

Civilian Complaint Review Board - Draft 2  
August 24, 2017

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CIVILIAN COMPLAINT REVIEW BOARD

PUBLIC MEETING

August 24, 2017

6:39 p.m.

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100 Church Street  
New York, New York

TRANSCRIPT OF PROCEEDINGS

B E F O R E:

MAYA D. WILEY, ESQ., Chairperson

JONATHAN DARCHE, ESQ., Executive Director

PUBLIC MEETING AGENDA:

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1. Call to Order
2. Adoption of Minutes
3. Report from the Chair
4. Report from the Executive Director
5. Public Comment
6. Old Business
7. New Business
- \* New Truncation Category
8. Adjourn to Executive Session

Civilian Complaint Review Board - Draft 2  
August 24, 2017

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BOARD MEMBERS PRESENT:

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MAYA D. WILEY, ESQ., Chairperson

YOUNGIK YOON, ESQ., Board Member

SALVATORE F. CARCATERRA, Board Member

ANGELA FERNANDEZ, ESQ., Board Member

DEBORAH N. ARCHER, ESQ., Board Member

RAMON PEGUERO, ESQ., Board Member

LINDSAY EASON, Board Member

FRANK J. DWYER, Board Member

JOSEPH A. PUMA, Board Member

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JONATHAN DARCHE, ESQ., Executive Director

Reported By:

Nicole Ellis

Civilian Complaint Review Board - Draft 2  
August 24, 2017

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Proceedings

CHAIR WILEY: Good evening. It is 6:39 and I call this meeting to order, the August meeting of the Civilian Complaint Review Board.

Thank you all members of the public for being here. Thank you staff for being here. Thank you board members for being here.

I apologize for being a few minutes late. Let the record reflect it is the beginning of the academic year even though Labor Day has not yet begun, but I am pleased to be here.

Let's jump right in with the adoption of the minutes.

Do I have a motion?

MS. ARCHER: So moved.

CHAIR WILEY: Do I have a second?

MR. DWYER: Second.

CHAIR WILEY: Any discussion?

(No response.)

CHAIR WILEY: Okay.

All those in favor?

(Chorus of ayes with Commissioner

Civilian Complaint Review Board - Draft 2  
August 24, 2017

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Proceedings

Yoon abstaining.)

CHAIR WILEY: All those opposed?

(No response.)

CHAIR WILEY: Any abstentions?

(Indication by Commissioner Yoon.)

CHAIR WILEY: Mr. Yoon.

Thank you, the minutes are adopted.

I am, in the interest of time and having been a little late, not going to give a lengthy report.

I just want to thank the staff again for all the hard work the staff has been doing, but I think it's much more important for us to here the report of our Executive Director Jon Darche.

EXEC. DIR. DARCHE: Thank you, Madame Chair.

Good evening, everyone. I'd like to also welcome you to 100 Church for our August Board Meeting.

Please note that the September Board Meeting will take place on Wednesday, September 13th in Staten Island. The meeting will be held at the JCC Beacon

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Proceedings

Program at IS 49, which is located 101  
Warren Street.

I'm just going to jump right into our  
statistics.

In July 2017, the CCRB initiated 383  
new complaints. This is an increase from  
345 in July 2016 and a decrease from 421  
in June 2017.

At the end of July, the CCRB's total  
open docket was 1,254 cases; 808 of those  
cases were in the investigations division,  
295 cases were pending board or executive  
staff review, and 137 were assigned to the  
mediation unit. There were an additional  
14 cases on DA hold in July.

The July 2017 docket included 17  
reopened cases; 11 of those cases are  
active investigations and 6 are pending  
board review.

Of the cases that remain in the CCRB  
active docket, 88 percent have been open  
four months or less and 98 percent have  
been open for seven months or less.

Investigators closed 93 full

Proceedings

investigations in July 2017.

Year-to-date, the average days used to close a full investigation were 168 days compared to 223 in 2015.

In July 2017, the CCRB fully investigated 29 percent of the cases it closed and resolved 33 percent of the cases it closed. The truncation rate was 67 percent in July 2017.

I'm just going to briefly run through some other key statistics for the month of July.

The July case substantiation rate was 18 percent, which is compared to 20 percent for 2017 so far.

The agency substantiated, exonerated or unfounded allegations in 44 percent of fully investigated cases in July 2017 where video was available, as compared to 36 percent of fully investigated cases where video was not available.

The discipline rate for non-APU cases was 63 percent in July and 74 percent year-to-date for cases in which police

Proceedings

misconduct was substantiated by the Board and sent to the Police Department Advocate's Office with discipline recommendations.

The Department's decline-to-prosecute rate for non-APU cases in July was 31 percent and is 22 percent year-to-date.

In July, the police commissioner finalized decisions against 12 officers in APU cases, seven were closed after a trial. Of those cases, three were guilty verdicts and three were not guilty verdicts.

In the seventh case, the trail commissioner found the subject officer guilty, but the police commissioner reversed the verdict to not guilty.

Of the remaining cases, three were resolved by plea and the Department retained the final two cases pursuant to Section 2 of the MOU. In those two cases that were retained, the Department imposed discipline on its own. The APU conviction rate for July was 60 percent.

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Proceedings

For a full review of the agency's monthly statistics, please visit our website. If you do not have access to the website and would like a copy of the full report, please reach out to our outreach unit and we'll send you a hardcopy.

There are investigators here now to take complaints. If you're watching at home and would like to file a complaint, you can call us at 800-341-2272 or you can call us through 311 or you can file online at [nyc.gov/ccrbcomplaint](http://nyc.gov/ccrbcomplaint).

That's the August report.

CHAIR WILEY: Thank you.

Let me open up to any questions, comments on the Executive Director's report.

MR. PUMA: I have a comment.

I've just wanted to thank the staff for including in these statistics PSA breakdown. It was something that I forget when I suggested that, and I know members of the public have also suggested it in the past. So I appreciate the effort that

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Proceedings

went into making that part of the monthly report.

CHAIR WILEY: Absolutely. Thank you for that comment.

It was a very important observation, both by you Joe, but by the community. And I think it's important to reflect we had gotten that comment back in public comments and it was extremely helpful to us to know more useful ways to present our data.

So thank you to the policy unit for that.

Any other questions or comments?

(No response.)

CHAIR WILEY: I have one comment, which is really on the truncation rate at 67 percent, which unfortunately is very high still and not necessarily very different from our historic truncation rate, so it doesn't represent a change.

But I wonder, Jon, if you could share any additional thoughts on how we can get at the issue of those truncations.

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Proceedings

And just for the public's sake 'cause I know it's a wonky word, by truncation what we mean is cases where we have either started investigations or been able to complete -- where we've been unable to complete investigations, so we can't say one way or another what a recommendation would be to the Board to make a decision on the case.

So for us it's very important to get that number down so we're making more recommendations.

EXEC. DIR. DARCHE: So the investigations division from top to bottom has really been focused on this. We are really trying to think outside the box for reasons why cases are truncating and how we can increase the full investigation rate.

One of the ways in which we hope to do this is through the Blake fellowship. We're hoping that we can use the Blake fellowship as an incubator to develop best practices and then spread them throughout

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Proceedings

the agency.

But also we're looking to, without waiting for the Blake fellow, encourage investigators to be more proactive. To really go out and beat the bushes for investigations, and to gather the evidence that we need to fully investigate a case.

And we're taking steps to reach out to the criminal defense bar so that they will be more likely to have their clients participate in our investigations, even though there are open criminal matters. And that's going to be a -- that is a difficult task to convince them of that, but we're working on that.

Later in our agenda we're talking about the new truncation category. If you want, I can jump into that.

CHAIR WILEY: Why don't you, that makes sense.

EXEC. DIR. DARCHE: So historically when people have filed complaints, but they have open criminal matters, many times their attorneys tell them not to

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Proceedings

participate in our investigations 'cause their statements to the agency can be used against them in their criminal trial. And the -- those cases are then closed and they can be reopened at the conclusion of the criminal matter, but that rarely happens.

And so we're hoping by reaching out to the defense bar and explaining how our process works, they'll be likely to allow their clients, at least in misdemeanor cases where their clients jeopardy is relatively low, to cooperate with and participate in our investigation so that we can fully investigate those cases.

And by carving out this new truncation category, we're hoping that we can better identify that problem and how many cases we're having. But based on our -- the staff research, and I'd like to thank the policy team for the work they did, it was actually difficult to calculate those numbers and they did a lot of work. Like 100 cases in 2016 were

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Proceedings

truncated that would have come into this new category.

And nothing that we've done will changed truncation rate. This is not a way to hide the truncation rate, this is a way for us to better identify why a case is not being fully investigated so that we can try and solve that problem.

CHAIR WILEY: Do you know what the percentages, if you took -- not 'cause we should report it differently, I'm curious about what percentage that 100 cases is of the truncations of 2016, if you know?

EXEC. DIR. DARCHE: I don't. I should know, but I don't. I apologize, Madame Chair.

CHAIR WILEY: That's fine. No reason to know off the top of your head.

Any other questions on truncations and on anything that Jon said?

(No response.)

CHAIR WILEY: Okay. I just have one other, so this is in the question category on the numbers.

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Proceedings

So on the video statistic, where our substantiation rates are higher where there's video evidence, nothing surprising there 'cause we've been getting that data pretty consistently.

I'm just wondering if body camera video is yet starting to factor in? I know it's very new and it's only piloting, but is that impacting us at all?

EXEC. DIR. DARCHE: It's so far too new to have an impact yet.

CHAIR WILEY: Any other questions or comments?

MR. PUMA: I have an additional comment.

This pertains to another suggestion that had been made in the past regarding the statistical data, which I would find interesting if it were able to be included. And that is the whether an officer is -- that's subject to allegations was in plainclothes or in uniform?

I know that's a bit more complicated

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Proceedings

sometimes to find out. But I mean often in our reports we do note that. So that's just kind of a placeholder, I think, from the past.

And, you know, as long as we may be making more changes to the data, I just wanted to resuscitate that suggestion.

EXEC. DIR. DARCHE: So Connor, I see you in the back, if you could make note of that and see if we can investigate that, is what we investigate and put that together for Mr. Puma and for -- generally speaking.

CHAIR WILEY: Great, thank you.

Okay with this, then we will go into the public comment session of the Board meeting.

I have a list of those who would like to speak and the first person on my list is Eric Perez.

MR. PEREZ: No, I don't want to speak. I just signed the list.

CHAIR WILEY: Sorry, I thought you had signed the list. Well thank you for

Civilian Complaint Review Board - Draft 2  
August 24, 2017

16

1 Proceedings

2 being here.

3 MR. PEREZ: No problem.

4 CHAIR WILEY: Anthony Poppas.

5 Just a reminder, two minutes.

6 If there's anyone who's come in who  
7 has not yet signed the list but would like  
8 to speak, please just either raise your  
9 hand or check in with a staff member.

10 Thank you.

11 MR. POPPAS: In the Charlottesville,  
12 Virginia, a group of people wearing white  
13 robes and carrying torches protested about  
14 a statue. Counter-protesters showed up  
15 and a white supremacist drove a car into  
16 the crowd, Heather Heyer was killed and  
17 many were injured.

18 All sensible people were condemned;  
19 racism, bigotry and bias as evidence by  
20 the people wearing white robes. But in  
21 our society, if you wear black robes and  
22 sit on a bench, then you can do whatever  
23 you want. You can be a fascist, you can  
24 be a neo-Nazi and no one has oversight  
25 over the judiciary branch of the

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Proceedings

government.

The judges can take children away. The father's can't see them for years and months, mothers can't see them, and people commit suicide.

You should look at the pictures of those that commit suicide:

Mary Richardson Kennedy, Steven Koufakis, Thomas Ball, Robert Sapolsky.

Many were killed because the judges were biased and you could not obtain redress of grievances in this system.

So we need to fight this doctrine of judicial supremacy and judicial immunity which is a stain on our democracy. Thank you.

CHAIR WILEY: Thank you, Mr. Poppas.

I have no one else on my list who's indicated they would like to make comments.

Is there anyone in the audience from the public who would like to make comments who I didn't call?

(No response.)

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Proceedings

CHAIR WILEY: Okay. Thank you.

With that then, we will move into old business.

Do we have any old business?

MS. ARCHER: At our June board meeting, we were scheduled to talk about an issue that was raised by another board member but we had adjourned it to this board meeting in the interest of time.

And that question was that whether or not it is appropriate or helpful to include the criminal histories of the complainants in the closing reports that are provided to board members.

And some members of the Board raised questions about the appropriateness of doing that. And maybe it would be helpful to hear why it is we include that information in the closing reports that provided and have that discussion.

CHAIR WILEY: Thank you for raising that, Deborah. You're absolutely right that we have that on our agenda and tabled it.

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Proceedings

Jon, can you give the Board the background on -- and just for the public -- purposes for the public to understand what it is -- what the practice is that Deborah is referring to and what the, kind of, history and background of the practice is and then we'll open up for board discussion.

EXEC. DIR. DARCHE: So the Board had asked us to research the history of the agency's current policy regarding inclusion of civilian's conviction histories in closing reports.

And I want to thank the staff, especially our Chiefs of Investigations Chris Duerr and Winston Thelwell for helping us research this topic.

Both City Charter and the Board Rules are silent on this issue. The Investigations Manual instructs investigators to do the following:

"For every complainant or victim, not witness, the investigator should list every conviction the complainant or victim

Proceedings

has and the punishment imposed as result  
of those convictions.

"Allot one sentence per victim.

For example, between July 15, 2003  
and April 21, 2014, victim pled guilty to  
criminal possession of marijuana twice and  
disorderly conduct once and received  
fines, imprisonment equal to time served,  
and community service respectively.

"In this section, the investigator  
should note anything from a civilian's  
history that may impact the victim's  
credibility. For example, if the victim  
denies ever having drugs but has five  
convictions for the possession of  
narcotics.

"In cases where the complainant or  
victim has an extensive conviction  
history, the investigator should consult  
with a supervisor. The supervisor will  
assess to what extent the civilian's  
credibility is a factor in the case and  
determine the amount of history to include  
in the report."

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Proceedings

We are unable to find any documentation of changes, if there were any, to this policy over time. There is no documented history saved to a general agency computer drive tracking the changes to this policy in any form of a standard operating procedure or a documented change update to past versions of the Investigations Manual.

From speaking to staff and looking at old closing reports, it appears that the current policy has been the general practice for as long as any current member of the agency can recall. There have been minor changes to the structure, presentation and placement of this section in the closing report over the years, but those changes never materially alter the policy requiring investigators to include a conviction history for all complainants and victims in the case.

There was a period of time in the early 2000s when investigators were instructed to use certain aspects of a

Proceedings

conviction history when conducting credibility assessments. This is no longer the practice. Investigators no longer conduct separate, general credibility assessments in closing reports, nor do investigators use a civilian's conviction history to draw conclusions about that person's general credibility.

As to the number of convictions or how far back in time the history should extend, there remains an inconsistency in practice across the investigations division. Over the years, the practice has changed numerous times. At different periods investigators have been instructed to include all convictions, all criminal convictions, up to ten criminal convictions, and convictions spanning the ten years preceding the drafting of the closing report.

None of those changes are documented anywhere, it's just what we were able to determine from talking to staff and

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Proceedings

looking at closing reports.

The investigations division, the training unit and the general counsel's office will work to implement any changes the Board sees fit to making this policy.

CHAIR WILEY: Thank you.

First let's start with, are there any questions from board members about what Jon shared about the history and background and then let's open it up for general discussion on the policy.

Does anyone have any clarifying questions?

(No response.)

CHAIR WILEY: Okay. Let's open it up to discussion.

Let me start just a little bit of context to remind the board that one of our board members raised it.

I think it would be -- personally realized, I hadn't thought about it in all honesty because I didn't read the closing reports with that criminal history as relevant to whether or not, in fact, the

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Proceedings

allegation happened or didn't happen so it hadn't occurred to me. I thought it was a legislate point to raise.

One of the board members who's not present made a point that I'll throw out and remind people 'cause it came up in discussion, is that the City has now a statute, Ban the Box, which does not allow employers to take into account criminal history in determining whether or not someone is qualified for a job, and has to make a conditional offer and if -- and can't do a criminal background check unless -- after the offer has been conferred. Meaning they can't use any criminal background to make a decision about whether a candidate is qualified and whether to extend an offer.

If after an offer is extended, the employer can -- has to make a judgement whether or not, if there is criminal history, it's relevant to whether someone would be qualified for the job. And if it's not relevant, then the employer's not

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Proceedings

allowed, under the statute, to take the criminal history into account.

I'm just sharing that because that was part of the discussion that one of the board members not present raised in context in terms of discussion we've been having as a city on our laws and policies.

But I'll stop there just to remind the Board the discussion that's taken place since it was months ago.

MS. ARCHER: And I'll stress what you just said. That it is inconsistent that we have included criminal history in our reports. It is inconsistent with the way that the City is generally approaching use of criminal history.

But also I also never saw it as relevant, which then again raises the question, Why do we include it? At least it's not relevant in, I would say, 75 percent of the cases. It's relevant if the officer was aware of that criminal history and it impacted the actions of the officer, then yes, it should be included

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Proceedings

and it's relevant. And I can also see a small handful of cases where it's relevant to credibility issue.

And so my position is we should reconsider the blanket inclusion of criminal histories and instead look to include them if, for some reason, depending on the facts of that case, the investigator or attorney who's reviewing that case, viewed that criminal history as relevant.

CHAIR WILEY: Others?

MS. FERNANDEZ: So actually when the other board member had brought this up, I myself had been a little embarrassed that I hadn't even thought of it, and it was exactly because what you mentioned before, I wouldn't focus on that when I was reading the closing reports.

But I do think that it's interesting that it wasn't documented anywhere this practice. And so I'd like to know why that is, was it just simply an oversight? And I think that might be hard to find

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Proceedings

out. But I think it's something that we need to look at and understand.

But I agree in that having that in the report, I don't think is relevant. I think, you know, if a person has a criminal history doesn't mean that they may have been victimized and have experienced misconduct or been the victim of misconduct, and so I would agree with that premise.

EXEC. DIR. DARCHE: One of the issues the agency has been trying to confront in recent months is a general lack of accurate historical knowledge, not just in the investigations division for standard operating procedures, but, you know, in wider agency practices.

And there's been a lot of work, both in the investigations division, in the administration unit, trying to put that right. And so it is clearly something that we need to do and that we are focusing on. It's a bear of a task and we're working on it.

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Proceedings

MR. DWYER: So I may have misunderstood the Executive Director, but I thought it was documented in the manual of how to do a case and you read from that line by line?

EXEC. DIR. DARCHE: The changes.

MR. DWYER: But it is documented as an administrative step of how to do a case.

Beyond that, two comments. One is the apples to apples, that the basis of CCRB is that everybody gets treated equitably and the same. And with police officers we get not only their, if you will, convictions in the CCRB process, but we also get a list of every allegation ever made against them even it was unsubbed or unfounded.

So I think if you're going to have apples and apples, if you're going to lay this out for the police officers, it needs to be laid out for the civilians.

The second issue to Deborah's point, I think sometimes it goes to credibility,

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Proceedings

sometimes it doesn't go to credibility.  
But I would rather the board members on an individual case decide whether or not it goes to credibility, rather than asking the individual investigator to make that decision.

MS. ARCHER: So I think 95 percent of the time it's not relevant to credibility either. So given the small chance that it is relevant to credibility, I would err on not including it as opposed to including it.

And then the point you raised about police officer, I don't think that's apples to apples. Because as a board member when I'm looking at a case and considering whether we've substantiated it and considering whether or not what penalty to issue, to me it's important to know that officer's history, that that this is actually directly relevant to the actions we're asked to take.

CHAIR WILEY: So Deborah made the point I was going to make, so I won't make

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Proceedings

it. I don't think it's apples to apples.

I think the point about fairness is very important, and from my standpoint it's critically important to see and understand for determining recommendations on discipline.

And it works both ways for the officers so I think we shouldn't talk about it assuming it's only a negative. Because there are many cases I've been on where we've substantiated but because the officer really clearly did not have any pattern or history of misconduct -- this is not the public comment session, but if there's a question I will open up later for the audience, but thank you for giving me the opportunity to say that.

If the -- so the point being that there are times when it often helps the officer because if the officers really don't have a history, then even though that particular allegation is substantiated, it means they're much more likely to get something like a training as

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Proceedings

opposed to a loss of vacation days.

So I don't think we should, unlike a criminal history for a complainant which only becomes a negative if we think of it as relevant to whether they were victimized. In the case of an officer having a history can be helpful to the officer.

MR. CARCATERRA: The fairness issue. Is it apples to apples, maybe not exactly. However, I believe that their criminal record is important and I'll explain why.

And Deborah alluded to 95 percent that it's not. I don't know, I doubt it's 95, I don't know what percent it is.

However, looking at certain cases, I can tell you that when you look at the complainant slash victim and you look at the arrest record and you look at what he or she was arrested for and you look at the location, it's very telling whether that complainant is actually using that as a sword or a shield.

And we've seen many cases, I have,

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Proceedings

where it's very obvious that it's whether it's a narcotics officer at a narcotics location, whether it's a peddler officer at a peddler location, and we have absolute certain facts that they are peddling illegal things in the precinct and they continually make the complaints against the sergeant or the team that's enforcing it.

So in that respect I believe it is very telling, and it is -- it's a tool that I like to see to be able to determine with the totality of the entire case whether or not that is pertinent. And I would -- if you're going to do that, I want to see that. I would not want to defer that to the investigator or the supervisor and have it come to us as a board, when we do our cases, and not have the ability to see that whether it's pertinent or not.

I've seen it in cases and that's how I feel about it.

CHAIR WILEY: Thank you for sharing.

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Proceedings

I have one response. The reaction to that is I don't think anyone has suggested that we take out of the closing report the complaint history of the complainant.

So I think to the extent that there is a pattern of complaining that would still be in the closing report because that's not pertinent to criminal history. I think actually, Frank, your comment, fairness is absolutely important and I don't think we know what the percentage would be if we took Deborah's formulation of if it's relevant to understanding whether or not the officer had grounds, right? Which I think like in your example if it's a stop case and the officer said, Well I stopped that guy because I know's got a rap sheet a mile long on drug charges and it looked like he pass something, that would be relevant.

I think the flip though is just because someone has a long history doesn't mean that they haven't suffered from excessive force. For example, in the

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Proceedings

context of the stop. So the fact that they had that lengthy history wouldn't mean that an officer didn't otherwise violate their rights by using force excessively. So then what would the relevance of this history be except to be prejudicial against the person because they had a criminal history, not because it was relevant or salient to whether or not the allegation was substantiated.

MR. CARCATERRA: I don't see it that way. I see it as another tool in the tool box of looking at the cases for the investigation. And the CCRB history is fine; however, you know, when you see the criminal record and it gives you an idea of, Are we dealing with the complainant that is a drug dealer, that is an illegal peddler, it is somebody that's engaged and has been engaged in criminal activity, that's what they do.

As opposed to -- and listen, I don't want to paint everybody with the same brush, but I think after all these years

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Proceedings

to just take it off the table at this point and not having the ability to, kind of, look at it in context to see if it's appropriate, I think that's a disservice all around.

And as an investigator doing that case, I mean that's kind of investigation 101 is part and parcel of a case. I don't know why you would start removing that to be quite honest.

CHAIR WILEY: So folks on my wing, I can't see you necessarily, so I don't want to lose anyone.

Anyone else want to weigh in?

MR. PEGUERO: I'm in the middle somewhere. I'm wondering what would someone's criminal history have to do with whether or not an agent of the municipality acted correctly? Which is what we are really looking to ascertain, whether a police officer behaved appropriately.

Whether a person has a criminal history or not is not necessarily

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Proceedings

important in determining whether that police officer behave appropriately in their interaction with that citizen.

However, I must say that I don't think that any case against an officer that is either unsubstantiated, exonerated or unfounded should also be included. And if there's a pattern of substantiated cases against that particular police officer, then we can take a look at that as it relates to what penalty we would be recommending to be imposed.

CHAIR WILEY: So just -- let me just say that back to make sure I followed it. You're, at least, suggestion would be, maybe not formulating as a proposal yet, but would be that criminal histories only used where relevant either to the underlying allegation or to credibility, but that the only complaint background for the officer be where there was a substantiation, but not simply an allegation that was not resolved?

MR. PEGUERO: The second part, yes.

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Proceedings

The first part, no criminal history at all. I don't think it has bearing at all on whether or not the police officer acted appropriately.

CHAIR WILEY: Others?

MR. DWYER: I just want to -- first, I don't know if we have any indication that there's any pattern among these board members of acting differently. I certainly have voted substantiated on many cases where the people have extensive criminal records and as far as I'm cognitively aware of generality, so have every member of this board.

So if there was a visible impact that someone could demonstrate, I would have a lot more sympathy for this argument. I'm also aware of cases where having the criminal record did ultimately go to the credibility of the complainant because it clearly came out, and I'm sure you might be thinking of what I'm thinking of at the moment.

So having said that, I come back to

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Proceedings

the basic point, Should we have 80-some individual investigators make that decision of is the person's criminal records -- what's the correct word? -- related or relevant to this case or should the Board, when they meet in panels decide that? And I would prefer the Board meeting in panels rather than an individual investigator.

MS. ARCHER: First, just to respond to Frank. And I'm not -- like you, I don't believe that anyone on this board is acting intentionally demonstrating bias against people based on their criminal record. But there's been lots of conversations about implicit bias and the role that implicit bias has on the decisions that people make.

And so it's really impossible for us to say that including that criminal history that we scan over and read is not impacting how any of us view those cases. And then question is whether or not that's a risk we should be taking given, at least

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Proceedings

my opinion, that there is minimal  
relevance with those criminal histories.

And just to respond a little bit to  
what Sal mentioned, that yes, the criminal  
history may show that this person is a  
drug dealer, it may show that the person  
is a bad person, but that should not be  
impacting our outcome. If a police  
officer used excessive force, it's still  
excessive force, whether it's a drug  
dealer, a murderer or a bad person.  
There's still rules that constrain their  
behavior.

So whether or not there's a criminal  
history helps us determine that the  
complainant is a bad person, to me,  
doesn't answer the question whether or not  
the officer's behavior was appropriate  
under the facts of that particular  
interaction.

MR. CARCATERRA: If I could clarify  
what you said. That's not what I meant  
when I said that.

What I meant was that you look at it

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Proceedings

to see whether he's a drug dealer and agreed, okay, whatever you are, you have rights.

My point was that you look at it to see it's because of that drug trade or because of what they're doing that they're using CCRB and the CCRB vehicle to deflect exactly what they're doing and create complaints and allegations that really aren't there because they're making them because the police are interfering with their illegal activity. That's where I'm going.

MS. ARCHER: I think Maya spoke to this before, but having their CCRB history is more helpful in that determination for me. If there's one complaint, they filed one CCRB complaint, including their criminal history, cannot make me conclude that they're using CCRB as a sword to help promote their drug trade.

CHAIR WILEY: Any other comments?

MR. PUMA: It occurred to me during this discussion that in the Charter and in

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Proceedings

the agency rules, there's a clause to the effect of an officer's prior history of CCRB complaints should not be the sole determinant of the Board's determination on the current case -- I'm butchering the language -- but whether those allegations from the prior cases were substantiated, exonerated, unfounded, unsubstantiated, et cetera.

And, I mean, so we have that in writing in our Charter, in the rules, but there isn't anything to that effect when it comes to the civilian's history. So I feel like we're much more -- I don't know what to -- what conclusion to make, but I just find that the fact that if we include that, the criminal history, that that could be, you know, whether it be a function of implicit bias or what have you, it just sort of -- it just kind of leaves that an open possibility that bias is created by virtue of having the criminal history there, trying to connect that with, you know, what we're already

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Proceedings

obliged to do for the officers based on their CCRB history.

CHAIR WILEY: So I'm going to make a suggestion, if I can, to see whether this will make sense to the Board.

This really the first detailed conversation we've had on the topic and the first real background we've gotten from staff on where the practice is and where it's documented and not documented.

I'm going to suggest that we ask the staff to take this back and to come back to the Board with a recommendation for a policy based on what you've heard the Board discuss.

Does that sound like a good plan? And then we can discuss it again, all right, 'cause I think we benefit from hearing what the staff believes would be an appropriate practice based on the debate.

EXEC. DIR. DARCHE: We'll sit down, discuss it, and get something for you guys.

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Proceedings

CHAIR WILEY: Thank you.

I'm sorry, did you have a question?

MR. PEREZ: Yes, I did.

Mr. Perez. This is, like, my second meeting.

I just had a question in reference to what if there is no officer? I mean, what do you do when there's some sort of misconduct going around as far as like, you know, unwarranted invasion of privacy, eaves-dropping, coming in and out of somebody's apartment, and you just don't have a name or a person? Because that's called clandestine activity and the officer's obviously practice that.

So how do you come up with -- who do you blame? There's 16 different agencies under the umbrella of the federal government and the State government so like who do you complain to?

CHAIR WILEY: That's actually a really important question in terms of how you handle when you don't know who the officer is and even you don't necessarily

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Proceedings

know if it's NYPD.

But Jon, do you want to take that in terms of the CCRB process.

EXEC. DIR. DARCHE: So one of the things the agency is quite good at is identifying members of service who are the subjects of allegations. And when we are unable to determine who the subject officer is, we close the case as officer unidentified. So at a when you see in the statistics "officer unidentified," that is the type of case.

And that would tend to include cases where it might actually be an officer who was not in our jurisdiction, 'cause it's not a member of the NYPD, but because we weren't able to identify them, it's falling in that category.

CHAIR WILEY: The short answer though is, if you believe a person maybe had been an NYPD officer and you believe they've, you know, unlawfully entered your home, say, you can still file a complaint with us. And the investigation staff goes

Proceedings

1 through a process for identifying the  
2 officer. And I can tell you as a board  
3 member we have many where the officer was  
4 not originally known to the person  
5 complaining, but through witnesses,  
6 through knowing the date, time and place,  
7 and getting the detailed information from  
8 the precinct about who was on duty and who  
9 may have there. There are many times when  
10 the staff is able to identify. And even  
11 when the staff -- so if it's a possibility  
12 you can still file a complaint, and we  
13 will go through an investigation process.

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15 What comes to the Board, even if the  
16 staff is unable to identify the officer,  
17 the case still comes to the Board, but it  
18 comes as officer unidentified, and we  
19 actually get a description of what the  
20 investigator did to try to identify the  
21 officer. Which also means sometimes for  
22 board members -- and our police  
23 representatives have done this -- said  
24 they could have gone back and here's  
25 another thing they could have asked to try

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Proceedings

to identify the officer.

So it is very helpful that we get that from our investigators of what they did so that sometimes board members have advice of other things we can do to try the identify the officer.

MR. PEREZ: So your organization is just in reference to anything the NYPD is basically connected to?

CHAIR WILEY: Not anything.

So only NYPD. We don't have jurisdiction over the FBI or the Port Authority police. But for -- whenever we're talking about our jurisdiction, it's only certain kind of allegations.

So abusive authority, excessive force. So Stop and Frisk would be under abuse of authority, for example. Excessive force. Discourteous language or behavior or offensive language or behavior. So that would be a racial slur or -- so that's what we have jurisdiction over.

We will sometimes get complaints, and

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Proceedings

if we think it's under the jurisdiction of another agency, we'll refer it. And sometimes if they get cases they think it's under our jurisdiction and they refer it to us.

MR. PEREZ: Thank you.

CHAIR WILEY: Thank you for the questions 'cause we want to make sure people know.

So we have one more person who would wish to speak publicly, Ms. Jennings. Ivonne Jennings.

MS. JENNINGS: I don't have much to say, can you hear me?

At this point, I don't come out these days 'cause I fear for my safety. I came here back in April, I think, I tried to reach out to you Ms. Wiley, but I haven't heard back from you.

And that's to say I don't feel safe. I don't know if I showed you any of those letters, did I show you any of the letters? Some letters I wanted to show you but I never got to it 'cause I

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Proceedings

couldn't get to speak to you. If you have a moment when you finish.

Everyone in here knows me, no one should. Encouraged by law enforcement for now ten years. I don't care where you put me, people are grabbing at me, running at me. Been putting their hands on me. And I wouldn't even go into all of it 'cause I'm really quite upset today.

So I'm going to try after maybe you could spare me a moment 'cause I haven't heard from you. And I called today and I told whoever, your assistant, I don't go out anymore.

Stalking is against the law, but I guess it's not. I just watched all of them run out as I was coming in, and I just watch, yeah.

So I'm going to try and maybe you could speak to me after. Thank you.

CHAIR WILEY: Thank you.

That -- again, I don't have anyone else on the list for public speaking and I think -- is there any other old business?

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Proceedings

(No response.)

CHAIR WILEY: Hearing none is there -- and we had the conversation about the new truncation category under new business.

Is there anything else we need to discuss under the truncation category?

EXEC. DIR. DARCHE: No.

CHAIR WILEY: Any other new business?

(No response.)

CHAIR WILEY: Okay. Well it's now that time where we, if I have a motion, can adjourn to Executive Session.

Do I have a motion?

MR. PEGUERO: So moved.

CHAIR WILEY: Do I have a second?

MS. ARCHER: Second.

CHAIR WILEY: All those in favor?

(Chorus of ayes.)

CHAIR WILEY: All those opposed?

Abstentions?

(No response.)

CHAIR WILEY: Okay, thank you. We'll move into Executive Session.

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Proceedings

Ms. Jennings, I'll take a few minutes  
to speak with you before I go into  
Executive Session.

Thank you, all.

(Time noted: 7:26 p.m.)



**Civilian Complaint Review Board - Draft 2  
August 24, 2017**

<b>A</b>		
ability (2) 32:21 35:3	appreciate (1) 8:25	believes (1) 42:20
able (6) 10:5 14:20 22:24 32:13 44:18 45:11	approaching (1) 25:16	bench (1) 16:22
absolute (1) 32:6	appropriate (4) 18:12 35:5 39:19 42:21	benefit (1) 42:19
absolutely (3) 9:4 18:23 33:11	appropriately (3) 35:23 36:3 37:5	best (1) 10:24
abstaining (1) 4:2	appropriateness (1) 18:17	better (2) 12:19 13:7
abstentions (2) 4:5 49:22	April (2) 20:6 47:18	Beyond (1) 28:11
abuse (1) 46:19	APU (2) 7:11,24	bias (6) 16:19 38:14,17,18 41:20 41:22
abusive (1) 46:17	ARCHER (8) 2:7 3:18 18:6 25:12 29:8 38:11 40:15 49:18	biased (1) 17:12
academic (1) 3:12	argument (1) 37:18	bigotry (1) 16:19
access (1) 8:4	arrest (1) 31:20	bit (3) 14:25 23:18 39:4
account (2) 24:10 25:3	arrested (1) 31:21	black (1) 16:21
accurate (1) 27:15	ascertain (1) 35:21	Blake (3) 10:22,23 11:4
acted (2) 35:20 37:4	asked (3) 19:11 29:23 45:25	blame (1) 43:18
acting (2) 37:10 38:14	asking (1) 29:5	blanket (1) 26:6
action (1) 51:12	aspects (1) 21:25	blood (1) 51:12
actions (2) 25:24 29:23	assess (1) 20:22	board (52) 1:3 2:2,4,5,6,7,8,9,10 2:11 3:5,8 4:21,22 5:13,20 7:2 10:9 15:17 18:6,8,10,15,16 19:2 19:9,10,19 23:6,9,19,20 24:5 25:6,10 26:15 29:3,16 32:20 37:9 37:15 38:7,8,13 42:6,14,16 45:3 45:15,17,22 46:5
active (2) 5:19,22	assessments (2) 22:3,6	Board's (1) 41:5
activity (3) 34:21 40:13 43:15	assigned (1) 5:14	body (1) 14:7
additional (3) 5:15 9:24 14:15	assistant (1) 48:14	bottom (1) 10:15
adjourn (2) 1:25 49:14	assuming (1) 30:10	box (3) 10:17 24:9 34:14
adjourned (1) 18:9	attorney (1) 26:10	branch (1) 16:25
administration (1) 27:21	attorneys (1) 11:25	breakdown (1) 8:22
administrative (1) 28:9	audience (2) 17:22 30:17	briefly (1) 6:11
adopted (1) 4:8	August (5) 1:5 3:4 4:21 8:14 51:16	brought (1) 26:15
adoption (2) 1:18 3:15	authority (3) 46:14,17,19	brush (1) 34:25
advice (1) 46:6	available (2) 6:20,22	bushes (1) 11:6
Advocate's (1) 7:4	average (1) 6:3	business (7) 1:22,23 18:4,5 48:25 49:6,10
agencies (1) 43:18	aware (3) 25:23 37:14,19	butchering (1) 41:6
agency (10) 6:17 11:2 12:3 21:6,15 27:13,18 41:2 44:6 47:3	eyes (2) 3:25 49:20	
agency's (2) 8:2 19:12		<b>C</b>
agenda (3) 1:16 11:17 18:24	<b>B</b>	C (2) 51:1,1
agent (1) 35:19	B (1) 1:12	calculate (1) 12:24
ago (1) 25:11	back (10) 9:9 15:10 22:12 36:15 37:25 42:13,13 45:24 47:18,20	call (5) 1:17 3:3 8:11,12 17:24
agree (2) 27:4,10	background (7) 19:3,7 23:11 24:14 24:17 36:21 42:9	called (2) 43:15 48:13
agreed (1) 40:3	bad (3) 39:8,12,17	camera (1) 14:7
allegation (6) 24:2 28:17 30:23 34:11 36:20,24	Ball (1) 17:10	candidate (1) 24:18
allegations (6) 6:18 14:23 40:10 41:7 44:8 46:16	Ban (1) 24:9	car (1) 16:15
Allot (1) 20:4	bar (2) 11:10 12:10	CARCATERRA (4) 2:5 31:10 34:12 39:22
allow (2) 12:11 24:9	based (5) 12:20 38:15 42:2,15,21	care (1) 48:6
allowed (1) 25:2	basic (1) 38:2	carrying (1) 16:13
alluded (1) 31:14	basically (1) 46:10	carving (1) 12:17
alter (1) 21:19	basis (1) 28:12	case (24) 6:14 7:15 10:10 11:8 13:7 20:23 21:22 26:9,11 28:5,10 29:4,17 31:7 32:14 33:17 35:8,9 36:6 38:6 41:6 44:10,13 45:17
amount (1) 20:24	Beacon (1) 4:25	cases (43) 5:11,12,13,16,18,18,21 6:7,9,19,21,23,25 7:7,11,12,19 7:21,22 10:4,18 12:5,13,16,20,25
ANGELA (1) 2:6	bear (1) 27:24	
answer (2) 39:18 44:20	bearing (1) 37:3	
Anthony (1) 16:4	beat (1) 11:6	
anymore (1) 48:15	beginning (1) 3:12	
apartment (1) 43:13	begun (1) 3:13	
apologize (2) 3:10 13:16	behave (1) 36:3	
appears (1) 21:12	behaved (1) 35:22	
apples (10) 28:12,12,21,21 29:16 29:16 30:2,2 31:11,11	behavior (4) 39:14,19 46:21,22	
	believe (5) 31:12 32:11 38:13 44:21,22	

**Civilian Complaint Review Board - Draft 2**  
**August 24, 2017**

2

13:13 20:18 25:22 26:3 30:11  
31:17,25 32:20,23 34:14 36:10  
37:12,19 38:23 41:8 44:14 47:4  
**category (8)** 1:24 11:18 12:18 13:3  
13:24 44:19 49:5,8  
**cause (12)** 10:2 12:2 13:11 14:5  
24:7 42:19 44:16 47:9,17,25 48:9  
48:12  
**CCRB (14)** 5:6,21 6:6 28:13,16  
34:15 40:8,8,16,19,21 41:4 42:3  
44:4  
**CCRB's (1)** 5:10  
**certain (4)** 21:25 31:17 32:6 46:16  
**certainly (1)** 37:11  
**certify (2)** 51:7,11  
**cetera (1)** 41:10  
**Chair (47)** 1:19 3:2,19,21,23 4:3,5  
4:7,18 8:15 9:4,17 11:20 13:10  
13:17,18,23 14:13 15:15,24 16:4  
17:18 18:2,22 23:7,16 26:13  
29:24 32:25 35:12 36:14 37:6  
40:23 42:4 43:2,22 44:20 46:11  
47:8 48:22 49:3,10,12,17,19,21  
49:24  
**Chairperson (2)** 1:13 2:3  
**chance (1)** 29:10  
**change (2)** 9:22 21:8  
**changed (2)** 13:5 22:16  
**changes (8)** 15:7 21:3,6,16,19  
22:23 23:5 28:7  
**charges (1)** 33:20  
**Charlottesville (1)** 16:11  
**Charter (3)** 19:19 40:25 41:12  
**check (2)** 16:9 24:14  
**Chiefs (1)** 19:16  
**children (1)** 17:3  
**Chorus (2)** 3:25 49:20  
**Chris (1)** 19:17  
**Church (2)** 1:7 4:20  
**citizen (1)** 36:4  
**city (4)** 19:19 24:8 25:8,16  
**Civilian (2)** 1:3 3:4  
**civilian's (5)** 19:13 20:12,22 22:8  
41:14  
**civilians (1)** 28:23  
**clandestine (1)** 43:15  
**clarify (1)** 39:22  
**clarifying (1)** 23:13  
**clause (1)** 41:2  
**clearly (3)** 27:22 30:13 37:22  
**clients (3)** 11:11 12:12,13  
**close (2)** 6:4 44:10  
**closed (5)** 5:25 6:8,9 7:11 12:5  
**closing (12)** 18:14,20 19:14 21:12  
21:18 22:6,22 23:2,23 26:20 33:4  
33:8  
**cognitively (1)** 37:14

**come (7)** 13:2 16:6 32:19 37:25  
42:13 43:17 47:16  
**comes (4)** 41:14 45:15,17,18  
**coming (2)** 43:12 48:18  
**comment (9)** 1:21 8:19 9:5,9,17  
14:16 15:17 30:15 33:10  
**comments (8)** 8:17 9:10,15 14:14  
17:21,23 28:11 40:23  
**commissioner (5)** 3:25 4:6 7:9,16  
7:17  
**commit (2)** 17:6,8  
**community (2)** 9:7 20:10  
**compared (3)** 6:5,15,20  
**complain (1)** 43:21  
**complainant (10)** 19:23,25 20:18  
31:4,19,23 33:5 34:18 37:21  
39:17  
**complainants (2)** 18:14 21:21  
**complaining (2)** 33:7 45:6  
**complaint (9)** 1:3 3:4 8:10 33:5  
36:21 40:18,19 44:24 45:13  
**complaints (7)** 5:7 8:9 11:23 32:8  
40:10 41:4 46:25  
**complete (2)** 10:6,7  
**complicated (1)** 14:25  
**computer (1)** 21:6  
**conclude (1)** 40:20  
**conclusion (2)** 12:6 41:16  
**conclusions (1)** 22:9  
**condemned (1)** 16:18  
**conditional (1)** 24:13  
**conduct (2)** 20:8 22:5  
**conducting (1)** 22:2  
**conferred (1)** 24:16  
**confront (1)** 27:13  
**connect (1)** 41:24  
**connected (1)** 46:10  
**Connor (1)** 15:9  
**considering (2)** 29:18,19  
**consistently (1)** 14:6  
**constrain (1)** 39:13  
**consult (1)** 20:20  
**context (4)** 23:19 25:7 34:2 35:4  
**continually (1)** 32:8  
**conversation (2)** 42:8 49:4  
**conversations (1)** 38:17  
**conviction (7)** 7:24 19:13,25 20:19  
21:21 22:2,8  
**convictions (8)** 20:3,16 22:11,18  
22:19,20,20 28:16  
**convince (1)** 11:15  
**cooperate (1)** 12:14  
**copy (1)** 8:5  
**correct (1)** 38:5  
**correctly (1)** 35:20  
**counsel's (1)** 23:4  
**Counter-protesters (1)** 16:14

**COUNTY (1)** 51:4  
**create (1)** 40:9  
**created (1)** 41:23  
**credibility (13)** 20:14,23 22:3,6,10  
26:4 28:25 29:2,5,9,11 36:20  
37:21  
**criminal (42)** 11:10,13,24 12:4,7  
18:13 20:7 22:18,19 23:24 24:10  
24:14,17,22 25:3,14,17,23 26:7  
26:11 27:7 31:4,12 33:9 34:9,17  
34:21 35:18,24 36:18 37:2,13,20  
38:4,15,21 39:3,5,15 40:20 41:18  
41:24  
**critically (1)** 30:5  
**crowd (1)** 16:16  
**curious (1)** 13:12  
**current (4)** 19:12 21:13,14 41:6

**D**

**D (2)** 1:13 2:3  
**DA (1)** 5:16  
**Darce (15)** 1:14 2:13 4:16,17  
10:14 11:22 13:15 14:11 15:9  
19:10 27:12 28:7 42:23 44:5 49:9  
**data (4)** 9:12 14:5,19 15:7  
**date (1)** 45:7  
**day (2)** 3:13 51:16  
**days (4)** 6:3,4 31:2 47:17  
**dealer (4)** 34:19 39:7,12 40:2  
**dealing (1)** 34:18  
**debate (1)** 42:22  
**Deborah (5)** 2:7 18:23 19:6 29:24  
31:14  
**Deborah's (2)** 28:24 33:13  
**decide (2)** 29:4 38:7  
**decision (4)** 10:9 24:17 29:7 38:4  
**decisions (2)** 7:10 38:19  
**decline-to-prosecute (1)** 7:6  
**decrease (1)** 5:8  
**defense (2)** 11:10 12:10  
**defer (1)** 32:18  
**deflect (1)** 40:8  
**democracy (1)** 17:16  
**demonstrate (1)** 37:17  
**demonstrating (1)** 38:14  
**denies (1)** 20:15  
**Department (3)** 7:3,20,23  
**Department's (1)** 7:6  
**depending (1)** 26:9  
**description (1)** 45:19  
**detailed (2)** 42:7 45:8  
**determinant (1)** 41:5  
**determination (2)** 40:17 41:5  
**determine (5)** 20:24 22:25 32:13  
39:16 44:9  
**determining (3)** 24:11 30:6 36:2  
**develop (1)** 10:24

**Civilian Complaint Review Board - Draft 2**  
**August 24, 2017**

**different (3)** 9:21 22:16 43:18  
**differently (2)** 13:12 37:10  
**difficult (2)** 11:15 12:23  
**DIR (12)** 4:17 10:14 11:22 13:15  
14:11 15:9 19:10 27:12 28:7  
42:23 44:5 49:9  
**directly (1)** 29:22  
**Director (5)** 1:14,20 2:13 4:16 28:3  
**Director's (1)** 8:17  
**discipline (4)** 6:23 7:4,24 30:7  
**Discourteous (1)** 46:20  
**discuss (4)** 42:16,18,24 49:8  
**discussion (10)** 3:21 18:21 19:9  
23:12,17 24:8 25:5,7,10 40:25  
**disorderly (1)** 20:8  
**disservice (1)** 35:5  
**division (6)** 5:12 10:15 22:15 23:3  
27:16,20  
**docket (3)** 5:11,17,22  
**doctrine (1)** 17:14  
**documentation (1)** 21:3  
**documented (8)** 21:5,8 22:23  
26:22 28:4,8 42:11,11  
**doing (5)** 4:14 18:18 35:7 40:7,9  
**doubt (1)** 31:15  
**drafting (1)** 22:21  
**draw (1)** 22:8  
**drive (1)** 21:6  
**drove (1)** 16:15  
**drug (7)** 33:19 34:19 39:7,11 40:2  
40:6,22  
**drugs (1)** 20:15  
**Duerr (1)** 19:17  
**duty (1)** 45:9  
**DWYER (5)** 2:10 3:20 28:2,8 37:7

**E**

**E (4)** 1:12,12 51:1,1  
**early (1)** 21:24  
**EASON (1)** 2:9  
**eaves-dropping (1)** 43:12  
**effect (2)** 41:3,13  
**effort (1)** 8:25  
**either (5)** 10:4 16:8 29:10 36:7,19  
**Ellis (3)** 2:17 51:6,21  
**embarrassed (1)** 26:16  
**employer (1)** 24:21  
**employer's (1)** 24:25  
**employers (1)** 24:10  
**encourage (1)** 11:4  
**Encouraged (1)** 48:5  
**enforcement (1)** 48:5  
**enforcing (1)** 32:10  
**engaged (2)** 34:20,21  
**entered (1)** 44:23  
**entire (1)** 32:14  
**equal (1)** 20:9

**equitably (1)** 28:14  
**Eric (1)** 15:21  
**err (1)** 29:11  
**especially (1)** 19:16  
**ESQ (8)** 1:13,14 2:3,4,6,7,8,13  
**et (1)** 41:9  
**evening (2)** 3:2 4:19  
**everybody (2)** 28:13 34:24  
**evidence (3)** 11:7 14:4 16:19  
**exactly (3)** 26:18 31:11 40:9  
**example (5)** 20:5,14 33:16,25  
46:19  
**excessive (5)** 33:25 39:10,11  
46:17,20  
**excessively (1)** 34:6  
**EXEC (12)** 4:17 10:14 11:22 13:15  
14:11 15:9 19:10 27:12 28:7  
42:23 44:5 49:9  
**executive (11)** 1:14,20,25 2:13  
4:16 5:13 8:17 28:3 49:14,25  
50:4  
**exonerated (3)** 6:17 36:7 41:9  
**experienced (1)** 27:9  
**explain (1)** 31:13  
**explaining (1)** 12:10  
**extend (2)** 22:13 24:19  
**extended (1)** 24:20  
**extensive (2)** 20:19 37:12  
**extent (2)** 20:22 33:6  
**extremely (1)** 9:10

**F**

**F (3)** 1:12 2:5 51:1  
**fact (3)** 23:25 34:2 41:17  
**factor (2)** 14:8 20:23  
**facts (3)** 26:9 32:6 39:20  
**fairness (3)** 30:3 31:10 33:11  
**falling (1)** 44:19  
**far (5)** 6:16 14:11 22:12 37:13  
43:10  
**fascist (1)** 16:23  
**father's (1)** 17:4  
**favor (2)** 3:24 49:19  
**FBI (1)** 46:13  
**fear (1)** 47:17  
**federal (1)** 43:19  
**feel (3)** 32:24 41:15 47:21  
**fellow (1)** 11:4  
**fellowship (2)** 10:22,24  
**FERNANDEZ (2)** 2:6 26:14  
**fight (1)** 17:14  
**file (4)** 8:10,12 44:24 45:13  
**filed (2)** 11:23 40:18  
**final (1)** 7:21  
**finalized (1)** 7:10  
**find (5)** 14:19 15:2 21:2 26:25  
41:17

**fine (2)** 13:18 34:16  
**finer (1)** 20:9  
**finish (1)** 48:3  
**first (7)** 15:20 23:8 37:2,7 38:11  
42:7,9  
**fit (1)** 23:6  
**five (1)** 20:15  
**flip (1)** 33:22  
**focus (1)** 26:19  
**focused (1)** 10:16  
**focusing (1)** 27:24  
**folks (1)** 35:12  
**followed (1)** 36:15  
**following (1)** 19:22  
**force (6)** 33:25 34:5 39:10,11  
46:18,20  
**forget (1)** 8:22  
**form (1)** 21:7  
**formulating (1)** 36:17  
**formulation (1)** 33:13  
**found (1)** 7:16  
**four (1)** 5:23  
**Frank (3)** 2:10 33:10 38:12  
**Frisk (1)** 46:18  
**full (5)** 5:25 6:4 8:2,5 10:19  
**fully (6)** 6:6,19,21 11:8 12:16 13:8  
**function (1)** 41:20  
**further (1)** 51:11

**G**

**gather (1)** 11:7  
**general (7)** 21:5,13 22:5,9 23:4,12  
27:14  
**generality (1)** 37:14  
**generally (2)** 15:13 25:16  
**getting (2)** 14:5 45:8  
**give (2)** 4:11 19:2  
**given (2)** 29:10 38:25  
**gives (1)** 34:17  
**giving (1)** 30:17  
**go (8)** 11:6 15:16 29:2 37:20 45:14  
48:9,14 50:3  
**goes (3)** 28:25 29:5 44:25  
**going (14)** 4:10 5:4 6:11 11:14  
28:20,21 29:25 32:16 40:14 42:4  
42:12 43:10 48:11,20  
**good (4)** 3:2 4:19 42:17 44:6  
**gotten (2)** 9:9 42:9  
**government (3)** 17:2 43:20,20  
**grabbing (1)** 48:7  
**Great (1)** 15:15  
**grievances (1)** 17:13  
**grounds (1)** 33:15  
**group (1)** 16:12  
**guess (1)** 48:17  
**guilt (1)** 20:6  
**guilty (4)** 7:12,13,17,18

**Civilian Complaint Review Board - Draft 2**  
**August 24, 2017**

**guy (1)** 33:18  
**guys (1)** 42:25

---

**H**

---

**hand (2)** 16:9 51:15  
**handful (1)** 26:3  
**handle (1)** 43:24  
**hands (1)** 48:8  
**happen (1)** 24:2  
**happened (1)** 24:2  
**happens (1)** 12:8  
**hard (2)** 4:13 26:25  
**hardcopy (1)** 8:7  
**head (1)** 13:19  
**hear (2)** 18:19 47:15  
**heard (3)** 42:15 47:20 48:13  
**hearing (2)** 42:20 49:3  
**Heather (1)** 16:16  
**held (1)** 4:25  
**help (1)** 40:21  
**helpful (6)** 9:10 18:12,18 31:8  
40:17 46:3  
**helping (1)** 19:18  
**helps (2)** 30:20 39:16  
**hereunto (1)** 51:15  
**Heyer (1)** 16:16  
**hide (1)** 13:6  
**high (1)** 9:20  
**higher (1)** 14:3  
**historic (1)** 9:21  
**historical (1)** 27:15  
**historically (1)** 11:22  
**histories (5)** 18:13 19:14 26:7  
36:18 39:3  
**history (45)** 19:7,11 20:13,20,24  
21:5,21 22:2,8,12 23:10,24 24:11  
24:23 25:3,14,17,24 26:11 27:7  
29:21 30:14,22 31:4,8 33:5,9,23  
34:3,7,9,15 35:18,25 37:2 38:22  
39:6,16 40:16,20 41:3,14,18,24  
42:3  
**hold (1)** 5:16  
**home (2)** 8:10 44:23  
**honest (1)** 35:11  
**honesty (1)** 23:23  
**hope (1)** 10:21  
**hoping (3)** 10:23 12:9,18

---

**I**

---

**idea (1)** 34:17  
**identify (8)** 12:19 13:7 44:18 45:11  
45:16,20 46:2,7  
**identifying (2)** 44:7 45:2  
**illegal (3)** 32:7 34:19 40:13  
**immunity (1)** 17:15  
**impact (3)** 14:12 20:13 37:16  
**impacted (1)** 25:24

**impacting (3)** 14:10 38:23 39:9  
**implement (1)** 23:5  
**implicit (3)** 38:17,18 41:20  
**important (11)** 4:15 9:6,8 10:11  
29:20 30:4,5 31:13 33:11 36:2  
43:23  
**imposed (3)** 7:23 20:2 36:13  
**impossible (1)** 38:20  
**imprisonment (1)** 20:9  
**include (9)** 18:13,19 20:24 21:20  
22:18 25:20 26:8 41:17 44:14  
**included (5)** 5:17 14:21 25:14,25  
36:8  
**including (5)** 8:21 29:12,12 38:21  
40:19  
**inclusion (2)** 19:13 26:6  
**inconsistency (1)** 22:13  
**inconsistent (2)** 25:13,15  
**increase (2)** 5:7 10:19  
**incubator (1)** 10:24  
**indicated (1)** 17:20  
**indication (2)** 4:6 37:8  
**individual (4)** 29:4,6 38:3,10  
**information (2)** 18:20 45:8  
**initiated (1)** 5:6  
**injured (1)** 16:17  
**instructed (2)** 21:25 22:17  
**instructs (1)** 19:21  
**intensionally (1)** 38:14  
**interaction (2)** 36:4 39:21  
**interest (2)** 4:9 18:10  
**interested (1)** 51:13  
**interesting (2)** 14:20 26:21  
**interfering (1)** 40:12  
**invasion (1)** 43:11  
**investigate (4)** 11:8 12:16 15:11  
15:12  
**investigated (4)** 6:7,19,21 13:8  
**investigation (7)** 6:4 10:19 12:15  
34:15 35:8 44:25 45:14  
**investigations (16)** 5:12,19 6:2  
10:5,7,15 11:7,12 12:2 19:16,21  
21:10 22:14 23:3 27:16,20  
**investigator (9)** 19:24 20:11,20  
26:10 29:6 32:18 35:7 38:10  
45:20  
**investigators (11)** 5:25 8:8 11:5  
19:22 21:20,24 22:4,7,17 38:3  
46:4  
**Island (1)** 4:24  
**issue (7)** 9:25 18:8 19:20 26:4  
28:24 29:20 31:10  
**issues (1)** 27:12  
**Ivonne (1)** 47:13

---

**J**

---

**J (1)** 2:10

**JCC (1)** 4:25  
**Jennings (4)** 47:12,13,14 50:2  
**jeopardy (1)** 12:13  
**job (2)** 24:12,24  
**Joe (1)** 9:7  
**Jon (6)** 4:16 9:23 13:21 19:2 23:10  
44:3  
**JONATHAN (2)** 1:14 2:13  
**JOSEPH (1)** 2:11  
**judgement (1)** 24:21  
**judges (2)** 17:3,11  
**judicial (2)** 17:15,15  
**judiciary (1)** 16:25  
**July (16)** 5:6,8,10,16,17 6:2,6,10  
6:13,14,19,24 7:7,9,25 20:5  
**jump (3)** 3:15 5:4 11:19  
**June (2)** 5:9 18:6  
**jurisdiction (6)** 44:16 46:13,15,23  
47:2,5

---

**K**

---

**Kennedy (1)** 17:9  
**key (1)** 6:12  
**killed (2)** 16:16 17:11  
**kind (6)** 15:4 19:7 35:3,8 41:21  
46:16  
**know (29)** 8:23 9:11 10:3 13:10,14  
13:16,19 14:9,25 15:6 26:23 27:6  
27:17 29:21 31:15,16 33:12  
34:16 35:10 37:8 41:15,19,25  
43:11,24 44:2,23 47:10,22  
**know's (1)** 33:18  
**knowing (1)** 45:7  
**knowledge (1)** 27:15  
**known (1)** 45:5  
**knows (1)** 48:4  
**Koufakis (1)** 17:10

---

**L**

---

**Labor (1)** 3:13  
**lack (1)** 27:14  
**laid (1)** 28:23  
**language (3)** 41:7 46:20,21  
**late (2)** 3:11 4:10  
**law (2)** 48:5,16  
**laws (1)** 25:8  
**lay (1)** 28:21  
**leaves (1)** 41:22  
**legislate (1)** 24:4  
**lengthy (2)** 4:11 34:3  
**let's (4)** 3:15 23:8,11,16  
**letters (3)** 47:23,24,24  
**LINDSAY (1)** 2:9  
**line (2)** 28:6,6  
**list (9)** 15:19,20,23,25 16:7 17:19  
19:24 28:17 48:24  
**listen (1)** 34:23

**Civilian Complaint Review Board - Draft 2**  
**August 24, 2017**

**little (4)** 4:10 23:18 26:16 39:4  
**located (1)** 5:2  
**location (3)** 31:22 32:4,5  
**long (4)** 15:6 21:14 33:19,23  
**longer (2)** 22:4,5  
**look (11)** 17:7 26:7 27:3 31:18,19  
31:20,21 35:4 36:11 39:25 40:5  
**looked (1)** 33:20  
**looking (7)** 11:3 21:11 23:2 29:17  
31:17 34:14 35:21  
**lose (1)** 35:14  
**loss (1)** 31:2  
**lot (3)** 12:24 27:19 37:18  
**lots (1)** 38:16  
**low (1)** 12:14

**M**

**Madame (2)** 4:17 13:17  
**making (5)** 9:2 10:12 15:7 23:6  
40:11  
**manual (3)** 19:21 21:10 28:4  
**marijuana (1)** 20:7  
**marriage (1)** 51:12  
**Mary (1)** 17:9  
**materially (1)** 21:19  
**matter (3)** 12:7 51:9,14  
**matters (2)** 11:13,24  
**Maya (3)** 1:13 2:3 40:15  
**mean (8)** 10:4 15:2 27:7 33:24 34:4  
35:8 41:11 43:8  
**Meaning (1)** 24:16  
**means (2)** 30:24 45:21  
**meant (2)** 39:23,25  
**mediation (1)** 5:15  
**meet (1)** 38:7  
**meeting (12)** 1:4,16 3:3,4 4:21,23  
4:25 15:18 18:7,10 38:9 43:6  
**member (16)** 2:4,5,6,7,8,9,10,11  
16:9 18:9 21:14 26:15 29:17  
37:15 44:17 45:4  
**members (15)** 2:2 3:6,8 8:23 18:15  
18:16 23:9,20 24:5 25:6 29:3  
37:10 44:7 45:22 46:5  
**mentioned (2)** 26:18 39:5  
**middle (1)** 35:16  
**mile (1)** 33:19  
**minimal (1)** 39:2  
**minor (1)** 21:16  
**minutes (6)** 1:18 3:10,16 4:8 16:5  
50:2  
**misconduct (5)** 7:2 27:9,10 30:14  
43:10  
**misdemeanor (1)** 12:12  
**misunderstood (1)** 28:3  
**moment (3)** 37:24 48:3,12  
**month (1)** 6:12  
**monthly (2)** 8:3 9:2

**months (5)** 5:23,24 17:5 25:11  
27:14  
**mothers (1)** 17:5  
**motion (3)** 3:17 49:13,15  
**MOU (1)** 7:22  
**move (2)** 18:3 49:25  
**moved (2)** 3:18 49:16  
**municipality (1)** 35:20  
**murderer (1)** 39:12

**N**

**N (1)** 2:7  
**name (1)** 43:14  
**narcotics (3)** 20:17 32:3,3  
**necessarily (4)** 9:20 35:13,25  
43:25  
**need (5)** 11:8 17:14 27:3,23 49:7  
**needs (1)** 28:22  
**negative (2)** 30:10 31:5  
**neo-Nazi (1)** 16:24  
**never (3)** 21:19 25:18 47:25  
**new (15)** 1:7,7,23,24 5:7 11:18  
12:17 13:3 14:9,12 49:5,5,10  
51:3,7  
**Nicole (3)** 2:17 51:6,21  
**non-APU (2)** 6:23 7:7  
**Notary (1)** 51:6  
**note (4)** 4:22 15:3,10 20:12  
**noted (1)** 50:6  
**number (2)** 10:12 22:11  
**numbers (1)** 12:24 13:25  
**numerous (1)** 22:16  
**nyc.gov/ccrbcomplaint (1)** 8:13  
**NYPD (5)** 44:2,17,22 46:9,12

**O**

**O (1)** 1:12  
**obliged (1)** 42:2  
**observation (1)** 9:6  
**obtain (1)** 17:12  
**obvious (1)** 32:2  
**obviously (1)** 43:16  
**occurred (2)** 24:3 40:24  
**offensive (1)** 46:21  
**offer (4)** 24:13,15,19,20  
**office (2)** 7:4 23:5  
**officer (35)** 7:16 14:22 25:23,25  
29:15 30:13,21 31:7,9 32:3,4  
33:15,17 34:4 35:22 36:3,6,11,22  
37:4 39:10 43:8,25 44:10,10,12  
44:15,22 45:3,4,16,18,21 46:2,7  
**officer's (4)** 29:21 39:19 41:3  
43:16  
**officers (6)** 7:10 28:15,22 30:9,21  
42:2  
**okay (8)** 3:23 13:23 15:16 18:2  
23:16 40:3 49:12,24

**old (5)** 1:22 18:3,5 21:12 48:25  
**once (1)** 20:8  
**online (1)** 8:12  
**open (11)** 5:11,22,24 8:16 11:13,24  
19:8 23:11,16 30:16 41:22  
**operating (2)** 21:8 27:17  
**opinion (1)** 39:2  
**opportunity (1)** 30:18  
**opposed (5)** 4:3 29:12 31:2 34:23  
49:21  
**order (2)** 1:17 3:3  
**organization (1)** 46:8  
**originally (1)** 45:5  
**outcome (2)** 39:9 51:13  
**outreach (1)** 8:6  
**outside (1)** 10:17  
**oversight (2)** 16:24 26:24

**P**

**p.m (2)** 1:6 50:6  
**paint (1)** 34:24  
**panels (2)** 38:7,9  
**parcel (1)** 35:9  
**part (5)** 9:2 25:5 35:9 36:25 37:2  
**participate (3)** 11:12 12:2,15  
**particular (3)** 30:23 36:10 39:20  
**parties (1)** 51:12  
**pass (1)** 33:20  
**pattern (4)** 30:14 33:7 36:9 37:9  
**peddler (3)** 32:4,5 34:20  
**peddling (1)** 32:7  
**PEGUERO (4)** 2:8 35:16 36:25  
49:16  
**penalty (2)** 29:20 36:12  
**pending (2)** 5:13,19  
**people (11)** 11:23 16:12,18,20 17:5  
24:7 37:12 38:15,19 47:10 48:7  
**percent (19)** 5:22,23 6:7,8,10,15  
6:16,18,21,24,24 7:8,8,25 9:19  
25:22 29:8 31:14,16  
**percentage (2)** 13:13 33:12  
**percentages (1)** 13:11  
**Perez (7)** 15:21,22 16:3 43:4,5  
46:8 47:7  
**period (1)** 21:23  
**periods (1)** 22:17  
**person (13)** 15:20 27:6 34:8 35:24  
39:6,7,8,12,17 43:14 44:21 45:5  
47:11  
**person's (2)** 22:9 38:4  
**personally (1)** 23:21  
**pertains (1)** 14:17  
**pertinent (3)** 32:15,22 33:9  
**pictures (1)** 17:7  
**piloting (1)** 14:9  
**place (3)** 4:23 25:11 45:7  
**placeholder (1)** 15:4

**Civilian Complaint Review Board - Draft 2**  
**August 24, 2017**

**placement (1)** 21:17  
**plainclothes (1)** 14:23  
**plan (1)** 42:17  
**plea (1)** 7:20  
**please (4)** 4:22 8:3,6 16:8  
**pleased (1)** 3:14  
**pled (1)** 20:6  
**point (11)** 24:4,6 28:24 29:14,25  
30:3,19 35:3 38:2 40:5 47:16  
**police (15)** 6:25 7:3,9,17 28:14,22  
29:15 35:22 36:3,10 37:4 39:9  
40:12 45:22 46:14  
**policies (1)** 25:8  
**policy (10)** 9:13 12:22 19:12 21:4,7  
21:13,20 23:6,12 42:15  
**Poppas (3)** 16:4,11 17:18  
**Port (1)** 46:13  
**position (1)** 26:5  
**possession (2)** 20:7,16  
**possibility (2)** 41:22 45:12  
**practice (10)** 19:5,8 21:14 22:4,14  
22:15 26:23 42:10,21 43:16  
**practices (2)** 10:25 27:18  
**precinct (2)** 32:7 45:9  
**prefer (1)** 38:8  
**prejudicial (1)** 34:8  
**premise (1)** 27:11  
**present (4)** 2:2 9:11 24:6 25:6  
**presentation (1)** 21:17  
**pretty (1)** 14:6  
**prior (2)** 41:3,8  
**privacy (1)** 43:11  
**proactive (1)** 11:5  
**problem (3)** 12:19 13:9 16:3  
**procedure (1)** 21:8  
**procedures (1)** 27:17  
**proceeding (1)** 22:21  
**proceedings (51)** 1:10 3:1 4:1 5:1  
6:1 7:1 8:1 9:1 10:1 11:1 12:1  
13:1 14:1 15:1 16:1 17:1 18:1  
19:1 20:1 21:1 22:1 23:1 24:1  
25:1 26:1 27:1 28:1 29:1 30:1  
31:1 32:1 33:1 34:1 35:1 36:1  
37:1 38:1 39:1 40:1 41:1 42:1  
43:1 44:1 45:1 46:1 47:1 48:1  
49:1 50:1 51:8,10  
**process (5)** 12:11 28:16 44:4 45:2  
45:14  
**Program (1)** 5:2  
**promote (1)** 40:22  
**proposal (1)** 36:17  
**protested (1)** 16:13  
**provided (2)** 18:15,21  
**PSA (1)** 8:21  
**public (13)** 1:4,16,21 3:6 8:24 9:9  
15:17 17:23 19:4,4 30:15 48:24  
51:6

**public's (1)** 10:2  
**publicly (1)** 47:12  
**Puma (5)** 2:11 8:19 14:15 15:13  
40:24  
**punishment (1)** 20:2  
**purposes (1)** 19:4  
**pursuant (1)** 7:21  
**put (3)** 15:12 27:21 48:6  
**putting (1)** 48:8

---

**Q**

---

**qualified (3)** 24:12,18,24  
**QUEENS (1)** 51:4  
**question (9)** 13:24 18:11 25:20  
30:16 38:24 39:18 43:3,7,23  
**questions (8)** 8:16 9:15 13:20  
14:13 18:17 23:9,14 47:9  
**quite (3)** 35:11 44:6 48:10

---

**R**

---

**R (2)** 1:12 51:1  
**racial (1)** 46:22  
**racism (1)** 16:19  
**raise (2)** 16:8 24:4  
**raised (5)** 18:8,16 23:20 25:6  
29:14  
**raises (1)** 25:19  
**raising (1)** 18:22  
**RAMON (1)** 2:8  
**rap (1)** 33:19  
**rarely (1)** 12:7  
**rate (10)** 6:9,14,23 7:7,25 9:18,22  
10:20 13:5,6  
**rates (1)** 14:3  
**reach (3)** 8:6 11:9 47:19  
**reaching (1)** 12:9  
**reaction (1)** 33:2  
**read (3)** 23:23 28:5 38:22  
**reading (1)** 26:20  
**real (1)** 42:9  
**realized (1)** 23:22  
**really (12)** 9:18 10:16,17 11:6  
30:13,21 35:21 38:20 40:10 42:7  
43:23 48:10  
**reason (2)** 13:18 26:8  
**reasons (1)** 10:18  
**recall (1)** 21:15  
**received (1)** 20:8  
**recommendation (2)** 10:8 42:14  
**recommendations (3)** 7:5 10:13  
30:6  
**recommending (1)** 36:13  
**reconsider (1)** 26:6  
**record (7)** 3:11 31:13,20 34:17  
37:20 38:16 51:10  
**records (2)** 37:13 38:5  
**redress (1)** 17:13

**refer (2)** 47:3,5  
**reference (2)** 43:7 46:9  
**referring (1)** 19:6  
**reflect (2)** 3:11 9:8  
**regarding (2)** 14:18 19:12  
**related (2)** 38:6 51:11  
**relates (1)** 36:12  
**relatively (1)** 12:14  
**relevance (2)** 34:7 39:3  
**relevant (19)** 23:25 24:23,25 25:19  
25:21,22 26:2,3,12 27:5 29:9,11  
29:22 31:6 33:14,21 34:10 36:19  
38:6  
**remain (1)** 5:21  
**remaining (1)** 7:19  
**remains (1)** 22:13  
**remind (3)** 23:19 24:7 25:9  
**reminder (1)** 16:5  
**removing (1)** 35:10  
**reopened (2)** 5:18 12:6  
**report (15)** 1:19,20 4:11,15 8:6,14  
8:18 9:3 13:12 20:25 21:18 22:22  
27:5 33:4,8  
**reported (2)** 2:16 51:8  
**reports (10)** 15:3 18:14,20 19:14  
21:12 22:7 23:2,24 25:15 26:20  
**represent (1)** 9:22  
**representatives (1)** 45:23  
**requiring (1)** 21:20  
**research (3)** 12:21 19:11,18  
**resolved (3)** 6:8 7:20 36:24  
**respect (1)** 32:11  
**respectively (1)** 20:10  
**respond (2)** 38:11 39:4  
**response (10)** 3:22 4:4 9:16 13:22  
17:25 23:15 33:2 49:2,11,23  
**result (1)** 20:2  
**resuscitate (1)** 15:8  
**retained (2)** 7:21,23  
**reversed (1)** 7:18  
**review (5)** 1:3 3:5 5:14,20 8:2  
**reviewing (1)** 26:10  
**Richardson (1)** 17:9  
**right (6)** 3:15 5:4 18:23 27:22  
33:16 42:19  
**rights (2)** 34:5 40:4  
**risk (1)** 38:25  
**Robert (1)** 17:10  
**robes (3)** 16:13,20,21  
**role (1)** 38:18  
**rules (4)** 19:19 39:13 41:2,12  
**run (2)** 6:11 48:18  
**running (1)** 48:7

---

**S**

---

**safe (1)** 47:21  
**safety (1)** 47:17

**Civilian Complaint Review Board - Draft 2  
August 24, 2017**

<p><b>sake (1)</b> 10:2  <b>Sal (1)</b> 39:5  <b>salient (1)</b> 34:10  <b>SALVATORE (1)</b> 2:5  <b>Sapolsky (1)</b> 17:10  <b>saved (1)</b> 21:5  <b>saw (1)</b> 25:18  <b>scan (1)</b> 38:22  <b>scheduled (1)</b> 18:7  <b>second (7)</b> 3:19,20 28:24 36:25              43:5 49:17,18  <b>section (3)</b> 7:22 20:11 21:17  <b>see (18)</b> 15:9,11 17:4,5 26:2 30:5              32:13,17,21 34:12,13,16 35:4,13              40:2,6 42:5 44:11  <b>seen (2)</b> 31:25 32:23  <b>sees (1)</b> 23:6  <b>send (1)</b> 8:7  <b>sense (2)</b> 11:21 42:6  <b>sensible (1)</b> 16:18  <b>sent (1)</b> 7:3  <b>sentence (1)</b> 20:4  <b>separate (1)</b> 22:5  <b>September (2)</b> 4:22,24  <b>sergeant (1)</b> 32:9  <b>served (1)</b> 20:9  <b>service (2)</b> 20:10 44:7  <b>session (6)</b> 1:25 15:17 30:15 49:14              49:25 50:4  <b>set (1)</b> 51:15  <b>seven (2)</b> 5:24 7:11  <b>seventh (1)</b> 7:15  <b>share (1)</b> 9:23  <b>shared (1)</b> 23:10  <b>sharing (2)</b> 25:4 32:25  <b>sheet (1)</b> 33:19  <b>shield (1)</b> 31:24  <b>short (1)</b> 44:20  <b>show (4)</b> 39:6,7 47:23,24  <b>showed (2)</b> 16:14 47:22  <b>signed (3)</b> 15:23,25 16:7  <b>silent (1)</b> 19:20  <b>simply (2)</b> 26:24 36:23  <b>sit (2)</b> 16:22 42:23  <b>slash (1)</b> 31:19  <b>slur (1)</b> 46:22  <b>small (2)</b> 26:3 29:10  <b>society (1)</b> 16:21  <b>sole (1)</b> 41:4  <b>solve (1)</b> 13:9  <b>somebody (1)</b> 34:20  <b>somebody's (1)</b> 43:13  <b>someone's (1)</b> 35:18  <b>sorry (2)</b> 15:24 43:3  <b>sort (2)</b> 41:21 43:9  <b>sound (1)</b> 42:17  <b>spanning (1)</b> 22:20</p>	<p><b>spare (1)</b> 48:12  <b>speak (7)</b> 15:20,23 16:8 47:12 48:2              48:21 50:3  <b>speaking (3)</b> 15:14 21:11 48:24  <b>spoke (1)</b> 40:15  <b>spread (1)</b> 10:25  <b>ss (1)</b> 51:3  <b>staff (17)</b> 3:7 4:12,13 5:14 8:20              12:21 16:9 19:15 21:11 22:25              42:10,13,20 44:25 45:11,12,16  <b>stain (1)</b> 17:16  <b>Stalking (1)</b> 48:16  <b>standard (2)</b> 21:7 27:16  <b>standpoint (1)</b> 30:4  <b>start (3)</b> 23:8,18 35:10  <b>started (1)</b> 10:5  <b>starting (1)</b> 14:8  <b>State (3)</b> 43:20 51:3,7  <b>statements (1)</b> 12:3  <b>Staten (1)</b> 4:24  <b>statistic (1)</b> 14:2  <b>statistical (1)</b> 14:19  <b>statistics (5)</b> 5:5 6:12 8:3,21 44:12  <b>statue (1)</b> 16:14  <b>statute (2)</b> 24:9 25:2  <b>step (1)</b> 28:9  <b>steps (1)</b> 11:9  <b>Steven (1)</b> 17:9  <b>stop (4)</b> 25:9 33:17 34:2 46:18  <b>stopped (1)</b> 33:18  <b>Street (2)</b> 1:7 5:3  <b>stress (1)</b> 25:12  <b>structure (1)</b> 21:16  <b>subject (3)</b> 7:16 14:22 44:9  <b>subjects (1)</b> 44:8  <b>substantiated (9)</b> 6:17 7:2 29:18              30:12,24 34:11 36:9 37:11 41:8  <b>substantiation (3)</b> 6:14 14:3 36:23  <b>suffered (1)</b> 33:24  <b>suggest (1)</b> 42:12  <b>suggested (3)</b> 8:23,24 33:3  <b>suggestion (4)</b> 14:17 15:8 36:16              42:5  <b>suicide (2)</b> 17:6,8  <b>supervisor (3)</b> 20:21,21 32:19  <b>supremacist (1)</b> 16:15  <b>supremacy (1)</b> 17:15  <b>sure (3)</b> 36:15 37:22 47:9  <b>surprising (1)</b> 14:4  <b>sword (2)</b> 31:24 40:21  <b>sympathy (1)</b> 37:18  <b>system (1)</b> 17:13</p> <hr/> <p align="center"><b>T</b></p> <hr/> <p><b>T (2)</b> 51:1,1  <b>table (1)</b> 35:2  <b>tabled (1)</b> 18:24</p>	<p><b>take (12)</b> 4:23 8:9 17:3 24:10 25:2              29:23 33:4 35:2 36:11 42:13 44:3              50:2  <b>taken (1)</b> 25:10  <b>talk (2)</b> 18:7 30:9  <b>talking (3)</b> 11:17 22:25 46:15  <b>task (2)</b> 11:15 27:24  <b>team (2)</b> 12:22 32:9  <b>tell (3)</b> 11:25 31:18 45:3  <b>telling (2)</b> 31:22 32:12  <b>ten (3)</b> 22:19,21 48:6  <b>tend (1)</b> 44:14  <b>terms (3)</b> 25:7 43:23 44:4  <b>thank (29)</b> 3:6,7,8 4:8,12,17 8:15              8:20 9:4,13 12:22 15:15,25 16:10              17:16,18 18:2,22 19:15 23:7              30:17 32:25 43:2 47:7,8 48:21,22              49:24 50:5  <b>Thelwell (1)</b> 19:17  <b>thing (1)</b> 45:25  <b>things (3)</b> 32:7 44:6 46:6  <b>think (35)</b> 4:14 9:8 10:17 15:4              23:21 26:21,25 27:2,5,6 28:20,25              29:8,15 30:2,3,9 31:3,5 33:3,6,10              33:12,16,22 34:25 35:5 36:6 37:3              40:15 42:19 47:2,4,18 48:25  <b>thinking (2)</b> 37:23,23  <b>Thomas (1)</b> 17:10  <b>thought (5)</b> 15:24 23:22 24:3 26:17              28:4  <b>thoughts (1)</b> 9:24  <b>three (3)</b> 7:12,13,19  <b>throw (1)</b> 24:6  <b>time (10)</b> 4:9 18:10 20:9 21:4,23              22:12 29:9 45:7 49:13 50:6  <b>times (4)</b> 11:25 22:16 30:20 45:10  <b>today (2)</b> 48:10,13  <b>told (1)</b> 48:14  <b>tool (3)</b> 32:12 34:13,13  <b>top (2)</b> 10:15 13:19  <b>topic (2)</b> 19:18 42:8  <b>torches (1)</b> 16:13  <b>total (1)</b> 5:10  <b>totality (1)</b> 32:14  <b>tracking (1)</b> 21:6  <b>trade (2)</b> 40:6,22  <b>trail (1)</b> 7:15  <b>training (2)</b> 23:4 30:25  <b>transcript (2)</b> 1:10 51:9  <b>treated (1)</b> 28:13  <b>trial (2)</b> 7:12 12:4  <b>tried (1)</b> 47:18  <b>true (1)</b> 51:9  <b>truncated (1)</b> 13:2  <b>truncating (1)</b> 10:18  <b>truncation (11)</b> 1:24 6:9 9:18,21              10:3 11:18 12:18 13:5,6 49:5,8</p>
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**Civilian Complaint Review Board - Draft 2  
August 24, 2017**

<p><b>truncations (3)</b> 9:25 13:14,20  <b>try (6)</b> 13:9 45:20,25 46:6 48:11,20  <b>trying (4)</b> 10:17 27:13,21 41:24  <b>twice (1)</b> 20:7  <b>two (4)</b> 7:21,22 16:5 28:11  <b>type (1)</b> 44:13</p> <hr/> <p align="center"><b>U</b></p> <hr/> <p><b>ultimately (1)</b> 37:20  <b>umbrella (1)</b> 43:19  <b>unable (4)</b> 10:6 21:2 44:9 45:16  <b>underlying (1)</b> 36:20  <b>understand (3)</b> 19:5 27:3 30:6  <b>understanding (1)</b> 33:14  <b>unfortunately (1)</b> 9:19  <b>unfounded (4)</b> 6:18 28:19 36:8 41:9  <b>unidentified (3)</b> 44:11,12 45:18  <b>uniform (1)</b> 14:24  <b>unit (5)</b> 5:15 8:7 9:13 23:4 27:21  <b>unlawfully (1)</b> 44:23  <b>unsubbed (1)</b> 28:19  <b>unsubstantiated (2)</b> 36:7 41:9  <b>unwarranted (1)</b> 43:11  <b>update (1)</b> 21:9  <b>upset (1)</b> 48:10  <b>use (5)</b> 10:23 21:25 22:7 24:16 25:16  <b>useful (1)</b> 9:11</p> <hr/> <p align="center"><b>V</b></p> <hr/> <p><b>vacation (1)</b> 31:2  <b>vehicle (1)</b> 40:8  <b>verdict (1)</b> 7:18  <b>verdicts (2)</b> 7:13,14  <b>versions (1)</b> 21:9  <b>victim (8)</b> 19:23,25 20:4,6,14,19 27:9 31:19  <b>victim's (1)</b> 20:13  <b>victimized (2)</b> 27:8 31:7  <b>victims (1)</b> 21:22  <b>video (5)</b> 6:20,22 14:2,4,8  <b>view (1)</b> 38:23  <b>viewed (1)</b> 26:11  <b>violate (1)</b> 34:5  <b>Virginia (1)</b> 16:12  <b>virtue (1)</b> 41:23  <b>visible (1)</b> 37:16  <b>visit (1)</b> 8:3  <b>voted (1)</b> 37:11</p> <hr/> <p align="center"><b>W</b></p> <hr/> <p><b>waiting (1)</b> 11:4  <b>want (13)</b> 4:12 11:19 15:22 16:23 19:15 32:17,17 34:24 35:13,15 37:7 44:3 47:9  <b>wanted (3)</b> 8:20 15:8 47:24</p>	<p><b>Warren (1)</b> 5:3  <b>wasn't (1)</b> 26:22  <b>watch (1)</b> 48:19  <b>watched (1)</b> 48:17  <b>watching (1)</b> 8:9  <b>way (6)</b> 10:8 13:6,7 25:15 34:13 51:13  <b>ways (3)</b> 9:11 10:21 30:8  <b>we'll (5)</b> 8:7 19:8 42:23 47:3 49:24  <b>we're (14)</b> 10:12,23 11:3,9,16,17 12:9,18,20 27:25 29:23 41:15,25 46:15  <b>we've (9)</b> 10:6 13:4 14:5 25:7 29:18 30:12 31:25 42:8,9  <b>wear (1)</b> 16:21  <b>wearing (2)</b> 16:12,20  <b>website (2)</b> 8:4,5  <b>Wednesday (1)</b> 4:23  <b>weigh (1)</b> 35:15  <b>welcome (1)</b> 4:20  <b>went (1)</b> 9:2  <b>weren't (1)</b> 44:18  <b>WHEREOF (1)</b> 51:15  <b>white (3)</b> 16:12,15,20  <b>wider (1)</b> 27:18  <b>Wiley (47)</b> 1:13 2:3 3:2,19,21,23 4:3,5,7 8:15 9:4,17 11:20 13:10 13:18,23 14:13 15:15,24 16:4 17:18 18:2,22 23:7,16 26:13 29:24 32:25 35:12 36:14 37:6 40:23 42:4 43:2,22 44:20 46:11 47:8,19 48:22 49:3,10,12,17,19 49:21,24  <b>wing (1)</b> 35:12  <b>Winston (1)</b> 19:17  <b>wish (1)</b> 47:12  <b>within-entitled (1)</b> 51:8  <b>witness (2)</b> 19:24 51:15  <b>witnesses (1)</b> 45:6  <b>wonder (1)</b> 9:23  <b>wondering (2)</b> 14:7 35:17  <b>wonky (1)</b> 10:3  <b>word (2)</b> 10:3 38:5  <b>work (5)</b> 4:13 12:22,25 23:5 27:19  <b>working (2)</b> 11:16 27:25  <b>works (2)</b> 12:11 30:8  <b>wouldn't (3)</b> 26:19 34:3 48:9  <b>writing (1)</b> 41:12</p> <hr/> <p align="center"><b>X</b></p> <hr/> <p><b>X (2)</b> 1:2,6</p> <hr/> <p align="center"><b>Y</b></p> <hr/> <p><b>yeah (1)</b> 48:19  <b>year (1)</b> 3:12  <b>year-to-date (3)</b> 6:3,25 7:8  <b>years (6)</b> 17:4 21:18 22:15,21</p>	<p>34:25 48:6  <b>Yoon (4)</b> 2:4 4:2,6,7  <b>York (4)</b> 1:7,7 51:3,7  <b>YOUNGIK (1)</b> 2:4</p> <hr/> <p align="center"><b>Z</b></p> <hr/> <p align="center"><b>0</b></p> <hr/> <p align="center"><b>1</b></p> <hr/> <p><b>1 (1)</b> 1:17  <b>1,254 (1)</b> 5:11  <b>100 (4)</b> 1:7 4:20 12:25 13:13  <b>101 (2)</b> 5:2 35:9  <b>11 (1)</b> 5:18  <b>12 (1)</b> 7:10  <b>137 (1)</b> 5:14  <b>13th (1)</b> 4:24  <b>14 (1)</b> 5:16  <b>15 (1)</b> 20:5  <b>16 (1)</b> 43:18  <b>168 (1)</b> 6:4  <b>17 (1)</b> 5:17  <b>18 (1)</b> 6:15</p> <hr/> <p align="center"><b>2</b></p> <hr/> <p><b>2 (2)</b> 1:18 7:22  <b>20 (1)</b> 6:16  <b>2000s (1)</b> 21:24  <b>2003 (1)</b> 20:5  <b>2014 (1)</b> 20:6  <b>2015 (1)</b> 6:5  <b>2016 (3)</b> 5:8 12:25 13:14  <b>2017 (10)</b> 1:5 5:6,9,17 6:2,6,10,16 6:19 51:16  <b>21 (1)</b> 20:6  <b>22 (1)</b> 7:8  <b>223 (1)</b> 6:5  <b>24 (1)</b> 1:5  <b>28th (1)</b> 51:16  <b>29 (1)</b> 6:7  <b>295 (1)</b> 5:13</p> <hr/> <p align="center"><b>3</b></p> <hr/> <p><b>3 (1)</b> 1:19  <b>31 (1)</b> 7:8  <b>311 (1)</b> 8:12  <b>33 (1)</b> 6:8  <b>345 (1)</b> 5:8  <b>36 (1)</b> 6:21  <b>383 (1)</b> 5:6</p> <hr/> <p align="center"><b>4</b></p> <hr/> <p><b>4 (1)</b> 1:20  <b>421 (1)</b> 5:8  <b>44 (1)</b> 6:18  <b>49 (1)</b> 5:2</p>
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**Civilian Complaint Review Board - Draft 2**  
**August 24, 2017**

<b>5</b>		
<b>5 (1)</b> 1:21		
<b>6</b>		
<b>6 (2)</b> 1:22 5:19 <b>6:39 (2)</b> 1:6 3:3 <b>60 (1)</b> 7:25 <b>63 (1)</b> 6:24 <b>67 (2)</b> 6:10 9:19		
<b>7</b>		
<b>7 (1)</b> 1:23 <b>7:26 (1)</b> 50:6 <b>74 (1)</b> 6:24 <b>75 (1)</b> 25:22		
<b>8</b>		
<b>8 (1)</b> 1:25 <b>80-some (1)</b> 38:2 <b>800-341-2272 (1)</b> 8:11 <b>808 (1)</b> 5:11 <b>88 (1)</b> 5:22		
<b>9</b>		
<b>93 (1)</b> 5:25 <b>95 (3)</b> 29:8 31:14,16 <b>98 (1)</b> 5:23		