

December 23, 2024

The Honorable Analisa Torres
United States District Court
For the Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York NY 10007

Dear Judge Torres,

We write as three experts in civilian oversight of law enforcement who have significant experience with the NYPD disciplinary system to provide this comment in response to the September 19, 2024, *Report to the Court on Police Misconduct and Discipline* by the Honorable James Yates (“Yates Report”). We write to suggest the Court recommend or order¹ two reforms that are not among the Yates Report’s recommendations but which, based on the Yates Report’s findings and our experience, could improve the timeliness and effectiveness of the disciplinary system.

We recommend that 1) the Civilian Complaint Review Board end the practice of reviewing every case in board panels and instead delegate the power to make dispositions to the agency staff, and 2) the CCRB and the NYPD return to the practice of holding administrative trials before the Office of Administrative Trials and Hearings (“OATH”) rather than in the NYPD Trial Room.

We first set forth our experience overseeing law enforcement agencies throughout the country, including the NYPD. We then detail the rationale behind our recommendations.

Who We Are

Philip K. Eure served as the first Inspector General for the New York Police Department, holding the position from 2014 until 2021. Prior to that, he served as the first executive director for the District of Columbia’s Office of Police Complaints and worked in the Civil Rights Division of the United States Department of Justice. He is also a past president of the National Association for Civilian Oversight of Law Enforcement.

Franklin H. Stone served as member of the Civilian Complaint Review Board from 1998–2009, serving as Chair from 2006–2009. In that capacity, she reviewed and ruled on thousands of CCRB investigations, worked with the mayor’s office and the NYPD to obtain resources to improve investigations, and spoke regularly regarding concerns about the disciplinary process and disciplinary outcomes. Since 2011, she has been a board member of New York State’s Committee on Open Government, serving as Chair for several years.

Nicholas E. Mitchell serves as the court-appointed monitor of the Los Angeles County Sheriff Department. He previously served as the executive director of the City of Denver’s Office of the

¹ We take no position as to the Court’s authority to order relief in response to the Yates Report. To the extent the Court believes it can order the reforms we suggest, we believe it should do so. To the extent the Court believes it lacks such power, we ask that it recommend the parties empowered to take action to do so.

Independent Monitor from 2012–2020. Prior to that, he served as an investigator and later an investigative supervisor at the CCRB from 2000–2004.

Our Recommendations

CCRB Should End Board Review and Make Findings by Agency Attorneys Final

The CCRB has its origins in a report that Lawrence E. Walsh sent to Mayor John Lindsay in 1966.² In May of that year, Lindsay issued an executive order creating a seven-person board (four civilians and three NYPD officials) to review and rule on investigations conducted entirely by police department employees. The purpose of the board was to serve as a check on pro-police bias that police department investigators were likely to bring to their investigations. But that November, Lindsay’s board was eliminated by a public referendum.

It was twenty more years before the New York City Council passed a law adding five civilian members to a ten-member board.³ Investigations at that time were still conducted within the police department by the Civilian Complaint Investigative Bureau, a bureau staffed principally with uniformed supervisors but which included some civilian investigators and intake staff.⁴ At that time, the board members performed the initial review of investigative files completed by NYPD employees. The purpose was again to reduce bias and also “to review the thoroughness of the investigation and the sufficiency of the evidence.”⁵ Only with the passage of Local Law 1 in 1993 were the Board and the investigative staff all fully civilianized.⁶

But once both the Board and the investigative staff became fully civilianized, the principal purpose of board panel review—addressing pro-police bias by police investigators—was no longer relevant. And since the agency has been able to hire experienced attorneys to review cases and conduct administrative prosecutions, board review’s secondary purpose—reviewing the investigations for thoroughness—is also less pressing.

Instead, board review adds the one thing that CCRB investigations do not need more of: time. The Yates Report details the challenges that untimely cases present and encourages swifter resolution.⁷ The time that passes between when the agency completes an investigation and a board panel votes on it is the easiest lag in the complaint process to address. Between the time it takes for busy board members to review case files and then meet and discuss them, board review can add multiple months to an investigation. The burden of sitting on the CCRB and reviewing so many cases is large: in interviews with the Monitoring team, “Board members have expressed concerns about the number of cases they must review each month.”⁸ This delay jeopardizes effective discipline,

² See generally Vincent J. Cannato, *The Ungovernable City: John Lindsay and His Struggle to Save New York*, 2001 (Basic), pages 155–88. Cannato’s chapter on the origins of the CCRB forms the basis for the CCRB’s history section on its website, quoted extensively in the Yates Report.

³³ New York City Charter Revision Commission, “Civilian Complaint Review Board” (1989). David G. Trager Papers from the NYC Charter Revision Commissions: Dec. 1986–Nov. 1988 & Dec. 1988–Nov. 1989. 19. <https://brooklynworks.brooklaw.edu/trager/19> at 3.

⁴ *Id.* at 6.

⁵ *Id.* at 8.

⁶ See Local Law 1 of 1993.

⁷ See, e.g., Yates Report at 249–53.

⁸ Yates Report at 187.

particularly in the current framework where the NYPD has been declining to impose discipline in cases where the statute of limitations is “short” rather than expired.⁹

When board review was first implemented, board members were likely the first attorneys to have seen the casefile, but now investigations are reviewed by supervisory staff and legal staff within the CCRB. The attorneys who will bring administrative prosecutions are best-situated to determine whether charges are appropriate. Finally, board review now produces inconsistent results: as the Yates Report notes, an internal CCRB study showed that substantiation rates varied depending on the makeup of board panels, lending credence to allegations that CCRB investigative outcomes are inconsistent.

Removing board review is within the Board’s rulemaking authority. The language of Section 440 is clear. The board “shall” consist of fifteen members serving three-year terms. N.Y. City Charter § 440 (b)(1), (b)(3). It “shall” promulgate rules. *Id.* at § 440 (c)(2). These rules “may” provide for the establishment of panels. Panels are not required. The board has the power to “receive, investigate, hear, make findings and recommend action upon complaints by members of the public.” *Id.* § 440 (c)(1). The board has already delegated the power to receive, investigate, and hear complaints to the agency. It can delegate the power to make findings and recommendations as well. *See Lynch v. New York City Civilian Complaint Rev. Bd.*, 98 N.Y.S.3d 695, 712 (N.Y. Sup. Ct. 2019) (“[T]he rule stands to make the CCRB more efficient, and it is within the Executive Director’s authority to delegate responsibility in an efficient manner.”)

The CCRB should end the practice of panel review.

NYPD Disciplinary Trials Should be Returned to OATH

Prior to 2003, most administrative prosecutions stemming from CCRB cases were heard at the Office of Administrative Trials and Hearings (“OATH”).¹⁰ OATH is a citywide administrative tribunal 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.”¹¹ The OATH Administrative Law Judges are separated from the prosecutor, a “common staple of any fair-hearing procedure.”¹² As the Yates Report notes, having a neutral adjudicator “may be salutary and a desirable legislative goal from the perspective of the public.”¹³

But when the CCRB and the NYPD entered the first version of their Memorandum of Understanding regarding administrative prosecution, the Police Benevolent Association sued to prevent the CCRB from prosecuting cases and argued that hearings that could result in removal must be held at the NYPD Trial Room. As the Yates Report notes, the First Department ruled not only that removal hearings must be held in the Trial Room but “unfortunately extended its holding

⁹ See NYPD Monitor, *Twenty-First Report of the NYPD Monitor*, September 4, 2024, at 47–49.

¹⁰ See Commission to Combat Police Corruption, *The New York Police Department’s Prosecution of Disciplinary Cases*, July 2000, at 2 fn.4. <https://www.nyc.gov/assets/ccpc/downloads/pdf/The-NYPD-s-Prosecution-of-Disciplinary-Cases-July-2000.pdf>. Cases where the subject officer had a rank of Police Officer were held at OATH while those where the subject officer was

¹¹ Chapter 45-A, N.Y.C. Charter § 1048.

¹² Yates Report at 177.

¹³ Yates Report at 180.

beyond removal hearings covered by the statute to all disciplinary proceedings.”¹⁴ The Yates Report includes an analysis of the First Department’s decision which demonstrates the error of its holding.¹⁵ As Judge Yates notes, the decision “directly affects attempts to enforce *Floyd’s* holding in stop and frisk cases” because stop-and-frisk cases generally do not carry termination as a potential penalty.

Returning administrative prosecutions to OATH, or even returning those cases with a stop, question, or frisk allegation to the venue, would promote transparency and independence in the disciplinary process. As the Yates Report notes, the calendars, hearings, and decisions (including the names of the parties and the details of the allegations) are posted on a publicly-available website.¹⁶ Currently “OATH disciplinary hearings are the rule, not the exception for all other City employees, including other uniformed services.” Disciplinary hearings for firefighters, corrections officers, and even police officers in cases brought by the New York Human Rights Commission rather than the CCRB, are heard there.¹⁷ Trying these cases before NYPD deputy commissioners in the trial room invites the potential for bias—or even the appearance of bias—and moving these cases back to OATH presents an opportunity to return them to a truly neutral forum.

While moving disciplinary trials stemming from CCRB complaints to OATH may be subject to a legal challenge, the landscape has changed significantly since 2003. As the Yates Report notes, the particular statutory language relied upon in the original decision is contained in statutes regulating discipline for other uniform agencies and these agencies’ officers are tried before OATH tribunals. A future court is unlikely to review the evidence and the history and conclude that *Lynch v. Giuliani* remains good law. We note that to the extent moving these cases to OATH creates an increase in the agency’s operational demands, it should be provided funding and other resources adequate to adjudicate these cases in a timely manner.

Conclusion

We appreciate the significant time and effort Judge Yates and his team spent researching and drafting the report. While we are confident that the Court will review the entire report and take appropriate action on a number of fronts, we wanted to address the two issues above based on our experience working in civilian oversight systems in New York and elsewhere.

Sincerely,

Philip K. Eure
Franklin H. Stone
Nicholas E. Mitchell

¹⁴ Yates Report at 179, *discussing Lynch v. Giuliani*, 301 A.D.2d 359 (1st Dep’t 2003).

¹⁵ *See* Yates Report at 176–181.

¹⁶ Yates Report at 177.

¹⁷ Yates Report at 178.