

Public Board Meeting
April 9, 2014

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Public Board Meeting
of the Civilian Complaint Review Board
Wednesday, April 9, 2014
10:05 a.m.
100 Church Street, 10th Floor
New York, New York 10007

BISHOP MITCHELL G. TAYLOR, ACTING CHAIR
TRACY CATAPANO-FOX, ESQ., EXECUTIVE DIRECTOR

PUBLIC MEETING AGENDA:

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1. Call to Order
2. Adoption of the Minutes
3. Report from Chair
4. Report from Executive Director
5. Committee Reports
6. Old Business
7. New Business
8. Public Comment

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1 BOARD MEMBERS PRESENT WERE:

2 Tosano Simonetti

3 Youngik Yoon, Esq.

4 Janette Cortes-Gomez, Esq.

5 Alphonzo Grant, Jr., Esq.

6 David G. Liston, Esq.

7 Jules A. Martin, Esq.

8 Rudolph Landin, Esq.

9 James Donlon, Esq.

10 Dr. Mohammed Khalid

11 Daniel M. Gitner, Esq.

12 Joseph A. Puma

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1 BISHOP MITCHELL G. TAYLOR: Good morning,
2 everyone. We are opening now the Public Meeting for
3 the Civilian Complaint Review Board. And so we're
4 calling the meeting to order now.

5 The first order of business is the adoption of
6 last month's minutes. And if everyone had a chance
7 to review those minutes and concur that they're
8 accurate, someone can make a motion to accept them.

9 MR. DANIEL M. GITNER: Move to accept.

10 BISHOP TAYLOR: Dan Gitner.

11 MR. JAMES DONLON: Second.

12 BISHOP TAYLOR: James Donlon. All in favor.

13 (Chorus of Ayes.)

14 MR. TOSANO SIMONETTI: I abstain.

15 MS. JANETTE CORTES-GOMEZ: As do I.

16 BISHOP TAYLOR: Janette and Tony abstain.

17 Now we're going to have -- in the absence of our
18 chair, of a chair of the Agency, we have formed, as
19 you know, an Executive Committee made up of Jules
20 Martin, David Liston and myself. And so we do not
21 have an official chair but we are managing and
22 handling all of the relative business that the chair
23 would do until a chair is appointed.

24 We are glad to be back in our new offices. This
25 is the first meeting -- public meeting in our new

1 place at 100 Church, and I hope that the Staff
2 enjoyed the coffee and orange juice and things that
3 we provided just to kind of celebrate and christen
4 our new space and place of work. And so we're
5 excited about that.

6 Our meeting with the Police Commissioner, one of
7 the things that we requested was to have some future
8 follow-ups with smaller teams from PD with our teams
9 here to move the agenda on some of the bottlenecks
10 in our work together. I must say that the
11 Investigations Department in the requests thereof
12 have been moving much more quickly than in the past.
13 And I think that that is accredited to our meeting
14 with the Commissioner and his desire to assist us in
15 making sure that we have the tools we need to do our
16 work.

17 We also have a meeting set up with Susan Herman
18 to talk more about mediation and how we could do it
19 better, increase it, promote it, tweak it, if
20 necessary.

21 So the things that we talked about with the PD,
22 they're moving forward, they're advancing. And so
23 I'm encouraged, I'm excited. I'm looking at a lot
24 of articles that are being circulated about the CCRB
25 in referring to us as "the expanded" or "the

1 enlarged CCRB". I guess that's a reference to our
2 APU Unit, which is doing a fabulous job. So it's an
3 exciting time. And so we're glad that things are
4 moving in the direction that it's moving.

5 So at this time, we're going to have the report
6 from the Executive Director.

7 MS. TRACY CATAPANO-FOX: Thank you, Bishop.

8 BISHOP TAYLOR: You're welcome.

9 MS. CATAPANO-FOX: Good morning, everyone.
10 Welcome to 100 Church Street. I have to thank the
11 Board for its tireless efforts to help us get to
12 this location. And it is a beautiful, professional
13 and really excellent place for all of us to work in.
14 I can't thank the staff enough. Everybody worked
15 really hard to make sure that this move was pretty
16 much seamless, and I really appreciate all your hard
17 work and how great you've been. So I thank you for
18 that as well.

19 This month, the CCRB received 453 complaints in
20 March of 2014. This is 123 fewer complaints than
21 were received in the same time period from 2013,
22 when the Agency received 576 complaints. During the
23 first three months of 2014, the Agency received
24 1,333 complaints. This was 301 more complaints than
25 in the same period of 2013 when the CCRB received

1 1,032 complaints.

2 The Executive Committee of the Board has asked
3 me to address the increase in complaint activity and
4 compare statistics for pre-Hurricane-Sandy Agency
5 activity and post-Hurricane-Sandy Agency activity.
6 You'll see in your packet that we have a number of
7 charts that address some of these issues and to show
8 you the numbers. And what you will see is that
9 there has been, in terms of the different charts, we
10 break it down in terms of overall complaint
11 activity. Complaint activity is still down. It
12 is -- you'll see from Charts 1 and 2 that it's down
13 from the high numbers, or the numbers we had in 2012
14 before the storm.

15 You will see that complaints to the Police
16 Department have essentially gone back to where they
17 were. So the complaints that the Police Department
18 receives and sends to us has essentially stayed the
19 same. You'll also see that the online complaint
20 system, the numbers have stayed the same as well.
21 There hasn't been -- it dropped off obviously during
22 this month where we were not in our office and in
23 full capacity. But they have pretty much come back
24 to the original numbers.

25 Where you will see a difference is the voice

1 calls, the voice mail complaints that we received.
2 We've been aware that there was an issue after Sandy
3 with Rector Street in terms of Verizon and the
4 different companies trying to get us back to
5 operational phone systems. We've been working on
6 that for months. We know that there have been still
7 issues at that location and that we see that already
8 at 100 Church the numbers have gone back.

9 So we will be able to -- we'll be able to give
10 you better statistics in the next few months with
11 regard to seeing where the complaints are, but we do
12 recognize that there was an issue with regard to the
13 overnight voice mail systems and the phone systems
14 that came in. And that can attribute to some of the
15 numbers, the decrease in the numbers.

16 The Board -- in March, the Board closed 515
17 cases. For the year, the Board closed 1,043 cases.
18 In March, there were -- the Board closed 221 full
19 investigations, 14 cases were mediated, and 280
20 cases had other dispositions. In the first three
21 months of this year, the Board closed 416 full
22 investigations. This includes 63 substantiated
23 cases and mediated 30 cases. Year-to-date, our
24 substantiation rate is 15 percent of fully
25 investigated cases.

1 Our report, as you'll see within the packet, it
2 still includes two different forms of reporting
3 dispositions. There's a report that talks about
4 truncation rate and a report that talks about case
5 resolution rate.

6 From January to March, the updated truncation
7 rate, which excludes cases closed as complaint
8 withdrawn, is 55 percent. In the same period of
9 that time, the rate was 62 percent. From January to
10 March 2014, our case resolution rate was 42 percent,
11 and in that same period of 2013, the rate was 27
12 percent.

13 Now, we're still reporting in the two different
14 ways because we're hoping that the Operations
15 Committee can perhaps meet next month to talk about
16 how we want to proceed in the future with regard to
17 reporting cases as truncated or reporting them as
18 case resolution rate. So we'll be able to in next
19 month's meeting -- I know, Tony, you wanted, as
20 you've been a strong supporter in terms of looking
21 at these stats and figuring out how you'd want to
22 best report them, maybe in May we can schedule an
23 Operations Meeting and go through that. So that's
24 the reason why we have the two different reports.

25 By data of the report, 95 percent of our open

1 cases stem from complaints filed within the last
2 year and 63 percent were filed in the last four
3 months. Of the open cases, 449 were awaiting Panel
4 review, or 17 percent of the docket. 1,966 were
5 being investigated, which is 73 percent of the
6 docket. And 275 cases were in the Mediation
7 Program, or 10 percent of the docket.

8 We do want to correct that in February we
9 reported the docket as 2,599 cases. It was actually
10 2,724. We have addressed this error and reflected
11 and corrected the February docket to reflect the
12 actual values. So you'll see those reports also in
13 the packet.

14 By date of incident, we have 21 cases in our
15 open docket that are over 18 months. This is
16 .5 percent of our open docket. But out of these 21
17 cases, seven cases in the docket are in the docket
18 of the Investigations Division. In 6 of those
19 cases, the statute of limitations does not apply
20 because the exception under Public Officers Law 75
21 applies for those cases. The breakdown of the 7
22 cases is as follows: 4 cases are on DA hold, 1 case
23 was reopened at the request of the complainant, and
24 2 cases were filed months after the date of
25 incident.

1 Out of the 21 cases over 18 months, 14 are in
2 Panel review. The crime exception to the statute of
3 limitations applies in 5 of those cases. And the
4 breakdown of those 14 cases is as follows: 4 cases
5 are now closed, they were in mediation, but they've
6 been closed; 3 cases were late because the Board has
7 requested further work on those cases; 3 cases were
8 late because of investigation delays; 1 case was
9 late because it was a complex case with the crime
10 exception applying; and then 3 cases were filed
11 months after the date of the incident.

12 In February of 2014, the NYPD closed 7
13 substantiated cases involving 7 officers. All 7 of
14 those officers received instructions; and,
15 therefore, the disciplinary action rate was 100
16 percent for that month, 79 percent for year-to-date.
17 And year-to-date, the NYPD's decline-to-prosecute
18 rate is 21 percent.

19 In March of 2014, the Board recommended charges
20 in 22 cases. These 22 cases have been added to the
21 APU docket, now leaving an open docket of 175 cases.
22 In 3 of the cases, the Police Commissioner has
23 modified guilty pleas and we are now awaiting formal
24 closure of those cases. In 7 other cases, the
25 guilty pleas have been entered and are awaiting

1 approval from the Police Commissioner. In 2 cases,
2 the trial verdict has been rendered and we're
3 awaiting approval by the Police Commissioner. 10
4 cases have gone to trial and we're awaiting
5 verdicts. 4 trials have been commenced but still
6 have not been completed. 36 trials are scheduled
7 and 18 cases are scheduled for calendaring for court
8 appearance and 67 cases are awaiting their initial
9 court appearance after the charges have been served.
10 Charges were filed in 7 cases and 21 cases were
11 awaiting the filing of charges.

12 One of the issues that was brought up last month
13 was a request to find out whether or not we have a
14 higher inventory of cases at DAO than cases that
15 they are sending back to us. I'm sure, Mr. Gitner,
16 you're going to notice that there were only 7 cases
17 released to us this month.

18 We did an internal search and based upon our
19 numbers, we find that there's 162 cases that appear
20 open that are in DAO's docket; however, I am working
21 with Deputy Commissioner Schwartz to make sure that
22 those cases have not been closed and we just weren't
23 notified or that there's been some other disposition.
24 So by next month, we will have a more accurate report
25 of what DAO's docket is and where are those cases

1 when those cases were voted by the Panels. In our
2 reports, we give you a chart that tells you those
3 cases out of the 7. In the future, we will also
4 report when the Panel, when the Board, voted those
5 cases out.

6 MR. GITNER: I think that's great. Thank you
7 for paying attention to that.

8 MS. CATAPANO-FOX: Other than that, I think
9 that's my report. Thank you very much. Yes?

10 MR. SIMONETTI: In looking at the cases over
11 18 months, I notice 4 are still on DA hold. And I
12 know that's always been a concern, you know? And I
13 know we should be visiting that again and to try to
14 come to some resolution or try to develop a policy
15 that we feel that after -- if they're
16 procrastinating and just sitting on these cases and
17 not telling us about them or no one seems to be
18 doing any work on them, I think we should have a
19 policy where we tell them, "Listen, we're going to
20 proceed with the case," and we should go ahead and
21 continue the investigation on the case.

22 But in analyzing these four cases, one is a
23 long-term case that was a shooting resulting in the
24 death of a female and that case is still on DA hold,
25 and understandably so. Another one of those cases,

1 my understanding is there's going to be a trial very
2 shortly, probably next week, and that case will be
3 resolved. That should be the resolution of that
4 case. The third one is the Galati case, and
5 we're waiting to hear back from the Chief of
6 Department on exactly what's going to be happening
7 with that case. The fourth case, interesting case,
8 the officer was indicted for his actions in
9 connection with that case. So that case is
10 literally -- has been -- should be removed from
11 our docket.

12 I'll tell you what's encouraging about -- as I
13 look at some of the stats. At the beginning of
14 2014, you had 107 cases that were 14 months and
15 older. Okay. And what's interesting, that number's
16 down to 52 today. It's been cut in half. And I think
17 that's -- a lot of that has to do with the program
18 that you and Denis had instituted with the intake to
19 expedite those cases. And of those cases, 14 are on
20 review of the 52; 14 were late reports over 8
21 months; and 4, as I said, were on DA hold.

22 So it looks like we're starting to put a good
23 dent in these old cases and getting them off our
24 docket, which is important that we do. And I think
25 with the decrease in the caseload, the number of

1 cases coming in, we should be able to more
2 effectively deal with some of those other issues.
3 But I'd still like to see us discuss and talk about
4 what we can do with DA hold cases because I think we
5 came close many years ago to trying to get it
6 resolved by telling -- after we were telling
7 investigators they had to call the DA every month
8 and find out what the status of their hold was. And
9 if in their mind and with the managers and in
10 consultation with the Chief of Investigations that
11 some decision be rendered, that we're going to
12 proceed and go forward with the case. So I think we
13 should continue with that discussion and come to
14 some resolution.

15 MS. CATAPANO-FOX: Thank you, Mr. Simonetti. I
16 will say I have to thank the team managers for
17 staying on top of their cases and they have a
18 meeting regularly with Denis and I to go over their
19 dockets and make sure that we're all moving forward,
20 especially on the oldest cases. I have to thank
21 Jayne Cifuni and Nina Mickens, the Supervisors of
22 the Intake Department, for training their new staff
23 and making sure that they're moving those cases
24 forward as well. So I appreciate the hard work of
25 all of those teams. I have to thank Sarah Peterson

1 for getting the reports to us so timely and doing
2 the statistics for us on these. And I also want to
3 mention -- I should've mentioned before -- we had a
4 bit of a flood. You know, I don't know if
5 pestilence and famine are next, but we did have a
6 flood over one of the weekends. And I have to thank
7 the IT team, Sorin and Sarah. I have to especially
8 thank Brian Connell and Sheshe for making sure
9 that the office -- this area was completely flooded
10 two weeks ago and you would not know it. So it's a
11 testament to how hard they worked around the clock to
12 make sure that this happened and that we were able to
13 meet today. So I want to thank them for that. And I
14 appreciate how some of our units, Denise's CMU; HR,
15 Josie's HR unit; and IT and Operations were all moved
16 and that they handled the move very well. And, again,
17 we're moving forward, so I really appreciate their hard
18 work.

19 MR. SIMONETTI: I guess I'll wait for under old
20 business and then ask if other Panel Members, other Board
21 Members, have any comments on DA holds, you know, because
22 I'd like to hear from other people about that.

23 MR. CATAPANO-FOX: Thank you, Tony.

24 MR. GITNER: I have a question about the report,
25 if now is a good time. It's the report page. It's

1 not numbered. It starts with "Officers against whom
2 the CCRB substantiate allegations." I asked the
3 question about a similar page last month. It says
4 that the Board substantiated 29 cases involving 46
5 identified subject officers. And last month, I
6 think we were told that in the last five years or so
7 the typical rate has been -- that we've been, I
8 think, recommending charges in 66 percent of the
9 cases. I think that's -- is my memory right?

10 MS. CATAPANO-FOX: Yes.

11 MR. GITNER: It's hard to -- I had to sort of
12 count here. I could be wrong. But as I read this,
13 we're recommending charges again this month, as we
14 did last month, in many more than 66 percent of the
15 cases. And I think the month before that was the
16 same. And so it seems to me that the historical
17 average of 66 percent at least in the last few
18 months is being blown out of the water a little bit.
19 And I'm not saying that's a good or bad thing. It
20 just seems that there's got to be a reason for it.
21 And I'm wondering if anybody has thought about it,
22 or maybe it's because we now have an APU, there are
23 different incentives for different kinds of
24 recommendations, or are we recommending charges for
25 kinds of cases where years ago we would not have?

1 And should this be studied? There doesn't
2 necessarily have to be an answer now; in fact, there
3 probably isn't. And I recognize the statistics
4 could be misleading. There could be a whole host of
5 reasons for this. But I do think it's worth some
6 study by the staff who have more access to the
7 information to try to figure out exactly what's
8 going on over the last few months.

9 MS. CATAPANO-FOX: I can give two possible
10 explanations for it. One, you're correct, this
11 month we subbed with charges 22 out of 29 cases. We
12 have a 76 percent sub rate. What I will say is that
13 Denis and I in meeting with the teams have made a
14 concerted effort to make sure that all older
15 substantiated cases, cases that are 14 to 16 months
16 and older, are being reviewed expeditiously. I'm
17 reviewing those cases. And so proportionately you
18 may be getting an increased number of cases with
19 substantiations in Panels than you might have in the
20 other few months because we started doing this in
21 January, where we took those cases and I started
22 reviewing them and getting them out quicker. So I
23 think that there's been an increased number out of
24 your proportion of cases that are substantiations
25 just because we're moving those cases along. I

1 would say in another quarter, because we really have
2 gone through a significant portion of those cases,
3 you might see less of an increase because we've been
4 able to resolve and close a lot of that bulk of
5 cases that were sitting there with substantiations.
6 So the numbers may go down because I think the
7 Panels will be more equal in terms of unsubs and
8 subs. But --

9 MR. GITNER: I suppose that could be one
10 explanation. But it does seem that -- and just from
11 these numbers -- that the Panels are not just
12 substantiating whatever percentage of cases but that
13 they're recommending charges in a significantly
14 higher percentage of the cases that are
15 substantiated. Last month, I think it was 90
16 percent. I don't -- my head does not allow me to
17 figure out the percentage from this month on my own.
18 But it's definitely higher than 66 percent, I think.

19 MS. CATAPANO-FOX: It was 76 percent.

20 MR. GITNER: And the month before that, I think,
21 was higher. And so, again, it could just be that's
22 because the nature of the cases the last three
23 months. But there could be other statistical or
24 systemic reasons and I personally think it's worth
25 looking at.

1 MR. SIMONETTI: Yeah, Dan, I looked at those
2 numbers, too, and I was -- my concern was it seems
3 to coincide with the implementation of the APU.

4 MR. GITNER: Exactly.

5 MR. SIMONETTI: And I'm just wondering if
6 there's some connection between the two, which
7 could be. We certainly have to look into that and
8 see if there is. Just because now we have the
9 responsibility of the prosecution of those cases, we
10 don't up the ante --

11 MR. GITNER: Right.

12 MR. SIMONETTI: -- and prefer more charges.

13 MR. GITNER: Right. My concern is if that is a
14 reason, I do think it would be unfair if that's why
15 we are upping the ante, to borrow that term; and
16 also, it would seem that we would be pushing more
17 cases to the APU, which would unduly burden them,
18 whereas when the APU was created, I think it was
19 probably expected that given the historical average,
20 the numbers would remain at a certain level and it
21 looks like they may be going up. Again, I'm not
22 saying anything's good or bad but it's worth study
23 so we can understand it and react to it.

24 BISHOP TAYLOR: Great. Excellent.

25 So we're going to have now committee meetings --

1 committee reports, rather. I guess we'll start in
2 alphabetical order, APU.

3 MR. LISTON: Sure. Thank you. The Memorandum
4 of Understanding that created the APU gave it the
5 power to prosecute substantiated cases in which the
6 Board recommended charges, has a provision in it
7 pursuant to which we, the CCRB, are to make reports
8 quarterly to the NYPD regarding the status of the
9 cases that we are prosecuting. And the first
10 quarterly report for 2014 is due. We are in the
11 process of preparing that report. We are
12 circulating to the Board a draft report. Once we
13 get the okay from the Board and any comments or
14 proposed edits, we intend to forward that report to
15 the Police Commissioner, correct?

16 MS. CATAPANO-FOX: Yes.

17 MR. LISTON: And we also intend to make the
18 report public at that point. And other than that,
19 and Dan can speak to the Investigations Committee, but
20 suffice to say he and I remain in touch and look forward
21 to having a joint meeting shortly. That's my report.

22 BISHOP TAYLOR: Excellent Any questions for Dave
23 Liston on APU?

24 (No response.)

25 BISHOP TAYLOR: All right.

1 That's a good segue into Dan, Investigations.

2 MR. GITNER: Nothing new to report other than
3 Mr. Liston and I had some informal conversations and
4 we have sort of an informal agenda of a few items
5 that we think are worth talking about that effect
6 both the Investigations and potential issues related
7 to the APU.

8 BISHOP TAYLOR: Excellent. Mediation.

9 MR. JULES A. MARTIN: Lisa.

10 MS. LISA GRACE COHEN: I will be giving the
11 Mediation report this month. Thank you. The CCRB
12 has always had three consistent goals regarding the
13 Mediation Program, to grow the program, to process
14 cases efficiently and to provide a mediation
15 alternative to investigation that is effective in
16 creating understanding between police officers and
17 the communities they serve.

18 In order to grow the program, we assess the
19 following: The rate at which mediation is offered
20 to civilians, the rate at which mediation is
21 accepted by civilians, the rate at which officers
22 accept mediation, and the pool of cases that are
23 eligible and suitable for mediation.

24 The CCRB, unique among other police oversight
25 mechanisms in New York, is a complainant-driven

1 process. When a case is eligible and suitable for
2 mediation, the investigator informs the complainant
3 about both the mediation and investigation options.
4 Investigators stress that mediations are
5 non-disciplinary, voluntary and confidential. The
6 rate at which investigators offer mediation is
7 year-to-date at an historical high, 68 percent. The
8 average offering rate for the years 2009 to 2013 was
9 53 percent. The complainant then has the choice
10 whether to participate in the mediation or have the
11 case investigated. Year-to-date, our complainant
12 acceptance rate is 49 percent, which is 5 percentage
13 points lower than the 5-year average of 54 percent.
14 However, on a monthly basis, the acceptance rate has
15 increased from an average of 51 cases per month in
16 2013 to 58 cases per month in year-to-date 2014,
17 indicating that we are headed in the right
18 direction. Taken together, the increase in the
19 offering rate and the decrease in the acceptance
20 rate, tells us that we need to focus more on
21 investigator training and civilian outreach.

22 The next part of the process is a review of the
23 case by the Mediation Unit and the ADR Panel of
24 the Board for eligibility and suitability.
25 Generally speaking, a case is not eligible for

1 mediation if there is an allegation of physical
2 injury or property damage or if the allegations
3 raised by the complainant arose from an underlying
4 arrest. A case may not be suitable if the
5 complainant is suing the City and the suit relates
6 to the complaint filed with the CCRB. Year-to-date,
7 of the complaints received by the CCRB, 41 percent
8 were eligible and suitable for mediation. This
9 number has remained relatively stable and is
10 consistent with the 5-year average of about
11 40 percent. Another assessment is made by the
12 Department Advocates Office of the Police Department
13 for their determinations of the officers'
14 suitability to participate in mediation.
15 Year-to-date, the DAO has not rejected any officers.
16 Over the last five years, this number has been
17 steadily declining from 11 in 2009 to 2 in 2013.

18 The next step in the process is to offer the
19 mediation to the subject officers. Our current
20 officer acceptance rate is 79 percent, a significant
21 increase over the 2008 rate, which was below
22 70 percent. Our assessment of case processing
23 starts by looking at how long it takes to process a
24 case. In the first quarter of 2014, the average
25 number of days from the date the incident was

1 reported to the date the mediation session was
2 conducted was 180 days, which was a decrease by 31
3 percent compared with 2013 when the average number
4 of days was 274. We believe that the unprecedented
5 274-day case-processing time in 2013 was due in
6 large part to a significant turnover in personnel.
7 With the addition of another mediation coordinator
8 last year, we believe we can reduce completion time
9 to below the 6-month mark.

10 We have also reviewed the way our mediation
11 cases are processed and are working with the
12 Department to implement a new processing method that
13 reorders the way cases are approved, which should
14 significantly reduce the case-processing time. In
15 order to assess the effectiveness of the program,
16 the CCRB conducted a review of the Mediation Program
17 and its effects on deterring additional complaints.
18 The resulting studies found that officers who
19 accepted mediation were less likely to receive
20 another complaint. The Policy Unit is planning to
21 conduct a follow-up study.

22 Another indicator of effectiveness is the
23 success rate of the program. A mediation is
24 considered successful when both parties have
25 articulated that the mediation session has addressed

1 their concerns and the case is closed as mediated.
2 2014 year-to-date, the mediation success rate is
3 93 percent, which is consistent with a 5-year
4 average of about 92 percent. The CCRB also utilizes
5 a post-mediation satisfaction survey given to both
6 officers and civilians to assess the success of our
7 program. The survey results show a great deal of
8 satisfaction by civilians and officers with both the
9 process and the outcome of the case. And I pardon
10 the statistics, but 85 percent of civilians and 91
11 percent of officers were satisfied with the outcome;
12 90 percent of civilians and 93 percent of officers
13 were satisfied with their mediation session; 87
14 percent of civilians and 90 percent of officers
15 would recommend mediation to others; and 98 percent
16 of civilians and 97 percent of officers felt that
17 they had had an opportunity to explain their point
18 of view.

19 Going forward, the CCRB remains committed to its
20 Mediation Program and to addressing challenges. As
21 Commissioner Taylor said, next week, staff and Board
22 Members are meeting with Deputy Commissioner of
23 Collaborative Policing Susan Herman to discuss ways
24 in which the CCRB can work with the Department to
25 increase civilians' and officers' knowledge of an

1 accessibility to the Mediation Program. A detailed
2 description of the Mediation Program is given in
3 every Outreach event and Mediation staff are often
4 participants. We have implemented weekly
5 investigative training and have recently conducted a
6 mediator refresher course. We believe that these
7 efforts will help to effectively and efficiently
8 grow the Mediation Program and thereby increase
9 communication and understanding between police
10 officers and the communities they serve. Thank you.

11 BISHOP TAYLOR: Thank you so much. Wow. Tony.

12 MR. SIMONETTI: I want to thank you for sending
13 me that list of cases that are eligible for
14 mediation and those that are not. It's quite an
15 extensive list and if you haven't seen it in a
16 while, I got to kind of remind myself what's on
17 there and what cases are not eligible. So I think
18 it's worth the while if we circularize that to the
19 whole Board.

20 MS. COHEN: Sure.

21 MR. SIMONETTI: And I would like to suggest the
22 ADR Committee and particularly the Operations
23 Committee meeting next month, before next month's
24 meeting, that we put that on as an agenda item. So
25 if people get an opportunity to look at the list,

1 because there are cases that are on the prohibitive
2 list that I think we could include in Mediation.
3 And I think if we took a look at that, maybe, and
4 then we could come up with some ideas to try to
5 expand the program.

6 And I was wondering, Tracy, in your meeting with
7 the First Vice President of PBA and their attorney,
8 did mediation come up as a discussion issue?

9 MS. CATAPANO-FOX: It did and they have -- they
10 always have been very supportive of it, and I have
11 to thank our Director of Mediation, Lisa Cohen, for
12 working with them to have a positive and growing
13 program with the officers. They have actually been
14 very interested in finding ways to also work with
15 us. We want to do some more outreach in terms of
16 discussing mediation to the civilians and with the
17 police officers to encourage them at roll calls and
18 other opportunities, and they have agreed to work
19 with us. And I know that the ADR Committee and Lisa
20 have been working to get the Detectives Unit more
21 involved as well, because although they have a small
22 number of our cases, percentage-wise they are not as
23 receptive to mediation as they might be. And I
24 think in the future there's been a showing by the
25 Police Commissioner and his deputies that they are

1 going to work hard to try to increase those numbers
2 as well.

3 BISHOP TAYLOR: Excellent.

4 MR. MARTIN: I would like to thank Lisa for a
5 wonderful report, very comprehensive, very
6 informative. Thank you very much.

7 MR. LISTON: Agreed.

8 BISHOP TAYLOR: I want to second that.

9 MS. COHEN: My pleasure.

10 BISHOP TAYLOR: Mediation is such a valuable
11 tool.

12 We have now after Mediation, we have a Personnel
13 Committee. I'm not sure if you guys remember,
14 before Dan resigned as chair, he appointed a
15 Personnel Committee to look at personnel issues and
16 Al Grant was the chair of that committee. I think,
17 Tony, you're on that committee. Is there anybody
18 else on that Personnel Committee here? Were you on
19 that, James?

20 MR. DONLON: No.

21 BISHOP TAYLOR: Do you want to talk a little bit
22 about anything in terms of --

23 MR. ALPHONZO A. GRANT, JR.: Well, we haven't
24 done anything yet. And one of the reasons why was
25 we wanted to have the committee established to begin

1 to put in place some employment procedures for, you
2 know, manual procedures for when employees are
3 leaving; how cases are reviewed; if employees leave
4 under unfavorable circumstances, so to speak, is
5 there a procedure or process in place for looking at
6 their cases, et cetera; and just the manner and the
7 process in which we hire managers or executive level
8 individuals. And the decision was made that we
9 would postpone doing anything until Tracy came on
10 board and was able to get settled and get a full
11 understanding of what's going on. And I think we
12 had more than enough time now, right?

13 (Laughter.)

14 MS. CATAPANO-FOX: I have to thank Mr. Grant.
15 He's been wonderful in terms of helping us and
16 assisting us with getting performance evaluations
17 together, he's been working with us in terms of
18 setting up standards for hiring and promotional
19 opportunities. And he's always been a great
20 resource to me and the other staff members in terms
21 of moving forward with some of the very important
22 hiring positions we've had and really moving with
23 our employee manual. And I can't thank you enough
24 for your assistance.

25 MR. GRANT, JR.: My pleasure. So we'll continue

1 to formulize that stuff and once we have a report
2 that we can present to the Board of where we are,
3 what the policies and procedures are, we'll do so as
4 soon as possible.

5 BISHOP TAYLOR: Excellent, excellent. Tony.

6 MR. SIMONETTI: Last month while I was in
7 Florida, I was able to watch the meeting via podcast
8 live down in Florida. It was quite an interesting
9 meeting. And then after the meeting ended, I called
10 Tracy and I made a comment. I said, "You know,
11 Tracy, I never realized that being so close, you
12 know, when we're all sitting here, sometimes you
13 don't see through the trees through the forest."
14 And I said, "What was very evident was you were the
15 only female of all the people sitting up here and
16 I've been on the Board over 17 years now and I can
17 tell you we always had three or four female members
18 on the CCRB." So just being cognizant of it, the
19 discussion we had, and I know the Mayor hasn't
20 appointed a Deputy Mayor yet, and it's difficult to
21 get some of these issues over to City Hall and let
22 them know. But in light of the memo that they sent
23 to all Agency heads, you know, talking about these
24 issues and diversification and all those things, I
25 think it's a very important issue. And I think --

1 Al and I had a brief discussion and we have to look
2 at our own personnel here in terms of the
3 supervisory people and the investigative staff and
4 make sure that we apply the diversity fairly across
5 the Board with that. So I hope they get a deputy
6 mayor soon or somebody that we can talk to over at
7 City Hall.

8 BISHOP TAYLOR: Excellent. Excellent.

9 Now we're going to have a report from Outreach.
10 Outreach has been very, very busy and very
11 successful in that business. I want to ask Brian
12 Connell if you can give us an update on that.

13 MR. BRIAN CONNELL: We have had a number of -- a
14 lot of diversity in the Outreach. We've been doing
15 more religious institute -- religious places, we've
16 been doing a lot of schools, we've gone to senior
17 centers, and we're doing many more community boards.
18 I think we've done about 30 community boards, if I'm
19 correct. And we're doing -- we have plans to do
20 another maybe 10 or 13 within the upcoming month.
21 So those are in the evenings, so if anyone's
22 available to attend those, you're welcome.

23 And we have on average about 25 Outreach events
24 per month. We are encouraging our volunteers
25 throughout the Agency to participate. So we're

1 making a lot of strides in doing Outreach.

2 BISHOP TAYLOR: Excellent. Thank you. And just
3 to give you a more concise breakdown, between
4 January and March 2014, there was -- 23 percent were
5 presented at nongovernment organizations;
6 educational institutions, 38 percent; religious
7 institutions, 7 percent; and government
8 institutions, 32 percent. And you know, the
9 Outreach is very important because if we're here and
10 people don't know that we're here, then it doesn't
11 make sense to be here. And I think that getting the
12 message out clearly and to the right populations is
13 very, very important. So thank you so much, Brian,
14 for your work and your efforts in that department.
15 It's been really, really robust.

16 Okay. So now we're moving to -- did I miss any
17 committees? Operations and Reports.

18 MR. DONLON: Reports and recommendations.

19 BISHOP TAYLOR: I'm sorry, James, Reports.

20 MR. DONLON: Marcos Soler and the staff members
21 are working on three possible areas that we can report
22 on. The topics are the use of I-cards by the Police
23 Department when they're trying to -- or when they are
24 in the process of conducting an investigation, they
25 use a so-called I-card to locate -- well, I'm not

1 explaining this very well. An I-card would identify
2 a person of interest in a particular investigation.
3 The typical pattern is the detective would go to the
4 residence or the place where the person is known to
5 frequent and then there's typically an interaction
6 between family members. Frequently the person is
7 not there. But it does generate a significant
8 number of complaints we believe but we're looking
9 into the data on that. And that is one area.

10 The other area is the use of pepper spray. I
11 believe there's a report that was issued many years
12 ago and that's an area which can be updated. And
13 that's also being worked on.

14 And the third is a possible report on searches
15 that occur in the process of car stops. And that
16 also is an area which generates a substantial number
17 of complaints.

18 So those three areas are the ones that are being
19 looked into and hopefully we'll have reports on
20 those in the future.

21 And that's the report. Thank you.

22 BISHOP TAYLOR: Thank you. Any questions for
23 Commissioner Donlon?

24 (No response.)

25 BISHOP TAYLOR: No. Okay, did I get all the

1 committees? Excellent.

2 So now we're moving to old business, and I
3 think, Tony, you wanted to have more conversation
4 about the APU under old business. You want to open
5 that up now?

6 MR. SIMONETTI: And not the APU in particular,
7 more about the DA hold cases.

8 BISHOP TAYLOR: I'm sorry, the DA holds, right.

9 MR. SIMONETTI: The DA hold case. I'd just like
10 to know Board Members' feelings about the DA hold,
11 many of you having been ex-prosecutors, so, you
12 know, you're familiar with what goes on both at the
13 local DA's office and the federal DA's office -- the
14 federal prosecutor's office. So if you can share
15 some of your ideas, and do you think we're on the
16 right track in terms of at some point -- and by the
17 way, it has to be case by case, obviously, and in
18 some cases where we can go ahead and continue with
19 our investigation.

20 BISHOP TAYLOR: So are you kind of suggesting
21 that if there's a DA hold that has been sustained
22 that we take another look and just --

23 MR. SIMONETTI: Well, first I would suggest that
24 we get a process report every month, that the
25 investigator contact the DA, you know, and they got

1 to be a little more definitive in terms of what
2 they're doing with the case. And then at some
3 point, maybe we bring it to the Operations Committee
4 or -- I don't want to form another committee but
5 there are enough committees that could take a look
6 at this and then we make a decision to go ahead and
7 continue with the investigation and come to a
8 conclusion. I think if we do it, the DAs will get
9 the message.

10 MS. CATAPANO-FOX: Tony, I think that Denis has
11 been reporting to Dan Gitner and the Investigations
12 Committee in terms of those cases.

13 MR. GITNER: I think the way we report on this
14 a little while ago, I think the DA hold issue is
15 very complicated, actually, because DA holds can be
16 very legitimate, and not necessarily because of a
17 district attorney being lazy or slowly moving the
18 case. It could be, for example, because the case
19 should move slowly or because the court systems are
20 moving slowly. And a CCRB investigation could
21 actually interfere with an appropriate and proper
22 criminal prosecution. And we have to be very
23 careful in that balance.

24 At the same time, we have our job to do and we
25 want to make sure we do our job without interfering.

1 And there could be times -- I do agree with you.
2 There could be times where a DA hold is
3 illegitimate. And we need to push a little bit and
4 tell the DA, "Look, it's your fault. We're going to
5 move on." I think that those cases are probably
6 fewer than many.

7 But I do agree probably there should be a better
8 system in place whereas if a DA hold is in place for
9 "X" number of months -- and we can decide that right
10 now and you can pick a number, four, five, six --
11 then the investigator or supervisor should be
12 calling the DA and asking for more than a
13 boilerplate request for an extension, asking for,
14 you know, basically saying, "Why?" and asking for a
15 few sentences perhaps in writing. And then perhaps
16 that should go to -- we don't have -- I don't think
17 we should form another committee either. Maybe it
18 goes to a Panel. The Panels are already meeting and
19 in addition to reviewing the whatever number of
20 cases, one thing they review is a report from the
21 investigator that says, "This case has been on hold
22 for 'X' reasons." The DA says, "It should still be
23 on hold for whatever reason. Do you agree or do you
24 want to go forward?" And the Panel can decide and
25 then report back to the DA, "We're going forward, so

1 either move your case or there's going to be
2 interference." And if the DA feels strongly about
3 it, frankly, they'll come back to us and tell us --
4 they'll have a supervisor call in and say, "Please
5 don't," and then we can reassess.

6 But that's how I think things should happen.
7 That would, I think, strike an appropriate balance
8 between not letting cases fall into -- below the
9 statute because of an illegitimate DA hold, at the
10 same time not letting our investigations interfere
11 with an appropriate prosecution when there's no need
12 for such interference.

13 MR. SIMONETTI: If I can relate a case
14 anecdotally about -- that could speak to this point,
15 when I was still active in the Department as the
16 First Deputy Commissioner, all retirements had to
17 come through my office. I was notified because
18 everybody has to give 30 days' notice before their
19 retirement becomes effective. And that gives the
20 Department and all agencies an opportunity to look
21 at that person to see if there's any pending
22 criminal action, to see if there's any serious
23 charges pending within the Department; and lo and
24 behold, we had an officer who put in his papers to
25 vest, not to retire. He had 17 years in the Police

1 Department and he was going to vest. You can vest
2 at 15 years. And it came to my attention that this
3 officer was the same officer that was involved in
4 the Baez case up in the Bronx. Those of you who
5 remember that case, it was a couple of young men
6 tossing around a football, the radio car stops, and
7 an altercation pursues and the officer gets one of
8 the young men in a strangle hold and he dies because
9 of that strangle hold. He was tried at state court.
10 He was exonerated in state court.

11 When it came to our attention, I went to the
12 Police Commissioner. We went to the Mayor and we
13 told him, "Listen, this can be a very embarrassing
14 situation. Here's a guy that's probably going to
15 vest at" -- 30 days, by the way, you can't stop the
16 clock. That 30-day clock runs and at the end of 30
17 days, if you haven't taken any action, he gets his
18 pension, or he gets his vestment. So Mayor Giuliani
19 was the Mayor at the time. Him having been the
20 federal prosecutor in the Southern District, and
21 Mary Jo White was the then current sitting person,
22 he called her up and he -- because we had a hold on
23 the case. We had a DA hold. She was pursuing some
24 civil rights charges against him. And he told her,
25 "Listen, we're going ahead with this case. We're

1 bringing it into the trial room and we're going try
2 him for the strangle hold." AND she says, "You
3 can't be doing that." He said, "Well, I'm telling
4 you we're going to do it. So you can do whatever
5 you like, but we're going in." And we did and he
6 was found guilty of the strangle hold and he was
7 dismissed from the Police Department prior to being
8 able to retire or vest.

9 And that's a really exaggerated case. Most
10 cases, if you look over my years here at the
11 Civilian Complaint Review Board, I bet there are
12 very few cases that are on DA hold that finally wind
13 up in indictments, very few. I mean, this one that
14 we have pending now with the homicide of the female,
15 where police killed the female, that's
16 understandable. That case has got a -- we got to
17 continue on a DA hold. But the other cases in my
18 experience are certainly nowhere near the Baez case
19 and certainly nowhere near a death in custody or a
20 death by police.

21 MR. GITNER: I think the majority of DA hold
22 cases do not involve situations where the criminal
23 prosecution is against the officer. The majority of
24 DA hold cases, I think, involve situations where
25 there's a prosecution against somebody else and one

1 of the officers involved in that case has a
2 complaint against him or her. So I think it's -- I
3 know the Baez case a little bit, and it's a good
4 illustrative case. But probably most cases are a
5 little different. What I would do, I think, is
6 institute a system where we respect the request at
7 least initially every time, 100 percent of the time,
8 let's say for three or four months. And then after
9 three or four months passes, it automatically goes
10 through this process where the investigator makes
11 this phone call we just discussed and it goes to the
12 Panel. And that can happen every month. That's not
13 a severe burden, particularly given the number of
14 cases that are on DA hold. And the Panel can then
15 decide.

16 At some point, it will get closer and closer to
17 the statute of limitations issue and the balance may
18 change according to the Panel, and I think the case
19 should stay with the Panel that initially ruled on
20 it so there's some history of it so they understand
21 the dynamic. That's what I would do. That's the
22 system I would institute.

23 MR. LISTON: If I may?

24 BISHOP TAYLOR: Yes.

25 MR. LISTON: I just want to thank Commissioner

1 Simonetti for raising this important issue. And I
2 want to echo all the points that Commissioner Gitner
3 has made. This is a very serious issue. I used to
4 be a prosecutor. Many of us were prosecutors. So
5 we respect the importance of a DA hold. Prosecuting
6 cases is difficult enough without having to worry
7 about your officers being pulled into other
8 proceedings, making statements that somehow
9 complicate the prosecution of a very serious case.
10 Having said all that, we've got to balance that
11 against the mission that our agency has, which is to
12 investigate these cases and prosecute them. And at
13 some point, it may just be difficult, but we may
14 have to say to a prosecutor, "We're going to go
15 forward," as Commissioner Simonetti suggested, "and
16 you'll just have to deal with this as best you can."

17 I also like the proposal you suggest, Dan.
18 Another variation and another point I want to make
19 is that this also has implications for the APU
20 because we're going to end up getting these cases
21 later, we are getting them much later, if at all,
22 than we otherwise would, and that only makes the job
23 of prosecuting those cases more difficult. Memories
24 fade, witnesses disappear. So this is as much an
25 issue for Investigations as it is for the APU. So

1 either we go with your idea of sending it to a
2 Panel, which has its benefits, or a variation, a
3 joint review by the Investigations Committee and the
4 APU Committee of these particular items. And what's
5 good about that is then you have a more unified
6 approach. If you send it off to different Panels,
7 you might have different reactions. But if we get
8 our committees together and we begin to see trends,
9 we can start to identify a good way forward.
10 Whether it's my way or your way, I think it's good
11 that we give this the attention it needs.

12 MR. GITNER: I think that's a perfectly good
13 idea. Having the consistency is not something I had
14 thought of when I was talking. I think it's a good
15 idea. I wouldn't necessarily want to divest to the
16 Board Members who are not on either of those
17 committees, you know, being involved in these
18 decisions if they wanted to be --

19 MR. LISTON: Sure.

20 MR. GITNER: -- which is one reason I suggested
21 the Panels because then I think it would be evenly
22 spaced out. But either way works for me.

23 MR. LISTON: And I think the way our committees
24 work, if I'm not mistaken, is even if you're not
25 officially on a committee, you could --

1 BISHOP TAYLOR: You could attend.

2 MR. LISTON: Yes, so the more the merrier.

3 BISHOP TAYLOR: Excellent. Doesn't the clock
4 stop when we get a DA hold?

5 MS. CATAPANO-FOX: No.

6 MR. LISTON: That's another problem.

7 MS. CATAPANO-FOX: But in those cases where
8 there's a crime exception --

9 MR. SIMONETTI: It's only if there's a crime
10 exception. But I think it would be hard for us to
11 prosecute those cases too, not being an attorney,
12 but I think it would be hard for us. I think if
13 that went through an appeal course, I don't think it
14 would hold up, that you can go ahead and prosecute
15 the case, just because it was a crime exception. I
16 don't think that would hold up. I mean, that's my
17 own personal feeling.

18 MS. CATAPANO-FOX: You think that they would
19 make a motion to dismiss based upon the statute of
20 limitations?

21 MR. SIMONETTI: Not the statute of limitations,
22 the fact that you passed the statute, you're saying
23 it's a crime. Unless it's a very serious offense.

24 MS. CATAPANO-FOX: Believe it or not, I mean,
25 I've done the research on this and the case law has

1 been very clear that even if the person is
2 no-true-billed after indictment, even if they're
3 found not guilty after trial, it doesn't matter. As
4 long as the officer's actions could've constituted a
5 crime even though he's never been found guilty or
6 there's been adverse findings, it doesn't matter.

7 MR. SIMONETTI: Oh, the officer's conduct?

8 MS. CATAPANO-FOX: I'm sorry?

9 MR. SIMONETTI: The officer's conduct?

10 MS. CATAPANO-FOX: It's always the officer's
11 conduct. In those cases -- we do have scenarios
12 potentially where a complainant's conduct is the
13 reason why the DA has asked for a DA hold or the
14 officer's conduct doesn't rise to the level of
15 crime. And those are the DA holds that are more
16 complicated for us. I will tell you that
17 independently we always make sure that there are
18 requests from the DA. We did have a case recently
19 where an officer came in and claimed that the
20 officer at the DA had told him that the case should
21 be on a DA hold and so he shouldn't give an
22 interview. But the team was very professional.
23 They handled it very well. They came to me and
24 Denis, they asked us if that was the process and we
25 said, "No. Until the DA actually asks for the DA

1 hold, go ahead with the interview. There's no
2 reason not to." And they did.

3 MR. LISTON: Just so I could be clear, when
4 there's a DA hold, my understanding is that the
5 clock continues to tick.

6 MR. SIMONETTI: Yes.

7 MS. CATAPANO-FOX: It is a courtesy. A DA hold
8 is really just a courtesy from us. It's not a court
9 order telling us that we can't proceed. It's the
10 DA --

11 MR. LISTON: So we're trying to be responsible,
12 right, and balance what we're trying to do with what
13 other people are trying to do, as well we should,
14 but I've asked this before and I'll ask it again and
15 I think it's something we should keep our eyes on.
16 When I was a prosecutor, I remember dealing with
17 30.30, which was the law that requires the cases, as
18 many of us know, be prosecuted within a certain
19 period of time. And I deal with that as a
20 prosecutor but I also had certain exceptions to that
21 rule, and there were a lot of them. And these were
22 exceptions for pursuant to which the clock stopped
23 ticking. And that was important so that certain
24 things could happen without the clock ticking. I
25 don't know why the clock continues to tick while

1 we're doing the responsible thing and allowing the
2 DA to do what they're supposed to do.

3 BISHOP TAYLOR: The courtesy, exactly.

4 MR. LISTON: I wish there was a way, and I think
5 there has to be a way to revisit this.

6 MR. SIMONETTI: That's in the CPLR, I would
7 assume?

8 MR. LISTON: Under the CPLR, we have certain
9 exceptions.

10 MS. CATAPANO-FOX: The court -- the judge can
11 always say that the time is tolled, the time is
12 stayed, and the DA will often ask for that. And if
13 a judge orders that, that's one thing. If there's
14 discovery pending, the judge can decide to toll the
15 time while discovery motions are pending or
16 discovery is being exchanged.

17 MR. LISTON: The list is as long as my arm. And
18 the point is that it's just that long. There are so
19 many exceptions that stop the clock, and as well
20 they should.

21 MR. GITNER: There aren't that many --

22 MR. LISTON: I don't know why we don't have
23 them.

24 MR. GITNER: Right. We don't have them,
25 unfortunately, unlike in the 30.30 world. And it's

1 unfortunate and I think maybe the law should be
2 changed.

3 MR. LISTON: Maybe we should press to have it
4 changed.

5 MR. GITNER: I agree with that, and/or I think
6 there is some value to asking the Police Department
7 to agree to essentially toll the statute during the
8 course of the hold. I think even if the individual
9 officer doesn't agree to the stay --

10 BISHOP TAYLOR: That's true.

11 MR. GITNER: -- if the Department agrees to the
12 stay on behalf of the officer -- it's probably never
13 been tried by a court or a judge -- but I think
14 there's a good legal argument that the Department
15 can bind the officer for whom the officer works.
16 You know, the Department can agree to the stay and
17 the clock would not tick. And perhaps we should
18 negotiate with the Department to have them
19 essentially agree to stays whenever there is a DA
20 hold that we respect.

21 MR. SIMONETTI: If I can suggest, your meeting
22 with Susan Herman next week, next Monday, that that
23 be brought up with Susan. By the way, I worked with
24 Susan for many, many years when she was in the
25 Police Department. She was Special Counsel to the

1 Police Commissioner and we developed the domestic
2 violence policy that's currently in the Police
3 Department way back then. So she's a very smart
4 person, and you suggest something like that to her,
5 she'll take that under serious consideration.

6 MR. LISTON: Excellent. We'll do that.

7 BISHOP TAYLOR: Okay. Any more discussion on --
8 any more on old business?

9 MR. GRANT, JR.: Just the one thing that I'm
10 concerned about is, you know, we talk about doing
11 all these things then two months from now everybody
12 forgets. So all I'm asking is that we document
13 these procedures in a memo, that six months from now
14 we can go back and look at the memo and understand
15 what our procedures are.

16 The other thing I wanted to highlight was, if
17 someone can -- I don't know if Denis or Dan -- but I
18 assume this is the case, that even though there's a
19 DA hold, there are other aspects of the
20 investigation that can still go forward; and are we
21 making sure that we're doing that to its fullest so
22 that when the hold is lifted we're not that far
23 behind the eight ball; for example, getting videos,
24 speaking to other witnesses, things like that. I
25 just wanted to make sure that that's in the

1 procedures, that's documented. And in terms of that
2 memo, it should really have some sort of a cutoff
3 point, right, whether it's six months out or
4 whatever, that we now say, "Look, we've got to go
5 forward."

6 So I just want to see that. I'm getting just
7 inundated, guys, generally about all the things that
8 are happening, which is great. We're moving very
9 fast. But what I'm seeing here is repeated
10 discussions coming up. And the example I can give
11 is that one of the things we talked about when
12 Katrina happened is we got hit with the all of these
13 cases and we realized that there wasn't a statute of
14 limitations in place, a carve-out, for this, for,
15 you know, an act of God, and every other agency, I
16 think, had it and we didn't.

17 MR. LISTON: There wasn't an exception. And we still
18 don't.

19 MR. GRANT, JR.: Right, and we still don't. And so I
20 know that's one of the things we talked about with
21 General Counsel, one of the first things we're going to
22 need him to do, and certainly the statute of limitations'
23 carve-out for this instance would doincide with that.

24 But, again, I just want to make sure when we're
25 moving forward as a board and we're laying out these

1 things, there has to be -- it has to culminate in a
2 memo laying out the process and procedures that's
3 we've come up with so that we're not doing this over
4 and over again.

5 MR. GITNER: I took -- you're point is good,
6 that we shouldn't just talk, we should do. Of course
7 I agree with that. I just want to say that with
8 regard to the DA hold, I do think that Investigations
9 probably can do some things during the course of the
10 hold but just I'm not sure it's a good policy to say
11 that they should automatically talk to any witnesses,
12 for example. I think it really has to be on a case-
13 by-case basis, as you know.

14 MR. GRANT, JR.: I agree. I agree. I agree with
15 that.

16 MR. GITNER: I just want to make sure that
17 that's --

18 MR. GRANT, JR.: But, you know, generally, I'm
19 saying there's certain things --

20 MS. CATAPANO-FOX: We can make document
21 requests, video requests.

22 MR. GITNER: Yes.

23 MR. GRANT, JR.: Whatever it is. But I know,
24 Dan, you're going to be thorough with it. I just
25 want to make sure that the memo's there so that

1 three years from now, you know, when another crew's
2 in here, they're not doing this all over again.

3 MR. SIMONETTI: We'll rely on the wisdom of the
4 Investigations Committee when those cases come to
5 you guys and that you can report back to us.

6 MR. GITNER: That's fine. Hopefully I have some
7 wisdom.

8 MR. LISTON: You do. You do.

9 BISHOP TAYLOR: Okay. So we're moving on now to
10 new business.

11 MR. SIMONETTI: I guess it's a question rather
12 than a statement. The Police Department has
13 undertaken some kind of a survey currently, and the
14 only thing I know about is what I read in the paper.
15 And I guess it has something to do with
16 satisfaction, public satisfaction of services they
17 receive. Maybe it has something to do with morale
18 because that seems to be a very timely issue that's
19 percolating around town. So I'm just wondering --
20 you know, many years ago, we attempted to do
21 something with CCNY. We had a professor that was
22 willing to come in and look at the Agency and look
23 at our relationship with -- particularly with the
24 people that we were serving our complaints to do
25 something. That never materialized. It never came

1 to be. So I'm just wondering if we can get some
2 information in your meeting Monday, if you can ask
3 Susan about some of the particulars of the survey
4 that they're going to be conducting, if we can kind
5 of tailor something like that maybe for this agency.

6 MR. LISTON: That's a great idea.

7 MR. SIMONETTI: You know, it's been in the
8 pipeline as long as I've been here, but we've never
9 done anything about it.

10 MS. CATAPANO-FOX: We do it for Mediation.
11 You're right. And that's something we could branch
12 out. But that is something that --

13 MR. LISTON: What we're doing for Mediation
14 could be a perfect model for other parts of what we
15 do.

16 BISHOP TAYLOR: Exactly.

17 Are we finished with old business?

18 MR. SIMONETTI: I'm finished with all business.

19 BISHOP TAYLOR: So we're moving on to new
20 business.

21 (No response.)

22 BISHOP TAYLOR: Any -- no?

23 (No response.)

24 BISHOP TAYLOR: Okay. So now we're going to
25 open up to public comment. And we have on our list

1 a very lengthy public comment of 10 people. But
2 we're going to call Mr. Dunn first.

3 MR. CHRIS DUNN: I'll take up all 10 of their...
4 Tony, welcome back. I can barely see you but I can
5 hear you clearly. You're channeling the NYC right
6 down to gender representation on the image that
7 people see on television as we speak.

8 MR. SIMONETTI: I mean, I didn't steal anything
9 from the ACLU.

10 MR. DUNN: No, I love hearing you say it.

11 So on the new place, congratulations. I know
12 moving to a new place is a big deal. I have to tell
13 you that I remain concerned -- and I've talked to
14 Tracy about this -- about public access to the
15 Agency. And I know that Tracy is concerned about
16 this and there's been discussion about it, but --
17 and I know she's taken some steps to try to address
18 some things.

19 Starting with the paint scheme, which given that
20 orange is the new black, it's a little bit
21 unfortunate prison-like message that gets sent. I
22 know the waiting room got repainted, so that's good.
23 The fact that you got people behind glass in what
24 looks like almost like a cell, I think is not a good
25 start. But even downstairs, I'm telling you you

1 have to step back and understand the difficulty of
2 getting in here. I come to this building all the
3 time. The Law Department's here. I come here all
4 the time. This is not a space that is something
5 that people can easily get to from the street. This
6 is the only space you have in the City of New York
7 for people to come in and engage with you. And
8 everything from the rigmarole at the desk to having
9 to have your photograph taken, which I understand
10 was not supposed to be the case, and I think you're
11 going to have a separate entrance at some point,
12 which maybe that will not be the case, but I really
13 would encourage you as Board Members, you kind of
14 get into things and you're the privileged people
15 here and you have a pass and you just whisk in. And
16 let me tell you, I would encourage you to step back
17 and say to yourself, "How welcoming is this? How is
18 this a space, and someone who is a typical
19 complainant is going to feel trying to get in here?"
20 And I would really encourage you as you go
21 forward -- I know there'll be lots of tweaks. It's
22 a new space. You're dealing with floods. You're
23 dealing with pestilence. You're dealing with
24 famine. I get it all. But I really think you want
25 to try to pay a little more attention to that.

1 Okay. On the report, on the 18-month cases,
2 Tony, I see that -- and you missed several meetings
3 and discussion about this -- but kind of the 14-,
4 15-, 16-month numbers have come way down, which is
5 great, because that, of course, means you're going
6 to have far fewer things come into the end for the
7 process.

8 But there are still a lot of 18-plus-month cases
9 on there, and I was a little confused. I mean, I
10 see you're trying to put more information on the
11 report about the 18-plus-month cases. There now
12 seems to be a new category, the Mediations Awaiting
13 Board Review. And you have three cases I think,
14 maybe four, that are Mediation cases, that are
15 18-plus months. And I just have not seen that
16 before. Are those one that have gone through
17 Mediation and the Board has to sign off on it? Is
18 that something that's awaiting Board approval so it
19 can go into Mediation? I just --

20 MS. CATAPANO-FOX: Those cases were closed by
21 the Panels last night, the Mediation Panels. So
22 when we say "pending Board review," they were
23 awaiting their closure. So they're actually not --
24 they shouldn't be on the list as of today because
25 they closed last night at 4:00.

1 MR. DUNN: So but the thing, Tracy, I didn't
2 quite get, why would you have an 18-plus-month
3 Mediation case? I just would not have thought that
4 any Mediation case would get anywhere near that old.
5 And you got cases that were filed -- two of them I
6 think are one day after the incident, one of them is
7 two days after the incident. You don't have to
8 answer that question. I'm just -- when I look at
9 the report, I'm struck by how old some of these
10 cases are.

11 And on that point, you didn't talk about your
12 City Council testimony but you mentioned that there
13 were 21 statute of limitation cases in calendar year
14 2013. And I took it that through the testimony,
15 there was 21 substantiated cases where the statute
16 of limitations was blown. There wasn't any more
17 detail about that but I was just trying to remember
18 it and I just didn't have the report with me. Do
19 you recall how many total substantiated cases there
20 were in 2013; like 200, less than 200?

21 MR. MARCOS SOLER: The total number of
22 substantiations? 300 total cases.

23 MR. DUNN: 300 total cases, okay. And so there
24 were 21 cases in 2013 -- presumably, 21 of those
25 300, the statute of limitations is blown.

1 MS. CATAPANO-FOX: Is that an exact number
2 though? I mean, I don't want to just --

3 MR. SOLER: I can check the number.

4 MS. CATAPANO-FOX: So it's an approximation.

5 MR. DUNN: Here's my point: 21 cases -- if you
6 have any like, 2, 3, 350 total subcases in which 21
7 had the blown statute of limitations, that, to me,
8 I'd just say that's a huge number. Again, I see
9 that you're working on it and I understand that.
10 And I see maybe the problem is fixed when you look
11 at the 14-, 15-, 16-month cases, but I just continue
12 to think that is a huge concern. Similarly, the
13 number of cases are coming through from the
14 Department. Tracy, I hear you saying you're talking
15 to DAO and Julie's going to tell you something, and
16 I'm happy to have Dan take this up and I'm glad that
17 he's been raising questions about it. I, for four
18 or five months, have been pointing out that four,
19 five, six cases a month are coming through from the
20 Department and I just -- with all due respect, it
21 should not take four months to figure out why
22 there are no cases coming from the Department.
23 That's a phone call. It's a huge change in the
24 numbers you're getting from like 25 a month.
25 There's got to be some obvious explanation there. I

1 just think we need to get to that.

2 On the APU report, page that's in the report,
3 there's a mention about three modified -- I don't
4 know if it's post-trial or post-plea cases.

5 MS. CATAPANO-FOX: Post-plea.

6 MR. DUNN: Post-plea, okay. So what I didn't
7 see was any cases, and maybe this is just a function
8 of the categories, where the Police Commissioner had
9 approved something that was a final disposition from
10 the CCRB process. And I don't know if there had
11 been any such cases but that category, which is at
12 the top of the list, suggests that at least there
13 are three pleas that have gotten to the Police
14 Commissioner, all of which have been modified by
15 him. But I don't know. Does he use the term
16 "modify," there to mean that the Police Commissioner
17 has not accepted the plea you negotiated and has
18 changed the plea?

19 MS. CATAPANO-FOX: Yes.

20 MR. DUNN: Okay. I think there needs to be some
21 reporting to the public and discussion amongst you
22 about what the Police Commissioner is doing with
23 your plea negotiations. Because needless to say, if
24 you're doing all this work and you're pleading these
25 cases out, which you all know can be a big process,

1 and then it goes upstairs and he says, "Nah," that
2 completely cuts you out in terms of your
3 effectiveness in negotiating pleas. And the unions
4 will know that and they're going to change their
5 practices in negotiating with you on pleas. So I
6 would just encourage you to take a look at that.

7 On the testimony, on the City Council testimony,
8 as I mentioned, there was no discussion about that,
9 but there were two things I was struck by. I was
10 happy to see the five-borough initiative. I didn't
11 see a lot of detailed discussion in there about what
12 that would actually do. And I saw what was in
13 there. And then there was a field investigation
14 piece also. And again, Tracy, I know you have
15 talked about this and other members have supported
16 it. You know, I think what you're trying to do in
17 the boroughs is great. I just feel like there's
18 been a discussion about this for a very long time
19 and as we stand here or sit here, there's not a
20 space outside of this space right now where you
21 could meet with people, that you do meet with
22 people, who are complainants and it's just a huge
23 problem. And I think it is a mistake. You simply
24 wait for the City Council to give you more money to
25 do it. I think you've got to find some way with the

1 resources you have. Maybe they'll give you some
2 more resources so you can do more. But you're
3 redeploying people here so they get out of this
4 space and they get out to the communities where
5 people are having encounters with the police and you
6 can engage with complainants. I'm just telling you
7 it is a waste. When you're here -- and I understand
8 why you're here -- but when you're here, you are
9 just completely separated from most of what you
10 should be doing.

11 The third thing that's mentioned in the
12 testimony is hiring some more lawyers, always happy
13 to hear the CCRB wants to have more lawyers. Good
14 for you. But it did raise a question because it
15 said that many of your cases involve legal issues.
16 I'm just curious where things stand on the memo we
17 discussed for public meetings about the summons and
18 frisk issue, which at the last couple of meetings,
19 Tracy, I think you said the Board was looking at and
20 there would be discussion about an -- is that on the
21 list or...

22 MS. CATAPANO-FOX: It's on the list but it's
23 related to an individual case, as we've discussed.

24 MR. DUNN: Well, as you know, I'm raising the
25 broader policy issue. And I'm with Mr. Grant in

1 saying that you guys have a million things going on,
2 to your credit. I mean, you're really -- there's a
3 lot more activity, which is great. One of the
4 challenges with that is a lot of things get talked
5 about in a Board meeting and then the world of
6 business keeps going on and things get lost. So to
7 the extent there's an institutional memory here and
8 I'm part of it, I'll keep reminding you. I'll try
9 not to nag but I do want to not lose track of that.

10 MR. GITNER: Are you asking the Board to make a
11 legal determination about whether a stop in
12 connection with a summons is right or wrong? Is
13 that what you're basically asking, like an advisory
14 opinion as to whether or not we think in general
15 that's a good or bad thing or in violation of the
16 4th amendment or something like that? Is that what
17 you're asking? I just want to make sure I
18 understand what you're saying.

19 MR. DUNN: Sure. What I'm responding to is a
20 memo written by a high level staff person that took
21 the legal position that officers were free to frisk
22 people who have been given a summons without any
23 suspicion that the person presented a danger that
24 would otherwise allow a frisk and took the position
25 that in those circumstances, misconduct should not

1 be substantiated because that was a permissible
2 frisk. So there is an Agency document right now
3 that takes the -- I'm not sure if it's a legal
4 position, I would treat it as a legal position --
5 that says, what I've been told, is in an individual
6 case but it does not have any particulars about any
7 individual case, but says --

8 MS. CATAPANO-FOX: Except for the case number.

9 MR. DUNN: It's got a case number on it. That's
10 it.

11 MS. CATAPANO-FOX: That's pretty particular.

12 MR. DUNN: It says, "It is fine to frisk in
13 these circumstances. Do not substantiate."

14 MS. CATAPANO-FOX: Mr. Gitner, that's what --
15 what happened was a memo was put in a file by a team
16 attorney who was reviewing a particular case and
17 wrote a memo to the investigator about the
18 particular case and gave a legal analysis of an
19 issue that that team investigator -- team attorney
20 believed was relevant in the similar way that team
21 attorneys might give case law or case decisions.
22 That went into a case file and then somehow got to
23 Mr. Dunn.

24 BISHOP TAYLOR: Wow. That's great. Great
25 police work.

1 MS. CATAPANO-FOX: So the issue that Mr. Dunn
2 and I discussed is whether or not the Agency and the
3 Board had made a change in policy with regard to a
4 legal determination about these types of frisks.
5 And my position, and please forgive me if I'm
6 speaking for the Board, was that at no time did the
7 Board make a legal determination, rather a team
8 attorney did what that team attorney was hired to
9 do, which was give legal advice on a particular case
10 which was provided within the internal document file
11 of that particular case.

12 MR. LISTON: Right. That's not the same thing
13 as the Board embracing this --

14 MS. CATAPANO-FOX: That's correct.

15 MR. LISTON: -- Agency-wide as our official
16 policy.

17 MR. GRANT, JR.: And that memo was not
18 circulated wider?

19 MS. CATAPANO-FOX: No, sir. It was put in the
20 file.

21 MR. GRANT, JR.: Just in the file, okay.

22 MR. DUNN: Just so we're clear, not that I don't
23 mind creating the misimpression that I have access
24 to CCRB files, but I do not. That memo was
25 circulated amongst staff and it is not a memo that

1 says, "Here's a case with the following facts. What
2 do I do with it?" It's a memo -- and, Dan, I will
3 send it to you. I brought it a couple meetings ago.
4 It says, "What is the answer to the question, 'Can a
5 police officer frisk somebody in issuing a summons
6 without suspicion that the person presents a danger
7 or has a weapon?'" And it is a memo that is a
8 straight legal memo that you've seen a million of,
9 Dan, that is completely devoid of any facts and is a
10 straight legal analysis.

11 So if the suggestion is that that is something
12 that just has no consequence in the Agency, the
13 Agency has no position about this, and people are
14 just going about their business, well, you can say
15 that. I think that given that the issue of frisk
16 activity by the Police Department is a significant
17 issue, given this memo got circulated amongst staff
18 and there was confusion, as it was reported to me,
19 about the extent to which this represented Agency
20 policy, and to the extent as is true, the Agency
21 previously has dealt at the Board level with this
22 policy issue. I don't think you can just say,
23 "Well, that was a nonevent that you can ignore."
24 But you'll deal with it as you please.

25 Tony, thank you for raising the DA holds. I

1 think DA holds are an issue. I will say that the DA
2 holds are pretty small in number. And from my
3 perspective, I've been raising the issue about DA
4 holds. I think you're right in what you were saying
5 and what Dan is saying about trying to be a little
6 more aggressive with the district attorneys. They
7 raise complicated legal issues.

8 I frankly think that if I were the one making
9 decisions about what the Agency was really going to
10 focus its time on, it would be more on the
11 truncation problem and less on the DA hold problem
12 just because the numbers are so different. But I'm
13 with you on the DA holds. And you mentioned Francis
14 Livoti. Francis Livoti, of course, is the police
15 officer in the Baez chokehold case. Just to
16 introduce a little moment of levity, as you may
17 recall, he now goes by Frankie Sands and is now a
18 wedding singer. That is the legacy of Francis
19 Livoti and his Anthony Baez chokehold.

20 The quarterly --

21 MS. CATAPANO-FOX: How do you know that?

22 MR. DUNN: The Wall Street Journal did a story
23 about a year ago on Frankie Sands and his wedding
24 performances.

25 Finally, I just wanted to mention about

1 Mediation, because this relates to this. I would
2 like to get, if possible -- I don't know if you,
3 Lisa, were reading something, but I don't know if
4 that's going to be provided. I don't think there
5 was something in the packet.

6 MR. LISTON: There'll be a transcript.

7 MR. DUNN: Well, there'll be a transcript, but
8 to the extent that she read something, I would ask
9 that you make that available to the public. There
10 were a lot of statistics in there and my head was
11 swimming halfway through it. I will say, what I
12 understood Lisa to start with was saying that you
13 were offering mediation to 68 percent of
14 complainants? Maybe I misunderstood that.

15 MS. CATAPANO-FOX: (Answers with a nod of the
16 head).

17 MR. DUNN: Okay, so I misunderstood that. I see
18 Tracy is nodding her head for purposes of the
19 transcript.

20 MS. CATAPANO-FOX: And there are charts. There
21 are Mediation charts that might explain some of the
22 things that Lisa explained.

23 MR. DUNN: Okay. That's fine. It's just that I
24 will raise this -- and, Tony, I'm not sure what is
25 behind your request for everyone to see the

1 categories of mediation-eligible complaints. But we
2 continue to be very concerned about the expanding
3 use of mediation, not because mediation can't be
4 good in many cases, it can. And we're not
5 completely anti-mediation, but we think
6 categorically there are a number of types of
7 complaints that should not be eligible for mediation
8 under any circumstances.

9 And I just want to repeat again -- I said this
10 at the last meeting -- the big downside for your
11 purposes of mediation is you don't get a full
12 investigation; and therefore, you don't know what
13 happened. You have a closed process in which the
14 officer comes in, the complainant comes in, they
15 have a conversation, they walk away. And there can
16 be circumstances, and I recognize where that's the
17 best thing for everybody. But as a general,
18 mediation is not a good thing in terms of thinking
19 about the broader issues about police reform.
20 Because it's something where everyone just walks
21 away, you lose the opportunity to learn something
22 about a practice or a policy that you should pay
23 attention to.

24 And the more there's mediation, the less there's
25 investigation, which is the flip side of the

1 truncation problem, from my perspective, the less
2 you folks all know.

3 And the final thing I'll say just in closing,
4 Jim, I'm thrilled that you're talking about these
5 policy areas that the Board is going to focus on.
6 You know, this is something we keep talking about.
7 I was a little surprised the City Council testimony
8 didn't mention additional initiatives in looking at
9 policy issues because I think that there do need to
10 be more resources spent in that area.

11 But, Jim, I was happy to hear what you said and
12 I really hope that one of the things that comes out
13 of the new world that we're all now in is that the
14 group of you are spending more time and paying more
15 attention to policy issues. And with the Inspector
16 General showing up, there's going to be a new person
17 in town who's going to have responsibilities that
18 overlap with you and I hope that means that the
19 competitive juices start flowing as opposed to
20 people saying, "We don't have to worry about that
21 anymore. That's somebody else's problem," because
22 you guys have a unique ability to investigate
23 policies and practice and you have a unique ability
24 to have a voice in public discussion about the
25 Police Department discussion that nobody else does.

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1 Sorry I took so much time, but thank you.

2 BISHOP TAYLOR: Thank you so much, Mr. Dunn, for
3 public comment.

4 Anyone else here for public comment?

5 (No response.)

6 BISHOP TAYLOR: No?

7 (No response.)

8 BISHOP TAYLOR: All right. Well, this meeting
9 is adjourned. Thank you so much for coming.

10 (Whereupon, the meeting concluded at 11:22 a.m.)

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

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

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

I 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 15th day of April 2014.

DANIELLE CAVANAGH

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