CIVILIAN COMPLAINT REVIEW BOARD

PUBLIC MEETING

April 13, 2022

4:00 p.m.

HELD VIA VIDEOCONFERENCE/
100 Church Street
New York 10007

BEFORE:

ARVA RICE, CHAIR

JONATHAN DARCHE, ESQ., EXECUTIVE DIRECTOR

COURT REPORTER:
Sabrina Brown Stewart
PUBLIC MEETING AGENDA

1. Call to Order
2. Report from the Chair
3. Report from the Executive Director
4. Approval of Minutes
5. Presentation from Outreach on the CCRB
6. Public Comment
7. Old Business
8. New Business
9. Adjourn to Executive Session
BOARD MEMBERS PRESENT

1. Arva Rice, Chair
2. Salvatore F. Carcaterra, Board Member
3. Frank Dwyer, Board Member
4. Esmeralda Simmons, Esq., Board Member
5. Michael Rivadeneyra, Esq., Board Member
6. Herman Merritt, Board Member
7. John Siegal, Esq., Board Member
8. Erica Bond, Board Member
9. Corrine A. Irish, Esq., Board Member
10. Willie Freeman, Board Member
11. Joseph A. Puma, Board Member

PRESENTERS:
Yojaira Alvarez – Senior Advisor to the Executive Director & Director of Intergovernmental Affairs
MS. ALVAREZ: Good evening, everyone.

For those that would like to utilize our ASL services, we have two interpreters this evening; Anna Marie Brown -- oh, I'm sorry. Andria Alefhi and Craig Ridgway. You can pin their videos on the chat, and you could also use the cart services that are available in the chat as well. Thank you.

CHAIR RICE: Good afternoon, everyone and welcome. My name is Arva Rice. I use she/her pronouns, and I am the interim chair of the Civilian Complaint Review Board. I would like to call the CCRB April public meeting to order.

First, on behalf of the entire board, I would like to recognize the 16 victims who were injured in yesterday's horrific shooting. And thank our city's first responders who rushed to the scene. They are in our thoughts and prayers, and we wish them a speedy recovery.

Would the rest of the board please introduce themselves, starting with Sal.

MR. CARCATERRA: Good evening, everyone. My name is Sal Carcaterra and I'm
a Police Commissioner Designee.

MR. DWYER: Good evening, all. So, my name is Frank Dwyer, and I'm also a Police Commissioner Designee.

MS. SIMMONS: Good evening. My name is Esmeralda Simmons. I'm from Bed-Stuy, Brooklyn. I am a public advocate appointee.

MR. RIVADENEYRA: Good evening, everyone. My name is Michael Rivadeneyra, and I am a City Council designee I'm hailing from the Bronx.

MR. MERRITT: Hi. My name is Herman Merritt. I'm a City Council representative from Brooklyn.

MR. SIEGAL: John Siegal. I'm not sure this is on, but hopefully you can hear me.

John Siegal, I'm a Mayoral Appointee, and glad to see you all in person, at least those who are in the room here.

CHAIR RICE: Thank you.

Is there a quorum? Can I ask for a motion to approve the minutes?

MS. SIMMONS: So moved.

MR. DWYER: Second.

MR. DARCHE: Madam Chair, do you want
the members who are online to introduce themselves?

CHAIR RICE: Those that are online, if I can ask them to introduce themselves.

Thank you, Jon.

MS. IRISH: Hi, this is Corrine Irish. I'm a Mayoral Appointee and live in Harlem.

MS. BOND: Good afternoon, all. This is Erica Bond. I'm sorry I can't be there with all of you in person today. I'm a Mayoral Designee and I'm from Brooklyn.

MR. FREEMAN: I am Willie Freeman. I'm a Police Commissioner Designee, and I'm from Brooklyn.

MR. DARCHE: Those are all the board members who are online, Madam Chair.

CHAIR RICE: Okay. Thank you so much. All right. And with that said, I know that Esmeralda made a motion for the approval of the board minutes.

Are there any changes or corrections to the minutes before I officially accept that? Any corrections or approval --

MR. DARCHE: Madam Chair --

CHAIR RICE: -- changes or
corrections --

MR. DARCHE: -- I think you need to wait for Mr. Puma to arrive before you have a quorum to vote on it.

CHAIR RICE: Okay. Okay.

All right. We will hold on the approval of the minutes until we have a quorum. So, thank you.

A few weeks ago, I had the opportunity to advocate for the CCRB in the budget hearing before the City Council's public safety committee. I recapped many of the Agency's successes from last year, including gaining the right to investigate bias-based policing, untruthful statements and sexual misconduct and the right to self-initiate complaints.

With these expanded powers, the Agency continues to grow. We need to hire and train numerous employees to staff the new unit investigating bias-based policing and racial profiling. We are constantly working to better our investigative training programs and our civilian assistance unit needs more staffing.
Funding for our outreach team is particularly key. All the investments into the Agency is only validated if New Yorkers know we are available to resource them -- or an available resource for them.

Since the budget hearing, I am pleased to report that OMB has approved 20 investigator positions which will fill our next two classes of investigators and authorize the hiring of three level-three investigators and for the new unit on racial profiling and bias-based policing.

Plus, we have identified six attorneys and one data scientist who are actively working with OMB to get on-boarded for the Administrative Prosecution Unit and the Racial Profiling Unit.

I would like to thank the City Council who recently advocated for an expanded CCRB budget, namely with the goal of achieving the .65 percent ratio of uniformed officers to CCRB employees outlined in the city charter.

I also use the hearing as an opportunity to reemphasize the main goals the CCRB hopes to achieve this year, starting
with receiving an exemption from sealing statutes and improving the weight with which NYPD accepts CCRB recommendations.

To that end, I met with Police Commissioner Sewell last week to establish a productive working relationship. This will be the first of many meetings. And while we may not always agree, we have laid the foundation for open communication and will both work hard to make New York City safer for everyone.

One of the items we discussed is the NYPD Disciplinary Matrix. The NYPD introduced the Matrix for the first time in January 2022, under Commissioner Shea. The Department met with the CCRB and other stakeholders while deciding the disciplinary outcomes. And in February of last year, the CCRB and the NYPD signed the Memorandum of Understanding, agreeing to abide by the Matrix.

The MOU agreed that each group would only deviate from the Matrix in extraordinary circumstances. The CCRB hope the implementation of the Matrix would increase
how often the NYPD enforce CCRB recommendations.

We will now hear from Executive Director, Jon Darche, with a detailed results of the Matrix thus far.

Jon?

MR. DARCHE: Thank you, Chair Rice.

My name is Jon Darche. I'm the Executive Director of the Agency, and I use he, him and his pronouns.

As the Agency has been using the Matrix for a year now, the Chair charged me, on behalf of the board, with reporting to the public on how the Agency implemented the Matrix, and what changes the board would suggest that the Department make in the Matrix.

First, a little background. The NYPD introduced the Matrix for the first time with then Police Commissioner Shea in January 2021.

The Matrix is an idea that had been in development by the NYPD for a while. It was recommended by the Blue Ribbon Commission, the Department convened to review
disciplinary matters. Later as part of the state-mandated police reform process, of which our interim chair was a facilitator, that the Department agreed to introduce the Matrix.

The Department met with and took input from the CCRB, as well as other groups, as part of creating the Matrix. And then, in February of 2022, the NYPD introduced some amendments to the Matrix.

Just some statistics to explain where we are now with regard to the Matrix.

There have been 752 members of service against who the CCRB substantiated at least one allegation of misconduct since the Matrix was adopted by the NYPD and the CCRB in February 2021.

There are 539 cases in which the Police Commissioner must still make a ruling on whether to impose discipline and what the penalty will be.

The NYPD closed 213 disciplinary cases against members of service, against who the CCRB substantiated at least one allegation since the Matrix was adopted by the NYPD in
January 2021.

In 127 of those cases, the Department did not take any disciplinary action at all, so those cases do not impact the Matrix.

In 86 cases, the Department imposed discipline. The Department took the CCRB's disciplinary recommendations 75 times. The Department imposed a lesser discipline than recommended by the CCRB 11 times. We are still working to understand what happened in those 11 cases.

While the impact of the Matrix on the rate at which the NYPD concurs with the CCRB's disciplinary recommendations is unclear, what is very clear is the impact of the Matrix on CCRB's discipline recommendations.

From 2016 to 2020, the average rate at which the CCRB recommended charges for members of service against who it substantiated at least one allegation of misconduct is 13 percent. And then, during that same time period, the percentage of time the CCRB recommended a command discipline, whether Schedule A or Schedule B, was
47 percent. And then, the rate at which the CCRB recommended either instructions or formalized training was 40 percent.

In 2021, which still includes a small portion of the time when the Matrix was not in effect, the CCRB recommended charges for 50.5 percent of the members of service against who it substantiated at least one allegation.

The CCRB recommended either a Schedule A or Schedule B command discipline 44 percent of the time, and it recommended instructions of formalized training 5 percent of the time.

The most direct impact of the Matrix has been the explosion in the size of the open docket of the CCRB's administration -- Administrative Prosecution Unit.

2020, APU had 35 open cases. 2021, the open docket climbed 167 open cases. And already in 2022, there have been a 139 cases sent to the APU.

This required additional resources, especially prosecutors, be assigned to that unit. That's why we're very thankful that
we've been working with Office of Management and Budget to set start dates for the four prosecutors who we've identified and made offers to, that were accepted by the Agency.

So, the Chair, on behalf of the board, asked me to meet with the NYPD about ways we could tweak the Matrix. Prior to doing so, I met with members of the Policy Unit, Case Management Unit and General Counsel's Office to determine what allegation types resulted in the most hesitation in using the Matrix.

The areas of the Matrix that caused the most hesitation, according to staff, were allegations of discourtesy and allegations of offensive language. The Policy Unit could not identify anything in the statistics that would indicate there was an issue with discourtesies. But the staff that was present in the panel deliberations, indicated there is often a feeling that the mitigated penalty for discourtesy was too high.

The issue of offensive language is more stark. The board panels decided not to substantiate 8 or 12 percent of the allegations of offensive language that --
where the board had recommended -- where the investigator had recommended substantiating an allegation of offensive language. And when you isolate that to allegations of offensive language related to gender, that percentage climbs to 19 percent of the time the board will change -- will go against the investigator's recommendation of substantiating an allegation of offensive language.

That's compared to board panels deciding not to substantiate approximately 7 percent of all allegations, not just limited to offensive language.

I have since met with representatives of the NYPD's Risk Management and Legal Affairs Bureau, that are working on making changes to the Matrix. I conveyed staff some initial findings. The members of the Department I spoke to were receptive to our feedback.

During this initial meeting, we discussed various ways to amend the Matrix. One those ideas centered around breaking offensive language into different categories
or rose on the Matrix as has been done with entries into premises and use of force, that would allow the board and the Department to calibrate the discipline imposed on members of service for those types of misconduct.

The members of the Department who I met with and I agreed to meet again in the future, but we have not yet scheduled more meetings. And that's where we stand right now with the Matrix.

I was also hoping, Madam Chair, to give an update on where the case involving Police Officer Wayne Isaacs is.

So, do you want me to continue with that or do you want me to take questions on the Matrix right now?

CHAIR RICE: Questions from the board members on the Matrix first, and then we'll go into the case for Officer Isaacs.

MR. CARCATERA: I have a question. And just tell me if I got the numbers right, the two that jumped off the page.

So, there's a 37 percent increase in charges cases; is that correct, based on the new Matrix?
MR. DARCHE: Yes. So, I don't know if it's a 37 percent increase, but it increased from 13 percent to 50 percent.

MR. CARCATERA: Okay. Okay. And 35 percent on the decrease side in the instructions and training?

MR. DARCHE: Correct.

MR. CARCATERA: Let me ask you a question, Jon: Did you have any idea that these numbers would be so significant when this Matrix went into effect?

MR. DARCHE: So, I think it was clear from looking at the Matrix that it would call for much higher types of discipline to be imposed on members of service, just from looking at the numbers. And then -- but I had not foreseen that stark in increase.

MS. IRISH: Jon, I have a question, if you can hear me.

You mentioned that a hundred of the 213 cases the NYPD closed, 123 that we recommended be substantiated, the NYPD took no disciplinary action. That's, by my calculation, 57.7 percent of the cases that we've substantiated. And you said that that
is not considered a deviation under the Matrix.

Can you just explain that a little bit, 'cause I'm confused.

MR. DARCHÉ: So, there's a difference between following the Matrix and then concurrence with the CCRB's recommendation. So, we would not -- those cases are not considered concurring with the CCRB's recommendation because we recommended that those officers be disciplined, one level or another. But since the Department felt that there was no discipline required, they did not even go to the analysis of using the Matrix.

MS. IRISH: And do we or are we entitled to some understanding as to why no discipline -- they determined no discipline was required in 57.7 percent of the cases that we substantiated?

MR. DARCHÉ: Yes. Yes. Ms. Irish.

So, the three types of categories, broadly speaking, are when officers are retired, when officers had been previously adjudicated to have committed some misconduct
for the same conduct by the Department, and if the Department considered that we got them the case too close to the SOL for them to impose discipline.

And so, I don't have the exact breakdown of those numbers, but those are the three largest categories.

CHAIR RICE: Sal?

MR. CARCATERRA: No, I lost my chain -- I'm fine. Jon, how are you doing? Let me just finish up with my questions. I don't want to -- to amend the Matrix, the last part, you said you're going to have a follow-up with the PD but no date set, correct?

MR. DARCHE: Correct.

MR. CARCATERRA: Because we've spoken about this for a while now, and while we're waiting for a date and while we're waiting to make possibly some amendments to this Matrix, it's still moving forward with what I see is very, you know, excessive at times and a jump of almost 40 percent, you know, discipline.

So, I would just like to see, maybe, these meetings done sooner than later, so we
could maybe come to some consensus to kind of wrap our arms around this and maybe put it in a better direction. And this -- by the way, I've been on panels where other board members, like myself, Mayoral Designees, Council Designees, where we're all basically saying, "I think something needs to be done to that Matrix."

So, I'm not only speaking for myself here. And so, I would just like to see if we can just move that along at a little quicker pace.

Thanks, Jon.

MR. DARCHE: Understood.

MS. SIMMONS: Good afternoon, Jon. Thank you for that report. And thank you Madam Chair and Executive Director for meeting with the officials at NYPD regarding the Matrix.

I'm going to be a little more basic about it. I think the board needs to have a full report of the Matrix and have some discussions among ourselves in terms of what we think are the most alarming parts of its execution by ourselves and also the actions
or inactions by the Department, and that we should make some recommendations on how we feel the Matrix needs to be changed or how implementation of the Matrix needs to occur.

I would like to see that kind of discussion within this board. And that's the full appreciation of all the work you've already done and all the discussions you've had with the Department.

MR. DARCHE: So --

MS. BOND: Sorry, Jon. I know you were going to say something.

MR. DARCHE: I appreciate Simmons' point, and I will work with the General Counsel and the Policy Unit and the Chair to make sure that conversation is -- that you're given the information you have to have that fulsome conversation. But I think we might have to have that in public. I don't know if it's possible to do that in private.

I don't want to over promise to the board. And I'm going to check with the General Counsel afterwards to -- because I know, you know, the open meetings law is extremely serious and I just need to make
sure we're following it in the right way, which is why we presented this information today in public, so that you can have this conversation.

MR. SIEGAL: Jon, John Siegal here. I have a question. I don't know -- it occurs to me as we're speaking. I don't know if you have the information nor can answer it.

But under the Matrix, the one area of discretion for the Board in recommending penalties is where we find a violation but we have the option of designating the action as aggravated or mitigated which changes the result.

Has there been any analysis, that you know of, of the categories of misconduct or the types of misconduct that we've reviewed, and are there areas where we've tended to more find them aggravated or mitigated?

And the reason I ask is, I think from a results-oriented point of view, there have been times where some of us have looked at what the Matrix result is and made recommendations tied to the -- what the penalty would result in if we designated it
as aggravated or mitigated. And I'm thinking that may shed some light on areas where board members tend to think that the outcomes depart from what perhaps they'd prefer, so we try to adjust it by those designations.

I hope I make sense, but it's -- has there been any look at that?

MR. DARCHE: That actually made a ton of sense. And, no, if we have looked at it in that way, I'm not aware of it. And I think that's actually a very fruitful area of the complaint, so we will look at it.

CHAIR RICE: The questions in regard to the discipline.

MR. DWYER: Executive Director, this is Frank Dwyer.

I would add that I've seen significant discussion discourse among myself and my fellow board members in areas such as use of force. The Board substantiated and said it is the presumptive. And yet, in the discussion, and beside the fact I was working on something -- but in discussion, my fellow board members and I --

(Technical difficulties.)
MR. DARCHE: I'm sorry. I can't hear Mr. Dwyer.

MR. DWYER: Can you hear me now?

MR. DARCHE: I heard you say, "Can you hear me now?" The last thing I heard you say was, "in discussion, my fellow board members and I."

MR. DWYER: That the penalty for presumptive, which is the middle one, for presumptive on use of force which is 20 days, if I remember correctly, seemed excessive but the board members still felt that the presumptive use of force was the appropriate designation of what happened, even though they didn't agree with the penalty, but they felt obligated to go with it.

So, I think one, the use of force is a whole area where the whole continuum is worthy of discussion. So, for example, a shove of a shoulder versus a much harder use of force, yet they both, if you come down with a presumptive penalty, you have a 20-day penalty.

The business card area, as I have pointed out in panels and others have pointed
out -- in fact, including yourself Executive Director, when two or three years ago at the public meeting you put a monetary value on what a day's penalty is and is whatever the number we come up with, $400.

Well, at the moment, for you to give a business card is presumptively, I believe, three days. I regularly say that, "No." I mean, the mitigation penalty of one day is far more appropriate. So, these are at least two other categories where I feel discussion with the Police Department is important.

And I suspect now that we know this work is going on, that all of us collectively can reflect back on the work we've done and see what other categories are present.

I would also ask that when we're doing panels that, since it's such an important topic, that from this day forward, staff collect, in a very fastidious way, records of any time panel members say that "we substantiate as presumptive. We have concerns about the penalty," and then you'll have much stronger data to engage for or against the Matrix in its present form.
MR. DARCHE: So, I appreciate what you're saying, Mr. Dwyer.

One of the things that I make sure to do when I was talking with staff at the Department is try and give areas where there was a consensus and not get into areas where -- while some board members or groups of board members might have felt something was too high, others may have disagreed.

So, areas where there was a lot of agreement in where I went back to the Department or on discourtesy where there was a mitigating factor and offensive language. And then -- and to me, if you look what you're saying about force, the Matrix divides force into numerous categories and subcategories, which are roles in the Matrix. Which if we haven't put on our website, I'll make sure it's there for the public to go through and it's online on the NYPD's website.

And so, I feel like there is a sufficient -- what I feel isn't material. Like clearly, the Department is interested in what the board feels. And I just -- it is
tough to kind of breakdown the feelings as a whole because not everyone feels -- there's some people who feel that force is excessive and there are other people who feel that forces penalties are too high, and there are other people who feel that abuse of authority penalties are too high, and then there are other people who feel the opposite.

And so, the two -- at least the two categories where we were able to find a consensus, where I was, that doesn't mean that there isn't one, is on discourtesies that are -- where there's a mitigating factor or the mitigating factors prevail and then offensive language.

CHAIR RICE: I believe you were trying to ask a question as well.

MS. BOND: Sorry. I'm having a little bit of trouble hearing, but I just want to chime in quickly which is to say: I think it's important that we continue to have this conversation about the Matrix and how it's being implemented.

But I also just want to underscore Board Member Irish's point around the 213
cases. If we're finding that in 60 percent of cases, the Matrix isn't even coming into play because there's disagreement between CCRB and the Department about whether discipline needs to be imposed at all.

I think that needs to be a point of discussion with the NYPD that goes beyond just the Matrix and how it's applied because we're clearly not coming into agreement about whether any discipline is needed at all.

And I do think some of the rationale for taking on the Matrix was to create more agreement in terms of the imposition of discipline, both in terms of the kind of discipline, but also, I think, many of us were hoping that there would be higher levels of agreement when it comes to whether misconduct occurred.

So, I just want to name that as an important point for continued discussion with the NYPD as we talk about changes to the Matrix.

MR. RIVADENEYRA: Jon, just thankful that you're having this conversation.

I know when the board attempted to do
its own Matrix years ago, we had reached out to the Department to do an analysis of similar cases and see what the Department would use in discipline measures in those similar cases.

I wonder, to use Erica's point, you know, to sort of align it a little bit better, are we getting that same information, when we're having these conversations now about the Matrix that the department created, you know. Like my understanding was that the Department was creating this to address many of the issues that were brought up in the past administration and that they put this sort of aggressive approach in establishing the higher discipline and also making it a progressive Matrix.

You know, I just wanted to understand, like, how are we trying to get information back from the Department about their usage of their own Matrix before we also do an analysis of how we would recommend changes to their --

MR. DARCHE: Thank you,

Mr. Rivadeneyra.
The Department has been following the guidelines, or guidelines and requirements set out by the council in -- I'm forgetting the name of the City Council bill that requires them to report out on cases where they do not concur with either the CCRB's discipline recommendation or the Assistant Deputy Commissioner of Trials recommendation. So, our Policy Unit has been compiling those trying to get a handle on them.

We are also redacting them and putting them online for people to see. So, the issue isn't really a flow of information, it's trying to understand the information we do have and what it is telling us, and then coming to an agreement with the Department on what the Department actually -- whether they agree with us or not about what the penalty levels.

MS. SIMMONS: Jon, I have one other question.

You mentioned that the Department implemented amendments to the Matrix in February of this year, if I heard correctly. I am very interested in hearing what those
amendments are and if they intend to further amend before or after discussions with the CCRB?

MR. DARCHE: So, I will get you -- those amendments were made public in February, and we will share that on our website and we will also e-mail it to all the board members so that you have it. There's a memo they had with explanation of the changes as well as the new Matrix. So, we'll let you have it, so you can see what the changes are.

CHAIR RICE: Are there any more questions for our Executive Director in regards to the discipline Matrix portion of this report? Any other questions?

MS. BOND: Just one more question and that's with regard to the cases that we've subbed but there hasn't been a final decision by NYPD. So, if I'm understanding this correctly, we had 752 officers that have one or more allegations substantiated against them. NYPD has made a decision on those cases one way or the other in 213 cases.

I'm just curious what the timeline is like between when we're making a
recommendation and NYPD is making a
determination about whether to impose
discipline or not.

Do we have any numbers on the average
amount of time that that's taking?

MR. DARCHE: I'll get that for you. I
don't have it in front of me.

MS. BOND: Great. Thank you.

MR. DWYER: Yeah, it's more of an
observation. I mean, I don't think it should
get lost on us, among the many things the
Executive Director said, that in 86 cases,
the Department concurred with the findings.
And 75 out of the 86, they did take the
recommendation, which -- I don't know. Maybe
somebody smarter than I am could do it in
their head, but I would suspect that's
somewhere between the 85 to 90 percent
percentage range.

So, when they do concur, they seem to
take the recommendation at a very high rate.
As somebody who sits on panels and regularly
doesn't concur with my colleagues, I think I
would find something similar that the -- that
I often also don't incur, but what I'm saying
here is, we shouldn't miss the fact when they agree that it is a disciplinary matter, they do take the recommendations at a very high rate.

CHAIR RICE: Excellent points brought up by many members of the board, which we will take back and discuss further.

Unless I hear any other questions, I'm going to ask our Executive Director to continue with the rest of his report, and then we will do a vote on the minutes.

Jon?

MR. DARCHE: Thank you, Madam Chair.
I wanted to update folks on the CCRB case involving Police Officer Wayne Isaacs. We've received many inquiries around the status of the APU trial prosecuting Officer Isaacs.

And just to give you all a little background. In 2016, Officer Isaacs fatally shot Delrawn Small. In 2017, Officer Isaacs was found not guilty of the murder of Mr. Small. In 2018, members of Mr. Small's family filed a complaint with this agency. And after a full investigation, the CCRB
substantiated misconduct against Officer Isaacs. One allegation, that Police Officer Isaacs used excessive force when he shot Mr. Small.

In October of 2020, the Agency filed charges and specifications with the NYPD. In January of 2021, the Department served Police Officer Isaacs with those charges and specifications. In March of 2021, Police Officer Isaacs' attorney filed an Article 78 proceeding with the Supreme Court New York County, asking for the Court to stop the disciplinary proceeding.

In October 2021, the CCRB filed a motion to unseal the criminal case against Officer Isaacs in order to obtain all of the records used during the criminal trial. Attorney General James' office joined in our application and that application is still pending.

In January of 2022, the Court denied Police Officer Isaacs' application in his Article 78 proceeding because the Police Commissioner had not made a final determination in the case. And then last
month, Officer Isaacs' attorney wrote a letter to the Police Commissioner asking her to use the power she has under Provision 2, the 2012 MOU that created the Administrative Prosecution Unit.

Provision 2 allows the Police Commissioner to retain cases where the subject officer either has no disciplinary history or there are parallel or related criminal investigations. Most of the time when Provision 2 is in play, the Police Department makes the determination on its own. It is rare but not unprecedented for a subject officer to request the Police Commissioner use the powers under Provision 2. In those cases, it's almost akin to a motion to dismiss in a criminal trial.

The CCRB submitted its response to Officer Isaacs' request. We are waiting the Police Commissioner's decision. And I just want to point out that much of the information in this case is sealed because Officer Isaacs was acquitted in the criminal trial. And this case is an example of why
the CCRB has been advocating for an exemption to the state's sealing statutes.

Before we get started any further this afternoon, I wanted to just give a quick update on our agency operations. We continue to review protest cases and expect to have a protest report out in the coming months. Our office is open for walk-in complaints, but you can also file complaints online at nyc.gov/ccrbcomplaint. That's nyc.gov/ccrb C-O-M-P-L-A-I-N-T or by telephone at 1-800-341-2272, or by just calling 3-1-1.

We're going to ask people to limit their comments to four minutes in the public session. And I want to thank the staff for their hard work and thanks to the members of the public who are participating today. And if there are any other questions, I'm available, Madam Chair, to answer them.

CHAIR RICE: Before we go to the public comment, does anyone have any questions in regards to the report that we just heard from our Chair on the Isaacs case?

(No response.)

CHAIR RICE: Any clarifying questions
on the Isaacs case, the board members?

(No response.)

CHAIR RICE: Anyone online?

MS. BOND: I just have one question.

So, Jon, you noted that Officer Isaacs' attorney is asking the Police Commissioner to take the case under Provision 2. The two reasons that that can happen is where there's no prior history or there's a parallel investigation or criminal case.

Do you know which of those applies here or both?

MR. DARCHE: So, I don't know if Officer Isaacs has prior disciplinary history, but I do know that there are parallel criminal -- there was a parallel criminal investigation into this case.

MS. BOND: But that's closed now, correct?

MR. DARCHE: Correct.

MS. BOND: Okay. So, we don't have any reason to believe there are other parallel investigations happening?

MR. DARCHE: Correct.

MS. BOND: Okay. Thank you.
CHAIR RICE: Thanks for that clarification.

Any other questions about the update on the Isaacs case?

(No response.)

CHAIR RICE: All right. We have been joined by another board member. We are going to ask if he could introduce himself.

MR. PUMA: Hi. Good afternoon, everyone. My name is Joseph Puma. I'm the Manhattan City Council Designee to the board, and I live in Manhattan on the Lower East Side.

CHAIR RICE: So, are there any amendments or corrections to the minutes as presented? Any corrections to the amendments?

(No response.)

CHAIR RICE: All right. Once again, can I have a motion to accept the minutes as presented?

MS. SIMMONS: So moved.

CHAIR RICE: Can I have a second?

MR. MERRITT: Second.

CHAIR RICE: All right. Thank you.
All in favor of accepting the minutes as presented with "aye."

(Chorus of ayes.)

CHAIR RICE: Opposed, same sign?

(No response.)

Okay. We're going to have a presentation from our Senior Adviser Yojaira Alvarez on outreach.

Yojaira?

MS. ALVAREZ: Thank you so much, Chair. I hope you can see my screen. Perfect. Apologies. Let me just do it from the beginning.

Great. So, as the Chair mentioned, my name is Yojaira Alvarez. I am the senior adviser and director of inner governmental affairs at the CCRB. I'm here filling in for the irrereplaceable Jahi Rose who is on a well-deserved vacation.

So, I wanted just to take some time to have those that are joining us virtually or in person to give you a brief overview of the Agency. As was discussed, we are the Civilian Compliant Review Board. We are the nation's largest oversight entity of the
nation's largest police force.

The Agency is responsible for investigating, mediating and administratively prosecuting complaints of misconduct alleged against members of the NYPD. As you can see, we are governed by a 15-member board, five are appointed by the Mayor, five are appointed by the City Council, three are designated by the Police Commissioner but then appointed by the Mayor. One is appointed by the Public Advocate and the Chair is co-appointed by the Mayor and the City Council.

So, although we are an agency that investigates allegations of police misconduct, we don't investigate all allegations of police misconduct. There are four major categories that we investigate. And a helpful reminder on what we investigate is the acronym FADO, F-A-D-O.

The "F" is for force. So, if force is used during an encounter with a police officer that falls within our jurisdiction, we would then investigate it to determine if it was excessive or unnecessary, given the
totality of the circumstances.

The second category is abuse of authority. This is a very larger category. Some of the allegations that fall within that category are improper entry, refusal to provide a name and shield number, improper stops, searches or frisks, threatening to call ICE, forceable removal to the hospital and sexual misconduct, among others.

The "D" is for discourtesy. So, this includes discourteous gestures, actions and words, like the use of profanity.

And finally, we investigate allegations of offensive language. So, this is language that inappropriately refers to my race, ethnicity, sexual orientation, gender identity or expression, nationality, disability status, religion, et cetera.

And as we've mentioned before, the Agency is preparing to soon investigate allegations of racial profiling and bias-based policing, and we'll be presenting on that soon.

So, as a reminder, the Right to Know Act is now law. So, what that means is that
in majority of the situations and encounters
with police officers, police officer must
identify themselves by providing their name
and other information; such as their rank,
command and shield number upon request. And
in certain situations, they would proactively
provide that information. And this is what a
card would look like (indicating).

With some exceptions, they have to explain the purpose of that interaction with
the civilian. So, in situations where they do not have the legal justification to search
you, they must proactively ask for that consent. And they have to also inform you of
your right to say no.

They also have to provide language
access services upon request or if they notice that the civilian that they are
interacting with is monolingual and does not speak English.

As a reminder, you can also report allegations of police misconduct that you have witnessed on social media or on the news, even if you were not there in person.

Our Twitter handle is @ccrb_nyc.
And if you've experienced or witnessed misconduct, there are multiple ways of accessing the Agency. You can call most favorite number 3-1-1.

You can contact us directly at 1-800-341-2272. You can visit our office located in Lower Manhattan at 100 Church Street, 10th Floor. You can file a complaint at your local precinct.

And as a reminder, every precinct is required to take a CCRB complaint. And you can also mail in a complaint at our address, 100 Church Street, 10th Floor, New York, New York 10007.

And finally, we want remind everyone that the CCRB is hiring. We encourage you to share this information with your networks. You can find the job posting, other investigator, along with other open positions at nyc.gov/jobs. If you have any questions you can e-mail careers@ccrb.nyc.gov. And more information about the investigator position is found on our website, which we will include in the chat.

And last, but not least, we have a
dedicated team of coordinators that will go
to any after-school program, religious
institutions, any community event that you
have to share this information about the
CCRB. You can reach us at
outreach@ccrb.nyc.gov to request the
presentation. Again, we are in-person and
also virtual, and these are our social media
handles.

Thank you so much.

CHAIR RICE: Thank you.

So, to the board members present in the
room first, do you all have any questions of
Yojaira in regards to her presentation?

(No response.)

CHAIR RICE: Any questions, comments,
feedback?

(No response.)

CHAIR RICE: And to our members who are
online?

(No response.)

CHAIR RICE: Okay. Hearing none, we
will now enter the public comment portion of
the meeting.

If you are interested in making a
public comment, please line up behind the -- wait, we don't have a podium. You can use the "raise your hand" feature if you're joining us virtually and we will go in order. Please keep your comments to four minutes. And we're going to ask Yojaira if you would please call on the first person.

MS. ALVAREZ: Thank you, Chair.

The first person on our list is joining us virtually, Michael Meyers.

(No response.)

MR. DARCHE: Could someone allow -- upgrade Mr. Meyers so he can speak.

MS. ALVAREZ: It looks like there's a bit of a technical difficulty with Meyers -- with Michael, so we will circle back.

Next, we have Vincent Riggins.

MR. RIGGINS: (Inaudible.)

MS. ALVAREZ: Vincent, we heard a little bit. If you can --

MR. RIGGINS: Yes, I apologize. I had a package delivery at the same time you called on me.

I got a couple of questions. One, I apologize -- well, I'm Vincent Riggins. I'm...
co-chair public safety Community Board Number 5. And I got on a little late, but can you briefly explain what is meant by your Matrix. It's a simple question. I give them all to you, take your time. And what's the difference between "lying" and "misleading?"

What's the difference between lying and misleading? 'Cause apparently, the Commissioner is using misleading as not being lying, so I definitely want you to explain that to me as well. And one more question. You can start answering, though, I'm going to draw up the other one.

Oh. And under Section 307 (B) of the Crimes Act 1900, why would that not apply in officers giving false or misleading information?

And I'll wait for your response.

CHAIR RICE: Thank you, Mr. Riggins. We're going to ask our Executive Director to respond to the first question about what exactly we were referring to when we mentioned the disciplinary Matrix, and then ask him about the questions between -- the difference between lying and misleading as
has been defined by our new Police Commissioner.

MR. RIGGINS: Okay. Well, discipline is the word I was missing, so this should be an easy answer. I didn't have discipline, so now I know what the Matrix is, but go right ahead. I'm sorry.

MR. DARCHE: No problem, Mr. Riggins.

Matrix is a system that the Department developed with input from the community and other stakeholders, including the CCRB, to try and create a discipline system that is consistent and predictable for different levels of misconduct and also institutes a system of progressive discipline.

And as was pointed out by Ms. Simmons, they recently updated it in February of this year, and we are engaged in conversations with the Department about future changes to the Matrix.

With regard to the difference between lying and misleading, I don't know the particular cases, but I believe misleading is when everything you say is technically true, but you are conveying a false impression of
what the facts are to the person asking the
question. And lying is when you
intentionally tell something that is not
ture. And then, I'm not familiar with
Section 302 of the Crimes Act.

MR. RIGGINS: Okay. So, from my
understanding, the Commissioner, past or
present, was using a difference in the words
misleading or lying to vacate or not
discipline officers; is that what I'm
reading? Is that accurate?

MR. DARCHE: Sorry. I don't --

MR. RIGGINS: Some of the cases that
you guys already filed, the officers were
guilt of lying, but none of them got any
discipline from lying. And the Commissioner
found that they were misleading, not lying.

MR. DARCHE: So, until recently, cases
involving allegations of false statements
were not in the CCRB's jurisdiction. And so,
there was recently a report put out by
LatinoJustice, which is part of Puerto Rican
Legal Defense Fund, and that went into how
the Department handled cases in which we
found evidence that an officer gave a false
statement, and then we would refer that to the Department for investigation.

So, that's not -- those statistics are not exactly in our purview and none of those cases were handled by the current Police Commissioner.

MR. RIGGINS: Let me ask one more follow-up question.

So, is that a reason or justification a commissioner could use not to follow your recommendation? Well, I guess they can. They could just ignore it, I guess, but that's what I'm trying to find out.

Just by them saying, "No, he didn't lie. It was a little misleading." Is that justification for a commissioner to do that and not take action against the CCRB's filing?

MR. DARCHE: So, I think that we're in a much different situation now than during the period covered by the report because now telling untruthful statements to the CCRB is within our jurisdiction. And also telling -- giving untruthful statements to entities other than the CCRB is considered an abuse of
authority.

So, now these cases which we previously have referred out are going to be handled inside CCRB as part of our jurisdiction and then we will be able to give you much better feedback and clearer answers as to how the Department treats those cases and why they treat them that way.

Part of the problem with the old system is it was not transparent, and we don't have a lot of insight into why the Department did what it did.

MR. RIGGINS: So, today you have more transparency?

MR. DARCHE: We do. We just don't have a lot of cases where there's been a file disposition where we've had untruthful statements as part of our jurisdiction.

MR. RIGGINS: Final question, if you will.

So, 50C allow you to look back at police officers' records. How come that was not applied in the cases that you found where officers actually lied or did you guys do that research?
MR. DARCHE: I am not familiar.

Mr. Riggins, I'm going to ask that you reach out to -- that you give my number -- that you give your number and contact information to someone online --

MR. RIGGINS: Okay.

MR. DARCHE: -- who is going to chat with you. And then my policy people will call you and get exactly what you're asking and we'll get answers for you.

MR. RIGGINS: Thank you. Sorry for being long-winded.

MR. DARCHE: No, sir. That was a good question. I just don't know the answer.

CHAIR RICE: Thank you very much -- thank you, Mr. Riggins.

MR. RIGGINS: You're welcome.

CHAIR RICE: Frank, were you trying to make a comment or no?

MR. DWYER: (Hand gesture.)

CHAIR RICE: You're fine? Okay. Thank you.

Yojaira, can we hear from the next person with a question?

MS. ALVAREZ: Thank you, Mr. Riggins.
It's nice to hear from you again.

We will try Michael Meyers one more time. And as we're calling them up, I just want to acknowledge and thank the staff from Council Member Grace Meng's office and Queens, Bronx and Manhattan DA's offices and Council Member Carlina Rivera's office, the office of Public Advocate Jumaane Williams, the office of Speaker and Assembly Member Carl Heastie and Speaker Adrienne Adams' staff for all attending tonight. Thank you so much.

Michael?

MR. MEYERS: Can you --

(Disruptive background noise.)

MS. ALVAREZ: There's a bit of feedback. Want to try that again?

MR. MEYERS: Can you hear me now?

(Disruptive background noise.)

MS. ALVAREZ: There's a bit of feedback. We'll circle back with you, Michael, and see if we can sort that out and try to alleviate that.

Next, we'll be hearing from Chris Dunn, and we'll circle back with Michael.
MR. DUNN: Good afternoon, everyone. I do wish there were a podium. And I look forward to us being in person again sometime soon.

I want to focus on the Matrix discussion, which was quite illuminating, and picking up on what Corrine and Erica said, although they were very subtle about it, I find quite alarming.

And I'm going to start with -- Jon, I want to make sure I understand why the Agency believes it's appropriate to be modifying the Matrix. If I am to understand it, the modifications you are considering are modifications to lessen penalties.

And I heard your report about the increase in charges and spec cases. I assume that by itself would not be a reason for changing it. And I heard you suggest that some board members are resisting subbing cases because of their view of appropriateness of the Matrix, which sounds to me like something that should not be happening.

But can you, Jon, explain what the
entities thinking is about trying to change the Matrix.

MR. DARCHE: It is based on the conversations with staff who are in the panels. It was determined that the areas in which the board had a consensus, a broad consensus, that the penalties were too high was when they determined that mitigated penalty for discourtesies was appropriate.

And then, in many cases involving offensive language where either the term was close to being considered part of a common language that had been attenuated from its origin as offensive language. And then -- or in statements that would have -- that were discourteous, that the board felt were more discourteous than offensive language.

Because -- I'm trying to think of a way to do it without using offensive language and it's very difficult. But -- so, let's say -- so, let's -- it's just tough to do it in this situation. But there are terms which have become -- the word "bitch" to refer to women or sometimes men in the sexual politics of it, it sometimes isn't clear that that use of
that language is actually meant to be an offensive language gender.

And so, it becomes questionable whether that is offensive language or a mere discourtesy. So, there's no question it is misconduct, it's what is the level of misconduct.

MR. DUNN: Okay. Well, I will -- I hear what you're saying. I think one of the board members -- I'm sorry. I don't remember who it was, was asking for a fuller board discussion about this. And since I'm not on the board, I'll just say as a member of the public, I think that's imperative that the Agency is going to be advocating with the Police Department to reduce penalties in the Matrix, which from our perspective is not demanding enough of police officers.

I think it's essential the Agency have an open discussion before it goes out and starts negotiating and use as an -- follows by Sal's suggestion "this is going too slowly." From my position, it's going too fast, and I cannot tell how many members of the board are fully informed about what the
status is of negotiations with the Department about this.

But I, for one, just want to say very loudly and clearly that we have a lot of concerns that the CCRB is calling for a reduction of penalties to the Matrix.

The other thing I just want to mention, I appreciate the detailed accounting, Jon, in terms of the numbers. But I do want to pick up on a couple of things, notwithstanding Frank's efforts to play this as if the Department is somehow doing something laudable.

If there are 86 total cases where discipline is imposed out of 700 since February of 2021, which is what I understood the numbers to be, that is a paltry number. And I am prepared to wager, although I don't that. I don't want to put you on the spot, Jon.

But if you know, of the 75 of the accepted recommendation, how many of them are for instructions or formalized training? Which is, I think, you know, in our book is not discipline at all.
MR. DARCHE: So, I think if you -- so, number one, I don't have the breakdown for you and I can get that for you.

In 77 of the 88 cases or 76 of the cases, they've complied with our recommendation. And as you could see, we recommended very few instructions cases. And the reason why it is tough to make a conclusion about how the Department is treating these cases is there are 500 cases that are open where the Department hasn't made a determination yet and there is a new Police Commissioner.

And so, I think it behooves us to be a little -- and I understand your concern and your vigilance on this issue, but I just think it's too soon to reach a conclusion, one way or the other, how this Police Commissioner is acting on CCRB recommendations.

I think one of the reasons why, like in the same way that I, you know, you feel that it's going too fast and Sal feels like it's going to slow, we're having this conversation, disclosing the data we do have.
so that we can not do things in secret and explain what's going on to the public, so you know where we stand.

MR. DUNN: Yeah, and don't get me wrong. I appreciate that. And you guys -- I mean, I've said this many times: For all my criticism with the CCRB, you're terrific in terms of disclosing information. You are the most transparent city agency when it comes to policing by a wide margin, full stop.

But the fact that Commissioner Sewell has been here for three months doesn't give me a lot of comfort about 539 cases that have been sitting there since February 2021. And I'm the first person to say let's see what her practice is. What I am saying is, and as many of us know, the Department has a terrible history on this.

I'm always looking forward to a new PC coming in and all of a sudden turning that around. I am not holding my breath for that. And I don't see anything in the numbers so far to suggest things are changing. To be sure, there are a lot of undecided cases, but I think that Corrine's, like this -- when you
talk about till they're closing, which has always been a problem, they're just saying drop dead to the CCRB.

And then, look at the actual discipline they are imposing and it may well be that a smaller percentage of your cases you're recommending training and instructions. I get that. I'm going to guess it's a disproportionate number up to 75. I'm just going to guess. I don't have any idea. Maybe I'll be proven wrong.

So, I guess all I'm saying is thank you for this presentation. Thank you for getting this out. Please hear me as I say this support notion of people undoing -- this is my language, not yours. Undoing the Matrix is an alarming issue to me, in a Department that does not distinguish itself in terms of its discipline and practices.

I'll get off my soapbox. I look forward to standing in front of a podium in front of all of you sometime soon.

Thank you.

MR. SIEGAL: John Siegal here.

It was always the intention stated at
the time the Matrix was adopted that it would be reviewed after a year, number one. And number two, I don't think it's accurate to take the comments that have been made as the CCRB trying to reduce the level of discipline. I don't think that's accurate at all.

And one of the aspects of it is that the Matrix, like any guidelines, impose comparative penalties for different offenses. And some of the discussion has been comparing those outcomes under the Matrix because some of us feel that in some areas they're too low.

So, the two areas that Jon identified are a small portion of the types of things that have been discussed in panels, and that I did agree totally need to be discussed fully and publicly. But I'd urge you not to jump to the conclusion that the CCRB is trying to reduce discipline under the Matrix. I don't think that that's accurate.

MR. DUNN: Okay. John, I appreciate that. I look forward to hearing a full discussion and particularly an identification
of cases where the Agency is going to recommend an increase in penalty. I just haven't heard that articulated so far.

MR. DARCHE: Madam Chair, there was just one other thing that Mr. Siegal reminded me of that I was hoping I could address, and that is, February 2021 was the first time the board voted to adopt the Matrix. We voted three cases involving one member of service in March of 2021 and then it took several months for us to get the Matrix integrated into our system to start using it more fully.

And so, while I understand 500 cases outstanding is a lot of cases to have open for a year, I don't think that's like -- it's not like all those cases were decided on February 1, 2021. The vast majority of those 500 cases are much newer than a year old, 14 months old.

CHAIR RICE: Thank you for that information --

MS. IRISH: Jon --

CHAIR RICE: -- thank you, Jon, for providing that input on where the CCRB is on the discipline Matrix.
And thank you, Mr. Dunn. It's wonderful to meet you, and I look forward to further conversation partnership with you.

Yojaira, can we hear from the next person on the list?

MS. IRISH: Can I just ask for a clarification with regards -- in relation to this with regards to the April monthly report? The number of NYPD decisions or non-APU cases, it says the report include February and not March.

Is that just a mistake or are there no -- have there been no determinations by NYPD in March?

MR. DARCHE: So, what had been happening is sometimes cases were -- the reports were coming in very close to the board meeting date. And so, at some point last year, we -- I believe we switched to being a month behind.

So, instead of reporting the March data in April, we're reporting the February data in April.

MS. IRISH: Okay. Because I thought for the APU cases, it is March data.
MR. DARCHE: Because the APU, it's different tracks from the Department. On the APU cases, we're getting the decisions from PCT in most cases. Whereas the non-APU cases, we're getting from DAO, and sometimes we get them from the Police Commissioner.

It's -- in an effort to make sure the information was accurate, we decided to delay the non-APU cases by a month. I should have -- I thought I must have explained that back then. If we didn't, I apologize. That's my fault.

MS. IRISH: Thank you.

CHAIR RICE: Any final questions from the board?

(No response.)

CHAIR RICE: Let's listen to the next person on the list.

MS. ALVAREZ: Thank you, Chair. We will try Michael one more time.

MR. MEYERS: Can you hear me?

(Disruptive background noise.)

MS. ALVAREZ: There's a lot of feedback. I'm not sure if you can step away from -- I don't know if you're both on your
phone and the laptop.

MR. MEYERS: Can you hear me now?

(Disruptive background noise.)

MS. ALVAREZ: It's pretty bad feedback, Michael. I'm really sorry.

MR. MEYERS: Public meeting --

(Disruptive background noise.)

MS. ALVAREZ: So, Michael, our next public meeting will be on May 13th -- sorry, May 11. You can join us virtually or in person. If you have any other questions before that or if you want to relay what you wanted to ask, you can e-mail me -- yalvarez@ccrb.nyc.gov. So, that's Y-A-L-V, as in victor, A-R-E-Z.

Apologies, Michael.

Chair, that concludes our public session.

MR. DARCHE: Madam Chair, I just want to say while we may have been unable to get Mr. Meyers to give a statement today, I think we should recognize the history he's had with policing in the City and civilian oversight in the City. And, you know, he brought to our attention the issue with limiting how
long people could speak, two minutes being too short. We went back and looked at the situation and extended it to four minutes.

And, like, I truly value him. I know many of the other board members do value Mr. Meyers and his contributions. And I want to apologize that we were unable to get him online today and assure him, you know, whether he comes down in person next week -- next month or we'll just make sure we get a better connection, so that he can speak at the next meeting.

CHAIR RICE: Thank you, Jon, for that acknowledgment.

Anything else from any of the board members in the room or online, who I can now see. So, thank you so much for that adjustment.

All right. Do we have any old business to come before the board, any old business? Old business?

(No response.)

CHAIR RICE: All right. And do we have any new business to come before the board?

(No response.)
(No response.)

CHAIR RICE: Hearing none, I am going
to move now that we break into executive
session.

The agenda for executive session is the
board will receive an update from the General
Counsel and the Executive Director will
discuss the following three items; scheduling
issues for panels, update on pending
personnel actions, and scheduling board
training sessions.

Do I have a motion to conclude the
meeting?

SPEAKER: (Inaudible.)

CHAIR RICE: Do I have a second?

MR. RIVADENEYRA: Second.

CHAIR RICE: All right. All in favor?
(Chorus of ayes.)

CHAIR RICE: All right. So moved.
The meeting is concluded. Thank you.

(TIME NOTED: 5:28 p.m.)
CERTIFICATE

STATE OF NEW YORK

COUNTY OF QUEENS

I, Sabrina Brown Stewart, a shorthand reporter within and for the State of New York, do hereby certify that the within is a true and accurate transcript of the statement taken on April 13, 2022.

I further certify that I am not related to any of the parties to this action by blood or by 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 21st day of April 2022.

Sabrina Brown Stewart

Sabrina Brown Stewart