CIVILIAN COMPLAINT REVIEW BOARD

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CROSSING THE THRESHOLD:

An Evaluation of Civilian Complaints of Improper Entries and Searches by the NYPD from January 2010 to October 2015

CCRB MISSION AND VALUES

The New York City Civilian Complaint Review Board (the "CCRB" or the "Board") is an independent agency, created by Chapter 18-A of the New York City Charter. The Board is empowered to receive, investigate, prosecute, mediate, hear, make findings, and recommend action on complaints against New York City police officers alleging the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language.

In fulfillment of its mission, the Board has pledged:

- To report apparent patterns of misconduct, relevant issues and policy matters to the Police Commissioner and the public.

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TABLE OF CONTENTS

TABLE OF FIGURES

EXECUTIVE SUMMARY

Police search and seizure—especially of homes—represents one of the most invasive forms of intrusion of individual liberty. When conducted without proper constitutional authority, home searches are one of the most serious violations of privacy and, consequently, types of police misconduct that engender anger at and distrust of police authority.

Entries are fraught with a range of potential dangers to both civilians and officers. Many officers enter homes early in the morning when occupants are sleeping, in a state of undress, and engaged in the private routines in preparation for the day ahead—often leaving residents and their children frightened, confused, and angry. Police officers find themselves in chaotic and potentially dangerous situations, with an unknown number of occupants in the home and limited knowledge of what they will encounter. Even when done lawfully, police entries are forceful, aggressive and surprising, intended to apprehend suspects and seize evidence of a crime.

Data compiled by CCRB indicates that most officers in the New York Police Department (the "NYPD" or "Department") enter homes to respond to crimes-in-progress, to render aid to residents, or pursuant to valid search or arrest warrants. Yet the cost of loss of confidence in the presumption of lawful conduct as a result of the cohort of improper entries and searches far outweighs their modest prevalence. Not only are core civil liberties violated, but the necessary constructive relationship between community members and the police is degraded. The community's tolerance for law enforcement activity and compliance with the law rises and falls upon its sense of police legitimacy and authority. Where officers fail to act in accordance with the law requiring procedural and substantive warrant requirements, civilians lose trust and confidence in the police. A lack of procedural justice contributes to a perception that police ignore the law's constraints.

To understand the nature and scope of civilian complaints regarding police search and seizure at premises, the CCRB conducted a study of over five and a half years of fully investigated complaints. The CCRB is the largest police oversight agency in the nation and is empowered to receive, investigate, make findings and recommend action upon complaints by New Yorkers alleging misconduct by NYPD officers. *See* NYC Charter § 440(c)(1). To further this mission, CCRB issues monthly, biannual, and special statistical and qualitative reports analyzing trends and recurring issues arising from the many thousands of civilian complaints it receives. These reports act as a barometer of police-civilian encounters in a number of ways, including the police practices that civilians find most troubling. In its role as an independent investigator of misconduct allegations, CCRB is uniquely positioned to identify the circumstances that generate civilian complaints, to assess whether officer conduct is improper, and to offer recommendations to redress misconduct.

In this study, the CCRB isolated the recurring police practices and misunderstandings of the law that led to improper entries, searches, and failures to show a warrant to occupants. In *Payton v. New York*, the Supreme Court established a bright-line rule for police searches and seizures on premises: officers must possess a valid warrant, based upon probable cause and issued by a judge or magistrate, to cross the threshold of a home. Absent consent, exigent or emergency circumstances, an officer's warrantless entry into a residence is presumptively unreasonable and violates the Fourth Amendment of the U.S. Constitution.

The CCRB found that improper entries and searches arose from misunderstanding or misapplication of the legal standards for consent, exigent and emergency circumstances, hot pursuit, and the plain view doctrines—which, if applied correctly, would permit warrantless entry, search, and seizure. Also, officers improperly used investigation cards (known as "I-Cards")—an internal NYPD tool that tracks individuals officers seek to arrest—and, occasionally, warrants to gain entry into homes. Officers in these cases did not understand the line drawn by the law at the threshold of an individual's home, or prioritized the seizure of a suspect or evidence over the residents' constitutional rights.

Data in this report is presented in a variety of ways—by complaint, by allegation, by subject officer, or by victim—depending on the best method for analyzing a particular issue. For example, in order to assess how often civilians complain of improper entries, complaint activity is most useful. Yet, in order to assess how many officers participated in an entry or search, or the characteristics of CCRB's disciplinary recommendations and penalties imposed upon specific officers, a granular review by allegation or subject officer is preferable. The CCRB's key statistical findings in this study include:

- In the years from 2010 to 2014, the CCRB received between 535 and 622 complaints per year of improper entries, searches, and failures to show a warrant. In the first nine months of this year, the CCRB received 400 such complaints. Complaints of premises entry, search, and failures to show a warrant represent approximately 11% of all complaints received annually by the CCRB between January 1, 2010 and October 1, 2015.[1]

- A single "complaint" may contain multiple "allegations" relating to force, abuse of authority, discourtesy, and/or offensive language. For example, a single complaint may contain multiple allegations of improper entries, searches, and/or failures to show warrants

[1] According to the NYPD, officers executed at least 15,120 search warrants at dwellings from January 1, 2010 to December 31, 2014. This number includes the Bronx, Brooklyn North, Brooklyn South, Manhattan North, Manhattan South, Queens North, Queens South, and Staten Island. The dwellings include apartment buildings, hotels/motels, housing developments, and residences. "Dwellings" do not include "building" and "basement" in this approximate number of search warrants from January 1, 2010 to December 31, 2014. The figure 15,120 is a low number because a search warrant would not be counted in the NYPD's Intel database if a unit did not report the search warrant.

depending on how many entries or searches occurred at a location, and how many officers were alleged to have participated in the entry, search, and/or failure to show a warrant. The vast majority of complaints regarding improper entries, searches, or warrant executions involve only a single incident of entry or search, but a few complaints involved more than one entry or search (occurring on the same day or on different days). Data on complaint counts are presented separately from allegation counts; they are not added together.

- Between January 1, 2010 and October 1, 2015, the CCRB decided 1,762 complaints corresponding to 2,640 fully investigated allegations of premises entry and/or search, or failure to show a search warrant. The CCRB substantiated 180 complaints (or 10% of complaints).

    - The 180 substantiated complaints involved 263 subject officers, 487 victims, and 183 unique locations.

    - **Premises entry and search**: the CCRB decided 1,759 complaints corresponding to 2,465 allegations of premises entry and search. The 174 substantiated complaints corresponded to 288 allegations, representing a substantiation rate of 10% by complaint and 12% by allegation. The CCRB exonerated 1,527 allegations (62%), and unsubstantiated 493 allegations (20%).

    - **Failure to show a warrant**: the CCRB decided 150 complaints corresponding to 175 allegations of failure to show a warrant. The 7 substantiated complaints corresponded to 9 allegations, representing a 5% substantiation rate by complaint and by allegation. The CCRB exonerated 4 allegations (2%), and unsubstantiated 116 allegations (66%).

- The CCRB exonerated 704 allegations (approximately 33%) of premises entry and search allegations because officers possessed a valid search warrant, arrest or bench warrant, or other court order permitting entry into premises. These 704 allegations corresponded to 663 complaints. One significant factor that may trigger civilian complaints even when officers execute valid warrants is whether officers show occupants the warrant. Of the 663 complaints in which officers possessed a valid warrant, 138 complaints (21%) included allegations that officers failed to show that warrant to the occupant.

- 175 substantiated complaints (97% of all substantiated complaints) occurred in residential premises, while only 5 substantiated complaints (3% of all substantiated complaints) occurred in private areas of businesses. Single-family or dual-family homes were improperly entered or searched in 44 substantiated complaints (approximately 25% of all substantiated complaints), while multi-story apartment buildings were the locations of almost all the

remaining improper entries and searches. 33 substantiated complaints (or 18% of all substantiated complaints) of improper entries and searches of residential premises occurred in apartment buildings owned and operated by the New York City Housing Authority.

- The greatest number of substantiated complaints of improper entries, searches, and failures to show a warrant occurred in the early morning hours between 5:00 a.m. and 8:00 a.m. All but one of the 30 substantiated complaints involving the NYPD's Warrant Squad occurred between 5:00 a.m. and 10:00 a.m.

- Consistent with CCRB complaints generally, African-Americans comprised approximately 55% of the 487 victims in substantiated complaints, while they make up only 23% of New York City population. White individuals represent 4% of 487 victims in substantiated complaints, though they make up 34% of New York City population.

- Of the 263 subject officers in substantiated complaints, 140 officers (52%) were assigned to Patrol or Housing Bureau Commands, while 74 officers (25%) were assigned to Warrant Squad and Detective Bureaus. 45 officers (16%) were assigned to Narcotics Borough Commands.

- 101 substantiated complaints (56% of all substantiated complaints) involved officers dressed in plainclothes at the time of the incident. Police intrusion into homes when officers do not wear uniforms may contribute to a civilian's belief that police activity is improper, and may trigger a complaint.

- Substantiated complaints of improper entry, search, or failure to show a warrant often also raise other related allegations. For example, 157 substantiated complaints (87% of all substantiated complaints) included an allegation of discourtesy by an officer; 84 substantiated complaints (46%) included a force allegation; 26 substantiated complaints (15%) included an offensive language allegation; and 25 substantiated complaints (14%) also contained an allegation that officers damaged property.

- In 94 substantiated complaints (52% of all substantiated complaints), officers detained, arrested, or issued summons to individuals after improperly entering or searching their premises. In criminal proceedings, arrests, summons, or evidence seized pursuant to an illegal entry or search would be dismissed or excluded.

- Of the 263 subject officers involved in the 180 substantiated complaints of improper entry, search, and failure to show a warrant, the CCRB referred 14 instances of a false official statement to the Department's Internal Affairs Bureau ("IAB") for further investigation.

- Of the 297 allegations substantiated between January 1, 2010 and October 1, 2015, the CCRB recommended charges and specifications as discipline in 174 allegations (59%), command discipline in 75 allegations (25%), and formalized training or instructions by a commanding officer in 43 allegations (15%).

- The NYPD possesses final authority over whether and what type of discipline to impose on officers. Of the 297 substantiated allegations, the Department has informed the CCRB of its final disciplinary decision in 185 allegations (62%). Of these 185 allegations, the Department imposed a penalty in 64% (or 118) allegations, and imposed no penalty in 36% (or 67) allegations.

- Charges and specifications, which are recommended in the most serious of cases, have been prosecuted since April 2013 by the CCRB's Administrative Prosecution Unit ("APU"). APU has procured guilty verdicts after an administrative trial for 12 allegations of improper entry and search, and has resolved another 11 allegations through plea agreements with subject officers. Not guilty verdicts were issued for 15 allegations of improper entry or search after trial conducted by APU.

Key findings from CCRB's qualitative analysis of substantiated complaints include:

- A hotly-contested issue in CCRB complaints is whether civilians provided voluntary consent to allow police entry or search. 42 substantiated complaints (24%) of the 174 substantiated complaints of premises entry and search involved a dispute between officers and civilians over consent. Among the sample of 91 unsubstantiated complaints reviewed by the CCRB, a dispute over consent was the reason for the unsubstantiated finding in 33 complaints (36%).

- In 19 substantiated complaints (11%) of the 174 substantiated premises entry and search complaints, the CCRB found consent provided by an occupant to be involuntary and produced by police coercion. Coercion took various forms, including threats, intimidation, and physical force.

- The Department introduced a policy in 2008, requiring certain officers to obtain a signed "consent to search" form from an occupant when they wish to seize evidence or a wanted person within a particular location. The incidents examined by the CCRB revealed that very few officers subject to the Department's policy use or attempt to use the form.

- Many substantiated CCRB complaints arise from routine law enforcement activities by patrol officers in and around homes, such as responding to radio calls involving reports of crimes-in-progress and vertical patrols of apartment buildings. Patrol officers in substantiated complaints often misunderstood the exigencies that allow immediate, warrantless entry into

homes, and entered homes though the circumstances permitted them time to obtain a warrant to do so.

- The intersection of two legal doctrines—the law surrounding street encounters and the hot pursuit of individuals under arrest—led to improper entries by officers into homes. While officers who possess reasonable suspicion that an individual is committing, has committed, or will commit a crime may pursue that individual if he flees, they may not pursue that individual *into a home* unless they have probable cause to arrest him. Yet officers in several substantiated complaints initiated a pursuit based only upon reasonable suspicion. In these cases, the hot pursuit doctrine does not justify subsequent entry into a home.

- 58 subject officers found to have committed misconduct (20% of the 263 officers in 180 substantiated complaints) were members of the Warrant Squad—a unit that more than any other should understand the law of warrants. An issue leading to improper entries involves the use of arrest or bench warrants issued several months or even years earlier to enter homes without A valid arrest or bench warrant allows officers to enter a residence to search for and arrest the subject of the warrant if they reasonably believe it to be the suspect's residence and they reasonably believe the suspect is present at the time they enter. investigative steps taken to form a reasonable belief that the subjects of the warrants still resided in the home and could be found within. A valid arrest or bench warrant allows officers to enter a residence to search for and arrest the subject of the warrant only if they reasonably believe it to be the suspect's residence and they reasonably believe the suspect is present at the time they enter. According to recent estimates, over 1 million bench warrants are open in New York City, heightening the need to confirm that individuals sought on those warrants still live at the address listed on those warrants.

- Another issue in substantiated complaints is whether officers understand the need for search warrants when executing an arrest warrant at a third-party residence. For example, a detective with the Warrant Squad told the CCRB in a 2015 interview that "The [arrest] warrant is for the person itself, it's not for the location. There's no restrictions. If the person is believed and you can articulate and know for a fact that an individual is at a certain location, any entry or means to get in there and arrest the individual is appropriate."

- The Warrant Squad's investigation of investigation cards (also referred to as an I-card) is an area of concern among the CCRB's substantiated complaints, especially when I-cards are used in conjunction with warrants issued years before to gain entry into a home. Officers often attempt to apprehend the individual listed as a suspect on an I-card by going to residences where they believe the individual to be present. While arrest of those individuals in public places needs no warrant, arrest of those individuals inside homes most certainly do. I-cards are not warrants since they have not been issued by a judge or neutral magistrate. I-

cards invite improper entries—either because officers are left with little choice but to cross the threshold of a home when they see a suspect, or because civilians allow entry based on a misunderstanding of I-cards as warrants. One Warrant Squad detective acknowledged that, though an I-card did not provide permission to enter a residence, he was required to enter because "once [the resident] opens up the door and I see the wanted perpetrator there, I need to take him."

- Civilians emphasize the failure of officers to show them a warrant as a reason they refuse to accept the legitimacy of police presence in their homes. One woman told the CCRB that she was sleeping in her apartment when officers opened her unlocked front door at 7:30 a.m. to look for her son. She said, "I asked [the officer], did he have a warrant? Did he have a physical warrant to pick up my child? He said no, he only had a complaint in his hand." When an officer asked to enter her son's room, she responded, "[A]bsolutely not if he didn't have a physical warrant, and he was already in my apartment. I knew my rights. He came into my apartment without a warrant."

To address the misunderstandings or misapplications of the law that lead to improper entries and findings of misconduct, a summary of the CCRB's recommendations follow:

1. **Recommendation: The Department should record, as part of its body-worn camera program, all non-exigent home entries (and, when possible, all home entries) to document their propriety. The Department should craft rules to protect privacy if entry videos are released.** Video footage has been a sea change in the ability to investigate and determine whether misconduct occurred. While police video recording in and around homes is another significant intrusion of individual privacy and must be properly regulated, videos of all searches of homes have the potential to document material issues in home entry and search cases—including consent, the existence of exigent or emergency circumstances, and the facts leading to hot pursuit, among others.

2. **Recommendation: The Department should expand its current policy regarding the consent to search form and require all officers in the Department to use the form to document consent to search homes and businesses.** A significant number of complaints involve disputes between civilians and officers over consent to enter and search and their homes. Expanding the Department's consent to search form—in addition to enforcing the current policy requiring certain officers to use the form—is essential to resolve these disputes. Further, a signed form may lead to exoneration of officers named in misconduct complaints, while also protecting the rights of civilians.

3. **Recommendation: The Patrol Guide should be revised to contain a stand-alone section on the law of search and seizures at homes and businesses. The Police Student's Guide should be revised to contain a stand-alone section that addresses the *Payton* rule as it applies to searches and seizures generally.** Currently, the Patrol Guide contains separate sections regarding arrests with a warrant and the execution of search warrants. This division is mirrored in the Police Student's Guide. What is missing from these sections are the first principles of *Payton* and its progeny—that to gain entry into a home for search or seizure, an arrest or search warrant must be secured. CCRB recommends a combined, comprehensive section on search and seizure at homes generally. In addition, the Patrol Guide's section on investigation cards should be revised to state clearly they are not warrants, and in what circumstances officers should be required to obtain a warrant instead of relying solely on an investigation card for arrest.

4. **Recommendation: The Department should make a series of roll-call announcements reminding officers of the requirements of Patrol Guide 214-23 regarding noise violations.** Many complaints arise from incidents where officers arrive at residences to address noise complaints or because they have heard loud noise themselves. These incidents often involve parties, large gatherings, or other chaotic, unpredictable circumstances that can pose great risk to both officers and civilians. Officers should be reminded that entry to correct a noise violation is a last resort and a decision to be made by a precinct commander or duty captain only.

5. **Recommendation: The penalties imposed by the Department on officers who improperly enter and search homes should deter future misconduct and reflect the serious harms suffered by civilians.** Both CCRB disciplinary recommendations and final disciplinary decisions by the Police Commissioner should address the causes of improper entries and searches—often a basic misunderstanding of the law—through the expanded use of formalized training. However, where charges and specifications are appropriate and result in a guilty verdict after trial, the penalty should reflect the significant intrusion on individual liberties that unlawful entries and searches and homes represent.

Section One of this report provides basic statistics regarding relevant complaint activity, dispositions of the relevant complaints, and outlines the methodology of this study. Section Two reviews the principle sources of legal and procedural guidance for the NYPD in the area of searches and seizures at homes and businesses. Section Three is a qualitative, descriptive analysis of the substantiated complaints of improper entries, searches, and failures to show a warrant, including numerous case examples. Section Four contains a statistical analysis of significant aspects in substantiated complaints—including location of complaints, demographics of victims and subject officers, the assignment, rank, tenure, and complaint history of subject

officers, and related allegations. Section Five examines discipline, trial decisions, and penalties imposed by the Department in substantiated cases of improper search, entry and failure to show a warrant. Section Six explains the basis for the exonerated and unsubstantiated complaints. Finally, Section Seven discusses the recommendations generated by this study in detail.

INTRODUCTION: BACKGROUND OF CCRB AND GLOSSARY

The Charter of the City of New York establishes the Civilian Complaint Review Board and empowers it to receive and investigate complaints from members of the public concerning misconduct by officers of the NYPD. *See* NYC Charter § 440(a). The CCRB is required to conduct its investigations "fairly and independently, and in a manner in which the public and the police department have confidence." *Id.* Under the City Charter, the CCRB has jurisdiction to investigate the following categories of police misconduct: Force, Abuse of Authority, Discourtesy, and Offensive Language, collectively known as "**FADO**." *Id.* § 440(c)(1). The CCRB will also note "**other misconduct**" when it uncovers certain conduct by NYPD officers during the course of its investigation that falls outside its jurisdiction, but that the Department has requested be noted or remains important to bring to the Department's attention. Examples of "other misconduct" include failures by officers to enter necessary information in their activity logs (memo books), failures to complete required documentation of an incident, and evidence suggesting that officers have made false official statements.

The "**Board**" consists of thirteen individuals. Of the 13 members, five are chosen by the Mayor, five are chosen by the City Council, and three members with experience as law enforcement professionals are chosen by the Police Commissioner. Apart from the members selected by the Police Commissioner, none of the Board members may have experience as law enforcement professionals or be former employees of the NYPD. The Mayor selects one of the thirteen members to serve as Board Chair.

The Executive Director is appointed by the Board and is the Chief Executive Officer, who is responsible for managing the day-to-day operations of the Agency and overseeing its 180 employees. The Agency consists of an 110-member Investigations Division responsible for investigating allegations of police misconduct within the Agency's jurisdiction ("FADO"), and for making investigative findings. The most serious police misconduct cases are prosecuted by a 16-member Administrative Prosecution Unit. The prosecutors within the Unit are responsible for prosecuting, trying and resolving the most serious misconduct cases before a Deputy Commissioner of Trials at One Police Plaza. The Agency also includes a Mediation Unit with trained mediators who may be able to resolve less serious allegations between a police officer and a civilian. The Outreach Unit acts as a liaison with various entities, and is responsible for intergovernmental relations, outreach presentations, and community events throughout the five boroughs of New York City.

Members of the public who file complaints regarding alleged misconduct by NYPD officers are referred to as "**complainants**." Other civilians involved in the incident are

categorized as "**victims**" or "**witnesses**." Officers who commit the actions that are alleged to be misconduct are categorized as "**subject officers**," while those who witnessed or were present for the alleged misconduct are categorized as "**witness officers**." The CCRB's **Intake** team receives the complaints filed by the public in-person, or by telephone, voicemail, an online complaint form, or referred to the agency by the NYPD's Internal Affairs Bureau.

When a complaint is filed with the CCRB, the CCRB assigns it a unique complaint identification number. The CCRB also refers to "**complaints**" as "**cases**." The vast majority of complaints regarding improper entries, searches, or warrant executions involve only a single incident of entry or search, but a few complaints involved more than one entry or search (occurring on the same day or on different days). A single complaint or case may contain multiple "**allegations**" relating to force, abuse of authority, discourtesy, and/or offensive language. Allegations regarding improper entries, searches, or failures to show a warrant are considered allegations falling within the CCRB's abuse of authority jurisdiction. A single complaint or case may contain multiple allegations of improper entries, searches, and/or failures to show warrants. Each allegation is reviewed separately during an investigation.

During an **"investigation**," the CCRB's civilian investigators gather documentary and video evidence and conduct interviews with complainants, victims, civilian witnesses, subject officers and witness officers in order to determine whether the allegations occurred, and whether they constitute misconduct. At the conclusion of the investigation, a closing report is prepared summarizing the relevant evidence and providing a factual and legal analysis of the allegations. The closing report and investigative file is provided to the Board for disposition. A panel of three Board members (a "**Board Panel**") reviews the material, makes findings for each allegation in the case, and if allegations are substantiated, provides recommendations as to the discipline that should be imposed on the subject officers.

The "**Disposition**" is the Board's finding of the outcome of a case (i.e. if misconduct occurred). The Board is required by its rules to use a "preponderance of the evidence" standard of proof in evaluating cases. Findings on the merits result when CCRB is able to conduct a full investigation and obtain sufficient credible evidence for the Board to reach a factual and legal determination regarding the officer's conduct. In these cases, the Board may arrive at one of the following findings on the merits for each allegation in the case: "**substantiated**," "**exonerated**," or "**unfounded**." Substantiated cases are those where there was a preponderance of evidence that the acts alleged occurred and constituted misconduct. Exonerated cases are those where there was a preponderance of the evidence that the acts alleged occurred but did not constitute misconduct. Unfounded cases are those where there was a preponderance of the evidence that the acts alleged did not occur. "**Unsubstantiated**" cases are those where the CCRB was able to conduct a full investigation, but there was insufficient evidence to establish whether or not there

was an act of misconduct. In many cases, the CCRB is unable to conduct a full investigation or mediation and must "**truncate**" the case.[2]

A complainant may "**mediate**" his or her case with the subject officer, in lieu of an investigation, with the CCRB providing a neutral, third-party mediator.

The CCRB's **Administrative Prosecution Unit (APU)** prosecutes cases in which the Board has substantiated misconduct and recommended discipline in the form of Charges and Specifications. The APU began operating in April 2013, after the CCRB and the NYPD signed a Memorandum of Understanding establishing the unit.

[2] Fully investigated cases comprise complaints disposed of as "substantiated," "unsubstantiated," "exonerated," "unfounded," "officers unidentified," or "miscellaneous." Miscellaneous cases are those where an officer retires or leaves the Department before the Board receives the case for decision. Truncated cases are disposed of in one of the following ways: "complaint withdrawn," "complainant/victim uncooperative," "complainant/victim unavailable," and "victim unidentified."

SECTION ONE: THE SCOPE OF THE STUDY – STATISTICS AND METHODOLOGY

The CCRB receives hundreds of complaints each year from members of the public who believe officers have entered and searched their homes and businesses improperly. The CCRB conducts full investigations into a significant number of these complaints and, over the last five and a half years, substantiated approximately 10% of these incidents as improper. To conduct this study, the CCRB reviewed not only substantiated complaints, but also a sample of exonerated and unsubstantiated complaints.

Relevant Complaint Activity. Between January 1, 2010 and October 1, 2015, the CCRB received 3,369 complaints with 4,811 allegations of: (1) premises entered and/or searched; and (2) failure to show a warrant (Figure 1). From year to year during this period, complaint activity fluctuated. The CCRB received the lowest number of relevant complaints in 2013—535 complaints—and then experienced a 16% increase in complaints the next year—622 complaints. In the first nine months of 2015, the CCRB has received 400 relevant complaints. Assuming the rate remains the same, the CCRB estimates that in 2015 it will receive approximately 533 relevant complaints—which would be the lowest number of complaints in the six-year period between January 1, 2010 and December 31, 2015.

The decline in premises entry and search complaints received in 2015 mirrors the overall decline of all types of complaints received by the CCRB. However, in examining the period between 2010 and 2015, total CCRB complaint activity has steadily declined, while complaints of improper entry and search has fluctuated—increasing some years, and decreasing in others. Complaints of premises entry and search have comprised approximately 10% of the total number of complaints received by CCRB between 2010 and 2013, though in 2014, this percentage rose to 13% (Figure 2).

Complaint activity regarding improper entries and searches should be assessed in the context of overall police-civilian encounters at homes and businesses. Though exact numbers cannot be determined, some data exists. According to the NYPD, officers executed at least 15,120 search warrants at dwellings from January 1, 2010 to December 31, 2014.[3] In addition, some of the approximately 33,000 arrests by NYPD officers between January 1, 2014 and September 27, 2015 were made in dwellings.

[3] This number includes the Bronx, Brooklyn North, Brooklyn South, Manhattan North, Manhattan South, Queens North, Queens South, and Staten Island. The dwellings include apartment buildings, hotels/motels, housing developments, and residences. "Dwellings" do not include "building" and "basement" in this approximate number of search warrants from January 1, 2010 to December 31, 2014. The figure 15,120 is a low number because a search warrant would not be counted in the NYPD's Intel database if a unit did not report the search warrant.

Figure 1: Number of Complaints and Allegations of Premises Entry, Search, and Failure to Show a Warrant Received By Year between 1/1/2010 and 10/1/2015

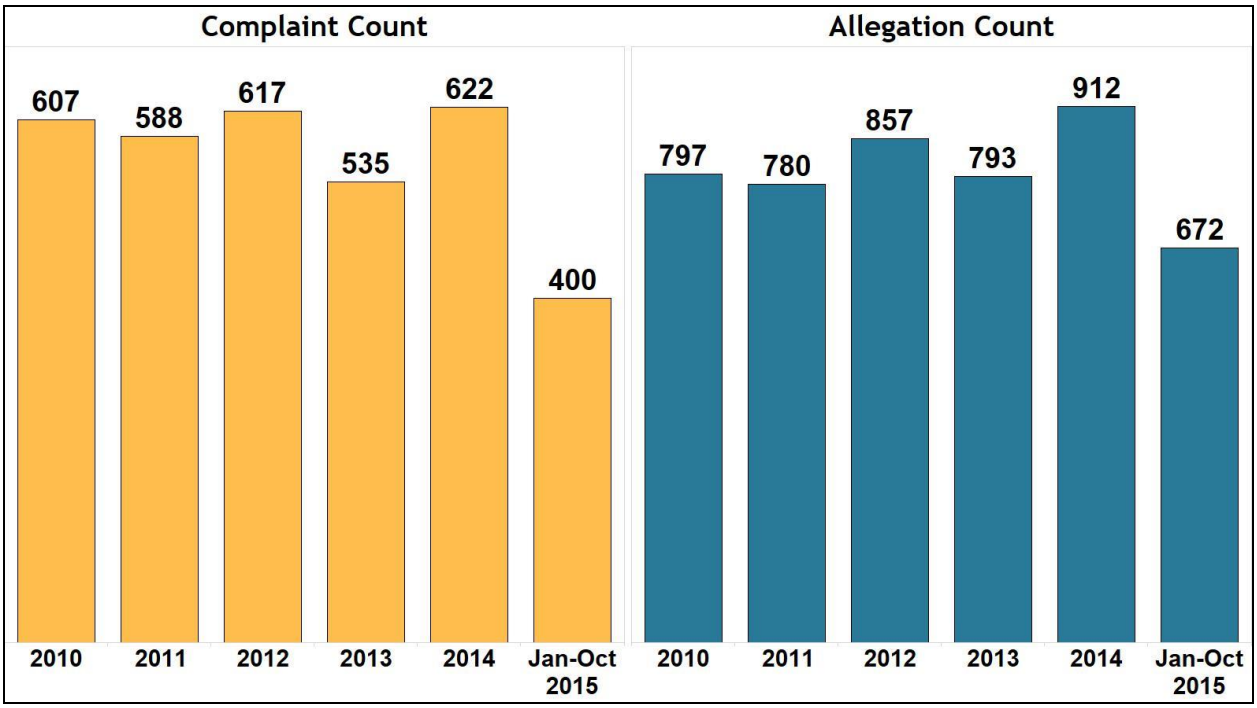
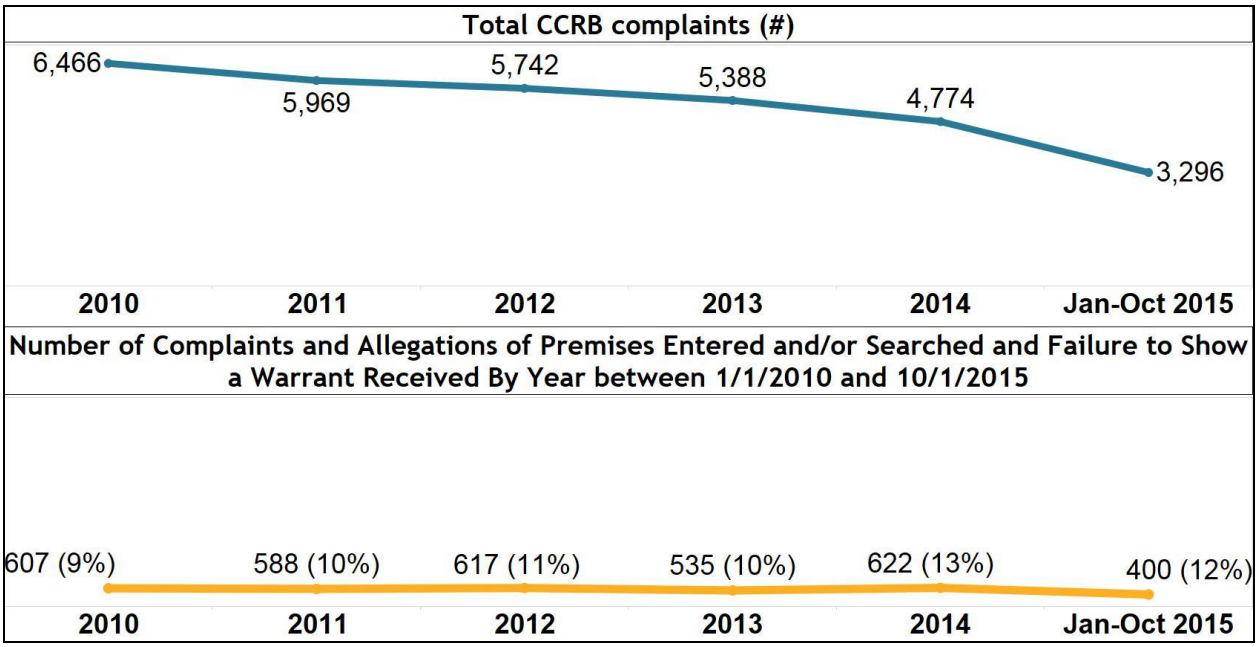


Figure 2: Total CCRB Complaints Received By Year between 1/1/2010 and 10/1/2015



Relevant Complaint Dispositions. Between January 1, 2010 and October 1, 2015, CCRB Board panels decided 1,762 complaints with 2,640 fully investigated allegations of

premises entry and/or search, and/or failure to show a warrant (Figure 3). During this time period, the CCRB substantiated 297 such allegations, corresponding to 180 unique complaints. The 288 substantiated allegations of premises entry and/or search corresponded to 174 complaints, and the 9 substantiated allegations of failure to show a warrant corresponded to 7 complaints.

Of the 174 substantiated complaints of premises entry and/or search, 88 complaints were ones where the CCRB substantiated both an improper entry and search; 76 complaints were ones where the CCRB substantiated an improper entry only; and 10 complaints were ones where the CCRB substantiated an improper search only.

In addition, during the period from January 1, 2010 to October 1, 2015, the CCRB noted "Other Misconduct" in two complaints where officers were required to obtain a signed consent to search form but failed to do so.

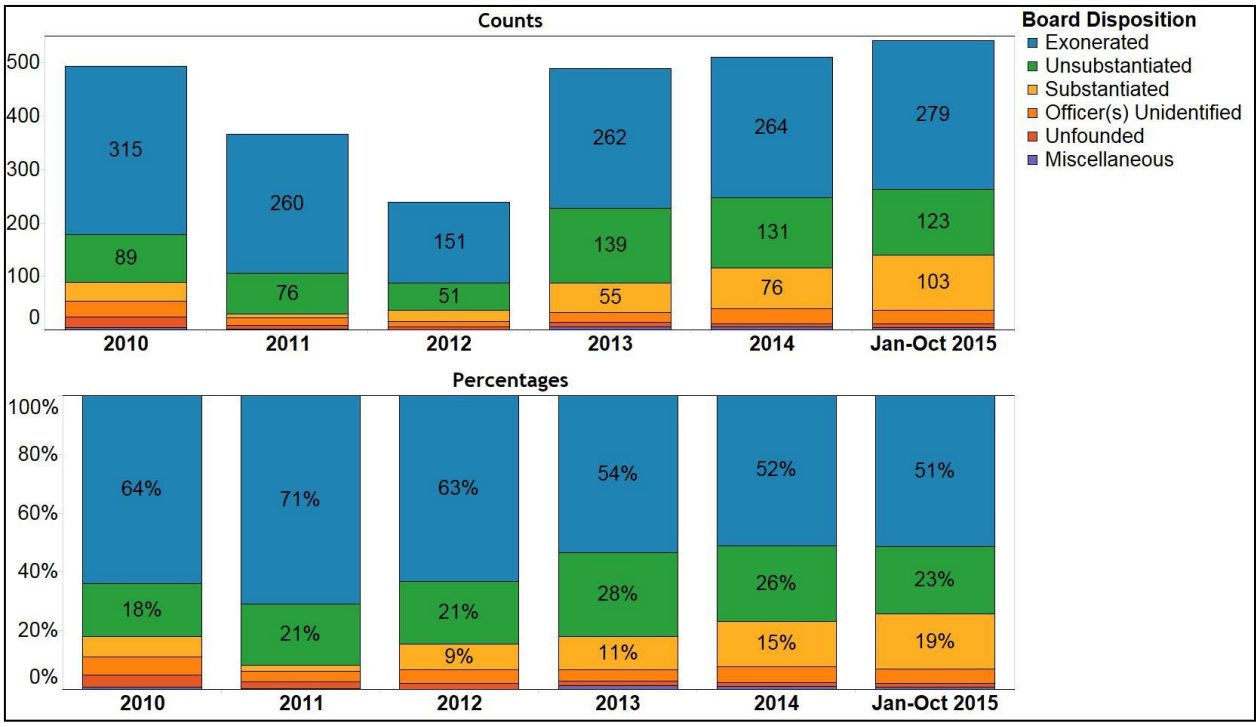
The substantiation rate of complaints with allegations of premises entry, search, and failure to show a warrant, is lower than the substantiation rate for all fully investigated complaints. Between 2010 and 2014, the CCRB's substantiation rate for all fully investigated complaints was 13%. During the first half of 2015, the CCRB's substantiation rate for all fully investigated complaints was 21%. The substantiation rate of premises entry and search complaints decided between January 1, 2010 and October 1, 2015 is 10% (Figure 3).

However, broken down by year, the CCRB's raw count of substantiated allegations and the CCRB's substantiation rate has increased significantly since 2010 (Figure 4). In 2010, the substantiation rate of premises entry, search, and failure to show a warrant allegations was 7%, which fell to a substantiation rate of 2% in 2011. In 2012, however, this trend reversed course. The CCRB substantiated more allegations of premises entry, search, or failure to show a warrant each year from 2012 to 2015, and the substantiation rate increased as well: 9% in 2012, 11% in 2013, 15% in 2014, and 19% for the allegations decided up to October 1, 2015.

Figure 3: Disposition of Fully Investigated Allegations of Premises Entry, Search, and Failure to Show Warrant Between 1/1/2010 and 10/1/2015

Disposition of Allegation	Number of premises entered and/or searched allegations	Number of failure to show a warrant allegations
Substantiated	288 (174 cases)	9 (7 cases)
Exonerated	1527	4
Unfounded	33	22
Unsubstantiated	493	116
Officer Unidentified	105	23
Miscellaneous	19	1
Total Number of Fully Investigated Allegations	2465 (corresponding to 1759 cases)	175 (corresponding to 150 cases)
Substantiation Rate by Complaint	10%	5%
Substantiation Rate by Allegation	12%	5%

Figure 4: Disposition by Year of Fully Investigated Allegations of Premises Entry, Search, and Failure to Show Warrant Between 1/1/2010 and 10/1/2015



Methodology. To conduct this study, the CCRB reviewed the 180 complaints decided by a Board panel between January 1, 2010 and October 1, 2015 that corresponded to 297 substantiated allegations of the following types: (1) premises entry and/or search; and (2) failure to show a warrant. Both of these allegations are abuse of authority allegations within the CCRB's FADO jurisdiction. In addition, the CCRB reviewed the two complaints in which the Board noted "Other Misconduct" arising out of an officer's failure to obtain a signed consent to search form. The CCRB examined several characteristics of these complaints, including type of premises involved, time of day, command, assignment and rank of subject officers, presence of a warrant or investigation card, the presence of exigent or emergency circumstances, and disputes over consent to entry and search. The CCRB reviewed the investigative files for each substantiated complaint, including closing reports; the factual and legal analysis of investigators and attorneys; audio recordings and transcripts of interviews with complainants, victims, and witnesses; audio recordings and transcripts of interviews with subject and witness police officers; relevant video, audio or photographs of the underlying incidents; and related documents such as arrest reports, warrants, investigative cards, and other investigative activity by officers.

In addition to reviewing substantiated complaints, the CCRB reviewed exonerated complaints to determine the presence of a valid warrant or exception to the warrant requirement. The CCRB reviewed a random sample of cases in the latter category to examine the types of circumstances that served as a permissible basis for warrantless entry. The CCRB also reviewed

a random sample of unsubstantiated allegations to analyze why it was unable to come to a finding on the merits in these cases.

The level of discipline and penalties imposed for improper searches and entries is crucial to understanding whether the CCRB can redress police misconduct. To do so, the CCRB analyzed its disciplinary recommendations in substantiated complaints, along with the Department's final disciplinary decisions. Where available, the CCRB reviewed the documents describing the basis of the Department's disciplinary decisions.

The law that controls government intrusion in private homes arises out of federal and state law, including the New York Criminal Procedure Law. The CCRB summarized the relevant federal and state constitutional provisions, common law and statutes that relate to warrantless entry, as well as entries pursuant to a search or arrest warrant. The CCRB also examined the sections of the NYPD Patrol Guide and NYPD Operations Order relevant to the issues examined in this report. The CCRB also examined the July 2014 NYPD Police Student's Guide.

SECTION TWO: ENTERING PREMISES – LAW AND POLICE PRACTICES

Search and seizure in homes and businesses by NYPD officers is governed by four principal sources of authority. *First*, the United States and New York State Constitutions, as interpreted by courts and codified in the New York Criminal Procedure Law ("CPL"), establish the legal standards for entry into premises and outline the limited exceptions to the warrant requirement. *Second*, the NYPD Patrol Guide contains certain procedures that must be followed when effecting arrests and conducting searches. *Third*, the NYPD training curriculum offers recruits a further explanation of the relevant law and Patrol Guide procedures. *Fourth*, the NYPD issues various Legal Bulletins and Operations Orders containing a recitation of the law applicable to issues such as search and seizure at homes. What emerges from a comprehensive review of the various documents issued by the Department regarding search and seizure is a distinction made for officers between arrests for individuals and searches for evidence, and a further distinction between officers engaged in patrol and those assigned to investigative commands. While these distinctions may reflect the operational differences among various NYPD commands and assignments, they leave certain officers with the impression that warrants are not particularly relevant to their law enforcement activity in homes.

Law on Entries. Restrictions on searches and seizures at homes stem from the Fourth Amendment of the United States Constitution, which provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons or things to be seized.

In *Payton v. New York*, the Supreme Court held that, in order to cross the threshold of an individual's home for search or seizure, an officer must possess probable cause and a valid warrant.[4] Absent consent or exigent or emergency circumstances, an officer's warrantless entry into a residence is presumptively unreasonable and violates the Fourth Amendment. Probable cause to arrest an individual, standing alone, will not justify a warrantless entry into a residence to make the arrest. Similarly, probable cause to search for contraband or evidence of a crime at a particular residence will not justify a warrantless entry into and search of that residence.

[4] *Payton v. New York*, 445 U.S. 573 (1980). However, police officers do not need an arrest warrant to arrest individuals in a public place as long as the officers possess probable cause to do so. *See United States v. Santana*, 427 U.S. 38, 42 (1976); C.P.L. § 140.10(1). The Second Circuit recently decided that *Payton* is implicated when the arrestee is inside of his residence at the time of arrest, regardless of whether officers cross the residence threshold. *United States v. Allen*, No. 13-3333-CR, 2016 WL 362570 (2d Cir. Jan. 29, 2016).

In addition to the protections afforded to them by the United States Constitution, individuals in New York are governed by New York common law and the New York State Constitution, in which there is a provision identical to that of the Fourth Amendment of the United States Constitution. In several contexts in the area of search and seizure, New York State courts have imposed greater restrictions on local police activity than are imposed on federal law enforcement. Courts have interpreted the Fourth Amendment and its state analogue to define what constitutes unreasonable searches and seizures, what constitutes probable cause, and when lawful searches and seizures can be conducted in the absence of a warrant. The NYPD is also subject to the provisions of the New York Criminal Procedure Law, which codifies the standards and procedures to apply for and execute a search or arrest warrant. Finally, administrative judges in the Department's trial room applying legal precedents have further refined the scope of permissible police searches and seizures without a warrant.

A valid arrest or bench warrant allows officers to enter a residence to search for and arrest the subject of the warrant if they reasonably believe it to be the suspect's residence and they reasonably believe the suspect is present at the time they enter.[5] If the subject of a valid arrest or bench warrant is present in a third-party's residence, the police must secure a search warrant for the third-party residence in order to search it for the subject of the warrant.[6] Once officers have lawfully entered a residence, they may conduct a quick and limited walk-through when it is reasonable to conclude that third-persons may be present who could pose a threat to the officers or who may destroy evidence.[7]

For businesses, officers generally have the same right as any civilian to enter commercial premises during normal business hours and make observations in the areas open to the public.[8] However, certain areas within commercial premises may be private and closed to public access; officers must obtain a warrant to enter or search these areas.

NYPD Patrol Guide. The NYPD Patrol Guide does not contain a section devoted to search and seizure generally at homes and businesses. Instead, the Patrol Guide splits discussion of search and seizure across two sections on arrests and arrest processing, and separate sections on searches and search warrants.

Patrol Guide Section 208-01 relates to the "Law of Arrest" and contains the "conditions under which a uniformed member of the service may make an arrest."[9] This section outlines the geographic scope of an officer's authority to "arrest <u>with</u> a warrant" and to "arrest <u>without</u> a

[5] *Payton v. New York*, 445 U.S. 573 (1980).
[6] *Steagald v. United States*, 451 U.S. 204, 212-13 (1981).
[7] *Maryland v. Buie*, 494 U.S. 325, 337 (1990); *People v. Febus*, 157 A.D.2d 380 (1st Dep't 1990).
[8] *People v. Saglimbeni*, 95 A.D.2d 141 (1st Dep't 1983).
[9] NYPD Patrol Guide 208-01, Law of Arrest at 1 (eff. 8/1/2013).

warrant," but contains no reference to arrests at homes. Section 208-42 relates to "Arrest on a Warrant" and provides the procedures to be used when "arresting a person for whom a warrant has been issued."[10] While the section sets forth the procedures to be used once an arrest warrant has been obtained, it does not outline the circumstances that necessitate the presence of an arrest warrant—namely, an arrest inside a home. Once an arrest warrant is present, this section instructs officers that, if premises are involved, they should knock and announce their presence, absent a fear for safety, flight by the suspect, or destruction of evidence. Officers are required to "[i]nform the defendant of the warrant and offense charged unless physical resistance, flight or other factors make such procedure impractical," and show the warrant to the arrestee upon request.[11] This section also notes that, if an arrest warrant is to be executed at a third-party residence, a search warrant must also be secured.

Patrol Guide 212-75 instructs officers how to apply for a search warrant that authorizes a "search of premises" for the purpose of seizing property.[12] This section notes that a search warrant may "authorize the search of a designated premises for a person who is the subject of an arrest warrant," but does not state that such a warrant is necessary. Section 212-105 outlines the procedures applicable to the execution of a search warrant, including an affirmative obligation for officers to "show a copy of the search warrant to any of the occupants" when they are able to do so safely.[13]

"Investigation Cards" are described in Patrol Guide section 208-23.[14] The investigation card database is a computerized system used by the NYPD to track individuals sought as suspects in or witnesses to a crime. The "investigation card" system, in general terms, allows officers to enter details of an individual in the computerized system and create an "investigation card" for that individual. The officers can identify the individual as: (1) a "perpetrator," meaning that there is probable cause to arrest him; (2) a "suspect," which means there is no probable cause to arrest him; or (3) a "witness" sought for questioning. The section does not discuss whether officers should look for the subject of investigation cards at homes, and if they do, what level of authority investigation cards provide for entry into homes. Most importantly, this section omits a clear statement that investigation cards are not warrants.

The Patrol Guide, by dividing up arrests for persons from searches for evidence, fails to include the basic principles that searches and seizures at homes must be conducted pursuant to probable cause and a warrant. No Patrol Guide section contains the standards for voluntary consent, though "consent" is referenced throughout the Patrol Guide. Nor does the Patrol Guide incorporate the Department's guidelines regarding the use of the consent to search form, discussed further below. The Patrol Guide also does not contain sections outlining the legal

[10] NYPD Patrol Guide 208-42 at 1 (eff. 8/1/2013).
[11] *Id.*
[12] NYPD Patrol Guide 212-75 at 1 (eff. 2/18/2015).
[13] NYPD Patrol Guide 212-105 at 1, 3 (eff. 10/16/2013).
[14] NYPD Patrol Guide 208-23 (eff. May 14, 2015).

standards for exigent and emergency circumstances justifying warrantless entry, with the exception of Patrol Guide 215-03 relating to the removal of a child from a home where there is an imminent danger to the child's life or health.

NYPD Police Student's Guide. The NYPD Police Student's Guide is a written curriculum for a recruit in the Police Academy. While the Guide contains the basic legal standards for entries on premises, it characterizes the warrant requirement as one inapplicable to most officers, or something necessary only if the officer cannot first obtain consent or possess exigent circumstances.

The material in the Police Student's Guide most relevant to entries into premises is contained in the chapter on "Authority to Arrest." Officers are instructed on the legal standards and police procedures for arrests, probable cause, proper sources of probable cause, and arrests with and without a warrant. Officers are told that "[m]ost of the arrests that you will make will be without a warrant," though "[w]hen time permits—as when detectives conduct lengthy investigations—police should seek judicial approval, by obtaining a warrant, prior to making an arrest."[15] This text suggests that most of officers' arrests will be made on the street, even though a significant proportion of a patrol officer's duties involve responding to calls regarding crime complaints and emergencies at homes and businesses. Responding to these calls often involve making arrests on premises, and being cognizant of the need for warrant to do so.

Within the 30-page chapter, approximately half a page addresses "Limitations of Warrantless Entries of Private Premises in order to Make Routine Arrests." These two paragraphs inform officers of *Payton v. New York* and *Riddick v. New York*, and those cases' prohibition on "routine summary arrest of a person within a private residence *unless* one of the below listed conditions is present."[16] Those conditions are listed in the following order as "exigent circumstances," "consent of a co-occupant," or "a warrant." Officers are then told that they must be "prepared to explain your reasons for going into a private premise without a warrant to effect an arrest." Officers are referred to Legal Bureau Bulletin Vol. 10, No. 4 for further discussion of the topic.

In contrast to the Guide's hierarchy of how premises may be lawfully entered, *Payton* treats warrantless entries as presumptively unreasonable. The Guide suggests to officers that warrants are necessary only if consent cannot be obtained or exigent circumstances cannot be established, rather than the limited exceptions to the warrant requirement. Further, the chapter on Arrest in the Guide contains no reference in *Steagald* and the requirement that entry into a third-party residence to arrest the subject of an arrest warrant also requires a search warrant.

Another relevant piece of information provided to officers is the Police Student Guide's description of the "Computerized Investigation Card System (I-card)," which is described as "an

[15] NYPD Police Student's Guide, Authority to Arrest at 3 (July 2014).
[16] NYPD Police Student's Guide, Authority to Arrest at 24 (July 2014).

internal tool available to investigative units that allows detectives to place suspects into a 'Wanted File' without having to file an arrest warrant with the court, when probable cause has been established and the suspect is properly identified."[17]

This material, as a whole, leave officers with the impression that arrest warrants are necessary only in a few circumstances, and only after consent and exigent circumstances have been exhausted. Further, the guide suggests to officers that I-cards can serve as a substitute for an arrest warrant, and does not clearly state that investigations cards provide no authority to enter a home.

NYPD Operations Orders and Legal Bulletins. In 2008, the NYPD established the use of a Consent to search form and issued an Operations Order outlining the circumstances under which the form must be presented to civilians for their review and signature.[18] Pursuant to the order, uniformed members of the service assigned to investigatory commands and units, including the Detective Bureau and Organized Crime Control Bureau ("OCCB"), are required, when they believe seizable property or wanted persons are present at a particular location, to approach the legal owner or lawful custodian of an address, vehicle or item to be searched, request that they sign a consent to search form, and notify their supervisor that the form has been signed and the search is to be conducted. The order further instructs members of the service to explain to an individual that they have the right to refuse a search and to request that a warrant be obtained to conduct the search. Members are also instructed that consent must be voluntarily, knowingly, and intelligently provided, and that threats and promises cannot be used to secure consent. Members are told to immediately cease the search if consent is withdrawn prior to the completion of the search, and then to seek a search warrant.

The NYPD Legal Bureau also issues periodic bulletins on various aspects of search and seizure law, among other topics. Relevant bulletins have been issued on arrests without warrants, the *Payton* rule regarding arrests in the home, warrantless searches of third-party homes, and the plain view doctrine.[19]

[17] NYPD Police Student's Guide, Authority to Arrest at 8 (July 2014).
[18] *See* NYPD Operations Order 29, "Establishment of Department Form 'Consent to Search (PD541-030) - For Uniformed Members of the Service Assigned to the Detective Bureau, O.C.C.B. and Other Investigatory Commands," June 18, 2008.
[19] *See, e.g.*, NYPD Legal Bureau Bulletin Vol. 10, No. 4 (arrests without warrants); Vol. 11, No. 5 (warrantless search of third-party home); Vol. 20, No. 8 (arrests in the home); Vol. 13, No. 5 (plain view doctrine); Vol. 17, No. 6 (same).

SECTION THREE: EXAMINING POLICE CONDUCT IN SUBSTANTIATED COMPLAINTS

The CCRB reviewed all substantiated complaints of misconduct involving premises entry, search, and failure to show a warrant decided between January 1, 2010 and October 1, 2015. A qualitative and descriptive review of these complaints depicts the recurring types of officer misconduct at homes and businesses. This section is organized according to the legal doctrines that permit officers to enter, search, and seize persons or evidence on premises—consent, exigent or emergency circumstances, hot pursuit doctrine, the plain view doctrine, and the presence of a valid warrant—with case examples to illustrate how officer conduct did not meet the relevant standard. The problematic use of investigation cards (I-cards) in substantiated complaints is also discussed in detail, given its presence in a number of substantiated complaints. Finally, officers' failures to show a warrant to occupants of a home demonstrate the emphasis placed by community members upon officers acting pursuant to lawful procedures. A quantitative analysis provides basic statistics on the prevalence of each type of officer misconduct within the substantiated complaints.

A. Occupants Do Not Provide Valid Consent

Voluntary consent to enter and search is often the dispositive issue in search and seizure cases because, if an individual provides consent, an officer's warrantless entry and search of the premises is permissible.[20] The vast majority of substantiated cases were ones in which the CCRB found that occupants did not consent to an officer's entry or search, and indeed, affirmatively *refused* consent (Figure 5). In some of these cases, and others, the CCRB found that any consent provided by the occupant did not authorize an officer's subsequent entry or search because the consent was produced by police coercion, such as threats, intimidation, or misrepresentations that the officer possessed a warrant. In addition, the CCRB found in a few cases that officers procured consent from an individual who did not possess authority to provide consent, or that officers exceeded the scope of the consent. Finally, in one case, officers continued their entry or search even after an occupant withdrew consent.

[20] *United States v. Matlock*, 415 U.S. 164, 165-66 (1974); *People v. Gonzalez*, 39 N.Y.2d 122 (1976).

Figure 5: Consent Issues in Substantiated Entry and Search Complaints

Type of Consent Issue	Number of Substantiated Complaints	Percentage of 174 Substantiated Complaints
Occupant did not provide consent to enter and/or search (including cases where occupants affirmatively refused consent).	157	90%
Occupants affirmatively refused consent.	24	14%
Disputed consent: officers claimed occupants consented to entry and/or search, occupants denied doing so.	42	24%
Consent invalid because it was product of police coercion (threats, intimidation, misrepresentation of warrant, physical force).	19	11%
Consent invalid because consenting individual did not possess authority over premises.	3	2%
Search exceeded scope of consent.	2	1%
Consent withdrawn.	1	0.6%

Based on its review of the cases involving consent issues, **the CCRB recommends:**

(1) Every NYPD officer carry and be required to use the Department's consent to search form to document a resident's consent to enter and search his or her home, absent exigent or emergency circumstances.
(2) The NYPD should require, as part of its body-worn camera program, officers to record an occupant's consent to enter and search, along with the interaction between the officer and occupant that leads to consent.
(3) The NYPD Patrol Guide should be revised to include the legal standards for voluntary consent, and to incorporate the Department's consent to search policy.

To determine consent, the CCRB applies well-established legal standards regarding voluntariness. Voluntariness is assessed from the totality of circumstances, including whether an individual was in custody at the time of providing consent, threats, coercive techniques, or

deception used by police, and the background of the individual.[21] Consent is involuntary where police misrepresent to an occupant that they have a valid warrant that allows their entry into the premises.[22] In addition, where police refuse to answer questions about a warrant or incorrectly state that a warrant is unnecessary, they leave an inhabitant with the impression that they have no right to refuse the search, also rendering the consent involuntary.[23] A third-party may consent to a search if they share common authority over the premises to be searched, unless a co-occupant is physically present and refuses consent.[24] Even if the third-party did not have actual authority to consent to the search, a police officer may rely on a reasonable belief that the third-party had authority to consent.[25] If police conduct a warrantless search based on consent, the scope of their search must be limited to the terms of the individual's consent—what a typical reasonable person would have understood by the exchange between the officer and the occupant.[26] Police who have been provided consent only to "enter" or "check the residence for suspects" may not possess consent to search the entire premises.[27]

1. Disputed Consent. In 42 complaints, almost a quarter of the 174 substantiated cases of premises entry and search, civilians and officers disputed whether consent was given. Officers alleged that civilians consented to their entry, either explicitly with words or implicitly by actions such as opening the door and stepping aside, or gesturing in a manner that indicated consent. The officers did not record the civilians' consent on a Department consent to search form. In contrast, civilians claimed that the officers never asked for consent before entering, or entered despite their clear, vocal refusal. In a large number of these situations, the CCRB must unsubstantiate the case because there is no preponderance of the evidence that resolves the direct dispute between the civilian and the officer over the issue of consent. In some cases, however, the CCRB possesses sufficient evidence to find that the civilian did not provide consent, leading to a conclusion that officers improperly entered or searched the premises.

Officers in substantiated cases of improper entry and search often enter homes over a civilian's protests in order to arrest a crime suspect, even where they do not have a warrant. Though an officer's claim that the civilian consented may obscure the legality of their conduct in some cases, contemporaneous evidence can corroborate the civilian's refusal. In a 2013 incident, a man was awoken in his home in the morning by banging on his front door and ringing of his doorbell. When he opened the front door of his house, he encountered an officer pointing his gun at him and asking him to step outside. Police had tracked the signal of a stolen cell phone to his backyard, where they recovered the phone from a BBQ grill. Two officers and a sergeant from an Anti-Crime unit accused the man's son of stealing the phone and sought permission to

[21] *See, e.g., People v. Gonzalez*, 39 N.Y.2d 122 (1976); *People v. Matta*, 76 A.D.2d 844 (2d Dep't 1980).
[22] *Bumper v. North Carolina*, 391 U.S. 543 (1968).
[23] *See, e.g., People v. Bowers*, 15 Misc.3d 760 (Sup. Ct., Kings Co. 2007).
[24] *Georgia v. Randolph*, 547 U.S. 103 (2006).
[25] *Illinois v. Rodriguez*, 497 U.S. 177 (1990); *People v. Adams*, 53 N.Y.2d 1 (1981).
[26] *People v. Gomez*, 5 N.Y.3d 416 (2005).
[27] *See, e.g., People v. O'Neill*, 11 N.Y.2d 148 (1962); *People v. Flores*, 181 A.D.2d 570 (1st Dep't 1992); *People v. Jimenez*, 163 Misc. 2d 30 (N.Y. Crim. Ct. 1994).

search his home for his son. The man said his son was at basketball practice. One officer responded, "You're f---ing lying," and then said "I can do anything I want," when the man refused to allow the officers in his house. One officer walked inside the house with his gun drawn, where he encountered the man's daughter and five-year-old son. The officers claimed that the daughter provided them consent to search the house, while the daughter said the officers did not ask for permission nor did she provide consent. The officers searched the second and third floors of the house, along with bedrooms and bathrooms, but did not find the son. The sergeant forced the man to wait outside in his boxers in the rain until the crime victim could pass by in a patrol car and make an identification. Once the crime victim confirmed that the man did not steal the phone, he was allowed back inside his home. At that point, officers noticed surveillance cameras around the house, and requested permission to view the footage. The man refused to show the footage to the sergeant because of his attitude, but did show it to a lieutenant who arrived later. The footage confirmed that an unknown person hid the cell phone in the man's backyard, and corroborated the man's account of events.[28]

In a 2012 incident, officers claimed that a civilian consented to their entry into her apartment to look for the subject of an investigation card. The CCRB credited the civilian's statement that she refused consent, since a 911 call she made while the officers were in her apartment documented her saying that the officers did not have an arrest or search warrant for anyone inside the apartment, and once connected to the NYPD's Internal Affairs Bureau ("IAB"), she was recorded stating that the officers entered her apartment without her consent.

In several instances, officers executing a warrant at a home have claimed that a resident consented to entry—which would serve an alternative basis for lawful entry even if there were defects in the warrant. For example, in a June 2014 incident, a lieutenant and several officers in plainclothes from a Warrant Squad knocked on the door of the complainant's apartment in a NYCHA building at 6:00 a.m. while conducting a warrant sweep. The officers possessed an arrest warrant issued in November 2013 for an individual that listed the complainant's address. The officers conducted no investigation prior to the warrant sweep to determine whether the suspect still lived at address on the 8-month-old warrant. When the complainant opened her door, she told the officers that the individual they sought did not live in her apartment. Officers claimed that the complainant stepped away from the door and allowed them in when they asked if they take a look around her apartment. The complainant alleged that she told the officers they needed a search warrant to enter her apartment, refused to allow them into her apartment, and that the officers pushed their way in anyway. The officers threatened to arrest her and her son when they became angry and combative at the officers who entered. The 911 call made by the

[28] The surveillance video also contradicted the sergeant's attempt to minimize his involvement in the incident by claiming that, by the time he arrived at the man's front door, his two subordinate officers had already gone inside the home. The video showed the sergeant closing the door after one officer entered the man's home, and opening the door to allow another officer to enter. The CCRB noted and referred a "false official statement" to IAB for further investigation. The sergeant also told the CCRB that, throughout the one hour he was present at the home, the officers never discussed obtaining a search warrant.

complainant during the officers' search of her bedroom corroborated her refusal of consent, documenting her saying, "I want badge numbers . . . you're supposed to have a search warrant, not an arrest warrant . . . that's a f---ing arrest warrant."

In a 2013 incident, a civilian was woken at 7:30 a.m. by loud banging on her door by members of the Intelligence Division who were looking for the male subject of an arrest warrant. When she asked the officers if they had a warrant, they told her it could not be shown because of "ongoing investigation." She argued with the officers about a warrant until one officer put his foot inside her doorway, pushed her out of the way, and told other officers to search her entire home. As the officers searched her home, the resident told them, "You've entered my home. You still haven't shown me a warrant." One officer said to her, "Give me your ID so I can have some kind of verification." At this, the resident responded, "What do you need my ID for? This is my household. You came to my house like you knew what you were coming here for. You're searching my house, you pushed me out of the way, you're telling me you're going to arrest me because I'm asking you for a warrant, which I have the right to ask for. If you want to come to my household, you have to have a warrant." The resident, nervous, shaking and crying, retrieved her cell phone to call a relative for assistance. An officer snatched the cell phone out of her hand so she couldn't make a call, leaving bruises on her hand. Officers eventually left the home without showing her a warrant. The resident said during her CCRB interview, "Still to this day I don't know what they came to my house for, [I] don't know if they're going to come back again." The sergeant that executed the warrant explained during his CCRB interview that he was assisting the gang squad to conduct a "case takedown." He had received an arrest warrant for suspect and a list of addresses where he should look for him. The police connected the suspect to the civilian's apartment based only on the fact that the suspect's *brother* had used the civilian's address, among eight other addresses, as that of a family member six months prior to the incident.[29] The sergeant claimed that the civilian was friendly, invited the officers in by opening the door fully and stepping out of the way, and provided verbal consent to search her apartment. He denied telling the civilian that he could not show the warrant to her, but acknowledged that he did not know if he was obligated to do so if she asked. The CCRB credited the civilian's testimony based on discrepancies among the officers' accounts.

2. Consent to search Form. Although officers alleged that civilians provided consent in 42 substantiated complaints (24% of the 174 substantiated complaints of premises entry and search), these officers did not attempt to use the Department's consent to search form. Of these 42 complaints, 20 incidents (11% of the 174 substantiated complaints of premises entry and search) were ones in which officers were assigned to the Detective Bureau or commands reporting to OCCB, and therefore required to use the form.[30] As a first step, officers

[29] The officers did not possess a search warrant that authorized entry into the resident's home. The sergeant also stated that he was unsure whether he was required to complete a consent to search form under these circumstances.
[30] The CCRB has cited officers for "Other Misconduct" for the failure to obtain a signed consent to search form in only two incidents. One case involved a sergeant assigned to the Intelligence Division's Criminal Intelligence

required to use the form should be retrained to remind them of their obligations under the Department's Operations Order. As for other officers who are not required by the Operations Order to use the form, the Department should expand its policy to require all officers to use the consent to search form absent exigent or emergency circumstances. Had the consent to search form been presented and signed by the civilian prior to the entry or search, it may have exonerated officers from subsequent allegations of misconduct.

Apart from cases involving disputed consent, officers in two incidents attempted to use the consent to search form. In both cases, officers sought an occupant's signature on the form after they had already entered a residence, suggesting that they intended the form to cure prior improper conduct. Indeed, one narcotics officer stated that, in his experience, consent to search forms are filled out *after* narcotics are found. In a 2014 incident, members of a Conditions Team responded to a radio run of a burglary in progress at a two-family home. Surveillance video from the first floor hallway shows the officers knocking on the first-floor tenant's door, the tenant exiting his apartment into the hallway, and officers frisking him. Officers then placed the tenant in handcuffs and left him in the hallway while they entered his apartment and remained inside for several minutes. In contrast to the video, the Special Operations lieutenant told the CCRB that he entered the tenant's apartment to arrest him inside it. While inside, he saw four police radios in plain view, which he seized and used as the basis for a criminal charge of criminal possession of stolen property. After these items were found, the lieutenant presented the consent to search form to the tenant, who refused to sign it. The radios were never inspected, and the related criminal charges were dropped. The CCRB found that the officers did not have a basis to enter the apartment, given that surveillance video showed the tenant arrested and handcuffed outside of the apartment by the time the lieutenant arrived on the scene.[31]

In another case, officers arrested a young man for a drug-related crime, took him to the precinct, and allegedly obtained his consent to use his house keys to enter and search his home for drugs. Officers used the keys to enter his home, but encountered the young man's mother inside, who unequivocally refused to sign a consent to search form allowing the officers to search her apartment.[32] The mother stated that officers pressed her repeatedly to sign the form and said "Goddamn it, you f---ing Haitian, just do it." Even after a Haitian-Creole-speaking officer arrived at her apartment and spoke to her, the mother refused to sign the form. Eventually the officers left without searching the apartment.

Only one of the 174 complaints of substantiated entry and search involved a signed consent to search form. Officers from an Anti-Crime unit stopped a civilian for a traffic

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Section, while the other involved a detective who obtained a handwritten note signed by a resident—but not signed by any other officer—purporting to consent to search of a bedroom.

[31] The CCRB referred the lieutenant, whose statement to the CCRB was clearly contradicted by video footage, to IAB for further investigation of a "false official statement."

[32] The CCRB analyzed any consent given by this young man at the precinct and concluded it was involuntary because he was in custody and being debriefed when officers procured the consent. Notably, the officers did not document the consent on a consent to search form, even though they presented one to his mother at the apartment.

infraction, searched his car and frisked him, leading to substantiated allegations of an improper vehicle search and frisk. The officers alleged that, during the encounter, the civilian told them that he had a gun at his home.[33] The officers procured a signed consent to search form from the civilian at the precinct, which the CCRB found to be coerced since the individual signed it while under arrest, in the presence of three officers in the precinct, with the implicit understanding that, if he did not sign, he would not be released until after Christmas (two days away).

3. Coerced Consent. In 19 of the 174 (11%) substantiated improper entry and/or search complaints, the CCRB found that the NYPD used coercion to obtain a civilian's consent. That coercion rendered the consent involuntary and invalid. Police coercion took several forms, including misrepresentations that the police possessed a valid warrant authorizing entry, threats to arrest or to destroy property if an occupant did not consent to entry, and police intimidation or force.

a. Misrepresentation: In three cases of coerced consent, the CCRB found that officers used open warrants issued years before the incident and represented to residents of apartments that those warrants authorized entry into the apartment, though officers performed no investigation to form a reasonable belief that the subjects of the warrant resided in the apartment. The CCRB found that, even accepting the officers' representation that the residents provided consent for entry, such consent would be invalid.

In a 2013 incident, a woman and her autistic son were home at 8 a.m. when officers arrived and entered, telling her that they had a warrant. According to the woman, officers would not show her the paper they held, but asked her whether two men were in her home. The woman told the officers that one of the men had been incarcerated for several years, while the other man was her daughter's ex-boyfriend. At the conclusion of the officers' search, the woman asked for a business card, but one officer said, "don't give her sh-t," and left the apartment. The officers, in contrast, claimed the woman had provided them consent to enter and search her apartment. Officers possessed a bench warrant issued seven years prior to the incident for riding a bike on a sidewalk, but admitted that they conducted no investigation about the warrant or the current residence of the warrant subject prior to the incident. A quick search of the federal Bureau of Prisons website would have confirmed that the subject had been incarcerated for several years. The warrant did not provide a basis for the officers to enter the home because the officers did not possess a reasonable belief that the subject of the warrant still resided in the home. Any consent provided by the woman was therefore improper, as it was based on the officers' improper representation that they were authorized to enter.

[33] The officers also alleged that the civilian tried to punch a female officer while he was standing at the rear of his vehicle, but the civilian was never charged with that crime. The civilian was ultimately given a disorderly conduct summons and released. One of the officers also claimed during his CCRB interview that he had never searched the civilian's home, in contrast to two fellow officer statements confirming that he did. The CCRB referred that statement to IAB for further investigation as a "false official statement."

b. Threats and Intimidation: Police officers have threatened civilians—with arrest, eviction, damage, force, or to call ACS—in order to obtain their consent to enter and search their homes. Such threats, made without probable cause and exigent circumstances to support an arrest, entry, or search, are improper. In several cases, officers, including ESU teams, have threatened to break an apartment door down if the occupants did not open it. In a 2014 case, a civilian owned a building with a barbershop and money transfer business on the ground floor, and his apartment on the second floor. Officers assigned to Conditions entered the barbershop and the closed-off area of the money transfer business to search for a gun, and also frisked the occupants. The shop owner asked the sergeant, who had no badge, what was going on and was told to "shut the f--- up." Officers threatened to "trash the place" if they were not taken up to the second floor apartment to view footage from surveillance cameras recording activities on the ground floor. Eventually one individual took them to the upstairs apartment because he felt that "things would only get worse" if he did not. The shop owner filed a CCRB complaint because the officers had "no search warrant" and "violated his rights." The CCRB found that consent to search was coerced, in that police acted in an intimidating fashion by cursing at and pressuring the civilians into allowing access.

A civilian in a 2013 case provided consent after officers improperly threatened to arrest his sister without probable cause to do so. Two officers from a street narcotics enforcement unit saw a man smoking what appeared to be marijuana outside of a fenced backyard. Upon seeing the officers, the man ran into a backyard and then into a house. The officers pursued him, and found themselves at a Fourth of July barbeque with numerous civilians. The occupant of the house refused entry without a warrant. A lieutenant arrived on the scene and told the occupant, "As far as I'm concerned, he ran in and you're gonna get arrested if you don't…" The resident responded, "I'm not getting arrested." The lieutenant repeated, "Yea, you are. You are. It's either him or you." The resident again responded, "I can't give you something that's not here… I'm not obstructing anything." And again the lieutenant said, "You're obstructing the officers from going in the house." At this point, the resident's brother stepped in and provided permission for the officers to enter, given their threats to arrest his sister. The CCRB found that this consent, given in response to an improper threat to arrest the civilian, was coerced.[34]

Even where threats are not explicit and verbal, officers, by their very presence, can create an intimidating and coercive atmosphere. For example, officers in one incident arrived at an apartment building after 1 a.m. to search for the perpetrator of a kidnapping. By this point, the kidnapping victim had been released and gave the officers equivocal descriptions of where and

[34] At most, the officers in this situation possessed reasonable suspicion to stop the individual who they observed smoking what appeared to be a marijuana cigarette. Reasonable suspicion may allow an officer to pursue an individual in a public place, but does not provide probable cause to pursue an individual into a private home under the hot pursuit doctrine. Further, given the lack of probable cause to make an arrest, the officers did not have exigent circumstances to justify a warrantless entry. Therefore, the officers' threat to arrest the homeowner for refusing their entry was improper. *See People v. Rodriquez*, 19 Misc. 3d 302 (Crim. Ct. N.Y. County 2008) (individuals have right to refuse unlawful entry by police).

by whom he was held. Officers tracked the crime victim's phone signal to the building but not to any particular apartment. They knocked on multiple doors in the building, seeking consent to enter and search the apartments. One resident, encountering 12 to 15 officers, agreed to allow officers inside his apartment because he was afraid he would look like the "bad guy" if he refused.

In a similar case, officers investigating a burglary at a shelter knocked on several doors and sought to enter and search the rooms of the shelter residents in order to find the stolen property. When one resident stated that he did not want the officers to enter, the officers persisted. The resident did not physically block the officers from entering the room because he did not want the situation to escalate. Officers searched his closet, under his bed, and opened his cabinets. The CCRB found that, under the circumstances, the civilian did not provide voluntary consent.

Other instances of coerced consent involved custodial situations. In one, a civilian awoke in his bedroom at 3:00 a.m. to find officers from an Anti-Crime unit surrounding him, cuffing him, and then asking for consent to search his room for a gun. Officers apparently focused in on this civilian because of a tip that he had a gun from another individual they arrested. The civilian granted consent, believing he had no choice. The officers told the civilian that he had an open warrant for drinking in public, but then left without arresting him. The CCRB found that consent was involuntary since it was given while the civilian was handcuffed, in his bedroom, and with a search seemingly already underway.

c. Police force: In a few cases, officers secured consent by using physical and other displays of force. Police in one recent case arrived at a resident's apartment seeking to arrest her boyfriend. The resident alleged that, after she refused to allow the officers inside her apartment, the officers banged on her door for forty minutes, kicked the door, and used screwdriver to pry the door open. The officers, while denying that they forced opened the door, admitted to knocking on the door for thirty minutes until the resident finally opened the door, left it open, and walked to the couch, implicitly providing them consent to enter. The CCRB found that, even if the officers' account of events was accepted, any consent provided by the resident was coerced as it was provided after the officers banged continuously on her door for thirty minutes. In two very similar cases, the CCRB found consent invalid due to police intimidation and force where officers admitted to knocking on door sufficiently hard and long enough so that the peephole fell out of the door, after which, according to the officers, an occupant opened the door and granted access to the apartment.[35] In another case, the CCRB found that, even accepting an officer's claim that a resident had implicitly allowed him access into her home by

[35] In describing why the officers were at her apartment, the occupant stated, "I have no idea. They took my son. They didn't even mention to me, have the decency to say, oh ma'am we'll get in touch with you . . . when I got in touch with Detective [x], he said he'd get back to me, but he never did. . . . Finally I got the district attorney number . . . she looked into it, and they claimed that I opened the door to them, but the door was already busted."

failing to verbally object to his presence, such consent was not truly voluntary since the officer had encountered the resident after entering her home with his gun drawn.

4. Third Party Consent. In three substantiated complaints, officers gained consent to enter or search a private area from a person who was not authorized to provide that consent. The cases involved officers entering and searching private rooms in single-residence occupancy buildings (SROs), homeless shelters, and transitional or supporting housing arrangements. Even though the residents of these buildings did not have traditional house or apartment building arrangements, they still possessed a reasonable expectation of privacy in their private rooms. The CCRB found that, under the circumstances, officers did not obtain valid consent to enter the tenant's apartment from a landlord or management company.

A 2014 case arose from a 911 call by a resident of a Brooklyn shelter who complained that his television and video game system had been stolen from his room.[36] The shelter consisted of private single rooms for residents with shared bathrooms. The subject officers stated that they responded to the 911 call and spoke to the shelter's security guard, who told them that the building policy was for officers to "check" every resident's room when something goes missing, and that the building manager wanted the officers to check the rooms. One subject officer acknowledged that he did not request documentation of this policy, did not call the building manager to confirm it, and had no previous experience at this particular shelter. He understood the policy to require him to enter any occupant's room, even if they objected to it. He acknowledged that, though the complainant "probably said explicitly that he did not want the officers to enter," he did so anyway. During his CCRB interview, the security guard stated that he did not know if the building had a policy allowing officers to enter residents' rooms, and did not recall telling the officers about such a policy. The CCRB was unable to determine whether such a policy existed, noted that the officers had made no attempts to verify the existence of such a policy, and cited *People v. Ponto*, 103 A.D.2d 573 (2d Dep't 1984), to find that, even if such a policy existed, lessors cannot consent to a search of their lessees' premises.

In a 2011 case, officers tracked the signal of a stolen cell phone to a block where a supportive housing building was located. With the assistance of the receptionist who worked at the building, they reviewed video footage that showed the complainant exiting and entering the building with her friend, and alleged that the complainant and her friend matched the description of the suspects who stole the phone. When officers did not receive an answer at the complainant's room, they instructed the receptionist to open the door with the master key, then instructed the complainant to remove the chain to the door, after which they entered and searched the room. They did not find the cell phone, and thereafter pressured the receptionist into using

[36] The other officer who conducted the entries and searches, perhaps aware that their conduct was improper, denied entering or searching any of the residents' rooms. Given clear statements to the contrary by his partner, the security guard, and civilian witnesses, the CCRB noted "Other Misconduct" and referred the officer for further investigation of a false official statement.

her master key to open the door of a different tenant, so that they could enter and search his room. The receptionist stated that the sergeant told her his actions were authorized by a "24 hour protocol." The sergeant on the scene alleged that he spoke to the building administrator, who said they controlled the tenants' rooms and allowed him to wake up the tenants. The sergeant could not remember if the administrator authorized him to actually enter the tenants' rooms. He denied entering and searching any of the rooms. The CCRB found that the officers entered the tenants' rooms without probable cause or consent to do so.

5. Dwelling Entered/Searched Beyond Scope of Consent. In a small number of substantiated complaints, the CCRB found that, while civilians may have consented to an initial entry into their premises, the subject officers entered or searched areas beyond the scope authorized by the civilian's consent. In a 2014 case, three officers arrived at a home looking for the subject of a domestic violence complaint. The officers stated that they spoke to the homeowner in his driveway outside the home, asked whether the suspect lived in his home, and were allowed to enter the home behind the owner as he went inside to retrieve a list of his tenants in the home. The homeowner, also the complainant, contended that he never consented to the officers' initial entry, and the propriety of the initial entry could not be determined by the CCRB. However, the CCRB determined that the officers' decision to go up to the second floor of the house, upon hearing a "movement," and then to open the closed door to a front bedroom, were unauthorized by an initial consent provided by the owner.

In a 2011 case, a mother of a teenage boy called the police after she got into an argument with her son and he ran away. The responding officers asked to be taken to the son's bedroom, and searched the closet and dresser drawers. The officers then asked to be shown the mother's bedroom and then apartment bathroom, both of which they entered and searched even though the mother objected to their actions. The officers admitted to searching the entire apartment, including looking for drugs in a dresser drawer and searching closets. Their sergeant contended that standard procedure when responding to report of a missing person is to search the person's residence, but only places that could fit a person. The CCRB found that, while the mother consented to the officers' entry, she did not consent to the scope of their actions within the apartment, including the full-blown search of bedrooms and bathroom.

B. No Exigent or Emergency Circumstances Justify Warrantless Entry

CCRB complaints often involve situations where officers arrive at an individual's home to investigate previously-filed crime complaints, to respond to calls of crimes in progress, noise complaints, tips of firearms or weapons inside premises, apprehension of individuals involved in narcotics sales, and calls of emotionally-disturbed people or other public safety issues. In addressing these issues, the emergency or exigent circumstances doctrine can justify an officer's immediate entry and search of a residence despite having no warrant to do so. The application of this doctrine often turns on the reason why officers are present at a location, as well as the

reasons that officers articulate for entering a premises without a valid warrant. **Based on its review of the substantiated cases involving relevant situations, the CCRB offers the following recommendations:**

1) The NYPD should require, as part of its body-worn camera program, officers to document the conditions that support a warrantless entry of premises due to exigent or emergency circumstances.
2) The NYPD Patrol Guide should be revised to include the legal standards for exigent or emergency circumstances in the context of entries at homes and businesses.
3) The NYPD Police Student's Guide and other training material should be revised to explicitly state that entries to investigate crimes and complaints at homes need a warrant, absent consent or exigent or emergency circumstances. Training materials should provide examples of what constitutes an exigent or emergency circumstance, and what does NOT constitute an exigent or emergency circumstance. Routine investigations of crimes that have already occurred and are not currently in progress at that time generally do not provide exigent circumstances to enter residences.
4) Patrol officers, along with officers assigned to narcotics commands and street narcotics units, should receive training on the situations that permit pursuit of an individual into a home on less than probable cause.
5) Officers should receive a roll call announcement on the requirements of Patrol Guide 214-23, and the standards for entry into a home to correct a noise violation.

To examine in detail why the exigent circumstances doctrine did not excuse warrantless entry, substantiated complaints were categorized according to the type of situation that brought officers to a particular location (Figure 6). Next, the CCRB reviewed the facts of the particular encounter to analyze why the exigent circumstances doctrine did not excuse an officers' entry. To analyze how officers understood and applied the emergency circumstances doctrine, the CCRB reviewed complaints where officers responded to a location because of an emergency, public safety issue, or crime-in-progress, or articulated during their CCRB interview that they entered a location because they believed individuals inside were in distress.

Figure 6: Exigent or Emergency Circumstances Issues in Substantiated Entry and Search Complaints

Reason for Officer Presence at Location in Cases where Exigent or Emergency Circumstances Were a Factor	Number of Substantiated Complaints	Percentage of 174 Substantiated Complaints of Entry and Search
Officers arrive at location to investigate crimes such as harassment, domestic violence complaints, larceny or burglary, or minor crimes and violations; to apprehend subjects of Investigation Cards or warrants[37]; to enforce custody orders; to assist with landlord-tenant disputes.	69	40%
Officers arrive at location to investigate narcotics-related crime, or to apprehend individual involved in narcotics buy-and-bust operation or observation sale.	33	19%
Officers arrive at location to investigate complaint of shots fired or shooting, or to search for gun on premises.	15	9%
Officers arrive at location to address emergency call or articulate belief that individual inside premises is in distress.	13	7%
Officers arrive at location to address noise violation.	6	3%

In examining entries made in order to arrest an individual, CCRB investigators determine whether officers possessed probable cause and exigent circumstances by an assessment of the following factors:

> (1) the gravity or violent nature of the offense; (2) whether there is reason to believe the suspect is armed; (3) whether there is a reliable basis for believing the suspect is in the premises at issue; (4) whether there is probable cause to believe that the suspect committed the crime; (5) the likelihood that the suspect will escape if not quickly apprehended; and (6) the time of day of the entry and whether the entry was peaceful in nature.[38]

In the context of entries to search for and seize evidence, officers are permitted to make a warrantless entry to prevent the imminent use of a dangerous weapon, such as a gun.[39] Officers are also permitted to enter to prevent the potential destruction or removal of fruits of a crime

[37] Certain substantiated cases involved the presence of a warrant that, according to the CCRB, did not permit entry or search of the premises. In these cases, the CCRB analyzed whether exigent circumstances would permit the entry or search despite the lack of a valid warrant.
[38] *People v. McBride*, 14 N.Y.3d 440, 446 (2010).
[39] *People v. Doerbecker*, 39 N.Y.2d 448 (1976).

where they do not have the time to obtain a warrant. In these cases, exigency is determined by reviewing the following factors: (1) the nature and degree of urgency involved and the amount of time needed to obtain a warrant; (2) a reasonable belief that the contraband is about to be removed; (3) the possibility of danger to officers guarding the site of contraband while a warrant is sought; (4) information indicating that the possessors of the contraband are aware that police are on their trail; and (5) the ease with which the contraband can be destroyed.[40] Information that a gun is located inside an apartment, without more, may not serve as exigent circumstances.[41] In addition, the fact that contraband may be easily disposed of, in and of its self, is not a predicate for exigency.[42]

Police officers can also make an entry without a valid warrant under the "emergencies doctrine" to protect individuals in distress, to assist victims of crimes that have just occurred, or to investigate signs of impending danger. Courts have focused on the following factors in determining whether an emergency justifies warrantless entry: (1) there are reasonable grounds to believe that there is an emergency at hand and an immediate need for police assistance to protect life or property; (2) the search is not primarily motivated by an intent to arrest and seize evidence; and (3) there is some reasonable basis to associate the emergency with the area or property to be searched.[43] Thus, police are permitted to enter residences without a warrant to locate or aid possible victims of a reported crime, when they respond to a call involving a domestic dispute, shots fired in the location, or other crime-in-progress inside the apartment, when there has been a report regarding an emotionally disturbed person, and to investigate strange odors or other hazardous conditions.[44] Any search that results from such an entry should be related to the emergency itself.

1. Apprehension or Investigation Cases. When officers arrive at a location to investigate a crime complaint or apprehend a suspect, the CCRB will examine whether exigent circumstances justified the officers' entry or search of the residence. The CCRB concludes that exigent circumstances do not exist to justify warrantless entry if there is no urgent need to enter, as determined by the *McBride* factors. For example, in one recent 2015 incident, a woman was sleeping in her home at approximately 6 a.m. when a captain and officer knocked on her door. When she opened it, officers entered her apartment and arrested her son for an open domestic violence complaint. Not only did the officers fail to articulate any exigency for apprehending her son without first obtaining an arrest warrant, one officer noted that they were carrying out a weekly "domestic violence initiative" where they would go to the homes of individuals with open domestic violence complaints early in the morning to try and apprehend them.

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[40] *People v. Lewis*, 94 A.D.2d 44, 49 (1st Dep't 1983).
[41] *Matter of Kwok T.*, 43 N.Y.2d 213 (1977).
[42] *People v. Knapp*, 52 N.Y.2d 689 (1981).
[43] *People v Mitchell*, 39 N.Y.2d 173, 177-78 (1976).
[44] *See, e.g.*, *People v. Salazar*, 290 A.D.2d 256 (1st Dep't 2002); *People v. DePaula*, 179 A.D.2d 424 (1st Dep't 1992).

Key to the urgency for an officer's immediate, warrantless entry is whether the suspect in the apartment is armed or will flee. Officers in several cases lacked any indication that these facts were present. In a 2014 case, officers responded to a call regarding a domestic dispute in an apartment building. They encountered a woman outside the apartment, who stated that her boyfriend hit her in the face and remained in the apartment. The man refused to open his door, so officers broke the lock and entered the apartment with their guns drawn. The CCRB found that, under the circumstances, exigent circumstances were not present since there was no indication that the man would escape or was armed, and the officers entered the apartment using physical force. Other cases involved domestic violence incidents or assaults where the crime victims were not in the residence, and officers did not need to enter the apartment immediately and without a warrant to apprehend suspects. In other cases, occupants consented to an officer's initial, warrantless entry, but did not provide consent for the officer's subsequent search, and no exigency required a warrantless search for contraband or evidence.

Finally, the criminal conduct at issue in several other cases was not serious enough to justify a warrantless entry for an individual's arrest. Situations where officers entered apartments to arrest occupants included alleged crimes of vandalism, stolen phones, tablets, or other electronic devices, and trespassing. In a 2014 incident, patrol officers responding to a call spoke to a woman who alleged that her neighbor keyed her vehicle. The officers and the woman went to the neighbor's apartment together. After the neighbor's mother opened the door, the woman identified the neighbor inside the apartment as the one who had keyed her car. During his CCRB interview, one patrol officer admitted telling the mother that "we could enter," and that "she could be arrested for obstructing government . . . for keeping us [from] getting to her child to be arrested. That process would lead to making phone calls and since there were young children, ACS would be involved." The mother refused to allow the officers entry, but once a sergeant arrived on the scene, the officer used the mother's distraction to enter the apartment and handcuff her daughter. The CCRB found that exigent circumstances did not exist to justify the officer's warrantless entry into the apartment to arrest for the minor crime of criminal mischief.

2. Narcotics Cases. 33 substantiated complaints (19%) of the 174 substantiated premises entry and search complaints involved police officers engaged in narcotics investigations. Officers frequently conduct investigations of the sale and use of controlled substances in and around apartment buildings and homes. Many of the substantiated premise entry and search complaints arise out of these investigations of drug sales, "kite" complaints, and specialized narcotics operations. Narcotics cases are analyzed in light of applicable case law and the officers' belief that presence of drugs justifies their immediate and warrantless entry and search of a private home. In substantiated cases involving drugs, the CCRB found no exigent circumstances to justify warrantless entry given the lack of probable cause associated with the location or the individual sought, the low likelihood that the suspect would flee, or the minor nature of the crime.

a. Kite Locations. 16 substantiated complaints (9%) of the 174 substantiated complaints of premises entry and search related to incidents where officers stated they arrived at a location because of multiple past complaints regarding drug-related activity at the location—also known as a "kite" complaint or location. One detective from a Brooklyn Narcotics Squad was the subject officer in two substantiated incidents involving "kite" locations. In the first one, the detective told the CCRB that he had an arrangement with an elderly resident of an apartment that was frequently "taken over" by other individuals who used it to sell drugs. Every month, the detective would go to the apartment and check in on the resident; if the resident provided him a code word, the detective would enter the apartment and arrest the individuals engaged in drug sales. The detective went to the apartment one day, where he encountered a new tenant. The tenant alleged that this detective, along with two other officers in plainclothes, knocked on the door, gave a false name, and pushed past him when he opened the door. The detective then allegedly punched the tenant in the chest twice, and demanded to know about drugs and money in the apartment. After the tenant persuaded the officers that he legally resided in the apartment, they left; the tenant immediately called 911.

In the second case, the same detective, along with other members of the narcotics team, went to a kite location at night. One of the residents stated that, as he was leaving the two-story house, he opened the front door to find several officers outside, who pushed and punched him in the mouth. The officers searched the second floor of the house, finding marijuana on top of a television and arresting the two occupants upstairs. In contrast, the officers from the narcotics team stated that they had received information that narcotics were being sold out of the home, so they went there to conduct an observation, knock on the front door, and obtain the name of the person who lived inside. They did not obtain a search warrant because, according to the officers, they did not intend to enter the building. When a detective knocked on the front door, he claimed to see an individual holding a clear sandwich bag containing crack cocaine. The detectives entered the hallway of the building and tackled the individual to the ground. According to the officers, the two occupants upstairs walked downstairs on their own and were arrested. Two officers denied searching the upstairs apartment. The CCRB rejected the detectives' claim that they observed a clear plastic bag containing cocaine because the house had no electricity, and all officers described available light as poor or nonexistent (except when it came to identifying narcotics). Further, the CCRB found that the officers searched the upstairs apartment and there found the marijuana that served as the basis of the civilians' arrests, because one officer confirmed that the occupants upstairs were escorted downstairs by other officers.[45]

[45] The CCRB referred the detective involved in both "kite location" incidents to IAB for further investigation of a "false official statement" when he claimed that the two occupants upstairs walked downstairs by themselves. His statement contradicted the consistent, plausible testimony of other officers and the upstairs occupants. Another detective involved in this incident was also referred to IAB for investigation of a "false official statement," because she omitted crucial information from her memo book at the CCRB interview in order to minimize her presence inside the home and her involvement in the improper entry and search.

b. Buy-and-bust operations. Another set of substantiated cases arises from narcotics buy-and-bust operations. In these operations, narcotics officers work as a team. An undercover officer purchases drugs, and is trailed by a ghosting officer, whose ensures the undercover is safe. If the undercover buys drugs, the undercover may make a pre-planned physical movement (positive buy sign) to indicate to the ghost officer that the purchase was successful. The ghost or undercover will radio or relay a description of the seller to a back-up team, which then converges on the seller's location to arrest the seller. In 8 of 174 substantiated complaints of premises entry and search (5%), officers entered apartments and homes in order to search for and arrest the person they believed to be the seller in a narcotics buy-and-bust operation. In these cases, exigent circumstances did not justify the officers' entry because officers lacked probable cause to tie the apartment entered to the drug sale, or that the individual was armed or would flee.

Three substantiated CCRB complaints involved officers entering the wrong apartment in search of the seller in a buy-and-bust operation. In one serious case, an undercover officer went inside an apartment building with two individuals, and then exited and made a positive buy sign. One of the individuals who accompanied the undercover was later arrested outside the building, while the other individual remained inside. The ghost officer decided to enter the building with the field team, using information provided by an officer in the prisoner van about the apartment where the remaining individual was located. The ghost knocked on the apartment door, and claimed "J" had been hit by a car. The ghost admitted during his CCRB interview that, at this point, he did not have probable cause to arrest the individual. When a man opened the door, the ghost was "95%" positive it was the same man because both wore a do-rag. The ghost officer tried to pull the man out of the apartment, but was instead pulled inside the apartment when the man retreated. Two pitbulls lunged towards officers, who shot and killed the dogs. The man and a female resident were arrested, though neither were the ones sought by the officers.

In another case, officers conducted a "buy and walk" operation where an undercover purchased drugs from a man and woman, but the officers did not immediately arrest the couple. Instead, officers arrived at the couple's apartment approximately one month later, and knocked on the door. When the woman opened the door, the sergeant told the couple that he had a warrant and entered the vestibule of the apartment to arrest them. The sergeant admitted during his CCRB interview that he lied to the couple about possessing a warrant because he did not want the couple to resist arrest. In addition, the sergeant stated that he did not need a warrant for their arrest because they had been identified by the undercover officer on the team. This statement indicates that the sergeant did not understand the need for a warrant to enter premises in order to effect an arrest.

c. Observed drug sales. 6 substantiated complaints (3%) of the 174 substantiated complaints of premises entry and search arose from observed narcotics sales, where officers witnessed a drug sale in public and then entered a residence in order to arrest the seller or search for evidence. The CCRB found in these cases that the circumstances presented did not

justify a warrantless entry, since officers had time to obtain a warrant and did not need to enter immediately to prevent the suspect's flight or to prevent use of a weapon. In one case, officers observed a man sell drugs to a woman in front of his house.[46] Officers knocked on the door, and when the man answered, the officers entered without consent and arrested him. Officers then alleged that the man asked the officers to retrieve his shoes from his bedroom, and when they went upstairs to do so, they saw marijuana in plain view. In one case, officers did not actually observe a sale, but simply saw a man stepping on and off his stoop, which they thought suspicious. Officers entered the vestibule of the home, a private area closed and locked to the public, and searched the area for drugs. Similarly, in a case where officers arrested an individual involved in a narcotics sale in the lobby of his apartment building, the CCRB found the officers' subsequent entry into his apartment upstairs to search his bedroom was not justified by exigent circumstances, in part because the individual was already in custody at that point.

In two related cases, officers sought to seize contraband after seeing it from a point outside an apartment. No facts suggested that the contraband would be destroyed if the officers did not enter the apartment immediately, or froze the location. In one, an Impact officer claimed that he was on the roof of a building, looked down and saw through a bedroom window two males packaging crack cocaine, which he recorded on his personal cell phone. The officer further alleged that, after the men were stopped and detained outside of the apartment building, he went up to the apartment, asked the men's mother if he could enter, and she "did not appear reluctant" to let them do so. After claiming to find "plenty of other narcotics," including marijuana, oxycodone and drug paraphernalia in the men's bedroom, the officers ultimately released the men without arrests or summons. The mother, on the other hand, claimed that she repeatedly refused to allow the officers to enter her apartment and told them "you will only come inside when you get the search warrant." According to her, one officer said, "if you don't let me in and I obtain a search warrant, you and [your daughter] will be arrested, and ACS will be called to take [your daughter's] son away." Officers walked in past her, despite her refusals. The CCRB credited the mother's account of the events given her contemporaneous video recording on the officers' search and her protests on her iPad.

3. Firearms Cases. Reports regarding the presence of a firearm in a home are among the most serious incidents requiring police response. As detailed in Section 6 below, the CCRB exonerates numerous complaints where officers enter homes as part of their response to a call about shots fired inside a particular location or a crime-in-progress involving a firearm. The substantiated cases involving firearms are ones where officers received information regarding the presence of a gun at a location, but the circumstances did justify their immediate and warrantless entry and search for the gun. As the New York Court of Appeals has held, the

[46] The CCRB noted Other Misconduct for a detective involved in this incident, who denied going upstairs, in light of a fellow officer's clear statement that the detective was upstairs when the bedroom was searched, along with the civilian witness statement as well.

"mere fact that police have information that a weapon is located in a suspect's apartment . . . does not justify a warrantless entry."[47]

In 4 substantiated complaints (2%) of the 174 substantiated complaints of premises entry and search, officers received a tip from an identified person regarding the presence of a gun in or outside a home. In one of these cases, officers from an Anti-Crime unit arrived at a home without a warrant at approximately 12:30 a.m. based on a tip from a confidential informant that two males inside a particular home had guns and drugs they were looking to "move." The Anti-Crime supervisor claimed that when he knocked on the door, both the husband and wife came to the door and the wife gave the officers consent to "look around." The 85-year-old husband, on the other hand, said he came to the door, opened it, and several plainclothes officers "shoved me back, I almost fell." When he asked what was going on, he was told that someone had weapons in the house. At this point, he returned to his bedroom to bring his "panicking" 81-year-old wheelchair-bound wife to the front of the house, since she could not walk without assistance. The husband asked the officers, "you got a search warrant or something like that for my house?" The officers did not respond. The husband was particularly upset that the officers "got us up outta bed at that time in the morning" even though they "weren't chasing anyone." The Board panel found the homeowners' account of the event more credible, and noted that the particular circumstances—the late hour, the gun tip—required officers to possess a warrant.

In another case, an Anti-Crime unit alleged that the tenant of a house came to the precinct and told officers that, at some point during the previous thirty-six hours, he fought with his roommate and was told to leave the apartment. The tenant was afraid to return to the apartment because his roommate possessed a gun. The lieutenant did not write down the name of the tenant, but claimed he helped officers identify his roommate walking down the street. Two officers stopped and frisked the roommate, but did not find a gun. The officers alleged that, even though they told the roommate he could leave at any time, the roommate admitted to having a firearm in his home, and took officers directly to a closet in his apartment where they recovered a gun. The Board credited the roommate's account that he had been stopped and arrested on the street, and officers took his keys without consent to open his apartment door and search it.

In 3 substantiated complaints (2%) of the 174 substantiated complaints of premises entry and search, officers responded to residential premises to apprehend the perpetrator of a crime involving a gun, including a shooting, menacing, or robbery. In these cases, the CCRB will examined the propriety of each action taken by the officers to address the exigency or emergency. While initial steps to apprehend the perpetrator were exonerated, subsequent searches for the gun inside a home without a warrant—after the perpetrator was in custody, and the circumstances presented no ongoing or imminent danger—were substantiated as improper. For example, in one case, the CCRB exonerated the officers' initial entry into an apartment to

[47] *Matter of Kwok T.*, 43 N.Y.2d 213, 220-21 (1977); *see also People v. Gibson*, 117 A.D.3d 1317 (3d Dep't 2014); *People v. Lott*, 102 A.D.2d 506 (4th Dep't 1984).

arrest the individual accused of menacing someone with a gun. However, the CCRB substantiated as improper the officers' subsequent, warrantless search of the apartment for the gun after the perpetrator was in handcuffs. In a fourth case, the CCRB found that, once the police had secured a residential location where they believed a gun to be present, they should have waited for a search warrant before initiating the search for the gun.

In other cases, officers did not possess sufficient evidence linking a complaint of shots fired or a gun to a particular individual or location. In one, officers responding to a call of shots fired pursued a fleeing individual on foot, but lost sight of him. As the officers walked back to where they initially began their pursuit, they chose an apartment to enter to look for the suspect without any particular link to that apartment. Several cases involved tips from informants or 911 calls regarding the presence of a gun in a particular location. In two cases, the tip or 911 call was anonymous and did not have sufficient indicia of reliability to support probable cause that the gun was present at the location. In one of these cases, officers entered the wrong apartment with guns drawn, even though the apartment number tied to the 911 call was relayed to the officers.

In another case, members of a narcotics team noted in their memo books that they received a tip from a confidential informant that he attempted to purchase narcotics at a particular apartment, but had a gun pointed at him. The team applied for an emergency search warrant, which was denied. The next day, the team went to the building, stopped, frisked, and cuffed a resident of the building, and then entered and searched his apartment because they claimed to hear yelling from inside it. At their CCRB interviews, members of the narcotics team denied any link between their unsuccessful attempt to obtain an emergency search warrant to enter an apartment and the next day's search of that apartment based on the pretext that they heard someone yelling inside. Instead, the team claimed that their visit to the building on the day of the incident was motivated by a kite complaint made a week earlier. The CCRB found no evidence of this kite complaint. In contrast to the police accounts, the civilian complainant alleged that, as he was taking the trash out of his apartment building, the officers "bum rushed" him, cuffed and searched him. The police took him upstairs to his apartment, opened the closed apartment door and entered the apartment without consent. After the officers exited his apartment, they uncuffed him, "punched [him] in the face," and laughed as they walked down the stairs. He felt like he couldn't "even protect my own daughter" who was inside the apartment. He told the CCRB, "the law is supposed to be there to set the rules and protect us," not "to be breaking laws." CCRB investigators found that the warrantless entry and search of the apartment was motivated by the confidential informant's tip and the officers' inability to obtain a warrant, rather than follow up of a kite complaint. During a subsequent unrelated investigation, IAB uncovered evidence that members of this narcotics team fabricated statements from confidential informants to obtain search warrants.

4. Noise Violation Cases. In several substantiated complaints, officers arrived at a residence to address a noise complaint or having heard loud noise themselves. The residents of the premises alleged that they lowered the volume of a radio or television, while the

officers alleged that they entered the apartment because the residents failed to do so. In either case, Patrol Guide section 214-23 authorizes officers to enter a resident to correct a noise complaint only after a decision to do so has been "made by a precinct commander/duty captain and ONLY as a last resort, after requests to stop the noise have been ignored." In none of these substantiated cases did officers on the scene obtain the required approval to enter premises from a precinct commander or duty captain. In one instance, officers obtained keys to an apartment from the landlord and surveillance video showed the officers entered the apartment after the noise abated, while the occupants were sleeping.

More troubling is that some incidents escalated beyond the noise issue and led to civilians being arrested and subjected to physical force, pepper spray, and the threat of a taser. Large gatherings or parties especially present difficult circumstances. Officers in these cases were dissatisfied by a civilian's response to the officer and then either pushed their way into the residence or pulled the civilian into a public area in order to arrest the civilian. Officers found themselves at risk of serious physical harm, due to the presence of multiple angry civilians and unknown circumstances inside a residence, over a minor noise violation.

In a 2011 incident, two patrol officers responded to a complaint of loud music in an apartment building. One of the officers told the CCRB that he smelled marijuana as he walked up the stairs to the apartment, and when the occupant of the apartment opened the door, he saw marijuana residue and paraphernalia on a table in the living room but no lit marijuana. He entered the "because we could," and told CCRB he did not need consent.[48] He did not ask the occupants to lower the music before entering her apartment, nor did he call for a supervisor to respond because "it wasn't necessary." As he told the CCRB, he did not need a search warrant because he was not searching for or removing anything from the apartment. Video captures this officer telling the four women inside the apartment, "We don't need a warrant." The women demanded to know why the officers were inside their apartment. During the argument, a physical struggle ensued leading to arrests of the three women for resisting arrest, disorderly conduct, and obstructing governmental administration, but no marijuana-related charges. Video captured an officer grabbing a woman around her torso and pushing her face down onto a bed to cuff her. The officer also used pepper spray against the women.

5. Emergency Circumstances Doctrine Inapplicable. In several cases, the CCRB did not find "reasonable grounds" for the officer to have believed an emergency existed requiring police assistance to protect life or property. For example, in one case, officers alleged that they entered a store where they believed a burglary was in progress because the metal gate in front of the door was halfway down and the entrance door was ajar. However, a SPRINT recording confirmed that the officers called for backup for a "business inspection," rather than a

[48] At the time that the closing report for this incident was drafted, this officer had accumulated 18 substantiated allegations in his thirteen years of service, including substantiated physical force allegations in three separate incidents. One penalty received was the loss of 25 vacation days and a 5-day suspension, while another penalty was the loss of ten vacation days.

crime-in-progress. An independent witness confirmed that the entrance door was closed, and officers picked the lock and used a crowbar to open it. The CCRB investigation revealed that officers entered the basement of the business to investigate illegal social club activities, and used the pretext of investigating a burglary to justify their entry.

In a 2014 incident, a detective and sergeant arrived at an apartment to apprehend the subject of an investigation card; when they received no answer at the door, the detective climbed the fire escape, and entered the apartment through a window. Though the detective and sergeant claimed they entered because they thought a burglary was in progress, the police officer on the scene contradicted that account and said there were no facts indicating a burglary in progress. Similarly, in other cases, the CCRB did not credit the officer's testimony of having heard yelling or other noises indicating that someone was in distress, because fellow officers offered a different justification for the entry and did not corroborate hearing sounds of distress.

In some cases, the CCRB rejected application of the emergency doctrine because a preponderance of the evidence indicated that the officers' primary motivation was to arrest and seize evidence, rather than to respond to an emergency. For example, in a 2013 case, officers responded to a dispute at a Father's Day barbeque in the courtyard of an apartment building. Upon the officers' arrival, a woman reported that she had been punched in the face by a man approximately fifteen minutes earlier and that the man had fled into a ground floor apartment. The resident of the ground floor apartment opened her door, but refused to allow the officers inside without a warrant. The sergeant on the scene confirmed that she refused consent, but that he heard the assailant inside so he walked past her to arrest him. Since the sergeant and other officers intended to arrest the assailant, and that the assailant had no way to escape, the CCRB found there were no emergency circumstances to justify the warrantless entry.

Certain cases turned on whether an officer possessed a "reasonable basis" to associate the emergency with the apartment or residence entered. In one case, a teenager alleged she had been kidnapped and held along with another child in an apartment with a "red door," where she was forced into prostitution. After being rescued by her parents, the teen filed a police report. Police officers drove her around the neighborhood until she pointed out a particular address with a "red door." Officers then forcibly entered the apartment without a warrant. The resident of the apartment described the incident during her CCRB interview, "at 2 a.m., [I'm] by myself, [officers] bum rushed into my apartment, looking for god knows what." The woman said the officers "ignored" her questions of whether they had a warrant, and told her to "shut up" when she asked what was going on. The woman was "nervous and scared," and eventually the officers left. The CCRB found that the officers had taken no investigative steps to bolster or refute the teen's allegations, which were doubted even by the supervising officer.

C. Hot Pursuit Did Not Justify Warrantless Entry

In examining the 174 substantiated complaints of premises entered and/or searched, 39 complaints or 23% involved situations where officers alleged that they observed an individual engaged in suspicious activity on the street or outside of a residence, approached the individual to investigate the activity or arrest them for it, and then pursued the fleeing individual into a residence. The CCRB found that the hot pursuit doctrine did not permit a warrantless entry into the home for arrest or search purposes. In the majority of these complaints, the underlying offense was minor and could not justify entry into a home. The pursuit of individuals for minor offenses into apartments, backyards, and houses requires officers to confront unknown, potentially dangerous situations inside residences. Officers may unnecessarily place themselves and civilians in danger, especially when they draw guns, use tasers, or otherwise engage in force to control a chaotic situation encountered in an unfamiliar location. **Based on its review, the CCRB recommends the following:**

a. The NYPD training material should explicitly note, and officers should be retrained, that officers engaging in a pursuit of an individual:
    i. Officers can pursue a fleeing individual only if they have reasonable suspicion that the individual has committed, is committing, or will commit a crime. Reasonable suspicion, however, does not permit entry into a private home.
    ii. If officers enter a private residence in pursuit of an individual, they must possess **probable cause** that the individual committed a crime.
    iii. The hot pursuit doctrine only allows entry into a home if the officer initiated the arrest outside of the home.
    iv. Officers should not pursue individuals into a home for a violation.

When the police are in hot pursuit of a suspect they are attempting to arrest, courts have held that the fleeing suspect cannot thwart an otherwise lawful arrest by hiding out in his or her home or in the home of another person.[49] The police can therefore forcibly enter the residence into which the suspect has sought refuge in order to make the arrest. Police may not, however, claim "hot pursuit" to justify warrantless entry into a home in a situation where a suspect simply closes the door to the police and stays at all times within the interior of his home.[50] The Supreme Court has held that the "hot pursuit" exception does not permit warrantless entry into a home where the underlying offense is "relatively minor."[51] With respect to misdemeanor crimes, the Police Department instructs officers the hot pursuit doctrine permits warrantless entry for such

[49] *See United States v. Santana*, 427 U.S. 38, 42-43 (1976).
[50] *See People v. Gonzalez*, 111 A.D.3d 147, 150 (2d Dep't 2013).
[51] *See Welsh v Wisconsin*, 466 U.S. 740 (1984).

crimes, without regard to the nature of the offense or maximum term of imprisonment.[52] With respect to "violations" under New York law, such as alcohol consumption in public view, the hot pursuit doctrine does not permit warrantless entry in order to arrest or issue a summons.

1. Hot pursuit for minor offenses. Officers pursue individuals into homes and apartments when they see low-level marijuana offenses. In a 2013 case, officers in a street narcotics enforcement unit stated they saw a man smoking marijuana outside of a house, and upon initiating a stop, the man fled indoors. The sergeant responding to the scene authorized entry into the house along with three officers in order to arrest the man.[53] Inside, officers encountered approximately 15 occupants, angry and upset over the officers' presence. A large physical struggle erupted, resulting in officers being punched and thrown into furniture, injuries to civilians, and damage to the homeowner's property. The CCRB found that the warrantless entry into the house was not justified by the minor nature of the crime.

In yet another 2013 case, Anti-Crime officers alleged that they observed a man smoking what appeared to be a joint, and then ran after him as he ran into a house and away from the officers. Officers encountered several angry civilians in the house, and admitted to punching the suspect and drawing their guns inside the home. Similar situations—where officers pursued an individual into an apartment or home after observing him allegedly smoking marijuana outside of a building—arose in 2012, in 2011, and 2010.

Low-level alcohol violations also led to warrantless entries. In one 2013 case, a lieutenant and police officer saw two men drinking from a bottle of vodka outside of a building. The police stopped their car and approached the men, one of whom fled into the building and was pursued. The lieutenant pursued the man into an apartment filled with several people, who became agitated, yelling and cursing at the officers. On the way out of the apartment building, the lieutenant encountered one man, who accused the lieutenant of punching and kicking him, and backup officers used a Taser to subdue another man in the hallway. The CCRB found that the underlying criminal activity—drinking in public—was too minor to justify warrantless entry based on the hot pursuit doctrine.

2. Not continuous flight. Other situations arise where officers begin pursuing an individual, but lose sight of them prior to entering an individual's residence. Yet the hot pursuit doctrine can only be applied to justify a warrantless entry if officers engage in

[52] On this issue, the CCRB has taken a different position than the Police Department in some cases. In applying the Supreme Court's holding that the hot pursuit doctrine does not permit entry for minor offenses, the penalty imposed by the state is an important factor by which to determine whether the offense is minor. *See People v. Cruz*, 41 Misc.3d 1222(A) (Crim. Ct. Bx. Co. 2013). In certain cases, involving marijuana-related misdemeanors, the CCRB has found that the hot pursuit doctrine did not authorize the officers' warrantless entry. Certain marijuana-related misdemeanors are punishable by a term of imprisonment of up to 3 months only.

[53] This sergeant had previously been the subject of substantiated force, stop, search, entry, and threat of arrest allegations arising out of his supervision of an entry into an apartment to search it for contraband after a buy-and-bust operation. Charges were recommended by the CCRB, and in May 2012, an administrative trial resulted in a 27-day suspension and the loss of 13 vacation days.

"immediate or continuous pursuit" of the individual from the scene of the crime into the home.[54] In a 2014 case, two men were sitting outside of an apartment building when they noticed four plainclothes officers running past them and out of sight. Approximately five minutes later, the officers walked back towards the men and past them through the entrance of the apartment building. The officers went to the second floor apartment, where they began banging loudly on the door and announcing themselves as police. The officers asked the men whether any males lived upstairs, and the men said no. One man went into the first floor apartment, where his friends lived, to get the phone number of the second floor resident and alert her to the officers' presence outside of her house. When he came back outside of the first floor apartment, the officers demanded that he open the door to the first floor apartment, and upon gaining entry, searched all bedrooms, under the beds, in the closets, and behind doors. The officers told the residents they were looking for a young man named "Elijah" who had a gun. After satisfying themselves that the suspect was not in the location, the officers left. The officers, in turn, stated that they responded to a report of a firearm and detained a group of teenagers, one of whom fled. They admitted chasing the fleeing teen, but denied entering or searching any apartment. However, another officer contradicted those officers, and confirmed she and a sergeant had stood guard outside the searched apartment. The CCRB found not only that the officers had improperly entered and searched the apartment, but also noted other misconduct in the form of false official statements by the officers who denied entering and searching the apartment.

In a 2012 incident, Impact officers and a sergeant heard a radio transmission regarding a robbery, including two physical descriptions of suspects, a description of the stolen property (a cell phone), and the direction of the suspects' flight. Approximately twenty minutes after hearing the radio transmission, the officers were approximately five blocks away from the location of the robbery, when they observed a man fitting the description of one of the suspects. When the officers and the man made eye contact, the officers opened the door of the van, the individual threw a cell phone into a trash can, and began running. Officers observed the man fleeing into a particular building, followed him inside, and heard a door shut on the third floor. An officer alleged that he knocked on a third-floor apartment and heard someone say, "They found me. It's the police. I'm not coming out." After knocking and telling the individual inside the apartment to unlock the door, the door was finally unlocked. The officer alleged that he saw a small girl and adult male in a dark apartment, and pointed his gun at the man because he would not comply with orders to come out of the apartment. The man was eventually taken out of the apartment, shown to the victims, and released when they did not identify him. The father inside the apartment, however, told the CCRB that his front door was kicked open, and officer standing outside the doorway pointed his gun at his daughter and tracked her as she ran past the doorway. The father stated that officers cuffed him and punched him, which a neighbor corroborated. Neighbors who listened to the entire incident contradicted the officers' claim that someone inside the apartment said he was "I'm caught," and instead corroborated the father's account.

[54] *See Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984).

3. No probable cause. An officer must possess probable cause to put an arrest in motion when the suspect is outside the home, in order for the hot pursuit doctrine to justify subsequent pursuit of that suspect into a residence. Officers in these cases may have possessed reasonable suspicion to stop the individual outside the home, which would also allow the officers to pursue the individual if he took flight. However, only probable cause—not reasonable suspicion—permits officers to pursue the individual into a private residence under the hot pursuit doctrine. Moreover, all of these cases involved situations where the CCRB did not credit the officers' accounts that the fleeing individual would pose a danger to the individuals inside the homes.

In a number of cases, officers did not possess probable cause to arrest an individual when they began pursuing him outside the home, rendering their subsequent entry into the home improper. In a 2010 incident, Impact officers in a drug-prone neighborhood drove by a home at night and saw two individuals facing each other in the front yard, with one next to a mailbox. One officer suspected the individuals of engaging in a drug transaction, though he also acknowledged he "did not know what was going on." The officers stated that, when they exited their vehicle to ask the men whether they lived at the residence, one man ran into the home while the other remained in the front yard. One officer ran after the man, and grabbed him inside the home. According to the residents of the home, the officers accused the man of putting something in the mailbox. No contraband was ever recovered and the man was released without arrest or summons. According to one resident, when he asked the officer, "do you have a warrant?," the officer responded that he "doesn't have a warrant, doesn't need one, he belongs here."

The circumstances of some cases indicate that officers pursue civilians into their homes after an interaction where the officers believe the civilian has disrespected them in some way, though there was no probable cause to arrest or issue summons. In a particularly egregious case from 2011, two Impact officers stated that they encountered and admonished two teenage boys attempting to pry open the door of an apartment building. The boys' older brother approached the scene, upset that the officers were speaking to his teenage brothers. When the officers began to leave, the older brother followed them to their vehicle, cursing and yelling. The officers then turned, intending to issue the brother a summons for disorderly conduct for acting loud and boisterous. The older brother, according to the officers, ran into the building, and into his apartment, where a sergeant later arrived and authorized entry to arrest him. Video taken by the older brother, however, shows that the Impact officers became extremely irritated when the older brother interrupted to ask why they were harassing his teenage brothers and recorded their interaction with his teenage brothers. Video captures the older brother walking away from the officers, not running, towards the building entrance. The older brother stated in his CCRB interview that, after he and his brothers returned to their apartment, the Impact officers showed up outside the apartment door, demanded that he step out of the apartment, attempted to pull him out, and punched him. Video shows one of the officers stepping into the apartment, telling the older brother to exit so that he could receive a summons, and saying "In about two seconds,

twenty cops are going to come in here, so do you want to step outside so we can get this under control?" Later, video documents the officer saying, "Three times I summoned you to come out here and you didn't," and "Did you think we were just going to go away if we told you to come here?" The Impact officers radioed for additional officers, who entered the apartment and arrested two brothers.[55] Both arrested brothers sustained bruising on their backs and alleged that they had been punched by the officers, though all officers denied punching or using force to affect the arrests.

In a 2014 case, two plainclothes Impact officers doing vertical patrol in an apartment building stated that they saw a man walking down the hallway who put his hands in his pockets as he made eye contact with the officers. Based only upon that motion of putting his hands in his pockets, the officers stopped him, asked for ID, and asked whether he lived in the building. The man refused to provide ID and then ran to an unlocked apartment door a few feet away. Officers pursued the man into his home and arrested him. In the man's interview with the CCRB, he described seeing two guys in "black hoodies" emerging from the staircase doorway as he returned from taking the garbage out. The men in hoodies asked, "What's up?" The man responded, "Who are you?" and backed up to his apartment door. When the men in hoodies asked if he had ID, the civilian responded, "For what, who are you?" The police then identified themselves, and demanded his ID again. The man said, "For what? I'm in my house," went inside his apartment and tried to close the door. The police pushed their way inside, where they allegedly put the man in a chokehold. The hot pursuit doctrine did not apply since the officers lacked probable cause to arrest the man, let alone reasonable suspicion to stop him.

D. Plain View Doctrine Misapplied to Entries and Seizures

Several substantiated cases involved officers who possessed an incorrect understanding of the "plain view doctrine." In these cases, officers believed that, once they saw narcotics inside an apartment, they were allowed to cross the threshold of the apartment to seize those items without a warrant. Officers are permitted to make a warrantless seizure of contraband or evidence of a crime if: (1) the officers are lawfully in the position from which the object is viewed; (2) the officers have lawful access to the object; and (3) the illicit nature of the items seized must be immediately apparent.[56] If officers observe contraband from a lawful vantage point *outside* premises, they must establish lawful access to the premises by way of a warrant, consent, or exigent circumstances.[57] Patrol Guide 212-105, relating to execution of search warrants, as well as Operations Order 29 of 2008, relating to the consent to search policy,

[55] The District Attorney's office declined to prosecute these arrests made after the warrantless entry. In the documents declining prosecution, the office stated clearly that there was "insufficient grounds for [the arresting officer] to issue a summons," since the older brother was approximately 15 feet from the officers, he was "not shouting," there were only "2-3 spectators," and ultimately "there were no grounds to conduct a hot pursuit into this [defendant's] residence." While informative, decisions by the District Attorney to decline to prosecute a case do not determine the CCRB's decision to substantiate or exonerate allegations of misconduct.

[56] *See People v. Diaz*, 81 N.Y.2d 106, 110 (1993).

[57] *See People v. Vega*, 276 A.D.2d 414 (1st Dep't 2000).

instructs officers that, if they are inside premises lawfully pursuant to a search warrant or consent, they may seize contraband or evidence if the incriminating nature of the seized item is immediately apparent, and the discovery of the item is inadvertent.[58]

Based on its review, the CCRB recommends the following:

a. The NYPD Police Student's Guide and related training material should explicitly describe the plain view doctrine, and provide examples of where the plain view doctrine **does not** allow entry without a warrant, consent, or exigent circumstances.

b. The NYPD should require, as part of its body-worn camera program, officers to document the presence of contraband or narcotics in plain view.

In a 2014 incident, Brooklyn North Narcotics officers stationed outside of an apartment building received confirmation from an undercover officer that he had made a positive buy of marijuana from individuals on the fourth floor of the building. The officers went to the fourth floor, saw two men in a doorway with their hands clenched, and then saw one man attempt to place a bag of marijuana in his pants pockets. After detaining the men, frisking them, and finding marijuana on one of them, the officers stated that they looked through the open doorway of the apartment and saw a scale and marijuana placed on a table approximately three feet inside. One of the officers reached into the apartment and grabbed the items. The officer who did so stated during his CCRB interview, "we didn't need [a warrant], we didn't have one . . . it wasn't warranted." The sergeant accompanying the officer stated during his CCRB interview that, because the items were in open view in the doorway, the officers were conducting an operation and making an arrest, and the table was in lungeable area from outside the door, it was standard procedure to take the drugs and paraphernalia to voucher them.

In another case involving Brooklyn North Narcotics, officers stated that, while conducting nighttime observation of a brownstone where parties and drug sales were taking place, they entered the unlocked front door of the building to study the interior and collect information that could assist an undercover's future operations at the building. The captain on the scene stated that he smelled marijuana inside the building, went up to the second floor, and through the open front door to the second floor apartment, saw a few men smoking a joint. The captain and his officers entered the apartment, requested everyone's ID, and then left without issuing any summons or arrests.

E. Investigation Cards Are Improperly Used To Gain Entry into Premises

[58] Patrol Guide 212-105 also references the "Plain View Doctrine" discussed in Legal Bulletins Vol. 13, No. 5 and Vol. 17, No. 6.

Investigation cards (commonly known as I-cards) are present in numerous substantiated cases, suggesting that they are being improperly used by investigatory commands to gain entry into homes to search and apprehend the subject of the investigation card. In addition, as described in Section 6, unsubstantiated cases also involve investigation cards. **Based on its review, the CCRB recommends the following:**

a. The NYPD Patrol Guide, Police Student's Guide, and other training material should explicitly state, and officers should be retrained, that investigation cards are not warrants. Further, investigation cards carry with them no authority to enter homes.
b. The NYPD should clarify the situations where it is permissible for officers to create an investigation card for an individual instead of obtaining an arrest warrant, with an emphasis on the need for warrants if officers want to apprehend an individual inside a private residence.
c. The NYPD should require, as part of its body-worn camera program, officers who arrive at a home with an I-card to record their interactions with the occupants of the home, in order to capture the following information: (a) whether the officer states he possesses a warrant; (b) how the officer describes the authority provided by the investigation card; and (c) the context in which an occupant provides consent, especially as it relates to the presence of the investigation card.

"Investigation Cards" are described in Patrol Guide section 208-23. While the section describes the various categories associated with an individual listed on an I-card—a perpetrator, suspect, or witness—it does not clearly state that an investigation card is not a warrant. Nor does it clearly state that that the investigation card provides no authority to enter premises to search for or arrest an individual.

In 28 substantiated complaints (16%) of the 174 substantiated complaints of premises entry and search, officers entered and/or searched premises improperly in the course of their search for a subject of an I-card. Since I-cards are often used to record that an individual is wanted for arrest or a suspect in a crime, members of the Warrant Squad were the subject officers in all of these cases but two. In 13 cases, officers entered premises based on an I-card alone, while in the remaining 15 cases officers used the I-card along with an invalid warrant as the basis of their entry (Figure 7).

Figure 7: Investigation Cards and Warrants in Substantiated Entry and Search Complaints

Type of Complaints	Number of Substantiated Complaints	Percentage of 174 Substantiated Complaints of Entry and Search
Substantiated Cases Involving Use of Investigation Cards Alone to Gain Entry	13	7%
Substantiated Cases Involving Use of Investigation Cards and Invalid Warrants to Gain Entry	15	9%

Two types of cases illustrate the problematic use of investigation cards by officers to gain entry into a residence. First, officers possessing only an investigation card used force or misrepresentation of the I-card as a warrant to gain access into a private home. In one case, a detective from the Warrant Squad acknowledged that an I-card did not give officers permission to enter an apartment, but once he saw the suspect listed in an I-card standing behind his mother inside the apartment, he immediately had to take the suspect into custody.

In a 2013 case, a sergeant and three officers from the Warrant Squad arrived at an apartment at 6:30 a.m. to look for the subject of an I-card for robbery of a cell phone. The sergeant and officers banged on the door, identified themselves, and asked the occupants they heard inside to come to the door. They denied using tools to remove the peephole, but alleged that the vibration from knocking on the door caused the peephole to fall off. According to the officers, the older brother of the I-card subject eventually opened the door after 20-25 minutes, and in response to the sergeant's question of whether the subject was present, nodded his head backwards as if saying, "look in the back." In contrast, the teenage subject of the I-card, along with his twin brother, alleged that they were sleeping in their bedroom when they heard banging on the front door and the NYPD identifying themselves. The twins further stated that, after a few minutes, an officer appeared on the fire escape directly outside their bedroom window, opened the window, pointed his gun at one twin and ordered him to unlock the fire-escape gate blocking entry into the bedroom. The twin did so, and the officer entered the apartment, pointed his gun at him, and ordered them to open the front door for the remaining officers. When the twins went to the living room, they saw components of the peephole on the floor and a tube inserted into the hole where the peephole had been. Officers told the twins and their brother that they were looking for a gun. When one twin asked the officers if they had a warrant, the sergeant on the scene pointed to a piece of paper with that twin's photograph on it. The boys heard officers in the bedroom making a commotion, as if searching it, and eventually one twin was

taken to the precinct. The CCRB found that, regardless of how the peephole fell off the door, the sergeant's act of looking through it to see what was going on in the apartment constituted an improper search. In addition, the CCRB found that the physical entry into the apartment by the officers was improper because any consent given was coerced, and there were no exigent circumstances justifying entry.

In another 2013 case with similar facts, detectives from the Warrant Squad arrived at an apartment just after 6:30 a.m. to apprehend the subject of an I-card wanted as perpetrator (probable cause to arrest) for a robbery. Detectives stated that they knocked on the door for 10 to 15 minutes, and told a male occupant that they were looking for a particular individual. The detectives continued to knock on the door, and the peephole fell out. One detective stated that he could see the subject of the I-card through the peephole running back and forth. According to the detectives, approximately one hour later, the mother of the suspect unlocked the door for the detectives and then stepped back to allow them to come into her apartment and look for her son. The detectives cuffed the suspect, and then asked the mother if she had a jacket for her son. One detective walked to the back of the apartment with the mother to retrieve the jacket. The mother stated, in her CCRB interview, that she awoke to loud banging on the door, and upon going to her front door, saw the peephole knocked out and the lock broken. The detectives opened the door themselves and entered without her permission; one detective took her son out of the apartment, while another detective went to the bedroom in the back, looked in a shelf in the bedroom closet and said he was looking for a gun. The CCRB found that, even if the mother opened the door as the detectives alleged, it was not voluntary consent, given the prolonged and forceful banging on the door. Further, no exigent circumstances existed since the detective told the mother that he would have obtained a warrant if she had not opened the door.

In the second type of case, members of the Warrant Squad or other detectives arrive at a residence to apprehend the subject of an investigation card, but also possess an open warrant for someone else to facilitate their entry of the residence. For example, in an August 2014 incident, members of the Bronx Warrant Squad arrived at an apartment looking for the young male subject of an I-card. Since the I-card carried no authority to enter the apartment where the Warrant Squad believed the individual to be present, the detectives took the name of the main resident of the apartment, a white male in his 70s, and found a bench warrant issued in 1981 for a man with the same name, but identified on the warrant as a 58-year-old black male at a completely different address. The officers performed no additional investigation to determine whether subject of the bench warrant lived at the apartment they sought to enter. When they arrived at the apartment, the officers told the 70-year-old man, who they could immediately observe to be white, that they had a warrant for him, so he allowed them to come in over the objections of his daughter. The detectives claimed that they went inside to confirm that the black male subject of the bench warrant was not the same person as the 70-year-old white man. The detectives then claimed to hear noise coming from a bathroom, opened the door, and found the subject of the I-

card. CCRB found that the officers' entry based on the 1981 bench warrant was invalid, since they took no steps to establish a reasonable belief that the subject of the bench warrant lived at the apartment they entered. Further, the officers' search was found to be improper since, by the time they opened the bathroom door, they knew that the subject of the bench warrant was not in the apartment.

F. Improper Execution and Use of Warrants to Gain Entry into Premises

Members of the NYPD Warrant Squad and other investigative commands are the subject of a variety of substantiated complaints regarding the improper use and execution of arrest and search warrants on premises. **Based on its review, the CCRB makes the following recommendations:**

a. The NYPD should ensure that officers executing arrest or bench warrants at homes are trained regarding their obligation to take investigative steps to form a reasonable belief that: (1) the subject of the warrant resides in home; and (2) the subject of the warrant is present within the home at the time of the officers' entry. Fulfilling these obligations takes on a heightened importance when:
   i. Officers execute warrants issued several months or years previously;
   ii. Officers conduct warrant sweeps of an apartment building or residential area; and
   iii. Officers are at an apartment to apprehend a person for whom they do not have a warrant and use an open warrant associated with the location to enter it.

Payton requires a warrant for officers to conduct a search and seizure at a home. An arrest warrant may only issue from a neutral and detached judge or magistrate, not a police officer or prosecutor, and is based upon an officer's affidavit, which sets forth facts that establish probable cause for the individual's arrest.[59] Bench warrants result when an individual, who was previously arrested, fails to appear in court as required; the judge (who sits on the "bench") then issues a warrant for that individual's arrest.[60] A search warrant is a judicial order authorizing the police to conduct a search at a specified location in order to seize designated property or to arrest a specific person.[61] The search warrant must contain a description of the property that is the subject of the search, and a designation or description of the place to be searched using an address, ownership, name or any other means that can identify the place with certainty.[62] While a search warrant must be executed within ten days of its issuance,[63] arrest and bench warrants have no deadline by which they must be executed.

[59] *Steagald v. United States*, 451 U.S. 204, 212 (1981); *see also* C.P.L. §§ 120.10, 120.20.
[60] C.P.L. § 1.20(30).
[61] C.P.L. § 690.05(2).
[62] C.P.L. § 690.45.
[63] C.P.L. § 690.30(1).

There are, however, important limitations on officers' ability to execute arrest and bench warrants at a residence. Both arrest and bench warrants permit officers to enter a dwelling to look for the subject of the warrant only if: (1) they reasonably believe it to be his residence; and (2) they reasonably believe he is present at the time they enter.[64] When warrants are issued months or years prior to the entry, officers must take investigative steps to confirm that the premises entered is still the residence of the subject of the warrant, and to provide themselves with "some modicum of concrete, believable information of recent vintage, pointing to the suspect's presence at the time his home is searched."[65] As one court has held, "[a] 'reasonable belief' that the suspect is present cannot be arrived at simply because that suspect may have lived at those premises some 6 ½ months prior thereto."[66] Nor does "the fact that a suspect may have lived at a particular premises at some point in time . . . legally transform those premises into his residence for a period of indefinite duration."[67]

Because an arrest or bench warrant permits police to enter a residence to search for and arrest a person, the police must confine their search within the residence to areas in which a person could be hiding, *e.g.*, rooms and closets. With an arrest or bench warrant, the police will generally not be permitted to search through cabinets and drawers for evidence, though the officer can legally seize contraband in plain view.[68]

Of the 174 substantiated complaints of premises entered and/or searched, a warrant was present in 29 complaints (17%). That warrant, however, could not authorize entry and/or search of the premises for one or more of several reasons, including the lack of a reasonable belief that the warrant subject resided in the premises, the officers entered a third-party residence without a search warrant in addition to an arrest warrant, or the officers executed the warrant at the wrong address (Figure 8).

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[64] *See Payton v. New York*, 445 U.S. 573 (1980); *People v. Rodriguez*, 19 Misc. 3d 202 (Crim. Ct. N.Y. Cnty. 2008).
[65] *People v. Cabral*, 560 N.Y.S.2d 71, 76 (N.Y. Sup. Ct. 1990); *cf. People v. Brown*, 56 A.D.2d 543 (1st Dep't 1977); *People v. Russell*, 958 N.Y.S.2d 310 (City Ct. Troy 2010) (officers illegally entered and searched apartment using only open warrant as part of warrant sweep, without any checks to confirm that subject of warrant remained at apartment); *People v. Smith*, 806 N.Y.S.2d 447, 447 (N.Y. Sup. Ct. 2005) (officers executing four-year-old bench warrant did not possess reasonable belief that subject of warrant still resided at address on warrant where officers did not receive any information about suspect from NYPD databases and did not conduct further investigation with NYCHA, DMV, or other city agencies); *People v. Baez*, 661 N.Y.S.2d 759 (Bx. Sup. Ct. 1997).
[66] *People v. Cabral*, 560 N.Y.S.2d 71, 76 (N.Y. Sup. Ct. 1990); *see also People v. Fernandez*, N.Y.L.J. Aug. 31, 1990 (N.Y. Crim. Ct.) (suppressing evidence obtained after officers executed a bench warrant at the last known address given by a suspect a year and a half earlier and without any attempts to verify that address through interviews with neighbors, or checking phone books or mailboxes).
[67] *Id.* at 74.
[68] *People v. Dalton*, N.Y.L.J. May 3, 1991 (Sup. Ct. Queens Co.).

Figure 8: Substantiated Entry and Search Complaints In Which Warrants Did Not Authorize Entry

Reason Why Warrant Did Not Authorize Entry	Number of Substantiated Complaints	Percentage of 174 Substantiated Complaints of Entry and Search
Officers did not possess a reasonable belief that premises entered was the residence of the subject of the warrant.	19	11%
Officers did not possess a reasonable belief that suspect was present in the residence at the time they entered.	4	2%
Officers entered a third-party's residence for the subject of an arrest warrant without obtaining a search warrant for the third-party residence.	9	5%
Officers executed a valid warrant at the wrong address.	2	1%
Officers lacked a sufficient basis to apply for the warrant.	2	1%
Officers conducted a search for evidence inside a dwelling, though they possessed only an arrest warrant.	1	1%

Four substantiated complaints (2%) where officers did not possess a reasonable belief that the subject of an arrest warrant resided in a dwelling were "warrant sweep" situations. In these cases, officers pulled all open warrants associated with apartments in a particular building, and travel to each address to apprehend the subjects of the warrants. In three cases, the warrant sweep was triggered by a serious crime that had occurred in the area just prior to the sweep, and appeared to be an investigative strategy by which the police could take individuals living in the area into custody and question them. However, officers executed the warrants without conducting proper investigation to confirm that the subjects of the arrest or bench warrants still resided in the apartments listed on the warrants. In one 2014 case, a man and his three friends were in their bedrooms on the second floor of a house at approximately 7:30 a.m. when they heard a commotion downstairs, and encountered plainclothes officers, allegedly with their guns drawn. When the man asked to see a warrant, one officer responded, "We don't have to show you sh-t," and the officers searched the house, saying, "We have a right to be here." The officers had executed an arrest warrant issued approximately four months earlier, without running any checks to confirm that the subject of the warrant lived at the address on the warrant. They entered the home through an open window. One lieutenant from the Warrant Squad oversaw two separate substantiated cases where warrant sweeps were conducted at NYCHA buildings before 7 a.m., and used open warrants issued between 5 to 7 months prior to the incident to enter apartments without first conducting any investigative steps to confirm the warrants' validity or the current residence of the warrant subject. In one case, the lieutenant arrived and insisted on entry into the complainant's apartment based on his review of the resident directory in the building's lobby. He noted that the very common last name of the subject of the bench warrant,

on which no apartment number was listed, was referenced on the directory as the last name associated with the complainant's apartment.

Another common theme among substantiated cases with warrants is that officers from a Warrant Squad, when trying to apprehend the subject of a bench or arrest warrant, will go to homes upon receiving information that the subject of the warrant can be found there. However, officers needed, but did not possess, a search warrant authorizing their entry into the third-party residence. For example, in a 2014 incident, officers arrived at a particular address to look for the female subject of an open bench warrant. When they did not find the woman, they proceeded to the apartment of the woman's ex-boyfriend, which was listed on a domestic incident report filed three months earlier. Officers did not possess a reasonable belief that woman lived at this apartment, nor did they have a search warrant to search the third-party residence for the subject of the bench warrant. Nonetheless, officers entered the apartment at approximately 5:30 a.m., where a middle-aged woman lived with her daughter and granddaughter.

b. *Officers Fail to Show Warrants to Occupants*

The CCRB substantiated 7 complaints (5%) of all 150 complaints that an officer failed to show a warrant to the occupant of the premises when executing the warrant. These 7 complaints correspond to 9 substantiated allegations. Patrol Guide section 212-105 requires officers "executing the search warrant shall, when able to do so safely, show a copy of the search warrant to any of the occupants of the premises."[69] Patrol Guide 208-42 requires officers executing an arrest warrant, to show the warrant as soon as possible upon request.

In these cases, the CCRB credited the accounts of occupants, who credibly and consistently testified that they had asked multiple officers to show them a search or arrest warrant but were never shown one, or that officers flatly refused to do so. In one case, a civilian recounted hearing a vibration noise at the front door, seeing the front door knob fall out, and hearing, "Police, police, get down!" As she sat in her bedroom while officers searched her apartment, she asked the officers multiple times, "Where's your warrant?," but was never shown one. Another civilian alleged, "I kept asking [the officers] for a search warrant. They told me they didn't have to show me sh-t. Point blank. I thought those were my rights." In another, a detective acknowledged hearing a civilian's request to see the search warrant, but claimed that he could not show it to her because it contained sensitive information regarding an undercover officer conducting buys at the apartment that was searched. The CCRB reviewed the warrant, however, and it did not contain any of the sensitive information the detective claimed.

[69] This Patrol Guide section imposes a greater obligation than the Criminal Procedure Law by requiring officers executing a search warrant to show occupants a search warrant without any requirement that the occupants request to see it. In contrast, CPL § 690.50(3) requires officers to show civilians a search warrant "upon request."

Some officers claimed they never heard a request from a civilian to be shown the search warrant. However, under the Patrol Guide, officers have an obligation to show an occupant a search warrant if they can do so safely, and this obligation is not contingent upon receiving a request from the occupant. The CCRB noted that, in all but one of the search warrant cases, every officer interviewed by the CCRB stated that he or she had not shown a search warrant. These statements support a finding that no officer on the scene showed the occupants the warrant. In all of the search warrant cases, the CCRB found that the officers had secured the premises and could have shown the occupants a search warrant safely.

The number of substantiated complaints of failure to show a warrant is limited because CCRB investigators have interpreted the obligation to show a search warrant as triggered by a civilian's request. Officers also appear to understand the Patrol Guide requirements as requiring a search warrant to be shown upon request. Therefore, if officers stated during their CCRB interview that they did not hear the civilian's request to see a search warrant, and the CCRB could not resolve the dispute, the allegation was "unsubstantiated." As described in detail in Section 6, approximately 116 allegations (66%) of the 175 allegations failure to show a search warrant were unsubstantiated, and only 4 or 2% of allegations were exonerated.

Going forward, CCRB investigators will substantiate a failure to show a search warrant if a preponderance of evidence supports that: (1) the occupants of the premises were not shown a search warrant; and (2) the officers executing the search warrant were able to show that warrant to the occupants safely. As to the officer who should be the subject of such an allegation, Patrol Guide 212-105 states only that "[t]he member of the service executing the search warrant shall, when able to do so safely, show a copy of the search warrant to any of the occupants of the premises." Since the Patrol Guide does not assign a specific officer the responsibility of possessing the search warrant, or showing it to the occupants, the CCRB will plead this allegation against the officer assigned to have possession of the warrant on the scene, or the officer in command of the entry.

The CCRB recommends that officers be reminded and trained on Patrol Guide 212-105 and its affirmative obligation to show residents a valid search warrant that is being executed, without waiting for a request from the residents to see the warrant.

SECTION FOUR: RELEVANT CHARACTERISTICS OF SUBSTANTIATED COMPLAINTS

The CCRB isolated and quantified certain characteristics of substantiated complaints, such as location, demographics of victims and subject officers, and a variety of other indicators related to subject officers, to further analyze how and where improper entries and searches occur.

Location of Improper Entries and Searches. The CCRB tracks the location where a complained-of incident occurred, both at the borough and precinct level. Among the boroughs, the distribution of complaints with a substantiated allegation of premises entry, premises search, or failure to show a warrant generally mirrors the distribution of all types of CCRB complaints among the boroughs. For all types of complaints of FADO misconduct decided between January 1, 2010 and October 1, 2015, 34% of complaints (occurred in Brooklyn; 23% in Bronx; 22% in Manhattan; 16% in Queens; 4% in Staten Island. Yet, when comparing the distribution of all CCRB complaints to the distribution of substantiated premises entry, search, and warrant complaints, one notable point emerges. Forty-nine percent of relevant complaints substantiated between January 1, 2010 and October 1, 2015 occurred in Brooklyn (Figure 9). Yet, during that same time period, only 34% of all complaints decided by the CCRB occurred in Brooklyn.

Similarly, many of the police precincts generating the most premises entry, search, and warrant complaints are located in Brooklyn. The distribution of 1,761 fully investigated complaints among the various precincts is shown in the complaint activity map on the next page (Figure 10).

The overrepresentation of substantiated complaints in Brooklyn is notable. Brooklyn has traditionally generated the greatest proportion of overall CCRB complaints, but within premises entry, search, and warrant allegations, generates an even higher percentage.

Figure 9: Complaints by Borough of Premises Entry, Premises Search, and Failure to Show a Warrant Substantiated Between 1/1/2010 and 10/1/2015

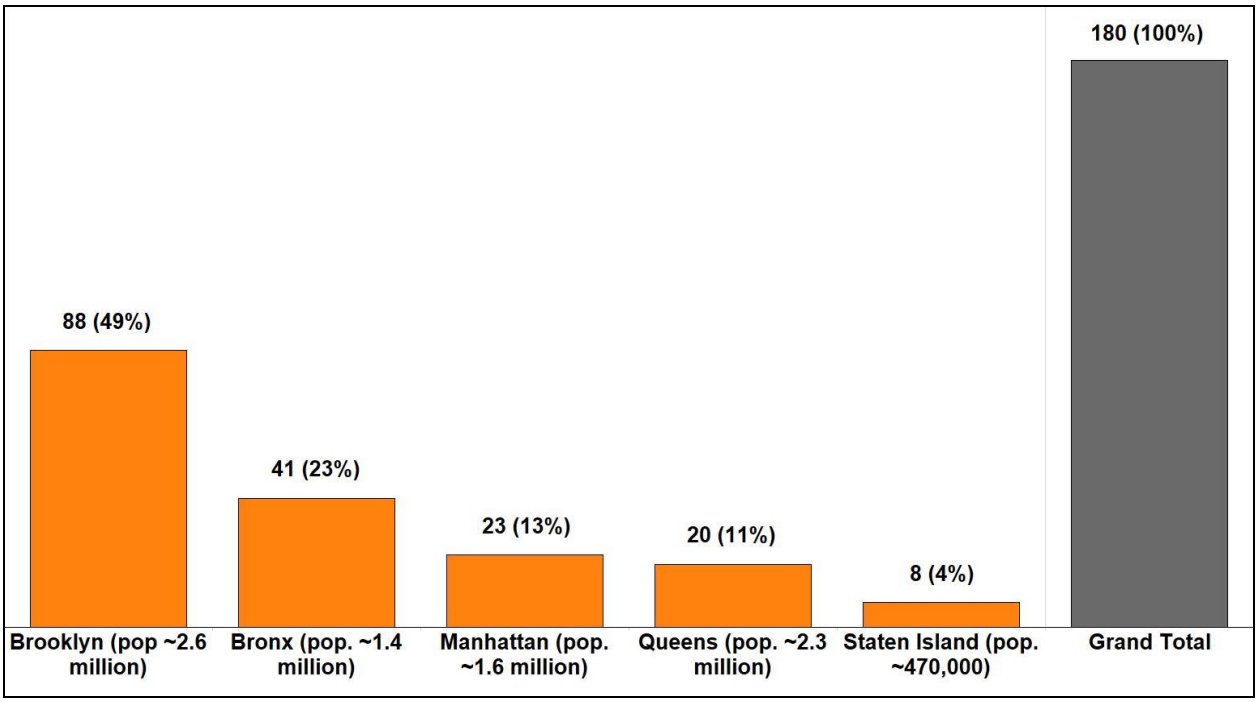
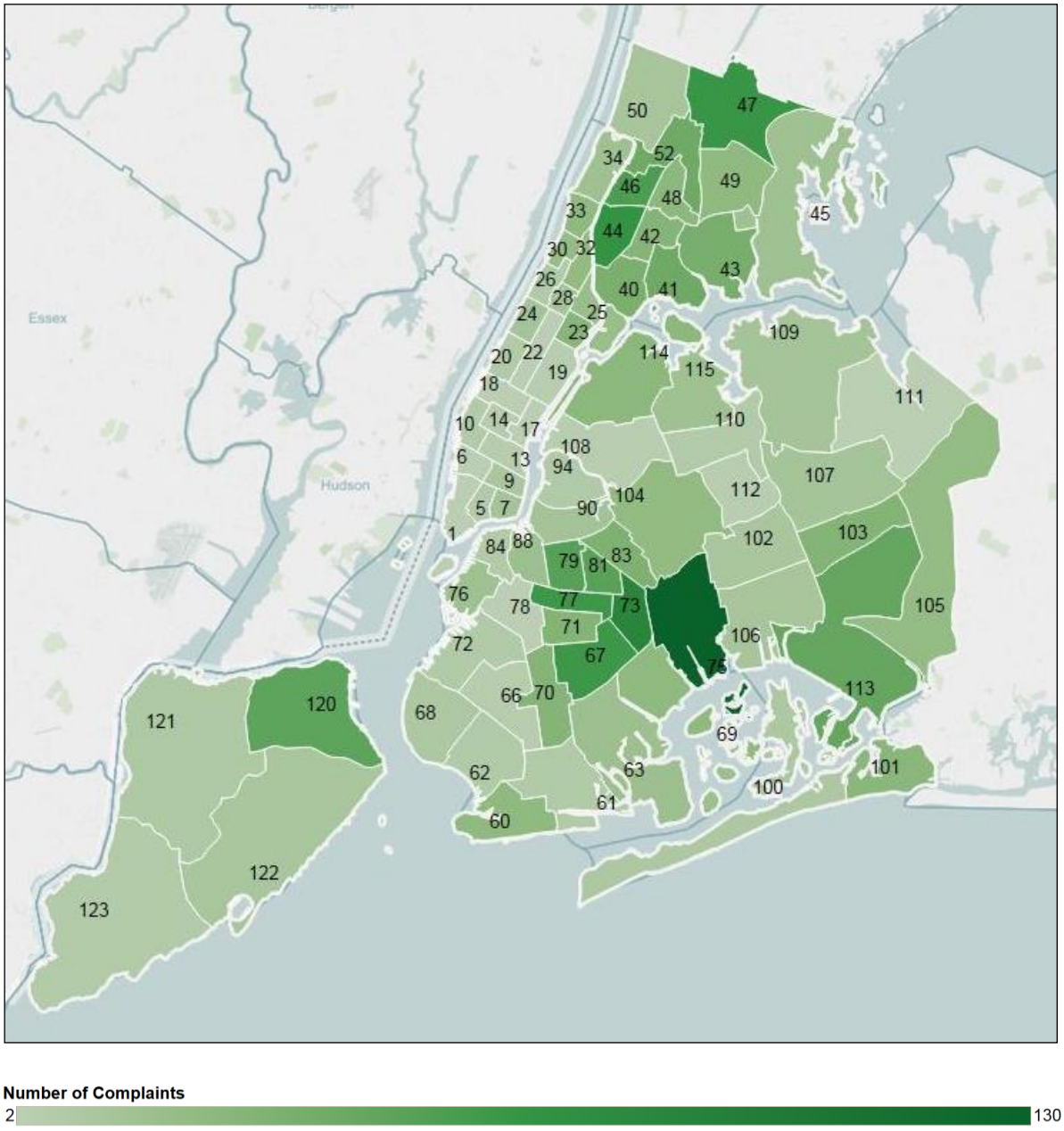


Figure 10: Fully-Investigated Complaints by Precinct of Premises Entry, Premises Search, and Failure to Show a Warrant Between 1/1/2010 and 10/1/2015



Number of Complaints

2 — 130

Types of Premises Searched. The vast majority—175 complaints or 97%—of the 180 substantiated complaints involved residential premises: houses, apartments, rooms in shelters, transitional living facilities and single room occupancies. Only 5 of the 180 substantiated complaints, or 3%, involved commercial or business premises, and in these cases, the CCRB found that officers had improperly entered an area in the commercial premises that was not open to the public and where the complainant had a reasonable expectation of privacy.

The CCRB also analyzed the types of residential premises where substantiated allegations occurred (Figure 11). Only a quarter of substantiated allegations occurred at single-family or dual-family homes, such as stand-alone houses, townhomes, or brownstones. The entries and searches of almost all of the remaining substantiated complaints occurred in multi-family apartment buildings, some of which were purely residential, and some of which consisted of residential units above street businesses.

Significantly, 18% (33 unique residential locations of the 183 locations) of substantiated complaints occurred in apartment buildings owned and operated by the NYC Housing Authority (NYCHA). According to NYCHA, its apartments house only 403,917 authorized residents or 5% of the New York City population.[70] Measured by housing units, NYCHA buildings contain 177,666 apartments or 5% of total housing units in New York City.[71] These figures may be explained by greater presence of NYPD assignments and operations in public housing buildings.

Figure 11: Type of Residential Premises in Substantiated Complaints

Type of Residence[72]	Number of Complaints	Percentage of Locations
One or Two Family Buildings	44	24%
Multi-Family Walk-up Buildings	50	27%
Multi-Family Elevator Buildings	48	27%
Mixed Residential and Commercial Use Buildings	35	19%
Single-Residence Occupancy, Shelter, or Other Housing Facility	6	3%
Number of Unique Residential Locations in 180 Substantiated Complaints	183	100%

[70] *See* New York City Housing Authority, Facts About NYCHA at 1 (Mar. 26, 2105), *available at* http://www1.nyc.gov/assets/nycha/downloads/pdf/factsheet.pdf (last accessed Nov. 1, 2015).
[71] *Compare id. with* New York City Dep't of Housing Preservation and Development, Selected Initial Findings of the 2014 New York City Housing and Vacancy Survey at 1 (Feb. 9, 2015), *available at* http://www1.nyc.gov/assets/hpd/downloads/pdf/2014-HVS-initial-Findings.pdf (last accessed Nov. 1, 2015).
[72] The first four categories correspond to "Land Use" categories assigned to each address and tax lot by the New York City Department of City Planning.

Time of Day of Improper Entries and Searches. The CCRB analyzed the time of day when improper entries, searches, or failure to show a warrant occurred. The greatest number of substantiated incidents occurred in the early morning hours between 5:00 a.m. and 8:00 a.m., with another concentration of substantiated incidents occurring during traditional after-work hours between 6:30 p.m. and 9:00 p.m. (Figure 12). When examining the Warrant Squad's activities, the concentration of improper entries, searches, and failures to show a warrant increased in the morning hours. All substantiated complaints involving the Warrant Squad occurred between 5:00 a.m. and 10:00 a.m., with the exception of a single incident that occurred at 2:30 p.m. (Figure 13). While officers may intend to arrive at a home at hours when they are least expected, and residents are most likely to be home, these early-morning encounters are also what civilians describe as frightening and problematic.

Figure 12: Substantiated Complaints by Time of Incident (All Commands) (#)

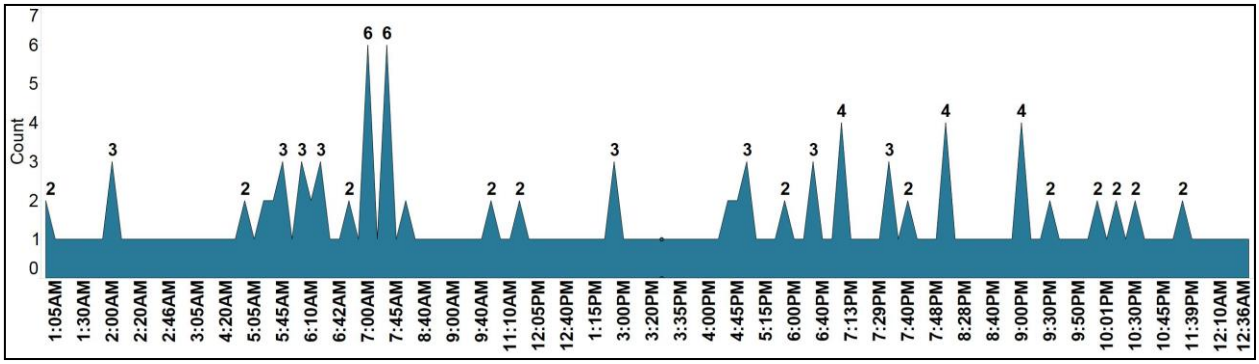
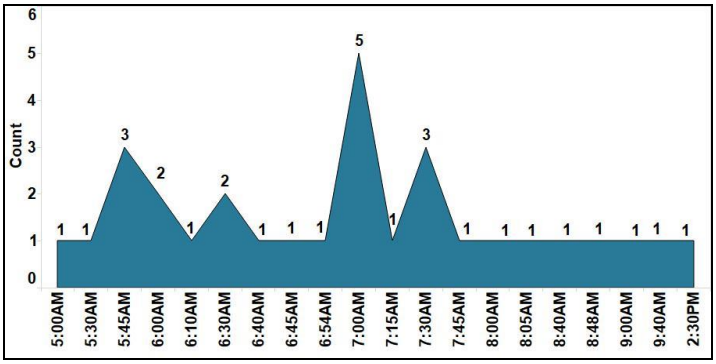


Figure 13: Substantiated Complaints by Time of Incident (Warrant Squad Only) (#)



Victims Demographics. The 2,640 fully investigated allegations of premises entry, premises search, and failure to show a warrant decided between January 1, 2010 and October 1, 2015 involved 4,046 victims and victim/complainants. 487 victims and victim/complainants were involved in the 180 complaints with at least one substantiated allegation of premises entry or search, or failure to show a warrant decided between January 1, 2010 and October 1, 2015.

The racial and sex makeup of these victims and victim/complainants, along with a comparison to the demographics of New York City as a whole in 2014, are detailed below (Figures 14 and 15). 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, the percentage and number of criminal suspects, or the demographics of individuals for whom arrest or bench warrants are issued.

African-Americans comprise 55% of the victims in improper entry, search, and failure to show a warrant incidents, twice their proportion of the population of New York City. Whites comprise only 4% of victims in substantiated incidents, an eighth of their proportion in the population of New York City.

This data is consistent with the racial makeup of CCRB victims in all types of complaints. Between 2010 and 2014, 56% of all alleged CCRB victims were African-American, while 26% were Hispanic, 12% were white, 2% were Asian, and 3% were classified as "other."

Figure 14: Race of Alleged Victims and Victim/Complainants in Substantiated Complaints Compared to New York City Demographics

Race of Alleged Victims and Victim/Complainants	Race of Victims in Substantiated Complaints[73]	Race of Victims in All Relevant Complaints[74]	Demographics of New York City (U.S. Census Bureau, 2010)
African-American	55% (269)	52% (2087)	23%
Hispanic	23% (112)	23% (918)	29%
White	4% (20)	6% (247)	34%
Asian	2% (9)	1% (39)	12%
Unknown	15% (72)	17% (678)	--
Other	1% (5)	2% (77)	2%

[73] Victims in Substantiated Complaints consists of the 487 victims and victim/complainants in cases with at least one substantiated allegation of premises entered and/or searched and/or failure to show a warrant.
[74] Victims in All Relevant Complaints consist of the 4,046 victims and victim/complainants in the 2,640 fully investigated allegations.

Figure 15: Sex of Alleged Victims and Victim/Complainants in Substantiated Complaints Compared to New York City Demographics

Sex of Alleged Victims and Victim/Complainants	Sex of Victims in Substantiated Complaints	Sex of Victims in All Relevant Complaints	Demographics of New York City (U.S. Census Bureau, 2010)
Male	54% (265)	51% (2074)	48%
Female	43% (212)	45% (1837)	52%
Unknown	2% (10)	3% (135)	--
Total	100% (487)	100% (4,046)	100%

Subject Officer Demographics. From January 1, 2010 to October 1, 2015, there were 1,584 subject officers associated with the 2,640 premises entry, search, and failure to show a warrant allegations. There were 263 subject officers associated with the 297 substantiated allegations of premises entered/searched or failure to show a warrant.[75] In addition, many more officers may have been involved in the improper entry and/or search than the 263 identified subject officers. The CCRB's pleading practice is—in instances where officers are acting pursuant to orders from a higher-ranking member of service—to plead an improper entry and/or search allegation against only the highest officer on the scene.

During the period under review, the racial makeup of subject officers in fully investigated complaints alleging premises entered, premises searched, or failure to show a warrant mirrored the demographics of the NYPD as a whole. These proportions are consistent with the CCRB data for all types of complaints—subject officers have historically reflected the racial makeup of the Police Department (Figure 16).

In addition, male officers are overrepresented in substantiated improper entry, search, and warrant allegations, comprising 97% of subject officers in substantiated allegations. In 2014, male officers made up 83% of the Department.

Figure 16: Race of Subject Officers in Substantiated Allegations Compared to NYPD Demographics

Race of Subject Officers	Race of Subject Officers in Substantiated Allegations	Race of Subject Officers in All Relevant Allegations	Demographics of NYPD in 2015
African-American	14% (38)	15% (232)	15%

[75] The total count of subject officers is greater than the number of distinct subject officers because some officers were involved in more than one complaint (26 subject officers appeared more than once).

Hispanic	25% (67)	25% (392)	27%
White	58% (152)	57% (897)	51%
Asian	2% (6)	4% (60)	6%
American Indian	0%	0. (2)	< 0.01%

Command and Assignment of Subject Officers. The CCRB analyzed the commands of the 263 subject officers involved in the 297 substantiated allegations of premises entry, premises search, or failure to show a warrant. The 263 subject officers were responsible for 285 instances of improper entry, improper search, or failure to show a warrant.[76] The CCRB further analyzed the specific assignment of those officers within Patrol Bureau and Housing Bureau commands, to determine whether improper entries and searches were more prevalent among certain assignments than others (Figure 17).[77]

58 subject officers (20%) are members of the Warrant Squad, and another 16 officers (6%) are members of Detective Bureaus. Members of these commands engage in apprehension and investigation, including the problematic use of investigation cards and warrants issued years earlier described in Section Three. Members of the Warrant Squad receive specialized training regarding warrant execution, suggesting that the training they receive is either inadequate or not followed consistently. At least one member of the Warrant Squad told CCRB that common practice is to unscrew peepholes in front doors in order to look inside—which, under the law, is considered a search.

Other specialized commands and assignments that include a significant percentage of subject officers include the 45 subject officers (16%) assigned to Narcotics Borough Commands, and the 25 subject officers with Anti-Crime assignments (9%) (Figures 17 and 18). Officers who engage in specialized operations and investigations of narcotics and firearms should be especially aware and trained regarding the difference between exigent circumstances permitting immediate, warrantless entry, and those in which they will be expected to obtain a search or arrest warrant. Each borough in New York City has an assistant district attorney on-call 24 hours per day to assist officers in obtaining emergency search warrants, along with a duty judge available to issue warrants.

[76] Sometimes CCRB investigators pled a single allegation of improper entry and search by an officer in a particular incident. At other times, investigators pled one allegation of improper entry by an officer and a separate allegation of improper search by the same officer in the same incident. Therefore, the 297 allegations actually correspond to 285 unique instances of improper entry, search, or failure to show a warrant by different officers. In assessing command and tenure, we use a denominator of 285 instances of improper entry, search, or failure to show a warrant to avoid double-counting an officer's command, assignment, and rank where two allegations against the officer arose out of the same underlying entry and search.

[77] Appendix A contains specific commands and the count of subject officers assigned to each command.

Also notable is that 63 subject officers (22%) were assigned to patrol duties (Figure 18). Patrol officers are often the first line of response to calls regarding crimes-in-progress, emotionally disturbed persons, and other public safety issues occurring at homes and businesses. Their entry and searches of premises are inevitable. Their constant contact with civilians, and presence at homes and businesses, necessitates continuous training regarding the legal standards of consent, exigent circumstances, and emergency circumstances.

Figure 17: Command of Subject Officers in Substantiated Allegations

Command at Time of Incident	Number of Subject Officers	Percentage of Total Incidents
Patrol Bureaus, including precincts	140	49%
Warrant Section	58	20%
Narcotics Borough Commands	45	16%
Detective Bureaus, including precinct detective squads	16	6%
Housing Bureau Commands, including Police Service Areas (PSA)	10	4%
Auto Crime Division and Gang Squad	4	1%
Emergency Services Units	4	1%
Intelligence Division	4	1%
Major Case Squad	1	<0%
Uniformed Promotions Training Unit	1	<0%
Technical Assistance and Response Unit	1	<0%
Vice Enforcement Squad	1	<0%
Number of Entries and/or Searches, or Failures to Show a Warrant by Subject Officers	285	100%

Figure 18: Assignment of Patrol and Housing Bureau Subject Officers in Substantiated Allegations

Assignment at Time of Incident	Number of Subject Officers	Percentage of Total Incidents
Patrol	63	22%
Anti-Crime	25	9%
Impact	17	6%
Conditions	8	3%
Platoon Commander	7	2%
Special Operations	6	2%
SNEU	4	1%
Domestic Violence	3	1%
Precinct Commanding Officer	2	1%
Auto Larceny Patrol	2	1%
Burglary	2	1%
Field Intelligence	2	1%
Cabaret Sergeant	1	<0%
Field Training Unit Supervisor	1	<0%
Housing Bureau – Warrant Enforcement	1	<0%
Noise Sergeant	1	<0%
Robbery Reduction Overtime	1	<0%
Search Warrant Supervisor	1	<0%
Shooting Reduction Overtime	1	<0%
Violence Reduction	1	<0%
Administrative Duty	1	<0%
Total Number of Unique Incidents	150	53%

Ranks of Subject Officers. The CCRB analyzed the ranks of 263 subject officers involved in the 297 substantiated allegations of premises entry, search, and failures to show a warrant (Figure 19). The largest group of subject officers were 111 police officers (39%). However, a significant number of subject officers were sergeants (70 officers or 25%) and lieutenants (25 officers or 9%) possessing supervisory authority over lower-ranking officers, and often ordering their officers to enter and search premises. In addition, 26% of subject officers possessed detective ranks and were supervisors in detective squads (74 officers).

Figure 19: Rank of Subject Officers in Substantiated Allegations

Rank at Time of Incident	Number of Subject Officers	Percentage of Total Incidents
Police Officer	111	39%
Sergeant	70	25%
Detective 3rd Grade	49	17%
Lieutenant	25	9%
Detective 2nd Grade	9	3%
Supervisor – Detective Squad	7	2%
Captain	5	2%
Detective 1st Grade	3	1%
Detective Specialist	3	1%
Lieutenant Commander Detective Squad	3	1%
Total Number of Unique Incidents	285	100%

Tenure and Complaint History of Subject Officers. The CCRB analyzed the tenure of 263 subject officers at the time of the substantiated incident of improper entry, search, or failure to show a warrant (Figure 20). Notably, only a very small number of officers had less than two years on the job. Significant numbers of subject officers possessed between five and ten years on the job at the time of improper entry or search. Large numbers of subject officers had over fifteen years on the job at the time of the improper entry or search. It is unclear why officers with long tenures engage in improper entries and searches, having received multiple trainings and legal bulletins regarding the law of entries and warrant execution procedures.

The CCRB also reviewed the complaint history of the subject officers at the time of the substantiated incident of improper entry, search, or failure to show a warrant (Figure 21). 50 subject officers (19%) had received twenty or more CCRB complaints at the time of substantiated incident of improper entry, search, or failure to show a warrant. Another 89 subject officers (34%) received between ten and nineteen CCRB complaints prior to the complained-of substantiated incident.

Figure 20: Tenure of Subject Officers at Time of Substantiated Incident (Years)

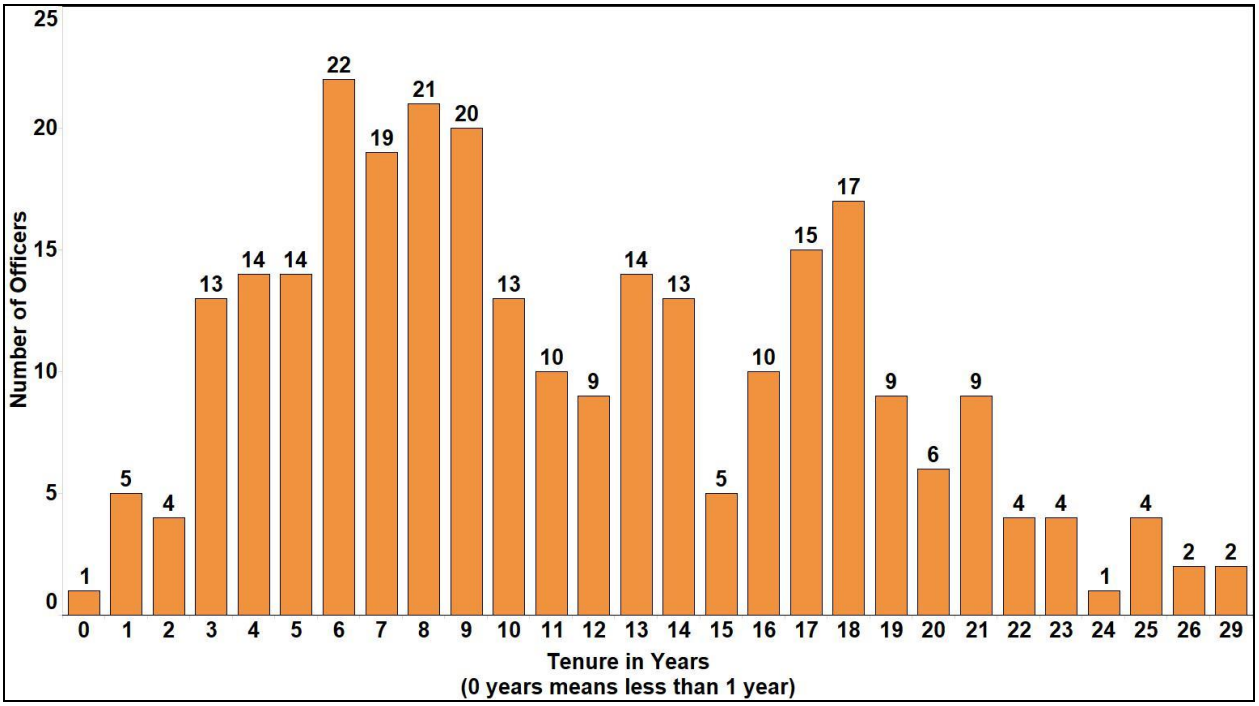
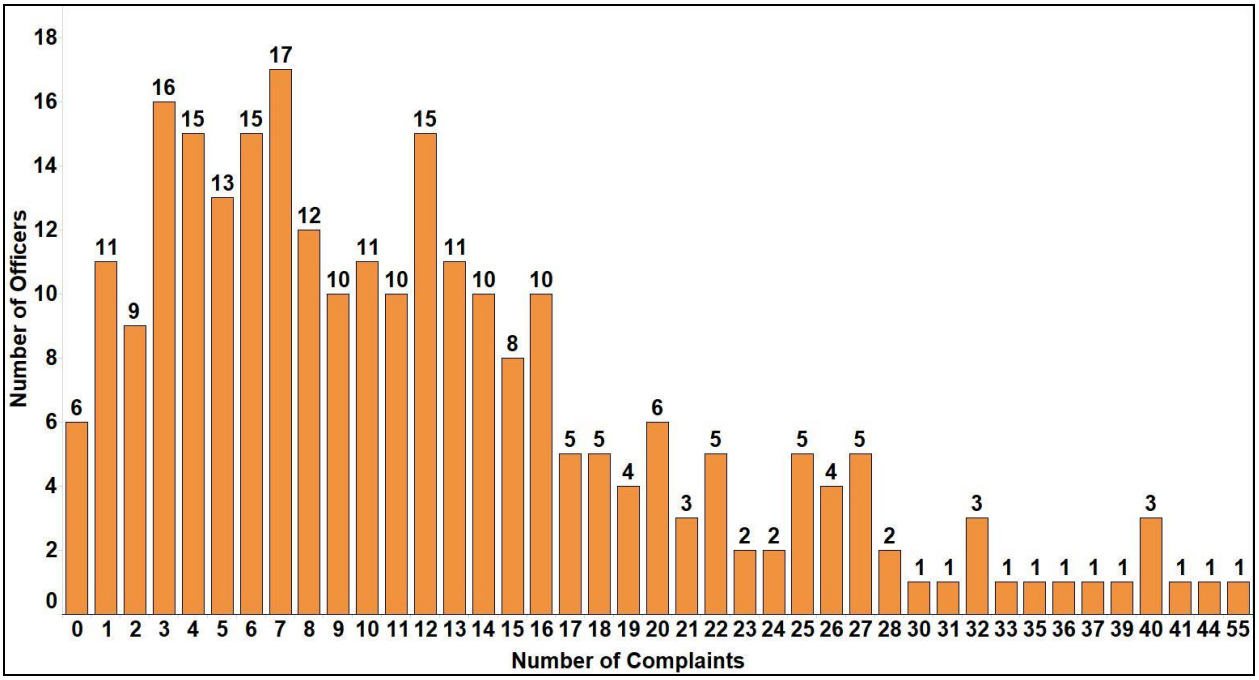


Figure 21: Number of Complaints before Substantiated Incident by Number of Subject Officers (#)



Subject Officers in Plainclothes. The CCRB analyzed how often plainclothes officers were involved in substantiated complaints. Of the 180 substantiated complaints, 101 complaints or 56% involved subject officers who were in plainclothes at the time. The designation "plainclothes" refers to subject officers who were not wearing uniforms at the time of the incident. These "plainclothes" officers do not include officers on an undercover assignment. Officers engaged in apprehension possess compelling reasons to wear plainclothes when they arrive at homes. Yet civilians often complain that strangers without uniforms banging on their doors at early morning hours and demanding entry leave them confused and frightened.

Several victims have told the CCRB that the appearance of plainclothes officers inside and at their homes did not provide them with the sense that lawful and appropriate procedures were being followed. One victim described the way in which narcotics officers tried to enter his apartment: "Three people were pushing in the [front] door. I didn't see no badges, no nothing, they didn't state they were police officers. . . I said, well this is a break-in robbery . . . these guys are breaking in and gonna rob me." A victim in another incident said that when she looked at her intercom one evening to see who had rung her bell, "They looked like teenagers, they had hoodies on, I didn't see any faces so I ignored it because I didn't know who it was." The officers later came up to the woman's apartment, and as she told the CCRB later, "They said to open the door, I said, Sir, I'm not going to open the door because they didn't look like police officers. They didn't have any uniforms on. They just looked like hoodlums to me."

Additional data would assist the CCRB in assessing whether the number of complaints it receives regarding conduct of plainclothes officers is consistent with the number of officers in the NYPD who have plainclothes assignments. With this data, one could examine whether an officer's plainclothes dress is a relevant factor in triggering a CCRB complaint.

Manner of Entry. The CCRB analyzed the manner in which officers entered the premises in the 164 complaints that were substantiated for improper entry (Figure 22). As Section Three details, civilians alleged that officers enter their apartments in a variety of ways, including using physical force to break or kick down doors, pushing past occupants to enter apartments, opening locked and unlocked doors, entering through open windows, and by placing their foot in the doorway. Many officers also used no physical force to enter residences. In some circumstances, the CCRB cannot make a finding regarding exactly how an officer enters a residence, even though it can establish improper entry. In cases where the CCRB could establish the manner of entry, the majority involved officers using some amount of physical contact, including force, to gain entry into an apartment.

Figure 22: Manner of Entry in Substantiated Entry Complaints

Manner of Entry	Number of Complaints	Percentage of Complaints
The CCRB found that the subject officers did not use physical force.	49	30%
The CCRB found that the subject officers used physical force against a person to enter the premises (including pushing past an occupant and pulling an occupant out of the premises).	37	23%
The CCRB found that the subject officers used physical force against the entryway door in order to enter the premises (including breaking and kicking the door).	25	15%
The CCRB did not make a finding about the manner of entry.	22	13%
The CCRB found that the subject officers used keys to open locked doors or opened unlocked doors to gain entry.	16	10%
The CCRB found that subject officers put their foot in the doorway, preventing closure of the door.	13	8%
The CCRB found that subject officers went through a window to gain entry.	2	1%
Substantiated Complaints of Entry	164	100%

Damage to Property Allegations. In the 180 complaints containing a substantiated allegation of improper entry and/or search or failure to show a warrant, 25 complaints or 14% also included an allegation that the officers damaged complainants' or victims' property. Damaged property ranged from broken doors, locks, and peepholes, to destruction of tables and other items inside an apartment during the course of a physical confrontation between the officer and civilian.

In a 2013 case, detectives from the Warrant Squad arrived at an apartment to apprehend the subject of an I-card who was wanted as a perpetrator. The I-card stated that there was probable cause to arrest him for assault in the second degree. The detectives stopped a child leaving the apartment, who confirmed that the subject of the I-card was his stepbrother and offered to get his brother from the apartment. The detectives followed the child to the apartment, but remained in the hallway, with one detective's foot placed on the surface of the door to keep it slightly ajar. An individual inside the apartment slammed the door, and refused to open it again.

The main detective admitted that he banged on the door and used his asp, but denied breaking down the door. Three of the occupants stated, in contrast, that officers broke down the door, using a black metal crowbar-like tool at the bottom of the door, causing it to bend into the apartment, and knocked out the peephole and the door until it hung off the hinges. The CCRB credited the occupants' narrative since the building management office documented the damage on an incident report from the same day, provided a receipt confirming that the entire door and associated parts were replaced, and filed a claim with the New York City Comptroller's Office.

Arrests after Improper Entry. The CCRB reviewed the 174 substantiated complaints of improper premises entry or search and found that, in 94 complaints or 54%, officers detained, arrested, or issued summons to individuals after illegally entering or searching private premises. Criminal charges associated with these arrests and summonses included disorderly conduct, obstructing governmental administration, trespassing, harassment, resisting arrest, assault, petit larceny, grand larceny, unreasonable noise, criminal possession of stolen property, unlawful possession of marijuana, an open alcohol container in public view, criminal sale and possession of a controlled substance, robbery, and assault.

In several instances, officers appear to have made the arrest because the occupants of the home resisted the officers' illegal entry. New York courts have found that individuals do not commit the crime of obstructing governmental administration when they refuse a warrantless, improper entry by police. *See People v. Rodriquez*, 19 Misc. 3d 302 (Crim. Ct. N.Y. County 2008). In one 2013 case, a sergeant assigned as a field training supervisor was driving down the street with other officers in a van when he saw a young man look into the front passenger window of a vehicle, but then run across the street in front of the police van after he noticed the officers. Believing a grand larceny auto crime possibly in progress, the sergeant had the officer driving the van to stop. The sergeant claimed that he saw the man grab the front of his waistband with both hands, even though the sergeant sat in the front passenger seat, the man was standing 8 feet away from the driver's side window, and the driver herself did not see the man grab his waistband. When the driver asked the man to come to the van, he said "no" and ran into a house. The sergeant followed, breaking through the front door with his gun drawn and knocking over a man in a wheelchair. The officers arrested the man for disorderly conduct, alleging that he began screaming profanities as he was led out of the house, and flailed his arms to resist arrest. No criminal charges were related to the underlying activity that the officers claimed to see.

Use of Force Allegations and Alleged Injuries to Victims. In the 180 complaints containing a substantiated allegation of improper entry and/or search or failure to show a warrant, 84 complaints (46%) also included a force allegation. These 84 complaints contained 212 force allegations that were fully investigated. Of the 212 fully investigated force allegations, 22 allegations (10%) were substantiated, 98 allegations (46%) were unsubstantiated, 43 allegations (20%) were exonerated, and 13 force allegations (6%) were unfounded. These force allegations comprised allegations of physical force (127 allegations or 60%), allegations of a gun

pointed, used as a club, or fired (39 allegations or 18%), allegations of pepper spray being used (12 allegations or 6%), allegations of a chokehold (9 allegations or 4%), allegations of a nightstick, asp, or baton or other blunt instrument being used (10 allegations or 5%), allegations of being hit against an inanimate object (5 allegations or 2%), allegations of a nonlethal restraining device, handcuffs being too tight, or other force (10 allegations or 5%).

In the 174 complaints containing a substantiated allegation of improper entry and/or search, victims in 41 complaints (24%) reported suffering an injury arising out of the officers' improper entry or search of their premises. These injuries ranged from pain, swelling, and bruising, to contusions and lacerations. In some cases, the CCRB obtained medical records corroborating these injuries. Some victims alleged that these injuries occurred when officers pushed them as part of the entry or search, while others alleged that the injuries occurred as officers arrested them inside their residences.

Discourtesy and Offensive Language Allegations. The majority of the substantiated complaints of improper entries, searches, and failures to show a warrant also contained an allegation of discourtesy by an officer on the scene. Of the 180 substantiated complaints, 157 complaints (87%) also included a discourtesy allegation, corresponding to 125 discourtesy allegations that were fully investigated. Of the 125 fully investigated discourtesy allegations, 20 allegations (16%) were substantiated, 89 allegations (71%) were unsubstantiated, 8 allegations (6%) were exonerated, and 8 allegations (6%) were unfounded. The 16% substantiation rate of discourtesy allegations within substantiated premises entry, search, and failure to show a warrant allegations is higher than the CCRB's overall substantiation rate of discourtesy allegations. Between 2010 and 2014, the substantiation rate of all fully investigated discourtesy allegations ranged from 3% to 6%, and in the first six months of 2015, the substantiation rate reached 9%.

Offensive language allegations were much less frequently raised within the substantiated complaints of improper entries, searches, and failures to show a warrant. Of the 180 substantiated complaints, 26 complaints (15%) also included an offensive language allegation, corresponding to 23 offensive language allegations that were fully investigated. Of the 23 fully investigated offensive language allegations, 3 allegations (13%) were substantiated, 19 allegations (83%) were unsubstantiated, and 1 allegation (4%) was unfounded. In the first half of 2015, 3% of all fully investigated offensive language allegations were substantiated, and the substantiation rate between 2010 and 2014 increased from 2% to 6%.

Presence of Notice of Claim or Civil Lawsuit. In the 180 complaints containing a substantiated allegation of improper entry, search, or failure to show a warrant, 7 complaints (4%) had a statement from the complainant or victim that a Notice of Claim with the Comptroller's Office related to the incident, or a civil lawsuit arising out of the incident, had been filed.

For example, in a 2013 case, officers noticed a man standing in an apartment building stairwell holding a red cup full of liquor. When officers approached the man to investigate the open container violation, he dropped the cup and ran into an apartment, pursued by officers. At the door of the apartment, a crowd of five people grabbed the man and an officer, pulling the man into the apartment, and pushing the officers out of the apartment. In arresting the man, the civilians alleged that officers punched a man and pushed a pregnant woman to the floor, leading to three people going to the hospital and two filing a notice of claim with the City for false arrest and excessive force.[78]

False Official Statements. In the 180 complaints containing a substantiated allegation of improper entry and/or search or failure to show a warrant, 14 officers were referred by the Board to IAB for further investigation of a potential false official statement. In addition, there were 2 instances where the Board noted Other Misconduct in the form of a false official statement, but exonerated or unsubstantiated the allegation of improper entry or search of premises. In all 16 instances, the false official statement noted by the Board was material to CCRB's investigation of the premises entry and search allegations. As described in Section Three, officers in these cases minimized or denied entering or searching premises as a way to avoid involvement in the misconduct. Other evidence—in the form of video footage, contradictory statements by other officers on the scene, and contradictory statements by civilians—provided the CCRB with a sufficient basis to note a potential false official statement by the officer.

In a November 2013 incident, officers activated I-cards for a pair of brothers, sought as perpetrators in a robbery. The robbery victim identified the first suspect by seeing a wanted poster for that person in the precinct and identifying him as one of the men who robbed him; the victim identified the second suspect by picking him out of mug shots. Officers arrived at the brothers' home, where their mother answered the door. The mother alleged that the officers pushed past her, immediately arrested one of her sons who was the subject of the I-card, and also arrested another one of her sons, who was <u>not</u> the subject of the other I-card. Entries made in the command log of the precinct showed that, initially, the names of the arresting officer and a supervisor who verified the arrests were written in the log. Yet both the officer and sergeant's names were crossed out and replaced with another officer's name; the latter officer denied crossing out the original names listed. The officer and sergeant whose names were originally written in the command log both denied being present at the apartment, denied arresting the two men, and denied writing their names in the command log. The Board substantiated the improper

[78] CCRB exonerated one officer's use of physical force against the pregnant woman because it was the minimum amount needed in light of the woman's interference in the arrest. Another force allegation was closed as officers unidentified. The final force allegation was closed as unsubstantiated because the victim pursued a claim with the Comptroller's Office and did not provide a CCRB statement. All officers denied punching or kicking any civilians; however, the victim's arrest photograph depicts a swollen upper lip and the command log at the precinct confirms that he was transported to the hospital from the precinct.

entry by these officers into the apartment, and also cited the officer and sergeant for other misconduct for making a false official statement to obscure their involvement in the incident.

Failure to Complete a Memo Book Entry. In the 180 complaints containing a substantiated allegation of improper entry and/or search or failure to show a warrant, 58 complaints (32%) had Other Misconduct Noted in the form of officers failing to complete an entry in their memo book about key aspects regarding their encounter with the victims. Memo book entries are key to CCRB investigations, because they assist the CCRB in identifying subject and witness officers, and documenting their movements and assignments each day.

Presence of Video, Audio or Relevant Photographs. Of the 180 complaints containing a substantiated allegation of improper entry, search, or failure to show a warrant, 30 substantiated complaints (17%) included video, audio, or photographs that depicted some aspect of the improper entry or search.

For example, in a 2014 incident, a borough narcotics team was engaged in a buy-and-bust operation, in which undercover officers observed two men making a hand-to-hand sale of marijuana at a particular intersection. The narcotics team apprehended the purchaser, but lost sight of the seller, who was on a bicycle at the time of the sale. After an hour canvassing for the seller, the undercovers notified the team that the complainant, who was riding his bike, was the seller. The team pursued the complainant and alleged that he ran into a basement apartment and locked the door. Surveillance video, however, depicted the complainant walking without hurry to the side door of the basement apartment, propping his bicycle against a table, looking for his keys in his pocket, unlocking and opening the side door, and then entering and closing the door behind him. The sergeant reached the door two seconds after the complainant closed it. Video then showed the officers forcing the door open with a Kelly Tool, a detective and sergeant entering the door, and then walking out with the complainant. The sergeant admitted pointing his gun at the complainant and his wife when he entered the apartment. The complainant alleged that the sergeant said, "Get the f--- on the floor," pushed him to the ground, and placed his foot on the side of his neck. A detective claimed that he entered a bedroom and saw an open shoebox with a bag of marijuana in plain view. The complainant was arrested and charged with criminal sale of marijuana in the fourth degree, and criminal possession of marijuana in the fifth degree, though the charges were eventually dismissed. The CCRB found that the officers lacked exigent circumstances to make forcible entry into the complainant's apartment, given the non-violent nature of the crime, no indication that the complainant was armed, and his casual entry into the apartment indicated that he was not fleeing. Moreover, the CCRB discredited the detective's claim that he saw marijuana in plain view upon entering a bedroom, since surveillance video showed him remaining in the apartment for over 13 minutes after the complainant was taken outside.

SECTION FIVE: DISCIPLINE AND PENALTIES IN SUBSTANTIATED CASES

The CCRB analyzed the type of discipline it recommended in substantiated cases of premises entry, premises search, and failure to show a warrant, along with final discipline and penalty imposed by the NYPD. Over the last five years, the CCRB has increased the number of cases where it recommends command discipline or formalized training as the appropriate discipline. While the CCRB has reduced the number and percentage of substantiated complaints in which it recommends charges and specification, its Administrative Prosecution Unit (APU) prosecutes many more of these cases than in prior years. In several cases, the Department's Deputy Commissioner – Trials has issued written decisions that align with the analysis of home entries reflected in CCRB closing reports. Ultimately, the penalties imposed by the Department after a successful prosecution reflects the Department's emphasis on progressive discipline.

After the CCRB substantiates a complaint, it sends its finding to the Department, along with a recommendation of the type of disciplinary penalty that should be imposed on the subject officer in the substantiated allegation. The CCRB's disciplinary recommendations to the Department are advisory in nature. The Board has three basic options when making disciplinary recommendations. The first form of discipline is to compel an officer to receive formalized training, instructions from a commanding officer or other mild forms of discipline. The second form of discipline is a command discipline schedule "A" or "B." These cases are forwarded to the subject officer's commanding officer for adjudication, and can result in the loss of up to five vacation days for a schedule A and up to ten vacation days for a schedule B. The third and most severe disciplinary option is the filing and service of formal administrative charges and specifications. This will launch a disciplinary administrative proceeding, and may lead to a loss of vacation days, probation, suspension, or dismissal. Officers may plead guilty prior to trial, or may be found guilty or not guilty after trial before an Assistant Deputy Commissioner – Trials. In all cases, the Police Commissioner possesses the final authority to approve or disapprove discipline, and decide the penalty to be imposed in cases of substantiated misconduct.

In 2012, the CCRB and the NYPD signed a Memorandum of Understanding allowing CCRB to prosecute cases in which it recommended charges and specifications. The CCRB's Administrative Prosecution Unit ("APU") began operating in April 2013 to carry out these prosecutions. Under the MOU, the Police Commissioner has the discretion to retain a case where charges have been recommended, though he must notify the CCRB and allow the CCRB an opportunity to contest this decision.

Between January 1, 2010 and October 1, 2015, the CCRB substantiated 180 complaints corresponding to 297 substantiated allegations of (1) premises entered and/or searched; and/or

(2) failure or refusal to show a warrant. There were 263 unique subject officers with substantiated allegations.

Over this period, the CCRB recommended Charges and Specifications in 174 substantiated allegations (59%) (Figure 23). Examining the year-to-year breakdown of disciplinary recommendations, charges and specifications were recommended as discipline for approximately 75% of allegations substantiated in the years between 2010 and 2014 (Figure 24). In the first nine months of 2015, however, the CCRB recommended charges and specifications in only 33% of substantiated allegations.

In 75 allegations (24%) substantiated between January 1, 2010 and October 1, 2015, the CCRB recommended some form of command discipline (Figure 23). Between 2010 and 2014, command discipline recommendations fluctuated between 13% and 24% of substantiated allegations (Figure 24). In 2015, however, command discipline recommendations jumped to 40% of disciplinary recommendations made by the CCRB.

The CCRB began recommending formalized training as a form of discipline in 2014. The CCRB has recommended formalized training in 27 allegations (26%) of those substantiated in the first nine months of 2015 (Figure 24). The CCRB decreased its recommendation of instructions to 1% of substantiated allegations in the first nine months of 2015.

In the 9 substantiated allegations of failure to show a warrant, the CCRB recommended Instructions in 2 allegations (22%); Formalized Training in 2 allegations (22%); and Command Discipline "A" for 4 allegations (44%). In the remaining substantiated allegation of failure to show a warrant, the subject officer was also found to have committed an improper entry into a home—the CCRB recommended charges for both substantiated allegations.

Figure 23: CCRB Disciplinary Recommendations in Substantiated Premises Entry, Search, and Warrant Allegations

CCRB Disciplinary Recommendation	Number of Substantiated Allegations	Percentage of Substantiated Allegations
Charges	174	59%
Command Discipline[79]	33	11%
Command Discipline A	24	8%
Command Discipline B	19	6%
Formalized Training	28	9%
Instructions	15	5%
No Recommendation	5	2%
Total Substantiated Allegations	297	100%

[79] This category refers to cases where the Board recommended "Command Discipline," but did not make a further recommendation for either Schedule A or Schedule B Command Discipline.

Figure 24: CCRB Disciplinary Recommendations By Year in Substantiated Premises Entry, Search, and Warrant Allegations

CCRB Disciplinary Recommendation	Number of Allegations Sub. In 2010	Number of Allegations Sub. In 2011	Number of Allegations Sub. In 2012	Number of Allegations Sub. In 2013	Number of Allegations Sub. In 2014	Number of Allegations Sub. 1/1/2015 and 10/1/2015
Charges	26	5	14	40	55	34
Command Discipline	6	1	5	12	10	41
Instructions	1	1	2	0	10	1
Formalized Training	0	0	0	0	1	27
No Recommendation	2	0	0	3	0	0
Total Sub. Allegations	35	7	21	55	76	103
% of allegations with Charges	74%	72%	67%	73%	72%	33%
% of allegations with Command Discipline	17%	14%	24%	22%	13%	40%
% of allegations with Instructions	3%	14%	9%	0%	13%	1%
% of allegations with Formalized Training	0%	0%	0%	0%	2%	26%
% of allegations with No Recommendation	6%	0%	0%	5%	0%	0%

Examining the NYPD's final disciplinary decisions in substantiated entry, search, and warrant cases indicates that the Department's disciplinary action rate is in line with its overall disciplinary action rate for all substantiated CCRB complaints. As of January 20, 2016, of the 297 substantiated allegations, the Department has informed the CCRB of its final disciplinary decision in 185 allegations (62%) (Figure 25). Of these 185 allegations, the Department imposed a penalty in 64% (or 118) allegations, and imposed no penalty in 36% (or 67) allegations. The Department's disciplinary action rate for substantiated complaints of all types in 2014 was 73%.

Figure 25: Police Department Discipline in All Substantiated Premises Entry, Search, and Warrant Allegations[80]

Discipline Imposed	Number of Substantiated Allegations	Percentage of Substantiated Allegations
Pending Final Discipline Decision	112	38%
Penalty Imposed (118 allegations – 40%)		
Instructions	44	15%
Formalized Training	19	6%
Guilty After Trial – Forfeit Vacation	13	4%
Command Discipline B	16	5%
Command Discipline A	13	4%
Resolved by Plea – Forfeit Vacation	7	2%
Reprimand	3	1%
Suspension	2	1%
Warned and admonished	1	0.3%
No penalty (67 allegations – 23%)		
No penalty – Department Unable to Prosecute	28	9%
No penalty – Not Guilty Decision after Trial	16	5%
No penalty – Statute of Limitations Expired[81]	13	4%
Retired	5	2%
Charges Dismissed by APU	3	1%
Retained, without discipline	2	1%
Total Substantiated Allegations	297	100%

[80] Data about the final penalties imposed by the NYPD are provided by allegation. This means that, even if an officer is not given a penalty for one substantiated allegation within a case, he or she may receive a penalty for another substantiated allegation within the same complaint.

[81] In twelve cases, the CCRB did not forward its findings and disciplinary recommendations to the Department until after the statute of limitations had expired. In the thirteenth case, CCRB forwarded its findings and disciplinary recommendations to the Department four days before expiration of the limitations period. All of these cases were substantiated in or before August 2014.

Analysis of Disciplinary Decisions in Administrative Proceedings.

The CCRB recommended charges and specifications as discipline for 174 substantiated allegations. The Department's decline to prosecute rate, disciplinary rate, and final dispositions should be assessed before and after April 2013, when APU began prosecuting cases in which Board panels recommended charges and specifications.

Prior to April 2013, the Department declined to prosecute 12 of the 52 allegations in which the CCRB recommended charges. The Department also imposed lesser penalties such as command discipline B in 7 allegations or instructions in 17 allegations. The Department's decline to prosecute rate in pre-APU charges cases was 23%, while its rate of imposing lesser discipline was 46%. The DAO prosecuted seven allegations (or 13%), culminating in a decision after trial (4 allegations) or plea agreement with subject officers (3 allegations). The DAO secured guilty verdicts for officers in three allegations and a not guilty verdict in the remaining allegation, for a conviction rate of 75%.

After April 2013, the Department no longer declines prosecution, but instead has the option to retain a case where charges have been recommended. The Department has chosen to retain two allegations without discipline, and six allegations with discipline (formalized training)—all of which arose out of incidents that occurred in 2013 and prior years (Figure 26). In addition, in November 2014 and again in September 2015, the Department set aside two pleas reached by APU with the subject officers. The incidents underlying both of these plea agreements occurred in 2012. APU initiated prosecutions against all subject officers, with the exception of one who retired, in charges cases arising out of incidents that occurred in 2014 and 2015.

The creation of APU, along with increased communication between the CCRB and the NYPD, has resulted in the prosecution of an increased percentage of subject officers. In addition, even though the CCRB has reduced the percentage of substantiated complaints in which it recommends charges, more of those cases are going to trial as compared to the years prior to the creation of APU. For example, this year alone four of the 34 allegations in which the CCRB recommended charges have been scheduled for or commenced trial, as compared to seven allegations prosecuted by the Department across the years of 2010 to April 2013. The APU has obtained guilty verdicts after trial for officers in 12 allegations, while not guilty verdicts were issued after trial for officers in 15 allegations, resulting in a 44% conviction rate.

In cases where officers forfeited vacation days as part of a plea agreement, the number of days forfeited ranged from two days to 30 days (Figure 26). Where officers were found guilty after trial, the Police Commissioner has imposed penalties ranging from a reprimand to forfeiture

of 10 vacation days. Administrative case law cited by Assistant Deputy Commissioners – Trials supports recommendations that officers with no prior disciplinary records receive a forfeiture of five vacation days as a penalty for improper entry and/or search. In a very recent case, however, an ADCT recommended only three vacation days as the penalty for an improper entry, noting another very recent Police Commissioner decision to impose that penalty upon a sergeant with no prior disciplinary record.

Figure 26: Police Department Discipline in Allegations with Charges Recommendation

Discipline Imposed by NYPD	Number of Allegations	Number of Allegations
Charges Served, in pre-trial stage	16	65 Allegations Pending (38%)
Charges Served, in trial stage	35	
Plea agreed to or filed, awaiting NYPD approval	10	
Charges Filed, Awaiting Service	4	
Guilty Decision After Trial – Warned and Admonished	1	63 Penalty Imposed (36%)
Guilty Decision After Trial – Reprimand	3	
Guilty Decision After Trial – Forfeit Vacation	11	
Resolved by Plea – Suspension	1	
Resolved by Plea – Instructions	1	
Resolved by Plea – Forfeit Vacation	7	
Resolved by Plea – Command Discipline A	2	
Plea Set Aside – Formalized Training	1	
Plea Set Aside – Instructions Issued	1	
Retained, With Discipline (Formalized Training)	6	
Suspension	1	
Command Discipline B	9	
Instructions	19	
No penalty – Not Guilty Decision after Trial	16	46 No Penalty Imposed (26%)
No penalty – Department Unable to Prosecute	12	
No penalty – Statute of Limitations Expired	8	
No penalty – Charges Dismissed	3	
No penalty – Retired	5	
Retained, Without Discipline	2	
Total Allegations Where CCRB Recommended Charges and Specifications	174	174

An examination of Deputy Commissioner guilty decisions at the conclusion of administrative trials demonstrates that the Department, at times, concurs with the reasoning by which the CCRB substantiated improper entries and searches. For example, the Department assesses whether valid was consent was given, and in cases where it has been, whether officers

remained within the scope of that consent. In one case, the Assistant Deputy Commissioner - Trials ("ADCT") found that an officer who entered a civilian's apartment using a key, despite her many refusals to open the door, did not possess valid consent to enter. In another case, an ADCT found a subject officer guilty of an improper search where the officer continued searching a civilian's apartment even after she repeatedly asked the officer to leave her apartment, thereby revoking her initial consent to enter.

Assistant Deputy Commissioners have also found that no exigent or emergency circumstances existed to support warrantless entry into private homes. In one case, the ADCT reviewed a situation involving entry to arrest the perpetrator of a domestic violence assault. The ADCT reviewed the factors set forth in *People v. McBride*, as well as two Department legal bulletins regarding warrantless entries of homes, and noted that the ultimate issue was whether an "urgent need" for the warrantless intrusion exists. The ADCT found no urgent need for immediate entry because there was no indication that the perpetrator was armed or that evidence related to the assault would be destroyed. In addition, the ADCT did not find any likelihood that the perpetrator would escape, especially because eight officers were on the scene. The ADCT noted that the scene could have been safeguarded until officers obtained proper authorization to enter the apartment. In another case, an ADCT rejected an officer's claim that he entered an apartment to look for a small child inside since, as the officer testified at trial, he did not hear anything signaling distress before he opened the civilian's unlocked front door.

In one important case, an ADCT addressed the complexity of the hot pursuit doctrine, as it arises from encounters based on reasonable suspicion or less than probable cause. The civilian victim in this case testified that, as she was leaving an apartment for dinner, she saw two men dressed all in black standing in the hallway. She asked the men if she could help them, but neither responded. She then stepped back into her apartment to avoid passing the men, who she found large and intimidating. As she tried to close the door, the men pushed it open, she fell to the ground, and an officer straddled her and searched her coat pockets. The officers testified that they had received a kite complaint about this apartment previously, and on the day of the incident, received a noise complaint regarding the occupants. One subject officer testified that, as the officers approached the apartment door, the civilian exited the apartment and asked them "what do you need," while holding what he believed to be an eight ball of crack cocaine. The officer concluded that the civilian was offering to sell him drugs, and so he pursued her into the apartment when she turned and went inside. The civilian was discovered to be holding a blue and white lollipop. The ADCT noted that the hot pursuit doctrine allows entry only where officers have probable cause to arrest an individual for a crime. The subject officers, however, did not possess probable cause to believe that the civilian was engaged in narcotics sale—since they only had a prior anonymous kite complaint, a noise complaint on the day of the incident, asked the civilian no questions about what she held in her hand, and saw nothing indicative of a drug sale at the apartment—and therefore had "no legal right to pursue" her into the apartment.

Finally, in a recent case, an ADCT examined a detective's conduct in light of the law requiring that entries into apartments pursuant to arrest warrants be based upon an officer's reasonable belief that the subject of the arrest warrant resides there. The lead detective entered the apartment of a civilian looking for her father, who was wanted on a bench warrant and open investigation card. The detective testified that he believed the father could be found in his daughter's apartment based on a number of factors, including statements made by the daughter and her mother, the presence of the father's car close to her apartment, and the use of an electronic benefits card nearby. The ADCT noted that the detective had not recorded many of these statements in complaint follow-up forms (known as DD-5s), and that checks of the car's location and use of the EBT card in the weeks leading up to the entry did not confirm the father's presence near his daughter's apartment. Given the lack of evidence indicating that the father lived in his daughter's apartment, the ADCT found the detective's entry and search into the apartment unlawful. In addition, the ADCT discredited the detective's testimony that the apartment door "swung open," and found forcible entry.

Not guilty decisions also turned on the crucial issues of consent, exigent or emergency circumstances, and the use of arrest or bench warrants to gain entry. Consent excused officers' initial entries into apartments or driveways surrounding a home in a few cases. In another case, the CCRB failed to prove by a preponderance of the evidence that the officers entered without consent. ADCTs have found emergency circumstances to allow entry where officers responded to a home alarm to investigate a potential burglary, or to resolve a potential domestic violence situation. Exigent circumstances were found to exist in a case where the ADCT credited the officer's testimony that the occupant of the apartment was engaged in narcotics sale, was likely to be tipped off about her accomplice's arrest, and sounds inside the apartment indicated that the occupant was trying to destroy contraband. In two cases, ADCTs found that the officers' actions—looking for medication and a knife used by an EDP, or retrieving a child from behind a closed bedroom door—did not constitute an improper search.

In two cases resulting in not guilty decisions, ADCTs assessed an officer's use of a bench or parole warrant to enter a home and found that the officers possessed a reasonable belief that the subject of the warrant resided in the premises and was present at the time of the entry. In one case, the ADCT credited testimony that a particular man lived with the mother of his sons based on the mother's domestic violence complaint filed a week prior to the entry stating that he "came home" and assaulted her. In another case, the ADCT found that officers possessed a reasonable belief that the subject of a parole warrant resided and was present within his mother's home based on his use of that address with the DMV and since members of his family resided there. In this case, and others, ADCTs have resolved doubts about the propriety of an officer's conduct by finding that the officer acted in good faith, and did not commit misconduct since he did not act intentionally or negligently.

Analysis of Disciplinary Decisions in Non-Charges Cases

In cases where the CCRB recommended command discipline, instructions, or formalized training, the Department accepted the CCRB's recommendation of command discipline in 15 (32%) of the 47 allegations decided by the Department. The Department accepted the CCRB's recommendation of formalized training or imposed a more severe form of discipline in 9 (90%) of the 10 allegations decided by the Department (Figures 27 and 28). The Department accepted the CCRB's recommendation of instructions or imposed more serious discipline in 7 (50%) of the 14 allegations decided by the Department (Figure 29). The Department's rate of agreement with CCRB's disciplinary recommendations this year cannot yet be determined, since a large number and percentage of substantiated allegations are pending final decision.

There were also five substantiated allegations where the CCRB made no disciplinary recommendations. In three allegations, the Department declined to pursue discipline. In one allegation, the Department issued instructions to the subject officer. In the remaining allegation, the Department served Charges and Specifications on the subject officers, obtained a guilty decision at trial and imposed a penalty of forfeiture of 30 vacation days.

The Department has made final disciplinary decisions in 3 of the 9 substantiated allegations of failures to show a warrant. The Department issued instructions in these 3 allegations.

Figure 27: Police Department Discipline in Allegations with Command Discipline Recommendation

Discipline Imposed by NYPD	Number of Cases
Pending Final Discipline Decision	28
Instructions	16
No penalty – Department Unable to Prosecute	8
Command Discipline A	10
Command Discipline B	5
Formalized Training	4
No penalty – Statute of Limitations Expired	3
Forfeit vacation	1
Total allegations Where CCRB Recommended Command Discipline	75

Figure 28: Police Department Discipline in Allegations with Formalized Training Recommendation

Final Penalty Imposed by NYPD	Number of Cases
Pending Final Discipline Decision	18
Command Discipline A	1
Formalized Training	8
Instructions	1
Total allegations Where CCRB Recommended Formalized Training	28

Figure 29: Police Department Discipline in Allegations with Instructions Recommendation

Final Penalty Imposed by NYPD	Number of Cases
Pending Final Discipline Decision	1
No penalty – Department Unable to Prosecute	5
No penalty – Statute of Limitations Expired	2
Instructions	5
Command Discipline B	2
Total allegations Where CCRB Recommended Instructions	15

SECTION SIX: A REVIEW OF EXONERATED, UNSUBSTANTIATED, AND OFFICER UNIDENTIFIED ALLEGATIONS

The CCRB reviewed exonerated and unsubstantiated allegations of premises entry, search, and warrant allegations in order to contextualize its findings in substantiated allegations. The CCRB can resolve most improper search and entry allegations on the merits as substantiated or exonerated. The presence of a valid warrant, or contemporaneous radio runs or 911 calls of crimes-in-progress, leads to the exoneration of most premises entry and search allegations. In contrast, failure to show a warrant allegations often involved conflicting statements between civilians and officers, where a preponderance of evidence does not exist to support either version of events. Accordingly, the majority of failure to show a warrant allegations remain unsubstantiated.

Exonerated Entry and Search Allegations

Between January 1, 2010 and October 1, 2015, the CCRB exonerated 1,527 allegations of premises entry and/or search, comprising 62% of all 2,465 such allegations. The CCRB reviewed these allegations by first isolating those that were exonerated because officers possessed a valid search warrant, valid arrest or bench warrant, or other valid court order authorizing entry into the premises. The CCRB then selected a random sample of the remaining 823 entry and search allegations—172 allegations—and determined the basis for the exoneration.

Almost 30% of all improper search and entry allegations were exonerated due to the presence of a valid warrant.[82] The existence of a valid search warrant or other legal authorization permitting a search on premises led to the exoneration of 591 (24%) of the 2,465 allegations of improper entry and search (Figure 30). Another 113 (or 5%) of all improper search and entry allegations were exonerated due to the existence of a valid arrest, bench, or parole warrant, or other legal order authorizing entry into premises (Figure 30). These 704 allegations corresponded to 663 complaints.

One reason why civilians file complaints regarding incidents where officers execute valid warrants may be a failure by the officers to show the warrant to the civilian. Of the 663 complaints in which officers possessed a valid warrant, 138 complaints (21%) included allegations that officers failed to show that warrant to the occupant.

The CCRB exonerated 823 (33%) of the 2,465 allegations of improper entry and search in situations where officers did not have a warrant (Figure 30). After reviewing a random

[82] Data on the total number of warrant executions during the period under review would allow one to determine whether a large or small proportion of warrant executions lead to civilian complaints.

sample consisting of 172 (21%) of these 823 allegations, the CCRB identified several bases for the exoneration. Sufficient exigent or emergency circumstances existed in 57% of the sampled allegations to justify the warrantless entry and/or search (Figure 31). Valid consent was given to authorize the warrantless entry and/or search in 26% of the sampled allegations. Officers were in hot pursuit of a suspect in 11% of the sampled allegations. In a small number and percentage of allegations, officers either conducted a valid protective sweep of the premises or entered to correct a noise violation. In another few cases, officers entered or searched an area, such as a common hallway, in which the complainant did not have a reasonable expectation of privacy.

Figure 30: Bases for All Exonerated Entry and Search Allegations

Basis of Exoneration	Number of Exonerated Entry and Search Allegations
Entry and Search Conducted Pursuant to Valid Search Warrant, Probation Search, or Liquor Inspection	591
Entry Conducted Pursuant to Valid Arrest Warrant, Bench Warrant, Parole Warrant, or Court Order	113
Entry and Search Permissible Pursuant to Warrant Exception or Other Reason	823
Total Exonerated Allegations	1,527

Figure 31: Bases for Exoneration in Sample of Exonerated Allegations

Applicable Warrant Exception	Number of Allegations	Percentage of Sample
Exigent or Emergency Circumstances Present	98	57%
Valid Consent to Entry and Search Provided by Occupant	44	26%
Hot Pursuit Doctrine Applicable	19	11%
Officers Entered or Searched Area where Occupant Had No Reasonable Expectation of Privacy	6	3%
Officers Conducted Appropriate Protective Sweep of Premises	3	2%
Entry to Correct Noise Violation	2	1%
Total Allegations Sampled	172	100%

The CCRB found that the occupant had provided consent to enter and/or search premises in a numerous cases. Some of these cases involved implied consent, such as an individual opening the door and walking away, allowing the officers to enter the home. Other cases involved a signed consent to search form. Officers obtained a signed and valid consent to search form in 16 of the 44 allegations of improper entry and/or search (corresponding to 11 cases) exonerated because of valid consent.

Exigent and emergency circumstances are generally found by the CCRB when officers enter an apartment during the course of their response to a call of a crime-in-progress, or to address a situation involving an emotionally disturbed person. For example, in a 2014 case, officers responded to an apartment from which an occupant had called 911 to report that a man was holding them at knifepoint. When officers arrived at the home, the occupants refused to open the door despite numerous commands to do so over several hours. Officers called for an Emergency Services Unit team and a Hostage Negotiation Team, and eventually broke down the door to arrest the perpetrator and ensure the safety of two young children inside. In a 2015 case, a man who had just been stabbed inside an apartment called 911 as he left it. Officers responded to the apartment, and arrested the perpetrator outside in the hallway. Seeing blood on the floor, officers also entered the apartment and checked all the rooms to confirm there were no other injured victims inside.

Officers also are called upon to investigate whether an EDP should be taken to the hospital. In a 2015 case, officers responded to a 911 call stating that a woman with a history of mental illness was acting violent inside an apartment. In another case, officers pushed their way into an apartment after the occupant called 311 and said she would either kill herself or someone else. Other emergency situations where warrantless entry was permissible included investigation of a medical alert, a drug overdose, children crying or in distress inside an apartment, a water leak, and a broken boiler in winter.

In a few instances, officers responded to a call of shots fired. In a 2012 case, officers received a radio run generated by a 911 call that shots had been fired on the second floor of a particular address. Officers responded within four minutes to that address, went inside the building and to the second floor, and entered an apartment with their guns drawn. The CCRB found that the existence of a potential violent crime, the likelihood that the suspect was armed, and the likelihood that the suspect was still at the apartment when the officers arrived, all gave officers exigent circumstances to enter the apartment.

The CCRB has found in a few cases that officers' immediate entry into an apartment to seize narcotics and apprehend those involved in drug sales was justified by exigent circumstances. In a 2015 case, a borough narcotics team engaged in a buy-and-bust operation.

The undercover officer reported to the team that she had been taken to a house, where she obtained heroin and saw marijuana being packaged on the ground floor. The undercover argued back and forth with the occupants of the house about her identity and whether she was a police officer. After she left, officers entered the house, seized narcotics, and arrested the sellers. The CCRB found exigent circumstances primarily because the occupants suspected that the undercover was an officer, leading to a likelihood that they would destroy the contraband and escape.

Hot pursuit is applied to exonerate an allegation when the investigation reveals that officers initiate an arrest based upon probable cause in public and then pursue an individual continuously into a residence. In a 2014 case, officers witnessed two men in a physical fight. When the officers approached, one man fled, ran to his house, scaled a metal gate and entered the house through the back entrance. Officers chased him to the house, knocked on the front door, and entered it past the man's aunt in order to apprehend the man.

Unsubstantiated Entry and Search Allegations

Between January 1, 2010 and October 1, 2015, the CCRB unsubstantiated 493 or 20% of all 2,465 allegations of improper entry and/or search. The CCRB reviewed a sample consisting of 145 allegations (29%) of these 493 unsubstantiated allegations. The 145 sampled allegations corresponded to 91 complaints. As with all unsubstantiated complaints, the CCRB did not have a preponderance of the evidence to come to a conclusion about a material issue in the incident. For example, in some cases, the dispute was over the entry itself—the civilians alleged that officers entered their residences or stuck a foot in the doorway, while officers denied it. In other cases, the dispute centered over the occurrence or scope of search. Civilians alleged that they saw officers opening cabinets, looking in closets, going under mattresses and conducting other types of searches, or that they found their items in disarray, suggesting that officers did so. In contrast, officers denied conducting a search and, in cases where guns or drugs were recovered from a residence, claimed to find the contraband in plain view.

Thirty-three (33) of the 91 complaints arose from incidents involving disputed consent—the civilians denied providing consent, while the officers claimed that they had consent to enter and/or search. Among these thirty-three complaints involving disputed consent, officers obtained a signed consent to search form in only three complaints. In the remaining thirty complaints, officers did not obtain a signed consent to search form. In sixteen complaints, subject officers were assigned to commands that, pursuant to the Department's Operations Order, were required to obtain a signed consent to search form.

Among all 493 unsubstantiated allegations, officers obtained a signed consent to search form in only seven complaints. The existence of a signed consent to search form did not exonerate the officers involved in these incidents for a few reasons. In one case, officers

presented and obtained a signed form after they had already conducted a search. In two other cases, officers and civilians had different accounts of whether the officers entered before or after they obtained the signed form. In three cases, the civilians admitted signing a consent to search form, but said they did so only because officers threatened to arrest them or contact ACS if they did not. In the final case, the civilian alleged both that she was presented with the form after a search of her apartment had already occurred, and signed it only because the officer on the scene told her she would lose her apartment if she did not—which the officer denied doing.

Failure to Show a Warrant Allegations

The CCRB unsubstantiated 116 (66%) of the 175 failure to show a warrant allegations decided between January 1, 2010 and October 1, 2015. The CCRB reviewed a sample consisting of 37 (32%) of these 116 unsubstantiated allegations. Civilians alleged, in these cases, that they requested to see a search warrant, but that the officers at their residence either did not show it to them or affirmatively refused to do so. Officers, in contrast, allege that they either did not hear a civilian make a request to see a warrant, that they actually did show the civilian the warrant, or that they could not recall whether or not they showed the civilian the warrant. Without additional evidence to resolve the dispute between the civilians' and officers' accounts, the CCRB could not substantiate the allegation.

The CCRB exonerated 4 (2%) of the 175 failure to show a warrant allegations. In one, a civilian alleged that a particular officer on the scene did not show her a search warrant when she asked to see one. The CCRB determined that this officer did not possess the warrant, and therefore exonerated the allegation against him. In another case, the CCRB concluded that, given the dangerous nature of the warrant execution, officers were not required to show the warrant to the civilian immediately when she asked for it, but did offer to show it to her later.

"Officer Unidentified" Complaints

Of the 1,762 complaints containing allegations of premises entered and/or searched, or failure to show a warrant, 125 complaints (7%) had 128 allegations disposed of as "Officer Unidentified." The CCRB reviewed 26 complaints that had allegations of premises entry, search, or failure to show a warrant that were closed as "Officer Unidentified" in 2014. There were three main reasons why the CCRB was unable to identify the officers involved in these allegations. First, discrepancies among NYPD documents prevented identification. Second, the civilian complainant did not actually witness the officers who entered or searched the premises, and only saw the aftermath of the entry or search. Therefore, the complainant was unable to provide a description of the subject officers. Third, the civilian was unable to recall or provide enough information or pedigree descriptions about the officers, and the CCRB was unable to identify them either.

SECTION SEVEN: CCRB RECOMMENDATIONS

Recommendations to the NYPD on the issue of entries and searches on premises are guided by the nature of law enforcement activity at homes and businesses, and the specific failings noted in substantiated complaints. The initial, and often dispositive, issues are why an officer decides to enter a home, and how he or she chooses to do so. The lack of exigent and emergency circumstances, the improper use of investigation cards and warrants issued years earlier, the misunderstanding of the hot pursuit doctrine—all lead to unlawful entries into constitutionally-protected spaces. In addition, consent obtained through physical force, coercion, threats, or other improper means, or not even obtained at all, violates basic legal principles. The illegality of such intrusions is compounded where an officer kicks, breaks, or bangs down the front door to a home. Yet what an officer does inside a home often matters just as much as how he or she entered the home. Where officers use physical force against residents, arrest them, search beyond the scope of consent, seize or damage property, point guns at occupants, and otherwise act discourteously, they leave themselves open to complaints of misconduct even if their initial entry was justified.

Recommendation 1: The Department should record, as part of its body-worn camera program, all non-exigent home entries (and, when possible, all home entries) to document their propriety. The Department should craft rules to protect privacy if entry videos are released.

Video recording inside civilian homes pose serious implications for an invasion of a civilian's privacy. Where a civilian's Fourth Amendment rights are violated through an improper search and entry, additional intrusion through the use of surveillance technology compounds the injury. In addition, the storage of and access to footage of a civilian's home—even weeks and months later, for unrelated law enforcement purposes—is a crucial factor in whether the advantages of body-worn cameras inside the home are outweighed by the risks of misuse. Yet CCRB would be remiss if it did not note the value that video recording has to its investigative work, and the crucial role it can play in resolving allegations of officer misconduct.

In December 2014, the Department launched a pilot program equipping certain patrol officers with body-worn cameras. These cameras possess the capability to record both audio and video of civilian encounters with police. Under Operations Order 48, governing the use of body-worn cameras, officers are required to record certain categories of encounters, and have discretion to record encounters that do not fall within the mandatory categories.[83] Some of the mandatory categories are ones that implicate officers entering, searching, and being present inside homes. For example, officers are required to record stops of civilians based upon

[83] *See* NYPD, Operations Order No. 48, "Pilot Program – Use of Body-Worn Cameras" at 2 (Dec. 2, 2014).

reasonable suspicion—if a civilian flees, officers have pursued those individuals into homes. Next, officers are required to record encounters where individuals commit a summons-able offense. Several instances of improper home entries arose from officers encountering individuals engaged in drinking in public view, or other minor offenses. Officers are also required to record "all interior vertical patrols of non-Housing Authority buildings and Housing Authority buildings." Again, several CCRB complaints of improper entries and searches arose during the course of an officers' vertical patrol of a NYCHA building. Finally, officers are required to record all use of force incidents, which arise not infrequently during the course of a home entry.

While Operations Order 48 instructs officers not to activate their body-worn cameras in "[p]laces where a reasonable expectation of privacy" exists, the CCRB recommends that the Department use body-worn cameras to address three distinct issues that arise in the context of home entries. The Board passed a resolution in October 2015 calling on the NYPD to equip members of service that conduct home entries with body-worn cameras.

First, the video recording may illuminate the circumstances that lead to officer entry into premises. This includes recording of any exigent or emergency circumstances that may exist—such as noises or visual observations—that justify a warrantless entry. In addition, video can be used to document verbal consent provided by an occupant, or the occupant's actions that provided the officer with implied consent. Video can also capture the verbal exchange between officers and civilians that lead to consent. Officer threats, representations regarding a warrant, and discussion of an investigation card are all crucial factors in determining whether consent was voluntary. Finally, video may capture the facts and circumstances that provide an officer with probable cause to initiate a hot pursuit of a suspect into a residence.

Second, body-worn cameras can shed light on how officers gain entry into homes and businesses—through physical force, such as pushing a civilian or kicking down a door, or going through an open window. How an officer gains entry is often an important element in determining whether consent is valid, or exigent circumstances are present.

Third, video recording of an officers' actions inside a home may be useful, though it also raises the most privacy concerns for citizens. Recording what occurs during the course of an entry and search of premises assists in resolving the scope of an officers' search, as well as whether the officer used force, discourtesy, or offensive language—allegations that frequently accompany those of improper entry and search. Body-worn cameras can also document that officers show civilians a search warrant affirmatively, or an arrest warrant upon request. Officers who find contraband inside a home in plain view can document that discovery with body-worn cameras, and avoid challenges to their conduct in both criminal proceedings and CCRB complaints. Also crucial is the civilian's conduct inside the home. Civilians were arrested, detained, or issued a summons after an officer's improper entry or search in more than

half of the substantiated complaints. Video would assist civilians and officers in proving the existence, or lack, of probable cause.

Recommendation 2: The Department should expand its current policy regarding the consent to search form and require all officers in the Department to use the form absent exigent or emergency circumstances.

Currently the Department requires only officers assigned to investigatory commands or units, including the Detective Bureau and OCCB, to use a consent to search form whenever they want to enter a "particular location" to seize property or a person. The Department should expand this policy to require *all* officers to document consent to enter or search a location, absent exigent or emergency circumstances.[84]

Expanding the policy to include all officers not only safeguards the rights of civilians, but also may result in the exoneration of misconduct allegations. 42 (24%) of the 174 of substantiated complaints of improper entry or search involved situations where consent was the dispositive—and disputed—issue. Although the CCRB found a preponderance of evidence in these cases that no consent was given, if a signed and valid consent to search form had been present, those cases may have been exonerated. In addition, a signed consent to search form provides evidence for officers and districts attorney in court where arrests and seizures of evidence are challenged on the basis of an officers' unlawful entry and search in a home.

The consent to search form also removes ambiguity from situations where a civilian's actions—such as stepping away or walking away from a door—constitute implied consent. Officers no longer have to guess, nor are civilians forced to explicitly protest, in order to establish consent. Indeed, over a third of the sampled unsubstantiated complaints were ones where consent was disputed, and a signed consent to search form may have allowed a finding on the merits.

Apart from expanding this policy, the Department should reinforce the current Operations Order it has in place by reminding officers that the consent to search form should be signed *prior* to entry and search of a location, not simply instances where the search yields something of value. Where the consent to search form is signed *after* the entry and search takes place it has less probative value in documenting that the civilian provided consent prior to the entry and search. In addition, officers should be reminded that threats cannot be used to gain a civilian's signature. Indeed, officers should be reminded in their training materials and other written directives that threats unsupported by probable cause, or exigent or emergency circumstances, are improper. Moreover, consent is rendered invalid by misrepresentations that an officer

[84] The New York City Council is considering a bill that would require officers conducting consent searches in any context, including home entries, to inform the person being searched that the search is consensual and that he or she has the right to deny or withdraw consent. The bill would also require that officers document consent through an audio or signed record, and provide proof of consent to the person searched. *See* Int 0541-2014.

possesses a warrant when they do not—including situations where officers have only an investigation card.

In addition, the Department's current Operations Order and consent to search policy should be incorporated into the Patrol Guide. Not only would this remind officers of the existence of the policy and the procedures to be followed, it would allow the Department to cross-reference other key Patrol Guide sections. For example, the Patrol Guide currently requires that language assistance be provided to limited English proficiency ("LEP") individuals in a number of instances. One such instance should be where an individual is presented with a consent to search form to sign.

While the CCRB has noted "Other Misconduct" in only two instances for an officer's failure to obtain a signed consent to search form, many other subject officers in improper entry and search complaints failed to do so. Going forward, CCRB investigators will be reminded to determine whether the Department's current Order requires a subject officer to have obtained a signed consent to search form. Where officers were required to do so, but did not, the CCRB will refer this as "Other Misconduct" to the Department for further investigation.

Recommendation 3: The Patrol Guide should be revised to contain a stand-alone section on the law of search and seizures at homes and businesses.

The NYPD Patrol Guide contains separate sections on the law of arrests and the law of searches for evidence, with some indication of how these two bodies of procedure intersect with homes and businesses. A stand-alone section in the Patrol Guide setting forth the basic law of search and seizure at homes and businesses is necessary to consolidate applicable legal doctrines, the exceptions to the warrant requirement, and related police procedures.

As an initial matter, the Patrol Guide should contain a new section that begins with the *Payton* rule: absent consent or exigent circumstances, arrests and searches in homes must be conducted pursuant to probable cause and a warrant. The section should distinguish between homes and businesses, and provide the factors under which searches and entries of the latter are improper. Further, this section should set forth the legal standards for voluntary consent, the Department's consent to search form, and the factors used to assess whether exigent or emergency circumstances are present. This section should discuss the hot pursuit doctrine, and that officers may pursue an individual into a home only if they have probable cause to support the arrest in public. Reasonable suspicion can justify an officer's pursuit of a fleeing individual in a public place, but not entry into a private place. As it stands, no section of the Patrol Guide contains this guidance for officers. In addition, this section should incorporate the standards contained in Patrol Guide 208-42 that officers must obtain a search warrant in order to execute an arrest warrant at a third-party residence. This section should also incorporate the plain view doctrine contained in Patrol Guide 212-75, and expand upon it to describe the circumstances allowing entry when officers outside the home observe contraband in plain view inside the home.

Other revisions to the Patrol Guide are warranted. Patrol Guide 208-23 on Investigation Cards should be revised to state the circumstances under which officers should go to homes in order to look for the suspect of an investigation card. This section should also clearly state that investigation cards are not warrants, and carry no authority in themselves for an officer to enter a home.

At least two other police departments with model polices contain sections in their departmental policy and procedure manual that contain, in one place, the legal rules applicable to searches and seizures generally, not simply the procedures of how search or arrest warrants can be obtained and should be executed. These policies clearly state the warrant requirement for searches and seizures, including those on premises, and then outline clearly the exceptions to the warrant requirement. These policies incorporate both the law and the procedure, so that officers can proceed from the law regarding searches and seizures on premises to the appropriate procedures for obtaining a warrant, and how it must be executed at a home or private area of a business. At least one jurisdiction requires officers to document consent to a search on a department consent to search form.

The Seattle Police Department Manual clearly states "searches and seizures generally must be made pursuant to a warrant."[85] Officers "bear the burden" of documenting that an exception to the warrant requirement applies. The Manual outlines the legal standards for the various exceptions to the search warrant requirement, including consent, exigent and emergency circumstances, and the plain view doctrines. Officers who use the "consent" exception to the warrant requirement are required to document the consent using a "consent to search form," or, if the form is unavailable, a department authorized recording device.

The Minneapolis Police Department's Policy and Procedure Manual contains a section regarding "Search and Seizure."[86] This section outlines the relevant legal rules and department procedures applicable to searches of persons, searches of vehicles, and searches of dwellings and buildings. In the last category, the Manual clearly states:

> "A search warrant is always required to search dwellings and non-public areas of buildings, absent consent or exigent circumstances. Without a search warrant, officers may legally search a dwelling or building in the following circumstances:
>
> a. Hot Pursuit;
> b. Protect and Preserve Life;
> c. To Prevent the Destruction of Evidence;
> d. Serving an Arrest Warrant;
> e. Consent Search."

[85] Seattle Police Department Manual POL-6.180 (eff. Date 1/1/2015).
[86] Minneapolis Police Department, Policy and Procedure Manual 9-200, Search and Seizure.

Recommendation 4: The Police Student's Guide should be revised to contain a stand-alone section that addresses the *Payton* rule as it applies to searches and seizures generally.

The Department's training material should be revised to explicitly note that entries to investigate crimes and complaints at homes need a warrant, absent exigent or emergency circumstances or consent. Warrants should not be listed as the last option available for officers if they cannot first gain consent or establish exigent circumstances to gain entry into premises. Troublingly, the Police Student's Guide leaves officers with the impression that they should try to establish exigent circumstances to gain entry, as opposed to noting that the warrant requirement is primary, with exigent circumstances permitting entry only in certain, limited circumstances. Training materials should provide examples of what constitutes an exigent or emergency circumstance, and what does not. Routine investigations of crimes that have already occurred and are not currently in progress at the time the officers arrive at the residence generally do not provide exigent circumstances to enter residences.

Regarding consent, officers should be instructed on the use of threats to gain consent to enter and search a home or business. Training material should explicitly describe the plain view doctrine, and provide examples of where the plain view doctrine **does not** allow entry without a warrant, consent, or exigent circumstances. Concurrent with revisions to the Patrol Guide, officers should be explicitly told that:

- Officers can pursue a fleeing individual only if they have reasonable suspicion that the individual has committed, is committing, or will commit a crime. Reasonable suspicion, however, does not permit entry into a private home.
- If officers enter a private residence in pursuit of an individual, they must possess **probable cause** that the individual committed a crime.
- The hot pursuit doctrine only allows entry into a home if the officer initiated the arrest outside of the home.
- Officers should not pursue individuals into a home for a violation.

For borough narcotics commands and officers assigned to street narcotics enforcement units, training on the standards for probable cause versus reasonable suspicion is crucial. As is training on the presence of drugs and contraband providing exigent circumstances for entry and searches into homes. Generally, the mere existence of a drug-related crime or the presence of narcotics is insufficient to justify a warrantless entry or search of a home.

For members of the Warrant Squad and Detective Bureau, officers should be reminded of that an arrest or bench warrant can only be executed at a home if they possess a reasonable belief that the subject of the warrant resides and can be found inside. In the case of warrants issued several months or years earlier, certain investigative steps must be taken in order to form a

reasonable belief that the subject of those warrants still lives at a particular dwelling. This is especially important when warrants issued several months or years earlier are used to enter homes looking for a different person for whom only an investigation card has been issued. The Department should consider, if it does not have it already, establishing a protocol for such investigative procedures before warrants issued several months or years before are executed at homes. Introducing such guidelines is especially important in light of the over 1 million open warrants in New York City, some of which were issued in the 1970s.[87]

In all arrest warrant investigations and apprehensions, officers should take reasonable steps to confirm that the subject of a warrant resides in and is present in the home to be entered. In warrant sweep situations, officers should confirm the validity of open warrants to avoid the appearance of using invalid warrants as a pretext to investigate other criminal conduct.

In addition, the Department should examine how officers use its investigation card system in order to apprehend suspects at homes, in light of the numerous CCRB complaints involving investigation cards. An analysis of the complaints involving I-cards reveals that, in many instances, subject officers had time to obtain an arrest warrant prior to arriving at an individual's residence. It is unclear why officers do not obtain arrest warrants when they have sufficient time to do so. Relying only upon investigation cards invites illegal conduct—civilians are confused about what an I-card is and may consent to entry based on a misrepresentation or misunderstanding that it is a warrant. Officers who arrive with only an I-card and see the suspect inside an apartment may feel compelled to arrest the person even knowing they need, but do not have, an arrest warrant. The Department should outline situations where officers can arrive at a home with only an I-card, and where officers should first obtain an arrest warrant.

Recommendation 5: The Department should make a series of roll-call announcements reminding officers of the requirements of Patrol Guide 214-23 regarding noise violations.

A number of complaints arise from situations where officers respond to noise complaints or hear excessive noise from a home. These situations often require officers to address groups of civilians, who may be angry at the officers' presence, and refuse entry. Officers who enter homes to address noise violations often become involved in chaotic, violent encounters, resulting in physical injury to both the officers and the civilians. Patrol officers should be reminded that Patrol Guide 214-23 requires them to request that civilians cure the loud noise, and that entry to correct a noise violation should be done only as a last resort. In addition, entry must be approved by a precinct commander or duty captain.

[87] Al Baker, "Brooklyn Program Erasing Warrants for Low-Level Offenses," N.Y. Times, Oct. 7, 2015 at A24, *available at* http://www.nytimes.com/2015/10/08/nyregion/in-brooklyn-an-effort-to-erase-warrants-for-low-level-offenses.html?_r=0 (last visited Nov. 6, 2015).

Recommendation 6: The Department should analyze CCRB data on complaints arising from executions of valid search warrants. The Department should clarify the Patrol Guide and assign the obligation to show a search warrant to a particular officer.

As detailed in the body of the report, 704 (29%) of the 2,465 allegations of improper entry and search were exonerated because a valid warrant or court order authorized the officers' conduct. Despite the presence of valid court authorization, and the officers' compliance with the law, civilians believed something about the officers' behavior was troublesome. Such a high proportion of complaints related to valid warrant executions may be explained simply because civilians will be upset whenever a government official intrudes in their home. Or, civilians may be upset by particular warrant executions—either because the officer failed to show them the warrant authorizing entry and search, or because the officer engaged in some other concerning behavior (e.g., pointing a gun, using force, discourtesy). The Department could test these theories by comparing the total number of search and arrest warrant executions it conducts every year with the number of CCRB complaints that arise from these incidents. If only a limited percentage of search and warrant executions lead to CCRB complaints, the Department should analyze the circumstances in the executions that triggered the complaints.

The data analyzed in this report points to a correlation between allegations of failure to show a warrant and the allegations improper entry and search exonerated due to the presence of a valid warrant. Historically, the CCRB has substantiated allegations of a failure to show an arrest or search warrant if a civilian makes a request to see a warrant, an officer hears that request, and no officer shows the civilian a warrant. However, the Patrol Guide section relating to search warrants makes no mention that an occupant must request to see it, and instead states that officers "shall" show occupants a search warrant if they can do so safely. This provision contrasts with the Patrol Guide section on arrest warrants, which requires officers to show an arrest warrant only upon a request from a civilian.

The Department should revise the Patrol Guide to assign to a particular officer the affirmative responsibility of showing a search warrant to a civilian, or the responsibility of showing an arrest warrant upon request. The Patrol Guide already contains Section 212-106 on Search Warrant Post-Execution Critique, which requires a captain or higher-ranking officer to prepare a written critique of a search warrant execution.[88] Among the issues to be included in the assessment are whether any problems were encountered during the execution, any persons arrested, damage incurred, evidence seized, and "any other pertinent information." This Section could be amended to require the captain to confirm that the occupants were shown the search warrant, or explain why the officers were unable to do so safely.

[88] NYPD Patrol Guide 212-106, Search Warrant Post-Execution Critique (eff. 8/1/2013).

Going forward, the CCRB will plead and analyze the allegation of failure to show a search warrant against the officer assigned to have possession of the warrant on the scene, or the officer in command of the entry. In addition, the CCRB will analyze failure to show a *search* warrant allegations irrespective of whether a civilian made a request to see the warrant.

Recommendation 7: The penalties imposed by the Department on officers who improperly enter and search homes should deter future misconduct and reflect the serious harms suffered by civilians.

The Department should impose penalties upon subject officers who improperly enter and search homes and businesses by determining what level of penalty will deter those officers from engaging in similar conduct in the future. At a basic level, formalized training in a classroom setting is essential for officers to understand the correct legal standards regarding searches and seizures on premises. To reflect the Department's preference, however, the CCRB can only recommend a single penalty for subject officers, rather than dual penalties—for example, a recommendation of command discipline and formalized training. In cases where CCRB panels recommend charges or command discipline, this means that subject officers may not receive any of the training necessary to guide an officer encountering similar situations in the future. And in cases where officers are found not guilty after trial, they will not receive training. Yet, even though an officer's conduct did constitute misconduct, the need to instruct the officer of the correct legal standards for search and seizure on premises may remain. The CCRB calls upon the Department to allow dual penalty recommendations so that officers may receive training necessary for the daily practice regardless of whatever other discipline they may, or may not, receive.

Similarly, the Department should accept recommendations from the CCRB that certain officers undergo retraining, even when they are not found to have committed misconduct. For example, in some incidents, subordinate officers act at the direction of their superior officers to enter and search homes and businesses improperly. Generally, the superior officers will be the ones held responsible for the improper conduct, and receive disciplinary recommendations for formalized training, command discipline, or charges and specifications. The subordinate officers will not have a substantiated allegation against them since they acted at the direction and command of their superior officers. While this practice accommodates the clear obligations that subordinate officers have to follow their superior's orders, it prevents CCRB from recommending that subordinate officers undergo retraining to address misunderstandings about the law or police practice. Subordinate officers who participate in the improper search and seizure may never clearly be told that their conduct was improper, and may engage in it again when confronted with similar circumstances. Referring officers for retraining in a non-disciplinary context will allow mistaken beliefs of the law to be corrected, while avoiding holding subordinate officers liable for carrying out superior's orders.

The Department should also recognize that, where they impose a forfeiture of vacation days, the number of days chosen should reflect both the seriousness of the misconduct and the likelihood that the chosen penalty will deter future misconduct. For example, the Department recently imposed a forfeiture of only 3 vacation days on an officer with several years' tenure and no disciplinary record. While this penalty may align with the Department's progressive approach to discipline, it may not have a deterrent effect on an officer who has numerous years on the job—as do many of the subject officers in the substantiated complaints of improper entry and search. In addition, police intrusion of homes is among the most serious violations of an individual's constitutional rights. Criminal law recognizes the significance of this violation through the use of the exclusionary rule. A penalty of three days does not adequately capture the harmful consequences—to civilians, to the criminal justice system, and to police-community relationships—of unlawful searches and seizures.

APPENDIX A: COMMANDS OF SUBJECT OFFICERS

Command at Incident	Number of Officers
WARRSEC	60
NARCBBN	26
081 PCT	13
075 PCT	13
047 PCT	10
067 PCT	9
NARCBBX	9
049 PCT	8
INT CIS	5
NARCBQN	5
PBBN	4
NARCBMN	4
120 PCT	4
DB BX	4
052 PCT	4
044 PCT	4
023 PCT	4
076 PCT	4
103 PCT	3
105 DET	3
106 PCT	3
062 PCT	3
073 PCT	3
007 PCT	3
041 PCT	3
046 PCT	3
121 PCT	3
079 PCT	3
114 PCT	3
ESS 03	3
GANG BS	3
PSA 2	3
PSA 8	2
PBBN AC	2
PBBX	2

Command at Incident	Number of Officers
NARCBBS	2
083 PCT	2
060 PCT	2
061 PCT	2
042 DET	2
028 PCT	2
009 PCT	2
024 PCT	2
066 PCT	2
068 PCT	2
069 PCT	2
070 PCT	2
PSA 1	2
071 PCT	1
073 DET	1
063 PCT	1
109 PCT	1
113 PCT	1
077 DET	1
077 PCT	1
025 PCT	1
033 PCT	1
040 PCT	1
042 PCT	1
052 DET	1
001 DET	1
046 DET	1
AUTO CD	1
DBBN OP	1
E S U	1
NARCBMS	1
GANG Q	1
MC/SQD	1
MNROBSQ	1
PBBX AC	1
PBMN	1
PBMS	1
PBMS TF	1
PBQNT/F	1
PBBS	1

Command at Incident	Number of Officers
PBBS SU	1
PSA 9	1
T.A.R.U	1
VE BSSI	1
PSA 3	1
PA UPTU	1
Total	297

"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)

CIVILIAN COMPLAINT REVIEW BOARD
100 Church St., 10th Floor, New York, NY 10007
Complaints: 1-800-341-2272 or 311 | Outside NYC: 212-New-York
General Information: 212-912-7235
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