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December 24, 2024

**PUBLIC SUBMISSION  
VIA MONITOR'S WEBSITE**

Honorable Analisa Torres  
United States District Judge  
United States District Court  
for the Southern District of New York  
500 Pearl Street  
New York, New York 10007-1312

Re: *Floyd, et al. v. City of New York*, No. 08 Civ. 1034 (AT);  
*Davis, et al. v. City of New York, et al.*, No. 10 Civ. 0699 (AT);  
*Ligon, et al. v. City of New York, et al.*, No. 12 Civ. 2274 (AT).

Your Honor:

I am a Senior Counsel in the Office of Muriel Goode-Trufant, Corporation Counsel for the City of New York, and one of the attorneys assigned to the above-captioned matters. This letter and the accompanying attachments are submitted on behalf of the City of New York pursuant to the Court's Order dated September 19, 2024 (ECF No. 936), requesting public comments on the Report to the Court on Police Misconduct and Discipline authored by retired Judge James Yates (hereinafter "the Discipline Report").

Over the past eighteen months the Law Department has worked in close consultation with numerous agencies to review and comment on multiple iterations of the Discipline Report. Most, if not all, of those comments have been previously submitted to the Monitor and Judge Yates. While those comments are generally being resubmitted in the manner described below, this letter focuses primarily on the 51 recommendations set forth by Judge Yates in the Discipline Report, and discusses those recommendations in the context of how the Discipline Report came about. It is the City's firm belief that the work of Judge Yates and the resulting Discipline Report can serve the intended purpose of informing the Court on specific issues without unjustly burdening the City with unadjudicated findings of fact and law that are not necessary to the Court's oversight of the remedial phase of this litigation.

First, it is important to acknowledge at the outset the effort undertaken by Judge Yates at the behest of the Court. While the City has differences of opinion with Judge Yates, and also concerns about the process that resulted in the Discipline Report, there is no question that Judge Yates has devoted an enormous amount of time to the subject of police discipline. Part of the challenge here is that the Department's disciplinary system has changed over the last few years, most significantly with the introduction of the Discipline Matrix, several memoranda of understanding between the Department and CCRB, and the CCRB's new statutory responsibility for investigating allegations of bias-based policing and racial profiling. As a result, significant portions of the Discipline Report are stale or have been superseded by statutory, regulatory, and administrative changes. These portions are identified in the Exhibits to this letter. As a result, the Court and the Monitor must be very cautious in relying on what is inarguably stale, and at times inaccurate, information when considering potential reforms for the future.

Second, there is no question that examining and improving disciplinary procedures in connection with *Terry* stops is squarely within the scope of the Court's and the Monitor's purview during the remedial phase of this litigation. More broadly, while the City has made significant reforms as a result of the Monitorship, the City also acknowledges that more work remains to be done. The City stands ready to work with the Monitor and her team in a continuing effort to achieve substantial compliance with the Court's remedial order.

#### Background, Stated Purpose, and Future Use of the Discipline Report

To understand the City's position on the Discipline Report it is necessary to recount the origin of that document and the purpose it was meant to serve.

During the Joint Remedial Process (JRP) that set the goals for this federal monitorship, it was found that further recommendations related specifically to police discipline should be "developed and published to increase public understanding of how officers are disciplined and to ensure external accountability." New York City Joint Remedial Process: Final Report and Recommendations at 224–25, *Floyd* ECF No. 597 (May 15, 2018). However, the JRP Facilitation Team did not themselves "feel it appropriate to dictate the structure or format" of police discipline at that juncture. *Id.* Upon receiving the Final Report of the JRP, and in a process that the parties only became aware of after the fact, on May 30, 2018, the Court directed the preparation of "an in-depth, critical examination of the efficacy, fairness, and integrity of the City's policies, practices, and procedures with respect to police misconduct during stops. . . ." Discipline Report at 13–14 (quoting "Correspondence from Judge Analisa Torres to Peter Zimroth (May 30, 2018)"). Judge Yates was selected to write the requested report without input by the parties, and the Court directed that Judge Yates "set forth, in detail, recommendations as to the specific ways in which such

policies, practices, and procedures can be improved, in order to promote constitutional policing.” Discipline Report at 13.<sup>1</sup>

It is therefore the City’s understanding that Judge Yates’s ultimate mandate was to develop the *recommendations* that the JRP Facilitation Team declined to advance on their own, and that the Discipline Report was an intermediate step towards completing that task. As such, the purpose of this entire process as we understand it has never been about the body of the Discipline Report itself, but a means to reach the recommendations for the Court to consider with input from the parties and other interested observers. Indeed, at an event hosted by the Community Liaison on December 12, 2024, Judge Yates acknowledged that most people will not have the time or need to read and digest the entirety of the Discipline Report, and instead urged participants to focus on the 51 recommendations.

In light of the foregoing, the City urges the Court to accept the Discipline Report for what it is: a testament to Judge Yates’s work over a period of years to obtain sufficient knowledge to make public recommendations, but not as a thoroughly vetted, verified, and fully-adjudicated statement of impartial fact created through an adversarial process. In that light, the focus of both the Court and the parties should not be on the 500+ pages of the Discipline Report, but rather on the 51 recommendations that resulted from Judge Yates’s work. The City therefore respectfully requests that the Court make clear that the Discipline Report is not intended to be used as evidence in any other proceeding, or relied on for any purpose beyond evaluating the 51 recommendations set forth therein.

### The Recommendations

Judge Yates sets forth 51 proposed recommendations for the Court to consider. *See* Discipline Report at 470–479. The City—including the New York City Police Department (NYPD), the Civilian Complaint Review Board (CCRB), the Office of Administrative Trials & Hearings (OATH), and the Law Department—has reviewed the 51 recommendations in detail, and have set forth extensive comments on each one in the document attached hereto as Exhibit A. The City respectfully requests that the Court consider those comments while reviewing the 51 recommendations and deciding which ones to pursue further with the Monitor and the parties.

As reflected in the City’s comments, the City has no objection to some of the recommendations. In some instances, the recommendations have been superseded by statutory, regulatory, or administrative changes,<sup>2</sup> or have already been

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<sup>1</sup> This letter was prepared prior to the Order the Court issued on December 23, 2024 (*Floyd* ECF No. 948), and does not address any of the issues therein.

<sup>2</sup> *See, e.g.*, Recommendation No. 22, which appears to predate the creation—and Court-approval—of the Disciplinary Matrix currently in use.

undertaken by the various stakeholders.<sup>3</sup> In other instances, the City respectfully submits that the recommendation would require the City to violate state or municipal law—indeed, in a number of instances the Discipline Report acknowledges as much.<sup>4</sup> In some cases the City disagrees with the recommendation because it would be challenging or even impossible to implement.<sup>5</sup>

Furthermore, to the extent Judge Yates makes broad recommendations that do not focus specifically on “police misconduct *during stops*,” those are beyond the scope of this litigation and the Monitorship.

The City urges the Court to winnow the list of 51 recommendations down to those that are within the scope of the Monitorship, consistent with city and state law, and feasible to implement.

### Other Comments on the Discipline Report

On September 23, 2024, the Court published the Discipline Report on the docket and requested public comment. This was the third time the City of New York devoted significant resources to reviewing and commenting on the Discipline Report. Unfortunately, most of the City’s previous objections, comments, and concerns have not received any meaningful response or correction in subsequent versions of the Discipline Report. As a result, the City now reiterates for the record its strong objections to the content, tone, and conclusions of the Discipline Report.

First and foremost, and as touched on above, the City has grave concerns with how far Judge Yates has ventured beyond both the Court’s mandate and the scope of this litigation when compiling the Discipline Report. For example, the lawsuits at issue here specifically address Fourth and Fourteenth Amendment violations in the context of *Terry* stops. Misconduct allegations unrelated to a *Terry* stop, such as a general discussion on use of force, are part of the issues specifically litigated by the parties nor within the purview of the Monitor. Indeed, such matters were expressly excluded from Judge Yates’s mandate by the Court when it included the words “during stops” in its original instruction. It was therefore improper for Judge Yates to make ‘findings’ of ‘fact’ or ‘law’ regarding wholly separate topics that are not before the Court.

Another general concern with the Discipline Report was the seeming lack of care given to protecting the City’s Confidential Information (as that term is defined

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<sup>3</sup> For example, the NYPD Department Manual, including the non-privileged and non-confidential portions of the Patrol Guide and Administrative Guide, are already available on the internet, consistent with Judge Yates’s first recommendation.

<sup>4</sup> See, e.g., City’s Comments on Recommendation Nos. 9, 17, 21, *etc.*

<sup>5</sup> See, e.g., City’s Comments on Recommendation Nos. 6, 15, 24, *etc.*

in the Court's previous Confidentiality Orders). The City sought to facilitate Judge Yates's research by giving him broad access to City employees at various agencies, with the expectation that those communications would be protected by the Confidentiality Orders in place. The City's understanding in this regard was reinforced by the Court's previous order denying the Plaintiffs automatic access to Judge Yates's work product. See 07/30/2021 Order (*Floyd* ECF No. 844) at 2 (subsequently vacated by 12/27/2021 Order (*Floyd* ECF No. 876)). Among the Court's grounds for denying Plaintiffs' motion to compel was "the need to preserve the free flow of information between the Monitor and the parties." *Id.* at 3. As a result of this free flow of information, the City's Confidential Information has been repeatedly disclosed in the Discipline Report.

These objections, comments, and concerns, along with numerous suggested edits and corrections, are set forth in the following documents included herewith:

- Exhibit A: The City's detailed commentary on the 51 recommendations included in the Discipline Report, as discussed above;
- Exhibit B: Three letters previously submitted to the Monitor setting forth the City's overarching concerns with the Discipline Report (also filed at *Floyd* ECF Nos. 946-1, 946-2, and 946-3);
- Exhibit C: A spreadsheet containing detailed comments, corrections, and objections to the contents of the Discipline Report; and
- Exhibit D: A section-by-section analysis of the Discipline Report with recommendations for reducing and simplifying the text.

The City respectfully refers the Court to those documents for specific and detailed commentary on the contents of the Discipline Report.<sup>6</sup>

### Conclusion

We look forward to working with the Court and the Monitor with respect to any of the 51 recommendations that are adopted. As stated above, the City urges the

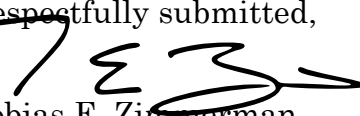
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<sup>6</sup> The City prepared redlined markups of the previous drafts circulated in June 2023 and January 2024, and submitted those to the Monitor. Consistent with its position above, the City believes that the time and resources of the Court and the parties would be better served focusing solely on the recommendations, but the City is willing to prepare and submit a markup of the draft posted to the docket in September 2024 if requested by the Court.

Court to eliminate any controversy regarding attempts to use the Discipline Report in other contexts by adding a disclaimer limiting its applicability to these cases.

The City Defendants thank the Court for its attention to this matter.

Respectfully submitted,

  
Tobias E. Zimmerman  
*Senior Counsel*  
Special Federal Litigation Division

Encls.

cc: Mylan Denerstein, Monitor (**via Email**)  
Richard Jerome, Deputy Monitor (**via Email**)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAVID FLOYD, *et al.*,

Plaintiffs,

-against-

08 Civ. 1034 (AT)

CITY OF NEW YORK, *et al.*,

Defendants.

KELTON DAVIS, *et al.*,

Plaintiffs,

-against-

10 Civ. 699 (AT)

CITY OF NEW YORK, *et al.*,

Defendants.

JAENEAN LIGON, *et al.*,

Plaintiffs,

-against-

12 Civ. 2274 (AT)

CITY OF NEW YORK, *et al.*,

Defendants.

**CITY OF NEW YORK'S PUBLIC COMMENTS ON  
REPORT TO THE COURT ON POLICE MISCONDUCT AND DISCIPLINE**

**EXHIBIT A**

**CITY'S COMMENTS ON RECOMMENDATIONS**

This document sets forth the City of New York’s responses to the fifty-one (51) “Recommendations” set forth in the “Report to the Court on Police Misconduct and Discipline” (“the Discipline Report”) posted by the Court to the Docket of the above entitled cases with a request for public comment. *See* Order dated September 23, 2024 (*Floyd* ECF No. 936). Each of the 51 recommendations is set forth below with accompanying commentary.

As a general matter, the proposed recommendations lack sufficient context and explanation to fairly assess their merit and potential benefits. It is often difficult to discern the goal of any given recommendation, and it is therefore impossible to assess whether the suggested change is likely to be effective in accomplishing that intended goal. The City further refers the Court to its letter to the Monitor dated February 23, 2024 (*Floyd* ECF No. 946-2) for additional comments about the recommendations as a whole.

**RECOMMENDATION NO. 1:**

Any items in the Departmental Manual pertaining to Fourth Amendment or Fourteenth Amendment enforcement, compliance, and related discipline should be made publicly available including: procedures, supervisory responsibility, investigations, interviews, reporting and decision-making regarding misconduct, interaction with Civilian Complaint Review Board (CCRB) or other investigative bodies. Such provisions in the Departmental Manual, which includes the Patrol Guide and the Administrative Guide, should be publicly posted and available to the public, with exceptions as provided in NYC Admin. Code § 14- 164 (confidential information non-routine investigative techniques, material which could compromise safety or ongoing investigations and operations).<sup>1930</sup>

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<sup>1930</sup> In the course of litigation and discovery in *2020 Demonstrations*, Plaintiffs sought to obtain the entirety of the Administrative Guide with specificity as to the timing of any amendments. The City objected for several reasons, among them that production of the entirety of the Guide was unnecessary to the litigation and that specifying the timing of amendments would be burdensome. In support of disclosure, the Attorney General wrote that “The Guide is a policy document that should have long ago been produced.” Doc. No. 1004. The City’s objection was denied by U.S. Magistrate Judge Gabriel W. Gorenstein with the caveat that production would not be deemed a waiver of any individual claim of protection for “purportedly privileged material.” Doc. No. 1006



**CITY’S COMMENTS ON RECOMMENDATION NO. 1:**

The City has no objection to this. Currently, the NYPD Departmental Manual, including both the Patrol Guide and the Administrative Guide, are publicly available on [NYPD’s webpage](#). Updates are generally posted within 24 hours.

**RECOMMENDATION NO. 2:**

Proposed changes to the Disciplinary System Penalty Guidelines or the Department Manual pertaining to Fourth Amendment or Fourteenth Amendment enforcement, compliance, and related discipline, should be made available to the Monitor prior to adoption. The Monitor, after consultation with the Community Liaison, may direct that such proposed changes be made public or presented for public comment.

**CITY’S COMMENTS ON RECOMMENDATION NO. 2:**

The discipline Matrix was the result of extensive discussion with stakeholders, and each form is the result of collaboration with both the Civilian Complaint Review Board (CCRB) as well as the Commission to Combat Police Corruption (CPCC). All proposed changes to the Matrix are made available for public comment before implementation. The City has no objection to the Monitor’s review of any changes to the Discipline Matrix or Departmental Manual that implicate issues pertaining to the monitorship.

The City objects to adding the Community Liaison to this process, as it is outside of the Framework established by the Court for that position, and does not fall within the Community Liaison’s sphere of expertise.

**RECOMMENDATION NO. 3:**

Complainants and officers should be advised every 60 days of the status of a pending complaint, including where it is pending and causes for delay. When either CCRB or the Internal Affairs Bureau (IAB) sends notice of an outcome to a complainant, the complainant should be advised with particularity which allegations were substantiated along with a listing of any other outcomes and any specific penalty or guidance ordered.

**CITY’S COMMENTS ON RECOMMENDATION NO. 3:**

The CCRB already affirmatively notifies complainants and subject officers of outcomes, and also maintains a website that allows complainants to look up the status of their case prior to

resolution. NYPD is also working on a system that will provide regular notifications, and provide a look-up tool, for officers. It would be unduly burdensome and of little benefit for CCRB to attempt to make such regular affirmative notifications in every pending case.

**RECOMMENDATION NO. 4:**

Upon receiving notice and a directive to impose discipline or guidance of a substantiated SQFS (Stop, Question, Frisk, Search of Person) finding by CCRB, the CO must report back to the Department Advocates Office (DAO) the final result, including the specific penalty or guidance imposed and the date of imposition, within 30 days. This should be forwarded immediately to CCRB and be made publicly available. Any complainant should be personally advised of the penalty outcome.

**CITY'S COMMENTS ON RECOMMENDATION NO. 4:**

This is largely duplicative or redundant to processes already in place. There is no reason for DAO to be notified of “guidance”, which is non-disciplinary in nature and outside the purview of DAO. Furthermore, it is not clear if the phrase “personally advised” is meant to have particular significance. In any event, NYPD now sends a report on non-APU disciplinary matters approximately twice per month.

**RECOMMENDATION NO. 5:**

Command disciplines imposed for SQFS misconduct are not “technical” findings under Public Officer’s Law § 86 and should be publicly available under FOIL. *See, e.g., United Fire Officers Ass’n v. de Blasio*, 846 F. App’x 25, 33 (2d Cir. 2021).

**CITY'S COMMENTS ON RECOMMENDATION NO. 5:**

The section of law cited in this recommendation is not correct, and the cited case does not support the proposition for which it is offered.

In any event, release of a command discipline record under FOIL is dependent on the facts of the disciplinary incident and the statutory rules detailed in the Public Officer’s Law. If, as a matter of state law, a particular command discipline is not a technical infraction, it would be released under FOIL subject to any other FOIL exemptions. If, as a matter of state law, a particular command discipline is a technical infraction, it will not be subject to release under FOIL.

Additionally, this recommendation ignores the fact that misconduct that is not “technical” in nature is on CCRB’s website and NYPD online provides a link to it.

[N.B.: The correct name of the case cited by Judge Yates is *Uniformed Fire Officers Ass’n v. De Blasio*]

**RECOMMENDATION NO. 6:**

NYPD’s “Officer Profile” (<https://nypdonline.org/link/2>) posting of “Disciplinary History” should include all substantiated SQFS allegations accepted by the Police Commissioner (with date of incident and specific outcome, including guidance or penalty). This should include SQFS substantiations whether made by CCRB, IAB, or within the Department.

**CITY’S COMMENTS ON RECOMMENDATION NO. 6:**

This recommendation would be impractical and ineffective given the nature of command disciplines. Because CDs may be imposed without the “acceptance” of the Police Commissioner, the proposed scope would not capture all SQF related CDs. The imposition of “guidance” is not discipline as a matter of state law, and should not be tracked under “Disciplinary History”. Further, many CDs are not recorded with sufficient data to permit this type of subject-matter tracking. CCRB provides a complete list of substantiated SQF allegations where discipline is imposed.

**RECOMMENDATION NO. 7:**

When CCRB has referred Other Possible Misconduct Noted (OPMN) to NYPD arising from an SQFS investigation, the Department should promptly advise CCRB of the disposition, level of discipline, and penalty, if any, imposed. Substantiated dispositions should be listed on the publicly posted online profile and in CCRB’s listing of MOS disciplinary outcomes.

**CITY’S COMMENTS ON RECOMMENDATION NO. 7:**

Non SQFS-related OPMN is not covered under the Monitorship, even if it arises from an SQFS investigation. It also concerns misconduct that is outside of FADO and beyond the purview of CCRB.

There is no reason to believe that this type of additional information would be meaningful or helpful to the public, and there is no data driven analysis between what is suggested and improved outcomes. All case allegation dispositions are listed on a Subject Officer’s CPI at the

time of case closing, and provided to the District Attorney's office as required by law as part of their *Giglio* history

**RECOMMENDATION NO. 8:**

The Law Department should review and assess the accuracy of its public postings pursuant to Admin. Code § 7-114 (Civil actions regarding the police department and covered individuals), and update or correct if necessary:

- a. The Code requires an online posting indicating whether a case was resolved by payment by the city, employer, or covered individual (officer) or another person paying on behalf of a covered individual and, if so, the amount of such payment. This should specify if the Law Department declined to represent or if indemnification was denied.
- b. The Code requires a delineation of whether the complaint alleges use of force, assault and battery, malicious prosecution false arrest or imprisonment, or deprivation of a right pursuant to chapter 8 of title 8 of the Code (right of security against unreasonable search and seizure and against excessive force regardless of whether such force was used in connection with a search or seizure).
  - i. Included therein, the posting should include a column indicating if the complaint alleges an illegal stop, frisk, or search.

**CITY'S COMMENTS ON RECOMMENDATION NO. 8:**

The Law Department already provides the best information available to it in accordance with the ordinance. In general, many portions of the Discipline Report and its recommendations are based on an misunderstanding of the relationship between NYPD disciplinary conduct and litigation handled by the Law Department.

**Comment on paragraph 8(a):**

This recommendation concerns matters beyond the scope of the monitorship. N.Y.C. Admin. Code § 7-114 does not require the Law Department to specify when it declines to represent or indemnify.

**Comment on paragraph 8(b):**

This recommendation concerns matters beyond the scope of the monitorship. The Law Department now includes a column in its report specifying when a complaint alleges a violation of Chapter 8 of Title 8 in accordance with Admin. Code § 7-114.

**Comment on paragraph 8(b)(i):**

This is not required under Section 7-114, and would be impractical or impossible given the vagueness and boilerplate nature of most civil complaints.

One significant hurdle to using allegations in lawsuits is the poor quality of many of the civil pleadings filed against the City. Many of the civil complaints fielded by the Law Department are “the sort of ‘shotgun pleading’ that illustrates plaintiffs’ utter disrespect for Rule 8, Fed. R. Civ. P.,” containing only “a potpourri of vague and conclusory allegations that for the most part are not explicitly linked to any specific factual assertions, making it extremely difficult to discern the precise nature of [the] claim[s].” *Coakley v. Jaffe*, 49 F. Supp. 2d 615, 625 (S.D.N.Y. 1999) (quoting *Pelletier v. Zweifel*, 921 F.2d 1465, 1518 (11th Cir. 1991)). For example, it is more common than not for all of the allegations in a civil complaint to be pled generally against all “Defendants”, even though different defendants may have been involved in different aspects of the allegedly tortious conduct. Such pleading practices makes it impossible to discern—often until the summary judgment stage or even trial—just which “allegations” are being made against which officers.

**RECOMMENDATION NO. 9:**

CCRB and NYPD should agree upon one set of descriptions for findings and outcomes and apply them uniformly. In particular:

- a. “Exonerated” in SQFS cases should be reinstated by CCRB as a finding, and reserved exclusively for cases where it is demonstrated that the subject officer engaged in the alleged conduct, but the officer’s actions were lawful and proper.
- b. “Unfounded” in SQFS cases should be applied in cases of misidentification or where it is demonstrated that the officer did not perform the acts or engage in the conduct attributed to the officer.
- c. In SQFS cases, if there is insufficient evidence to determine whether or not the acts alleged occurred or that the officer performed the acts or engaged in the conduct attributed to the officer, the case is “unsubstantiated” not “unfounded.”

**CITY’S COMMENTS ON RECOMMENDATION NO. 9:**

The City objects to this recommendation. First, such a change would require rulemaking by CCRB, and is already the subject of pending litigation.

The CCRB adopted the current terminology based on analysis of what would most effectively communicate results to the public. There is no reason to believe that having a separate, SQF-specific set of terminology would benefit public understanding.

**Comment on paragraph 9(b):**

When CCRB believes that misconduct occurred, but cannot identify the member of service, the disposition is “MOS Unidentified.” If an allegation is made against one member of service, but the CCRB determines that the misconduct was actually committed by a different member of service, then the CCRB pleads against that member of service.

**RECOMMENDATION NO. 10:**

In any case containing an SQFS allegation where there is overlap of separate investigations or a split in investigations of the same complaint, encounter or subject officer, NYPD and CCRB should coordinate the investigations, sharing information and explaining differences in outcome. CCRB should have access to any interview by IAB of any police witnesses regarding the subject matter of the complaint being investigated by CCRB. Where separate investigations (by NYPD and CCRB) of an encounter have occurred, DAO should present both matters to the Police Commissioner for reconciliation or resolution. If the findings regarding SQFS conduct are inconsistent, the Police Commissioner should describe, in writing, the reasons for the final decision and CCRB should have an opportunity to respond or publicly comment.<sup>1931</sup>

**CITY’S COMMENTS ON RECOMMENDATION NO. 10:**

The City objects to this recommendation. One of the themes of these recommendations is information sharing and collaborative investigations. This is the opposite of a dual system of

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<sup>1931</sup> In its review of a draft of this Report, dated July 12, 2024, CPR expressed concern that “coordination” as recommended herein would result in NYPD’s stripping CCRB of authority to conduct investigations. This misapprehends the intent of Recommendation 10, which is merely that concurrent or overlapping investigations should proceed, when appropriate, with full access to all necessary information and recommendations by both parties and that DAO or the Police Commissioner should not judge a case solely upon the recommendation of one agency without receiving and considering any concurrent investigation which may have been undertaken. This should be done with transparency and with an explanation when CCRB’s recommendation is not followed. No one is suggesting that CCRB be stripped of jurisdiction or authority. Command discipline should not be utilized to pre-empt an ongoing CCRB investigation.

concurrent independent investigations, with each agency providing checks and balances on the work of the other. When CCRB substantiates a complaint and NYPD does not impose penalty requested by CCRB the Department explains the inconsistent findings through P2 and P6 letters, which are publicly available. For its part, NYPD's Force Investigation Division (FID) already shares some limited information with CCRB where appropriate.

**RECOMMENDATION NO. 11:**

Deputy Commissioner of Trials should be provided with a complete CPI (not just a Summary of Employment History) and disciplinary history, including matters which have been sealed or did not result in discipline and including investigations by IAB. While prior unsubstantiated allegations cannot, in and of themselves, form the basis for a finding of misconduct, unsubstantiated matters may be considered in weighing assertions, claims or defenses of good faith, mistake, motive, intent, identity, common scheme or plan, or in identifying patterns of misconduct.

**CITY'S COMMENTS ON RECOMMENDATION NO. 11:**

Adopting this recommendation would be contrary to due process. Officers should not be penalized or judged differently based on unsubstantiated allegations. The Deputy Commissioner of Trials (DCT) already receives a complete CPI (not a summary), which summarizes findings of misconduct. Under appropriate circumstances, an administrative prosecutor may present evidence of a pattern of misconduct at trial or in a *Fogel* letter. Where DAO seeks to use "*Molineux*" evidence, it is up to the DCT to rule on the admissibility of that evidence, weighing probity with prejudice.

**RECOMMENDATION NO. 12:**

When investigating misconduct, CCRB and NYPD should examine and consider allegations, findings, judgments and settlements, made in court or before the Comptroller, for related complaints, inconsistent statements, and in assessing credibility, motive, assertions of good faith or mistake, and in identifying patterns of misconduct, as well as when recommending or imposing a penalty.

**CITY'S COMMENTS ON RECOMMENDATION NO. 12:**

Again, this would violated due process and once again misunderstands the relationship between litigation and the disciplinary process. Mere allegations in court filings and notices of

claim are not evidence against an officer. IAB case investigators already do “history checks” of officers as part of their case investigation. *See also* Comment on Recommendation No. 8(b)(i), above.

CCRB already takes findings and judgments into account where appropriate.

**RECOMMENDATION NO. 13:**

A CCRB panel should have available upon request a complete disciplinary history of the subject officer, including all Departmental investigations, when recommending a penalty for substantiated SQFS misconduct. The CCRB executive director should be able to obtain this history at an earlier point, upon request, during investigation, when relevant to any of the issues arising in that investigation.

**CITY’S COMMENTS ON RECOMMENDATION NO. 13:**

The City is opposed to this recommendation as a matter of due process. Unsubstantiated allegations are not evidence of misconduct, and an officer should not be penalized based on prior allegations against them in the absence of a factual finding that the allegations were true. *See also* Comments on Recommendation Nos. 11 & 12, above.

It is CCRB’s responsibility to determine the legality of a specific action, in a specific context, and that determination should not be prejudiced by unsubstantiated and unrelated allegations.

**RECOMMENDATION NO. 14:**

In SQFS investigations, in light of the fact that substantiated CCRB recommendations are reviewed after referral by Departmental employees and, in all cases, are subject to a final outcome determination by the Police Commissioner, preliminary screening by police designees on every CCRB panel is not necessary. In concordance with the City Charter, CCRB should eliminate its supplemental requirement that a police designee must be one of the members of every SQFS panel and, as well, should eliminate the two-step process recently put in place that requires a secondary review by a panel with a police designee before a substantiation.

**CITY’S COMMENTS ON RECOMMENDATION NO. 14:**

This recommendation is contrary to the fundamental principles of the CCRB. Moreover, SQF is a highly complex and nuanced area of law, that implicates policy, tactics, training, and



officer safety. As such, the police designee provides perspective and knowledge that is of important value to the CCRB Board.

It is also not clear what is referred to by “SQFS panel”.

**RECOMMENDATION NO. 15:**

Upon substantiating an SQFS allegation, the CCRB panel should separately and clearly delineate findings of fact.

**CITY’S COMMENTS ON RECOMMENDATION NO. 15:**

This recommendation is not feasible. Moreover, it would require unanimous findings of fact by the panel, which is not currently required. That change would most likely result in many fewer cases being substantiated because it would require agreement on each and every fact as well as the overall conclusion of misconduct. Furthermore, attempting to implement this recommendation in all instances would be unduly burdensome and time consuming, and would risk pushing the resolution of many cases beyond the statute of limitations.

**RECOMMENDATION NO. 16:**

When CCRB cases with SQFS allegations are “closed pending litigation,” CCRB should review the matter upon conclusion of the litigation and determine, unless opposed by the complainant, whether to re-open the matter for investigation or recommendation. The Law Department should send a notice to the Legal Bureau or IAB upon conclusion of litigation, when advised that a CCRB investigation was closed pending litigation. The IAB liaison should be responsible for advising CCRB of the status.<sup>1932</sup>

**CITY’S COMMENTS ON RECOMMENDATION NO. 16:**

Once again, this recommendation is premised on a misunderstanding of the relationship between litigation and NYPD discipline. “Closed pending litigation” means the case is closed *because of* pending litigation (civil or criminal), and does not mean the investigation is merely “paused” during the pendency of the litigation. Cases are not “closed pending litigation” at the

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<sup>1932</sup> In its review of this Report, dated July 12, 2024, CPR recommended that “Cases should never be closed pending litigation, they should be put on pause and reopened automatically when litigation is completed. This Report does not recommend automatic re-opening without either consent of the complainant or a determination by CCRB.

request of the Law Department. These requests are usually made by counsel representing the civilian-complainant in a criminal prosecution because statements made to CCRB are admissible in the criminal prosecution.

CCRB already has a process by which a civilian or their attorney may seek to reopen an investigation that was previously closed. However, attempting to implement this recommendation in all cases would be impractical and would often be impossible due to the statute of limitations.

**RECOMMENDATION NO. 17:**

Materials or statements presented to the Comptroller while processing a claim which includes a claim of SQFS misconduct should be made available to CCRB upon request. If needed, CCRB should seek consent from complainants to obtain GML § 50-h transcripts.

**CITY'S COMMENTS ON RECOMMENDATION NO. 17:**

This is contrary to law and has already been litigated, as acknowledged on page 259 of the current draft of the Discipline Report. The Comptroller's files are protected from disclosure by numerous privileges. *See CCRB v. Office of the Comptroller*, 52 Misc.3d 226 (Sup. Ct. N.Y. C'ty, March 24, 2016). As a matter of practice CCRB routinely obtains releases from complainants and requests § 50-h transcripts from the Comptroller, which provides those transcripts where appropriate, but under N.Y. Gen. Mun. L. § 50-h, mere assent by the complainant is sometimes insufficient to unseal a transcript.

**RECOMMENDATION NO. 18:**

Materials filed or presented in the course of litigation which includes a SQFS claim, unless privileged, should be made available to CCRB, by the Law Department upon request. Such materials should be considered, by CCRB and the Police Commissioner, in a related disciplinary proceeding.

**CITY'S COMMENTS ON RECOMMENDATION NO. 18:**

Once again, this is premised on a misunderstanding of the relationship between litigation and the disciplinary process. Most lawsuits are not commenced until after the disciplinary

investigation is complete. CCRB already makes requests and gets from NYPD or other sources most of the non-privileged documents.

As counsel to the City and its agencies, the Law Department receives information from numerous sources, and is constrained from disclosing such information by various competing confidentiality obligations including, but not limited to, those imposed by various sealing statutes.

**RECOMMENDATION NO. 19:**

In any SQFS investigation, when assessing the credibility of the subject officer's statements, CCRB should seek and have full access to the entire investigative file or court record of any case alleging a Fourth or Fourteenth Amendment violation, where the officer had been the subject of an adverse credibility finding or is the subject of a pending investigation for making an untruthful, misleading, or false statement, whether sworn or not. If IAB is investigating, or has investigated, a subject officer for an untruthful, false or misleading statement in connection with a current CCRB case, the CCRB should have full access to the file of such investigation and any statements the officer made regarding the encounter for consideration in the pending matter, including pertinent officer interviews conducted by IAB. If CCRB finds that an officer testified untruthfully about material facts pertaining to the encounter, it may disregard the officer's testimony. Such a determination, if made, is entitled to deference when reviewed by the Police Commissioner.

**CITY'S COMMENTS ON RECOMMENDATION NO. 19:**

Some of this recommendation is already accomplished through the 2023 MOU between CCRB and NYPD. Expanding the scope of information would be time consuming, impractical, and costly. Furthermore, many of the implicated records are sealed, and would therefore require separate court orders to unseal for each complainant in each investigation. There is legislation currently pending in the State Legislature that would affect this issue. *See* N.Y. Sen. B. 2023-S6267.

During a CCRB investigation, the credibility of all witnesses should be taken into account. The credibility of the officer and complainant must be weighed by CCRB and not artificially stacked against the officer, as this recommendation suggests. The proposal that the Police Commissioner must defer to CCRB's credibility determinations is contrary to the New York City

Charter, which vests the Police Commissioner with plenary authority over Department discipline.

See New York City Charter § 434 and New York City Administrative Code § 14-115.

**RECOMMENDATION NO. 20:**

“Training” as a finding should be individualized, addressing the specific circumstances of SQFS misconduct, performed in-person (not video), and completed within a reasonably short period of time after the misconduct finding is finalized.

**CITY’S COMMENTS ON RECOMMENDATION NO. 20:**

Training is not discipline under Civil Service Law Section 75 or the Admin. Code provisions related to the NYPD.

Training for SQFS is often done in-person after reviewing the CCRB investigative findings. However, the insistence that the training be “in-person (not video)” is unwarranted, as there are times when video training is both prudent and reasonable. All organizations, including NYPD and the state bar have adopted online training (both live and pre-recorded) as an equivalent to live training.

**RECOMMENDATION NO. 21:**

In any case where an SQFS allegation was substantiated, when writing after a departure or deviation from a panel recommendation or from the Penalty Guidelines, or when retaining a case, the Police Commissioner should separately and clearly delineate findings of fact and conclusions of law if the basis for departure is either.

- a. In finding facts, CCRB’s determination is not conclusive but is entitled to deference and weight. If the Police Commissioner does not accept material facts found by CCRB, he should specify the facts which were not accepted. Such determination should not be made upon a credibility assessment of a witness absent identified inconsistent statements or extrinsic evidence, in the record, contravening or supporting the witness’ statement. If the Police Commissioner has considered evidence outside the record reviewed by CCRB, he should notify CCRB. Upon such notice, CCRB should have the option to re-open the hearing or reconsider the matter.
- b. After a substantiated allegation of SQFS misconduct, if the penalty or level of discipline imposed by the Police Commissioner is less than that recommended by the CCRB panel, but the reason for departure or deviation is an act of lenity, separate from a disagreement over the findings of fact or conclusions of law, the Police Commissioner should explain the factors considered in lenity. Along with such explanation, the statement should contain a list all prior disciplinary

investigations and their outcome, whether conducted within NYPD or at CCRB.

- c. When setting aside a substantiated allegation of SQFS misconduct, or finding of guilt, by either an NDA, DUP or “not guilty” determination, the Police Commissioner should specify any factual finding and any legal conclusions that form the basis for the action. This should be publicly available, and a copy should be sent by CCRB to any complainant in the matter.

**CITY’S COMMENTS ON RECOMMENDATION NO. 21:**

It is the practice of the Police Commissioner’s Office to prepare departure and deviation letters that contain findings of facts and conclusions of law.

**Comment on paragraph 21(a):**

The recommendation that the Police Commissioner defer to CCRB is contrary to the law, which vests ultimate authority over discipline solely with the Commissioner. *See* New York City Charter § 434 and New York City Administrative Code § 14-115. While the Police Commissioner has the authority to consider any and all evidence in disciplinary matters, it is not the practice of the Police Commissioner’s Office to consider extrinsic evidence, and because the Police Commissioner is the final adjudicator of disciplinary matters, the end result of allowing CCRB to re-open a hearing or reconsider the matter would erode the Police Commissioner’s role as the final arbiter in matters of discipline. Any departure or deviation from CCRB’s recommendations would be explained in a departure letter.

There are well established legal principles dealing with the assessment of credibility that are not taken into account here. Few things are more difficult, yet more fundamental to the role of a trier of fact, than the task of attempting to reconstruct the most probable nature of a past event on the basis of conflicting testimonial accounts alone. While the law creates the framework within which such task is accomplished, establishing as it does rules for the scope, content and manner in which the conflicting accounts may be received and considered, allocating to one side or the other the burden of convincing the fact finder of the correctness of one or the other version of events,

and establishing the degree of certitude with which a fact finder must be convinced before rendering his or her verdict, the ultimate determination of which account to accept in such cases depends almost solely on an assessment of witness credibility. In making such assessment, the trier of fact should consider a wide range of factors, including but not limited to, witness demeanor, corroborating evidence, the consistency of a witness' account both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, and perhaps most basically the degree to which the witness' account is logical and comports with common sense and general human experience. *See, e.g., Dep't of Correction v. McNeill*, OATH Index No. 265/22 at 8 (Feb. 22, 2022), *adopted*, Comm'r Dec. (June 16, 2022); Disciplinary Case No. 2017-17490 (Sept. 20, 2003).

“Evidence outside the record” is not defined except in cases where there is a trial. As head of the agency, the Police Commissioner has a broader perspective as well as personnel and policy considerations to take into account. This cannot be the basis for reopening the record.

**Comment on paragraph 21(b):**

Decisions regarding lenity are already covered in individual P2 and P6 deviation letters which are publicly available, based on the CCRB and NYPD MOU. As a matter of routine this information has already been reviewed, it is largely available elsewhere (including to the public). Circumstances surrounding individual acts of misconduct are unique, particularly when considering an officer's work history and experience, and the Police Commissioner's penalty determinations take into account a member's disciplinary history, or lack thereof, during consideration of aggravating and/or mitigating factors. It would be unreasonable, time consuming and burdensome to include such a list, and such a requirement serves no purpose beyond attempting to de-legitimize or undermine the Police Commissioner's lenity decision.

**Comment on paragraph 21(c):**

It is the practice of the Police Commissioner’s Office to prepare departure or deviation letters that contain findings of facts and conclusions of law for all cases, not just those concerning SQFS issues. The NYPD posts deviation letters on its public facing website. The NYPD forwards departure letters to CCRB, and CCRB makes those letters publicly available on their website.

Any “not guilty” determination is made after trial and will include detailed findings of fact and conclusions of law by the presiding DCT Judge. These decisions are publicly available.

**RECOMMENDATION NO. 22:**

The Police Commissioner, upon accepting a command discipline recommendation from CCRB in an SQFS case, may direct a specific penalty or guidance. If the choice of penalties is referred to the Commanding Officer (CO), the CO should apply the Disciplinary Guidelines and inform the Police Commissioner and DAO of the penalty imposed. The CO is not free to deviate from the Guidelines without first conferring with DAO.

**CITY’S COMMENTS ON RECOMMENDATION NO. 22:**

There is a range of potential penalties and guidance available under the Discipline Matrix.

**RECOMMENDATION NO. 23:**

As recommended by the Commission to Combat Police Corruption (CCPC), IAB referrals for Charges and Specifications should be noted in the CPI, as “referred not charged,” when DAO declines to bring charges.

**CITY’S COMMENTS ON RECOMMENDATION NO. 23:**

It is not clear what source this is referring to when it says “recommended by the [CCPC].” There are places in the body of the Discipline Report where CCPC is incorrectly identified in place of CCRB or other agencies. This “recommendation” does not seem to fall within CCPC’s purview, and the City cautions against relying on any statements not issued directly by the CCPC to infer or deduce the opinions of that Board. DAO makes a recommendation, not a final determination to bring charges. Additionally, this is unduly prejudicial to the respondent.

**TEXT OF FOOTNOTE NO. 1233:**

“Good faith” and “mistakes” are commonly asserted as cause of reducing or dismissing substantiated allegations of SQFS misconduct. The problem for CCRB, as explained by NYPD in

another context (profiling), is that, “Even the best investigative protocols . . . cannot go inside an officer’s mind to glean, and prove by a preponderance of the evidence, intent or motivation.”

**CITY’S COMMENTS ON FOOTNOTE NO. 1233:**

If the footnote substantively affects the meaning of the heading, then its contents should be incorporated into the body text.

**RECOMMENDATION NO. 24:**

If the subject officer asserts “good faith,” “inadvertence,” “mistake,” or asserts that misconduct was an “isolated” incident (under PG 212-11), the panel should have complete access to all prior investigations where an SQFS allegation was investigated at CCRB and/or within NYPD, whether or not prior cases were substantiated or “sealed.”

- a. If guidance rather than discipline is recommended by CCRB or directed by the Police Commissioner for an SQFS violation, it should be limited to “isolated cases of erroneous but good faith stops or frisks,” as specified in PG 212-11 or when permitted under paragraph (b) or (c). Such a finding for an improper stop or frisk, is not permitted more than one time for an officer. The Department should include, in its posted officer profile, a listing, (including identification of the officer) of each time guidance or no penalty, in lieu of an assessment of penalty days or lost time, was ordered as a result of such finding.
- b. “Good faith” or “mistakes” are to be measured objectively. The “good faith” or “mistake” asserted in defense must not only be an honestly held belief or a subjectively honest mistake, but it also must be an objectively reasonable belief or an objectively reasonable mistake measured by the standard of a reasonably trained police officer’s point of view.
- c. “Good faith” or “Complexity” or “Misunderstanding of the Law” is not a basis for NYPD to NDA, DUP, or to find an officer “Not Guilty” of an SQFS violation but may be used in mitigation. “Good faith,” “Complexity,” or “Misunderstanding of the Law” is not to be considered in mitigation of SQFS allegations against an officer on more than one occasion.
- d. CCRB and the Department should maintain a separate descriptive index, publicly available and posted monthly, for each case where a finding of “mistake” or “good faith” is utilized as justification for reducing a discipline recommendation or excusing misconduct, specifically identifying the officer and the circumstances of the complaint and finding.

**CITY’S COMMENTS ON RECOMMENDATION NO. 24:**

This would be unduly burdensome and impractical, and impossible to reconcile with the sealing laws.



DCT decisions are based on the legal standard for determining misconduct pursuant to N.Y. Civil Service L. § 75, which requires some showing of fault on the employee's part, either that he or she acted willfully or intentionally, or carelessly or negligently. *See Reisig v. Kirby*, 62 Misc.2d 632, 635 (Sup. Ct. Suffolk Co. 1968), *aff'd*, 31 A.D.2d 1008 (2d Dep't 1969) ("Misconduct and insubordination on the part of a civil service employee implies intentional and willful disobedience") (emphasis in original); *Dep't of Sanitation v. Rizzo*, OATH Index No. 1423/06, at 2 (Sept. 26, 2006) ("A finding of misconduct cannot be predicated on mere errors in judgment that lack willful intent and are not so unreasonable as to be considered negligence."); *and Dep't of Sanitation v. Nieves*, OATH Index No. 1683/07, at 2 (Sept. 19, 2007) (citing *Ryan v. New York State Liquor Auth.*, 273 A.D. 576, 581 (3d Dep't 1948) ("The degree of carelessness must be more than de minimis, since minor and inconsequential errors do not rise to the level of misconduct.")). It is therefore solidly within DCT's purview to accept or reject a good-faith defense, and that defense is frequently rejected where it does not meet the legal standard. Conversely, where the defense is successfully established, there is—by definition—no misconduct, and therefore should be no further consideration of the allegation.

Furthermore, due to the complex nature of SQFS law, which is regularly litigated. It is completely possible that an officer could make more than one stop during their career, under which entirely different parts of the law are applicable. Attempting to track whether or not an officer had already used their "one" good faith mistake would not be administratively feasible. This recommendation is completely untenable and does not take into account officer longevity. The ramifications of such a recommendation would also unduly extend into the realm of collective bargaining.

**Comment on paragraph 24(a):**

It is unreasonable to impose an arbitrary “one-strike” rule on the good-faith defense, particularly given the complex and evolving nature of SQF law. The DCT should be free to consider and apply all options available under the Civil Service Law in each and every case.

**Comment on paragraph 24(d):**

This would be unduly burdensome and impracticable, and would be unlikely to achieve any positive benefit.

**RECOMMENDATION NO. 25:**

When making a disciplinary recommendation, the CCRB panel should itemize, with specificity any aggravating or mitigating circumstances found and explicitly state whether any assertions of “good faith,” “mistake,” or “inadvertence,” were rejected or accepted.

**CITY’S COMMENTS ON RECOMMENDATION NO. 25:**

The CCRB already writes closing reports that set forth all of the salient and relevant aspects of their findings. The reconsideration process laid out in the CCRB rules allows NYPD to engage CCRB when the Department believes CCRB has erred. The City is amenable to developing a mechanism whereby NYPD can request further clarification or detail from CCRB when such information would be helpful.

**RECOMMENDATION NO. 26:**

Corporation Counsel’s decision to deny representation or indemnification, in litigation involving the same encounter, based upon wrongdoing or recklessness should be taken into consideration by CCRB and the Police Commissioner in assessing a case and should preclude a finding of mitigation, good faith, inadvertence or mistake. Corporation Counsel should notify NYPD Legal Bureau upon each such declination and a record should be kept by DAO, which record will be made available to CCRB during the course of any related investigation or prosecution. CCRB should be advised of the “general basis” for declination or denial, i.e., a brief description of why representation was denied.

**CITY’S COMMENTS ON RECOMMENDATION NO. 26:**

This recommendation once again fails to grasp the relationship between police discipline and civil litigation. Specifically, it does not accurately reflect the sequence in which such decisions are made. When a civil complaint comes to the Law Department, one of the first facts that the

Law Department investigates is whether any involved personnel were disciplined by their agency in relation to the complained-of incident. If there is an active/ongoing investigation of misconduct at the agency (or with DOI or a law enforcement entity such as a District Attorney's Office), the Law Department generally defers any decision on representation until that investigation is complete. Thus, the Law Department's representation and indemnification decisions are largely driven by, but not always, the outcome of the disciplinary/criminal investigation, and those investigations are therefore usually completed before the Law Department makes its own decision.

The Law Department already notifies NYPD (and all of its client agencies) whenever it makes a decision to decline representation or indemnification. NYPD records such notifications, and denials are logged on a MOS's CPI.

CCRB is an independent investigative body, and it would be inappropriate for it to rely on findings made by the Law Department.

**RECOMMENDATION NO. 27:**

In cases where SQFS allegations are not substantiated, CCRB should continue to refer failures to file a stop report to NYPD for investigation. However, if CCRB determines that an officer has abused authority by an improper stop or frisk, it should then fully investigate and independently determine if a stop report should have been filed and was not. In such a case if a stop report is "missing," CCRB should list the failure, if substantiated, as either a separately substantiated offense under the Disciplinary System Penalty Guidelines, or as an aggravating factor, rather than referring the matter to NYPD for later, or separate, investigation. The determination by CCRB is entitled to deference and should only be disregarded by the Police Commissioner in extraordinary circumstances, explained in writing.

**CITY'S COMMENTS ON RECOMMENDATION NO. 27:**

This does not fall within CCRB's own definition of "abuse of authority," and absent rulemaking would be contrary to law. CCRB already documents any instances where required paperwork was not generated, and that information is provided to NYPD.

The law makes the Police Commissioner the ultimate arbiter of discipline and, while the Commissioner certainly reviews and takes CCRB determinations into consideration, any attempt

to impose a “deference” standard on that review would diminish the Commissioner’s disciplinary authority, and would therefore require legislative action. Absent a legislative change, this recommendation would be contrary to city and state law. *See* New York City Charter § 434 and New York City Administrative Code § 14-115.

**RECOMMENDATION NO. 28:**

Consecutive/concurrent discipline: a stop, a failure to file a stop report, a frisk, or a search are all separate and distinct acts. Each act should be examined individually and, if substantiated, the penalties assigned in the Disciplinary Guidelines should be applied consecutively, absent extraordinary circumstances detailed in writing by CCRB or the Police Commissioner, as the case may be.

**CITY’S COMMENTS ON RECOMMENDATION NO. 28:**

There is no reason for a presumption in favor of consecutive penalties. The Discipline Matrix addresses when conduct should give rise to consecutive penalties and when penalties should be imposed concurrently. Limiting the use of concurrent penalties to “extraordinary circumstances” would generate a remarkably severe penalty framework, resulting multiple punishments for the same error, and is contrary to basic and widespread principles of sentencing.

**RECOMMENDATION NO. 29:**

In establishing a protocol for examination of bias-based policing, CCRB should, at a minimum, include the protocol approved by the court in IAB Guide 620-58.

**CITY’S COMMENTS ON RECOMMENDATION NO. 29:**

This has always been part of CCRB’s process.

**RECOMMENDATION NO. 30:**

CCRB must affirmatively investigate and document whether slurs or profiling allegations are part of a pattern, either by the subject officer or within a squad or group of officers working together. When investigating a complaint with regard to one officer, CCRB should include a review of past discourtesy, slur, and profiling complaints, whether or not substantiated, by all officers involved in the encounter.

**CITY’S COMMENTS ON RECOMMENDATION NO. 30:**

It would also be impractical (if not impossible) to implement the second sentence of this recommendation for a number of reasons. For one thing, there can sometimes be dozens of officers

“involved in [an] encounter”, even if many of them are not the subject officer, or were not even present when the alleged bias occurred. The recommendation that CCRB grossly expand its investigations into all officers working together, without sufficient predicate, is highly problematic and unduly prejudicial to the subject officer and other officers involved in the encounter for which there is no pending complaint and/or investigation. Furthermore, it once again seeks to use prior unsubstantiated allegations which not only violates due process, but also would be virtually impossible to do meaningfully without seeking unsealing orders for sealed records in each and every case.

**RECOMMENDATION NO. 31:**

CCRB should review a past history of allegations, even if unsubstantiated, to assess whether there exist any patterns of discrimination, as well to assess potential motivation. All profiling investigations should state the results of the investigation for a pattern in its closing report.

**CITY’S COMMENTS ON RECOMMENDATION NO. 31:**

Again, the reliance on unsubstantiated allegations violates due process. This proposal would also run afoul of the sealing laws. To the extent that past complaints are substantially similar to the pending complaint, they are considered by CCRB for pattern behavior. Whenever CCRB considers evidence of a pattern to substantiate an allegation, that is included in the closing report. A negative finding is not specifically referenced. *See also* Comments on Recommendation Nos. 11 & 30, above.

**RECOMMENDATION NO. 32:**

If IAB decides to separately investigate a profiling complaint (either concurrently with CCRB or after the Police Commissioner receives a substantiated profiling complaint from CCRB), the results of the investigation should be shared with CCRB. If there is a material difference in the findings, the full investigative IAB file should be sent to CCRB for reconsideration.

**CITY’S COMMENTS ON RECOMMENDATION NO. 32:**

The City Council has transferred jurisdiction over these investigations to CCRB, so it is not clear when or why IAB would “decide[] to separately investigate a profiling complaint”.

Moreover, IAB's internal investigations are privileged, and sharing them with CCRB would violate the principles of independent oversight built into the separation of the two agencies. *See also* Comments on Recommendation No. 10, above.

**RECOMMENDATION NO. 33:**

In cases where CCRB has substantiated an improper stop, frisk, or search, CCRB should review, as a potential abuse of authority, any supervisor who was present and in a position to observe the stop, question, frisk, or search for an abuse of authority (failure to supervise), regardless of whether the failure was active or passive. In cases where the supervisor did not actively participate, CCRB panels should have the option to refer the matter to NYPD as Other Misconduct Noted.

**CITY'S COMMENTS ON RECOMMENDATION NO. 33:**

The CCRB already has a practice of examining the actions of supervisory officers who were present during an incident. To the extent that the actions at issue were undertaken at the direction of a supervisor, CCRB pleads against the supervisor rather than the subordinate officer. That said, "Failure to Supervise" does not fall within the definition of "Abuse of Authority" under the CCRB's rules, and is outside of CCRB's jurisdiction.

**RECOMMENDATION NO. 34:**

Any disposition by NYPD of a substantiated CCRB finding of SQFS misconduct should be recorded in the subject officer's Central Personnel Index (CPI). This should include cases that result in a DUP, NDA, guidance or penalties.

**CITY'S COMMENTS ON RECOMMENDATION NO. 34:**

This information would already be inextricably tied to the MOS through the CCRB complaint (never sealed) and the IAB investigation (on the CPI). A separate entry would be redundant and unnecessarily punitive. Substantiations are already recorded and publicly available.

**RECOMMENDATION NO. 35:**

In cases of training, the record maintained by DAO should specify the training or training module mandated along with confirmation of where and when the training took place.

**CITY’S COMMENTS ON RECOMMENDATION NO. 35:**

The Legal Bureau is responsible for tracking this information. Training is often not a particular module, but rather tailored to the specific facts and circumstances surrounding an incident.

**RECOMMENDATION NO. 36:**

When an audit (RAND, PIE, QAD, Monitor) finds a deficiency in a stop report or a failure to file a stop report, it is not enough to correct the report. A review or investigation, as outlined in Admin. Guide § 318-02, by the Command—CO, Integrity Control Officer (ICO) or Executive Officer (XO)—of the circumstances of the SQFS should be made with findings recorded and maintained or forwarded as required by § 318-02. Paragraph 33 of § 318-02 should be amended to require recording in the CPI of all command disciplines for SQFS misconduct (not just B-CDs). If the SQFS was found to be improper, the CO should impose appropriate discipline or take appropriate action, applying the Disciplinary Guidelines when applicable.

**CITY’S COMMENTS ON RECOMMENDATION NO. 36:**

Audit reports are meant to correct behavior and ensure accurate and complete reporting. While there are times when resulting discipline is appropriate, this recommendation is overbroad and will have a chilling effect on the efficacy of QAD’s audits.

**RECOMMENDATION NO. 37:**

In all cases where a stop report has been or should have been completed and where a use of force was indicated in a TRI, the CO or XO should review the propriety of the stop/frisk/search independent of the force investigation and report the findings to DAO. If the investigation is done by IAB or FID, there should be a review of the propriety of any accompanying SQFS behavior with a separate recommendation, even if there is no civilian complainant. DAO should review and assess for further investigation or discipline if misconduct is indicated.

**CITY’S COMMENTS ON RECOMMENDATION NO. 37:**

It would be impractical and unduly burdensome for the Department to separately and independently investigate every SQF case in this manner. Stop reports and TRIs are already reviewed at the command level. Any recommendation regarding force and TRIs is outside the scope of the monitorship.

**RECOMMENDATION NO. 38:**

In any force investigation, whether done by the CO, IAB, or FID, there should be an inquiry by the Department into whether there is an SQFS complaint being investigated by CCRB for the same

or a related encounter. In any SQFS investigation by CCRB where the complainant alleges use of force, there should be an inquiry by CCRB into whether there is a force investigation by the local command, IAB, or FID. In either instance, the two investigations should be coordinated with information and interviews being shared. If there are parallel investigations of racial profiling or bias-based policing, they should be disclosed and coordinated as well.

**CITY’S COMMENTS ON RECOMMENDATION NO. 38:**

This recommendation concerns matters beyond the scope of the monitorship, including allegations of excessive force. This recommendation is contrary to the principles of separate independent oversight embodied in the structure of the independent CCRB, and would therefore violate the N.Y.C. Charter.

**RECOMMENDATION NO. 39:**

Patrol Guide § 207-21 should be amended to make it clear that the duty to intervene or report fellow officer misconduct includes a supervisor’s duty to report intentionally wrongful SQFS encounters, bias-based policing, and racial profiling (as recommended by OIG-NYPD).

**CITY’S COMMENTS ON RECOMMENDATION NO. 39:**

The term “Member of the service” is already clearly defined in all Departmental documentation, and is not limited to police officers. There is no evidence of misunderstanding or confusion on this point by MOS.

**RECOMMENDATION NO. 40:**

As recommended by the Independent Panel, *ex parte* communications with the Police Commissioner and staff reporting directly to the Police Commissioner regarding pending disciplinary decisions should be documented.

**CITY’S COMMENTS ON RECOMMENDATION NO. 40:**

The meaning of this recommendation is not entirely clear. Does it refer to communications between the Police Commissioner and his legal advisors, or communications between the Commissioner’s Office and other bureaus and agencies? In either case, most such communications would be subject to one or more privileges that exist to preserve the ability of the Commissioner and others to make independent, well-informed decisions.

The term “Independent Panel” should be defined or at least refer to the source.



**RECOMMENDATION NO. 41:**

38-A RCNY should be amended to make it clear that a failure to supervise SQFS misconduct may be considered as an abuse of authority and investigated by CCRB, whether or not the supervisor was actively involved or passively neglected proper supervision.

**CITY'S COMMENTS ON RECOMMENDATION NO. 41:**

As the recommendation itself seems to acknowledge, under present City law “failure to supervise” is not within CCRB’s jurisdiction. Moreover, to the extent the recommendation is that supervisors be held strictly liable for the actions of their subordinates, this is contrary to black-letter state law that there must be a finding of fault before discipline can be imposed on an officer. *See also* Comments on Recommendation No. 24, above (collecting case). Indeed, imposing strict liability on officers would have the perverse effect of disincentivizing being on scene and supervising their subordinates.

**RECOMMENDATION NO. 42:**

The Department Manual should be amended to make it explicit that it is a Commanding Officer’s obligation to monitor, investigate, and discipline SQFS misconduct even in the absence of a civilian complaint to CCRB. Admin. Guide § 318-01 needs to be amended accordingly. As well, the Disciplinary Guidelines, in its list of “Violations of Department Rules and Regulations” (offenses for which command discipline can be imposed at the precinct level), should specify that SQFS misconduct is included therein and should explicitly mandate discipline (at levels directed in the Abuse of Authority section of the Guidelines).

**CITY'S COMMENTS ON RECOMMENDATION NO. 42:**

Disciplinary decisions must be based on the Discipline Matrix as applied to the facts and circumstances of each particular case. The Department definition of misconduct is already inclusive of violations of SQFS laws, procedures, and preparation. Given the breadth of the Department’s policies and procedures, explicitly stating each potential violation would be redundant and burdensome.

**RECOMMENDATION NO. 43:**

QAD should audit samples of TRI reports to determine if a stop/frisk occurred, and if so, to ensure that a stop report was filed if required.

**CITY’S COMMENTS ON RECOMMENDATION NO. 43:**

This recommendation relates to TRI reports and it outside the scope of the monitorship.

**RECOMMENDATION NO. 44:**

Commanding Officers should be required to file an annual report demonstrating compliance with the provision in Admin. Guide § 318-01 whereby multiple command disciplines within a six-month period are referred to the borough/bureau adjutant for consideration of whether Charges and Specifications should be filed. The result should be sent to DAO. A copy of the report should be sent to the Professional Standards Bureau for consideration.

**CITY’S COMMENTS ON RECOMMENDATION NO. 44:**

The Discipline Matrix already accounts for progressive discipline, which sufficiently addresses concerns of multiple instances of similar misconduct. The portion of the recommendation that would require a new report by commanding officers would be unduly burdensome without any demonstrated practical benefit. For example, the recommendation does not specify who would be responsible for reviewing such reports or taking action based on them.

**RECOMMENDATION NO. 45:**

Admin. Guide § 329-15 should be amended to make it clear that the Career Advancement Review Board will take substantiated SQFS allegations into account.

**CITY’S COMMENTS ON RECOMMENDATION NO. 45:**

SQF misconduct is already considered by CARB.

**RECOMMENDATION NO. 46:**

Notwithstanding the Administrative Guide mandate that A-CDs be expunged after one year and B-CDs be sealed after three years, records of SQFS misconduct should be kept by DAO and considered during the Disciplinary Guidelines prescribed look-back period (three years for A-CDs and for five years for B-CDs) in order to determine whether to apply progressive discipline. Similarly, such records should be made available to DAO for the purpose of assessing whether there is misconduct “demonstrating a pattern of behavior that indicates an inability to adhere to Department rules and standards,” as required by the Guidelines.

**CITY’S COMMENTS ON RECOMMENDATION NO. 46:**

This would require legislative and rulemaking action to amend or repeal the sealing statutes, which exist for good reason. It would also result in more officers declining command disciplines on minor infractions in favor of formal Charges & Specifications which would have to

be adjudicated, creating an enormous burden on the disciplinary system that would benefit no one. The consideration of “unsubstantiated” and sealed cases raises the same due process concerns raised in response to other recommendations, and concerns collective bargaining agreements with various unions.

**RECOMMENDATION NO. 47:**

Admin. Guide § 318-12 should be amended such that substantiated SQFS misconduct occurring during the three-year pause period (for B-CDs), and the one-year pause period (for A-CDs), if applicable, would toll the pause-period and delay expungement or sealing, as the case may be, from the time of the alleged misconduct through and until the time of final disposition of the most recent SQFS allegation(s).

**CITY’S COMMENTS ON RECOMMENDATION NO. 47:**

A-CDs are applied to only minor misconduct, and there is no positive benefit seen to extending the time periods involved.

B-CDs are only eligible for sealing three years after the disposition of any case, so no pause or tolling period is warranted.

**RECOMMENDATION NO. 48:**

“Progressive Discipline” as defined in the Guidelines for repeated SQFS misconduct is too narrow.

- a. The Guidelines calculate a “prior” from the date of final approval by the Police Commissioner of the substantiated allegation. If a complaint is pending, following substantiation by CCRB, but has not yet been finally adjudicated by the Police Commissioner, it should be considered as a prior offense for purposes of progressive discipline even if the Commissioner’s final approval occurred after the date of the new wrongful act.
- b. Prior substantiated allegations, for purposes of enhancing discipline, should not be limited to the “same misconduct.” A prior violation of any of the provisions of PG § 212-11 (investigative encounters) should count as prior misconduct upon a finding of a similar 212-11 violation. E.g., a prior finding of wrongful frisks, should count as a prior offense for a new finding of an illegal stop and questioning of a person, for purposes of progressive discipline.
- c. Repeated acts of similar misconduct should call for enhanced discipline, even if the later acts do not otherwise call for greater penalties than the earlier findings. E.g., a prior slur should count as a prior for purposes of progressive discipline upon a later finding of discourtesy.

**CITY’S COMMENTS ON RECOMMENDATION NO. 48:**

The City disagrees that the definition of “progressive discipline” is too narrow. The intended purpose of “progressive discipline” is to allow for flexibility in determining the proper penalty from among the range of penalties set forth in the Discipline Matrix. Rather than being “narrow” and limiting the range of penalties, progressive discipline expands it for appropriate cases.

**Comment on paragraph 48(a):**

This recommendation is unduly prejudicial and fails to recognize that the Police Commissioner determines the final disciplinary disposition and penalty imposed. Until that determination is made, it is improper and unjust to consider a pending complaint or allegation a “prior misconduct” for purposes of progressive discipline under the Matrix. It cannot be assumed that all substantiations by CCRB will result in findings of guilt in the Trial Room or by the Police Commissioner.

**Comment on paragraph 48(b):**

This recommendation is overbroad and antithetical to the goals of the discipline process. The purpose of progressive discipline is to impose increasingly punitive consequences when it is clear that lower-level consequences have not corrected the behavior. It is already the practice of the Police Commissioner’s Office to consider a member’s discipline history, as well as service history when determining a penalty.

**Comment on paragraph 48(c):**

Every discipline determination is evaluated on a case-by-case basis. It is the practice of the Police Commissioner’s Office, however, to consider prior discipline history in determining penalties in all disciplinary matters not just those pertaining to SQF.

**RECOMMENDATION NO. 49:**

All SQFS investigations should be completed by CCRB within 120 days and, if not, the reasons for the delay shall be explained in writing to the subject officer and the complainant.

**CITY'S COMMENTS ON RECOMMENDATION NO. 49:**

It would not be possible or practical for CCRB to complete its investigations in such a short timeframe given the current complaint volume and the resources allocated to CCRB. The ability of NYPD to gather and produce requested information also makes this recommendation impractical. There is also no reason that SQF-related investigations should be subject to a different time frame from other types of cases, including those with more serious allegations.

**RECOMMENDATION NO. 50:**

Where CCRB has recommended Charges and Specifications and APU has submitted them to DAO, the subject officer should be notified immediately. The Police Commissioner may delay formal service of the Charges while he considers further action, but for purposes of the Statute of Limitations, the Department should define "commencement" of the action to be upon written notice received by the subject officer of the specifications requested by CCRB rather than delaying "commencement" while waiting for later approval by DAO and formal service.

**CITY'S COMMENTS ON RECOMMENDATION NO. 50:**

This recommendation is not possible under state law. *See Mikoleski v. Bratton*, 249 AD2d 83 (1st Dept. 1998) ("The relevant measuring date [for commencing disciplinary proceeding under the Civil Service Law] is service of the first set of charges and specifications." (citing *Nagle v. Bratton*, 245 A.D.2d 122 (1st Dept. 1997))).

**RECOMMENDATION NO. 51:**

Where CCRB has recommended command discipline rather than Charges, for purposes of the Statute of Limitations, "commencement" should be determined as of the time CCRB notified DAO and the officer of the recommendation.

**CITY'S COMMENTS ON RECOMMENDATION NO. 51:**

This would require legislative action to change state law on the statute of limitations. *See* Comment on Recommendation No. 50, above.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAVID FLOYD, *et al.*,

Plaintiffs,

-against-

08 Civ. 1034 (AT)

CITY OF NEW YORK, *et al.*,

Defendants.

KELTON DAVIS, *et al.*,

Plaintiffs,

-against-

10 Civ. 699 (AT)

CITY OF NEW YORK, *et al.*,

Defendants.

JAENEAN LIGON, *et al.*,

Plaintiffs,

-against-

12 Civ. 2274 (AT)

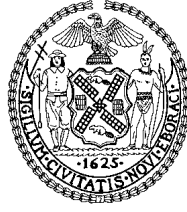
CITY OF NEW YORK, *et al.*,

Defendants.

**CITY OF NEW YORK'S PUBLIC COMMENTS ON  
REPORT TO THE COURT ON POLICE MISCONDUCT AND DISCIPLINE**

**EXHIBIT B**

**CITY'S PREVIOUS LETTERS TO THE MONITOR**



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September 1, 2023

**VIA EMAIL**

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Re: City's Initial Comments on Preliminary Draft Report by Judge Yates.

Ms. Denerstein:

Thank you for the opportunity to review and comment on the preliminary draft report by retired Judge James Yates on the New York City Police Department's disciplinary system ("the Yates Report"). The City's feedback is offered in four parts: First, this letter lays out the City's primary, overarching concerns with the Yates Report in its present form. Second, accompanying this letter is a spreadsheet, described in greater detail below, containing nearly 1000 comments on specific language and citations in the draft report and its appendix. Third, also attached is a 4-page supplemental commentary from the Civilian Complaint Review Board (CCRB) addressing the use of certain data in the draft report. Finally, the City is prepared to meet with the Monitor's team to outline its concerns in greater detail.

There is no question that Judge Yates has spent an enormous amount of time and effort preparing the draft report. He has sought to explore a very complex topic that is rapidly evolving. Nothing contained herein or in the City's other feedback is intended to denigrate Judge Yates's integrity or commitment, or to diminish the extraordinary amount of work he has put into this project. We deliberately refer to the Yates Report in its present form as a "preliminary draft" because: (1) the current draft contains numerous typographic and grammatical errors, factual inaccuracies, and many unsupported statements that we expect Judge Yates will wish to correct; (2) it is the first version of that report that has been shared with anyone; (3) portions of the report have been rendered obsolete by the passage of time, and will therefore require updating if they are to accurately reflect the current policies and processes for discipline in the NYPD; and (4) at least one key portion of the Court's original request—*i.e.*, specific recommendations related to the subject of this Monitorship—are not included. We trust that the Monitor will allow the parties additional opportunities to provide meaningful input and feedback on future drafts of the report.

The comments in this letter and the accompanying spreadsheet are the result of a substantial outlay of effort by various agencies of the City of New York. Two divisions of the Law Department, and multiple bureaus of the Police Department have contributed to this review process. The Monitor also granted us permission to share the draft, in whole or in part, with the CCRB and the Office of Administrative Trials & Hearings (OATH). For the final report to

adequately and accurately reflect the many facets of the complex disciplinary process and the overlapping jurisdictions of various stakeholders, we believe it is vital that—in addition to the aforementioned agencies—future drafts also be reviewed by additional agencies and organizations, including the City’s Department of Investigation (DOI), the Office of the NYPD Inspector General (OIG-NYPD), and the Commission to Combat Police Corruption (CCPC), among others.<sup>1</sup> We also believe that it is necessary to involve the police unions in this process so that they can review the extensive portions of the draft report that concern those entities’ involvement in the misconduct-related disciplinary process as well as matters that directly concern their members’ rights and responsibilities.<sup>2</sup>

### **Clarification of the Final Form and Purpose of the Yates Report is Necessary**

The City’s ability to effectively review and comment on the Yates Report has been, and will continue to be, significantly constrained by the lack of clarity on the final form and function of the document. We presume that the Plaintiffs are similarly struggling with both the scope and breadth of the draft report as well as the present uncertainty about how the report will be used and who will have access to it. Given the informal manner in which this report was commissioned, and the lack of formal written orders or directives from the Court outlining the intended use and audience of the final product, it is virtually impossible for the City to meaningfully comment on portions of the report and the propriety of various information contained therein. Any future review process must be guided by a clear understanding of what the final report will look like, who will have access to its contents, and what imprimatur of authority it will bear.

This concern is by no means trivial or academic given the significant impact on the City that a public dissemination of the report would likely have. As we have previously observed, the work on this Monitorship concerns high-profile issues of public policy that are closely watched by numerous groups and interests. Among those who refer to, and rely on, any and all formal analyses of NYPD are the numerous attorneys who routinely file claims against the City. Any formal conclusion or recommendation that appear to carry the endorsement of the Court, the Monitor, or any agency, will undoubtedly serve as potential fodder for those seeking to advance legal claims against the City in other cases. In short, we can fully expect to see any public dissemination of the Yates Report to be cited in future *Monell*<sup>3</sup> litigation against the City.

What—if any—evidentiary value the Yates report will have, including at the very forgiving pleading stage of litigation, will depend entirely on who is seen to “endorse” the final contents of

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<sup>1</sup> For example, Judge Yates specifically identifies, and includes sections on the City Commission on Human Rights (CCHR) and the State’s Law Enforcement Misconduct Investigative Office.

<sup>2</sup> You denied the City’s request to share the preliminary draft with the unions at this time. We hope that you will reconsider. One of the issues that the Court specifically sought input on was the “fairness” of the disciplinary process, including “the issues of accountability, transparency, speed, and due process for officers. . . .” Draft report at 13 (quoting Correspondence from Judge Analisa Torres to Peter Zimroth (May 30, 2018)). Individual officers are represented by union representatives and counsel during disciplinary proceedings, and input from the unions is therefore vital to fulfilling Judge Torres’s request.

<sup>3</sup> *Monell v. Dep’t of Social Services*, 436 U.S. 658 (1978)



the report by the act of publication. If the Yates Report was to be entered on the docket by the Court, future plaintiffs will certainly claim that it represents “findings of fact” that are at least persuasive, if not dispositive of the issues covered. Even if such evidentiary claims are incorrect, and can ultimately be disproven, the very existence of the report would therefore cause extensive litigation for the City, and could even lead to inconsistent results as the issue is decided by various judges in various courts and contexts.

If it is the intent of the Monitor or the Court to formally publish the Yates Report on the docket of this case, then the process for reviewing and challenging its contents must be weighed against the City’s Due Process rights to challenge evidence and be heard on substantive matters. If the Yates Report is to appear as even arguably endorsed by the Court, rather than an advocacy document like a legal brief filed by an interested party, there must be some process of third-party review over the veracity and accuracy of the facts and opinions set forth. On the other hand, if the Yates Report is to be only one input that the Court will consider before drawing its own conclusions and advancing formal orders, then the City is confident that it’s feedback and concerns can be addressed through a more informal process like the one we are currently engaged in.

### **Non-Public Information & Identity of Individual Employees Should Not Be Included**

During the course of his investigation, Judge Yates spoke and communicated with numerous City employees, and consulted non-public communications between the City and the Monitor team. These conversations and communications are explicitly cited throughout the draft report. While Judge Yates’s diligence is admirable, the inclusion of these information sources places the integrity and accuracy of the final work product in doubt for numerous reasons. First, there is no way to verify or correct undocumented communications between Judge Yates and individual employees of the City. Second, information that was offered or provided informally is unlikely to be as reliable as information requested and supplied through a formal process. Indeed, there is no way to separate what might have been expressed to Judge Yates as an “opinion” of a speaker versus what was conveyed to him as potentially verifiable “fact”.<sup>4</sup>

In addition to concerns about the contents of such private communications, the City strongly objects to naming individual City employees in any public document as purportedly knowledgeable sources on specific topics. This circumvents the City’s ability to carefully shape its own public messaging. Had the speaker known that their private conversations with a member of the Monitor’s team would be made so public and used in this manner, those communications would have been done differently, and likely would have been followed with a written memorialization. Furthermore, the use of specific names exposes those individuals to potential harassment, including through litigation. Individuals cited by Judge Yates as knowledgeable on certain topics could very well face deposition notices and subpoenas from future litigants seeking to obtain *Monell* discovery.

Also of concern is the effect that inclusion of this material will have on the City’s ability to engage with the Monitor team. The content and tone of the City’s confidential communications with the Monitor team are often dependent on the relationship between the parties and the knowledge that information may be safely given in confidence. It is important to the future of the

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<sup>4</sup> It is not at all clear whether these conversations were sufficiently formal to warrant citation as “interviews” under Bluebook Rule 17.2.5.

Monitorship that the City and the Monitor maintain a mutually trusting relationship that allows free communication and collaboration.

### **The Yates Report is Not a Functional Document in its Current Form**

The City has significant concerns regarding the scope and length of the Yates Report in its current, Brobdingnagian form. As it stands, the City does not find the current draft to be responsive to the original request by Judge Torres, or helpful as a resource to the Monitor or the parties.

The City was not party to the communications between the Court and the Monitor that set this report in motion, and that resulted in Judge Yates being selected to create it. On page 13 of the draft, Judge Yates quotes an email from Judge Torres requesting “an in-depth, critical examination of the efficacy, fairness, and integrity of the City’s policies, practices and procedures with respect to police misconduct during stops. . . .”<sup>5</sup> The draft reviewed by the City fails to satisfy this request in several significant ways.

First, the draft’s verbosity and frequent redundancy make it very difficult—if not impossible—to extract meaningful analysis from the text.<sup>6</sup> Second, in its present form, the City cannot agree that the current text is a fair “critical examination” uncolored by preexisting biases or perceptions that are the result of the unique experience of the single author.<sup>7</sup> Third, the current report does not limit itself to an examination of “police misconduct *during stops*”, which is not only what was requested, but also what is solidly within the purview of the Monitor. Instead, Judge Yates attempts to describe the disciplinary process comprehensively, including entire sections on unrelated topics outside the scope of the Monitorship, such as excessive force.

More acutely, Judge Torres also instructed that “[f]ollowing the report’s critical assessment of existing policies, practices and procedures, the report shall set forth, in detail, recommendations as to the specific ways in which such policies, practices, and procedures can be improved, in order to promote constitutional policing.”<sup>8</sup> As previously mentioned the document does not currently contain such recommendations, and would therefore need to be further revised and (unfortunately) expanded in order to satisfy the Court’s original directive.

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<sup>5</sup> Quoting “Correspondence from Judge Analisa Torres to Peter Zimroth (May 30, 2018)”. The City was not party to this email and only learned of its contents upon reviewing the draft report. It is not known to the City whether Judge Torres intended this communication to be shared with the parties.

<sup>6</sup> We fully understand that initial drafts of legal writings are often over-inclusive and repetitive before there is an opportunity to shape the text holistically through the editing process.

<sup>7</sup> It would be highly unusual for a document of this scope and length created by a single author to be disseminated as an “official” report by a court or government agency. Reports of this scope and size are typically the result of a committee or other body that can draw on the experiences and opinions of numerous individuals.

<sup>8</sup> Draft Report at 13 (quoting correspondence from Judge Analisa Torres to Peter Zimroth (May 30, 2018)).

The City firmly believes that the Court would not find the document—in its present form—to be helpful in shaping the ongoing remedial-phase of this litigation. Before the Court can meaningfully consider the Yates Report in the context of this case it must be significantly reduced in size and scope, updated to reflect current information, and also completed to cover the explicit request of the Court.

### **Format of the City's Comments and Feedback**

The spreadsheet accompanying this letter collects the comments and feedback of the numerous agencies identified above who have reviewed some or all of the draft so far.<sup>9</sup> The various reviewers have sought to highlight substantive problems with the draft, but have largely refrained from attempting to rewrite or reword problematic portions of the text. Nor has the City expended significant time and effort attempting to note or correct typographical and other non-substantive errors that, we are sure, will be addressed in subsequent drafts by the author.

While we have sought to be as comprehensive and inclusive as possible in our feedback, it must be stressed that the City cannot, at this time, confirm the accuracy or suitability of any portion of the draft report, including the portions on which no comments are presently offered. As previously mentioned, there are additional stakeholders, such as CCPC and the unions, who we believe need to review and comment on the report before it is finalized in any form. The City expressly reserves the right to note further changes or objections to the draft report. The City will also supplement, clarify, or expand on any comment as appropriate.


### **Future Process**

The City looks forward to working with the Monitor and Judge Yates to structure this process going forward. While we cannot dictate what such a process would look like, some of the issues that must be addressed and resolved are:

- The intended use and whether the final report will be a public document;
- The length and scope of the final report;
- Feedback from additional entities;
- The time frame and budget for each stage of the project between now and the final report;
- The use of non-public information and conversations in the report; and
- Whether efforts will be made to include and incorporate the points of view and opinions of additional authors.

As always, we are available to further discuss the draft report with the Monitor's team.

Respectfully,



Tobias E. Zimmerman

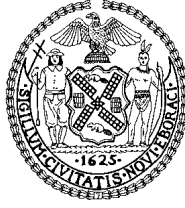
*Senior Counsel*

Special Federal Litigation Division

Encls.

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<sup>9</sup> Comments and feedback on the draft report and the accompanying appendix are provided in separate worksheets within the spreadsheet.



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February 23, 2024

**VIA EMAIL**

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Re: *David Floyd, et al. v. City of New York, et al.*, 08-CV-1034 (AT);  
*Kelton Davis, et al. v. City of New York, et al.*, 10-CV-699 (AT);  
*Jaenean Ligon, et al. v. City of New York, et al.*, 12-CV-2274 (AT);  
City Comments On Draft Recommendations In Discipline Report

Dear Ms. Denerstein and Mr. Jerome:

Thank you for giving the City the opportunity to review the draft “Recommendations” set forth by Judge Yates in the latest draft of the report on NYPD Discipline. The City has reviewed those proposed Recommendations carefully, seeking input from each of the affected agencies and bureaus. The City’s comments and observations on each individual proposed Recommendation are set forth in the attached document, which also includes a few redlined edits suggested to the wording of the proposed Recommendations themselves. Please consider this letter along with the attached comments together as the City’s feedback on the draft Recommendations.<sup>1</sup>

The City continues to acknowledge the amount of work Judge Yates has invested in this project. Nothing in this letter or the accompanying comments is meant to diminish those efforts. However, in addition to the specific comments set forth in the accompanying document, the City has a number of overarching concerns with the proposed Recommendations as they are currently drafted.

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<sup>1</sup> The City continues to review the latest draft of the Discipline Report as a whole, and will be returning feedback on the remainder of that draft as soon as possible.

First, it will come as no surprise to you that the City has deep reservations about the scope of many of these proposed Recommendations insofar as they explicitly go beyond the issues germane to this monitorship. For example, several proposed Recommendations are directed towards the investigation and handling of cases involving use of force or other types of non-SQF misconduct. *See, e.g.*, Draft Recommendation Nos. 7, 38, & 43. This is beyond the scope of this litigation and the monitorship, and we believe their inclusion in this report is therefore inappropriate.

Several draft Recommendations appear aimed at accelerating various time tables by demanding greater and more timely output from CCRB. Setting aside, for a moment, the feasibility of accomplishing those goals, it nevertheless leaves open the question of how an accelerated time frame is expected to improve or enhance the discipline process as a whole. Certainly, there are instances where faster resolution would be welcome by all parties involved—complainants and subject officers—but rarely would faster results be justified by less careful or thorough work by the investigating agencies. Therefore, each proposed Recommendation that seeks to accelerate the process should explicitly describe the benefits to be gained as balanced against the additional burdens that would be placed on the responsible agencies. Such balance must also recognize that the City operates with finite resources, and that many of the proposals would require a substantial investment in personnel and resources that is beyond the control of the implementing agencies.

Relatedly, many of the draft Recommendations propose actions or procedures that are directly contrary to the law. For example, in Draft Recommendation No. 17, Judge Yates proposes that the Comptroller share privileged materials with CCRB, and also provide CCRB with copies of transcripts from hearings under N.Y. Gen. Mun. L. 50-H. Yet, as Judge Yates acknowledges on page 269 of the current draft of the report, this issue has already been litigated, and the materials in question is protected from disclosure. *See CCRB v. Office of the Comptroller*, 52 Misc.3d 226 (Sup. Ct. N.Y. Cnty., March 24, 2016). Thus, to implement the proposed Recommendation, either Section 50-H would need to be amended by the State Legislature, or the City would need to seek court approval in each and every case where CCRB requests access to a transcript. Neither possibility seems feasible or practical and the existing law limits the agencies' ability to implement such recommendations. Similarly, many of the proposed Recommendations do not adequately consider the various sealing statutes that are in effect, which would make it impossible for NYPD to share various records with CCRB or any other agency. Other examples of proposed Recommendations that are contrary to existing law or regulations—and which would therefore require legislative or rulemaking action—include, but are not limited to, Draft Recommendation Nos. 9, 14, 30, 41, 46, 50, & 51.

Many of the proposed Recommendations also contradict the statutory structure and relationship of CCRB and NYPD. First, all of the recommendations calling for “deference” by the Police Commissioner to the findings or holdings of the CCRB

(*see, e.g.*, Draft Rec. No. 21(a)) would undermine the power vested in the Commissioner by the legislature as the ultimate arbiter over departmental discipline. Further, those Recommendations that propose greater coordination between NYPD and CCRB during investigations (*e.g.*, Draft Rec. No. 10) are contrary to the statutory purpose of having an *independent* review board separate and apart from NYPD.

Another glaring concern, as reflected in the individual comments on the accompanying attachment, is that the proposed Recommendations seek to diminish or eliminate certain due process protections owed to members of service who are subject to investigation and discipline. *See, e.g.*, Draft Rec. Nos. 11, 30, 31, 42, & 46. While the interests of the Department, the City, and potential complainants are adequately represented in this process, there has been a lack of input aimed at safeguarding the interests of the individual officers who would be the most affected by the proposed changes to the disciplinary process.

Yet another significant issue we found with the proposed Recommendations was the discussion of the relationship between potential misconduct and civil litigation. *See, e.g.*, Draft Rec. Nos. 8, 12, 13, 16, 18, & 26. In virtually all cases, civil litigation is not commenced until months or years after the alleged misconduct, and well after all of the agency investigations (CCRB or NYPD) have been concluded. In fact, when a lawsuit is filed on a case where a disciplinary investigation is still pending, it is the typical practice of the Law Department to request a stay of the litigation until that investigation has concluded. Thus, rather than any decision of the Law Department having influence or bearing on the outcome of the disciplinary investigations, it is typically the other way around, with the Law Department's decisions on representation driven, in large part, by the findings of CCRB, NYPD, and other investigatory bodies. In light of this reality, many of the proposed Recommendations could not be implemented even if they were accepted.

Finally, as they are currently drafted, the proposed Recommendations lack sufficient context and explanation to fairly assess their merit and potential benefits. Certainly we understand that the proposed Recommendations are meant to be read in the context of the report as a whole, but given the length and breadth of that report, it is often difficult to discern, for each proposed Recommendation, what specific problem is meant to be addressed, and therefore whether the proposed Recommendation is likely to be effective in accomplishing the intended goal. The City therefore requests that the draft Recommendations be rewritten to clearly state, for each one: (1) the "problem" that the proposed Recommendation is intended to address; and (2) how the proposal is expected to remedy the perceived deficiency.

Once again, we thank you for the opportunity to consider these draft Recommendations and provide input and feedback on them. While the City is always striving to do better by the public and its officers, at this time, and in their present form, the City finds most of these proposed Recommendations to be infeasible or unwar-

ranted. We would welcome an opportunity to address a more targeted set of recommendations that are grounded within the existing legal frameworks and supported by clear-cut analysis of how each proposal would materially advance the purposes of this monitorship.

We thank you for your attention to these matters.

Respectfully,



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Re: City's Comments and Feedback on Second Draft of the Discipline Report

Dear Ms. Denerstein:

Thank you for the opportunity for the City to review and comment on the second draft of the report by retired Judge James Yates on the New York City Police Department's disciplinary system ("the Discipline Report").<sup>1</sup> The City previously provided: (1) comments on the preliminary draft of the Discipline Report (*see* Letter from T. Zimmerman to M. Denerstein dated September 1, 2023); and (2) comments on the draft Recommendations included in the second draft of the report (*see* Letter from T. Zimmerman to M. Denerstein dated February 23, 2024).<sup>2</sup> This letter continues the City's efforts to engage constructively with the Monitor in fulfilling the Court's request for "an in-depth, critical examination of the efficacy, fairness, and integrity of the City's policies, practices and procedures with respect to police misconduct during stops."

As explained further below, the City's feedback on this draft consists of three written parts. First, this cover letter states (and, in some cases, reiterates) the City's primary and overall concerns with the report generally. Second, we are attaching a new spreadsheet similar to what was provided for the preliminary draft. This new spreadsheet seeks only to identify new concerns and corrections that arose due to additions or alterations to the text from the first draft of the Discipline report. We have not included all of the previously stated comments that were already provided, but continue to hope that those concerns will be addressed in future drafts. Third, we are providing a document in which we provide high-level commentary on the sections of the draft report, with recommendations for how the report might be substantially shortened and focused on the issues germane to the Monitorship.

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<sup>1</sup> This draft was shared with the parties as a PDF on or about January 16, 2024. A slightly different MS Word document was shared a few days later. We have treated the two documents as a single "draft" for purpose of review and comment. We have sought to minimize reliance on pinpoint page citations, as the pagination of the two documents is not identical.

<sup>2</sup> Each of those previous letters were accompanied by one or more attachments setting forth detailed commentary on the underlying text.



In addition to the written feedback, the City hopes for further discussions regarding the draft report and possible strategies for a final report that is responsive to the Court’s original request.

### **Reiteration Of Prior Concerns**

The City began its previous commentary on the Discipline Report by noting that its “ability to effectively review and comment on the [Discipline] Report has been, and will continue to be, significantly constrained by the lack of clarity on the final form and function of the document.”<sup>3</sup> This lack of clarity continues to significantly impair the City’s ability to provide meaningful, substantive feedback on the Discipline Report in its current form.

Another concern the City raised was that the “scope and length” of Judge Yates’s initial draft of the Discipline Report was, in numerous respects, not responsive to the Court’s original request. It is incredibly burdensome for the City to review (and re-review) portions of the report that should not be included at all, as the matters are well beyond the scope of the underlying litigation and this Monitorship.

The City also previously objected to the inclusion of confidential communications between City employees and the Monitor team and references to non-public and even privileged documents.<sup>4</sup> This remains a critical concern. Large sections of the Discipline Report are directly based on non-public communications and documents obtained from various City agencies and are covered by the various Confidentiality Orders and stipulations governing this matter.<sup>5</sup> The City spent hundreds of hours being interviewed by Judge Yates and was forthright when sharing information and answering questions, all subject to those orders and stipulations. We understood—consistent with the longstanding practice of the Monitorship across a wide range of inquiries and issues—that the verbatim language and identity of the speakers would be kept confidential. The Discipline Report, in its present form, does not reflect this understanding and practice.

We appreciate that we have previously raised these concerns. We reiterate them at this time because they have not been addressed. Moreover, most of the specific comments and corrections that were noted on the preliminary draft were rejected and not included in the second draft. In fact, the City’s analysis shows that the vast majority of its previous comments—approximately 700 out of 900—were not addressed or corrected in the new draft. The failure to even acknowledge and explain the rejection of the City’s feedback makes it very difficult for us to provide meaningful feedback on the second draft.

### **Specific Comments On The Second Draft Of The Report**

In reviewing the second draft, the City has once again gone through the entirety of the draft and made hundreds of comments on the text and footnotes of the report. The spreadsheet tracking

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<sup>3</sup> 09/01/2023 Ltr. From T. Zimmerman at 2.

<sup>4</sup> For example, NYPD agreed to share example CAR memoranda with Judge Yates, but made it clear that such agreement was not intended as a subject-matter waiver, or even a general waiver of privilege with respect to the specific documents that were shared. Nevertheless, those privileged documents and their contents are discussed and even cited in the draft report.

<sup>5</sup> See, e.g., Confidentiality Order dated October 11, 2018 (*Floyd* ECF No. 650).

these comments is now well over 1000 lines long, and contains 13 columns of information. As explained above, we are including with this letter only an abbreviated version of that spreadsheet reflecting new comments and concerns raised by edits or additions between drafts. The first spreadsheet is already with the Monitor and Judge Yates.

Another concern is that, in many instances, it appears that the City's comments were not addressed in the second draft but rather were copied into the footnotes. The City did not prepare its feedback with the expectation that it would be reprinted—sometimes verbatim—in the report itself. We would request that greater effort be made to consider and integrate the City's comments, rather than copying those comments into the document.

### **Inclusion of Officer-Identifying Information**

The City objects to the inclusion of any information that identifies or singles out particular officers or commands, even when that information might otherwise be public. The purpose of this report is to discuss the NYPD disciplinary system as it relates to police misconduct during stops. Towards that end, it is both gratuitous and unnecessary to name individual officers who have no control or influence over the disciplinary system. There is no reason, in our view, why such anecdotes and “case studies” cannot be sufficiently anonymized to avoid any appearance of stigmatization of particular individuals. The City therefore requests that all such personally identifying information such as names and tax numbers be excised, and that any descriptions be sufficiently generalized to avoid the appearance of singling out specific officers or commands.

### **Proposals For Reducing The Overall Size Of The Report**

We have also undertaken to identify portions of the draft report that we believe are far outside the scope of the Monitorship and could be deleted while still providing the information and analysis requested by the Court. The accompanying document, titled “City's Recommendations On Sections Of Draft Discipline Report,” contains the City's recommendations in this regard. The City believes that more than one-third of the current draft could be excised without jeopardizing the report's purpose.

### **Conclusion**

Once again, the City thanks Judge Yates for his continued work on this project and reiterates its commitment to working cooperatively towards a final report that responds to the Court's directive. We would welcome the opportunity to discuss the concerns raised above with the Judge Yates and the Monitorship team.

Thank you for your attention to this matter.

Respectfully,



Tobias E. Zimmerman  
*Senior Counsel*

Special Federal Litigation Division

Encls.

cc: All Parties (**via Email**)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAVID FLOYD, *et al.*,

Plaintiffs,

-against-

08 Civ. 1034 (AT)

CITY OF NEW YORK, *et al.*,

Defendants.

KELTON DAVIS, *et al.*,

Plaintiffs,

-against-

10 Civ. 699 (AT)

CITY OF NEW YORK, *et al.*,

Defendants.

JAENEAN LIGON, *et al.*,

Plaintiffs,

-against-

12 Civ. 2274 (AT)

CITY OF NEW YORK, *et al.*,

Defendants.

**CITY OF NEW YORK'S PUBLIC COMMENTS ON  
REPORT TO THE COURT ON POLICE MISCONDUCT AND DISCIPLINE**

**EXHIBIT C**

**COMMENTS AND CORRECTIONS  
ON TEXT OF THE REPORT**

The attached spreadsheet contains the aggregated comments of the City on the various drafts of the “Report to the Court on Police Misconduct and Discipline” authored by retired Judge James Yates (hereinafter “the Discipline Report”). The City initially submitted a spreadsheet to the Monitor in September 2023 in response to the first draft of the Discipline Report that was shared with the parties. The City subsequently—and through a great expenditure of time and effort—cross referenced the initial feedback with the second draft, and having found limited updates made in response to the feedback, provided an updated spreadsheet in March 2024 with comments on new material included in the second draft.

On September 23, 2024, the Court posted a new version of the Discipline Report to the public docket and requested comment. *See* Court Order (*Floyd* ECF No. 936). Judge Yates added some material, but made limited changes to the draft previously reviewed by the City. As a result, updating the spreadsheet to match the current iteration of the report would have required another extensive review of the Discipline Report by the City in order to match the revised page and note numbers in the most current version of the Discipline Report. For the latest version of the Report, the City chose to forego the effort of directly matching comments to page and note numbers. To the extent any of the comments in the attached spreadsheet cannot be readily correlated to the Discipline Report, the City is prepared to provide further information upon request.

The City’s main line-edits and feedback are focused on the fact that the Discipline Report contains: outdated material; material outside the scope of the monitorship; mischaracterizations; inaccurate statements; citations to, or quotations from, written material (e.g., emails) that is protected from disclosure by the Confidentiality Order; and statements with no citation or source.

The Discipline Report also includes the names of City employees, which is often unnecessary. The third version, published on the docket on September 23, 2024, includes some redactions of City employee names, but, in many instances, their identities can be determined with the information that remains unredacted.

Finally, while many City agencies and employees engaged in good faith with the author to provide information and context about the discipline process, references in the Discipline Report to these specific conversations and exchanges instead of a publicly verifiable source can lead to inaccuracies and differences in recollections (*see, e.g.,* filed comment from Robert Martinez uploaded to the Monitor’s website under the Discipline Report tab).

Item #	Document Page	Footnote No.	Body Text	Footnote Text	Feedback / Comment
1	8	5	"In the time since the trial, while the number of stops, as self-reported by police officers in "Stop Reports," has dropped from a peak of 685,274 in 2011, to 11,008 in 2018, 13,459 in 2019, and 9,544 in 2020,..."	"Much of the data references in this Report will be to the years 2017–2019. The year 2020 is an outlier due to the COVID-19 pandemic and, in any event, data from 2020 in most reports relied upon herein is not yet reported. Further, many data requests to the Department have not been answered, hindering analysis of more current data. As reported by the Department, "[e]xtraordinary factors, unique to 2020, impacted all aspects of the disciplinary process. COVID-19 disrupted the investigatory process by initially canceling, then limiting, in person interviews of complainants, witnesses, and subject officers." NYPD, 2020 Discipline Report at 2, available at <a href="https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/discipline/discipline-in-the-nypd-2020.pdf">https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/discipline/discipline-in-the-nypd-2020.pdf</a> . For the pandemic year 2021 only 8947 stop reports were filed.	NYPD dispute the assertion that "many data requests to the Department have not been answered, hindering analysis of more current data."  Citation is needed for data in report or in footnote.
2	8	3	"In the time since the trial, while the number of stops, as self-reported by police officers in "Stop Reports,..."	<a href="https://www1.nyc.gov/site/nypd/about/about-nypd/patrol-guide.page">https://www1.nyc.gov/site/nypd/about/about-nypd/patrol-guide.page</a> , The NYPD Patrol Guide requires an officer to prepare a Stop Report for "all Terry Stops/Level 3 encounters." Patrol Guide § 212-11, ¶ 24, available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg212-11-stop-frisk.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg212-11-stop-frisk.pdf</a> . Failure to prepare and file a Stop Report is treated as a violation of the Guide, and, thus, misconduct. Temporary detention based on reasonable suspicion that the subject has committed, is committing or is about to commit a felony or Penal Law misdemeanor, falling short of full-custodial seizures based on probable cause, is referred to as a "Terry stop," after Terry v. Ohio, 392 U.S. 1 (1968). "Level 3 encounter" refers to the New York state law equivalent of a Terry stop. See People v. De Bour, 40 N.Y.2d 210, 223 (1976). Stop reports are accessible under New York's Freedom of Information Law ("FOIL"), subject to the exceptions provided within N.Y. Pub. Off. Law § 87. See Patrolmen's Benevolent Ass'n v. de Blasio, 171 A.D.3d 636, 638 (2019) (citing N.Y. C.L. Union v. N.Y.C. Police Dep't, 32 N.Y.3d 556 (2018)).	1. First link in footnote is not active 2. No citation for the following statement in the footnote: Failure to prepare and file a Stop Report is treated as a violation of the Guide, and, thus, misconduct 3. Stop reports are accessible under New York's Freedom of Information Law ("FOIL"), subject to the exceptions provided within N.Y. Pub. Off. Law § 87 (case cited here does not stand for this proposition).
3	9	8	"Although not a direct comparison, a recent study done by the Monitor Team found when adjustments were made to account for undocumented stops, it appears that Black subjects were more likely to be frisked relative to White/Other subjects in 2019, with a difference on the order of six to thirteen percentage points."	See Thirteenth Report of the Independent Monitor, Racial Disparities in NYPD Stop, Question, and Frisk at [PINCITE] (Sept. 1, 2021).	Cites to a monitor report; also no pincite provided, could not verify cite
4	10	17	"One set of reforms specified in the Remedies Opinion was: The Department Advocate's Office [(DAO)] must improve its procedures for imposing discipline in response to the Civilian Complaint Review Board's ('CCRB') findings of substantiated misconduct during stops."	The "Department Advocate" (and their deputies) are attorneys designated by the Police Commissioner to prosecute disciplinary proceedings. See 38 RCNY §15-01. The DAO exercises considerable discretion in reviewing investigations conducted by CCRB, as well as Departmental units such as the Internal Affairs Bureau (IAB), the Force Investigation Division (FID) and Boro/Bureau Investigations Units (BIU).	Citation is needed.
5	12	23	"Attendees at the forums requested greater accountability at the officer, precinct, and departmental level."	Blank	This footnote is blank.
6	12	24	"...the CCRB does not adequately pursue complaints and . . . constituents fear that officers would retaliate when a complaint has been filed."	Id. at 185.	Incorrect/improper citation. There is no cite provided in first footnote, following footnotes are <i>Id.</i>
7	12	25	"Two important suggestions made during the JRP were that, in addition to loss of pay, vacation days or demotion, "command discipline should go on an officer's record" and "[i]f officer misconduct is ignored in the precinct, supervisors, managers, and the commanding officer should be penalized." Footnote 25: Id. at 186 nn 236–37. "Command discipline" refers to an informal process for adjudicating misconduct whereby Commanding Officers (COs) in precincts and at the local level are vested with the authority to investigate, determine, and penalize misconduct, e.g., violations of the Patrol Guide. Command discipline or "CDs" carry different levels of potential penalty, discussed later, and can be either an "A-CD," "B-CD," or "C-CD."	Id. at 186 nn 236–37. "Command discipline" refers to an informal process for adjudicating misconduct whereby Commanding Officers (COs) in precincts and at the local level are vested with the authority to investigate, determine, and penalize misconduct, e.g., violations of the Patrol Guide. Command discipline or "CDs" carry different levels of potential penalty, discussed later, and can be either an "A-CD," "B-CD," or "C-CD."	Incorrect/improper citation. There is no cite provided in first footnote, following footnotes are <i>Id.</i>
8	12	26	"Attendees at the forums suggested that the implementation of stricter discipline for officers with repeated violations and greater accountability for the Department overall in addressing rights violations were critical elements of meaningful police reform."	Id. at 217.	Incorrect/improper citation. There is no cite provided in first footnote, following footnotes are <i>Id.</i>
9	13	28	"Develop and publish disciplinary recommendations to ensure external accountability and public understanding."	New York City Joint Remedial Process: Final Report and Recommendations at 224, Floyd, No. 08-cv-1034 (S.D.N.Y. May 15, 2018)	Citation is needed.

10	13	27	"The NYPD's decision to publish this information is consistent with the need for greater transparency and accountability stressed in this Report."	Id. at 222–23. In March 2018, NYPD proposed to publish an online Compendium of non-identifiable summaries of the outcomes of disciplinary trials, while omitting information that would tend to identify individual police officers. This proposal falls far short of full transparency but was considered by some to be a helpful step. One year later, in March 2019, Justice Arthur Engoron, New York County Supreme Court, enjoined publication of the Compendium, citing N.Y. Civ. Rights Law § 50-a (hereinafter § 50-a). See <i>Patrolmen’s Benevolent Ass’n. v. de Blasio</i> , No. 15231/2018, 2019 WL 1224787 (Sup. Ct. N.Y. Cnty. Mar. 11, 2019). Subsequently, with the repeal of §50-a. L. 2020, ch. 96, § 1, effective June 12, 2020, the relief sought in the petition and injunction became moot, and the decision was reversed on November 19, 2020, see <i>Patrolmen’s Benevolent Ass’n v. de Blasio</i> , 188 A.D.3d 577 (1st Dep’t 2020). After that, the Department began to post an “Officer Profile” online at <a href="https://nypdonline.org/link/2">https://nypdonline.org/link/2</a> . In that space, an officer’s “Disciplinary History” can be accessed. This posting is extremely limited, however, in that it only lists “formal” charges which have been sustained and where a penalty was imposed by the Police Commissioner. So, for example, cases that were “filed,” reversed, resulted in Command Discipline, or cases in which the penalty was reduced to guidance such as training are not listed despite substantiation by CCRB or recommended substantiation by IAB.	Incorrect/improper citation. There is no cite provided in first footnote, following footnotes are <i>Id.</i>
11	14	n/a	"The NYPD disciplinary process is rapidly changing on an almost daily basis. This Report will attempt to describe a moving target, which has undergone significant changes since the Court's opinions in Floyd, mostly in the last three years. For that reason, statistics and even case studies referred to in this Report that might be as little as one or two years old should be viewed with caution."	n/a	While the report rightly points out that discipline in the NYPD is a “rapidly changing, moving target, and statistics and case studies must be viewed with caution” (p. 13), it seems to dismiss this notion when it uses the case studies themselves . All of the case studies in Appendix 1 were decided prior to the adoption and implementation of the NYPD Disciplinary System Penalty Guidelines of January, 2021. Most are described in a way that ignores the context and reasonableness around the actions of any of the involved Member of the Service (hereinafter “MOS”).
12	14	n/a	"For that reason, statistics and even case studies referred to in this Report that might be as little as one or two years old should be viewed with caution."	n/a	it seems to dismiss this notion when it uses the case studies themselves . All of the case studies in Appendix 1 were decided prior to the adoption and implementation of the NYPD Disciplinary System Penalty Guidelines of January, 2021. Most are described in a way that ignores the context and reasonableness around the actions of any of the involved Member of the Service (hereinafter “MOS”). In one particular example, the report describes an incident (example 2) which led to five allegations of misconduct. In this case, the Respondent had an argument with a woman who had gotten into a fight in the Olive Garden the day before. This woman remained so upset about it, she went to the police precinct to confront the Respondent. She alleged he choked her in order to get her camera after she began taking photos of him in the precinct. Video showed that he did NOT choke her, rather he tried to remove the phone from her hand. This is a perfect example of an incident where the discipline response makes sense in the context of the heated situation, exaggerated allegation, and the relative degree of misconduct.
13	18	60	"In addition, in 2020, the City was directed by former Governor Andrew Cuomo to “develop a plan to improve . . . deployments, strategies, policies, procedures, and practices, for the purposes of addressing the particular needs of the communities served by such police agency and promote community engagement to foster trust, fairness, and legitimacy, and to address any racial bias and disproportionate policing of communities of color.”	Exec. Order No. 203 (June 12, 2020).	Slight mischaracterization of the executive order --> all municipaliaites were directed to study and then use the study to develop a plan
14	19	64	"The movement to provide independent citizen oversight of police misconduct originated nearly 100 years ago with the creation of a Committee on Constitutional Rights by the Los Angeles Bar Association in 1928."	See Samuel Walker, <i>Police Accountability: The Role of Citizen Oversight</i> (2001) see Wadsworth Professionalism in Policing Series available at <a href="https://www.amazon.com/Police-Accountability-Oversight-Wadsworth-Professionalism/dp/0534581587?ie=UTF8&amp;s=books&amp;qid=1277046556&amp;sr=1-1">https://www.amazon.com/Police-Accountability-Oversight-Wadsworth-Professionalism/dp/0534581587?ie=UTF8&amp;s=books&amp;qid=1277046556&amp;sr=1-1</a> .	Citation is needed to specific pages.
15	22	85	"In 1993, once again after extensive debate and public comment,..."	Six NYPD officers were arrested in Suffolk County in 1992 for selling cocaine. Mayor David Dinkins, shortly thereafter, created the Mollen Commission and proposed a civilian oversight agency. Union response was a rally with thousands of officers marching on City Hall in protest.	Citation is needed.
16	22	84	"The power of the City Council to amend a provision of the Charter (section 440) that had previously been approved by initiative, was unsuccessfully challenged by the Police Benevolent Association of the City of New York (PBA)."	See , 517 N.Y.S.2d at ,898 n.1 (distinguishing local law amendments from initiatives and referenda).	Incorrect/improper citation format

17	22	88	"The new Board was authorized to hire and employ civilian investigators to replace the 156 civilian and uniformed employees of NYPD previously assigned to review civilian complaints."	Report of the Committee on Public Safety, New York City Legislative Annual, Dec. 17, 1992. "The Police Commissioner was to assign NYPD personnel to assist the CCRB. This NYPD assistance would come from the Civilian Complaint Investigative Bureau, which assigned 129 investigators to the CCRB."	Second two sentences in footnote do not appear to be supported by the cite.
18	27	121	"The current Agreement, in continued effect by virtue of the Triborough Amendment, stipulates those grievances "shall not include disciplinary matters."	Patrolmen's Benevolent Association 2010-2012 Agreement, (CBA), art. XXI, § 1(a)(2), 1 year extension signed by Patrick Lynch, President PBA and Police Commissioner William Bratton, February 10, 2016. <a href="https://www.nyc.gov/assets/olr/downloads/pdf/collectivebargaining/cbu79-police-patrolmens-benevolent-association-080106-to-073110.pdf">https://www.nyc.gov/assets/olr/downloads/pdf/collectivebargaining/cbu79-police-patrolmens-benevolent-association-080106-to-073110.pdf</a> .	This is outdated agreement.
19	29	131	"Recommendations for discipline may be adopted or modified by the Police Commissioner, or may result in No Disciplinary Action (NDA)."	"Of 487 closed cases, in 2016 through 2019, where an allegation of Stop/Frisk/Question misconduct was substantiated after investigation by CCRB, eighteen had a final decision by the Police Commissioner of "NDA."	Citation is needed.
20	29	130	"Not only does the Police Commissioner have complete discretion in deciding upon a penalty, but it is also the City's legal posture that "no law mandates how or when [the Commissioner] must impose discipline."	"Respondent's Reply Memorandum of Law in Further Support of Their Motion to Dismiss the Petition at 5, Carr v. de Blasio, 101332/2019 (Sup. Ct. N.Y. Cnty. July 10, 2020), NYSCEF No. 13. Petitioners had sought a summary judicial inquiry, pursuant to NYC Charter § 1109, into the stop and arrest of Eric Garner, claiming a need for transparency beyond that available under FOIL. The petition did not seek to compel any particular disciplinary outcome. The Court ruled that, "[a] failure to conduct . . . an investigation" in the case before the Court "would constitute a neglect of duty." Carr v. de Blasio, 133 N.Y.S.3d 737, 754 (Sup. Ct. N.Y. Cnty. 2020), aff'd 197 AD3d 124 (1st Dept. 2021).	Incorrect/improper citation format
21	30	n/a	"Civilian complaints to the Department, processed within NYPD through the Internal Affairs Bureau (IAB), the Office of the Chief of Department (OCD), and the Department Advocate's Office (DAO)"	n/a	All complaints of officer misconduct are processed through the Internal Affairs Bureau, regardless of where they are made. The Office of the Chief of Department and Department Advocates Office do not process civilian complaints.
22	30	137	"In addition to the four city and state entities, the Department learns of officer misconduct through: Force Investigations by the Force Investigation Division (FID) triggered by reported incidents of use of force;..."	"Usually triggered by a Threat, Resistance, Injury Report (TRI), which members are required to file."	Citation is needed.
23	30	140	"In addition to the four city and state entities, the Department learns of officer misconduct through: Audits within the NYPD through the Department's Quality Assurance Division (QAD), such as Stop Report audits, RAND audits,..."	"RAND audits are reviews of radio dispatches (ICADS), following an encounter, screened for use of certain key words ("stopped" "holding" "under" "warrant check," etc.), to ascertain if a Terry Stop has occurred and has been properly reported."	Citation is needed.
24	30	141	"In addition to the four city and state entities, the Department learns of officer misconduct through: Audits within the NYPD through the Department's Quality Assurance Division (QAD), such as Stop Report audits, RAND audits, 140 and Police-Initiated Enforcement (PIE) audits;..."	"PIE audits are reviews by Departmental auditors of the paperwork when a self-initiated enforcement action (i.e., not in response to a call or directive) has resulted in an arrest. Under an Audit Plan approved by the Court, See Memo Endorsement, Floyd, 959 F. Supp. 2d 540 (No. 08-cv-1034), ECF No. 792, there will be a review of one encounter (where an arrest occurred) per week in each of 133 commands, yielding a total of 6916 encounters reviewed. In addition, RAND and QAD reviews will yield data on roughly 7,980 additional encounters. Integrity Control Officers within each precinct review the audit response for corrective action."	Incorrect/improper citation format. Data cited is in doc. 791.
25	32	145	"In the end, the contours of what can be pursued as misconduct are not outlined with precision but are shaped by reference to a North Star—the Department Manual which includes the Patrol Guide and the Administrative Guide."	"The Court has ordered or approved a few provisions pertaining to the issues in Floyd. Any such changes would require Court approval prior to amendment or revision. Salient provisions of the Patrol Guide were stripped and moved to the NYPD Administrative Guide in July 2021. The Patrol Guide and the Administrative Guide, together, are now denominated the "Department Manual." Misconduct allegations, in NYPD's Disciplinary Guidelines refers to violations of the Department Manual. The Manual may be found at <a href="https://www1.nyc.gov/site/nypd/about/about-nypd/manual.page">https://www1.nyc.gov/site/nypd/about/about-nypd/manual.page</a> . Misconduct also includes criminal conduct, including violations of NYS Penal Law, an analogous statute of another state, or federal law."	Citation is needed.
26	32	146	"The rules contained in the Guides are not drafted externally; they are written and amended by the Police Commissioner at the Commissioner's sole discretion."	"As an example, a recent notable re-write by the Police Commissioner is in the definition of "Making False Statements," Patrol Guide § 203-08. (Now Admin. Guide § 304.10). The Department had, for decades, promised to punish intentionally false official statements with presumptive termination, which, in practice, rarely occurred. After years of criticism by the Commission to Combat Police Corruption for lack of enforcement and in the Department's handling of false statement allegations, Section 440(3) of the City Charter was amended, over objection by the Department, to permit some false statement investigations by CCRB. On the day that the amendment took effect, March 31, 2020, the Patrol Guide was amended, allowing the Police Commissioner greater flexibility in disciplining findings of false or misleading statements by codifying exceptions to a finding of a false official statement. It will be worth watching to see how closely CCRB follows the Police Commissioner's formulation."	Citation is needed.

27	34	156	"However, CCRB is not necessarily confined to the express elements of an offense as written in the Manual."	"Tension between CCRB's finding that a FADO violation has occurred and the Police Commissioner's decision on whether a Patrol Guide violation will be acknowledged, can, and does, arise. The contours of misconduct in the areas of false testimony, sexual harassment, and racial profiling—all discussed later—are particular areas of potential disagreement."	Citation is needed.
28	34	157	"This is especially true in the definition of "Abuse of Authority," which is malleable." Footnote 157: See, e.g., Lynch v. NYC Civilian Complaint Rev. Bd., 183 A.D.3d 512 (1st Dep't) (allowing the Board to add sexual harassment as misconduct under abuse of authority), leave denied 36 N.Y.3d 901 (2020).	See, e.g., Lynch v. NYC Civilian Complaint Rev. Bd., 183 A.D.3d 512 (1st Dep't) (allowing the Board to add sexual harassment as misconduct under abuse of authority), leave denied 36 N.Y.3d 901 (2020).	Parenthetical to case cite is inaccurate. Year missing in cite provided. In 2021, Appellate Div invalidated the CCRB rule regarding investigating sexual misconduct because the CCRB failed to adhere to rulemaking process. CCRB subsequently followed the rulemaking process the month after the opinion came down by holding a public meeting and reapproved the rule regarding investigating sexual misconduct. The re-upped rule survived a subsequent challenge: in Lynch v. CCRB 206 A.D.3d 558 (1st Dep't 2022)
29	35	161	"This open-ended canon is often used in conjunction with, or as an alternative to, other well-defined rule violations when the evidence may not clearly prove a violation of the better-defined rule." Footnote 161: See Commission to Combat Police Corruption, Sixteenth Annual Report of the Commission 86 (Oct. 2014), available at <a href="https://www1.nyc.gov/assets/ccpc/downloads/pdf/Sixteen-Annual.pdf">https://www1.nyc.gov/assets/ccpc/downloads/pdf/Sixteen-Annual.pdf</a> . ("The 'conduct prejudicial' section is often used when misconduct falls short of 'making false official statements' as defined" in the Patrol Guide.)	See Commission to Combat Police Corruption, Sixteenth Annual Report of the Commission 86 (Oct. 2014), available at <a href="https://www1.nyc.gov/assets/ccpc/downloads/pdf/Sixteen-Annual.pdf">https://www1.nyc.gov/assets/ccpc/downloads/pdf/Sixteen-Annual.pdf</a> . ("The 'conduct prejudicial' section is often used when misconduct falls short of 'making false official statements' as defined" in the Patrol Guide.)	Unable to verify statement in text and parenthetical
30	35	n/a	"After a finding, penalty recommendations by CCRB are made for each substantiated allegation while NYPD has assessed one penalty for an entire case."	n/a	Both the NYPD and CCRB determine a finding for each allegation and penalties are based on the totality of substantiated allegations. NYPD and CCRB do not separate discipline for each substantiated allegation. (ex. CCRB recommending separate Command Disciplines or sets of Charges and Specifications - one for each substantiated CCRB allegation).
31	35	162	"Some of this conduct is corruption, other is misconduct, and other is administrative violation." Footnote 162: Risk Management Bureau, Federal Monitor Team Request Form (Apr. 16, 2020), on file with the Monitor Team.	Risk Management Bureau, Federal Monitor Team Request Form (Apr. 16, 2020), on file with the Monitor Team.	Relies on a non-public comment/Cannot be verified
32	35	163	"After a finding, penalty recommendations by CCRB are made for each substantiated allegation while NYPD has assessed one penalty for an entire case."	"With the proposed adoption of a "grid" or "matrix," NYPD will begin to assign a penalty for each substantiated allegation, but penalties will be combined when "the same underlying act(s) of misconduct apply to multiple specifications." NYPD, Disciplinary System Penalty Guidelines (Aug. 12, 2020). Penalties for a given case may be the aggregated sum of penalties for individual allegations."	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
33	36	165	"Differences in the definition of "unsubstantiated," "exonerated," or "unfounded," while subtle, will have consequences in how they are noted and kept in personnel files, whether sealing or expungement will follow, and in the available files for consideration in investigations that may arise anew at a later time."	CBA, art. XVI, § 7(c) requires removal of unfounded and exonerated findings in the Central Personnel Index (CPI), but not of unsubstantiated findings. This provision was the subject of litigation (Uniformed Fire Officers Ass'n v. DeBlasio, supra) and an arbitration proceeding.	Unable to verify source with the city provided
34	36	166	"CCRB Rules, prior to October 22, 2022, provided for nineteen different possible dispositions, the majority of which explain the outcome of an investigation that may have been side-tracked before completion—Complainant Unavailable, Complainant Uncooperative, and Officer Unidentified are a few examples."	complaint withdrawn, complainant unavailable, victim unavailable, complainant uncooperative, victim uncooperative, victim unidentified, officer unidentified, referral to another agency, lack of jurisdiction, mediated agreement, failed mediation when complainant fails to participate, officer no longer with NYPD, and administrative closure when an agency, not a member of the public, refers a case but CCRB is unable to proceed. 38-A RCNY § 1-33."	This is outdated. CCRB Rules have been updated.
35	36	167	"As to the principal findings after a completed investigation, the CCRB Rules gave the following definitions: <ul style="list-style-type: none"> <li>• Substantiated: There was a preponderance of evidence that the acts alleged occurred and constituted misconduct.</li> <li>• Unsubstantiated: There was insufficient evidence to establish whether or not there was an act of misconduct.</li> <li>• Unfounded: There was a preponderance of the evidence that the acts alleged did not occur.</li> <li>• Exonerated: There was a preponderance of the evidence that the acts alleged occurred but did not constitute misconduct.</li> <li>• Other Misconduct Noted (OMN): Evidence of misconduct is indicated, but the allegation falls outside of CCRB's FADO jurisdiction and is being referred to NYPD for investigation or disposition."</li> </ul>	Id.	This is outdated. CCRB Rules have been updated.
36	38	n/a	"By comparison to CCRB, NYPD uses the following "standardized terminology . . . when preparing reports concerning internal investigations."	n/a	The "Standardized Terminology" refers to overall case findings. Partially Substantiated and Misconduct Noted are not individual allegation findings.



37	38	174	n/a	"NYPD Admin. Guide § 322-11 (effective June 23, 2020). Unfortunately, IAB Guide 620-58 (dealing with profiling investigations) uses yet another set of definitions. Adding to the mystery, Administrative Guide § 322-11 is not available to the public online."	The statement that IAB use "yet another set of definitions. Adding to the Mystery" regarding profiling finding definitions is flawed. Substantiated, Unsubstantiated, Unfounded or Exonerated are the only findings that should be used for profiling and attempts to provide a clear standard at how you should arrive at those determinations.
38	39	176	"With the lack of uniformity, cases can fall into different slots not because of the evidence or lack of evidence, but merely due to ambiguity in interpretation."	"In another context, discovery in criminal proceedings, a court refused to be bound by CCRB denominations due to the lack of a uniform standard. ("Unless specifically restricted by statute, city and state agencies are free to modify their administrative regulations, altering applicable definitions and standards so long as such modifications do not run afoul of the law. Unlike defined standards of proof in formal criminal and civil law proceedings, there is no universal standard which governs the administrative proceedings or internal investigations of different city, county and state law enforcement or ombudsman agencies. Thus, an unsubstantiated finding in Albany County might be an exonerated finding in New York City and vice versa. The CCRB may use the term unsubstantiated today but, later, may substitute that term for another. Limiting discovery to categories which are not governed by standards that are universal across New York State and/or are subject to change when the individual agency deems appropriate could result in potentially arbitrary rulings.")," People v Taveras, (Bx Crim. Ct. 2/10/2023), NYLJ p.17, col 3.	The footnote quotes an explanation for a decision in an order in a Bronx Criminal Court case mandating the disclosure of certain CCRB material, the order mandating the disclosure was overturned a month or so later
39	39	179	"The PBA fears, with some justification, that renaming an "unsubstantiated" case as an "unable to determine" case may become a vehicle for bypassing the Charter's prohibition."	NYC PBA v. City of New York, Index No. 150441/2023, Doc. No. 22 at 20. (Sup Ct. NY Cty, 2023).	Incorrect/improper citation format Author jumps back and forth between pinciting to pages of the document and the docket. Since the footnote cites the docket, the page number here should be 25.
40	39	180	"Fundamentally, as in any adjudicatory process, the definitions require understanding the difference between findings of fact and conclusions of law."	See generally, e.g., Rochester Lantern Co. v. Stiles & Parker Press Co., 135 N.Y. 209 (1892); Gridiron Steel Co. v. Jones & Laughlin Steel Corp., 361 F.2d 791 (6th Cir. 1966).	Second case cited in footnote Gridiron does not include a discussion about the difference between a finding of fact and conclusion of law.
41	40	185	"The CCRB online definition of "unsubstantiated" (endorsed by Corporation Counsel in federal court <sup>185</sup> ) speaks of the insufficiency of "available" evidence, while the definition in the CCRB Rules, prior to the proposed amendments, and in the NYPD Administrative Guide do not."	Defendants' Memorandum of Law in Support of Their Motion to Dismiss at 11, Uniformed Fire Officers Ass'n v. De Blasio, No. 20-cv-05441 (S.D.N.Y. Sept. 4, 2020), ECF No. 220.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
42	41	186	"...or (3) there was some evidence that the officer engaged in misconduct, but it was not proven by a preponderance of the evidence?"	"After years of litigation, the U.S. Department of Justice and the Yonkers Police Department came to an agreement regarding police encounters and disciplinary measures on November 14, 2016. The Agreement can be accessed at <a href="https://www.justice.gov/crt/case-document/file/923196/download">https://www.justice.gov/crt/case-document/file/923196/download</a> . Incorporated in the agreement are the following definitions: "Unfounded," where the investigation determines, by a preponderance of the evidence, that the alleged act did not occur; "Substantiated," where the investigation determines, by a preponderance of the evidence, that an accused person committed all or part of the alleged acts of misconduct; "Unsubstantiated," where the investigation determines by a preponderance of the evidence, that there is insufficient information to prove or disprove the allegations; and "Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged act did occur but was justified, legal and did not violate Yonkers Police Department policies, procedures, or Training."	Footnote needs a signal. Text is an analysis of the distinctions in between CCRB and NYPD definitions but footnote is a reference to the definitions in the resolution of a dispute between the federal government and Yonkers.
43	41	188	"The Collective Bargaining Agreement with the various police unions requires removal of unfounded and exonerated, but not unsubstantiated, cases from an officer's personnel file."	Specifically, Article XVI, Section 7(c) of the CBA requires, that "upon written request to the Chief of Personnel by the individual employee, remove from the Personal Folder . . . reports . . . which are classified 'exonerated' and/or 'unfounded.'" There is no provision for removing cases which are closed as "unsubstantiated." See Response and Reply Brief for Plaintiffs-Appellants-Cross-Appellees at 48, Uniformed Fire Officers Ass'n v. De Blasio, No. 20-2789 (2d Cir. Nov. 19, 2020), ECF No. 357.	Incorrect/improper citation format. The citation to the CBA should include the year (and possibly a link). The statement in the footnote regarding the ability to remove an unsubstantiated complaint is not supported by the authority on the page number (neither docket page number nor brief page number) provided.
44	43	n/a	"A knotty example of this dilemma (the choice between "unsubstantiated" and "unfounded" arises with frequency in profiling and bias-based policing cases. C complains of an action (a gesture, a slur, words, or deeds) and O denies the action. In the earlier years of profiling investigations by IAB or BIU, more cases were unfounded than unsubstantiated. That has shifted more recently with the number of unsubstantiated profiling complaints exceeding those that were unfounded. The reason for the shift in recent years, which is sizeable, is unclear. For 2017-2019, 1,827 bias claims were unfounded, while 1,176 were unsubstantiated. As of March 31, 2021, of 5,077 profiling investigations, 1,974 were unfounded and 2365 were unsubstantiated."	n/a	For 2017-2019, IAB reported 1,912 Unfounded allegations of profiling and 1,193 Unsubstantiated allegations of profiling. As of March 31, 2021 there were 5,077 Allegations of profiling, of which 2,964 were Unfounded and 1,826 were Unsubstantiated. Profiling allegations were added November of 2014. The NYPD no longer investigates profiling allegations. As of October 22, 2022, all profiling allegations are sent to CCRB for investigation.

45	43	191	"As of March 31, 2021, of 5,077 profiling investigations, 1,974 were unfounded and 2365 were unsubstantiated."	Internal Affairs Bureau, Assessment and Analysis Unit, Profiling Case Analysis Report. No profiling allegation against a uniformed officer has been upheld by DAO as "substantiated."	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
46	43	192	"In its Rules, CCRB proposes to carry a separate case disposition – "Officer Unidentified."	38-A RCNY § 1-33 (12)	The pincite in the footnote citation does not stand for this (think the author intended 11).
47	44	193	"If there is no credible evidence to support the charge, the charge is unfounded. If there is credible evidence of misconduct but, on balance, the weight of the evidence is against the allegation, then the charge is unsubstantiated."	See, N.Y. Crim. Proc. Law § 70.10(1). Legally sufficient evidence of a charge occurs when "competent evidence which, if accepted as true, would establish every element of an offense." Id. In the context of a misconduct allegation, if the sworn testimony of a victim/witness establishes misconduct, a case cannot be "unfounded." It might be that counter evidence outweighs or balances against the claimed violation, in which case the matter is "unsubstantiated" not "unfounded."	This footnote should have a signal
48	45	196	"Without more, it cannot be known if there was a disagreement on the facts, credibility assessments, inferences, conclusions, or a reading of the law." Footnote 196: Later in this Report, the Police Commissioner's obligation to explain departures from CCRB recommendations is discussed. A review of departure letters will show that they rarely, if ever, explain a difference of opinion in interpretation of the law.	Later in this Report, the Police Commissioner's obligation to explain departures from CCRB recommendations is discussed. A review of departure letters will show that they rarely, if ever, explain a difference of opinion in interpretation of the law.	Citation is needed.
49	48	207	"...attributed to the officer, either because the acts did not happen or because of misidentification."	See, Floyd Liability Opinion at 107, n 383. ("An officer is 'exonerated' if she committed the alleged acts, but the acts "were determined to be lawful and proper," and an allegation is. 'unfounded' if there is sufficient evidence that the officer did not commit the alleged act.")	Pincite here is off; definition of exonerated not included in the note cited
50	48	208	"Exonerated" - Viewing all the evidence it is demonstrated that the subject officer engaged in the alleged conduct, but the officer's actions were lawful and proper."	"IAB Guide 620-58 ("Processing and Investigating Complaints of Profiling and Bias-Based Policing") uses "[c]redible evidence exists that the alleged conduct occurred, but it was lawful and proper." It would be better to use the CCRB definition: "The subject officer was found to have committed the act alleged, but the officer's actions were determined to be lawful." Introduction of the word "credible" at this point confuses factual findings with questions of law."	Citation is needed for CCRB material.
51	48	209	"The hearings and procedural rights accorded N.Y. by Civil Service Law § 75 and NYC Admin. Code § 14-115 are part of the "formal disciplinary process."	Patrol Guide § 206-06.	Need an additional authority to connect the idea that the procedure listed in the patrol guide complies with the civil service law and was drafted pursuant to authority afforded by NYC Admin Code
52	49	211	"The Civil Service Law § 75(3-a) limits the suspension to a period not to exceed thirty days."	Bullock v. Kelly, 847 N.Y.S.2d 384 (Sup. Ct. Kings Cty. 2007) (finding, where an officer was incarcerated and unavailable for duty pending a criminal trial—and the disciplinary proceedings were delayed pending the criminal proceedings—upon a later not-guilty determination that the officer was entitled to salary from the point in time the thirty-day suspension had expired, despite the fact that he was incarcerated and unavailable for assignment during that period of time.)	Footnote needs a signal
53	50	217	"At the conclusion of the year, the officer is either dismissed or restored to service."	"There are three types of probation: (1) Entry Level Probation—for the first two years of employment, a newly-hired MOS can be summarily terminated without formal proceedings; (2) Promotion Probation – upon a promotion in rank, the officer must complete a probationary period before he or she is "tenured" in the greater rank; (3) Dismissal Probation – occurs following a finding of misconduct or negotiation regarding a misconduct allegation. Throughout this report "disciplinary probation" refers only to Dismissal Probation."	No authority/cite for the definitions of probation in footnote; entire rest of footnote difficult to follow (departures from forms in citations and analysis) Footnote 218 is missing from the footer - it looks like paragraph starting with 194 was a continuation of footnote 217, author may have intended that to be a different footnote. No citation to any NYC case law that says a verbal warning is not a reprimand.
54	51	223	"When an officer is separated from the Department during the pendency of an investigation, the case is "filed" which preserves the charges in the event he re-applies or is restored to service."	"NYPD reports that 136 officers elected "forced separations" when charged with misconduct for CY 2018–2020. NYPD, 2020 Discipline Report at 9, available at <a href="https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/discipline/discipline-in-the-nypd-2020.pdf">https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/discipline/discipline-in-the-nypd-2020.pdf</a> . Five of those were officers who, facing an allegation of an illegal stop/question/frisk amongst other charges, retired and had their cases "administratively filed." Beginning in 2018, in theory, those officers who resigned "in connection with allegations of misconduct" are to be listed in a public "decertification" list whereby future employers, including law enforcement agencies, would be aware of the misconduct cause for retirement. See N.Y. Exec. Law § 845; 9 NYCRR § 6056.2; NYS Division of Criminal Justice Services, Police and Peace Officer Decertification, available at <a href="https://www.criminaljustice.ny.gov/Officer_Decertification.htm">https://www.criminaljustice.ny.gov/Officer_Decertification.htm</a> . A recent (Nov. 17. 2021) search of that database did not include any of the officers who separated while facing SQF misconduct charges. It is unclear why NYPD did not post their names with DCJS. Absent listing, they could be rehired by other agencies without knowledge of the SQF misconduct allegation." See also Arno Pedram and Luca Powell, NY Regulations Allow Cops Stripped of Training Credentials to be Rehired, The Intercept, available at <a href="https://theintercept.com/2021/07/08/new-york-police-decertification/">https://theintercept.com/2021/07/08/new-york-police-decertification/</a> .	Citation is needed.

55	51	220	"Other sanctions, ancillary to discipline, include: j. Revocation of Permission to engage in outside employment for up thirty days IF the violation was related to outside employment."	Patrol Guide § 206-14 (now Admin. Guide § 318-12).	Patrol guide citation does not support statement (author may have meant 206-04)
56	51	221	"Other sanctions, ancillary to discipline, include: k. Restriction on out-of-command assignments for a fixed period not to exceed five such assignments." Id. Out-of-command assignments are lucrative in that officers receive pay and credit beyond the normal work-week assignment."	Id. Out-of-command assignments are lucrative in that officers receive pay and credit beyond the normal work-week assignment.	Patrol guide citation does not support statement
57	53	230	"Command Disciplines (CDs) fall into three categories: Schedule A (A-CD), Schedule B (B-CD) or Schedule C (C-CD)."	"C-CDs can carry a penalty up to twenty penalty days. C-CDs are rare and are not an available penalty to local commanders. No C-CDs have been proposed by COs or approved by DAO in recent years."	Citation is needed.
58	53	233	"Very often, findings of misconduct, especially for SQF misconduct, result in guidance, such as "Training," "Instructions," "warnings/admonition," or CRAFT entries, without imposition of an official penalty."	"Cop's Rapid Assessment Feedback Tool. Formerly, precincts kept a "minor violation" log as a paper local record in the precinct. The minor violations log was a logbook kept at each command that recorded minor procedural violations of Department rules by members of the service. The information in these logs was not tracked centrally, it did not become part of a member's personnel record, and there were no penalties or additional consequences for being listed in the log. The NYPD has replaced the minor violations log with a CRAFT Supervisor's Comment Form. CRAFT entries can be either positive or negative. CRAFT entries are not considered discipline by the Department."	Citation is needed.
59	54	234	"This may entail increased supervision, change of assignment, limitation on promotion or specialized assignments, restrictions on hours worked or permission to engage in off-duty employment." Footnote 234: "Monitoring comes at 3 levels. Level 1 and Level 2 are not disciplinary. They last 12 months and 18 months respectively and can include mentoring, counseling, or restrictions on assignments. Level 3 accompanies dismissal probation and is part of discipline."	"Monitoring comes at 3 levels. Level 1 and Level 2 are not disciplinary. They last 12 months and 18 months respectively and can include mentoring, counseling, or restrictions on assignments. Level 3 accompanies dismissal probation and is part of discipline."	Citation is needed.
60	55	234	n/a	"Monitoring comes at 3 levels. Level 1 and Level 2 are not disciplinary. They last 12 months and 18 months respectively and can include mentoring, counseling, or restrictions on assignments. Level 3 accompanies dismissal probation and is part of discipline."	The basis to impose monitoring derives from the PC's disciplinary authority. All levels of monitoring may be triggered by a disciplinary event (suspension, penalty imposed, etc.). Level III monitoring has two sources: dismissal probation and special monitoring, which is based upon negative performance
61	55	237	"DAO sends a communication regarding the subject of instruction but receives no specific information on what follows." Footnote 237: See September 18, 2019 response to Monitor inquiry of DAO.	See September 18, 2019 response to Monitor inquiry of DAO.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
62	55	238	"The CCRB tells Board members that instruction is "less formal,"238 and has stated that panels "usually recommend[] this type of discipline where the [officer] has committed a technical violation of the law or Patrol Guide,..."	CCRB 101, included in a "Board Packet" provided new members, at 37 ("Disciplinary Recommendations").	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
63	55	239	"...but the Panel understands the reasoning behind the [officer's] actions."	CCRB, Memorandum Accompanying August 8, 2018 Public Presentation of CCRB's Disciplinary Framework, at 5.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
64	55	242	"When no adverse consequence, punishment, or penalty described in the statute follows a misconduct finding, it invites misunderstanding to say that "discipline was imposed."	CCRB annual and bi-annual reports, see CCRB, Reports, available at <a href="https://www1.nyc.gov/site/ccrb/policy/reports.page">https://www1.nyc.gov/site/ccrb/policy/reports.page</a> , will commonly say "discipline was imposed" after a case was sent to the Police Commissioner, when in fact Training, Instructions or warnings were the only action directed by the Police Commissioner. For example, when the Police Commissioner decides to block a CCRB-APU prosecution (Provision Two - retention, discussed later), CCRB will frequently report that the case was "retained with discipline" when, in fact, only guidance, without penalty, followed.	Footnote needs additional citation for examples provided
65	56	246	"If guidance is the only disposition after a finding of misconduct, that action is not recorded in the officer's Central Personnel Index (CPI)." Footnote 246: "An accepted B-CD with guidance which came through CCRB will be entered in the CPI. But guidance, without a B-CD, is not included."	"An accepted B-CD with guidance which came through CCRB will be entered in the CPI. But guidance, without a B-CD, is not included."	Citation is needed.
66	56	243	"Acceptance by the Department of a finding of misconduct by CCRB, standing alone, may signify no more than that the Department acknowledged the finding and then ordered some "corrective action," caution, or guidance in place of a penalty."	"In a parallel proceeding, Nunez v. City of New York, No. 11-cv-5845 (S.D.N.Y.), regarding misconduct by staff of the NYC Department of Correction, the federal monitor is careful to use the term "corrective action" when discussing Training, counseling, modification of assignment and even suspension." See, e.g., Eleventh Report of the Nunez Independent Monitor at 75, Nunez, No. 11-cv-5845 (S.D.N.Y. May 11, 2021), ECF No. 368. In other major cities, where Guidelines have been adopted or court-ordered, Training, Instructions, and Warnings are corrective, non-disciplinary, actions. See, e.g., Los Angeles Police Department Admin. Order No. 15 (Sept, 15, 2016); United State v. City of Cleveland, No. 15-cv-1046 (N.D. Ohio, Jan 10, 2018); Denver Police Department Discipline Handbook: Conduct Principles and Disciplinary Guidelines (May 3, 2018).	Incorrect/improper citation format. The sources from other jurisdictions cannot be located with the citation provided in the footnote.

67	57	249	"In criminal court proceedings, when a report of prior discipline for misconduct is produced for use as potential Giglio material, the Department provides the prosecutor and court with a modified copy of the CPI which does not include findings resulting in guidance."	See Giglio v. United States, 405 U.S. 150 (1972). The adequacy of a limited response in the face of a discovery demand under the Criminal Procedure Law is a topic working its way through New York criminal courts. See, e.g., People v. Perez, 144 N.Y.S.3d 332(Crim. Ct. Bronx Cnty. Apr. 8, 2021). AG 329-09 provides, "Information contained in the Central Personnel Index is highly personal and confidential....Information will be disseminated on a need to know basis and authorized personnel will not utilize the Index for mass checks. In no cases will any information be divulged relative to a current investigation."	Citation is needed in footnote regarding modified CPI produced.
68	58	255	"The Police Commissioner then imposed command discipline, not necessarily statutory discipline, for only 259..."	"As discussed later, many if not most of the CDs were "accepted" without imposition of any penalty."	Citation is needed.
69	58	256	"...and pursued charges for fourteen officers."	The fact that Charges and Specifications were "pursued" for fourteen officers does not mean that they were found guilty or that discipline was imposed. There was "Disciplinary Action" in 28% of the cases where charges were pursued by APU and closed in 2019. The rest were "Not adjudicated" or "No Disciplinary Action."	Citation is needed.
70	58	254	"For the years 2017 to 2019, CCRB substantiated FADO misconduct allegations against 1,217 officers."	CCRB, Annual Report 2019 at 43, available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2019CCRB_AnnualReport.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2019CCRB_AnnualReport.pdf</a> .	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
71	59	259	"In the end, just twenty seven of 266 officers (10.0%) were penalized by forfeiture of penalty days after CCRB had substantiated an illegal stop, question, or frisk."	"Sixteen cases were "closed administratively," which could mean retirement, resignation, or simply a decision by the Police Commissioner not to pursue the matter for a variety of reasons. Although numbers are incomplete for 2022, of 254 stop/question/frisk substantiated misconduct findings by CCRB referred to the Department for discipline, 86 have been finalized and only 5 officers received discipline in the form of penalty days."	Citation is needed.
72	59	258	"In the end, just twenty seven of 266 officers (10.0%) were penalized by forfeiture of penalty days after CCRB had substantiated an illegal stop, question, or frisk."	"Sixteen cases were "closed administratively," which could mean retirement, resignation, or simply a decision by the Police Commissioner not to pursue the matter for a variety of reasons. Although numbers are incomplete for 2022, of 254 stop/question/frisk substantiated misconduct findings by CCRB referred to the Department for discipline, 86 have been finalized and only 5 officers received discipline in the form of penalty days."	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote. Also, it needs a pincite.
73	59	260	"The remaining 104 substantiated SQF cases were disposed of or diverted in other ways, short of imposition of a penalty."	Federal Monitor - SQFSTA Report supplied by DAO to the Monitor.	Relies on non-public communications between NYPD and the Monitor.
74	60	263	"The rest went unfounded, unsubstantiated, or exonerated."	CCRB 2019 Annual Report, at 46	Unable to confirm this information in the report at the page cited in the footnote
75	60	264	"But for the three-year period, 2019 through 2021, of 183 closed and finalized cases where there was a substantiated SQF allegation within a complaint, only eighteen officers received a penalty of lost vacation or credited days."	"Subsequent to the drafting of this Report, a matrix submitted by DAO included stop/frisk substantiations up to September 30, 2022. Of 46 cases where CCRB substantiated an SQF violation, 25 had been finalized by the Police Commissioner who imposed penalty days on only two of the officers (██████████ and ██████████) whose cases are discussed later in the report. Due to the Covid pandemic, the interview and investigation process was impaired considerably in 2020-21. In 2022, as of the report date, 254 cases with a substantiated SQF violation were sent to DAO from CCRB. In 86 cases, the matter was closed with five of the 86 receiving a penalty of lost vacation days (two officers lost three days each and the officers lost one day each." Final Federal Monitor - S Q F S T A Report as of 09-30-2022 (1).	Relies on non-public communications between NYPD and the Monitor.
76	60	265	"Of eighty-six reported failures to file a Stop Report, some with identified SQF misconduct, uncovered by QAD audits spanning the period from 4Q2016 to 1Q2020, sixty two received a CRAFT report, twenty-nine received Instruction/Training, ten accepted a Command Discipline without penalty, and eleven received NDA."	NYPD Spreadsheet: "QAD stop report failures," (Dec. 8, 2020), on file with the Monitor Team.NYPD Spreadsheet: "QAD stop report failures," (Dec. 8, 2020), on file with the Monitor Team.	Relies on non-public communications between NYPD and the Monitor.
77	61	268	"If a CCRB panel believes that a penalty rather than guidance is needed, it will simply recommend an A-CD, a B-CD, or Charges and Specifications, depending on what penalty the panel believes should be available to the Police Commissioner (up to five penalty days, up to ten penalty days, or more)."	"C-CDs (with a potential penalty of twenty days) are the exclusive province of the Police Commissioner. If a CCRB panel believes a penalty greater than the ten days available in a B-CD should be imposed, it will not recommend a C-CD. Instead, it asks APU to file Charges and Specifications."	Citation is needed.
78	61	269	"This leaves the choice of penalty to the Police Commissioner."	"As discussed later, when calculating "progressive discipline" for Guidelines purposes, CCRB has asserted that it will presume a penalty of five days was imposed when an A-CD was accepted, despite the reality that this almost never occurs."	Citation is needed.
79	62	271	"Mere acceptance of an A-CD without a penalty (e.g., even if the result is Training, Instructions or a warning and admonishment) and without entry into a centralized personnel record such as the CPI is not discipline, although a formal, written, reprimand citing a CD and recorded in the CPI is a penalty."	The Career Advancement Review Board (CARB) (see Admin. Guide § 320-48) is convened to determine whether members who have disciplinary issues in their careers possess the character and judgment necessary to become a supervisor. "[H]aving a disciplinary history cannot, standing alone, disqualify a candidate for promotion." Thompson v. City of New York, 50 Misc. 3d 1202 (A) (Sup. Ct. N.Y. Cnty. 2015).	Unable to review this section of Admin Guide; Thompson case needs a pincite

80	62	272	They included: (1) warning and admonishing verbally; (2) warning and admonishing in writing with "a copy to be filed with the papers";..."	"Papers" is not defined, but presumably it is the written hardcopy kept at the precinct. Admin. Guide § 320.	Unable to confirm statement in footnote
81	63	277	"Only one of those cases carried forfeiture of a penalty day; three carried a time deduction of two to four hours."	"The one A-CD carried a forfeiture of one penalty day. Time deducted for three cases was two, two, and four hours respectively."	Citation is needed.
82	63	278	"Two of those cases carried a penalty of days forfeited, two cases had time deducted."	"One A-CD carried a one-day, the other a five-day, penalty (the officer was found to have given false testimony); two cases had four and five hours deducted, respectively."	Citation is needed.
83	63	279	"Two of those cases resulted in forfeiture of one penalty day for each, three cases had hours deducted."	"Each of the two cases ended with one penalty day assessed; three cases had time deducted of one, one, and four hours respectively."	Citation is needed.
84	63	275	"The exception would be if the B-CD or recommendation for a C-CD was presented to DAO, i.e., disciplinary matters other than Schedule A command disciplines, where conferral or approval by DAO is required."	DAO Response to Inquiry from the Monitor Team (July 10, 2019).	Relies on non-public communications between NYPD and the Monitor.
85	63	276	"For a significant number of cases where CCRB substantiated SQF misconduct, "CD accepted" is the final disposition with no discipline attached. Only a small fraction of SQF cases, where a CD is accepted, carry a penalty."	"This practice may be impacted, but not eliminated, in the future to some extent, by application of the newly adopted disciplinary matrix, discussed later. For example, in 2022 of the first 86 closed cases where CCRB substantiated an SQF violation, 12 cases resulted in a "CD accepted" – five of the 12 resulted in loss of one or more penalty days and four of the cases resulted in a loss of credit for one or more hours. Three ended in a "CD accepted" without penalty."	Relies on non-public communications between NYPD and the Monitor.
86	64	281	"In sum, for 2017-2019, putting the "guidance" and "CD accepted" numbers together for wrongful SQF behavior: Guidance instead of discipline was imposed in 135 of 266 closed cases..."	"Guidance and CD accepted account for 204 of the 266 closed cases. The majority of the remaining cases ended without discipline as well for a variety of reasons (administratively closed, NDA, Not Guilty verdicts, retirement, etc.). Only twenty-two of the 266 (not already counted in the "CD accepted column") received penalty day punishment. (twenty-seven cases in all received penalty days. Five overlapped in the "CD accepted" column.) Those cases will be explained in detail later in this Report. None of them are cases where penalty days were forfeited in response to an SQF allegation alone. Each has a storied history."	Citation is needed.
87	64	282	"Seven of the fifty-five A-CDs carried a penalty." Footnote 282: "In 2017 and 2018, three officers lost a total of seven days and four officers lost a total of nine hours. In 2019, no officer receiving an A-CD was penalized with a loss of time or vacation day."	"In 2017 and 2018, three officers lost a total of seven days and four officers lost a total of nine hours. In 2019, no officer receiving an A-CD was penalized with a loss of time or vacation day."	Citation is needed.
88	66	291	"DAO keeps its own records in a database, known as DADS, but that is kept by the attorney advocates for internal use by DAO and is not accessible outside of DAO."	Disciplinary Administrative Database System.	Citation is needed.
89	67	295	"The B-CD record is not available to CCRB or Trial Commissioners for use in a new investigation."	"If the B-CD was adjudicated by CCRB, they will have their own record of the CCRB proceedings."	Citation is needed.
90	67	296	"B-CDs for SQF misbehavior are infrequent. Only fourteen cases of 286 closed SQF cases in the years 2017 to 2019 resulted in a B-CD."	"In 2022, as of 9/30/22, of 254 SQF substantiations by CCRB, the Board recommended a B-CD in 37 cases, but the Police Commissioner imposed a B-CD in only four of the cases."	Citation is needed.
91	68	298	"In its "Collaborative Plan" submitted to the Governor, the City Council and the Mayor promised that the City will "[h]old police officers accountable for misconduct through internal NYPD disciplinary decisions that are transparent, consistent, and fair," which included "[k]eeping a record and recognizing disciplinary actions as vital sources of information about an officer, supervisors, and the department as a whole" and promising "[t]ransparency[] [so] both [the] NYPD and community know what discipline to expect." Footnote 298: NYC Police Reform and Reinvention Collaborative Draft Plan at 13–14 (Mar. 5, 2021), available at <a href="https://www1.nyc.gov/assets/home/downloads/pdf/reports/2021/Final-Policing-Report.pdf">https://www1.nyc.gov/assets/home/downloads/pdf/reports/2021/Final-Policing-Report.pdf</a> , adopted by the N.Y. City Council, Intro. Res. 1584/2021 (Mar. 25, 2021).	NYC Police Reform and Reinvention Collaborative Draft Plan at 13–14 (Mar. 5, 2021), available at <a href="https://www1.nyc.gov/assets/home/downloads/pdf/reports/2021/Final-Policing-Report.pdf">https://www1.nyc.gov/assets/home/downloads/pdf/reports/2021/Final-Policing-Report.pdf</a> , adopted by the N.Y. City Council, Intro. Res. 1584/2021 (Mar. 25, 2021).	The cited authority(ies) does not support the proposition.
92	68	301	"In litigation following the repeal of Civil Rights Law § 50-a, the City has taken the position that A-CDs, even when substantiated, are merely "technical infractions" that should be redacted from FOIL responses for requests to see "law enforcement disciplinary records."	Uniformed Fire Officers Ass'n v. de Blasio, 846 F. App'x 25, 33 (2d Cir. 2021) (quoting N.Y. Pub. Off. Law § 89(2-c)).	Clarify footnote/case description because it difficult to discern between what the City argued and what the court held.
93	69	303	"Without knowledge of prior disciplinary results, progressive discipline for repeat offenders cannot be realized."	"CCRB has indicated informally that the Board may presume that a penalty was imposed, but that is an assumption on CCRB's part—an assumption that is not statistically defensible."	Citation is needed.

94	70	307	"If a case is sent to the CO for final disposition without direction from the Police Commissioner, will the CO's disposition be reported back to CCRB? Currently, when a case is sent to the CO without specific mandate by the Police Commissioner, the final penalty or non-penalty by the CO, kept at the precinct, is not logged in a central database and is not easily retrieved without individualized manual effort. Proceeding to recommend penalties for misconduct without knowledge of previous final dispositions runs counter to the notion of "progressive discipline."	"Aside from the need to know for purposes of progressive discipline, knowledge of other complaints is useful in detecting patterns and examining motive. Two of the cases examined later in this report included misconduct claims of retaliation, where earlier encounters with the same civilian(s) gave insight to later misconduct. (Generally speaking, an officer receives qualified immunity from § 1983 liability if probable cause supports an arrest even one made with a retaliatory motive. Whether §1983 immunity should insulate an officer from internal discipline is an open question. Reichle v Howards, 466 US 658 [2012])."	Incorrect/improper citation. Citation should be 566.
95	70	308	"For example, if allegations of false testimony or profiling or failure to file a Stop Report were included in an SQF complaint, the results of related Departmental investigations of those matters would not be reported to CCRB."	"The 2020 Charter amendments permit CCRB to investigate the "truthfulness of any material official statement...made during the course of and in relation to the board's resolution of [a FADO] complaint." N.Y. City Charter § 440(c)(1). This leaves out false statements made in court, to district attorneys, to grand juries, in court, and in paperwork. Experience shows that a false or misleading statement made in one context is often repeated in other settings. Nothing in the Charter precludes concurrent investigations of false or misleading statement."	Unsure if conclusion drawn by writer in footnote is accurate
96	71	311	"As of the most recent SQFSTA matrix provided to the Monitor Team, in the years 2019 to 2021, CCRB substantiated 210 cases against an officer where a wrongful stop/question/frisk/search allegation was included within the complaint."	"The number of complaints, not cases, is less than 210, since one wrongful complaint, describing an improper encounter, may include allegations against multiple officers."	Incorrect/improper citation
97	72	314	"As of this writing, the City has failed to provide sufficient documentation or data to fully assess the application of the Disciplinary Guidelines to stop and frisk misconduct."	"The City has resisted production of Case Assessment Reports (CAR) by DAO or other correspondence between DAO and CCRB, which are needed to understand why a recommendation by CCRB was downgraded. The claim that CAR memos are protected by attorney-work product or deliberative process memos and therefore not available to the Court is dubious. It is currently being litigated in an unrelated proceeding In Re: NYC Policing During Summer 2020 Demonstrations, 20-cv-8924, (SDNY). More recently, in March 2022, the Department provided a spreadsheet with the outcomes of thirty-eight cases decided under the Disciplinary System Penalty Guidelines, again, without accompanying Departmental memos which had been requested. Those outcomes are discussed infra. CCRB has recently begun to post "Departure Letters" (described infra) which describe cases where the Police Commissioner has elected to impose a lower level of discipline than requested by CCRB., at <a href="https://www1.nyc.gov/site/ccrb/complaints/complaint-outcomes.page">https://www1.nyc.gov/site/ccrb/complaints/complaint-outcomes.page</a> . Visited 6/8/2022. Twelve of the 111 cases included in that list included a finding of an improper stop, frisk or search of person. One case (PO ██████████) resulted in a one-day penalty. The remainder went with no discipline (NDA), training, or an A-CD accepted without penalty."	Citation is needed.
98	72	313	"Last year the Police Commissioner agreed to abide by the Disciplinary Guidelines Matrix."	Disciplinary System Penalty Guideline. <a href="https://www1.nyc.gov/assets/nypd/downloads/pdf/public%20information/nypd-disciplinary-penalty-guidelines-effective-2-15-2022-final.pdf">https://www1.nyc.gov/assets/nypd/downloads/pdf/public information/nypd-disciplinary-penalty-guidelines-effective-2-15-2022-final.pdf</a>	Link in footnote is inactive.
99	73	317	"As well, discipline for one case cannot be looked at in a silo, isolated from other pending cases." Footnote 317: "A recent submission by CCRB (March 2022) of recommendations made since inception of the Disciplinary Penalty Guidelines System (Matrix, discussed below), indicates that CCRB may make note of "[t]he adverse result of a criminal, administrative or civil proceeding related to the underlying conduct" as a potential aggravating factor when recommending a penalty."	"A recent submission by CCRB (March 2022) of recommendations made since inception of the Disciplinary Penalty Guidelines System (Matrix, discussed below), indicates that CCRB may make note of "[t]he adverse result of a criminal, administrative or civil proceeding related to the underlying conduct" as a potential aggravating factor when recommending a penalty."	Citation is needed.
100	73	318	"It is here that CAR memos would be useful since DAO puts cases together where there are multiple concurrent investigations for the same encounter or multiple misconduct claims pending contemporaneously."	"Case Analysis and Recommendation Memos prepared by DAO for the Police Commissioner. The Law Department recently prevented production of CAR memos when requested by the Monitor team on grounds of privilege." Letter, ██████████ Deputy Chief to the Monitor, February 10, 2022. The same issue is currently pending before J. Colleen McMahon in the Southern District. . (In re: New York City Policing During Sumer 2020 Demonstrations, 1:20-cv-8924 [SDNY], Doc No. 831 (1/28/2023). The City has asked that the Report not include references to the two CAR memos which were produced.	Relies on non-public communications between Law and the Monitor.
101	74	321	"NYPD employs approximately 36,000 uniformed officers and 19,000 civilian employees."	NYPD, About NYPD, available at <a href="https://www1.nyc.gov/site/nypd/about/about-nypd/about-nypd-landing.page">https://www1.nyc.gov/site/nypd/about/about-nypd/about-nypd-landing.page</a> . Members of the Service (MOS) include uniformed and approximately 19,000 civilian employees. Uniformed Members of the Service (UMOS) are the roughly 35,000 sworn police officers.	All of these cites should include a date when the website was last visited
102	74	322	"The NYPD is principally divided into twenty-three bureaus and major offices that perform enforcement, investigative, and administrative functions."	NYPD, Bureaus, available at <a href="https://www1.nyc.gov/site/nypd/bureaus/bureaus.page">https://www1.nyc.gov/site/nypd/bureaus/bureaus.page</a> .	All of these cites should include a date when the website was last visited
103	74	323	"The largest bureau is the Patrol Services Bureau, which oversees the majority of uniformed officers on patrol and is headed by the Chief of Patrol."	NYPD, Patrol, available at <a href="https://www1.nyc.gov/site/nypd/bureaus/patrol/patrol-landing.page">https://www1.nyc.gov/site/nypd/bureaus/patrol/patrol-landing.page</a> .	All of these cites should include a date when the website was last visited

104	74	324	"It is divided into eight borough commands,..."	These include Manhattan North, Manhattan South, The Bronx, Brooklyn North, Brooklyn South, Queens North, Queens South, and Staten Island. NYPD, Detectives, available at <a href="https://www1.nyc.gov/site/nypd/bureaus/investigative/detectives.page">https://www1.nyc.gov/site/nypd/bureaus/investigative/detectives.page</a> .	All of these cites should include a date when the website was last visited
105	74	325	"...which are further divided into seventy-seven police precincts."	NYPD, Patrol, available at <a href="https://www1.nyc.gov/site/nypd/bureaus/patrol/patrol-landing.page">https://www1.nyc.gov/site/nypd/bureaus/patrol/patrol-landing.page</a> .	All of these cites should include a date when the website was last visited
106	74	326	"Relevant to a discussion of discipline, other NYPD offices include the Office of the Chief of Department (OCD), which oversees all Members of the Service (MOS), the Internal Affairs Bureau ("IAB"), which is tasked with investigating police misconduct, the Risk Management Bureau ("RMB"), which tracks police performance, and the Trials Bureau, which is also referred to as the Office of the Deputy Commissioner of Trials (DCT)."	Id.	All of these cites should include a date when the website was last visited
107	75	329	"Reporting to the Commissioner are several other key department officials, including First Deputy Commissioner Edward A. Caban, a number of Deputy Commissioners, 328 Chief of Department Jeffrey B. Maddrey, and the various bureau chiefs."	NYPD, Leadership, available at <a href="https://www1.nyc.gov/site/nypd/about/leadership/leadership-landing.page">https://www1.nyc.gov/site/nypd/about/leadership/leadership-landing.page</a> .	This is outdated. There has been change in NYPD leadership.
108	75	n/a	"Matthew Pontillo is Chief of Risk Management and Ernest Hart is Deputy Commissioner for Legal Affairs."	n/a	Current references to the Risk Management Bureau should be updated to the Professional Standards Bureau. "Ernest Hart is Deputy Commissioner for Legal Affairs" should be updated to "Michael Gerber is Deputy Commissioner of Legal Matters"
109	75	327	"The Force Investigation Division ("FID"), established in 2015, investigates all firearms discharges and deaths in police custody, and reports directly to the First Deputy Commissioner."	NYPD, New NYPD Use of Force Guidelines Announced, available at <a href="http://nypdnews.com/2015/10/new-nypd-use-of-force-guidelines-announced/">http://nypdnews.com/2015/10/new-nypd-use-of-force-guidelines-announced/</a> ; NYPD, Use of Force Report 2017, available at <a href="https://www1.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2017.pdf">https://www1.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2017.pdf</a> .	First link to cite in footnote goes to a general website not a specific announcement; second citation needs a pincite
110	75	330	"In 2018, there were, on average, 36,784 uniformed members of service."	"For many of the statistics cited, 2018 was chosen since the records are the most complete, facilitating comparisons. Where relevant, 2019 statistics will be noted."	Citation is needed in the footnote.
111	75	331	"There were 246,781 arrests."	NYPD, Use of Force Report at 13, available at <a href="https://www1.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2018.pdf">https://www1.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2018.pdf</a> . Of those arrests, 96,394 were for seven major index crimes (Murder, Rape, Robbery, Felony Assault, Burglary, Grand Larceny, and Grand Larceny Auto). See also RMB Crime, Arrest, Summons, Stop Reports Matrix (Mar. 2020), on file with the Monitor Team. Arrests dropped dramatically, to 214,617 in 2019.	Incorrect/improper citation. Citation should be to pg. 14.
112	77	337	"In addition, the Internal Affairs Bureau Guide sets forth procedures for the intake, classification, and investigation of complaints against members of the NYPD."	See, e.g., NYPD, Internal Affairs Bureau Guide 620-58, Processing and Investigating Complaints of Profiling and Bias-Based Policing Control. The IAB Guide is not available to the public.	Footnote indicates IAB guide is not available to the public, but section cited it is available on the monitor's website
113	77	338	"If one totals the number of arrests, Terry stops, summonses and DATs, there are nearly 2 million police-citizen enforcement encounters per year in New York City, and another one million moving violation tickets written." Footnote 338: Desk Appearance Tickets (Article 150 of the Criminal Procedure Law).	Desk Appearance Tickets (Article 150 of the Criminal Procedure Law).	Citation is needed in the footnote.
114	77	339	"Unless a civilian complains to CCRB or some other monitoring agency, or files a civil legal claim, and excluding the rare case where the officer's conduct is fully litigated in a criminal proceeding, evaluations of police compliance with the law are entirely dependent on the Department's own internal mechanisms for detecting, investigating, and describing the propriety of officer interactions with the public."	"The Inspector General for NYPD and the Commission to Combat Police Corruption (CCPC) will, on a regular basis, review the work done by the Department when it investigates, but they are neither mandated nor equipped to conduct their own field investigations."	Citation is needed.
115	78	n/a	"The Department, through IAB, logs about 50,000 complaints annually."	n/a	Prior to 2020 IAB logs about 50,000 complaints annually. However, 2020-2022 IAB has averaged 30,000 complaints per year.
116	78	340	"On average, about 60,000 complaints of police misconduct are received or logged each year by NYPD and CCRB combined." Footnote 340: "Due to cross-referrals, from NYPD to CCRB and vice-versa, there is some degree of overlap in these two sets of numbers."	"Due to cross-referrals, from NYPD to CCRB and vice-versa, there is some degree of overlap in these two sets of numbers."	Citation is needed in the footnote.
117	79	n/a	"Many complaints are duplicative and will lead to just one investigation. There might, for example, be multiple complainants regarding one encounter. After consolidation, screening, and out-bound referrals, of the 51,106 complaints, IAB conducted 29,873 investigations in 2018. Of 46,192 complaints in 2019, NYPD conducted 23,878 investigations. For a sense of proportion, this is five to six times as many investigations as are done by CCRB and as much as twenty times the number of full investigations conducted by CCRB."	n/a	Out of 51,106 complaints (logs received) in 2018 and after consolidation, screening and outbound referrals, the NYPD created 36,701 cases for investigation. Out of 46,192 complaints received in 2019, the NYPD created 34,028 cases for investigation.

118	79	n/a	"One of the consequences of shared investigative authority between NYPD and CCRB is the large number of cases referred in a two-way exchange from one agency to the other before full investigation. Of the 2,326 complaints that IAB passed to CCRB in 2018, 2,088 were retained and handled by CCRB as within its jurisdiction."	n/a	IAB referred 2,951 complaints to CCRB in 2018 and 2,919 in 2019.
119	79	n/a	"Meanwhile in that same year, CCRB received directly, and then referred out, 5,689 complaints to NYPD (4,802 to IAB and 887 to OCD)."	n/a	The numbers cited were obtained from the 2018 CCRB annual report. The numbers were reversed: 4,802 were referred to OCD and 887 to IAB.
120	79	343	"For a sense of proportion, this is five to six times as many investigations as are done by CCRB and as much as twenty times the number of full investigations conducted by CCRB." Footnote 343: A large number of CCRB complaints are truncated or mediated and therefore are not processed for investigation."	A large number of CCRB complaints are truncated or mediated and therefore are not processed for investigation.	Citation is needed in the footnote.
121	80	346	"In 2018, 2,584 complaints were sent by CCRB to governmental agencies other than NYPD."	CCRB, Annual Report 2018, available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2018CCRB_AnnualReport.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2018CCRB_AnnualReport.pdf</a> .	Incorrect/improper citation (no pincite)
122	80	348	"By way of comparison to the investigative workload of NYPD, after subtracting cases that are truncated or sent to mediation, IAB averages a little over 1,300 full investigations per year as measured against approximately 24,000 internal NYPD investigations."	"In 2017, CCRB closed 1,348 cases after full investigation. In 2018, that number was 1,208. CCRB Annual Report, 2018. A direct comparison is not possible for a variety of reasons: (1) NYPD misconduct jurisdiction is much broader than FADO and may include internal personnel matters or any other violation of the Patrol Guide, which runs 2,101 pages in length (available online at <a href="https://www1.nyc.gov/site/nypd/about/about-nypd/patrol-guide.page">https://www1.nyc.gov/site/nypd/about/about-nypd/patrol-guide.page</a> ); (2) although internal investigations may, and often do lead to discipline, a limited number are based on civilian encounters; and (3) a large number of CCRB cases end in efforts at mediation or are truncated—cut short for a variety of reasons discussed below. In 2018, 58% of CCRB case resolutions were by truncation and 12% were by mediation or attempted mediation."	Incorrect/improper citation (no pincite) The link is active
123	80	349	"By contrast, Integrity Control Officers (ICO) throughout the Department have access to CCRB's Complaint Tracking System (CTS), a database that organizes and holds together all the evidence in a complaint being investigated by CCRB."	CCRB Response to Supplemental Question Number Six (June 3, 2018). "ICOs are lieutenants assigned to each precinct and borough command. They keep track of investigations within their command."	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
124	81	n/a	"Investigations conducted by IAB, OCD, BIU (Borough/Bureau Investigation Units) or FID (Force Investigation Division) are all tracked through a variety of databases, not one integrated database."	n/a	All data contained in ICMT is tracked and is accessible through ICMS. ICMT is a different system for security reasons where in case of a security breakdown, members outside of IAB would not be able to access cases being investigated by IAB. FID conducts their cases utilizing ECMS, but case findings are then entered into ICMT once completed.
125	81	355	"Once IAB splits a case, IAB does not track the investigation at CCRB and does not "pair back" the IAB investigation with the CCRB investigation." Footnote 355: Memo from ██████████, Risk Management Bureau, NYPD, to the Monitor Team (Sept. 9, 2020).	Memo from ██████████, Risk Management Bureau, NYPD, to the Monitor Team (Sept. 9, 2020).	Relies on non-public communications between NYPD and the Monitor.
126	82	359	"A civilian complaint against a police officer can be lodged at any patrol precinct, Housing Police Service Area, transit district, traffic unit, or any other NYPD office."	Patrol Guide § 207-31.	Citation in footnote does not support statement in report (207-31 is the Silver Alert System regarding vulnerable seniors)
127	82	360	"Civilians can also submit complaints by mail, email, and telephone."	Id.	Citation in footnote does not support statement in report (207-31 is the Silver Alert System regarding vulnerable seniors)
128	83	n/a	"Approximately one half of the complaints received by the Department are classified as "Outside Guidelines" (OG). OG cases involve an allegation of a violation of a Departmental rule or guideline. It is a classification reserved for lesser offenses. Common intra-Departmental OG complaints include Misuse of a Parking Plaque, Damage to Police Property, and Improper Parking of a Department Vehicle. Common civilian complaints in the OG category are disputed traffic or parking summonses or a failure to take or make a report when requested by a civilian. They can be passed on from IAB to OCD. The Investigation Review Section of OCD will send less serious complaints to the local command to be addressed through the Command Discipline process. All investigations have a target date for completion within ninety days."	n/a	IAB electronically sends cases direct to these commands without delay.
129	83	362	"Complaints received by NYPD involving excessive force, abuse of authority, discourtesy, or offensive language (FADO) and made by a civilian, are assigned a CCRB serial number and, according to the Patrol Guide, referred immediately by telephone to the CCRB's Intake Unit...."	Although the Patrol Guide requires the receiving officer to immediately refer the complaint to the CCRB, in practice it can take up to a week for the receiving officer to do so.	Citation is needed.
130	83	363	"...which is open to receive complaints twenty-four hours a day." Footnote 363: Patrol Guide § 207-31.	Patrol Guide § 207-31.	Citation in footnote does not support statement in report (207-31 is the Silver Alert System regarding vulnerable seniors)



131	83	364	"Complaints against uniformed members containing allegations of other acts of misconduct, such as failure to properly perform duty, are also referred to the CCRB, and assigned a Chief of Department serial number as well." Footnote 364: Id.	Id.	Citation in footnote does not support statement in report (207-31 is the Silver Alert System regarding vulnerable seniors)
132	83	366	"...which the complainant prepares in his or her own handwriting and signs."	Patrol Guide § 207-31. (Now Patrol Guide § 207-28).	Citation in footnote does not support statement in report (207-31 is the Silver Alert System regarding vulnerable seniors) Author seems to be referring to 207-28 of the patrol guide - can be used to correct previous cites). Consider citing to the date effective for these sections to assist anyone reading and trying to locate source.
133	84	370	"The officer is also required to notify an Investigating Supervisor if doubt exists as to the identity of the service member against whom the complaint is lodged."	"Patrol Guide § 207-28. When asked by the Monitor Team if a complainant would learn the name of a subject officer who had not identified himself, DAO responded, "[t]his question is best answered by CCRB." Letter from DAO to Monitor Team (September 3, 2019).	Relies on non-public communications between NYPD and the Monitor.
134	84	369	"The officer is also required to notify an Investigating Supervisor..."	A Platoon Commander, Special Operations Lieutenant, or the Integrity Control Officer.	Missing citation for footnote and statement
135	84	372	"Reviewing Supervisor371 then reviews the Civilian Complaint Report and forwards the report to the Commanding Officer, who then distributes it to either (i) the IABB's CCRB Liaison if the complaint is within the CCRB's jurisdiction,..."	Department records, however, are not forwarded directly to the CCRB. See Patrol Guide § 207-28.	Incorrect/improper citation format. Citation needs pincite.
136	84	373	"...or (ii) the Investigation Review Section of the Office of the Chief of Department if it is a non-FADO complaint."	Patrol Guide §§ 207-28.	Incorrect/improper citation format. Citation needs pincite.
137	84	374	"An example would be "fail[ing] to properly perform [a] duty, unwarranted traffic summons, etc"	Patrol Guide § 207-28.	Incorrect/improper citation format. Citation needs pincite.
138	84	375	"The decision to send the case to one place or the other before full investigation will be consequential since disputed summonses at NYPD rarely result in findings of misconduct, while wrongful threats to summonses or arrest, or retaliatory summonses, receive a full investigation at CCRB."	"Looking at allegations fully-investigated by CCRB in 2019, there were 48 threat of summons allegations (five were substantiated); 557 threat of arrest allegations (29 were substantiated) and 14 retaliatory summons allegations (13 were substantiated.)" Executive Director's Monthly Report, January 2020 at 47. Available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2020/20200108_monthlystats.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2020/20200108_monthlystats.pdf</a> .	Incorrect/improper citation format. The source cannot be located with pincite.
139	85	n/a	"And 4,229 cases were classified as "OG-Outside Guidelines" which were passed on to OCD."	n/a	OG cases are assigned electronically to the unit responsible for investigating them.
140	85	n/a	"CCRB can also send minor cases directly to OCD."	n/a	IAB takes these complaints direct from the CCRB complaint tracking system and then electronically assigns them to the responsible unit.
141	85	376	"In 2019, CCRB referred 6,102 complaints to NYPD that were logged by IAB, which then assessed the complaint by a "preliminary investigation . . . [that] may include calling the complainant [and] searching databases."	Internal Affairs Bureau: Assessment and Analysis Unit Report, on file with the Monitor Team.	Relies on non-public communications between NYPD and the Monitor.
142	85	378	"Most of the cases referred by CCRB to NYPD are for minor violations. In 2019, thirty-seven of the cases contained a "C-Corruption" allegation. And, closing the circle, fifty cases were sent from CCRB to IAB for alleged retaliation by an officer after the complainant filed a complaint with CCRB."	"Retaliatory arrest or summons of a civilian is investigated by CCRB as a potential abuse of authority. The CCRB investigative manual lists action by a civilian which, if the cause for enforcement action, might be the basis for an investigation of possible retaliation.. This includes "the use of an obscenity, a challenge to the officer's authority, a request to obtain the officer's name or shield number, or a threat to file a complaint." CCRB Investigative Manual at 323. Retaliation for filing a CCRB complaint is not considered a FADO action and, instead, is sent to IAB."	Citation is needed.
143	85	379	"And 4,229 cases were classified as "OG-Outside Guidelines" which were passed on to OCD."	The remainder were either referred out to another agency or filed for further information without investigation.	Citation is needed.
144	85	377	"After screening, 5,220 of the referred cases377 containing 10,757 allegations were processed by IAB."	"A "case" is a complaint against an identified officer."	Citation omitted in footnote
145	86	n/a	"If a Member of Service submits a civilian complaint to CCRB against another officer (presumably while the complaining officer was off duty), the matter stays within the Department and is referred to the Commanding Officer of the Investigation Review Section of OCD for disposition."	n/a	This references complaints being referred to OCD for assignment, which is incorrect.
146	86	382	"The Monitor Team was advised that an individualized query to precincts would be required to learn if that information exists."	Patrol Guide § 207-31."One exception is the case where a MOS is the victim of a discriminatory slur by another officer. In that case, the complaint is registered with CCRB, but then forwarded to the Equal Employment Opportunity Division of NYPD for investigation. A bias complaint may also be filed with CCHR."	Citation in footnote does not support statement in report (207-31 is the Silver Alert system); need authority to refer bias to CCHR
147	87	387	"Some are specialized and handle select categories of investigations."	"Examples of internal groups formed in the past include: police impersonation, integrity testing, surveillance, financial investigations, court monitoring, and computer crimes."	Citation is needed.
148	87	388	"IAB employs an investigative staff of approximately 350 sergeants and detectives charged with reviewing complaints, interviewing witnesses, gathering evidence, and assessing allegations of misconduct."	Independent Panel Report at 9.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.

149	87	393	"A sixth category, "information/intelligence only" ("I&I"), is used to, among other things, record complaints that are referred to other agencies, outside the NYPD, or to describe complaints that are considered so clearly not credible that no investigation is undertaken."	See Independent Panel Report at 9 n.18.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
150	89	403	"The Patrol Guide permits time to obtain counsel for "serious" violations presumably where formal proceedings are contemplated.:	"After the assault on Abner Louima, in 1997 there was pressure to eliminate the "48-hour" rule which had been part of the union contract. Finally, in 2002 after litigation, the automatic rule was eliminated."	Citation is needed.
151	93	n/a	"IAB oversees some of the non-FADO complaints against NYPD officers, but not all. IAB investigations are typically classified into one of four categories depending on the nature of the allegations. Corruption ("C") cases involve allegations of corruption or serious misconduct. They are typically retained for investigation by IAB. Misconduct ("M") cases are handled by investigative personnel within the Borough/Bureau Investigative Units. M cases commonly involve non-appearance in court, missing property, off-duty incidents, misuse of time, disputed stop of a vehicle. From 2015 through the beginning of 2022, allegations of racial profiling and bias-based policing were also classified as M cases and investigated by Borough/Bureau Investigative Units (BIU). Outside Guidelines ("OG") cases involve allegations of minor infractions or violations of Department regulations that fall outside Patrol Guide prohibitions involving public contact. They are often referred to command-level investigators as a result."	n/a	All C Cases are retained by IAB. M cases are handled by both IAB and other investigative units. OG cases are primarily handled by command level investigators and other investigative units, but are sometimes handled by IAB. This is later clarified on Page 96, paragraph 1 with regard to OG cases.
152	93	417	n/a	"PO [REDACTED], IAB [REDACTED]."	The officer's last name should be spelled [REDACTED]. Additionally, the IAB log cited is for a missing Department radio battery and has a different subject officer.
153	93	n/a	"OG cases, whether raised by civilian complaint or otherwise, are typically referred to the Investigation Review Section ("IRS") of the Office of the Chief of Department ("OCD")."	n/a	OG cases are no longer referred to the Chief of Department's office they are sent directly to the investigating unit. Chief of Department IRS monitors all ICMT cases to ensure they are closed in a timely manner.
154	93	n/a	"Outside Guidelines ("OG") cases involve allegations of minor infractions or violations of Department regulations that fall outside Patrol Guide prohibitions involving public contact. They are often referred to command-level investigators as a result."	n/a	The current state of DAO should be worth at least as much note by the report as detailing a report filed in 2017 by the NYPD OIG about "inefficiencies" in the disciplinary process. (p. 93). The Monitor has expressed no interest in learning about the DAO of 2023, no information has been sought or gathered, actively choosing instead to remain in the past.
155	93	419	"IAB oversees some of the non-FADO complaints against NYPD officers, but not all. IAB investigations are typically classified into one of four categories depending on the nature of the allegations."	IAB may also conduct Self-Initiated (SI) cases and Programmatic Review (PR) cases.	Citation is needed.
156	93	420	"Misconduct ("M") cases are handled by investigative personnel within the Borough/Bureau Investigative Units. M cases commonly involve non-appearance in court, missing property, off-duty incidents, misuse of time, disputed stop of a vehicle."	NYPD distinguishes vehicle stops (M cases) from street stops (CCRB abuse of authority). A complaint of a wrongful vehicle traffic stop is not sent to CCRB, unless there is also a claim of an illegal frisk or search.	Citation is needed.
157	93	422	"OG cases, whether raised by civilian complaint or otherwise, are typically referred to the Investigation Review Section ("IRS") of the Office of the Chief of Department ("OCD")."	CCPC, Eighteenth Annual Report of the Commission at 163 (Aug. 2017), available at <a href="https://www1.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf">https://www1.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf</a> .	Source cited does not mention IRS or OCD, and cite contains no page number. Footnote 13 page 9 of cited source states "OG" cases being handled by "other investigative personnel within the department"
158	94	n/a	"The OG processing system is elaborate. The complaint usually gets passed from IAB to OCD-IRS, which then forwards it to the appropriate command (Patrol Services Bureau, Housing or Transit Bureau)."	n/a	OG cases are no longer referred to the Chief of Department's office they are sent directly to the investigating unit. Chief of Department IRS monitors all ICMT cases to ensure they are closed in a timely manner.
159	98	438	"Level 2 investigations will stay with the local command at a rank above the immediate supervisor (the Commanding Officer, the Executive Officer or the Duty Captain), unless superseded by IAB or the Force Investigation Division ("FID")."	While IAB reports directly to the Police Commissioner, FID, DAO and RMB report to the First Deputy.	Citation is needed.
160	98	n/a	Section ii: Force	n/a	Force policy <ul style="list-style-type: none"> <li>•Under level 2 the reference to "stun gun" is inaccurate (should be a conducted electrical weapon or CEW)</li> <li>•Discharge/use of a CEW in probe mode is a level 1</li> <li>•Use of a CEW in drive stun mode is a level two (when successful, probes incapacitate a muscle mass and therefore the individual; drive stun is used to coerce compliance by the infliction of localized pain)</li> <li>•Level 3 – does not include "death"</li> </ul> <input type="checkbox"/>

161	98	430	"Section 221-01 of the Patrol Guide sets forth the NYPD's use of force guidelines."	"In enacting the budget for FY 2020, New York State mandated that all law enforcement agencies in the state have a use-of-force policy, with mandatory reporting requirements, for all use-of-force incidents. Governor Cuomo Announces Highlights of FY 2020 Budget (Apr. 1, 2019), Executive Law 837-t., available at <a href="https://www.budget.ny.gov/pubs/press/2019/pr-enactfy20.html">https://www.budget.ny.gov/pubs/press/2019/pr-enactfy20.html</a> ."	Relevance of footnote 430 (FY 2020 NYS budget) – UoF policy dates to June 2016 is not clear.
162	104	n/a	"The protocol for processing profiling complaints brought to CCRB has not yet been finalized. Presumably, nothing bars IAB from investigating discriminatory policing in the absence of a citizen complaint. That should be a consideration as the protocol for CCRB investigations is developed."	n/a	This outdated. CCRB does have a process in place.
163	108	478	"In the past, false official statement referrals (for statements made while being interviewed by CCRB investigators) were treated as "C" cases when received by IAB from CCRB."	With the 2019 Charter amendments, the Board has the power to investigate "the truthfulness of any material official statement made by a member of the police department who is the subject of a complaint received or initiated by the board, if such statement was made during the course of and in relation to. The board's resolution of such complaint." Going forward, CCRB may investigate false statements made to the CCRB investigator, but that does not prevent CCRB from referring false statement investigations to IAB where the statements were made elsewhere. The 2022 proposed Rules changes define "Abuse of Authority" to include "intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions..." This is broader than the language in the Charter, but arguably falls properly within abuse of authority and would permit CCRB to investigate misstatements in reports, filings and court proceedings.	Citation is needed.
164	108	479	"In 2018, there were 611 Corruption, or "C," cases investigated by IAB. 46 of the C cases were substantiated. 145 were "partially substantiated," which means that misconduct other than corruption was sustained. 231 of the 611 investigations resulted in findings of Exonerated, Unfounded, Unsubstantiated and I&I. Another 185 resulted in a finding of a Minor Procedural Violation."	Misconduct was not found but Command is notified of an MPV which results in a CRAFT entry only.	Citation is needed.
165	116	509	Finally, the Disciplinary System Penalty Guidelines defines an abuse of discretion to include an "enforcement action such as an arrest or summons for which there is a lawful basis, however, but for the officer's improper motive, enforcement action would not have been taken."	NYPD Disciplinary System Penalty Guidelines at 27 (Jan. 15, 2021), <a href="https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/disciplinary-system-penalty-guidelines-effective-01-15-2021-compet-e.pdf">https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/disciplinary-system-penalty-guidelines-effective-01-15-2021-compet-e.pdf</a> .	Incorrect/improper citation. Citation should be NYPD Disciplinary System Penalty Guideline (February 15, 2022) - <a href="https://www.nyc.gov/site/nypd/about/about-nypd/policy/nypd-discipline-matrix.page">https://www.nyc.gov/site/nypd/about/about-nypd/policy/nypd-discipline-matrix.page</a>
166	117	n/a	"Of 5,077 discrimination complaints logged by IAB as of March 31, 2021, 3,392 (66.8%) alleged bias based on race, color, ethnicity or national origin—the groups covered by § 304-17(3). The remaining complaints—1685 (33.2%)—were claims of discrimination based on the other groups itemized in the Administrative Code – age, immigration or citizen status, gender, sexual orientation, disability and housing status."	n/a	It is 5,077 profiling allegations that became 3,336 cases.
167	118	513	"In 2016, there were 34 SQF allegations, involving 14 subject officers, that had a racial profiling allegation spun off to IAB and which were fully investigated and closed by a vote of a CCRB panel. CCRB substantiated 14 of the SQF allegations, against seven of the officers. The remainder were unsubstantiated or exonerated. In 2017-2018, there were 41 SQF allegations, involving 20 subject officers, that were fully investigated and closed by CCRB panels and where a racial profiling allegation was spun-off to IAB for the same complaint."	There were 126 SQF allegations in CCRB with a spin-off racial profiling allegation sent to IAB. 85 of them did not close with a finding on the merits by CCRB either because they were truncated, closed for pending litigation, mediated, the officer was unidentified, or the complainant was uncooperative. While CCRB mediates a substantial number of the SQF complaints with a racial profiling allegation, NYPD does not mediate profiling complaints that it receives.	Citation is needed.
168	118	514	"What happens if a profiling complaint also contains a racial slur allegation? In the past the allegations were split."	Although NYPD sent the slur allegation to CCRB, while keeping the profiling investigation, in practice IAB/BIU would investigate the slur as well.	Citation is needed.
169	119	n/a	"The charts below examines whether there is a parallel drift in regard to SQFS disciplinary recommendations by CCRB."	n/a	The "parallel drift" section is outdated. As noted, CCRB is now recommendation charges at significantly higher rate. I don't have the numbers for SQFS post NYPD Disciplinary Matrix.
170	124	543	"Supervisors have the important duty to guide their subordinates and take action to prevent or correct mistakes and misconduct. The failure to do so can not only lead to inadvertent misconduct by subordinates but can actually encourage misconduct if the subordinates observe that there are no negative consequences. When the supervisor is the person engaging in misconduct, the supervisor models that behavior for colleagues, and sends a message that such transgressions, and perhaps others, will be tolerated. Because of the possible far-reaching impact, these types of cases merit significant penalties."	CCPC, Nineteenth Annual Report at 98(Dec. 2019), <a href="https://www1.nyc.gov/assets/ccpc/downloads/pdf/Annual-Nineteen-Report.pdf">https://www1.nyc.gov/assets/ccpc/downloads/pdf/Annual-Nineteen-Report.pdf</a> .	Citation is incorrect. Correct page cite is 99.

171	125	550	"The Patrol Guide [section 212-11 governing stops and frisks] requires supervisors to respond to the scene of stops when feasible, discuss the circumstances of the stop with the officer making the stop before the end of the officer's tour, and review the officer's stop report form and activity log. The supervisor must determine whether the stop was based on reasonable suspicion of a felony or Penal Law misdemeanor; if a frisk was conducted, whether the frisk was supported by reasonable suspicion that the person was armed and dangerous; if a search was conducted, whether it was reasonable; and if force was used, whether the use of force was reasonable. The supervisor must direct the officer to make corrections to the stop report form if it is inaccurate or incomplete, and, if appropriate, instruct the officer or refer the officer for additional training or other remedial action, including, if appropriate, disciplinary action."	Fourth Report of the Independent Monitor, cite.	Incorrect/improper citation format
172	128	564	"Without further investigation or more explicit description of the stop or Stop Report deficiency by supervisors, improper stops and frisks may well go unreviewed unless reported to CCRB."	With the planned introduction of Neighborhood Safety Teams, testing the validity of street encounters will become increasingly important. Self-examination and careful supervision are vitally important to this effort.	Citation is needed. Source (2019 charter amendments) referenced but not cited.
173	129	569	"In 192 of the 327 closed cases (59%), CCRB substantiated SQF misconduct."	Typically, when a CCRB substantiated FADO is sent to DAO, the accompanying OMN (Stop Report Failure) is left with DAO, rather than being fully investigated by IAB, OCD or BIU, to resolve. Oddly, in 12 of the 192 SQF substantiations, NYPD "exonerated" or "unfounded" the stop report failure, but in each case, nonetheless, DAO required "Instructions" or "Training" for the Stop Report failure. It is difficult to understand how a stop, question, frisk violation can be substantiated by CCRB and confirmed by DAO, while the Department claims that the allegation of a missing Stop Report is exonerated or unfounded—unless the Report was discovered after the referral from CCRB. But in that case, why would DAO order Instructions or Training for the OMN? It could be that the report was initially misfiled. The alternative might be that the stop/frisk was illegal but the Stop Report fully and accurately described illegal actions by the officer. The matter was not pursued further.	Citation is needed.
174	133	586	"One officer who pled to supervising an improper search and frisk of two individuals, had his agreed-upon penalty reduced."	There is one case where a "supervising Sergeant" personally conducted 2 illegal stops and an illegal search of a teenager's backpack. At the same time, a fellow officer under his supervision "slammed" a teenager to the ground and the "stomped" him. In that case, Sgt. Lamont Gibson was charged, went to trial, and received 10 penalty days. In part, the penalty applied was due to a prior record of 3 separate disciplinary matters resulting in 45 penalty days and, in addition three separately substantiated CCRB cases where no penalty was dispensed. Sgt. Gibson was subsequently promoted to Lieutenant.	Citation is needed.
175	138	617	"In one case, an officer (PO [REDACTED]) and his partner were each offered a penalty of five vacation days after an investigation. [REDACTED]'s partner had wrongfully arrested the complainant for a parking violation."	Meagher v. Safir, 96 N.Y.2d 32 (2001).	Incorrect/improper citation Footnote cites to <i>Meagher v. Safir</i> , 96 N.Y.2d 32. However, cite leads to case called <i>Kelly v. Safir</i> .
176	139	619	"Given the quid pro quo of the bargaining process, ... it is ... to be anticipated that sentences handed out after trial may be more severe than those proposed in connection with a plea."	Meagher, 96 N.Y.2d at 40.	Incorrect/improper citation. Short cite is for <i>Meagher</i> instead of <i>Kelly</i> .
177	141	n/a	"The use of force is routinely investigated. Why not thoroughly investigate the stop itself? "	n/a	ICMS and ICMT systems contain Disputed Stop allegations. If during the course of the investigation there is reason to believe that the stop was improper, or it is alleged by the complainant the stop was improper, the allegation would be added and investigated.
178	141	627	n/a	"RISKS reviews are held semi-annually for each precinct, but RISKS reviews are not used for disciplinary investigations. Administrative Guide § 318-01 lays out a procedure for complaints not involving corruption or force. If the complaint does not fall under the purview of FADO, it goes to the OCD Investigation Review Section (IRS) which passes it on to the local Commanding Officer or BIU responsible for the allegation. The Guide calls for an interview of the officer and witnesses within five days and the filing of a Disposition Report (PD 468-152) within ninety days. Since these allegations do not involve force, racial profiling or SQF misconduct, this Report did not attempt an assessment of compliance with the stated goals."	RISKS reviews are no longer being conducted

179	143	n/a	"The NYPD does not provide the CCRB with disposition or results of concurrent investigations. The exception to this rule is for False Official Statements which the CCRB has referred to the NYPD which result from the CCRB's investigation. In the past, this has been an issue which, in part, led the CCRB to pursue investigations into sexual misconduct allegations. The NYPD refused, and continues to refuse, to provide the CCRB with any information regarding sexual misconduct allegations against MOS referred by the CCRB."	n/a	These complaints entirely ignore any duty to redact information in order to safeguard the privacy rights of victims and witnesses from being directly handed over to an independent non-governmental agency. Privacy rights of survivors, and their safety concerns, never raised in the report. Rights of juveniles captured on BWC, the safety of undercover or cooperators, victims that disclose information that would put them at risk on camera, personal and private information shared from any party... none of these are concerns for the Monitor. Yet the report complains over and again that only DAO has complete information about closed cases, investigations, and unsubstantiated investigations . The abject failure to recognize or appreciate any legitimacy to the dangers inherent to an outside actor having full access to confidential and privileged materials is baffling.
180	145	646	"To the extent that discourtesy or offensive language findings were substantiated by CCRB, while profiling allegations in the same encounter were not substantiated by NYPD, the outcome is understandably difficult for complainants to accept."	In 2016 to 2018, CCRB referred 44 cases with profiling allegations where there was a contemporaneous SQF investigation by CCRB. None of the profiling allegations were substantiated.	Citation is needed.
181	155	n/a	"Unfortunately, the Charges and Specifications of which the officer is accused are omitted."	n/a	Case Type (Use of Force, Insubordination, e.g) has been included for over a year.
182	155	n/a	"The DCT is free to apply principles of civil practice or rules of evidence but is not required to do so."	n/a	This is accurate however DC Trials is not required. DC Trials generally adhere- it is more than we are "free to apply principles of evidence." This makes it sounds like DC Trials often operate outside norms and bounds of evidence and civil practice which is not the case
183	155	n/a	"Trial Commissioners take the view that "hearsay declarations are insufficient to support findings of guilt in cases that pose close questions of credibility."	n/a	This isn't untrue however, DC Trial feel like it is an over statement <ul style="list-style-type: none"> <li>•In general, hearsay is admissible in administrative proceedings and may form the sole basis for a finding of fact. See N.Y.C. Charter § 1046(c)(1); 38 RCNY § 15-04 (e); Gray v. Adduci, 73 N.Y.2d 741, 742 (1988); Dep't of Correction v. Jackson, OATH Index No. 134/04 at 4-5 (May 5, 2004); Police Dep't v. Ayala, OATH Index No. 401/88 (Aug. 11, 1989), aff'd sub nom., 170 A.D.2d 235 (1st Dep't 1991)</li> <li>•In cases where a charge is based primarily on hearsay, hearsay has been deemed sufficiently reliable only if the statement is detailed and corroborated. Dep't of Envtl. Prot. v. Ginty, OATH Index No. 1627/07 (Aug. 10, 2007)</li> <li>•Where, as here, the hearsay evidence is controverted, a fact finder must very carefully scrutinize the nature and reliability of the out-of-court statement. Disciplinary Case No. 2015-14073 (Dec. 19, 2016)</li> <li>•Hearsay must have probative value and bear some indicia of reliability in order to be given significant weight. See Dep't of Hous. Preservation &amp; Dev. v. Davron, OATH Index No. 1533/11 at 16 (Dec. 21, 2011)</li> <li>•Excited/spontaneous utterances are particularly probative hearsay because they are made under the uncontrolled domination of the senses, during the brief period when considerations of self-interest could not be brought fully to bear by reasoned reflection. People v. Brown, 70 N.Y.2d 513 (1987)</li> </ul>
184	155	n/a	"DAO will move to dismiss a case if the complainant does not cooperate."	n/a	DAO rarely moves to dismiss a case in recent year with a non-cooperative complainant-particularly thinking of DV. Citations needed to what cases prosecutors proceed with.
185	155	n/a	"The DCT is free to apply principles of civil practice or rules of evidence but is not required to do so...DAO has a different policy and will only proceed if the complainant or necessary witnesses are available."	n/a	For the most part, the report does not make "errors" as much as the sorts of statements (as described above) which tend to obfuscate the current truth in service of the conclusion that the CCRB should rule discipline in the NYPD. The past is used to justify changes to the present, without exploring current paradigms. There are some few strangely made mistakes, however. For example, the report explains that departmental trials are not governed by "rules of evidence", when the Federal Rules of Evidence are used and that DAO only proceeds if a complainant cooperates which is false.
186	156	n/a	"In the alternative, the DCT may submit a penalty outside the scope of the statutes if agreed upon by the parties."	n/a	This is more of a feature of a posttrial negotiation not a DCT recommendation. But we now recommend penalties that can only be agreed upon
187	156	n/a	"Notwithstanding that the trial is open to the public, the transcript, record, preliminary findings, and the Fogel response are still considered confidential personnel records by NYPD and are not available to the complainant or the public, even in redacted or anonymized form."	n/a	DC Trials understanding is that at minimum the preliminary findings (draft decision) and probably any DAO fogel letters are protected under FOIL as intra-agency materials that are not final agency policy or determinations. We do not stop the unions or CCRB from publishing their fogel responses but they are not NYPD work product. Transcripts are a another question- but there is no law that requires that we publish them wholesale
188	156	n/a	"In addition, the Department has recently begun to post trial decisions in a Library which is available online. This new listing is quite useful and more current, with postings running just months after the decision."	n/a	This is fair but inconsistent with a later comment that posting of decisions and deviations is haphazard on p.406

189	157	n/a	"Ten to fifteen percent of DAO cases go to trial, while more than one-half of the cases prosecuted by CCRB go to trial."	n/a	DC Trial has concerns with numbers for 2021 and 2022. Also, there are many citations in this document but what is the basis here?
190	157	n/a	"From the third quarter 2016 through 2020, CCRB brought 310 cases to the Trial Room."	n/a	This should be cited. Is it from CCRB, NYPD discipline reports, combination?
191	157	n/a	"193 (62%) went to trial, of which 82 (42%) resulted in a guilty or partial guilty verdict. The Police Commissioner reversed or reduced the penalty in 19 of the 82 guilty/verdict cases (23%)."	n/a	DC Trial have 110 CCRB trials in this timeframe- individual cases and respondents (multi case trials) were not tracked for 2016 and 2017 so 193 is somewhat plausible for Respondents given the high number of multi-respondent cases.
192	157	n/a	"The Police Commissioner vacated or reduced the approved plea in 41 of the 117 plea bargains (35%) approved by DCT."	n/a	This isn't consistent with the numbers for settlements on the record that we have. There is no citation.
193	157	n/a	"In 2020 alone the Police Commissioner allowed one out of six pleas to stand while reducing the rest."	n/a	Any 2020 metric should have large caveats involving that it was a singularly unique year in terms of Department challenges for MOS.
194	157	n/a	"In all, 66 trials were held."	n/a	We had 66 hearings (trials and mitigations) held in 2018. We had 78 in 2019. (This number appears to be some hybrid of trials held in the calendar year and trials finalized in the calendar year 2019- those are a different things and makes it hard to reconcile his number. A significant number of 2019 decisions would be related to 2018 trials and the majority of our 2020 decisions were related to 2019 trials)
195	157	n/a	"DAO in the Trial Room - 2019 : 288 cases resolved the Trial Room by DAO."	n/a	DC Trial would not characterize DAO settled cases as "Resolved in the trial room."
196	157	703	"In one case the Police Commissioner increased the penalty by adding dismissal probation to the recommended loss of penalty days."	"The officer refused medical treatment to a diabetic who had been arrested for fare-beating. While the victim was handcuffed and leg-shackled, the officer knocked him unconscious with a punch to the face.) CCRB asked for a loss of 25 vacation days. The Police Commissioner agreed, but imposed probation as well."	Citation is needed.
197	158	n/a	"DAO in the Trial Room - 2019 : 38 Trials (34 Guilty; 4 Not Guilty)"	n/a	This is not consistent with DC Trial numbers. Was there a reaccounting for only trials held in 2019 and discount the ones decided in 2020?
198	158	691	"DAO in the Trial Room - 2019 : 17 officers separated from the Department"	38 RCNY § 15-06.	These were FORCED separations- this renders footnote 691 unnecessary.
199	158	n/a	"APU in the Trial Room - 2019: 51 cases resolved in the Trial Room by APU."	n/a	DC Trial don't have anything close to this number- there were 7 CCRB on the record settlements in 2019
200	158	n/a	"APU in the Trial Room - 2019: 28 Trials (15 Guilty; 13 Not Guilty)."	n/a	DC Trial have 20 finalized trial decisions- 11 guilty and 9 not guilty and 29 respondents- 15 G; 13 NG for 2019.
201	158	n/a	"DAO prosecutions for misconduct during a citizen encounter are the exception, not the rule."	n/a	That is of course because most fall within the purview of CCRB.
202	158	n/a	"Only 23 of all 339 cases formally charged in 2019 were for "Misconduct Involving Public Interaction."	n/a	These are not cases "charged in 2019"- they were resolved in 2019- they could have been charged as far back as 2015, 16.
203	158	n/a	"Typically, cases DAO considers serious enough to warrant Charges involve conduct within the station house or while off-duty."	n/a	It is no longer the case that it is rare for DAO to prosecute off-duty conduct in the trial room
204	159	n/a	"A total of 35 officers were disciplined in the Trial Room for misconduct in the categories of excessive force or public interaction misconduct."	n/a	These numbers are pulled from a chart that combined trial penalties and settlements. The numbers are correct as it relates to the chart on p.10 of the 2019 discipline report.
205	159	n/a	"This became increasingly true in the last three years, as CCRB's Framework and the Department's Guidelines recommend Charges and Specifications for other types of misconduct, but not for an illegal stop, question, frisk, or search."	n/a	This line should be struck- stop question and frisk is in the Matrix/Guidelines. That seems to be an issue with this entire report- the Matrix/Guidelines are not discussed or factored in until later in the document.
206	160	n/a	"There were 2 trials with guilty verdicts—both included allegations of improper strip search, along with other serious matters—both received 10 days."	n/a	Citation is needed. DC Trial did not see any strip search cases that received 10 days and involved "other serious matters"  DC Trials is aware of Respondent [REDACTED] a 2016 strip search case decided in 2017- single spec- CCRB asked for 10 days, DCT recommended 12, PC lowered from 12 days to 10.  Respondent [REDACTED] single spec strip search case- 10 days. CCRB requested 30 was deemed excessive on precedent- this had aggravating factors- penalty likely would have been higher today with matrix.
207	160	n/a	"There were 7 trials ending in 5 guilty verdicts—all received 10 penalty days or less with the exception of one case carrying an allegation of a chokehold, receiving 15 penalty days."	n/a	Generic stop and frisk cases have never really been > ten penalty day cases and still are not.
208	160	n/a	"There were 9 trials ending in 7 guilty verdicts—all received 10 penalty days or less with the exception of one case where the verdict was 15 days for illegal force with an added 3 penalty days for the illegal stop."	n/a	DC Trials only had 11 finalized trial decisions for CCRB in 2018 – most were force I see maybe 3 with stop question frisk elements- even looking at 2019 decisions tried in 2019 I don't see where he gets this.
209	161	n/a	"CCRB recommended Charges and Specifications in 3 of 68 cases (4%) which included a substantiated SQF allegation."	n/a	DC Trials cannot possibly tell what 3 cases he means but there were more than 3 trials involving stop/frisk/seach elements from 2020-2022 so its disingenuous to make it look as though the department hasn't disciplined anyone for this in years.
210	165	720	"Lawsuit commenced against Sgt. et al., settled for \$300,000 - false arrest/malicious prosecution."	"Based on Law Department posting. Not available on NYSCEF."	Link to Law Department posting needed.

211	173	745	"Under Section 440 of the Charter, in CCRB cases only, if the Police Commissioner departs upward or downward from the recommendation made by the DCT or CCRB, he must prepare a variance memorandum explaining the basis for deviating from their recommendations. A more detailed explanation is required if the Police Commissioner imposes a penalty or level of discipline that is lower than that recommended by the Board or DCT."	"NYC Charter §1 440 (b)(7)(d)(3). "n case substantiated by the board in which the police commissioner intends to impose or has imposed a different penalty or level of discipline than that recommended by the board or by the deputy commissioner responsible for making disciplinary recommendations, the police commissioner shall provide such written report, with notice to the subject officer, no later than 45 days after the imposition of such discipline or in such shorter time frame as may be required pursuant to an agreement between the police commissioner and the board. Such report shall include a detailed explanation of the reasons for deviating from the board's recommendation or the recommendation of the deputy commissioner responsible for making disciplinary recommendations and, in cases in which the police commissioner intends to impose or has imposed a penalty or level of discipline that is lower than that recommended by the board or such deputy commissioner, shall also include an explanation of how the final disciplinary outcome was determined, including each factor the police commissioner considered in making his or her decision."	There is a typo at beginning of quote for the footnote.
212	178	n/a	"OATH insulates the hearing officer from the chain of command; difficult decisions can be made without fear or favor."	n/a	As written, it implies OATH has some control over chain of command. We do not. We fall outside of the chain of command. It would be more accurate to say "Because OATH is a separate agency, OATH's Administrative Law Judges are insulated from outside influence, including influence from the agency for which the subject employee works."
213	178	n/a	"Hearing officers are not hired, selected, fired or punished for their independent judgments; and, as is demonstrated by the existing practice utilized for correction officers, decisions are made openly and publicly, with written decisions explaining outcomes and providing guidance for future conduct proceedings."	n/a	"for future conduct proceedings" is awkward. Maybe they meant "for future proceedings involved alleged misconduct"?Moreover, this sentence/para would be stronger if it also stated that "Per the City Charter, OATH Administrative Law Judges are appointed to five year terms, providing them with protection from political influence and changes in administrations."
214	179	775	"OATH judges are independent agents. They can be deputized but cannot be "employees" of the agency for which they provide hearings."	See, e.g., Dep't of Correction v. Royster, OATH Index No. 156/20 (2020).	Footnote 775 cites OATH's Royster decision. This decision does not stand for the statement in the second sentence (about deputization, etc.), but it does stand for the first sentence (independence). The citation should be relocated so that it falls after the first sentence quoted above.
215	181	n/a	"It is an open question whether due process also requires an impartial decision-maker at a pre-termination hearing, i.e., a hearing and recommendation to the Police Commissioner who makes the final decision."	n/a	The report's dismissal of the very concept of due process as it relates to discipline, must be further addressed. The report suggests inverting commonly accepted principals of criminal law when applied to the disciplinary space. It argues in favor of intelligence driven arguments unbound by established safeguards. In our New York criminal legal system, no prosecutor would seek blanket access and full use of all prior dismissed cases and allegations pertaining to a defendant nor would such blanket access be permitted. Dismissed arrests are not used to ask for increased bail, rarely admitted as evidence in a case in chief, and virtually never used to enhance sentences. Law enforcement agents argue for very structured and limited use of sealed arrests, and often must litigate the use of information that is unequivocally not sealed such as Domestic Incident Reports. This might also include other "intelligence" gathered and compiled from various sources during investigations independent from arrests or conviction. The report rejects the application of these principals of fundamental fairness as being relevant to matters of discipline in the NYPD.
216	186	n/a	"After their appointments, all Board members attend orientation and receive training from the Senior Counsel on the CCRB's processes, terminology, and disciplinary framework."	n/a	It should be General Counsel's Office.

217	186	809	"In 1997, Advocate Mark Green asked to review several years' worth of substantiated CCRB case files to "ascertain whether the NYPD's failure to prosecute and/or impose discipline against misbehaving officers is indicative of systemic problems in the response to complaints."808 NYPD objected, citing Charter § 24 (j), claiming that review of misconduct complaints was not an authorized power of the Public Advocate. The Court disagreed, writing "[t]hat one third to one half of CCRB 'substantiated' complaints resulted in no discipline is a legitimate area for study by [the Public Advocate] to determine why such a result ensued" 809, an analysis with which the Appellate Division agreed and described as "cogent.""	Id. at 401.	The Public Advocate sought to review two years of files (1995 and 1996). Use of the word several is misleading. Respondent argued against the release stating (1) Public Advocate failed to exhaust his administrative remedy pursuant to 24 (j); (2) "the records petitioner seeks do not relate to any of petitioner's Charter-mandated functions"; (iii) "petitioner lacks the capacity to bring this proceeding", and (iv) "the records petitioner seeks are confidential under Civil Rights Law § 50-a (1)" (respondents' mem of law, dated June 12, 1997, at 2).  Supreme Court ruled in favor of Petitioner, stating (1) Public Advocate serves a watchdog function, (2) police misconduct is and has always been an area of concern for the government, (3) the Public Advocate was looking for patterns, not resolve individual cases (something the Public Advocate cannot do), (4) stated that lack of disciplinary action in the proportion that exists was a legitimate area of study, (5) noted that Civil Rights Law §50-a (4) provides an exception to its general rule of police officer record privacy for government agencies in furtherance of their official duties.  Supreme Court also ordered any identifying information redacted. It also ruled that 24(j) is permissive, not exclusive, and that to force the Public Advocate to seek permission from the Council would nullify his watchdog function, noting that the City Council submitted an amicus brief in favor of Petitioner. The Court had previously ruled that the Public Advocate did not need an express permission to sue.
218	186	813	"More recently, Letitia James, then Public Advocate, sued unsuccessfully to obtain Grand Jury records in the case examining the death of Errol Garner and the involvement of Officer Daniel Pantaleo. There, the Appellate Division Second Department denied the application on the grounds that the office of Public Advocate, which reviews complaints against city agencies, lacked the capacity to oversee either District Attorney offices or the Courts and, as such, had no legitimate reason to obtain the testimony in the criminal proceeding."	Matter of James v. Donovan, 130 A.D.3d 1032 (2d Dept. 2015).	The Public Advocate lacks capacity to maintain a proceeding based on CPL 190.25(4)(a) (which allows a DA to request Grand jury records to be unsealed). The section does not mention overseeing the DA or the courts.
219	186	814	"The Charter anticipates the creation of "panels" to review a given complaint, and states that a panel should contain no less than three Board Members, and no panel may consist exclusively of one group of appointees (i.e., a panel cannot be entirely composed of three appointees of the Mayor, designees of the Police Commissioner, or appointees of the City Council)."	NYC Charter § 440(c)(2).	Anticipates is misleading. The section states the board shall promulgate rules of procedure and may provide for the establishment of panels.
220	186	816	"Panels are determined by the CCRB's Case Management Unit (CMU). The CMU collects the Board members' availability and then sets a six-month schedule of panel-meeting dates."	CCRB, Procedures and Standards for CCRB Board Panels, supra note 516, at 2.	CCRB, Procedures and Standards for CCRB Board Panels, supra note 516, at 2.
221	186	817	Board members are assigned to panels on a rotating basis, with the CMU adjusting panel composition as necessary to accommodate individual members' schedules.	Id. (CCRB, Procedures and Standards for CCRB Board Panels, supra note 516, at 2.)	Note 528 is NYPD, Final Response to Complaints of Biased Policing in New York City. It does not contrain a section titled CCRB 101.
222	186	811	Subsequently, the Public Advocate published a 147-page report811 analyzing 664 substantiated cases and finding that 75 percent of the officers disciplined received insignificant penalties which he characterized as a "slap on the wrist."812	Mark Green, Investigation of the New York City. Police Department's Response to Civilian Complaints of Police Misconduct, New York: Office of the New York City Public Advocate and the Accountability Project, 1999. Repeated attempts to obtain a copy of this report have failed. The description comes from the NY Times article cited infra.	The statements here are correctly cited, but Green also had several complimentary things to say about the NYPD in the same article.
223	187	n/a	"Panel votes are confidential."	n/a	This is outdated.
224	187	n/a	"The panels do not actually convene in one setting."	n/a	This is incorrect. They can review independently prior to the panel but they convene once to deliberate and vote.
225	187	818	"Panel members meet, generally via online video conference, to discuss and register final votes on each case."	CCRB, Procedures and Standards for CCRB Board Panels, supra note 516, at 2-3; CCRB, Response to Federal Monitor Request Number Six, at Rqst6pg20 (document compilation that is the second enclosure in the CCRB's first response, dated July 17, 2018, to the Federal Monitor's request for CCRB documents; on file with Monitor).	Note 516 is the NYPD Disciplinary Guidelines, not the CCRB Procedures and Standards for CCRB Board Panels. The CCRB's CMU is not mentioned in the NYPD Disciplinary Guidelines. The CCRB Procedures and Standards for CCRB Board Panels document could not be found.
226	187	819	"These meetings are not taped or transcribed. A CCRB attorney is present to answer any legal questions and provide legal advice, but she may not recommend how the panel should dispose of any case."	CCRB 101, supra note 528, at Rqst6pg33.	Note 528 is NYPD, Final Response to Complaints of Biased Policing in New York City. It does not contrain a section titled CCRB 101.
227	187	820	"Before reaching a conclusion, the panel may ask questions of the investigator who handled the case."	CCRB, Procedures and Standards for CCRB Board Panels, supra note 516, at 3.	Note 516 is the NYPD Disciplinary Guidelines, not the CCRB Procedures and Standards for CCRB Board Panels. The CCRB's CMU is not mentioned in the NYPD Disciplinary Guidelines. The CCRB Procedures and Standards for CCRB Board Panels document could not be found.



228	187	821	"The panel can also return the case to the Investigations Unit for further investigation,..."	CCRB RULES, supra note 332, at § 1-32(b); CCRB, Procedures and Standards for CCRB Board Panels, supra note 516, at 3.	CCRB Rules cite is correct. Note 516 is the NYPD Disciplinary Guideline, not the CCRB Procedures and Standards for CCRB Board Panels. The CCRB's CMU is not mentioned in the NYPD Disciplinary Guidelines. The CCRB Procedures and Standards for CCRB Board Panels document could not be found.
229	187	823	A panel operates by majority rule, meaning a panel can determine the outcome of any allegation by a two-to-one vote.823	E.g., INVESTIGATIVE MANUAL, supra note 323, at 23.	Incorrect/improper citation
230	187	824	Panel votes are confidential.824	CCRB, Procedures and Standards for CCRB Board Panels, supra note 516, at 2.	Note 516 is the NYPD Disciplinary Guideline, not the CCRB Procedures and Standards for CCRB Board Panels. The CCRB's CMU is not mentioned in the NYPD Disciplinary Guidelines. The CCRB Procedures and Standards for CCRB Board Panels document could not be found.
231	187	825	When asked if, in the past, panel members have personally participated in an interview, the CCRB response was: "Despite the fact that CCRB Rules authorize personal interviews of witnesses by Board Members, historically, the Board has not personally interviewed witnesses. Board panels do utilize the Further Investigation process whereby Members submit questions to the investigator which can include another interview. If a CCRB panel disagrees with the investigator's finding, the Case Management Unit sends a memo to the investigator, to which the investigator may respond. In 2018 - 2019, 18 cases were sent back for Further Investigation."825	██████████ Chief Counsel, CCRB, June 3, 2019 letter.	Relies on non-public communications between CCRB and the Monitor.
232	187	826	CCRB convenes two to four panels each month, and each panel is assigned approximately 50 cases for review. As a result, "most Board members review 50 cases a month, though there are times when some will review as many as 100 cases." In discussions with the Monitor team, some Board members have expressed concerns about the number of cases they must review each month.826	Interviews, 8/17/18.	Relies on non-public communications between CCRB and the Monitor.
233	188	n/a	"They officially conference by Webex Video Conferencing."	n/a	Outdated - Teams is used now.
234	188	832	"In 2018, the rule was amended to permit designation of a panel by the Chair to decide a case without requiring that at least one member be a NYPD designee. However, this is limited to instance where it is necessary to avoid interference or unreasonable delay in the Board's operations. The amendment was unsuccessfully challenged by the PBA, with a claim that "this prejudices the interests of Police Officers for no rational reason."	Lynch v. New York City Civilian Complaint Review Board, 98 N.Y.S 3d 695 (Sup. Ct. N.Y. Cty. 2019) 2019, aff'd in part, 183 A.D.3d 512 [1st Dept 2020]). The decision addressed challenges to twelve separate rule changes by CCRB. The Appellate Division affirmed in part and reversed in part.	The rule specifically states it is applicable in rare instances.
235	188	828	"The Chair, on its own initiative may ask for full board review. During panel review, a Request for full Board review can be made "at any time and for any reason" by a panel member or any other member of the Board."	CCRB, Procedures and Standards for CCRB Board Panels, supra note 516, at 3.	Note 516 is the NYPD Disciplinary Guideline, not the CCRB Procedures and Standards for CCRB Board Panels. The CCRB's CMU is not mentioned in the NYPD Disciplinary Guidelines. The CCRB Procedures and Standards for CCRB Board Panels document could not be found.
236	188	830	"The full Board reviews about one to three cases per year."	CCRB, Procedures and Standards for CCRB Board Panels, supra note 516, at 3.	Note 516 is the NYPD Disciplinary Guideline, not the CCRB Procedures and Standards for CCRB Board Panels. The CCRB's CMU is not mentioned in the NYPD Disciplinary Guidelines. The CCRB Procedures and Standards for CCRB Board Panels document could not be found.
237	189	n/a	"In the years 2016 to 2018, there were twenty different commissioners sitting on the thirteen-member Board."	n/a	Incorrect - Board members are not commissioners.
238	189	n/a	"But the inescapable fact is that, as a result of the Board's decision to include a law enforcement official in every panel, the police designees decide a far greater number of cases than other appointees."	n/a	This is misleading. The PC designee is always 1 of 3 in a panel, so the individual designee may vote on more cases overall but their vote holds no additional weight than any other board member.
239	189	n/a	"Rather, the point being made here is that the Charter makes all members equal, but the Rules alter that by giving some members the opportunity to weigh in on a greater number of overall dispositions. Some members have a more frequent say on dispositions and, consequentially, a heavier imprint on precedent and norms. They have a greater voice."	n/a	Again, this is misleading. The PC designees are always 1 of 3 in a panel and thus have no greater voice than any other member of the board.
240	189	836	"During that period, the three police designees voted on 4,409 cases – an average of 1,469 cases for each police-designee during those years."	One police designee participated in 653 investigations in 2016 alone.	Citation is needed.
241	189	837	"But the inescapable fact is that, as a result of the Board's decision to include a law enforcement official in every panel, the police designees decide a far greater number of cases than other appointees."	Based on the numbers cited in the study period (2016-2018) - before the Charter change - it appears that police designees decided almost twice as many cases as the Mayoral appointees and about 80% more cases than Council appointees.	Is this referring to the public advocate study noted in note 811?
242	190	n/a	"The result of Rule 1-31 is that each police designee has had and will have a disproportionate weighted vote in CCRB's decision-making process overall and in setting presumptive penalties under the guidelines."	n/a	The PC designees are always 1 of 3 in a panel and thus have no greater voice than any other member of the board.
243	191	n/a	"Ironically, by adding the two new members to the "non-police" bucket but maintaining the rule that a police representative must be present in every panel, the mathematical imbalance between appearances by police and non-police representatives will be even greater."	n/a	This is outdated. The PC designees don't sit on every panel. We currently do a fourth panel (unable to determine, exonerated and unfounded) without a PC designee. If any Board Member wants to sub a case (flip the investigator's recommendation) it goes to a panel with a PC designee.

244	191	n/a	"Indirectly, the impact of law enforcement votes was raised in pending litigation against CCRB's Executive Director."	n/a	Inappropriate to discuss litigation that was not resolved in its merits. Additionally, post 50a, all Board Member votes are released to the public. We strongly disagree with this characterization and the matters related to the litigation.
245	191	839	"One can assume that the Board would assert confidentiality on grounds that the record constitutes pre-decisional intra-agency materials under the Public Officers Law, ut at this time, CCRB Rules do not specifically provide for confidentiality."	Public Officers Law § 87(2)(g).	Reference to Public Officers Law cannot be used without also mentioning the reasons the Board actually gave for denying the request.
246	191	841	"In the main, the flips she described were cases where the investigator had requested substantiation of misconduct allegations, but panel members voted against substantiation."	Overall, including the law enforcement representatives, panels overturned 585 allegations of police misconduct where investigators had recommended substantiation from January 2014 to May 2020 for a flip rate of 11.4 percent. (The Board substantiated 5127 allegations of misconduct during that period.) Not all flips were to unsubstantiate. There were 180 allegations where panels substantiated out of 39,000 allegations where investigators had recommended against substantiation.	Citation needed for data in footnote.
247	192	n/a	"Rather, the question is why the Board gives the Police Commissioner's designee's vote more weight."	n/a	This is incorrect. PC designees are only 1 of 3 members and a case can move forward with a 2-1 vote. PC designees votes are not more heavily weighted.
248	192	n/a	"At the outset, few if any SQF cases are prosecuted by APU at trial. Most SQF cases are resolved with a panel vote, followed by DAO requests for reconsideration or by DAO recommendations to the Police Commissioner, and the Commissioner has the sole and final power to decide whether misconduct occurred."	n/a	Citation is needed.
249	192	845	"The case was subsequently settled without a public posting of the terms of the settlement or a copy of the "flip" memo."	Order of Dismissal, Buchanan, Doc No. 61, and Stipulation of Voluntary Dismissal, Doc No 93 (Nov. 10, 2022)	The case was settled, but this document can't be used to show there was no public posting.
250	192	846	"Against a claim that the Rule slows down the process by overloading a few members with a disproportionate share of decisions, it had been argued that a "law enforcement perspective on each panel was essential, and more important than a delay in deciding a case."	Lynch v. N.Y.C. CCRB, No. 152235/2018 (N.Y. Sup. Ct.), Memorandum of Law in Support (March 13, 2018) (NYSCEF No. 3).	"multiple CCRB board members" recognized the value of having a member of law enforcement on the panel.
251	192	844	"The verity of the memo was not reached in the litigation. District Court Judge Sidney Stein granted portions of a motion to dismiss but denied a motion to dismiss as against the Executive Director."	Buchanan v City of New York, 21-cv-0660 (SDNY) Doc No. 30.	The case appears to exist, but could not find Doc 30.
252	192	845	"The case was subsequently settled without a public posting of the terms of the settlement or a copy of the "flip" memo."	Order of Dismissal, Buchanan, Doc No. 61, and Stipulation of Voluntary Dismissal, Doc No 93 (Nov. 10, 2022)	The case was settled, but this document can't be used to show there was no public posting.
253	193	n/a	Section B: CCRB Budget	n/a	Some attention is paid by the report to the comparative funding of the CCRB (p. 193), and contextualized by recent budget cut proposals by the mayor, (p. 197) by way of explanation. However, the report never once explores the alternate hypothesis: that the CCRB is ineffective and inefficient. Instead, the report suggests throughout that the CCRB merely needs more access, more authority, more power. The Monitor never analyzes if the decisions by the CCRB are good, right, fair, just. It even goes so far as to spend a sizeable amount of time articulating the position that the NYPD has a disproportionate and outsized position of influence by holding one fixed position, of several, on the CCRB panel. That the NYPD has a one out of three-person position at all times on their three-person panel is an issue the report dives into. The report explores the frequency of which the sole representative from the NYPD is able to convince the panel to "flip" their votes on a case against the recommendations of the case investigator, clearly displaying an undue amount of influence, strongly implying that the NYPD should be removed entirely from the oversight group. (p. 188-192) The entire purpose of a panel is to work together to reach a conclusion, requiring a unanimous vote. Conceptually, the CCRB was designed to include the perspective of the NYPD, which offers critical insight into tactics, legal issues, and training. All of this is considered and dismissed by the report. "Unfettered discretion" is not the ultimate concern of the report, only that this power be transferred from the PC to the CCRB.
254	193	n/a	Section B: CCRB Budget	n/a	These budget numbers do not include FY 24 and are outdated
255	194	n/a	"It does not look at relative salaries or overall budget, remembering that the average cost of a uniformed officer (including benefits) is higher than the average cost of a CCRB employee."	n/a	Citation is needed.

256	194	850	"It does not look at relative salaries or overall budget, remembering that the average cost of a uniformed officer (including benefits) is higher than the average cost of a CCRB employee."	"For perspective, the overall operating budget for NYPD in recent years has been: (FY 2020 = \$6.086 billion [spent]) (FY2021 = \$5,565 billion [budgeted]) ((FY 2022 = \$5,587 billion). Budgeted OTPS (FY 2021 - \$607 million) (FY 2022 = \$450 million). Not included in this number are items in other budget lines for police-related expenditures such as capital costs, litigation, council member discretionary precinct funds, etc., which can almost double the allotment. Additionally, the NYPD regularly exceeds its budget. In FY 20, NYPD spent \$6.1 billion when allotted \$5.5 billion."	Citation is needed data in footnote.
257	194	849	"Police oversight in New York is a massive undertaking. In 2017, the CCRB received over 10,500 complaints, 4,487 of which were in its investigative jurisdiction. CCRB requires additional funding for a number of essential initiatives to support these investigations. For instance, it is absolutely critical for the Agency to upgrade to its systems, hardware, Training, security, and operations, some of which are more than twenty years old. The CCRB's case tracking system dates back to the early 1990's and continues to run on outmoded and often redundant technologies—this system simply cannot keep up with the pace of the Agency's investigations or the digital storage demands that continue to grow as the NYPD equips every officer with a body-worn camera. With the Right to Know Act taking effect in October 2018, officers for the first time will be required to hand out business cards during all Level 2 and Level 3 stops. The card will include the number for 311 and a notation that civilians may call the number if they wish to comment on their interaction with the officers. Many of those calls will be routed to the CCRB, and the Agency will need to increase its intake staff, investigators, and resources in order to effectively manage the inevitable increase in complaints."	Fred Davie, Chair, CCRB to New York City Charter Revision Commission, May 23, 2018.	Relies on non-public communications between CCRB and the Monitor.
258	194	850	"The adopted Charter amendment requires an appropriation each year, beginning in fiscal year 2021, in an amount sufficient to fund a "full-time equivalency" (FTE) rate equal to 0.65 percent of the number of uniform budgeted headcount of the Police Department. This ratio looks exclusively at the number of personnel in each agency and, in effect, requires that the City budget appropriate enough money so that the number of employees at CCRB should be .0065 of the number of uniform police in the same budget. It does not look at source of funds. It does not look at hardware, technology costs, rental, equipment or other OTPS. It does not look at relative salaries or overall budget,850 remembering that the average cost of a uniformed officer (including benefits) is higher than the average cost of a CCRB employee."	For perspective, the overall operating budget for NYPD in recent years has been: (FY 2020 = \$6.086 billion [spent]) (FY2021 = \$5,565 billion [budgeted]) ((FY 2022 = \$5,587 billion). Budgeted OTPS (FY 2021 - \$607 million) (FY 2022 = \$450 million). Not included in this number are items in other budget lines for police-related expenditures such as capital costs, litigation, council member discretionary precinct funds, etc., which can almost double the allotment. Additionally, the NYPD regularly exceeds its budget. In FY 20, NYPD spent \$6.1 billion when allotted \$5.5 billion.	Source needed.
259	195	852	"There are roughly 35,000 uniform officers with the NYPD. To be more precise, the budgeted uniform headcount over the past few years has been:852 FY 2016 - 34,483 FY 2017 - 35,780 FY 2018 - 35,822 FY 2019 - 36,461 FY 2020 - 35,910853 FY 2021 - 35,007 FY 2022 - 35,030"	Finance Division, NY City Council, Report to the Committees on Finance and Public Safety on the Fiscal 2022 Executive Budget for the New York Police Department, May 11, 2021, available at <a href="https://council.nyc.gov/budget/wp-content/uploads/sites/54/2021/05/NYPD.pdf">https://council.nyc.gov/budget/wp-content/uploads/sites/54/2021/05/NYPD.pdf</a> . (This does not include roughly 19,000 Members of the Service [MOS] who may be officers or other civilian employees but are not uniform police. There are approximately 5300 School Safety Agents who are not uniformed officers.)	These numbers are slightly off from those on page six of the report.
260	195	854	"If the Charter is followed, that would mean CCRB should receive sufficient Personal Service funding for approximately 228 FTE in the current fiscal year."	"0065 x 35,007 = approximately 228."	The math works. However, it's not clear where the .0065 figure, which appears earlier in the paragraph, is coming from.

261	195	855	"The allocated budget for Personal Services for CCRB855 over the past five years (in thousands of dollars) with an authorized headcount of full-time equivalent employees, was: <ul style="list-style-type: none"> <li>• FY 2016 \$15,077 180 FTE</li> <li>• FY 2017 15,174 166 FTE</li> <li>• FY 2018 16,403856 173 FTE</li> <li>• FY 2019 18,459 168 FTE</li> <li>• FY 2020 19,330 212 FTE</li> <li>FY 2021857 18,973858 203 FTE. - original COVID plan"</li> </ul>	NY City Independent Budget Office, Fiscal History: CCRB, (last accessed April 16, 2022), available at <a href="https://ibo.nyc.ny.us/RevenueSpending/ccrb.html">https://ibo.nyc.ny.us/RevenueSpending/ccrb.html</a> ; <a href="https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/03/054-ccrb.pdf">https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/03/054-ccrb.pdf</a> .	These numbers differ from those in the two linked documents.
262	196	860	FY 2022 19,626	Adopted Budget July 2021. OTPS budget was increased from FY 2021 = \$4.77 million to FY 2022 = \$5.15 million.	Incorrect/improper citation format. The documents cannot be located with the citation provided in the footnote because for July 2021, there are several documents on the adopted budget webpage.
263	196	862	"The numbers above are the amounts budgeted and expected to be spent. The Adopted 2022 Financial Plan for the City called for 269 FTE by 6/30/2022."	The Financial Plan of the City of New York, Fiscal Years 2021-2025, available at <a href="https://www1.nyc.gov/assets/omb/downloads/pdf/adopt21-stafflevels.pdf">https://www1.nyc.gov/assets/omb/downloads/pdf/adopt21-stafflevels.pdf</a> .	This is outdated data.
264	196	863	"The Mayor's proposed FY 2023 budget for the NYPD 863 was \$5.66 billion with a Personal Services appropriation to fill 50,863 positions, which includes uniformed and non-uniformed members. The Mayor proposes to maintain a uniformed headcount of 35,030,864."	This includes \$4.3 million to fund a Gun Violence Suppression Unit of 60 uniformed officers.	The 35K figure appears in this source. The 50K figure does not.
265	196	865	"Under the Charter, this would call for 228 FTE positions at CCRB. (.065 x 35,030)."	The Mayor's proposed budget, submitted 1/5/2023, appropriates \$23.5 million to CCRB with allowance for 259 FTE. 236 of those positions are city-funded. <a href="https://data.cityofnewyork.us/City-Government/Full-Time-and-FTE-Headcount-including-Covered-Orga/84ax-hg3y">https://data.cityofnewyork.us/City-Government/Full-Time-and-FTE-Headcount-including-Covered-Orga/84ax-hg3y</a> . The personal service allocation for IAB is \$74.3 million allowing for 625 full-time employees. Risk Management Bureau is allotted \$18.9 million for 42 FTE. The Departmental Advocate appropriation is for \$6.1 million, allowing for 71 employees. The total operating budget appropriation for NYPD is \$5.7 billion. (Not including capital expenditures.) There are 34,158 uniformed officers currently active, with a budgeted headcount of 36,201 uniformed officers. <a href="https://data.cityofnewyork.us/City-Government/Full-Time-and-FTE-Headcount-including-Covered-Orga/84ax-hg3y/">https://data.cityofnewyork.us/City-Government/Full-Time-and-FTE-Headcount-including-Covered-Orga/84ax-hg3y/</a> and <a href="https://www.nyc.gov/site/ccrb/policy/data-transparency-initiative-mos.page">https://www.nyc.gov/site/ccrb/policy/data-transparency-initiative-mos.page</a> .	Link in the footnote does not lead directly to the source data. It needs to include instructions on how to access the stated data to be useful.
266	197	867	"After negotiations with the City Council, the adopted financial plan for FY 2023 allocated \$ 5.59 billion to the police department and \$23.5 million to CCRB."	<a href="https://www1.nyc.gov/assets/omb/downloads/pdf/exec22-fp.pdf">https://www1.nyc.gov/assets/omb/downloads/pdf/exec22-fp.pdf</a> .	The outdated data.
267	197	868	"In September 2022, the Mayor directed an additional 3% cut in spending for CCRB, but not for NYPD. This action was repeated with another 3% directed cut in November."	"Eric Adams orders city to leave jobs vacant after migrant crisis, union bill", Jesse O'Neil and Bernadette Hogan, NY Post 11/22/2022, at <a href="https://nypost.com/2022/11/22/nyc-orders-third-round-of-budget-cuts-this-year/">https://nypost.com/2022/11/22/nyc-orders-third-round-of-budget-cuts-this-year/</a> .	The article notes that the NYPD did not receive a cut, but doesn't address whether the first cut included the police.
268	197	869	"Despite aspirational budgeting, the actual headcount at the end of January 2021 was 185 positions (Investigations and Mediation had 119 personnel + Executive and Administrative program area had 52 personnel + APU had 14 personnel). This in part was due to a hiring freeze during the pandemic and delays by the Office of Management and Budget in approval for new hires. "As a result of not being able to fill vacant position, the City is currently [March 16, 2021] out of compliance with the Charter."	Finance Division of The Council of the City of New York, The New York City Council's Response to The Fiscal 2023 Preliminary Budget and Fiscal 2022 Preliminary Mayor's Management Report, April 1, 2022, available at <a href="https://council.nyc.gov/budget/wp-content/uploads/sites/54/2022/04/Fiscal-2023-Preliminary-Budget-Response-.pdf">https://council.nyc.gov/budget/wp-content/uploads/sites/54/2022/04/Fiscal-2023-Preliminary-Budget-Response-.pdf</a> .	Source cannot be used for this proposition.
269	198	870	"Level I investigators have a starting salary of \$39,370. After one year of experience, they are eligible to become Level II investigators with a salary of \$54,147."	Supplemental Question Number 2 – Staffing and Hiring.	Source needed.

270	198	871	"There are, as with any agency, budgetary factors and needs which are unique, one-shots or peculiar to the agency. So, for example, one problem for CCRB is that approximately \$2.5 million of its budget is transferred to other city agencies for things like rent, phone services and other technical services. In all, almost \$3.5 million of its budget is for other-than-personnel services. As well, within its budget are extraordinary one-time, non-personnel service costs such as computer and video build-ups associated with the increased use of body worn cameras and surveillance videos."	Requested needs include: \$150,000/year for expanded computer storage, \$1.45 million for case-tracking platform, and added needs for a call-recording system, sexual misconduct investigators, language access facilitation, etc.	Source needed.
271	198	872	"An Article 78 proceeding was commenced on Jan 28, 2020, by the Police Benevolent Association ("PBA") contending that the budget provisions in the Charter amendments are illegal under state law because they deprive the Council of its appropriation authority. The petition contended, as well, that the entire set of Charter amendments approved in the November 2019 referendum were null and void since they are all part of one integrated amendment and vote. The petition was dismissed on October 31, 2020, for want of standing. The PBA has filed a notice of appeal."	Lynch v. City of New York, (Sup Ct, NY County) (Edmead, JSC) Index No. 150957/2020.	Petition may use this language. Decision says PBA claimed respondents exceeded their authority by including the ballot question on the ballot.
272	198	873	"Complaints, when first made, are reviewed by CCRB's intake unit. CCRB receives complaints from the public through multiple channels. The Intake Unit receives complaints, logs them into the CCRB's computerized Complaint Tracking System ("CTS"), and forwards any that will be investigated by the CCRB to one of sixteen Investigative Squads."	See CCRB, Response to Federal Monitor's Request Number Six, at Rqst6pg12 (document compilation that is the second enclosure in the CCRB's first response, dated July 17, 2018, to the Federal Monitor's request for CCRB documents; on file with author); CCRB INVESTIGATIVE MANUAL, supra note 323, at 5-6; CCRB, Intake Training at 25 (PowerPoint presentation that is the fourth enclosure in the CCRB's third response, dated Oct. 1, 2018, to the Federal Monitor's request for CCRB documents; on file with author) [hereinafter Intake Training].	Relies on non-public conversation between CCRB and the Monitor.
273	199	878	n/a	"In 2017, 42% of the 2,269 complaints filed directly with the CCRB were reported in a phone conversation, 27.1% were reported through the CCRB's website, 22.3% were reported through the automated call processing system, and 6% were reported in-person at the CCRB. 2017 STATISTICAL APPENDIX, supra note 326, at 20 tbl. 7A. Meanwhile, 91% of the 2,084 complaints filed with the NYPD that ended up with the CCRB were reported in a phone conversation, 5.1% were reported in person, and 2.9% were reported over the internet."	Relies on non-public conversation between CCRB and the Monitor.
274	199	875	"These numbers are down from a high of 7,660 complaints in 2009."	Data Transparency Initiative--Complaints, CCRB, <a href="https://www1.nyc.gov/site/ccrb/policy/data-transparency-initiative-complaints.page">https://www1.nyc.gov/site/ccrb/policy/data-transparency-initiative-complaints.page</a> (last visited May 8, 2019).	Cannot be used for this proposition. Data does not go back to 2009.
275	199	880	"On average there are about 10,000 complaints filed with CCRB's intake unit each calendar year, with the pandemic year of 2020 being predictably lower. CCRB retains fewer than one-half: Filings Retained CCRB Sent to: OCD IAB Other"	"Other" would include other law enforcement agencies or relevant governmental bodies.	The category used is "referrals to other agencies."
276	200	n/a	"Upon investigation, if a stop is alleged, CCRB will request a copy of the stop report, and if none is produced in a case where a stop is believed to have occurred, an OMN referral will be generated."	n/a	OMN should be OPMN - Other Possible Misconduct Noted.
277	200	n/a	"While CCRB compiles an aggregate number of stop complaints made and NYPD aggregates the number of stop reports filed, neither CCRB nor NYPD attempt to correlate statistics by matching stop reports for an officer, a squad or a command with complaints. NYPD keeps track of the number of CCRB complaints by officer or command, but they are not matched to the number of stops made. Knowing what percent of reported stops by an active officer or in a busy precinct result in a complaint brought to CCRB might prove useful as a performance gauge."	n/a	Outdated - RPBP may do this in their cases
278	200	881	"The bulk of complaints to CCRB are made, initially, by phone contact - roughly 65% each year, with the on-line website accounting for much of the remainder."	Undoubtedly due to the pandemic, there was a steep rise in on-line filings in 2020 from an average of 25% to 42% of filings that year.	Source needed.
279	200	882	"The Intake Unit will attempt to schedule an initial interview with the complainant for each complaint that is filed in a way other than in-person communication."	INVESTIGATIVE MANUAL, supra note 323, at 6; Intake Training, supra note 379, at 7.	Cannot find or access this source.

280	200	883	"Intake Unit personnel are provided with training materials that cover, among other things, how to process new complaints and enter details about them into a Complaint Tracking System (CTS), and how to talk to a complainant to get an effective narrative of her allegations."	"See generally Intake Training, supra note 379. The CCRB's Training Unit is discussed in further detail below in Part II.C. The Director of Intake maintains a separate queue of cases deemed "sensitive" that are not handled through the regular intake process. INVESTIGATIVE MANUAL, supra note 323, at 6. Such cases involve, for example, officer-involved shootings, deaths in custody, cases involving public figures or in which there has been media coverage of an officer's conduct, or where a video appears on social media with a "significant number of views." Id. at 15. Such cases are assigned to senior investigators (as discussed below in Part II.A.)."	Cannot find or access this source. Link in note 323 does not lead to the investigative manual.
281	200	884	"For "walk-in" complaints made in person at CCRB offices, an Investigative Squad on intake duty handles the intake responsibilities, including the initial interview with the complainant."	INVESTIGATIVE MANUAL, supra note 323, at 4-5.	Cannot find or access this source. Link in note 323 does not lead to the investigative manual.
282	200	885	"NYPD keeps track of the number of CCRB complaints by officer or command, but they are not matched to the number of stops made. Knowing what percent of reported stops by an active officer or in a busy precinct result in a complaint brought to CCRB might prove useful as a performance gauge."	All though not correlative, it is worth noting that only 4500 of 13,500 stops reported in 2019 resulted in an arrest or issuance of a summons.	Source needed.
283	201	n/a	"In 2017, the CCRB conducted split investigations for 142 (3 percent) of the cases referred to the OCD and 222 (22 percent) of cases referred to the IAB."	n/a	This is outdated.
284	201	886	Although they might arguably fall within FADO, CCRB will generally refer complaints of abuse to the OCD when they allege that "an officer failed to make an arrest or issue a summons, failed to take appropriate action, or improperly prepared reports," or "when a civilian complains that he/she was not guilty of the offense or crime for which he/she was summonsed or arrested."	Id. (providing several illustrative examples, and noting that "[g]enerally, the CCRB chooses not to exercise its jurisdiction over such allegations" (emphasis added)).	Source needed.
285	201	887	"CCRB will keep a complaint aimed at a summons or arrest as an abuse of authority if the facts suggest that the summons was issued or arrest made in retaliation for the complainant's response,887 the officer refused to process a complaint, or there was attendant misconduct claimed that falls within FADO."	Administrative Guide 304-17 (7).	Cannot be used for the proposition without a second cite, as CCRB is not mentioned in this clause.
286	201	889	"If a referral to another agency is made, the Case Management Unit notifies the complainant of the referral,..."	Senior Counsel, CCRB, CCRB: The Life of a Case, at "Initial Case Screening" (on file with author). The CMU is a group of eight employees (as of July 2018) who perform various administrative functions for the CCRB, including facilitating Board review of cases. CCRB, Response to Federal Monitor's Request Number Six, at Rqst6pg13 (document compilation that is the first enclosure in the CCRB's first response, dated July 17, 2018, to the Federal Monitor's request for CCRB documents; on file with author).	Relies on non-public communications between CCRB and the Monitor.
287	201	890	"...and complainants whose complaints are referred to other agencies are mailed a tracking number."	JANUARY-DECEMBER 2017 REPORT, supra note ---, at 9.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
288	201	891	"Once a determination is made, at intake, to retain a case, CCRB is required to notify the Department "of the actions complained of within a reasonable period of time after receipt of the complaint."	38-A RCNY § 1-16.	Incorrect/improper citation. Citation should be 38-A RCNY §1-17.
289	201	892	"Complaints that fall within the "sole jurisdiction of another agency" must be referred to that agency.892 Where the allegations in a complaint fall partly within the CCRB's jurisdiction and partly within the sole jurisdiction of another agency, CCRB's Chair (in consultation with the Executive Director) has discretion to refer the entire complaint to the other agency to be investigated by that agency."	CCRB RULES, supra note 332, at § 1-14(a). Per this rule, the CCRB refers complaints against civilian employees of the NYPD to the OCD or the IAB. INVESTIGATIVE MANUAL, supra note --- at 11.	Note 332 leads to Crim Pro Law 150.10, which describes DATs. There is no CCRB Rule 1-14 (a). The rule mentioned in the footnote is 1-13(a) and (b) and can be used for the first two sentences. Do not have access to investigagative manual.
290	201	894	"It is common for CCRB to refer some allegations in a complaint to other agencies while retaining others."	See INVESTIGATIVE MANUAL, supra note 323, at 10-11 (IAB), 11-12 (OCD).	Do not have access to this source.
291	201	895	"In 2017, the CCRB conducted split investigations for 142 (3 percent) of the cases referred to the OCD and 222 (22 percent) of cases referred to the IAB."	CCRB, Responses to Federal Monitor's Supplemental Questions, at 1 ¶ a (CCRB's response, dated June 3, 2019, to the Federal Monitor's additional request for CCRB documents; on file with author).	Relies on non-public communications between CCRB and the Monitor.
292	202	n/a	"The most common OMN cases referred by CCRB to NYPD are: (1) Improper Use of Body-worn Camera; (2) False official statement."	n/a	OMN should be OPMN; Outdated - CCRB investigates both of these (Improper Use of Body-worn camera and False official statement
293	202	n/a	"CCRB refers a comparatively smaller number of profiling cases to IAB. Between 2016 and 2018, CCRB received a total of 143 profiling complaints. It is CCRB's policy to "capture" that information "only if the complainant or alleged victim voluntarily expresses this belief."	n/a	This is outdated.
294	202	n/a	"In the years 2016-2018 there were very few false official statement referrals (49) and virtually no BWC referrals, since cameras were not in use."	n/a	This is outdated.
295	202	n/a	"For OMN cases, if there are no FADO allegations to investigate, CCRB will close the case as it refers the matter to IAB."	n/a	This is inaccurate. There would never be an OPMN without a FADO

296	202	898	"By either calculation (complaints or allegations), somewhere between 38 to 45 percent of the time when CCRB notes a documentation failure. CCRB determined that a FADO violation occurred as well. This is an exceptionally high concurrence rate, given that the overall substantiation rates by CCRB in recent years is generally in the 25 percent range."	From 2010 to 2019, CCRB panels substantiated 2933 complaints out of 17,325 decisions - a 16.9% substantiation rate. More recently, the substantiation rate in 2019 had increased to 24% (370 of 1540 fully investigated complaints) and 30 % (293 of 981 fully investigated complaints) in 2020. The 2020 numbers are probably skewed due to the reduced number of complaints that could be fully examined during the CoVid pandemic.	Citation is needed.
297	202	899	"CCRB has observed that it has "better success conducting full investigations when the case is filed directly with CCRB" rather than with the NYPD.899 CCRB's 2017 Annual Report indicates that in referred cases, CCRB sometimes has difficulty making initial contact with the complainant or victim, who may not have been informed of the referral to the CCRB by the referring agency."	CCRB, Responses to Federal Monitor's Supplemental Questions, at 3 ¶ b (document that is the tenth enclosure in the CCRB's third response, dated Oct. 1, 2018, to the Federal Monitor's request for CCRB documents; on file with author); see also JANUARY-DECEMBER 2017 REPORT, supra note 376, at 9-10.	Relies on non-public communications between CCRB and the Monitor.
298	203	n/a	"In 2018, the number of truncations for cases coming through IAB increased to 73 percent.902 This compares to an overall truncation rate within CCRB of 60.9 percent for that same year. In 2018, of 4759 complaint closures at CCRB, 2899 were truncated, mostly due to pending litigation or complainant reluctance of one kind or another."	n/a	This is outdated.
299	203	n/a	"The Intake Unit consisted of six investigators."	n/a	There are eight investigators.
300	203	901	"Cases coming from the IAB more often result in truncated (and hence uncompleted) CCRB investigations. In 2017, the truncation rate was 69 percent for cases filed with IAB and sent to CCRB; 44 percent for cases filed directly with CCRB; and 52 percent for cases filed elsewhere."	id. at 23.	Relies on non-public communications between CCRB and the Monitor.
301	203	902	"In 2018, the number of truncations for cases coming through IAB increased to 73 percent."	NYC Civilian Complaint Review Board, James Blake Fellow Report 2020, at 5, available <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/CCRB_BlakeFellow_Report.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/CCRB_BlakeFellow_Report.pdf</a> .	Can be used for 73%, can't be used for "increased."
302	203	903	"More currently, albeit in a pandemic year, 2020, of 3,307 closed CCRB cases, 2,187 were closed due to truncation. 1,709 were truncated because a complaint was withdrawn, the witness was uncooperative or unavailable. 351 of the truncated cases were "closed pending litigation."	Pending Litigation is a truncation category added in August 2017. It indicates that the complaint was truncated due to the complainant/alleged victim's attorney. See CCRB, Executive Director's Monthly Report, January 2021, at 28, available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2021/20210111_monthlystats.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2021/20210111_monthlystats.pdf</a> .	Numbers are different in source.
303	203	904	"CCRB has indicated that, "[t]here are some instances where IAB refers a case after significant delays and some occasions, including for notable incidents garnering media attention, where IAB did not refer a case when it should have. IAB often does not inform civilians that their cases are being referred to the CCRB if the complaint contains allegations falling with the CCRB's jurisdiction."	CCRB, Responses to Federal Monitor's Supplemental Questions, at 3 ¶ b, supra.	Relies on non-public communications between CCRB and the Monitor.
304	203	905	"The Intake Unit consisted of six investigators."	CCRB, Response to Federal Monitor's Request Number Six, at Rqst6pg12 (document compilation that is the first enclosure in the CCRB's first response, dated July 17, 2018, to the Federal Monitor's request for CCRB documents; on file with author).	Relies on non-public communications between CCRB and the Monitor.
305	203	906	"For "walk-in" complaints made in person at CCRB offices, an Investigative Squad on intake duty handles the intake responsibilities, including the initial interview with the complainant."	INVESTIGATIVE MANUAL, supra note 323, at 4-5.	Do not have access to this source.
306	204	n/a	"With an expanded definition of "abuse of authority" CCRB may begin to investigate, concurrently with NYPD, corruption and perjury charges."	n/a	This is incorrect.
307	204	907	"After preliminary screening, the Intake Unit forwards matters that are retained to one of sixteen investigative squads."	See CCRB, Response to Federal Monitor's Request Number Six, at Rqst6pg12 (document compilation that is the second enclosure in the CCRB's first response, dated July 17, 2018, to the Federal Monitor's request for CCRB documents; on file with author); CCRB INVESTIGATIVE MANUAL, supra note 323, at 5-6; CCRB, Intake Training at 25 (PowerPoint presentation that is the fourth enclosure in the CCRB's third response, dated Oct. 1, 2018, to the Federal Monitor's request for CCRB documents; on file with author) [hereinafter Intake Training].	Relies on non-public communications between CCRB and the Monitor.
308	204	908	"Roughly 65% of the staff at CCRB are assigned to the Investigations, Intake & Evidence Collection, NYPD Relations and Evidence Collection Units."	908 NYPD Relations Unit works with the IAB Liaison to obtain Departmental records and access to officers.	Source needed.

309	204	909	"The investigative squad assigned to a complaint, along with staff known as the field team, use various methods to locate and collect evidence to investigate that complaint. The Rules of the CCRB enumerate specific methods that investigators may use, including requests for information or documents; interviews with the complainant, alleged victim, subject officer and/or witnesses; and field visits to examine the site of the alleged misconduct and collect evidence from the scene."	CCRB RULES, supra note 332, at § 1-23; see also ██████████, Senior Counsel, CCRB, CCRB: The Life of a Case, at "Role of the Field Team" (on file with author). "Within one business day of being assigned the complaint, the investigator must attempt to arrange to interview the complainant (and/or victim) by contacting the complainant by telephone and e-mail." INVESTIGATIVE MANUAL, supra note 323, at 21. NYPD officers must agree to requests by CCRB investigators for interviews, whether they are the subjects of investigation or witnesses to investigated incidents. See N.Y. CITY CHARTER, ch. 18-A, § 440(d)(2) (2019) ("The police commissioner shall ensure that officers and employees of the police department appear before and respond to inquiries of the board and its civilian investigators in connection with the investigation of complaints submitted pursuant to this section . . . .")	Cannot access most sources. NYC Charter cite is correct. Probably ██████████, " not ██████████."
310	204	910	"IAB investigates all claims of potential criminal conduct by NYPD officers or civilian employees."	INVESTIGATIVE MANUAL, supra note 323, at 10.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
311	204	911	"Until recently, CCRB referred complaints to the IAB when they involve allegations of corruption, perjury, and off-duty criminal conduct."	Id.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
312	204	912	"CCRB refers complaints to the OCD when they do not contain FADO allegations and do not come within the IAB's responsibility."	Id. at 11.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
313	205	n/a	"In 2017, the CCRB conducted split investigations for 142 (3%) of the cases referred to the OCD and 222 (22%) of cases referred to the IAB."	n/a	This is outdated.
314	205	913	"In addition, the CCRB will generally refer complaints of abuse of authority to the OCD when they allege that "an officer failed to make an arrest or issue a summons, failed to take appropriate action, or improperly prepared reports," or "when a civilian complains that he/she was not guilty of the offense or crime for which he/she was summonsed or arrested."	Id. (providing several illustrative examples, and noting that "[g]enerally, the CCRB chooses not to exercise its jurisdiction over such allegations" (emphasis added)).	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
315	205	914	"The CCRB will, however, keep a complaint aimed at a summons or arrest as an abuse of authority if the facts suggest that the summons was issued or arrest made in retaliation for the complainant's behavior or there was attendant misconduct claimed that falls within FADO."	Id. "The manual provides a few examples of complainant behavior that could prompt retaliation by an officer and result in CCRB investigation: "the use of an obscenity, a challenge to the officer's authority, a request to obtain the officer's name or shield number, or a threat to file a complaint." Id. Proposed Rule changes for CCRB would include sexual harassment, if the cause for police action, as an Abuse of Authority within its jurisdiction."	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
316	205	915	"With the Charter change authorizing investigations of false statements, overlap in that arena [CCRB/NYPD investigations] is likely to occur as well – particularly when an officer has given a questionable statement to CCRB and to another entity (NYPD, Courts, prosecutors) about the same subject matter."	"The NYPD's Internal Affairs Bureau can, in theory, initiate its own investigations into alleged misconduct based on media reports, although no evidence was offered that IAB has in fact done this in response to media reports over the last decade concerning racially biased and/or constitutionally unjustified stops and frisks."	Citation is needed.
317	205	916	"In FFY 2017-2018, 205 of 692 allegations of misconduct closed by IAB were FADO allegations."	CCPC Nineteenth Annual Report, at 22, available at <a href="https://www1.nyc.gov/assets/ccpc/downloads/pdf/Annual-Nineteen-Report.pdf">https://www1.nyc.gov/assets/ccpc/downloads/pdf/Annual-Nineteen-Report.pdf</a> . CCPC analysis was done on a fiscal year, rather than a calendar year basis. CCPC evaluated 830 cases involving 2,707 allegations during FFY 2017 and 2018.	Cannot be used for this proposition.
318	205	917	"In 2017, the CCRB conducted split investigations for 142 (3%) of the cases referred to the OCD and 222 (22%) of cases referred to the IAB."	CCRB, Responses to Federal Monitor's Supplemental Questions, at 1 ¶, June 3, 2019, on file with the Monitor Team.	Relies on non-public communications between CCRB and the Monitor.
319	206	n/a	"The CCRB experiences varying levels of turnover in the investigator ranks, with a 30.9 percent rate of attrition in 2016 and a 10.9 percent rate in 2017."	n/a	This is outdated.



320	206	918	"While force is the most common type of allegation that is investigated by both the NYPD and the CCRB, there are numerous incidents that both the NYPD and CCRB investigate, although each investigation may focus on different aspects of the incident....The NYPD will open concurrent investigations into portions of an incident being investigated by the CCRB that are outside of the CCRB's jurisdictions – such as corruption – or IAB will at times pursue investigations into non-FADO aspects of a case referred by the CCRB. The CCRB is not always notified of these investigations. Additionally, there are allegations within IAB's sole jurisdiction that arise out of concurrent investigations into FADO allegations that IAB pursues, but that the CCRB did not refer to them.... At times, the CCRB may receive complaints that fall partially within the jurisdiction of the CCRB and partially within of another agency or the NYPD. Often these cases will only require that "spin-off" case be referred to the external agency with jurisdiction in some cases, the case may be better served by referring the entirety of the investigation to another agency...In these instances, the Executive Director, in consultation with the Board Chair, will make the final determination about whether to pursue an investigation, but the Agency reserves all rights to investigate FADO's in any complaint."	CCRB, Responses to Federal Monitor's Supplemental Questions, at 1 (document that is the tenth enclosure in the CCRB's third response, dated Oct. 1, 2018, to the Federal Monitor's request for CCRB documents; on file with author).	Relies on non-public communications between CCRB and the Monitor.
321	206	919	"CCRB employs three different "levels" of investigators: Levels I, II, and III.919 Level I investigators are considered entry-level, and can be promoted to Level II after one year of successful employment.920 The CCRB experiences varying levels of turnover in the investigator ranks, with a 30.9 percent rate of attrition in 2016 and a 10.9 percent rate in 2017.921 Level II and III investigators are considered "experienced."	CCRB, Responses to Federal Monitor's Supplemental Questions, at 1 (document that is the tenth enclosure in the CCRB's third response, dated Oct. 1, 2018, to the Federal Monitor's request for CCRB documents; on file with author).	Relies on non-public communications between CCRB and the Monitor.
322	206	923	"Supervisors within each squad assign the squad's cases to particular investigators based on a number of factors; the only rule about assigning cases to particular investigators is that "sensitive" cases must be assigned to a Level II or III Investigator."	CCRB, Response to Federal Monitor's Requests Number 7 and 8, at 4 (document that is the ninth enclosure in the CCRB's third response, dated Oct. 1, 2018, to the Federal Monitor's request for CCRB documents; on file with author).	Relies on non-public communications between CCRB and the Monitor.
323	206	924	"Although improving the quality and efficiency of investigations has been a priority of the CCRB in recent years,924 measuring quality is difficult."	See, e.g., CCRB, 2014 ANNUAL REPORT 1 (May 2015), available at <a href="http://www.nyc.gov/html/ccrb/downloads/pdf/Annual%20Report%202014-Rev4Final.pdf">http://www.nyc.gov/html/ccrb/downloads/pdf/Annual%20Report%202014-Rev4Final.pdf</a> .	Can be used for the first part. Cannot be used for "measuring quality is difficult."
324	207	926	"At the start of investigators' employment, and after any promotion, they are given job expectations called "Tasks and Standards." There are expectations for each of several areas of job performance, including "adher[ing] to current investigative practices," "interview[ing] civilian and police witnesses," "rigorously prepar[ing] impartial reports that accurately document any and all evidence obtained," and "obtain[ing] all relevant evidence . . . and employ[ing] other investigatory methods as required by agency rules and procedures."	CCRB, Tasks and Standard Sheet, provided to Monitor Oct. 18, 2018.	Relies on non-public communications between CCRB and the Monitor.
325	207	927	"Specific expectations for Level I investigators include: ... "Understands what NYPD documentary and video evidence are required for incidents under investigation and, within 24 hours of the initial assignment of a case, follows the appropriate protocol to request such evidence from IAB, DOA, and any other applicable NYPD command."	927 Id.	Relies on non-public communications between CCRB and the Monitor.
326	208	928	"Investigators are generally evaluated each year thereafter and are generally eligible for promotion to Level III after two years of employment."	CCRB, Response to Federal Monitor's Supplemental Question Number Four (document that is the thirteenth enclosure in the CCRB's third response, dated Oct. 1, 2018, to the Federal Monitor's request for CCRB documents; on file with author).	Relies on non-public communications between CCRB and the Monitor.
327	208	929	"The CCRB has also defined criteria for promotion; among other things, investigators must receive certain performance-evaluation scores for "interview skills," "written work," "gathering documentary evidence," "gather[ing] other evidence" and "case management and organization."	Memorandum from , Executive Director, CCRB, to Investigative Staff, CCRB (July 30, 2018) (on file with author).	Relies on non-public communications between CCRB and the Monitor.

328	208	930	"CCRB uses its more experienced staff to promote the quality of its investigations. For example, sensitive cases are only assigned to experienced investigators, and SQF cases are "often" assigned to experienced investigators because they "often require proficiency in search and seizure law."930 Further, experienced investigators supervise the work of less experienced investigators. For example, the squad leader gives initial instructions to the investigator to whom she assigns a complaint and then reviews the case file that the investigator develops in working on that complaint, including the case plan (which sets out the investigative steps that the investigator intends to take) and the ultimate report that goes to the Board.931 The squad leader tracks data about how well investigators are doing, known as key performance indicators (KPIs), in the Complaint Tracking System. In addition, the CCRB provides all investigators with legal guidance for certain kinds of cases. An investigator must consult an agency attorney about applicable law before interviewing officers in sensitive cases and cases involving searches of persons, vehicles or premises, entry onto premises (absent a search warrant), and strip searches."	CCRB, Response to Federal Monitor's Requests Number 7 and 8, at 4 (document that is the ninth enclosure in the CCRB's third response, dated Oct. 1, 2018, to the Federal Monitor's request for CCRB documents; on file with author). CCRB has explained in discussions with the Monitor team that some SQF cases are assigned to Level I investigators.	Relies on non-public communications between CCRB and the Monitor.
329	208	933	"In addition to supervision from experienced investigators, new investigators also receive intensive orientation training when they start."	CCRB, Responses to Federal Monitor's Supplemental Questions, at 5 (document that is the tenth enclosure in the CCRB's third response, dated Oct. 1, 2018, to the Federal Monitor's request for CCRB documents; on file with author).	Relies on non-public communications between CCRB and the Monitor.
330	208	934	"Topics include the use of documentary evidence to assess search and seizure allegations, techniques for effectively interviewing civilians and officers in search and seizure cases, and the law related to street encounters, entries onto premises, and vehicular stops and searches."	E.g., ██████████, Deputy Chief Prosecutor, CCRB, Search & Seizure Law: Street Encounters (on file with author); ██████████, Deputy Chief Prosecutor, CCRB, Search and Seizure Law: Entries (on file with author); ██████████, Deputy Chief Prosecutor, CCRB, Vehicle Stop & Search Law (on file with author); ██████████, Investigative Manager, CCRB & Greg Finch, Investigator, CCRB, Documents Related to Search and Seizure Cases (on file with author).	Incorrect/improper citation format. The source cannot be locate with the citation provided in the footnote.
331	209	n/a	"In addition to overseeing the initial training for Level I investigators, CCRB's Training Unit—made up of a Director and two Deputies—is also responsible for providing investigators with ongoing training and professional-development programs."	n/a	CCRB's Training Unit is outdated.
332	209	n/a	"CCRB's Director of Quality Assurance and Improvement ("DQAQI"). Measuring and improving the quality of investigations is a central focus of the DQAQI's role. Among other things, the DQAQI: (a) provides data to the Deputy Chief of Investigations on the state of the overall docket, delayed cases and KPIs for each investigative squad; (b) reviews random samples of cases in their final stages, as well as reports and accompanying files in sensitive cases before they go to the Board; (c) updates and maintains the Investigations Manual and interim operating procedures, and develops new policies and efficiency improvements, in consultation with the Deputy Chief and Co-Chiefs of Investigations; (d) reviews decisions to "truncate" or close cases without full investigation (for example, because the complainant is unavailable or uncooperative) and tracks truncation statistics; and (e) in coordination with the Director of NYPD Relations, monitors evidence collection efforts between the CCRB and NYPD."	n/a	This is outdated. This role no longer exists and the tasks have been reassigned to other members of the investigations leadership team.
333	209	n/a	"Finally, each fall, the NYPD invites all investigators hired by CCRB since the previous fall to the Police Academy so that the investigators can learn about how MOS are trained. The NYPD presentations to CCRB investigators are simulations of the trainings that MOS receive. (Board members do not attend these presentations, nor do they receive any raining from the NYPD). The syllabus of presentations that NYPD Police Academy trainers conduct for CCRB investigators typically includes:	n/a	This is outdated. NYPD no longer invites CCRB investigators to the Academy - CCRB has attended no NYPD presentations since 2019.
334	209	937	"The Training Unit assesses needs for additional Training and implements programs, in part, in consultation with the CCRB's Director of Quality Assurance and Improvement ("DQAQI")."	CCRB, Response to Federal Monitor's Supplemental Question Number Nine, at 1 (document that is the fifteenth enclosure in the CCRB's third response, dated Oct. 1, 2018, to the Federal Monitor's request for CCRB documents; on file with author).	Relies on non-public communications between CCRB and the Monitor.

335	209	938	"Among other things, the DQAQI: (a) provides data to the Deputy Chief of Investigations on the state of the overall docket, delayed cases and KPIs for each investigative squad; (b) reviews random samples of cases in their final stages, as well as reports and accompanying files in sensitive cases before they go to the Board; (c) updates and maintains the Investigations Manual and interim operating procedures, and develops new policies and efficiency improvements, in consultation with the Deputy Chief and Co-Chiefs of Investigations; (d) reviews decisions to "truncate" or close cases without full investigation (for example, because the complainant is unavailable or uncooperative) and tracks truncation statistics; and (e) in coordination with the Director of NYPD Relations, monitors evidence collection efforts between the CCRB and NYPD."	938 Id.	Relies on non-public communications between CCRB and the Monitor.
336	210	940	"As part of an overall revision of its rules "to accelerate investigations" CCRB adopted 12 rules changes in 2018."	Notice of Adoption, City Record, 1/2/18, eff 2/1/18.	This is only part of the purpose of the rule changes, and there are more than 12.
337	211	n/a	"In 2019, it took 21 days on average to have a full interview with a complainant. It took 98 days on average for an officer to be interviewed."	n/a	This is outdated.
338	211	n/a	"IAB will not provide any case materials or additional information beyond the disposition."	n/a	This is incorrect.
339	211	942	"The "post-verification" rule was written to "to avoid the possibility of discouraging that witness [a civilian] from testifying," and as the lower court found, when the rules were challenged by the PBA, "[t]he CCRB's concerns of intimidation and underreporting are legitimate and provide a rational basis for the differences in swearing requirements between civilian witnesses and officers."	Lynch v. CCRB, 64 Misc. 3d 315, 329 (Sup. Ct. N.Y. Cty.), aff'd 183 A.D.3d 512 (2020)	The citation is to a Respondent's argument oppose to Court's opinion. It does not have the weight of legal finding.
340	211	943	"When a CCRB investigator wishes to interview an officer, notice is given to the Supervisory/Ranking Officer concerned who directs the officer to answer questions. A subject officer is given two business days' notice prior to the interview to obtain and consult with counsel. The officer is advised that all questions must be "answered fully and truthfully," that "refusal to cooperate...will result in immediate suspension and preparation of disciplinary charges," and that "answers given in an interview or proceeding may not be used against the member in a later criminal action."	Patrol Guide § 211-14. Police officers who refused to sign waivers of immunity from prosecution could not be summarily dismissed under Article I § 6 of the New York Constitution and § 1123 of the New York City Charter, but those provisions must be read together with this section and would be construed to afford police officers a hearing and an opportunity to explain. Gardner v. Murphy, 46 Misc. 2d 728, 260 N.Y.S.2d 739, 1965 N.Y. Misc. LEXIS 1780 (N.Y. Sup. Ct. 1965), rev'd, Koutnik v. Murphy, 25 A.D.2d 197, 268 N.Y.S.2d 265, 1966 N.Y. App. Div. LEXIS 4654 (N.Y. App. Div. 1st Dep't 1966).	The quoted material is a direct quote from the patrol guide. The remaining text of the footnote should be in the body of the paper, with more detail.
341	212	n/a	Section v. Case Study - Force, False Statement, and FADO Investigations Interwoven	n/a	Citations are needed for CCRB case numbers.
342	212	n/a	"Information is not shared."	n/a	This is not always.
343	212	n/a	"And, most of all, resolution is prolonged."	n/a	Concurrent investigations don't always result in delays.
344	212	n/a	"C was diagnosed with Impulse Disorder."	n/a	Citation is needed.
345	212	945	"The CCRB is rarely provided with audio of officers statements to IAB regarding concurrent incidents."	██████████, General Counsel CCRB, June 2, 2019 letter to the Monitor Team.	Relies on non-public communications between CCRB and the Monitor.
346	212	946	"Investigations and proceedings that followed included a CCRB FADO case, an IAB force investigation, an IAB false statement investigation, an interview at the Comptroller's office, 946 a civil lawsuit in Bronx Supreme Court and a trial before a DCT."	946 GML § 50-h.	Cannot be used for this proposition.
347	213	n/a	Section v. Case Study - Force, False Statement, and FADO Investigations Interwoven: Habib	n/a	Citations are needed to CCRB case numbers.
348	214	n/a	Section v. Case Study - Force, False Statement, and FADO Investigations Interwoven: Goldberg	n/a	Citations are needed to CCRB case numbers.
349	214	n/a	Section v. Case Study - Force, False Statement, and FADO Investigations Interwoven: Pa	n/a	Citations are needed to CCRB case numbers.
350	214	n/a	"Other closely related items, such as failure to document enforcement actions, false reporting in other venues, such as complaint or arrest reports or court testimony, making misleading or inaccurate statements that impede an outside investigation still remain outside CCRB jurisdiction."	n/a	This is inaccurate. CCRB investigates false/misleading/inaccurate statements against a civilian in other venues.
351	214	947	"The IAB investigation was closed on April 4, 2019, one year after it had been sent to IAB. The chokehold and punch allegations were referred back to CCRB for investigation and closed by IAB for I&I. CCRB lists the case as "Previously adjudicated, with discipline." DAO lists the case as "Administratively Closed.""	The most current SQFSTA spreadsheet provided by the Department, (Dec. 31, 21,) lists the case as closed administratively. The CCRB online website lists the penalty as 1-year dismissal probation. It is unclear how or when the decision to place him on probation occurred.	Relies on non-public communications between NYPD and the Monitor.
352	215	n/a	"CCRB's jurisdiction under the Charter runs to "complaints by members of the public against members of the police department...."	n/a	This is inaccurate. Section 440(a) of the Charter states "It is in the interest of the people of the city of New York and the New York city police department that the investigation of complaints concerning misconduct by officers of the department towards members of the public be complete..."
353	215	949	"CCRB's jurisdiction under the Charter runs to "complaints by members of the public against members of the police department...."	NY City Charter, ch 18-A, §440 (c)(1) (emphasis added).	Non-uniform members of police department don't engage in investigative encounters.

354	215	950	"However, CCRB Rules define the Board's jurisdiction as limited to "complaints by members of the public against uniformed members" of the NYPD."	38-A RCNY § 1-02 (emphasis supplied).	This is outdated data. The rule was updated with "complaints by members of the public or complaints initiated by the Board."
355	216	n/a	"...it would appear that the limited engagement is self-imposed and not a consequence of language in the Charter."	n/a	This is inaccurate.
356	216	954	"Another bone of contention, the subject of litigation by the PBA, is whether a sworn complaint by a civilian "victim" of police misconduct is a necessary predicate to commencement of an investigation by CCRB. The Board re-wrote several provisions of their Rules954 in 2018. Ten of the Rules changes were challenged by the police union."	Title 38-A RCNY Rules of the Civilian Complaint Review Board.	Why is victim in quotes? Why is it even here? The word could be left out entirely rather than diminishing the civilian's status via use of quotes or enlarging the civilian's status by leaving it in without quotes. Otherwise, Lynch can be used for the proposition that several rule changes were enacted.
357	217	959	"At the same time, the Rules were expanded to receive complaints from people who reported misconduct that they did not personally witness (e.g., someone who complained about NYPD conduct seen in a video online), if the CCRB's Executive Director or Chair determined that investigating those complaints would be appropriate.959 (The so-called "non-Witness Rule")"	CCRB RULES, supra note 332, at § 1-11(b). The CCRB Rules provided a list of factors that the Executive Director and Chair would consider in determining whether investigation was appropriate: "the nature and/or severity of the alleged misconduct, the availability of evidence and/or witnesses, the ability to identify officers and civilians involved, the practicability of conducting a full investigation within the time prescribed by the statute of limitations and the numbers of complaints received by the Board regarding the incident." Id.	The cite in the footnote can be used for the proposition in the footnote, but not for the text in the body of the report.
358	217	960	"The CCRB commenced 643 investigations in 2018 and 2019 based on the complaints of reporting non-witnesses and referred another 409 complaints of reporting non-witnesses to other agencies."	Kadushin, Counsel to CCRB, letter June 3, 2019.	Relies on non-public communications between CCRB and the Monitor.
359	217	961	"The union challenged the Sua Sponte Rule claiming that it allowed the CCRB to "investigate" potential misconduct without a "complaint by [a] member of the public," in violation of the City Charter.961 The Rule was defended on the basis that it only allowed the CCRB to "review" incidents that had not been complained about; it did not allow the CCRB to "investigate" those incidents toward the end of disciplining a subject officer."	Lynch v. de Blasio, supra.	There is no Lynch v de Blasio cite in this document.
360	217	963	"The PBA claimed that the rules were "likely to cause more harm than good."	64 Misc 3d at 332.	The court declared rule 1-11 arbitrary and capricious and more likely to cause harm than good. Cannot be used for this proposition.
361	218	964	"The court agreed, striking the YouTube clause on the "possibility of a mass influx of complaints based on unreliable information."	Id.	Can be used for this proposition.
362	219	967	"Accordingly, the Rules were amended and 38-A RCNY 1-11 (c) was deleted effective March 26, 2021."	Councilmember Adrienne Adams has introduced legislation authorizing investigations of "complaints initiated by the board" (Intro 2440-2021), 11/10/2021.	CCRB's charter was amended to such we can self-initiate complaints.
363	220	970	"...but, nonetheless the fact of a pending prosecution in another setting acts to discourage full participation in the CCRB process."	"Even when a complaint is filed and accepted by CCRB, only a minority undergo full examination. In 2018, only 1408 of 4759 complaint closures at CCRB were fully investigated. 2899 were truncated, mostly due to pending litigation or complainant reluctance of one kind or another. . In 2020, of 3307 closed CCRB cases, 2187 were closed due to truncation. 1709 of those were truncated because a complaint was withdrawn, the witness was uncooperative or unavailable. 351 of the truncated cases were "closed pending litigation. Pending litigation is a truncation category added in August 2017. It indicates that the complaint was truncated due to the complainant/alleged victim's attorney, CCRB, Executive Director's Monthly Report, January 2021, at 28.1 available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2021/20210111_monthlystats.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2021/20210111_monthlystats.pdf</a> ."	The statistics are outdated.
364	220	969	"The relatively low number of CCRB complaints of illegal stops (862 in 2018) may be an indicator of improved policing, or it might readily be ascribed to a number of other factors: (i) unless force or some egregious behavior, such as a strip search or an illegal arrest, accompanies the charge, civilians may not think a report to CCRB is "worth the effort;" (b) majority of persons stopped are young, Black or Hispanic males who, for a variety of reasons, may view official avenues of redress with skepticism;..."	In 2018, 12,244 of 13,459 (91%) of persons listed in stop reports as suspects were non-white. 12,179 were male (90%). 8,262 were under 30 years of age (61%). These numbers are for reported stops. There is reason to believe that the percentage of minorities are even higher if unreported stops are included. See, Twelfth Report of the Independent Monitor: The Deployment of Body Worn Cameras on NYPD Officers at 74, 11/30/2020. 76% of CCRB complaints are made by Black or Hispanic victims. See CCRB Annual Report 2018, at 20.	The first source cannot be used for this proposition. CCRB Annual report can be used for the 76% figure in the footnote.
365	221	975	"Along that line, employees in the investigations division of CCRB are advised, "[i]n the event that you read a tweet that is not linked to the CCRB's Twitter feed, take a screenshot or copy the tweet's language & handle and email that info to [supervisors]." In those cases the "potential complainant" is to be encouraged to use one of CCRB's official channels."	Memo, Response Procedures for Twitter posts re potential complaints, Chiefs of Investigation to the Investigation Division, October 26, 2017.	This is outdated. Now, CCRB can self-initiate
366	221	n/a	"There, three police officers approached a group of children playing in a park telling them that "they had received a call about someone in the park with a gun." Two of the children, an 11-year-old boy and a 13-year-old girl began to flee."	n/a	Citation is needed to CCRB case number.
367	221	974	"Notwithstanding the initial deletion of the Sua Sponte Rule was mitigated by the appellate approval of the "You Tube" clause."	§ 1-11 (b).	Incorrect/improper citation format.

368	221	977	"The Police Commissioner retained the case977 and ordered "Training" in place of a disciplinary hearing."	Provision two of the 2012 APU-MOU.	Cannot be used for this proposition.
369	222	983	"But after the amendments, CCRB may also investigate any other matters "within its jurisdiction," and may subpoena, hear, make findings and recommend action, but, without findings of misconduct or recommended discipline against any particular member." If the finding or recommendation pertains to an identified officer, then the finding or recommendations cannot "be based solely upon an unsworn complaint or statement."	Id. at § 440(c)(1).	This section does not appear to be limited to an "identified officer," as this language is not in the paragraph: "No finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any such finding or recommendation."
370	222	984	"Does this mean that the former Sua Sponte Rule would no longer violate the revised Charter?"	38-A RCNY 1-11(c)	There is currently no section (c).
371	223	990	"Following amendment to the Charter, adopted by referendum in November 2019, the Board's jurisdiction was expanded to include investigations into whether a subject officer had given a false statement in the course of a CCRB investigation."	"The board shall also have the power to investigate, hear, make findings and recommend action regarding the truthfulness of any material official statement made by a member of the police department who is the subject of a complaint received by the board, if such statement was made during the course of and in relation to the board's resolution of such complaint." City Charter § 440(c)(1).	False statements made to CCRB required a Charter Amendment because CCRB would be the complainant.
372	223	985	"The purpose of the Rule, as argued before the court, was "to allow [CCRB] to initiate contact with potential victims who may not know of CCRB's existence, who may not know how to file a complaint, or who are fearful of reporting alleged misconduct. The revised rule also authorized CCRB to take pre-investigative steps to gather evidence before it is destroyed."	Lynch, 64 Misc. 3d at 331.	This was a statement by the Court. It was not an argument.
373	223	986	"Subsequently, Local Law 24 of 2022, passed by the City Council and returned by the Mayor unsigned on January 2022. The Charter was amended again, this time to explicitly authorized investigations of "complaints initiated by the board..."	LL 24/ 2022, Charter § 440(c)(1).	Cannot be used for this proposition.
374	223	987	"While recognizing the Charter authorization of Board initiated investigations, the NYC PBA has commenced an Article 78 proceeding barring delegation to others than the full Board."	NYC PBA v. City of New York, Index No. 150441/2023, Doc. No. 1 (Sup Ct. NY Cty, 2023).	The cite is correct but the sentence is unclear.
375	223	988	"Under earlier Charter provisions,988 CCRB was permitted to investigate four kinds of misconduct: (1) excessive use of force; (2) abuse of authority; (3) discourtesy; and (4) use of offensive language."	1993 to 2019.	Citation is needed.
376	223	989	"...CCRB was permitted to investigate four kinds of misconduct: (1) excessive use of force; (2) abuse of authority; (3) discourtesy; and (4) use of offensive language. (FADO)"	NY CITY CHARTER, ch. 18-A, § 440(c)(1) (2019).	This follows the previous sentence. Maybe it's meant to be a parenthetical citation?
377	224	n/a	"As noted earlier, with a revised definition of "abuse of authority" in its Rules, there is a possibility that CCRB may begin to investigate corruption cases and false statements made outside a CCRB investigation."	n/a	We already do this.
378	224	992	"Theoretically, CCRB could investigate the force allegation separately while splitting off the theft charge, but it has the discretion to send the entire complaint to IAB."	38-A RCNY 1-14 (b).	There is currently no section (b). This is probably meant to be 1-15(b).
379	225	n/a	Section: Other Possible Misconduct Noted. (OMN)	n/a	OMN should be OPMN - Other Possible Misconduct Noted.
380	225	n/a	"There are other violations, such as an officer's failure to complete a stop report, in-house rules violations, and off-duty misconduct, that may remain beyond the CCRB's jurisdiction and must be referred to the NYPD as OMN's."	n/a	OMN should be OPMN - Other Possible Misconduct Noted.
381	225	n/a	"In the past, under paragraph 7 of the APU-MOU, an immediate referral to NYPD would be made by the investigator without submission to a panel or itemizing evidence."	n/a	This is incorrect. OPMNs always get submitted to the Board. The section you cite here is related to misconduct outside of CCRB's jurisdiction that may have been discovered AFTER the investigation and board vote, during the prosecution process. That does not need to go through the board.
382	225	998	"The referral would be described as, "Other Misconduct Noted: The Board found evidence during its investigation that an officer committed misconduct not traditionally investigated by the Board, but about which the Police Department should be aware."	38-A RCNY 1-34-(15).	Other Possible Misconduct is §1-44
383	225	999	"In 287 of the OMN referrals, there was not a substantiated FADO allegation."	Appendix, CCRB Complaint Data 2018.	Incorrect/improper citation format. The source cannot be locate with the citation provided in the footnote.
384	226	n/a	"The "Other Misconduct" Rule is contained within Subchapter E of the Rules of the CCRB, which applies only to APU prosecutions of Charges and Specifications."	n/a	Misleading that it only applies to APU. There is a definition that states it applies to the investigation as well. It is just mentioned here to specifically say CCRB will not prosecute it, not that OPMNs only arise in the prosecution stage.

385	226	1000	"The PBA objected to the 2018 revision of the OMN rule, claiming that in cases of misconduct other than FADO, CCRB is without jurisdiction or authority: (1) to investigate; or 226 (2) to collect evidence; or (3) to forward evidence to the Department; or (2) to note misconduct in CCRB records. The PBA argued that the new Rule would "allow non-FADO conduct to appear in CCRB proceedings...[and] taint those reports and appear in the permanent record of that officer. The challenge was rebuffed by the lower court on the grounds that "[d]ocumentation affords clarity to both the NYPD and CCRB."	Lynch v. NY City CCRB, 98 N.Y.S.3d 695(Sup Ct NY Cty 2019) (Crane, J.). ("Lynch")	PBA argued against several rule changes in this case.
386	226	1005	"Until January 2022, when Charter amendments took effect, bias-based policing and racial profiling allegations were examples of matters which may be split off from investigation of a stop and frisk complaint and referred to NYPD. However, they were not sent to the full panel first and no reference of profiling is made by the panel. Instead, an immediate spin-off referral is made to IAB without detailing evidence or naming the subject officers."	Memo, Re: Profiled Contact, ██████████, Director of Quality Assurance and Improvement, CCRB, to the Investigations Division, March 28, 2018	Relies on non-public communications between CCRB and NYP.
387	227	n/a	"...IAB interviews of officers, the CPI, Command Disciplines, prior IAB, OCD, FID investigations..."	n/a	This is incorrect and outdated. The only additional information APU used to routinely receive is a Summary of Employment History which is a very brief one page document that will list whether the MOS has received any formal discipline in the past and/or is on probation. With the adoption of the NYPD Discipline Matrix NYPD has now made that document available to the Board for review when determining appropriate penalty recommendations.
388	227	n/a	"It is more likely that APU prosecutors will uncover other misconduct than that which may be discovered during the normal course of a CCRB investigation of minor misconduct. That may explain why the OMN rule was placed in the APU-MOU."	n/a	This is incorrect.
389	227	n/a	"In response to inquiry, the CCRB has indicated that it is not aware of any case where this has occurred."	n/a	This is a misinterpretation of the CCRB's OPMN process.
390	227	1006	"This is a one-way street: in cases of concurrent or split investigations, the NYPD may not forward its P.G. 206-13 (officer interview) to CCRB absent approval by the deputy commissioner for legal affairs, which is rarely given."	PG § 206-13 was moved to AG § 318-11 as of 2/16/22.	Instead of footnote, change to AG 318-11
391	227	1007	"In the case of OMN spinoffs, CCRB's subject matter jurisdictional limitations may result in incomplete examination of misconduct related to one complaint. An obvious question is "What becomes of the misconduct allegation which is spun-off or referred back to the Department?" A misconduct allegation left standing alone - if there is no substantiation of the FADO allegation by CCRB - is referred to one of the investigating units for disposition - IAB, BIU or OCD as the case may be."	In a CAR memo (Case Analysis and Recommendation) made available in the case of PO ██████████, the DAO attorney noted that the officer "has no prior CCRB allegations substantiated against him" but that he had three prior OMN referrals from CCRB but, according to DAO in the memo to the Police Commissioner, "[n]o further information is available." The Department has asserted privilege (attorney-client and deliberative process) as to requests for CAR memos, which are of the essence in trying to understand the underlying facts relied upon by the Police Commissioner in making a final decision. The deliberative process privilege does not apply to "purely factual material." Nat'l Cong. For Puerto Rican Rts., 194 FRD 88, 93 (SDNY 2000).	The last sentence can be used for itself. Cannot find the previous cite.
392	228	1008	"This raises a few questions. Assuming CCRB has a stop complaint under investigation and a camera was not activated as required, or required documents were not prepared, will the OMN referral for BWC misconduct 1008 or Stop Report failure go to DAO? IAB? OCD? Or the precinct?"	Rule changes proposed on May 31, 2022 would permit BWC violations to be investigated by CCRB as an abuse of authority. On January 12, 2023, the NYC PBA filed a lawsuit seeking to bar investigation of BWC violations by CCRB. PBA of the City of NY v NY City CCRB., Index No. 150441/2023 (Sup Ct. NY Cty). The Department joined the union in arguing that BWC non-compliance should not be investigated by CCRB as an abuse of authority. Doc.No. 22 at 7.	Should not be used for this proposition, as source doesn't discuss the referral mentioned.
393	229	n/a	"With increased usage of body worn cameras, the possibility that misconduct will be captured even in the absence of a civilian complaint to CCRB increases as well. The BWC-MOU, signed in November 2019, grants access in a contained viewing room to CCRB investigators when responding to a complaint."	n/a	This never materialized, there is no viewing room. The CCRB still only receives the BWC that NYPD deems relevant to our requests.
394	229	1011	"The BWC-MOU, signed in November 2019, grants access in a contained viewing room to CCRB investigators when responding to a complaint. While looking at the videos, if the investigator "recognizes or believes that he or she has observed potential misconduct ...unrelated to the incident under investigation by the CCRB, the investigator shall refer the incident to the NYPD's Internal Affairs Bureau...[and] not commence an investigation into the unrelated incident."	BWC-MOU paragraph 7(a).	Can be used for this proposition.
395	229	1012	"It is unclear if CCRB will note the referral in "case dispositions by categories describing the possible misconduct and the evidence of misconduct" under OMN referral rule."	38A RCNY 1-44	Not being used for a proposition. Just pointing to the rule.

396	230	n/a	"One example, where the Police Commissioner and CCRB disagreed over jurisdiction, is of a complainant who was pursued by an off-duty Sergeant, in a seeming moment of road rage, in his personal car."	n/a	Citation is needed.
397	230	1013	"Offensive language refers to slurs and derogatory gestures relating to, among other things, a person's race, religion, gender, sexual orientation, or physical disability."	N.Y. CITY CHARTER, ch. 18-A, § 440(c)(1) (2019); see also INVESTIGATIVE MANUAL, supra note 323, at 10, 206-07. The percentage of slur allegations based on offensive racial language decreased each year from 2013 (51.2%) to 2017 (34.7%). 2017 STATISTICAL APPENDIX, supra note 326, at 18 tbl. 5. The next-most common type of offensive language alleged was based on gender (26.6% in 2017) followed by ethnicity (15.5% in 2017). Id.	The city charter cite can be used for this proposition. Investigative manual and statistical appendix can't be found. Patrol Guide section seems to have been moved.
398	230	1017	"As pertinent to this Report, included in this category are street encounters involving wrongful stops, questioning, frisks, searches, and an officer's refusal to identify or non-compliance with the requirements of the Right to Know Act."	NYC Admin. Code § 14-174. Eff. 10/19/2018.	Needs more information for the cite to be useful, unless it's simply pointing to the codification of the Right to Know Act.
399	231	n/a	"38-A RCNY § 1-01 now reads: "Abuse of Authority. The term "Abuse of Authority" refers to misusing police powers. This conduct includes but is not limited to, improper searches, entries, seizures, property damage, refusal to provide identifying information, and intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions."	n/a	This is an incomplete definition. The definition now reads: Abuse of Authority. The term "Abuse of Authority" refers to misusing police powers. This conduct includes, but is not limited to, bias-based policing and racial profiling, improper use of body worn cameras, improper searches, entries, seizures, property damage, refusals to provide identifying information, intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions, and sexual misconduct.
400	231	1020	"The Police Commissioner closed the case administratively and took no disciplinary action, having determined that CCRB did not have jurisdiction in that case."	Vehicle stops accounted for 6% of the allegations received by CCRB in the last semi-annual report. Supra, n.995. See also, Torres v. Madrid, 141 S.Ct. 989 2021), (force used in an attempt to restrain, objectively measured, is a seizure under the 4th Amendment. The Disciplinary Guidelines lists Improper/Wrongful - Stop of a Vehicle" under the Misconduct category of Abuse.	Case can be used for the seizure, but not for the CCRB.
401	231	1021	"Prior to the 2019 Charter referendum, the City Charter made no reference to false statements or false documentation made by an officer in the course of processing a case or during a misconduct investigation. Such arguably could have been considered an abuse of authority and could potentially have been investigated by CCRB in conjunction with a complaint under investigation."	See, Lynch v. NYC CCRB, Index No. 154653/2021, Memorandum of Law in Support of Defendants-Respondents' Verified Answer to The Petition and in Support of Defendants-Respondents' Cross-Motion to Dismiss at 11, citing Memorandum from CCRB's General Counsel, January 2021 ("false official statements "harms civilians, betrays the public trust, and directly implicates CCRB's abuse of authority jurisdiction...")	Citation is needed to original source.
402	233	n/a	"Within the new definition of Abuse of Authority, the Board has acted to include false or missing reports or statements made not only in a CCRB interview, but at any time when it harms a civilian or a civil right."	n/a	<b>The statement "or missing reports" is incorrect.</b> Acts of omission are not included in the CCRBs false statement allegations.
403	233	1028	"The Rule [1-44] was amended, effective March 26, 2021."	CCRB, Board Resolution February, . 14, 2018, effective March 26, 2021, available at: <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/20181402_boardmtg_sexual_misconduct_resolution.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/20181402_boardmtg_sexual_misconduct_resolution.pdf</a> .	The source cannot be used for this proposition.
404	233	1031	"Most SQF cases do not result in Charges and Specifications and are not prosecuted by the APU."	"A review of SQF cases substantiated by CCRB for the 18-month period from January 2018 to June 30, 2019 shows that panels recommended Charges and Specifications for 27 of 176 cases. None of those cases resulted in a trial by prosecuted by APU."	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
405	234	n/a	Section iv. Use of Force - Display of a Firearm	n/a	Relevance to the court's mandate cannot be determined.
406	234	n/a	"It is unclear where "display" or "brandishing" of a firearm when the gun is not aimed at the complainant falls."	n/a	It falls under "Gun Drawn" as Abuse of Authority, not Force.
407	234	1034	"CCRB does not entirely align its force allegations with the four-tier system used by IAB. CCRB subcategorizes force complaints into 18 groupings, from "gun pointed" to "restricted breathing."1034	1034 See, e.g., CCRB, Executive Director's Monthly Report, January 2020 at 45.	Incorrect/improper citation Citation is should be to page 42.
408	235	n/a	"From 2013 through 2017, there were 1,202 allegations accepted by CCRB of cases where, according to the complaint, a gun was improperly pointed, out of a total of 19,687 use of force allegations (6.2 percent)."	n/a	<b>From 2013 through 2017: Outdated</b>
409	235	1035	"Use of Force reports by the Department do not include cases where a gun is pointed or drawn, since the Patrol Guide does not require the filing of a TRI unless the firearm is discharged (Level 4) or used as a hard object against a civilian (Level 2)."	1035 NYPD, Use of Force, available at <a href="https://www1.nyc.gov/site/nypd/stats/reports-analysis/use-of-force.page">https://www1.nyc.gov/site/nypd/stats/reports-analysis/use-of-force.page</a> .	Can be used for defnion of use of force. Cannot be used for patrol guide reference.
410	235	1042	"In another case,1042 an officer chased an 11-year-old boy and a 13-year-old girl who were playing basketball in a park."	PO [REDACTED], Reconsideration Request, CCRB # 201608576, April 7, 2018.	Relies on non-public communications between CCRB and the Monitor.
411	236	1043	"DAO asked CCRB to withdraw the Charges and exonerate the officer, in part on the grounds that, "[t]he Department does not consider the act of an officer merely pointing his firearm to be a Use of Force." CCRB declined the request. The Police Commissioner took the case away from CCRB, and ordered training for the officer."	Provision Two retention, discussed infra.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.

412	236	1044	"In its quarterly Report APU noted...the decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present."	Report of the Administrative Prosecution Unit ("APU") Second Quarter of 2018, March 12, 2019, available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/20190312_APU_2Q18.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/20190312_APU_2Q18.pdf</a> Although CCRB cites the case as one which was "Retained with Discipline," and notwithstanding that APU filed Charges and Specifications, the officer's Disciplinary History online indicates that he "does not have any applicable entries." See Disciplinary History, available at <a href="https://nypdonline.org/link/2">https://nypdonline.org/link/2</a> .	Should cite to Patrol Guide.
413	236	1045	"The Police Commissioner rejected CCRB's disciplinary recommendation in eight of the nine cases, and imposed discipline in none of them."	"Police Officers and There is one case (Captain ), from 2015, where an officer wrongfully stopped, pointed his firearm at, and ordered to the ground, two individuals. A 30-day penalty was imposed."	No source listed to verify this claim.
414	237	1047	"Unfortunately, the Rule was also amended to add a new exclusion, "a superior officer's failure to supervise." This arbitrarily carves out failures to supervise as "outside CCRB's jurisdiction" and strips CCRB of the power to review serious misconduct."	For supervisors and peer officers the Patrol Guide considers "Failure to intervene in the use of excessive force . . . is serious misconduct." Patrol Guide § 221-01.	Can't be used without more information.
415	238	n/a	"It may be, going forward, that CCRB will be permitted to investigate cases where the supervisor physically participated in the misconduct, but it would appear by the language of 1-44 that a CCRB investigator or panel member cannot examine a direct, improper, order by a supervisor ("Go toss that guy.")"	n/a	It has always been the policy of the CCRB to plead allegations against supervising officers if they actively participate in the misconduct, by words or deeds.
416	238	n/a	"Unlike other referrals where the panel notes OMNs and cites evidence, supervisory failures will not be documented by CCRB."	n/a	This is incorrect. CCRB routinely makes Failure to Supervise OPMNs and they are reviewed by the Board and then sent to NYPD.
417	238	1055	"Unlike other referrals where the panel notes OMNs and cites evidence, supervisory failures will not be documented by CCRB. If the Rule follows previous practice, there will not be vote by a panel, there will not be a notation by CCRB, and there will not be a detailing of the evidence passed on to NYPD by CCRB. "	NYPD has, in recent years, adopted a policy of reporting back to CCRB the outcome of a profiling referral sent to IAB. Since none were substantiated, the report back would not be especially informative. At a minimum, going forward, IAB should report the outcome of referrals in failure to supervise cases. A good example might be the investigation into CCRB complaint # [REDACTED]. There, during a protest on [REDACTED] 2020, PO was found to have struck a reporter with his baton and to have been untruthful during the investigation. The reporter was wrongfully arrested and given a summons. PO was on the scene with a supervising officer, Lt. who was alleged to have been present and spoken discourteously (cursed) at the reporter at the same time. Based on a video with "no...ambiguity" the CCRB investigator recommended that Lt. be charged with discourtesy. The panel unsubstantiated the discourtesy allegation against Lt. but referred an OMN allegation of failure to supervise against him. It is unknown what ensued within the Department with that referral, but Lt. was separately found to have wrongfully used force, himself, on the same day.	Do not have access to this source.
418	239	1057	"The PBA challenged the move claiming it was, in effect, a Rule change not a policy change, that would require public notice and comment under the City Administrative Procedure Act (CAPA)."	1057 City Charter § 1041 (5).	The footnote points to the definition of "rule."
419	239	1061	"Notably, the Appellate Division did not hold that sexual misconduct cannot be included in the definition of abuse of authority. Without reaching the merits of that issue, it held the Resolution to be a nullity on procedural grounds. The holding was that CCRB "did not follow the public vetting process required by CAPA."	1061 Lynch, at 3190.	The quote is in the App Div cite above, but 3190 does not appear in the cite.
420	239	1062	"CCRB in February 2021 adopted the necessary Rule change and sexual misconduct may now be investigated."	1062 Miscellaneous Rule Amendments, 2020 RG 068, effective March 26, 2021.	Do not have access to this source.
421	240	1064	"The Sexual Misconduct rule is confined to allegations by "a civilian against a member of the Police Department."	1064 Proposed Rule § 1-01.	Can't be used for this proposition, as it's a proposed, not actual rule, unless the rule has since been adopted.
422	240	1065	"Presumably that is limited to misconduct by Uniformed Members of the Service and would not include other Members of the Service."	1065 Patrol Guide § 207-31. "Complaints made against civilian members of the service...will be directed to the Internal Affairs Bureau for screening...." One exception is the case where a MOS is the victim of a discriminatory slur by another officer. In that case, the complaint is registered with CCRB, but then forwarded to the Equal Employment Opportunity Division of NYPD for investigation. A bias complaint may also be filed with CCHR.	The quoted text appears in 207-28, but not in 207-31.



423	240	1066	"Since complaints between Departmental employees are not typically processed by CCRB, one can also assume that "civilian" in this context means someone other than Members of the Service and is not limited to someone who is not a Uniformed Member."	Patrol Guide § 207-31. "A member of the service may prefer a civilian complaint against another member of the service. Investigation of such complaint will be conducted by the commanding officer(s) assigned by the Commanding Officer, Investigation Review Section, Office of the Chief of Department. Whenever a member of the service is a victim of disparaging remarks relative to his/her ethnicity, race, religion, gender, or sexual orientation, made by another member of the service, he/she may register a complaint with the Civilian Complaint Review Board. The Civilian Complaint Review Board will record the complaint and forward a summary of the allegation to the Equal Employment Opportunity Division for Investigation."	Quoted text appears in 207-28, but can't be used to make this assumption.
424	240	1070	"On the other hand, with the Guidelines, Discourtesy carries a presumptive penalty of five days and Offensive Language carries a presumptive penalty of 20 penalty days."	1070 Within the proposed NYPD Disciplinary Matrix supra, note 41, at 22, defines Discourtesy as "foul language, acting in a rude or unprofessional manner (such as demeanor or tone), and flashing rude or offensive gestures." FN 42 declares that "Offensive language is more serious conduct than discourtesy and includes slurs based on membership in a protected class such as race, religion, ethnicity, gender, gender identity, sexual orientation, age, or disability."	Could be more precise about penalties. Definition of discourtesy is found on page 26.
425	241	1071	"Of interest is the number of cases where CCRB substantiates an SQF violation and, at the same time, substantiates either a discourtesy or slur allegation. 2019: One racial slur allegation"	"The officer retired and the case was administratively closed."	Relies on non-public communications between NYPD and the Monitor.
426	242	n/a	"It is worth asking whether or why any jurisdictional limits are required when a citizen complains of improper police conduct by an on-duty officer. Other than political considerations, why do the Charter, or MOUs, or Rules, even attempt to limit oversight of public misconduct? If a civilian complains of misconduct by an officer that injures the civilian while the officer was "on the job," why place any offenses out of CCRB's power to review?"	n/a	The report skips assessment of whether the CCRB is able to effectively manage the matters that are within its jurisdiction.
427	242	1073	"Corruption investigations are probably best left to IAB, but they are relatively small in number and could easily be excluded."	"IAB substantiated 58 corruption cases in 2019. False statement cases are included in that count as a "C" case."	Relies on non-public communications between NYPD and the Monitor.
428	243	1075	"CCRB's ability to investigate a complaint is limited if the complaint is delayed or if the investigation is prolonged. There are two deadlines. The first deadline is a discretionary one, set by CCRB rules."	38-A RCNY 1-15 (b).	If the deadlines pass, the chair and the executive director make the decision whether to investigate. So, it's less "limited" than it is a different procedure must be followed.
429	243	1078	"The subject officer need not be convicted, or even charged, with a crime. It is sufficient to avoid the statute if the conduct could constitute a crime if proved."	Rea v. City of Kingston, 110 A.D.3d 1227 (3rd Dep't 2013).	In this case, there were more factors than just "the conduct could constitute a crime."
430	243	1079	"The extension permitted by this provision has been, on occasion, broadly interpreted. In one case, an officer used false pretenses to trick the owner of a broken-down vehicle into giving him title."	Mieles v Safir, 272 AD2d 199 (1st Dept. 2000).	This case doesn't provide an example of "broadly construed."
431	243	1080	"Although not criminally charged, the officer was disciplined after expiration of the statute of limitations on the ground that he could have been charged with official misconduct under the penal law."	Penal Law § 195.00 (1) ("A public servant is guilty of official misconduct when, with intent to	The hearing transcript or decision would have been a better source.
432	244	1081	"At the same time, the ADCT found CCRB failed to prove intentional strangulation as defined in the Penal Law and, accordingly, dismissed the second charge as untimely before reaching the merits of the Patrol Guide violation."	CCRB exonerated ██████ on an allegation of improper threat of summons and unsubstantiated an allegation of discourtesy. Presumably those allegations were untimely as well.	<b>ADCT:</b> Rosemarie Maldonado is the Deputy Commissioner of Trials, not an Assistant. This abbreviation should be DCT. <u>Citation is needed for case cited in footnote</u>
433	244	1083	"As well, the statutory clock starts to run at completion of the misconduct. Thus, in the case of a continuing crime, such as concealing evidence or impeding an investigation, the 18-month clock is tolled until "all relevant alleged acts were completed...."	1083 Id.	quote is not in cited document.
434	245	1086	"At one time, the Department had pursued a legislative proposal to amend CSL§ 75 to extend the Statute of Limitations for the discipline of non-criminal misconduct from 18 months to 3 years. The proposal was supported by CCPC, 1086 but apparently never gained traction and has not appeared as an agenda item for NYPD in more recent years."	1086 CCPC, Second Annual Report of the Commission, October 1997 at 10, available at <a href="https://www1.nyc.gov/assets/ccpc/downloads/pdf/Second-Annual-Report-of-the-Commission.pdf">https://www1.nyc.gov/assets/ccpc/downloads/pdf/Second-Annual-Report-of-the-Commission.pdf</a> .	First part is correct. Second sentence is not supported by cite.
435	245	1088	"Not many cases are actually dismissed due to the SOL. In 2018-2019 only four cases were dismissed for that reason."	NYPD SQFSTA Matrix as of 12/31/2021.	Relies on non-public communications between NYPD and the Monitor.
436	245	1090	"However, there are cases where discipline is reduced, pled out, charges are not filed or officers separate from the Department, while filing charges without adjudication, if the SOL dismissal date is near."	1090 Officers facing disciplinary charges sometimes "separate" from the Department through termination (rare), resignation, retirement, or termination by operation of law (i.e., they are convicted of certain crimes which automatically terminate employment as a public officer. NY Public Officer's Law § 301 (e)). Retirement may be full retirement after 20 years of service or a reduced benefit for vested service below 20 years.	Citation is needed for information in footnote.

437	245	1091	"In a recent analysis by the Legal Aid Society, 346 complaints in 2022 were dismissed due to want of timeliness. 45 of the dismissed cases contained a substantiated SQF allegation. This seems to be a result of delayed findings by CCRB coupled with the Police Commissioner's decision to let the SOL expire for many cases where the findings were presented to the Police Commissioner in the final weeks or months of the allotted time."	1091 Letter, The Legal Aid Society to Mayor Eric Adams, 3/15/2023. On file with the Monitor.	Relies on non-public communications between Legal Aid Society and the Monitor.
438	246	1092	"If the SOL cutoff is near, NYPD will draw up Charges and Specifications, rather than wait for CCRB, in anticipation of a possible declination."	"(Phone conversation with ██████████, Executive Director, CCRB August 7, 2020)"	Relies on non-public conversation between CCRB and the Monitor.
439	246	n/a	"If the SOL cutoff is near, NYPD will draw up Charges and Specifications, rather than wait for CCRB, in anticipation of a possible declination. In the end, the SOL has impact on case resolutions as they are delayed, truncated or closed pending litigation, and then result in avoidance of meaningful discipline merely because the clock has run out."	n/a	The report considers the recent statute of limitations and case delay issues that have also been raised in front of the City Council and in correspondence about the CCRB. But neither the comparative ineffectiveness of APU as compared to DAO, nor the fact that CCRB take significantly longer to process the small number of cases it currently handles as compared to DAO, leads the report to question the effectiveness of the CCRB. Of the large number of statute of limitations declinations, the Monitor wonders whether it could be the result of the new PC, or application of the new Matrix, or some other ambiguous systemic failure.  The report does not discuss the issue of long CCRB investigative timeframes and the companion backlog of cases has been discussed and addressed with CCRB on countless occasions dating back to the fall of 2021. As the flow of cases increased, and the timeframes for the Department to process these cases became smaller, DAO worked with the CCRB to try to alleviate this issue. The Department initially informed the CCRB that it would need 120 days to process its recommendations and impose discipline. This timeframe was relaxed to 30 days after assurances that the CCRB backlog was a temporary one, and that CCRB was working to implement stronger case management. Still, the CCRB provided cases just days or weeks before the expiration of the statute of limitations, and sometimes after. Consider this, an officer has substantiated allegation on her record on a case that cannot be contested because the statute of limitations had already expired.
440	246	n/a	"If the SOL cutoff is near, NYPD will draw up Charges and Specifications, rather than wait for CCRB, in anticipation of a possible declination."	n/a	CCRB doesn't think this is true.
441	246	n/a	"Delay may be caused by any number of factors, some to accommodate witnesses and officers, some to process and investigate the case within CCRB and some to preparation for trial or evaluation by DAO and the Police Commissioner."	n/a	<b>some to preparation for trial or evaluation by DAO and the Police Commissioner.:</b> These have no effect on discipline as the SOL clock stops as soon as the MOS is served with charges and specs. Trial prep occurs outside of SOL time constraints.
442	246	1093	"In the end, the SOL has impact on case resolutions as they are delayed, truncated or closed pending litigation, and then result in avoidance of meaningful discipline merely because the clock has run out."	See, e.g., Sgt. who faced Charges for an unlawful frisk, along with allegations of improper force, whose "penalty" was reduced to loss of 3 vacation days rather than a trial due to an impending closing date.	Citation is needed for information in footnote.
443	246	1094	"In a response to a recent data request for the status of cases with a substantiated SQF allegation in 2021, of 46 cases listed in the matrix supplied by the Department, seven of 46 cases were listed as "closed administratively" by reason of "Short SOL.""	SQF received DAO 2021 matrix (on file with Monitor Team).	Relies on non-public communications between NYPD and the Monitor.
444	246	1096	"Sgt. ██████████, along with Officers ██████████ and ██████████ were on duty in the Bronx on August 5, 2016."	Sgt. ██████████ was promoted to Lieutenant on 6/10/21. The fact of promotion in this case and other examples contained herein is listed in light of current litigation pending, a class action regarding NYPD's response to BLM protests, before J. Colleen McMahon. ( <i>In re: New York City Policing During Summer 2020 Demonstrations</i> , 1:20-cv-8924 [SDNY], Doc No. 798 (12/27/2022)). There, plaintiffs have advanced a "fail upward" theory - claiming "numerous instances" where NYPD is alleged to have ignored CCRB disciplinary recommendations only to have "ultimately rewarded with career benefits" the "worst kind of abusers. ." Without opining one way or the other on the validity of the theory presently before J. McMahon, note is taken and the course of the litigation should be tracked.	The cited letter was written to the court about the case of disciplined officers "failing upward." It is relevant, but does not tend to show Sgt. was promoted. It should be in the body of the paper.
445	247	n/a	"The ensuing saga is too extended to repeat, but in essence, JL claims he was wrongly arrested, falsely charged, and held for 23 hours, the District Attorney declined prosecution, he was re-arrested and given a DAT, and his recording equipment was confiscated, with some of it returned later but with recordings deleted."	n/a	Citation is needed.
446	247	1097	"Sgt. ██████████ and PO ██████████ interviewed by IAB on 11/14/17."	██████████ filed a false statement complaint against ██████████ and ██████████. The allegations were unsubstantiated.	Citation is needed for information in footnote.

447	248	1099	"In all, in a relatively short three-year period coinciding with the pending charges and litigation in this case, it is remarkable to note that the three officers, frequently working together and occasionally charged together, compiled an aggregate 12 CCRB complaints (not counting the older cases) and 15 lawsuits."	As noted, one filing was a suit against both [redacted] and [redacted], another filing was a suit against [redacted] and [redacted].	Source needed.
448	249	n/a	"They assert it is the cause of a higher level of truncations for cases initiated at the precinct as opposed to those made directly with CCRB."	n/a	Citation is needed.
449	250	1104		"If the Statute of Limitations cutoff is near, NYPD will draw up Charges and Specifications in readiness for a possible declination". (Phone conversation with Jonathon Darche, Executive Director, CCRB August 7, 2020).	CCRB is not sure this is correct. This is outdated. Also, relies on non-public communications between CCRB and the Monitor.
450	250	n/a	"In 2018, the average time to first civilian interview was 19 days and the first officer interview took place on average, 75 days after the complaint was received."	n/a	This is outdated.
451	250	n/a	"CCRB and NYPD have adopted a policy, not necessarily required by law, whereby the entire length of the time that CCRB investigates, a panel reviews and considers a complaint, and until NYPD serves notice with fully drafted specifications, is considered "pre-commencement."	n/a	Citation is need for the "policy"/agreement.
452	250	1103	"Even then, the clock continues to run while the officer, after consultation with an advisor, contemplates whether to accept the CD. If the officer declines the CD, 1103 i.e., the officer wishes to contest the findings, then Charges and Specifications are drafted and served on the officer."	1103 Patrol Guide 206-02. An officer may refuse to accept a CD finding and request formal charges.	There is currently no Patrol Guide 206-02. There is no access to the second source.
453	250	1105	For formal discipline, the Statute of Limitations "clock" begins to run at the time of the occurrence of the alleged misconduct and is "stopped" at commencement. After a panel has approved Charges, the APU unit will draft the Specifications and forward them to NYPD to serve the officer. A proceeding "commences" at time of service 1105 of the Charges and Specifications.	1105 Mikoleski v. Bratton, 249 A.D.2d 83,84 (1st Dept 1998).	Case can be used for the "commences at time of service."
454	251	1108	"If the officer declines the CD, i.e. the officer wishes to contest the findings, then Charges and Specifications are drafted and served on the officer."	"If the Statute of Limitations cutoff is near, NYPD will draw up Charges and Specifications in readiness for a possible declination. (Phone conversation with Jonathon Darche, Executive Director, CCRB August 7, 2020)."	Relies on non-public conversation between CCRB and the Monitor.
455	251	1111	"There is no indication that a substantial number of cases were lost to the Statute of Limitations on account of delayed service by NYPD, but the approaching deadline can be a factor in the final disposition."	"One study of 120 closed use of force investigations by the OIG-NYPD found that five of them had been dismissed where the Statute of Limitations expired before discipline could be imposed." NYC Department of Investigation, Office of the Inspector General for the NYPD, Police Use of Force in New York City, , October 1, 2015 at 45, available at <a href="https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf">https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf</a> .	How can that be so if the clock has stopped upon service and discipline/final disposition is only imposed after a plea or trial which commences post-service?
456	252	n/a	"A study by CCPC of 1,395 disciplinary cases adjudicated between October 2014 and August 2016 found the average delay from day of incident to service and filing of charges was 256 days for DAO and 458 days for APU. For cases that went to trial, DAO on average took 339 days before serving charges, measured from day of incident to date of service, and APU took 455 days. For cases that ended with a plea, DAO on average took 232 from date of incident to filing of charges, while APU took 474 days. 1113 In sum, prosecutions, and especially pleas, by APU take considerably longer from day of incident to service and formal accusation."	n/a	This is outdated.
457	252	n/a	"CCPC's review of a large sample of closed disciplinary cases (513), spanning October 2016 through September 2018, found that the average "Investigative Period" was 8.18 months and the average "Adjudication Period" was 14.36 months for an overall processing period of 22.94 months. 363 of the 513 cases sampled were prosecuted by DAO. For those cases, the average Investigative Period was 7.37 months. The average Adjudication Period was 12.31 months. The overall processing period was 20.11 months. 150 of the 513 cases sampled were prosecuted by APU-CCRB. For those cases, the average Investigative Period was 10.1 months. The average Adjudication Period was 19.27 months. The overall processing period was 29.8 months."	n/a	This is outdated.
458	252	1113	"For cases that went to trial, DAO on average took 339 days before serving charges, measured from day of incident to date of service, and APU took 455 days. For cases that ended with a plea, DAO on average took 232 from date of incident to filing of charges, while APU took 474 days."	CCPC, Eighteenth Annual Report of the Commission, August 2017, available at <a href="https://www1.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf">https://www1.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf</a> .. The bulk of the delay for DAO can be attributed to the average length of investigation by IAB. It is not possible to make a one-to-one comparison, given the nature of the reports, but CCPC found that the average investigation length in those years ranged from 10 to 13 months. CCPC Nineteenth Annual Report of the Commission., at 18, available at <a href="https://www1.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf">https://www1.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf</a> ..	Neither linked document can be used for this proposition.
459	253	n/a	"The reconsideration process, however, has not been used by the NYPD since 2020."	n/a	This is rarely been used. There have been 2-3 cases in the last 12 months or so.

460	253	1115	"Differences in timeliness between CCRB and DAO could be ascribed to a number of factors: (i) the time it takes to present a case to a Board panel and await a panel decision; (ii) CCRB cases...(vi) subject officers may appreciate the reality that a plea offer from DAO is less likely to be undercut by the Police Commissioner, while realizing that an appeal to the Police Commissioner following an APU negotiation may be more fruitful, giving them a second bite at the apple;"	"In 2018-2020, the Police Commissioner reduced or set aside 18 out of 43 pleas which had been agreed to by the of+F464ficer, APU and DCT."	Citation is needed.
461	253	1116	"Differences in timeliness between CCRB and DAO could be ascribed to a number of factors:...(vii) the reconsideration process;"	"CCRB attributed the lengthy delays in 2016 to "an increase in the number of cases where the Department requested reconsideration...." CCRB, Report on the Administrative Prosecution Unit, Second and Third Quarters 2019, at 10, available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/20200605_APU_2Q-3Q19.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/20200605_APU_2Q-3Q19.pdf</a> .	Cite can't be used for this proposition.
462	253	1117	"For stop and frisk cases, reconsideration requests by DAO are rarely successful. In SQF cases overall, in years 2017-2019, DAO requested reconsideration in 40 cases. Reconsideration was denied or there was no change by CCRB in all but five. In 12 of the 40 cases DAO requested reconsideration where the Board had substantiated Charges. Only one was granted."	CCRB # [REDACTED] . Det. [REDACTED] .	Relies on non-public communications between CCRB/NYPD and the Monitor.
463	253	1118	"Processing delay is a serious concern for all involved – officers, victims, and the public at large. Whether it's budget, access to information, witness reluctance or simple bureaucratic indifference, the problem with timeliness is recognized by the Department and CCRB as a priority, 1118 but success seems elusive."	"Improve the quality and timeliness of investigations" is listed as the number 1 goal by CCRB in its FY 2021 Mayor's Management Report.	Can be used for this proposition.
464	254	1119	"In 2017, 88 percent of CCRB's docket were cases that were less than five months old. That dropped to 76 percent in 2018 and dropped further to 68 percent in 2019 and 2020."	CCRB Executive Director's Monthly Reports for December 2017, available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2017/20171213_monthlystats.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2017/20171213_monthlystats.pdf</a> , et seq.	The first number (88%) is confirmed by the first source.
465	254	1121	"In particular, in order to prepare for trial, APU prosecutors need CORD reports, SEH reports, 1122 and DCS reports."	"Commanding Officers Report on Members facing discipline."	Relies on non-public communications between NYPD and the Monitor.
466	254	1124	"At that time (December 2020) there were another 14 cases where a plea had been proposed or a verdict rendered and the parties were awaiting a decision by the Police Commissioner as to how they could proceed."	Executive Director's Monthly Report, January 2021, supra. note ---at 48.	Incorrect/improper citation. Citation should be to page 49.
467	255	1127	"If the recipient of a subpoena fails to comply, a court order, pursuant to CPLR 2308, is required to enforce the subpoena. Unfortunately, a Richmond County Supreme Court Justice ruled in 2019 that the Charter did not give the Board the "capacity to sue" to enforce a subpoena."	CCRB v. Office of the District Attorney, 63 Misc. 3d 530 (Sup. Ct. Richmond Cty. 2019) (Garnett, JSC).	The case cannot be used for this proposition. Petitioner was suing to release grand jury minutes.
468	255	1132	"In seeking direct access to section 50-h transcripts, CCRB argued that, as a sister public agency to the Comptroller, the Board did not need to apply to a court, on notice to the parties, with a demonstration of individualized "good cause" in order to inspect the transcripts when relevant."	The Law Department has access to 50-h transcripts. It is unclear if, in the course of preparing a case, the Corporation Counsel shares the transcripts with IAB investigators.	Citation is needed.
469	255	1129	"Another lower court, in an application by CCRB for a declaratory judgment granting access to GML section 50-h transcripts held by the City Comptroller, 1128 ruled that CCRB did have capacity to sue for declaratory or injunctive relief."	The issue here, in praxis, was delay and cost more than availability, since the Comptroller's Office has never opposed an application by CCRB" to obtain the transcripts. Petitioner's Memorandum in Support, Index No. 452358/2015, NYSCEF Doc. No. at 11.	The Memo in Supprt cannot be used.
470	256	1137	"The Board, in the eyes of the court, was advisory to NYPD and could request the Department's assistance in obtaining documents,..."	1137 NYC Admin. Code § 14-137 (a).	Probably would edit out "advisory to NYPD," or at least not use this cite for this proposition by itself.
471	256	1139	"In general, subpoenas necessary to an investigation may now be issued as administrative subpoenas, and, if denied, enforced by way of court proceedings, under CPLR Article 23."	1139 However, it may be that GML § 50-h transcripts, if not made available by the Comptroller, will continue to require an application to a court and a showing of good cause or complainant's consent, but for the moment CCRB should have the same access as any other City agency. CCRB v. Office of the Comptroller, 52 Misc.3d 226, 227 (Sup. Ct. N.Y. Ctny. 2016) (d'Auguste, JSC).	Footnote should be in body of document.
472	257	n/a	"Convening a quorum and obtaining a vote of the full Commission for every subpoena is impractical."	n/a	CCRB is not a Commission. It is a Board.
473	257	1140	"In addition, before amendment, the Charter required a majority vote of the full Board to approve issuance of a subpoena."	Letter, Fred Davie, Chair, CCRB to NYC Charter Revision Commission, May 23,2018.	Relies on non-public communications between CCRB and the NYC Charter Revision Commission.
474	257	1141	"In the month of April 2018 alone, CCRB issued 179 subpoenas..."	CCRB RULES, supra note 332, at § 1-23(d) ("Upon a majority vote of the members of the Full Board, subpoenas ad testificandum and deuces tecum may be issued and served."); N.Y. CITY CHARTER, ch. 18-A, § 440(c)(3) (2019) ("The board, by majority vote of its members, may compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of complaints submitted").	The footnote cannot be used for this proposition.

475	257	1143	"...the problem in the past was that NYPD used administrative subpoenas for criminal investigations, thereby wrongly circumventing the Criminal Procedure Law."	People v. Ayodele, 2012 NY Misc LEXIS 6651 (Sup Ct Queens County 2012) rev'd on other grounds, 116 A.D.3d 706 (2d Dep't 2014). "[T]he commissioner's subpoena powers are limited to administrative issues that directly affect the Police Department and cannot extend to those given the District Attorney." (Citations omitted).	A single case can't be used to assert a general principle.
476	257	1144	"The same abusive practice should not arise with use of subpoena power by CCRB. Just as NYPD may continue to obtain administrative subpoenas in aid of a disciplinary proceeding after application to the Deputy Commissioner of Trials and upon a showing of need, balanced by a consideration of resources and the complexity of the case."	1144 Irizarry v. NYPD, 260 A.D.2d 269 (1st Dep't 1999); 38 RCNY 15-03 (f)(2).	Complexity is not a factor listed in the cited case.
477	258	1146	"CCRB investigators cannot receive information directly from the precinct or other investigative units."	1146 Patrol Guide 207-31. (Now AG § 207-28). "Any request for Department records made by representatives of the Civilian Complaint Review Board will be referred to the Internal Affairs Bureau, Civilian Complaint Review Board Liaison, for necessary attention. Department records will not be forwarded direct to the Civilian Complaint Review Board."	Found in PG 207-28 (5/10/22)
478	258	1147	"Typical CCRB requests from the NYPD include, among other things, arrest reports, radio-dispatch communications, command logs, officers' memo books, stop reports, BWC and video footage, 911 reports, and investigative records from the IAB and the FID."	See, e.g., Senior Counsel, CCRB, CCRB 101 Presentation, at Rqst 6 pg29, in CCRB, Response to Federal Monitor's Request Number Six (document compilation that is the first enclosure in the CCRB's first response, dated July 17, 2018, to the Federal Monitor's request for CCRB documents; on file with author).	Relies on non-public communications between CCRB and the Monitor.
479	258	1148	"IAB personnel can also assist in identifying subject officers when the complainant is unable to identify the officers in the complaint."	See INVESTIGATIVE MANUAL, supra note ---, at 212 (explaining that "[i]n certain cases, the Chief of Investigation will also act as a liaison between the CCRB and IAB commanders to expedite requests for New York City Police Department records"); id. at 61 (explaining that "the IAB Liaison Unit" will sometimes help investigators obtain the identity of officers).	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
480	259	n/a	"A recent example of concurrent investigations leading to conflicting results is the case of PO [REDACTED]."	n/a	Citation is needed.
481	259	1149	"It was reported to the Monitor Team that, since May 2018, the NYPD disclosure of their files has become more restrictive than the Patrol Guide provisions, with the NYPD declining to provide additional categories of records (for example, Domain Awareness System ("DAS") snapshots, which reflect the data officers are aware of at the time of stops) and redacting additional content within records (for example, redacting threat resistance injury reports entirely, and redacting everything but complainants' arrest stamps in command logs)."	Interview with , Chief of Investigations, CCRB (DATE) [Based on "NYPD refusal to share with CCRB.pdf" file]	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
482	259	1151	"The Police Commissioner rejected the findings of CCRB. Based upon "a thorough review of this incident...conducted independently by the Department" and upon her "being shown the video evidence" the Police Commissioner dismissed the recommended B-CD with an NDA/DUP."	Police Commissioner Departure Letter, CCRB Case # [REDACTED].	The letter states [REDACTED] corrected his account after "being shown" video evidence during the interview.
483	260	n/a	"Beginning in 2018, under the claim of CPL 160.50 (sealed cases) and Family Court Act 381.3 (Juvenile Records) compliance, IAB redacted identifying information in documents which had been sealed or which might become sealed...As well, IAB began editing and redacting BWC footage if there was a possibility of a sealed arrest or a juvenile arrest."	n/a	These redactions, if any, are made by the Legal Bureau and not IAB.
484	260	1153	"In interviews by the Monitor Team with CCRB staff, the point was made that, on not infrequent occasion, a request for information by a CCRB investigator is met with a demand to identify the specific complaint being investigated and to particularize the need for the file."	Monitor Team Interviews with CCRB staff, July 24, 2018 and September 17, 2019.	Relies on non-public communications between CCRB and the Monitor.
485	261	1155	"At Chair Davies' request, that provision was amended as follows, It shall be the duty of the police department to provide such assistance as the board may reasonably request, to cooperate fully with investigations by the board, and to provide to the board upon request records and other materials which are necessary for investigations undertaken pursuant to this section except such records or materials that cannot be disclosed by law."	1155 Id. Effective 3/31/20. (New matter underlined. Deleted matter bracketed.)	Relies on non-public communications
486	262	n/a	"According to investigative staff at CCRB, this seemingly innocuous caution, on occasion, becomes a barrier to access and cause for denial or delay in obtaining material from the Department when the liaison officer questions the need for records sought by a CCRB investigator."	n/a	"According to investigative staff at CCRB": This is not appropriate reference.
487	262	1159	"Similarly, the Department of Investigation is awarded "full cooperation" in investigations, without limitation. Any attempt to "prevent, interfere with, obstruct, or otherwise hinder any study of investigation...shall constitute cause for suspension or removal from office or employment."	1159 NY City Charter § 1128.	This chapter governs the Department of Information Technology and Telecommunications. The chapter governing the Department of Investigation starts at section 801.

488	263	1160	"If a panel voted to substantiate charges and formal discipline, the APU would receive the Summary of Employment History (SHE) of the officer which included any prior substantiated Charges, Dismissal Probations, and B-CDs."	Email, Dep. Commissioner to Monitor Team, 3/18/21. C-CDs could also be included but, as a practical matter, they are so rare as to be not worth listing.	Relies on non-public communications between NYPD and the Monitor.
489	263	1162	"Limited access was accomplished by mutual, unwritten, agreement. This was unfortunate given that a history of prior OMN, M, C, OG and even FADO A-CDs."	As discussed previously, a substantial number of FADO allegations are investigated within the Department and without CCRB involvement.	Relies on non-public communications between NYPD and the Monitor.
490	264	n/a	"As discussed later in this Report, adjustments are being worked through."	n/a	The SEH is now requested by investigators whenever a case is closed with at least one substantiated allegation. It is provided to the board during case deliberations so the panel members can make an appropriate penalty recommendation consistent with the Matrix.
491	264	n/a	"In both substantiated cases, CCRB recommended, and the Police Commissioner accepted, a disposition of Training."	n/a	Citation is needed.
492	265	1165	"Unavailability of the full disciplinary history of officers was raised at a recent public CCRB meeting by a Board Member, who complained that lack of access to NYPD disciplinary history interferes with panel decision-making."	Board Member Erica Bond, CCRB public meeting, 12/09/2020.	This is outdated.
493	265	1164	"Another was in 2016, shortly after the 2016 finding. Both sessions, as listed in his Officer Profile, were simply a viewing of the same video: "Terry Stops and Reasonable Suspicion.""	The video had the same title. While it is possible that the video was updated in the interval between screenings. here is no indication of such in the Officer Profile.	Citation is needed.
494	266	n/a	"At this point in time, it is too early to know if the MOU provision is intended to obviate the Patrol Guide restrictions on access to meaningful employment histories."	n/a	The only thing the Board receives is a SEH, there is no additional, more meaningful information other than what had been provided to APU now being provided at a slightly earlier stage in the process.
495	267	n/a	Section L: Access to Files Sealed by CPL 160.50	n/a	Should include the Wayne Isaacs case in this discussion. We filed the unsealing motion in October 2021 and are still litigating the issue. We won in the trial court Isaacs appealed to the 2nd department. Appeal is still pending
496	267	1172	"It is widely recognized that a vast number of arrests result in dismissal or, in the words of CPL §160.50, the accused receives a "favorable termination."	Discovery in the R.C. case showed that the Domain Awareness System (DAS) installed on phones with Microsoft K, contain 6,908,699 sealed arrest reports of 3,576,113 individuals as of 11/20/19 – "The NYPD Can See Millions of Arrest Records That Were Supposed to be Sealed" Huff Post 7/27/20 <a href="https://www.huffpost.com/entry/nypd-police-sealed-records_n_5f1add79c5b6296fb417b71?ncid=newstushpmsgnews">https://www.huffpost.com/entry/nypd-police-sealed-records_n_5f1add79c5b6296fb417b71?ncid=newstushpmsgnews</a> .	Court filing could've been used, which were mentioned in the article.
497	267	1174	"In the normal course, aside from records kept at the precinct of arrest, entries of sealed events will be kept on a central digitized report that compiles various documents into one easily accessible and readable document, an ENTITY - EXTENDED REPORT in the Domain Awareness System. It combines ICADs prepared at the precinct, complaint reports, and interviews by the Criminal Justice Agency (CJA)"	Notwithstanding an assertion of the Miranda right to remain silent or a request to see an attorney, arrestees are required to answer personal questions put by a CJA interviewer before counsel is assigned if they want the agency to make a bail/release recommendation to the court. A refusal to answer personal questions can be cause for a prosecutor to recommend or a court to order confinement without bail.	Citation is needed.
498	268	1182	"Further exacerbating difficulties that CCRB has in obtaining information necessary to an investigation, the Department of Law has taken the position in R.C. that NYPD should be permitted to look at sealed records when making disciplinary decisions, but at the same time, opposes availability of sealed records to CCRB."	Letter/Correspondence to Judge. NYSCEF Doc No. 273 at 3.	This document discusses permissions given or suggested by the court.
499	269	1186	"The Court of Appeals has recognized exceptions to CPL §160.50 in the case of attorney disciplinary proceedings..."	1186 Matter of Dondi, 63 N.Y.2d 331 (1984).	It should not be used for this proposition.
500	269	1187	"...and in the case of judicial disciplinary proceedings."	1187 Matter of NYS Commission on Judicial Conduct v. Rubenstein, 23 N.Y.3d 570 (2014).	...if they are reasonably related to the inquiry.
501	270	1191	"To be sure, the statute creates a permissible private right of action to guard against the "risk of public disclosure."1191	1191 Lino v. City of New York, 101 A.D.3d 552 (1st Dep't 2012) (emphasis in the original).	"...prior to an actual unlawful disclosure."
502	270	1192	But CCRB and IAB investigations are internal personnel actions which prevent public disclosure.1192	1192 Hughes, Hubbard & Reed v. CCRB, 171 A.D.3d 1064 (2d Dep't 2019).	IAB is not mentioned in this case.
503	270	1193	"The only exception should be in the rare case where the officer who is the subject of the misconduct investigation is also the same person who was criminally charged and subsequently acquitted. In that case, the Department is not entitled to unseal the criminal court record."	1193 NYS Police v. Charles Q, 85 N.Y.2d 571 (1995).	Incorrect/improper citation format. Case is Charles Q., Appellant, v. Thomas A. Constantine, as Superintendent of the New York State Police. Also, case cannot be used for this proposition.
504	271	n/a	"When asked,..."	n/a	Sentence was not completed. After <i>asked</i> , there is a new paragraph
505	271	1195	"Unfortunately, the Court in R.C. v. City of NY rejected the City's argument by reference to Lino (a case where arrestees with favorable terminations faced a risk of stigma) and Charles Q. (a case where the officer sought to protect himself from stigma and adverse consequences following an acquittal)."	1195 R.C. v. City of New York, 64 Misc.3d 368, 375–76 (Sup Ct, NY Cty, 2019).	The court referenced far more than just these two cases.
506	271	1196	The Court invoked the "clear language" of the statute, while, in fact the statute does not directly address this situation, as reason to avoid looking at the statute's history and purpose – to protect against adverse consequences which might be visited upon an arrestee1196.	Id. at 375.	The court was referring to prior or contemporaneous legislation in this section.

507	271	1197	"In response to the City's motion to dismiss on the grounds that internal use of sealed matters was necessary for disciplinary investigations, Plaintiff's argued, [M]ost of Defendants' hypotheticals [citing a need for use in disciplinary proceedings] concern the use of sealed records in the context of public safety or internal officer discipline matters that have nothing to do with the use of sealed records in the course of routine investigations at issue here. The issue on this motion is the internal use and disclosure of sealed records, which results in the stigmatization and further scrutiny of individuals whose records should be sealed."	Index No. 153739/2018, NYSCEF Doc No. 41 at 28.	Incorrect/improper citation. The quote is located at page 21.
508	271	1198	"The Court denied a Motion to Dismiss made by the City. The Court also enjoined the City to the extent the "the defendants [are] to abide by the sealing statutes as such statutes have been interpreted through relevant case law."	1198 Id. Doc no. 200, 9/27/2021.	Incorrect document.
509	272	1203	"Under this Plan, if approved by the Court, IAB will have access to sealed records when the investigation does not "involve suspicion of criminal activity."	Id. at 9.	Pages 8-9 of the cited document say that the NYPD will remove sealed records access to investigatory personnel within IAB; IAB so happens to perform investigations; and many of those involve suspicion of criminal activity. It is not saying that IAB will have access to sealed records when the investigation isn't criminal; my reading is that IAB will not be able to use sealed records in its investigations.
510	272	1204	"Plaintiffs expressed concern that overlap may occur when a supervising officer uses records for "oversight and accountability" but then continues to have the records available for criminal investigations."	Letter/Correspondence to Judge, Doc No. 214 (May 20, 2022).	However, this FN elides over the fact that Plaintiffs and Defendants were largely in agreement about the issue discussed in FN 1203 as actually presented instead of how it is described in the report.
511	272	1201	"More recently, the City proposed a "Preliminary Injunction Compliance Plan."1201 The Plan limits use of sealed records "for investigatory purposes." Access will be available for "non-investigatory functions, such as internal oversight and police officer accountability."1202 Under this Plan, if approved by the Court, IAB will have access to sealed records when the investigation does not "involve suspicion of criminal activity."	NYSCEF Doc. No. 211, 4/5/22.	There has been a lot of activity since then. Probably should not be used as a source.
512	272	1206	".. "De-Identified Sealed Records" for "police oversight and accountability purposes." Those are records "from which the name, date of birth, address, NYSID, and any other unique identifiers that can be used to connect the records to an individual are removed. The final implementation plan should define the personnel who will be given such access...."	1206 Plaintiffs' Modifications to Defendants' Proposed Plan, Exhibit A, NYsCEF Doc. No. 2115, 5/20/22.	Incorrect/improper citation. The citation should be 215, 5/20/22.
513	276	1223	"Section 8 of the collective bargaining agreements applies to sealing certain schedule "A" CD incidents. This is still being litigated in the UFOA case and there is pending action re the TRO. The city has taken the position that sch "A" CDs for technical violations, as that term is defined in the Public Officers' Law, should not be disclosed but that others (CCRB FADOs) could be published."	Email exchange Monitor Team and ██████████, Assistant Chief and Commanding Officer, Office of the First Deputy Commissioner, 3/18/21.	Relies on non-public communications between NYPD and the Monitor.
514	278	n/a	"From 2014 through 2019, of 5,581 SQFS allegations that were fully investigated, i.e., not withdrawn, truncated or mediated, only 1,424 (25.5%) were substantiated. 2,062 (36.9%) went unfounded or exonerated."	n/a	This is outdated data.
515	278	1229	Far and away the most common finding by CCRB is that an allegation was "unsubstantiated." A review of all findings by CCRB from 2010 through 2019 found that 8,775 of 17,325 (50.6%) complaints went unsubstantiated.	"Why the Majority of NYPD Misconduct Complaints End up 'Unsubstantiated,'" David Cruz, The Gothamist 8/18/2020. See also, CCRB 2018 Statistical Appendix indicating that from 2014-2018, 93% of 23,079 closed complaints went without substantiation.	The first sentence in this citation is correct, but not the second. In the second sentence, the author states that from 2014-2018, 93% of 23,079 closed complaints went without substantiation. However, the substantiation and unsubstantiation rates are based off the number of cases deemed "substantiated" or "unsubstantiated." The author conflates the word "unsubstantiated" to mean "every case that is NOT in the category 'substantiated,' including 'unfounded,' or 'case withdrawn,' etc." Therefore, the substantiation rate for 2014-2018 is 1658/8131, or 20%, as the 2018 Appendix actually says. 23079 is the full number of cases, whether fully investigated or not.
516	279	n/a	"Remembering that an unsubstantiation means there was evidence linking the officer to misconduct..."	n/a	This is not always. The rules define Unsubstantiated/Unable to Determine as there was insufficient evidence to establish whether or not there was an act of misconduct. There is no assumption here that the evidence necessarily linked the officer to the misconduct.
517	283	n/a	Section i.: Two Case Studies - Case History with Little or No Substantiations: Deputy Inspector Taylor	n/a	CCRB case number is ██████████
518	284	n/a	Section i.: Two Case Studies - Case History with Little or No Substantiations: PO Alan Avella	n/a	CCRB case number is ██████████

519	285	n/a	"In the end, over the three-year period, 3,786 of complaints (29.4% of all retained cases) were fully investigated by CCRB and voted upon by a panel, resulting in a finding for or against a complaint against an identified officer."	n/a	Looking at these numbers without a reference to BWC is misleading. One needs to compare pre-BWC to post BWC. It's not, as suggested, simply Covid-19. In its 2020 BWC report, the CCRB found that "BWC evidence greatly increases the CCRB's ability to determine what happened during a police-civilian interaction, resulting in a greater number of cases being closed with a disposition of substantiated, unfounded, or exonerated (on the merits)." Strengthening Accountability: The Impact of the NYPD's Body-Worn Camera Program on CCRB Investigations, pp. 6, available at: <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/20200227_BWCReport.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/20200227_BWCReport.pdf</a> . The report noted that the percentage of fully-investigated CCRB cases involving BWC footage increased significantly from 1% to 33% between 2017 and 2019. Since the CCRB issued the BWC report, this percentage has continued to increase. In 2021, for example, the percentage of fully-investigated CCRB cases involving BWC footage was 59%. In 2022, 71% of CCRB's full investigations had BWC. See figure 46 of CCRB's 2022 Annual Report. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf</a> .
520	285	n/a	"Overall SQFS misconduct (which falls within the abuse category) constitutes only about 13.7 percent of all allegations considered by CCRB."	n/a	This appears to be different than how we report SQF in our annual report. See figure 13 in CCRB's 2022 Annual Report. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf</a>
521	286	451	Section 1.: Complaints of Stop, Question, Frisk Misconduct: data	n/a	Are these CCRB numbers? We have slightly different numbers. See figure 13. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf</a> . It should also be noted that in 2022 the number was 528. This does not fit the explanation given in footnote 451 and cannot be explained entirely by covid-19. We should pull the 2023 numbers.
522	286	1249	"Within the 14,092 complaints retained by CCRB, in the same three-year period, there were 49,244 allegations of FADO misconduct."	"In 2020, the pandemic year, there were 2813 force allegations + 7114 abuse allegations + 1078 discourtesy allegations."	The data is outdated.
523	286	1250	"Over time, the number of reported stops has decreased. Whether this is an accurate measure of stop activity, merely a drop in reports, or some combination of the two is an open question. During the period of the Monitorship." Footnote: 1250: "Reported stops in 2020 dropped to 9544 and SQF complaints in 2020 dropped to 696, but given the many issues associated with reports in the pandemic CoVid year the numbers may be an aberration."	"Reported stops in 2020 dropped to 9544 and SQF complaints in 2020 dropped to 696, but given the many issues associated with reports in the pandemic CoVid year the numbers may be an aberration."	Citation is needed.
524	287	n/a	"How many complaints retained by CCRB after screening at intake contained an allegation of a wrongful stop, question, frisk or search of person?"	n/a	For 2021 and 2022, the numbers are significantly down. See figure 12 of CCRB's 2022 Annual Report. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf</a> . Specifically, 2021, stops: 2021 428 and 2022 581; questions: 2021, 144 and 2022, 199; Frisk: 2021, 311 and 2022, 259.
525	287	1251	"% of Stops: % of Stops 2014 2.2% 2015 3.9% 2016 7.0 % 2017 7.7% 2018 7.6% 2019 6.4%"	"This percentage does not assume that the complaints were for reported stops. Many complaints are for encounters that were not reported. See Stop Report Failure discussion below."	Citation is needed.
526	287	1252	"In recent years, the percentage of stops which led to a civilian complaint has leveled off in the seven percent range, but that percentage is significantly higher than the percent of stops leading to a civilian complaint in earlier years."	In 2020, there were 696 SQF complaints out of 9,544 reported stops (7.3%).	Citation is needed.
527	288	1254	n/a	"DAO or the Police Commissioner will commonly combine two open parallel investigations by administratively closing one or assessing one penalty for the IAB and CCRB findings. This is particularly true in false statement cases substantiated by IAB where CCRB has a related finding."	This is not accurate. There are also instances in which NYPD decided not to take disciplinary action and CCRB pursues disciplinary action.
528	288	1256	n/a	"Commission to Combat Police Corruption ("CCPC")" 18th Annual Report at 18.	Why is the Monitor referencing Commission to Combat Police Corruption ("CCPC") 18th Annual Report to reference how CCRB reports complaint outcomes? He should be citing CCRB's Annual report and/or CCRB's rules. Additionally, CCRB no longer uses "exonerated" or "unsubstantiated" for case outcomes.



529	288	1253	"In addition to looking at complaint numbers, one can look at individual allegations of misconduct within a complaint, or one can look at the number of cases (each complaint against an officer is handled as a separate "case")."	"When Charges and Specifications are voted by a panel, the case is passed to the Administrative Prosecution Unit (APU) of CCRB for potential trial before a trial commissioner within the Department (discussed later in this Report). APU treats each officer as a separate "case" for statistical purposes" See CCRB Semi-Annual Report 2019 at 9, (available at: <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2019_semi-annual.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2019_semi-annual.pdf</a> ).	The author cites to the wrong page: It should be Page 47.
530	288	1254	"CCRB forwards a discipline recommendation to DAO for each substantiated allegation. Until implementation of the Disciplinary Guidelines, the Police Commissioner had imposed one penalty for an entire case, regardless of the number of allegations substantiated by CCRB. If there was a separate finding in a related case by IAB or one of the other internal investigation units (BIU or FID), the Police Commissioner assessed one penalty for that case."	"DAO or the Police Commissioner will commonly combine two open parallel investigations by administratively closing one or assessing one penalty for the IAB and CCRB findings. This is particularly true in false statement cases substantiated by IAB where CCRB has a related finding."	Citation is needed.
531	288	1255	"Separate presumptive penalties, adjusted for relevant aggravating and mitigating factors, are applied to each substantiated act of misconduct for which there has been a finding or acceptance of guilt. These presumptive penalties are then aggregated to address each distinct act of misconduct."	Disciplinary Guidelines at 13.	The author cites to the wrong page: It should be Page 12.
532	289	1262	n/a	"CCRB Annual Report 2018" at 22.	Monitor is using numbers from 2018 and not aggregate from the time period. 2022 numbers can be found in figure 18 of CCRB's 2022 Annual Report. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf</a> .
533	289	1262	"Eighty-nine percent of officers (30,674) officers have had zero substantiated complaints against them. Only 804 (2.3 %) have two or more substantiated complaints in their history."	CCRB Annual Report 2018 at 22.	The data is outdated.
534	289	1263	"There is no available data on how many officers have been the subject of a SQF complaint, which would be worth obtaining."	Once CCRB begins to investigate profiling complaints, a dataset on outcomes in that area would become important. As of now, even without any substantiated profiling cases, there is a listing by IAB of MOS who have been the subject of three or more profiling cases. As of April 17, 2021 there were 74 officers who had been named in three or more profiling complaints. Two had been named seven times.	Citation is needed.
535	290	n/a	"Disciplinary efforts should concentrate on them."	n/a	CCRB doesn't know if the data supports this conclusion. One would need more information about the officers (assignments ect) before making such a sweeping conclusion.
536	290	1265	Section ii.: CCRB Findings – All FADO Complaints Footnote 1265: "The rate of substantiation in 2020 rose to 30% (293 of 981) but the many issues surrounding police action and CCRB investigation in the pandemic year make the numbers a possible aberration."	"The rate of substantiation in 2020 rose to 30% (293 of 981) but the many issues surrounding police action and CCRB investigation in the pandemic year make the numbers a possible aberration."	It should be noted that this is substantiation rate for fully investigated complaints and not all complaints? Or all complaints? I believe he's using fully investigated complaints and should specify as such. There are a couple of important data points in the current data that are not reflected in these numbers.  First, the "unable to determine" or unsubstantiated numbers are significantly lower. For example, in 2022, the unable to determine was 29% and YTD 2023 it's 27%. See figure 25 of CCRB's Executive Director's Monthly Report for August 2023. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf</a> .  Second, the "unfounded" number is 10% in 2022 and 18% in 2023 YTD. See figure 25 of CCRB's Executive Director's Monthly Report for August 2023. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf</a> .  Finally, the substantiated rate is higher. CCRB's substantiation rate for fully investigated complaints was 34% in 2021 and 42% in 2022. See figure 23 of CCRB's 2022 Annual Report. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf</a> . The 2022 numbers are inflated because we closed out all the covid-19 cases (May 4, 2022) at the same time. In 2023, for the first half of the year, CCRB's substantiation rate for fully investigated complaints is 26%. See figure 23 of CCRB's Executive Director's Monthly Report for August 2023. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf</a> .

537	290	1266	n/a	"Unlike tables in the Annual Reports filed by CCRB, this Report does not include "Officer Unidentified" in the "findings" category. A recent article in the Gothamist <a href="https://gothamist.com/news/why-the-majority-of-nypd-misconduct-complaints-end-up-unsubstantiated">https://gothamist.com/news/why-the-majority-of-nypd-misconduct-complaints-end-up-unsubstantiated</a> , looked at 17,325 complaints decided by CCRB from 2010 to 2019 and found that 8,775 were unsubstantiated, 1,525 were unfounded, 2,939 were exonerated, 1,153 were officer unidentified and only 2,933 (16.9%) were substantiated. During that same period 49% of filed cases were truncated."	Monitor's decision not to include officer unidentified in findings is extremely problematic, especially in light of the fact that he's using outdated data to draw conclusions. It's impossible to track and double-check his work since this is not how CCRB tracks data. This data has also not been reported in this manner. But it still doesn't account for the differences in substantiation rate and reduction in unable to determine. Also, Gothamist got this data from a CCRB FOIL request.
538	290	1267	n/a	"Includes "Complaint withdrawn," "victim/witness unavailable," "victim/witness uncooperative," "closed pending litigation."	CCRB no longer reports truncations in this manner. It breaks everything out by category. See for example, figure 25 of CCRB's Executive Director's Monthly Report for August 2023. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf</a>
539	290	n/a	Section ii. CCRB Findings – All FADO Complaints: 2019: Truncations/Other 2,855	n/a	CCRB's truncation rate has gone down significantly and these percentages are no longer accurate. See figure 25 of CCRB's Executive Director's Monthly Report for August 2023. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf</a>
540	290	1265	"CCRB Findings – All FADO Complaints - Footnote: 1265 The rate of substantiation in 2020 rose to 30% (293 of 981) but the many issues surrounding police action and CCRB investigation in the pandemic year make the numbers a possible aberration."	The rate of substantiation in 2020 rose to 30% (293 of 981) but the many issues surrounding police action and CCRB investigation in the pandemic year make the numbers a possible aberration.	The author does not cite to any source here and makes an aside.
541	291	n/a	"It could be that increased availability of video evidence, from BWC, witness cell phones, and video surveillance cameras, has an impact here, but that would require further careful analysis."	n/a	This is outdated in light of most recent reporting. The entire paragraph should be stricken.
542	291	n/a	"Again, the range, from a low of 17.9 percent to a high of 25.8 percent, without deeper analysis is not significant enough to draw any firm conclusions."	n/a	This is outdated and should be stricken.
543	292	n/a	Section: CCRB PANEL FINDINGS ON INDIVIDUAL ALLEGATIONS - 2017-2019	n/a	"CCRB PANEL FINDINGS ON INDIVIDUAL ALLEGATIONS " is not how accurate. It should be "Dispositions - Fado Allegations". I don't understand why he would use panel findings? It's a subjective term.
544	292	n/a	Section: CCRB PANEL FINDINGS ON INDIVIDUAL ALLEGATIONS - 2017-2019a;3-year%	n/a	These stats are outdated and not represent For example, the substantiation rate is 15% and unable to determine rate is 20%. See figure 26 CCRB's Executive Director's Monthly Report for August 2023. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf</a>
545	293	n/a	"Video evidence, which may lend clarity to contrasting claims, would logically explain a shift from unsubstantiated (where the evidence is not conclusive enough to support a clear finding) to one of the other fact-based outcomes (where the evidence, after viewing a video, is conclusive enough to resolve factual conflicts between substantiated and unfounded)."	n/a	Video analysis here is wrong and outdated. It was discussed above sections of the report in great detail.
546	295	n/a	Section: CCRB PANEL FINDINGS OF STOP, QUESTION, FRISK, SEARCH OF PERSON ALLEGATIONS	n/a	CCRB would need to re-run data. CCRB's annual report is not broken down this way. I just have the total allegations. But, as noted, the numbers are down. See figure 12 CCRB's 2022 Annual Report. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf</a>
547	296	n/a	Section vi.: Rate of Substantiation for SQFS Allegations by CCRB Panels	n/a	This entire section is outdated and inaccurate. As noted above, the total number of SQF cases decreased. Additionally, I did not re-run the data for SQF specifically. However, overall the substantiation, within NYPD Guidelines, and Unfounded rates have increased, while the unable to determine numbers have gone down significantly. Using 2020 data with a seven year look-back does not tell you anything about what's taking place now. We would need to re-run the data for SQF. But we know that the numbers for overall FADA are significantly different for this time period.
548	296	n/a	"Again, explanations for the fall-off in substantiations are theoretical. It could be that more people are complaining about stops but more officers are complying with SQF law and rules. That would explain the increase in exonerations."	n/a	This is "theoretical" opinions with outdated data.
549	296	n/a	Section 1: Fewer SQFS Substantiations, More Exonerations - Why?	n/a	This is not accurate.
550	299	n/a	"At the close of a CCRB investigation, the investigator prepares a closing report and a "CCRB Investigative Recommendation," which is reviewed by a Squad Leader and an Administrative Reviewer."	n/a	The meaning of "Administrative reviewer" is not know. To whom is the Monitor referring to?
551	299	n/a	"The closing report by the investigator will include copies of interview notes, activity logs, and other relevant documents."	n/a	This is not correct. The closing report does not include "copies" but rather summarizes relevant documents.

552	299	n/a	"The CMU also sends the Police Commissioner a memorandum detailing the Board's findings."	n/a	"Disposition letters" have been updated since the release of this report. They were reviewed for plain language and to make everything clearer. Additional changes were made post-50a repeal
553	299	1270	After a CCRB panel makes a decision, the Case Management Unit generates a "disposition letter" which is sent to the complainant, the victim, and the subject officer informing them of the Board's findings. Footnote 1270: INVESTIGATIVE MANUAL, supra note 323, at 21.	INVESTIGATIVE MANUAL, supra note 323, at 21.	The supra cite is incorrect, but the citation stands for that proposition.
554	300	n/a	"Under the Disciplinary Guidelines recently put in place, CCRB has begun to "add up" allegations and recommend Charges where, in the past, multiple SQF allegations would only lead to informal discipline recommendations."	n/a	This is out of date and not reflective of the NYPD Disciplinary Matrix. CCRB doesn't know if that is accurate either. No footnotes for this portion of the report therefore it is unclear the source of information.
555	300	1267	"As longtime Board Member [REDACTED] succinctly put it, "I will tell you the difference between Command Discipline B and A is a complete mystery to me." Footnote 1276: CCRB Board Minutes, August 8, 2018 at 45:6-8.	CCRB Board Minutes, August 8, 2018 at 45:6-8.	This is appropriate. Cherry picking a comment by the Board Member. It lacks objective analysis.
556	300	n/a	"Over time, there has been a significant shift in the recommendations by CCRB away from Charges and toward guidance."	n/a	This is not accurate post-Matrix. In fact, it's the exact opposite. In 2023, as of July, Charges accounted for 27% of CCRB's Board Discipline Recommendations. See Figure 35, Executive Director's Monthly Report for August 2023. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/08092023-monthlystats.pdf</a> . In 2022 and 2021, Charges Represented 33% and 48% of CCRB's Board Discipline Recommendations. See Figure 28, CCRB's 2022 Annual Report. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_Annual_Report.pdf</a> . Yates' failure to note the update - especially including the 2021 numbers - is extremely problematic given when the report was written and therefore fails to address the impact of the NYPD's Disciplinary Matrix. Notably, in the July 2021 Executive Director's Monthly Report Charges represented 46% of CCRB's Board Dispositions. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2021/07102021-monthlystats.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2021/07102021-monthlystats.pdf</a>
557	300	1275	"Under the Disciplinary Guidelines recently put in place, CCRB has begun to "add up" allegations and recommend Charges where, in the past, multiple SQF allegations would only lead to informal discipline recommendations. It is unknown at this time whether the Police Commissioner will accept or decline to follow these recommendations."	"Prior to the CCRB's adoption of the NYPD's Disciplinary Matrix on 03/15/2021, the Board Discipline Recommendation for each officer was determined [sic] by the most severe disposition of the allegation(s) substantiated against the officer, with the order of severity [sic] as follows: 1. Charges 2. Command Discipline B 3. Command Discipline A 4. Formalized Training 5. Instructions.	Citation is needed.
558	301	1279	Over time, we have arrived at a point where 58 percent of recommendations for substantiated FADO misconduct are for guidance rather than discipline and another 22 percent result in A-CD, which seldom result in discipline. Footnote 1279: This Report concludes that A-CD recommendations are rarely "discipline" because a very small minority of those cases carry any penalty. See "'Discipline Defined" discussion earlier.	This Report concludes that A-CD recommendations are rarely "discipline" because a very small minority of those cases carry any penalty. See "'Discipline Defined" discussion earlier.	This is just an unsupported opinion without any authority.
559	302	1280	Separating discipline from guidance, in how many SQFS substantiated misconduct cases did CCRB recommend discipline? As discussed earlier, an "A-CD accepted" without penalty is not discipline. During 2014-2020, there were 220 SQFS cases where CCRB recommended an A-CD. Of those, a total of eight cases resulted in the loss of one or more penalty days.	Numbers of officers forfeiting a penalty day after CCRB recommended an A-CD: (2014 = 0) (2015 = 0) (2016 = 3) (2107 = 1) (2018 = 2) 2019 =0) (2020 = 2).	Citation is needed.
560	303	n/a	"About one-half (related to approximately 65 officers) face formal discipline, the other half are recommendations for informal discipline."	n/a	The Monitor should have included citations for these numbers. One does not know what year or years he's referencing.
561	303	1281	n/a	"The discussion here approximates case flow from year to year. For more precise numbers, 2019 can serve as a typical example. In that year, CCRB received 10,084 citizen complaints. After initial screening CCRB accepted for potential investigation 4,961 FADO complaints. In that same year, it fully investigated 1,540 of the complaints. Only 370 of the complaints were Substantiated. Of the 370, the Board recommended formal discipline (Charges and Specifications) for only 55. The Board recommended informal discipline or guidance for the remaining 315 substantiated cases."	In the footnote below, the Monitor should be citing to CCRB's Annual Report including page number so we know that his numbers are correct. Additionally, as noted, 2019 is pre Disciplinary Matrix and this is not reflective of the current practice. CCRB's 2019 Annual Report Figures 22, 27. It appears that number on charges is not correct. Looking at figure 32 one doesn't know where the number comes from. "The Board recommended Charges and Specifications for 15% of officers against whom there was a substantiated allegation" <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2019CCRB_AnnualReport.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2019CCRB_AnnualReport.pdf</a>
562	303	1282	"As demonstrated by tables above, a similar "funnel" can be found for SQFS complaints. In recent years, on average almost 900 SQF complaints are received each year. Approximately 100 of them have one or more SQF allegations substantiated. Roughly 40 or so are recommended for discipline (Charges or B-CD)."	"The reference here is limited to Charges and B-CDs because so few A-CDs can be expected to end with a penalty."	Citation is needed.

563	304	n/a	"For the remaining 234 cases (47%), guidance or no discipline resulted."	n/a	Again the Monitor is citing to annual report or CCRB report for these numbers. The numbers cannot be double-check all numbers and citations are needed.
564	305	n/a	"The Inspector General for NYPD (OIG-NYPD) had recommended that penalties should be assessed separately for substantiated allegations."	n/a	The NYPD Disciplinary now discusses concurrent versus consecutive and has several sections on this issue. I don't know why he's not referencing the Matrix.
565	307	n/a	Section: SQFSTA: CCRB Recommendation > Ultimate Police Commissioner Decision	n/a	Citation is needed for the data. Monitor should at least for internal purposes note the spreadsheet that the Monitor was using for creation of this information and how it was obtained. A
566	307	1288	"On occasion, in non-SQF cases, a retirement may be "forced" but even then, the officer retires with any accrued benefits."	"NG" is not guilty. "Guidance" combines "Instructions" and "Training." "No disposition" is mostly accounted for by APU decisions still pending.	Footnote should go after the next sentence.
567	308	n/a	"A finding of "aggravated circumstances" may allow for a recommendation of Charges under the Matrix as well."	n/a	Reference to the disciplinary guidelines is unclear.
568	308	1290	"The few cases where CCRB had recommended Charges after 2018 and prior to utilization of the Matrix often included other misconduct such as use of force, a strip search, a denial of necessary medical treatment or intentional entry into premises."	There is one case, ██████████, where a complaint was filed alleging, along with an illegal stop, two wrongful use of force actions along with discourtesy and an illegal search. CCRB only substantiated the stop allegation, but recommended Charges. ██████████ had 15 CCRB complaints with 19 allegations of illegal Stop, Frisk, Question, or Search of Person (SQFS) misconduct, four of which were substantiated. The case went to trial and ██████████ was found Not Guilty.	There is no source cited here. The appropriate case # is ██████████
569	308	n/a	"In 2019, the last year in which Charges were recommended prior to the Matrix,..."	n/a	The NYPD-CCRB MOU was signed in Feb of 2021. This is not correct.
570	309	n/a	"Even if one considers a B-CD mark entered into the CPI to be a "penalty," whether or not time or days are forfeited, CCRB recommended a B-CD for stop and frisk misconduct 82 times in the years 2017-2019."	n/a	Citation is needed for the numbers.
571	309	n/a	"The Police Commissioner imposed discipline (either a forfeit of days or hours, or entry of a B-CD in the CPI even without loss of time) in just 41 of those cases (8.4%)."	n/a	Citation is needed for data.
572	309	n/a	Section i.: Case Study:- A Recommended B-CD for an SOF Violation Reduced to Training by DAO: ██████████	n/a	CCRB case number is ██████████ No, force allegations (punching) were found in this case.
573	309	1292	"Even if one considers a B-CD mark entered into the CPI to be a "penalty," whether or not time or days are forfeited, CCRB recommended a B-CD for stop and frisk misconduct 82 times in the years 2017-2019."	"CCRB recommended a B-CD 82 times, but six are still open."	Citation is needed.
574	311	n/a	"Today, in the main, APU handles the cases where FADO allegations are substantiated and the CCRB recommends Charges and Specifications."	n/a	Within the last year or so, CCRB starting handling cases in which it recommends command discipline and the officer refuses to accept the offer from DAO.
575	311	1294	"During those years, DAO would then assume the case and decide whether to prosecute. DAO had a history of reluctance to prosecute case presented by CCRB. "In the 18 months prior to the APU's existence, the Department hadn't held a single trial for any CCRB case for which the Board had recommended Charges and Specifications."	Fred Davie, Chair, "Changes to Chapter 18-A of the New York City Charter," May 23, 2018.	Citation is needed.
576	311	1295	"An Administrative Prosecutions Unit was permitted, in cases substantiated by CCRB, to prosecute "a small portion of the misconduct cases that went to administrative trial at the police department."	Id.	The footnote provides no place to locate the authority to which he cites. He might be citing to the wrong authority.
577	312	n/a	"On April 2, 2012, a Memorandum of Understanding (MOU) was signed between the Police Commissioner and the Chair of CCRB."	n/a	The MOU is available on CCRB's website. <a href="https://www.nyc.gov/site/ccrb/policy/citymandate-legaldocuments.page">https://www.nyc.gov/site/ccrb/policy/citymandate-legaldocuments.page</a>
578	312	n/a	"Accordingly, a new Subchapter E of Title 38-A of the Rules of the CCRB, was adopted which replaced the previous Subchapter E."	n/a	NYPD rules were also updated as well. Chapter 15 of NYPD's rules. <a href="https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-78144">https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-78144</a>
579	312	n/a	"Currently the APU consists of a Chief Prosecutor, two Deputy Chief Prosecutors, sixteen prosecutors, four trial preparation assistants and an administrative assistant."	n/a	These numbers are outdated. Ten APU Prosecutors, 2 Deputy Chief Prosecutors, and a Chief Prosecutor (position currently vacant).
580	312	1304	"The MOU acknowledges this in paragraph 8: "The Police Commissioner shall retain in all respects the authority and discretion to make final disciplinary determinations."	MOU ¶ 8.	Incorrect/improper citation format
581	312	1305	"All trial decisions and negotiated pleas are subject to approval by the Police Commissioner."	Id. ¶ 21.	Incorrect/improper citation format
582	312	1307	"Unless the Disciplinary Guidelines alter the landscape, the APU-MOU is generally inapplicable to SQF allegations for which Charges and Specifications are not recommended."	See, e.g., CCRB's "Disciplinary Framework" which does not call for charges based upon an SQF violation.	The footnote provides no place to locate the authority to which he cites, nor is it a helpful cite.

583	313	n/a	"Inconsistencies between the amended Rules and MOU will persist until the MOU is re-drafted."	n/a	What is inconsistent? I think he's referencing the reconsideration process. This is a minor point. But, again, I am not 100% sure. Matter of Lynch v New York City Civilian Complaint Review Bd., 183 A.D.3d 512, 516 (1st Dep't 2020) ("8-A RCNY 1-42 (h) was amended to provide that, after referral of a case for prosecution by the CCRB's Administrative Prosecution Unit (APU), the CCRB's Chief Prosecutor or Executive Director or designee may ask the panel to add allegations, or to reconsider unsubstantiated allegations for substantiation, upon written notice to all parties.")
584	313	n/a	"The MOU is outdated and in need of revision."	n/a	What is the Monitor referencing to?
585	313	1310	"During the review process conducted by the New York City Charter Revision Commission, the CCRB requested "Codification of the APU."	Fred Davie, Chair, "Changes to Chapter 18-A of the New York City Charter," May 23, 2018.	Incorrect/improper citation format
586	313	1311	"In support of that proposal, Chair Davie wrote: Amending the City Charter to codify the APU will ensure that the effective administrative prosecution procedures developed by the CCRB and the NYPD over the past few years continue, regardless of leadership changes at either agency. Such action by the Charter Revision Commission will further demonstrate the City's commitment to providing fairness and safety to the public by ensuring that there is an independent, proven, and secure process for holding NYPD officers accountable for misconduct."	Id.	The footnote provides no place to locate the authority to which he cites. He might be citing to the wrong authority.
587	313	1312	"In the Preliminary Staff Report to the Charter Commission, staff noted that codification was supported by Citizens Union, the NYCLU and Communities United for Police Reform."	Charter 2019 NYC, Preliminary Staff Report, April 2019 at 18.	Citation should be Charter 2019 NYC, Preliminary Staff Report, April 2019 at 17.
588	313	1313	"Neither the Staff Report nor the Final Report1313 adopted the proposal for codification."	Final Report of the 2019 New York City Charter Revision Commission, August 2, 2019.	Incorrect/improper citation format
589	314	1316	"The panel does not draw up the specifications itself. Instead, when a panel recommends Charges and Specifications, the Case Management Unit notifies APU attorneys, who prepare the specifications, submit them to the panel for approval, and then forward them to DAO, usually within four weeks."	CCRB, APU Prosecutions and Provision Two of the MOU (document that is the twelfth enclosure in the CCRB's second response, dated Aug. 23, 2018, to the Federal Monitor's request for CCRB documents; on file with author)."	Charges are reviewed by Board Members. No citation and that is not mentioned in the MOU. Relies on non-public communications between NYPD and the Monitor.
590	314	n/a	"With the adoption of the Disciplinary Framework ("Framework") by CCRB in 2018 and the adoption of a Disciplinary Matrix ("Matrix") by NYPD (both discussed later in this Report) the numbers may stabilize."	n/a	Why does the report keep saying the Framework and Matrix? CCRB no longer uses the framework.
591	314	n/a	"It could be, however, that the variations in the number of cases for which CCRB seeks formal discipline are based on external factors rather than inconsistency in value judgments made by the panels."	n/a	The number of charges and specifications has been consistently higher since the Matrix.
592	314	1317	"Since 2013, the APU has closed more than 400 cases, tried more than 250 members of the NYPD, and taken pleas from more than 180 members of the NYPD."	The Administrative Prosecution Unit (APU), CCRB, <a href="https://www1.nyc.gov/site/ccrb/prosecution/administrative-prosecution-unit-apu.page">https://www1.nyc.gov/site/ccrb/prosecution/administrative-prosecution-unit-apu.page</a> (last visited November 3, 2021).	Citation is needed.
593	315	1318	"After substantiating FADO misconduct, panels have recommended formal discipline (Charges and Specifications) as little as 8 % of the time and as much as 55% of the time over the last seven years."	After adoption of the Disciplinary System Penalty Guidelines, the number of cases with recommendation for Charges and Specifications has increased significantly. Since almost none of those cases have resulted in a disposition, it is too early to know if they will be tried, retained, reduced, or pled."	Again, sporadic reference to the increase in charges. But this is a significant development. Also why isn't the report using "NYPD Disciplinary Matrix" in the footnote below. Instead, the report says, "Disciplinary System Penalty Guidelines". The should be consistent throughout the report and not go back and forth.
594	315	n/a	"Year by year, the number of cases where CCRB called for charges were: *2014:254 of 463 = 55% of substantiated cases"	n/a	Citation is needed for these numbers.
595	315	1320	"In the last three fiscal years, looking at cases, there have been 81 trials and 56 plea bargains."	CCRB, Preliminary Mayor's Management Report at 71 (available at: <a href="https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2021/ccrb.pdf">https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2021/ccrb.pdf</a> ).	Why isn't the report citing CCRB's Annual Reports or APU reports.
596	315	n/a	Section: APU Results - Calendar Year (Cases)	n/a	The should should cite CCRB's semi-annual or annual report. Citation is needed.
597	316	n/a	"There is also a time-lag between verdict/plea in the trial room and final decision on a penalty by the Police Commissioner. For those same years, penalty decisions by the Police Commissioner were: Penalty2017201820192020 Penalty Imposed51292516 No Discipline/Penalty Imposed 57121820"	n/a	Citation is needed for the data. 2020 is a bad year to use for data in APU. APU trials stopped because of Covid-19.
598	316	n/a	"From the earlier tables, we know that CCRB panels voted to recommend Charges and Specifications in 226 cases for the four calendar years 2017-2020."	n/a	"Cases" refers to "officers". The noted that earlier in the report. But, it can be confusing. The should be citing to a CCRB report for this data and charts to avoid confusion and this provides more explanation.
599	316	1322	"But of 228 cases prosecuted by APU which did reach final disposition during those four years, 121 ended with discipline being imposed and 107, for one reason or another, went without discipline."	"Because of the natural time lag between a panel vote and final disposition, the two totals do not match.	Citation is needed.

600	317	1323	"All 322 of the officers who pled or were found guilty were penalized with dismissal (10), forced separation (17), loss of credited days with dismissal probation (94), or forfeiture of penalty days (201)." .	NYPD 2020 Discipline Report at 7, (available at: <a href="https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/discipline/discipline-in-the-nypd-2020.pdf">https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/discipline/discipline-in-the-nypd-2020.pdf</a> ). Technically speaking, forced separation is not a discipline. NYPD is not permitted to force a retirement, but it is common to negotiate a settlement (either before or after a finding of guilty) of voluntary separation.	Note that the report cites to NYPD report for the data in the footnote below and doesn't do the same for CCRB.
601	317	1327	"While the DCT now publishes the final decision and recommendation of a Trial Commissioner, the minutes of the proceedings, recommendations by DAO to the Police Commissioner, and Fogel letters are still not publicly available." Footnote 1327: Fogel v. Bd. of Ed. of City of New York, 48 A.D.2d 925, 925 (1975). Fogel letters can be filed in DAO prosecutions and in APU prosecutions. 38 RCNY § 15-06 and 38-A RCNY § 1-46 (a).	Fogel v. Bd. of Ed. of City of New York, 48 A.D.2d 925, 925 (1975). Fogel letters can be filed in DAO prosecutions and in APU prosecutions. 38 RCNY § 15-06 and 38-A RCNY § 1-46 (a).	Reference relevance needs to be explained. Also, it seems out of place to discuss what is publicly available here. And, it is not do a complete analysis.
602	317	1325	"In litigation prior to the repeal of Civil Rights Law § 50-a, 1325 the Department had prevailed when it argued that minutes of the proceedings, Fogel letters, and the preliminary recommendation of a Trial Commissioner are all confidential personnel records."	Blank	This footnote is blank.
603	318	n/a	"Any analysis of the level of discipline imposed for violations of Floyd, begins with recognition that formal disciplinary proceedings with penalties for stop and frisk violations are the exception, not the rule. Recall the "funnel" of penalties for SQF misconduct for the years 2017-2019, wherein 286 complaints containing a CCRB substantiated Stop, Question, Frisk (SQF) violation were sent to the Police Commissioner. Of the 286, CCRB recommended formal proceedings (Charges and Specifications) in 35 cases. (None were for SQF misconduct alone; i.e. there were associated other charges.) In the end, 21 of those cases ended with penalty days forfeited. When penalty days are assessed, the penalty more often than not is in a range between 1 to 10 accrued vacation days. Of the 286 SQF misconduct cases in that time period, only three ended with a penalty in excess of 10 days forfeited. 1328 Remembering the Appellate Division's overly expansive reading of Unconsolidated Law § 891 in the Giuliani case, to require that all disciplinary adjudications be kept in-house despite the fact that the plain language of the statute only requires such for termination cases, it is worth noting that none of the SQF related cases in the trial room ended in termination or suspension."	n/a	Why is re-stating parts of the report? This entire paragraph seems out of place and not necessary.
604	318	n/a	"The Amendments to the Rules and the Charter will be discussed as the process for administrative prosecutions is described."	n/a	The reconsideration issue is a minor point. Matter of Lynch v New York City Civilian Complaint Review Bd., 183 A.D.3d 512, 516 (1st Dept 2020) ("8-A RCNY 1-42 (h) was amended to provide that, after referral of a case for prosecution by the CCRB's Administrative Prosecution Unit (APU), the CCRB's Chief Prosecutor or Executive Director or designee may ask the panel to add allegations, or to reconsider unsubstantiated allegations for substantiation, upon written notice to all parties.")
605	318	1328	"When penalty days are assessed, the penalty more often than not is in a range between 1 to 10 accrued vacation days. Of the 286 SQF misconduct cases in that time period, only three ended with a penalty in excess of 10 days forfeited."	The surrounding circumstances, which caused heftier penalties, for the three cases—F [REDACTED] - were exceptional. They are discussed individually in detail later in this Report.	Citation is needed.
606	318	1334	"The APU is composed of a chief prosecutor, two deputy chief prosecutors, sixteen prosecutors, four trial-preparation assistants, and an administrative assistant. "	INVESTIGATIVE MANUAL, supra note 323, at 33.	The supra cite is incorrect, but the citation stands for that proposition.
607	319	n/a	"When prosecutors start at the APU, they are supervised by more experienced colleagues until they are ready to conduct prosecutions on their own. All prosecutors are required to attend seminars that provide continuing legal education on topics such as recent changes in the law. CCRB requires prosecutors to attend seminars on trial skills and effective questioning of witnesses in court, and encourages prosecutors to attend seminars on other topics such as working with people who face mental-health challenges. DAO, in the past, provided APU prosecutors with training on NYPD procedures and terminology, but no longer does so—APU prosecutors mostly learn that material from more experienced colleagues."	n/a	The qualifications of the prosecutors does not appear to be relevant.
608	319	1336	"When prosecutors start at the APU, they are supervised by more experienced colleagues until they are ready to conduct prosecutions on their own."	CCRB, Response to Federal Monitor's Request Number Five (c) and Supplemental Question Number Three (b) (document that is the first enclosure in the CCRB's third response, dated Oct. 1, 2018, to the Federal Monitor's request for CCRB documents; on file with author).	Relies on non-public communications between CCRB and the Monitor.

609	319	1337	"CCRB requires prosecutors to attend seminars on trial skills and effective questioning of witnesses in court, and encourages prosecutors to attend seminars on other topics such as working with people who face mental-health challenges."	Id.	Relies on non-public communications between CCRB and the Monitor.
610	319	1338	DAO, in the past, provided APU prosecutors with training on NYPD procedures and terminology, but no longer does so—APU prosecutors mostly learn that material from more experienced colleagues.	Id.; see also APU-MOU, supra note 654, at ¶ 10; CCRB RULES, supra note 332, at § 1-45(e) (2018).	The cited authority(ies) does not support the proposition.
611	319	1339	"Once a panel substantiates a complaint, CCRB notifies the Police Commissioner "of the substantiation and CCRB's disciplinary recommendation."	Blank	This footnote is blank.
612	319	1340	"In order to formally commence a prosecution, Charges and Specifications are drafted by CCRB and then served upon the subject officer by NYPD, at DAO's direction, on behalf of CCRB."	Blank	This footnote is blank.
613	319	1344	"While this is rare to non-existent, it is more common for a case to be resolved through administrative filings associated with retirement." Footnote 1344: "116 officers "separated" from the Department in 2018-2020 when faced with disciplinary charges. (Discipline in the NYPD- 2020, <a href="https://www1.nyc.gov/site/nypd/stats/reports-analysis/discipline.page">https://www1.nyc.gov/site/nypd/stats/reports-analysis/discipline.page</a> .) 29 of those were officers facing discipline recommended by CCRB. (CCRB Monthly Statistical Reports, January 2019, 2020, and 2021 at <a href="https://www1.nyc.gov/site/ccrb/policy/monthly-statistical-reports.page">https://www1.nyc.gov/site/ccrb/policy/monthly-statistical-reports.page</a> .) Five of those were cases which included a substantiated SQF misconduct allegation among other allegations in the complaint. (SQFSTA Matrix 2021). Other than ██████████, no officer prosecuted by APU has been terminated. The DCJS online Decertification List shows only three officers in all as having been Removed for Cause pursuant to a Hearing Held Under Civil Service Law § 75 since 2016. <a href="https://www.criminaljustice.ny.gov/Officer_Decertification.htm">https://www.criminaljustice.ny.gov/Officer_Decertification.htm</a> . They were Officers ██████████. None of those officers were terminated as a result of a substantiated CCRB allegation. Det. ██████████ is listed in the Appendix for a case where CCRB recommended Command Discipline for a bad frisk, but the Police Commissioner decided on NDA for the frisk."	"116 officers "separated" from the Department in 2018-2020 when faced with disciplinary charges. (Discipline in the NYPD- 2020, <a href="https://www1.nyc.gov/site/nypd/stats/reports-analysis/discipline.page">https://www1.nyc.gov/site/nypd/stats/reports-analysis/discipline.page</a> .) 29 of those were officers facing discipline recommended by CCRB. (CCRB Monthly Statistical Reports, January 2019, 2020, and 2021 at <a href="https://www1.nyc.gov/site/ccrb/policy/monthly-statistical-reports.page">https://www1.nyc.gov/site/ccrb/policy/monthly-statistical-reports.page</a> .) Five of those were cases which included a substantiated SQF misconduct allegation among other allegations in the complaint. (SQFSTA Matrix 2021). Other than ██████████, no officer prosecuted by APU has been terminated. The DCJS online Decertification List shows only ██████████ in all as having been ██████████ pursuant to a Hearing Held Under Civil Service Law § 75 since 2016. <a href="https://www.criminaljustice.ny.gov/Officer_Decertification.htm">https://www.criminaljustice.ny.gov/Officer_Decertification.htm</a> . They were ██████████. None of those officers were terminated as a result of a substantiated CCRB allegation. ██████████ is listed in the Appendix for a case where CCRB recommended Command Discipline for a bad frisk, but the Police Commissioner decided on NDA for the frisk."	Citation is needed to the source.
614	320	n/a	"It takes APU, on average, 242 days longer to resolve a case by plea than it takes for DAO to negotiate a plea."	n/a	Citation is needed for this data.
615	320	n/a	"Plea discussions occur after the panel has voted."	n/a	CCRB's inability to seek reconsideration from the Board does not impact the delays. He seems to fixated on this point without discussing or asking CCRB about this issue. This point is not an issue and I don't understand why he's spending so much of this report talking about this point.
616	320	1345	"Once the officer has been served, the APU requests from NYPD the documents necessary to determine whether and how the officer should be disciplined." Footnote 1345: Id. at "Calendaring the Case."	Id. at "Calendaring the Case."	Citation is needed.
617	320	1346	"Among other things, the NYPD provides a summary of the officer's NYPD disciplinary record and a report from the officer's commanding officer detailing the officer's performance evaluations."	CCRB, Procedures and Standards for CCRB Board Panels, supra note 516, at 4.	Incorrect/improper citation format
618	320	1347	"The DAO is responsible for ensuring that the relevant personnel at the NYPD cooperate with the CCRB throughout this process."	CCRB RULES, supra note 332, at § 1-45(f) (2018).	Incorrect/improper citation format
619	320	1348	"If, during the course of discovering information for the prosecution, the APU learns that a case might fall outside the CCRB's jurisdiction or require a deadline that the APU cannot meet, it will dismiss the charges against the officer and either refer the case to the entity that has power to review the officer's actions, or request that the NYPD discipline the officer."	See CCRB RULES, supra note 332, at §§ 1-43, 1-44 (2018); see also JONATHAN DANCHE, REPORT ON THE ADMINISTRATIVE PROSECUTION UNIT SECOND QUARTER OF 2018, at 5 (2019).	Incorrect/improper citation format
620	320	1349	"APU may request that an officer be placed upon modified assignment or suspended, either with pay or without pay. The determination is made by the Police Commissioner."	Patrol Guide § 206-08.	The cited authority(ies) does not support the proposition.
621	320	1350	"A suspension without pay may not exceed 30 days.: Footnote 1350: New York Consolidated Laws, Civil Service Law § 75 (3).	New York Consolidated Laws, Civil Service Law § 75 (3).	Citation should be 75(3-a) instead of 75(3).
622	321	1352	"This makes practical sense for all concerned. For this reason, APU sought comparable authority to amend Charges and Specifications. CCRB amended its Rules1352 in 2018 to parallel the Department's Rules."	38-A RCNY 1-42 (h).	The cited authority(ies) does not support the proposition.
623	321	1353	"This would have allowed CCRB's Chief Prosecutor or Executive Director to ask the panel to add allegations, or to reconsider previously unsubstantiated allegations upon written notice to the parties."	38-A RCNY § 1-42 (h).	The cited authority(ies) does not support the proposition.

624	322	n/a	Section ii: Pleas and Final Approval of Pleas by the Police Commissioner	n/a	The issue of PC accepting or rejecting pleas is an issue. But not for the reasons outlined here. The PC has final disciplinary authority. And therefore can do whatever PC pleases - no matter the system or the rules outlined below. I don't think it's necessary to go into all this detail. He should just focus in on SQF where the commissioner rejected a plea deal, if, in fact, there are any cases. Or a brief summary of the data. But no rule or MOU change is going to change this problem. You cannot limit the PC's discretion to impose discipline.
625	322	1357	"After the officer is served with notice of the Charges and Specifications, proof of service is returned to the APU. At that point, APU requests the Summary of Employment History (a redacted portion of the CPI for that officer) and a CORD report (Commanding Officer's Review), which will list prior A-CDs within the last 12 months along with the most recent Employment Evaluation and Departmental Recognition of medals."	PD 468-153: The Commanding Officer describes a subject officer's assignments and rates the officer's overall performance.	The citation is incorrect and it is unclear what he is referencing.
626	322	1358	"The CCRB should obtain a complete record of any prior disciplinary actions by the Department, including disciplinary probation, whether or not the prior investigation came through CCRB. This may include PEPR, CRAFT or CORD reports as well. This should include prior discipline which came through Command, FID, DAO, BIU, IAB, DCT or OCD." Footnote 1358: [REDACTED], RMB, February 26, 2021 correspondence."	[REDACTED], RMB, February 26, 2021 correspondence.	Relies on non-public communications between NYPD and the Monitor.
627	322	1359	"[A]bsolutely not. It's not relevant to their determination, runs counter to the goals of discipline, management of a command, established policy, collective bargaining and due process. For the more serious or non-technical 206-03 violations, these generally go through DAO."	Id.	Relies on non-public communications between NYPD and the Monitor.
628	322	1360	"APU does not have access to the full CPI for the officer."	"On February 26, 2021, in response to inquiry by the Monitor Team concerning APU access to background information, RMB wrote: "The "Summary of Employment" document that the NYPD provides to CCRB contains all of the information that they have asked for. It includes C&S, Sch. "C" and "B" CDs, and Dismissal Probation and includes all of the information considered by the NYPD when evaluating a case. Schedule "A" CDs for command-level violations are not considered nor should they be. The list of 36 violations enumerated in PG 206-03 identifies technical and administrative violations and delegates the authority to the commanding officer to address those issues locally and manage their command. The whole point here is to empower commanders and address low-level issues through non-judicial means. Expungement is an important part of this process since it fulfills the goals of a disciplinary system which include rehabilitation and education and strikes the right balance with respect to proportionality and fairness. These sch. "A" CDs are not relevant to CCRB cases with regard to content or penalty. CCRB already knows the outcome of their own cases related to their FADO jurisdiction including CDs. Until now, CCRB has not asked for the penalty imposed by the PC – only the method of imposing the penalty (i.e. "A" CD, "B" CD, etc.)."	Relies on non-public communications between NYPD and the Monitor.
629	323	1361	"Unsubstantiated, unfounded, or exonerated cases will not be included. Pending complaints which have not been resolved are not disclosed."	38 NYCRR § 15-15.	The citation is incorrect and it is unclear what he is referencing.
630	324	1370	"The most common discipline imposed in plea agreements was forfeiture of vacation days."	See, e.g., [REDACTED], REPORT ON THE ADMINISTRATIVE PROSECUTION UNIT FIRST QUARTER OF 2018, at 5 (2019); [REDACTED], REPORT ON THE ADMINISTRATIVE PROSECUTION UNIT FIRST QUARTER OF 2018, at 6-8 (2018); [REDACTED], REPORT ON THE ADMINISTRATIVE PROSECUTION UNIT THIRD QUARTER OF 2016 – FOURTH QUARTER OF 2017, at 8-15 (2018); see also [REDACTED], Senior Counsel, CCRB, CCRB: The Life of a Case, at "APU Plea Offers" (on file with author)."	Relies on non-public communications between CCRB and the Monitor.
631	325	n/a	"The quarterly reports by APU to the Police Commissioner provide brief descriptions of departures from APU recommendations."	n/a	APU Reports were recently revised post-50a. Now include links to actual documents. <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/APUReport2023-Q1.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/APUReport2023-Q1.pdf</a>
632	326	1380	"In years 2018-2020, the Police Commissioner retained 17 of 142 cases (12%) where CCRB had voted that Charges and Specifications to be drawn."	Executive Director's Monthly Report January 2018 (Statistics for December 2017) at 30 (available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2018/20180110_monthlystats.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2018/20180110_monthlystats.pdf</a> ).	This citation is not correct. It's discussing 2018-20. But it's citing to Executive Director's Report from January 2018.
633	326	n/a	"This is a six-fold increase from the previous three-year cycle where Provision Two was used sparingly. In years 2015-2017, the Police Commissioner retained only 11 of 544 cases (2%) where CCRB had recommended Charges."	n/a	Citation is needed.



634	326	n/a	"In 2016, there were 74 reconsideration requests of 212 substantiated SQF cases alone."	n/a	CCRB currently receives almost no reconsideration requests. I think that is the result of the Matrix. But it started a little bit before covid-19. These numbers are way out of date and do not reflect the current process.
635	326	n/a	"In 2020 and 2021 there were no requests for reconsideration in SQF cases."	n/a	2020 and 2021 there were no requests for reconsideration in SQF - accurate and remains true 2022 and 2023. Almost no requests.
636	326	1377	"Under Provision Two, the Police Commissioner is to write a "detailed explanation" of the decision to retain a case along with "a statement detailing what discipline if any the Police Commissioner would pursue." Footnote 1377: MOU 2-5; see also 38-A RCNY § 1-42 (b) through (e)."	MOU 2-5; see also 38-A RCNY § 1-42 (b) through (e).	Incorrect/improper citation format
637	326	1378	"CCRB then has five business days to object to the decision in writing, at which point the Police Commissioner then can respond in writing and, if he persists in removal, CCRB must "refrain from further prosecution."	Id.	Incorrect/improper citation format
638	326	1379	"Again, the denial must be "made in writing and shall include a detailed response to CCRB's rebuttal."	Id.	Incorrect/improper citation format
639	327	n/a	"Of the 97 cases where DAO requested reconsideration and CCRB declined, the Police Commissioner ended the matter by a downward departure in finding or penalty in 67 cases."	n/a	Citation is needed for this stat.
640	327	n/a	"However, a minority of the 32 cases "retained with discipline" received any penalty. Most received Training or an A-CD with no penalty."	n/a	Citation is needed for this stat.
641	328	1384	"As a typical example, ██████ unlawfully frisked a "Black male in his early twenties [who] was sitting on a stoop . . . smoking[.]"	Report on the Administrative Prosecution Unit ("APU") First, Second, Third, and Fourth Quarters of 2020 at 21 (available at: <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/05282021_APU2020.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/05282021_APU2020.pdf</a> ).	██████ The APU report cited to says that "Commissioner Shea retained the case and instead imposed Schedule "A" Command Discipline and Training on both Respondents." and CTS shows CDA for him as well,  The ██████ involved in ██████ no longer active as of 12/15/2021. He does not show up in the NYPD officer lookup as of this morning. Not sure when Judge Yates did this officer lookup (if it was before Dec. 2021 when this PO Duggan left force) and if it said something different at that time.  There is another ██████, different person, who is an active MOS and appears in NYPD database as having no disciplinary history. I suspect that they mixed these two officers up.
642	328	1386	"Similarly, ██████ had an arrest warrant for a person that was seven years old."	Report on the Administrative Prosecution Unit ("APU") First, Second, Third, and Fourth Quarters of 2020 at 22 (available at: <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/05282021_APU2020.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/05282021_APU2020.pdf</a> ).	CCRB case number is ██████
643	328	n/a	"But when the Police Commissioner decides that no misconduct occurred, it is paradoxical to say that discipline was ordered. In any event, CCRB describes the outcome as retained with discipline."	n/a	CCRB's officer look-up page provides detailed information about the allegation history for the officer. Additionally, in light of the repeal of 50A, someone can FOIL the closing report and read detailed explanation of the alleged misconduct.
644	328	1389	"A review of 28 cases retained in years 2016-2020 shows that penalty days were assessed in only four cases."	Two cases were retained with Training, while receiving penalty days assessed in separate departmental investigations. Two officers, ██████, separated from the Department when charged.	Citation is needed.
645	328	1390	"Each of those "penalty" cases involved either force, a chokehold, or multiple incidents and allegations separately prosecuted by the Department which were "wrapped up" by combination." Footnote 1390: This is an incomplete listing of outcomes in later years because some matters may still be open and unresolved.	This is an incomplete listing of outcomes in later years because some matters may still be open and unresolved.	Citation is needed.
646	328	1391	"Two cases were administratively closed when the officer separated from the Department. Nine of the retained cases ended with Training. Five of the cases ended with an "NDA" meaning that no disciplinary action was taken."	"These cases are also written up as "DUP" Department Unable to Prosecute."	Citation is needed.
647	329	n/a	"A review of 28 cases retained in years 2016-2020 shows that penalty days were assessed in only four cases. Each of those "penalty" cases involved either force, a chokehold, or multiple incidents and allegations separately prosecuted by the Department which were "wrapped up" by combination. Two cases were administratively closed when the officer separated from the Department. Nine of the retained cases ended with Training. Five of the cases ended with an "NDA" meaning that no disciplinary action was taken. Four of the cases ended with an A-CD which was accepted without penalty. All but the first four of the retained cases not only avoided discipline, but also avoided, according to the disciplinary history in the Department's online profile, a record of formal Charges having been sustained by the Police Commissioner. In other words, while CCRB or NYPD may note the proceedings, there is no disciplinary history for the officer in the Department's posted public record."	n/a	Citations are needed for this entire paragraph.

648	329	n/a	"Despite the fact that the Rules and the MOU call for detailed explanations justifying removal from APU prosecution, a review of the letter exchange between the Police Commissioner and CCRB in 18 of these cases leads to the unfortunate conclusion that the correspondence from NYPD is far from the detailed writing contemplated by the APU-MOU. A form letter without analysis or content is the more usual response from the Police Commissioner's office."	n/a	Citations are needed for this entire paragraph.
649	329	n/a	"For those who hoped for a meaningful exchange in the demand by the Police Commissioner to remove a case from APU prosecution, a disheartening example would be the following exchange in the case of ██████████."	n/a	The Monitor should refrain from the editorial language.
650	329	n/a	██████████ who was charged with violating Patrol Guide rules limiting the use of Tasers. He was found to have pointed and threatened the use of a taser at a student in a school setting while the student was already rear-cuffed. He was also charged with pointing and threatening use of the taser at a group of other students. The Police Commissioner's initial explanation for reducing Charges to NDA was the following: The Police Commissioner has reviewed the Civilian Complaint Review Board's recommendation for Charges/Specifications in connection with CCRB Case No. 2016-08016 as it pertains to ██████████. Having analyzed the facts and circumstances of this matter, the Police Commissioner has determined that to pursue Charges/Specifications would be detrimental to the Police Department's disciplinary process. ██████████ has no disciplinary history and no prior substantiated CCRB complaints. Therefore, as provided for within the Memorandum of Understanding between the Civilian Complaint Review Board and the Police Department, based on the interests of justice, the Police Commissioner intends to retain the current matter within the Police Department and take No Disciplinary Action against ██████████."	n/a	Citation is needed for the letter.
651	329	n/a	"While the form letter repeats the language of the MOU in conclusory terms, it says nothing about the reasons for blocking CCRB prosecution in the instant case. Nor does it explain why he was imposing no discipline at all."	n/a	Citation is needed for the CCRB reply.
652	329	1392	"In other words, while CCRB or NYPD may note the proceedings, there is no disciplinary history for the officer in the Department's posted public record."	"In theory, the two officers who left the Department, ██████████, should be named in NYS Division of Criminal Justice Services decertification index. Executive Law § 845, 9 NYCRR 6056.2, (available at: <a href="https://www.criminaljustice.ny.gov/Officer_Decertification.htm">https://www.criminaljustice.ny.gov/Officer_Decertification.htm</a> ."	Citation is needed.
653	330	n/a	"It should be noted that ██████████ had six complaints filed against him from 2014 to 2019. While this case was the only one substantiated, the cluster of similar complaints in a five-year time span is troubling. One was for Discourtesy, but the remaining five were for excessive force. All but one of them, including a Chokehold complaint, preceded the Police Commissioner's declaration that the officer has no disciplinary history."	n/a	Citation is needed for the entire paragraph.
654	330	n/a	"In sum, fifteen cases were resolved with no formal discipline and it remains unknown whether any penalty was actually imposed in the other cases."	n/a	Citation is needed.
655	330	1394	"It can be fairly said that the decision to retain a case is, in most instances, likely to remove the case from any disciplinary penalty without the benefit of an NYPD investigation or trial."	In CCRB's quarterly reports to the Police Commissioner, a number of cases are listed as "retained with discipline," without further elaboration. In fact, almost all of the cases listed as "retained with discipline" were cases where guidance, in the form of Instructions or Training were the ultimate disposition."	Citation is needed to specific APU reports, specific officers and dispositions.
656	330	n/a	"...(3) an unfortunate downgrading of SQF violations."	n/a	The report should cite the specific number of SQF downgrades at issue.
657	330	1393	"The abject failure to meet the expectations of the MOU is more than a contract failure; it undermines the objective of creating an understanding between civilians, CCRB, the Department and officers on the force as to why CCRB's findings were disregarded."	Departure letters may be sent to CCRB, but, as explained earlier, they are cursory at best.	Citation is needed.
658	330	1395	"The Police Commissioner's expansive reading of Provision Two manifests itself in several ways: (1) an overly liberal view of "no disciplinary history"; (2) a disregard for adverse civil litigation or repeated complaints indicating a pattern of abuse; and (3) an unfortunate downgrading of SQF violations."	██████████, described earlier, is a useful case study for this purpose."	Citation is needed.
659	331	n/a	"Many of the retained cases were quite serious."	n/a	The report should include citations for the entire paragraph. These examples should be reported in CCRB's APU reports.
660	331	n/a	Section B: Provision Two – Retention by the Police Commissioner : ii. Sergeant ██████████	n/a	CCRB case number is ██████████
661	331	1399	"DAO emphasized that the Officer had no prior formal disciplinary history." Footnote 1399: "As of this writing, ██████████ online Officer Profile shows no disciplinary history."	"As of this writing, ██████████ online Officer Profile shows no disciplinary history."	Citation is needed.

662	332	n/a	Section B: Provision Two – Retention by the Police Commissioner : iii. Case #2 - PO [REDACTED] : "No Prior Disciplinary History"	n/a	CCRB case number is [REDACTED].
663	332	1401	"In August of 2016, the Police Commissioner retained the case and imposed no discipline. CCRB objected on the grounds that the officer had a prior disciplinary history. At that time, the officer had been the subject of 23 prior CCRB complaints."	New York Civil Liberties Union, "NYPD Misconduct Complaint Database," (available at: <a href="https://www.nyclu.org/en/campaigns/nypd-misconduct-database">https://www.nyclu.org/en/campaigns/nypd-misconduct-database</a> ).	Citation is needed.
664	333	1402	"When CCRB pointed out to the Commissioner that the officer did, in fact, have another complaint that had recently closed with a substantiation by CCRB, 1402 the response, was that "it is the Police Commissioner's position that a substantiation of the earlier allegation that post-dates the matter at hand cannot be considered as a prior substantiated CCRB complaint within the meaning of Provision Two of the MOU."	"At the time the Police Commissioner pulled the case, CCRB had substantiated an unrelated abuse case for an illegal frisk in 2014. It apparently was the Commissioner's position that an illegal frisk in 2014, substantiated in 2015, could not be considered as a bar to a 2016 retention because the 2015 decision to substantiate occurred two months after the illegal force misconduct in the instant case."	Citation is needed.
665	333	1403	"When CCRB pointed out to the Commissioner that the officer did, in fact, have another complaint that had recently closed with a substantiation by CCRB, 1402 the response, was that "it is the Police Commissioner's position that a substantiation of the earlier allegation that post-dates the matter at hand cannot be considered as a prior substantiated CCRB complaint within the meaning of Provision Two of the MOU."	8/31/16 letter to [REDACTED], ED CCRB, from [REDACTED], Deputy Chief, Commanding Officer, Police Commissioner's Office.	Relies on non-public communications between NYPD and CCRB.
666	334	n/a	"In July 2018, [REDACTED], along with three other officers, approached two individuals sitting on a stoop in the Bronx."	n/a	This is the same case as [REDACTED]
667	334	n/a	"In 28 SQF and force cases reviewed for this Report where the Police Commissioner retained a case, none were retained due to a pending criminal investigation."	n/a	Citation is needed.
668	334	n/a	"There were, however three cases where the officer was the subject of multiple investigations both by CCRB and IAB."	n/a	Citation is needed.
669	334	n/a	"Although separate incidents, to some extent, the processing of the cases overlap and intertwine."	n/a	Citation is needed. It should include CCRB case number.
670	335	n/a	"In some cases they were alleged to have acted together."	n/a	Citation is needed.
671	335	n/a	"In others, the lawsuits were the cause of dropped disciplinary investigations into the same conduct."	n/a	Citation is needed.
672	335	n/a	"One went to trial and the other was administratively removed (without a retention letter) by NYPD and settled informally."	n/a	Citation is needed.
673	335	n/a	"Collectively, they had 26 complaints brought to CCRB, with 15 of them alleging wrongful force, while the remainder were largely for SQF misconduct and discourtesy."	n/a	Citation is needed.
674	335	n/a	i. An Unusual Case: Charges, a Trial, and Penalty Days for an Unlawful Stop? Section: Charges: [REDACTED] - 1st Use of Force Substantiation	n/a	CCRB case number is [REDACTED]
675	335	n/a	"On Sept 27, 2017, the complainant (CW) was walking home from his job as a security guard. [REDACTED] in plainclothes and an unmarked care made a U-turn, approached CW and "surrounded" him. He was asked "What's going on, what are you doing, where are you going?" CW started to reach into his pocket to show identification. According to CW, he was grabbed. He "feared for his life" and ran for one minute, then stopped and sank to his knees. [REDACTED] They took his ID back to their car. After determining that he was not armed, according to CW, he was told he could go as long as didn't "say the 75th Precinct or the police did this to me." His eye was swollen and bruised."	n/a	Citations are needed for this entire paragraph.

676	336	n/a	"APU recommended three forfeited penalty days for [REDACTED] seven days for [REDACTED] and 18 days for [REDACTED] (15 days for the force allegation plus 3 days for the illegal stop). To CCRB's credit, the closing report acknowledged that prior allegations against [REDACTED] "reflect a pattern applicable in this case." The report cited two prior force allegation and one prior stop allegation, none of which had been substantiated. The 18-day recommendation was adopted. As to [REDACTED], the Trial Commissioner concluded that "recent precedent shows that, for an unlawful stop alone, respondent typically forfeit three days" reducing the time assessed to [REDACTED] from seven to three days and recommending three days for [REDACTED] as well. On November 21, 2019, Police Commissioner O'Neill approved the recommended penalties. By the time the Police Commissioner accepted the 18-day penalty for [REDACTED], he had already been charged anew with another and similar Use of Force violation, once again punching a suspect without cause. It is not certain, but probable, that the Police Commissioner knew of the later Charges at the time he concurred with the Trial Commissioner's recommendation."	n/a	Citations are needed for this entire paragraph.
677	336	n/a	"Four months before the Police Commissioner's July 31, 2019 decision on the above force substantiation, [REDACTED] was alleged to have wrongfully punched another citizen in a questionable stop and frisk encounter."	n/a	CCRB case number is [REDACTED].
678	336	n/a	"According to the civil complaint, [REDACTED] and several other officers, ordered him to stop and put his hands up."	n/a	Citations are needed to the civil complaint numbers.
679	336	n/a	"As found by CCRB [REDACTED] exited a police vehicle and reached toward CW2's torso. CW2 backed up and told the officer not to touch him."	n/a	Citations are needed to the CCRB case numbers.
680	336	1407	"He was given an Adjournment in Contemplation of Dismissal, and the case against CW2 was later dismissed by the Court."	The NYPD Office of the Deputy Commissioner's Legal Bureau Bulletin Vol. 47, No. 2 (February 2017) explains the circumstances under which a person may be charged with disorderly conduct, in regard to defining "public inconvenience, annoyance or alarm." It states that the public harm standard is not met unless and until the exchange in question extends beyond that between the person involved and an officer and becomes "a potential or immediate public concern," making clear that a verbal or gestural dispute between an officer and a civilian is not sufficient for an arrest for disorderly conduct in the absence of civilian bystanders who are becoming agitated or whom the subject intends to agitate by his actions.	This is a sealed case under 160.50. Also, for the footnote below, it is unclear why NYPD Legal Bureau Bulletin is being cited. Case law should be cited.
681	336	n/a	"CCRB substantiated a wrongful stop claim against both [REDACTED], a wrongful strip search ..."	n/a	Citation is needed for CCRB case number.
682	337	1409	"Discipline for [REDACTED] for the strip search was combined with the IAB investigation regarding the wrongful touching of CW2's genitals."	CCRB investigates strip searches as possible FADO misconduct. IAB investigates wrongful touching of genitalia. [REDACTED] received no penalty for the CCRB substantiation. NYPD's online posting of disciplinary history shows no "applicable entry" for the portion of the encounter investigated by IAB.	It is not clear why Monitor is relying on NYPD's online posting? Has he made the request of NYPD?
683	337	n/a	"Yet another force complaint against him was "closed pending litigation," but it is unclear to which incident this complaint refers."	n/a	Citations are needed for this entire paragraph, specifically for listing the case numbers and citing officer look-up page.
684	337	1410	"No aggravating or mitigating circumstances were found or cited by CCRB for any of the three officers. At this point in time, the Charges recommended for [#13] have not been served. Instead they were diverted by DAO as "Closed: previously adjudicated."	RMB response 11/1/2021 "Data Request. New and Outstanding Discipline.nypd.11/1/21"matrix.	Relies on non-public communications between NYPD and the Monitor.
685	338	n/a	[REDACTED] has been with the Department six years. Six CCRB complaints have been lodged against him, two of which have been substantiated. In the first case he was given instructions for a refusal to identify. The second substantiated complaint is the one described above."	n/a	Citations are needed for this entire paragraph.
686	338	n/a	[REDACTED] has been with the Department five years. He has four prior CCRB complaints in his history, two of which were substantiated. [REDACTED] A use of force and discourtesy complaint against him was closed pending litigation. It is unclear if the pending litigation deferral refers to the pending 2018 EDNY case or if there is yet another case filed against him."	n/a	Citations are needed for this entire paragraph.
687	338	n/a	[REDACTED] has been a police officer for 8 years. Six CCRB complaints have been filed against him, with one substantiation. Complaints in the past include three claims of excessive force, including use of a chokehold, illegal frisks and a profiling charge which went unsubstantiated. In October 2017, he settled a case alleging an illegal seizure and arrest for \$20,000."	n/a	Citations are needed for this entire paragraph.
688	340	n/a	"Curiously, while the 2017 CCRB closing report identified a pattern of wrongful stops and use of force, the 2019 CCRB closing report asserts that [REDACTED] CCRB history does not show a pattern pertinent to this investigation."	n/a	Citation is needed to the closing report numbers.

689	341	1415	Section IX.DISCIPLINARY SYSTEM PENALTY GUIDELINES (Matrix)	Throughout the NYPD Disciplinary Guidelines may be referred to as either the "Guidelines" or the "Matrix." Available at <a href="https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-disciplinary-penalty-guidelines-effective-2-15-2022-final.pdf">https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-disciplinary-penalty-guidelines-effective-2-15-2022-final.pdf</a> .	This is not his first reference to NYPD Disciplinary System Penalty Guidelines.
690	341	1420	"The Los Angeles Police Department has adopted guidelines by Administrative Order."	LAPD Administrative Order No. 15, September 15, 2016.	Incorrect/improper citation format
691	341	1422	"During the Joint Remedial Process, the Facilitator noted that multiple participants asked for discipline guidelines to be drafted and that progressive discipline be imposed as a means of holding officers accountable."	See, e.g., JRP at 24, 161, 224, ECF Doc No. 597, (May 15, 2018) .	Incorrect/improper citation format
692	342	n/a	Section A: CCRB's Framework for Charges and Specification Cases	n/a	It is unclear why this section is needed.
693	342	n/a	"A review of past recommendations showed wide-ranging variations in CCRB recommendations following substantiation:" [Chart used]	n/a	If the chart is from CCRB's presentation, then citation is needed.
694	342	1423	"The facilitator was more specific, calling for an enumeration of ranges of penalties, taking into account degrees of justification, and mitigating and aggravating factors."	Id at 65.	Citation does not stand for the proposition cited.
695	342	1427	"In 2018, CCRB began a pilot program to test a "Disciplinary Framework." The Board said that the Framework was "in response to Board member concerns about having no formal guidelines" for determining what cases should be recommended for Charges and Specifications. A review of past recommendations showed wide-ranging variations in CCRB recommendations following substantiation: "	A Framework. For Discipline Recommendations: August 2018 Board Meeting: <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/20180808_disciplinaryframework_presentation.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/20180808_disciplinaryframework_presentation.pdf</a> . The presentation did not define the category "No Recommendations."	Citation is needed to specific page number.
696	343	1428	"The Board tested the Framework in July 2018 and seven months later adopted the plan. The Framework consisted of three tiers of analysis: First, the panel would look at: (1) "Allegation Type;" then (2) "MOS History;" and finally (3) "Case Totality. "	Memorandum Accompanying August *, 2018 Public Presentation of CCRB's Disciplinary Framework, <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/20180808_disciplinaryframework_memo.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/20180808_disciplinaryframework_memo.pdf</a> .	Citation is needed to specific page number.
697	344	n/a	"CCRB has posted 173 departure letters received in 2020-2021..."	n/a	Citation is needed.
698	344	1431	"CCRB held a public hearing on September 17, 2020, eliciting comments on the first draft."	Sept. 9, 2020 CCRB Letter to Police Commissioner Shea, available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/NYPDMatrix_Response_Testimony_09302020.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/NYPDMatrix_Response_Testimony_09302020.pdf</a> .	Board meeting was September 9, 2020. <a href="https://www.nyc.gov/site/ccrb/about/news/2020-board-meeting-schedule.page">https://www.nyc.gov/site/ccrb/about/news/2020-board-meeting-schedule.page</a>
699	347	1438	Section B. Explanation of the Guidelines as Adopted January 15, 2021: Conduct Constituting a Crime.	"Public Officers Law § 30 requires automatic termination upon conviction of a number of crimes related to holding of office. As such, the Matrix provides for termination as a presumptive penalty. Forced Separation is allowed, if mitigated, for theft-related convictions and in cases where no conviction has occurred, but where the Police Commissioner finds that the officer engaged in criminal conduct nonetheless, e.g., Pantaleo. Article V, Section 7 of the NYS Constitution permits forfeiture of vested pension rights when a public officer is convicted of a felony related to his office. However, that provision, adopted in 2018, does not apply to NYPD officers beyond the Police Commissioner. Consequently, unlike most other public officers in the State, neither termination nor forced separation carries an automatic threat to pension rights for almost all NYPD officers."	Footnote and reference to pension is unclear. It's a complicated topic which should be addressed in a separate section.
700	349	n/a	"The following is an abridged listing of Matrix penalties for misconduct of importance to Floyd contained in the "ADO" section:"	n/a	Citation is needed and link to page numbers.
701	350	n/a	"For example, in the past if a wrongful frisk was accompanied by a punch and the officer received a 15-day penalty, it is not possible to isolate the penalty ascribed to the frisk. As such, ascertaining "precedent" becomes a murky."	n/a	Overall tone for these three paragraphs is concern. But the overall point about the penalties for SQF being too low is something that Board Members have flagged.
702	350	1446	"Items such as Misuse of Computer, Email or Mobile Digital Devices, Using Department Letterhead of Non-Official Purpose, and Failing to Utilize a Holster, are just a few examples of offenses that carry a higher minimum penalty and/or a higher presumptive or aggravated penalty than offenses related to search and seizure."	For comparison, "Detaining a person without legal justification" in the Los Angeles matrix requires discipline by way of an official reprimand or 1 to 5 penalty days at a minimum for first offenders, 11 to 15 days for second offenders and termination for a third offense. <a href="http://lapd-assets.lapdonline.org/assets/pdf/AO_15.pdf">http://lapd-assets.lapdonline.org/assets/pdf/AO_15.pdf</a> .	Citation is needed because the link is inaccessible.
703	351	n/a	"For example, the Matrix has a generalized listing of fourteen "Potential Mitigating Factors" and eighteen "Potential Aggravating Factors" that may be used in any case being reviewed by CCRB and the Police Commissioner."	n/a	Citations are needed to specific page numbers.
704	351	n/a	"After that, for the Abuse, Discourtesy, and Offensive Language section (ADO), the Matrix has a sets out seven "Additional Potential Mitigating Factors" and thirteen "Additional Potential Aggravating Factors."	n/a	Citation is needed.
705	353	n/a	"As this new process takes shape, it will be of particular interest to the Floyd litigation to see if the Police Commissioner provides a detailed explanation in public of aggravating and mitigating factors considered or rejected when the Police Commissioner imposes a level of discipline or penalty lower than that recommended by CCRB in non-APU cases."	n/a	CCRB posts departure letters on its website. CCRB also includes the closing report fo the case. <a href="https://www.nyc.gov/site/ccrb/complaints/redacted-departure-letter.page">https://www.nyc.gov/site/ccrb/complaints/redacted-departure-letter.page</a>

706	354	1456	"During the investigation phase they rely upon their own limited internal history. If there is a request for reconsideration (which are becoming nearly non-existent), DAO will share some history of substantiated formal discipline."	"In response to an inquiry put to RMB and IAB, dated 4/16/20, the Monitor Team was advised that "DAO looks at the complete disciplinary history when considering a penalty recommendation, including A-CD history and history of dismissal probation...During the course of an investigation, CCRB does not get any other information besides the CCRB history. Once they substantiate a case, if we ask for reconsideration, the reconsideration memo will include all disciplinary history, including Dismissal probation. If it is an APU case and APU is prosecuting, APU will be made aware of the Dismissal Probation and the disciplinary history. The disciplinary history referred to here is for formal discipline and substantiated (non-CCRB) A-CDs in the CPI."	Relies on non-public conversation between NYPD and the Monitor.
707	354	1457	"[E]mployment history" refers to a document which was previously supplied by the NYPD to the CCRB in cases where CCRB's Administrative Prosecution Unit handled the prosecution of substantiated allegations resulting in Charges and Specifications "	Matrix-MOU, Section V at 5.	Incorrect/improper citation format
708	358	1469	"An officer's objectively reasonable misapplication of the law may be used in mitigation of penalty, but not liability. This Court, recognizing the distinction at an earlier juncture, approved language in the Patrol Guide that "isolated cases of erroneous but good-faith stops or frisks...should ordinarily be addressed through instruction and Training."	See generally NYPD Patrol Guide, Investigative Encounters: Requests for Information, Common Law Right of Inquiry and Level 3 Stops, Proc. No. 212-11, effective Oct. 15, 2016, available at <a href="http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/212-11.pdf">http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/212-11.pdf</a> .	Citation should be to the court opinion.
709	359	n/a	"As of March 2023, CCRB has posted 181 departure letters."	n/a	Here, the report reference something from March 2023. However, much of the report is out of date. This implies that the rest of the report is accurate up to this time period.
710	359	n/a	"A review of the 50 departure letters, written in the latter half of 2022, shows that, typically, penalty recommendations or misconduct findings by CCRB are rejected by the Police Commissioner for one or more of the following reasons."	n/a	Citation is needed for the specific departure letters that Monitor reviewed.
711	359	n/a	"Without the full, unredacted, closing reports from CCRB or the CAR memo from DAO, the cause for departure is not clear."	n/a	CCRB's current practice, as noted, is to include the closing report with the department letter on CCRB's website.CCRB includes the closing reports because it agrees that without them it's hard to make sense NYPD's letters. As of August 11, 2023, CCRB currently has 69 and 45 departure letters and closing reports for 2022 and 2023 respectively. <a href="https://www.nyc.gov/site/ccrb/complaints/redacted-departure-letter.page">https://www.nyc.gov/site/ccrb/complaints/redacted-departure-letter.page</a>
712	359	n/a	"Of the most recent 65 departure letters, as of March 20, 2023:"	n/a	Citations are needed.
713	359	n/a	"More interesting is the reason offered in the Departure letters for the 65 reductions or dismissals. - XX were dismissed or reduced on the basis of a renewed finding of facts by the Police Commissioner - XX were dismissed or reduced on the basis of a declaration of "good faith" or "lack of intent." - XX were dismissed or reduced because the Police Commissioner disagreed on the law as to whether misconduct occurred."	n/a	Citations are needed for the three categories below.
714	360	n/a	"The Department Advocate's Office must improve its procedures for imposing discipline in response to the Civilian Complaint Review Board's ... findings of substantiated misconduct during stops."	n/a	The report could have discussed how the many ways this occurred over the last several years, with regard not only to SQF but to the disciplinary process as a whole. It could have acknowledged the ongoing efforts between the current DAO to have regular, weekly meetings with the CCRB, across multiple levels of supervision. It could have noted regular contact between the agencies, at a granular level, to attempt to correct errors in memos submitted by the CCRB, while also trying to coordinate efforts to prepare for bulk submissions of large batches of their cases. These efforts have not resulted in uniform success, but with respect to SQF cases from the period of time of January 2022 through March 2023, the NYPD had a concurrence rate with the CCRB of 94%
715	360	1470	"In the Floyd Liability Opinion, Judge Scheindlin observed, "[W]hen confronted with evidence of unconstitutional stops, the NYPD routinely denies the accuracy of the evidence, refuses to impose meaningful discipline, and fails to effectively monitor the responsible officers for future misconduct."	Floyd Liability Opinion at 105.	Incorrect/improper citation format
716	360	1471	"There was no "deference" to CCRB's factfinding process. She concluded that "DAO's evidentiary theory [rejecting CCRB's acceptance of uncorroborated civilian testimony as insufficient] seriously undermines the NYPD's ability to hold officers accountable for unconstitutional stops or frisks."	Floyd Liability Opinion at 107-08.	Incorrect/improper citation format
717	360	1472	"This improvement must include increased deference to credibility determinations by the CCRB, an evidentiary standard that is neutral between the claims of complainants and officers, and no general requirement of corroborating physical evidence."	Floyd Remedies Opinion at 24.	Incorrect/improper citation format

718	361	n/a	Section E: Concurrent and Consecutive Penalties	n/a	<p>The new revisions to the matrix changed this process. Here's a redlined version of the difference.</p> <p>Separate presumptive penalties, adjusted for relevant aggravating and mitigating factors, are applied to each substantiated act of misconduct for which there has been a finding or acceptance of guilt. These presumptive consecutive penalties are then aggregated to address each distinct act of misconduct not related to each other by fact, scheme or pattern. If the same underlying act(s) of misconduct support multiple definitions of proscribed conduct or support alternative theories of prosecution, then a single penalty will be applied. Concurrent penalties may be appropriate when misconduct includes minor technical infractions, or when the effort to maintain a balance between punishment, deterrence and remediation is undermined by consecutive penalties, or where the separate acts of misconduct are inherent in each other and inseparable. The totality of the circumstances will be considered in order to maintain the efficiency of the disciplinary system and to ensure a just outcome.</p> <p>For example, a member of the service who has been determined to have operated a motor vehicle while intoxicated was by definition necessarily unfit for duty. Because these potential separate charges result from the same underlying course of conduct, a single penalty will be applied, and cannot be separated because they are intrinsic to each other, a single concurrent penalty will be applied. Similarly, if a member of service has been determined to have failed to conduct a proper investigation or failed to properly supervise, the additional charges for failing to take a complaint report, aided report, stop report, complete activity log entries, or make proper notifications, for example, will not be considered separately. In these cases a concurrent penalty should be applied. *Insert Footnote Penalties imposed prior to final adjudication (e.g. days forfeited during pre-adjudication suspension) may be applied to any final penalty determination. In the event that the total number of penalty days is calculated at greater than 90 days, the presumed penalty shall be termination or forced separation. *Footnote to be added: In cases where the lesser misconduct consists of acts that may also be incorporated into the same incident that gives rise to the greater charge, the penalty days may run concurrently. For example, when a charge consists of an overall</p>
719	362	n/a	"A recent example provided to the Monitor Team involved an officer who "wore a sweatshirt bearing discourteous and offensive words and images during an encounter with five teenagers."	n/a	Citation is needed for CCRB case number.
720	362	n/a	"Some of the SQF requirements listed in P.G. § 212-11 (such as report failures and BWC failures) are not contained in the Abuse, Discourtesy, Offensive Language section of the Matrix since they are not investigated by CCRB."	n/a	CCRB has investigated improper use of BWC since October 2022. And, this is outdated.
721	362	1478	"Instead, they are listed under "Violations of Department Rules and Regulations." That section, however, is headlined as violations "Adjudicated by Charges and Specifications."	Matrix at 43.	Incorrect/improper citation format
722	362	1479	"In such cases, the violations may be addressed as aggravating factors related to other acts of misconduct or may be addressed at the command level if there are no associated acts of misconduct being adjudicated through Charges and Specifications."	Matrix at 45, n. 80.	Incorrect/improper citation format
723	363	1480	"The Department has assured the Monitor Team that a Stop Report failure will carry a presumptive 5-day penalty, not treated simply as an aggravating factor for an improper stop."	NYPD response to Monitor Questions re Matrix, 12212020.	Relies on non-public conversation between NYPD and the Monitor.
724	363	n/a	"The choice of whether to pursue Charges appears to be left to the discretion of DAO. Since CCRB does not investigate report and BWC failures, how will CCRB's assessment of whether a failure justifies aggravation be reconciled with DAO's calculation?"	n/a	BWC is within CCRB's jurisdiction.
725	364	1488	"Thus far, there is no definitive court ruling embracing the prohibition against multiple penalties under the Administrative Code. However, prior to the addition of subdivision 3-a in 1990, there were two Appellate Division rulings barring multiple punishments of NYPD officers under Civil Service Law § 75(3)."	See cases cited supra note 1553.	Incorrect/improper citation format
726	364	1489	"On the other hand, imposition of a combined sentence of forfeiture of 30 vacation days coupled with placement on dismissal probation has been upheld."	Quinn v. Kerik, 305 A.D.2d 68 (1st Dep't 2003).	Citation should be Quinn v. Kerik, 305 A.D.2d 168 (1st Dep't 2003).
727	364	1492	"However, limiting that principle, the new Guidelines state if "the same underlying act(s) of misconduct support multiple definitions of proscribed conduct or support alternative theories of prosecution, then a single penalty will be applied."	Id.	Citation is needed.

728	365	n/a	"In response to inquiry, the Monitor team was orally advised that for a single encounter that involves an improper stop and an improper frisk and/or search, each would be reviewed individually (because they are separate acts), and each would receive a separate penalty."	n/a	Citation is needed.
729	365	1496	"In one of the few cases where the issue has been discussed since adoption of the Guidelines, DAO recommended that a substantiated stop against two individuals be considered one act and, accordingly, recommended a reduced penalty (but see the [redacted] case discussed in the Section above)."	[redacted]	Citation is needed. Is this a CCRB case?
730	366	n/a	Section F: Progressive discipline	n/a	Early in the report, concerns about the application of "progressive discipline" in support of a "step up approach" to misconduct is raised. That concern is prevalent throughout, and while most examples focus on multiple unsubstantiated allegations associated with unique MOS, some do not. This is really the heart of being about to "demonstrate [the NYPD] is actively identifying noting and responding to SQF". The report is deeply unsatisfied with the imposition of "informal discipline", particularly in the form of "training" for SQF findings, and feels that concurrences in this respect are significantly inflated. It explains that if a Command Discipline (hereinafter "CD") is accepted that doesn't carry a penalty, it should not be considered discipline by the report. This is in particular due to Schedule "A" CDs not appearing on a CPI, and the sealing of Schedule "B" CDs.
731	366	n/a	"In another case in the Trial Room, on October 14, 2021 the Police Commissioner approved a Trial Commissioner's recommendation, where the DCT wrote that the subject had "no prior disciplinary history" so "the Disciplinary Guidelines counsels a mitigated penalty in this matter."	n/a	Citation is needed for the second case referenced.
732	366	1497	Progressive discipline is a goal cited in the Joint Remedial Process Report and sought by many reformers.	JRP at 241.	Incorrect/improper citation to page in the report.
733	367	1500	Aggravation	Guidelines at 11.	Aggravation is not mentioned in the cited page of the report.
734	367	1501	"While a disciplinary history for misconduct is not listed as one of the specific thirty-one factors itemized that may be used to raise a presumptive penalty in Abuse, Discourtesy, Offensive Language cases..."	"There are 18 factors which apply to all cases and an additional 13 which may be used in a ADO case."	The cite provides a summary, but does not cite to the source.
735	367	1503	Time Limitations: The prior substantiation must have been within either three, five, or 10 years of the current offense, depending on the severity of the prior offense.	There is an exception for offenders who faced termination or forced separation but escaped the penalty by way of previous mitigation.	The cite provides an observation, but does not cite to the source.
736	368	n/a	"As such, it is uncertain how CCRB is to calculate recommendations for "progressive discipline" without being permitted to take such instances of misconduct into account."	n/a	This is outdated.
737	369	1508	One is for Equal Employment Opportunity Violations which are consigned to the Deputy Commissioner of Equity and Inclusion.	Disciplinary System Penalty Guidelines at 50.	EEO offenses are not listed on the cited page.
738	369	1510	The list in the Matrix largely replicates the offenses that were covered in the list of Command Discipline offenses that could be handled at the precinct level included in Patrol Guide § 206-03.	Now AG § 318-02.	The cited section does not include the list of CDs.
739	369	1511	The list of "Misconduct Adjudicated by Command Discipline" also includes "Omitted Activity Log entries" and "Omitted entries in Department records, forms or reports."	Id.	This cited section does not include the list of CDs.
740	370	n/a	"As of the report made available to the Monitor in March 2022, there were 39 complaints where CCRB has substantiated an SQF allegation since the Guidelines were adopted."	n/a	Different time periods for the data. As noted, the report referenced March 2023 data.
741	370	n/a	"The cases are open and pending as of April 2022."	n/a	Citation is needed for case number.
742	370	1512	"on a trial basis, for a period of one year, as the non-binding framework for its discipline recommendations in all CCRB cases."	CCRB Annual Report 2021 at 4.	The cited quote does not appear in the page of the document.
743	371	n/a	"The Board recommended the presumptive penalty for 177 of the 224 substantiated allegations."	n/a	Is this based on the data submitted to the monitor on 3/25/22?
744	371	n/a	"Seventeen arose from one complaint where two officers detained a group of teenagers."	n/a	Citation is needed for case number.
745	371	n/a	"In another case where two officers detained five teenagers, the Board did not recommend concurrent penalties for the ten findings; the allegations were aggregated to arrive at an elevated penalty recommendation for each officer."	n/a	Citation is needed.
746	371	n/a	"The Board found aggravating circumstances for 17 of the 224 allegations."	n/a	Citations are needed for this entire section.
747	371	1514	The Board then combines the allegation recommendations to arrive at an overall Board recommendation for the entire case (i.e., for each officer).	"Follow-up Detail" matrix on file with Monitor Team, submitted 3/25/22."	Relies on non-public communications between NYPD and the Monitor.
748	372	n/a	"The Board found mitigating circumstances for 30 of the 224 substantiated allegations."	n/a	Citations are needed.
749	373	n/a	"The Board has recommended a B-CD for 36 of the 224 allegations."	n/a	Citations are needed.



750	373	n/a	"One case was that of Lt. [REDACTED] who has two open and separate post-matrix complaints with five substantiated allegations pending."	n/a	Citations are needed.
751	373	n/a	"The Board has recommended an A-CD for 134 of the 224 allegations."	n/a	Citations are needed.
752	374	n/a	Section iii: SQF Allegations - Board Recommendation	n/a	Citations are needed for this entire section.
753	374	1516	"Within the 39 complaints produced, there were 107 substantiated allegations for stop, question, frisk or search of person misconduct. 4 question"	"An allegation for an illegal question does not receive a separate penalty if there is a stop allegation substantiated for the same complaint. Here, two of the four alleged illegal questioning incidents were in an encounter with an illegal stop."	Relies on non-public communications between NYPD and the Monitor.
754	375	n/a	"Lt. [REDACTED] was in a patrol car with Detective [REDACTED] (retired) when the complainant "flipped a bird" at the car."	n/a	Citation is needed for CCRB case number.
755	375	n/a	Section iv: CCRB Recommendations by Case	n/a	Citations are needed for this entire section.
756	376	n/a	"An example is the case of PO [REDACTED] who was found to have illegally searched a bag and to have failed to provide a business card when requested."	n/a	Citation is needed for CCRB case number.
757	376	n/a	"For one officer (PO [REDACTED]), the Board elevated a presumptive A-CD for Discourtesy to a B-CD due to an aggravating factor ("time for deliberate reflection")."	n/a	Citation is needed for specific case.
758	376	1518	"The Board recommended that 38 of the 91 officers be served with Charges and Specifications to face formal discipline."	"CCRB recommended Charges for a thirty-ninth officer, Deputy Inspector Steven Ortiz, but the Police Commissioner administratively closed that case without discipline or penalty before Charges could be served."	The cite references a decision by the PC but does not cite the decision itself.
759	377	n/a	Section v: NYPD Response to CCRB Panel Recommendations	n/a	Citations are needed for this entire section.
760	377	n/a	"Of the 38 cases where the Board recommended Charges."	n/a	Citations are needed for the specific cases.
761	377	1520	"The City Department of Law has objected to production of CAR memos, claiming deliberative process and work-product privilege."	The City Department of Law has objected to production of CAR memos, claiming deliberative process and work-product privilege.	Relies on non-public communications between City and the Monitor.
762	378	n/a	"Of the 16 cases where the Board recommended a B-CD, six have been resolved. The rest are open."	n/a	Citations are needed for specific case numbers.
763	378	n/a	Section vi: Penalty Disposition of SQFS Misconduct by NYPD	n/a	Citations are needed for this entire section.
764	379	n/a	"...to delay, mitigation, departure, dismissal, or acceptance by the Police Commissioner of a lesser penalty. One officer received a three-day penalty for an A-CD after the Police Commissioner departed downward from the level of discipline recommended by the Board, a B-CD. One officer received a three-hour time deduction, which was a penalty downward departure from the presumptive penalty for the B-CD recommended by the Board without mitigation and accepted by the officer. One officer received a two-hour time deduction, which is a penalty downward departure from the B-CD recommended by the Board without mitigation and accepted by the officer. One officer received Warnings upon a B-CD, a penalty departure from that recommended by the Board. (No mitigation found). One officer received a one-hour time deduction, which was a penalty departure from the penalty for an A-CD recommended by the Board, where no mitigation was found. Seven officers accepted an A-CD with no penalty where no mitigation was found. Four officers received an A-CD with Warnings where no mitigation was found. Three officers received Training without command discipline based upon a CCRB finding of mitigation. Nineteen officers received an NDA from the Police Commissioner.	n/a	Citations are needed.
765	382	1538	In place of § 50-a, the Legislature directed that law enforcement disciplinary records are available by use of the Freedom of Information Law (FOIL).	Public Officers Law § 86 et seq.	The cite does not support the statement.
766	382	1541	Law enforcement disciplinary records, since they are not itemized as exceptions in paragraph 2-b, must be disclosed without redaction unless the agency determines, on a case-by- case basis, to redact because disclosure with identifying details would constitute an unwarranted invasion of personal privacy	"[B]lanket exemption for particular types of documents are disfavored." NYCLU v. City of Schenectady, 306 A.D.2d 784,785 (3d Dep't 2003) (citing Matter of Gould v. NYPD, 89 N.Y.2d 267, 275 (1996) (rev'd on other grounds). Agencies also have discretion to deny access to records or portions of records that, if disclosed, would impair contract negotiations, expose trade secrets, interfere with law enforcement investigations, identify a confidential source in a criminal investigation, and certain inter-agency and intra-agency communications. POL § 87 (2).	The cite is not on point for law enforcement disciplinary records.
767	383	1543	This is a matter of discretion for the Department. The statute suggests specific items which would generally be so protected such as "employment, medical or credit histories," and "information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency."	POL § 89 (2)(b)(iv).	The cite is to the wrong section of the statute.

768	383	1544	First the agency needs to decide whether a particular item's disclosure would constitute an unwarranted invasion of privacy.	The Court of Appeals, in condemning a "runaround" which must end in an application to see force reports, declared, "The City is reminded that government records are "presumptively open," and statutory exemptions are "narrowly construed," and the City must articulate a "particularized and specific justification for non-disclosure." Matter of NYCLU v. City of Schenectady, 2 N.Y.3d 657 (2004).	The cite does not refer to the process.
769	383	1545	Even then, however, the agency is still permitted discretion to disclose, notwithstanding the privacy interests asserted	POL § 89 (2)(a). Matter of Capital Newspapers Div. of Hearst Corp v. Burns, 67 N.Y.2d 562, 567 (1986). ("[W]hile an agency is permitted to restrict access to those records falling with the statutory exemptions, the language of the exemption provision contains permissive rather than mandatory language, and it is with the agency's discretion to disclose such records . . . if it so chooses.")	The section of the statute cited does not refer to discretion; the quote from the case cited is partially correct.
770	384	1548	"In our opinion, if the City is able to prevent disclosure of records which would constitute an unwarranted invasion of personal privacy through the redaction of identifying details, it has an obligation to redact those details and disclose the remainder of the records (unless another ground for denial can be asserted)."	Committee on Open Government, FOIL AO 19805, 4/30/21. <a href="https://docs.dos.ny.gov/coog/ftext/f19805.pdf">https://docs.dos.ny.gov/coog/ftext/f19805.pdf</a> .	The cited opinion does not have the quoted text.
771	385	1551	"In addition, the court speculated that open claims might be protected on the grounds that release would interfere with law enforcement investigations and were also protected as inter- and intra- agency documents.	Id., (citing POL §§ 87(2)(e), and 87 (2)(g)).	The cite does not support the author's interpretation.
772	385	1552	It did permit the Syracuse Police Department to withhold or redact individualized records upon a showing of a particularized and specific justification showing an unwarranted invasion of personal privacy under Public Officers Law § 89 (2)(c)[i].	Matter of NYCLU v City of Syracuse, 210 AD3d 1401 (4th Dept. 2022).	The cite does not support the author's conclusion.
773	386	1558	In our opinion, if the City is able to prevent disclosure of records which would constitute an unwarranted invasion of personal privacy through the redaction of identifying details, it has an obligation to redact those details and disclose the remainder of the records (unless another ground for denial can be asserted)	Matter of Abbatoy v Bater, 178 NYS 3d 412, Index No. E2021009176 (Sup Ct. Monroe Cty. 11/17/2022). A notice of appeal has been filed, 12/16/2022.	The name of the case cited is incorrect - The respondent is Baxter not Bater.
774	386	1559	They cited Due Process...	"Stigma-plus" injury.	The cite to the case referenced in the sentence is provided in 1560; there are 261 items on the docket. The author did not provide a docket number.
775	386	1560	...and bargaining contract obligations, as well as claimed a generic unwarranted invasion of privacy.	Uniformed Fire Officers Assn v. de Blasio, Index No. 20-cv-05441 , ECF Doc No [ ] (S.D.N.Y.) (Failla, J.).	The cite is to an SDNY case with 261 items on the docket. The author did not provide the docket number.
776	386	1561	"The NYPD and CCRB may not disclose records of Schedule A command discipline violations for cases heard in the trial room, for which the ultimate disposition of the charge at trial, or on review or appeal, is other than guilty, which records have been, are currently, or could be in the future the subject of a request to expunge the record of the case pursuant to Section 8, for those officers covered by the PBA, the SBA, and the LBA, collective bargaining agreements."	Id., ECF Doc No 16 at 23. 8/21/20.	The cited document does not contain the quote.
777	388	1567	The parties, in the stipulation of dismissal, promised to "continue internal discussions regarding modification language and potentially collaborate with [Communities United for Police Reform]...	CPR had intervned to strike the lower court's preliminary injunction barring disclosure of A-CD's.	Docket number 258 does not have a stipulation of dismissal.
778	388	1568	...to draft mutually agreeable language to propose to the Court for its consideration.	UFO v. de Blasio, 20-cv-5441, ECF Doc No 258, 3/22/21.	Docket number 258 does not have a stipulation of dismissal.
779	388	1571	In a case that preceded the repeal of § 50-a, the Appellate Division, First Department, granted access to BWC footage without regard to the pendency or prospect of a disciplinary proceeding.	Matter of Patrolmen's Benevolent Assn. of New York City v. de Blasio, 171 A.D.3d 636 (1st Dept 2019), appeal dismissed, 35 N.Y.3d 979 (2020).	Appellate Division did not grant access, it affirmed the lower court.
780	391	1580	"CCRB has voluntarily entered into an agreement that may be more prohibitive than required by FOIL, which is not legally authorized, since as "records that must be disclosed under FOIL" cannot be bargained away."	Uniformed Fire Officers Ass'n v. de Blasio, 846 F. App'x ,at 31 (2d Cir. 2021).	The cited case does not include the quote.
781	391	1582	"This clause is apparently limited to the Summary Employment History (SEH) which, in the past, did not contain CORD reports, or disciplinary histories from IAB, DAO, BIU, or local commands."	The Matrix-MOU also provides that NYPD will not refuse to disclose or delay disclosure of an officer's employment history on the ground that it is conducting a concurrent or parallel investigation.	The cite does not support the conclusion. The cite is a comment without a cite to support it.
782	391	1583	"But the current Matrix-MOU does not confine records available to CCRB investigators solely to APU cases. which may mean that more information will be available in SQF investigations not leading to formal discipline."	Employment histories may not necessarily be sought in every case. The Matrix-MOU only promises to deliver the employment history within 20 business days after a specific written request is made to the Department by the CCRB investigator. Matrix-MOU, supra note 1504 paragraph 12.	The cite refers to note 1504. Note 1504 is not the Matrix-MOU. It is to the Guidelines. The cite also does not support the statement.
783	393	1591	"Only 26 to 37 percent of cases in that time period were formally prosecuted after a recommendation of Charges by CCRB."	Preliminary Staff Report, Charter Commission (April 2019) at 17.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
784	393	1593	"In addition, the Administrative Code requires an annual online public posting online of statistics regarding the number and percentage of instances in which the Commissioner deviated from the Guidelines."	NYC Admin. Code § 14-186 (d) "[B]y each January 30...the department shall post...the number and percentage of instances within the preceding calendar year in which the commissioner imposed a discipline penalty that is different from the disciplinary matrix penalty." In calendar year there were six posted deviations out of 431 cases. <a href="https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/cy-2021-disciplinary-matrix-deviations-by-the-police-commissioner.pdf">https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/cy-2021-disciplinary-matrix-deviations-by-the-police-commissioner.pdf</a> .	The cite to the Admin Code is correct, but the cite also includes a comment. The comment states: "In calendar year there were six posted deviations out of 431 cases." An outdated link follows.

785	394	1595	n/a	"The language of 38 RCNY § 15-18, which incorporates paragraph 6 of the APU-MOU, does not limit itself to formal charges. It applies to "any case substantiated by CCRB," which would seem to require an explanation in SQF cases that are not formally charged. Notwithstanding such, the explanations are only supplied in cases prosecuted by APU." Conversation with ██████████, Risk Management Bureau (July 16, 2019).	██████████ disputes having such a conversation with Judge Yates and would ask that his name be removed from the citation
786	394	1595	"The language of 38 RCNY § 15-18, which incorporates paragraph 6 of the APU-MOU, does not limit itself to formal charges. It applies to "any case substantiated by CCRB," which would seem to require an explanation in SQF cases that are not formally charged. Notwithstanding such, the explanations are only supplied in cases prosecuted by APU."	The language of 38 RCNY § 15-18, which incorporates paragraph 6 of the APU-MOU, does not limit itself to formal charges. It applies to "any case substantiated by CCRB," which would seem to require an explanation in SQF cases that are not formally charged. Notwithstanding such, the explanations are only supplied in cases prosecuted by APU. Conversation with ██████████, Risk Management Bureau (July 16, 2019).	Cites to Conversation with Risk Management Bureau July 16, 2019.
787	395	1596	"The Rules of CCRB require the same notice and permit the same response in APU cases where the Police Commissioner intends to impose a lower level of discipline than that recommended by CCRB or the Trial Commissioner. But the CCRB Rules modify the APU-MOU slightly by specifying that the Police Commissioner give reasons for lowering the level of discipline from the Trial Commissioner's recommendation as well as from that of CCRB, which may not be the same."	Rules of the Civilian Complaint Review Board, 38-A RCNY § 1-45. The recommendations of CCRB and the Trial Commissioner may, and often do, differ. Although the CCRB Rules require the Police Commissioner to explain deviations from both the CCRB recommendation and the Trial Commissioner's recommendation, this does not result in two writings: only one explanation is written. In cases prosecuted by DAO, the Police Commissioner does not provide an explanation to DAO or the Trial Commissioner. Rules of the Police Department, 38 RCNY Chapter 15 "Adjudications." In all cases, regardless of whether prosecuted by APU or DAO, and regardless of the level of intended discipline, the parties may submit a "Fogel letter commenting on the recommendation of the Trial Commissioner before final consideration by the Police Commissioner. See Matter of Fogel v. Board of Educ. of City of N.Y., 48 AD2D 925 (2d Dep't 1975).	The cite to 1-45 of the Rules of the CCRB does not support the statement by the author.
788	395	1597	"In practice, one letter is written..."	This is, theoretically, more detailed than the "cursory" "change of penalty" letters written to DAO of which the Independent Panel complained.	The cite references an opinion of the Independent Panel, but does not cite to a source.
789	395	1598	"The 2012 APU-MOU and the Rules of CCRB..."	38-A RCNY § 15-12 (b).	The cite is a source to neither the 2012 APU-MOU nor the Rules of the CCRB.
790	395	1599	...allow the Police Commissioner to "retain" cases being prosecuted by APU, which are known as "Provision Two" or "Paragraph Two" cases.	Paragraph Two or "Provision Two" as it is known is discussed in detail infra [Section ].	The cite is incomplete and cannot be verified.
791	396	1603	"But the Board does not recommend a specific penalty..."	After a trial or as part of a plea-bargain, APU will recommend a specific penalty to the DCT.	The cite states (in contrast) APU will recommend a specific penalty to the DCT. No cite to CCRB or APU process is provided.
792	396	1604	"Unlike APU cases, there will not be an opportunity in advance of imposition to object."	Id.	The cite refers to 1603, which provides no support for the statement.
793	396	1605	"It is unlikely that the public, when voting for the Charter change and promised explanations for deviations from recommendations were aware that the explanations might remain secret."	It appears deviation letters in a few cases have begun to be posted online in response to the Matrix MOU. The range of letters to be posted has yet to be determined.	The cite does not provide support for the hypothesis.
794	397	1606	"The Disciplinary System Penalty Guidelines or "Matrix" promises that the Police Commissioner will prepare a memorandum documenting factors that were considered in making her final "disciplinary decision" in all cases—not just formal disciplinary proceedings—describing any deviation from a recommendation by DAO, Trial Commissioner, or CCRB—all of which may be different."	NYPD Disciplinary System Penalty Guidelines, eff. January 15, 2021 at 6. Adopted pursuant to NYC Admin. Code § 14-186.	The cite does not provide support for the conclusion.
795	398	1610	"If APU enters into a proposed plea agreement, the basis for the plea is in writing and is not publicly available. It is provided to the officer prior to approval/disapproval by Police Commissioner."	Id. at <a href="https://www1.nyc.gov/assets/home/downloads/pdf/office-of-the-mayor/2021/Disciplinary-Matrix-MOU.pdf">https://www1.nyc.gov/assets/home/downloads/pdf/office-of-the-mayor/2021/Disciplinary-Matrix-MOU.pdf</a> .	The cite does not support the statement.
796	399	1611	"If CCRB's recommendation is outside the Guidelines (limited to extraordinary circumstances), the basis for the determination must be in writing and will be publicly available. Provided prior to NYPD action."	Id..	The cite does not support the the statement.
797	399	1612	"If DAO requests reconsideration (rare in recent years) there is a written request from DAO to CCRB and a response from CCRB prior to service of Charges and Specifications. These documents are <u>not</u> publicly available."	38-A RCNY-& 1-36.	The cite does not support the statement
798	399	1613	"If the Police Commissioner determines (limited to extraordinary circumstances) to deviate from the Guidelines (whether or not it is in agreement with CCRB's recommendation), she will put the basis in writing in a departure letter. This will be publicly available. No time limit is given for this departure letter."	MOU-Matrix at <a href="https://www1.nyc.gov/assets/home/downloads/pdf/office-of-the-mayor/2021/Disciplinary-Matrix-MOU.pdf">https://www1.nyc.gov/assets/home/downloads/pdf/office-of-the-mayor/2021/Disciplinary-Matrix-MOU.pdf</a> . When an item is designated as publicly available, the Department and CCRB reserve the right to redact or withhold information where "permitted by applicable local, state, or federal laws." Matrix-MOU at 4. <a href="https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-ccrb-discipline-matrix-mou-final.pdf">https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-ccrb-discipline-matrix-mou-final.pdf</a> .	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
799	399	1614	"If the Police Commissioner intends to impose a level of discipline or penalty of discipline other than that recommended by CCRB, (regardless of whether it is within the Guidelines), she must explain the reasons for deviating from the Board, 45 days after imposition of the discipline. This is not publicly available."	N.Y. City Charter § 440 (d)(3).	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.

800	399	1615	"If the Police Commissioner intends to impose a level of discipline or penalty lower than that recommended by CCRB (regardless of whether it is within the Guidelines), she must also explain how the outcome was determined including each factor considered. This is provided to the CCRB within 45 days after imposition and is not publicly available."	Id.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
801	399	1616	"BUT: Under the APU-MOU, if the Police Commissioner intends to impose "discipline that is of a lower level" than that recommended by CCRB or the Trial Commissioner, the Police Commissioner must "notify" CCRB and the Respondent 10 days prior to imposition with a detailed explanation of the reasons for deviating. CCRB and the Respondent have five days to respond, followed by the Police Commissioner's final determination. This correspondence is not publicly available."	APU-MOU, Provision Six, at <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf</a> .	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
802	400	1617	"In "limited instances" where the officer has no disciplinary history and the Police Commissioner wishes to withdraw the case from APU prosecution in the "interests of justice" (either permitting DAO to take over the prosecution or diverting from formal discipline entirely), the Police Commissioner writes a detailed explanation. CCRB may offer a statement in rebuttal, and the Police Commissioner may deny CCRB's request with a "detailed response."	APU-MOU, Provision Two, ay <a href="https://www.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf">https://www.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf</a> .	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
803	400	1618	"Despite the Charter mandate that CCRB be informed of the level of discipline and the penalty imposed, the Department has heretofore disregarded the mandate."	"The Agency does not receive specifics on the penalty that the Police Commissioner ultimately imposes." CCRB Annual Report 2020 at 42 <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2020_semi-annual.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2020_semi-annual.pdf</a> .	The cite does not support the conclusion.
804	401	1619	"Despite the Charter mandate that CCRB be informed of the level of discipline and the penalty imposed, the Department has, heretofore, disregarded the mandate. "the Agency does not receive specifics on the penalty that the Police Commissioner ultimately imposes."	CCRB Annual Report 2020 at 42. <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2020_Annual.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2020_Annual.pdf</a>	The cite does not support the conclusion.
805	401	1621	"As of June 12, 2022, a total of 118 cases are detailed in explanatory departure letters covering misconduct occurring during a period from 2018 to 2021."	There is some overlap between the first 47 departures contained in the Appendix to CCRB's Semi-Annual 2020 Report, at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2020_semi-annual.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2020_semi-annual.pdf</a> . and CCRB's posting of departure letters under "Complaint Outcomes" at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2020_semi-annual.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2020_semi-annual.pdf</a> . The combined total covers 119 cases.	The cite does not support the conclusion.
806	402	1622	There were another 58 downward departures where CCRB did not receive an explanation, mostly because CCRB had recommended Training and the Police Commissioner ordered that Instructions be given instead. In the eyes of CCRB, this is a downward departure, but in the eyes of DAO this is not a downward departure and, thus, no letter is written.	CCRB Semi-Annual Report 2020 at 53. But compare, Disciplinary Guidelines for failure to activate a BWC, at 43, where the presumptive penalty is Training, but a mitigated penalty is Instructions. NYPD's Guidelines seem to support CCRB's argument that Instructions is a lesser penalty than Training.	The cite does not support the conclusion
807	403	1623	The first published draft of the Guidelines contained a provision making Training the presumptive penalty and Instructions a lesser penalty which becomes available upon a finding of mitigating circumstances.	Improper activation of a BWC, at 45 in the Disciplinary Guidelines.	The cited does not support the conclusion.
808	404	1624	The presumptive penalty for an improper threat of enforcement activity is a 5-day penalty, the equivalent of an A-CD.	The Guidelines detail an improper threat of enforcement activity without specifying a threat to arrest. An improper threat to arrest is prohibited by Administrative Guide § 304-06. In its CAR memo, DAO presumed that a threat of arrest fell within a threat of enforcement activity. Note: The City has asserted a claim of privilege with regard to the two CAR memos which have been produced and asks that they not be referenced in this Report.	Relies on non-public communications between NYPD and the Monitor.

809	407	1632	If the Department can continue to justify deviances and departures with little more explanation than that the officer acted in good faith or reasonably, then the memos are not worth the time it takes to write or read them.	As just one example, in the case of PO ██████ discussed earlier, the Police Commissioner's Departure Letter, written November 8, 2021, explained a reduction from CCRB's recommended B-CD to an A-CD based on a "lack of substantiated CCRB history and the belief that the stop and the question were conducted in good faith." PO ██████ had eight previous similar CCRB complaints, none substantiated. In this incident, the police had received a radio call for a "past" domestic incident. By mistake they went to the wrong building. Although the complainant did not fit the description of a suspect, the officers thought he looked "angry." ██████ and his partner stopped the man, and during the stop, handcuffed, frisked, and detained the complainant for ten minutes, along with other discourteous actions (such as throwing his wallet on the ground when the complainant asked for its return). The suspect sought by police in that case was described as a Black male, 6'5" tall, heavy set, bald, and walking with a limp. The record was clear that the wrongly detained complainant was 5'7" with an athletic/muscular build, black hair, and no limp. In short, he looked nothing like the suspect. The officers, in the findings of CCRB, lacked "any credible suspicion." PO Hirschman admitted in his interview that the officers "did not have reason to suspect [the complainant] of being involved." In other words, there is nothing in the record to support the claim that the actions were taken "in good faith." Instead, it is merely a conclusory assertion, without basis, offered by rote to justify a departure.	The cite does not support the conclusion.
810	408	1633	Also of interest is the fact that the encounter under examination occurred on the same day the POs alleged, according to the sworn complaint in Bronx Supreme Court, to have been part of an encounter with several officers and several complainants, which included wrongful arrests, use of force, and chokeholds.	Castro v. City of New York, ██████, Index No. 34384/2018E (Sup. Ct. Bronx Cnty. 2018)	It is unknown what is mean by the "sworn complaint" in the Bronx. The complaint filed in the civil matter is verified by the plaintiff's attorney.
811	409	1636	Also of interest is the fact that the encounter under examination occurred on the same day the POs alleged, according to the sworn complaint in Bronx Supreme Court, to have been part of an encounter with several officers and several complainants, which included wrongful arrests, use of force, and chokeholds.	Second Annual Report at 6-8 (October 1997).	The cite is to p. 6-8; the cite is solely on p. 8.
812	410	1639	"There continues to be allegations of false testimony regarding the circumstances surrounding the stops and searches of individuals. When officers are found to have made false statements, the public's confidence in the integrity of the policy may be affected. In order to prevent the tarnishing of the Department's credibility, those officers who have lied must, in all but the most exceptional of circumstances, be separated from the Department."	Twelfth Annual Report of the Commission at 61. (February 2010).	The quote cited is actually: There continues to be allegations of false testimony regarding the circumstances surrounding the stops and searches of individuals. Without proper justification, evidence recovered after such a stop would be excluded from admission at a trial, risking dismissal of the criminal case or acquittal of the criminal defendant. In a recent case, two undercover officers were indicted for the false arrest of four innocent men.186 Whe officers are found to have made false statements, the public's confidence in the integrity of the police may be affected. In order to prevent the tarnishing of the Department's credibility, those officers who have lied must, in all but the most exceptional circumstances, be separated from the Department.
813	410	1640	"CCPC found that the Department invoked the "exceptional circumstances" clause quite frequently. CCPC believed that "the Department needs to better document, where applicable, its reasons for finding exceptional circumstances."	Fourth Annual Report of the Commission at 18. (November 1999).	The quoted text is correct but the conclusion that the CCPC found that the Department invoked the "exceptional circumstances" clause quite frequently is not supported.
814	410	1643	"Whenever an officer's testimony is found to be "incredible" by a factfinder, the Department should consider a false statement charge."	Seventh Annual Report of the Commission at 141. (March 2004).	the cite does not support the conclusion. The commission stated further investigation should be conducted.
815	411	1648	"The Department should consider termination for all false statements, not just those made in sworn testimony or in a P.G. hearing. "[T]ermination should be consistently applied to falsities made in non-testimonial settings, since the same policy considerations apply."	Id. at 79.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
816	411	1650	"Analysis revealed that Departmental findings that a lie was a "mere denial" without elaboration, thereby avoiding termination, is extensively used."	Ninth Annual Report of the Commission at 36 (February 2006).	The cite does not support the conclusion.
817	412	1655	"Imposition of penalties for false statement are not significantly different from the penalties that would have been imposed for the underlying misconduct alone . . . [which] undermines the work of investigators, weakens the utility of Department interviews, and sends a message to members of the service that lying to cover up their own misconduct will be tolerated."	Seventeenth Annual Report of the Commission at 106. (November 2015) and Eighteenth Annual Report at 120 (August 2017).	The second cite does not support the quote.

818	412	1657	"Often, the circumstances . . . leave little doubt that the subject officer made statements that were . . . both intentional and material, yet the Department appears to routinely employ other Patrol Guide Sections to address the misconduct, bypassing the mandatory termination penalty in the process...By levying an alternate charge, the Department need not find that exceptional circumstances exist to retain those officers."	Eighteenth Annual Report of the Commission at 119. The Commission gave as an example of an officer who was charged with false statements on two separate occasions. In one, the officer falsely claimed to have seen a violation before a stop and search, both in testimony before a grand jury and in interviews with IAB and an ADA. His false statements were considered to be "inaccuracies" and "mistakes, and in all, for both cases, the officer received a 40-day penalty. The Commission concluded that the officer's repeated falsehoods represented an intentional attempt done to cover up his misbehavior.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
819	416	1670	"Inaccurate Statements" are defined as one known to include material information with gross negligence.	"Gross negligence" generally means a disregard of the consequences and indifference to rights of others. <i>Clark v. MacDuff</i> , 281 A.D. 799 (4th Dep't 1953).	The author cites to a 1953 Fourth Department case to define gross negligence. The case is an article 78 regarding a DMV infraction. It is in no way instructive as to the meaning of gross negligence in this context.
820	419	1672	"Perhaps the largest "loophole" in the Disciplinary Guidelines is in the paragraph denominated "Mistakes.""	Disciplinary Penalty Guidelines at 33. Also in AG § 304-10.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
821	419	1673	"The amended Administrative Guide section refers only to "written statements made in a sworn document, including affirmations."	AG 304-10 at 2 (emphasis added).	The actual language of the cited section on p. 2 is: Circumstances in which false or misleading official statements are made include, but are not limited to, verbal statements made pursuant to a statutory or procedural requirement, or under oath during a civil, administrative, or criminal proceeding, in addition to written statements made in a sworn document, including affirmations made in Department (e.g., COMPLAINT REPORT [PD313-152], etc.) and non-Department (e.g., New York State Domestic Incident Report [DCJS-3221], etc.) forms.
822	419	1676	"14 were found to be False Official Statements"	Presumptive Penalty: Termination	Citation is needed for data.
823	419	1677	"7 were found to be Misleading Official Statements"	Presumptive Penalty: 30 days + Dismissal Probation	Citation is needed for data.
824	420	1678	"1 was found to be an Inaccurate Official Statement"	Presumptive Penalty: 10 days	Citation is needed for data.
825	420	1679	2 were found to Impede an Investigation"	Presumptive Penalty: 30 days + Dismissal Probation	Citation is needed for data.
826	421	1682	"4,645 complaints were received and retained by CCRB"	Roughly 50% of complaints brought to CCRB each year do not fall within its FADO or personal jurisdiction. Received and retained cases are those which survive initial screening for jurisdiction.	Citation is needed for data.
827	421	1683	"1,234 complaints were fully investigated by CCRB"	Most retained cases end up being diverted due to truncation, mediation, lack of witness cooperation, etc.	Citation is needed for data.
828	421	1684	"6,491 civil complaints against the Department were filed with the Comptroller"	This includes police action tort cases, which can include an injury, and civil rights claim. Roughly one-third (1,541) of the complaints filed with the Comptroller against police are for civil rights violations without an alleged physical injury. Some of the 6,491 complaints with the Comptroller are settled without litigation, and some continue as filings in court. The number here includes both - cases which were settled pre-litigation and those that went on to litigation.	Citation is needed for data.
829	421	1685	"3,079 lawsuits were filed in state and federal courts alleging police misconduct."	These include cases which were filed with the Comptroller but were not settled pre-litigation. This includes false arrest, malicious prosecution, excessive force, false imprisonment and assault/battery claims.	Citation is needed for data.
830	421	1686	"One might think that the bulk of the claims were for misuse of force, but in fact there were only 1,379 allegations of use of force or assault and battery, while there were 2,516 allegations of malicious prosecution, false arrest, and false imprisonment."	NYPD-OIG, 2019 Assessment of Litigation Data Involving NYPD at 12 (Apr. 30, 2019) <a href="https://www1.nyc.gov/assets/doi/reports/pdf/2019/Apr/13LitData_pressrelease_report_43019.pdf">https://www1.nyc.gov/assets/doi/reports/pdf/2019/Apr/13LitData_pressrelease_report_43019.pdf</a> .	The cite does not provide support for the conclusion.
831	422	1689	"He went on to complain, "[t]here is a total disconnect between the settlements of civil claims and police department action; such matters are ordinarily not even noted in an officer's personnel file."	Flynn, "Record Payout in Settlements against Police," supra.	The quote is not in the cited article.
832	423	1692	"Beginning in 2015, efforts have been undertaken to separate the wheat from the chaff. Mayor de Blasio announced on January 30, 2015, that the City would no longer settle frivolous lawsuits."	During a January 30, 2015 press conference, the Mayor announced that the City will no longer settle "frivolous" suits. The same day, First Deputy Mayor Shorris made the same announcement in a letter to several police unions about changes in the City's litigation strategy for lawsuits against NYPD. Letter from Anthony E. Shorris, First Deputy Mayor to Mr. Ray Richter, President, Captain's Endowment Association et al. (Jan. 30, 2015).	Citation is needed for data.
833	423	1694	"PALS relies on merit-based litigation information as the basis of its advice and counsel to the agency, not mere filing data."	Id.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
834	423	1695	"In 2017, the Comptrollers' bid for correlation was further bolstered by the Association of the Bar for the City of New York in testimony supporting proposed legislation:.."	Intro 0119-2017 which was subsequently enacted as LL 166/2017.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
835	425	1705	"When CCRB closes a case due to pending litigation, it is because "the complainant or victim chose not to cooperate with the investigation on the advice of counsel."	38-A RCNY 1-33 (11).	The quoted language does not appear in the cited section.

836	426	1707	"That section directed six agencies: the inspector general, the comptroller, the Department, CCRB, CCPC, and CCHR to work together to collect and evaluate information regarding allegations or findings of improper police conduct and to develop recommendations relating to discipline along with Training, monitoring and related policies."	N.Y.C. Charter § 808 (b). The inspector general for the police department shall, working with the law department, the comptroller, the police department, the civilian complaint review board, the commission to combat police corruption, and the commission on human rights collect and evaluate information regarding allegations or findings of improper police conduct and develop recommendations relating to the discipline, Training, and monitoring of police officers and related operations, policies, programs, and practices of the police department, including, but not limited to, any system that is used by the police department to identify police officers who may be in need of enhanced Training or monitoring.	The sentence mischaracterizes the code section cited.
837	427	1711	"NYPD responded that it had made information and employees available, and that the Examination was "hardly accurate."	NYPD letter to Mayor de Blasio, at 9 (Aug. 7. 2018). <a href="https://www1.nyc.gov/assets/doi/oignypd/response/LitigationDataResponse_FINAL_80718.pdf">https://www1.nyc.gov/assets/doi/oignypd/response/LitigationDataResponse_FINAL_80718.pdf</a> .	The cited quote is a mischaracterized fragment.
838	427	1713	"As the OIG noted, "such data [has] value."	OIG-NYPD, 2019 Assessment of Litigation Data Involving NYPD, supra, at 10.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
839	433	1731	"In 2019 and 2020, 716 CCRB investigations were closed "pending litigation.""	CCRB, Semi-Annual Report at 24 (2021), <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2021_semi-annual.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2021_semi-annual.pdf</a> .	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
840	433	1732	"Two of the investigations were substantiated by CCRB, with recommendation for Charges and Specifications, but the Police Commissioner did not accept the recommendations or findings, and no discipline was imposed."	In one case, discussed below, where CCRB recommended Charges, the Police Commissioner retained the case and removed APU from the prosecution. In another case that went to trial, the Police Commissioner overturned a guilty verdict and substituted it with a not-guilty finding.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
841	434	1733	"This does not include a \$325,000 verdict against fellow officers in his precinct for which, it was later claimed, he personally and wrongfully retaliated against the same complainant."	The lawsuit claiming retaliation was dismissed.	Citation is needed.
842	434	1734	"Without the ability to pierce the terms of three of the settlements before the new law takes effect..."	Local Law 48 became law on April 25, 2021. But the new listings are not required until July 31, 2021 and are to be updated bi-annually on January 31st and July 31st thereafter.	It is unclear what is meant by the footnote.
843	437	1741	"Today, the Comptroller settles many lesser claims of police misconduct under an early settlement program that saves the parties the cost of litigation."	A notable exception is the case against PO [REDACTED], which the Comptroller settled for \$5.9 million.	The cite does not provide a source for the statement.
844	438	1742	Approximately 72% of the Comptroller's settlements are for wrongful "police action" or "civil rights," claims.	See Annual Claims Report, Chart 11, N.Y. City Comptroller, available at <a href="https://comptroller.nyc.gov/reports/annual-claims-report/">https://comptroller.nyc.gov/reports/annual-claims-report/</a> .	Cites to "chart 12". The charts in the cited report are not numbered.
845	438	1743	"For those court cases, it is reported that the City paid out \$55,645,598 in 2018."	NYPD-OIG, Using Data from Lawsuits and Legal Claims Involving NYPD to Improve Policing, page 17, April 20, 2015, available at <a href="https://www1.nyc.gov/assets/doi/reports/pdf/2015/2015-04-20-Litigation-Data-Report.pdf">https://www1.nyc.gov/assets/doi/reports/pdf/2015/2015-04-20-Litigation-Data-Report.pdf</a> .	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
846	439	n/a	"The Court's order establishing an Early Intervention program recognized the need to capture claims of wrongful conduct made to the Comptroller and in court filings as a tool to recognize and intercept potential bad practices."	n/a	The early intervention order does not include "claims of wrongful conduct made to the Comptroller." Plaintiffs' counsel had advocated for the inclusion of such claims but they were not in the final order.
847	439	1746	"For the Fiscal Years 2018 and 2019, the Comptroller also settled 2,671 police action claims pre-litigation for a total of \$51.3 million (an average pay-out of \$19,206)."	Comparisons are difficult for several reasons. For one, Law Department postings are by calendar year and Comptroller listings are by fiscal year. For another, some number of the Comptroller's settlements are for wrongful use of force – even if minor injury was all that was alleged. Approximately 72% of the Comptroller's settlements are for wrongful "police action" or "civil rights," claims. See Chart 11, supra, note 776. Not included in this number are wrongful conviction claims which are quite costly. In 2018 there were 5 such settlements for \$33.3 million and in 2019 there were 7 settlements for \$30.9 million.	Link to Law Department posting needed.

848	439	1747	"The Comptroller settled 2,971 civil rights claims for a total of \$194.8 million."	See Chart 11, supra, note 776. Over the five-year period 2016-2020, 14,459 police misconduct cases were filed in state and federal courts - averaging about 3000/year. However, even this large number vastly undercounts potential misconduct claims since many cases are disposed of by the Comptroller without litigation and most civil lawsuits contain allegations against multiple officers. While a civil lawsuit claim, in and of itself, does not necessarily prove misconduct, the expense and effort accompanying a court filing are such that court filings cannot be discounted. The Comptroller's office, for purpose of reporting, separates Personal Injury Police Action Claims from Police Action Civil Rights Claims. In 2019, there were 3614 personal injury claims and 1468 Civil Rights Claims filed. Some were settled by Comptroller "Pre-litigation" and some went on to be filed in court. One can assume that some number fell by the wayside between the time they were filed in court as well. A little more than half (5110 of 9782 = 52 percent) of Personal Injury Police Action Claims were settled Pre-litigation by the Comptroller in the 2017-2020 time period. If about one-half of all police action claims are settled by the Comptroller and about 3000 per year continue on to court filings, we can approximate that a total of 6000 sworn complaints are brought each year.	The cite refers to an earlier cite which is not a proper source. The cite has additional data not sourced.
849	439	1748	(Not all the civil rights claims are against the Department or its officers.)	The Comptroller separates "police action" claims from "civil rights" claims. See Chart 11, supra, note 776. Police action claims cover false arrest, false imprisonment, assault, failure to provide police protection and excessive force. Civil rights claims arise from alleged statutory or constitutional violations such as discrimination based on sex, race, religion, disability, sexual orientation, or age. Claims in this category also include alleged constitutional civil rights violations by law enforcement personnel such as false arrest, malicious prosecution, excessive force, or wrongful incarceration claims under 42 U.S.C. section 1983. In 2019, 16 percent of the claims settled by the Comptroller were police action claims and another 16 percent were civil rights claims	The cite refers to an earlier cite which is not a proper source.
850	441	1758	"They are protected by the doctrine of "qualified immunity"."	Conrad v. City of New York, 192 A.D.3d 505 (1st Dep't 2021). The historical oddity of Harlow is that the appeal was premised upon a claim that "high officials" close to the President enjoyed absolute immunity similar to that claimed by the President in Nixon v. Fitzgerald, 457 U.S. 731 (1982). The Court in Harlow rejected the claim of absolute immunity. Absent qualified immunity, excessive use of force by an officer may be considered an unreasonable seizure under Fourth Amendment. Shamir v. City of New York, 804 F.3d 553 (2d Cir. 2015).	The discussion in the cite is not on point.
851	441	1759	"...and, when not so protected, they are indemnified by the City."	GML § 50-j.	Cite to 50-j is inappropriate as it does not apply to the City of New York.
852	443	1768	"Defendants will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded that a warrant should issue; but if officers of reasonable competence could disagree on this issue, immunity should be recognized."	Malley, supra at 341.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
853	443	1770	"Or, in the words of Justice Byron White, "[a]s the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or those who knowingly violate the law."	Malley, supra, at 341.	Incorrect/improper citation format. The source cannot be located with the citation provided in the footnote.
854	443	1773	"If the doctrine is not drawn from constitutional interpretation nor an exercise of the supervisory powers of the Supreme Court, is it open to Congressional modification by amendment to section 1983?"	Ending Qualified Immunity Act, H.R. 7085, 116th Cong. § 2 (2020), available at <a href="https://www.congress.gov/bill/116th-congress/house-bill/7085/text">https://www.congress.gov/bill/116th-congress/house-bill/7085/text</a> ; see also Congressional Research Service, <a href="https://crsreports.congress.gov/product/pdf/LSB/LSB1049">https://crsreports.congress.gov/product/pdf/LSB/LSB1049</a> note 2, at 1.	The link to CRS Report is inactive.



855	446	1784	"An interplay between disciplinary proceedings and civil lawsuits arises on frequent occasion."	Over the five-year period 2016-2020, 14,459 police misconduct cases were filed in state and federal courts - averaging about 3000/year. However, even this large number vastly undercounts potential misconduct claims since many cases are disposed of by the Comptroller without litigation and most civil lawsuits contain allegations against multiple officers. While there is some probability that a civil lawsuit claim, in and of itself, does not necessarily prove misconduct, the expense and effort accompanying a court filing are such that they do not deserve to be minimized. The Comptroller's office, for purpose of reporting, separates Personal Injury Police Action Claims from Police Action Civil Rights Claims. In 2019, there were 3614 personal injury claims and 1468 Civil Rights Claims filed. Some were settled by Comptroller "Pre-litigation" and some went on to be filed in court. One can assume that some number fell by the wayside between the time they were filed in court as well. A little more than half ( 5110 of 97 percent = 52 percent) of Personal Injury Police Action Claims were settled Pre-litigation by the Comptroller in the 2017-2020 time period. If about one-half of all police action claims are settled by the Comptroller and about 3000 per year continue on to court filings, it would seem that approximately 6000 sworn complaints are brought each year.	Citation is needed for the information in footnote.
856	447	1785	"Aside from the annual consultations and review of disciplinary practices to be conducted by the OIG-NYPD required by Section 808."	After May 2020, Local Law 166 only requires a Section 808 report once every three years.	Incorrect/improper citation format.
857	449	n/a	Section XIII: External Oversight By Companion Agencies	n/a	The consistent refrain of nearly limitless disciplinary power in the hands of the PC would be more honestly contextualized by a robust description of the constant efforts of the NYPD to evolve towards a fair, efficient, and transparent system. It is entirely dishonest to suggest that the powers of the PC are not at all without limits or checks. Objectively, the NYPD is heavily monitored by reports and investigations from external agencies, state and federal courts, the city council, public hearings, depositions, and all the while exposed to countless civil suits. Roughly 9 of the 459 pages explain oversight powers of these other agencies, and it somehow escaped the Monitor's notice that most if not all recommendations from these oversight agencies with respect to the George Floyd protests have been implemented well before either the the report or the January 2023 report from the CCRB.
858	449	n/a	"The Court's remedy opinion called for increased deference by the Department to CCRB credibility determinations. It would be inconsistent with that mandate to have DAO dispute an SQF case which hinged on credibility of the officer while the Department was aware of credibility complaints by prosecutors and hid those complaints from CCRB."	n/a	From the start, there seems to be significant emphasis on the notion that the Department does not give the CCRB the proper deference due with respect to their credibility determinations. There is not much support for this core belief inside the four corners of the report. There are no statistics provided, culled from departure letters written by the PC, which cite disagreements with respect to the credibility of witnesses as the reason for arriving at different disciplinary conclusion. To the extent the report bases this on finding of DCT at trial that run counter to the discipline requested by APU, "deference" in such a context would be the ideological opposite of "due process". The entire point of an adversarial process is to challenge positions, require evidence, and test it publicly. If the implication is that DAO is more successful than APU "in the trial room" because the Department is biased against CCRB, once again, an alternate hypothesis should be tested.
859	449	1792	"It would be troubling, if not unethical, for a DAO attorney to seek to overturn a CCRB credibility assessment while withholding adverse credibility information."	See, e.g., GEICO v. National Ind. Truckers, 180 A.D.3d 900, 902 (2d Dep't 2020) (lack of candor to an arbitrator constitutes misconduct).	The cite does not stand for the proposition.
860	450	1795	"The NYC Police Reform and Reinvention Collaborative Draft Plan submitted by the City to the Governor."	Supra note [ ] (submitted March 5, 2021 to Governor Cuomo).	The cite refers to a "note number" in a "supra" source but does not provide the name of the source, or the note number.
861	450	1796	"According to the submitted plan, "Putting all three under one umbrella will allow a new, stronger entity to establish itself as a trusted and robust oversight voice."	Id. at 15.	The cite is to "Id.", but the prior citation has no source.
862	454	1822	"The OIG does not read this section as authorization to handle individual civilian complaints as they come in."	Because of the Covid-19 pandemic and Black Live Matters protests, statistics in 2020 are not generally consistent with prior years or useful for trend analysis. In 2020 OIG-NYPD received 618 complaints.	The cite is a not a source for the statement.
863	457	1841	"None have resulted in enforcement actions by the Commission."	Standing was premised upon a claim of reputational injury to members of the Union. In upholding the Union's claim of likely injury, the Appellate Division took note of the fact that CCHR had filed complaints against two officers as of the time of the decision (June 23, 2016—two and one-half years after the law took effect on November 20, 2013).	The cite does not source the information included within the cite.

864	458	1844	"Its designated responsibilities include "protecting civil liberties and civil rights, ensuring compliance with constitutional protections and local, state and federal laws, and increasing the public's confidence in law enforcement."	N.Y. Exec. Law § 85(2)(d). Note the identical language to Local Law 70, the New York City	Incorrect/improper citation. The citation is 75.
865	458	1847	"The failure to so report "shall be cause for removal from office or employment or other appropriate penalty.""	N.Y. Exec. Law § 85(5). Compare with Patrol Guide § 207-21 ("All members of the service have an absolute duty to report any corruption or other misconduct or allegation of corruption or other misconduct, of which they become aware.")	Incorrect/improper citation. The citation is 75.
866	458	1848	"The Executive Law now requires a search for patterns regardless of whether the prior complaints have been substantiated."	Cf. Jenkins v. Zambrano, 1:15-cv-05889 (E D N.Y. June 15, 2019) ECF No. 94. (handling of complaint, even though unsubstantiated bespoke indifference).	The cite does not support the statement.
867	101-106	n/a	Section: Reported Use of Force in Stop and Frisk Encounters	n/a	"Reported Use of Force in Stop and Frisk Encounters" <ul style="list-style-type: none"> <li>• conflates the definition of force and the criteria for preparation of a TRI Report with the method employed to stop an individual when conducting a Terry stop (as documented on a Stop Report)</li> <li>•the Stop report does not report use of force – rather it asks for the "Actions Taken to Stop and/or Detain Prior to Arrest:"</li> <li>•such action(s) may include "Verbal Command/Instruction", handcuffing, etc. among others</li> <li>•these actions are not reportable uses of force</li> <li>•the comparison is misleading and inaccurate</li> <li>•this entire section is misplaced and evinces a misunderstanding of the force policy</li> <li>•drawing and pointing a firearm is distinguished from the use or discharge of a firearm under policy but seemingly combined in the draft discipline report</li> <li>•repeatedly uses the term "force" when describing the actions taken to stop an individual even though this is inconsistent with the force policy and definitions (he appears to use force interchangeably with the concepts of coercion and not being free to leave)</li> <li>•Report: "Because CCRB and IAB/FID separately investigate force incidents, it is difficult to track and trace the efficacy of use of force investigations overall" – outside the scope and beyond the court's mandate for this report</li> </ul>
868	106-107	n/a	"In borough-based cases, if investigated by units other than IAB, when an investigation has concluded, the Duty Captain is responsible for submitting a detailed report to the IAB with the disposition of all allegations and recommendations for further investigation, if warranted. The Duty Captain may also recommend that the IAB close the investigation."	n/a	This statement is indicative of the procedure related to a Duty Captain's initial response and preliminary investigation of a reported incident, not the investigation of a misconduct case.
869	111-114	n/a	Section I: Biased Policing and Profiling Defined	n/a	Racial Profiling Allegations <ul style="list-style-type: none"> <li>•City Charter amendment – affirmed CCRB's authority rather than directed CCRB to assert jurisdiction</li> <li>•CCRB may self-initiate an investigation and has look-back jurisdiction over past professional conduct when an allegation is substantiated</li> </ul>
870	119-120	521	"888 profiling cases, none of which had been substantiated. It recommended that CCRB investigate profiling complaints under its "abuse of authority" jurisdiction."	OIG-NYPD, Complaints of Biased Policing in New York City: An Assessment of NYPD's Investigations, Policies, and Training, supra, at 40-42, 56 <a href="https://www1.nyc.gov/assets/doi/oignypd/response/FinalResponse_to_IG_v2_81619.pdf">https://www1.nyc.gov/assets/doi/oignypd/response/FinalResponse_to_IG_v2_81619.pdf</a> .	Relies on non-public communications between NYPD and the Monitor.
871	121-122	533-534	"Following a February 2021 hearing on racism, bias, and hate speech in the NYPD, the City Council determined there was a "need for performance of a comprehensive public integrity investigation to identify any instances of previous professional misconduct by an NYPD employee who has been found to have engaged in an act exhibiting racism or bias or in hate speech."	City Council Committee Report of the Committee on Civil and Human Rights, Intro. No. 2212-A, at 9 (Mar. 25, 2021), <a href="https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4770945&amp;GUID=B5D55B19-D0FD-440C-999F-1708BF09F374&amp;Options=ID%7cText%7c&amp;Search=2021%2F047">https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4770945&amp;GUID=B5D55B19-D0FD-440C-999F-1708BF09F374&amp;Options=ID%7cText%7c&amp;Search=2021%2F047</a> . Footnote 534 Id. at 10.	Citation is needed to specific document quoted.
872	127-128	563	"In 2019, QAD looked at more than half of the Stop Reports which were filed—7,475 of 13,459. QAD found 6,050 of those sufficiently justified the stop. Similarly, 3,233 of 3,434 frisk reports were found to be sufficient and 2,312 of 2,473 search reports were sufficient." Footnote 563: Id. at 79. "Unlike the numbers for CCRB allegations, prior to 2020, QAD only looked at the sufficiency of a basis for a frisk or search if the stop appears to be justified. Therefore, the number of frisks and searches which appear to be questionably supported do not overlap with number of stops reported to be questionable. If a stop was done without cause and a frisk was later done without reasonable suspicion, only the illegal stop would be reflected by these numbers. One can safely assume that some number of the frisks were illegal, but not accounted for in this tabulation."	Id. at 79. "Unlike the numbers for CCRB allegations, prior to 2020, QAD only looked at the sufficiency of a basis for a frisk or search if the stop appears to be justified. Therefore, the number of frisks and searches which appear to be questionably supported do not overlap with number of stops reported to be questionable. If a stop was done without cause and a frisk was later done without reasonable suspicion, only the illegal stop would be reflected by these numbers. One can safely assume that some number of the frisks were illegal, but not accounted for in this tabulation."	Citation is needed.

873	141-142	631	"There is no data on the intersection, i.e., how many SQF complaints to CCRB were accompanied by a use of force investigation by either CCRB or IAB." Footnote 631: While that number is unknown, it should be noted that of 96 complaints with a substantiated SQF violation in 2019, nine also substantiated a wrongful use of force.	While that number is unknown, it should be noted that of 96 complaints with a substantiated SQF violation in 2019, nine also substantiated a wrongful use of force.	Citation is needed.
874	155-156	n/a	"The DCT can submit a penalty recommendation permitted by the Administrative Code and the Civil Service Law."	n/a	Matrix is taken into account.
875	173-174	n/a	Section xii: Unfettered Discretion of the Police Commissioner	n/a	What is discussed much more briefly is that the PC's discretion is not actually "unfettered" but rather, limited by three separate statutes referenced briefly
876	174-177	n/a	Section xiii: Efforts to Remove the Police Commissioner's Final Authority on Discipline	n/a	There's no discussion about why "discipline" should be different from any other decision made by the PC, or why this agency is distinct from any other agency.
877	186, 243	n/a	Pg. 186: "More recently, Letitia James, then Public Advocate, sued unsuccessfully to obtain Grand Jury records in the case examining the death of Errol Garner and the involvement of Officer Daniel Pantaleo."  Pg. 243: "The most well-known example of the invocation of the "crime" exception is the case against Daniel Pantaleo. He was charged with an assault and chokehold in connection with the death of Errol Garner, which occurred on July 17, 2014."	n/a	<b>Errol:</b> It should be Eric.
878	193-194	n/a	"Police oversight in New York is a massive undertaking. In 2017, the CCRB received over 10,500 complaints, 4,487 of which were in its investigative jurisdiction. CCRB requires additional funding for a number of essential initiatives to support these investigations. For instance, it is absolutely critical for the Agency to upgrade to its systems, hardware, Training, security, and operations, some of which are more than twenty years old. The CCRB's case tracking system dates back to the early 1990's and continues to run on outmoded and often redundant technologies—this system simply cannot keep up with the pace of the Agency's investigations or the digital storage demands that continue to grow as the NYPD equips every officer with a body-worn camera. With the Right to Know Act taking effect in October 2018, officers for the first time will be required to hand out business cards during all Level 2 and Level 3 stops. The card will include the number for 311 and a notation that civilians may call the number if they wish to comment on their interaction with the officers. Many of those calls will be routed to the CCRB, and the Agency will need to increase its intake staff, investigators, and resources in order to effectively manage the inevitable increase in complaints."	n/a	This is outdated. This testimony is 5 years old and occurred pre-Covid. Most recent budget testimony should be cited as many things have changed.
879	197-198	n/a	"Level I investigators have a starting salary of \$39,370. After one year of experience, they are eligible to become Level II investigators with a salary of \$54,147."	n/a	This is outdated.
880	202-203	n/a	"CCRB's 2017 Annual Report indicates that in referred cases, CCRB sometimes has difficulty making initial contact with the complainant or victim, who may not have been informed of the referral to the CCRB by the referring agency.900 Cases coming from the IAB more often result in truncated (and hence uncompleted) CCRB investigations. In 2017, the truncation rate was 69 percent for cases filed with IAB and sent to CCRB; 44 percent for cases filed directly with CCRB; and 52 percent for cases filed elsewhere."	n/a	This is outdated.
881	216-223	n/a	Section ii. Who May Complain?	n/a	The entire section is outdated.

882	241-242	n/a	<p>"For the years 2017-2019 CCRB:</p> <ul style="list-style-type: none"> <li>oReceived 3832 complaints of Discourtesy</li> <li>oReceived 5461 allegations of Discourtesy</li> <li>oFully investigated 2089 allegations of Discourtesy</li> <li>oSubstantiated 313 (15%) allegations of Discourtesy</li> </ul> <p>For the years 2017-2019 CCRB fully investigated 466 allegations of Offensive Language. 48 (10.3 percent) were substantiated.</p> <p>Of interest is the number of cases where CCRB substantiates an SQF violation and, at the same time, substantiates either a discourtesy or slur allegation.</p> <p>2017 - Out of 102 cases with a substantiated SQF allegation</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Seven also had a substantiated Discourtesy allegation</li> <li><input type="checkbox"/> One also had a substantiated slur (offensive language) allegation</li> </ul> <p>2018 - Out of 88 cases with a substantiated SQF allegation</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Five also had a substantiated Discourtesy allegation</li> <li><input type="checkbox"/> No slur allegations substantiated</li> </ul> <p>2019 - Out of 96 cases with a substantiated SQF allegation</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Seven also had a substantiated Discourtesy allegation</li> <li><input type="checkbox"/> One racial slur allegation"</li> </ul>	n/a	This is outdated and citation is needed.
883	242-243	n/a	<p>"But it is difficult to understand why civilian complaints and encounters involving false filings outside of a CCRB interviews which abuse authority or harm a civilian, intentional report or camera misconduct when done to cover or misrepresent a civilian encounter, etc., are out of CCRB's reach."</p>	n/a	They are not, we plead these allegations.
884	246-248	n/a	Section: Case Study: NDA Due to Statute of Limitations	n/a	Citations are needed for this entire section.
885	264-267	n/a	Section: A Case Study Where Access to a Personnel File Would Be of Value to CCRB	n/a	Citations are needed for this entire section.
886	272-273	n/a	"If formal discipline is intended, then expungement will be automatic unless Charges are brought for a new offense in the year following the A-CD."	n/a	This is incorrect. "Formal discipline" includes Charges & Specs as well as all forms of CDs - A, B, and C. The only thing that does not count is Training/Instructions/Reprimand.
887	308-309	n/a	"In conversations with the Executive Director of CCRB, the Monitor Team was advised that CCRB, when applying the Guidelines, assumes that officers accepting an A-CD or B-CD will forfeit some penalty days (up to 5 and 10 respectively) upon acceptance of the CD. But records show that no more than 6 out of 53 officers, where CCRB recommended command discipline, received any penalty in 2019. (three forfeited a few days, three forfeited a few hours). The rest received "guidance," a "warning," or nothing at all."	n/a	Relies on non-public conversation between CCRB and the Monitor.
888	420-425	n/a	Section XII.: Lawsuits And Civil Claims Against Officers	n/a	The report notes a number of large payouts that relate directly to issues of police misconduct with no known disciplinary component. In particular, there is the example of a \$16 million tort settlement with no discipline. While it would be wrong to conclude that this is complete proof of system failure, three things must be said: (1) there is no indication that CCRB sought discipline for these matters; (2) the complexities and distinctions between civil actions and misconduct should not be assumed to be of no moment, rather the specific examples used could each be the subject of more rigorous analysis; and (3) the report is not wrong to suggest there should be a more robust effort to investigate civil actions from the perspective of misconduct.
889	50-51	219	"Other sanctions, ancillary to discipline, include: h. Demotion of a probationary supervisor or an officer, who has received a discretionary promotion."	"Demotion of a tenured officer may be a negotiated alternative, but it is not one of the disciplinary penalties set forth in Section 14-115 of the Administrative Code and is not available to the Police Commissioner as a disciplinary penalty unless objection is waived in a negotiated settlement. See Wein v. City of New York, 56 N.Y.2d 758 (1982). Civil Service Law § 75(3), on its face, does authorize "demotion in grade or title" as a disciplinary penalty but the Administrative Code does not. Normally, the State statute would prevail. However, the Administrative Code section preceded enactment of § 75(3) and is grandfathered by the terms of Civil Service Law § 76(4). See Bailey v. Susquehanna Valley Cent. School Bd. of Educ., 276 A.D.2d 963 (23 Dep't 2000). In 1990, Civil Service Law § 75(3-a) was enacted. L 1990, ch. 753. The 1990 amendment made it clear that the Administrative Code list of available sanctions does not include demotion controls. It seems likely that, if challenged, the Code's limitation (excluding demotion of a tenured officer) would prevail."	Error in Bailey citation

890	59-60	262	"There were 2,176 allegations evaluated to conclusion by CCRB from 2017 to 2019."	"Because of the way CCRB reports findings, sometimes listing allegations and sometimes listing complaints, it is not possible to convert the 2,176 allegations (which were fully investigated) to an identifiable number of complaints (out of 2,592) that contained an SQF allegation that was fully investigated."	Citation is needed.
891	63-64	280	"Along with stop and frisk misconduct, if CCRB substantiates other FADO misconduct such as wrongful force, discourtesy, slurs, strip searches, threatened firearm use, or vehicle searches, for example, in the same complaint with the SQF misconduct, a common result will be to roll all substantiated allegations together into one disposition—"CD accepted."	"Other FADO misconduct could range from excessive force to discourtesy to slurs or any other conduct within FADO. The disposition by the Police Commissioner is unitary; one disposition for the entire complaint."	Citation is needed.
892	68-69	297	"Again, since SQF violations standing alone seldom, if ever, receive formal discipline, current practice undermines a Trial Commissioner's ability to take prior SQF misconduct into proper account."	"In theory, Trial Commissioners will now utilize the Disciplinary Guidelines. If they do so, they are to consider progressive discipline for offenders who repeat a similar offense. This should require production by DAO of more fulsome records for their review. It is unclear if DAO has committed to such production."	Citation is needed.
893	86, 177, 198,	n/a	CCRB ACTIVITY - Generally, OATH, Internal Affairs Bureau	n/a	Far more ink is spent discussing the history of IAB, or of OATH, or the various iterations of the CCRB from 1953 forward. While it is certainly worthy of discussing how the Administrative Prosecution Unit (hereinafter "APU") came to be, and what they handle now, so too a meaningful and fair discussion of discipline in the NYPD should note that the DAO of 2023 is very different than the DAO of 2020. The NYPD has evolved at a much faster pace than APU. For example, DAO is engaged in efforts to hire survivor advocates, is building diversion programs working in conjunction with mental health resources, and has adopted a view of discipline that takes a modern, holistic and even preventative approach.
894	98-99	n/a	Reporting and Investigating Use of Force section	n/a	"Reporting and Investigating Use of Force" <ul style="list-style-type: none"> <li>•this section is outdated and inaccurate – the references to the TRI Report and the process described go to the June 2016 version of the report/procedure</li> <li>•Part A and Part B of the TRI, separate TRIs for each MOS and the Supervisor's Assessment have been eliminated and replaced with the TRI 2.0, which includes an Incident Report for the event and TRI Interaction Report(s) for each MOS involved</li> <li>•beginning in 2017, there were significant revisions to the force policy as well as engineering and process changes to the TRI</li> <li>•terms like "substantial injury" have been eliminated</li> </ul>
895	99-101	n/a	Section: Reporting and Investigating Use of Force	n/a	"Reporting and Investigating Use of Force" <ul style="list-style-type: none"> <li>•this section is outdated and inaccurate – the references to the TRI Report and the process described go to the June 2016 version of the report/procedure</li> <li>•Part A and Part B of the TRI, separate TRIs for each MOS and the Supervisor's Assessment have been eliminated and replaced with the TRI 2.0, which includes an Incident Report for the event and TRI Interaction Report(s) for each MOS involved</li> <li>•beginning in 2017, there were significant revisions to the force policy as well as engineering and process changes to the TRI</li> <li>•terms like "substantial injury" have been eliminated</li> </ul>
896	Universal	n/a	Referencing Patrol Guide sections which have been replaced by Administrative Guide sections.	n/a	The report should only reference Administrative Guide not Patrol Guide because these policies will no longer be available in the Patrol Guide.
897	Universal	n/a	Hearing Officers	n/a	All references to OATH's "Hearing Officers" should be changed to "Administrative Law Judges."

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COMMENTS ON 1st DRAFT APPENDIX BEGIN HERE					
A1	1	n/a	Section 1: [REDACTED] Strip Search		<p>While the complaint charges under "Allegation C" that a strip-search was committed, that is not precisely what was alleged. In the initial CCRB Investigative Recommendation, it is alleged that [REDACTED] complained that during a frisk, the Sgt. pulled [REDACTED] pants low, exposing the waistband of his boxers, and that the sgt. touched the exposed crevice between his buttocks in the search. The allegations described by CCRB vary throughout the case documents. In their CAR memo, they describe [REDACTED] statement as follows: that after Sgt. [REDACTED] let him into the subway through the emergency gate, after he used and returned his metro-card to another individual, Sgt. [REDACTED] searched [REDACTED] above his clothing. [REDACTED] alleged this frisk included the groin area, his waist, and his buttocks. There is no mention of a strip search. Additionally, there is MTA security footage of the entire incident. No strip search took place.</p> <p>There is a strip-search allegation but it was closed as unfounded. It is unclear if CCRB added that or if it was actually alleged by the complainant. The Closing Report indicates that "Mr. [REDACTED] alleged that after Sgt. [REDACTED] conducted a frisk...Sgt. [REDACTED] then patted down his right leg...causing his pants to drop lower exposing his boxers." CCRB noted that "...the surveillance footage showed Sgt. [REDACTED] frisk of Mr. [REDACTED]. The footage shows that at no point did Mr. [REDACTED] pants drop such that his underwear was exposed." My guess is that if this case were to be brought to us now the allegation may have been "failure to cover," or something similar and not "strip-search."</p>
A2	1	n/a	Section 1: Sergeant [REDACTED]: "The Trial Commissioner, in accepting the plea, was advised that [REDACTED] had no disciplinary history."		The negotiation at the conference was for 10 days. ADCT noted on the record in January 2020 conference this was higher than what was consistent with precedent (this conference took place one year before the Matrix was first implemented) but accepted the plea, allowing Respondent to move toward retirement, while noting on the record 5-6 days would be more appropriate. PC rejected 10 day plea and lowered to 5 in July 2020
A3	2	n/a	Section 2: PO [REDACTED]: "CCRB recommended B-CDs for each of the five allegations."		<p>This isn't accurate. This case is pre-Matrix. Allegations weren't voted on separately. The only recommendation made was a Schedule "B" Command Discipline. Furthermore the case was closed prior to release of Matrix Vol. 1.</p> <p>In the initial intake, [REDACTED] alleged that she, and two friends, tried to get a police report about a fight she had at the Olive Garden the day before. However, she was told by the responding officer that he had been informed by his captain that he hadn't needed to take a report. [REDACTED] wanted the officers name and badge number, and began taking pictures of him. She then alleged that this officer choked her in the precinct in order to get back the phone and delete the photos, after another officer shouted that she wasn't allowed to take pictures in the precinct. Precinct video shows that the officer did not choke her, but did forcibly grab her phone from out of her hands.</p>
A4	3	n/a	Section 2: PO [REDACTED]: [REDACTED] had a CCRB history of six complaints alleging at various points force, discourtesy, refusal to obtain medical treatment and wrongful use of a restraining device. Shortly before retiring, [REDACTED] had been found guilty in a separate incident, pending since 2017. PO [REDACTED] had wrongfully used force against a "much smaller" disabled woman, breaking her arm. A DCT trial commissioner, on August 23, 2021, recommended a loss of 25 days. The Police Commissioner approved the penalty. It is unclear if the one-day penalty for the 2018 incident ran concurrently with the 25 day penalty for the broken-arm incident."		He received loss of 15 vacation days and 10 suspension days.
A5	3	n/a	Section 3: Sgt [REDACTED]: "Sgt. [REDACTED] was cited by CCRB for an incident arising on 3/28/19 wherein six of eight allegations were substantiated. Along with an unlawful stop, and a wrongful use of force, he was found to have issued a retaliatory summons, refused to process a civilian complaint, and acted with discourtesy. CCRB recommended a B-CD for each of the founded allegations. Under the Matrix, a substantial penalty should have ensued. Instead, the Police Commissioner ruled that the force allegation would carry NDA and the remaining five allegations were combined with a final penalty of one day."		<p>In this case, [REDACTED] was walking in the middle of the street, and stopped ifo the vehicle Sgt [REDACTED] was driving in on the way to a job. [REDACTED] remained in the middle of the street for several seconds, refusing to move. When he did move to the side of the street, he was asked for identification, and the conversation between the Sgt. and [REDACTED] continued in a belligerent tone. When [REDACTED] turned towards the Sgt.'s female partner, BWC shows the Sgt. pushed [REDACTED] resulting in no injuries, described by the CCRB CAR as minor.</p> <p>This case is also pre-Matrix and was closed prior to release of Matrix Vol. 1.</p>

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A6	3	n/a	PC [REDACTED]: A DCT trial commissioner, on August 23, 2021, recommended a loss of 25 days. The Police Commissioner approved the penalty. It is unclear if the one-day penalty for the 2018 incident ran concurrently with the 25 day penalty for the broken-arm incident.		No this would not have run concurrently as the trial occurred 10 months after the 1 vacation day penalty was imposed
A7	3	n/a	Sgt [REDACTED]: "Sgt. [REDACTED] received Charges and Specifications in a case where CCRB substantiated twelve allegations of abuse. [REDACTED] negotiated an 18 day penalty."		Correct case # is [REDACTED] Respondent availed herself of DCT settlement conference and the matter was settled at the conference. PC approved the negotiated penalty three months later in February 2022
A8	4	n/a	Section 5: Sgt. [REDACTED]: "Sgt. [REDACTED] was investigated for a complaint arising from an incident on 3/28/19. Two of four allegations were substantiated – an illegal stop and a failure to provide a business card as required. A frisk and improper question allegation were unsubstantiated, along with an OMN for improper BWC activation. [REDACTED] received a 3-day deduction and a B-CD. In all, Sgt. [REDACTED] has been the subject of twelve CCRB investigations. Only four were substantiated, including: a discourtesy allegation where APU recommended Charges, but the Police Commissioner decided upon No Disciplinary Action; a refusal to take a civilian complaint for which he received "instructions; a wrongful force (chokehold) case which went to trial and he was found not guilty. A strip search case was "closed pending litigation." Over time, twelve allegations against him were for wrongful force, but none were substantiated. The strip search case is still pending in Brooklyn Supreme Court. [REDACTED] has two other civil actions filed against him: a federal civil rights action that ended in a \$5000 settlement and another wrongful stop and search case still open in court as well. A separate profiling charge, arising from a 9/18/2018 incident not included in the CCRB investigations, went unsubstantiated."		Sgt. [REDACTED] stopped an individual wearing a ski mask and a hoodie as they attempted to gain entry to an apartment. [REDACTED] refused to stop when the police called to him, kept his hands in his pockets, and conspicuously kept turning his body away from the Sgt. When stopped, [REDACTED] refused to produce ID, or tell them his full name, and wouldn't take his hand out of his pocket. Sgt. [REDACTED] didn't turn on his bodycam, or provide his RTK card when asked by [REDACTED]  The NDA decision made by the PC relates to a 2012 incident where then PO [REDACTED] stopped a vehicle for improperly tinted windows. It was alleged that PO [REDACTED] yelled at the driver after the driver refused to exit the vehicle. There was an audio recording of a portion of the incident where PO [REDACTED] could be heard apologizing saying "I'm sorry I fucking yelled at you". The only substantiated allegation was for this discourtesy.  For another incident that occurred in 2019, Sgt. [REDACTED] was found "not guilty" at trial after CCRB recommended termination. After a trial conducted by APU, DCT [REDACTED] found no credible evidence that the Sgt. had used a chokehold during an altercation with the complainant, who is on bodycam having punched Sgt. [REDACTED] repeatedly.
A9	4	n/a	Section 5: [REDACTED]: Sgt. [REDACTED]: In all, Sgt. [REDACTED] has been the subject of twelve CCRB investigations. Only four were substantiated, including: a discourtesy allegation where APU recommended Charges, but the Police Commissioner decided upon No Disciplinary Action; a refusal to take a civilian complaint for which he received "instructions; a wrongful force (chokehold) case which went to trial and he was found not guilty.		Trial May 2022- PC approved Not Guilty- august 2022
A10	4	n/a	Section 6: PO [REDACTED]: "Officer [REDACTED] was alleged to have improperly stopped, unjustifiably threatened the complainant with arrest, and failed to comply with the right to know law. The three allegations were substantiated, and [REDACTED] accepted a four-day penalty."		This is the same case as above for Sgt. [REDACTED]
A11	4	n/a	Section 6: [REDACTED]: "The three allegations were substantiated, and [REDACTED] accepted a four-day penalty."		Correct Tax # [REDACTED]
A12	5	n/a	Section 6: [REDACTED]: "Without an opportunity to review internal records, it cannot be determined if the CCRB complaint(s) arose while [REDACTED] was on dismissal probation, which would seem to explain the unusually strict 4-day penalty (notwithstanding that it falls within the presumptive range under the disciplinary guidelines.) By its terms, dismissal probation authorizes termination for infractions occurring while on probation."		While Sgt. [REDACTED] had taken a 3 day penalty, for this incident PO [REDACTED] had drawn his firearm during the encounter as well. He also threatened to arrest [REDACTED] if [REDACTED] didn't provide his identification, and failed to turn on his bodycam or provide a RTK card.
A13	5	n/a	Section 7: PO [REDACTED]: "A complaint filed against Officer [REDACTED] alleged that, on 3/28/2019, he unlawfully stopped and frisked the complainant with gun drawn, and he subsequently failed to provide an RTKA card. He was also charged with a failure to properly activate his body-worn camera. The frisk and gun charge were unsubstantiated, while the other allegations were substantiated. He received an A-CD and a loss of three days credit."		This is, again, the same incident, despite initially classified as 17 different cases.

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A14	5	n/a	Section 6: [REDACTED] After trial in the earlier case, he was found guilty of failing to pay a taxi fare, engaging in a fight while drunk and interfering with the departmental investigation of the incident. For that misconduct he was suspended for 30 days and was penalized with dismissal probation and a thirty day suspension.		This case settled prior to trial in 2016 and PC approved on January 2017
A15	5	n/a	Section 6: [REDACTED] Without an opportunity to review internal records, it cannot be determined if the CCRB complaint(s) arose while [REDACTED] was on dismissal probation, which would seem to explain the unusually strict 4-day penalty (notwithstanding that it falls within the presumptive range under the disciplinary guidelines.) By its terms, dismissal probation authorizes termination for infractions occurring while on probation.		DP has finished over a year before the SQF incident.
A16	7	n/a	Section 9: Lt. [REDACTED]: "The trial commissioner found [REDACTED] guilty of an unlawful frisk."		And there was not guilty of the vehicle search.
A17	7	n/a	Section 9: Lt. [REDACTED]: "While the Trial Commissioner was aware that [REDACTED] was on level 1 force monitoring at the time, it is unclear if the hearing officer was also aware of his lengthy CCRB record."		This is incorrect. He was not on force monitoring at the time. The Trial Commissioner noted he had previously been on Level 1 force monitoring in 2007-08 (long before incident) in the confidential memo. He had no formal disciplinary history.
A18	8	n/a	Section 9: Lt. [REDACTED]: In the only case where Lt. [REDACTED] ever received a penalty, CCRB substantiated allegations of an illegal stop, failure to supply a business card and a violation of BWC rules. This incident occurred in June 2019. DAO prosecuted the case at trial. [REDACTED] with two other officers, driving an unmarked car, saw the victim place something into a "dusty" car and enter the passenger side. It was raining and shortly before midnight. They pulled him out of the car, frisked and questioned him, then searched the car. When the victim tried to call his father (the owner of the car), they took his cellphone. After the search, they were about to leave the scene, but the victim called them back to complain that they had broken ("cracked") his cellphone. [REDACTED] deactivated his BWC during that portion of the encounter. DAO recommended a 4-day penalty – 3 for the stop and RTKA violation, 1 more for the BWC violation. The Trial Commissioner reduced the penalty to 3-days because "Respondent has a strong record ...has been awarded numerous medal..and has received consistently exceptional evaluations." The "Summary of Employment Record" noted that "Respondent has no adverse findings in his formal disciplinary record." There is no mention of [REDACTED] extensive history with CCRB and previous trials.		This is substantially correct. The respondent had explained their actions in more detail: that on a rainy night, they saw [REDACTED] look around as he approached what appeared to be a car that hadn't been moved in some time, a conclusion drawn from observations that the car was "dusty" and covered with "soot", made worse in the light rain. [REDACTED] approached the vehicle, and put a bag inside the car, possibly from a bodega, then entered on the passenger side, leaned back, and seemed to be checking his phone for a while. Respondent testified at trial that he smelled marijuana through the car door. When [REDACTED] exited the vehicle, he called his father, as Respondent attempted to frisk him, resulting in respondent eventually taking the phone. Walking back to his vehicle after telling [REDACTED] he was good to go, having returned his phone, respondent deactivated his bodycam, however [REDACTED] complained at that point that his phone had been broken in the seizure. Respondent told [REDACTED] he was not entertaining this complaint, and did not provide [REDACTED] with a RKT card, nor did he reactivate his BWC.
A19	8	n/a	Section 9: [REDACTED]: And in March 2020 a discourtesy complaint, when substantiated, resulted in an A-CD with no penalty		This isn't reflected in CPR.
A20	8	n/a	Section 9: Lt. [REDACTED]: Shortly thereafter, in July 2020, [REDACTED] was promoted to Lt. Detective Commander		He was promoted in July 2020 well before the trial which was in February 2022- PC approved decision May 2022
A21	9	n/a	Section 10: Lt. [REDACTED]: "It should not be assumed that the many allegations which were not substantiated were decisions on the merits, i.e., exonerated, unfounded, or even unsubstantiated. Eleven allegations failed because the complainant was unavailable, uncooperative or unidentified."		This statement has been made previously, but it is worth a counterpoint. At some point a complainant that is unavailable to testify, or even provide meaningful information, IS a decision on the merits; it means that the allegations cannot be proven.
A22	10	n/a	Section 10: Lt. [REDACTED]: "While that case (the one and only case where [REDACTED] was penalized) pending and before final disposition, [REDACTED] picked up five new complaints with 30 allegations of misconduct. One of those five newer cases, a discourtesy charge, was substantiated and ended with the acceptance of an A-CD (no penalty)."		Pejorative phrasing permeates every portion of the report. This is the smallest example of cavalier language, with negative connotations.
A23	10	n/a	Section 10: Lt. [REDACTED]: "Finally, [REDACTED] had an astonishing number of cases pending against him in the 2017 to 2020 time period."		There is no context for phrases like "astonishing". There is no attempt to contextualize how many stops this MOS was involved with, or a comparative department wide average, or an analysis of similarly situated MOS. The Monitor's "astonishment" occurs in an information vacuum.



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A24	12	n/a	Section 12: PO [REDACTED]: "Unfortunately, in this case, the Monitor team has not been provided with the CCRB closing report or any of the correspondence between CCRB, DAO, or the Police Commissioner."		The police were called to a restaurant after a patron refused to be searched. When asked for ID he provided a PBA card, and showed a mini-shield in his wallet. When the POs responded, the frisked him, and explained that people are searched at restaurants, a bars, and clubs all the time for safety. The patron explained that he had a relative on the job.  There is no information that indicates that there would have been any reason not to provide this information.
A25	14	n/a	"CCRB recommended a B-CD for Officer [REDACTED]. On November 11, 2018, DAO requested Training. DAO asserted that he had no prior formal disciplinary history and that there was no pattern of similar misconduct in his background. CCRB denied the request, by a vote of 2-1, on April 24, 2019."		PC imposed training- no B CD.
A26	15	n/a	"In the time since the 2019 case where 5 days were assessed, [REDACTED] has accumulated five new complaints: -Another stop/frisk and refusal to obtain medical treatment case was substantiated by CCRB, who recommended Charges and Specifications. That case has lingered for almost three years without decision."		DC Trials does not see these charges were ever filed.
A27	15	n/a	"In the time since the 2019 case where 5 days were assessed, [REDACTED] has accumulated five new complaints: -Another frisk/discourtesy case which was substantiated by CCRB with a recommendation of Charges and Specifications has remained open and unresolved for 20 months."		Charges prepared November 2022 and served December 13, 2022- not on calendar or DCT docket yet
A28	3-4	n/a	"Sgt. [REDACTED]; [REDACTED] has seven lawsuits filed against her in the last five years. Two are still open. The others settled for \$2500, \$46,001, \$6500, and \$55,000."		NYPD could find this information.
A29	9, 10	n/a	"Lt. [REDACTED] Aside from the one 10-day penalty discussed above, throughout his history, of the substantiated allegations, the following penalties were assessed. Force.....Charges pending on 2nd 3-year old case Discourtesy..... Charges pending on 2nd 3-year old case  Two other cases, arising during the same period, resulted in filing of Charges and Specifications which are open and pending."		DC Trial does see no open charges- DC Trail do see multiple case numbers that were administratively closed out by DAO in 2022 and DC Trial see in his CPR that he received verbal instructions on some of these (stop and frisk report, BWC). And that force in 2020 was closed as exonerated and in 2019 as unfounded. DC Trial see no discourtesy allegations in the CPR other than the on discussed in the first paragraph

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898	14	3	In the time since the trial, the number of stops, as self-reported by police officers in "stop reports," [fn3] ...	"https://www.nyc.gov/site/nypd/about/about-nypd/manual.page. The NYPD Patrol Guide requires an officer to prepare a stop report for "all Terry Stops/Level 3 encounters." Patrol Guide § 212-11, ¶ 47, available at <a href="https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg212-11-stop-frisk.pdf">https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg212-11-stop-frisk.pdf</a> . Failure to prepare and file a stop report is treated as a violation of Department rules and regulations and, thus, misconduct. NYPD "Disciplinary System Penalty Guidelines" at 44. Temporary detention based on reasonable suspicion that the subject has committed, is committing or is about to commit a felony or Penal Law misdemeanor, falling short of full-custodial seizures based on probable cause, is referred to as a "Terry stop," after Terry v. Ohio, 392 U.S. 1 (1968). "Level 3 encounter" refers to the New York state law equivalent of a Terry stop. See People v. De Bour, 40 N.Y.2d 210, 223 (1976). Stop reports are accessible under New York's Freedom of Information Law ("FOIL"), subject to the exceptions provided within N.Y. Pub. Off. Law § 87. See Patrolmen's Benevolent Ass'n v. de Blasio, 171 A.D.3d 636, 638 (2019) (applicable to Body Worn Camera videos). "Within 10 business days of receipt of your request, the NYPD will send out a copy of your stop report or a response indicating that there was no record found or insufficient information to find the stop report." Police Encounters, <a href="https://www.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page">https://www.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page</a> ."	The first URL links to the main Patrol and Administrative Guide page. This is not sufficiently specific for the reader to learn the source of the definition of "stop reports."  The second URL leads to an inactive link.
899	21	31	There is a partial analysis of post-Matrix data in this Report as well.	Context around any particular action by the Police Commissioner is best understood by review of DAO's Case Analysis and Recommendation (CAR) report. Unfortunately, the Department asserted privilege and CAR reports were not available for this Report.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents. City also re-asserts deliberative process and work-product privilege over cited documents, and takes exception with the author's commentary on the City asserting said privilege.
900	40	148	These Guides generally spell out the rules officers must follow.	See, NYPD Disciplinary System Penalty Guidelines, at 45: "Department rules and regulations are codified in the Patrol Guide, Administrative Guide, Detective Guide, DAS Bulletins, Finest Messages, Reference Guides and other publications available to members on the Department's electronic portal under the "Directives & Manuals" section." (citing <a href="https://portal.nypd.org/pages/DirectivesAndManuals.aspx">https://portal.nypd.org/pages/DirectivesAndManuals.aspx</a> ). Unfortunately, other than the Patrol Guide and some sections of the Administrative Guide, these are not publicly available, making it difficult to know whether some rules or regulations have been violated and, if so, how.	Link to "Directives & Manuals" is incorrect.
901	42	166	"After a finding, penalty recommendations by CCRB are made for each substantiated allegation while NYPD has assessed one penalty for an entire case."	"With the adoption of a "grid" or "matrix," NYPD has begun to assign a penalty for each substantiated allegation, but "If the same underlying act(s) of misconduct support multiple definitions of proscribed conduct or support alternative theories of prosecution, then a single penalty will be applied." NYPD, Disciplinary System Penalty Guidelines at 12 (January 15, 2021. Penalties for a given case may be the aggregated sum of penalties for individual allegations. "Both the NYPD and CCRB determine a finding for each allegation and penalties are based on the totality of substantiated allegations." City 09.01.23 Feedback to Yates Discipline Report, Item 30."	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
902	42	166	. After a finding, penalty recommendations by CCRB are made for each substantiated allegation while NYPD has assessed one penalty for an entire case.	With the adoption of a "grid" or "matrix," NYPD has begun to assign a penalty for each substantiated allegation, but "If the same underlying act(s) of misconduct support multiple definitions of proscribed conduct or support alternative theories of prosecution, then a single penalty will be applied." NYPD, Disciplinary System Penalty Guidelines at 12 (January 15, 2021. Penalties for a given case may be the aggregated sum of penalties for individual allegations. "Both the NYPD and CCRB determine a finding for each allegation and penalties are based on the totality of substantiated allegations." City 09.01.23 Feedback to Yates Discipline Report, Item 30.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
903	63	240	"Records of training are kept and maintained in several decentralized locations, depending upon the type of training imposed. Training imposed as a result of formal discipline is maintained in DADS. Training which results from informal discipline is often recorded at a precinct level, in a personnel folder, and in the CRAFT system. Training performed from the Training Unit, in accordance with tactics and other directives, is generally reflected in an officer's CPR."	December 22, 2023 "DAO Responses to Federal Monitor Inquiry – FM 68-2023."	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.

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904	70	275	A disciplinary history may be looked at when promotions are under consideration.	The Career Advancement Review Board (CARB) is convened to determine whether members who have disciplinary issues in their careers possess the character and judgment necessary to become a supervisor. Admin. Guide § 320-48. Longe v City of New York, 802 Fed. Appx. 635 (2d Cir. 2020).	Admin. Guide cite is incorrect.
905	70	276	However, "[h]aving a disciplinary history cannot, standing alone, disqualify a candidate for promotion."	Thompson v. City of New York, 50 Misc. 3d 1202 (A) at *6 (Sup.Ct. N.Y. Cnty.2015).	Pin cite is incorrect.
906	71	282	Looking at closed SQF cases:	Final Federal Monitor – SQFSTA -2023 Q1 Q2 final copy.	Cite includes reference to source subject to the Monitor's Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
907	74	295	When an officer's disciplinary history is examined by a CCRB investigator for prior or related misconduct, or by a CCRB panel contemplating a penalty recommendation, a slimmed-down version of the CPI, a Summary Employment History (SEH), is provided to CCRB. The SEH will not include NYPD investigations with misconduct findings that merely resulted in guidance, an "accepted A-CD," or even an A-CD where a penalty was imposed.	"The CCRB is provided with the Summary of Employment information which contains: Pedigree information, Current Command, Arrest history, medals, Discipline History of Closed Charges and Specification and B-CDs/C-CDs. It does not contain A-CDs, cases that were dismissed, or those currently pending." December 22, 2023 "DAO Responses to Federal Monitor Inquiry – FM 68-22023."	Cite includes reference to source subject to the Monitor's Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
908	75	298	Nonetheless, public reports by NYPD, in its online profile,[fn298] will still claim no disciplinary history.	NYPD Officer Profile at <a href="https://nypdonline.org/link/2">https://nypdonline.org/link/2</a> .	Cite is to search of officer profiles; no specific info given.
909	80	323	As of this writing, there is insufficient documentation or data to fully assess the application of the Disciplinary Guidelines to stop and frisk misconduct	The City has resisted production of Case Assessment Reports (CAR) by DAO or other correspondence between DAO and CCRB, which are necessary to a full understanding as to why a recommendation by CCRB was downgraded. Letter, ██████████ Deputy Chief to the Monitor, February 10, 2022. The same issue is currently being litigated before J. Colleen McMahon in the Southern District. . (In re: New York City Policing During Summer 2020 Demonstrations, 1:20-cv-8924 [SDNY], Doc No. 831 (1/28/2023). The claim that CAR memos are protected by attorney-work product or deliberative process memos and therefore not available to the Court is dubious.)(See discussion, Memorandum Order, Dkt. No. 271). More recently, in March 2022, the Department provided a spreadsheet with the outcomes of thirty-eight cases decided under the Disciplinary System Penalty Guidelines, again, without accompanying Departmental memos that had been requested. Those outcomes are discussed infra. CCRB has recently begun to post "Departure Letters" (described infra) which describe cases where the Police Commissioner has elected to impose a lower level of discipline than requested by CCRB, at <a href="https://www1.nyc.gov/site/ccrb/complaints/complaint-outcomes.page">https://www1.nyc.gov/site/ccrb/complaints/complaint-outcomes.page</a> ; visited 6/8/2022. Twelve of the 111 cases included in that list included a finding of an improper stop, frisk or search of person. One case (PO ██████████) resulted in a one-day penalty. The remainder went with no discipline (NDA), training, or an A-CD accepted without penalty.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents. City also re-asserts deliberative process and work-product privilege over cited documents, and takes exception with the author's commentary on the City asserting said privilege.
910	81	325	oWithin that number, 13 of 149 closed complaints (encounters), resulted in imposition of the presumptive three or more penalty days for any one of the officers.	Even then, one of the four complaints was the product of a downward departure by the Police Commissioner from a recommended B-CD to an A-CD. In another case, where CCRB recommended charges, the Police Commissioner allowed a negotiated plea, of five penalty days (the equivalent of an A-CD) to avoid a formal disciplinary proceeding.	Not clear what "one of the four complaints" in footnote text is referring to.
911	87	351	"The Department, through IAB, logs about 50,000 complaints annually."	In reviewing this Report, the Department asserted that the average had more recently (2020-2022) dropped to an average of 30,000 complaints, but has not provided a citation or reference in support of that number. Item 115, City 09.01.23 Feedback to Yates Discipline Report.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
912	88	354	"Many complaints are duplicative and will lead to just one investigation. There might, for example, be multiple complainants regarding one encounter. After consolidation, screening, and out-bound referrals, of the 51,106 complaints, IAB conducted 29,873 investigations in 2018. Of 46,192 complaints in 2019, NYPD conducted 23,878 investigations. For a sense of proportion, this is five to six times as many investigations as are done by CCRB and as much as twenty times the number of full investigations conducted by CCRB."	Item 118, City 09.01.23 Feedback to Yates Discipline Report	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
913	90	364	"Investigations conducted by IAB, OCD, BIU (Borough/Bureau Investigation Units) or FID (Force Investigation Division) are all tracked through a variety of databases, not one integrated database."	ICMT, ICMS, CPI, and DADS, described infra. ICMS is the internal case management system used by NYPD to track investigations, including those referred to CCRB. ICMT includes IAB investigations internal to the Department, such as corruption ("C") cases which is only available to IAB. FID conducts their cases utilizing another system, the Enterprise Case Management System ("ECMS") with case findings only being entered into ICMT when completed. Item 125, City 09.02.23 Feedback to Yates Discipline Report.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.

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914	90	367	Compounding the problem, the Force Investigation Division (FID) keeps a separate database, not shared with IAB.	Memo from ██████████ Risk Management Bureau, NYPD, to the Monitor Team (Sept. 9, 2020).	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
915	102	434	"OG cases, whether raised by civilian complaint or otherwise, are typically referred to the Investigation Review Section ("IRS") of the Office of the Chief of Department ("OCD")."	CCPC, Eighteenth Annual Report of the Commission at 163 (Aug. 2017), available at <a href="https://www1.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf">https://www1.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf</a> . More recently, the procedure was altered such that OG cases are sent directly to an investigating unit and the IRS "monitors [the] cases to ensure they are closed in a timely manner." Item 154, City 09.01.23 Feedback to Yates Discipline Report.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
916	104	441	It noted that the switchover from a manual entry system for data collection and reporting to implementation of ICMT was incomplete, there was no web-based procedure to communicate the status of complaints to complainants and the Department is merely "considering" publishing quarterly reports with the number of cases received, investigated, and closed annually	OIG-NYPD, Seventh Annual Report at 44 (Apr. 2021), available at <a href="https://www1.nyc.gov/assets/doi/reports/pdf/2020/OIGNYPDAnnualRpt4012021.pdf">https://www1.nyc.gov/assets/doi/reports/pdf/2020/OIGNYPDAnnualRpt4012021.pdf</a> .	The information would still need to be manually entered into ICMT, but there was no automated mechanism that triggered notification if an OG investigation was open past 90 days.
917	104		"the heart of the criticism by the OIG" and "According to OIG as of April 2021"	N/A	"NYPD OIG" is the proper shorthand. The office is referred to differently on different pages.
918	105	445	--Level 2 involves the intentional use of an object, like a baton, a canine bite, or the use of a CEW in stun mode.	In drive stun mode a probe can incapacitate a muscle mass and therefore the individual. This is used to coerce compliance by the infliction of localized pain. Item 161, City 09.01.23 Feedback to Yates Discipline Report.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
919	126	525	"Of 5,077 discrimination allegations logged by IAB as of March 31, 2021, 3,392 (66.8%) alleged bias based on race, color, ethnicity or national origin—the groups covered by § 304-17(3). [fn525] The remaining complaints—1685 (33.2%)—were claims of discrimination based on the other groups itemized in the Administrative Code – age, immigration or citizen status, gender, sexual orientation, disability, and housing status."	3,336 cases. Item 167, City 09.01.23 Feedback to Yates Report.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
920	130	547	OIG-NYPD responded by asserting:	OIG-NYPD, Annual Report 2020, supra, at 3, 9	Information cited is in a report
921	130	n/a	The Police Commissioner is free to prohibit biased policing proactively. If the elements of proof required by the Administrative Code are too difficult, if not impossible, to meet, the Police Commissioner can alter the Administrative Guide to effectuate the goal—robust enforcement against biased policing.		Inaccurate. Admin Code cannot be altered by admin processes.
922	131	549		City Council Committee Report of the Committee on Civil and Human Rights, Intro. No. 2212-A, at 9 (Mar. 25, 2021), <a href="https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4770945&amp;GUID=B5D55B19-D0FD-440C-999F-1708BF09F374&amp;Options=ID%7cText%7c&amp;Search=2021%2f047">https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4770945&amp;GUID=B5D55B19-D0FD-440C-999F-1708BF09F374&amp;Options=ID%7cText%7c&amp;Search=2021%2f047</a>	Pincite incorrect.
923	131	n/a	By its terms, the NYPD, the Commission on Human Rights (CHR), and the Department of Investigation (OIG-NYPD) are required to advise CCRB of any finding, in the last five years, by CHR where an officer engaged in an act of bias		Wrong abbreviation for the agency -- should be CCHR throughout; error made multiple times in report.
924	131	n/a	By its terms, the NYPD, the Commission on Human Rights (CHR), and the Department of Investigation (OIG-NYPD) are required to advise CCRB of any finding, in the last five years, by CHR where an officer engaged in an act of bias.		Inaccurate. The Charter requires that entities communicate a Final Determination in this arena. In addition, CCHR is governed by the NYCHRL, which prohibits bias-based profiling.
925	132	n/a	This review is to be conducted for past findings by any "covered entity" which includes not only CHR, but also DOI, NYPD, any court, or any other officer or body designated by the Board.		This review is related only to final determinations, as noted above.
926	132	n/a	Because, for all practical purposes, neither CCHR nor NYPD have made any findings of bias against a uniformed police officer, the impact of the Charter's new mandate to look back is uncertain.		There were 10 claims and complaints between 2016-2022; CCRB is not aware of Decisions and Orders in this area. CCRB has issued probable cause in cases of biased-based policing per the CHRL's definition, which includes a broader list of protected classes than CCRB's. This statement only concerns outward-facing NYPD action, avoiding employment contexts.
927	134	566	The new Patrol Guide section 212-11 governing stops and frisks requires supervisors to respond to the scene of stops when feasible	Fourth Report of the Independent Monitor, November 18, 2016, at 18	Outdated.
928	139	589	For the two-year period 2018-2019, there were fifteen cases that the Department identified as "Improper Stop/Frisk/Search" encounters identified by audits or local command reviews and the Department issued command discipline.	"Stop Report Failure Discipline 2-25-20" matrix provided by RMB, on file with the Monitor team.	The City objects to the inclusions of any information subject to the Confidential Order.

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929	150	643	Outside of audit notices to the precinct, there is no evidence that IAB or any other centralized investigating body within NYPD proactively pursues disciplinary investigations for incidents of stop and frisk misconduct, repeated SQF violations, or patterns of SQF misbehavior.	RISK reviews were terminated in 2023. For several years prior, RISKS reviews were held semi-annually for each precinct, but RISKS reviews were not used for disciplinary investigations. Administrative Guide § 318-01 lays out a procedure for complaints not involving corruption or force. If the complaint did not fall under the purview of FADO, it went to the OCD Investigation Review Section (IRS) which passes it on to the local Commanding Officer or BIU responsible for the allegation. The Guide calls for an interview of the officer and witnesses within five days and the filing of a Disposition Report (PD 468-152) within ninety days. Since these allegations do not involve force, racial profiling or SQF misconduct, and have been abandoned by the Department, this Report did not attempt an assessment of compliance with the stated goals	Mischaracterization and outdated.
930	150	644	Similarly, when IAB is investigating a use of force incident, if there was no arrest, shouldn't IAB assess the propriety of the entire encounter?	While reviewing a draft of this Report, the Department responded that, "ICMS and ICMT systems contain Disputed Stop allegations. If during the course of the investigation there is reason to believe that the stop was improper, or it is alleged by the complainant the stop was improper, the allegation would be added and investigated." Item 180, City 09.01.23 Feedback to Yates Discipline Report. The Department has been asked to give statistics or an example of a case where IAB substantiated a force complaint and, at the same time, disciplined an officer for an illegal stop arising out of the same encounter independent of any CCRB complaint or investigation.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents. Also, Footnote text cites to incorrect comment in 1st draft -- quoted text is in item 177 and did not pertain to this body text.
931	152	654	However, "The NYPD does not provide the CCRB with disposition or results of concurrent investigations. The exception to this rule is for False Official Statements which the CCRB has referred to the NYPD which result from the CCRB's investigation. In the past, this has been an issue which, in part, led the CCRB to pursue investigations into sexual misconduct allegations. The NYPD refused, and continues to refuse, to provide the CCRB with any information regarding sexual misconduct allegations against MOS referred by the CCRB."	[REDACTED], General Counsel, June 3, 2019, letter. After the letter was written, and after a court-imposed delay, CCRB has resumed investigation of sexual misconduct complaints by civilians against officers. Matter of Lynch v NY City Civilian Complaint Review Bd., 206 AD3d 558 (2022). In its review of a draft of this Report, the Department noted that, for sexual misconduct cases referred to NYPD by CCRB, in the past, there was a "duty to redact information in order to safeguard the privacy rights of victims from being handed over to an independent non-governmental agency." (Item 180, City 09.01.23 Feedback to Yates Discipline Report). It is true that Civil Rights Law § 50-b exempts disclosure to the public, under FOIL, of a police report which "tends to identify such a victim" unless or until consented to by the victim or ordered by a court for "good cause." Since the quoted matter in the Kadushin letter speaks to cases referred, in the first instance, by CCRB to NYPD, it can be assumed in most such cases the victim at first complained to CCRB and consent of the victim to receive records would have been obtained by CCRB. In any event, going forward, now that CCRB investigates the matter in any case where the victim complains of sexual misconduct by an officer to CCRB, it would seem paradoxical for the Department to resist access to police reports surrounding the encounter in the name of protecting the identity of the victim.	Footnote text added that quotes comment from "review of a draft of this Report," but it is more of a lengthy argument with the comment than a responsive change. Cite also includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
932	164	705	Unfortunately, the Charges and Specifications of which the officer is accused are omitted	Update: More recently, the Department has begun to post a Disciplinary Trial Calendar which categorizes the allegations by "Case Type", such as "physical alteration" of "violated EEO policy," etc., without listing the allegations or Charges. <a href="https://www.nyc.gov/site/nypd/bureaus/administrative/trials.page">https://www.nyc.gov/site/nypd/bureaus/administrative/trials.page</a>	No time frame to provide context.
933	165	709	"Until recently, DAO would move to dismiss a case if the complainant does not cooperate."	The Department has asserted that "DAO rarely moves to dismiss a case in recent year [sic] with a non-cooperative complainant." (Item 185 City 09.01.23 Feedback to Yates Discipline Report.) but has not cited any case where this occurred. A quick survey of published trial decisions did uncover a recent case, PO Bryan Scheblein, where an illegal search of a car was sanctioned, notwithstanding the non-appearance of the victim. <a href="https://nypdonline.org/link/1016">https://nypdonline.org/link/1016</a> .	Missing citation for the information in the text. Footnote should be depersonalized. Cite also includes reference/information subject to the Confidentiality Order (Oct. 11, 2018), and the City objects to the reference to the information.
934	165	n/a	"The DCT is free to apply principles of civil practice or rules of evidence but is not required to do so...DAO has a different policy and will only proceed if the complainant or necessary witnesses are available	n/a	Problems flagged in body of the text remain.
935	169	734	Looking at cases from 2016 to 2022 which included a substantiated SQF allegation along with other allegations:	The following tables are based on NYPD – Federal Monitor – SQFSTA reports provided to the Monitor by NYPD.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.

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936	187	n/a	OATH was established within the City Charter in 1988 as part of a New York City Charter Revision Commission ballot proposal creating the City Administrative Procedure Act. Administrative Law Judges within OATH are authorized to "conduct adjudicatory hearings for all agencies of the city unless otherwise provided for by executive order, rule, law or pursuant to collective bargaining agreements." OATH is "an independent body that can be a resource to agencies in conducting their adjudications, while at the same time establishing an independent structure outside of the agency to provide an unbiased assessment of the matters to be adjudicated."	n/a	OATH suggests substantial edits in the last two paragraphs on page 187:  OATH is the City's central administrative law tribunal, created by Mayoral Executive Order No. 32 of 1979, which established an independent cadre of professional adjudicators subject to the Code of Judicial Conduct, the same rules of ethics that apply to state court judges. In 1988, OATH became a City Charter agency, as part of the New York City Charter Revision Commission ballot proposal approved by New York City voters. That Charter revision created the City Administrative Procedure Act, which sets forth the bedrock principles of due process of law that OATH judges uphold, including notice and a full and fair opportunity to be heard in administrative adjudications. Administrative Law Judges within OATH are authorized to "conduct adjudicatory hearings for all agencies of the city unless otherwise provided for by executive order, rule, law or pursuant to collective bargaining agreements." OATH is "an independent adjudicative body that can be a resource to agencies in conducting their adjudications, while at the same time establishing an independent structure outside of the agency to provide an unbiased assessment of the matters to be adjudicated."
937	187	n/a	OATH hearings separate the investigator/prosecutor from the adjudicating officer—a common staple of any fair-hearing procedure. Secondly, the hearing officers are trained independent arbiters. OATH Administrative Law Judges are outside the chain of command; difficult decisions can be made without fear or favor. Administrative Law Judges are not hired, selected, fired or punished for their independent judgments; and, as is demonstrated by the existing practice utilized for correction officers, decisions are made openly and publicly, with written decisions explaining outcomes and providing guidance for future proceedings. Decisions are posted on a website with full disclosure, naming the parties and detailing the facts and recommended findings. If needed, OATH officers have discretion to redact items to protect particular items of information needing privacy.	n/a	OATH suggests substantial edits in the last two paragraphs on page 187:  OATH hearings separate the investigator/prosecutor from the adjudicating officer—a common staple of any fair-hearing procedure. OATH Administrative Law Judges are trained, independent arbiters. Because OATH is a separate City agency, OATH's Administrative Law Judges are not employed by the Police Department or any City agency that employs the person facing disciplinary charges, and are insulated from outside influence; difficult decisions can be made without fear or favor. OATH Administrative Law Judges are selected after a rigorous merit selection process, including a writing competition, and they are not fired or otherwise punished for their independent judgments. Their independence is derived in part from their appointment to five-year terms pursuant to the City Charter. Those terms provide insulation from changes in administrations and political influence. As is demonstrated by the existing practice utilized for correction officers, decisions are made openly and publicly, with written decisions explaining outcomes and providing guidance for future proceedings. Decisions are posted on a website with full disclosure, naming the parties and detailing the facts and recommended findings. If needed, OATH judges have discretion to redact decisions to protect particular items of private information where "legally recognized grounds exist" to do so.
938	188	793	CCHR also has the authority to investigate claims of bias-based policing, independent of CCRB or NYPD actions that may be pursued.	Admin. Code § 14-151(d)(1)(ii) specifically authorizes CHR to investigate and pursue a complaint alleging bias-based profiling against "any law enforcement officer who has engaged, is engaging, or continues to engage in bias-based profiling."	Bias-based policing and and bias-based profiling are two different things. The text and footnote conflate them here.
939	188	794	In Jaggi v. NYC Police Department, OATH Index No. 1498/03 (2004) a Traffic Enforcement Agent successfully alleged religious discrimination - again on an employment issue - before an OATH officer.	In Jaggi v. NYC Police Department, OATH Index No. 1498/03 (2004) a Traffic Enforcement Agent successfully alleged religious discrimination - again on an employment issue - before an OATH officer.	OATH suggests the use of OATH "judge" instead of "officer" in this footnote:  In Jaggi v. NYC Police Department, OATH Index No. 1498/03 (2004) a Traffic Enforcement Agent successfully alleged religious discrimination - again on an employment issue - before an OATH judge. In Jaggi v. NYC Police Department, OATH Index No. 1498/03 (2004) a Traffic Enforcement Agent successfully alleged religious discrimination - again on an employment issue - before an OATH judge.

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940	188	n/a	Today, issues surrounding the propriety of a police stop are, on occasion, heard before an OATH officer, however these are in the context of Krimstock hearings (seeking return of a seized property), not discipline. Isolated misconduct matters dealing with employee relations charged against a police officer, not prosecuted by APU and not leading to possible termination, can also be resolved before OATH Administrative Law Judges. When the Law Enforcement Bureau of the NYC Commission on Human Rights (CHR) brings a complaint against individual police officers, it is heard in the Office of Administrative Trials and Hearings. The parties are publicly identified by title and name in the Commission's published decisions. Thus far, CCHR has not brought an action against any individual officer or group of officers for misconduct other than internal employment. CCHR also has the authority to investigate claims of bias-based policing, independent of CCRB or NYPD actions that may be pursued. Presumably those claims could be resolved at a public OATH proceeding if needed.	n/a	OATH suggests reworking beginning of 2nd paragraph:  Certain cases involving NYPD – but unrelated to NYPD officer discipline – are heard at OATH today. Issues surrounding the propriety of a police stop are, on occasion, heard before an OATH judge, however these are in the context of Krimstock hearings (seeking return of a seized property), not discipline.791 When the Law Enforcement Bureau of the NYC Commission on Human Rights (CHR) brings a complaint against individual police officers, it is heard in the Office of Administrative Trials and Hearings. The parties are publicly identified by title and name in the Commission's published decisions.792 Thus far, CCHR has not brought an action against any individual officer or group of officers for misconduct other than internal employment. CCHR also has the authority to investigate claims of bias-based policing, independent of CCRB or NYPD actions that may be pursued. Presumably those claims could be resolved at a public OATH proceeding if needed.
941	188	n/a	When the Law Enforcement Bureau of the NYC Commission on Human Rights (CHR) brings a complaint against individual police officers, it is heard in the Office of Administrative Trials and Hearings.		Misleading. This is only true if a complaint is filed and is not resolved via settlement or administrative closure or NPC. Matters that go before OATH are usually only where there is an LEB finding of Probable Cause.
942	188	n/a	Thus far, CCHR has not brought an action against any individual officer or group of officers for misconduct other than internal employment.		Statement is inaccurate. It would be accurate to say "CCHR has not brought an action at OATH..." -- filed claims or complaints may have been resolved via other channels. CCHR has filed cases against NYPD and individual officers for violations of the public accommodations section of the CHRL.
943	188	n/a	Presumably those claims could be resolved at a public OATH proceeding if needed.		Needs further clarification. This is true only if parties are unable to settle prior to going to OATH or if a matter is administratively closed.
944	201	854	Ironically, by adding the two new members to the "non-police" bucket but maintaining the rule that a police representative must be present in every panel, the mathematical imbalance between appearances by police and non-police representatives will be even greater. Each Council representative and the Mayoral representative will be called upon less frequently to participate – each of them will vote on a smaller share of the overall caseload. The police representatives will have a vote in every decision and their proportionate share of all votes will be increased.	In reviewing a draft of this Report, CCRB explained that it currently has adopted a different practice, not explained in the Rules. Apparently, it can send a case to a preliminary screening panel without a Police Commissioner representative. If the matter is not substantiated; the vote becomes a panel recommendation. If one of the members disagrees and wishes to substantiate an allegation, then it needs to go to an appellate panel with a Police Commissioner representative for a decision. If anything, this exacerbates the problem...requiring a double vote before a case may be substantiated and exalting police designees into membership in an appellate panel. Item 243, City 09.01.23 Feedback to Yates Discipline Report.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
945	203	865	More to the point, the Police Commissioner needs to hear the reactions of a citizen panel to a disputed stop encounter before he renders final judgment.[fn865] B.CCRB Budget	"In a review of a draft of this Report, the City response complained that the Report was "strongly implying that the NYPD should be removed entirely from the oversight group." Item 254, City 09.01.23 Feedback to Yates Discipline Report). This clearly misapprehends the entire discussion. For one thing, the NYPD cannot be "removed" since the NYPD designates former law enforcement personnel but is not a participant in the first place. More importantly, an observation that certain designees get to vote in a disproportionate number of cases, not as a result of language in the Charter or the Administrative Code, but merely as a matter of choice by CCRB, does not imply in any way that NYPD should be removed entirely."	Cite also includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
946	204	n/a	Similarly, the City Commission on Human Rights had an OTPS allocation of more than \$3.7 million for an authorized headcount of 156 in fiscal year 2018, compared with the CCRB's allocation of \$3.5 million for 187 authorized heads.		CCRB's headcount is 136 today, which will be on the record as part of the upcoming budget hearing.
947	210	901	"The Intake Unit will attempt to schedule an initial interview with the complainant for each complaint that is filed in a way other than in-person communication."	"INVESTIGATIVE MANUAL, , at 6; -7, Intake Training. In In Item 200 of the City review of a draft of this Report, the "Feedback Comment" was that it "Cannot find or access this source." (City 09.01.23 Feedback to Yates Discipline Report). The Plaintiff Notes on City's Feedback, responded, "Agree that the entire Investigative Manual (which is subject to FOIL, and which plaintiffs have certain sections of) should be published on the monitor's website in conjunction with report publication.""	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.

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948	210	901	The Intake Unit will attempt to schedule an initial interview with the complainant for each complaint that is filed in a way other than in-person communication.	Investigative Manual, , at 6; -7, Intake Training. In In Item 200 of the City review of a draft of this Report, the "Feedback Comment" was that it "Cannot find or access this source." (City 09.01.23 Feedback to Yates Discipline Report). The Plaintiff Notes on City's Feedback, responded, "Agree that the entire Investigative Manual (which is subject to FOIL, and which plaintiffs have certain sections of) should be published on the monitor's website in conjunction with report publication."	Footnote cites inaccurately to feedback. Cite also includes reference to source subject to the Monitor's Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
949	211	904	Upon investigation, if a stop is alleged, CCRB will request a copy of the stop report, and if none is produced in a case where a stop is believed to have occurred, an OMN referral will be generated.	Until 2022, the term "OMN" was used for non-FADO referrals to NYPD by CCRB where other misconduct was noted. The PBA complained on the grounds that, without investigation, it was improper to imply that misconduct had been found. The courts agreed, Lynch v CCRB, Index No. 154653/2021, Doc No. 88, and the term used thereafter is "OPMN" indicating Other Possible Misconduct. Since some references in this Report are to items generated before 2022 and some are later, any reference herein to OMN may, in the future be read as OPMN.	Cited decision does not mention OMN or OPMN.
950	212	913	"Where the allegations in a complaint fall partly within the CCRB's jurisdiction and partly within the sole jurisdiction of another agency, CCRB's Chair (in consultation with the Executive Director) has discretion to refer the entire complaint to the other agency to be investigated by that agency. [fn913]"	"38-A RCNY § 1-13 (a, b)) and § 1-02."	Error in citation.
951	214	929	"The Intake Unit consisted of six investigators in 2018. [fn928] That number has increased to eight. [fn929]"	" Item 300, City 09.01.23 Feedback to Yates Discipline Report."	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
952	217	948	ii.CCRB Staff and Training	NB: The section "CCRB Staff and Training" is outdated. It was accurate when first drafted in 2018-2019, but, as the City rightly points out, there have been revisions. However, neither the City nor CCRB have suggested any amendments or provided any new information in this regard. Plaintiffs have pointed out that they do not object to streamlining this discussion to avoid unnecessary delay in the release of the Report. The discussion is left within the Report to describe past practice and can be updated when necessary information is supplied to the Monitor.	City includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information. Author relies on outdated information at risk to quality of report.
953	226	974	Other closely related items, such as failure to document enforcement actions, false reporting in other venues, such as complaint or arrest reports or court testimony, making misleading or inaccurate statements that impede an outside investigation may remain outside CCRB jurisdiction	CCRB asserts that, by its rules, it "investigates false/misleading/inaccurate statements against a civilian in other venues." (Item 351, City 09.01.23 Feedback to Yates Discipline Report.). It is unclear if this is only in connection with a pending FADO complaint already under investigation for an untruthful statement made to a CCRB investigator, or if CCRB will actively pursue a false statement case wholly unrelated to, and independent of, a complaint or an ongoing investigation. Subparagraph 440 (c)(i) of the New York City Charter provides: "The board shall also have the power to investigate, hear, make findings and recommend action regarding the truthfulness of any material official statement made by a member of the police department who is the subject of a complaint received or initiated by the board, if such statement was made during the course of and in relation to the board's resolution of such complaint." However, CCRB Rule 38-A RCNY 1-01 includes within the definition of Abuse of Authority, "intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions."	Citation does not provide support for author's point; cite also includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
954	229	986	There, three police officers approached a group of children playing in a park telling them that "they had received a call about someone in the park with a gun." Two of the children, an 11-year-old boy and a 13-year-old girl began to flee. The subject officer followed them, at which point they ran to an apartment building. The officer chased them, unholstering and pointing his gun at the girl. CCRB determined that there was insufficient basis for the attempted stop and brandishing of the weapon. The scene was witnessed by an adult who filed a complaint. The complainant described himself as the girl's "godfather." He was neither a parent/guardian nor a victim of the threatening gesture. CCRB recommended Charges and Specifications, without a sworn complaint by the girl. DAO asked for reconsideration, claiming that the complainant's status was "insufficient to satisfy the sworn complaint or statement requirement." Since "the CCRB does not have a verified, sworn statement from [the girl] ...this matter should not have been substantiated."	PO [REDACTED], CCRB # [REDACTED], at [REDACTED].	Could not find this source with the information given and all information in the report should be de-personalized.



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955	237	1022	Separately, the failure to prepare a required report or to document an investigative encounter carries a presumptive penalty of five days with a mitigated penalty of three days.	The Department has proposed revisions to the discipline matrix which would reduce the mitigated penalty for failure to prepare a required report, i.e., activity logs and memo books, to training. The comment submission period ended 6/18/2023. The revision has not been adopted as of 12/1/2023.	No citation is included for the proposed revisions.
956	239	1030	However, the BWC MOU goes on to provide that "The NYPD IAB Liaison will inform the CCRB of the actions, including dispositions, it has taken in response to any such referral," which is a break from the customary practice of other OMN referrals. Unfortunately, according to CCRB, notwithstanding the MOU, the plan for review was not implemented.	Item 393, City 09.01.23 Feedback to Yates Discipline Report. ("This never materialized, there is no viewing room. The CCRB still only receives the BWC that NYPD deems relevant to our requests.")	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
957	244	1051	Within the new definition of Abuse of Authority, the Board has acted to include false or missing reports or statements made not only in a CCRB interview, but at any time when it harms a civilian or a civil right.	Failure to file a report (memo book, activity log, stop report, consent to search report, strip search documentation, etc.) are not reviewed by CCRB as "Acts of omission are not included in the CCRB's false statement allegations." (Item 402, City 09.01.23 Feedback to Yates Discipline Report). This seems odd since an intentional omission about a material item can support a false statement claim. See, e.g., Kastis v Alvarado, 2019 US Dist. LEXIS 115731 (ED Cal., 2019). Similarly, a failure to file a stop report is a violation of PG § 212-11.	Prior feedback remains. Cite also includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
958	244	1053	For example, the City, in its review of a draft of this Report objected to a reference to "missing reports" as possible inclusion within an untruthful statement determination by CCRB. It noted that "Acts of omission are not included in the CCRBs false statement allegations."	Item 402, .09.01.23 Feedback to Yates Discipline Report.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
959	244	1054	Plaintiffs responded that, "CCRB still investigates missing memo book entries, etc. as OMNs but they are not included in the "false statement" jurisdiction that was granted." (Presumably referring to section 440 of the Charter.)	Item 402, .09.29.23 Feedback to Yates Discipline Report Excel with headers and plaintiff comments--updated 10.24.23	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
960	246	1061	It is unclear where "display" or "brandishing" of a firearm when the gun is not aimed at the complainant falls. CCRB and NYPD do not always see eye-to-eye. CCRB may consider the unnecessary brandishing of a weapon to be a use of force violation.	CCRB will consider "gun drawn" as a potential abuse of authority. Item 407, City 09.01.23 Feedback to Yates Discipline Report. On the other hand, NYPD only lists such as an abuse if there is a wrongful "threat of force." NYPD Disciplinary System Penalty Guidelines, at 28.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.. Second citation to NYPD does not mention a firearm at 28, although the quoted "threat of force" is there.
961	250	1082	It may be, going forward, that CCRB will be permitted to investigate cases where the supervisor physically participated in the misconduct, but it would appear by the language of 1-44 that a CCRB investigator or panel member cannot examine a direct, improper, order by a supervisor ("Go toss that guy.")	CCRB asserts, in its response to a draft of this Report that it investigates allegations against supervising officers "if they actively participate in the misconduct by words or deeds." ( Item 416, City 09.01.23 Feedback to Yates Discipline Report). If so, it would appear that the language in § 1-44 is overbroad and should be amended.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
962	254	1103	But it is difficult to understand why civilian complaints and encounters involving false filings outside of a CCRB interviews which abuse authority or harm a civilian, intentional report or camera misconduct when done to cover or misrepresent a civilian encounter, etc., are out of CCRB's reach.	In review of a draft of this Report, CCRB asserted "They are not, we plead these allegations." Item 883, City 09.01.23 Feedback to Yates Discipline. CCRB may investigate the totality of untruthful statements when uncovered as part of a FADOU investigation, but CCRB does not, independently investigate adverse credibility or false statement allegations brought against officers in the normal course of criminal prosecutions, civil litigation, or false filings.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
963	258	1124	There may or may not be more cases similarly affected since 21 of the cases were still open at the time of the submission, March 15, 2022.	For a period of time, during the pandemic, it was alleged that substantial delays were caused by officers' refusal to appear when called by CCRB. To the extent that this may be true, equitable estoppel would justify extending the termination date. In re Steyer, 70 NY2d 990 (1988).	Inaccurate/misleading citation.
964	258	1125	During the period of time from January 2022 through October 2023 the Department closed as "Short SOL" 937 of the 2380 (39.4%) of the APU cases it received from CCRB. 191 of those cases contained a substantiated SQF allegation.	FM-68 2023 DAO Responses to Federal Monitor Inquiry.	Cite includes reference to source subject to the Monitor's (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
965	258	1126	Delay may be caused by any number of factors, some to accommodate witnesses and officers, some to process and investigate the case within CCRB and some to preparation for trial or evaluation by DAO and the Police Commissioner. No attempt was made in this Report to weigh the various causes of delay.	In response to a draft of this Report, the Department pointed to "the comparative ineffectiveness of APU as compared to DAO" and "the issue of long CCRB investigative time frames." The response went on to assert that, "The Department initially informed the CCRB that it would need 120 days to process its recommendations and impose discipline. This timeframe was relaxed to 30 days after assurances that the CCRB backlog was a temporary one...." (Item 440, City 09.01.23 Feedback to Yates Discipline Report.)	Cite includes reference to source subject to the Monitor's (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
966	258	1128	An audit of timeliness by CCRB conducted by the NYS Comptroller, even taking COVID delays into account concluded that "CCRB does not complete investigations in a timely manner and does not have performance measures in place to effectively monitor lengthy investigations."	Office of the NYS Comptroller, Division of State Government Accountability, New York City Civilian Complaint Review Board, Complaint Processing, Report 2020-N-9 (October 2022). "While CCRB officials attributed long investigation times in part to NYPD's delays in providing information or access to members of service, we identified weaknesses in CCRB's oversight of timeliness of investigations and monitoring of delays that could jeopardize its ability to hold officers accountable for misconduct." At 1.	Improper cite format.

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967	259	1132	oThe Police Commissioner dismissed the cases (administratively closed due to SOL) on 3/16/2018.	C160578 Closing1.pdf at 12.	Unable to identify this source with the info given and if the citation is to source deemed confidential, the City objects to the reference.
968	263	1143	Even after a full investigation and recommendation for formal discipline by CCRB, a not insignificant series of events are set in motion before service and commencement. "A DAO attorney will thoroughly review the CCRB file. All available records will be reviewed, including but not limited to: Body Worn Camera footage from responding and involved officers, relevant surveillance captures, cell phone records and recordings, 911 calls, and witness statements....The DAO will make a recommendation as to whether to concur with the findings of the CCRB, or to depart. Where they concur, DAO will serve charges. Where there is a recommendation to depart, the case will be then reviewed by the First Deputy Commissioner and the Police Commissioner. If the First Deputy Commissioner and Police Commissioner agree with the departure recommendation, a departure letter will be issued. If they disagree DAO will serve charges."	December 22, 2023 "DAO Responses to Federal Monitor Inquiry – FM 68-2023."	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
969	265	1149	In 2020 the Department took an average of 85 days to serve Charges and Specifications on 50 Respondents.	In a recent response to a recent request for update (FM 68-2023 DAO, December 22, 2023, "Responses to Federal Monitor Inquiry"), DAO asserts that the average time for service was reduced to 32 days for 2022 and 25 days for 2023. In part this was due to the large number of cases where a decision was made to not serve charges at all for a variety of reasons, including Short SOL, Departures, and MOS resigning/retiring.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information.
970	266	1155	"Since 2020, the reconsideration process has rarely been used and has not been used by the NYPD for SQF cases."	"In response to a draft of this Report, the Department asserts that there are "between 2-3 cases in the last 12 months or so." Item 460, City 09.01.23 Feedback to Yates Discipline Report. See, also, Final Federal Monitor – SQFSTA – 2023 Q1, Q2 on file with Monitor."	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
971	273	1189	The Police Commissioner rejected the findings of CCRB. Based upon "a thorough review of this incident...conducted independently by the Department" and upon her "being shown the video evidence" the Police Commissioner dismissed the recommended B-CD with an NDA/DUP.	Police Commissioner Departure Letter, CCRB Case # [REDACTED] In response to a draft of this Report, the Department pointed to the fact that [REDACTED] corrected his account" after being shown the video evidence. (Item 483 City 09.01.23 Feedback to Yates Discipline Report.) This supports the observation that a secondary factfinding proceeding by NYPD followed the proceedings conducted by CCRB.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
972	277	1201	Knowledge of a complete disciplinary history would seem to be essential to CCRB discipline recommendations as well as any meaningful dialogue regarding a reconsideration request in SQF cases.	In response to a draft of this Report, the City responded, "The SEH is now requested by investigators whenever a case is closed with at least one substantiated allegation. It is provided to the board during case deliberations so the panel members can make an appropriate penalty recommendation consistent with the Matrix." (Item 491, City 09.01.23 Feedback to Yates Discipline Report.). As discussed later in this Report, there are times when disclosure of non-CCRB discipline would be useful during the course of an investigation and before a substantiated allegation is being reviewed for penalty assessment.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
973	278	1203	For example, in 2019 the Police Commissioner imposed Training as the "discipline" after a substantiated SQF finding by CCRB in 39 of 96 cases. In 24 of those 39 cases, CCRB had recommended Training and the Police Commissioner agreed. In another 15 cases, CCRB recommended something other than training but the Police Commissioner imposed Training nonetheless.	Federal Monitor SQFSTA report provided by NYPD.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
974	298	1289	. In the end, over the three-year period, 3,786 of complaints (29.4% of all retained cases) were fully investigated by CCRB and voted upon by a panel, resulting in a finding for or against a complaint against an identified officer	Throughout this Report there is reliance upon data from 2017 to 2019. This is the product of several factors: delay and lag time in closing cases sufficient to capture a full set of data; the pandemic; delay in obtaining reports or data from official sources, to name a few. In response to a draft of this Report, CCRB points out, rightly, that much of the data on CCRB's substantiation rates were "pre-BWC." The availability of video evidence undoubtedly has substantially impacted its substantiation rate. A true assessment of those numbers would necessarily entail another study – which is beyond the scope of this Report. (Item 520, City 09.02.23 Feedback to Yates Discipline Report.)	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
975	299	1292	Another 63.1 percent of the allegations were for abuse of authority. Overall SQF misconduct (which falls within the abuse category) constitutes only about 13.7 percent of all allegations considered by CCRB.	In 2022, 528 complaints received contained a SQFS allegation (CCRB Annual Report – 2022 at 19) out of a total of 3,724 complaints (CCRB Monthly Statistical Report – January 2023 at 8). This is 14.2 %.	Pincite incorrect.
976	302	1301	*Now that CCRB has revised its description of case dispositions, comparison is impossible since it no longer matches with NYPD's description of outcomes.	Compare CCRB "case dispositions" 38-A RCNY§ 1-33, amended effective October 22, 2022, with NYPD Admin. Guide § 322-11 (effective June 23, 2020).	Relies on non-public cite; unable to verify.
977	305	1315	CCRB has begun to measure and report upon "The Impact of BWC and Other Video Evidence."	Id. at 51.	Relies on non-public cite; unable to verify.

Item #	Document Page	Footnote No.	Body Text	Footnote Text	Feedback / Comment
978	316	1327	Since 2021, more cases have ended with a recommendation by CCRB for Charges and Specifications than before. In 2022, out of 1608 recommendations, 534 (33%) were for Charges and Specifications.	CCRB Annual Report 2022, Figure 28: Board Recommendations for Officers with Substantiated Allegations.	Number of recommendations is inaccurate.
979	316	1328	In 2022, only 128 Abuse of Authority allegations of 3028 substantiated FADOU allegations (4.2%), received a CCRB recommendation that Charges and Specifications be drawn. 151 Force allegations, 75 slur allegations and 96 untruthful statement allegations account for the bulk of Charges.	CCRB Annual Report 2022, Figure 29: Board Disciplinary Recommendations by Substantiated Allegations.	Unable to identify figures within the cited source.
980	317	1329	In 2022, APU only closed 21 cases where discipline was imposed. Five of those cases ended with a trial/guilty verdict and imposition of penalty days. Twenty cases ended with a plea where penalty days were imposed. Only seven of those cases resulted in the imposition of ten or more penalty days. One case resulted in a plea and suspension.	CCRB Annual Report 2022, Figure 34: Case Outcomes.	Unable to identify figures within the cited source.
981	317	1333	More recently, implementation of the Disciplinary Matrix has impacted CCRB's informal (non-Charges) recommendations as well. Of 1,608 case recommendations against officers in 2022, (excluding Charges discussed above) there were:	CCRB Annual Report 2022, Figure 28.	Number of recommendations is inaccurate.
982	318	1335	Internally, however, the penalty assessed by the Police Commissioner in 2022 upon issuance of a B-CD or A-CD by the Police Commissioner can be measured. It appears that 48 of the 52 B-CD dispositions finalized received penalty days as part of the discipline. It appears that 42 of the 207 A-CD dispositions received penalty days as part of the discipline imposed. Another 165 A-CDs received as a final disposition do not report an assessment of penalty days.	CCRB Annual Report 2022, Figure 30.	Unable to identify figures within the cited source.
983	319	1338	Looking at cases which included a substantiated stop/frisk/search finding among the allegations within a complaint, it appears that, in 2022, 92 of 254 substantiated cases were sent from CCRB with a Charges and Specifications recommendation. As of the latest matrix [fn1338] sent to the Monitor, 27 of the 92 cases had closed.	Final Federal Monitor – SQFSTA – 2023 Q1, Q2 final copy.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
984	320	1339	Only two of the 27 closed SQF cases where charges had been recommended resulted in imposition of penalty days – one was reduced to an A-CD with 3 days imposed and the other ended as a B-CD with a 10-day penalty.	Final Federal -SQFSTA – 2023 Q1,Q2 provided by NYPD to the Monitor.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
985	329	1359	Today, in the main, APU handles the cases where FADO allegations are substantiated and the CCRB recommends Charges and Specifications	In 2022, CCRB began to handle cases in which it recommended command discipline, but the officer refused to accept a CD offered by DAO. (Item 575, City 09.01.23 Feedback to Yates Discipline Report.)	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
986	330	1365	Currently the APU consists of a Chief Prosecutor, two Deputy Chief Prosecutors, ten prosecutors, four trial preparation assistants and an administrative assistant.	Item 580, City 09.01.23 Feedback to Yates Discipline Report.	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
987	351	1459	█████ currently has a record of thirteen CCRB complaints. The allegations range from SQF misconduct to excessive force, to sexual misconduct and slurs, among others.	CCRB has investigated 10 force allegations, 7 SQF/search allegations, and 6 discourtesy/slur allegations, among others, made against this officer. Officer ██████ was promoted to Detective on 2/9/2022.	Missing authority for the data/All data should be depersonalized
988	379	1534	Take, for example, the recent case of PO ██████, an officer with no prior CCRB history who has been with the Department for eight years.	Subsequent to sharing this draft of the Report with the parties, PO ██████ had a new substantiated complaint with allegations of discourtesy and a racial slur. As of September 2023, both complaints (with a total of seven substantiated allegations) remained unresolved, notwithstanding recommendations for Charges and Specifications by CCRB for both complaints.	Missing authority.
989	390	1575	"To assess the impact of the newly adopted Matrix upon SQF discipline, the Monitor team asked for closing reports, CAR reports, and final dispositions for all cases in which an SQF allegation had been substantiated by CCRB after implementation of the Matrix in June 2021."	"The City Department of Law has objected to production of CAR memos, claiming deliberative process and work-product privileges. Letter, ██████, Deputy Chief NYC Law Department. (2/10/2022)."	Cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents. City also re-asserts deliberative process and work-product privilege over the information alluded to, and objects to the commentary on the City's right to assert privilege.
990	390	1576	Closing reports for 91 cases (within 39 complaints containing 224 substantiated allegations) were supplied in February and March of 2022 with follow-up data sent in June.	The list of cases analyzed can be found in spreadsheet, "Follow-up Detail, sent to the Monitor on June 30, 2023. "NYPD Disciplinary Administrative Database System, CCRB Substantiated Stop/Question/Frisk/Search or Trespass Arrest Allegations Closed from 2022 to YTD 3/31/23."	Cite may include reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the extend the reference includes information subject to the order and the disclosure of confidential information/documents.

Item #	Document Page	Footnote No.	Body Text	Footnote Text	Feedback / Comment
991	396	1581	Of the 91 cases produced for examination in March 2022 in response to a data request to NYPD for SQF cases substantiated by CCRB after implementation of the Matrix, 31 have not yet closed. They are cases listed as "decision pending," despite the fact that they all originated in the period 2019 to 2021. In 37 of the 91 cases, CCRB recommended Charges and Specifications. 24 of the open cases are instances where CCRB recommended Charges and Specifications, but a decision is still "pending." Another six are cases where CCRB recommended a B-CD, but a decision is still pending. Lastly, in one case CCRB recommended Training, but the matter is listed as "decision pending."	"NYPD Member of Service Histories" at <a href="https://www.nyc.gov/site/ccrb/policy/MOS-records.page">https://www.nyc.gov/site/ccrb/policy/MOS-records.page</a> .	Footnote cite is not specific enough. Text includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
992	396	1583	3 cases were reduced to an A-CD, receiving 1 day, 3 days and a warning/ admonishment respectively.	PO [REDACTED] was discussed earlier in this Report. In that case, notwithstanding the CCRB recommendation for Charges based in part upon a substantiated improper strip search, the Department resolved the case without prosecution by APU. IAB separately investigated the incident, due to a fellow officer having punched the victim repeatedly in the face. PO [REDACTED] was permitted to accept an A-CD with a Warning and Admonishment.	All information should be depersonalized
993	398	1584	If the Police Commissioner were to find mitigating circumstances for any or all of those 12 cases, reducing the case from an A-CD to training, that would still be a departure from the penalty recommended by CCRB.	If the case is simply reduced to Training upon the Police Commissioner's finding of mitigation, there is no question that the result is a departure. If the case is finalized as an A-CD with Training, although the level of discipline remained as an A-CD, the penalty reduction from a presumptive 3-day penalty to Training requires explanation under the Charter provisions.	Missing authority/All information should be depersonalized
994	399	1585	In sum, within the sampled 91 cases with substantiated SQF allegations, without other accompanying non-SQF substantiations, no officer has received penalty days for an A-CD recommended by the Board and no officer has received the presumptive 3-day penalty for SQF misconduct.	One officer, PO [REDACTED], whose case is described later in this Report received a presumptive three-day penalty for stopping two individuals. CCRB had recommended an A-CD for each stop which might have called for six forfeited days. But since the two were treated concurrently, the presumptive three-day penalty was imposed.	Missing authority/All information should be depersonalized
995	399	1586	Even for cases where an SQF substantiation is included along with other substantiated allegations, imposition of penalty days is in the minority. Disallowing the 30 cases which have yet to be decided, [fn1586] of the remaining 61 finished cases where there is an SQF substantiated finding within the case, only 10 cases ended with imposition of penalty days.	As of October 10, 2023, looking at CCRB – NYPD Member of Service Histories, <a href="https://www.nyc.gov/site/ccrb/policy/MOS-records.page">https://www.nyc.gov/site/ccrb/policy/MOS-records.page</a> .	More specific citation needed.
996	399	1587	Another 13 cases resulted in an A-CD disposition without notation that penalty days were imposed.	As described earlier in this Report, it is common for an SQF case to end with the notation "A-CD accepted," which typically goes without penalty days and as discussed above, for a variety of reasons, is not discipline. As well, it is not uncommon for an A-CD finding by CCRB to be referred to the local command for decision as to penalty. There is no guarantee, or follow-up, to ensure that the local precinct commander imposes penalty days upon receiving the case.	Missing authority.
997	406	1616	Holding to the contrary, the Appellate Division, First Department, recently ruled that the repeal of Civil Rights Law § 50-a applies retroactively.	NYP Holdings, Inc. v New York City Police Dep't, __AD3d__(1st Dep't 10/12/23), Index No.159132/21, Case No. 2023-00242.	Wrong cite format.
998	447	1771	That section directed six agencies: the inspector general, the comptroller, the Department, CCRB, CCPC, and CCHR to work together to collect and evaluate information regarding allegations or findings of improper police conduct and to develop recommendations relating to discipline along with Training, monitoring and related policies.	N.Y.C. Charter § 808 (b). The inspector general for the police department shall, working with the law department, the comptroller, the police department, the civilian complaint review board, the commission to combat police corruption, and the commission on human rights collect and evaluate information regarding allegations or findings of improper police conduct and develop recommendations relating to the discipline, Training, and monitoring of police officers and related operations, policies, programs, and practices of the police department, including, but not limited to, any system that is used by the police department to identify police officers who may be in need of enhanced Training or monitoring.	Mischaracterization/inaccurate. The section directs the IG to work with the named agencies and the Law Department. It is not a mandate for all the agencies to play an equal role in this effort.
999	448	1773	The Examination was limited by NYPD, which led to the conclusion that "DOI cannot state whether NYPD is currently conducting the type of analysis described in [the] Report	fn. 1686 NYPD-OIG, 2019 Assessment of Litigation Data Involving NYPD at 10 (Apr. 30, 2019) <a href="https://www1.nyc.gov/assets/doi/reports/pdf/2019/Apr13LitData_pressrelease_report_43019.pdf">https://www1.nyc.gov/assets/doi/reports/pdf/2019/Apr13LitData_pressrelease_report_43019.pdf</a> .	The determination was in a footnote, not a conclusion of the report. The text here is confusing/misleading.
1000	448	1776	As mentioned, the Department claims to use a "merit-based" analysis rather than merely looking at allegations to weed out "baseless allegations" in its use of litigation data "to adjust policy and training, identify officers in need of intervention and reduce the number of lawsuits.	Id. at 2.	Most links to pdfs in footnotes 1773-1776 are not active. The text here is misleading; the letter referenced here says using merit-based analysis to weed out baseless litigation, not baseless allegations.
1001	448		In April 2018, OIG-NYPD published a report, "Ongoing Examination of Litigation Data Involving NYPD" ("Examination"). The Examination was in response to section 808(b) of the Charter.	No footnote provided	The report referenced is a follow-up of a 2015 report issued by OIG-NYPD, prior to enactment of Section 808 of the City Charter. Text here is misleading.

Item #	Document Page	Footnote No.	Body Text	Footnote Text	Feedback / Comment
1002	461	1813 & 1814	The Court's order establishing an Early Intervention program recognized the need to capture claims of wrongful conduct made to the Comptroller and in court filings as a tool to recognize and intercept potential bad practices.	#1813 - Floyd ECF Doc No. 767 (6/2/20). In reviewing a draft of this Report, the City asserts that, "The early intervention order does not include 'claims of wrongful conduct made to the Comptroller.'" (Item 846, City 09.01.23 Feedback to Yates Discipline.) The order itself refers to "any civil lawsuit or settlement alleging an unconstitutional stop, an unconstitutional trespass enforcement, or racial profiling, including racial slurs, where there has been a judgment or settlement against a police officer, and where there exists evidence that the police officer violated a rule or regulation of the NYPD, identification of such evidence, including, but not limited to notices of claims and civil complaints..." (Emphasis supplied). #1814 - [1] As well as declined prosecutions, adverse credibility determinations and unsubstantiated profiling allegations. A simple declined prosecution can constitute a "favorable termination" sufficient to permit a section 1983 action for Malicious Prosecution. <i>Thompson v. Clark</i> , 142 S.Ct. 1332 (2022).	Text includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
1003	473	1872	One response to this call was Executive Order No. 18 of 1995 (February 27, 1995, Mayor Giuliani), creating the Commission to Combat Corruption (CCPC), chaired by Michael Armstrong until his death on October 17, 2019	<a href="https://www.nyc.gov/site/ccpc/about/about.page">https://www.nyc.gov/site/ccpc/about/about.page</a>	Per CCPC, the first chair was not Michael Armstrong. Cite in footnote does not support all of the information in the text.
1004	474	1875	The Executive Order calls for five citizen members appointed by the Mayor. With the sad passing of long-time Chair Michael Armstrong in 2019, there are only three appointees at this time. The Commission is authorized to "employ an Executive Director and other appropriate staff sufficient to organize and direct audits, studies and analyses" within its mission. At present it appears it has been reduced to a staff of five, though it can work in conjunction with the DOI and utilize DOI staff with consent of the DOI Commissioner	Executive Order No. 18 of 1995	Information in paragraph is inaccurate and out of date.
1005	475	1886	The OIG does not read this section as authorization to handle individual civilian complaints as they come in	Because of the Covid-19 pandemic and Black Live Matters protests, statistics in 2020 are not generally consistent with prior years or useful for trend analysis. In 2020 OIG-NYPD received 618 complaints	No authority offered to support the text. The text is also misleading. NYPD OIG does handle every complaint, which could mean referring to another agency that has jurisdiction.
1006	476	1892	In particular, among its responsibilities, the Inspector General is to look at NYPD's "response to actions, claims, complaints, and investigations . . . including disciplinary actions."	N.Y. City Charter § 808(b)(3).	Should be "the Inspector General of NYPD."
1007	476	1897	Additionally, another investigatory unit within the Department called Police Action Litigation Section (PALS) was established in 2015. Apparently, PALS logs detailed information concerning claims which could be useful in identifying patterns and trends for misconduct, including wrongful stops, frisks and searches. According to the Inspector General, however, this happens on an ad hoc basis in response to specific requests and does not involve routine data analysis to identify historical trends in allegations or related metrics. The OIG was unable to specifically follow-up on this issue since the Department denied it access based on a claim of attorney-client privilege, which OIG-NYPD refutes as inapplicable to information sharing between OIG and NYPD. According to OIG, NYPD barred interviews of employees whose job was to monitor litigation on the ground that it would reveal "sensitive information" which is protected by City Charter. Again, NYPD-OIG argues that the "sensitive information" provision is inapplicable. The Department denied the accusation, claiming, "In addition to making Department executives available for interviews, and contrary to the narrative put forth by OIG, NYPD also produced more than a hundred pages of sensitive information related to litigation data analysis and monitoring of officer performance. Thus, OIG's narrative that NYPD has been uncooperative and non-compliant is hardly accurate as NYPD fully satisfied OIG's requests for litigation data to the extent possible."		Paragraph reads like it is referring to one report instead of two.
1008	477	1896	According to OIG, NYPD barred interviews of employees whose job was to monitor litigation on the ground that it would reveal "sensitive information" which is protected by City Charter	See N.Y. City Charter § 803 (c)(3). "The Mayor, in consultation with the department and the New York City police department, shall have the discretion to determine how sensitive information provided to the department in connection with any investigation, review, study, or audit undertaken pursuant to this section shall be treated. The Mayor shall provide the Council with any guidelines, procedures, protocols or similar measures related to the treatment of sensitive information that he or she puts in place. Sensitive information shall mean information concerning (a) ongoing civil or criminal investigations or proceedings; (b) undercover operations; (c) the identity of confidential sources, including protected witnesses; (d) intelligence or counterintelligence matters; or (e) other matters the disclosure of which would constitute a serious threat to national security or to the safety of the people of the city of New York."	Source missing to support "according to OIG."

Item #	Document Page	Footnote No.	Body Text	Footnote Text	Feedback / Comment
1009	478	1903	On its website, CHR offers a few examples of bias-based profiling.	<a href="https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/BiasBasedHarassment_Brochure%20Final.pdf">https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/BiasBasedHarassment_Brochure%20Final.pdf</a> .	Cite/source does not support text. CCHR's brochure is about bias-based harassment, not profiling.
1010	478	1904	In response to an inquiry by the Monitor Team, CCHR indicated that they have reviewed three complaints against individual officers for profiling.	April 9, 2019, reply, ██████████, General Counsel, CCHR. A fourth was received but closed administratively.	Information is outdated. In addition, cite includes reference to source subject to the Confidentiality Order (Oct. 11, 2018). City objects to the reference and the disclosure of confidential information/documents.
1011	478	n/a	In the example posted, reasonable suspicion is absent, so bias is apparent.		Inaccurate. In the example given in the brochure, if a trans woman and a cis woman are next to each other and if only the trans woman is questioned, that may help identify bias-based profiling.
1012	478	n/a	The more difficult hypothetical, not posited on the website, would be a case where the officer selectively stops persons in a protected class but where reasonable suspicion exists to justify the stop.		Misleading. If an officer has reasonable suspicion and stops someone, then there exists no prima facie evidence of bias-based harassment.
1013	478	n/a	CCHR has not asked the Law Department to bring a "policy or practice" complaint against the Department.		Misleading. The City's Law Department is not able to file a pattern or practice claim against a City agency in state or federal court.
1014	479	n/a	Whether these two encounters would be sufficient to substantiate a claim under AG 304-17, absent a demonstration of motivation or intent, is dubious.		Value-laden wording - suggest replacing "dubious" with "uncertain."
1015	480	1913	The Office is under development and time will tell whether it can or will fulfill these promises.	On December 29, 2023, the agency published the results of an investigation into an individual encounter for the first time. It found that an officer of the Tonawanda Police Department (TPD) had wrongfully arrested two teenagers and used excessive force in the arrest of one of the minors. LEMIO recommended that TPD "review the ...incident and discipline" the officer. It also recommended an update of the TPD's use of force policy and for further training.. Report and Findings pursuant to Executive Law § 75(3) regarding July 20, 2022 incident and the City of Tonawanda Police Department. ( <a href="https://ag.ny.gov/sites/default/files/reports/753report-tonawandacity-pd.pdf">https://ag.ny.gov/sites/default/files/reports/753report-tonawandacity-pd.pdf</a> ).	Incorrect link.
1016	485	1918	"Good Faith" and "Mistakes"	"Good faith" and "mistakes" are commonly asserted as cause of reducing or dismissing substantiated allegations of SQFS misconduct. The problem for CCRB, as explained by NYPD in another context (profiling), is that, "Even the best investigative protocols... cannot go inside an officer's mind to glean, and prove by a preponderance of the evidence, intent or motivation."	Missing source.
1017	501	1920	Lieutenant ██████████ has 15 CCRB complaints filed against him that were fully investigated.	As explained in the body of the Report, fewer than one-half of the complaints brought to CCRB are fully investigated.	Misleading footnote/all information should be depersonalized.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAVID FLOYD, *et al.*,

Plaintiffs,

-against-

08 Civ. 1034 (AT)

CITY OF NEW YORK, *et al.*,

Defendants.

KELTON DAVIS, *et al.*,

Plaintiffs,

-against-

10 Civ. 699 (AT)

CITY OF NEW YORK, *et al.*,

Defendants.

JAENEAN LIGON, *et al.*,

Plaintiffs,

-against-

12 Civ. 2274 (AT)

CITY OF NEW YORK, *et al.*,

Defendants.

**CITY OF NEW YORK'S PUBLIC COMMENTS ON  
REPORT TO THE COURT ON POLICE MISCONDUCT AND DISCIPLINE**

**EXHIBIT D**

**STRUCTURAL ANALYSIS OF THE REPORT**

**CITY’S RECOMMENDATIONS ON SECTIONS OF THE 2ND DRAFT OF DISCIPLINE REPORT**

<b>CHAPTER &amp; SECTION HEADINGS</b> (approx. current length)	<b><i>CITY’S RECOMMENDATION</i></b>
<b>I. EXECUTIVE SUMMARY</b> (6-1/2 pages)	<i>This chapter should be shortened to match the contents of the report following other cuts discussed below.</i>
<b>II. BACKGROUND</b> (6 pages)	<i>Most or all of this chapter could be cut. The court (and any other reader) should be presumed to have familiarity with the history of the litigation.</i>
<b>III. COURT’S DIRECTION</b> (5 pages)	<i>The only portion of this chapter that is needed is the quoted language of the Court’s email on page 20. The remainder should be cut or substantially shortened.</i>
<b>A. History Of Civilian Oversight In New York City</b> (5-1/2 pages)	<i>This section is not needed and should be cut.</i>
<b>B. Statutory Framework</b> (4 pages including subhead)	
i. Unconsolidated Law § 891, CSL § 75 and NYC Admin. Code § 14-115	<i>This subsection is not needed and should be cut.</i>
<b>IV. INVESTIGATING POLICE MISCONDUCT – A PRELIMINARY OVERVIEW</b> (4-1/2 pages)	<i>The beginning of this chapter is not needed and should be cut.</i>
<b>A. What Is “Misconduct”?</b> (3 pages)	<i>This section should be reduced to approximately 1 page.</i>



**CITY'S RECOMMENDATIONS ON SECTIONS OF THE 2ND DRAFT OF DISCIPLINE REPORT**

<b>CHAPTER &amp; SECTION HEADINGS</b> (approx. current length)	<b><i>CITY'S RECOMMENDATION</i></b>
<b>B. Describing Findings</b> (11 pages)	<i>This section can be reduced substantially by limiting it to only the current terminology in use by CCRB and NYPD without the extraneous commentary.</i>
i. Split Determinations (2 pages)	<i>This subsection should be reduced to approximately 1 page.</i>
<b>C. Formal Discipline</b> (4 pages)	<i>This section should be shortened, particularly by removing unnecessary footnotes.</i>
<b>D. Informal Discipline</b> (1 page) <b>E. Guidance In Lieu Of Discipline</b> (2 pages)	
<b>F. Discipline Defined</b> (3 pages)	<i>The introduction to this section should be reduced to approximately 1 page.</i>
i. Discipline Recommended By CCRB (2 pages)	<i>This subsection should be reduced to approximately 1 page.</i>
ii. Discipline For SQF Misconduct Examined at The Precinct (1 page)	
<b>G. "CD Accepted"</b> (4 pages)	
<b>H. A-CDs Not Recorded In The Central Personnel Index</b> (6 pages)	<i>This section should be substantially reduced.</i>
<b>I. Penalty Imposed For <i>Floyd</i> violations?</b> (4 pages)	<i>This section should be reduced to approximately 1 page.</i>
<b>V. OVERVIEW OF THE NYPD ORGANIZATION – BACKGROUND</b> (3 pages)	<i>This chapter should be reduced by removing the historical force figures.</i>

**CITY'S RECOMMENDATIONS ON SECTIONS OF THE 2ND DRAFT OF DISCIPLINE REPORT**

CHAPTER & SECTION HEADINGS (approx. current length)	<i>CITY'S RECOMMENDATION</i>
<b>VI. MISCONDUCT INVESTIGATIONS WITHIN NYPD</b> (1-1/2 pages)	
<b>A. NYPD Internal Investigations Of Civilian Complaints – Preliminary</b> (2 pages) <b>B. NYPD Disciplinary System</b> (2 pages)	
<b>C. Complaint Intake at NYPD</b> (4 pages)	<i>This section should be substantially reduced.</i>
<b>D. Internal Affairs Bureau</b> (6 pages including subhead) i. Officer Interviews Within The Department During Investigations	
<b>E. NYPD Internal Investigations – Categories Of Misconduct</b> (1/2 page)	
i. Outside Guidelines Cases (2 pages)	<i>This subsection should be shortened, and the statistics either removed or else updated to more current figures.</i>
ii. Force (8 pages)	<i>This subsection covers matters beyond the scope of the Monitorship and should be cut.</i>
iii. “M” Cases (4 pages)	<i>The statistics in this subsection should either be updated to more current figures or else removed as no longer relevant.</i>
iv. “C” Cases (2 pages)	<i>This subsection covers matters beyond the scope of the Monitorship and should be cut.</i>

**CITY'S RECOMMENDATIONS ON SECTIONS OF THE 2ND DRAFT OF DISCIPLINE REPORT**

CHAPTER & SECTION HEADINGS (approx. current length)	<i>CITY'S RECOMMENDATION</i>
<p><b>F. Bias-Based Policing And Racial Profiling Investigations at NYPD</b> (12 pages including subheads i through v)</p> <ul style="list-style-type: none"> <li>i. Biased Policing And Profiling Defined</li> <li>ii. Comparing Language In Sections Of Law To Sections Of The NYPD Administrative Guide</li> <li>iii. Burden Of Proof, Class By Class</li> <li>iv. Consolidating Bias Investigations And Allegations</li> <li>v. Discourtesy, Slurs, Offensive Language, And Proof Of Bias</li> </ul>	<p><i>This section, including subsections i to v should be substantially reduced.</i></p>
<ul style="list-style-type: none"> <li>vi. A Look Into Prior Wrongs And Patterns In Bias Cases (2 pages)</li> </ul>	<p><i>Subsection vi is not needed and should be cut.</i></p>
<p><b>G. SQF Investigations Within The Department</b> (&lt;1 page)</p> <ul style="list-style-type: none"> <li>i. Supervisory Review (7 pages)</li> <li>ii. Disciplining Supervisors Within a Command (2 pages)</li> <li>iii. A Move Away From CCRB Review Of Supervisory Failures (1 page)</li> <li>iv. Investigations Within A Local Command – Process (6 pages)</li> <li>v. Internal NYPD Investigations Of Stop And Frisk Misconduct (3 pages)</li> <li>vi. Concurrent, Split Investigations - Results Might Not Be Combined (7 pages)</li> </ul>	
<p><b>H. Adjudication And Processing Of Substantiated Complaints Within NYPD</b> (&lt;1 page)</p> <ul style="list-style-type: none"> <li>i. Department Advocate's Office (4 pages)</li> <li>ii. Departmental Investigations - Charges And Specifications Presented By DAO (1 page)</li> <li>iii. Disciplinary Trials (3 pages)</li> </ul>	

**CITY'S RECOMMENDATIONS ON SECTIONS OF THE 2ND DRAFT OF DISCIPLINE REPORT**

<b>CHAPTER &amp; SECTION HEADINGS</b> (approx. current length)	<b><i>CITY'S RECOMMENDATION</i></b>
<ul style="list-style-type: none"> <li>iv. Cases In The Trial Room (2 pages)</li> <li>v. Stop And Frisk In The Trial Room (3 pages)</li> </ul>	<p><i>Subsections iv and v should be combined into a single section of ~3 pages.</i></p>
<ul style="list-style-type: none"> <li>vi. A Case Study Of A Negotiated Plea Reduced By The Police Commissioner (1 page)</li> <li>vii. Case Study Where The Police Commissioner Raised A Penalty Recommended By Dct (But One Day Less Than That Requested By CCRB) (6 pages)</li> </ul>	<p><i>Subsections vi and vii should be cut as unnecessary and problematic.</i></p>
<ul style="list-style-type: none"> <li>viii. Records In The Trial Room (1 page)</li> <li>ix. Police Commissioner Review After Trial (2 pages)</li> <li>x. Level C Command Discipline In Lieu Of Charges And Specifications (1 page)</li> <li>xi. Police Commissioner's Duty To Explain Departures From Recommendations (1 page)</li> </ul>	
<ul style="list-style-type: none"> <li>xii. Unfettered Discretion Of The Police Commissioner (1 page)</li> <li>xiii. Efforts To Remove The Police Commissioner's Final Authority On Discipline (2 pages)</li> </ul>	<p><i>Subsections xii and xiii should be combined with subsection xv into one section and shortened.</i></p>
<ul style="list-style-type: none"> <li>xiv. Previous Efforts To Limit The Authority Of The Police Commissioner (4 pages)</li> </ul>	<p><i>Subsection xvi should be eliminated.</i></p>
<ul style="list-style-type: none"> <li>xv. Deference To The Trial Commissioner's Factual Findings (2 pages)</li> </ul>	<p><i>Subsection xv can be incorporated into the combined subsections xii and xiii.</i></p>
<p><b>VII. THE CIVILIAN COMPLAINT REVIEW BOARD</b></p> <ul style="list-style-type: none"> <li><b>A. Board Structure</b> (3 pages) <ul style="list-style-type: none"> <li>i. Panel Assignment (2 pages)</li> <li>ii. Police Commissioner Designees On All Panels (5 pages)</li> </ul> </li> </ul>	

**CITY'S RECOMMENDATIONS ON SECTIONS OF THE 2ND DRAFT OF DISCIPLINE REPORT**

CHAPTER & SECTION HEADINGS (approx. current length)	<i>CITY'S RECOMMENDATION</i>
<b>B. CCRB Budget (5 pages)</b>	<i>This section should be reduced to 1–2 pages.</i>
<b>C. CCRB Activity – Generally (6 pages including subhead)</b> i. Processing Complaints at CCRB	
<b>D. CCRB Investigations – Generally (1 page)</b> i. Split And Concurrent Investigations And Cross-Referrals (1-1/2 pages) ii. CCRB Staff And Training (4 pages) iii. Civilian Interviews (<1 page) iv. Officer Interviews at CCRB (1 page)	
v. Case Study - Force, False Statement, And FADO Investigations Interwoven (3 pages)	<i>Subsection v should be cut as unnecessary and problematic.</i>
<b>E. Jurisdiction – Personal (&lt;1 page)</b> i. Who May Be Investigated? (1-1/2 pages) ii. Who May Complain? (5-1/2 pages)	
<b>F. Subject Matter Jurisdiction (6 pages)</b>	
i. Defining FADO (3 pages)	<i>This subsection should be reduced.</i>
ii. Abuse Of Authority Defined For The First Time (1-1/2 pages)	<i>This subsection is unnecessary and redundant of later text.</i>
iii. Processing False Statements Under The New Rules In The Administrative Guide (2 pages)	<i>This subsection concerns matters too attenuated to the Monitorship and should be cut.</i>

**CITY'S RECOMMENDATIONS ON SECTIONS OF THE 2ND DRAFT OF DISCIPLINE REPORT**

<b>CHAPTER &amp; SECTION HEADINGS</b> (approx. current length)	<b><i>CITY'S RECOMMENDATION</i></b>
iv. Use Of Force – Display Of A Firearm (2-1/2 pages)	<i>This subsection covers matters beyond the scope of the Monitorship and should be cut.</i>
v. Failure To Supervise – Outside CCRB Jurisdiction? (2 pages)	<i>This subsection is unnecessary and should be cut.</i>
vi. Sexual Misconduct (3-1/2 pages)	<i>This subsection covers matters beyond the scope of the Monitorship and should be cut.</i>
<b>G. Do We Need FADO?</b> (<1 page)	<i>This section is unnecessary and should be cut</i>
<b>H. Timeliness</b> (3-1/2 pages)	
i. Case Study: NDA Due To Statute Of Limitations (2 pages)	<i>This subsection should be cut as unnecessary and problematic.</i>
ii. Processing Time (2 pages) iii. Commencement (4-1/2 pages)	
<b>I. Subpoenas – Enforcement</b> (3 pages)	<i>This section should be reduced.</i>
i. NYPD Administrative Subpoenas (<1 page)	
<b>J. NYPD Duty To Cooperate With CCRB Investigations</b> (5 pages)	<i>This section should be reduced.</i>
<b>K. CCRB Access To Employment And Disciplinary History</b> (2 pages)	<i>This section should be reduced.</i>
i. A Case Study Where Access To A Personnel File Would Be Of Value To CCRB (2-1/2 pages)	<i>This subsection should be cut as unnecessary and problematic.</i>
<b>L. Access To Files Sealed By Cpl 160.50</b> (6-1/2 pages)	<i>This section should be reduced.</i>

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CHAPTER & SECTION HEADINGS (approx. current length)	<i>CITY’S RECOMMENDATION</i>
<p><b>M. Access To Sealed Or Expunged Substantiated Disciplinary Cases (5 pages)</b></p>	<p><i>This section should be reduced.</i></p>
<p><b>N. Unsubstantiated Findings - The “Sole Basis” Rule (8 pages including subhead)</b>            i. Two Case Studies - Case History With Little Or No Substantiations</p>	<p><i>This section including the subsection should be cut as unnecessary and problematic.</i></p>
<p><b>O. CCRB Complaints And Allegations - All FADO (1 page)</b></p>	<p><i>The introductin to this section is unnecessary and should be cut, particularly statistics that are unrelated to SQF.</i></p>
<p>i. Complaints Of Stop, Question, Frisk Misconduct (&lt;1 page)            ii. SQF Misconduct By Allegation (&lt;1 page)</p>	
<p><b>P. CCRB Findings (&lt;1 page)</b></p>	
<p>i. UMOS With Substantiated Complaints (1 page)            ii. CCRB Findings – All FADO Complaints (2 pages)            iii. CCRB Findings – All FADO Allegations (2 pages)</p>	<p><i>Subsections i to iii should be cut as unnecessary.</i></p>
<p>iv. CCRB Findings – Stop/Frisk/Search Complaints (&lt;1 page)            v. CCRB Findings – Stop/Frisk/Search Allegations (1-1/2 pages)            vi. Rate Of Substantiation For SQF Allegations By CCRB Panels (3 pages)</p>	
<p><b>Q. CCRB Recommendations To The Police Commissioner (7 pages)</b></p>	

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CHAPTER & SECTION HEADINGS (approx. current length)	<i>CITY’S RECOMMENDATION</i>
<p><b>R. A Larger Perspective - The “Funnel” For Civilian Complaints</b> (1 page)</p>	
<p><b>VIII. NYPD DISPOSITION OF CCRB SUBSTANTIATED MISCONDUCT – FADO</b> (1 page)</p>	
<p><b>A. NYPD Disposition Of CCRB Substantiated SQF Misconduct</b> (5 pages)</p>	
<p>i. Case Study: A Recommended B-Cd For An Sof violation Reduced To Training By DAO (1 page)</p>	<p><i>This subsection should be cut as unnecessary and problematic.</i></p>
<p><b>IX. THE ADMINISTRATIVE PROSECUTION UNIT - FORMAL DISCIPLINE</b> (5 pages)</p>	<p><i>There is no “A” heading in this chapter.</i></p>
<p>i. Amendments To Charges (1-1/2 pages)            ii. Pleas And Final Approval Of Pleas By The Police Commissioner (4 pages)            iii. APU Prosecutions – Numbers (3 pages)            iv. Comparing DAO And APU Results In Cases Of Formal Prosecution (&lt;1 page)            v. Trial Decisions – APU Cases (&lt;1 page)            vi. Stop And Frisk Misconduct – APU In The Trial Room (&lt;1 page)</p>	
<p><b>B. Provision Two – Retention By The Police Commissioner</b> (3-1/2 pages)</p>	
<p>i. Memo Exchanges Justifying A Retention To Avoid APU Prosecution (2 pages)</p>	



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<b>CHAPTER &amp; SECTION HEADINGS</b> (approx. current length)	<b><i>CITY’S RECOMMENDATION</i></b>
<ul style="list-style-type: none"> <li>ii. Case Study #1 - Sergeant Christopher Alazraki (1 page)</li> <li>iii. Case #2 - PO Jason Greenberg: “No Prior Disciplinary History”? (1 page)</li> <li>iv. Case #3 - PO Sandra Martinez - Wrongful Frisk Leads To Repeated “Training” (&lt;1 page)</li> </ul>	<p><i>Subsections ii, iii, and iv should be cut as unnecessary and problematic.</i></p>
<p><b>C. Charges, Non-APU Cases, Profiling Investigations, And Lawsuits Intertwined (&lt;1 page)</b></p>	
<ul style="list-style-type: none"> <li>i. An Unusual Case: Charges, A Trial, And Penalty Days For An Unlawful Stop? (7 pages)</li> </ul>	<p><i>This subsection should be cut as unnecessary and problematic.</i></p>
<p><b>X. DISCIPLINARY SYSTEM PENALTY GUIDELINES (MATRIX)</b> (1-1/2 pages)</p>	
<ul style="list-style-type: none"> <li><b>A. CCRB’s Framework For Charges And Specification Cases</b> (5 pages)</li> <li><b>B. Explanation Of The Guidelines As Adopted January 15, 2021</b> (3 pages)</li> <li><b>C. Is The Matrix Consistent With The Court-Approved Patrol Guide?</b> (1 page)</li> </ul>	
<ul style="list-style-type: none"> <li><b>D. Mitigation And Aggravation</b> (2 pages) <ul style="list-style-type: none"> <li>i. Mitigation Factors (&lt;1 page)</li> <li>ii. Personal History In Mitigation (2 pages)</li> <li>iii. Legal Issues Related To SQF Mitigation (1 page)</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>iv. Mistake Of Law (8 pages)</li> </ul>	<p><i>This subsection should be substantially reduced.</i></p>

**CITY'S RECOMMENDATIONS ON SECTIONS OF THE 2ND DRAFT OF DISCIPLINE REPORT**

CHAPTER & SECTION HEADINGS (approx. current length)	<i>CITY'S RECOMMENDATION</i>
<b>E. Multiple Allegations – Penalty</b> (3 pages) <b>F. Progressive Discipline, Mitigation, Aggravation</b> (2-1/2 pages)	
<b>G. Other violations In The Matrix</b> (1-1/2 pages)	<i>This section should be cut as unnecessary.</i>
<b>H. Stop/Question/Frisk Under The Disciplinary Guidelines</b> (1-1/2 pages) i. Board Recommendation By Allegation – Presumptive, Mitigated Or Aggravated (1 page) ii. Board Recommendation - Level Of Discipline For Each Allegation (1 page) iii. SQF Allegations - Board Recommendation (2 pages) iv. CCRB Recommendations By Case (1-1/2 pages) v. NYPD Response To CCRB Panel Recommendations (2 pages) vi. Penalty Disposition Of SQF Misconduct By NYPD (2-1/2 pages)	<i>The introduction to section H and subsections i through vi should be substantially reduced.</i>
vii. Case Study - A Case Where NYPD Produced A Post-Matrix File (1 page)	<i>This subsection should be cut as unnecessary and problematic.</i>
<b>XI. TRANSPARENCY</b> (8-1/2 pages)	<i>The introduction to this chapter should be substantially reduced.</i>
<b>A. Investigative Files - Public Access</b> (1 page)	<i>This section should be cut as unnecessary.</i>
<b>B. Access To CCRB Records Under Foil</b> (2 pages)	<i>This section should be cut as unnecessary.</i>
<b>C. Published Reports</b> (<1 page)	

**CITY'S RECOMMENDATIONS ON SECTIONS OF THE 2ND DRAFT OF DISCIPLINE REPORT**

CHAPTER & SECTION HEADINGS (approx. current length)	<i>CITY'S RECOMMENDATION</i>
<p><b>D. Explanation Of Findings, Variance, Deviation, Departure</b> (7 pages)</p>	<p><i>The introduction to this section should be substantially reduced.</i></p>
<p>i. Memos And Correspondence - APU Cases (Formal Discipline): (2 pages)</p> <p>ii. Memos And Correspondence - DAO/Dct Cases (Formal Discipline): (&lt;1 page)</p> <p>iii. Memos And Correspondence - CCRB FADO Cases Without Charges (Most SQF; Informal Discipline): (1 page)</p> <p>iv. Memos And Correspondence When Internally Investigated By IAB, OCD, BIU, And FID (&lt;1 page)</p> <p>v. Departure Letters Posted By CCRB As Of June 2022 (2 pages)</p>	<p><i>Subsections i through v should be cut as unnecessary and problematic.</i></p>
<p>vi. Departure Letters In SQF Cases (1-1/2 pages)</p> <p>vii. Deviation Letters Posted By NYPD (2 pages)</p> <p>viii. Deviations From Trial Decisions (2-1/2 pages)</p>	<p><i>Subsections vi through viii should be substantially reduced.</i></p>
<p><b>XII. FALSE STATEMENTS – RECENT PATROL GUIDE AMENDMENTS AND THE DISCIPLINARY GUIDELINES</b> (5-1/2 pages)</p> <p><b>A. False Statement – Jurisdiction</b> (3 pages)</p> <p><b>B. CCRB Examination Of Untruthful Statement Allegations</b> (&lt;1 page)</p> <p>i. False Statements Under The Disciplinary Guidelines (3-1/2 pages)</p>	<p><i>The entirety of chapter XII should be cut as unnecessary.</i></p>

**CITY'S RECOMMENDATIONS ON SECTIONS OF THE 2ND DRAFT OF DISCIPLINE REPORT**

CHAPTER & SECTION HEADINGS (approx. current length)	<i>CITY'S RECOMMENDATION</i>
<p><b>XIII. LAWSUITS AND CIVIL CLAIMS AGAINST OFFICERS</b> (4-1/2 pages)</p> <p><b>A. Potential Use Of Civil Case Information In Disciplinary Proceedings</b> (5-1/2 pages)</p> <p><b>B. Identifying Civil Claims Of Police Misconduct</b> (2 pages)</p> <p>    i. Posting Individual Officer Liability Online (2 pages)</p> <p>    ii. Integrated Reporting Of Civil Claims And Citizen Complaints (1 page)</p> <p>    iii. Case Study - Multiple Contemporaneous Actions - The Need For An Accurate Integrated Database (1-1/2 pages)</p> <p><b>C. Early Settlement Program: Pre-Litigation Settlements For Police Misconduct</b> (4 pages)</p> <p><b>D. Qualified Immunity And Indemnification</b> (6 pages)</p> <p><b>E. Adverse Credibility Determinations</b> (2-1/2 pages)</p>	<p><i>The entirety of chapter XIII should be cut as civil litigation is wholly separate from the disciplinary process and should not be considered in this report.</i></p>
<p><b>XIV. EXTERNAL OVERSIGHT BY COMPANION AGENCIES</b> (1 page)</p> <p><b>A. Commission To Combat Police Corruption (CCPC)</b> (2 pages)</p> <p><b>B. New York Police Department Office Of The Inspector General</b> (3 pages)</p> <p><b>C. Commission On Human Rights - Bias-Based Profiling</b> (2 pages)</p> <p><b>D. The Law Enforcement Misconduct Investigative Office – Deputy Attorney General</b> (2-1/2 pages)</p>	<p><i>The entirety of chapter XIV should be substantially reduced to simply identifying other agencies with involvement in discipline generally, and acknowledging that none of them have any responsibility specific to SQF.</i></p>
<p><b>XV. RECOMMENDATIONS</b> (10 pages)</p>	<p><i>See the City's separate comments on the draft Recommendations. Any recommendation solely connected with one of the sections flagged for deletion should similarly be deleted.</i></p>