

CCRB Audio Tape - Final
June 8, 2016

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1 Public Board Meeting
2 of the Civilian Complaint Review Board
3 Wednesday, June 8, 2016
4 100 Church Street, 10th Floor
5 New York, New York 10007

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8 DEBORAH N. ARCHER, ESQ., ACTING CHAIR

9 MINA Q. MALIK, ESQ., EXECUTIVE DIRECTOR

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11 Audio File Transcription

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14 PUBLIC MEETING AGENDA:

15 =====

16 1. Call to Order

17 2. Adoption of the Minutes

18 3. Report from Chair

19 4. Report from Executive Director

20 5. Committee Reports

21 6. Old Business

22 7. New Business

23 8. Public Comment

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1 BOARD MEMBERS PRESENT:

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3 DEBORAH N. ARCHER, ESQ.

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5 FRANK DWYER

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7 I. BENNETT CAPERS

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9 JANETTE CORTES-GOMES, ESQ.

10

11 YOUNGIK YOON, ESQ.

12

13 JOSEPH A. PUMA

14

15 RAMON PEGUERO, ESQ.

16

17 LINDSAY EASON

18

19 SALVATORE F. CARCATERRA

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22 MINA Q. MALIK, ESQ., EXECUTIVE DIRECTOR

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24 Transcribed from an Audio File by:

25 Daniel Cavanagh

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CHAIR DEBORAH ARCHER: Good evening, everyone.
My name is Deborah Archer. I'm the Acting Chair of
the Civilian Complaint Review Board and I'm going to
call to order the June meeting of the Civilian
Complaint Review Board.

We're going to start with an adoption of the
minutes. Can I have a motion to adopt the minutes?

MR. CAPERS: So moved.

CHAIR ARCHER: Second.

MS. CORTES-GOMEZ: Second.

CHAIR ARCHER: All in favor?

(Chorus of Ayes.)

CHAIR ARCHER: All opposed?

(No response.)

CHAIR ARCHER: Any abstentions?

MR. DWYER: I abstain.

MR. PEGUERO: I abstain.

CHAIR ARCHER: Two abstentions.

All right. We have adopted minutes. I'm going
to start by mentioning that we have two new board
members joining us today. The first is Frank Dwyer
and he is the new Police Commissioner designee.

Frank, do you want to say anything?

MR. DWYER: Sure. It's an honor to join

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1 the Board. I'm Brooklyn born and raised. I live in
2 Queens now. Is the mic working? I can't hear it.

3 In any case, I went into the Police Department
4 in 1983 and I retired in 2012. I've worked in Queens,
5 I've worked in Manhattan, I've worked in Brooklyn.
6 And I do some teaching. I do some consulting. But
7 it's just a real honor to join this group. So thank
8 you.

9 CHAIR ARCHER: Thank you and welcome.

10 Also, Bishop Taylor had been on the Board
11 waiting the appointment of a new -- a City Council
12 designee from Queens. So first I want to just
13 acknowledge Bishop Taylor's years of service to the
14 Board and thank him for all that he has done for the
15 agency.

16 And we now have a new City Council designee from
17 Queens. Ramon Peguero, would you like to say
18 something?

19 MR. PEGUERO: Sure. It's an honor to be
20 appointed to this board. For the past 25 years I've
21 worked all over the City of New York, in the Bronx
22 and Manhattan, Queens, Brooklyn, in not-for-profit
23 work dealing with the most needy. And I'm hoping to
24 bring that experience as well as my law experience
25 to the Board to work with the Board to make sure

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1 that we are dealing with the issues that come before
2 us in a very diligent and very objective manner. So
3 I thank the Mayor for the appointment and I thank
4 the City Council for designating me, and looking
5 forward to working with this distinguished panel of
6 board members.

7 CHAIR ARCHER: Thank you and welcome.

8 As I think everyone probably knows, on Monday
9 the CCRB released our annual report for 2015.
10 Copies of the report are currently available on our
11 website and hard copies will be available here at
12 the CCRB's office shortly. The annual report
13 describes a few of the impacts that the major
14 improvements that we've been trying to implement over
15 the past year have had. I do want to highlight a
16 few of the key trends that are also highlighted in
17 the report.

18 The first is a continuing decline in complaints
19 of police misconduct. A second is a rise in the
20 number of substantiated cases. We also observed an
21 increase in the availability and use of video
22 evidence. We believe there is continued cooperation
23 with the Police Department and there is also
24 demonstrated positive results as a result of
25 their -- on productivity as a result of some of the

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1 reforms that we've been implementing.

2 A few of the statistical highlights, I won't go
3 over all of them but I do want to mention a few of
4 them. In 2015, civilians filed 4,460 complaints,
5 and that's the lowest number since 2001 and it's a
6 7-percent decrease from the 4,775 complaints that we
7 received in 2014.

8 Last year marked the highest substantiation rate
9 in the agency's 23-year history. The complaint
10 substantiation rate has increased from 14 percent in
11 2012, 15 percent in 2013, 17 percent in 2014, and
12 then to the current 24 percent in 2015. We believe
13 that the rise in the number of substantiations is
14 largely due to faster and more effective
15 investigations, but also as I mentioned to the
16 availability and use of video evidence in a lot of
17 the complaints we see.

18 We've seen many positive results due to the
19 reforms that have been implemented. The entire
20 staff of the CCRB and Mina Malik, our Executive
21 Director, really should be acknowledged and deserve
22 our appreciation for everything that they've done to
23 come up with the ideas for reform and then to
24 implement those reforms.

25 But in addition to thanking everyone, I do want

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1 to highlight the work of a few units in particular.
2 First, under the direction of Jonathan Darche, the
3 Administrative Prosecution Unit conducted more
4 trials and closed more cases than in any other year
5 since its existence. The APU closed 186 cases in
6 2015 compared to 112 in 2014, and completed trials
7 against 130 officers in 2015 compared to trials
8 against 82 officers in 2014. And the APU's
9 discipline rate for 2015 was 61 percent. The APU
10 also implemented a new procedure to allow
11 incarcerated witnesses to testify via video
12 conference in department trials and instituted a
13 streamlined court appearance system for our
14 attorneys. A new system of benchmarks and an
15 internal case-tracking system were both created to
16 increase the speed and processing of cases and to
17 increase efficiency within that unit.

18 This past year under the direction of our new
19 Chief of Investigations Thomas Kim, the
20 Investigations Division also restructured the intake
21 unit, created evidence collection field teams to
22 immediately respond to complaints that might include
23 video evidence and to get that video evidence before
24 it was spoiled. They streamline cooperation with the
25 Internal Affairs Bureau to obtain documents more

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1 quickly. These changes have enhanced both the feed
2 and -- speed and efficiency of investigations, and I
3 think it really does have something to do with the
4 increased substantiation rate. Also in 2015, the
5 Investigations Division implemented a comprehensive
6 CCRB training academy with competency-based
7 graduation requirements for the first time in the
8 agency's history.

9 In 2015, the average number of days it took to
10 mediate a case was the lowest in CCRB history. It
11 took an average of 150 days to -- 115 days to
12 mediate a complaint in 2015, which is a decrease of
13 40 percent from the average of 190 days in 2014.
14 Lisa Cohen, the Director of Mediation, has been
15 working really hard with that team to help meet new
16 benchmarks that were set for that unit in 2015. So
17 we're sure we'll see improved speed with which the
18 cases are mediated.

19 During the past year under the direction of a
20 new Deputy Executive Director of Policy and
21 Strategic Initiatives, Dr. Robia Charles, the newly
22 expanded policy unit has used data in ways that the
23 agency had not before. Monthly reports had been
24 restructured so the report is more accessible to all
25 members of the public. The introduction of new

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1 software has helped to enhance data visualization to
2 track data internally in all CCRB teams and to
3 create the new interactive complaint activity map on
4 the website. And in 2015, the unit began to build
5 an open-data initiative to make CCRB data more
6 available to the public.

7 And finally, within the Administration Division,
8 headed by Brian Connell, the Outreach Unit expanded
9 and has helped the agency to become more visible and
10 well-known throughout New York City than it has been
11 in the past. With more strategic outreach efforts
12 into all bureaus -- boroughs, the CCRB's Outreach
13 team visited more educational institutions and
14 precinct councils in 2015 than in any other year.
15 And finally, the agency has also expanded outreach to
16 New Yorkers in other ways. For example, in 2015
17 complaint walk-in forms became available in Arabic,
18 Chinese, Haitian, Creole, and Russian, complementing
19 forms that were already available in English and
20 Spanish.

21 And I welcome comments from other board members
22 on the annual report or questions from board
23 members.

24 (No response.)

25 CHAIR ARCHER: So we will move on to the report

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1 from the executive director.

2 MS. MINA Q. MALIK: Thank you.

3 Good evening. My name is Mina Malik and I am
4 the Executive Director of the Civilian Complaint
5 Review Board. Please note that the July board
6 meeting will take place on Wednesday, July 13th and
7 will also be located at the CCRB office here at 100
8 Church Street. I'm going to discuss matters
9 pertaining to the operations of our agency and
10 provide you with highlights from our monthly
11 statistical report. For a full review of the
12 agency's monthly statistics, please visit our
13 website.

14 I'm going to direct the members of the audience
15 to Figure 1. In May 2016, the CCRB initiated 373
16 new complaints, which reflects a decrease from 376
17 in April. With regard to complaints received by
18 type of allegation comparing May 2015 to May 2016,
19 complaints with a discourtesy allegation have
20 decreased by 25 percent, complaints with an
21 offensive language allegation have decreased by 39
22 percent, complaints with an abuse of authority
23 allegation have increased by 7 percent, and
24 complaints with a force allegation have remained the
25 same.

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1 With respect to Figure 2, the open docket
2 analysis, in May the CCRB's total open docket was
3 1,104 cases. By the end of May, 596 of these cases
4 were in the Investigations Division, representing
5 54 percent of the total, down from 647 in April of
6 2016. Of the total docket, 384 cases were pending
7 board and/or executive staff review, representing
8 35 percent, up from 301 cases pending review in
9 April. The Mediation Program handled 106 cases,
10 representing 10 percent of the open docket, down
11 from 108 cases in April. There were an additional
12 18 cases on DA hold in May. The May 2016 docket
13 includes 14 reopened cases; 9 of these cases are
14 active in Investigations and 5 are pending board
15 review.

16 The CCRB continues to close its cases more
17 efficiently. Of the cases that remain in the CCRB
18 active docket, 94 percent have been open for four
19 months or less and 99 percent have been open for
20 seven months or less. These docket numbers continue
21 to represent the best docket numbers in the agency's
22 23-year history. Investigators closed 637 full
23 investigations from January through May 2016
24 compared to 878 for the same period last year, which
25 resulted in 27 percent fewer full investigations.

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1 Year to date, the average days to close a full
2 investigation has decreased 56 percent from 2014
3 before the reforms. In May 2016, the CCRB fully
4 investigated 27 percent of the cases it closed and
5 resolved 42 percent of the cases it closed. The
6 truncation rate was 56 percent in May 2016. This is
7 primarily driven by complainant victim witness,
8 uncooperative -- being uncooperative, which the
9 CCRB's focused on examining in order to decrease the
10 number of truncations.

11 A few other key statistics for the month of May,
12 I'd like to direct your attention to Figure 3. The
13 May case substantiation rate was 24 percent, marking
14 the fourteenth straight month that the CCRB has
15 substantiated more than 20 percent of the cases it
16 fully investigates. With regard to fully
17 investigated allegations in May, the Board
18 substantiated 7 percent of force allegations,
19 14 percent of abuse of authority allegations,
20 13 percent of discourtesy allegations, and no
21 offensive language allegations.

22 Investigations with video evidence substantiated
23 allegations in 24 percent of cases, the same as the
24 24-percent substantiation rate for cases in which
25 video was not available. The discipline rate for

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1 non-APU cases was 93 percent in May for cases in
2 which police misconduct was substantiated by the
3 Board and sent to the Police Department Advocate's
4 Office with penalty recommendations. The
5 Department's decline-to-prosecute rate for non-APU
6 cases for the same time period was 7 percent. In
7 May, the police commissioner finalized decisions
8 against 27 officers; 12 of these were guilty
9 verdicts won by our Administrative Prosecution Unit.
10 The Administration Prosecution Unit has conducted
11 trials against 61 officers year to date and trials
12 against 8 officers in May.

13 And as a final note, I welcome both Board
14 Members Peguero and Dwyer. The staff and I look
15 very much forward to working with both of you.

16 CHAIR ARCHER: Thank you.

17 Does anyone have any questions regarding the
18 executive director's report?

19 (No response.)

20 CHAIR ARCHER: Now I'm going to turn to a
21 discussion of the NYPD's use-of-force policy. On
22 June 1st the NYPD issued its new use-of-force
23 policy. And here at the CCRB we're continuing to
24 review the policy to analyze it and seek
25 clarification on some of the provisions. We

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1 certainly see some positive developments in the new
2 policy including deeming an officer's failure to
3 intervene in the use of excessive force or the
4 failure to report excessive force. But there are
5 also some areas where we have some questions and
6 have sought additional information; for example,
7 there's a note in Interim Order 34 that some have
8 said could be read to excuse prohibitive actions if
9 they are deemed to be justified and under exigent
10 circumstances. So we are certainly seeking
11 additional clarification on that. And there's also
12 some questions about the scope of authority of the
13 new Use-of-Force Review Board. And we're going to
14 have Jonathan Darche give us an overview of the new
15 use-of-force policy and discuss some of its
16 provisions, the new provisions and some changes as
17 well.

18 MR. DARCHE: Thank you, Chair Archer.

19 Last week, the Department issued 10 interim
20 orders that change how the Department uses force,
21 how the Department memorializes the use of force by
22 and against its officers, how the Department
23 evaluates whether officers use force appropriately,
24 and how the Department disciplines officers for
25 violating the new force guidelines. The new orders

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1 are listed on the screen in front of you. For the
2 purposes of this presentation, I will be focusing on
3 Interim Order 34, which replaces Patrol Guide
4 Sections 203-11 Use of Force, and 203-12 Use of
5 Deadly Force with newly created Patrol Guide
6 Section 221-01 force guidelines. Under the old
7 guidelines only the amount of force necessary to
8 overcome resistance was allowed to make an arrest.
9 In addition, members of the NYPD were required to
10 use the minimum amount of force. The new force
11 guidelines allow force to be used when it is
12 reasonable to ensure the safety of a member of the
13 service or a third person or otherwise protect life
14 or when it is reasonable to place a person in
15 custody or to prevent escape from custody. This
16 change seems to permit officers to use force to make
17 an arrest even if the person being arrested is
18 offering no resistance as long as it is reasonable
19 to do so.

20 It should be noted that the new standard is more
21 in line with the standard for evaluating excessive
22 force claims by the United States Supreme Court,
23 which requires that officers' actions be objectively
24 reasonable in light of the facts and circumstances
25 without regard to their underlying intent or

1 motivation.

2 The new force guidelines introduce the concept
3 of de-escalation. This is a positive development
4 that will hopefully lead to the reduction in uses of
5 force by members of the Department. The new
6 guidelines then list the factors listed on the
7 screen in front of you that an officer should use
8 when evaluating whether use of force is reasonable.
9 This list is not exhaustive. For example, I imagine
10 that whether a subject has a weapon is a factor that
11 isn't listed but would be relevant to determining
12 whether a member of the service's use of force was
13 reasonable. These factors were not previously
14 enumerated in Patrol Guide Section 203-11. I think
15 it is a step forward in educating officers and the
16 public about when the use of force is permitted that
17 they are now enumerated.

18 The new guidelines list a number of definitions
19 including that of objectively reasonable standard.
20 This was not previously defined in Patrol Guide
21 Section 203-11. The new guidelines base the
22 reasonableness of the use of force on the totality
23 of the circumstances viewed from the perspective of
24 a member with similar training and experience and
25 placed into same circumstances. Again, this is in

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1 line with the U.S. Supreme Court standard.

2 The new guidelines also require a member of
3 service who becomes aware of the use of excessive
4 force or a failure to request or ensure timely
5 medical treatment for an individual to report that
6 conduct to the Internal Affairs Bureau. While the
7 old guidelines required members of service to
8 intervene if the use of force against a subject
9 became excessive, it did not impose a duty to report
10 on members of service. This is a significant
11 improvement over the old guidelines.

12 The new guidelines state that the use of deadly
13 physical force against a person can only be used to
14 protect members of service and/or the public from
15 imminent serious physical injury or death. The old
16 guidelines stated that police officers shall not use
17 deadly physical force against another person unless
18 they have probable cause to believe that they must
19 protect themselves or another person present from
20 imminent death or serious physical injury. The
21 removal of the phrase "probable cause" is
22 interesting. The new guidelines seem to allow an
23 officer to use his or her firearm if it is
24 reasonable under the totality of the circumstances
25 viewed from the perspective of a member with similar

1 training and experience and placed into the same
2 circumstances. We are working with the Department
3 to clarify if this expands the ability of an officer
4 to use deadly force.

5 There are two other substantive changes in the
6 new guidelines covering the use of firearms. The
7 first is the move from a subjective standard for
8 judging whether an officer is unnecessarily
9 endangering an innocent person to a more objective
10 reasonable member-of-the-service standard.

11 In addition, the new guidelines impose a duty to
12 retreat upon officers before using their firearms
13 against an animal. This section also contains a
14 note below the list of prohibited actions with a
15 firearm that informs members of the service to only
16 display or draw their firearms upon an articulable
17 belief that the potential for serious injury is
18 present and that was not in the old guidelines.

19 The new guidelines list six actions that are
20 prohibited. They are listed on the screen right
21 now. The new guidelines add three actions to the
22 list that hadn't been included in the old
23 guidelines. The new actions that are prohibited are
24 using force to punish, retaliate or coerce a subject
25 to make statements using force on handcuffed or

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1 otherwise restrained subjects, and finally, using
2 force to prevent a subject from swallowing a
3 controlled substance or to remove a controlled
4 substance from the subject's mouth or body cavity.
5 By putting these prohibited actions in a single
6 list and adding them to the list of prohibited
7 actions, the new guidelines -- excuse me -- and
8 adding to the list of prohibited actions, the new
9 guidelines are a significant improvement.

10 The note below the list of prohibited conduct is
11 unclear. It seems to imply that the prohibited
12 actions listed above the note could be reviewed on a
13 case-by-case basis by the Department. It seems to
14 say that in exigent or exceptional circumstances the
15 Department could find actions on the list of
16 prohibited conduct within guidelines. We are
17 working with the Department to clarify when and how
18 this review will take place. The note also seems to
19 allow members of service who are facing disciplinary
20 actions or civilian complaints to request the
21 Use-of-Force Review Board review allegations against
22 them. The note also states that the Use-of-Force
23 Review Board's determination is final. Again, the
24 agency is working with the Department to clarify how
25 this process will differ from the process noted

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1 earlier in the note, whether the process will only
2 apply to allegations of the listed prohibited
3 conduct, and how this review will impact the
4 disciplinary process.

5 MS. MALIK: Thank you very much.

6 Do any board members have any questions for
7 Jonathan or any observations about the new
8 use-of-force policy?

9 CHAIR ARCHER: Now we'll have a report from the
10 Outreach Committee. Hello.

11 MS. MEDLEY: Good evening. Thank you. In May
12 2016 the Outreach Unit completed 115 presentations.
13 This is the highest monthly total on record since
14 these statistics have been maintained. This has
15 raised the 2016 year-to-date total to 443
16 presentations. Of the 115 presentations in May, we
17 completed 44 in Brooklyn, 29 in Queens, 25 in
18 Manhattan, 15 in the Bronx and 2 in Staten Island.
19 We have now presented at the close of May to every
20 precinct of the city.

21 The Outreach Unit initiated presentations to the
22 constituent services units of elected officials in
23 Manhattan. This month the Outreach Unit completed
24 presentations for staff in the Offices of State
25 Senator Rivera in the Bronx; State Senator Squadron

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1 in Manhattan; Council Member Mark Levine, also in
2 Manhattan; and Council Member Helen Rosenthal, also
3 in Manhattan.

4 In the first five months of this year we have
5 surpassed the 2015 annual totals for many of the
6 specific organization types that we reach out to.
7 In particular, we have more than doubled numbers for
8 NYCHA events as they have risen from 15 in all of
9 2015 to 38 this year to date. For community board
10 meetings, it totaled 10 in 2015 compared to 44 so
11 far this year. And in 2015, we presented to 1
12 homeless organization and we've stood before 16 thus
13 far this year.

14 Thank you.

15 CHAIR ARCHER: Thank you.

16 Any questions or comments?

17 (No response.)

18 CHAIR ARCHER: All right. So we'll turn to
19 public comment. We have two folks signed up for
20 public comment. We're going to start with
21 Mr. O'Grady.

22 MR. O'GRADY: New York City Government awarded a
23 plumbing contract to O'Grady, Inc. to repair the
24 sewage line in Apt 5. O'Grady mechanics were
25 racially attacked by the developer. Run off job.

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1 There are some typos in the May 11th. Page 12,
2 line 4, delete the letter A. It should read
3 Chairman David Zornow. And the next word is another
4 chairman, Chairman Mel, M-E-L, Barkan, B-A-R-K-A-N.
5 I don't know where they got that Bartan. It's
6 Barkan. That's another chairman. They are
7 leadership. I guess that's considered as a typo.

8 And also, page 13, line 19, it should read
9 N-I-G-R-I, N-I-G-R-I. That's the preferred
10 spelling. I see they preferred a provocative there.
11 They're going -- rather use a provocative spelling.
12 I don't think they should use the unnecessary
13 provocation.

14 Page 14, line 3, arm manservant, A-R-M-E-D,
15 referring to the sheriff manservant. I noticed that
16 they were armed, both of them.

17 Line 8, armed manservant.

18 Line 12, armed manservant.

19 Line 13, the correct spelling is N-I-G-R-I.
20 They're using the -- I see the provocative spelling
21 got through. It should be N-I-G-R-I.

22 Line 15, again N-I-G-R-I. They're using the
23 provocative spelling.

24 Line 18, N-I-G-R-I. They're using -- I don't
25 know how the provocative spelling got through.

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1 N-I-G-R-I.

2 Line 22, armed manservant, the sheriff
3 manservant.

4 On page 15, line 2, N-I-G-R-I. They're using
5 the provocative spelling.

6 And also line 5, sheriff is spelled
7 S-H-E-R-I-F-F.

8 And also, line 7 -- line 7 -- well, line 6 is
9 N-I-G-R-I. Again, the provocative spelling, they're
10 using it, N-I-G-R-I.

11 And also, line 7 -- or is that line 8? Sheriff
12 is spelled S-H-E-R-I-F-F.

13 So that's it for the typos.

14 So I wanted to say that Tracy Catapano-Fox
15 indicated her family had voted to relocate to the
16 state of Florida. My CCRB investigator, Stephen
17 Joel Rackmill, I was told, relocated to Florida.
18 Winsome Thelwell, I was told, inherited or was
19 assigned Stephen Joel Rachmill's caseload
20 work. My attorney told me to tell Winsome
21 Thelwell the attorney wanted to speak to her. I had
22 this strange kind of feeling Winsome Thelwell was
23 evading contact with my attorney. The officer who
24 succeeded Alvarez, I don't see her here tonight but
25 I would like to strongly welcome her to respond to

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1 the fact that my attorney told me to tell Winsome
2 Thelwell that he wanted to speak to her. And she
3 successfully evaded speaking to my attorney or she
4 ducked, or whatever she did, she never spoke to my
5 attorney. She ducked, evaded. I don't know why she
6 did. If she's my investigator, she's inherited the
7 caseload from Rackmill, who went to Florida. And
8 Tracy -- Tracy Catapano, she told me on her last day
9 that her family was going to Florida, had voted to
10 go to Florida. But Rackmill -- Rackmill told me
11 that he wanted to speak to that sheriff manservant.
12 I asked the sheriff manservant -- they're also known
13 as deputies, but in the criminal procedure they're
14 referred to as manservant -- and Rackmill, he did
15 interview the sheriff manservant. That's what he
16 did. He said he wanted to talk to him. The sheriff
17 told me that the correct -- the correct -- when the
18 manservant goes to the bank and takes money out,
19 it's not garnishee, it's called an attachment.

20 But any case -- in any case, the sheriff told me
21 that the woman came into his office and cursed him
22 out for taking the money out of her account. It was
23 done by the sheriff manservant. The sheriff
24 manservant went to her bank and took money out and
25 gave it to me and put it in my account. The sheriff

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1 himself told me that she cursed him out, she cursed
2 him out for that. So you know, I'm wondering if the
3 officer who succeeded Alvarez -- I mean, my attorney
4 told me to tell her that he wanted to talk to her
5 but evidently, she evaded -- she evaded any contact
6 with my attorney.

7 CHAIR ARCHER: Thank you very much, Mr. O'Grady.

8 Next we have Chris Dunn from the NYCLU.

9 MR. DUNN: Good evening. To the new board members,
10 my name is Chris Dunn. I'm with the New York Civil
11 Liberties Union. I've been around here longer than
12 anyone would care to recall. And for the other
13 board members, of course I missed the last couple
14 meetings. I was out of the country. And as you may
15 know, I had made a decision to stop coming to board
16 meetings because nothing was happening. But given
17 the new leadership, I have come back. My faith has
18 been rewarded. That presentation by John was --
19 where did he go -- there he is, okay -- was the
20 single most useful presentation I have seen in two
21 years. And I am immensely pleased that the agency
22 is paying attention to the use-of-force policy,
23 which is an enormous development with the NYPD, and
24 there are a lot of questions about that. One
25 question I have is I know that you folks have talked

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1 at one point about posting the Patrol Guide, I
2 believe on your website, and I think right now you
3 have sections of the Patrol Guide on your website.
4 Have you put up the new policy and the new interim
5 orders?

6 MS. MALIK: Yes.

7 MR. DUNN: You have? Okay.

8 MS. MALIK: The old ones are up as well as the
9 new ones.

10 MR. DUNN: Okay. Good for you. I believe that
11 is the first public disclosure of the policies
12 themselves. The Department did not release them
13 last week when they announced the new policy and had
14 a briefing with Kevin Ward, Commissioner Bratton's
15 Chief of Staff. Nobody got the policy at
16 that point. So if you have yours up, good for you.
17 I look forward for everyone being able to see it.
18 And I hope that you will continue to report back
19 about what the Department has to say about these
20 questions. You do raise important questions,
21 particularly in terms of the interaction between the
22 CCRB and the Department around force allegations.

23 I just wanted to mention a couple of things.
24 First, in terms of the annual report, of course it
25 came out this week. It suffered the fate of any

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1 annual report that comes out in June of the
2 following year, which it pretty much was ignored.
3 And I will just say for future reference there had
4 been a couple years when you had had a lot of
5 success getting your annual report out close to the
6 end of the year. And I would really encourage you
7 to get back to that because you're going to get a
8 lot more attention if it's actually a fresh report.
9 And at least a couple years ago I think in part in
10 my insistence or suggestion, a lot of the work was
11 able to get done near the end of the calendar year.
12 Since you were in the position I think in the first
13 week of February you released a report that was much
14 more up to date.

15 With respect to the report itself, I have not
16 yet had a chance to read all of it but I did notice
17 one thing which I do want to alert everyone to. And
18 I've said this before, so I'm repeating myself. But
19 there is much agency praise about the substantiation
20 rate. There's precious little attention paid to the
21 huge increase in the number of cases and police
22 officers involved in substantiated cases, which went
23 up about 70 percent last year. And the police
24 officer number went from like 450 to almost 800.
25 This is during a time when, as you oftentimes point

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1 out, complaints are going down, and yet we had this
2 huge increase in substantiated cases and officers
3 involved in those cases. And that is a phenomenon
4 that I feel both you are bearing and that you are
5 trying to discount. So the line that is in the
6 press release and the line that is in the report,
7 and that was -- well, the lines in those two places
8 note the increase and immediately say that's due to
9 increased prevalence of video and improved CCRB
10 investigative practices. If you do the math, that
11 doesn't quite add up. The video cases, if you look
12 at the fully investigated video cases and you
13 multiply the substantiation rate for those cases,
14 you get about 100 cases. You don't get the
15 212 cases. That was an increase last year. And
16 maybe some of those were because you're
17 investigating faster but my point is this: That
18 there is a huge increase. It is probably the single
19 most significant statistical development in the
20 annual report, is a huge increase in the number of
21 police officers in cases that were substantiated
22 last year. And from my perspective, this agency
23 first should be saying, Okay, what is going on here,
24 and really exploring that because that is a
25 dangerous signal. And it has been much too quick to

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1 discount that by relying upon this video business
2 which just does not add up in terms of the numbers
3 and the issue of improved investigations.

4 One thing that did of course get emphasized and
5 was mentioned again here tonight was the drop in the
6 complaint numbers last year, and the complaint
7 numbers, to be sure, have gone down. I assign less
8 importance to complaint numbers than other people
9 because the complaint numbers, they go up, they go
10 down; maybe they mean something, maybe they don't.
11 I do feel though that there's too much of an
12 inclination to highlight complaint numbers when
13 they're going down and not when they're going up.
14 Complaint numbers this year are up 15 percent. That
15 has not been mentioned. And you can only figure that
16 out by doing a little bit of digging in the report.
17 So again, I'm not assigning a lot of significance to
18 complaint numbers but you do have to note the
19 numbers going up when they go up.

20 The final thing I will mention is going back to
21 the force issue. As all New York now knows but
22 maybe all of you knew before the Daily News story,
23 there's a draft Taser report. It is sitting at City
24 Hall. Doing what, I don't know. People in the
25 Police Department apparently are taking shots at it

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1 now and have decided they can have their spin with
2 the Daily News and try to call into question the
3 report. I will simply say to you that makes the
4 agency look bad. That makes the City look bad. You
5 need to get that report out so everyone can see what
6 it says. And I guess I'm not addressing this to you
7 as much as to those in City Hall to whom you speak
8 but you need to be saying to City Hall, let us
9 release our report.

10 Thank you.

11 CHAIR ARCHER: You raised a few statistical
12 questions and I'm wondering if Dr. Charles can come
13 up and respond to any of the issues raised.

14 DR. CHARLES: Sure. So I will talk very briefly
15 about the second question that was raised regarding
16 the substantiated complaints. And once you take a
17 look at the annual report, you'll see section 1,
18 page 16 has some numbers on officers that are
19 included within complaints. So the punch line is
20 that the increase in the substantiation rate is it
21 is largely due to, as acting Chair Archer mentioned,
22 better and faster investigations and increased
23 cooperation video evidence and whatnot. We do not
24 think that the substantiation rate is necessarily a
25 direct indicator of what's going on on the ground in

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1 terms of increased police misconduct. We do think
2 that the number of complaints each year is a more
3 accurate reflection of what's going on on the
4 ground. So this is point one.

5 Point two is that when we look at the number of
6 officers who are connected to complaints each year,
7 especially between 2014 and 2015, they're quite
8 similar and there has not been a substantial
9 increase there. There has been a substantial
10 increase in substantiated allegations towards
11 officers, which is a different issue.

12 So I think that there are three different points
13 there. Once you take a look at the annual report,
14 we'd be very happy to get your feedback on those.

15 Regarding the report, it's not published. You
16 know, it's not public. It's confidential and we
17 can't really make a comment on that. You're right
18 to say that it is at City Hall and a number of
19 places and, you know, we do hope that all of our
20 reports are able to be released in due time.

21 CHAIR ARCHER: Thank you. Rebuttal?

22 MR. DUNN: One, I appreciate the response. I
23 got to tell you that what you're saying is a better
24 measure of police misconduct or allegation as
25 opposed to complaints or substantiated --

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1 MS. MALIK: Can I just ask -- sorry to
2 interrupt, Chris -- can you use the podium so the
3 mic picks up --

4 MR. DUNN: I'm sorry. I apologize for that.
5 The suggestion that the better measure of what's
6 happening on the street in terms of misconduct is
7 complaints that you received as opposed to cases
8 that you substantiate after a full investigation I'm
9 having a very difficult time with. As we all know,
10 people can file complaints for a million different
11 reasons. And the Police Department year in and year
12 out says, Eh, forget about complaints, the only
13 thing that counts is substantiations. And they
14 spent a lot of time in prior years talking about,
15 not wrongly, decreases in the numbers of
16 substantiated cases as the most important indicator.
17 So I do not accept that allegations are a better or
18 complaints are a better measure of police misconduct
19 on the street. With respect to the number of
20 officers, your complaint, and I'm looking at --
21 excuse me -- your report says there are 467 officers
22 who had substantiated complaints in 2014 and 790
23 last year. That's a 69-percent increase. Maybe I
24 misunderstood what you said but that is a big
25 number. It's the same percentage increase on

1 complaints. It actually correlates completely.

2 And I appreciate what you're saying about the
3 Taser report. I look forward to City Hall telling
4 you you can release it.

5 CHAIR ARCHER: Thank you.

6 Is there anyone else who would like to make
7 public comment?

8 MR. O'GRADY: I just wanted to say that the
9 Corporation Counsel had put this developer off the
10 property. At least that's what they -- they knocked
11 on the tenants' doors and they say that this
12 developer was put off the property because he
13 pocketed \$200,000 of their money. So why was this
14 developer back on the property to racially attack a
15 plumbing contractor?

16 CHAIR ARCHER: Do any board members have any
17 other issues they want to raise?

18 COMM. SALVATORE F. CARCATERRA: I have one
19 question for Chris. I missed you, Chris, when you
20 were away.

21 MR. DUNN: I missed you, Sal.

22 COMM. CARCATERRA: Just on the complaints, and I
23 thought Dr. Robia did an excellent job explaining
24 that. So my question would be if the complaints
25 were up, whether it's 40, 50 percent, as opposed to

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1 down, would you find that troubling? Because you
2 don't find it worthy that they're down. Would you
3 find it troubling if they were up?

4 MR. DUNN: I have for years and years and years
5 said I do not assign a lot of significance to
6 complaint numbers. They go up, they go down. Where
7 I balk is when you folks assign a lot of
8 significance to it and then I only hear the agency
9 talking about the complaint numbers going down and
10 not acknowledging when they go up. So for instance,
11 I think the press release -- I don't have it in
12 front of me -- leads off by saying complaint numbers
13 went down in 2014. Okay. Complaint numbers are up
14 15 percent in 2016. That was not mentioned. And
15 I'm just saying I don't pay attention to that. So I
16 don't assign significance if they go up or they go
17 down. I'm just saying that for those who are
18 discussing them, it goes both ways.

19 CHAIR ARCHER: So we'd like to move into
20 executive session to discuss some subpoena-related
21 matters and some other issues. I'd like to get a
22 motion to move into executive session.

23 MR. CAPERS: So moved.

24 CHAIR ARCHER: Second.

25 MS. CORTES-GOMEZ: Second.

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1 CHAIR ARCHER: All in favor?

2 (Chorus of Ayes.)

3 CHAIR ARCHER: Any opposed?

4 (No response.)

5 CHAIR ARCHER: Thank you, everyone.

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C E R T I F I C A T I O N

STATE OF NEW YORK)
) SS.:
COUNTY OF RICHMOND)

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

I transcribed the proceedings in the
within-entitled matter from an audio file, and that
the within transcript is a true record of such
proceedings transcribed to the best of my ability.

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 16th day of June, 2016.

DANIELLE CAVANAGH

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