

CIVILIAN COMPLAINT REVIEW BOARD  
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June 16, 2008

Honorable Raymond W. Kelly  
Police Commissioner  
City of New York  
1 Police Plaza  
New York NY 10038

Dear Commissioner Kelly:

I am writing in response to your comments on the draft of our 2007 Annual Report. We appreciate your prompt and careful review. As usual, there are statements in your letter with which we agree and others with which we do not.

We flatly disagree with your repeated assertion that the CCRB has a bias against members of the New York City Police Department. This claim is not supported by a fair assessment of any individual case and our disposition statistics demonstrate that it is false. As you frequently note, we exonerate far more allegations against police officers than we substantiate. Every case is investigated by a trained investigator, reviewed by a senior supervisor or manager and evaluated by a panel of highly credentialed board members, including a police department representative. All substantiated cases are also reviewed by a former prosecutor. Our CCRB Board members are unbiased; they understand the reality of police work during street encounters; and they know the difference between probable cause and reasonable suspicion.

Although you state that “good faith by the officer” is “rarely credited in his or her favor,” the CCRB does consider an officer’s good faith in evaluating whether misconduct occurred. Good faith is relevant, as the report states on page 24, except when an officer “obviously violates clearly established law.” Evaluating good faith, however, differs from evaluating credibility. Your letter conflates these two issues instead of treating them separately.

When we analyze credibility, we are no more lenient towards a complainant than a police officer. Both complainants and officers can have motives to lie in their sworn CCRB testimony; our investigators do a good job of sorting out the contradictions and reaching a fair assessment of credibility. Complainants with pending litigation or criminal histories are held to an extremely high standard, and the board generally does not substantiate claims that are uncorroborated or contradicted by credible witnesses.

We agree that there are contours to search and seizure law that would stump judges, let alone police officers. However, the CCRB does take the “totality of the circumstances” into account and does not substantiate claims which “do not violate clearly established statutory or constitutional rights of which a reasonable person would have known,” Di Palma v. Phelan, 179 A.D.2d 1009, 1010 (4<sup>th</sup> Dept. 1992). As we state on page 24, we hold officers accountable only for the “important principles” of People v. DeBour, which are written on the flypages of their memo books. We substantiate only those cases in which a preponderance of the evidence shows that a police officer engaged in conduct that he or she knew or should have known was improper.

As the CCRB has made its review process more rigorous and sent fewer substantiated cases to the NYPD, the department has imposed discipline less frequently. You have publicly attributed the decrease in discipline to the decrease in the percentage of substantiated force allegations. In this context, it seems entirely fair for us to note that the NYPD has declined to prosecute substantiated force cases involving nightsticks or pepper spray, in order to correct the public record about the nature of the cases that the department is declining to prosecute.

Furthermore, Chief Campisi, in his testimony before the City Council, stated that “officers receiving instructions are invariably found not to receive the same type of complaint again.” As our report indicates, this statement is false – *many* officers who have received instructions *have* received the same type of complaint again. Although there is perhaps much more that could be said on this subject, our statements were once again intended simply to correct the public record.

We appreciate your thoughts on the three cases we discussed in the report. These comments represent the most detailed explanation of your decision-making process that we have received to date and do not contain the serious factual errors that have characterized some of the department’s previous public comments about these cases. While we stand by our evaluation of the cases, we believe it is productive to have a detailed and fair exchange about them.

I would like to note that the CCRB does not consider an officer’s CCRB history in assessing his credibility, only to consider the appropriate level of discipline to be imposed. We have changed the language in our report to make this practice clear. We understand, furthermore, that the NYPD considers this history and other personnel factors in deciding whether to prosecute a substantiated case. In that context, we find it surprising that cases involving officers with troubling CCRB histories are among those which you have declined to prosecute.

We are mostly in agreement with your remaining comments and we have made changes to the report reflecting that agreement. On page 10, we have clarified that we are discussing the increase between 2002 and 2006. We have added language detailing the exceptions to the 18-month statute of limitations. Regarding stop and frisk cases, we state only that the data sparked public debate. The CCRB has remained neutral on this issue. We have not stated that the raw data can support charges of racial profiling. However, we also have not endorsed the department’s claim that demographic disparities in the descriptions of perpetrators explains similar disparities in civilians stopped based on officer observations.

Regarding the chart on page 26, we find your objection to our use of the word “success” to describe a guilty finding curious. In our adversarial judicial system, even though the goal is a fair and just determination, prosecutors generally consider themselves advocates and verdict in their favor a “success.” However, to accommodate your concern and to reflect common usage, we have changed the title to “Department Advocate’s Success Rate at Trial.”

Thank you again for your comments. As you know, I believe that the work which the CCRB does is important in fostering good police and community relations. I look forward to additional dialogue with you to further these interests.

Sincerely,

Franklin H. Stone