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 HEARINGS IN NEW YORK CITY
 ON
 POLICE MISCONDUCT
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 SUBCOMMITTEE ON CRIMINAL JUSTICE
 OF THE
 COMMITTEE ON THE JUDICIARY
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(II)

I. BACKGROUND

On June 21, 1983, a large delegation of black community leaders traveled to Washington, D.C. for an emergency meeting with Congressman John Conyers, Jr., chairman of the Criminal Justice Subcommittee of the House Judiciary Committee, U.S. House of Representatives. Their concern was great and it was serious. A series of questionable arrests and allegations of police beatings of arrestees, including those of a young black minister, had pushed tension levels between the black community and the New York City Police Department to a new high. Efforts to deal with the problem locally had been unsuccessful; doubts expressed by Mayor Edward Koch as to the existence of a problem had enraged crowds gathered at a May rally against police brutality.

After exhaustive consideration of possible alternatives, the community leaders had concluded that federal intervention was the only thing that was likely to turn the tide of dissension in New York away from rioting and other forms of civil unrest. Their purpose in traveling to Washington was to present a personal appeal to Representative Conyers, asking that congressional hearings be held in New York. Their hope was that a public airing of concerns would, at least, diffuse the ticking bomb of racial tension in the city and possibly would lead to constructive talks between community leaders and city officials.

By early afternoon, most of those concerned had gathered in Representative Conyers' private office. Rev. Calvin Butts, executive minister of Abyssinian Baptist Church in Harlem, was there as were Jacques Maurice and Hilda Hubbard, chairman of the Grand Council of Guardians (New York black police officers' organization) and national delegate of the National Black Police Association, respectively. Rev. Adolph Roberts, pastor of Mt. Calvary Baptist Church in Harlem, was present, as was Andrew Brown. Attorney C. Vernon Mason had come, as had Jim Anderson (co-chair of the Police Brutality Investigating Unit of the Black United Front) and Rev. Lawrence Dixon (Bright Temple A.M.E. Church in the Bronx), Father Lawrence Lucas (Resurrection Roman Catholic Church in Harlem), Brother Tommy Stanfield, Rev. Sharon Williams, Rev. Mildred Shulter, and Issac Thompson were also present.

Members of Congress were prepared to listen to the concerns of the visiting New Yorkers. Congressman Conyers was present along with several members of his staff. Representative Charles Rangel (16th District-New York) was also present and Bill Lynch, legislative assistant to Representative Major Owens (12th District-Brooklyn) was in attendance. As the meeting began, Peter W. Rodino, Jr., chairman of the House Judiciary Committee, joined the gathering.

The New Yorkers, with Reverend Butts acting as spokesperson, related alarming concerns. Mutual respect between people in the minority community and the New York Police Department was on a sharp

(1)

decline, Reverend Butts claimed. Questionable arrests by police, use of racial epithets and unwarranted use of physical force were becoming the norm. Anyone and everyone seemed to be a likely target for police insensitivity and misconduct, including one of the owners of Harlem's best-known restaurant while responding to a report of a fire in the restaurant, and a young minister while out for an evening with friends. "The only criterion for police harassment," Reverend Butts concluded, "seems just to be black."

Black police organization representatives together with the Black United Front (BUF) presented an equally disturbing picture of life for blacks on the police force. Stories were related of black officers working plainclothes being subjected to racial epithets and attacks by white uniformed officers before, and even after identifying themselves as police. A list was shared of black plainclothes officers killed in the line of duty by white officers who mistook them for law-breakers. Ugly confrontations between the black police organizations and the Policeman's Benevolent Association (integrated but white-controlled) were related. "We can't help the black community," the officers stated, "because we are still hard-pressed to help ourselves."

The problems related captured the attention and concern of the Members and staff present. They were convinced not only that there was a need to go into New York and hold hearings but also that that need was great. Judiciary Committee Chairman Peter Rodino lent Justice Subcommittee Chairman Conyers his full support, suggesting the Subcommittee hold as many hearings as would be necessary.

II. PRIOR SUBCOMMITTEE EXAMINATIONS OF THE PROBLEMS OF POLICE MISCONDUCT

Some types of police misconduct violate 18 U.S.C. § 242, which relates back to 1866. That section makes it a crime for persons acting "under color of law" (including police officers) to willfully (1) deprive any person of a right, privilege or immunity protected by the Constitution or laws of the United States or (2) subject any person to a different punishment, pain or penalty on account of that person's color. A police officer, then, cannot punish a person accused of being involved in a crime with a beating or with death (thereby depriving that person of their right to due process of law). The civil equivalent of section 242 is 42 U.S.C. § 1983, which makes any person who, under color of law, deprives another party of rights, privileges, or immunities secured by the Constitution and laws liable to the injured party. Section 1983 creates a basis for lawsuits for monetary damages.

The drafting and enforcement of civil rights statutes are concerns of the House Judiciary Committee. More specifically, since the examination of the criminal civil rights statutes as a part of comprehensive criminal code revision efforts begun during the 96th Congress, the enforcement and effectiveness of section 242 has been the concern of, first, the Crime Subcommittee and, more recently, the Subcommittee on Criminal Justice.

Often, allegations of violations of section 242 are received by the Subcommittee on Civil and Constitutional Rights which forwards them to the Department of Justice. An FBI investigation follows only

if allegations made in the complaint, if true, would constitute a violation of the statute.

Occasionally, however, a unique situation is presented to the Criminal Justice Subcommittee, one in which more than one incident of police misconduct is alleged, community tensions appear to be rising and an on-site airing of the concerns seems to be in order. Such was the case in Los Angeles in the spring of 1980. Shortly before that time Eulia Love, a black woman armed with a butcher knife, had been shot and killed by police called to her home to settle a dispute involving a utility bill. Reaction to the Love incident was coupled with rising concern among blacks and Hispanics about Los Angeles Police Department officers' use of the "choke hold" as a means of restraining people being placed under arrest. Several persons, mostly blacks or Latinos, had died while being restrained with the choke hold.

Two days of hearings on police use of deadly force were held in Los Angeles. Testimony was received from the Los Angeles Police Department and other city and state officials; from the Community Relations Service of the U.S. Department of Justice and the U.S. Commission on Civil Rights. Also testifying were organizations representatives of the Los Angeles community, experts on the subject of the use of deadly force by police and the Berkeley Police Review Commission.¹

Issues surrounding police use of deadly force were again before the Judiciary Committee in 1981, when the Criminal Justice Subcommittee held hearings on racially motivated violence. Among those testifying was social scientist, Dr. Kenneth B. Clark, who appeared to present the latest findings on the relationship between race and police violence.²

In late December 1982, a young black man, Neville Johnson, was shot and killed by police in a video game arcade in Miami, Florida's predominantly black Overtown community. The officer was Hispanic. Onlookers were outraged and frightened by the shooting; civil disturbances erupted from that location with reactions spreading through the community. Three days of violence and civil unrest followed. Miami's contacting the Subcommittee were quick to point out that the Johnson shooting was just one in a series of "questionable" shootings and, indeed, a number of police shootings (and more unrest) followed the Johnson incident.

The Criminal Justice Subcommittee began monitoring the situation in Miami in January 1983, and on June 16th of that year, a hearing was held in Washington, D.C., on the use of deadly force by police. Included among the witnesses testifying at the hearing were Miami's city manager and the president of the Miami chapter of the Southern Christian Leadership Conference.

III. THE NEW YORK HEARINGS

The House Judiciary Subcommittee on Criminal Justice inquiry into allegations of police misconduct in New York City began on September 19, 1983, in the 369th Division Armory in Harlem. The Armory

¹ Police and the Use of Deadly Force: Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary, 96th Cong., 2d Sess. (March 21 and 22, 1980).

² Racially Motivated Violence: Hearings Before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary, 97th Cong., 1st Sess. 14-17 (March 4, June 3, November 12, 1981) (statement of Dr. Kenneth B. Clark).

was chosen because of its accessibility and its size (capacity: 2500). Built-in seating in three balconies around the hall accommodated the crowd, which numbered around 700, laying the floor free for the Subcommittee members, witnesses and media personnel. Because the Subcommittee anticipated that many spectators would come to the hearing hoping to find an ear for their complaints, representatives of the various New York groups concerned with police misconduct staffed a table in the lobby to which those attending could bring their allegations of mistreatment at the hands of the police.

The opening witness, New York Mayor Edward Koch, declined to attend, terming the Armory an inappropriate setting. His invitation to testify was extended to the second hearing, which was still in the planning stage at that time.

Between 10:40 a.m. and 5:30 p.m. on September 19th, the Subcommittee on Criminal Justice received testimony alleging police misconduct from nine organizations, a New York State Assemblyman, an attorney, a law professor and 15 persons who claimed to have been victims of police misconduct. Order was maintained throughout the long day with the help of plainclothes black police officers, members of the Grand Council of Guardians. The crowd was decorous and very attentive, becoming vigorously outspoken at only one point—when the Rev. Jesse Jackson, just back from Europe and on his way to Chicago, stopped in to listen to some of the testimony.

At the completion of the September hearing, the need for a second hearing was apparent: many individuals and groups had yet to have an opportunity to testify, including Mayor Koch and other city officials whose testimony was very necessary to a complete hearing record.

Less than one month after the September hearing, New York Police Commissioner Robert J. McGuire announced he was resigning his post, effective December 31, 1983. Then, on November 7th, Mayor Koch announced that McGuire would be replaced by Benjamin Ward, then City Correction Commissioner, 32-year veteran of the New York City law enforcement establishment, and a black man. He would become, in a heavily-attended swearing-in ceremony on January 5th of 1984, New York City's first black commissioner of police.

Also in October 1983, all of the September testimony of alleged victims of police misconduct was responded to in a 90-page item issued by the New York Police Department and entitled, "Report on Cases Submitted During Congressional Hearings on Alleged Police Brutality". The report was sent to Chairman Conyers two weeks after its release.

The second Subcommittee hearing was held on November 28, 1983, in the United States Eastern District Courtroom at Cadman Plaza in Brooklyn. Between 9:40 a.m. and 5:45 p.m., testimony was received from New York Mayor Edward Koch and Police Commissioner Robert McGuire along with other city officials, plus representatives of nine organizations, nine alleged victims, three law school professors and others.

In March 1984, the Police Department released a second report which responded to the claims made by victims in the November hearings. An interesting compilation of statistical and other information, the second report was sent to the Subcommittee chairman as it was released.

A. THE ORGANIZATIONS

The numerous organizations testifying before the Subcommittee were, for the most part, in agreement in their assessments of minority community-police relations and their concerns about problems within the police department.

Many groups claimed that there is a widely-known bias, based largely on race, within the NYPD and between the Department and many segments of the community. As evidence of the in-house bias groups point, first, to the wide disparity between black representation in the community at large and their numbers on the police force. Blacks compose 24 percent³ of the population in the city of New York but only 11 percent of the police force. In 1976, the Grand Council of Guardians brought suit against the NYPD alleging racial bias in the entrance examinations. The lawsuit was unsuccessful, but the City did agree in 1978 to an affirmative action plan under which at least one-third of each class hired would be composed of blacks and Hispanics.⁴

Despite the affirmative action plan and its accompanying minority recruitment drive, black representation on the police force, in particular, remains low. Officers of the Guardians point again to 1979. The nearly 4,000 blacks who were recruited represented a percentage of the recruits that ranked second only to whites. After screening and processing, however, only 318 blacks were appointed; blacks composed the smallest percentage of the final list.⁵

Indeed, statistics demonstrate more progress in Hispanic hiring than in black hiring. In 1979, 11 percent of the total NYPD appointments were of minority officers. Of those, 31 were Hispanic (67 percent) and 15 were black (33 percent). In September 1980, combined NYPD, New York Transit and New York Housing appointments included 665 minority officers: 194 were Hispanic (59 percent) and 135 were black (41 percent). In 1981 combined hiring (Jan/Feb/July NYPD; December 1980 Transit and July Housing) 789 minority officers were appointed: 440 Hispanic (56 percent) and 349 black (44 percent). In 1982, 280 more Hispanics were on the force than in 1981 and 110 more blacks. In 1983, 44 additional Hispanics were on the force than in 1982 but the number of blacks declined by 13.⁶

Officers in the Guardians attribute the relatively low number of Blacks who make it through the recruitment process, in part, to the way in which character background checks and psychological testing are conducted. They state that the backgrounds of New York City blacks are investigated over much longer periods of time and more minutely than are those of suburban whites and that the documents of blacks are requested again and again as investigators claim to have lost them. Applicants, Guardians claim, have been harassed by police personnel and have even been threatened with arrest. The harassment is alleged to continue through the psychological testing

³ 1980 Census (non-Hispanic blacks only).

⁴ Police Misconduct: Hearings Before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary, 98th Cong., 2d Sess. 1174 (June 16, July 18, September 19, November 28, 1983) (statement of John Cousar [Hereinafter, Police Misconduct]). Additional information on the plan was requested from the Police Department, but was not received.

⁵ Police Misconduct at 1174 (statement of John Cousar).

⁶ Police Misconduct at 1178-1179 (attachments to statement of John Cousar).

segment. As many as 30.8 percent of black females coming before the testing board have been found to be of "questionable mental stability".⁷

Black police officers express concern at training methods. The behavioral sciences, cultural and sensitivity training are treated very lightly, they claim. At the same time, in the training manual, examples of aggression against police are typically portrayed as taking place in black or Hispanic areas in Harlem, the Bronx, or Bedford-Stuyvesant.

The Guardians and others cited problems between black and white police officers as further evidence of the in-house racial bias. Instances of white officer attacks on or shooting of black officers in plainclothes were complained of. The Black United Front maintains a list of black officers who were shot and killed by white officers before the use of "color of the day" and other protective steps were taken.⁸

The Subcommittee received testimony that white police officers cannot (or refuse to) tell the difference between black criminals and black plainclothes officers. Witnesses told of white officers refusing to acknowledge (or call in to check on) the badges of black officers, and of white officers taking the badges of black officers and throwing them away.⁹

Four police officers and one former officer came forward to allege beatings or other abuse at the hands of white officers. The actions of these black officers are particularly significant in that their coming forward in this way was clearly at the risk of very negative reactions by their white co-workers. Guardian officers have stated, also, that they have received many other complaints from black officers which were not pursued in the hearings.

Statements from Officer Warena Brown and Detective Francis Phillips are indicative of the kinds of concerns raised: Police Officer Warena Brown testified that, while on maternity leave from the Department, she was arrested for "impersonating a police officer" after calling in a report on a robbery in progress. She was roughly treated by the arresting officer and her infant was left unattended on the street. She was taken to the precinct to sit for four hours incommunicado, she claims, until her eventual release.¹⁰

Detective Francis Phillip described being beaten by a white officer while in the midst of showing his shield and identifying himself as a member of Manhattan Robbery Squad to another officer. The altercation eventually ended when Phillip's partner intervened on his behalf. When Phillip attempted to file a complaint against the officer who assaulted him, he states, he was taken aside and told that the best way to avoid on-the-job harassment would be to accept a simple apology.¹¹

The testimony of the five officers, whether wholly or only partially factual, speaks of a disturbing degree of hostility within the NYPD, Housing police, and Transit police which would seem to be racially based. If black and white police officers are adversaries, and we have testimony on record which indicates that many believe they are, claims

⁷ Police Misconduct at 1100 (statement of John Cousar).

⁸ "Color of the day" is a procedure whereby every officer is told, upon coming on duty, that plain clothes police will be wearing a certain color on their persons (a bandanna or other item) throughout that day. This helps officers identify their comrades and makes it easier for the plain clothes officers to substantiate their claim of being police.

⁹ Police Misconduct at 1142 (testimony of Jacques Maurice).

¹⁰ Police Misconduct at 1188 (testimony of Warena Brown).

¹¹ Police Misconduct at 1189 (testimony of Francis Phillip).

by civilian minorities of inordinate aggression at the hands of white police officers become that much more credible.

The actions of the Policemen's Benevolent Association¹² indicate serious differences of opinion between that organization and the Guardians. The Subcommittee members were told, and a PBA representative verified, that the PBA was among the first to hold a press conference and to purchase radio and television time opposing the congressional hearing into allegations of police misconduct. Yet, the Guardians had requested that the hearing take place. Many black officers resent PBA's use of their dues to finance positions which most blacks oppose.

PBA's standing rule of defending any officer accused of misconduct while on duty has placed it in an awkward position in altercations between white and black police officers. Blacks claim that, in such circumstances, PBA always defends the white officer against the black. Phil Caruso, testifying on behalf of the PBA, stormed away from the witness table before questions relating to this potential conflict of interests could be posed. Those questions do, however, remain unanswered on the record.¹³

It should be mentioned that PBA's negative reputation among many blacks goes back at least to 1966 and the City's battle over the Civilian Complaint Review Board. During that year, the PBA was at the forefront in demanding a referendum on and defeating a combined civilian-officer complaint board set up to examine allegations made by civilians of police misconduct. Such a board had already been put into place by Mayor John Lindsay on his own authority. During the 1966 battle, a P.B.A. spokesman vowed that the P.B.A. would fight a CCRB wherever it "raise[d] its ugly head".¹⁴

The Patrolmen's Benevolent Association wields a tremendous amount of power. Secure in the luxury of a guaranteed budget it does not hesitate to recast the issues of any dispute involving the Department to allege that to do things any way other than theirs would be at the risk of a complete breakdown of a lawful society. The P.B.A. is apparently oblivious to the concerns of a number of its members (former NYPD Guardian President John Cousar dryly describes it as "taxation without representation"), and appears to answer to no one, including the United States Congress.

Blacks are by no means the only minority group claiming racial discrimination by police. A representative of the Puerto Rican Legal Defense and Education Fund expressed concern over discriminatory hiring and promotion. While Hispanic representation in the NYPD and other forces has grown at a faster pace than Black representation, Hispanic officers compose only 8 percent of the police force while 20 percent of the New York City population at large is Hispanic. Little or no attention is paid to the ability of officers (or candidates) to speak Spanish, it was claimed, with predictably disastrous results in the Hispanic community.

¹² All officers are required to belong to the PBA, and dues to finance the organization are taken directly from their pay checks. The Guardians have sought but have been refused the right to offer a box on the pay check forms which would allow their members to have their Guardian dues taken directly from their pay checks.

¹³ Police Misconduct at 1233 (questions posed by Rep. Major Owens).

¹⁴ New York Times, February 14, 1966, at A1, col. 6.

B. POLICE-COMMUNITY INTERACTION

Many members of the middle and upper classes and many whites fail to recognize that the poor, non-whites and other "unpopular" groups (such as gay persons) have entirely different perceptions of the police than they have, born, at least on the part of some, out of experience. Testimony indicates this dichotomy of perception is no less real in New York City than in many other American cities. As a representative from the National Alliance Against Racist and Political Repression testified in November: "Our communities, for those of us who are black, Hispanic, poor and other oppressed minorities, are areas where the police serve as an occupying force, an army. . . ." ¹⁵

Several groups testified that the few statistics available on citizens' allegations of police brutality lead to a gross underestimation of the scope of the problem. "There is a pervasive fear that every black person in this city feels when they encounter a black officer." ¹⁶ "Evidence of police crimes is not so scarce as to make one in the black community or any other poor and oppressed community believe that police brutality is isolated, but rather systematic." ¹⁷

The NAACP representative complained and several victims testifying also maintained that the use of racial epithets by police is common in New York's minority communities. On the matter of racial epithets Mayor Koch testified that "words do sting and words of prejudice sting worst of all." ¹⁸ However, the NAACP was concerned not so much with the sting of the words but the motivations and attitudes which lead to their use. Obviously, a police force trying to avoid an image of being racially or culturally prejudiced must also avoid the use of racial epithets.

More than one witness attested to the minority poor's fear that their call for the police is at the risk of their own well-being.

If you are a black New Yorker, you automatically read indelibly but invisibly written "caution" when you pick up the phone to call the police. Calling a police officer can be hazardous to your health. It can result in death, serious physical injury, and almost certain spiritual abuse of your person and your dignity. ¹⁹

Instances were related in which blacks and Hispanics allege having been assaulted by the police they summoned. ²⁰

Police-minority community problems have been exacerbated, minority leaders claim, by an unwillingness on the part of white police leaders to meet with the various groups to discuss the difficulties. ²¹ The gap between white and black perceptions of police mentioned before must be re-explored here. The Subcommittee does not presume to, itself, make decisions for NYPD leadership on when and with whom they will meet. However, the value of a face-to-face meeting is great in most circumstances, particularly in situations wherein the views of those who are oppressed and lack a listening ear may be

¹⁵ Police Misconduct at 1273 (testimony of Frank Chapman).

¹⁶ Police Misconduct at 472 (testimony of Laura Blackburne).

¹⁷ Police Misconduct at 1289 (testimony of Frank Chapman).

¹⁸ Police Misconduct at 921 (testimony of Edward Koch).

¹⁹ Police Misconduct at 472 (testimony of Laura Blackburne).

²⁰ Police Misconduct at 459 (testimony of Hector Soto and 496 (testimony of Herbert Daughtry).

²¹ Police Misconduct at 502 (testimony of Herbert Daughtry).

expressed. It is not the obligation of the NYPD or the Mayor to agree with the minority community on all matters, but it is their obligation to know something of the perceptions of the people in those communities. Had the concerns of the minority leadership in New York City been aired more freely in City Hall, perhaps they would not have perceived a need to seek out a national forum.

Difficulties between police and the Asian-American, Hispanic and gay communities were also described to the Subcommittee. These will be discussed in the section on victims.

C. CIVILIAN COMPLAINT REVIEW BOARD

In its 1982 Annual Report, the Civilian Complaint Review Board describes itself as conscientious and efficient. However, much of the testimony received about the CCRB suggested otherwise. Composed of NYPD personnel and described on more than one occasion as an "NYPD front", the allegations expressed about the CCRB were numerous and serious. In no less than seven places in the testimony, leaders ranging from ministers to public interest lawyers stated that they do not trust the CCRB and that they either advise against its use or implore their advisees to proceed with caution, expecting little.

Unwillingness to go the CCRB does not indicate an unwillingness to complain. The National Gay Task Force receives many complaints of police misconduct which are not reported to the CCRB; the Black United Front (BUF) also receives and processes numerous complaints from blacks and others who have not reported their allegations to the CCRB.

At best, witnesses maintained, the CCRB is slow. Investigations of the complaints are often incomplete with officers being cleared of all allegations without the investigator speaking either to the complainant or complainant's witnesses. ²² Another very serious allegation is that the CCRB personnel, when faced with a complainant, threaten to or do investigate not the allegations but the complainant himself. Complainants allege calls have been made to their job places in which investigators imply that the complainants are being investigated for criminal conduct. Complainants also allege that CCRB personnel have made veiled threats that inactive criminal charges against them can be reactivated or new charges asserted if they insist upon pursuing their complaint.

. . . [O]ne of the reasons why I don't recommend filing CCRB complaints unless you have to, is that I have known instances where the assistant district attorney, who is on the case at the criminal level, if there has been a CCRB complaint filed, has it in his folder, knows that a CCRB complaint has been filed and then feels more pressure to find the person guilty of something in order to cover the police action. ²³

Witnesses claim support for their allegations against the CCRB by maintaining that there is an active CCRB-prosecutor connection.

Other difficulties, more administrative than attitudinal, were mentioned. One is that the CCRB does not cover the Housing Authority

²² Police Misconduct at 626-627 (statement of Richard Emery).

²³ Police Misconduct at 469-470 (testimony of Hector Soto).

and Transit Police. Also, complainants protest being required to go back to the precinct in which the assault is alleged to have taken place or from which the officers in question are dispatched, in order to file a complaint. It was also alleged that relatives and friends never "qualify" as witnesses to an incident of police misconduct, making it virtually impossible to ever prove an allegation.

The most recent CCRB statistics available to the Subcommittee are those of 1982. In that year complaints filed by New Yorkers increased by 30 percent over 1981.²⁴ The CCRB attributes the increase to the addition of 2,589 officers to the force (thereby increasing officer-community contact) and to male irritation at being ticketed or arrested by female officers. A decrease in the severity of the allegations was claimed by the CCRB. The civilian support staff of the CCRB decreased 25.5 percent between 1980 and 1982. Nevertheless, the Board states, it issued 35 percent more notifications and letters to interested parties in 1982 than in 1981.

During the year 1982, the CCRB and its panels reviewed 3,917 cases. Of those, 1,384 (35 percent) were not fully investigated because the complainant agreed to settle through conciliation, 1,243 (32 percent) were discontinued as withdrawn by the complainant or because the complainant failed to cooperate in the investigation, 1,137 (29 percent) were found to be unsubstantiated and 153 (3.9 percent) were found to be substantiated.

Of the cases found to be substantiated, charges and specification procedures were recommended in 51 cases, command discipline procedures in 42 cases (but accepted in only 36 cases), and formal instructions were to be given by the commanding officer in 88 cases.

In all likelihood, the key to the frustration with the CCRB expressed by so many witnesses before the Subcommittee lies not, as they opined, in the small number of cases substantiated but in the three other categories of resolution. The largest number of complaints (35 percent) go to conciliation. Do citizens feel free not to choose conciliation? Are they comfortable with the process? Are they pleased with the resolution?

Another 32 percent of complaints are either withdrawn or not pursued. Why? Obviously some complaints are filed in anger and not pursued when the anger cools, however this would account for only some of the 1,243 abandoned complaints. What happens in the other instances?

Witnesses were quick to state that the Board staff discourages the pursuing of complaints through the use of discourteous and even maddening behavior. Stories are told of late-night phone calls, threats to charge complainants with crimes and annoying scheduling practices.²⁵

One witness told of having weeks of silence go by after filing a complaint only to have a CCRB staff person insist by telephone late on Friday, September 16th that 9 a.m. Monday the 19th (the date and time of the police misconduct hearing) would be the only available time slot for an investigative interview.²⁶

²⁴ Report on Cases Submitted During Cong. Hearings on Alleged Police Brutality Held November 28, 1983, App. J-1, New York City Police Department, March 1984. See, Police Misconduct at 1701.

²⁵ Police Misconduct at 627 (statement of Richard Emery).

²⁶ Police Misconduct at 535 (testimony of Roy Shabazz).

Only after some of the questions which remain are answered will it be possible to determine whether the percentage of complaints found to be unsubstantiated (29 percent) is within the realm of reasonableness. Also it must be kept in mind that CCRB statistics in no way reflect the number of complaints not filed because the victim does not trust or does not care to be bothered with the CCRB as he or she has heard it described by others in the community.

Clearly, there is a very large gap between the CCRB self-image and the CCRB as described at the Subcommittee hearing. It is up to the City of New York to decide how that gap is to be closed.

D. LITIGATION

Not surprisingly, some disputes between civilians and police find their way into the courts. Some are criminal actions brought by the local prosecutor or recommended by the CCRB, others are civil actions brought by victims or families.

Witnesses protested both that there are too few prosecutions and that there are too few convictions in the trials which do take place.²⁷ Prosecutors are accused of being hesitant to take on police officers because they believe that exempting officers from prosecution is a reasonable tradeoff for competent investigative work.²⁸ Prosecutors are also accused of failing to present the pertinent facts to grand juries and of presenting those facts in a way designed to exonerate the police officer whose actions are being questioned.

Several witnesses complained that civil actions against police are often complicated or even blocked by allegations of wrong-doing on the part of the complainant. It was suggested that the likelihood of a complainant being charged and the seriousness of that charge grow in direct proportion to the earnestness with which a civil action is being pursued.

If you file a civil suit against the city, the department and the police officer, the district attorney, the next appearance in court knows about it, has the information and again feels compelled to go forward and find the person guilty of something in order to, in effect, kill the civil action on the other side. . .

It is not unusual for the district attorney at that point to offer some kind of a plea, which is basically, "You drop yours and we will drop ours," which we believe is unconstitutional but has not been challenged in the court.²⁹

All the lawsuits do is line up the city and the Police Department and the Corporation Counsel's office against the person who complained of police abuse.³⁰

E. THE VICTIMS

Persons claiming to have been victims of police misconduct came before the Subcommittee in two groups. The first group was persons who came with organizations, attorneys and others who appeared

²⁷ Police Misconduct at 622 (statement of Richard Emery and 869 (testimony of Douglas Colbert).

²⁸ Police Misconduct at 513 (statement of Alton Maddox, Jr.).

²⁹ Police Misconduct at 470 (testimony of Hector Soto).

³⁰ Police Misconduct at 615 (testimony of Richard Emery).

before the Subcommittee. These persons testified, placing their stories, in their own words, in the hearing record. The other group was members of the public who came to the September hearing and took advantage of the opportunity to make written complaints of police misconduct at specially-staffed tables in the lobby area, or who wrote to the Subcommittee asking that their complaints be known for the record.

It would not be appropriate to re-tell all of the stories related in the two days of hearings. The complete transcript is available. Nevertheless, a few of the stories should be related in summary form:

Darnel Murdaugh states that he was on his way home from work on his moped when he got into a verbal, then physical battle with two white men in an adjoining car. They broke it up when the light changed and Murdaugh continued on his way. He encountered the two men again, and one drew a gun. Murdaugh was beaten by one of the men and didn't discover until uniformed police arrived that his two assailants were plainclothes police. Murdaugh, who suffered a broken tooth and cuts requiring stitches in his head and lip, was arrested for assault. Murdaugh has filed a complaint against the officers, saying, "I would like to see justice done by all means because I look for trouble from no one."³¹

Corey Gibson states that on March 15, 1983, he and a friend, Larry Dawes, were on Dawes' moped, on their way home from visiting girl friends in Brooklyn. They narrowly missed a collision with a police cruiser turning onto the street on which they were travelling. The driver of the cruiser pursued the moped, Gibson states, eventually striking it on a near-by sidewalk. Gibson was injured and Dawes, who was charged with running a red light, was killed.

I feel that if we are going to let the police force do this to another brother, over a red light, imagine what they are going to do to our women and our little babies who are coming up. . . . The police officers, they still are on the force, rookie cops, young rookie cops, 25 and 24 years old on the police force, only 1 year out there acting like Starsky and Hutch. Now my friend Larry Dawes is lying in a grave, his mother all destroyed, and depressed, all shaken up, what she should do over this situation.

Who should she turn to to get justice for her son? Who can she turn to? I would like to know, I am asking the Congressmen, who should she turn to?³²

Lillian Long states that she was travelling on the subway with a group of family members on September 13, 1983. When the group became separated at the 8th Avenue and 42nd Street Station, her cousin, Linda Wolfe, went ahead and held the door of the train. Ms. Long asserts that Ms. Wolfe was not the only person holding subway doors open.

Transit officers confronted Ms. Wolfe, there was a commotion, and she was beaten. A code 1013 was called and officers flooded the platform. Ms. Wolfe was arrested and taken to a holding facility with

³¹ Police Misconduct at 480 (testimony of Darnel Murdaugh).

³² Police Misconduct at 533 (testimony of Corey Gibson).

her family streaming behind. She was charged with resisting arrest and disorderly conduct. Ms. Long describes the scene:

For the next 15 or 20 minutes they paraded up and down this facility, they were calling us every kind of nigger in the books, and just, you know, getting together, I don't know what they were doing. So my cousin, several were injured, I requested medical assistance; they ignored me, and she was bleeding from her mouth, she had lumps on her head, and blood all over her clothes and she was a mess.

So finally they decided to call an ambulance, and they had a discussion with the two ambulance attendants whether she could be treated on the spot or was it truly necessary for her to be taken to a hospital. After they looked at her, she had an open wound, they decided it was necessary for her to go to the hospital.³³

Ms. Wolfe's blood-soaked blouse was brought by her attorney for display at the hearing.

All in all, sixteen persons claiming to have been victims of police misconduct testified in September and the cases of another five persons were presented in their absence. Nine additional persons presented their stories in November. Five of these witnesses were black police officers presenting stories of altercations with white officers.

All of the 24 civilians who testified alleging acts of police misconduct were black. Allegations on behalf of three Asian-Americans (and three more blacks) were placed into the hearing record. Of the 30 people (24 testifying and six whose cases were placed in the record) 19 were male, 11 female.

Common elements in the stories should be pointed out: Fifteen of the altercations began with a minor incident—missing license tag on an automobile, a misplaced bus ticket, holding open a subway door. Nineteen of those testifying specifically mentioned the profanity the police officers used in addressing them, twelve complained of racial epithets. Fourteen persons said they were struck by police, usually after being handcuffed behind their backs. Eleven specified injuries they had suffered.

In eight incidents, victims asserted that other were with them who were also assaulted; six said that strangers tried to intercede on their behalves. Seven persons mentioned that, during the incident, extra police were called in (code 1013—officer in trouble) and as many as six cars were on the scene to execute the arrest. Of the 30 persons alleging police misconduct, only seven were charged with a crime. Also, only 6 of the 30 (20 percent) specifically reported their experiences to the Civilian Complaint Review Board. Other incidents found their way to the CCRB through various channels, including letters of complaint to city officials.

The New York Police Department did a follow-up response to all allegations of police misconduct placed in the record. One hundred and eight cases were listed for examination. The NYPD examined cases referred to in testimony as well as those cases presented, but by eliminating cases occurring before 1978, cases with white victims, and

³³ Police Misconduct at 661 (testimony of Lillian Long).

cases alleged against black police officers, the number of cases examined by the NYPD was reduced from 108 to 52.

While the complaints of police misconduct fall into a pattern, the police responses to these complaints do not. In some instances the police department related stories fully 180 degrees from those told by complainants. In other incidents the police response implied that the complainant was mentally unstable, or extraordinarily hot-tempered, too slow to answer questions posed, or was telling some truth but grossly exaggerating the degree of force used.

In approximately 10 cases the police, while not denying that an altercation between officers and citizens took place, insisted they were not the instigators, the alleged victims were. In two instances the police agree that something untoward occurred but insist it was not racially motivated. At least four of the 30 incidents under discussion here are still under investigation.

Not all of the police responses commented on victim's allegations of injury. Discussion of injury is conspicuous in its absence from the Michael Stewart case.³⁴ Also, only one response comments on the numerous complaints alleging the use of racial epithets.

The complaints of police misconduct placed side-by-side with the police responses to those allegations together demonstrate the degree to which the police department and many citizens are not communicating. The complainants, in the stories they told, described the police officers they had encountered as discourteous, foul-mouthed, quick-tempered and brutal. The police department describes the citizenry involved in the incidents as hot-tempered, verbally aggressive, totally lacking in respect for law enforcement personnel and virtually fearless.³⁵ The truth lies somewhere in between.

The incidents also point up another complication. On one side complainants state that the CCRB never contacts them about complaints filed. On the other side CCRB and other NYPD personnel state that complainants fail to return phone calls or refuse to be forthcoming in interviews. All of this indicates a serious break down in citizen-CCRB communications.

Reverend Lee Johnson alleged an act of police brutality and touched off a wide-spread and heated controversy, yet refused to facilitate or even accommodate an investigation of the allegation. In a statement issued by District Attorney Robert M. Morgenthau on November 7, 1983, Reverend Johnson's attorney is said to have requested that Mr. Morgenthau investigate Rev. Johnson's allegations. However, also according to that November 7th statement, Rev. Johnson and Roderick Mitchell (Johnson's companion in the car who also alleged mistreatment) both refused to be interviewed, declined to appear before the Grand Jury and refused to reveal the whereabouts of the third companion and witness to the incidents: Al Bradley.

Left with precious little on which to base a case, the Grand Jury failed to return an indictment. Apparently some New Yorkers trust none of the offices or agencies through which justice is meant to be protected.

³⁴ This is probably because law suits have been filed on the case.

³⁵ In two police responses, civilians are described as deliberately "ramming" marked police cruisers. One of these ramblings was said to have been accomplished by a youth on a moped.

The Subcommittee also received 81 written complaints of police misconduct, most as "walk-ins" at the September hearing but some through the mail. The elimination of complaints which are out-of-date, unrelated to police actions, already entered into the hearing transcript or against law enforcement officials other than New York police officers reduces the total number of complaints to be considered here to 60.

Because of the way the complaints were taken it is difficult to ascertain the races of the complainants. Three people identify themselves as white, and four as Hispanic. The remaining 53 complainants are probably black. Once again, many altercations between citizens and police seemed to stem from minor incidents: arguments between drivers in heavy traffic, motor vehicle summons, or being in the wrong place (scene of a store robbery, waiting for the Staten Island ferry late at night) at the wrong time.

Although racial epithets were not frequently specified, general verbal abuse was alleged in 24 instances. Some of those allegations of verbal abuse may have included racial remarks. Twenty-nine persons (48%) alleged having been struck or beaten by police, and 13 alleged injuries. In three instances complainants alleged that police called a 1013 (officer in trouble), gathering numerous officers and patrolcars to accomplish one arrest. Twenty-one of the complainants were charged (six of those charged with traffic violations). Strangers were involved (either intervening on behalf of complainants or filing the complainants in response to incidents they have witnessed) in seven cases.

Four persons alleged being taken by transit police to small rooms—bathrooms or storage areas—to be beaten. Transit police are also accused in the hearing transcript of using small rooms in the subway tunnels for private beatings of the accused. It is appropriate to point out at this juncture that the transit police are not subject to the supervision of the Civilian Complaint Review Board.

Twenty-two of the complainants (37 percent) filed CCRB complaints. Two persons alleged that they were harassed out of pursuing their complaints.

F. THE CITY OFFICIALS

New York City Mayor Edward Koch, Police Commissioner Robert McGuire and former chief of uniformed forces William Bracey appeared as the first witnesses at the November 28th hearing. At that time they were accompanied by Kenneth Conboy, legal counsel for the NYPD; Charles Adams, executive director of the Civilian Complaint Review Board; and Fritz Schwartz, Corporation Counsel for the City of New York. Mayor Koch, Commissioner McGuire and Chief Bracey testified, submitted written statements and responded to questions.

Both Mayor Koch and Commissioner McGuire listed steps taken and changes made in recent years to make the police department more responsive to the needs of the community. These include increased police academy emphasis on racial sensitivity and community relations, coupled with weekly precinct training sessions on these concerns. Also, Mayor Koch stated, the staff of the CCRB has been increased and complaints were being accepted at the community boards and by telephone as well as at police department facilities.

Commissioner McGuire identified the deputy commissioner as being responsible for programs to identify officers with personality difficulties which may give rise to violent behavior. If necessary, such officers are referred to the Psychological Services Counseling Unit.

The New York Police Department takes a great deal of pride in its weapons guidelines. More strictly crafted than the New York State penal code requires, officers may fire their weapons only in defense of their own lives or the life of another person. Weapons cannot be fired at fleeing suspects or automobiles. A Firearms Discharge Review Board investigates all firing of weapons. The Board has the power to order retraining or file formal disciplinary charges against officers who violate the guidelines. Since imposition of the guidelines policy in 1973, shooting incidents in New York City have dropped 39.2 percent.³⁶

The pride that New York's city officials take in its progressive firearms policy has led, perhaps unintentionally, to an unfortunate confusion of issues. Much of Commissioner McGuire's testimony (and much of the media coverage) focused on whether or not it is fair to criticize the NYPD for the frequency and way in which its officers use deadly shooting force. This was not one of the concerns the Subcommittee set out to explore (except, perhaps, in the case of shootings of black police officers by white police officers). The complaints brought to the Subcommittee which prompted the holding of the hearings were of racially discriminatory treatment by police, unfair use of force falling short of fatality, unwarranted arrests, use of racial epithets and other related problems.

The only fatality brought before the Subcommittee in extensive testimony was that of Michael Stewart. Mr. Stewart's arrest occurred shortly before the September hearing and he died before the November hearing. His death was not, however, as a result of a shooting.

Commissioner McGuire also pointed with pride to NYPD recruitment and hiring of minority officers. According to Commissioner McGuire, a program to assist minority candidates in preparing for qualifying examinations, coupled with publicity campaigns, has increased the number of minority candidates eligible for appointment. Minority representation on the force has risen almost 50 percent since 1978, from 2729 to 4077. In 1978 minorities constituted 11 percent of the force. In 1983 they composed 17.6 percent of the force. McGuire appointed minority persons as deputy commissioners (3), a bureau chief, a borough chief, deputy chiefs and deputy inspectors (3).

Commissioner McGuire described the Civilian Complaint Review Board as a "valuable institutional innovation for the restraint and inhibition of improper police conduct."³⁷ McGuire noted that 33 percent more complaints were filed before the Board in 1982 than in 1981, but asserted that allegation of force in which the injury is claimed declined 31 percent.

During the five and one-half years immediately preceding McGuire's testimony (January 1978-June 1983, presumably), 54 New York City police officers were arrested for assault-related crimes. Nine of the 54 were convicted in criminal trials and dismissed from the Department. Four were tried and acquitted but dismissed nevertheless. Six cases are

³⁶ Police Misconduct at 944 (statement of Robert McGuire).
³⁷ Police Misconduct at 949 (statement of Robert McGuire).

still pending. In 64 additional cases of alleged use of unnecessary force (but not criminal proceedings) five officers were fired and 59 others disciplined.³⁸

The New York City Police Department annually budgets \$16.9 million for community relations; 399 persons work in those operations. A Deputy Commissioner is responsible for "assisting the communities and neighborhoods of the City as they struggle to deal with crime and its consequences."

More than 50 percent of New York's 8,000 Auxiliary Police are minority citizens. Disadvantaged youth were provided with 885 jobs in the police department during the summer of 1983.³⁹ The Youth Dialogue Program has brought 350 police officers together with 4,000 young people for discussions on self-improvement, the value of education and the importance of community service.⁴⁰ The Summer Youth Recreation Program provides sports, crafts and day trips for 43,000 youngsters, three-quarters of whom are from minority families.

Mayor Koch states that New York's minority community and its police force get along well:

By any fair measurement, it must be said that relationships between the New York City Police Department and the minority community are generally sound and continue to improve.⁴¹

Mayor Koch does recognize, however, that police misconduct does occur.

That is not to say that there are not a few police officers who will from time to time engage in an isolated, reprehensible act. That racist act on occasion may be verbal abuse or physical assault, but it is always the act of an individual and never of the Police Department.⁴²

Mayor Koch reminded the Subcommittee that (1) police have the lawful right to use reasonable force in doing their jobs and (2) "there will be times when accusations of unlawful force are false, put forward as a smokescreen by the guilty or as a slander by inveterate critics of the police who were not present, have no real idea of what happened, and who seek to undermine public trust."⁴³

G. THE RECOMMENDATIONS

Most of the organizations and some of the individuals testifying included recommendations for specific changes in their presentations. These recommendations, consolidated and summarized, are presented below.

- The New York Police Department should continue and expand its *affirmative action* hiring and recruiting program.

The goal would be a police force which is, in its racial composition, wholly reflective of the racial and ethnic composition of the city itself. Coupled with this were two related recommendations: that New York

³⁸ Police Misconduct at 952 (statement of Robert McGuire).
³⁹ Police Misconduct at 955 (statement of Robert McGuire).
⁴⁰ Police Misconduct at 956 (testimony of Robert McGuire).
⁴¹ Police Misconduct at 924 (testimony of Edward Koch).
⁴² Letter from Edward I. Koch to Peter W. Rodino, Jr. (June 28, 1983).
⁴³ Police Misconduct at 921 (testimony of Edward Koch).

police officers be required to be residents of the city and that police officers be assigned, when possible, to their own neighborhoods.

- The *screening and training* procedures for New York City police officers should be reexamined.

Particular care should be paid to psychological testing of recruits and ethnic and race relations courses for trainees. Upon receiving their assignments, new officers should participate in community-approved orientation programs in which they could become acquainted with the community as it sees itself.

- Several groups and organizations made suggestions relating to the *approach* police officers take in New York and the *attitudes* they evidence.

Police are, basically, providers of services. However, in many of the New York communities, citizens have no impression of officers as helpers but only as enforcers or occupying armies. Toward changing this image, a greater central officer emphasis on consciousness raising and a deemphasis on the purchase of hardware was recommended.

Police-community relations would benefit if efforts to prevent crime were combined more fully. Bringing community people into the police department to observe might help. Also, it was suggested that the Precinct Councils be expanded into a Citizen's Policy Advisory Board to consult with the Commissioner of Police on a regular basis. Decentralization of the NYPD, already begun on a limited basis, was hailed as a very positive step, one which should be continued and expanded.

- The *Civil Complaint Review Board* procedures need to be truly independent.

The CCRB problems discussed in section C will not be repeated here. Witnesses stated that the CCRB must begin to operate more efficiently, deal with complainants with more patience and objectivity, and perform investigations with more diligence. Also, the CCRB must operate more independently from the police department than is true at present.

Some of those testifying opined that New York's system of CCRB investigation and district attorney prosecution of allegations of police misconduct is too interdependent to ever be effective. These persons would favor the option of appointing a special prosecutor to handle the more serious of the allegations.

Several recommendations for changes on the federal level were also entered into the record. These included:

- Revision of federal criminal civil rights statute (18 U.S.C. § 242) to make it easier to prosecute police misconduct.
- A Federal mandate requiring all Civilian Complaint Review Board be elected, as opposed to appointed.
- Establishment of a federal agency to handle allegations of police misconduct.
- Reservation of federal funds for compensation of victims of police misconduct.
- Withdrawal of federal funds from cities (including New York) which fail to take aggressive affirmative action steps in hiring and promotion.

IV. NEW YORK 1 YEAR LATER

Upon assuming the position of New York City police commissioner in January, 1984, Benjamin Ward set out to respond to some of the concerns voiced in the September and November hearings. On January 4th he "directed the formation of a committee⁴⁴ to initiate an overall review of the Civilian Complaint Review Board and submit recommendations to implement operational changes and innovations . . ."⁴⁵ As that work proceeded, Commissioner Ward took two other, significant and positive steps: the assignment of additional personnel to the CCRB, and the creation of similar review boards to oversee the transit and housing authority police.

From all appearances, the CCRB review committee accomplished its task ably. The number and rank of uniformed personnel assigned to the CCRB has been increased and upgraded. Investigators' roles have been substantially revised. In the past, investigators (who are uniformed personnel) have been responsible for receiving complaints at the intake desk, handling conciliation of less serious complaints and investigating complaints on the basis of the geographical area in which they are alleged to have taken place.

Under the new system investigators no longer receive complaints or handle conciliations. These tasks are done by civilians. This is good both because intake and conciliation are areas in which civilians may be preferable as less intimidating than uniformed personnel and because investigators are thereby freed to concentrate on the basic task of conducting investigations.

Another change distributes the investigation load on the basis of offense (force, abuse, discourtesy and ethnic slur) rather than geography. This enables investigators to develop an area of expertise and facilitates the assignment of the most senior investigators to the more serious cases.

As part of the CCRB restructuring complaints are being received on a 24-hour 7-day weekly basis rather than the 12-hour 5-day schedule employed in the past. Also, investigators are available 24 hours, able to respond to emergency situations.

A most important change is the re-establishment of a hearing procedure for selected cases (as determined by the Executive Director). The procedure would allow for the examination of complainants, witnesses and police officers under oath.

Several steps have been taken in the area of police-community communications. As field commanders are being held strictly accountable for community contacts made by their personnel, the CCRB has developed a data dissemination and reporting system which will aid commanders in identifying undesirable trends and developing corrective measures in their fields. Police personnel of varying ranks sit on Advisory Panels. The task assigned to these Panels is to discuss selected cases with CCRB members, assisting the Board in reaching its final recommendations and providing advise on police practices and procedures.

In-house attention to police-community relations is also being improved. Roll Call Training begun in March 1983, for NYPD personnel

⁴⁴ The Committee included Hamilton Robinson, Chief of Patrol; Raymond Jones, Chief of Organized Crime Control; Charles Adams, Executive Director of the Civilian Complaint Review Board and was chaired by Chief of Operations, Robert J. Johnston, Jr.

⁴⁵ Letter from Benjamin Ward to John Conyers, Jr. (August 8, 1984).

in daily contact with the public and sensitivity training implemented by the Chief of Patrol Services continue. In the latter program, spokespersons from the communities represented in the various precincts meet with police officers at least once monthly to monitor police-community relations. Also, Charles Adams, Executive Director of the CCRB, continues to meet with community groups throughout the city.

Changes implemented do appear to directly address some of the concerns voiced in the Subcommittee hearings. Civilian Complaint Review Board understaffing problems appear to be on the road toward a solution. More important, the changes in the investigators' roles demonstrate that the allocation of CCRB resources is being handled more carefully and intelligently. The fact that the CCRB is turning a more "civilianized" face to the public is bound to encourage its use. Plus the lengthening of its hours of operation is evidence of a genuine desire to serve the public more fully.

The steps taken to improve police-community relations also appear very positive. Genuine effort on the part of the police personnel coupled with patience and true cooperation on the part of community people should bring some improvements.

Revs. Calvin Butts and Lee Johnson have placed themselves at the forefront of those complimentary of the "post hearings" NYPD by being quoted in a July New York Times article as "report[ing] some progress."⁴⁶ Reverend Butts has been invited to speak at a Brooklyn precinct sensitivity session, is appearing in a NYPD training film and describes the police department as more cooperative, cordial and responsible. Reverend Johnson, whose complaint helped spark the call for the hearings, describes the changes as giving him the "feeling that there is a possibility of justice." Brooklyn Representative Major Owens, instrumental in the planning and execution of the hearings, is quoted as saying "we're light years ahead of where we were a year ago," and that steps taken by Commissioner Ward "are paying off."

Complaints filed to the CCRB rose 14.5 percent (from 4,105 to 4,700) last year. Because increased filings imply a rise in the credibility of the CCRB in the eyes of the public, a temporary rise in the number of complaints should be viewed as a positive development.

The horizon cannot accurately be described as cloudless, however. Some of the persons testifying as victims in September and November are still displeased with the resolution of their cases. The black police officers who testified allege serious job placement problems as a result of their coming forward. The Subcommittee continues to receive complaints of police misconduct.

VI. FINDINGS

Title 18 U.S.C. § 242 makes it a federal crime for a police officer to punish a person accused of a crime with a beating or with death, because such acts deprive the accused of his or her right to due process of law. The mere existence of this federal law is indicative of the degree of concern with which the United States Government greets allegations of police brutality. After investigating general allegations

⁴⁶ New York Times, July 25, 1984, p. B1, col. 1.

of widespread and racially patterned violations of § 242 in New York City, the Subcommittee finds:

- The posture the New York City leadership has taken toward allegations of police misconduct in recent years suggests that the problem has been treated less than seriously by them.

The central indication that allegations of police misconduct have been treated less than seriously was the condition of the Civilian Complaint Review Board in June, 1983. Woefully understaffed and in need of serious procedural and administrative changes, the CCRB had been allowed to deteriorate (or had it always been so?) to the point that no one but the city government officials had a good word to say for it. Moreover, it was seen by much of the leadership of New York's minority communities as an NYPD tool or front.

Many community leaders and representatives (including attorneys) testified that they advised against the use of the CCRB, considering it worthless at best and dangerous at worst. Persons alleging complaints stated that the CCRB personnel tried to talk them out of filing those complaints. Attorneys testified that clients going to the Board were threatened with criminal charges and that the abandonment of a CCRB complaint was often the stated price for the dismissal of criminal charges brought against the complainant. Inept as the CCRB was claimed to be, one was better off with a complaint against the NYPD than against the Housing or Transit Authority police for which no complaint board existed.

Left with no viable administrative alternative, they felt, community leaders made various kinds of efforts to bring the problem of alleged police to the attention of city officials. But lines of communication were poor. Almost immediately city officials and community people divided into separate camps. A barrage of verbiage was unleashed in the press and the city was pushed even further from the solutions to its problems. This failure by city officials to maintain strong lines of communication between themselves and those communities which saw themselves as having a police misconduct problem is a secondary indication that allegations of the problem were being treated less than seriously.

- Racism appears to be a major factor in alleged police misconduct specifically and in police-community relations generally.

Of the 30 people entering complaints of police misconduct into the hearing record, 12 specifically mentioned the use of racial epithets by police. Also, 15 of the altercations blacks had with police appeared to have begun with what would typically be termed a "minor incident". These two factors taken together lend validity to the complaint which was brought to the Subcommittee in June of 1983: that police in some New York communities are relatively quick to comment on behavior by blacks which would be overlooked in whites, and that these confrontations rapidly accelerate to arrest and/or injury. That racial prejudice plays a role is indicated both by the officers' choices of citizenry to confront and by the racially offensive language the officers use in effecting the arrest.

The police department would be in a better position to deny the racial factor if relations between black and white officers were better. Certainly blacks and whites work together on the NYPD, however, statistics and testimony both reveal that there have been and are problems.

Minority representation on the force began to rise late, and only after a series of legal actions by the Guardians Association (the black police organization). Even now, black representation on the force is 11 percent against a population representation of 24 percent, and Hispanic representation is 8 percent against a population representation of 20 percent.

Attacks by white officers on black plain-clothes officers, once an extremely serious problem, appears to be on the decline but the testimony indicated that the phenomenon is still a good distance from being eradicated. And there is yet more troubled water to be crossed as New York confronts the challenge presented by the disappointing pass rates of Hispanics and, particularly, blacks taking the recent sergeants examination.

It can only be hoped that relations between New York's white and minority officers are better than those between their representative organizations: the Policemen's Benevolent Organization and the Guardians Association. These two groups are struggling with ideological and procedural differences so profound as to be frightening, and their relationship appears very adversarial.

- Recent steps taken in New York to improve community relations are an indication of progress.

Despite the extraordinarily negative reactions of most city officials to the Subcommittee's hearings, the airing of issues and grievances appears to have done good things for police-community relations in New York. Blacks, other minorities and various community organizations have been brought a bit closer into the process of police-community relations decision-making. The rise in the number of complaints made to the CCRB indicates greater trust in that agency. As CCRB Executive Director Adams has said, an indication of continued progress would be a drop in the number of complaints overall. Changes in the CCRB staffing and methods of operations are a clear and welcome response to complaints heard in September and November.

- What remains to be done will require serious commitment on the part of New York's city officials and the communities concerned, in cooperation with one another.

Blacks, Hispanics, and other racial minorities in New York City have an expectation of being able to be placed on the police force, work safely and well with white officers and to rise in rank and responsibility as they become experienced. At this time, this is not happening to the degree many would consider satisfactory. The Subcommittee does not presume to propose to New York City specific steps to make these expectations a reality; it does recognize that it is necessary that they be stated.

The CCRB appears to be on the road to improvement. A question remaining, however, is what will be done about allegations of CCRB-prosecutor tie-ins. It is hoped that part of the work of the new, stricter,

more community-oriented CCRB will include a confrontation with this accusation.

An equal or even greater challenge for the CCRB will be that of maintaining and continuing its improvement. This is vital. New York sacrifices some of the image of its police department when it takes short cuts with its civilian complaint review board.

Lines of communication, only recently established or re-opened, must be maintained. It is not inappropriate to remind the community people that to make a serious allegation, then refuse to discuss it with any of those officials obligated to help is counter-productive. And it is not inappropriate to remind the city officials that to imply that all persons involved in a community confrontation with the City are liars and opportunists is also counter-productive.

The Subcommittee finds problems in New York, sees some improvement since the hearings were first opened in July 1983, and will watch for continued improvement.

VI. NEED FOR CHANGES IN FEDERAL LAW

A number of witnesses emphasized the fact that, given the barriers to local prosecution of acts of police misconduct, it is often necessary to resort to federal prosecution in order that justice be served. Consequently, the utility of the applicable federal police misconduct provision, 18 U.S.C. § 242, is of particular importance. Evidence received in several communities over a period of years, combined with concerns expressed by Department of Justice attorneys whose responsibility it is to prosecute violations of 18 U.S.C. § 242 have convinced the Subcommittee of the need to revise that section in order that the original intent of its drafters be carried out.

Section § 242 makes it a federal offense for persons acting under color of law (including police officers) to "willfully" (1) deprive any person of a right, privilege or immunity protected by the Constitution or laws of the United States or (2) subject any person to different punishment, pain or penalty on account of that person's color.

The word "willfully" has been interpreted to require that specific intent to violate the rights in question be proven in order that the elements of the crime be met.⁴⁷ This can be a difficult test to meet.⁴⁸ It is not enough to show that an arrestee was beaten intentionally. Present law requires two determinations:

The first is a purely legal determination. Is the constitutional right at issue clearly delineated and plainly applicable under the circumstances of the case? If . . . it is, then the jury must make the second, factual, determination. Did the defendant commit the act in question with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected by that federal right? If both requirements are met, even if the defendant did not in fact recognize the unconstitutionality of his act, he will be adjudged as a

⁴⁷ *Sereus v. United States*, 325 U.S. 91 (1945); *United States v. Ehrlichman*, 546 F.2d 910 (D.C. Cir. 1976), cert. denied, 431 U.S. 933 (1977).

⁴⁸ Revision of the Federal Criminal Code, Hearings Before the Subcommittee on Criminal Justice of the House Judiciary Committee, 96th Cong., 1st Sess., 4155 (statement of Steven L. Winter); Racially Motivated Violence at 161 (statement of Steven L. Winter).

matter of law to have acted "willfully"—i.e. "in reckless disregard of constitutional prohibitions or guarantees. . . ." ⁴⁹

These rather complex proof requirements have, in the past, led to jury confusion.

An additional problem of § 242 is that, unless death results, the penalties it carries are relatively low. Persons convicted of violating the provision can be punished with a fine of \$1000 and a prison term of one year. If the victim died, the punishment is imprisonment for any term of years, up to and including life imprisonment. Thus, conduct which constitutes assault resulting in serious bodily injury (18 U.S.C. § 113(f)) and carries a federal penalty of 10 years imprisonment, would be punishable with only a year in prison if carried out under color of law. These penalties should be adjusted to be more reflective of the seriousness of the crime.

⁴⁹ H.R. Rept. No. 96-1396, 96th Cong., 2d Sess. 216 (citing *United States v. Ehrlichman*, 546 F.2d 910, 921 (D.C. Cir 1976), *cert. denied*, 431 U.S. 933 (1977)).

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