

# BEHIND THE BLUE WALL OF SILENCE: RACIAL DISPARITIES IN NYPD DISCIPLINE

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## ABSTRACT

This Note presents the first contemporary empirical study of racial disparities in New York City Police Department (“NYPD”) discipline. Historically, the NYPD, like many departments across the country, applied its enormous disciplinary discretion in secrecy. That changed in June of 2020, when New York City publicly released thousands of civilian complaints and disciplinary decisions. Analysis of these newly released data reveals significant racial disparities in discipline of police officers. More fundamentally, these data demonstrate the NYPD’s extreme leniency towards police misconduct of all kinds and its disregard of recommendations by the Civilian Complaint Review Board. These findings call for greater transparency in New York and around the country. Greater transparency will encourage participation by both officers of color and the public in discourse about police reform, leading to shifts in public opinion and playing an essential role in the pathway to police abolition.

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## INTRODUCTION

In 2014, NYPD officer Daniel Pantaleo suffocated Eric Garner in Staten Island.<sup>1</sup> Pantaleo, who is white, had been called to the scene about a fight.<sup>2</sup> Mr. Garner, who was Black, had broken up the fight.<sup>3</sup> He also happened to be selling cigarettes without a license.<sup>4</sup>

Mr. Garner's death shocked much of the country, drawing new participants into national discourse about racial injustice and adding to mounting calls for police reform. To communities targeted by the police, Pantaleo's murder of a Black father of six who had neither threatened officers nor resisted arrest was all too familiar. And to Pantaleo's peers and superiors, his actions likely did not come as a surprise: Pantaleo had a history of abusing civilians. Before he killed Mr. Garner with a chokehold maneuver banned by the NYPD, multiple civilians—most of them people of color, like Mr. Garner—had formally accused Pantaleo of civil rights violations, including excessive force, on at least seven separate occasions.<sup>5</sup> The NYPD disciplined him in just two instances, by docking two vacation days and ordering his commander to provide him instructions.<sup>6</sup>

Such lax consequences are typical of the NYPD, which is the largest municipal police department in the country<sup>7</sup> and enjoys total discretion over officer discipline.<sup>8</sup> The NYPD has sole responsibility for filing administrative charges, determining guilt, imposing discipline, and terminating officers.<sup>9</sup> At the time of Mr. Garner's death, it was also free to apply this discretion in secrecy. Until 2020, New York Civil Rights Law § 50-a sealed all NYPD

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1. *Eric Garner Dies in NYPD Chokehold*, HIST. (July 15, 2020), <https://www.history.com/this-day-in-history/eric-garner-dies-nypd-chokehold> [https://perma.cc/69JT-J3KU].

2. *Id.*; *Eric Garner: NY officer in 'I Can't Breathe' Death Fired*, BBC (Aug. 19, 2019), <https://www.bbc.com/news/world-us-canada-49399302> [https://perma.cc/BUG4-CZ46].

3. HIST., *supra* note 1.

4. *Id.*

5. See CCRB COMPLAINT DATABASE RAW 04.20.2021.XLSX, N.Y.C.L. Union (May 6, 2021) [hereinafter CCRB COMPLAINT DATABASE], <https://github.com/new-york-civil-liberties-union/NYPD-Misconduct-Complaint-Database-Updated> [https://perma.cc/52W6-NUSF].

6. See *id.* For an explanation of "instructions," see Part I.D.

7. *About NYPD*, NYC, <https://www1.nyc.gov/site/nypd/about/about-nypd/about-nypd-landing.page> [https://perma.cc/XZ4U-KHC3].

8. MARY JO WHITE ET. AL., THE REPORT OF THE INDEPENDENT PANEL ON THE DISCIPLINARY SYSTEM OF THE NEW YORK CITY POLICE DEPARTMENT 21 (2019).

9. See *id.* at 21–24.

misconduct and disciplinary records.<sup>10</sup> The public would not learn of the NYPD's disregard of the warning signs in Mr. Pantaleo's behavior until a whistleblower leaked his disciplinary record in 2017.<sup>11</sup>

Nearly a third of states continue to keep police misconduct and disciplinary records completely confidential.<sup>12</sup> Another fifteen states limit public availability.<sup>13</sup> Alongside the successful lobbying of police unions to limit discipline, secrecy perpetuates a lack of accountability nationwide.<sup>14</sup> In the most extreme instances, this dynamic keeps dangerous officers like Mr. Pantaleo on the streets, essentially undisciplined, until they commit an act of violence stunning enough to capture public attention. On the other end of the spectrum, it allows for the endurance of pervasive, lower-level civilian abuses.<sup>15</sup>

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10. N.Y.C.R.L. § 50-a (Mckinney 1981) (repealed 2020) ("All [police] personnel records used to evaluate performance . . . shall be considered confidential and not subject to inspection or review without the express written consent of such police officer . . ."); see also Stephanie Wykstra, *The Fight for Transparency in Police Misconduct, Explained*, VOX (June 16, 2020, 7:30 AM), <https://www.vox.com/2020/6/16/21291595/new-york-section-50-a-police-misconduct> [<https://perma.cc/9SL9-NKR5>] (discussing the efforts to repeal 50-a).

11. See Al Baker & Benjamin Mueller, *Records Leak in Eric Garner Case Renews Debate on Police Discipline*, N.Y. TIMES (Mar. 22, 2017), <https://www.nytimes.com/2017/03/22/nyregion/nypd-eric-garner-daniel-pantaleo-disciplinary-records.html> [<https://perma.cc/B98U-Q4LY>].

12. Nikhel Sus, *States Must Lift the Veil of Secrecy over Police Misconduct*, CITIZENS FOR RESP. & ETHICS IN WASH. (June 19, 2020), <https://www.citizensforethics.org/reports-investigations/crew-investigations/states-secrecy-police-misconduct-reform/> [<https://perma.cc/8SES-K3LV>]; Allie Weintraub, *Police Disciplinary Records Are Kept Secret in Nearly a Third of States*, INSIDE ED. (July 17, 2020, 6:15 AM), <https://www.insideedition.com/police-disciplinary-records-are-kept-secret-in-nearly-a-third-of-states-60711> [<https://perma.cc/UF9K-LKZY>].

13. Sus, *supra* note 12.

14. Kim Barker et al., *How Cities Lost Control of Police Discipline*, N.Y. TIMES (Mar. 10, 2021), <https://www.nytimes.com/2020/12/22/us/police-misconduct-discipline.html> [<https://perma.cc/Q484-C7GR>].

15. A notable example is New York City's stop-and-frisk policy. The NYPD engaged in rampant racial profiling in stopping and frisking civilians from the inception of the policy until 2013, when the Southern District of New York found the policy unconstitutional. *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013). Civilian complaints of illegal stops were not available to the public, N.Y.C.R.L. § 50-a (Mckinney 1981) (repealed 2020), and rarely resulted in discipline. *Floyd*, 959 F. Supp. at 561 ("Discipline was spotty or nonexistent."). The harms of the stop-and-frisk years were not limited to an affront to democratic and humanitarian ideals but included devastating mental health impacts for the population targeted. Amanda Geller, Jeffrey Fagan, et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. PUB. HEALTH 2321 (2014).

The New York State legislature repealed New York Civil Rights Law §50-a in June 2020, allowing for the release of a subset of police discipline data,<sup>16</sup> and in April 2021, the Second Circuit struck down a police union lawsuit challenging the repeal.<sup>17</sup> New York City has since released some additional data, but the full scope of disclosure remains to be seen.<sup>18</sup>

Using the data first made public in 2020, this empirical Note contributes to the project of transparency by illuminating a failure of one arm of the NYPD disciplinary system, the Civilian Complaint Review Board (“CCRB”). Specifically, this Note presents the first contemporary study of racial disparities in NYPD discipline and argues that the findings constitute an additional justification for greater police misconduct and discipline transparency in New York and across the country.

Part I of this Note discusses the statutory framework for police disciplinary discretion in New York City, the influence of police unions, and the union and NYPD’s historical tension with officers of color and hostility towards civil rights. It then outlines the history and procedures of the CCRB system, highlighting the CCRB’s lack of independent power. These racial tensions give rise to hypotheses about racial disparities in discipline, while the CCRB’s complex procedures inform the interpretation of the data.

Part II describes the author’s methodology for exploring racial biases within the CCRB disciplinary process. First, the author tested whether the NYPD was less likely to impose the least severe type of discipline on officers of color compared with white officers (Hypothesis 1).<sup>19</sup> Second, the author explored whether any racial differences in discipline could be explained by the CCRB’s initial complaint recommendations, both by testing whether racial differences in ultimate discipline can be explained by initial CCRB recommendations for low penalties (Hypothesis 2), as well as testing whether there are racial differences in the NYPD’s departure from CCRB recommendations in favor of lower penalties (Hypothesis 3). Part III describes the results.

Finally, Part IV discusses how this Note’s empirical findings strengthen arguments for greater police transparency and how they should inform efforts to increase transparency. Transparency initiatives that reveal

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16. See *infra* Part II.

17. See *Uniformed Fire Officers Ass’n v. De Blasio*, 846 F. App’x 25 (2d Cir. 2021).

18. Ashley Southall, *N.Y.P.D. Releases Secret Misconduct Records After Repeal of Shield Laws*, N.Y. TIMES (Mar. 8, 2021), <https://www.nytimes.com/2021/03/08/nyregion/nypd-discipline-records.html> [<https://perma.cc/5WM9-NXML>]; see also *infra* Part IV.A (discussing the partial release of records by the NYPD).

19. Only 158 complaints (about 3%) in the regression dataset received penalties more severe than the loss of 10 vacation days. See *infra* Table 1.

significant abuse and discrimination can encourage participation in reform discourse and shift public opinion towards police abolition.

## I. NYPD Disciplinary Discretion, Police Unions, and the CCRB System

### A. NYPD Disciplinary Discretion and New York Law

The NYPD's total discretion over the initiation of discipline and imposition of penalties is written into the New York City Code and Charter. Specifically, the Police Commissioner, a mayoral appointee who heads the NYPD, maintains final authority over all disciplinary decisions.<sup>20</sup> Section 434(a) of the New York City Charter states, "[t]he commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department,"<sup>21</sup> and Section 14-115(a) of the Administrative Code states, "[t]he commissioner shall have power, in his or her discretion . . . to punish the offending party."<sup>22</sup>

The Police Commissioner's discretion extends not only to the initiation of discipline and ultimate penalties, but to procedure as well, creating a completely closed circuit of discipline.<sup>23</sup> The New York City Administrative Code 14-115(b) states that administrative charges against officers must be "heard and investigated by the commissioner or one of his or her deputies."<sup>24</sup> A New York state court has interpreted this to mean that only employees of the Police Commissioner—NYPD employees—may preside over police disciplinary hearings.<sup>25</sup>

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20. The current Police Commissioner, like previous commissioners, had years of experience as a high-ranking non-civilian NYPD employee before he was appointed in 2019. See *Police Commissioner*, N.Y.C. POLICE DEP'T, <https://www1.nyc.gov/site/nypd/about/leadership/commissioner.page> [<https://perma.cc/7726-XC27>].

21. N.Y. CITY CHARTER § 434(a).

22. N.Y. CITY ADMIN. CODE § 14-115(a).

23. The City has made an exception for CCRB prosecutorial power. See *infra* Part I.D.

24. N.Y. CITY ADMIN. CODE § 14-115(b).

25. In *Lynch v. Giuliani*, the court found that the Police Commissioner could not deputize Office of Trials and Administrative Hearings ("OATH") to hear cases that could result in an officer's termination, because OATH judges are not law enforcement employees. *Lynch v. Giuliani*, 755 N.Y.S.2d 6, 11 (App. Div. 1st Dept. 2003). A New York state law (N.Y. UNCONSOL. LAW § 891 (McKinney 2021)), which constrains disciplinary power to the Police Commissioner's "deput[ies] and other employee[s] . . . plainly limits the Commissioner's power to delegate the task of presiding over such hearings to employees of his own department." *Lynch*, 755 N.Y.S.2d at 14. Read together with N.Y. CITY ADMIN. CODE § 14-115(b), which concerns *all* police disciplinary hearings, N.Y. UNCONSOL.

Thus, any path to meaningful external oversight of NYPD officer discipline and terminations would involve substantial revisions to New York law. While New York City police unions cannot collectively bargain over discipline,<sup>26</sup> they exert enormous political influence.<sup>27</sup> As discussed in the following Section, police unions in New York City and elsewhere have aggressively thwarted many attempts at discipline reform.

### B. The Influence of Police Unions

During the 1960s and 1970s, both courts and the public called for police reform across the nation. Landmark Supreme Court cases *Mapp v. Ohio*<sup>28</sup> and *Miranda v. Arizona*<sup>29</sup> imposed checks on unconstitutional searches and seizures and interrogation practices, as civil rights activists demanded police reform as an integral component of racial justice.<sup>30</sup>

At the same time that public attitudes towards racial justice were changing and affected communities were gaining power, an oppositional process was building within police departments.<sup>31</sup> National modern police union culture, which includes a “reactionary vision of the criminal system and race relations in the United States,”<sup>32</sup> hostility towards police discipline,

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LAW § 891 prevents the Police Commissioner from deputizing OATH judges or other non-employees to preside over *any* police disciplinary hearings, regardless of whether they may result in termination. *Lynch*, 755 N.Y.S.2d at 14.

26. See *Matter of Patrolmen's Benevolent Ass'n of City of N.Y., Inc. v. N.Y. State Pub. Emp't Rels. Bd.*, 848 N.E.2d 448, 448 (N.Y. 2006) (holding that police may not collectively bargain over discipline where the legislature has already expressly assigned disciplinary authority to officials); see also *Montella v. Bratton*, 713 N.E.2d 406, 409 (N.Y. 1999):

[T]he Legislature determined to 'leave the disciplining of police officers, including the right to determine guilt or innocence of breach of disciplinary rules and the penalty to be imposed upon conviction, to the discretion of the Police Commissioner, subject, of course, to review by the courts pursuant to CPLR article 78.

(quoting *City of N.Y. v. MacDonald*, 201 A.D.2d 258, 259 (N.Y. App. Div. 1st Dept. 1994)).

27. See *infra* Part I.B.

28. *Mapp v. Ohio*, 367 U.S. 643, 685 (1961) (holding inadmissible evidence seized during an unconstitutional search of defendant's home).

29. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (holding that an arrestee must be informed of the right to remain silent and the right to an attorney before interrogation).

30. Katherine J. Bies, *Let the Sunshine in: Illuminating the Powerful Role Police Unions Play in Shielding Officer Misconduct*, 28 STAN. L. & POL'Y REV. 109, 121 (2017).

31. *Id.*

32. Benjamin Levin, *What's Wrong with Police Unions?* 120 COLUM. L. REV. 1330, 1346 (2020).

oversight, and transparency, and intense political involvement,<sup>33</sup> developed as backlash to the Civil Rights Movement.<sup>34</sup> Today, police unions exert a major influence on policing nationwide.<sup>35</sup>

In New York City, the Police Benevolent Association (“PBA”)—the largest police union in the country<sup>36</sup>—emerged as a powerful political force with its successful 1966 campaign against the addition of civilians to the CCRB.<sup>37</sup> In the years since, it has continued to advocate against legislation advancing civil rights, from a 1970s battle against women patrol officers<sup>38</sup> to more recently opposing restrictions on chokeholds.<sup>39</sup>

Unsurprisingly, given the origins of the U.S. police force in the slave patrol,<sup>40</sup> the reactionary response of police to the Civil Rights Movement, and continuing violence by the police against communities of color,<sup>41</sup> Black

33. Samuel Walker, *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*, 9 POLICE PRAC. & RSCH. 95, 105–06 (2008).

34. *Id.* at 105; see also Bies, *supra* note 30, at 121 (explaining the relationship between the Civil Rights Movement and modern police unions).

35. Walker, *supra* note 33, at 95.

36. *Who We Are*, NYCPBA, <https://www.nycpba.org/about-the-pba/who-we-are/> [<https://perma.cc/9HLZ-YEHA>].

37. Matthew Vaz, *How Police Unions Got Their Power: The Rise of the PBA and Lack of Accountability in the NYPD*, N.Y. DAILY NEWS (June 13, 2020), <https://www.nydailynews.com/opinion/ny-oped-how-police-unions-got-their-power-20200613-jgqaeq714bhvgixxxx3psx434-story.html> [<https://perma.cc/Z73F-3DRS>]; see *infra* Part I.D (describing the formation and development of the CCRB, including the PBA’s successful efforts to defeat a referendum that would have increased the number of civilians on the Board).

38. *Id.*

39. Luis Ferré-Sadurní et al., *Defying Police Unions, New York Lawmakers Ban Chokeholds*, N.Y. TIMES (June 8, 2020), <https://www.nytimes.com/2020/06/08/nyregion/floyd-protests-police-reform.html> [<https://perma.cc/82JF-KLLE>].

40. See, e.g., Dorothy Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1, 20–29 (2019) (explaining the origins of police forces from slave patrols); Amna A. Akbar, *Toward a Radical Reimagination of Law*, 93 N.Y.U. L. REV. 440, 449 (2018) (explaining how scholars have long tied police forces to their origins in slavery).

41. In New York, police kill Black people at nearly eight times the rate that they kill white people. William Finnegan, *How Police Unions Fight Reform*, NEW YORKER (July 27, 2020), <https://www.newyorker.com/magazine/2020/08/03/how-police-unions-fight-reform> [<https://perma.cc/2VMA-XJ86>]. Abolitionist scholars posit that police violence is an intentional feature rather than incidental effect of the U.S. police system. See Roberts, *supra* note 40, at 4 (“[C]arceral law enforcement — police, prisons, and the death penalty — can be traced back to slavery and the white supremacist regime that replaced slavery after white terror nullified Reconstruction. Criminal punishment has been instrumental in reinstating the subjugated status of black people and preserving a racial capitalist power structure.”); see also Brandon Hasbrouck, *Abolishing Racist Policing with the Thirteenth Amendment*, 68 UCLA L. REV. DISC. 200, 202 (2020) (“[T]he institution of policing was designed to protect and serve the racial hierarchy . . .”).



officers have a complex relationship with the PBA and dominant NYPD culture.<sup>42</sup> When the PBA launched a racially charged campaign against the CCRB in the 1960s, a Black fraternal police organization called the Guardians Association sued for a refund of their members' dues.<sup>43</sup> In 1976, an off-duty officer shot and killed Randolph Evans, a Black 15-year-old, in Brooklyn.<sup>44</sup> The PBA paid for the officer's legal defense and bail, and thousands of Black officers moved to withdraw from the union.<sup>45</sup>

When the PBA endorsed Donald Trump in 2020, many Black and Latinx officers said they did not feel represented by the union that ostensibly protects their interests.<sup>46</sup> The racial makeup of NYPD and PBA leadership accords with this sentiment—although officers of color have diversified the ranks of the NYPD over the past few decades, PBA and NYPD leadership have remained overwhelmingly white.<sup>47</sup> Officers of color today make up half of the department,<sup>48</sup> but almost 90% of union leaders are white and most are politically conservative.<sup>49</sup> As discussed in the following Section and in Part III, the PBA's opposition to discipline transparency and oversight may also work against the interests of Black officers and other officers of color.

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42. See Finnegan, *supra* note 41 (describing the recent history of the PBA and its resistance to reform); see also Walker, *supra* note 33, at 104 (stating the difference in attitudes between white officers and their Black colleagues); Jake Offenhartz, *Black NYPD Officers Say Union's Trump Endorsement Takes Police To 'A Dark Place,'* GOTHAMIST (Sept. 2, 2020), <https://gothamist.com/news/black-nypd-officers-say-unions-trump-endorsement-takes-police-dark-place> [<https://perma.cc/WEZ4-9UWD>] (describing the reactions of some officers of color to the PBA endorsement of Donald Trump).

43. The Guardians have historically dissented from PBA opposition to civilian oversight. See Finnegan, *supra* note 41; see also *infra* Part I.D (discussing the Guardians' history of opposition to the PBA).

44. Max H. Seigel, *Boy, 15, Shot to Death Point-Blank; Officer Arrested in East New York*, N.Y. TIMES (Nov. 27, 1976), <https://www.nytimes.com/1976/11/27/archives/boy-15-shot-to-death-pointblank-officer-arrested-in-east-new-york.html> [<https://perma.cc/46DM-UXKH>].

45. *Id.*; see also Vaz, *supra* note 37 (explaining that the officer was ultimately acquitted on a temporary insanity defense).

46. Alan Feur, *How New York City's Police Unions Embraced Trump*, N.Y. TIMES (Oct. 5, 2021), <https://www.nytimes.com/2020/09/14/nyregion/ny-police-unions-racial-disparity-trump.html> [<https://perma.cc/WZ93-9J3N>] (“Many Black and Hispanic officers said they did not feel represented by their unions, a sense of disconnection that was heightened by the P.B.A.’s endorsement.”).

47. Finnegan, *supra* note 41.

48. According to the CCRB, of active NYPD officers, “30% are Hispanic, 15% are Black, 10% are Asian and less than 1% are American Indian.” *Current NYPD Members of Service*, CCRB, <https://www1.nyc.gov/site/ccrb/policy/data-transparency-initiative-mos.page> [<https://perma.cc/2T6K-S26V>].

49. Feur, *supra* note 46.

### C. The NYPD's History of Discrimination

Consistent with the NYPD's external-facing politics, empirical evidence suggests that its racial bias extends to its treatment of its own officers. In 2005, Criminology Professor James Fyfe published a seminal study of "career-ending" NYPD misconduct.<sup>50</sup> Fyfe's analysis compared the personnel files and histories of the more than 1,500 officers who were dismissed from the NYPD for misconduct from the mid-1970s to the mid-1990s to a stratified random sample of their contemporaries.<sup>51</sup> Fyfe found that after controlling for other factors, the strongest predictor of involuntary separation from the NYPD was whether the officer was Black;<sup>52</sup> Black officers were more than three times as likely to be terminated for on- or off-duty misconduct as white officers were.<sup>53</sup>

Empirical evidence was also used in a lawsuit alleging racial discrimination by the NYPD. In 1999, the Latino Officers Association, a fraternal police organization, filed an employment discrimination class action against the NYPD.<sup>54</sup> Subsequently, the Southern District of New York ("SDNY") certified a class of Black and Latinx NYPD officers.<sup>55</sup> The lawsuit alleged a hostile work environment, disparate disciplinary treatment, and retaliation.<sup>56</sup>

Specifically, the complaint described a culture of racial hostility within the NYPD, noting a prevalence of racist graffiti and racial slurs.<sup>57</sup> The complaint also presented several studies of NYPD discipline concluding that Latinx and Black officers had faced formal and informal disciplinary proceedings more often than white officers and had received harsher discipline for the same violations.<sup>58</sup> One 1995 study was limited to the 94th precinct, another from 1998 relied upon "assorted data" of sergeant discipline, and a third used NYPD's internal Case Analysis Tracking System database, which contained all disciplinary actions against NYPD officers since 1995 in which officers received administrative charges.<sup>59</sup> All three

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50. JAMES J. FYFE & ROBERT KANE, *BAD COPS: A STUDY OF CAREER-ENDING MISCONDUCT AMONG NEW YORK CITY POLICE OFFICERS* (2005).

51. *Id.* at xiii.

52. Specifically, "[B]lack officers were 3.27 times more likely than whites to be involuntarily separated." *Id.* at xxv-xxvi.

53. *Id.*

54. See *Latino Officers Ass'n v. City of New York*, 209 F.R.D. 79 (S.D.N.Y. 2002).

55. *Id.* at 93-94.

56. *Id.* at 83.

57. *Id.* at 82.

58. *Id.* at 83.

59. *Id.* at 83-84.

studies found profound racial disparities.<sup>60</sup> Black and Latinx officers were far more likely to be terminated and far less likely to have discipline reduced to a Command Discipline compared with white officers.<sup>61</sup>

Finally, the complaint alleged that the NYPD retaliated against Black and Latinx officers who raised concerns about racial hostility and discipline disparities.<sup>62</sup> This retaliation took the form of aggressive interrogations, as well as slander by the NYPD when the officers sought other employment.<sup>63</sup>

In 2004, the class reached a settlement with the NYPD,<sup>64</sup> which was later incorporated into a court order.<sup>65</sup> The settlement included \$26.8 million in damages and a structural injunction against further discrimination by the NYPD.<sup>66</sup> Among other provisions, it required the NYPD to establish a review panel to track and guard against discriminatory discipline and retaliation against Black and Latinx officers and an advisory committee to address discrimination concerns.<sup>67</sup> Notably, the settlement did not create any

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60. *Latino Officers Ass'n*, 209 F.R.D. at 83–84 (citing study that found that disparities exceeded two standard deviations for Latinx and Black officers compared with white officers).

61. *Id.* at 84. The court noted:

[i]ndeed, by relying on these statistics at the certification stage, the Court expresses no opinion on the admissibility or probative value of these studies. Indeed, even assuming they are admissible, it is not clear that they are sufficient to meet plaintiffs' burden of production in establishing a prima facie case.

*Id.* at 83; see also Part I.D (explaining Command Discipline).

62. *Latino Officers Ass'n*, 209 F.R.D. at 85–86.

63. *Id.* at 86.

64. Emily Jane Goodman, *City Settles Discrimination Lawsuit by Black and Latino Officers*, GOTHAM GAZETTE (Feb. 20, 2004), <https://www.gothamgazette.com/criminal-justice/2318-city-settles-discrimination-lawsuit-by-black-and-latino-officers> [<https://perma.cc/8WWQ-RWJ2>].

65. “The Court in this case incorporated all the terms of the Agreement into its judgment and order. In consequence, noncompliance with any of the terms of the Agreement could constitute a violation of a court order.” *Latino Officers Ass'n v. City of New York*, 519 F. Supp. 2d 438, 441, 443 (S.D.N.Y. 2007).

66. Goodman, *supra* note 64.

67. *Id.* As the Second Circuit later summarized, the settlement required the NYPD to:

[1] establish a ‘Disciplinary Review Unit’ (‘DRU’) to track and analyze whether minority members of the NYPD were being treated in a discriminatory manner when disciplined, [2] establish an ‘Advisory Committee’ to address employment discrimination and retaliation concerns, [3] develop a ‘Know Your Rights’ guide to the NYPD discipline system, and [4] enhance existing databases and create new databases to capture, and report to plaintiffs on a specified schedule,

external reporting or transparency mechanisms, other than to the plaintiffs.<sup>68</sup>

In the years since the lawsuit, police records secrecy has prevented researchers and activists from gaining a full picture of the discrimination faced by Black officers and other officers of color in the NYPD, but contemporary findings on other police departments suggest disparate treatment of Black officers. For instance, a Boston Globe analysis of the Boston Police Department found that in the past decade, Black officers have accounted for nearly half of suspensions and terminations, despite comprising only 22% of the department.<sup>69</sup> White officers, on the other hand, were significantly more likely than Black officers to receive departmental awards.<sup>70</sup> In Chicago, Black officers are punished at twice the rate of white officers.<sup>71</sup> The release of NYPD data following the repeal of § 50-a provided a new opportunity to uncover similar patterns in the NYPD.

#### D. The Civilian Complaint Review Board

NYPD officers are disciplined through several distinct pathways.<sup>72</sup> Most of these pathways occur entirely within the NYPD.<sup>73</sup> An officer's commander typically has independent disciplinary power regarding minor

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data thought to be relevant to analyzing whether or not discrimination was continuing in the NYPD discipline system.

Latino Officers Ass'n City of N.Y., Inc. v. City of New York, 558 F.3d 159, 162 (2d Cir. 2009).

68. The settlement required the NYPD to "enhance existing databases and create new databases to capture, and report to plaintiffs on a specified schedule, data thought to be relevant to analyzing whether or not discrimination was continuing in the NYPD discipline system." *Latino Officers Ass'n*, 519 F. Supp. 2d at 441. The plaintiffs later moved to hold the NYPD in contempt of the settlement, but the court found that the NYPD's violations of the settlement agreement did not meet the high bar for contempt. *See Latino Officers Ass'n*, 519 F. Supp. 2d at 441, 447-48, *aff'd*, 558 F.3d 159 (2d Cir. 2009) (holding that the NYPD's reporting failures did not rise to the level of contempt, nor was contempt the proper remedy for alleged continued discrimination).

69. Andrew Ryan & Evan Allen, *Within Boston Police, More Often White Officers Win Awards and Black Officers Get Punished*, BOS. GLOBE (Oct. 10, 2020), <https://www.bostonglobe.com/2020/10/10/metro/within-boston-police-more-often-white-officers-win-awards-black-officers-get-punished/> (on file with the *Columbia Human Rights Law Review*).

70. *See id.* (finding that white officers received five times as many awards as Black officers, even though there were only three times as many white officers).

71. Timothy Williams, *Chicago Rarely Penalizes Officers for Complaints, Data Shows*, N.Y. TIMES (Nov. 18, 2015), <https://www.nytimes.com/2015/11/19/us/few-complaints-against-chicago-police-result-in-discipline-data-shows.html> [https://perma.cc/C3EG-C8EW].

72. WHITE, *supra* note 8, at 7-9.

73. *Id.*

offenses not involving a civilian complaint, such as loss of departmental property like police shields.<sup>74</sup> The Internal Affairs Bureau (“IAB”) investigates the majority of serious misconduct, including some conduct it learns of through civilian complaints.<sup>75</sup> The Force Investigation Division (“FID”) within the NYPD investigates all officer shootings and civilian deaths in custody.<sup>76</sup> Any administrative trials resulting from IAB or FID investigations occur entirely within the NYPD with no external oversight.<sup>77</sup>

The CCRB process, on the other hand, deals only with misconduct complaints submitted by civilians and since its founding has gained some independence from the NYPD.<sup>78</sup> At a high-level, the CCRB investigates complaints and makes broad disciplinary recommendations.<sup>79</sup> For the most serious misconduct,<sup>80</sup> the CCRB also serves as prosecutor at administrative trials.<sup>81</sup> However, the CCRB has no independent disciplinary power. The Police Commissioner can ignore CCRB recommendations at each and every stage of the process.<sup>82</sup>

The NYPD formed the CCRB in the mid-20<sup>th</sup> century in response to pressure from civil rights activists.<sup>83</sup> The original CCRB sat within the NYPD and consisted of three Deputy Police Commissioners who investigated

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74. *Id.* at 8.

75. *Id.* at 9.

76. *Id.*

77. *Id.* at 9–16. External agencies such as the Office of the Inspector General have some oversight of NYPD activities in general, but do not involve themselves in individual disciplinary processes. *Id.* at 14–16.

78. *About CCRB*, NYC CIVILIAN COMPLAINT REVIEW BOARD, <https://www1.nyc.gov/site/ccrb/about/about.page> [<https://perma.cc/UXX5-XDLK>].

79. *Id.*

80. The CCRB has not set forth concrete standards for what constitutes the most severe misconduct. *See infra* note 119 (discussing NYPD categorizations of misconduct, inconsistencies in the application of different penalties, and the lack of public CCRB guidance on determining severity).

81. RULES OF THE CITY OF N.Y. POLICE OFFICERS (38 RCNY) § 15-2; *see also* John Del Signore, *CCRB Gets Power to Actually Prosecute NYPD Officers*, GOTHAMIST (Mar. 28, 2012), <https://gothamist.com/news/ccrb-gets-power-to-actually-prosecute-nypd-officers> [<https://perma.cc/5YF7-6VXH>] (discussing the grant of prosecutorial power to the CCRB); *see also* Civilian Complaint Rev. Bd. & Police Dep’t of the City of N.Y., *Memorandum of Understanding Between the Civilian Complaint Review Board and the Police Department of the City of New York Concerning the Processes of Substantiated Complaints* (Apr. 2, 2012), [https://www1.nyc.gov/assets/ccrb/downloads/pdf/about\\_pdf/apu\\_mou.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf) [<https://perma.cc/36FM-27QU>] (agreeing that the CCRB will prosecute complaints for which the NYPD files Charges and Specifications, with some exceptions).

82. WHITE, *supra* note 8, at 21–24.

83. *History*, NYC CIVILIAN COMPLAINT REV. BD., <https://www1.nyc.gov/site/ccrb/about/history.page> [<https://perma.cc/W7L3-FBR6>].

civilian complaints of misconduct.<sup>84</sup> During the Civil Rights Movement, New York City Mayor John Lindsay appointed four civilians to the board.<sup>85</sup> In response, the PBA promptly launched a racially charged campaign to stoke public fear of civilian oversight.<sup>86</sup> John Cassesse, then-president of the PBA, announced, “I am sick and tired of giving in to minority groups, with their whims and their gripes and shouting. Any review board with civilians on it is detrimental to the operations of the police department.”<sup>87</sup> As a result of the campaign, the PBA’s ballot measure barring civilian participation in the CCRB won an overwhelming majority of the 1966 public vote.<sup>88</sup>

Two decades later, in 1986, the New York City Council enacted legislation to add civilians to the Board, and a year later, the CCRB also hired its first civilian investigators.<sup>89</sup> Finally, in 1993, the New York City Council amended the New York City Charter to replace the NYPD internal CCRB with an entirely civilian agency, free of any current police officers.<sup>90</sup> Today, the board consists of thirteen members: five appointed by the New York City Council, five by the Mayor, three by the Police Commissioner, one by the Public Advocate, and the Chair jointly by the Mayor and City Council.<sup>91</sup> Even as of 2021, three of CCRB’s “civilian” board members have a combined seventy years of previous experience as NYPD officers.<sup>92</sup>

Civilians can submit complaints against officers on the CCRB’s website, by calling the CCRB’s hotline, or in-person at the CCRB’s office.<sup>93</sup> The CCRB investigates four categories of complaints: excessive or unreasonable

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84. *Id.*

85. *Id.*

86. *Id.*; see also *P.B.A Head Denies Charge of Racism*, N.Y. TIMES (July 18, 1966), <https://timesmachine.nytimes.com/timesmachine/1966/07/18/83227355.html?pageNumber=54> [<https://perma.cc/SQ73-VDE4>] (a contemporary article suggesting that the union’s actions were racially motivated).

87. Ben Houtman, *Police Corruption and the Civilian Review Board*, WNYC (Mar. 3, 2016), <https://www.wnyc.org/story/john-lindsays-civilian-review-board/> [<https://perma.cc/986F-E5W7>].

88. *History*, NYC CIVILIAN COMPLAINT REV. BD., <https://www1.nyc.gov/site/ccrb/about/history.page> [<https://perma.cc/W7L3-FBR6>].

89. *Id.*

90. U.S. COMM’N ON CIV. RTS., POLICE PRACTICES AND CIVIL RIGHTS IN NEW YORK CITY Chapter 4, MONITORING OF CIVILIAN COMPLAINTS (2000), <https://www.usccr.gov/pubs/nypolice/ch4.htm> [<https://perma.cc/HJ62-4U6A>].

91. *Members*, NYC CIVILIAN COMPLAINT REV. BD., <https://www1.nyc.gov/site/ccrb/about/board/members.page> [<https://perma.cc/T4HG-CZ5G>].

92. *Id.*

93. *File a Complaint*, NYC CIVILIAN COMPLAINT REV. BD., <https://www1.nyc.gov/site/ccrb/complaints/file-complaint.page> [<https://perma.cc/VDJ2-DGUC>].

force, abuse of authority, discourtesy, and offensive language.<sup>94</sup> If a complaint falls outside of these categories, such as a complaint that alleges corruption, the CCRB passes it to the NYPD.<sup>95</sup>

The NYPD is legally required to cooperate with CCRB investigations. Since 1993, the CCRB has had subpoena power over the NYPD and other city agencies.<sup>96</sup> If investigators need certain materials, a majority of the CCRB can vote to send a subpoena request.<sup>97</sup> The department must produce requested disciplinary and incident-related records, and officers must appear for interviews and answer questions truthfully.<sup>98</sup>

In practice, however, the NYPD routinely stonewalls CCRB investigations. A 2020 ProPublica report revealed several types of systematic obstruction by the NYPD.<sup>99</sup> For instance, the NYPD often redacts or withholds documents requested by the CCRB, depriving it of information about the incident and potential witnesses.<sup>100</sup> In addition, during the COVID-19 pandemic, the NYPD allowed officers to refuse CCRB remote interviews, in direct opposition to a provision of the New York City Charter.<sup>101</sup> Perhaps most critically, the NYPD frequently refuses to turn over police body camera footage, often a crucial piece of evidence in investigating a complaint.<sup>102</sup>

After the investigation is complete, a panel of three CCRB board members consisting of one mayoral appointee, one City Council appointee, and one Police Commissioner appointee reviews the investigatory file.<sup>103</sup> The CCRB uses a preponderance of the evidence standard in evaluating a

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94. *Frequently Asked Questions*, NYC CIVILIAN COMPLAINT REV. BD., <https://www1.nyc.gov/site/ccrb/about/frequently-asked-questions-faq.page> [<https://perma.cc/3N9J-4RA2>].

95. *File a Complaint*, *supra* note 93.

96. N.Y. CITY CHARTER § 440.

97. *Id.* § 440(c)3.

98. *Id.* Officers are entitled to counsel at interviews. RULES OF THE CITY OF N.Y. POLICE OFFICERS (38 RCNY) § 1-24.

99. Eric Umansky & Molly Simon, *The NYPD Is Withholding Evidence from Investigations into Police Abuse*, PROPUBLICA (Aug. 17, 2020), <https://www.propublica.org/article/the-nypd-is-withholding-evidence-from-investigations-into-police-abuse> [<https://perma.cc/9D8J-J8U8>].

100. *Id.*

101. RULES OF THE CITY OF N.Y. POLICE OFFICERS (38 RCNY) § 1-23.

102. Umansky & Simon, *supra* note 99.

103. *Case Outcomes*, NYC CIVILIAN COMPLAINT REV. BD., <https://www1.nyc.gov/site/ccrb/investigations/case-outcomes.page> [<https://perma.cc/Z8A5-83DH>]. The complainant can also request “mediation,” in which case the CCRB does not investigate the complaint or make a recommendation, and the officer receives no discipline. *See Mediation*, NYC CIVILIAN COMPLAINT REV. BD., <https://www1.nyc.gov/site/ccrb/mediation/mediation.page> [<https://perma.cc/83X8-Q32Q>].

complaint and assigns each allegation in the complaint a disposition.<sup>104</sup> It deems an allegation “unfounded” if it finds the events alleged did not occur, “exonerated” if it finds the events alleged occurred but do not constitute misconduct (i.e., were not “improper”), “unsubstantiated” if there is not enough evidence to find whether or not the events alleged occurred, and “substantiated” if it finds the events alleged occurred and constitute misconduct.<sup>105</sup> Obstruction contributes to an extremely low CCRB substantiation rate.<sup>106</sup> According to a Gothamist investigation, the CCRB substantiated fewer than 17% of all complaints from 2010 to 2019.<sup>107</sup> Its final designation for the majority of complaints was “Unsubstantiated.”<sup>108</sup>

The CCRB also contributes to obstruction. Board members have admitted to recommending lower penalties in an apparently unsuccessful bid to convince the NYPD to cooperate with CCRB recommendations.<sup>109</sup> And even at the substantiation stage, Board members have thwarted police accountability. An internal CCRB analysis found that between 2014 and 2020, the Board overturned hundreds of allegations substantiated by CCRB investigators—more than 11% of allegations that the investigators substantiated during this period.<sup>110</sup> In particular, two Police Commissioner appointees voted to overturn substantiation approximately half the time.<sup>111</sup> Both were former police officers.<sup>112</sup> In January 2021, four former CCRB employees, including investigators and a policy director, brought a lawsuit

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104. RULES OF THE CITY OF N.Y. POLICE OFFICERS (38 RCNY) § 1-33.

105. *Id.* § 1-33(d).

106. David Cruz, *Why the Majority of NYPD Misconduct Complaints End Up “Unsubstantiated,”* GOTHAMIST (Aug. 18, 2020), <https://gothamist.com/news/why-the-majority-of-nypd-misconduct-complaints-end-up-unsubstantiated> [<https://perma.cc/5PVC-TWE5>] (describing the NYPD’s withholding of witness information, injury reports, and body camera footage from CCRB investigators).

107. *Id.*

108. *Id.*

109. Dana Rubinstein & Mihir Zaveri, *Maya Wiley Takes Credit for Daniel Pantaleo’s Firing. Is that Justified?* N.Y. TIMES (June 22, 2021), <https://www.nytimes.com/2021/06/17/nyregion/maya-wiley-ccrb-eric-garner.html> [<https://perma.cc/HA6V-XU5Z>].

110. Yoav Gonen, *NYPD Oversight Board Overturned Hundreds of its Own Police Misconduct Findings*, THE CITY (May 4, 2021), <https://www.thecity.nyc/2021/5/4/22419968/nypd-oversight-board-ccrb-overturned-cop-misconduct-findings> [<https://perma.cc/L2SB-MSMB>].

111. *Id.*

112. *Id.*



against the agency, alleging they were fired for raising concerns about obstruction by the NYPD and Board members.<sup>113</sup>

If at least one allegation in a complaint is substantiated, the CCRB may formally recommend disciplinary action.<sup>114</sup> For misconduct it considers least serious, the CCRB recommends that the officer's commander provide her with instructions or that she receive training from the Police Academy or NYPD Legal Bureau.<sup>115</sup> For misconduct it considers moderately serious, the CCRB recommends that the officer's command impose discipline.<sup>116</sup> Command Discipline A may result in penalties ranging from training to the loss of up to five vacation days, and Command Discipline B may result in the loss of up to ten vacation days.<sup>117</sup> The NYPD Patrol Guide instructs commanding officers to expunge Command Discipline A from their subordinates' records after one year and specifies that Command Discipline B can be sealed at an officer's request after three years.<sup>118</sup> For misconduct it considers most serious, the CCRB recommends Charges and Specifications.<sup>119</sup>

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113. Yasmeen Khan, *Former Employees of Police Watchdog Agency Say They Were Fired for Flagging Problems With Investigations*, WNYC (Jan. 27, 2021), <https://gothamist.com/news/former-employees-police-watchdog-agency-say-they-were-fired-flagging-problems-investigations> [<https://perma.cc/SE4R-NS97>].

114. RULES OF CITY OF N.Y. POLICE OFFICERS (38 RCNY) § 1-33(d).

115. CIVILIAN COMPLAINT REV. BD., EXECUTIVE DIRECTOR'S MONTHLY REPORT JUNE 2020 (STATISTICS FOR MAY 2020), at 22 (2020) [hereinafter STATISTICS FOR MAY 2020], [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/monthly\\_stats/2020/200610\\_monthlystats.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2020/200610_monthlystats.pdf) [<https://perma.cc/L6KY-6NZZ>].

116. *Id.*

117. *Id.*

118. *Hearing on the New York City Police Department's Disciplinary Practices Before the Pub. Safety Comm. of the N.Y.C. Council*, 7–8 (2019) (Testimony of Nahal Zamani, Advocacy Program Manager for the Center for Constitutional Rights), [https://www.changethenypd.org/sites/default/files/docs/ccr\\_nzamani\\_nypdhearingtestimony-20190207.pdf](https://www.changethenypd.org/sites/default/files/docs/ccr_nzamani_nypdhearingtestimony-20190207.pdf) [<https://perma.cc/4H9V-T27B>].

119. CIVILIAN COMPLAINT REV. BD., EXECUTIVE DIRECTOR'S MONTHLY REPORT JANUARY 2020 (STATISTICS FOR DECEMBER 2019), at 22 (2020) [hereinafter STATISTICS FOR DECEMBER 2019], [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/monthly\\_stats/2020/20200108\\_monthlystats.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2020/20200108_monthlystats.pdf) [<https://perma.cc/F8A8-VJPQ>]. As discussed in Part II, legislation has historically sealed details of CCRB complaints—and all other documentation of NYPD misconduct—from the public. There exists no definitive, publicly available authority indicating the criteria for police misconduct the CCRB considers less, more, or most serious. (The NYPD Discipline Matrix, which was developed with the CCRB's input and purports to define presumptive penalties for different misconduct, was created after the adjudication of the complaints in the CCRB COMPLAINT DATABASE. See New York City Police Department, *Disciplinary System Penalty Guidelines*, effective January 15, 2021.) The NYPD Patrol Guides list "Schedule A" and "Schedule B" infractions that

The CCRB's recommendations are non-binding.<sup>120</sup> After making its findings, the CCRB sends its recommendations and findings to the Police Commissioner.<sup>121</sup> The Police Commissioner has complete discretion to depart from these recommendations for any reason, though since 2012 he must explain any departures in writing to the CCRB.<sup>122</sup> If the CCRB recommends Charges and Specifications, it must also send its findings to the Department Advocate's Office (DAO) within the NYPD, which since 2014 has been able to request reconsideration for a lower penalty.<sup>123</sup> Even if the CCRB rejects the request, the Police Commissioner retains final authority over all disciplinary decisions, no matter the circumstances.<sup>124</sup> When the Department chooses not to impose discipline despite the CCRB's recommendation, the case is recorded as "department unable to prosecute" ("DUP").<sup>125</sup>

Originally, the CCRB's role ended at this stage. However, in 2012, against strenuous opposition from the PBA, the CCRB, Police Commissioner, and City Council reached an agreement to extend prosecutorial power to the

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internally give rise to Command Discipline A and B, respectively. N.Y.C. POLICE DEP'T, PATROL GUIDE, Violations Subject to Command Discipline § 206-03. Infractions include loss of departmental property, failure to attend departmental trainings, and other minor misbehavior unrelated to public safety. *Id.* However, the CCRB frequently recommends, and the Police Commissioner frequently metes out, Command Discipline A or B in response to civilian complaints of misconduct such as threats and inappropriate force. *See* CCRB COMPLAINT DATABASE, *supra* note 5.

120. WHITE, *supra* note 8, at 21–24.

121. RULES OF CITY OF N.Y. POLICE OFFICERS (38 RCNY) § 1-33(c).

122. Civilian Complaint Rev. Bd. & Police Dep't of the City of N.Y., *Memorandum of Understanding Between the Civilian Complaint Review Board and the Police Department of the City of New York Concerning the Processes of Substantiated Complaints* (Apr. 2, 2012), [https://www1.nyc.gov/assets/ccrb/downloads/pdf/about\\_pdf/apu\\_mou.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf) [<https://perma.cc/L6KY-6NZT>]. An independent report found that the Police Commissioner failed to provide "meaningful" explanations for frequent departures. WHITE, *supra* note 8, at 27.

123. RULES OF CITY OF N.Y. POLICE OFFICERS (38 RCNY) § 1-36(b). From 2016 to 2018, the Department Advocate's Office ("DAO") sought reconsideration in 14–32% of cases. WHITE, *supra* note 8, at 13.

124. *See id.* at 21 ("[N]o written guidelines inform the Commissioner's exercise of his discretion or set standards for his written explanations").

125. *See* STATISTICS FOR DECEMBER 2019, *supra* note 119, at 32, 34. This designation is a product of NYPD discretion rather than legal barriers that make the department "unable" to impose discipline. While the expiration of the statute of limitations can prevent the department from disciplining an officer against whom the CCRB substantiates misconduct, such complaints receive a separate designation. *See, e.g., id.* at 32 (defining DUP as when the department chooses not to impose discipline despite the recommendations of the Board and displaying "SOL Expired" as a separate outcome category).

CCRB.<sup>126</sup> As a result, if the Police Commissioner agrees to file Charges and Specifications against an officer, the Administrative Prosecution Unit (“APU”) of the CCRB now serves as the officer’s adversary at administrative trials.<sup>127</sup> The Deputy Commissioner of Trials within the NYPD, or one of her deputies, serves as the trier of fact.<sup>128</sup> Importantly, this procedural adjustment did not interfere with the Police Commissioner’s ultimate authority over discipline.<sup>129</sup>

Trial proceedings resemble a bench trial, taking place over one or two days.<sup>130</sup> Officers are typically represented by counsel.<sup>131</sup> Both sides call witnesses and present evidence.<sup>132</sup> At close, the Deputy Commissioner of Trials makes a determination of guilt or innocence on each charge and often a disciplinary recommendation.<sup>133</sup>

Similar to CCRB disciplinary recommendations, the Trial Commissioner’s disciplinary recommendations apply to the entire complaint

126. RULES OF CITY OF N.Y. POLICE OFFICERS (38 RCNY); John Del Signore, *CCRB Gets Power to Actually Prosecute NYPD Officers*, GOTHAMIST (Mar. 28, 2012), <https://gothamist.com/news/ccrb-gets-power-to-actually-prosecute-nypd-officers> [<https://perma.cc/FH79-AW6Y>]; Civilian Complaint Rev. Bd. & Police Dep’t of the City of N.Y., Memorandum of Understanding Between the Civilian Complaint Review Board and the Police Department of the City of New York Concerning the Processes of Substantiated Complaints (Apr. 2, 2012), [https://www1.nyc.gov/assets/ccrb/downloads/pdf/about\\_pdf/apu\\_mou.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf) [<https://perma.cc/HZ9M-MF9Z>].

127. Previously, the DAO served as prosecutor if Charges were filed. Signore, *supra* note 126.

128. WHITE, *supra* note 8, at 13. In limited circumstances, the NYPD may remove cases from CCRB prosecution. Such circumstances include parallel or related criminal charges against the officer or when “in the case of an officer with no disciplinary history or prior substantiated CCRB complaints, based on such officer’s record and disciplinary history the interests of justice would not be served” by CCRB prosecution. NYPD & Civilian Complaint Rev. Bd., *supra* note 126, ¶¶ 2–5; RULES OF CITY OF N.Y. POLICE OFFICERS (38 RCNY) § 1-42(b). These cases are “retained” by the NYPD, see STATISTICS FOR MAY 2020, *supra* note 115, at 32, 34 (2020). But the ultimate outcome is reported to the CCRB. CCRB COMPLAINT DATABASE, *supra* note 5. Additionally, the DAO may determine that the officer is entitled to an expedited trial based on impending retirement or promotion. If the CCRB cannot prosecute the officer on the expedited timeline the DAO deems necessary, the DAO takes control of the case. NYPD & Civilian Complaint Rev. Bd., *supra* note 126, ¶¶ 14–15.

129. WHITE, *supra* note 8, at 14.

130. RULES OF CITY OF N.Y. POLICE OFFICERS (RCNY 38) (outlining the structure and rules for these administrative trials and gives authority to the Deputy Commissioner of Trials).

131. WHITE, *supra* note 8, at 13.

132. *See id.*

133. Alternatively, the APU can negotiate pleas with officers under the supervision of the Trial Commissioner. Like all other CCRB recommendations, these pleas are non-binding suggestions and must be approved by the Police Commissioner. RULES OF CITY OF N.Y. POLICE OFFICERS (RCNY 38) § 1-46(d).

rather than individual charges.<sup>134</sup> In making these determinations, the Deputy Commissioner of Trials consults a database of precedential decisions.<sup>135</sup> The Deputy Commissioner of Trials then sends the case file and recommendation to a committee in the Police Commissioner's office, which makes its own disciplinary recommendation and sends all materials to the Police Commissioner.<sup>136</sup> The Police Commissioner has final authority on what, if any, discipline to impose.<sup>137,138</sup>

Unlike the IAB, the CCRB publishes annual summaries of discipline.<sup>139</sup> These summaries include one- or two-word descriptions of misconduct, the CCRB's recommendations, and NYPD departures from CCRB recommendations.<sup>140</sup> Therefore, the public has had access to information about the NYPD's frequent disregard of CCRB recommendations for years. However, the data released following the repeal of § 50-a contain a wealth of information previously unavailable, including complaint-level information about officer race, along with additional complaint details. These data allow for detailed analysis of racial disparities in discipline as well as overall leniency in discipline, both important to public discourse on policing.

## II. Methodology

This Note tests the hypothesis that officers of color are treated more harshly in the CCRB disciplinary process compared to white officers. The author tested (1) whether the NYPD is less likely to impose the least severe type of discipline on officers of color compared with white officers, (2) whether disparities in discipline are explained by initial CCRB recommendations, and (3) whether the NYPD is less likely to downcharge officers of color compared with white officers.

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134. WHITE, *supra* note 8, at 13.

135. *Id.* at 12.

136. RULES OF CITY OF N.Y. POLICE OFFICERS (RCNY 38) § 1-46(b)-(c).

137. *Id.* § 1-45(a).

138. An officer may challenge the Police Commissioner's disciplinary determination through an Article 78 proceeding. *Montella v. Bratton*, 93 N.Y.2d 424, 430 (1999). The standard of review in such cases is even more stringent than abuse of discretion. The court may not reverse a decision by the Police Commissioner unless it "so disproportionate to the offense as to be shocking to one's sense of fairness." *Trotta v. Ward*, 77 N.Y.2d 827, 828 (1991). *See also*, WHITE, *supra* note 8, at 5 note 11 (citing this caselaw in describing the Police Commissioner's complete authority over disciplinary determinations).

139. *See, e.g.*, STATISTICS FOR DECEMBER 2019, *supra* note 119 (including a breakdown of cases before the CCRB and summary statistics on allegations and recommendations).

140. *See id.* at 35 (summarizing CCRB recommendations and NYPD dispositions for allegations received in December 2019).

### A. Data Sources

The data used in this analysis only became publicly available in the summer of 2020. Although New York Public Officers Law § 84, known as the Freedom of Information Law (“FOIL”), requires New York State and City agencies to disclose most government records to the public upon request,<sup>141</sup> FOIL contained a police disciplinary records carveout, New York Civil Rights Law § 50-a.<sup>142</sup> In response to years of intense public pressure, including grassroots organizing following George Floyd’s murder in the spring of 2020, the New York State legislature repealed New York Civil Rights Law § 50-a in June 2020.<sup>143</sup>

ProPublica and the New York Civil Liberties Union (“NYCLU”) subsequently used FOIL to obtain disciplinary data from the CCRB. The Mayor and the CCRB planned to publish databases of complaints and discipline online.<sup>144</sup> In July, the PBA and other unions filed suit in the SDNY against New York City and the CCRB seeking to enjoin release of records made accessible by the repeal.<sup>145</sup> When the SDNY ruled in favor of the City, the unions appealed to the Second Circuit, which stayed the defendants from releasing additional information pending the appeal.<sup>146</sup> ProPublica and NYCLU, however, were not subject to the Second Circuit’s order and published the data they had already received from the CCRB.<sup>147</sup> In April 2021,

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141. N.Y. PUB. OFF. LAW § 84 (Mckinney 2021); *see generally* COMM ON OPEN GOV’T, 40 YEARS OF FOIL AND THE COMMITTEE ON OPEN GOVERNMENT (2014), <https://www.dos.ny.gov/coog/pdfs/Timeline2014.pdf> [<https://perma.cc/4Q7-TGS6>] (chronicling the caselaw related to FOIL from its passage through 2014).

142. N.Y.C.R.L. § 50-a (Mckinney 1981) (repealed 2020).

143. *See, e.g.*, Luis Ferré-Sadurní & Jesse McKinley, *N.Y. Bans Chokeholds and Approves Other Measures to Restrict Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/nyregion/50a-repeal-police-floyd.html> (describing shifting attitudes toward the police record carveout in New York local and state government after George Floyd’s murder).

144. Erin Durkin, *NYC to Publish Disciplinary Records Online*, POLITICO (June 17, 2020), <https://www.politico.com/states/new-york/albany/story/2020/06/17/nyc-to-publish-police-disciplinary-records-online-1293508> [<https://perma.cc/2AQS-45CY>].

145. *See* Complaint, Uniformed Fire Officers Ass’n v. De Blasio, No. 154982/2020 (N.Y. Sup. Ct. July 14, 2020) (alleging that public disclosure of personnel and disciplinary records violates collective bargaining, due process, and other rights of police officers); *see also* Notice of Removal, Uniformed Fire Officers Ass’n v. De Blasio, No. 154982/2020 (N.Y. Sup. Ct. July 15, 2020) (indicating the removal of the case to SDNY from New York Supreme Court).

146. Order on Motion to Stay, Uniformed Fire Officers Ass’n v. De Blasio, 846 F. App’x 25 (2d Cir. 2020).

147. *See* Derek Willis et al., *The NYPD Files*, PROPUBLICA (July 26, 2020), <https://projects.propublica.org/nypd-ccrb/> [<https://perma.cc/PJ24-4DGH>] (ProPublica

following the defeat of the police unions' lawsuit, NYCLU released a more complete dataset that the author used for this Note.

### 1. Subsetting of Data

The author subset the data to the 5,947 substantiated complaints resulting from incidents that occurred between 2005 and 2019, to exclude the period before the Latino Officers' Association settlement. The dataset was further subset to allegations within those complaints that were substantiated by the CCRB, on the assumption that only substantiated allegations were considered in the determination of penalties for each complaint. In addition, the author removed 305 complaints for which no final penalty determination was reached through the CCRB process due to (1) the expiration of the statute of limitations,<sup>148</sup> (2) the previous adjudication by the IAB,<sup>149</sup> (3) a complaint that was still pending when the data were released, or (4) the officer's death, resignation, or retirement during adjudication.

There were an additional 463 complaints that did not record an ultimate penalty for any substantiated allegation in the complaint. For most of these 463, neither an NYPD disposition nor ultimate penalty was recorded for any substantiated allegation in the complaint, and for others, the NYPD disposition indicated discipline, but the ultimate penalty field did not record the outcome.<sup>150</sup> These complaints were excluded because they did not have the necessary information for determining the value of the dependent

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records published here); *NYPD Misconduct Database*, N.Y.C.L. Union, <https://www.nyclu.org/en/campaigns/nypd-misconduct-database> [https://perma.cc/GB95-N45E] (NYCLU records published here). The unions sought to stay NYCLU from releasing its records on the theory that NYCLU had acted in concert with the CCRB, but the court rejected this argument. *See Uniformed Fire Officers Ass'n v. De Blasio*, 973 F.3d 41, 44 (2d Cir. 2020) (affirming that the court could not stay NYCLU from releasing data).

148. CCRB complaints have an 18-month statute of limitations from the date of the alleged misconduct. N.Y.C.R.L. § 50-a (McKinney 1981) (repealed 2020). NYPD obstruction of CCRB investigations is one factor that may cause the SOL to expire, but others are outside of the NYPD's control, such as the CCRB's failure to investigate in a timely fashion or a civilian's delay in filing a complaint after an incident. Thus, a complaint that resulted in no discipline due to the expiration of the statute of limitations cannot be appropriately attributed to NYPD discretion without additional information not reported in the dataset.

149. Although the dataset includes ultimate discipline for these complaints, it was not reached through the CCRB disciplinary process.

150. In contrast, some NYPD dispositions in the database, such as DUP or not guilty trial findings, indicate that the NYPD found that no penalty should be imposed; such observations consistently do not record a penalty. These observations were not interpreted as containing missing data and were not excluded.

variables in most of the regressions.<sup>151</sup> For analyses that used the CCRB's recommendation as a dependent variable or input to a dependent variable, fifty-eight substantiated complaints for which the CCRB recorded a recommendation of "no recommendation" were excluded. Finally, because the dataset contained only three complaints against Indigenous officers—too few to draw conclusions about disparate treatment—these complaints were also excluded.

### B. Variables and Measures

This Note relies on logistic regressions<sup>152</sup> and augmented inverse propensity weighted estimators ("AIPW estimators")<sup>153</sup> to test the impact of officer race on several metrics of discipline severity. The regressions are clustered by the officer's command unit at the time of the incident or the precinct associated with the incident.<sup>154</sup> There are 261 clusters in regressions using command unit and seventy-eight clusters in regressions using precinct. Each regression includes up to eleven other predictors: (1) the log of the number of complaints in the dataset associated with the officer's command unit (or the precinct) at the time of the incident, (2) a numeric variable from one to fifteen representing the year the incident took place to control for external factors causing year-to-year variation, (3) the log of the number of substantiated allegations in the complaint,<sup>155</sup> (4) the log of the number of previous CCRB complaints against the officer at the time of the complaint, (5) the percentage of those previous CCRB complaints against

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151. Most of these complaints had an incident date in 2019. Aside from year, there were no observable systematic patterns in these missing data. It is likely that at the time of the publication of the data, the NYPD had not reported the final outcomes of these complaints to the CCRB.

152. Logistic regression is the standard method for modeling binary outcomes. Logistic regression models explain the relationship between a dependent variable and one or more independent variables. ANDREW GELLMAN & JENNIFER HILL, *DATA ANALYSIS USING REGRESSION AND MULTI-LEVEL/HIERARCHICAL MODELS* 79–108 (R. Michael Alvarez et al. eds., Cambridge Univ. Press 2007).

153. *See infra* Part III.A.2.

154. This is achieved by using "fixed effects," which consists of adding a binary variable for each command unit in the dataset, minus a reference category. Fixed effects models "provide a means for controlling for unobserved characteristics" of categories within the data. GELLMAN & HILL, *supra* note 152, at 226–27. Controlling for demographics like command unit allows us to control for all characteristics intrinsic to command unit that are not contained in the dataset. For instance, an officer's command unit may reflect both her expertise and typical geographic area of operation.

155. This variable was included based on the assumption that a higher number of allegations within a complaint would be correlated with more severe discipline.

the officer that were substantiated by the CCRB,<sup>156</sup> and dummy variables<sup>157</sup> for the following: (6) whether the complaint included at least one substantiated allegation classified as force, (7) whether the complaint included at least one substantiated allegation classified as abuse of authority, (8) whether the complaint included at least one substantiated allegation classified as discourtesy, (9) whether the complaint included at least one substantiated allegation classified as offensive language,<sup>158</sup> (10) whether multiple officers were named in the complaint,<sup>159</sup> and (11) whether the officer was of the lowest rank at the time of the incident.<sup>160</sup>

### 1. Hypothesis 1

Hypothesis 1 questions whether officers of color were *less* likely than white officers to receive the least severe penalty category—training, instructions, or reprimand—or no penalty at all.<sup>161</sup> The dependent variable was whether the ultimate disciplinary outcome<sup>162</sup> of the complaint was within this penalty category, which this Note refers to as a “low or no penalty.”

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156. These variables were included based on the assumption that arbiters would be inclined to treat officers with cleaner disciplinary records more leniently.

157. A dummy variable is a variable with two possible values which are represented as 0 or 1. *See* DAMODAR N. GUJARATI, *BASIC ECONOMETRICS* 298 (4th ed. 2003).

158. The CCRB assigns every allegation in a complaint one of these classifications. *See* CCRB COMPLAINT DATABASE, *supra* note 5 (containing a FADO designation for each allegation in the dataset).

159. When multiple officers are named in the same complaint, the data specifies the allegations against each of them individually. *See* CCRB COMPLAINT DATABASE, *supra* note 5 (containing observations for allegations against different officers that are assigned to the same complaint identification number). Thus, when multiple officers were named in the same complaint, this Note’s analyses treated the set of allegations against each officer in the complaint as a separate unit of observation. This variable was included to control for the effects of concurrent proceedings against different officers for the same incident.

160. Most of the officers in the dataset were police officers or detectives. This variable was included on the assumption that police officers might receive less lenient treatment.

161. The CCRB recommends training or instructions for misconduct it considers least severe. *See supra* Part I.D. The author included verbal reprimands or warnings in this category.

162. The ultimate disciplinary outcome refers to the disciplinary decision of the Police Commissioner, which ends the CCRB process. When the Police Commissioner imposes Command Discipline on an officer, the officer’s commander has discretion to choose training, instructions, or a loss of vacation days. This information is not public. *See supra* Part I.D.



## 2. Hypotheses 2 and 3

Hypotheses 2 and 3 question whether any racial differences in ultimate discipline reflect racial disparities in CCRB recommendations. In other words, they tested whether NYPD discretion, rather than CCRB recommendations, drove observed racial differences in disciplinary outcomes. Hypothesis 2 tested whether controlling for CCRB recommendations impacts the results of the Hypothesis 1 regressions. The dependent variable was again whether officers of color were less likely than white officers to receive a low or no penalty, but the regressions included an additional explanatory variable for whether the CCRB recommended the lowest penalty level, training or instructions.

Hypothesis 3 tested whether officers of color were *less* likely to be “downcharged” by the ultimate penalty received relative to the CCRB’s recommendation, in other words, given a lower ultimate penalty than that recommended by the CCRB.<sup>163</sup> For this analysis, the author grouped penalties into four categories ordered from least to most severe: (1) no penalty, (2) training, instructions, or verbal warnings, (3) Command Discipline, and (4) loss of vacation days, suspension, or probation resulting from Charges and Specifications.<sup>164</sup> The latter three correspond to the three categories of CCRB recommendations: (1) training or instructions, (2) Command Discipline, and (3) Charges and Specifications. For example, a complaint for which the CCRB recommended Command Discipline, but for which the Police Commissioner ultimately imposed training or instructions, was considered downcharged. The dependent variable was whether a complaint was downcharged.

## III. Results

Table 1 shows ultimate disciplinary outcomes for the dataset by incident year. Table 2 shows CCRB disciplinary recommendations for the dataset by incident year.

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163. “Upcharging” was extremely uncommon in the dataset. *See infra* Table 3.

164. While the CCRB considers Command Discipline an intermediate disciplinary category between training/instructions and Charges, Command Discipline ultimately results in penalties ranging from verbal warnings to the loss of up to 10 vacation days, based on the discretion of the officer’s commander. *See supra* Part I.D. The commander’s decision is not recorded by the CCRB database. Thus, complaints that receive Command Discipline are necessarily grouped in the intermediate category in this analysis regardless of how they are handled at the command level. Category three is reserved for loss of vacation days or suspension imposed by the Police Commissioner following a trial.

## T1 - Ultimate Penalties Imposed by Year

|      | No Penalty | Training,<br>Instructions, or<br>Reprimand | Command<br>Discipline | 10 or Fewer<br>Vacation Days | 11 or More<br>Vacation Days | Suspension | Probation | Dismissal |
|------|------------|--|-----------------------|------------------------------|-----------------------------|------------|-----------|-----------|
| 2005 | 68         | 174  | 60                    | 10                           | 3                           | 0          | 2         | 1         |
| 2006 | 127        | 66   | 60                    | 16                           | 7                           | 0          | 2         | 0         |
| 2007 | 110        | 40   | 72                    | 8                            | 7                           | 4          | 0         | 1         |
| 2008 | 42         | 75   | 74                    | 16                           | 9                           | 6          | 0         | 3         |
| 2009 | 61         | 153  | 84                    | 13                           | 9                           | 3          | 1         | 1         |
| 2010 | 39         | 133  | 44                    | 5                            | 7                           | 2          | 1         | 0         |
| 2011 | 114        | 141  | 51                    | 8                            | 10                          | 2          | 0         | 0         |
| 2012 | 115        | 116  | 26                    | 90                           | 5                           | 0          | 1         | 0         |
| 2013 | 89         | 135  | 57                    | 82                           | 9                           | 1          | 0         | 2         |
| 2014 | 76         | 154  | 119                   | 50                           | 15                          | 1          | 2         | 2         |
| 2015 | 91         | 224  | 146                   | 42                           | 16                          | 0          | 0         | 0         |
| 2016 | 95         | 228  | 83                    | 20                           | 7                           | 1          | 2         | 0         |
| 2017 | 90         | 177  | 63                    | 22                           | 8                           | 1          | 2         | 0         |
| 2018 | 69         | 235  | 114                   | 9                            | 1                           | 1          | 0         | 0         |
| 2019 | 22         | 246  | 66                    | 3                            | 0                           | 0          | 0         | 0         |

## T2 - CCRB Recommendations by Year

|      | No<br>Recommendation | No<br>Recommendation | Training or<br>Instructions | Command<br>Discipline | Charges     |
|------|----------------------|----------------------|-----------------------------|-----------------------|-------------|
|      | 1                    |                      |                             |                       |             |
| 2005 | 2                    | 2 / .6%              | 8 / 2.5%                    | 48 / 15.1%            | 260 / 81.8% |
| 2006 | 3                    | 3 / 1.1%             | 16 / 5.8%                   | 47 / 16.9%            | 212 / 76.3% |
| 2007 | 5                    | 5 / 2.1%             | 4 / 1.7%                    | 48 / 19.8%            | 185 / 76.4% |
| 2008 | 5                    | 5 / 2.2%             | 21 / 9.3%                   | 59 / 26.2%            | 140 / 62.2% |
| 2009 | 24                   | 24 / 7.4%            | 18 / 5.5%                   | 68 / 20.9%            | 215 / 66.2% |
| 2010 | 7                    | 7 / 3.0%             | 16 / 6.9%                   | 44 / 19.0%            | 164 / 71.0% |
| 2011 | 2                    | 2 / .6%              | 19 / 5.8%                   | 81 / 24.8%            | 224 / 68.7% |
| 2012 | 6                    | 6 / 1.7%             | 27 / 7.6%                   | 69 / 19.5%            | 251 / 71.1% |
| 2013 | 3                    | 3 / .8%              | 89 / 23.7%                  | 84 / 22.4%            | 199 / 53.1% |
| 2014 | 1                    | 1 / .2%              | 116 / 27.7%                 | 173 / 41.3%           | 129 / 30.8% |
| 2015 | 0                    | -                    | 204 / 39.3%                 | 233 / 44.9%           | 82 / 15.8%  |
| 2016 | 0                    | -                    | 191 / 43.8%                 | 203 / 46.6%           | 42 / 9.6%   |
| 2017 | 0                    | -                    | 159 / 43.8%                 | 140 / 38.6%           | 64 / 17.6%  |
| 2018 | 0                    | -                    | 225 / 52.4%                 | 190 / 44.3%           | 14 / 3.3%   |
| 2019 | 0                    | -                    | 254 / 75.4%                 | 82 / 24.3%            | 1 / .3%     |

There is a clear trend in distribution of CCRB recommendations in Table 2. For incidents that occurred after 2012, the year the CCRB gained prosecutorial power, the CCRB has recommended Charges increasingly less frequently and training or instructions consistently more frequently.<sup>165</sup>

If this pattern reflects the CCRB's efforts to gain greater compliance from the NYPD, Table 1 suggests the NYPD did not cooperate. The distribution of ultimate discipline imposed by the Commissioner does not track the distribution of CCRB recommendations but is weighted much more heavily toward lesser penalties.

## A. Impact of Race on Imposition of a Low or No Penalty

### 1. Logistic Regressions

R1 tested the impact of race on the imposition of a low or no penalty. As described in Part I.D, once the CCRB substantiates a complaint, it makes a penalty recommendation, which the Police Commissioner considers in making a final disciplinary determination. If the Police Commissioner considers the misconduct serious enough to file Charges and Specifications, the complaint goes to an administrative trial, prosecuted by the CCRB, at which the NYPD determines guilt or innocence. In these cases, the Police Commissioner then makes the final disciplinary determination based on the outcome of that trial and recommendations from the Deputy Commissioner of Trials and the APU. The binary dependent variable in the R1 regressions is whether this final disciplinary determination was in the lowest penalty category, which includes training, instructions, a verbal warning, or no penalty.

R1.1 included only year and race variables as explanatory variables, while R1.2-1.5 incrementally added additional explanatory variables. All regressions included a variable for the races represented in the data, besides white,<sup>166</sup> which is the "reference category." Coefficients of explanatory variables describe the relationship between that variable and the dependent variable, after controlling for the other variables in the regression. A negative coefficient indicates a negative relationship, while a positive coefficient

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165. Note that the years in this table correspond to the incident year, rather than the year of the CCRB's recommendation. Still, due to the statute of limitations, recommendations must occur within 18 months of the incident. *See supra* note 148.

166. The raw data assign each officer to one of five racial categories: "White," "Black," "Hispanic," "Asian," or "American Indian." The author used these categories in the regressions but recognizes their limitations. For instance, it is not clear whether "Hispanic" refers exclusively to Latinx officers and whether it includes officers who also identify as white.

indicates a positive relationship. For categorical variables like race, coefficients describe the relationship between that variable and the dependent variable, relative to the relationship between the reference category and the dependent variable. R2 replaced the Command Unit variables with precinct variables. As described in Table R2, this change did not have a significant impact on the results.

Logistic regression coefficients can be interpreted in terms of changes in the odds ratios of outcomes. Odds ratios are the probability of one outcome of the binary dependent variable compared to the other.<sup>167</sup> For instance, suppose that, given all of the controlled-for characteristics, there is a 50% probability that a particular complaint against a white officer will receive a low or no penalty and a 50% probability that it will not. The odds ratio for this complaint is  $0.5/0.5=1$ . Using the Black officer coefficient in R1.5, one can calculate the impact of race on this odds ratio. First, one must exponentiate the Black officer coefficient in the R1.5 regression,  $-0.4$ , for a value of  $0.67$ . This indicates that a unit difference in the Black officer variable for this observation—a change from white officer, the reference category, to Black officer, holding other variables constant—corresponds to a  $1-0.67=33\%$  decrease in the odds of receiving a low or no penalty.<sup>168</sup> Using this odds ratio of  $0.67$  and the odds ratio formula (probability of low or no penalty)/(1-probability of low or no penalty) $=0.67$ , the probability of receiving a low or no penalty can be calculated as approximately  $40\%$ .

**Table R1 - Logistic Regression of Officer Race on the Imposition of Low or No Penalty (Training, Instructions, Reprimand, or No Discipline)**

|                         | (1)                 | (2)                 | (3)                         | (4)                           | (5)                            | (6)                |
|-------------------------|---------------------|---------------------|-----------------------------|-------------------------------|--------------------------------|--------------------|
|                         | Race and Year Only  | Adding Command FX   | Adding Officer Features [1] | Adding Complaint Features [2] | Adding Allegation Features [3] | Without Command FX |
| Black                   | -0.378***<br>(.084) | -0.342***<br>(.092) | -0.36***<br>(.093)          | -0.388***<br>(.103)           | -0.4***<br>(.095)              | -0.4***<br>(.087)  |
| Hispanic                | -0.196**<br>(.069)  | -0.208**<br>(.077)  | -0.255**<br>(.078)          | -0.254**<br>(.086)            | -0.265***<br>(.080)            | -0.228**<br>(.073) |
| Asian                   | -0.082**<br>(.147)  | -0.006<br>(.158)    | -0.062<br>(.160)            | -0.306<br>(.185)              | -0.115<br>(.164)               | -0.16<br>(.151)    |
| <b>Model Statistics</b> |                     |                     |                             |                               |                                |                    |
| N                       | 5,176               | 5,176               | 5,176                       | 5,176                         | 5,176                          | 5,176              |
| -2 Log Likelihood       | 6,485               | 6,020               | 5,954                       | 4,970                         | 5,736                          | 6,204              |

Significance: .p < .1, \*p < .05, \*\* p < .01, \*\*\* p < .001

[1] Includes the log of the number of complaints in the dataset associated with the officer's command unit, the officer's gender, the officer's rank, the log of the number of previous CCRB complaints against the officer, and the percent of those complaints that were substantiated by

[2] Includes whether there were multiple officers implicated in the incident and the log of the number of substantiated allegations in the

[3] Includes flags for whether any substantiated allegation in the complaint was categorized by the CCRB as abuse of authority, discourtesy, offensive language, or force.

167. See GELMAN & HILL, *supra* note 152, at 82–83.

168. See *id.* at 83.

**Table R2 - Logistic Regression of Officer Race on the Imposition of No or Low Penalty (Training, Instructions, Reprimand, or No Discipline)**

|                         | (1)                 | (2)                 | (3)                         | (4)                           | (5)                            | (6)                 |
|-------------------------|---------------------|---------------------|-----------------------------|-------------------------------|--------------------------------|---------------------|
|                         | Race and Year Only  | Adding Precinct FE  | Adding Officer Features [1] | Adding Complaint Features [2] | Adding Allegation Features [3] | Without Precinct FE |
| Black                   | -0.378***<br>(.084) | -0.377***<br>(.087) | -0.388***<br>(.089)         | -0.411***<br>(.091)           | -0.408***<br>(.091)            | -0.398***<br>(.088) |
| Hispanic                | -0.196**<br>(.069)  | -0.243***<br>(.074) | -0.281***<br>(.075)         | -0.281***<br>(.077)           | -0.277***<br>(.157)            | -0.225**<br>(.073)  |
| Asian                   | -0.082**<br>(.147)  | -0.037<br>(.151)    | -0.102<br>(.153)            | -0.118<br>(.157)              | -0.134<br>(.043)               | -0.184<br>(.152)    |
| <b>Model Statistics</b> |                     |                     |                             |                               |                                |                     |
| N                       | 5,176               | 5,171               | 5,171                       | 5,171                         | 5,171                          | 5,171               |
| -2 Log Likelihood       | 6,485               | 6,336               | 6,267                       | 6,066                         | 6,027                          | 6,155               |

Significance: .p < .1, \*p < .05, \*\* p < .01, \*\*\* p < .001

[1] Includes the log of the number of complaints in the dataset associated with the precinct, the officer's gender, the officer's rank, the log of the number of previous CCRB complaints against the officer, and the percent of those complaints that were substantiated by the CCRB.

[2] Includes whether there were multiple officers implicated in the incident, and the log of the number of substantiated allegations in the

[3] Includes flags for whether any substantiated allegation in the complaint was categorized by the CCRB as abuse of authority, discourtesy, offensive language, or force.

The p-values are less than 0.05 for all Black officer and Hispanic officer coefficients in all R1 and R2 regressions. P-values smaller than 0.05 tell us that there is at least a 95% chance that the observed effect is not due to random chance. This 95% level is the generally accepted threshold for statistical significance. The p-values for the Asian officer coefficient in all but one iteration are larger than 0.05, suggesting that any differences in treatment of Asian officers compared with white officers likely occurred due to random chance.

These results suggest that after controlling for relevant factors, Black and Hispanic officers were less likely than white officers to receive training, instructions, reprimands, or no penalty for misconduct, and more likely to receive higher penalties such as Command Discipline or loss of vacation days.<sup>169</sup>

169. Given the difficulty of controlling for complaint severity, a natural follow up question is whether the severity of the complaints in the dataset against Black and Hispanic officers might allege more severe misconduct on average compared with the complaints against white officers. For instance, one might hypothesize that the beats to which the NYPD tends to assign Black and Hispanic officers put them into contact with fewer civilians willing to report minor misconduct, skewing the population of complaints against Black and Hispanic officers toward more severe misconduct. However, as shown in Part III.B, the CCRB's initial recommendations for complaints in the dataset do not

## 2. AIPW Estimators

R3 and R4 tested the same hypothesis as R1 and R2 using Augmented Inverse Probability Weighted (AIPW) estimators corresponding to the Black and Hispanic officer variables in the R1 and R2 regressions. The results are presented in Tables R3 and R4. This method combines two statistical tools: regression adjustment<sup>170</sup> and inverse probability weighting.<sup>171</sup> AIPW estimators are “doubly robust:” If either model is specified correctly, the estimator will produce consistent results.<sup>172</sup>

The model outputs an “average treatment effect” (“ATE”) of the variable of interest. The ATE is interpreted as the average marginal impact of the treatment variable on the probability of the dependent variable outcome. For instance, in R3.5, the ATE of the Black officer coefficient is -.083. This means that the R3.5 model estimated that on average, across all observations, being Black rather than white causes an 8.3 percentage-point decrease in the probability of receiving a low or no penalty, after controlling for other relevant factors. Because 8.3 is an average, it does not apply to all complaints against Black officers—the impact of race on outcome is smaller for some complaints, and larger for others.

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support this theory. Those results suggest that the CCRB does *not* consider the complaints in the dataset against Black and Hispanic officers more severe on average than the complaints against white officers. Anecdotal evidence also suggests that Black and Hispanic officers may be less likely than white officers to engage in the most severe abuses of civilians. See Bocar A. Ba et al., *The Role of Officer Race and Gender in Police-Civilian Interactions in Chicago*, 317 *SCIENCE* 696 (2021) (finding that Black and Hispanic officers in Chicago were less likely than were white officers to use force that injured civilians).

170. Regression adjustment models the outcomes that would have occurred absent the treatment effect. See Chuck Huber, *Introduction to Treatment Effects in Stata: Part 1*, STATA BLOG (July 7, 2015), <https://blog.stata.com/2015/07/07/introduction-to-treatment-effects-in-stata-part-1/> [<https://perma.cc/7HCV-JL8V>].

171. Inverse probability weighting involves assigning higher weights to certain underrepresented datapoints. See *id.*

172. Adam N. Glynn & Kevin M. Quinn, *An Introduction to the Augmented Inverse Propensity Weighted Estimator*, 18 *POL. ANALYSIS* 36, 36–37 (Winter 2010); STATA TREATMENT-EFFECTS REFERENCE MANUAL: POTENTIAL OUTCOMES/COUNTERFACTUAL OUTCOMES 35 (Stata Press 2013), <https://www.stata.com/manuals13/te.pdf>. [<https://perma.cc/K4AN-KHBL>].

**Table R3 - AIPW Estimators of Officer Race on the Imposition of Low or No Penalty (Training, Instructions, Reprimand, or No Discipline)**

|                         | (1)                   | (2)                  | (3)                               | (4)                                 | (5)                                  | (6)                      |
|-------------------------|-----------------------|----------------------|-----------------------------------|-------------------------------------|--------------------------------------|--------------------------|
|                         | Race and<br>Year Only | Adding<br>Command FE | Adding<br>Officer<br>Features [1] | Adding<br>Complaint<br>Features [2] | Adding<br>Allegation<br>Features [3] | Without<br>Command<br>FE |
| Black                   | -0.084***<br>(.019)   | -0.084***<br>(.022)  | -0.083***<br>(.022)               | -0.084***<br>(.022)                 | -0.082***<br>(.022)                  | -0.085***<br>(.019)      |
| Hispanic                | -0.043**<br>(.015)    | -0.043*<br>(.018)    | -0.049**<br>(.017)                | -0.047**<br>(.017)                  | -0.047**<br>(.017)                   | -0.05***<br>(.015)       |
| <b>Model Statistics</b> |                       |                      |                                   |                                     |                                      |                          |
| N Black/White           | 3,461                 | 3,461                | 3,461                             | 3,461                               | 3,461                                | 3,461                    |
| N Hispanic/White        | 4,136                 | 4,136                | 4,136                             | 4,136                               | 4,136                                | 4,136                    |

Significance: .p &lt; .1, \*p &lt; .05, \*\* p &lt; .01, \*\*\* p &lt; .001

[1] Includes the log of the number of complaints in the dataset associated with the officer's command unit, the officer's gender, the officer's rank, the log of the number of previous CCRB complaints against the officer, and the percent of those complaints that were substantiated by the CCRB.

[2] Includes whether there were multiple officers implicated in the incident and the log of the number of substantiated allegations in the complaint.

[3] Includes flags for whether any substantiated allegation in the complaint was categorized by the CCRB as abuse of authority, discourtesy, offensive language, or force.

**Table R4 - AIPW Estimators of Officer Race on the Imposition of Low or No Penalty (Training, Instructions, Reprimand, or No Discipline)**

|                         | (1)                   | (2)                   | (3)                               | (4)                                 | (5)                                  | (6)                    |
|-------------------------|-----------------------|-----------------------|-----------------------------------|-------------------------------------|--------------------------------------|------------------------|
|                         | Race and<br>Year Only | Adding<br>Precinct FE | Adding<br>Officer<br>Features [1] | Adding<br>Complaint<br>Features [2] | Adding<br>Allegation<br>Features [3] | Without<br>Precinct FE |
| Black                   | -0.084***<br>(.019)   | -0.084***<br>(.024)   | -0.087***<br>(.025)               | -0.087***<br>(.025)                 | -0.085***<br>(.025)                  | -0.085***<br>(.019)    |
| Hispanic                | -0.043**<br>(.015)    | -0.043**<br>(.016)    | -0.05**<br>(.017)                 | -0.048**<br>(.018)                  | -0.047**<br>(.017)                   | -0.047**<br>(.015)     |
| <b>Model Statistics</b> |                       |                       |                                   |                                     |                                      |                        |
| N Black/White           | 3,461                 | 3,457                 | 3,457                             | 3,457                               | 3,457                                | 3,457                  |
| N Hispanic/White        | 4,136                 | 4,132                 | 4,132                             | 4,132                               | 4,132                                | 4,132                  |

Significance: .p &lt; .1, \*p &lt; .05, \*\* p &lt; .01, \*\*\* p &lt; .001

[1] Includes the log of the number of complaints in the dataset associated with the precinct, the officer's gender, the officer's rank, the log of the number of previous CCRB complaints against the officer, and the percent of those complaints that were substantiated by the CCRB.

[2] Includes whether there were multiple officers implicated in the incident and the log of the number of substantiated allegations in the

[3] Includes flags for whether any substantiated allegation in the complaint was categorized by the CCRB as abuse of authority, discourtesy, offensive language, or force.

The results in R3 and R4 are consistent with the results of the corresponding logistic regressions. The ATEs indicate the impact of race as an average change in probability of outcome across all observations, while the logistic regressions allow for calculation of the impact of race on outcome for individual observations along the probability curve. The R3 and R4 results confirm that Black and Hispanic officers were less likely to receive a low or no penalty than were white officers after controlling for other factors. The p-value for each iteration is smaller than 0.05; all these results are thus statistically significant, or unlikely to have occurred by random chance.

#### B. Influence of CCRB Recommendations

R5 and R6 tested whether the racial disparities observed in R1-R4 can be attributed to racial differences in CCRB recommendations. Like in the R1-R4 regressions, the dependent variable was whether the complaint resulted in a low or no penalty. However, the R5 and R6 regressions also included an explanatory binary variable for whether the CCRB recommended training or instructions.<sup>173</sup> By controlling for the impact of CCRB recommendations, these regressions eliminate underlying CCRB recommendations as a cause for any observed racial disparities.

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173. This variable also captured the few cases in which the APU chose to dismiss the complaint instead of prosecuting it, or the APU struck a plea deal for training or instructions with an officer facing Charges, the rationale being that in these cases, the CCRB, rather than the NYPD, was the driving force behind the officers' receiving training, instructions, or no penalty.



**Table R5 - Logistic Regression of Officer Race on the Imposition of Low or No Penalty, Controlling for CCRB Recommendation**

|                         | (1)                 | (2)                 | (3)                         | (4)                           | (5)                            | (6)                 |
|-------------------------|---------------------|---------------------|-----------------------------|-------------------------------|--------------------------------|---------------------|
|                         | Race and Year Only  | Adding Command FE   | Adding Officer Features [1] | Adding Complaint Features [2] | Adding Allegation Features [3] | Without Command FE  |
| Black                   | -0.408***<br>(.093) | -0.377***<br>(.102) | -0.401***<br>(.099)         | -0.402***<br>(.104)           | -0.405***<br>(.104)            | -0.395***<br>(.095) |
| Hispanic                | -0.205**<br>(.076)  | -0.228**<br>(.085)  | -0.248**<br>(.083)          | -0.248**<br>(.087)            | -0.26**<br>(.086)              | -0.211**<br>(.079)  |
| Asian                   | -0.292.<br>(.169)   | -0.25<br>(.184)     | -0.254<br>(.178)            | -0.272<br>(.187)              | -0.303<br>(.188)               | -0.332.<br>(.173)   |
| <b>Model Statistics</b> |                     |                     |                             |                               |                                |                     |
| N                       | 5,118               | 5,118               | 5,118                       | 5,118                         | 5,118                          | 5,118               |
| -2 Log Likelihood       | 5,458               | 5,018               | 4,999                       | 4,903                         | 4,869                          | 5,274               |

Significance: .p &lt; .1, \*p &lt; .05, \*\* p &lt; .01, \*\*\* p &lt; .001

[1] Includes the log of the number of complaints in the dataset associated with the officer's command unit, the officer's gender, the officer's rank, the log of the number of previous CCRB complaints against the officer, and the percent of those complaints that were substantiated by the CCRB.

[2] Includes the log of the number of complaints in the dataset associated with the officer's command unit, whether there were multiple officers implicated in the incident, and the log of the number of substantiated allegations in the complaint.

[3] Includes flags for whether any substantiated allegation in the complaint was categorized by the CCRB as abuse of authority, discourtesy, offensive language, or force.

[4] All models include the explanatory variable for whether the CCRB recommended training or instructions.

**Table R6 - Logistic Regression of Officer Race on the Imposition of Low or No Penalty, Controlling for CCRB Recommendation**

|                         | (1)                 | (2)                 | (3)                         | (4)                           | (5)                            | (6)                 |
|-------------------------|---------------------|---------------------|-----------------------------|-------------------------------|--------------------------------|---------------------|
|                         | Race and Year Only  | Adding Precinct FE  | Adding Officer Features [1] | Adding Complaint Features [2] | Adding Allegation Features [3] | Without Precinct FE |
| Black                   | -0.408***<br>(.093) | -0.393***<br>(.096) | -0.393***<br>(.089)         | -0.401***<br>(.099)           | -0.399**<br>(.084)             | -0.401***<br>(.096) |
| Hispanic                | -0.205**<br>(.076)  | -0.243**<br>(.080)  | -0.281***<br>(.076)         | -0.248**<br>(.083)            | -0.256**<br>(.086)             | -0.214**<br>(.079)  |
| Asian                   | -0.292.<br>(.169)   | -0.249<br>(.174)    | -0.072<br>(.155)            | -0.254<br>(.178)              | -0.289<br>(.179)               | -0.327.<br>(.173)   |
| <b>Model Statistics</b> |                     |                     |                             |                               |                                |                     |
| N                       | 5,118               | 5,113               | 5,113                       | 5,113                         | 5,113                          | 5,113               |
| -2 Log Likelihood       | 5,458               | 5,324               | 6,195                       | 5,189                         | 5,152                          | 5,270               |

Significance: .p &lt; .1, \*p &lt; .05, \*\* p &lt; .01, \*\*\* p &lt; .001

[1] Includes the log of the number of complaints in the dataset associated with the precinct, the officer's gender, the officer's rank, the log of the number of previous CCRB complaints against the officer, and the percent of those complaints that were substantiated by the CCRB.

[2] Includes whether there were multiple officers implicated in the incident, and the log of the number of substantiated allegations in the complaint.

[3] Includes flags for whether any substantiated allegation in the complaint was categorized by the CCRB as abuse of authority, discourtesy, offensive language, or force.

[4] All models include the explanatory variable for whether the CCRB recommended training or instructions.

The Black and Hispanic officer coefficients are similar in size to those of the R1 and R2 regressions with similar levels of statistical significance. This suggests that CCRB recommendations do not drive the racial disparities observed in the R1 and R2 regressions.

## C. Downcharging

### 1. Logistic Regressions

R7 and R8 tested NYPD departure from CCRB recommendations. The dependent variable in these regressions was whether the NYPD downcharged a complaint relative to the CCRB's recommendation.<sup>174</sup> The following disciplinary scenarios were designated downcharged: (1) NYPD imposition of Command Discipline, training, instructions, reprimand, or no penalty when the CCRB recommended Charges; (2) NYPD imposition of training, instructions, reprimand, or no penalty when the CCRB recommended Command Discipline; or (3) NYPD imposition of no penalty when the CCRB recommended training or instructions. Table 3 describes the comparison of CCRB recommendations and ultimate penalties for all complaints by race. Tables R7 and R8 present the results of the regressions.

**T3 - CCRB Recommendation vs. Ultimate Penalty**

| CCRB                            |                                      |           |           |           |          |
|---------------------------------|--------------------------------------|-----------|-----------|-----------|----------|
| Recommendation                  | Ultimate Penalty                     | White     | Black     | Hispanic  | Asian    |
| <i>Charges</i>                  | Charges*                             | 245 / 21% | 104 / 28% | 141 / 24% | 24 / 34% |
|                                 | Command Discipline                   | 178 / 15% | 62 / 17%  | 104 / 18% | 8 / 11%  |
|                                 | Training, Instructions, or Reprimand | 336 / 29% | 93 / 25%  | 177 / 30% | 15 / 21% |
|                                 | No Penalty                           | 395 / 34% | 107 / 29% | 169 / 29% | 24 / 34% |
| <i>Command Discipline</i>       | Charges*                             | 14 / 2%   | 4 / 2%    | 8 / 2%    | 1 / 1%   |
|                                 | Command Discipline                   | 320 / 41% | 121 / 52% | 222 / 46% | 32 / 46% |
|                                 | Training, Instructions, or Reprimand | 281 / 36% | 61 / 26%  | 145 / 30% | 21 / 30% |
|                                 | No Penalty                           | 168 / 21% | 47 / 20%  | 111 / 23% | 15 / 22% |
| <i>Training or Instructions</i> | Charges*                             | 2 / <1%   | 0 / <1%   | 6 / 2%    | 1 / 1%   |
|                                 | Command Discipline                   | 23 / 3%   | 13 / 7%   | 14 / 4%   | 6 / 6%   |
|                                 | Training, Instructions, or Reprimand | 576 / 83% | 165 / 85% | 324 / 84% | 77 / 81% |
|                                 | No Penalty                           | 92 / 13%  | 17 / 9%   | 40 / 10%  | 11 / 12% |

\*Indicates that the ultimate penalty was one that the CCRB could not specifically recommend and could only be achieved by bringing charges: loss of vacation days, suspension, probation, or dismissal.

\*\*Percentages represent ultimate penalty as a percentage of complaints against officers in the same race category that received the same CCRB recommendation

174. These regressions also included the explanatory variable described in note 173.

Table R7 - Logistic Regression of Officer Race on Downcharging by NYPD

|                         | (1)                   | (2)                  | (3)                               | (4)                                 | (5)                                  | (6)                   |
|-------------------------|-----------------------|----------------------|-----------------------------------|-------------------------------------|--------------------------------------|-----------------------|
|                         | Race and<br>Year Only | Adding<br>Command FE | Adding<br>Officer<br>Features [1] | Adding<br>Complaint<br>Features [2] | Adding<br>Allegation<br>Features [3] | Without<br>Command FE |
| Black                   | -0.357***<br>(.093)   | -0.376***<br>(.102)  | -0.359***<br>(.102)               | -0.358***<br>(.103)                 | -0.357***<br>(.103)                  | -0.321***<br>(.095)   |
| Hispanic                | -0.172*<br>(.075)     | -0.193*<br>(.083)    | -0.162.<br>(.084)                 | -0.153.<br>(.085)                   | -0.165.<br>(.085)                    | -0.145.<br>(.077)     |
| Asian                   | -0.424*<br>(.159)     | -0.468**<br>(.168)   | -0.476**<br>(.168)                | -0.459**<br>(.169)                  | -0.483**<br>(.169)                   | -0.424**<br>(.160)    |
| <b>Model Statistics</b> |                       |                      |                                   |                                     |                                      |                       |
| N                       | 5,118                 | 5,118                | 5,118                             | 5,118                               | 5,118                                | 5,118                 |
| -2 Log Likelihood       | 5,758                 | 5,329                | 5,319                             | 5,266                               | 5,226                                | 5,635                 |

Significance: .p &lt; .1, \*p &lt; .05, \*\* p &lt; .01, \*\*\* p &lt; .001

[1] Includes the the log of the number of complaints in the dataset associated with the officer's command unit, the log of the number of previous CCRB complaints against the officer, the officer's gender, and the percent of those complaints that were substantiated by the CCRB.

[2] Includes whether there were multiple officers implicated in the incident and the log of the number of substantiated allegations in the complaint.

[3] Includes flags for whether any substantiated allegation in the complaint was categorized by the CCRB as abuse of authority, discourtesy, offensive language, or force.

Table R8 - Logistic Regression of Officer Race on Downcharging by NYPD

|                         | (1)                   | (2)                   | (3)                               | (4)                                 | (5)                                  | (6)                    |
|-------------------------|-----------------------|-----------------------|-----------------------------------|-------------------------------------|--------------------------------------|------------------------|
|                         | Race and<br>Year Only | Adding<br>Precinct FE | Adding<br>Officer<br>Features [1] | Adding<br>Complaint<br>Features [2] | Adding<br>Allegation<br>Features [3] | Without<br>Precinct FE |
| Black                   | -0.357***<br>(.093)   | -0.358***<br>(.096)   | -0.337***<br>(.097)               | -0.331***<br>(.098)                 | -0.33***<br>(.098)                   | -0.33***<br>(.095)     |
| Hispanic                | -0.172*<br>(.075)     | -0.183*<br>(.079)     | -0.149.<br>(.081)                 | -0.142.<br>(.081)                   | -0.156.<br>(.082)                    | -0.154*<br>(.077)      |
| Asian                   | -0.424*<br>(.159)     | -0.38*<br>(.163)      | -0.375*<br>(.163)                 | -0.347*<br>(.163)                   | -0.382*<br>(.164)                    | -0.418**<br>(.160)     |
| <b>Model Statistics</b> |                       |                       |                                   |                                     |                                      |                        |
| N                       | 5,118                 | 5,113                 | 5,113                             | 5,113                               | 5,113                                | 5,113                  |
| -2 Log Likelihood       | 5,758                 | 5,635                 | 5,632                             | 5,612                               | 5,554                                | 5,512                  |

Significance: .p &lt; .1, \*p &lt; .05, \*\* p &lt; .01, \*\*\* p &lt; .001

[1] Includes the log of the number of complaints in the dataset associated with the precinct, the officer's gender, the officer's rank, the log of the number of previous CCRB complaints against the officer, and the percent of those complaints that were substantiated by the CCRB.

[2] Includes whether there were multiple officers implicated in the incident, and the log of the number of substantiated allegations in the complaint.

[3] Includes flags for whether any substantiated allegation in the complaint was categorized by the CCRB as abuse of authority, discourtesy, offensive language, or force.

The Black and Asian officer coefficients in R7-R8 are negative and similar in size to the Black officer coefficients in R1-R2. The Hispanic officer coefficients are also negative, though smaller in size. The p-values for all Black and Asian officer coefficients are smaller than 0.05, indicating statistical significance. The p-values for the Hispanic officer coefficients were larger than 0.05 in some models, but all were smaller than 0.1

Taken together, the R8 and R9 results suggest that after controlling for relevant factors, the NYPD was less likely to downcharge complaints against Black and Asian officers than it was complaints against white officers, and that the same was possibly true for Hispanic officers.

## 2. AIPW Estimators

R9 and R10 tested the same hypothesis as R7 and R8 using AIPW estimators.

Table R9 - AIPW Estimators of Officer Race on Downcharging by NYPD

|                         | (1)                 | (2)                 | (3)                         | (4)                           | (5)                            | (6)                 |
|-------------------------|---------------------|---------------------|-----------------------------|-------------------------------|--------------------------------|---------------------|
|                         | Race and Year Only  | Adding Command FE   | Adding Officer Features [1] | Adding Complaint Features [2] | Adding Allegation Features [3] | Without Command FE  |
| Black                   | -0.068***<br>(.018) | -0.068***<br>(.019) | -0.064**<br>(.019)          | -0.06**<br>(.019)             | -0.061**<br>(.019)             | -0.061***<br>(.018) |
| Hispanic                | -0.033*<br>(.014)   | -0.033*<br>(.016)   | -0.025<br>(.015)            | -0.023<br>(.016)              | -0.026<br>(.015)               | -0.026<br>(.014)    |
| Asian                   | -0.091**<br>(.032)  | -0.091*<br>(.036)   | -0.102**<br>(.036)          | -0.09*<br>(.037)              | -0.091*<br>(.037)              | -0.091**<br>(.033)  |
| <b>Model Statistics</b> |                     |                     |                             |                               |                                |                     |
| N Black/White           | 3,424               | 3,424               | 3,424                       | 3,424                         | 3,424                          | 3,424               |
| N Hispanic/White        | 4,090               | 4,090               | 4,090                       | 4,090                         | 4,090                          | 4,090               |
| N Asian/White           | 2,864               | 2,864               | 2,864                       | 2,864                         | 2,864                          | 2,864               |

Significance: .p < .1, \*p < .05, \*\* p < .01, \*\*\* p < .001

[1] Includes the log of the number of complaints in the dataset associated with the officer's command unit, the officer's gender, the officer's rank, the log of the number of previous CCRB complaints against the officer, and the percent of those complaints that were substantiated by the CCRB.

[2] Includes whether there were multiple officers implicated in the incident and the log of the number of substantiated allegations in the

[3] Includes flags for whether any substantiated allegation in the complaint was categorized by the CCRB as abuse of authority, discourtesy, offensive language, or force.

Table R10 - AIPW Estimators of Officer Race on Downcharging by NYPD

|                         | (1)                   | (2)                   | (3)                            | (4)                                 | (5)                                  | (6)                    |
|-------------------------|-----------------------|-----------------------|--------------------------------|-------------------------------------|--------------------------------------|------------------------|
|                         | Race and Year<br>Only | Adding<br>Precinct FE | Adding Officer<br>Features [1] | Adding<br>Complaint<br>Features [2] | Adding<br>Allegation<br>Features [3] | Without<br>Precinct FE |
| Black                   | -0.068***<br>(.018)   | -0.068***<br>(.020)   | -0.064**<br>(.021)             | -0.061**<br>(.022)                  | -0.061**<br>(.022)                   | -0.061***<br>(.018)    |
| Hispanic                | -0.033*<br>(.014)     | -0.033*<br>(.015)     | -0.026<br>(.016)               | -0.024<br>(.016)                    | -0.027<br>(.016)                     | -0.027<br>(.014)       |
| Asian                   | -0.091**<br>(.032)    | -0.09*<br>(.037)      | -0.102**<br>(.035)             | -0.091**<br>(.034)                  | -0.091**<br>(.034)                   | -0.091**<br>(.032)     |
| <b>Model Statistics</b> |                       |                       |                                |                                     |                                      |                        |
| N Black/White           | 3,424                 | 3,420                 | 3,420                          | 3,420                               | 3,420                                | 3,420                  |
| N Hispanic/White        | 4,090                 | 4,086                 | 4,086                          | 4,086                               | 4,086                                | 4,086                  |
| N Asian/White           | 2,864                 | 2,861                 | 2,861                          | 2,861                               | 2,861                                | 2,861                  |

Significance: .p < .1, \*p < .05, \*\*p < .01, \*\*\*p < .001

[1] Includes the log of the number of complaints in the dataset associated with the precinct, the officer's gender, the officer's rank, the log of the number of previous CCRB complaints against the officer, and the percent of those complaints that were substantiated by the CCRB.

[2] Includes whether there were multiple officers implicated in the incident and the log of the number of substantiated allegations in the complaint.

[3] Includes flags for whether any substantiated allegation in the complaint was categorized by the CCRB as abuse of authority, discourtesy, offensive language, or force.

The results in R9 and R10 confirm the results of the R8 and R9 regressions with respect to the less frequent downcharging of Black and Asian officers. However, because most of the Hispanic officer coefficients in these models are not statistically significant, they weaken the inference that Hispanic officers were less likely to be downcharged than were white officers.

#### D. Conclusion

Collectively, these results suggest that Black and Hispanic officers were less likely than were white officers to receive a low or no penalty, and Black and Asian officers were less likely than white officers to be downcharged, after controlling for relevant factors. These results also suggest that these disparities were driven by NYPD discretion in the disciplinary process, which includes DUP, not-guilty findings at trials, and other rejections of CCRB recommendations in favor of lower penalties.

These data also show that officers across races commit shocking violence against civilians. The CCRB, despite a low overall substantiation rate, has substantiated complaints of egregious misconduct including

chokeholds,<sup>175</sup> sexual harassment,<sup>176</sup> and threats.<sup>177</sup> As shown in Table 3, the NYPD routinely downcharges complaints, such that the ultimate discipline received by the officer is typically less severe than that recommended by the CCRB. Few substantiated accusations result in punishment more severe than the loss of a few vacation days, regardless of race, as shown in Table 1. In summary, these results do not suggest that the NYPD targets and over-punishes officers of color. Rather, they demonstrate that officers of color receive a less flagrant degree of leniency compared with white officers and that the observed patterns of racial bias by the NYPD against civilians are replicated internally by the department.

#### IV. Proposed Solution

This Note argues that transparency is the best response to racial disparities and an overall pattern of leniency. Over the past few years, public discussion has foregrounded transparency as perhaps the most important step for overall police reform.<sup>178</sup> Though little research exists on racial disparities in police discipline, studies show that increased transparency can reduce discrimination in other contexts, such as the gender pay gap.<sup>179</sup> Activists have also called for data transparency as an essential ingredient for reducing racial disparities in public school discipline.<sup>180</sup>

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175. For instance, the CCRB substantiated a complaint of a 2008 chokehold against Officer Richard Baker. Though the CCRB recommended Charges, the NYPD never served Officer Baker with Charges and Specifications, and instead imposed Command Discipline. CCRB COMPLAINT DATABASE, *supra* note 5.

176. See, e.g., *Id.* (displaying “Sex Miscon (Sexual Harassment, Verbal)” and “Sexual Misconduct (Sexual Humiliation)” in the “Allegations” column and “Substantiated” in the “CCRBDisposition” column).

177. See, e.g., *id.* (displaying “Threat to notify ACS” and “Threat of force” in the “Allegations” column and “Substantiated” in the “CCRBDisposition” column).

178. Kate Levine, *Discipline and Policing*, 68 DUKE L.J. 839, 844 (2019) (“[T]ransparency has become one of the most often called-for police-reform suggestions”).

179. Maria Recalde & Lise Vesterlund, *Gender Differences in Negotiation and Policy for Improvement* (Nat’l Bureau of Econ. Rsch., Working Paper No. 28183, 2020), [https://www.nber.org/system/files/working\\_papers/w28183/w28183.pdf](https://www.nber.org/system/files/working_papers/w28183/w28183.pdf) (on file with the *Columbia Human Rights Law Review*) (“Numerous studies find . . . that initiatives which prove transparency are likely to help equalize opportunities at the bargaining table.”).

180. See, e.g., *Amendments to Student Safety Act Are a Win for School Discipline and Student Well-Being*, N.Y.C.L. Union (Sept. 29, 2015), <https://www.nyclu.org/en/press-releases/amendments-student-safety-act-are-win-school-discipline-and-student-well-being> [<https://perma.cc/DX6Q-9L5X>] (“Complete data transparency on school discipline and law enforcement practices is essential to evaluate current policies, end unacceptable racial disparities, support kids with special needs, and ensure that all children are treated with respect and dignity.”); see also, DC PUB. CHARTER SCH. BD., AN HONEST APPROACH TO

Admittedly, increasing transparency will not directly address racial disparities or leniency in the CCRB process in New York or elsewhere. But in New York, any reforms to the process itself would require either buy-in from the NYPD or statutory expansion of CCRB power, and there exist significant barriers to both.<sup>181</sup> Other cities with weaker external oversight agencies or none at all may present even higher barriers.<sup>182</sup> In addition, reforms that shift more power to the CCRB in hopes that i) more white officers, like Black and Hispanic officers, will lose a few vacation days or receive Command Discipline for their serious misconduct, or ii) more Black and Hispanic officers, like white officers, will receive a lower penalty or no penalty at all for their serious misconduct, would not address the larger issue of leniency. As shown in Table 2, the CCRB recommended Charges for more than 80% of incidents that occurred in 2005, but less than 18% of incidents for each year from 2015 to 2019.<sup>183</sup> For incidents that occurred in 2018 and 2019, the CCRB recommended Charges for less than 4% of complaints.<sup>184</sup>

In general, one should be skeptical of the ability of process changes to create material changes to accountability. A New York Times study of CCRB cases from 2001 onward found that for 71% of complaints for which the CCRB recommended Charges, the NYPD imposed a lower level of

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SCHOOL DISCIPLINE: AN AUTHORIZER'S APPROACH TO SCHOOL DISCIPLINE AND HOW THREE PUBLIC CHARTER SCHOOL NETWORKS REDUCED OUT-OF-SCHOOL SUSPENSIONS 5 (2016), [https://dcpcsb.org/sites/default/files/DC-PCSB-Discipline-White-Paper\\_July2016\\_v2\\_0\\_0.pdf](https://dcpcsb.org/sites/default/files/DC-PCSB-Discipline-White-Paper_July2016_v2_0_0.pdf) [<https://perma.cc/PR7Y-K6U7>] (“DC PCSB uses [strategies including] making exclusionary discipline data public, accessible and transparent”). A nationwide study showed that on average, Black public school students were three times more likely to be suspended than were white public school students. Travis Riddle & Stacey Sinclair, *Racial Disparities in School-Based Disciplinary Actions Are Associated with County-Level Rates of Racial Bias*, 116 PNAS 8255, 8257 (2019). In New York City, the De Blasio administration enacted a slate of school disciplinary reforms that both directly limit suspensions and increase data transparency. *De Blasio Administration Announces New School Climate Initiatives to Make NYC Schools Safer, Fairer and More Transparent*, OFFICIAL WEBSITE CITY OF N.Y. (July 21, 2016), <https://www1.nyc.gov/office-of-the-mayor/news/628-16/de-blasio-administration-new-school-climate-initiatives-make-nyc-schools-safer-fairer> [<https://perma.cc/E2D2-4L23>].

181. See *supra* Parts I.A, I.B.

182. According to a 2020 study, only 9% of the 100 most populous U.S. cities have a civilian oversight board with the power to make findings and recommendations in individual discipline cases. 39% have no civilian oversight board of any kind. See Sharon. R. Fairley, *Survey Says?: U.S. Cities Double Down on Civilian Oversight of Police Despite Challenges and Controversy*, 2020 CARDOZO L. REV. DE NOVO 1, 10 (2020), <http://cardozo.lawreview.com/survey-says-u-s-cities-double-down-on-civilian-oversight-of-police-despite-challenges-and-controversy/> [<https://perma.cc/F6DH-LK58>].

183. See *supra* Table 2.

184. *Id.*

discipline.<sup>185</sup> This pattern remained “largely unchanged” when Former Mayor Bill De Blasio took office in 2014, which implies the pattern endured even following the grant of prosecutorial power to the CCRB in mid-2012.<sup>186</sup> This finding is unsurprising given the Board’s unsuccessful attempts to cajole the NYPD into compliance and some Board members’ conflicted loyalties, as discussed in Part I.D and III.

Scholars,<sup>187</sup> legislators,<sup>188</sup> and activists<sup>189</sup> have advocated

185. Mihir Zaveri, *A Pattern of Leniency Toward Officers Accused of Misconduct*, N.Y. TIMES (Nov. 16, 2020), <https://www.nytimes.com/2020/11/16/nyregion/nypd-discipline-ccrb.html> [<https://perma.cc/9GK4-PV6L>].

186. *Id.* Granting binding disciplinary power to the CCRB could perhaps create significant change. However, according to the National Association of Civilian Oversight of Law Enforcement, only a handful of cities nationwide have ever implemented this type of civilian oversight, most of which did so in response to court orders. *See Who Should Make the Final Determination?*, NAT’L ASS’N FOR CIVILIAN OVERSIGHT L. ENFT, [https://www.nacole.org/final\\_determination](https://www.nacole.org/final_determination) [<https://perma.cc/3S2Q-8ARU>] (discussing different models for civilian review boards). Portland, Oregon is a notable exception. Voters approved a ballot measure in November 2020 to create an independent police oversight board with complete disciplinary power. *See* Everton Bailey Jr., *Portland Voters Approve Creating New Civilian-Run Police Oversight Board*, THE OREGONIAN (Nov. 3, 2020), <https://www.oregonlive.com/politics/2020/11/portland-voters-approve-creating-new-civilian-oversight-board-for-police.html> [<https://perma.cc/V7JN-6ETE>].

187. *See, e.g.*, Cynthia Conti-Cook, *A New Balance: Weighing Harms of Hiding Police Misconduct Information from the Public*, 22 CUNY L. REV. 148, 149 (2019) (“[A]rgu[ing] that police privacy protections . . . cause greater harm to individuals, public trust in justice systems, and democratic decision making than access to police misconduct information harms individual police officers.”); Bies, *supra* note 30, at 112–13 (discussing police union opposition to reforms to increase accountability and providing recommendations for overcoming police union political strength); Barry Scheck, *Preface: The Integrity of Our Convictions: Holding Stakeholders Accountable in an Era of Criminal Justice Reform*, 48 GEO. L.J. ANN. REV. CRIM. PROC. iii, iv–v (2019) (discussing initiatives for holding criminal justice stakeholders accountable, and explaining that each requires transparency and continual data collection).

188. For instance, in 2018, California legislators passed SB 1421, which gives the public access to certain police misconduct records. *See* Liam Dillon, *California Legislature Passes Major Police Transparency Measures on Internal Investigations and Body Cameras*, L.A. TIMES (Sept. 1, 2018), <https://www.latimes.com/politics/la-pol-ca-police-transparency-bill-passes-20180831-story.html> [<https://perma.cc/2R46-3A7A>] (discussing two recently enacted California laws that allow public access to police shooting investigations and associated body camera footage); *see also* Kevin Rector, *Police Transparency Advocates Push Bill to Ease Public Release of Officer Discipline Records in Maryland*, BALTIMORE SUN (Feb. 12, 2019), <https://www.baltimoresun.com/news/crime/bs-md-police-records-bill-20190212-story.html> [<https://perma.cc/JYP4-J7A3>] (discussing a legislative push to give police administrators discretion over releasing internal affairs and discipline records.)

189. *See, e.g.*, Tom Robbins, *How a Coalition of New York Activists Revealed Police-Department Secrets*, NEW YORKER (July 17, 2020), <https://www.newyorker.com/news/our-local-correspondents/how-a-coalition-of-new-york-activists-revealed-police->



extensively for police records transparency—including the repeal of New York’s § 50-a—as an essential ingredient to accountability and reform. The following Sections will describe how the possibility of exposing racial bias in discipline provides support to existing arguments in favor of increased transparency and how transparency advances both reformist and abolitionist agendas. Legislators and advocates should also consider the possibility of exposing racial bias when evaluating potential models for increasing transparency in the NYPD and beyond. Free from any oversight or public reporting, internal disciplinary processes may suffer from magnified versions of the racial disparities and extreme lenience identified in the CCRB process. The same inference applies to the dozens of states with limited or no police records transparency, particularly those without civilian review boards.

#### A. Transparency and Police Reform

One of the most widely cited arguments in favor of greater police transparency is that secrecy undermines trust—the public’s trust that departments are managing officer behavior and removing dangerous officers, and police officers’ trust in the fairness of the disciplinary system.<sup>190</sup> As these data reveal, the public would misplace its trust in the NYPD, which rarely imposes meaningful discipline in response to civilian complaints.<sup>191</sup> Officers of color, too, should mistrust the NYPD, which treats the misconduct of their white counterparts with greater permissiveness. Injecting transparency into this system increases the likelihood that these types of

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department-secrets [<https://perma.cc/TF35-EDEU>] (discussing the important role activists played in repealing § 50-a).

190. See Conti-Cook, *supra* note 187, at 160–67 (discussing the relationship between public trust and the police disciplinary system); Bies *supra* note 30, at 117–20 (“[P]roviding public access to personnel files not only promotes public confidence in the ability of the police ‘to police themselves’ but also builds greater trust and mutual respect between the officers and the community they have sworn to serve”); Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 *Geo. WASH. L. REV.* 712, 752 (2017) (explaining that transparency is important for “restoring public trust in police”); Rachel Moran, *Police Privacy*, 10 *U.C. IRVINE L. REV.* 153, 185–89 (2019) (discussing how “unchecked misconduct” undermines police legitimacy).

191. As discussed in *supra* Part III.D, the NYPD routinely imposes lower penalties than those recommended by the CCRB—recommendations made in the shadow of the Police Commissioner’s total discretion, by a panel that includes former officers. According to the complete dataset of complaints released by NYCLU, only 11 officers since 2000 been terminated through the CCRB process. CCRB COMPLAINT DATABASE, *supra* note 5.

failures will be exposed and corrected, so that the system can become worthy of trust.<sup>192</sup>

Transparency also enhances public discourse. Public access to knowledge leads to better informed voters, inspires community organizing and lobbying, and empowers the communities most affected by policing to imagine and fight for models of policing that would best serve them.<sup>193</sup> As litigator and Ford Foundation Fellow Cynthia Conti-Cook explains, secrecy that effectively excludes the public from fully participating in discussions of reform “deprives society of the public’s solutions” and represents “a major loss.” After all, “the person experiencing injustices in their daily life . . . can contribute more valuable solutions than a judge or lawyer trying to imagine what it is like to be in the shoes of a person experiencing police abuse.”<sup>194</sup> Exposing departments’ racial biases may inspire officers themselves to participate in public discourse about reform. In New York City, the Black fraternal police organization the Guardians has historically broken with the PBA in response to the some of the union’s uglier displays, such as its backing of the officer who murdered James Powell and its racially charged campaigns against civilian oversight.<sup>195</sup> Perhaps the exposure of racially biased discipline could serve as another organizing force.

Misconduct and discipline transparency will also serve police brutality victims and their families, by providing closure and helping them to evaluate different paths forward such as filing a civil complaint or pursuing a media campaign.<sup>196</sup> Similarly, transparency that exposes the extent of bias within a department’s disciplinary process will help officers who experience discrimination decide how to address it and expand their legal options. The Latino Officers’ Association class action alleged overt, highly visible racial violence,<sup>197</sup> but access to data will allow victims of less conspicuous discrimination, if they choose to pursue litigation, to meet the high bar for discovery.<sup>198</sup>

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192. Conti-Cook, *supra* note 187, at 153–54, citing David S. Ardia, *Court Transparency and the First Amendment*, 38 CARDOZO L. REV. 835, 895 (2017).

193. *Id.* at 172–73.

194. *Id.* at 172.

195. *See supra* Part I.B.

196. Conti-Cook, *supra* note 187, at 154.

197. The SDNY opinion certifying the class described graffiti reading, “I want to get out of here fast so I can legally kill n—” greeting entrants to the police academy. *Latino Officers Ass’n N.Y. v. City of New York*, 209 F.R.D. 79, 82 (S.D.N.Y. 2002).

198. For instance, to sustain an equal protection claim, a plaintiff must show that she was treated differently from “similarly situated” individuals of a different race or other protected class. *United States v. Armstrong*, 517 U.S. 456, 458 (1996) (holding that

## B. Transparency and Police Abolition

The failure to hold officers accountable for misconduct and the racial disparities in discipline parallel the failure of the criminal justice system to hold officers accountable for murdering civilians and the racial disparities in officer criminal prosecutions. Professor Kate Levine writes that the criminal justice system “play[s] out its racial pathologies” in prosecutions of police who kill civilians.<sup>199</sup> Just as misconduct complaints filed with the CCRB rarely result in meaningful discipline, fatal shootings by the police rarely result in criminal penalties.<sup>200</sup> Evidence also suggests that the system disproportionately imposes its relatively few criminal punishments on officers of color.<sup>201</sup>

Levine does not call for increased prosecutions of white officers who shoot civilians or for a higher rate of officer prosecutions overall. To the contrary, she argues that “a project to increase the harshness of the criminal legal system against police officers will, far from its proponents’ goals, legitimize and increase the footprint of our current criminal legal system.”<sup>202</sup> In addition, doubling down on existing systems promotes the fiction that police violence represents an aberration rather than a feature of the carceral state, and that “bad apples” rather than an inherently violent system, are responsible for officers’ terrorizing of communities.<sup>203</sup>

These same conclusions apply to efforts to eliminate the CCRB process’s racial disparities or otherwise reform it. Directing resources to the reform of a disciplinary system that preserves NYPD discretion and secrecy

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defendants were not entitled to discovery for their selective prosecution claim because they had failed to identify “similarly situated” individuals who were treated differently). The second circuit has applied the “similarly situated” requirement to equal protection claims against government employers. *See* *Brown v. City of Syracuse*, 673 F.3d 141, 146 (2d Cir. 2012) (holding that by failing to identify “similarly situated” employees who had not been fired, a police officer failed to state a discrimination claim against a police department when it fired him for having a sexual relationship with a minor).

199. Kate Levine, *Police Prosecutions and Punitive Instincts*, 98 WASH. UNIV. L. REV. 997, 1008 (2021).

200. Police fatally shoot roughly 1,000 people yearly in the United States, but fewer than 50 officers have been convicted on charges related to these shootings since 2005. *See* Amelia Thomson-DeVeaux et al., *Why It’s So Rare for Police Officers to Face Legal Consequences*, FIVETHIRTYEIGHT (June 4, 2020), <https://fivethirtyeight.com/features/why-its-still-so-rare-for-police-officers-to-face-legal-consequences-for-misconduct/> [<https://perma.cc/PYM4-6WXQ>].

201. *See* Levine, *supra* note 199, at 1007–08 (highlighting the convictions of three officers of color in jurisdictions where on-duty killings did not result in convictions for white officers).

202. *Id.* at 1003.

203. *Id.* at 1035.

perpetuates the fiction that the NYPD is capable of or even interested in controlling police misconduct. Further, the CCRB's punishments of individuals reinforces the false narrative of "good cops" and "bad cops," rather than drawing attention to the violent nature of the police system as a whole.

Levine urges the adoption of an abolitionist ethic to guide solutions.<sup>204</sup> As Levine writes, an abolitionist ethic "is a way of looking at criminal legal system reform with an eye toward diminishing its power and footprint rather than tinkering at the margins with cosmetic reforms that do little to change the inherently rotten structures in place."<sup>205</sup> Increased transparency has a place in an abolitionist ethic.

Abolitionist reforms challenge the notion that more policing means more safety, reduce the tactics at police disposal, reduce the scale of policing, and do not add to police department budgets.<sup>206</sup> Activists do not typically count increased transparency among abolitionist reforms. Politicians often mention transparency alongside growth initiatives such as community policing and body cameras.<sup>207</sup> However, abolition cannot and should not be achieved without shifting decision-making power to the communities most impacted by policing, and full transparency is essential to that power shift. Today, few civilians support defunding the police, including Black and Latinx people who are much more likely to be affected by police abuse.<sup>208</sup> Communities need complete and easily accessible information to evaluate options and strategies.

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204. *Id.* at 1023–24; *see also* Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1161 (2015) (introducing the idea of a "prison abolitionist ethic").

205. Levine, *supra* note 199, at 1024.

206. Or better yet, reduce police department budgets. *See* CRITICAL RESISTANCE, REFORMIST REFORMS VS. ABOLITIONIST STEPS IN POLICING (2021), [http://criticalresistance.org/wpcontent/uploads/2020/08/CR\\_NoCops\\_reform\\_vs\\_abolition\\_REV2020.pdf](http://criticalresistance.org/wpcontent/uploads/2020/08/CR_NoCops_reform_vs_abolition_REV2020.pdf) [<https://perma.cc/K5FD-28YX>].

207. *See, e.g.*, Cameron Knight, *Mayor: Make It easier for the Police Chief to Punish and Fire Officers*, CINCINNATI ENQUIRER (Oct. 13, 2020), <https://www.cincinnati.com/story/news/2020/10/13/mayor-wants-to-make-easier-police-chief-discipline-officers/5978611002/> [<https://perma.cc/A7K5-G4QB>] (describing a Cincinnati mayoral report that recommends, among other reforms, increased records transparency and use of body cameras).

208. Ben Guarino, *Few Americans Want to Abolish Police, Gallup Survey Finds*, WASH. POST (July 22, 2020), <https://www.washingtonpost.com/nation/2020/07/22/abolish-police-gallup-poll/> [<https://perma.cc/KJ7M-GC8G>].

### C. Models of Transparency

In the months since the defeat of the New York City police unions' § 50-a lawsuit, City agencies have released various misconduct and discipline data. For instance, the NYPD published an online dashboard with profiles of active officers including "partial" disciplinary histories since 2014.<sup>209</sup> However, the disciplinary history is populated for few if any officers and does not include at least some discipline resulting from CCRB complaints during the specified time period.<sup>210</sup> The NYPD also released a subset of administrative trial decisions since 2017, only some of which pertain to misconduct against civilians.<sup>211</sup> For its part, the CCRB has created a dashboard of complaints on its website and has released additional information to NYCLU, such as complainant race.<sup>212</sup>

These developments make New York City a leader in police transparency compared to most cities in the country. Along with the nearly third of states plus the District of Columbia that completely seal police discipline records, additional states such as California allow the public to access only certain classes of disciplinary information.<sup>213</sup> Others, like

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209. See *Officer Profile*, NYPD ONLINE, <https://nypdonline.org/link/2> [<https://perma.cc/GF37-5BZX>]; see also Southall, *supra* note 18 (discussing publication of officer disciplinary records by the NYPD).

210. For instance, Dominick Abate received a penalty of "instructions" for a 2019 incident, but his disciplinary history on the dashboard is blank. Compare CCRB COMPLAINT DATABASE, *supra* note 5, with *Officer Profile*, NYPD ONLINE, <https://nypdonline.org/link/2> [<https://perma.cc/GF37-5BZX>]. Notably, the dashboard does not allow users to download the data in aggregate.

211. See *e.g.*, Off. of the Police Comm'r, Disciplinary Case No. 2017-17713 (July 6, 2020), [https://oip.nypdonline.org/files/937735\\_07062020\\_2020009.pdf](https://oip.nypdonline.org/files/937735_07062020_2020009.pdf) [<https://perma.cc/X9CM-FGG3>] (example of a trial decision against an officer). See generally Trial Decisions Library, NYPD ONLINE, <https://nypdonline.org/link/1016> [<https://perma.cc/YT38-9ZVT>] (the library of published decisions).

212. In the coming months, FOIL requests by citizens may broaden the scope of available data, but FOIL is no substitute for affirmative disclosure. The NYPD's history of obstructing transparency and oversight, along with demonstrated obstruction of freedom of information requests by departments in other cities should compel New York City to take action. See *supra* Part I; see also Robert Lewis et al., *Is Police Misconduct a Secret in Your State?* WNYC (Oct. 15, 2015), <https://project.wnyc.org/disciplinary-records/> [<https://project.wnyc.org/disciplinary-records/>] (describing WNYC's 2015 state-by-state review of disciplinary records secrecy laws).

213. All Things Considered, *California's New Police Transparency Law Shows How Officers Are Disciplined*, NPR (Mar. 27, 2019), <https://www.npr.org/2019/03/27/707358137/californias-new-police-transparency-law-shows-how-officers-are-disciplined> [<https://perma.cc/YKF5-8E48>]; see also Lewis et al., *supra* note 212 (describing WNYC's 2015 state-by-state review of disciplinary records secrecy laws); CAL. PENAL CODE § 832.7 (West 2019) (listing the types of incidents for which reports, investigations, and findings are to be made available to the public).

Louisiana, have unclear statutes and case law and do not affirmatively release information, allowing police departments to defy freedom of information requests.<sup>214</sup>

But so far, New York City agencies have not released the necessary details to empower policed communities and expose racial disparities in discipline, particularly with respect to discipline outside of the CCRB process. To achieve these objectives, databases must include all disciplinary actions and misconduct accusations, as well as full details of the misconduct, including (1) demographic information on complaining witnesses, (2) final disciplinary decisions imposed by the Police Commissioner, and (3) final disciplinary outcomes at the command level (such as the end result of Command Discipline)—regardless of whether or not the NYPD filed internal or CCRB Charges<sup>215</sup>—and (4) sufficient demographic information about officers, including race.

Most importantly, this information will allow policed communities to access the full picture of police violence and lack of accountability in their neighborhoods. It will also allow officers who feel they have been discriminated against to compare the outcomes of their cases to the outcomes of similar cases. Complainants too may investigate whether officer or complainant race affects disciplinary outcomes.

The Citizens Police Data Project, an initiative by the non-profit Invisible Institute in Chicago, is a useful model of transparency.<sup>216</sup> The

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214. See *City of Baton Rouge v. Cap. City Press, L.L.C.*, 2007-1088 (La. App. 1st Cir. Ct. 10/10/08); 4 So. 3d 807, *judgment modified on reh'g.*, (La. App. 1st Cir. Ct. 2/13/09); 7 So. 3d 21 (holding that the Baton Rouge Police Department violated Louisiana's Public Records Act when it refused to disclose police discipline records upon request); see also Lewis et al., *supra* note 212 (providing state-by-state overview of relevant statutes and case law).

215. The CCRB data demonstrate that most complaints of misconduct investigated by the CCRB do not lead to Charges—either because the CCRB does not have enough evidence to substantiate the complaint, because the CCRB recommends a lower penalty, or because the NYPD defies the CCRB's recommendation to bring Charges. See, e.g., Part III.D (displaying results of downcharging analyses); see also *supra* Table 3 (showing that the NYPD typically rejects CCRB recommendations of Charges). Limiting disclosure to instances in which Charges were filed would limit disclosure to a small corner of the total universe of NYPD misconduct.

216. See *Citizens Police Data Project*, INVISIBLE INST., <https://invisible.institute/police-data> [<https://perma.cc/VUQ2-M2W8>]. The Citizens Police Data Project was made possible by *Kalven v. City of Chi.*, 2014 IL App (1st) 121846 (removing legal protections for police misconduct records in Illinois). The Fraternal Order of Police ("FOP") continues to wage a legal battle against transparency in Chicago. Most recently, the Supreme Court of Illinois ruled against the FOP in holding that the CPD's policy of destroying old disciplinary records violated the public policy underlying Illinois's State

database allows the public to view Chicago police misconduct individually and in aggregate, from the full text of individual civilian complaints<sup>217</sup> to maps visualizing the geography of misconduct, as well as vital officer information such as race and misconduct history. To date, it includes information about nearly 250,000 allegations against officers.<sup>218</sup> The database revealed that fewer than 3% of allegations led to discipline and that Black officers received discipline at almost twice the rate of white officers.<sup>219</sup> The extreme lack of accountability revealed by the database helped spark a U.S. Department of Justice investigation of the Chicago Police Department in 2015.<sup>220</sup> Chicago adopted extensive police reforms in the aftermath of the investigation.<sup>221</sup>

No transparency effort, even one as significant as the Invisible Institute's, will transform police accountability or eliminate racial disparities on its own. Transparency is a tool for creating change, not solution in itself. However, the broad-based support for transparency and its immediate benefits to survivors and officers make it an essential first step toward both reform and abolition goals.

#### CONCLUSION

This Note aimed to test (1) whether the NYPD was less likely to impose the least severe type of discipline on officers of color compared with white officers, and (2) whether any racial differences in discipline could be explained by the CCRB's initial complaint recommendations. Black and Hispanic officers in the dataset were less likely than white officers to receive a low or no penalty for misconduct after controlling for relevant factors, and this disparity was not explained by differences in CCRB recommendations.

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Records Act and Chicago's State Records Act. *See* City of Chicago v. Fraternal Ord. of Police, Chi. Lodge No. 7, 2019 IL App (1st) 172907.

217. The complaints protect privacy by redacting all personal information about complainants and sensitive personal information about officers.

218. *See Citizens Police Data Project*, *supra* note 216.

219. *See The Invisible Institute Wins December Sidney for Exposing Trove of Troubling Police Data*, SIDNEY HILLMAN FOUND. (Dec. 2015), <https://hillmanfoundation.org/sidney-awards/invisible-institute-wins-december-sidney-exposing-trove-troubling-police-data> [<https://perma.cc/VZ32-3CPE>].

220. *See id.*; U.S. DEP'T OF JUST. C.R. DIV. & U.S. ATT'Y'S OFFICE N. DIST. OF ILL., INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT (2017), <https://www.justice.gov/opa/file/925846/download> [<https://perma.cc/T6KN-NP>8].

221. Matthew S. Schwartz, *Court Approves Historic Reforms to Chicago Police Department*, NPR (Feb. 1, 2019), <https://www.npr.org/2019/02/01/690591913/court-approves-historic-reforms-to-chicago-police-department> [<https://perma.cc/MAY7-GRC8>].

Black and Asian officers were also less likely to be downcharged by the NYPD from CCRB recommendations than were white officers.

Given the NYPD's history of discrimination against both civilians and officers of color, these findings do not come as a surprise. However, it is important to properly contextualize these results: these data show that few officers of any race face significant consequences for their misconduct against civilians, but that white officers enjoy a higher degree of lenience than do officers of color.

Increasing police misconduct and discipline transparency, recognized as a pillar of police reform, would likely illuminate similar racial disparities in other police departments and in internal NYPD disciplinary processes. While transparency is not often cited as an abolitionist reform, increased transparency is essential to empowering policed communities and shifting public opinion towards abolition. Illuminating disparities may also motivate more officers of color across the country to participate in conversations about reform.