

Civilian Complaint Review Board-Draft
July 8, 2015

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1 Public Board Meeting
2 of the Civilian Complaint Review Board
3 Wednesday, July 8, 2015
4 6:38 p.m.
5 Central Family Life Center
6 59 Wright Street
7 Staten Island, New York 10304
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9

10 RICHARD D. EMERY, ESQ., CHAIR
11 MINA Q. MALIK, ESQ., EXECUTIVE DIRECTOR
12

13 PUBLIC MEETING AGENDA:

- 14 =====
- 15 1. Call to Order
16 2. Adoption of the Minutes
17 3. Report from Chair
18 4. Public Comment
19 5. Report from Executive Director
20 6. Committee Reports
21 7. Old Business
22 8. New Business

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1 BOARD MEMBERS PRESENT WERE:

2 Richard D. Emery, Esq., Chair

3 Mina Q. Malik, Esq., Executive Director

4 Bishop Mitchell G. Taylor, Commissioner

5 Joseph A. Puma, Commissioner

6 Youngik Yoon, Esq., Commissioner

7 Lindsay Eason, Commissioner

8 Deborah L. Zoland, Esq., Commissioner

9 Deborah N. Archer, Esq., Commissioner

10 Salvatore F. Carcaterra, Commissioner

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1 CHAIR RICHARD D. EMERY: Can we bring the July
2 Civilian Complaint Review Board Meeting to order?

3 Mina is here too, good. I believe the minutes have
4 been -- oh, thank you Bishop, good to see you.

5 BISHOP MITCHELL G. TAYLOR: Likewise.

6 CHAIR EMERY: I guess that's certainly a quorum.
7 And what do we need? We have a sign-in sheet.
8 Thank you. Great.

9 We have a bunch of fairly substantive things to
10 talk about tonight.

11 Are we okay with the video? Are we all set?
12 Thank you, Sorin.

13 And so we're going to move this right along.

14 First of all, do we have a motion to adopt the
15 minutes which I believe have been distributed over
16 the last couple of days?

17 MS. DEBORAH N. ARCHER: So moved.

18 CHAIR EMERY: So moved. Second?

19 MS. DEBORAH L. ZOLAND: Second.

20 CHAIR EMERY: All in favor.

21 (Chorus of Ayes.)

22 CHAIR EMERY: Any opposed?

23 (No response.)

24 CHAIR EMERY: Obviously any comments to the
25 minutes are welcome but I think we're good with

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1 that.

2 Let me report on a few things that I think are
3 important developments in our activities and then I
4 think what we're going to do is have the executive
5 director's report after my report and then have
6 public comments so that people can hear -- actually,
7 I think what we're going to do today is have
8 committee reports and have everything and then have
9 public comments at the end. I think it probably is
10 important for people to be able to hear what we're
11 doing and then have the public comments, if that's
12 okay.

13 We are in the midst of adopting new rules, as
14 everybody knows. We thought we had them completed
15 last time. I think that there are a couple of minor
16 changes and a memo was distributed late today with
17 more editorial corrections than anything else.

18 Mina, do you have anything that we want to bring up
19 that's substantive? It seems to me that there is
20 only one matter to correct. Let me look at the memo
21 that we got. It's the first item in your -- I think
22 these are now ready finally to go to the Corporation
23 Counsel's Office. They've been documented as in the
24 proper form now for adoption.

25 Mina, are there any comments that you have, and

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1 Debbie, since you worked on these very hard, are
2 there any comments that either of you or both of you
3 have about the rules as they are now finally edited
4 for the Board so that we can move forward their
5 adoption -- once again, I should say?

6 MS. ZOLAND: I didn't have a chance to review
7 this memo fully. I believe that some of these
8 suggestions are not in the rules yet. The only
9 thing that I think would bear further conversation
10 is the proposal to amend the section that informs
11 officers about -- that goes further into informing
12 officers about the way their statements may or may
13 not be used. I think there was some board
14 discussion and we ended up with the rules, the way
15 they were. So I wouldn't want to see that changed
16 until we had exactly further discussion. I don't
17 believe that they have been changed yet. I
18 believe that's just a suggestion.

19 MS. MINA Q. MALIK: That's correct.

20 CHAIR EMERY: That's right. And let's talk
21 about that for a second because it's really an
22 initiative that I started and I was concerned about
23 it when I read the rules. Essentially, we are
24 required to read the same statement that IAB reads
25 when it interviews any police officer during an

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1 investigation. And our interview statement for
2 police officers mirrors that exactly as it is in the
3 currently rules and I have no problem with that;
4 however, I did feel that we had an obligation to add
5 a very short sentence that reflected the state of
6 the law in an accurate statement to police officers
7 because I thought it was unfair to inform police
8 officers that anything they say in these
9 investigative interviews cannot be held against them
10 in the way that it's described in the statement that
11 is currently in the rules and that IAB describes.
12 IAB has, in my view, in their statement, they miss a
13 very important fact that should be told to police
14 officers in order for them to have fair notice of
15 the actual potential use of what they say in the
16 interview, which is, as you know, Debbie, and
17 others, I think, that if the interview statement
18 cannot be used against them in any criminal
19 proceeding in the future, however, if they
20 contradict what they say at the subsequent
21 proceeding, the interview could be used to test
22 their subsequent testimony and their credibility as
23 impeachment. And I think it's unfair for them to
24 make this blanket statement at IAB and we should not
25 be engaging in that unfairness by making the blanket

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1 statement that it can never be used against them in
2 a future proceeding. We should say words to the
3 effect that it can only be used if they make a
4 subsequent inconsistent statement which somebody
5 wishes to attest by virtue of this statement they're
6 making today.

7 MS. ZOLAND: I have a few comments. First of
8 all, this is not IAB's statement. This is a
9 statement that's in the Patrol Guide and it's been
10 bargained over and the Department is mandated to
11 read it just as CCRB is. So it's not a creation of
12 the Internal Affairs Bureau.

13 Second, it's very important to distinguish
14 between a criminal proceeding and a civil
15 proceeding. It is very unlikely that in a criminal
16 case against the officer that the DA would have this
17 document because the DA doesn't even want it because
18 they don't even want to taint -- because they're not
19 allowed to use these statements against the officer
20 in their prosecution. So generally, the DA would
21 not even have it and therefore would not have to
22 give it over in discovery so there's not a
23 likelihood that they would be cross-examined in a
24 criminal case on this.

25 Third, I think the Board recognizing the

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1 complications of adopting this sentence decided to
2 review it further, and we could or could not use it
3 at a later time but we would have to really discuss
4 it and go -- there's no reason for it to be in the
5 rules. I think that's where the Board came down on
6 this, because it is a very, very complicated issue
7 how it can be used, when it can be used, and I think
8 that just putting it in there gives the impression
9 to an officer that it will always be available in
10 their criminal prosecution, which it likely will not
11 be available. So I think that it was something that
12 we had left not necessarily off the table but on the
13 table for further discussion with the Department and
14 perhaps even Labor Relations because it's a bigger
15 issue than it looks like by one sentence.

16 CHAIR EMERY: Yeah. I mean, I understand all of
17 those things but my concern is is that it's simply
18 inaccurate or misleading the way it currently is
19 read and I have a big problem reading an incomplete
20 statement to an officer as a -- it's not a warning,
21 it's a description of what they are supposed to be
22 able to rely on when they make their statement and I
23 don't think it's fair to tell them that they can
24 rely on this in its current form. So I just have a
25 problem with it in its current form. I know that we

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1 can do something about it later but this is where
2 the rules are and I think we should be compelled to
3 properly inform them when we take their statements.

4 MS. ZOLAND: Yeah, I disagree that this properly
5 informs them though.

6 CHAIR EMERY: Really? I mean, the fact that
7 it's unlikely -- the fact is that they could be
8 impeached with this material and it would be
9 perfectly proper.

10 MS. ZOLAND: Well, certainly it doesn't even say
11 any direct evidence in any subsequent proceeding
12 against whom, really against them, against someone
13 else maybe.

14 CHAIR EMERY: Even against them.

15 MS. ZOLAND: Right. But it doesn't say against
16 them. They may know -- I think that you're worried
17 about any -- they're only immune in criminal
18 prosecutions against themselves. That's all the
19 immunity is really for. It's not for any immunity
20 against anyone else, it's only criminal prosecutions
21 against themselves. If a G015 was necessary by
22 defense counsel in the case once the investigation
23 was closed, I think they probably could get it and
24 might be able to be more like a civil case where it
25 could be used not against the officer in a criminal

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1 proceeding against the officer. So I would not
2 agree to include that sentence. I know it's not in
3 the rules right now and I think the Law Department
4 and as their counsel, the Office of Labor Relations
5 will comment if we put it in as well. So this is
6 not the final say. Obviously we can bring it to the
7 Law Department and get a legal interpretation from
8 them because they clearly have to -- but I would not
9 want to see it as our proposal at this point the way
10 it's written.

11 CHAIR EMERY: I think you're right. I think
12 that puts it in a context where we can all agree
13 because at this point, I would like to flag it for
14 purposes of the public comment and discussions
15 before final adoption because we can always change
16 it before final adoption if we get a more uniform
17 agreement from the various parties who are
18 interested in this. I think that convinces me that
19 we should leave it the way it is for now and then
20 make sure that our commentary is reflective of what
21 we're saying in this memo. And I think we can
22 include that in our commentary, Vasudha Talla,
23 wrote this memo along with Mina and others and
24 Lindsey Flook. So we should just take note of
25 that. And Vasudha is here tonight. Is

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1 Lindsey here as well?

2 FEMALE SPEAKER: No.

3 CHAIR EMERY: Lindsey's on vacation. That's
4 right.

5 So we should just take note of that in our
6 commentary that accompanies the public distribution
7 for comment in the future.

8 Okay. With that in mind, is there anything else
9 that we want to raise? There was just -- everything
10 else was, I thought, just trying to clarify and make
11 consistent, more consistent and more readable the
12 rules that we adopt and put into effect.

13 MR. JOSEPH PUMA: I have a comment on the
14 section that wasn't discussed in the memo. It's a
15 small change. It would be under the Mediation
16 section, Section 154, Sub I. And that's the
17 provision that speaks about a case that if it's not
18 successfully resolved under mediation, any party may
19 ask for the complaint to be investigated and the
20 complaint shall be referred to agency staff for
21 investigation. Now, that's an important rule but I
22 guess I would want the -- it seems to imply that the
23 agency may be obligated to do the investigation but
24 there may be a case or situations where the case may
25 be so old by the time that mediation has proven to

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1 not be successful that we may -- the agency may not
2 be able to investigate it within an SOL.

3 CHAIR EMERY: Well, I think the theory here is
4 that if it would be referred for investigation to be
5 handled like any other investigation and that the
6 timing issues implicit in any investigation would be
7 considered in how it was handled.

8 MR. PUMA: That's what I was trying to read into
9 it as well. I wasn't sure if it needed more
10 clarity.

11 CHAIR EMERY: I don't think it needs more
12 clarity on that issue myself. But we can make a
13 note of that so the commentary is similarly
14 reflective of the fact that it would just go back
15 for the normal investigative process.

16 Anything else?

17 (No response.)

18 CHAIR EMERY: All right. Can we get a motion
19 that the version that's cleaned up will now go
20 forward and go to the Law Department and through the
21 normal process for public comment?

22 BISHOP TAYLOR: I make a motion.

23 CHAIR EMERY: Second?

24 MS. ZOLAND: I would like to reserve the right
25 to actually look at this more closely.

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1 CHAIR EMERY: Please.

2 MS. ZOLAND: Although it seems fine in concept,
3 but I will look it over more closely.

4 CHAIR EMERY: Any comments that come up
5 subsequently, again, we have time to deal with them.
6 Great, thanks.

7 Second?

8 MS. ZOLAND: Second.

9 CHAIR EMERY: All in favor?

10 (Whereupon, Board Members make a motion with a
11 show of hands.)

12 CHAIR EMERY: Any opposed?

13 (No response.)

14 CHAIR EMERY: Great. Thanks.

15 Next, I was hoping that we could talk about the
16 issue of chokeholds briefly. And I don't want to
17 belabor this because I don't think that -- this is
18 also a matter that's very much in progress. It's by
19 no means resolved and it's animated for me by a
20 couple of new developments.

21 But first, before we go into the new
22 developments, Marcos, perhaps you could just present
23 for the record the chokehold statistics for the CCRB
24 that you've developed over the last eight or
25 nine months.

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1 Marcos Soler is going to show us on the
2 PowerPoint and just discuss them quickly. Is there
3 a PowerPoint on this or you just want to talk about
4 it?

5 MR. MARCOS SOLER: As a matter of background,
6 yes, I'm going to give you some basic statistics on
7 chokehold activity.

8 So the first thing is from January 1, 2015
9 through June 30, 2015, members of the public have
10 filed 73 chokehold complaints.

11 CHAIR EMERY: Allegations?

12 MR. SOLER: No, chokehold complaints;
13 cases. Allegations actually was 86 year-to-date.

14 The current annualized rate then is about 146
15 complaints, which has, of course, been the lowest
16 rate since 2004 when the public filed 140
17 complaints. To give you a historical perspective,
18 the CCRB received 240 chokehold complaints in 2009,
19 207 in 2010, 157 in 2011, 157 in 2012, 187 in 2013
20 and 232 complaints last year in 2014. In our
21 chokehold report of 2014, we also suggested that one
22 of the best ways to measure the prevalence of
23 chokeholds was to compare chokehold complaints to
24 overall use-of-force complaints. Chokehold
25 complaints were at 3.8 percent of all force

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1 complaints in 2001 increasing to 6 percent in 2009.

2 For this year, the percentage is 7 percent, which is
3 slightly lower than last year when it was 9.6
4 percent.

5 Another important statistic that deserves
6 further examination is the disposition data. As our
7 2014 report indicated, the Board substantiated 9
8 chokehold complaints from 2009 through June 2014; 3
9 in 2009, 2 in 2010, 1 in 2011, 1 in 2012, and 1 in
10 2013. Since the 2014 report was published, the
11 Board has substantiated 12 complaints from
12 October 2014 through June 2015. The Board
13 substantiated 5 complaints in the second half of
14 2014, all incidents occurring in 2012 or 2013 and
15 7 cases in the first 6 months of 2015; 1 incident in
16 2013 and all 6 other incidents in 2014.

17 So the final item is all of these cases except
18 for 1 are in the Prosecution Unit. One case was
19 command discipline and was forwarded to the
20 Department Advocate's Office. And the other 11
21 cases that are in the Administrative Prosecution
22 Unit are being right now examined by the unit. They
23 are through the process at different stages whether
24 charges have already been served, trials have been
25 scheduled, et cetera. This concludes a little bit

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1 the presentation in terms of statistics.

2 One final item, sorry, is one of the reasons for
3 the increase in the number of substantiated
4 complaints we think may respond to the fact that we
5 see a lot of videos, a lot of videos related to
6 chokeholds, more videos than perhaps at other times
7 in the history of the CCRB. And as we see a lot of
8 these videos, these provide for better evidence in
9 order to make some of these assessments. There are
10 other patterns but they will be discussed at another
11 time.

12 CHAIR EMERY: Thank you, Marcos. So the issue
13 other than that update, which is very important in
14 the wake of the chokehold report, which was issued
15 last year in October, the issue that comes up now is
16 that last week in his testimony, Commissioner
17 Bratton said that the new force rules would include
18 a new chokehold rule which was going to, he said --
19 and we'll see it when it comes out -- mirror the
20 language of the misdemeanor rule, the misdemeanor
21 bill, which was in front of the City Council. The
22 misdemeanor bill, being a criminal statute,
23 precluded or criminalized chokeholds that in fact
24 inhibit breathing, whereas the current Patrol Guide
25 rule and the rule under which this board operates

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1 currently and presumably was operating, although the
2 chokehold report discusses that in some detail, says
3 that a chokehold is constituted when there's any
4 pressure to the neck which may inhibit breathing.
5 These are two very different standards if we're to
6 take Commissioner Bratton at his word that the new
7 chokehold standard in the Patrol Guide is going to
8 mirror the misdemeanor language. And as I see it,
9 that is a move backwards from the more protective to
10 the public rule of may inhibit breathing. The --
11 actually, the sponsor of the bill in the City
12 Council, Roy Lancman, who's a person who worked on
13 this at length -- Molly Cohen is here. Roy wrote me
14 a letter, which is in our folder, which you can see
15 in which he says -- dated today -- in which he says
16 that the legislation was based on criminalization
17 and potential charges against officers as opposed to
18 the disciplinary process, and therefore, had a much
19 more narrow and much more specific standard of
20 actually curtailing breathing whereas it's his view
21 that that would not be an appropriate -- this is his
22 view -- not be an appropriate standard for
23 disciplinary processes. My personal view -- and I'm
24 not speaking for the Board here and just I'm opening
25 this up to comment, which we can have or we can move

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1 on, it's just totally up to everybody here -- my
2 personal view is that it is much more beneficial to
3 have the may inhibit breathing standard, not only
4 because it's more protective generally and
5 discourages holds which involve the neck, but
6 because it gives clear notice to the officer. The
7 officer can't have notice as to whether a person's
8 breathing or not. An officer can have notice that
9 something they do may inhibit breathing. And so I
10 believe that the disciplinary rule is better left
11 alone. There certainly could be engrafted on it
12 life-saving or life-threatening exceptions but
13 that's a different issue. Just in terms of the
14 actual standard, it's my view that the current
15 standard is the appropriate standard and it was
16 arrived at after many years of debate in the '80s
17 and '90s and many experiences during that period and
18 that the Police Department is going to be much
19 better off and we're going to be a lot better off as
20 a board in assessing these cases if the current
21 standard is maintained.

22 But I open that up to comments to anyone else
23 who wants to comment on it at this point. And in
24 any event, we're going to be looking at this more
25 closely when the force standards come out from the

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1 Police Department in their final form.

2 Any comments?

3 MS. ZOLAND: I would have to say that I disagree
4 with the analysis. I believe the stricter standard
5 is better for the Department and for the Civilian
6 Complaint Review Board. In all of our cases we
7 evaluate whether the force was reasonable or
8 necessary under the circumstances. So anytime we
9 see force, we do that independent evaluation. A
10 chokehold now is very ambiguous. I believe in some
11 of the analyses done by the CCRB was determined that
12 the prosecutions were successful when the
13 prosecution could prove intent and actual impediment
14 of the airways. It broadens the scope in that it's
15 not just the windpipe. It's also the carotid
16 artery, so it's the blood flow. I mean, there are
17 many reasons to adopt that standard. I think it
18 makes our job easier because then we do a regular
19 excessive force analysis on every case that we get
20 and there's no pressure. There's individualized
21 assessments on the reasonableness of force. We do
22 know when it is -- and also, given how quickly the
23 situations unfold, we're not second-guessing whether
24 the officer knew or should've known or didn't know.
25 We take it by the totality of the circumstances.

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When there is an impediment to the airways or the carotid artery, that immediately goes into a prohibited standard and I think it will make our job even easier, not less easy.

5 CHAIR EMERY: Anyone else?

6 MS. ARCHER: I won't go into a lot of detail. I
7 just want to say that I agree with the concerns that
8 Richard raised and I'm concerned about this shift
9 which I think is a move backwards.

10 And I also want to raise the additional concern
11 that there's some language in the new definition
12 that would limit chokehold prohibition to arrests or
13 the process of arrests or attempted arrests. And I
14 think many of us know that there are many more
15 interactions between police and civilians that could
16 lead to the use of the chokehold that would not be
17 defined as an arrest, and that's an additional
18 concern about the shift in policy.

19 CHAIR EMERY: Any other thoughts?

20 BISHOP TAYLOR: I just would like to chime in.
21 When I read the comments, I was concerned that we
22 were going backwards and although I do agree that
23 there should be some dialogue beyond where we are
24 now with the Department and the powers that be. I
25 just think that it's timely for us to at least,
as been

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1 expressed, share our feelings in view of that
2 statement since it was shared publicly and not with
3 us first. I think that it's important that we cite
4 some of the weaknesses of that advance, which is not
5 an advance.

6 MR. SALVATORE CARCATERRA: I just want to add
7 that a lot of these situations that we're talking
8 about on the police side are not static. These are
9 dynamic situations and there's force being used many
10 times to arrest someone and there's a fight going on
11 to make that arrest. So in that, even when there is
12 video, you know, you'll see maybe a video of a
13 minute, a minute and a half, sometimes longer, and
14 that officer or officers are trying to place someone
15 under arrest. That individual is resisting arrest.
16 Sometimes the positions and the fight, and it is a
17 fight, no change, and I just have an issue with the
18 fact of -- and I know we spoke about this and Tom
19 had brought it up where we could freeze videos and
20 look at times, because certain times that officer,
21 when they are fighting for their lives and they have
22 finally the upper hand on the individual, are they
23 supposed to now let go? Because that individual is
24 unarmed until he has that officer's gun. And I just
25 want to throw that perspective out because these

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1 aren't as simple as it appears. It's not two
2 stationary people trying to arrest someone. Many
3 times there's a lot more going on that has to be
4 taken into account.

5 BISHOP TAYLOR: I think that in all fairness, I
6 mean, what is the 600-pound gorilla in the room now
7 is the latest chokehold video that we'd seen that
8 happened almost a year ago which was not a situation
9 where an officer was in harm. It was his decision
10 to bring a person under compliance by using the
11 chokehold. So I think that -- although I understand
12 what you're saying, I think that using that maneuver
13 and changing the language to say, Well, he didn't
14 stop breathing so it's okay -- you know what I mean?
15 They're not doctors out there. They're law
16 enforcement agents. And so I think that -- I
17 understand what you're saying but I think that it's
18 just a slippery slope but I think if we allow people
19 to go there like that happened last year, it's not
20 going to be good.

21 CHAIR EMERY: All right. Unless there's
22 anything further, I think we're going to leave this
23 open to wait to see what the Police Commissioner and
24 the Police Department issues. I think that they are
25 trying to issue -- I know that they're trying to

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1 issue force rules which are going to be a model
2 nationally as a model of deescalation restraint and
3 appropriate force that allows police officers to
4 operate but nonetheless protects the public. So I
5 know that they're struggling hard and consciously
6 and very idealistically with this idea. They
7 obviously have a lot of Sal's concerns in mind.
8 These are dynamic situations which are fast-moving
9 and change by the second.

10 Obviously there are circumstances where a police
11 officer's entitled to do almost anything to prevent
12 death or serious injury and that could include a
13 chokehold. I can imagine somebody with a child on
14 the edge of a roof. If a police officer came up
15 behind him and grabbed him around the neck, we'd all
16 say that guy was a hero or that woman was a hero.
17 So obviously there are circumstances that we can all
18 figure out where anything goes and there are others
19 where it doesn't and the key is somehow to put this
20 in words and train accordingly. So I mean, we're
21 all going to struggle with this. As it turns out,
22 it's not only the Police Department's problem. It's
23 ours. And so I think a lot of thought by this board
24 and a lot of study and a lot of realistic analysis
25 of these situations and what we're going to do in

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1 them is warranted. And that's why I brought it up
2 tonight, because we certainly have that issue in
3 front of us and we're going to have to work with it.

4 MR. PUMA: If I might, what is the process by
5 which new rules would be issued? Is there --

6 CHAIR EMERY: They're Patrol Guide Rules.

7 MR. PUMA: Are they subject to CAPA? I just
8 don't know too much about this particular process.

9 CHAIR EMERY: I think there's a public-comment
10 period, isn't there?

11 MS. ZOLAND: No, there isn't.

12 CHAIR EMERY: There isn't?

13 MS. ZOLAND: There is not.

14 CHAIR EMERY: Debbie would know this better than
15 I.

16 MS. ZOLAND: For internal rules that don't
17 affect the public, the Police Department, it's a
18 matter of internal operations and Police Department
19 can change its operational rules pretty much at
20 will, of course subject to litigation and all kinds
21 of oversight. There's a lot of oversight of the
22 Police Department but CAPA's only necessary when the
23 rule affects the public. So it's an interagency --
24 if, like, the Civilian Complaint Review Board wanted
25 to decide how it was going to hire staff as opposed

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1 to our own rules, which are how it affects the
2 public, it's internal agency operations versus --

3 CHAIR EMERY: It's an interesting legal
4 technicality because anything the Police Department
5 does affects the public. But neither here nor
6 there, that's the rule and that's the way they do
7 it.

8 BISHOP TAYLOR: This would definitely affect the
9 public.

10 CHAIR EMERY: But for some reason they have the
11 ability to change the Patrol Guide.

12 MS. ZOLAND: Because it's an operational fact.

13 CHAIR EMERY: Nobody's challenging that.

14 Any other thoughts at this point?

15 (No response.)

16 CHAIR EMERY: Okay. Marcos, I wanted to just do
17 a quick, for the record mainly, review and analysis
18 of our reconsideration process which has been
19 somewhat controversial in some circles. I don't
20 know about other board members but I'm extremely
21 enthused and it confirms I think our best activities
22 here as a Board to have aligned ourselves in ways
23 that our disciplinary process is now actually
24 getting enormous amounts of traction that we never
25 had in the past because, as I've said many times, in

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1 the past, I think we've been the stepchild of the
2 disciplinary process and in this age and in this
3 time we are not only not the stepchild, we are the
4 center of an effective, I believe effective, and
5 meaningful disciplinary process and it's largely
6 because of the implementation by the Board of the
7 reconsideration process, which, by the way, is also
8 reflected in the new rules. But we have a six-month
9 window at this point of this process and Marcos has
10 been kind enough to put together some slides so that
11 we can view where we are. It's also in our
12 materials. But for the public and for the record, I
13 think it's important to report on this six-month --
14 on this development of reconsideration in the past
15 six months. Marcos.

16 MR. SOLER: So we will make it also available
17 and posted online as soon as possible. We don't
18 have copies for the public but we will make it.

19 CHAIR EMERY: You can talk us through it
20 briefly, if you could.

21 MR. SOLER: The first part that I want to
22 highlight is during the reconsideration analysis, we
23 had looked at the evolution of cases in total. So
24 first we look at the number of full investigations
25 over time. Full investigations have increased over

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1 time from 2013, 29 percent, to 37 percent in 2014.

2 And this year we're at 40 percent and --

3 CHAIR EMERY: You're saying these are the number
4 of closed full investigations --

5 MR. SOLER: Full investigations.

6 CHAIR EMERY: -- as a percentage of all
7 complaints?

8 MR. SOLER: As a percentage of all cases that we
9 receive. So what we're doing is specifically
10 compare our substantiation rate over time. In 2013,
11 our substantiation rate was 14 percent, 300
12 substantiated cases. In 2014, we did 325 cases for
13 a substantiation rate of 17 percent. And year-to-
14 date, we have substantiated 237 cases for a
15 substantiation rate of 21 percent.

16 So where we also looked was the type of
17 penalties that the Board was recommended. Charges
18 were overwhelmingly the vast majority of cases of
19 recommendations in 2013, 64 percent of cases
20 included charges. Charges decreased in 2014 to 51
21 percent, where the Board started to do more command
22 discipline and instructions. And right now the
23 Board is combining a little bit of the three
24 categories. We have 44 percent of cases that are
25 command discipline, 27 percent of cases are charges

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1 and 28 percent are instructions.

2 We also look at the number, at the percentage of
3 cases that have been reconsidered. In 2014, when we
4 implemented the process, we reconsidered 37 cases
5 out of a total of 325 cases. And so that is
6 reconsidered 11 percent of all substantiated
7 complaints. Right now in 2015, we have reconsidered
8 only 6 percent or the Department has requested that
9 we reconsider only 6 percent of cases that we have
10 substantiated. When we analyze what we are doing in
11 terms of the reconsiderations, the Department
12 requested that we change the substantiation or the
13 penalty in 37 cases in 2014 and 14 cases in
14 year-to-date 2015. You can see that in 2014 there
15 was almost a balance between reconsideration of
16 substantiation and reconsiderations of penalties.
17 Right now the Department has requested primarily
18 reconsideration of penalties; 13 cases was a request
19 for reconsideration of penalty, only 1 a request for
20 reconsideration of the substantiation.

21 Also, we have looked whether the CCRB agreed to
22 change the substantiation of penalty recommendation.
23 We saw that in 2014 the CCRB disagreed -- sorry, the
24 CCRB agreed to change the substantiation or the
25 penalty in 21 cases but did not change the

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1 recommendation in 16 cases year-to-date because
2 mostly recommendations requests are about
3 discipline. On the level of penalty recommended,
4 the Board is agreeing to change the penalty in many
5 of the instances. We have here a much more detailed
6 account of what we have agreed or what we have not
7 agreed to change.

8 And most importantly, what we have done is three
9 statistics to show the effect, the value, of the
10 reconsideration program. So if you look at the
11 chart, you will see that in overall agreement has
12 increased drastically in the 4 years in the last --
13 sorry, in the last 3 years. The overall agreement
14 between the CCRB and the Police Department was
15 57 percent in 2013, it was 71 percent in 2014, and
16 is now 92 percent in year-to-date 2015. An
17 important number here is certainly to mention the
18 fact that that increase in agreement is across all
19 categories; cases for charges, command discipline,
20 and instruction. We have done a further analysis,
21 not just the overall agreement but the agreement
22 with a penalty recommendation. And here we also see
23 drastic improvements in all categories, both for
24 charges, command discipline, and instructions. So
25 for instance, in instructions, the agreement in 2013

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1 was 44 percent, it was 72 percent in 2014, and it is
2 80 percent right now in 2015. The same drastic
3 improvement can be with command discipline where it
4 went from 7 percent in 2013 to 29 percent in 2014 and
5 72 percent in year-to-date.

6 Finally, we have also measured the agreement in
7 the cases that go to the APU Unit and the cases with
8 charges. And we see there the level of agreement
9 has increased from 0 percent in 2013 where there
10 were 12 cases and in all the cases there was
11 disagreements between the Department and the CCRB;
12 43 percent in 2014 and right now we see an
13 86 percent in terms of the dispositions in
14 year-to-date 2015. All of these trends indicate
15 that certainly the implementation of the
16 reconsideration process is aligned with also an
17 increase in the agreement rates between the CCRB and
18 the NYPD.

19 CHAIR EMERY: Marcos, thank you very much.
20 This, I would just say to my fellow Board Members
21 and everybody here and everybody watching, that this
22 is, in my view, one of the most heartening
23 developments that I've ever heard about at the CCRB
24 over the many years that I've watched the CCRB and
25 certainly one of the most heartening developments.

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I guess the most heartening development is the way
the investigators have brought down time, and we're
going to hear about that from Mina in a minute. But
this is one of the best things that's happened at
CCRB in my view maybe ever. And to me, it's
extraordinarily exciting and I think what we're
going to see when we look at these statistics
further, and Marcos is looking into this, is that
not only are we on the same page with the Police
Department and the whole disciplinary process in a
year, but we are not in any way diluting the penalty
structure or -- the substantiation rate is actually
going up, as you can see, but the penalty structure
is every bit as similar to what it was in the past
during this period. The reconsideration process is
in no way diluting or changing the actual penalty
structure that the Board panels. And I know each of
you, you sit on a panel, you make your decision on
each case, so it's not like there's any directive or
any pressure or anything else to make any particular
decision. Everybody here sits on cases and tries to
figure out what's appropriate for that particular
case so I would expect that the penalties would be
the same. But there have been some people who think
that because of reconsiderations, penalties have

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1 been diluted or diminished. It's just not so and
2 we're going to see those statistics as well even
3 after all the reconsiderations are taken into
4 account.

5 So I just think this is a very important moment
6 and that we can pat ourselves on the back a little
7 bit about this.

8 Anyway, any comments, any thoughts, about the
9 reconsideration process? Anybody want to say
10 anything more for the record or for anybody to raise
11 questions later on that is at the Board?

12 (No response.)

13 CHAIR EMERY: Okay. The executive director's
14 report.

15 MS. MALIK: Good evening, ladies and gentlemen.
16 My name is Mina Malik and I am the Executive
17 Director of the Civilian Complaint Review Board. I
18 would like to thank both the Central Family Life
19 Center and Council Member Debi Rose and her staff
20 for assisting us in being here tonight.

21 I first want to provide to you with a highlight
22 from our monthly statistical report and then we'll
23 discuss other agency matters going forward. And for
24 a full review of our agency's monthly statistics, I
25 ask you to please visit our website.

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1 Our year-to-date civilian complaints against the
2 police have decreased by 22 percent. From January
3 through June of 2015, the CCRB received 2,092
4 complaints as compared to 2,698 for the same time
5 period in 2014. Last month, complaints decreased by
6 21 percent as compared to June 2014.

7 By category of allegations, force complaints
8 have decreased by 27 percent, offensive language
9 complaints by 33 percent, and abuse of authority
10 complaints by 23 percent -- I'm sorry, offensive
11 language complaints by 33 percent. During the first
12 half of 2014, the CCRB received an average of 450
13 complaints. That number decreased to 346 complaints
14 per month in the second half of 2014. In the first
15 six months of this year, there were two distinct
16 patterns. First, from January through March of 2015
17 the agency received fewer than 300 complaints per
18 month with an average of 291 complaints per month.
19 From April through June of 2015, the agency received
20 over 400 complaints per month with an average of 406
21 monthly complaints.

22 In the first six months of 2015, our docket and
23 case processing times have improved drastically. In
24 December of last year, we implemented a strategy
25 which was designed to further reduce both the number

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1 of old cases in our open docket and the average time
2 to complete an investigation. And we are achieving
3 the targets that we have set forth. The number of
4 cases in the open docket of the Investigations
5 Division continues to be lower than at any point in
6 the last decade. A year ago, in June 2014, the open
7 docket of the Investigations Division was
8 1,838 cases. The open docket in June of 2015 was
9 666 cases. And this makes a 64-percent reduction.

10 In June, we focused primarily on cases that were
11 9 months or older to minimize the number of cases
12 approaching the statute of limitations. And at the
13 end of June, there were only 2 cases that were older
14 than 18 months, 1 of which was on hold pursuant to a
15 request by the Brooklyn District Attorney's Office
16 and the other which is still on hold pursuant to a
17 request by the Bronx District Attorney's Office. In
18 addition, there were 6 cases that were 15 to
19 18 months old and 20 cases that were 9 to 14 months
20 old. The executive staff and I have made these
21 cases a high priority. Only 4 percent of all
22 current cases being investigated are 9 months or
23 older as compared to 15 percent in May. And in June
24 of 2015, 90 percent of the cases in the open docket
25 of the Investigations Division are 4 months or

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1 younger which was 27 percentage points higher than
2 in June of 2014. These are certainly the best
3 docket numbers since the creation of this office as
4 an independent agency from the New York City Police
5 Department. By the end of June, there were 426
6 cases pending board or executive staff review or
7 35 percent of the open docket. 131 cases were in
8 the Mediation Program and there were ten cases on DA
9 hold in total. Our statistics show that we continue
10 to reach some of the new benchmarks and the goals
11 that we set for ourselves in terms of timeliness.

12 We have reviewed the productivity of the
13 Investigations Division from January to June and
14 continue to find that investigators under the new
15 smaller team structure were able to close cases in
16 substantially less time than it took investigators
17 to close cases under the former larger team
18 structure. Investigators under the new squad
19 structure submitted cases for review in an average
20 of 135 days while they did so under the old
21 structure in 273 days. Those numbers include cases
22 filed prior to and in the year 2015. But most
23 notably, in 2015 we have closed 397 cases filed
24 after the implementation of the new structure in an
25 average of 80 days. This is a 71-percent reduction

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1 compared to the average it took to conduct an
2 investigation a year ago.

3 There are also other statistics showing that the
4 new squad structure is far more effective than the
5 former larger team structure. The number of days it
6 takes to interview a complainant has decreased
7 drastically from 31 days in the first half of 2014
8 to 18 days in 2015. The number of days it takes to
9 interview an officer has decreased from over
10 200 days in 2014 to 51 days year to date in 2015.

11 There are several statistics also that highlight
12 the disposition of our cases. The first being is
13 that the case resolution rate is currently
14 47 percent year to date. The second year-to-date,
15 the Board has substantiated 21 percent of all full
16 investigations which is higher than the percentage
17 from the same period last year when the Board
18 substantiated only 15 percent of the cases it fully
19 investigated.

20 Third, the Board substantiated 6 percent of all
21 fully investigated force allegations, 17 percent of
22 all fully investigated abuse of authority
23 allegations, 9 percent of all fully investigated
24 discourtesy allegations, and 3 percent of all
25 offensive language allegations that were fully

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1 investigated. Notably, the Board substantiated 32
2 percent of all frisk allegations that were fully
3 investigated.

4 Fourth, year-to-date, the percentage of cases
5 referred to the Administration of Prosecution Unit
6 is 27 percent of all substantiated cases, down from
7 61 percent during the same period in 2014. And
8 year-to-date 2015, the CCRB has resolved 171 cases
9 through the Mediation Program which is up from
10 164 cases in the same period of 2014. The CCRB's
11 Administrative Prosecution Unit conducted 14 trials
12 in June, which is the second largest number of
13 trials conducted by that unit in a single month
14 since the unit's inception.

15 And finally, from January through June 2015, the
16 discipline rate was 91 percent for cases in which
17 police misconduct was substantiated by this Board
18 and sent to the Police Department Advocate's Office
19 with penalty recommendations. From January through
20 June 2015, the discipline rate for cases handled by
21 the Administrative Prosecution Unit was 58 percent.

22 And I just want to point out that the timeliness
23 of these new investigations and the benchmarks that
24 we have set for ourselves that were being met is a
25 result of the dedication of the staff at the CCRB

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1 and I want to publicly recognize all of them in the
2 Investigations Division, in the Administrative
3 Prosecution Unit and all units in the CCRB because
4 without them we wouldn't have been able to bring
5 these investigation times down to what they are
6 today.

7 CHAIR EMERY: Thanks, Mina. Any comments?

8 (No response.)

9 CHAIR EMERY: I find it unbelievably impressive.

10 BISHOP TAYLOR: I almost wanted to clap.

11 CHAIR EMERY: Yeah, that's what it feels like.
12 And you have the most perspective sitting at this
13 table, I think, right?

14 BISHOP TAYLOR: Exactly.

15 CHAIR EMERY: And Youngik, you.

16 BISHOP TAYLOR: It has drastically improved in
17 terms -- it's like night and day. So
18 congratulations, Mina and team, for great work,
19 great work. This is great work.

20 CHAIR EMERY: I mean, I must say that a year ago
21 this was unimaginable and I'm just amazed and
22 totally impressed.

23 Any other comments before we move on?

24 MS. MALIK: I would just like to also say that
25 all of the benchmarks and all of the goals that

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1 we've met thus far, and we're not where we are or
2 where we want to be just yet, but all of it couldn't
3 have happened without the support of this wonderful
4 board and I want to thank you all on behalf of the
5 staff at the CCRB for all of your support.

6 CHAIR EMERY: Lindsay, you got something to say?

7 MR. EASON: I believe that we can win. I
8 believe that we can win.

9 Bishop, I think you should lead us in the
10 applause for the accomplishments that Mina read out,
11 you and Youngik.

12 (Appplause.)

13 CHAIR EMERY: Absolutely. And would you do me a
14 favor, Mina, send your written executive director's
15 report to the entire Board.

16 MS. MALIK: Absolutely.

17 CHAIR EMERY: I think that's a document to
18 remember and I think it's important that we all at
19 least have a copy of it because we hope, we believe,
20 that things will get better but it may be that we're
21 at the high point, and I hope not but it's pretty
22 impressive where we are.

23 Committee reports. Anybody want to say anything
24 about committees at this point? Bishop?

25 BISHOP TAYLOR: If I can just do Outreach very

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1 quickly, as you know, we have a slew of new staff
2 that's coming in. We've been doing more with less,
3 using volunteers from different parts of the agency
4 to do presentations in Outreach and so on and so
5 forth. Carlmais and her team has been fabulous.
6 And right now we're trying to position the Outreach
7 team so that we reset for a minute and put together
8 a sustainable design that will adequately use the
9 new human capital that we'll get to advance
10 Outreach. So I think rather than running the one
11 and a half people that we have on the team crazy,
12 you know, our recommendation in our last meeting was
13 let's just kind of reset and do some design work and
14 do some thoughts, put some thoughts together around
15 how we can use these new people that came on the
16 team and what will be the most effective way, and so
17 on and so forth. So I just didn't want the Outreach
18 team to feel bad because this month we had 8
19 presentations which has fallen a little bit but it's
20 because we don't have Jessica, we don't have a
21 person making the appointments for the
22 presentations, and we have one person going out
23 making the appointments and so on and so forth. So
24 it's just now we're not stopping Outreach but we are
25 going to reset and create a design platform that

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1 we'll be able to launch from when we get new
2 staffing. And I know that the staff is working very
3 hard to interview. You read like 200 resumes or 500
4 somebody told me. I don't know if you read all 500
5 but somebody did. Thank you.

6 CHAIR EMERY: Thanks, Bishop. Anyone else?

7 (No response.)

8 CHAIR EMERY: Okay. I think we have one speaker
9 today. Mr. O'Grady, you want to come up?

10 Anybody else who wants to speak may raise their
11 hand but we have one speaker who signed up.

12 Thank you, Mr. O'Grady.

13 MR. O'GRADY: There are typos. Mr. Chairman,
14 you indicated Denise Alvarez has resigned during her
15 tenure of communications from her office strongly
16 recommending listing racial elements of incidents or
17 occurrence. The Police Department referred to the
18 incident as an occurrence. Rudolph Giuliani also
19 made Gene Lopez, a judge, introducing the double-G
20 spelling. You have started cursing, foaming at the
21 mouth, also known as slurring. Page 46, line 14, I
22 guess it would be Spanish. It should be an "a" at
23 the end. Page 47, line 10, it should be an "a" at
24 the end, not a "0" -- not an "o," rather. Page 47,
25 line 20, it should be an "a" at the end, not an "o".

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1 In Italian, it becomes an "i" instead of an "a".

2 Page 48, line 22, it should be an "a" at the end,
3 not an "o". Page 48, line 17, it should be an "a"
4 at the end, not an "o".

5 Who replaced Denise Alvarez?

6 CHAIR EMERY: The eminent and incredibly
7 accomplished Nina Mickens, who's sitting over
8 there.

9 MS. NINA MICKENS: Thank you.

10 CHAIR EMERY: And who's doing a magnificent job.

11 (APPLAUSE.)

12 CHAIR EMERY: She's doing a fabulous job.
13 That's all I have unless anybody else has any
14 other -- sorry. Do you want to say something? Come
15 on up to the microphone and identify yourself,
16 please.

17 MS. MARJORIE O'CALLAGHAN: My name is Marjorie
18 O'Callaghan, Community Board 1 on Staten Island.

19 CHAIR EMERY: Thank you for coming up.

20 MS. O'CALLAGHAN: Oh, I was very interested when
21 I saw the leaflet. Sorry. I just got back from
22 Nebraska.

23 One of the things that you were talking about
24 about the chokehold situation, where are all the
25 stun guns that they used and killed people with?

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1 Those are out now. The same thing with the
2 chokehold is obesity, diabetic and diabetes 2. The
3 worst condition that people have when they're in
4 that situation is heart conditions. The stun guns
5 hit people, they had a heart attack. The chokehold,
6 they have a heart attack. The Police Department has
7 no idea who is in what situation. The situation we
8 had on Staten Island recently, the gentleman who was
9 chokehold, the policemen -- he had 30 counts against
10 him -- the policemen were trying to get him into the
11 office and he refused to attend. So I can
12 understand that situation. How many people
13 chokehold have been killed? Do we know the numbers?

14 CHAIR EMERY: You're asking that question. I
15 don't know the numbers off the top of my head.
16 It's --

17 MS. O'CALLAGHAN: Okay. So I'm not sure --

18 CHAIR EMERY: There were -- over the years there
19 were big controversies about that in the 1980s and
20 1990s when a number of people died nationally and
21 it's certainly been an issue for more than 30 or
22 40 years.

23 MS. O'CALLAGHAN: Well, I'd like to know what
24 the death situation is. We still have not heard
25 anything about the medical records of Eric Garner on

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1 Staten Island, so nobody really understands what
2 happened in that situation. Now, I'm not racist.
3 Well, I don't like Italians but I'm not racist. So
4 I talked to many of the police officers and they're
5 on the streets day after day after day. They have
6 to protect themselves. They have to be safe.

7 The situation with Eric Garner is very tragic,
8 very sad. It's too bad that it happened. But I
9 don't know if we can totally prevent the chokehold
10 because we still are using Tasers. But let's get
11 the information out there and have the Police
12 Department know what they should do when they should
13 do it because we do have to protect the people on
14 Staten Island. Thank you very much.

15 CHAIR EMERY: Thank you very much. Anything
16 else from anybody?

17 (No response.)

18 CHAIR EMERY: So could we have a motion to go
19 into Executive Session?

20 BISHOP TAYLOR: I make a motion.

21 MR. CARCATERRA: Second.

22 CHAIR EMERY: All in favor.

23 (Whereupon, Board Members make a motion with a
24 show of hands.)

25 CHAIR EMERY: Thank you. So this public portion

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1 of the meeting for July of the Civilian Complaint
2 Review Board is adjourned. And we'll see you all in
3 August.

4 (Time noted: 7:39 p.m.)

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1

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

3

4 STATE OF NEW YORK)
5 COUNTY OF RICHMOND) ss.:
6

7

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

9

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

12

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.

16

IN WITNESS WHEREOF, I have hereunto set
my hand this 12th day of July 2015.

18

19

20

21

DANIELLE CAVANAGH

22

23

24

25

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