Civilian Complaint Review Board Meeting - Final
August 8, 2018

CIVILIAN COMPLAINT REVIEW BOARD
PUBLIC MEETING
August 8, 2018
4:02 p.m.

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:

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
BOARD MEMBERS PRESENT:

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

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

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

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

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

MR. DARCHE: John Darche, executive director.

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

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

MR. EASON: Good evening, everyone. My name is Lindsay Eason. I am
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a police commissioner representative.

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

MR. DAVIE: Thank you.

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

MR. PEGUERO: So moved.

MR. DAVIE: Is there a second?

MR. SIEGAL: Second.

MR. DAVIE: Any discussion?

(No response.)

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

(Chorus of ayes.)

MR. DAVIE: Opposed, no.

(No response.)

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

As many of you know, one of the top proprieties of the CCRB is making sure our process of reviewing cases and
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recommending discipline is thorough and impartial. We are always examining and evaluating the process in an effort to be as fair as possible to every civilian who files a complaint, as well as to every officer who is the subject of a complaint.

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

While the City Charter dictates that a panel of three board members must review every CCRB case to determine a disposition, that is whether or not to substantiate the allegations, there are no formal parameters regarding how to recommend discipline for members of the NYPD against whom the board substantiates misconduct. In effect, this means that two officers who engage in similar acts of misconduct ultimately may face different disciplinary recommendations.
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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framework on a trial basis already has begun to yield more consistency on the panels, and we look forward to continuing that progress.

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

John.

MR. DARCHE: Thank you, Mr. Chair.

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

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

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

As part of our outreach we participated in the City Hall in Your Borough initiative -- the Major's City Hall in Your Borough initiative. And I was lucky enough to attend the resource fair with our director of intergovernmental affairs and outreach, Yojaira Alvarez, and one of our investigators, Wassim. And it was really -- it showed me how important it is, the work we do. Also the work that our outreach team does and that all of our employees do really making sure people know who we are and what we do and that we are here to hear the their complaints. As
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part of that we are going to be returning

to Staten Island for next month's board

meeting.

Finally, if anyone here wants to

file a complaint with this agency there

are two investigators here right now,

Santosh Prakash and Dangeen Santi

(phonetic) who are available to accept

complaints. If you guys can stand up.

MR. DARCHE: Vanessa Rosen will be

playing the part of Santosh Prakash.

Thank you, Mr. Chair.

MR. DAVIE: You're very welcome.

Are there any comments from the

board members?

(No response.)

MR. DAVIE: We've just been joined

by our representative from the Bronx.

Would you like to introduce

yourself, Mr. Rivadeneyra?

MR. RIVADENEYRA: Hi. Good

afternoon. Michael Rivadeneyra from the

Bronx delegation to the city's council

appointment to the CCRB.
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Apologize for my tardiness.

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

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

MR. RIVADENEYRA: You are.

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

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

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

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

So one of the things that I do as part of my responsibilities is I sit in with the panels when they are voting to
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give legal assistance to the board
members. And one of the things that we
heard time and time again was board
members -- especially new board members
when is they first started -- were always
looking for some sort of guidance when it
came to discipline. And one of the things
that staff lawyers cannot do in the panel
is tell the board members how to vote. We
are only there for legal advice.

So based on this we started talking
about how we could come up with something
both to maintain consistency and also to
give board members a little bit more
guidance in how they should be approaching
discipline. So we came up with -- first
thing we did was we went back and we
looked at the disciplinary history. We
looked at the stats to see over a
five-year period. And we basically picked
that for a number of reasons but one of
the main reasons was it also coincided
with the formation of the Administration
Prosecution Unit, the APU, which started
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in 2012. So we looked at from 2012 to 2017 where our discipline was. And we basically saw that we were a little bit all over the place.

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

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

So we had the six-month pilot program. We started this in our panels in
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January. And this slide just sort of shows to you what I was talking about before, was when we first started this program, we looked at our stats. And we looked to see what kind of discipline recommendations were we recommending over a five-year span. And as you can see there were fluctuations in just about every category.

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

So what we came up with was this framework. And I like to refer to it as -- and I may show my age here -- a choose your own adventure. Where you sort of go
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through this framework and it gives you, if yes move this way, if no move this way; with, again, nonbinding suggestions. So we start at the top of our framework -- and on the left is the framework completely -- we start first with substantiated allegation type.

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

So when we looked at the discipline across the board and of the allegations across the board, we decided we needed some sort of standard by which we could judge discipline. Meaning what
Proceedings were the most serious types of allegations that we could hold up and say, this is the most serious and the most serious would lend itself to charges and specifications. And then everything else that's not necessarily named because we come up with a number of different allegations depending on the case, everything else can sort of be measured against this.

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

So what we came up with were these six substantiated allegation types. The first one, choke hold. Pretty obvious, the patrol guide is very clear, member shall not use a choke hold. And, again, I just want to bring up the fact that, yes, there are certain situations in the patrol
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guide where the language has been
modified. That would go more towards
whether or not something actually was a
chock hold and would be substantiated as a
choke hold. This only comes into play
once the panel has determined this is a
choke hold, we are substantiating an
allegation of a choke hold, and that
allegation would lend itself to charges
being one of the more serious allegations
of misconduct.

So the second substantiated
allegation type we came up with was strip
search. Strip search the state and
federal courts have both been very clear
that strip searches are invasion of the
first magnitude. And this is something
also that the patrol guide backs up
because the patrol guide adds additional
requirements including making sure that a
sergeant authorizes a strip search before
it can be done, as opposed this kind of
search -- stop and frisk and search you
would see out on the street. When it
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comes to a strip search there are processes in place. A strip search has to be done within certain parameters, certain ways. Everything is much more specific and it has to be run past a sergeant. A sergeant has to authorize it.
So the next one is warrantless entry. And warrantless entry, the Fourth Amendment clearly defined this as, the right of the people to be secure in their homes, shall not be violated. This is a very fundamental premise of the Fourth Amendment that people should be secure in their homes and invading that zone of privacy that they have in their homes is a violation of a higher magnitude than simply against stopping them on the street, searching them on the street, arresting them on the street. That's why you have additional requirements for arrest warrants, search warrants, other things that you don't necessarily have on the street.

Number four is offensive language.
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And much like choke holds, offensive language is prohibited by the patrol guide. It's prohibited conduct and unlike discourtesies, which we also have jurisdiction over, offensive language has no official law enforcement function. And that's a big thing for us. Because when you're talking about offensive language -- this is things such as comments about someone's gender, about race, what we would refer to in the law as protected classes, disabilities. And this is the kind of thing where people shouldn't -- you know, we kind of like to say, you shouldn't have learned it at home and you shouldn't have learned it at the academy, you shouldn't be saying it for any reason. With discourtesies there are times where the patrol guide allows for certain law enforcement purposes for an officer to be discourteous to someone. They do not make -- the patrol guide does make the same exceptions for offensive language. So this was something that we felt was a
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higher level of misconduct.

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

And then finally, sexual misconduct, which we've gone into in our public sessions before. Obviously that's a fundamental abuse of authority based on the authoritative power inherit in law
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enforcement and especially when officers are on duty and they are armed.

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

but you look at the MOS history and you'll

see a pattern of things and that may lend

itself to charges because maybe the

officers been disciplined in the past for

the same thing.

If it doesn't -- if MOS history
doesn't do it, then you go down to case
totality. And case totality is what we

sort of refer to as our catch all. And

that's where everything is taken into

consideration. And if the acts -- the

misconduct is so egregious based on just

the nature of what happened itself but it
doesn't happen to be one of these five

allegation types -- you know, we see this

sometimes with force, where maybe there's

not a serious injury but maybe it's a

situation where an officer had escalated

something that didn't need to be escalated

and other officers didn't engage in any

kind of force, this officer did. And

while there wasn't a serious injury, it

still was a greater misconduct and would
lend itself to charges.

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

So we'll see that a lot of times where it may be an allegation where the board feels like, okay, this requires some sort of discipline, maybe they've had
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training in the past, it's something that clearly they're not getting. Or based on the nature of what happened in the case, based on the facts, they may say, you know, this doesn't seem like a training issue, this seems like a misconduct issue. And it's something for discipline but maybe it doesn't rise to the level of charges. So then they decide between the CDA or CDB as a recommendation.

Formalized training and instructions. Formalized training would be, for example, where the officer would be sent to either the police academy or some type of training with risk management on the NYPD legal bureau on a specific topic. And then command level instructions is where it would be sent back to the command and the commanding officer would instruct the officer, this is what you did wrong, this is how you can fix it next time. This is what the board will generally recommend if, for example, it's like a less serious infraction or
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it's a less serious case, if the officer
is newer to the force and this just seems
like a fundamental misunderstanding of the
law. We see this a lot of times with very
complicated law. You know, there may be
something complicated about a vehicle
search or there may be something
complicated in an entry and then training
or instructions may be more appropriate.

So one of the things that we've
noticed is that once we instituted this
six-month pilot program, we looked at the
five-year average of charges from 2013 to
2018. And what we noticed was that using
this framework we are just under the
average of charges recommendations of
substantiated cases and of total closed
cases in the five-year average. So it
pretty much shows that by using this over
the past six months, we're really hitting
that really consistent plateau of the
average of all of these fluctuations over
the past five years. So the percentages
that are up there are reflective of the
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five-year average of closed cases but I also have some stats later on if anybody wants to hear it, about the percentage of substantiated allegations -- the percentage of charges per substantiated allegation.

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

Strip search allegations -- and so what I mean by hesitation is, when the panel discusses it as part of the pilot program, we say to the panel, this is the type of allegation that would lend itself to charges. And the panel will say, I may not have done that but she consistency sake I will stay with a charges recommendation. A deviation is a deviation from a substantiated allegation type. And that would be where they would
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
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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Offensive language -- this was the interesting one actually. We had three cases. One of them the board deviated from the investigator's recommendation. The investigator had substantiated the investigation and the board decided after reading the case that it felt that it was actually an unsub. They didn't think it made out the preponderance so the board flipped it to an unsub. There was one hesitation and then there were two deviations. And it's a little bit complicated. I don't want to get into too much about the specific cases because I don't want to go into too much it might violate 50A. But basically those were where the words themselves didn't actually come out of the officer's mouth. That's -- it was just sort of the situation. But the words -- the offensive words themselves didn't actually come out of the officer's mouth.

And then force with serious injury, we had four cases. There was
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one case where it came to the board as an unsub and after reviewing it the panel determined that they believed there was enough information to sub. So when they did that, that then made the case eligible for the framework, they subbed. And there were no hesitations and no deviations in this category either. And, again, that's the force with serious injury.

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

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

So I'm going to talk a little bit about MOS history. And what we consider when we look at MOS history, which is sort of the second phase of the framework are a number of things. We look at the rank of the officer. You know, is this a police officer who's been on the force for about a year versus a sergeant who's been on the force for 15 years. We look at the command. Is it a very busy command, something like ESU. Where they are constantly knocking people's doors down
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and they are the first people in the door, they are the first name people remember. Or is it like, you know, the 112th where you're looking at the biggest issue is, you know, people get their cars broken into or their hubcaps stolen. We look at that.

We also look at prior -- and, again, only when we get to a sub do we look at this -- we look at prior substantiated allegations -- prior substantiated allegations against the officer. And the reason we do that is because when we looked at the case -- when we look at the numbers, 90 percent of the active New York City police force has never had a substantiated allegation. So of the 35 or 36,000 members of the NYPD, 90 percent of them have never gotten a substantiated allegation. That's a significant amount. So they may have been called in as a witness officer; they may have been called in as a subject officer and not been substantiated; but 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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previously. So this was a situation where if they had already been subbed for it, they maybe had already -- and had already received lower level of discipline for the same conduct, then the panel felt like it was time to up the discipline recommendation at that point.

And then we get to case totality, like I said, which is basically our catch all. We had seventeen in the cases in the six months of substantiated cases where the board recommended charges and specifications based on case totality. Again, without getting into too much about the cases, the common examples of why a case would not be one of the allegation types and an officer may have a decent discipline history but still get charges is because maybe the officer escalated the situation; maybe there was video. Now with cell phones, body-worn camera footage, if the video discredits or contradicts the member of the service's version of events -- and, again, they're
shown those videos when they come in here, so. And then if a senior officer engages in egregious conduct and is setting a bad example for the more junior officers, that's when -- these are some of the factors that go into charges for case totality. The majority of the cases though, I will tell you, are just unique facts that the panels look at and they just say, it doesn't -- it's almost like one and two almost don't even matter. That the conduct is egregious at that point and they just -- they just vote charges based on case totality. So here we are just going to sort of close out with a few charts just talking about the results of the pilot program. So as I said, we started with our panels in January using this pilot program. And from January 2018 to June 2018, you can see how the number of -- the breakdown in the cases where charges were voted. So we had 40 cases from January to June where charges were voted using this
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framework. So about 11 of those cases were allegation type, 17 were based on case totality, and 3 were based on MOS history. And so you can see that this wasn't necessarily just about the substantiated allegation types because I want to make that clear. That this framework, the charges apply to everything -- the other -- the CDA/CDB training -- all forms of discipline apply to it. It really is a framework and it's just a consensus building tool and a way so that all of the board members are on the same page when they're discussing these cases to know what's serious and -- what's more serious versus what would be considered less serious. So that's why those substantiated allegation types you see, that's not even the -- that was only about 35 percent of the cases were decided on charges from that. That set the standard of the most egregious misconduct.

Then finally on this chart, I want to talk just a little bit about the
substantiated allegation type deviations
and what happens there. So you'll see
that of the substantiated allegation
types, it looks like 77 percent
approximately were charges. So 31 cases
were eligible for this substantiated --
I'm sorry, were eligible for the
framework. 31 cases of the 40. And they
were voted based on the substantiated
allegation type, they were voted on
charges.

So we had 7 cases, about 17 percent, where the panel deviated. So 17 percent of the time the panel looked and they said I understand that this case would lend itself to charges but because of the specific facts, I'm not going -- the board didn't feel that that was an appropriate recommendation. So you can see with the deviations, it's a good illustration that, again, this is nonbinding and the penalty -- the discipline recommendations can be reduced in this situation as well. So even though
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it may be one of the five allegation types, if the panel doesn't believe that it warrants charges they can and they do deviate.

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

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

MR. DAVIE: Thank you, Heather.
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Let me see now if any of the board members have questions or comments.

Frank.

MR. DWYER: Mr. Chair.

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

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

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

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

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

MR. DAVIE: Any other comments
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before I make one?

MR. RIVADENEYRA: Mr. Chair?

MR. DAVIE: Yes.

MR. RIVADENEYRA: Thank you.

Is this on?

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

And to Frank's point, I think it helped me analyze in a fairer way. I also recognize that we're not all created equally so we think in different processes. But just to -- to just touch on that point, it helped me think in a
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fairer way of how to examine and analyze
what type of disciplinary -- disciplinary
action to vote for.

MR. DAVIE: Thank you.

Other comments?

Mr. Siegal.

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

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

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

MR. DAVIE: Other comments? Questions?

(No response.)

MR. DAVIE: Let me just, again, 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
appointed a blue ribbon commission of, I think, three former prosecutors to look at the same question for how he makes and how the department makes decisions about discipline. And, particularly, well -- also discipline recommendations that come from the CCRB. So we are all wrestling with this. We want to try to be as we've said -- as I've said in my comments and as we've in other places, as fair to the complainants and the officers as we possibly can be. And I think it only redounds to the benefit of the processes for us to continue to wrestle with this for another six months. And then come back to you with a set of recommendations that we may decide to codify or we may decide to set aside, but we will continue to look at it for six months.

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

MR. DARCHE: So I just wanted to explain briefly the difference. A command discipline B, the penalty that can go to
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an officer is between a reprimand up to a forfeiture of ten vacation days. And after three years a member of service can ask to have that removed from their CPI, but the department does not have to remove it from the CPI. And a schedule A command discipline automatically is removed from the CPI after one year. And the penalty can range from a reprimand to a forfeiture of five vacation days.

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

MR. DAVIE: Any comments from the public?

Yes. Identify yourself please.

MR. BELFER: Ellis Belfer.

MR. DAVIE: Just into the mic, please.

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

MR. DAVIE: Can you just tell us
who you are, please.

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

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

I'm also a naval --

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

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

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

MR. DARCHE: Darche.

MR. BELFER: Darche -- Mr. Darche a letter addressing a Civil Complaint
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Review Board Case No. 201708591. In reference to a Detective Kenneth --

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

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

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

MR. DAVIE: Thank you.

MR. BELFER: Okay. Thank you.
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MR. DAVIE: Yes, Chris.

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

Is this public comment generally or just on the framework?

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

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

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

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

John, you're absolutely right. This is all fine and good but what counts is across the park, as you say, and what is happening over there is a complete 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
more importantly to talk to the department. And my friend's at the PBA, I think they should be part of this process if they have not. I think for the officers it's only fair that they have some input into this. So I look forward to hearing what's happening with the next six months.

I will say in terms of reporting of the numbers, I see in the executive director's report for this month that you showed charges is 25 percent of the substantiated cases. That is a substantial increase from last year and indeed from the two years before then where the trend has gone straight down. You're reporting numbers based upon total cases closed, which is not the figure you should be using. Because as Heather explained this comes into play only when you sub a case. And so you should be reporting the use of this framework in subbed cases. And it appears the use of this framework has produced a much greater
percentage of charges and specs in subbed cases in 2018. And if that's because of the framework -- I don't have any position about what's a good number, what's a bad number. It does look like it has prompted a significant change in the number of -- in the percentage of cases that are getting charges.

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

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

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

The disciplinary panel, I would really encourage you folks to keep going with them. As I said, I know you've met with them but that's an important enterprise. And it's not clear to me what authority they have. It's not clear to me the extent at which the commissioners going to pay attention to them. That was Larry's gift to Commissioner O'Neill on
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his way out the door. And we'll see what happens with.

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

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

And then finally -- and I'm hoping
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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remark and discipline -- in my Sunday school, they were brutal.

Any more questions? Comments?
Any public comments?
(No response.)
MR. DAVIE: Any old business to come before us?
I'm sorry. Sure. Just identify yourself.

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

MR. DARCHE: So we've discussed use of disciplinary history with the NYPD but right now we don't have access to that information. We have limited access once a case does have charges. We get an abstract of the officer's CPI, which I'm
pretty sure is -- Frank, central personnel index?

MR. DWYER: Yes.

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

MR. DAVIE: Any other questions?

Comments? Either board members or members of the public.

Mr. Puma, and welcome.

MR. PUMA: Thank you.

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

Thank you, Heather, for your presentation. And I understand, you know, the very specific scope about presenting the framework. Maybe asking this question very early but is there any information about how some of these cases have fared after
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the APU process. Understanding that maybe
the APU process hasn't concluded yet on
some of these cases and that some of these
cases are -- were just closed a couple of
months ago. Is there anything of note?
MR. DARCHE: No, not yet. But
we'll report back when there's more
information.
MR. PUMA: Thanks.
MR. DAVIE: Other questions or
comments? Board members or public.
(No response.)
MR. DAVIE: All right. Seeing
none I will see if there's any old
business to come before this body.
(No response.)
MR. DAVIE: Hearing none. I will
entertain a motion to adjourn to executive
section.
Is there such a motion?
MR. SIEGAL: So moved.
MR. DAVIE: Is there a second?
MR. PEGUERO: Second.
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.)
CERTIFICATE

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
Civilian Complaint Review Board Meeting - Final
August 8, 2018

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