



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the New York City Charter Revision Commission 2019
Meeting on Police Accountability
March 7, 2019

Good evening Chair Benjamin and distinguished members of the New York City Charter Revision Commission. My name is Rachel Bloom and I am the Director of Public Policy and Programs at Citizens Union. We thank you for holding this meeting on police accountability, and for giving Citizens Union the opportunity to publicly share our recommendations with you.

As a watchdog group for the public interest and a historic advocate of open and honest government in New York City, Citizens Union (CU) urges amendments to the City Charter that will strengthen the accountability of the New York City Police Department (NYPD) to the public and, consequently, improve the relationship between the NYPD and the public.

Since 2008, Citizens Union has been exploring the issue of police accountability with particular emphasis on establishing clarity and consistency across the police oversight system, and strengthening the Civilian Complaint Review Board (CCRB) to bolster independent oversight of the police. In 2016, we released a comprehensive position paper outlining failures in the police oversight system and urging the enactment of laws and the adoption of new rules and regulations to ameliorate them.¹ The following are recommendations for Charter reform, which we believe are urgent and should be taken up by this Charter Revision Commission. These changes, if adopted, would amend Section 440 of Chapter 18-A of the New York City Charter.

- 1. Codify the CCRB's power to file and handle the prosecution of complaints it substantiates with the recommendations of Charges and Specifications, instead of NYPD lawyers from the Department Advocate's office.** The CCRB should be given full authority and responsibility in the law for developing its own team of qualified and experienced lawyers to litigate the substantiated cases. A 2012 memorandum of understanding (MOU) between the NYPD and CCRB gave the CCRB this authority by establishing an Administrative Prosecution Process, but this does not have the force of law and the extent to which certain features of the MOU are being followed is questionable. Using the City Charter revision process to effectuate such a change would allow the public to decide on this issue of great concern, particularly within communities where police-community relations have been or continue to be less than optimal.
- 2. Require the Police Commissioner to provide to the CCRB and respondent the rationale when diverging from CCRB disciplinary recommendations.** The 2012 MOU requires that

¹ The policy position can be accessed at <https://bit.ly/2XN7kSy>.

the Police Commissioner notify the CCRB in writing with “a detailed explanation of the reasons for deviating from CCRB’s recommendation including but not limited to each factor the Police Commissioner considered in making his determination.” Citizens Union was involved in the negotiation of this MOU and believes this requirement would provide an appropriate and meaningful expansion of the CCRB’s independent oversight of the NYPD. However, it is unclear the extent to which this portion of the agreement is being followed.

3. **Amend the Charter to permit the CCRB to initiate an investigation into reported or known incidents of police misconduct within its jurisdiction in the absence of a complaint.** Such authority would track the authority of the Police Department’s Internal Affairs Bureau. With this authority, the CCRB would no longer be forced to remain on the sidelines when there is a notorious or sensitive incident that has become the focus of community and police concern.
4. **Empower the CCRB to investigate complaints filed by the public against members of the police department’s school safety division, a unit of public safety officers under the supervision and control of the Police Department, as well as other divisions overseen and controlled by the police department.** While there have been differing views concerning the role of the school safety division officers in the City’s schools there should be no doubt or confusion as to how members of the public who believe they have been aggrieved by a school safety officer can file a complaint.
5. **Safeguard the independence and integrity of CCRB investigations and standardize the effects of participation in an investigation for complainants, witnesses, and officers.** This should be done by:
 - a. requiring the CCRB to inform complainants, witnesses, and officers that their statements to the CCRB may be used against them in corresponding court cases, and of the associated risks;
 - b. reinstating the “zero tolerance” policy for false official statements; and
 - c. granting the CCRB authority to prosecute officers who lie under oath during the course of its investigations.

Our last recommendation on this topic is to require greater transparency in the budgets of city agencies, including the NYPD, before being voted on by the Council. To that end, the words “program,” “purpose,” “activity,” and “institution” need to be defined in the Charter (Chapter 6, Section 100) in relation to units of appropriation so that units of appropriation will be made more narrow and finite, rather than continue as catch-all categories reflecting numerous programs or an entire agency’s budget.

We thank the Commission for its consideration of these important reforms to expand the transparency and public accountability of the police department, and look forward to continuing to work with you on this issue.

NYC Campaign for an
**ELECTED CIVILIAN
REVIEW BOARD**

*Testimony to the NYC Charter Revision Commission Expert Hearing on Police Accountability
City Hall, March 7th, 2019.*

Good evening, my name is Pamela Monroe, and I represent the Campaign for an Elected Civilian Review Board. We are a coalition of over 44 organizations and prominent individuals.

Over the past three years we have talked to thousands of New Yorkers about replacing the current appointed review board with an elected board. Our idea is met with nearly universal support wherever we go. As of this afternoon, we have thousands of signatures on our petition, and we have collected more this evening.

While canvassing in Brooklyn we met a young black mother, who told us she has rearranged her work schedule, morning and afternoon, to walk her kids to and from school. This wasn't to protect them from gangs, or criminals. This was to protect them from the NYPD. That is why we're here tonight, for New Yorkers who are afraid of the police.

And we have good reason to be afraid. Over the last 4 years, over 17,900 civilian complaints were made to the CCRB. As a result - zero police officers were fired. But in the past five years, our city has paid out \$384 million in civil judgments, so clearly, misconduct is occurring. New Yorkers are being harassed, injured, and killed, while our city's response is to just wait for the lawsuits. The real human costs is reflected in these portraits of our neighbors killed by the NYPD.

We propose a new system of police accountability and discipline. One that is in the hands of the people. We propose a board of 21 members, elected by their neighbors, responsible to their district, and answerable to New Yorkers.

Police discipline has been, for too long, tied up in an appointed board and by now we think it's safe to say the CCRB has failed. Our elected board would put the needs, experience, and values of the community to work holding the police accountable to the same standards that apply to every resident. Our elected board would have binding disciplinary power. Our elected board can change the fabric of New York.

Public outcry around Rodney King gave rise to the appointed review boards of the 90's. The modern Black Lives Matter movement demands Elected Civilian Review Boards now.

Let's talk about being first to do the right thing. Let's bring an Elected Civilian Review Board to voters. Thank you.

ELECTED CIVILIAN REVIEW BOARD

PROBLEM:



Police abuse their power and get away with it
NYPD officers unfairly target black, brown, and poor communities, conduct illegal searches, lie in testimony, assault and kill NYC residents without consequence



Our current review board is appointed and powerless
The Civilian Complaint Review Board is insulated from public pressure, and only makes recommendations to the police commissioner, who then waters them down or throws them out



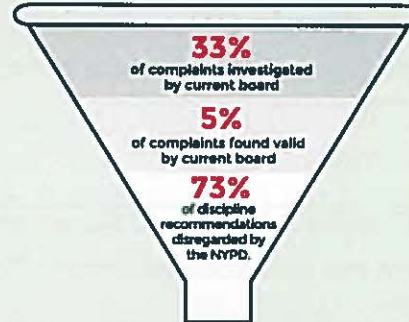
The District Attorneys don't prosecute them
DAs work too closely with the police to prosecute them in an unbiased way

2017 STATISTICS¹



4,487

Civilian complaints filed against police



0%

NYPD officers fired as a result of civilian complaints

¹ <https://www1.nyc.gov/assets/ocrb/downloads/pdf/policy.pdf> accessed 10/17/2017, accessed.pdf

SOLUTION

An Elected Civilian Review Board that represents the people and is empowered to hold police accountable when they abuse their power.



A board that is elected by and accountable to the community, representing all neighborhoods, including those most affected by police misconduct



A board that is empowered and effective to conduct thorough investigations and make binding decisions, such as retraining or firing, that the police commissioner is required to carry out



An Elected Independent Special Prosecutor that handles all criminal cases involving the NYPD to ensure unbiased prosecution

YOU CAN HELP US WIN!

- Via the new **Charter Revision Commission** which will bring amendments to NYC voters in November 2019
- Via **Passage by City Council Bill**



Let @Charter2019NYC and your city council member know you support an ECRB!



Share our petition!



Come to a meeting!

ABOUT OUR CAMPAIGN

We are a coalition of groups and individuals fighting for police accountability. We work democratically with participation and leadership from people most affected by police violence.

[facebook.com/HoldPoliceAccountableNYC](https://www.facebook.com/HoldPoliceAccountableNYC)

@HoldPoliceAccountable

@ECRBforNYC

<https://www.stoppoliceviolencenyc.org/>

Phone: 212-222-0633

Email: StopPoliceViolenceNYC@gmail.com



NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
212.607.3300
212.607.3318
www.nyclu.org

**Testimony of Michael Sisitzky on Behalf of the New York Civil Liberties Union
Before the 2019 New York City Charter Revision Commission
Regarding Police Accountability**

March 7, 2019

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following testimony in connection with the 2019 Charter Revision Commission’s expert forum on police accountability.

The NYCLU, the New York affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with eight offices throughout the state and more than 180,000 members and supporters. The NYCLU’s mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution.

Defending New Yorkers’ right to be free from discriminatory and abusive policing is a core component of the NYCLU’s mission. Protecting this right requires robust systems for investigating abusive officers and holding them accountable. It also requires vigorous oversight of police surveillance practices and mechanisms to ensure that New Yorkers can fully participate in conversations about protecting civil liberties while ensuring public safety. The City Charter provides the basic framework for how these systems are regulated, but it does not go far enough to ensure that these systems function effectively. We encourage the Commission to consider the ways in which the Charter can better serve New Yorkers most impacted by police misconduct and unwarranted surveillance.

The City Charter Must Ensure Independent and Effective Oversight of Police Misconduct

No legislative body or commission, alone, can fully resolve the systemic issues related to police accountability. The State Legislature has a role to play in repealing laws that keep misconduct records secret and that give special treatment to administration of police disciplinary proceedings. The New York City Council must do its part to require greater transparency regarding how the NYPD applies its own standards for discipline and to mandate better tracking and reporting on disciplinary outcomes. And the Charter Revision Commission can work to ensure that

the institutions of New York City's government—the Civilian Complaint Review Board (“CCRB”)—in particular, do not continue allowing the NYPD to police itself.

Local and independent civilian oversight is a necessary component for promoting fair and accountable policing, and the NYCLU has long supported efforts to ensure such oversight for the NYPD. The NYCLU was instrumental in the creation of the CCRB. Since the City Council legislatively mandated an independent CCRB in late 1992 and since the CCRB began operating in July 1993, we have consistently worked to ensure that the agency lives up to its mandate in the City Charter. As part of our work, the NYCLU has published a number of reports examining the operations of the CCRB,¹ testified on multiple occasions before the City Council on proposals to strengthen the CCRB's independence and effectiveness,² and have attempted through litigation to gain a better understanding of how the NYPD decides disciplinary outcomes in CCRB-substantiated cases.³

While the CCRB has authority to investigate and, pursuant to a 2012 memorandum of understanding, prosecute certain cases of police misconduct, its recommendations on disciplinary outcomes are ultimately not binding on the NYPD. The police commissioner's exclusive authority to decide and impose discipline for officers stems from the City Charter, with Section 434 providing that the commissioner's cognizance and control extends to the “disposition and discipline of the department.”⁴ This authority is reinforced in the Charter section governing complaints filed with the CCRB, which states that its provisions “shall not be construed to limit or impair the authority of the police commissioner to discipline members of the department.”⁵

Together with the provisions of the City Administrative Code that provide additional structure to the Charter's mandate,⁶ these provisions empower the police commissioner with full discretion to accept, modify, or outright reject the findings and recommendations of the CCRB. In practice, the exercise of this discretion is serious cause for alarm.

¹ NYCLU, *Five Years of Civilian Review: A Mandate Unfulfilled*, (1998), available at

[https://www.nyclu.org/sites/default/files/publications/NYCLU%20-](https://www.nyclu.org/sites/default/files/publications/NYCLU%20-%20Five%20Years%20of%20Civilian%20Review%20-%20A%20Mandate%20Unfulfilled%20July%205%2C%201993-%20July%205%2C%201998.pdf)

[%20Five%20Years%20of%20Civilian%20Review%20-%20A%20Mandate%20Unfulfilled%20July%205%2C%201993-%20July%205%2C%201998.pdf](https://www.nyclu.org/sites/default/files/publications/NYCLU%20-%20Five%20Years%20of%20Civilian%20Review%20-%20A%20Mandate%20Unfulfilled%20July%205%2C%201993-%20July%205%2C%201998.pdf); NYCLU,

Mission Failure: Civilian Review of Policing in New York City, (2007), available at

https://www.nyclu.org/sites/default/files/publications/nyclu_pub_mission_failure.pdf.

² Testimony of the NYCLU before the New York City Council Committee on Public Safety Regarding NYPD Disciplinary Practices in Cases of Police Misconduct Substantiated by the New York City Civilian Complaint Review Board, Jan. 29, 2009, available at <https://www.nyclu.org/en/nypd-disciplinary-practices-cases-police-misconduct>; Testimony of the NYCLU before the New York City Council Committee on Public Safety and the Committee on Civil Rights regarding the Civilian Complaint Review Board and Civilian Oversight of Policing, March 9, 2007, available at <https://www.nyclu.org/en/publications/civilian-complaint-review-board-and-civilian-oversight-policing>.

³ See, e.g., *Matter of New York Civil Liberties Union v. New York City Police Department*, No. 133, 2018 WL 6492733 (N.Y. Dec. 11, 2018).

⁴ N.Y.C. Charter § 434(a).

⁵ N.Y.C. Charter § 440.

⁶ N.Y.C. Admin. Code §§ 14-115, 14-123.

In 2017, the most recent year for which we have full data, the police commissioner imposed penalties weaker than those recommended by the CCRB in the majority of cases.⁷ For the majority of misconduct cases, where the CCRB recommended disciplinary penalties that would not lead to a full departmental trial, the commissioner departed from CCRB recommendations 58 percent of the time; the CCRB noted that this was the highest rate of NYPD rejection of its recommendations since 2013.⁸ In the most serious misconduct cases that involved full administrative trials, the police commissioner imposed discipline consistent with CCRB recommendations in just 27 percent of cases.⁹

The low rate of concurrence with CCRB recommendations has been a persistent problem across administrations and has not been tied to any one police commissioner. It is a result of structural powers more than it is the result of any one commissioner's view of or relationship to the CCRB. In 2007, an NYCLU report that analyzed data from 2000 to 2004—a period that included the tenures of three separate police commissioners—found that the NYPD rejected CCRB recommendations at a rate of 63 percent.¹⁰

Noting the persistence of this problem across administrations, the NYCLU has previously called on the City to remove the commissioner's exclusive authority to decide disciplinary outcomes and to transfer that power to an independent, civilian oversight agency.¹¹ The NYPD has proven time and again its willingness to ignore calls for outside oversight and its unwillingness to hold itself to the high standards of accountability that the public expects of its police force. To be clear, the NYCLU remains concerned about the CCRB's own commitment and willingness to pursuing serious discipline for officers who engage in misconduct, even if it were empowered to decide outcomes. In 2017, we sent a letter to the CCRB expressing our concern about the agency's dramatic shift away from recommending the most serious types of discipline and its increasing move toward recommending trivial consequences for officers found to have engaged in misconduct.¹²

Still, the current system in which the NYPD is accountable only to itself is untenable. Civilian oversight of policing is an empty exercise if the police commissioner has the authority to reject unilaterally the findings and recommendations of the very agency specifically entrusted to engage in that oversight. The Charter Revision Commission should explore options for removing or otherwise cabining the police commissioner's exclusive authority over matters of police

⁷ Civilian Complaint Review Board, *2017 Annual Report*, 34, https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf.

⁸ *Id.*

⁹ *Id.* at 35.

¹⁰ *Mission Failure*, *supra* note 1 at 2.

¹¹ Testimony of the NYCLU before the New York City Council Committee on Public Safety and the Committee on Civil Rights regarding the Civilian Complaint Review Board and Civilian Oversight of Policing, March 9, 2007, available at <https://www.nyclu.org/en/publications/civilian-complaint-review-board-and-civilian-oversight-policing>.

¹² NYCLU Letter to the CCRB regarding 2016 Year-End Figures on Police Misconduct, Jan. 17, 2017, available at https://www.nyclu.org/sites/default/files/field_documents/letter-to-ccrb.pdf.

discipline. Outright transfer of that authority outside the police department is one option, but the Commission may also want to consider approaches that would impose restrictions on how the police commissioner exercises discretion, which could include requiring the NYPD to accept the findings of the CCRB but retaining the ability to decide the precise degree of punishment according to a defined disciplinary matrix.

We also note that the CCRB itself has proposed a number of potential changes to the Charter that would enhance its ability to operate independently and effectively, including the codification of its Administrative Prosecution Unit, provisions that would allow for delegation of the Board's subpoena power, and language clarifying the extent of the NYPD's duty to cooperate with CCRB requests for information.¹³ While these proposals may lessen some of the administrative challenges facing the CCRB, they do little to alter the structural imbalance of power between the NYPD and its civilian oversight agency, and we encourage the Commission to closely review and consider amending the Charter provisions that allow that imbalance to persist.

The City Charter Must Require Public Oversight of Surveillance Technology

Efforts to promote fair and accountable policing are further undermined when the police are able to engage in secretive and unchecked surveillance, and the NYPD has a long and troubling history of engaging in surveillance tactics that target political dissent, criminalize communities of color, and jeopardize all New Yorkers' privacy.¹⁴

The NYPD uses numerous forms of powerful, invasive and covert surveillance technologies to police New York City streets every day. These surveillance technologies can capture vast amounts of information about the places we visit, people we communicate with, the frequency of those communications, where we are located inside our home, and our most recent social media post. While surveillance technologies, by themselves, can pose significant risks to privacy, public health and other civil liberties and rights, the lack of transparency and oversight regarding how these technologies are acquired and used by the NYPD threatens our democracy.

To date, most of what we know regarding the NYPD's use of surveillance technologies is based on costly Freedom of Information Law litigation by the NYCLU and other organizations, investigative journalism, and inquiries by the criminal defense community. Two examples that illustrate the problems created by the lack of transparency and oversight regarding the NYPD's acquisition and use of surveillance technologies are Stingrays and X-ray vans.

¹³ Testimony of the Civilian Complaint Review Board before the New York City Charter Revision Commission, July 26, 2018, available at https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/news/speeches-and-testimonies/testimony/20180726_testimony_crc.pdf.

¹⁴ The NYCLU has litigated many cases involving NYPD surveillance abuses, including *Handscu v. Special Services Division* (challenging surveillance of political activists), *Raza v. City of New York* (challenging the NYPD's Muslim Surveillance Program), and *Millions March NYC v. NYPD* (challenging the NYPD's refusal to respond to a FOIL request seeking information about whether the NYPD is using invasive technology to infringe on the protest rights of Black Lives Matter advocates).

Stingrays are surveillance devices that mimic cell site towers and allow the NYPD to pinpoint a person's location, and some models can collect the phone numbers that a person has been texting and calling as well as intercept the contents of communications. When Stingrays seek information for a targeted phone in a place as densely populated as New York City, they also sweep up information from hundreds or thousands of nearby cell phones. Stingray devices can cost over \$100,000 per unit, and this does not include the additional costs of the training and maintenance packages that are necessary to use the devices.

In 2015, the NYCLU sent a FOIL request to the NYPD about Stingrays. We learned that the NYPD used these devices in more than 1,000 investigations since 2008, ranging from robbery and drug cases to criminal contempt of court.¹⁵ The NYPD has been successful in concealing their use of Stingrays because they are used without a warrant and without an internal policy guiding their use. Currently, all that the public knows regarding the NYPD's use of stingrays is based on the results of our FOIL request. We still do not know the full fiscal implications of the NYPD's use of Stingrays because they have failed to reveal how many they own or which models have been purchased.

X-ray vans are military-grade surveillance equipment that utilize x-ray radiation to see inside of cars and buildings. These devices were used to search for roadside bombs in Afghanistan, but are also used on the streets of New York City.¹⁶ The company that manufactures X-ray vans determined that the vans expose bystanders to a 40% larger dose of ionizing radiation than that delivered by similar airport scanners. Exposure to ionizing radiation can mutate DNA and increase the risk of cancer. In fact, the European Union and United States Transportation Security Administration banned the use of this type of radiation technology in airports citing privacy and health concerns. Additionally, X-ray vans costs between \$729,000 and \$825,000 per unit, which can have significant fiscal implications. Until ProPublica's FOIL lawsuit, which revealed some of what we know about x-ray vans, the NYPD has largely refused to disclose anything about how it uses x-ray vans on the streets of New York. The NYPD's attempt to keep these devices secret runs counter to best practices because other agencies, including the Department of Homeland Security, already revealed the same types of information sought by ProPublica in its FOIL lawsuit.

The secretive process by which the NYPD obtains and uses these technologies runs counter to good governance principles and threatens the digital security of all New York City residents and visitors. The NYPD is able to acquire and deploy these devices in secret because, unlike police

¹⁵ NYCLU, "NYPD Has Used Stingrays more than 1,000 Times since 2008," Feb. 11, 2016, <https://www.nyclu.org/en/press-releases/nypd-has-used-stingrays-more-1000-times-2008>.

¹⁶ Michael Grabell, "Drive-By Scanning: Officials Expand Use and Dose of Radiation for Security Screening," ProPublica, Jan. 27, 2012, <https://www.propublica.org/article/drive-by-scanning-officials-expand-use-and-dose-of-radiation-for-security-s>.

departments in Seattle, Washington;¹⁷ Oakland, California;¹⁸ and Cambridge, Massachusetts,¹⁹ the Police Department is not required to seek City Council approval before obtaining new surveillance technologies. The NYPD further relies on federal grants and private donations to thwart what little transparency is already required under procurement rules.

Legislation supported by the NYCLU and pending in the City Council would require the NYPD to disclose the types of surveillance tools currently used against New Yorkers and to engage with the public before acquiring new types of surveillance technologies in the future.²⁰ While this is an important measure within the City Council's authority to pursue, the Charter Revision Commission should consider going even further. The Commission should explore amending the Charter to set up a process similar to what exists in Seattle, Oakland, and other municipalities²¹ that have acted to curb abusive surveillance practices by providing that such technologies can only be acquired with express City Council approval. Such procedures should mandate that this approval would only happen following an opportunity for the public as a whole to review and comment on proposed policies for their use and to assess whether adequate safeguards are in place. And if, following this public engagement, New Yorkers and their elected representatives are not satisfied that these technologies are worth the costs to our budget and our privacy, the Council should be empowered to prevent the NYPD from going forward with acquisition.

Conclusion

We thank the Charter Revision Commission for the invitation to present testimony on the topic of police accountability. The NYCLU looks forward to working with the Commission as it finalizes its proposals for strengthening and improving our framework for local government.

¹⁷ ACLU of Washington, "Seattle Adopts Nation's Strongest Regulations for Surveillance Technology," Aug. 8, 2017, <https://www.aclu-wa.org/news/seattle-adopts-nation%E2%80%99s-strongest-regulations-surveillance-technology>.

¹⁸ ACLU of California, "Oakland Becomes Latest Municipality to Reclaim Local Control over Surveillance Technologies Used by Local Law Enforcement," May 2, 2018, <https://www.aclunc.org/news/oakland-becomes-latest-municipality-reclaim-local-control-over-surveillance-technologies-used>.

¹⁹ ACLU of Massachusetts, "Cambridge Passes Law Requiring Community Control of Police Surveillance," Dec. 10, 2018, <https://www.aclum.org/en/news/cambridge-passes-law-requiring-community-control-police-surveillance>.

²⁰ Int. 487-2018.

²¹ ACLU, "Community Control over Police Surveillance," <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance?redirect=feature/community-control-over-police-surveillance>.

Liza Chowdhury, PhD

Assistant Professor at Borough of Manhattan Community College/CUNY

President of Reimagining Justice

In the era of Black Lives Matter, it is imperative that there is more transparency and trust between the police and the community. Research cites the disproportionate use of force on black brown communities. Communities around the country are frustrated and organizing because they are looking towards their police department to serve and protect, but are at times met with unprofessional conduct and at its worst, unmerited use of force. Civilian Review Boards allow citizens to have a forum for grievances and provide a mechanism for accountability that is more transparent than the traditional internal affairs system. In theory, civilian review boards allow every citizen to be a part of correcting an injustice done by a system that they are depending on for public safety (King, 2015). The NYC Civilian Complaint Review Board (CCRB) has legal authority to investigate, hear and make recommendations for disciplinary actions on complaints made by the public. This is a tremendous opportunity to utilize the legal power the CCRB has to strengthen relationships between police and community by improving any disconnect between citizen participation and the review board.

Some suggestions to improve legitimacy of the CCRB are to appoint board members who are nominated by civic organizations who are trusted by the community (Ofer, 2015). Currently some the members are political appointments and some have former law enforcement backgrounds. In an effort to legitimize the representation of actual community interests, it is imperative that the community actually has a say on who sits on this board. Perhaps the board can hire former law enforcement professionals as consultants, but to allow them to have voting power can cause some level of distrust.

As a long time community organizer and youth advocate, I have seen the distrust community members feel at times in regards to reporting inappropriate interactions with the police. They feel that

no one is hearing them, that they are not represented and are not confident that any accountability will actually happen. Therefore, in my experience, I think there needs to be more effort placed by the CCRB to educate grassroots organizations on how community members can actually become involved in the process and they need to be more present in the community. The CCRB tends to be complaint driven, but if they are in the community and see or hear that possible misconduct has occurred, perhaps they can guide community members on how to actually access the CCRB.

At this point in time, I think the NYC CCRB has the opportunity to be a model for the rest of the nation on how to actually improve trust between the community and police. However, I believe that more community involvement and representation is key to achieving the full potential of a true community centered civilian review board.

Ofer, U. (2015). Getting It Right: Building Effective Civilian Review Boards to Oversee Police. *Seton Hall L. Rev.*, 46, 1033.

King, K. (2015). Effectively implementing civilian oversight boards to ensure police accountability and strengthen police-community relations. *Hastings Race & Poverty LJ*, 12, 91.



National Association for Civilian Oversight of Law Enforcement

Code of Ethics

PREAMBLE

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

PERSONAL INTEGRITY

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when a significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

INDEPENDENT AND THOROUGH OVERSIGHT

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional, or political consequences.

TRANSPARENCY AND CONFIDENTIALITY

Conduct oversight activities openly and transparently, providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

RESPECTFUL AND UNBIASED TREATMENT

Treat all individuals with dignity and respect, and without preference or discrimination including, but not limited to: age, ethnicity, citizenship, color, culture, race, disability, gender, gender identity, gender expression, housing status, marriage, mental health, nationality, religion, sexual orientation, socioeconomic status, or political beliefs, and all other protected classes.

OUTREACH AND RELATIONSHIPS WITH STAKEHOLDERS

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialogue with your stakeholders. Educate and learn from the community.

AGENCY SELF-EXAMINATION AND COMMITMENT TO POLICY REVIEW

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

PROFESSIONAL EXCELLENCE

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

PRIMARY OBLIGATION TO THE COMMUNITY

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

The following oversight agencies have adopted the NACOLE Code of Ethics:

- Citizen Oversight Board, City & County of Denver, CO
- Citizens' Law Enforcement Review Board, San Diego County, CA
- Citizens' Review Board on Police Practices, San Diego, CA
- Civilian Review Board, Eugene, OR
- Independent Review Panel, Miami, FL
- Milwaukee Fire and Police Commission, Milwaukee, WI
- Office of Citizen Complaints, San Francisco, CA
- Office of Community Complaints, Kansas City, MO
- Office of Police Complaints, Washington, D.C.
- Office of Professional Accountability, Seattle, WA
- Office of the Community Ombudsman, Boise, ID
- Office of the Independent Monitor, City & County of Denver, CO
- Office of the Independent Police Auditor, Bay Area Rapid Transit District, San Francisco, CA
- Office of the Independent Police Auditor, San Jose, CA
- Office of the Police Auditor, Eugene, OR
- Office of the Police Ombudsman, Spokane, WA
- Richmond Police Commission, Richmond, CA

**STATEMENT OF OLEG CHERNYAVSKY
EXECUTIVE DIRECTOR, LEGISLATIVE AFFAIRS
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL
CHARTER REVISION COMMISSION
COUNCIL CHAMBERS, CITY HALL
MARCH 7, 2019**

Good evening, I am Oleg Chernyavsky, Executive Director of Legislative Affairs for the New York City Police Department (NYPD). I am joined by Deputy Commissioner, Department Advocate Kevin Richardson. On behalf of Police Commissioner James P. O'Neill, I am pleased to offer comment on our internal discipline process and our shared goals of increasing transparency into this process.

The Department's commitment to Neighborhood Policing has transformed the NYPD from a police force primarily focused on enforcement to one that encourages collaboration, partnership and building trust with the citizens we are charged with protecting. Compared with just five years ago, we are far better connected to communities, far more service oriented, and far better trained at de-escalation and non-enforcement alternatives to addressing neighborhood conditions and community complaints. Principally, trust and transparency are the cornerstones of any collaborative effort, be it policing or any effort with a common goal. To this end, the Department has continued to build upon and improve its already robust internal discipline system. We've come a long way in achieving these goals, and complaints against officers have dramatically decreased in the last ten years even as technology has made it easier to lodge such complaints. But we can always do more, we can always get better.

The Department employs numerous tools to discipline the relatively few officers whose conduct necessitates it. The majority of discipline is self-initiated at the command level where a supervisor or Commanding Officer will issue command discipline for mainly administrative offenses. Serious allegations of misconduct or corruption are investigated by the Internal Affairs Bureau and, if substantiated, prosecuted by the Department Advocate. Criminal allegations may also be referred to the appropriate District Attorney or United States Attorney. The Civilian Complaint Review Board (CCRB) investigates complaints of excessive use of force, abuse of authority, discourtesy, and offensive language, and its Administrative Prosecution Unit (APU) prosecutes substantiated complaints. Similar to a criminal prosecution, if no pre-trial settlement is reached the Department Advocate or the APU will present its evidence in a trial, that is open to the public, before the Department's Deputy Commissioner for Trials.

As you know, the final determination of discipline lies with the Police Commissioner who may, as a matter of law, accept or modify the recommended discipline. The Commissioner takes his disciplinary role very seriously and welcomes and respects the judgments of those recommending discipline. In this unique role, the Police Commissioner must balance the needs of the department with the administration of a meaningful disciplinary process. He has used his experience, much like his predecessors, to be judicious in his decision-making in a way that acts as a deterrent to misconduct while maintaining morale.

As part of his continuing effort to better the Department, Commissioner O'Neill last year took the unprecedented step of commissioning an external panel of criminal justice experts to examine the Department's internal discipline process. Though the panel noted that there was no evidence of a lack of fairness, it made a number of important recommendations which the Commissioner immediately accepted. He quickly formed an implementation group, chaired by the First Deputy Commissioner and a number of Department executives to guide the effective implementation of these recommendations, some of which the Department was already in the process of addressing. For example, taking steps to expedite the disciplinary timeline and assessing the feasibility of adopting a disciplinary matrix to assist in the consistent application of discipline. Also, the Department has already undertaken a review of how it disciplines domestic violence offenses in order to ensure they are treated with the severity these types of offenses deserve.

Equally important, with regard to transparency, the Department strongly supports legislative efforts to amend, rather than repeal, Civil Rights Law § 50-a. Our goal for an amended § 50-a would permit us to release information of significant public interest, including officer names, trial transcripts, trial decisions, and final disciplinary outcomes concerning *all* serious misconduct that leads to the formal service of charges, as well as cases involving improper use of force or improper searches, even if charges are *not* served in those cases, at the conclusion of a disciplinary process. This is information advocates, elected leaders and the public have long sought. Importantly, such an amendment would leave in place safeguards that protect police officers, by allowing the Department to assess and address threats to officers' safety prior to disclosing such records. Safeguards against disclosure of non-disciplinary personal records such as records dealing with changes in social status, absence from or tardiness at work, and transfer requests. And safeguards aimed at protecting officers against harassment on the stand, reprisals, hostility, and outright threats to their physical safety, which has always been the intent of the law. We pledge to continue those efforts, as their fruits will enable us to publically demonstrate the effectiveness of our discipline process and build greater trust and confidence in the Department.

I would now like to briefly comment on some of the Charter revision proposals.

1. Granting the CCRB prosecutorial powers and making their decisions binding.

As you are aware, the Department and the CCRB are participants in an agreement whereby the Police Commissioner has delegated CCRB's Administrative Prosecutions Unit the authority to prosecute civilian complaints against NYPD officers that have been substantiated and for which the Board has recommended Charges and Specifications. The agreement has been in effect since 2012 and stands as an excellent example of the effective collaboration, cooperation and respect amongst our agencies. Although the Commissioner can delegate portions of the discipline process, as the legally vested administrator of the Department and its discipline, this delegation should not be codified or circumscribed, as it effectively dilutes the Commissioner's authority by extinguishing his judgment in this vital area of Department governance. Judgment that has been exercised prudently by this Commissioner and his predecessors, who have reflected on their decades of police service to arrive at meaningful and fair discipline that creates a deterrent to future misconduct, while at the same time preserving morale.

2. Granting subpoena signing power to the CCRB's highest ranking staff.

Currently the CCRB Board may compel attendance of witnesses or production of records, by a majority vote, via their existing subpoena power. It is important to note that the Department routinely cooperates with the CCRB by providing witnesses and documents without the need for a subpoena. The Department does not have an objection to subpoena signatory authority being expanded to include the Executive Director of the CCRB in connection with cases where there is an active CCRB investigation based on a civilian complaint. However, we would object to such an expansion, which effectively eliminates the majority Board vote safeguard against overly broad demands and demands for information that may not be relevant, if the scope of CCRB's authority is expanded beyond its current charge.

3. Expansion of the Department's duty to cooperate with CCRB in relation to subjects that go beyond the scope of investigations.

Currently, the Charter mandates the Department cooperate with the CCRB in connection with investigations that the CCRB is conducting pursuant to its legal authority. While the Department will continue to encourage a healthy working relationship that goes beyond the strict bounds of the Charter, as we did with the creation of the APU, we do not support such an expansion of the CCRB's authority. As the members of the Commission are aware, the Department is the subject of multiple oversight entities to include, the Office of the Inspector General, Department of Investigation, District Attorneys, U.S. Attorneys, a federal monitor, the Commission to Combat Police Corruption, the City Council, and of course, the public. Allowing an expansion of the CCRB's legal jurisdiction to include prosecution and policy review would be duplicative of existing oversight frameworks, and create a significant unfunded burden to the Department.

4. Mandate that CCRB's budget be a fixed percentage of the NYPD's budget.

Every city agency or office must be able to justify their respective requests for funding based on their unique and demonstrated needs. The Department's budget is complex and based in no small part on emerging technologies, equipment needs and upgrades, personnel, evolving training, infrastructure requirements, and counterterror operations. We are certain that the CCRB can outline a list of factors that dictate their annual expenses and funding needs. It is that list of factors, unique to the CCRB, which should serve as the basis for their budget, and not factors unique to the NYPD.

5. Establishing set timelines for various aspects of the discipline process.

The Department is committed to an efficient and fair discipline process. As noted in the independent Blue Ribbon Panel's report, the Department has made a number of improvements in this area and we have accepted the Panel's recommendation for greater improvement. However, setting timelines in legislation is not the solution. There are multiple factors, outside of the Department's and CCRB's control, that have the effect of extending the time in which an individual discipline process can be concluded. Among those factors are requests for delay by prosecutors due to ongoing criminal prosecutions and adjournments requested by the subject of the discipline. While we agree with the goal of this proposed amendment, the unique realities of each case is precisely the reason that guidance as to the timeliness of various aspects of the process should be dictated by policy, which will invariably be the subject of review by our numerous oversight entities.



Thursday, March 7, 2019

Thank you for allowing the Department an opportunity to be heard in connection with the Charter revision process and we look forward to answering any questions you may have.



BILL DE BLASIO
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
100 CHURCH STREET 10th FLOOR
NEW YORK, NEW YORK 10007 ♦ TELEPHONE (212) 912-7235
www.nyc.gov/ccrb



FREDERICK DAVIE
CHAIR

**2019 Charter Revision Commission Public Forum Presentation of Jonathan Darche,
Executive Director, Civilian Complaint Review Board (CCRB)
Proposed Changes to Chapter 18-A of the New York City Charter
March 7, 2019**

My name is Jonathan Darche, and I am the Executive Director of the Civilian Complaint Review Board, or “CCRB,” an independent city Agency that investigates, prosecutes, and mediates complaints of misconduct filed by civilians against New York City Police Department (“NYPD”) officers. Thank you to the 2019 Charter Revision Commission for inviting me to speak about some of the proposed City Charter changes related to police accountability.

The CCRB is committed to a fair, transparent, and robust system of police accountability in New York. However, there are a number of challenges to achieving that goal that would be greatly diminished by making four changes to the City Charter: first, to codify the CCRB’s Administrative Prosecution Unit (“APU”); second, to enable the Board to designate subpoena signatory power to the agency’s highest ranking staff; third, to better define the Department’s duty to cooperate with Agency requests for information and documents related to policy, outreach, and operational support; and fourth, to amend the CCRB budget to be one percent of the NYPD’s budget. I can provide more detail on any of our recommendations—achievable Charter revisions that we think would help strengthen the CCRB, but for tonight, I’ll limit my focus to two important areas: codification of the APU and the NYPD’s duty to cooperate.

The work of the APU is governed by a 2012 Memorandum of Understanding between the NYPD and the CCRB. The first unit of its kind in the United States, and heralded as a significant step for police oversight by local elected officials and advocates, the APU prosecutes nearly all of the cases in which the Board recommends Charges and Specifications, the most serious disciplinary recommendation. Since the creation of the APU, the CCRB has administratively prosecuted officers for misconduct at 374 trials. As evidenced by the APU’s current prosecution in the Garner case, the APU is a vital part of the disciplinary process for officers who commit misconduct. Amending the City Charter to codify the APU will ensure that this independent and effective tool for civilian oversight will continue.

Similarly, better defining the NYPD’s duty to cooperate would enable the established cooperation between the agencies to continue, regardless of leadership changes at either agency. The Charter currently requires that the NYPD cooperate with CCRB investigations, but lacks any specific language requiring the Department to cooperate with prosecutions or the Agency’s operational capabilities. As a result, the CCRB lacks access to items like subject officers’ NYPD disciplinary histories or the specific penalties given to officers in non-APU cases, both of which would help the Board to make more informed decisions on disciplinary recommendations and

provide more transparent aggregate disciplinary data to the public creating the ability for CCRB policy reports to provide more context to the reported data.

Further, while there is no current legal requirement for the Police Commissioner to defer to the CCRB's findings of fact or recommendations for discipline, there is also no requirement for the Commissioner to explain his or her reasons when downwardly departing from the CCRB's findings and recommendations. Including a provision in the Charter to require the Police Commissioner to document to the CCRB the case-specific factual and legal reasoning for downward departures would help hold the Police Commissioner accountable for disciplinary decisions, regardless of the person in the role.

I welcome any further opportunity to discuss any of the proposed Charter changes with the Commission or its staff, and I am happy to answer any questions about the Agency or our Charter proposal.



BILL DE BLASIO
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
100 CHURCH STREET 10th FLOOR
NEW YORK, NEW YORK 10007 ♦ TELEPHONE (212) 912-7235
www.nyc.gov/ccrb



FREDERICK DAVIE
CHAIR

Background Information and Supporting Documentation for CCRB Executive Director Jonathan Darche's March 7, 2019 Testimony at the Expert Forum on Police Accountability

INTRODUCTION

The New York City Civilian Complaint Review Board ("CCRB") is an independent city Agency that is empowered, pursuant to Chapter 18-A of the New York City Charter, to receive, investigate, prosecute, mediate, hear, make findings, and recommend action on complaints filed by civilians against members of the New York City Police Department ("NYPD" or "the Department") that allege the use of excessive or unnecessary Force, Abuse of Authority, Discourtesy, or the use of Offensive Language ("FADO").

Uniquely, the Agency's staff is comprised entirely of members of the public—civilians, rather than law enforcement. The CCRB takes very seriously its obligation to conduct fair and independent investigations of civilian complaints against sworn members of the NYPD. The Board evaluates each case individually and without predisposition before making findings, and where appropriate, recommending discipline to the Police Commissioner.¹

As part of the Charter revision process, the CCRB suggests four changes to Chapter 18-A: (1) to codify the CCRB's Administrative Prosecution Unit ("APU"); (2) to amend the CCRB budget to be one percent of the budget assigned to the NYPD; (3) to better define the Department's duty to cooperate with Agency requests for information and the Board's disposition and discipline recommendations; and (4) to enable the Board to designate subpoena signatory power to the Agency's highest-ranking staff.

CODIFICATION OF THE APU

On April 2, 2012, the NYPD and the CCRB signed a Memorandum of Understanding ("MOU"), which conferred on the CCRB the power to independently prosecute substantiated cases where the Board recommended "Charges and Specifications." APU prosecutors have the ability to offer pleas in order to resolve a case. If a plea agreement cannot be reached, the case proceeds to trial. Trials are held at Department headquarters, before either the Deputy Commissioner of Trials or an Assistant Deputy Commissioner of Trials. If the subject officer is found guilty after trial, a report containing the judge's findings and a discipline recommendation is sent to the Police Commissioner (the "Commissioner") for review. The Commissioner retains the authority to

¹ Board Panels reviewing cases are comprised of three Board Members: one mayoral designee, one city council designee, and one Police Commissioner designee.

determine whether misconduct occurred and the level of discipline, if any, that is imposed. The Commissioner's sole authority to discipline members of service is encoded in other chapters of the City Charter, the Administrative Code of the City of New York, the Rules of the City of New York, and by New York State law.²

The APU was the first unit of its kind in the United States, and was heralded as a significant step for police oversight by former Mayor Michael Bloomberg, former City Council Speaker Christine Quinn, and community advocates.³ In the 18 months prior to the APU's existence, the Department had not held a single trial for any CCRB case for which the Board had recommended Charges and Specifications. Between 2014 and 2018, the APU closed 374 trials. Of the cases closed by the APU in 2018, the NYPD pursued discipline for 85% of the officers found guilty of misconduct.

Amending the City Charter to codify the APU will ensure that the effective administrative prosecution procedures developed by the CCRB and the NYPD over the past few years continue, regardless of leadership changes at either agency. Such action will further demonstrate the City's commitment to providing fairness and safety to the public by ensuring that there is an independent process for holding NYPD officers accountable for misconduct.

LINKING THE CCRB AND NYPD BUDGETS

Currently, the CCRB's budget is approximately 0.27 percent of the NYPD's total budget. After intra-city (i.e. required) spending for items such as occupancy, internet service, and telephone lines, the Agency has less than \$1 million dollars in available funds to support its investigations, prosecutions, and employees, generally. On a per head basis, that amounts to less than \$2,000 per person each year. Such limited resources make it unnecessarily difficult for Agency staff to effectively investigate a police department with a budget of more than \$5.6 billion and some 38,000 uniformed officers. As a point of comparison, the Inspector General for the NYPD ("OIG-NYPD"), housed within the Department of Investigation ("DOI"), had an Other than Personal Services ("OTPS")⁴ budget of nearly \$17,000 per head for fiscal year 2018, and the DOI as a whole had an OTPS allocation of almost \$35,000 per person in the same period. Similarly, the City Commission on Human Rights had an OTPS allocation of more than \$3.7 million for an authorized headcount of 156 in fiscal year 2018, compared with the CCRB's allocation of \$3.5 million for 187 authorized heads.

Police oversight in New York is a massive undertaking. In 2018, the CCRB received over 10,600 complaints, 4,745 of which were within its investigative jurisdiction. The CCRB requires additional funding for a number of essential initiatives to support these investigations. For instance, it is absolutely critical for the Agency to upgrade its systems, hardware, training, security, and operations, some of which are more than twenty years old. The CCRB's case tracking system dates back to the early 1990s and continues to run on outmoded and often

² See NYC Charter § 434; NYC Charter § 440; 38 RCNY § 15-12; 38 RCNY § 15-17; 38 RCNY § 1-46; NYC Administrative Code § 14-115; NYC Administrative Code § 14-123; NY CLS Civ S § 75.

³ Baker, Al, "Independent Agency Gets New Powers to Prosecute New York Police Officers," *The New York Times*, March 27, 2012.

⁴ The OTPS category of a budget includes all non-personnel related expenditures.

redundant technologies. This system simply cannot keep up with the pace of the Agency's investigations or the digital storage demands that continue to grow as the NYPD equips every officer with a body-worn camera ("BWC"). With the Right to Know Act having taken effect October 2018, officers for the first time are required to hand out business cards during all Level 2 and Level 3 stops.⁵ The card includes the number for 311 and a notation that civilians may call if they wish to comment on their interaction with the officers. Many of those calls are routed to the CCRB, and the Agency will need to increase its intake staff, investigators, and resources in order to effectively manage the inevitable increase in complaints.

Other cities have worked to better fund independent oversight of the police by tying the budget of police oversight agencies to the budget of the police departments they oversee. In Chicago, for instance, the Civilian Office of Police Accountability ("COPA") has a budget of nearly \$17.5 million dollars to oversee fewer than 15,000 uniform officers; Chicago has committed to fund COPA with one percent of Chicago Police Department's budget—this year more than \$1.5 billion.⁶ Miami's City Charter also requires that its Civilian Investigative Panel "be operated on an annual budget that shall be no less than one percent of the approved regular salaries and wages line item of the city's police department general fund budget."⁷ A number of other cities, including San Francisco and Oakland, have taken steps to fund their independent oversight agencies with working budgets that allow them to help bridge the gap between the police and their respective communities. In fiscal year 2017, the San Francisco Department of Police Accountability's budget was 1.23 percent of the San Francisco Police Department's budget; Oakland's Police Commission had a budget that was 0.85 percent of that allocated to the Oakland Police Department.⁸

Amending the City Charter to link the CCRB's budget to the NYPD's budget would not be an unprecedented action. The city's Independent Budget Office ("IBO"), an agency created as part of the 1989 Charter revision process to provide nonpartisan analysis of the city's budget and economy to the public, is allocated a budget that is 10 percent of that allocated to the New York City Office of Management and Budget ("OMB").⁹ Similar to the way that the CCRB provides

⁵ As explained by NYPD Patrol Guide § 212-11, "A common law right of inquiry [otherwise known as a Level 2 stop] is an encounter between a civilian and a uniformed member of the service conducted for the purpose of asking the civilian pointed or accusatory questions because the police officer has a "founded suspicion" that criminal activity is afoot. "Founded suspicion" is a lower level of suspicion than the "reasonable suspicion" required to conduct a "stop" or Level 3 encounter. Upon a founded suspicion of criminality, the officer may approach a person to ask accusatory questions and may seek consent to search; however, consent must be voluntarily given... A Terry Stop/level 3 encounter is any encounter between a civilian and a uniformed member of the service in which a reasonable person would not feel free to disregard the officer and walk away."

⁶ City of Chicago 2018 Budget Overview, (https://www.cityofchicago.org/content/dam/city/depts/obm/supp_info/2018Budget/2018_Budget_Overview.pdf) at 111; see also: Spielman, Fran, "Emanuel accused of renegeing on funding commitment to COPA," *Chicago Sun Times*, (<https://chicago.suntimes.com/news/emanuel-accused-of-renegeing-of-funding-commitment-to-copa/>).

⁷ City of Miami, Florida Charter and Code, Sec. 11.5-35.

⁸ San Francisco Police Department, Fiscal Year 2017-2018 Budget, (<https://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/PoliceCommission020817-SFPDBudgetPresentationFY17-18.pdf>); see also: Department of Police Accountability Report 3rd Quarter 2017, (<https://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/PoliceCommission120617-DPA20173rdQuarterReport.pdf>); see also: City of Oakland 2017-2019 Adopted Policy Budget, (<http://www2.oaklandnet.com/oakcal/groups/cityadministrator/documents/policy/oak067556.pdf>) at G-17 and G-35.

⁹ New York City Charter Revision, August 1989 Summary of Final Proposals,

independent, civilian input into disciplinary decisions following police misconduct, the IBO works to bring transparency to public conversations about budget and revenue. Both agencies facilitate an opportunity for greater public participation in policy debates and decisions.

NYPD'S DUTY TO COOPERATE

The NYPD and the CCRB currently have a healthy exchange of information. The NYPD provides not only documents and materials relevant to the CCRB's investigation of individual incidents of police misconduct; it also furnishes information that contributes to the Agency's operational capabilities and Charter-mandated public education efforts.¹⁰ For example, the NYPD supplies a regularly-updated roster of members of service who have been assigned BWCs, and a monthly spreadsheet indicating dates of CCRB requests for BWC footage and NYPD responses so that both agencies can reconcile internal audits of footage turnaround time. The Department has also made NYPD personnel available for interviews and allowed CCRB staff to observe and participate in training.

Currently, the Charter only requires the NYPD's duty to cooperate with the CCRB's requests for records and materials that are necessary to its investigations.¹¹ Establishing more concrete parameters for the NYPD's duty to cooperate will enable the cooperation between the agencies to continue, regardless of leadership changes at either agency.

Additionally, the findings and recommendations of the Board are currently submitted to the Police Commissioner for implementation. To increase greater concurrence between the NYPD and the Board, the CCRB suggests adding language to the Charter that better defines the NYPD's duty to cooperate with the Board's disposition and discipline recommendations. It is imperative that the CCRB not only learn the final disposition and discipline in all cases in which the Board submitted a finding and recommendation, but also that the Police Commissioner give deference to the CCRB's recommendations.

DELEGATION OF SUBPOENA POWER

To fulfill its mandate under the City Charter, the Board is empowered to issue subpoenas compelling the attendance of witnesses and the production of records and other materials. The CCRB serves dozens of routine subpoenas every month for records, video footage, and other materials relevant to its investigations.

The current wording of the City Charter requires a majority vote of the Board in order for a subpoena to be issued. In practice, requiring an entire 13-person Board to meet and review routine subpoenas before Agency staff can serve them results in days or weeks of unnecessary delay. Both investigations and prosecutions suffer from these delays. Complainants and members of service deserve accountability as soon as possible. Allowing the Board to delegate this authority to the highest-ranking members of the Agency staff—for instance, the Executive

(http://www1.nyc.gov/assets/charter/downloads/pdf/1989_final_report.pdf) at 23.

¹⁰ Charter 18-A § (c)7.

¹¹ Charter 18-A § (d)1.

Director or General Counsel—is a small administrative change that would have a large impact on the efficiency of the CCRB’s operations.

Strong democracy requires robust oversight. Making changes to its Charter to strengthen the ability of the CCRB to perform its duty to hold police accountable for misconduct demonstrates that New York City intends to be a leader in police oversight, and is committed to principles of fairness and public accountability.



40 Rector Street, 9th Floor
New York, New York 10006

www.StopSpying.org | (571) 766-6273

**SUBMISSION OF
ALBERT FOX CAHN, ESQ.
EXECUTIVE DIRECTOR
SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT, INC.**

**TO THE NEW YORK CITY
CHARTER REVISION COMMISSION 2019
CONCERNING POLICE ACCOUNTABILITY**

**SUBMITTED
March 3, 2019**

I write on behalf of the Surveillance Technology Oversight Project (“STOP”). STOP litigates and advocates for the privacy rights of New Yorkers impacted by suspicionless, warrantless surveillance. I commend the Charter Revision Commission for bringing much-needed attention to the ongoing campaign for greater accountability of New York City Police Department (“NYPD”) misconduct.

In this submission, I propose two measures that would empower both the City Council and the Civilian Complaint Review Board to hold NYPD officers accountable for surveillance practices that unconstitutionally infringe the constitutional rights of New Yorkers. Both of the proposed charter amendments would remedy long-standing, and structural barriers to holding officers accountable and safeguarding the rights of the marginalized communities.

I Background

For the past year, I’ve have been proud to partner with the City as part of its Automated Decision Systems Task Force, meeting with City leaders, academics, and advocates to shape recommendations for the future role of artificial intelligence in New York City Government. As part of my role in the task force, I have noted that while transparency is crucial in every area of government, it is nowhere more vital than in policing, where mistakes can quickly rob New Yorkers of their liberty, or even their life.

As part of the Charter Revision’s deliberations, I urge you to recommend the add measures to ensure accountability for discriminatory surveillance practices, especially those tools that use artificial intelligence and other automated decision systems. Historically, the NYPD deployed novel and highly invasive surveillance technologies in ways that circumvented democratic oversight and accountability. The NYPD used private and federal funds, without any disclosure to the lawmakers we depend-on to oversee our police forces. With this unaccountable funding, the NYPD was able to deploy tools like “stingrays,” fake cell towers that collect sensitive location and communications data.¹ Like many of the NYPD’s new tools, stingrays spy not only on the target of an investigation, but also on untold numbers of innocent bystanders.²

Civilian oversight of policing and intelligence gathering is not only a fundamental American value, it is essential for effective policing. As then-President Obama’s Task Force on 21st Century Policing found, “[l]aw enforcement agencies should establish a culture of transparency and accountability in order to build public trust and legitimacy.”³ The NYPD’s current intelligence practices are not only undemocratic, but they harm the NYPD’s very mission of promoting public safety.

¹ Joseph Goldstein, *New York Police Are Using Covert Cellphone Trackers, Civil Liberties Group Says*, N.Y. TIMES, Feb. 11, 2016, <https://www.nytimes.com/2016/02/12/nyregion/new-york-police-dept-cellphone-tracking-stingrays.html>.

² *Id.*

(Cont'd on following page)

Unfortunately, the CCRB and City Council currently lack the tools to address the longstanding pattern of unconstitutional NYPD surveillance targeting Muslim New Yorkers and Communities of Color. For example, public records show that the NYPD's Intelligence Division engaged in extensive, suspicionless surveillance of majority Muslim neighbourhoods and Muslim families.⁴ Additionally, NYPD officials have conducted blanket surveillance of entire mosques, surveilling men, women, and children for nothing more than practicing their faith.⁵ Some local businesses have even been classified as "place[s] of concern" for nothing more than having customers of middle eastern dissent.⁶

The facts are clear, the NYPD is engaged in widespread, discriminatory policing practices. According to the Office of the Inspector General for the NYPD ("OIG"), over 95% of recent NYPD political and religious investigations targeted Muslim individuals and organizations.⁷ The pattern of discriminatory surveillance is completely at odds with the fact that the overwhelming majority of terrorist attacks in the United States are committed by right-wing extremists and white supremacists, according to sources as varied as the Anti-Defamation League, Southern Poverty Law Center, and U.S. General Accountability Office.⁸

(Cont'd from preceding page)

³ PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 12 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁴ Matt Apuzzo & Joseph Goldstein, *New York Drops Unit That Spied on Muslims*, N.Y. TIMES, Apr. 15, 2014, https://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html?_r=0; see also DIALA SHAMAS & NERMEEN ARASTU, MUSLIM AM. CIVIL LIBERTIES COAL., CREATING LAW ENFT ACCOUNTABILITY & RESPONSIBILITY & ASIAN AM. LEGAL DEF. & EDUC. FUND, MAPPING MUSLIMS: NYPD SPYING AND ITS IMPACT ON AMERICAN MUSLIMS 10 (2013), <https://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

⁵ Apuzzo & Goldstein, *supra* note 7.

⁶ Adam Goldman & Matt Apuzzo, *NYPD: Muslim Spying Led to No Leads, Terror Cases*, ASSOCIATED PRESS, Aug. 21, 2012, <https://www.ap.org/ap-in-the-news/2012/nypd-muslim-spying-led-to-no-leads-terror-cases>.

⁷ OFFICE OF THE INSPECTOR GEN. FOR THE N.Y. POLICE DEP'T, N.Y. CITY DEP'T OF INVESTIGATION, AN INVESTIGATION OF NYPD'S COMPLIANCE WITH RULES GOVERNING INVESTIGATIONS OF POLITICAL ACTIVITY 1 n.1 (2016), https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig_intel_report_823_final_for_release.pdf. In its investigation, the OIG reviewed a random selection of 20% of cases closed or discontinued between 2010 and 2015 of each case type. *Id.* at 14.

⁸ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-17-300, COUNTERING VIOLENT EXTREMISM: ACTIONS NEEDED TO DEFINE STRATEGY AND ASSESS PROGRESS OF FEDERAL EFFORTS 4 (2017), <https://www.gao.gov/assets/690/683984.pdf>; David Neiwert, *Trump's Second Travel Ban Once Again Misidentifies Source of Domestic Terrorist Threat*, SOUTHERN POVERTY LAW CENTER (Mar. 13, 2017), <https://www.splcenter.org/hatewatch/2017/03/13/trumps-second-travel-ban-once-again-misidentifies-source-domestic-terrorist-threat>; *Murder and Extremism in the United States in 2016*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/education/resources/reports/murder-and-extremism-in-the-united-states-in-2016> (last visited June 13, 2017).

Currently, the City Council is evaluating long-overdue reforms to promote better accountability for police surveillance, but limitations in the existing charter prevent the council from enacting the full scope of needed reforms. One measure is the Public Oversight of Surveillance Technology (POST) Act.⁹

Under the POST Act, the NYPD must issue an “impact and use policy” report when choosing to use a new surveillance tool.¹⁰ This report must describe the technology, rules, and guidelines for the use of that technology, and safeguards for protecting any data collected.¹¹ The City Council and the people of New York City would then be allowed to comment on such an acquisition.¹² The Post Act is a valuable first step, but it is a far weaker law than any of the growing number of police reforms enacted across the country.¹³

The reason for this limitation, as with so many police accountability measures, is curtailment. Under New York’s Municipal Home Rule Law (MHRL), the City Council must ratify any city law through a public ballot measure if it “[a]bolishes, transfers or curtails any power of an elective officer”, including the mayor.¹⁴ This doctrine blocks a broad array of measures that seek to reform the conduct of city agencies, including the NYPD, but arguably curtail the powers of the mayor in the process.

For this reason, the POST Act does not prohibit the NYPD from using new surveillance tools. Unlike reform bill in other cities, which require civilian approval for new surveillance tools, the POST Act merely ensures that the council is informed as to how such tools are deployed. To be clear, the POST Act’s proposed reforms are indispensable to police accountability, but it is also clear it must just be the first step. To keep up with the broader national movement for surveillance oversight and accountability, this commission must act.

⁹ Intro 1482-2017

¹⁰ N.Y. CITY COUNCIL 1482 § 1 (N.Y. 2017), ch. 1, 14 ADMIN. CODE OF N.Y.C. § 14-167(b) (as proposed)

¹¹ *Id.* at 14-167(a) (as proposed)

¹² *Id.* at 14-167(e-f) (as proposed)

¹³ *See*, ACLU, Community Control Over Police Surveillance, available at <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance>

¹⁴ MHRL section 23

II Proposals

a. POST Act Plus

- Implement bill paralleling the reforms implemented by Oakland, California and other progressive municipalities.
- Form civilian oversight body to review existing surveillance technologies and proposals for new technologies.
- Civilian oversight body must approve any request for the deployment of new surveillance tools.
- Civilian oversight body can remove authorization for existing surveillance tools at any time.
- Civilian oversight body can hold hearings on the impact of surveillance on New Yorkers.
- Empower CCRB and NYPD Office of the Inspector General to review and investigate surveillance complaints.
 - Provide CCRB with suitable investigative powers and independent adjudicative forum.
 - Empower CCRB to investigate bias in automated decisions tools used in police surveillance, including artificial intelligence, machine learning, and natural language processing.

b. Curtailment repeal

- Pass stand-alone ballot measure authorizing the City Council to implement any and all regulations of the NYPD, irrespective of curtailment concerns.
- This initiative would not implement specific changes, but it would empower the council to enact any/all regulations going forward to ensure police accountability, irrespective of mayorial authority.

III Conclusion

In light of the foregoing, I urge the commission to use its authority to propose and promote ballot measures that enhance public accountability for police surveillance. Regardless of what specific proposal is adopted, I hope that, at a minimum, the commission includes this valuable and timely discussion as part of its deliberations.