DRAFT

1 Public Board Meeting
2 of the Civilian Complaint Review Board
3 Wednesday, March 11, 2015
4 6:41 p.m.
5 Stanley M. Neighborhood Center
6 415 East 93rd Street
7 New York, New York 10128
8
TRANSCRIPT OF PROCEEDINGS
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RICHARD D. EMERY, ESQ., CHAIR
10
MINA Q. MALIK, ESQ., EXECUTIVE DIRECTOR
11
Reported by:
12 Danielle Cavanagh
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
23 STENO-KATH REPORTING SERVICES, LTD.
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BOARD MEMBERS PRESENT WERE:

Richard D. Emery, Esq., Chair

Bishop Mitchell G. Taylor

Joseph A. Puma

Youngik Yoon, Esq.

Daniel M. Gitner, Esq.

Janette Cortes-Gomez, Esq.

Lindsay Eason

Deborah L. Zoland, Esq.

Deborah N. Archer, Esq.

CHAIR RICHARD D. EMERY: Let's call the March Meeting of the Civilian Complaint Review Board in to order, in order. We'll start with the adoption of the minutes. Anybody have a motion to adopt the minutes that have been previously distributed?

BISHOP MITCHELL G. TAYLOR: So moved.

MS. JANETTE CORTES-GOMEZ: Second.

CHAIR EMERY: Everybody in favor.

(Chorus of Ayes.)

CHAIR EMERY: Any opposed?

(No response.)

CHAIR EMERY: So the main order of business tonight for the Commission, other than the normal reports and the statistical information, the only real issue that is of moment, I would say, for us is that we have distributed at the back table and distributed among Board Members for public discussion the very first iteration of proposed new rules which will go through the rulemaking process formalized in the city. So there's nothing final about tonight's discussion. It's the first discussion and we are going to have public commentary after this discussion so that at least the initial impressions of anyone who wants to come up and talk about these rules or anything else at

that point, that there's an opportunity to do so. The draft that you'll see has the changes that we're proposing to discuss. I don't think anybody pretends for a second that there is agreement among Board Members about these rules. There's a lot of debate still to be had. It's an open issue. There's a lot of, I think, relatively controversial things in this proposal. I'm not in favor of all of them myself, as you'll hear during the discussion. And but it's a process and I think we should be going through this process openly with public commentary. And I think those watching on live stream or on video later will then also have an opportunity to participate at the next meeting.

After this meeting, presumably we'll have another version of these rules with taking into account the commentary that occurs tonight and considerations that we are all having about these rules. And at the next meeting, I would hope that we could come up with a final set of rules that we propose for the public rulemaking process during which there's also time for amendments and changes and the process that takes place at the formalized City-rulemaking process. But in our own processes here, the idea is to discuss them.

So unless anybody has anything that each of any of you want to say, I would just like to just go through these and talk about, obviously, as Deborah has said -- as Debbie has said, there are a number of drafting issues and other kinds of formal issues, which we will handle before we get to the next iteration of this. But I'm much more interested in having a discussion about substance.

So if anybody has anything else to say before we do this, can we launch into this? Are we all set to launch into this a little bit?

So the first real substantive matter, as I see, is the standing to file, the definition of people who could be complainants before the Board. That's Section 1-15. If anybody has anything before that, say anything you'd like. Any discussion, any commentary on this attempt to capture I think what the current Board has been doing for some time, any thoughts on it?

(No response.)

BISHOP TAYLOR: What number are you looking at?

CHAIR EMERY: 1-15. It's the third page at the top, standing to file. This is essentially a new section which makes it clear that we are taking complaints from witnesses, we are taking complaints

from family members, we are taking complaints from a victim, an alleged victim, we are taking complaints from legal guardians, and we are also reserving the right to take cases that the Board may believe should be resolved; although, I think the idea is that that's a rare case, it's probably a case we've gotten on a video. And ultimately, whether we would resolve a case without any complainant, any personal complainant, is something that seems to be unlikely. But I think we are reserving to ourselves that possibility.

And obviously a lot of this has to be evaluated in the context of the charter, and we're in the process of doing that. Some of the things in this draft may not be consistent with the charter. We've tried to make it consistent with the charter but there may be debate about that. So I know that Dan Gitner had views of this so we can also hold this a bit. He's coming tonight, isn't he?

MR. LINDSAY EASON: Yes, he said he will be here.

CHAIR EMERY: So are there people who have comments on it before Dan gets here? Otherwise, we'll allow ourselves to go back to it.

MS. DEBORAH N. ARCHER: I have a question.

CHAIR EMERY: Sure.

1 MS. ARCHER: Can you explain what is meant by
2 "categories of cases"? It says we can take "other
3 cases or categories of cases." An example of the
4 other categories of cases would be helpful.
5 CHAIR EMERY: Well, it's a good question.
6 Anybody, any staff, have an answer to that, Mina or
7 Marcos or others that worked on this? Is Jon here
8 tonight?
9 MS. LINDA SACHS: He's parking.
10 CHAIR EMERY: Oh, okay.
11 MS. ARCHER: I can hold it.
12 CHAIR EMERY: But is there -- it's not
13 necessarily Jon. It may just be a drafting issue.
14 Marcos, do you want to say something about that?
15 MR. MARCOS SOLER: Sure. That is connected to
16 our (inaudible) the jurisdiction. There are right
17 now in some instances in which we connect only if
18 people only -- if people only file a complaint that
19 is within a particular type of case that we keep
20 within our jurisdiction. So there is a type of
21 category of cases, that right now, for instance, they
22 are not within our jurisdiction but we are not
23 (inaudible). So if we consider people should be
24 able to file, then we will do it. So right now, for
25 instance, in some cases there is a divide that we

1 generally use, for instance, strip search and some
2 instances a cavity search and then who has the
3 standing to file that particular case. That is a
4 category of cases, for example, we have referred.
5 But would be a category of cases we can include and
6 then we would have to define the standing to file a
7 case of that category.
8 CHAIR EMERY: You're saying that -- what would
9 be considered a category of cases, cavity -- I mean,
10 what's the decision between a strip search and
11 cavity search?
12 MR. SOLER: There is a distinction, legal
13 distinction, of what are cavity search numbers and
14 strip search numbers.
15 CHAIR EMERY: Of course, yes.
16 MR. SOLER: Right now the Board is investigating
17 mostly strip searches. Most cavity searches, most
18 cavity searches, are referred to the Police
19 Department. And what I'm trying to suggest is that
20 if there was -- if the Board decided to take cavity
21 searches, for instance, and then we'll have to
22 define who has the standing to file a complaint
23 pertaining to a cavity search.
24 CHAIR EMERY: Okay. So it's an --
25 MR. SOLER: So in some instances it would be --

1 besides a complainant, obviously, in some instances
2 it might be, for instance, officers who observe
3 interactions of officers from IB or somebody else.
4 CHAIR EMERY: Any other? Joe.
5 MR. JOSEPH PUMA: I mean, it might be self-
6 explanatory and the language might me broad here,
7 but I just wanted to confirm what is meant by the
8 phrase, "or any individual having personal knowledge
9 of alleged officer misconduct." I understand that to
10 include witnesses but I wonder what personal knowledge
11 would mean. Does that person necessarily have to be
12 present? I mean, that's usually the case, right?
13 But that is not always the case.
14 CHAIR EMERY: We take complaints now from people
15 who are not present. So I don't think that's a
16 preclusion. And I think it's trying to capture the
17 broad category of people who complain about
18 something that they may have heard about or heard
19 from a family member about or heard from a friend or
20 read about even. So I think it's just -- what it's
21 trying to convey is that we will take a complaint
22 from virtually anywhere if we think it's appropriate
23 to investigate.
24 MS. CORTES-GOMEZ: Mr. Chair, just to piggyback
25 on what Commissioner Puma just said. So do you

1 believe that this would be a restrictive paragraph
2 because it does not allow for those who do not have
3 personal knowledge? So for example, now we may
4 have someone contact CCRB if they see something on
5 television or on a YouTube video. Would this
6 exclude them in this current language as proposed?
7 CHAIR EMERY: Well, I think the intent is not to
8 but I think that's a question of interpretation for
9 us. But I think the intent is to include anybody
10 who believes they want to complain about something
11 that they are aware of. And maybe we can say that
12 differently.
13 BISHOP TAYLOR: I guess the word "personal," if
14 you want to just be subjective, if you took out
15 "personal knowledge," just be "knowledge of," and
16 that could be viewing a video or --
17 CHAIR EMERY: And I guess the real issue is do
18 we agree with that? Does that make sense from our
19 point of view?
20 BISHOP TAYLOR: Well, I think historically we
21 have taken complaints. I know we did a case that
22 someone saw abuse on YouTube and they made a
23 complaint and the complaint was fully investigated.
24 So I mean, if this language doesn't preclude that,
25 it actually becomes more inclusionary.

1 CHAIR EMERY: So maybe "personal" is an issue.
2 Anything else on that section?
3 (No response.)
4 CHAIR EMERY: The statute of limitations is
5 expired. We give the discretion to the executive
6 director to investigate a complaint even though the
7 statute of limitations is expired and the question
8 is what the criteria is for doing that. And I think
9 the idea is if it's sufficiently important that we
10 should say something about it if we believe it's
11 important enough to do an investigation and reach a
12 conclusion, that notwithstanding the statute of
13 limitations we may well do that, although maybe the
14 recommendation of any discipline if that were the
15 outcome would be moot. It may also be that we would
16 make a recommendation that there would be no
17 discipline when somebody had made -- when the statute
18 of limitations had expired but when somebody had been
19 publicized or somehow held up to -- I mean, I take it
20 we always have a tolling of the statute of
21 limitations when there's a criminal proceeding. So
22 I think this is really one where it's a question of
23 whether because of the high-profile nature of the case
24 there should be an opportunity for there to be a full
25 investigation and a ruling. What would ultimately be

done with that is a good question because I'm not sure it would ever get publicized or the public would ever know about it. But the officer would know.

BISHOP TAYLOR: I think the extenuating circumstances might mean, this might be a stretch, but if someone was involved in an altercation with an officer and they were in a coma for a certain period of time and didn't have the personal ability to make a complaint or testify on their own behalf, then we would have to wait until they've been rehabilitated to do such. I'm not sure that would be an 18-month stretch but I think that might be an extenuating circumstance. I think that if we're talking about people particularly filing a complaint 18 months after an alleged incident I guess we'd have to really talk about why we would allow that to be reported after the 18 months. Other than being very egregious, was there a fear factor, was there a threat? You know, I guess those were the extenuating -- why someone didn't file a complaint.

CHAIR EMERY: I don't think the charter in any way precludes us from taking a complaint outside the statute of limitations. And so I think we're just providing here for that opportunity and --

BISHOP TAYLOR: Oh, we can take them after the

SOL?

CHAIR EMERY: Yeah. I don't think there's any -- I don't think there's any preclusion to that.

BISHOP TAYLOR: So let me ask another question. So does the clock for the SOL start ticking -- does this SOL law apply to the incident or to the handling of the investigation, from the filing of the investigation?

CHAIR EMERY: It's the incident date.

BISHOP TAYLOR: So the incident date, okay.

CHAIR EMERY: Incident date triggers the statute of limitations.

MS. ARCHER: I have a question. It might be obvious and I apologize if it is. What is the obligation of officers to participate in an investigation that's happening after the statute of limitations?

CHAIR EMERY: Well, I think they have to participate in our investigation regardless if we call them down. I mean, we don't have to subpoena officers but we always could.

Dan, just, we're going over these proposed rules.

MR. DANIEL M. GITNER: Thank you. Sorry I'm late.

CHAIR EMERY: So the one thing I know you have thought about and have an interest in is on page 3, 1-15, the standing to file. And there's a new rule here which is trying to capture I think what we're doing now and what we have done, and I know that you had made comments in the past and this reserves the right for us to get into cases where somebody reports the fact to us that they've learned about a case third hand or whatever, gives us an open capacity to investigate cases.

MR. GITNER: I completely agree with that. I think it's a good change.

MS. CORTES-GOMEZ: I'm sorry. Going back to 1-16, the determination as to whether or not to investigate a complaint after the SOL is to be made by the executive director.

CHAIR EMERY: Right.

MS. CORTES-GOMEZ: Who then makes a determination as to what, if any --

CHAIR EMERY: Result would be?

MS. CORTES-GOMEZ: Result.

CHAIR EMERY: It would go to a panel, I presume.

MS. CORTES-GOMEZ: It would still go to the panel?

CHAIR EMERY: Yeah. It would go through the

same process. I mean, I think if that's not clear we can make it clear, but that's certainly what's contemplated here.

MR. EASON: The entire board or a panel?

CHAIR EMERY: A panel. It would be treated like any other case. I think, if I'm not mistaken, and tell me if you want to talk about anything before this, we'll go to -- what section is it -- it's 1-24, conduct of interviews, Section L.

MR. GITNER: Before you get to that, on 1-23 (D), I just want to make the point, and I think it's important, that the addition of the subpoenas being able to be issued at the discretion of the executive director is a very good change.

CHAIR EMERY: Oh, I mean, it's necessary because it happens all the time.

MR. GITNER: Should've been changed a decade ago. I just wanted to comment that I think that's a very good thing.

CHAIR EMERY: I think it's very important because it should be routine when there's any resistance to us getting a video or getting documents or getting witness statements or whatever it is.

MR. GITNER: Absolutely.

1 CHAIR EMERY: The next one is actually, and I'm
2 looking at L of 1-24. Let me say what we're trying
3 to do here because I think it's important to
4 understand this. And there's been a good deal of
5 controversy among the unions and the Police
6 Department about this. And what we've tried to
7 suggest here, and in -- where's the second section
8 where we do it with the police officer? Is it also
9 in this section?
10 MR. GITNER: D. There is something in 1-24(D)
11 that's read to the police officer, on the prior
12 page.
13 CHAIR EMERY: Right. Okay. So what we're
14 trying to do here in D and L, and this is, I think,
15 something --
16 MS. DEBORAH ZOLAND: D already exist.
17 CHAIR EMERY: You're right. I understand. But
18 D and L -- and this probably has to be tinkered with
19 and there has to be some work on this -- is we're
20 trying to create a parallel circumstance for the
21 police officer and the complainant to incentivize
22 truth-telling and deter lying. And even to the
23 point of having potentially, hopefully rarely if
24 ever, but potentially some consequences to lying to
25 our investigators when either complainants or police

1 officers are interviewed. And the theory here is
2 that currently police officers are told, as you can
3 see in D, that if they do not tell the truth, they
4 are subject to patrol guide consequences which
5 include loss of job potentially or serious
6 discipline and that the statements can be used
7 against you in subsequent criminal proceedings if
8 they are -- they can't be used against them in
9 criminal proceedings but they can be used as
10 impeachment and the like, the classic situation.
11 But --
12 MR GITNER: But part of the problem is
13 actually -- I was reading this the other night -- it
14 actually says, "If you answer, neither your
15 statements nor any information or evidence gained by
16 reason of such statements can be used against you in
17 any subsequent criminal proceedings." I'm not sure
18 that's accurate.
19 CHAIR EMERY: You can use that as impeachment.
20 MR. GITNER: Yeah. I actually think -- but by
21 reading it to the officer, I think it becomes
22 accurate. So it would actually does not have the --
23 your point is you want to make, have a deterrence to
24 lying, which of course we all want. If the officer
25 does take the stand in a subsequent criminal

1 proceeding, I think typically absent that warning,
2 he could be crossed on inconsistencies between the
3 CCRB testimony and the criminal testimony.
4 CHAIR EMERY: Right. And you're saying with
5 this warning he couldn't be crossed.
6 MR. GITNER: I think there's a good argument
7 that with this warning he couldn't be crossed,
8 absolutely, because it's a promise made by a city
9 agency.
10 CHAIR EMERY: Right. And what should be the
11 situation?
12 MR. GITNER: I don't know. That's why we have a
13 law professor on the Board and why the ACLU sits
14 here and tells us when we're doing things wrong. I
15 don't know. But I think typically under a typical
16 situation probably they can be crossed. There's
17 also the question --
18 CHAIR EMERY: A queen for a day would always
19 give a --
20 MR. GITNER: Even under a queen-for-a-day
21 agreement you're not immunizing someone for being
22 cross-examined properly for inconsistent impeachment
23 material. So this seems to be broader than that.
24 CHAIR EMERY: Yeah. And I'm not sure we can
25 grant this immunity as currently stated. I think

1 both these statements need a good deal of work and I
2 think it's something we have to really talk about
3 carefully. And quite frankly, we have Brian
4 Krist and Lindsey Flook here, have written a memo --
5 oh, no, I guess Roger and Brian have written a memo
6 to us which we're thinking about working on about the
7 question of what criminal statutes are implicated by
8 lying in the context of these interviews, both for
9 complainants and for police officers. And it's
10 probably a low-level perjury as well as ascribing to
11 a false statement. Those are the matters which we are
13 exploring in this area.
14 But I think the whole point here is to change
15 these introductions to the interview process so that
16 the warnings include the potential consequences.
17 And there's more work to be done on this but I think
18 introducing the subject here tonight is for each of
19 us to consider and have the public consider what
20 this means. I know that there's people who will say
21 quite convincingly that whenever you put something
22 like this in a complainant's introduction, you're
23 deterring legitimate complainants from coming
24 forward because they will fear the possibility, even
25 though they're telling the absolute truth, of some

kind of prosecution or some kind of consequences. And so we have to weigh this. It's not clear to me what the right balance is here but I do think that if complainants come to us and plainly lie, they should be told that there are potential consequences to that. And I do think that police officers need to be told that there are more consequences to lying than just what might happen because they gave a false statement as a result of that false statement at the Police Department.

So this is an interesting sensitive matter which I'm hopeful that all of you will consider and comment on so that when we come back with another draft, we can discuss it more fully because I don't think it's simple.

Anybody have thoughts on this? Bishop.

BISHOP TAYLOR: When you say that it would be a low-level perjury for giving false statement, what does that actually mean to a complainant?

CHAIR EMERY: An A misdemeanor.

BISHOP TAYLOR: What does that mean pragmatically? What is that?

CHAIR EMERY: An A misdemeanor.

BISHOP TAYLOR: An A misdemeanor?

CHAIR EMERY: Yeah. It's a serious criminal

1 offense but it's not a felony. And it's not even
2 clear exactly what qualifies and that's what we're
3 concerned about. Because generally speaking, you
4 have to be under oath, you have to be sworn, you
5 have to have a person qualified to give an oath in
6 order to trigger a perjury. And that's true if
7 somebody takes an oath. Right now, the officers
8 don't take oaths. They're just told what the
9 consequences may be.
10 BISHOP TAYLOR: Well, let me ask another way
11 then to that point. So if the process was that
12 before an investigation that there would be an oath
13 given by the complainant and the officer, would that
14 kind of preclude some of this indemnity that we're
15 offering, it would just naturally organically happen
16 if it was discovered?
17 CHAIR EMERY: It would, but I would think -- I
18 would be in favor of warning people what it would
19 mean potentially to violate that.
20 BISHOP TAYLOR: Well, when you go to court, they
21 say, I want to remind you that you're under oath
22 and, you know, dah-dah-dah-dah. So I think that
23 statement in itself kind of triggers, you know, a
24 truth serum, if I can use that.
25 CHAIR EMERY: I think it does, and I think we

should have -- I mean, regrettably, nothing that involves an interview at the CCRB is that formal or that -- it doesn't have all the bells and whistles like the court. But I do think that making it clear what the potential consequences are is something that we should debate. I don't know what I think about the ultimate result because I think it's a subtle problem and there are a lot of consequences to it which we have not yet assessed or thought through. But I do think the current situation is probably inadequate.

BISHOP TAYLOR: Well, I think there's an upside too because we do have some chronic CCRB complainants that always file CCRB complaints. Some of them -- some of that is connected to a lot of different things. But if a person is a chronic complainant and it's always found that there's no basis to the complaint, you know, and if there's a notation that in that series there was some false statements made in previous complaints by that complainant, then that could shape the investigation or the determination of the panel's decision, I think.

CHAIR EMERY: Well, it certainly does that but I think it would do more if the threat would be, don't

1 make these false complaints. The fear is of course
2 that if you threaten that, are you deterring
3 legitimate complaints. And that's the balance. I
4 think it's tricky. I know in the judicial
5 commission there has been the determination that the
6 complainants -- it's not they aren't sworn. I think
7 they are. But nobody's ever going to prefer them
8 for a perjury prosecution because we don't want to
9 deter legitimate complaints. So there's a lot of
10 discretion here. And similarly, with the officers,
11 I don't think telling them that the patrol guy tells
12 them they have to tell the truth is really adequate
13 for our purposes.
14 MS. ZOLAND: I think with police officers it's
15 different because they don't have a right to not
16 talk. So it's a compelled statement. So it's not
17 under oath but it's a compelled statement so that
18 their consequence is administrative if they must
19 talk or they'll be brought up on charges, they must
20 tell the truth or they'll be brought up on charges
21 for that. But those statements are compelled and
22 they're not allowed to exercise their Fifth
23 Amendment rights and, therefore, they are subject to
24 immunity from criminal prosecution. So it's a
25 different analysis.

1 CHAIR EMERY: Well, I think there's -- that's
2 a good question and I don't know the answer. And
3 that's something that I think should be answered in
4 the Krist-Smith analysis of this, which is I think
5 they're definitely immunized for criminal
6 prosecution for the subject matters of what they
7 talk about. I don't think they're immunized for
8 perjuring themselves in their statements.
9 MS. ZOLAND: No, I think they can be brought up
10 on charges. I'm not sure --
11 MR. GITNER: They're not under oath so there is
12 no perjury.
13 CHAIR EMERY: I'm just saying if we put them under
14 oath, which --
15 MS. ZOLAND: I don't think as a matter of label
16 that we could put them under oath. It's
17 a bargaining issue.
18 MR. GITNER: Exactly. They're compelled to show
19 up and answer questions. And so compelling someone
20 to go under oath is a whole different issue. I'd
21 also --
22 CHAIR EMERY: Well, that's an interesting
23 question.
24 MR. GITNER: And the other issue is just more
25 from a practical point of view as opposed to a legal

1 point of view, questioning somebody under oath, in
2 my experience, changes the nature of the interview
3 and it changes -- it makes it a more formal
4 interview and it will by necessity change the way
5 the CCRB gathers information from police officers.
6 And without exploring whether that's a good thing or
7 a bad thing, I don't know whether that would be a
8 good thing or a bad thing.
9 CHAIR EMERY: And what about complainants?
10 MR. GITNER: Exactly the same. Your point
11 earlier, simply by saying, You know you're under
12 oath, right, changes the way somebody might talk to
13 you, particularly a complainant who's walking in off
14 the street.
15 CHAIR EMERY: But you know now when complainants
16 give a statement they verify it with a statement
17 that says -- they verify it, it's actually verified.
18 MR. GITNER: Right. We can't proceed unless
19 they do.
20 CHAIR EMERY: Excuse me?
21 MR. GITNER: We can't proceed unless they do.
22 CHAIR EMERY: Right. And they have to verify
23 every complaint and they have to swear that what
24 they're saying is true. So I think they are
25 virtually under oath since they're in front of a

1 commissioner of deeds. I don't know why we don't
2 have notaries. We seem to have commissioner of
3 deeds but not notaries, which is fascinating. I
4 never met a commissioner of deeds before.
5 MS. MALIK: They're specific to New York City,
6 commissioner of deeds, whereas notaries are
7 statewide.
8 CHAIR EMERY: They have to get renewed every
9 year instead of every four years which is silly. In
10 any event, that's an administrative matter. But
11 they are authorized to take oath and swear people.
12 And so my question is, aren't these people in that
13 situation right now? And that's -- so, look, I
14 don't think we have to solve it tonight. But it's a
15 tricky problem that I think this Board has to
16 wrestle with and figure out where we want to come
17 out for the integrity of these investigations and
18 these interviews. It's not simple.
19 MR. GITNER: Well, isn't it the case though that
20 a police officer is compelled to come and talk and
21 he's not under oath, right?
22 CHAIR EMERY: Yes.
23 MR. GITNER: And if he or she faces
24 administrative sanctions if it's determined by the
25 Police Department that there was purposeful

1 misleading statements or untruths, right?
2 CHAIR EMERY: Or that the things they say
3 constitute misconduct.
4 MR. GITNER: Correct. And isn't it the case
5 that if we really wanted to take under-oath
6 testimony we have subpoena power and you could
7 subpoena that officer and put him or her under oath?
8 And so if you really felt that in a particular case
9 under-oath testimony from an officer was necessary,
10 you could, rather than go through the administrative
11 compulsion process, you could subpoena the officer
12 and put him or her under oath. So you have both
13 options right now, right, or am I misunderstanding
14 the process?
15 CHAIR EMERY: I don't know that just because you
16 subpoena an officer means that have to appear and
17 testify. They don't have to be under oath.
18 MR. GITNER: Well, there's -- I think that the
19 subpoena power, not to produce documents but the
20 subpoena to testify, would require an under-oath
21 testimony, as I understand it. It wouldn't
22 necessarily mean they'd be compelled by their job to
23 show up, but they'd be compelled by whatever powers
24 of the subpoena required them to show up.
25 MS. ZOLAND: Then they can assert their Fifth

1 Amendment rights against testimony.
2 MR. GITNER: Exactly. If they wish to, they
3 could assert.
4 CHAIR EMERY: And that's the question. I'm not
5 so sure that if somebody's compelled in the
6 employment context they are precluded from being
7 under oath. You may be right about that, Deborah,
8 but I don't know the answer.
9 MS. ZOLAND: I think that DOI had tried it some
10 years ago and it never came into fruition. So I'm
11 not sure why. I just don't recall. We'll have to
12 do some looking into it.
13 CHAIR EMERY: So I just wanted to flag this
14 whole issue because it has been actually a debated
15 issue between the unions and the Police Department
16 and our office and there's no -- there's been no I
17 would say balance or satisfactory resolution and I
18 think we should come to a position as a board as to
19 how our agency should operate in the context of
20 taking these interviews.
21 Now, 1-31 is actually very interesting. And I
22 got to thank Marcos for reading the charter as it
23 always should've been read and how it has been
24 consistently misread by this Board and by the CCRB,
25 by the CCRB as an agency. What's fascinating is we

do not need to have panels with police appointees on each panel. The language of the charter simply mandates that no panel can have members from one appointee. So we can distribute this work a little bit more evenly in the future and not be hamstrung by the fact that poor Debbie and Lindsay who are missing a third member have to do more than double duty. And it also allows something that I've wanted to do very much, which is sit with other members of my appointing authority, mainly Dan and Deborah and so forth. So what this is a proposal to do is do random appointments of panels which we're doing now but not limited so that there's an appointee of each appointing authority on each panel. We can, as long as we have one person on a panel that's from another appointing authority than the other two, under the charter, it's legitimate and proper, and that this rule captures that proposal.

MS. ZOLAND: I think we'd have to discuss that further. I think it's wise to have a Police Department appointee on each panel.

CHAIR EMERY: It's desirable. But the fact is that we've been saddled with the proposition that we have to get all these cases done with only three Police Commissioner appointees and we've had two of

them for about six months or eight months. It's just happened that way and it has hamstrung the process. And so I just -- and I also think that the collegiality of this board is such that there's -- I mean, we can look at it. We can look at the results. But I bet you there's no difference between the resolutions and recommendations of the Police Commissioner appointees compared to other appointees.

MR. GITNER: But it is the case that the Police Department appointees provide, through my experience, invaluable measure of experience of how to understand --

CHAIR EMERY: I thought you were the one that's invaluable.

MR. GITNER: I mean, I found personally that not having personally been in these kinds of encounters other than getting a speeding ticket, by understanding the Police Department appointees' views and experience has been enormously valuable. So for me at least, I fully appreciate the desire to move things along. And I think you're right to try to mix things up to do that but I'm a little hesitant to personally without thinking about it more to say that panels would be as good at their

1 analysis without a Police Department appointee.
2 MR. EASON: I believe this has to be approached
3 in terms of the panel consistency the same way we
4 took a delicate approach to the police officer
5 testifying and the complaining victim testifying.
6 It has to be weighed extremely seriously so we can
7 be fair, to being fair, to the process, you know,
8 the police officer and the complainant. I think the
9 same mindset has to be approached with the
10 determination to not have a police representative on
11 a panel to ensure that from the perspective that Dan
12 just mentioned, that if there's an opportunity, I'm
13 sure it can be delayed if it can't be decided, you
14 know, put it off for further investigation, you
15 know, to ensure that the police officer's getting a
16 fair --
17 CHAIR EMERY: See, the thing is, I mean, look, I
18 understand it and I think the issue that Dan raises
19 about the experience of the police officer -- Police
20 Commissioner appointees is a very important one. I
21 would like to look at the numbers. I would like to
22 see what a series of random panels would look like
23 and how many as a practical matter would really
24 exist without -- I can't do the statistics in my
25 head -- how many would really exist without a PC

1 member, assuming we had three PC members, which I
2 think we're going to have pretty soon. But -- and
3 then make a decision, all of us, make a decision
4 about this. I mean, I think the presumption should
5 always be that there's a PC member on a panel. But,
6 you know, there could be panels with two PC members
7 too. That could happen also under this arrangement.
8 If you did random selection, that could happen too.
9 So I mean, the key phrase here is random selection
10 and I think that this is -- when I came to this
11 place in July, the first thing I did was make random
12 selection because it's the chair's authority to make
13 panels. And quite frankly, I think it's been
14 essential and I think it's been really healthy and
15 I've loved serving with different people on
16 different panels to make decisions and I would like
17 to continue that. I would like to expand it so I
18 get to serve with people from my same appointing
19 authority occasionally once in a while. Bishop.
20 BISHOP TAYLOR: I think there's a larger
21 question looming. If -- you know, I see both sides
22 because the value of a police appointee
23 participating in the panel is immeasurable in a lot
24 of the cases; however, if you really want to attack
25 that and address that in an equitable way and still

be able to gleam from the experience of someone that has been on the job, maybe the board composition needs to be challenged. Why should there be ten City Council people and two -- if there's in fact a move to create some equity with that, why can't there be an equal amount of appointees from the different appointing agencies?

CHAIR EMERY: There was a legislative decision that goes back to the 1990s that this is the composition of this board. And we could make proposals. And if as a board we decided we want to make legislative proposals, we can do that.

BISHOP TAYLOR: I think that really begs an answer, because if you really think about equity, you think about the contribution of someone that's on the job that can help fill in some of the pragmatic points that happen in field. I think that would go a long way. Maybe we should reach for that or either strive to look to equalize that.

CHAIR EMERY: Well, I think that's perfectly legitimate if that's the Board's view. I personally think that -- so far my perception has been that there's been no lesser sense of accountability for officers from the police members of my -- Lindsay -- and even before, with some of the police members

that have retired, were more demanding of discipline than any of their fellow panel members.

MS. ZOLAND: Are you proposing that you look to the panels to see if there's a difference, like there is a two to one vote, or if a Police Department appointee has been overruled?

CHAIR EMERY: I just --

MS. ZOLAND: I'm not sure what you're proposing statistically.

CHAIR EMERY: Fair enough. Fair enough. I would -- and I don't think we have to do this overnight but I would think Marcos -- Marcos has had in the past an analysis of how panels have operated. And I think we could apply that and we'll find it any way. If you want to work on this, I'd be happy to have you kind of figure out how we would analyze it. But I think there are ways of analyzing by vote and types of cases, and you could put categories of cases together, how various people are inclined to vote on this Board. And you can put the categories in together as police appointees and mayoral appointees and City Council appointees and see if there's any statistical meaningfulness as to the origin of the appointment. My guess is there will be none in this current board certainly and probably

over the past many years I bet there have been statistical differences which are marked between those fixed panels that used to exist. There I think there were real issues about certain panels favoring certain kinds of cases and certain panels being harder on some cases and types of cases than others and there was a lack of coordination between panels in the agency. Because of the randomness of what we currently do, I don't think that exists anymore.

MS. ZOLAND: I think random is excellent. I just think there's a value for a Police Department vote and I'd be curious to see. In the two panels I've been on so far, maybe because I'm new I see a difference. But I have only been on two panels.

CHAIR EMERY: Well, let's investigate it because I don't think we have to. But the point is, all I'm saying is, we aren't constrained in the way we all thought we were constrained.

MS. ARCHER: Can I make a quick comment?

CHAIR EMERY: Please do.

MS. ARCHER: I agree that there may be an issue of having the value of the experience they bring to the panel. But a couple of times I heard the word fairness and I want to make sure that we not give

any indication that a panel that wouldn't have a Police Commissioner appointee would be unfair or that folks who are other categories cannot be fair.

CHAIR EMERY: Well, in fact, I think that's what we could show if we analyze it. I think the analysis would show that there's no difference whether a Police Commissioner member is on a panel or not, the outcomes in particular types of cases. I mean, to the extent you can show statistics, obviously there's individualized factors.

Joe, you want to say something?

MR. PUMA: I have something on something we skipped over, so whenever --

CHAIR EMERY: Anything more on this for the time being?

(No response.)

CHAIR EMERY: Okay.

MR. PUMA: I just wanted to jump back to 1-24, Sub (L), which is also new. It talks about the statement that needs to be read at the commencement of a civilian or witness interview.

CHAIR EMERY: Yeah, that what we were -- I was trying to raise that issue by creating the parallelism. But you have something specific?

MR. PUMA: There's a sentence here saying that,

"This interview is taking place at the CCRB." And I just would remind us all that we also have interviews, conduct interviews, at other sites, off-site interviews, such as ones that take place at Rikers Island and our CCRB in the Boroughs program that we're trying to launch, and also there are interviews that take place over the phone. So that would just need to be adjusted.

CHAIR EMERY: Okay. Good point. And then now there's the next one which is I think relatively controversial, which is on the next page. It's 1-33, Sub (5). And this is the addition of a result of a panel ruling, a non-sanction, if you will, which is being proposed here as good faith error. "The acts alleged did occur but were the result of inexperience, requiring training and/or instructions, and committed in good faith," as opposed to instructions. I personally am against this but other people have mentioned this in the past.

MR. GITNER: I think this is probably the result of something I did in the panel.

CHAIR EMERY: See, there you are.

MR. GITNER: I actually think that there are, in not significant number of cases, where panel might find that an officer did not act perfectly but

that the officer's actions were not the result of bad faith, that the officer was trying to do the right thing and just in the heat of the moment, for whatever reason, didn't act perfectly. And in those circumstances, there are times when it's hard to say that that officer on certain facts committed misconduct. But it's also hard to say unsub nothing wrong occurred. I personally think that -- I'm not sure it should be called good faith error. That wasn't my terminology. But I think that there should at least be a band of cases where you could unsubstantiate certain allegations and either impose without opposition from the Police Department or request training or instructions so that the officer learns from what might be a good faith mistake. In situations where there's a good faith mistake that doesn't necessarily mean that the officer, in every situation, there should be a substantiated allegation. Under FADO, the A is abuse of power -- abuse of authority. Making a mistake isn't always an abuse of authority even if it's experienced that way by the complainant. There has to, I think, be in some situations a middle ground. So that's probably the result of a particular panel case I'm thinking of recently that probably made its way in

here from that.

CHAIR EMERY: Well, I think you've also mentioned it and the reason it's in here is because it's been discussed and I think you were part of that discussion in the past. And I certainly think it's worth debating. My worry is that this so-called narrow category will swallow the instruction rule and that instructions will very rarely occur, and I think instructions are in some ways one of the most valuable things we recommend, especially now that they're often formalized and people go to --

MR. GITNER: But this would require instructions.

CHAIR EMERY: Well, yeah, I understand. But I do think that instructions without any teeth at all -- I guess my question is what the charter says. Doesn't the charter -- we have to look at this to make sure that the charter allows for this. And I think it does allow for it but I'm not sure about that. That's an interesting question. Deborah.

MS. ARCHER: I am uncomfortable with this.

CHAIR EMERY: You are comfortable?

MS. ARCHER: I am uncomfortable. One of the reasons is what you mentioned. And I think

1 substantiating with instructions should cover most
2 of it. But also to me, if you're putting a separate
3 category for people who acted in good faith, it kind
4 of forces us to read into the other categories or
5 requirement proving intent, that they intended to
6 violate someone's rights, they intended to have the
7 consequences. And I don't think that's appropriate
8 to read into, the other categories of FADO.
9 MR. GITNER: I just disagree. I don't think it
10 does that at all. I think that there are clearly
11 cases where officers screw up but they were in good
12 faith. There are plenty of cases where they're
13 trying to do the right thing or they just didn't
14 know that they were allowed to do the strip search
15 then or they didn't know they weren't allowed to
16 search this vehicle at that time, either because
17 they've been on the job for a year or for whatever
18 reason. There are these cases. And the question is
19 whether or not in those circumstances should you
20 substantiate a finding of abuse of authority.
21 Maybe. Maybe not. But right now, we're not allowed
22 to say, Okay, you made a mistake, you didn't
23 purposefully abuse your authority, it wasn't in bad
24 faith. But at the same time, there's got to be some
25 consequence to the mistake.

1 MS. CORTES-GOMEZ: I disagree.
2 CHAIR EMERY: Your example to me -- sorry, I'll
3 be very short. Your example to me actually paints
4 it very starkly as to why I'm against it because
5 when you say somebody was strip searched and the guy
6 didn't understand what the rule was and he did it
7 totally in good faith, what do you say to the victim
8 of that? I mean, how do you justify it later? You
9 write a letter to the victim saying, We found a good
10 faith error on the part of the officer? I have a
11 lot of difficulty with that. I think somebody that
12 gets strip searched and there's no basis for it or
13 there's an improper basis for it and the cop made a
14 mistake, it's perfectly appropriate to send that cop
15 for instruction at least.
16 MR. GITNER: But I'm not saying he shouldn't be
17 sent for instructions.
18 CHAIR EMERY: Well, I understand. But I'm
19 saying --
20 MR. GITNER: He absolutely should be sent for
21 instructions.
22 CHAIR EMERY: But I think there's a --
23 MR. GITNER: But that doesn't mean you should
24 also say -- I'm not saying in every case. Let's be
25 very, very clear. I view this as a very narrow band

of cases, so I want to be clear about that. But it doesn't mean that in every case there should be a finding of abuse of authority. There has been, in my experience, there has been a narrow band of cases where it's, in my view, very difficult to make a decision. And I think that my fellow panel members in those cases have found exactly the same difficulties. I don't think I'm alone. And this would allow for -- I'm not going to call it compromise because I don't think it is, but I think it allows for in those small areas -- I don't think it will (inaudible) anything -- the proper result, which is the guys got to go to instructions. In those narrow band of cases, there is the threat or possibility that the panel would decide this isn't a substantiated allegation because it wasn't abusive, and then there would be on instructions. What I'm trying to say is that in those circumstances, that guy should still get instructions.

MS. ZOLAND: I was thinking that maybe you could have your staff, whoever's doing research, research good faith exceptions for the search warrant in federal court. They allow good faith exceptions when a search warrant is executed wrongfully. We can make do a comparison between those analyses and

1 what we have here as maybe some kind of road map.
2 MR. GITNER: It's a similar analysis.
3 MR. EASON: Each case will still be judged on
4 its merit of the case. We're not asking for any
5 exception. And the officer would still receive
6 instructions or formalized instructions but there
7 may be a gray area there where if the panel, and
8 taking into account the victims, the complaining
9 victims also, what they're going to be told, but if
10 there's a gray area there where if the panel agrees
11 that the officer, you know, under those
12 circumstances was acting in good faith for whatever
13 reason, you know. So he's not going to walk away
14 scot-free with no attention.
15 MS. CORTES-GOMEZ: See, and maybe I have to
16 think about it a little more. But for example, if
17 you have an individual who is driving 30 miles an
18 hour right after it was changed to 25 miles an hour,
19 is a police officer pulling that person going to
20 think the same way, the person driving 30 miles an
21 mistakenly didn't know that it was 25 miles an hour
22 now. Do I give a ticket or not? To me, he's guilty
23 of driving 30 miles an hour instead of 25, so the
24 officer can give a warning instead of a ticket,
25 whereas in these cases, I believe for the most part,

all the panels I've been on, we give instructions instead of charges. It happened, it was wrong, so instead of saying charges or command discipline, we'll do instructions. I think giving this extra category may open a can of worms.

MR. EASON: We're talking about something less punitive. We're not talking about substantiated, unsub. We're talking about something less punitive, instructions or formalized instructions, you know, for the officer.

MS. CORTES-GOMEZ: But the result will end up being the same, we agree that instructions in that specific case are warranted.

MR. EASON: That's what Dan is saying.

MS. CORTES-GOMEZ: But you're not saying that it was substantiated.

MS. ZOLAND: But I think the difference is the motorist has a ticket on their record or they don't. Here, the police officer would have a substantiated Civilian Complaint Review Board complaint or they won't.

MR. GITNER: Exactly.

MS. ZOLAND: So there is a major difference in the outcome. They officer may learn and never do it again and he or she would be instructed. The

1 question is the motorist has a ticket on the record
2 and the officer has a substantiated complaint on his
3 or her record. And I think what Dan,
4 Commissioner Gitner, is saying is that sometimes
5 they don't deserve that substantiated complaint on
6 their record when the instructions are just good
7 enough.
8 MR. GITNER: It's that, plus, sometimes when a
9 panel might otherwise decide to unsub a case, it's
10 better if the officer also gets instructions or
11 training. And in the circumstances right now, if we
12 unsub, that officer never gets instructions or
13 training. So it hits it from both sides, both --
14 whether or not the officer deserves quote/unquote
15 the substantiated finding on his or her record and
16 you create a situation where you can increase the
17 types of cases in which training or instructions are
18 given.
19 MS. ZOLAND: Which raised the issue of
20 unsubstantiated with training as a category which we
21 don't now use.
22 MR. GITNER: Right. It's basically unsub with
23 training or unsub with instructions.
24 MS. CORTES-GOMEZ: See, that I would not object
25 to. The unsubstantiated with training, I would not

1 object to.
2 MR. GITNER: That's what I would've called it.
3 CHAIR EMERY: I myself, I don't know. That's an
4 interesting question. That raises it -- it's harder
5 for me than good faith error.
6 But, so Joe, you wanted to --
7 MR. PUMA: Right. So I've heard the arguments
8 before about this type of recommendation. I was on
9 the panel that Dan is talking about. And I thought
10 about it more and I certainly oppose good faith
11 error as a term. I think it's -- I agree with lots
12 of the arguments that have been made already. I
13 think there's a risk of eroding the definition of
14 substantiated and unsubstantiated. There is
15 possibly like unintended consequences with any
16 further litigation than the complainant might want
17 to pursue because the Civilian Complaint Review
18 Board has found that the complaint resulted in the
19 recommendation of a good faith error, a disposition
20 of good faith error. And I think there's also -- we
21 have to also think about the opposite of that term,
22 good faith, and any sort of kind of -- so that the
23 shadow side of good faith is bad faith. So I
24 wonder, it may be implying other things about
25 other -- the officer's intent in substantiated cases

that may not be warranted. I think there are certain encroachments and violations that just don't -- that they're serious enough and it doesn't really matter what the intent of the officer was.

MR. GITNER: The way I would have done this is I would just, rather than have Category 5 as drafted here, I would just change this so that a penalty of instructions or training could be recommended with any finding including one of unsub. So I wouldn't have done it this way. I would just say, look, you can recommend instructions or training at the same time as charges. You can recommend instructions or training at any time with any finding and in conjunction with any other penalty. And frankly, I think the Police Department, we should engage with the Police Department, where we do recommend instructions or training it should in every circumstance, at least with instructions, be listened to because it's such an easy thing for the Police Department to do.

That's the way I would have done this. I think that this particular language comes out of the facts of a particular case that we discussed possibly with somebody who was helping draft this. But the broader way I think about this is just to allow

1 instructions with any particular finding by a panel.
2 MS. ARCHER: I think that's better. I don't
3 have the same concerns if it's formulated that way.
4 CHAIR EMERY: Well, look, so let's table this
5 for the moment. Mina, I think we should look at the
6 arrest, the search warrant, good faith issue. I
7 think we should think about redrafting this at least
8 for discussion purposes as the discussion has
9 evolved. And we should also make sure we check the
10 charter because I have some recollections in the
11 charter of the types of dispositions being set
12 forth --
13 MR. EASON: If there's no prohibitions --
14 CHAIR EMERY: -- and we want to make sure
15 there's no -- that we have the flexibility and
16 authority to do something like this if the majority
17 believes it's warranted. All right.
18 You wanted to say something else, Joe, sure.
19 MR. PUMA: Also in that section, under 1-33, it
20 goes through our existing dispositions and in
21 Subparagraph (B), it refers to our preponderance of
22 the evidence standard. And then under (D), it lists
23 all of the dispositions possible and I would feel
24 more comfortable with certain changes to the way
25 those are phrased. For example, bearing in mind

1 that our standard is preponderance of the evidence,
2 which, for me, in layman's terms, just means more
3 likely than not. So then when you see that
4 substantiated means the acts alleged did occur and
5 did constitute misconduct, I would like to insert
6 language like "more likely than not occur," because
7 I think there are cases -- and I think that would
8 sort of follow for consistency because I'm not
9 necessarily sure if in all of our cases we -- I'm
10 not certainly sure -- I'm not the person who is
11 determining whether an act happened. That's how I
12 view the cases when I read them. I'm determining
13 whether more likely or not they happened.
14 MS. ZOLAND: So you would take the language of
15 unsubstantiated and just tweak if for substantiated
16 as more likely than not.
17 MR. PUMA: Yeah. I wouldn't make a definitive
18 statement that the acts alleged occurred.
19 CHAIR EMERY: Well, I think maybe the way to do
20 it, if we're talking about substantiated, there is
21 sufficient evidence to conclude that the alleged
22 acts did occur. Just make it parallel with
23 unsubstantiated, as Deborah says. For instance, in
24 4, "Unfounded: The alleged acts did not occur," is
25 not -- we make a finding there -- well, that's by

preponderance also.

MS. ZOLAND: Unfounded and exonerated --

CHAIR EMERY: This is a drafting issue, and I think it's a good one to bring up. I think it makes sense to. But I don't think we should say more likely than not. I think we should say evidence.

MS. CORTES-GOMEZ: I think the word likely.

CHAIR EMERY: No, I don't think likely captures it either. I think it's misleading. I think we have the standard and we should say the evidence, because we have the evidentiary standard.

MR. GITNER: You can just use the language as sufficiency, as you just suggested.

CHAIR EMERY: Evidence is sufficient.

MR. PUMA: And that's language that I think I often see in the closing reports already.

CHAIR EMERY: So 6 in that same list, we don't -- we have other misconduct now, don't we? Why is this added? Do you know that, Mina? On the top of the page, number 6.

MS. CORTES-GOMEZ: I believe I use OMN but I don't believe it was ever formalized.

MS. MALIK: I don't think it was ever formalized, and that's why it was added.

CHAIR EMERY: And we should look again at this

one with respect to the charter because there is some debate about what jurisdiction we have to even say anything about other misconduct noted. And I'd like to resolve it. I'd like to feel comfort that we have the authority, which we are constantly doing, to substantiate an allegation for other misconduct noted, especially memo books. I have no problem looking at the absence of memo books as probitive to reach a particular result, and I think we've talked about that before, and that makes a lot of sense, or other contemporaneous documents you would expect to exist at the time of an incident or around the time of an incident. But I'm not sure -- nobody's ever resolved from me whether we actually have the authority to send over a referral. It's basically a referral. It's basically something that's saying to the Police Department, You should look into whether this person should be disciplined under your system, because nobody's ever prosecuted for it by APU, I don't believe. Is there any APU prosecution for OMN, Jon?

MR. JON DARCHE: There is a provision that you could do a joint prosecution but so far we have not done one yet.

CHAIR EMERY: But we -- do we have authority to

prosecute as one of the allegations in an APU case OMN?

MR. DARCHE: I think it is theoretically possible that it could work out that way but it has not yet, and I don't foresee one in the future.

CHAIR EMERY: Well, I think we should explore what our authority is here and make a judgment about it.

MS. ZOLAND: Wouldn't it be similar to referring false statements?

CHAIR EMERY: Yes.

MS. ZOLAND: So that we -- I can't see how there would be anything against our referring a false statements allegation.

CHAIR EMERY: I agree, but what we're doing now is we're making them specific allegations and we're subbing them. It's not a referral.

MS. ZOLAND: So it's not the same as a false statement.

CHAIR EMERY: It doesn't seem to me it's a referral. It goes on the record of the police officer as a substantiated allegation.

MS. ZOLAND: Okay, it does, okay.

MS. CORTES-GOMEZ: I'm sorry, we don't substantiate OMN's.

CHAIR EMERY: OMN's? Yeah, we do.

MS. CORTES-GOMEZ: At least the way I have done it, the category is OMN.

CHAIR EMERY: But the investigator recommends a substantiation for the OMN and either we agree with it or we don't.

MR. SOLER: The Board Member is correct. What we do is we note the OMN. The term is other misconduct noted. The Board notes, meaning makes a record, that the misconduct occurred.

CHAIR EMERY: But the substantiation in the voting sheet, it's substantiated. It's not separate -- it's not viewed -- it's one of the allegations on a voting sheet.

MR. SOLER: No, no, no. It has its own separate disposition. Other misconduct has it's own disposition, which is other misconduct that is referred to the department under a different option.

CHAIR EMERY: I understand. But the panel makes a finding of other misconduct.

MR. SOLER: That is separate from whether the panel makes a finding is separate from what I'm saying. Technically, it's called noted as opposed to substantiation. We don't use the term substantiation when referring to the OMN.

CHAIR EMERY: In the voting sheets? Is that right?

MS. ARCHER: I think so.

CHAIR EMERY: But I do think -- I mean, the Board is definitely making rulings on other misconduct noted, whatever you want to call the ruling. And the question is, do we have the power to do that? I'm not so sure we do.

BISHOP TAYLOR: Well, I think that this arose several years ago when we saw a lot of memo book omissions. And so in one of our meetings with the PC, Ray Kelly at the time, he was the one that suggested -- no, the chief of departments suggested that anytime we got cases with no memo book entries that we refer it over to the chief of departments because he was very concerned about the omissions.

CHAIR EMERY: That's what we do now.

BISHOP TAYLOR: Right.

CHAIR EMERY: The real question is --

BISHOP TAYLOR: I mean, it's not like under FADO. But it's, you know, we came across it so much until it became a conversation.

CHAIR EMERY: I have no problem noting it and referring it for whatever they want to do with it. I have a problem with it being in our records for

1 part of the consequences if we don't have authority
2 to do it.
3 MR. GITNER: That's a good question. Your
4 question is let's assume we substantiate an OMN --
5 CHAIR EMERY: Agree that there is an OMN.
6 MR. GITNER: -- does it go on the officer's
7 record.
8 CHAIR EMERY: In CCRB it does, I believe.
9 MR. GITNER: And meanwhile, we haven't applied
10 our sufficiency of the evidence standard, we haven't
11 applied whatever we should apply to it, and there's
12 no opportunity -- or maybe I'm wrong. And you're
13 wondering is that fair to the officer for us to be
14 sort of hitting him with a record that we have no
15 jurisdiction to keep.
16 CHAIR EMERY: To me, it's not a question
17 necessarily of fairness to the officer that's
18 implied. It's whether we have authority to do it.
19 MR. GITNER: I understand. It's a good
20 question.
21 CHAIR EMERY: And I'd like to sort of get an
22 answer to that proposition. I mean, we're trying to
23 create rules here so I think we should make sure we
24 have the authority to do what we're proposing
25 potentially.

I'm not sure what 15 captures given the rule on standing. Since anybody has standing, I'm not sure that there's a person who doesn't have standing to file the complaint or how that ruling could be, how that could be a disposition. But maybe staff can come up with some kind of a rationale for that. I don't know what it is. All right.

The other ones I don't think are very -- 20 is pretty obvious, just a rewording. It's a definition of administrative closure.

And I don't know that we need 21. I don't think we should have a catchall. I think this is something that has to be part of a rule, don't you think? I don't think we should have resolutions that are undefined.

MS. CORTES-GOMEZ: I agree.

CHAIR EMERY: 21 should probably be eliminated. You'll notice throughout, if you look at this again, that there are a number of places where the power of the executive director has been expanded, which I think you should look at. I agree with the places where the executive director for purposes of efficiency and the like should be given the authority in here. But I think each of us should review whether we agree with them. And it's sort of

1 throughout with respect to various decisions and
2 actions that are taken by the agency.
3 I'm up to 1-43. These are just mainly
4 grammatical and fill-in stuff.
5 Let's see. This is administrative prosecution,
6 1-45. Where's the plea section?
7 MS. ARCHER: (D), 1-46.
8 CHAIR EMERY: 1-46 (D), is it? Yes. So this
9 captures the resolution we passed I think in
10 September that we're not going to accept pleas in
11 APU until after the Police Commissioner agrees so
12 that we're not in the position of making a plea deal
13 with a representative of a police officer in the APU
14 process and then having the Police Commissioner
15 water down the agreement. And this is working as a
16 practical matter at this point. But I think putting
17 in our rules is going to solidify the way the Police
18 Department treats these cases. Actually, the
19 authority to do this is ours because we don't have
20 to approve a plea until we know that it is approved
21 by the Police Commissioner. So we have the leverage
22 here to make this happen. But I do think this
23 should be captured in an actual rule, which is
24 what's proposed here. We passed it as a Board
25 resolution.

Any comments on that?

(No response.)

CHAIR EMERY: Okay. So let's go to --

MR. GITNER: I have a comment on Section F right underneath it. This sort of imposes upon the Police Department the duty of notifying the CCRB when it disagrees with certain findings or recommendations.

CHAIR EMERY: Well, this is trying to capture what we're doing.

MR. GITNER: Yeah. So I just have a question. Has the New York City Police Department agreed to this procedure?

CHAIR EMERY: "The Trial Commissioner, the Police Commissioner, shall notify the Board with notice to the subject officer at least ten business days prior to the imposition of such discipline." Yes. This is what they are doing and they in principle agreed to. Obviously once we get the next -- I've already given them a copy of these. And we will give them a copy of the next draft and we're asking for their commentary always.

MR. GITNER: That was my next question. Good. Thank you.

CHAIR EMERY: D is pretty straightforward, down

1 below on 1-53, just notifying the complainant. I
2 don't think there's anything new about 1-54 --
3 1-51 -- wait a sec, sorry -- 1-54(A), mediation. I
4 don't think there's anything new in mediation.
5 We're getting there.
6 1-55, this is reopening.
7 MS. ZOLAND: I have one question. Is this
8 saying that the parties don't have to sign an
9 agreement but that the mediator who advised the CCRB
10 if a mediation's agreed to? So shouldn't there be
11 something in writing from somebody, at least the
12 mediator?
13 CHAIR EMERY: I thought there is an agreement by
14 the parties. Where are you looking at?
15 MS. ZOLAND: Mediation, the parties may sign an
16 agreement. So that means they may not.
17 CHAIR EMERY: Well, a complainant or alleged
18 victim and the subject officer may resolve a
19 complaint by means of mediation as long as both
20 parties agree.
21 MS. ZOLAND: I'm at G.
22 CHAIR EMERY: Right. Okay. So -- oh, this is
23 the outcome of the mediation.
24 MS. ZOLAND: Yeah.
25 CHAIR EMERY: In other words, they don't have to

resolve it. If they don't resolve it, they're not going to sign an agreement. In other words, they may walk away and say, Sorry, I want --

MS. ZOLAND: But that seems to be talking about successful mediation.

MS. CORTES-GOMEZ: Correct. G talks about if it's successful.

CHAIR EMERY: I'm sorry, G. I was on the one before.

MS. ZOLAND: So are we saying that the parties don't have to sign anything?

CHAIR EMERY: Yeah, why isn't it "shall"?

MS. CORTES-GOMEZ: Should be "shall".

CHAIR EMERY: Right, it should be "shall". Good pickup. Deborah, you're going to go through everything here and fix it all.

Reconsideration. So the theory here is that we can reconsider any case that we believe was wrongly decided if the original panel or the full Board believes that it was wrongly decided or the sanction should be changed.

MS. ZOLAND: But do you need -- do you need new evidence or --

CHAIR EMERY: I don't think we do. I think the parties --

1 MS. ZOLAND: Because we don't have any or in the
2 interest of justice.
3 CHAIR EMERY: It should be request. It should
4 be request (inaudible) may reopen any case.
5 MS. ZOLAND: If.
6 CHAIR EMERY: If new evidence or a previously
7 unavailable (inaudible) determination of a panel
8 constitute to consider such new evidence. See, I
9 don't think that section's right. I think we -- we
10 need to work on that. This should be in the
11 interest of justice.
12 MS. ZOLAND: Any compelling factor or something
13 like that.
14 CHAIR EMERY: Interest of justice probably
15 captures all of that. But I think we should be able
16 to reopen cases if we think it's appropriate, if the
17 SOL hasn't expired. Maybe if the SOL has expired
18 that would be a reason we wouldn't, because it
19 wouldn't be in the interest of justice. But other
20 than that, I think --
21 MR. GITNER: I have a question. The way I read
22 it is it's the Board, the Chair or the executive
23 director can reopen the case.
24 CHAIR EMERY: Right.
25 MR. GITNER: Let's assume it's in the interest

of justice. What happens if the Board wants to reopen it but the Chair does not or the Chair wants to reopen it and the Board does not?

CHAIR EMERY: Anybody can reopen it. So the Board would override the Chair.

MR. GITNER: So the executive director on her own initiative could reopen it.

CHAIR EMERY: That's right. But it would go to a panel. It would still have to go to a panel.

MR. GITNER: But in this situation, you theoretically -- I'm not saying this is good or bad, I just want to talk about it -- you can have a panel that makes a final determination, executive director doesn't like it -- and we have a wonderful executive director now, but let's say the next executive director doesn't like it --

MS. MALIK: Thank you.

MR. GITNER: -- and the next executive director isn't as wonderful as the current one -- he or she can then decide, You know what, I don't like the way the panel decided that, I'm reopening it and I'm sending it to another panel.

CHAIR EMERY: No, you can't send it to another panel. That panel has to get it back. If that panel exists, the panel that handled it gets it

1 back. And I think we should be clear about that.
2 MS. CORTES-GOMEZ: We should probably say that.
3 MR. GITNER: It should say that.
4 CHAIR EMERY: And then the Board -- then the
5 full Board can do something. But the panel gets it
6 back. You can't go around shopping for panels,
7 especially with Mina or me.
8 MR. GITNER: So it would have to go back to the
9 original panel --
10 CHAIR EMERY: That's right.
11 MR. GITNER: -- not to the Board --
12 CHAIR EMERY: That's right.
13 MR. GITNER: -- but to the original panel.
14 CHAIR EMERY: And the reasons for reopening in
15 the interest of justice would have to convince the
16 original panel to do it.
17 MR. GITNER: Okay. Thank you.
18 CHAIR EMERY: All right. Can we make sure we
19 capture that, Mina, so it's not --
20 MS. MALIK: Absolutely.
21 CHAIR EMERY: -- because this is all screwy the
22 way it is now. It has to be changed dramatically to
23 reflect interest of justice and reflect Dan's point.
24 MR. GITNER: So what's the difference between A
25 and the first sentence of B?

CHAIR EMERY: I'm not sure there is. I was just looking at that too.

MS. ZOLAND: This is without --

MR. GITNER: It's hard to read just because the track changes.

MS. MALIK: One is following a full investigation; that's A. And B is closed without a full investigation.

CHAIR EMERY: It's truncation.

MS. CORTES-GOMEZ: A is the Board, the Chair, executive director. But B only says the Chair or the executive director.

CHAIR EMERY: Yeah, because it's a truncated case. I think --

MR. GITNER: That makes sense to me.

CHAIR EMERY: You don't want the Board dealing with a truncated case. If somebody came to one of us and it was a truncated case, it's going to be reopened. All you have to do is call up the executive director or call me up and it will be reopened. Okay.

D, this is something we already passed in principle as a Board measure but we want to put into a rule. That is that the Administrative Prosecution Unit can reopen to add allegations. This is the one

that's adding allegations or -- reconsider allegations to -- in order to substantiate additional allegations, which then would go to charges. So what happens here is the investigation -- this is something we did discuss in the past and I believe we had -- Jon, didn't we have a resolution about this in the past?

MR. DARCHE: Yes, we did, but the Board felt that we should have it in the rules because we had to swear it in by giving a signed statement from the complainant by adding this rule and it would let the AP prosecutor just make the request to reconsider.

CHAIR EMERY: Right. So we altered the rule that it was hamstringing us a little bit before by requiring a signed statement from the complainant.

Then E is the process we're trying to follow now where DAO asked us to reconsider and gives us reasons in writing and we're trying to -- we've disagreed with them a lot and we've agreed with them some. So I think this is just a function of getting facts and reasons before us that inform us more completely.

MS. ZOLAND: Just going back to D for a second, what if APU thinks a case is wrongly decided and should be unsubstantiated? Is there a process --

CHAIR EMERY: They can dismiss. We have a dismissal rule, right? But shouldn't that be in the rules, the dismissal power of APU? Remember we did that with the Chair's consent, I believe?

MR. DARCHE: I didn't realize we needed to add it to the rules but if you want me to do that, we can do that.

CHAIR EMERY: I think that should be in the rules.

MR. DARCHE: Okay.

CHAIR EMERY: We should add dismissal here.

MR. DARCHE: Understood.

CHAIR EMERY: Just so that's all in one place and clear what the processes are.

MR. PUMA: On E --

CHAIR EMERY: Sorry?

MR. PUMA: On E, I -- this was something that I had requested I think in private at the last meeting. I think formalizing this in the rules is a good step in the right direction. As far as the -- well, there is a rule in the charter, not a rule, a provision of the charter, that talks about the Police Department's obligation to inform us of what action the Department eventually took on the case. And I'm wondering if -- I'm mentioning that because

1 the E seems to pertain only to one particular
2 penalty, could be a series of substantiations that
3 the Board has disposed. But I've had in my
4 first-hand experience with this process already a
5 case where allegations A, B and C were substantiated
6 but we were only asked to reconsider the penalty on
7 C, and A and B were indicated in the e-mail as
8 basically the Department was not going to take any
9 action on those allegations that the Board had
10 disposed. So I don't know if there's just a way to
11 kind of build into this communication process with
12 PD about a process whereby it's very clear what
13 they're not taking action on because sometimes --
14 CHAIR EMERY: When you say "not taking action,"
15 you mean they're not disagreeing with us and
16 they're --
17 MR. PUMA: They disagree with us.
18 CHAIR EMERY: Oh, they do disagree with us?
19 MR. PUMA: They do disagree with us and they're
20 not pursuing the --
21 CHAIR EMERY: The charges.
22 MR. PUMA: -- charges or the recommended
23 penalty.
24 CHAIR EMERY: Really? And they haven't asked us
25 to reconsider?

1 MR. PUMA: They did not in that particular --
2 CHAIR EMERY: Really? I've only seen cases --
3 MR. PUMA: That's how I understood that.
4 CHAIR EMERY: I've only seen cases where they
5 asked us to reconsider. They told us they weren't
6 doing it for X, Y and Z reasons and would we
7 reconsider. And we did or we didn't. But I've
8 never seen one that I could remember, if anybody
9 else can remember where they actually said, I don't
10 even want you to reconsider it.
11 MR. PUMA: I think it's been the exception so
12 far but that's my recollection on one of the cases
13 that I --
14 CHAIR EMERY: Those cases -- if that happens --
15 they usually come through me first I think, so I
16 don't know. I'm missing something. I'd love to see
17 that. But I think our position has to be that if
18 they're not going to do what we recommend, and
19 that's the idea and the spirit behind all of this,
20 then give us reasons for what they're doing and why
21 they're not doing it, and whether we want to agree
22 with them or not is up to us. The other times they
23 might be more amenable saying, We wish you would
24 consider X, Y or Z, and they haven't decided whether
25 they're going to either do what they have -- whether

they're going to do something else and they're going to wait for us to explain. Some cases they don't wait for us to explain. So I'm not sure what change you want there though.

MR. PUMA: I would just -- I mean, in the future I would like that to be much more explicit and I don't know if it should be in our rules. I mean, certainly that has to be --

CHAIR EMERY: What be more explicit?

MR. PUMA: If there are substantiated charges -- excuse me, substantiated allegations from the Board that are not being pursued with the recommended penalty, that that's very clear.

CHAIR EMERY: In cases of charges, that exists already for APU. They cannot act without giving us an opportunity to comment on their reasons for not acting. That's in the APU sections of the memorandum of understanding, which actually is in our rules, isn't it? The memorandum of understanding was incorporated into our rules. So my question is -- so you're thinking of cases where it's a CD or instructions?

MR. PUMA: Exactly, and that was -- I'm referring -- I have in mind a case like that.

CHAIR EMERY: Okay. So why don't we look at

1 this rule and make sure that we capture the same
2 process that exists for charges in APU when the
3 Police Department is indicating that they aren't
4 going to follow our findings.
5 MS. ZOLAND: It's in the MOU, isn't it?
6 CHAIR EMERY: It is, but not with CDs and
7 instructions. So what we want to do is specify that
8 they are going to do the same thing because
9 basically they've agreed to do that, as I understand
10 it, with CDs and instructions, and that this rule
11 ought to capture that thought.
12 And then the last one is just a simple fact --
13 just a grant of power from the Board to the
14 executive director to manage the affairs of the
15 organization in terms of appointing employees,
16 organizational structure, day-to-day operations,
17 which I think is something that we have never really
18 said and we should say.
19 MR. PUMA: I have one addition that is not
20 covered by the current rules at all, suggestion as
21 to how to better capture the power of the Chair to
22 form committees and subcommittees. I don't think I
23 see this.
24 CHAIR EMERY: Isn't that in the rules somewhere?
25 I'm not sure of that.

MR. PUMA: It may be encompassed in something more general.

CHAIR EMERY: I think that's right, so let's look at it. And I think it's probably a good idea. I think maybe -- I'm not sure if it may be in the charter. Maybe not. Somehow I vaguely remember it. It's certainly been the practice of the CCRB to allow the Chair to form committees and subcommittees.

Any other comments on the rules? I think we've done a lot of work on this already.

Why don't we -- just let me make two other quick announcements. Today, if I'm not mistaken, Linda, the relevant sections of the patrol guide that relate to FADO have been put on our website for public access. One of the frustrations has been for many years is that the patrol guide has not been available to anybody. We're not going to put the whole patrol guide up there because it involves a lot of stuff about which side of your lapel your medals go on and white socks and the like. But we did put up -- we selected the portions of the patrol guide that relate to our functions. And they are now on our website and accessible.

The other significant development on the website

is that our complaint activity maps are now interactive. They've gained sophistication dramatically because of the work that Marcos and Brian and Mina and Linda have done.

MS. SACHS: And Lincoln.

CHAIR EMERY: And Lincoln, exactly, sorry, and Lincoln. And so they're kind of interesting and it's worth going to when you click on stuff and it pops up at you. It's just a lot of fun. So I think that's worth mentioning.

But why don't we take a very short bathroom break because some people have asked for it. And then we'll come back and get public comment.

(Whereupon, a short recess was taken.)

CHAIR EMERY: Mr. O'Grady, are you speaking tonight?

MR. O'GRADY: Yeah. There was someone ahead of me, wasn't there?

CHAIR EMERY: No, you're the first. Come on up. How are you, sir?

MR. O'GRADY: Fine. Thank you.

In the charter of bylaws of this body, statute of limitation, if particulars involved could be, were to be, proved in court of law, statute of limitation does not apply. Recent successors or

leaders of this body spoke. The Police Department has ways of "milking the clock, milking the clock." Strange phraseology. Recent successors or leaders of this body have ways of confusing the identity of the officer behind the wheel of the police vehicle. There are obviously some civilians who you would not want to confront or meet in a dark alley or even a well-lit room.

CHAIR EMERY: Thank you. Chris, Mr. Dunn.

MR. CHRIS DUNN: Good evening.

CHAIR EMERY: Good evening.

MR. DUNN: So I didn't expect there to be a regulatory geek-a-thon here, but good for you. I mean that seriously. I think it's great you went through the regs. You didn't have to do that publicly, I don't think.

CHAIR EMERY: I think we did, but that's just my opinion.

MR. DUNN: Richard, I'm glad that your public-disclosure knee is twitching. I'm glad you did it, whether rightly or wrongly. And I actually think that you raised a bunch of important issues. What I hear you saying, Richard, is there's going to be further public discussion about this.

CHAIR EMERY: And we want you to comment on this

stuff between now and the next meeting. And then you're going to have the normal, normal processes after that. But before even the normal processes start, we would love you to -- we'll give you the next iteration of this and love to have your comments.

MR. DUNN: Right. I appreciate that. I don't want to overdo comments on things that are in transition.

But let me just say a couple things because I assume there'll be some deliberations between now and the next draft. On the subpoena authority, I think it's great that you gave Mina the subpoena authority. I look forward to seeing subpoenas with your signature on it. I will note that as far as I know, the agency has never once in its history issued a subpoena to the Police Department. And I think that the subpoena power is an important power that you have and I hope that it gets used.

On the verification issue, I think you have identified what the concerns are about that. I do wonder to the extent to which there's actually a problem with complainants who you think are not telling the truth. I think we do know there's a documented history of police officers making false

1 statements to the CCRB and that makes the things
2 that are said to police officers in the OMNs about
3 false statements particularly important. I have not
4 heard about complainants that you thought have made
5 false statements. I'm sure it may happen from time
6 to time. And to the extent that you have -- I think
7 someone described frequent complainants who you
8 suspect are making things up; okay, fair enough.
9 But I just question whether or not the impulse to be
10 equal is perhaps misguided because there's not an
11 equal problem. And the real problem is with police
12 officers. I do think, Dan, you make a good point if
13 the script that's being read to the police officers
14 is inaccurate in terms of the immunity to which they
15 are being given and it overstates it, you certainly
16 want to correct that. And I appreciate your having
17 caught that.
18 With respect to the panel assignments, Richard,
19 I totally understand what you're saying. And, Dan,
20 I hear what you're saying about the expertise the
21 Police Department representatives bring. And I
22 think that's valuable. I think it will be very
23 interesting to hear what the Police Department
24 ultimately has to say about this because as you
25 heard from Lindsay and from Debbie, I think the

1 Police Department's going to push back very, very
2 hard on that because I think they are going to want
3 to have one of their people on every single panel.
4 And I don't think that's necessary in terms of
5 fairness. I think Deborah's absolutely right.
6 Everyone on the Board can be fair. And at some
7 level I think there's a public perception if the
8 Police Department pushes too hard and says, We have
9 to have one of our people on every single panel,
10 because that is going to look like protection. So I
11 look forward to seeing how that goes.
12 With respect to the good faith exception, I
13 heard the group of you seemingly backing away from
14 that and talking about a different regime where you
15 might perhaps be recommending training or
16 instructions even when a case is not substantiated.
17 I do think there's going to be an issue, and I
18 myself will look at this also, the extent to which
19 when there is not a substantiation you have the
20 authority to nonetheless say to the Police
21 Department something should happen to a police
22 officer. I suspect that the PBA will push back very
23 hard on that. And frankly, I think there may be a
24 fair question on behalf of police officers if they
25 are found not to have engaged in any misconduct

1 whether or not the CCRB and the Department should be
2 requiring them to engage in something that may be
3 viewed in the Department as being disciplinary. So
4 I don't know which way that's going to cut but I do
5 think there are some concerns about that perhaps on
6 behalf, rightly so, of police officers who are in
7 substance exonerated by the Board.
8 The other thing I would say about the good faith
9 error, and, again, it seems like this has gone away,
10 but the other point that I would make is if there is
11 some notion of good faith error, I guarantee you
12 that police officer after police officer will come
13 in in a CCRB interview and will have a very good
14 explanation as to why whatever they might have done
15 wrong was done in good faith. And so I offer that
16 to further buttress the point that I think you have
17 arrived at, which you are not going to do that.
18 The final thing I would say is on the
19 reconsideration option. As we have said many times,
20 and I'm not going to repeat it in substance, we
21 oppose what you have done on reconsideration. We
22 will oppose it when we get to the written comments.
23 The one thing that I would say, not to in any way
24 legitimate in my mind at least that option, but
25 there should be a very short time frame for which

1 the Department can request reconsideration. Right
2 now, under your resolution, it's 90 days. I don't
3 believe the proposed reg speaks to a time period.
4 Maybe I missed that. I think it just says the
5 Department can request it. I think that should be a
6 very tight time frame. And I've seen the figures
7 for the last couple of months, the reconsiderations.
8 The numbers look quite substantial to me. I think
9 in February you were already up to 15 percent of
10 your sub-cases have come back with a request for
11 reconsideration and we are only 30 days into the
12 cycle. Where we are 60 days from now in terms of
13 what the percentage is, I don't know. I think you
14 had 20 percent of your subs in December came back
15 from the Department with a request for
16 reconsideration. Those in my mind are very big
17 numbers.
18 CHAIR EMERY: Well, we didn't do reconsideration
19 on all of them.
20 MR. DUNN: No, I understand that. I get that
21 and I am frankly less concerned, Richard, about the
22 prospect that you will change your minds. What I'm
23 more concerned about is, and we said this before,
24 you know, kind of the relationship aspect and what
25 that conveys to the world about the finality and

1 seriousness of what you do. But the other thing
2 more concretely is the time that it adds to the
3 process. Now, to be fair and to be clear, your
4 disposition time has decreased considerably to your
5 credit. But if they have 90 days to come back and
6 ask, you're going to get stuff back on days 60, 75,
7 89. And then you're going to take it seriously, and
8 that might add another 30, 60 days. And all of a
9 sudden, we've tacked on five months to a
10 substantiation that went over to the Department,
11 whereas before you opened this door, APU would have
12 had the case or the Department would have had to
13 take the case and proceed. So that's my practical
14 concern.
15 The other thing which I thought Joe was getting
16 at but maybe I misunderstood this, Richard, is when
17 the Department is duping a case, so if something
18 goes over, it goes to them, it doesn't go to APU,
19 it's instructions or a CD case. And they then come
20 back, and as I understood it, Joe, you were saying
21 on one of the subs allegations they asked you to
22 reconsider. But on the others they were just
23 saying, We're not going to do anything on this.
24 That I believe is a dupe, if that's what you're
25 referring to.

1 MR. PUMA: That's what I'm referring to.
2 MR. DUNN: That's what you're referring to,
3 okay. And I think what I understood you to be
4 saying, which I would encourage you to build into
5 the regs, is a requirement that the Department
6 explain in writing why it's duping a case.
7 CHAIR EMERY: Absolutely. We want to do that.
8 MR. DUNN: Okay. So that's what -- I think you
9 were kind of puzzled, understandably, about the
10 category cases he was talking about.
11 CHAIR EMERY: No. The dupe cases should be
12 handled the same as the Section 2 cases, in my view.
13 MR. DUNN: And I see that, and we see this in
14 this month's report, there's a 20-percent dupe rate
15 last year. And that's still a very big number. And
16 you know, I've been saying this for a long time and
17 I'm not going to repeat the whole thing. I'm just
18 going to say a 20-percent dupe rate in 2014, that's
19 a lot of cases that the new Police Commissioner is
20 saying, I'm not going to pursue, even though you
21 subbed them. And that's a problem.
22 You didn't get to do the regular business,
23 Richard. I don't know if you're going to have a
24 meeting continuing after this or --
25 CHAIR EMERY: Yeah, we are.

MR. DUNN: So I see things in the numbers. I guess there are just a couple things I will say and then I'll sit down so you can continue.

First, there is the time story today about the drop in complaints and the disparity between the complaints coming from the Department as opposed to complaints coming directly to you. I don't know if you're going to discuss that in the meeting tonight.

CHAIR EMERY: We're not.

MR. DUNN: You're not, okay. Well, I will just say with a thousand cases not coming from the Department last year as compared to the year before, when I look at that, it feels to me like there's got to be a lot more explanation of what happened to all those cases. And maybe the Department is going to figure it out, but I think you as the CCRB have to get to the bottom of why there's such a significant drop in cases coming from the Department when your intake actually went up in 2014. The second thing --

CHAIR EMERY: It's interesting. We should be clear about that. Our intake went up as compared to 2013 over the second half of 2013. The first half of 2013 is an unfair measurement because we were still hanging over from Sandy and our phones were

1 down for several -- a couple of months into '13. So
2 we're looking at the second half of '13 compared to
3 the second half of '14 and in that period, we went
4 up. But the reality is over the period of '14,
5 month by month, our complaints have come down fairly
6 significantly during the period that IAB's referrals
7 to us came down more significantly, just so we're on
8 the same page.
9 MR. DUNN: Yeah. And I understand the numbers.
10 And what I'm saying and what I hope people on the
11 Board understand is there is an apparent significant
12 disparity in the trend of CCRB complaints in total
13 intake with things coming through the Department.
14 And maybe that's just because people stopped going
15 to the Police Department in 2014 and are coming
16 directly to you. And maybe that's because there are
17 ten precincts out there that have a lot of
18 complaints sitting in a back room that they never
19 sent to IAB, and maybe that's because IAB's got 500
20 cases sitting in a closet they never logged. I
21 don't have any idea. But the numbers are so big,
22 there needs to be some inquiry into that.
23 CHAIR EMERY: I think that's a good subject for
24 the IG. I don't know that we can get to the Police
25 Department to make that investigation. They can.

MR. DUNN: That's a very good suggestion, Richard. Where is Phil? In fact, he should be coming to these meetings.

CHAIR EMERY: Well, he should be. I agree with you.

MR. DUNN: I think Mina can give him a call and suggest to him --

CHAIR EMERY: Why don't you bring him here, Chris?

MR. DUNN: I will do that. And with that, I will sit down. Thank you.

CHAIR EMERY: Thank you, Chris.

Anybody else have anything to say before we continue with the meeting?

(No response.)

CHAIR EMERY: Thank you. Mina, Executive Director's report.

MS. MALIK: Yes. Good evening, everyone. My name is Mina Malik. I'm the Executive Director of the CCRB and I want to thank our hosts here tonight at the Stanley Isaacs Neighborhood Center here in Manhattan for having us here. We're very happy to be here.

I first want to provide you with a highlight from our monthly statistical report and then we'll

1 discuss other matters pertaining to our Agency
2 operations. For a full review of the monthly
3 statistics, I invite you all to please visit our
4 website.
5 In my first month as Executive Director of the
6 CCRB, I have met with executive staff and senior
7 staff and designed a strategy to further reduce the
8 number of old cases in our open docket.
9 So last month, I reported at the end of January
10 that the open docket was 1,767 cases, which was a
11 significant reduction from the 2,699 cases that were
12 pending at the end of January 2014. This month,
13 we've reduced the open docket further by 253 cases,
14 going from 1,767 cases to 1,514 cases. This was a
15 substantial 14-percent reduction in a month.
16 Of the 1,514 cases, 33 percent are awaiting
17 panel review. We have identified 81 cases that are
18 12 months in age or older, and in consultation with
19 the Chair of the Board, I have directed staff to
20 create a special panel of the Board with all 81
21 cases pending panel review that are 12 months or
22 older. The goal is to resolve those cases as soon
23 as possible and to eliminate the possibility of any
24 case being referred to the Police Department beyond
25 the statute of limitations.

1 The second step in the strategy is to further
2 reduce the number of cases in the open docket within
3 the Investigations Division that's headed by Deputy
4 Executive Director -- Acting Deputy Executive
5 Director Jon Darche for Investigations. Last month,
6 I reported that the open docket of the
7 Investigations Division had decreased from
8 1,858 cases in January of 2014 to 961 cases in
9 January of 2015. By the end of February, the open
10 docket has been reduced by another 49 cases to 912.
11 We have focused primarily on cases 12 months
12 or older. At the end of February, we only had 5
13 cases in the Investigations Division that were
14 between 15 to 18 months old and 22 cases that were
15 between 12 to 14 months old. There were 5 cases
16 that were older than 18 months; however, the statute
17 of limitations did not apply and does not apply to
18 those cases as they are on DA hold and the statute
19 of limitation crime exception applies to those
20 cases.
21 With this strategy, the Executive Staff and I
22 are minimizing the number of cases approaching the
23 statute of limitations. We are also creating the
24 conditions for a more effective and
25 efficient-running organization. An analysis of new

1 cases that were received between the time period of
2 August 2014 through February 2015 shows that we have
3 fully investigated 186 cases, and the average number
4 of days to conduct these investigations has been
5 brought down to 96 days. As the docket is further
6 reduced, we expect to continue to make more
7 efficient gains in timeliness and efficiency.
8 As I also stated last month, the preliminary
9 data for the new POD system shows that it is more
10 effective than the former CCRB Team system. The
11 number of days it takes to interview a complainant
12 has decreased from 31 days in January of 2014 to
13 11 days in year-to-date 2015. In year-to-date 2015,
14 approximately 75 percent of complainant interviews
15 were conducted in less than 15 days.
16 I also want to highlight statistics related to
17 the disposition of our cases. First, the percentage
18 of cases that are fully investigated has increased
19 from 44 percent in 2014 to 57 percent. Second,
20 year-to-date, the Board has substantiated 18 percent
21 of full investigations, which is consistent with
22 data from last year when the Board substantiated
23 17 percent of the cases it fully investigated. And
24 third, in January 2015, the discipline rate was 88
25 percent for cases handled by the Police Department

1 Advocate Office. It was 73 percent in 2014.
2 In addition to the statistical information, I
3 also want to update the Board on the recent
4 memoranda in the FINEST message that was issued by
5 the New York City Police Department regarding the
6 court-ordered changes to the Police Department
7 practices and policies related to stop and frisk.
8 And in that FINEST message memorandum, there were
9 several things that were outlined: For example, the
10 UF 250 form must be revised to include a narrative
11 section where an officer must record the basis for a
12 stop; there has to be a separate explanation
13 regarding why a frisk was conducted; the check box
14 system on the form is to be simplified and improved;
15 and the Department has to adopt new policies
16 ensuring that NYPD supervisors review the
17 constitutionality of the stops; there must be
18 changes to the process for imposing discipline
19 following substantiated cases by our agency; tracking
20 and investigating civilian complaints of racial
21 profiling; and they also mention a Body-Warn Cameras
22 Pilot Project in which a body camera must be worn
23 for a 1-year period by officers on patrol in one
24 precinct per borough, specifically the precinct with
25 the highest number of stops during 2012; and

1 finally, with respect to racial profiling, this
2 FINEST message memorandum revoked the patrol guide,
3 Section 203-25 that was implemented in August of
4 2013.
5 And finally, with respect to the Board
6 discussion about the rule amendments, I invite the
7 Board to think about the matters that are important
8 to bringing the uniformity and consistency regarding
9 our Agency's procedure.
10 And I want to thank Deputy Executive Director of
11 Strategic Planning and Policy Marcos Soler and
12 Acting Deputy Executive Director of Investigations
13 Jonathan Darche for working on the rules and
14 proposing new rules to the Board. The staff and I
15 look forward to working with you and assisting you
16 in this process. Thank you.
17 CHAIR EMERY: Committee reports. Janette, you
18 want to say some things about --
19 MS. CORTES-GOMEZ: I do have a Mediation report,
20 thanks to the work of Lisa Cohen, who unfortunately
21 could not make it today. Again, I'm sorry to bother
22 you all with stats but here we go.
23 In 2014, the CCRB mediated 198 complaints, 182
24 of them successfully for a mediation success rate of
25 92 percent. In addition, 205 complaints were closed

as mediation attempted. These complaints involved 454 civilians and 486 members of the NYPD.

This month, we would like to highlight some of the categories of the FADO allegations that were closed as mediated or mediation attempted. Each FADO category is subdivided into various types of allegations that can be pleaded. In 2014, CCRB successfully mediated 20 force allegations. Categories of force allegations can range from the use of nonlethal restraining device to handcuffs being too tight to the use of pepper spray to gun pointing. The vast majority of force allegations is in the physical force category and are primarily allegations of being pulled, pushed or shoved. 42 force allegations were closed as mediation attempted. 41 allegations were in physical force category and one was other.

Abuse of authority. In 2014, CCRB successfully mediated 239 abuse of authority allegations in 15 different categories. In addition, 248 allegations in 17 categories were closed as mediation attempted. Commonly cited abuse of authority allegations included stop, questioned, frisked, vehicle stop and search, threat of arrest and failure to provide name and shield.

1 Discourtesy. In 2014, there were 103
2 allegations of discourtesy mediated which fell into
3 three different categories; word, gesture and
4 demeanor. Discourtesy allegations closed as
5 mediation attempted fell into for categories; word,
6 gesture, demeanor, tone and action, totaling 115
7 allegations. Discourtesy by word is overwhelming
8 the most frequent discourtesies allegation.
9 Offensive language. In 2014, 15 allegations of
10 offensive language were successfully mediated.
11 These allegations fell into five categories; race,
12 ethnicity, sexual orientation, physical disability
13 and other. 19 offensive language allegations also
14 in five categories were closed as mediation
15 attempted; race, ethnicity, sex, sexual orientation
16 and other.
17 For 2015, we only have stats obviously for
18 January and February. In those two months, the
19 Agency successfully mediated 36 complaints and
20 closed 45 complaints as mediation attempted.
21 In 2015, there were four allegations of force
22 which fell into two categories; 3 allegations were
23 physical force, 1 was a hit against an inanimate
24 object. 5 force allegations were closed as
25 mediation attempted, all of them in the physical

1 force category.
2 44 allegations of abuse of authority were
3 mediated in 2015. These allegations fell into 11
4 categories. 42 abuse of authority allegations in 9
5 categories were closed as mediation attempted. As
6 in 2014, complaints alleging abuse of authority or
7 stop and threat of arrest were most common. 19
8 allegations of discourtesy were mediated and 34
9 closed as mediation attempted. All of the
10 allegations are from word and action.
11 One allegation of offensive language,
12 specifically with respect to race, was mediated in
13 2015. 3 allegations were closed as mediation
14 attempted, 1 for race and 2 for ethnicity. That is
15 the report for the Mediation Subcommittee.
16 CHAIR EMERY: Thank you. Outreach or -- do you
17 want to say something?
18 BISHOP TAYLOR: Yeah. For February 2015, we
19 completed, the Outreach Committee, completed 23
20 presentations. One of those events was to the
21 Queens District Council Meeting of Resident
22 Association Presidents, which is made up of all the
23 presidents of housing developments in the Borough of
24 Queens. Two of those meetings were with precinct
25 community council. And there are 29 events that

we're in the middle of executing for March. It's important to note that the next Board Meeting, April, will be held at Staten Island Borough Hall. We're still working on a location for May, but the June meeting will be held at the Lower East Side Girls' Club. There was testimony before the City Council Finance Division. Executives from the agency appeared before the City Council Finance Division in regards to the agency's budget. The City Council indicated that they support our efforts and will try to facilitate our CCRB broader initiative in the five boroughs.

The CCRB in the Boroughs initiative has been restarted with sites identified in all outer boroughs. Dates for these off-site locations have already been added to the investigative calendar, with the first dates slated for late March.

We're continuing our outreach to NYCHA and the team will continue meeting with the Queens District Council of Resident Association Presidents. And we're hoping that this outreach will result in more advertisement of what the CCRB does and its availability to the community and better attendance in our outer-borough meetings.

That's the Outreach report.

MR. PUMA: I have a very brief Training Subcommittee update. The subcommittee composed of Board Members and Staff has still continued to meet. I co-chair along with Commissioner Cortes-Gomez. And within the month, the last month, we did confirm that the mayor's preliminary budget included head count additions that actually applied for the current fiscal year, and so in fact for the last quarter of the fiscal year, and so now we are looking to post those three positions very soon to create a new training unit which is, I think, a very welcome addition to the staff and to just the day-to-day operations of the Agency to ensure the continued quality of our investigations and promote more and better management skills amongst the many supervisors and executive staff, and also work with the Board on issues on which we could benefit from some training as well.

So that's my brief report.

CHAIR EMERY: I think this training expansion is a big deal for the Agency. People in this agency have been thirsting for training for a long time and it's been a haphazard process where people, Roger Smith, in particular, but others have worked very hard to provide training on a shoestring with all

the other duties that each of them has. And so this is a big new qualitatively different approach to systematic training for not only investigators but really every expertise in the agency. And I'm very excited about it. I think it's a big deal.

With that, there's old business, new business, any other commentary, before we close the public meeting and go into Executive Session?

(No response.)

CHAIR EMERY: Can we have a motion to go into Executive Session?

MS. CORTES-GOMEZ: I'll make that motion.

CHAIR EMERY: Second?

BISHOP TAYLOR: Second.

CHAIR EMERY: Everybody in favor? Anybody opposed?

(No response.)

CHAIR EMERY: Thank you all for coming. We are adjourned for the Public Session.

(Whereupon, the meeting concluded at 8:55 p.m.)

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

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 March 2015.

_____

DANIELLE CAVANAGH

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