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Testimony of Alvin Bragg Regarding The Jurisdiction Of The Civilian Complaint Review Board

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**Testimony of Alvin Bragg
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**The New York City Civilian Complaint Review Board
January 13, 2021
100 Church Street, 10th Floor
New York, New York 10007**

Regarding The Jurisdiction Of The Civilian Complaint Review Board

Alvin Bragg, on behalf of the New York Law School Racial Justice Project, respectfully submits the following testimony today in support of the New York City Civilian Complaint Review Board's ("CCRB") authority to investigate allegations of untruthful testimony and written statements made by members of the New York City Police Department ("NYPD") as well as allegations of sexual misconduct by NYPD officers.

The Racial Justice Project is a legal advocacy organization dedicated to protecting the constitutional and civil rights of people who have been denied such rights on the basis of race, and to increasing public awareness of racism and racial injustice in, among other areas, the areas of education, employment, political participation, economic inequality, and criminal justice. The Racial Justice Project's work includes impact litigation, appellate advocacy, legislative advocacy, training, and public education.

For the reasons that follow, the Racial Justice Project fully supports the CCRB's proposed rule revisions.

I. Investigating Intentionally Untruthful Testimony And Written Statements Falls Under The CCRB's Abuse Of Authority Jurisdiction.

The proposed rule revisions defining CCRB's abuse of authority jurisdiction to include intentionally untruthful testimony and written statements are important measures that are fully consistent with the CCRB's mission, the City Charter, and relevant case law.

New York City Charter § 440(c)(1) vests the CCRB with "the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability." In November 2019, New York City voters voted overwhelmingly in favor of a ballot question to grant the CCRB the power "to investigate, hear, make findings and recommend action regarding the truthfulness of any material official statement made by a member of the police department who is the subject of a complaint received by the board, if such statement was made during the course of and in relation to the board's resolution of such complaint." New York City Charter § 440(c)(1).

The proposed rule revisions specify that the CCRB’s abuse of authority jurisdiction extends to intentionally untruthful testimony and written statements. The proposed rule revisions define “abuse of authority” to include, *inter alia*, “intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions.” The proposed rule revisions thus reflect what the Court of Appeals and other courts have made clear: intentionally untruthful testimony and written statements constitute an abuse of authority. *See generally People v. Flanagan*, 28 N.Y.3d 644, 653 (2017) (where detective, *inter alia*, prepared a false report, including false statements, to close out a case, official misconduct conviction was legally supported); *Matter of Weissmann*, 176 A.D.3d 77 (2nd Dept. 2019) (submission of false documentation by prosecutor appointed to prosecute traffic tickets and zoning violations to a village justice to justify giving favorable plea dispositions in the course of performing official functions supported official misconduct conviction); *People v. Ackermann*, 44 Misc. 3d 626 (Sup. Ct. Bronx Co. 2014) (police officer's alleged act of making false statements in criminal complaint supported criminal charge against him for official misconduct). *See also* New York City Charter § 1116(b) (“Any officer or employee of the city or of any city agency who shall knowingly make a false or deceptive report or statement in the course of duty shall be guilty of a misdemeanor and, upon conviction, forfeit such office or employment.”).¹

When a police officer intentionally offers untruthful testimony or written statements, public trust is undermined—and when law enforcement officers who offer intentionally untruthful testimony or written statements are not held accountable, public trust is further corroded. Empirical research supports the conclusion that transparency in connection with the work of police contributes to greater trust between people and police. *See* Brief of Amici Curiae Former Prosecutors in Support of Intervenor-Defendant-Appellee-Cross-Appellant and Urging Affirmance, *Uniformed Fire Officers Association, et al. v. Bill de Blasio, et al*, 2020 WL 6806462 (2nd Cir. 2020) (20-2789). Absent transparency, trust between law enforcement officers and the communities they serve suffers and the efficacy of law enforcement is significantly hindered. Public trust in law enforcement and the integrity of the investigatory and disciplinary processes require an effective system of accountability for members of the NYPD who offer untruthful testimony or written statements.

The CCRB’s investigation of the killing of Eric Garner, and the NYPD’s failure to take any action in relation to false statements discovered in connection with that investigation, is a prime example of why the CCRB must have jurisdiction to investigate untruthful testimony and written statements.

¹ False statements by a federal agent in connection with the agent’s duties can be a federal offense. *See* 18 U.S.C. § 1000. Indeed, as an Assistant U.S. Attorney for the Southern District of New York, I prosecuted an FBI Agent who had a sexual relationship with a confidential informant and then lied about the relationship to the FBI and the U.S. Attorney’s Office. The FBI Agent was convicted, after a jury trial, for making false statements.

In the administrative trial of former Officer Pantaleo, the Deputy Commissioner of Trials found that Officer Justin Damico falsely stated on an arrest report that no force was used against Mr. Garner and that Mr. Garner committed a felony requiring possession of over 10,000 cigarettes. Notwithstanding that the NYPD's own bylaws proscribe against making false official statements and require the Police Commissioner to impose discipline and, absent extraordinary circumstances, dismiss the officer from the NYPD, it appears the Police Commissioner took no action.²

Intentionally offering untruthful testimony and written statements is undoubtedly an abuse of authority and, as the proposed rule revisions reflect, is well within the CCRB's abuse of authority jurisdiction.

II. Investigating Sexual Misconduct Is Within the Purview Of The CCRB's Abuse of Authority Jurisdiction.

New York case law and the City Charter make clear what should be patently obvious: sexual misconduct by police officers against people they are charged with protecting is an abuse of authority that—as the proposed rule revisions reflect—is within the purview of the CCRB's abuse of authority jurisdiction.

New York City Charter § 440(c)(1) vests the CCRB with “the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability.”

The proposed rule revisions specify that conduct that amounts to “abuse of authority” includes, *inter alia*, “sexual misconduct.” The proposed rules further define sexual misconduct as “misconduct of a sexual nature alleged by a civilian against a member of the Police Department.” Some examples of such misconduct include “verbal sexual harassment; sexual harassment using physical gestures; sexual humiliation; sexually motivated police actions such as stops, summonses, searches, or arrests; sexual or

² After five-plus years of denied access to fundamental information concerning Mr. Garner's death, including whether any investigations and disciplinary actions were taken in connection thereto, Mr. Garner's mother, sister, and police accountability organizers filed a petition, pursuant to New York City Charter § 1109, seeking an order convening a summary inquiry, at which City officials and employees with knowledge or information can be made to testify. On September 24, 2020, the Court held that a summary inquiry was warranted. *Carr v. de Blasio*, 133 N.Y.S.3d 737 (Sup. Ct. N.Y. Cnty. Sept. 24, 2020). The City filed a notice of appeal and argued that an automatic stay halted all proceedings in the matter. The Court rejected its arguments and ordered the parties to move forward with further proceedings. *Carr v. de Blasio*, No. 101332/2019 (Sup. Ct. N.Y. Cnty. Dec. 22, 2020). The Racial Justice Project is co-counsel for the Petitioners in this litigation, which remains ongoing.

romantic propositions; and any intentional bodily contact of a sexual nature, including but not limited to, inappropriate touching, sexual assault, rape, and on-duty sexual activity.”

That sexual misconduct is a form of abuse of authority has been recognized by our courts. *See generally People v. Arcila*, 152 A.D.3d 783, 784 (2nd Dept. 2017) (evidence that an off-duty police officer touched complainant’s breast and inner thigh, without her consent, while displaying his police badge, representing that he was a police officer, and stating that he could give complainant a ticket, was legally sufficient to establish the charge of official misconduct); *People v. Moreno*, 100 A.D.3d 435 (1st Dept. 2012) (entry into an apartment for official police functions when the police officer’s actual intent is to obtain a personal benefit, including “the prospect of sexual relations,” constitutes official misconduct); *People v. Sandino*, 34 Misc. 3d 1223(A) (Crim. Ct. 2011) (obtaining sexual gratification is sufficient to satisfy the benefit element of official misconduct).³

Public discussion about police violence generally focuses on excessive force and too infrequently considers another invidious form of police violence: sexual misconduct. When a member of the NYPD commits an assault upon a person—*i.e.*, an assault upon a person that the NYPD is charged with protecting—an independent oversight body is the necessary and appropriate body to receive, investigate, hear, make findings, and recommend action to be taken regarding the complaint.

Complainants should not have to go to the agency that employs the officer who allegedly committed the assault to investigate it. CCRB oversight would foster a system in which complainants can provide information to an independent agency about police misconduct that they have been subjected to or witnessed. Such a system would, among other things:

- give the community faith that complaints of sexual misconduct are being taken seriously and investigated appropriately;
- increase the likelihood that survivors report such misconduct;
- allow for the community to understand how often people are subjected to sexual misconduct by NYPD officers; and
- facilitate citywide policymaking to determine how to stop police sexual misconduct from happening in the first place.⁴

³ Federal courts also have addressed this issue. As an Assistant Attorney General for New York State, I worked on a matter in which a federal court imposed a monitor on a local police department subsequent to the filing of a lawsuit alleging that officers had a practice of stopping women motorists for the purpose of soliciting sexual conduct, in violation of the Fourth and Fourteenth Amendment. *See People of The State of New York v. The Town of Wallkill*, Docket No. 7:01-cv-00364 (S.D.N.Y. Jan. 18, 2001), available at <https://www.clearinghouse.net/detail.php?id=1033>.

⁴ It is well-established that Black, Latinx, and LGBTQ persons disproportionately bear the brunt of police misconduct. *See, e.g., Stop-and-Frisk in the de Blasio Era*, New York

The number of complaints the CCRB has received about sexual misconduct by NYPD members indicate the need for a central, independent body to investigate such complaints. Between 2016 and 2020, CCRB made 299 referrals to other agencies.⁵ Between January 2016 and June 2017, CCRB referred 117 sexual misconduct complaints to IAB; “the Police Department declined to answer questions about any discipline handed down to officers . . . how the cases were decided or what the complaints alleged.”⁶ Implementation of the proposed rule revisions would empower the CCRB to investigate these types of complaints itself.

Sexual misconduct by police officers against people they are charged with protecting is unquestionably an abuse of authority and, as the proposed rule revisions reflect, is within the purview of the CCRB’s abuse of authority jurisdiction.

III. Conclusion

We thank the Board for the opportunity to provide testimony today. The Racial Justice Project looks forward to working with the Board on this and other measures to ensure that complaints of police misconduct are appropriately heard, investigated, and adjudicated.

Civil Liberties Union, 2 (2019), https://www.nyclu.org/sites/default/files/field_documents/20190314_nyclu_stopfrisk_singles.pdf; *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights*, Make the Road New York, 4-5 (2012), https://maketheroadny.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf. Anecdotal observations suggest that this is so for sexual misconduct by officers as well. Centralized, transparent recordkeeping of investigative findings concerning sexual misconduct by officers is important for fashioning remedies and preventative measures that account for disparities experienced by Black, Latinx, and LGBTQ persons.

⁵ Sydney Pereira & Josefa Velasquez, *NYPD’s Oversight Agency Launches Do-Over On Police Sexual Misconduct Investigations*, Gothamist (Nov. 10, 2020, 5:00 AM), <https://gothamist.com/news/nypds-oversight-agency-launches-do-over-police-sexual-misconduct-investigations>.

⁶ Al Baker & Benjamin Mueller, *Police Complaint Board to Investigate Charges of Sexual Misconduct*, The New York Times (Feb. 14, 2018), <https://www.nytimes.com/2018/02/14/nyregion/ccrb-sexual-misconduct-police.html>.