

NYC - Civilian Complaint Review Board
February 10, 2021

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CIVILIAN COMPLAINT REVIEW BOARD
PUBLIC MEETING
February 10, 2021
4:00 P.M.
WEBEX VIDEO CONFERENCE
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B E F O R E:
FREDERICK R. DAVIE, Chair
JONATHAN DARCHE, ESQ., Executive Director

Transcribed by:
Shechinah Jackson

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- PUBLIC MEETING AGENDA
1. Welcome & Virtual Meeting Protocol
 2. Call to Order
 3. Report from the Chair
 4. Report from the Executive Director
 5. Presentation from Outreach on the CCRB
 6. Old Business
 7. New Business
 8. Public Comment
 9. Adjourn to Executive Session

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CCRB Board Members

Frederick Davie - Chair

John Siegal, Esq.

Erica Bond Esq.

Corrine Irish, Esq.

Joseph A. Puma

Michael Rivadeneyra, Esq.

Angela Sung Pinsky

Willie Freeman

Frank Dwyer

Sal Carcaterra

Marbre Stahly-Butts Esq.

Esmeralda Simmons, Esq.

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CHAIR DAVIE: Good evening, everyone. Welcome to the Civilian Complaint Review Boards February board meeting. I'm Fred Davie and I'm the chair of the Board and before we get started, I'm going to ask my colleagues on the Board to introduce themselves. And I will like to start with Ms. Irish.

Corrine?

MS. IRISH: Hi, everyone. Corrine Irish. I am a mayoral appointee and I'm from Harlem.

CHAIR DAVIE: Ms. Bond?

MS. BOND: Good evening. I'm Erica Bond. Mayoral appointee and I'm from Brooklyn.

CHAIR DAVIE: Ms. Simmons?

MS. SIMMONS: Good afternoon, everyone. I'm the public advocates appointee. I'm from Bedstuy, Brooklyn.

CHAIR DAVIE: Mr. Dwyer?

MR. DWYER: My name is Frank Dwyer and I'm a police commissioner designee.

CHAIR DAVIE: Mr. Siegal?

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MR. SIEGAL: John Siegal (inaudible)
Mayor Deblasio to the Board.

CHAIR DAVIE: Mr. Puma?

MR. PUMA: Good Afternoon, everyone.
My name is Joseph Puma. I'm the City
Council representative on the Board.
I'm from the borough of Manhattan.

CHAIR DAVIE: Mr. Rivadeneyra?

MR. RIVADENEYRA: Good afternoon,
everyone. Michael Rivadeneyra. I am
the City Council designee to the Board
and I'm from the Bronx.

CHAIR DAVIE: Mr. Freeman?

MR. FREEMAN: (No response.)

CHAIR DAVIE: I think your on mute,
Mr. Freeman.

MR. FREEMAN: Can you hear me?

CHAIR DAVIE: Yes, we can hear you.

MR. FREEMAN: Willie Freeman.
Police commissioner designee from
Brooklyn.

CHAIR DAVIE: Thank you.

And Mr. Carcaterra? He's out there
some where.

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MR. CARCATERRA: (Inaudible.)

CHAIR DAVIE: Sal, will you say that again.

MR. CARCATERRA: I am Sal Carcaterra and I'm a police commissioner designee.

CHAIR DAVIE: Thank you. So thank you all.

Before we go any further, I guess we should go a little bit of housekeeping. We need to approve the minutes from the last meeting. Is there a motion to approve those minutes? I saw a raised hand somewhere. Is there a second? Are there any additions? Revisions? Hearing none, seeing none, all those in favor of approving the minutes please say aye or raise your hand? All those oppose? The ayes have it, the minutes are approved.

Two weeks ago this board voted to adopt the guidelines within the NYPD disciplinary matrix into our own recommendations. Last week I signed a Memorandum of Understanding with police

1
2 Commissioner Shea to implement the
3 disciplinary matrix. I understand the
4 video that pertains to the members of
5 the public and even from this board, who
6 are critical of the matrix and the NYPD
7 willingness to discipline officers who
8 permit misconduct. However, the outset
9 legislative changes that addressed the
10 police commissioner's broad discretion,
11 over discipline in CCRB cases, the
12 disciplinary matrix is an important way
13 to ensure the police commissioner and
14 the Department as a whole are more
15 accountable to CCRB disciplinary
16 oversight and to the people of New York
17 City. Ultimately, the closer we get to
18 CCRB having binding disciplinary
19 authority in it's cases, the better and
20 I believe the disciplinary matrix and
21 MOU, the Memorandum of Understanding,
22 bring us closer to it than we have ever
23 been before. The disciplinary matrix is
24 a living document, as we had said, and I
25 look forward to strengthening it with

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all of you over the coming months and years.

I also look forward to the CCRB playing a significant role in the conversation around other reforms the city and the state can take, including the transfer of final disciplinary authority to the CCRB in our cases.

Tonight, we are brought together by a different reform and that is our effort to restart investigations into sexual misconduct and clarify the CCRB's ability to investigate false official statements made against civilians by members of service. These two areas of misconduct represent some of the worst kinds of abuse of police authority and I believe this agency is well equipped to investigate and prosecute this kind of misconduct.

During our public board meeting on January 13th and the public comment period that preceded it, the CCRB received valuable insights from

1
2 individuals, elected officials and
3 community organizations. The public
4 comments were overwhelmingly supportive
5 of the proposed and included a lot of
6 thoughtful feedback about how to improve
7 the proposed rules. The Board carefully
8 considered each of these comments and in
9 order to avoid any further delay in
10 investigating sexual misconduct again
11 and untruthful testimony and untruthful
12 written statements against civilians, we
13 believe that the rules as drafted are
14 for the agency, a strong starting point
15 and a strong starting position to begin
16 these investigations.

17 As our work on these cases proceeds
18 the Board will continue to consider
19 comments that we received to further
20 refine these rules. I want to thank the
21 public for providing feedback on these
22 rules and for being here today to
23 observe our vote. I plan to vote in
24 favor of adopting the rules and it is my
25 hope that my colleagues on the Board

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will do the same.

With that said, the implementation of these rules, the matrix and the MOU and any additional reforms made at the city and state level, will only have a positive impact on our investigative work, so long as transparency is at the center of the entire disciplinary process. In addition to providing the public with access to disciplinary information guaranteed by the repeal of 50A, it is critical that CCRB investigators have access to everything they need to investigate their cases. New rules and new authorities will only get us so far without evidence that is essential to our investigation, those very same investigations will suffer. Going forward, it is my hope that the city and the state examine ways to provide the CCRB with direct access to not just body-worn footage, but statutorily protected access to other documents and evidence that may be

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crucial to our cases. Like the disciplinary matrix, these rule changes are a first step, but they will only be as strong as the city and the state's support for police accountability and for civilian oversight.

I thank you and I now turn the mic over to Jon Darche our executive director. Jon?

MR. DARCHE: Thank you, Chair Davie.

The agency is excited about the opportunity to better serve New Yorkers who experience sexual misconduct or who are hurt by a false official statement made by a member of service on police documents or in official testimony.

Three years ago, this board voted to begin investigating sexual misconduct. In the time since that board's initial vote and despite delays brought about by lawsuits, our agency has built competency in this area, hired staff and investigations and APU to investigate what we term, phase two misconduct and

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hired a director on what will be our new Civilian Assistant Unit. We have established a framework that we will use when we on board case workers. This is an important night for the civilian oversight of the NYPD, we appreciate the members of the public being here with us.

Some ground rules for this meeting: In the public session, please use the raise the hand feature to make a comment. Please restrict your comment to two minutes. If you like to discuss a problematic encounter with an officer, please provide contact information, so that our investigators can follow-up with you.

I would like to thank you, the staff, for continuing operations during this difficult time, during the pandemic and thank, again, members of the public for participating in this meeting.

CHAIR DAVIE: Thank you, Mr. Darche. We're now going to have a presentation

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from our outreach department and I think Jahi Rose is going to do that presentation. Jahi?

MR. ROSE: Thank you very much, Chair Davie.

Once granted, I will be able to share my screen. Okay, thank you so much. Can everyone see my screen?

CHAIR DAVIE: Yes, thanks.

MR. ROSE: Thank you all so much for attending today's board meeting. As the Chair mentioned, I will be providing a brief presentation regarding outreach.

As you may know, the Civilian Complaint Review Board is the largest civilian oversight agency for the largest police force in the country. The CCRB investigates, mediates and prosecutes complaints of misconduct against members of the New York City Police Department.

As you've been introduced to, our agency is ran by a 15 member board, you met many of them today. With five seats

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being appointed by the mayor, five being appointed by the New York City Council, three designated by the New York City police commissioner, one appointed by the public advocate and the chair is jointly appointed by the mayor and the City Council.

While the Civilian Complaint Review Board has an ability to intake all types of complaints regarding misconduct from the New York City Police Department, we're only allowed to investigate four categories. We use an acronym called FADO in order to remember what those categories are. That may be a helpful acronym for you as well. The FADO acronym stands for force, which is looking for force that is excessive and unnecessary, abuse of authority, discourtesy and offensive language. The agency also investigates the use of the Right to Know Act. So for those that may not know, there's a couple of things to know about the Right to Know Act.

1
2 The Right to Know Act changes and may
3 effect how New York City police officers
4 interact with members of the public.
5 The Right to Know Act was enacted in
6 October 19th of 2018 and pertains to
7 certain stops, searches, pertaining to
8 how a police officer should conduct
9 themselves. So the four facts that you
10 should know about the Right to Know Act
11 include, an officer, under certain
12 circumstances, should identify
13 themselves by providing their name,
14 their information, such as their rank,
15 command and their shield number. With
16 some exceptions they should explain the
17 purpose for the interaction. Officers
18 should also inform you under certain
19 circumstances of your right to say no,
20 when asking for your consent to search
21 your person, property, vehicle or home.
22 And last, but certainly not least, under
23 certain circumstances the officer should
24 offer you a business card. The business
25 card has the officer's information,

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explains how to comment and/or complain about interactions with the New York City police officers. Civilians may request these business cards in all interactions and this is an example of what that business card may look like.

Now, there are a couple of ways to be able to report police misconduct. One way to file police misconduct is online at NYC.Gov/CCRBComplaint or you can call the CCRB 1(800)341-2272 or CCRB, so that's 1(800)341-CCRB.

Now a reminder, if you see footage of misconduct on social media or on the news, you can file a complaint even if you not there in person. A couple of additional ways to file complaints about police misconduct include, calling 311 and you can also visit our office at 100 Church Street on the 10th floor in Manhattan, New York, zip code 10007. You can also visit a police precinct in the City of New York to file a complaint about police misconduct. You can also

1
2 send a letter to our office at 100
3 Church Street. If you would like to
4 request an outreach presentation for
5 your community, for an organization, for
6 a nonprofit, educational institution or
7 after school program feel free to reach
8 out to us at outreach@ccrb.nyc.gov. You
9 can also follow the CCRB on social
10 media, on Instagram, Twitter and
11 Facebook.

12 Thank you very much, Chair Davie.

13 CHAIR DAVIE: Thank you Jahi.

14 Do any of the Board members, have
15 any questions or comments for Jahi, any
16 aspect of his presentation?

17 (No response.)

18 CHAIR DAVIE: All right. Thank you,
19 Jahi.

20 We will now go to public comment.
21 We'll hear first from our elected and
22 public officials and then from the
23 general public and the public can
24 comment on the rules changes or any
25 other issue that they would like to

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comment on.

So Yojaira is leading us through this portion of the agenda.

MS. ALVAREZ: Yes, thank you.

As a reminder, you can use the raise hand feature, if you would like to make a comment. We kindly request that you keep your comments to two minutes.

First, we'll be hearing from Christon.

MALE SPEAKER: Fred, can you hear me?

CHAIR DAVIE: Yes, Chris. Go ahead. Welcome.

MALE SPEAKER: Good afternoon, Fred and the rest of the Board and Jon. Fred, on the matrix, I'm not going to repeat the concerns that we have about that, they are extensive. But what I do want to say is I think the CCRB has a really important role in terms of seeing how it actually works and the CCRB has always been good about publicizing information and data and I think it's

1
2 really important that the agency do
3 everything it can to make sure that the
4 reporting about the operation of the
5 matrix is complete and is timely, so the
6 public and other people can have a very
7 thorough sense of how it is working or
8 how it is not working. Yet, I think --
9 I'm not quite sure of when this is going
10 to go into effect in terms of your
11 reporting, but we are heading into an
12 election cycle. There's going to be a
13 lot of public discussion about the
14 police department, about police
15 discipline and I would urge you to start
16 reporting on this as quickly as
17 possible. The month of March is a good
18 place to start.

19 With respect to the rule changes, we
20 fully support those rule changes. As we
21 said before, I understand and appreciate
22 the notion of finalizing these rules now
23 and then proceeding to amendments. And
24 we agree that it's very important for
25 the agency to be able to start

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investigating sexual harassment complaints and to continue it's work on false statements. So we thank you for that. If you need an eighth vote and Sal doesn't come through and Sal I'm counting on you to do the right thing, Fred you can count me as number eight, thank you very much.

CHAIR DAVIE: Thank you, Chris. That would be quite the vote to take. I think it would get a lot of attention.

And just on the issue of reporting on the use of matrix, our desire is to make sure the public has confidence in the use of this new approach to discipline and so, my commitment is to, as much as we can until the issues around 50A are resolved, as much information as we can make available we will and as soon as it's feasible to do so. And I think my fellow board members are committed to the same as well as the staff of the CCRB.

But let me see if any of the other

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board members will like to comment before we move onto the next speaker.

MR. CARCATERRA: Fred, it's always good to here from Chris. That's all I'll like to say.

CHAIR DAVIE: There you go, Sal. You sure you don't want to expound on that a little bit more.

MR. CARCATERRA: No, I think I said it all.

CHAIR DAVIE: Okay. Thank you, Chris. Next speaker please, Yojaira.

MS. ALVAREZ: Before we move on to the next speaker, we just want to acknowledge a few folks from different offices. Edwardo Savetto from the Public Advocates Office. Latoya LaGrand from Senator Comrie offices. Pearl Valery from Assemblymember Anderson's office. Anchow from the assemblyman David Weprin. Eric Rose from Senator Robert Jackson's office. Marlyn Rice of Assemblymember Zinerman. Jack Connors from Senator Brad Hoylman's office.

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Monica Monson of the office
Assemblymember Kenneth Burgos and
Wilbert Lamel of the Queens District
Attorneys Office. Thank you for joining
us.

Next, we'll be hearing from John
Saunda. As a reminder, please keep your
comments to two minutes.

MR. SAUNDA: At the November 9, 2020
board meeting, Executive Director Darche
stated, "We are the in the process of
changing our disposition letters to
inform complainant and victims of the
reopening process in their disposition
letter. That information should have
been included in that and we are
rectifying the situation."

Has that situation been rectified?

CHAIR DAVIE: Mr. Darche, do you
want to answer that?

(No response.)

CHAIR DAVIE: Mr. Darche? Jon are
you on mute?

Mr. Saunda, it seems Mr. Darche may

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be having an issue with his mic. It looks like it's on mute.

MR. SAUNDA: My next question is, when was the 2019 annual report issued?

CHAIR DAVIE: Is Ms. Harya on? Harya are you on the conference, in the room?

MS. ALVAREZ: No, but we can have her upgraded in just a second.

CHAIR DAVIE: Mr. Saunda?

MR. SAUNDA: Yes. My question is, when was the 2019 annual report issued?

CHAIR DAVIE: She is going to let us know in just a second. We will have her put it in the chat.

Do you have another question?

MR. DARCHE: Do you mind if I answer the first question? I'm sorry I wasn't --

CHAIR DAVIE: Go ahead, Mr. Darche.

MR. DARCHE: So we are working with a group from California, I'm forgetting the name of the college right now, one of the state universities in California

1
2 has a group that we are going to be
3 working with that is going to examine
4 all of our external communications with
5 civilians starting with disposition
6 letters. So we have not yet -- we have
7 not yet changed our disposition letters.
8 I changed some of the APA dispositions
9 letters that were giving incorrect
10 information, but we still have a long
11 way to go in fixing the disposition
12 letters.

13 CHAIR DAVIE: That is the Goldman
14 School, as I recall it. The University
15 of California Berkely.

16 MR. DARCHE: I think that's right.

17 CHAIR DAVIE: Okay. Next speaker
18 please, Yojaira.

19 MS. ALVAREZ: Thank you Jon.

20 I'm just going to refresh my page.
21 I believe that concludes our public
22 comment portion.

23 CHAIR DAVIE: Do we have any hands
24 raised?

25 (No response.)

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CHAIR DAVIE: No, hands raised. All right.

So we will go then to I would like to remotion rules to get someone to move it and then in get a second, we will then have board comments on the rule changes. All right. So pursuant to the City Administrative Procedure Act, the CCRB published a draft copy of our rules on December 7, 2020. For more than 30 days the CCRB accepted public comments and on January 15, 2021, the CCRB held a public hearing to discuss it.

I'm going to ask our board members if they will mute their mics please. Great. Thank you.

After careful consideration of the public comment, the CCRB established the final version of the new rules on our website on Thursday, February 4, 2021. At this time I would like to take a final vote and may I have a motion to approve the rules governing the Board's investigation of sexual misconduct and

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untruthful testimony and written statements against civilian, is there -- would someone move that.

MS. IRISH: So moved.

CHAIR DAVIE: Is there a second?

Thank you, Ms. Bonds.

So will open it for comments from the Board members. I know that Mr. Dwyer had a comment. Mr. Dwyer?

MR. DWYER: Mr. Chair, I do not support the rule changes that is proposed here and I will address a few of my objections, certainly not all of them. And I will, consistent parliamentary procedure, make a number of secondary motions, which I would encouraged my fellow board members, to seriously consider before we move forward.

The first that concerns me that we have over hundred pages, well over a hundred pages, of public comment to study and determine which recommendations to incorporate. And I

1
2 read them all, it's not that I haven't,
3 I read them all. And they were
4 complexed and often enraged.

5 I note that when we have conducted
6 public hearings regarding the police
7 department disciplinary matrix, we
8 received many pages of public comments
9 and in that case, we studied them and
10 sent a letter to the police commissioner
11 with recommendations concerning how to
12 proceed. At our last meeting, our
13 assistant legal counsel presented to us
14 and to the public what those
15 recommendations were, which ones the
16 police department had adopted and which
17 ones they had not adopted. We did that
18 in terms of another agency. I think if
19 we are going to do that in terms of
20 another agency, we should do that in
21 terms of ourselves. I am acutely
22 appreciative of what you are saying that
23 we can move forward with these rules and
24 then modify them later on, but my
25 experience in government is even the

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best intent often does not get followed up on because new challenges, many, many new challenges get in the way.

So my first subsidiary motion is that staff prepares a matrix of the recommendations, that we review them publicly, as I understand it as required by the Open Rules Law and that we decide what to include in here, as we would rather than just saying that we shall not, we should just move forward with what we have. So I can make that into a shorter motion or would you just like to throw it open onto the floor to get a discussion among all of us who are board members, how --

CHAIR DAVIE: So if we can get a second, we can discuss as an amendment to the motion. Is there a second to what I will designate as an amendment to this motion, is there a second?

MR. CARCATERRA: I'll second that Fred, just I'd like to hear some opinions on that.

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CHAIR DAVIE: Okay. Well, this amendment has been made and seconded. Other comments?

MR. SIEGAL: John Siegal here.

I appreciate the suggestion and the concern. I do see a pretty key distinction between these rules and the matrix. Mainly these rules were drafted by CCRB at the end of a long deliberative process of fact finding from people involved and relevant issues and discussed over a period of time by the Board and as compared to the matrix, which was drafted by the police department and therefore required us to go through the process of public comments on their draft because we didn't have any other input into it. So I see that as a pretty critical distinction in the process leading up to the adoption of this rule versus the matrix.

CHAIR DAVIE: Public comments?

Thank Mr. Siegal.

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MS. IRISH: I certainly think that it makes sense to do that and to look at the recommendations that we received and to look at them carefully in a matrix or however. I just think we can do that, as well as vote for the rule as is and then move forward with looking at ways to improve it.

CHAIR DAVIE: Thank you, Ms. Irish. Others? Ms. Bond, go ahead.

MS. BOND: No. I'd just add that I agree with Corrine. I think as the Board chair noted at the beginning of this conversation, it's been three years now and during that time, I'm sure there are individuals who would have liked to avail themselves of the opportunity to report these kinds of issues. And so I just don't think we can afford to wait any longer, if we were going to be responsive to the needs of the civilians in the city and it's for that reason that I think we should move forward with these rules. As Corrine noted, I think

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taking into consideration a lot of the comments that have been given to us, but incorporate them into the next round of revisions.

CHAIR DAVIE: Thank you. Others?
Ms. Simmons?

MS. SIMMONS: As everyone noted in the last meeting, I had several problems with the matrix. However, I believe our monitoring, self monitoring of what happens going forward and problems that we think may have been predicted by the public, noting them as they go forward is absolutely necessary. We already said we were going to do it. The mechanism for doing it, I think, needs to be as detailed as possible and I think we do need to keep track of the issues raised by the public to see if in fact their worst fears or any of their fears come into fruition. So I certainly want a tracking system. I'm not sure exactly what will be recommended here, but I don't think that

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needs to bar us voting for this motion.

CHAIR DAVIE: Thank you. Any other comments?

(No response.)

CHAIR DAVIE: So let me just say that we have been joined by two board members since we started. Angela Pinsky, who is mayoral appointee rather and Marbre Stahly-Butts, who is a Brooklyn representative.

So if we approve this amendment, then we will send the rules back for further review and we won't be able to proceed with the vote. If we don't approve it, we can proceed and do what many of you said, which I agree with is to get that -- to get that grid of what the proposed comments represent how they impact the rules as they currently stand and as we proceed along the way -- as we proceed along the way, make adjustments and changes, as we will need to do with the matrix, as all of these documents are living documents. And as

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we try to refine and get better at what it is we've been charged to do.

I'm going -- Mr. Dwyer, I'm going to encourage my fellow board members to not approve this amendment, but out of deep appreciation for you're wanting to make this process as good as it can possibly can be, are there any other comments?

All those --

MR. CARCATERRA: Fred, I just want to say thank you to the other board members that did comment. The comments were very thoughtful and it did explain it further. So I appreciate those comments.

CHAIR DAVIE: Thank you, Sal.

MR. DWYER: Not in significant, but I just mention to Mr. Siegal because I think it's important that the public knows this, that an attorney from CCRB did participate in meetings around creation of the matrix. So it's not the CCRB voice was not heard. We can at some point learn about how much it's

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heard or not heard, but this was not just a totally isolated thing. The CCRB attorneys did participate in meetings concerning the disciplinary matrix with the police department.

CHAIR DAVIE: So noted. Thank you. Are you all ready to vote? All those in favor of the amendment please say aye?

MR. DWYER: Aye.

CHAIR DAVIE: All those opposed to the amendment please say no?

(No response.)

CHAIR DAVIE: Are any abstentions?

(No response.)

CHAIR DAVIE: Okay. The amendment fails. So thank you, Mr. Dwyer.

Did you have another one you would like to propose?

MR. DWYER: I do. So I won't take a lot of your time. I'll make up for at least a few meetings, where I sit silent and just listen.

A second much smaller matter that concerns me, but a very important one in

1
2 my mind concerns definition. And
3 definitions I think we all agree are
4 very important. So as you may recall my
5 fellow board member may recall in 2018 I
6 voted to approve the inclusion of
7 allegations of sexual abuse within the
8 jurisdiction of CCRB. I did so first,
9 because I thought it made sense it was
10 right and I also thought it was
11 complexity present anyhow it's
12 important. So let me be explicitly
13 clear, I support us investigating those.
14 Having said that, I'm concerned about
15 this definition that is in here
16 concerning sexual abuse, sexual
17 misconduct and I draw upon an analogy, a
18 court case, a federal Court case in New
19 York, I think about 25, 30 years ago,
20 one that I would not be surprised even
21 if Mr. Dunn were involved in litigating
22 and I thought the issue involved begging
23 in the subways. And I thought the
24 federal district court judge who heard
25 it was very wise when he said he quoted

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2 from one of the great songs of the
3 horrible great depression, and he said
4 the line Mister can you spare a dime
5 cannot be criminal. And I thought it
6 was great wisdom. And the case went up
7 to the Circuit Court and it got muddled
8 up, but line has always stuck with me,
9 things such as Mister can you spare a
10 dime could not be criminal.

11 When I look at the definition we
12 have regarding sexual misconduct, it's
13 on page 12, at least as I print them
14 out, much of it I agree with verbal
15 harassment, terribly wrong, not
16 acceptable. Sexual physical gestures,
17 the same, terribly wrong, not
18 acceptable. However, when I come to a
19 sentence that stands by itself and says
20 sexual or romantic propositions. Sexual
21 or romantic propositions. I cannot help
22 but think of the obvious, Miss can I buy
23 you a cup of coffee is the equivalent of
24 brother can you spare a dime. So I
25 think the definition needs greater

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clarity on wanted sexual or romantic propositions, aggressive, rude, but definitions count and when we write definitions that are not specific, then we take the chance of at some point the board invoking them in away that is not consistent with what law and justice should be.

So while I think the whole definition is -- the whole definition here is worthy of consideration, I would simply at this point motion that we add the word or words I like to hear what others like to add, unwanted, unwanted sexual propositions or unwanted romantic, in other words rude and unwanted -- ruse or unwanted aggressive or unwanted or rude, but just to have the definition that says a sexual or romantic proposition is to me is equivalent of can I buy you dinner and I can assure you about one third of the police department would not have a partner in life if they were not allowed

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to say those lines. So I have grave concerns about that definition.

CHAIR DAVIE: Thank you. Any comments?

(No response.)

CHAIR DAVIE: Well, I will speak (inaudible) one believe we shouldn't leave this as broad as we possibly can. We can -- two comments on that. One is, we as board members when we get these cases we'll have an opportunity to have our image on the severity, the significance of any of those comments that come under this category. In my last panel, we actually had such a case, where a person complained about an officer asking that person out on a date and it was inappropriate, as we determined, and should not have happened. And it wasn't aggressive, it wasn't (inaudible). I think it was not proper etiquette that we deemed appropriate for an officer. So I think we should leave ourselves the room to

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make these decisions as a deliberative and, in some ways, judicial body when it comes to adjudicating these types of cases.

The other thing is if we indeed after these rules are implemented find that we need to make some adjustments as we said with the prior amendment, we can make those changes as we go along. I don't think the public is going to let us get away with not reviewing both these rules changes and the matrix and anything else that we use to guide our investigation and adjudication of these complaints and cases. So I would be in favor of the leaving (inaudible) as we do make adjustments and comments.

Any other comments?

Ms. Simmons?

MS. SIMMONS: Yes, I disagree. I believe that any public servant, notice I say any public servant, not just police, any public servant during the course of handling their duties should

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2 not be involved in any propositions,
3 meaning sexual or romantic, to the
4 people that they suppose to be serving.
5 I think it's unprofessional and it's out
6 of place and it's misuse of their
7 authority or their service
8 responsibility. This is not just police
9 officers. The same rules applies to
10 social worker, teachers et cetera, et
11 cetera. So I don't have any issue with
12 this because everything we're talking
13 about in this rule talks about police
14 officers doing things in the course of
15 their duties. We're not talking about
16 off duty they go to some event or their
17 walking down the street and they see
18 somebody and they ask them out. We're
19 not talking about that. We're talking
20 about in the course of their duties, so
21 no, I disagree. I'm against the
22 amendment.

23 One other comment. I don't believe
24 you can change one word without going
25 through the process again.

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CHAIR DAVIE: That is correct.

Ms. Stahly-Butts?

MS. STAHLY-BUTTS: I would echo what's been said. I also think it's important the name the kind of defense of it was wanted or desired on both parts is really -- like there is a long legacy of folks who sexually (inaudible) harassing other folks and have used that as an excuse. And I think in a power relationship, which police have when they're on duty, that this idea that somehow we can engage what is not wanted, I think is a real miscalculation and understanding of how power plays out. So I would just strongly agree the language, as is, is sufficient. I think we have all powers of disownment as we go through cases, but I do think like this is about total power analysis and the power that police have when they stop somebody, when they speak to somebody, when they're on and off duty.

CHAIR DAVIE: Thank you.

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Anyone else?

(No response.)

CHAIR DAVIE: So we didn't actually get a motion on that amendment.

Do you want to make a motion Mr. Dwyer? I think you're on mute.

MR. DWYER: Yes, I do.

CHAIR DAVIE: Okay. So there's been a motion. Is there a second?

Who seconded it?

All right. All those in favor of revising the documents to reflect Mr. Dwyer suggestion that we add what were the words again unwanted and --

MR. DWYER: Rude, unwanted, harassing and any other I'd be welcome to add them, but my colleagues, just to make it simple rude, harassing, unwanted and I'll be more than willing to add other names.

CHAIR DAVIE: It's been made and seconded. All those in favor of that amendment say aye or raise your hand?

All opposed?

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(No response.)

CHAIR DAVIE: So the amendment fails. Thank you.

Another one, Mr. Dwyer?

MR. DWYER: Yes. I draw attention to a sentence that was added at the end of section 1-52, which doesn't involve sexual abuse or official misstatements and I have no idea where it came from. It says a board member must not abstain from voting unless a member is subject to subdivision A of this section and subdivision A just. To summarize, it is person or relationship with one of the people perhaps corporations involved. And first of all, I'm not aware of any issue around this I never heard it raised in a public meeting, I never heard it raised in the executive staff that's there an issue around board members not voting. So to suddenly just find this gratuitous thing shoved in there, I find very peculiar because I would've thought we would of gone

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2 through some process of discernment in
3 executive session if there were a
4 problem. But I would point out there
5 are numerous reasons a board member
6 would not want to vote; if they felt
7 that the legal research, for example,
8 was in adequate, if they felt that there
9 were ethical concerns, if they felt
10 though they didn't have a personal
11 relationship let us say God forbid one
12 of us had lost a six year old child and
13 a case involved a death of an eight year
14 old child, well there's not a personal
15 relationship, but I still would not want
16 to vote if I was such a person. I can't
17 think of -- maybe one of you can --
18 organizations that demand people vote.
19 I mean Congress they don't have to vote,
20 senate doesn't have to vote, City
21 Council members aren't told they have to
22 vote, but suddenly this statement
23 appears in our document. I don't know
24 why and so I motion that it be removed
25 from the document.

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MR. DARCHE: Mr. Chair, can I address one thing?

CHAIR DAVIE: Absolutely.

MR. DARCHE: I was speaking with the general counsel who alerted me to Mr. Dwyer's concern and in that situation if there was someone who was uncomfortable with voting for a reason that isn't included in the rules, they could make a request to the executive director or to the chair and we can reassign the entire case to a different panel and I can assure you Mr. Dwyer that should that request come to me, I would make sure that that happens.

MR. DWYER: Mr. Darche, I have total faith that you would and I have total faith our chair would, but as we learned in recent history -- let me take that back. As we seen in history and different points over the years, we never know who power is going to be to and we will never know how they would act for it. So I just go back to a

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statement that I made earlier which is let us not put in words or definitions that can be binding on future generations that we would not want binding. So I'm appreciative of your thoughts and sentiments, but I just don't see a reason that it should be there.

CHAIR DAVIE: So there's a motion been made. Is there a second to that motion?

MR. CARCATERRA: Fred, I second that, but I would just like to know what was the thought process behind putting that in and Frank brought up all those other bodies, federal legislature doesn't have that, why was this put in? I'm just curious.

CHAIR DAVIE: Jon, you want to address that or does Matt want to address it? You're on mute.

MR. DARCHE: So I think it might be better actually to promote Mr. Kadushin to so the panel and let him address it,

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as the general counsel.

CHAIR DAVIE: Ms. Sorrien, can you do that? There he is Matt Kadushin our general counsel, do you want to comment on this?

MR. KADUSHIN: So let me just say that this is a warning to wear a suit and tie to all board meetings regardless if you are supposed to be not on camera.

So I'm going to -- I think this -- but we observe this panel that there were instances where people were just not voting, despite having read the cases and deliberated in the process and we thought it was a better way that there is a means to the abstain and the extension is specified in paragraph A and that the extension shouldn't be used for any reason that the Board members wanted to because we needed the panels to move forward. I would note that in all the panels if a board members were uncomfortable with a case, they can request any case at any point in time,

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that they go to a full board and that's the right of any board member to do. And in reference to Mr. Dwyers's point that if a board member is uncomfortable with a particular case, it can be removed prior to it any vote taking place or a board member reviewing the case. This is just a process to make the panels more efficient and work smoothly and to record votes as yes or no and to get board members to set forth their opinion on how they want to proceed in this case.

CHAIR DAVIE: Thank you. Other comments?

MS. IRISH: I have a comment. I think that Frank's point to me is well taken because I did not have an understanding that this was a part of the rule changes that would be happening. I thought this was about adding the ability to review sexual misconduct cases. And so, I think that notice should've been given to the Board

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2 about other aspects of the changes that
3 were made and so this is somewhat as a
4 surprise to me that is in there and you
5 know I would've preferred just to have
6 been aware and I'm not talking -- and I
7 know you have given us the rules and
8 what the changes were, but I mean this
9 is change outside of the scope, what
10 this was suppose to be --

11 MR. KADUSHIN: Corrine, if I can
12 just add one of the other big issues
13 with this in terms of doing this is not
14 to have one, one votes in the panel
15 because if it's a one, one vote in the
16 panel and somebody abstains and neither
17 person request that it go to a full
18 board there's no disposition to the case
19 and so that was also happening we were
20 having situations sometimes where it was
21 one, one in a panel and sometimes board
22 members had not had an opportunity to
23 review the case and didn't feel
24 comfortable voting, but it if it created
25 a situation of a possible one, one tie

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and so we just there is no way to
resolve a case that is voted one, one.

MS. IRISH: I understand there's
been times when I have not been able to
vote because I just -- the body worn
camera footage was on the technology
wasn't working and the footage was
freezing or I was suppose to get a
report and I didn't get a report, so
there's other things that I just
would've wanted to taken into
consideration when considering that
particular rule change.

CHAIR DAVIE: Thank you Ms. Irish.
Other comments? Are we ready to vote?
All those in favor of the amendment that
we -- is the amendment Frank that we
remove this -- I'm sorry, Ms. Simmons.

MS. SIMMONS: I want to point out
again, that if you change a word, that
the whole thing goes back it.

CHAIR DAVIE: Understood --

MS. SIMMONS: It undo's everything
about the rule changes, so it's not just

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we want to amend, we want to stop the whole process that's the effect of it.

CHAIR DAVIE: Understood and I would encourage us to your point, to deal with these issues and others that are going to arise on the other side of the many times we'll have to address these rules and the matrix in the months going forward. But having said that we have an amendment on the floor that has been made and seconded. Is it to remove that language Mr. Dwyers? To remove that particular language. So are you ready to vote? All those in favor of the amendment to withdraw the language as articulated by Mr. Dwyers, please say aye or raise your hand if you're in favor of the removal?

All those oppose to that amendment?

MALE SPEAKER: Oppose.

CHAIR DAVIE: (Inaudible) so the amendment (inaudible) I lost you, there you are.

MALE SPEAKER: Mr. Dwyers, you're

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muted.

CHAIR DAVIE: You're muted still.

MR. DWYER: Mr. Chair, I have a number of other concerns, but it is quite clear to me that while there is wisdom in getting them on the record, my hope is that we will move forward looking at many of these things very carefully. So I do have a substantial list here, but at this point I will concede the floor and just say that I do hope we get to review these and many other things in the future.

CHAIR DAVIE: Thank you and I hope you will share them with us, the rest of them with us, so that we can consider them. And we will have these periodic checks along the way, again on both of these documents.

So we have a motion on the floor to approve these rules and the motion's been seconded. Is there any more discussion or comments?

(No response.)

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CHAIR DAVIE: All right hearing none, I'm going to ask everybody to un mute and vote by voice vote. All those in favor of approving these rules changes, please say aye.

(Chorus of ayes.)

CHAIR DAVIE: All those opposed please say no.

MR. DWYER: No.

CHAIR DAVIE: All those abstaining, please indicate by saying abstained?

(No response.)

CHAIR DAVIE: All right. The motion is passed, the motion passes and we have the rules changes now approved. That is the new business under our agenda. Is there any new business to come before us? All right hearing none. Is there a motion to adjourn to executive session? So moved, is there a second.

MALE SPEAKER: Second.

CHAIR DAVIE: There is a second. All those in favor of adjourning to executive session, please say aye?

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CHORUS: Aye.

CHAIR DAVIE: Oppose.

(No response.)

CHAIR DAVIE: No. The ayes have it.

The motion passes and we will now adjourn to executive session. Thank all of you, thanks to the public that has joined us for this meeting. We look forward to seeing you at future meetings. Thanks again to the Board members, to the staff, to everyone who made tonight possible or this evening possible and now we will go to executive session with board and staff.

(TIME NOTED: 5:05 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)


Ss:

COUNTY OF BRONX)

I, Shechinah Jackson, a shorthand reporter within and for the State of New York, do hereby certify that the within is a true and accurate transcript of the statement taken on 02/10/2021.

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

In witness whereof, I have hereunto set my hand this 10th day of February 2021.


Shechinah Jackson

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