

Speech by Mr Frank H. Wohl
Chair, New York City Civilian Complaint Review Board, U.S.A.

“Police Complaints System in New York City”

My name is Frank Wohl. I am the Chair of the New York City Civilian Complaint Review Board, more commonly referred to in New York as the CCRB. I am pleased to be here to share with you my experiences with the most highly developed and elaborate civilian police review system in the United States.

In New York City, the issue of how to handle civilian complaints of police misconduct has been an issue of substantial public concern for many years. The core question has been whether such complaints should be received and investigated by the Police Department itself or by an independent agency. This is the same question that the Roman poet, Juvenal, posed over 2000 years ago: "Who will guard the guardians?"

A board that monitors civilian complaints of police misconduct has existed in New York City for almost fifty years. For most of that time the board was part of the Police Department. Under that system, the entire disciplinary process was controlled by police officers and police employees, who reported to the Police Commissioner. The Police Commissioner serves at the pleasure of the Mayor, who is elected by the population of the City. Accordingly, control of the process was ultimately political. In 1966, a direct voter referendum to add civilians to the police review board was proposed, but it was defeated. Twenty years later, New York's City Council passed legislation adding members of the public to the Board. This hybrid—partly police and partly civilian—operated for six years. Finally, in 1993, the City Council passed legislation that created an all-civilian, non-police agency to investigate allegations of police misconduct—the CCRB.

The logic behind an all-civilian review board was, of course, the belief that civilians would be more willing than police officials to conduct full and impartial investigations. It was also believed that the public would have more confidence in civilians investigating the police than in the police investigating themselves. The contrary view was that civilians would not be

able to investigate police misconduct effectively because they would not have the sensitivity to police issues to fairly evaluate police officers' behavior, especially in stressful emergency situations. Another concern was that a civilian agency could not rapidly gather the information needed to evaluate police officers' actions. Today, in New York City, these issues are still debated.

From the police side, the CCRB is criticized for supporting complaints that are not capable of proof to a high degree of certainty. Police critics claim that civilians, who have never "walked in a police officer's shoes," cannot fully appreciate the pressures on police officers that motivate their responses to stressful situations.

On the other hand, members of the public tend to criticize the CCRB when complaints are not resolved in a manner that is favorable to complainants. Frequently, the Board is criticized because it substantiates a relatively low percentage of its cases. In 2000, the Board substantiated less than 8% of the 2,414 cases it fully investigated. This low percentage probably results from the fact that our board is required to accept all complaints, with no screening for facial validity.

Our CCRB is composed of thirteen commissioners. All thirteen board members are appointed by the Mayor of New York City. Five, including the Chair, are designated, or nominated, by the Mayor. Five are designated by the City Council and three are designated by the Police Commissioner. Although none of the commissioners can be current Police Department employees, they have considerable legal and law enforcement experience. Seven of our current board members are attorneys. Of those, five are former federal or state prosecutors. Three of the current board members are former Police Department executives, including one former Police Commissioner and one former First Deputy Police Commissioner. The Board members also reflect the racial and ethnic diversity of the city's population.

Apart from the Board itself, the CCRB has a full-time staff that includes 129 investigators plus an executive and administrative staff, and a budget of approximately \$9 million. By comparison, the New York City Police Department has approximately 40,000 officers, and a budget of

approximately \$3.3 billion.

By New York City statute, the CCRB has the power to investigate and make findings based on complaints of misconduct against New York City police officers and to recommend disciplinary action. The Board cannot impose discipline on a police officer. That power is reserved to the Police Commissioner.

In a move that represents a major enhancement of the agency's powers, the Mayor and the Police Commissioner announced on January 26 that the CCRB was going to be given the authority to prosecute its own cases against police officers. This added power should improve the efficiency of the disciplinary process. Although there are still many questions that must be answered before we can implement this additional responsibility, the Board views this proposed expansion of its authority as a natural outgrowth of its role and believes it will increase the confidence of the public in the disciplinary process.

CCRB investigations do not take the place of criminal investigations or of civil lawsuits. State and Federal prosecutors pursue criminal investigations, and often ask the CCRB to defer its investigation until after the criminal matter is concluded. Normally, the CCRB accedes to such requests. If a criminal case results in a conviction, the CCRB case generally becomes moot because the convicted officer is discharged from the police force. If the officer is acquitted and continues as a member of the Police Department, the CCRB is likely to take up the case and arrive at its own determination. Persons who claim that they have been injured by police misconduct have the right to file a civil lawsuit seeking money damages. Complainants who bring civil suits for damages often decide not to participate in a CCRB investigation for fear that their cooperation with the CCRB investigation may adversely affect their civil actions.

The CCRB's jurisdiction includes complaints in four basic categories: excessive or unnecessary force, abuse of authority, discourtesy, and offensive language. Excessive or unnecessary force means force beyond that necessary to arrest a suspect or to protect life or property, subject to some very specific Police Department regulations which seek to implement a substantial body of law on that subject. These investigations may range

from an unnecessary push that did not result in injury to the unwarranted firing of a gun that results in death. In 2000, the CCRB received 2,038 complaints in which excessive or unnecessary force was alleged. Abuse of authority complaints can include allegations of improper street stops, frisks, searches, the issuance of retaliatory summonses, unnecessary threats of arrest, or any other abuse of police powers to intimidate or otherwise mistreat a civilian. In 2000, we received 2,319 complaints in which abuse of authority was alleged. Discourtesy complaints allege any form of rudeness or discourtesy in the way a police officer interacts with a member of the public. In 2000, the CCRB received 1,596 complaints in which discourtesy was alleged. Offensive language complaints are allegations of insulting statements by a police officer that refer to a person's race, ethnicity, religion, sexual orientation, gender, age, or disability. In 2000, we received 296 complaints in which offensive language was alleged.

Since 1993, the CCRB has received an average of about 4,800 complaints per year. In 2000, complaints were down, with 4,121 received. We are frequently asked why complaints increase or decrease. We have generally declined to answer that question because we believe that any answer is inherently speculative.

The CCRB cannot initiate a complaint on its own. Instead, its jurisdiction is limited to investigating matters reported to it by private persons. However, the Board has an active outreach staff that is charged with making presentations at community meetings to inform the public about the CCRB and how to make a complaint. We also distribute brochures throughout the City to make sure that members of the public know how to make a complaint.

Members of the public can file complaints by reporting the misconduct in-person at our office or at any police precinct, calling our 24-hour hotline, writing a letter to the CCRB or a government official, sending an email to the agency, or filling out an electronic complaint form on our website. The CCRB is required to investigate all complaints that fall within its jurisdiction.

Once a complaint is filed, it is assigned to an investigator. The investigator gathers as much information as possible about the complaint by

interviewing the complainant, the victim and any witnesses. In addition, the investigator may canvass the scene of the incident to find additional witnesses, order and analyze police documents for identification purposes, review medical records, and examine any other relevant evidence. An investigator may request that the Board exercise its subpoena power to acquire additional information necessary to complete the investigation.

Of course, the investigator will interview the subject officers. Police officers are required to respond to CCRB questions. If they refuse, they will be dismissed from the Police Department. Officers are usually accompanied in an interview by a police union representative or an attorney.

Once an investigation is completed, the investigator summarizes his findings and recommendations in a draft report that is reviewed by the supervisor and executive staff. After that review, the report is sent to a panel of the Board, composed of three Board members. These panels have the authority to make the CCRB's findings and recommendations to the Police Commissioner. The panel also has the option of sending the case to the full 13-member board, although that occurs rarely. The Board also has the power to hold hearings, but that process is almost never used.

If the CCRB concludes that there is sufficient credible evidence to find by a preponderance of the evidence that the subject officer engaged in the claimed misconduct, the CCRB substantiates the allegation. In 2000, the Board substantiated 189 cases, or 7.8% of its full investigations. Substantiated cases are referred to the Police Commissioner for disciplinary action. If the panel concludes that the officer did indeed commit the act, but that his or her behavior was lawful and proper, it exonerates the officer. In 2000, the Board found the officers' conduct was exonerated in 499 cases, or 20.7%, of the CCRB's full investigations. If the panel determines that the act of misconduct simply did not occur, it finds the allegation to be unfounded. In 2000, the Board found the complaints unfounded in 736 or 30.5% of the CCRB's fully investigated cases. We also have separate dispositions for situations in which we cannot identify the subject officer. Although these situations are not frequent because police officers are required to give their names and badge numbers to members of the public upon request, they occur more often than we would like.

When the Board finds insufficient evidence to determine whether an act of misconduct did or did not occur, the allegation is given an unsubstantiated disposition.

About half of our cases are not fully investigated because the complainant or a witness decides not to pursue the investigation. Although we do not have detailed empirical information on the reasons why complainants abandon the process, one study found that many complainants just want their complaint registered. That having been accomplished by simply filing a complaint, they do not want to spend the additional time to give testimony and possibly attend a hearing.

Records of complaints and their dispositions remain part of an officer's CCRB history for the officer's entire career. This history, which becomes part of the officer's personnel record, is used by the Police Department as a management tool. The precise manner in which the Police Department uses an officer's CCRB history is the subject of ongoing discussions between the Police Department and the police unions. A record with a large number of complaints is certainly not a positive aspect of a police officer's job performance.

As I mentioned earlier, if the CCRB finds a complaint to be substantiated, it refers the matter to the Police Commissioner, who has the exclusive authority to impose discipline. The CCRB can recommend one of three disciplinary measures for the Commissioner's consideration - Instruction; Command Discipline or Charges and Specifications. Instruction, the mildest form of discipline, empowers a commanding officer formally to instruct the subject officer on proper police procedures regarding the incident. Command Discipline entitles a commanding officer to require the subject officer to forfeit up to ten vacation days, which could result in a sizable loss of money. Charges and Specifications, the most serious form of discipline, may result in punishment as severe as suspension from the police force for up to a year or termination from the Police Department. These severe forms of punishment can be imposed only after an administrative trial.

A very important function of the CCRB is the publication of its Semiannual Report, which describes complaint activity, dispositions and

disciplinary action during the reporting period. The Board's Semiannual Report has become a significant basis for public discussion of police misconduct issues. In addition, the CCRB issues separate reports on particular issues relating to policing. Examples of such special reports are reports in 1997 and 2000 on the use of Pepper Spray (a substance derived from the cayenne pepper plant, packaged in a spray canister and used as a less-than-lethal-force device) in order to subdue violent or hyperactive individuals; in 1998 a report on the impact of the Police Department's plan to use Hollow Point Bullets [whose hollowed out heads tend not to ricochet or pass through a body as much as the full metal jacket bullets then being used]; a 1998 report on the disproportionately high rate of substantiated cases in certain precincts; and a 2001 report concerning street encounters between police officers and civilians. The Board also has a special committee formed to study race relations between police officers and members of racial minority groups. That committee is now cooperating with an academic study of encounters between police officers and civilians. Another important function of the Board is to identify and analyze patterns of complaints, and to bring them to the attention of the Police Commissioner, with the hope of minimizing misconduct through increased training or changes in policy.

The CCRB's primary strength is its independence from the Police Department. This independence allows the agency to conduct investigations that are in fact objective and are perceived by the public as objective.

In the early years of its independence, many of the CCRB's recommendations were not followed by the Police Commissioner. For example, of the cases substantiated and referred to the Police Commissioner in 1996, that the Police Commissioner has resolved, discipline was imposed in only 35% of the cases. I am pleased to say that this problem seems to have been corrected. Of the cases that the CCRB substantiated and referred to the Police Commissioner in 1999 and 2000 that the Police Commissioner has resolved, over 90% have resulted in discipline.

One of the primary challenges to the CCRB is reducing the time it takes to conclude investigations. The agency now takes an average of between nine and ten months to complete a full investigation. Although

some complex investigations may require this length of time, many of our cases should be completed within 30 to 60 days, and the discipline should be imposed within 30 days after our recommendation. This timetable should be adequate for simple cases, such as claims of a verbal insult or a push that does not result in injury. We have spent considerable effort analyzing the reasons why investigations are not resolved faster. They include administration and management issues, and questions about the adequacy of resources.

A significant factor in many cases is the time it takes to get information from the Police Department. Part of the solution lies in the more efficient sharing of information between the CCRB and the Police Department. To complete an investigation, our investigators must often get information from the Police Department. Depending on the case, that information may consist of reports filed at the time of the incident or interviews of officers on duty, including the subject officer. In more complex cases, we may need tapes of emergency 911 calls, police radio logs, vehicle records or other materials from Police Department records. I am very pleased that the Police Department has recently committed to allow CCRB investigators to access certain Police Department databases directly from CCRB computer stations. I hope that information sharing process will make the CCRB's investigation process significantly more efficient.

Still, the agency faces other difficulties. One of our most intractable problems is our inability to resolve credibility issues. Many encounters between police officers and members of the public are one-on-one events. Often, when the facts are in dispute, it is the word of one or more police officers against one or more civilians. Unless we find some corroborating evidence, such as an objective third-party witness, it will be impossible to resolve the conflict in testimony. These cases often result in unsubstantiated findings.

A potential solution to many of the CCRB's problems lies in its mediation program. Mediation is a non-adversarial, non-disciplinary process, voluntarily agreed to by the complainant and subject officer, in which the parties meet with a mediator and attempt to achieve mutual understanding and reconciliation. The neutral mediator assists the parties in resolving the complaint but cannot impose a settlement. Mediation is not

available in cases involving an allegation of injury to a person or damage to property, or when the subject officer has an extensive prior record of CCRB complaints. In my opinion, mediation offers the solution to many non-force cases involving officers who do not have an extensive history of misconduct. Mediation is faster and cheaper than the more adversarial process. And the result is better—a consensual resolution reflecting mutual understanding—in contrast to the bitterness of investigations and punishment.

A major disappointment, however, is the low number of cases we have been able to mediate. In 2000, even an aggressive push by the CCRB resulted in only 43 mediated cases. Still, that was almost equal to all cases mediated in the three prior years. The primary reason for this meager number of mediations is opposition from the police unions. They claim that officers get no benefit from mediation because the Police Department considers a mediation adversely to the officer. Although the Police Department has denied this, the union's attitude persists. However, because the mediation process is so beneficial to the officers involved, I hope that the Police Department will succeed in convincing the unions to support mediation with enthusiasm.

The ultimate challenge for the CCRB has been to gain the confidence of the public. We have made progress by improving the quality of investigations. Despite its progress, the CCRB continues to struggle in its effort to accomplish one of the most difficult tasks now confronting local governments, guarding the guardians.