# CIVILIAN COMPLAINT REVIEW BOARD

BILL DE BLASIO, Mayor | RICHARD D. EMERY, Esq., Chair | MINA Q. MALIK, Esq., Executive Director

# *Semi-Annual Report*

JANUARY-JUNE

# *2015*

# Mission and Values:

The New York City Civilian Complaint Review Board (CCRB) is an independent agency that is empowered to receive, investigate, prosecute, mediate, hear, make findings, and recommend action upon complaints filed against members of the New York City Police Department (NYPD) that allege the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language. The Board's staff, composed entirely of civilian employees, conducts impartial investigations, mediations, and prosecutions. The City Charter gives the Police Commissioner final authority in all matters of police discipline.

## In fulfillment of its mission, the Board has pledged:

- To encourage members of the community to file complaints when they believe they have been victims of police misconduct
- To respect the rights of civilians and officers
- To encourage all parties involved in a complaint to come forward and present evidence
- To expeditiously investigate each allegation thoroughly and impartially
- To make fair and objective determinations on the merits of each case
- To offer civilians and officers the opportunity to mediate their complaints when appropriate in order to promote understanding between officers and the communities they serve
- To recommend disciplinary actions that are measured and appropriate, if and when the investigative findings substantiate that misconduct occurred
- To engage in community outreach in order to educate the public about the Agency and respond to concerns relevant to the Agency's mandate
- To report relevant issues and policy matters to the Police Commissioner and the public

*This report covers the period of January 2015 through June 2015*

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# Letter from the Chair

**September 2015**

Dear Fellow New Yorkers:

We issue this Mid-Year Report at a moment of crucial change both in the Civilian Complaint Review Board (CCRB) and in police-community relationships in our city and nationwide. The big news in police oversight is one word: video. Video is changing everything. As described in this Mid-Year Report, video is the primary factor in the dramatically increased substantiation rate (from 15% to 21%) of CCRB investigations that, in order to recommend discipline of any NYPD officer, require an evidentiary showing by preponderance of evidence. No longer are the lion's share of cases "he said/she said" where additional corroboration is almost always required, and substantiation is quite difficult. Now almost half of substantiated force allegations are possible because of video evidence. And sub-categories such as chokehold cases are now much more frequently documented even though the number of chokehold complaints has fallen significantly. The CCRB is obtaining far more video than ever before because video is ubiquitous and because our investigations begin and end much more quickly, before video is lost. Throughout this Report, as you read it, think of how important video is to the work of the CCRB and the NYPD in overseeing police behavior.

The other overriding reality documented in this Report is the confluence of two significant statistics: the continuing decrease in citizen complaints against NYPD officers, and the remarkable fact that VERY few officers are responsible for almost all CCRB complaints. More than 80% of NYPD officers have had no complaints in the last 18 months; whereas 14% of officers are responsible for 100% of all complaints. Five percent of officers on the force—about 1,800—are responsible for 80% of the force complaints. And each FADO category mirrors this pattern with only a relatively few officers responsible for a vast percentage of all complaints. What this means for CCRB and the NYPD is that police misconduct is not intractable and is on the wane. The new culture of de-escalation is taking hold, a far less violent culture of policing that emphasizes and rewards professionalism. The ability of the CCRB and NYPD to identify the cohort of officers who engage in misconduct presents an opportunity to mitigate the old patterns of systemic misconduct. CCRB is currently working to mine its historical data to identify factors predictive of future substantiated complaints. This research will inform future prioritization of CCRB investigations and collaboration with NYPD on risk mitigation efforts.

The CCRB's increased substantiation rate of misconduct complaints, and its subsequent disciplinary recommendations, now has an unprecedented impact on the NYPD disciplinary process. Six months after implementing the new reconsideration process between the CCRB and the Police Department, the Department has adopted more than 90% of CCRB's disciplinary recommendations. In prior years, only 60% were adopted. As a result, the number and the percentage of prosecuted officers have increased sharply. In the first half of 2015, 77 out of 192 officers facing discipline were prosecuted (40%) as compared to 40 out of 237 in 2014 (17%) and 24 out of 287 in 2013 (8%). These numbers prove that the CCRB new discipline recommendation process has gained unprecedented traction with the NYPD. These significantly higher numbers of discipline imposed, based on CCRB recommendations, will hopefully enhance CCRB's credibility with the public and officers alike.

The CCRB's mission—to fulfill its mandated role as the primary independent oversight agency of the New York Police Department—is being accomplished. Our aspiration, to support and invigorate the process of healing police-community relations in New York, is a work in progress, but appears within reach.

Sincerely,

Richard D. Emery, Esq.

# Letter from the Executive Director

**September 2015**

Dear Fellow New Yorkers:

Over the last six months, the Executive Staff and I have overseen significant, meaningful changes to the CCRB intended to bring all aspects of its operations in line with its mission as an independent police oversight agency.

The restructuring of the CCRB's Investigations Division has resulted in a smaller, more collaborative structure within the Agency, with each group of investigators having a more manageable docket of open cases. The speed and thoroughness of the CCRB's investigations have dramatically increased —a development that is thoroughly described in this report. Our analysis shows that the percentage of complaints that are fully investigated has grown, it takes fewer days to complete an investigation, and cases are being substantiated at an unprecedented rate. With a new Chief of Investigations, these gains will be consolidated.

Since the Agency reorganized its Investigations Division at the end of 2014, new cases have been submitted for Board review in an average of 77 days, as compared to an average of 329 days in 2013 and 271 days in 2014. As a result, our open docket has dropped 54% compared to this time last year, and 90% of the cases under active investigation were four months or younger by the end of June of this year. The Agency has also investigated more cases: 1,253 cases during the first six months of 2015 were fully investigated, compared to 1,038 cases during the first six months of 2014. With fewer open cases for each investigator, our investigators are able to gather evidence more quickly, including videos, and conduct interviews while memories are still fresh. This yields better-quality evidence and enables more decisions on the merits of misconduct allegations. As a result, the CCRB has increased its rate of substantiating complaints of police misconduct from 14% in 2013 and 17% in 2014 to 21% during the first six months of 2015.

The CCRB is only as effective as the trust that the public has in it. It is my core belief that this trust must be restored after years of anonymity and negative perceptions. Under my tenure, the Agency is expanding its community engagement programs. Thus, for example, the CCRB has recently launched the Community Partners Initiative. Through this initiative, the Agency currently

deploys staff at community-based organizations so that residents can access our services without having to travel to our Manhattan office during business hours. The Agency is collaborating with the Speaker's office and the City Council to utilize district offices to further expand this initiative.

The other way in which the Agency can gain the trust of the public is by continuing to strengthen the Administrative Prosecution Unit. The Unit prosecutes all substantiated cases where the Board has recommended Charges and Specifications. Drawing from my experience as a prosecutor for almost two decades, I have been working with the Agency's Chief Prosecutor in enhancing the Unit's standing in the Police Department. In 2014, before my tenure, the APU successfully pursued charges and specifications in 43% of its cases. Under my tenure, that figure doubled to 86% during the first half of 2015.

Completely restructuring the way the Agency handles investigations, mediations, and prosecutions has not been easy, and our work is not finished. Yet I can now promise members of the public that when they encounter police misconduct, our Agency's response will be swift, and justice will be served, in all stages of the complaint.

Sincerely,

Mina Q. Malik, Esq.

# Executive Summary

## Report Highlights

- Complaints against officers were at their lowest levels since 2001, and a small number of officers were responsible for a great majority of complaints.
- There was unprecedented cooperation between CCRB and NYPD. This cooperation has resulted in NYPD adopting a much greater percentage (91%) of CCRB's recommendations with respect to discipline. The rate at which the APU pursued discipline for cases with Charges and Specifications was 86% in the first half 2015.
- CCRB has been able to increase the rate at which it substantiates claims of misconduct (21%) and identifies police officers that allegedly make false statements during investigations due, at least in some part, to the increasing availability of video.
- CCRB has identified a few trends that merit NYPD attention: (1) the small increase in the number of noted possible false statements by police officers during the course of CCRB investigations; (2) the persistence of improper searches despite the drop in stop-and-frisk encounters; (3) the increase in the percentage of substantiated complaints of unnecessary or excessive force; and (4) a significant number of complaints allege that officers are not providing name/shield in violation of the Patrol Guide.
- CCRB's reorganization of its Investigations Division has enabled it to significantly reduce the length of time it takes to investigate complaints to an average of 77 days, increase the number of cases fully investigated, and shrink the docket of open cases.

## Section 1: Outcome of Investigations

The main finding of this Report is that, in conjunction with the CCRB's reformed and more efficient investigative process, the CCRB's ever-growing access to video has enhanced its ability to investigate allegations of police misconduct. CCRB investigations require an evidentiary showing of a preponderance of evidence in order to substantiate an allegation of misconduct and thereafter recommend discipline of an NYPD officer. Video often now serves as a way to meet the evidentiary standard. With investigators obtaining more video evidence through faster interviews and fieldwork, the CCRB substantiation rate has drastically increased. During the first half of 2015, the substantiation rate was 21% of fully investigated cases, by far the highest rate since CCRB's creation as an independent agency in 1993.

### *Video and Case Outcomes*

- Under the preponderance of evidence standard that the CCRB must use in evaluating cases, the increased prevalence of video in force cases has led to an increased percentage of cases where CCRB can substantiate the use of improper or excessive force. The percentage of substantiated force complaints with video evidence increased from 15% in 2012, to 26% in 2013, 34% in 2014, and 45% in the first half of 2015.

- Substantiated cases of abuse of authority, discourtesy, and offensive language increasingly have contained video evidence: 6% of such cases in 2012 had video evidence, as compared to 23% during the first half of 2015.

***Disposition of Cases***

- The substantiation rate for all fully investigated cases was 21% from January through June 2015. This is six percentage points higher than in the same period of 2014, when the rate was 15%. From 2010 to 2014, the annual substantiation rate fluctuated: it was 11% in 2010, 8% in 2011, 15% in 2012, 14% in 2013, and 17% in 2014.
- The number of officers with substantiated allegations has increased by 89%, as compared to the first half of 2014. In the first half of 2015, the Board substantiated 237 complaints against 354 police officers, as compared to the substantiation of 133 complaints against 187 police officers in the first half of 2014. (See Section 2)
- The rate of "truncated" cases—those that cannot be fully investigated—dropped to its lowest number since the Agency began to track this statistic in 1998.

***Disposition of Allegations***

- In the first half of 2015, the highest substantiation rate by allegation was for retaliatory summons and retaliatory arrest, which were substantiated at a rate of 70% and 58%, respectively.
- The Board continued to find misconduct in stop-and-frisk encounters, substantiating complaints involving a question, stop, frisk, and/or search allegation at a higher rate than in 2014. So far in the first half of 2015, 26% of all stop-and-frisk complaints have, at least, one substantiated stop-and-frisk allegation, as compared to 20% in the same period of 2014.
- In the first half of 2015 as compared to the first half of 2014, the CCRB substantiated improper question allegations at a rate of 11% versus 9%, stop allegations remained the same at 21%, frisk allegations at 32% versus 24%, and search allegations at 17% versus 10%.

***Other Misconduct Noted (OMN)***

- The Board continued to document failures by officers to complete stop-and-frisk reports (UF-250 form). In the first half of 2015, officers failed to prepare the UF-250 form as required in 16% of stop-and-frisk cases fully investigated by the CCRB. The rate was 18% in 2014.

***Misconduct Rate***

- The proportion of cases forwarded to the Police Department for discipline that contained either a substantiated allegation and/or another form of misconduct decreased in 2015. In the first half of 2015, 33% of cases in which the CCRB conducted a full investigation were forwarded to the Police Department containing a substantiated allegation and/or other form of misconduct. By comparison, the CCRB forwarded 37% of all fully investigated cases in 2014.

## Section 2. What's Happening to Civilians: Complaint Activity

The first half of 2015 has seen a significant (22%) decrease in the number of civilian complaints of police misconduct, including a reduction in the number of stop-and-frisk complaints. Three developments may have caused the steady decrease in complaint activity. These are the decrease in law enforcement interactions with civilians achieved without compromising public safety, better training, and the beginnings of a change in the NYPD culture toward civilians.

Furthermore, an analysis by the CCRB reveals that the problem of misconduct is limited to an identifiable cohort of officers. From January 2014 through June 30, 2015, one percent of identified officers on the force were responsible for 18% of all misconduct claims, five percent were responsible for 52%, and 10% were responsible for 78% of claims during this period. Five percent of officers were responsible for generating 100% of force complaints. Significantly, 86% of officers had no CCRB complaints during this period of time.

### *Complaint Activity and Officers*

- From January 2014 through June 2015, one percent of the entire force (N=372 officers) received 1,251 complaints against identified officers. This small group of officers was responsible for 18% of misconduct claims where the subject officer could be identified.
- During the reporting period, based on CCRB's identification of officers, 86% of officers on the force did not receive a single complaint of misconduct.
- The top one percent of officers who were the subjects of force misconduct claims was involved in 26% of all force allegations. Even more significant, the top one percent accused of using offensive language was responsible for 93% of all offensive language complaints against identified officers.
- Of the 5,209 identified officers with complaints over the reporting period, 4,005 officers were involved in only one complaint and 1,204 were involved in two or more complaints.
- An analysis of the 325 identified officers who received three or more complaints during this period of time show that, on average, these officers were younger (34 years old) and less experienced (9 years of tenure) than officers without multiple complaints (37 years old, with 11 years on the force).

### *Number of Complaints Received*

- In the first half of 2015, civilian complaints against the police decreased by 22%, as compared to the first half of 2014. The CCRB received 2,092 complaints from January through June 2015, as compared to 2,698 for the same time period in 2014. This is the lowest number of complaints since 2001.
- By category of allegation, force decreased by 28%, abuse of authority by 22%, discourtesy by 30%, and offensive language by 29%.

- In recent years, more than one in four CCRB complaints contained allegations of improper stop, question, frisk, or search (referred to as stop-and-frisk complaints). However, the actual percentage of such complaints has decreased during the last five years by ten percentage points, from 31% in the first half of 2010 to 21% in the first half of 2015.

***Characteristics of Complaints Received***

- Although comprising 23% of New York City's population, African-Americans accounted for 51% of alleged victims. From January through June 2015, 16% of alleged victims were white and 2.5% were Asian, though they make up 34% and 12% of the city's population, respectively. Hispanics constituted 26% of alleged victims in CCRB complaints and 29% of the City population.
- In the first half of 2015, 56% of the alleged victims in stop-and-frisk complaints were black, which is lower than the average of 62% during the period 2010 to 2014. The percentage of white alleged victims remained at less than 10% from 2010 to 2013, but it increased to 12% in 2014 and to 14% in the first half of 2015. Hispanics comprised 26%, which is slightly lower than their numbers in overall complaints, and 1% were Asian.
- In the first half of 2015, 31% of complaints were based in Brooklyn, 23% in the Bronx, 23% in Manhattan, 18% in Queens, and 5% in Staten Island. At the same time, the Bronx had the highest number of complaints per 10,000 residents, at 3.4. Manhattan had 2.9, Brooklyn 2.5, Staten Island 2.2, and Queens 1.6.

## Section 3. The Heart of Civilian Oversight: Collaboration and Improvement in the NYPD Disciplinary Process

Beginning in August 2014, the CCRB and the Police Department began unprecedented inter-agency communication on disciplinary outcomes. This sharing of information has yielded results that have significantly increased implementation by the NYPD of the CCRB's independently recommended disciplinary action for substantiated allegations against officers.

- In the first half of 2015, the Board recommended that administrative charges be brought against 103 officers in 64 cases (27% of cases), command discipline for 157 officers in 105 cases (44% of cases), formalized training or instructions for 93 officers in 67 cases (28% of cases), and no recommendation was made for 1 officer in 1 case (0.4%).
- The Department Advocate's Office (DAO) of the NYPD has increased both its rate of imposing some form of discipline in substantiated allegations of misconduct and adherence to CCRB recommended penalties. From January through June 2015, DAO imposed some form of discipline in 91% of the substantiated cases in which the Board recommended discipline—the highest rate ever for the DAO since the creation of the independent CCRB. In contrast, during the same period in 2014, DAO imposed discipline in only 58.5% of cases where CCRB recommend discipline.

- From January through June 2015, the Administrative Prosecution Unit (APU) processed before the NYPD's Deputy Commissioner of Trials (DCT) 84 trials or pleas, as compared to 45 for the entire 2014. This was an 87% increase.
- In evaluating the Reconsideration Process implemented in December 2014, the statistics show that DAO has increased its rate of agreement with the Board's recommendations both for substantiations and for discipline. The rate at which the DAO pursued discipline in non-APU cases was 57% in 2013, 71% in 2014, and 92% in the first half of 2015.
- The Reconsideration Process has also benefited the work of the APU. The rate at which the APU pursued discipline for cases with Charges and Specifications was 0% in 2013, 43% in 2014, and 86% in the first half 2015. While in 2014, the Police Department decided to withhold 33 cases from APU prosecution, in the first half of 2015 the Police Department withheld no cases.
- In the first half of 2015, the Police Commissioner set aside only three plea agreements negotiated by the APU, as compared to 19 such cases in 2014. This was the result of a protocol put in place to ensure basic agreement between the CCRB and the Police Department on the appropriate penalty level for negotiated pleas.

## Section 4. Update on Troubling Complaint Patterns

By examining patterns and trends that emerge across all complaints, the CCRB is seeking to identify ways in which policing can become more respectful and professional without sacrificing effectiveness. In the first half of 2015, the CCRB analyzed the following three troubling patterns which merit scrutiny: (1) the increase in the number of alleged false official statements made by police officers during the course of CCRB investigations coinciding with greater availability of video; (2) the persistence of allegations of improper searches despite the drop in stop-and-frisk encounters; and (3) the increase in the percentage of substantiated complaints of unnecessary or excessive force.

### *False Official Statements*

- The CCRB's 2014 Annual Report documented that, although false official statement allegations are statistically rare, they were noted at a higher frequency in 2014. That trend continued in the first half of 2015.
- In the first half of 2015, the CCRB closed investigations that noted 19 allegations of false official statement, 18 of which stemmed from incidents that occurred in 2014. Those 19 allegations of false official statement are on pace to far exceed the 26 allegations noted in 2014. The reason for the significant increase is primarily the result of video evidence.
- From 2010 through 2013, the CCRB noted 26 allegations of false official statements: two in 2010, three in 2011, eight in 2012, and 13 in 2013.

***Improper Search of a Person***

- In the first half of 2015, the CCRB received 251 complaints including at least one search allegation for a total of 309 search allegations. CCRB statistics show that 57% of stop-and-frisk complaints contained a search-related allegation, a number that has fluctuated only slightly since 2010.
- The Board substantiated 38 search allegations in 29 cases, or 17% of all fully investigated allegations. One case stemmed from an incident that occurred in 2013 and 28 incidents occurred in 2014.
- In making findings in these 29 substantiated search cases, the Board also noted and referred to the Police Department cases where the subject officer failed to prepare the required stop-and-frisk report (UF-250), which must be completed after each encounter involving a stop, frisk or search. In the first half of 2015, the Board noted these failures in proper reporting in 19 out of the 29 substantiated search cases, or 66% of these cases.

***Excessive Use of Force***

- In the first half of 2015, the CCRB fully investigated 1,339 allegations of excessive and/or unnecessary force. The Board substantiated 77 force allegations, or 6%, which was three times higher than the first half of 2014 when the rate was 2%. The main reason for the increase was the presence of video evidence.
- These 77 force allegations substantiated in the first half of 2015 stemmed from 49 complaints: four incidents occurred in 2013 and 45 occurred in 2014.

## Section 5. Revamping the Investigations Division in Three Phases: One-Year Report Card

The CCRB's most significant internal achievement in 2015 has been the dramatic reduction in the length of time it takes to conduct investigations, which followed an organizational restructuring that began in July 2014 and proceeded in three phases. Since the implementation of the second phase in December 2014, the CCRB has investigated 394 cases and taken an average of 77 days to investigate and submit them for Board review. This represents a 72% reduction from the 271 days an average investigation took to complete a year ago.

- Looking at all cases—old and new—investigators closed 85% of cases received in less than 120 days. By comparison, for the same period of last year, investigators closed 54% of cases received in less than 120 days.
- In the first half of 2015, investigators fully investigated and submitted for Board review 1,253 cases, which were 21% more investigations than in the first half of 2014, when investigators completed 1,038 cases.
- By the end of June, the open docket of the Investigations Division—the number of cases under active investigation—was smaller than at any point since the creation of the Agency. In June 2015, the open docket of the Investigations Division was 666 cases, a 64% decrease from the open docket of 1,838 cases in June 2014.

## Section 6. Community Outreach

- In December 2014, the CCRB's Community Partners Initiative began at two locations in Queens. This initiative has been key to the expansion of our outreach work in the first half of 2015. The CCRB's Outreach Unit completed 120 presentations during the first half of 2015 and it is on pace to complete at least 240 presentations by the end of the year.

## Section 7. Mediation and the Power of Dialogue

- In the first half of 2015, the Mediation Unit mediated 82 cases. There were 81 cases mediated in the first half of 2014. It was the most productive January through June period for mediation since 2010, when the CCRB mediated 91 cases.
- In the first half of 2015, it took an average of 144 days to mediate a complaint, a decrease of 25% from the average of 192 days in the first half of 2014.

## Section 8. Police Officer Anonymity: New Findings on Officers Refusing to Provide Name and Shield

The CCRB investigated claims of officers refusing to provide their name and shields when asked, in violation of the NYPD Patrol Guide. Though substantiating such charges is particularly challenging absent video or third-party evidence, the investigations still yielded important information about officers' refusal to identify themselves.

- In the first half of 2015, the CCRB received 320 complaints containing an allegation of refusal to provide name and/or shield number, which is 15% of all cases received for that period.
- During this period, the CCRB investigated 434 allegations, of which 226 were fully investigated. The substantiation rate was 7% and the unsubstantiation rate was 70%, which is the second highest unsubstantiation rate for any allegation, second to failure to show search warrant at 75%.
- In approximately half of refused name and shield investigations, the CCRB substantiated at least one other charge against the subject officer. Approximately half of the CCRB's substantiations in refusal to provide name allegations were made against plainclothes officers.

## Section 9. Update on Policy Reports Issued in 2014

### *Vehicle Search*

- During the first half of 2015 as compared to the same period in 2014, vehicle search allegations were substantiated at a rate of 26% versus 17%, while vehicle stops were substantiated at a rate of 20% versus 5%.

***Chokeholds***

- From January 1, 2015, through June 30, 2015, members of the public filed 73 chokehold complaints. The current annualized rate is 146 chokehold complaints, which is on course for being the lowest rate since 2004 when the public filed 140 complaints.
- As our 2014 Chokehold Report noted, the Board substantiated nine chokehold cases from 2009 through June 2014: three in 2009; two in 2010; one in 2011; one in 2012; one in 2013; and one in the first half of 2014. Since the Report was published in October 2014, the Board substantiated 12 chokehold cases from October 2014 through June 2015. The increase in substantiated chokehold cases can be attributed to the prevalence of video, often available due to faster investigations.

## SECTION 1

# Outcome of Investigations
## The Increasing Role of Video in CCRB Investigations

The main finding of this Report is that, in conjunction with the CCRB's reformed and more efficient investigative process, the ever-growing access to video has enhanced the CCRB's ability to investigate allegations of police misconduct. CCRB investigations require an evidentiary showing of a preponderance of evidence in order to substantiate an allegation of misconduct and thereafter recommend discipline of a police officer. Video often makes the difference in meeting the evidentiary standard. With investigators obtaining more video through faster interviews and dedicated fieldwork, the CCRB's substantiation rate has drastically increased. During the first half of 2015, the substantiation rate of cases was 21%, the highest rate since CCRB's first year of operation in 1993.

While the CCRB traditionally has sought video evidence from fixed security cameras, the ubiquity of smartphones and other mobile devices allows victims and virtually any bystander to generate helpful video evidence. The importance of video evidence is that it provides the CCRB with more and more reliable evidence as to what actually happened. As recently as 2012, only 3% of CCRB full investigations utilized video evidence, a number that has grown each year, reaching 17% for the first half of 2015.

The impact of video evidence has been most profound in excessive force investigations. Unsurprisingly, incidents involving use of force by the police attract more videotaping witnesses than nonviolent confrontations. The percentage of force investigations with video evidence increased from 4% in 2012, to 13% in 2013, to 16% in 2014, finally reaching 21% of all full investigations of force during the first half of this year. By comparison, the percentage of non-force investigations with video evidence grew from 2% in 2012, to 6% in 2013, 10% in 2014, and 12% in the first half of 2015.

The greater prevalence of video in force investigations has naturally led to its increasing role in substantiating cases. The percentage of substantiated force allegations with video evidence increased from 15% in 2012, to 26% in 2013, 34% in 2014, and 45% in the first half of 2015. By contrast, video was only available in 16% of force cases that were not substantiated in the first half of 2015, clear evidence of the potency of video evidence.

Similarly, investigations resulting in substantiated cases of abuse of authority, discourtesy, and offensive language increasingly involved video evidence, from 6% of such cases in 2012 to 23% during

the first half of 2015. As with force cases, instances in which these allegations were not substantiated involved video evidence only 9% of the time in the first half of 2015.

Video is also present in cases where officers are found not to have committed misconduct. The percentage of cases exonerated with video evidence increased from 2% in 2012 to 16% in the first half of 2015. Similarly, the percentage of unfounded cases with video evidence increased from 1% in 2012 to 14% in the first half of 2015.

As expected, with the full implementation of an investigative field team dedicated primarily to gathering video evidence, finding witnesses, and conducting other investigative activity in the field, the trend of obtaining video evidence has accelerated. In the first half of 2015, there were 221 new investigations underway with the support of such evidence. That represents 11% of all complaints, which means the percentage of full investigations using video will exceed that of prior years. The CCRB expects the amount of video evidence to climb steadily in the years ahead, especially following the NYPD roll-out of its body-worn camera program, which will add an entirely new source of video for investigators to access and assess.

Another result of the reforms initiated in the last year is that the use of video evidence is not restricted to the investigative process, but has expanded into the Board review process. In the first half of 2015, the CCRB developed a new computer-based application that enables Board members to watch video files and to listen to audio files while they review the investigative case file and vote electronically. More than ever before, video files are directly available to Board panel members as they decide how to vote on case outcomes.

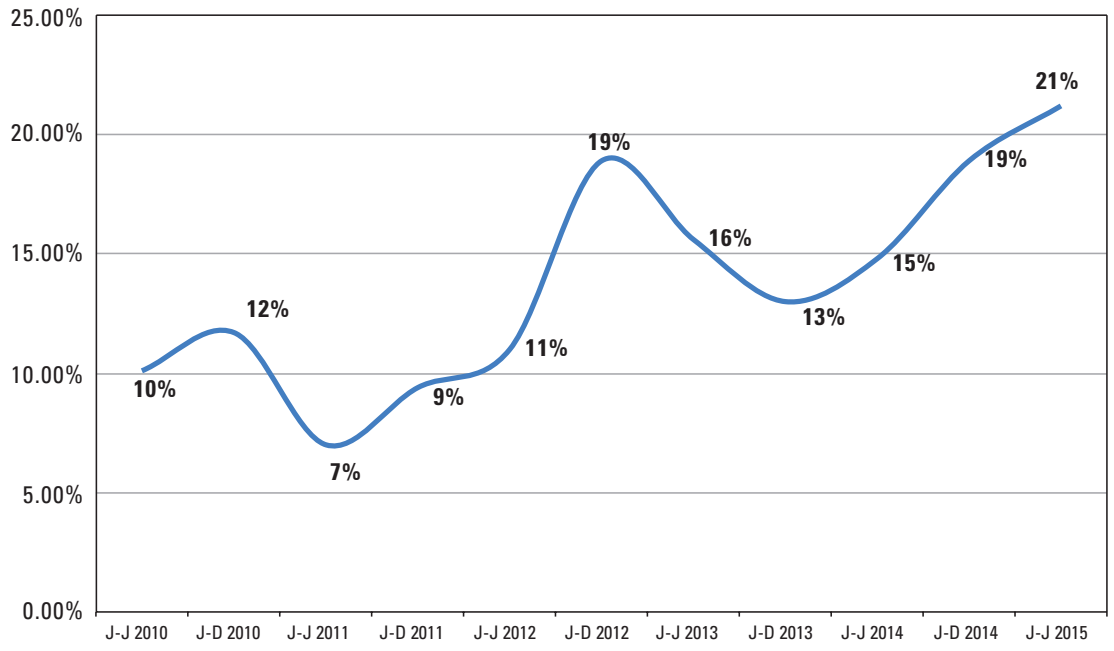
As telling and powerful as video evidence may be, the CCRB continues to employ rigorous investigative standards and weigh the evidentiary value of third-party video carefully. Many incidents occur quickly in real time, and videos will never completely replace the firsthand accounts of victims, subject police officers, and civilian and police witnesses, or information gathered from medical records and other documentary evidence. In some instances, video will never provide conclusive evidence. In the first half of 2015, 14% of unsubstantiated cases had video evidence. Nonetheless, all participants in the CCRB process recognize the value that video and audio evidence adds to the ability of CCRB to conduct efficient, fair, and accurate investigations.

#### *Disposition of Cases*

The substantiation rate was 21% of all fully investigated cases from January through June 2015. This substantiation rate was six percentage points higher than the rate of 15% for the same period of 2014, a jump of more than a third. From 2010 to 2014, the annual substantiation rate fluctuated: it was 11% in 2010, 8% in 2011, 15% in 2012, 14% in 2013, and 17% in 2014. CCRB attributes this to video evidence and faster, more efficient investigations.

The Board substantiated 237 cases against 354 police officers in the first half of 2015. This is 104 cases more than the first half of 2014, when the Board substantiated 133 complaints against 187 police officers. The Board substantiated 260 complaints for the full year of 2010; 160 in 2011; 189 in 2012; 300 in 2013; and 326 in 2014.

## Substantiation Rate, January 2010 – June 2015




In addition to the substantiation rate, the Board examines the case resolution rate and the truncation rate to analyze long-term trends in the disposition of complaints. Case resolution rate is the percentage of all complaints closed in a given year that are resolved either through a full investigation or through the mediation program. The rate was 47% in the first half of 2015, as compared to 44% in the first half of 2014. The average case resolution rate from 2010 to 2014 was 38%, nine percentage points lower.

Truncation rate refers to cases where a full investigation or a mediation was not possible because the case was deemed "complaint withdrawn," "complainant/victim uncooperative," "complainant/victim unavailable," and "victim unidentified." The truncation rate for the first half of 2015 was 47%, which was the lowest truncation rate since 1998, when the agency began to measure the rate at which complaints were truncated. The average truncation rate from 2010 to 2014 was 62%, fifteen percentage points higher.

In the first half of 2015, there was a significant difference of 27 percentage points in the truncation rate based on whether the complaints were initially filed with the CCRB (41%) or with the Police Department (68%). These data are consistent with past findings. It is important to note that, although the difference in the truncation rate was significant by place of filing, there was no such difference in terms of the substantiation rate. The substantiation rate was 21% for cases filed directly with the CCRB, as compared to 22% for cases within the CCRB jurisdiction initially filed with the Police Department.

Although the difference between complaints filed with the CCRB and complaints filed with the NYPD are relatively important for the categories of "complaint withdrawn" and "complainant/victim uncooperative," the most substantial difference is for cases closed as "complainant unavailable."[1] A case was four times more likely to be closed as "complainant/victim unavailable" if it was filed with the Police Department (18% of all cases filed with the Police Department) than if it was filed with the CCRB (4% of all cases filed with the CCRB). In cooperation with the Police Department, the CCRB is implementing protocols to further reduce the number of cases where the complainant is unavailable after the filing of a complaint. Similarly, in the first half of 2015, 30% of all complaints filed with the CCRB directly and 40% of complaints filed with the NYPD were closed as "complainant/victim uncooperative." Finally, 6% of complaints filed with the CCRB and 9% of complaints filed with NYPD were closed as "complaint withdrawn."

Statistical analysis shows that the method by which complaints are filed with the CCRB is a significant factor in determining the truncation rate. Only 2% of all complaints filed in-person were truncated. By comparison, 41% of all complaints filed by phone with the Intake Unit during business hours, 45% of complaints filed online, and 48% of complaints filed by leaving a message on the automated voice-messaging system were truncated. The location of a complainant's residence played no significant role in the truncation rate.

#### *Disposition of Allegations*

In addition to analyzing case dispositions, the Agency examines the disposition of individual allegations in a complaint. A complaint may consist of one or more allegations of misconduct against one or more police officers corresponding to the CCRB's FADO jurisdiction.[2] To examine the disposition of individual allegations, the CCRB tallies the individual disposition of each allegation within a complaint. Two rates are relevant: (1) the rate at which the CCRB makes "findings on the merits," and (2) the "substantiation rate" of each individual allegation.[3]

Of the 4,611 allegations the CCRB fully investigated in the first half of 2015, 40% (1,858 allegations) were closed with findings on the merits, compared to 41% in the same period of 2014. From 2010 to 2014, the average rate was 45%. The rate has been below 50% since 2010 when the rate was 52%. A decade ago, in 2005, the findings on the merit rate were 65%.

The high rate of unsubstantiated findings—not a finding on the merits—is the main reason for the low rate. In the first half of 2015, 2,134 allegations were unsubstantiated (46%). This is an increase of two percentage points from 44% in the first half of 2014. In the first half of 2015, 13% of allegations were closed as "officer(s) unidentified," which is the same rate than in the first half of 2014.

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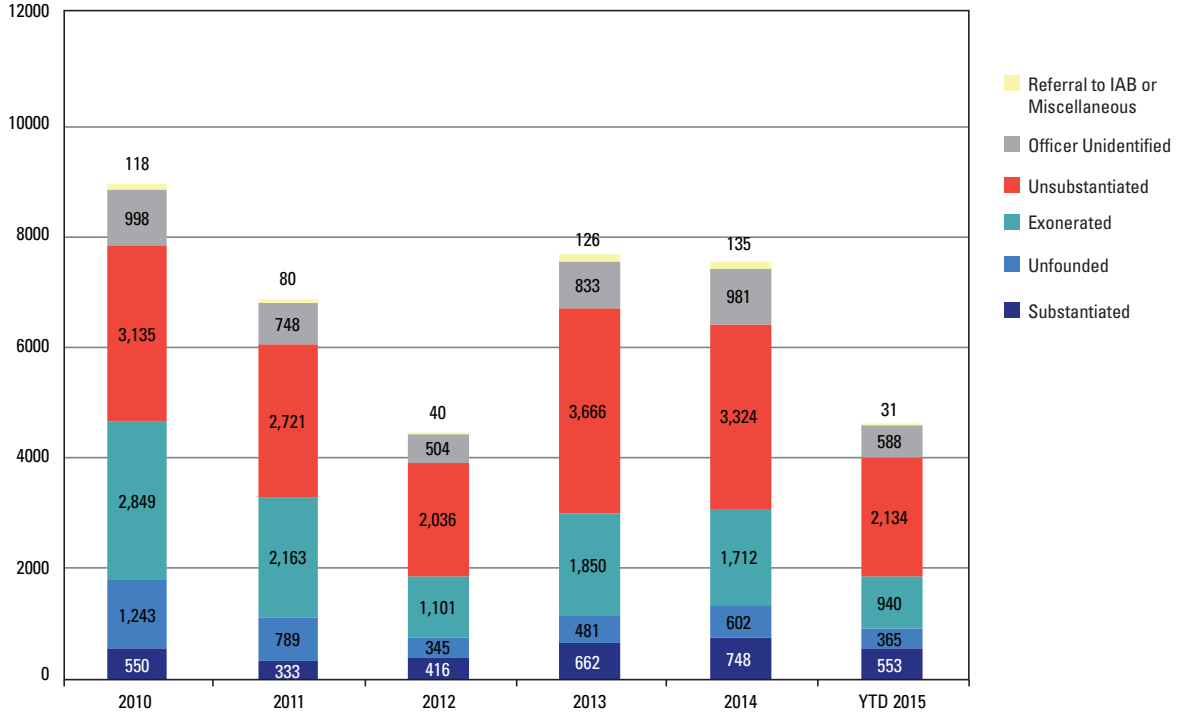
1 A complainant is unavailable when the Agency has or receives incomplete or inaccurate identifying and contact information, or when the information is complete and investigators cannot make contact because the complainant is unavailable.

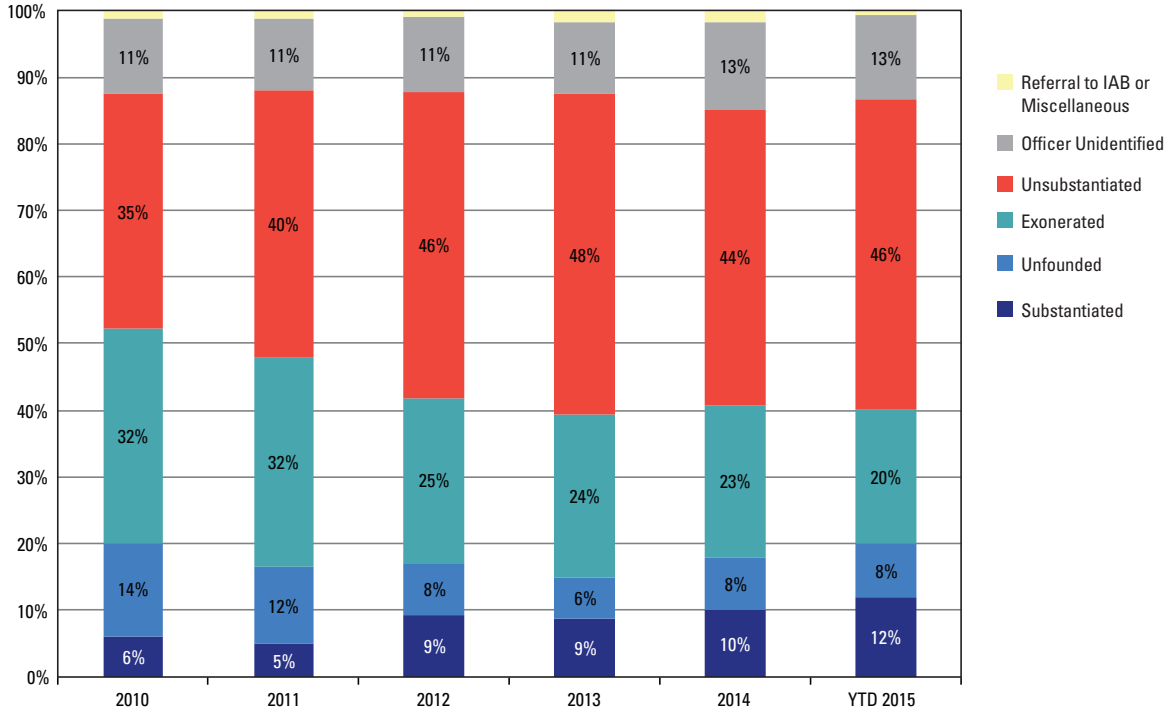
2 The Agency's jurisdiction is limited to four categories of misconduct: force, abuse of authority, discourtesy, and offensive language. It is known by the acronym FADO.

3 Findings on the merits result when the Agency obtains sufficient credible evidence for the Board to reach a factual and legal determination regarding the officer's conduct. These findings include those allegations resolved as substantiated, exonerated, or unfounded.

## Disposition of Allegations in Full Investigations, 2010 – June 2015




## Disposition of Allegations in Full Investigations, 2010 – June 2015



The substantiation rate by allegation was 12% in the first half of 2015, as compared to 8% in the first half of 2014. From 2010 to 2014, the rate averaged 8%. There were changes in the substantiation rate for all four categories of allegations—force, abuse of authority, discourtesy, and offensive language. In the first half of 2015, 77 force allegations (6%) were substantiated, versus 24 allegations (2%) in the same period of 2014. For abuse of authority, 404 allegations (17%) were substantiated compared to 219 (13%). For discourtesy, 67 allegations (9%) were substantiated compared to 30 (5%). Finally, in the first half of 2015, five offensive language allegations (3%) were substantiated compared to 11 such allegations (10%) in the first half of 2014.

In the first half of 2015, the highest substantiation rates by allegation were for retaliatory arrest and retaliatory summons, which were substantiated at a rate of 58% and 70%, respectively. The next highest substantiation rate was for the generic category of "other - abuse of authority," at 37%.

The Board substantiated stop-and-frisk complaints at a higher rate than in 2014. During the first half of 2015, 26% of all stop-and-frisk complaints have, at least, one substantiated allegation of question, stop, frisk and/or search, as compared to 20% in the same period of 2014. In the first half of 2015, the CCRB substantiated improper question allegations at a rate of 11%, stop allegations at 21%, frisk allegations at 32%, and search allegations at 17%. By comparison, in the first half of 2014, the CCRB substantiated improper question allegations at a rate of 9%, stop allegations at 21%, frisk allegations at 24%, and search allegations at 10%. These numbers show improper frisk and improper search substantiation rates are up compared with the first half of 2014.

There were other findings in the allegations of search and seizure. In the first half of 2015, premises improperly entered and/or searched allegations were substantiated at a rate of 17%, which was two percentage points higher than in the same period of 2014. Improper or illegal vehicle search allegations were substantiated at a rate of 26%, while vehicle stops were substantiated at a rate of 20%. These allegations were also substantiated at a significantly higher rate than in the first half of 2014. (See Section 9)

The rate at which allegations were unsubstantiated was higher for offensive language allegations (73%) and discourtesy allegations (62%) than it was for force (41%) and abuse of authority allegations (43%). There were some categories where the rate that allegations were unfounded was much higher than the average rate of eight percent. Thus, for example, 32% of cases where the drawing of a gun was alleged and 26% of cases where chokeholds were alleged were deemed unfounded. The exoneration rate was higher for force (28%) and abuse of authority (23%) allegations than it was for discourtesy allegations (3%). Offensive language was never exonerated.

#### *Other Misconduct Noted*

Where an investigation reveals that the police officer committed misconduct that falls outside of the CCRB's jurisdiction, as defined in Chapter 18-A § 440 (c)(1) of the New York City Charter, the Board notes the "other misconduct," which is categorized by the CCRB as Other Misconduct Noted (OMN). The Board reports the misconduct to the Police Department for possible disciplinary action. Examples of OMN allegations include an officer's failure to properly document an encounter

or other activity in his or her memo book as required by Patrol Guide procedure. Allegations of other misconduct should not be confused with allegations of corruption, which are also referred to the Police Department.

In the first half of 2015, the Board noted 439 allegations of other misconduct compared to 393 OMN allegations in the first half of 2014. From 2010 to 2014, the total number of allegations of other misconduct referred to the Police Department was 3,748.

OMN allegations may arise in two types of cases. The first is where the Board substantiates an allegation of force, abuse of authority, discourtesy, or offensive language (FADO). The second is when no FADO allegation is substantiated.

In recent years, there have been a large number and proportion of substantiated complaints that also contained OMN allegations. The rate was 31% in 2010, 36% in 2011, 47% in 2012, 55% in 2013, and 46% in 2014. In the first half of 2015, 103 out of 237 substantiated cases contained allegations of other misconduct, or 43% of cases.

In addition to false official statements, which this Report discusses in a separate section, the Board refers cases to the Police Department in which officers failed to document their actions as required by the NYPD. The three major categories of this form of misconduct are an officer's failure to complete a stop-and-frisk form (UF-250), failure to document a strip search in the precinct's command log, and failure to make memo book entries. In the first half of 2015, the first type of documentation failure occurred 64 times, the second occurred eight times, and the third occurred 339 times.

In recent years, the Board has focused on investigations of stop-and-frisk encounters where a police officer or officers failed to complete a UF-250 report to document a street encounter with a civilian. The Board continued to note these forms of other misconduct and to refer them to the Police Department. In the first half of 2015, the Board noted that 16% of all stop-and-frisk complaints fully investigated were referred to the Police Department for failure of to fill out the required UF-250 report. These numbers are consistent with past reports. (See Table 1)

**Table 1: Stop-and-Frisk Investigations and No UF-250 Forms**

| Panel Year | Stop-and-Frisk Full Investigations | No UF 250 | Percentage |
|---|---|---|---|
| 2010 | 834 | 72 | 9% |
| 2011 | 659 | 87 | 13% |
| 2012 | 383 | 76 | 20% |
| 2013 | 624 | 108 | 17% |
| 2014 | 557 | 98 | 18% |
| J-J 2015 | 318 | 50 | 16% |

These failures to document police activities are significant because a CCRB investigation needs a preponderance of evidence for the Board to make findings on the merits and the documentation of an officer's actions can tip the balance. The failure to document can result in a lack of evidence that causes the complaint to be unsubstantiated rather than the Board reaching a finding on the merits.

Additionally, the Board has a miscellaneous category for misconduct such as "improper supervision" or "failure to complete an aided report." The Board referred 10 such instances of misconduct in the first half of 2015.

***Misconduct Rate***

The proportion of cases forwarded to the Police Department for discipline that contained either a substantiated FADO allegation and/or an OMN has decreased in 2015. In the first half of 2015, 33% of cases in which the CCRB conducted a full investigation contained a substantiated allegation and/or an OMN, and were forwarded to the Police Department. By comparison, the CCRB forwarded 20% in 2010, 21% in 2011, 34% in 2012, 35% in 2013, and 37% in 2014. In absolute numbers, the Board forwarded 369 cases to the Police Department in the first half of 2015: 103 substantiated cases with other misconduct noted allegations attached to the case, 134 substantiated cases without other misconduct noted, and 132 cases where other misconduct was noted but the underlying complaint was not substantiated.

## SECTION 2

# What's Happening to Civilians: Complaint Activity

### Small Number of Officers Generate Vast Majority of Complaints

Based on an analysis of data received during the last 18 months, the overwhelming majority of police misconduct complaints are driven by a small percentage of the police force. An analysis of complaints against police officers from January 2014 through June 2015 found that 10% of officers (N=3,721) of a total of 37,215 on the force during this period were responsible for 78% of misconduct claims (5,432 out of 6,920).[4] A large number of complaints were concentrated within an even narrower slice of the force: one percent (N=372) of officers accounted for 18% of all CCRB complaints (See Table 1). Meanwhile, 86% of officers did not receive a single complaint of misconduct over the reporting period, a remarkably high number compared with two previous studies of other police departments in the United States.[5]

From January 2014 through June 2015, New Yorkers filed 6,383 complaints with the CCRB. The CCRB successfully identified at least one officer as the subject in 5,159 of the complaints, and did not identify any subject officers in the remaining 1,704 complaints. Because complaints can consist of multiple allegations of misconduct against one or more officers, there were 9,789 different subject officers in these 6,863 complaints, of which 5,209 officers were identified and 4,580 officers could not be identified.

A single complaint of misconduct may include complaints against two or more officers. As a result, these 5,209 identified officers were the subjects of a total of 6,920 complaints. In addition, a single complaint of misconduct can include multiple allegations of misconduct that correspond to the four distinct FADO categories: complaints involving use of force (N=2,922); abuse of authority (N=3,654); discourtesy (N=1,912); and offensive language (N=409). The 5,209 identified officers were responsible for 6,920 complaints and 8,897 FADO allegations of misconduct.

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4 The analysis looked only at cases where the subject officer could be identified by the CCRB. It focused on all complaints received by the CCRB from January 2014 through June 2015 for which the complaint of misconduct fell within the CCRB's FADO jurisdiction and the subject officers. This includes cases where the CCRB conducted a full investigation, cases where the CCRB could not conduct a full investigation but was able to identify subject officers before the case was closed, and mediated cases. Of the officers alleged to have committed misconduct, the CCRB identified 60.2% of the officers and could not identify 39.8% of the officers.

5 In those studies, approximately 50% of officers had at least one allegation of misconduct against them in a three-year period. See: Kim M. Lersch and Tom Mieczkowski, "Who Are the Problem-Prone Officers? An Analysis of Citizen Complaints," *American Journal of Police* XV.3 (1996): 23-44; Ibid., "An Examination of the Convergence and Divergence of Internal and External Allegations of Misconduct Filed Against Police Officers." *Policing: An Internal Journal of Police Strategies and Management* 23.1 (2000): 54-68.

**Table 2: Identified Subject Officers from January 2014 – June 2015**
ALL COMPLAINTS

| Percentile | Officers | Number of Complaints | Percentage of Complaints |
|---|---|---|---|
| Top 1% | 372 | 1,251 | 18.1% |
| Top 5% | 1,860 | 3,571 | 51.6% |
| Top 10% | 3,721 | 5,432 | 78.5% |
| Bottom 80% | 29,772 | 0 | 0.0% |

The data also show that 372 officers, one percent of the entire force during this period of time, received 1,251 complaints against identified officers. This small group of officers was responsible for 18% of misconduct claims where the subject officer could be identified. Digging even deeper, the 16 officers (.05% of the force) with the most complaints received at least six and as many as ten complaints over the 18 months.

The top one percent of officers on the force, ranked by the number of complaints received, was responsible for 26% of all force allegations and 25% of abuse of authority allegations. The top 5% of officers on the force was responsible for 100% of force allegations. Also, the top one percent of officers on the force was responsible for 93% of all offensive language complaints against identified officers.

***Officer Characteristics: Officers with Three or More Complaints***

Of the 5,209 identified officers, 4,005 officers were involved in only one complaint and 1,204 were involved in two or more complaints. The CCRB's analysis yielded 325 identified officers (.9% of the force) who received at least three complaints against them. While this small group of officers accounted

**Table 3: Concentration of Complaints Against Officers**

| Complaints with Identifiable Officers | Officers | Percent of NYPD | Total Number of Complaints | Percentage | Cumulative Percentage |
|---|---|---|---|---|---|
| 0 | 32,006 | 86.00% | 0 | 0.0% | 0.0% |
| 1 | 4,005 | 10.76% | 4,005 | 57.9% | 57.9% |
| 2 | 879 | 2.36% | 1,758 | 25.4% | 83.3% |
| 3 | 221 | 0.59% | 663 | 9.6% | 92.9% |
| 4 | 62 | 0.17% | 248 | 3.6% | 96.4% |
| 5 | 26 | 0.07% | 130 | 1.9% | 98.3% |
| 6 | 6 | 0.02% | 36 | 0.5% | 98.8% |
| 7 | 4 | 0.01% | 28 | 0.4% | 99.2% |
| 8 | 4 | 0.01% | 32 | 0.5% | 99.7% |
| 9 | 0 | 0.00% | 0 | 0.0% | 99.7% |
| 10 | 2 | 0.01% | 20 | 0.3% | 100.0% |
| **Total** | **37,215** | **100%** | **6,920** | **100%** | **100%** |

for less than one percent of the total sworn officers employed by the Police Department, the repeat offenders accumulated 16.7% of the total number of complaints. (See Table 3)

When this group of repeat offenders is compared with the demographic composition of the Police Department as a whole, it distinguishes itself in several respects. Most notably, male officers are overrepresented, accounting for 96% (N=312) of officers with three complaints, as opposed to 83% of the police force generally. On average, officers with three or more complaints were also younger (34 years old) and less experienced (9 years) than officers without multiple complaints (37 years old, with 11 years on the force). In other respects, repeat offenders reflect the make-up of the overall police force. For example, the racial composition of the two groups is essentially the same, as well as how many are New York City residents.

By rank, 65% of officers with multiple complaints are police officers, 12% are detectives, 17% are sergeants, and 5% are lieutenants. There was only one member of the service with a higher rank. By command assignment, the analysis identified the five commands with the largest number of officers with multiple complaints. The 75th Precinct had 19 officers with multiple complaints, the 121st Precinct had 12 officers, Brooklyn North Narcotics and Patrol Borough Bronx had 11 officers each, and Queens North Narcotics had 10 officers.

These numbers suggest that the type of police misconduct under the CCRB's jurisdiction is not intractable. Based on the data available to the CCRB, the overwhelming majority of officers are doing their jobs the right way. However, those officers that receive complaints can be easily identified, monitored and retrained if needed, or disciplined in the event of substantiated serious misconduct or failed training. The small number of officers identified as the generators of most CCRB complaints also suggests that enhanced training is a good foundation. But laser-like focus must be directed at the truly problematic officers that generate a disproportionate numbers of complaints.

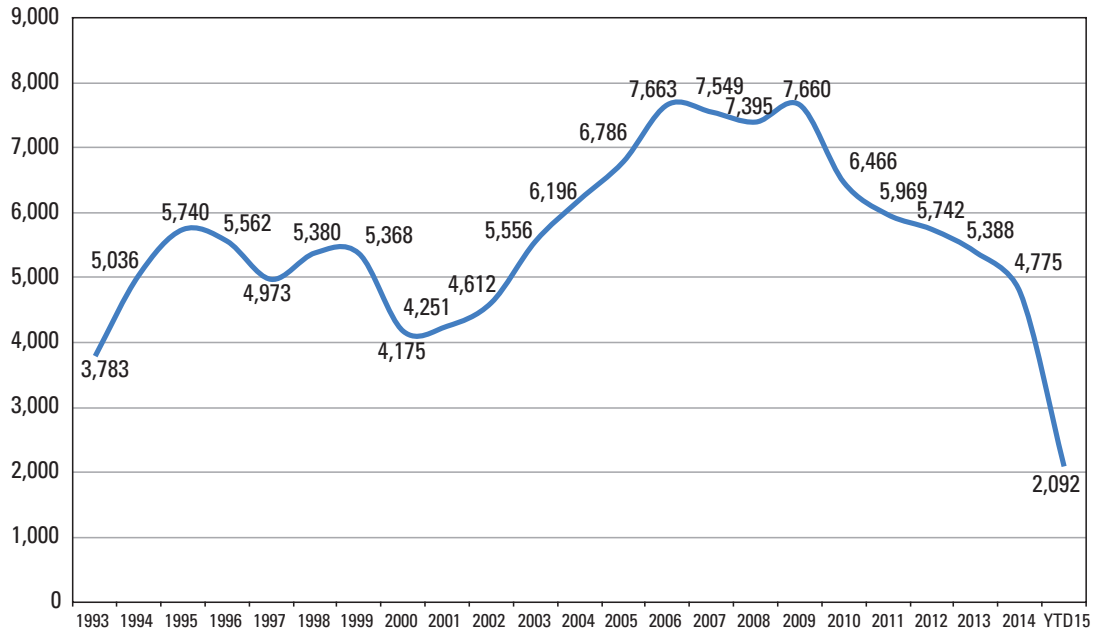
To this end, the CCRB is conducting research, using its extensive database of civilian complaints, in order to identify factors predictive of future substantiated complaints. This research will help the CCRB prioritize investigations of complaints involving NYPD police officers at the highest risk of future complaints. CCRB will also share the results of this research with NYPD to help inform the Department's efforts to reduce officer misconduct.

## Decrease in Number of Complaints Received

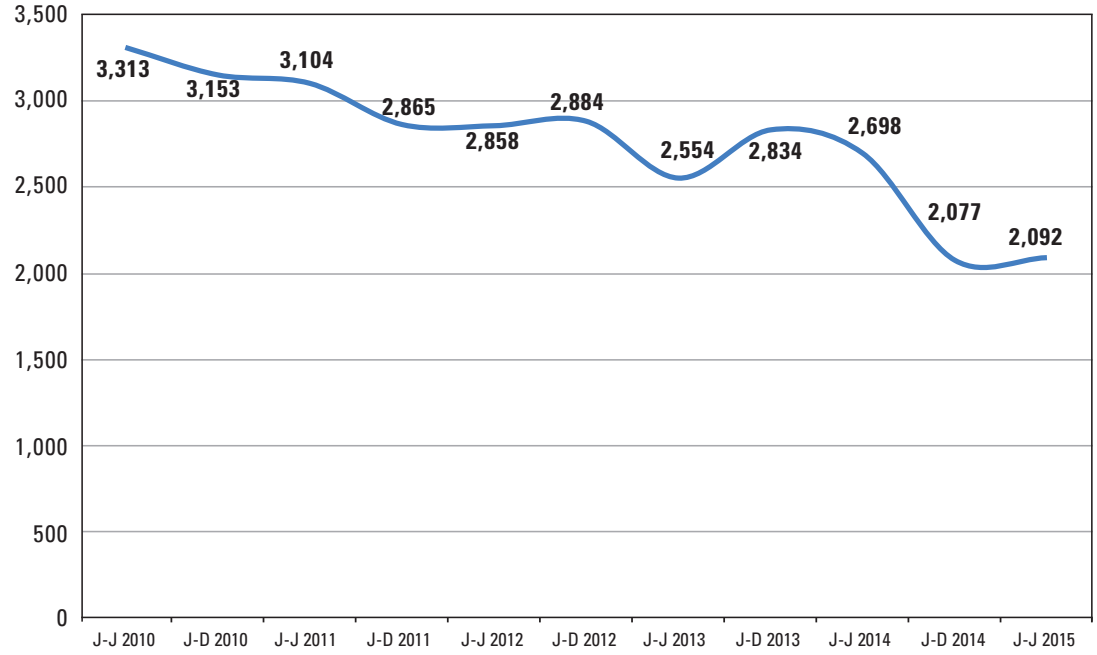
The CCRB received 2,092 complaints within its FADO jurisdiction in the first half of 2015. This is a 22% decrease from the first half of 2014 when members of the public filed 2,698 complaints. When annualized, the number of complaints is the lowest rate since 2001 when the CCRB received 4,251 complaints.

Complaint activity has been steadily declining from the peak years of 2006 to 2009, when the Agency received over 7,000 complaints annually. From 2010 to 2014, complaints have been steadily declining. The best way to interpret this trend is to look at monthly complaint activity. Average monthly complaint activity has decreased from 539 complaints per month in 2010, to 497 in 2011, 479 in 2012, 449 in 2013, 398 in 2014, and 349 per month in the first half of 2015.

## Total Complaints Received 1993 – June 2015




## Total Complaints Received, per 6 Months, January 2010 – June 2015



Statistics show that long-term decline accelerated in the second half of 2014, where complaint activity decreased from an average of 472 complaints per month in the second half of 2013, to 450 complaints per month in the first half of 2014, and then to 346 complaints in the second half of 2014. In the first six months of 2015, there have been two distinct patterns. From January through March 2015, the Agency has received an average of 291 monthly complaints. From April through June 2015, the CCRB received an average of 396 monthly complaints.

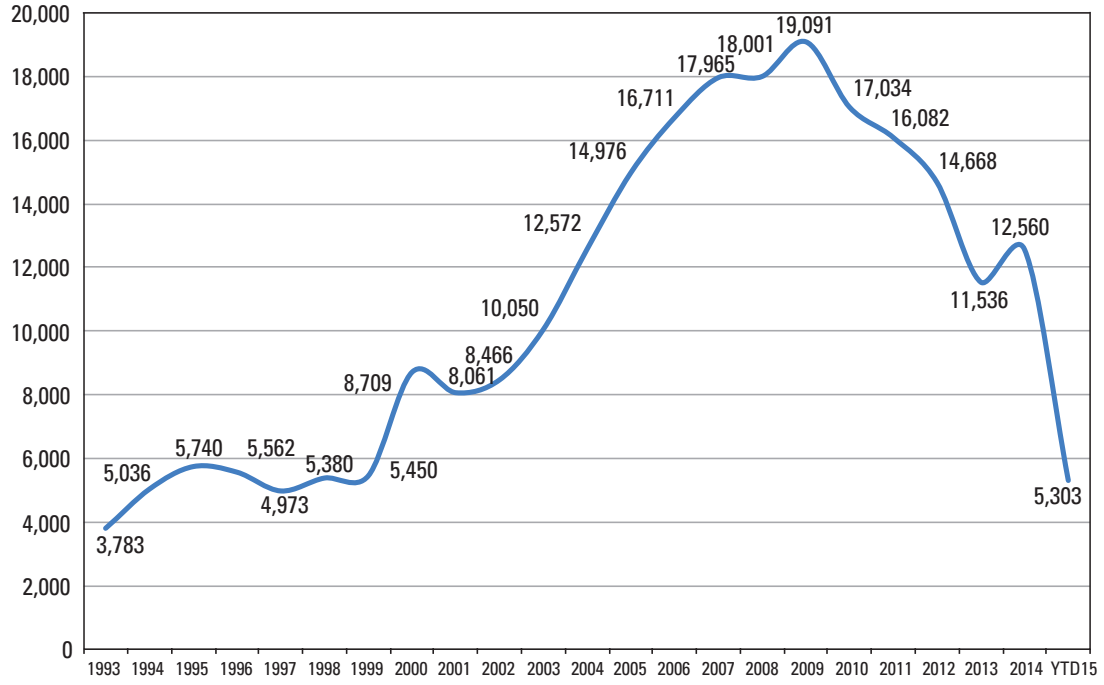
To understand the long-term and short-term decrease in complaint activity, it is important to look at the factors that are most relevant and may have an effect on complaint levels. The decrease in law enforcement interactions with civilians, which has been achieved without compromising public safety, appears to be the most likely cause of this steady decrease in complaint activity.

***Total Filings***

It is clear that both the number of FADO complaints (complaints within the CCRB's jurisdiction) and CCRB's total intake has declined. Total intake is the sum of FADO complaints plus complaints filed by members of the public that were determined to be outside CCRB jurisdiction. While the latter category of complaints is entered into the Agency's Complaint Tracking System (CTS), CCRB does not investigate them and instead refers them to the governmental entities that have the jurisdiction to process them.

In the first half of 2015, total intake decreased by 39% from the first half of 2010 and by 17% from the first half of 2014. It decreased from 8,635 total filings from January through June 2010, to

**Total Intake Received, 1993 – June 2015**



6,426 in the same period of 2014, and to 5,303 in the first half of 2015. The CCRB's total intake in the first half of 2015 was lower than at any period since 2010, including the period post-Hurricane Sandy when the CCRB was displaced for four months and its phones were not fully operational for five months.

The CCRB made 535 referrals to other jurisdictions per month in the first half of 2015 of complaints not within its jurisdiction. This was a 14% decrease from the first half of 2014 when the Agency made 621 referrals per month. It was a 40% decrease from the first half of 2010 when the Agency made 887 referrals per month.

The trends for complaints and total filings have followed a parallel path, except for 2014. From 2010 to 2013, both complaints within the CCRB's jurisdiction and total intake were down by 17% and 32%, respectively.

However, in 2014, the parallel path changed. Complaints went *down* by 11% from 5,388 complaints in 2013 to 4,775 in 2014, while total intake was *up* by 9%, from 11,536 to 12,560. In the first half of 2015, the parallel pattern returned. Complaints went down by 22% from the first half of 2014 to the first half of 2015, and total intake decreased by 17%.

As a percentage of all intake filings, the percentage of cases referred to the Police Department and other agencies has remained above 60% since 2010, with the exception of the period from July 2012 through June 2014 when referrals were approximately 55% of all intake filings. In the first half of 2015, the percentage of total intake referred to the Police Department or other agencies was 61%.

#### *Place and Method of Filing Complaints within the CCRB's Jurisdiction*

The CCRB has experienced declines in all methods of filing complaints, except for filing via internet on the CCRB website, which has increased. Civilians may file complaints directly either with the CCRB (including phone calls transferred from the City's 311 service center to the CCRB's 1-800 number) or with the NYPD, which then refers the complaints to the CCRB.

In the first half of 2015, 57% of all complaints within CCRB jurisdiction were filed with the CCRB directly, while in 2014, 62% of all complaints were filed directly with the CCRB. From 2010 to 2013, 57% of all complaints were filed directly with the CCRB.

A comparison of the complaint trends from 2010 through 2015 for CCRB-filed and NYPD-filed complaints reveals additional information. In the recent years, except for 2014, the number of complaints filed with the CCRB for the period from January through June decreased each year: 326 complaints per month in 2010, 320 in 2011, 304 in 2012, 185 in 2013, and 268 in 2014. In the first half of 2015, complaints filed directly with the CCRB decreased again to 199 complaints per month.

By comparison, the number of complaints filed with the NYPD and referred to CCRB for the period from January through June 2015 decreased from 226 complaints per month in 2010 to 196 in 2011, 172 in 2012, and then increased to 240 in 2013. They dropped again to 180 complaints per month in 2014 and to 147 in 2015.

The CCRB also tracks the four basic ways in which civilians file complaints directly with the Agency: in person, by letter or fax, online, or by phone. If by phone, the Agency tracks whether: (a) the complainant spoke with an investigator upon calling the Intake Unit during business hours; or (b) left a message on the automated voice-messaging system. In the first half of 2015, 73% of CCRB complaints were made by phone compared to 78% in the first half of 2014, and 84% in the first half 2010. The proportion of complaints filed via the internet through the CCRB website increased from 11% in the first half of 2010 to 16% in the first half of 2014 and to 21% in the first half of 2015. With New Yorkers' increasing access to the internet at home and on their smartphones, the importance of the CCRB website as an intake center has increased over time. In response, the CCRB is working on an update to its website and electronic complaint form that will make it even more user-friendly.

In the first half of 2015, the number of complaints filed by phone decreased significantly by 31% when compared to the first half of 2014, from 1,259 in 2014 to 865 in 2015. The number of phone complaints has decreased by 47% in the last five years, from 272 complaints per month in the first half of 2010 to 144 complaints per month in 2015. The most significant long-term trend is the decline in the number of complaints made by phone through the automated voice-messaging system. While complaints by phone during business hours have declined from 156 complaints per month in the first half 2010 to 97 complaints per month in the first of 2015, a decrease of 38%, complaints by phone through the voice-messaging system, have declined from 116 complaints per month in the first half of 2010 to 47 in the first half to 2015, a decrease of 59%.

In terms of total intake filings, the declines are equally pronounced, 39% for live operator and 59% for voice-messaging system respectively from 2010 to 2015. In the first half of 2010, the CCRB received 3,340 intake filings by phone during business hours and 2,032 filings during off-hours, as compared to 2,051 and 835, respectively, in the first half of 2015.

#### *Location of the Incident and Complaint Activity*

To explore the reasons for the decrease of CCRB-filed and NYPD-filed complaints as well as the decrease in total intake, the CCRB looked at complaint activity by the precinct where the incident took place.

For NYPD-filed complaints, when comparing the first half of 2015 to the first half of 2014, there were 26 precincts where complaints increased and there were 51 precincts where complaints decreased or remained unchanged. The analysis also shows that the July through December deviation from the historical pattern and from the prior year in certain precinct or geographic areas that the CCRB noted in its 2014 Annual Report was an anomaly.

The data on the "attribution" of complaints also offers insight into the decrease in complaint activity. Attribution occurs when the CCRB can determine the assignment of the subject officer. In the first half of 2015, complaints attributed to specialized bureaus such as Housing, Detectives, Organized Crime, and Transit declined by 27%. Detectives decreased by 34% and Transit Bureau decreased by 32%. The only Bureau to experience a modest increase, 4%, was the Traffic Control Division.

Similarly, complaints attributed to the Patrol Services Bureau, which includes the Patrol Boroughs, Special Operations, and other patrol services commands, decreased by 17%. The Patrol Borough of Staten Island decreased by 31%, while Patrol Boroughs Queens South and Manhattan South decreased by 1.5% and 4%, respectively.

***Characteristics of Encounters***

The CCRB also reviewed the characteristics of the complaints it has received in order to determine why complaint activity has decreased. When the CCRB investigates a complaint, it seeks the reasons leading to the contact between the civilian and the officer(s). The data show that a significant number of complaints arise from encounters where an officer suspects that the civilian is about to commit or is committing a crime. In the first half of 2015, 34% of all complaints had suspicion of a crime listed as the main reason for contact compared to 43% in the first half of 2014.

Given that more than one-third of all CCRB complaints arose from an encounter where police suspected the civilian of committing a crime, police activity, as defined by the number of arrests, criminal court summonses issued, and stop, question and frisk reports, provides a valuable context in which to view changes in complaint activity.

The NYPD has reported that, from January through June 2015, there has been a decrease of over 800,000 contacts between NYPD officers and civilians resulting in fewer arrests, summonses, and reasonable-suspicion stops.[6] In recent years, the number of police-civilian encounters (arrests, criminal summonses, and stop-and-frisk documented encounters) decreased by 50%, from 1,559,429 in 2010 to 791,976 in 2014. From 2013 to 2014, the number of documented stop-and-frisk encounters decreased by 76%, the number of arrests decreased by 2%, and the number of criminal summonses decreased by 15%. Arrests decreased from 394,539 in 2013 to 387,461 in 2014, criminal summonses issued decreased from 423,119 in 2013 to 358,728 in 2014, and documented stop, question and frisk encounters decreased from 191,851 in 2013 to 45,787 in 2014.[7]

In the 2014 Annual Report, the CCRB noted that there was a high correlation between the number of CCRB complaints and the number of stop-and-frisk encounters, arrests, and criminal summonses issued. Though a long-term analysis is necessary to determine the strength of the correlation, this relationship strongly indicates that the decline in enforcement actions is the main factor contributing to the current decrease in complaint activity. There was a higher level of enforcement activity in the second quarter of 2015 than in the first quarter, which is likely why complaint activity increased from 291 monthly complaints in the first quarter to 396 monthly complaints in the second quarter.

Valuable information can be gained in reviewing whether an encounter leading to a complaint involved an arrest or summons. In the first half of 2015, 41% of all complaints involved no

6 On July 12th, 2015 Police Commissioner William Bratton wrote an editorial in the Daily News that reflected on new strategies of the NYPD to increase peaceful interactions with civilians. Commissioner Bratton reported that YTD arrests, summons, and reasonable-suspicion stops have decreased by 800,000 incidents. Commissioner Bratton connected this decrease in incidents with the 22.5% decrease in civilian complaints YTD in 2015 (source: http://tinyurl.com/onzgcjh).

7 Breakdown of these categories: Arrests – 422,982 in 2010; 413,575 in 2011; 397,166 in 2012; 394,539 in 2013; and 387,461 in 2014. Summonses – 535,162 in 2010; 490,579 in 2011; 476,363 in 2012; 423,119 in 2013; and 358,728 in 2014. Stop and Frisk Reports – 601,285 in 2010; 685,724 in 2011; 532,911 in 2012; 191,851 in 2013; and 45,787 in 2014.

arrest or summons, while for the same period of 2014, 40% of all complaints involved no arrest or summons.

The statistics also show that the percentage of complaints involving an arrest has increased. In the first half of 2015, 48% of all complaints involved an arrest, while in the same period of 2014, 43% of all complaints involved an arrest. By comparison, in the first half of 2010, 35% of all complaints involved an arrest.

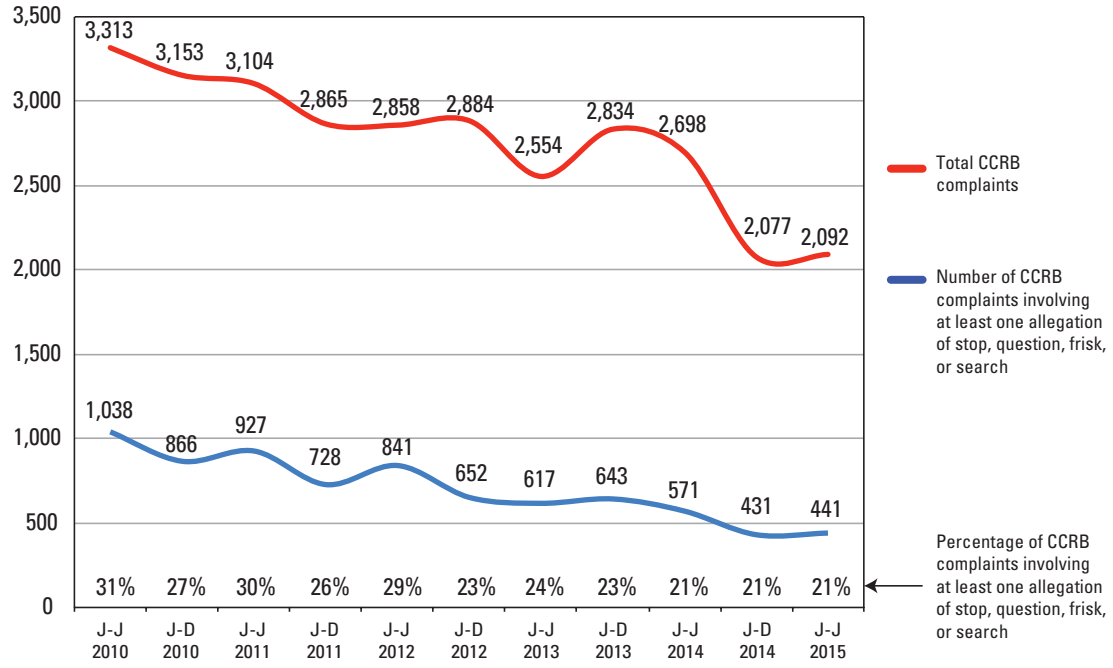
In the first half of 2015, 11% of all complaints arise from an incident where a summons was issued. This is five percentage points lower than in the same period of 2014 and seven percentage points lower than in the first half of 2010 when 18% of all complaints involved the issuance of summons.

***Stop-and-Frisk Encounters***

Within the overall decrease in complaints received by CCRB, the number of CCRB complaints involving allegations of improper stop, question, frisk or search (referred to as stop-and-frisk complaints) has also decreased. In recent years, more than one in four CCRB complaints involved allegations of stop and frisk. However, the actual percentage of such allegations has decreased since 2010 by ten percentage points, from 31% in the first half of 2010 to 21% in the second half of 2014 and the first half of 2015.

In the first half of 2015, the number of stop-and-frisk complaints continued to decrease. The CCRB received 441 stop-and-frisk complaints from January through June 2015, as compared to 571

**Stop and Frisk Complaints, per 6 Months, January 2010 – June 2015**



stop-and-frisk complaints in the same period of 2014—a 23% decrease. The reason for this decrease is clear. From 2010 to 2014, the number of NYPD documented stop-and-frisk encounters decreased substantially, from 601,285 encounters in 2010 and 685,724 in 2011, to 191,851 in 2013, to 45,787 in 2014. The number of documented encounters in 2014 was the lowest since 2000. Thus far, in the first half of 2015, the number of documented encounters was 13,405.

The ratio of stop-related complaints to documented stop-and-frisk encounters has drastically changed since 2010. In 2010, the CCRB received one stop-and-frisk complaint per 316 encounters. The ratio decreased further in 2011, but increased in subsequent years. There was one complaint per 152 encounters in 2013, one complaint per 46 encounters in 2014, and one complaint per 30 documented encounters in the first half of 2015.

However, establishing a ratio of stop-and-frisk complaints to overall documented stops provides an incomplete picture. This is because CCRB stop-and-frisk complaints have different characteristics than the universe of NYPD documented investigative encounters. Of the 441 stop-and-frisk complaints filed in the first half of 2015, 26% stemmed from an encounter leading to an arrest, 16% stemmed from an encounter where a summons was issued, and 58% of complaints came from incidents involving neither arrest nor summons. Additionally, in 32% of stop-and-frisk complaints, the complainant was frisked, and in 57% of stop-and-frisk complaints the complainant was searched.

To illustrate this point, the Police Department's statistics show that police officers appear to be conducting searches in only 17% of street encounters, yet CCRB data indicate that approximately 60% of complainants were searched. In the first half of 2015, 251 out of the 441 stop-and-frisk complaints stemmed from a street encounter that involved a search allegation. Since 2010, 50% or more of all stop-and-frisk complaints contained a search allegation.

In the first half of 2015, there was one complaint for every nine documented search encounters, as compared to the first half of 2010 when there was one complaint for every 51 documented encounters in which the civilian was searched. As a result, the CCRB's data indicate that a stop alone is not likely to result in a complaint, but rather that other factors, such as the fact that the civilian was searched, contribute to a civilian's decision to file a complaint.

In the first half of 2015, 35% of stop-and-frisk complaints included an allegation of excessive or unnecessary force. This percentage is a decrease from 2010 when force allegations were present in approximately 40% of all stop-and-frisk cases.

## Characteristics of Complaints Received

### *Location of Incidents Resulting in Complaints*

In December 2014, the CCRB launched a new web-based mapping feature, called "CAM" (Complaint Activity Maps), which shows weekly-updated interactive information about complaints.[8] CAM is part of the Agency's effort to increase the transparency of its investigative process and to make its data about police misconduct complaints accessible and understandable. The longer-term

8 http://www.nyc.gov/html/ccrb/html/news/complaint-maps.shtml

purpose of CAM is to identify emerging trends in alleged misconduct by officers, within specific commands and precincts, and to quickly alert the Police Department to these trends as soon as they become apparent. CAM also shows maps, by precinct, where complaints are concentrated; where they have increased or decreased; the number of complaints by precinct of incident per 10,000 residents; and where complaints per 10,000 residents have increased or decreased.

While complaint filings have decreased, the relative distribution of complaints by borough has not changed significantly. The proportion of complaints that occurred in Queens increased from 17% in the first half of 2014 to 18% in the first half of 2015. Bronx complaints increased from 21.5% in the first half of 2014 to 23% in the same period of 2015. Brooklyn decreased from 33.5% to 31%, Staten Island from 6% to 5%, and Manhattan remained unchanged at 22%.

When comparing total number of incidents from the first half of 2014 to the first half of 2015, complaints in Staten Island decreased by 36%. There were also complaint decreases in all other boroughs: Brooklyn was 28%, Manhattan was 20%, Bronx was 17%, and Queens was 19%.

The Bronx had the highest number of complaints per 10,000 residents, at 3.4. Manhattan had 2.9, Brooklyn 2.5, Staten Island 2.2 and Queens 1.6.

Brooklyn's 75th Precinct continues to have the highest number of complaints within a geographical area in the city with 100 complaints in the first half of 2015. There are five other geographical areas with high complaint activity: in Brooklyn, the 73rd with 53 complaints; in the Bronx, the 40th Precinct with 68 complaints, the 42nd with 57 complaints, the 47th with 54 complaints; and, in Queens, the 103rd Precinct with 58 complaints.

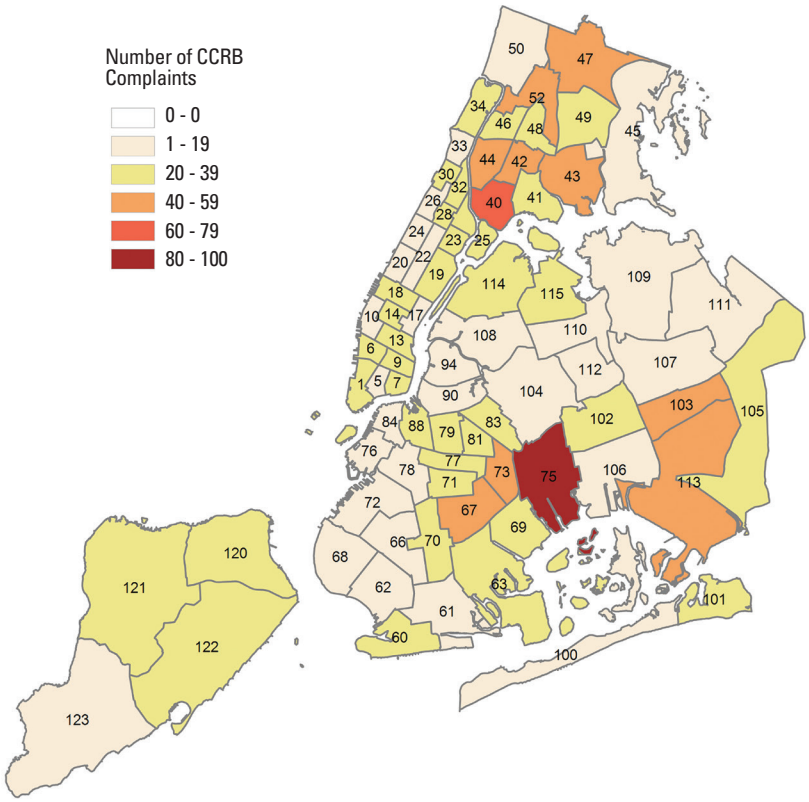
The map shows the density of complaints according to precinct of occurrence. It is important to note that the data presented does not reflect any factors that may influence the complaint rate, such as: crime rate, precinct size, or number of uniformed personnel working within the precinct boundaries.

#### *Types of Allegations Received*

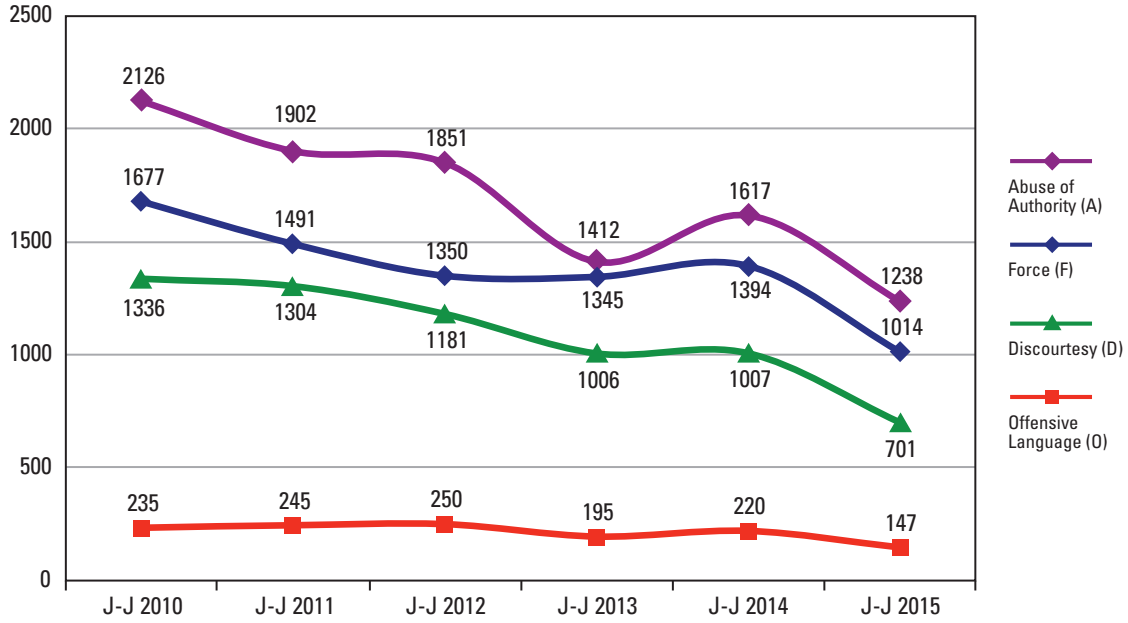
To understand complaint activity, it is important to note the distinction between a "complaint" and an "allegation." An individual complaint received by the CCRB may contain multiple allegations against one or more officers. Though the number of complaints and allegations has declined, there has been no drastic change in the characteristics of the complaints and the patterns in allegations since 2010.

The CCRB analyzes total complaints by the presence of one or more allegations of a particular FADO category. The distribution of complaints across these four categories remained nearly the same in the first half as it was from 2010 to 2014. In the first half of 2015, 48% of all complaints contained one or more force allegations, compared to 52% in the same period of 2014; and 59% contained one or more abuse of authority allegations, compared to 60% in the first half of 2014. Also, in the first half of 2015, 34% of complaints contained one or more discourtesy allegations, down from 37% in the first half of 2014. The proportion of complaints containing one or more allegations of offensive language was 8% in the first half of 2014 and 7% in the first half of 2015.

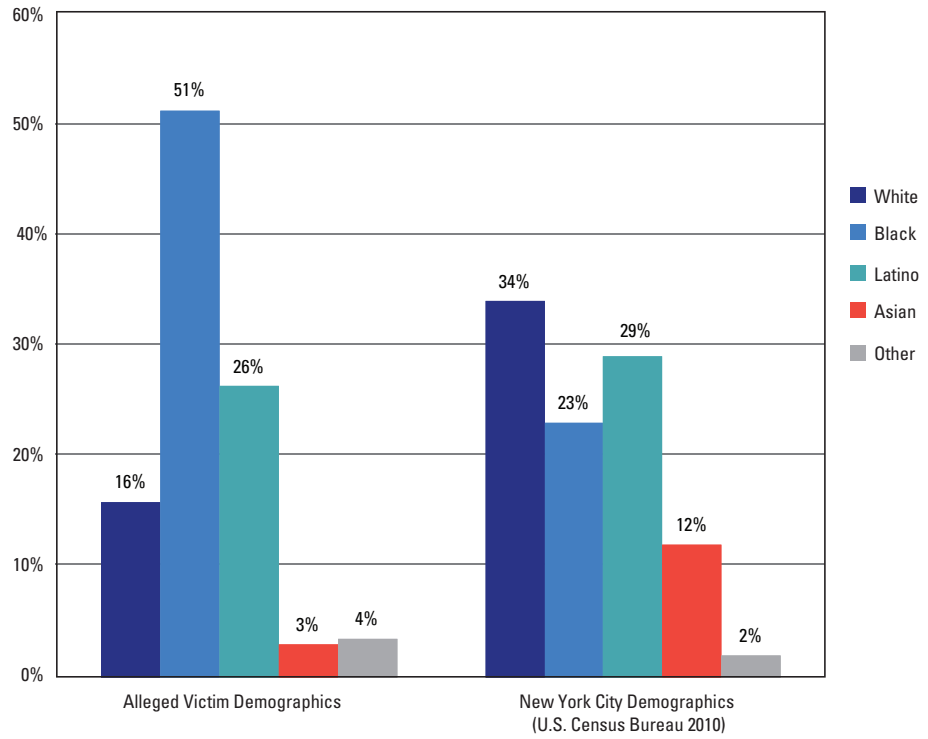
## Complaints Received January – June 2015




## Types of Allegations



## Alleged Victims by Race Compared to New York City Demographics
## January – June 2015



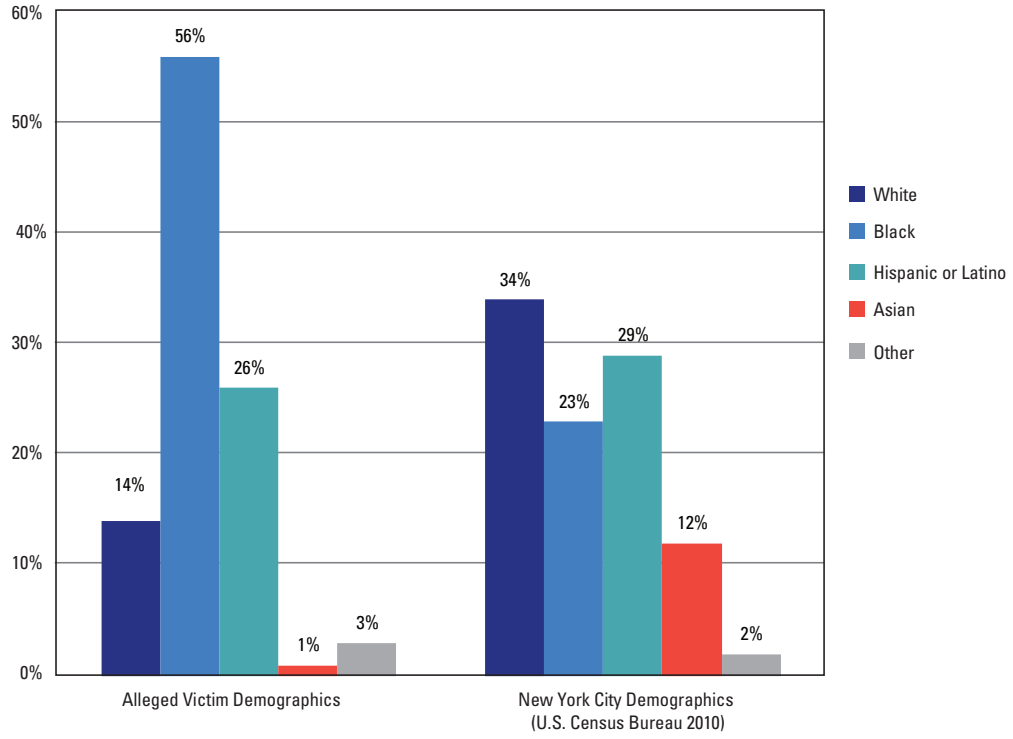

***Characteristics of Alleged Victims***

The CCRB compares the demographic profile of the alleged victims to the demographics of the City as a whole, without controlling for any other factors such as proportion of encounters with the police or percentage and number of criminal suspects.

In the first half of 2015, as in previous years, African-Americans constituted the majority of alleged victims. Although comprising 23% of New York City's population, they accounted for 51% of alleged victims. Whites and Asians were a disproportionately low percentage of alleged victims. From January through June 2015, 16% of alleged victims were white and 3% were Asian, though they make up 34% and 12% of the city's population, respectively. The percentage of Hispanic alleged victims was slightly below their proportion of the City's population. Hispanics constituted 26% of alleged victims in CCRB complaints and 29% of the City population. The category "other" included 4% of alleged victims and 2% of the total population.

These numbers have changed slightly when compared to the numbers from 2010 through 2014. During this period of time, approximately 55% of all alleged victims were African-American. Hispanics consistently comprised between 24% and 27% of alleged victims, and whites were between 9% and 13% of the alleged victims. Asians made up less than 3% of all alleged victims. Each year, approximately 2-3% of alleged victims were classified as "other." By gender, 71% of alleged victims were male in the first half of 2015.

## Alleged Victims by Race in Stop-and-Frisk Complaints vs. New York City Demographics, January – June 2015




The statistics for the first half of 2015 present similar numbers for stop-and-frisk complaints and overall complaints. In the first half of 2015, 56% of the alleged victims in stop-and-frisk complaints were African-American, which is lower than the average of 62% during the period 2010 to 2014. The percentage of white alleged victims remained at less than 10% from 2010 to 2013, but it increased to 12% in 2014 and to 14% in the first half of 2015. Hispanics comprised 26%, which is slightly lower than their numbers in overall complaints, and 1% were Asian. Three percent of civilians were categorized as "other."

### *Characteristics of Subject Officers*

Officers who are subjects of complaints have historically reflected the racial makeup of the Police Department. This trend continued in the first half of 2015 when 56% of subject officers were white, while whites were 51% of the Department; 14% of subject officers were black, while black officers were 15% of the Department; 26% were Hispanic, while Hispanics comprised 27% of the Department; and 4% were Asian, while Asians were 6% of the Department.

Male officers are overrepresented as the subjects of CCRB complaints. In the first half of 2015, consistent with the past five years, male officers were subjects of 91% of all complaints while making up 83% of the Department.

## SECTION 3

# The Heart of Civilian Oversight: Collaboration and Improvement in the NYPD Disciplinary Process

One of the most important initiatives of the new CCRB has been to change and enhance its role in the Police Department's disciplinary process, work that began in late 2014. The Police Commissioner continues to have final authority to impose discipline and decide the level of punishment for members of service. Notwithstanding this statutory authority, the Police Commissioner and the Board have agreed that a transformed disciplinary system needed to be put in place so that the two agencies fully communicate to ensure that both complainants and police officers are treated fairly.

In December 2014, the Board adopted a resolution implementing a formal "reconsideration process" that has strengthened the communication between the agencies. The reconsideration process allows the NYPD's Advocate's Office (DAO) to request in writing, in a detailed memorandum, that the Board reconsider its findings and/or penalty recommendations of a previously substantiated CCRB case based on new evidence or reasons not known during the investigation. Meanwhile, the DAO's enhanced trust in and deference to the CCRB process has resulted in record-high implementation of its recommendations.

The Board may reconsider a case if: (1) the penalty recommended for the case against any subject officer is determined upon reconsideration to be inappropriate or excessive; (2) new facts or evidence that was not previously known by the Board panel could reasonably lead to a different finding or recommendation in the case; or (3) matters of fact or law are found to have been overlooked or misapprehended by the deciding panel.[9]

### *CCRB Disciplinary Recommendations*

The number of officers with substantiated allegations has increased by 89%, compared to the first half of 2014. In the first half of 2015, the Board substantiated 237 complaints against 354 police officers, as compared to 133 complaints against 187 police officers in the first half of 2014. In the second half of 2014 the Board substantiated 192 complaints against 298 officers.

9 Within the Police Department, there are three basic disciplinary options. The first form of discipline is to compel an officer to receive formalized training at the Academy or at the Legal Bureau, instructions, or other mild forms of discipline. The second form of discipline is a command discipline A or B, in which the case is forwarded to the subject officer's commanding officer for adjudication, and can result in the loss of up to five vacation days for a command discipline A and up to ten vacation days for a command discipline B, or if not resolved may result in Charges. The third and most severe disciplinary option is the filing of formal administrative charges and specifications. Charges and specifications may lead to an officer losing vacation days, being placed on probation, or dismissal. Charges and specifications may result in officers pleading guilty prior to trial, or facing prosecution in an administrative trial, where the officer can be found guilty or not guilty. The charges can also eventually be dismissed. In all cases, the Police Commissioner has final approval of all dispositions.

In the first half of 2015, the Board recommended that administrative charges be brought against 103 officers in 64 substantiated cases (27% of cases), command discipline for 157 officers in 105 cases (44% of cases), formalized training or instructions for 93 officers in 67 cases (28% of cases), and no recommendation was made for 1 officer in 1 case (.4%).

The percentage of officers for whom the Board recommended administrative charges, the most serious form of discipline, decreased from 67% of officers in 2010 to 54% of officers in 2014, and then to 27% of officers in the first half of 2015. The Board's recommendation of command discipline has increased overall from 25% of officers in 2014 to 44% during the first half of 2015. Finally, the percentage of officers that received the recommendation of instructions and/or formalized training has increased overall for this period: 7% of officers in 2010, 21% of officers in 2014, and 26% in the first half of 2015.

These numbers suggest an alignment between the CCRB's disciplinary goals and the NYPD's. Of course, the CCRB's ultimate goal is not just greater agreement with the Police Department in the evaluation of discipline for the sake of agreement, but to work with the Department on highlighting misconduct and prioritizing training protocols. In response to these efforts, the NYPD has taken CCRB recommendations more seriously. For example, in the past, the Board recommended administrative prosecution in two-thirds of substantiated cases, but the Department only prosecuted approximately 10% of officers in those cases. In contrast, during the first half of 2015, the Board recommended administrative prosecution in less than one-third of cases but 40% of those officers were successfully prosecuted.

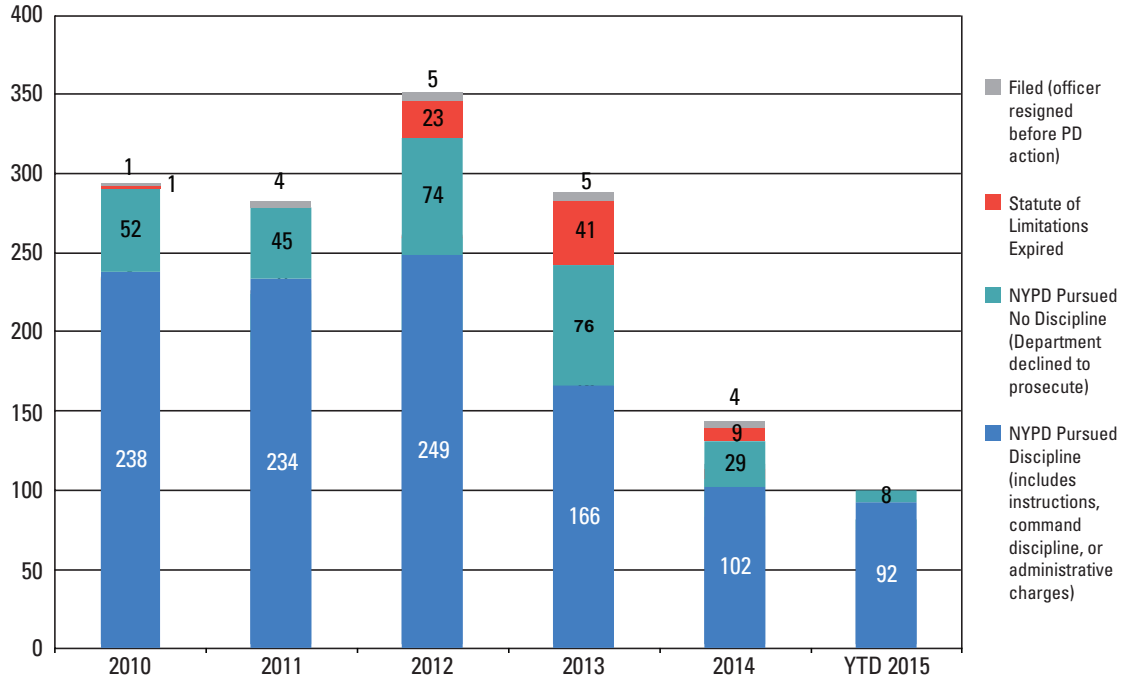
Furthermore, in the past, the Department rarely adopted the CCRB penalty recommendations for command discipline and instructions. Now it does. In 2013, the Department followed specific CCRB command discipline recommendations only 7% of the time, as opposed to 60% during the first half of 2015. Similarly, in 2013, the Department agreed to the CCRB's recommendation to impose instructions 44% of the time, but by the first half of 2015, that number had grown to 79%. While there will always be individual cases in which the CCRB and Department disagree, moving toward a unified standard of discipline for misconduct will enhance the efficiency and credibility of the CCRB process.

#### *Department Advocate's Office Disciplinary Actions on CCRB Cases*

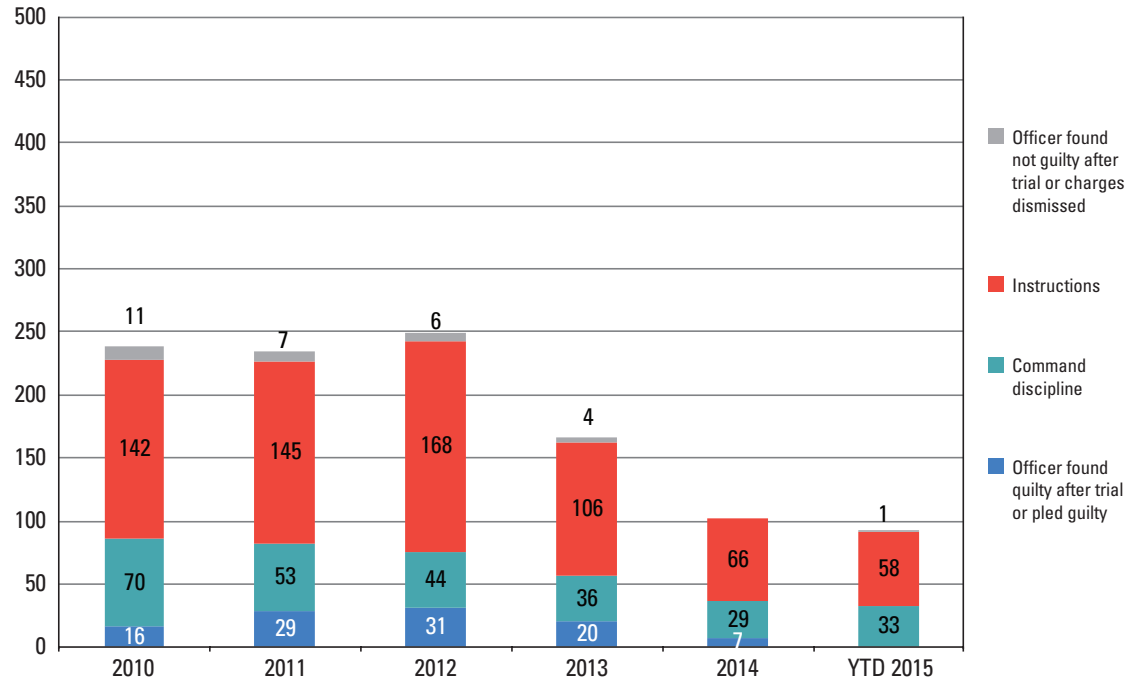
The Department Advocate's Office (DAO) is the unit within the NYPD that ensures implementation of discipline on behalf of the CCRB against officers guilty of misconduct. In the first half of 2015, the Department Advocate's Office took such action against 100 subject officers in CCRB substantiated cases.

The DAO's disciplinary action rate on substantiated complaints has fluctuated in the past but showed a particularly negative trend from January 2013 through June 2014. The disciplinary rate, which reached 81% in 2011, fell to 70% in 2012 and 57% in 2014. The disciplinary rate was 58.5% in the first half of 2014, but climbed to 82% during the second half of 2014, resulting in an overall

## Police Department Action in Substantiated CCRB Cases, January 2010 – June 2015




## Police Department Discipline, January 2010 – June 2015



rate of 73% for 2014. In the first half of 2015, the discipline rate has surged to 91%—the highest rate since the creation of the independent CCRB in 1993.

In the first half of 2015, there were 33 officers who received command discipline and 58 officers who received formalized training or instructions. The DAO declined to seek discipline in 8% of substantiated cases, the lowest rate on record. While in 2014 the Police Department could not seek discipline in nine cases because the statute of limitations (SOL) had expired, this did not happen once during the first half of 2015. The CCRB achieved this milestone by eliminating Agency systemic inefficiencies. The Board sees these changes continuing in future CCRB investigations.

#### *Administrative Prosecution Unit*

The CCRB's Administrative Prosecution Unit prosecutes allegations of police misconduct in which the Board has recommended administrative charges. Prior to 2010, all such trials were handled by the DAO. That year the City Council, with the support of then-Public Advocate Bill de Blasio, funded a pilot project where a CCRB attorney served as lead prosecutor in disciplinary trials at the NYPD for a small number of cases where allegations were substantiated by the Board. The pilot program was given permanent status and funding in November 2011 and expanded into a full-fledged Administrative Prosecution Unit (APU) with the signing of a Memorandum of Understanding (MOU) on April 2, 2012, between the CCRB and the NYPD. The MOU authorized the APU to prosecute all substantiated CCRB allegations when the Board recommends administrative charges, with limited exceptions. The MOU went into effect in April 2013. Under the MOU, the DAO continues to handle substantiated CCRB allegations when the Board recommends a command discipline or instructions.

When the APU receives a case from the Board, it can either obtain a plea agreement from the defendant officer, take the case to trial (where an officer will be found guilty or not guilty), or dismiss the case for legal or evidentiary reasons. In the first half of 2015, the APU received 103 new cases from the Board.

From January through June 2015, the discipline rate for cases handled by the APU was 54%, which means that in those cases the APU obtained a guilty plea or guilty verdict.[10] For the same period for 2014, the rate was 58.5%. Through the first half of 2015, the Police Department reported the final disposition of 99 APU cases, including 66 administrative trials and 18 cases resolved by plea, a dramatic increase from the first half of 2014, when the Department reported the final disposition in 16 APU cases, including 4 trials and 5 cases resolved by plea. In 2014, the Police Department reported the disposition of 109 APU cases, including 24 trials and 21 pleas.

At the end of June 30, 2015, the APU's total open docket stood at 287 cases. This docket does not include 78 cases where the CCRB was waiting for a trial verdict or final determination of discipline by the Police Commissioner.

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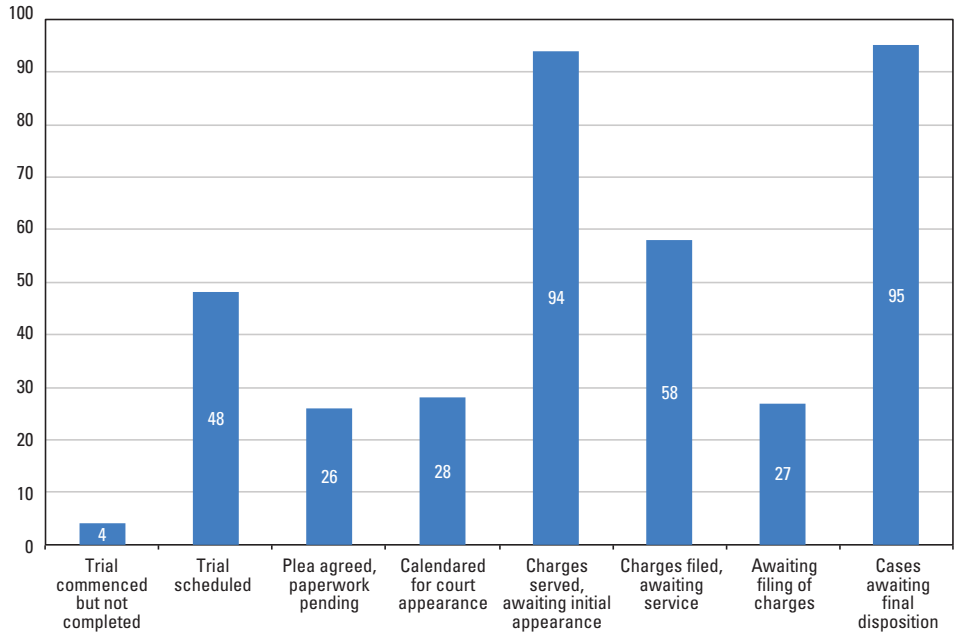
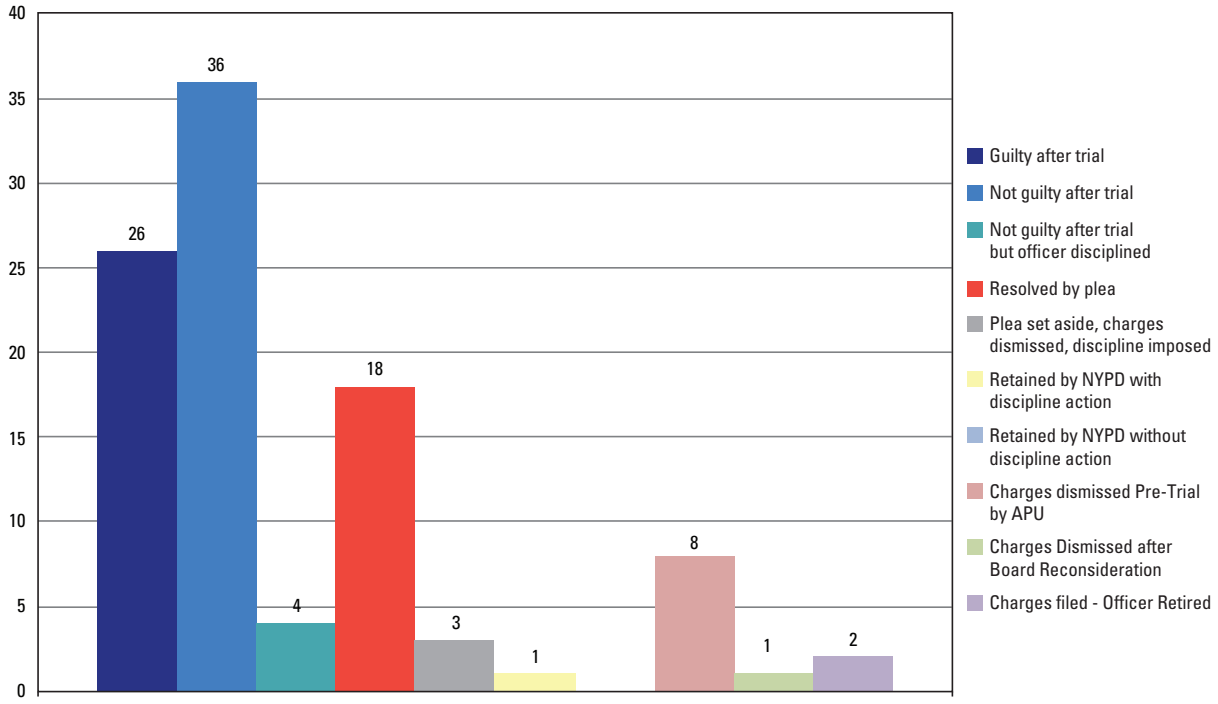
10 In the first half of 2015, the Assistants Deputy Trial Commissioner (ADTC), presiding over the trials found the officer guilty in 26 of those cases and not guilty in 36 of those cases. In four cases, the officer was found not guilty but was disciplined. In 18 instances, the cases were resolved by a guilty plea. In three cases where there was originally a plea, the plea was set aside by the Police Commissioner and instructions were imposed. In eight cases the charges were dismissed in pre-trial by the APU. There was one case that was dismissed after Board reconsideration, and two cases where charges were filed but the officer retired. One case was previously adjudicated with discipline.

## APU Open Docket, June 2015




## APU Disposition in CCRB Cases, January – June 2015



The increased collaboration between DAO and the APU led to two immediate results during the first half of 2015. First, the Police Commissioner set aside only three pleas, as opposed to 19 pleas in 2014. Second, the Police Department declined to block a single CCRB prosecution under the "limited exception" provision of the MOU, after blocking 33 cases in 2014.

***Reforming the Disciplinary Process***

As the DAO and APU statistics have illustrated, the collaboration between the CCRB and the Police Department has begun to change the way the Department handles discipline in CCRB cases. There has been a notable difference between the Police Department's disciplinary process in cases that were adjudicated before August 2014 and in cases adjudicated after the implementation of inter-agency cooperation in September 2014. This change is evidenced by the following January through June 2015 statistics concerning the reconsideration process.[11]

During the first half of 2015, the Police Department requested reconsiderations in 51 cases, 37 that were closed in 2014, and 14 that were closed in 2015. That represents 11% of all cases closed in 2014 and 6% of cases closed in 2015. The Department requested a change in the disposition in 16 substantiated cases and a change in the penalty recommendation in 35 substantiated cases. Of the 37 cases requested in 2014, 15 were reconsiderations of the substantiation (41%). Of the 14 cases requested in 2015, only one was a reconsideration of the substantiation (7%).

The Board agreed to the reconsideration request in 27 out of the 37 requests for 2014 closed cases, or 57%. By comparison, the Board changed the disposition or penalty recommendation in 12 out of the 14 requests for 2015 closed cases, or 86%. When the Department requested a change in the disposition of the case, the Board changed the disposition in 31% of cases. When the Department requested a change in the penalty recommendation, the Board changed the penalty recommendation in 80% of cases. These numbers reflect an increased level of cooperation and collaboration between the CCRB and NYPD. This collaboration has led to a markedly increased DAO disciplinary rate. During the first half of 2015, the DAO pursued discipline in 92% of CCRB cases, up from 89% during September to December 2014, 62% from January to August 2014, and 57% in 2013.

The Police Department's rate of agreement with the CCRB on specific penalty recommendations has also changed significantly. The rate of agreement when the Board recommended a specific command discipline increased from 7% in 2013 to 29% in 2014, and 60% in 2015. The rate of agreement for recommended instructions and formalized training increased from 44% in 2013 to 72% in 2014, and 79% in the first half of 2015. The rate at which the Department declined to impose *any* discipline decreased from 27% in 2013 to 21% in 2014, and 8% in the first half of 2015.

Another metric by which to measure APU/DAO collaboration is the percentage of cases that the DAO allows the APU to pursue. In 2013, the APU was not permitted to pursue discipline for a single charges and specifications case, largely due to statute of limitations expirations. In 2014, the APU successfully pursued charges and specifications in 43% of its cases, and during the first half of 2015 that figure doubled to 86%.

11 For a detailed analysis, visit the CCRB website: http://www.nyc.gov/html/ccrb/downloads/pdf/report-case-reconsideration-analysis-20150708.pdf

## SECTION 4

# Update on 2014 Troubling Complaint Patterns

The new leadership at the CCRB is committed to looking beyond individual complaints to identify patterns and trends in policing. By identifying troubling patterns and making recommendations to improve policing practices, the CCRB can help improve police-community relations. This new effort enabled the Agency, in its 2014 Annual Report, to flag at least three trends that merited scrutiny and required further analysis during the first half of 2015: (1) the increase in the number of alleged false official statements made by police officers during the course of CCRB investigations; (2) the persistence of substantiated improper search allegations despite the drop in stop-and-frisk encounters; and (3) the increase in the percentage of substantiated complaints of unnecessary or excessive force.

### *The Increasing Number of Alleged False Official Statements Noted*

From time to time, the Board uncovers during the course of an investigation an alleged false official statement made by an officer, either to the CCRB, in an official document, or during some other proceedings. The CCRB 2014 Annual Report documented that, although false official statement allegations are statistically rare, they were noted at a higher frequency in 2014 than previous years. That trend continued in the first half of 2015. Identifying these allegations is extraordinarily important as they potentially jeopardize the integrity of the oversight process.

An alleged false statement is a separate and distinct act of serious misconduct for which there should be specific fact finding and analysis, and for which a ruling from the Police Commissioner on the merits is required. For this reason, when investigators can document that a false official statement appears to have been made, the Agency prepares a detailed analysis of the alleged misconduct in the investigative closing report and the Board must vote on that allegation. If the vote is to affirm the possible misconduct, the Board will note the other misconduct and will refer the case to the Department for fact finding, analysis and proper adjudication.

The Patrol Guide is clear that intentionally making a false official statement is prohibited. Patrol Guide 203-08 states the following:

"The intentional making of a false statement is prohibited, and will be subject to disciplinary action, up to and including dismissal. Intentionally making a false official statement regarding a material matter will result in dismissal from the Department, absent exceptional circumstances. Exceptional circumstances will be determined by the Police Commissioner on a case by case basis."

It further adds that:

"Examples of circumstances in which false statements may arise include, but are not limited to, an interview pursuant to Patrol Guide 211-14, Investigations by Civilian Complaint Review Board, and lying in an official Department document or report."

Administrative case law holds that, in order to sustain a false official statement allegation, it must be proven that: (1) an officer made a statement, (2) the statement was material, and, (3) the statement was intentionally false. See: Department of Correction v. Biland & Joyner, OATH Index No. 569-70/89.

From 2010 through 2013, the CCRB noted 26 allegations of false official statements: 2 in 2010, 3 in 2011, 8 in 2012, and 13 in 2013. In 2014, the number increased, and the Board noted 26 allegations. In 23 out of the 26 instances, the underlying FADO complaint was substantiated. The circumstances giving rise to all 52 complaints occurred prior to 2014.

In the first half of 2015, the CCRB noted 19 allegations of false official statement. In all 19 instances, the underlying FADO allegation was substantiated. All incidents, except for one, occurred in 2014. If this pace continues, 2014 will feature the highest number of alleged false official statements per year yet noted by the CCRB.

This analysis focuses specifically on the evidentiary basis for the Board noting the false official statements. It is important to highlight that the Board does not substantiate the OMN. Rather, the Board simply notes and refers the alleged misconduct, which is outside its statutory jurisdiction. Four categories of evidence have served as the basis by which the Board can note the alleged existence of a false official statement: (1) video or audio evidence, (2) paperwork related to the incident, (3) other officer testimony, and (4) independent civilian witness testimony. Some of the false official statements involved more than one of these categories.

Truthfulness is not only a Departmental mandate, it is a crucial element in police credibility and accountability. The CCRB is committed to further research to analyze false official statements moving forward. Initial analysis suggests that much of the increase in noting false official statements can be attributed to the increasing availability of video evidence. The cooperation of both the Police Department and civilians is needed to gain access to this often critical evidence in a timely manner, preferably before an officer's interview with CCRB investigators. There is no doubt that with the implementation of the NYPD body-camera program this aspect of verification will expand. Of the 26 OMNs for false official statements in 2014, 13 cases had video footage which was crucial in making the determination to note that the officer had committed possible misconduct. Of the 19 cases in the first half of 2015, eight had video or audio footage. Equally important is the CCRB's access to Departmental records in a timely fashion. In three of the 19 false official statements noted in the first half of 2015, the testimony of the officer was contradicted by Department documents.

### *Improper Search of a Person*

In the first half of 2015, civilians continued to file complaints with the CCRB about improper searches, a violation of one of the most fundamental rights guaranteed by the Constitution. Complaints of improper searches persist even as: (1) the number of documented stop-and-frisk encounters has decreased substantially; and (2) Police Department statistics show that police conducted fewer searches than in the past, and only in a small number of documented street encounters.

In the first half of 2015, the CCRB received 251 complaints with at least one search allegation, for a total of 309 search allegations. The statistics show that 57% of stop-and-frisk complaints contained a search related allegation. In the first half of 2015, according to NYPD data, police officers conducted 2,285 documented encounters where the civilian was searched. This means that the CCRB received one complaint per nine search incidents documented in the City (a 1:9 ratio). This is not a representative sample, but the number of cases is large enough to require attention.

The following table presents the basic statistics regarding complaint activity:

| | 2010 | 2011 | 2012 | 2013 | 2014 | J-J 2015 |
|---|---|---|---|---|---|---|
| Number of search complaints | 1,094 | 981 | 870 | 697 | 562 | 251 |
| Number of stop-and-frisk complaints | 1,910 | 1,610 | 1,500 | 1,260 | 1,002 | 441 |
| Total CCRB complaints | 6,466 | 5,969 | 5,742 | 5,388 | 4,775 | 2,092 |
| Documented encounters | 601,285 | 685,724 | 532,911 | 191,851 | 45,787 | 13,405 |
| Documented search encounters | 55,597 | 58,363 | 44,248 | 18,369 | 7,283 | 2,285 |
| Search as a percentage of stop-and-frisk complaints | **57%** | **61%** | **58%** | **55%** | **56%** | **57%** |
| Search as a percentage of all complaints | **17%** | **16%** | **15%** | **13%** | **12%** | **12%** |
| Ratio documented stops to complaints | 1:315 | 1:426 | 1:355 | 1:152 | 1:46 | 1:30 |
| Ratio documented searches to complaints | 1:51 | 1:59 | 1:51 | 1:26 | 1:13 | 1:9 |

In the first half of 2015, the CCRB fully investigated 226 search allegations, mediated or attempted to mediate 20 search allegations, and was unable to investigate 156 allegations that were closed as "complaint withdrawn," "complainant uncooperative," or "complainant unavailable."

The Board substantiated 38 search allegations in 29 cases, or 17% of all fully investigated allegations. The Board exonerated 19 search allegations, unsubstantiated 116 search allegations, and unfounded six search allegations. The Board was not able to identify the officer in 44 search allegations, and the officer was no longer a member of the force in three search allegations.

In addition to the improper search, the Board also found other allegations of misconduct during the course of the investigation of these search cases. There were a total of 261 allegations in these 29 cases: 207 allegations within the CCRB's FADO jurisdiction and 54 allegations of Other Misconduct Noted (OMN) that were referred to the Police Department. The Board substantiated a total of 143 allegations: 38 improper search allegations and 105 allegations in other FADO categories.

#### *Failure to File UF-250s*

The Board also noted and referred to the Police Department cases where the subject officer failed to prepare the required stop-and-frisk report (UF-250), which must be completed after each encounter involving a stop, frisk, or search. These failures are considered OMNs and are forwarded to the NYPD. In the first half of 2015, the Board noted other forms of misconduct in 19 out of the 29 substantiated cases, or 66% of cases. Specifically, the Board noted 17 OMN instances of failure to prepare the required stop-and-frisk report, 38 OMN instances of failure to prepare a memo book entry, and one OMN for false official statement.

The failure of police officers to prepare UF-250 reports in 16% of cases fully investigated by the CCRB (18% of cases in 2014) is problematic. Given the focus of the NYPD's federal monitor on this issue, the hope is that this number will decline moving forward.

The statistics above tell two stories. The most obvious is the persistent violation of people's right to be free from unjustified intrusions by law enforcement in 38 substantiated instances of an improper search and the failure to properly document these encounters. The second, equally important story is that police officers working in the aftermath of the *Floyd* litigation need additional training and oversight to comply with applicable constitutional standards.

The CCRB has always adhered to the letter and spirit of applicable law on searches and seizures. The CCRB also had historically recommended the most serious discipline when the Board substantiated allegations of improper search: administrative charges, leading to disciplinary trials. This was the normal outcome during the stop-and-frisk era until 2014. However, because it is now clear that the NYPD, prior to 2014, had a policy to engage in what the Courts have determined to be unconstitutional street encounters, CCRB disciplinary recommendations were not adopted at the NYPD when the CCRB recommended discipline for improper stop-and-frisk. It could not be expected that the Department would take action against officers where their actions were consistent with departmental training and directives.

Given the changed policing landscape and increased monitoring that is addressing the past unconstitutional policies of stop and frisk, in the first half of 2015, under new leadership, the Board began to take a different approach in its disciplinary recommendations. Although the Board's evaluation of misconduct has not changed and remains consistent with constitutional and legal principles, the Board's approach to the punishment has changed. The Board is now focused on making penalty recommendations that de-emphasize mere punishment in favor of training for cases that were a product of departmental pressure on individual officers to conduct stop-and-frisk encounters determined to be unconstitutional. By contrast, for new cases, after mid-2014, when it is found that officers have received proper training and were not mandated to conduct improper stop-and-frisk, the Board will impose more serious penalties.

There also has to be an acknowledgment of the complexity of the law in this area, and the fact that officers have to make split second decisions that the CCRB and judges evaluate after the fact—from hindsight. The CCRB evaluates the good faith actions of officers in these cases when it determines proper recommended penalties and training options, even though CCRB decisions recommending substantiation of an alleged violation strictly adhere to the Patrol Guide and constitutional standards.

During the first half of 2015, the Board recommended Charges and Specifications in four allegations, command discipline in 22 allegations, and formalized training in 12 allegations. Thus, the CCRB is recommending formalized training and command discipline in approximately 90% of cases, especially when the stop itself was lawful but the search was not, taking into consideration the date of the incident.

The statistics are as follows:

| Substantiated Search Allegations | January-July 2014 | August-December 2014 | January-June 2015 |
|---|---|---|---|
| Substantiated (Charges) | 20 | 16 | 4 |
| Substantiated (Command Discipline) | 3 | 13 | 22 |
| Substantiated (Formalized Training) | 1 | 7 | 12 |
| Total search allegations | 24 | 36 | 38 |
| % of cases with Charges | 83% | 44% | 10.5% |
| % of cases with Command Discipline | 13% | 36% | 58% |
| % of cases with Instructions | 4% | 19% | 31.5% |

The 2014 Annual Report focused on the reasons the officers gave for conducting improper searches. These reasons can be divided into six categories: (1) a bulge was observed or felt during a frisk; (2) after being handcuffed, the victim was searched, which officers believed to be proper procedure; (3) the officer claimed he or she was trained to conduct a search under the circumstances; (4) the officer denied any recollection of conducting the search; (5) the search was done to retrieve

a civilian's identification; and (6) the line between a frisk and a search was not clear. These reasons persisted in the first half of 2015.

Although these findings are relevant, the Agency is conducting further research to understand the persistence of improper searches. It is important to expand the universe of cases and to look at additional information, such as officer complaint histories, to see to what extent officers are allegedly repeating the same misconduct and engaging in additional forms of misconduct. Another avenue for further research that the Agency is examining is to what extent an officer who is the subject of an allegation of improper search is able to articulate his/her actions and the basis for taking such action. Finally, the CCRB intends to evaluate the final disciplinary outcome in these cases, many of which are still open, in order to evaluate the Department's commitment to addressing this issue.

#### *Unnecessary and/or Excessive Force*

The New York City Police Department defines its use of force policy in two main sections of the Patrol Guide: Use of Force under PG 203-11 and Use of Deadly Force under PG 203-12. In order to understand the use of force numbers for the first half of 2015, it is important to understand underlying philosophy and specific regulations governing Department policy.

The central goal of any use of force policy is to define the limits of the legitimate coercive use of force. This implies a differentiation between proper and improper use of force. There are some instances in which the use of force is improper because it is unnecessary, and there are other instances in which the use of force is necessary but its use as applied to the specific situation is excessive. There are, of course, situations where the use of force is both unnecessary and excessive. Defining the precise boundaries between necessary and unnecessary, between acceptable and excessive, is the central issue in any internal or external force investigation. Unfortunately, there can be no single, accepted policy definition among police departments and police oversight practitioners on the precise limits between legitimate coercive use of force and excessive use of force as each case must be determined based on its individual facts. With minor exceptions, such as absolute prohibitions against chokeholds, the limits are established on a case-by-case basis.

During the first half of 2015, the CCRB fully investigated 1,339 allegations of excessive and/or unnecessary force. In 712 allegations, or 53% of all fully investigated allegations, there was insufficient evidence to establish whether or not there was an act of misconduct and the allegation was unsubstantiated. The Board exonerated 377 allegations, or 28%, and unfounded an additional 166 allegations, or 12%. During this period, the Board substantiated 77 force allegations, or 6%, triple the rate of the first half of 2014. By comparison, in the first half of 2014, the Agency fully investigated 1,039 allegations of excessive and/or unnecessary force. In 432 allegations, or 42%, there was insufficient evidence to establish whether or not there was an act of misconduct. The Board exonerated 410 allegations, or 39%, and unfounded an additional 157 allegations, or 15%. During this period, the Board substantiated 24 force allegations, or 2%.

Viewing the data through the narrow lens of complaints in which the CCRB has reached findings on the merits, which excludes unsubstantiated cases and cases where the officer was not identified,

the statistics show that police officers used force lawfully and within Departmental guidelines in approximately 87% of incidents. It is thus relatively infrequent for the CCRB to find and substantiate misconduct in use-of-force complaints.

As noted in the CCRB's 2014 Chokehold Report, however, the real issue in evaluating use-of-force statistics is not how frequent or infrequent the use of force is, but rather the impact these "rare [statistical] events" have, and more importantly, whether or not there is a performance target to further reduce its frequency. It is the idea of setting targets to reduce defective, unprofessional police behavior, and actively manage their problem-prone officers that guides the CCRB's analysis. Although police officers have used force with restraint and only when necessary in the vast majority of fully investigated cases, the numbers from the first half of 2015 show that there is room for improvement. From January through June 2015, the Board substantiated a greater number of force allegations (6%) as a percentage of all fully investigated cases than at any time since the second half of 1999 when the Board substantiated 6.2% of all allegations of force.

The statistics for the first half of 2015 also show that there are categories of force where the proportion of substantiated cases is well below the average, and categories that are well above the average. The Department should focus its priorities on addressing the problem categories.

There were six categories of force where the Board did not substantiate any allegations against a single police officer: (1) gun fired; (2) police shield; (3) vehicle; (4) handcuffs too tight; (5) flashlight as club; and (6) use of animal. Two other categories where the Board rarely substantiated the allegation of force include: use of force – other (2%) and gun pointed (1%). Gun pointed is important because it is the second most frequent allegation of unnecessary and excessive use of force with 121 fully investigated allegations. It is also one of the allegations that the Board is more likely to exonerate. The Board exonerated 56% of gun pointed allegations, as compared to and 62% in the first half of 2014.

On the other hand, there were three categories where the Board substantiated the force allegations at a rate above average: the Board substantiated five allegations of unnecessary and/or excessive use of a nightstick as club (13%), six allegations of pepper spray (11%), and eight chokehold allegations (8%).

The most relevant category of force, from a statistical standpoint, is generic physical force. This includes allegations of a punch, kick, knee, drag, pull, push, shove, throw, slap, bite, and fight. The Board substantiated 49 physical force allegations, unsubstantiated 356 allegations, exonerated 242 allegations, and unfounded 91 allegations. The substantiation rate was 5.8% in the first half of 2015 as opposed to 1.7% in the first half of 2014.

These 77 allegations of misconduct investigated and substantiated in the first half of 2015 stemmed from 49 complaints: four incidents occurred in 2013 and 45 occurred in 2014. Given the increase in the substantiation rate, it is important to track whether the new NYPD training methods are effective in reducing force complaints. The goal of any departmental policy and training is to teach

the police officer to make the right choice under all possible scenarios. It should be every officer's aim to use the appropriate level of force as required by the Patrol Guide. These substantiated complaints show that additional training on de-escalating situations without using force is critical and that de-escalation tactics should be exercised regularly by officers.

To support the implementation of these rules and precedents that constrain officers and guide them to make the right choice, the NYPD must undertake several measures: (1) promulgate clear and precise policies; (2) increase training; (3) enhance supervisory controls; (4) strengthen data collection and analysis for the purpose of developing additional risk management strategies; and (5) penalize improper conduct. The CCRB fully shares its complaint database with the Police Department.

## SECTION 5

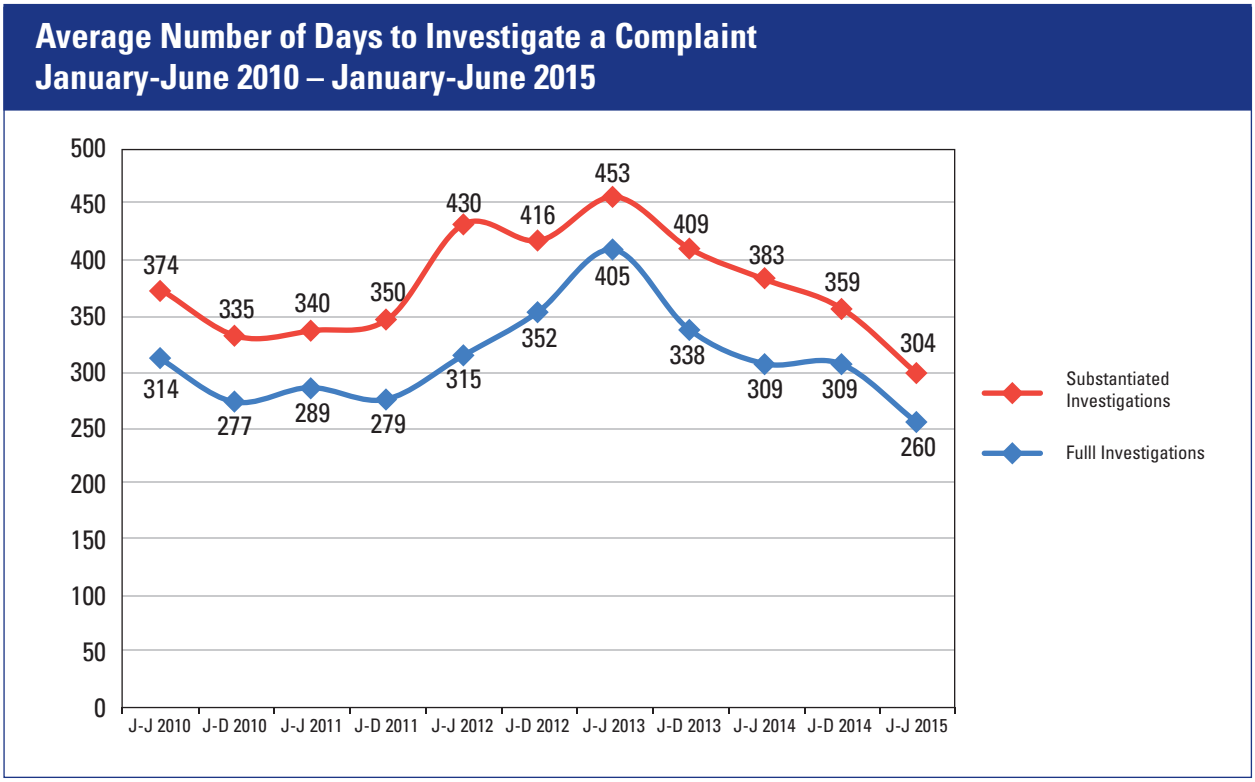
# Revamping the Investigations Division in Three Phases: One-Year Report Card

The central mission of the CCRB is to investigate and resolve allegations of police misconduct, fairly and independently, and in a manner in which the public and the police department have confidence. Since the beginning of his term, Mayor Bill de Blasio has demonstrated a strong desire and commitment to improve the quality, thoroughness, and timeliness of CCRB case investigations. The CCRB's most significant internal achievement in 2015 has been the dramatic reduction in the length of time it takes to conduct investigations, which followed an organizational restructuring that began in July 2014 and proceeded in three phases. After one year of reforms, the evidence shows that investigations can be thorough and complete and yet be done in a timely fashion. While, in 2013 and the first half of 2014, a complainant could expect that his or her investigation could take an average of more than 300 days, in the first half of 2015 a complainant could expect his or her investigation to be fully resolved by a panel of the CCRB within approximately 100 days.

The first phase of the reform was the appointment of a new Board Chair in July 2014 with a mandate to transform agency operations. The Agency launched new initiatives with a particular focus on improving the quality, speed, and consistency of complaint investigations. The initial effects of these changes were modest. It took an average of 309 days to complete a full investigation from January to June 2014 and it took 306 days from July through October 2014.

In November 2014, the Board asked executive staff to accelerate the process of restructuring the Agency's Investigations Division and the second phase of the reforms began. In December 2014, the Board implemented a comprehensive action plan, restructuring and transitioning the Investigations Division from its antiquated hierarchical and vertical team structure to a horizontal structure based on smaller teams called pods. The plan also included new benchmarks and accountability instruments for the investigative process, including the creation of weekly C*CRBstat* meetings, and prioritization of resources to aggressively reduce the open docket. As part of the plan, the Agency set forth a new transition strategy. The Case Closing/Transition Unit consisted of three teams that investigated only older cases received prior to December 1, 2014, while the Investigations Division, consisting of eight pods, received only new cases.

With the appointment of a new Executive Director in February 2015, the third phase of the reform began and the transition to the new structure and new leadership was fully consolidated. Since then, the goal of the Agency has been to reduce the size and the age of the open docket as




well as the time it takes to complete new investigations. Four indicators document the results of this overhaul.

***(1) Average Case Closure Time***

The average time it takes to close an investigation is one of the key performance indicators the Agency uses to measure productivity. This indicator measures the length of time from the date the CCRB receives a complaint to the date a complaint is closed by the Board. The CCRB uses three metrics: (1) the time to complete a full investigation from the date of the complaint; (2) the time to close a substantiated investigation from the date of complaint; and (3) the age of a substantiated case referred to the Police Department based on the date of the incident.

The CCRB took an average of 260 days to complete a full investigation in the first half of 2015, a 16% improvement from the average of 309 days in the first half of 2014. The average for January to June 2015 was the lowest six-month average since the second half of 2003. The length of these time periods is still disproportionately affected by the presence of old cases that are the focus of the CCRB's effort to get out from under the backlog of years past.

Similarly, in the first half of 2015, the time needed to complete a substantiated investigation decreased from 383 days from January through June 2014 to 304 days from January through June 2015. This was a 21% decrease. The average of 304 days was the lowest six-month average since the first half of 2007.

However, to understand the real magnitude of the changes implemented during the last year and their impact on timeliness, the analysis on case processing times must focus on productivity and investigation time by the staff in the first half of 2015. First, investigators fully investigated and submitted for board review 1,253 cases or 21% more investigations than in the first half of 2014, when investigators investigated 1,038 cases. Second, after the implementation of the second phase of the reforms, investigators closed 85% of cases received in less than 120 days, including old cases. By comparison, for the same period of 2014, investigators closed 54% of cases received in less than 120 days. Finally, and most significantly, the CCRB investigated 394 complaints filed after the implementation of the second phase (December 2014) and it took investigators an average of 77 days to investigate such complaints. By comparison, investigators fully investigated 859 complaints filed prior to the implementation of the restructuring's second phase and the average number of days to investigate these complaints was 271 days.

In other words, the reforms appear to have reduced investigative completion time by more than 70%.

#### *(2) Age of Substantiated Cases Referred for Discipline*

From January to June 2015, 59% of cases referred to the Police Department for discipline were a year old or less, as compared to 37% in the first half of 2014. Similarly, the percentage of substantiated cases referred to the Police Department that were 15 months or older after the date of incident decreased from 37% in the first half of 2014 to 13.5% in the first half of 2015.

These improvements resulted in fewer cases in which the statute of limitations expired. In the first half of 2015, the CCRB referred two substantiated cases (1%) to the Police Department in which the statute of limitations had expired, as compared to three cases (2%) in the first half of 2014. More significantly, from January to June 2014, the Board referred 25 cases (19%) with less than one month to go before the statute of limitations expired but only referred seven (3%) such cases in the first half of 2015.

#### *(3) Docket Size*

The size of the docket for June 2015 was 1,233 complaints, a decrease of 1,429 cases from June 2014 when the open docket was 2,662 cases.[12] This represents a 54% decrease. Furthermore, it is the smallest Agency docket in its 22 years of existence.

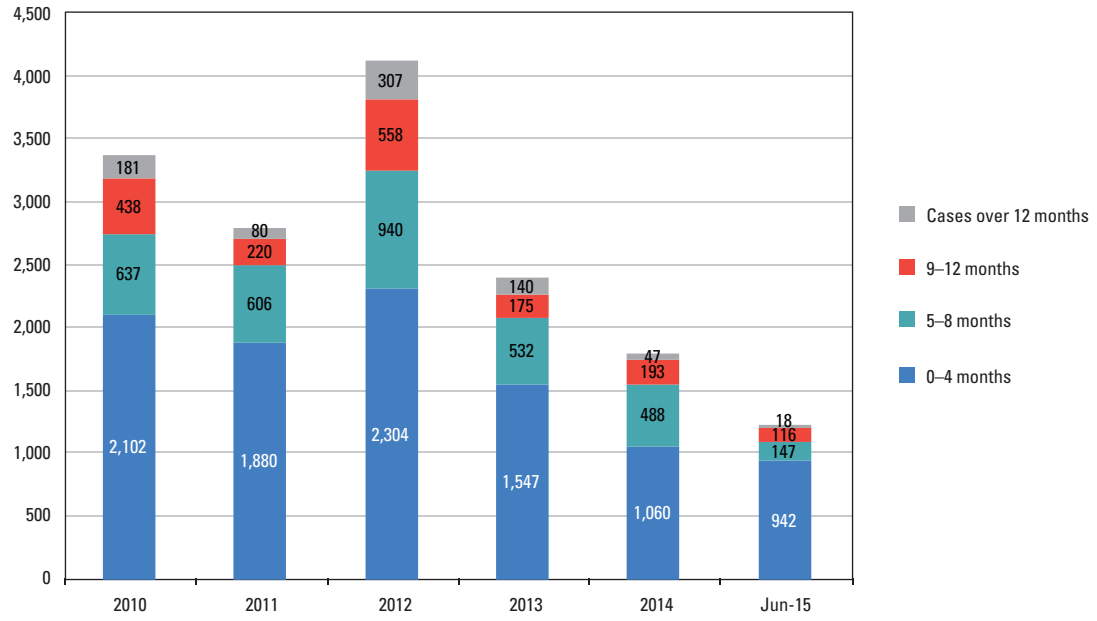
The open docket of the Investigations Division, which is the number of cases under active investigation, decreased by 64%, from 1,838 cases in June 2014 to 666 cases in June 2015. By the end of June, 90% of cases were four months old or less. The average age of the cases in the open docket of the Investigations Division was 76 days from the date of the incident and 59 days from the date the case was reported to the CCRB.

#### *(4) Age of the Docket*

In the third phase of the restructuring, from February 2015 to June 2015, the Agency focused particularly on cases 9 months or older in order to minimize the number of cases approaching the

12 The docket consisted of 1,223 cases and 10 cases on DA hold. In May 2015, the CCRB began to report DA hold cases in a separate docket category.

## Size and Age of Open Docket, By Date of Report, January 2010 – June 2015




statute of limitations. At the end of June, there were only two cases that were 18 months or older, one of which was on hold pursuant to a request by the Brooklyn District Attorney's Office and the other which had been on hold pursuant to a request by the Bronx District Attorney's Office. There were 13 cases that were 18 months or older in June 2014.

Based on the date of the incident, at the end of June 2015, 891 open complaints (73%) were four months old or less. This number was 12 percentage points higher than it was in June 2014 (61%), which shows consistent gains in productivity. At the same time, the percentage of old cases decreased. In June 2015, 5% of complaints in the docket were 12 months and older, as compared to 8% in June 2014.

Based on the date of the incident, at the end of June 2015, 942 open complaints (77%) were four months old or less. This number is 12 percentage points higher than it was in June 2014 (65%). At the same time, the percentage of old cases decreased. In June 2015, 3% of complaints in the docket were 12 months and older, as compared to 6% in June 2014.

## SECTION 6

# Community Outreach

The Outreach Unit makes public presentations to increase awareness of the Agency's mission and to build public confidence in the complaint process. The CCRB outreach manager, as well as investigators, attorneys, and other agency staff, conduct outreach presentations at schools, public libraries, tenant associations, advocacy organizations, community groups, churches, community boards, and precinct community councils, among others, in all five boroughs.

The Agency's outreach and communications efforts are guided by three key goals: (1) to ensure the people who need the Agency services know how to access them; (2) to educate the general public and the news media on the importance of having a strong civilian oversight agency in New York City; and (3) to make sure that people throughout the five boroughs understand their rights during police/civilian encounters and to educate them on staying safe during these encounters.

The Fiscal 2016 Budget provides an additional $328,730 to hire five outreach coordinators and one communications assistant, and to fund the production of more outreach publications and media. The Outreach Unit presently consists of one staff person who is the manager of the unit. The manager is presently responsible for both organizing and conducting the nearly 300 presentations annually. This is already becoming an insurmountable task.

The CCRB is very grateful for the funding the Mayor and City Council allocated in the Fiscal 2016 Budget. We anticipate that this funding will greatly enhance and expand the CCRB's outreach program. The agency will bolster its new outreach initiatives, which began in 2014, such as the CCRB Youth Ambassador Internship Program, the CCRB Community Partners Initiative and the Community Board Meeting Initiative. The Agency will also work on establishing an increased presence at Precinct Council Meetings, NYCHA residences and community forums concerning police-community relations. The Agency will also continue to foster its on-going initiative which focuses on students in high schools, colleges and universities, and members of community based organizations, particularly those in areas with high CCRB complaint volume. The five new outreach coordinators will each be assigned to a borough, where they will increase outreach presentations, establish a greater presence at community events and contacts and partnerships with community groups, local officials, other stakeholders and police precinct community affairs units.

In December 2014, the CCRB's Community Partners Initiative began at two locations in Queens. This initiative has been key to the expansion of our outreach work in the first half of 2015. Through this initiative, the agency currently deploys staff at community based organizations during evening

hours so that residents can file complaints and complainants can be interviewed without having to travel to our Manhattan office during business hours. This initiative also informs community members about their rights during police encounters and, if appropriate, how to employ de-escalation tactics when interacting with a police officer. In the first half of 2015, the CCRB did a pilot of this initiative at one of the City Council district offices in Brooklyn and it was very successful. We are now collaborating with the Speaker's office and the City Council to utilize five additional district offices for the CCRB Community Partners Initiative. We anticipate that this expansion will take place in the second half of 2015.

The CCRB's Outreach Unit completed 120 presentations during the first half of 2015 and it is on pace to complete 240 presentations. The agency began the year, in the first quarter, with an average of 24 presentations per month for a projected total of nearly 300 presentations. However, for the second quarter, this average declined to 16 presentations per month because the Unit had redirected its efforts towards recruitment and hiring in order to fill the positions in the Outreach Unit. Once the Unit is fully staffed, the number of annual CCRB presentations is expected to grow considerably.

In the first half of 2015, the Agency conducted 17 presentations at Precinct Community Council meetings, compared to one in the first half of 2014. These presentations reach the public and police officers, stressing the CCRB's impartiality, its commitment to swift and fair justice for civilians and officers, and the importance of de-escalation in police-civilian encounters. The agency considers this initiative valuable because police officers hear directly from the CCRB the message which the Agency communicates to the community. The Agency's focus on schools and colleges has been sustained, with 67 presentations conducted at educational institutions. Half of all outreach presentations were held within the precincts generating the highest numbers of civilian complaints.

Last, but certainly not least, the CCRB Youth Ambassador Internship Program continued in June 2015, with 15 teenagers registered for internships at the CCRB, where they are trained to conduct outreach presentations to their peers in NYCHA neighborhoods, and learn other professional skills.

## SECTION 7

# Mediation and the Power of Dialogue

The City Charter mandates that the Board offer mediation to both civilians and police officers. The goal of the mediation program is to allow civilians and officers to address and resolve the issues contained in the complaint by means of an informal process should they voluntarily choose to do so. In 2014, the Board eliminated the distinction between eligible and ineligible cases so that all cases are eligible for mediation pending an assessment of their suitability.

Mediation provides a valuable alternative method of resolving civilians' complaints of police misconduct. While an investigation is focused on evidence gathering, fact finding, and the possibility of discipline, a mediation session focuses on fostering discussion and mutual understanding between the civilian and the subject officer. A trained, neutral mediator guides the session and facilitates a confidential dialogue about the circumstances that led to the complaint. Successful mediations also benefit communities because a measure of trust and respect often develops between the parties. This can lead to better police-community relations.

Mediation, however, is a sensitive and difficult process, especially to initiate. Usually, at the outset of a case, the complainant is angry and wants officers punished. CCRB personnel—most often investigators—offer mediation. This is a delicate offer because, while the CCRB does not want any complainant to feel pressure to mediate, the CCRB wants to give each complainant that option if the officer(s) involved also agree. The mediation offer, therefore, must be just that—an offer without any sense of coercion or pressure. CCRB strives to encourage mediation without dissuading complainants from availing themselves of their right to a full investigation and a determination by a Board panel at the conclusion of a case. The CCRB goal is to expand the mediation option without depriving those complainants who want officers held accountable of that right.

Since 2000, approximately nine out of ten mediations have been successful. After a successful mediation, a complaint is closed as "mediated," meaning that there will be no further investigation and the officer will not be disciplined. If the mediation is not successful, the case returns to the Investigations Division for a full investigation. In the first half of 2015, 82 out of 92 mediation sessions were successful, or 89%.

The CCRB's investigative staff is responsible for offering mediation to complainants, while the Police Department is responsible for offering it to officers in coordination with the Agency's staff. The Mediation Unit has ongoing training sessions, for both investigative staff and Police Department representatives, to teach them the nature and benefits of mediation, so they in turn can offer it successfully.

***Mediation Statistics***

In the first half of 2015, the Mediation Unit mediated 82 cases. There were 81 cases mediated in the first half of 2014. It was the most productive January through June period for mediation since 2010, when the CCRB mediated 91 cases.

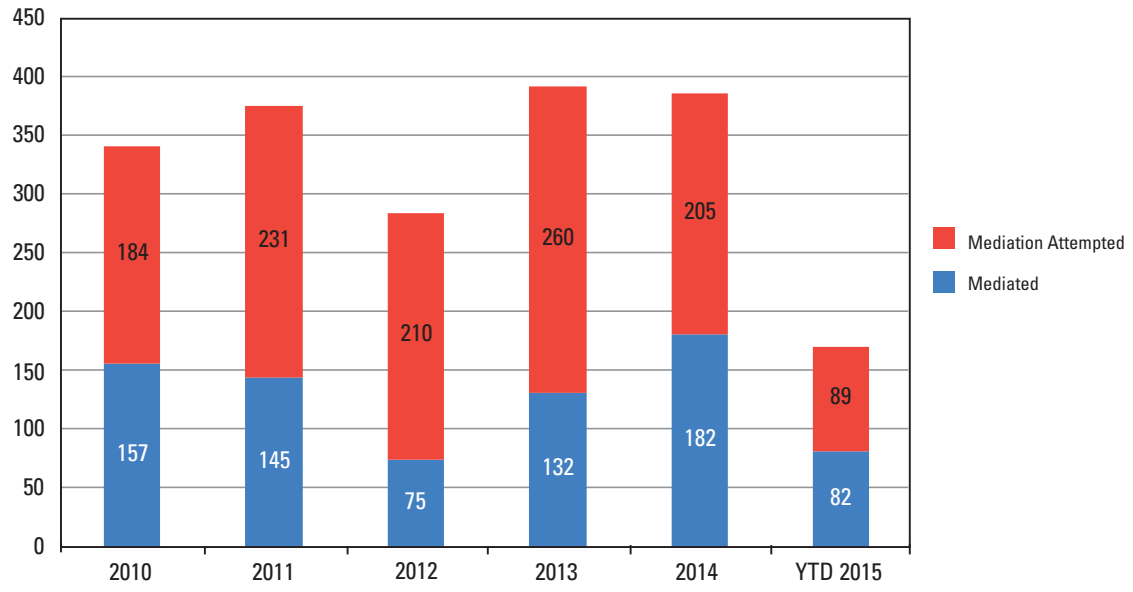
In the first half of 2015, it took an average of 144 days to mediate a complaint, a decrease of 25% from the average of 192 days in the first half of 2014. This was the shortest time since 2010. From 2010 through 2014, the average number of days to mediate a complaint was 202.

The number of mediation closures (cases closed as mediated and mediation attempted) increased by 4%, from 164 in the first half of 2014 to 171 in the first half of 2015. There were 341 mediation closures in 2010, 376 in 2011, 285 in 2012, 392 in 2013, and 387 in 2014.

In the first half of 2015, the number of cases resolved by the mediation program was approximately 17% of the total number of cases resolved by the Agency, either through the mediation process or a full investigation. This percentage was two percentage points higher than the 15% rate of the first half of 2014, and consistent with recent years. By comparison, the mediation resolution rate was 12% in 2010; 16% in 2011; 18% in 2012; 16% in 2013, and 17% in 2014.

In the first half of 2015, the Mediation Unit received 216 mediation referrals from the Investigations Division, compared with 265 in the first half of 2014. The Investigations Division made 652 referrals in 2010. Although referrals had decreased by 32% from 2010 to 2014, the number of mediation sessions and attempted mediations has increased steadily. In 2010, 63% of cases referred to mediation were mediated and attempted mediations while 37% were returned to the Investigations Division. By 2014, 72% of cases referred to mediation were mediated and attempted mediations.

**Mediation Closures, 2010 – June 2015**



For the past five years, the rate complainants accepted the offer of mediation has been approximately 50%. The mediation acceptance rate for civilians was 54% in 2010, 53% in 2011, 56% in 2012, 50% in 2013, and 48% in 2014. The number of civilians who accepted mediation decreased to 44% in the first half of 2015.

The percentage of subject officers who accepted the offer to mediate was 82% in 2010, 77% in 2011, 74% in 2012, 83% in 2013, and 84% in 2014. In the first half of 2015, the CCRB offered mediation to 265 officers and 217 accepted for a 82% acceptance rate.

## SECTION 8

# Police Officer Anonymity: New Findings on Officers Refusing to Provide Name and Shield

New Yorkers experiencing encounters with police officers are entitled to learn those officers' names and shield numbers upon request. The NYPD Patrol Guide is clear on this policy. Unfortunately, the CCRB continues to receive and substantiate complaints from the public regarding officers' refusal to do so. Officers who refuse to provide their name and shield both harm public trust in the police and the perception of police accountability, and also encumber CCRB investigations by preventing investigators from quickly identifying and interviewing the subject officers. This issue has led the City Council to consider legislation that would require officers to affirmatively identify themselves at the outset of encounters. The NYPD would prefer internal solutions, such as the implementation of GPS technology. Either remedy would improve the CCRB's ability to conduct timely investigations into all complaints. The CCRB issued a policy recommendation in 2003 that led to a revision to the Patrol Guide.

### *NYPD Name and Shield Policy*

NYPD policy regarding self-identification is unequivocal. The Patrol Guides states, in the first paragraph of the "Public Contact" section, "Courteously and clearly state your rank, name, shield number and command, or otherwise provide them, to anyone who requests you do so. Allow the person ample time to note this information." P.G. 203-09(1). In the Patrol Guide's section on "Violations Subject to Command Discipline," failure to provide name and shield to a person requesting such information is a Schedule B violation, which subjects an officer to potential command discipline. P.G. 206-03(8).

### *CCRB Data*

Name and shield incidents represent an "Abuse of Authority," one of the four areas of CCRB jurisdiction. In the first half of 2015, the CCRB received 320 complaints of refusal to provide name and/or shield number, which is 15% of all cases received for that period. During this period, the CCRB investigated 434 allegations, of which 226 were fully investigated. The substantiation rate was 7% and the unsubstantiation rate was 70%, which is the second highest unsubstantiation rate after failure to show search warrant at 75%.

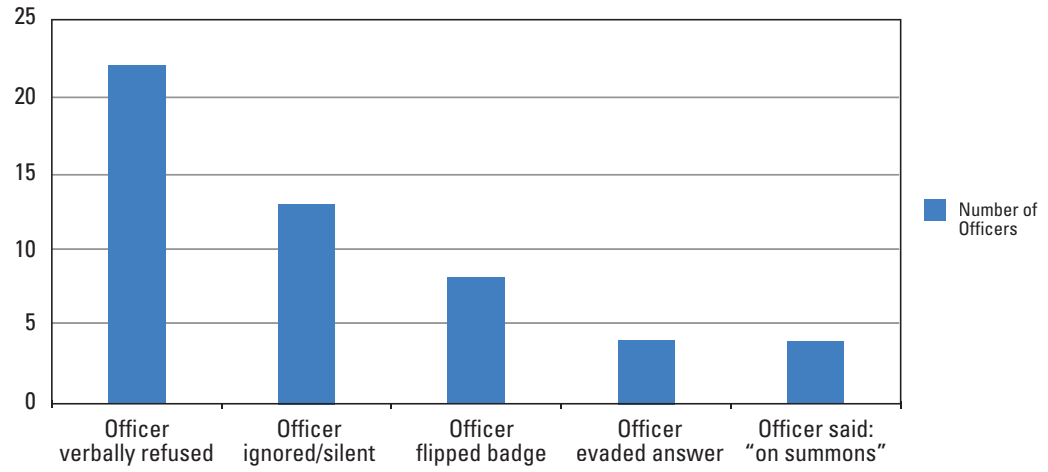
Two precincts had the greatest number of allegations: the 73rd Precinct and the 103rd Precinct. In the first half of 2015, 39% of complaints stemmed from incidents occurring in Brooklyn.

Of the 226 fully investigated allegations, the Board substantiated 15, stemming from 13 incidents. In addition to the Refusal allegation, the Board substantiated 22 FADO allegations and noted 16 instances of other misconduct in these cases. As noted earlier, the overwhelming majority of allegations were closed as unsubstantiated, with the Board unable to determine whether or not the incident took place as alleged. Notwithstanding this fact, the Board substantiated allegations in 23 cases where the officers had allegedly refused to provide name and shield information.

Refusal allegations have traditionally been difficult to prove because they are usually cases of simple contradictions between the complainant's version and the officer's version of events. Uncorroborated, the preponderance of evidence standard is not met to substantiate an allegation. Once again, video with audio is more often playing a significant role in resolving these allegations. CCRB expects this category of alleged misconduct to further be refined because of video and body camera evidence.

In approximately half of name and shield investigations, the CCRB substantiated at least one other charge against the subject officer. Approximately half of the CCRB's substantiations were made against plain-clothed officers. The manifestations of the refusals vary: some officers crudely declare that they will not provide their information, others ignore the request silently or refer to their name on the summons, and a small number intentionally make their shields difficult to read or record.

**Name and Badge Refusals, 2014 – 2015**




***City Council Proposal***

New York City Council Int. No. 182A, part of the "Right to Know Act," would regulate the NYPD's approach to name and shield. A similar bill was discussed and not voted on in 2012. The legislation would require officers "to identify themselves by providing full name, rank, and command, and explain to the subject of the law enforcement activity the specific reason for the activity. When the law enforcement activity does not result in an arrest or summons, this bill would require that, at the

conclusion of the encounter, the officer provide a business card to the individual that includes the officer's rank and command as well as contact information for the Civilian Complaint Review Board (CCRB)."[13] The bill allows a broad exception for undercover officers (as distinct from "plainclothed" officers). Intro 182A is co-sponsored by the majority of the City Council, and was discussed at a Public Safety Committee hearing on June 29, 2015.

***NYPD Proposal***

NYPD Commissioner William Bratton testified before the City Council that Intro 182A was unnecessary, arguing that name and shield concerns were better addressed by improved department "policies, protocols and procedures."[14] The Commissioner specifically highlighted the Department's new vehicle GPS policies, which were expected "within the months ahead."[15] This technology, he explained, "would allow us to identify where every police car is at any time in the city, and most importantly where it was. So if somebody is indicating that they had an incident with an officer yesterday at such and such a location and such and such a time and the officer failed to give identifying information, we would be able to with our new GPS capability identify what car was there, and what officers were assigned there."[16]

Technology for police departments to track their vehicles is already being used in cities such as Boston, Los Angeles, and Columbus, but there are limits to the technology's utility. In one CCRB investigation highlighted at the City Council hearing, the investigator was unable to identify the officers, reaching an impasse when he was unable to obtain a vehicle authorization sheet for the day in question. GPS technology in cars will not solve lapses in record-keeping. Additionally, GPS data is only useful if it is stored long enough to be of use to an investigator—at least a year. Retaining the data for evidentiary purposes should require it to be stored even longer.

Deputy Commissioner Lawrence Byrne added that soon "all 36,000 officers will have an email address, and they'll have a smartphone so there are many ways to communicate with the officer."[17] Unless these phones are similarly equipped with GPS technology that can retroactively yield officers' locations, it is unclear how they will reduce name and shield incidents. Unmentioned during this part of the hearing, the NYPD body camera pilot project may end up being the most important technology to solve name and shield issues. Current Department policy does not allow body camera videos to be used for disciplinary purposes within the NYPD for the duration of the pilot program, but the CCRB has and will continue to use evidence from body cameras to enhance its own investigations.

***Potential Impact of Legislation and NYPD Technology Upgrades***

Name and shield issues transcend the comparably small number of cases where New Yorkers specifically ask and fail to receive information from officers. Many CCRB complaints begin with only a physical description of officers, as complainants and victims are unable to determine the name on

13 City Council Public Safety Committee Report at 7.
14 City Council Public Safety Committee Hearing on 6/29/2015, at 35.
15 Ibid. at 37-38.
16 Ibid. at 34-35.
17 Ibid. at 100.

officers' badges for a variety of reasons: darkness, distance, the short duration of the encounter, stress, or fear of escalation. This leaves the task of identifying subject officers to investigators, a process that slows investigations. If the City Council passes Intro 182A, more complainants and witnesses will hear officers identify themselves, and be able to pass on those names to CCRB investigators. If the NYPD implements GPS vehicle tracking, investigators and their NYPD liaisons could more easily identify subject officers. Either would advance the efficiency of CCRB investigations and assist the CCRB in reducing (a) the extraordinarily high rate of unsubstantiated findings and (b) the extraordinarily high number of allegations who are pleaded against unidentified officers.

## SECTION 9

# Update on 2014 Policy Findings

In 2014, the CCRB issued a number of reports to fulfill its mandate to inform the public and New York City elected officials about the Agency's operations, complaint activity, case dispositions, and Police Department discipline. In addition, the CCRB issued two ad hoc reports and recommendations on NYPD policies, procedures, and training.

During the first six months of 2014, the CCRB issued a special statistical report on vehicle stops. In the second half of 2014, the CCRB issued a special, comprehensive report on chokeholds: *A Mutated Rule: Lack of Enforcement in the Face of Persistent Chokehold Complaints in NYC.*[18] Basic updates on both reports are below.

### Vehicle Searches: Fewer Complaints but Substantiation Rate Remains High

One of the complaint categories to which the CCRB has paid particular attention in recent years has been vehicle stops and searches. After two years of consecutive increases, in 2012 and in 2013, the number of complaints involving "vehicle stop" and/or "vehicle search" complaints is now decreasing—a trend that began in 2014. Looking at the past years, the CCRB received 532 complaints in 2010; 459 in 2011; 479 in 2012; 498 in 2013; 441 in 2014; and 209 in the first half of 2015 (which is an annualized rate of 418 per year). This is a decrease of 5% from 2014 to 2015, and a 21% decrease from 2010 to 2015. Approximately one out of every 10 complaints that the CCRB received annually involved a vehicle stop and/or vehicle search.

In the first half of 2015, the CCRB fully investigated 280 allegations of vehicle stop and/or search. The Board substantiated 68 allegations; unsubstantiated 102 allegations; exonerated 68 allegations; unfounded three allegations; and the officers remained unidentified in 37 allegations. Officers were no longer members of service in two allegations.

While the raw numbers of such complaints are going down, the substantiation rate is going up. The substantiation rate was 21% for vehicle stop and 26% for vehicle search allegations. By comparison, in the first half of 2014, the substantiation rate was 5% for vehicle stop and 17% for vehicle search allegations. These are both significant increases.

Additionally, the February 2014 study documented that there were many vehicle stop and search cases where people were also frisked and searched. The study also documented a failure to file required UF-250 reports more than half of the time.

18 http://www.nyc.gov/html/ccrb/downloads/pdf/Chokehold%20Study_20141007.pdf

The study analyzed two types of cases. The first category consists of cases where there was a vehicle stop and/or search, but there were no allegations of a stop, frisk, or search of a person. The second category consists of cases where both vehicle stop and/or search allegations and stop, frisk, and/or search of a person were present. This group is called "vehicle stop/search plus." Within the two categories, the study measured only the substantiation rate for vehicle stop and vehicle search allegations.

From 2009 to 2013, the substantiation rate for these two groups varied greatly and this variation was statistically significant. During this period, the Board substantiated 155 cases of "vehicle stop/search plus" cases. The average substantiation rate was 22%. By comparison, the Board substantiated 51 cases of "vehicle stop/search only" cases for an average substantiation rate of 10%. During this period, the average substantiation rate for the entire universe of CCRB fully investigated cases was 11%.

In 2014, the Board substantiated the vehicle search and/or vehicle stop allegations in 42 out of 153 "vehicle stop/search plus" cases, a substantiation rate of 27%. By comparison, the Board substantiated the vehicle search and/or vehicle stop allegations in 9 out of 88 "vehicle stop/search only" cases for a 10% substantiation rate. During this period, the average substantiation rate for the entire universe of CCRB fully investigated cases was 17%. The statistics for 2014 continued to show a much higher substantiation rate for vehicle stops and searches where civilians were also frisked and searched when compared to other type of incidents.

In the first half of 2015, the Board substantiated the vehicle search and/or vehicle stop allegations in 18 out of 74 "vehicle stop/search plus" cases, a substantiation rate of 24%. By comparison, the Board substantiated the vehicle search and/or vehicle stop allegations in 20 out of 65 "vehicle stop/search only" cases for a 31% substantiation rate. The overall substantiation rate was 27% for both type of cases.

The important conclusion is that CCRB found that the overall substantiation rate for incidents involving vehicle stops and/or searches was 36% in the first half of 2015.[19] This means that over a third of police encounters involving vehicles led to some misconduct being substantiated.

### Chokehold Report Update: Chokehold Complaints Decreased in 2015

From January 1, 2015, through June 30, 2015, members of the public filed 73 chokehold complaints. The current annualized rate is 146 chokehold complaints, which is on course to be the lowest rate since 2004 when the public filed 140 complaints. The CCRB received 240 chokehold complaints in 2009; 207 in 2010; 157 in 2011; 157 in 2012; 187 in 2013; and 232 complaints in 2014.

In the 2014 Chokehold Report, the CCRB suggested that one of the best ways to measure the prevalence of chokeholds was to compare chokehold complaint activity and its relation to overall use of force complaints. Chokehold complaints were 3.8% of all force complaints in 2001 increasing

19 The difference between the 27% substantiation rate and the substantiation 36% rate was that the latter percentage includes cases where other allegations were substantiated even though the Board did not substantiate the vehicle stop and/or search.

to 6.0% in 2009. The rate was 6.4% in 2010; 5.4% in 2011; 5.5% in 2012; 6.6% in 2013; 9.6% in 2014; and 7.0% in the first half of 2015.

The other relevant statistic is the disposition data. As our 2014 Report indicated, the Board substantiated 9 chokehold cases from 2009 through June 2014: three in 2009; two in 2010; one in 2011; one in 2012; one in 2013; and one in the first half of 2014. Since the 2014 Report was published in October 2014, the Board has substantiated 12 chokehold cases from October 2014 through June 2015. The Board substantiated five cases in the second half of 2014 (all incidents occurred in 2012 or 2013) and seven cases in the first six months of 2015 (six incidents occurred in 2014 and one incident in 2013).

Of these 12 cases, 11 cases are being handled by the CCRB's Administrative Prosecution Unit and one case was handled by the Department Advocate's Office. There is only one final disposition —one case in which the Department declined to prosecute the officer for the substantiated chokehold allegation.

There were several notable patterns in these substantiated complaints, and at least one appears to contribute to the increase in the substantiation rate. First, the increasing prevalence of video contributed to the Board's substantiation of many of these cases and, in two instances, to the Board's finding that the chokehold allegations made against the officers were unfounded. Video of the encounter existed in most of the chokehold allegations analyzed, and it is evidence that the increasing availability of video evidence allows the CCRB to make conclusive findings. This fact is important as the Department implements and expands its body camera pilot program.

The presence of video is also important because it allows the CCRB to confront the officers with the documentary evidence during the investigation. In their interviews, officers are asked to explain the encounter in their own terms and, also, define in their own words the interaction with the civilian based on the video and/or photographic evidence.

The second pattern demonstrated by these cases is that there were always two or more officers at the scene of the incident. In two or more cases, there were multiple officers. This pattern is consistent with the 2014 Report.

In 2015, there was no consistent pattern defining the interaction between the officers and the civilians. Examples of interactions in which chokeholds occurred included: two officers identifying an individual beating the subway fare; officers identifying a possible marijuana transaction; officers arresting a civilian for panhandling; officers responding to a domestic dispute between family members; a large number of officers responding to large gathering of people resulting in a melee; officers responding to reports of a fight at a game; and officers responding to an office dispute.

In some cases, the chokehold occurred after the civilian was already in handcuffs and the range of other options available to the officers was significant. These are clear examples of unnecessary and excessive use of force in contained situations and after the arrests had been effected by the officers. In other instances, however, the chokehold occurred during the arrest of the complainants.

In analyzing these cases, the CCRB policy unit examined the officer's description of the incident that led to the alleged chokehold as well as the totality of the force used during the encounter. In several instances, the officer's description of the incident did not correspond with the documentary evidence. In two instances, for example, the officers were cited for making a false official statement to the CCRB and this misconduct was referred to the Police Department. In two other cases, the officers were noted for failing to properly document the interactions with the complainants in their memo books.

In several cases, there was no question that the chokehold stemmed from the officers' emotional response to the circumstances. In two cases, officers responded to civilians spitting at them. In one case, the officer responded to the complainant throwing a cup of coffee that indirectly hit the officer. In another case, the officer was responding to an agitated complainant who acted disorderly and attracted a crowd. Because the Police Department has committed to retraining its members in de-escalation and alternative methods to gain compliance, we have shared these cases with the Department not only for discipline but also for the purpose of training.

Recent legislative and departmental proposals regarding chokeholds affect the policy landscape. On June 29, 2015, the New York City Council Committee on Public Safety, chaired by Council Member Vanessa Gibson, held a hearing on various bills regarding policing and police accountability. In particular, Int. No. 540-A proposes to amend the administrative code and criminalize the use of chokeholds by an officer in the course of effecting or attempting an arrest. The law would create a misdemeanor crime for such an act by an officer, punishable by not more than one in year imprisonment and/or a fine up to $2500.

The bill's definition of chokehold is:

"Chokehold means to wrap an arm around or grip the neck in a manner that limits or cuts off either the flow of air by compressing the windpipe, or the flow of blood through the carotid arteries on each side of the neck."

The current Patrol Guide defines a chokehold as:

"A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air."

During the hearing, Police Commissioner Bratton testified that the Patrol Guide definition of "chokehold" is being modified to match the definition of "chokehold" in Int. No. 540. Key differences between the current definition of chokehold in the Patrol Guide and the definition contained in the bill appear to be as follows:

A. Ban on Vascular Restraints: The Patrol Guide does not specifically ban the use of vascular restraints, which involve the compression of the carotid arteries on either side of the neck without restricting the flow of air.

B. Potential v. Actual Restriction: The Patrol Guide currently bans pressure to the neck or windpipe that "may" prevent or hinder breathing or intake of air, as well as pressure that

actually does prevent or hinder breathing or air intake. A strict textual interpretation of the bill could be read as prohibiting only holds that actually limit or cut off air or blood flow.

C. Refinement of Respiratory Restraint Definition: The Patrol Guide bans pressure to the "throat or windpipe" that may prevent or hinder "breathing or reduce intake of air." The bill bans arm holds around the neck or gripping the neck in a manner that "limits or cuts off the flow of air by compressing the windpipe." The text of the bill refines the definition of a prohibited respiratory restraint, but seems coextensive with the current Patrol Guide definition. The bill's omission of the word "breathing" from the chokehold definition seems to be consistent with administrative decisions that focus heavily or exclusively on whether a complainant could breathe or not.

D. In the Course of Effecting or Attempting to Effect an Arrest: The Patrol Guide bans chokeholds in the course of effecting an arrest or under any circumstances. A strict textual interpretation of the bill could be read as only prohibiting neck restraints in the course of an arrest. As the CCRB report well documented, chokeholds have been alleged in scenarios that did not involve arrests and/or scenarios where complainants were neither violent nor resisting arrest.

The Board is examining the changes to the Patrol Guide and how they will affect the Board's assessment of misconduct. Any change of the Patrol Guide to conform to the definition of chokehold in the City Council bill would be a serious mistake for the Department and the disciplinary process, as opposed to a basis for a criminal misdemeanor. A flat ban on touching the neck in a manner which "may" restrict breathing is critical to proper restraint of officers in the interactions with civilians and protection of civilian life and from injury. It is also critical to give officers a clear line of demarcation for what is and is not permitted. If the City Council legislation's criminal definition is imported into the disciplinary process, the question of whether an officer violates the rule will not be determined by his/her actions but rather by whether a complainant can prove that breathing was in fact restricted. This shifting of proof places the issue of culpability out of the hands of the officer and into those of after-the-fact testimony and proof. While that may be appropriate for criminal liability, it is an unsuitable standard for discipline.

It is also important for the Board to continue to examine the disciplinary outcomes of substantiated cases, and to look at the final discipline in these cases. To date, many of these allegations are still open in the disciplinary system, and it will be prudent to review the entire record before reaching firm conclusions.

# Appendix
## The Board, Agency Operations, and Resources

The Civilian Complaint Review Board (CCRB) is an independent agency of the City of New York. The Board investigates, mediates, and prosecutes complaints of misconduct that members of the public file against police officers of the New York City Police Department (NYPD). The CCRB was established in its all-civilian form, independent from the Police Department, in 1993.

The Board consists of thirteen members. The City Council designates five Board members (one from each borough), the Police Commissioner designates three, and the Mayor designates five, including the Chair. All appointments are made by the Mayor, who also has the authority to select the Chair of the Board.

Under the Charter, the Board must reflect the diversity of the City's residents and all members must live in New York City. No member of the Board may have a law enforcement background, except those designated by the Police Commissioner, who must have law enforcement experience. No Board member may be a public employee or serve in public office. Board members serve three-year terms, which often are renewed. They receive compensation on a per-session basis, although some Board members choose to serve pro bono.

In January 2015, the Police Commissioner designated Deborah Zoland as a Board member in place of Michael O'Connor. In June, Mayor de Blasio appointed Salvatore Carcaterra to the Board, another Police Commissioner designee. As of June 30, 2015, the Board had two City Council vacancies, one for Staten Island and the other for Brooklyn.

In February 2014, the Board named Mina Malik as its new Executive Director. Prior to joining the CCRB, Ms. Malik was Special Counsel to the Brooklyn District Attorney where she advised the newly-elected District Attorney on the restructuring and reorganization of the agency, personnel matters, policy issues, and wrongful conviction cases. The Executive Director is the Chief Executive Officer and is responsible for the Agency's daily operations, including the hiring and supervision of the Agency's staff. The staff is organized according to the core functions they perform.

Board members, executive staff, and Agency attorneys review all misconduct complaints once they have been investigated by the all-civilian Investigations Division. The Board also evaluates trends emerging from these complaints and makes policy recommendations to the Police Department.

From 1993 to 2013, when the Board found that an officer committed misconduct, the case was referred to the Police Commissioner with a discipline recommendation. Under a Memorandum of Understanding (MOU) between the CCRB and the NYPD (effective April 11, 2013), all substantiated cases in which the Board recommends that charges and specifications be brought against an officer are prosecuted by the attorneys in CCRB's Administrative Prosecution Unit (APU).

In December 2014, the Board began making more detailed recommendations on the level of discipline. In addition to charges and specifications, the Board now distinguishes between two levels of command discipline (command discipline A or command discipline B), formalized training at the Police Academy or at the NYPD's Legal Bureau, and instructions at the command level.

In addition to investigations and prosecutions, the CCRB resolves complaints through mediation. Mediation is voluntary, and gives a complainant the chance to meet face-to-face with a police officer to discuss and resolve the issues that led to the complaint. Complainants have the opportunity to share with the officer the effects of his or her actions or words and the officer has a chance to explain his or her actions. This can lead to mutual understanding and a measure of trust and respect.

The CCRB also engages the community to increase public awareness of the CCRB's mission and services. This is done primarily through presentations to community groups, tenant associations, public schools, religious organizations, precinct community councils, and advocacy organizations throughout the five boroughs. The Agency has been collaborating with the Council Speaker to designate district offices in all the boroughs, that can be used to interview complainants, conduct outreach presentations, and take complaints. This Community Partners initiative will give CCRB a presence throughout the City and alleviate the burden on complainants of travel to CCRB's lower Manhattan office during the day when they may have work, school, child-care, or other scheduling conflicts.

The CCRB's Fiscal 2015 budget, which was in effect from July 1, 2014 to June 30, 2015, was $13,626,493. For Fiscal 2016, the Budget is $15,076,755, which is an 11% increase over Fiscal 2015. The total authorized full-time headcount for Fiscal 2016 is 180, as compared to 167 in Fiscal 2015. There are 115 employees in the Investigations Division, 5 in the Mediation Unit, 8 in the Outreach Unit, 20 in the APU, and 32 in the Administration Division.

***"It is in the interest of the people of the City of New York and the New York City Police Department that the investigation of complaints concerning misconduct by officers of the department towards members of the public be complete, thorough and impartial. These inquiries must be conducted fairly and independently, and in a manner in which the public and the police department have confidence. An independent civilian complaint review board is hereby established..."***

*(NYC Charter, Chapter 18-A, effective July 4, 1993)*

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