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CIVILIAN COMPLAINT REVIEW BOARD

PUBLIC MEETING

September 14, 2022

4:13 p.m.

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HELD VIA VIDEOCONFERENCE/  
100 Church Street  
New York 10007

B E F O R E:

ARVA RICE, CHAIR

JONATHAN DARCHE, ESQ., EXECUTIVE DIRECTOR

COURT REPORTER:  
Sabrina Brown Stewart

PUBLIC MEETING AGENDA

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1. Call to Order
2. Approval of Minutes
3. Report from the Chair
4. Report from the Executive Director
5. Presentation from Outreach on the CCRB
6. Public Comment
7. Old Business
8. Voting on Rule Changes
9. New Business
10. Adjourn to Executive Session

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BOARD MEMBERS PRESENT

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- 1. Arva Rice, Interim Board Chair
- 2. AU Hogan, Board Member
- 3. Corrine Irish, Esq., Board Member
- 4. Michael Rivadeneyra, Esq., Board Member
- 5. Herman Merritt, Board Member
- 6. John Siegal, Esq., Board Member
- 7. Willie Freeman, Board Member
- 8. Joseph A. Puma, Board Member
- 9. Salvatore Carcaterra, Board Member
- 10. Esmeralda Simmons, Esq., Board Member
- 11. Rev. Dr. Demetrius Carolina, Board Member
- 12. Frank Dwyer, Board Member

PRESENTERS:

JAHl ROSE - Director of Outreach  
 New York City Civilian Complaint Review Board

1 S P E A K E R S :

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3 MICHAEL MEYERS - President - New York Civil Rights  
4 Coalition Inc.

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5 DANIEL HEREDIA - Community Outreach Liaison - Office  
6 of Council Member Farah Louis

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7 ANDREW WILSON - Community Member

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1 MS. ALVAREZ: Good evening, everyone.  
2 Thank you so much for joining us. For those  
3 utilizing ASL interpretation services, our  
4 interpreters for that today are Alefhi and  
5 Beth, their display names are on the screen.  
6 Instructions of how to pin their video will  
7 be in the chat, and as well as CART services.

8 CHAIR RICE: Good afternoon, everyone,  
9 and welcome. My name is Arva Rice. I use  
10 she/her pronouns, and I am the Interim Chair  
11 of the Civilian Complaint Review Board. I  
12 would like to call the CCRB September Board  
13 meeting to order.

14 Would the rest of the Board please  
15 introduce yourselves, starting with  
16 Esmeralda.

17 MS. SIMMONS: Esmeralda Simmons,  
18 she/her, an appointee by the Public Advocate.

19 DR. CAROLINA: Demetrius Carolina,  
20 Staten Island, Mayoral Appointee.

21 MR. RIVADENEYRA: Good afternoon,  
22 everyone. Michael Rivadeneyra, pronouns  
23 he/him. I am a City Council Appointee  
24 hailing from the Bronx.

25 MR. PUMA: Good afternoon. My name is

1 Joseph Puma. I go by he/his pronouns, and  
2 I'm the Manhattan City Council Representative  
3 on the Board.

4 MR. DWYER: Good afternoon, everybody.  
5 My name is Frank Dwyer. I'm a Police  
6 Commissioner Representative Designee.

7 MR. DARCHE: Good afternoon. My name  
8 is Jonathan Darche. I'm the Executive  
9 Director of the agency, and I use he/him  
10 pronouns.

11 MS. IRISH: Hi, everyone. My name is  
12 Corrine Irish. I am a Mayoral Appointee and  
13 live in Harlem.

14 MR. SIEGAL: John Siegal, Mayoral  
15 Appointee.

16 MR. MERRITT: Herman Merritt, City  
17 Council Appointee from Brooklyn.

18 MR. CARCATERRA: Good evening. I'm Sal  
19 Carcaterra, and I'm a Police Commissioner  
20 Designee to the Board.

21 CHAIR RICE: Thank you.

22 MR. DARCHE: Is there anyone --

23 CHAIR RICE: Is there anyone on the  
24 line?

25 Mr. Freeman?

1 MS. ALVAREZ: Board Member Freeman will  
2 be joining us shortly, as well as Board  
3 Member Hogan.

4 CHAIR RICE: And just so you know, it's  
5 still just a little bit hard to hear Yojaira  
6 on the line. If you want to just turn it up  
7 just a tad. Thank you.

8 For a motion to approve the minutes.

9 MR. DWYER: So moved.

10 CHAIR RICE: A second?

11 (Chorus of seconds.)

12 CHAIR RICE: Are there any changes or  
13 corrections to the minutes?

14 (No response.)

15 CHAIR RICE: None? Okay. Hearing  
16 none, all those in favor of approving the  
17 minutes as presented say, "Aye."

18 (Chorus of ayes.)

19 CHAIR RICE: All those opposed?

20 (No response).

21 CHAIR RICE: The minutes are approved.

22 Today, the Board will vote on the  
23 Agency's proposed rules. In July, the CCRB  
24 posted its proposed rules and opened the  
25 floor for public comments. Last year, the

1 City Council voted to change the City Charter  
2 to grant the CCRB the power to self-initiate  
3 complaints and begin investigations on  
4 bias-based policing and racial profiling.

5 In order for the CCRB to begin these  
6 types of investigations, the Board must vote  
7 to change the Agency's rules. The CCRB is  
8 also proposing to include misuse of body-worn  
9 camera footage as an abuse of authority,  
10 bringing it into the CCRB's jurisdiction.  
11 These new powers will empower the CCRB to  
12 address a wider range of police misconduct  
13 and improve accountability for all New  
14 Yorkers.

15 If the Board votes to adopt the  
16 proposed rules, the rules will be published  
17 in the City Record. The rules will go into  
18 effect 30 days after publication. Any  
19 questions on the procedure or details of the  
20 vote and rule changes can be directed to  
21 Executive Director, Jon Darche.

22 Jon?

23 MR. DARCHE: Thank you, Chair Rice.

24 The CCRB received notification from the  
25 Office of Management and Budget on

1           September 12, 2022, that the administration  
2           would like the CCRB, as well as every other  
3           city agency, including the NYPD, to plan cost  
4           savings for this year and future years.

5           The target is for the CCRB to cut  
6           \$706,000 from the current fiscal year's  
7           budget to \$1,100,000 from future fiscal  
8           years. The Agency anticipates it can meet  
9           these targets without impacting our personal  
10          services or PS budget. But I will report  
11          back to the Board on our plans as we move  
12          forward.

13          Despite these targets, the agency is  
14          still recruiting to fill openings for several  
15          attorney positions in one of the CCRB's core  
16          teams, the Administrative Prosecution Unit.  
17          The APU handles the most serious cases of  
18          misconduct and takes them to trial before an  
19          administrative law judge, who works for the  
20          Police Department.

21          In addition to recruiting prosecutors  
22          for the APU, we are also recruiting  
23          additional investigators for the Agency. We  
24          are going to be holding a virtual information  
25          session on CCRB careers on September 21st at

1           5 p.m., which you can all register for by  
2           clicking the link in the chat that Jahi is  
3           going to post.

4           This week, the National Association for  
5           the Civilian Oversight of Law Enforcement is  
6           hosting its annual conference and invited the  
7           CCRB to be a part of the national  
8           conversation on civilian oversight. As the  
9           largest civilian oversight board in the  
10          country, the CCRB is honored to be a part of  
11          the national conversation and help lead the  
12          rest of the country as we all work for  
13          greater accountability.

14          I'm excited to have been part of a  
15          group that presented on the issue of  
16          responding to critical incidents earlier  
17          today. Other CCRB staff who will be  
18          presenting at the conference are Yojaira  
19          Alvarez, Baiana Turat and Amy O'Sullivan.

20          This afternoon, I have a few updates  
21          and rules on CC -- updates on CCRB operations  
22          and how this meeting is going to work. The  
23          CCRB expects to have a protest report out in  
24          the coming months. Our office is open for  
25          walk-in complaints, but it is also possible

1 to file complaints online at  
2 nyc.gov/ccrbcomplaint. That is  
3 nyc.gov/ccrb-C-O-M-P-L-A-I-N-T or by calling  
4 us on the telephone at 1(800)341-2272 or by  
5 calling 3-1-1.

6 If anyone who is here right now wishes  
7 to file a complaint, we have two  
8 investigators on hand to take new complaints.  
9 They are Emma Stoddard (phonetic) and Kee  
10 Busk (phonetic). Emma are you -- Kee, is  
11 Emma here?

12 There you go. Sorry, Emma.

13 Again, for this afternoon, if you are  
14 joining us online and you wish to make a  
15 comment, please use the "raise-the-hand"  
16 feature. We're going to be limiting  
17 comments, both online and in person, to  
18 four minutes max.

19 I want to thank the staff for their  
20 hard work. And I want to thank, again, the  
21 members of the public for joining us today.

22 CHAIR RICE: Of our Board members, do  
23 anyone of you have questions of Jon based on  
24 his report?

25 (No response).

1 CHAIR RICE: Okay. Seeing no  
2 questions, I'm going to ask our Director of  
3 Outreach, Jahi Rose, to make his  
4 presentation.

5 MR. ROSE: Good afternoon. Thank you  
6 very much, Chair Rice. Thank you all very  
7 much for attending. My name is Jahi Rose. I  
8 go by he/him pronouns. Just bear with me for  
9 one moment while I share my screen.

10 (Display on screen.)

11 MR. ROSE: Can you see my screen?

12 MS. ALVAREZ: Yes.

13 MR. ROSE: Good.

14 So, the Civilian Complaint Review Board  
15 is the nation's largest independent oversight  
16 entity over the largest police force in the  
17 country. The CCRB investigates, mediates and  
18 prosecutes complaints of misconduct against  
19 members of the NYPD. The Agency is governed  
20 by a 15-member board; five seats are  
21 appointed by the Mayor, five are appointed by  
22 the New York City Council, three are  
23 designated by the Police Commissioner, one is  
24 appointed by the Public Advocate, and the  
25 Chair is jointly appointed by the Mayor and

1 the City Council.

2 The CCRB intakes complaints about  
3 police misconduct. Our jurisdiction falls  
4 under the acronym FADO; force, abuse of  
5 authority, discourtesy and offensive  
6 language.

7 Just a few details regarding the  
8 Right-to-Know Act. The Right-to-Know Act is  
9 a law that went into effect in October of  
10 2018, on impact police encounters with member  
11 of the public, which includes under certain  
12 circumstances, officers being required to  
13 identify themselves by providing name and  
14 other information; such as rank, command and  
15 shield number.

16 With some exceptions, explaining the  
17 purpose of their encounter with that  
18 individual, also informing an individual of  
19 their right to say no when asking for their  
20 consent to search that individual's personal  
21 property, vehicle and/or home.

22 And under certain circumstances,  
23 offering a business card with the officer's  
24 information that explains how to make a  
25 comment and/or complaint about the

1 interaction with the officer or any other  
2 officer for that matter. Civilians can  
3 request the business card in all encounters.  
4 This is a copy of what the business card  
5 looks like (indicating).

6 Now, there are various ways to report  
7 police misconduct, as mentioned by our  
8 Executive Director, Jonathan Darche. You  
9 could go to our website at  
10 [nyc.gov/ccrbcomplaint](https://nyc.gov/ccrbcomplaint). You could also call  
11 our hotline at 1(800)341-CCRB or  
12 1(800)341-2272.

13 Remember, if you see a footage of  
14 misconduct on social media or news media, you  
15 could feel free to file a complaint, even if  
16 you weren't there in person. The hashtag for  
17 the Agency or the handle for the Agency is  
18 CCRB\_NYC. Couple of additional ways to file  
19 a complaint, also by calling 3-1-1. You  
20 could visit the CCRB's office at 100 Church  
21 Street on the 10th Floor, New York, New York,  
22 zip code 10007, in Lower Manhattan.

23 You could go to the CCRB's social media  
24 page. We have Facebook, Twitter and  
25 Instagram. You could also file a complaint

1 using mail, which is the same address,  
2 100 Church Street, 10th Floor, New York, New  
3 York, zip code 10007. You could also file a  
4 complaint at any local police precinct. It  
5 does not have to be where the encounter took  
6 place. Police officers are required to  
7 accept complaints at any precinct. And they  
8 could also provide you with a complaint form  
9 and postage-free envelope.

10 The CCRB is hiring, as mentioned by the  
11 Executive Director, for various positions  
12 within the Agency. If you have questions  
13 regarding information about the jobs or  
14 roles, feel free to e-mail  
15 careers@ccrb.nyc.gov. If you would like an  
16 outreach presentation for your friends,  
17 family, neighborhood, local organizations,  
18 feel free to reach the CCRB's outreach unit  
19 at outreach@ccrb.nyc.gov. You could also  
20 reach us -- feel free to follow us on  
21 Instagram, Twitter and on Facebook.

22 Thank you.

23 CHAIR RICE: Thank you. I appreciate  
24 it.

25 Do members of the board -- well,

1           actually, before I go to that, let me ask --  
2           have we been joined on the line by additional  
3           Board members?

4           MS. ALVAREZ: Yes, we have been joined  
5           by Board Member Willie Freeman.

6           Mr. Freeman, can you unmute and turn on  
7           your video when you get a moment.

8           MR. FREEMAN: Yes. My name is Willie  
9           Freeman, Police Commissioner Designate. I am  
10          from Brooklyn.

11          CHAIR RICE: Do any members of the  
12          Board have any questions about the  
13          presentation from Jahi Rose, outreach  
14          presentation?

15          (No response).

16          CHAIR RICE: Okay. Thank you so much,  
17          Jahi. We appreciate it.

18          MR. ROSE: Thank you.

19          CHAIR RICE: We will now enter the  
20          public comment portion of the meeting.

21          If you are interested in making a  
22          public comment, please line up behind the  
23          podium, if you are joining us in person. Or  
24          use the "raise-your-hand" feature if you are  
25          joining us virtually and we will go in that

1 order. Please keep your comments to  
2 four minutes.

3 And Yojaira, would you please call on  
4 our first person.

5 MS. ALVAREZ: Thank you, Chair Rice.

6 First, we'll be hearing from Michael  
7 Meyers, who is joining us virtually.

8 MR. MEYERS: Can you hear me? Can you  
9 hear me?

10 MS. ALVAREZ: Yes.

11 MR. MEYERS: Okay. First of all, I  
12 want to respond to the comment on the  
13 outreach of the CCRB. I find the  
14 presentation, this one in particular, the  
15 former preparation, to be inane, repetitive,  
16 insulting. It come off as filler for these  
17 meetings. We already know the pamphlet about  
18 how to proceed and how to check on the CCRB  
19 for the complaints. So, I just find the  
20 filler, just waste of our time.

21 Second of all, I want to question  
22 again, is there any further word or progress  
23 on inviting the Police Commissioner to attend  
24 a regular public, open public meeting of the  
25 CCRB? So, the public can hear from her and

1           hear CCRB question her about her support or  
2           lack of support and backing of the CCRB's  
3           investigations.

4           CHAIR RICE: Thank you, Mr. Meyers, for  
5           your comment and your question. I'm going to  
6           ask our Executive Director to respond to the  
7           presentation about our outreach director to  
8           see any feedback that he has on that.

9           And in terms of your recommendation to  
10          invite the Police Commissioner, our Board has  
11          been in conversation about the feasibility of  
12          whether to extend that invitation, and that  
13          is an ongoing conversation that we're having.  
14          And we'll most assuredly make a presentation  
15          back to the public on the ultimate decision  
16          that's decided on that recommendation.

17          MR. MEYERS: What's taking them so  
18          long?

19          MR. DARCHE: Mr. Meyers, I know you  
20          have been very involved in the issue of  
21          civilian oversight of law enforcement in this  
22          city for many, many years. And I have a huge  
23          amount of respect for the work that you do  
24          and have done for this city on this issue.  
25          But there are also people tuning into this

1 hearing who may not really know what the  
2 Agency does.

3 And so, when we have this outreach  
4 presentation, it is not really aimed at  
5 someone such as yourself, who frankly  
6 probably knows more about civilian oversight  
7 in this city more than I do. It is aimed at  
8 someone who might not realize what they're  
9 tuning into. It's supposed to give people  
10 the baseline, so that they could participate  
11 in this meeting and understand what this  
12 agency does.

13 And so, with all due respect, I think  
14 it's -- I know how much work Jahi does on his  
15 presentation. And as his boss, I'm proud of  
16 the work he does and his whole team does.  
17 And so, I think it -- and while I understand  
18 it may be frustrating for you, I think it's  
19 an important part of this meeting and the  
20 work that we do.

21 CHAIR RICE: Jahi, can you let us know  
22 who is next -- I mean, sorry.

23 Yojaira, can you let us know who is  
24 next on the list.

25 MS. ALVAREZ: Next, we have Daniel

1 Heredia joining us virtually.

2 MR. HEREDIA: Hello. My name is Daniel  
3 Heredia. I'm from Council -- hi, my name is  
4 Daniel Heredia. I'm from Council Member  
5 Farah Louis' office. I am making a comment  
6 on behalf of our team with Constituent  
7 Services here at District 45.

8 Recently, we had a person come into our  
9 office wanting to make a complaint, and we  
10 were informed that the web form to making a  
11 complaint is a little bit difficult to use,  
12 especially when not all of the details about  
13 the person, about the police officer, who the  
14 complaint is made about in this incident is  
15 known.

16 So, I am wondering if maybe it could be  
17 answered or rather if hopefully later down  
18 the line there can be a discussion on how to  
19 make a complaint when some of the information  
20 about the NYPD representative or officer who  
21 the complaint is about, if not all the  
22 details are known, somehow to be able to  
23 understand that still there's a pathway for  
24 an investigation to take place within that  
25 precinct, to figure out where that situation

1           took place and find which police officer was  
2           responsible, even though, if the complainant  
3           was not able to get a name or other  
4           identification.

5                       This is especially true as in the case,  
6           the constituent case that we dealt with a  
7           couple of weeks ago, where the NYPD officer  
8           perhaps was off duty. And thus, there is  
9           more of an impetus to make a response on the  
10          behavior of a police officer, even when  
11          they're off duty and may possible abuse of  
12          power, but still being able to identify who  
13          that representative is and to make sure that  
14          they are able to be identified during  
15          investigation.

16                      So, again, just to succinctly put it,  
17          our office is concerned about the way that  
18          complaints of police misconduct are handled  
19          if not all the detail of the police officer  
20          is known at the time. And we would like to  
21          be able to reassure our constituents who do  
22          make complaint with the Civilian Complaint  
23          Review Board, to be able to know that the  
24          investigations can still be done in a  
25          productive and fulfilling manner, even if not

1 all those details are had.

2 So, I rest my time, and thank you so  
3 much for this public hearing. Thank you.

4 CHAIR RICE: Thank you so much, Daniel,  
5 for that thoughtful question. And I'm going  
6 to turn it over to our executive director to  
7 respond.

8 MR. DARCHE: Thank you, Madam Chair.  
9 And thank you, Mr. Heredia.

10 So, there are two issues that I want to  
11 address from your question. The first is:

12 A civilian doesn't need to be able to  
13 identify the police officer or officers they  
14 had an interaction with in order to file a  
15 complaint. One of the things that our  
16 investigators are good at is taking the  
17 information that we do get from a civilian  
18 and looking at police paperwork, looking at  
19 body-worn camera footage and figuring out who  
20 the civilian making a complaint interacted  
21 with.

22 With regard to the actual form, we're  
23 in the process of revising the forms. And  
24 so, this is something that I'm going to bring  
25 up with the team that's working on that to

1           make sure that it's clear that you don't need  
2           to fill out all of the identifying  
3           information about a police officer in order  
4           to file a complaint, that you could just give  
5           the basic information about what you know  
6           happened in order to file the complaint. And  
7           then, our investigators will contact you to  
8           get a statement from you and do the follow-up  
9           work on the back end to identify officers.

10           I just wanted to clarify one other  
11           point: The CCRB has jurisdiction over  
12           members of service who are either on duty or  
13           who invoke their authority as police officers  
14           when they're off duty. So, it may be that we  
15           investigate them when we get the complaint  
16           and investigate the case.

17           We determine then in this case we don't  
18           have jurisdiction because the officer did not  
19           invoke their authority as a police officer.  
20           And in that case, we will refer the matter to  
21           the NYPD, or in all likelihood I'd be -- or  
22           maybe another investigative unit will handle  
23           the investigation.

24           But I thank you, Mr. Heredia, for  
25           bringing these matters to our attention.

1 CHAIR RICE: Thank you so much, Jon,  
2 for that clarification because I had that  
3 question in my mind as well.

4 Michael?

5 MR. RIVADENEYRA: Madam Chair, I just  
6 have one question regarding what we had  
7 practiced before the pandemic where there  
8 were investigators who would go to council  
9 members' offices. And I'm not sure if we're  
10 engaged with the Council again in trying to  
11 resume that practice.

12 I know that there was a couple offices  
13 in the Bronx and in Brooklyn that hosted  
14 investigators on set days during the month.  
15 And, you know, I would like to see if we can  
16 get back to that practice, so we can create  
17 another access point for folks to complain.

18 CHAIR RICE: Has that been resumed?

19 MR. DARCHE: So, I don't believe it's  
20 resumed at this point, and so I will talk to  
21 Yojaira and Jahi when this meeting is over  
22 about trying to get that restarted.

23 CHAIR RICE: Thank you.

24 All right. Yojaira, who is next on the  
25 list?

1 MS. ALVAREZ: Thank you, Madam Chair.  
2 That concludes our virtual participation.

3 I just want to make a personal note:  
4 Daniel, we'll be reaching out to you shortly  
5 to hear more insight and feedback. And we  
6 also want to thank the office of  
7 Assemblymember Hyndman, the office of  
8 Manhattan District Attorney's office, the  
9 office of the Bronx Borough President and the  
10 office of Congresswoman Grace Meng, and as  
11 well as the City Council Member's office of  
12 Kristin Richardson Jordan.

13 Thank you all for attending. And I  
14 move it to you, Chair, for any folks in the  
15 room that would like to have a comment.

16 CHAIR RICE: If there is anyone in the  
17 room who would like to make a comment, if  
18 they'd want to come to the microphone.

19 MR. WILSON: Hello. How are you? My  
20 name is (inaudible). I came here several  
21 times before, and I mentioned that I'm being  
22 attacked and followed around by a couple of  
23 people in law enforcement. The flyers that I  
24 gave you shows you that Philando Castile, he  
25 was executed by law enforcement. How long

1 was law enforcement following him around?

2 According to the New York Times, for

3 13 years.

4 I put this online 2013 that I'm being  
5 followed around by terrorist organization.

6 This is corrupt people in law enforcement,

7 they attacked me in Chicago. They put me in

8 the hospital in 2015. 2018, they did the

9 same thing here, they attacked me and put me

10 in the hospital. When I filed the complaint,

11 I told the investigator, but they took down

12 the camera from off the building, they had

13 erased the video.

14 They did this to the guy in Chicago

15 named Laquan McDonald. I have been asking

16 for help like several times, and I've been

17 asking to reopen the investigation. So far,

18 I heard nothing. And law enforcement keep

19 throwing me inside the psych ward. And in my

20 friend investigation, I found out that when

21 law enforcement does that, it's because law

22 enforcement is scared of you. That's why

23 they toss you on the psych ward.

24 Now, why the psych ward? Because law

25 enforcement don't want you to testify against

1           them. They did this to two people in  
2           New York City; Adrian Schoolcraft, Nela  
3           Gomez, two NYPD officers in NYPD. Why?  
4           Because they had evidence against corrupt  
5           people in law enforcement.

6                    When law enforcement is exposed, they  
7           toss people in the psych ward like they did  
8           to me a couple of times. Obviously, they're  
9           scared of me because they can't push me.  
10          They can push other people -- OJ Simpson,  
11          Julian Sims and Edward Snowden. So, I need  
12          help in exposing these corrupt people in law  
13          enforcement.

14                   I came here several times before. Has  
15          anyone looked at the video that I sent to the  
16          CCRB, that they tossed me in the psych ward  
17          against my will? Has anyone checked out the  
18          video that I e-mailed the CCRB, the last  
19          time, March 5, 2022?

20                   CHAIR RICE: Is that the question  
21          today?

22                   SPEAKER: That's the question.

23                   CHAIR RICE: Thank you for your comment  
24          and I'm going to turn it over. I know that  
25          you joined us -- that you were with us last

1 month. So, I will just call on our executive  
2 director to respond.

3 MR. DARCHE: So, I will check on the  
4 status of your complaint, sir.

5 MR. WILSON: You tell me that every  
6 time I come here.

7 MR. DARCHE: If you wait till the end  
8 of the meeting, I will sit down with you and  
9 we can talk about your case and I'll tell you  
10 and give you an update.

11 MR. WILSON: Take a look at my shirt,  
12 police ambushed me in two states, front and  
13 back. Okay? Every time I come here, it's  
14 the same story over and over again -- "I'm  
15 going to look at it, look at it." Meanwhile,  
16 corrupt people in law enforcement and their  
17 thugs keep attacking me.

18 This is a court case. The court case  
19 is called Socialist Workers Party versus the  
20 Attorney General. Law enforcement used thugs  
21 right here in New York City. The court case  
22 was right here in New York City. They used  
23 thugs to break into people's homes and  
24 businesses. That's corrupt people in law  
25 enforcement. They make people homeless and

1 get people fired from their jobs -- Colin  
2 Kaepernick, Council Member Colin (inaudible),  
3 Mahasha Brown (phonetic). They like to  
4 terrorize people.

5 The point is, they can't push me, so  
6 they're scared of me because they could never  
7 push me, ever. People that they cannot push  
8 in history -- Martin Luther King, Jr. and  
9 Jesus Christ. Two people that could not be  
10 pushed and they were murdered. Like me, I  
11 can't shut my mouth.

12 If you punch me in my face, I'm going  
13 to let the world know that you punched me in  
14 my face. If the President of China punch me  
15 in my face, he gets the same treatment,  
16 nobody is special. You want to attack me,  
17 I'm going to talk. I don't need to use  
18 violence to get my point across. It's better  
19 to be like Martin Luther King, Jr. and use  
20 his words like Jesus Christ.

21 So, that's my example. So, I don't  
22 need to come down here next month and next  
23 month and next month and keep asking the same  
24 question. This doesn't make sense.

25 MR. DARCHE: Understood.

1 MR. WILSON: All right. Thank you.

2 CHAIR RICE: Thank you.

3 Is there any other member of the public  
4 who would like to make a comment? If they  
5 want to step to the microphone. Any other  
6 members?

7 (No response).

8 CHAIR RICE: Seeing none, we'll move to  
9 our old business.

10 Pursuant to the City Administrative  
11 Procedure Act, the CCRB published a draft  
12 copy of our rules 30 days in advance of our  
13 July Public Board Meeting. During that  
14 period, the CCRB accepted public comments.  
15 And on July 13, 2022, the CCRB held a public  
16 hearing to discuss it. After careful  
17 consideration of the public comment, the CCRB  
18 established the final version of the new  
19 rules on our website on Thursday,  
20 September 8, 2022.

21 At this time, I would like to take a  
22 final vote. May I have a motion to approve  
23 the Board's revision of multiple sections of  
24 its rules?

25 MR. DWYER: Can we discuss them?

1 CHAIR RICE: Yes. The discussion will  
2 definitely follow, absolutely.

3 The proposed changes, among other  
4 things, will allow the agency to begin  
5 self-initiating complaints and investigating  
6 bias-based policing and racial profiling and  
7 simplify the language related to  
8 dispositions.

9 Can I have a motion to -- may I have a  
10 motion to take the final vote today?

11 DR. CAROLINA: So moved.

12 MS. SIMMONS: Second.

13 CHAIR RICE: Thank you.

14 I will now open it up for comments from  
15 the Board members.

16 Frank.

17 MR. DWYER: So, I have a number of  
18 concerns, many of which can be ameliorated or  
19 addressed. First, as I read the document and  
20 at first I find the whole incubation of how  
21 we get to these things very odd because we're  
22 not allowed to discuss them in advance and  
23 yet they just sort of appear.

24 And I'm not saying that's the fault of  
25 anybody here, but it's just very hard to

1           get -- I think if we had a way, if our legal  
2           counsel could find a way for us to be  
3           involved early on, concerns could be  
4           addressed early on.

5                        So, one of the things I noticed is  
6           there's a move under the guise of making  
7           things clearer for civilians, to change  
8           "unsubstantiated" to "unable to determine."  
9           And also, to change "exonerated" to "within  
10          Police Department guidelines."

11                      Now, I understand why that might be  
12          clearer for civilians and police officers.  
13          It might be very helpful, but there's a  
14          simple way to do it, that doesn't cause  
15          issues. And that simple way is to put  
16          unsubstantiated (unable to determine),  
17          exonerated (within police department  
18          guidelines).

19                      So, you would say, what's the  
20          difference? Well, the first difference is  
21          that academics, scholars, members of the  
22          Court, members of the Board, members of the  
23          public like to compare apples to apples. And  
24          this Board cannot just vote or tell staff, or  
25          staff cannot on their own, just decide to go

1 back and take four decades of data and change  
2 something Board-voted "exonerated" and change  
3 it to "within police department guidelines."

4 Because the panels that heard those  
5 cases didn't vote for "within police  
6 department guidelines," they voted for  
7 "exonerated." So, if we leave the categories  
8 where they are, which is unsubstantiated and  
9 exonerated, and then put after  
10 unsubstantiated (unable to determine),  
11 exonerated (within police department  
12 guidelines), then people who are doing  
13 research, people who are doing comparisons  
14 will have apples and apples, not apples and  
15 oranges, and it will be much more useful over  
16 time.

17 But as I say, and I would strongly  
18 encourage we not go back and claim that we  
19 can re-categorize 40 years of data, when, in  
20 fact, the panels and boards didn't vote for  
21 those things being the same. They are  
22 different words.

23 In the second area, it says remove  
24 "Complainant Unavailable" and put in "Unable  
25 to investigate." Well, I think I understand

1           what that's about. I'm not totally sure.  
2           But if we just have a category called "Unable  
3           to investigate," then that leads to board  
4           inquiry -- why were you not able to  
5           investigate?

6                        So, again, here it seems to me we've  
7           used Complainant Unavailable for, I guess,  
8           four decades. Why don't we just put a colon  
9           or open parenthesis/close parenthesis  
10          Complainant Unavailable, unable to  
11          investigate. And again, you would maintain  
12          apples and apples. That's on that category  
13          right there.

14                      Madam Chair, I don't know if -- I have  
15          some other matters I'd like to discuss, but I  
16          don't know if you want to open that specific  
17          issue for Board discussion and let me go to  
18          my second and third, or whether you want me  
19          to continue.

20                      CHAIR RICE: I actually -- I thank you  
21          for that. I think it would be best if we did  
22          take them one by one. And so, the issues  
23          that you brought up around unsubstantiated  
24          and exonerated, I would like to hear any  
25          other discussion from Board members on that

1 first, and then we'll take them in turn.

2 MS. IRISH: I can comment very quickly.

3 I really appreciate the Board moving to  
4 language that is more understandable for  
5 civilians, because I do think -- and people  
6 have commented in our board meetings that  
7 they don't know what substantiated means,  
8 they don't know what these terms are and that  
9 we are talking a language that they don't  
10 really understand.

11 And in the effort to be more  
12 transparent, you know, and just clearer, I  
13 really think these rules are a good step  
14 forward. I don't -- I think it is a good  
15 question about whether it is retroactive and  
16 I would like to know that as well.

17 Are we going to go back and change  
18 things or is this just moving forward?

19 CHAIR RICE: Jon, do you --

20 MR. DARCHE: It was a prospective  
21 change. We will not be changing the data  
22 that we have that -- what the Board already  
23 voted on.

24 CHAIR RICE: John.

25 MR. SIEGAL: So, it seems to me Frank's

1 concern is easily resolved by dropping a  
2 footnote on the Board's statistical reporting  
3 and any researcher will see that and can  
4 account for it. And it doesn't seem to me it  
5 should be -- impose much confusion.

6 CHAIR RICE: Sal, did you have a  
7 comment?

8 MR. CARCATERRA: Yes. As far as  
9 Frank's comments on both the definitions;  
10 number one, I don't really see the reasoning,  
11 but I agree with Frank. If you're going to  
12 do that, then why not just go with what we've  
13 done for all this time and add the words, as  
14 Frank said.

15 Same thing with Complainant  
16 Unavailable. That leads open to all kinds of  
17 questions down the road, why if you  
18 complain -- Complainant Unavailable, just to  
19 take that out. I think it's important to  
20 know why you couldn't investigate a case, and  
21 I would not do one without the other.

22 So, those two changes or suggestions  
23 that Frank mentioned, if I'm voting on it, I  
24 would vote yes for those, with those  
25 additions, and I would not vote for that

1           without them. I just don't see the need for  
2           that, and I think it creates more problems.  
3           And if you want transparency, put them both.  
4           It gives answers to both things the way we've  
5           done them and for the civilians to understand  
6           them better. It gives us both, and I don't  
7           see any downside to that.

8                     Thank you.

9           CHAIR RICE: Any other thoughts on the  
10          first issue that Frank raised, just for a  
11          first concern?

12                    (No response).

13          CHAIR RICE: Okay. No other?

14                    Okay. And then, I don't know if  
15          anyone -- so, you were saying, basically,  
16          Sal, that you agree with both of these two  
17          pieces of the comment in terms of the  
18          definition being able to put the slash and  
19          keep the title. And then, also, being able  
20          to compare the apples to apples, rather than  
21          apples to oranges.

22                    And then, was there another piece of  
23          those first comments?

24          MR. DWYER: Well, the second part was  
25          this idea of removing Complainant

1           Unavailable, so that when the public looks  
2           and they see we didn't follow up and we wrote  
3           Unable to Investigate, that they have an  
4           insight why. We couldn't investigate because  
5           we couldn't find the person who was the  
6           alleged victim, and there were no other  
7           avenues at the time.

8                         So, in fact, what I'm suggesting by  
9           putting Unable to Investigate or Complainant  
10          Unavailable/unable -- we're actually  
11          providing the public with more information,  
12          which is totally in the spirit of  
13          transparency that we often speak about.

14                        MS. IRISH: I would just say -- and you  
15          can correct me, Mr. Darche, if I'm wrong. I  
16          don't think changing that label prevents us  
17          from giving more detailed information as to  
18          why we were unable to investigate. It's just  
19          that initial label might be changed, but we  
20          can still offer in reporting breakdowns; is  
21          that --

22                        MR. DARCHE: That is correct.

23                        MS. IRISH: Okay. So --

24                        MR. CARCATERRA: Tell me the reasoning  
25          why. I mean, you would think you'd want --

1           everybody wants more.  Everybody wants  
2           transparency explaining exactly why you  
3           couldn't investigate the case.  Just have it  
4           and add that in and it makes it crystal  
5           clear.  I just don't see why you wouldn't  
6           want that.

7                        MS. SIMMONS:  As we -- if and when we  
8           move to self-initiated complaints,  
9           Complainant Unavailable will not be able to  
10          capture all of the reasons why a complaint  
11          was not able to be investigated.  So, I think  
12          I like Complainant Unavailable, too, because  
13          it's very obvious.  But there may be other  
14          reasons that will fall under that category,  
15          if, in fact, these rules are passed.

16                       So, I think that it does require a  
17          change in just having not only Complainant  
18          Unavailable, but when you come across other  
19          circumstances in self-initiated complaints  
20          where complainant is not an issue.

21                       CHAIR RICE:  Very helpful.

22                       Any other thoughts or opinions on the  
23          first two points that Frank raised?

24                       (No response).

25                       CHAIR RICE:  Okay.  We would like to

1           hear the third.

2                       MR. DWYER:   And just before I go to the  
3           third, I'll just add the other thing, "within  
4           police guidelines."   You can make an  
5           argument, I guess, that we always rule based  
6           on police guidelines, but, in fact, we don't.  
7           We often rule based on court decisions.   We  
8           often rule based on the City Charter.

9                       Sometimes we look at each other and  
10          say, you know what, as far as we know, the  
11          Patrol Guide is 2,700 pages long, last time I  
12          checked, there's nothing to our knowledge in  
13          there or in the police guidelines, and we  
14          have to make a decision based on law,  
15          commonsense.   So, to categorize it as "within  
16          police guidelines," as I say, you can make an  
17          argument that in the end, the City Charter  
18          says, "protect life and property" or  
19          something.

20                      But the reality is, it's often more or  
21          different than just merely within police  
22          guidelines.   Just this is a small thing and,  
23          again, this is a good example of why if we  
24          can find some way in the incubation process  
25          of these proposals, you know, I would have

1           addressed this then. It's a rather small  
2           matter, but it's not insignificant.

3                         In the Bias-based Policing, it says,  
4           "An act by a member of the force." Well, the  
5           Police Department in New York City has not  
6           used the term "force" since I believe the  
7           1960s or early 1970s. And there was a  
8           specific reason that it made that change.

9                         So, I think some would argue it's not a  
10          substantive matter. I would just ask that  
11          that be struck from the text. To the best of  
12          my knowledge, nowhere else does anything say  
13          "the force," to refer to the Police  
14          Department. It's the Department.

15                        I have a concern about the definition  
16          "an act of bias," and a lot of the  
17          definition, I think, is very solid. I'm not  
18          sure whether it was taken from the City  
19          Council or whether folks here put it  
20          together. I think there's a lot of very  
21          solid stuff in there. But the last thing in  
22          there speaks about conduct that otherwise  
23          shocks the conscience.

24                        And conduct that otherwise shocks the  
25          conscience -- well, whose conscience; Donald

1 Trump's, the Dalai Lama's, Pope Francis'? I  
2 mean, we're trying to make things that would  
3 be used essentially as matters of  
4 administrative law. And while it is very  
5 hard to get the objectivity in any matter, we  
6 try our best to define it.

7 Now, I think it's a fair statement and  
8 I say this in my heart: I think everybody up  
9 here are people of good will and good  
10 conscience and differ sometimes, but I hold  
11 them in high regard. But part of the reason  
12 we create documents like this to permanently  
13 inshrine, indoctrinate, admittedly subject to  
14 change, is because we don't know what a Board  
15 will look like in six months, a year,  
16 five years.

17 So, I think it's important that phrases  
18 that are open to such broad interpretation,  
19 we'd be very careful about including them.  
20 So, I think the conduct should be specified,  
21 and that terms like "conduct" that otherwise  
22 shocks the conscience -- well, I don't think  
23 that's the -- we had a man in the 1950s in  
24 America who ruined hundreds of lives. We all  
25 know who it is. His name is Joe McCarthy,

1 'Cause it shocked his conscience that in the  
2 1920s during the Depression, somebody went to  
3 a meeting of a political party that he didn't  
4 like. We can say that would never happen  
5 here. Do we know that?

6 So, the idea that we would take up an  
7 administrative prosecution based on shocks  
8 the conscience, I think we should be able to  
9 name what is it. Name it as clear bias.  
10 Name what makes it severe bias. I'll stop on  
11 that point.

12 CHAIR RICE: Thank you.

13 SPEAKER: (Inaudible).

14 CHAIR RICE: Excuse me, sir. We're not  
15 in the public -- that's okay. We're just not  
16 in the public portion of the meeting, so  
17 thank you. We're just having conversation  
18 with the Board members.

19 So, just to -- so, you're asking for a  
20 strike of the use of "the force" 'cause it's  
21 an antiquated -- antiq --

22 MR. DWYER: Exactly.

23 CHAIR RICE: And then, you talked about  
24 the conduct that shocks the conscience. And  
25 so, I wanted to hear any further thoughts or

1 opinions on those, those two facts.

2 MR. CARCATERRA: I just think whether  
3 it's used there in that sentence "shocks the  
4 conscience" or, you know -- we do cases and  
5 we go back and forth with things. And why  
6 would we start out now with something that's  
7 so broad when we could narrow that down and  
8 be a little more specific?

9 And maybe, obviously, you can't cover  
10 everything, but that to me is, we're starting  
11 off from this big room filled with stuff, and  
12 we're supposed to interpret what shocks me as  
13 compared to John or other people on the  
14 Board, and that's just not fair. It's way  
15 too vast. It's a broad brush and I would  
16 strike that idea.

17 And you need to come up with something  
18 that's more pinpoint than that. It can't be  
19 obviously all inclusive, but this just goes a  
20 180 degrees the other way, and I don't know  
21 if we want to start off a document with that.

22 MS. IRISH: I would just say that --  
23 so, the definition is -- that term, I see it  
24 in the definition of "severe act of bias,"  
25 where act of bias is previously def -- is

1 earlier defined in the definitions and is  
2 very specific. Shocks the conscience to me  
3 actually has a very specific legal  
4 definition, and I think it is -- and I  
5 think -- I assume that that is incorporated  
6 into this definition because that term is  
7 used in case law and it actually isn't easy  
8 to get to that standard.

9 So, I don't think that there's a  
10 concern that it's going to be overbroad or it  
11 actually -- I think, it just is meant to be  
12 something we haven't conceived of. And I  
13 think it's okay to have it in because there  
14 is case law that has dealt with that term and  
15 how it should be and how it should be  
16 limited.

17 MS. SIMMONS: I was going to say the  
18 same thing but go a little broader. I was  
19 amused when I saw it. It's a -- I wish Matt  
20 was here 'cause I'm not the case law case  
21 expert to tell you exactly what Supreme Court  
22 case that came from. Shocks the conscience  
23 comes right out of a Supreme Court case,  
24 criminal justice Supreme Court case. It's  
25 very similar in terms of their idea of trying

1 to express something that is not normally  
2 expressible, not easily expressible. Like  
3 when they say that you know pornography, you  
4 know it when you see it.

5 These Supreme Court quotes are given to  
6 us in the legal community to serve as a guide  
7 into an area that's not easily expressed or  
8 is broad but needs to be specified in a way  
9 that many people would understand exactly  
10 that. It's a committee decision, by the way.  
11 It's never supposed to be an individual.

12 What shocks the conscience? So, I do  
13 believe that putting it there may serve our  
14 purposes because it allows us to look into  
15 things that are not specifically designated  
16 as a major bias crime, but -- and maybe  
17 somebody gets ultra-creative. We don't need  
18 anymore creativity in the area, but people  
19 can get creative. But we have not listed  
20 every single thing that could happen.

21 So, that's my response to it. I can  
22 understand 'cause, you know, when you're in  
23 law school, you say, "What Does that mean?"  
24 Well, exactly, everybody is going to say  
25 that. Unfortunately, it's very familiar to

1 the ears of attorneys.

2 MR. SIEGAL: All right. I have just a  
3 question on -- I have a question that the  
4 answer which escapes me as I'm looking at it.

5 What's the difference procedurally of  
6 an act of bias and a severe act of bias?  
7 What's the consequence of something being  
8 brought as a -- contending that it's an act  
9 of bias versus a severe act of bias? I know  
10 Matt's here and can answer that. I just  
11 don't know where it leads in these rules.

12 MR. DARCHE: So, I think it may depend  
13 on what the Matrix eventually says about  
14 severe act of bias versus act of bias. But  
15 right now, the way the Matrix is set up, it  
16 is extremely harsh on just mere acts of bias.

17 MR. SIEGAL: So, from our point of  
18 view, if it's charged as an act of bias,  
19 clear act of bias, it doesn't make any  
20 difference, the case gets investigated and  
21 hearing panel makes a recommendation. The  
22 difference is where it ultimately leads is a  
23 penalty?

24 MR. DARCHE: Yes, that's my  
25 understanding.

1 MR. SIEGAL: Okay. Thanks.

2 MR. CARCATERRA: So, you're saying,  
3 Jon, that when this case comes out after it's  
4 investigated, okay, comes out of  
5 investigations, it goes to the panel, is the  
6 investigator making this determination?

7 MR. SIEGAL: I think so, but --

8 MR. DWYER: I'm Glad that got asked.

9 MR. CARCATERRA: -- here, your  
10 attorneys, you have court decisions and now a  
11 panel reviewing the case is going to get this  
12 from an investigator? And not knocking the  
13 investigators, but they're young kids. They  
14 don't have a ton of experience, and this is  
15 really far-reaching and very severe, and who  
16 is making that call?

17 MR. DARCHE: So, the racial profiling  
18 cases aren't -- so, just to break it down a  
19 little bit.

20 When cases are coming through regular  
21 investigations track, there are investigators  
22 of varying levels of expertise who make those  
23 recommendations in conjunction with squad  
24 leaders who are very experienced and  
25 attorneys who, in this case, Heather and

1           Suzanne, who you guys know that are our  
2           current deputy chiefs of investigations, and  
3           Monte is here now, he's a chief of  
4           investigations. These are experienced  
5           attorneys who are assisting the investigators  
6           in coming and making those determinations in  
7           the cases that we see today.

8                     But on the bias-based police cases, we  
9           understand that these are extremely  
10          complicated, difficult cases, which is why  
11          we've set up an entirely different unit,  
12          where there is no one who -- there are no  
13          investigators assigned to racial profiling  
14          cases who are lower than a level 3  
15          investigator. And then, we have  
16          investigative attorneys actually assigned to  
17          the unit.

18                    So, I am attacking the premise of the  
19          question a little bit to stick up for my  
20          investigators, but I do get it and I want to  
21          assure you that the racial profiling unit,  
22          like you will be getting cases that have been  
23          investigated by very experienced  
24          investigators, investigative attorneys, and  
25          then the decision will be made by attorneys

1 and investigators working together and  
2 submitting it to the Board. So, you will see  
3 those cases, but they will be different from  
4 a regular force investigation or abuse of  
5 authority investigation.

6 MR. CARCATERRA: Do you have any  
7 different protocols set up for the  
8 investigative process in those cases, any  
9 different reviews by the supervisors as the  
10 case is progressing? Is there anything that  
11 was added in training, and it steps that into  
12 acknowledge the severity of this and how it  
13 goes about to get to that conclusion?

14 MR. DARCHE: So, I don't think we've  
15 added because it's not the same investigative  
16 process. It's a whole different unit and  
17 team and, frankly, they're using different  
18 tools. So, we have a data scientist and  
19 we're going to have a data analyst.

20 It's a very different process and, you  
21 know, I think it warrants bringing Darius  
22 back to give another presentation, so that  
23 you, the Board, can see and the public can  
24 see how we're going to be handling these  
25 types of investigations. I don't want to be

1 just doing it off the top of my head right  
2 now.

3 MS. IRISH: I also think the rules have  
4 to be passed first, right? And then, the  
5 training on the rules after the rules.

6 MR. DARCHE: So, we have been work --  
7 like the unit, we have people who we've hired  
8 and they are building the unit and they  
9 are -- their goal is to be ready, so that if  
10 these rules pass and then we publish the  
11 rules, and then 30 days later the rules go  
12 into effect, when we get a complaint, we will  
13 be able to investigate it. That is the goal.  
14 So, we are ready to be online when this  
15 happens.

16 CHAIR RICE: Thank you.

17 Frank.

18 MR. DWYER: So, two of my colleagues  
19 have pointed out that the term "shocks the  
20 conscience," is a term of law based on case  
21 law, and I -- but I also -- one colleague  
22 clearly said that she's not sure what exactly  
23 the definition is, and the other colleague  
24 didn't comment whether she knows the  
25 definition or not.

1                   And over the next months and years,  
2                   panels are going to meet. And when they  
3                   meet, they're not going to know what that  
4                   definition of law is. So, it leads me to  
5                   think about something as simple as a burglary  
6                   statute. So, a burglary is when you enter or  
7                   remain in a building -- blah, blah, blah.

8                   But before that or with that, they  
9                   always define burglary -- they always define  
10                  building. So, they say a building is a  
11                  house, commercial, hardly enough a van that  
12                  somebody uses for their business is actually  
13                  considered a building under the burglary  
14                  statute, so a plumber or something.

15                  So, you know, my recommendation here is  
16                  that if we are going to say that this is a  
17                  defined concept in law, we should add either  
18                  right there or earlier on to the definition.  
19                  The definition based on either the Supreme  
20                  Court ruling or whatever that which carries  
21                  the support of the judiciary.

22                  'Cause otherwise, we're going to be  
23                  sitting around not working off a legal  
24                  definition. We're going to be sitting  
25                  working off of everybody's opinion of what

1           that means at the time. So, that's easily  
2           fixable.

3           I mean, this is -- as taking out the  
4           word "force" can be done tomorrow, as adding  
5           this definition can be done, you know,  
6           tomorrow. You know, and I'm happy to make  
7           motions on these things if it serves  
8           parliamentary procedure. But to just say  
9           we're going to leave it in, yet not know what  
10          the legal standard of something regarding  
11          conscience of this regard, I think is a  
12          mistake. It is too subjective.

13          CHAIR RICE: Thank you for that  
14          restatement.

15          And I was just clarifying on the  
16          various topics that you've brought up, if we  
17          should -- I actually wanted to hear all of  
18          them, and then we'll go back and figure out  
19          which ones we want to make a motion on, see  
20          if we wanted to make a vote about it being  
21          part of the amendments to the rules.

22          So, I have three at this point. And  
23          did you have a fourth?

24          MR. DWYER: In the section that speaks  
25          of adding misuse of cameras, body-worn

1 cameras, I have a concern there. And if I  
2 understand -- and please let me get clarity  
3 on this: Are we listing this as an abuse of  
4 authority? Maybe Executive Director could  
5 clarify that.

6 MR. DARCHE: I'm sorry, Mr. Dwyer.

7 MR. DWYER: The inappropriate use of  
8 body cameras, we're going to categorize that  
9 as an abuse of authority?

10 MR. DARCHE: Yes.

11 MR. DWYER: Okay. So, the issue -- and  
12 we've danced around this in some panels -- is  
13 abuse of authority, the definition given, and  
14 the commonsense use of the words, that one  
15 abuses their authority when they do  
16 something. But the definition of misuse of  
17 cameras that we have includes when someone  
18 doesn't turn them on, that is to say an  
19 omission.

20 I think if we're going to start  
21 including omissions, as well as co-missions,  
22 which we've always included, then that needs  
23 to be clarified and maybe even examined in  
24 terms of the City Charter as it exist.  
25 Because at least in my experience in

1           examining cases, what we look at is what the  
2           officers have done, not what they have failed  
3           to do.

4                       Which, by the way, it doesn't mean for  
5           a second I don't believe that if an officer  
6           fails to act, that it's not a disciplinary  
7           matter. It can be a very strong -- it could  
8           be a disciplinary matter for which he or she  
9           should be fired under the right  
10          circumstances. But as I'm reading the  
11          structure of our documents historically and  
12          the law, we investigate acts, not omissions.

13                      CHAIR RICE: Thank you.

14                      Did anybody have a comment on that  
15           comment?

16                      MR. SIEGAL: Yeah, I don't see it the  
17           same way. There are lots of failures to act  
18           and omissions of action that we recommend  
19           discipline now as an abuse of authority.

20                      MR. PUMA: Failure to obtain language,  
21           you know, interpretation services. I don't  
22           have a mic that works, unfortunately.

23                      Yeah, I mean, an example of that would  
24           be like failure to obtain language access  
25           services, is something that we plead. There

1           was another one that came to my -- oh,  
2           failure to process or to give a Right to Know  
3           Act card is one that has popped up in cases  
4           over the last few years. So, yeah, those are  
5           examples.

6                   MR. DWYER: Yeah. Joe, I would agree  
7           with you. Although, I think the least of the  
8           latter. I think the City Council  
9           specifically authorized us to do that, didn't  
10          they?

11                   MR. PUMA: Yeah, unfortunately.

12                   MR. DWYER: I think that was a specific  
13          legislative authorization, as opposed to us  
14          taking the power ourselves. But I could be  
15          wrong on that. I could be wrong.

16                   I think the last thing I'll raise for  
17          the moment, anyhow, is I'm concerned about  
18          this investigation of people -- it mentions  
19          going back five years, which is fine if the  
20          person is an active officer. But it also  
21          seems to say that we'll investigate people  
22          who are retired, theoretically dead.

23                   And the question is, I mean, there's  
24          all sorts of matters of unintended  
25          consequences here, you know. What do we do

1 with that? We've invest -- you know, the  
2 person has no right to a trial after that if  
3 it's substantiated. They can't say, "I would  
4 like" -- so, you substantiate something from  
5 four years ago, against somebody who lives in  
6 Florida, and he says, "I would like an  
7 administrative trial to prove I'm innocent."

8 Well, first, he's going to have to hire  
9 lawyers, 'cause unions no longer represent  
10 him, et cetera, et cetera. But the reality  
11 is, he's not entitled to any method of  
12 adjudicating this finding. And I don't know,  
13 that could seem most peculiar to me. It  
14 sort of seems to go against it. It's almost  
15 like the district attorney indicted you and  
16 you say, "I want a trial," I'm going to say,  
17 Oh, you're not entitled to a trial because  
18 you're retired. That's a most peculiar  
19 administrative reality.

20 Particularly, I would add, because  
21 then, as I'm aware have happened once in a  
22 case where somebody was retired, somebody  
23 sued and the Corp Counsel said, "We're not  
24 indemnifying you 'cause there's a CCRB case  
25 substantiated against you," and he said,

1 "Yeah, but they won't give me a trial to  
2 prove I'm innocent." So, these are not  
3 simple matters.

4 CHAIR RICE: So, your concern is about  
5 the abilities to investigate members of  
6 service back for five years, right?

7 MR. DWYER: Well, it's not per se  
8 five years. I mean, you know, there are  
9 circumstances where you'd want to investigate  
10 20 years ago, I would think it would be the  
11 district attorney, you know, if somebody  
12 wants to kill somebody. The issue is,  
13 somebody is retired or even theoretically  
14 dead and somebody has made this allegation.

15 Are we going to open an investigation  
16 for somebody who's retired four years or  
17 something? Particularly when they don't have  
18 a route within due procedure, to if it gets  
19 substantiated, to then ask for a hearing to  
20 clear their name.

21 CHAIR RICE: Right. Understood.

22 Before I hear comments from the other  
23 members of the Board, I saw that there might  
24 have been a question, a clarifying question  
25 over here. So, if you all are asking for a

1 clarifying question, I'm sure we probably  
2 also had it as well.

3 So, John were you able to --

4 MR. SIEGAL: No.

5 CHAIR RICE: No? Did you -- okay. So,  
6 if there isn't a clarifying question for the  
7 full Board, Jon, I wanted you to, if you  
8 could, just to clarify what the rules were  
9 actually saying in regards to how far back  
10 that you can look at for these cases --  
11 five years, just exactly so we're --

12 MR. DARCHE: So, the Charter  
13 resolution, the Charter change did not give  
14 the CCRB jurisdiction over new categories of  
15 members of service. We have jurisdiction  
16 over members of, sworn members of the NYPD.  
17 So, if someone is no longer a member of the  
18 NYPD, we have no jurisdiction over them.

19 And so, we will not -- we're not going  
20 to open that investigation against someone  
21 who is a sworn member of the NY -- who is no  
22 longer a sworn member of the NYPD.

23 CHAIR RICE: Thank you. Very helpful.

24 Does anyone -- Dr. Carolina.

25 DR. CAROLINA: As one of the

1 non-attorneys on this wonderful Board.

2 Is the nature of this rule referring to  
3 the spirit of the investigation of CCRB? Is  
4 that the goal here, that we do our due  
5 diligence with regard to investigation? Is  
6 that the nature? I guess that's the question  
7 that I'm asking.

8 CHAIR RICE: Does he need to clarify?

9 MR. DARCHE: You need to clarify  
10 that --

11 DR. CAROLINA: And then, not being the  
12 attorney, I don't know if I'm wording that  
13 the way in which you intelligent attorneys  
14 would do so.

15 But I'm thinking that the nature of  
16 this is so that we can do our due diligence  
17 with regard to the -- you know, any, you  
18 know, accusation against an officer.

19 MS. IRISH: Yeah, I think that we have  
20 to -- we have to put forth rules consistent  
21 with the Charter, which gives us the  
22 authority to investigate past professional --  
23 past professional conduct by members of the  
24 Police Department.

25 So, I do think, yes, this is trying to

1 capture what that means and be more specific  
2 than what's in the Charter.

3 DR. CAROLINA: Thank you.

4 MR. DWYER: I'll just point out that  
5 this document, which the mask makes my  
6 glasses fog and then I can't read it.  
7 Probably part of the grand conspiracy to  
8 censor me.

9 (Laughter).

10 MR. DWYER: It says, "May conduct an  
11 investigation of past conduct in the course  
12 of performance of official duties by a  
13 current or former member of the police  
14 department."

15 "By a current or former member." So,  
16 if, as the executive director explained, it's  
17 our policy not to open up against former  
18 members, then I think this needs to be  
19 corrected.

20 MR. DARCHE: But that language is  
21 straight from the Charter.

22 MR. DWYER: So, then, this is a radical  
23 change. We are now authorized to conduct  
24 them against former members?

25 MR. DARCHE: So, the Charter authorizes

1           that, but the Charter meets no provision for  
2           any of the other types of followthrough that  
3           would be needed to do those types of  
4           investigations. So, we are trying to develop  
5           the rules in a way that allows us to  
6           investigate the cases, as Reverend Carolina  
7           said, in the spirit of what the Charter would  
8           like us to do that actually is still doable.

9           MR. CARCATERRA: But Jon, according to  
10          what Frank read then, and I know what you  
11          say, but there is nothing, based on that  
12          statement, that prevents you from  
13          investigating the former member of the  
14          service. It's black and white.

15          MR. DARCHE: But there's nothing --

16          MR. CARCATERRA: I know what you said,  
17          but what I'm saying is, it states that you  
18          can do that to a former member of service,  
19          with all the things that Frank said, with no  
20          recourse, they could basically substantiate  
21          in absentia or something, this person, you  
22          could get substantiation if they retired and  
23          living somewhere else with a job, and that  
24          could affect their life, their livelihood and  
25          they have no recourse whatsoever.

1                   Is that true what I just said?

2                   MR. DARCHE:    So, if the Board chooses  
3                   to do that in concurrence with what the City  
4                   Council already did, then, yes.

5                   MR. CARCATERRA:  Okay.

6                   MR. DARCHE:    But I can tell you there  
7                   is no plan to investigate --

8                   MR. CARCATERRA:  I know what you said.  
9                   You answered my question.  The answer is,  
10                  they can.

11                  CHAIR RICE:  There's nothing -- the way  
12                  I'm reading it, Sal, there's nothing that  
13                  prevents it, but there's also nothing that  
14                  enables it either, right?  So, there's  
15                  nothing that we have that enables us to go  
16                  after -- I shouldn't use the term "go after."  
17                  To go forward with a claim against a member  
18                  of service who has retired.  We don't have  
19                  the infrastructure to do that because that's  
20                  not what we do.

21                  MR. CARCATERRA:  I know.

22                  CHAIR RICE:  So, it doesn't prevent us  
23                  from doing it --

24                  MR. CARCATERRA:  Yeah, I hear you all.  
25                  But if you were retired, you wouldn't want to

1 be on the other side of that with that  
2 happening to you. I could assure you no one  
3 on this panel or in this room would and  
4 that's my concern.

5 CHAIR RICE: I'm just trying to figure  
6 out if we were to -- the language itself  
7 comes from the Charter, the language -- okay.  
8 Got it. I'm just trying to figure out --  
9 okay.

10 MR. DARCHE: I think we're trying to  
11 add Darius to the Zoom, so that -- or to the  
12 Teams meeting, so he can explain the  
13 difference between the two sections in the  
14 Charter.

15 MS. IRISH: I thought that what we  
16 talked about last time he made the  
17 presentation was, though we may be able to  
18 investigate, we can't really discipline.

19 MR. DARCHE: Correct.

20 MS. IRISH: That was so --

21 MR. CARCATERRA: But you could publish  
22 a finding, right?

23 MS. IRISH: I don't even know. I don't  
24 know. Is that true?

25 MR. CARCATERRA: Can't discipline a

1           retired member, but there's nothing  
2           preventing you from publishing this whole  
3           finding without any recourse from that  
4           member.

5           MS. IRISH: But I guess the question  
6           is, we're trying to figure out where to  
7           allocate our resources. Why we would put so  
8           many resources in investigating people who we  
9           couldn't -- don't have authority to  
10          discipline, as apposed to current members of  
11          the force who may be engaged in racial  
12          profiling or acts of bias?

13          I mean, to me, that would be the  
14          priority, the overwhelming priority. And we  
15          can't -- we're trying to thread a needle  
16          where we can't be inconsistent with what the  
17          Charter says, but we also are aware of, you  
18          know, our limitations.

19          MR. DARCHE: Madam Chair, Darius has  
20          gotten upgraded. If we can --

21          DR. CAROLINA: I would just add  
22          before -- we want the public to be aware of  
23          what we do find. That is our job to do our  
24          due diligence. And to hell with somebody's  
25          retirement if the public or if we, these

1           investigators, find some wrongdoing, it is  
2           our responsibility morally to publish those  
3           findings, period.

4           CHAIR RICE:   Darius, I understand that  
5           you have joined us.

6           MR. CHARNEY:   Yes, can you all hear me?  
7           Can you hear me?

8           CHAIR RICE:   -- where we are  
9           (inaudible)?

10          MR. CHARNEY:   Yes, can you hear me?

11          MS. ALVAREZ:   Darius, you're a little  
12          muffled.   Can you speak up through the mic.

13          MR. CHARNEY:   Yeah, I'm trying to get  
14          it close to my mic on my computer, but can  
15          you all hear me?   Hello?   I don't know  
16          what --

17          MR. DARCHE:   We can kind of hear you,  
18          but you're very low.   And the other people  
19          participating virtually, we can hear fine.

20          MR. CHARNEY:   Yeah, I'm not sure.   I'm  
21          sitting on my laptop.   I hear you all very  
22          well, but I don't know why -- I don't know  
23          what's wrong with my microphone.   Let me --  
24          can you hear me better now?

25          CHAIR RICE:   My goodness, yes.

1                   MR. CHARNEY:   There we go.   I switched  
2                   the microphone.   All right.   Sorry about  
3                   that.

4                   So, this has been a really interesting  
5                   discussion to listen to, but I was eager to  
6                   interject because I think there is a little  
7                   bit of confusion.   And I understand why  
8                   because I think the City Charter is a little  
9                   confusing or the Charter amendments are a  
10                  little confusing on this.   But there's a  
11                  little confusion, I think, over the kind of  
12                  two areas of jurisdiction that are -- that  
13                  you all are discussing with respect to the  
14                  bias policing stuff.

15                  So, I think the first one is the  
16                  Section 440 of the amendments to Section 440,  
17                  which have now made bias policing and racial  
18                  profiling a form of abuse of authority that  
19                  the CCRB has jurisdiction to investigate  
20                  under its FADO jurisdiction.

21                  And so, that mean, you know, if a  
22                  civilian files a complaint and alleges  
23                  profiling or bias policing, we will  
24                  investigate it as we do, you know, other  
25                  forms of FADO.   And for those investigations,

1 the definitions in the rules that are  
2 relevant are the definition for bias-based  
3 policing and racial profiling.

4 The definitions for act of bias and  
5 severe act of bias, those apply to what we  
6 call the past professional conduct  
7 investigations, which are Section 441 of the  
8 Charter. And I think the important thing to  
9 understand about those investigations is --  
10 and I think this gets to the concern that was  
11 raised by the Board about, you know, officers  
12 not having a right to kind of answer the  
13 allegations.

14 And if somebody is retired -- those  
15 investigations, the past professional conduct  
16 investigations, will only be triggered -- in  
17 other words, we will only open such an  
18 investigation if that officer has already  
19 been found in a prior investigation, whether  
20 that's by the CCRB, the City Commission of  
21 Human Rights, Department of Investigation or  
22 a court, if one of those other entities has  
23 already made a finding, a final determination  
24 that that officer had committed an act of  
25 bias.

1           So, in the case of a retired NYPD  
2 officer who was found to have committed an  
3 act of bias, that finding would have been  
4 pursuant to a full investigation in which  
5 that officer would have already had an  
6 opportunity to, you know, respond to the  
7 allegation and there would have been a full  
8 investigation and a finding made about that  
9 past act of bias.

10           Once that finding is made, what CCRB  
11 would then be investigating is not that act  
12 of bias. We would then be investigating this  
13 officer's on-the-job conduct to determine if  
14 that single act of bias was part of a larger  
15 pattern of bias. And in that investigation,  
16 and I think the Charter said this, the  
17 officer would have an opportunity to respond  
18 in writing, I believe, to any findings that  
19 we make about, you know, his or her past  
20 professional conduct.

21           So, I don't think it's accurate to say  
22 that -- if this was a situation involving a  
23 retired officer, that that officer wouldn't  
24 have the opportunity to respond to the  
25 allegation to, you know, to have -- to say

1           that they wouldn't have any sort of due  
2           process.

3                         Now, again, going back to this question  
4           of act of bias, severe act of bias, those  
5           terms are only used in Section 441 of the  
6           Charter as it applies to these past  
7           professional conduct investigations. So,  
8           that is not going to be something in a  
9           regular profiling or bias policing  
10          investigation, where a civilian files a  
11          complaint. Those terms are not going to be  
12          what we would use.

13                        What we would use are the definitions  
14          for racial profiling and bias-based policing,  
15          and those definitions come both from City  
16          Statute Administrative Code and from the  
17          NYPD's own racial profiling definition. So,  
18          that's where those terms come from.

19                        And I guess the last thing I would say  
20          -- and I'm happy to answer questions, is on  
21          this shocks the conscience question, as I  
22          think Board Member Irish and other noted,  
23          that term is a term that the Supreme Court  
24          used in a very, I think, well-known police  
25          misconduct case called County of Sacramento

1           versus Lewis, which you can look up.

2                       So, I think -- and I would agree with  
3           Board member Irish that it is a pretty  
4           well-established legal standard. It's not  
5           something that kind of was created out of  
6           thin air, and it is meant to, I think,  
7           encompass really egregious misconduct by  
8           police officers that doesn't rise necessarily  
9           to the level of the other categories we put  
10          in the proposed rule, you know, bodily injury  
11          of criminal conduct, but other forms of  
12          egregious misconduct.

13                      So, I'll stop there and I'm happy to  
14          answer any questions.

15                      CHAIR RICE: Thank you for the  
16          clarification and response on not only the  
17          issue that we were just discussing, but the  
18          full range of questions that were raised.  
19          So, that was very helpful.

20                      Does anyone have any comments or  
21          questions to ask of Darius before we continue  
22          the conversation?

23                      Reverend Carolina.

24                      DR. CAROLINA: Just the County of  
25          Sacramento versus whom again?

1                   MR. CHARNEY: Lewis, I believe. I  
2 think it's a Supreme Court case from, like,  
3 the late 1990s. I'm sure we could send a  
4 copy of it, if people want to read it.

5                   MS. SIMMONS: What's the name?

6                   MR. DARCHE: Darius, could you put it  
7 in the chat, so that everyone can have it.

8                   MR. CHARNEY: The name of the case,  
9 yeah. Let's see. Where's the chat on this  
10 thing?

11                   MR. DARCHE: -- put it in the --

12                   MR. CHARNEY: Yeah, I'm not as skilled  
13 on Webex. Oh, I see it. I'll put it in  
14 there.

15                   MS. IRISH: Would it be acceptable to  
16 Mr. Dwyer if that case is just attached as an  
17 appendix to the rules or -- I don't know.

18                   MR. DWYER: Well, I'll just find it  
19 acceptable if the Court's definition of what  
20 it means is put in. Because I mean, this is  
21 a phrase that is so subjective, right? But  
22 we can instantly not make it subjective by  
23 just adding, you know -- you could add it as  
24 a footnote or I would rather if it's added as  
25 a term of definition, you know.

1           The Supreme Court has rules, shocks the  
2 conscience means blah, blah, blah in, you  
3 know, San Diego versus Lewis. But at least a  
4 definition that allows people not to go by  
5 their own feeling about -- well, that shocks  
6 my conscience -- well, what's the standard?  
7 And I realize in the end, there will be  
8 subjectivity in the standard.

9           MR. DARCHE: So, if we are going to  
10 change the definition --

11           MS. SIMMONS: If we make any changes,  
12 we have to go back to the process, right?

13           MR. DARCHE: Correct. The only  
14 exception would be for something that is  
15 ministerial like a typo.

16           MS. IRISH: If we're taking out the  
17 word "force," which I don't really have a  
18 problem with, is that considered ministerial  
19 or something more involved?

20           MS. SIMMONS: And replace it with?

21           MR. DARCHE: Service.

22           MS. SIMMONS: Service. I think that's  
23 ministerial.

24           MR. DARCHE: I would agree with Board  
25 Member Simmons that that is ministerial.

1 CHAIR RICE: Before we --

2 MR. RIVADENEYRA: Any of the footnotes  
3 that have been proposed, would that be  
4 considered admin -- ministerial or --

5 MR. DARCHE: No.

6 MR. RIVADENEYRA: That was pulled back?

7 MR. DARCHE: Yes.

8 MR. SIEGAL: I have two comment I want  
9 to make for the record; one on the severe act  
10 of bias and the definition that includes  
11 otherwise shocks the conscience.

12 This would have to be something that --  
13 it can involve death, physical injury,  
14 serious psychological or economic injury to  
15 the victim, subjects the victim of the act to  
16 demeaning, degrading or humiliating treatment  
17 or involves criminal conduct, sexual  
18 misconduct and threat of violence. It's  
19 already within severe act of bias.

20 So, we're talking about something so  
21 hypothetical that it doesn't fall in any of  
22 those categories. And I for one am not  
23 willing to limit the definition of severe act  
24 of bias to what we and our imagination can  
25 conceive of. Because history tells us there

1           are inconceivable acts of bias that may not  
2           fall within those categories.

3                       And I'd like to see this Board in its  
4           wisdom and its judgment and its discretion,  
5           have the right to investigate such instance  
6           that none of us can think of and none of us  
7           wants to, but it's possible.

8                       Two, I want to second the point that  
9           Reverend Carolina made. Yes, the CCRB cannot  
10          recommend discipline in the employment  
11          sanctions that we recommend to former police  
12          officers. But I do not think that means that  
13          we can't investigate and comment on acts of  
14          bias or patterns of bias by former police  
15          officers.

16                      If indeed in the report that we're  
17          going to be issuing about the police  
18          department response to the Black Lives  
19          Matters demonstrations in which there has  
20          been a wrath of resignations of people who  
21          otherwise would have been investigated for  
22          their conduct in that. I believe we should  
23          and we must make such findings and make  
24          policy commentary on it.

25                      The rules do afford a former member the

1 opportunity to be heard. I get the practical  
2 concerns about representation for former  
3 members of service whose unions may abandon  
4 them or they otherwise may not be able to  
5 have counsel. But that doesn't mean that I  
6 think we should hold off on investigating and  
7 commenting on severe acts of bias by former  
8 police officers. I think we should. That's  
9 what independent civilian oversight is, and  
10 we need a body in the City that does it.

11 MR. DARCHE: So --

12 CHAIR RICE: Yes, if you could.

13 MR. DARCHE: I just wanted to add and  
14 speak to something about the term "force."  
15 So, Darius, if we could call in Darius, that  
16 might be helpful. He was texting me and  
17 explaining that we use that term from the  
18 Charter language for the -- from  
19 Administrative Code 14-151.

20 Is Darius -- are you with us, Darius?

21 MR. CHARNEY: I'm here. Can you hear  
22 me? Can you hear me or am I faint again?  
23 I'm trying to...

24 MR. DARCHE: Darius?

25 MR. CHARNEY: Yes, can you hear me?

1 CHAIR RICE: We can.

2 MR. CHARNEY: Is it muffled or --

3 MS. ALVAREZ: It's faint, Darius.

4 MR. CHARNEY: Is it better now or no?

5 MS. ALVAREZ: Yes.

6 MR. CHARNEY: No? Microphone.

7 Can you hear me now.

8 CHAIR RICE: Yes, we can hear you now.

9 You can go ahead and respond. The question  
10 is around the use of the word "the force."

11 MR. CHARNEY: Sure. So, that  
12 definition for bias-based profiling is taken  
13 verbatim from New York City Administrative  
14 Code 14-151, which is the City Bias Policing  
15 statute that was passed in 2012, so we're  
16 just using that definition. So, your City  
17 Council use that language. They say, you  
18 know, bias-based policing means an act of a  
19 member of the force of the Police Department.

20 So, again, that language comes directly  
21 from a city statute. It's not our idea. But  
22 then we want to be consistent because, again,  
23 that's the definition that is not only  
24 codified in city law, but I believe it's also  
25 the definition that is included in the NYPD's

1 bias policing policy as well, so that's why  
2 we used it.

3 MR. DWYER: I would just comment on  
4 that.

5 40 or 50 years ago, the Police  
6 Department eliminated using that because of  
7 the stigmatization that it caused. And  
8 because the City Council was not sensitive to  
9 that language, currently, I don't think we  
10 need to replicate that insensitivity.

11 CHAIR RICE: All right. I currently  
12 have six issues that we have discussed.  
13 Thank you so much, Frank, for your thorough  
14 review of the rules. And I just wanted to  
15 open up to any other Board members who had  
16 anything that they wanted to bring to the  
17 floor, and see it based on the amendments  
18 that -- motions for amendments that people  
19 want.

20 I also should pause for a moment. I  
21 believe we've had another member of the Board  
22 join us virtually.

23 MS. ALVAREZ: Board Member Hogan, are  
24 you able to unmute yourself?

25 MR. HOGAN: Yes, I'm available. I'm

1 here. Hello, yes, I could hear you.

2 CHAIR RICE: Introduce yourself.

3 MR. HOGAN: AU Hogan, Board Member of  
4 Queens Representative City Council. And I've  
5 been listening and I'm, you know, I think  
6 ready to make my particular position on this.

7 At the hearing, all that's been said, I  
8 agree with basically some of the stuff, you  
9 know, has to be really looked at in more  
10 conversation, you know, to -- for me to okay  
11 anything. You know, there's a lot of unclear  
12 language, you know, that exists. And, you  
13 know, in regards to the one particular  
14 conversation on, you know, after there's an  
15 investigation if the police officer is on a  
16 force.

17 You know, we live in a world that stuff  
18 follows us, and we should not be able to  
19 escape particular wrongdoings because we  
20 either retired or change our lives, you know.  
21 The whole system exist on, you know, people  
22 that have to become accountable for things  
23 that they've done in the past. And I think  
24 we'd be sending a really negative message to  
25 the public if we don't -- I won't say

1           prosecute 'cause we don't have that ability.  
2           But continue to investigate and find ways  
3           that wherever a person lands, you know, some  
4           of the activities and the actions of  
5           misconduct, you know, if it doesn't in a  
6           sense follow him or her from our  
7           investigation.

8                     There need to be some kind of recourse  
9           where, you know, they understand 'cause we'd  
10          be sending bad message for the police  
11          officers that are in the Department. And you  
12          can also have police officers that, seeing  
13          they're under a particular misconduct that  
14          might be substantiated, they retired and  
15          they're free from it, you know. And so,  
16          that's only, basically, my comment on that.

17                    CHAIR RICE: Thank you so much, AU, for  
18          that comment and for officially joining the  
19          meeting with your introduction.

20                    MR. HOGAN: Thank you.

21                    CHAIR RICE: So, I want to -- once  
22          again, if there's no other comments on the  
23          rules as presented, we have six different  
24          areas that were brought to bear. We do -- we  
25          did have a check with our general counsel in

1            regards to the -- to not using the term  
2            "force" and possibly using "members of  
3            service" or "service."

4            And so, I will let Jon speak to where  
5            he landed on that. But just to remind folks  
6            that basically the process here is that if we  
7            do make any amendments to the rules, that  
8            they do have to go back to the Law Department  
9            and we have two months that we'll take the  
10           process in order for us to rework the rules.  
11           So, I just wanted to make sure to restate  
12           that as Jon has already presented.

13           And Jon, if you can let us know what  
14           our general counsel said.

15           MR. DARCHE: So, I was communicating  
16           with the General Counsel Matt Kadushin and he  
17           is of the opinion, and I agree, that if we  
18           replaced the word "force" in the definition  
19           of bias-based policing in Subchapter (a),  
20           Section 1-01 definitions on page 5, I believe  
21           if you're all looking at the rules, it is the  
22           fourth line from the bottom, and it is the  
23           second line from the -- and the second word  
24           from the end of the line.

25           If we replace the word "force" with the

1 word "service," that would be a ministerial  
2 change and that is something we could do  
3 without restarting the process.

4 CHAIR RICE: Okay. All right. So,  
5 thank you for that.

6 The other issues that were brought to  
7 bear, then, would require the restarting of  
8 the process. And so, I'm basically asking if  
9 there are folks who want to make a motion  
10 based on any of the things that were already  
11 brought to the conversation?

12 MR. DWYER: Well, since I raised them,  
13 I suspect I do. So, the first motion would  
14 be, I guess, the first three, that we  
15 continue to use the language that's been used  
16 for, I guess, 40-some-odd years --  
17 unsubstantiated, exonerated and what was  
18 the --

19 CHAIR RICE: Investigates.

20 MR. DWYER: Yeah, we immediately put  
21 after it with a hyphen or a colon or a  
22 parenthesis, I have no strong feelings, key  
23 explanation, which would be unsubstantiated.  
24 I have to go back to my notes. Excuse me.

25 It would be "Substantiated: Unable to

1           determine," and "Exonerated: Within the NYPD  
2           guidelines or law," I would put. And the  
3           third one would be "Unable to Investigate:  
4           Complainant Unavailable." So, that would be  
5           my first motion that we make those three  
6           changes.

7                   CHAIR RICE: Okay.

8                   All right. Is there a second to that  
9           motion?

10                   MR. CARCATERRA: I second that.

11                   CHAIR RICE: Okay. I'm going to ask  
12           for a vote, and I'm going to go ahead and  
13           read a note for myself, just because I know  
14           there's some other members who are new to the  
15           Board.

16                   So, after we vote on this, just so you  
17           know, there's going to be a majority of the  
18           vote that's required in order for us to move  
19           forward, just so you know that. Probably  
20           pretty obvious, but I figured I would say  
21           that as well. So, we have a motion on the  
22           table. It has been seconded.

23                   And so, can I just, as a show of sup --  
24           I'm trying to figure out how we can -- but by  
25           raise of hands, if we can say all who are in

1 favor of the motion as presented, if I can  
2 have a show of hands.

3 MR. DWYER: (Hand gesture).

4 MR. CARCATERRA: (Hand gesture).

5 CHAIR RICE: All right. And all of  
6 those who are voting nay against the motion,  
7 if we can see a show of hands.

8 MS. SIMMONS: (Hand gesture).

9 DR. CAROLINA: (Hand gesture).

10 MR. RIVADENEYRA: (Hand gesture).

11 MR. PUMA: (Hand gesture).

12 CHAIR RICE: (Hand gesture).

13 MS. IRISH: (Hand gesture).

14 MR. SIEGAL: (Hand gesture).

15 MR. MERRITT: (Hand gesture).

16 CHAIR RICE: Okay. And were you able  
17 to -- were we able to gather the vote from  
18 Mr. Freeman and from AU?

19 Can they vote virtually?

20 MR. DARCHE: They're allowed to vote  
21 virtually.

22 CHAIR RICE: Okay.

23 MS. ALVAREZ: Mr. Freeman, you can  
24 unmute yourself.

25 MR. FREEMAN: Yes, I voted.

1           CHAIR RICE: You all received the votes  
2           from Mr. Freeman and from AU? Yojaira, did  
3           you hear the vote from AU and Mr. Freeman?

4           MS. ALVAREZ: Just to make sure we have  
5           it recorded for the minutes, I'm going to ask  
6           first, Board Member Freeman, if you could  
7           verbally vote yay, nay or abstain.

8           MR. FREEMAN: Abstain.

9           MS. ALVAREZ: And Board Member AU?

10          MR. HOGAN: You hear me?

11          MS. ALVAREZ: Yes.

12          MR. HOGAN: Okay.

13          MS. ALVAREZ: Sorry. Can you repeat  
14          your vote.

15          (No response).

16          MS. ALVAREZ: Board Member Hogan, can  
17          you repeat your vote.

18          MR. HOGAN: Did you hear me?

19          MS. ALVAREZ: Now we can hear you. Can  
20          you repeat your vote, please. Sorry about  
21          that.

22          MR. HOGAN: Yay.

23          MS. ALVAREZ: So, now Chair Rice, we  
24          recorded eight votes in the negative and the  
25          motion is not moved.

1           MR. DARCHE: So, I just want to be  
2 clear. There were two votes "yes" in person,  
3 there were eight votes "no" in person, one  
4 abstention remotely. And then, Yojaira I  
5 never got Mr. Hogan's vote.

6           MS. ALVAREZ: Mr. Hogan, I want to  
7 confirm. I have you recorded as "yes"?

8           MR. HOGAN: Yes.

9           MR. DARCHE: It's three "yes," eight  
10 "no," one abstention.

11          CHAIR RICE: Did you want to make a  
12 motion for the --

13          MR. DWYER: Do we require a motion to  
14 change "force" to "service," or is that  
15 something we can just do by a claim or --

16          MR. DARCHE: We do need a scope  
17 through.

18          MR. DWYER: Okay. I motion that we  
19 change the word "force" on page 4, fourth  
20 line up, two from the end, to the word  
21 "service."

22          MR. DARCHE: Mr. Dwyer, if you could  
23 make it the bottom of page 5.

24          MR. DWYER: And also on the bottom of  
25 page 5, if it appears there.

1 (Laughter).

2 MR. DARCHE: If we weren't going to  
3 have litigation, I would laugh. But I'm just  
4 trying to preserve the record.

5 MR. DWYER: Yeah, we appreciate that.

6 MR. DARCHE: So, I just want to be  
7 clear. The motion that the Board will be  
8 voting on is that the word "force" in  
9 Subchapter (a), Subsection 1-01 definitions  
10 of the term "bias-based policing" on page 5,  
11 four lines from the bottom, two words from  
12 the end of that line, the word "force" will  
13 be replaced with "service." And that's what  
14 everyone is voting on now.

15 MS. IRISH: Second.

16 CHAIR RICE: All in favor?

17 (Hand gesture) aye.

18 MS. SIMMONS: (Hand gesture).

19 MR. RIVADENEYRA: (Hand gesture).

20 MR. PUMA: (Hand gesture).

21 MR. DWYER: (Hand gesture).

22 MS. IRISH: (Hand gesture).

23 MR. SIEGAL: (Hand gesture).

24 MR. MERRITT: (Hand gesture).

25 MR. CARCATERRA: (Hand gesture).

1 CHAIR RICE: Okay. Thank you.

2 And can we have a verbal vote from  
3 Mr. Freeman and AU?

4 MR. FREEMAN: Yes, for Freeman.

5 MR. HOGAN: Yes.

6 CHAIR RICE: Okay. Thank you.

7 AU?

8 MR. HOGAN: I vote yay.

9 CHAIR RICE: So then, that means we  
10 have nine in person voting in the affirmative  
11 "yes/yay," for the motion as presented, one  
12 voting in the negative for the -- for the  
13 recommendation, and then we also have on  
14 virtually. We have one vote in the affirm --  
15 no, two votes in the affirmative virtually.  
16 Thank you. The motion is passed.

17 Did you want to make a motion on the  
18 other two, on the use of body-worn cameras  
19 and then also the investigation of members of  
20 service for five years? Oh, actually, first,  
21 you have to do shocks the conscience.

22 MR. DWYER: Yes, in order to bring  
23 greater clarity to the document, I motion  
24 that the Supreme Court definition of "shocks  
25 the consciousness" included in the document

1 in a way that the executive director  
2 determines most appropriate or perhaps a  
3 footnote, perhaps. I leave it to the  
4 discretion of the executive director where it  
5 would best go in, and that will assist future  
6 members in evaluating what the standard of  
7 shocks the consciousness means.

8 CHAIR RICE: Do I have a second?

9 MR. CARCATERRA: (Hand gesture).

10 CHAIR RICE: Sal seconds.

11 And we need to make a vote on the  
12 amendment.

13 All those in favor?

14 MR. DWYER: (Hand gesture).

15 MR. CARCATERRA: (Hand gesture).

16 CHAIR RICE: Two are in favor.

17 All those who are opposed, same sign.

18 MS. SIMMONS: (Hand gesture).

19 DR. CAROLINA: (Hand gesture).

20 MR. RIVADENEYRA: (Hand gesture).

21 MR. PUMA: (Hand gesture).

22 CHAIR RICE: (Hand gesture).

23 MS. IRISH: (Hand gesture).

24 MR. SIEGAL: (Hand gesture).

25 MR. MERRITT: (Hand gesture).

1 CHAIR RICE: Okay. And then, online.  
2 Mr. Freeman.

3 MR. FREEMAN: Opposed.

4 CHAIR RICE: And AU.

5 MR. HOGAN: Yay.

6 CHAIR RICE: Okay. So, I have on the  
7 record those in person, we have eight who are  
8 opposed, two are in favor; and those are  
9 those of us who are here in person. Online,  
10 we have one who is opposed and also one who  
11 is in favor.

12 So, that is declined. The next.

13 MR. DWYER: Given the high probability  
14 of success of my motions, I rest my case at  
15 the moment.

16 CHAIR RICE: All right. Thank you.  
17 Thank you for that.

18 Anyone else? Any other issues? Any other  
19 motions that anyone else would like to make?

20 MS. SIMMONS: I'm going to vote for the  
21 changes, the regulatory change as written.

22 DR. CAROLINA: Second.

23 CHAIR RICE: Okay.

24 MR. DARCHE: As written or just with  
25 the mandate?

1 MS. SIMMONS: With the change of force.

2 CHAIR RICE: Okay. Great.

3 MS. SIMMONS: The ministerial  
4 amendments.

5 CHAIR RICE: Terrific. And thank you  
6 for that second, Reverend Carolina.

7 And as a result, we need to do a roll  
8 call. So, we need to individually vote on  
9 the rules as presented with the amendments,  
10 and so I will model.

11 And so, I, Arva Rice, am voting  
12 affirmatively.

13 Mr. Carolina.

14 DR. CAROLINA: It's affirmative.

15 CHAIR RICE: Okay. John Siegal.

16 MR. SIEGAL: I vote to approve the new  
17 rules.

18 CHAIR RICE: Okay. Corrine, Ms. Irish.

19 MS. IRISH: I vote affirmatively.

20 CHAIR RICE: Okay. Mr. Rivadeneyra.

21 MR. RIVADENEYRA: I vote in the  
22 affirmative.

23 CHAIR RICE: Mr. Puma.

24 MR. PUMA: I vote yes, affirmative.

25 CHAIR RICE: Mr. Merritt.

1 MR. MERRITT: Affirmative.

2 CHAIR RICE: Mr. Dwyer.

3 MR. DWYER: Negative.

4 CHAIR RICE: Sal.

5 MR. CARCATERRA: Negative.

6 CHAIR RICE: Thank you. Has everyone  
7 voted? Mr. Freeman -- oh, I'm sorry.

8 MR. FREEMAN: Affirmative.

9 MS. SIMMONS: Yes.

10 CHAIR RICE: Thank you.

11 Has everyone in the room voted? Okay.

12 Your votes have been recorded.

13 Virtually, Mr. Freeman.

14 MR. FREEMAN: Affirmative.

15 CHAIR RICE: And AU?

16 MR. HOGAN: Affirmative.

17 CHAIR RICE: Thank you.

18 The motion is passed. The rules are  
19 now approved.

20 Do we have any other old business to  
21 come before the Board?

22 (No response).

23 CHAIR RICE: Any new business to come  
24 before the Board?

25 (No response).

1 CHAIR RICE: Okay. Then we will  
2 adjourn to the executive session.

3 MR. DARCHE: You need to get a motion  
4 for that.

5 CHAIR RICE: Oh, I'm sorry.

6 Can I have a motion to close out the  
7 meeting and move to executive session?

8 SPEAKER: So moved.

9 CHAIR RICE: Second?

10 SPEAKER: Second.

11 CHAIR RICE: All in favor?

12 (Chorus of ayes.)

13 CHAIR RICE: Okay. We're going to move  
14 now into executive session. The agenda for  
15 the executive session is the Board will  
16 receive an update on litigation from the  
17 general counsel, and the executive director  
18 will provide an update on pending personnel  
19 issues.

20 Do I have a motion -- I believe that we  
21 have already decided we're going to move into  
22 executive session.

23 So, so moved. And the meeting of the  
24 CCRB for today is adjourned.

25 Thank you.

(TIME NOTE: 5:58 p.m.)

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STATE OF NEW YORK)

:SS

COUNTY OF QUEENS)

I, Sabrina Brown Stewart, a shorthand reporter within and for the State of New York, do hereby certify that the within is a true and accurate transcript of the statement taken on September 14, 2022.

I further certify that I am not related to any of the parties to this action by blood or by 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 26th day of September 2022.

*Sabrina Brown Stewart*  
Sabrina Brown Stewart