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NEW YORK CITY TAXI & LIMOUSINE COMMISSION
PUBLIC HEARING

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Held on Thursday, November 18, 2010

40 Rector Street

New York, New York.

Time: 10:00 a.m.

FIVE STAR REPORTING, INC.

90 JOHN STREET, SUITE 411

NEW YORK, NEW YORK 10038

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1 A P P E A R A N C E S :

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5 COMMISSIONERS :

6 DAVID YASSKY, Chairman

HARRY GIANNOULIS, Commissioner

7 LAUVIENSKA POLANCO, Commissioner

ED GONZALES, Commissioner

8 MARK GJONAJ, Commissioner

CHARLES FRASER, General Counsel

9

10

SPEAKERS :

11

GEORGIA STEELE, Licensing Division

12 VINCENT SAPONE, LOMTO

ANDREW VOLLO, Director, Taxi FHV

13 Driver Institute

CLIFF ADLER, LOMTO

14 ETHAN GERBER, Greater New York Taxi Association

JOHN MOORE, on behalf of

15 Council Member Jessica Lappin

PETER MAZER, Metropolitan Taxicab

16 Board of Trade

DEPUTY COMMISSIONER RAY SCANLON

17 DEPUTY COMMISSIONER PANSY MULLINGS

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2 MR. YASSKY: Good morning. We have
3 another Commissioner on her way, and I'm told
4 that she will be here shortly. So, I know
5 everyone has business schedules, and we would
6 like to try and get started right at ten
7 o'clock or as close thereto as we can. So, I
8 figure we mine as well get started and we
9 will achieve quorum in progress.

10 We have some distinguished folks with us
11 today. We have all the distinguished members
12 of the industry and interested public, and
13 one special guest that we'll get to in a
14 moment. But first let me introduce a new
15 face for some folks here. I would like to
16 introduce our newest Commissioner on the Taxi
17 and Limousine Commission Mark Gjonaj, whose
18 appointment was unanimously approved by the
19 City Council on October 27th unanimously,
20 everybody in favor.

21 (Applause)

22 MR. YASSKY: Mark is president of MP
23 Realty Group, a rapidly growing real estate
24 firm that specializes in property
25 development, mergers and acquisitions,

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2 property management, and the underwriting of
3 debt, and sales with a portfolio of over
4 1,000 units of commercial and residential
5 real estate. He is also founding member of
6 the Elyria (ph) Partnership and is involved
7 in numerous other health care organizations
8 and community organizations in New York
9 City. He is serving the remainder of the
10 term that ends in January 2015, representing
11 his home Borough of the Bronx.

12 I have had the pleasure of spending some
13 time with Mark in bringing him fully up to
14 speed in what we're doing at the Commission
15 and what the staff is up to. I can say with
16 confidence that you will see that he is a
17 superb addition to our team at the
18 Commission. I'm very, very pleased with his
19 presence here on the Commission.

20 So, we have, as you know, in our vacancy
21 that is I believe on its way to being filled,
22 Frank Garon (ph,) who has been very gracious
23 in bearing with the government as its wheels
24 of justice grind slowly toward our
25 confirmation of his appointment, but I

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2 believe that we're on our way to having a
3 full-strength Commission before too long.

4 A couple other items, first, Taxi of
5 Tomorrow. As I'm sure you know, Mayor
6 Bloomberg announced earlier this week that
7 the Taxi of Tomorrow process is moving
8 forward apace. As the Mayor announced, the
9 process yielded seven proposals, three of
10 which were scored sufficiently highly by the
11 scoring committee to make them the leading
12 contenders. Those were -- I wouldn't go
13 through this in detail, but there is a
14 proposal from Ford Motor Company for the
15 Transit Connect, a proposal from Karsan for a
16 vehicle called the V1, and a proposal from
17 Nissan for their MV200 vehicle. We are
18 asking each of those three to submit their
19 best and final offer, which we expect we will
20 get over the next month or six weeks, and we
21 I believe are still on track toward a
22 selection early next year.

23 So, in the meantime, in conjunction with
24 the Mayor's Office of Media and
25 Entertainment, we have launched a webpage to

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2 solicit public feedback. Obviously the
3 people in this room have a powerful interest
4 of what the new taxi design will be, so, of
5 course, does the broader riding public and
6 the broader New York City public. So, we're
7 soliciting that feedback on a webpage that
8 contains a survey, not a vote on the
9 vehicles, but a survey on which attributes
10 people care about the most. You know, you
11 will all make your voices heard directly to
12 the Commission, but I encourage you to fill
13 out the survey as well. If you do, you will
14 have a chance at free taxi rides for a year.
15 You know, some of you have taxis at your
16 disposal, but still, I'm sure you would
17 appreciate that nonetheless, a chance to
18 check out the competition.

19 The Media and Entertainment Office also
20 designed a public service announcement about
21 Taxi of Tomorrow that, as you know, is now
22 running in taxicabs.

23 A personnel change that I would like to
24 tell you about, another thing that I'm just
25 enormously pleased by, is the rounding out of

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2 our senior team here at the Commission. We
3 have a new staff member, Ashwini Chhabra,
4 will you raise your hand please?

5 MR. CHHABRA: (Raising hand.)

6 MR. YASSKY: This is our new Deputy
7 Commissioner for Policy and Programs.
8 Ashwini comes to TLC most recently from the
9 private sector in a senior position at a law
10 firm, but before that, also extensive
11 experience in the government, in the City
12 government. He was part of Jeff Kay's team
13 at the Mayor's Office of Operations. He
14 worked under Chancellor Joel Klein at the
15 Department of Education. When he was working
16 with Jeff Kay, he worked on a number of TLC
17 projects including the initial stage of Taxi
18 of Tomorrow, an in-house expert to join the
19 other experts.

20 But he, I can tell you again, I think we
21 have a strong a team in place now as any City
22 agency does, and Ashwini is a terrific
23 addition.

24 Couple of last things, recent, some
25 milestones in the industry, and some other

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2 points. The taxi industry reached a notable
3 landmark recently. Earlier this month, we
4 hacked up, or you hacked up, the 4,000th
5 hybrid electric taxicab. The number of
6 hybrid taxis has been increasing steadily
7 since the Commission first approved the use
8 of the hybrids in 2005, and with gas prices
9 hovering at around three dollars a gallon, we
10 certainly expect that trend to continue. So,
11 4,000, I think this industry has done
12 something material for the health of New
13 Yorkers in the cleanliness of our air. So, I
14 commend you for that.

15 Also, credit card usage in taxis has
16 continued to grow. For the month of October,
17 39 percent of taxi trips were paid by credit
18 card, up from 29 percent a year ago; about 43
19 percent of the total fare box paid by credit
20 cards during October compared to 34 percent
21 October 2009. So, the trend continues, that
22 is a fairly rapid rate of increase. I think
23 fairly soon, you'll see a majority,
24 two-thirds maybe, of the trips paid by credit
25 card, I think testifying to the importance of

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2 that equipment.

3 And credit card tipping I'm pleased to
4 say remains high. The average credit card
5 tip during October was 19 percent of the fare
6 up from 18 percent in October 2009.

7 So, that's all good. A couple of less
8 cheery things I'll point out, one is to
9 acknowledge an issue that we had here at the
10 Commission. Wait times to get inspections of
11 livery vehicles, which I know in the spring
12 had gotten unacceptably high and we worked
13 hard to bring that wait time down again, I
14 acknowledge that it got up again in October,
15 and really to a kind of unacceptable point of
16 a couple weeks wait for an inspection. We
17 fully understand that time is money, and we
18 added extra hours on Friday, and we will
19 continue to do that to get it back down
20 again. The wait is now about five days for a
21 transfer, which I think is okay. It is high
22 for a new still, it is about 12 days as of
23 today for a new vehicle. I repeat, we
24 understand that that is unacceptably high and
25 we will get that number down.

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2 I also want to tell you about something
3 that will be in the news today about the
4 Mayor's budget. Today's New York Post
5 reports that the Mayor will release his
6 midyear financial plan today, and it's not --
7 these are difficult times. As the Post
8 reports, the Mayor will be announcing
9 significant layoffs throughout the City
10 government -- not here at TLC, I want to make
11 that crystal clear. We fortunately will
12 continue to have the resources that we need
13 to do our mission, but elsewhere in the City
14 government, the budget will require layoffs.
15 It said over a \$3 billion gap for the coming
16 fiscal year, and the City will do what it
17 needs to do to make the books balance.

18 There is a part of the budget relating
19 to this industry. As part of the budget
20 exercise, the City has reviewed a number of
21 fees to see if the fee is covering the cost
22 of providing the service; we're talking here
23 about the license fee and the inspection
24 fee. And what that survey showed in the case
25 of TLC is that our fees which have not been

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2 raised in some 18 or 19 years, at least for
3 those two, the core inspection fee and the
4 license fee, those no longer do cover the
5 cost of the operation, they are significantly
6 under that cost. The Mayor's budget will
7 propose adjusting those fees -- not to cover
8 the entire costs still, because that would
9 be, you know, that would be a steep increase
10 given where they are -- but they will propose
11 a modest increase. I don't know what the
12 exact figure is at this point, but they will
13 propose a modest increase in both the license
14 fee and the inspection fee.

15 The last business point, and then, you
16 know, then pleasure, the December meeting, we
17 are going to address an issue that I think is
18 as important as any on our agenda, the issue
19 of access ability. As you know, the
20 Commission has long been working to ensure
21 that the TLC regulated industries are
22 accessible to all New Yorkers including those
23 who use wheelchairs. We are the firm belief
24 that all New Yorkers should have access to
25 the type of service that you provide, point

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2 to point service at a market rate. We tried
3 a pilot program for dispatching the taxis.
4 As you know, we also have a rule for
5 liveries, for livery bases, neither that
6 pilot program, nor I dare say 607(f), have
7 succeeded in producing an acceptable level of
8 service for people in wheelchairs. We are
9 working on some other solutions. And what we
10 will be doing in December is having a
11 hearing. It certainly wouldn't be right for
12 vote by this Commission, but we're going to
13 put out some thoughts about what we should do
14 next and invite the interested public or the
15 members of this community and advocates of
16 the disabled to make a presentation to you
17 Commissioners in response to the staff's
18 suggestions. Again, this is a big issue, I
19 don't think it is the sort of issue that we
20 can have testimony and vote the same day like
21 some more straight forward issues. So,
22 between now and December, we will be putting
23 out a proposal and getting back comments at
24 the December meeting so that you can hear it
25 and have time to digest those comments with

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2 an eye toward moving forward sometime in the
3 beginning part of next year.

4 So, now, before we turn to our actual
5 business, I do want to recognize an important
6 honoree, really, that we have with us today,
7 Matt Daus, my predecessor in this position.

8 Matt is here. We have a gift from the
9 TLC, so, if you will come and join us, and
10 while you are doing that, I will note what
11 everyone in this room knows, that Matt served
12 the Commission for 14 years, first as counsel
13 and then as the longest-serving chair in the
14 Commission's history. And Matt, I expect
15 that record to stand a good long while. I
16 think that is the Lou Gehrig of the TLC.

17 Matt certainly served during interesting
18 times: A taxi strike; a transit strike; a
19 franchise bus strike; a blackout; border wars
20 with Nassau County, that remained, you know,
21 cold wars, never sprang into actual armed
22 conflict, but nonetheless tension, but
23 leading to good resolution; there was
24 September 11th, on a serious note, just
25 blocks from the Commission's office here at

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2 Rector Street. During all that time and
3 despite all those challenges, the TLC did
4 world class innovative work during Matt's
5 tenure. The TPEP system has become a model
6 for taxis everywhere across the country and
7 indeed across the world. And I'm sure that
8 the Taxi of Tomorrow, a project started under
9 Matt's tenure of course, I'm sure that will
10 be equally influential every place that taxis
11 are used.

12 It's really been, in the time I've been
13 here, I've just come to appreciate more and
14 more the enormous quality of leadership that
15 Matt provided during his tenure, and I see
16 the fruits of that continuing to be produced
17 day in, day out. Operations were
18 modernized. Customer service standards
19 enhanced here at the TLC. Waiting times
20 dropped dramatically. March Madness became
21 March Mildness -- I wish I could take credit
22 for that line, that's a really good one.

23 (Laughter)

24 MR. YASSKY: And the transparency of
25 TLC's operations is unparalleled, and the

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2 website has a true wealth of information,
3 statistics, tools and listings.

4 And one aspect of Matt's legacy that I
5 appreciate every day is the superlative staff
6 you recruited to the TLC, and I repeat that.
7 If there's one thing that you expect a leader
8 to do, is attract first-rate people and
9 empower them, and Matt certainly did that.

10 So, in recognition of all of that, but
11 just tokens that can't quite approach it
12 even, we have, Matt, for you today, your
13 badge, the badge that was yours as Chairman
14 and Commissioner, suitably encased so that --

15 MR. DAUS: I can carry it in my car.

16 (Laughter)

17 MR. YASSKY: It can hold down the legal
18 papers that must be proliferating in your new
19 office. And also, and this is quite pretty,
20 a gavel and plaque: "Hail to the. Your
21 drive to excel helped the TLC's regulated
22 industries safely drive over one million
23 people each day. Your compassionate
24 leadership will never be forgotten." To Matt
25 Daus.

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2 (Applause)

3 MR. DAUS: Thank you, Commissioner.

4 This is beautiful, thank you. I was
5 expecting to get at least a week's free worth
6 of cab rides, when I came here today, for 14
7 years of service. I am going to go up to the
8 website and apply I guess.

9 But it's really good to see everybody.
10 Thank you so much for welcoming me back. And
11 I can't take credit for any of that stuff,
12 because really the people that were in the
13 room, many of them still are really the ones
14 that did it all. And I'm glad that you are
15 happy with the team, and I see you're
16 building and making great additions to the
17 team, and I'm very, very honored and
18 pleased. And I think you have already done a
19 tremendous job in the first six months that
20 you have been here, and I'm here to support
21 you even after I'm gone. It's not only the
22 things that we started that you brought to
23 the next level, but there are new things
24 going on too. And I greatly appreciate the
25 honor, the recognition.

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2 And it's good to see -- it's kind of
3 weird being on the other side, it is kind of
4 like Alice in Wonderland. But, having been
5 at every meeting for the last fourteen years
6 and standing up here and being down there,
7 it's not that bad down there actually.

8 It's good to see my colleagues that
9 we've been through wars together, friends,
10 Commissioner, new Commissioner -- and some
11 frienemies too, it's good to see you. It's
12 good to be back, and thank you for this
13 honor, I really, really appreciate it.

14 (Applause)

15 MR. DAUS: You know, if I know my
16 brothers, you'll do 10 million times better
17 than what I've ever done, and I hope you do
18 and I know you will.

19 MR. YASSKY: Thank you. What Matt
20 graciously didn't say is that by Alice in
21 Wonderland, he meant it going from the topsy
22 turvy world back to the above-ground reality.

23 MR. DAUS: That's correct.

24 MR. YASSKY: So, to business, we have
25 minutes to adopt. The minutes of the October

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2 21st meeting have been provided, do I have a
3 motion to adopt them?

4 MR. GONZALES: Motion to adopt.

5 MR. YASSKY: Thank you. All in favor,
6 say "aye."

7 THE COMMISSION: (In unison) Aye.

8 MR. YASSKY: Opposed, "no"?

9 (No response)

10 MR. YASSKY: By unanimous vote, the
11 minutes of the October 21, 2010 meeting are
12 adopted.

13 We have base applications. Georgia, you
14 are still the presenter, yes?

15 MS. STEELE: Good morning. Licensing
16 would like to present before the Commission
17 16 bases with a recommendation for approval.

18 MR. YASSKY: Is there a motion to adopt
19 this?

20 MR. GONZALES: Motion to adopt.

21 MR. YASSKY: All in favor, say "aye."

22 THE COMMISSION: (In unison) Aye.

23 MR. YASSKY: Opposed, "no"?

24 (No response)

25 MR. YASSKY: By unanimous vote, the

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2 recommendation is adopted.

3 And you have three bases as well being
4 recommended for denial?

5 MS. STEELE: Yes, and we request that
6 the Commission grants an additional 30 days
7 so that they may present the outstanding
8 items.

9 MR. GONZALES: Motion to deny.

10 MR. YASSKY: All in favor, "aye."

11 THE COMMISSION: (In unison) Aye.

12 MR. YASSKY: Opposed, "no"?

13 (No response)

14 MR. YASSKY: By unanimous vote, the
15 recommendation for denial of those three
16 bases is adopted, and with an additional 30
17 days to give them time to meet their
18 requirements.

19 MS. STEELE: Thank you.

20 MR. YASSKY: We now have three rules, or
21 three sets of rules. Let's do them in this
22 order: First, the change in the effective
23 date for the TATC Rule Book and then the
24 proposed critical driver rule and then the
25 adjudication rules.

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2 MR. FRASER: The first one is changing
3 the effective date of the Rules Revision and
4 the comprehensive rewrite of the rules from
5 January 1, 2011 to April 1, 2011. This is to
6 enable our MIS staff and other staff to
7 complete preparations which are extensive for
8 a complete revision of the rule book.

9 We published this for a public comment
10 for the 30-day required period. We received
11 no comments, and no one has signed up to
12 testify today.

13 MR. YASSKY: So, Commissioners, just to
14 report to you, we of course put in an
15 enormous amount of the work in the re-writing
16 of the rule book to plain language and to
17 achieve greater clarity of text and
18 organization. There are, I guess not
19 innumerable, they can be numerated, but there
20 are numerous implementation steps that go
21 with these forms that need []to be re-done.
22 A lot of MIS work where the programming
23 refers to specific rule numbers and looks for
24 those rule numbers and has to be now
25 rewritten. And given all of the other

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2 initiatives going on in the Commission, I
3 just didn't want to stop work completely on
4 everything else to get that implementation
5 done, so, we're pushing that effective date
6 back from January 1st to April 1st. But we
7 are on target to stick to that, so, I think
8 that's a good date and I would ask for your
9 support.

10 Motion in favor?

11 MR. GONZALES: Make a motion.

12 MR. YASSKY: All in favor say, "aye."

13 THE COMMISSION: (In unison) Aye.

14 MR. YASSKY: Opposed?

15 (No response)

16 MR. YASSKY: The proposed rule book
17 effective date is adopted.

18 MR. FRASER: The next one is a revision
19 to the critical driver rules which are
20 applicable to drivers. The originally
21 published proposal made three changes to the
22 existing rules. In response to public
23 comments, the staff is recommending removing
24 one of those changes, that change is the one
25 that would total all of the points for all of

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2 the violations from a particular incident,
3 and instead what the staff is recommending is
4 we adhere to the current rule, which is only
5 the violation with the highest number of
6 points arising from a particular incident
7 will be counted.

8 The other two changes that the proposed
9 rule would make that the staff is
10 recommending be promulgated, the rule was
11 published for comment. And a number of
12 written comments were received and those have
13 been circulated to the Commissioners. In
14 addition, four people have signed up to
15 testify today.

16 MR. YASSKY: Vincent Sapone from LOMTO,
17 League of Mutual Taxi Owners.

18 (Applause)

19 MR. SAPONE: Good morning. Thank you,
20 Mr. Chair. Thank you, Commissioners, for
21 giving me the opportunity to speak.

22 I represent the League of Mutual Taxi
23 Owners, known as LOMTO, established in 1934.
24 My name is Vincent Sapone, as you know.

25 Before that two-minute clock goes on, I

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2 want to say a little something. First of
3 all, this has got nothing to do with today's
4 meeting. I want to thank the Commissioners
5 for being here month after month without
6 getting paid, probably losing four, five
7 hours a day to be here. Whether you support
8 us or not, it's nice of you to be here and
9 take the time out and support the City.

10 And No. 2, for 33 years it's been two
11 minutes there. I think it's time for a
12 change for three minutes. Maybe it's time
13 for a change for four minutes.

14 MR. YASSKY: I think our rules should
15 change from three to two.

16 MR. SAPONE: What about three and a half
17 minutes, you know? With an important meeting
18 like today, three minutes is sometimes not
19 enough. If a guy is out of order, put him
20 out.

21 MR. YASSKY: The one place where
22 inflation does not operate, sadly, is time.
23 It operates in currency, but not time.

24 MR. SAPONE: You sound like my wife.
25 Anyway.

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2 MR. YASSKY: To what do we owe this
3 special comedic routine treat today?

4 (Laughter)

5 MR. YASSKY: I'm sorry, Mr. Sapone.
6 Please continue.

7 MR. SAPONE: Maybe we should go on stage
8 somewhere, you know, call it the "TLC Comedy
9 Hour."

10 Anyway, people who drive their personal
11 cars in New York don't spend much time behind
12 a wheel. Taxi drivers work six days a week
13 and average 12 hours a day sometimes seven
14 days a week to make ends meet. They cover
15 hundreds of miles every day between
16 construction, bus lanes, bike lanes, petty
17 cabs, skaters. It is very tough to get
18 around the City today, and they are very
19 vulnerable to get some kind of a summons.
20 They there is no quota, but there definitely
21 is a quota, it's been that way since I was a
22 kid -- and anyone could tell me I'm wrong, I
23 don't know what I'm talking about -- that's
24 what it is, and the police officer or the
25 traffic officer who gives out the most

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2 tickets is saluted.

3 I would like to discuss the 15-month
4 period in which points are accumulated. The
5 current rule states that the 15-month period
6 starts from the most recent violation. This
7 would be changed to that it is cited in the
8 summons issue. If this happens, many drivers
9 will be suspended or revoked.

10 LOMTO is in favor of keeping safe
11 drivers on the road. If a driver received
12 three two-point summonses in 2007 or 2008,
13 which could easily happen, and say, no
14 summonses since then, or maybe only one
15 two-point summons in 2010, is it fair to put
16 that driver out of work for 30 days? He's
17 got a family. He's got to pay rent just like
18 all us.

19 Let me get started here. Based on what
20 happened two or three years ago, the 15-month
21 period should only start from the most recent
22 summons issued.

23 Education is a vital part of any
24 industry. Many drivers do not know they can
25 take a defensive driving course every 18

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2 months if needed. I think the critical
3 driver rule needs to be changed so that the
4 driver can take a defensive driving course
5 even after a critical driver summons is
6 issued. The point reduction should apply and
7 the driver will learn to be a safe driver.

8 Thank you very much. Have a nice day.
9 Have a nice Thanksgiving.

10 (Applause)

11 MR. YASSKY: Thank you. We also have
12 Christian Palamik (ph) who has signed up to
13 testify.

14 (No response)

15 MR. YASSKY: We will move on to Andrew
16 Vollo.

17 MR. VOLLO: Good morning. Thank you,
18 Chairman. Thank you, Commissioners. My name
19 is Andrew Vollo. I'm the director of the
20 Taxi FHV Driver at the La Guardia Community
21 College.

22 The New York City Taxi and FHV Driver
23 Institute at La Guardia Community College
24 recognizes the value and supports the Taxi
25 and Limousine Commission's proposed amendment

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2 to the critical driver program.

3 The proposed rule will enhance and
4 increase the program's contribution to public
5 safety. The institute applauds the TLC's
6 plan also to include commuter vans and
7 Paratransit in the program.

8 While drivers should be rewarded for
9 taking advantage of professional education,
10 the institute believes that they need
11 additional training beyond the standard motor
12 vehicle accident prevention course, given
13 that the professional drivers face unique
14 driving conditions.

15 As a provider for over 26 years of
16 experience training TLC drivers, the
17 institute works closely with the TLC in the
18 conception, design and implementation of
19 training programs. We're concerned that
20 there's not enough time in the current
21 six-hour vehicle accident prevention course
22 to meet the specialized needs of the TLC
23 drivers. These needs include coping with
24 passengers while driving under already
25 stressful conditions; the need to drive

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2 longer hours; TLC traffic regulations that
3 apply only to TLC drivers, such as cell
4 phones, electronic device rule, alcohol
5 restrictions, critical driver/persistent
6 driver program, new technologies that drivers
7 need to embrace and enhance.

8 The institute, in conjunction with the
9 National Traffic Safety Institute, NTSI, has
10 developed a TLC driver safety component that
11 has been approved by the New York State
12 Department of Motor Vehicles. This seven-
13 hour course specifically is designed to
14 address the needs of TLC drivers. In August
15 2009, the institute and NTSI certified 100
16 drivers with the seven-hour defensive driving
17 course so that a survey study could be done
18 to assess the program value. We've shared
19 this information with your staff and we thank
20 them for their participation and
21 cooperation.

22 Mandating that all TLC drivers attend a
23 specialized State certified seven-hour
24 defensive driving course designed
25 specifically for TLC drivers who will more

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2 effectively into training safer drivers than
3 generic programs designed for the general
4 public. The institute has a secured data
5 link to the TLC expediting the completion and
6 compliance requirements and eliminating many
7 of the possibilities of fraud. Having the
8 course conducted by an official New York City
9 taxi training school rather than a generic
10 course delivered by any motor vehicle
11 accident prevention course provider will
12 ensure program integrity and compliance.

13 The proposed seven-hour defensive
14 driving course is ready for immediate
15 commencement and will be taught by the New
16 York State certified defensive driving
17 instructors who are taxi drivers and FHV
18 drivers. They bring a wealth of knowledge to
19 the class. Such a course will be beneficial
20 to both the TLC driver, the passenger, by
21 ensuring that professional drivers have the
22 skills and knowledge that they need to
23 provide a safe and comfortable driving
24 experience.

25 The TLC may want to consider

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2 compensating drivers for their additional
3 time and effort in taking this course by
4 allowing them to reduce four violation points
5 from their license, helping to keep
6 professional drivers on the streets of New
7 York City.

8 Thank you for considering our views on
9 these important regulations. Should you have
10 any questions, I'll be --

11 MR. YASSKY: Thank you. Just for
12 clarity, the course you are describing you
13 said has been approved by the State DMV?

14 MR. VOLLO: Correct. It exists.

15 MR. YASSKY: And the driver then taking
16 that gets credit under our rules?

17 MR. VOLLO: Correct, and they get credit
18 with the State also.

19 MR. YASSKY: I understand. Thank you.

20 MR. VOLLO: Thank you.

21 MR. YASSKY: We have Cliff Adler, also
22 representing the League of Mutual Taxi
23 Owners.

24 MR. ADLER: Mr. Chairman, Commissioners,
25 ladies and gentlemen, thank you. There's a

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2 point which has been bothering not just
3 myself but a lot of drivers especially around
4 stations like Penn Station and Grand Central.
5 When you're talking about the critical driver
6 program, drivers are pulling up in traffic
7 close to Penn Station, passengers who I'm
8 sure you understand get very antsy when
9 they're looking at four minutes, five
10 minutes, seven minutes to catch a train, they
11 jump out in the middle of traffic throwing
12 money through the partition or on the front
13 seat. Drivers in most cases have no chance
14 to say, "Please don't do that, I'll get a
15 ticket." The passenger jumps out, when
16 driver pulls up, another 50 yards is a police
17 officer waiting to pull them over, and they
18 give them not one, but two or three tickets;
19 blocking traffic, improper discharge of
20 passengers, they write out a whole slew of
21 tickets, because it's what they do, okay?
22 So, if you wind up with three, four or five
23 tickets, that could put somebody out of
24 business right there. And I wish the
25 Commissioner and the Commission would

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2 seriously think about this please. Thank
3 you.

4 (Applause)

5 MR. YASSKY: Finally, Ethan Gerber from
6 the Greater New York Taxi Association.

7 MR. GERBER: Thank you, Mr. Chairman.
8 At the outset, I just want to say that my
9 first and biggest concern of these particular
10 rules was taken care of by your office
11 already with the top count merger, and I
12 appreciate the hard work that your staff did
13 of doing that, so, that was my number one
14 concern with this particular section of the
15 rules, so, thank you.

16 Also, since I'm cutting out that large
17 portion of my speech, saying I want to
18 welcome the two new Commissioners, the
19 Commissioner sitting and the one to be, both
20 have wonderful reputations and I'm delighted
21 to have them. I'm speaking for members of
22 the industry.

23 Also speaking as a member of the
24 industry, I do want to take the opportunity,
25 since I have it, saying, 14 years back,

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2 congratulations, that's a fantastic run. My
3 wife threatened to change the locks when I
4 served four years in government, so, I
5 understand what a sacrifice that was.

6 As to the problem I do have with these
7 rules is the retroactive effect of the
8 15-month purge going back in time. This
9 seems to be inherently unfair that a driver,
10 who like many professionals gets better with
11 time, can still run the risk of activities
12 that took place quite a long time ago. This
13 grabbing of a number and not going forward
14 and starting off with day one has inherent
15 due process problems and inherent problems
16 for the drivers personally with the
17 retroactive effect.

18 I urge the Commission to make this a
19 point of going forward and not one of going
20 back. We do not need to purge drivers who
21 have been excellent drivers and who have
22 improved with time. Thank you.

23 (Applause)

24 MR. YASSKY: Commissioners, are there
25 questions?

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2 MS. POLANCO: Yeah. I have a question
3 regarding -- I'm trying to understand this.
4 So, basically a driver that got two or three
5 summonses that basically will sum up to six
6 or more points three years ago could easily
7 be suspended today if, for example, the TLC
8 staff runs his license or his TLC license
9 number and they realize that he's accumulated
10 that time. I'm trying to see in the rule; it
11 says that within any 15-month period, so we
12 can go back to 2006, basically there is no
13 limit. So, basically it depends on when we
14 catch this driver.

15 MR. FRASER: It doesn't depend so much
16 when we catch the driver, it depends when the
17 DMV adjudicates the violation. In other
18 words, although the violation counts the day
19 you run the stop sign, for example, if it
20 takes two years, which I understand from the
21 documents I have seen, it is not atypical at
22 all for the DMV to adjudicate that, obviously
23 there are no points until the adjudication,
24 even though once they're adjudicated, the
25 points are now two years old.

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2 Our licensing staff runs weekly computer
3 runs of points on all of our drivers, subject
4 to the critical driver program, and so
5 therefore, no more than a week after that
6 adjudication basically, the point total
7 created by that adjudication will be
8 detected. But the fact of that matter is,
9 the adjudication does not happen necessarily
10 quickly. That's obviously because there can
11 be adjournments, there can be all kinds of
12 delays in the process, and of course the
13 driver can end that process by pleading
14 guilty, which is I think probably more often
15 than not how the State adjudication is ended.

16 The point is the driver has some control
17 over the adjudication date, we have none of
18 course. And the driver has no control
19 presumably over the violation date. The
20 statute calls for the point, using DMV
21 points, DMV accrues them as of the violation
22 date. We feel that we really have to
23 accumulate them as of the violation date,
24 even though they don't exist obviously until
25 there is an adjudication.

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2 So, yes, it is possible that we can be
3 looking at older violations, but we're always
4 looking at newer adjudications, because we
5 run those every week.

6 MR. YASSKY: And that's why -- I don't
7 want to belabor, but, Mr. Adler's
8 hypothetical where police officer issues
9 three tickets to somebody, first of all,
10 that, you know, the industry folks came to us
11 and said they were concerned about the
12 fairness of that, and I think that's a
13 judgment call, it could go either way, but it
14 was the staff's judgment unbalanced that we
15 should not count all three tickets issued for
16 one episode, but only count the most grave of
17 the violations. So, that cannot happen under
18 the new rules, meaning somebody gets three
19 tickets all at once and now all of a sudden
20 they're a critical driver and their license
21 is suspended.

22 As General Counsel explains, while it is
23 possible, I guess, that this could operate to
24 suspend a license based on, you know, three
25 separate episodes in 2007, the only way that

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2 could really happen is, No. 1, if we just
3 went back and looked for the first time --
4 which doesn't happen, since we do every
5 week. You know, as soon as that third
6 violation that adds up to six points hits the
7 DMV database, we're going to learn about it
8 in the next few days, and then they'll get
9 their critical driver notice.

10 The only other way would be if somehow
11 it has not been, even though the violation
12 was in 2007, it was not adjudicated until
13 now. And then that makes sense, because only
14 now do they have the six points. So, I hope
15 that answers your question.

16 Further discussion?

17 MS. FRIEDMAN: Excuse me, Commissioner.
18 I'm a traffic attorney. My name is Karen
19 Friedman, I'm the president of the
20 Association of Motor Vehicle Trial Attorneys.

21 MR. YASSKY: You know, we do ask people
22 to sign up to speak. It is formality, but
23 still it helps order the proceedings here.
24 But why don't you go ahead and make your
25 comment.

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2 MS. FRIEDMAN: Thank you very much,
3 Judge. The problem is that over the years,
4 attorneys have suggested to drivers that they
5 plead guilty to a ticket to cut off that
6 period, that 15-month look-back period. So,
7 now what's going to happen is that those
8 drivers who had six points or eight points,
9 perhaps a year or two went by and they were
10 worried that they might be called in under
11 the critical driver rules. So, then they got
12 a two-point ticket, went out and pled guilty,
13 thinking, "Okay, well, this cuts off that
14 look-back period." And now, the TLC
15 conceivably could look back to 2007 and say,
16 "Oh, my gosh, this man has 10 points. We'll
17 have to revoke his Hack License," or whatever
18 the situation is, but it's not fair, because
19 they actually proceeded based on your rules.

20 MR. YASSKY: First of all, I mean, in
21 truth it's not TLC's belief that the rules as
22 previously written have the same effect, but
23 this clarifies it.

24 Second of all, still, the core kind
25 of bottom line is that you're only subject to

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2 the critical driver penalty if you have six
3 points within a 15-month period. So, it's
4 not in the question of 2007 and then 2009 and
5 then 2010 violations, but the violations have
6 to be within that 15-month period.

7 MS. FRIEDMAN: Yes, I understand what
8 you're saying, Commissioner. The problem is
9 that assuming, arguendo, the person went and
10 pled guilty to six points, and he did it over
11 the last 15-month period, odds are that the
12 TLC would pick that up. But what has
13 happened as drivers are convicted of six or
14 eight or 10 points in a 15-month period, but
15 that period has gone by, and then
16 subsequently, a year later they are afraid
17 that "Oh, I might get convicted of the
18 critical driver rules," so, they'll get a
19 two-point ticket and plead guilty based on
20 your present rules. And under your proposed
21 rules, the TLC could look back at any
22 15-month period, and that would create a
23 problem for many drivers.

24 MR. YASSKY: Okay.

25 MS. FRIEDMAN: In addition, when you

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2 consider it, a six-point ticket could be
3 given out for 22 miles over. In other words,
4 the Clearview Expressway, you want to pass
5 somebody on a hill, and you could all of a
6 sudden get six points, and that would be
7 grounds for --

8 MR. YASSKY: That's always been true.
9 But, okay, your testimony is noted. Thank
10 you.

11 MS. FRIEDMAN: Thank you.

12 MR. GONZALES: I would like to make one
13 general comment here. In essence, what we're
14 trying to do here is to make sure that both
15 the drivers and the riding public are safe,
16 correct? Now, I understand some of the
17 logistics around the 15-month period, but
18 there is a resolution to this, you can take
19 the program, and the program removes points;
20 that's resolution, it's not determining
21 whether it's 15 months, this month, that
22 month or not.

23 (Interruption)

24 MR. YASSKY: Thank you, Commissioner.
25 You are certainly correct.

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2 (Interruption)

3 MR. YASSKY: Is there a motion to
4 approve the rule as drafted?

5 (Interruption)

6 MR. FRASER: The statute, we have no
7 authority to change this. The 15-month look-
8 back period is in the statute, we don't get
9 to change that. And the two-point credit is
10 also in the statute, and what it says is if
11 you voluntarily take the course, our judges
12 for many years have interpreted "voluntarily"
13 to mean before you get a summons for it. If
14 you are under a summons and you take the
15 course then, they have construed that to be
16 not voluntarily. All this rule does is
17 codifies that long standing precedent of our
18 judges. You can take the two points, you can
19 take that time any time up until the day
20 before we issue the summons when you have six
21 points, four points, eight points, whatever
22 number of points you want, or no points.
23 Now, you can only do it once -- and again,
24 this is in the statute, we don't get to
25 change this -- every, I forget, 18 months or

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2 whatever the statute says. You can't take
3 three courses in three weeks and drop your
4 point total to zero. But what we are doing
5 here codifies long standing precedent of our
6 judges, and we thought it was a good thing to
7 do and take those appeals decisions and put
8 them in the rules rather than to have them in
9 appeals decisions.

10 MR. YASSKY: Thank you.

11 I move that we adopt the critical driver
12 rules as written. All in favor say, "aye."

13 THE COMMISSION: (In unison) Aye.

14 MR. YASSKY: Opposed, "no"?

15 (No response)

16 MR. YASSKY: With all in favor, the
17 motion is adopted and the rule is adopted.

18 Our final package are the adjudication
19 rules that the General Counsel will now
20 explain.

21 MR. FRASER: This is two separate rules
22 packages. What we're doing here is we
23 have -- and they are supposed to be
24 identical, hopefully they are -- one of them
25 amends our existing rules, the rules that are

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2 in effect today, and one of them amends the
3 set of rules that will become effective April
4 1st as we just determined a few minutes ago.
5 They modify to our adjudications chapters in
6 a number of respects. We published the rules
7 for comment, we received I think it was two
8 written comments which we circulated to the
9 Commissioners, and three people have signed
10 up to speak today.

11 MR. YASSKY: The first is John Moore
12 representing Council Member Jessica Lappin.

13 MR. MOORE: Thanks for letting me speak
14 today on behalf of Council Member Jessica
15 Lappin. Again, my name is John Moore.

16 "I am pleased to testify in support of
17 the Taxi and Limousine's Commission to
18 proposed changed and regulations regarding
19 hearing postponements. These new regulations
20 will help close a loophole that will allow
21 unscrupulous operators to put off hearings to
22 put off their misconduct seemingly
23 indefinitely. I ask the TLC to undertake
24 this change after learning of an exasperating
25 experience of one of my constituents. That

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2 constituent was driving his car on March 11,
3 2007 when he was forced out of his lane by a
4 taxi driver. He and his young child were
5 badly frightened by the encounter. He filed
6 a complaint on the same day and was asked to
7 attend a hearing on September 19th. He
8 showed up but the driver did not. The
9 hearing was rescheduled and this happened
10 four more times. Each time my constituent
11 showed up and the driver did not, always
12 asking to get another postponement always for
13 medical reasons.

14 "Then in June 2008, my constituent was
15 asked to appear for a fifth time. The case
16 was finally heard in July 2008, 16 months
17 after the incident, and the driver was found
18 guilty. His license was suspended for a
19 period of time and he received a substantial
20 fine.

21 "The story does not end there. The
22 driver appealed, as is certainly his right,
23 and in August 2008, an administrative judge
24 reduced his penalties. The case was reviewed
25 again, and it was not until July 2009, more

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2 than two years after the original incident,
3 that the case was resolved in my
4 constituents's favor.

5 "I think that this is a clear case of
6 justice delayed, justice denied. During
7 these two years, the driver in question, who
8 has also been found to be a dangerous driver,
9 was out on the streets possibly endangering
10 his passengers, occupants of other vehicles,
11 pedestrians, and himself.

12 "It is certainly possible for a driver
13 as well as the complainant to have a valid
14 medical reason or other reason for needing a
15 postponement of a hearing. However, on
16 looking into this case, I learned that the
17 TLC had no regulations limiting the number of
18 postponements a driver could request, no
19 verification of the medical necessities
20 alleged, and no way to make sure the hearings
21 proceeded at a reasonable pace in order to
22 protect the public from dangerous drivers.

23 "I was in contact with former
24 Commissioner Daus and current Commissioner
25 Yassky to request that this matter be

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2 pursued, and I'm pleased with the outcome.

3 "These regulations provide that, except
4 for a very clearly defined good cause, a
5 respondent shall be entitled to only
6 adjournment. They also clarify the appeals
7 procedures including time limits for each
8 stage of the process and clarify the timing
9 of the imposition of penalties after a
10 hearing decisions. These new regulations are
11 appropriate and sensible and I'm delighted to
12 lend my support, and I hope they're adopted.
13 Thank you very much."

14 MR. YASSKY: Thank you, Mr. Moore.

15 Peter Mazer?

16 MR. MAZER: Good morning.

17 MR. YASSKY: Good morning.

18 MR. MAZER: Good morning, Chairman
19 Yassky, Mr. Fraser, members of the TLC Board
20 of Commissioners. My name is Peter Mazer,
21 and I'm general counsel to the Metropolitan
22 Taxicab Board of Trade, an association
23 representing the owners of more than 3,500
24 licensed taxicabs.

25 As part of our member services, we

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2 provide representation at TLC tribunals to
3 medallion owners, agents, brokers, licensed
4 taxi meter businesses, as well as drivers at
5 the various TLC adjudications tribunals.

6 I personally represented respondents at
7 nearly 500 TLC hearings during the past five
8 years and served as a judge at the TLC
9 tribunal from 1987 to 1996, and as the TLC's
10 chief judge from 1996 to '98.

11 MTBOT has previously submitted written
12 comments, which you have, regarding a number
13 of concerns raised by the proposed amendments
14 to the adjudications rules, but I will limit
15 my testimony to two major concerns that I
16 have.

17 The first issue in which I would like to
18 address is the proposed new Section 18-06(c),
19 which would allow the TLC to prosecute
20 hearings without the testimony of the officer
21 who issued the summons. The proposed rule
22 provides, "If the summons of Notice of
23 Violation is sworn to under oath or affirmed
24 under penalty of perjury, a copy of the
25 summons will be admitted into evidence prima

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2 facie proof of the allegations alleged." And
3 I believe that there is a new draft this
4 morning that changed the word "prima facie
5 proof" to the word "prima facie evidence."

6 MR. FRASER: I forgot to mention that
7 there were four changes that staff is
8 recommending to the rule. I would regard
9 them all as technical. One of them is
10 changing the word from "proof" to "evidence,"
11 in response to the comments submitted by
12 Mr. Mazer and others.

13 MR. MAZER: In the Statement of Basis
14 and Purpose, accompanying the rules would the
15 following: "This change in adjudications
16 procedures conform to procedures used at
17 other tribunals in the City including the
18 Environmental Control Board." However, the
19 rules governing the ECB shows that its rules
20 are quite different. Section 3-54(a) of the
21 ECB rules provides that the Notice of
22 Violation if sworn to or affirmed shall
23 constitute prima facie evidence of the facts
24 stated therein.

25 ECB also routinely allows respondents to

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2 obtain adjournments to compel the issuing
3 officer to be present. The judge need only
4 determine that the hearing can be conducted
5 more effectively if the officer were made
6 available.

7 When a summons is presented into
8 evidence at an ECB hearing, it is the same as
9 if the officer were at the hearing and
10 testified under oath to the facts contained
11 in the summons. For example, the summons was
12 issued because there's no curb cut in front
13 of a building, it's like introducing the
14 summons is like having the officer saying, "I
15 saw that there was no curb cut."

16 The judge then decides what to do with
17 the facts; believe them, discredit them,
18 consider defenses or responses. ECB rules
19 are very clear that burden of proof in the
20 hearing remains at all times with the agency
21 issuing the summons. The City must prove the
22 respondent guilty. A respondent is never
23 required to prove his or her innocence.

24 This is a significant distinction
25 between a summons being prima facie evidence

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2 of the facts as practice at the ECB and the
3 summons being prima facie proof or even prima
4 facie evidence of a violation as proposed by
5 the TLC.

6 Under the TLC proposed rules, a summons
7 is not merely evidence of the facts stated on
8 it, it is proof that the allegation
9 occurred. Thus, the proposed rule asserts
10 the authority of the judge to apply the law
11 to the facts alleged and to reach a judicial
12 determination as to whether the facts are
13 sufficient to establish the violation alleged
14 in the summons. By simply introducing the
15 summons into evidence, the TLC now shifts the
16 burden of proof to the respondent. So, now,
17 the respondent is guilty unless he or she
18 could prove innocence, unlike The ECB where
19 hearings are routinely adjourned because the
20 respondent wants the issuing officer to be
21 present. Under proposed rule 18-09(a)(4),
22 the burden is also on the respondent to
23 convince the judge that the issuing officer's
24 testimony is even necessary. Not only is the
25 respondent presumed to be guilty but the

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2 respondent may even be denied the tools to
3 defend a case to establish his or her
4 innocence.

5 If the TLC truly wanted to replicate the
6 procedures in other agencies, it should look
7 at the ECB rules, look at The City Charter,
8 set forth the due process requirements and
9 mandate first that the burden of proof remain
10 with the TLC to establish guilt and not with
11 the respondent to prove innocence; and
12 second, to develop a fair procedure to
13 balance the respondent's right to a fair
14 hearing with the TLC's admitted desire to
15 utilize its offices in ways other than
16 testifying at hearings.

17 Replicating what the ECB does word-for-
18 word might be one way to achieve the result.
19 The proposed TLC rules neither replicate
20 ECB's procedures as they purport, nor provide
21 a truly fair hearing to the respondent.

22 While we're on the subject of
23 replicating procedures at other tribunals,
24 the TLC is unique among tribunals in not
25 providing attorneys or representatives with

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2 notice of scheduled or rescheduled hearings.
3 Part of the rationale that reforms those
4 today is to reduce the number of adjourned
5 hearings. One of the reforms, the one I
6 previously discussed would actually increase
7 the number of adjourned hearings, because
8 now, whenever a respondent chooses to contest
9 a hearing, there will be a necessity of at
10 least two appearances by the respondent and
11 the hearing would be adjourned at least once
12 to have the issuing officer present.

13 A large number of summonses are
14 adjourned because the TLC is unprepared to go
15 forward. From my experience, about 10
16 percent of hearings are adjourned for that
17 reason. Also from my experience, about 20
18 percent of hearings are adjourned at the
19 request of the respondent or his attorney.
20 Non-availability of a party or the attorney
21 or the representative is the number one
22 reason for adjournments, followed by
23 adjournments to request records.

24 Unlike every other tribunal that I am
25 aware of, if an attorney or representative

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2 requests an adjournment, the notice of
3 rescheduled hearing is not sent to the
4 attorney or representative, but directly to
5 the respondent. The attorney or
6 representative at the TLC is not given timely
7 notice or given any notice of a rescheduled
8 hearing. If a hearing is dismissed at the
9 TLC level and an appeal is filed, appeal or a
10 notice of appeal is occasionally sent to the
11 attorney, but not always. If a case is
12 remanded for a new hearing, the attorney is
13 never notified. A respondent who receives a
14 notice and who has an attorney will usually
15 assume that the attorney knows of the
16 hearing. After all, in every other tribunal,
17 attorneys and authorized representatives are
18 informed in a timely basis about all future
19 proceedings, only the TLC does not.

20 Many of the issues relating to
21 adjournments and missed hearings arise
22 because the TLC does not inform attorneys and
23 representatives about rescheduled hearings.
24 A simple change in the procedure would make
25 the TLC tribunal operate just like any other

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2 court, any other adjudication tribunal.
3 Simply have the attorneys and representatives
4 file notices of appearances either at the
5 hearing or at any pre-hearing request such as
6 an adjournment request. By the way, this is
7 the way it's done at the JFK Tribunal that
8 the TLC operates, although absolutely nothing
9 is done with the notice of hearings that are
10 filed there. Give the attorney or the
11 representative notice of all future
12 hearings. ECB does it, Department of Health
13 does it, every court does it. This simple
14 change in procedure will enable your
15 tribunals to operate more efficiently and
16 reduce the number of adjournments and missed
17 hearings.

18 I'll be happy to answer any questions
19 that anyone may have.

20 MR. YASSKY: Commissioners, are there
21 any questions for Mr. Mazer?

22 (No response)

23 MR. YASSKY: Alright, while you are
24 here, we have one more person who is
25 testifying, my guess is, along much the same

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2 lines. I have to say I think that the
3 distinction between evidence of the facts and
4 evidence of the violation, I think that seems
5 to be your main point, I think is utterly
6 without meaning. If a summons says, "I saw
7 that Mr. X. I hailed Mr. X who was an
8 unlicensed vehicle and he offered me a ride
9 and a ride for money," and therefore, it's an
10 illegal street hail, you are saying that
11 there is a difference between saying that it
12 is evidence of facts that constitute
13 unlicensed activity and that's one thing, and
14 saying evidence of unlicensed activity is a
15 different thing?

16 MR. MAZER: Well, actually I'm a lot
17 happier that the word "proof" was changed,
18 "proof of the violation" to "evidence of the
19 violation."

20 MR. YASSKY: Honestly, I mean it's
21 mandated, we would be happy to have it say
22 "evidence of proof," but in neither case is
23 it conclusive. In both cases, it's a
24 rebuttable evidence that if a defendant has
25 something to say in his or her case, he or

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2 she is perfectly free to do that. And if
3 they can persuade the judge that the summons
4 is incorrect or wrong, then the judge will
5 dismiss the case.

6 MR. FRASER: If I may add. I, as five
7 years in charge of enforcement at the
8 Buildings Department, supervised the practice
9 of the Buildings Department's violations at
10 the Environmental Control Board. And our
11 Deputy Commissioner for Adjudications was an
12 official for many years at the Environmental
13 Control Board, I believe leaving as legal
14 director. So, we have a pretty good idea of
15 what ECB practice is, and it is our intention
16 to precisely mimic that practice in this
17 rule. You can write that down as part of the
18 legislative history right from the transcript
19 of the hearing.

20 You should know that we conceive of this
21 as having -- there are four types of hearings
22 procedurally speaking: One, the respondent
23 defaults, doesn't show up; two, the
24 respondent shows up and asks for an
25 adjournment that has nothing to do with the

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2 inspector being present; three, the
3 respondent shows up and doesn't need the
4 inspector to testify, his defense relates to
5 some other thing altogether; and four, the
6 respondent shows up and needs to have the
7 inspector's testimony.

8 In the first three cases, the procedure
9 that is being advocated for would require us
10 to have the inspector present for all of
11 those hearings, even though only in the
12 fourth case is that inspector's testimony
13 needed. This is exactly what happens at
14 ECB. If the respondent does not show up,
15 there is no hearing. And I know this, this
16 comes from my own practice. The computer, at
17 the end of the day subtracts out all the
18 things where action was taken, says, "Okay
19 everything else, no action was taken," the
20 computer spits out a default decision. No
21 judge even looks at it.

22 We're not proposing to go that far by
23 the way. In this respect it is different
24 than the ECB practice. We will still have a
25 judge issue a decision based on the summons.

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2 But the inspector won't have to take time to
3 testify for an uncontested case. The only
4 time an inspector will have to testify is
5 when the inspector's testimony is in issue.
6 And that can be put in issue, of course the
7 respondent would ask for it, the judge would
8 review it, and our intention is that the
9 judge will have the same flexibility to
10 adjourn to call the inspector that the ECB
11 judge has. I guess that's the points I
12 wanted to make.

13 The notice of the adjourned date to the
14 attorney, your point is well-taken. We think
15 that's something that should be done. We
16 don't think that's a rule-making issue.
17 That's something we think we need to work on
18 operationally and we've committed to do that.

19 MR. MAZER: Can I make just one rebuttal
20 to your first point about the inspector's
21 testimony?

22 MR. FRASER: Sure.

23 MR. MAZER: The only difference there,
24 and if you want to replicate ECB practice,
25 it's true that ECB spits out default

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2 judgements for respondents that do not show.
3 But the respondent who files a motion within
4 45 days has an absolute right to the hearing
5 be reopened. There is nothing in these rules
6 that give that respect.

7 MR. FRASER: That's right. The motion
8 to vacate default is different. At any
9 speed, that's true. But that's not covered
10 -- that is the prima facie proof issue.

11 MR. MAZER: And I'm very happy that
12 you're saying as part of this transcript is
13 the legislative history that your practice
14 here will replicate the ECB practice with
15 respect to inspectors, with respect to
16 adjournments.

17 MR. FRASER: Well, I can't and wont' try
18 to bind our judges. What I'm saying is our
19 rule is intended to mimic their rules and
20 their practice. I do not decide the actual
21 cases, so.

22 MR. YASSKY: Thank you.

23 Mr. Ethan Gerber again has also signed
24 up to testify.

25 MR. GERBER: Thank you, Mr. Chair.

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2 Thank you, Commissioners, and I do adopt all
3 of Mr. Mazer's comments.

4 I do want to say that I'm here on behalf
5 of the Greater New York Taxi Association and
6 Owners Association, which largely concerns
7 drivers as well, which is of course essential
8 to our industry. I'm also here because on a
9 personal level as a Bar Association leader
10 and as a former prosecutor, my sense of due
11 process is deeply upset by what's going on.
12 We have got a couple of things going on, one
13 of them is the change of adjournment rules.
14 And what we're doing here, let's be certain,
15 is we're taking the discretion away from the
16 administrative law judges. What we're doing
17 in changing the discretionary powers of
18 administrative law judges to be certain is
19 changing the powers of the administrative law
20 judges' discretion of the administrative law
21 judges that were appointed and screened by
22 this agency itself. So, we are not happy
23 with the discretion that's being given buy
24 these ALJs, and we are going to reduce their
25 powers to do the fact-finding and to exercise

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2 their discretion.

3 It's ironic, because just recently I
4 received or became aware of a plethora of
5 appeals decisions where the TLC was not ready
6 on dates by their inspectors for the dates
7 that they set, that the TLC inspectors set
8 and the agencies set, were not ready, the
9 adjournment was denied and brought to the
10 appeals bureau, and the denial of the
11 adjournment was appealed by this agency and
12 overturned. The appeals bureau signed off on
13 by the General Counsel.

14 MR. FRASER: Whoa, whoa, hold on a
15 second. I do not decide appeals, please.

16 MR. MAZER: Your name is on the bottom
17 of it.

18 MR. FRASER: Alright, yeah, they sign
19 them in my name. That's actually one of the
20 things that this rule would change. I do not
21 see appeals decisions.

22 MR. GERBER: Right. But this agency has
23 a history of appealing its own denial of
24 adjournments when it seeks the adjournments,
25 that's number one.

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2 As to the prima facie case or the fact
3 on a piece of paper, I would like to take
4 some umbrage also at the comparison between
5 ECB. The violations of this agency are quite
6 different than the violations that are often
7 given. They are very fact specific. The
8 statement given by who happens to be my
9 Councilwoman, I understand the frustration.
10 But the specific charge given in that
11 particular case had to do with the type of
12 reckless driving. That is not the type of
13 allegation that, let's say, did not properly
14 dispose of a flammable liquid or some other
15 type of thing which either happened or did
16 not. A reckless driving is akin to a court
17 case which is very, very fact specific, and
18 the idea of being able to defend such a
19 charge without cross-examination is virtually
20 impossible. I don't know what evidence I
21 would come in to rebut an allegation on a
22 piece of paper of that type of conduct. I
23 would not know how to do that cross-
24 examination. Maybe an attorney with better
25 power than I can figure it out, but as

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2 someone who has tried many jury cases and has
3 tried many bench trials, I don't know how I
4 would possibly cross-examine that piece of
5 paper. The Administrative Code of the City
6 of New York gives due process rights and the
7 Administrative Code specifically recognizes
8 that cross-examination is one of those
9 essential rights.

10 Here, what we do is we put the burden on
11 the respondent to make a motion to the court
12 to bring in a person to cross-examine. This
13 is not consistent with the Administrative
14 Code. Again, liking it to a sanitation issue
15 I really think is a stretch because of the
16 very fact-specific nature of the types of
17 charges that appear here. There are all
18 types of issues that are subject to cross-
19 examination.

20 You know, you get a violation, a driver
21 gets a violation in this forum for not
22 checking the back seat when they drop of a
23 passenger. They take a passenger from the
24 airport, they don't check the back seat, the
25 passenger alleges three weeks later that he

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2 lost his wallet in that cab and the driver
3 didn't check. How am I supposed to prove or
4 disprove that allegation on a piece of paper?
5 I mean cross-examining the witness would be
6 interesting. I know I don't like the type of
7 questions when I lose my wallet every other
8 day and my wife says, "Where's the last place
9 you had it?" You know, well, that's a
10 difficult question. And that's a difficult
11 question that you would ask to a person who
12 makes the allegation that "I lost my wallet
13 in the back seat of a cab."

14 Again, I could go on and on with the
15 type of allegations, but those type of cases
16 are thrown out routinely in court when there
17 is a tort of a bailment issue and they base
18 it on the ALJ decision that came out of TLC,
19 routinely thrown out of court because the
20 proof is insufficient. But here, it's okay.
21 How you could possibly sustain those charges
22 in almost the whole plethora of type of
23 charges that a driver could be faced with on
24 a piece of paper and cross-examine a piece of
25 paper? It is virtually impossible to prove a

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2 negative, I don't know how to do it.

3 MR. YASSKY: Thank you.

4 (Applause)

5 MR. YASSKY: Are there questions by
6 Commissioners?

7 MS. POLANCO: Well, my question is, I
8 thought that the driver when he appears at a
9 hearing, basically he will have the option to
10 call the officer, the issuing officer.

11 MR. YASSKY: That's correct.

12 MS. POLANCO: But the issue here is that
13 the hearing, when they come in for the first
14 time, let's say there is no adjournment by
15 the driver, automatically there will be an
16 adjournment because the issuing officer will
17 not be there.

18 MR. YASSKY: If I can, Mr. Gerber, if
19 there is an issue in dispute; so, what this
20 enables, and the goal, my goal, my primary
21 goal here is to maximize the use of our very
22 limited enforcement resources and enable our
23 officers to be in the field writing tickets
24 for illegal street hails every possible
25 minute, rather than in court, when they have

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2 no need to be there, right?

3 If there are facts in dispute, the
4 respondent's, the driver's right to cross-
5 examine is unchanged. If there are facts in
6 dispute, the driver can say "This summons is
7 inaccurate. I need to examine the officer to
8 show why it is inaccurate, to show that there
9 are other things that weren't reflected
10 here," they can do that.

11 But in the bulk of cases in which there
12 are no facts in dispute, we don't have to
13 have our officers sitting in the Long Island
14 City hearing area for their entire shift when
15 they could be out writing tickets. That's
16 the goal.

17 MR. FRASER: Mr. Gerber's hypothetical I
18 think is precisely the argument that would
19 lead to the calling of the inspector. In
20 other words, he said, "The facts are in
21 dispute, I need to call him. I need to
22 cross-examine him. I can't cross-examine a
23 paper." What this rule is intended for is if
24 there is a defense that has nothing to do
25 with the inspector's testimony. For example,

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2 service was incorrect, or "I wasn't the
3 person in the car," or whatever it might be
4 that calling the inspector has nothing to do
5 with it.

6 But, there's one other point. When I
7 was at the Department of Buildings, you would
8 be amazed how many times the respondent asked
9 to have the inspector called and the judge
10 would say, "Are you contesting the
11 violation?" and the answer was "No."

12 "Well, why are we calling the
13 inspector?" And that's what this is intended
14 to root out, delay for delay's sake.

15 MR. GERBER: Can I answer the question
16 posed by the Commissioner? The question of
17 the Commissioner was, do you have a right to
18 call the witness? And the answer is
19 certainly 100 percent, no, you do not. What
20 you have the right to do is make a motion to
21 the judge to request a witness, which is the
22 same effect as let's say an oath proceeding
23 of asking the court to issue subpoenas --
24 which it virtually never does, very, very
25 rarely.

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2 MR. FRASER: Again you have insulted me.
3 I was an ALJ for 10 years, I signed many,
4 many subpoenas, Mr. Gerber.

5 MR. GERBER: And I could bring in
6 testimony by one of your lawyers on the
7 record that said "We don't do that here." I
8 have that transcript, Mr. Fraser.

9 So, what you would do is -- you do not
10 have the right. The question, Commissioner,
11 I thought was, do you have the right to call
12 witnesses? No you do not have the right to
13 call witnesses. You have the right to make a
14 motion to ask for the right to call
15 witnesses. And as you know, being familiar
16 with the court system, that's a big
17 difference between having the right to make a
18 motion and having the right to do something.

19 I have, as a litigator in the court
20 system representing parties, I have subpoena
21 powers myself. I can subpoena witnesses. If
22 they don't come to a lawful issued subpoena
23 that was done in the course of litigation,
24 the judge could hold that person in
25 contempt.

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2 In this proceeding, all I have is a
3 right to a motion, and the motion I'm calling
4 is -- and what am I doing? I'm asking simply
5 for the judge to call the witness against my
6 client. That's what I'm asking them to do.

7 So, I asked you if The Charter of the
8 City of New York says that there must be due
9 process in this forum, and that due process
10 says you have a right to cross-examine
11 witnesses, and that is exactly what The City
12 Charter says. If The City Charter of New
13 York says I have a right to due process and
14 due process includes the right to cross-
15 examine witnesses, how is that right
16 discretionary with the court?

17 MS. POLANCO: Where is that in the rules
18 about a motion to call a witness?

19 MR. FRASER: Where that is --

20 MS. POLANCO: Because my understanding
21 is they appear at the hearing, if they tell
22 the ALJ judge basically that that they
23 dispute the facts as they are in the
24 violation, "I'm requesting to speak with the
25 officer," does it have to prove anything

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2 else?

3 MR. FRASER: I have to say the purpose
4 of the rule is to leave very wide discretion,
5 and as I said, the intent was to mimic the
6 ECB's rules and procedure in that respect.
7 Where it is, it's under requests for
8 adjournment, so, in the new version of the
9 rules it is 18-09(a)(4), and it's
10 adjournments to obtain the testimony of a
11 complaining witness.

12 One of the purposes of the rules is
13 notice. It's supposed to inform people the
14 kind of things you have to say, and of course
15 inform the judges the kind of things we have
16 to find. So, as the respondent must explain
17 the subject of the testimony the respondent
18 intends to obtain, Mr. Gerber says, "I want
19 to cross-examine him because I'm going to
20 contradict what he has to say," that's the
21 subject matter. ALJ will find good cause if
22 he concludes that the complainant's witness
23 is reasonably likely to be necessary to a
24 fair hearing. Cross-examination of an
25 adverse witness all on material facts is very

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2 likely to be reasonably likely to be
3 necessary.

4 And then the non-attendance of the
5 complaining witness is submitted a sworn --
6 oh, that's a different issue. So, that's
7 what he needs to show: (i) and (ii) is what
8 he has to show. And my position on it is
9 that the judge then has very wide discretion
10 to determine that that's good cause.

11 And my expectation would be that barring
12 some fairly bizarre circumstances I can't
13 anticipate, if that hypothetical as
14 Mr. Gerber just spelled it out were the case,
15 the witness would be called. Now, it might
16 not be if this was the eighth time the case
17 was on or some other bizarre circumstance,
18 but as a general matter, I would expect that
19 to be the case.

20 MR. GERBER: And that's exactly my
21 point. My point is that it requires a
22 motion, it requires the burden to show that
23 there is good causes on the party calling the
24 witness. The judge must then determine that
25 there is good cause and that it will somehow

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2 impact. So, in other words, I have to make
3 my case of what my cross-examination is going
4 to reveal before I cross-examine.

5 Remember, this is not a trial where I
6 have deposition testimony to say, "Look,
7 there has been conflict in testimony." What
8 do I have other than my driver says this is
9 not true and this would bear witness? And
10 this procedure makes it a discretionary, it
11 shifts the burden, it shifts the burden on
12 the party seeking to call the witness. It
13 requires a finding of fact by the judge that
14 it would have some material effect without
15 the ability to cross-examine that witness in
16 the first place to find out these issues of
17 fact and the bearing omissions and perhaps
18 the triteness or silliness of the
19 allegation.

20 If we take the position that all drivers
21 are guilty, you know, it's just a rubber
22 stamp anyway, then I agree, then we don't
23 need these procedures. You know, but the
24 purpose of these rules should not be about
25 the kangaroo to jump higher.

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2 MR. GIANNOULIS: Do we know
3 approximately what percentages of the cases
4 actually end up currently with one of our
5 inspectors testifying?

6 MR. FRASER: My understanding is it's
7 about 10 percent, but someone in the back
8 might have a better number.

9 MR. MAZER: I said in my testimony my
10 records show 10 percent of the cases that I
11 have handled were adjourned because the
12 issuing officer was not available.

13 MR. FRASER: Maybe Deputy Commissioner
14 Mullings might know. But I had the idea it
15 was about 10 percent.

16 MS. MULLINGS: What was the question?

17 MR. GIANNOULIS: Just of these cases,
18 currently what percentage does an inspector
19 show up?

20 MS. MULLINGS: Any summons written in
21 the field, the inspector shows up.

22 MR. GIANNOULIS: Any summons?

23 MS. MULLINGS: Written by an officer,
24 written from actions in the field, the
25 inspector shows up.

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2 MR. YASSKY: So 100 percent?

3 MS. MULLINGS: 100 percent.

4 MR. FRASER: But how many end up
5 testifying? In other words, they show up now
6 because --

7 MS. MULLINGS: Unless somebody takes a
8 plea of guilty, they testify. Every now and
9 again there is a rare moment where the rep
10 will stip to the testimony, but in 99 percent
11 of the cases that go to hearings the
12 inspector testifies.

13 MR. YASSKY: Or shows up and is prepared
14 to testify.

15 MS. MULLINGS: Shows up to testify.

16 MR. GIANNOULIS: On average, how many
17 cases are seen a day would you see?

18 MS. MULLINGS: The overnight squad
19 writes, actually writes for an entire day of
20 hearings. The other inspectors schedule
21 basically either a morning session or
22 afternoon session. So, they are tied up
23 through their entire shift basically.

24 MR. YASSKY: Thank you.

25 MS. POLANCO: You mentioned the goal

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2 that we're trying to accomplish with this, we
3 want to basically not have the inspector tied
4 up sitting around in hearings, and we want
5 them out there on the street issuing
6 summonses.

7 MR. YASSKY: Yeah, unless they are
8 needed to adjudicate the facts in dispute,
9 then of course their place is in the hearing
10 room.

11 MS. MULLINGS: Thank you. I would just
12 like to point out an issue as having been in
13 unfortunately about 20 years in Sanitation.
14 The Sanitation summonses, the officers do not
15 appear. The uniform forces did not appear
16 for most of the hearings.

17 MR. FRASER: Those are ECB?

18 MS. MULLINGS: ECB summonses.

19 MR. FRASER: Parking violation
20 summonses, the cops do not go.

21 MR. YASSKY: In speaking of Mr. Gerber's
22 point, let me ask General Counsel, do ECB
23 rules give the power of subpoena to the
24 respondent?

25 MR. FRASER: I actually don't know.

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2 They may formally refer to subpoenas. Deputy
3 Commissioner Scanlon would know this.

4 MR. SCANLON: The rules that were in
5 effect when I was there, the judges did have
6 subpoena power.

7 MR. YASSKY: The judges do, but do the
8 respondents?

9 MR. SCANLON: The judge would issue a
10 subpoena based on respondent's request.

11 MR. FRASER: But in the case of an
12 inspector of an agency employee, the subpoena
13 wouldn't be used, it would just be adjourned
14 and the agency instructed to call the
15 inspector.

16 MR. SCANLON: Due to a disputed fact,
17 the judge would screen the basis on an
18 issuing officer. Not just Sanitation, the
19 Parks Departments, even the Police
20 Department, when cases are general, they
21 include them and they would not automatically
22 show up.

23 MS. POLANCO: Basically, when you get
24 let's say a DMV violation, you appear and so
25 forth. If you have an issue, you request an

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2 adjournment because you want to produce the
3 officer, but I don't know about proving or
4 speaking with the judge trying to prove
5 basically why you need the testimony of the
6 officer I think. Does that happen?

7 MR. FRASER: Yes, at ECB, well, in
8 general. As a general matter, if you are
9 calling asking for adjournment of a witness
10 called, most bureaus, the judge would want to
11 know what for and would want to make sure
12 that it is not a waste of time. And
13 certainly when I was an oath judge, I did not
14 allow witnesses who had nothing material to
15 say. If the issue was not contested, if it
16 was irrelevant or whatever, I did not allow
17 the witness.

18 MR. YASSKY: Can we hear from Deputy
19 Commissioner Mullings if there is additional?

20 MS. MULLINGS: I mean, I would just
21 point out that in Sanitation there were some
22 summonses where we would appear, and there
23 are certain summonses that we will appear
24 because there will be questions of fact.
25 Some summonses, for example, whether it could

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2 be a simple thing as whether there was a
3 missing detail, I don't know that we need to
4 appear on that unless somebody is coming in.

5 But I mean, there are going to be some
6 issues where we're going to appear. And the
7 same way in Sanitation where the respondent
8 could request to appear.

9 MR. GIANNOULIS: How detailed is the
10 information in the summons?

11 MS. MULLINGS: Well, what I'm saying is
12 once this rule passes, we will be changing
13 how we write the summonses, so they will have
14 to be more detailed, so they will spell out
15 the facts.

16 MR. GIANNOULIS: Currently?

17 MR. YASSKY: Often not at all, just
18 "checked," you know. And you are right,
19 Commissioner Polanco. I feel like what
20 you're getting at is just put some kind of
21 burden on the judges to do the job, which I
22 have faith that they do, in determining
23 whether their issue is in dispute or not.
24 And that is, you know, that does become part
25 of their job, you are right.

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2 MS. POLANCO: Especially because we have
3 at these hearings, a lot of these drivers are
4 pro se, so, they are not represented by
5 counsel, they're not going to be looking at
6 summonses and say -- you know, they way they
7 will explain it to the judge I mean.

8 MR. FRASER: That is true, but the
9 judges are obligated and there's still a
10 relatively new three, four-year-old code of
11 ethics that applies to judges that spells out
12 in a fair amount of detail their obligations
13 when a party appearing before them has no
14 counsel, and they stick strictly to it. I've
15 seen transcripts, I have listened to
16 recordings, they are very good about it. So,
17 I would not be too worried about that.

18 MR. YASSKY: For example, when
19 Mr. Gerber points out that it's not uncommon
20 for judges to deny the Commission's request
21 for an adjournment such then the Commission
22 goes and appeals, I think that tells you a
23 little bit about the independence of the
24 judges, you know, they're not there just to
25 be rubber stamps.

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2 MR. GIANNOULIS: Would it be problematic
3 then if they as part of their little speech
4 explain that they have the ability to call in
5 the inspector?

6 MR. FRASER: I don't see why, and if it
7 isn't already there, we're going to add it.

8 MR. YASSKY: That's an excellent idea.
9 I think that is clear.

10 Look, the goal of course is to identify
11 the cases where there is a factual issue and
12 the cases where there is not. And if there
13 is not, the amount of, you know, kind of
14 bureaucratic time we will make as little as
15 possible.

16 MR. GIANNOULIS: I mean, people should
17 certainly should have a clear understanding
18 that they have a right to do that if they
19 think that there's something under it. I
20 mean, a bunch of these summonses I assume are
21 factual and are not that under dispute,
22 right? I mean in terms of whether it is
23 equipment issues or other things that the
24 inspector really has nothing to offer
25 anyway.

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2 MR. FRASER: That's right. And a number
3 of them aren't eye witness cases. In other
4 words, the administrative summonses that we
5 wrote, the computer record shows this or that
6 or the other thing, the person who wrote the
7 summons is going to relatively add to that.

8 But yes, many of them are eye witness
9 cases. In the field, you picked up a street
10 hail, you know, "I saw the person paying."

11 MR. YASSKY: For what it's worth, they
12 are. I think Mr. Gerber is correct in saying
13 that a lot of these cases are fact
14 intensive. That doesn't necessarily mean
15 though that there are disputed facts. I
16 mean, you know, "I saw a cell phone," the
17 facts are more detailed than maybe an average
18 Sanitation violation, but that doesn't mean
19 they're disputed.

20 "I saw that the driver was speaking on
21 the cell phone," now, the officer doesn't
22 have to show up.

23 Judge says, "Were you speaking on the
24 cell phone?" "Yes." If the answer is yes,
25 then the facts are non-disputed.

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2 You know, "You are denying that you were
3 speaking on the cell phone?" "Yes." "Okay,
4 then we need to have the officer here."

5 I think that you will find that most
6 people though tell the truth and will not say
7 that the facts are in dispute if later it's
8 going to turn out that they really are not.

9 Is there a further discussion?

10 MS. POLANCO: Was there something else
11 you needed to say?

12 MR. GERBER: Yes. I mean, I think the
13 point of this is that there are problems with
14 the rule as written. Commissioner
15 Giannoulis' point that the witness should be
16 advised of their rights, one of the things
17 that an advisory of the rights would do is it
18 would remind the ALJ of their duty to
19 institute justice where a fact is in
20 dispute. There is no guidelines here of why
21 that would be necessary.

22 I think these rules need to be amended.
23 With all due respect, Mr. Chairman, I would
24 beg my request for adjournment, so that you
25 can contemplate a little bit of a safeguard

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2 needed just so that people have the ability
3 and the right to cross-examine witnesses that
4 are essential. And it is very difficult to
5 make a case of why you need to cross-examine.
6 I mean, you gave a point about "I saw a
7 witness on the cell phone." Well, if there
8 were three people in the back seat and you
9 are sitting behind the rate card, maybe it
10 is, maybe you saw something you didn't think
11 you had seen, which is one of the reasons why
12 cross-examination is important.

13 MR. GIANNOULIS: I'm not advocating for
14 this, but just maybe to save some time. I
15 actually believe that while attorneys will
16 find value in being able to have the
17 inspector, I actually think that most people
18 will not want the inspector there, because
19 chances are you are going to get off better
20 if he's not there. There is no debate about
21 that in my mind, so, eventually, people
22 figure that out, because the judge will be
23 more lenient. "Oh, okay. Well, I was only
24 on the phone for a second. You know, the guy
25 really screwed me, and you know, it was my

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2 wife and she was driving me crazy," the
3 judge, you know, "Okay." There's no debate
4 about what's going to happen.

5 MR. YASSKY: Thanks for the dose of
6 reality.

7 MR. GIANNOULIS: Again, maybe this
8 defeats the purpose of this rule, so, I don't
9 know if this is a very good idea, but is
10 there possibly some process during the
11 summons, kind of a notification where
12 somebody could express their intent as also,
13 "I would like to have the inspector"?
14 Because I think a lot of people will say,
15 "No. I don't want the inspector there
16 because he busted me. He caught me. I don't
17 want him there."

18 MR. YASSKY: I think you are absolutely
19 right that, you know, I think our operations
20 need to be improved. That starts with a
21 hand-held device for the officers to issue
22 the summons. And the reason I put it that
23 way is then we can build into the document
24 that the person gets. We could do this
25 today, but once our processing of the

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2 summonses is automated, we can build in the
3 opportunity to say, you know, "I'm contesting
4 this and I think there are facts in dispute,"
5 and then we can know.

6 The whole goal of this is for us to know
7 of the thousands of summonses that we issue
8 which are the handful of real cases and which
9 aren't. And we don't have to have the full,
10 you know, people just sit and stand and wait
11 for something that's not a real case. Once
12 we have the hand-held, then we can move to an
13 online ability for -- and the point of about
14 notice by the way, you are right, kind of an
15 ideal world we would send the notice to the
16 respondent and to the representative as well.
17 All of these things are operational, and
18 take, you know, it is a question of what our
19 priorities are for implementing operational
20 improvements; you know, which sooner and
21 which later. You know, we don't think that
22 that one -- that we don't see much evidence
23 of kind of day-to-day practical problems,
24 Mr. Mazer, but nonetheless you're right, the
25 representative should get notice too.

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2 Once we have the hand-helds and then you
3 can go to the online response both to ask for
4 adjournments, to reschedule on your own, to
5 pay, just to plead guilty online and pay in
6 advance, all of that will enable us to
7 identify the real cases and separate the real
8 cases from the ones where it is just a matter
9 of getting to them, and quicker.

10 So, you were right about those
11 operational improvements. We will certainly
12 incorporate. I want to tell you, when this
13 goes into effect, the ALJs will get training
14 on this as they do on all new rules, and
15 Deputy Commissioner Scanlon and our new
16 Deputy Chief ALJ have done really a very nice
17 job in kind of stepping up our training
18 regimen for ALJs. They'll be trained on the
19 rule, and that will include a directive to
20 advise people that if you think that there
21 are facts in dispute and you want to question
22 the inspector, that you can ask the judge to
23 call on the inspector.

24 Mr. Gerber?

25 MR. GERBER: Mr. Chairman, I do want to

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2 caution that I think some of these goals that
3 you are stating are fair and I wish they were
4 incorporated into the rules that you are
5 about to pass. What you are about to do, if
6 you do it, is change the essential due
7 process rights that have been in effect in
8 this organization since it started, since
9 this Commission started.

10 It is ironic to me slightly, when I was
11 going through some of the past issues that
12 have here, is that just not too long ago, we
13 just changed the rules so that you allowed
14 testimony by witnesses via video
15 conferencing. At the hearings for that, it
16 was suggested, "Don't worry, you'll still
17 have all your due process rights to cross-
18 examine." Apparently those rights that we
19 talked about, those due process rights that
20 we talked about when we went to video
21 conferencing no longer exist and they have to
22 be by request of the judge.

23 If you're going to shift the burden, if
24 you're going to say that a piece of paper is
25 enough to take away someone's livelihood --

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2 and another distinction between the
3 Sanitation summons and the summonses that are
4 issued by this body is that particularly for
5 drivers you are talking about things that
6 could result their suspension, their ability
7 to put food on their table, to pay for their
8 children's school, to pay for their rent, and
9 in doing so, they should have due process
10 rights. And the severity of the punishment
11 involved, the lack of livelihood is such that
12 I believe that it gives rise to a greater due
13 process rights, and I think that's what all
14 Administrative Code decisions that I have
15 read say that, say that it has to do with the
16 deprivation that is going on by the body. A
17 fine for leaving the garbage out is not the
18 same thing. So, I do ask that these
19 suggestions that were made today be
20 incorporated into these rules and they are
21 re-examined when those changes are made.
22 Thank you.

23 (Applause)

24 MR. YASSKY: Thank you. As strongly as
25 I do feel that these rules are not just smart

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2 but fairly common sense, I'm glad that we had
3 the discussion. I think it's good to have
4 kind of a full and thorough airing of the
5 issues including points of view with which I
6 disagree. So, I appreciate all of the folks
7 who testified here to bring those issues
8 forward.

9 Do we have a motion to approve the
10 rule?

11 (No response)

12 MR. YASSKY: I will move to approve the
13 rule as written. All in favor, say, "aye."

14 THE COMMISSION: (In unison) Aye.

15 MR. YASSKY: Opposed, "no"?

16 (No response)

17 MR. YASSKY: By unanimous vote, the rule
18 is adopted. Thank you, Commissioners.

19 MS. POLANCO: I mean, I did approve the
20 rule, but I would just like to maybe between
21 now and December -- well, by December, I
22 would like to see basically some of the
23 suggestions that we spoke about, something in
24 writing regarding instructions to the ALJ,
25 maybe something in the summons itself where

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2 people can check that they are disputing the
3 facts, something. I want basically just
4 something in writing.

5 MR. YASSKY: We will do that. Thank
6 you, Commissioner. Thank you for that
7 suggestion.

8 The last item is, and I know it is now
9 20 minutes before noon, Commissioners, so, I
10 don't want to impose on your schedules, I did
11 think it was a good time for me to kind of
12 bring you fully up to speed on the Taxi of
13 Tomorrow project. I outlined at the
14 beginning of this session the broad outline
15 of where we are in the process, but we
16 haven't as a group discussed it in some
17 time.

18 Given that the responses involved
19 confidential material from the proposers, it
20 is necessary that we retire to executive
21 session to do that. So, I'm going to move
22 that we now move to executive session to
23 discuss the Taxi of Tomorrow project. If
24 that motion is approved, we will then adjourn
25 this meeting. We can do that, so, we'll

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2 adjourn the meeting and then we can do that
3 in the conference room inside so people don't
4 have to leave more expeditiously than they
5 otherwise would.

6 So, I move that we convene executive
7 session to discuss the Taxi of Tomorrow
8 project. All in favor, "aye."

9 THE COMMISSION: (In unison) Aye.

10 MR. YASSKY: Opposed, "no"?

11 (No response)

12 MR. YASSKY: Okay, the motion is
13 approved. With that, this meeting is
14 adjourned. Thank you.

15 (TIME NOTED: 11:48 a.m.)

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STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

I, CASEY MARTIN, a Stenotype Reporter and Notary Public for the State of New York, do hereby certify:

THAT this is a true and accurate transcription of the Taxi & Limousine Commission Public Hearing held on November 18, 2010.

I further certify that I am not related either by blood or marriage to any of the parties in this matter; and

I am not in any way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of November 2010.

CASEY MARTIN

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