

Civilian Complaint Review Board Meeting - Final
August 8, 2018

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CIVILIAN COMPLAINT REVIEW BOARD

PUBLIC MEETING

August 8, 2018

4:02 p.m.

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100 Church Street
10th Floor
New York, New York

TRANSCRIPTS OF PROCEEDINGS:

BEFORE:

FREDERICK DAVIE, Chair

JONATHAN DARCHE, Esq., Executive Director

REPORTED BY:

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PUBLIC MEETING AGENDA:

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1. Call to Order
2. Adoption of Minutes
3. Report from the Chair
4. Report from the Executive Director
5. New Business
 - Discipline Framework
6. Old Business
7. Public Comment
8. Adjourn to Executive Session

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BOARD MEMBERS PRESENT:

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FREDERICK DAVIE, Chair

RAMON PEGUERO, Board Member

FRANK J. DWYER, Board Member

JOSEPH A. PUMA, Board Member

LINDSAY EASON, Board Member

MICHAEL RIVADENEYRA, Board Member

SALVATORE CARCATERRA, Board Member

MARBRE STAHLY-BUTTS, Board Member

JOHN SIEGAL, Board Member

=====

JONATHAN DARCHE, ESQ., Executive Director

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2 MR. DAVIE: Good afternoon,
3 everyone. I'd like to call this August
4 meeting of the Civilian Complaint Review
5 Board to order.

6 Before we get started I'm going to
7 ask my colleagues if they will introduce
8 themselves. We'll start to my right with
9 Mr. Dwyer.

10 MR. DWYER: I'm Frank Dwyer. I'm
11 a police department representative to the
12 CCRB.

13 MR. CARCATERRA: I'm Sal Carcaterra
14 and I'm also a police department rep to
15 the CCRB.

16 MR. DAVIE: Fred Davie and I'm
17 chair.

18 MR. DARCHE: John Darche,
19 executive director.

20 MR. PEGUERO: Ramon Peguero, I'm
21 the Queens County designee.

22 MR. SIEGAL: John Siegal, I'm a
23 mayoral designee.

24 MR. EASON: Good evening,
25 everyone. My name is Lindsay Eason. I am

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2 a police commissioner representative.

3 MS. STAHLY-BUTTS: Hello,
4 everybody. My name is Marbre
5 Stahly-Butts. I'm the Brooklyn
6 representative for the council.

7 MR. DAVIE: Thank you.

8 The chair will entertain a motion
9 to adopt the minutes from the last
10 meeting.

11 MR. PEGUERO: So moved.

12 MR. DAVIE: Is there a second?

13 MR. SIEGAL: Second.

14 MR. DAVIE: Any discussion?

15 (No response.)

16 MR. DAVIE: All those in favor
17 please say aye.

18 (Chorus of ayes.)

19 MR. DAVIE: Opposed, no.

20 (No response.)

21 MR. DAVIE: The ayes have it, the
22 minutes are approved.

23 As many of you know, one of the
24 top proprieties of the CCRB is making sure
25 our process of reviewing cases and

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2 recommending discipline is thorough and
3 impartial. We are always examining and
4 evaluating the process in an effort to be
5 as fair as possible to every civilian who
6 files a complaint, as well as to every
7 officer who is the subject of a complaint.

8 In accordance with that ongoing
9 effort, this afternoon the board will
10 discuss a disciplinary framework that the
11 agency has been using as a pilot program
12 to increase consistency in the board's
13 disciplinary recommendations.

14 While the City Charter dictates
15 that a panel of three board members must
16 review every CCRB case to determine a
17 disposition, that is whether or not to
18 substantiate the allegations, there are no
19 formal parameters regarding how to
20 recommend discipline for members of the
21 NYPD against whom the board substantiates
22 misconduct. In effect, this means that
23 two officers who engage in similar acts of
24 misconduct ultimately may face different
25 disciplinary recommendations.

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To be clear, oftentimes it is indeed possible that recommending different levels of discipline for similar offenses is a valid decision. But our agencies' commitment to fairness for all parties demands that there must be as much consistency in discipline recommendations as possible.

This disciplinary framework, which the board began using as a part of a pilot program in January, will serve as a framework for every board panel as it reviews cases. The framework will help us be more consistent in discipline recommendations across allegations and officers.

I believe this enhanced consistency will be good not only for this agency but for police-community relations in the city all together. As a member of our staff -- a member of our staff, Heather Cook, will be sharing more about this presentation momentarily.

But I will say that using this

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2 framework on a trial basis already has
3 begun to yield more consistency on the
4 panels, and we look forward to continuing
5 that progress.

6 The CCRB's executive director John
7 Darche has a few comments and then after
8 that we'll hear from Heather.

9 John.

10 MR. DARCHE: Thank you, Mr. Chair.

11 I'd like to welcome you all to 100
12 Church Street.

13 Yesterday marked 30 years since
14 Tompkins Square, which spurred the
15 creation of an independent CCRB. Much
16 progress has been made in that time but
17 there is still work to did be done. I
18 want to assure the members of this board
19 and the residents of the city, that every
20 day the staff of this agency works to keep
21 improving this agency. The work we do
22 investigating, mediating, and prosecuting
23 allegations of police misconduct is so
24 important to every person who lives in the
25 city and to the people who work and

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2 protect the people of the city.

3 As part of that continuing
4 process, I would like to tell you that we
5 have a new class of investigators that is
6 just started. They just completed
7 training. And everything we've heard says
8 that they're going to be a -- they're
9 really an exceptional bunch. They are
10 already off to a great start.

11 As part of our outreach we
12 participated in the City Hall in Your
13 Borough initiative -- the Major's City
14 Hall in Your Borough initiative. And I
15 was lucky enough to attend the resource
16 fair with our director of
17 intergovernmental affairs and outreach,
18 Yojaira Alvarez, and one of our
19 investigators, Wassim. And it was really
20 -- it showed me how important it is, the
21 work we do. Also the work that our
22 outreach team does and that all of our
23 employees do really making sure people
24 know who we are and what we do and that we
25 are here to hear the their complaints. As

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2 part of that we are going to be returning
3 to Staten Island for next month's board
4 meeting.

5 Finally, if anyone here wants to
6 file a complaint with this agency there
7 are two investigators here right now,
8 Santosh Prakash and Dangeen Santi
9 (phonetic) who are available to accept
10 complaints. If you guys can stand up.

11 MR. DARCHE: Vanessa Rosen will be
12 playing the part of Santosh Prakash.

13 Thank you, Mr. Chair.

14 MR. DAVIE: You're very welcome.

15 Are there any comments from the
16 board members?

17 (No response.)

18 MR. DAVIE: We've just been joined
19 by our representative from the Bronx.

20 Would you like to introduce
21 yourself, Mr. Rivadeneyra?

22 MR. RIVADENEYRA: Hi. Good
23 afternoon. Michael Rivadeneyra from the
24 Bronx delegation to the city's council
25 appointment to the CCRB.

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2 Apologize for my tardiness.

3 MR. DAVIE: No worries. Thank
4 you. We're glad you're here.

5 I was just handed a note that I'm
6 getting even better now pronouncing your
7 name.

8 MR. RIVADENEYRA: You are.

9 MR. DAVIE: I actually practice
10 just before every board meeting.

11 So now we'll have a report from
12 Heather Cook on the discipline framework.

13 MS. COOK: Good afternoon,
14 everyone. My name is Heather Cook and I
15 am senior counsel here at the CCRB. And
16 I'm going to talk today a little bit about
17 our discipline framework, where it came
18 from, why we developed it, how it works,
19 and what the results so far have been in
20 our six-month pilot program.

21 Thank you. This is not made for
22 the vertically challenged.

23 So one of the things that I do as
24 part of my responsibilities is I sit in
25 with the panels when they are voting to

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2 give legal assistance to the board
3 members. And one of the things that we
4 heard time and time again was board
5 members -- especially new board members
6 when is they first started -- were always
7 looking for some sort of guidance when it
8 came to discipline. And one of the things
9 that staff lawyers cannot do in the panel
10 is tell the board members how to vote. We
11 are only there for legal advice.

12 So based on this we started talking
13 about how we could come up with something
14 both to maintain consistency and also to
15 give board members a little bit more
16 guidance in how they should be approaching
17 discipline. So we came up with -- first
18 thing we did was we went back and we
19 looked at the disciplinary history. We
20 looked at the stats to see over a
21 five-year period. And we basically picked
22 that for a number of reasons but one of
23 the main reasons was it also coincided
24 with the formation of the Administration
25 Prosecution Unit, the APU, which started

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2 in 2012. So we looked at from 2012 to
3 2017 where our discipline was. And we
4 basically saw that we were a little bit
5 all over the place.

6 So what we decided was the goal
7 for this framework was to come up with a
8 consistent and fair guideline to help the
9 board come up with consistent and fair
10 discipline recommendations that will be
11 good for both civilians and members of
12 service. Everybody will basically be on
13 the same page and know what to expect.

14 The most important thing that I
15 want to emphasize about this framework is
16 it is a guideline, it is nonbinding. So
17 that means the board members, while they
18 have this framework to look at and it is a
19 way to discuss cases so that everybody's
20 on the same page with how they are
21 discussing the cases, it is nonbinding.
22 If they want to deviate from it for
23 specific reasons, they certainly can.

24 So we had the six-month pilot
25 program. We started this in our panels in

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2 January. And this slide just sort of
3 shows to you what I was talking about
4 before, was when we first started this
5 program, we looked at our stats. And we
6 looked to see what kind of discipline
7 recommendations were we recommending over
8 a five-year span. And as you can see
9 there were fluctuations in just about
10 every category.

11 Charges, 66 percent of our
12 substantiated cases were charges in 2013;
13 down to 11 in 2016; down to 10 in 2017.
14 And the same thing when you look at
15 command discipline recommends, 24 percent
16 in 2013; 24 percent in 2014; all the way
17 up to 43 percent; and then up to
18 53 percent. Everything was sort of all
19 over the place. So we figured we need to
20 find some way to make things a little bit
21 more consistent across the board.

22 So what we came up with was this
23 framework. And I like to refer to it as
24 -- and I may show my age here -- a choose
25 your own adventure. Where you sort of go

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2 through this framework and it gives you,
3 if yes move this way, if no move this way;
4 with, again, nonbinding suggestions. So
5 we start at the top of our framework --
6 and on the left is the framework
7 completely -- we start first with
8 substantiated allegation type.

9 Does the allegation -- and, again,
10 I just want to reiterate, this framework
11 only comes into play when the board -- the
12 panel has already determined that an
13 allegation or multiple allegations against
14 an officer will be substantiated. So if
15 there's an issue of whether or not it
16 should be substantiated, we don't even
17 talk about this. This only comes after
18 the fact when the panel is trying to
19 determine what discipline to recommend to
20 the police department.

21 So when we looked at the
22 discipline across the board and of the
23 allegations across the board, we decided
24 we needed some sort of standard by which
25 we could judge discipline. Meaning what

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2 were the most serious types of allegations
3 that we could hold up and say, this is the
4 most serious and the most serious would
5 lend itself to charges and specifications.
6 And then everything else that's not
7 necessarily named because we come up with
8 a number of different allegations
9 depending on the case, everything else can
10 sort of be measured against this.

11 So we looked -- we looked at the
12 patrol guide first. We looked at state
13 and federal courts. And we looked at
14 state and federal constitution to come up
15 with what we determine to be the most
16 serious violations, the most serious
17 misconduct that were within our FADO --
18 that was within our FADO jurisdiction.

19 So what we came up with were these
20 six substantiated allegation types. The
21 first one, choke hold. Pretty obvious,
22 the patrol guide is very clear, member
23 shall not use a choke hold. And, again, I
24 just want to bring up the fact that, yes,
25 there are certain situations in the patrol

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2 guide where the language has been
3 modified. That would go more towards
4 whether or not something actually was a
5 chock hold and would be substantiated as a
6 choke hold. This only comes into play
7 once the panel has determined this is a
8 choke hold, we are substantiating an
9 allegation of a choke hold, and that
10 allegation would lend itself to charges
11 being one of the more serious allegations
12 of misconduct.

13 So the second substantiated
14 allegation type we came up with was strip
15 search. Strip search the state and
16 federal courts have both been very clear
17 that strip searches are invasion of the
18 first magnitude. And this is something
19 also that the patrol guide backs up
20 because the patrol guide adds additional
21 requirements including making sure that a
22 sergeant authorizes a strip search before
23 it can be done, as opposed this kind of
24 search -- stop and frisk and search you
25 would see out on the street. When it

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2 comes to a strip search there are
3 processes in place. A strip search has to
4 be done within certain parameters, certain
5 ways. Everything is much more specific
6 and it has to be run past a sergeant. A
7 sergeant has to authorize it.

8 So the next one is warrantless
9 entry. And warrantless entry, the Fourth
10 Amendment clearly defined this as, the
11 right of the people to be secure in their
12 homes, shall not be violated. This is a
13 very fundamental premise of the Fourth
14 Amendment that people should be secure in
15 their homes and invading that zone of
16 privacy that they have in their homes is a
17 violation of a higher magnitude than
18 simply against stopping them on the
19 street, searching them on the street,
20 arresting them on the street. That's why
21 you have additional requirements for
22 arrest warrants, search warrants, other
23 things that you don't necessarily have on
24 the street.

25 Number four is offensive language.

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2 And much like choke holds, offensive
3 language is prohibited by the patrol
4 guide. It's prohibited conduct and unlike
5 discourtesies, which we also have
6 jurisdiction over, offensive language has
7 no official law enforcement function. And
8 that's a big thing for us. Because when
9 you're talking about offensive language --
10 this is things such as comments about
11 someone's gender, about race, what we
12 would refer to in the law as protected
13 classes, disabilities. And this is the
14 kind of thing where people shouldn't --
15 you know, we kind of like to say, you
16 shouldn't have learned it at home and you
17 shouldn't have learned it at the academy,
18 you shouldn't be saying it for any reason.
19 With discourtesies there are times where
20 the patrol guide allows for certain law
21 enforcement purposes for an officer to be
22 discourteous to someone. They do not make
23 -- the patrol guide does make the same
24 exceptions for offensive language. So
25 this was something that we felt was a

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2 higher level of misconduct.

3 Excessive force with serious
4 injury is pretty self explanatory. One of
5 the reasons that we included this was
6 because around 2015 when the department
7 decided to overhaul their force
8 allegation -- I'm sorry -- their force
9 guidelines in the patrol guide, they added
10 more requirements on supervising officers
11 and also on officers who are present at
12 the time force is involved. So this was
13 the implementation of the TRIs, threat
14 resistance and injury reports, that also
15 came along with reports that the
16 commanding officers have to do, even if
17 they're not on the scene. And so this was
18 obviously -- excessive force with serious
19 injury is something that lends itself to
20 charges.

21 And then finally, sexual
22 misconduct, which we've gone into in our
23 public sessions before. Obviously that's
24 a fundamental abuse of authority based on
25 the authoritative power inherent in law

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2 enforcement and especially when officers
3 are on duty and they are armed.

4 So these were the five -- the six
5 allegation types that we looked at and we
6 said, if we substantiate an allegation
7 like this, these lend themselves to
8 charges. Now that does not mean that the
9 board has to recommend charges. There are
10 times -- and I'll get into this in a
11 little bit -- but there are times, for
12 example, where you may have a warrantless
13 entry. But the board may look at the
14 facts and say, you know what, this was an
15 issue where -- and we've seen this a
16 number of times with things we refer to as
17 wellness checks. So an officer makes an
18 unlawful entry not to seize evidence or to
19 arrest somebody but because they got a
20 call that somebody may be in danger
21 inside. So maybe they didn't have the --
22 enough information to have entered so the
23 entry would be substantiated. However, it
24 may not lend itself to charges because of
25 the nature of the incident.

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So, again, when the board deviates, if the board wants to deviate, we track those deviations. And we track them looking for patterns like this. As we said this is not binding. We are in a pilot program. We are trying to see what sorts of patterns that we see in these cases. That's one -- wellness checks is one that has come up relatively -- I would say relatively often in this case.

So if it doesn't lend itself to charges -- I'm sorry -- if it's not one of the five -- six substantiated allegation types, then we move on. You can see the no category. We move on to what we refer to as MOS history, member of service history. And I'm going to go into that a little bit more in a minute. And if MOS history is what we would say egregious it might possibly lend itself to charges. So this is where you might see something like a discourtesy or you might see something like a stop and frisk. And it may be a situation where on its face it's not one

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2 of the five substantiated allegation types
3 but you look at the MOS history and you'll
4 see a pattern of things and that may lend
5 itself to charges because maybe the
6 officers been disciplined in the past for
7 the same thing.

8 If it doesn't -- if MOS history
9 doesn't do it, then you go down to case
10 totality. And case totality is what we
11 sort of refer to as our catch all. And
12 that's where everything is taken into
13 consideration. And if the acts -- the
14 misconduct is so egregious based on just
15 the nature of what happened itself but it
16 doesn't happen to be one of these five
17 allegation types -- you know, we see this
18 sometimes with force, where maybe there's
19 not a serious injury but maybe it's a
20 situation where an officer had escalated
21 something that didn't need to be escalated
22 and other officers didn't engage in any
23 kind of force, this officer did. And
24 while there wasn't a serious injury, it
25 still was a greater misconduct and would

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1
2 lend itself to charges.

3 So if it doesn't lend itself to
4 charges, then we have other options. CDB
5 -- command discipline B, command
6 discipline A, formalized training, or
7 command level instructions. And just --
8 I'll give a very, very brief description
9 of what that means. Command discipline A
10 and B are what the department considers
11 formal discipline. And basically I tell
12 the board all the time -- CDA -- I say A
13 is for awesome, B is for bad. CDA is the
14 lighter of the -- of the disciplines. It
15 can be anything from a reprimand, up to a
16 loss of five days vacation forfeiture.
17 And CDB is anything from a reprimand up to
18 ten days of vacation forfeiture. And the
19 commanding officer of the precinct
20 determines what type of discipline is
21 imposed.

22 So we'll see that a lot of times
23 where it may be an allegation where the
24 board feels like, okay, this requires some
25 sort of discipline, maybe they've had

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2 training in the past, it's something that
3 clearly they're not getting. Or based on
4 the nature of what happened in the case,
5 based on the facts, they may say, you
6 know, this doesn't seem like a training
7 issue, this seems like a misconduct issue.
8 And it's something for discipline but
9 maybe it doesn't rise to the level of
10 charges. So then they decide between the
11 CDA or CDB as a recommendation.

12 Formalized training and
13 instructions. Formalized training would
14 be, for example, where the officer would
15 be sent to either the police academy or
16 some type of training with risk management
17 on the NYPD legal bureau on a specific
18 topic. And then command level
19 instructions is where it would be sent
20 back to the command and the commanding
21 officer would instruct the officer, this
22 is what you did wrong, this is how you can
23 fix it next time. This is what the board
24 will generally recommend if, for example,
25 it's like a less serious infraction or

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2 it's a less serious case, if the officer
3 is newer to the force and this just seems
4 like a fundamental misunderstanding of the
5 law. We see this a lot of times with very
6 complicated law. You know, there may be
7 something complicated about a vehicle
8 search or there may be something
9 complicated in an entry and then training
10 or instructions may be more appropriate.

11 So one of the things that we've
12 noticed is that once we instituted this
13 six-month pilot program, we looked at the
14 five-year average of charges from 2013 to
15 2018. And what we noticed was that using
16 this framework we are just under the
17 average of charges recommendations of
18 substantiated cases and of total closed
19 cases in the five-year average. So it
20 pretty much shows that by using this over
21 the past six months, we're really hitting
22 that really consistent plateau of the
23 average of all of these fluctuations over
24 the past five years. So the percentages
25 that are up there are reflective of the

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2 five-year average of closed cases but I
3 also have some stats later on if anybody
4 wants to hear it, about the percentage of
5 substantiated allegations -- the
6 percentage of charges per substantiated
7 allegation.

8 So what we found while we've been
9 using this in our pilot program, is that
10 we have had, over the past six months,
11 three chock hold cases. And of those
12 cases there have been no hesitations and
13 no deviations. The panel has voted
14 charges on those three cases.

15 Strip search allegations -- and so
16 what I mean by hesitation is, when the
17 panel discusses it as part of the pilot
18 program, we say to the panel, this is the
19 type of allegation that would lend itself
20 to charges. And the panel will say, I may
21 not have done that but she consistency
22 sake I will stay with a charges
23 recommendation. A deviation is a
24 deviation from a substantiated allegation
25 type. And that would be where they would

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say, I understand that this would lend itself to charges but based on the specific facts of this case, I don't believe that it warrants charges and we're going to deviate from that. So choke hold, three cases, no hesitations, no deviations.

Strip searches, we had two cases. We had one deviation where the panel just didn't believe the facts of that -- they believed the facts of the particular case were unique. And, again, because this is a nonbinding framework, there's room for that. It allows for these deviations when you get more unique circumstances. So we can maintain consensus while still allowing for these deviations when warranted.

We had five warrantless entry cases. And we had four hesitations and two deviations. So the deviations were basically -- one of them was a confusion about who gave the order to enter. So that was something where the panel just

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felt like it wasn't -- it wasn't fair to put charges on somebody when they couldn't quite determine that because a number of different officers had entered.

And then, as I talked about before, the wellness checks. The wellness checks came up a lot in terms of the hesitation and the deviation. And that is where somebody was -- the police were called because somebody was in need of assistance. And while the law says you have to have a certain -- you have to have a certain amount of information before you enter, the panel just believed that in these situations it wouldn't necessarily be prudent for the officers to have left. So while it may have been suppressible in a criminal court of law at the time, the panel understood this may not be worth charges. It's worth a substantiation. Again, it wasn't that they didn't substantiate. It was worth a substantiation but they did not recommend charges and specifications.

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2 Offensive language -- this was the
3 interesting one actually. We had
4 three cases. One of them the board
5 deviated from the investigator's
6 recommendation. The investigator had
7 substantiated the investigation and the
8 board decided after reading the case that
9 it felt that it was actually an unsub.
10 They didn't think it made out the
11 preponderance so the board flipped it to
12 an unsub. There was one hesitation and
13 then there were two deviations. And it's
14 a little bit complicated. I don't want to
15 get into too much about the specific cases
16 because I don't want to go into too much
17 it might violate 50A. But basically those
18 were where the words themselves didn't
19 actually come out of the officer's mouth.
20 That's -- it was just sort of the
21 situation. But the words -- the offensive
22 words themselves didn't actually come out
23 of the officer's mouth.

24 And then force with serious
25 injury, we had four cases. There was

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2 one case where it came to the board as an
3 unsub and after reviewing it the panel
4 determined that they believed there was
5 enough information to sub. So when they
6 did that, that then made the case eligible
7 for the framework, they subbed. And there
8 were no hesitations and no deviations in
9 this category either. And, again, that's
10 the force with serious injury.

11 Sexual misconduct, we had two
12 cases. One case was, again, flipped from
13 a substantiation to an unsubstantiation.
14 The board just didn't -- the panel at that
15 point didn't believe that there was enough
16 information to determine by a
17 preponderance that the actions -- the
18 allegations actually occurred the way it
19 was alleged. And then one deviation. And
20 this was basically a complainant where the
21 complainant initiated an inappropriate
22 remark towards an officer and the officer
23 responded in kind. Not great,
24 substantiated but the panel did not
25 believe that it necessitated charges in

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1
2 that situation.

3 So, again, I just want to be
4 really clear. These are five allegation
5 types that lend themselves to charges, but
6 it is only after the case has been
7 substantiated. So we may have had a
8 number of cases that fell within these
9 categories that didn't get substantiated
10 and this framework did not apply. It only
11 applied to the substantiated cases and we
12 were able to deviate from them when the
13 board felt like it.

14 So I'm going to talk a little bit
15 about MOS history. And what we consider
16 when we look at MOS history, which is sort
17 of the second phase of the framework are a
18 number of things. We look at the rank of
19 the officer. You know, is this a police
20 officer who's been on the force for about
21 a year versus a sergeant who's been on the
22 force for 15 years. We look at the
23 command. Is it a very busy command,
24 something like ESU. Where they are
25 constantly knocking people's doors down

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2 and they are the first people in the door,
3 they are the first name people remember. Or
4 is it like, you know, the 112th where you're
5 looking at the biggest issue is, you know,
6 people get their cars broken into or their
7 hubcaps stolen. We look at that.

8 We also look at prior -- and,
9 again, only when we get to a sub do we
10 look at this -- we look at prior
11 substantiated allegations -- prior
12 substantiated allegations against the
13 officer. And the reason we do that is
14 because when we looked at the case -- when
15 we look at the numbers, 90 percent of the
16 active New York City police force has
17 never had a substantiated allegation. So
18 of the 35 or 36,000 members of the NYPD,
19 90 percent of them have never gotten a
20 substantiated allegation. That's a
21 significant amount. So they may have been
22 called in as a witness officer; they may
23 have been called in as a subject officer
24 and not been substantiated; but
25 90 percent, no substantiations. And

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40 percent of active members of service have never even been a subject officer. So we felt like those numbers were so significant that it should be a factor in our determination.

Now, one of the things that's important about this, is that we're basing that off of CCRB history because we don't have the officer's full department history at the time that the panel is reviewing these cases. We don't have the officer's disciplinary history from the NYPD. So we are basing this is off of our records of CCRB substantiations. So it is very possible that it will look like an officer has no prior CCRB subs, but they may have other departmental discipline. We just won't know that at the time. So this is really just related to the CCRB subs.

So we only had three cases that were decided completely based on member service history and this was sort of a common example. It was mostly the officer had been subbed for the same conduct

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2 previously. So this was a situation where
3 if they had already been subbed for it,
4 they maybe had already -- and had already
5 received lower level of discipline for the
6 same conduct, then the panel felt like it
7 was time to up the discipline
8 recommendation at that point.

9 And then we get to case totality,
10 like I said, which is basically our catch
11 all. We had seventeen in the cases in the
12 six months of substantiated cases where
13 the board recommended charges and
14 specifications based on case totality.
15 Again, without getting into too much about
16 the cases, the common examples of why a
17 case would not be one of the allegation
18 types and an officer may have a decent
19 discipline history but still get charges
20 is because maybe the officer escalated the
21 situation; maybe there was video. Now
22 with cell phones, body-worn camera
23 footage, if the video discredits or
24 contradicts the member of the service's
25 version of events -- and, again, they're

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2 shown those videos when they come in here,
3 so. And then if a senior officer engages
4 in egregious conduct and is setting a bad
5 example for the more junior officers,
6 that's when -- these are some of the
7 factors that go into charges for case
8 totality. The majority of the cases
9 though, I will tell you, are just unique
10 facts that the panels look at and they
11 just say, it doesn't -- it's almost like
12 one and two almost don't even matter.
13 That the conduct is egregious at that
14 point and they just -- they just vote
15 charges based on case totality.

16 So here we are just going to sort
17 of close out with a few charts just
18 talking about the results of the pilot
19 program. So as I said, we started with
20 our panels in January using this pilot
21 program. And from January 2018 to June
22 2018, you can see how the number of -- the
23 breakdown in the cases where charges were
24 voted. So we had 40 cases from January to
25 June where charges were voted using this

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2 framework. So about 11 of those cases
3 were allegation type, 17 were based on
4 case totality, and 3 were based on MOS
5 history. And so you can see that this
6 wasn't necessarily just about the
7 substantiated allegation types because I
8 want to make that clear. That this
9 framework, the charges apply to
10 everything -- the other -- the CDA/CDB
11 training -- all forms of discipline apply
12 to it. It really is a framework and it's
13 just a consensus building tool and a way
14 so that all of the board members are on
15 the same page when they're discussing
16 these cases to know what's serious and --
17 what's more serious versus what would be
18 considered less serious. So that's why
19 those substantiated allegation types you
20 see, that's not even the -- that was only
21 about 35 percent of the cases were decided
22 on charges from that. That set the
23 standard of the most egregious misconduct.

24 Then finally on this chart, I want
25 to talk just a little bit about the

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1 substantiated allegation type deviations
2 and what happens there. So you'll see
3 that of the substantiated allegation
4 types, it looks like 77 percent
5 approximately were charges. So 31 cases
6 were eligible for this substantiated --
7 I'm sorry, were eligible for the
8 framework. 31 cases of the 40. And they
9 were voted based on the substantiated
10 allegation type, they were voted on
11 charges.
12

13 So we had 7 cases, about 17
14 percent, where the panel deviated. So 17
15 percent of the time the panel looked and
16 they said I understand that this case
17 would lend itself to charges but because
18 of the specific facts, I'm not going --
19 the board didn't feel that that was an
20 appropriate recommendation. So you can
21 see with the deviations, it's a good
22 illustration that, again, this is
23 nonbinding and the penalty -- the
24 discipline recommendations can be reduced
25 in this situation as well. So even though

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2 it may be one of the five allegation
3 types, if the panel doesn't believe that
4 it warrants charges they can and they do
5 deviate.

6 And then we have just the two --
7 where it says two other. Those were the
8 two cases that I discussed earlier where
9 the board disagreed with the
10 investigator's recommendation and they
11 unsubbed the cases and took them out of
12 the framework. And, again, when they come
13 out and they deviate, we end up talking
14 about CDB and CDA training and command
15 level instructions. So this is, again,
16 just something that we're doing to try to
17 maintain consistency, to get everybody on
18 the same page, and to make sure that, you
19 know, we are doing what is fair and
20 consistent for everybody.

21 So at this point that's -- I feel
22 like I'm starting to say the same things
23 over again so I'm going to turn it over to
24 the board.

25 MR. DAVIE: Thank you, Heather.

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2 Let me see now if any of the board
3 members have questions or comments.

4 Frank.

5 MR. DWYER: Mr. Chair.

6 First, thank you for your very
7 unique presentation. I appreciate the
8 thoughtfulness of it on all perspectives.

9 As I've expressed previously, I
10 have reservations about this framework.
11 One, guidelines tend to become sneaky
12 creatures where they're no longer
13 guidelines. And I will be very curious to
14 see if that occurs over time.

15 But the second thing that really
16 concerns me about these guidelines are the
17 underlining assumption is not that you
18 start by examining all the factors and try
19 to come to a decision about what the
20 appropriate discipline is. But that the
21 assumption is that if X then charges,
22 unless there are reasons not. And I don't
23 think that is how we in this country or in
24 this organization should approach
25 discipline. If this were a panel on

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2 immigration, if this were a panel on
3 taxes, if this were a panel on attorneys,
4 I don't think we would start from a place
5 if A then the body should think B, unless
6 the body can work backwards.

7 Now I am not suggesting that it
8 should go the other way. I'm not
9 suggesting everything should make the
10 assumption of substantiated then at the
11 lowest degree. But what I am suggesting
12 is my own belief about how discipline
13 should be done anywhere. How judges
14 should think about how sentences are
15 given. How religious bodies should think
16 about how they engage in stuff. And I'm
17 recognizing that we separate religion and
18 country, of course, but I think they have
19 a certain wisdom over the years about to
20 engage in discernment. Is that you start
21 by examining the elements that occurred
22 and then say what is fair. Not that you
23 say, we will begin with the highest level
24 of discipline assumed and work backwards.

25 MR. DAVIE: Any other comments

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2 before I make one?

3 MR. RIVADENEYRA: Mr. Chair?

4 MR. DAVIE: Yes.

5 MR. RIVADENEYRA: Thank you.

6 Is this on?

7 I want to thank Heather for the
8 presentation. As one of the newer board
9 members here I think this framework helped
10 situate me into a mindset in terms of how
11 to examine. You know, I feel that the --
12 the outline that's been given to us really
13 helps us start from a place of, like,
14 okay, we are now at a substantiating one
15 of the charges -- one of the allegations,
16 where do we go from the there. And that
17 was one of the difficult things that I
18 found myself having to deal with as I read
19 through these cases.

20 And to Frank's point, I think it
21 helped me analyze in a fairer way. I also
22 recognize that we're not all created
23 equally so we think in different
24 processes. But just to -- to just touch
25 on that point, it helped me think in a

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2 fairer way of how to examine and analyze
3 what type of disciplinary -- disciplinary
4 action to vote for.

5 MR. DAVIE: Thank you.

6 Other comments?

7 Mr. Siegal.

8 MR. SIEGAL: A few things. One,
9 of course, is that we're making
10 disciplinary recommendations and we don't
11 actually have any idea or visibility into
12 what the ultimate determiner of discipline
13 uses as a framework or guidelines. So one
14 of the things that I'm hopeful about with
15 this is that it engenders a public
16 conversation about that. Because I think
17 the process would be more effective if we
18 had more understanding and visibility of
19 what the police department and police
20 commissioner view as appropriate
21 discipline. And there'd be some -- you
22 can have a discussion of compatibility.
23 So I think putting this out there is -- is
24 a part of that, I hope.

25 Secondly, on the -- this is

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1
2 probably just a personal comment about how
3 I approach cases. But on the totality
4 section, I'm very aware that we decide
5 cases based on a cold paper record. We
6 make our determinations based on a cold
7 paper record. And there are not in
8 frequently cases that I look at and for
9 various reasons think -- and if we decide
10 to recommend a discipline level other than
11 charges, that's basically it for the CCRB
12 because the police department, they do
13 whatever they do. So there are a number
14 of cases that I've seen where it's my
15 judgement that the case would be best
16 served by the APU staying involved,
17 further developing the case, further
18 analyzing the case, have the kinds of
19 pretrial discussions that prosecutors
20 have. And -- so to me that's an element
21 of the totality of the case, that there
22 should be further process. And so I don't
23 know how that factors into this but as a
24 practical matter, it does for me.

25 The third point I want to make is,

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2 I don't know if there's been
3 consideration, Heather or anyone else,
4 about trying to do the same -- a similar
5 kind of matrix for recommendations other
6 than charges. I will tell you the
7 difference between command discipline B
8 and A is a complete mystery to me. It's a
9 complete mystery to me. How it's treated
10 when we make that recommendation, what the
11 basis for it is, and so I would hope that
12 over time as we get into this process we
13 start to think about that as well. So
14 that there's both some predictability to
15 what we're doing as a guideline and also
16 an understanding hopefully through
17 dialogue that we like have some idea of
18 how that's treated across the park and how
19 they approach these things when we send
20 the cases there.

21 MR. DAVIE: Other comments?

22 Questions?

23 (No response.)

24 MR. DAVIE: Let me just, again,
25 thank you, Heather.

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I would just sort of add that if we look at this analysis of the cases where we have substantiated allegations and referred charges, most of them are actually focused on the totality of the case and not the allegation type, which I think speaks to the fact that we're not being doctrinaire about this framework.

I do think it's good framework as a first step to help us consider those allegation types that are most serious that we have coming before us. And then to consider the most serious discipline for those allegation types, but only a consideration. We don't have to impose that discipline but it's there for consideration. And if it contributes to consistency and we will see over time, and recommended discipline for substantiated allegation types, then we've made a big step.

I think we should recognize that this is not an issue that we are wrestling with alone. The commissioner has

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2 appointed a blue ribbon commission of, I
3 think, three former prosecutors to look at
4 the same question for how he makes and how
5 the department makes decisions about
6 discipline. And, particularly, well --
7 also discipline recommendations that come
8 from the CCRB. So we are all wrestling
9 with this. We want to try to be as we've
10 said -- as I've said in my comments and as
11 we've in other places, as fair to the
12 complainants and the officers as we
13 possibly can be. And I think it only
14 redounds to the benefit of the processes
15 for us to continue to wrestle with this
16 for another six months. And then come
17 back to you with a set of recommendations
18 that we may decide to codify or we may
19 decide to set aside, but we will continue
20 to look at it for six months.

21 Mr. Darche, you had a comment
22 about the difference between CDA and CDB.

23 MR. DARCHE: So I just wanted to
24 explain briefly the difference. A command
25 discipline B, the penalty that can go to

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2 an officer is between a reprimand up to a
3 forfeiture of ten vacation days. And
4 after three years a member of service can
5 ask to have that removed from their CPI,
6 but the department does not have to remove
7 it from the CPI. And a schedule A command
8 discipline automatically is removed from
9 the CPI after one year. And the penalty
10 can range from a reprimand to a forfeiture
11 of five vacation days.

12 But -- and Mr. Siegal, it is
13 something that we can look at as a staff
14 and get back to the board about guidelines
15 for -- for the other -- the other
16 discipline recommendations as well.

17 MR. DAVIE: Any comments from the
18 public?

19 Yes. Identify yourself please.

20 MR. BELFER: Ellis Belfer.

21 MR. DAVIE: Just into the mic,
22 please.

23 MR. BELFER: I think Heather's
24 framework is outstanding.

25 MR. DAVIE: Can you just tell us

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2 who you are, please.

3 MR. BELFER: My name is Ellis
4 Belfer. I'm guess I'm now a New York City
5 resident just as a couple days ago. I've
6 been in city for a while.

7 This letter is actually -- the
8 question -- I think Heather provided
9 excellent framework. And I think we all
10 have to think that law is a law and that
11 we are covered by the U.S. Constitution,
12 which is the highest law of the land.

13 I'm also a naval --

14 MR. EASON: Can you speak into the
15 mic, please?

16 MR. BELFER: Lieutenant Belfer,
17 United States Naval Reserve. I may or may
18 not have a top secret clearance.

19 This letter is addressed to
20 Jonathan Darche. And written -- a written
21 letter in May 7, 2018. I sent Mr. Darche
22 -- is that correct?

23 MR. DARCHE: Darche.

24 MR. BELFER: Darche -- Mr. Darche
25 a letter addressing a Civil Complaint

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2 Review Board Case No. 201708591. In
3 reference to a Detective Kenneth --

4 MR. DARCHE: You know what, sir,
5 we can't really discuss these cases in --

6 MR. BELFER: I actually already
7 had a private session. This is a public
8 case that was reported to U.S. District
9 Court in a civil RICO case. I just want
10 to make you, the board, aware -- if I
11 can't talk about it -- the board aware
12 that this may be viewed as an obstruction
13 of justice in accordance with Title 18
14 U.S. Code 793F gathering, transmitting, or
15 losing defense department information.

16 If CCRB refuses to hear my
17 testimony, you will be all subpoenaed --
18 actually, Jonathan Darche, you'll be
19 subpoenaed pending a federal subpoena in
20 U.S. district court for the district of
21 New Jersey, Trenton. So if I can't talk
22 about it, we'll be talking about it in
23 U.S. district court.

24 MR. DAVIE: Thank you.

25 MR. BELFER: Okay. Thank you.

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2 MR. DAVIE: Yes, Chris.

3 MR. DUNN: Chris Dunn with the New
4 York Civil Liberties Union.

5 Is this public comment generally
6 or just on the framework?

7 MR. DAVIE: We will go to general
8 public comment.

9 MR. DUNN: So good for you. If
10 you talked about things like this all the
11 time I'd come to these meetings more,
12 which means you won't --

13 MR. DAVIE: We might. We enjoy
14 seeing you.

15 MR. DUNN: Okay. So I think this
16 is great. I think that I have 4 minutes
17 and 55 seconds left to say it's great. So
18 I'll cut to the critique. The board needs
19 to be doing this. There needs to be more
20 regularity.

21 John, you're absolutely right.
22 This is all fine and good but what counts
23 is across the park, as you say, and what
24 is happening over there is a complete
25 mystery. And I'm very glad that you

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mentioned the panel and I will be meeting with them. Also, I know that you have met with them. I don't hold a lot of hope for what they are going to do but we will see.

But with respect to what you are doing, Mr. Dwyer, I'm kind of intrigued about your concerns about guidelines becoming rules. When I look at these things, all I see is fuzz. I appreciate the fact that you're trying to have some standards. But there's a lot of play in this and I don't worry too much about you not having discretion. I'm not sure evoking the church as a disciplinary model is really a place you want to go because I don't hold them up as a disciplinary model.

But more relevantly and going back to John's point, the department is not a model. And I do wonder if you talked to the department as part of the process for developing these. If you have not, I would encourage you to do so. I'd encourage you to talk to me also. But

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2 more importantly to talk to the
3 department. And my friend's at the PBA, I
4 think they should be part of this process
5 if they have not. I think for the
6 officers it's only fair that they have
7 some input into this. So I look forward
8 to hearing what's happening with the next
9 six months.

10 I will say in terms of reporting
11 of the numbers, I see in the executive
12 director's report for this month that you
13 showed charges is 25 percent of the
14 substantiated cases. That is a
15 substantial increase from last year and
16 indeed from the two years before then
17 where the trend has gone straight down.
18 You're reporting numbers based upon total
19 cases closed, which is not the figure you
20 should be using. Because as Heather
21 explained this comes into play only when
22 you sub a case. And so you should be
23 reporting the use of this framework in
24 subbed cases. And it appears the use of
25 this framework has produced a much greater

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2 percentage of charges and specs in subbed
3 cases in 2018. And if that's because of
4 the framework -- I don't have any position
5 about what's a good number, what's a bad
6 number. It does look like it has prompted
7 a significant change in the number of --
8 in the percentage of cases that are
9 getting charges.

10 With respect -- with other public
11 comments since this is the whole deal --

12 MR. BELFER: New York Supreme
13 Court -- you're violating charter --
14 you're violating your charter.

15 MR. DUNN: I want ten seconds back
16 on the clock.

17 The disciplinary panel, I would
18 really encourage you folks to keep going
19 with them. As I said, I know you've met
20 with them but that's an important
21 enterprise. And it's not clear to me what
22 authority they have. It's not clear to me
23 the extent at which the commissioners
24 going to pay attention to them. That was
25 Larry's gift to Commissioner O'Neill on

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2 his way out the door. And we'll see what
3 happens with.

4 A couple other things. Last week
5 there was a court hearing in the case in
6 which our friends at the PBA sued you over
7 the sexual harassment resolution and other
8 rule changes. I would encourage there to
9 be a public report from the board about
10 the progress of that case. We have come
11 into the case. You'll be happy to know we
12 came into the case on your side because we
13 believe in the CCRB -- you're welcome.

14 There was a ruling yesterday in a
15 state supreme court case on a FOIL matter
16 concerning the Ramarley Graham case, which
17 is a high profile case. I'm always happy
18 to hear CCRB personnel -- Heather, thank
19 you -- mentioning 50A. You should all be
20 ashamed about your position on 50A. But
21 that was a case in which a judge rejected
22 the City's position on 50A. And I will
23 encourage you, as I always do, to be
24 rethinking your position on 50A.

25 And then finally -- and I'm hoping

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there will be discussion about this later in this meeting -- the biggest thing that happened since the last meeting is -- yes, congratulations, you are now in the business of dealing with the Daniel Pantaleo prosecution. That is the single biggest incident of police misconduct in the City of New York in the last four years. You mentioned going back to Staten Island next month. I'm sure you're going to get a warm reception in Staten Island when you show up there. But suffice it to say, this board will be in the position of prosecuting that case. I think it's essential that the board report regularly -- to the extent that it can -- what's happening with that case because the entire city is paying attention to that.

And I have 13 seconds left and I'll sit down. Thank you.

MR. DAVIE: Thank you, Chris.

Any of the board members have comments? Questions?

Let me just say on the church

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2 remark and discipline -- in my Sunday
3 school, they were brutal.

4 Any more questions? Comments?
5 Any public comments?

6 (No response.)

7 MR. DAVIE: Any old business to
8 come before us?

9 I'm sorry. Sure. Just identify
10 yourself.

11 MS. TAGGART: Sure. Hi, my name
12 is Kendall Taggart. I'm a journalist at
13 BuzzFeed News. I saw the member of
14 service history as part of this
15 disciplinary framework. I was wondering
16 if anyone's asked the NYPD to provide the
17 CCRB with full disciplinary records so
18 that you'd have more information to be
19 able to make your decisions.

20 MR. DARCHE: So we've discussed
21 use of disciplinary history with the NYPD
22 but right now we don't have access to that
23 information. We have limited access once
24 a case does have charges. We get an
25 abstract of the officer's CPI, which I'm

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2 pretty sure is -- Frank, central personnel
3 index?

4 MR. DWYER: Yes.

5 MR. DARCHE: So we get an abstract
6 that contains information on whether an
7 officer has received charges or not or
8 schedule B command disciplines and then if
9 a schedule A command discipline is deemed
10 relevant by the department, they'll inform
11 us of that as well. That is our access to
12 in NYPD disciplinary information.

13 MR. DAVIE: Any other questions?
14 Comments? Either board members or members
15 of the public.

16 Mr. Puma, and welcome.

17 MR. PUMA: Thank you.

18 I'm not sure if this -- okay, this
19 is on. The light is not on.

20 Thank you, Heather, for your
21 presentation. And I understand, you know,
22 the very specific scope about presenting
23 the framework. Maybe asking this question
24 very early but is there any information about
25 how some of these cases have fared after

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2 the APU process. Understanding that maybe
3 the APU process hasn't concluded yet on
4 some of these cases and that some of these
5 cases are -- were just closed a couple of
6 months ago. Is there anything of note?

7 MR. DARCHE: No, not yet. But
8 we'll report back when there's more
9 information.

10 MR. PUMA: Thanks.

11 MR. DAVIE: Other questions or
12 comments? Board members or public.

13 (No response.)

14 MR. DAVIE: All right. Seeing
15 none I will see if there's any old
16 business to come before this body.

17 (No response.)

18 MR. DAVIE: Hearing none. I will
19 entertain a motion to adjourn to executive
20 section.

21 Is there such a motion?

22 MR. SIEGAL: So moved.

23 MR. DAVIE: Is there a second?

24 MR. PEGUERO: Second.

25 MR. DAVIE: All in favor please

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say aye.

(Chorus of ayes.)

MR. DAVIE: Those opposed, no.

(No response.)

MR. DAVIE: The ayes have it. We
are adjourned to executive session. Thank
you.

(Time noted: 4:56 p.m.)

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C E R T I F I C A T E

I, KRISTINA TRNKA, a shorthand reporter and
Notary Public within and for the State of New York,
do hereby certify:

That the within statement is a true and
accurate record of the stenographic notes taken by
me.

I further certify that I am not related to
any of the parties to this action by blood or
marriage, and that I am in no way interested in the
outcome of this matter.

In witness whereof, I have hereunto set my
hand this 27th day of August, 2018.

Kristina Trnka

KRISTINA TRNKA

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