

NYC - Civilian Complaint Review Board Special Meeting
September 17, 2020

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CIVILIAN COMPLAINT REVIEW BOARD
PUBLIC MEETING
SEPTEMBER 17, 2020
4:07 P.M.

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HELD VIA VIDEOCONFERENCE

B E F O R E:
FREDERICK R. DAVIE, CHAIR

Transcribed by:
Elbia Merino

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BOARD MEMBERS PRESENT

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- Fred Davie, Chair
- John Siegal, Esq.
- Erica Bond, Esq.
- Corrine Irish, Esq.
- Esmeralda Simmons, Esq.
- Joseph A. Puma
- Michael Rivadeneyra, Esq.
- Marbre Stahly-Butts, Esq.
- Nathan Joseph
- Willie Freeman
- Salvatore F. Carcaterra
- Frank Dwyer

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PRESENTERS

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NYPD Deputy Commissioner of Risk Management
Jeffrey Schlanger

NYPD Chief Matthew Pontillo, Commanding Officer of
the First Deputy Commissioner's Office

Heather Cook, Assistant General Counsel
Civilian Complaint Review Board

SPEAKERS

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Councilmember Donovan Richards, Chair, New York
City Council Committee on Public Safety

Nick Smith, First Deputy Public Advocate

Sabrina Rezy Director of Communication
Assemblymember Rodneyse Bichotte

Michael Sisitzky, Lead Lead Policy Counsel,
New York Civil Liberties Union

Darius Charney, Senior Staff Attorney,
Center for Constitutional Rights

Jennvine Wong, Staff Attorney, Cop
Accountability Project at the Legal Aid
Society

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CHAIR DAVIE: Welcome, everyone, to this special meeting of the Civilian Complaint Review Board. My name is Fred Davie, and I am the Chair of the Board. And before we get started with the meeting, I'd like to -- (audio interruption) -- introduce themselves. And again, I'm going to ask everyone who is on, if you are not speaking, to keep your mic muted so that we can limit the amount of background noise.

We are glad that everybody is here today, and we'd like to hear from -- just have the Board members introduce themselves. And I'm going to start with Esmeralda Simmons.

MS. SIMMONS, ESQ.: Good afternoon, everyone and welcome. My name is Esmeralda Simmons. I'm representing the Public Advocate's Office, and I'm from Brooklyn, New York, Bed-Stuy.

CHAIR DAVIE: Corrine Irish?

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MS. IRISH, ESQ.: Hi, everyone.
My name is Corrine Irish. I'm a
Mayoral Appointee, and I live in
Harlem.

CHAIR DAVIE: Erica Bond.

MS. BOND, ESQ.: Good afternoon,
all. I'm Erica Bond. I'm also a
Mayoral Appointee, and I live in
Brooklyn.

CHAIR DAVIE: Frank Dwyer.

MR. DWYER: My name is Frank
Dwyer. I'm a police commissioner
designee, and I live in the borough of
Queens.

CHAIR DAVIE: John Siegal?

MR. SIEGAL, ESQ.: Good afternoon.
John Siegal here. I was appointed to
the CCRB by the Mayor. I reside in
the Bronx and practice law in
Manhattan.

CHAIR DAVIE: Joseph Puma.

MR. PUMA: Good afternoon,
everyone. My name is Joseph Puma. I
sit on the board as representative of

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the Borough of Manhattan from the City Council Cohort. And I live in the East Village, Lower East Side.

CHAIR DAVIE: Marbre Stahly-Butts.

MS. STAHLY-BUTTS, ESQ.: Good afternoon. My name is Marbre. I use "she" and "her" pronouns. I am a City Council appointee for Brooklyn.

CHAIR DAVIE: Michael Rivadeneyra.

MR. RIVADENEYRA, ESQ.: Hi, good afternoon, everyone. I'm Michael Rivadeneyra. Pronouns are "he" and "him." I reside in the Bronx, and I am an appointee by the Council.

CHAIR DAVIE: Willie Freeman?

MR. FREEMAN: Good afternoon, everyone. Willie Freeman, Police Commissioner Appointee, and I reside in the Borough of Brooklyn.

CHAIR DAVIE: Nathan Joseph.

MR. JOSEPH: Good afternoon. My name is Nathan Joseph. I'm a City Council designee. I live in the Borough of Staten Island.

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CHAIR DAVIE: So these icons have bounced around all around my screen. I want to make sure that I haven't forgotten any of my fellow board members. Is there any board member that didn't get to introduce him or herself?

MR. CARCATERRA: Hey, Fred, this is Sal calling in. Hello, everyone. This is Sal Carcaterra. I am a police commissioner designee, and I live in the Borough of Staten Island.

CHAIR DAVIE: Welcome. Anyone else?

(No response.)

CHAIR DAVIE: Excellent. So those of you who attended last week's regular board meeting know, this is our second meeting for the month of September. We've called out this time to receive feedback from civilians on the New York City Police Department Disciplinary Matrix. The NYPD released this proposed matrix in draft

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form on August 31. That started a clock on a 30-day public comment period, which will conclude on September 30th.

As far as we know, this afternoon's meeting is the only public hearing during which civilians will be able to offer their feedback on this disciplinary matrix. This matrix will determine what punishment is appropriate when a member of the department violates the law or the patrol guide.

This is a major change for New York City, and it's vital that we hear from all of you. This disciplinary matrix will be an important part of the future CCRB recommendations for discipline. As New York and cities across the country continue the conversation about how to hold police accountable for misconduct, we must ensure everybody and every person has a seat at the table. That's why we

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are very much looking forward to hearing from you all this afternoon.

During this afternoon's meeting, we will hear first from representatives from the NYPD who will provide an overview of how the department developed the matrix. Following that, CCRB Assistant General Counsel, Heather Cook, will present the CCRB's analysis of the matrix. We will then receive testimony from elected officials, advocates and members of the public.

We know that there will be questions, and we most certainly welcome everyone's questions. We ask, however, that you hold your questions until the public comment portion of the meeting. When we do reach the time for public comment, we ask that you please keep your questions and comments focused on the proposed disciplinary matrix. I want to say that again. We ask that you keep your

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questions and comments focused on the proposed disciplinary matrix. We are intentional about receiving feedback on this matter specifically today.

There is a raised hand feature on WebEx that you can use to let us know that you are interested in asking a question or making a comment. We ask that you please keep your comment to two minutes so that we have enough time for everyone to speak. I want to reiterate that.

We ask that you please keep your comments to two minutes so that we have enough time for everyone to speak. If you would like to file a complaint or talk to one of our investigators about an encounter with an NYPD officer, there is a link to our File A Complaint page in the chat box. Please follow that link to complete the form and an investigator will reach out to you shortly.

Finally, I want to thank the

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members of the staff for putting this together. And members of the public for joining us today.

Now, let's give our attention to NYPD Deputy Commissioner of Risk Management, Jeffrey Schlanger and Chief Matthew Pontillo, Commanding Officer of the First Deputy Commissioner's Office, who will give us a brief presentation on the matter -- on the matrix. So we turn to Deputy Commissioner Schlanger and Chief Pontillo.

DEPUTY COMMISSIONER SCHLANGER: Go od afternoon, Chairman and all members of the CCRB, as well as those in the public. We appreciate the opportunity to be here. Chief Pontillo is going to give a brief presentation, as you indicated, and we will listen to the comments after that presentation. We'll be taking all comments under advisement and obviously, we'll be working closely with the CCRB to come

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out with a final matrix. And Chief Pontillo will talk a little bit more about that process.

But we appreciate the opportunity to be here.

Chief Pontillo?

CHIEF PONTILLO: Thank you, Jeff. And thank you Chair Davie and all the members of the board and everybody else who is online here today. I'm going to try to share my screen here. Let me see if I can do this. Okay. This is going to work -- I'm sorry, just bear with me.

CHAIR DAVIE: No rush.

CHIEF PONTILLO: One moment here. Just looking for the right one.

Okay. Hopefully, there's a PowerPoint up.

CHAIR DAVIE: We can see it, thank you.

CHIEF PONTILLO: All right, great. Thank you. I'm just using this to -- to help manage my comments moving

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forward. I want to convey the essence of the disciplinary guidelines to everybody and keep it flowing.

So the guidelines really began -- the process began more than a year ago. So many folks may be aware that then Police Commissioner O'Neil, more than two years ago now, commissioned an independent panel of criminal justice experts to come in and take a look at the disciplinary system in the NYPD.

And they worked for several months. They had full access to IAB files, department advocate files, trial room and they issued their report on January 25th of 2019. And the good news is that overall, they found that the disciplinary system was generally fair and robust. However, they also noted that the most significant problem that we had was a complete lack of transparency. And that door swung both ways. Right.

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So it was not just transparency to the public. You know, folks just did not have any insight to the system. They didn't really understand how it worked. They never really got to see whether or not discipline was imposed and for what. And most of that because of then Civil Rights Law Section 50(a).

They also noted that that lack of transparency also occurred internally, that generally police officers and supervisors didn't necessarily know what the disciplinary system was or how it worked or what the penalties were. And that's problematic, right, because one of the goals of discipline is to have a credible deterrent against misconduct and if people don't know what it is or how it works, it's a little too mysterious and it doesn't necessarily have the desired effect.

So they made a number of recommendations for improving the

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system. Just about all of those have been implemented. They were in the process of hiring some additional attorneys from the Department Advocate's Office. For those of you who don't know, the Department Advocate is the NYPD's internal prosecutor who brings these administrative cases against members of the department for misconduct.

So we are beefing up the capability there. One of their recommendations was that we should consider developing a disciplinary matrix or penalty guidelines. So beginning last January, we set out to do just that. And what we did was we brought in internal subject matter experts. And -- and these included people from labor policy, people from the Advocate's Office, the trial Commissioner and her staff, Commissioner Schlanger and his people on the risk management side, to do a

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top to bottom review of the current state of discipline in the NYPD and make some determinations and recommendations and begin to put together a matrix.

We also consulted with internal stakeholders. You'll hear from Heather Cook in a while about some of that collaboration, consultation with CCRB. We also worked with the Commission of Combat Police Corruption. And as a parallel part of this process, the Commissioner of Combat Police Corruption had previously made a recommendation about strengthening the department's false statement policy. There were some elements of the policy that were vague or needed to be updated.

So we worked with the Commission to rewrite the policy, work with our internal affairs people who have a lot of experience in this area. And last November, we published a new policy.

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You'll see that in the guidelines, there is a section on false statements. A lot of that material actually comes from the Commission and their recommendations.

So that was one of the external stakeholder groups, CCRB and other, getting input. We also looked at what other police departments were doing in their jurisdictions. So for example, we looked at LA, Denver, Cleveland, Cincinnati, New Orleans among others to look at what they have done in the area of discipline. And we began our assessment of the current state of types of misconduct that we see and the penalties that are imposed by surveying five or more years of cases.

So we went back, we looked at cases that have been decided, both trial cases and settlements over the last five years, in some cases more, to see what acts of misconduct were covering, in what frequency. And then

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what the penalties were and what some of the factors that were present in those cases that may have affected the outcome.

So that was the process. That began last January. And it culminated a few weeks ago with the release of the draft penalty guidelines that are now on our website.

If you look at it, you'll see that we organized it topically or phonetically. So there are 11 categories. Force is one category, false statements, abusive authority, discourtesy and offensive language together in another category. Domestic violation, DWI, EEO violations each in their own category.

This was something we struggled with when we looked at matrixes from other jurisdictions. Notably Denver. They take a different approach. They start with penalty ranges and classifications. So their most

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serious classification may be a Class A offense, which could result in termination. And then they have this whole series of classes. And then as they go through different regulations and different potential acts of misconduct, they say this incident would be a Class A or a Class B offense.

Ultimately, we opted for a topical organization with very specific presumptive penalties as a starting point. You know, we thought that the other way -- some of those ranges were very, very broad, with a lot of overlap. We felt that this was much more specific and gave more guidance. The document is -- is written for both internal and external audiences. Right.

So if you look, you know, the first few pages, we talk about the investigative process and how cases become disciplinary matters and the

1
2 path they may follow. The different
3 entities that may be involved in an
4 investigation or bringing a case, as
5 well as some of the consequences of
6 somebody's status, whether they're on
7 probation. Also, we -- we didn't want
8 to get too technical. Discipline is
9 very, very complicated as it is, given
10 the current landscape, you know,
11 considering City laws, State law,
12 judicial decisions, Office of
13 Collective Bargaining decisions,
14 Collective Bargaining agreements. It
15 gets very, very complicated.

16 So we try to touch upon and
17 reference some of those controlling or
18 influencing statutes or other legal
19 requirements where appropriate,
20 without getting too technical and too
21 legalistic. You know, I don't know if
22 we struck the right balance. You
23 know, certainly, civil service law is
24 relevant and applies. But also, we
25 didn't want to get bogged down in the

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minutia of it as well.

So we tried to put something that would inform people, provide a fair level of detail. You know, we didn't want it to be, you know, that was -- you know superficial. We wanted specificity. But we also wanted to keep it digestible.

And you'll see when you go through it, for each offense, there is a presumptive penalty. And that should be viewed as the starting point. If there is a substantiated act of misconduct, that's -- that's in the guidelines. The starting point is that presumptive penalty. And then we would consider whether or not there are any aggravating, mitigating factors present, to what level and how those would be applied.

We try to put as much information as possible. But we also need to recognize here that in some respect, this may be more art than science,

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right. It's not purely mathematical. In some cases, you'll see with an act of misconduct or an aggravating factor, it is. Right, it's a very clearly defined, very distinct, very discreet act that we can put -- find and put a number on and say if you limit this act of misconduct and then you have this aggravating factor present, it's either present or it isn't. So therefore, we can fix a penalty to that.

Other offenses or other aggravating or mitigating factors may be more nuanced and may be more dependent upon the facts and circumstances of the situation. And that's where we really rely on the expertise of initially the investigators, whether it's IAB or CCRB bringing the case. And then ultimately either the department advocate attorneys or, if it comes to APU or the trial judge. And

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Commissioner Maldonado and her judges,
their analysis and their decision and
their recommendations.

So we are relying on all these
subject matter experts to weigh in and
give their professional opinions on,
you know, how these things should be
valued and how they should be
addressed within this framework. And
certainly, you know, reasonable people
can disagree and there will be some
differences of opinion. But we think
on whole, given this framework, it
certainly creates the -- the landscape
and the vehicle to deliver consistent
penalties that are appropriate for the
offense committee.

And again, like I said, we wanted
to describe the whole disciplinary
process, you know, for the external
audience to give people a better
understanding of what that looked
like, generally.

We began this last April. The

1
2 first iteration of penalty guidelines
3 were published on the department
4 website. So we began with domestic
5 violence related offenses. So this is
6 an area that the independent panel
7 looked at specifically. It's also
8 been the subject of recommendations in
9 a recent report from the Commission to
10 Combat Police Corruption. They made
11 some recommendations regarding
12 penalties. So we adopted their
13 recommendations. We adopted the
14 recommendations from the independent
15 panel, and we formulated that into our
16 very first set of public guidelines.
17 And that was published on the NYPD
18 website last April, and it's been in
19 effect ever since.

20 And that was really the spring
21 board for the context and the format
22 for the rest of the penalty
23 guidelines. So that was our first
24 chapter that was developed. And then
25 from there, we then worked on the

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other sections. Force and the other areas, et cetera.

So as the Chair indicated, this has been published. The draft went out on August 31, 2020. There is a public comment period. That remains open through September 30th of this year. People can go online, and I'll put up the web page in a minute. There is a link by which people can click on and they can submit comments. So when you first click on the link, it brings you in to Survey Monkey and there is a freeform text box where you can write a narration of your observations, comments, any recommendations.

That is then followed by -- I mean, it's five questions, survey questions about the matrix itself. You know, we wanted to get a sense of, you know, people's assessment of the matrix in some particular areas. Whether or not they thought the

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penalties were appropriate, whether or not, as written, whether or not it gave them a better understanding of the process, et cetera, et cetera.

People don't have to complete all parts of it. Depending upon how much you write, you can really complete the whole thing in about ten minutes. We encourage people to go online and take a look at it. We do read every one of these as they come in.

There's also the ability to submit a paper. So there's another link you can click on. And we've had -- the Commission to Combat Police Corruption has given us a detailed written analysis of the guidelines. We are going through that now. We've also received written assessments and recommendations from two universities so far. And if we get any additional papers, we will evaluate and consider those as well.

We are also meeting with different

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stakeholders and advocacy groups separately from this online process. So that's ongoing. We expect that we'll get all the recommendations in by September 30th. We will go through them. We will consider every recommendation and then revisit the matrix and then publish the final version. And I say final with some trepidation. January 2021. It will be final at that point, but we also expect that this will be a living document. You know, certainly will evolve over time.

You know, there could be situations where something new arises that we hadn't thought about or in evaluating penalties, we determine that, you know, we need to be stronger in some area, more of a deterrence. So we expect that in the coming years, it will evolve.

And I referenced the website. So if you go to the NYPD website and the

1
2 City's NYC.GOV backslash NYPD, it will
3 bring you to our main page. On the
4 upper right, there's a tab for draft
5 policies. If you go to that tab and
6 click on it, it will bring you to the
7 page where we have the penalty
8 guidelines. And you'll note that it
9 is available both in PDF format. So
10 the PDF version is a PDF document in
11 English. But there's also an HTML
12 link and you can click on HTML and
13 that will open it up in the web
14 browser. And then there's a function
15 in the web browser to translate into
16 another language. So you can open up
17 the document in the HTML link and then
18 click on the translate button and you
19 can translate it into any other
20 language that you need. And then you
21 can click on the link next to it for
22 submitting comments and
23 recommendations through the Survey
24 Monkey website.

25 In addition to this, also on the

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website, from the main page, there's on the carousel, there's a link to discipline. We have a discipline page here. It talks about discipline in the department. There are a number of reports that are available on discipline page. And in the near future, we are going to be expanding this to create a dashboard where you'll be able to get additional information about discipline, members of the department, their histories and trial decisions. That's all coming in the near future. We are working on that now. We expect to have something relatively soon up on this page.

And that is it, of the presentation. I think we are saving questions until the end?

CHAIR DAVIE: That's correct. And -- that's correct. Anything from Deputy Commissioner Schlanger?

DEPUTY COMMISSIONER SCHLANGER: No . Good to go.

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CHAIR DAVIE: All right. So
Yojaira, I think we need to now turn
to our -- to Heather, I guess, is next
on our agenda. Heather Cook.

MS. COOK, ESQ.: Hi. Good
afternoon, everyone. I'm going to
also attempt to share my screen. My
name is Heather Cook. I'm an
Assistant General Counsel at the CCRB.
And I'm just going to go over this --
here we go.

I'm just going to run through a
little bit of an overview of the
disciplinary matrix as it sort of
relates to the CCRB a little bit more
specifically.

So the CCRB actually implemented
our own discipline framework. Back in
2017, we began drafting it. We felt
like we needed sort of a consensus
building tool. We were looking to get
a little bit more consistency and also
a little bit more transparency for
both the public and members of

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service. So we worked on that in 2017, and we implemented it beginning in January of 2018.

It was a very basic framework at the time, and during the year of that pilot program, from January 2018 until January or December 2018, we tracked the fame framework and how it was going. And then we also started working on a build out. What we heard from our board members was that it was good to have this framework and they wanted it to go a little more specific.

What we did is we created this build out in 2019 where we basically looked at every allegation that we -- that we plead. And then we went through it and we also -- as Chief Pontillo said, we also looked at other jurisdictions, Denver, LA, and we saw what they were doing and we adopted that same sort of format. So we did this build out, but before we rolled

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it out, we saw that the Blue Ribbon Commission had issued this report recommending the creation of a discipline matrix. And then in April 2019, we were invited by Chief Pontillo and Commissioner Schlanger to participate as part of this NYPD discipline working group to help develop a matrix.

So we sort of held off on our build out, but we did bring it with us and we shared that with the department, about which way we were going. And we were going sort of in the same direction with kind of presumptive penalties and then aggravating and mitigating factors.

In August of 2020, as you can see, the NYPD issued the draft discipline matrix. While we were part of the working group, we actually didn't see a version of this, though, until it was issued by the department in 2020. As Chief Pontillo said, the matrix was

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organized into eleven categories.
There are three main categories that cover CCRB allegations. And those are force, abuse of authority, discourtesy and offensive language, which is all one, the ADO of our FADO. And then based on the November ballot initiative, we also have false, misleading and inaccurate statements.

Sorry. One second. Okay. The discipline matrix is based on what's called progressive discipline. And progressive discipline is a process of using increasingly greater levels of discipline. When an officer continues to engage in the same misconduct or fails to correct that behavior after being given a reasonable opportunity to do so. So all of the presumptive penalties in this matrix are based on the first incident of misconduct. The assumption is that the officer has no prior misconduct. That's what, in a progressive discipline system, how it

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would work.

So all of these presumptive penalties assume that there's no prior misconduct. So that means that in some of the most serious cases, the matrix -- this matrix does allow for termination, even if that is the officer's first act of misconduct. And you see that specifically, especially in what relates to CCRB, in chokeholds.

Chokeholds interestingly enough in the matrix have been broken out into a number of different categories. So there's chokeholds resulting in death and serious injury; that results in termination upon the first -- the first instance. There's the unauthorized use of deadly physical force. Basically, anything that results in death will be automatic termination, even if it's a first instance of misconduct.

The interesting thing is failing

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to intervene now is also failing to
intervene during the unauthorized use
of deadly force which results in death
will also be a presumptive penalty of
termination. And unauthorized use of
deadly force, even with no injury will
result in termination. So that's sort
of been spelled out really clearly,
that even though it's a progressive
system, which sort of goes step by
step, there are some really serious
allegations that the presumptive
penalty can still be termination.

There was some talk about
aggravating and mitigating factors.
And the matrix breaks it down into
sort of two different categories.
There's general aggravating factors.
And these are things that would come
into play in any case, whether it's a
force case, abuse of authority, a
discourtesy, those are things like
failing to activate your body-worn
camera, the nature and volatility of

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the certain situation. And then there are allegations specific factors.

So this is, for example, in failing to obtain medical attention, one of the aggravating factors would be, there was a readily apparent injury. In a force case, it may be, was there an attempt to deescalate.

And, you know, one of the issues with this, though, it is still -- these factors are still very subjective. Right. So, you know, one board member or the CCRB may say, "You know what, I didn't see any good faith effort to deescalate here," and somebody else may have a different interpretation. What's a readily apparent injury? You know, they're still pretty subjective, those factors.

So the CCRB right now recommends our discipline in terms of the type of discipline. We don't have a say in the amount of what they refer to in

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the matrix as penalty days, which we refer to in the CCRB as vacation days. We don't have the ability to impose the discipline. So we don't give the specific number of days. What we give is the type. And then the department issues the days. So this chart sort of shows you our recommendations and what the equivalent in the matrix would be.

So we have command level instructions and training, which the department does not consider formal discipline. And they specifically say in the matrix that in addition to any other formal discipline, training can also be imposed.

So training and command level instructions would be sort of the equivalent of training in the matrix. A Schedule A command discipline would be anything from a reprimand or zero vacation days through five vacation days. Up to five vacation days. A

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Schedule B command discipline would be anywhere from really a reprimand up to ten days, but the CCRB generally uses it when we believe that something -- that an appropriate penalty would be somewhere between a six and ten-day mark. And then charges and specifications is anything more than ten days.

Now, there's a lot of entries in this matrix with 20 days as a recommended penalty. Twenty days would be consistent with a Schedule C command discipline that we are not allowed to recommend. A Schedule C command discipline is a special form of command discipline that is granted to the Department Advocate only. And there's a bit of an investigative or kind of almost -- I don't want to say almost quasi-judicial piece of it where the Department's Advocate office does a little bit more than just imposing the discipline.

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They do a review of the case itself, and then they can impose up to 20 days of discipline with the Schedule C command discipline. They're the only ones who can do that. The CCRB cannot do that. So anything in this matrix that has a recommendation of more than ten days would be the equivalent of charges and specifications from the CCRB.

So I'm just going to go through the FADO's, hopefully a little quickly to just bring up some high points as it relates to the work that the CCRB does. So force is still defined by -- under the guidelines of the patrol guide Section 221-01. And Again, it's still when it's reasonable, force can be used when it's reasonable to ensure the safety of a member of service or a third person.

And again, this is a little bit more subjective still too, but force

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in general is a bit clearer. You know, there was -- there was an act or there wasn't. There was an injury or there wasn't. It's a little bit more clear than some of the other -- some of the other FADO's.

One of the things that is interesting for us is that deescalation is not required in this matrix. So it's strongly encouraged, but it is not in fact required. And it's when appropriate and consistent with personal safety is sort of the standard. And I'm not -- we're -- you know, in terms of whether or not that's strong enough is something that we need to consider. Deescalation is great because it sort of provides the time, the benefit of the deescalation is it provides the time for other resources to become available, for things to calm down in the scene, for other personnel to get there and for, generally, a safer resolution to an

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incident.

There are 15 enumerated prohibited acts in this matrix. Many of them are FADO's. But one of the other interesting things is that for some of these prohibited acts, it specifies what the discipline recommendation should be. But for others, it's not there. And that leaves a little room. I don't -- I think that's something, you know, that we want to look at in terms of clarification about, you know, if it's a force, if it's a prohibited act of force. And it says, "Members shall not do this," then the presumptive penalty, the assumption would be that the presumptive penalty is termination. However, that's not always necessarily the case.

So for chokeholds, it is broken down into, as I said before, three different types of chokeholds. So it's force prohibited. And chokeholds are broken down into intentional

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chokeholds, which is termination.
Conviction of the crime of chokehold,
which is a recent development. It is
now a crime in New York State for --
for committing a chokehold. That's
also termination.

And then chokeholds resulting in
death, termination. Chokeholds
resulting in serious physical injury,
termination. But then chokeholds
resulting in either physical injury or
no injury do not come with
termination. And so it's a prohibited
act, but it doesn't result in a
presumptive penalty of termination.
It's a substantial penalty. Chokehold
with physical injury is a 30-day
suspension with 30 penalty days, and
dismal probation. Which means the
officer is on probation and at any
time, any form of misconduct or any
issue can cause immediate termination.
And chokeholds with no injury at all,
the presumptive penalty is 30 vacation

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days and dismissal probation. So just something to be aware of, that it's really -- that category has really been broken down in ways that a lot of other categories have not.

Another one that relates to CCRB is any level of force on a handcuffed or otherwise restrained subject. But again, the matrix does not list any presumptive penalty for this. So something to consider. Tying rear cuffed hands to cuffed or restrained ankles or legs. This is also prohibited, but no presumptive penalty is specified in the matrix. Same thing, transporting a civilian faced down, no presumptive penalty.

One of the interesting things about the force presumptive penalties is, they are equal to or greater than what the CCRB framework generally results in. So the lowest penalty in this matrix for a force allegation is a CDA, a Schedule A command

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discipline, which is the equivalent of zero to five vacation days or penalty days. And the only time that that's actually used is in a couple of specific minor use of force without injury categories. Everything else comes with substantive penalties of a Schedule B -- which would be the equivalent of a Schedule B or charges of specifications or higher.

Abuse of authority, discourtesy and offensive language, this is the second category. And this is where the majority of our FADO's lie. This is where our stop, question, frisk, our vehicle searches, our vehicle stops, unlawful entries, interference with recording devices, sexual misconduct, the Right to Know Act, the discourtesy and offensive language section. So this is sort of the bulk of the CCRB allegations.

The intent of the officer now is really explicitly considered. It's

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never sort of been spelled out this way, though. You know, I'm not sure if -- I don't want to go so far as to say that it hasn't been considered this way by the department. We weren't privy to that. But it was never sort of spelled out this way specifically in the patrol guide before, and never been analyzed this clearly based on intent. And it's been broken down into three different types of intent.

So the three standards are whether something was an objectively reasonable mistake of fact or law. And if that comes up in for example a stop or an unlawful entry, then the result is just going to be training. It's not going to be formal discipline based on the matrix.

The second category is an abuse of authority where you knew or should have known, the officer knew or should have known that they were making a

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mistake of fact or law. And then the third is an intentional act or a bad faith conduct. And so, everything now is sort of, in these abuse of authority categories, almost everything is broken down into these three -- especially with the stop, question, and frisk. You know, which is sort of the bulk -- the bulk of the allegations. And the unlawful entries as well, they're really broken down into these three forms of intent.

And the one thing to note is that if it's determined, and again, this is pretty subjective, but if it's determined that the officer committed an objectively reasonable mistake of fact or law, excuse me -- there will be no discipline, no formal discipline. It will just be training will be the recommendation.

There are some other allegations that the CCRB sees a lot of. Things like strip searches. Those are also

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2 broken out. Strip searches, unlawful
3 entries, those are broken out now into
4 procedural or de minimus violations.
5 Versus, you know, either a bad faith
6 or an unlawful or unauthorized action.
7 And this is pretty much still
8 consistent with our CCRB framework
9 that we use. We have deviations that
10 we've been tracking since we started
11 with the matrix and we generally see
12 when something, you know -- even
13 though a strip search or an unlawful
14 entry, generally our presumptive
15 penalty -- what would be the
16 equivalent of our presumptive penalty
17 would be charges based on the nature
18 of those offenses, we do deviate from
19 those -- those recommendations when we
20 see something like, for an example, an
21 unlawful entry for a wellness check as
22 opposed to enter to arrest or to seize
23 evidence.

24 So that is -- that is definitely
25 consistent with what the CCRB has been

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doing. But the allegations are still in stop, question and frisk. They're a little bit higher than what the department has done before. They're ranging for stop, question and frisk between three and 20 days. In the other two categories, the knew or should have known or the bad faith, so you are looking at anything from a Schedule A, C, D to if it's the CCRB charges and specifications. And it has been a while since the CCRB has recommended charges and specifications for stop, question and frisk cases.

So the next category is the false, misleading and inaccurate statements. And this is the newest category to our jurisdiction. We received this pursuant to the November 2019 New York City Charter revision ballot initiative. And so, the CCRB can now investigate the truthfulness of any material statement that is made within the course of the CCRB's investigation

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or a resolution of a complaint by a police officer who is the subject of that complaint.

So we can now investigate and make recommendations on these cases, which before was -- we would refer to the department as other misconduct noted. We would not investigate it ourselves. The issue with this one that we want to highlight is just that there are many exceptions. These are listed in the patrol guide. And we can -- I'll go through them as we get -- get towards the end.

But basically, officers are allowed to retract a false statement and then issue a truthful statement in its place as long as the retraction occurs during the same interview, before the statement has substantially affected the investigation and before the officer is made aware that the fact finder knows the statement is false. The statement must also be

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material. And I'm going to get into what material means in a little bit.

But that means that basically, the officers can make false or misleading statements. And a lot of the times, then be confronted with evidence and there still seems an ability for them to say, "Oh, sorry. Wait, no," and then sort of change -- change their recollection of events.

So I'm just going to go through these because they're so new to the CCRB, I just want to sort of go through each of these categories because they're a little bit different. So the false statement is an intentional statement that a member of service knows to be untrue, which is material to the outcome of an investigation, proceeding or other matter in connection with which the statement is made. For false official statements, the recommendation is termination. And this one is

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basically what we think of when we think of a false official statement. It's sort of like, you know, for lack of a better term, it's the officer comes in and lies, right. And that's -- that's the false official statement. That's sort of the clearest one. And that results in termination. The presumptive penalty is termination.

The big issue with all of these statements is they must be material. The statement must be material. So the patrol guide defines that as a material fact, as a significant fact that a reasonable person would recognize as relevant to or affecting the subject matter of the issue at hand, including any foreseeable consequences or establishment of the elements of some prescribed conduct. So it's basically got to be a fact that is essential to the investigation or to the issue at hand.

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So if somebody comes in and they say something like, you know, if their identity, for example, is not in question and they say, "I was wearing a red hoody that day," and then the -- they see a video and they say, "Oh, I'm sorry, that's me in the blue hoody or the gray hoody." That's not necessarily material because the identification is not at issue in that case. So that wouldn't necessarily be a false statement.

Misleading statements are a little bit different. Misleading statements are statements that are intended to misdirect the fact finder, and they materially alter the narrative or the story. They can do this in three different ways. So intentionally omitting a material fact or facts. An unreasonable "I do not remember" or "I do not know." So this is basically the situation where the memory of the officer is so good on every other

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detail, but then when it comes to this one material fact, they just continue to claim "I do not remember, I do not know," when a reasonable person in that situation would. If it was very recent in time, if there was something very special about it, and they just claim "I don't know, I don't know," or "I don't remember," that would be misleading. Or altering a prior statement when confronted with independent evidence.

So again, this is sort of like, "Okay, well, you said that you were down the street, you weren't present when this occurred," and then the video comes and it says, "Oh yeah, I am -- I was in fact -- in fact there."

The misleading statements are 30 penalty days and dismissal probation. That is the recommendation for that. And then the last one is inaccurate statement. And that's sort of a statement that the member knew or

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should have known includes incorrect information. They don't necessarily have an intent to deceive, it's just their actions are grossly negligent.

And this is a situation where, you know, they're just -- it's just a gross negligent situation. It's like they knew, they should have known that something was -- was incorrect. But they said it any way without even attempting to find out if it was the truth before they said it. And this comes with penalty -- presumptive penalty of only ten penalty days.

The last category here is impeding an investigation. And this is sort of like the -- this is sort of the result, if you will, of making these statements. So it's when making a false, misleading or inaccurate statement or engaging in an impeding action. They failed to produce records, they failed to -- you know, they make it difficult to show up for

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something, an interview or, you know, they try to -- they try to -- to interfere with some portion of the investigation. And impeding an investigation comes with 30 penalty days and dismissal probation. But again, not termination.

One of the biggest factors in a progressive discipline system is the officer history. There's just no way to function in a progressive discipline system where you are saying, "Okay, well, the presumptive penalty is 'X' based on the fact that the officer, the assumption that the officer has no prior disciplinary history," there's no possible way that you can continue in this system if you don't know the number of prior disciplinary events.

And one of the issues in presumptive penalties is that if -- as I said before, it's based on this assumption that the officer has no

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prior discipline. So saying that the officer history is a mitigating factor in any way is a little bit disingenuous to the presumptive penalty, right, because the presumptive penalty is based on that any way. So that's just one thing to think about that officer history and the number of prior disciplinary events should only be really seen as an aggravating factor based on the way this matrix is set up.

Another thing that's considered is the nature and seriousness of the prior event or events. You know, is this something where you have a force case and there were other allegations of force before, or is it something where you have a force case and you have another allegation of, you know, maybe, I don't know, something like -- like clocking out early. I know that's a big issue of stealing time. But in terms of the seriousness of the

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prior offense as it relates to this offense.

So that's something else to consider. Again, an officer history. In a progressive disciplinary system, you have to see if the same misconduct was repeated. You have to see the similarities between the prior and current acts of misconduct. Do you have a street stop in the past. Do you have a vehicle stop now. What are the similarities in a street stop and search and a vehicle stop and search. Or are you looking really at, you know, a street stop and then a discourtesy. What are the similarities in those incidents, right.

That's all part of the officer history. So you really have to know not only what type of misconduct the officer has in their past, but also the details of that misconduct in order to really evaluate how it

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relates in terms of an aggravating or mitigating penalty here.

So the last part of officer history that's important is if there's any patterns of behavior. We look at that at CCRB. I know IAB also looks at that. There's just a couple more, I know I have to speed up.

The officer history, one just important thing is the time lapse between misconduct. There's look-back periods in this matrix. So the most serious allegations, anything that included imposition of 20 or more penalty days or dismissal probation will be -- will not be considered aggravating if it was more than ten years old.

So if something is a very serious allegation, say somebody had a chokehold, so they got 30 days vacation penalty ten years ago and now it's ten years in one day, that's not going to be considered. If it's 20 or

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30 more penalty days, just in general, no dismissal probation, it's not going to be an aggravating factor if it was adjudicated more than five years in the past.

So it's interesting that the less severe penalties don't seem to have this look-back period. But the more serious penalties have this look-back period that's going to invalidate them. So it's something -- another thing that we want to think about moving forward.

So moving forward, one of the things -- you know, the CCRB is going to have to look at a few things. As I've mentioned throughout this presentation, there's just no way to do this to fully participate in a progressive disciplinary system without having the officer's disciplinary record. A full disciplinary record to know what the prior misconduct was, what it

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involved, what the facts were. So the CCRB is going to need the CPI, the officer's personnel file, or some very detailed other option that gives us all that information, and we are going to need it at the Board stage, at the time the Board is evaluating these cases to make a proper recommendation.

There are a couple things in the matrix that are a little confusing. One of the things that comes up a lot for the CCRB is when trying to determine if we should recommend training for an officer. We have no idea what that means. So when there's a penalty in the matrix and it says, "The officer will receive training for a stop, question and frisk violation," what does that mean? Does that mean that it's going to be -- does that mean it's going to be a day at the academy, does that mean it's going to be, you know, at the command, at One PP, in the Legal Department. These

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are all specific things that we need to know.

Concurrent and consecutive penalties, we are going to need clarification on if there are multiple allegations for an officer. If they're going to run concurrent or consecutive. There was a paragraph about justification that just was at the end of the four section. It wasn't aggravating, it wasn't mitigating, it was sort of just plopped down just as justification. And it was -- all it was was the New York Penal Law definition of justification. We're not really sure where that fits in.

The Right to Know Act, it was specified in terms of failure to give a business card. But it's unclear how the Right to Know Act provisions about getting consent to search or to enter are going to be treated. And then if this document is going to be like the

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patrol guide where it's going to be continuously updated, then we are going to need continuous and timely access to that.

Just a few other -- a few other additional issues. In order for this to have the transparency and uniformity that the matrix is going for, any deviations from presumptive penalties really need to be in writing. The Charter mandates that for the -- any deviation from CCRB recommendations, so that we know why the department is deviating from our recommendation. The officers and the public, the complainant should also know if there's any deviation from a presumptive penalty, which aggravating and mitigating factors were considered and how were they weighed in order to make sure this discipline is still being imposed uniformly and fairly.

There's no mention specifically of taser use at all here, which concerns

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the CCRB. We've put out taser reports in the past. We have serious concerns about taser use, and we'd like to see, you know, there's -- it's very important that tasers themselves be addressed in some way.

Body-worn cameras are very important to our investigations. We use them heavily in our investigations. They're an aggravating factor for a lot of FADO's. And the presumptive penalties here are pretty low and don't seem to really encourage compliance with the policies that the department is trying to advance to have the officers using their BWC responsibly and correctly.

Discourtesy and offensive language are defined in general terms, but there's no guidance when something could be considered both, which we see in certain terms.

And then the last one is very important for our complainants. One

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of the mitigating factors for an officer is, there is sort of this conflation of the availability of a witness and credibility of a witness. And there are a number of different reasons that we found in the CCRB, through our investigations and through our work, that would make a civilian unavailable. You know, there are housing and security issues, where in the beginning of a complaint, our -- you know, our civilian has -- has a place where they're living, they become homeless during the process. It doesn't make them any less credible. It just makes them a little difficult to find, but it doesn't make them any less credible or mean that the misconduct didn't happen.

There are child care issues, there are work issues, people can't leave. So, you know, making that a mitigating factor brings up a lot of concerns that we see, especially with our

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civilian population.

So I know that was a little quick in the end. I apologize. It was a lot of information to go through. But I hope it was helpful and a bit informative.

CHAIR DAVIE: Thank you, Heather. And we are going to wait on the questions until after the public comments. So we'll go now to public comment. And I want to ask Yojaira, she will lead us through this. I want to remind the public that there's a two-minute limit on public comment. And so Yojaira, will you call the first person to speak.

MS. ALVAREZ: First, we'll be hearing from Councilman Donovan Richards.

CHAIR DAVIE: Welcome, Councilmember.

MR. RICHARDS: Fred, it's so good to see you. Each and every one. I want to thank the CCRB for your

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continued work and partnership and strengthening our relationship in terms of building trust with the public and ensuring that there is accountability when it comes to policing in New York City.

I'm going to be brief, but I just wanted to stop in to say I certainly agree with many of the things you spoke of today. That this matrix in which we pass legislation on is certainly a step in the right direction. Without a doubt, it is. But we have a long way to go. I really urge the public to really take advantage of this moment. You know, the legislation we pass requires the police department to take into account public comments. So this is your moment to do that.

Let me also just point out, and you know, I just want to be clear that although this is a step in the right direction, that I solely still

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believe, and many people believe, in the work that we do each and every day, that the sole discretion of decision making should not solely lie in the Police Commissioner's hand.

So I want to be clear on that. That although this is a step in the right direction, that the Police Commissioner holds a whole lot of power when it comes to disciplining officers. And we believe there should be an independent entity. The CCRB should be a part of that to ensure that whenever punishment is dealt, that there's more transparency and accountability around that.

So we are going to hear a lot more, obviously. And the Council, I think we will also do some work or host a hearing on this as well as we get closer to finalizing -- the public gets finalized -- finishes finalizing their comments. But it's very clear that body camera footage, tasers, as

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you mentioned, all of these things that have not been accounted for need to be accounted for in this matrix as well.

And I will also add that we need to make sure that the CCRB is fully funded and that you have the tools necessary to carry out the investigations that need to happen and that, you know, you have a more of a leveled playing field. And I look forward to working with our state partners. I know that there are some folks in Albany who are also interested in making sure that you have more tools in the toolbox to hold the police accountable.

As I always say, none of us are anti-police. But we are -- for fair policing in our communities -- we are for ensuring that those who dishonor the badge are held accountable. And the only way during this moment in history to ensure that as we see what

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people are marching on the streets for, accountability actually happens, is to ensure that there's more transparency in the disciplinary process.

And I think this is a step in ensuring that will happen. This is probably one of the most important bills, I think, we've passed in the Council. It was sort of swept under the rug, but we knew that this was one of those moments, groundbreaking moments actually where we could sort of push the department in a different direction in being more accountable to the public.

So I look forward to working with you all. I want to thank you for the important work that you do, and you can look forward to me, as long as I'm around. Now, you've got me for a few more months in being a steadfast partner with the CCRB and beyond that. I don't think my work ends even

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leaving the Council. We have a lot of work to make sure that everybody is responsible here and that the police department is responsible to the taxpayers who pay their salaries as well.

So thank you, Fred. Thank you for the staff. Thank you for all that you do. I know it's a thankless job. But you are really going to make this City safer. The way you make the City safer is through good policing, through partnership and by making sure that we have the best and the brightest on the force who respect every community across the City. So thank you, Fred.

CHAIR DAVIE: Thank you. And we continued to appreciate your leadership, your support of improving police community relation, your support of civilian oversight, transparency and accountability. And we will make good use of the time that

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you have on the Council, and we know you are not going far as a Queens resident. I'm here now. I know where you'll be. So we'll come looking for you. But thank you for all your support.

MR. RICHARDS: And feel free to use Borough Hall, too.

CHAIR DAVIE: Thank you.

MR. RICHARDS: All righty.

CHAIR DAVIE: Thanks. Yojaira, our next speaker.

MS. ALVAREZ: Next, we'll be hearing from First Deputy Public advocate, Nick Smith.

CHAIR DAVIE: Welcome, Nick. Nick, you might be on mute.

MR. SMITH: Can you hear me now?

CHAIR DAVIE: Yes.

MR. SMITH: I sometimes have tech issues. So thank you, Fred.

It's good to see you all. I'm Nick Smith, First Deputy Public Advocate representing our Cities

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Public Advocate, Jumaane Williams. If you bear with me, I just want to read a statement on his behalf. Make sure we get it on the record.

"We want to thank the members of the CCRB for inviting New Yorkers to submit their thoughts on police accountability and the proposed matrix at a time when our communities have witnessed, week after week, troubling and systemic problems of police misconduct, not only here but across the nation. The Public Advocate's office is charged with acting as an ombus person for all residents of the City, serving as a connected link between the residents and their government. We applaud the CCRB for the steps taken to enlist feedback from the public, particularly under existing restraints.

As the government agency charged with investigating, mediating and prosecuting complaints of misconduct

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on the part of the PD, the CCRB must continue to incorporate the feedback of the public. And as the public safety Chair mentioned, be funded and fully funded.

All across the country, calls for a more just and equitable policing system are being highlighted. We appreciate that New York City's Mayor and Commissioner are joining us in listening to the community to develop this matrix. However, it was the council that really pushed this forward, with the public safety Chair, Donovan Richardson. So we thank the public safety Chair for his work and the Council's work.

While advocates have long called for these changes, it cannot be more important to build trust and safety for all of our communities in this moment. Ensuring better policing and safe streets at the same time is an attainable goal. These past few

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months have been very hard for New Yorkers experiencing this COVID-19 pandemic. Sadly, communities of color have had to simultaneously deal with the disproportionate impact of COVID and excessive policing and enforcement of new orders" --

I think my video wasn't on -- my apologies. Was not on. It's okay. I'll keep -- keep going. Sorry about that.

"We have also seen questionable use of force in protests during Black Lives Matter over the last few months. For these reasons, my offices proposes the following," pardon me for tripping up there.

"First, although the admin code gives the Police Commissioner discretion in determining whether or not a police officer has violated the rules established in the patrol guide, we have seen several instances where the Police Commissioner has determined

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that the PD's -- PD officer actions against protesters were not in violation of PD guidelines. We recommend that the Police Commissioner in accordance with Section 14-115 of the Civil Service Code, in addition to determining whether a police officer has violated the rules also determines whether the actions of said officer has, per the law, engaged in a, quote, conduct injurious to the public peace or welfare, or immoral conduct or conduct unbecoming of an officer.

For example, using an NYPD car to run over protesters may be immoral, even if it did not technically violate the use of force guidelines.

Similarly, an officer seen pummeling a homeless man on the subway station would constitute an immoral act; yet, according to the Commissioner, will likely only result in more training.

This is important because we know that not all police conduct these past

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few months have been advantageous to the welfare of the public, or becoming of an officer. But were ruled to have not violated police guidelines, particularly the use of force guidelines.

The rules established in the police patrol guide will mean very little if the rules allow for immoral or injurious conduct with no penalties. Additionally, as the recent NYCLU Database has shown us, accusations of police misconduct occur throughout all ranks within the police department. I must therefore recommend that regardless of rank, all officers within the probation period, depending on their misconduct, such as criminal mischief or activity, be susceptible to termination to the occasion called for it. It is not enough that, for example, a sergeant who engages in certain domestic violence incidents would, during

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probation, only be demoted.

I want to also note that the database indicates that officers who were found to have violated minor guidelines, like dress codes and timeliness, received harsher punishments than those with more severe violations. Finally, I'd be remised if I didn't acknowledge that all of the written aggravating factors should and must always include vulnerable populations who often fall victim to police misconduct in a unique way, correlated with their identity.

The NYPD discipline guidelines must be specific in ensuring that aggravating factors include misconduct against our aging, disabled, LGBTQIA plus and trans and gender-nonconforming communities and those who live within these intersections are intentionally outlined in the matrix.

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A consistent finding in the Floyd Monitor Report includes the astounding fact that the PD has consistently substantiated zero instances of bias policing on the basis of race.

These lacking substantiating claims are not just indicative of a refusal to come to terms with racial bias policing, but how about the fact that New Yorkers living at the intersection of these identities may experience bias policing that's not in the matrix. We recommend explicitly naming instances of these biases, including but not limited to misgendering and deadnaming of our transgender New Yorkers and failing to provide necessary accommodations in police interactions with our aging and disabled communities.

I want to thank again the CCRB for conducting this public comment period, and I hope that moving forward, we will continue to -- our efforts to

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publish when officers have been disciplined in accordance with this guideline so there are checks and balances in holding the PD accountable."

Thank you very much.

CHAIR DAVIE: Thank you, Nick. So we are going to hear from one additional public official. And then we'll go to community comments.

So Yojaira.

MS. ALVAREZ: We'll be hearing from Sabrina Rezzy, Director of Communication and Legislation for Assemblymember Bichotte.

MS. REZZY: Hi. Thank you, Yojaira. Can you guys hear me?

CHAIR DAVIE: Yes, we can. Please proceed.

MS. REZZY: I think my camera is off. Yeah, good afternoon. I'm Sabrina Rezzy, the Director of Communications for assemblymember Rodneyse Bichotte. Thank you, Chair

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Davies, members of the Board, Chief Pontillo, Council Member Richards, the public advocate and all the other elected officials who are here with us today. Assemblymember Bichotte submitted testimony for today's hearing, and I will just briefly summarize that on her behalf today.

I think Heather spoke about some of this during her presentation about officer history. The deep-seeded need for police reform has been brought to the forefront of our agenda by recent events. The mission of the CCRB to oversee the NYPD and review civilian complaints of misconduct is one we need to fulfill today more than ever so that police community relations can be healed.

I thank you for your efforts to see that through and ensure justice is netted out. I believe the matrix needs to include -- to include a mechanism for collecting data on

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racial profiling and to require police officers to identify themselves to the public and impose a penalty deemed appropriate by the CCRB for those that do not comply.

One goal of the matrix is to increase public transparency, but when there is no data, there's no transparency. Racial profiling is punishable by termination under the matrix, but there is currently no requirement that officers collect data on the race of each and every person that is stopped by the police. The fact that the data is limited hinders the Board's ability to effectively review complaints and make a determination in cases of racial profiling because the Board cannot truly see which officers are using race as a determination of who gets stopped.

We also saw during the protests this summer that many officers were

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hiding their badge numbers. I believe we need to require police officers to identify themselves, and I encourage the CCRB and NYPD to consider adding a penalty for officers that obscure their badges. Officers who obscure their badge numbers hinder the heart of the CCRB's mission, and I fear that may be the intent. It is very difficult for citizens to file complaints when they believe there has been officer misconduct if they have no way of identifying the officer involved in their case.

If formal measures are not taken to prevent this from happening, it will reflect badly on the entire department. As Councilmember Richards mentioned, in the Assembly, we have sponsored legislation that would help to correct these inequities in policing. And I encourage the CCRB and NYPD to consider incorporating them into the disciplinary system

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penalty guidelines as well.

I truly believe that if we work together, we can build better community police relations, and I just want to thank everybody again for being here today and allowing this testimony. So thank you.

CHAIR DAVIE: Thank you, Sabrina. We'll now go to community testimony. I'll remind -- that you are --

(Technical interruption.)

CHAIR DAVIE: -- we'll get through as many speakers as possible. And then get to some questions on the other -- so Yojaira, will you call our first speaker.

MS. ALVAREZ: We'll be hearing from Jennvine Wong, Staff Attorney at the Cop Accountability Project at the Legal Aid Society.

CHAIR DAVIE: Jennvine Wong, please go ahead. Make sure you are unmuted.

MS. WONG, ESQ.: Hi, can you hear

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me?

CHAIR DAVIE: Yes, we can. Please proceed.

MS. WONG, ESQ.: Thank you very much. Thank you board members, elected officials, members of the public for the opportunity to provide testimony on the NYPD proposed disciplinary matrix. The Legal Aid Society is the primary defender of low income New Yorkers prosecuted in the State Court System. And the Cop Accountability Project works to improve police accountability and transparency through litigation and advocacy.

So it is in this capacity and through our role as counsel in several civil rights cases, that we are in a unique position to testify about the draft disciplinary matrix today.

We at Legal Aid question whether any disciplinary matrix can bring any form of procedural or substantive

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2 justice to the NYPD's disciplinary
3 system. A disciplinary matrix alone
4 will not address the many documented
5 issues with the disciplinary process
6 itself. And Legal Aid has long called
7 for the City's civilian oversight
8 agency to play an active role in
9 officer discipline. And we continue
10 to urge elected officials to
11 significantly strengthen the oversight
12 role of the CCRB and the OIG.

13 NYPD disciplinary matters should
14 also be moved to an independent and
15 impartial agency, bringing it in line
16 with the system used for adjudicating
17 discipline for nearly every other New
18 York City employee. However, to the
19 extent that this matrix can improve
20 upon the current system, even in a
21 world where the NYPD retains internal
22 control over disciplinary decisions,
23 the current proposed matrix will fail
24 to accomplish that goal.

25 First, the vagueness set forth in

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the proposed matrix failed to ensure true consistency and transparency. And it makes no tangible effort to reign in the Police Commissioner of unchallenged discretion over discipline. An effective disciplinary matrix should include, in addition to presumptive penalties, a schedule for progressive discipline, which includes the minimum penalty for conduct with mitigating factors, and a maximum penalty for misconduct with aggravating factors.

As it is currently proposed, there is an overly encompassing list of aggravating and mitigating factors that can far too easily justify arbitrary departures from the presumptive penalty. Other police department agencies include a schedule of progressive penalties, including Denver, Tucson and Vancouver, just to name a few. The list of aggravating and mitigating factors is so

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voluminous that it is to the point of failure to create any meaningful constraint on the discretion -- on indiscretion and it is riddled with confusing and potentially irrational factors.

For example, the draft matrix confusingly identified knowledge training and experience as both an aggravating and a mitigating factor. The inclusion of this background both listed is inherently contradictory and does not detail how and when it may be applied in one way or another.

This is just one example of several troubling factors included in the draft matrix. Second, this proposal also misses crucial opportunity to reflect best practices and address longstanding concern. For example, when the draft affirm an officer's duty to intervene in excessive force, it also fails to effectively promote active

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bystandership by establishing penalties for failing to intervene in non-force related misconduct.

Another important factor is the manner in which use of force violations are handled. This draft matrix outlines penalties based on the outcome of the use of force rather than the propriety of the force applied in any particular situation. The propriety of the use of force should be a primary consideration, with bodily outcome such as injury or death serving as aggravating factors as should the failure to deescalate the aggravating factor.

Nonetheless, officers that use excessive force are afforded overly broad deference by underlying NYPD policies which has long imputed accountability effort. What I have named are just merely a few examples that I'm choosing to highlight today. We have identified several other

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additional issues in our written testimony that we have submitted to the CCRB.

Ultimately, too much discretion remains vested with the Police Commissioner, allowing for deviations from the presumptive penalties, even in instances where findings of misconduct are substantiated. And there remains numerous fundamental deficiencies with the NYPD's practices and policies that cannot be adequately addressed with the disciplinary matrix alone.

We continue to urge the City for greater transparency and accountability through more robust external oversight by significantly strengthening the independent oversight roles of the CCRB and the OIG. Thank you for the opportunity to testify today.

CHAIR DAVIE: Thank you, Jennvine. Yojaira, our next speaker, please.

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MS. ALVAREZ: Next, we'll be hearing from Darius Charney, Senior Staff Attorney at the Center for Constitutional Rights.

MR. CHARNEY, ESQ.: Can you hear me?

CHAIR DAVIE: Yes, we can.

MR. CHARNEY, ESQ.: Okay. Thank you. First of all, I'd like to thank the Chair, the Board and Yojaira as well for inviting me to testify today. And to share my organization's, The Center for Constitutional Rights comments on the proposed NYPD disciplinary matrix.

First off, I'd like to just mention that for, you know, more than two decades, CCR in close collaboration with our grassroots partners in the New York City Police Accountability Movement, has worked to challenge abusive and discriminatory practices in the NYPD and to push for a police department that is more

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transparent and accountable for the people of New York City.

You know, we've taken part in legislative campaigns to pass the Community Safety and Right to Know Acts in the City Council, and were recently involved in the successful statewide campaign to repeal a New York Civil Rights Law 50(a). We've also served for the last 12 years as lead plaintiff's counsel in Floyd versus City of New York, Federal Class Action lawsuit that successfully challenged the NYPD's racially and discriminatory and unconstitutional stop and frisk practices, which has resulted in federal court injunction requiring, among other things, for the NYPD to change and improve its procedures for disciplining officers found by the CCRB to have committed misconduct during pedestrian Terry stops.

Now, I resubmitted written

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testimony, and I'm just going to kind of highlight a couple of the points in there because I know my time is short. Some of these have already been touched upon by the excellent presentations of Jennvine and Heather and others. I just want to elaborate a little more on a couple of them.

The first being the use of -- I guess an officer's lack of or low level of prior disciplinary history as a mitigating factor. As I think was mentioned by Heather earlier, that really does not make any sense in a progressive discipline matrix in which the presumptive penalty is for the first offense. So to have a -- to then have a lack of prior history as a mitigating factor really wouldn't work with that kind of system.

Moreover, I think it's important to note that all members of service of the NYPD are already duty bound to comply with the patrol guide and all

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the department policies, and to treat all civilians with courtesy, professionalism and respect. Therefore, the members of service should not be afforded special treatment for doing what are already mandatory requirements of their jobs.

Another concern we have about some of the mitigating factors are factors which seem to focus on and place the blame on the characteristics or behaviors of the civilian who is the victim of the misconduct rather than on the subject officer. For example, there is listed as mitigating factors whether or not the civilian was intoxicated, whether or not they were using rude or hostile language. And these kinds of mitigating factors we feel set really a dangerous precedent and shifts the focus away from the officer who is duty-bound to behave properly and professionally in all circumstances and should be held to a

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higher standard of conduct, given their immense power over civilians.

Another concern that we did have that we wanted to flag goes to the use of, I guess, training as the presumptive penalty for stops, frisks, searches and seizures which are based on a, quote, objectively reasonable mistake of fact or law. Now, that term, objectively reasonable mistake of fact or law is not defined anywhere in the matrix. Moreover, to those of us who practice civil rights and police misconduct law, it is a very infamous term. It comes from the federal court-created document of qualified immunity.

And as those of us who have been working on policing and civil rights issues for many years know, qualified immunity is one of, if not the single biggest obstacle to really achieving accountability for police misconduct and unconstitutional behavior.

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Therefore, we don't really think that the NYPD should be in the business of using a standard that has been an obstacle to accountability as part of its disciplinary system.

Moreover, in the use discourtesy and offensive language section of the matrix, listed amongst the mitigating factors are reasonable and good faith mistakes of law. So having these then also be penalty categories is really redundant and unnecessary. We recommend that those penalty categories involving objectively reasonable mistakes of fact or law be removed, and that training not be a presumptive penalty for improper stops. But rather only be used in the rare circumstances where there is a mitigating factor that would warrant it.

And last, I think -- just want to mention on the penalties for body camera violations, which I think

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Heather also alluded to. And not only are the penalties we think not, I guess, strong enough or strict enough, but there are not enough violations which seem to be covered by the matrix. And I'll give two examples.

One is a situation which I think we have encountered over and over again, which we believe the CCRB also is familiar with, which is an officer recording an incident but either turning the camera on too late or turning it off too early so that the incident is not fully captured. That seems to be really a common and frankly epidemic problem amongst the department. And so there should be a separate penalty category for that.

And then similarly, there's a really widespread problem with officers failing to categorize videos. This is important because it then makes it much more difficult, both for internal NYPD supervisors as well as

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other investigators to locate videos after the fact when they're either investigating or reviewing an incident. So that also should be a category of penalty that is factored into this matrix.

At this point, I think I'll just, again, point to our written testimony and thank the Board for allowing me to speak today. And look forward to the NYPD incorporating and hopefully improving upon the matrix that is published in January. Thank you.

CHAIR DAVIE: Thank you, Darius. Yojaira for our next speaker, please.

MS. ALVAREZ: Next, we'll be hearing from Michael Sisitzky. I apologize, Michael. Lead Policy Counsel at New York Civil Liberties Union.

MR. SISITZKY, ESQ.: Hi, can you hear me?

CHAIR DAVIE: Yes, we can.

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MR. SISITZKY, ESQ.: So good evening. My name is Michael Sisitzky, Lead Policy Counsel at the NYCLU. I'll try to keep this super brief and in part because my colleague at Legal Aid Society and CCR captured a lot of our shared feedback on this disciplinary matrix.

The NYCLU has historically called for the implementation of a disciplinary matrix. But it's really important to note at the outset that just having a set of guidelines is not enough. And that's because at the end of the day, the usefulness of these guidelines is only as strong as the NYPD's willingness to implement them fully and fairly. And we've seen time and time again that the NYPD is fundamentally unwilling to police itself and hold itself to the standards that they purport to hold themselves to.

So we mentioned that several

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2 points throughout the proposed matrix
3 is the fact that at the end of the
4 day, it's the Police Commissioner who
5 has -- is the only one with explicit
6 authority to make final disciplinary
7 decisions. And -- but what this
8 proposed matrix fails to do is inspire
9 confidence that those final decisions
10 are going to be made with any
11 consistency, nor any real sense that
12 the incredible amount of discretion
13 that the Commissioner carries is going
14 to be meaningfully constrained in any
15 way by the guidelines in this matrix.
16 Instead, we have these presumptive
17 penalties coupled with long, vagueless
18 of aggravating and mitigating factors
19 and no real process of how those
20 factors interact with each other, how
21 they're balanced against each other,
22 what the process is, what the
23 standards the Commissioner or other
24 decision makers within the department
25 are going to use in reaching those

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final outcomes. And the matrix is incomplete without that analysis.

So there's a few examples of categories where there is a presumptive aggravating penalty range that's spelled out in the matrix in the context of DWI incidents, domestic violence incidents. But we don't know when all of the other categories that are like out in the matrix, what the department views as the appropriate additional penalty as an aggravating factor in use of force cases and abuse of authority cases. And we don't know what they view as an appropriate range of mitigating penalties. Because they don't list that out anywhere in this matrix.

So it's incomplete without the ability to see what the department views as the appropriate modification to the presumptive penalty -- or the presumptive penalties that they list out in this document.

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And I think the -- another point we wanted to raise was that, you know, we caution the CCRB from really embracing this as the feeling on what they recommend in terms of charges and recommendations that they make with respect to discipline. You know, we understand that the CCRB obviously doesn't recommend penalties in the same way as laid out in this matrix. But we encourage the agency to not feel bound by what we view as too low a threshold of appropriate discipline in these categories.

And on that point, I think the last thing I'll say in closing is, we hope that there's a real commitment from the NYPD to engage in this public comment process. Not just to check off public input received docks before they put out the final policy. But to really internalize and sit with the recommendations that are coming from the communities that are most impacted

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by police violence and police misconduct.

And if the comments come in, as I expect they will, that the penalties laid out in this matrix are too low, are not adequately reflective of concerns that officers are not being held adequately accountable when they abuse New Yorkers, then we need to see a real commitment from the department to update the matrix accordingly and impose the proper penalties that community members demand.

And with that, thank you for inviting me to testify.

CHAIR DAVIE: Thank you, Michael. Yojaira, our next speaker.

MS. ALVAREZ: Next, we'll be hearing from Jordan Wouk followed by Stefani Zinerman.

MR. WOUK: Am I unmuted?

CHAIR DAVIE: Yes, you are, Jordan. Please go ahead.

MR. WOUK: Thank you very much. A

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process question, in the case of federal regulations, the comments received and the agency's responses including rationale are published, listening to what the police describe that may not be happening. It's another part of transparency that help the public understand why comments were or were not adopted. I hope that the NYPD will follow this approach and that prior to the release of the final matrix, they will explain why they did or did not adopt certain comments.

That's my most important -- sorry I can't take five minutes today. Thank you.

CHAIR DAVIE: Thank you, Jordan. We accept this time given back to us. Our next speaker, please, Yojaira.

MS. ALVAREZ: Next, we'll be hearing from Stefani Zinerman followed by Michael Collins.

CHAIR DAVIE: Speaker, make sure you are off mute.

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MS. ZINERMAN: Okay. Thank you.
Good evening, Chair Davie and the Board. Thank you for holding this very important hearing this evening. For the two minutes, I'd like to focus on four areas, and then I will submit at a later date a written testimony and analysis of what I've read.

First, I'd just like to say with regard to training, training is not a penalty. Training is -- training is what employers are required to do to ensure that their employees are fulfilling the mission of an organization. And so to list training as a penalty in a document is not something that I can support and -- (audio interruption) -- to be listed.

So I would like to just focus in on stop and frisk, chokehold area, sexual misconduct, failure and refusal to obtain medical assistance. With regard to stop and frisk, and I think that Attorney Cook spoke to this issue

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as well, the stop and frisk is now requirement -- it is -- it is not something that we should try to parse out --

(Audio interruption.)

MS. ZINERMAN: I'm sorry. Can -- am I clear?

CHAIR DAVIE: There's a lot of feedback.

MS. ZINERMAN: Yes. I'm in transit. Is that better?

CHAIR DAVIE: So please go ahead.

MS. ZINERMAN: Okay. With regard to stop and frisk, that entire area I believe should not be parsed out the way that it is, and should include seven days of actual -- of actual suspension. And in addition to the penalty days, there was no suspension listed in that area. And given that that is now the policy going forward, it should include suspension if it is violated.

With regard to the chokehold bill,

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again, with regard to training as a penalty, it cannot be -- that cannot be used as a penalty. The chokehold is something that we've seen over and over again, and it has resulted in death and in injury. Everyone knows it on the street, even from the youngest student, that chokeholds are -- is not an acceptable policy. So anyone who is on the force should be well aware that they should not use it, and that we should punish people accordingly when they do.

With regard to sexual misconduct, there definitely needs to be a suspension from the force if officers are found to have violated or -- or had any inappropriate conduct. Again, officers are there to protect and serve our community. And if they are -- if they have come to the force undetected as sexual predators, it is up to the force to remove them from the public so that they do no harm.

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And finally, failure or refusal to obtain medical assistance, again, that should come with a suspension.

Everyone knows that if someone is in need in the City, it is our responsibility to call 9-1-1. To think that a police officer would not call 9-1-1 when someone was in need of medical assistance or requested it, is -- is something that we must address. And the only way to deter people from violating that kind of basic human response to someone in need is to make sure that they're suspended and that there's a penalty that is worthy of what I think when you deny someone health care. You need to ensure that others know that that is something that we won't tolerate.

So thank you for the opportunity to testify. And as before, I will submit a written testimony.

CHAIR DAVIE: Thank you,

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Ms. Zinerman. Thank you.

Yojaira for our next speaker,
please.

MS. ALVAREZ: Next, we'll be
hearing from Michael Collins followed
by Darlene Jackson. And that will
conclude the public comment.

CHAIR DAVIE: Go ahead, speaker.
I think you might be muted. Michael
Collins?

(No response.)

CHAIR DAVIE: All right, Yojaira,
let's turn to our next speaker, then,
and we'll come back if he's still on.

MS. ALVAREZ: Next, we'll be
hearing from Darlene Jackson.

MS. JACKSON: I'm sorry, can you
guys hear me?

CHAIR DAVIE: Yes, we can. Please
proceed.

MS. JACKSON: So hi, my name is
Darlene Jackson. So I have more of a
question for a point of clarity with
this new disciplinary matrix and how

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would that apply to un-uniformed officers. Because from my understanding, I was hoping that Donovan Richards was still going to be on the call. He may have the answer to this.

How would that apply to plain clothes officers, which I was under the assumption that that unit was disbanded by the City. But you still have officers that's on foot that are still racially profiling and they're still enforcing stop and frisk and they're not applying the Right to Know Act.

And I'm saying this because just 30 days ago, my 17 teen-year-old son was stopped and frisked, illegally searched by three plain clothes officers for allegedly fitting the description of somebody they was looking for.

So I'm wondering how is this new disciplinary matrix is going to apply,

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how is it going to be enforced and what would the oversight even look like? Because we already -- stop and frisk was allegedly stopped. The Right to Know was allegedly passed in City council, but yet, it has yet to be enforced. You still have police officers that on the street that's doing illegal practices.

So I want to know how is this new matrix going to be any different, the Board -- how is the Board going to ensure that these folks are going to be held accountable?

CHAIR DAVIE: And we'll get to -- we'll get to all those questions and issues as this process goes forward. Thank you for your comments.

Yojaira, do we have any other speakers?

MS. ALVAREZ: So --

(Audio interruption.)

CHAIR DAVIE: Anyone want to raise their hand using the raise your hand

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feature WebEx?

MS. ALVAREZ: So next, we'll be hearing from -- we'll try Michael Collins again. And I misspoke. The final speaker that we have using the raise the hand function is Ranette Releford.

CHAIR DAVIE: Great. So Michael Collins, are you there?

(No response.)

CHAIR DAVIE: Are you off mute?

(No response.)

CHAIR DAVIE: So I think there's clearly some technical difficulties there.

And so who's the next speaker, Yojaira?

MS. ALVAREZ: We'll conclude the public comment section with Ranette Releford.

MS. RELEFORD: Thank you. Hello. My name is Ranette Releford, and I'm the administrator for the Citizen Review Board for the City of Syracuse,

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and I wanted to take the time to, one, appreciate everything that has been said previously. And I would offer a ditto. Most of the people that spoke before me in terms of the officials and community agencies have basically dictated some of the things that I wanted to say. And I wanted to continue to, again, encourage the CCRB to continue doing the work and continue to provide as much input as possible with regard to the rules and regulations.

We are looking at what you are doing down there in New York City as a way to continue the fight here in Syracuse. We have been recommending a disciplinary matrix for several years and watching and watching how this plays out is going to give us more of a leg out when we continue to fight the same thing.

So I encourage you to continue doing what you are doing and --

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because we are all watching. So it's going to trickle from you downstate. So we are watching so thank you so much. And all the comments were right on point for my concerns. Thank you.

CHAIR DAVIE: Thank you. So now we are going to go into questions from the Board members.

MR. DARCHE: Mr. Chair, is it okay if I address one of questions that one of the speakers had?

CHAIR DAVIE: Okay. Go ahead.

MR. DARCHE: I'd just like to point out that the CCRB has jurisdiction over plain clothes officers. And that even though the anti crime teams have been disbanded, there are still plain clothes officers in the NYPD.

And if people feel that they have been the victims of misconduct at the hands of a member of the NYPD, whether they're in uniform or in plain clothes, they should file a complaint

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with the CCRB. You can call 3-1-1, you can call our hotline, you can file a complaint online. And the -- the patrol guide that we use to determine whether or not an officer committed misconduct is separate for this matrix.

The matrix for -- once we determine misconduct occurs, to govern the penalty that is given to the members of service. Just because the matrix exists doesn't mean that there was misconduct. The CCRB needs to conduct an investigation, present evidence to the Board and then let the Board make a determination.

CHAIR DAVIE: John, while we -- so while you have the floor, one of the questions I was going to ask, I think it might be helpful for the public to know, what process we are proposing at least right now for the Board to use or the agency to use to bring the CCRB's framework in line with whatever

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the final matrix is that the NYPD produces.

MR. DARCHE: So I think you can see from the presence of Chief Pontillo and Deputy Commissioner Schlanger, that we've been working closely with the department, letting them know the issues that we have that we think need to be flushed out more so that we can better -- better coordinate our discipline recommendation with the matrix.

But I think one of the things that we are going to have to work out in order for the Board to effectively recommend discipline is to either have access to the CPI or more likely a summary of an employment history and time that the Board is making a determination on discipline. Right now, we receive some employment history basis and in many cases, that is going to be too late for the Board to have used it to make a

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determination about the appropriate level of discipline.

CHAIR DAVIE: Let me ask one other question, and then I'll yield the floor.

Maybe this is for Heather. Under the Schedule C of command discipline, which of course we don't have, charges and specifications, I just wonder, are there any infractions under that schedule that would not be eligible for the CCRB's charges and specifications? That was for Heather. And Heather, you are on mute.

MS. COOK, ESQ.: Sorry. I just came back.

So there's nothing that would not -- in terms of you asking, the ones that are 20 days now, are any of those not what we would consider charges and specifications under the current framework, right? No. Everything -- almost everything would be charges and specifications. There

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may be one or two minor. Something like intervening -- interfering with a recording device is now 20 days. That's not something we generally give 20 days for. But everything that we currently give, charges and specifications for is covered under 20 days or more in the Schedule C.

CHAIR DAVIE: I'll make one final comment. And that is, I don't completely understand sort of the particularities of the deescalation issues in this matrix. But the fact that it is not required, I think -- I think I get probably why that is the case. But I do think it's important for the department to emphasize in the appropriate way, and I want to try to be realistic about this, the need for deescalation.

I think if you really want to restore confidence of the public in -- in policing, not just in New York City but beyond, then deescalating these

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situations, particularly some of the more public and graphic ones we've seen here in New York, would be -- is really important. So a standard where that becomes sort of a first approach and becomes a part of the culture of how policing happens, I think only -- to the benefit of all of us who want to see improved relationships between the community and -- and the officers who -- who serve.

So I don't know if the -- if Chief Pontillo or Deputy Commissioner Schlanger want to respond. If not, then we'll go to -- we'll go to questions -- comments from the Board members.

DEPUTY COMMISSIONER SCHLANGER: I don't think we have a specific response now other than to say, Chair, that the deescalation is something which is very much emphasized in both our training and in the policies as well. And -- and with respect to

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specific comments about how, if at all, it should be included in this disciplinary matrix, we look forward to any comments and obviously, we'll consider those.

CHAIR DAVIE: Thank you. Board members?

MS. IRISH, ESQ.: Hi. I have a question around process and if thought has been given yet as to how the matrix will actually be implemented. And how the ways in which there will be checks to ensure that it is implemented in a way that's consistent across different commands, between what decisions the DAO makes versus command decisions or whatever with regards to discipline. How -- thought given in regards to that.

DEPUTY COMMISSIONER SCHLANGER: I think -- Chief Pontillo, are you still on?

CHIEF PONTILLO: I am, yeah.
So a couple things. When the

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Police Commissioner decides a case and makes a final decision, if there's a deviation from the recommendation, that is articulated in a written memorandum that accompanies the case in a CCRB matter back to CCRB. So you would see it that way.

Also on our website, we are currently publishing some data around discipline. We are in the process of developing a dashboard where people will be able to see more information around discipline and outcomes. So that will be a way to actually view the outcomes individually and in comparison to other cases.

I want to go back to the discussion around Schedule C Command discipline. There's a lot of confusion about that.

For the purposes of the CCRB, you would make your recommendation, which could be command discipline A or B or it could be charged in specs. The

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Schedule C command discipline is a tool that we use internally to -- as an alternative to charges and specifications. So when we have a charges case, we'll only use it for administrative policy violations. It's a way to fast track those cases where if the respondent and their attorney agree, we will dismiss the charges, issue the Schedule C command discipline, return that to the borough to adjudicate when the mandatory minimum and penalty range, to ensure consistency. And it's just a way to fast track a case that will otherwise take a lot longer, because of the process involved with charges and specifications.

So we are happy to have a conversation with the executive director going forward about possibly incorporating or using that CCRB -- the Schedule C command discipline to include some CCRB cases. But no need

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to decide that today. But just I think for the Board purposes, you would still vote charges and specifications if you felt something was appropriate for charges and penalty of over ten days.

CHAIR DAVIE: Understood. Thank you. Other comments, questions from the Board?

Frank, did I see you raise your hand?

MR. DWYER: You did. I was just going to speak to similar to Chief Pontillo to point out the vast -- you could argue all of them, but I think we might quibble around two or three, but the vast majority of C command discipline are things that are -- you failed to vouch a property, you act -- you clean your gun and you accidentally discharge it, they're not things that fall within FADO. So I just wanted -- and the Chief has spoken more eloquently to it than I

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just did.

CHAIR DAVIE: Thank you, Frank.
Anybody else? Board members?
Comments? Questions?

MR. SIEGAL, ESQ.: Fred, John
Siegal. I have two questions. But
first, let me say that I think this is
very helpful. One of the unknowns for
me in the time I've been on the Board
is whether there's any synchronicity
between what we recommend and the way
that the department thinks about
proper penalties for types of
violations. And, you know, I think
this is a difficult thing to write.
And it's been done quite thoroughly.
And it's particularly helpful because
it deals with all the levels of
offenses, whereas the CCRB matrix that
we've been trying to work with didn't
deal with a lot of the types of -- of
misconduct that we reviewed.

So I think this is helpful and
hopefully, we'll move the CCRB and

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police department into greater coordination.

I have a question about the mitigating factor of example -- of -- of an objective -- where an officer makes an objectively reasonable mistake of fact or law. I do not know what that means. And Darius Charney raised that it's somehow akin to qualified immunity, which I hadn't thought of. And I appreciated his comment as -- appreciate nearly everything he does. But to me, he qualified immunity as at least there's an absence of prior decisional law or -- or authority on an issue. But if there is prior authority, then there's a presumed immunity for it.

Objectively reasonable mistake of fact or law seems to me to be the opposite, which is the member of service did not follow preexisting law and yet somehow, we or the Commissioner or someone in the process

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is going to decide, well, it's okay.
It was objectively reasonable. I -- I
would not know how to make that
determination. It seems to me to be
boundless in its discretion. And I
think if -- if the Chief or
Mr. Schlanger could give us a
description of what they mean by that
or maybe some examples, I think that
would be helpful.

DEPUTY COMMISSIONER SCHLANGER: I
can try to explain. Getting a little
feedback. I don't know why that is.
Okay. Much better.

I -- I didn't understand Darius'
point exactly with respect to the
qualified immunity. And we'll try to
take that up with him and understand
it better than -- than I do. But I
think there are a couple of situations
and, you know, Matt will give some
more examples. But as I think
everyone on the call knows, the area
of stop and frisk is a very

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complicated one. Especially in New York. And there are decisions that are sometimes made which may be the wrong decision in retrospect. A technical violation of the law. One that perhaps would be decided by a Supreme Court 5-4 or a -- a -- an appellate panel 3-2 or -- that we just don't want to punish the officer in the same way that -- that an intentional mistake would be punished.

I do take your point relative to the boundless discretion that could be exercised by the PC and the lack of a specific standard. But I think there will be a check on that, given the transparency that we expect going forward in -- in these types of cases. So Matt.

CHIEF PONTILLO: Yeah, I'm happy to weigh in. You've covered it very well. We've seen -- and anybody who is familiar with Judge Barry Kamins knows that he publishes an annual

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treatise on Fourth Amendment law in New York State and it's the size of a phone book. And that speaks to the complexity of Fourth Amendments issues. And some of these are very, very close calls.

I can remember a case, co-defendants, it involved Fourth Amendment issues. Goes up to the court of appeals because there were separate trials that went up separately. And on the same day, the court of appeals released an opinion upholding the search and the recovery of a weapon and suppressing it on the other on Fourth Amendment grounds.

So I think that's what we are talking about. We are not talking about the repeated bad behavior. We are not talking about the egregious where it's clear you knew or should have known. This is clearly a violation of law. But it's the very subtle kind of nuanced situations

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where, as Commissioner Schlanger said, you know, the Appellate Division came out 3-2 on this.

And, you know, it's those types of tough close cases where everybody agrees there was no bad intent. It was an erroneous but good faith mistake. This is the kind of thing that everybody is best served through training. And training may not always be appropriate, but -- you know, in the right circumstances, it certainly would be. That particular language, and I disagree that it's the qualified immunity or it's analogous to qualified immunity. It's actually closer to the language in current NYPD policy on stop and question that was approved by Judge Torres in the stop and frisk case. Where it talks about, you know, good faith but erroneous mistakes on stops should be dealt with through training.

So I think everybody agrees that

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there are these areas where it can be very, very subtle. You know, where reasonable people can look at the same set of facts and some will say, "Yes, that passes Fourth Amendment muster," or others will say, "No, I don't think it met the threshold." So it's those really close cases that we are talking about, and that objectively reasonable standard, that language, you know, in working with Deputy Commissioner Maldonado, Deputy Commissioner of trials who oversees trial judges and herself has many years experience as trial judge in oath, has provided us with that as a legal standard that is used in those administrative tribunals. So that's where that language comes from.

DEPUTY COMMISSIONER SCHLANGER: Let me just add one additional item. I know there was a question during the question period about training in this respect, risk management bureau has

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run and has put through nearly all of the uniformed force through investigative encounters training, which was also court approved pursuant to the federal monitorship. And some subsection of that training is that which would be given under these circumstances.

We are also in the process under the hospices of the federal monitorship, developing remedial and refresher training in individual modules which could be assigned to particular individual officers in this kind of circumstances as well.

MR. SIEGAL, ESQ.: Those are helpful responses. We certainly, you know, have our share of close call cases on the CCRB panel. It's not unheard of that we have two to one determinations. And the types of things you are talking about certainly come up in the stop, question, frisk area as well, as very often unlawful

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entries. But I would urge you to take a second look at that standard. It feels like a catchall.

And the other mitigating circumstances, I think, are the sorts of things that we generally end up looking at in these close call cases. Is it an emergency setting, is there a 9-1-1 information that someone's at work or there's imminent violence, right? Is it a mental health case. The other circumstances, is it chaotic. I think a lot of those other mitigating circumstances resolve these issues. And I'm just concerned that this objectively reasonable mistake or fact of law, it feels like a catchall that we ought to be able to specify what circumstances might tend to make something a reasonable mistake versus a misconduct.

DEPUTY COMMISSIONER SCHLANGER: We appreciate the comment. Just to your prior -- when we started this process,

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we spoke specifically of the goal of having some continuity between the framework, which you all had pioneered and our eventual matrix as it ends up. So we are on the same page there, I think.

MR. SIEGAL, ESQ.: I have a second question. And that is what is your expectation about what the outcome will be under this matrix? That is, there's a presumptive discipline. There are aggravating and mitigating circumstances. But what's your benchmark of success for this matrix? What percentage of cases will come out at or about the presumptive discipline that would lead you to think this really is successful, it's kind of in the right place, versus how wide a range of deviance from the presumptive discipline would mean that it's really not being a successful -- successful guide post. If that's clear.

DEPUTY COMMISSIONER SCHLANGER: An

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d in answer, I think my answer is that I myself haven't thought much about that. I think the -- the ultimate question will be whether or not in any given circumstance, the right factors are taken into consideration. If they should be and are either added to or subtracted from the presumptive penalty. Hard to have, at least from my perspective, a prejudgment of what that would look like because it's totally dependent on each individual case, I think. Matt?

CHIEF PONTILLO: Yeah, I agree. I don't have a number in mind. I think clearly there's a line somewhere in there. Right. If there are too many deviations or the deviations are too wide, then the guidelines lose credibility. And then, you know, do all this work to have something that is not credible. So we want to make sure we are striking the right balance and achieving all the goals of

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discipline. Punishment, deterrence, remediation, education, notice, culture. Right. We want to touch on all those things and have meaningful impact.

So I -- I think the answer is, we kind of have to stay tuned. This is going to be an evolution. We will implement the guidelines. We will constantly reevaluate. If there comes a time when we need to make some changes or some modifications, that will also be made public with the reasons why. So, you know, look, thank you for your questions. I mean, I thought they were brilliant. And especially going back to the first question about the objectively reasonable standard. You know, the great examples you gave I think are very, very helpful and really help illuminate that and maybe that's one way we can approach it. We'll talk more about that, about going from that

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general guideline but then including those very, very concrete examples or situations that were applied. That can be very helpful.

MR. SIEGAL, ESQ.: Thank you. You mentioned all this work. It's very appreciated as is your participation today. Thank you very much.

CHIEF PONTILLO: Thank you.

CHAIR DAVIE: Are there other questions? I see Erica raising her hand.

MS. BOND, ESQ.: Thank you, Chair Davie. And thank you both to Jeff and Chief Pontillo for coming here and answering our questions.

I just wanted to pick up on a thread and an issue that John raised. I appreciate the challenges and setting a metric in advance for the success of this matrix. What I'm curious about is whether the department is planning on producing some data that would actually help us

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and the public understand without necessarily defining in advance like how much deviation represents success or not. But just producing some data around -- at some regular intervals around the extent to which the department is adhering to the matrix. You know, how frequently that's not happening and in which types of achievements. That's one question. And then I have a second. But I'll wait for the second.

CHIEF PONTILLO: The short answer is yes. We will be publishing data. We haven't designed all of those metrics yet. We don't know exactly what it's going to look like, but certainly there are more cases, deviations, that will all be included.

MS. BOND, ESQ.: Okay. Thank you. That's helpful. And then my second question relates to the mitigating factors. Which I agree with John, seem to align with some of the factors

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that I think many of us take into consideration when we are looking at cases. But there's one that stands out to me that I'm just a bit confused about. So it will be helpful to get an explanation. I assume if I'm confused, members of the public might be as well.

So about halfway down, there's this mitigating factor, the veracity of the respondent and the respondent's level of cooperation with the investigation. I just want to understand what's meant by that because my presumption is, of course, that an officer would participate in an investigation and be truthful. And so to me it seems strange that that would be a mitigating factor. But perhaps I'm misunderstanding something.

CHIEF PONTILLO: No, you are right. So absolutely, honesty and integrity must be required. So this

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would contemplate a situation where --
I don't even have a real example --
where somebody goes above and beyond.
Is proactive in assisting the
investigators, coming up with ideas,
participating in the investigation
beyond what that individual was asked
or told to do.

DEPUTY COMMISSIONER SCHLANGER: An
d potentially a situation where the
individual who is the subject is not
the primary actor in -- in a
disciplinary situation.

MS. BOND, ESQ.: Okay. I think
that's helpful, but I actually do
think that ultimately, there should be
more clarification. Because right now
it really reads as folks get credit
simply for showing up and
participating in the investigation.
And I don't think that's the message
you are trying to get across here.

DEPUTY COMMISSIONER SCHLANGER: Wh
ich I think is similar to the comment

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relative to prior misconduct or lack of prior misconduct being included as a potential mitigating factor. So we are going to look.

MS. BOND, ESQ.: Thank you.

CHAIR DAVIE: Anyone else?
Nathan?

MR. JOSEPH: Hi, thank you. I'd just like to go back for some clarification on training, when training is recommended in the matrix.

It seems as though you are indicating that there might be specific training programs associated with specific allegations of misconduct. Am I understanding that correctly? Because right now, it's just general. It just says training. And we don't know what that means. You alluded to certain training programs. So is that something that will be included in the matrix, these specific programs that will be used in training?

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DEPUTY COMMISSIONER SCHLANGER: I'm not sure that it will necessarily be included in the matrix. Although that's an interesting suggestion. We certainly have specific training that would apply to specific situations. We have training obviously relative to force, we have training relative to stops, we have training relative to -- to general courtesies.

So we always try to, when training is the -- is the end result of a disciplinary proceeding, we try to tailor the training to the -- the specific misconduct as best we can. Whether or not that should be specified in the matrix, I think is an interesting question.

CHAIR DAVIE: Anyone else? Sorry. Anybody? Joe?

MR. PUMA: Good evening, everyone. I guess my question could be answered by representatives from the department and even Heather herself. My

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2 understanding is, of the matrix, is
3 that it's -- nothing prior to the
4 matrix -- matrix's implementation, as
5 far as decisions and prior
6 disciplinary cases, will carry over as
7 precedent. And so I guess I'm
8 wondering, this is sort of like a
9 very, very basic question, but because
10 the document itself didn't include the
11 entire universe of allegations that
12 could be pled in a disciplinary case,
13 especially in my -- my special concern
14 is our FADO jurisdiction. Is there
15 any -- any risk, I guess, of something
16 like for example, Heather mentioned
17 that taser use, improper use of a
18 taser is omitted in the document. I
19 don't know if that was intentional or
20 just -- just a innocent omission or
21 anything like that.

22 But are there -- is there anything
23 that the CCRB should be concerned
24 about as far as allegations that we
25 plead currently that are not sort of

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mentioned explicitly in the document?

DEPUTY COMMISSIONER SCHLANGER: So I think if there are those, and taser obviously is one. And the answer to your question is, I believe that we thought that it was adequately covered in the force section. But I think the point is very well taken. But if there are others, please let us know. We did try to cover all the situations that -- that we are aware of. At least I think that's what we tried; is that right, Matt?

CHIEF PONTILLO: Yeah, absolutely. I mean, we looked back, you know, the starting point was looking at five or more years of case precedent, types of cases and types of allegations. But no, we are happy to sit down and go through this. I agree with Commissioner Schlanger, the current breakdown, you know, covers so well, it doesn't mention tasers. Specifically, the use of force,

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misconduct categories will cover
tasers. But, you know, if the Board
members think and the executive
director should spell out with some
more specificity some other areas
because of particular concerns, we are
happy to sit down and work through
that with you.

CHAIR DAVIE: Very well.

MR. PUMA: Thank you.

CHAIR DAVIE: I think there can be
more conversations, as I know you'll
have. And then John can report back
to the Board sort of where you all got
to a meeting of a mind or can either
choose to endorse that, recommend
modification or -- or otherwise. But
that's probably executive director to
your offices is probably the best way
to handle that. John, you want to
comment on that?

MR. DARCHE: I think those are --
those are the issues that I have to
work out with Chief Pontillo and

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Commissioner Schlanger about, but I also think it's going to be tasers and any other areas that aren't adequately addressed, the summary of employment history is going to be -- CPI is going to be a rather key area that we need to rely.

CHAIR DAVIE: Other Board members? Other comments or questions? Anything at all?

(No response.)

CHAIR DAVIE: All right. Let me thank both Chief Pontillo and Commissioner Schlanger for their time. I thank Heather for all of her work on this as well. I thank the rest of the staff that have had input, that have also been working alongside Heather on this. You, the Board members for your commitment and time on this as well. And hopefully, at the end of this, we'll have a framework at the CCRB that aligns with the matrix at the police department, and we can get some

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more consistent -- more consistent
final decisions on discipline and have
better alignment with the department
on those final decisions when it comes
to this.

We still have clearly some ways
to. Some questions to yet answer, but
I think this is a good start, at least
for us, in terms of both hearing from
the public and sharing our own sort of
perspectives and positions and
analysis on the matrix as it currently
stands.

If there are no other comments
from my fellow Board members, we'll
entertain a motion to adjourn. Is
there such a motion?

MR. SIEGAL, ESQ.: Motion.

CHAIR DAVIE: Is there a second?

All those in favor say aye.

Is there any opposition?

(No response.)

CHAIR DAVIE: We stand adjourned.

(TIME NOTED: 6:26 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)

:SS

COUNTY OF SUFFOLK)

I, Elbia Merino, a Notary Public within
and for the State of New York, do hereby certify:

I reported the proceedings in the
within-entitled matter, and that the within
transcript is a true record of such proceedings
to the best of my ability.

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 2nd day of October, 2020.


Elbia Merino

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