expressed a belief that many individuals who feel they

Statistics can also suggest that incidents of police misconduct are decreasing, instead of becoming more frequent. Both the mayor of New York City and the police commissioner noted that any recent rise in the number of civilian complaints does not account for the corresponding increase in the size of the police force.¹⁹⁶ In 1994, civilians filed 160 complaints per 1,000 police officers; in 1998, civilians filed 128 complaints for every 1,000 police officers.¹⁹⁷ Statistical data do indicate that a downward trend in civilian complaints per officer may be taking place.¹⁹⁸

Allegations by Category

Of the four major categories of CCRB jurisdiction (i.e., force, abuse of authority, discourtesy, and offensive language), the rise in the total number of allegations appears to be attributable to an increase in the number of complaints alleging an abuse of authority.¹⁹⁹ If data are examined from 1994 (the first full calendar year for the independent CCRB) to 1998, for example, most types of allegations declined: allegations of unnecessary force decreased 22.2 percent from 1994 levels; allegations of discourtesy were down 13.3 percent from 1994; and allegations of offensive language decreased 39.1 percent from 1994.²⁰⁰ In contrast, allegations of abuse of authority increased 30.5 percent from 1994 to

have been the victim of police misconduct decline to present their complaint to the police or to the CCRB.

¹⁹⁶ Giuliani Testimony, New York Hearing Transcript, pp. 44–45; Safir Testimony, New York Hearing Transcript, pp. 161–62.

¹⁹⁷ Green Testimony, New York Hearing Transcript, p. 277.

¹⁹⁸ See *Civilian Complaint Statistical Survey*. A downward trend in registered complaints does not necessarily indicate a corresponding reduction in police abuse of power. A perception that the CCRB does not effectively investigate claims of police misconduct might also be responsible for a downward trend in the number of complaints filed, because persons who might otherwise file a complaint might not bother, believing it to be futile to do so. The numbers, however, do indicate a drop in the incidence of complaints filed per uniformed police officer, down from a high of 160 complaints per 1,000 officers in 1994 and 1995 to approximately 130 complaints per 1,000 officers in 1997 and 1998.

¹⁹⁹ Because complaints may contain more than one allegation of misconduct, the number of allegations is greater than the number of complaints filed during any one period, and the correlation between allegations and complaints should not be considered exact.

²⁰⁰ See *CCRB Report, January–December 1998*, p. 20; *Review and Analysis, 1998*, p. 7.

1998.²⁰¹ As a result, allegations of abuse of authority became the most frequent type of allegation raised in CCRB complaints in 1998.

Over the past 5 years, the most common type of “abuse of authority” allegation has been an unnecessary search of the person. In 1998, for example, civilians asserted 565 such allegations, constituting 21.4 percent of all abuse allegations.²⁰² Threat of arrest was the second most frequent allegation, comprising 18.9 percent of abuse allegations in 1998.²⁰³ The third major category of abuse allegations was unlawful threat of force, which comprised 13.3 percent of 1998 abuse allegations.²⁰⁴ Each of the remaining 11 subcategories accounted for less than 10 percent of the abuse allegations received in 1998.²⁰⁵

Analysis of the “force” category complaints suggests that, in the majority of cases, the force about which the civilian complained was blunt force applied without a weapon. Within the force category of allegation, the most common allegation has been that the subject officer engaged in unnecessary pushing and/or shoving, which accounts for almost 30 percent of force allegations.²⁰⁶ The next most common subcategories were complaints of “punch[ing]/kick[ing],” “beat[ing],” and “drag[ging]/pull[ing],” each of which had between 200 and 300 allegations during 1998.²⁰⁷ The next most frequent categories were

“gun pointed,” which accounted for 185 allegations and “pepper spray,” which accounted for 75 allegations. The final six categories of force allegations (“slap[ping],” “nightstick,” “radio used as club,” “gun used as club,” “gun fired,” and “flashlight used as club”) constituted only a small percentage of the force complaints.²⁰⁸

Despite being distinct from the “offensive language” category of allegations, most allegations classified as “discourtesy” seem to involve offensive language of some sort. Complaints of discourtesy, in the vast majority of cases, allege either cursing or using other “nasty words.” Cursing has been the most frequent complaint since 1994, representing more than two-thirds of all discourtesy allegations.²⁰⁹ The use of nasty words, however, became the most common type of discourtesy complaint in 1998, representing 39.9 percent of discourtesy allegations in 1998.²¹⁰ The “profane gesture” and “rude gesture” represented only 1.8 percent and 4.5 percent of 1998 discourtesy complaints, respectively.²¹¹ Within the offensive language category, allegations of slurs against African Americans were the most common, both in 1998 and over the last 5 years (although the number of complaints in this subcategory has declined each year since 1995).²¹² The only other categories of offensive language allegations were for Latino and “other,”²¹³ which comprised 10.2 percent and 29.4 percent of 1998 complaints, respectively.

²⁰¹ *CCRB Report, January–December 1998*, p. 20. Allegations of abuse of authority did decrease 13.1 percent from 1996 to 1998.

²⁰² See *CCRB Report, January–December 1998*, pp. 22, 78.

²⁰³ *Ibid.* The actual number of threat of arrest allegations was 499.

²⁰⁴ *Ibid.*, pp. 22, 78, 79. A fourth “major” category of allegations was the “other” category, which includes allegations not falling into one of the defined subcategories. In 1998, the “other” category encompassed 417 allegations, or 15.8 percent of the total. It is not clear whether this high number of undefined complaints is due to imprecision in the category definitions, imprecision on the part of persons receiving complaints, or imprecision in data entry.

²⁰⁵ *Ibid.*, p. 78. This is consistent with the historical trend of abuse complaints, which have historically been dominated by the “person searched,” “threat of arrest,” and “threat of force” subcategories.

²⁰⁶ See *CCRB Report, January–December 1998*, pp. 21, 77. There were 699 such allegations during 1998, which was lower than during any of the previous 4 years, but more than twice as many as any other subcategory of force allegations.

²⁰⁷ *Ibid.*, p. 21. This does not include the “other” subcategory, which accounted for 528, or 21.8 percent of force allegations in 1998. *Ibid.* These subcategories consistently were the

most common force allegations after “push/shove”; the common thread that these four subcategories share is that they allege an improper use of force without a weapon. During the period from 1994 through 1998, these four most frequent categories comprised 62 percent of all force allegations.

²⁰⁸ *Ibid.*, pp. 21, 76, 77. Those six categories constituted 6.1 percent of force allegations in 1998.

²⁰⁹ *Ibid.*, pp. 22, 80. Of the 11,743 discourtesy allegations, 67 percent, or 7,888, were for cursing.

²¹⁰ *Ibid.* Cursing was second, representing 37.1 percent of all discourtesy allegations during 1998.

²¹¹ *Ibid.* A fair number of discourtesy allegations, however, were not counted as part of one of the defined subcategories; they were instead counted as “other” allegations. Together these allegations made up 16.7 percent of 1998 discourtesy allegations.

²¹² *Ibid.*, pp. 23, 81.

²¹³ *Ibid.*, p. 49. Other defined categories include “Jewish,” “Asian,” “white,” “gay/lesbian,” and “sexist remark,” so the “other” category presumably covers anything not encompassed by all of the above-mentioned categories. Together these less common categories made up only 3 to 4 percent of all offensive language complaints where the content of the allegation was defined during 1997 and 1998.

Analysis of Complaints by Race and Gender

One clear disparity exists when the race of the complainant is considered—African Americans have filed a number of complaints that is disproportionately larger than their representation in the population.²¹⁴ African Americans and Hispanics file three out of every four complaints with the CCRB.²¹⁵ The majority of those complaints, however, have come from African American civilians. During 1998, African Americans filed just over half (50.1 percent) of all complaints registered with the CCRB (in which the race of the complainant is identified), while African Americans constituted just over one-quarter of the New York City population in the 1990 census.²¹⁶ The level of Latino complainants, on the other hand, was relatively commensurate with the Latino population in the city.²¹⁷ Finally, whites filed far fewer complaints (in which the race of the complainant is identified) than their representation in the general population would predict.²¹⁸

The reason for this apparent disparity in the level of complaints that different racial groups have filed is not immediately clear. For example, African American complainants do not appear to be more or less likely to file complaints against officers of any particular racial group (including African American officers). The percentages of complaints that African Americans filed against

African American, Latino, and white officers in 1998 were relatively close to each racial group's representation on the force.²¹⁹ Although the number of complaints that African Americans filed is disproportionate with respect to their representation in the community, it is proportionate with respect to NYPD arrest records. In 1995, for example, 52.5 percent of all CCRB complainants were African American.²²⁰ This percentage corresponds closely to arrest records: that same year, 49.6 percent of all persons that the NYPD arrested were identified as African American.²²¹

On the other hand, CCRB complaint tracking statistics suggest that an officer's race is not relevant to the likelihood that civilians filed complaints against him or her.²²² While white officers constituted approximately 67 percent of the uniformed police force in 1997–1998, the percentage of civilian complaints that were filed against them ranged from 65 to 68 percent.²²³

²¹⁴ In both 1997 and 1998, more than 1,000 complainants declined to provide the CCRB with their racial information; as a result, the available statistics may not be entirely accurate.

²¹⁵ See New York Civil Liberties Union, *Five Years of Civilian Review*, p. 5.

²¹⁶ See *CCRB Report, January–December 1998*, pp. 23, 49. In 1997, African Americans filed 1,976 of the 3,698 complaints where the complainant is identified by race (53.4 percent). The percentage of the New York City African American population may have changed since 1990, so the actual size of this disparity is not entirely clear.

²¹⁷ *Ibid.*, p. 23. The CCRB noted that in 1998, as has historically been the case, Latino complaints were close to the percentage of the New York City population that is Latino. For both 1997 and 1998, Latino-filed complaints were 22.9 percent of the complaints in which the complainant's racial background is identified (822 of 3,586 in 1998; 847 of 3,698 in 1997). In the 1990 census, Latinos constituted 24.4 percent of the New York City population. *Ibid.*, p. 49.

²¹⁸ In both 1997 and 1998, whites filed fewer than one-quarter of all racially identified civilian complaints (22.8 percent in 1998; 20.3 percent in 1997), even though whites were 43.2 percent of the New York City population in the 1990 census.

²¹⁹ *Ibid.*, p. 51. In 1998, 66 percent of the African American complaints were filed against white officers, who were 67.4 percent of the force that year. African Americans registered 16.2 percent of their complaints against African American officers, who constituted 13.4 percent of the force. Finally, African Americans filed 16.5 percent of their complaints against Latino officers, who made up 17.4 percent of the force.

²²⁰ See *Review and Analysis, 1995*, p. 6. This percentage includes only the complaints where the racial identity of the complainant was identified. In 1995, 78 percent of the complainants (4,426 of 5,689) were identified by race.

²²¹ *Ibid.* This percentage reflects the 348,748 arrests that the NYPD (including the transit and housing divisions) made for felonies, misdemeanors, and violations.

²²² *Ibid.*, p. 7. See also *CCRB Report, January–December 1998*, p. 23. As is the case with statistics dealing with the race of the complainant, these may be somewhat unreliable because, in some cases, the race of the subject officer was not identified (39 percent of all complaints in 1998 and 32 percent of all complaints in 1997). It is not clear why the race of the subject officer was unidentified in such a high proportion of cases, but one could assume that many of these incidents are administratively closed cases. If so, little or no investigation was conducted and the subject officer was never identified due to an unavailable or uncooperative complainant. The available statistics do not give any readily apparent method of ascertaining whether the unavailable information would skew the data in a particular direction. Data from 1995, however, suggest the same conclusions; the percentages of complaints filed against African American, Latino, and white members of the NYPD closely matched their representation on the force.

²²³ See *CCRB Report, January–December 1998*, p. 49; "Civilian Complaint Statistical Summary." In 1998, that percentage was 67.4 percent; in 1997, that figure was 67.8 percent (mirroring exactly the percentage of the police force

Complaints against African American and Latino members of the department likewise approximated their representation on the force. Approximately 14 to 15 percent of complaints in 1997–1998 for which the racial identity of the officer was available were filed against African American members of the force. This percentage was almost equivalent to the 13 to 14 percent African American representation in the NYPD over that same time period.²²⁴ Similarly, Latino officers constituted 17 to 19 percent of the police force during 1997–1998 and accumulated 18 to 19 percent of the civilian complaints filed during those 2 years.²²⁵

The relationship between gender and civilian complaints has remained relatively constant over the 5-year period from 1994 through 1998. During that period, men were more likely to file complaints, and to have complaints filed against them, than their representation in either the general population or on the police force would normally suggest. While men accounted for 84.8 percent of the police force in 1997 and 1998, male officers have received over 90 percent of the civilian complaints filed during those years.²²⁶ Similarly, while men constituted 47.3 percent of the New York City population in the 1990 census, males registered approximately 60 percent of the civilian complaints in 1997 and 1998.²²⁷

that was white that year). *See ibid.*, p. 7. The NYPD asserts that for the first half of 1998, the percentage of claims brought against white officers (62.6 percent) was significantly lower than the percentage of police officers that were white for that time period (67.8 percent).

²²⁴ *See ibid.*, p. 49. In 1998, African Americans were 13.4 percent of the city's police force and had 14.7 percent of the civilian complaints lodged against them. In 1997, African Americans constituted 13.5 percent of the NYPD and had 13.7 percent of all civilian complaints registered against them.

²²⁵ *Ibid.* Latino officers were 19.4 percent and 17.1 percent of the uniformed force during 1998 and 1997, respectively. During those 2 years, the percentages of civilian complaints that Latino officers accumulated were 19.4 percent and 17.7 percent, respectively.

²²⁶ *Ibid.*, p. 52. In 1998, male officers received 91.4 percent of all complaints; in 1997, male officers received 90.9 percent of all civilian complaints.

²²⁷ *Ibid.* The exact percentages were 60 percent in 1997 and 58.3 percent in 1998.

Monitoring Complaints: By an Officer's Residency and Education

No significant correlation appears to exist between the probability that an officer will have complaints filed against him and whether that officer lives within New York City. The incidence of complaints against resident and nonresident officers has virtually matched the actual composition of the NYPD.²²⁸ In 1998, 54 percent of uniformed officers were New York City residents; 56 percent of all civilian complaints were filed against officers who were New York City residents.²²⁹

The CCRB has noted that officers with less education are more likely to have complaints substantiated against them. At the end of 1998, for example, 71.7 percent of the police force had less than an associate degree. Those officers, however, were responsible for 80.9 percent of the substantiated complaints in 1997 and 82.2 percent of the substantiated complaints in 1998.²³⁰

The CCRB has also attempted to identify particular classes of officers who have been most responsible for civilian complaints. For example, in its January–June 1996 report, the CCRB concluded that officers with 3 to 5 years of service in 1996 accounted for approximately 45 percent of civilian complaints in 1995 to 1996.²³¹ However, that conclusion does not identify specific graduating classes, and does not indicate that 43 percent of the police officers in 1996 had 5 years of experience or less.²³²

²²⁸ *See ibid.*, p. 31. The percentage of substantiated complaints for nonresident officers also closely matched their representation on the force. In 1997, 45.9 percent of substantiated complaints were against nonresident officers, while 46.2 percent of the force were not New York City residents. In 1998, the percentage of substantiated complaints that were against nonresident officers rose to 49.2 percent.

²²⁹ *See* "Civilian Complaint Statistical Summary," Residency/Race of Officers Receiving Civilian Complaints. The numbers for 1997 were similar. New York City residents made up 55 percent of uniformed officers that year, and 56 percent of all civilian complaints were filed against New York City residents.

²³⁰ *See CCRB Report, January–December 1998*, p. 31.

²³¹ *See Review and Analysis, 1996*, p. 10. In 1997 and 1998, the CCRB continued this trend of identifying broad classes of officers that were responsible for the bulk of civilian complaints. *See, e.g., Review and Analysis, January–June 1997*, p. 12.

²³² *See Review and Analysis, 1996*, p. 11.

Analysis of Officers with Repeated Complaints

CCRB statistical tracking has also identified some trends with respect to how many complaints are filed against officers with a history of previous complaint activity. Overall, the CCRB data suggest that there are fewer officers with multiple complaints: in 1994, 566 officers had more than one complaint filed against them. That figure rose to 599 in 1995, but has fallen each year since then.²³³ The number of officers accumulating multiple complaints in a single year fell to 541 in 1996, to 392 in 1997, and to 322 in 1998.²³⁴ Manhattan was the borough that had the most officers with more than one complaint in 1998 (102); along with Staten Island, Manhattan seems to have an increasing number of officers with multiple complaints.²³⁵ In July 1997, the CCRB passed a resolution which provided that investigative priority would be given to any claims made against officers who had accumulated six or more complaints within the past 5 years.²³⁶ The CCRB appears to be committed to continued monitoring of officers who are repeatedly the subject of civilian complaints.²³⁷

²³³ See *Review and Analysis, January–June 1997*, p. 13. One hundred twenty-six police officers had four or more complaints filed against them during the period from July 1, 1995, through June 30, 1997. That statistic does not account for complaints where the officer was unidentified. If CCRB statistics were able to identify all subject officers, the number of officers with multiple complaints might rise considerably.

²³⁴ See *Review and Analysis, 1998*, p. 14; *CCRB Report, January–December 1998*, p. 24.

²³⁵ See *CCRB Report, January–December 1998*, pp. 24–25. In contrast, Brooklyn and the Bronx appear to have a decreasing number of officers with multiple complaints. See *Review and Analysis, 1998*, p. 11. It appears that the Street Crime Unit (SCU) was more responsible for complaints than any of the geographic commands. The rate of complaints filed against members of the Street Crime Unit was substantially higher than the average rate of approximately .12 complaints per officer during the last 5 years. In 1996, the SCU had a complaint rate of .31 complaints per officer, more than twice the forcewide average. *Ibid.* That rate declined slightly, and fell to .16 complaints per officer in 1998; a level much closer to the forcewide average.

²³⁶ See *Review and Analysis, 1997*, p. 13.

²³⁷ See Chief of Patrol Louis R. Anemone, letter to Commanding Officers, Mar. 2, 1994. The joint NYPD/CCRB Civilian Complaint Reduction program identifies officers who meet any of the following criteria: (1) three complaints within the previous 12 months; (2) five complaints within the previous 24 months; or (3) six career complaints and at least one complaint within the past 36 months. *Ibid.* Commanding officers, after identifying officers who meet those

Weaknesses in Complaint Statistics

In a significant number of cases, critical information is not collected. Specifically, detailed information on the type of misconduct incident is not documented.²³⁸ In 1995, for example, 75.3 percent of force complaints and 43.6 percent of abuse of authority allegations did not identify the sort of improper act that was committed.²³⁹ During the later half of 1996, the “other” subcategory comprised 29.8 percent of all force allegations.²⁴⁰ The lack of detailed information concerning allegations has not been included during recent CCRB reporting periods, as a large number of force and abuse of authority complaints are still classified as “other.”²⁴¹ This omission of specific information makes it more difficult for the NYPD to use complaint data to reduce future incidents of misconduct through training and other appropriate initiatives.

Similarly, the CCRB’s complaint data do not indicate the command assignment in a large number of cases—41 percent in 1995.²⁴² The CCRB ceased reporting this information at the end of 1995, and the percentage of cases in which an officer’s command was unidentified dropped considerably in 1996 and 1997.²⁴³ However, in 1998 the number of complaints in which the officer’s command was unidentified rose 40.2 percent.²⁴⁴ Continuing to reduce the number of cases in which an officer’s command is unidentified is essential to monitoring potential problem areas within the city.

criteria, are responsible for monitoring those officers and taking steps to “prevent future complaints.”

²³⁸ See *Review and Analysis, 1995*, pp. 13–14.

²³⁹ *Ibid.*, p. 13. On the CCRB complaint form, force allegations are broken down into 12 subcategories, while abuse of authority allegations are broken down into 14 subclassifications.

²⁴⁰ See *Review and Analysis, January–June 1997*, p. 4.

²⁴¹ See *CCRB Report, January–December 1998*, pp. 21–23.

²⁴² *Ibid.*

²⁴³ See New York City Police Department, Office of Management and Planning, *A Preliminary Analysis of the Civilian Complaint Experiences of the New York City Police Department, January–June 1996*, p. 4. For the first half of 1996, for example, the officer’s command was unidentified in 22.1 percent of complaints received during that period. According to the CCRB chair, the CCRB does not always know the officer’s assignment, and for that reason, provides statistics by the location of occurrence in addition. See Wohl Letter, p. 3.

²⁴⁴ See *Review and Analysis, 1998*, p. 11.

ANALYSIS OF PARTICULAR COMPLAINT ISSUES

After receiving a sharp increase in complaints alleging improper use of pepper spray,²⁴⁵ the CCRB analyzed its current use within the NYPD and issued a report recommending that the NYPD continue to use pepper spray as a form of nonlethal force.²⁴⁶ In formulating its recommendations, the CCRB pepper spray committee reviewed training and guidelines on its use, civilian complaints relating to use of pepper spray, and extensive medical literature. The CCRB determined that the risk of severe harm from pepper spray is minimal, if it is used correctly.²⁴⁷ In order to ensure that pepper spray would cause minimal harm to the persons sprayed, the report recommended that the NYPD prohibit employing the substance as a crowd control device; that the NYPD maintain and tabulate accurate statistics on its use; and that officers using pepper spray request medical attention for anyone sprayed, regardless of whether the individual suffered an adverse reaction to it.²⁴⁸ The NYPD responded to this report by implementing several of the CCRB's recommendations. Various organizations approved of this report, stating that it made a positive contribution to an area that otherwise might cause more complaints of police misconduct.

The CCRB also issued a report that reviewed the NYPD's decision to employ hollow-tip, rather than full-metal-jacket bullets.²⁴⁹ Several CCRB members analyzed evidence which suggested that hollow-tip bullets, while possessing increased stopping power and a possible greater chance for injury, were also less likely to injure bystanders by ricocheting or passing through the target.²⁵⁰ In addition, the CCRB report noted that these factors influenced a number of juris-

dictions to switch to hollow-point bullets.²⁵¹ As a result, the board's report concluded that the switch to hollow-point bullets was prudent.

Moreover, the CCRB also conducted a detailed review of precincts that generate a significant number of civilian complaints.²⁵² Reacting to the high number of complaints filed against officers in the 75th and 81st Precincts, the CCRB examined some of those precincts' civilian complaints and operations. In particular, the CCRB noted that the officers against whom complaints were filed matched the composition of the force at those precincts.²⁵³ Other factors, such as a strict antidrug initiative, however, may have produced more forceful police tactics.²⁵⁴ The CCRB did not formulate any definitive conclusions or recommendations, but forwarded this information to the NYPD so that it could address civilian complaints in those precincts in the future.²⁵⁵

THE CCRB AND COMMUNITY OUTREACH

Finally, the CCRB has taken positive steps to reach out to the community, in order to investigate and resolve specific complaints of police misconduct. For example, in response to a May 19, 1996, altercation between police and residents within the 120th Precinct, the CCRB's executive director and several representatives attended a meeting at a local community center the next evening to encourage those with complaints to file them with the CCRB.²⁵⁶ During 1998, the CCRB made extensive attempts to disseminate information to the public. To make the public aware of the board's existence and mission, CCRB staff provided more than 100 public information sessions at community board meetings, high schools, and church organizations.²⁵⁷ At these meetings, community residents were

²⁴⁵ See *Review and Analysis, 1995*, p. 8. During 1995, there was a 254 percent increase in allegations concerning use of pepper spray. In 1996, there was a 150 percent increase in allegations relating to the use of pepper spray. *Review and Analysis, 1996*, p. 4.

²⁴⁶ See David Scott and Charles M. Greinsky, "Report of the Pepper Spray Committee of the Civilian Complaint Review Board," May 14, 1997. The CCRB also reexamined certain aspects of the NYPD's pepper spray policy. *Ibid.*

²⁴⁷ *Ibid.*, pp. 14-15.

²⁴⁸ *Ibid.*, pp. 10-11.

²⁴⁹ See New York City Civilian Complaint Review Board, *Hollow Point Bullet Report*, July 8, 1998, pp. 2-3.

²⁵⁰ *Ibid.*, p. 3.

²⁵¹ *Ibid.*

²⁵² See Mel P. Barkan, "Report to Commissioners on 75th and 81st Precincts," Aug. 11, 1998.

²⁵³ *Ibid.*, p. 3.

²⁵⁴ *Ibid.*, pp. 5-6.

²⁵⁵ *Ibid.*, p. 6.

²⁵⁶ See New York City Police Department, Office of Management and Planning, *A Preliminary Analysis of the Civilian Complaint Experiences of the New York City Police Department, January-June 1996*, p. 4.

²⁵⁷ See *CCRB Report, January-December 1998*, p. 11. The CCRB claims that the exact number of meetings attended was 106.

informed of the function of the CCRB, as well as how civilians could file complaints. Finally, during the second-half of 1998, the CCRB also developed a Web site on the Internet.²⁵⁸ The Web site contains general information about the CCRB, publications, semiannual and topical reports (e.g., the Pepper Spray report), and the CCRB brochure in several languages.

FINDINGS AND RECOMMENDATIONS: CHAPTER 4 **The CCRB's Challenges: Potential Improvements**

The increased number of substantiated civilian complaints and the implementation of disciplinary measures for recalcitrant police officers over the past few years suggest that some of the CCRB's initial inefficiencies may have been due to its status as a newly independent agency. In important respects, the CCRB has improved the efficiency and quality of its investigations, while the DAO has taken stronger measures to hold officers accountable when the CCRB substantiates civilian complaints against them. Nonetheless, there remain several improvements that the CCRB, the NYPD, and other city officials could implement to further improve oversight of police misconduct against civilians.

This Commission believes while it appears that the CCRB has taken some major steps forward in the past couple of years, it can better accomplish its mission by considering and implementing the following recommendations:

CCRB's Civilian Complaint Monitoring System

Finding 4.1: As the above analysis of the Civilian Complaint Review Board semiannual reports suggests, the board relies on data derived from the number of complaints it receives, rather than information from cases it actually investigates, where much more is known about the alleged incident.²⁵⁹ As a result, many of the CCRB analyses are based on incomplete or false data. Data are likely to be more reliable after a claim has been fully investigated. Therefore, it would be useful for the CCRB to generate statis-

tics derived from fully investigated claims in addition to the analyses that it currently conducts.

The NYPD, for example, has asked the CCRB to document the circumstances in which complaints arise, such as whether the complaint occurred in an arrest situation, a situation in which an officer is attempting to serve a summons, or a situation in which an officer is executing a search.²⁶⁰ Finally, CCRB data do not appear to track the numbers of cases that have resulted in observable, actual physical injuries requiring medical attention.

Recommendation 4.1: The CCRB should report data and perform analyses based on fully investigated complaints as well as based on all complaints. In addition, the CCRB complaint form should track other types of information that might be useful.

Improving the Initial Stages of the CCRB's Investigation

Finding 4.2: Less serious allegations could be referred to mediation or conciliation, allowing CCRB investigators to concentrate on the most serious civilian complaints.²⁶¹

Recommendation 4.2: The CCRB should continue to use its resources more efficiently by screening out less serious allegations at an early point in the investigative process.

Need for an Increased Awareness of the Community's Concerns

Finding 4.3: Although CCRB board meetings are currently open to the public, local perception of the CCRB could be improved further by holding town hall meetings. Hence, the CCRB and the NYPD would have a scheduled opportunity to address the concerns of community residents.²⁶² Continued outreach efforts are critical to ensuring that New York City residents are aware of the CCRB's existence. Ultimately, this will increase the public's trust in the agency's ability to effectively investigate complaints of police misconduct and to recommend the appropriate discipline.

Recommendation 4.3: The CCRB and the NYPD should establish town hall meetings in each borough at least once a year, which should

²⁵⁸ New York City Civilian Complaint Review Board Web site (visited Apr. 6, 2000) <<http://www.ci.nyc.ny.us/html/ccrb/home.html>>.

²⁵⁹ See New York City Police Department, Office of Management and Planning, *A Review and Analysis of the Civilian Complaint Review Board's January-June 1998 Report*, pp. 5-6.

²⁶⁰ *Ibid.*, p. 14.

²⁶¹ See *March 1998 Task Force Report*, p. 75.

²⁶² *Ibid.*, p. 106.

be attended by upper management officials of both agencies.

Potential NYPD Improvements

Finding 4.4: The rising percentage of substantiated cases in which discipline is imposed does suggest that the NYPD is responding to substantiated complaints more seriously than it has in the past. However, the department's failure to act on a considerable percentage of substantiated referrals, combined with its reluctance to inform the public of the reasons that it declined to act in many cases, suggests that additional measures are necessary.

Recommendation 4.4: Oversight might be improved if the NYPD better specified the types of conduct (with regard to civilian complaints) that are subject to disciplinary action. The NYPD Patrol Guide Manual indicates that actions such as "unnecessary conversations" and "a failure to maintain a neat and clean appearance" are susceptible to command discipline, but does not state the types of abusive language, discourteous conduct, or abuse of force or authority that are subject to discipline.²⁶³ This additional specificity would provide both uniformed officers and the CCRB with more detailed information as to the kinds of misconduct (particularly with regard to allegations of discourtesy and offensive language) that can lead to disciplinary action. Not only would officers have additional guidance, but fewer substantiated cases would later be dismissed because the DAO concluded that discipline was not warranted.

Informing the CCRB and the Public about Why Disciplinary Action is Not Warranted in Cases

Finding 4.5: The low number of substantiated complaints upon which the police commissioner has acted contributes to the pervasive public perception that the CCRB is an ineffective mechanism to control police abuse of authority.²⁶⁴ Informing the public as to why no discipline was imposed in a particular case would improve not only public confidence in the NYPD,

but also future CCRB investigations. For example, when the department declines to impose disciplinary measures or resorts to command discipline because a critical witness has become unavailable, this knowledge would justify the action taken and indicate that the CCRB investigation was probably adequate.²⁶⁵ On the other hand, if the department dismisses a substantiated complaint because of an inadequate investigation, explaining to the CCRB the manner in which the investigation was deficient would improve future investigations.

Recommendation 4.5: The NYPD would improve both future CCRB investigations and public confidence in NYPD handling of civilian complaints by providing explanations as to why the department imposed no disciplinary measures in a particular case.

Limit Time to Resolve Substantiated Complaints

Finding 4.6: The department has indicated that it needs 3 months to investigate a substantiated referral, as well as additional time to actually close a case. The NYPD has not provided any evidence that it should take more than 2 years to dispose of a complaint.²⁶⁶

Recommendation 4.6: In the absence of delineated exceptional circumstances, the NYPD should attempt to resolve all substantiated complaints within 6 months of referral from the CCRB.

Continued Use of the COMPSTAT System

Finding 4.7: The COMPSTAT system is a computerized system that monitors crime rates in each precinct area. Precinct commanders are evaluated monthly based on statistics generated by the COMPSTAT system to determine whether their precinct has effectively addressed issues of crime. Frank Fenuccio, legislative advisor to Bronx borough president Fernando Ferrer indicated that the CCRB should use the COMPSTAT system to monitor civilian complaints on a police precinct level, which would ultimately hold precinct commanders accountable for the number of CCRB complaints issued

²⁶³ See *Patrol Guide* § 118-02.

²⁶⁴ As previously discussed, Mark Green, public advocate for the City of New York, is currently conducting an investigation that is focusing expressly on why such a low percentage of substantiated complaints translates into actual disciplinary action. See Green Testimony, New York Hearing Transcript, pp. 258-59.

²⁶⁵ See *March 1998 Task Force Report*, p. 87.

²⁶⁶ This seems to be particularly true in light of the fact that the CCRB has conducted a complete investigation prior to referral, and that the evidence developed from this investigation is forwarded to the department.

against their respective precincts each month.²⁶⁷ However, Police Commissioner Safir testified before the Commission that this is already being done.²⁶⁸

Recommendation 4.7: Continue to use the COMPSTAT system to monitor and reduce civilian allegations of police misconduct.

Decreasing Response Time to Substantiated Complaints

Finding 4.8: New York has an 18-month statute of limitations on civilian complaints of misconduct by police officers. The police department, therefore, can only initiate formal proceedings against an officer if the CCRB forwards the results of its investigation to the police department within 18 months of the date on which the incident occurred. City Council speaker Vallone has proposed increasing the staff of the NYPD Advocate's Office by 5 attorneys, 10 investigators, and 3 support staff to ensure that the DAO is better able to deal with substantiated complaints forwarded from the CCRB.²⁶⁹

Recommendation 4.8: Increase the size of the CCRB team within the DAO to allow the NYPD to respond more quickly to substantiated referrals.

Incentives for Police Officers

Finding 4.9: A police officer's record of interacting with the public should be considered as a performance indicator, just as the current factors of making arrests and reducing crime are being used for decisions concerning promotions, pay raises, and other benefits. Moreover, Police Commissioner Safir commented during the Commission's hearing, "I certainly support incentives for excellent police performance. And what that requires is no abuse of civil rights."²⁷⁰

²⁶⁷ Fenuccio Testimony, New York Hearing Transcript, p. 503. Currently, precinct commanders are responsible for the number of arrests and parking tickets that their police officers issue each month. Ibid.

²⁶⁸ Safir Testimony, New York Hearing Transcript, pp. 218-19. "If civilian complaints are going up, they [precinct commanders] have to explain to us what they're doing about them. We measure them from each 5-week period that they come in on how they're doing. And if they don't reduce civilian complaints, it has a significant impact on their career or their ability to continue as a precinct commander." Ibid.

²⁶⁹ See Peter F. Vallone, "The NYPD: Blueprint for Reform" (May 12, 1999), p. 12 <<http://www.council.nyc.ny.us/loi/blueprint.htm>>.

²⁷⁰ Safir Testimony, New York Hearing Transcript, p. 219.

Recommendation 4.9: Create promotional and other incentives for officers who do not have civilian complaints filed or substantiated against them.

Other Suggested Improvements

As critics have noted, one potential structural weakness of the CCRB, as referenced in the City Charter, is that its success is heavily dependent on mayoral support for its budget and other resources.²⁷¹ The CCRB has sufficient authority to effectively oversee civilian complaints, provided that it receives sufficient support from the administration.²⁷² The mayor, therefore, must support the CCRB and its mission. In addition, the city government can improve the CCRB and the disciplinary process in several ways.

The CCRB's Funding and Other Resources

Finding 4.10: As noted above, the CCRB budget for 1999 appeared to reflect the board's needs for the first time, especially given the expansion of the police force in recent years. As the police force expands and the need for more investigations increases, the city government must continue to appropriate sufficient funds for the CCRB to carry out its mission.

Earlier this year, City Council speaker Vallone offered a plan that would prevent the CCRB from reacquiring the backlog of cases which hampered its effectiveness from 1993 through 1996. Speaker Vallone's plan would add 22 investigators and 12 support staff to the CCRB, as well as 5 attorneys, 10 investigators, and 3 support staff to the NYPD Advocate's Office to en-

²⁷¹ See New York Civil Liberties Union, *Five Years of Civilian Review*, p. 9. "[T]he institutional weakness of New York's CCRB is, in important part, a function of the mayor's authority to influence the agency's operations through budgetary allocations and appointments of board members and chairperson." Ibid. The other major area of potential weakness is probably the advisory nature of the CCRB; because it cannot actually impose any disciplinary measures, it depends on the police department to implement its recommendations.

²⁷² See Michael Meyers, Margaret Fung, and Norman Siegel, *Deflecting Blame: The Dissenting Report of the Mayor's Task Force on Police/Community Relations* (New York Civil Liberties Union: March 1998), p. 47 (hereafter cited as Meyers et al., *Deflecting Blame*). "The CCRB's failings are not attributable to a flaw in the concept of civilian oversight. The City Charter gives the CCRB sufficient authority to perform its mission." Ibid.

sure that substantiated complaints are dealt with in a timely fashion.²⁷³

Recommendation 4.10: The CCRB's funding should be commensurate to the NYPD's police officer complement. Similarly, the city must remain committed to providing the CCRB with an adequately sized and skilled staff to perform its oversight function.

The 48-Hour Rule

Finding 4.11: The 48-hour rule is another factor that often impedes the progress of the CCRB's investigations. Under police department regulations and the collective bargaining agreement between the city and rank-and-file police officers, police officers suspected of wrongdoing are not required to speak to ranking officers until 48 hours after they are identified as suspects.²⁷⁴

The 48-hour rule impedes CCRB investigations in several ways. This 48-hour delay permits occasions for details to be forgotten and the loss of other evidence. Secondly, 2 days creates opportunities for subject officers to corroborate their versions of the alleged misconduct incident. Finally, this delay undermines public confidence in the CCRB's ability to conduct a thorough and efficient investigation. As a result, some police misconduct may never be reported because civilians feel the CCRB will be unable to conduct an efficient investigation.

The 48-hour rule seems to have few defenders. The current mayor, police commissioner, City Council speaker, and community leaders have all advocated its elimination.²⁷⁵ The Police Benevolent Association president described it as little more than a bargaining chip that could be negotiated in the next police contract.²⁷⁶ As others have noted, the protections of the 48-hour rule are redundant. If the rule is eliminated, NYPD officers will remain entitled to the same Fifth Amendment protections afforded to any

other suspect.²⁷⁷ When the city next has the opportunity to modify its collective bargaining agreement with the PBA, therefore, elimination of the 48-hour rule should be a priority.

Recommendation 4.11: Enhance CCRB investigations by eliminating the 48-hour rule.

Monitoring the NYPD's Disposition of Complaints

Finding 4.12: During recent years, NYPD officials have imposed disciplinary measures in a higher percentage of substantiated CCRB referrals, but a large number of substantiated cases remain in which the NYPD takes no action against the officers involved. In particular, the NYPD has taken no steps to explain why it dismisses a significant number of cases that the CCRB has deemed to be substantiated.²⁷⁸ Furthermore, Norman Siegel, executive director of the New York Civil Liberties Union, voiced his support of the need for continued monitoring of police misconduct incidents, as well as requesting President William Clinton's intervention in solving this problem.²⁷⁹

Recommendation 4.12:

- New York City should establish an independent board with the specific responsibility for reporting to the public on the department's disposition of substantiated referrals, in order to ensure that the NYPD takes appropriate disciplinary steps.²⁸⁰ This board would examine the need for the DAO to re-investigate complaints that the CCRB has already deemed substantiated, the refusal of many officers to participate in CCRB-sponsored meditation, and any other issues that affect the department's disposition of substantiated complaints. The board would

²⁷³ See Vallone, "Blueprint for Reform," p. 2.

²⁷⁴ See *Patrol Guide* § 118-9.

²⁷⁵ Vallone, "Blueprint for Reform," p. 12. The mayor's task force recently advocated its elimination. Sharpton Testimony, New York Hearing Transcript, p. 381. See *March 1998 Task Force Report*, pp. 73-74.

²⁷⁶ See Savage Testimony, New York Hearing Transcript, p. 189. "This wasn't something we invented. This was something that the police department invented many years ago."

²⁷⁷ See Wohl Testimony, New York Hearing Transcript, p. 181. Although the officer can be required to cooperate with a CCRB investigation, the officer can be forced to answer questions only subject to a grant of use immunity, so the officer's Fifth Amendment protections remain intact.

²⁷⁸ See also Walcott Testimony, New York Hearing Transcript, p. 108. Dennis Walcott, president of the New York Urban League, embraced the idea of strengthening the police commissioner's role in removing and issuing discipline to errant police officers. Ibid.

²⁷⁹ Siegel Testimony, New York Hearing Transcript, pp. 127-28.

²⁸⁰ See *March 1998 Task Force Report*, p. 76. The mayor's task force made this recommendation part of its report.

then make recommendations for improving the system.²⁸¹

- There must be public disclosure of disciplinary actions taken against officers engaged in acts of misconduct and/or use of excessive force. While members of every profession should be afforded certain protections against the disclosure of information pertaining to one's work record, police officers are given special powers—such as the power to “stop and frisk”—which, when abused, can do tremendous damage to individuals and to society. Therefore, the NYPD should work with local citizens groups, faith-based groups, and community organizations to draw up a list of certain violations which, after a thorough investigation in accordance with all standards of due process, will be disclosed to the general public. There must also be greater accountability of station commanders for appropriate discipline of officers who have been found guilty of police misconduct.

Appointment of an Independent Prosecutor for Selected Misconduct Cases

Finding 4.13: Some have suggested that the independence of a special prosecutor is necessary to ensure that where credible evidence exists to support a charge against an officer, that charge is pursued in as vigorous a fashion as possible.²⁸² For example, two witnesses who tes-

tified at the Commission's hearing supported this idea. Specifically, Hyun Lee, program director of the Committee Against Anti-Asian Violence, emphasized that a special prosecutor should be appointed for police brutality cases in New York City. She believes that past cases that involved police officers killing civilians should be reopened and reinvestigated.²⁸³ Rev. Al Sharpton, president and chief executive officer of the National Action Network, maintained that there was a need for federal intervention to prosecute police brutality cases, as well as the establishment of a federal monitor to oversee the NYPD's operations.²⁸⁴ At this point, it appears that the department is taking constructive steps to improve the disposition of misconduct complaints. Then, the NYPD must continue to improve the rate at which it addresses substantiated complaints.²⁸⁵

Recommendation 4.13: A public perception that police misconduct cases place a tremendous strain on local government prosecutors, who rely routinely on the police to provide the evidence to prosecute criminal violations, often exists. Therefore, the City Council should appoint an independent prosecutor in cases alleging serious police misconduct.²⁸⁶ If finances are a barrier to such an appointment, law firms could be asked, on a pro bono basis, to oversee an investigation of allegations that the killing of an allegedly unarmed individual was unnecessary.

²⁸¹ The CCRB may not be the entity most suited for this oversight function for two reasons. Additional oversight responsibilities might severely restrict the CCRB's resources. Secondly, assigning this function to the CCRB could increase tension between it and the DAO, which is responsible for enforcing substantiated complaints.

²⁸² See, e.g., Meyers et al., *Deflecting Blame*, pp. 59–63.

²⁸³ Lee Testimony, New York Hearing Transcript, pp. 351–52.

²⁸⁴ Sharpton Testimony, New York Hearing Transcript, pp. 376–77, 380. See also Gadsen Testimony, New York Hearing Transcript, p. 474. The police commissioner has too much discretion in determining whether he will act on substantiated complaints. Therefore, there is a need for federal oversight to monitor police brutality in the New York City. Ibid.

²⁸⁵ Additionally, the CCRB and the NYPD are negotiating terms under which the NYPD may give the CCRB access to additional information, such as the reasons for not taking disciplinary measures on a particular complaint.

²⁸⁶ The City Council passed legislation last year that would create the independent police investigation and audit board, which would be separate from the CCRB. It was upheld in September 1999 by the State Supreme Court in Manhattan, but the ruling was appealed by the mayor and District Attorney Robert M. Morgenthau of Manhattan, who said it would undermine their power and violates the City Charter. See Thomas J. Lueck, “Vallone Revives His Call for Local Police Monitor,” *The New York Times*, May 17, 2000, sec. B, p. 3.

Stop, Question, and Frisk

Each year in New York City, the NYPD stops and frisks thousands of individuals. During each of these stop and frisk encounters, the right of individuals to be free from arbitrary and unwarranted intrusions by government authorities coincides with the duty of those agents to prevent crime and apprehend criminals. Achieving an appropriate balance between the right and the duty presents a challenge for any metropolitan police force.

The current situation presents a formidable dilemma. On the one hand, it is well settled that individuals are entitled to be free from arbitrary police encroachments on their privacy. At the same time, effective law enforcement and maintenance of safe streets require that officers be granted some discretion to stop and question individuals whom they reasonably suspect to be engaging in criminal activity.

In recent years, there has been a growing perception that the NYPD has sacrificed the protection of individuals' civil liberties in order to achieve quantifiable law enforcement gains.¹

¹ See Diane McWhorter, "Killing by N.Y. Police Raises Ghosts of Past," *USA Today*, Mar. 29, 1999. "Many criminal justice experts long have been skeptical about the aggressive 'quality of life' policing ('zero tolerance' for even petty crime) pioneered by the New York Police Department in 1994 and exported vigorously around the country." Alexandra Marks, "Trust in Police Has Slipped," *The Christian Science Monitor*, Mar. 15, 2000, p. 1. Professor Richard Fox of Union College in Schenectady, New York, conducted a survey of Bronx, NY, residents on their confidence in interacting with police. Eleven percent of the respondents felt that the police treated community residents fairly, and 16 percent were comfortable about dealing with the police. Eight percent of the respondents felt that police treated people respectfully. *Ibid.* But see New York City Police Department, *New York City Response to the Draft Report of the United States Commission on Civil Rights—Police Practices and Civil Rights in New York City*, May 16, 2000 (page numbers omitted) (hereafter cited as *NYPD Response*). The NYPD maintains

The department's stop and frisk practices are at the heart of this highly publicized debate.²

This chapter of the report begins by discussing the applicable federal and state legal standards governing the NYPD's stop and frisk policies and practices. Next, there is an assessment of the NYPD's principal training mechanisms for stop and frisk encounters. This chapter then includes an analysis of the NYPD's "UF-250" stop and frisk data for the calendar year 1998. Lastly, the chapter concludes with findings and policy recommendations.

LEGAL STANDARDS

The Fourth Amendment

The Fourth Amendment of the United States Constitution protects individuals against unreasonable searches and seizures by police officers. The Constitution provides that

[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, *shall not be violated*, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly de-

that several criminal justice experts consider the department as an example of proper policing.

² See, e.g., Leslie Casimir et al., "Blacks, Latinos: Cops Harass Us," *N.Y. Daily News Online*, Mar. 26, 1999. The perception of racial profiling appears widespread in New York City at this time. There have been numerous articles by the New York City newspapers interviewing residents of the five boroughs to determine whether they have been stopped and frisked. In particular, young black and Latino males increasingly perceive themselves as being unfairly targeted by NYPD officers for pretextual stops and frisks on the basis of their race. Of the 100 males interviewed by the *New York Daily News* for the Mar. 26, 1999, article, 81 said they had been stopped and frisked by a police officer. Sixty-six percent believed that police officers viewed them with suspicion because of their racial background.

scribing the place to be searched, and the persons or things to be seized.³

The United States Supreme Court has recognized that “[n]o right is held more sacred . . . than the right of every individual to [be] . . . free from [the] restraint or interference of others, unless by clear and unquestionable authority of law.”⁴ The framers of the United States Constitution specifically drafted the Fourth Amendment “to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.”⁵ The Fourth Amendment generally requires that all searches and seizures be made pursuant to a warrant based upon probable cause. Accordingly, on numerous occasions, the United States Supreme Court has examined a variety of stop, search, and frisk issues that are relevant to determining whether a Fourth Amendment violation exists.

In the landmark decision of *Terry v. Ohio*,⁶ the Supreme Court confronted the issue of whether to create a narrow exception to the Fourth Amendment’s probable cause and warrant requirements to permit a police officer to briefly stop a citizen, question him, and frisk him to ascertain whether he possesses a weapon that could endanger the officer. In upholding the “stop and frisk” procedure employed by an Ohio police officer, the Court concluded that the appropriate constitutional standard should be “reasonable suspicion” rather than probable cause.⁷

To justify a stop under the Supreme Court’s *Terry* decision, a police officer must have “a reasonable suspicion” of some wrongdoing. In determining reasonableness, an officer “must be able to point to *specific and articulable facts*” that warrant the governmental intrusion; reliance on “inchoate and unparticularized suspicion or [a] ‘hunch’ ” is not permissible.⁸ Furthermore, the scope of any resulting police search must be narrowly tailored to match the original reason for the stop. The Court emphasized that a search must always be “strictly circumscribed by the

exigencies which justify[ed] its initiation.”⁹ In *Terry*, the Court identified the police officer’s safety as the primary purpose for the search, and concluded that a frisk is permissible if “a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.”¹⁰ However, this case established the legal precedent that police officers could draw conclusions based on their experiences to ascertain if an alleged suspect’s conduct is an indication of criminal activity.¹¹ If a police officer surmises that an individual’s conduct is ambiguous, then the officer can briefly detain the person and conduct a limited search for the safety of him/herself and others.¹²

Moreover, police officers do not infringe upon an individual’s constitutional rights if they approach alleged suspects in a public location, and inquire whether he or she would be willing to answer some questions.¹³ However, the Court in *Florida v. Royer* further explained that

⁹ *Id.* at 26.

¹⁰ *Id.* at 27. See *Sibron v. New York*, 392 U.S. 40 (1968). *Sibron* was a companion case to *Terry*, which began to define the scope of *Terry*’s stop and frisk guidelines. According to the Court, “[t]he police officer is not entitled to seize and search every person whom he sees on the street or of whom he makes inquiries. Before he places a hand on the person of a citizen in search of anything, he must have constitutionally adequate, reasonable grounds for doing so. In the case of the self-protective search for weapons, he must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous.” *Sibron*, 392 U.S. at 64; *Chimel v. California*, 395 U.S. 752 (1969). The scope of the search is restricted to the alleged suspect’s person, and to the area within his or her immediate control. *Chimel*, 395 U.S. at 762.

See also *Brown v. Texas*, 443 U.S. 47 (1979). The Court in *Brown* concluded that a person’s presence in a neighborhood that was frequented by drug users was an insufficient basis for determining that the individual was engaged in criminal activity. Hence, *Terry*’s “reasonable suspicion” prerequisite was not satisfied for the stop and frisk that occurred in this case. *Id.* at 52–53. But see *New York v. Belton*, 453 U.S. 454 (1981). In *Belton*, police officers searched the interior of a suspect’s vehicle, although the driver and the car’s occupants were away from the vehicle and were unable to reach inside of it. Nevertheless, the Court permitted this search and interpreted it as being incident to a lawful arrest. *Id.* at 456, 457–58, 462–63.

¹¹ *Terry*, 392 U.S. at 30.

¹² *Id.*

¹³ *Florida v. Royer*, 460 U.S. 491, 497 (1983). See also *id.* at 497 (citing *Terry*, 392 U.S. at 32–34; *United States v. Mendenhall*, 446 U.S. 544, 556 (1980)). Further, constitutional protections are not violated when the individual’s voluntary responses to these inquiries are used as evidence

³ U.S. CONST. amend. IV (emphasis added).

⁴ *Union Pac. R.R. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

⁵ *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967).

⁶ 392 U.S. 1 (1968).

⁷ *Id.* at 20–22.

⁸ 392 U.S. at 21, 27 (emphasis added).

[t]he person approached . . . need not answer any question put to him; . . . he may decline to listen to the questions at all and may go on his way. . . . He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. . . . If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed.¹⁴

In subsequent cases, most court rulings began to allow police officers' interpretations of signs of alleged criminal activity as a foundation for the required degree of reasonable suspicion.¹⁵ For example, in *United States v. Cortez*,¹⁶ the United States Supreme Court granted more deference to a police officer's perceptions of the totality of the circumstances involving an alleged suspect, when assessing whether the requisite degree of reasonable suspicion existed prior to the stop and frisk episode:¹⁷

The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be based upon all of the circumstances. The analysis proceeds with various objective observations, information from police reports, . . . and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions—inferences and deductions that might well elude an untrained person. The process does not deal with hard certainties, but with probabilities. . . . Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement. The second element contained in the idea that an assessment of the whole picture must yield a particularized suspicion is the concept that the process described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing.¹⁸

in a subsequent criminal prosecution. *Id.* at 497 (citing *Dunaway v. New York* 442 U.S. 200, 210, n. 12 (1979)).

¹⁴ 460 U.S. at 497–98.

¹⁵ David A. Harris, "Factors for Reasonable Suspicion: When Black and Poor Means Stopped and Frisked," *Indiana Law Journal*, vol. 69 (1994), p. 665 (hereafter cited as Harris, "Factors").

¹⁶ 449 U.S. 411 (1981).

¹⁷ Harris, "Factors," p. 665.

¹⁸ *Cortez*, 449 U.S. at 418. See also *Reid v. Georgia*, 448 U.S. 438 (1980). In *Reid*, the Court ruled that petitioner's stop

The Supreme Court granted a greater degree of reliance on police officers' assessments of potential criminal activity in a drug courier profile case, *United States v. Sokolow*.¹⁹ Here, the majority considered the defendant's overall behavior and activities that preceded the stop and frisk. The Court concluded that law enforcement authorities satisfied *Terry's* "reasonable suspicion" requirement, when the agents determined that the defendant's actions corresponded to the Drug Enforcement Agency's (DEA) drug courier profile.²⁰

In 1990, the Court decided a sobriety checkpoint case, *Michigan Department of State Police v. Sitz*.²¹ In this decision, the majority maintained that although the Saginaw County Sheriff's Department had no overt evidence of drivers with impaired physical conditions, all motorists were required to stop as they approached the checkpoint.²² A balancing test was used to compare the minimal nature of the intrusion of the stop and questioning imposed on the privacy of drivers, versus the seriousness of the drunken driving problem.²³ As a result, while relying

and seizure was improper when a law enforcement officer based it on his observation of the individual engaging in separate acts of innocent activity. However, the opinion indicated that the court would have supported the petitioner's seizure, if there were additional evidence of suspicious activity. *Id.* at 441; Harris, "Factors," p. 667.

¹⁹ 490 U.S. 1 (1989). Drug Enforcement Administration (DEA) agents stopped the defendant, Andrew Sokolow, when he arrived at Honolulu International Airport. The agents ultimately uncovered 1,063 grams of cocaine in his carry-on luggage. When the stop was made, "the agents knew . . . that (1) he paid \$2,100 for two airplane tickets from a roll of \$20 bills; (2) he traveled under a name that did not match the name under which his telephone number was listed; (3) his original destination was Miami, a source city for illicit drugs; (4) he stayed in Miami for only 48 hours, even though a round-trip flight from Honolulu to Miami takes 20 hours; (5) he appeared nervous during his trip; and (6) he checked none of his luggage." *Id.* at 3; see Harris, "Factors," p. 667.

²⁰ *Sokolow*, 490 U.S. at 9–10. "A court sitting to determine the existence of reasonable suspicion must require the agent to articulate the factors leading to that conclusion, but the fact that these factors may be set forth in a 'profile' does not somehow detract from their evidentiary significance as seen by a trained agent." *Id.* at 10.

²¹ 496 U.S. 444 (1990).

²² *Id.* at 448. During the 75 minutes that the checkpoint was in operation, 126 drivers were stopped and questioned, and two arrests were made. *Id.*

²³ *Sitz*, 496 U.S. at 451–52. See *id.* at 451. The Court relied upon their prior decisions in *Treasury Employees v. Von Raab*, 489 U.S. 656 (1989); and *United States v. Martinez*

upon its 1976 decision in the *Martinez-Fuerte* case, the Court reasoned that

the circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving-patrol stop. Roving patrols often operate at night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion.²⁴

Hence, the *Sitz* Court determined that the checkpoint stops were constitutionally "reasonable," despite the lack of suspicion of drunken driving in relationship to any particular motorist.²⁵

In *California v. Hodari D.*,²⁶ the Court examined when an individual has been "seized" pursuant to the parameters of the Fourth Amendment. The *Hodari* decision relied upon the Court's observation in *Mendenhall*, which indicated that an individual has been constitutionally seized, "only when, by means of physical force or a show of authority, his freedom of movement is restrained. Only when such restraint is imposed is there any foundation whatever for invoking constitutional safeguards."²⁷ As a result, the majority concluded that the objective test for establishing this "show of authority" is whether a reasonable person would have understood the police officer's words and actions to mean that the citizen is being ordered to stop.²⁸

Fuerte, 428 U.S. 543 (1976), a case that dealt with highway checkpoints established for detecting illegal aliens. "[W]here a Fourth Amendment intrusion serves special governmental needs, beyond the normal need for law enforcement, it is necessary to balance the individual's privacy expectations against the Government's interests to determine whether it is impractical to require a warrant or some level of individualized suspicion in the particular context." *Sitz*, 496 U.S. at 450-51 (citing *Treasury Employees*, 489 U.S. at 665-66).

²⁴ *Sitz*, 496 U.S. at 453 (citing *Martinez-Fuerte*, 428 U.S. at 558).

²⁵ 496 U.S. at 453, 455.

²⁶ 499 U.S. 621 (1991).

²⁷ See *id.* at 627-28 (citing *Mendenhall*, 446 U.S. at 553).

²⁸ *Hodari*, 499 U.S. at 628. See also *Whren v. United States*, 517 U.S. 806 (1996). In *Whren*, the Court confirmed that it is reasonable for a police officer to stop a motorist when the officer has probable cause to believe that the civilian has committed a traffic violation. Hence, there is no Fourth Amendment violation of unreasonable searches and seizures. *Id.* at 809-10.

Thus, citizens are generally not obligated to answer a police officer's inquiries. However, although constitutional safeguards exist that generally protect individuals from unreasonable governmental searches and seizures, a police officer who has reasonable suspicion that persons are involved in existing criminal activity are legally permitted to approach them in public locations, detain and question them, and conduct limited searches for the officer's safety. Furthermore, courts have relied upon a police officer's assessment of existing criminal activity when evaluating whether the reasonable suspicion prerequisite for stop and frisks has been met. This assessment of existing illegal activity now includes determining if alleged suspects' actions and appearances correspond to criminal profiles.

The Equal Protection Clause and Race

Although neither the Fourth nor the Fourteenth Amendment prohibits the use of race when it must be employed and does not result in an unfair application of the laws, the Constitution forbids police officers from targeting individuals for investigation *solely* on the basis of their race.²⁹ Thus, if a law enforcement officer "adopts a policy, employs a practice, or in a given situation takes steps to initiate an investigation of a citizen based solely upon that citizen's race, without more, then a violation of the Equal Protection Clause has occurred."³⁰ Skin color does not justify heightened suspicion for all members of a particular race.

Nevertheless, this does not mean that where race is a part of the description of a particular suspect, it may not be used as a legitimate basis for questioning. In *Brown v. Oneonta*,³¹ the Court of Appeals for the Second Circuit consid-

²⁹ See, e.g., *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975). The Court determined that the appearance of Mexican ancestry does not furnish reasonable belief for questioning the occupants of a car in search of illegal aliens. *United States v. Avery*, 137 F.3d 343 (6th Cir. 1997). Police would violate the Equal Protection Clause if they investigated a suspect on suspicion of drug trafficking solely on the basis of race. *People v. Johnson*, 102 A.D.2d 616, 622, 478 N.Y.S.2d 987, 993 (N.Y. App. Div. 1984). In *Johnson*, the Court found that the "color of a person's skin . . . cannot serve as the sole basis for suspicion." *But cf. NYPD Response*. The NYPD maintains that the Equal Protection Clause has no bearing on the *Terry* analysis. *Ibid.*

³⁰ *Avery*, 137 F.3d at 355.

³¹ 195 F.3d 111 (2d Cir. 1999), *reh'g denied*, 203 F.3d 153 (2d Cir. 1999).

ered the extent to which police officers may rely on a physical description consisting primarily of a suspect's race and gender in the investigation of a crime. In that case, an elderly woman in Oneonta, New York, reported being attacked by a young black male. She could not, however, identify her assailant's face or provide a detailed physical description.³² Fewer than 300 blacks live in Oneonta, and the police proceeded to conduct a "sweep" of the town, questioning more than 200 persons of color over the next several days.³³ In addressing the plaintiffs' constitutional claims, the court concluded that the stops of black men in Oneonta were not based solely on race, but "on the altogether legitimate basis of a physical description given by the victim of a crime."³⁴ In the *Oneonta* court's estimation, the policy of the police "was race-neutral . . . [they] investigate crimes by interviewing the victim, getting a description of the assailant, and seeking out persons who matched that description."³⁵ Accordingly, *Oneonta* grants police officers greater latitude to rely on race where it constitutes the principal element in a victim's physical identification of a suspect.

While *Oneonta* permits police officers to use race as a factor in establishing reasonable suspicion, such reliance creates an opportunity for the abuse of police authority:

Although this permissible use of race as an identifying characteristic serves as a necessary and efficient means for police to narrow their investigative efforts, police often lower their standards of investigation when a suspect has been described as a minority, thus intruding upon a greater number of individuals who meet the racial description than if the suspect had been described as white.³⁶

³² *Id.* at 116.

³³ *Id.*

³⁴ *Id.* at 119.

³⁵ *Id.*

³⁶ "Developments in the Law—Race and the Criminal Process, Section III: Racial Discrimination on the Beat: Extending the Racial Critique to Police Conduct," *Harvard Law Review*, vol. 101, no. 7 (1988), pp. 1472, 1505; Emily J. Sack, "Police Approaches and Inquiries on the Streets of New York: The Aftermath of *People v. De Bour*," *New York University Law Review*, vol. 66 (1991), pp. 512, 539 (hereafter cited as Sack, "Police Approaches"). "[W]hen the suspect is described as a minority, the police often lower their standards of investigation . . . thus intruding upon a greater number of individuals who meet the racial description than if the suspect had been described as white." *Ibid.*

Often, it is difficult to evaluate the use of race by police officers during street encounters. Because of the multiplicity of race-neutral factors an officer may credibly use in order to establish the requisite degree of articulable suspicion, a discriminatory intent may only at times be inferred from the totality of relevant facts, including evidence of discriminatory impact. As the United States Supreme Court observed in *Washington v. Davis*,³⁷ "the discriminatory impact . . . may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds."³⁸ While police officers and courts infrequently cite race as an element in creating the suspicion necessary to justify police intrusions, evidence of strong disparate impact may indicate that race plays a more important role than may be conceded.

New York Law

New York's Criminal Procedure Law (CPL) essentially codifies the United States Supreme Court's holding in *Terry*, authorizing police officers to make limited intrusions upon the liberty of persons in public places for investigative purposes, when the attendant circumstances provide an articulable basis to suspect involvement in criminal activity. Section 140.50 of the CPL authorizes a police officer "to stop a person in a public place . . . when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor."³⁹ Once such a stop has been made, New York law authorizes a frisk of the person only if the officer "reasonably suspects that he is in danger of physical injury."⁴⁰ These provisions form the core of what is popularly referred to as New York's "Stop and Frisk Act."

While the CPL generally codifies the *Terry* standard, the New York Constitution, as interpreted and applied by New York courts, generally accords greater protection to individual liberty and privacy interests than does the federal Constitution. Article I, Section 12 of the New York Constitution provides that

³⁷ 426 U.S. 229 (1976).

³⁸ *Davis*, 426 U.S. at 242.

³⁹ N.Y. CRIM. PROC. LAW § 140.50(1) (Consol. 1999).

⁴⁰ *Id.* at § 140.50(3).

[t]he right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The right of people to be secure against unreasonable interception of telephone and telegraph communication shall not be violated, and *ex parte* orders or warrants shall issue only upon oath or affirmation that there is reasonable ground to believe that evidence of crime may thus be obtained . . .⁴¹

Despite the similarities between the New York and federal Constitutions, the New York courts have considerably broadened the scope of conduct that constitutes an impermissible search or seizure. New York courts, for example, have concluded that encounters between a police officer and a citizen must be scrutinized for reasonableness from their inception, and not just from the point where a seizure or forcible stop occurs.⁴² In *People v. Torres*,⁴³ the New York Court of Appeals specifically stated that “this court has demonstrated its willingness to adopt more protective standards under the State Constitution [than those imposed under federal law] when doing so best promotes ‘predictability and precision in judicial review of search seizure cases and the protection of individual rights of our citizens.’”⁴⁴ Thus, a New York police officer who obeys the mandates of the U.S. Constitution’s Fourth Amendment may still be in violation of the New York State Constitution.⁴⁵ New York

police officers are held to a higher standard with regard to the protection of individuals’ civil liberties.⁴⁶

The leading New York case governing the actions of police officers during street encounters with private citizens is *People v. De Bour*.⁴⁷ In *De Bour*, the New York Court of Appeals addressed the question of when and under what circumstances a police officer, in the absence of any concrete indication of criminality, may approach a private citizen on the street for the purpose of requesting information.⁴⁸ The court held that the police officer’s conduct was justified at all stages of the encounter. However, in its opinion, the court articulated a four-tiered approach for evaluating the constitutionality of police encounters with the public. At the first or lowest level, the court concluded that police officers may approach individuals to request information “when there is some *objective credible reason* for that interference not necessarily indicative of criminality.”⁴⁹ In contrast, any police intrusion “undertaken with intent to harass or . . . based upon mere whim . . . or idle curiosity” violates

that New York police officers operate under a different set of rules than officers bound only to follow the Supreme Court’s holding in *Terry*.

⁴⁶ *But see NYPD Response*; “The Governor’s Attack on the Judges,” *The New York Times*, Feb. 3, 1996, p. 22; Steven Duke, “Crime and Punishment,” *The New York Times*, Mar. 31, 1996, p. 8. The NYPD maintains that a higher standard does not necessarily indicate that the legal guidelines are clear. Some authorities, such as New York Governor George Pataki and former New York Supreme Court Judge Harold Rothwax, have considered stop and frisk law ambiguous. *Cf. Editor’s Note*. The latest United States Supreme Court decision on the stop and frisk doctrine was unanimous, and not indicative of an unclear doctrine (citing *Florida v. J.L.*, 120 S. Ct. 1375 (2000)).

⁴⁷ 40 N.Y.2d 210, 386 N.Y.S.2d 375, 352 N.E.2d 562 (1976).

⁴⁸ 40 N.Y.2d at 213. In this case, two uniformed police officers observed Louis De Bour walking alone in their direction at 12:15 a.m. in an area of Brooklyn with a high incidence of drug traffic. When De Bour came within 30 or 40 feet of the officers, he crossed the street, and the two policemen followed suit. When he reached the officers, one of officers asked him what he was doing in the neighborhood. De Bour replied that he had just parked his car and was going to a friend’s house. One of the officers then asked De Bour for identification. As he was answering that he had none, the officer noticed a bulge in De Bour’s coat and asked him to “unzipper” the coat. When De Bour complied with this request, the officer observed a revolver protruding from his waistband and arrested De Bour for gun possession. *Id.* at 213–14.

⁴⁹ *Id.* at 223 (emphasis added).

⁴¹ N.Y. CONST., art. I, § 12. *See* Robert M. Pitler, “Independent State Search and Seizure Constitutionalism: The New York State Court of Appeals’ Quest for Principled Decisionmaking,” *Brooklyn Law Review*, vol. 62 (1996), pp. 1, 13. The second paragraph, directed at wiretapping, was expressly intended to reject the view of the United States Supreme Court that nontrespassory wiretapping was neither a search nor a seizure within the meaning of the Fourth Amendment.

⁴² *See e.g.*, *People v. De Bour*, 40 N.Y.2d 210, 352 N.E.2d 562, 386 N.Y.S.2d 375 (N.Y. 1976).

⁴³ 74 N.Y.2d 224, 230, 543 N.E.2d 61, 65, 544 N.Y.S.2d 796, 800 (N.Y. 1989).

⁴⁴ *Id.* at 228.

⁴⁵ *See* Douglas Holden Wigdor, “What’s in a Word? A Comparative Analysis of Article I, § 12 of the New York State Constitution and the Fourth Amendment to the United States Constitution As Interpreted by the New York Court of Appeals and the United States Supreme Court,” *Touro Law Review*, vol. 14 (1998), pp. 757, 759. The court noted

the Constitution.⁵⁰ At the second level, the court held that police officers have a “common-law right to inquire” and to request “explanatory information” when there is “a founded suspicion that criminal activity is afoot.”⁵¹ At the third level, police officers may conduct a forcible stop and seizure where there is “a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or a misdemeanor.” Finally, at the fourth level, the court held that police officers may arrest and detain individuals based on “probable cause.”⁵²

De Bour essentially creates a sliding scale for assessing police conduct; New York police officers are only permitted to increase the intensity of their intrusions as the degree of articulable suspicion increases during the course of a street encounter.⁵³ Further, each successive governmental intrusion must be judged on its own merits to determine “whether or not it was reasonably related in scope to the circumstances which rendered its initiation permissible.”⁵⁴ By delineating multiple levels of intrusion and requiring a separate level of police justification for each, the court in *De Bour* expressed a heightened concern with “protecting citizens against . . . arbitrary and discriminatory government intrusions.”⁵⁵

STOP AND FRISK PRACTICES

Stop and Frisk Reports: UF-250s

There is no legal requirement that NYPD officers record stop and frisk encounters with private citizens. Instead, documenting certain types of street encounters has been a longstanding NYPD practice “designed to provide protection to both the police and the public, so that full information is available should followup or investigation of the stop become necessary.”⁵⁶ Under

NYPD policy, the completion of a “stop and frisk report”—(or UF-250 form) is only required under the following circumstances: (1) a person is stopped by use of force, (2) a person stopped is frisked or frisked and searched, (3) a person is arrested, or (4) a person stopped refuses to identify him or herself.⁵⁷ Accordingly, if a person is stopped and questioned without official use of force and gives his or her name, a UF-250 is not required, provided that the individual is neither frisked nor arrested by NYPD officers.⁵⁸

The standard UF-250 form requires officers to document, among other things, the time, date, place, and precinct where the stop occurred; the name, address, age, gender, race, and physical description of the person stopped; factors that caused the officer to reasonably suspect the person stopped; the suspected crime that gave rise to the stop; the duration of the stop; whether the person stopped was frisked, searched or arrested; and the name, shield number, and command of the officer who performed the stop.⁵⁹ When a UF-250 is completed, the Patrol Guide Manual indicates that officers must submit the form to the desk officer in the precinct where the stop occurred.⁶⁰ The desk officer is then required to bring the report to the attention of the commanding officer.⁶¹

The number of UF-250 forms completed by NYPD officers has increased significantly over the past 10 years.⁶² According to information

New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General, 1999, p. 64 (hereafter cited as OAG, *Stop & Frisk Report*). “The overall purpose of the UF-250 is several-fold: In addition to informing the court what circumstances led the officer to believe that a stop was necessary, the report also serves to protect the officer and the Department from allegations of police misconduct which may sometimes arise from the proper performance of police duty.” *Ibid.*

⁵⁰ *Patrol Guide*, pp. 116–33; see Safir Statement to Public Safety Committee, p. 10. See also *NYPD Response*. The NYPD’s policy for completing stop and frisk reports is above the constitutional requirement. *Ibid.*

⁵¹ Safir Statement to Public Safety Committee, p. 10.

⁵² *Patrol Guide*, pp. 116–33; OAG, *Stop & Frisk Report*, p. 63.

⁵³ *Patrol Guide*, pp. 116–33.

⁵⁴ *Ibid.*

⁵⁵ OAG, *Stop & Frisk Report*, p. 65; see Editor’s Note. The earliest written reference that the Commission has found regarding this form is 1986. *But see NYPD Response*. The

⁵⁰ *Id.* at 217.

⁵¹ *Id.* at 223.

⁵² *Id.*

⁵³ *Id.* “[V]arious intensities of police action are justifiable as the precipitating and attendant factors increase in weight and competence.” *Id.*

⁵⁴ *Id.* at 222.

⁵⁵ See Sack, “Police Approaches,” pp. 512, 527.

⁵⁶ Howard Safir, New York police commissioner, statement to the New York City Council Public Safety Committee, New York, NY, Apr. 19, 1999, p. 10 (hereafter cited as Safir Statement to Public Safety Committee); State of New York, Office of the Attorney General, Civil Rights Bureau, *The*

received from the department, the number of UF-250s filed by officers increased from 42,805 in 1989 to 114,825 for 1998.⁶³

In 1997, Police Commissioner Howard Safir initiated a policy to make the filing of UF-250 forms a “rigorously enforced” priority.⁶⁴ As figure 5.1 demonstrates, this policy change resulted in a noticeable increase in the number of stop and frisk encounters reported by NYPD officers between 1997 and 1998. The UF-250 policy modification also coincided with the establishment of the department’s initiatives to combat quality of life crimes.

In 1997, the NYPD announced “Strategy ‘97—Goal Oriented Neighborhood Policing.” Strategy ‘97 was an effort designed to address “concerns that have the most impact on New York City’s Neighborhoods,” including property crime, quality of life violations, illegal guns, and drugs.⁶⁵ As part of this initiative, the NYPD’s Street Crime Unit (SCU), a group of plainclothes officers assigned to apprehend violent criminals with guns, was augmented by 300 officers to a total complement of 438.⁶⁶ Concomitantly, the primary mission of the SCU was expanded to address “all forms of street level crime,” including drugs, robbery, and assorted quality of life violations.⁶⁷ The Street Crime Unit was also directed to commence efforts targeted at entrenched pockets of crime as identified by precinct borough commanders.⁶⁸

department has asserted that the UF-250 form has been mandatory since 1964 and was amended in 1973.

⁶³ Memorandum from Director Central Records Division to Executive Director Support Services Bureau, Apr. 5, 1999, p. 1. The numbers of UF-250s for the intervening years are as follows: 1990—41,438; 1991—44,209; 1992—46,371; 1993—43,014; 1994—47,665; 1995—44,654; 1996—56,353; 1997—85,768; see Editor’s Note. These figures are the only source of data covering the entire 10-year period. Although the NYPD database indicates that the number of stop and frisk incidents for 1998 is greater than what is stated in the Apr. 5, 1999, memorandum, the memorandum’s total is used to more accurately show the annual trend in stop and frisk incidents.

⁶⁴ *Ibid.*

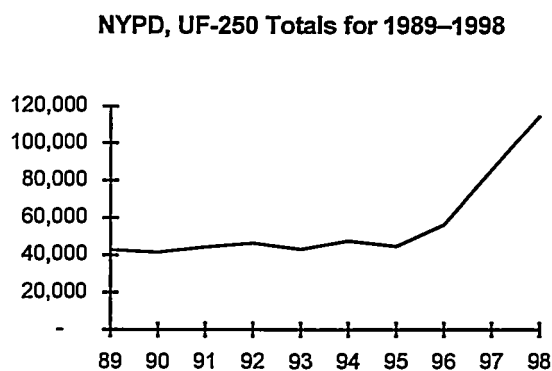
⁶⁵ New York City Police Department, “NYPD Strategy ‘97: Goal-Oriented Neighborhood Policing” (hereafter cited as “Strategy ‘97”).

⁶⁶ *Ibid.*, p. 6.

⁶⁷ *Ibid.*, p. 7.

⁶⁸ *Ibid.*

FIGURE 5.1



Despite the recent marked increase in the filing of UF-250s, a significant number of stop and frisks may still remain unreported.⁶⁹ During the Commission’s May 1999 hearing on police practices in New York City, Lieutenant Eric Adams estimated that in “1 out of 30 [stop and frisks] . . . a UF-250 [is] prepared.”⁷⁰ Moreover,

⁶⁹ OAG, *Stop & Frisk Report*, pp. 71–72. “Among the officers interviewed by the OAG . . . there was no clear consensus about the degree to which ‘stop’ encounters are underreported, or why. . . . [O]ne former supervisor of a specialized unit reported that, in his experience, UF-250 forms were completed ‘fairly regularly,’ but not always. The supervisor stated that a ‘stop’ which leads to an arrest is most likely to be the kind of ‘stop’ for which no UF-250 is completed. In an arrest situation, the supervisor explained, the arresting officer must complete an on-line booking sheet, a property voucher, and other paperwork to process the prisoner; ‘[UF-] 250’s are just excess Rosario material’—that is, material that defense lawyers can use to cross-examine the officer at trial.

On the other hand, other officers stated their belief that, routinely, ‘stops’ are not reflected in completed UF-250’s forms. Some estimated that only one in three ‘stops’ is documented; others said only one in five. The reasons for this (perceived) failure to adhere to the rules were varied: considerations of time, convenience, and necessity were frequently cited. Notably, the general consensus was that officers were more likely to complete the forms and document a ‘stop’ where there was the possibility that a civilian might later complain about the officer’s conduct.” *Ibid.*

See Editor’s Note, “Unreported stops” are defined as those for which UF-250 forms should have been filed according to NYPD guidelines but were not. *But see NYPD Response.* “[T]here is no legal or Department requirement for officers to fill out a stop and frisk form for many stops. Additionally, at least some of the stop and frisk reports that were actually recorded need not have been prepared given the NYPD’s policy.” *Ibid.*

⁷⁰ Eric Adams, testimony before the U.S. Commission on Civil Rights on *Police Practices and Civil Rights in New York City*, hearing, New York, NY, May 26, 1999, transcript,

he testified that the UF-250s on file are “mere child’s play on the number of people who have been harassed by [the NYPD].”⁷¹

Another police officer, Sergeant Anthony Miranda, provided these comments: “[A] stop, question and frisk report . . . sometimes gets prepared and may not get prepared. . . . [t]hey do this randomly.”⁷² New York State Attorney General Eliot Spitzer has also expressed skepticism regarding the adequacy of the pool of reported UF-250s. As a result, the Attorney General’s Civil Rights Bureau disseminated a “Stop and Frisk Information Collection Form,” that was designed to allow individual citizens to report stop and frisk encounters. State investigators would then “compare [these forms] to the 250s to see what the correlation might be between the 250s that . . . are within the city’s repository, which is claimed by the [NYPD] to be essentially the totality of the stop and frisk universe.”⁷³

Legitimate questions may also be raised as to the reliability of reported UF-250 data. Because individual officers involved in street encounters are responsible for completing the actual UF-250 forms, the accuracy of critical data—such as the legal predicate for a stop and frisk—may be open to challenge. As Police Commissioner Safir acknowledged in his April 1999 statement before the New York City Council, “there is no foolproof way to conduct a paper audit to determine whether reasonable suspicion was present in a street encounter, since the [UF-250] forms are self-generated by the officer taking action.”⁷⁴

Concerns about the reliability of the reported UF-250 data are exacerbated by claims that new

quotas may have been instituted, both at the precinct level and within the specialized units, to produce suspects, summonses, guns, arrests, and stop and frisk reports.⁷⁵ Officer Hiram Monserrate provided the following testimony before the Commission:

These quotas vary from unit to unit, but precinct officers on patrol are given specific goals, like 25 summonses a month and at least 2 arrests per quarter. . . . [I]n the Street Crime Unit, 2 felony arrests and a 15 stop, question, and frisk report per quota are the mandate.⁷⁶

Similarly, Sergeant Noel Leader testified before the Commission regarding the pressure on SCU and other NYPD officers “to just produce numbers.”⁷⁷ Although there is anecdotal testimony regarding quotas for UF-250s, it is unclear to what extent such quotas are in place and whether they are a meaningful indication of police effectiveness.⁷⁸

Moreover, until recently, no uniform practice existed for non-precinct units to process and record UF-250s. Unlike officers assigned to precinct divisions who had detailed procedures concerning the processing and submission of UF-250s, there was no uniform procedure across non-

p. 306 (hereafter cited as New York Hearing Transcript). *But see NYPD Response*. The NYPD contends that there is no evidence to support the testimony of this witness. The department indicates that the Commission should have surveyed a random sample of police officers.

⁷¹ Adams Testimony, New York Hearing Transcript, p. 310.

⁷² Miranda Testimony, New York Hearing Transcript, p. 311.

⁷³ Spitzer Testimony, New York Hearing Transcript, pp. 242–43. The results of the OAG comparison between the Stop and Frisk Information Collection Forms and UF-250s have yet to be published.

⁷⁴ Safir Statement to Public Safety Committee, p. 12; OAG, *Stop & Frisk Report*, p. xiv. The OAG *Stop & Frisk Report* found that in “one out of every seven ‘stops’ . . . the facts that the officer provided as a basis for ‘stopping’ the individual did not meet the legal test of ‘reasonable suspicion.’” *Ibid.*

⁷⁵ See Rocco Parascandola and Larry Celona, “Case Prompts Probe Into Unit’s Gun Use,” *New York Post*, Feb. 14, 1999, p. 3; Cynthia Cotts, “Deconstructing Diallo’s Death,” *Village Voice*, Feb. 24–Mar. 2, 1999, issue, at Press Clips Column; Jodi Wilgoren, “Police Profiling Debate: Acting on Experience, or on Bias,” *The New York Times*, Apr. 9, 1999, Metro Section; Cynthia Cotts, “By the Numbers,” *Village Voice*, Apr. 14–20, 1999, issue, at Press Clips Column; Nat Hentoff, “Lawless Arrests Under Giuliani,” *Village Voice*, Oct. 27–Nov. 2, 1999, issue; William K. Rashbaum, “Police Demote Commanders of 2 Precincts,” *The New York Times*, Jan. 8, 2000, Metro Section; Kevin Flynn, “Ranking Officers Retiring as Opportunities Call and Pressures Mount,” *The New York Times*, Jan. 16, 2000, Metro Section; Dan Barry, “One Legacy of a 41-Bullet Barrage Is a Hard Look at Aggressive Tactics on the Street,” *The New York Times*, Feb. 27, 2000, Metro Section. *But see NYPD Response*. Data extracted from UF-250 forms may be inadequate for purposes other than those originally intended.

⁷⁶ Officer Hiram Monserrate, NYPD, second vice president, Latino Officers Association, Testimony, New York Hearing Transcript, p. 292.

⁷⁷ Sergeant Noel Leader, NYPD, member of 100 Blacks in Law Enforcement Who Care, Testimony, New York Hearing Transcript, p. 326.

⁷⁸ *See NYPD Response*. The NYPD contends that it does not maintain formal or informal quotas on the filing of UF-250 forms.

precinct divisions as of March 1999.⁷⁹ Most UF-250s completed by officers in both city and boroughwide special units were reviewed by the unit supervisor and then forwarded to the precinct of occurrence for processing. The specialized divisions often did not retain any independent records. Furthermore, the SCU and Organized Crime Control Bureau, which includes the Narcotics, Organized Crime Investigation, and Auto Crime Divisions, were the only specialized units to maintain independent records of the number of UF-250s prepared.⁸⁰ Accordingly, there is no meaningful way to assess the stop and frisk activities of these other specialized units.⁸¹

⁷⁹ See Memorandum from Deputy Commissioner, Policy and Planning, to Chief of Department et al., re: Follow up to UF-250 Process Meeting Held Mar. 22, 1999 (Mar. 22, 1999), pp. 1-3. *But see NYPD Response* (citing NYPD, Operations Order 30, 2000). "Reports are to be filled out in units and sent to the precinct for processing. Supervisors are required to sign the report. Copies may be made for local use by outside units. Since copies go to the precinct and then to Central Records Division (including those in specialized units) a uniform procedure for collecting and numbering the reports is in place. A new procedure is now in effect in which a Stop and Frisk Log is to be maintained in commands that fill out the report and photocopies of each report are also maintained in this log." *Ibid.*

Cf. Editor's Note. The procedure for processing UF-250 forms was changed on May 4, 2000, after the draft version of this report was submitted. The new procedure requires the forms to be completed in units and sent to the precinct for processing. Nonpatrol precinct commands submit forms through the precincts concerned.

⁸⁰ Memorandum from Commanding Officer Street Crime Unit, Follow-up to UF-250 Meeting Held on Mar. 25, 1999 (Mar. 25, 1999), NYP 008870. Members of the Street Crime Unit prepared 19,821 UF-250s in 1997; 27,061 in 1998; and 3,863 in 1999 as of Mar. 25, 1999. *Ibid.* Memorandum from Chief Organized Crime Control Bureau re: Accountability of the UF-250 Process (Apr. 1, 1999), p. 1. Officers assigned to (1) Narcotics completed 1884 UF-250s in 1997 and 1,396 in 1998; (2) Vice completed 18 in 1997 and 10 in 1998; (3) OCID completed 47 in 1997 and 38 in 1998. The Auto Crime Division, although it does not maintain a log separate from those maintained in the precinct of occurrence, noted however that "due to the covert nature of this assignment it is estimated that less than 50 reports were prepared during the last five years." *Ibid.* *But see NYPD Response.* The number of stop and frisk reports for the Street Crime Unit is incorrect. Correct figures are available through the UF-250 database. *Cf. Editor's Note.* The UF-250 database breaks down filings into precincts, but does not allow for the screening of Street Crime Unit filings from other filings within a precinct.

⁸¹ See Memorandum from Commanding Officer, Homeless Outreach Unit, Follow up to 250 Process Meeting Held on Mar. 22, 1999 (Mar. 25, 1999), NYP 008871; Memorandum

Non-precinct units within the Patrol Services borough units maintained equally varied procedures.⁸² For example, all non-precinct units in Patrol Borough Manhattan South and North,⁸³ except certain units within Patrol Borough Manhattan South,⁸⁴ independently process UF-250s. Similarly, all Bronx non-precinct units, except the Yankee Stadium detail, recorded the preparation of UF-250s in the unit, immediately forwarding them to the precinct of occurrence.⁸⁵ Brooklyn South non-precinct units, including Patrol Borough Brooklyn South units, forward UF-250s to the precinct of occurrence with each unit maintaining a record of the number of com-

from Commanding Officer Harbor Unit, Follow Up to UF-250 Process Meeting Held on Mar. 22, 1999 (Mar. 24, 1999), NYP 008872; Memorandum from Commanding Officer, Emergency Service Unit, Follow Up to UF-250 Process Meeting Held on Mar. 22, 1999 (Mar. 25, 1999), NYP 008874. Homeless Outreach, Harbor, Anti-Graffiti/Vandalism and Emergency Services Unit do not maintain independent records of the number of UF-250s prepared by officers assigned to those units. *Ibid.* Memorandum from Commanding Officer, School Safety Division, UF-250 Processing (Mar. 26, 1999), p. 4. School safety agents are not authorized to perform stop and frisks under New York law. *Ibid.*

⁸² *But see NYPD Response.* All stop and frisk reports are processed through the precinct of occurrence, regardless of the particular unit. *Cf. Editor's Note.* The NYPD's process has now been changed to uniformly process filings through the precinct of occurrence, but this change did not take place until May 4, 2000.

⁸³ Memorandum from Commanding Officer, Patrol Borough Manhattan North, to Chief of Patrol, UF-250 Survey (Mar. 26, 1999), pp. 1-2. Patrol Borough Manhattan North non-precinct units, which include Manhattan North Task Force, Northern Manhattan Initiative, Central Harlem Initiative, and East Harlem Initiative, process UF-250s similarly; however, no individual units retain records of the UF-250s issued. *Ibid.*

⁸⁴ Memorandum from Commanding Officer, Manhattan South Task Force, to Commanding Officer, Patrol Borough Manhattan South, Processing of Stop and Frisk Reports (Mar. 25, 1999), p. 1. These units include the Manhattan South Task Force, Peddler Task Force, and Grand Larceny Task Force. Patrol Borough Manhattan South has maintained its own log since June 6, 1995. As of Dec. 17, 1998, Patrol Borough Manhattan South prepared 1,589 UF-250 reports. *Ibid.*

⁸⁵ See Memorandum from Commanding Officer, Patrol Borough Bronx, re: Processing and Forwarding UF-250 Reports (Mar. 26, 1999), p. 1. The non-precinct units comprising the Patrol Borough Bronx and the number of 250s they prepared are as follows: Bronx Rape Apprehension Team—5,594; Bronx Task Force—4,300; Bronx Zoo Detail—11. Yankee Stadium Detail forwards UF-250s immediately to the 44th Precinct. Bronx Warrant Module was not in service until 1999.

pleted UF-250s.⁸⁶ Most Brooklyn North non-precinct units record UF-250s in the unit of occurrence, with only the Brooklyn North Narcotics and the Brooklyn North Task Force maintaining separate records of the number of UF-250s completed in 1998.⁸⁷ In the Borough of Queens, non-precinct units employed a myriad of approaches. Patrol Borough Queens South, including Queens South Task Force (and its former subunits Queens South Robbery Task Force and Auto Larceny Units), forward UF-250s to the precinct of occurrence but also retain independent records.⁸⁸ Lastly, Staten Island's non-precinct units generally process UF-250s in the precinct of occurrence.⁸⁹

The Housing and Transit Districts, which recently became a part of the NYPD, all maintained separate UF-250 statistics for uniform personnel assigned to the Housing Bureau.⁹⁰ The Transit Division, which recently came within NYPD, forwards completed UF-250s to the precinct of occurrence.⁹¹

⁸⁶ See Memorandum from Commanding Officer, Patrol Borough Brooklyn South, UF-250 Records (Mar. 26, 1999), p. 1. For example, in 1998 the Brooklyn South Task Force recorded 345 UF-250s, Brooklyn South Gang Unit reported 100, and the Brooklyn South Corridor Unit recorded 74. The numbers for the previous year were 370, 30, and 53, respectively.

⁸⁷ Memorandum from Commanding Officer, SATcom Brooklyn North, Follow-up to UF-250 Process Meeting (Mar. 26, 1999), p. 1.

⁸⁸ Memorandum from Commanding Officer, Patrol Borough Queens North (Mar. 25, 1999), pp. 1-2. For 1998, each unit's UF-250s, respectively, were 44, 234, and 1,117. Patrol Borough Queens North's non-precinct units also retain copies of UF-250 forms: Queens North Task Force—440 forms; Auto Larceny Unit—805 forms; and the B.R.A.V.E. Unit formerly known as Robbery Task Force.

⁸⁹ See Memorandum from Commanding Officer, Patrol Borough Staten Island (Mar. 25, 1999), pp. 1-2. Staten Island included records of individual units, with the exceptions of the TRACER units, which processed UF-250s through the precinct of occurrence. TRACER units maintained their own records which reveal that 477 UF-250 reports were prepared for the period of July 1998 through December 1998.

⁹⁰ Memorandum from Chief of Housing Bureau to Deputy Commissioner, Policy and Planning, pp. 1-2. Uniform units assigned under the Housing Bureau special services to the PSA where the stop occurred.

⁹¹ Memo from Commanding Officer, Special Investigations Unit, to Commanding Officer, Transit Division (Mar. 25, 1999), p. 1. The total number of UF-250s filed by Transit Police for 1994-1998 was 10,085. The Transit Police Department was merged into the NYPD on Apr. 2, 1995. Prior to the merger, Transit Police completed a similar stop and frisk form entitled a TP-65. All records of Transit Depart-

Few, if any, of these units maintained adequate information to determine whether their stop and frisk practices disproportionately targeted particular racial or ethnic groups.⁹²

Citywide Data

The department's UF-250 data that was furnished to the U.S. Commission on Civil Rights lack certain fields or include particular codes which hinders us from providing a complete assessment of the NYPD's stop and frisk practices.⁹³ For example, the NYPD's UF-250 data do not contain sufficient detailed information to determine how many stops initiated by NYPD officers result in arrests. Further, the NYPD's data do not provide the reasons police officers furnish in their UF-250 reports for stopping civilians. Nevertheless, our analysis should be considered in light of the following shortcomings:⁹⁴

- The Commission had access only to the department's computerized UF-250 data for 1998.⁹⁵ This information demonstrated that

ment's TP-65s filed before the merger have been destroyed. Ibid.

⁹² See *NYPD Response*. The units had the appropriate forms and used them as intended.

⁹³ But see *NYPD Response*. The department maintains that the Commission has all UF-250 data, and did not properly analyze it. Cf. Editor's Note. The arrest data are sporadic and incomplete. Many of the arrest fields of the database were left blank, which made an accurate determination of arrests impossible.

⁹⁴ But see *NYPD Response*. The NYPD asserts that the Commission's subsequent analyses of UF-250 data citywide and by borough are misleading. "[K]ey information regarding critical crime complaint data supplied by crime victims is ignored." Ibid. Cf. Editor's Note. The Commission was unable to confirm whether stop and frisk incidents were predicated on victim identifications, since the NYPD did not provide the necessary information. The precinct demographics cited were those provided to us by the NYPD, which characterized the census data as precinct information and not boroughwide census data.

⁹⁵ But see *NYPD Response*. The NYPD indicates that the Commission did not use UF-250 tabulations from their comprehensive computerized stop and frisk database, which are more accurate than the April 1999 memorandum from the Central Records Division. Cf. Editor's Note. The use of the NYPD's suggested information does not change the fact of an increase in UF-250 filings. The source of the NYPD data is unclear since the database contained only information for 1998. The database also uses a different system of tabulation than the data previously used. This makes a 10-year study inaccurate, as 1997 to 1998 would show an increase that is due to methodology change. The number used in the

during that year, NYPD officers completed 139,409 UF-250 forms.⁹⁶ Of these, 52.3 percent of the data subjects were identified as black, 32.9 percent Hispanic, 13.17 percent white, and 1.7 percent Asian. The population of New York City is approximately 31.7 percent black, 20.3 percent Hispanic, and 9.7 percent Asian.⁹⁷

- The Commission agreed to use the NYPD computations for the total number of unique UF-250 forms filed in 1998. The number of unique filings for 1998 is 138,872, out of a total of 147,787 UF-250 forms filed. For years prior to 1998, no means for screening duplicate reports exist. Therefore, in examining the data for the 10 years ending in 1998, the larger 147,787 figure for 1998 must be used in order to accurately display the growth trend in the filings. The borough and precinct data appearing in this report will be recalculated to screen out duplicate filings. These recalculations do not change any of the findings of this report.

The NYPD's Brooklyn units logged the largest number (37,825, or approximately 27 percent) of stop and frisk reports in 1998. Of these reports, 64.6 percent were for black subjects, 22.7 percent were for Hispanics, 11.9 percent were for whites, and 0.7 percent were for Asians. Approximately 88 percent of all stop and frisk subjects in Brooklyn were members of ethnic minorities. The population of Brooklyn is approximately 41 percent black, 35 percent white, 17 percent Hispanic, and 6.7 percent Asian.⁹⁸

Queens' NYPD units generated 33,848 stop and frisk reports in 1998 (24.3 percent). Of these, 43.6 percent of the data subjects were described as black, 35 percent were Hispanic, and 17.8 percent were white. The population of Queens is approximately 41.3 percent white, 23.1 percent black, 18.5 percent Hispanic, and 16.6 percent Asian.⁹⁹

The Bronx had the next largest number of stop and frisks reported at 30,519 (21.9 percent). Of these, 50.2 percent of the data subjects were identified as black, 42.6 percent were Hispanic, and 6.9 percent were white. The population of the Bronx is approximately 42.4 percent black, 34.2 percent Hispanic, 18.6 percent white, and 4 percent Asian.¹⁰⁰

Manhattan's NYPD units produced 28,359 (20.3 percent) stop and frisk reports in 1998. Of these, approximately 48.6 percent were classified as black, 37.4 percent as Hispanic, 11.6 percent as white, and 2 percent as Asian. The population of Manhattan is approximately 41.9 percent white, 26.7 percent black, 20.5 percent Hispanic, and 10.3 percent Asian.¹⁰¹

Finally, Staten Island had 6,090 (4.4 percent), which was the lowest number of stop and frisks reported for New York City's boroughs in 1998. Approximately 51.6 percent of Staten Island UF-250 subjects were identified as black, 32.4 percent were classified as white, and 15.5 percent were described as Hispanic. The population of Staten Island is approximately 75.4 percent white, 9 percent black, 8.6 percent Hispanic, and 6.7 percent Asian.¹⁰²

following graphs may contain duplicate filings, as no system was in place before 1998 to determine duplicative findings.

⁹⁶ See Editor's Note. This number of stop and frisk incidents for 1998 and all subsequent borough and precinct information, with the exception of data for the Street Crime Unit, is derived from the NYPD database. The NYPD has suggested a procedure for screening the database for duplicate records, which we have followed to the fullest extent possible. *But see NYPD Response.* The department contends there were 138,872 UF-250 reports filed in 1998, due to the erroneous inclusion of duplicate reports.

⁹⁷ U.S. Bureau of the Census, "Index of Population/Estimates/County" <<http://www.census.gov/population/estimates/county>>.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

FIGURE 5.2

NYC, UF-250 Percentage v. Population Percentage, 1998

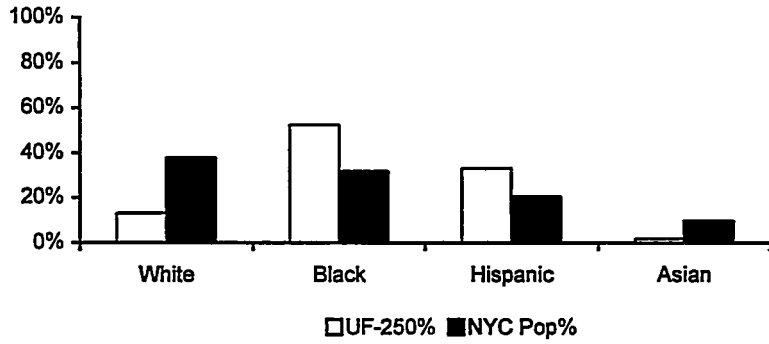


FIGURE 5.3

Brooklyn, UF-250 Percentage v. Population Percentage, 1998

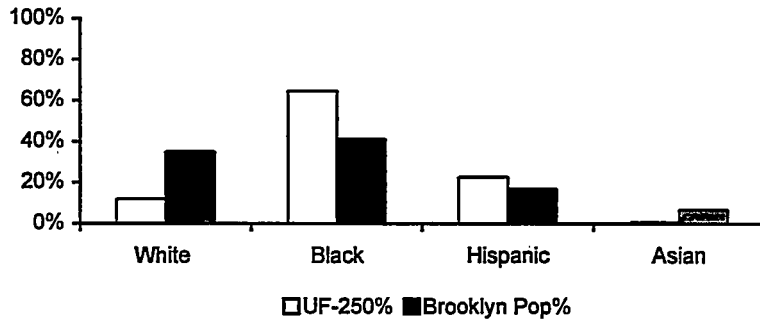


FIGURE 5.4

Queens, UF-250 Percentage v. Population Percentage, 1998

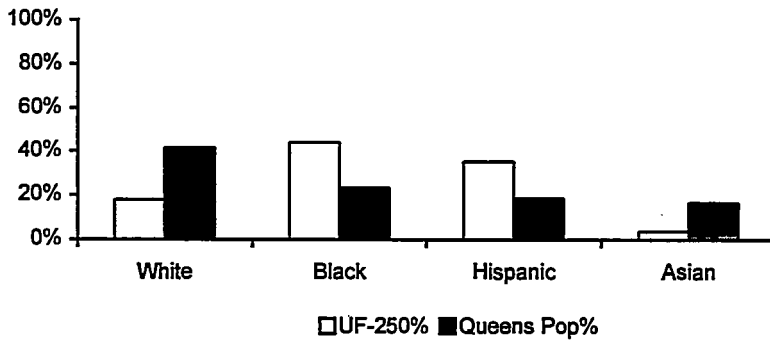


FIGURE 5.5

Bronx, UF-250 Percentage v. Population Percentage, 1998

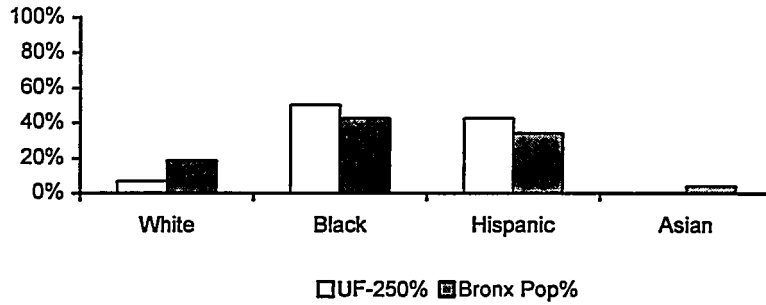


FIGURE 5.6

Manhattan, UF-250 Percentage v. Population Percentage, 1998

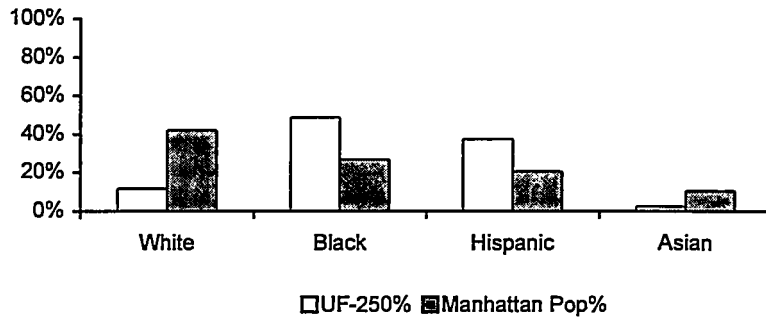
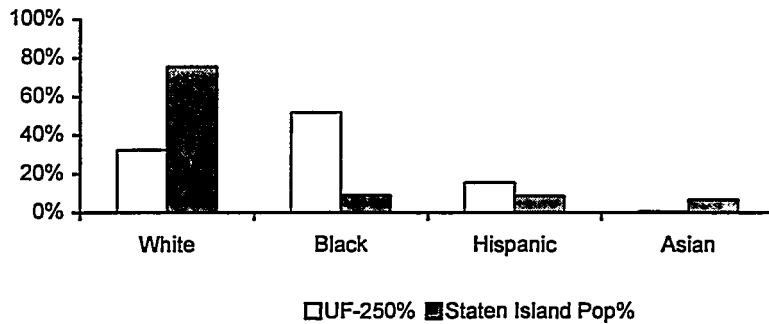


FIGURE 5.7

Staten Island, UF-250 Percentage v. Population Percentage, 1998



Street Crime Unit and Precinct-level Analysis

Nearly one-third of the 139,409 UF-250 reports filed by NYPD officers in 1998 were attributable to five units: the Street Crime Unit (SCU), the 40th Precinct, the 120th Precinct, the 43rd Precinct, and the 47th Precinct.¹⁰³ We provide a closer examination of the stop and frisk practices of the Street Crime Unit, as well as the precinct units that produced the greatest number of stops in 1998.

The Street Crime Unit

In 1998, the SCU filed 27,061 stop and frisk reports, which was the greatest number generated by any NYPD unit.¹⁰⁴ This figure represented a 37 percent increase over the SCU's reported UF-250 figures for 1997. However, according to the NYPD's preliminary tabulation that was prepared for the April 19, 1999, City Council hearing, the Street Crime Unit only produced 8,722 UF-250s in 1998. The demographics of UF-250s subjects were as follows: 64.5 percent black, 20.7 percent Hispanic, 6.3 percent white, and .5 percent Asian.¹⁰⁵

¹⁰³ *But see NYPD Response.* The correct number of stop and frisk incidents in 1998 was 138,872. "The more accurate number of stop and frisk reports prepared by the Street Crime Unit is contained in the database (subtracting out any duplicates that are in the data base itself). Specifically, the data base documents that the Street Crime Unit made 15,324 unique stop and frisk reports in 1998." *Ibid.* Cf. Editor's Note. The trend of the numbers is substantially increasing, regardless of whether database numbers are used or not.

¹⁰⁴ Memorandum from Commanding Officer, Street Crime Unit, Follow-up to UF-250 Meeting Held on Mar. 25, 1999 (Mar. 25, 1999), NYP 008870; *see* Editor's Note. Stop and frisk reports for the Street Crime Unit cannot be determined in the database since that unit files UF-250 forms through the precinct of the incident's occurrence. Therefore other sources must be used for information on Street Crime Unit data.

¹⁰⁵ New York, NY, City Council, hearing, "Stop & Frisk Report: Preliminary Crosstabs, Tabulations for April 19, 1999" (May 25, 1999), p. 6. The preliminary tabulation statistics include all 121,339 UF-250s that were entered into the NYPD's computer system as of 5:00 p.m. on Apr. 15, 1999. Of these, 13,436 were excluded since they were from other years, duplicate serial numbers, or did not reflect the major racial or ethnic groups. This resulted in a raw file of 107,993 that served as the basis for the NYPD's analysis. *But see NYPD Response.* "[T]his was a preliminary figure [8,722] because the complete database was not finished when the April hearing was conducted (the Department was still in the process of entering stop and frisk reports into the computer). Therefore, the 8,722 figure is only a partial figure." *Ibid.*

The disproportionate nature of the SCU's stop and frisk practices is portrayed in the UF-250 statistics for the top 25 precincts in which the SCU was deployed in 1998.¹⁰⁶ These figures reveal that the racial and ethnic composition of the communities surrounding these precincts in which the SCU was deployed most frequently in 1998 was approximately 45 percent black, 28 percent Hispanic, 22 percent white, and 4 percent Asian. Thus, the SCU was more commonly deployed in disproportionately African American and Hispanic neighborhoods.¹⁰⁷

Specifically, 63 percent of the UF-250 forms filed by SCU officers from these precincts in 1998 involved African American civilians. Hispanic civilians were the subject of 30 percent of the filed UF-250s, while white civilians were mentioned in 6 percent of the forms, and Asians were involved in 1 percent of the stop and frisk incidents. Hence, SCU officers stopped blacks and Hispanics with a greater frequency than their actual presence in the predominately minority communities in which SCU officers typically operated in 1998. For example, the Street Crime Unit was deployed to the 71st Precinct in the southern end of the Crown Heights section of Brooklyn for 52 weeks in 1998. According to the 1990 census, 78.3 percent of the residents of the 71st Precinct were black, 10.7 percent white, 9.4

¹⁰⁶ *See NYPD List of Top Twenty-Five Precincts in Which SCU was Deployed, 1998*, p. 1 (hereafter cited as "Top 25 Precinct Data"). As noted earlier, the SCU, like many other non-precinct units, reports its UF-250s through the precinct of occurrence. As a result, the data supplied by the department, describing the number of stop and frisk reports for the top 25 precincts in which the SCU was deployed, are only provided on a precinctwide basis. Since the SCU likely contributed to a marked increase in the number of UF-250s completed within each precinct in which they are deployed, it is probable that the precinct data can be readily interpreted as a proxy for the number of UF-250s completed by the SCU. *But see NYPD Response.* The database should have been used for the 1998 stop and frisk figures, instead of employing data from the top 25 precincts in which the Street Crime Unit was deployed. There were 15,324 stop and frisk reports prepared by the SCU in 1998. *Ibid.* Cf. Editor's Note. According to the NYPD's policy, this unit should submit reports to the precinct in which the encounter occurred; the stops of the unit could not be separated from those of the precinct in the database provided to the Commission. The NYPD provides figures that show 9,004 stops by the SCU occurred in 1997, and 15,324 stops in 1998. Even if these numbers are accepted, a sharp increase can be seen.

¹⁰⁷ *But see NYPD Response.* The Street Crime Unit was deployed to minority neighborhoods, due to the higher rates of crime in those communities. *Ibid.*

percent Hispanic, and 1.2 percent Asian. However, in 1998, 94.5 percent of all of the UF-250 subjects in that precinct were black, 1 percent were white, 4.1 percent were Hispanic, and .4 percent were Asian.

Moreover, within specific precincts, the NYPD's data on the SCU's stop and frisk practices reveal more pronounced racial disparities. For example, in the 6th Precinct, which covers West Greenwich Village, blacks composed 3.4 percent of the resident population. However, African Americans constituted 52.2 percent of the subjects in all UF-250 reports filed by SCU officers.¹⁰⁸ In the same precinct, Hispanics were 5.4 percent of the population, yet accounted for over 24 percent of UF-250 subjects. Similarly, in the 104th Precinct in northwest Queens, blacks were only .5 percent of the resident population, but accounted for 44 percent of UF-250 reports filed by SCU officers in 1998.¹⁰⁹ Data from the 110th and 115th Precincts in Queens also indicate significant disparities.¹¹⁰ Hispanics made up 41.8 percent and 43 percent of the population in these precincts, and accounted for 75.8 percent and 70 percent of all UF-250 reports filed by SCU officers, respectively. In nearly all of the 25 precincts in which the SCU was deployed in 1998, SCU officers stopped either blacks or Hispanics, or both, well out of proportion to their presence in the relevant population.

The 40th Precinct

The unit filing the second largest number of UF-250s was the 40th Precinct, which registered approximately 5,058 stop and frisk reports in 1998 alone. The 40th Precinct encompasses an area of approximately 3 square miles in the South Bronx.¹¹¹ The command includes such neighborhoods as Port Morris (below East 138th Street), Mott Haven (roughly East 138th Street to East 149th Street), and Melrose (north of East

149th Street). The resident population of the 40th Precinct is approximately 77,000.¹¹²

Of the 5,058 reports filed in the 40th Precinct, 51.4 percent were recorded for Hispanic subjects, 45.4 percent for black subjects, and 1.8 percent for white subjects. Accordingly, nearly 95 percent of all subjects stopped in the 40th Precinct in 1998 were Hispanic or black. Although the NYPD did not submit population figures for this precinct by ethnicity, relevant figures for the Bronx provide an estimation for comparison (42 percent black, 34 percent Hispanic, 18 percent white).

The 120th Precinct

Police officers in the 120th Precinct generated 4,489 UF-250 reports in 1998. The 120th Precinct is located on the North Shore of Staten Island and encompasses all of the area north of the Staten Island Expressway.¹¹³ The precinct services an area of approximately 14.1 square miles and a population of 141,500.

Of the 4,489 reports filed in the 120th Precinct, 64.4 percent were recorded for black subjects, 18.3 percent for white subjects, and 16.2 percent for Hispanic subjects. Although the NYPD did not submit population figures for this precinct by ethnicity, available population figures for Staten Island indicate that the population is 75 percent white, 9 percent black, 8 percent Hispanic, and 7 percent Asian.

The 43rd Precinct

Officers in the 43rd Precinct produced 4,176 UF-250 reports in 1998. The 43rd Precinct is situated in the southeast section of the Bronx.¹¹⁴ It is primarily a residential and commercial area consisting of 20 housing developments, one- and two-family private homes, as well as numerous apartment buildings.¹¹⁵ The 43rd Precinct encompasses an area of 4.3 square miles and includes a population of approximately 170,000.

Of the 4,176 reports from the 43rd Precinct, approximately 50.6 percent were filed for black subjects, 45.5 percent for Hispanic subjects, and

¹⁰⁸ "Top 25 Precinct Data," p. 9. The SCU was deployed in the Sixth Precinct for 28 weeks.

¹⁰⁹ *Ibid.*, p. 11. The SCU was deployed in the 104th Precinct for 20 weeks.

¹¹⁰ *Ibid.*, p. 5. The SCU was deployed in the 110th Precinct and 115th Precinct for 38 and 41 weeks, respectively.

¹¹¹ See NYPD, "Patrol Services Bureau—the 40th Precinct" (visited Apr. 12, 2000) <<http://www.ci.nyc.ny.us/html/nypd/html/pct/pct040.html>>.

¹¹² *Ibid.*

¹¹³ See NYPD, "Patrol Services Bureau—the 120th Precinct" (visited Apr. 12, 2000) <<http://www.ci.nyc.ny.us/html/nypd/html/pct/pct120.html>>.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

FIGURE 5.8

NYPD SCU UF-250, Percentage in Top 25 Precincts Deployed v. Top 25 Precincts Population Percentage, 1998

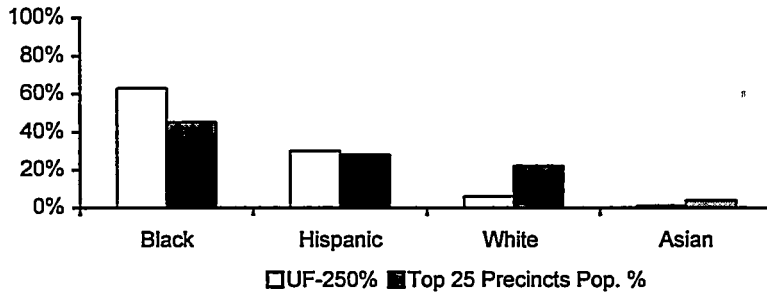


FIGURE 5.9

NYPD 40th Precinct, UF-250 Percentage v. Bronx Population Percentage, 1998

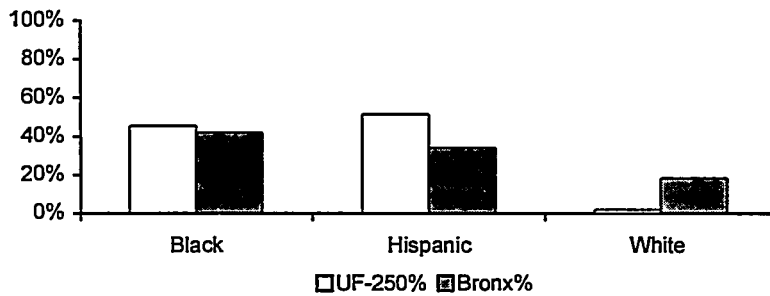


FIGURE 5.10

NYPD 120th Precinct, UF-250 Percentage v. Staten Island Population Percentage, 1998

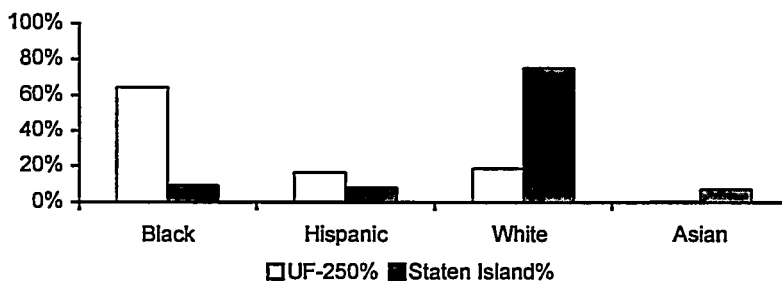


FIGURE 5.11

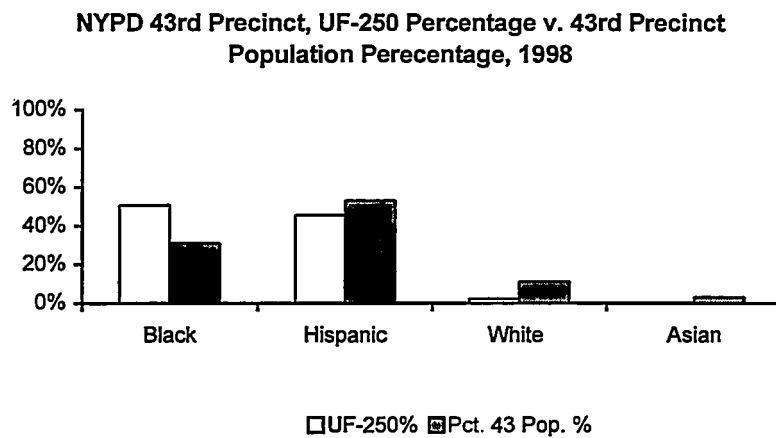
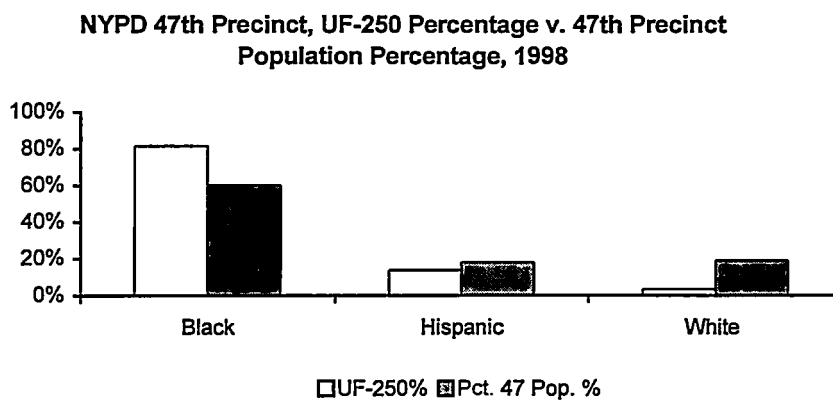


FIGURE 5.12



about 2 percent for white subjects. According to NYPD data, the population of the 43rd Precinct is 31 percent black, 53 percent Hispanic, 11 percent white, and 3 percent Asian.¹¹⁶

The 47th Precinct

There were 4,196 UF-250 reports from the 47th Precinct filed in 1998. The 47th Precinct is located in the North Bronx and includes neighborhoods in Woodlawn, Wakefield, Williamsbridge, Baychester, Edenwald, Olinville, and Fishbay.¹¹⁷ The precinct encompasses an area of 5.5 square miles and includes a population of approximately 130,000.¹¹⁸

Of the 4,196 UF-250 reports that were recorded in the 47th Precinct, 81.4 percent were filed for black subjects, 13.7 percent for Hispanic subjects, and 3.3 percent for white subjects. According to NYPD data, the population surrounding the 47th Precinct is 60 percent black, 19 percent white, and 18 percent Hispanic.

Analysis of UF-250 and Demographic Data

An examination of the UF-250 data indicates that NYPD officers routinely stop blacks and Hispanics out of proportion to their presence in the general population.¹¹⁹ In many precincts, as noted above, significant disparities exist between the actual population of Hispanics and primarily African Americans within New York's communities, and the racial distribution of UF-250 subjects reported by the NYPD. In addition, a number of minority New York City residents also

contend that they are more likely to be stopped and frisked, as well as detained by the police.¹²⁰ During the Commission's hearing on police practices in New York City, the testimonies of several community residents reflected a great deal of frustration with this situation.¹²¹ For example, Arthur Mims, a New York City resident, stated that while on his way home one evening in November of 1997, he was stopped by police officers from the Midtown North precinct. "They came over to me and asked me what is in my "f-ing" bag, and they didn't say "f-ing." I said I work here. I went over to the door, rang the bell, co-workers came out and said he works here. And with that I was maced."¹²²

Similarly, Anthony Rivera, a corrections officer of the New York Department of Corrections, informed the Commission of another potentially

¹²⁰ See *National Congress for Puerto Rican Rights v. City of New York*, 191 F.R.D.52, 1999 U.S. Dist. LEXIS 19244 (S.D.N.Y. 1999). The plaintiffs in this case are six New York City Latino and African American men from the boroughs of the Bronx and Brooklyn. Each plaintiff alleges that he has been stopped and frisked without the prerequisite standard of reasonable suspicion. They assert that NYPD officers, who were thought to be from the Street Crime Unit, conducted these acts based upon each plaintiff's race and national origin. As a result of these incidents, the plaintiffs maintain that they have been injured and they are apprehensive about the possibility of future stop and frisk incidents. *Id.* at 53. See also Michael A. Riccardi, "Suit That Alleges Racial Profiling in Stops Revived," *New York Law Journal*, Dec. 16, 1999, p. 1; Adam Nagourney, "Giuliani's Ratings Drop Over Actions in Dorismond Case," *The New York Times*, Apr. 7, 2000, p. A1. New York City residents who responded to an April 2000 New York Times/CBS News poll believed that the NYPD was "more likely to use deadly force against black suspects than white ones, and that brutality against minorities was widespread." *Ibid.*

¹²¹ *But see NYPD Response*. The Commission included anecdotal evidence from witnesses who had negative contact with police officers. Instead, statements from a random sample of New York City residents should have been used. *Cf.* Editor's Note. The Commission received testimony from numerous persons who were not pre-selected by the Commission, but who volunteered to testify under oath about their relevant experiences involving the department.

¹²² Mims Testimony, New York Hearing Transcript, pp. 544-45; Fersedy Miorcea Testimony, New York Hearing Transcript, pp. 512-16. The witness provided testimony of alleged incidents of police brutality toward him and his family members from officers of the 114th Precinct. *Ibid.* See Carmen Torres Testimony, New York Hearing Transcript, pp. 534-38. Ms. Torres testified about the death of her cousin, Yvette Marin Kessler, who died while in police custody in Central Booking in September of 1998. Ms. Kessler's body and face were allegedly badly beaten. The family was informed that Ms. Kessler died from a drug overdose, although there was no evidence of drugs in her system. *Ibid.*

¹¹⁶ "Top 25 Precinct Data," p. 12.

¹¹⁷ See NYPD, "Patrol Services Bureau—the 47th Precinct" (visited Apr. 12, 2000) <<http://www.ci.nyc.ny.us/html/nypd/html/pct/pct047.html>>.

¹¹⁸ *Ibid.*

¹¹⁹ See also *NYPD Response*. On a number of occasions, the Police Commission has acknowledged that blacks and Hispanics are stopped in numbers greater than their proportion to the population. "A more plausible interpretation is that officers are stopping individuals based on descriptions given by current victims as well as descriptions collected from continuing crime patterns (e.g., rape pattern, robbery pattern) in the area being policed. Those individuals who fit these pattern descriptions (from either immediate incidents or continuing patterns) along with those who officers actually observe committing crimes or violations are those most likely to be stopped by police. . . . [C]omplaint data is a very strong indicator of the demographics of the individuals committing actions that would lead an officer to develop the reasonable suspicion necessary to conduct a street stop." *Ibid.* *But see* Editor's Note. The use of the term "pattern descriptions" appears to indicate the use of profiling.

serious incident that involved the Street Crime Unit:

I was also stopped by a fellow officer while picking up my daughter one day at school, by the Street Crimes Unit. They just came out of their vehicles, about three vehicles, like cowboys from the wild, wild west, with their guns drawn. Luckily I had a shield, and my friend, my fellow officer, had his shield. But if it was a regular Latino out there, we might have been a statistic that you talk about today, our brothers being shot without probable cause, or for any reason.¹²³

¹²³ Rivera Testimony, New York Hearing Transcript, pp. 542-43. See Councilman William Perkins, New York City Council, Testimony, New York Hearing Transcript, pp. 578-79. A Central Harlem constituent testified at a hearing that community members did not want to contact the NYPD to remove a mentally ill person from their neighborhood, due to their fear that the police would harm the individual. *Ibid.*

See also Councilwoman Margarita Lopez, District 2 of Manhattan, Testimony, New York Hearing Transcript, pp. 561-64. "In 1993, June 22, I was participating [as] . . . a community borough member, in community borough three, in which I was appointed by [former] Manhattan borough president . . . Ruth Messinger. . . [A] situation erupted in that meeting, where the police [were] . . . ordered to arrest citizens that were asking to speak, and to allow to speak in the public session that that community board, by mandate, had to allow. The chairman of the community board did not wish to let these people speak, because they were speaking against certain positions that he had, and ordered the police to begin arresting the people who were ready to speak, called prior by himself, to the microphone. At that moment the police came down, and began arresting people. One of the individuals who was arrested was thrown on the floor by one police officer. This police officer began beating up this man, and some point this man began bleeding. I was sitting in the front row of the seats in that place, at the time, and when I saw the bleeding coming out of the head of this man, I stood up from my chair, and I yelled at the police officer, "He is bleeding, don't do that, don't beat him up, he is bleeding." At that moment the chairman of the board saw me, and immediately stood up and ordered the captain of the precinct to move forward and arrest me. The captain of the precinct, together with other four police officers surrounded me, arrested me, put handcuffs behind my back, dragged me to the front of the dais in the area where we were, throw me in the floor, kick me and beat me.

By the end of that process I was taken to the precinct, the Seventh Precinct. I was retained in the Seventh Precinct until 2 o'clock in the morning. Another community board member was arrested with me when she tried to explain to the police officers that I was a community board member. Just for that reason she was also arrested, and the same fate happened to her. At 2 o'clock in the morning I was let go from the precinct. . . . I was let go with pretty much the following charges: resisting arrest, impairing police business, and inciting to riot. But before I was let go I asked why I was arrested, what was the reason, who was the officer arresting me, please indicate to me my charges. Can I call a lawyer, can I please get to phone? None of these things were allowed for me. . . . [A]t some point I was transported from

Other witnesses maintained that minority youth in particular are especially likely to be stopped and frisked in New York City. According to Hyun Lee, program director of the Committee Against Anti-Asian Violence,

[y]outh of color who sit on their front stoops these days are routinely subjected to illegal stops and frisks during random neighborhood drug sweeps conducted by the NYPD. After illegally searching the youth and coming up with absolutely nothing, the police continue the process of detention and questioning for several hours, hoping to acquire leads on other cases. During the detention, the police officers also take illegal Polaroid snapshots of the youth. Although the youth has committed no crime and have no prior record, his or her face is now logged into the criminal justice system. These illegally acquired mug shots are later used to facilitate the selection of suspects when a crime is reported.¹²⁴

the cage in which I was put to a closet, a broom closet, a janitor closet. And in that janitor closet a police officer strip searched me, made me take my clothing off, and I was naked, and I was strip searched." *Ibid.*

¹²⁴ Lee Testimony, New York Hearing Transcript, p. 353. See also *ibid.*, pp. 357-58. "Immigrants who work 12-hour days in public or semi-public spaces and, therefore, frequently interact with the general public as well as the police, such as cab drivers, dollar van drivers, street vendors, food delivery people, and small shop keepers, are subject to routine police abuse and harassment. For a food vendor in Chinatown, for every action from where she sets up her display to the size of her display, where she keeps her cardboard boxes, to how she keeps her fingernails is regulated and policed. . . . Having to pay a heavy fine for the smallest violation has become so routine that it is figured into her monthly operating cost. . . . Paying the fine turns out to be less expensive than closing up shop for the day. Such vigilant policing has resulted in a dramatic decline in the number of street vendors in Chinatown from 300 to 60 in the last 5 years." *Ibid.*

Payne Testimony, New York Hearing Transcript, p. 439. Police officers ask minority youth to show their identification to prove that they live in their neighborhoods, and then ask them how their parents could afford their homes. *Ibid.*

Adams Testimony, New York Hearing Transcript, pp. 307-08. "If you will only examine the total number of new arrests, first-time arrests, by African American and Latino youth in this city, it would be mind-boggling how under this administration they are now being arrested for riding their bicycles on the sidewalk. They are . . . spen[ding] 2 days in jail for not having a bell on their bicycle. They are being arrested for not having identification, for having an open can of beer in their hand, normal summonses offenses that are normally dealt with without penalizing someone's record. I had a male in the prison cell the other night. He lost his job merely because he was—he had to stay overnight for only having an open container of alcohol in his hand. We should not be incarcerating people in this city merely for having an open container of alcohol." *Ibid.*

The mayor's office and NYPD officials interpret these differences in the racial distribution of those individuals who are recorded as UF-250 stop and frisk subjects as an indication of known crime suspects' profiles, as reported by crime victims.¹²⁵ According to Mayor Giuliani, "[t]he stops the [NYPD] makes are largely driven by the victims' description of the person who committed the crime."¹²⁶ Echoing this perspective, Commissioner Safir commented:

We do not select our suspects, as they are identified not by us but by the victims. We deploy our officers where violent crime occurs, and we question individuals who fit the description of crime suspects. This is basically strategy implemented without regard to race or ethnicity but, rather, as a part of our commitment to eradicate crime in every neighborhood in our city.¹²⁷

Further examination of the mayor's and police commissioner's explanations for the reason minorities are more frequently the focus of stop and frisk incidents yields another possible cause. Noel Leader testified that the NYPD selects its own UF-250 subjects without the assistance of victim identifications. The SCU and the other specialized units do not respond to radio calls providing physical descriptions drawn from victim identifications. Generally, he suggested that the mandate of these units is to root out crime by searching for individuals who may be engaged, or about to be engaged, in criminal activity (e.g., carrying an unlicensed gun).¹²⁸ Thus, in the case

of the SCU, as Attorney General Spitzer observed, "it is the officer's own observation that initiates the stop and frisk."¹²⁹ Sergeant Noel Leader's testimony confirmed this point:

Street Crime rides around the city. And they stop individuals with no complainant, with no victim. They arbitrarily of their own initiation stop individuals. . . . Street Crime . . . stops male black and Latinos randomly in the street without any victims.¹³⁰

In addition, many stops conducted by both the specialized and nonspecialized units arise out of victimless crimes, including the assortment of quality of life violations that the NYPD has recently targeted as part of its Strategy '97 patrol initiative.¹³¹ As Lieutenant Adams stated:

the profile, searching for illegal guns. . . . The strategy has also exacerbated racial tensions because it is most often used in tandem with another police tactic: mapping out areas of particular criminal activity and dispatching units to target them. The . . . Street Crimes Unit, known for using this strategy most aggressively, is 82 percent white, while the people the officers stop and treat as potential suspects are virtually all black or Latino. In response to the Diallo shooting, [Police Commissioner] Safir has put the plainclothes unit's officers back in uniform and reserved 50 new slots for minority officers." Ibid.

¹²⁹ Spitzer Testimony, New York Hearing Transcript, p. 249; see Kocieniewski, "Success." "[The Street Crime Unit's] success, even their lives, depend on the ability to spot and seize a handgun before a suspect can use it. So street crimes officers pride themselves on the ability to read the walk, mannerisms and subtle movements of someone carrying a concealed weapon." Ibid. *But see NYPD Response*. The Commission does not understand the nature of police work, since officers make stops based upon observations, "known patterns" and crime problems. Officers who observe quality of life violations have reasonable suspicion for a stop and frisk. Cf. Editor's Note. The use of the term, "known patterns" again may be indicative of profiling. Stops or arrests for quality of life violations may show discriminatory enforcement if not uniformly applied to the population.

¹³⁰ Leader Testimony, New York Hearing Transcript, p. 314. Kocieniewski, "Success." "Some street crime officers also said they felt pressured by the department's emphasis on crime statistics, and that they are forced to adhere to an unwritten quota system that demands that each officer seize at least one gun a month." Ibid. *But see ibid.*, p. A1. During a February 1999 news conference, the mayor indicated that the Street Crime Unit was not forced to reduce crime rates. "They are under tremendous pressure from supervisors to keep the city safe, and many of them put that pressure on themselves. . . . But that's no different than being in the narcotics unit and being under tremendous pressure to arrest narcotics dealers, or being a homicide detective and being under tremendous pressure to investigate homicides. . . . Police work is highly pressured work. It's very intense." Ibid.

¹³¹ Strategy '97, p. 7.

See Sarah Francis, Testimony, New York Hearing Transcript, pp. 587-88. Ms. Francis maintained that her son was beaten and choked while he was handcuffed in police custody. As a result, her son still suffers ill effects. Ibid.

¹²⁵ "Top 25 Precinct Data," p. 1.

¹²⁶ Giuliani Testimony, New York Hearing Transcript, p. 49.

¹²⁷ Safir Testimony, New York Hearing Transcript, p. 165.

¹²⁸ See David Kocieniewski, "Success of Elite Police Unit Exact a Toll on the Streets," *The New York Times*, Feb. 15, 1999, p. A1 (hereafter cited as Kocieniewski, "Success"). In 1999, police officers in the Street Crime Unit made up less than 2 percent of the NYPD, but confiscated 40 percent of all illegal guns that were seized in New York City; Rose Marie Arce, "Queens: Our Future—Chapter 5: 21st Century Government, On Guard—Surveillance and DNA Testing are Among the Latest Police Weapons; But How will We Balance Fighting Crime and Preserving Civil Rights?" *Newsday*, May 30, 1999, p. A17. "Another anti-crime tactic being used increasingly is so-called suspect profiling, where police use just a rough description of the race, territory and habits of a suspect to aggressively stop and frisk people who match

Look at the . . . complaints in UF-250s. Those are [largely] complaints that are generated not by the public but merely by police officers that are using . . . too many times their own biases on who they're going to stop. Victimless crimes are our problems.¹³²

Thus, it is probable that a significant proportion of the UF-250s that were filed by NYPD officers in 1998 did not originate from victim identifications.¹³³

Racial Profiling in Stop and Frisks

The NYPD's data strongly suggest that racial profiling plays some role in the stop and frisk practices of the overall department, and particularly in the SCU.¹³⁴ The department's explanation that the ethnic breakdown of UF-250 subjects simply mirrors the racial breakdown of victim descriptions does not adequately account for the *particularized* suspicion required by the Constitution to effect a stop. The Fourth Amendment specifically mandates that the justification for a search be supported by a warrant "particularly describing . . . the persons or things to be seized."¹³⁵ However, the mayor and the police commissioner indicate that racial disparities in UF-250 data may be explained by reference to precinct and citywide "profiles" of violent criminals. As Commissioner Safir testified, "the racial, ethnic distribution of the subjects . . . reflect the demographics of known violent crime suspects as reported by crime victims."¹³⁶ As a result, this explanation may implicitly sanction racial profiling. Specifically, police officers are provided with this rationale as their basis for stopping a proportionate number of people who match a statistical profile of suspects that are based on victim descriptions.

¹³² Adams Testimony, New York Hearing Transcript, p. 307.

¹³³ The Commission did not have access to any existing NYPD records or radio report transcripts that provided victim identifications, which could account for the disproportionate stop and frisk practices.

¹³⁴ "Racial profiling" may be defined as the detention, interdiction, or other disparate treatment of an individual based upon racial or ethnic stereotypes and that has the effect of treating persons of color differently from other persons. See P. Verniero, Attorney General of New Jersey, *Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling*, April 1999, p. 8 (hereafter cited as Verniero, *Report on Racial Profiling*).

¹³⁵ U.S. CONST. amend. IV.

¹³⁶ Safir Testimony, New York Hearing Transcript, p. 165 (emphasis added).

Stopping an individual based on statistical probabilities or demographics is prohibited; individualized suspicion remains the relevant standard for initiating a legal stop. As the United States Supreme Court concluded in *Terry*, "[the] demand for specificity in the information upon which the police action is predicated is the central teaching of this Court's fourth amendment jurisprudence."¹³⁷ Accordingly, the premise that NYPD officers were justified in stopping a disproportionate number of minorities in 1998 because of historical crime data must be rejected.

Although it would be problematic to verify that the NYPD has racially biased motivations when initiating stop and frisk encounters with civilians, the department's data demonstrate that the consequences of these police encounters are indications of racial profiling in New York City.¹³⁸ Moreover, the NYPD, as noted above, has not documented that a majority of UF-250 subjects are stopped on the basis of victim identifications. One of the real problems with many forms of "profiling" is that the characteristics that are typically compiled tend to describe a very large category of presumably innocent persons. This point was expressly recognized by the United States Supreme Court in *Reid v. Georgia*, 448 U.S. 438, 441 (1980) (*per curiam*). Indeed, using profiles that rely on racial or ethnic stereotypes is no better, and in many respects is far worse, than allowing individual officers to rely on inchoate and unparticularized suspicions or "hunches," which is clearly not permitted under Fourth Amendment jurisprudence.¹³⁹

¹³⁷ *Terry*, 392 U.S. at 21. *But see NYPD Response*. Standards for a warrant search requiring a description with particularity do not apply to stop and frisk encounters.

¹³⁸ *But see NYPD Response*. This report does not include sufficient evidence that the department engages in racial profiling. "The Commission has not examined the demographics of suspect descriptions provided by victims, has not determined what proportion of stops were self-initiated by officers, and has not concluded what percentage of stops were legally justified." *Ibid.* Cf. Editor's Note. The Commission subpoenaed the NYPD for information on the details of victims' accounts. None was provided. However, the department now criticizes the Commission's report on the issue of victims' identification data, without noting the source of this new information. Secondly, the NYPD denounces the report's concluding line of the paragraph that mentions "historic crime data," when the department itself must use such data to create the "crime patterns" mentioned in its response.

¹³⁹ Verniero, *Report on Racial Profiling*, p. 61.

In addition, it is possible that the intense demand for increased arrests may induce officers to search for perpetrators by using simple racial and ethnic stereotypes, unless the department's cultural training practices are strengthened and complex police investigations are uniformly employed.¹⁴⁰ This may explain, at least in part, the growth of arrests that are not prosecuted because of insufficient evidence or an improper arrest.¹⁴¹ For example, in 1998, 18,000 of 345,000 arrests failed to reach the arraignment phase of prosecution. The rate of these "pre-arraignment" arrests increased by 41 percent in the Bronx and 23 percent in Manhattan, compared with 1997 figures.¹⁴² Moreover, 1998 marked the first time in NYPD's history, that the arrest total surpassed the number of reported crimes.¹⁴³

Even if the NYPD demonstrated that victim identifications led to a majority of stop and frisk encounters, the reliability of the calls themselves may be subject to question. Members of the Street Crime Unit have been quoted as stating that, if a person who was stopped complains, police officers would then

phone in a bogus 911 call of an armed man matching a description of the "perp" they just stopped, and then make sure the guy knew it, then they'd go on to say we'd fill out a stop and frisk report to cover ourselves. But we knew what we were doing.¹⁴⁴

¹⁴⁰ *But see NYPD Response.* The department objects to the assertion that increased demands for arrests may result in officers using racial profiling taught to them through cultural training classes.

¹⁴¹ *But see NYPD Response.* The department contends that this assertion is erroneous. Other causes may contribute to declined prosecutions, such as various factors controlled by each district attorney (i.e., policies, staffing, etc.); noncooperative victims and witnesses; the increased number of cases eligible for prosecution that are generated from quality of life initiatives; and new domestic violence laws and policies that require the police to make an arrest for misdemeanor cases and violations. Moreover, the department's Interim Order 67 works to address declining prosecutions in each borough by working with the district attorney's offices.

¹⁴² See Ford Fessenden and David Rhode, "Dismissed Before Reaching Court, Flawed Arrests Rise in New York," *The New York Times*, Abstracts, Aug. 23, 1999.

¹⁴³ See Nat Hentoff, "The Big Apple's Rotten Policing," *The Washington Post*, Sept. 4, 1999, p. A29.

¹⁴⁴ Rocco Parascandola and Larry Celona, "Case Prompts Probe Into Unit's Gun Use," *New York Post*, Feb. 14, 1999, p. 3. *But see NYPD Response.* The NYPD indicates that this anecdotal statement is unsubstantiated, and should not be included in this report.

In March 2000, the United States Supreme Court, noting the unreliability and unaccountability of anonymous tips, held that an anonymous tip giving the race, gender, clothing, and location of an individual, absent other information, clearly was insufficient to provide reasonable suspicion to stop and search the individual.¹⁴⁵

FINDINGS AND RECOMMENDATIONS: CHAPTER 5

Finding 5.1: Persons are afforded greater protections against intrusions on their individual liberty and privacy interests by law enforcement officials under New York law than under federal constitutional law, as interpreted by the Supreme Court.

The Cato Institute recently released a report in which it was concluded that in New York City "experience has shown that stop and frisk tactics unnecessarily endanger the police, the suspect, and bystanders. Policymakers in New York and elsewhere should discontinue the freewheeling stop-and-frisk searches and restore the constitutional standard of probable cause without delay."¹⁴⁶

Based on the analysis of UF-250 data submitted to the Commission, the department's use of "pattern descriptions" of alleged suspects is a possible indicator of racial profiling. This practice apparently has been a factor in the stop and frisk practices of the NYPD, including its specialized units.

Testimony at the Commission's hearing indicated that perhaps only 1 out of 30 stop and frisk encounters resulted in a filed UF-250 form. This criticism was echoed recently in a preliminary report by the CCRB, whose investigators have determined, based on a study of hundreds of instances in which people had been stopped and frisked, that NYPD officers routinely fail to file the required paperwork after stopping and frisking people on the streets of the city.

Therefore, the combination of the testimony and the analysis of the UF-250 data could lead a reasonable observer to conclude that racial profiling has been practiced by NYPD officers.

Recommendation 5.1: The NYPD should take steps to ensure that indicators of racial pro-

¹⁴⁵ *Florida v. J.L.*, 120 S. Ct. 1375 (2000).

¹⁴⁶ Timothy Lynch, "We Own the Night: Amadou Diallo's Deadly Encounter with New York City's Street Crimes (sic) Unit," *Cato Institute*, Mar. 31, 2000, p. 8.

filing do not occur. Racial profiling violates the law and undermines public confidence and respect for the police, which may cause deadly altercations.

These steps should include the immediate adoption and implementation of a written department policy that carefully defines, expressly prohibits, and stiffly penalizes racial profiling as the sole motivation in the stopping and searching of individuals. There should also be a departmental system of records established to permit the consistent collection and evaluation of data to determine whether racial profiling is occurring, and if so, when and why.

Secondly, the NYPD should use existing mechanisms (i.e., planning and community boards, churches, schools, local organizations, etc.) to begin or expand its efforts to inform local residents regarding what constitutes a legitimate stop, search, and frisk. Further, the department could also advise the public what civilians should and should not do during an encounter with police officers. These efforts may serve to help eliminate the public's concerns about the possibility of being stopped by the police, particularly in minority communities.

Statement of Chairperson Mary Frances Berry, Vice Chairperson Cruz Reynoso, and Commissioners Christopher F. Edley, Jr., Yvonne Y. Lee, Elsie M. Meeks, and Victoria Wilson

This Commission report, *Police Practices and Civil Rights in New York City*, carefully balances the sworn testimony of selected witnesses with an analytical review of subpoenaed data and documents. It is our hope that elected and appointed officials will examine the evidence in this report and accept its invitation to reject the status quo and to improve police-community relations in New York City.

The report acknowledges that the work of police officers is hard and dangerous. Most police officers perform their jobs in accordance with the rule of law and with a reasonable expectation that their work will be honored by the community they serve. The report also acknowledges an appreciable decline of both crime in the city and fatal shootings by the NYPD. If this report only addressed law enforcement accomplishments, the report would simply hone in on these salutary statistics and conclude with praise for a department that has achieved much in these two categories. Instead, the focus of this report is on the issues that reflect the mandate of this Commission, including an examination of the extent to which there are strategies and systems in place for ensuring that civil rights are protected while the NYPD is implementing strategies and systems for reducing crime.

The Commission had a strong interest in studying the methods used by the city to balance crime fighting with the exercise of appropriate restraint, particularly following the highly publicized tragedies involving Abner Louima and Amadou Diallo. Abner Louima was brutally sodomized with a toilet plunger by an NYPD officer. Amadou Diallo, an unarmed person of color standing in the vestibule of his home, was tragically shot and killed by four plainclothes officers from the NYPD's Street Crime Unit. Although these incidents are not the focus of this report, the Commission cannot dismiss or deny the significant impact that they have had on police-community relations in New York City.

At the same time, a number of additional concerns had been raised regarding NYPD policies and practices, including its "stop and frisk"

tactics, which have significantly and disproportionately affected people of color on city streets. We acknowledge that officials and experts will differ on the best law enforcement strategies to reduce crime while ensuring that civil rights are protected. However, there are police departments that have demonstrated the capacity to maximize public safety through professional police conduct without endangering the civil rights of members of the community. The Commission continues to spotlight these "best practices" and will update its historic publication *Who Is Guarding the Guardians?* later in this year.

This hearing report is legally and logically supported by facts secured from the sworn testimony of witnesses who appeared before the Commission at its public hearing. The witness testimony is bolstered by written evidence contained in more than 32,000 pages of subpoenaed documents and a statistical overlay presented with charts and graphs reflecting information contained in more than 100,000 individual records regarding stop and frisk encounters stored on CD-ROM by NYPD officials. The witnesses included the mayor, the police commissioner, the chair of the Civilian Complaint Review Board, other public officials, religious leaders, representatives of civic and civil rights advocacy groups, New York Police Department officers, and individuals describing personal encounters with the NYPD.

Before this report was approved by the Commission, it received extensive internal and external scrutiny during several levels of review. Following the standard operating procedures of the Commission, the staff made necessary corrections, where appropriate, and added substantive new information to the initial drafts of this report in light of legal sufficiency reviews, editorial policy reviews, and affected agency reviews.

We must emphasize that the Commission's findings and recommendations regarding stop and frisk practices by the NYPD are built upon a strong foundation of data provided by the NYPD and from testimony provided under oath by some of its own officers. The combination of the

sworn testimony and the analysis of the NYPD data could lead a reasonable, objective observer to conclude that racial profiling has been a factor in the stop and frisk practices of the NYPD, including its specialized units. For example, according to witness testimony, these units do not consistently receive or rely upon descriptions of assailants by crime victims before engaging in stop and frisk practices. Moreover, the assertion that there are alternative explanations for the disproportionate numbers of African American and Latino persons who are stopped, but not arrested by NYPD officers, is not backed by any data provided by the NYPD or any records of profiles.

This targeted inquiry into police practices was not intended to look broadly and directly into prosecutorial practices and successes. We would not and could not criticize any district attorney without a formal and focused review of his or her office. Instead, the report offers a recommendation for addressing the sensitive and delicate interrelationship of separate law enforcement agencies in cases where an independent entity could increase public confidence in the outcome of highly sensitive cases. We expect that the public will understand that an independent counsel for high-profile cases only will serve the best interests of the NYPD, the community, and local prosecutors.

The timeliness of the report's discussion of monitoring and disciplinary systems is underscored by the recent revelations of the Commission to Combat Police Corruption, which was created in 1995 by the mayor after he successfully blocked a City Council attempt to create an independent agency with wide-ranging authority

to investigate police corruption. According to news accounts, the mayor's commission has strongly confirmed in its draft report that the current internal system for disciplining officers is slow and ineffective. The mayor's commission recommends that some internal disciplinary cases should no longer be prosecuted by NYPD lawyers. The points raised in that draft report appear to be consistent with the findings and recommendations found in our report. In order to ensure viable community support for the NYPD's crime-reduction strategies, it is crucial that a credible, independent monitoring and disciplinary mechanism be substituted for the current system.

We believe that this report will help the city and its police department to refocus their attention on strategies and systems that will uncover and discourage police misconduct and encourage community support. Professionalism is the key to effective police strategies. Police officers must be willing to remain professional and uphold the duties of their office, even in the face of mounting public criticism. The Commission is concerned, therefore, that at the time this report was being approved, the NYPD was facing new allegations that in June 2000, several officers failed to respond to calls for help from women who were being sexually attacked at an event in Central Park. It is our hope that these allegations against a few officers are not a sign, as some critics have suggested, of a frustrated force, weary of official scrutiny.

This report should help law enforcement officials to better understand that police officer professionalism and stronger ties with the community are inextricably connected.

Dissenting Statement of Commissioners Carl A. Anderson and Russell G. Redenbaugh

This report, *Police Practices and Civil Rights in New York City*, falls far short of the standards for thoroughness and balance which should guide the Commission. It “profiles” the police, politicizes the debate, manipulates the data provided to the Commission, and misses an important opportunity to make a valuable contribution to the NYPD. As Alexis de Tocqueville once observed, a political institution is never more vulnerable to criticism than when it has recognized the need for reform and has set about to implement it. This report’s treatment of the NYPD is ample proof of de Tocqueville’s insight.

When the Commission decided to hold its May 1999 hearing, it was a crucial and highly volatile moment in time: Headlines reflected the public outcry over the tragic shooting of Amadou Diallo by four police officers in the Bronx in February 1999. The verdicts were imminent in the trial of another highly publicized case—the August 1997 assault on Abner Louima by police officers in Brooklyn. Several different inquiries, local, state and federal, had been launched. And, to the extent that the successful strategies of New York City’s mayor and police commissioner in both reducing crime and addressing police misconduct were now under attack, the public debate on those issues quickly became caught up in the whirlpool of election-year politics.

At that time, we were concerned that holding a Commission hearing on police practices in New York would open the Commission to charges of politicization while seriously impairing progress on other projects already underway. Overriding those concerns, the Commission voted 3 to 2 to proceed with this initiative. More than a year has passed since the hearing on May 26, 1999. After a year of work—work that has involved the expenditure of substantial sums for outside contractors to help examine hundreds of pages of documents and prepare this report—the Commission has issued a sweeping indictment of the New York Police Department.

But the indictment is flawed, in several respects. First, it is not based on a comprehensive, sound methodology. The report reflects an over-reliance on anecdotal testimony, a lack of expert

testimony on policing and how police departments should be run, and inadequate follow-up and research (other than selected newspaper articles and the Internet) in the year since the hearing occurred. At the same time, the report dismisses much of the relevant data that has been provided to the Commission on the substantial improvements by the NYPD in recruitment and training, the dramatic reduction in the use of force by NYPD officers, and the decline in the number of civilian complaints. Finally, the report neglects an important context of discussion for all of these developments—a decline in crime in New York City to levels not seen in 30 years.

What the report does provide is a one-sided portrayal of the NYPD, which will perpetuate many negative stereotypes of the police. It paints the NYPD as rife with problems that the department is unwilling to address. The report’s final verdict, that the NYPD has engaged in an extensive practice of racial profiling, is captured in this one sentence from the Executive Summary: “They simply stop who they think they should stop.” Instead of providing a “meaningful discourse” on police-community relations in New York (the stated intent of our hearing), the report is, itself, an exercise in profiling. The attack it makes is based not on evidence, but on conjecture, opinion, and “perception as reality.”

The response that the Commission has received from the NYPD and the City of New York provides extensive information and additional data. The Commission has rightly decided to honor our commitment to append the NYPD’s comments to the final document. However, we are disappointed that the Commission has summarily dismissed so much of the new information from the NYPD, thereby foreclosing a full and objective discussion of the issues. To cite some examples:

On the number of fatal shootings by New York police officers:

The report now states: “According to New York police officials, the use of deadly force by the city’s police officers occurs less than in other

major cities, when measured in terms of fatal shootings per 1,000 officers." The report presents this as something that is "asserted" by the NYPD. What it leaves out is the data showing that, compared to other large urban police departments, the NYPD had *the lowest rate* of fatal shootings per 1,000 officers. These numbers are either accurate or they are not. And if our staff believes they are not accurate, then they ought to state that and conduct additional research and not just characterize this important data as an undocumented assertion by the NYPD.

The report also dismisses NYPD statistics showing the dramatic decline in the numbers of fatal shootings by police officers over the past 25 years. This decline in NYPD fatal shootings has been widely cited and corroborated by experts like Dr. James Fyfe. (Attached to our dissent is a copy of the chart distributed by Dr. Fyfe during the Commission's recent briefing on national police issues.) This significantly positive trend does not mean that there is no room for improvement within the NYPD, but it does provide the context in which these issues should be considered.

That context is one that has seen the incidence of fatal police shootings decline from 93 in 1971 to 11 in 1999. Since the early 1990s, the crime rate in New York City has fallen in an equally dramatic fashion. It is also perhaps worth bearing in mind that in 1998 the probability of a 15-year-old African American male being murdered before reaching his 45th birthday was 8.47 percent in Washington, D.C., compared to only 1.89 percent in Brooklyn, New York. Moreover, during the Vietnam War, 1.2 percent of those who served in the United States military were killed in action. Thus, it was safer for a young African American to serve in the U.S. armed military in Vietnam than it is for him now to live in our nation's capital or within sight of the Statue of Liberty. This is also the environment in which daily decisions are made by the "cop on the beat" in New York City. The national death rate from homicide remains alarmingly high, but the evidence does suggest that sound law enforcement policy changes—such as those implemented in New York—can be effective in reducing violent crime.

On recruitment and training:

The report frequently relies on outdated information. For example, it criticizes at length

training materials which at the time of our May 1999 hearing, the police commissioner himself testified were no longer in use. On the other hand, the report totally dismisses as "not necessarily relevant," the information submitted by the NYPD regarding its more recent *Streetwise* cultural diversity curriculum. According to Dr. Robert Loudon of John Jay College, who also testified at our recent briefing, the *Streetwise* curriculum has been enormously successful and is now being marketed internationally for police training in emerging democracies and elsewhere. By refusing to include even a brief discussion of this new curriculum, our report does a disservice.

Other sections in the report reflect an excessive reliance on inflammatory, anecdotal assertions. For example, the report quotes a witness (a police sergeant who is a frequent critic of the NYPD) who testified that the recruitment and hiring process "is already prostituted and it's already corrupted." The report goes on to say that this same witness "opined" that an increase in the number of applicants is unlikely to affect the number who actually become officers "because of the biases built into the system." The report then complains that because of a lack of information from the NYPD, the Commission "is unable to evaluate these assertions." The discussion concludes, however, with the following: "The information the NYPD did provide to the Commission . . . suggests that people of color were not disproportionately disqualified for appointment to police officer on the basis of psychological and character screening in 1997."

This discussion of charges about bias within the NYPD recruitment and hiring process is important because it illustrates the extent to which this report relies on opinion and on "perceptions" which are not supported by the evidence at hand. From the thousands of pages of testimony, the report tends to quote from the most inflammatory testimony, almost totally ignoring the NYPD's response to these charges. In this case, the Commission's response to the NYPD's objections is to say that the testimony of the police sergeant is included "not to prove the truth" of his assertion, but rather "to reveal the perceptions of officers of color within the NYPD."

But of the nearly 41,000 police officers in the NYPD, there are more than 5,000 African American officers. There is no way of knowing whether the "perception" relayed here is representative of all people of color on the force, or

even a majority of them. Certainly, the perception or allegation that candidates tend to be screened out on the basis of race is refuted by the data showing that on the basis of psychological screening in 1997, 65 percent of those disqualified were white, compared to 14 percent who were African American. On the basis of the 1997 character review, 56.2 percent of disqualified candidates were white and 18.7 percent were African American.

Allegations of discrimination within the NYPD are entitled to more than mere repetition. More should have been done on this question to determine the degree to which discrimination may have been or continues to be a problem. But to treat the issue in the cursory manner of this report does a disservice to both the NYPD and the Commission's own mandate.

On NYPD "stop and frisk" practices:

The report's discussion of the NYPD's "stop and frisk" practices is the most serious example of slipshod analysis, because this is what forms the basis for the allegations that the NYPD is guilty of racial profiling. The section on stop and frisk is conclusory, relies on faulty analysis, and does not give sufficient credit to possible alternative explanations for data on NYPD stop and frisk encounters. The report concludes that because the percentage of people stopped and frisked who are people of color is higher than the percentage of people of color within the general population of New York City, the NYPD therefore is engaging in racial profiling.

This logic is simply wrong. First, it is an improper comparison. The relevant comparison would be between the ethnicity of those stopped and the ethnicity of those committing crimes in New York City as described by crime victims. In fact, the City provided the Commission with data demonstrating that the ethnicity of those stopped closely matched the ethnicity of those committing violent crimes. Second, the NYPD uses a highly sophisticated computer tracking system (COMPSTAT) to track reports of crime and complaints made by crime victims. COMPSTAT helps ensure that officers are sent to areas where more violent crime occurs. Since, unfortunately, minority neighborhoods are disproportionately plagued by violent crime, the NYPD sends more officers to those neighborhoods. The report summarily dismisses this historic crime data, and it is impossible to draw any

meaningful conclusions about racial profiling from the report's analysis.

On recommended reforms:

The main problem with the report's recommendations is that they appear to be based on an approach that was described during our recent briefing as "policy change by crisis." The Commission agreed before proceeding with its hearing that the Diallo case would not be a focus of its investigation. Nonetheless, it pervades this report as a leitmotif. The report tries to use Diallo, and the other recent high-profile cases, to build its charge that the NYPD is biased against minorities, that it engages in racial profiling, and that it tolerates police violence and misconduct. But the Diallo shooting was not the example of a trend that the report tries to make it out to be, nor was it the result of some misguided NYPD policy involving racial profiling, as the report alleges. As it stands, this report compounds the tragedy of the Diallo incident by undermining efforts both to rebuild public trust in the police and to seek needed revision of police procedures.

For the most part, the Commission's recommendations embody a heavy-handed approach of external controls that might only thwart the goals of enhancing accountability, improving performance, and restoring public trust in the New York Police Department. For example, the report calls for an independent commission to review NYPD training; an independent board to oversee the NYPD's disposition of Civilian Complaint Review Board complaints; and an independent prosecutor to investigate serious misconduct cases.

Such additional bureaucratic controls and mechanisms appear to be, at best, unnecessary and of questionable value. For example, the NYPD already has a Board of Visitors to review police training. With respect to review of the civilian complaint process, the Commission's report acknowledges not only that the CCRB has significantly improved its operations over the last several years, but that the NYPD has been taking disciplinary action based on CCRB complaints in a steadily rising percentage of cases. It is difficult, therefore, to understand why the Commission now recommends an independent board to oversee this independent board.

Finally, in regard to the call for a special prosecutor, it must be noted that the NYPD is already the most scrutinized police department in the country. Besides the CCRB, there is also an independent Commission to Combat Police Corruption that oversees the NYPD's anti-corruption efforts. New York City also has five elected district attorneys, one for each borough, and two federal prosecutors, for New York's eastern and southern districts. Without even the most cursory analysis of whether these prosecutors effectively handle cases of police misconduct, however, the Commission summarily concludes that they cannot do so and recommends an independent prosecutor. As New York County District Attorney Robert M. Morgenthau wrote to the Commission on April 28, 2000:

[I]t is disheartening that no one from the Commission even bothered to speak to representatives of this Office, or the other local prosecutors' offices, prior to the Commission reaching its conclusions. Nor did the Commission even ask to review any records of this, or any other, Office pertaining to such matters. If anyone from the Commission had taken the trouble to ask, it would have become readily apparent that this Office has a long and distinguished record of prosecuting cases of police brutality and corruption.

The district attorney's comments are instructive, because they point to the report's fundamental weakness. The findings and recommendations are not the product of careful consideration or rigorous analysis of how the NYPD can improve, which is what the people of New York City deserve. Rather, they appear to be the result of the Commission's own biases and predispositions. As District Attorney Morgenthau remarked in his letter to the Commission, it is "hard to avoid the conclusion that the Commission is more interested in publicizing and politicizing its views than it is in solving real problems."

Instead of adding new layers of government review, we believe the Commission's focus should be on greater internal accountability and enhancing reforms from within the NYPD. We should encourage the efforts already underway within the NYPD for a better educated and better trained force, one that is responsive to community needs and concerns. As our recent panel also observed, there must be a continued focus on attracting and retaining qualified police officers, which will entail a more concerted effort to promote a view of law enforcement as an essential, first-rate career.

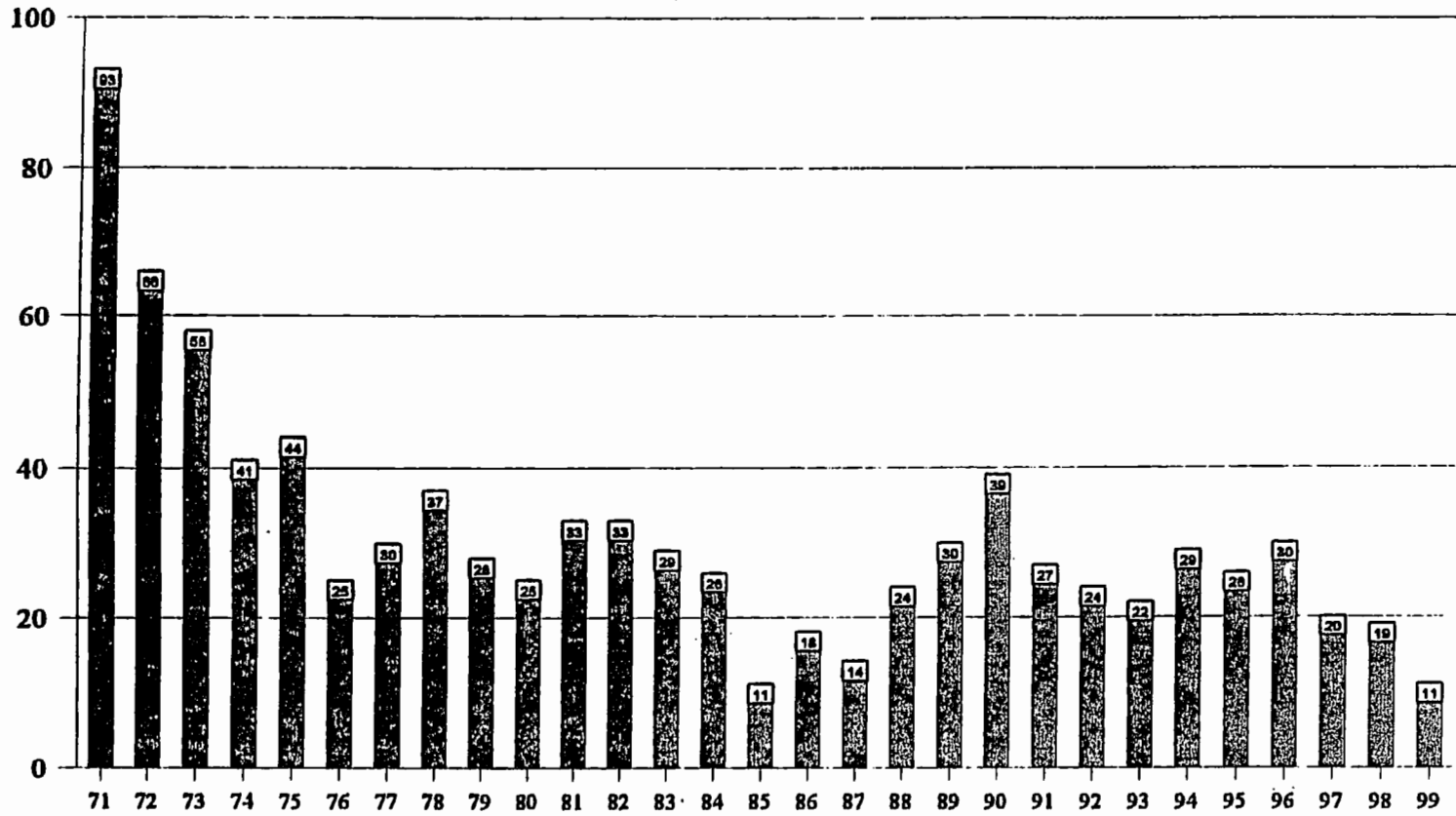
Conclusion

The New York City and NYPD officials who testified at our hearing last year underscored their commitment to striking an essential balance between crime reduction and protection of basic civil rights. Certainly, this is an ongoing challenge. But the crucial question this report fails to address is this: Are police shootings in New York an anomaly or the norm? The evidence shows that, clearly, they are not the norm. Nor is there any evidence that the NYPD engages in racial profiling. As one New York journalist recently noted, what is needed is "some sort of perspective that clarifies how extraordinary a job our cops have done and why they, like any minority, should not be judged as an entity by the worst among them . . ."

Police practices are a legitimate and even an essential concern of this Commission. Unfortunately, by stigmatizing the police in one of America's largest cities, the Commission has missed a unique opportunity. Our real mission should be to promote reform within the New York Police Department in a way that enhances public trust in the police. This report falls far short of that objective; and for that reason we respectfully dissent.

June 30, 2000

Figure 1: Fatal New York City Police Shootings, 1971-1999



Source: New York City Police Department.

Appendix A

Status of Task Force on Police/Community Relations Recommendations

On August 19, 1997, 10 days after the Louima incident, Mayor Rudolph Giuliani established the Task Force on Police/Community Relations. The task force began its factfinding process by convening a series of public forums that included both members of the community and members of the NYPD. Several thousand community residents were invited to these forums, and approximately 350 people attended in total.¹ The task force put forth 91 recommendations.

During its investigation, the U.S. Commission on Civil Rights expected specific and detailed information from the NYPD that would have allowed the Commission to determine the extent to which the task force recommendations were being implemented, and with what impact. Regrettably, the information provided to the Commission lacked specificity with regard to scope, strategy, timeframe, cost, impact, etc.

For example, the task force recommended that the NYPD "implement an aggressive affirmative action plan designed to create a police force more reflective of the City's population." The NYPD informed the Commission that the recommendation had been "IMPLEMENTED." But such a conclusory statement does not allow for a careful evaluation and conclusion regarding the impact and/or effectiveness of the task force recommendation. A careful evaluation of the facts could have been conducted only if the NYPD had provided the Commission with such information as goals, timetables, positions targeted, outreach efforts, and rates of success. What follows is a reproduction of the information provided to the Commission by the NYPD regarding the status of the 91 task force recommendations.

¹ See March 1998 Task Force Report, pp. vii-ix.

| Task Force Number | <u>Recommendation</u> | <u>Status</u> |
|--------------------------|--|-----------------------|
| 1 | The task force recommend that the police department build on the current Courtesy, Professional and Respect (CPR) Strategy | IMPLEMENTED |
| 1A | Institute a code of professional standards | IMPLEMENTED |
| 1B | Institutionalize CPR training outside the precinct (attach to In-Tac training) | IMPLEMENTED |
| 1C | Separate CPR Academies and Borough Conferences for supervisors | PARTIALLY IMPLEMENTED |
| 1D | Rank-specific CPR evaluation surveys by an independent body | NOT NYPD |
| 1E | Increased CPR compliance testing | IMPLEMENTED |
| 2 | The task force recommends the enhancement of Precinct Community Councils | IMPLEMENTED |
| 2A | Mandated policy and procedural manual for Precinct Councils | IMPLEMENTED |
| 2B | Monthly Precinct Council newsletter produced by DCCA | IMPLEMENTED |
| 2C | Institute mandated quarterly meetings with all precinct commanders and Precinct Council Executive Board members | IMPLEMENTED |
| 2D | All Precinct Councils submit copy of all monthly meeting minutes with cover memorandum from precinct commanding officer | IMPLEMENTED |
| 2E | Precinct Councils mandated to establish a membership recruitment subcommittee to recruit a representation of community | UNDER CONSIDERATION |
| 2F | Establish Precinct Council funding | NOT NYPD |
| 3 | The task force recommends the enhancement of Youth Program Services | IMPLEMENTED |

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| 3A | Increase the Youth Academy to 5,000 participants per year | REJECTED |
| 3B | Implement Police Youth Encounter workshops at schools and housing sites | IMPLEMENTED |
| 3C | See additional funding sources for GREAT | IMPLEMENTED |
| 3D | Develop a pilot program for recidivist youths in five precincts with highest rate of recidivism | IMPLEMENTED |
| 3E | Establish a Beacon School in the 70th Precinct | NOT NYPD |
| 3F | Launch a citywide public service campaign on rights and responsibilities | IMPLEMENTED |
| 3G | Human Rights Commission develop workshops and materials for youths on rights and responsibilities in interactions with police | NOT NYPD |
| 4 | The task force recommends expansion of patrol officer involvement in community service | IMPLEMENTED |
| 4A | Require all patrol and youth officers to participate in one community activity per month | PARTIALLY IMPLEMENTED |
| 4B | Provide promotional credits for outstanding demonstration of CPR principles | PARTIALLY IMPLEMENTED |
| 5 | The task force recommends implementation of a system for measuring police-community relations | IMPLEMENTED |
| 5A | NYPD design and implement a COMPSTAT-like strategy for CPR | PARTIALLY IMPLEMENTED |
| 6 | The task force recommends implementation of a precinct-based, citizen-police information seminar series and citizen-police town hall dialogues | PARTIALLY IMPLEMENTED |
| 6A | Develop and implement a citizen-police information seminar series facilitated by active patrol officers | IN DEVELOPMENT |
| 6B | Develop and institute citizen-police town hall dialogues | PARTIALLY IMPLEMENTED |
| 7 | The task force recommends the enhancement of NYPD's access to language interpreter services | UNDER CONSIDERATION |

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| 7A | Increase funding and staffing of the precinct receptionist program (one receptionist per precinct) | UNDER CONSIDERATION |
| 7B | Increase use of Language Line | IMPLEMENTED |
| 7C | Reimbursement for tuition costs for foreign language education | UNDER CONSIDERATION |
| 8 | The task force recommends the reinvigoration of the Clergy Liaison program | IMPLEMENTED |
| 8A | Enhance training and operations of the Clergy Liaison program | IMPLEMENTED |
| 8B | Support the "Adopt a Cop" program | IMPLEMENTED |
| 9 | The task force recommends the enhancement of the status of the Office of the Deputy Commissioner for Community Affairs | IMPLEMENTED |
| 9A | Greater liaison between precincts and Community Affairs | IMPLEMENTED |
| 9B | Create an adequate budget for DCCA | IMPLEMENTED |
| 9C | Internal program development and evaluation team for DCCA | REJECTED |
| 9D | Change title of Community Affairs to Community Relations | REJECTED |
| 10 | The task force recommends implementation of a pilot Community Affairs Response Team (CART) | PARTIALLY IMPLEMENTED |
| 10A | Develop and implement a CART pilot in a precinct subject to community unrest | PARTIALLY IMPLEMENTED |
| 11 | The task force recommends implementation of an annual Civilian Recognition Ceremony | IMPLEMENTED |
| 11A | The task force recommends implementation of an annual Civilian Recognition Ceremony to be merged with the CPR recognition ceremony | IMPLEMENTED |

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| 1 | The task force recommends implementation of public-private advertising initiative similar to the recent effort in New Orleans | IMPLEMENTED |
| 2 | The task force supports the continuation of the department's entrance examination tutoring efforts | IMPLEMENTED |
| 3 | The task force recommends the enhancement of the NYPD Cadet Corps | IMPLEMENTED |
| 4 | The task force recommends to the mayor the development of a comprehensive employment policy with the goal of ensuring that the NYPD's makeup reflects the racial diversity of the city. This policy should include a prospective residency requirement for all NYPD employees hired after the effective date of the plan | IMPLEMENTED |
| 5 | The task force recommends that the NYPD implement an aggressive affirmative action plan designed to create a police force more reflective of the city's population | IMPLEMENTED |
| 1 | The task force recommends the enhancement of cultural diversity training at the Police Academy | IMPLEMENTED |
| 1A | The department should create a proactive curriculum that exposes students to the diverse and changing natures of the city's communities | IMPLEMENTED |
| 1B | Creation and use of video vignettes that explore each ethnic group | IMPLEMENTED |
| 2 | The task force supports the efforts of the Policing Institute and the continued participation of the NYPD in this program | IMPLEMENTED |
| 3 | The task force recommends the enhancement of the field training component of the Police Academy | IMPLEMENTED |
| 3A | Expansion of field training from 3 to 6 months | IMPLEMENTED |
| 3B | Recruits should be required to participate in community-based activities while on duty | IMPLEMENTED |
| 3C | Require recruits to participate in a daylong field training program on Riker's Island with the Department of Correction | REJECTED |

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| 4 | The task force recommends the enhancement of cultural diversity training at borough and precinct orientation | IMPLEMENTED |
| 4A | Community Affairs Officers create and maintain precinct specific resource books | IMPLEMENTED |
| 4B | Create and utilize precinct-specific language card memo book inserts | IMPLEMENTED |
| 5 | The task force recommends the enhancement of in-service cultural diversity training | IMPLEMENTED |
| 5A | Create an in-service diversity skills workshop: 6-month weekly class series that would be given to approximately 30 officers in every precinct, PSA, and district | PARTIALLY IMPLEMENTED |
| 6 | The task force recommends the enhancement of cultural diversity training in the Leadership and Executive Development programs | IMPLEMENTED |
| 6A | Create a highly selective Sergeant's Leadership Institute | REJECTED |
| 6B | Mandate participation in diversity training courses for all department executives | IMPLEMENTED |
| 6C | Award points in the promotion process for advanced education and specialized training | PARTIALLY IMPLEMENTED |
| 7 | The task force recommends the creation of a Board of Visitors for the New York Police Academy to act as advisors to the mayor and the police commissioner | IMPLEMENTED |
| 8 | The task force recommends whatever subsequent body replaces it investigate the following ideas: <ol style="list-style-type: none"> 1. Replace all of the academic course given at the Police Academy with equivalent credit bearing courses at accredited colleges 2. Increase the minimum education requirement for acceptance into the Police Academy to a bachelor's degree from an accredited college or university 3. Create model training precincts 4. Field training or internship for recruits at victim services agencies, hospital emergency rooms, child welfare and protective agencies | NOT NYPD |

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| 1 | The task force recommends the city increase the number of custodians assigned to its precincts to the extent that the overall budget consideration permit | IMPLEMENTED |
| 2 | The task force recommends the creation of a career path program for patrol officers with the following features and incentives: | IMPLEMENTED |
| 2A | Create "community patrol specialists" in each precinct, PSA and district | IMPLEMENTED |
| 2B | Precinct commanders would recommend officers for "community patrol specialists" | IMPLEMENTED |
| 2C | The police department should develop a means of community input regarding an officer's performance | PARTIALLY IMPLEMENTED |
| 3 | In order to attract the best and brightest to the NYPD and thus to improve police-community relations, the city should recognize that the current force is underpaid and a significant increase in wages is needed to adequately compensate police officers | NOT NYPD |
| 4 | The task force recommend the elimination of the 48-hour rule | PARTIALLY IMPLEMENTED |
| 5 | The task force recommends the creation of an independent auditor/monitor and evaluate the civilian complaint process administered by the CCRB and the NYPD | NOT NYPD |
| 5A | Create a screening body to identify the less serious complaints and refer them without a full investigation for resolution by mediation or conciliation | NOT NYPD |
| 5B | Form a permanent auditor-monitor board, independent of the police department to monitor and evaluate the CCRB investigation process and the police department's disciplinary process and publicly report its findings | NOT NYPD |
| 5C | Designate senior NYPD official and CCRB member to act as liaisons between their respective agencies and the auditor-monitor | NOT NYPD |
| 6 | The task force supports the enactment of City Council Intro. 250 | NOT NYPD |

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| 7 | The task force endorses the view that public safety and positive police-community relations compel leaving police disciplinary matters solely in the hands of the police commissioner, and that the police commissioner's disciplinary determination be accorded great deference | IMPLEMENTED |
| 8 | The task force acknowledges the mayor's push to enhance CCRB's operations and output, but recommends that its budget be further increased commensurate with NYPD staffing increases | NOT NYPD |
| 8A | The CCRB must hold public town hall meetings no less than five times a year in each borough at least once per year | NOT NYPD |
| 8B | The CCRB must issue its 6-month report within 45 days of the closing period | NOT NYPD |
| 8C | CCRB should issue reports on patterns and practice of police abuse | NOT NYPD |
| 8D | Successor body should examine the effectiveness of the Department Advocate's Office in prosecuting police officers | NOT NYPD |
| 8E | The NYPD and CCRB should compile a broad range of statistics on a daily, weekly, monthly, and annual basis | IMPLEMENTED |
| 9 | The task force recommends a comprehensive review of psychological testing practices used by the NYPD | IMPLEMENTED |
| 9A | Comprehensive review of the pre-employment psychological screening protocol | IMPLEMENTED |
| 9B | Review should examine the Psychological Services Unit for issues regarding confidentiality, service utilization, quality of service delivery, size and diversity of staff | IMPLEMENTED |

Appendix B

Your Rights and Responsibilities When Interacting with the Police

NEW YORK CITY POLICE DEPARTMENT

How do you file a complaint against a police officer?

If you want to file a complaint against the police for misconduct or corruption, you should notify the New York City Police Department's Internal Affairs Bureau (IAB) by phone, letter, or in person at:

315 Hudson Street, 3rd Floor
New York, NY 10038
(212) 741-8401

For complaints of unnecessary use of force, abuse of authority, discourtesy, or offensive language, you should notify the Civilian Complaint Review Board (CCRB) by phone, letter, or in person at:

40 Rector Street, 2nd Floor
New York, NY 10006
(212) 442-8833
(800) 341-2272

IAB or CCRB complaints can be filed at any precinct or police facility.

New York City Police Department Values

In partnership with the community we pledge to:

- Protect the lives and property of our fellow citizens and impartially enforce the law
- Fight crime both by preventing it and by aggressively pursuing violators of the law
- Maintain a higher standard of integrity than is generally expected of others because much is expected of us
- Value human life, respect the dignity of each individual and render our services with courtesy and civility



Your Rights And Responsibilities When Interacting With The Police

The Mission of the New York City Police Department is to enhance the quality of life in our city by working in partnership with the community and in accordance with constitutional rights to enforce the laws, preserve the peace, reduce fear, and provide a safe environment.

Police work, by its very nature, can at times put police and the public at odds. Unresolved misunderstandings can give rise to mistrust and apprehension.

Rudolph W. Giuliani
Mayor
City of New York

Howard Safir
Police Commissioner

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Police officers have the right and responsibility to investigate criminal activity. This is done in a variety of ways that includes asking questions. Sometimes, officers will question an individual who has no knowledge of the criminal activity being investigated; however, the officer may not know the individual's lack of involvement until after their investigation.

What are your rights and responsibilities when you are approached by a police officer?

- Remain calm
- Police officers are required to address you as Sir/Ma'am
- Address police officers as "Officer" or "Sir/Ma'am"
- Cooperate with the officer's inquiries
- Allow the officer(s) to explain their actions
- Treat the officer the same way you wish him/her to treat you, that is with courtesy and respect

Under New York State Law, police officers have the right to stop, question, when they have reasonable belief of criminal activity; and frisk when they reasonably suspect they are in physical danger.

New York City Police Officers are required to prepare a report if force was used to conduct the stop, the person was searched or frisked, or if the person refused to produce identification.

What are your rights and responsibilities when you are arrested and taken to the precinct?

- Police officers must read you your rights if they want to question you about a crime you may have been involved in.
- The police may remove some of your personal property for safekeeping; however, you are entitled to a receipt.
- Your lawfully possessed property will be returned to you if it is not vouchered for forfeiture proceedings, arrest, or investigatory evidence.
- If you are under arrest, the police are entitled to ask you your name, address, and telephone number without reading you your rights.

What are your rights if an officer's conduct is questionable or inappropriate?

You have the right to file a complaint against a police officer.

You should get as much information as possible:

- Name
- Badge Number
- Description of car
- License plate number
- Description of officer, i.e. scars, tatoos, height, weight, etc.
- The names of other witnesses

This brochure was designed by the New York City Police Department, Office of the Deputy Commissioner Community Affairs to provide you with information on your rights and responsibilities and to answer questions frequently asked when interacting with the police.

Appendix C

U.S. Commission on Civil Rights, Office of General Counsel, Response to NYPD Comments on Draft "Police Practices and Civil Rights in New York" Report

This memorandum responds to the Affected Agency Comments submitted by the New York Police Department (NYPD) regarding the draft report entitled "Police Practices and Civil Rights in New York City" ("Draft Report"). The Comments were reviewed by OGC staff and the contractor, resulting in this response. After addressing a few general points, the memorandum sets out, in point form, suggested responses to each NYPD Comment in the NYPD Response.

First, we believe that many of the NYPD affected agency comments are unfounded, immaterial, or not relevant to the points to which they allegedly respond. The NYPD comments, at times with a shrillness that reveals a lack of objectivity, unfairly attack the Draft Report. These attacks often begin by mischaracterizing the Draft Report, which allows the NYPD to respond to "straw-man" arguments. In other instances, the NYPD clearly just disagrees with the conclusions reached, and uses inflammatory language rather than logic or fact to support its position. Despite these problems, however, there are a number of points raised in the NYPD Comments that merit consideration.

Second, these comments are extremely critical of the Draft Report's reliance on statements of various witnesses made during Commission hearings. However, the Commission has historically cited the sworn testimony of hearing witnesses in its reports to ensure that there is some consideration of the views and perceptions of members of the community about tensions that perpetuate problems of discrimination and inequality.

Third, the NYPD Response contains considerable information that was not previously available to the Commission. Although it may be the case that much or all of this information should have been provided by the NYPD to the Commission prior to the NYPD Response (pursuant to the subpoena), it nevertheless remains true that in order for the Commission to produce the most accurate and balanced report possible much of this new information should be included in the Draft Report. In deciding whether and in what form to include the new information, we emphasize that most of the new information provided does not undermine the Draft Report's conclusions. We also have taken into consideration the fact that much of the information is not supported by any underlying documentation—the NYPD Response contains primarily assertions of fact without citation. Still, for much of the new information, there is no reason to question its accuracy or validity and, in such cases, it will simply be added.

Fourth, the NYPD Response alleges certain errors and inconsistencies in the statistics and other facts included in the Draft Report. In most cases, these errors and inconsistencies are apparently the result of erroneous information contained in NYPD documents relied upon by the contractor in writing the initial version of the Draft Report. Regardless, the following point-by-point discussion of the NYPD comments indicates, among other things, instances where it appears that these comments have accurately asserted errors of fact and inconsistencies that should be corrected in the Draft Report.

POINT-BY-POINT OGC RESPONSES

I. INTRODUCTION

NYPD Comment #1 (p. 4; re: p. 6, ¶1): *The Draft Report states that according to the NYPD, the use of deadly force by the city's police officers is no more prevalent than in other major cities. The NYPD asserts that the use of deadly force is substantially lower than in other major cities.*

OGC Response: The Draft Report will be revised to add the following statement: According to New York police officials, the use of deadly force by the city's police officers occurs less than in other major cities, when measured in terms of fatal shootings per 1,000 officers.

NYPD Comment #2 (p. 7; re: p. 9, ¶2): *The NYPD has correctly stated that all City Council members represent distinct districts. None of the City Council members represent an entire borough. Also, the President of the City Council is the Public Advocate.*

OGC Response: The Draft Report will be changed to reflect the NYPD's Comments.

NYPD Comment #3 (p. 7; re: p. 12, ¶2): *The NYPD offers information about its newly developed "Streetwise" cultural diversity curriculum.*

OGC Response: The information provided here by the NYPD is not necessarily relevant to the statements that are being made by the Commission. The Commission's statements remain accurate and this information is not required to be added. No change in the Draft Report is necessary.

NYPD Comment #4 (p. 7; re: p. 14, line 1): *The NYPD correctly notes that the Commission should amend the 4,000,000 number to 400,000 population figure.*

OGC Response: The Draft Report will be revised to reflect the correct population figure.

NYPD Comment #5 (p. 7; re: p. 14, ¶2): *The Draft Report states that the NYPD is one of the largest police departments in the country. The NYPD points out that they are at least three times larger than the next largest department.*

OGC Response: The Draft Report will be revised to state that the NYPD is the largest police department in the United States.

NYPD Comment #6 (p. 7; re: p. 15, ¶2): *The NYPD essentially argues and disagrees with the Commission's characterization of the Department's emphasis on quality of life crimes. The NYPD also notes that quality of life initiatives are routinely demanded by the communities.*

OGC Response: No change to the Draft Report is necessary.

NYPD Comment #7 (p. 8; re: p. 16, ¶1): *The NYPD has provided updated numbers concerning crime rates.*

OGC Response: The numbers in the Draft Report are accurate. The NYPD's updated numbers, however, will be substituted.

NYPD Comment #8 (p. 8; re: pp. 16–17): *The NYPD offers information that provides a more favorable picture of the number of civilian complaints the Department has faced and attempts to explain these numbers.*

OGC Response: This NYPD Comment is more directly relevant to Chapter 4 where they are addressed.

NYPD Comment #9: (p. 13; re: p. 16, ¶2): *The main criticism here is that the Draft Report does not reflect the fact that an increasing percentage of cases referred to the NYPD by the CCRB have resulted in disciplinary action.*

OGC Response: The NYPD Comment does not contradict or alter anything stated in the Draft Report. No change in the Draft Report is necessary.

NYPD Comment #10 (p. 15; re: p. 17, ¶2): *The NYPD is essentially asserting that the Commission has failed to make the NYPD's defense in this section.*

OGC Response: The information presented does not contradict any facts in this section of the Draft Report. No change in the Draft Report is necessary.

NYPD Comment #11 (p. 16; re: p. 17, ¶3): *The NYPD asserts that this passage wrongly implies that complaints are increasing and that the NYPD's programs are new.*

OGC Response: The paragraph is accurate and requires no revision. No change in the Draft Report is necessary.

NYPD Comment #12: (p. 16; re: p. 18, ¶2): *The NYPD asserts that the Draft Report mischaracterizes the 48-hour rule.*

OGC Response: The statement in this section concerning the 48-hour rule is accurate as drafted. No change in the Draft Report is necessary.

NYPD Comment #13 (p. 17; re: p. 18, ¶2): *The NYPD asserts that they have responded to the OGC Response here about bi- or multilingual receptionists in precincts with large non-English-speaking populations.*

OGC Response: While the information provided by the NYPD is interesting, the point raised by the Commission is accurate as drafted. No change in the Draft Report is necessary. This information will be added into the Police-Community Relations section as a footnote.

NYPD Comment #13a (p. 17 re: p. 18, ¶3): *The NYPD points out that the Mollen Commission was prompted by the discovery that several officers, not entire precincts, were selling drugs and beating suspects.*

OGC Response: The Draft Report will be revised to state: NYPD officers in several New York precincts were discovered selling drugs and beating suspects.

NYPD Comment #14 (p. 17; re: p. 19, ¶1): *The NYPD asserts that the Draft Report fails to include the Mollen Commission's strong endorsement of internal reforms that were put in place by the Department. While accurate, this NYPD Comment is not related to the point being made in the Draft Report.*

OGC Response: The Draft Report is accurate and the proposed insertion by the NYPD is not necessary. No change in the Draft Report is necessary.

NYPD Comment #15 (p. 17; re: p. 23): *The NYPD asserts that the Commission's discussion of the New York Attorney General's Report fails to include numerous objections raised by the NYPD. Although a number of specific objections are raised, none of them makes any of the Draft Report's statements incorrect or false.*

OGC Response: No change in the Draft Report is necessary. However, the following footnote will be inserted: Not surprisingly, the NYPD objects to much of the analysis and conclusions in the Attorney General's Report.

II. RECRUITMENT, SELECTION, AND TRAINING

NYPD Comment #1 (p. 23; re: p. 25, ¶2): *This NYPD Comment misrepresents the Draft Report, which explicitly notes numerous factors important to effective policing (see, e.g., Commission Report, p. 25). The NYPD Comment is correct that no specific proposal is made regarding the form of affirmative action.*

OGC Response: No change in the Draft Report is necessary. However, in response to a request by Commissioners, there will be specific OGC Responses regarding the form of affirmative action that the NYPD might use added to the Draft Report.

NYPD Comment #2 (p. 24; re: p. 26, ¶2): *The statistics on pages 11 and 26 of the Draft Report are somewhat inconsistent.*

OGC Response: **This inconsistency will be eliminated.**

NYPD Comment #3 (p. 24; re: p. 26, graph): *The Draft Report is accurate. If anything, the Draft Report's numbers are more favorable to the NYPD than those of the NYPD Comments.*

OGC Response: **No change in the Draft Report is necessary.**

NYPD Comment #4 (p. 24; re: p. 27, ¶1): *The Draft Report is accurate.*

OGC Response: **A statement will be added regarding the representation of recruits of color in the Police Academy.**

NYPD Comment #5 (p. 26; re: p. 27, ¶2): *The Draft Report is correct; the updated numbers reflected no material change. The statistics included in the NYPD Comments do not suggest that "Minorities are appointed to discretionary ranks in greater proportion than their representation in the Department," e.g., 13% of officers are African American, but only 2.4% of captains are African Americans. New statistics are included regarding the shorter time for promotion of minorities.*

OGC Response: **The new information forwarded by the NYPD pointing out the shorter time period for promotion of officers of color and women will be added.**

NYPD Comment #6 (p. 29; re: p. 29, ¶3): *The NYPD Comment suggests that the Draft Report misstates the pass rate for minority takers of the 1999 exam, and includes new statistics for the October 1999 exam.*

OGC Response: **The correct minority pass rate for the January 1999 exam (43.66%) will be substituted and the new information regarding the October 1999 minority pass rate (68.12%) will be added.**

NYPD Comment #7 (p. 29; re: pp. 31 and 32): *This NYPD Comment is critical of the Draft Report's use of statements by a sergeant within the NYPD about the Department's hiring process.*

OGC Response: **The sworn testimony of this NYPD insider is not offered to prove the truth of the statement asserted but to reveal the perceptions of officers of color within the NYPD. The Draft Report clearly provides sufficient detailed information about these processes for a reasonable person to reach proper conclusions about the witness' perceptions. No changes are necessary.**

NYPD Comment #8 (p. 31; re: p. 32, ¶2): *This NYPD Comment is semantic.*

OGC Response: **No change in the Draft Report is necessary.**

NYPD Comment #9 (p. 31; re: p. 33, ¶1): *This NYPD Comment addresses a section regarding college education requirements for officers.*

OGC Response: **This section of the Draft Report will be revised consistent with the comments of Commissioners.**

NYPD Comment #10: (p. 33; re: p. 35, ¶2): *This objection contains statistics of questionable relevance.*

OGC Response: **No change in the Draft Report is necessary.**

NYPD Comment #11 (p. 35; re: p. 37): *The Draft Report clearly addresses the 1998 recruitment drive. That drive was the last drive for which the Commission was provided information. The NYPD Comment contains a detailed account of the 1999 drive.*

OGC Response: **A section will be added describing the 1999 recruitment drive, which appears to have helped to increase the level of minority exam filers.**

NYPD Comment #12 (p. 50; re: p. 39, ¶2): *The Draft Report is accurate.*

OGC Response: **No change in the Draft Report is necessary.**

NYPD Comment #13 (p. 51; re: p. 40, ¶3): *The NYPD provides more information about its Recruitment Drive and points out that the services by the advertising agency were a gift to the City.*

OGC Response: A summary of this additional information will be added and the agency services will be properly referred to as "a gift to the city."

NYPD Comment #14 (p. 51; re: p. 41, ¶1): *The NYPD argues that the police commissioner did not contradict his own statement as a witness claimed.*

OGC Response: **The text in this section will be clarified to show that the Department disputes the witness' assertion.**

NYPD Comment #15 (p. 51; re: p. 42, ¶¶1, 2): *This NYPD Comment addresses the discussion in the Draft Report regarding proposals for a police officer residency requirement.*

OGC Response: **This section of the Draft Report will be revised in accordance with comments on this point by Commissioners.**

NYPD Comment #16 (p. 52; re: p. 45, ¶4): *This NYPD Comment states that the Mayor's proposal to establish a Law Enforcement High School is already in place. No details are provided.*

OGC Response: A footnote will be inserted to point out that the NYPD states that the proposal is already in place.

NYPD Comment #17 (p. 52; re: p. 48, ¶3): *The NYPD Comment includes new information about the writing of the promotional exams.*

OGC Response: **This newly presented information will be incorporated into the Draft Report.**

NYPD Comment #18 (p. 53; re: p. 49, ¶3): *The NYPD Comment includes new information about the writing of the promotional exams.*

OGC Response: A footnote will be added to the Draft Report incorporating the new information.

NYPD Comment #19 (p. 53; re: p. 49, ¶4): *The NYPD Response's conclusion that there is "no evidence" of bias in the promotion system is contradicted by the statistics. Additional information is given regarding the criteria considered for promotion.*

OGC Response: **New information regarding promotion will be added to the Draft Report.**

NYPD Comment #20 (p. 54; re: p. 50, ¶2): *This NYPD Comment argues against and misinterprets statements in this section of the Draft Report by claiming that these statements imply that police officers are rewarded for abusing the public.*

OGC Response: **Instead, the statements of this witness, who is an officer in the NYPD, are clear about the types of police conduct that engender incentives and those that do not. No changes are necessary.**

NYPD Comment #21 (p. 54; re: pp. 51, 52): *This NYPD Comment disputes the sworn testimony of Commission witnesses, who are employed by the NYPD.*

OGC Response: **The Draft Report will clarify that these statements are unsubstantiated but that they are relevant to an understanding of the perceptions and tensions within the NYPD involving officers of color.**

NYPD Comment #22 (p. 56; re: p. 53, ¶1): *The NYPD Comment indicates that the Commission did not request additional data on OEEEO complaints. The NYPD Comment includes 1999 data. Why is no data provided for 1997 and 1998? The statistics provided are of limited usefulness without more information about each complaint and disposition.*

OGC Response: **The Commission's subpoena *duces tecum* issued to the NYPD encompassed this additional data. A footnote will be added to the Draft Report discussing the 1999 statistics and noting their limitations.**

NYPD Comment #23 (p. 57; re: p. 53, ¶1): *This NYPD Comment discusses measures taken by the Department to reduce retaliation for making complaints. These measures are not particularly strong, and no statistics are provided.*

OGC Response: **A footnote will be added to discuss these measures.**

NYPD Comment #24 (p. 58; re: p. 53, ¶1): *The NYPD indicates that such surveys have been conducted. This information was not provided to the Commission.*

OGC Response: **The Report will indicate that, according to the NYPD, "the OEEEO has elected to conduct written confidential inquiries of controlled groups to ascertain if employment discrimination has occurred," but that the results were not provided to the Commission.**

NYPD Comment #25 (p. 58; re: p. 55, ¶2): *The NYPD provides information about additional measures to reduce sexual harassment; none of these measures is particularly significant.*

OGC Response: **A listing of these measures will be added to the Report.**

NYPD Comment #26 (p. 60; re: p. 58, ¶1): *The Draft Report is accurate. The Commission issued a subpoena *duces tecum* to the NYPD for the following documents: Any document, including but not limited to, reports, studies, compilations, press releases, orders or special orders, regulations, rules, directives, guidelines, and policy statements generated, issued, and/or collected by the NYPD relating to the number of harassment and/or discrimination complaints based on gender, race, or ethnicity within the NYPD from 1993 to the present. The Department agreed to comply with the subpoena and was legally obligated to submit the requested information.*

OGC Response: **No change in the Draft Report is necessary.**

NYPD Comment # 27 (p. 60; re: p. 58, ¶2): *This NYPD Comment contains additional information about training requirements for OEEEO investigators.*

OGC Response: **The new information will be summarized in the Draft Report.**

NYPD Comment #28 (p. 60; re: p. 59, ¶1): *The NYPD includes new information about additional OEEEO staffing.*

OGC Response: **The new information will be added to the Draft Report.**

NYPD Comment #29 (p. 61; re: p. 59, ¶2): *The Draft Report is accurate.*

OGC Response: **No change in the Draft Report is necessary.**

NYPD Comment #30 (p. 61; re: p. 59, ¶2): *The NYPD Comment contains alternative explanations for an increase in complaints to outside agencies.*

OGC Response: **These alternate explanations will be summarized in the Draft Report.**

NYPD Comment #31 (p. 61; re: p. 60, ¶1): *This NYPD Comment states that no information was requested on this point. Otherwise, the Draft Report is accurate.*

OGC Response: **No change in the Draft Report is necessary.**

NYPD Comment #32 (p. 62; re: p. 60, ¶2): *The NYPD Comment states that no information was requested on this point. OEEO reports, from which this data may be culled, were clearly covered by the Commission's subpoena duces tecum issued to the NYPD. The NYPD Comment includes additional statistics regarding disposition of OEEO complaints; however, these statistics are of little relevance without knowing the basis of the claims.*

OGC Response: The Draft Report will be revised to include a discussion of the new statistics.

NYPD Comment #33 (p. 62; re: p. 62, ¶1): *The Draft Report is accurate. Some new statistics are provided in the NYPD Comment.*

OGC Response: The Draft Report will be revised to include a discussion of the new statistics.

NYPD Comment #34 (p. 63; re: p. 62, ¶3): *The NYPD updates information contained in the Draft Report.*

OGC Response: The updated information will be included in the Report.

NYPD Comment #35 (p. 63; re: pp. 64–67): *The NYPD mentions the "Visiting Professors Program" and "Behavioral Science Advisory Board," but no detail is given.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #36 (p. 63; re: p. 65): *The NYPD provides some new information about the training materials, including information about different forms of training.*

OGC Response: Although the Draft Report contains a fair and accurate description of NYPD diversity training, new information contained in the NYPD Comment will be added.

NYPD Comment #37 (p. 67; re: p. 66): *The Draft Report is accurate.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #38 (p. 67; re: p. 66, ¶2): *The Draft Report is accurate.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comments #39 (p. 67; re: pp. 66–68): *The Draft Report is accurate.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #40 (p. 68; re: p. 68): *The NYPD claims that references to assimilation are no longer included in the training materials.*

OGC Response: A clarification will be added in the text that the "assimilation" references existed in the training materials until May 1998.

NYPD Comment #41 (p. 68; re: p. 68): *The NYPD offers additional information about the development of training materials, and claims regarding their specific purpose. These appear to be ex post facto rationalizations of materials that contain ridiculous racial stereotypes.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #42 (p. 69; re: pp. 68–69): *The NYPD Comment claims that negative references to certain ethnic groups are no longer included in the training materials.*

OGC Response: A clarification will be added in the text that the negative references existed in the training materials until May 1998.

NYPD Comment #43 (p. 69; re: p. 69): *The Draft Report is accurate.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #44 (p. 69; re: p. 70): *The Draft Report is accurate.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #45 (p. 69; re: p. 70): *This comment focuses on a criticism by Norman Siegel about the limited information about Dominicans contained in NYPD training materials.*

OGC Response: Mr. Siegel's comments are accurate. The Report will be revised, however, to indicate that, according to the NYPD, all recruit officers are "require[d] . . . to purchase and read *New Immigrants in NY* (Foner, 1988), which includes an entire chapter on the Dominican immigrant (27 pages of text).

NYPD Comment #46 (p. 70; re: p. 71, ¶1): *The Draft Report is accurate.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #47 (p. 70; re: p. 72, ¶1): *The NYPD alleges that the Draft Report alleges inconsistency without support.*

OGC Response: The first paragraph on page 72 of the Draft Report will be revised to read: ". . . the materials are internally inconsistent because they send a confusing message—should officers treat each individual differently according to the training he or she has received about the individual's ethnicity, or should the officer treat everyone the same?"

NYPD Comment #48 (p. 70; re: p. 73): *The NYPD states that the Draft Report expresses the need for "cultural and language sensitivity training," but fails to include the current curriculum consisting of the "Interactive Language Workshop." In addition, the Response points out that the NYPD provides all recruits with a book of Spanish phrases at Department expense.*

OGC Response: A footnote will be added to include this new information.

NYPD Comment #49 (p. 70; re: p. 74, ¶1): *The NYPD takes issue with a witness's claim that instructors are not qualified and some only get one day of training prior to teaching.*

OGC Response: The Draft Report will be revised to add that the NYPD maintains that each Police Academy instructor has completed a two-week method of instruction class and is certified by New York State Division of Criminal Justice Services, Bureau of Municipal Police.

NYPD Comment #50 (p. 70; re: p. 74, ¶2): *The NYPD attempts to explain a witness's observation that officer trainers in an audience for a hate crimes seminar appeared to be unfamiliar with the material presented, by stating that this seminar was a new training initiative, and the material was being presented to the audience for the first time.*

OGC Response: The witness's statement will be eliminated.

NYPD Comment #51 (p. 71; re: p. 74, ¶2): *The NYPD notes that the Draft Report fails to point out that all officers, including veterans, have been trained in "Verbal Judo, which is essentially a course built on respect"; further, the NYPD claims that there is a cultural awareness component in every training course and that the "NYPD has conducted training courses for new promotees for many years."*

OGC Response: The Draft Report will be revised to address these points.

NYPD Comment #52 (p. 71; re: p. 74, ¶3): *This comment contains new information regarding the role of minority community members and "specialists in various ethnic and cultural groups within the City" in the preparation of training materials.*

OGC Response: This information will be incorporated into the Draft Report.

NYPD Comment #53 (p. 73; re: p. 75, ¶2): *The NYPD offers additional information about the Streetwise program.*

OGC Response: A sentence will be added to the Draft Report explaining that almost 3,000 newly graduated officers in the June 1998, February 1999, and April 1999 recruit classes received the "Streetwise: Language, Culture and Police Work in New York City" training, which includes role plays, videotapes, and language-training audio tapes.

NYPD Comment #54 (p. 74; re: p. 77, ¶2): *The NYPD argues that characterizations of NYPD diversity training efforts as inadequate by Department critics are without factual support.*

OGC Response: This section of the Draft Report includes the perceptions of community representatives who are familiar with NYPD training efforts. No change to the Draft Report is necessary.

NYPD Comment #55 (p. 74; re: pp. 78–79): *This comment lists types of sexual harassment training provided to officers, but does not make clear whether this training is the same as or different from the training listed on pages 79 to 80 of the Draft Report.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #56 (p. 74; re: pp. 80–81): *The NYPD provides information about the ethnic and gender makeup of the Behavioral Science Department of the Police Academy and the qualifications of certain members of the academy.*

OGC Response: The Draft Report will be revised to discuss the ethnic and gender makeup of the academy's Behavioral Science Department, noting that minority staff in this Department is far greater than in the Police Academy generally.

[NYPD Comments ##57–66 (NYPD Comments pages 76– 81) See Response to Chapter 5]

NYPD Comment #67 (p. 81; re: p. 89): *The NYPD discusses measures already taken by the NYPD to implement certain suggestions of the Mayor's Task Force Report.*

OGC Response: The Draft Report will be revised to indicate what new information has been provided by the NYPD regarding the progress it has made in implementing the Mayor's Task Force OGC Responses listed on pages 89 to 90.

NYPD Comment #68 (p. 83, re: p. 90): *This comment is argumentative.*

OGC Response: No change in the Draft Report is necessary.

III. POLICE-COMMUNITY RELATIONS

NYPD Comment #1 (p. 84; re: p. 94, fn. 412): *The NYPD asserts that it provided all requested information to the Commission. The NYPD misses the point of footnote 412. Footnote 412 states that the information provided by the NYPD lacked specificity.*

OGC Response: No change in the Draft Report is required. However, the Draft Report will be revised to reflect new information submitted by the NYPD.

NYPD Comment #2 (p. 84; re: p. 97, ¶3): *The NYPD has provided additional and updated information concerning Precinct Community Councils. The NYPD Comment does not contradict any information contained in the Report.*

OGC Response: The Draft Report is accurate. No change in the Draft Report is necessary. The information provided here and in Attachment K by the NYPD would seem to show the NYPD's commitment to this program. The new information provided by the NYPD will be addressed below where certain OGC Responses concerning Precinct Community Councils are discussed.

NYPD Comment #3 (p. 85; re: p. 99, ¶2): *The NYPD has provided additional information concerning the Model Block Program. The information does not contradict anything in the Draft Report. The NYPD Comments provided here by the NYPD appear factual in nature and could be used by the Commission to add information to the Model Block section.*

OGC Response: While no change in the Draft Report is necessary, some of the information provided on pages 85–86 of the NYPD Comments will be added to the Draft Report.

NYPD Comment #4 (p. 86; re: pp. 102–03): *The NYPD asserts that the Commission's criticisms of the CPR program must be viewed in light of the purported drop in the number of civilian complaints. The Commission's points in the Draft Report are not contradicted by this information. Moreover, there is no way to determine at this juncture whether the numbers are accurate or are being accurately portrayed. The Draft Report remains accurate without change. The NYPD also attaches its Code of Professional Standards at Attachment L. Nothing in this "Code" contradicts anything that the Commission has stated in this section.*

OGC Response: No change is necessary.

NYPD Comment #5 (p. 86; re: p. 103, ¶2): *The Draft Report states that there was a 99% acceptability rating in testing for the CPR program. The NYPD asserts that the number is slightly more than 98%. Regardless, the Commission's substantive point remains accurate. The NYPD also provides additional information about disciplinary actions taken in the cases of NYPD CPR test failures. This information is new; however it does not change the Commission's substantive point.*

OGC Response: The Draft Report will be revised to substitute "slightly over 98%" for 99%. The new information provided by the NYPD will be added in a footnote.

NYPD Comment #6 (p. 87; re: p. 105, ¶2): *The NYPD states that they have drafted a procedures manual for Precinct Community Councils. This was one of the comments discussed in the Draft Report.*

OGC Response: A footnote will be added in this section that states: Since the hearing in this matter, the NYPD has adopted a mandatory policies and procedures manual for Precinct Community Councils that address many of the points raised by the Mayor's Task Force. No changes to the text are necessary.

NYPD Comment #7 (p. 87; re: p. 106, ¶4): *This NYPD Comment discusses the Youth Academy. No new information is presented here and no changes are necessary.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #8 (p. 87; re: p. 107, ¶1): *This NYPD Comment provides information concerning some preliminary steps that the Department is taking relating to role playing interactions between youth and the police. Nothing in this NYPD Comment contradicts anything in the Draft Report.*

OGC Response: No change in the Draft Report is necessary. However, a footnote will be added to the Draft Report to address the post-hearing, preliminary steps by the NYPD relating to police/youth relations.

NYPD Comment #9: (p. 87; re: p. 107, ¶2): *This NYPD Comment lists several new initiatives taken by the NYPD in the community policing area.*

OGC Response: While no change in the Draft Report is necessary, the Draft Report will be revised to add the information here into the text since these represent new community policing initiatives taken by the NYPD since the hearing.

NYPD Comment #10 (p. 90; re: p. 108, ¶2): *This NYPD Comment does not provide any relevant information for this section.*

OGC Response: No change in the Draft Report is necessary.

IV. MONITORING OF CIVILIAN COMPLAINTS

NYPD Comment #1 (p. 110; re: p. 117, ¶1): *This technical NYPD Comment concerning the structure of the NYPD appears to be correct.*

OGC Response: The first sentence of the paragraph will be modified to read: “The New York City Police Department and external oversight entities share. . . .”

NYPD Comment #2 (pp. 110, 112 n.476, 114; re: pp. 117, ¶1, 119 n.476, 121): *Although the NYPD asserts that data concerning IAB and the Commission to Combat Police Corruption were never requested from the Department, the subpoena duces tecum issued to the Mayor encompassed “[a]ny document . . . relating to allegations of excessive force, harassment or mistreatment of residents of New York City by [NYPD] officers, broken down by race, ethnicity, and gender of officer(s) and complainants.”*

OGC Response: The Draft Report will be revised to add to the discussion in footnote 476 some mention of the specific attempt by the Commission to obtain this information from the Mayor’s office.

NYPD Comment #3 (p. 111; re: p. 118, ¶2): *This objection correctly notes that a new unit within the NYPD has become responsible for investigation of retaliation complaints.*

OGC Response: The sentence beginning at the bottom of page 118 will be modified to read: “The NYPD has authorized its Employee Relations Section to investigate allegations of retaliation. . . .”

NYPD Comment #4 (p. 112; re: p. 120, ¶1): *The Department’s contention that the Commission never sought information concerning the role of IAB is contrary to our understanding.*

OGC Response: Addressed above in response to NYPD Comment #2.

NYPD Comment #5 (p. 113; re: p. 120): *The Department appears to be correct that Mayor Giuliani authorized creation of a Commission to Combat Police Corruption (CCPC). However, the Mayor’s Office was asked to provide information on this subject, but apparently declined to do so.*

OGC Response: Immediately following footnote 481, a sentence will be added, stating: “The Mayor, however, vetoed that legislation.” Following that sentence, the following footnote will be added to discuss the CCPC:

“Although there has been no completely independent oversight of IAB, a mayoral commission does review IAB procedures. In 1995, Mayor Giuliani created the Commission to Combat Police Corruption (CCPC) to assess the Department’s anti-corruption efforts. Although critics have criticized the CCPC as in its most recent annual report, the CCPC gave IAB only a “passing grade” in investigating officer misconduct. See N.Y. L.J. at 1 (Nov. 17, 1999). More recently, the CCPC found that although IAB did a “reasonably good job” of investigating misconduct, IAB was an undesirable assignment that officers were “anxious” to leave. See “IAB Cops Can’t Wait to Get Out, Study Says,” *N.Y. Daily News*, Mar. 24, 2000, p. 7. Although the CCPC has been criticized as ineffective, the Department appears to have been somewhat responsive to CCPC reports. For example, in response to a CCPC report documenting the Department’s failure to punish officers who lie under oath, the Department promised to terminate officers who lie. See “See-No-Evil Officers Should Pay,” *New York Times*, Aug. 24, 1997, sec. 4, p. 3. Finally, the last two sentences of this paragraph that currently follow footnote 481 will be removed.

NYPD Comment #6 (p. 114; re: p. 122, ¶1): *The NYPD incorrectly states that the Commission never requested information concerning OCD and IAB investigations. The information that the NYPD has provided in its response, however, is consistent with the Report.*

OGC Response: The following additional information will be added to the Report in a footnote at the end of the first paragraph on p. 122: "Although the Mayor's office initially declined to provide the Commission with additional information concerning OCD investigations, some information has been provided to the Commission following the initial drafting of this Report. In particular, the Department noted that about 25% of civilian complaints are referred to the OCD for review. After being referred to the subject officer's borough command, the subject officer's commanding officer is then usually designated to conduct an investigation of the complaint. The NYPD also contends that dispositional data for all OCD claims is kept by the Department. This data, however, have not been provided to the Commission."

NYPD Comment #7 (p. 118; re: p. 125, ¶2): *This objection concerns a quote by the Public Advocate citing a 44% increase in civilian complaints from 1992 to 1998 without noting the increased numbers of police officers from 1992 to 1998, suggesting that the rise in complaints may be attributable to the increased size of the police force. However, the Report cites directly to Mayor Giuliani's testimony on the increased size of the police force.*

OGC Response: No change is necessary; however, a footnote will be added to acknowledge the increased size of the police force over the same period of time.

NYPD Comment #8 (pp. 118–19; re: p. 125): *The NYPD contends here that citation to the high number of complaints is unfair because most were not substantiated.*

OGC Response: No changes are necessary.

NYPD Comment #9 (p. 119; re: p. 126, ¶2): *This objection to the discussion of the 48-hour rule is baseless and fails to address the fundamental objection to the rule, that it gives officers the opportunity to get their stories straight.*

OGC Response: No changes are necessary.

NYPD Comment #10 (p. 121; re: p. 128, ¶2): *This objection is directed to the statement that the NYPD rarely disciplines officers.*

OGC Response: The statement is the sworn testimony of a single witness under a section of the Report concerning perceptions of police misconduct. A footnote will be added to explain that the officers involved in the Diallo shooting have been involved in previous shooting incidents, yet, according to NYPD records, that prior to the Diallo shooting, none of the officers involved ever received charges and specifications or were the subject of any formal discipline.

NYPD Comment #11 (p. 122; re: p. 129, ¶1): *This objection is to the "factors involved in police misconduct," which are provided through the sworn testimony of witnesses in a section of the Report that concerns perceptions of police misconduct.*

OGC Response: The Draft Report will be revised to emphasize that these factors represent the collective perceptions of knowledgeable witnesses.

NYPD Comment #12 (p. 125, n.521; re: p. 133, n.521): *The NYPD objection that the officer receiving a civilian complaint must report it to the CCRB, if the complaint falls within CCRB jurisdiction, misses the point of this footnote, which is that it is still the officer who makes the initial determination whether the CCRB has jurisdiction.*

OGC Response: The footnote is entirely accurate, but can be clarified easily. The footnote will be revised by changing the period to a semicolon at the end of the last substantive sentence of this footnote, and add the following text: "if the officer determines that the complaint is within the jurisdiction of the CCRB, then he must forward that complaint directly to the CCRB."

NYPD Comment #13 (p. 127; re: p. 134, ¶2): *This objection lacks substance, as the information the NYPD seeks to provide is squarely within the text of the Report.*

OGC Response: **No change is necessary.**

NYPD Comment #14 (p. 130; re: p. 137, ¶2): *The NYPD is correct that mediated complaints remain on the officer's record as mediated, with the allegations removed.*

OGC Response: **That information, however, is already contained in the Report, at n.534. No change is necessary.**

NYPD Comment #15 (p. 131; re: p. 138, ¶1): *The NYPD correctly notes that the CCRB discontinued conciliation of complaints last year.*

OGC Response: **Although the Report does not contain any factual inaccuracies, the following clarification will be added at the top of footnote 538, after the "Ibid." cite: "The CCRB suspended the conciliation process on May 12, 1999."**

NYPD Comment #16 (p. 133; re: p. 140, ¶2): *This NYPD objection incorrectly states that the Report discusses the CCRB's adjudication of cases not within its jurisdiction. In fact, the Report states exactly the opposite—when the CCRB concludes that an officer has committed misconduct not within its jurisdiction, the Report states, that information is forwarded to the Department.*

OGC Response: **No change is necessary.**

NYPD Comment #17 (p. 134; re: p. 134, ¶2): *This objection concerns the Draft Report's description of a Police Department team making comments regarding disciplinary action. The description is based on information from the Public Advocate's Interim Report.*

OGC Response: **A statement will be added to show the different description provided by the NYPD.**

NYPD Comment #18 (p. 135; re: p. 142, ¶1): *The NYPD contends that the description of the DAO as advocate for the officers is misleading. The Report correctly states that the DAO is charged with making sure that charges filed against an officer are legally sufficient. However, the Report can be misinterpreted because the use of the term "advocate" might suggest (incorrectly) that the DAO actually represents officers when charges are filed against them. The Department also asserts that Patrol Guide section 118-05 has been superseded by Patrol Guide section 206-05, but the Department did not provide that section with its Response, so it is impossible to evaluate the validity of this assertion.*

OGC Response: **The phrase "acts as advocate for the officer since it" will be deleted from the first sentence in this paragraph on page 142.**

NYPD Comment #19 (p. 136; re: p. 143, ¶1): *The NYPD contends that it no longer reinvestigates substantiated complaints, due to the improved nature of CCRB investigations; however, the NYPD has not provided any documentation to back up this assertion.*

OGC Response: **The following text to footnote 557 will be added: "Following the initial drafting of this Report, the NYPD informed the Commission that the Department discontinued its practice of reinvestigating substantiated complaints in September of 1999. The Department contends that this change in policy is due to the improved quality of CCRB investigations. The Department, however, did not produce any documents to substantiate these contentions."**

NYPD Comment #20 (p. 136; p. 143, ¶3): *The NYPD objection seeks to clarify the officials responsible for conducting administrative trials of officers charged with misconduct.*

OGC Response: **This paragraph will be clarified. Following the first sentence on page 143, ¶ 3, the following additional text will be inserted to state: "The Deputy Commissioner, Trials also conducts formal disciplinary hearings. Once a trial has been conducted, those findings are reviewed by the**

Department.” In addition the end of next sentence, will be modified to read: “the first deputy commissioner reviews the findings.” Finally, the fourth sentence will be edited to read: “In all cases, the commissioner has final authority to determine the discipline that will be imposed, if any.”

NYPD Comment #21 (p. 137; re: p. 144, ¶2): *This NYPD Comment by the Department seeks to introduce new information concerning the Department’s cooperation with the CCRB.*

OGC Response: Although some of the information in this NYPD Comment is, in essence, contained in the Report, much of the new information is not. In order to reflect fully the steps that the Department has taken to cooperate with the CCRB, the following footnote will be added at the end of the first sentence on page 158: “Following the initial drafting of this Report, the Department informed the Commission that it had undertaken additional steps to assist the CCRB. In particular, the Department has assigned a police Lieutenant to serve as a full-time liaison to the CCRB, the Department has instituted a four-day training program for newly assigned CCRB investigators, and CCRB investigators now participate in the Internal Investigations course that IAB conducts.”

NYPD Comment #22 (p. 138; re: p. 145, ¶2): *This NYPD Comment provides redone statistics for 1996 CCRB investigations.*

OGC Response: On page 145 and the top of 146, the percentages for full investigations, ADR, administratively closed, and truncated will be changed to: 27.4%, 13.7%, 47.0%, and 11.0%, respectively.

NYPD Comment #23 (p. 140; re: p. 147): *This NYPD Comment contends that 81 substantiated complaints from 1995 were not referred to the Department until 1998. The Department does not offer any documentation to support this assertion. This assertion, even if true, does not undermine anything in the Report.*

OGC Response: No change is necessary.

NYPD Comment #24 (p. 143; re: p. 150, ¶1): *The Department contends that this paragraph contains incorrect statistics. The data contained in the Report, however, are taken directly from the Department’s own CCRB statistical analysis.*

OGC Response: No change is necessary.

NYPD Comment #25 (p. 144; re: p. 150, ¶2): *This NYPD Comment that the Department takes strong measures against officers guilty of misconduct is simply argumentative; nothing in the Report is incorrect or misleading.*

OGC Response: No change is necessary.

NYPD Comment #26 (p. 144; re: p. 151, ¶3): *This comment clarifies that the percentages of dismissals based on statute of limitations grounds were for closed cases, not for all substantiated complaints.*

OGC Response: At the bottom of page 151, and the top of page 152, the Draft Report will change “substantiated complaints referred to the Department” and “substantiated referrals” to “cases closed by the Department.”

NYPD Comment #27 (p. 145; re: p. 152, ¶2): *This NYPD Comment states that the Report’s statistics are incorrect. According to the semiannual CCRB reports, however, the Department’s statistics appear, for the most part, to be incorrect. The numbers in the Report match exactly the Department’s own data from its CCRB Statistical Summary, which was prepared last year by the DAU. The Department has offered no documents that contradict that report.*

OGC Response: No change is necessary.

NYPD Comment #28 (p. 150; re: p. 157, ¶1): *The NYPD states that the Report should contain additional details concerning disposition of substantiated complaints.*

OGC Response: Material will be added to footnote 610 to reflect the fact that the low percentage of cases disciplined in 1996 and 1997 may have been the result of poor investigations by the CCRB before it improved its investigations. Text will be added to the end of the footnote: "For much of the first 2 years of the Giuliani administration, the Department disciplined officers based on complaints substantiated by the 'old' CCRB that was part of the Department. The low percentage of cases in which discipline imposed over the next 2 years may have been caused, in part, by untimely and relatively poor quality investigations from the newly independent CCRB."

NYPD Comment #29 (p. 150; re: p. 157, ¶3): *The NYPD objects to the assertion that the police commissioner does not explain cases in which no discipline is imposed.*

OGC Response: Most of this objection lacks substance, but the Report should be modified to reflect the Department's new practice of providing disposition data to the CCRB. Furthermore, the Report, in note 622, acknowledges the agreement to provide the CCRB with information. In the interest of removing any possible objection to this part of the Report, however, this fact will be mentioned earlier on in the Report. At the end of footnote 611, the new text will be added to state: "During 1999, however, the Department did initiate the practice of providing the CCRB with disposition data pertaining to the specific penalties imposed on officers with complaints substantiated against them."

NYPD Comment #30 (p. 151; re: p. 158, ¶1): *This objection notes new data for disciplined officers.*

OGC Response: At the end of footnote 613, additional text will be inserted to reflect more recent figures: "Following the initial drafting of this Report, the Department informed the Commission that the percentage of cases in which discipline was imposed rose significantly again in 1999. According to Department statistics, 292 out of 482 officers (60.5%) received some form of discipline in cases closed last year."

NYPD Comment #31 (p. 152; re: p. 159): *The NYPD states that the Draft Report should reflect that the police commissioner was responsible for creation of the DAU within the Department Advocate's office.*

OGC Response: In paragraph 1, page 159, the fourth sentence will be revised to read: "During the same year, the police commissioner created a Disciplinary Assessment Unit (DAU) to coordinate the disciplinary system and act as liaison to the CCRB."

NYPD Comment #32 (p. 153; re: p. 160, ¶2): *The NYPD objects to the Draft Report's statement that the DAO often fails to discipline officers in substantiated cases. The objection provides new data suggesting that discipline is imposed more than half the time; however, the NYPD does not contend that the numbers contained in the Report are incorrect.*

OGC Response: Footnote 621 will be revised to reflect the new information. "This was the most recent half-year period for which data were available during the initial drafting of this Report. Since that time, the Department has provided the Commission with data stating that more than 60% (292 of 482) of closed cases in 1999 resulted in some form of discipline for the officer. Over the last several years, therefore, the Department has shown significant improvement in prosecution of misconduct cases."

NYPD Comment #33 (p. 154; re: p. 161, ¶2): *The Department contention is without merit. Since a commissioner designee sits on every CCRB panel, it seems likely that the commissioner designee is concurring in at least a majority of substantiated dispositions. Moreover, the Department has offered no evidence to the contrary.*

OGC Response: No change is necessary.

NYPD Comment #34 (p. 158; re: p. 165, ¶2): *This objection concerns an "unsupported allegation from a Commission hearing witness." The statement is not offered to prove that this particular incident occurred, but rather to describe the types of complaints that prompt elected officials and community leaders to express concerns about the impartiality of the CCRB.*

OGC Response: A statement will be added to refer to this particular anecdote as an unsubstantiated, second-hand account of an event.

NYPD Comment #35 (pp. 159–60; re: pp. 166–67): *The NYPD suggests that in that case, the Department dismissed the substantiated charge without even interviewing the subject officer. The Department does not offer any documentation to support this assertion.*

OGC Response: No changes are necessary.

NYPD Comment #36 (p. 164; re: p. 171, ¶1): *The NYPD contends that the statement that an investigation mechanism independent from the Department would minimize the likelihood of the NYPD mishandling or destroying evidence of police misconduct is simply an unfounded assertion by an NYPD critic. They fail to point out that this “critic” is an NYPD officer testifying under oath. The NYPD then asserts, without documentation, that CCRB investigators gather all evidence of police misconduct and keep all originals in their files and send only copies to the NYPD.*

OGC Response: The Draft Report will be revised to more fully identify Lt. Adams and to refer to the NYPD assertion concerning the retention of original evidence by CCRB investigators.

V. STOP, QUESTION, AND FRISK

NYPD Comment #1 (p. 76; re: p. 82): *The NYPD argues that the Draft Report fails to provide evidence for the assertion that NYPD’s training fails to instill respect for constitutional procedures with regard to stop and frisk.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #2 (p. 77; re: p. 83): *This objection claims that NYPD training materials stress the need for balance between personal safety and individual rights and is not tilted, as alleged in the Draft Report, toward personal safety.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #3 (p. 77; re: p. 83): *The NYPD contends that the quoted material is from a study guide, not the NYPD Patrol Guide.*

OGC Response: The citation will be changed. The NYPD does not deny that this study guide is in standard use, so the point is unchanged.

NYPD Comment #4 (p. 77; re: p. 84): *This objection concerns the Draft Report’s implication that the listed factors provide grounds for reasonable suspicion which the Patrol Guide does not do.*

OGC Response: No such implication is made; therefore, no change in the Draft Report is necessary.

NYPD Comment #5 (p. 78; re: p. 85): *The NYPD correctly notes that the wrong court is cited in the text of the Draft Report while the footnote is correct.*

OGC Response: The reference in the text to the Court of Appeals will be changed to Appellate Division.

NYPD Comment #6 (p. 78; re: p. 85): *This NYPD Comment states that the material mentioned as appearing in the Legal Bureau Bulletins is wrongly cited.*

OGC Response: The Draft Report will be revised to cite the material as follows: (for the first quote) New York City Police Department Legal Bureau, Street Encounters, NYP 017631; (for the second quote) NYP 017632.

NYPD Comment #7 (p. 78; re: p. 86): *This objection concerns a statement in the Draft Report, which states that it is unclear when officers must attend In-Tac training. The NYPD maintains that in fact all officers must attend In-*

Tac, which supplanted borough-based training in 1996. Also, the lesson plans quoted make the point that police officers must make quick decisions while judges may deliberate.

OGC Response: The first paragraph on page 86 will be revised to state that In-Tac training is mandatory for all officers under designated commands. No other change is necessary.

NYPD Comment #8 (p. 79; re: p. 87): *The NYPD claims that the Commission uses one episode to indict the general system of training in legal standards.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #9 (p. 104; re: p. 181): *The response states that the Draft Report discusses the challenging dilemma of balancing individual rights and government duties but does not factor this into the remainder of the Draft Report.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #10 (p. 104; re: p. 181): *The Commission is accused of using “numerous instances of opinion-based, superficial analysis and defamatory, unsubstantiated anecdotes” in the Report. Also, the response alleges that the Report fails to consider the opinion of some criminal justice experts who consider the NYPD an example of proper policing. Examples of these expert opinions were not provided.*

OGC Response: A footnote will be added that some experts have considered the NYPD an example of proper policing, including appropriate citations.

NYPD Comment #11 (p. 105; re: pp. 182–89): *The NYPD argues that the standard for proper stop and frisk actions is unclear and that the Draft Report is unclear on the subject as well.*

OGC Response: A footnote will be inserted, stating that some, such as Governor Pataki and former New York Supreme Court Judge Harold Rothwax do consider current stop and frisk law unclear, but that the latest U.S. Supreme Court decision on the stop and frisk doctrine was unanimous, not indicative of an unclear doctrine.

NYPD Comment #12 (p. 105; re: p. 183): *The NYPD argues that the Equal Protection Clause has no bearing on the Terry analysis.*

OGC Response: The first sentence beginning “The Equal Protection Clause . . .” will be deleted. In the second sentence beginning “Although neither the Fourth . . .” replace “Constitution” will be substituted for “Equal Protection Clause of the 14th Amendment.”

NYPD Comment #13 (p. 106; re: p. 185): *The NYPD states that a quotation in the Draft Report improperly cites a law review article and represents the quoted material as fact rather than opinion.*

OGC Response: The sentence beginning “When police officers are permitted to rely heavily on race” will be replaced with “While Oneonta permits police officers to use race as a factor in establishing reasonable suspicion, such reliance creates the potential for police abuse. Although this permissible use of race as an identifying characteristic serves as a necessary and efficient means for police to narrow their investigative efforts, police often lower their standards of investigation when a suspect has been described as a minority, thus intruding upon a greater number of individuals who meet the racial description than if the suspect had been described as white.” The following citation will be inserted: “Developments in the Law—Race and the Criminal Process,” Section III: Racial Discrimination on the Beat: Extending the Racial Critique to Police Conduct, *Harvard Law Review*, 1988, pp. 1472, 1505. The Sack citation of the same material will then be inserted.

NYPD Comment #14 (p. 106; re: p. 187): *This objection argues that the sentence beginning “Likewise, New York Courts . . .” has no cite and improperly states the law on the use of less intrusive means of assuring safety.*

OGC Response: The sentence will be deleted.

NYPD Comment #15 (p. 106; re: p. 189): *The NYPD argues that the Draft Report incorrectly states that the degree of articulable suspicion must increase during a street encounter when the proper rule is that the requisite level must exist at the time enhanced police action is taken.*

OGC Response: A simple modification will be made in the Draft Report text to clarify that the standard is that the degree of intrusion must be in relation to the degree of articulable suspicion at the time of the intrusion and that any increased intrusion requires an increased level of articulable suspicion.

NYPD Comment #16 (p. 106; re: p. 190): *The NYPD states that the Commission should state that the NYPD rule on who may be stopped and frisked is above the requirements of the law.*

OGC Response: A footnote will be inserted, stating that the NYPD standard is above the Constitutional requirement.

NYPD Comment #17 (p. 107; re: p. 191): *The NYPD maintains that the UF-250 form has been mandated since 1964, not 1986 as stated in the Report.*

OGC Response: A footnote will be inserted, stating that the Department has asserted that the UF-250 form has been mandatory since 1964 and was amended in 1973, but the earliest written reference that the Commission has found on the form is from 1986. Also begin the paragraph text with "The number of UF-250 forms . . ." eliminating the language before the comma.

NYPD Comment #18 (p. 107; re: p. 191): *This objection claims that the Draft Report failed to use the UF-250 tabulations from the database, which are more accurate than the April 1999 memorandum from the Central Records Division. This failure is indicative of sloppy methodology by the Commission.*

OGC Response: A footnote will be added that the use of the NYPD's suggested information does not change the fact of an increase in UF-250 filings. The source of the NYPD data is unclear since the database contained only information for 1998. The database also uses a different system of tabulation than the data previously used. This makes a 10-year study inaccurate, as 1997 to 1998 would show an increase that is due to methodology change. The footnote will also make clear that the number used in the graph may contain duplicate filings as no system was in place prior to 1998 to determine duplicate filings.

NYPD Comment #19 (p. 109; re: p. 192): *The NYPD objects to the Commission's assertion, that many stops are unreported, claiming that it should be explained that this is because not all stops require the filing of form UF-250.*

OGC Response: The Draft Report will be revised with the insertion of a definition of "unreported stops" as those for which a UF-250 should have been filed according to NYPD guidelines but was not.

NYPD Comment #20 (p. 109; re: p. 193): *This objection argues that two critics of NYPD conduct cited in the Draft Report make claims that lack evidence and that a more accurate method of determining the behavior of officers would have been to survey a random sample of officers.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #21 (p. 109; re: p. 193): *This NYPD Comment states that the reliability of UF-250 data is questionable if utilized in ways other than the original intent.*

OGC Response: A footnote will be inserted, noting that the Department has stated that data from the UF-250 forms may be inadequate for purposes other than those originally intended.

NYPD Comment #22 (p. 110; re: p. 194): *The NYPD argues that the Department does not maintain quotas on the filing of form UF-250 as is stated in the Report.*

OGC Response: The Draft Report will be revised to note that the NYPD asserts that it does not maintain formal or informal quotas on the filing of UF-250s.

NYPD Comment #23 (p. 110; re: p. 195): *This NYPD Comment claims that the Draft Report improperly states the procedure for filling out and recording UF-250s.*

OGC Response: A footnote will be inserted, stating that the procedure for the processing of UF-250 forms was changed May 4, 2000, after the Draft Report was submitted. The new procedure requires the forms to be completed in units and sent to the precinct for processing. Non-patrol precinct commands submit forms through the precinct concerned.

NYPD Comment #24 (p. 110; re: p. 195, fn. 782): *The NYPD asserts that the number of stop and frisk reports stated for the Street Crime Unit was incorrect in the Report and is available through the database.*

OGC Response: A footnote will be added that the database breaks down filings into precincts, but does not allow for the screening of Street Crime Unit filings from other filings within a precinct. The footnote will also note that "3,863 in 1997 as of . . ." should read "3,863 in 1999 as of . . ."

NYPD Comment #25 (p. 111; re: pp. 196-97): *The response states that all stop and frisk reports are processed through the precinct of occurrence regardless of unit.*

OGC Response: A footnote will be added that the NYPD process has now been changed to uniformly process filings through the precinct of occurrence, but this change did not take place until May 4, 2000.

NYPD Comment #26 (p. 111; re: p. 197): *This objection argues that the Draft Report apparently criticizes units of the Department as failing to maintain adequate information; yet the units had the appropriate forms and used them as intended.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #27 (p. 111; re: pp. 197-98): *The NYPD argues that the Commission has all UF-250 data but has failed to analyze the data properly.*

OGC Response: A footnote will be inserted that the data concerning arrests are sporadic and incomplete. Many of the arrest fields of the database were left blank, making an accurate determination of arrests impossible.

NYPD Comment #28 (p. 112; re: p. 198): *The Department claims here that the Draft Report incorrectly states that the number of UF-250 forms filed in 1998 was 147,787 and that this number should be 138,872 because of the erroneous inclusion of duplicate reports.*

OGC Response: In the text of the Report, it will be stated that the Commission will agree to use the NYPD computations for the total number of unique UF-250 forms filed in 1998. The number of unique filings for 1998 is 138,872 out of a total of 147,787 UF-250s filed. But it will also be noted that for years prior to 1998 no means for the screening of duplicate reports exists. Therefore, in examining the data for the 10 years ending 1998, the larger 147,787 figure for 1998 must be used in order to accurately display the growth trend in the filings. The borough and precinct data appearing on pages 197-209 will be recalculated to screen out duplicate filings. These recalculations do not change any of the findings of the Draft Report.

NYPD Comment #29 (p. 112; re: pp. 198-201, 204-09): *The response criticizes Commission charts showing the relationship between UF-250 percentage and percentage population because "such a depiction completely fails to address more complex operational relationships which can better explain what is taking place."*

OGC Response: The Draft Report will be revised to point out that the Commission was unable to confirm whether stop and frisks were predicated on victim identifications since the NYPD never provided the necessary information. The precinct demographics cited were those provided to the

Commission by the NYPD, which characterized the census data as precinct not boroughwide census data.

NYPD Comment #30 (p. 115; re: p. 202): *The Department criticizes the Draft Report for citing an improper number of stop and frisk incidents for 1998, using numbers that were subsequently revised, and fails to explain why this was done.*

OGC Response: A statement will be added to emphasize that regardless of whether the database numbers are used or not, the trend of the numbers is substantially upward.

NYPD Comment #31 (p. 116; re: p. 203): *This objection states that the Draft Report implies that the Street Crime Unit was deployed disproportionately to minority neighborhoods for a "sinister" purpose when in fact the SCU was deployed to these neighborhoods because of higher crime rates there.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #32 (p. 116; re: p. 203, fn. 801): *The NYPD claims that the database should have been used for 1998 stop and frisk numbers rather than using the data from the top 25 precincts in which the SCU was deployed.*

OGC Response: A footnote will be added that the Department claims that database information can be used to determine the number of stops performed by the Street Crime Unit. However, since according to the NYPD's policy this unit should submit reports to the precinct in which the encounter occurred, the stops of the unit could not be separated from those of the precinct in the database provided to the Commission. The NYPD provides numbers that show 9,004 stops by the SCU in 1997 and 15,324 stops in 1998. Even accepting these numbers a sharp increase can be seen.

NYPD Comment #33 (p. 117; re: p. 210): *According to the NYPD, the Draft Report fails to state that the police commissioner has acknowledged that blacks and Hispanics are stopped in numbers greater than their proportion to the population, but that this can be explained by officers stopping individuals who meet victim descriptions or "pattern descriptions."*

OGC Response: It will be noted that the Department in its response to the Draft Report gives reasons officers may use for stopping citizens. One of these reasons is termed "pattern descriptions." The use of the term "pattern descriptions" appears to indicate the use of profiling. The police commissioner's acknowledgment will also be included in the text.

NYPD Comment #34 (p. 118; re: pp. 210–11): *This objection argues that statements in the Draft Report should have been taken from a random sampling of the population rather than just individuals who had negative contact with police.*

OGC Response: The Commission received random sworn testimony from persons who had relevant experiences involving the NYPD. No change in the Draft Report is necessary.

NYPD Comment #35 (p. 118; re: p. 213): *This objection concerns the deletion of the word "not" from Commissioner Safir's quote and the apparent exclusion of evidence of the NYPD position from the Report.*

OGC Response: The word "not" will be reinserted in the text of the quote. A footnote will be added, stating that the word "not" was originally deleted to avoid a double negative, but that the point remains the same regardless of the quote.

NYPD Comment #36 (p. 118; re: pp. 213–14): *The NYPD argues that the Commission fails to understand the nature of police work as officers make stops based upon observations, "known patterns," and crime problems. Officers who observe quality of life violations certainly have reasonable suspicion for a stop and frisk.*

OGC Response: The text of the Draft Report will be revised to note that the Department has responded that observations may be used in tandem with "known patterns" to provide the basis for reasonable suspicion. The use of the term "known patterns" again may be indicative of profiling. It

will also be noted that stops or arrests for quality of life violations may show discriminatory enforcement if not uniformly applied to the population.

NYPD Comment #37 (p. 119; re: p. 215): *The NYPD argues here that the standards for a warrant search requiring description with particularity do not apply to stop and frisk encounters.*

OGC Response: No change in the Draft Report is necessary.

NYPD Comment #38 (p. 119; re: p. 236): *The Department asserts that the Draft Report's contention that the NYPD uses racial profiling in stop and frisk practices is without proof and fails to consider that stop and frisk encounters mirror the description given by victims.*

OGC Response: A footnote will be added that points out that the Department argues that the stop and frisk encounters mirror the victims' accounts. It will also note that information on the details of victim's accounts was subpoenaed from the NYPD, however, none was provided. The NYPD now criticizes the Draft Report based on victim's identifications data without noting the source of this new information. It will also be noted in a footnote that the NYPD criticizes the Draft Report's concluding line of the paragraph which mentions "historic crime data" when the Department itself must be using such data to create the "crime patterns" mentioned on page 117 of the Response.

NYPD Comment #39 (p. 121; re: p. 237): *The Department argues that the assertion in the Draft Report that an increasing number of declined prosecutions is due to improper arrests is erroneous and that other causes may be to blame.*

OGC Response: In the paragraph beginning "In addition" on page 237, the Draft Report will be revised by changing "there is a likelihood" to "it is possible."

NYPD Comment #40 (p. 123; re: p. 216): *The Department objects to the assertion that increased demands for arrests may result in officers using racial profiling taught to the officers through cultural training classes.*

OGC Response: The portion of this line mentioning the cultural training classes will be modified as follows: "... which were introduced to them through ..." will be replaced with "... unless ..." The remaining portion of the sentence will be replaced with "the Department's cultural training practices are strengthened" and complex police investigative techniques are uniformly employed.

NYPD Comment #41 (p. 123; re: p. 237): *The NYPD objects to the Draft Report's use of an unsubstantiated statement of a Police Department critic that officers routinely call in phony 911 calls to supply a description.*

OGC Response: The following will be added after the quote: "In March of this year, the U.S. Supreme Court, noting the unreliability and unaccountability of anonymous tips, held that an anonymous tip giving the race, gender, clothing and location of an individual, absent other information, clearly was insufficient to provide reasonable suspicion to stop and search the individual. Florida v. J.L., 120 S.Ct. 1375 (2000)."

Appendix D

NYPD Response to Draft “Police Practices and Civil Rights in New York City” Report*

* The 125-page response submitted by the NYPD has been reformatted to conserve space and document length. We have also deleted page numbers from the NYPD response's table of contents to eliminate any confusion due to reformatting.

The original response and its attachments are on file at the U.S. Commission on Civil Rights and will be made available on request.

NYPD RESPONSE TO THE DRAFT REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS – POLICE PRACTICES AND CIVIL RIGHTS IN NEW YORK CITY



HOWARD SAFIR
POLICE COMMISSIONER

**NYPD RESPONSE TO THE DRAFT REPORT
OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS -
POLICE PRACTICES AND CIVIL RIGHTS IN NEW YORK CITY**

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Terminology Errors

Sworn Verification of Police Commissioner Howard Safir

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PROVIDED UNDER SEPARATE COVER

| | |
|--------------|---|
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| Attachment B | <i>An Analysis of the CCRB Status Report, July – December, 1994</i> , New York City Police Department, Office of Management Analysis and Planning |
| Attachment C | <i>A Methodological Critique of the New York State Attorney General's Report</i> – New York City Police Department |
| Attachment D | New York City Police Department Analysis of Stop and Frisk Data Citywide |
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| Attachment F | Settlement Agreement Between the United States of America and the New York City Police Department (<u>Goff Agreement</u>), June 18, 1998 |
| Attachment G | Interim Orders No. 48 s.98 – Employment Discrimination No. 48-1 s.98 – Employment Discrimination No. 49 s.98 – Revision of Patrol Guide Procedure 104-01 – “General Regulations” No. 50 s.98 – Employment Discrimination – Commanding Officer/Unit Head Responsibilities No. 51 s.98 – Sexual, Ethnic, Racial, Religious, or Other Discriminatory Slurs through the Display of Offensive Material No. 52 s.98 – Revision of Administrative Guide Procedure 303-19, “Evaluation of Members of the Service” No. 70 s.98 – Investigation of Incidents of Retaliation Against Members of the Service |
| Attachment H | Patrol Guide Sections P.G. 205-36 – Employment Discrimination P.G. 205-37 – Sexual, Ethnic, Racial, Religious, or Other Discriminatory Slurs through Display of Offensive Material |
| Attachment I | <i>Investigator's Guide</i> , New York City Police Department, Office of Equal Employment Opportunity |
| Attachment J | Statement of Police Commissioner Howard Safir Before the New York City Council Public Safety Committee, December 9, 1999 |
| Attachment K | <i>Precinct Community Council Regulations</i> , New York City Police Department, Office of Deputy Commissioner, Community Affairs |
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Youth Programs
Crime Prevention Programs
Community Affairs Programs

- Attachment P Letter of Michael D. Hess, New York City Corporation Counsel, to Police Commissioner Howard Safir, January 5, 2000
- Attachment Q Operations Order No. 30 s.00 -- Preparation of Stop and Frisk Reports (PD344-151)
- Attachment R Demographic Analysis Charts -- Black/Hispanic Suspects Identified by Victims versus Black/Hispanic UF 250s, 1998
Citywide
Top 25 Street Crime Unit Precincts
Brooklyn
Bronx
Manhattan
Queens
Staten Island
40th Precinct
120th Precinct
43rd Precinct
47th Precinct

**NYPD RESPONSE TO THE DRAFT REPORT
OF THE U.S. COMMISSION ON CIVIL RIGHTS --
"POLICE PRACTICES AND CIVIL RIGHTS IN NEW YORK CITY"**

GENERAL COMMENTS

The overall methodology of the Draft Report of the U.S. Commission on Civil Rights Report (hereafter referred to as the "Report") recklessly relies almost exclusively on unsupported and uninvestigated anecdotal allegations or statements made by individuals, organizations, or media sources without independent verification or fact finding performed by the Commission. Subjective opinion may have its place in evaluative research, but the kind of verifiable, empirical evidence that the Commission might have used to bolster its claims and conclusions is noticeably absent from the Report. Researchers who deal with matters of subjective opinion typically enhance the credibility of their work by candidly acknowledging the limitations of the data or conclusions presented. The Report does not provide sufficient information about the credibility or expertise of the individuals upon whom it relies to enable an objective evaluation of their statements, especially in matters requiring extensive knowledge and experience such as police training. In this case, the failure to honestly acknowledge these limitations does a disservice to the reader, to the Police Department, and to the public at large.

Where facts are offered by Mayor Giuliani or Police Commissioner Safir, they are consistently and expressly doubted in the Report. While the assertions of most witnesses are accepted at face value, or at least politely considered, the Commission makes comments such as: "The Department now boasts that [this] targeted approach to crime prevention has made the City the safest it has been for nearly the past three decades" (p. 15); "Unfortunately, Mayor Giuliani's representations may not be entirely accurate," (p. 65); and "Police Commissioner Safir particularly touted the NYPD's 'Streetwise Language, Culture and Police Work in NYC' course" (p. 75-6). Language was not used in this manner for witnesses critical of the Department.

Another common practice of the Commission throughout the Report is to imply that "more information" about a particular subject was needed from the Department. The extensive body of supportive material offered by the City of New York in response to the subpoena of the Commission was selectively utilized, as will become apparent in our specific comments, to present a distorted and unfair picture of the Police Department which served to confirm the negative predispositions of the Commission. The Report repeatedly refers to its inability to draw conclusions because information was not provided by the Police Department or the City, where in fact information which was provided was not utilized, apparently because the Commission failed to comprehend it or was unable to analyze it, or the information was never formally requested. If the Commission was as doubtful of the veracity of the Mayor and Police Commissioner as it seems, there should at least have been an attempt to obtain expert testimony, a more reliable and valid basis for subjective conclusions, from academic experts on policing and other independently credentialed experts. No such attempt was made.

The report also makes frequent use of unsupported, inflammatory rhetoric or conclusory language whose sole purpose, it must be assumed, is to create an atmosphere of suspicion for the reader and to reinforce pre-supposed negative stereotypes of the NYPD:

"a widespread belief that New York City police officers too often abuse their authority." (p. 1);

"New, more aggressive police strategies have resulted in what appears to be an ever-widening divide between the city's residents of color and the NYPD" (p. 2);

"To exacerbate the looming suspicion of the NYPD's police practices" (p. 20).

Perhaps the most blatant example is a statement on p. 24: "Moreover, the many flaws in the recruitment and training processes may contribute to race-related problems in the NYPD." Completely without factual basis, the Commission indicts the Department and confirms its own beliefs based upon embedded assumptions about the character of the NYPD.

This tactic of the Commission was most apparent in Chapter 5 of the Report, in its discussion of the Department's street stops. During the course of that chapter, the Commission alternately ignored, misstated, or misinterpreted the Department's analysis of key data regarding street stops supplied by the Department to the Commission. In sum, this approach produced a finding of racial profiling devoid of any pretense of fairness and most certainly defamatory and degrading not only to the Department as an institution but to each of our approximately 57,000 employees.

In carefully reviewing this Report, it was both striking and telling (with respect to the Commission's apparently preconceived motivations) that in a city so well served by its police department as the City of New York, the Commission could only find individuals with negative anecdotes regarding the Department. Except for testimony by government officials, there are virtually no positive comments about the policies or performance of

the NYPD quoted in the Report. It is clear that the Commission only found members of the public and officers with negative anecdotes, because those were the only individuals whom the Commission sought out.

What follows is a detailed assessment (although far from exhaustive) of the various mistakes, misstatements, unsupported and defamatory anecdotes, research problems and analytical flaws contained in this Report.

CHAPTER 1

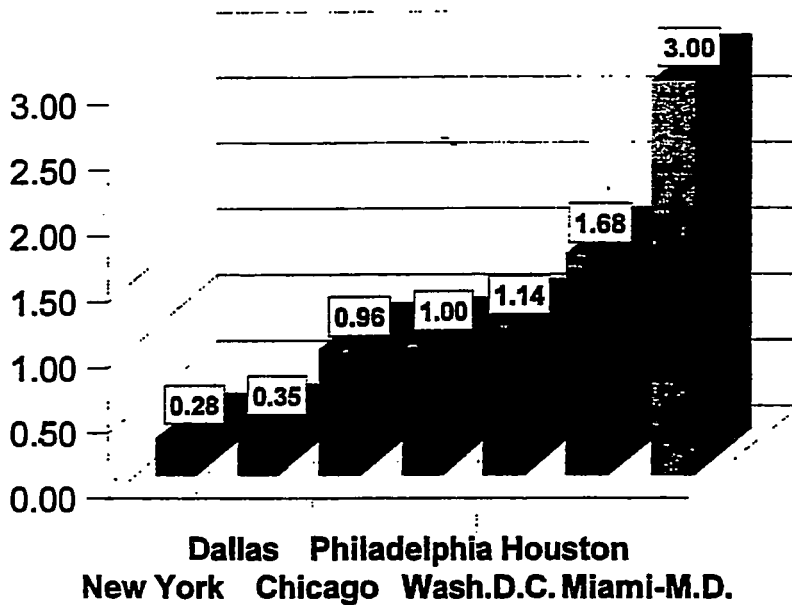
INTRODUCTION

P. 6, Para.1 states: "According to New York police officials, the use of deadly force by the city's police officers, is no more prevalent than in other major cities" and then goes on to cite four examples which purport to contradict the Department's position.

In fact, the NYPD's use of deadly force is significantly less than other large police departments. In a comparison of 1999 NYPD Fatal Shootings to those of six other large urban police departments, the NYPD had the lowest rate of Fatal Shootings Per 1,000 Officers.

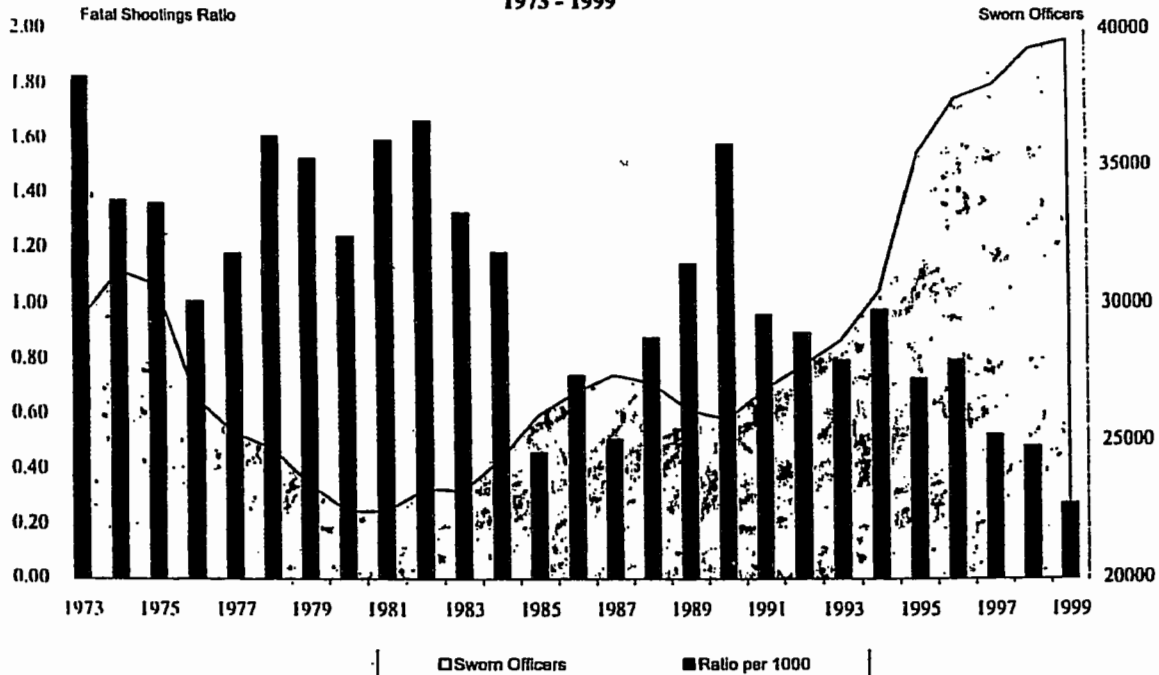
| | |
|-------------------|------|
| Miami (MetroDade) | 3.00 |
| Houston | 1.68 |
| Washington D.C. | 1.14 |
| Philadelphia | 1.00 |
| Chicago | 0.96 |
| Dallas | 0.35 |
| New York | 0.28 |

**FATAL SHOOTINGS PER 1,000 OFFICERS
SEVEN MAJOR CITIES - CALENDAR YEAR 1999**



Furthermore, fatal shootings have continued to decline in almost every year during the current administration to rates not seen in over twenty-five years.

NEW YORK CITY POLICE DEPARTMENT
Fatal Shootings Ratio per 1,000 Officers
1973 - 1999



Sworn Officers up +34.4% (99 vs 73)

1999 Ratio per 1,000 Officers = 0.28
 lowest in over 25 years

Prepared by the Mayor's Office of the Criminal Justice Coordinator

P. 9, Para. 2 incorrectly sets forth the membership of the City Council. There are no Council members elected at large, on a borough-wide basis. Each council member represents a distinct geographical district. Further, the President of the City Council is the Public Advocate.

P. 12, Para. 2 states that "Six countries account for one-half of all recent legal immigrants to New York City: the Dominican Republic, Jamaica, China, Guyana, Haiti and the Soviet Union. In fact, more than one quarter of all recent immigrants come from the Dominican Republic and Jamaica alone." It should be noted that the newly developed *Streetwise* cultural diversity curriculum was developed under the direction of the Office of Deputy Commissioner Community Affairs (DCCA) in response to that data. In 1998, one-day curriculum modules, including videotapes, were produced on New York City's Hispanic (including the Dominican Republic), Haitian, Chinese and African/Caribbean-American communities. In 1999, we introduced a module on the Russian community. Copies of the *Streetwise* materials were provided to the Commission pursuant to its subpoena, and are attached (Attachment A).

P. 14, Line 1 incorrectly quotes the Department website; in 1845 New York City's population was nearly 400,000.

P. 14, Para. 2 states: "Today, the NYPD is one of the largest municipal police departments in the United States." In fact, with over 40,680 uniformed members, the NYPD is by far the largest police department in the country, over three times the size of the next largest department, the Chicago Police Department, and four times the size of the Los Angeles Police Department.

P. 15, Para. 2 characterizes the Department's emphasis on quality of life crimes as "a way to demonstrate control of the streets and apprehend individuals who may have outstanding arrest warrants against them," as if this were the only reason for pursuing quality of life offenses. Beyond its ignorance of the fundamental "Broken Windows" theory underpinning the Department's tremendous success in reducing serious crime, the Report fails to note that quality of life initiatives are routinely demanded by communities, in order to make their streets safer and more pleasant by removing low level disorder from City neighborhoods.

P. 16, Para. 1 utilizes preliminary figures for 1997 to discuss the decrease in crime in New York City. The crime reduction achieved by the NYPD is far greater than that reported by the Commission. Preliminary figures for 1999 show a 54.7% reduction in major felony crime in New York City since 1993. For the same period, the number of homicides in the City has dropped 65.4%, from 1,927 to 667, for a drop of 1,250. Shooting incidents fell by 66.7%, from 5,282 down to 1,760, for a drop of 3,522.

Pp. 16-17 discusses the level of civilian complaints, noting that they increased in 1994 and 1995 and then declined from a plateau in 1997. Without further analysis, the Report utilizes this data to demonstrate that the Department sacrifices civil rights for aggressive policing and the implementation of the crime strategies.

A summary of civilian complaints received from 1993 through 1999 follows, including the complaint to personnel rate (the number of civilian complaints per uniformed officer) for 1993 through 1999:

| <u>Period</u> | <u># of Complaints</u> | <u>Average Uniformed Staffing</u> | <u>Complaint to Personnel Rate</u> |
|---------------|------------------------|-----------------------------------|------------------------------------|
| 1999 | 4,903 | 39,642 | 0.12 |
| 1998 | 4,930 | 39,074 | 0.13 |
| 1997 | 4,768 | 38,029 | 0.13 |
| 1996 | 5,550 | 37,522 | 0.15 |
| 1995 | 5,618 | 35,511 | 0.16 |
| 1994 | 4,877 | 30,524 | 0.16 |
| 1993 | 3,580 | 28,737 | 0.12 |

Note that complaint to officer ratio has steadily improved from 1 complaint per 6 officers in 1994 to 1 complaint per 8 officers in 1999.

With respect to the Report's "analysis" of civilian complaint levels, first, the Report failed to note that during 1994 and 1995, the Department's Uniformed Personnel increased 23.6%, most obviously through merger with the Housing and Transit Police Departments.

Second, as reported in "An Analysis of the CCRB Status Report July-December 1994," prepared by the Department's Office of Management Analysis and Planning (Attachment B), the increase in complaints in 1994 was related to a change by the CCRB in the manner in which they classified incoming complaints.

In general, complaints which do not contain a specific FADO allegation (Force, Abuse of Authority, Discourtesy, Offensive Language) are referred to the Department for further action, through the Office of the Chief of Department (OCD). A comparison of the years 1992, 1993 and 1994 shows an increase in the overall number of complaints made to CCRB. However, it also shows that CCRB was retaining a larger number of complaints, i.e. referring a lower number of complaints to the OCD.

Referral Comparisons 1992, 1993, 1994

| Year | Overall # of Complaints Made to CCRB | # of Complaints Retained by CCRB | # of Complaints Referred to OCD |
|------|--------------------------------------|----------------------------------|---------------------------------|
| 1992 | 8,814 | 3,437 | 5,377 |
| 1993 | 8,959 (+1.6%) | 3,580 (+4.2%) | 5,379 (+.03%) |
| 1994 | 9,879 (+10.3%) | 4,877 (+36.2%) | 5,002 (-7.0%) |

Therefore, calendar year 1994, as compared to 1993, saw the overall number of complaints made to CCRB rise by only 10.3%, while during the same time period, the CCRB caseload rose by 36.2%. In 1995 the CCRB continued this new trend in retaining an even larger number of complaints, while at the same time referring even fewer to OCD.

| Year | Overall # of Complaints Made to CCRB | # of Complaints Retained by CCRB | # of Complaints Referred to OCD |
|------|--------------------------------------|----------------------------------|---------------------------------|
| 1995 | 10,375 (+5.0%) | 5,618 (+15.2%) | 4,757 (-4.9%) |

Third, the Report fails to acknowledge that 1994 was the first full year of the independent CCRB, which may have contributed to an increased awareness of both the CCRB and the means for making a civilian complaint.

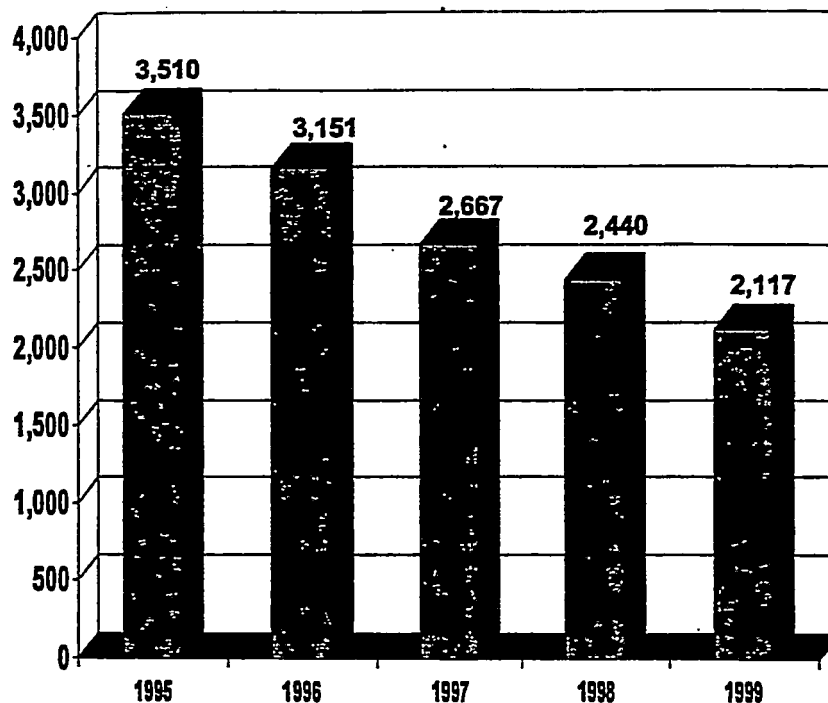
With respect to the decrease in complaints since 1997, this positive trend may be due in part to implementation of the Department's CPR Strategy, with its accompanying testing program, as well as the Department's "Profiling and Assessment Program" launched in May 1997, which focuses on officers with patterns of multiple complaints, and recommends counseling by supervisors, additional training, or disciplinary action, as may be most appropriate.

In 1999 multiple complaints were lodged against 241 officers whose precinct was known. This number represents a 40.9% decline from 1998, when 408 officers had more than one complaint lodged against them, and it is also the lowest in the past five years.

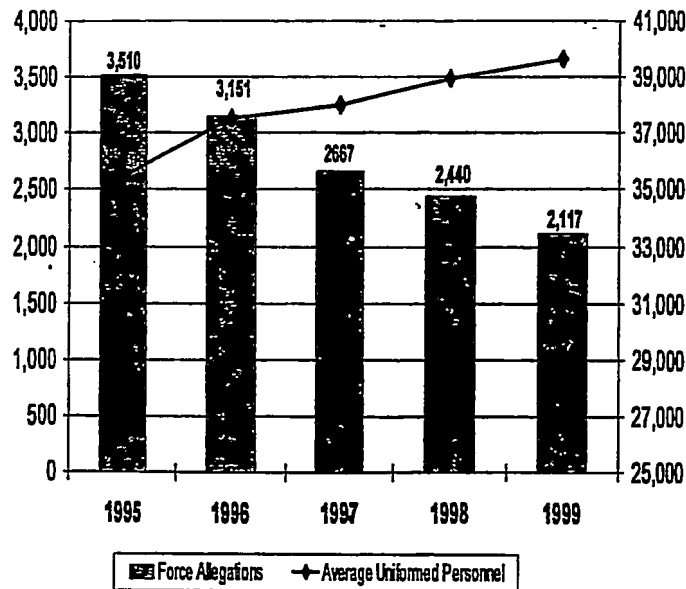
Specifically with respect to force allegations, there have been consistent reductions annually since 1995. In 1999, there were 1,393, or 39.7% fewer force allegations than in 1995.

The ratio of force allegations to MOS has also consistently improved, from 1 allegation per 7 officers in 1984 to 1 allegation per 10 officers in 1995, to 1 allegation per 19 officers in 1999.

CCRB FORCE ALLEGATIONS 1995 - 1999



FORCE ALLEGATIONS COMPARED TO AVERAGE UNIFORMED PERSONNEL



Since 1995, Force Allegations have decreased -39.7%, while Uniformed Personnel has increased by +11.6%.

Further, substantiated civilian complaints have declined drastically from their 1997 levels, as indicated below.

| <u>Year</u> | <u>Cases</u> | <u>M.O.S.</u> |
|--------------------------------|--------------|---------------|
| 1997 | 471 | 638 |
| 1998 | 301 | 416 |
| 1999 | 257 | 342 |
| 2000 (1 st quarter) | 51* | 65** |

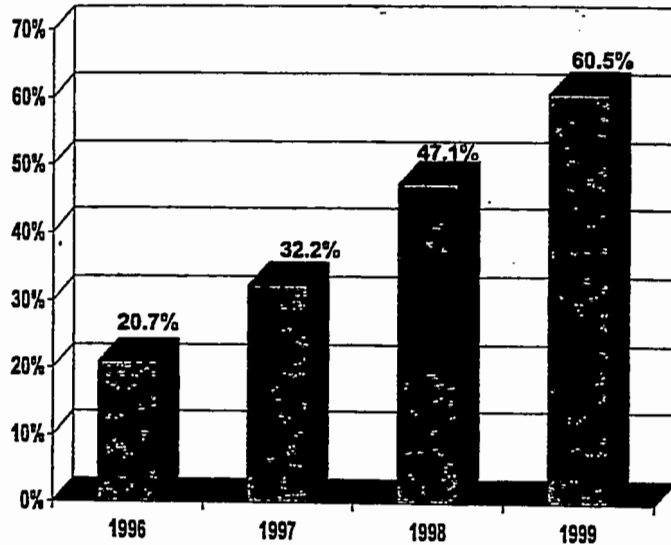
* projects to 204 for the year 2000

**projects to 260 for the year 2000

P. 16. Para. 2 cites the report of the Public Advocate criticizing the Department for dismissing substantiated complaints without further investigation. Putting aside the Commission's own analysis of the flaws contained in the CCRB cases at issue (Chapter 4 of the Report), the Report fails to acknowledge that there might have been reasons for the NYPD's alleged inaction on the complaints, such as complaints being substantiated against unidentified officers, which are therefore incapable of being prosecuted, or insufficient time left to prosecute due to statute of limitations problems caused by late referral of the cases by CCRB.

The percentage of substantiated cases referred to the NYPD by CCRB which result in disciplinary action has steadily increased:

**PERCENTAGE OF CCRB REFERRALS
WITH DISCIPLINARY DISPOSITIONS**



P. 17, Para. 2 states that 67% of the subject officers of civilian complaints are white, but the Report fails to note until p. 170 that this percentage is completely consistent with the percentage of white officers in the Department. The CCRB has compiled the following data with respect to the race of subject officers.

**Race of Subject Officers
vs. Overall Racial Distribution of NYPD Members
1999 and Five-Year Total**

| | 1999 | | | 5 Year Total | | |
|------------------|----------------------------------|-------------------------|---------------------------------|----------------------------------|-------------------------|---------------------------------|
| | <u>Subject Officer</u> Number | <u>% of</u> Subtotal | <u>NYPD</u> % of PD total | <u>Subject Officer</u> Number | <u>% of</u> Subtotal | <u>NYPD</u> % of PD Total |
| White | 1,770 | 64.4% | 67.2% | 11,104 | 66.4% | 67.8% |
| African American | 409 | 14.9% | 13.4% | 2,324 | 13.9% | 13.6% |
| Hispanic | 515 | 18.7% | 17.7% | 3,044 | 18.2% | 17.1% |
| Other | 53 | 1.9% | 1.7% | 248 | 1.5% | 1.5% |
| Subtotal | 2,747 | 100% | 100% | 16,720 | 100% | 100% |
| Unidentified | 2,156 | | | 9,049 | | |
| Total | 4,903 | | | 25,769 | | |

In its own report, the CCRB attempts an analysis based on the race/gender of both complainants and subject officers, but the data compiled is often lacking, and does not enable one to derive meaningful conclusions. The Board acknowledged the following in its January - December 1999 Review with regard to high numbers of racially unidentified officers: "It is difficult to draw valid conclusions from this data. For each of the past five years a significant proportion of the complaints, varying from 19% to 32% of the total, is categorized as *ethnicity unknown*."

The Board further stated: "Obviously, having such a large number of "unknowns" could "skew the data."

CY 1999 Complaints

In 32.8% of complaints, the complainant's race is unknown.

In 44.0% of complaints, the race of the subject officer is unknown.

In 13.1% of complaints, the gender of the complainant is unknown.

In 44.0% of complaints, the gender of the subject officer is unknown.

The Commission Report (p. 170, para. 2) noted the following: "Although the number of complaints that African Americans filed is disproportionate with respect to their representation in the community, it is proportionate with respect to NYPD arrest records."

P. 17, Para. 3 refers to "the increasing complaints of civil rights violations from residents" which have led to several Department monitoring programs. This passage implies first that complaints are increasing, which is inaccurate, and then that the programs mentioned are of recent vintage, which is also inaccurate.

P. 18, Para. 2 inaccurately describes the 48-hour rule as a "delay allowed for officers under investigation." The Report's discussion of the 48-hour rule perpetuates the myth that the 48-hour rule is a right that is available to police officers and not to members of the general public. Interrogations of police officers are **compelled**, and answers provided by an officer pursuant to such an interrogation are afforded "use immunity" based on a decision of the United States Supreme Court; therefore, officers interrogated by the Department who refuse to answer if they are properly directed to respond face dismissal. The 48-hour rule applies only to a **compelled interrogation**; as with a civilian an officer may choose to voluntarily waive his or her Fifth Amendment right and make a statement, and the 48-hour rule would have no application. Notwithstanding, it should also be pointed out that the 48-hour rule no longer applies to any rank other than police officer, and the Department is currently working in conjunction with the Mayor's Office of Labor Relations, to **eliminate** the 48-hour rule. Note that in most criminal cases, the rule is not involved, since a District Attorney most often asks the Department not to question the officer, so that a possible criminal case is not tainted.

P. 18, Para. 2 includes the Task Force recommendation that there be assigned "bi- or multi-lingual receptionists in precincts that have a large number of non-English speaking residents." It should be noted that under the direction of the Deputy Commissioner, Community Affairs, the Precinct Receptionist Program hires part-time employees from the community to greet visitors entering the station house. To date, there are 35 Precinct Receptionists, 26 of whom are bi-lingual.

P. 18, Para. 3 incorrectly states that "Several New York police *precincts* were discovered selling drugs and beating suspects." In fact, the allegations were made against several **officers**, *not* entire precincts.

P. 19, Para. 1 fails to include the Mollen Commission's strong endorsement of internal reforms that were put in place by the Department itself.

P. 23 concludes its reference to the New York State Attorney General's Report without mentioning the Department's position that Attorney General's analysis and conclusions are, in many ways, seriously flawed.

The Attorney General's Report does not overtly accuse NYPD officers of bias. However, it infers that NYPD officers, in conducting street encounter stop-and-frisks, act with bias against black and Hispanic New Yorkers. We believe strongly that this is false.

The Attorney General states that case law establishes "bright-line [clearly defined and unmistakable] rules under which an officer may 'stop' and frisk a civilian" (Executive Summary, p. v). This is not true. Officers must attempt to apply ambiguous and often contradictory rules and case law to fluid street situations. Most commentators, including Governor George Pataki (see "The Governor's Attack on the Judges," in *The New York Times*, February 3, 1996, p. A22) and the late New York State Supreme Court Judge Harold Rothwax (see Rothwax, Harold J., 1996, *Guilty: The Collapse of Criminal Justice*, Random House, New York), would argue that the law is extremely confusing and ambiguous in the area of stop-and-frisks.

The Attorney General's Report states ("Executive Summary," p. vii) that "minorities - and blacks in particular - were 'stopped' at a higher rate than whites, *relative to their respective percentages within the population of New York City*" (italics added). But the proper comparison, one that would show more accurately whether officers were making stops based on observed indicators of criminal activity rather than racial bias, would be between the ethnic breakdown of those stopped *and the ethnic breakdown of those committing crimes in the city*.

The ethnic breakdown of those stopped-and-frisked in the city as a whole *corresponds closely* with the ethnic breakdown of *those committing crimes in the city* (see chart below).

The ethnic breakdown of those stopped-and-frisked also *corresponds closely* with the ethnic breakdown of *persons described in 911 calls as having a gun ("gun runs")*.

Of course this correspondence will never, and can never, be perfect, but *the correspondence is so close that it rules out, quite definitively, racial bias as any significant factor in whom police officers choose as the subjects of stop-and-frisks*.

The ethnic breakdown of the population of the city as a whole, and the ethnic breakdown of those committing crimes in the city, are *widely divergent*.

Similarly, the ethnic breakdown of the population of a given area of the city, and the ethnic breakdown of those committing crimes in that area, are sometimes widely divergent.

| 1998 Comparative Proportions for Race/Ethnicity of Violent Crime Suspects, Victims, Arrestees and Stop-and-Frisk Subjects ("Violent Crimes" are here defined as Murder, Non-negligent Manslaughter, Rape, Robbery and Felonious Assault) | | | | | |
|---|-----------------------|----------------------------|------------------------------|--|------------------------------|
| | % of City's Residents | % of Violent Crime Victims | % of Violent Crime Arrestees | % of Violent Crime Suspects (as ID'd by Victims) | % of Stop-and-Frisk Subjects |
| Black | 25.4 | 43.1 | 57.7 | 62.4 | 52.3 |
| Hispanic | 24.5 | 30.1 | 29.0 | 26.8 | 32.9 |
| White | 43.4 | 19.1 | 10.1 | 8.5 | 13.1 |
| Asian | 6.7 | 7.7 | 3.2 | 2.2 | 1.7 |
| Black and Hispanic | 49.9 | 73.2 | 86.7 | 89.2 | 85.2 |

The NYPD's information on criminal activity in any given area of the city, including the ethnic breakdown of those committing crimes, comes from information and descriptions obtained from the victims of or witnesses to those crimes. It is recorded, not generated, by the NYPD.

The statistics shown above are consistent citywide down to the precinct level, that is, for every precinct the ethnic breakdown of the perpetrators of violent crimes (as identified by victims or witnesses) closely matches the ethnic breakdown of persons stopped-and-frisked.

Not all stop-and-frisks are based on descriptions obtained directly from crime victims or witnesses. They may also be based on information transmitted by the police radio dispatcher, obtained from callers to the 911 system. Often they are initiated by an officer who, utilizing his or her training, experience and knowledge of crime trends and patterns in the area, observes signs of possible criminal activity. But the fact that there is a close correspondence between the ethnic breakdown of those stopped-and-frisked in any given area of the city, and those committing crimes in that area (based, as noted above, on information obtained from victims and witnesses), is a strong indicator that officers are acting in good faith, not out of racial bias.

The Attorney General's Report does not examine the ratio of stops to the number of officers assigned to an area, and does not take into account that the NYPD assigns more officers to protect the residents of high-crime areas, sometimes more than would correspond to the area's actual crime rate. *It is to be expected that more stops would occur in an area where more officers are assigned based on disproportionately high crime rates.*

The Attorney General's Report does not take into account that additional officers are assigned to areas with specific crime patterns (for example, the "East Side rapist") and high-profile criminals (for example, the perpetrator of the recent brick attack) that have caused public alarm. It is to be expected that more persons matching the descriptions of these suspects would be stopped. *These criminals do not necessarily mirror the demographics of the area's general population.*

It is misleading to rely solely on information from Stop and Frisk Reports (UF 250s) to determine whether particular stops were appropriate. *These forms are administrative and investigative tools only, and are not intended to include every factor that led to a stop-and-frisk.* They are supplemented by other Department records such as memo books, previously prepared complaint reports, information on wanted persons and crime patterns, etc. In addition, *it is difficult, if not impossible, to articulate in written form every factor that led to a particular stop* - such factors as training, experience, knowledge of the area, etc. These factors are often explored more fully through oral testimony in court.

The Attorney General's Report obtains its information on crime rates, and the ethnicity of those committing crimes, from arrest data rather than more accurate complaint data. Arrest data reflects only those crimes in which arrests are made, while complaint data reflects those crimes, a much greater proportion of all crimes, in which reports are filed by victims or witnesses.

The Attorney General's Report tallied 19,409 arrests for the 15 month period January 1998-March 1999. NYPD analysis has identified substantially more arrests, 19,153 in 1998 alone, which extrapolates to approximately 24,000 for the 15 month period.

The Attorney General's Report does not mention or include in its analysis summons activity, which is an enforcement outcome that is in lieu of arrest for selected misdemeanors and for violations observed by the officer, providing the subject is able to supply identification. A large number of "arrests" are therefore not included

in the Attorney General's analysis. The study only mentions summonses as documentation of return on warrants, etc., which are in fact not documented on summonses.

There is unusually heavy reliance in the Attorney General's Report on "statistical significance," a term meaning that there is little likelihood that the results come from chance. However, the Attorney General's Report has very little information about explanatory power or the strength of the relationships between data. More sophisticated statistical analysis (such as "R-squared" or "Pseudo R-squared"), or measures of association, are not provided or referred to. With no discussion of these important statistics, and debatable assumptions of cause-and-effect, the results are less meaningful than they might otherwise be.

A brief synopsis of problems and objections to the methodology employed by the Attorney General's Report is attached (Attachment C). The NYPD's analysis of stop and frisk data citywide is also attached (Attachment D).

In sum, the Commission adopted the Attorney General's report wholesale, without any meaningful analysis of its own, and it ignored the serious problems the NYPD has pointed out in the Attorney General's methodology. This, of course, was perfectly consistent with the lack of any substantive analysis by the Commission throughout its draft Report.

CHAPTER 2

RECRUITMENT, SELECTION, AND TRAINING

P. 25, Para. 2 contains a quotation from the Commission's October, 1981 report: "It is axiomatic that a police force representative of its community will enjoy improved relations with the community and will, consequently, function more effectively." A similar sentiment is found on p. 36, stating that many groups "suggest that only a substantial increase in minority representation can be expected to improve public confidence in the police force . . ."

This simplistic premise implies that the primary requirement for an effective police department is that it matches the demographics of its jurisdiction, and that a demographically different agency must be ineffective. Would the Commission then agree that a jurisdiction which is 95% white should strive to achieve a police force which is also 95% white? Race is not a barometer of police performance, which must be measured by objective criteria such as crime rates and use of force. While the Department has taken substantive steps to diversify its workforce, racial criteria must not take the place of actual achievement and responsibility. As the Commission well knows, making assignment or employment decisions based solely on race is illegal.

The Report suggests at p. 44, para. 2, that "An affirmative action program, [instead of a residency program], would be a more direct, and presumably more effective mechanism for increasing minority representation." However, there is no specific proposal made from among the choices discussed. It is unclear what form an affirmative action program is expected to take - increasing the college requirement, or decreasing the college requirement, or decreasing the minimum age, or relaxing medical, physical, psychological, or character standards. At present, every qualified person is hired, assuming their list number is reached and that they are willing to accept the position when offered. Every civil service list produced from every written test is already exhausted, and every viable candidate hired.

P. 26, Para. 2 cites census statistics which disagree with the statistics cited on p. 11 of the Report. The Commission should utilize consistent demographic data for New York City.

P. 26, Graph sets forth a cumulative race/gender breakdown of police hires, but fails to separate the years so that a trend may be observed. The accompanying text states that "the disproportionate representation does not appear to be appreciably improving." As of May 1, 2000, 15.5% of the uniformed MOS is female, which is far better than the national average of 13.8% for females employed in law enforcement by large Departments as reported by the U.S. Department of Justice in its 1998 Sourcebook of Criminal Justice Statistics.

With respect to minorities, the Report fails to credit the Department for vast improvement over a more realistic time frame for this kind of change. The number of minority officers in the Department reached an all-time high of 31.1% in 1999. This is a substantial increase from 1974 when minorities represented only 11.6% of the Department. During this period the representation of African-American officers rose from 8.3% to 13.4%. The representation of Hispanic officers is even more dramatic, with an increase from 3.3% to 17.2%.

P. 27, Para. 1 discusses the reduced number of candidates and hires for the period 1994 through 1998. The reduction in candidates is due, in part, to increased hiring standards. The new entry-level qualifications implemented in June of 1996 are as follows:

Minimum age was raised from 20 to 22 years old.

Educational requirement was raised from a high school diploma to at least 60 college credits or two years of satisfactory military experience.

These changes resulted from a study by the Chief of Personnel, which found that:

Officers aged 22 or older at the time of appointment were better performers and received better probationary evaluations than their younger counterparts.

Members who had met the college requirement were:

- less likely to be involved in serious misconduct;
- less likely to receive civilian complaints; and
- less likely to report sick.

It should be noted that the increased standards did not have an impact on our ability to hire the planned number of new officers. Any variance in the number of hires from year to year is a function of attrition and the City's financial ability to hire new officers.

There have been four police officer exams since 1998, administered at approximately nine-month intervals. A total of 59,400 candidates applied for those exams. This is the result of recruitment drives directed at City residents during which the filing periods were extended to accommodate late filers.

The Department's goal is to increase recruitment of City residents. City residents who take the police officer exam are awarded an additional 5 points after receiving a passing grade. A natural by-product of these targeted drives will be an increase in minority representation in the NYPD. The March, 2000 Police Academy class numbered 1,542 recruits. A total of 58.4% of the class are City residents. The demographic breakdown is as follows:

| | White | Black | Hispanic | Asian | Indian | Other | Total |
|--------------|------------|------------|------------|-----------|----------|----------|-------------|
| Male | 796 | 137 | 301 | 58 | 2 | 6 | 1300 |
| Female | 85 | 62 | 89 | 4 | 1 | 1 | 242 |
| TOTAL | 881 | 199 | 390 | 62 | 3 | 7 | 1542 |

Ethnic Breakdown

| | |
|----------|--------|
| White | 57.13% |
| Black | 12.91% |
| Hispanic | 25.26% |
| Asian | 4.02% |
| Indian | 0.19% |
| Other | 0.45% |

Gender Breakdown

| | |
|---------|-------|
| Males | 84.3% |
| Females | 15.7% |

P. 27, Para. 2 discusses minority representation in ranks above police officer. As of May 1, 2000, the correct figures are: 492 captains, of whom 12 (2.4%) are African-American, 15 (3%) are Hispanic, 2 (.4%) are Asian-American, and 24 (4.9%) are women. In addition, 13.6% of lieutenants and 19.1% of sergeants are people of color.

The report points to an "even greater disparity" in minority representation among ranking officers. Just the opposite is true. While promotions to captain, lieutenant and sergeant are based on successful completion of Civil Service exams and requirements, beyond the control of the NYPD, the Department recognizes the importance of diversity in upper management and other discretionary positions, and aggressively pursues these goals.

Minorities are appointed to discretionary ranks in greater proportion than their representation in the Department, and earlier in their careers than white officers.

DISCRETIONARY RANKS

Deputy Inspectors and Above

Although there are a greater number of whites than minorities in the ranks of Assistant Chief, Deputy Chief, Inspector, and Deputy Inspector, a greater proportion of minority captains achieve discretionary titles than white captains.

Female members of the service in the rank of Captain are appointed to the discretionary titles 2 to 4 years earlier than male captains.

Discretionary Promotions Above Captain – Gender and Ethnicity

| | Discretionary Title above Captain | Total in Rank - Captains and Above | Percent with Discretionary Promotion | Percent of Captains | Percent of Discretionary Title |
|----------|-----------------------------------|------------------------------------|--------------------------------------|---------------------|--------------------------------|
| Female | 10 | 34 | 29.4% | 4.8% | 4.0% |
| Male | 237 | 713 | 33.2% | 95.2% | 96.0% |
| White | 224 | 696 | 32.2% | 94.4% | 90.7% |
| Black | 11 | 23 | 47.8% | 2.4% | 4.5% |
| Hispanic | 10 | 24 | 41.7% | 2.8% | 4.0% |
| Asian | 2 | 4 | 50.0% | 0.4% | 0.8% |

Whites are appointed to discretionary titles significantly later in their tenures as captain:

Mean Years in Rank Prior to Promotion Above Rank of Captain

| | Assistant Chief | Deputy Chief | Inspector | Deputy Inspector |
|----------|-----------------|--------------|-----------|------------------|
| Female | 5.0 | 6.0 | 4.0 | 3.0 |
| Male | 10.1 | 10.5 | 8.0 | 5.2 |
| White | 9.7 | 10.3 | 8.1 | 5.3 |
| Black | 6.0 | 5.0 | 5.5 | 2.4 |
| Hispanic | 7.0 | 6.0 | 5.4 | 3.0 |
| Asian | | 8.0 | | 2.0 |

Whites wait twice as long to be appointed to Deputy Inspector or Deputy Chief as blacks and almost twice as long as Hispanics.

Lieutenants

Lieutenants may be appointed to the discretionary titles of Lieutenant Special Assignment (LSA) and Lieutenant Commander Detective Squad (LCD).

5.8% of all lieutenants are black, yet 10.5% of all LSA's and 9.5% of all LCD's are black.

After becoming a lieutenant, blacks who are appointed to the discretionary titles do so in less than 4 years. The Department average is over 6 years.

Female lieutenants are appointed to the discretionary titles more than one year earlier than males.

7.8% of all lieutenants are female, but 13.2% of all LSA's are female.

Sergeants

Sergeants may be appointed to the discretionary titles of Sergeant Special Assignment (SSA) and Sergeant Supervising Detective Squad (SDS).

7.4% of all sergeants are black, yet 11.0% of all SSA's and 11.4% of all SDS's are black.

10.0% of all sergeants are hispanic, yet they comprise 19.2% of SSA's and 13.2% of SDS's.

10.3% of all sergeants are female, but females comprise 12.3% of SSA's and 11.4% of SDS's.

White sergeants have at least 3 years longer in rank prior to discretionary promotion. The average time in rank for white, black, and Hispanic sergeants prior to discretionary appointments is 7.3, 4.3, and 4.8 years, respectively.

Female sergeants are appointed to SSA and SDS almost 2 years earlier in their tenure than males.

Police Officers and Detectives

Police officers may be appointed to the discretionary titles of Police Officer Special Assignment (POSA) and Detective.

There is limited discretion in promotion to Detective 3rd Grade. Police officers who have served 18 months in an investigative unit are appointed to Detective 3rd Grade.

14.8% of police officers are black, but they comprise 17.7% of the Detective/POSA title.

Blacks and Hispanics are appointed to Detective 1st Grade almost 5 years earlier than whites and to Detective 2nd Grade almost 3 years earlier.

Females are appointed to the discretionary detective titles 3 to 6 years earlier than males.

P. 29, Para. 3 discusses the requirements to become a police officer and characterizes them as "superficially neutral." The requirements have been outlined above. The implication contained in this sentence is that in

some way the Department or the Civil Service system is throwing roadblocks in the way of minority applicants, rather than administering a neutral test and requiring minimum reasonable standards of its applicants.

The correct minority pass rate for the January, 1999 police officer exam was 43.66%. In an effort to assist candidates for subsequent examinations, the Department distributed a Test Preparation Kit and enhanced its tutorial program. This program will be discussed in greater detail later, in the description of the 1999 City Resident Recruitment Drive. The minority pass rate for the next exam, administered in October, 1999 improved to 68.12%. Beyond rank speculation, the Report does not explain how requirements to become a police officer may operate to limit the number of people of color in the Department; nor does it provide any example that there is such a problem.

Pp. 31 and 32 summarize the testimony of a frequent critic of the NYPD who makes broad, unsubstantiated and outrageous statements regarding the Department's hiring process. His statement concerning the psychological disqualification rate of African-American and Latino candidates is not correct. The psychological disqualification rates, broken out by gender, for examination nos. 8026, 7053, and 5177, range from 0.4% to 6.7% and fall far short of his "majority" of candidates. They are, in addition, not significantly different than the disqualification rates of white candidates (0.8% to 4.6%) on the same examinations.

The Department's Director of Psychological Services is an African-American woman. She sets the psychological standards and is the final arbiter of each candidate case. Among the psychologists are 10 whites, 2 African-Americans, and 1 Asian. This group is supplemented by 3 white and 1 African-American psychologists during periods of large-scale candidate investigations.

The witness's statements concerning the amount of time taken to complete investigations are not correct. Most background investigations are completed within 3 months rather than the 12 cited in the Report. Those investigations that take longer are the result of cases involving numerous arrests or prior employments, each of which must be reviewed. There is no data to support the contention that investigation of City residents takes longer to complete than those of candidates who live in the suburbs.

His description of the application process as "prostituted" and "tainted" is inaccurate and grossly irresponsible. He has not submitted any documentation to support this allegation. The entire process has been developed and enhanced to increase fairness and efficiency. A Retention Unit has been established to assist and counsel candidates during their processing phase. Additionally, every effort is made to restore candidates who have voluntarily discontinued their processing. More than 500 candidates have been counseled and restored to the process, 200 of whom have already been hired.

Where there is a recommendation that an applicant be rejected, there is a review process. To describe the candidate review process in brief, approximately 60 days after a case is opened, an investigator will complete a Case Review sheet which will be reviewed by the investigator's Unit Commander (lieutenant), Executive Officer, Applicant Processing Division (captain), and Commanding Officer, Applicant Processing Division (inspector). The Review sheets with Applicant Processing Division's recommendations are forwarded to the Office of the Chief of Personnel. The name, ethnic group and gender is redacted and the cases are reviewed by a panel of executive-level officers who confirm or reject the initial recommendation.

There are currently 299 investigators assigned to the Applicant Processing Division. Of these, 37% are white, 45% are African-American, 15% are Hispanic, and 3% are Asian-American. 40% of the investigators are women.

P. 32, Para. 2 states that "The NYPD did not provide the Commission with the civil service examination or the standards applied in connection with the character and psychological screenings. Therefore it is unable to evaluate [the witness's] assertions." The information provided to the Commission on the psychological screening of applicants absolutely refutes, rather than suggests, that psychological screening is biased, and indeed, the Report itself acknowledges that this is true. It is therefore incomprehensible that the Report would claim that the assertions can not be evaluated when the Report itself dismisses them as false. Further, the Commission never requested additional information on this topic from the NYPD.

P. 33, Para. 1 discusses the possible inadequacy of the entry requirement of 60 college credits. The Commission's position on this issue is inconsistent. It appears to advocate the maintenance or increasing of educational standards to prevent corruption and promote professionalism on p. 33, and yet perhaps it seeks to decrease education requirements to increase minority representation, on p. 29, but later that premise is debunked as an inaccurate assumption on p. 34. Further, the Report states on p. 34: "With the enormous amount of responsibility and public expectations placed on police officers, this college education requirement and the subsequent police academy training are inadequate." This conclusory statement is totally unsupported by fact and again relies on the implicit assumptions the Commission carried about the NYPD before initiating its investigation.

The issue of higher education for police officer has been discussed for many years. The argument for higher education and increased levels of professionalism is appealing, and one that the Department has long sup-

ported. The suggestion that we establish a four-year degree as the minimum educational requirement for employment is not practical, primarily because we cannot match the entry level pay scales offered to college graduates entering the job market in the private sector. A young person with a B.A. and no previous contact with the Police Department is likely to look elsewhere in his or her choice of a profession.

In 1996 the Department increased the minimum educational requirement for appointment from a high school diploma (or equivalent) to sixty college credits. Two years later, to ensure that our candidates were presenting credits that were earned by responsible college level work, we enhanced the prerequisite by requiring a 2.0 grade point index, the criteria that most colleges require to qualify for a degree. Recognizing the value of military service in terms of technical training and discipline, we have, and continue to accept two years of honorable service as an alternative to the college requirement. We believe that the recruits hired under this standard will, when combined with their college graduate colleagues who enter police service through the Police Cadet Corps, provide sufficient new officers to meet our staffing needs.

The Department encourages its officers to continue their educations while in service. We require 64 college credits for promotion to sergeant, 96 credits for lieutenant, and a Bachelor's Degree for promotion to captain. It is not uncommon for officers in each of these ranks to hold more than the minimum standards. Indeed, as of December 1999, over 6,000 uniformed members of the service were college graduates. More than 300 officers were pursuing graduate degrees, 436 held Masters Degrees, 27 were doctoral candidates and 111 held Ph.D or law degrees. We assist them in their efforts by allowing flexibility in work schedules, leaves of absence for study and by a wide range of scholarship programs at local colleges, the State University at Albany, and at Harvard University.

P. 35, Para. 2 begins an extensive discussion of what it terms the Department's "Minority-Directed Recruitment Efforts." The NYPD has attempted to deal with the perception that the Police Department is an inhospitable institution by staffing those units that are most likely to have contact with potential candidates with racially diverse and dedicated officers. The Recruitment Section is staffed by 5 White, 5 Black, 5 Hispanic and 6 Asian officers. In addition to their efforts to encourage potential candidates to file for the entry-level examination, the members of the Recruitment Unit are certified instructors who teach our tutorial program that is offered to help prepare candidates for the examination. This program is free of charge and is available in each Borough of the City. In addition to its primary goal of test preparation, it affords the candidates the opportunity to meet police officers in other than a traditional law enforcement setting.

The Recruitment Section and the Retention Unit are jointly hosting a career fair for candidates. All candidates on active lists have been mailed information on this event. Representatives from local colleges and counselors will be available to answer candidates' questions and concerns.

However, the Report raises a larger question of what the perception of the NYPD actually is: the compromised institution perpetuated by media-driven myth, or a credible law enforcement agency carrying out its mission successfully. It is helpful to review the findings of a poll conducted on behalf of the Police Department as part of the recent City Resident Recruitment Drive.

In a telephone survey conducted by Penn, Schoen and Berland Associates, Inc., 797 telephone interviews were conducted of NYC residents in September of 1999. The margin of error for the entire sample is +/- 3.5% at the 95% confidence level, but is higher for subgroups.

- 80% of New Yorkers agreed that NYC Police Officers protect their neighborhoods, including 70% of African-Americans and 78% of Latinos.
- 80% of New Yorkers feel that NYC Police Officers are concerned with the safety of NYC residents, including 65% of African-Americans and 76% of Latinos.
- 82% of New Yorkers respect the NYPD and NYC Police Officers, including 75% of African-Americans and 83% of Latinos.
- 65% of New Yorkers would support or encourage someone who was considering joining the NYPD, including 67% of African-Americans and 68% of Latinos.
- 66% of New Yorkers agree the NYPD is actively encouraging minorities to join the Department, including 61% of African-Americans and 68% of Latinos.
- 59% of New Yorkers say the NYPD is working toward improving relations with minority communities, including 51% of African-Americans and 58% of Latinos.

Furthermore, with respect to attracting women to a career in the NYPD, as indicated earlier, the NYPD does a better job than most other police agencies, with a higher percentage of women in its ranks than the national average.

Another survey, conducted by the US Department of Justice, Bureau of Justice Statistics, entitled **Criminal Victimization and Perceptions of Community Safety in Twelve Cities, 1998**, also demonstrated a high level of satisfaction and confidence in the performance of the NYPD:

"How satisfied are you with the quality of life in your neighborhood?"

At 81% total satisfaction, New York is well within range of the 12-city average of 83%.

"How fearful are you about crime in your neighborhood?"

58% of New Yorkers are not fearful of about neighborhood crime, matching the 12-city total exactly.

"Over the past 12 months, have your fears increased, decreased, or stayed the same?"

Fears increased by 19% in all cities, but only by 15% in New York. Additionally, fears decreased by 10% in New York, but only by 8% in the other cities.

"How satisfied are you with the quality of life in your city?"

Quality of Life satisfaction was 72% in New York and 69% in the other cities.

"How fearful are you about crime in your city?"

Fear in NYC = 68%. Fear in the other cities = 71%.

"Over the last 12 months, have your fears increased, decreased, or stayed the same?"

Fears increased by 13% in New York and by 18% in the other cities.

"In general, how satisfied are you with the police who serve your neighborhood?" (Question asked by race).

NYC satisfaction whites = 89%, blacks = 77%, other = 77%

Other cities whites = 90%, blacks = 76%, other = 78%

Note that the standard error for estimates of satisfaction with police for total population in NYC is 1.53.

P. 37, in its discussion of Department Recruitment Drives, is misleading and confusing, since it seems to address the 1999 City Resident Recruitment Drive, one of the most successful campaigns in the Department's history, but omits several key components and then refers solely to initiatives that were part of the 1998 Recruitment Drive. To clarify this confusion, the following outline summarizes the accomplishments of the 1999 City Resident Recruitment Drive.

CITY RESIDENT RECRUITMENT DRIVE

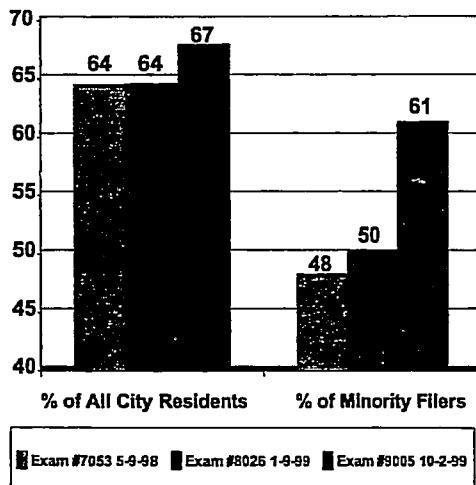
On April 7, 1999, the New York City Police Department launched an ambitious City Resident Recruitment Drive that resulted in the largest percentage of City residents and people of color ever applying to take the Police Officer exam, 67% City residents, 61% minorities, and 29.5% women. The Drive was also unique in that it shifted the ongoing recruitment process from the short term goal of maintaining personnel levels, to a long term commitment focused on: 1) recruiting a police force of City residents who reflect the City's population; and 2) retaining these officers once they pass the exam or until they join the police force.

This was accomplished by introducing a number of community outreach, career enhancement and training initiatives with lasting benefits. The success of these efforts is reflected in the numbers achieved by the end of the Recruitment Drive: approximately 450,000 applications were distributed in every community in the City; 13,725 calls were received by the 212 RECRUIT hotline; 4,768 hits were received by the NYPD Recruitment web site; and 15,200 candidates filed to take the exam.

The Recruitment Drive led to an increase in the number of people filing for the exam as compared to the last Police Officer exam (#8026, held on January 9, 1999): 15,000 this exam vs. 14,222 for the last exam.

The Recruitment Drive led to a 25.54% increase in the number of females filing for the exam, a 10.70% increase in the number of City residents filing for the exam, and a 27.56% increase in the number of minorities (black, Hispanic, Asian and Native American) filing for the exam.

Highest Percentage of City Residents & Minority Filers



The Recruitment Drive led to an increase in the number of individuals actually sitting for the exam: 10,309 this exam vs. 9,386 last exam.

The following is a statistical breakdown of those who filed for the exam, as compared with those who filed for the last exam:

| GENDER | EXAM #9005 (10/02/99) | | EXAM #8026 (01/09/99) | | %Change |
|---------------------|-----------------------|-------|-----------------------|-------|-------------|
| Male | 10,462 | 69.7% | 10,607 | 74.6% | -1.4% |
| Female | 4,458 | 29.7% | 3,551 | 25.0% | 25.5% |
| Unidentified | 80 | 0.5% | 64 | 0.5% | 25.0% |
| Total Filers | 15,000 | | 14,222 | | 5.5% |

| RESIDENCE | EXAM #9005 (10/02/99) | | EXAM #8026 (01/09/99) | | %Change |
|--------------------------------|-----------------------|-------|-----------------------|-------|-------------|
| Total City-Resident Filers | 10,076 | 67.2% | 9,102 | 64.0% | 10.7% |
| Total Non-City Resident Filers | 4,924 | 32.8% | 5,120 | 36.0% | -3.8% |
| Total Filers | 15,000 | | 14,222 | | 5.5% |

| ETHNICITY | EXAM #9005 (10/02/99) | | EXAM #8026 (01/09/99) | | %Change |
|------------------------|-----------------------|-------|-----------------------|-------|-------------|
| Black Filers | 3,939 | 26.3% | 2,994 | 21.1% | 31.6% |
| White Filers | 5,677 | 37.8% | 6,862 | 48.2% | -17.3% |
| Hispanic Filers | 4,536 | 30.2% | 3,622 | 25.5% | 25.2% |
| Native American Filers | 57 | 0.4% | 48 | 0.3% | 18.8% |
| Asian Filers | 558 | 3.7% | 462 | 3.2% | 20.8% |
| Unidentified Filers | 233 | 1.6% | 234 | 1.6% | -0.4% |
| Total Filers | 15,000 | | 14,222 | | 5.5% |

The fact that these results occurred during a period when the Police Department has been under constant criticism and increased public scrutiny indicates that there is strong underlying support for the police among City residents from diverse ethnic backgrounds. It must be considered, as well, that had considerable monetary and personnel resources not been committed to the recruitment effort, the numbers would almost certainly have been much lower. This raises the issue of the gradual decrease in actual numbers of applicants over the past several years.

Many factors have contributed to this phenomenon: the fact that the private sector economy has continually expanded, drawing potential applicants away from public safety jobs which seems to be part of a national trend, since other law enforcement agencies around the country, as well as the Armed Forces, are experiencing similar recruitment difficulties; and, as we have noted, the increase in the age requirement to 22 years and the increase in the education requirement to a minimum of two years of college. Although the increased education requirement has also decreased the available pool of applicants, it should be pointed out that the applicants who fulfill the requirement are in fact much more likely to succeed in ultimately becoming police officers.

The Police Department has been proactive in addressing this challenge. In addition to the New York City Residency 5-Point Credit, the City Resident Recruitment Drive expanded our efforts with a comprehensive approach that included initiatives in four key areas: 1) Community Outreach, including an extensive advertising campaign in all media; 2) Youth Career Development; 3) Career Enhancement/Incentives; and 4) Training.

Community Outreach was the most visible aspect of the City Resident Recruitment Drive. Over a period of more than four months, from April 7th to August 27th, 1999, the Recruitment Drive was brought directly into New York City communities, utilizing a combination of citywide and grassroots initiatives, including: establishing recruitment stations; providing a tutorial program for people interested in taking the Police Officer exam; attending and hosting special events; working with community-based and business organizations; working with members of the clergy; making presentations at high schools and colleges; working with NYPD Fraternal Organizations; working with elected officials; working with the military; and providing informational interviews to the local media.

As a first step in carrying out the Recruitment Drive, 1,356 recruitment stations were established in all five boroughs, which operated between April 26th and August 27th. The stations were staffed by 440 Community Affairs, Youth and Crime Prevention Officers from the local Precinct or PSA. These officers were representative of, and familiar with, their community. They were assisted by additional personnel from the Office of the Deputy Commissioner, Community Affairs. Recruitment stations were located in libraries, police stations, colleges and retail sites and were also open during evening and weekend hours. In addition to answering questions, the officers distributed over 1.5 million recruitment information cards.

A special effort was made to reach potential applicants in New York City Housing Developments with recruitment stations located in over 30 developments. Between July 3rd and August 25th, Housing Community Affairs Officers supplied applications to Management Offices, Community Centers and PSA commands. They addressed PSA Community Councils, Resident Patrols, and Resident Associations and attended events such as Open Houses, Fellowship Breakfast Conferences and Youth Councils. In addition, recruitment ads were placed in the NYCHA Journal during the months of May, June, July and August. During this period, 230,000 copies of the Journal were distributed to more than 600,000 residents.

Other recruitment stations were established at 40 highly utilized transit locations, which were visited by Recruitment Officers between August 16th and August 27th. With the support of the Fulton Mall Business Improvement District, a storefront recruitment station was centrally located in the Mall's busy shopping district. Similar stations were located in malls throughout the City.

In addition to establishing an extensive network of recruitment stations, the NYPD provided free tutorials in preparation for the Police Officer exam. These tutorials took place at seven borough locations: the Harlem State Office Building and Police Academy in Manhattan; the Police Department Leadership Training Section on Gold St. in Brooklyn; the Allen A.M.E. Development Corporation and Diane Armstrong Family Center in Queens; the Latino Pastoral Action Center in the Bronx; and the Cromwell Recreation Center in Staten Island.

A series of nine sessions was held at each site, and between August 9th and September 18th, 3,547 people attended these sessions. In addition, for the first time, a Study Guide was developed that included sample questions and a review of test preparation skills that was mailed to every applicant. By the end of the Recruitment Drive, over 15,200 guides had been mailed. Further assistance was provided by Crosswalks Learning Channel which televised a condensed version of the tutorial.

In an effort to reach as many communities as possible, a Recruitment Bus traveled throughout the City. On July 9th, the Transit Authority provided the Police Department with a City bus. The bus was wrapped with images of the NYPD Bicycle Unit and the slogan JOIN US 212 RECRUIT. The Recruitment Bus subsequently visited 168 locations in all five boroughs, including many special events, totaling 3,400 miles traveled.

Recruitment Officers attended 178 Special Events throughout the City, including street fairs, festivals, parades and job fairs. The Department created the 1999 All City Heroes Tour, a signature event that focused additional interest on the recruitment effort. The Tour featured talented Police Officers who joined with DJs from HOT 97 and MEGA 97.9 radio to get out the recruitment message. Between July 30th and August 27th, 8 Tours traveled to sites in every City borough. They were accompanied by D.E.F. JAM Street Teams, groups of inner-city youth that were hired to distribute flyers promoting the events. The Tours were broadcast live on HOT 97 and MEGA 97.9 radio stations and were widely promoted and covered by all local media, including other radio outlets and the press. In organizing the Tour, the NYPD worked with Rush Media, Inc., a company which played an extensive role in the entire Recruitment Drive, as will be discussed below.

The Citywide Recruitment Drive received strong support from the City's religious communities. Presentations on recruitment were made to religious institutions throughout the City, and we sent a recruitment letter to all 443 Clergy Liaisons. The Clergy Liaison Program is the Department's longstanding outreach program in which Clergy from the City's many religious denominations volunteer to serve as liaisons between their communities and the Police Department. In addition the Police Commissioner met with the heads of the Council of Churches and the N.Y. Hispanic Clergy Organization to discuss the Recruitment Drive.

Equally important to these efforts was the assistance of elected officials. On April 27th, a recruitment letter was sent to all 51 City Council Members, seeking assistance in "finding the best and brightest" candidates in the City. As a follow-up, the Commanding Officer of the Citywide Recruitment Unit personally met with 18 City Council Members, and every Council Member was invited to attend the 1999 All City Heroes Tour.

The City's community and business organizations also provided the Department with vital support. Recruitment Officers visited a number of these organizations which, in turn, assisted the Police Department by distributing applications and recruitment information to their members. These included: Community Boards, the NAACP, the New York Urban League, Business Improvement Districts, the Hispanic Federation, 100 Black Women, and local development corporations, among others. The Police Commissioner met, as well, with the heads of the New York Urban League, Black Agency Executives, the Greater Harlem Chamber of Commerce, and the National Conference of Community Justice, to discuss the Recruitment Drive, just to name a few.

Institutions of higher education are natural sources of recruitment. To this end, recruitment speakers made 150 presentations at CUNY and private college campuses in the metropolitan area. Specially staffed recruitment stations were located at school events, including graduation ceremonies, and as part of the Department's College Alumni Program, members of the service returned to their alma maters to speak about careers in the NYPD.

The Police Department is fortunate to have many fraternal organizations that can be called upon to communicate important issues to their membership. Numerous meetings were held with fraternal organizations to inform them of the upcoming recruitment campaign. The Police Commissioner personally met with the following organizations: the Guardians, the Hispanic Society, the Asian Jade Society and 100 Blacks in Law Enforcement Who Care.

Because the Police Department recognizes two years of military service with an honorable discharge as fulfilling the entry-level educational requirements, a special effort was made to reach potential candidates by sending a mass mailing to 2,200 members of the military expecting to be discharged from the service. In addition, the NYPD recruitment message was transmitted to military bases worldwide through the Direct Operating Research System, the military's computerized system for seeking new employment. To further these efforts, Chief of Patrol John Scanlon and Manhattan North Borough Commander Nicholas Estavillo visited Camp Lejeune in North Carolina to make a presentation. In addition, a liaison was developed with the U.S. Army Transition Services Department and New York City Recruitment Department, and ongoing presentations have been made at military bases throughout the Metropolitan Area.

To complement the Community Outreach initiatives, a large-scale advertising campaign was undertaken. In a city as vast and diverse as New York, effective communication operates on many levels in order to reach both a local and citywide audience. Many of the Community Outreach Initiatives, such as meetings, presentations and recruitment stations transmitted the recruitment message at the grassroots level. The City funding provided the means of tapping into the tremendous potential of the mass media and carrying the recruitment message citywide. It led to the formation of an extensive advertising campaign in all media that would continually promote the value and benefits of becoming a New York City Police Officer. In order to realize this ambitious undertaking, the Department was fortunate to obtain a gift of the services of The Arnell Group (now called The Arnell Group Worldwide), a New York City marketing and advertising firm that developed and carried out the advertising campaign.

The City Resident Recruitment Advertising Campaign had three main components: Creative Development; Production; and Media Buys. Creative Development consisted of developing the concepts and designing media products for the entire campaign. Production consisted of realizing the media products, i.e. T.V., print, radio

and outdoor ads. It also covered the use of public surveys to accurately assess the target audience and the focus of the campaign. Media Buys consisted of placing the ads in various media outlets.

The City provided the Police Department with a \$10 million budget to carry out the City Resident Recruitment Drive Advertising Campaign. The money was allocated as follows: \$2,250,000 - Production; \$7,500,000 - Media Buys; \$250,000 - Media Contingency (to cover additional, miscellaneous media purchases)

The Arnell Group carried out the Creative Development phase pro bono - services that would otherwise have cost anywhere between \$1.2 and \$1.3 million. To assist in this development, Arnell hired Penn, Schoen and Berland Associates, a marketing research firm, to conduct surveys, both prior to the development of the media products and during their appearance in the media. (Some of the results of their surveys are provided in the discussion of p. 35 of the Report.)

The objective of the Creative Development and Production phases of the Advertising Campaign was to create ads that would encourage more City residents to join the New York City Police Department. The target audience was City residents between the ages of 18½ and 34 who reflect the demographic make-up of New York City. Accordingly, it was important that the ads were seen in all New York City communities, including African-American, Hispanic, Caribbean, Asian and other newer immigrant communities within the City's five boroughs.

The ads were based on two main concepts: 1) the mission of the Police Department or "NYPD to the Rescue" and 2) testimonials by police officers. The testimonial concept was the basis for ads in all media during the entire campaign: TV, print, radio, outdoor advertising and on the NYPD Recruitment Web Page. Ads based on the concept of "NYPD to the Rescue" were used exclusively on TV.

The ads were carried on television, in print media (including newspapers, magazines and flyers), on the radio, and in a variety of outdoor locations, including: banners on buildings, bus shelters, buses, subways, and billboards. We also developed promotional items, such as key chains and pens displaying recruitment information.

The ads were phased in between mid-May and the end of the Recruitment Drive on August 27th as follows: television ads were launched on May 17th, radio and print ads were launched the week of May 24th to the 31st, and outdoor advertising was introduced in June.

Penn, Schoen and Berland Associates conducted a research program that: established benchmarks for evaluating the ad campaign's success; assessed the effectiveness of the ad campaign by measuring its impact on City residents, in particular their interest in becoming a New York City Police Officer; and determined what changes, if any, should be made to the campaign during the recruitment period. As noted earlier, one finding of the survey was that 66% of respondents believed that the NYPD was actively encouraging minorities to join the Department. A high percentage of respondents (82%) also agreed with the statement "I respect the New York City Police Department and its officers."

The final phase of the Advertising Campaign involved Media Buys, the strategic placement of ads in various media. This was critical, since it determined who would hear the recruitment message and the context within which it would be heard. The Arnell Group hired Rush Media, the advertising division of Rush Communications, the nation's second largest black entertainment company, because of their extensive experience with the youth culture and the African-American market. This was an excellent choice, since the target audience was younger City residents who reflected the City's diversity.

Rush Media sought to increase public awareness, increase the number of applicants for the Police Officer exam among the target audience, and deliver the message to minority residents throughout the City. Accordingly, they utilized the following strategy: targeting television programs that specifically reach that age group, with a concentration among African-American and Hispanic viewers; placing ads in minority publications of the Asian, African-American, Caribbean, Filipino, Gay and Lesbian, Hispanic, Korean, Jewish and Russian communities, as well as borough publications, such as the New York Post and Daily News; and targeting radio programs that specifically reach this age group, that is during early morning time periods and via talk show, rap, R&B, Latin and rock music formats.

By the end of the Ad campaign, Rush Media had achieved the following total coverage:

Television ads had been broadcast over 14 different stations, with 3,000 spots consisting of 1,500 30-second spots and 1,500 60-second spots. Print ads had been placed in 45 publications, with the following ad publication totals: 189 African-American, 70 Hispanic, 24 Asian, 14 Haitian, 13 Gay and Lesbian, 4 Indian, 6 Russian, 4 Jewish and 25 General Market ads. Radio ads had been aired over 18 different stations, with approximately 4,000 60-second spots. These television, print and radio spots were produced in the following languages in addition to English: Spanish, Creole, Korean, Mandarin and Cantonese. 150 posters had been placed in bus shelters. Approximately 1,255 posters were placed in subway cars and subway stations. Approximately 580 6- by 12-foot billboards had been strategically placed, and a 12-story high, vinyl recruitment billboard was installed on the south side of One Police Plaza.

The Ad campaign even took to the skies with a series of flyovers at area beaches, displaying the 212 RECRUIT banner. Breakdown of the media buy expenditures is as follows:

| Media Type | Approved Estimates | Paid |
|------------|--------------------|-------------|
| Television | \$4,224,465 | \$3,768,692 |
| Radio | \$1,713,114 | \$1,542,103 |
| Print | \$1,151,873 | \$1,110,630 |
| Outdoor | \$ 740,619 | \$ 652,586 |

Of the \$7 million spent on media buys, \$4 million was spent on minority media.

The Recruitment Drive Advertising Campaign was aimed at people who were, for the most part, over the age of 18. However, at the same time, long range initiatives were developed that would encourage an early interest in a police career among the City's younger people.

The New York City Police Department in collaboration with the New York City Board of Education Queens High School Office, the Police Athletic League, the Queens Borough President and other partners are working on the development of a High School for Law Enforcement. The School will be located in Jamaica, Queens and will house both a high school and a full time PAL community center. It will accommodate approximately 800 students through the Education Option Program. Students will be able to take specialized courses on law enforcement, social sciences and New York City history, taught by experts in the field, and they will be mentored by police professionals. The proposed opening date is September, 2003.

The Police Department is also expanding its Cadet Corps. There are currently 535 Police Cadets in the Police Department. Cadets work in police facilities while attending college, performing a variety of administrative duties. Once they have graduated from college, Cadets take a promotional exam and are appointed Police Officers. 2,321 Cadets were hired since 1986, and of these, about 1,313 have become Police Officers.

The expanded Cadet Corps will include graduating high school seniors, who enter the Cadet Trainee Program. They work 20 hours a week for \$8.34 per hour until they obtain 45 college credits, at which time they become Police Cadets earning \$8.59 per hour and become eligible for a \$4,000 college loan. In June, 1999 virtually all high schools in the City were visited during an all-out Cadet Corps recruitment campaign conducted jointly by the Cadet Corps, Recruitment Section and Division of School Safety. This included over 30 presentations made to high school senior classes. This effort resulted in the hire of 312 Cadet Trainees.

The Department will hire a total of 600 Cadets and Cadet Trainees in Fiscal Year 2000. To complete the Department's budgeted headcount, an additional 65 Cadets will be hired before June 30, 2000.

In addition to the focus on young people, a number of residency initiatives were also developed that provide greater career advancement for police personnel who are City residents.

Beginning with Sergeant exam #5504 administered on October 30, 1999, all City residents who passed were awarded an additional 2.5 points. Continuing with this incentive to reward City residents, all future Open Competitive Police Officer, Sergeant, Lieutenant, and Captain exams will offer these additional points.

The Department continues to seek from within for advancement to the position of Police Officer. Traffic Enforcement and School Safety Agents, all of whom are required to reside in the City, are offered the opportunity to take a promotional exam rather than the open competitive exam for police officer. This opportunity provides these individuals an advantage not offered to those persons taking the open competitive exam.

The Department now offers several home ownership programs for officers who reside in the City, the "Officer Next Door," the "Resident Police Program," and the "NYPD Home Program" which is sponsored by the New York City Department of Housing Preservation and Development and Fannie Mae. These programs are described more fully in the discussion of p. 42 of the Report.

The final component of the City Resident Recruitment Drive focuses on the issue of training. In keeping with the comprehensive approach of the entire Recruitment Drive and based on a recommendation by the Mayor's Task Force on Police/Community Relations, The Police Commissioner appointed a Board of Visitors on May 6, 1999. The Board is made up of 15 prominent individuals from the business, legal and academic communities, as well as community leaders and former members of the Police Department. Its purpose is to examine and make recommendations for enhancing the Police Academy curriculum, as well as to review recruitment practices. It is accomplishing this mission through regular meetings and the formation of four sub-committees on Recruitment/School Safety Training, Leadership Training, In-Service Training, and Firearms and Tactics Training.

Finally, it should be mentioned that since the Drive ended on August 27, 1999, additional funding from the City Council has enabled the Department to expand its Recruitment and Retention Units within the Applicant Processing Division. Previously, the Recruitment Unit consisted of 1 Lieutenant, 2 Sergeants and 13 Police Officers. With this funding, the number of recruiters was increased by seven Police Officers. This expansion has

enabled the Department to assign additional personnel to each borough and have more trained recruiters available for college, professional and community presentations.

In addition, with the funds provided by the Council, 13 civilian members were hired. Six of these members were civilian investigators who replaced police officers at the Applicant Processing Division so that the officers could be assigned to an expanded Retention Unit, bringing the uniformed staff of this unit up to 8 police officers. It is the object of this Unit to proactively assist viable candidates who, for one reason or another, have not moved their candidacy forward. This assistance includes reaching into the community and contacting applicants who might otherwise find the process daunting and helping them to devise strategies to overcome obstacles in education or other areas. Seven other civilian members were also hired as support staff for both expanded Units.

P. 39, Para. 2 states: "Although impressive on paper, the 1998 Drive does not appear to have been particularly successful, at least in the short term." The results of the 1999 City Resident Recruitment Drive speak for themselves. There are no facts to support the conclusion offered, which ignores the events of the last year.

P. 40, Para. 3 perpetuates the myth created by Rev. Al Sharpton and others that the NYPD did not reach out to minority media in the course of the Recruitment Drive, and that the Drive was initiated because Rev. Sharpton held sit-ins. The Report should incorporate the foregoing detailed description of the elements of the Drive, including the participation of Rush Media and the extensive outreach to young people of color, to refute the misrepresentation that the NYPD failed to reach out to people of color.

Additionally, the NYPD did not "retain" the advertising agency; rather, its services were a gift to the City.

P. 41, Para. 1 recites an assertion by Rev. Sharpton that the Police Commissioner contradicted his own statement before the City Council regarding the City Resident Recruitment Drive. There was no such contradiction, and that point should be made clear.

P. 42, Paras. 1 and 2 attempt to make the case for a police officer residency requirement, while at the same time on p. 45, the Report states: "there is no evidence that City residents make better police officers." This issue is and continues to be a red herring for several reasons, especially because it has no chance of being enacted by the State Legislature. A mandatory residency requirement would dramatically decrease the pool of qualified applicants, including women and minorities. There is no demonstrable correlation between where a police officer resides and his or her ability to discharge their duties and responsibilities effectively.

However, even though the NYPD opposes a mandated residency requirement, there are several voluntary and incentive programs which have been discussed which encourage City residency, not only for applicants but for police officers already on the job who may otherwise move out of the City. The Report cites several suggestions for encouraging City residency, all of which have been implemented. A summary of the home ownership incentives follows:

The "Officer Next Door" through which uniformed members apply to HUD for the purchase of homes located in designated revitalized neighborhoods for 50% reduction of the listed price. This program is sponsored by HUD and is ongoing.

The "Resident Police Program" which is sponsored by the NYC Housing Authority. Uniformed police personnel may apply for rental apartments located within specified housing developments at a reduced rate comparable to rates provided to NYCHA employees; and

The "NYPD Home Program" which is sponsored by HPD and Fannie Mae. Uniformed police personnel can obtain 100% financing along with reduced closing costs on a home located anywhere within the City. During September, 1999, the Department hosted a number of seminars for the new NYPD Home Program. 781 uniformed members attended these seminars which included presentations by Chase and Republic Banks, which are the participating lenders.

P. 45, Para. 4 cites Mayor Giuliani's suggestion that a Law Enforcement High School be established. This proposal is already in place, and is outlined in the discussion of the 1999 Citywide Recruitment Drive, above.

P. 48, Para. 3 states that promotional exams are administered by the NYPD and that one must pass a drug test in order to sit for the exam. In fact, exams are administered in accordance with the Civil Service Law and administered by the Department of Citywide Administrative Services (DCAS). A diverse panel of incumbent members of the Police Department writes each examination under the direct supervision of a civilian examiner from DCAS, and every question is subject to that agency's approval before it is used on the examination. After the exam is written a second panel reviews the questions to ensure that they are job related. As with the test writing panel, this group is composed of racially diverse members holding the rank for which the exam is being prepared. Only those candidates who pass the written test are placed on a list for consideration for promotion.

Passing a drug test is not a requirement to sit for the examination. It is, however, a requirement for promotion. The officer will be tested one time, but the test may occur prior to promotion or after promotion, during the probationary period. This test is required in addition to any other drug testing conducted by the Department.

P. 49, Para. 3 discusses the multiple-choice exams for promotion. Each of these exams tests abilities and knowledge determined by DCAS to be important to the performance of the tasks of sergeant, lieutenant, or captain. These determinations are made after a job analysis to learn the frequency and importance of the various tasks performed by incumbents in a rank prior to writing the exam. The examination questions are written by panels of NYPD officers in the rank for which the test is being prepared, as described in the response to p. 48, para. 3 of the Report.

P. 49, Para. 4 expands upon the description of the promotional exams by questioning their fairness, although they "appear objective on paper," because "the radical underrepresentation of women and people of color in the ranks of sergeant . . . suggests an element of bias in the promotion system."

These assertions are without merit. There is only one type of examination administered by DCAS for Police Department uniformed promotion exams. A written test in multiple-choice format has been used exclusively since 1993. It is beyond the scope of these comments to speculate on the reasons for underrepresentation of women and minorities, except to point out that the pool of candidates for promotional exams consists of the employees of the next lower level, who must all have passed the exam for that position.

The Report's suggestion of bias in the promotion system is entirely speculative and devoid of evidence. The Department's promotional exams have withstood frequent court challenges and have been found to be job-related. Each applicant is provided with a study guide that includes a listing of all the material which will be covered in the exam. Study classes, or tutorials, are provided by the Department, and private enterprises, to assist test takers in exam preparation.

The Report again makes a contradictory observation regarding educational level, implying that less education should be required for supervisors because it may decrease the promotional pool.

Departmental awards are earned for highly creditable acts of police service, independent of the promotion exam process. Credit for these awards is only added to the scores of candidates who have passed the written examination, and cannot get a failing candidate onto the promotion list. Accordingly, such awards only affect placement on the list. It should be noted that the amount of credit given for departmental awards, ranging from 0.031 points for an Excellent Police Duty award to 0.375 points for a Medal of Honor, is minimal when compared with the 2.5 points awarded for New York City residency.

P. 50, Para. 2 states that it is "unclear to what extent performance concerning equal employment opportunity issues is considered" in making promotions. The Commission was provided a copy of Interim Order No. 52 of 1998 which sets forth the requirement that all evaluations include an equal employment component. Promotion decisions are made based on test performance and disciplinary history; the Commission is seeking to merge equal opportunity with observing someone's civil rights in a street encounter. If the Report means to imply that police officers are rewarded for abusing the public, that implication is false and outrageous, and this section must be deleted from the Report.

Pp. 51 and 52 contain unfounded allegations of discrimination as a cause of the low number of minority group captains. A frequent Department critic testified, "there is little or no diversity among Deputy Commissioners who have authority over budgeting, recruitment, and community affairs." This testimony is incorrect and misleading. The Deputy Commissioner, Community Affairs, is a Hispanic woman. Her immediate predecessors were a Hispanic man and an African-American woman. Five of the ten Deputy Commissioners are women, and two are women of color. Furthermore, a Deputy Commissioner has no control over who passes promotional exams. It should also be noted that the DCCA played a major role in the management of the City Resident Recruitment Drive.

Another frequent critic accused the Police Department of "deliberately not promoting officers of color to the rank of captain." He testified that he had "hard data, showing that although people of color pass the promotional exams, the department curves them out of promotional opportunities, especially at the rank of captain." The inclusion of this claim that people of color pass promotional exams, but the Department "curves them out," is extremely unfair. The witness has not provided the "hard data" to support this claim, and his outrageous assertions should not have been accepted at face value. No such data has been shown to the Department, and none is contained in the Report. Indeed, none exists. Exams are administered by DCAS, not the Department, and as indicated earlier, the NYPD promotes people of color more quickly and in greater relative numbers than it does white officers. See the discussion of p. 27 of the Report.

With respect to the claim that P.O. Yvette Walton was terminated thirty minutes after testifying about another officer's misconduct, P.O. Walton received charges and specifications while on dismissal probation and the Police Commissioner approved the recommendation to terminate her employment seven days prior to her testimony.

Finally, the statement of Ms. Hyun Lee that true community policing will only be achieved "by putting the power to hire and fire officers in the hands of the community" should have been challenged rather than accepted at face value. The statement ignores the requirements of the Civil Service Law and makes an irrespon-

sible suggestion with no basis and no actual proposal, instead implying that police officers who run afoul of a community member, perhaps while doing their jobs in an exemplary manner, would be at risk in some way, without benefit of due process or civil service protection.

P. 53, Para. 1 asserts that “. . . little detail is available concerning the nature and disposition of [OEEO] complaints.” It is unknown in this instance and throughout this section (for example, p. 56, final para.) why the Commission did not request additional data.

The Report relies on 1996 OEEO data. The following statistics for calendar year 1999 will provide a more accurate picture of the nature and disposition of complaints. A copy of OEEO Report of December 31, 1999 is attached (Attachment E).

A total of 173 cases resulted in full investigations, all of which were reviewed by the Police Commissioner. Of that total:

49 cases involved claims of sexual harassment with 20 substantiated.

9 cases involved claims of race discrimination with 8 of them substantiated.

17 cases involved claims of retaliation with 1 case substantiated.

14 cases involved claims of disability discrimination with 2 cases substantiated.

12 cases involved gender with 2 cases substantiated.

11 cases involved disparaging remarks with 8 cases substantiated.

9 cases involved claims of sexual orientation discrimination with 4 cases substantiated.

7 cases involved ethnicity with 3 cases substantiated.

2 cases involved age discrimination, none of which were substantiated.

2 cases involved claims of discrimination based upon religion with one case substantiated.

Finally, 6 cases involved displays of sexual or other offensive material with 3 cases substantiated.

P. 53, Para. 1 also states that even if information about EEO complaints were available, “the reluctance of officers to lodge complaints for fear of retaliation may play a role.” It seems that the Report is asserting that officers are afraid to make complaints because they fear retaliation. The Commission supplied no basis for this conclusion.

OEEO complaints may be filed anonymously. In 1999, 15.3% of all cases filed with the OEEO involved retaliation claims, indicating that Department employees in fact seek the assistance of OEEO to resolve such claims.

OEEO efforts to address retaliation include:

Department policy expressly prohibits retaliation.

OEEO contacts command(s) subsequent to the filing of complaint to re-emphasize prohibition against retaliation. (See Report p. 57, para. 2)

Independent Consultant conducted Retaliation Workshop for managers and EEO Staff in 1999 and 2000.

Deputy Commissioner, EEO addressed Executive Staff on retaliation issues in January 2000.

“Retaliation is prohibited” is conspicuously marked on EEO communications to parties of an investigation.

All witnesses and respondents in EEO cases are reminded during interviews related to EEO investigations that retaliation is unlawful.

During the pendency of an investigation, OEEO will take remedial action, if warranted, to quell retaliation. See *USA v. NYPD (Goff)* Settlement Agreement, para. 46 (Attachment F).

P. 53, Para. 1 contains the assertion that “. . . the NYPD has elected not to conduct such surveys.” In fact, OEEO has elected to conduct written confidential inquiries of controlled groups to ascertain if employment discrimination has occurred. Additionally, complainants and respondents are invited to comment on their experience with the OEEO process at the conclusion of each investigation.

P. 55, Para. 2 states that “Overhaul of the NYPD’s sexual harassment policies and procedures should result from the June 18, 1998 settlement . . .” In fact, the *Goff* Agreement, as well as our additional initiatives, have resulted in a significant overhaul of policies and procedures.

Mandates referenced in Commission Report which have been implemented include:

a. All supervisors and employees receive annual instruction on acts which constitute employment discrimination, and complaint reporting procedures. (See Report p.55, no.1)

b. “Managing Diversity and EEO Issues” a two hour program was added to the Executive Development Curriculum in 1998. This course is regularly taught by the Deputy Commissioner, EEO. (See Report p.55, no. 2)

c. The Deputy Commissioner, EEO and her staff regularly confer with the Director of Training and his staff; reviews all lesson plans that address EEO issues; participate in training workshops for instructors, and host joint training sessions/events. (See Report p.56, no. 3)

d. Police Academy exams contain questions concerning EEO issues. (See Report p.56, no. 4)

e. All employees received the 1999 EEO policy booklet. This booklet is currently being revised for 2000 distribution. Similarly, the sexual harassment pamphlet and department policies concerning employment discrimination are regularly distributed. (See Report p.56, no. 5)

f. Procedures for handling OEEEO complaints were amended in 1998. Copies of the 1998 amendments as well as the revised Patrol Guide procedures are attached. (See Report p.56, no. 6 and Attachments G and H)

g. In 1998, staffing was increased to 35 employees. (See Report p.56, no. 7)

h. In 1998, OEEEO records and case histories were computerized. (See Report p.56, no. 8)

i. Survey of EEO complainants was conducted in 1999. (See Report p.56, no. 9)

Other OEEEO initiatives not addressed by Report

- Revitalized EEO Liaison Program - from 59 Liaisons of record in 1996 to over 300 (see 1999 Policy Booklet, 1996 Annual Report).
- Developed OEEEO Investigator's Guide (Attachment I).
- Developed Sexual Harassment Video in cooperation with Police Academy.
- Performance Appraisals of Supervisors include consideration of compliance with Department EEO policy.
- Increased command profiles. Conducted 106 command profiles in 1999. (See OEEEO Report p.11).
- Conducted 60 Commander Briefings in 1998 (Involve briefings with commanders with substantiated complaints).
- The Police Commissioner addressed executive members of the Department in 1998 re: renewed initiatives to address employment discrimination.
- The Deputy Commissioner, EEO addressed auxiliary police officers in April 2000.

As the above indicates, the Goff Agreement mandates provided a sound framework to allow the NYPD to continue to vigilantly address employment discrimination.

P. 58, Para. 1 states: "According to the OEEEO, cases are generally completed within 90 days; however, this does not include the time taken by the Commissioner to issue his final recommendations and findings." It should be noted that the time-frame imposed is mandated by City regulations pursuant to the Goff agreement (para. 59).

The Deputy Commissioner, EEO implemented a policy to ensure that cases are investigated within the time-frame whenever possible through regular case reviews and augmented staff. During the pendency of the Police Commissioner's review, investigators maintain contact with complainants. Additionally, City regulations recognize that some investigations must take longer than 90 days and provide a notice procedure to DCAS in those cases. Those regulations are followed by OEEEO in instances where investigations take more than 90 days.

P. 58, Para. 2 states that "...OEEEO investigators received . . . nine days training at Cornell University's New York State School of Industrial and Labor Relations." All OEEEO investigators are required to become certified in EEO Studies by Cornell University. Workshops taken in pursuit of this certificate include: The Law of EEO, EEO Selection and Performance Management, Data Analysis for EEO Professionals, and Resolving EEO Complaints, as well as a series of electives.

P. 59, Para. 1 questions the ability of investigators to "properly utilize this substantial training . . . given the severe under-staffing of the OEEEO" and to "properly investigate all claims filed by NYPD personnel." OEEEO staffing was increased to 35, a 75% increase, in 1998. Personnel additions included an Executive Officer in the rank of Captain, as well as two lieutenants. These managers possess significant investigative experience and case load management expertise.

P. 59, Para 2 states that in 1996, "only 20% of all OEEEO complaints were determined to involve prima facie basis for investigation." Augmented staff in 1998 has resulted in enhanced case assessment. OEEEO proactively addresses complaints that involve petty slights, or single disparaging comments, as well as offering counseling and referrals to individuals whose concerns may, after review, not involve employment discrimination. Each case is objectively reviewed on a case-by-case basis to determine whether the requisite prima facie elements of employment discrimination are met.

P. 59, Para. 2 also states: "...although complaints to the OEEEO decreased, formal complaints to outside agencies increased in 1996, possibly indicating that NYPD employees lack confidence in the OEEEO. . . ." Rather than support this conclusory statement with fact, the Report ignores the fact that other reasons may contribute to employees seeking resolution in outside agencies, such as the desire to receive monetary reward rather than discipline of the offender and/or corrective measures. The significant efforts of the Department to enhance its OEEEO policies and practices, such as an augmented EEO liaison program with hundreds of volunteers who support OEEEO efforts, and the greatly increased training and interaction of commanders and supervisors with OEEEO, as well as mandatory annual meetings between commanders and their supervisors, and heightened awareness of EEO issues, demonstrate that the NYPD is serious about addressing employment discrimination of all types, and that the appropriate message is being conveyed to all employees.

P. 60, Para. 1 states that "There is no information regarding the standards used by the OEEEO for making this determination. . . ." and "no information is available that discusses the factual settings in which the OEEEO does or does not initiate an investigation or the recommendation made by OEEEO for various offenses." It is again unclear why the Commission did not ask for this information. Each case is analyzed on a case-by-case basis by certified EEO investigators and supervisors, using criteria established for EEO specialists. As previously noted, the hallmark of EEO investigations is the individualized assessment undertaken in each case to determine whether a prima facie claim of discrimination has been articulated under the circumstances.

P. 60, Para. 2 again complains that "no statistics have been provided regarding the dispositions of OEEEO complaints . . . percentage of claims result[ing] in corrective action or discipline . . . [or] what types of corrective action or discipline were imposed."

The Commission never requested this material. Nonetheless, the Commission dishonestly attempts to imply that the NYPD refused to provide this information and is therefore trying to hide negative information. This implication is entirely false. As in other areas of the Report which make similar implications, if the Commission was lacking in information that it wanted, it was because the Commission never asked for it.

In 1998, the OEEEO resolved a total of 173 cases by completed investigations which were endorsed by the Police Commissioner. Of this total, 52 cases were deemed to be substantiated, and 2 were conciliated. Disciplinary action was issued in a majority of those cases deemed to be substantiated. Of the 52 cases that were deemed to be substantiated, where there were identifiable respondents, Schedule "A" command disciplines (with penalties ranging from a warning up to a loss of five days) were issued in 20 cases, Schedule "B" command disciplines (with penalties ranging up to a loss of ten days) were issued in 19 cases, and Charges and Specifications were issued in 12 cases. (See OEEEO Report December 31, 1999, pp.8-9)

P. 62, Para. 1 quotes Katherine Lapp, Commissioner of the Criminal Justice Services for the State of New York, in that Police Department officers are "better trained, more educated and more restrained at any time in the Department's 150 year history when compared to other urban police forces."

There is substantial data that supports these assertions. For example, firearms discharge incidents have consistently declined since 1995. In 1999 alone they have been reduced by 37.8%. It should also be noted that this four-year decline has occurred even after this Department merged with the Housing and Transit Police Departments in 1995. Furthermore, the number of police involved shootings were 54% less in 1999 than in the year of the merger. As for being more educated, the current class has a mean age of 26.3 and 51.5% of them are City residents, 53.56% have baccalaureate degrees, 18 officers have masters degrees and 2 have Juris Doctorates.

Yet, despite the objective criteria which demonstrate repeatedly that NYPD training is a nationwide model, this section contains some of the most objectionable, biased, selective, and conclusory statements of the entire Report. They will be discussed in detail.

P. 62, Para. 3 states "All new recruits receive five days of firearms qualification training and five days of tactics training in the police academy. The Academy has added 2 additional days of tactics to bring range training to 12 days, not 10 days.

Pp. 64 through 67 discuss the Department's Cultural Diversity Training, but neglects to include our Visiting Professors Program, which may be the only type of its kind in the country, or the Behavioral Science Advisory Board.

P. 65 questions whether the diversity training is taken seriously by officers that are part of an institution that is often perceived to hold prejudices against people of color and women. There are no studies cited to support this statement. The Commission utilizes the opinion of one individual without any empirical data and then uses this opinion to question the validity of the Academy's cultural diversity training program. This program was developed with significant contributions from prominent and recognized experts in the field of Cultural Diversity.

The Report contains the following passage at p. 65, para. 2: "Cultural diversity training and related materials designed to improve relations between police and their communities and reduce bias and stereotypes are themselves often laced with negative and potentially offensive stereotypes of minority ethnic and religious groups and women." To demonstrate this point, the Report selectively quotes from material that is obsolete and misrepresents the context in which the quotes were placed. Our Behavioral Science curriculum dealing with diversity training is state of the art and is in line with that given by City and other universities. It was developed with the assistance of a Behavioral Science Training Advisory Board that consists of renowned experts in the field (see below), and is supplemented by members of our Visiting Professor Program, who also participate in instruction.

Further, it is ironic that the Commission criticizes the NYPD for "perpetuating stereotypes" when they make or rely on comments in the Report such as:

"Part of the allure of New York City is the tremendous diversity of its residents. Unlike many Asian and European cities . . ." (p. 6)

"the NYPD starts talking about cultural sensitivity and the culture of other races, it needs to seriously examine its own culture of racism and brutality." (p. 88)

The problem of police brutality "resides with individual officers, the [officers] themselves are racists and dealing with individual officers won't root out the problem." (p.88)

Overview of the Current Behavioral Science Curriculum

The Behavioral Science Department's twenty-four hour cultural competence track is comprised of eighteen subject areas utilizing innovative methodologies currently being used in the field of social work. This multi-cultural and anti-racist curriculum addresses the historical roots of racial prejudice and discrimination by directly confronting prejudice through the discussion of past and present racism, stereotyping, and discrimination in society. It teaches the recruit officer the economic, structural, and historic roots of inequality.

The Theory of Cultural Competence for Police Officers can be summarized utilizing three major principles:

- 1) As a human service provider, police officers must be knowledgeable about the various groups living in New York City.
- 2) Be self-reflective and to recognize biases within themselves and within the profession.
- 3) Integrate this knowledge and reflection with practice skills.

Central in the Cultural Competence track are:

- Effective communication, explosive phrases and racism in language that creates barriers to communication, and perception.
- Socialization, culture, subcultures.
- Attitudes, Prejudice and Myths.
- Racism, Sexism, Heterosexism, Homophobia, Classism, Anti-Semitism, Ageism, Ableism. Issues of oppression and privilege are discussed and experientially based methodologies employed.
- Colonialism and genocide of Native Americans.
- Historical and political perspective of slavery and the African American experience both historically and presently.
- Historical perspective of immigration, migration and diversity of New York City as it relates to the European immigration.
- New Immigrants; Latino, Caribbean, Asian, Arab, African and Russian speaking communities.
- Religious diversity.
- Lesbian, Gay, Bi-Sexual and Transgender Communities
- Hate crimes
- Sexual harassment and EEO policies

The Behavioral Science curriculum employs various interactive methodologies as part of the training such as: films, role play, socio-drama, forum and interactive theater techniques, adventure based learning, simulation, reflective team exercises, and consciousness raising techniques. By utilizing learner-centered methodologies, a bridge is built between theory and practice thereby allowing the recruit time to rehearse and be evaluated in a sterile environment.

The curriculum includes the use of two (2) texts which are required reading:

Foner, N., (1987), New Immigrants in New York. NY: Columbia University Press and

Rothenberg, P., (1998), Race, Class, and Gender in the United States. NY: St. Martin's Press.

Note that the Commission itself utilizes the Foner text as source material, beginning on p.11, fn 18.

During recruit training, recruit officers visit the following locations in addition to the cognitive and experientially based learning around the issues of cultural competence: Ellis Island Immigration Museum, National Museum of the American Indian, Museum of Jewish Heritage; A Living Memorial to the Holocaust, the African Burial Grounds, The Harlem Museum, and Museo del Barrio.

The Leadership Section offers a full day seminar to sergeants, lieutenants, and civilian managers on "Cultural Competence." This leadership seminar, conducted by the Chairperson and Assistant Chairperson of the Behavioral Science Department is a shortened version of the twenty-four hour training conducted for recruit officers. It is an engaging day long training program, utilizing various experientially based exercises, which aim to raise consciousness around the issues of oppression and privilege.

Specific Responses to Report Criticisms

P. 66 starts by making several positive statements such as "The training begins with sophisticated discussions of the nature, forms, and barriers to effective communication." This is followed by attempts to turn these into negative commentaries by accentuating the discussions of stereotyping, racism and sexism. The open and frank discussions on racial stereotypes are necessary in adult education. We must deal with the negatives, negative stereotypes etc., and address these issues head on.

P. 66, Para. 2 quotes a phrase, that using racial epithets and jokes will result in "anything but friends" This is taken out of context and fails to include critical statements, such as: "The use of degrading substitutes for the names of national, religious, and racial groups is racist language and perpetuates hatred."

Pp. 67-68 criticize the Police Academy training materials. This is a baseless allegation. The report fails to include the Behavioral Science Department's current methodologies that have been researched in the social work literature and are currently being utilized in anti-racist and multi-cultural education all over the U.S. (Morelli & Spencer, 2,000; McGregor & Ungerleider, 1993; McGregor, 1993; Lee, 1994; Ungerleider & McGregor, 1992)

P. 68 criticizes material concerning the notion of assimilation. The Report fails to include that this was removed in May 1998, because the concept of assimilation, as held by social welfare scholars years ago, is no longer considered to be valid in today's multi-cultural society. This material has been replaced with readings from consciousness-raising articles from modern scholarly texts in the field of social welfare.

P. 68 is critical of the use of what it considers to be stereotyping material. The Report misrepresents the material as student material, and fails to include that this is taken out of context from the Instructor Lesson Plan that is used as a guide for these lessons on the "new immigrants". These lessons are "recruit-oral presentation-driven" and the lesson plan is used as a guide to insure that the recruit makes the necessary points. These terms are utilized as educational tools, not as facts, to point out the lunacy of stereotypical language. These concepts or terms are taken from the resource guide entitled, The Hispanic American Almanac: A Reference Work on Hispanics in the United States, Gale Research, Inc. 1993. The advisors and contributors of the Almanac are as follows:

Advisors & Contributors of Almanac:

Dr. Edna Acosta-Belen, Director, Center for Caribbean and Latin American Studies, University of Albany

Dr. Rodolfo Cortina - Professor of Spanish, Florida International University

Dr. Rodolfo de la Garza, Professor of Political Science, University of Texas

Dr. Ricardo Fernandez, President, Lehman College
Dr. Arturo Madrid, Director, The Tomas Rivera Center, Claremont, California

Tatcho Mindiola, Mexican American Studies Program, University of Houston

Dr. Michael Olivas, Associate Dean of Law and Director of the Institute for Higher Education Law and Governance, University of Houston

Jude Valdez, College of Business, University of Texas San Antonio

Pp. 68 - 69 are critical of references to the Chinese & African American communities, to Jews, women and gay and lesbian people. The Report fails to include that these excerpts are taken from old curriculum (1996) and have been removed since May 1998 because they were anecdotal, and not supported by empirical evidence. This material was replaced by a text, New Immigrants in NY, by Nancy Foner. This book is highly respected and widely used at the college level. The Commission was made aware of this fact.

P. 69 is critical of what it cites as "a list of derogatory terms . . ." This material was taken out of context and fails to include critical statements such as, "The use of degrading substitutes for the names of national, religious, and racial groups is racist language and perpetuates hatred."

P. 70 states, "Training materials contained culturally insensitive information." "The reading material reinforced disparaging stereotypes about immigrants and their impact on the city." "They reinforce stereotypes of immigrant communities, as foreign, as really different."

The opposite of this statement is true: we do not focus on differences, because focusing on the differences is an intellectual dead end. We discuss the differences, then focus on the similarities. These misconceptions are likely to occur when assertions such as those in the Report are drawn based on the testimony of individuals who base their conclusions on their own perceptions rather than observation or expertise, or the current curriculum.

P. 70 cites Norman Siegel's criticism that "there are only three paragraphs about the Dominicans . . ." in the training materials. The Report fails to include that the Behavioral Science curriculum requires all recruit officers to purchase and read New Immigrants in NY, (Foner, 1988) which includes an entire chapter on the Dominican immigrant (27 pages of text).

P. 71, Para. 1 states, "materials struggle to address concerns." The Report fails to include the consciousness-raising articles utilized from Race, Class, and Gender, (Rothenberg, 1998), which all recruits are required to purchase and read. Some of the articles include: McIntosh, "White Privilege", Yamato, "Racism: Something about the Subject Makes It Hard to Name", and Lorde: "Age, Race, Class, and Sex: Women Redefining Difference". These articles are suggested in all multi-cultural and anti-racist education (Morelli & Spencer, 2,000; McGregor & Ungerleider, 1993; McGregor, 1993; Lee, 1994; Ungerleider & McGregor, 1992; Jacobs & Bowles, 1988).

P. 72, Para. 1 states “the materials are internally inconsistent,” but the Commission offers no example of inconsistency. CPR is taught at all levels of this organization and is a consistent theme in all of our training.

P. 73 expresses the need for “cultural and language sensitivity training,” but fails to include the current curriculum consisting of the “Interactive Language Workshop.” In addition, we provide all recruits with a book of Spanish phrases at Department expense.

P. 73 asserts that instructors are not qualified and some only get one day of training prior to teaching. Each Police Academy instructor has completed a two-week method of instruction class and is certified by New York State Division of Criminal Justice Services, Bureau of Municipal Police. They attend ongoing staff development from outside curriculum advisors from prestigious schools of social work and psychology. Instructors also have significant police experience.

P. 74, Para. 1 states that the audience for a hate crimes seminar “looked like they had never seen the material before.” In fact, this seminar was a new training initiative, and the material was being presented to the audience for the first time.

P. 74, Para. 2 states, “since most abuses involve veteran officers, [they] should be required to participate in these training sessions.” In fact, this training is required for all officers, from the newest rookies to the most seasoned veterans. We have trained over 30,000 in-service personnel in Verbal Judo, which is essentially a course built on respect.

P. 74, Para. 2 recommends, “When any officer reaches another level, gets promoted . . . they need to be re-trained.” This recommendation was based upon testimony by Howard Katz who is apparently unaware that NYPD has conducted training courses for new promotees for many years. The Commission never investigated the accuracy of this testimony, but chose to include it in its report at face value. In fact, newly promoted sergeants are given a 27-day program that includes a field training component. New lieutenants and new captains receive 12 and 20 days of training respectively. There is a cultural awareness component in every single course that we give.

P. 74, Para. 3 cites a need to consult with community leaders in the preparation of training materials. The Report fails to include the current list of academic and scholarly curriculum advisors from reputable schools of social work and psychology and professional service providers who participate in curriculum development and review.

Curriculum Advisors

Ms. Fatemeh Arirrezuani
Director
NYC Rape Treatment Consortium

Ms. Natasha Kaufman
Deputy Director
NYC Mayor’s Office of Immigration Affairs

Ms. Margaret Berger
Director
Visiting Nurses Association

Dr. David Koch
Assistant Professor
Fordham University
Graduate School of Social Services

Dr. Irene Deitch
Licensed Psychologist and Professor
Staten Island College

Ms. Anita Laviola, C.S.W.
Counselor
The Door

Ms. Kris Drumm
Community Organizer
Senior Action in a Gay Environment

Dr. Manning Marabel
Professor
Columbia University
Institute for Research in African American Studies

Dr. Raymond Fox
Professor
Fordham University
Graduate School of Social Services

Dr. Doug Muzio
Professor
Baruch College

Ms. Susan Fox, C.S.W.
Associate Executive Director
The Shore Front YM-YWHA

Dr. George Patterson
Assistant Professor
New York University,
Shirley M. Ehenkranz School of Social Work

Dr. Daniel Herman
Research Scientist
Columbia University
College of Physicians and Surgeons
Department Of Psychiatry

Dr. Zulema Suarez
Assistant Professor
Fordham University
Graduate School of Social Services

Specifically with respect to the development of the *Streetwise* Cultural Diversity Curriculum, NYPD solicited extensive community input. Under the Direction of the Deputy Commissioner, Community Affairs, the curriculum was developed for the NYPD by a team of professors from the City University of New York who are specialists both in pedagogical issues and various ethnic and cultural groups within the City. In 1998 and 1999, as a first step in developing the curriculum, the *Streetwise* team held focus groups with a total of **one hundred and seven (107) community members** from the Hispanic, African/Caribbean-American, Chinese, Haitian and Russian communities. These focus groups were held in Washington Heights, Harlem, St. Albans, Crown Heights, Brownsville, Brighton Beach and lower Manhattan.

P. 75, Para. 2 makes only a passing reference to the *Streetwise* training, even though it is one of the most extensive cultural diversity programs in the nation. In the spring of 1997, The New York City Police Department, through the Office of the Deputy Commissioner Community Affairs (DCCA), received a one-year Regional Community Policing grant from the U.S. Department of Justice Office of Community Oriented Policing Services (COPS). The \$1,000,000.00 grant was shared by the NYPD, John Jay College, the Citizens Committee for New York City and the Bureau of Municipal Police who operate as partners in the *New York State Regional Community Policing Institute*.

The Institute develops training curricula for law enforcement providers that foster community policing, which is defined as building police/community partnerships that enhance police/community relations. Each partner develops a specialty training, and the NYPD component focuses on cultural diversity.

One of the Institute's major accomplishments was to develop and deliver a one-day cultural diversity training, *Streetwise: Language, Culture and Police Work in New York City*, to over 1,000 newly graduated police officers from the **June 1998** recruit class.

The curriculum was developed by the City University of New York, in coordination with the NYPD and members of the community. It consists of discussions, role plays, videos and a two-hour language class. Handouts include an audiotape and memo book insert with phrases in the target language. The four original curricula were: African/Caribbean-American; Haitian; Hispanic and Chinese, as well as language classes in Haitian-Creole, Spanish and Chinese. Classes were taught by teams of Training Sergeants and experienced Police Officers from the new officers' future command, with language instructors provided by the City University of New York.

As a result of the training's success, the Institute was re-funded for a second year. The curriculum was expanded to include a new, full length videotape on the African/Caribbean-American Community and a curriculum on New York City's Russian community. *Streetwise* training was delivered to 1,987 graduates of the February and April, 1999 Academy classes. In September, 1999 the Institute was re-funded for a third year. A new curriculum is being developed, which includes the Indian, Pakistani, Bangladeshi, and Sikh communities and the Gay, Lesbian, Transgender and Bi-sexual communities, as well as In-Service *Streetwise* training for experienced officers.

P. 77, Para. 2 states, "Community leaders criticized these efforts." The members of the Curriculum Advisory Panel, listed above, are a diverse group of educators and social service professionals who work in New York City. It would not be possible to include everyone who considers themselves to be community leaders on the panel. All arguments contained in this paragraph are made by people who have never seen the Department's training, which, for field officers consists of five full training days per year, and one hour per week of precinct level training per person. Once again, the Commission chose to accept this testimony as fact.

Pp. 78-79 discuss sexual harassment training, but fail to note the current film produced by OEEEO that include various scenarios (20 minutes in length). The Report also fails to include the current Interdisciplinary Theater Workshop on sexual harassment (7 hour training). At least one test question on every recruit quarterly exam deals with sexual harassment and/or EEO issues. Additionally all personnel attend 1 day of training per year which contains a sexual harassment segment.

Pp. 80-81 state that staff/instructors should represent diversity and that the quality of the materials used in training is irrelevant if the instructors are not qualified. The sweeping criticisms contained in this passage, in the characterization of both the instructors and the student officers are based on little to no evidence beyond personal anecdote. The Commission did not request to attend any training sessions, nor did it request information on the training that instructors receive.

The Report does not indicate whether the Congressional case worker referred to informed the NYPD of her experience or made a complaint so that the matter could be investigated.

The NYPD categorically rejects the notion that there are deficiencies in our training, and that such deficiencies are created by a lack of ethnic diversity. With respect to the demographic makeup of Police Academy instructors, since the Department assigns its instructors from its employment resources, it is natural that the makeup of the instructors reflect the demographics of the Department, rather than the City. In fact, the Police Academy is overrepresented by female officers (23%) and African American officers (23%) when compared to the Department as a whole.

The demographic breakdown and academic credentials of the Behavioral Science Department specifically are also relevant and should have been included in the Report.

Breakdown:

46 % White 37 % African American 15% Latino 2 % Other

73% Male 27% Female

12% openly gay or lesbian

Academic credentials:

10% possess an Associates Degree

44 % possess a Bachelors Degree

7 % possess a Masters Degree

The Director of Training has a PhD. and is an Adjunct Professor of Criminal Justice leadership at St. John's University. The Commanding Officer of the Police Academy is an attorney and an Adjunct Professor at Iona College. The Chairperson of our Police Science Department has a Masters Degree and has completed a Fulbright Fellowship. The Chairperson of the Law Department is an attorney and holds a graduate degree from Harvard University. The Chairperson of the Behavioral Science Department is a Ph.D. candidate (ABD) at Fordham University's Graduate School of Social Service.

The NYS Board of Regents that accredits every college in the state allows us to grant academy graduates 28 college credits based on the academic credentials and leadership of instructional staff as well as our college level curriculum.

P. 82, Para. 1 states, "a handful of other materials take a more cavalier approach toward constitutional requirements, exalt officer safety over other important objectives, or, worse still, provide officers with incomplete information. In particular, the NYPD's in-service stop and frisk training may fail to instill respect for adherence to constitutional procedures." The Report cites two short quotations (pp. 82 and 86) from among all of the materials reviewed.

The Report fails to identify the criteria utilized to make this assertion, and fails to specify which training is lacking: Recruit, In-Service, Leadership, etc. For example, the In-Tac training program has always included training on Stop, Question and Frisk tactics, with the relevant legal parameters being an integral part of this instruction. The training addresses the procedural aspects, as contained in the Patrol Guide; it also utilizes Legal Bureau Bulletins and the New York State Criminal Procedure Law to give students an understanding of how the above mentioned constitutional procedures are applied in real life, field situations. The subject is discussed during the post role-play critique with particular emphasis being placed on having students articulate the facts that support their actions.

P. 83, Para. 1 expresses the Commission's mistaken belief that NYPD training materials have emphasized personal safety over respect for individual rights. The Report's implication that officer safety is not a valid concern demonstrates an abject failure to understand the law in this area. The passage goes on: "These instructions correctly indicate that the law balances police safety and individual rights - and then suggest that officers may strike a different balance that resolves all issues in favor of personal safety."

The Commission has taken one line out of context. As the Report recognizes elsewhere, the Recruit Training manual "provides accurate descriptions of constitutional stop and frisk procedures and requirements" (p. 82, para. 3). Additionally, recruits read the entire Terry v. Ohio decision and are required to write a brief on the case and discuss it in class. In light of the Report's recognition of the comprehensive nature of the training materials, it defies logic that the Commission would take only one line from the many materials used, to denigrate the NYPD's training on stop and frisk law.

Moreover, the Terry decision itself clearly recognized the dangers inherent in police work in upholding stop, question and frisk based on reasonable suspicion of criminal activity combined with a reasonable fear of harm on the part of the police officer.

P. 83, Para. 3 quotes from a guide, "Practical Tips for New York Law Enforcement," which is incorrectly identified as a part of the NYPD Patrol Guide. In fact, the material is a study guide published by a private company, Gould Publications.

P. 84 also criticizes the Patrol Guide procedure on Stop, Question and Frisk (PG 116-33). This Section gives a list of factors that could lead an officer to establish reasonable suspicion. The Guide does not state that these factors would immediately provide reasonable suspicion, as the Commission implies. The guide merely offers a compilation of factors that could lead to the establishment of reasonable suspicion. These factors are taken from the various U.S. Supreme Court and N.Y. Court of Appeals cases regarding Stop, Question and Frisk. The Patrol Guide is not meant to be an all-encompassing legal text; its provisions are supported by Legal Bureau Bulletins and other training materials.

P. 85, Para. 1 attributes a quote to the New York State Court of Appeals which is actually from an Appellate Division opinion. Even the citation given in the footnote (which is correct) is to an Appellate Division case.

P. 85, Para. 2 is gravely flawed in its discussion of Legal Bureau Bulletins. It cites "Volumes 17 and 25" of the Legal Bulletins as containing basic instruction on Terry stop procedures. However, Volume 17, which is for the year 1987, has ten separate bulletins, No. 1 of which is entitled Stop, Question and Frisk. Volume 25 (1995) has five bulletins, No. 1 of which covers Street Encounters. The quotation purporting to be from "Volume 25" is nowhere to be found in Bulletin No.1 of either Volume 17 or 25. Additionally, since 1971 there have been approximately 20 Legal Bulletins which could be categorized as covering the law of Stop, Question and Frisk, including a bulletin on the DeBour case (Volume 6, No.11).

P. 86 discusses the NYPD's In-Tac Training Program and suggests the agency supports a borough-based training program. It states that it is unclear when and under what circumstances officers are required to attend In-Tac training. It further criticizes material that it believes indicates a cavalier attitude toward constitutional requirements

The Report refers to borough-based training as a current component of the Department's in-service training regimen. Borough-based training was supplanted by the In-Tac training program in 1996.

The Report fails to acknowledge the fact that the Department issues an annual Operations Order (currently, number 2-2, series 2000) relative to the In-Tac training program. This order clearly states that attendance for police officers and detectives from all units under designated parent commands, is mandatory. The order also sets forth daily numerical attendance allotments that commands are directed to adhere to.

The characterization that the United States Supreme Court Justices "pondered, researched, discussed, smoked a lot of cigars . . ." before rendering a decision is indeed contained in a 1992 lesson plan that was intended to be presented verbally. The material is contained in the introduction to the Justification lesson plan, and was intended to illustrate the fact that police officers are often required to make split second decisions under stressful circumstances, while judges have the opportunity to extensively review these decisions under safer conditions. While the Commission frowns on the tone of the excerpt, the material makes a very serious point which must be reinforced for all police officers.

The point of introducing Terry v. Ohio at the beginning of reinstatement training regarding justification is to show, by example, how a seemingly routine police interaction can be subject to years of judicial review. The lesson plan cited has not been used since 1998.

It should be noted that Reinstatement training is a fifteen-day course intended as a refresher for officers who have completed the Police Academy training and were later briefly separated from the Department.

P. 87, Para. 1 expands the testimony of one individual who claims to have seen "TOSS, TOSS, TOSS" on a training board in one station house, plus two quotes the Commission found questionable, into a wholesale indictment of the Department's "sporadic, inadequate training, lackadaisical attitudes, and mixed messages." This is an obviously absurd conclusion, based on one alleged observation, and is unfortunately quite typical of the Commission's use of unsubstantiated anecdotes as a substitute for credible research throughout the Report. Additionally, in doing so, the Commission ignores its own findings regarding the quality of legal training materials it reviewed.

P. 88, Para. 1 recites the testimony of Ms. Hyun Lee, who recommends that the Department "seriously examine its own culture of racism and brutality" and discusses as an example the "huge discrepancy" in the rates of indictments of civilian defendants in general and police officers accused of misconduct. Such a discrepancy "raises doubts in New York City about equal protection under the law." These conclusory statements are accepted without further inquiry in the Report, even though they are utterly lacking in a factual basis. Moreover, apparently both the Report and Ms. Lee fail to grasp that criminal indictments are brought not by the Police Department but instead by independently elected district attorneys in each borough. Thus, Ms. Lee's example of the NYPD's supposed failure to root out brutality, in fact, has nothing to do with the Police Department. Furthermore, the Report's apparent implication that police officers should be indicted whenever they use force against civilians is absurd.

The Report fails to distinguish between administrative misconduct and criminal conduct and assumes that the two are equally serious. It also fails to take into account that many charges against police officers are made by people with whom they have had an unpleasant encounter (arrest or summons) after the officer, often acting

in response to a complaint from a victim or witness, takes police action. The Report also seems to assume that the criminal use of force by police officers is a routine practice. The Commission fails to understand the unpleasant fact that officers must sometimes use force, including deadly physical force, during the course of performing their lawful duties. The law recognizes that fact in the form of specific statutes allowing the use of force under appropriate circumstances.

P. 88, Para. 2 recommends that the Department mandate protection of officers who testify under oath to protect criminal and brutal officers. Safeguards are already in place, through the City's whistleblower law and rules of the NYPD, and through state law regarding perjury, as well as through the Police Commissioner's policy of termination for false statements, absent exceptional circumstances.

Since December 12, 1996, when this policy went into effect, Commissioner Safir has dismissed 68 police officers who had been charged with making a false official statement.

Mandating federal punishment would therefore be duplicative and unnecessary.

P. 89 recites recommendations of the Mayor's Task Force on Police Community Relations. As discussed elsewhere in this response, the NYPD has provided to the Commission a full description of the implementation or partial implementation of the Task Force recommendations, contained in the statement of the Police Commissioner before the City Council on December 9, 1999 (Attachment J).

Specifically with respect to continuing the collaboration with the New York State Regional Community Policing Institute, in 1997 the federal government funded thirty-five (35) Regional Community Policing Institutes nationwide for one year with the proviso that second and third year funding would be dependent on the success of the first year initiatives. Because of the successful *Streetwise* training, the New York State Regional Community Policing Institute was funded for a second and third year. Only 28 Institutes have been funded for three years.

With respect to enhancing "diversity training with . . . memo-book inserts including language cards containing basic phrases of use to officers in dealing with their community," as part of the *Streetwise* Cultural Diversity Training, officers are provided with memo book inserts that list useful phrases in the language of their community. In addition, they are given audio tapes on which the same phrases are spoken.

With respect to the Commission's recommendation to create a Board of Visitors for the Police Academy to review the Police Academy curriculum, such a board was created by the Police Commissioner on May 6, 1999. The Board is made up of 15 prominent individuals from the business, legal and academic communities, as well as community leaders and former members of the Police Department. The mission of the Board of Visitors is to observe and review the training given by the Police Academy, entry-level and in-service, and to make substantive recommendations utilizing each board member's expertise in his or her particular field. The Board also reviews recruitment practices. It is accomplishing its mission through regular meetings and the formation of four sub-committees on Recruitment/School Safety Training, Leadership Training, In-Service Training, and Firearms and Tactics Training.

Board Of Visitors

Aminata Coker, Chairperson, Judiciary Committee, United African Congress

Lorraine Cortez-Vazquez, President Hispanic Federation

Stanley Crouch, Columnist, New York Daily News

Ralph Dickerson Jr., President United Way of New York City

Stephen Duncanson, Chief of Staff, Christian Life Center

Brigadier General John Gentile, Consultant

Richard Green, CEO, Crown Heights Youth Collective

Abraham Foxman, Director, Anti-Defamation League

Jules Martin, Asst. Vice President of Protection Services, New York University

John Mogulescu, Dean of Academic Affairs, City University of New York

Imam Izak-El Mu'eed Pasha, NYPD Chaplin

Thomas Reppetto, President, Citizen's Crime Commission

Deborah Taylor, Director, Member Services, Federation of Protestant Welfare Agencies

Charles Pei Wang, Director, Childcare Center Development Fund

Carmen Vazquez, Director of Public Policy, Lesbian & Gay Community Service Center

P. 90 ends Chapter 2 with a conclusory set of platitudes which are unclear at best. The Commission fails to grasp that the Police Academy is one of the most progressive training institutions in the country. Law enforcement officers from all over the United States and the world are continually requesting to review our training programs and policies and quite often to attend our many programs. Despite this stellar international reputation, the Department is always on the forefront of developing new and innovative training programs and is constantly reaching out to the academic communities for new and creative training recommendations. As previously stated, the NYS Board of Regents allows 28 college credits to Police Academy graduates, based on the

quality and content of the Police Academy curriculum. If the Commission had made even a minimal effort to engage in objective research in this area, this point would have been quite clear. However, instead of sound, objective research, the Commission chose to rely on unsubstantiated anecdotes freely supplied by a few consistent Department critics.

CHAPTER 3

POLICE COMMUNITY RELATIONS

P. 94, FN 412 accuses the NYPD of failing to provide adequate information to the Commission. In no way was the Department informed that the Commission required additional information; if so it would have been provided. As mentioned earlier, a copy of the Police Commissioner's full description of the implementation of the Task Force recommendations, as well as the recommendations of the Dissenters and the City Council Public Safety Committee, is attached.

P. 97, Para. 3 discusses Precinct Community Councils. The Office of the Deputy Commissioner Community Affairs completed its review and update of the Precinct Community Councils guidelines. The new Council Rules and Regulations clearly define specific rules and regulations for all the Councils to follow in dealing with the issues of structure, fund raising, elections and term limits. The goal was to encourage greater community participation and increase effectiveness. The Precinct Community Council Regulations are attached (Attachment K).

A Precinct Community Council Forum was held on May 26, 1999, hosted by the Police Commissioner. The new Precinct Community Council Rules and Regulations were given to all Council presidents, along with information on other Police Department Civilian Participation and Community Outreach Programs.

As a follow up to the forum, a Precinct Community Council Symposium was held on November 22, 1999 at the Borough of Manhattan Community College. The purpose of the symposium was to further educate council presidents about the new rules and regulations that would become effective January 1, 2000. Participants attended four workshops on *Fundraising, Organizational Techniques, Developing Neighborhood Youth and Crime Prevention Strategies and Collaborative Problem Solving*. An important proposed initiative was the development of a Citywide Precinct Community Council Committee to provide a central forum for addressing Council issues.

P. 99, Para. 2 discusses the Model Block Program. The Model Block Strategy is a cooperative effort between the Patrol Services Bureau, the Narcotics Division and the Office of the Deputy Commissioner Community Affairs. It is an example of goal-oriented community policing, designed to strengthen, stabilize and eliminate drug and criminal activity on the proposed Model Block. The strategy combines the Deputy Commissioner Community Affairs' Model Block Program with selective narcotics enforcement. The enforcement component is coordinated by Patrol Services Bureau and the Narcotics Division. DCCA coordinates the Community Outreach component which consists of helping residents organize tenant and block associations that will monitor, maintain and improve the block.

Currently, there are 22 proposed Model Blocks. Collectively, they have accomplished the following:

- 26 community members have graduated from the Citizen's Committee Neighborhood Stabilization Workshops. The workshops consisted of modules on community organizing, leadership skills and collaborative problem-solving between community members and the police.
- \$4,250 has been awarded from grants administered through the Reisenbach Foundation and \$19,086 through High Intensity Drug Trafficking Agency (HIDTA) awards. The funds were used for improvement projects on the block.
- Block associations have been created on 5 Model Blocks where they did not exist in the past. Additionally, these blocks have experienced a rise in civilian patrols, block watchers, tenant associations and other civilian participation groups.
- During the month of December 1999, 5 Model Block Holiday parties were sponsored by DCCA. These holiday parties involved Model Blocks in Manhattan and Queens. During these parties nearly 2,000 children received gifts distributed by the Police Department. Additionally, scores of new volunteers were solicited to become a part of the Model Block process.
- Through a joint effort with the Mayor's Community Assistance Unit, we have been able to coordinate the involvement of 8 city agencies, who have addressed quality of life problems on a number of the 21 proposed model blocks, including debris and the need for additional lighting.
- Finally, among these proposed model blocks, 3 blocks have met the criteria to be a "designated" model block and others are pending.

P. 102, Para. 4 through P. 103, Para. 1 begin with a detailed discussion of the system of accountability for the CPR strategy and CPR testing, and then claims that it suffers from "a deficiency in . . . standards." It should be pointed out that since the introduction of the CPR program in 1996, through 1999, civilian complaints are down 12.7%, total allegations are down 25%, and force allegations are down 40%. During the same period, uniformed strength has increased by over 4,000 officers. Additionally, civilian complaints are down 10.6% over 1999 figures through April 30, 2000. A copy of the NYPD's Code of Professional Standards is attached (Attachment L).

P. 103, Para. 2 reports a 99% CPR test acceptability rating; in fact, since the inception of the CPR testing program in October, 1996, through March, 2000, the combined "passing" and "exceptional" rate is slightly over 98%.

The Report goes on to state that "the concept of CPR is undermined so long as it is not tied to a system of discipline and accountability." Of the 173 test failures from October, 1996 through March, 2000, at least 90 officers have received formal written discipline. Moreover, accountability is reflected in the requirement that each failure be investigated by the officer's commanding officer. The commander must submit a written report on the findings of the investigation and include any corrective action taken.

P. 105, Para. 2 states that the Task Force recommended that the NYPD adopt a mandated policy and procedure manual for Precinct Community Councils. This has been accomplished, as described earlier.

P. 106, Para. 4 states that the Task Force recommended that the Youth Academy be expanded. Under the direction of the Deputy Commissioner, Community Affairs, the Youth Division operated various youth programs during the 1998/99 summer and school year that serviced approximately 117,439 young people citywide. It should be noted that four years ago, the NYPD established one of the first Youth Police Academies in the country.

P. 107, Para. 1 suggests role play interactions between youth and police officers. We are currently conducting workshops in various schools that educate young people on their rights and responsibilities in dealing with the police and the job of police officers. A copy of our pamphlet, "Your Rights and Responsibilities When Interacting With The Police," is attached (Attachment M). Additionally, we are in the process of developing a youth/police video and a High School curriculum to enhance police/youth relations.

P. 107, Para. 2 recapitulates the Task Force recommendation to implement police/community dialogues. To further advance the Department's crime reduction gains and foster positive police/community relations, the Office of the Deputy Commissioner Community Affairs expanded the CPR Strategy to include the following new initiatives:

Borough Forums

Six CPR Borough Forums have taken place since August, 1999. Two additional forums will take place in the near future. The events were held in the Bronx, Manhattan North, Brooklyn South, Manhattan South, Queens South and Brooklyn North with the following attendance by community residents:

- Patrol Borough Bronx - 350
- Patrol Borough Manhattan North - 325
- Patrol Borough Brooklyn South - 350
- Patrol Borough Manhattan South - 350
- Patrol Borough Queens South - 300
- Patrol Borough Brooklyn North - 325

The forums include presentations on crime reduction, CPR and Force Related Integrity Testing, recruitment, youth programs and cultural diversity training, all from a borough perspective. Following the presentations, a panel of NYPD executive staff answers questions posed by community members.

Precinct Open Houses

In 1999, DCCA coordinated citywide Precinct Open Houses, as a means of increasing involvement between community members and their precincts and PSAs. The events provided community members with the opportunity to discuss and obtain information on police/community issues while becoming familiar with command staff. The first Precinct Open House was held in June, 1999, and as of December, 75 Precinct Open Houses had been conducted and 6 are being planned for the year 2000.

Outdoor Range Events

During July and August 1999, DCCA organized three visits by community members to the Firearm Training Range, one especially for youth. The goal was to foster a better understanding of the complexity and quality of Department training, by giving the public a firsthand look at how police officers are trained to use their weapons. Attendees were able to visit the Tactics House, use the Firearms Training System ("FATS") machine and see various demonstrations and participate in role plays. These events were very well received and will resume in the Spring of 2000.

New Booklet and Brochures on Community Affairs in the NYPD

In May, 1999, DCCA introduced a new four-color, twenty-page booklet and four (4) brochures entitled "Community Affairs in the New York City Police Department".

This project is part of an ongoing DCCA initiative to enhance police/community relations by providing the public with comprehensive, well-designed informative materials about the Police Department.

The booklet outlines three areas: *Who we are (history of DCCA)*, *What We Are About (CPR, Community Policing, Quality of Life)* and *What We Are Doing For You (Civilian Participation Programs, Crime Prevention Programs, Youth Programs, Annual Events)*. At the end of the booklet are two pages of useful phone numbers for the public. The four individual brochures are: *Civilian Participation Programs*, *Youth Programs*, *Crime Prevention Programs* and *The Office of Deputy Commissioner Community Affairs*. Copies are attached (Attachments N and O).

Police Fellowship Conferences

In an effort to continue to strengthen Police/Community Relations, under the direction of the Deputy Commissioner of Community Affairs, a total of 19 nineteen Fellowship Conferences were conducted in Fiscal Year 1999 and were attended by members of the Department's Executive staff. City funding of \$500 was provided to each command. Members of DCCA established protocol and supervised the events. These Conferences have continued during Fiscal year 2000 bringing the total from May 1999 to December 1999 to 27.

Firearms Tactics Range Events

The Unit coordinated the selection of representatives of various new immigrant communities throughout the City to participate in a series of Firearm Tactics Range Events. Participants were able to observe, and in some cases, take part in simulations of Departmental training exercises. This event helped to increase awareness of the complex decisions made by police officers during a shooting incident.

Islamic Pre Ramadan Conference

DCCA organized the first citywide meeting/sensitivity training for the upcoming Islamic High Holy Month of Ramadan. The Conference was held at Police Headquarters. In attendance were the Police Commissioner, members of Executive Staff, the Department Imam, all Borough Commanders, various Precinct Commanders and members of the Islamic/Muslim Community. The Conference was the first step in developing stronger mutual relations between the Police Department and Islamic/Muslim Community.

P. 108, Para. 2 discusses the Clergy Liaison Program. A Clergy Liaison Conference was held in April of 1999, and the Department continually works with its 443 clergy liaisons to enhance this ongoing partnership.

CHAPTER 4

MONITORING CIVILIAN COMPLAINTS: CIVILIAN COMPLAINT REVIEW BOARD AND INTERNAL AFFAIRS BUREAU

P. 110, Para. 1 wrongly states that the NYPD has "internal . . . agencies." The NYPD is a single agency with internal Bureaus, Divisions, Sections and Units.

P. 110, Para. 1 again bemoans the lack of data provided to the Commission. No such data was requested. The Commission had access to many sources of data, including the Commission to Combat Police Corruption, which is specifically charged with monitoring the activity of IAB. The same complaint is made on p. 112, fn. 476 and again on p. 114.

P. 111, Para. 2 identifies IAB as the entity primarily responsible for investigating retaliation complaints. Interim Order No. 70 of 1998 (Attachment G) designates the Employee Relations Section as the command primarily responsible.

P. 112, Para. 2 states that Police Department mechanisms to prevent and punish acts of brutality should be discussed. However, the Report never sought any information about the IAB Force Unit, the primary internal NYPD entity charged with investigating civilian complaints of serious force.

P. 113 discusses the creation of an Independent Police Investigation and Audit Board (IPIAB). On February 27, 1995, Mayor Giuliani signed Executive Order #18 that established the Commission to Combat Police Corruption (CCPC) to assist the Mayor and the Police Commissioner in assessing the effectiveness of the Police Department's implementation and maintenance of anti-corruption efforts. To date, the CCPC has published nineteen reports, nine of which directly critique the performance of IAB. The Department has implemented many of the recommendations made by the CCPC. No mention is made of the CCPC in the Report, despite the fact that Mayor Giuliani extensively discussed the CCPC in both his testimony and his written statement to the Commission.

Pp. 114-115 indicate that the Commission was not familiar with the how OCD cases are conducted, but never requested explanatory information. The following is a brief explanation of OCD investigations.

Both IAB and the CCRB receive complaints from the public alleging misconduct by officers. In addition, IAB receives internal notifications concerning misconduct and related areas, such as loss of Department property, all requiring investigations.

IAB retains for its own investigations allegations of serious misconduct. Lesser misconduct cases are referred to the Chief of Department for investigation.

The CCRB retains for investigation civilian complaints alleging force, abuse of authority, discourtesy and offensive language (FADO) cases. Non-FADO cases are assigned OCD numbers, and are referred for investigation to the Chief of Department's Office for investigation. Approximately 25% of complaints are OCD cases.

All referrals are analyzed and coded for type of complaint, then referred to the subject officer's overhead command (usually, a patrol borough command). That command thus becomes aware of the quantity and nature of complaints in its jurisdiction and initiates remedial action when warranted. The overhead command usually selects the officer's commanding officer to investigate the complaint, but may also direct the commander of the local "Investigations Unit" to perform this function. All complaints are investigated and may result in various dispositions ranging from full exoneration of the officer to full substantiation of the allegations. Some complaints fall in between, and are partially substantiated. Discipline can be formal, that is, with charges formally levied, and with an administrative hearing presided over by a trial commissioner or administrative law judge, and a department advocate who prosecutes. It can also be informal, where an officer admits to minor misconduct and accepts punishment. Complainants are informed of results in all cases.

Following the orderly receipt and assignment of OCD cases for investigation, a procedure exists for reporting dispositional data up the chain of command to the Chief of Department. A written reporting system is in place, and a computerized filing system is used to log dispositional data. Complaints are tracked from start to finish with information kept in a central repository. This procedure ensures that every complaint of misconduct made to IAB and CCRB is investigated and acted upon.

P. 118, Para. 2 quotes the Public Advocate claiming a 44% increase in civilian complaints from 1992 to 1998. However during that time, year end Department uniform staffing figures grew from 27,801 to 39,074, an increase of 40.5%. This key fact is left out of the Commission's report.

Pp. 118-119 in discussing civilian complaints, fail to acknowledge that although between 1994 and 1998, there were 25,743 complaints containing approximately 40,000 allegations of police misconduct with almost 15,000 allegations of excessive force filed at the CCRB, only about 5% were substantiated. This key fact was left unmentioned in the Report. Additionally, it should be mentioned here that in 1995 there were 158 civilian complaints per 1000 officers and in 1999 there were 124 complaints per 1000, a 22% decrease. In 1995 there were 99 force allegations per 1000 officers and in 1999 there were 53 force allegations per 1000 officers, a 46% decrease, and the lowest level in the past sixteen years.

These figures, again, demonstrate that the trend is downward in civilian complaints. As discussed earlier, after an increase in 1994 and 1995, reflecting various factors such as implementation of new crime strategies, a change in the CCRB's complaint classification policy, and the Department merger with the Housing and Transit Police, complaint levels have returned to their previous low levels. Also, the drop in civilian complaints occurred immediately after the Courtesy, Professionalism and Respect program was initiated by Commissioner Safir. Analysis of civilian complaint levels is now also an integral part of the COMPSTAT process, to ensure that high priority is placed on encouraging CPR throughout the Department.

P. 119, Para. 2 reiterates the misconception that the 48-hour rule is a right that is available to police officers and not to members of the general public by ignoring the fact that interrogations of police officers are compelled; officers do not have the opportunity to refuse to answer if they are properly directed to respond by the Department. This is in contrast to the right of a civilian who is a suspect in a criminal investigation to remain silent and to refuse to answer an investigator's questions, pursuant to the Fifth Amendment.

P. 121, Para. 2 baldly states without any supporting documentation that "One individual testified the NYPD rarely disciplines officers who had been previously involved in wrong doing." This assertion is demonstrably false. The Police Commissioner is well known as a "tough but fair" disciplinarian, as is apparent to anyone familiar with police issues in New York City. As of April 30, 2000, Commissioner Safir has dismissed 238 tenured officers from the Police Department for acts of misconduct. Please note also the Police Commissioner's policy, discussed earlier, regarding dismissal for false statements, instituted in December, 1996.

Apparently as a means of buttressing his claim, the witness making this allegation stated that three of the four officers who shot Amadou Diallo were previously involved in police misconduct incidents and had earlier complaints filed against them with the CCRB. First, it should be pointed out that the filing of a CCRB complaint can in no way be equated with misconduct per se on the part of an officer especially since, as stated earlier, between 1994 and 1998 only about 5% of CCRB complaints were substantiated. Second, records indicate that none of the officers involved in the Diallo shooting have a single substantiated CCRB complaint on their

CCRB histories. Finally, records indicate that prior to the shooting, none of the officers involved ever received charges and specifications or were the subject of any formal discipline.

P. 122, Para. 1 concludes that factors which increase the level of police misconduct include the 48 hour rule, racism in the Police Department, infrequent discipline of officers involved in misconduct, and lack of incentive for officers to enforce civilian rights. However, the 48 hour rule comes into effect only after an incident; NYPD discipline is not infrequent – on average over 1000 MOS annually received formal Charges and Specifications, and as of April 30, 2000, Commissioner Safir has terminated 238 tenured officers for acts of misconduct; as an indicator of racism in the Department, civilian complaints of ethnic slur have decreased 34.8% from 1998 to 1999; and the incentive to enforce civilian rights is the officer's own integrity, the officer's training, the Department's structure and mission as set forth by every step of chain of command, and at last resort, the consequences of disciplinary action.

P. 125, Fn. 521 seems to imply that an officer receiving a civilian complaint has the discretion to determine if it should be reported to the CCRB. On the contrary, all FADO civilian complaints received by a MOS must be referred to the Internal Affairs Bureau and the CCRB without exception.

P. 127, Para. 2 states that the CCRB can invoke its subpoena power to obtain documents from the Department. It fails to state, however, that the NYPD is not aware of the CCRB ever having used its subpoena power for this purpose. On the contrary, the NYPD cooperates with the CCRB and promptly furnishes to CCRB documents and records in all cases except those involving pending criminal investigations. In those cases that the CCRB considers as high priority, the NYPD expedites delivery.

P. 130, Para. 2 indicates that when a mediation is successful the allegations are removed from the police officer's CCRB record. Although this statement is correct, it should also say that the complaint itself remains on the officer's CCRB record, with the allegations deleted, and a disposition of mediated.

P. 131, Para. 1 discusses the CCRB process of conciliation. As a point of information, the CCRB suspended the conciliation process on May 12, 1999.

P. 133, Para. 2 discusses the CCRB's ability to make determinations in "Other Misconduct" instances, contrary to the attached opinion of the New York City Law Department (Attachment P).

P. 134, Para. 2 refers to a Police Department team making recommendations regarding disciplinary action. The report erroneously states the team consists of representatives from the NYPD, the CCRB, and the DAU. The CCRB Steering Committee is comprised of the First Deputy Commissioner, members of his staff, representatives from the Department Advocate's Office (including the CCRB team), representatives from the Disciplinary Assessment Unit and the Special Prosecutor's Office.

P. 135, Para. 1 describes the DAO as an advocate for the officer since it ensures that there exists a sufficient legal basis for any charge brought against a police officer. Disciplinary proceedings are subject to Civil Service protection and judicial review. Accordingly, it is imperative that disciplinary actions are based upon sufficient evidence. The DAO must therefore ensure that legal sufficiency is present for charges and specifications and fulfill its role as advocate for the Department. Respondent police officers are advocated for by union attorneys or privately retained counsel, not by the DAO. The Commission's reference to and interpretation of Patrol Guide 118-05, (now replaced by Patrol Guide 206-05) is incorrect.

P. 136, Para. 1 describes a re-investigation by NYPD personnel which is no longer performed. In recognition of the substantial improvement in the quality of CCRB investigations, the Police Department in September 1999 discontinued its practice of reinvestigating CCRB cases after they are referred to the Police Commissioner. Such cases are referred back to CCRB, if further investigation is required.

P. 136, Para. 3 fails to include the Deputy Commissioner, Trials who also conducts disciplinary hearings. In addition, the passage erroneously implies that the First Deputy Commissioner conducts formal disciplinary hearings when an accused member of the service is above the rank of police officer. All trials are conducted by an administrative law judge and not the First Deputy Commissioner, and the findings are reviewed by the Police Commissioner.

P. 137, Para. 2 discusses the CCRB's early problems as an independent agency. In its initial years the Board's investigators lacked adequate training, the quality of C.C.R.B. investigations was poor, and the investigations were not completed in a timely manner. However, under the current administration of Police Commissioner Howard Safir, the Department implemented a number of steps to assist the CCRB to improve the efficiency and quality of CCRB investigation. The following is a list of some of the steps taken:

- 243% increase in staffing in the Department Advocate's Office's CCRB Unit.
- "Fast Tracking" of eligible CCRB referrals for expeditious processing.
- Full-time liaison, in the rank of Lieutenant, assigned to CCRB.
- Four-day Department training program for newly-assigned CCRB investigators.
- Participation by CCRB investigators in IAB's Internal Investigations Course.

P. 138, Para. 2 states that during the second half of 1996, only 773 (36%) of the complaints closed during that period received a full investigation. Another 387 cases (12%) were resolved through alternative dispute resolution (ADR) without receiving a full investigation. The majority of the investigations, however, were administratively closed (1325/41%) or truncated (312/10%) for unspecified reasons. According to the CCRB semi annual report (Jan.-Dec.1996) percentages should be corrected to 27.4% (fully investigated), 13.7% (ADR) and 47% were administratively closed.

P. 140 addresses the low substantiation rate at CCRB. Para. 1 states that during the second half of 1995, 18.1% of fully investigated complaints were substantiated, suggesting that many of the complaints may have had merit. An investigation by this Department revealed that it was during this time period that the CCRB substantiated 81 referrals representing 108 members of the service that were never forwarded to the Police Department. The referrals were eventually forwarded to the Department in late 1998.

P. 143, Para. 1 contains incorrect statistics. The Report should read, "Furthermore, an additional 196 cases (78.4% of the total referred) were between fifteen and eighteen months old, leaving the DAO little time to investigate and prepare charges against the officers involved." However, 70% of all referrals (203 out of 290) were between fifteen and eighteen months old, leaving the NYPD less than three months to investigate and act on the referral. The next paragraph should read, "During the first half of 1996, for example, the DAO closed 92 cases involving 114 subject officers."

P. 144, Para. 1 contains the assertion that the NYPD may not have taken strong measures to insure that proper discipline was meted out to officers who were guilty of misconduct. In each case that the Department took no disciplinary action there is a documented reason or reasons. It is impossible to analyze the Department's response to substantiated cases without taking into account the problems with the investigations. The Department Advocate reviewed each and every case sent to it by CCRB. Every case in which the Department believed there was a proper case of misconduct against a police officer ended in either a Department trial or negotiated settlement. In every case the DAO would ensure, where there was misconduct, that the case would be prosecuted.

It should be noted, however, that there are instances which make prosecution difficult, if not impossible. Examples include those cases in which the CCRB investigator does not substantiate a case against an officer and the Board reverses the decision without providing a reason, or cases substantiated against "unidentified" officers, or cases referred to the Department after the expiration of the administrative statute of limitations.

P. 144, Para. 3 should read, "In 1995, the DAO dismissed fifty-two Department cases (MOS) on Statute of Limitations grounds, representing 19.5% of cases closed by the Department that year. In 1998, however, that percentage dropped in half, as the number of dismissals dropped to thirty-seven, representing 9.9% of closed cases (MOS)."

P. 145, Para. 2 should read, "That year, 9.6% of all referred substantiated complaints were older than eighteen months, while 32.7% of substantiated referrals were between fifteen and eighteen months old. That trend continued in 1998 as only five referrals, or 1.7% of the pool was past the limitations period, while 11 referrals, comprising 3.7% of the pool was between fifteen and eighteen months." These statistical errors are repeated on p. 148.

P. 150, Para. 1 discusses the Public Advocate's analysis of CCRB substantiated cases. The Report states that during the first two years of the Giuliani Administration (1994-95) which coincided with the first 2 full years of independent CCRB, 46% of all officers with substantiated complaints were disciplined. But that during the next 2 years, under Commissioner Safir, only 27% of officers with substantiated complaints were disciplined. It should be pointed out that the cases adjudicated during the first two years were largely investigated by the "old" CCRB which was part of the NYPD, while the cases initially closed by Commissioner Safir were largely investigated under the troubled administration of Director Hector Soto at CCRB.

Further, the more recent caseload should be examined more closely. For the period January 1997 through December 1999 the Department closed referrals involving 1132 subject officers. Disciplinary measures were imposed against 49.2% of the subject officers. Of the 575 subject officers who were not disciplined:

- 65 subject officers (5.7% of the total cases disposed) became severed from the Department for reasons other than the CCRB complaint (filed cases).
- Discipline was no longer an option for the 74 subject officers (6.5% of the total cases disposed) due to the expiration of the 18-month statute of limitations *prior to forwarding to the Department*.
- 68 subject officers (6.0%) were found not guilty following administrative trial.

Thus, discretion to impose discipline remained in only 368 of the 575 cases, or 32.5% of the total 1132 cases disposed.

Therefore, a more accurate statement is that the Police Commissioner took disciplinary action in 60.2% (557) of the 925 cases where he had the option to do so.

P. 150, Para. 2 notes that the Police Commissioner “does not offer an explanation” when no disciplinary action is taken on CCRB referrals. A similar point is made on p. 153, in which the Department is alleged to fail to inform the CCRB of the disciplinary result.

The Report should note that cases of no discipline from 1997 to present are based upon a record made by the Department Advocate in an open public trial either at the Department Trial Room or at the Office of Administrative Trials and Hearings.

In addition, as noted by Frank Wohl, Chairman of CCRB, in the Semi-Annual Status Report January - June 1999, the CCRB Board members are now meeting with the Police Commissioner on a quarterly basis to address issues of mutual concern. These meetings are proving to be useful as a forum for direct exchange of views to work toward coordinated solutions to problems in the police disciplinary process. He further stated: “In 1999 the Police Department began to furnish the CCRB with information pertaining to the specific penalty imposed upon police officers.”

P. 151, Para. 1 comments on the increase in Police Department disciplinary action on CCRB referrals. During 1999, the Department disposed of CCRB referrals involving 482 officers. Of those officers, the Department took disciplinary action against 292, or 60.5% (the highest percentage in the last five years).

The percentage of disciplinary action taken in substantiated cases has steadily increased since 1996.

P. 152 should indicate that the Police Commissioner, not the Department Advocate, created DAU in 1995.

P. 153, Para. 2 states, “Even in cases where the limitations period has not yet expired, however, the DAO often fails to take action against the officers involved.” The statement that the DAO “often” fails to take action on substantiated complaints is simply inaccurate. In fact, in 1999, of the 482 cases adjudicated by the Department, 292 or 60.5% resulted in the officer receiving discipline. Of the remaining cases closed, the Department could not impose discipline on 24 because the officer either resigned or retired. Additionally, the Department conducted trials in 24 instances that resulted in Not Guilty verdicts and in 108 instances, the charges preferred against the officer were dismissed after a trial commissioner’s review for being legally insufficient, and 9 cases were not prosecutable because the statute of limitations had expired.

P. 154, Para. 1 contains a statement that “CCRB notes that when a panel substantiates a case, it does so almost always with the consent of a Police Commissioner designee.” There is no analysis of the voting sheets of CCRB panels which could show how often the Police Commissioner’s designees voted against substantiation on cases in which the Police Commissioner ultimately took no disciplinary action. Notwithstanding the lack of support for the Report’s statement, we must again refer to the above analyses of case dispositions.

P. 158, Para. 1 recites the unsupported allegation from a Commission hearing witness, without providing details or an indication of whether a complaint was filed against the captain who was alleged to have shoved a complainant down a flight of stairs. On its face this appears to be another unsubstantiated anecdote published by the Commission in order to defame the reputation of the Department.

Pp. 159-160 recount the allegations of a CCRB case in which the Board and its staff irresponsibly substantiated the case without interviewing the subject officers and with a criminal investigation into the incident pending.

P. 164, Para. 1 contains another unsupported and unchallenged assertion by a frequent Department critic, that an investigation mechanism independent from the Police Department would minimize the likelihood of the NYPD mishandling or destroying evidence of police misconduct. CCRB investigators gather all evidence of police misconduct and keep all originals in their files. They send only copies to the NYPD. This witness apparently did not know of, or was not asked if he had any specifics to back up his claims. Again, another example of the Commission publishing an unsubstantiated anecdote in order to defame the reputation of the Department.

CHAPTER 5

STOP, QUESTION AND FRISK

P. 181, Para. 2 begins by acknowledging that there is a “challenging dilemma” in balancing individual rights against government duties. This is very true. Yet these words are lost in the remainder of the report. It is still a challenging dilemma. This is what makes policing in a free society such an important and difficult profession. Such a balancing act is made even more difficult by the multi-cultural aspect of New York City. One group may see an action by police as completely justified while another strongly disagrees. With society lacking a consensus and the situation made even more complicated by ambiguous laws, police officers are left with a challenging, if not daunting, task.

The reality of a police officer’s dilemma is mentioned here but clearly has not been factored into the Commission’s analysis or conclusions.

P. 181, Para. 3 discusses what is characterized as a growing perception that the NYPD has sacrificed the protection of individuals' civil liberties in order to achieve quantifiable law enforcement gains. The Commission's draft report, containing numerous instances of opinion-based, superficial analysis and defamatory, unsubstantiated anecdotes, contributed to this when it was provided to New York media (including the New York Times). It is exactly the type of biased, conclusory, sweeping criticism publicly voiced by the Commission, in defiance of the facts, that fuel the unfortunate perceptions the Commission is lamenting, which the Department has to deal with. Additionally, many criminal justice experts (even outside the NYPD) argue that the NYPD is an example of how policing should be accomplished. These perceptions are equally important and should be recognized and included in the full report.

Pp. 182-189 summarize the law of stop, question and frisk, with an emphasis on the higher standard to which New York police officers are held when protecting an individual's civil liberties. A high standard does not necessarily mean a clear one. Most commentators, including Governor George Pataki (see The Governor's Attack on the Judges, in The New York Times February 3, 1996, A22) and former New York State Supreme Court Judge Harold Rothwax (see Rothwax, Harold J., 1996, Guilty: The Collapse of Criminal Justice, Random House: New York), argue that New York law is extremely confusing and complicated in this area. Indeed, the Report itself is somewhat confusing. The consequences of this uncertainty in what the law requires should be acknowledged by the Commission and applied in its analysis of police practices. The complexity of this law should be clearly stated in the Report.

P. 183, Para. 3 contains a discussion of the Equal Protection Clause under the rubric of the law of Stop, Question and Frisk. It correctly points out that a law enforcement officer may not initiate an investigation solely on the basis of a person's race. It then goes on to discuss the recent 2d Circuit decision in Brown v. Oneonta which held that police may act on the basis of a victim's description of a criminal suspect consisting primarily of race and gender without violating the Equal Protection Clause. The police in this case stopped virtually every male, black resident of the town based on the victim's statement that her attacker (whom she couldn't see) was a young, male black, yet the court found no §1983 liability. The Report then acknowledges that a police officer may utilize race as a factor in stopping an individual where race is part of the victim's description. It then editorializes that when a police officer is allowed to use race in establishing reasonable suspicion there is an enormous potential for abuse, quoting the controversial law review article discussed below. Why this discussion is characterized as being relevant to the law of Stop and Frisk is unclear. The Equal Protection Clause may provide a vehicle for civil liability in an appropriate case, but it has no bearing whatsoever on the Terry analysis and no relevance to this particular chapter other than to somehow support the later discussion of racial profiling.

P. 185, Para. 2 contains an extremely inflammatory excerpt from a quotation in a law review article whose source is not cited. The contention that police engage in a race-based lowering of a legal threshold was not substantiated. In fact, the quotation is from another law review article, "Developments in the Law - Race and the Criminal Process," Harvard Law Review, 1472, 1508 (1988), and not a court decision or other acknowledged authority. The excerpt should not have been included in the Report without observing that it represents opinion, not fact.

P. 187, Para. 2 would be accurate only if one removed the third sentence which indicates that "New York courts have held that police officers must always use the 'less intrusive' means for assuring their safety where more than one reasonable alternative is available." The Report cites no case for this proposition and indeed, it is not the law. The correct standard for evaluating an officer's actions in a street encounter is whether the officer's actions were reasonable. In other words, was the police action justified in its inception and reasonably related in scope to the circumstances which rendered its initiation permissible.

P. 189, Para. 2 inaccurately asserts that the degree of articulable suspicion must increase during a street encounter in order to justify an increased intensity of intrusion. In fact, the level of suspicion need not increase during the actual street encounter, but must be present at the time that the enhanced police action is taken.

P. 190, Para. 1 acknowledges that there is no legal requirement that NYPD officers record stop and frisk encounters with private citizens. However, the Commission should clearly articulate that the NYPD policy requiring its officers to fill out a stop and frisk form under certain conditions (i.e., person stopped by force, person is frisked or frisked and searched, person is arrested, person refuses to identify self) is above and beyond what is required by law. Again, the fact that this is not required by law is extremely important. The NYPD policy not only demonstrates its commitment to professionalism but also shows the importance it places on holding every police officer accountable.

P. 191, Para. 2 states that completion of the UF 250 form has been mandated since 1986; in fact, the form was introduced in 1964 and amended to its present version in 1973.

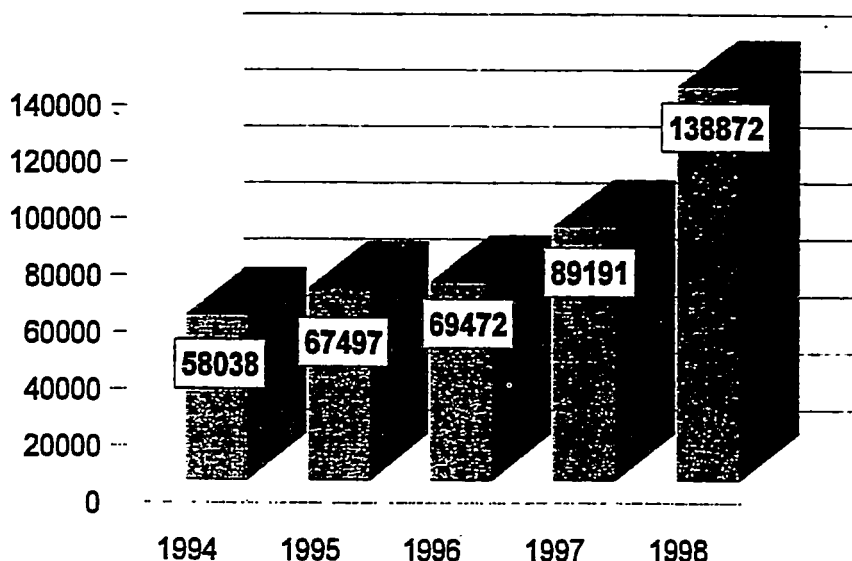
P. 191 contains a chart and numerical count of the number of UF 250s filed. While the number of stop and frisk reports are correctly cited from the April, 1999 memorandum from Central Records Division, the Commis-

sion failed to utilize updated numerical counts from the more comprehensive computerized stop and frisk data base (which was made available and used by the Commission for other tabulations although the Commission apparently used it incorrectly). Previous counts such as the one cited were hand counts of reports sent to Central Records Division. Computerized counts were based on a project in which all available stop and frisk reports were put into electronic format. These reports were entered and audited to ensure that all information on the handwritten report was accurately reflected in the electronic data. The Office of Management Analysis and Planning verified with precinct commands that every available report was entered into the data base.

Once the reports were entered and any duplicate reports identified so they could be excluded from statistical tallies, then final counts for all stop and frisk reports entered from 1994 through the first four months of 1999 were tabulated. The failure of the Commission to utilize widely acknowledged and available figures that are more accurate and cited later in its own report is an indication of extremely sloppy methods. The correct numbers of stop and frisk reports are:

| | |
|------|---------|
| 1994 | 58,038 |
| 1995 | 67,497 |
| 1996 | 69,472 |
| 1997 | 89,181 |
| 1998 | 138,872 |

STOP AND FRISK REPORTS BY YEAR



P. 192, Para. 2 asserts that despite the recent marked increase in the filing of UF 250s, a significant number of stop and frisks may still remain unreported.

For example, as acknowledged by the Commission on p. 190, NYPD officers only have to fill out the stop and frisk form under certain circumstances. That stops go unreported (as per the second paragraph in footnote 772) should, therefore, not be a surprise. As the Commission is aware, there is no legal or Department requirement for officers to fill out a stop and frisk form for many stops. Additionally, at least some of the stop and frisk reports that were actually recorded need not have been prepared given the NYPD's policy. The Commission chose not to emphasize the NYPD policy which goes above and beyond the requirements of law in requiring officers to fill out a stop and frisk report in certain circumstances.

P. 193, Para. 1 contains the unsupported estimate of a frequent Department critic that a UF 250 is prepared in one out of 30 stops. He further testified that the UF 250s on file are "mere child's play" on the number of people who have been harassed by the NYPD. Another frequent critic characterized the preparation of UF 250s as "random," as usual without any specific evidence to back up his claims.

As noted previously in this Response, it is particularly disturbing that in lieu of sound research methods, the Commission has consistently relied upon the unsupported claims and "estimates" of a few individuals who seem always be ready to provide the Commission with the criticism it is apparently seeking. Had the Commission been interested in determining actual behavior by NYPD officers, a more accurate method should have been used to select those who testify. For example, choosing a random sample of patrol officers and supervisors to survey would have been more appropriate (and more scientific, leading to more accurate findings).

P. 193, Para. 3 articulates doubt about the reliability of reported UF 250 data, especially in light of the reported institution of new quotas. As even the most inexperienced social scientist is aware, utilizing reports created for agency needs (i.e., official data) carries with it the risk that important information associated with an area of interest may not be reflected in the data. This is a generally acknowledged problem with utilizing official data. That is, the NYPD collected the data it believed was necessary for internal purposes. The data is not per se unreliable as the Commission states but rather it is the way in which the Commission wants to use the NYPD data that may be unreliable. Consequently, any researcher intending to utilize official data such as stop and frisk reports to study issues different from the intended purpose for its collection must first assess its adequacy for the intended use.

P. 194, Para. 2 states that the Department may have quotas for UF 250s, and considers meeting these quotas an important indicator of police performance. The Department has no quotas for UF 250s, but it does have an established, written policy indicating when UF 250s should be employed.

P. 195, Para. 2 purports to criticize the procedure utilized for filling out and recording UF 250s. The procedure is simply stated. Reports are to be filled out in units and sent to the precinct for processing. Supervisors are required to sign the report. Copies may be made for local use by outside units. Since copies go to the precinct and then to Central Records Division (including those in specialized units) a uniform procedure for collecting and numbering the reports is in place. A new procedure is now in effect in which a Stop and Frisk Log is to be maintained in commands that fill out the report and photocopies of each report are also maintained in this log (see attached Operations Order No. 30, 2000, Attachment Q).

P. 195, Fn. 782 recites inaccurate numbers of Street Crime Unit stop and frisk reports based on a memorandum from the Commanding Officer of the Street Crime Unit. Again the Commission fails to recognize the UF 250 data base and chooses to use older figures from internal NYPD memoranda. The figures quoted are based on Activity Reports of officers who note the preparation of stop and frisk reports thereon. However, the internal memoranda contain numerous duplicates. Those with experience in the NYPD and who are familiar with its internal mechanisms (including criminal justice experts) know that on Activity Reports all officers involved in a single stop will report that they made a stop to insure that their individual activity is reported. This complies with NYPD procedures. In contrast, the stop and frisk data base has the ability to remove duplicates and can more accurately enumerate Street Crime Unit stop and frisk reports.

In the year 1997 there were 9,004 unique stop and frisk reports prepared by the Street Crime Unit. In 1998 there were 15,324.

Pp. 196-197 contain a discussion on maintaining stop and frisk reports. The procedure was to process all stop and frisk reports through the precinct of occurrence regardless of unit. This centralizes the process and allows proper logging in of the forms (giving them a log number) and appropriate oversight. Copies are maintained at the precinct (as well as at Central Records). Note, however, that this process was updated by Operations Order No. 30, 2000. Stop and Frisk logs are to be kept in other than patrol commands and copies of all reports are to be kept with the log (see attached order).

P. 197, Para. 3 apparently criticizes Department units for failing to maintain adequate information to determine whether their stop and frisk practices disproportionately targeted particular racial or ethnic groups. These units had the forms and used them in their intended manner.

Pp. 197-198 state that the Department failed to provide complete UF 250 data to the Commission. This is false. In fact, the Commission has all of the data and has simply failed to properly analyze it. The data was supplied in the format that the Commission requested. All that the Commission had to do was properly input the data into a statistics program of their choice (e.g., SPSS, SAS) and analyze it. Furthermore, there is sufficient detailed information to determine the number of stops that resulted in an arrest.

It appears that the rudimentary analytical tasks necessary to perform an analysis were not done with the computerized data provided by the Department. Note that the New York State Attorney General's report is based on exactly the same data, for which significantly more analysis, albeit flawed, was conducted. Moreover, if the Commission had difficulty reading the information, the NYPD could easily have been asked for technical assistance.

P. 198, Para. 2 incorrectly states that for 1998, NYPD officers completed 147,787 UF 250 forms.

This is another example of basic analytical tasks not being performed with the computerized data that was provided. The Committee was given the full data base, including duplicate entries in order to document the duplicates and allow a reviewer to double check the NYPD's duplicate identification procedures. That is, some reports acquired from multiple Department units were entered into the database more than once. The NYPD supplied documentation contained on the computer disk given to the Commission explaining this.

The correct total for 1998, subtracting out duplicate reports, is 138,872. The Commission should have realized this not only from the documentation supplied to it by the NYPD but also from a review of the basic findings from the New York State Attorney General's report.

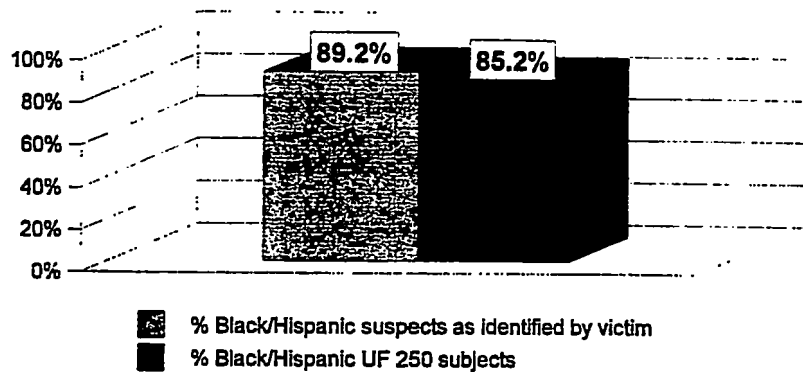
Pp. 198-201, 204-209 contain numerous charts by borough and citywide with UF 250 percentage versus percentage population by ethnicity, as well as numerous charts with population versus UF250s.

The bar charts show the simple relationship between UF 250 percentage and percentage population. In addition to the fact that the Commission is basing its UF 250 percentage on incorrect figures (see earlier comments), such a depiction completely fails to address more complex operational relationships which can better explain what is taking place.

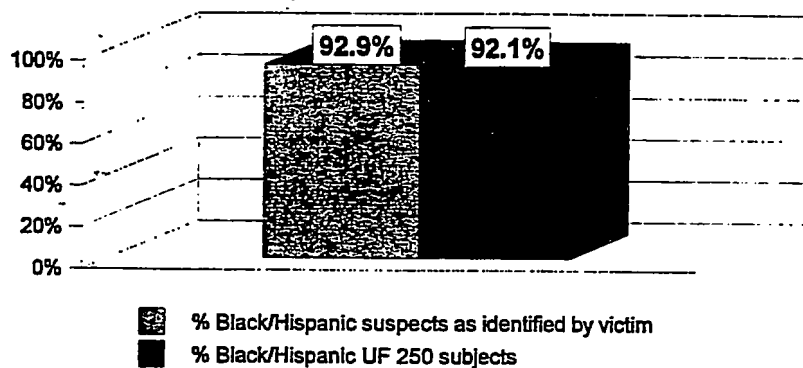
An even more basic mistake is to compare demographics of particular precincts to demographics of boroughs in which the precincts are located. Obviously, the demographics of an individual precinct do not necessarily mirror the overall demographics of the borough in which it is located. Such a comparison is therefore inherently inaccurate. If the Commission had requested precinct population data, it would have been provided.

In fact, the Commission's charts are grossly misleading in that key information regarding critical crime complaint data supplied by crime victims is ignored. To correct this obvious error and ensure that the public is supplied with accurate and complete data, similar simple charts have been constructed using the more appropriate demographic, race/ethnicity of suspects as identified by victims, for comparison with the racial breakdown of stop and frisk reports. The data in these charts completely refute the Commission's findings. These charts are attached to this Response, at Attachment R, with two of the charts included below.

Black/Hispanic Suspects Identified by Victims versus Black/Hispanic UF250's
1998 Citywide



Black/Hispanic Suspects Identified by Victims versus Black/Hispanic UF250's
1998 Top 25 Street Crime Unit Precincts



P. 202 contains an analysis of the Street Crime Unit and selected precincts. The total stop and frisk figure cited by the Commission is 147,787. As stated earlier this includes duplicates and is therefore incorrect as it stands (the correct number is 138,872). Compounding this initial error, the Commission then uses a variety of statistics from a number of sources that were subsequently refined and fails to explain why they did this. Even worse, the Commission fails to understand (or to even try to understand) the differences in the data sources which makes their combination unreliable. Examining each error will help to explain how the Commission is mistaken.

Initially the stop and frisk data that is most accurate is the computerized data base removing duplicates (as has been explained). The total number of stop and frisks is, therefore, 138,872, not 147,787. The Commission then states that the Street Crime Unit filed 27,061 stop and frisk reports. This number is taken from early internal memorandums. Again, the internal memorandums contain duplicates because this figure is based on summing each officer's Activity Reports. The cited memo and its corresponding figure of 27,061 used by the Commission, therefore, includes numerous duplicates (and, therefore, inflates the number of UF250 reports filled out) since its source is Activity Reports.

The more accurate number of stop and frisk reports prepared by the Street Crime Unit is contained in the data base (subtracting out any duplicates that are in the data base itself). Specifically, the data base documents that the Street Crime Unit made 15,324 unique stop and frisk reports in 1998.

Next the Commission states that the NYPD's preliminary tabulation for the City Council hearing was 8,722. That is true but fails to state that the Department made clear that this was a preliminary figure because the complete data base was not finished when the April hearing was conducted (the Department was still in the process of entering stop and frisk reports into the computer). Therefore, the 8,722 figure is only a partial figure.

The Commission continued to misinterpret the figures. They even point out the correct interpretation in fn. 800 but fail to make the connection with their earlier incorrect assertions. The footnote clearly states, "Tabulations for April 19, 1999 . . . include all 121,339 UF 250's that were entered into the NYPD's computer system as of 1700 hours on April 15, 1999." This is obviously significantly less than their own figure of 147,787 and is not even mentioned.

P. 203, Para. 2 contains an implication that for some sinister reason, the Street Crime Unit was deployed disproportionately in neighborhoods of color, perhaps so they could engage in racial profiling. The fact is that the Street Crime Unit was and is deployed according to where the violent crime is, and the unfortunate truth is that minority neighborhoods are disproportionately plagued with violent crime.

This is a crucial factor in understanding how a police agency works. An agency like the NYPD, which is serious about crimefighting, goes where the crime is. That means that there will be a proportionally greater number of officers in neighborhoods of color if that is where the crime is. There will also be a greater number of street encounters of all types, because there will be more officers doing their jobs in that area. Additionally, and perhaps most significantly, our crime data has shown that over the last six years, the disproportionate beneficiaries of the steepest drops in violent crime (homicide, shooting, robbery) have been the residents of communities of color. In fact, overwhelmingly individuals from these communities petition the Department and its commanders to deploy even more police in their precincts.

P. 203, Fn. 801 points out that data from the top 25 precincts in which the SCU was deployed can be readily interpreted as a proxy for the number of UF 250s completed by the SCU. Since the UF 250 data base was only finished in the summer of 1999, such a proxy was previously needed. However, with the data supplied to the Commission, this proxy is no longer necessary. More accurate counts of Street Crime stops can now be achieved using the data base.

For the year 1998 there were 15,324 unique stop and frisk reports prepared by the Street Crime Unit. Each and every one of those 15,324 is contained in the data base and can easily be read. Apparently the Commission did not believe it to be worthwhile to analyze the final data they were provided with to determine the number of SCU reports prepared in each precinct.

P. 210, Para. 1 contains a conclusion that NYPD officers stop blacks and Hispanics out of proportion to their presence in the general population.

What the Report fails to state is the fact that the Police Commissioner has acknowledged on a number of occasions (including his testimony before the Commission) that in general demographic terms, blacks and Hispanics are stopped in numbers greater than the overall proportion of the population.

The text of the Commission's statement, however, is grossly misleading, because it suggests that officers are stopping individuals based purely on race. It fails to recognize the complexities of the issue and conveniently ignores other data. In simple terms, it makes a conclusion based on one set of facts without even considering alternative explanations. In particular, a more plausible interpretation is that officers are stopping individuals based on descriptions given by current victims as well as descriptions collected from continuing crime patterns (e.g., rape pattern, robbery pattern) in the area being policed. Those individuals who fit these pattern descriptions (from either immediate incidents or continuing patterns) along with those who officers actually observe committing crimes or violations are those most likely to be stopped by police. It also fails to consider that complaint data is a very strong indicator of the demographics of the individuals committing actions that would lead an officer to develop the reasonable suspicion necessary to conduct a street stop.

Pp. 210-211 contain anecdotal information from individuals who have apparently had negative contact with police officers. Statements such as these should be solicited from a random sample of residents to more accurately reflect the entire population of New York City. If they are not, they should be interpreted as complaints from individuals who feel they have been wronged but do not necessarily represent broad public opinion, trends, or perceptions. However, this is another example of uncorroborated anecdotal information being utilized by the Commission to defame the Department.

P. 213, Para. 1 begins with a cursory mention of a critically important element of the analysis, complaint data. The only deletion from Commissioner Safir's quoted statement is the word "not," which completely changes the meaning of the sentence: We "do not select our suspects as they are identified not by us but by the victims." Additionally, the evidence in support of the Department's position is completely absent from the Report. The combination of this obvious lack of fairness to the Department's position with an irresponsible use of anecdotes makes the Commission's bias in this critical area clear.

Pp. 213-214 characterize the NYPD's argument as flawed, asserting that Street Crime Unit stops are based solely on officer observation. The Report also argues that many stops are based on quality of life violations. This passage of the Report shows how little the Commission understands both the law and police work, and the pitfalls of relying on the testimony of very few witnesses with overt biases. Officers in the Street Crime Unit predicate their stops on a minimum of reasonable suspicion based not only on observations but also on known patterns (e.g., robbery patterns, rape patterns) and crime problems such as gang activity, drug markets, other criminal enterprise intelligence etc. which are based on victims' or complainants' reports.

The Report states that it is probable that a significant proportion of stops in 1998 did not originate from victim identifications, but there is no evidence offered to confirm this assertion. Even if it were true, self-initiated stops are no less legitimate than pattern or other types of stops. The key factor is reasonable suspicion. With regard to the Commission's complaint that many stops are based on quality of life violations, the commission of such violations does constitute probable cause for not only a stop, but an arrest. Any stop originating from an observed criminal offense is clearly legal and in fact represents the officer doing the job the citizens of New York have hired him or her to perform. The fact that a crime may be characterized by the Commission as "victimless" does not mean that it is not a crime, or that officers should not legally stop and frisk, or arrest, someone in connection with it.

P. 215, Para. 1 inserts completely out of context a quote from the Fourth Amendment having nothing to do at all with a street encounters or stop and frisk. It refers to the "*particularized* suspicion required by the Constitution to effect a stop" and then quotes the Fourth Amendment's language requiring a warrant "particularly describing . . . the persons or things to be seized." The part of the Fourth Amendment that is quoted applies to the analysis required on the validity of the language of a search warrant. A warrant must particularly describe the place to be searched and the things that can be searched for. The law of stop and frisk has nothing to do with the quoted portion of the Fourth Amendment. A reasonable suspicion-based stop and frisk is permissible because the courts have found these types of encounters to be consistent with the language in the Fourth Amendment prohibiting unreasonable searches and seizures.

P. 215, Para. 1 squarely accuses the NYPD of racial profiling in its stop and frisk practices, and particularly those of the SCU.

For such a critically serious finding, the Report does not contain a shred of the necessary analysis to even try to prove its apparently predisposed conclusion, even on its own terms. The Commission has not examined the demographics of suspect descriptions provided by victims, has not determined what proportion of stops were self-initiated by officers, and has not concluded what percentage of stops were legally justified.

The Report rejects (without analysis) the Department's explanation that the ethnic breakdown of the UF 250 subjects simply mirrors the racial breakdown of victim descriptions, and does not adequately take into account the particularized suspicion required by the Constitution to effect a stop. The Report provides a patronizing summary of its belief that stopping an individual based on statistical probabilities or demographics is prohibited, thereby thoroughly mischaracterizing the Department's data analysis.

The Report states: "As Commissioner Safir testified, "the racial, ethnic distribution of the subjects reflect the demographics of known violent crime suspects as reported by crime victims." Then, in a statement that is so extremely beyond the bounds of logical analysis (even in the context of this Report) that it clearly betrays the Commission's preconceived bias to render a finding of racial profiling, the report continues: "As a result, this explanation may implicitly sanction racial profiling. Specifically, police officers are provided with this rationale as their basis for stopping a proportionate number of people who match a statistical profile of suspects that are [sic] based on victim descriptions." (Emphasis added)

There follows an explanation of why racial profiling is illegal, and the report concludes: "Accordingly, the premise that NYPD officers were justified in stopping a disproportionate number of minorities in 1998 because of historical crime data must be rejected." Clearly, Commissioner Safir made no such argument. The Commission has refuted a "premise" that no one asserted, other than the Commission itself!

The NYPD does not claim that its officers are making stops based on statistical probabilities but rather they base their stops on a minimum of reasonable suspicion. The Commission selectively quotes the Police Commissioner without attempting to understand the context of his statements. Unless the Commission is suggesting that officers ignore descriptions and continuing crime patterns, **this information will and should be utilized to help develop reasonable suspicion to legally stop a person.** For example, if an officer is made aware of a robbery pattern, with descriptions from victims telling the officer that the suspect is a male black about 5 feet 4 inches with short hair and often carrying a gym bag, who has been robbing people at knife point near ATM machines in the 109, 110, and 111 Precincts, then that information will and should be used to develop reasonable suspicion when combined with other appropriate factors. If the Commission is attempting to suggest that law enforcement agencies must begin to ignore objective data reported by crime victims to take proactive steps

to prevent crime and save lives, they are forging a path that is not only inconsistent with all of the relevant case law, but one that will lead to the undermining of effective law enforcement in our nation.

In summary, the NYPD tallied the statistics after this controversy began and found that the stops closely mirrored the distribution of violent crime suspects, as one might expect and hope from an intelligently conceived crime strategy. The authors of the Report ignore the foundations of good police work as taught in police agencies and academic criminal justice departments across the United States.

P. 216, Para. 2 discusses arrests which are ultimately not prosecuted as a corollary to improper arrests. There are numerous alternative explanations for this trend. Merely to assume that an increase in decline prosecutions was due to an increase in pressure to make arrests is not only simplistic but ignores other facts that support equally plausible explanations.

For example, the NYPD has no control over policies, staffing, and other such matters which are decided by each district attorney. This is evident by examining the different trends in each borough. If it were an NYPD systemic problem, then the numbers should increase in every borough. Statistics indicate that the Staten Island decline prosecution rate remained steady from 1997 to 1998 and that Queens did, in fact, decrease during the same time period. With Staten Island remaining steady and Queens decreasing, these are indications that these numbers are more influenced by criteria not in control of the NYPD.

The NYPD has little control over non-cooperative victims and witnesses. If these individuals do not show up at the district attorney's office or at court, the result is often declined prosecution.

Quality of life initiatives by the NYPD have generated many more arrests. This added burden on the district attorneys' offices could lead to more decline prosecutions as well. Legal and NYPD policy changes may also influence these statistics such as: amending the Desk Appearance Ticket (DAT) procedure (Interim Order 94-8, s.94 issued 8/26/98) such that it is more difficult to qualify for a DAT. This change may have led to fewer complainants being contacted due to the short time frame from arrest to arraignment, perhaps increasing decline prosecutions.

New domestic violence laws and policies have been strengthened requiring police to make an arrest in misdemeanor cases in or out of the officer's presence and violation cases in the officer's presence without asking the victim whether they wish to have the other party arrested. A Criminal Procedure Law change required the NYPD to effect this change effective 3/19/98.

Additionally, the NYPD has had a program in place that commenced on October 28, 1997 (Interim Order 67) to address decline prosecution cases in every borough. Under this program, the NYPD works closely with each of the district attorney's offices to reduce decline prosecutions. The Department receives a form letter from each district attorney which indicates the type of additional information (e.g., interviews, evidence, line-ups, etc.) that is required to re-open a case for prosecution. This form letter is immediately disseminated to the appropriate commanding officer who must ensure a follow-up investigation is completed within 10 business days.

P. 216, Para. 2 also contains the incredible assertion that the increased demand for arrests may induce officers to use racial stereotypes which the Department has taught them through our cultural training practices. Certainly none of the materials the Report cites remotely leads one to conclude that any of the groups portrayed is criminal in nature. Once again the Commission is taking the path of defaming the Department in a conclusory manner, without a specific, objective basis.

P. 216, Para. 3 finally ends the Report in a manner true to the "approach" of its entirety, in which the Commission resorts to yet another unsupported anecdote supplied from a frequently cited Department critic alleging that Street Crime officers would routinely call in bogus "911" calls to supply an otherwise unavailable description. This unfortunate exercise in shoddy reporting, in lieu of legitimate research methods, in order to publicly defame the reputation of the Department, is a perfectly representative example of a Report so poorly prepared that it is an embarrassment to the United States Government.

TERMINOLOGY ERRORS

"Street Crimes Unit" should be "Street Crime Unit"

"U.S. Attorney for Manhattan" should be "U.S. Attorney for the Southern District of New York"

"U.S. Attorney for Brooklyn" should be "U.S. Attorney for the Eastern District of New York"

"Force" should be replaced with "Department" with reference to the NYPD

"Transportation Bureau" should be replaced with "Transit Bureau" (p. 15)

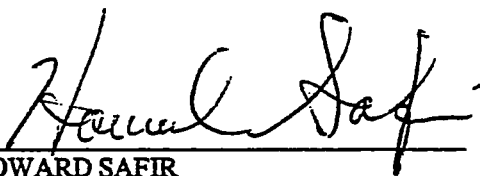
VERIFICATION

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COUNTY OF NEW YORK)

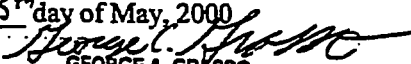
HOWARD SAFIR, being duly sworn, states that he is the Police Commissioner of the New York City Police Department. The foregoing Response to the United States Commission on Civil Rights draft report entitled *Police Practices and Civil Rights in New York City* is true and accurate to his knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true. The basis for the assertion of the validity of all matters not therein stated upon his knowledge are as follows: the books and records of the New York City Police Department and other departments of the City government and from statements and representations made to him by certain officers and agents of The City of New York.



HOWARD SAFIR

Sworn to before me this

15th day of May, 2000


GEORGE A. GRASSO
NOTARY PUBLIC, State of New York
No. 41-4836534
Qualified in Queens County
Commission Expires 11/30/01

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