



The City of New York  
Department of Investigation

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January 12, 2015

Honorable Bill de Blasio  
Mayor of the City of New York  
City Hall  
New York, NY 10007

Honorable Melissa Mark-Viverito  
Speaker  
The New York City Council  
250 Broadway, 18<sup>th</sup> Floor  
New York, NY 10007

Honorable William Bratton  
Commissioner  
New York City Police Department  
1 Police Plaza  
New York, NY 10038

Dear Mayor de Blasio, Speaker Mark-Viverito and Commissioner Bratton:

As required by Local Law 70 and the New York City Charter, I hereby submit the attached written Report of the investigation and review recently completed by the Department of Investigation, Office of the Inspector General for the NYPD ("OIG-NYPD"). The investigation and review, conducted over several months, concerns the disciplinary process for certain officers found to have used chokeholds and, from that review, considers questions regarding the use of force more generally.

Before discussing the Report itself, some background on the OIG-NYPD's creation and first six months of activity is in order. In 2013, Local Law 70 amended the City Charter to require the Commissioner of the Department of Investigation to:

"on an ongoing basis, investigate, review, study, audit and make recommendations relating to the operations, policies, programs and practices ... of the New York City Police Department with the goal of enhancing the effectiveness of the Department, increasing public safety, protecting civil liberties and civil rights, and increasing the public's confidence in the police force."

New York City Charter, Chapter 34, Section 803(c)(1).

Pursuant to that mandate, I appointed Philip Eure as the City's first Inspector General for the NYPD. For the past six months, Inspector General Eure has been assembling a staff of lawyers, investigators, and data and policy analysts who will carry out the requirements of Local Law 70. During

this time, both I and Mr. Eure have also met with numerous stakeholders within both the NYPD and the various communities the police department serves.

During the many hours of meetings with community and advocacy groups, various patterns and issues emerged. Broadly speaking, there are four general areas that stakeholders repeatedly raised and therefore require proactive review: (1) The NYPD's management of use of force and discipline for improper use of force; (2) Patterns (based on statistical analysis) of low-level arrests and summonses; (3) Surveillance of religious and political groups; and (4) Police encounters involving people with mental illness. *It is imperative to note that by listing these topics I do not suggest that we have yet made any findings of improper actions or make any criticisms other than what is specifically contained in the attached Report. Nor is it correct to assume that no other subjects will or should receive attention from this office.* However, given the history and purpose of Local Law 70, which is to create an independent vehicle for review of broad-based issues, all four of these areas clearly deserve such review.<sup>1</sup>

The attached Report represents the OIG-NYPD's preliminary findings regarding the first of the above listed proactive areas – discipline following a finding of improper use of force. The Report makes some initial findings and recommendations, and provides a comprehensive description of the opaque disciplinary process. However, the most important aspect of the Report is that it identifies the discrete questions that must be tackled within this broader subject, most notably: The extent to which the NYPD has disregarded disciplinary recommendations from the Civilian Complaint Review Board (“CCRB”) and thus minimized the role of the central body tasked with investigating individual cases of police misconduct; the extent to which interactions between police and members of the public too quickly escalate to physical force; and the extent to which lack of coordination between the various actions in this process produces inefficient results. We will examine each of these questions in the coming months in further public reports. *This preliminary Report should therefore be seen as a roadmap for the specific “investigation[s], review[s], stud[ies] or audit[s]” the OIG-NYPD will undertake concerning the use of force during 2015.*

Finally, this Report was completed in the shadow of the horrific events of December 20, 2014 – the assassination of detectives Wenjian Liu and Rafael Ramos. The NYPD is among the most professional and best trained police forces in the world. To suggest otherwise is to forfeit participation in the reasoned debate about the future of policing. However, neither the NYPD's virtues and successes, nor its acknowledged importance to our civic life, should be used to prevent a discussion of genuine problems. One can respect the NYPD and still seek to address the legitimate concerns of the communities it serves.

There is perhaps no more important time for objective, independent and dispassionate review of policing in this City. In a moment of great prescience, Local Law 70 created an entity to fill such a role. This Report is the first step in that process.

Very truly yours,



Mark G. Peters  
Commissioner

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<sup>1</sup> In addition to the three proactive areas discussed above, the OIG-NYPD, like all Inspectors General, will also investigate more specific concerns based upon complaints from the public, reporting from both the NYPD's Internal Affairs Bureau and the Civilian Complaint Review Board as well as the OIG-NYPD's own investigative efforts.



**New York City Department of Investigation  
The Office of the Inspector General for the NYPD (OIG-NYPD)**

**Observations on Accountability and Transparency  
in Ten NYPD Chokehold Cases**



**Mark G. Peters  
Commissioner**

**Philip K. Eure  
Inspector General for the NYPD**

**January 2015**

**TABLE OF CONTENTS**

**Executive Summary** ..... ii

**Introduction** ..... 1

**Methodology** ..... 3

**Summaries of the Ten Cases Reviewed** ..... 4

**Background and Observations** ..... 7

**Discussion and Analysis** ..... 20

**Recommendations and Areas for Further Study** ..... 30

**Appendix**

    Glossary of Terms and Acronyms ..... a-2

    Index of Tables and Graphics ..... a-4

## EXECUTIVE SUMMARY

Section 203-11 of the Patrol Guide, which governs “Use of Force,” explicitly and unequivocally prohibits members of the New York City Police Department (“NYPD”) from using “chokeholds” in their interactions with the public:

Members of the New York City Police Department will NOT use chokeholds. A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air.

Patrol Guide § 203-11 (emphasis in original).<sup>1</sup>

The death of a Staten Island man, Eric Garner, on July 17, 2014, after he was brought to the ground by an officer’s arm around his neck in the course of an arrest, cast a spotlight on the use of chokeholds by NYPD officers and the enforcement of the chokehold prohibition under Section 203-11. Mr. Garner’s death generated widespread public outcry, elevated chokeholds as a major concern within the rubric of the use of force, and prompted a flurry of videos purportedly showing NYPD officers using chokeholds in a variety of encounters with members of the public. The decision by a grand jury, on December 3, 2014, not to issue an indictment in the Garner case only increases the need for independent administrative review of these issues.

In response to Mr. Garner’s death, the Office of the Inspector General for the NYPD (“OIG-NYPD”) conducted a focused review of the ten most recent cases where the Civilian Complaint Review Board (“CCRB”) determined that NYPD officers used “chokeholds.”<sup>2</sup> What OIG-NYPD found raises questions not only about the way in which NYPD has enforced the chokehold ban in recent years, but also, far more importantly, about the disciplinary process in general and interactions between NYPD and CCRB. While no definitive conclusions regarding the use of chokeholds can or should be drawn from the finite universe of cases reviewed here, OIG-NYPD’s study sheds light on areas where further careful analysis and study are warranted: how discipline is determined and imposed in use-of-force cases, gaps in inter- and intra-agency communication during the investigation of use-of-force cases, and officer training regarding communication skills, de-escalation strategies, and the use of force. ***This focused review, in effect, presents a road map of key policing issues with regard to the use of force that OIG-NYPD intends to explore and probe more deeply in the coming months.***

A complaint alleging that an NYPD police officer employed a chokehold in the course of a police encounter is handled in the same manner as any use-of-force complaint – in general, such cases are investigated by CCRB under that agency’s commonly-named “FADO” jurisdiction.<sup>3</sup> If substantiated, the cases are then forwarded to NYPD for determination and imposition of discipline. But in practice, the

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<sup>1</sup> Chokeholds, while prohibited by NYPD policy, are not illegal under New York State or City law. This report only focuses on the enforcement of NYPD’s chokehold policy and does not consider the issue of legality.

<sup>2</sup> The Garner case was not among the ten cases reviewed, as there has been no CCRB determination in that matter to date. With the conclusion of the Staten Island grand jury’s investigation on December 3, 2014, NYPD has commenced its own internal investigation into the death of Mr. Garner.

<sup>3</sup> Under Chapter 18-A, Section 440(c)(1) of the New York City Charter, CCRB has jurisdiction to receive, investigate, and make findings upon complaints by members of the public against members of NYPD alleging “FADO” offenses: excessive use of Force, Abuse of authority, Discourtesy, or use of Offensive language.

processes by which these use-of-force complaints, including chokehold complaints, are reported and investigated, and the manner in which NYPD officers are held accountable when those complaints are substantiated, are more tangled. These processes not only span two different agencies – CCRB and NYPD – but they also involve several often divergent levels of review, evaluation, and authority. This report provides some measure of transparency into these processes, based on the ten cases reviewed as well as multiple interviews and review of other NYPD documents.

OIG-NYPD’s review of the ten chokehold cases substantiated by CCRB between 2009 and 2014 illustrates that, in practice, at least historically, the disciplinary process is complex, multi-tiered, and often delivers inconsistent results:

- CCRB recommended Administrative Charges, the most serious level of NYPD discipline, in nine of the ten cases studied. In the one chokehold case where CCRB recommended something less than Administrative Charges – the case of an officer who died before CCRB’s recommendation was reviewed or acted upon – CCRB recommended Command Discipline.<sup>4</sup>
- NYPD’s Department Advocate’s Office (“DAO”) – the NYPD unit that prosecutes NYPD disciplinary matters and, until April 11, 2013, was responsible for prosecuting all substantiated use-of-force cases – handled seven of the ten substantiated cases reviewed for this study.<sup>5</sup> CCRB recommended Administrative Charges in six of those seven cases, but none of these substantiated chokehold cases ever went to trial before a NYPD Trial Commissioner. Instead, DAO departed from CCRB’s recommendation every time. Rather than pursue the more serious Administrative Charges, DAO proposed Instructions<sup>6</sup> -- a lesser penalty -- in four cases, Command Discipline in one case, and no discipline whatsoever in one case.
- The Police Commissioner made a final determination about discipline in six of the ten cases reviewed for this study. All six times, the Police Commissioner<sup>7</sup> rejected the disciplinary recommendation of CCRB, imposing a less severe penalty than that recommended by CCRB or deciding that no discipline was warranted at all.<sup>8</sup>

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<sup>4</sup> Administrative Charges involves the filing of departmental Charges and Specifications before a Trial Commissioner and could result in the forfeiture of vacation days, probation, or even termination from NYPD. Command Discipline, a lower grade of discipline, involves a loss of vacation days and is generally imposed on the precinct level.

<sup>5</sup> Three of the ten cases reviewed went to CCRB’s Administrative Prosecution Unit (“APU”) after CCRB substantiated the chokehold allegations. The APU pursued Administrative Charges for chokehold allegations in two of those cases. In the third case, the APU declined to prosecute the substantiated chokehold allegation after the complainant told prosecutors that he could not identify the officer who placed him in a chokehold. However, the APU filed Charges and Specifications as to other allegations from the same incident.

<sup>6</sup> Instructions, the least punitive disciplinary measure, involves an officer receiving re-instruction on proper procedure by a Commanding Officer or at the Police Academy.

<sup>7</sup> The Police Commissioner who decided and imposed discipline in all six of these cases was Raymond W. Kelly, the predecessor to the current Police Commissioner, William J. Bratton.

<sup>8</sup> This report focuses exclusively on NYPD’s internal, administrative disciplinary process, separate and apart from other potential consequences, such as those imposed via the criminal justice system.

Moreover, from OIG-NYPD's review of the ten chokehold cases substantiated by CCRB between 2009 and 2014, certain themes, questions, and patterns emerge, each of which OIG-NYPD will review further to determine whether the trends seen are anomalous or emblematic of broader systemic issues:

- ***In the period reviewed, CCRB and NYPD had incongruous approaches for determining how and when police officers should be held accountable for using chokeholds. NYPD largely rejected CCRB's findings and recommendations and, thus, mooted CCRB's role in the process.*** CCRB, an investigative agency, tended to substantiate cases based specifically on whether credible evidence (such as video footage, third-party witnesses, or police officer admissions) indicated contact between the subject officer and the complainant's neck in a manner that interfered with breathing. Where the chokehold allegation was substantiated, CCRB tended to recommend Administrative Charges. In contrast, DAO, a prosecutorial unit, defined "chokehold" more narrowly and evaluated the incident more contextually, considering the subject officer's personnel history, the viability of a potential prosecution, and the circumstances in which the officer used the chokehold. After reviewing these factors, DAO rejected CCRB's disciplinary recommendations in every one of the cases examined. In fact, there was no indication from the records reviewed that NYPD seriously contemplated CCRB's disciplinary recommendations or that CCRB's input added any value to the disciplinary process. OIG-NYPD intends to examine a broader universe of substantiated use-of-force cases to probe whether DAO departed downward from CCRB's disciplinary recommendations in substantiated use-of-force cases as a matter of general practice.
- ***From the cases examined, the Police Commissioner routinely rejected CCRB's disciplinary recommendations in substantiated chokehold cases without explanation.*** Of the six chokehold cases reviewed for this study where the Police Commissioner made a final disciplinary determination, the Police Commissioner departed from the disciplinary recommendation of CCRB every time, imposing a less severe penalty or, in two cases, no penalty at all. In one of those cases, the Police Commissioner's imposed penalty was even lower than the reduced penalty recommended by DAO. Yet in none of these cases did the Police Commissioner provide any explanation for these disciplinary decisions. Whether such data are indicative of a broader trend whereby CCRB's disciplinary recommendations are not adding value to the process as intended and whether such a trend is continuing under the current Police Commissioner are matters that OIG-NYPD will take up in a subsequent review.
- ***A review of chokehold cases substantiated between 2009 and 2014 raises questions regarding the effectiveness of training on communication skills and de-escalation tactics.*** Chokeholds are strictly prohibited by Section 203-11 of the Patrol Guide, without exception. Yet the circumstance in which officers use chokeholds is relevant – if not with respect to accountability, then for training purposes. OIG-NYPD observed that in several of the ten cases reviewed, NYPD officers employed prohibited chokeholds – whether neck grabs or headlocks or some other contact with the neck or throat – as a ***first act of physical force*** in response to verbal resistance, as opposed to first attempting to defuse the situation. Without drawing any conclusions as to the prevalence of chokeholds from the finite sample of cases reviewed, OIG-NYPD intends to examine use-of-force cases more broadly to determine whether OIG-NYPD's observations in these cases are emblematic of a larger trend and to assess whether NYPD is adequately teaching and reinforcing effective communication skills and approved de-escalation tactics to all of its officers.

- ***There is an uneven exchange of information between IAB and CCRB with respect to chokehold and other use-of-force complaints which limits NYPD's ability to track, screen, and potentially investigate these cases.*** OIG-NYPD's review of the ten chokehold cases substantiated between 2009 and 2014 suggests that information tends to flow more readily from NYPD's Internal Affairs Bureau ("IAB") to CCRB than it does in the reverse direction. IAB notifies CCRB of all use-of-force complaints, as required under City law, but CCRB does not reciprocate by routinely sharing all use-of-force complaints with IAB (and indeed, there is nothing requiring CCRB to do so). Specifically, CCRB received timely referrals and was able to investigate all five of the chokehold cases reviewed by OIG-NYPD that originated with complaints made solely to IAB. By contrast, IAB had no record of the five cases where reports were made solely to CCRB because they did not involve "serious injury" and thus were not reported to IAB. As a result, IAB was not in a position to track the matters or assess the need for separate NYPD investigations to augment CCRB's FADO investigations. Importantly, IAB's lack of involvement with these cases was not necessarily based on a substantive reason, but occurred primarily because of the avenue through which the complaints were initially reported.
- ***NYPD conducts investigations of non-FADO components of chokehold and other use-of-force complaints on the borough or precinct level, but these investigations vary greatly in their depth and substance and are not consistently tracked.*** While CCRB investigates the force elements of chokehold cases under its FADO jurisdiction, the non-force elements of chokehold cases are generally sent to the Office of the Chief of Department ("OCD") for borough- or precinct-level investigators to investigate any non-FADO components of the complaint, such as improper summonses and irregularities with arrest paperwork. But from OIG-NYPD's limited review, there appears to be an informality and inconsistency to these "outside guidelines" ("OG") investigations, in terms of when they are performed, their scope, and how results are tracked. Greater consistency and coordination within NYPD related to these OG investigations may be desirable.

***This office will, over the next several months, review a statistically-significant universe of case files related to the above issues to determine whether these are systemic or widespread problems. OIG-NYPD's findings will be made public in subsequent reports.***

Even this limited review of the ten most recent substantiated chokehold cases revealed that certain policy changes should be made. To that end, and as discussed in more detail in this report, OIG-NYPD offers the following preliminary recommendations to NYPD, and where relevant, CCRB.

- 1.) Increase coordination and collaboration between NYPD and CCRB to reconsider and refine the disciplinary system for improper uses of force, specifically to ensure that both entities apply consistent standards. Clearly, if CCRB is to add value to the disciplinary process for use-of-force cases, its recommendations must be predictable and consistently enforced.
- 2.) Ensure that the Police Commissioner's disciplinary decisions are reasoned, transparent, and in writing, particularly when they depart from the recommendations of CCRB.
- 3.) Expand IAB's access to newly-filed complaints and substantive information on use-of-force cases filed with CCRB.



- 4.) Improve consistency, information sharing, and case tracking for non-FADO investigations that are outsourced to borough and precinct investigators via OCD.

We note that NYPD has already begun related changes on some of these issues. OIG-NYPD believes that these preliminary recommendations, if implemented, will further the goals of increasing public safety, protecting civil rights and civil liberties – for members of the public as well as for police officers – and providing greater transparency and enhancing accountability, which in turn will enhance the public’s confidence in the police department and improve relations between police and the community.

## INTRODUCTION

The death of a Staten Island man on July 17, 2014 during what should have been a routine arrest for a non-violent quality-of-life infraction – the unauthorized sale of loose cigarettes – brought heightened attention to the use of chokeholds specifically, and the improper use of force more generally, by members of the New York City Police Department (“NYPD”).

The use of chokeholds is strictly forbidden by Section 203-11 of the Patrol Guide, which sets forth NYPD policy on “Use of Force.” With respect to police authority to use force in general, Section 203-11 provides, “Only that amount of force necessary to overcome resistance will be used to effect an arrest or take a mentally ill or emotionally disturbed person into custody.” The policy further requires that all members of NYPD at the scene of a police incident “use minimum necessary force.” And notably, regardless of the level of force that may be warranted by a given situation, Section 203-11 explicitly and unequivocally prohibits the use of chokeholds:

Members of the New York City Police Department will NOT use chokeholds. A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air.

Patrol Guide § 203-11 (emphasis in original). Indeed, a concern about not impeding individuals’ breathing pervades Section 203-11. For example, in addition to the categorical ban on chokeholds, the policy stresses avoiding “tactics, such as sitting or standing on a subject’s chest, which may result in chest compression, thereby reducing the subject’s ability to breathe.” Patrol Guide § 203-11. The policy also emphasizes the need to position people in custody “so as to promote free breathing.” Patrol Guide § 203-11. But the prohibition on chokeholds is unique as the only specific type of force to be singled out and banned categorically and without exception.

Given this clear proscription against the use of chokeholds under NYPD policy,<sup>1</sup> the death of Eric Garner – coupled with the disclosure shortly thereafter that the Civilian Complaint Review Board (“CCRB”) substantiated ten reports of chokehold use by NYPD between 2009 and 2014<sup>2</sup> – raises compelling questions about NYPD policies, practices, and procedures surrounding the use of chokeholds (and the use of force more generally):

- How frequently are NYPD officers using chokeholds?
- How and why are NYPD officers using chokeholds, especially if they are a prohibited activity?
- What happens when an NYPD officer is found to have used a chokehold (or other improper force) on a member of the public?
- What type of discipline, if any, does NYPD impose on officers who violate the prohibition on the use of chokeholds (or otherwise use improper force)?

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<sup>1</sup> It bears noting that chokeholds, while prohibited by NYPD policy, are not illegal under New York State or City law.

<sup>2</sup> CCRB, in its recent report entitled, *A Mutated Rule: Lack of Enforcement in the Face of Persistent Chokehold Complaints in New York City*, raised relevant questions regarding how “chokehold” has been defined by NYPD and CCRB in the investigative and disciplinary processes. Given CCRB’s recent and detailed discussion of this important issue, OIG-NYPD will not replicate a consideration of that question in this report.

In response to the Garner incident and the related issues being debated in the public arena, in late July 2014, the Office of the Inspector General for the NYPD (“OIG-NYPD”) requested documents from NYPD and CCRB relating to the ten cases where CCRB investigated and substantiated allegations of chokeholds between 2009 and 2014.<sup>3</sup> The goal of this preliminary review was to understand how allegations that NYPD officers used chokeholds were received, investigated, and addressed<sup>4</sup> in the period between 2009 and 2014 in order to bring greater transparency to these important processes and to identify potential concerns and areas for further OIG-NYPD review.<sup>5</sup>

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<sup>3</sup> In the days following the Garner incident, CCRB announced that between 2009 and 2013, CCRB received 1,022 complaints alleging chokeholds by NYPD officers. Of the 462 cases that CCRB investigated fully, it substantiated nine chokehold allegations. See “Civilian Complaint Review Board Announces It Will Do Comprehensive Study of Chokehold Complaints Received by the Agency During Past Five Years,” (Press Release of July 19, 2014) at [http://www.nyc.gov/html/ccrb/downloads/pdf/News\\_Chokehold%20Study\\_20140719.pdf](http://www.nyc.gov/html/ccrb/downloads/pdf/News_Chokehold%20Study_20140719.pdf). In its more comprehensive report on chokeholds issued in October 2014, CCRB reported that from 2009 through June 2014, CCRB received and disposed of 1,082 complaints alleging 1,128 chokehold allegations by NYPD officers. Of the 520 chokehold allegations that it investigated fully, CCRB substantiated ten chokehold allegations. See Civilian Complaint Review Board, *A Mutated Rule: Lack of Enforcement in the Face of Persistent Chokehold Complaints in New York City* (October 2014), at 25-27.

<sup>4</sup> This report focuses exclusively on NYPD’s internal, administrative disciplinary process, separate and apart from other potential consequences, such as those imposed via the criminal justice system.

<sup>5</sup> Commissioner Mark G. Peters and Inspector General Philip K. Eure thank the staff of OIG-NYPD for their efforts, persistence, and insight in researching and writing this report, especially Thomas Mahoney, Director of Investigations; J. Olabisi Matthews, Investigator; Arturo Sanchez, Investigator; Andrew Guinan, Investigator; Sandra Musumeci, Deputy Inspector General; and Asim Rehman, General Counsel. Commissioner Peters and IG Eure also recognize the important contributions made by Lesley Brovner, First Deputy Commissioner, and Richard Condon, Special Commissioner of Investigation for the New York City School District. Commissioner Peters and IG Eure extend thanks to the New York Police Department and the Civilian Complaint Review Board for their cooperation during the investigation of this report.

## METHODOLOGY

Following the death of Mr. Garner on July 17, 2014, OIG-NYPD requested documents from NYPD and CCRB relating to the ten cases where CCRB investigated and substantiated allegations of chokeholds between 2009 and 2014.<sup>6</sup> In addition to requesting CCRB's complete investigative case files for these ten cases, OIG-NYPD requested from NYPD the following materials for each of these same ten cases:

- CCRB's disciplinary recommendations to the Office of the Police Commissioner;
- All logs from NYPD's Internal Affairs Bureau ("IAB");
- Related files maintained by the NYPD Department Advocate's Office ("DAO");
- Preliminary and/or final decisions rendered by the Office of the Deputy Commissioner of Trials;
- Documentation from the Office of the Police Commissioner regarding whether or not disciplinary, administrative, or other action was taken;
- Related files created or maintained by the Office of the Chief of Department ("OCD"), the Investigation Review Section ("IRS"), and/or the Borough Investigations Unit;
- The Central Personnel Index ("CPI") for each of the subject officers; and
- References to chokehold allegations or discipline stemming therefrom in any NYPD performance monitoring system or "early warning system."

In addition to carefully studying and analyzing the materials received from NYPD and CCRB, OIG-NYPD also reviewed relevant portions of the Patrol Guide as well as relevant sections of the New York City Charter and the Rules of the City of New York. Members of OIG-NYPD engaged in multiple discussions with leadership from numerous relevant NYPD units, including (but not limited to) IAB, IRS, DAO, the Office of the Deputy Commissioner of Trials, Office of the First Deputy Commissioner, and Deputy Commissioner of Legal Matters. OIG-NYPD staff also participated in discussions with representatives of CCRB and reviewed the Memorandum of Understanding ("MOU") of April 2, 2012, between CCRB and NYPD which created CCRB's Administrative Prosecution Unit ("APU"). Members of OIG-NYPD also studied the report issued by CCRB in October 2014 entitled, *A Mutated Rule: Lack of Enforcement in the Face of Persistent Chokehold Complaints in New York City*, which provided valuable insights into the processes and events described in this report. Furthermore, OIG-NYPD investigators conferred with law enforcement professionals at several other large metropolitan police departments around the U.S. Finally, OIG-NYPD reviewed a variety of other publicly-available materials and secondary sources, including agency websites, legal databases, sworn testimony from the case of *Floyd v. City of New York*, police accountability references, and related materials.

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<sup>6</sup> The Garner case was not among the ten cases reviewed, as there has not yet been a CCRB determination substantiating use of a chokehold in that matter. With the conclusion of the Staten Island grand jury's investigation on December 3, 2014, NYPD has commenced its own internal investigation into the death of Mr. Garner.

## SUMMARIES OF THE TEN CASES REVIEWED

In the period between 2009 and July 2014, CCRB investigated and substantiated chokehold allegations in a total of ten cases. These ten cases involved a variety of factual scenarios and resulted in a range of outcomes once presented to NYPD for officer discipline. For reference, a thumbnail summary of each of the ten cases based on CCRB investigative files is presented below.<sup>7</sup>

### CCRB No. 2008xxx87 (Subject Officer P.O. A)

A 19-year old female reported that on January 8, 2008, she was being disciplined by a dean and a principal at her Bronx high school. As the young woman began to walk away from the confrontation, school administrators elicited the assistance of a school safety officer to stop her from walking away. According to the complainant, when the subject officer, P.O. A, approached her, P.O. A threw her against the wall and grasped the front of the complainant's neck for three to four seconds. Relying heavily on video footage of the incident, CCRB substantiated the chokehold allegation and recommended Administrative Charges against P.O. A. DAO recommended that P.O. A receive Instructions at the command level.<sup>8</sup> The Police Commissioner disapproved both the CCRB and DAO recommendations and directed that no disciplinary action be taken against P.O. A.

### CCRB No. 2008xxx07 (Subject Officer Det. B)

A male complainant reported that on February 14, 2008, several officers responded to the building where he lived in the Bronx to investigate a domestic dispute. Even though the complainant had no involvement in the domestic dispute, one of the responding officers stopped him as part of the investigation. The subject officer, Det. B, placed his hands around the complainant's neck and squeezed his Adam's apple during the course of the encounter. Based largely on the statements provided by two independent witnesses who corroborated the complainant's account, CCRB found that Det. B used a prohibited chokehold on the complainant. While CCRB recommended Administrative Charges against Det. B, DAO recommended that the detective receive Command Discipline instead. The Police Commissioner concurred and ultimately imposed a "Schedule B" Command Discipline, resulting in Det. B's loss of five vacation days.

### CCRB No. 2008xxx31 (Subject Officer Sgt. C)

A 15-year-old male complainant alleged that on November 19, 2008, while detained on charges of armed robbery and handcuffed to a metal bar within a Bronx precinct house, an officer stood behind him, put his arms around his neck, and choked him, which restricted his breathing. Based on the statement provided by another teenager also detained in the precinct, as well as the account provided by Sgt. C, CCRB determined the subject officer to be Sgt. C and substantiated the chokehold allegation. CCRB recommended Administrative Charges. DAO recommended that no disciplinary action be taken against Sgt. C. The Police Commissioner approved DAO's recommendation and no discipline was imposed.

### CCRB No. 2009xxx47 (Subject Officer P.O. D)

A male complainant reported that on January 9, 2009, as he was walking out of a convenience store in the Bronx, he was approached by officers who asked for his identification and told him that they

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<sup>7</sup> In order to protect the privacy of the people involved in each of these cases, names and identifying information are not included herein. Instead, the cases are referenced by redacted versions of CCRB case numbers and a letter to represent each subject officer's name (e.g., P.O. A, Det. B, etc.).

<sup>8</sup> The various levels of discipline that may be imposed by NYPD are described more fully herein on page 15.

were responding to a 911 call. After the complainant explained that he was not involved in any illegal activity, the subject officer, P.O. D, grabbed him by the arm, pushed him against the front of the store, and handcuffed him. When the complainant told P.O. D that he was not doing his job properly, the officer placed his hand and forearm on the complainant's throat, which constricted his airway. CCRB found the statements provided by the complainant and a witness to be credible and substantiated the chokehold allegation. CCRB recommended Command Discipline for P.O. D, but there was no DAO recommendation or final disposition because P.O. D died while NYPD was reviewing the case.

CCRB No. 2009xxx33 (Subject Officer P.O. E)

According to a male complainant, on August 26, 2009, while he was "rapping" with friends in front of a NYCHA building in Brooklyn, he made a comment which prompted passing police officers to stop. When the officers approached the complainant to question him, the subject officer, P.O. E, grabbed him, wrapped his arm around the young man's neck, and placed him in a headlock. The complainant alleged that the headlock restricted his breathing. Upon the conclusion of its investigation, CCRB substantiated the chokehold allegation and recommended Administrative Charges against P.O. E. Although P.O. E admitted to having placed the complainant in a headlock, DAO recommended that the officer receive only Instructions. The Police Commissioner agreed and Instructions were imposed.

CCRB No. 2010xxx35 (Subject Officer P.O. F)

A male complainant alleged that on September 18, 2010, while he was pulling his van out of a parking spot in Brooklyn, he was stopped by two officers who asked for his driving documents and his keys and ordered him to exit the van. According to the complainant, the officers accused him of operating an illegal for-hire van. The man refused to surrender his keys and instead threw them to a friend who attempted to flee. The complainant resisted arrest and physically struggled with the officers as they attempted to place him in handcuffs. Although there were inconsistencies in the complainant's accounts, CCRB determined that P.O. F first held the complainant around the neck using his right forearm and elbow while the complainant was in a seated position, and then held the complainant around the neck using his right wrist and hand, as evidenced by photographs of the incident. CCRB substantiated the chokehold allegation and recommended Administrative Charges against P.O. F. DAO rejected CCRB's recommendation and instead recommended Instructions at the Police Academy, which were ultimately imposed following the Police Commissioner's approval.

CCRB No. 2011xxx74 (Subject Officer P.O. G)

According to a male complainant, on December 17, 2010, while he and a group of acquaintances were standing outside of a NYCHA building in Brooklyn, several officers approached, asked if they lived in the building, and requested identification. After the complainant provided his ID and explained that he did not live there, one of the officers told him that the search of his ID revealed an active warrant for his arrest. A struggle ensued and the complainant alleged that he was slammed to the ground and one officers placed his arm across his neck from behind, which restricted his breathing. Because the subject officer, P.O. G, acknowledged that his arm may have been across the complainant's neck during the incident, CCRB substantiated the chokehold allegation and recommended Administrative Charges. DAO disapproved CCRB's recommendation and instead recommended Police Academy Instructions for P.O. G, which the Police Commissioner imposed.

CCRB No. 2012xxx71 (Subject Officer P.O. H)

A male complainant reported that on the evening of January 24, 2012, as he and a friend walked their bicycles on the sidewalk in Queens, two plainclothes officers approached and stopped them. According to the complainant, without any warning or explanation, one of the officers attempted to frisk

him. After the complainant resisted the frisk, the subject officer, P.O. H, attempted to take him down. As the two men struggled, P.O. H put his arm around the complainant's neck, which restricted his breathing. Based on the consistent accounts of the complainant and his friend, CCRB substantiated the chokehold allegation and recommended Administrative Charges against P.O. H. The case was prosecuted by CCRB's Administrative Prosecution Unit ("APU"), but P.O. H was found not guilty of the chokehold charge after trial.

CCRB No. 2012xxx28 (Subject Officer P.O. I)

A male complainant reported that on August 24, 2012, while sitting on a stoop in Brooklyn with friends, two officers approached him alleging that they smelled marijuana. According to the complainant, the officers grabbed him by his arm and attempted to handcuff him, but he pushed one of the officers away and struggled to avoid arrest. In doing so, the officers forced the complainant onto the ground. Video footage of the encounter showed one of the officers attempting to hold the complainant's legs while the subject officer, P.O. I, was near the complainant's upper torso struggling to handcuff him. Unable to restrain the complainant, P.O. I first moved his hand toward the complainant's chin area. Seconds later, P.O. I moved his hand to the complainant's neck area, applying pressure for about five seconds. As both P.O. I and another officer continued to physically battle with the complainant to subdue him, the complainant refused to comply and bit one of the officers on the hand. During the struggle, several individuals stood nearby, screaming and yelling at the officers. Based largely on the footage reviewed, CCRB substantiated the allegation that the subject officer, P.O. I, placed the complainant in a chokehold twice while on the ground. CCRB recommended Administrative Charges for P.O. I. The case is being prosecuted by the APU and is pending trial as of the date of this report.

CCRB No. 2012xxx79 (Subject Officer P.O. J)

A male complainant stated that on September 13, 2012, while waiting for an elevator inside a Bronx NYCHA building, he was approached by two officers who inquired if he resided in the building. When the complainant responded that he did not live there but his girlfriend was a resident, the officers said that they wanted to search him and the newspaper tucked under his arm. According to the complainant, he shook the newspaper in front of the officers to show them that he was not concealing anything, and the officers responded by grabbing his arms and neck. As the officers were trying to pull the man's arms behind his body, the subject officer, P.O. J, placed him in a headlock and took him down to the ground. The complainant further alleged that while on the ground, one of the officers placed a stick around his neck from behind that prevented him from breathing. Although CCRB investigators recommended that there was insufficient evidence to substantiate the chokehold allegation, the CCRB panel substantiated the chokehold and recommended Administrative Charges against P.O. J. The APU, however, declined to prosecute the chokehold charge and decided to prosecute only charges for an improper stop.

## BACKGROUND AND OBSERVATIONS

OIG-NYPD's study of chokeholds consisted primarily of its review of ten cases where CCRB substantiated allegations involving the use of chokeholds between 2009 and 2014. No conclusions can or should be drawn about the prevalence of chokeholds in NYPD encounters from such a discrete and limited sample size. Nor can one credibly extrapolate an explanation for why police officers use chokeholds, notwithstanding their ban in the Patrol Guide, from a review of these ten cases. Rather, OIG-NYPD set forth to conduct a thorough review into a small and narrowly-construed set of recently adjudicated cases to understand – and explain in a fully public way – the relevant reporting, investigative, and disciplinary processes and to make observations about how the procedures and mechanisms at play functioned in the handling of **these ten particular cases**. Close examination of these cases from the past five years also serves as a springboard for identifying potential areas of concern and raising questions deserving of further consideration and study by this office.

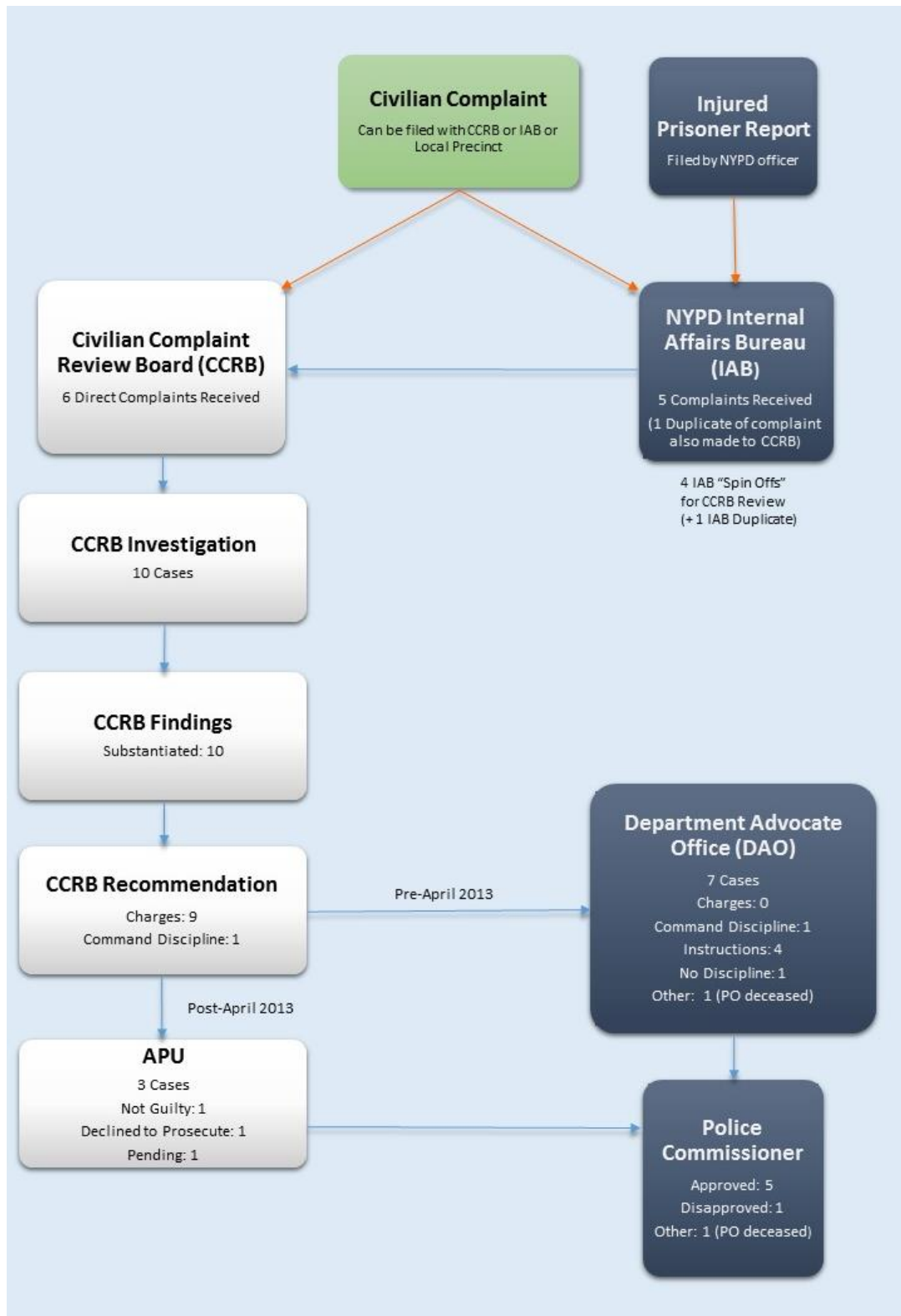
Before dissecting and evaluating the intake, investigative, and disciplinary processes at play, it is worthwhile first to describe the routes by which the ten chokehold allegations studied by OIG-NYPD worked their way through the NYPD system.

### ***Shedding Light on the Reporting, Investigation, and Disciplinary Processes for Use-of-Force Cases***

The system by which a chokehold complaint, or any use-of-force complaint, is reported and investigated, and the manner in which NYPD officers are held accountable when those complaints are substantiated, is a complex one involving two different agencies (CCRB and NYPD) and several different levels of review, evaluation, and authority. By this report, OIG-NYPD is providing the public with greater transparency into that often opaque system by tracing the progression of the ten substantiated chokehold cases that OIG-NYPD reviewed. The following diagram summarizes that path.



**Graphic 1: Life Cycle of the Ten Substantiated Chokehold Complaints**



### ***The Reporting of a Chokehold Case (As Evidenced by the Cases Reviewed)***

At the outset, it bears noting that chokehold allegations are merely a subset of the broader set of misconduct allegations relating to the excessive or improper use of force. Accordingly, the chokehold cases examined came to the attention of NYPD and CCRB through some variation of three primary mechanisms by which improper use-of-force allegations are reported. Each of the ten cases reviewed by OIG-NYPD reflected use of one or more of these reporting mechanisms:

1. *A complaint, either from the alleged victim or a witness, is made directly to CCRB.*

Since 1993, CCRB has had jurisdiction to receive, investigate, and make findings upon complaints by members of the public against members of NYPD alleging FADO offenses: excessive use of Force, Abuse of authority, Discourtesy, or use of Offensive language. See New York City Charter Ch. 18-A, § 440(c)(1). CCRB accepts complaints from members of the public through a variety of mechanisms: via walk-in complaints made at CCRB's office in downtown Manhattan, by telephone, by email, by mail, through CCRB outreach activities, and even through complaints made on CCRB forms available in all NYPD precinct houses. In general, CCRB does not routinely advise IAB when complaints alleging chokeholds, or any use-of-force, are received, unless the complaints allege serious injuries.

Six of the ten cases reviewed for this study involved reports that citizens made directly to CCRB.

2. *A complaint, either from the alleged victim or a witness, is made to IAB, which in turn refers the use-of-force complaint to CCRB (either with or without conducting its own preliminary "call-out" investigation).*

Members of the public may also lodge complaints about police conduct, including use-of-force allegations, with IAB. IAB maintains a central Command Center which logs all reports of potential misconduct received via telephone calls from members of the public, reports from precincts and members of NYPD, 911 calls, 311 calls, letters, emails, and referrals from other City and law enforcement agencies. Every report made to IAB is given a unique "log number," and multiple related logs pertaining to the same incident are flagged and linked. Incoming logs are reviewed and assessed daily and triaged, assigned, and referred as appropriate. Under NYPD procedure, all use-of-force complaints, including chokehold complaints, are referred to CCRB because they fall within CCRB's FADO jurisdiction. See Patrol Guide § 207-31.

When IAB refers use-of-force complaints to CCRB, IAB generates a separate "spin off" log number to track the CCRB investigation while, at the same time, retaining the original log number to encompass any non-FADO elements of the complaint. For example, if a citizen were to call and allege that an officer stopped him without proper basis, placed him in a chokehold, and took \$20 from him, all reported under IAB log # 12345, IAB would likely refer the improper stop and use-of-force allegations to CCRB, create a new spin-off log number to reflect that referral, and retain IAB log # 12345 to investigate the theft-of-property allegation as well as any potential related misconduct related to the officer's paperwork for the encounter.

In addition, in certain instances, IAB may conduct its own parallel investigation of the use-of-force complaint. For excessive force allegations deemed potentially serious, IAB deploys its dedicated use-of-force team, Group 54, on a "call-out" to conduct a preliminary investigation within 72 hours of

receiving the use-of-force complaint.<sup>9</sup> If the preliminary “call-out” investigation suggests that the complainant suffered serious injury (loosely defined as broken bones or stitches) or that the alleged misconduct is significant and likely to be substantiated, Group 54 may retain the case to conduct its own detailed investigation, separate from CCRB’s investigation.

Five of the ten cases studied for this review were initiated by reports made directly to IAB by members of the public. (One of these complaints duplicated a complaint also made directly to CCRB.) None of these five cases resulted in an IAB Group 54 “call-out” on the use-of-force allegations, and accordingly, none of them involved parallel investigations by IAB. However, all five of these cases did involve NYPD investigations of non-FADO allegations – namely, “OG” (“outside guideline”) investigations of potential administrative misconduct referred by IAB to the Office of the Chief of Department (“OCD”) and conducted on the local borough or precinct level.<sup>10</sup>

3. *An injured-prisoner report is made to IAB by a supervising officer at the precinct of arrest, which in turn triggers IAB to refer the matter to CCRB as a suspected alleged use-of-force complaint and may result in an IAB “call-out” to conduct a preliminary investigation.*

When a person in custody is injured in the course of a police encounter, the supervising officer is required to report that injury in the command log and elsewhere, which often results in a report to IAB. See Patrol Guide § 210-04. These calls are logged by the IAB Command Center in the same manner that calls from the public are logged. The use-of-force component of the injured-prisoner report will be referred to CCRB as a FADO complaint, and a “spin-off” log will be generated to track CCRB’s investigation. In addition, if the prisoner’s injury is serious, IAB may conduct a “call out” to preliminarily investigate and determine whether IAB should pursue its own parallel investigation into the use of force. At the same time, IAB will review the police encounter under the original IAB log number to determine if there was any non-FADO misconduct, such as in connection with police paperwork or other administrative issues. These OG investigations are outsourced to the boroughs or precincts via OCD.

One of the ten cases studied for this review was reported to IAB by members of NYPD as an injured-prisoner report. (The use of force at issue in the injured-prisoner report was also reported to IAB directly by a member of the public under a different IAB log number.) That same case also resulted in an IAB “call-out” investigation into the use of force, based specifically on the injured-prisoner report. However, from that preliminary “call-out” investigation, IAB determined that the circumstances did not warrant a full parallel investigation into the alleged use of force. Instead, NYPD only conducted an OG investigation into non-FADO administrative issues.

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<sup>9</sup> IAB conducts an average of between 500 and 600 call-out investigations each year, encompassing both use-of-force cases and non-force cases. According to IAB’s own data, IAB conducted 3,334 call outs between January 2009 and October 2014. Of those call outs, 88 cases were based on complaints that included the word “choke” or made reference to a headlock or contact with the neck.

<sup>10</sup> These “OG” investigations referred to the Office of the Chief of Department (“OCD”) and conducted on the local borough or precinct level are described in greater detail at pages 11-12.

***The Investigation of a Chokehold Case (As Evidenced by the Cases Reviewed)***

Regardless of the manner in which a use-of-force allegation is reported, under New York City law, any such allegation should make its way to CCRB for investigation. See New York City Charter, Chapter 18-A, § 440(c)(1); Rules of the City of New York, Title 38A, § 1-02. Whether NYPD decides to conduct its own parallel investigation into the use-of-force allegation depends on a variety of factors, including, for example, the severity of injury to the complainant, the degree of potential misconduct revealed by an IAB preliminary “call-out” investigation, and whether the case has garnered significant media attention.<sup>11</sup> Notably, whether a chokehold is alleged does not change the calculus; chokehold cases are treated like any other use-of-force case, notwithstanding the explicit prohibition against chokeholds in Patrol Guide Section 203-11 (“Use of Force”).

Of course, the fact that a chokehold was used during a police encounter is not always apparent at the initial stages of a complaint. While some complainants may report specifically that an officer grabbed the complainant around the neck or impeded the complainant’s breathing during the course of a struggle, other complainants focus their initial complaints on other uses of force and alleged misconduct and may not disclose actions suggestive of a chokehold until a more detailed interview or even until specifically asked. Indeed, in four of the ten cases reviewed, the complainant did not actually report a neck grab, choking, or restraint of breathing in the initial complaint, and the chokehold only became apparent through subsequent interviews, review of video footage, or interviews with other witnesses to the encounter.

Unless IAB conducts a “call-out” and determines, based on that call-out, that a full IAB investigation is warranted, IAB will not conduct its own investigation into the chokehold allegation. Instead, NYPD will rely in the first instance on CCRB’s investigation to determine whether the chokehold allegations have merit and whether to seek possible disciplinary action. Indeed, there was no full IAB investigation into chokehold or any use-of-force allegations in any of the ten cases reviewed; the investigations to substantiate the chokehold allegations were conducted solely by CCRB.

Even where NYPD does not conduct a separate investigation of the alleged use of force, cases that come into IAB and are then referred to CCRB as FADO complaints are also generally referred to the Office of the Chief of Department (“OCD”) for investigation of other potential non-FADO related misconduct, such as infractions related to officer paperwork. Likewise, CCRB can refer allegations of potential officer misconduct that fall outside of its FADO jurisdiction directly to OCD for further investigation. These investigations – whether from IAB or CCRB – are generally deemed “outside guidelines” (“OG”) investigations, meaning they involve potential officer wrongdoing that does not rise to the level of corruption (“C”) or misconduct (“M”). Rather than expend IAB resources on such lower-level investigations, they are generally outsourced to investigators at the borough or, more likely, precinct level. IAB and CCRB send these OG cases to OCD, where the Investigation Review Section (“IRS”) functions as a clearinghouse and distributes the cases for investigation in the boroughs and

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<sup>11</sup> Importantly, the IAB assessment of use-of-force complaints, including chokehold complaints, generally takes place only in instances where the complaint is reported directly to IAB, whether by a member of the public or by a police officer (*i.e.* via an injured-prisoner report). Where members of the public report use-of-force complaints directly to CCRB and not to IAB, IAB generally does not get notified of the complaint by CCRB unless there is serious injury and, therefore, is not in a position to determine whether a parallel IAB investigation is warranted.

precincts where the conduct allegedly occurred. Once these local OG investigations are complete, the results are supposed to be reported back up to IRS within 90 days. IAB may request the findings from the OG investigations, though such results are not reported back to IAB automatically or routinely.

All of the ten cases examined as part of this review were investigated by CCRB, without a full parallel investigation of the use-of-force allegations by IAB or any other unit of NYPD. As previously noted, five of the ten cases were reported to IAB; for all five of these cases, the use-of-force (including chokehold) allegations were referred to CCRB, and IAB assessed the non-FADO portions of the complaints as OG investigations which were conducted on the local level as coordinated by OCD and IRS. By contrast, in none of the five cases that were reported directly to CCRB did CCRB assess that there were potential non-FADO allegations and refer the complaints to OCD for an OG investigation.

### ***The Substantiation of a Chokehold Case (As Evidenced by the Cases Reviewed)***

Following an investigation by CCRB investigators,<sup>12</sup> the case is presented to a three-member panel of CCRB Board members to make a determination on each individual allegation and, if substantiated, to recommend discipline. The CCRB panel can make one of the following findings on the merits for each charge considered, based on a preponderance-of-the-evidence standard:<sup>13</sup>

- **Substantiated**: There is sufficient credible evidence to believe that the subject officer committed the act charged in the allegation and thereby engaged in misconduct.
- **Exonerated**: The subject officer was found to have committed the act alleged, but the officer's actions were determined to be lawful and proper.
- **Unfounded**: There is sufficient credible evidence to believe that the subject officer did not commit the alleged act.
- **Unsubstantiated**: There is insufficient available evidence to determine whether the officer did or did not commit misconduct.
- **Officer(s) Unidentified**: CCRB was unable to identify the officer(s) who committed the alleged misconduct.
- **Miscellaneous**: Generally indicates the subject officer is no longer a member of NYPD, although this designation could be used in other circumstances as well.

*See generally* Rules of the City of New York, Title 38A, Chapter 1, § 1-33(b), (d) (“Rules of the Civilian Complaint Review Board”).

CCRB substantiated allegations of chokeholds in all ten of the cases reviewed for this study.<sup>14</sup> But in addition to the chokehold allegations, these cases involved other FADO allegations and charges

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<sup>12</sup> OIG-NYPD will not describe or evaluate CCRB's investigative process in this report. For details on that process, see <http://www.nyc.gov/html/ccrb/html/investigations/investigations.shtml>.

<sup>13</sup> CCRB also uses a number of designations for cases where it did not perform a complete investigation (known as “truncated” cases). See <http://www.nyc.gov/html/ccrb/html/investigations/outcomes.shtml>.

<sup>14</sup> Interestingly, in the most recent of these cases, the CCRB panel voted to substantiate the chokehold allegation over the recommendation of CCRB investigators that the chokehold claim not be substantiated. See CCRB Case Closing Memorandum for CCRB No. 2012xxx79, at 18. The CCRB investigators determined that the complainant's testimony that P.O. J held a stick around the complainant's neck from behind and impeded his breathing could not constitute a preponderance of the evidence in light of P.O. J's denial, a lack of medical evidence, and the absence of independent witness corroboration. Notwithstanding this recommendation, however, the CCRB panel voted to

against other officers as well. The charges investigated, considered, and determined by CCRB in each of the ten cases reviewed are set forth in the following table, with all substantiated charges noted in bold text.

**Table 2 – CCRB Determinations of Investigated Claims**

Subject Officer	Substantiated Claims Against Subject Officer	Non-Substantiated Claims Against Subject Officer	Claims Against Other Officers from Same Encounter
CCRB No. 2008xxx87 (P.O. A)	<ul style="list-style-type: none"> <li><i>Force: Chokehold</i></li> </ul>	<ul style="list-style-type: none"> <li>Force: Hit Against Wall (Exonerated)</li> <li>Abuse of Authority: Denial of Medical Assistance (Unfounded)</li> </ul>	N/A
CCRB No. 2008xxx07 (Det. B)	<ul style="list-style-type: none"> <li><i>Force: Chokehold</i></li> <li><i>Discourtesy: Rude Language</i></li> </ul>	N/A	N/A
CCRB No. 2008xxx31 (Sgt. C)	<ul style="list-style-type: none"> <li><i>Force: Chokehold</i></li> <li><i>Abuse of Authority: Threat</i></li> </ul>	<ul style="list-style-type: none"> <li>Offensive Language: Improper Remarks Based on Race (Unsubstantiated)</li> <li>Offensive Language: Improper Remarks Based on Race (Unsubstantiated)</li> </ul>	<p><u>PO #2</u></p> <ul style="list-style-type: none"> <li><b>Force: Physical (Substantiated)</b></li> <li>Force: Physical (Unsubstantiated)</li> </ul> <p><u>PO #3</u></p> <ul style="list-style-type: none"> <li>Discourtesy: Spoke Rudely (Unsubstantiated)</li> </ul>
CCRB No. 2009xxx47 (P.O. D)	<ul style="list-style-type: none"> <li><i>Force: Chokehold</i></li> <li><i>Abuse of Authority: Improper Stop</i></li> <li><i>Abuse of Authority: Improper Summons</i></li> </ul>	<ul style="list-style-type: none"> <li>Discourtesy: Rude Language (Unsubstantiated)</li> <li>Abuse of Authority: Improper Search (Exonerated)</li> </ul>	N/A
CCRB No. 2009xxx33 (P.O. E)	<ul style="list-style-type: none"> <li><i>Force: Chokehold</i></li> <li><i>Abuse of Authority: Improper Stop</i></li> </ul>	N/A	<p><u>PO #2</u></p> <ul style="list-style-type: none"> <li>Force: Struck Victim with an Asp (Unsubstantiated)</li> </ul>
CCRB No. 2010xxx35 (P.O. F)	<ul style="list-style-type: none"> <li><i>Force: Chokehold</i></li> </ul>	<ul style="list-style-type: none"> <li>Force: Physical (Exonerated)</li> <li>Force: Pepper Spray (Exonerated)</li> <li>Abuse of Authority: Denial of Medical Assistance (Unfounded)</li> </ul>	<p><u>PO #2</u></p> <ul style="list-style-type: none"> <li>Abuse of Authority: Improper Frisk (Unsubstantiated)</li> <li>Force: Physical (Exonerated)</li> <li>Abuse of Authority: Denial of Medical Assistance (Unfounded)</li> </ul>
CCRB No. 2011xxx74 (P.O. G)	<ul style="list-style-type: none"> <li><i>Force: Chokehold</i></li> <li><i>Other: Failure to Complete Memo Book</i></li> </ul>	<ul style="list-style-type: none"> <li>Force: Physical (Unsubstantiated)</li> </ul>	<p><u>PO #2</u></p> <ul style="list-style-type: none"> <li><b>Abuse of Authority: Improper Stop (Substantiated)</b></li> <li>Force: Physical (Unsubstantiated)</li> </ul> <p><u>PO #3</u></p> <ul style="list-style-type: none"> <li>Force: Physical (Unfounded)</li> </ul> <p><u>Unidentified Officers</u></p> <ul style="list-style-type: none"> <li>Abuse of Authority: Denial of Medical Assistance (Unidentified)</li> </ul>

substantiate the chokehold allegation. Because the voting of the CCRB panel is a closed-door process, the Board members' reasons for substantiating the chokehold in spite of the investigators' recommendation are not available to OIG-NYPD.

<p>CCRB No. 2012xxx71 (P.O. H)</p>	<ul style="list-style-type: none"> <li>• <i>Force: Chokehold</i></li> </ul>	<ul style="list-style-type: none"> <li>• Force: Physical (Unsubstantiated)</li> <li>• Abuse of Authority: Denial of Name and Shield (Unsubstantiated)</li> </ul>	<p><u>PO #2</u></p> <ul style="list-style-type: none"> <li>• <b>Abuse of Authority: Improper Frisk (Substantiated)</b></li> <li>• <b>Abuse of Authority: Improper Search (Substantiated)</b></li> <li>• Force: Physical (Unsubstantiated)</li> <li>• Abuse of Authority: Denial of Name and Shield (Unsubstantiated)</li> </ul> <p><u>PO #3</u></p> <ul style="list-style-type: none"> <li>• <b>Abuse of Authority: Did Not Process Complaint (Substantiated)</b></li> </ul>
<p>CCRB No. 2012xxx28 (P.O. I)</p>	<ul style="list-style-type: none"> <li>• <i>Force: Chokehold</i></li> </ul>	<ul style="list-style-type: none"> <li>• Force: Physical (Unfounded)</li> </ul>	<p><u>PO #2</u></p> <ul style="list-style-type: none"> <li>• Force: Gun Pointed (Exonerated)</li> <li>• Force: Physical (Exonerated)</li> </ul> <p><u>PO #3</u></p> <ul style="list-style-type: none"> <li>• Abuse of Authority: Improper Search (Exonerated)</li> </ul> <p><u>PO #4</u></p> <ul style="list-style-type: none"> <li>• Abuse of Authority: Strip Search (Exonerated)</li> </ul> <p><u>Unidentified Officer(s)</u></p> <ul style="list-style-type: none"> <li>• Force: Chokehold (Unfounded)</li> <li>• Force: Physical (Unidentified)</li> </ul>
<p>CCRB No. 2012xxx79 (P.O. J)</p>	<ul style="list-style-type: none"> <li>• <i>Force: Chokehold</i></li> <li>• <b>Abuse of Authority: Improper Stop</b></li> </ul>	<ul style="list-style-type: none"> <li>• Force: Physical (Unsubstantiated)</li> <li>• Force: Use of Asp (Exonerated)</li> <li>• Discourtesy: Discourteous Language (Unsubstantiated)</li> </ul>	<p><u>PO #2</u></p> <ul style="list-style-type: none"> <li>• <b>Abuse of Authority: Improper Stop (Substantiated)</b></li> <li>• Force: Physical (Unsubstantiated)</li> </ul> <p><u>PO #3</u></p> <ul style="list-style-type: none"> <li>• Discourtesy: Discourteous Language (Unsubstantiated)</li> </ul> <p><u>Unidentified Officer(s)</u></p> <ul style="list-style-type: none"> <li>• Force: Hit Against Wall (Unidentified)</li> <li>• Force: Physical (Exonerated)</li> </ul>

In addition to making an investigative finding for each charge, the three-member CCRB panel also recommends discipline for each substantiated charge. Recommended discipline can range from no penalty whatsoever, to Instructions (whereby the officer is given retraining on the relevant procedures that led to the misconduct, either on the precinct level or at the Police Academy), to Command Discipline (whereby the officer can be given a warning or lose up to 10 vacation days), to Administrative Charges before an NYPD tribunal (which can result in lost vacation time, suspension, probation, or removal from the department). The forms of discipline that may be imposed by NYPD are described in the table below.

**Table 3 – NYPD Discipline Chart**

<b>Instructions</b>	Instructions are the least punitive measure of discipline, requiring the subject officer's Commanding Officer to re-instruct the subject officer on proper conduct and procedures with respect to any substantiated allegations. Sometimes, the subject officer is sent to the Police Academy for retraining. <sup>15</sup>
<b>Command Discipline</b>	<p>Command Discipline is a non-judicial punishment,<sup>16</sup> more serious than Instructions, that is adjudicated at an informal hearing by a Commanding Officer. The penalties range from a warning to the forfeiture of vacation days, all depending on the severity of the misconduct, the subject officer's past disciplinary record, and the subject officer's past performance record. It is divided into two schedules:</p> <p><u>Schedule A</u>: applies to less serious misconduct and carries up to forfeiture of 5 vacation days (<i>e.g., improperly kept uniform or equipment, failure to maintain neat and clean personal appearance, using any unauthorized electronic/digital device while on duty, etc.</i>).<sup>17</sup></p> <p><u>Schedule B</u>: applies to more serious misconduct and carries penalties of forfeiture of up to 10 vacation days (<i>e.g., loss of Department property, failure to safeguard a prisoner, etc.</i>).</p>
<b>Charges and Specifications</b>	Charges and Specifications are the most serious disciplinary measure. They can be filed against a subject officer who commits serious misconduct. Charges and Specifications may result in an official Department Trial prosecuted by the Department Advocate's Office or by CCRB's Administrative Prosecution Unit. If a subject officer is found guilty of misconduct, the penalties may range from the forfeiture of vacation days to termination.

Of the ten cases studied where CCRB substantiated allegations that a chokehold was used against a member of the public, the CCRB panel recommended Administrative Charges – the most serious form of NYPD discipline – in all but one case. In the one case where CCRB did not recommend Administrative Charges, the three-person CCRB panel unanimously recommended that the officer receive Command Discipline.<sup>18</sup>

<sup>15</sup> New York City Civilian Complaint Review Board website ("APU and Police Discipline"), at <http://www.nyc.gov/html/ccrb/html/police/police.shtml>.

<sup>16</sup> Patrol Guide, § 206-02.

<sup>17</sup> Patrol Guide, § 206-03.

<sup>18</sup> Curiously, there is no indication in CCRB's file as to why the panel unanimously recommended only Command Discipline in CCRB No. 2009xxx47 when CCRB consistently recommended Administrative Charges in all of the other substantiated chokehold cases reviewed. The Command Discipline recommendation is particularly surprising given the conclusion reached in CCRB's Case Closing Memorandum that, "The force [i.e. the chokehold] was not used to gain control of the situation, but to establish and command the respect that [P.O. D] believed he deserved as an



### ***The Determination of Discipline for a Chokehold Case (As Evidenced by the Cases Reviewed)***

Although CCRB practice is to recommend discipline for police officers where they have substantiated allegations of misconduct, only the Police Commissioner has the authority to actually impose discipline upon a police officer. *See, e.g.*, Rules of the City of New York, Title 38A, Chapter 1, § 1-45 (“Rules of the Civilian Complaint Review Board”) (“The Police Commissioner shall retain in all respects the authority and discretion to make final disciplinary recommendations.”); New York City Charter, Chapter 18-A, § 440(e). Until recently, all substantiated CCRB cases were sent to NYPD’s Department Advocate’s Office (“DAO”) for review and consideration of recommended penalties, and if Administrative Charges were recommended, possible prosecution. DAO attorneys review the complete CCRB investigative file, examine the subject officer’s prior disciplinary record, performance record, and history of CCRB complaints, and where relevant, consider the viability of a prosecution for Administrative Charges. Based on its independent review of these factors, DAO develops its own case analysis and recommendation memorandum for each case, which may either support or differ from the findings and recommendations of CCRB. Notably, DAO is not an investigative unit and does not conduct its own independent investigations. Instead, DAO reviews and evaluates CCRB’s investigations with an eye toward making disciplinary recommendations to the Police Commissioner, and, where Administrative Charges are sought, determining whether prosecution is viable. *See, e.g., Floyd v. City of New York*, No. 08-cv-1034 (S.D.N.Y.), Testimony of Julie Schwartz (April 22, 2014) at 4462:16-4468:17. Should DAO agree that Administrative Charges are appropriate, DAO then prepares and serves Charges and Specifications on the subject officer, and proceeds to a trial or negotiated settlement before an administrative law judge within NYPD’s Office of the Deputy Commissioner of Trials.

In 2012, NYPD and CCRB signed a Memorandum of Understanding (“MOU”) that shifted responsibility for prosecuting substantiated FADO cases, including chokehold cases, from NYPD’s DAO to CCRB’s own newly-created Administrative Prosecution Unit (“APU”).<sup>19</sup> CCRB prosecutors from the APU have been handling the prosecutions of substantiated FADO cases since April 11, 2013.<sup>20</sup> *See Civilian Complaint Review Board January – June 2013 Report*, 15, at

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officer.” CCRB Case Closing Memorandum for CCRB No. 2009xxx47, at 6. The records reviewed indicate that P.O. D died in September 2009, after CCRB substantiated the chokehold allegation and issued its disciplinary recommendation, but before NYPD considered or imposed any discipline in connection with the chokehold incident, and the circumstances of P.O. D’s death are not reflected in the paperwork received. As the paperwork fails to specify any mitigating factors, like illness, that may have prompted CCRB’s recommendation of Command Discipline, OIG-NYPD cannot speculate as to the rationale for CCRB’s disciplinary recommendation in this particular case.

<sup>19</sup> The Memorandum of Understanding provides for limited exceptions where the Police Commissioner may retain jurisdiction of substantiated FADO cases “where the Police Commissioner determines that CCRB’s prosecution of Charges and Specifications in a substantiated case would be detrimental to the Police Department’s disciplinary process.” For example, the Police Commissioner may decide not to allow CCRB’s APU to prosecute substantiated FADO cases where there are parallel or related criminal investigations or when the Police Commissioner determines that the interests of justice would not be served, based on the subject officer’s lack of disciplinary history or prior substantiated CCRB complaints. *See Memorandum of Understanding of April 2, 2012 at ¶ 2.*

<sup>20</sup> Significantly, the APU only has authority to prosecute and plea bargain cases where Administrative Charges are being filed. It does not have jurisdiction over cases where Command Discipline or Instructions are recommended, and while it may, with approval of the CCRB Board, decline charges for prosecution altogether, it is not authorized to decline prosecution of Administrative Charges and then recommend lower levels of discipline. *See, e.g., Memorandum of Understanding of April 2, 2012 at ¶¶ 1, 12, 21.*

[http://www.nyc.gov/html/ccrb/downloads/pdf/CCRBsemi2013\\_jan\\_June.pdf](http://www.nyc.gov/html/ccrb/downloads/pdf/CCRBsemi2013_jan_June.pdf). Importantly, to promote uniformity in prosecutions and disciplinary recommendations, the MOU requires that APU attorneys endeavor to understand and apply the same disciplinary processes and standards used by NYPD, to the extent practicable and relevant. See Memorandum of Understanding of April 2, 2012 at ¶ 11. The MOU also expressly contemplates a cooperative relationship between DAO and the APU “as needed to effectively evaluate, prepare, and prosecute” each case. Memorandum of Understanding of April 2, 2012 at ¶ 16.

Of the ten substantiated chokehold cases reviewed in this study, NYPD’s DAO reviewed seven cases for prosecution, while three cases fell under the post-MOU structure and have been handled by CCRB’s APU. The difference in approach in how DAO and the APU have handled these cases is stark. CCRB recommended Administrative Charges in six of the seven cases referred to DAO, but DAO did not pursue Administrative Charges in any of them. Instead, DAO departed from CCRB’s recommendation of Administrative Charges in every one of the six cases where CCRB recommended Administrative Charges and proposed Instructions in four cases, Command Discipline in one case, and no discipline whatsoever in one case. Thus, none of the substantiated chokehold cases reviewed and handled by DAO ever went to trial on Administrative Charges before a NYPD Trial Commissioner.

By contrast, in the three cases since the APU assumed responsibility for prosecuting substantiated CCRB charges, the APU pursued Administrative Charges for chokehold allegations two out of three times. One of the APU prosecutions went to trial, and the Trial Commissioner found the subject officer not guilty of the chokehold allegation. The other APU prosecution is still pending for trial and remains as-yet unresolved. In the third case, the APU declined to prosecute the chokehold allegation, despite the CCRB panel’s decision to substantiate it, based on the complainant’s statement that the subject officer, P.O. J, was not the officer who held him in a chokehold.<sup>21</sup> However, the APU is prosecuting P.O. J on other charges stemming from the same incident.

The decision to prosecute a substantiated chokehold case is not the end of the story. Whether DAO files Administrative Charges and brings a case to trial before the Deputy Commissioner of Trials, or DAO makes a disciplinary recommendation of something less severe than Administrative Charges, the issue of discipline is ultimately left to the discretion of the Police Commissioner. The Police Commissioner has absolute authority to impose the penalty that he deems appropriate – including the decision to impose no discipline at all. See, e.g., New York City Administrative Code, Title 14, § 14-115 (“Discipline of Members”); New York City Charter, Chapter 18, § 434; Rules of the City of New York, Title 38, §§ 15-12, 15-18. Traditionally, the Police Commissioner did not share his rationale for departing from the recommendations of CCRB, DAO, or the Deputy Commissioner of Trials, nor was the Police Commissioner required to do so. In essence, the Police Commissioner had authority to impose discipline with absolute discretion under the cloak of full authority.

Since April 11, 2013, however, City rules have required the Police Commissioner to provide some measure of transparency concerning his decisions regarding discipline in FADO cases. Specifically, the Rules of the City of New York governing CCRB provide as follows:

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<sup>21</sup> Interestingly, this is the same case – CCRB No. 2012xxx79 involving P.O. J – where the CCRB panel voted to substantiate the chokehold claim in the face of CCRB investigators’ recommendation that the evidence did not meet the preponderance-of-the-evidence standard.

In any case substantiated by the Board in which the Police Commissioner intends to impose discipline that is of a lower level than that recommended by the Board or by the Trial Commissioner, the Police Commissioner shall notify the CCRB, with notice to the subject officer, at least ten business days prior to the imposition of such discipline. Such notification shall be in writing ***and shall include a detailed explanation of the reasons for deviating from the Board's or, as the case may be, the Trial Commissioner's, recommendation, including but not limited to each factor the Police Commissioner considered in making his or her decision.*** The CCRB and the subject officers may respond to such notification within five business days of its receipt, after which the Police Commissioner shall make a final determination.

Rules of the City of New York, Title 38A, Chapter 1, § 1-46(f) (“Rules of the Civilian Complaint Review Board”) (emphasis added). In other words, while the Police Commissioner still has full authority and discretion to impose the discipline that he deems appropriate, he now must answer for those disciplinary decisions in certain cases by providing reasons for any downward departure from a discipline recommended by CCRB. The introduction of such a rule speaks to the recognition that discipline should not be imposed arbitrarily, and transparency is an important element of accountability.

Of the ten substantiated chokehold cases reviewed for this study, the Police Commissioner made a final determination about discipline in six.<sup>22</sup> In every one of those instances, the Police Commissioner departed from the disciplinary recommendation of CCRB, imposing a less severe penalty or, in two cases, no penalty at all. Indeed, in one instance, the Police Commissioner even departed downward from the recommendation of DAO; DAO recommended Instructions (rejecting CCRB’s recommendation of Administrative Charges), and the Police Commissioner decided that no discipline was warranted at all. A summary of the discipline recommended by CCRB, advocated by DAO or the APU, and ultimately imposed by the Police Commissioner in each of the ten cases reviewed is presented in the following table.

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<sup>22</sup> For all six of these cases, the Police Commissioner who ultimately decided and imposed discipline was Commissioner Raymond W. Kelly, the predecessor to the current NYPD Police Commissioner, William J. Bratton.

**Table 4 – From CCRB to NYPD:  
Recommendations and Final Dispositions on Chokehold Allegations**

Subject Officer	CCRB Recommendation to NYPD	DAO / APU Recommendation to Police Commissioner	Police Commissioner Decision	Discipline Imposed
CCRB No. 2008xxx87 (P.O. A)	Charges	Instructions	Disapproved	None
CCRB No. 2008xxx07 (Det. B)	Charges	Schedule B Command Discipline	Approved	Schedule B Command Discipline (5 lost vacation days)
CCRB No. 2008xxx31 (Sgt. C)	Charges	No Discipline Warranted	Approved	None
CCRB No. 2009xxx47 (P.O. D)	Command Discipline	PO Deceased	PO Deceased	PO Deceased
CCRB No. 2009xxx33 (P.O. E)	Charges	Instructions	Approved	Instructions
CCRB No. 2010xxx35 (P.O. F)	Charges	Instructions from Academy	Approved	Instructions from Academy
CCRB No. 2011xxx74 (P.O. G)	Charges	Instructions from Academy	Approved	Instructions from Academy
CCRB No. 2012xxx71 (P.O. H)	Charges	Not Guilty after Trial (Prosecuted by APU)	N/A	N/A
CCRB No. 2012xxx28 (P.O. I)	Charges	Pending (Prosecuted by APU)	Pending	Pending
CCRB No. 2012xxx79 (P.O. J)	Charges	APU Declined to Prosecute	N/A	N/A

All six of the cases where discipline was imposed were concluded before April 11, 2013, when Rule 1-46(f) went into effect. The Police Commissioner, therefore, was not required by City rules to justify his disciplinary decisions. Nor did the Police Commissioner at the time provide a detailed explanation for disciplinary decisions in any of the cases reviewed.

## DISCUSSION AND ANALYSIS

From the processes, data, and observations described thus far, certain themes, questions, and potential trends emerge. While no systemic conclusions should be drawn from a sample comprised of the ten cases studied here, OIG-NYPD will consider these issues via review of a statistically-significant sample of files in future reports. **Accordingly, OIG-NYPD views the following pages as a roadmap to guide future explorations that OIG-NYPD will undertake in the coming months into the issues of training, discipline, and the use of force.**

### **1. Historical Incongruity in the Handling of Substantiated Chokehold Cases by CCRB and NYPD and Resulting Impairment in CCRB's Role**

First, this review of the ten chokehold cases substantiated by CCRB between 2009 and 2014 suggests that during that timeframe, CCRB and DAO applied their own criteria and had access to different levels of information in determining appropriate consequences for chokehold cases. Across the substantiated chokehold cases reviewed that preceded the creation of CCRB's APU, DAO consistently overruled the disciplinary recommendations made by CCRB. In fact, although both CCRB and DAO were following the legal "preponderance of the evidence" standard in evaluating cases, in the cases reviewed, CCRB and DAO appear to have taken dissimilar approaches to deciding what constitutes a chokehold.

Based on OIG-NYPD's review of these ten cases, CCRB appears to have applied a relatively strict black-and-white definition of a chokehold<sup>23</sup> whereby it determined whether this type of use of force happened by leaning heavily on clear-cut "objective" evidence of officer contact with the complainant's neck or throat, such as photographs, video footage, or third-party testimony. In three of the cases, for example, CCRB investigators relied largely on the presence of photographic evidence showing the subject officer making physical contact with the complainant's neck. In two of the cases, third-party witnesses unconnected to the complainant gave statements corroborating the chokehold. In two of the cases, the subject officers themselves admitted to putting the complainants in headlocks or chokeholds. While CCRB investigators appear to have considered whether the contact actually impeded the complainant's breathing, they did not necessarily require medical evidence to support their findings that a chokehold occurred. In none of the cases reviewed did the context in which the subject officer applied the chokehold appear to influence CCRB's decision to substantiate a chokehold allegation. In other words, CCRB substantiated chokeholds regardless of whether the chokehold was a gratuitous act of physical aggression or took place more reflexively in the course of a violent struggle.<sup>24</sup>

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<sup>23</sup> According to CCRB's recent report on chokeholds, CCRB investigators applied a more narrowly-construed definition of "chokehold" than that described and prohibited by the Patrol Guide. The Patrol Guide states that the term "chokehold" includes, but is not limited to, "any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air." Patrol Guide § 203-11. According to CCRB's own report, however, between 2009 and 2014, CCRB investigators generally considered contact with the neck to constitute a "chokehold" only where there was also some actual restriction of or substantial interference with breathing. See, e.g., *A Mutated Rule: Lack of Enforcement in the Face of Persistent Chokehold Complaints in New York City* (October 2014), at viii, 17-18.

<sup>24</sup> There were three instances where individual Board members seemed to consider the context of the chokehold in their vote, although they were outvoted by their fellow panelists. In CCRB No. 2008xxx87, one panelist voted to

By contrast, during the 2009 through 2014 period, DAO appears to have considered the chokehold more contextually and weighed various factors in determining whether to bring charges and the appropriate level of discipline. In the cases reviewed, DAO placed emphasis on factors such as the officer's CCRB and disciplinary history, the commanding officer's view of the subject officer, and the presence of discernable injury, if any, caused by the chokehold, notwithstanding the Patrol Guide's strict prohibition on chokeholds in all circumstances. Moreover, in several cases, DAO applied a more narrow definition of what constitutes a "chokehold" and essentially overruled CCRB's decision to substantiate the chokehold allegation. For example, in the case of P.O. E, CCRB No. 2009xxx33, DAO declined to file Administrative Charges for the substantiated chokehold and instead recommended Instructions because the "headlock" at issue did not constitute a chokehold within the meaning of Patrol Guide Section 203-11:

[P.O. E] candidly admitted that he placed [complainant] in a headlock, and held the headlock for 10-15 seconds, in the course of attempting to wrestle [complainant] to the ground. [P.O. E] stated, however, that he never obstructed [complainant's] breathing during the course of the headlock. While [complainant] stated that his breathing was obstructed, he did not articulate that he was gasping for breath, or felt light-headed, etc. Additionally, the medical records did not note any damage to [complainant's] neck.

DAO Case Analysis and Recommendation Memorandum for CCRB No. 2009xxx33, at 5. DAO also tended to look for mitigating circumstances surrounding the chokehold. For example, in the case of P.O. A, CCRB No. 2008xxx87, where the chokehold allegation was substantiated largely because of compelling video evidence, DAO rejected CCRB's recommendation of Administrative Charges and recommended Instructions, based, in part, of the following reasoning:

On its face, the video suggests that [P.O. A] did place her hand on [complainant's] neck area. However, it is not clear if [P.O. A's] hand was actually on [complainant's] shoulder in an attempt to subdue a highly violent student. The video does corroborate that it took four additional School Safety Agents to handcuff the student. Additionally, members of the school staff present all testified that they did not see [P.O. A] make contact with the neck though some testified that they saw her hand in the "chest area." One student testified that she saw [P.O. A] put her hand on [complainant's] neck but even the student added that [complainant] was being difficult and could not be subdued.

DAO Case Analysis and Recommendation Memorandum for CCRB No. 2008xxx87, at 6. In other words, DAO looked beyond the video evidence to consider other factors that went beyond the definition of a chokehold – namely, the complainant's combativeness. As with P.O. E's case, DAO also justified its

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exonerate P.O. A's use of a chokehold in the course of a struggle to restrain an unruly student. In CCRB No. 2010xxx35, one panelist voted to recommend Command Discipline, rather than Administrative Charges, because P.O. F used the chokehold "to overcome resistance to arrest." Finally, in CCRB No. 2012xxx28, one Board member voted against Administrative Charges and wanted to recommend Command Discipline "under the circumstances" because the complainant "clearly violently resisted arrest."

departure from CCRB's recommendation by arguing that the contact with the complainant's neck "did not effect a chokehold as described in the patrol guide," in part by citing the lack of credible medical evidence supporting a chokehold and the complainant's refusal of medical attention on the scene. DAO Case Analysis and Recommendation Memorandum for CCRB No. 2008xxx87, at 6.

Finally, it appears that DAO also considered the overall viability of a successful prosecution when deciding whether to proceed with the CCRB's recommendation of Administrative Charges. In the case of Sgt. C, CCRB No. 2008xxx31, for example, DAO overruled CCRB's recommendation by noting:

[T]he Department cannot meet its burden of proof in this case. The first problem is identification. When [complainant] testified at both CCRB and the 50H hearing he did not mention that [Sgt. C] used a chokehold against him. He also did not mention that [Sgt. C] threatened him with the use of force.... Rather, in complete contradiction of the CCRB theory of the case, [complainant] attributed the chokehold and threat to [P.O. #2], the other subject officer in this case.

DAO Case Analysis and Recommendation Memorandum for CCRB No. 2008xxx31, at 6. While noting that motive is not required proof in a trial, the DAO attorney also emphasized that the complainant's allegations did not "make common sense" because of the lack of apparent motive for Sgt. C to leave his assigned post "and beat up a juvenile." DAO Case Analysis and Recommendation Memorandum for CCRB No. 2008xxx31, at 6. Once again, DAO also cited the lack of medical evidence of injury caused by a chokehold as a basis for declining to prosecute the case and recommending no discipline.

In short, OIG-NYPD's review of these cases reveals that in the time period examined, CCRB and NYPD were out of sync with respect to whether a prohibited chokehold was used and how and when police officers should be held accountable for using chokeholds.<sup>25</sup> Certain institutional differences between CCRB and DAO may underpin these disparities. For example, as currently structured, DAO has greater access to information about a subject officer's personnel history than is granted to CCRB, presumably for reasons of workplace confidentiality and because CCRB investigators are charged solely with determining whether a FADO violation occurred based on the facts of the incident itself. Indeed, CCRB has historically been a purely investigative agency, whereas DAO is a prosecutorial unit that does not conduct its own independent investigations, but rather assesses the investigations of others with an eye toward what can be proven at trial. Indeed, it is prudent for DAO, as a prosecutorial unit, to consider the viability of substantiated cases before filing Charges and Specifications and expending resources to bring disciplinary cases to trial. With the creation of the APU, CCRB has now ventured into a prosecutorial role more aligned with DAO.

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<sup>25</sup> To summarize, between 2009 and 2014, CCRB recommended Administrative Charges in nine of the ten substantiated chokehold cases and recommended Command Discipline in one. However, DAO failed to file Administrative Charges in any of the chokehold cases that came its way in this period, recommending lower-level discipline, or, as in one case, disapproving punishment altogether. In contrast, CCRB's APU has prosecuted two of the three chokehold cases that were substantiated after the APU came into being by filing Administrative Charges. The Deputy Commissioner of Trials found the subject officer not guilty of a chokehold in one of those cases, and the other case is still pending for trial. (In the third case, the APU filed Administrative Charges against the subject officer for other substantiated FADO charges but declined to file Administrative Charges for the substantiated chokehold count.)

But the fact that CCRB's APU is now handling all use-of-force prosecutions does not necessarily mean that chokehold prosecutions will be more viable or that more stringent penalties will be imposed going forward. The success of a prosecution on Administrative Charges depends on a number of factors, including the volume and nature of the evidence available, the quality of the lawyering, and the rulings of the Trial Commissioner overseeing each case. Even at the conclusion of a trial finding an officer guilty of Administrative Charges, the Trial Commissioner may make a disciplinary recommendation that differs from that proposed by the APU (or DAO) at the start of the trial. Furthermore, it bears repeating that the Police Commissioner alone has ultimate authority to determine discipline, regardless of the recommendations of CCRB, DAO, or even any Trial Commissioner after trial. See Patrol Guide § 206-02; New York City Administrative Code, § 14-15; New York City Charter, Chapter 18, § 434; Memorandum of Understanding of April 2, 2012 at ¶ 8.

Based on this initial review of the most recent ten substantiated chokehold cases, the following questions regarding NYPD's treatment of CCRB disciplinary recommendations arise:

- Are the observations reflected here, whereby DAO – and NYPD in general – routinely departed from the recommendations of CCRB, indicative of a broader trend?
- Was NYPD's handling of these ten substantiated chokehold cases representative of how NYPD treats the majority of use-of-force cases substantiated by CCRB?
- What, if anything, does the fact that DAO and the Police Commissioner rejected CCRB's disciplinary recommendations in each of these chokehold cases reveal about the disciplinary process for use-of-force cases more generally?
  - Does CCRB view use-of-force offenses too harshly or too one-dimensionally?
  - Does NYPD – whether acting via DAO, the Deputy Commissioner of Trials, or the Police Commissioner – take too lenient an approach toward these cases?
- Do the different approaches by which CCRB and NYPD evaluate use-of-force cases present inconsistencies, inefficiencies, or other systemic issues that erode public confidence in NYPD's system of accountability?
- What changes, if any, might be made so that the disciplinary recommendations of CCRB add greater value to the overall process and enhance police accountability, as they were doubtless intended to do when CCRB was first established?

OIG-NYPD intends to scrutinize a statistically-significant sample of substantiated use-of-force cases and further probe the way NYPD regards and responds to CCRB's disciplinary recommendations in order to answer questions like these in future reports.



## **2. Lack of Transparency Regarding NYPD Disciplinary Decisions for Use-of-Force Cases**

As previously noted, the Police Commissioner made a final disciplinary determination in six of the ten substantiated chokehold cases reviewed for this study.<sup>26</sup> Each time, the Police Commissioner (then-Commissioner Kelly) recommended a less severe penalty than that recommended by CCRB. In fact, in two cases, the Police Commissioner decided to impose no discipline whatsoever.

While the Police Commissioner has full authority to depart from the disciplinary recommendations of CCRB, DAO, and the Deputy Commissioner of Trials, such decision-making must be grounded in reason and should not be arbitrary. However, it appears that in none of the six cases at issue did the Police Commissioner furnish any explanation for his disciplinary decisions, or more specifically, his reasons for rejecting and undercutting the disciplinary recommendations of CCRB. Instead, the Police Commissioner communicated final disciplinary decisions via a cursory “Endorsement” form which provided a boilerplate explanation for the departure. For example, in the case of Sgt. C, under CCRB No. 2008xxx31, where CCRB recommended Administrative Charges, the Police Commissioner’s final decision, embodied in a “Second Endorsement,” stated in relevant part:

[Sgt. C] is to receive no disciplinary action for both allegations, in light of the facts and circumstances of CCRB Case No. 2008xxx31.

Second Endorsement of Deputy Chief Michael E. Shea of May 10, 2010. Similarly, in the case of P.O. A, under CCRB No. 2008xxx87, CCRB recommended Administrative Charges and DAO recommended Instructions, but the Police Commissioner overruled both recommendations and imposed no discipline whatsoever, by way of a “Second Endorsement” that contained no justification for the decision:

The Police Commissioner directs that no disciplinary action be taken against [P.O. A] for the allegation of force.

Second Endorsement of Deputy Chief Michael E. Shea of July 7, 2009.

The lack of transparency regarding the Police Commissioner’s disciplinary decisions in these cases deprives CCRB – and by extension, the public – of an important window into how NYPD works and how it holds its officers accountable when they violate the rules.

Fortunately, recent changes in the rules and procedures governing the relationship between CCRB and NYPD and the way in which substantiated use-of-force cases are handled recognize this need for more openness and transparency in police discipline. Since April 11, 2013 — in conjunction with the creation of the APU – New York City rules have required that the Police Commissioner provide to CCRB in writing “a detailed explanation for the reasons for deviating from the Board’s or, as the case may be, the Trial Commissioner’s, recommendation, including but not limited to each factor the Police Commissioner considered in making his or her decision” on CCRB-substantiated cases where the Police

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<sup>26</sup> As of the date of this report, one case – 2012xxx28 involving P.O. I – is still pending before the Deputy Commissioner of Trials, and that is the only chokehold case of those examined which may still be presented to the current Police Commissioner for a final disciplinary determination (provided the officer is found guilty after a departmental trial). In the remaining two cases, the chokehold allegations did not reach the Police Commissioner; in one case, the APU declined to prosecute the chokehold allegation, and in the other, the Deputy Commissioner of Trials found the subject officer not guilty of the chokehold count.

Commissioner “intends to impose discipline that is of a lower level than that recommended by the Board or the Trial Commissioner.” Rules of the City of New York, Title 38A, Chapter 1, § 1-46(f) (“Rules of the Civilian Complaint Review Board”). Such notification is to be given on at least ten days’ notice in order to provide CCRB an opportunity to challenge the Police Commissioner’s decision and make a case for why a stronger penalty might be warranted.

The requirement that the Police Commissioner explain his decision-making in detail to CCRB in certain cases is an important check to ensure that important disciplinary decisions are made transparently and non-arbitrarily, even if the Police Commissioner ultimately has authority to make the disciplinary decisions that he deems appropriate. OIG-NYPD was unable to discern from its review of the ten substantiated chokehold cases whether the former or current Police Commissioners have complied with Rule 1-46(f) since it went into effect, because none of the ten cases examined yielded final disciplinary decisions after the April 11, 2013 effective date.<sup>27</sup> However, OIG-NYPD intends to conduct a broader examination of substantiated use-of-force cases during the post-APU era to assess whether NYPD has been following Rule 1-46(f) and to evaluate NYPD’s disciplinary process for use-of-force cases more generally. The findings of such study will be presented in a future report.

### ***3. Observations About How and When Chokeholds Were Employed in the Cases Reviewed***

While OIG-NYPD’s review focuses largely on the processes by which the chokehold allegations were reported, investigated, and handled after being substantiated, the police encounters at issue and the circumstances in which the subject officers employed chokeholds in the ten cases reviewed warrant some comment. Again, no statistically significant conclusions should be drawn from this limited review; rather, OIG-NYPD offers these observations as points of departure for future work.

Chokeholds are strictly prohibited by the Patrol Guide, which makes no exception for the use of chokeholds based on the circumstances confronting the officer. See Patrol Guide § 203-11. That said, examination of CCRB case files, witness interviews, and where applicable, video footage for the ten cases revealed that several of the substantiated chokehold decisions fell into one of two distinct categories: on the one hand, chokeholds employed in the course of a violent physical struggle, and at the other end of the spectrum, chokeholds used as a first exercise of physical force in response to verbal confrontation. While all of these chokeholds are prohibited by the Patrol Guide, those falling into the second category are particularly concerning and deserving of further discussion.

In several of the ten cases reviewed, the subject officers apparently employed a chokehold as a first step to overcoming verbal resistance. For example, in CCRB No. 2009xxx47, P.O. D choked the complainant with his hand and forearm in response to the complainant challenging the officer’s basis for stopping him. CCRB criticized the officer’s escalation of the encounter and use of force by noting, “The force was not used to gain control of the situation, but to establish and command the respect that [P.O.

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<sup>27</sup> Only the three most recent cases – those handled by the APU – are potentially subject to Rule 1-46(f). No final discipline has yet been decided by the Police Commissioner in any of those cases. In CCRB No. 2012xxx71, P.O. H was found not guilty after trial on the chokehold count (the only count against that officer), and the Police Commissioner has not yet opined on discipline for his partner, who was found guilty on separate counts not involving the use of a chokehold from the same incident. In CCRB No. 2012xxx79, the APU declined to prosecute the chokehold count against P.O. J, and the remaining counts are pending and scheduled to be tried in December 2014. The final case, CCRB No. 2012xxx28, is likewise still pending and awaiting trial in early 2015.

D] believed he deserved as an officer.” CCRB Case Closing Memorandum for CCRB No. 2009xxx47, at 6. Similarly, in CCRB No. 2009xxx33, P.O. E grabbed the complainant in a “headlock” as a first contact after the complainant made a disrespectful comment and pushed P.O. E. Based on these facts, CCRB characterized P.O. E’s rapid escalation of the use of force as inappropriate: “Considering there were numerous options available to [P.O. E] prior to placing [the complainant] in a headlock, including the use of grappling techniques, the investigation determined that [P.O. E’s] use of force was excessive given the circumstances.” CCRB Investigation Report CCRB No. 2009xxx33, at 8.

By contrast, there were other cases where the subject officer resorted to use of a chokehold during the course of an already intense and violent physical struggle. For example, in CCRB No. 2012xxx28, P.O. I twice used a chokehold in the course of wrestling on the ground with a complainant who was believed to be armed with a firearm, was resisting arrest by writhing and trying to reach for his waistband, and who had just bitten the hand of another officer who was also trying to subdue him. This violent struggle, which happened in front of a screaming crowd of onlookers, was recorded on a video that captured the volatile and high-intensity nature of the police encounter. In short, while any chokehold is barred by the Patrol Guide, P.O. I’s use of a chokehold under such circumstances may have been reactionary given the threat posed by the complainant and the situation as a whole. Likewise, in CCRB No. 2008xxx87, video revealed that P.O. A placed her hands on the complainant’s neck in the course of a physical struggle with the complainant, a high school student who was pushing, shouting at, and threatening officers who were trying to stop and subdue her. From the evidence provided, it was unclear whether the officer intended to grab the complainant’s neck or inadvertently made contact with her neck while trying to hold the student against the wall to stop and restrain her. Again, while the chokehold fell within the Patrol Guide’s prohibition, the circumstances of the encounter is qualitatively different from the circumstances of other cases where officers employed chokeholds to overcome verbal resistance.<sup>28</sup>

While the substantiated use of prohibited chokeholds by members of NYPD in any context is troubling, the fact that several of the subject officers in the ten cases reviewed by OIG-NYPD used chokeholds as a **first act of physical force** and **in response to mere verbal confrontation** is particularly alarming. Rather than using communication skills and approved tactics to de-escalate tense encounters

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<sup>28</sup> As part of its review, OIG-NYPD investigators spoke with representatives of several large police departments to assess informally how they have addressed the issue of chokeholds. Of the cities contacted, three had policies that referred only to carotid holds or carotid restraints, while the other cities either discussed “neck restraints” more generally or did not have any policy addressing officer contact with a subject’s neck. Notably, the police departments in Washington, D.C., Detroit, and Dallas all ban the use of neck restraints but do provide limited exceptions. Washington, D.C.’s Metropolitan Police Department’s policy provides that, “members shall not employ any form of neck restraint except when an imminent threat of death or serious physical injury exists, and no other option is available.” Metropolitan Police Department General Order 901.07, Section F, No. 4. The Detroit Police Department and Dallas Police Department both treat neck restraints as a form of lethal force, and accordingly, they prohibit the use of neck restraints except where deadly force is authorized. See Detroit Police Department Directive 304.2, Section 4.3; Dallas Police Department Chief’s Update 04018. Similarly, OIG-NYPD investigators were advised that while the Chicago Police Department does not have a specific written policy on the use of chokeholds or neck restraints, officers there are allowed to use neck holds “in dire situations.” Information relayed to OIG-NYPD investigator on November 19, 2014, by a representative of the Chicago Police Department. In contrast, the Philadelphia Police Department appears to impose an unequivocal prohibition on neck restraints – like NYPD’s current policy – which makes no explicit exception for chokeholds, such as where lethal force would otherwise be authorized. See Philadelphia Police Department Directive 22, Section III, revised 7/29/2014.

with members of the community, these officers immediately turned to a prohibited and dangerous physical act to try to control the situation. It is important to note that observations in these ten cases do **not** present evidence of a widespread problem of officers resorting too quickly to force. However, OIG-NYPD intends to examine a broader sample of cases in which officers used force in encounters with the public in order to ascertain whether police officers are escalating encounters and using force too quickly as a systemic matter.

#### **4. *Coordination and Information Sharing in the Investigation of Use-of-Force Complaints Between CCRB and NYPD***

In the course of its review of the ten substantiated chokehold cases to trace the complex multi-agency avenues through which chokehold complaints are investigated and handled, OIG-NYPD uncovered certain informational asymmetries that appear to exist between CCRB and NYPD. Specifically, OIG-NYPD's review of the ten chokehold cases suggested that information tends to flow more readily from IAB to CCRB than it does in the reverse direction. IAB notifies CCRB of all use-of-force complaints that it receives, as required under City law. See Patrol Guide § 207-31; New York City Charter, Chapter 18, § 440. But CCRB does not reciprocate by routinely sending new use-of-force complaints to IAB. Instead, CCRB notifies IAB of new use-of-force complaints alleging serious injuries, but not the majority of use-of-force complaints, where serious injury is not at issue. While OIG-NYPD is not aware of any regulations requiring CCRB to alert IAB in particular of new FADO complaints that come directly to CCRB, CCRB is required to notify NYPD in general of **all** complaints under City rules:

With respect to complaints about officers and matters within the Board's jurisdiction, the Board shall notify the Police Department of the actions complained of within a reasonable period of time after receipt of the complaint.

Rules of the City of New York, Title 38A, Chapter 1, § 1-14.

In fact, there appears to be no formal protocol by which CCRB proactively advises NYPD of new FADO complaints at or near the time that the complaints are filed against officers.<sup>29</sup> Instead, NYPD generally learns of new CCRB complaints alleging use of force incidentally, often at some point well into CCRB's investigation, through one of the following avenues:

- Either when CCRB investigators call the subject or witness officers' command to schedule subject or witness officers for investigatory interviews and the officers are notified through NYPD's Appearance Control system; or
- When CCRB refers allegations of non-FADO misconduct by the subject officer, such as failure to perform a proper duty or issuance of an unwarranted traffic summonses, to OCD for OG review; or
- When select NYPD officers – namely, Integrity Control Officers (“ICOs”) and IAB investigators – run name searches of individual officers in CCRB's Complaint Tracking System (“CTS”), to which NYPD has limited access, and a general summary of CCRB complaint allegations is generated.

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<sup>29</sup> OIG-NYPD offers this observation not as a critique of CCRB policy and practice, per se, but rather, to highlight the potentially detrimental effect that this reported informational imbalance could have on the operations of NYPD.

Otherwise, it appears that CCRB did not proactively notify NYPD about FADO complaints in any substantive way in the cases reviewed until after the completion of CCRB's investigation, when substantiated claims were presented to DAO.

Of the ten chokehold cases reviewed, IAB only ever learned of and had logs for the five complaints that were reported directly to IAB by members of the public or members of NYPD. IAB had no record of, and thus had little or no practical ability to investigate, the other five chokeholds complaints that were made directly and only to CCRB.

In general, CCRB investigates all FADO complaints, including all use-of-force complaints and, therefore, all complaints alleging chokeholds. But as previously noted, IAB does conduct its own investigations of use-of-force cases in certain instances, namely, the most serious or high-profile cases. Unless IAB is notified routinely of all use-of-force cases reported through CCRB, it cannot make a fair and informed assessment of which cases warrant a preliminary "call-out" investigation by IAB's force team (Group 54),<sup>30</sup> and in turn, which cases should be investigated fully by IAB, separate and apart from CCRB's investigation. Instead, IAB is limited by a complainant's decision of where to file a complaint in the first instance, and CCRB's judgment as to which one-off cases CCRB believes are serious enough to warrant IAB's special attention. While there may be good reasons why IAB should not investigate every chokehold or use-of-force allegation, the fact remains that IAB cannot make an informed decision about which cases it should investigate if it is not made aware of all reported cases.

In addition, when IAB is not made aware of chokehold complaints that were reported only to CCRB, IAB cannot assess and refer the non-FADO aspects of complaints to OCD for OG review. Instead, the question of whether a complaint may implicate non-FADO allegations that should be investigated by OCD as an OG investigation is left to the discretion of the CCRB investigators who assess the complaint. Indeed, OG investigations conducted by local borough or precinct investigators to identify administrative infractions were not conducted for any of the five cases studied where chokeholds were reported solely to CCRB. Because OG investigations may probe or uncover misconduct that goes beyond mere paperwork irregularities, the fact that these OG investigations are not done routinely in all use-of-force cases presents a risk that chokehold complaints reported directly to CCRB may not be scrutinized to the same degree as those reported via IAB and then referred to CCRB.

##### ***5. Issues of Transparency and Accountability in NYPD Investigation of Use-of-Force Complaints***

Another area of concern involves the manner in which NYPD conducts and tracks its own investigations where chokeholds are reported. In the course of developing an understanding of how the ten cases reviewed made their way through NYPD, OIG-NYPD noted several areas where the system could potentially benefit from better coordination and more proactive communication internally within NYPD. OIG-NYPD intends to look at these issues more closely in the coming months.

First, OIG-NYPD's limited review of the ten cases suggests that there may be a lack of consistency in the type and depth of investigation that OG cases receive on the borough or precinct level. In general, IAB and CCRB refer the non-FADO components of use-of-force cases to OCD, where

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<sup>30</sup> IAB recently changed their use-of-force call-out criteria to conduct preliminary investigations of more use-of-force cases.

they are outsourced to the subject officer's borough or precinct as OG investigations. There is no set structure as to who actually investigates OG matters; the investigation may be conducted by a member of a Borough Investigations Unit, a precinct's ICO, or a designee of the precinct's Commanding Officer. Moreover, the local investigators have discretion to focus their OG investigations solely on non-FADO allegations or administrative matters, or to expand their inquiry to include the use-of-force allegations, as they so choose. It was informally reported to OIG-NYPD that the borough and precinct investigators rarely opt to examine use-of-force allegations, though they are permitted to do so. None of the five OG investigations examined for this study appear to have encompassed chokehold or other use-of-force allegations. But they did address issues ranging from allegations of improper arrest, improper summonses, and other violations of NYPD rules.<sup>31</sup>

In addition, it is not clear that investigative results from OG cases are consistently tracked upon completion. NYPD representatives informally commented upon the antiquated case management system by which OCD's Investigative Review Section ("IRS") currently tracks the cases that it outsources to the boroughs and precincts. Although an upgrade to align the computer systems used by IAB and IRS is reportedly underway, the closed case reports generated from the OG investigations (known as "BCATS" reports) are only transmitted to IAB upon request and not on a regular basis. Moreover, the BCATS reports transmitted to IAB contain only barebones information about the results of the OG investigations, without providing detail into the investigative process or findings. Of the five cases reviewed that were designated OG and outsourced via IRS, only four IAB case files included BCATS reports noting the results of those OG investigations.

Ultimately, better tracking of these OG investigations will promote greater accountability across NYPD.

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<sup>31</sup> None of the OG allegations were substantiated in the cases reviewed.

## RECOMMENDATIONS AND AREAS FOR FURTHER STUDY

One purpose of this report has been to provide greater transparency to the investigative and disciplinary processes at play when members of the public file complaints that a police officer used a chokehold. In shedding light on those processes, OIG-NYPD has identified potential areas of concern and highlighted issues that it intends to examine more closely in future work. Specifically, while OIG-NYPD noted certain shortcomings and trends regarding how the ten substantiated chokehold cases that OIG-NYPD reviewed were handled, OIG-NYPD will now examine a broader universe of cases in order to reach credible conclusions and give answers to certain questions raised herein regarding potential systemic issues.

Notwithstanding OIG-NYPD's plans for future reviews, there are certain areas where OIG-NYPD can assert now, based on its review to date, that certain reforms should be implemented in the near-term. OIG-NYPD notes that some of these recommendations reflect changes that are already under discussion or even underway at NYPD. All are important and are designed to improve transparency, increase accountability, and, ultimately, lead to greater public confidence in NYPD. Accordingly, OIG-NYPD offers the following preliminary recommendations to NYPD (and where relevant, CCRB).

***Recommendation #1: Increase Coordination and Collaboration Between NYPD and CCRB to Reconsider and Refine the Disciplinary System for Improper Uses of Force.***

OIG-NYPD's review of the ten chokehold cases substantiated between 2009 and 2014 reveals an urgent need for increased communication and enhanced coordination between CCRB and DAO regarding charging and recommended penalties for substantiated chokehold cases. The discrepancies between CCRB's disciplinary recommendations and the disciplinary outcomes that actually came to pass in the nine chokehold cases from this period that have been resolved are glaring. Furthermore, there is no indication from the records reviewed that NYPD seriously contemplated CCRB's disciplinary recommendations or that CCRB's input added any value to the disciplinary process. Particularly now that the APU is handling most or all prosecutions for substantiated FADO cases, it is essential that CCRB and NYPD have access to the same pertinent information to inform disciplinary recommendations and that CCRB's and NYPD's views on discipline be re-assessed and harmonized so that CCRB can make disciplinary recommendations that are colorable, credible, and beneficial to the disciplinary process as a whole. In order for CCRB to be a valuable contributor to the disciplinary process – thereby enhancing public confidence in that process – its determinations must be predictable and consistently enforced.

Now that the APU prosecutes all substantiated use-of-force cases, DAO should serve a supportive role by conferring with CCRB on chokehold and other use-of-force cases to share its expertise regarding disciplinary recommendations and the level of evidence it believes is generally required to successfully prosecute such cases before the Deputy Commissioner of Trials. Greater communication and coordination between the APU and DAO on charging decisions and disciplinary recommendations will likely result in greater consistency and more efficient use of resources in the prosecution of chokehold and other use-of-force cases, which in turn will improve overall accountability. Indeed, such cooperation between DAO and the APU is expressly contemplated by the 2012 Memorandum of Understanding that created the APU and by the Rules of the City of New York that govern CCRB operations. See Memorandum of Understanding of April 2, 2012, at ¶¶ 10, 11, 16; Rules of the City of

New York, Title 38A, Chapter 1, § 1-45(c),(d), (f) (“Police Department Procedures and Disciplinary Practices”).

At the same time, NYPD should re-evaluate its view of discipline for use-of-force cases and confer with CCRB, whose investigators and prosecutors are most familiar with the facts of individual cases, to ensure that officers are being held accountable for substantiated violations of the Patrol Guide’s use-of-force policy. That CCRB consistently recommended more stringent discipline than NYPD advocated or imposed may signal a public sentiment that NYPD has been treating recalcitrant officers – and particularly those who use excessive force and prohibited chokeholds – too leniently.<sup>32</sup> In identifying a more consistent and transparent system of discipline for chokehold cases – including setting criteria for when charges should be brought – NYPD should work in conjunction with stakeholders, including CCRB and the police unions, to consider what factors should be relevant to discipline recommendations for use-of-force cases, including:

- whether any use of force was necessary;
- whether any necessary use of force was proportionately used; and
- whether the police application and escalation of force was unreasonably rapid.

Regardless of what decisions are reached, NYPD’s process for determining appropriate discipline recommendations for use-of-force cases, including chokeholds, should be consequential, consistent, predictable, and transparent to police officers, CCRB, and the public.

OIG-NYPD understands that CCRB and DAO have already taken steps to increase communication and better align their practices and disciplinary recommendations for use-of-force cases, including chokehold cases. At a recent conference for NYPD leadership, the Deputy Commissioner of DAO announced that an effort to increase penalties in all substantiated excessive force cases was underway and that NYPD was working closely with CCRB to better coordinate their practices. Such cooperation needs to be fully institutionalized, such as by developing more formal written protocols.

***Recommendation #2: Provide Transparency with Respect to the Police Commissioner’s Disciplinary Decisions.***

The Police Commissioner should strive to provide transparency in making disciplinary decisions, particularly when departing from CCRB recommendations in use-of-force or other FADO cases. Such transparency can be easily achieved, in part, though compliance with recently-added Section 1-46(f) of the City Rules addressing CCRB, which states:

In any case substantiated by the Board in which the Police Commissioner intends to impose discipline that is of a lower level than that recommended by the Board or by the Trial Commissioner, the

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<sup>32</sup> OIG-NYPD does not take a position as to the appropriate penalties for chokehold cases, as such a recommendation goes beyond the scope of this review. However, OIG-NYPD does advise that NYPD, in consultation with CCRB, regularly review its disciplinary processes and standards to ensure that officers are held appropriately accountable for their conduct. NYPD’s evaluation of appropriate discipline for use-of-force cases should not just involve DAO, but should also incorporate the Deputy Commissioner of Trials and the Office of the Police Commissioner as well.



Police Commissioner shall notify the CCRB, with notice to the subject officer, at least ten business days prior to the imposition of such discipline. Such notification shall be in writing and shall include a detailed explanation of the reasons for deviating from the Board's or, as the case may be, the Trial Commissioner's, recommendation, including but not limited to each factor the Police Commissioner considered in making his or her decision. The CCRB and the subject officer may respond to such notification within five business days of its receipt, after which the Police Commissioner shall make a final determination.

Rules of the City of New York, Title 38A, Chapter 1, § 1-46(f). Of course, Rule 1-46(f) only requires that such explanations be provided to CCRB, and not the public at large, as the Police Commissioner's reasoning on discipline in individual cases would likely implicate the recognized privacy rights of officers with respect to confidential personnel information. To ensure NYPD's compliance with Section 1-46(f), and at the same time increase transparency into police discipline for the public at large, CCRB should consider including metrics on NYPD's adherence to Rule 1-46(f), in conjunction with its reporting on the types of discipline actually imposed, in its public reporting on substantiated use-of-force cases, perhaps in its semi-annual reports.<sup>33</sup>

***Recommendation #3: Expand IAB's Access to Newly-Filed Complaints and Substantive Information on Use-of-Force Cases Filed with CCRB.***

City law defines CCRB as the primary investigator of use-of-force complaints made against police officers, and accordingly, IAB notifies CCRB of all use-of-force complaints that it receives upon receipt, even where IAB decides to conduct its own investigation. OIG-NYPD's review revealed that the converse is not necessarily true; CCRB does not routinely and affirmatively notify IAB of all use-of-force cases that are reported directly to CCRB. Notwithstanding CCRB's role as the primary investigator of use-of-force cases under its FADO jurisdiction, there is a value to IAB also having substantive knowledge of all use-of-force complaints made against NYPD officers. With such knowledge, for example, IAB can ensure that such cases are referred to OCD as it deems appropriate so that local investigators can look into any potential non-FADO infractions connected to the encounter. Moreover, because IAB has access to officers' full disciplinary histories and non-FADO complaint data, IAB is better positioned than CCRB to incorporate use-of-force complaint information into an early warning system about potentially problematic police officers. Finally, IAB can also make its own assessment of whether a separate IAB investigation of the use of force might be warranted in certain unique instances. As a result, OIG-NYPD recommends that NYPD encourage further discussions with CCRB about proactively sharing information on incoming use-of-force complaints with IAB so that NYPD has full early information about these important cases. Because certain units of NYPD already have access to CCRB's case tracking system, it should be relatively easy for adjustments to be made so that IAB is affirmatively notified of any and all new use-of-force complaints that CCRB receives.

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<sup>33</sup> CCRB already reports, in the aggregate, on NYPD disciplinary outcomes in substantiated CCRB cases. For example, see Civilian Complaint Review Board, 2014 January – June Report, at 17, at [http://www.nyc.gov/html/ccrb/downloads/pdf/CCRBsemi\\_2014.pdf](http://www.nyc.gov/html/ccrb/downloads/pdf/CCRBsemi_2014.pdf).

***Recommendation #4: Improve Information Sharing and Case Tracking for Cases that are Outsourced to the Borough and Precinct Investigators via the Office of the Chief of Department and the Investigative Review Section.***

OIG-NYPD's review suggested a need for better and more consistent information sharing and case tracking in connection with OG investigations that are referred to borough and precinct investigators. Currently, when IAB assesses a matter as OG, it sends the case to OCD, where the IRS unit serves as a clearinghouse to assign and track these investigations conducted on the local level. Unfortunately, IRS, which reportedly handles more 30,000 cases per year, is saddled with an antiquated case management system that is incompatible with the system used by IAB. Moreover, current practice is for IRS to collect and track investigation closing reports in its own system, but not to share those results with IAB unless asked.

OIG-NYPD observed an opportunity to improve communication and coordination within NYPD by aligning the computer systems used by IAB and IRS. Such an improvement would promote more consistent tracking of these OG investigations overall and would allow information to be more readily shared with IAB. OIG-NYPD understands that IAB and IRS are already working on upgrading and aligning their computer systems to improve coordination and tracking.

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As noted throughout this report, OIG-NYPD intends to conduct a larger-scale review on the topics of use of force, accountability, and training in the coming months. OIG-NYPD's review of the ten chokehold cases substantiated by CCRB between 2009 and 2014 has proven to be a useful device for identifying specific issues requiring further, more comprehensive review, including (but not limited to) the following:

- Are the observations reflected here – whereby NYPD (whether DAO, the Deputy Commissioner of Trials, or the Police Commissioner) routinely departed from the disciplinary recommendations of CCRB – indicative of a broader trend for substantiated use-of-force cases in general? And if so, does CCRB view use-of-force offenses too harshly or too one-dimensionally, or does NYPD – whether acting via DAO, the Deputy Commissioner of Trials, or the Police Commissioner – take too lenient an approach toward these cases?
- Has the Police Commissioner been following Rule 1-46(f), requiring written explanations to CCRB setting forth the bases for his decisions whenever he intends to impose discipline less than that recommended by CCRB in substantiated FADO cases, since the rule went into effect in April 2013?
- Are police officers escalating encounters and using force too quickly as a systemic matter?
- Is NYPD adequately teaching and reinforcing effective communication skills and approved de-escalation tactics to all of its officers?
- Are there opportunities for better coordination and more proactive communication, both on inter-agency and intra-agency levels, to enhance NYPD's system of accountability in use-of-force cases?

OIG-NYPD intends to analyze a broader universe of substantiated use-of-force cases in the future to explore these and related issues, and the findings of this review will be presented to the public in future reports.

## **Appendix**

## GLOSSARY OF TERMS AND ACRONYMS

**Administrative Charges:** Involves the filing of departmental Charges and Specifications before a Trial Commissioner and could result in the forfeiture of vacation days, probation, or even termination from NYPD.

**Call-Out:** Preliminary investigation conducted by IAB's Group 54 within seventy-two hours of receiving excessive use of force complaints.

**CCRB:** Civilian Complaint Review Board, an independent city agency empowered to receive, investigate, mediate, hear, make findings, and recommend action on complaints against New York City Police officers alleging use of excessive force, unnecessary force, abuse of authority, discourtesy, or the use of offensive language.

**Command Discipline:** A lower level of police discipline which can result in loss of vacation days and is general imposed on the local precinct level.

**CPI:** NYPD Central Personnel Index.

**DAO:** Department Advocate's Office, the NYPD unit that prosecutes NYPD disciplinary matters in a courtroom hearing before administrative law judges and, until April 11, 2013, was responsible for prosecuting all substantiated CCRB cases.

**Deputy Commissioner of Trials (or DCT):** An appointed individual who supervises the New York City Police Department's administrative judges ("Trial Commissioners") and also presides over uniformed and civilian members' disciplinary trials within the department.

**Exonerated:** Disposition reached when the subject officer is found to have committed the act alleged, but the officer's actions are determined to be lawful and proper.

**FADO:** Force, Abuse of Authority, Discourtesy, Offensive Language.

**Group 54:** IAB's use-of-force team that investigates excessive force allegations.

**IAB:** NYPD Internal Affairs Bureau.

**ICO:** NYPD Integrity Control Officer.

**IRS:** NYPD Investigation Review Section, which sits within the Office of the Chief of Department.

**MOU:** Memorandum of Understanding entered into between the Civilian Complaint Review Board and the New York Police Department on April 2, 2012.

**NYCHA:** New York City Housing Authority.

**New York City Charter:** The foundational document that defines the organization, power, functions, and core procedures and policies of city government for New York City.

**NYPD:** New York City Police Department.

**OCD:** NYPD Office of the Chief of Department.

**OG:** Outside Guidelines, a designation for non-FADO related administrative misconduct.

**OIG-NYPD:** Office of the Inspector General for the New York City Police Department, a newly-created independent office charged with investigating, reviewing, studying, auditing, and making recommendations relating to the operations, policies, programs, and practices of the New York City Police Department.

**Patrol Guide:** Departmental rules, guidelines, and procedures that govern the New York City Police Department.

**Rules of the City of New York:** The regulations promulgated by city agencies are compiled in the Rules of the City of New York.

**Spin-off:** Referral made by IAB to another unit and which generates a new IAB log number.

**Substantiated:** Disposition reached when there is sufficient credible evidence to believe that the subject officer committed the act charged in the allegation and thereby engaged in misconduct.

**The Board:** The Board of the CCRB, which consists of thirteen members who must all live in the city and reflect the diversity of the city.

**Unfounded:** Disposition reached when there is sufficient credible evidence to believe that the subject officer did not commit the alleged act.

**Unsubstantiated:** Disposition reached when there is insufficient evidence to determine whether the officer did or did not commit misconduct.

**INDEX OF TABLES AND GRAPHS**

<i>Graphic 1:</i>	Life Cycle of the Ten Substantiated Chokehold Complaints .....	8
<i>Table 2:</i>	CCRB Determinations of Investigated Claims .....	13
<i>Table 3:</i>	NYPD Discipline Chart .....	15
<i>Table 4:</i>	From CCRB to NYPD: Recommendations and Final Dispositions on Chokehold Allegations .....	19