

The Case for an Independent Police Accountability System:

Transforming the Civilian Review Process in Rochester, New York

**By Barbara Lacker-Ware
and Theodore Forsyth**

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DEDICATION

We dedicate this report and its accompanying ordinance to the memory of community activist Rev. Raymond L. Graves, called the “spiritual father” of civilian police review. As a civil rights leader for over 40 years, Rev. Graves was a fearless advocate and prophetic voice for justice in Rochester.

It is also dedicated to the following individuals, who died during the course of conflicts with Rochester Police Department officers:

Ronald Frazier 1975
Denise Hawkins 1975
Alecia McCuller 1983
Kenneth Jackson 1984
Louis Davila 1985
Calvin Greene 1988
Vandre Davis 2001

Willie Carter 2002
Craig Heard 2002
Lawrence Rogers 2002
Patricia Thompson 2006
Hayden Blackman 2011
Israel “Izzy” Andino 2012
Richard Gregory Davis 2015

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TABLE OF CONTENTS

Section	Page
ABSTRACT	5
SUMMARY OF REPORT FINDINGS	6
KEY ELEMENTS OF THE PROPOSED POLICE ACCOUNTABILITY BOARD	8
NOTE TO THE READER	10
INTRODUCTION	11
HISTORY OF CIVILIAN REVIEW IN ROCHESTER	13
PROCESS FOR FILING A COMPLAINT	14
RECENT ADAPTATIONS	16
DEFINITIONS	19
LACK OF APPEAL PROCESS	19
RPD / PSS COMPLAINT REVIEW FINDINGS	21
CIVILIAN REVIEW BOARD RECOMMENDED FINDINGS	25
NONCONCURRENCES	28
THE CDS CIVILIAN REVIEW BOARD	29
Selection of CDS as Organizational Contractor of CRB	30
Civilian Review Board Panelists	33
Civilian Review Board Chairpersons	34
ROCHESTER POLICE DEPARTMENT DISCIPLINE	39
Discipline in Investigations of Civilian Complaints	41
Discipline in Investigations Initiated by RPD	45
Police Union Involvement	47
LACK OF TRANSPARENCY	50
SUMMARY OF REPORT FINDINGS	53
INSIGHTS & CONCLUSIONS	55
KEY ELEMENTS OF PROPOSED POLICE ACCOUNTABILITY BOARD	59
RECOMMENDED POLICE ACCOUNTABILITY BOARD ORDINANCE	61
APPENDIX A: REVIEW OF OTHER POLICE ACCOUNTABILITY PROCESSES	82
APPENDIX B: PROPOSED DISCIPLINARY MATRIX	88
APPENDIX C: SYRACUSE POLICES AND PROCEDURES FOR COMPLAINTS	92
APPENDIX D: SYRACUSE PANEL HEARING POLICIES AND PROCEDURES	94
APPENDIX E: PROPOSED LEGISLATION CHICAGO, ILLINOIS	98
ABOUT THE AUTHORS	100
END NOTES	101
BIBLIOGRAPHY	106

ABSTRACT

The purpose of this document is to improve the accountability of the Rochester Police Department through a robust civilian oversight system. The City of Rochester's civilian review process embodied in the Civilian Review Board does not adequately address the instances of police misconduct by officers in the Rochester Police Department (RPD). Civilians file complaints with the RPD's internal affairs office, the Professional Standards Section (PSS), which investigates them. These investigations and their findings are submitted to the Civilian Review Board (CRB) and the Chief of Police, who each make their own findings. The CRB has no power to independently investigate complaints, no power to compel testimony or evidence, and no power to discipline officers. The Chief of Police makes the final determination as to whether the complaint against the officer is sustained, and if so, what, if any discipline is administered. This process lacks transparency and accountability, and many individuals and organizations believe it perpetuates a system of officer misconduct resulting in ongoing mistreatment of some civilians in Rochester, NY.

The authors researched: annual reports of the CRB 2001-2015 and PSS 2002-2015, the history of Rochester's civilian review processes, and how the current process works. We compared the CRB, PSS, and Chief of Police findings and recommendations. We examined how the CRB was established, its make-up, and how it is funded. We reviewed the records of disciplinary consequences imposed by the RPD in instances of officer misconduct. We studied civilian review processes in other areas of the United States.

Our research indicates a lack of accountability and transparency within the RPD, resulting in continued occurrences of police officer misconduct. The PSS process involves the police investigating themselves, and there is no independent review of police misconduct that calls officers to account for their actions or enacts appropriate discipline that would deter the misconduct. The process through which the CRB is funded involves an apparent conflict of interest. The CRB has no power to investigate complaints. Instead, the police, through PSS, conduct all investigations of complaints. In many cases CRB findings mirror PSS findings, and there is no appeal process. The CRB is not adhering to portions of the 1992 ordinance that established it, and the ordinance itself does not address the need for an independent body to provide true accountability and transparency in incidents where civilians are mistreated by the police. There is no real opportunity for civilians to have their complaints heard in a just and fair process outside of the control of the RPD, short of filing a lawsuit, which is often not a realistic alternative, due to cost and other factors.

We recommend the abolition of the current Civilian Review Board and the establishment of a Police Accountability Board (PAB) through a City Council ordinance. The PAB would be completely autonomous and funded separately from the RPD, have investigative powers, and issue subpoenas to compel testimony and evidence. The PAB would make the final decision on the disposition of complaints and the recommended discipline to be imposed on officers if the complaints against them are sustained. This recommendation has been endorsed by numerous organizations and community leaders in Rochester, New York.

SUMMARY OF REPORT FINDINGS

Findings/Data

1. From 2002 to 2015, only 2% of civilian complaints of unnecessary force have been sustained by the Chief of Police and only 5% by the Civilian Review Board. (In contrast, Syracuse's Citizen Review Board's sustain rate was 23% in 2015.)
2. From 2008 to 2013, the Rochester Police Department (RPD) Professional Standards Section (PSS) did not sustain ANY civilian complaints for unnecessary use of force.
3. During the 14 years reviewed in the data, the harshest penalties meted out to the police officers for sustained complaints of excessive use of force were 6 suspensions.
4. From 2008 to 2015, there were no internal investigations regarding use of force by RPD officers; over the same time period there were 156 investigations of "procedure."
5. The Civilian Review Board (CRB) exonerated officers (meaning what they did was considered lawful) at a higher rate than the RPD most years.
6. When the Chief of Police disagreed with the CRB's recommended findings, he exonerated officers in all cases where the CRB sustained the complaint (meaning the officers' conduct was considered unlawful).
7. After the 2011 – 2012 City Council Commission review of the CRB, the Chiefs of Police sustained fewer civilian complaints, according to PSS reports, than they had before the Commission was established.
8. Civil lawsuits against the City of Rochester for police misconduct cost taxpayers millions of dollars each year.

Discipline

1. RPD officers can appeal any disciplinary action related to a civilian complaint through a three-person police appeal board, which could include a potentially sympathetic commander and a civilian of their choosing (per police union contract).
2. 77% of all types of civilian complaints filed 2002 – 2015 resulted in counseling memos or letters of reprimand as the only discipline for RPD officers.
3. Officers were suspended 7 times more for procedural violations during 2008 – 2015 and 10 times less for violations of force during 2002 – 2007.
4. In 2003, three different officers were cited for separate instances of: sexual harassment of a minor, an in-custody death, and shooting a bystander; all of which resulted in

suspensions. After 2003, PSS reports no details on discipline of officers for use of force.

Management/Process

1. The Center for Dispute Settlement (CDS) has served as the City of Rochester's contractor for the Civilian Review Board (CRB) for 24 years.
2. In 2012, the City established a process of requesting proposals to administer the CRB. This process has favored CDS to remain the sole contractor for the CRB, an apparent conflict of interest. In 2012, City Council administered the process. In 2015, the Rochester Police Department took over this administration.
3. The CRB is not independent. It receives training from the RPD and uses police investigators to conduct investigations into civilian complaints of police misconduct.
4. The Request for Proposals to administer the CRB includes the Chief of Police being able to remove anyone from the CRB based on undefined "bias"; this stipulation is not found in the 1992 ordinance establishing the CRB.
5. The majority of the CRB panel chairs have been either CDS staff or members of the CDS Board of Directors. This violates the 1992 ordinance that the panelists be volunteers.
6. The number of panelists and chairs has dwindled over the years to a select few who do not represent the racial or ethnic composition of the City of Rochester.
7. Information is not readily available to the public about the number of complaints made against a specific officer or the types of disciplinary measures that have been taken, if any.
8. The CDS's Community Advocate does not actually advocate for the civilian complainant.
9. The CRB offers no formal appeal process for complainants who disagree with the final dispositions of their complaints.
10. The CRB has never requested further investigation of a civilian complaint to the level of Rochester City Council; in 24 years, City Council has never reviewed a single civilian complaint.
11. The transmission of CRB recommended findings via voicemail to PSS seems to be an inadequate and insecure method.

KEY ELEMENTS OF THE PROPOSED POLICE ACCOUNTABILITY BOARD

1. The Civilian Review Board (CRB), established by a 1992 City Council ordinance, shall be abolished.
2. An independent Police Accountability Board (PAB) shall be established, which will be an autonomous office of the City separate from the Rochester Police Department (RPD).
3. The PAB shall be prohibited from contracting with, hiring, or consulting with the Center for Dispute Settlement (CDS) in any administrative capacity.
4. The PAB will be a civilian-controlled process for hearing civilian complaints about police misconduct. Its oversight will ensure accountability and transparency regarding the powers exercised by members of the RPD.
5. The PAB will report to the Rochester City Council and be funded through the budgetary process of the City of Rochester.
6. The PAB will hire an administrator, administrative staff, and independent investigator(s) who are not currently nor ever have been employed by the RPD or any other law enforcement agency.
7. The PAB will consist of 11 members who are residents of the City of Rochester and will serve terms of four years.
8. Six members of the PAB will be elected by the public. Four members of the PAB will be appointed by City Council and one by the Mayor. PAB members shall not be employed or formerly employed by the RPD or any law enforcement agencies while serving as a Board member.
9. The PAB will evaluate the efficacy of existing RPD policies, procedures and practices. The PAB may identify major problems or trends within the RPD and will make recommendations to the Chief of Police for appropriate and necessary changes to policies, practices, and procedures. It will share these recommendations publicly.
10. The PAB may conduct investigations into the conduct of specific members of the RPD concerning any allegation of misconduct and may investigate complaints of police misconduct independently of any investigation conducted by PSS.
11. PSS will provide full PSS reports, recommendations, and investigatory case files to the Police Accountability Board.
12. The PAB shall be trained in civil and human rights law, anti-racism, implicit bias, gender identity and sexual orientation, disability rights, both physical and mental disabilities, RPD and NY police policies and procedures, and other relevant state and local laws.

13. Complaints will be received directly by the Police Accountability Board or by the Rochester Police Department's Professional Standards Section (PSS) and referred from one to the other.
14. The PAB Chair shall establish a regular rotation of PAB members to serve on hearing panels composed of three members of the PAB.
15. The PAB, by majority vote of its members, may issue subpoenas to compel the attendance of witnesses, police officers, and the production of any records necessary to complete the investigation of a civilian complaint.
16. If the hearing panel finds that misconduct has occurred, the PAB will have the authority to recommend disciplinary sanctions including but not limited to reprimand, retraining, suspension, demotion, or dismissal.
17. If the panel believes there is evidence of criminal conduct, the complaint and its file will be forwarded to the Monroe County District Attorney's Office and/or to the NYS Attorney General's office to request that a Special Prosecutor be appointed.
18. The panel may also recommend that restitution be paid to the complainant by the City for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident.
19. The Chief of Police must share his or her final determination with the PAB and the complainant; where the Chief imposes lesser discipline or no discipline than recommended, he must explain and justify such action.
20. A disciplinary matrix will be established, and if the PAB and the Chief of Police fail to agree on the discipline to be imposed, the PAB will determine the discipline.
21. If any person who has filed a civilian complaint is not satisfied with the final determination, the complainant may file an appeal with the Police Accountability Board.
22. The PAB will publish monthly, quarterly, and annual reports related to the number and type of complaints, the types of force used, discipline recommended and administered, and appeals requested.

NOTE TO THE READER

Throughout this report, we have inserted text boxes to exemplify cases of police excessive use of force. In each of these incidents the civilians were Black and unarmed at the time the police targeted them. Documentation of each case is cited in the bibliography. These cases include one or more of the following scenarios:

- A complaint was made to the Professional Standards Section, presumably reviewed by the Civilian Review Board, and not sustained by the Chief of Police, meaning the officer was not found to be guilty of the charge (Warr, Davis, Coleman).
- The criminal charges against the civilian were dismissed or reduced in court, which may mean there was not sufficient evidence to indicate the civilian had committed the charged crime (Warr, Turner, Sinclair, Ivery, Keene, Griner).
- The civilian brought a civil complaint against the City of Rochester and/or filed a civil lawsuit, which resulted in monetary damages being paid to the complainant (Turner, Blackman/Williams, Sinclair, Libbett, Redd/Carelock/Weathers).
- The civilian brought a civil complaint against the City of Rochester and/or filed a civil lawsuit, which was discontinued (Rogers) or is pending (Warr, Ivery, Lipford, Parker).

The Case of Benny Warr

On May 1, 2013, Benny Warr, a Black man, age 52, was in his motorized wheelchair waiting for a bus on Jefferson Avenue and Bartlett Street. As part of “Operation Clear the Block,” RPD Officers Joseph Ferrigno and Anthony Liberatore ordered Warr to get off the street. When Warr replied that he was waiting for the bus, the officers pepper-sprayed him and tipped his wheelchair over, throwing him to the ground. The officers punched and kicked Warr all over his body and head. Sgt. Mitchell Stewart arrived shortly after Warr was on the ground, and proceeded to kick and strike him. Warr was arrested for disorderly conduct and resisting arrest. He received an adjournment in contemplation of dismissal. Warr suffered three broken ribs and irreparable damage to his leg. He is still in constant pain and suffers from PTSD. Warr filed a complaint with the CRB, and the officers were exonerated a year after the event occurred. Warr has a civil rights lawsuit pending in federal court. Officer Ferrigno and Sgt. Stewart are still employed by the Rochester Police Department; Officer Liberatore is not.

Millions of taxpayer dollars have been awarded by the City of Rochester to compensate those who brought civil complaints against the Rochester Police Department and its officers.¹ In the text boxes, several officers are named, a few of whom the reader will note repeated from one text box to the next. These are just a few examples of myriad cases of officer misconduct. Some may believe that lawsuits resulting from officer misconduct are just the cost we have to pay for “a few bad apples.” This is not the case. In fact, research indicates that officers and civilians are influenced by implicit racism, which can cause

people's subconscious minds to treat black people as "dangerous criminals."² Police departments, like most American social systems, reflect a systemic racism that has been part of our cultural mindset since slavery. This system must be dismantled and replaced with a process of accountability wherein police administration, city government, and the community ensure that there is no tolerance for police misconduct, and where consequences for such actions in the form of appropriate discipline are fair and transparent.

INTRODUCTION

In recent years, numerous individuals and organizations across the United States have called for an end to systemic racism, especially as exhibited by police departments that engage in racial profiling. Since the inception of slave patrols in the early 1800s, the police have been utilized primarily to "protect and serve" white, wealthy society, according to Kristian Williams, author of *Our Enemies in Blue: Police and Power in America*.³ That "protection and service" have been carried out primarily against poor people of color, especially those who are Black. With the rise of a white middle class and subsequent white flight out of cities and into the suburbs, poor Black people have been deliberately segregated into carefully bounded areas that became "ghettos," as elucidated by Ta-Nehisi Coates in "The Case for Reparations."⁴ Although Chicago is perhaps the most famous for its "redlining" practices that isolated Black communities and deprived them of assets, Rochester, New York fits perfectly into the pattern of draining resources from urban areas, resulting in high unemployment, poor educational opportunities, violence, crime, homelessness, drug abuse, mental illness, and high arrest and incarceration rates. In fact, the boundary-drawing and mortgage-lending discrimination of redlining is still happening, most recently litigated by the New York Attorney General against Five Star Bank, which settled in 2013.⁵

Police officers in Rochester, over 90% of whom do not live in the city,⁶ patrol high-poverty, predominantly Black and Latino neighborhoods that are targeted with special scrutiny. Whether walking, driving, standing, riding a bike, being in one's own yard or home, increasing documentation demonstrates what many have known for decades: "Blacks are far more likely to be arrested than any other racial group in the USA. In some places, dramatically so," according to *USA Today*.⁷ Rochester is one of those places: "Within Monroe County, the average disparity rate means blacks are arrested at a rate about six times higher than people of other races" (*Democrat & Chronicle*).⁸ In the City of Rochester, as of 2013, the rate was 2.7 times higher. This might seem comparatively low until considering the fact that Rochester is 42% Black. In many cases, even if a Black person's behavior could be legitimately questioned by the police, officers seem prone to harass and escalate rather than respectfully de-escalate situations. Such police aggressiveness too often leads to misconduct by the officer, resulting in actions that range from excessive ticketing to excessive and unlawful use of physical force.^{9,10} This excessive use of force has had devastating consequences for people, including injuries leading to long-term mental distress and/or disabilities, and in some cases death.

As a reaction to this kind of violence and police misconduct in general, many cities have instituted new civilian review processes or enhanced existing ones. There are currently more than 200 civilian entities that oversee police departments around the country, up from 100 in 2007.¹¹ In 2013, the Center for Public Policy at California State University, Fullerton published a report that reviewed national trends in civilian oversight committees. The study cites the “troublesome” nature of police autonomy “when officers commit acts that cause the public to question the integrity of a police officer or agency. Instances of officer-involved shootings, use of excessive force, or perceived racial profiling can often

challenge public trust in law enforcement agencies.”¹² These incidents often lead to increased costs for taxpayers, who pay for the prosecution and defense of meritless cases in the court system.

The Case of Robinn Turner

On September 12, 2010, Robbin Turner, a Black woman, was assaulted by a youth who threw a softball- sized rock at her right knee, causing excruciating pain. Turner called 911, and Officer Joseph Ferrigno responded but did nothing and left. Turner called 911 again and was told a sergeant would report to the scene, but instead Ferrigno returned, whereupon she was again assaulted by the youths in the officer’s presence, forcing her to the ground. Ferrigno then picked Turner up off the ground, slammed her onto the concrete and dragged her by her arm approximately 10 feet, saying, “Bitch, you are on my last nerve. You’re going to fucking jail.” When Turner told Ferrigno that she had a ruptured disk in her back, Ferrigno said, “Oh yeah?” then pulled her arm behind her back and slammed his knee into Turner’s back. He then handcuffed her and put her into a police car. A crowd had gathered, and some people asked Ferrigno why he was treating Turner that way. He replied, “Don’t you know I’m internationally known to be a ruthless mother fucker?” Turner was charged with second degree harassment, which was later dismissed. She filed a civil claim, which was settled by the City for monetary damages in her favor. Ferrigno is still employed with RPD.

In 2011, the City of Syracuse, New York, which had an established citizen review board since 1993, amended its laws to “insure public accountability over the power exercised by members of the Syracuse Police Department.” In 2012, the Syracuse Common Council appointed an eleven-member Citizen Review Board (SCRB) and hired an administrator and an independent investigator. The SCRB is a separate department of the City with its own budget. The SCRB has “the power to investigate complaints of police misconduct independent of and concurrently with any investigations conducted by Office of Professional Standards (OPS).”¹³ Additionally, the OPS (Syracuse’s internal affairs department) must provide the SCRB with a copy of the full OPS report, investigatory case file, and recommendation to the Chief of Police for each complaint it investigates.¹⁴ The Board also has the power to authorize issuances of subpoenas to compel witnesses, including police officers, to attend the hearing and records to be produced. The Chief of Police is required to ensure compliance by police officers with SCRB procedures.¹⁵ For more information on the SCRB, see Appendix A, Appendix C, and Appendix D.

In 2013, the SCRB sustained civilian complaints of excessive force at a rate of 24%;¹⁶ in 2014, the sustain rate was 41%, and in 2015 it was 23%, for an average sustain rate of 31% since the new

process was instituted.^{17,18} In contrast, the Rochester Civilian Review Board's average sustain rate for use of force is at 5% over the past 15 years.¹⁹ Rochester's rate is closer to Chicago (2%), which is notorious for its lack of police transparency and accountability.²⁰ If there were more transparency in the process, there could be more accountability, and patterns of policing could be studied and corrected, leading to increased safety and justice for the residents of the City of Rochester.

The first half of this document examines the current process of investigating unnecessary uses of force by the Rochester Police Department, the subsequent review of civilian complaints related to these incidents, and the lack of transparency for, and accountability to, the public in the process. Over the past 50 years, several attempts have been made to address the need for police to be held accountable to the civilians they serve in a meaningful way such that officers face consequences as a result of misconduct and unnecessary use of force. These efforts have not yet resulted in a process that satisfactorily reduces the incidents of misconduct in question, especially those that seem to stem from racial profiling. Black and brown people are overrepresented in the instances of being harassed, pepper-sprayed, hit, kicked, arrested, and in some cases killed by the Rochester Police Department. This report aims to provide unequivocal evidence that the police do not have an adequate system of accountability and the current Civilian Review Board does not function as a deterrent to police misconduct.

The second half of this document proposes an ordinance, through legislation enacted by the Rochester City Council, that will abolish the current Civilian Review Board and replace it with a Police Accountability Board as a separate and independent office of the City of Rochester. The Police Accountability Board would have the capacity to conduct its own investigations into civilian complaints, subpoena testimony and evidence, and discipline Rochester police officers who have committed the misconduct with which they are charged by civilian complainants.

The authors hope that this report will be the basis of an honest discussion about the state of police community relations, civilian review and police oversight, and that it will be the impetus for transformative justice to take place.

HISTORY of CIVILIAN REVIEW IN ROCHESTER

In the City of Rochester, the history of racial profiling and use of excessive force incidents has been documented back to 1962 by Ted Forsyth, an independent journalist with Rochester Indymedia. In a comprehensive report, Forsyth also chronicles the rise and fall of the Police Advisory Board in Rochester.²¹ This board was organized in 1963 by public demand, and served for a few years as an effective means to review police misconduct. The Police Advisory Board was strongly opposed by Rochester's police union, the Rochester Police Locust Club, which waged a legal battle over five years to prevent its operation, resulting in the Police Advisory Board being disbanded in 1970. In 1977, the Rochester City Council adopted recommendations of the Citizen's Committee on Police Affairs to create a

Complaint Investigation Committee, but it had little significant effect on behalf of complainants.²² In the 1980s, under the leadership of Rev. Raymond Graves and Rev. Franklin Florence, Black ministers and church leaders called for police accountability in the wake of police shootings of Black civilians. New models were proposed, but City Council accomplished little of significance in this area until 1992, when the Chief of Police was found guilty of embezzlement and conspiracy.²³

The current Civilian Review Board (CRB) was established in 1992 by Rochester City Council through Resolution 92-40. The Center for Dispute Settlement (CDS), a nonprofit organization, was selected to administer the CRB, and has done so since that time.^{24,25} In its legislation, the Council resolved that a “body composed of civilian volunteers” (originally 48) would be recruited by the City and would rotate service on panels to hear complaints: “each CRB panel is made up of three trained volunteers who review the investigation of a complaint against a Rochester police officer, issue a finding and forward the finding to the Chief of Police for consideration.” Specific volunteers were to be appointed by the Mayor from a list provided by the CDS as “chairpersons to serve as presiding officers” for the reviews.²⁶ In 1992, there were to be 10 chairpersons; in 1995 this was expanded to 15 by Resolution 95-8.²⁷ By 2015, the number of chairs dwindled to three.²⁸ CRB panelists must be City residents and undergo: 30 hours of New York State mediator training, 32 hours of Rochester Police Department (RPD) policies and procedures training, and eight hours of “ride-alongs” with the RPD in order to be certified for the CRB. The current Civilian Review Board has seemingly had no effect on reducing incidents of police misconduct and excessive force, despite a reform effort in 2011-12. This lack of effectiveness is primarily due to the fact that the CRB is not independent of the RPD; thus it cannot conduct its own investigations, it cannot issue subpoenas to compel testimony or evidence, it cannot discipline officers, and it relies solely upon the investigative materials and recommendations provided by the Rochester Police Department.

PROCESS FOR FILING A COMPLAINT

Each year the RPD’s internal affairs office, known as Professional Standards Section (PSS) and the Civilian Review Board (CRB) administered by the Center for Dispute Settlement (CDS), complete annual reports related to civilian complaints about police misconduct. When a civilian makes a complaint, PSS completes its own investigation, the CRB reviews their findings, and both make recommendations to the Chief of Police who subsequently reviews each recommendation and determines the ultimate findings regarding the complaint.

For the purpose of this study, CRB annual reports 2001-2015 and PSS annual reports 2002-2015²⁹ were analyzed specifically related to claims of police misconduct where officers were alleged to have used unnecessary force against the complainant. Every civilian complaint may carry more than one allegation, e.g. a punch, a kick, etc., each of which can be exonerated or sustained separately. Whenever there is a civilian complaint of physical force, the case is required to be heard by the CRB. Civilians can initiate their complaints

against RPD officers using the following methods: walk-in, call or email Professional Standards Section Office, Neighborhood Service Centers, Patrol Divisions/Sections, Office of Public Integrity or Center for Dispute Settlement; via RPD website or Twitter.

The online process to make a complaint, learn about the complaint process, or understand PSS via the City website is not user friendly. On the RPD webpage, there is no mention of how to make a complaint, although there is a sentence at the bottom: “We value your feedback. Please feel free to share a comment about a Rochester Police Department Employee.” This links to a form that can be submitted. In order to find out about complaints, you have to type in “complaint” in the search bar. This navigates to a page with articles containing the word “complaint.” Here you can click on “RPD Citizen Complaint Process,” which outlines the process for making a complaint. At the bottom under “Your Complaint is Important,” there is a sentence “Comment about a police officer.” This section also takes you to the online form. The Professional Standards Section page is also not listed on the RPD page. To find PSS, you have to type it into the search bar.

Regardless of where or how a complaint is filed, the complainant must be interviewed in person and complete documentation, usually at the PSS office. The interview constitutes the beginning of the investigation. Supporters can accompany complainants to the interview, but may not interject. The complainant can choose whether or not the interview is video recorded, and if so, it becomes part of the case file. PSS then contacts witnesses, reviews audio or visual evidence, takes statements from the officers involved, and searches for / follows up on evidence. At the conclusion of the investigation, PSS makes a findings report with recommendations that are passed on to the command officers and the CRB, then to the Chief of Police.

The Case of Hayden Blackman

Hayden Blackman, a Black man, was shot and killed on October 13, 2011, by Officer Randy Book, who was responding to a neighbor’s call to police about a domestic dispute. Blackman’s stepson had punched him in the face. When Book arrived on the scene, Blackman was holding a knife. Without saying anything to Blackman or asking him to drop the knife, Book immediately fired his gun 5 times, hitting Blackman 3 times in the torso. Blackman’s death led to a rally and march to city council and the formation of a Commission to review the process for filing complaints against police officers. Blackman’s widow, Roxanne Williams, filed a civil rights claim and received monetary compensation. Officer Book is still employed by RPD.

When PSS has completed an investigation, its investigative package and findings are transmitted electronically to the CRB panelists for review on computers set up by PSS in a designated secure room in City Hall. The three panelists complete forms to note the allegations of the complaint, their recommended findings, any feedback they have, and to log their attendance. The forms may include comments by individual panelists, such as why they disagree with their peers. Panelists vote to determine the CRB’s recommendation to the Chief of Police; the chair then calls PSS and leaves a voicemail message of their recommendation at the PSS office. In 2011, “the recording of findings by the Chairperson following the completion of an investigation review has been changed from using a digital recording device, that would be secured in the CRB review room for later retrieval by the

PSS Sargent *[sic]* assigned to the case, to calling in to a secure PSS voicemail system and reading the findings via phone for transcription by PSS.”³⁰ In other words, the CRB chairperson calls the PSS sergeant who is acting as the CRB liaison and leaves a voicemail message of their recommended findings on the sergeant’s phone. According to the 2015 liaison, that voicemail “transfers over to our email and I’ll email that to the stenographer, she’ll type up the transcription of the phone call recording,”³¹ which the stenographer then sends to the Chief.³² The CRB does not keep or receive a copy of the recording. There is no stenographic record of panelists’ deliberations—no account is filed with the City. CDS maintains panelists’ summary sheets and written records of their recommended findings. But there is no independent verification of the accuracy or integrity of this process.³³

The Chief of Police reviews the CRB finding as well as the PSS finding and makes a final determination on any action to be taken in response to the complaint. After a few months, the complainant receives a determination letter from the Chief, referring any questions or follow-up to the investigative sergeant.³⁴ Any subsequent discipline is handled by the Chief: the CRB has no power to discipline officers.³⁵ If the complaint is sustained, the Chief’s letter may state that an officer was disciplined but the details of any disciplinary actions are never revealed. In fact, the complainant, the CRB, and the public cannot gain access to any records as to why an officer was (or was not) disciplined and what disciplinary action, if any, was administered.

RECENT ADAPTATIONS

In 2011, community protests arose due to unnecessary use of force by police in several incidents, some of which were video recorded. The expression of these community-wide concerns resulted in the City of Rochester creating a Commission, which spent 16 months studying the issue and making recommendations to City Council. The Commission included several representatives on each of five committees: Community, Government, Police Administration, Center for Dispute Settlement, and Police Union. Each committee made recommendations to the Commission. In 2012, the Commission made several recommendations to the Council.

The points of agreement that were recommended for adoption by City Council are listed below. These are taken directly from Commission documents³⁶ that were made available to the authors; detailed minutes were not available. We have added unofficial clarifications in brackets.

- Community Advocate [to be hired]
- Multiple options for intake and investigation
- Members of CRB must be City residents
- Timetable for investigation [to be shortened]

- Case update letter sent every 30 days [to complainant]
- Monthly progress report to Council
- Additional community outreach
- Additional youth outreach
- Overhaul intake process
- Intake option at City Hall
- Fast track procedural discourtesy complaints
- Disciplinary details shared with complainant (general disposition)

Some of the recommendations that were not adopted include:³⁷

- Independent CRB
- Subpoena power
- Legislated CRB
- Council open monthly for complaints
- Complaint in full can be made to either CRB or PSS
- Shared information for investigations
- Open meetings to decide procedural and advocacy issues
- Improve intake through mandatory report for every phone call to PSS
- Record all intake calls
- Complaint qualifies as notice of claim³⁸
- Copy final determination letters to Council

The Case of Russell Davis

On August 5, 2006, Russell Davis, a Black man, went outside of his apartment to look for the superintendent to tell him that his sink needed to be fixed. Davis was outside the window of another apartment trying to get the superintendent's attention when several RPD officers approached him with their guns drawn. Sergeant Ronald Malley told him to get on the ground. Davis replied, "Is there a problem?" After some verbal back and forth, two officers jumped Davis, wrestled him to the ground, and bashed his head. The superintendent came out and told the officers that Davis lived there and there was no problem with him. The officers placed Davis in a police car with handcuffs so tight his wrists bled and his hands swelled. When Davis filed a complaint with PSS, Sgt. Malley was the officer put in charge of the investigation, even though he was the commanding officer who ordered the assault on Davis. After two years, Davis's complaint was determined to be unfounded. Sgt. Malley was promoted to Lieutenant and is still working for the RPD.

- Hearing officer as final arbiter, not Police Chief

Ultimately, a few policy changes within both the Professional Standards Section (PSS) and the Civilian Review Board (CRB) were made. According to the PSS 2012 Annual Report, these recommended changes were implemented:

- Multiple options for complaint intake, including internet options and hard copy reports in City public buildings were expanded, e.g. libraries, city hall, etc.³⁹
- Investigative case timelines were streamlined.⁴⁰
- Disciplinary details (in accordance with Civil Service Law) and case updates are provided to the complainants every 30-days.⁴¹
- Detailed PSS reports are made available to the public.⁴²

The Center for Dispute Settlement (CDS) 2012 Annual Report indicates the following enhancements as a result of the Commission's recommendations:

- The civilian oversight process includes utilizing only city resident, NY State Unified Court System certified mediators as CRB panelists for reviewing complaint investigations.⁴³
- CDS added the position of Community Advocate: a staff person to accompany complainants to police interviews and help them to understand the process.

[The title "Advocate" is a misnomer, as CDS's contract requires the organization to maintain a strict stance of neutrality. Thus, the advocate does not actually speak or act on behalf of the complainant.]

The job description of the Community Advocate includes these duties:

- Guide complainant through the complaint process;
- Provide a fair complainant intake process at Rochester Police Department's Professional Standard Section (PSS) or other off-site locations;
- Provide case status updates to complainants at all appropriate case stages providing regular case processing updates.⁴⁴

DEFINITIONS

PSS Annual Reports, CRB Annual Reports, and the RPD website each have defined the possible recommended findings that can be made in civilian complaints. We have combined these in Table 1:

TABLE 1

Finding	CRB Reports	PSS Reports	RPD Website
Exonerated	RPD personnel's conduct was justified, lawful and proper.	Conduct was lawful, justified, and proper.	Police officer(s) involved acted properly and will not be disciplined.
Sustained	The act occurred and the act amounts to misconduct or misjudgment.	The conduct occurred and amounted to misconduct or misjudgment.	Your complaint has been supported: The officer(s) involved acted improperly and may be disciplined.
Unprovable	There is insufficient evidence to prove or to disprove an allegation.	There is insufficient evidence to prove or to disprove an allegation.	There was not enough evidence to prove your complaint true or false so no further action will be taken.
Unfounded	The act complained of apparently did not occur.	The act apparently did not occur.	The investigation found no basis to your complaint.
No Findings/ Closed/ Officed	Not listed	An allegation is closed because a complainant fails to cooperate with the investigation and there is not enough evidence available to draw a fair conclusion and apply a finding.	Not listed
Pending	This is not a category of finding, but is listed in both CRB and PSS annual reports when the case was carried over from one year to the next.		

LACK OF APPEAL PROCESS

The Civilian Review Board (CRB) has no authority to initiate its own investigations into complaints, but if the panelists are not satisfied with the Professional Standards Section (PSS) investigation, the following process is in place: the CRB can write to PSS to request further investigation if the panelists believe it is lacking. According to PSS, they cooperate fully with these requests for more information.⁴⁵ If the CRB is not satisfied with the PSS response, however, the CRB can submit a request to the Chief of Police and again, if not satisfied, it can request the Mayor of Rochester to investigate the complaint. If the decisions by these entities regarding the case fail to satisfy the CRB, it can then write to City Council to hear the case and investigate it. If Council votes to accept the case, it can hold public hearings and may issue subpoenas to compel testimony before sending the new findings

back to the CRB. Should this happen, the 1992 law states: “The results of City Council's review of the PSS investigation shall be a matter of public record.”⁴⁶

We have learned that a true appeal process does not exist when the CRB or the complainant does not agree with the Chief's investigative finding. The review procedures are part of the original legislation implemented in 1992, but are not noted as an appeal process. Although City officials have claimed that there is an appeal process, an inquiry in September 2015 yielded this response from the Bureau of Communications: “Per the City Law Department there is no specific appeal process for the Civilian Review Board, but there is a procedure which a citizen may follow if a citizen is not satisfied with the investigation of a complaint.”⁴⁷ As described on the Rochester Police Department (RPD) website, this involves speaking to or making an appointment with the investigator, filing a claim against the City for damages, or contacting a lawyer to pursue a criminal or civil lawsuit. In a presentation on the complaint process, PSS officials stated that they only knew of one case

The Case of Kerry Coleman

On January 9, 2009, Kerry Coleman, a Black man, age 47, called the Mobile Crisis Unit to his home because his wife was in mental distress. Instead of the crisis unit, RPD Officer Brian Cala and other police officers barged into the house. When Coleman's wife told him to get out of the house, Cala pepper-sprayed her, then punched her in the face several times. When Coleman tried to help her, another officer pepper-sprayed him. Coleman's wife was then forced to sit on their front steps in the cold, and when other family members came toward the house, saw her injuries, and asked who had done it, Cala yelled, “I fucking did it!” When Coleman's complaint was presented to the Civilian Review Board in 2011, Officer Cala was exonerated. Cala is still serving on the RPD, and in 2012 was one of seven officers who shot and killed Israel Andino, a mentally ill man whom the police could have detained without the use of a deadly weapon.

in which a complainant disagreed with the Chief's finding that the allegation against the officer was found to be unprovable. The complainant called Mayor Thomas Richards, who called then Chief of Police James Sheppard, and the Mayor ended up agreeing with the Chief's findings. This was the extent of the “appeal” process.⁴⁸ Notably, in the 24-year history of the CRB, no PSS investigation has been brought to Rochester City Council, nor has the City Council voted to review any PSS investigation.⁴⁹

A PSS official stated that in the past five years, he's had one instance of “push back” from the CRB on an investigation.⁵⁰ Another PSS official described the relationship between PSS and the CRB as “not adversarial at all, if anything, it is overly congenial.”⁵¹

The absence of a robust CRB independent investigation also prevents the possibility of a meaningful appeal process for civilians when their complaints have been wrongly denied. The CRB and the civilian each receive the finding from the Chief, and that is the end of the complaint, whether they agree with the finding or not. As stated above, there is no appeal process spelled out in the ordinance. Outside of the civilian complaint process, complainants may file a Notice of Claim with the City of

Rochester within 90 days of the incident, or they may file a civil rights claim in federal court.

Now that we have reviewed how the process works, we will examine the findings of civilian complaint investigations where unnecessary use of force by police officers is alleged. As noted above, the internal affairs department of the Rochester Police Department, known as the Professional Standards Section, completes its own investigation and makes its finding on each allegation contained in the complaint. Thereafter, PSS sends its investigative package and recommended findings to the Civilian Review Board, which reviews and makes its own recommended findings. Both of these sets of findings are sent to the Chief of Police, who makes the final determination that is then conveyed to the complainant. First we will look at the Chief's ultimate findings as reported by PSS. Then we will review the findings of all three entities as reported by the CRB.

RPD / PSS COMPLAINT REVIEW FINDINGS

Table 2 shows the findings made by the Chief of Police in investigations of civilian/citizen⁵² complaint reviews related to allegations of excessive use of force. The data are taken from the Rochester Police Department's Professional Standards Section (PSS) annual reports 2002-2015. The definitions of exonerated, unprovable, unfounded, and sustained can be found on page 19. The Rochester Police Department (RPD) Chiefs of Police during the relevant period are:

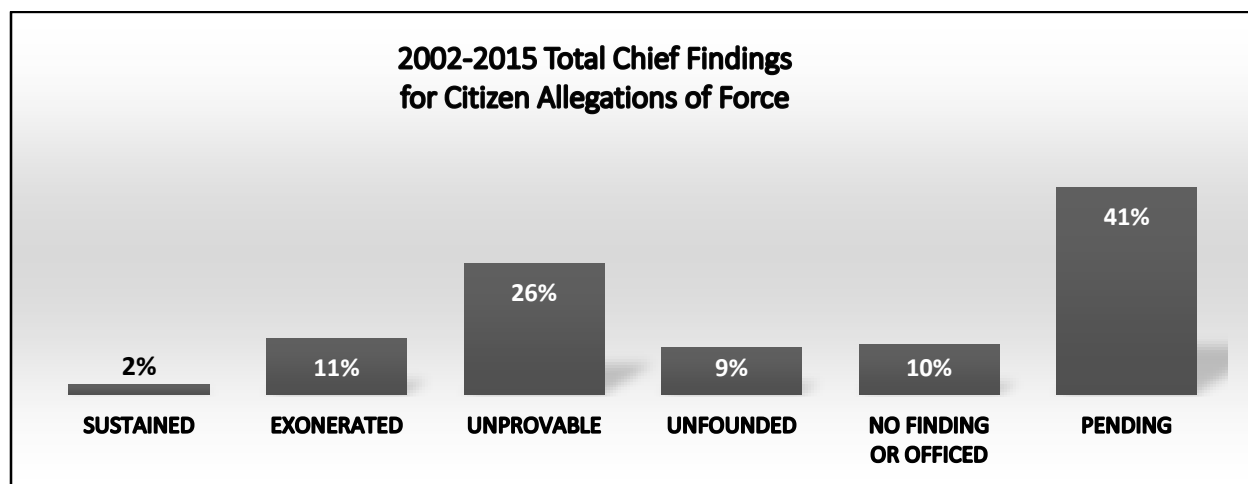
Robert Duffy	1998 – 2005
Cedric Alexander	2005 (Acting)
David Moore	2006 – 2010
James Sheppard	2010 – 2013
Michael Ciminelli	2014 – Present

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The totals of Table 2 are summarized in the chart below:

TABLE 2

CHIEF OF POLICE FINDINGS for CITIZEN COMPLAINTS RE: ALLEGATIONS OF FORCE													
ALLEGATIONS		SUSTAINED		EXONERATED		UNPROVABLE		UNFOUNDED		NO FINDING OR OFFICED		PENDING	
Years	Total	#	%	#	%	#	%	#	%	#	%	#	%
2002	107	2	2%	23	21%	43	40%	26	24%	13	12%	NA	NA
2003	152	8	5%	23	15%	85	56%	23	15%	13	9%	NA	NA
2004	95	2	2%	20	21%	62	65%	10	11%	1	1%	NA	NA
2005	108	7	6%	16	15%	25	23%	15	14%	7	6%	38	35%
2006	97	2	2%	11	11%	27	28%	14	14%	8	8%	35	36%
2007	110	1	1%	8	7%	10	9%	1	1%	15	14%	75	68%
2008	71	0	0%	0	0%	0	0%	0	0%	18	25%	53	75%
2009	85	0	0%	2	2%	0	0%	2	2%	7	8%	74	87%
2010	69	0	0%	4	6%	1	1%	0	0%	4	6%	60	87%
2011	70	0	0%	6	9%	15	21%	2	3%	12	17%	35	50%
2012	64	0	0%	5	8%	3	5%	4	6%	8	13%	44	69%
2013	69	0	0%	2	3%	17	25%	0	0%	6	9%	44	64%
2014	49	1	2%	7	14%	12	24%	10	20%	5	10%	14	29%
2015	27	0	0%	5	19%	6	22%	4	15%	1	4%	11	41%
TOTAL	1173	23	2%	132	11%	306	26%	111	9%	118	10%	483	41%



According to PSS annual reports, the number of civilian-initiated complaint allegations decreased from a total of 107 allegations in 2002 to a total of 27 in 2015. Between 2002 and 2007, the number of allegations ranged from 95 to 152. From 2008 to 2013, the range was 64 to 85; then 2014 saw a sharp drop to 49 and an even sharper drop to 27 in 2015.

What has caused this drop in complaints? Are the police using less force? We believe not. In fact, based on anecdotal evidence, we surmise several reasons for the drop in civilian complaints. First, in recent years, cell phone videos have demonstrated that police officers all over the country have engaged in unnecessary, unlawful, and even deadly use of force with little disciplinary penalty or consequences for the officer. Nationwide, police use of force is either more prevalent or more visible, or both. Secondly, the process used to investigate a complaint in Rochester is quite often unsatisfactory for the civilian. If complainants have criminal charges pending against them (usually disorderly conduct, obstructing government administration and/or resisting arrest) they are encouraged by PSS not to file the complaint until after the criminal charges have been adjudicated to protect their Fifth Amendment rights. This delay can be problematic, however, because officers cannot be disciplined for complaints that are filed more than 18 months after the incident. Many people have lost faith in the process and don't utilize it. Complainants have told us it is a "waste of time," and even a "hoax" that does not deliver any sense of accountability.⁵³ For example, in Rochester:

- Even though PSS and Civilian Review Board (CRB) public descriptions of the process state that civilians can make their complaints at the Center for Dispute Settlement (CDS), this description does not include the information that they still have to be interviewed by the PSS, who are the police.
- The PSS "interview" is conducted by uniformed officers at a police facility, in a room that looks like an interrogation room, and in a way that often feels to the complainant like an interrogation.⁵⁴
- Complainants do not have any interaction with the Civilian Review Board, only with PSS, and all follow-up usually consists of a letter from the RPD containing the Chief of Police's findings.
- The wait between filing of the complaint and the conclusion of the investigation is very lengthy, with very little communication from PSS.
- There is a lack of transparency in the process, and even if the complaint is sustained, the complainant never learns what, if any, discipline was administered.
- During the time that the complaint is being processed, the officer is usually still on the street, patrolling the same area in which the incident happened.
- Complainants have been harassed by the officers against whom they have lodged complaints, both during the complaint process and after it has concluded.⁵⁵
- Lawyers who might encourage their clients to use the process often choose not to do so, as stated by one attorney: "I haven't had any clients go to PSS. If I did, I'd accompany them. I'm somewhat conflicted because the only way to make the

process work is to use it, but on the other hand, what's the point of going through the process if it doesn't work?"⁵⁶

The primary reason for dissatisfaction with the complaint process, of course, is that very few complaints are sustained. As we review the totals line on the bottom of Table 2 on page 22, the most concerning data point is that overall, only 2% of the unnecessary force civilian allegations have been sustained by the Chief of Police. In other words, over a 14-year period, 2002-2015, when civilians made the effort and went through the lengthy, difficult, and frequently traumatic process of making a complaint, the Chief only sustained 23 out of 1,173 allegations. Further, whether the Chief ultimately ruled the charge to be exonerated, unprovable, unfounded, or no finding/officed, the result is the same—the allegation by the civilian has not been sustained and the officer faces no consequences.

In fact, the highest number of civilian allegations sustained by the Chief was 6% in 2005 and 5% in 2003. Only 2% were sustained in 2004, 2006, and 2014, with 1% sustained in 2007. And for seven years (2008-2013 and 2015) the Chief did not sustain ANY civilian allegations for unnecessary use of force by the police in all 455 instances. The low frequency of founded complaints leads us to question the thoroughness of the RPD internal police investigations and the accuracy of these rulings.

Furthermore, it is troubling that overall, almost half (41%) of the allegations were still pending at the time of the annual reports; we presume these were rolled into the results of successive years. For several years, more than 50% of the complaints filed were pending—even as high as 87%. What was the determination on these investigations? How can we compare the findings in a meaningful way? Most of the PSS annual reports studied include a "Summary of Investigations" section, with the note: "some of the investigations this year were initiated in the previous year,"⁵⁷ or "Data reflects investigations initiated, not necessarily completed in 2014."⁵⁸ But there is no explanation as to which allegations these refer and what were the final determinations.

The Case of Shakirrah and Jamar Carolyn Sinclair's Children

On March 31, 2005, Carolyn Sinclair's 12-year old daughter Shakirrah was verbally harassed by RPD Officer Robert Cortese. When her brother Jamar tried to call the police, Cortese slapped the cell phone from his hand. Officer Timothy Wright and other officers grabbed Jamar, threw him to the ground and kicked him. Cortese called him an "asshole," and said he "couldn't stand niggers like you," then officers pepper-sprayed and arrested Jamar. Shakirrah picked up her brother's cell phone and called her stepfather. Officers threw her to the ground, pepper-sprayed and arrested her. Both children were treated at the hospital. The charges against them were later dismissed. The family was then stalked and harassed by RPD officers. Sinclair filed a civil rights claim and the family received monetary compensation. Cortese is no longer serving on the RPD; Wright remains an officer.

CIVILIAN REVIEW BOARD RECOMMENDED FINDINGS

The information in Table 3 on page 26 was taken from the Civilian Review Board (CRB) Annual Reports 2001-2015 and compares CRB recommended findings, Professional Standards Section (PSS) recommended findings, and Chief of Police findings on civilian allegations related to use of force. This section addresses only civilian-initiated complaints, and Table 3 shows the number and percentage of complaint allegations. The categories are the same: exonerated, sustained, unprovable, unfounded, and pending (see page 19 for definitions). Those that are pending in these CRB data include only Chief of Police findings that were pending, not overall investigations that were pending, as in the PSS reports.

It is immediately noticeable that the totals for number of civilian complaint allegations of force in Table 3 below are not the same as the PSS number totals for the same data reported in Table 2 on page 22. These differing numbers of allegations and sustain rates are compared in Table 4 on page 27. Although both sets of annual reports show the total number of complaints, civilian-initiated complaints, and Rochester Police Department-initiated complaints, the numbers for civilian-initiated allegations of force for each report are different. Overall, PSS reports 337 more allegations of force than the CRB. In fact, in 11 out of 14 years, PSS reported higher numbers of allegations than the CRB, ranging from 17% to 59% annually. In the three years that the CRB indicates more allegations of force, the difference ranges from 18% to 41% fewer. What is the cause of these disparities? In the 11 years wherein PSS reports significantly higher numbers, we wonder, did they not submit all records of civilian complaints of force to the CRB for review? In the three years when CRB reports more allegations than PSS, is PSS attempting to indicate there are less instances of civilian complaints of force? The lack of transparency and accountability in the process leaves us to question these discrepancies and the reasons behind them.

The totals of Table 3 are summarized in the chart below.

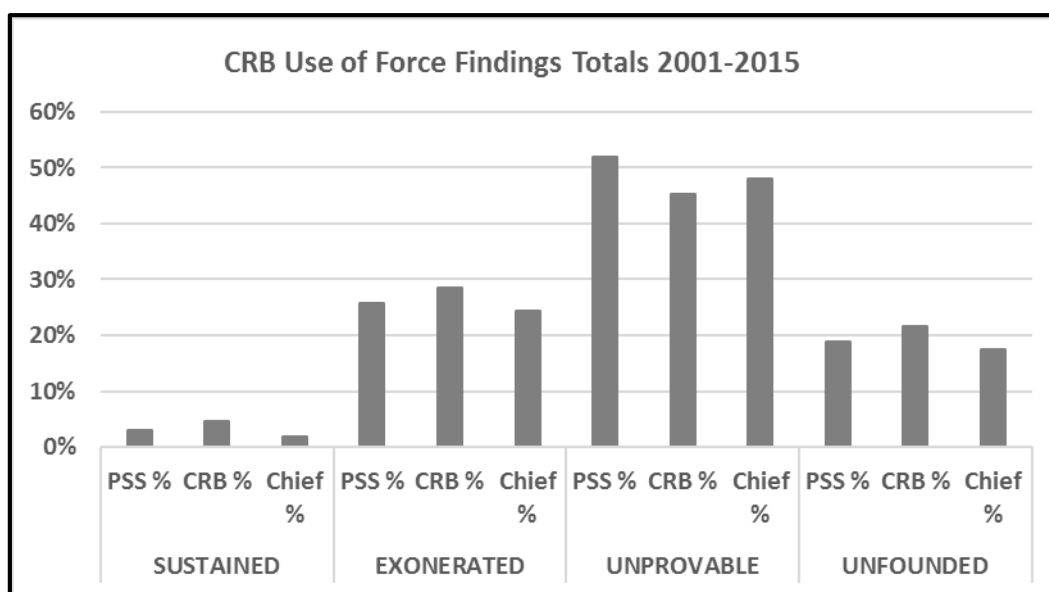


TABLE 3

CRB REPORT ON CITIZEN ALLEGATIONS OF FORCE FINDINGS														PENDING/ OFFICED/ NO DECISION	
ALLEGATIONS		SUSTAINED						EXONERATED							
YEAR	TOTAL	PSS #	PSS %	CRB #	CRB %	Chief #	Chief %	PSS #	PSS %	CRB #	CRB %	Chief #	Chief %		
2001	63	1	2%	0	0%	0	0%	13	21%	15	24%	12	21%		
2002	83	7	8%	8	10%	4	5%	14	17%	18	22%	14	19%		
2003	88	3	3%	2	2%	2	2%	15	17%	14	16%	15	18%		
2004	79	4	5%	4	5%	1	1%	14	18%	19	24%	17	24%		
2005	44	0	0%	1	2%	0	0%	15	34%	19	43%	14	33%		
2006	52	2	4%	2	4%	0	0%	10	19%	12	23%	11	26%		
2007	49	2	4%	2	4%	1	3%	11	22%	11	22%	10	26%		
2008	38	0	0%	2	5%	0	0%	12	32%	12	32%	9	25%		
2009	62	1	2%	3	5%	0	0%	25	40%	26	42%	24	44%		
2010	54	0	0%	0	0%	0	0%	15	28%	17	31%	18	33%		
2011	94	2	2%	5	5%	2	2%	17	18%	20	21%	21	24%		
2012	42	1	2%	2	5%	1	2%	16	19%	18	21%	14	24%		
2013	55	1	2%	1	2%	0	0%	19	35%	22	40%	16	31%		
2014	58	3	5%	7	12%	3	6%	22	38%	17	29%	12	23%		
2015	38	1	3%	3	8%	2	5%	14	37%	16	42%	13	34%		
Total	899	28	3%	42	5%	16	2%	232	26%	256	28%	220	24%		
ALLEGATIONS		UNPROVABLE						UNFOUNDED							
YEAR	TOTAL	PSS #	PSS %	CRB #	CRB %	Chief #	Chief %	PSS #	PSS %	CRB #	CRB %	Chief #	Chief %	Chief #	Chief %
2001	63	32	51%	22	35%	33	59%	17	27%	26	41%	11	20%	7	11%
2002	83	41	49%	33	40%	36	48%	21	25%	24	29%	21	28%	8	10%
2003	88	53	60%	47	53%	53	62%	17	19%	25	28%	15	18%	3	3%
2004	79	52	66%	40	51%	46	64%	9	11%	16	20%	8	11%	7	9%
2005	44	23	52%	15	34%	21	50%	6	14%	9	20%	7	17%	2	5%
2006	52	29	56%	28	54%	23	55%	11	21%	10	19%	8	19%	10	19%
2007	49	30	61%	24	49%	23	59%	6	12%	12	24%	5	13%	10	20%
2008	38	14	37%	16	42%	15	42%	12	32%	8	21%	12	33%	2	5%
2009	62	28	45%	24	39%	22	40%	8	13%	9	15%	9	16%	7	11%
2010	54	20	37%	21	39%	18	33%	19	35%	16	30%	18	33%	0	0%
2011	94	54	57%	53	56%	49	52%	18	19%	16	17%	16	17%	6	6%
2012	42	17	59%	15	56%	15	56%	8	20%	7	17%	8	18%	4	10%
2013	55	31	56%	29	53%	33	63%	4	7%	3	5%	3	6%	0	0%
2014	58	24	41%	26	45%	27	51%	9	16%	8	14%	11	21%	0	0%
2015	38	18	47%	14	37%	17	45%	4	11%	5	13%	6	16%	0	0%
TOTAL	899	466	52%	407	45%	431	48%	169	19%	194	22%	158	18%	66	7%

Additionally, the Rochester CRB found that overall, 45% of civilian complaints were unprovable. How can an organization with no investigative powers know if an allegation is unprovable if it does not have the means at its disposal to determine its “unprovability”? Furthermore, Table 3 shows us that the CRB determined that civilian complaints were unfounded at a three-percentage point higher rate than PSS, and four percentage points higher than the Chief. In these cases, the CRB decided “the act apparently did not occur,” more often than PSS or the Chief did. When the CRB goes out to do its “Road Show Presentations”⁵⁹ to market its services as a community benefit, the public probably does not know that 22% of their complaints will not be considered to have happened and that almost half (45%) will be deemed unprovable. In complaint after complaint, year after year, the data suggest that CRB rubber stamps the PSS investigations, and in some instances even finds against the complainant more frequently than the police. Furthermore, over the 14 years of reports filed by both PSS and the CRB, there is no indication that the CRB questioned any investigation to the point where public hearings could be initiated.

Table 4 isolates and compares the rate at which PSS, the CRB, and the Chief of Police sustained civilian allegations of excessive force.

TABLE 4

TOTAL ALLEGATIONS REPORTED and SUSTAINED BY PSS VS CRB												
YEARS	PSS REPORTS			CRB REPORTS							DIFFERENCE IN TOTAL ALLEGATIONS	
	ALLEG	SUSTAINED		ALLEG		SUSTAINED						
	Total	Chief #	Chief %	Total	PSS #	PSS %	CRB #	CRB %	Chief #	Chief %		
2002	107	2	2%	83	7	8%	8	10%	4	5%	24	22%
2003	152	8	5%	88	3	3%	2	2%	2	2%	64	42%
2004	95	2	2%	79	4	5%	4	5%	1	1%	16	17%
2005	108	7	6%	44	0	0%	1	2%	0	0%	64	59%
2006	97	2	2%	52	2	4%	2	4%	0	0%	45	46%
2007	110	1	1%	49	2	4%	2	4%	1	3%	61	55%
2008	71	0	0%	38	0	0%	2	5%	0	0%	33	46%
2009	85	0	0%	62	1	2%	3	5%	0	0%	23	27%
2010	69	0	0%	54	0	0%	0	0%	0	0%	15	22%
2011	70	0	0%	94	2	2%	5	5%	2	2%	-24	-34%
2012	64	0	0%	42	1	2%	2	5%	1	2%	22	34%
2013	69	0	0%	55	1	2%	1	2%	0	0%	14	20%
2014	49	1	2%	58	3	5%	7	12%	3	6%	-9	-18%
2015	27	0	0%	38	1	3%	3	8%	2	5%	-11	-41%
Total	1173	23	2%	836	27	3%	42	5%	16	2%	337	29%

NONCONCURRENCES

Nonconcurrences are cases wherein the Chief of Police disagrees with the recommended findings of the Civilian Review Board (CRB). Table 5 illustrates nonconcurrences related to allegations of force, reported by PSS annual reports over the years 2002-2015, which occurred in 138 allegations out of 1,173 cases, or 12% of the time. The left column indicates the recommended findings made by the CRB in each category. The right hand columns show how the Chief of Police ruled, thus disagreeing with the CRB recommended findings. For example, in the 40 total instances where the CRB exonerated the officer, the Chief sustained once and found allegations unprovable 31 times. Of the 138 times the Chief disagreed with the CRB, the Chief ruled against the officer only 4 times, or 3%.

TABLE 5

CRB FINDINGS	TOTAL FINDINGS	NONCONCURRENCES BY CHIEF OF POLICE									
		Sustained		Exonerated		Unprovable		Unfounded		Officed	
Exonerated	40	1	3%	0	0%	31	78%	6	15%	2	5%
Sustained	23	0	0%	7	30%	14	61%	2	9%	0	0%
Unfounded	34	0	0%	4	12%	28	82%	0	0%	2	6%
Unprovable	41	3	7%	21	51%	0	0%	17	41%	0	0%
Total	138	4	3%	32	23%	73	53%	25	18%	4	3%

In a 2015 meeting between the Professional Standards Section (PSS) and the Coalition for Police Reform, there was a discussion about the difference between PSS findings and CRB findings. A PSS official stated: “we don’t always agree on the allegation, but a lot of times our non-concurrences are: they found unprovable; we found unfounded. We find exonerated; they find unprovable. You know, on most occasions very rarely is it that we find sustained, they find exonerated.” He added, “it would be very odd and suspicious if we agreed on every single allegation and finding.”⁶⁰ Since PSS officials indicated that one of the primary areas of nonconcurrence was between unfounded / unprovable / exonerated charges, we will look at these first. In the 34 instances when the CRB found a complaint was unfounded, the Chief of Police ruled them to be unprovable 28 times (82%). In the 41 instances when the CRB found a complaint to be unprovable, the Chief found them to be unfounded 17 times (41%), but exonerated the officer 21 times (51%).

Yet out of 40 cases where the CRB exonerated the officers, the Chief ruled complaints to be unprovable 31 times (78%), unfounded 6 times (15%), and sustained only one. In the 23 (17%) cases where the CRB sustained the complaint, the Chief exonerated 7 times (30%) and found unprovable 14 times (61%). Although PSS reports indicate that the Chief did not agree with CRB recommended findings in only 12% of complaints, some of those concurrences were significant. For example, when the CRB believed 23 charges to be sustainable, the Chief instead determined in such a way that the officer suffered no penalty. On the other hand, the Chief sustained only one charge for which the CRB found

exonerated. In other words, the Chief chose not to sustain a charge when the CRB found it to be warranted 17% of the time. In general, when the Chiefs disagreed with the CRB recommended findings, for the most part, they ruled in favor of the officers by exonerating them or finding the allegations unprovable or unfounded.

THE CDS CIVILIAN REVIEW BOARD

There has been discussion over the years as to whether the Center for Dispute Settlement's (CDS) Civilian Review Board (CRB) is independent, and if so, what that means. Although the word "independent" was not found in the CRB's annual reports 2001-2010, it appears several times in the 2011-2015 reports, for example, that it is an "independent" agency providing "independent civilian oversight."⁶¹ Notably, it was in 2011, after public protest regarding police use of force and subsequent lack of accountability, that a Commission was empaneled by the Rochester City Council to review the process of civilian oversight of the police. Yet even though the word "independent" is continually used in these CRB annual reports to describe the process, there is little indication that true transparency, accountability, and independence are utilized in the process. In fact, when comparing the 2002-2012 data with the 2013-2015 data during and after the time the "improvements" were made to the process, the sustain rate for the Chief of Police went down from 2.1% to 0.7% according to PSS reports. When comparing CRB reports, while the PSS sustain rates for use of force remained essentially the same, going from 3.2% to 3.3%, the CRB rates rose from 4.5% to 7.3%, and the Chief of Police sustain rates rose from 1.6% to 3.3%. These numbers still give great cause for concern, especially when contrasted with the outcome in Syracuse when they overhauled their civilian review process during roughly the same time period as Rochester. The Syracuse Citizen Review Board formed an 11-member board to issue subpoenas and hold hearings; it hired an independent administrator and independent investigator. Compared to Rochester, the results in the City of Syracuse are startling, as shown in Table 6.⁶² For more on the Syracuse Citizen Review Board, see Appendix A, Appendix C and Appendix D.

TABLE 6

Syracuse CRB Use of Force Complaints			
Year	Total	Sustained	Percentage
2013	49	12	24%
2014	43	18	42%
2015	26	6	23%
Total	118	36	31%

(Note: when making their findings, Syracuse uses the standard of proof "substantial evidence"; Rochester currently uses the standard "a preponderance of the evidence.")⁶³

Rochester's 2012, 2013, and 2014 CRB annual reports include a section (duplicated in each) about the 2011 Rochester City Council review of the "Police Complaint System,"

stating, it “resulted in Council recommending police oversight program enhancements that were incorporated into the existing legislatively governed programs.” For four years in a row (2011-2014) the annual reports repeat the statement: “The Center has also been involved in recommending and institutionalizing modifications and improvements to the oversight process to present day.” Yet the Program Enhancements from 2011 to 2014 were almost identical, except for the creation of a new Community Advocate position, which was mandated by City Council Resolutions.⁶⁴

In 2011, the CRB included in its annual report a section entitled “Facilities Upgrade,” which was repeated verbatim in the 2012 report. In 2013, a paragraph was inserted, indicating that a new camera and recording system were added to the interview room. Reviewing these reports, it was startling to learn that the way the CRB transmits its recommended findings to the Rochester Police Department (RPD) is through a voicemail that is transcribed by the Professional Standards Section (PSS), which does not seem to be a very secure method due to the many opportunities for error and/or revision. Furthermore, there is no indication that the transcripts are ever verified by the CRB or that any written record of the CRB recommended findings and PSS recommended findings are compared for quality assurance.

Selection of CDS as Organizational Contractor of CRB

After the City Council’s Commission completed its review of Rochester’s civilian “oversight” of police in 2012, a request for proposals process was initiated, presumably to offer a fair opportunity for any organization to serve as the organizational contractor of the Civilian Review Board (CRB). In the first proposal request process in 2012, the City of Rochester, through City Council, sent out a request for “outside Consultants to provide services relating to management of complaints involving members of the Rochester Police Department.”⁶⁵ Although “the Center for Dispute Settlement was the only firm to respond to the request”⁶⁶ in 2012, we don’t know if or when the proposal request was made available to other prospective organizations.⁶⁷ In 2015, another proposal request was issued, this time by the Rochester Police Department, and the contract was again awarded to the Center for Dispute Settlement (CDS), thus maintaining its unbroken string of management of the CRB for the City of Rochester (dating officially back to 1992 and in some form to 1977). Typically, in a proposal request process, numerous organizations are offered the opportunity to present proposals and an objective process is used to determine which organization is awarded the contract. In 2015, the proposal request was sent to four nonprofit organizations.⁶⁸ In the request issued by the RPD, the “sole point of contact” was Lt. Mark Simmons of the Professional Standards Section.⁶⁹ The nonprofit organization responsible for reviewing complaints of a government body is selected by, under contract to, and financially dependent upon, the agency it is reviewing. This is an apparent conflict of interest. It is significant to note that, based on our research of over 20 other civilian review processes in cities across the country, *none of them* contract with a nonprofit organization to administer their police accountability system.

The proposal requests also include a requirement that panelists for the CRB be “certified arbitrators.”⁷⁰ According to Webster’s thesaurus, another word for an “arbitrator” is a “mediator.”⁷¹ CDS annual reports 2001-2015, include the following statement:

A unique aspect of the Rochester program that sets it apart from all other oversight efforts across the country is the exclusive use of mediators certified by the Center under auspices of the New York State Unified Court System as review board panelists.⁷²

Indeed, the authors have yet to find another civilian review process in the nation that requires its CRB panel members to be certified mediators or arbitrators. Why would this be a contract requirement if the proposal request process is meant to be open to any organization to apply to be the consultant? On the contrary, this requirement seems specifically designed to narrow the awarded application to one organization as the consultant: the Center for Dispute Settlement. In fact, City Council’s 2013 and 2014 ordinances reaffirm that CDS was the only firm to respond to the request.⁷³ In 2015, the Ordinance stated that when a new proposal request was issued on September 28, 2015, the proposal request was “mailed to four local companies ... and CDS was the sole respondent and is able to satisfactorily meet the requirements”⁷⁴ set forth in the proposal request. Is this because no other entity possessed the predetermined requirement that the CRB panelists be certified mediators? Mediation is a different skill than being able to review police investigations and determine if proper policies and procedures were followed. Perhaps this is why no other civilian review board has the certified mediator requirement—because it is not relevant to the process of determining civilian complaints.

Another unsettling requirement of this proposal request relates to the prior discussion of how panelists are selected to serve on a CRB panel.

First:

When a citizen is needed to serve on ... the Civilian Review Board in accordance with current City policy, the Commanding Officer of the Professional Standards Section of the Rochester Police Department shall forward to the consultant the name of the officer involved and a brief description of the incident. The consultant shall then contact the next available individual on the listing derived from the pool of qualified potential panelists, in order to determine if this individual possesses any knowledge

The Case of Lawrence Rogers

On August 31, 2002, Lawrence Rogers, a mentally ill Black man, was running in a parking lot in only his briefs, unarmed. Police Officers Jason Elwood and Thomas Rodriguez tackled Rogers and wrestled him to the ground. Officers Cynthia Muratore and Daniel Nowack joined them as all four officers hit Rogers with nightsticks, put a knee on his neck, punched and pepper-sprayed him. Rogers suffered 27 lacerations, contusions and abrasions to his face and body, respiratory trauma, asphyxiation, and death. All four officers are still employed by RPD; Elwood is now a Sergeant, and Muratore is an Investigator. Rogers’ family filed a civil rights claim, which was discontinued.

of the incident, or of the persons involved, which would preclude him or her from making an unbiased decision. In the event that the potential panelist is disqualified in the opinion of the Consultant, the Consultant shall proceed to the next individual on the list ... and shall in similar manner canvass the list of Chairs supplied by the Mayor, to select a Chair for the panel.⁷⁵

We wonder how this requirement is fulfilled given the small number of chairpersons, (see Table 11, page 36) and the similarly decreasing number of panelists (see Table 7, page 33).

Another disturbing element follows:

The Consultant shall then forward the name(s) of the panelist(s) ... to the Commanding Officer ... [who] shall review the designated names with the chief of Police, who may reject any or all of them if, in his determination, the potential panelist(s) will not deliver an impartial or unbiased opinion. If one or more of the potential panelists is rejected, the Consultant shall furnish another name or names.... This process shall continue until a sufficient number of panelists, and a Chair if necessary, are selected.⁷⁶

There is no mention of this requirement in the 1992 or 1995 legislation establishing the CRB, nor in the subsequent City Council ordinances 2012-15 authorizing the agreement with the Center for Dispute Settlement agreement.⁷⁷ Nowhere in the City/RPD proposal document is there a definition of what might constitute “impartial or unbiased opinion” or how the Chief of Police would make this determination. It is difficult to understand how the Chief can determine in advance whether a potential panelist will or will not deliver an impartial or unbiased opinion.

We strongly question the implications of this requirement in the proposal request, as it seems to give undue discretion to the Chief, which does not lend itself to providing a fair process for the complainant:

If a panelist ... fails to perform his or her duties or performs these duties in a manner that, in the opinion of the Chief of Police or his designee, shows bias, the Chief of Police shall immediately inform the Consultant, and the Consultant shall immediately replace that panelist. Panelists who are replaced for non-performance or for bias shall not be eligible for further service under this Agreement, and shall be replaced in the pool of potential panelists by the Consultant.⁷⁸

Again, there is no indication of how “bias” is defined or determined. These stipulations seem to document a process in which a narrower and narrower acceptable pool of panelists could constitute the Civilian Review Board, leading to recommended findings that closely resemble those desired by the PSS and the Chief of Police. Furthermore, there is no similarly stringent requirement to provide fairness to the complainant, nor is there any accountability in this proposal request of the CRB, the PSS or the Chief, as to the representation of the concerns of the community originally brought forward in the public outcry of 2011.

Civilian Review Board Panelists

In its proposal to the Rochester Police Department (RPD) in October 2015, the Center for Dispute Settlement (CDS) notes the need to increase the number of Civilian Review Board (CRB) panelists. This seems to be a significant issue, as Table 7 demonstrates: over the past 15 years, the total number of panelists who served (including chairs) has declined from a total of 35 in 2001 to a total of 8 in 2015:

TABLE 7

NUMBER OF CRB PANELISTS														
2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
35	25	23	23	15	14	14	25	22	22	21	17	9	10	8

Yet in spite of this notation about the need for more panelists, the CRB had only 4 chairs and 9 panelists listed in its second quarterly report published June 2016.⁷⁹ There seems to be no oversight or monitoring by the Mayor over the selection of panelists to ensure that a sufficient pool, as required by the legislation, is fulfilled, even though they are appointed by the Mayor upon recommendation by CDS.⁸⁰ In its submitted proposal, CDS states that it will “provide to the Mayor of the City a listing of all current CRB panelists noting their designation as either a panelist or a Mayoral appointed Chairperson”.⁸¹

Furthermore, the CRB is required as part of the legislation and proposal request process to represent the racial and ethnic diversity of the overall population of the City of Rochester. Table 8 and Table 9 show the racial and ethnic composition of the City of Rochester in the 2000 and 2010 decennial census.

TABLE 8

ROCHESTER POPULATION BY RACE										
Rochester Population	White		Black		Other		Asian		Total	
	#	%	#	%	#	%	#	%		
2000	106,161	48%	84,717	39%	23,952	11%	4,943	2%	219,773	100%
2010	91,951	44%	87,897	42%	24,224	12%	6,493	3%	210,565	100%

TABLE 9

ROCHESTER POPULATION BY ETHNICITY						
Rochester Population	Hispanic or Latino		Non Hispanic/Latino		Total	
	#	%	#	%	#	%
2000	28,032	13%	191,741	87%	219,773	100%
2010	34,456	16%	176,109	84%	210,565	100%

The CRB's annual reports are required to provide the racial and ethnic makeup of the panelists and chairpersons each year. Utilizing this data for 2001-2015, we have created Table 10, which shows the actual racial and ethnic composition of the CRB's panelists and chairs.

TABLE 10

CRB PANELISTS BY RACE AND ETHNICITY								
Year	White		Black		Hispanic		Total	
	#	%	#	%	#	%	#	%
2001	14	40%	17	49%	4	11%	35	100%
2002	11	44%	11	44%	3	12%	25	100%
2003	11	48%	9	39%	3	13%	23	100%
2004	11	48%	9	39%	3	13%	23	100%
2005	8	53%	6	40%	1	7%	15	100%
2006	8	54%	5	40%	1	6%	14	100%
2007	8	54%	6	40%	1	6%	15	100%
2008	15	60%	8	32%	2	8%	25	100%
2009	14	64%	6	27%	2	9%	22	100%
2010	13	59%	7	32%	2	9%	22	100%
2011	11	52%	8	38%	2	10%	21	100%
2012	9	53%	7	41%	1	6%	17	100%
2013	5	56%	3	33%	1	11%	9	100%
2014	7	70%	3	30%	0	0%	10	100%
2015	6	75%	2	25%	0	0%	8	100%

United States Census Bureau estimates of Rochester's White population between the decennials has remained at approximately 44% - 48%. In comparison, the numbers of people of color, including those who are Black and people in the Other category (which may include those of more than one race) have increased to 50% or more since 2001.⁸² In terms of ethnicity, the number of Hispanic people grew from 13% to 18%. As Table 10 demonstrates, only in 2001-2004 did the racial/ethnic makeup of CRB panelists resemble the racial/ethnic composition of the City as a whole. In fact, as time went on, the percentage of Black and/or Hispanic Rochester residents increased while the percentage of Black and Hispanic CRB panelists decreased.⁸³ By 2015, the panel's racial makeup had changed drastically from 2001; now 75% of the CRB are White, 25% Black, and 0% Hispanic. In contrast, the City's estimated racial composition in 2015 was 48% White, 42% Black, and 10% Other; 18% were of Hispanic ethnicity.⁸⁴ Yet CDS's submitted proposal in 2015 states: "The current pool of CRB panelists consists of 8 active panelists...an ethnically and racially diverse group of community volunteers comprised of 1 Black Female, 1 White Female, 1 Black Male, 5 White Males..."⁸⁵

Civilian Review Board Chairpersons

All of the Civilian Review Board (CRB) annual reports we reviewed describe the importance of the CRB panel Chairperson who reviews the Professional Standards Section (PSS) investigation packages. This quote from the 2012 report is typical: "Seasoned

panelists are recommended to the position of chairperson as they demonstrate an accepted level of proficiency, and/or as the need for new or more chairs is identified.”⁸⁶

The 1992 City Council Resolution notes that there shall be a “group of ten individuals to serve as Chairs of the CRB;” there will be “individual panels, of three civilians, selected on a rotating basis from a pool of qualified individuals who have been trained by CDS for such service.”⁸⁷ In 1995, the number of volunteers to serve as chairs was increased to 15.⁸⁸

Table 11 on page 36 shows the actual distribution of CRB chairs 2001-15, taken from the CRB annual reports of these years.

The row totals in Table 11 indicate the number of years in which each individual served as the chair for at least one review panel during a given year. The data show that some people chaired only a few panels, while others chaired in as many as 14 out of the 15 years reviewed.

The column totals in Table 11 indicate the number of different individuals who chaired at least one review panel in a given year. Even though the legislation requires 15 individuals to serve as chairs, we see that from 2001 to 2015 there were never more than 10 people who served as chairs at least once per year, and this number has decreased over time. In 2012, there were only 8 people who chaired at least once in the year; in 2013, there were 5, in 2014, there were 4, and in 2015 only 3 people served as chairperson at least once. This indicates an increasing consolidation of power in the hands of a few people.

The Case of Cardell Libbett

On December 9, 2011, Cardell Libbett was pulled over by RPD, but got out of his car and ran. Police officers chased him, then ordered him to the ground. Libbett lay face down on the ground and was attacked by six officers using hands, batons, and pepper spray. Officers punched, kicked, and struck Libbett on his head, face, and body. After handcuffing him, officers tasered him while he was on the ground. Libbett lost his left eye as a result of this beating. He filed a civil rights lawsuit, for which he received monetary damages. All officers: Nick Thomas, Chris Kosch, Jason Cropo, Brian Flint, Tim Thomas, and Sgt. Nathan Cornell are still employed by RPD; Lt. Mark Wiater is now a Captain.

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TABLE 11

CHAIRPERSONS OF CIVILIAN REVIEW BOARD PANELS 2001 - 2015																	
Chairperson	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total*	Role in Center for Dispute Settlement
Frank Liberti		X	X	X	X	X	X	X	X	X	X	X	X	X	X	14	Director of Police Community Relations 2010-16
Luis Zamot	X	X	X	X	X	X	X	X	X	X	X	X	X			13	Board of Directors 2002-12
Karen Spofford Sherry		X	X	X	X	X	X	X	X	X	X	X				11	Volunteer
Walker-Cowart Peggy	X	X	X	X					X	X	X	X	X	X	X	11	President & CEO 2005-16
Richardson Theodore			X	X	X	X	X	X	X	X	X	X				10	Program Director (unknown years)
Kantor	X	X	X	X	X	X	X	X	X							9	Board & Executive Comm 2007-15, CDS Attorney
Patricia Mason William Daniels							X	X	X	X	X	X	X	X		8	Director of Professional Development 2010-14
											X	X	X	X	X	5	Certified NYS Mediator 2004-16
Peter Bibby	X	X								X	X	X				5	Dir Police/Comm Relations 2003-08, Board Secretary 2002
Michal Herrera	X	X	X	X												4	Program Manager, Police/Community Relations 1993-98
Patricia Tyser	X	X	X	X												4	Volunteer
Ruby Turner			X	X												2	Volunteer
Evelyn Scott	X	X														2	Board of Directors 2001-02
George Vito	X	X														2	Board of Directors (honorary 2002-07)
Ann Valinzo	X															1	Volunteer
Total**	9	10	9	9	5	5	6	6	7	7	8	8	5	4	3		
* Row totals indicate the number of years in which each individual chaired at least one civilian review panel.																	
** Column totals indicate the number of different individuals who chaired at least one review panel in a given year.																	

Earlier it was noted that the 1995 City Council legislation stipulates the CRB panelists must be *volunteers*.⁸⁹ Given this requirement, it is alarming to note the professional roles of seven of the individuals who repeated as chairpersons during or after the time they were employed by the Center for Dispute Settlement (CDS) in the span of 2001 – 2015:

- Director of Police/Community Relations Frank Liberti chaired 14 years; he was employed at CDS during 6 of those years.
- President & Chief Executive Officer Sherry Walker-Cowart chaired 11 years; she was employed at CDS during 7 of those years.
- Program Director Peggy Richardson chaired 10 years; it is unknown how many of those years she was employed by CDS.
- Attorney Theodore Kantor chaired 9 years; he was presumably the CDS lawyer during those years.
- Director of Professional Development, Patricia Mason, chaired 8 years; she was employed at CDS during 5 of those years.
- Director of Police/Community Relations Peter Bibby chaired 5 years, none while employed at CDS.
- Program Manager Police/ Community Relations Michael Herrera chaired 4 years, none while employed at CDS.

Six of these people were key CDS staff members, and one was the CDS Attorney. They were not volunteers, as stipulated in the 1995 legislation, and they did not reflect the general populace. Yet the CDS response to the City's request for proposals in 2015 uses the word "volunteer" at least six times over six pages to describe the CRB panelists and chairs. These "volunteers" are also paid stipends.⁹⁰ As salaried employees, how did the four staff members justify serving as "volunteers" on the CRB? Did they collect the stipend for their service on the CRB as well as their salary from CDS? Did the CDS attorney bill CDS for the hours he served on the CRB as well as collecting a stipend? This use of staff is a serious lapse in the application of the ordinance on the part of CDS.

Additionally, five members of the CDS Board of Directors served as CRB chairs:

- Luis Zamot chaired 13 years; he was on the CDS Board of Directors (includes serving an unknown timespan as CDS chair) during 11 of those years.
- Theodore Kantor chaired 9 years; he was on the CDS Board of Directors' Executive Committee each of those years.

- Peter Bibby chaired 5 years; he was on the CDS Board of Directors as Secretary one of those years.
- Evelyn Scott chaired 2 years; she was on the CDS Board of Directors both of those years.
- George Vito chaired 2 years; he was on the CDS Board of Directors (honorary) one of those years.

The utilization of key staff and CDS board members on the Civilian Review Board represents an apparent conflict of interest. While there are several definitions of conflict of interest in legal parlance, a widely used definition states: “

A conflict of interest is a set of circumstances that creates a risk that professional judgment or actions regarding a primary interest will be unduly influenced by a secondary interest.⁹¹

In this case, the professional judgment of the CDS as an organization and that of the CRB panelists individually to render fair, independent, neutral findings and recommendations would be the primary interest. This could be unduly influenced by a secondary interest, that of financial gain for the organization through budget support and/or financial gain for individuals who received salary or stipend support.

Another definition of conflict of interest, which includes the type to which we refer, puts it simply:

A conflict of interest is a situation in which financial or other personal considerations have the potential to compromise or bias professional judgment and objectivity. An apparent conflict of interest is one in which a reasonable person would think that the professional's judgment is likely to be compromised.⁹²

As mentioned on page 30, the RPD issued a request for proposals to which the Center for Dispute Settlement was required to respond directly to the agency whose officers it was contracted to review. The CRB's entire budget, while administered through City Council, is dependent upon the RPD selecting the Center for Dispute Settlement as the consultant contractor. Members of the CDS Board of Directors have served on the Civilian Review Board, which is designated to assess the investigations of the RPD. The power of making the decisions regarding whether police acted appropriately and in the interests of civilians belongs to a very small number of people whose primary interest would likely be to maintain the financial contract with the City to enhance their nonprofit organization.

Rather than representing the community at large, the majority of those who had the greatest influence over the CRB review process most of the time were either paid by CDS, which relied financially on the contract with City Council, or were representing CDS in some official capacity. This is deeply concerning: over the past 15 years studied, CDS as a nonprofit organization has depended upon this contract with the City, and one would

assume this practice dates back to 1992.⁹³ This apparent conflict of interest warrants scrutiny, as a “reasonable person” might expect that it would be difficult, if not impossible, for the CRB to be objective. Individuals who held key positions of influence within the Center for Dispute Settlement were the primary decision makers 77% of the time during which only 5% of use of force complaints brought by civilians in Rochester were sustained by the CRB. The City of Rochester has for 24 years contracted with and paid an organization that in essence has essentially rubber stamped the police administration’s tolerance and promotion of officer misconduct.

ROCHESTER POLICE DEPARTMENT DISCIPLINE

The ultimate issue with police misconduct and excessive use of force against civilians is whether appropriate disciplinary measures and penalties are enforced after violations have been fairly reviewed and determined to have been committed by police officers. The Rochester Police Department’s (RPD) General Order Manual addresses discipline under the Rules of Conduct chapter. Before reviewing this data, we thought it might be helpful to review the Webster’s dictionary definition of the word “Discipline”:

- control that is gained by requiring that rules or orders be obeyed and punishing bad behavior
- a way of behaving that shows a willingness to obey rules or orders
- behavior that is judged by how well it follows a set of rules or orders

The RPD General Order Manual, in its section on discipline, provides the following “Background”:

Discipline within an organization requires compliance to a code of ethics and standards of performance supported by a system of authoritative guidelines, such as rules, regulations, general orders, and other policies and procedures. Discipline is a necessary element in the maintenance and growth of any person or organization. The establishment of rules, policies, and other guidelines assumes voluntary compliance by all who are affected.⁹⁴

The RPD utilizes an internal computer tracking system, Internal Affairs Professional, known as IA Pro, which provides an early warning to supervisors related to police officer behavior. This system “allows for the setting of thresholds relative to alleged officer misconduct.” It maintains “disciplinary and award records of Departmental personnel...and a database of complaints.”⁹⁵ According to PSS officials, any time an officer is involved in an accident, internal investigation, or civilian complaint, IA Pro triggers a flag that is sent to the commanding officer of that section and then brought to the lieutenant and sergeant. It also provides information and documentation to support the findings about the officer. Even phone call complaints, which are not part of the formal process, are tracked in this system. Supervisors are required to log into IA Pro at least once per week to check on complaints made about officers under their command. An official stated: “Once the officer reaches a certain threshold in a time period, whether it be three months, six months or a

year, we send that information out to the supervisor,” and they “look into ‘hey, is there a problem here? Does the officer need more training? What is the motivating cause for this officer to always get into a use of force?’”⁹⁶ Another official put it this way: “If we get three different complaints, even if they’re found to be unprovable, we’re still gonna have the officer’s supervisor sit down with the officer and find out exactly what’s going on. ... So basically we try to handle situations before they become problems—try to get ahead of them.”⁹⁷

Judging by the number of use of force incidents that have occurred, including those

The Case of Dwayne Ivery

On August 17, 2013, Officers Alexander Baldauf and Rickey Harris, Jr. came to Dwayne Ivery’s home due to a disagreement between Ivery and his girlfriend. She wanted to remove license plates from a vehicle and Officer Baldauf assisted her. Ivery calmly and slowly approached Baldauf to ask if one of the officers could accompany him to his girlfriend’s home to retrieve his TV. Baldauf stood up and said, “I thought I told you to be quiet,” then punched Ivery numerous times in the head and face, threw him on ground, continued punching him and stomped on his head. Harris placed handcuffs on Ivery, but Baldauf continued beating Ivery for several minutes. This incident was captured on video camera. Ivery was treated at the hospital for his injuries then taken to jail. He was charged with harassment, which was adjourned in contemplation of dismissal. Ivery still suffers from PTSD due to the head trauma. A civil lawsuit is currently pending against the City of Rochester and the officers, who are still employed by the Rochester Police Department.

reported by the media, plus the number of civil lawsuits filed against the RPD, it would not seem that the “early warning system” is successful in preventing recurring incidents of force by officers. In fact, when government employees hold the lives of the community in their hands, it would seem that waiting until three incidents trigger a flag in a computer system is insufficient. If the first event is an incident of force, we believe that should be an immediate trigger of a problem that has already occurred, not a problem that can be gotten “ahead of” after three incidents.

Furthermore, it is not clear if the RPD has used this data to develop policies and procedures to reduce officer misconduct or to discipline repeat offenders. Neither complainants nor the public have received any information that indicates what actual disciplinary measures were taken in response to specific civilian complaints. Most of this information, which would be of great interest to the public (especially involving officers who have had complaints lodged against them yet continue to patrol and harass civilians) cannot be shared unless a judge compels it to be released in court, under Civil Rights Law §50-a. (This law is discussed on page 51.)

In a handout⁹⁸ provided at the October 2015 meeting of the Coalition for Police Reform with PSS, under the summaries of case findings for 2014 and the first three quarters of 2015, it was indicated that the number of each type of allegation was trending lower. Yet the actual percentage of each type of allegation was exactly

the same. Later scrutiny after the meeting revealed that the percentage numbers reported for the first three quarters of 2015 in the PSS handout were duplicated from the 2014 summary and, when correctly calculated, resulted in completely different percentages. This issue is troubling, because it leads us to speculate as to whether PSS deliberately reported incorrect numbers or were incompetent in their reporting efforts.

When asked during the meeting discussion about the difference between the number of complaints recorded in 2014 versus 2015, in terms of the seeming trend of 2015 to be lower, PSS officials responded that they would attribute reductions in allegations to be related to the maturation of officers. They stated that research shows new officers to have more complaints lodged against them than veteran officers. PSS officials also stated that there was an influx of new officers “about five years ago,” (which would be 2010) so the data indicated that as those officers matured, their behavior apparently improved, resulting in fewer complaints. This raises additional questions, which remained unasked: knowing this information, what additional training has been implemented for new officers to reduce this behavioral discrepancy? And, how many people were unnecessarily mistreated during those five years of “officer maturation”? It is unsettling that the officials had a ready answer for a question that was not indicated in the data but is indeed a problem. It seems that they are aware of the misconduct issue with younger police officers and choose to do nothing but wait for them to mature.

Curious about this theory, we decided to test it by calculating the ages of the RPD officers referenced in the text boxes of this report. In all, 24 officers are mentioned, and their ages in 2012⁹⁹ averaged 40 years. The officers’ ages ranged from 24 to 62 as follows: 8 officers in their 20s, 7 in their 30s, 8 in their 40s, and 1 officer in his 60s. We speculate that lack of maturation may be used as an excuse for misconduct by the Rochester Police Department. Excessive use of force seems to be prevalent equally across the age ranges of the officers reflected in the text boxes in this report.

Discipline in Investigations of Civilian Complaints

Professional Standards Section (PSS) Annual Reports 2003-2015 list the formal charges preferred against Rochester Police Department (RPD) officers and the discipline for each charge as categorized by: Citizen Complaints investigated, Departmental Investigations, Command Discipline (initiated by a Command Officer), and Satellite Issues (“alleged violation discovered during an investigation, but was not part of the original complaint”).¹⁰⁰ These are listed by PSS case number, but in terms of the civilian complaint process, neither the PSS nor Civilian Review Board (CRB) annual reports provide information on which charge and its subsequent penalty correspond to which sustained civilian complaint. This information might be accessed through public records if it is raised in court. In one case, the authors connected the PSS number with the finding and subsequent penalty while attending a hearing for a civil litigation in which the plaintiff was also a civilian complainant.¹⁰¹ For the purposes of this report, all discipline and penalties listed in PSS reports as departmental, command, or satellite will be categorized under the general category of RPD discipline or penalty. Although we can’t know from the PSS annual

reports which sustained civilian complaints resulted in which type of penalty, we can review the type of discipline that was enforced for specific categories of complaint. Table 12 on page 43 delineates 115 sustained civilian complaints 2003-2015 and the subsequent penalty.¹⁰² For purposes of comparison, Table 12 includes not only investigations related to allegations of use of force, but also those for procedure, discourtesy,¹⁰³ and other complaints.

The Case of Delmar Lipford

On April 4, 2015, Delmar Lipford, a Black man, got out of his car at a red light to speak to a person in another car, and walked back to his car while the light was still red. Officer Alexander Baldauf pulled up and told Lipford to “get on the fucking curb.” While Lipford was walking towards the curb, Baldauf shoved him twice, and Lipford stumbled, but raised both hands in the air in a nonthreatening manner, stating, “You don’t have to shove me.” Baldauf shoved Lipford again, punched him in the face, and pointed his taser at him. A witness yelled, “Do not shoot him, he didn’t do anything to you, I saw you punch him for no reason. I am recording you.” Baldauf then told Officer Rickey Harris to handcuff and arrest Lipford. The Sergeant arrived and did not prevent the unlawful arrest of Lipford, who spent the night in jail, posted bail and was released. Officers did not complete the required Subject Resistance Report, but untruthfully stated that Lipford was disorderly and hit the officer. A civil lawsuit against the two officers, the sergeant, and their commanding lieutenant is pending. The officers are still employed by the RPD.

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TABLE 12

year	RPD Discipline Civilian Complainants*	no disciplin e	counselin g memo or letter of reprimand	total suspens ions	resigned , retired or terminat	total	percenta ge
2003	force	0	1	3	0	4	
2004	force	2	1	0	0	3	
2005	force	0	1	0	0	1	
2005	force, failure to cooperate w/internal investigation	0	0	2	0	2	
2006	force	1	0	0	0	1	
2007	force	0	1	0	0	1	
2011	force	0	1	0	0	1	
2012	force	0	1	0	0	1	
2014	force	0	0	1	0	1	
2015	force	0	1	0	1 retired	2	
total	force	3	7	6	1	17	15%
2004	procedure	0	1	0	0	1	
2006	procedure	0	5	1	0	6	
2007	procedure	0	5	0	0	5	
2008	procedure	0	4	3	1 term'd	8	
2009	procedure	0	3	0	0	3	
2010	procedure	0	1	0	0	1	
2011	procedure	0	2	1	0	3	
2012	procedure	0	7	0	0	7	
2013	procedure	0	9	2	0	11	
2014	procedure	0	9	2	0	11	
2015	procedure	0	4	0	0	4	
total	procedure	0	50	9	1	60	51%
total	discourtesy	0	25	1	0	26	22%
total	other	0	11	2	1 resigned	14	12%
	grand total	3	92	19	3	117	100%
	total percentage	3%	77%	16%	3%		100%
*may include multiple allegations							

Despite the fact that there were 23 complaints of force sustained by the Chief of Police 2002-2015 (Table 2, page 22), the subsequent penalties for only 17 of them are reported. For these 17 complaints of force, (15% of 117 total complaints) the officers received no penalty 3 times over the period, while they were given counseling memoranda or letters of reprimand (CM/LR) 7 times, suspended 6 times, and one officer retired.

In contrast, 60 complaints were found to be related to procedure. This represents a much higher number of officers, 60 of 117 or 51%, who were disciplined in this category. In most of these cases, 49 of 60 or 82%, the complaint resulted in the officers receiving CM/LR. But 9 officers were suspended for procedural violations, more than the number of officers suspended for acts of force against civilians (6). One officer was terminated for a procedural violation.

The authors wondered what a procedural violation entails, and a word search of the RPD General Order Manual yielded almost 500 instances of the words “procedure,” “procedures,” and “procedural.” Suffice it to say a procedural violation seems to be a catch-all term that can apply to almost any area of the policing system to be found within the 1,232 pages of the RPD’s rules and regulations manual.¹⁰⁴

Only 3%¹⁰⁵ of civilian complaints were sustained out of 1,173, and only 17 of those 21 complaints were reported on. By any standard, it is startling that the harshest penalties meted out for sustained use of force complaints involved merely 6 suspensions. Two of these suspensions were 1-20 days, one was 30 days, two were 60 days, and one was of unspecified length.¹⁰⁶ We don’t know if the officer who retired for use of force charges did so to avoid termination. Overall, 77% of civilian complaints resulted in CM/LR and 16% led to suspensions, while the remaining 3% resulted either in no penalty or retirement/termination.

A growing body of research indicates that it is common for police officers faced with charges of misconduct to resign or retire rather than be terminated, so they will not lose their pensions. In Nassau County, New York, “at least 33 officers have retired with serious misconduct charges against them pending...” and only six officers “were officially terminated since 2003.” For example, Sgt. William Kaul was “suspended for 30 days without pay” for injuring another driver in a car crash. Kaul then returned to “administrative duties, but he retired two months after the accident with an \$80,966 pension. He also faced criminal charges of official misconduct, obstructing governmental administration and leaving the scene of an accident. Kaul pleaded guilty to official misconduct in April 2012, and he received a conditional discharge and a \$500 fine.”¹⁰⁷

Although common in American policing, the practice of police officers retiring or resigning in order not to lose one’s pension seems to have become a problem beyond the United States. In the United Kingdom, the government has enacted “...regulations which stop police officers from resigning or retiring if they are subject to an allegation that could lead to dismissal” after “144 officers resigned or retired whilst subject to a gross misconduct investigation, preventing them from being held to account for their actions” from December 13, 2013 through August 1, 2014.¹⁰⁸

Discipline in Investigations Initiated by RPD

Internal investigations by the Rochester Police Department (RPD) document 363 instances of disciplinary actions taken against police officers during 2002-2015. Table 13 breaks down these investigations, which may include multiple allegations, in the following categories: very serious, force, procedure, discourtesy, conduct, untruthfulness, insubordination, property damage/loss, and other. These data include departmental investigations, command discipline, and satellite issues.

TABLE 13

Year	RPD Discipline Internal Investigations*	no discipline	couns memo/ letter of reprimand	suspensions	transfer / demotion	resigned/ retired/ terminated	other	total	percent
2003	poor supervision / in-custody death	0	2	0	0	0	0	2	
2003	sex with a minor / harrasment	0	0	1	0	0	0	1	
2003	shooting related to death	0	0	1	0	1 resigned	0	2	
2003	shot at moving vehicle / injured bystander	0	0	2	0	0	0	2	
2004	misappropriated funds / drug possession	0	0	0	0	1	0	1	
total	very serious	0	2	4	0	2	0	8	2%
2002-07	force	0	4	10	0	1 resigned	0	14	
2008-14	force	0	0	0	0	0	0	0	
2015	force	0	0	2	0	0	0	2	
total	force	0	3	12	0	1	0	16	4%
2002-07	procedure	2	18	6	0	5	0	31	9%
2008-15	procedure	0	91	43	3	16	3	156	45%
total	procedure	2	109	49	3	21	3	187	52%
2002-15	discourtesy	2	16	10	0	0	0	28	8%
2002-15	conduct	0	14	8	0	2	1	25	7%
2002-15	untruthfulness	0	2	6	0	4	0	12	3%
2002-15	insubordination	0	2	6	1	0	1	10	3%
2002-15	property damage / loss	0	28	8	0	0	7	43	12%
2002-15	other	2	19	12	1	0	0	34	9%
	grand total	6	195	115	4	30	12	363	
	percentage	2%	54%	30%	1%	9%	4%	100%	
	*may include multiple allegations								

As can be seen by the first list of formal charges in Table 13, earlier iterations of Professional Standards Section (PSS) annual reports researched for this study provided more detail regarding the offenses for which officers were disciplined than those in more recent years. In fact, the list from 2003 is shocking, especially when comparing the charges

with the penalties assessed. “Poor supervision related to in-custody death” resulted in a CM/LR while the officer who harassed and had sex with a minor received a 60-day suspension. When two officers were involved in a shooting wherein someone was killed, one was suspended for 30 days and the other resigned. The officer who shot and injured a bystander received a 10-day suspension.¹⁰⁹ Since 2003 is the only year in which such detail is provided for the 14 years of reports studied, one can only imagine what the details are for the charges in other years, and why they were not reported. This lack of transparency results in a lack of accountability to the public.

There is a lower number of charges of force and an increased number of procedural violations in RPD after 2007.¹¹⁰ During the years 2002-2007, there were 8 very serious violations and 14 charges of force, totaling 22. Yet from 2008 to 2014, an 8-year span, RPD reported zero very serious violations or charges of force, and only 2 in 2015. This causes us to question what changed after 2007 that the number dropped from 22 over a 6-year period to only two over the next 8 years?

By contrast, from 2002 to 2007, RPD reported 31 violations of procedure compared to 156 from 2008 to 2015. Taking into account that 2002 to 2007 covers 6 years and 2008 to 2015 covers 8 years, the latter span contains 5 times more procedural violations than the former. Since we have already determined that “procedure” seems to be a catch-all term, we question whether the category of procedure incorporates charges of force that have not been reported as such by the RPD. If so, what is the motivation for this increasing lack of transparency around the exact charges for which police officers were disciplined?

Furthermore, over the total period of 2002-2015, 30 officers resigned or retired from, or were terminated by, the RPD. From 2002 to 2007, 3 of these (10%) were the result of very serious or force investigations, whereas from 2008 to 2015, none (0%) of the resignations, retirements or terminations (RRT) were related to force charges. That is 8 years with no investigations of use of force by RPD officers. Yet from 2002 to 2007, 5 out of 30 (17%) RRT came from procedural violations, while 16 out of 30 (53%) RRT were caused by procedural violations between 2008 and 2015. Again taking into account the different span of years, there were 3 times the number of officers who resigned, retired, or were terminated for procedure over the latter 8-year span than the previous 6-year span.

Turning to suspensions, 14 officers (12%) were suspended for very serious or use of force charges during 2002-2007 out of a total of 115 suspensions, while only 2 (2%) officers were suspended for use of force charges during 2008-2015. In contrast, 6 out of 115 (5%) suspensions were related to violations of procedure during 2002-2007, while 43 out of 115 (37%) suspensions were for procedural violations between 2008 and 2015. Officers were suspended 7 times more for procedural violations over 2008-2015 than 2002-2007.

Finally, there were 6 (3%) counseling memos or letters of reprimand (CM/LR) issued for very serious or force charges during 2002-2007 out of 195 total CM/LR, compared to 0 (0%) during 2008-2015. But 18 out of 195 (9%) CM/LR were issued from 2002 to 2007 for procedural violations, in contrast to 91 out of 195 (47%) from 2008 to 2015. There were 5

times more CM/LR issued to officers for violations of procedure in the latter 8 years than in the previous 6 years.

Overall, out of a total 363 penalties issued to RPD officers through internal investigations (2002-2015), 24 or 6% related to very serious or force violations and 187 or 52% related to procedure, 8 times greater. Charges of force went down over the period while procedural violations went up.

Utilizing vague violations of procedure and providing less information about charges of force in the discipline of police officers who are the subject of internal investigations indicates an increasing lack of transparency within the RPD as we come to the present day. If there were more transparency in the process, there could be more accountability, and patterns of policing could be studied and corrected, leading to increased safety and justice for the residents of the City of Rochester.

Police Union Involvement

As indicated earlier, the Rochester Police Department's (RPD) General Order Manual has an entire chapter devoted to Rules of Conduct, and 14 pages of this chapter specifically address issues of discipline and penalties for violations of the rules. Yet the very first point in this section of the manual states:

If any portion of this General Order conflicts with the employees' respective current Collective Bargaining Unit Agreements, the terms of the applicable bargaining agreements will prevail.¹¹¹

The collective bargaining unit for the RPD is the Rochester Police Locust Club, which represents officers at the ranks of police officer, investigator, sergeant, lieutenant, and captain with minor exceptions. The Locust Club protects RPD officers in myriad ways, whether through publicly defending officers' misconduct or clauses within the police union contract involving officer discipline. And as the above statement indicates, even though there are numerous policies and procedures enacted by the RPD General Orders, these can all be superseded by provisions within the union contract that protect the officer.

The Cases of Raliek Redd, Daequon Carelock and Wan'Tauhis Weathers

On November 27, 2013, Raliek Redd, age 15, and his teammates, Daequon Carelock and Wan'Tauhis Weathers, Black high school basketball players, were waiting for a school bus outside S & S Market on East Main Street, as directed by their coach. Officer Eliud Rodriguez, Jr. approached the students in an aggressive manner and ordered them to move, even after they explained they were waiting for a school bus to play in a basketball game. Rodriguez then grabbed the players, handcuffed them, searched their belongings and arrested them. At the police precinct, the students were humiliated and strip-searched. The charges of blocking pedestrian traffic were later dismissed. Civil lawsuits were brought on behalf of Redd, Carelock, and Weathers, who each received monetary settlements from the City of Rochester. Rodriguez is now a police investigator.

In a case where a complaint against an officer is sustained by the Professional Standards Section (PSS) and the Chief of Police agrees with the finding, the Chief can administer discipline. The police officer found to have committed misconduct has a number of options in response to that discipline. According to the contract between the City of Rochester and the Locust Club, if a complaint against an officer is sustained and that discipline is deemed appropriate by the Police Chief, then the officer appears before a Hearing Board. The accused officer can choose to have a “professional neutral”¹¹² arbitrator hear the case, paid for by the City. Or the officer can choose to have a hearing board composed of:

- A Locust Club member selected by the Appointing Authority from the accused officer’s list of three, at a rank higher than the accused officer, and two command officers, above the rank of Lieutenant, selected by the accused officer from the Appointing Authority’s list of three; or
- Two command officers, above the rank of Lieutenant, selected by the accused officer from the Appointing Authority’s list of three, a Locust Club member selected by the Appointing Authority from the accused officer’s list of three, and a civilian chosen by the accused officer, who would displace one of the selected command officers; or
- A single “professional neutral” arbitrator who would hear the case and make a determination.

In other words, we surmise, an officer’s three-member hearing board could be composed of a potentially sympathetic Locust Club member *and* a potentially sympathetic civilian. The burden of proof is on the department to prove that the officer committed misconduct. Regardless of which option the accused officer selects, if they lose the hearing, they can appeal the decision again under Article 76 of New York’s Civil Service Law.

Police policing police is codified into the policy and procedure for disciplinary hearings within the Locust Club contract and Civil Service Law, and the RPD’s General Orders must conform to the contract agreement. Thus, the police union’s contract runs interference against all justifiable notions of accountability and transparency.

There are myriad other protections found in the Locust Club / RPD contract. Take for instance the statute of limitations when it comes to removing or disciplining an officer for misconduct:

No removal or disciplinary proceeding shall be commenced more than eighteen (18) months after the occurrence of the alleged...misconduct...[unless] the misconduct ...would, if proved in a court of appropriate jurisdiction, constitute a crime.¹¹³

Although there is no limit on when a complaint to PSS can be made against an officer, this point is moot in some aspects, because if a complainant waits too long to go to PSS to make the complaint, there can be no discipline if the complaint is sustained. If complainants have criminal charges pending against them (usually disorderly conduct, obstructing government administration and/or resisting arrest) PSS advises them not to file their

complaint until after the charges are adjudicated, to protect their Fifth Amendment rights. But 18 months could easily pass before the court ruling. A complainant might have any number of other reasons to wait to file a complaint, e.g., fear of reprisal, mental distress, or physical injuries. Yet if a civilian commits a crime, there is no 18-month limit on whether the civilian will be punished.

Another issue relates to how the discipline of officers is defined and documented. In most organizations and businesses, if an employee is given a warning or reprimand, it is placed in the employee's personnel file as documentation in case of further issues related to one's behavior or job performance. It is pretty standard that such a warning or memo could be used as an indication that a further level of discipline might be expected after the first infraction. Yet in the RPD's General Orders, Locust Club members must receive copies of this type of documentation but they are not counted as disciplinary measures:

Any member of the bargaining unit shall be given a copy of any warning or memorandum entered into his personnel file. ...Such warnings and memoranda are not considered discipline.¹¹⁴

The authors wonder how these warnings and memoranda are not considered discipline when they are clearly listed as such in the PSS annual reports (see Table 12 on page 43 and Table 13 on page 45). If they are not considered discipline, what does this mean in terms of consequences for infractions?

Issues with lack of accountability in egregious acts of police misconduct and use of force are not unique to Rochester. In fact, powerful police unions are the primary reason for the increasing and deliberate lack of transparency in Rochester, in New York State, and across the country. Police departments continually demonstrate intransigence in the face of attempts to gain more public control over holding them responsible for actions that harm the community. Although police department administration officials may portray themselves as powerless in the face of the strength of the police unions and the contracts they wield, the two organizations work more closely than is revealed to the public.

According to Kristian Williams:

Police associations provide a stronghold for the most reactionary aspects of the

The Case of Quintin Keene

On September 18, 2014, Quintin Keene, a Black man, was standing in a laundromat talking to his grandmother on his cell phone when Officer Mario Masic burst in, lunged at Keene, grabbed him, and told him to drop the phone. When Keene turned away from him to tell his grandmother what was going on, Masic pepper sprayed him and took him down, stating, "If you don't stop moving, I'm going to shoot you." Masic had been apparently looking for a man with a gun who bore no resemblance to Keene. Keene was charged with disorderly conduct, obstruction of justice and resisting arrest. Before offering an adjournment upon contemplation of dismissal to Keene, the judge stated, "This case raises a lot of issues for our community."

profession—elements that the command hierarchy is often at pains to disavow. When the police command cannot, for legal or political reasons, resist demands for civilian oversight...the union can defend the departmental status quo... Police unions are also on hand to defend individual officers whose misbehavior becomes embarrassing to the department and who therefore cannot be protected by their supervisors. ...The police union represents an extreme of autonomy, protecting officers of the lowest rank from authority both inside and outside the department.¹¹⁵

The public is led to believe at times that conflict may exist between the City of Rochester and the Locust Club, but in reality the RPD administration and the police union have common interests. This has been played out over the years, and most recently in several cases of police misconduct and use of force. Williams provides the rationale:

The careful tension between departmental policy and officer autonomy has its benefits for both the commanders and the line officers. Though police regulations do notoriously little to actually control officer conduct, they do provide a layer of plausible deniability between commanders and the routine activities of their troops. That is, the rules help to insulate commanders from responsibility for misconduct while at the same time police unions defend the rank and file from meaningful discipline. This arrangement allows for the formal appearance of a rigorous command and control while maintaining maximum discretion at the lowest levels of the organization. The command staff can minimize the criticism it faces through the manipulation of formal policies and bureaucratic shuffling, but concessions granted at that level need not affect much of what happens on the street.¹¹⁶

Williams has perfectly described what has happened in Rochester, and why previous iterations of civilian oversight mechanisms have yielded few fundamental changes in the ultimate accountability of the police to the public it serves. Despite commissions, committees, ordinances, and legislation, we have seen little, if any, tangible improvement in terms of police/community relations and public trust in the police because the civilian review process is not independent of the police department and has no power. There is no true accountability because there is no transparency in the system, and the community has no independent oversight for investigations outside the police department.

LACK OF TRANSPARENCY

The significant issues related to lack of transparency and accountability in Rochester were eloquently described 15 years ago by Attorney Matthew Fusco, who has defended clients in cases of alleged police misconduct. In a 2001 *Democrat & Chronicle* article about the Civilian Review Board, “Criticism Hounds Police Oversight,” he raised important issues:

Critics say the board members can be misled by a completed investigation that has been wrapped into a tidy report. “How are you supposed to know what questions weren’t asked if you have somebody else telling you what the findings are?” asked Matthew Fusco.... [He] said the board is presented each case in isolation, so members don’t know whether a particular officer has a history of misconduct

allegations. And he said a true investigative body could undertake investigations to curb misconduct. For instance, he said, a civilian review board could examine every incident of officers using force to see whether particular names reappear. Or they could study arrests to see whether minority residents are charged disproportionately for certain crimes. “We have this board looking at complaints in a vacuum,” he said. “They’re only looking at one particular incident but they never look at patterns, or patterns among particular officers.”¹¹⁷

Although much of the information in this document was taken from the annual reports of the Civilian Review Board (CRB) and the Rochester Police Department (RPD) Professional Standards Section (PSS), it would undoubtedly be much more productive, as Fusco suggests, to complete a comprehensive analysis of each RPD officer’s complaint history to review patterns within their individual histories. These could then be compiled to review patterns within the department as a whole. The lack of transparency in police records, especially for complaints of misconduct involving unnecessary use of force, has prevented the public from knowing if justice has been served. And in many cases, it leads us to believe it has not. Organizations and individuals have made scores of attempts, through the Freedom of Information Law, to obtain records relating to police misconduct, only to be denied access to relevant records.

This lack of transparency is made possible by a law enacted in New York State (NYS) to deliberately block public access to police records. As stated by the NYS Committee on Open Government’s 2014 annual report:¹¹⁸

The Freedom of Information Law (FOIL) today affords the public far less access to information about the activities of police departments than virtually any other public agency—even though police interact with the public on a day-to-day basis in a more visceral and tangible way than any other public employees. The cause of this disparity is §50-a of the Civil Rights Law, an exemption from the ordinary rules of disclosure that apply to other government agencies. Section 50-a permits law enforcement officers to refuse to disclose “personnel records used to evaluate performance toward continued employment or promotion.” The Legislature adopted this exemption in 1976 for the narrow purpose of preventing criminal defense lawyers from rifling through police personnel folders in search of undocumented information to use in cross examination of police witnesses during criminal prosecutions. Over time this narrow exception has been expanded in the courts to allow police departments to withhold from the public virtually any record that contains any information that could conceivably be used to evaluate the performance of a police officer. That means information about what an officer actually has done can be kept from the public in most cases. And it is.¹¹⁹

The personnel records of the majority of government employee are subject to public scrutiny and can be viewed through FOIL requests, e.g. public school teachers, senators, or secretaries.¹²⁰ Yet police officers, corrections officers, fire fighters, paramedics, and parole officers are the only government employees whose personnel records cannot be viewed by the taxpayers who fund their salaries, those whom they are sworn to serve and protect, those whose lives can be snuffed out or ruined based upon their decisions.

Current efforts are underway in Rochester and throughout New York State to repeal Civil Rights Law §50-a so that police records will be transparent. The recent decision by the City of Rochester to institute the use of body-worn cameras by the RPD is commendable, if the policies are stringent and if the public can have access to the video footage. Yet under Law §50-a,¹²¹ the police have the discretion to release body-worn camera recordings or not, thus withholding footage that the public has a right to view. This contradicts the stated purpose of body-worn cameras: transparency and accountability. When the statewide effort to repeal §50-a is successful, there will be more opportunities for police officers to be held responsible for their misconduct. It is clear, however, that the RPD has benefitted from this law and the public has been denied the accountability it deserves in a free and democratic society.

The Case of Rasheed Griner

On May 23, 2015, Rasheed Griner, a young Black man, and his family were at the beach listening to music. Monroe County sheriffs pulled up and asked the group to turn down their music, which they did. Then several RPD vehicles surrounded the group and told them they had to leave. When Griner asked why, he was told they looked “suspicious.” The group moved to a parking lot, but the police returned and told them to leave. When Griner asked for the officer’s badge number, Officer Mario Masic said, “I’ve had enough of your mouth,” and pulled out his baton. Masic hit Griner in the face, arrested and charged him with disorderly conduct and resisting arrest. He received stitches for his facial injuries. The criminal case against Griner was dismissed when the judge decided that Masic’s arrest of Griner was unlawful. Officer Masic is still employed by the Rochester Police Department.

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SUMMARY OF REPORT FINDINGS

Findings/Data

1. From 2002 to 2015, only 2% of civilian complaints of unnecessary force have been sustained by the Chief of Police and only 5% by the Civilian Review Board. (In contrast, Syracuse's Citizen Review Board's sustain rate was 23% in 2015.)
2. From 2008 to 2013, the Rochester Police Department (RPD) Professional Standards Section (PSS) did not sustain ANY civilian complaints for unnecessary use of force.
3. During the 14 years reviewed in the data, the harshest penalties meted out to the police officers for sustained complaints of excessive use of force were 6 suspensions.
4. From 2008 to 2015, there were no internal investigations regarding use of force by RPD officers; over the same time period there were 156 investigations of "procedure."
5. The Civilian Review Board (CRB) exonerated officers (meaning what they did was considered lawful) at a higher rate than the RPD most years.
6. When the Chief of Police disagreed with the CRB's recommended findings, he exonerated officers in all cases where the CRB sustained the complaint (meaning the officers' conduct was considered unlawful).
7. After the 2011 – 2012 City Council Commission review of the CRB, the Chiefs of Police sustained fewer civilian complaints, according to PSS reports, than they had before the Commission was established.
8. Civil lawsuits against the City of Rochester for police misconduct cost taxpayers millions of dollars each year.

Discipline

1. RPD officers can appeal any disciplinary action related to a civilian complaint through a three-person police appeal board, which could include a potentially sympathetic commander and a civilian of their choosing (per police union contract).
2. 77% of all types of civilian complaints filed 2002 – 2015 resulted in counseling memos or letters of reprimand as the only discipline for RPD officers.
3. Officers were suspended 7 times more for procedural violations during 2008 – 2015 and 10 times less for violations of force during 2002 – 2007.
4. In 2003, three different officers were cited for separate instances of: sexual harassment of a minor, an in-custody death, and shooting a bystander; all of which resulted in

suspensions. After 2003, PSS reports no details on discipline of officers for use of force.

Management/Process

1. The Center for Dispute Settlement (CDS) has served as the City of Rochester's contractor for the Civilian Review Board (CRB) for 24 years.
2. In 2012, the City established a process of requesting proposals to administer the CRB. This process has favored CDS to remain the sole contractor for the CRB, an apparent conflict of interest. In 2012, City Council administered the process. In 2015, the Rochester Police Department took over this administration.
3. The CRB is not independent. It receives training from the RPD and uses police investigators to conduct investigations into civilian complaints of police misconduct.
4. The Request for Proposals to administer the CRB includes the Chief of Police being able to remove anyone from the CRB based on undefined "bias"; this stipulation is not found in the 1992 ordinance establishing the CRB.
5. The majority of the CRB panel chairs have been either CDS staff or members of the CDS Board of Directors. This violates the 1992 ordinance that the panelists be volunteers.
6. The number of panelists and chairs has dwindled over the years to a select few who do not represent the racial or ethnic composition of the City of Rochester.
7. Information is not readily available to the public about the number of complaints made against a specific officer or the types of disciplinary measures that have been taken, if any.
8. The CDS's Community Advocate does not actually advocate for the civilian complainant.
9. The CRB offers no formal appeal process for complainants who disagree with the final dispositions of their complaints.
10. The CRB has never requested further investigation of a civilian complaint to the level of Rochester City Council; in 24 years, City Council has never reviewed a single civilian complaint.
11. The transmission of CRB recommended findings via voicemail to PSS seems to be an inadequate and insecure method.

INSIGHTS & CONCLUSIONS

The authors were present at meetings with Rochester Police Department (RPD) and Professional Standards Section (PSS) officials in 2015 and 2016. These meetings led us to several insights. First, there is significant evidence that RPD policies and procedures encourage, or at least do not prevent, the use of force by police officers against civilians. We believe these regulations need to be reviewed and revised since they seem to allow for the kind of behavior that does not meet the standard of human rights. In a discussion of how these policies and procedures play out in the lives of civilians, PSS Commander Lieutenant Mark Simmons noted that one complainant said the officer who arrested him “may not have violated the procedures, but he violated *me*.” Even recognizing this, Simmons said, police still “have to go by the procedures.”¹²²

Herein lies the crux of the matter: the Rochester Police Department, the Professional Standards Section, and the Civilian Review Board (CRB) are committed to following the policies and procedures of the RPD. Yet they do not seem to be committed to the *civil and human rights* of the civilians who end up being complainants, that is, the people who are targeted by the police. In fact, in conversations we have had with police officials, they commonly refer to the person with whom they are interacting as “the bad guy.”¹²³ This was particularly notable in one conversation when the central issue was how the RPD might have acted differently in the beating of William James, a mentally ill and homeless Black man, in 2015. The RPD has an Emotionally Disturbed Persons Response Team, but only approximately 10% of officers¹²⁴ are trained in those tactics, resulting in many instances where an unarmed person was beaten instead of being treated humanely.

Likewise, in the final analysis, the Civilian Review Board of Rochester seems to be nothing more than an artifice designed to give the false impression that civilians have an avenue through which they can obtain justice when they have been mistreated by the Rochester Police Department. This system works for the bureaucratic institutions but not for the civilian complainants they purport to protect. Regardless of which chief or mayor was in power, the system—and the results—remained essentially unchanged.

The CRB prides itself on its stance of neutrality, but in reality, there is not much difference between the findings of the CRB, the PSS, or the Chief. The authors wonder how a civilian review board, partially trained by the police, using police investigations, which is selected by, and thus financially dependent upon, the very organization it is contracted to review, can, in any sense, be neutral. The CRB serves no purpose for the civilian, providing only a rubber stamp for what PSS has already determined. The City of Rochester, funded by its people to serve and protect them, does not meet its responsibility. The relationship between the City, the RPD, and the CRB represent an apparent conflict of interest. Even after a Request for Proposals process was conducted, the means of selection completely favored choosing the Center for Dispute Settlement as the organization to administer the Civilian Review Board.

Furthermore, the CRB having instituted a position of “Community Advocate” gives complainants false hope that someone will actually advocate on behalf of justice for them. The authors have heard numerous accounts and been present at the interviews of those who have undergone this process. The complainant “interview” by RPD officers assigned to PSS is conducted as if the complainant were a suspect being interrogated regarding their involvement in a crime.¹²⁵ Thus, a person who has been physically brutalized is frequently set up to be mentally and emotionally traumatized through interrogation by the same entity. Additionally, complainants cannot speak directly to the CRB panelists to plead their cases. The CRB recommendations are made solely through reviewing PSS investigation files on the complaint.

Even members of the CRB recognize the futility of the process. One former panelist, on condition of anonymity, told us: “I found the process frustrating and ineffective. I remember one case when our panel and the investigating officers separately concluded that unreasonable, abusive force had been used by the arresting officers. The chief overruled all of us – we had no authority or power. I quit after that.”

Police cannot police themselves. As the data cited herein demonstrate, the civilian review process in Rochester is a travesty and does not serve complainants in any way. Thus, civilians are reluctant to file complaints alleging police misconduct, especially when the community is not really represented by the CRB. At best, community members are skeptical of this process; at worst, they fear retaliation from the police, which has occurred. Those who have filed complaints have been surveilled, followed, video-recorded, and verbally harassed by the same officers against whom the complaint was filed as well as other RPD officers. Some have been arrested under false pretenses, the charges were dismissed, and then the individuals were rearrested on the same charges after their lawyers filed Notices of Claim against the Rochester Police Department.¹²⁶

Over the years, many in the community have lost trust in the police and the police review process, which has been detrimental to the purported relationship-building activities conducted by the City and the RPD. Neither the “improvements” instituted after the 2011-2012 Commission, nor any recent “community policing” rhetoric, have ameliorated affected community members’ attitudes or made any noticeable difference in the behavior of officers on the ground. Rather than increasing public trust, it seems that the failure of the 2011-12 process has resulted in a loss of faith in the complaint review process while at the same time awareness of police brutality nationally and locally has risen. At the very least, the RPD seems to have strayed from its stated mission “to place people first, internally and externally and to appreciate the value of each and every person.”¹²⁷

Civilian complaints of use of force seem to result in little consequence for officers. Even in internal investigations, use of force charges have given way to procedural violations, the nature of which are not made public even in aggregated data. All decisions related to discipline reside in the hands of the Chief of Police. It is impossible to gain any information about which charges result in what type of discipline, if any. The public’s trust in the integrity of its police department has been eroded. The power of the police union and the laws that protect police officers to an extent not enjoyed by any other public servant,

further exacerbate the lack of accountability by these government employees to the tax-paying public to whom they owe their employment, protection, and service.

Millions of tax payer dollars have been awarded by the City of Rochester to compensate those who have brought civil complaints against the Rochester Police Department and its officers.¹²⁸ The misconduct of several officers and the resulting lawsuits are not the cost we have to pay for “a few bad apples.” Rather, the entire policing system encourages aggressively racist and brutal attitudes and behaviors that treat people of color as criminals instead of human beings. This system must be dismantled and replaced with a system of accountability wherein police administration, city government, and the community indicate that there is no tolerance for police misconduct, and where consequences for such actions

in the form of appropriate discipline are swift and transparent.

The Case of Lentorya Parker

On September 15, 2016, Lentorya Parker’s boyfriend Quentin Bowen was detained by police on Hollenbeck Street. Parker, who was on her way to pick up her daughter a few doors down, yelled at the police, “What are you doing?” Officer Jonathan Marsh warned Parker to stop yelling and get out of the street. She was turning away from him and into a yard when Marsh said, “Oh, too late.” He then ran and tackled Parker to the ground from behind and drove his knee into her back. One officer pepper-sprayed Parker three times and then sprayed in the direction of her daughter, who was nearby screaming. Parker was handcuffed and placed in a police car. Later, another officer said to the little girl, “sorry your mom’s an animal.” Parker was charged with disorderly conduct, resisting arrest, harassment and obstructing government administration. While her criminal case is pending, she has filed a civil rights claim against the City of Rochester. Parker suffered injuries to her back and elbow. Marsh is still employed by RPD.

The Rochester City Council ordinance establishing the Civilian Review Board in 1992, Resolution 92-40, included a separate resolution addressing the practices of the Rochester Police Department. This resolution contained requirements for recruitment, training and supervision of police officers, including:

- training in appropriate verbal skills to be used to diffuse potentially violent situations;
- commitment to attitudes of tolerance, openness, and understanding for the various cultural and ethnic groups which make up the City of Rochester, and a refusal to tolerate any behavior which deviates from this commitment;
- increased accountability for all officers who exhibit bias or racially motivated behavior...
- interviews of all officers involved in serious incidents, including excessive force or shootings, should be recorded.

Similarly, we recommend that the Rochester City Council establish a resolution in 2017 with training requirements for all Rochester Police Department officers, including, but not limited to: anti-racism, de-escalation techniques, how to handle mental health and emotional disturbance issues, awareness of physical and mental

disabilities, gender identity and sexuality, human and civil rights laws, and restorative justice skills.

We recommend a resolution empowering the new Police Accountability Board (PAB) to have the authority to establish a disciplinary matrix to be used to determine levels of discipline and sanctions for sustained charges of civilian complaints against officers of the Rochester Police Department. If the PAB and the Chief of Police fail to agree on the discipline to be imposed on an officer, the PAB will determine discipline and compel the Chief to impose it. The Board's determination of discipline will be final.

Finally, the human cost to hundreds of people whose complaints have been reviewed by the Civilian Review Board is incalculable. People deserve a true and transparent accountability process for those who have control over their lives, their employability, and their overall well-being. Lives can be ruined by a single decision of a police officer, yet the police are not accountable to the public who pay their salaries. Even worse, the Center for Dispute Settlement, which administers the Civilian Review Board, and is purported to be fair and neutral, derives its power and the livelihood of its employees from the Rochester Police Department, which it is supposed to be monitoring. This is not fair, it is not just, and it must be changed!

The case of Lentorya Parker (see text box on previous page) occurred as this document was being completed in 2016 and served as a catalyst to heighten awareness and reignite the issue of reforming the police accountability process in 2017. As these words are being written, a coalition is building in Rochester to address the issues raised in this report and to demand the enactment of the ordinance herein. A significant number of organizations and individuals endorse this call to action. We will stand and fight together until the needed changes are made and the Police Accountability Board is established by City Council ordinance in Rochester, New York.

KEY ELEMENTS OF THE PROPOSED POLICE ACCOUNTABILITY BOARD

1. The Civilian Review Board (CRB), established by a 1992 City Council ordinance, shall be abolished.
2. An independent Police Accountability Board (PAB) shall be established, which will be an autonomous office of the City separate from the Rochester Police Department (RPD).
3. The PAB shall be prohibited from contracting with, hiring, or consulting with the Center for Dispute Settlement (CDS) in any administrative capacity.
4. The PAB will be a civilian-controlled process for hearing civilian complaints about police misconduct. Its oversight will ensure accountability and transparency regarding the powers exercised by members of the RPD.
5. The PAB will report to the Rochester City Council and be funded through the budgetary process of the City of Rochester.
6. The PAB will hire an administrator, administrative staff, and independent investigator(s) who are not currently nor ever have been employed by the RPD or any other law enforcement agency.
7. The PAB will consist of 11 members who are residents of the City of Rochester and will serve terms of four years.
8. Six members of the PAB will be elected by the public. Four members of the PAB will be appointed by City Council and one by the Mayor. PAB members shall not be employed or formerly employed by the RPD or any law enforcement agencies while serving as a Board member.
9. The PAB will evaluate the efficacy of existing RPD policies, procedures and practices. The PAB may identify major problems or trends within the RPD and will make recommendations to the Chief of Police for appropriate and necessary changes to policies, practices, and procedures. It will share these recommendations publicly.
10. The PAB may conduct investigations into the conduct of specific members of the RPD concerning any allegation of misconduct and may investigate complaints of police misconduct independently of any investigation conducted by PSS.
11. PSS will provide full PSS reports, recommendations, and investigatory case files to the Police Accountability Board.
12. The PAB shall be trained in civil and human rights law, anti-racism, implicit bias, gender identity and sexual orientation, disability rights, both physical and mental disabilities, RPD and NY police policies and procedures, and other relevant state and local laws.

13. Complaints will be received directly by the PAB or by the Rochester Police Department's Professional Standards Section (PSS) and referred from one to the other.
14. The PAB Chair shall establish a regular rotation of PAB members to serve on hearing panels composed of three members of the PAB.
15. The PAB, by majority vote of its members, may issue subpoenas to compel the attendance of witnesses, police officers, and the production of any records necessary to complete the investigation of a civilian complaint.
16. If the hearing panel finds that misconduct has occurred, the PAB will have the authority to recommend disciplinary sanctions including but not limited to reprimand, retraining, suspension, demotion, or dismissal.
17. If the panel believes there is evidence of criminal conduct, the complaint and its file will be forwarded to the Monroe County District Attorney's Office or to the NYS Attorney General's office to request that a Special Prosecutor be appointed.
18. The panel may recommend that restitution be paid to the complainant by the City for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident.
19. The Chief of Police must share his or her final determination with the PAB and the complainant; where the Chief imposes lesser discipline or no discipline than recommended, he must explain and justify such action.
20. A disciplinary matrix will be established, and if the PAB and the Chief of Police fail to agree on the discipline to be imposed, the PAB will determine the discipline.
21. If any person who has filed a civilian complaint is not satisfied with the final determination, the complainant may file an appeal with the Police Accountability Board.
22. The PAB will publish monthly, quarterly, and annual reports related to the number and type of complaints, the types of force used, discipline recommended and administered, and appeals requested.

**RECOMMENDED NEW ACCOUNTABILITY LAW:
A LOCAL ORDINANCE ESTABLISHING
THE POLICE ACCOUNTABILITY BOARD**

Section One. Purpose.

- 1) To establish a civilian-controlled process for fairly hearing and reviewing complaints involving officers of the Rochester Police Department.
- 2) To establish a Police Accountability Board as the mechanism to hear such civilian complaints.
- 3) To ensure public accountability and transparency over the powers exercised by officers of the Rochester Police Department.
- 4) To provide a non-exclusive alternative to civil litigation.

Section Two. Definitions.

- 1) The term “Board” shall mean the Police Accountability Board, and such Board is a public agency within the meaning of New York Civil Rights Law §50-a.
- 2) The term “complaint” shall mean a written or oral report, regarding police misconduct, made by any individual.
- 3) The abbreviation “RPD” shall mean Rochester Police Department.
- 4) The abbreviation “CRB” shall mean the Civilian Review Board.
- 5) The abbreviation “CDS” shall mean the Center for Dispute Settlement.
- 6) The abbreviation “PAB Administrator” shall refer to the Police Accountability Board Administrator.
- 7) The abbreviation “PSS” shall refer to the Rochester Police Department Professional Standards Section, which is the internal affairs department of the RPD.
- 8) The term “police misconduct” is defined in Section Three.
- 9) The term “Chief” shall mean the “Chief of Police” for the City of Rochester.
- 10) The term “public notice” shall mean published in a conspicuous manner so as to attract civilian attention and interest in the various media outlets, including but not limited to newspapers, television, radio, or the internet.
- 11) The term “sanction” shall mean disciplinary action and/or retraining recommended in response to a sustained complaint, or a recommendation that restitution be made

by the City of Rochester.

- 12) The term “election” shall refer to elections as undertaken by the City of Rochester.
- 13) The term “immediate family” shall mean spouse, sibling, parent, child, stepchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, half-brother, half-sister, first cousin, domestic partner, and partner to a civil union, whether by blood, marriage, or adoption.
- 14) The term “qualified civilian” shall mean any civilian who meets the terms and conditions presented in Section Five of this ordinance and may be appointed or elected for a position on the Board.
- 15) A “quorum” of the Board shall consist of seven (7) members.
- 16) The term “public tracking number” shall mean an arbitrary number attached to individual complaints, submitted to the Board, made public in annual and quarterly reports.
- 17) For the purposes of this ordinance, the use of the terms “his/hers” and “he/she” have been removed and replaced with the singular and plural use of “they” and “their” where appropriate.
- 18) The term “good cause” shall mean “a legally sufficient reason.”

Section Three. Jurisdiction.

- 1) There shall be established a Police Accountability Board independent of the Rochester Police Department which shall hear, investigate, and review complaints, recommend action, and enforce discipline regarding police misconduct. Jurisdiction shall include misconduct that violates local, state, and/or federal law and/or RPD rules and regulations, including but not limited to complaints of:
 - a) Active misconduct – behavior that is alleged by any individual to be inappropriately aggressive and intrusive to persons, ranging from death or excessively physical force to harassment and slurs or insults;
 - b) Passive misconduct – failure to intervene appropriately, especially in misconduct of other officers when present, including untimely responses and refusal to take complaints;
 - c) Damage to property, including residences, whether owned or rented;
 - d) Denial or violation of individual rights, including but not limited to, human rights law, civil rights law, the United States Constitution, the New York State Constitution, and the laws of New York State; and
 - e) Disputes regarding truthfulness of police reports with regard to misconduct in any of the foregoing categories.
- 2) With respect to human rights, the Board is not bound to adhere to RPD policy and procedure as a human rights standard during its investigations, findings of fact, and

recommendations; it may set a higher standard and review civil rights, constitutional rights, and human rights laws in pursuing justice.

- 3) The Board may investigate and make recommendations to the Chief of Police with respect to changes in police policies and procedures. Copies of any such recommendation must be sent to the Mayor, President of the City Council, and the Chair of the City Council's Public Safety Committee.
- 4) The Board may investigate and make recommendations to the Chief with respect to patterns and practices of misconduct of individual officers.
- 5) The Board shall have access to the written policies and procedures of the RPD that the Board determines are necessary for the review of a matter within the jurisdiction of the Board. If any portion of this ordinance conflicts with the RPD employees' respective current Collective Bargaining Unit Agreements, RPD Rules and Regulations, and/or the RPD General Orders, the applicable sections of the ordinance shall prevail.
- 6) The annual budget of the Police Accountability Board shall be prepared and presented in accordance with Article VI of the Rochester City Charter, 1834, as amended.
- 7) The Board budget shall be separate from, and independent of, the RPD budget.

Section Four. Establishment.

- 1) The Civilian Review Board, established by Rochester City Council Resolution 92-40 and expanded by Resolution 95-08, is hereby abolished.
- 2) There is hereby established an independent office of municipal government to be known as the Police Accountability Board. It shall be an autonomous office the City separate from the Rochester Police Department and other local, state, and federal law enforcement agencies.
- 3) The Board shall be prohibited from contracting with, hiring, or consulting with the Center for Dispute Settlement (CDS) in any administrative capacity including personnel such as former CRB board members, chairpersons, CDS board members, staff, contract employees, consultants, and other personnel.
- 4) The Board shall be housed in a facility that is separate from the police department and all police substations.
- 5) The RPD shall make no conditions upon nor issue any restrictions or limitations upon the creation, policies, or composition of the Board.
- 6) The Board shall report to the Rochester City Council and be funded through the budgetary process of the City of Rochester, pursuant to Article VI of the Rochester

City Charter, 1834, as amended.

- 7) The Board shall employ an administrator, administrative staff, independent investigator(s), stenographer, and other employees as needed, all of whom, and their immediate family, shall not be currently or formerly employed or contracted by the Rochester Police Department or any other local, state, or federal law enforcement agencies.
- 8) Board members shall not be currently or formerly employed or contracted by the Rochester Police Department or any other local, state, or federal law enforcement agencies.
- 9) The Board shall have the power to retain legal counsel as needed. The Board's attorney shall not, in the regular course of their legal practice, defend law enforcement officers nor serve as counsel to the City of Rochester or any of its City Councilmembers or employees in defense of any lawsuit arising from an incident before the Board.
- 10) As a condition of employment with the Rochester Police Department, all officers and personnel shall fully cooperate with the Police Accountability Board.
- 11) The Board shall have the power to conduct independent investigations, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline Rochester police officers if complaints of misconduct are sustained.
- 12) The Board shall establish a disciplinary matrix in consultation with the President of the Rochester Police Locust Club and the Chief of Police. The disciplinary matrix shall include clearly delineated penalty levels with specific sanctions and the number of prior sustained complaints. The Board shall consider mitigating and aggravating circumstances when determining officer discipline. The Board shall decide the final version of the disciplinary matrix to be used.
- 13) The Board shall identify major problems or trends within the RPD, evaluate the efficacy of existing RPD policies and practices, and shall establish a program and/or process accessible to the public, that shares the resulting policy suggestions and studies each year.
- 14) The Board shall have the power to investigate the alleged misconduct of specific members of the RPD, even in the absence of a civilian complaint, e.g. media reports, when based on information and belief that an investigation is warranted.
- 15) All Board investigations shall be resolved in a fair and timely manner within ninety (90) business days.
- 16) The operations of the Board shall be transparent and accountable to the public, in accordance with all local, state, and federal law.

Section Five. Composition.

- 1) The Police Accountability Board shall consist of eleven (11) members, whose minimum age will be eighteen (18) years old at the time of the appointment; two (2) members must be under twenty-five (25) years of age at the time of election/appointment.
- 2) Members of the Board, appointed and elected, shall serve terms of four (4) years except for the initial Board, which shall serve staggered terms.
- 3) All Board members must be able to show proof of residency in the City for at least one year prior to being appointed or elected to the Board.
- 4) At least three (3) members of the Board shall have a household income of equal to or less than the household median income of the City of Rochester at the time of their election/appointment. These Board members shall be paid a stipend for their service to the Police Accountability Board.
- 5) Members of the Board shall be residents of the City of Rochester and should reflect the City's diverse community with respect to race, gender, disability, age, ethnicity, geography, language, religion, and sexual orientation.
- 6) Members of the Board or their immediate family shall not be currently or formerly employed or contracted by the Rochester Police Department or any other local, state, or federal law enforcement agencies.
- 7) Members of the Board shall not be members of the immediate family of any incumbent elected official of the City of Rochester, nor have any financial ties with either members of the RPD or any incumbent elected official of the City of Rochester; any Board member who files for public elective office shall immediately resign from their position on the Board, and failing such resignation shall be immediately removed by the Board members.
- 8) No practicing attorney or a member of their firm or the immediate family of an attorney who represents a plaintiff or defendant in a police misconduct lawsuit initiated against the Rochester Police Department, the Chief of Police or the Rochester Police Locust Club, shall be a member of the Board.
- 9) Four (4) members of the Board shall be appointed by City Councilmembers representing each district of the City; the appointees must live in the district of their Councilmember.
- 10) Two (2) members of the Board shall be elected as at-large representatives of the City of Rochester.
- 11) One (1) member of the Board shall be appointed by the Mayor.

- 12) Four (4) members of the Board shall be elected by the public to represent each district of the City.
- 13) The Board shall provide for voting in subsequent elections via the internet as the Board sees fit.
- 14) The provisions of Article 23-a of New York State Correction Law shall apply to any election or appointment to the Board.
- 15) The provisions of Article 2, Section 5 and Article 3, Section 30 of the Public Officers Law of the State of New York, regarding vacancies, shall apply to all members of the Board.

Section Six. Appointment, Election, Vacancy, and Removal.

- 1) Appointments to the Board shall be made as follows:
 - a) One (1) member shall be appointed by the Mayor. When an appointment by the Mayor has not been made, and a vacancy exists for more than sixty (60) days from the date of the notice of vacancy provided to the Mayor by the PAB Administrator or Chair, such appointment to fill the board vacancy shall be made by City Council.
 - b) Four (4) members shall be appointed by the City Council, with each district Councilmember nominating one member who lives in the district they represent.
 - c) If an appointed member moves out of City, they must resign immediately.
 - d) Should a Councilmember fail or refuse to nominate a prospective member of the Board, and a vacancy exists for more than sixty (60) days from the date of the notice of vacancy provided to the Council by the PAB Administrator or Chair, then the Council as a whole may make such an appointment.
 - e) When the Board vacancy has existed for at least sixty (60) days from the date of the notice of vacancy provided to the City Council and/or the Mayor by the PAB Administrator or Chair, and the City Council has not acted to make an appointment to fill that vacancy, the Board, by a simple majority, shall have the right to nominate person(s) for review and appointment by the City Council.
- 2) Elections to the Board shall be made as follows:
 - a) Four (4) members shall be elected by the residents of the City of Rochester, representing each district of the City, as well as two (2) at large elected seats, serve on the Board.
 - (i) Candidates for the Board shall be elected in a non-partisan election every four (4) years at the same time and place that elections regularly occur.
 - (ii) The signature requirement to be nominated on the ballot for election as a district Board member shall be 300 signatures of the residents within the district in which they live.
 - (iii) Elected Board members may not serve more than two (2) consecutive terms.
 - (iv) The nominating petition shall state that the candidate seeks nomination to election to the Police Accountability Board from the district in which

- they live and will state the address of the candidate.
- (v) A candidate for the Board shall not accept campaign contributions of any kind from outside the district in which they live.
- (vi) If an elected member moves out of the City, they must resign immediately.
- (vii) Should an elected Board member resign or be removed from the Board before their term has ended, and a vacancy exists for more than sixty (60) days from the date of the notice of vacancy provided to the City Council by the PAB Administrator or Chair, then the Council as a whole may make such an appointment.
- (viii) If City Council has not acted to make an appointment to fill that vacancy, the Board, by a simple majority, shall have the right to nominate person(s) for review and appointment by the City Council.
- (ix) At the next regular election, all elected seats, if they have been filled by appointment (due to vacancy or removal), will be open for election.

3) Removal and Vacancies

- a) Board members may not serve concurrently in any other elected office.
- b) If a Board member decides to run for elected office, the Board member must resign immediately.
- b) The Board, by a majority vote of the entire Board, may upon good cause be able to request that the City Council remove a Board member where appropriate.
- c) The Mayor and/or a member of the City Council shall be able to request that the City Council remove a Board member upon good cause.
- d) Public notice shall be made of Board vacancies for the purpose of providing the opportunity to qualified civilians to apply, both in the seating of the first full Board and for all subsequent Board vacancies as they occur.
- e) It shall be the responsibility of the City Council to seek and maintain a balanced composition of the Board.

4) Terms

- a) Except for the initial Board members, Board members shall serve staggered four (4) year terms and may be reappointed or elected for another four (4) year term, for a total of eight (8) years, after which, the member shall not be reappointed or elected for at least one (1) year.
- b) A term shall start on January 1st of the first year of that term and shall end on December 31st of the last year of that term. If a person is appointed to complete the unexpired term of a former Board member, the newly appointed Board member shall be eligible to be appointed to serve two successive four (4) year terms, unless the seat they have occupied is an elected seat. In that case, the seat would be open to candidates running within the four districts of the City or the at-large seats, at the next election cycle.
- c) The initial Board members shall serve the following terms:
 - (i) Four (4) members shall be appointed for one-year terms.
 - (ii) Four (4) members shall be elected for four-year terms.
 - (iii) Two (2) members shall be elected for three-year terms.

- (iv) One (1) member shall be appointed for a three -year term.
- (v) The Mayor's appointment to the initial Board shall be as follows:
 - One (1) appointment for a three-year term.
- (vi) The appointments of district Councilmembers to the initial Board shall be as follows:
 - One (1) appointment for a one-year term from the South District.
 - One (1) appointment for a one-year term from the Northwest District.
 - One (1) appointment for a one-year term East District.
 - One (1) appointment for a one-year term Northeast District.
- (vii) The elected members to the initial Board shall be as follows:
 - Two (2) elected at-large members for three-year terms.
 - One (1) elected for a four-year term from the South District.
 - One (1) elected for a four-year term from the Northwest District.
 - One (1) elected for a four-year term from the East District.
 - One (1) elected for a four-year term from the Northeast District.

Section Seven. Officers and Staff.

- 1) The Board shall elect its Chair, by majority vote, for a one (1) year term, at the first meeting of the calendar year. No individual shall serve more than two (2) consecutive terms as Chair. The Chair will be a voting member of the Board. The first order of business for the newly convened Board is to select such a Chair, who shall then convene a search committee for a PAB Administrator and a committee to establish rules of procedure not provided for herein. The search for a new PAB Administrator shall take place in the first year or when there is a vacancy. The Chair will also be responsible to:
 - a) facilitate meetings of the Board;
 - b) establish committees of Board members as needed;
 - c) work with the PAB Administrator to create agendas for Board meetings; and
 - d) establish a regular rotation of Board members to serve on hearing panels.
- 2) In the absence of a chair, the members of the Board shall select a member to facilitate that meeting unless otherwise provided for in the by-laws. A quorum must be present to conduct business. Unless otherwise specified within the legislation, when a quorum is present, action shall be taken by a vote of the majority of the Board members present.
- 3) Appointment of PAB Administrator
 - a) The Board shall appoint a PAB Administrator in the first year or when there is a vacancy. Public notice shall be made of the PAB Administrator's vacancy for the purpose of providing the opportunity to qualified civilians to apply. The PAB Administrator shall be a resident of the City of Rochester. The City Council, through the annual budgetary process as set forth in Article VI of the Rochester City Charter, 1834, as amended, shall provide for the compensation and benefits for the person appointed to the Board and may be called to report to the City

- Council. The PAB Administrator shall serve at the discretion of the Board.
- b) A Committee of five (5) people shall have the primary responsibility for oversight and annual review of the performance of the PAB Administrator, and may, if necessary, make a recommendation to the Board for the removal of a PAB Administrator for good cause. This committee shall consist of the Board Chair, two (2) additional members of the Board selected by a majority of the Board (provided, however that the two (2) Board members so designated shall consist of one district appointee and one elected district representative), the Mayor or their designee, and the Chair of the City Council Public Safety Committee.
 - c) The PAB Administrator shall not be currently or formerly employed by the Rochester Police Department or any other local, state, or federal law enforcement agency, nor shall any of their immediate family be employed by the Rochester Police Department. Neither shall the PAB Administrator be a member of the immediate family of any incumbent elected official of the City of Rochester, nor have financial interests with either such an elected official or any member of the Rochester Police Department or their immediate family, or have litigation pending against the City of Rochester involving a claim of police misconduct, or be a member of the immediate family of a person, or be an attorney representing a person, with such pending litigation.
 - d) The PAB Administrator shall be responsible, on a full-time basis, for the daily administrative work of the Board which shall include:
 - (i) maintain secure files of Board records;
 - (ii) develop an ongoing account and statistics of Board business, including all data required for monthly, quarterly, and annual reports;
 - (iii) interview complainants or persons seeking information about the complaint process;
 - (iv) make referrals;
 - (v) represent the Board;
 - (vi) assist complainants with filing and presenting their cases to the Board including:
 - interview witnesses and take statements
 - advise complainants regarding requests for subpoenas from the Board
 - (vii) conduct investigations of complaints. The PAB Administrator may also oversee investigations, or portions of investigations, conducted by an investigator, hired by the Board as described below;
 - (viii) create and maintain such forms and processes that may be necessary to document and summarize a complaint and any subsequent investigation, to present a complaint to the board, to track the processing and determination of a complaint, and to identify statistics and trends related to complaints and in reference to the categories of misconduct as defined in Section Three of this law and the demographics of residents of the City of Rochester, including but not limited to race, ethnicity, sex, gender, gender identity and/or expression, sexual orientation, religion, disability, primary or secondary language other than English, immigration or

- refugee status, and the location in which an incident occurred;
 - (ix) evaluate information in each complaint, summarizing the key facts in each complaint for presentation to the full board and making a recommendation to the board as to whether there is a reasonable basis on which a complaint should proceed to a hearing;
 - (x) provide written notice to complainants regarding the disposition of a complaint and the basis for this determination;
 - (xi) assist the Board in pursuing community and youth engagement;
 - (xii) seek supplemental grant funding for the Board;
 - (xiii) keep regular working and office hours consistent with other City departments;
 - (xiv) research and seek out ongoing training for the Board to assist it in developing further competence;
 - (xv) assist the Board to design and deliver appropriate public education programs;
 - (xvi) track Board expenses, preparing periodic written and oral reports;
 - (xvii) facilitate communication and scheduling for Board meetings and hearings;
 - (xviii) assist the Board in the design and establishment of studies looking at policy and procedural problems within the RPD and establish a program, accessible to the public, that shares the resulting policy suggestions and studies each year;
 - (xix) assist the Board in the initiation and establishment of investigations into the conduct of individual officers, even in the absence of a civilian complaint, when based on information and belief that an investigation is warranted;
 - (xx) provide written notice to the City Council and the Mayor of vacancies within one (1) week of a resignation or removal of a Board member by action of the Council, and at least sixty (60) days prior to the end of a term; and
other tasks as needed or as directed by the Board and its Chair within the jurisdiction of the Board.
 - (xxi) other tasks as needed or as directed by the Board and its Chair within the jurisdiction of the Board.
- 4) Should the Board deem that the volume or complexity of complaints filed with the Board justify the need for an additional investigator, the Board shall direct the PAB Administrator to submit a request to the City Council to approve the Board's hiring of a qualified investigator on a part time, full time, or contractual basis. Any such person shall be free of any conflict of interest, including but not limited to current or former employment with the Rochester Police Department or any other local, state, or federal law enforcement agency, nor shall any of their immediate family be employed by the Rochester Police Department. The investigator shall conduct investigations at the direction and under the supervision of the PAB Administrator.

Section Eight. Powers and Duties.

1) Board and PAB Administrator Training

The Board and the PAB Administrator shall seek and participate in a broad and independent range of ongoing and yearly training as they deem necessary to pursue their duties. Upon appointment or election, Board members and the PAB Administrator shall attend at least one Board meeting as an observer and complete an orientation consisting of annual and as-needed training in, but not limited to, the following:

- a) civil rights, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable use of force;
- b) anti-racism;
- c) implicit bias;
- d) gender identity and sexuality;
- e) disability rights, both physical and mental disabilities;
- f) policies and procedures of the Rochester Police Department;
- g) briefings on new or updated RPD policies and procedures;
- h) human rights law;
- i) Police Accountability Board Ordinance;
- j) state and local law regarding the Freedom of Information Law and the Open Meetings Law.

2) Public Information and Education

- a) In addition to regular monthly business meetings that include review of complaints, the Board shall hold public meetings in each City district a minimum of once each year, for the purpose of inviting public input or comment, and education about the Board process.
- b) The Board shall, through a standing Board committee, be dedicated to youth and community engagement, establish and pursue ways to interact with and solicit input from youth, present educational programs designed to promote public awareness of the Board process, give the public information about their rights and responsibilities regarding encounters with law enforcement officers, and publicize the procedure for filing a complaint with the Board.
- c) The PAB Administrator, on behalf of the Board, shall publish quarterly and yearly reports regarding data on the receipt and determinations of complaints, pursuant to Section Eleven of this ordinance.
- d) The PAB Administrator shall publish annual summaries of any studies conducted on the patterns and practices of the RPD and subsequent recommendations; and
- e) summaries of investigations into the conduct, patterns and practices of individual officers and the investigation's recommendations, pursuant to Section Eleven of this ordinance.

3) Receipt, Review, and Response to Complaints

a) Initiation of Complaints

- (i) Complaints may be received directly by the Board, or upon referral from the Rochester Police Department's Professional Standards Section. Any complaint received and accepted by the Board shall be immediately

- transmitted to PSS, and any complaint received and accepted by PSS shall be transmitted to the Board within one (1) business day.
- (ii) The Board shall receive initial complaints by telephone, in person, by mail, or email. Initial complaints shall be taken whether signed or anonymous in order to provide the complainant with the opportunity to discuss their options, but the formal review process will not begin without a signed statement. Efforts to simplify the procedure will be made so as not to discourage filing. Professional standards of confidentiality with regard to the written release of information and informed consent will apply to all complaints filed. The Board shall comply with the Civil Rights Law §50-a by maintaining the confidentiality of any and all personnel records received by the Board in the course of their duties.
 - (iii) Before proceeding with the complaint process, the complainant shall be made aware of and referred to organizations that advocate for people who have experienced police misconduct and can explain the process of the Board and other options that exist beyond the jurisdiction of the Board. Complainants shall be apprised by the PAB Administrator and/or the advocacy organization of legal assistance options and the procedure for filing a Notice of Claim with the Corporation Counsel against the City, pursuant to Article IX of the Rochester City Charter, 1834, as amended.
 - (iv) Once the complainant has conferred with an advocacy organization and/or the PAB Administrator, and is willing to proceed, the PAB Administrator shall assist a complainant in writing a complaint.
 - (v) Within ninety (90) days of the receipt of a complaint, the Board shall complete its investigation, determine whether there is reasonable cause to proceed to a hearing, conduct a hearing, and issue its findings and recommendations to the Chief and the Corporation Counsel.
 - (vi) Statements made by complainants, officers, or witnesses are subject to the panel's determinations of weight and credibility. Participation or lack of participation in the hearing process may be considered by the Board as one factor in their determination of credibility.
- b) Investigation of Complaints
- (i) The PAB Administrator, a Board investigator, or a designee of the PAB Administrator shall interview complainants.
 - (ii) The Board shall have the power to investigate complaints of police misconduct independent of and concurrently with any investigation conducted by PSS. Within sixty (60) days of receipt of a complaint by any person regarding police misconduct, PSS shall provide to the PAB Administrator a copy of the full PSS report and recommendation to the Chief, and the entire PSS investigatory case file including any dispatch transcripts related to the allegations in the complaint. The PAB Administrator and the Chief shall endeavor to establish a cooperative relationship between the Board and its staff, and the RPD and its officers and members, to ensure the orderly and efficient flow of information between those two agencies of the City.

- (iii) A complainant may decline to cooperate with a PSS investigation, and may seek review directly from the Police Accountability Board. A complainant may, at any time, decline to have their complaint investigated and reviewed by the Board. Such declination must be made in writing by the complainant, and shall immediately be forwarded to the Chief by the PAB Administrator.
 - (iv) The Chief shall take no action on a complaint, whether received directly by the RPD or by the Board, until receipt of the Board findings and recommendations, or notice that the Board will be taking no action, or ninety (90) days from the receipt of the complaint, whichever occurs first. The Chief retains the authority to discipline members of the RPD and the aforementioned provision shall not be interpreted as a restriction on the authority of the Chief to order disciplinary measures during the ninety (90) day time period as they deem necessary.
- c) Report by PAB Administrator on Investigations of Complaints
 - (i) Upon completion of the Board investigation and receipt of the PSS report, case file, and recommendation to the Chief of Police, the PAB Administrator shall make a determination as to whether there is reasonable cause to proceed to a Board hearing on the allegations of misconduct in a complaint. The PAB Administrator shall then present their report and recommendation to the full Board, and provide all Board members with access to the full Board and Professional Standards Section case files.
- d) Reasonable Cause Determination
 - (i) Upon review of the report and recommendations from the PAB Administrator, the full Board may either affirm or reverse the recommendation as to whether or not there is reasonable cause to proceed to a hearing. If there is reasonable cause to proceed, the Board shall direct the PAB Administrator to schedule a hearing and notify the complainant and the Chief of Police. If there is not reasonable cause, the PAB Administrator shall notify the complainant and the Chief of Police of this determination.
- e) Hearing Process
 - (i) As described above, the Board Chair shall establish a rotation of Board members to serve on hearing panels composed of three (3) members of the Board. Each panel shall consist of at least one (1) elected member and one (1) appointee.
 - Each panel shall select its own Chair on a case-by-case basis.
 - No member may serve on two consecutive panels.
 - (ii) The Board, by majority vote of its members, may authorize the issuance of a subpoena. Such subpoenas may compel the attendance of witnesses, police officers, and/or persons and require the production of such records and other materials as are necessary for the hearing of a complaint, including records of the RPD, other persons, or other agencies. A copy of any subpoena served upon an RPD officer shall also be

delivered to the Chief of Police. Board subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules. The Chief will use the authority granted by Article VIIIA, Section 8A-1 of the Rochester City Charter, 1834, as amended, to promulgate new rules or utilize existing rules regarding discipline and administration of the officers and members of the RPD to ensure compliance with Board procedure and applicable law.

- (iii) Panel hearings shall be closed to the public.
- (iv) Panel hearings shall be recorded by the Board. No other recordings are permitted.
- (v) Panel hearings shall follow the substantial evidence standard of proof.
- (vi) Both complainant(s) and officer(s) subject to a hearing shall have the right to obtain counsel or other representation and be able to cross examine witnesses. Complainants may represent themselves, retain counsel, use legal assistance options, or other community advocates.
- (vii) Both complainant(s) and officer(s) subject to a hearing shall be questioned by the panel; relevant evidence pertaining to the case before the panel may also be entered into the hearing.
- (viii) Statements made by complainants, officers, or witnesses are subject to the panel's determination of weight and credibility. Participation or lack of participation in the hearing process may be considered by the Board as one factor in their determination of credibility.
- (ix) The hearing panel shall exclude the complainant, officer(s) who is/are the subject of a complaint, and witnesses from proceedings when the panel receives and considers evidence involving confidential matters that are unrelated to the allegations in the complaint.
- (x) Decisions of the panel shall be made by a majority vote. Deliberations of the panel shall be confidential and confined to the panel members assigned to that particular hearing, and their legal advisors. Deliberations shall be recorded. The decision shall include findings of fact and recommendations.
 - If the panel finds that the officer engaged in criminal conduct, it shall refer the matter to the Monroe County District Attorney's Office and request that their office initiate an investigation.
 - If the panel finds that the officer engaged in criminal conduct, it can refer the matter directly to the New York State Attorney General's Office and request that their office assign a special prosecutor to initiate an investigation.
 - If a panel finds that misconduct has occurred, the PAB Administrator shall notify the complainant, the officer(s) who were the subject(s) of the complaint, and the Chief of Police, in writing within one (1) business day of the panel's findings and recommendations, by verifiable means.
 - PAB recommendations may include disciplinary sanctions including but not limited to counseling, reprimand, retraining,

suspension, demotion, or dismissal. The panel may recommend that restitution be paid to the complainant by the City for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident.

- A panel recommendation regarding restitution shall not include a specific dollar amount, although the Board's records of such cases shall note any estimates or receipts that were provided by the complainant. Restitution shall be the responsibility of the City, as in any case of an indemnified City employee. The Corporation Counsel shall advise the Board of the disposition of cases in which the Board has recommended that restitution be paid. This shall only occur if a complainant has filed a timely Notice of Claim with the City seeking such restitution in accordance with Article IX of the Rochester City Charter, 1834, as amended.

(xi) The panel shall report its findings and recommendations to the full Board at its next scheduled meeting.

(xii) The actions of the Board do not preclude action by the judicial system. A finding or decision by the Board shall not have any collateral effect upon a subsequent administrative or judicial proceeding.

f) Responses from the Chief of Police

Within thirty (30) calendar days of the receipt of a recommendation from a hearing panel, the Chief shall provide the Board with a written description of any disciplinary action the Chief has taken with respect to the member(s) in question and the reasons if none were imposed.

(i) The Chief's response shall include, but is not limited to, the following reason for taking a different action:

- an analysis of the employee's work history, including any prior disciplinary actions, letters of reprimand, memoranda, command discipline, any prior complaints filed against the employee, and/or any prior complimentary history;
- the Chief's professional opinion with regard to the case;
- the existence of any lawsuits arising out of the performance of police duties to which the employee has been a named party, and the outcome of such lawsuits, including those which the employee has been exonerated; and
- any evidentiary concerns with regard to the investigation.

(ii) Within thirty (30) calendar days of the receipt of a recommendation from a hearing panel, the Chief shall inform the complainant, the PAB Administrator, and the Chair of the Public Safety Committee, by certified mail, of the final disposition of the complaint and any discipline imposed or action taken against the named officer(s) in the complaint and in the case where no discipline was imposed or action taken, the Chief shall explain the reasons for their lack of action or discipline.

g) Discipline

- (i) Nothing within this ordinance shall limit the Chief's ability to impose any additional discipline for an officer above and beyond that recommended by the Board.
- (ii) If the Board disagrees with the Chief's imposition of a lower level of discipline or no discipline on a named officer(s), the Board shall inform the Chief, within fifteen (15) days, in writing, of its disagreement and its intent to determine discipline and compel the Chief to impose it.
- (iii) Upon review of the complaint, the Board, through a determination process using an agreed-upon disciplinary matrix, shall decide on the sanction to be imposed. The PAB Administrator shall communicate this to the Chief, in writing, within one (1) day of when the Board reaches its decision.
- (iv) The Board's determination of discipline for the named officer(s) shall be final.
- (v) The Chief shall be compelled to impose the discipline determined by the Board within ten (10) business days of the Board's final decision.
- (vi) If any person who has filed a civilian complaint is not satisfied with the final determination, the complainant may file an appeal with the Board. The Board may decide to accept or decline the appeal, based on the criteria listed in Section Nine, and if accepted, the appeal hearing decision shall be final.

4) RPD Policy and Procedure Oversight and Officer Investigations

- a) The Board may identify, analyze, investigate, and make recommendations about police policies, procedures, practices, or other systemic concerns about police conduct, even without the existence of underlying complaints.
- b) The Board shall have full access to all documents and records held by the City and the RPD that pertain to studies and investigations of any sort conducted by the Board.
- c) The Board shall have the power to conduct investigations into the conduct of specific members of the RPD concerning any allegation of misconduct, even in the absence of a civilian complaint, when based on information and belief that an investigation is warranted.
- d) The Board shall provide copies of any such recommendations to the Mayor, the Chief of Police, the named officer(s) if applicable, and the Chair of City Council's Public Safety Committee.
- e) Thirty (30) business days after such recommendations have been made, the Board will publish them on its website.

Section Nine. Appeals.

- 1) If any person who has filed a civilian complaint is not satisfied with the final determination, the complainant may file an appeal, based on the criteria listed below, requesting that the full Board review the complaint, the findings and recommendations made by the hearing panel, and the final disposition of the case.
 - a) The PAB may grant a request for appeal upon a showing by the complainant

- that:
- (i) new and substantive evidence has been found that could alter the decision of the Board;
 - (ii) a policy was misapplied in the evaluation of the complaint;
 - (iii) the findings or recommendations were arbitrary, capricious or constituted an abuse of discretion; or
 - (iv) the findings and recommendations were not consistent with the record of evidence.
- 2) The complainant must make such a request in writing within thirty (30) calendar days of receipt of the Chief's letter notifying the complainant of their final disciplinary decision related to the complaint.
 - 3) It is the Board's discretion whether or not to accept an appeal;
 - a) in the case where an appeal is accepted, the Board must, in writing, give its reasons for accepting the appeal and then inform the complainant, the named officer(s) in the complaint, the Chief, and the Chair of the Public Safety Committee of its decision;
 - b) the case where an appeal is denied, the Board must, in writing, explain its reasons for denying the appeal and then inform the complainant and the Chair of the Public Safety Committee of its decision.
 - 4) The Board shall notify the Chief of the request for an appeal hearing and hold a hearing on the matter at its next regularly scheduled meeting provided that there is a period of at least ten (10) days between the receipt of the request for a hearing and the next Board meeting.
 - 5) The PAB Administrator shall ensure notice is provided to the complainant at least two (2) weeks prior to an appeal hearing.
 - 6) Appeal hearings:
 - a) shall be included in the Board agenda;
 - b) shall be closed to the public; and
 - c) shall be recorded by the Board. No other recordings are permitted.
 - 7) Complainants may submit a written request to delay an appeal hearing for up to two (2) months. Failure to appear at a scheduled hearing may result in the Board acting on a request for appeal without further input from the complainant.
 - 8) The Board will determine a fair structure for the appeal hearings.
 - 9) Board members may ask questions at any time of any witness present. When Board members ask questions, the time limits set forth above are stayed until questioning is completed.
 - 10) New evidence may be accepted by the Board during the appeal hearing.

- 11) Decisions on requests for appeal shall be determined by a majority of Board members present. If the vote ends in a tie, the original findings and recommendations remain in place.
- 12) Upon completion of the Board's review and final determination, the PAB Administrator shall require the Chief to carry out the disciplinary actions determined in this final disposition of the complaint.
- 13) The PAB Administrator shall notify in writing, by certified mail, the complainant, the officer(s) named in the complaint, the Chief, and the Chair of the Public Safety Committee of the results of the appeal hearing and any action taken.

Section Ten. Independent Legal Representation of the Board.

The Police Accountability Board shall retain or employ independent legal counsel on a contractual basis to advise and represent the Board. If so retained, the Board's legal counsel shall represent the Board in the courts, shall advise the Board as to any legal matters relating to the ordinance and the Board's duties, responsibilities, and procedures except for Board member and personnel matters which shall remain under the authority of the City's Corporation Counsel. The Board's attorney shall not in the regular course of their legal practice defend law enforcement officers. The Board's attorney shall not participate in, nor serve as counsel to the City or any of its Council members or employees in defense of any lawsuit arising from the incident that is before the Board. The Board's attorney and their immediate family shall not be currently or formerly employed or contracted by the Rochester Police Department or any other local, state, or federal law enforcement agencies and immediate family of any incumbent elected official of the City of Rochester, nor have any financial ties with either members of the RPD or any incumbent elected official of the City of Rochester. Compensation for such legal services shall be established through the annual budgetary process as set forth in Article VI of the Rochester City Charter, 1834, as amended.

Section Eleven. Police Accountability Board Reports.

- 1) The PAB Administrator on behalf of the Board shall publish monthly data on the receipt and dispositions of complaints.
- 2) All complaints shall be issued a tracking number, which shall be included in the quarterly and annual reports.
- 3) The PAB Administrator, on behalf of the Board, shall publish public quarterly and annual reports that shall document:
 - a) the total number and type of complaints and the City districts in which they happened;
 - b) the categories of each complaint as defined in Section Three of the local law;
 - c) the public tracking number of each complaint;
 - d) the date, time, and location of each incident, whether there is available video of the incident or not, the name, age, race, and gender of the complainant, and the

- name(s), rank(s), serial number(s), age(s), gender(s), and race(s) of the officer(s); the Board shall comply with local, state, and federal law and redact any information that may not be disclosed publicly.
- e) the number of previous complaints against the named officer(s) within ten (10) years of the incident and whether or not those complaints were sustained.
 - f) the number of times and the types of use of force used per complaint and the total number of times and types of use of force used, e.g. kick, punch, knee strike, handcuffs put on too tightly;
 - g) the number of times pepper spray was deployed per complaint and the total number of times pepper spray was deployed;
 - h) the number of times and types of pain compliance tactics used per complaint and the totals for each use of pain compliance tactic;
 - i) the number of times and types of use where a Taser was deployed e.g. shooting with hits or shooting without hits per complaint and the total number of times and types of use where a Taser was deployed;
 - j) in the event where an officer uses their firearm,
 - (i) the type of weapon used (firearm, brand, type);
 - (ii) number of shots fired;
 - (iii) the range from which the firearm was fired;
 - (iv) injuries sustained by the complainant, animal(s), officer(s), and/or any bystanders;
 - (v) any medical care provided and what type; and
 - (vi) whether the person or animal was killed.
 - l) the number of cases where disciplinary sanctions were recommended;
 - m) the type of sanctions recommended;
 - n) the number of cases where sanctions were imposed;
 - o) the number of cases reviewed by the full Board;
 - p) the number of complaints dismissed during the quarter;
 - q) the number of complainants contacting the Board but not following through with a formal signed complaint;
 - r) the length of time each case was pending before the Board;
 - s) the number of complaints in which the Board recommended that the City provide restitution to the complainant and what type of restitution was recommended; and
 - t) the number of complainants who filed a notice of claim against the City of Rochester while their complaint was being considered by the Board.
- 4) The annual report shall also include information pertaining to appeals:
- a) the number of appeals requested;
 - b) the number of appeals granted;
 - c) the number of appeals denied;
 - d) the dates of filed appeals,
 - e) the dates of appeal hearings before the full Board,
 - f) the number of extensions requested,
 - g) the number of extensions granted;
 - h) the number of extensions denied;

- i) the number of cases overturned on appeal;
 - j) the number of cases where recommended sanctions were imposed after appeal;
and
 - k) the types of sanctions imposed after appeal.
- 5) The annual report shall also contain the type of recommendations related to changes in police policies, procedures, training, and other systemic improvements. The annual report shall also contain the number of investigations into the patterns and practices of misconduct by individual officers, the recommendations of each investigation, and the imposed discipline for each investigation. Copies of these reports shall be provided to the Mayor, the Chief, and the Chair of the Public Safety Committee by March 31 of each year covering the prior calendar year.
- 6) Quarterly and annual reports shall be posted in an appropriate location on the Board's website hosted by the City.
- 7) After the Board has made a final determination on the complaint, any video associated with any complaint that is brought forth to the Board will be added, with the written consent of the complainant, to a designated location on the Board's website and made public within thirty (30) calendar days after disposition of the complaint. Should the complainant not give consent to publish any video, the Board shall keep copies of all video in the case file, but shall not publish or disclose any video.
- 8) The City shall provide the Board with a website or series of webpages on which the Board shall be able to place information, educational materials and links, videos, reports and forms related to the operation of the Board and its mission. The City shall provide a reliable method by which the PAB Administrator may post or have such content posted on this website, webpages, or social media presence, in a timely manner.

Section Twelve. Retaliation Prohibited—Penalty.

No person (civilian or police officer) shall retaliate against, harass, follow, intimidate, electronically record, stalk, punish, or penalize any other person for making complaints with, cooperating with, or assisting the Board or any designee of the Board, in the performance of their duties with regards to the work of the Board. Any person who violates the provisions of the section shall be subject to a fine of not less than \$5,000.00 and not more than \$10,000.00 for each violation, to be paid individually.

Section Thirteen. Audit and Review.

- 1) The Board may, by majority vote, perform an annual audit, or direct that an audit be performed, on a random sample of up to 10% of individual civilian complaint investigations involving allegations of use of force. In the event that the Board votes against an audit, City Council, by a majority vote, may perform an annual audit or direct that an audit be performed by the Board. In exceptional circumstances, for the purpose of promoting an enhanced measure of quality assurance in the most

challenging cases, the Board may, by a vote of two-thirds of its members, perform an audit, or direct that an audit be performed, on any individual civilian complaint investigation by the Board.

- 2) The Board, in consultation with the Chief of Police and the President of the Rochester Police Locust Club, shall review the disciplinary matrix annually, and consider any recommended changes. The Board shall decide the final version of the disciplinary matrix to be used.

Section Fourteen. Severability.

The invalidity of any provision or provisions of this chapter shall not affect the validity of the remaining provisions thereof, but such remaining provisions shall continue in full force and effect.

Section Fifteen. Budget.

The PAB Administrator shall submit an annual budget to the Mayor and City Council, with the approval of the Board, during the City's annual budgetary process. The proposed budget shall provide for sufficient funding to carry out the powers and duties set forth in the Police Accountability Board Ordinance, including the funding of staff and all necessary operating expenses. The Police Accountability Board shall be funded through the budgetary process of the City of Rochester, pursuant to Article VI of the Rochester City Charter, 1834, as amended.

Section Sixteen. Effective Date.

This local law, as amended, shall take effect immediately subject to the provisions of the Municipal Home Rule of the State of New York.

APPENDIX A

REVIEW OF OTHER POLICE ACCOUNTABILITY PROCESSES

The National Association of Civilian Oversight in Law Enforcement maintains a current membership of 77 civilian oversight entities.¹²⁹ Research for the Police Accountability Board Ordinance included reviews of the available ordinances and bylaws for the civilian review processes of nine cities and one county: Chicago, Illinois; Syracuse, New York; Newark, New Jersey; Oakland, California; New York, New York; Albuquerque, New Mexico; Albany, New York; Austin, Texas; Los Angeles County, California; and Seattle, Washington. The summaries of these civilian review processes are organized and prioritized below to demonstrate which aspects we believe are essential for an accountable and transparent review process and which are not.

Chicago, Illinois – Civilian Police Accountability Council (CPAC):¹³⁰

This legislation was formally submitted to the Chicago City Council, but has not yet been approved. All of the aspects of this proposed legislation would result in a more accountable and transparent process. CPAC would;

- Be comprised completely of elected members;
- Appoint the Superintendent of Police;
- Re-write the policies and procedures of the Chicago Police Department;
- Investigate police misconduct;
- Investigate all police shootings;
- Have access to police data and reports;
- Have access to demographics on police violence and information obtained in investigations;
- Increase sustain rates through thorough investigations;
- Use the U.S. Constitution and Human Rights Law as the benchmark for misconduct rather than department policy and procedure;
- Have the final authority in the disciplining of officers;
- Have the power to indict officers for their crimes;
- Have its own budget.

This aspect is likely to result in less accountability and transparency:

- Individual elected seats could be manipulated by outside political forces

Syracuse, New York – Citizen Review Board (CRB):¹³¹

These aspects are likely to result in more accountability and transparency:

- 11-member board, none of whom may be currently employed by law enforcement.
The CRB:
- Is its own city agency with its own budget;

- Has the power to hire outside investigators who may not be currently employed by law enforcement agencies;
- Has the power to hire independent legal counsel if the Corporation Counsel or the Board feel there is a conflict of interest;
- Hears individual complaints through rotating 3-member hearing panels;
- Has the power to issue subpoenas and conduct independent investigations parallel to any investigations by the Syracuse Police Department;
- Sends letters to complainants and named officers regarding their findings and recommendations;
- If Chief of Police does not impose recommended discipline, the Chief must explain his or her reasons to the Board in writing, but the Chief of Police has final power over the disposition of complaints;
- May engage in study and investigation of the Syracuse Police Department's patterns and practices, as well as policies and procedures, and bring recommended changes to city government for consideration.

This aspect is likely to result in less accountability and transparency:

- Chief of Police has final power over the disposition of complaints.

Newark, New Jersey – Civilian Complaint Review Board (CCRB):^{132, 133}

These aspects are likely to result in more accountability and transparency:

- None of the 11-member board may be former employees of the NPD;
- CCRB investigates complaints and issues subpoenas;
- The board's Inspector General may audit the NPD's investigations for fairness;
- The IG and CCRB may make policy recommendations to the NPD;
- CCRB makes findings of fact and recommendations for discipline to the NPD;
- A disciplinary matrix, a predictable, progressive uniform tool, is used to determine police discipline, rather than police administrator discretion;
- If the discipline imposed is less than that recommended, the Public Safety Director may be asked to come before the board to answer questions pertaining to the lower imposed discipline.

These aspects are likely to result in less accountability and transparency:

- The Inspector General may be a former employee of the NPD;
- The CCRB is advisory in its capacity;
- The Public Safety Director has final say over the disposition of complaints and discipline imposed.

Oakland, California – Citizens' Police Review Board (CPRB):¹³⁴

Likely to result in more accountability and transparency:

- Investigates complaints against police officers;
- Issues subpoenas;

- Makes advisory recommendations to the City Manager regarding disposition of complaints;
- Makes recommendations regarding police policy to the Public Safety Committee;
- Has a non-City attorney legal advisor on staff.

Likely to result in less accountability and transparency:

- Has no power to enforce recommendations.

New York City, New York - Civilian Complaint Review Board (CCRB) and Office of the Inspector General, New York Police Department (OIG-NYPD):^{135, 136}

Likely to result in more accountability and transparency:

- 13-member CCRB is appointed by mayor, city council and police commissioner; must be residents of city and reflect its diversity;
- CCRB conducts investigations and makes recommendations regarding complaints of police misconduct;
- By a majority vote, CCRB may issue subpoenas to compel testimony and production of materials and documents for use in its investigations;
- Once the CCRB panel has heard the complaint, it makes findings and recommendations, which are passed onto the police commissioner;
- Closed CCRB cases can be re-opened should new evidence or witnesses come forward;
- OIG gathers and reviews facts and data;
- OIG looks for broad-based systemic issues relating to the policies, procedures, practices, and programs of the NYPD;
- OIG analyzes and drafts public reports stating the problem and offering practical and effective recommendations for implementation to address the systemic issue.

Likely to result in less accountability and transparency:

- CCRB and OIG are both advisory in their capacity;
- OIG refers specific police misconduct complaints to the CCRB and/or the Internal Affairs Division of the NYPD;
- When a complaint comes to the CCRB, the chair of the board determines if a panel of at least three members of the board should hear it after the investigation;
- Police commissioner makes final disciplinary determinations in substantiated complaints.

Albuquerque, New Mexico – Civilian Police Oversight Agency (CPOA) and Police Oversight Board (POB):^{137, 138}

Likely to result in more accountability and transparency:

- Independent city agency;
- At the start of POB meetings, the public is given a chance to speak;

- When a civilian files a complaint, the CPOA executive director, or their designee, investigates the complaint and prepares a report with findings of fact and recommendations to be presented to the POB for consideration;
- POB has access to the investigative file and all information pertaining to the complaint, but may not conduct its own investigation;
- POB takes a majority vote to determine the disposition of complaints: the POB may agree with the facts and recommendations, approve other facts and recommendations, or it may defer action and give the executive director more time for further investigation;
- Has a process for requests for reconsideration regarding findings of fact and recommendations;
- Has an appeal process if the complainant isn't satisfied with the Chief of Police's decision regarding discipline.

Likely to result in less accountability and transparency:

- Chief of Police makes decisions relating to officer discipline.

Albany, New York – Citizens' Police Review Board (CPRB):¹³⁹

Likely to result in more accountability and transparency:

- 9-member board appointed City Council and Mayor;
- Standing committees: By-laws and Rules, Community Outreach, Police Department Liaison, Public Official Liaison, and Complaint Review;
- CPRB appoints a Monitor to observe the internal affairs investigation of the complaint;
- Full board reviews the responses to the complaint by the Monitor and the Chief of Police or the Mayor;
- Chair of the Complaint Review Committee briefs the CPRB. The board then votes on whether to sustain the complaint;
- CPRB's vote, findings, and recommendations are forwarded to the Chief of Police and complainant but not the named officer.

Likely to result in less accountability and transparency:

- Chief of Police has final power over disposition of the complaint.

Austin, Texas – Office of the Police Monitor (OPM) and Citizen Review Panel (CRP):¹⁴⁰

Likely to result in more accountability and transparency:

- Has access to internal affairs' investigative processes and explains the complaint process to the complainant;
- The complainant is allowed to speak directly to the panel, if they so choose.

Likely to result in less accountability and transparency:

- CRP has no investigative power, no subpoena power, and makes purely advisory recommendations based on the very small amount of information that it is allowed to review through the OPM, internal affairs, or the Chief's office;
- Witnesses may not be compelled to speak;
- Officers are not required to cooperate with the CRP;
- The bylaws contain many penalties for alleged CRP breach of confidentiality and bias;
- Chief retains full and final control of complaint dispositions as well as any officer discipline.

Los Angeles County, CA - Sheriff Civilian Oversight Commission (SCOC) and Office of the Inspector General (OIG):¹⁴¹

Likely to result in more accountability and transparency:

- SCOC reviews and solicits public comment on policies and procedures before making recommendations to county Board of Supervisors and Sheriff;
- SCOC reviews and conducts some oversight of OIG;
- OIG has access to police records through a memorandum of understanding;
- SCOC and OIG partner to review systemic issues and make recommendations;
- Current law enforcement employees may not serve on the SCOC.

Likely to result in less accountability and transparency:

- SCOC does not have subpoena power;
- SCOC does not investigate individual complaints of police misconduct;
- SCOC is advisory only and has no power to impose officer discipline;
- Sheriff or their designee attends SCOC meetings but is not a voting member.

Seattle, Washington – Office of Professional Accountability (OPA), Office of Professional Accountability Auditor (OPA Auditor) and the Office of Professional Accountability Review Board (OPARB):¹⁴²

Likely to result in more accountability and transparency:

- Complaints of police misconduct are taken directly by the OPA Director or referred to the OPA for complaint intake;
- OPA Auditor reviews the investigation of the complaint and any recommendations for discipline;
- OPA Director and OPA Auditor must agree on the investigation, findings, and recommendations for discipline, then complaint classification is certified;
- Final classification can be designated in one of three ways: mediation, supervisor action (OPA Director believes supervisor of named employee is best suited to handle situation), or administrative investigation (a violation of policy).

Likely to result in less accountability and transparency:

- OPA Director and staff conduct investigations of complaints using police investigators;
- Chief of Police retains final determination on any sustained complaint where there is a recommendation of discipline;
- In the case that the officer is disciplined, the named employee can ask the OPA Director to reopen the case, file a labor grievance, or file an appeal with Seattle's civil service;
- The OPARB is generally used as a public outreach body and conducts oversight of the OPA's complaint handling process, but is not directly involved with complaints.

APPENDIX B

PROPOSED COMMUNITY-BASED DISCIPLINARY MATRIX FOR POLICE MISCONDUCT IN ROCHESTER, NY

A disciplinary matrix is a predictable, progressive, and uniform tool used to determine police discipline in cases of misconduct that reduces the use of discretion by police administrators. Such discretion, as used by many chiefs of police, can lead to disproportionate discipline, favoritism, and conflict between police managers and rank and file officers. The City of Newark instituted a Civilian Complaint Review Board (CCRB) in 2015 as the result of a mayoral executive order¹⁴³ after the U.S. Department of Justice (DOJ) completed its 2014 investigation into the unconstitutional policing practices of the Newark Police Division (NPD). In 2016, Newark entered into a final settlement outlined in a consent decree with the DOJ.¹⁴⁴ The Municipal Council of Newark legislated the CCRB as law in 2016. It was established to act as a “safeguard to ensure consistent application of discipline” and was needed to “include aggravating and mitigating circumstances.”¹⁴⁵ The position of Inspector General (IG) was initiated and is appointed by the Mayor as the paid administrator of the CCRB. The consent decree mandated that a disciplinary matrix be utilized.

In 2012, a study¹⁴⁶ was conducted by Jon Shane, a former precinct commander and police trial board member for the Newark Police Department (NPD). The study reviewed how a “rational sentencing structure for imposing internal police discipline” could be used within the NPD. Shane describes the police trial board as, “a triumvirate of command-rank officers who act as fact finders and impose discipline on police officers and civil employees charged with administrative policy violations.” He was in a unique position to gather the data for his study, after serving on the police trial board, having logged 360 hours of police trials involving sworn officers and civilian employees and agency records. He described the system of internal police discipline as “convoluted,” “not predicated on rational management,” and that it contained “unfettered discretion.” Shane concluded that a disciplinary matrix might be a more just system of officer discipline, because of its consistency, uniformity, and progression, rather than a discretionary system. Shane’s disciplinary matrix model, based on the Minnesota Sentencing Guidelines Grid¹⁴⁷ indicates that the distinct structure of a matrix:

- gives a clear indication of what officers can expect for their bad actions
- reduces favoritism and disproportionately harsh sanctions
- potentially increases officer morale and job performance
- potentially decreases the amount of police misconduct
- potentially increases public safety

The authors have created a disciplinary matrix for Rochester based on Shane’s study. This matrix modifies the types of misconduct and the severity of the sanctions referenced in the bargaining agreement between the City of Rochester and the Rochester Police Locust

Club.¹⁴⁸ The disciplinary matrix below represents this reformulation as a rational tool of community-based discipline in response to police misconduct.

An example is in order. Looking at the discipline matrix on page 91, let's assume a complaint against a named officer has been sustained by the Police Accountability Board (PAB). The sustained allegations are: using excessive force and discourtesy.

Excessive force is a Level Three penalty, which carries with it three progressive sanctions:

1. suspension (18-25 days)
2. reduction in rank and suspension (18-25 days) plus 5 days
3. dismissal

Discourtesy is a Level One penalty, with sanctions progressing as follows if the officer has no prior sustained complaints.:

1. written reprimand and/or re-training
2. suspension (7-9 days)
3. suspension (10-12 days)
4. suspension (13-17 days)
5. reduction in rank and suspension (13-17 days) plus 5 days
6. dismissal

The disciplinary matrix takes into account both sustained allegations and then determines that the PAB should use the highest allegation sustained as the starting point. Let's also presume that the named officer has no prior sustained allegations and that there are no mitigating or aggravating circumstances. Based on the officer's clean record, the circumstances around the complaint, and the severity of the penalty, the officer can expect to receive an 18 – 25-day suspension. Since this is the officer's first sustained complaint, the PAB is obliged to give out the lightest penalty possible, which would be an 18-day suspension.

Another example: Level One misconduct involves discourtesy, lack of familiarity with the laws being enforced, and officer attitude and impartiality. In the event that an officer is held to account for such a violation, the PAB can impose discipline in the form of a written reprimand or retraining. Depending on the circumstances surrounding the incident, the officer may benefit more from retraining rather than a written reprimand. The PAB could require training that includes, but is not limited to: anti-racism, de-escalation techniques, how to handle mental health and emotional disturbance issues, awareness of physical and mental disabilities, gender and sexuality issues, and restorative justice skills. If the officer's record already includes three prior sustained complaints and then another discourtesy complaint is sustained, the officer would face a 17-day suspension. In this case, following the matrix, the PAB would impose the maximum sanction based on the record of three prior sustained complaints. If at a later date another sustained complaint for discourtesy is issued against the officer, the sanction would be a reduction in rank and a 22-day suspension.

The proposed PAB ordinance for Rochester could emerge as an innovative national model by utilizing a disciplinary matrix to determine the consequences to be faced by police

officers named as perpetrators of misconduct. The new ordinance recommended by the authors empowers the PAB to compel the Chief of Police to impose sanctions on officers where complaints have been sustained and when the Chief and Board fail to agree on recommended disciplinary outcomes. This matrix would eliminate the use of discretion on the part of the police administration, which has been shown in many cases to be unable to impose appropriate levels of discipline upon its officers.

Disciplinary Matrix Chart Key

Penalty Levels:

Level 1: REP / TRAIN = written reprimand and/or specific retraining, e.g., anti-racism training, retraining on specific police procedures, and de-escalation tactics.

Level 2: SUS = suspension from duty in days

Level 3: RED = reduction by a single rank for superior officers and investigators; +5 days' suspension from upper limit of previous grade of suspension

Level 4: DIS = dismissal

Multiple charges across the penalty levels shall require the sanction to start at the highest charge sustained.

Prior record penalty guide:

0 = presumption in favor of minimum penalty

1 = presumption in favor of medium penalty

>3 = presumption in favor of maximum penalty

Use of prior sustained findings:

Prior record of sustained findings shall not be considered if the finding is more than five (5) years old from the date of the incident.

Aggravating Circumstances (increase penalty by one grade, same level)

Use or threat of use of force during the incident against the complainant;

Injuries sustained by the complainant;

Collusion or complicity of officer(s);

Officer intoxication from alcohol or altered state due to use of controlled substances;

Prior judicial (civil and criminal) proceedings that resulted in a verdict against the name officer(s); and

The number of civil lawsuits against the named officer(s) that ended in settlements.

Mitigating Circumstances (reduce penalty by one grade, same level)

Following advice from a superior officer;

Ignorance;

Mistake of fact; and Necessity

Discipline must be imposed within an eighteen (18) month period from the date of the incident.

DISCIPLINARY MATRIX

Penalty Level	OFFICER MISCONDUCT	Number of Sustained Complaints in Officer's Prior Record					
		0	1	2	3	4	5
Level 4 Dismissal (DIS)	Conviction for state-codified felony	DIS					
	Aiding or abetting another member in illegal						
	Perjury (criminal, civil, or administrative						
	Tampering with or destruction of evidence						
	Altering, delaying, or falsifying reports						
	Sexual Assault	RED +5 days	DIS				
	Coerced confession						
	Use of controlled substances on duty						
	Driving while intoxicated						
	Disobedience to laws, ordinances and rules						
	Retaliation						
Level 3 Reduction in Rank (RED)	Using excessive force	SUS 18 – 25 days	RED +5 days	DIS			
	Unauthorized strip/body cavity search						
	Intimidation	SUS 13 – 17 days	SUS 18 – 25 days	RED +5 days	DIS		
	Failure to administer medical attention for ill or injured persons						
Level 2 Suspension (SUS)	Harassment / stalking	SUS 10 – 12 days	SUS 13 – 17 days	SUS 18 – 25 days	RED +5 days	DIS	
	Unlawful search and seizure						
	Conviction for state-codified misdemeanor						
	Civilian property damage or destruction						
	Unlawful entry of home or business						
	Unauthorized discharge of a firearm						
	Carrying unauthorized firearm or weapon						
	Use of badge or position for personal gain						
	Violation of pursuit policy						
	Failing to answer subpoena						
	Intoxicated while on duty						
Level 1 Written Reprimand and/or Retraining (REP / TRAIN)	Discourtesy (swearing, rudeness, insolent language)	REP / TRAIN	SUS 7 – 9 days	SUS 10 – 12 days	SUS 13 – 17 days	RED +5 days	DIS
	Failure to have familiarity with the laws, ordinances and rules						
	Attitude and impartiality						

APPENDIX C

SYRACUSE CITIZEN REVIEW BOARD POLICIES AND PROCEDURES FOR COMPLAINTS

Section 1. General Policies Regarding Complaints

- (1) Complaints may be received directly by the CRB, or upon referral from the Syracuse Police Department Office of Professional Standards. Any complaint received and accepted by the CRB shall be immediately transmitted to Office of Professional Standards, and any complaint received and accepted by Office of Professional Standards shall be transmitted to the CRB within one (1) business day.
- (2) The CRB shall receive initial complaints by telephone, in person, by mail or email. Initial complaints shall be taken whether signed or anonymous in order to provide the complainant with the opportunity to discuss his or her options, but the formal review process will not begin without a signed statement.
- (3) The CRB Administrator shall assist a complainant in writing a complaint. Complainants shall be apprised of legal assistance options and the procedure for filing a Notice of Claim with Corporation Counsel against the City pursuant to the General Municipal Law.
- (4)) A complainant may decline to cooperate with the Office of Professional Standards investigation, and may seek review directly from the Citizen Review Board. A complainant may, at any time, decline to have his/her complaint investigated and reviewed by the CRB. Such declination must be made in writing by the complainant.
- (5) Conciliation shall be offered at each stage of the Board review process until the commencement of a hearing.
- (6) Within 60 days of the receipt of a complaint, the CRB shall complete its investigation, determine whether there is reasonable cause to proceed to a hearing, conduct a hearing, and issue its findings and recommendations to the Chief and the Corporation Counsel.

Section 2. Investigations & Subpoena Power

- (1) The Board shall have the power to investigate complaints of police misconduct independent of and concurrently with any investigations conducted by Office of Professional Standards.
- (2) The CRB Administrator, a CRB investigator or a designee of the CRB Administrator shall interview complainants, witnesses, and subject officers.
- (3) The CRB Administrator, a CRB investigator or a designee of the CRB Administrator shall collect any and all evidence and documentation relevant to the complaint in the course of the investigation.
- (4) The Board, by majority vote of its members, may authorize the issuance of a subpoena. Such subpoenas may compel the attendance of witnesses and/or persons and require the production of such records and other materials as are necessary for the hearing of a complaint including records of the SPD, other persons, or other agencies. A copy of any subpoena served upon a Syracuse Police Officer shall also be delivered to the Chief of Police. Board subpoenas are enforceable pursuant to relevant provisions of Article 23 of the

New York Civil Practice Law and Rules.

(5) The CRB Administrator shall complete an investigative report that details the findings of the investigation.

Section 3. Hearing Panels

(1) Three-member CRB Hearing Panels shall hear cases and make findings of fact and recommendations for discipline to the Chief of Police.

(2) The precise procedures for the CRB Hearing Panels are outlined in the CRB's Hearing Panel Policies and Procedures and the CRB ordinance, Local Law 11 of 1993, as amended.

Section 4. Board Findings and Recommendations

(1) Decisions of the CRB hearing panels shall be made by majority vote. Deliberations of the panel shall be confidential and confined to the panel members assigned to that particular hearing, and their legal advisers. The decision shall include findings of fact and may include recommendations.

(2) If the panel finds that the officer may have engaged in criminal conduct, it may refer the matter to the district attorney and request that he/she initiate an investigation.

(3) After hearing the testimony of all involved parties and reviewing all the available evidence, the panel shall state a finding of one of the following:

- a. Unfounded: the investigation indicates the alleged act did not occur.
- b. Exonerated: the investigation indicates the act occurred but that the act did not constitute misconduct.
- c. Insufficient Evidence: the investigation discloses insufficient evidence to clearly prove or disprove the allegation.
- d. Sustained: the investigation discloses that the act did occur and constitutes misconduct.

(4) If a panel finds that misconduct has occurred it may recommend disciplinary sanctions including but not limited to counseling, reprimand, suspension, retraining, demotion or dismissal.

(5) The panel may also recommend that restitution be paid to the complainant by the city for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident.

(6) The panel shall report its findings in mandated reporting periods in accordance with Section Seven, Subsection 2, paragraph (d) of local law 11 of 1993 as amended.

APPENDIX D

SYRACUSE CITIZEN REVIEW BOARD PANEL HEARING POLICIES AND PROCEDURES

Revised and Updated June 2014

The purpose of the CRB hearing is to provide a safe forum in which complainants, police officers, and witnesses can offer their account of the incident which resulted in a complaint being filed and to give the board the opportunity to pose questions to the involved parties. The hearing is designed to promote fairness and trust in the CRB process.

1. A three-member Hearing Panel rotation shall be established by the full Board to hear each case that the Board has voted to move to a panel hearing. Each panel shall be composed of one mayoral appointee, one council at-large appointee, and one council district appointee. Each panel shall select its own Chairperson.
2. Appearance at the hearing shall be optional for complainants, witnesses, and subject officers. However, the board strongly recommends that all parties take part in the panel hearing.
3. Testimony at the hearing can be offered by complainants, officers, or witnesses to supplement or correct any prior statements.
4. Statements made by complainants, officers, or witnesses are subject to the panel's determinations of weight and credibility. Participation or lack of participation in the hearing process may be considered by the Board as one factor in their determination of credibility.
5. Although no participants in the hearing shall be sworn in under oath or affirmation, all participants in the hearing will agree to tell the truth to the best of their recollection. Before testifying, every witness shall be required to declare that he or she will testify truthfully.
6. The Board, by majority vote of its members, may authorize the issuance of a subpoena to compel the attendance of complainants, witnesses, or officers as well as to require the production of such records or other materials as are necessary for the hearing of a complaint including records of the SPD, other persons, or other agencies.
7. Panel hearings shall not be open to the public.
8. Panel hearings shall not be recorded verbatim by any means or method.
9. Panel hearings shall follow the substantial evidence standard of proof.

10. Both complainants and officers subject to a hearing shall have the right to obtain counsel and to cross examine witnesses. For the purposes of a CRB hearing, a witness shall be defined as anyone who offers testimony at the hearing. Complainants may represent themselves, retain counsel to represent them, or use legal assistance options in the community. Cross-examination of any witness shall be limited to approximately 15 minutes but may be abbreviated or extended at the discretion of the panel chair. If there are multiple complainants or officers participating in the hearing, every complainant and officer (or their legal counsel) will be allowed to cross-examine any witness for approximately 15 minutes per witness, which may be abbreviated or extended at the discretion of the panel chair.

Questions posed during cross-examinations shall be limited in scope and must be directly relevant to the case. Individuals conducting the cross-examinations shall not be allowed to intimidate or have the effect of intimidating a witness. Questions allowed during cross-examinations shall be limited to the following criteria:

- a. to clarify facts presented under direct testimony
- b. to identify contradictory testimony that speaks to a witness' credibility
- c. to identify circumstances which may have interfered with a witness' ability to observe the incident
- d. to assess the mental or physical state of the witness at the time of observation

Objections during the course of questioning by cross-examiners shall not be allowed. The panel chair shall not allow any questioning of witnesses that violates the principles specified in the hearing policies and procedures.

Reference to a complainant's criminal record or an officer's complaint or disciplinary record may be noted and may be considered by the panel. However, no questions relating to a complainant or officer's past record shall be allowed during cross-examination.

11. Prior to the commencement of the hearing, the panel members shall receive a copy of the administrator's investigative report as well as a copy of the entire case file.

12. The hearing shall proceed as follows:

- a. The chair of the panel shall convene the hearing.
- b. All panel members, the CRB administrator, and any complainants, witnesses, or officers present shall be introduced by name and identified as complainant, witness, or subject officer.
- c. The complainant, if present, shall be offered the first opportunity to testify. The complainant(s) shall provide a description of the events that are the basis of the complaint. At the conclusion of the complainant's testimony, the officer or the officer's legal counsel may cross-examine the complainant(s) within the limits specified in paragraph #10 above. Members of the hearing panel may then pose questions to the complainant(s) at the conclusion of the cross-

- examination.
- d. Any subject officer, if present, shall be the next individual to testify. The officer shall provide a description of the events that are the basis of the complaint. At the conclusion of the officer's testimony, the complainant or the complainant's legal counsel may cross-examine the officer(s) within the limits specified in paragraph #10 above. Members of the hearing panel may then pose questions to the officer(s) at the conclusion of the cross-examination.
 - e. Any third party witness(es), if present, shall be the next individuals to testify. The witness(es) shall share with the panel any and all knowledge that they possess relevant to the complaint that is currently before the panel. At the conclusion of the witness' testimony, the complainant or the complainant's legal counsel may cross-examine the witness within the limits specified in paragraph #10 above. The subject officer or the subject officer's legal counsel may then cross-examine the witness within the limits specified in paragraph #10 above. Members of the hearing panel may pose questions to the witness(es) at the conclusion of the cross-examinations. Third party witnesses shall be in the hearing room only when they are testifying, being cross-examined, or being questioned by the panel.
 - f. The panel chairperson shall function as the hearing administrator during panel hearings. The role of the hearing administrator will be to resolve any procedural points of contention that arise during the hearing by fairly and impartially enforcing the CRB's hearing policies and procedures.
 - g. The hearing panel shall exclude the complainant(s), officer(s), or witness(es) from the proceeding when the panel receives and considers evidence involving confidential matters that are unrelated to the allegations in the complaint.
 - h. After all witnesses have testified and been cross-examined, the officer or the officer's legal counsel shall have the opportunity to make a closing statement in which any objections or rebuttals to prior testimony may be cited. Next, the complainant or the complainant's legal counsel shall have the opportunity to make a closing statement in which any objections or rebuttals to prior testimony may be cited.
 - i. The hearing shall then conclude and the panel members shall convene in private to deliberate.
13. Decisions of the panel shall be made by majority vote. Deliberations of the panel shall be confidential and confined to the panel members assigned to that particular hearing, and their legal advisors. The decision shall include findings of fact and may include recommendations for discipline. If the panel finds that the officer may have engaged in criminal conduct, it may refer the matter to the district attorney and request that he/she initiate an investigation.
14. After hearing the testimony of all involved parties and reviewing all the available evidence, the panel shall state a finding of one of the following:

- a. Unfounded: the investigation indicates the alleged act did not occur.
 - b. Exonerated: the investigation indicates the act occurred but that the act did not constitute misconduct.
 - c. Insufficient Evidence: the investigation discloses insufficient evidence to clearly prove or disprove the allegation.
 - d. Sustained: the investigation indicates that the act did occur and constitutes misconduct.
15. If a panel finds that misconduct has occurred the CRB Administrator shall notify the Chief of Police, the officer(s) who were the subject(s) of the complaint, and the complainant, in writing within one (1) business day of the panel's findings and recommendations, by verifiable means. Such recommendations may include disciplinary sanctions including but not limited to counseling, reprimand, suspension, retraining, demotion or dismissal. The panel may also recommend that restitution be paid to the complainant by the city for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident.
16. The panel shall report its findings in mandated reporting periods in accordance with Section Seven, Subsection 2, paragraph (d) of local law 11 of 1993 as amended.

The actions of the Board do not preclude action by the judicial system. A finding or decision by the Board shall not have any collateral effect upon a subsequent administrative or judicial proceeding.

APPENDIX E

PROPOSED LEGISLATION

CIVILIAN POLICE ACCOUNTABILITY COUNCIL CHICAGO, ILLINOIS

Draft Legislation for an elected Civilian Police Accountability Council enabling prosecution of criminal police abuse of human rights¹⁴⁹

The Chicago Alliance Against Racist and Political Repression, together with representatives of many community-based organizations, has drafted a proposal for establishing a democratic, elected, Civilian Police Accountability Council (CPAC) in Chicago. Attorneys working with the CAARPR Task Force on Police Crimes is perfecting this proposal. It includes a strong prosecutorial component - CPAC may petition the Chief Judge of the U. S. District Court to allow criminal charges before a sitting Grand Jury when police commit a crime such as battery, unlawful arrest, racial profiling, torture, rape, and murder when committed by police officers. Illinois has abolished the death penalty. It should strive to abolish the arbitrary use of deadly force by police.

The draft legislation is a work in progress. Obtain the text at www.StopPoliceCrimes.com and comment. Highlights of the proposed legislation include:

- Establish an elected CPAC over the Chicago Police Department. It shall have the authority to:
 - o Appoint the Superintendent of Police.
 - o Re-write the police rule book, including all use of force guidelines, Standard Operating Procedures, Rules, and General Orders.
 - o Investigate police misconduct.
 - o Investigate all police shootings, including all police involved shootings that kill unarmed people.
 - o Provide increased transparency of all investigations, including police involved shootings, and greater statistical analysis of demographic information of complaints by type and victim.
 - o Increase rates at which complaints are sustained based on thorough investigations of all allegations of police misconduct and violations of the US Constitution and Human Rights' law.
 - o Be the final authority regarding discipline in the Chicago Police Department. o Indict police officers for crimes they commit.
 - o Establish its own budget
- CPAC will replace the current rubber-stamp Police Board.
- CPAC will take over the job of the Independent Police Review Authority (IPRA) and eliminate it.
- CPAC will reduce bias and guarantee fair treatment of victims of police misconduct.

- CPAC will be elected by Police District and will have racially and ethnically equitable and proportional representation from each district.

The bill creating CPAC may be strengthened by adding some additional measures:

- CPAC should make simple complaint forms available to anyone, at City Hall, all public libraries, and all Police Department District Headquarters.
- CPAC should Encourage UN Human Rights Commission to audit Chicago Police standards and their implementation.
- CPAC can establish a democratically constituted Police Pension Review Board
- CPAC can assign a Civilian to be Chief of the Internal Affairs division, as in New Orleans.
- CPAC can create of a successor/ leadership program within the ranks for the Superintendent of police.
- CPAC can increase community outreach and involvement in our police districts and departments.

For information contact: Chicago Alliance Against Racist and Political
Repression 1325 S. Wabash Ave. Suite 105
Chicago IL 60605
312-939-2750

Or email contact@naarpr.org or visit www.StopPoliceCrimes.com, or www.naarpr.org

ABOUT THE AUTHORS

The research and writing of “The Case for an Independent Police Accountability System: Transforming the Civilian Review Process in Rochester, New York,” is an extension of the authors’ activism as members of the anti-police brutality group Enough Is Enough. In 2013, Benny Warr, a disabled Black man using a motorized wheelchair, who had committed no crime, was beaten by police officers in Rochester, New York. In response, members of the community rose up and said, “Enough Is Enough!” Enough racial profiling, enough police excessive use of force, enough ineffective civilian review processes, enough lack of disciplinary consequences for police misconduct, enough suffering for poor people of color targeted by police. From this protest, Enough Is Enough was born.

Barbara Lacker-Ware, a freelance grant writer and co-owner of Elf Editing & Writing Services, is an activist with Enough Is Enough and Rochester ACTS; she is a member of Shades of Sisterhood. Barbara lives in Irondequoit, New York, with her husband Michael; they have a son and daughter in Chicago. Barbara may be contacted about this document at PABROC17@gmail.com.

Ted Forsyth is a full-time activist with the Flying Squirrel Community Space and Enough Is Enough. He is a journalist with Rochester Indymedia. Currently, Ted is writing a book reviewing 52 years of police violence in Rochester and the community’s efforts to attain justice. Ted lives in Rochester, NY, with his wife and their daughter. Ted may be contacted about this document at PABROC17@gmail.com.

END NOTES

¹ See for example, Rochester City Council Ordinance No. 2016-286, paying damages of \$6,962,374 to settle the case of Peacock vs. City of Rochester et al, 9/14/16.

² Deborah Foster, “The ‘Few Bad Apples’ Theory of Police Reform Is Deadly Wrong” Human Development Project, 7/4/16.

³ Kristian Williams, *Our Enemies in Blue: Police and Power in America*, Third Edition, pages 90-119, 2015.

⁴ Ta-Nehisi Coates, “The Case for Reparations,” *The Atlantic*, p. 4-7, 5/21/14.

⁵ Editorial Board, “‘Redlining’ an Ugly Reality in Rochester,” *Democrat & Chronicle*, January 20, 2015.

⁶ City of Rochester Bureau of Communications, Uniformed Officers Lists, 2014 and 2015.

⁷ Brad Heath, “Racial Gap in U.S. Arrest Rates: ‘Staggering disparity,’” *USA Today*, 11/19/14.

⁸ Meaghan McDermott, “Black Arrest Rate High in Rochester Area,” *Democrat & Chronicle*, 11/19/14.

⁹ The Rochester Police Department (RPD) *General Order Manual* 2015, p. 321, states:

I. DEFINITIONS

A. Appropriate Force - The reasonable force, based upon the totality of the circumstances known by the member, to affect an arrest, overcome resistance, control an individual or situation, defend self or others, or to prevent a subject’s escape.

B. Force - Any intentional physical strength or energy exerted or brought to bear upon or against a person for the purpose of compulsion, constraint, or restraint.

II. POLICY

A. Members may use only that level of physical force necessary in the performance of their duties within the limits established by Article 35 of the New York State Penal Law, and consistent with the training and policies of the Rochester Police Department. The appropriateness of force used is dependent on the “totality of the circumstances” at the moment the force is used. The use of deadly physical force will be governed by GO 340.

¹⁰ New York State Penal Law §35.30 Justification: use of physical force in making an arrest or in preventing an escape states a police officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force; except that deadly physical force may be used for such purposes only when he or she reasonably believes that:

(a) The offense committed by such person was: (i) a felony or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person; or (ii) kidnapping, arson, escape in the first degree, burglary in the first degree, or any attempt to commit such a crime; or

(b) The offense committed or attempted by such person was a felony and that, in the course of resisting arrest therefor or attempting to escape from custody, such person is armed with a firearm or deadly weapon; or

(c) Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force.

¹¹ Martin Kaste, “Police Are Learning to Accept Civilian Oversight, But Distrust Lingers,” WXXI Broadcast, 2/21/15

¹² Eduardo L. Calderon and Maria Hernandez-Figueroa, *Citizen Oversight Committees in Law Enforcement*, Center for Public Policy, California State University at Fullerton, 2013.

¹³ City of Syracuse, “A local law of the City of Syracuse amending local law 11 of 1993 which established a citizen review board,” Section One, Purpose, 2011.

¹⁴ Ibid, Section Seven, Powers and Duties, (3) Receipt, Review, and Response to Complaints, (c) Investigation of Complaints.

¹⁵ Ibid, (f) Hearing Process, (2).

¹⁶ Ibid, (f) Hearing Process, (5).

¹⁷ City of Syracuse, Citizen Review Board, Fourth Quarter & Annual Report, 2015.

¹⁸ Syracuse uses a substantial evidence standard of proof. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” (*Richardson v. Perales*, 402 U.S. 389, 1971. A

"practical test" for determining whether substantial evidence exists is to "measure the evidence against the standard of sufficiency such as to require a court to submit it as a question of fact to a jury" *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181, 379 N.E.2d 1183, 408 N.Y.S.2d 54, 1978.

¹⁹ Rochester currently uses a preponderance of the evidence standard of proof. The preponderance of evidence is evidence that proves it is more likely than not that the facts presented are true. If the balance is 51% in favor (or not in favor) of the fact being true (or not true), it is proven by a preponderance of the evidence.

²⁰ Invisible Institute, Citizens Police Data Project, www.invisible.institute/police-data, 2015.

²¹ Ted Forsyth, "A Comparative Analysis of the Police Advisory Board and the Civilian Review Board," (unpublished), page 27, 2015.

²² City of Rochester Resolution 77-18, 1977.

²³ "Former Chief in Rochester Found Guilty," *New York Times*, February 26, 1992.

²⁴ The Center for Dispute Settlement (CDS) has been involved in civilian oversight since 1977, according to Civilian Review Board (CRB) annual reports, 2001-2015, page 2.

²⁵ A Request for Proposal process was instituted by the City of Rochester in 2012, but the Center for Dispute Settlement has been the only organization contracted to administer the Civilian Review Board per contract from 2013 to date.

²⁶ City of Rochester Resolution 92-40, 10/1/92.

²⁷ City of Rochester Resolution 95-8, 2/2/95.

²² CRB Annual Report 2015, page 27.

²⁹ Professional Standards Section (PSS) Annual Reports prior to 2002 are not available, per Freedom of Information Law (FOIL) Request to the Rochester Bureau of Communications.

³⁰ CDS CRB Annual Reports 2011 page 6, 2012 page 7, 2013 page 8.

³¹ Sgt. John DiVincenzo, Rochester Police Department (RPD) PSS, in a meeting with the Coalition for Police Reform (CPR), 10/28/15.

³² Transcription of Court Proceedings in case of *Benny T. Warr and Nina M. Warr vs. Anthony R. Liberatore, Joseph M. Ferrigno, II, Mitchell Stewart, II, James M. Sheppard and City of Rochester*, United States District Court for Western District of New York, pages 11-15, 8/25/15.

³³ Lt. Mark Simmons, RPD PSS meeting with CPR, 10/28/15.

³⁴ Ibid.

³⁵ Most municipalities accord disciplinary power to the chief of police, although many civilian review agencies would prefer to place discipline of officers under civilian control. Los Angeles has instituted a Police Commission, which employs an Inspector General (IG), who "has oversight over Department's internal disciplinary process.... The staff receives copies of every personnel complaint filed, and tracks selected cases along with any resultant litigation." The IG "audits selected investigations and conducts systemic reviews of the disciplinary system to ensure fairness and equity. Although the Commission, by Charter, does not have the authority to impose discipline, it receives regular reports and can investigate particular cases."

³⁶ City of Rochester, Civilian Review Board Recommendations 2012 by Committee, provided by Ryan Acuff and Jennifer Banister, community participants in the Commission.

³⁷ Ibid.

³⁸ A Notice of Claim is a document that may be filed with an entity prior to engaging in a civil lawsuit.

³⁹ Regardless of how or where civilians make initial complaint, they must be interviewed by PSS, usually at their office, 492 Lyell Avenue, Rochester, NY.

⁴⁰ Case findings are required to be sent to complainants within 18 months.

⁴¹ This is mischaracterized. No disciplinary details are ever provided to the complainant. The only updates they receive are that the case is still under review and then what the final determination was.

⁴² PSS Annual Reports are uploaded to the City of Rochester RPD website.

⁴³ This requirement to be a mediator makes it much harder for the average Rochester resident to serve on the CRB, due to training cost, time, and travel.

⁴⁴ CDS Job Announcement, Community Advocate for Police Community Relations (Program Manager), 12/10/12.

⁴⁵ PSS Lt. Mark Simmons and Sgt. John DiVincenzo, Sgt. Chris Kavanaugh, at a meeting with the Coalition for Police Reform (CPR), 10/28/15

⁴⁶ City of Rochester Resolution 92-40, Section 9, 10/1/92.

⁴⁷ James P. Smith, Records Access Officer, Bureau of Communications, September 2015.

⁴⁸ Lt. Mark Simmons, PSS meeting with CPR 10/28/15.

⁴⁹ James P. Smith, Records Access Officer, in response to FOIL request #60622, 11/2/16.

⁵⁰ Sgt. Chris Kavanaugh, PSS meeting with CPR 10/28/15.

⁵¹ Sgt. John DiVincenzo, PSS meeting with CPR 10/28/15.

⁵² PSS annual reports refer to “citizens,” but any civilian, US citizen or not, can file a complaint against the police.

⁵³ Russell Davis, interviewed by Ted Forsyth of Rochester IndyMedia on 10/25/11.

⁵⁴ Both authors have accompanied complainants to the PSS office and witnessed the process of making complaints.

⁵⁵ Authors interviewed several individuals who prefer not to be named for fear of further retaliation.

⁵⁶ Civil rights attorney who prefers to remain anonymous.

⁵⁷ PSS Annual Report 2013, page 8.

⁵⁸ PSS Annual Report 2014, page 8.

⁵⁹ See CRB Annual Reports from 2006-08 and 2012-15, “Road Show Presentations.”

⁶⁰ Sgt. Chris Kavanaugh, PSS meeting with CPR 10/28/15.

⁶¹ This is stated several times in each – in 2011: pages 3, 7, 10-11; in 2012 & 2013: pages 2-3, 7, 10-11; in 2014: pages 2-3, 12; in 2015: 2-4, 13.

⁶² City of Syracuse, Syracuse Citizen Review Board Annual Reports, 2012-2015.

⁶³ Syracuse uses a substantial evidence standard of proof. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” (*Richardson v. Perales*, 402 U.S. 389, 1971. A “practical test” for determining whether substantial evidence exists is to “measure the evidence against the standard of sufficiency such as to require a court to submit it as a question of fact to a jury” *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181, 379 N.E.2d 1183, 408 N.Y.S.2d 54, 1978. Rochester currently uses a preponderance of the evidence standard of proof. The preponderance of evidence is evidence that proves it is more likely than not that the facts presented are true. If the balance is 51% in favor (or not in favor) of the fact being true (or not true), it is proven by a preponderance of the evidence.

⁶⁴ City of Rochester, Civilian Review Board Recommendations 2012 by Committee, provided by Ryan Acuff and Jennifer Banister, community participants in the Commission.

⁶⁵ City of Rochester, “Request for Proposals, Civilian Complaint Process, Rochester Police Department,” issue date 11/8/12.

⁶⁶ City of Rochester, City Council Ordinance No. 2012-434.

⁶⁷ A FOIL request to the City of Rochester records office yielded no information on this issue.

⁶⁸ Center for Dispute Settlement, Action for a Better Community, Urban League of Rochester and Baden Street Settlement, Ordinance No. 2015-410, Rochester City Council, 12/15/15.

⁶⁹ Rochester Police Department, Request for Proposals, Police Complaint Services, page 2, Section 1, Scope of Services, 1.2 Issuing Office, 9/28/15.

⁷⁰ City of Rochester, “Request for Proposals, Civilian Complaint Process, Rochester Police Department,” Section 2, General Instructions to Agencies, B. Scope of Services, #4. b., issue date 11/8/12.

⁷¹ Merriam Webster Dictionary, 2016.

⁷² CRB Annual Reports, 2000-2015.

⁷³ City of Rochester City Council Ordinance Nos. 2013-431 and 2014-322.

⁷⁴ City of Rochester City Council Ordinance No. 2015-410.

⁷⁵ City of Rochester, “Request for Proposals, Civilian Complaint Process, Rochester Police Department,” Section 2, General Instructions to Agencies, B. Scope of Services, #7, issue date 11/8/12.

⁷⁶ Ibid.

⁷⁷ City of Rochester City Council Ordinance Nos. 2013-431, 2014-322, and 2015-410.

⁷⁸ City of Rochester, “Request for Proposals, Civilian Complaint Process, Rochester Police Department,” , Section 2, General Instructions to Agencies, B. Scope of Services, #7, issue date 11/8/12.

⁷⁹ City of Rochester, Police Community Relations Program: Civilian Review Board 2016 Second Quarter Report, January 1, 2016 through June 30, 2016, page 10.

⁸⁰ Resolution 92-40 states that from a “pool of eligible board members” trained by CDS, the “Mayor will name” a group of “individuals to serve as Chairs of the CRB,” Sections 2 and 3, 10/1/92.

⁸¹ Center for Dispute Settlement (CDS) proposal submitted to the RPD, Section 1.3, E., 10/8/15.

⁸² United States Census Bureau American Fact Finder estimates 2001-2015.

⁸³ CRB Annual Reports, 2001 and 2015.

⁸⁴ United States Census Bureau, 2000 and 2010.

⁸⁵ CDS proposal submitted to RPD, Section 1.3, D., 10/8/15,

⁸⁶ CRB Annual Report 2012, page 6.

⁸⁷ City of Rochester Resolution 92-40, Section 2, 10/1/92.

⁸⁸ City of Rochester Resolution 95-8, 2/2/95.

⁸⁹ City of Rochester Resolution 95-8, 2/2/95: "Whereas, in 1992, after a thorough investigation of the police review process, City Council created the Civilian Review Board (CRB), a body composed of civilian volunteers who have been trained by the Center for Dispute Settlement in mediation techniques and police procedures; and Whereas, each CRB panel is made up of three trained volunteers who review the investigation of a complaint against a Rochester police officer, issue a finding and forward the finding to the Chief of Police for consideration."

⁹⁰ CDS proposal submitted to RPD, Sections 2.1.6 and 2.1.7, 10/8/15.

⁹¹ Lo, Bernard and Marilyn J. Field, *Conflict of Interest in Medical Research, Education, and Practice*, Institute of Medicine of the National Academies, April 2009.

⁹² Fischbach, Ruth, and Joyce Plaza, "Responsible Conduct of Research," Center for Bioethics, Columbia University, 2016.

⁹³ In 2015, that amount was \$145,700, according to City Council Ordinance No. 2015-410, Authorizing agreement with the Center for Dispute settlement, Inc. to provide complaint management services.

⁹⁴ RPD General Order Manual, Rules of Conduct, Discipline, Order #301, Section II, 2015.

⁹⁵ PowerPoint presentation handout, PSS meeting with CPR 10/28/15.

⁹⁶ Lt. Mark Simmons, PSS meeting with CPR 10/28/15.

⁹⁷ Lt. Michael Callari, PSS meeting with CPR 4/10/15.

⁹⁸ PowerPoint presentation handout, PSS meeting with CPR 10/28/15.

⁹⁹ Uniformed officer lists provided ages only for 2012; these ages were repeated as identical in subsequent years.

¹⁰⁰ For example, PSS Annual Report 2015, pages 6-9.

¹⁰¹ Notes taken in open court by Barbara Lacker-Ware, United States District Court for the Western District of New York, *Benny T. Warr and Nina M. Warr vs. Anthony R. Liberatore, et al.*, 4/30/15.

¹⁰² PSS Annual Reports, Citizen Complaints, Departmental Investigations, Command Discipline, Satellite Issues, 2003-15

¹⁰³ There is no definition of "discourtesy" in the RPD *General Order Manual*. A doctoral research publication by Demosthenes Long, *Understanding Police-Citizen Conflict: A Neighborhood Environmental Perspective*, defines "discourtesy" as "inappropriate behavior or verbal conduct by an officer, including rude or obscene gestures, vulgar words, and curses," 2012, page 15.

¹⁰⁴ RPD *General Order Manual*, 2015.

¹⁰⁵ The reader may note that according to CRB and PSS annual reports of complaint allegations, only 2% were sustained, but disciplinary reports indicate 3% were sustained and disciplined. Perhaps this is due to the four complaints not addressed in the disciplinary reports.

¹⁰⁶ PSS Annual Reports 2003-2015, Departmental Investigations, Command Discipline, Satellite Issues.

¹⁰⁷ Sandra Peddie and Adam Playford, "For Their Eyes Only: police misconduct hidden from public by secrecy law, weak oversight," *Newsday*, 12/18/13.

¹⁰⁸ United Kingdom government website, [New regulations prevent police officers retiring or resigning to avoid dismissal - News stories - GOV.UKwww.gov.uk/government/organisations/home-office](http://www.gov.uk/government/organisations/home-office), 1/12/15.

¹⁰⁹ PSS Annual Report 2003, pages 3-6.

¹¹⁰ PSS Annual Reports 2003-2015, Departmental Investigations, Command Discipline, Satellite Issues.

¹¹¹ RPD *General Order Manual*, 2015.

¹¹² Ibid, Article 20, Section 1, pages 28-30.

¹¹³ Ibid, Article 20, Section 1, #16, page 30.

¹¹⁴ Ibid, Article 20, Section 1, #13, page 30.

¹¹⁵ K. Williams, *Our Enemies in Blue: Police and Power in America*, pages 227-228.

¹¹⁶ Ibid, page 228.

¹¹⁷ Patrick Flanigan, "Criticism Hounds Police Oversight," *Democrat & Chronicle*, 3/11/01.

¹¹⁸ The Committee on Open Government is a unit housed in the New York Department of State that oversees and advises the government, public, and news media on Freedom of Information, Open Meetings, and Personal Privacy Protection Laws. The Committee offers guidance in response to phone inquiries, prepares written legal advisory

opinions, and provides training to government and other interested groups. Recommendations to improve open government laws are offered in an annual report to Governor and the State Legislature.

¹¹⁹ Robert Freeman, 2014 Annual Report, Committee on Open Government, page 3.

¹²⁰ Robert Freeman, Advisory Opinions, New York State Committee on Open Government, FOIL-AO-17794, 9/1/09 and FOIL-AO-19088, 11/20/13.

¹²¹ New York Civil Service Law § 50-a: Personnel records of police officers, firefighters and correction officers.

¹²² Lt. Mark Simmons, PSS meeting with CPR 10/28/15.

¹²³ Police commander at meeting held by Mayor Lovely Warren and RPD in City council chambers November 2015.

¹²⁴ Police Chief Michael Ciminelli at a meeting with CPR and police officials, 11/6/15.

¹²⁵ Verbal accounts to the authors by complainants who chose not to be identified for fear of further retaliation.

¹²⁶ Ibid.

¹²⁷ City of Rochester website, <http://www.cityofrochester.gov/Priorities.aspx?id=8589966705>.

¹²⁸ See for example, Rochester City Council Ordinance No. 2016-286, paying damages of \$6,962,374 to settle the case of *Peacock vs. City of Rochester et al*, 9/14/16.

¹²⁹ National Association of Civilian Oversight in Law Enforcement (NACOLE), www.nacole.org

¹³⁰ Chicago Alliance Against Racist and Political Repression, Civilian Police Accountability Council proposed legislation for Municipal Code of Chicago, 2015.

¹³¹ City of Syracuse, “A Local Law of the City of Syracuse Amending Local Law 11 of 1993 which Established a Citizen Review Board”; and “Citizen Review Board Panel Hearing Policies and Procedures, Revised and Updated,” June 2014.

¹³² City of Newark, Mayoral Executive Order, 4/30/15.

¹³³ City of Newark, Consent Decree between the City of Newark and the United States Department of Justice, 3/30/16.

¹³⁴ City of Oakland, Ordinance No. 12454, 11/12/02.

¹³⁵ New York City Charter, Chapter 18-A, Civilian Complaint Review Board (CCRB); Memorandum of Understanding Between the CCRB and the NYPD of the City of New York concerning the Processing of Substantiated Complaints; and Rules of the Civilian Review Board, 2013.

¹³⁶ New York City Department of Investigation, *The Office of the Inspector General for the NYPD First Annual Report*, March, 2015.

¹³⁷ City of Albuquerque, Code of Ordinances, Part 1: Civilian Police Oversight Agency, 2015.

¹³⁸ City of Albuquerque, Civilian Police Oversight Agency, Policies and Procedures, 2015.

¹³⁹ City of Albany, By-Laws and Rules of the Citizens’ Police Review Board of the City of Albany, NY, 2000.

¹⁴⁰ City of Austin, Citizen Oversight of the Austin Police Department, 2001.

¹⁴¹ County of Los Angeles, charter of the County of Los Angeles, Title 3, Advisory Commissions and Committees; and Division 3, Departmental Provisions, Chapter 6, 12/9/16.

¹⁴² City of Seattle Legislative Information Service, Ordinance amending Seattle Municipal Code, 7/21/08.

¹⁴³ City of Newark, Mayoral Executive Order, April 30, 2015.

¹⁴⁴ City of Newark, Consent Decree between the City of Newark and the United States Department of Justice, March 30, 2016.

¹⁴⁵ City of Newark, Mayoral Executive Order, April 30, 2015.

¹⁴⁶ Shane, Jon, *Police Employee Disciplinary Matrix: An Emerging Concept*, Police Quarterly, March 2012.

¹⁴⁷ See <http://mn.gov/sentencing-guidelines/guidelines/currentguidelines.jsp>.

¹⁴⁸ City of Rochester and Rochester Police Locust Club, Inc., Contract Agreement July 1, 2013-June 30, 2016.

¹⁴⁹ The draft legislation is used here in the interest of brevity. The full ordinance proposed and submitted to Chicago City Council is 20 pages and may be found at <http://naarpr.org/wp-content/uploads/2016/07/Council-Ready-Proposed-Legislation.pdf>.

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