

Civilian Complaint Review Board
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Public Board Meeting
of the Civilian Complaint Review Board
Wednesday, May 13, 2015
6:36 p.m.
671 Prospect Place
Brooklyn, New York 11216

Transcript of Proceeding

RICHARD D. EMERY, ESQ., CHAIR
MINA Q. MALIK, ESQ., EXECUTIVE DIRECTOR

PUBLIC MEETING AGENDA:

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

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BOARD MEMBERS PRESENT:

Richard D. Emery, Esq., Chair
Lindsay Eason, Commissioner
Janette Cortes-Gomez, Esq., Commissioner
Daniel Gitner, Esq., Commissioner
Deborah L. Zoland, Esq., Commissioner
Deborah N. Archer, Esq., Commissioner
Youngik Yoon, Esq., Commissioner
I. Bennett Capers, Esq., Commissioner

Mina Q. Malik, Esq., Executive Director

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CHAIR RICHARD D. EMERY: May meeting of the Civilian Complaint Review Board to order. Are you okay, Sorin? Sorin, are you good with the various technology?

SORIN: Yes.

CHAIR EMERY: Good.

Welcome. Good to be in Crown Heights. Can we have a motion to adopt the minutes?

MR. EASON: I move.

CHAIR EMERY: Second?

Any -- all in favor?

MS. CORTES-GOMEZ: Aye.

MR. EASON: Aye.

MS. MALIK: Aye.

MS. ZOLAND: Aye.

MS. ARCHER: Aye.

MR. YOON: Aye.

MR. CAPERS: Aye.

CHAIR EMERY: Any opposed?

BOARD MEMBERS: (No response.)

Let me just say a couple of quick things, then we can go to the rules, which

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are, I think, getting to a point where we hopefully can put them into the process for formal adoption and comment in the normal proposed way through the City administrative process.

But before that, I want to quickly say that our long awaited, much anticipated by some, annual report is coming out on the web tomorrow around noon. I think it's a -- it appears to be a very substantive report, and it's not just about 2014, it's really matters up-to-date.

We took the opportunity of the delay to describe some of the things that have occurred during that delay. And some of it is quite hardening with respect to the progress that we are making with respect, to the development at the CCRB with case processing and the time it takes for that and the quality of it.

Then there are also three or four substantive areas, which were used in the annual report to report on some used-force issues, search issues, some other issues

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that I think are substantive and are going to be very interesting, both to the public and the Police Department and to people in general.

So that report is coming out tomorrow at noon and I'm hopeful that we will have a lot of comments at the next meeting and even in between on the issues raised in the report.

I do want to accelerate one issue that we would normally take towards the end in committee reports; that's training, a training opportunity. And I sent an e-mail around about this, but Debbie Zoland, maybe you can report on something that's about to happen for Board members and staff alike as an opportunity for us.

MS. ZOLAND: Yes. We've been in contact with the offices of the Deputy Commissioner of Legal Matters, and have been advised by -- that a new training protocol has been approved by the Court in the Floyd case, in the stop-question-and-frisk matters, and,

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the Police Department has agreed to provide training on the new lesson plan to new members of the Board, as well as CCRB staff and investigators. So this was a conversation that was just had this week and will be rolled out in the next -- hopefully by the end of the month.

CHAIR EMERY: So what we will do is, we're going to coordinate and give everybody the opportunity to go to that training, since so many of the thorny issues we face on a regular basis involves these questions that are now still prevalent. Although they are clearly not as frequent as they have been in the past, but the legal and factual issues that give rise to the question of whether we find misconduct are just as complicated and difficult as ever. And the level at which we understand, not only substantively the rules, but the training that the police officers are getting is going to inform us with respect to whether we find them -- these complaints substantiated and even

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more importantly perhaps, whether we think that sanctions -- the level of sanction that we fix is consistent with the training that officers receive. So I think it's going to be very useful if we undertake ourselves to be trained in this way, and certainly the staff should be.

MS. ZOLAND: And I think it's important because since it's training, to the extent it's different than the training that was received by the officers in the cases that we're reviewing, that it may impact our findings vis-a-vis penalty if it was an inappropriate frisk and the training was different, then we would probably send that officer for formalized instruction because they have never been trained in that way. So it's an important thing we need to keep in mind at the Board.

CHAIR EMERY: Joe Puma is sick tonight, but Janette is here, and also very much in the center of the training issues for the CCRB, so I would hope that you'll coordinate that and be on top of the

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process of making sure that the Board, as well as the staff is offered this training and that Mina and the executive staff will figure out how to make available the staff for that kind of training. I presume it will be out at the police academy. They may even come to us, they offered, right?

MS. ZOLAND: They offered to be pretty flexible and it depends on how many people we are training at once, if it's the Executive staff or the Board, my guess is they could come, if we needed a big training room and we can't accommodate that, then we would go someplace in the Police Department.

MS. CORTES-GOMEZ: Yes. I will speak with the contact that Commissioner Zoland has, to see what days are available for them to come to us, because obviously, although our investigators and the majority of CCRB is at one location, the commissioners are not. So we would have to figure out a date and time that are good for the commissioners, but getting to our

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investigators is a lot easier.

CHAIR EMERY: So is there any other training news that -- we should get that done as long as we're talking about training.

MS. GOMEZ: No. I don't think we have solidified the three individuals who we're hoping to hire to join --

MS. MALIK: We've actually posted for the training director, so that's up on our website right now.

MS. GOMEZ: So we still need two more postings and a total of three positions to hopefully strengthen the training,

CHAIR EMERY: In-house.

MS. CORTES-GOMEZ: In-house.

CHAIR EMERY: We still have, and I take it we're still doing this, the opportunity to train at the police academy for a number of staff people. That's happening occasionally, right?

The Resnick training and other training that they offer us, so we should avail ourselves to as much as is relevant

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to our function and our staff functions,
'cause it does seem to me, the more we
understand how officers are being trained
in the manners that we care about, the
better off we are with respect in
evaluating their conduct.

MS. CORTES-GOMEZ: Correct.

CHAIR EMERY: All right. I think the
main task at hand is to go over the rules
and some of the things we discussed last
meeting but -- and there are a bunch of new
issues that have come up in the rules and I
think inevitably, and we have to go pretty
much page by page and see if anybody has
issues.

I know I do have a few issues and I
think Debbie Zoland has a few and maybe
others do as well. And I think the key is
just to go through them. I have nothing on
pages 1 or 2. Anybody else? Three, I also
have nothing.

MS. ZOLAND: I did have on page 2,
I'm sorry. In the definition "Personal
Knowledge" --

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CHAIR EMERY: Lindsey, are you going to -- sorry, are you going to come up? Are you going to help us with this, are you going to take notes --

MS. FLOOK: Of course.

CHAIR EMERY: -- be our person to implement whatever changes we are making here?

MS. FLOOK: Yes.

CHAIR EMERY: Okay. Great.

MS. ZOLAND: I thought we were going to broaden the definition from "first-hand observation," to maybe "experience conversation," we thought that "observation" was too narrow.

MS. FLOOK: I can speak to that. The reason that we created this new term is because we were having situations now where we are taking cases not only from people that saw something, but also people that see something in the news, see something on YouTube, see something on the web, and we want to take those complaints and be able to do that.

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The problem is that we also want to make sure the situations where we have 30 or 40 people in various situations and things that are in the news that report something, we don't have to be provided personal information of the actual complainants and victims, and what happens in a case to those people who are simply calling in from the news. That's why we created this reporting non-witness and widely for personal knowledge that requires first-hand observation versus observation not present, merely for separating out the complaining victim and witness versus the reporting non-witness so that in the section, I can't recall, I can look it up for you. The section in which we talk about who we're giving information to and when we do give information to anyone, including a reporting non-witness, to let them know we started a case but when it comes to subsequent information of letting the complainants know what's happened in the case and that kind of thing. We don't

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want to give that information out to the general public that have merely watched the video on You Tube or calling because they saw something on the news. So that's why that personal first-hand knowledge is there versus something that they saw on the news or on video.

MS. ZOLAND: Do you think it covers if somebody overhears something? That's my concern.

MS. FLOOK: That's what we're saying, if someone overhears something, they remain a reporting non-witness because they weren't present; they're not a witness to that event.

MS. ZOLAND: Well, they could be there with their back turned and they just overheard something.

MS. FLOOK: Well, if they're hearing it, it's first-hand observation though listening.

CHAIR EMERY: Lindsey, can you come to the podium so this is all a part of the record; I think it's important.

MS. FLOOK: I can.

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CHAIR EMERY: Why don't you just stay there, this is going to take a while. Thank you. Thanks a lot.

MS. FLOOK: Of course. And just for the stenographer, I am sure, Lindsey, L-I-N-D-S-E-Y, Flook F- as in Frank, -L-O-O-K.

So that's -- I mean if there's another way you can say it, but that's the delineation. We want to find a way to separate out -- I think -- I wasn't here when it happened, but I think when it came to the Zuccotti Park issues and Occupy Wall Street, we were getting and someone else can let me know, but we were getting a lot of people reporting one incident.

We don't want to give out personal witness information, personal information of the results of the case to all those people, that's the delineation.

MS. ZOLAND: Right. I understand that. I am just not sure that rule as defined would cover something that I just heard. I'm at the scene and I just heard

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it but I didn't observe it. That's all I am saying.

MS. FLOOK: We could find a way maybe to reword "personal observation" and explain through sight, sound, and kind of delineate it that way. Would that help?

MS. ZOLAND: That will be fine. That was my only concern.

MS. FLOOK: Not a problem.

CHAIR EMERY: Page 3 anything? page 4? I thought the changes were fine on 4. My things are a little later; 5? Okay. I have some issues on 6. Do you have anything on 6, Debbie, first?

MS. ZOLAND: I don't actually have page numbers.

CHAIR EMERY: I'm sorry. So let's go by sections, then. 124 -- I am up to 124D.

MS. ZOLAND: No, you go ahead.

CHAIR EMERY: So on 124D, on this statement that we read to officers. This starts to discuss -- I wish Dan was here. Dan was supposed to be here, because he had ideas about this; but if he's not here, he's not

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here.

MR. CONNELL: He's on his way.

CHAIR EMERY: He is on his way? Well, let's start this, then we can, discuss it because this has been much debated. I think it's a decision we sort of have to resolve tonight about the parallelism of swearing police officers and swearing -- swearing complainants and civilians.

As we have these rules now, as we'll see in a little bit, the civilians are sworn and police officers are not. I'm -- I for one, I am not willing to support that position and, -- but let's just start with the statement that's being read to police officers. I'm not sure this is exactly correct and I want to make sure because I think this is what's being read now and I am a little concerned about it.

At the very end, everything up to the very end is fine, but where it says "If you do answer, neither your statement nor any information or evidence which is"

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granted -- "which is gained, by reason of such statements can be used against you in any subsequent proceedings."

I don't think that's a correct statement. That is -- I am asking this as much as I'm saying this, I think it has to read, "Except if you choose to testify in such subsequent proceeding and contradict what you say here, then the statement you give here may be subsequently used to impeach you," because I think the law is such that any statement given to us that is subsequently cannot be used in a subsequent proceeding or any criminal process, I think that's -- that's the immunization process for dealing with disciplinary proceedings.

However, if something is said subsequently in testifying on one's own behalf in a criminal defense contradicts what you say in the proceeding before the CCRB, I do believe, it -- you can use it -- a prosecutor in that subsequent proceeding can use it for impeachment.

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MS. FLOOK: I know from my experience as a prosecutor when we had similar situations, that was the terminology we used. I'll have to look into it to see if it's similar for disciplinary or not. I know what you're talking about in my former job as prosecutor but I would have to look into it.

CHAIR EMERY: I mean it's typical in queen-for-a-day and those kinds of things; I think it's true also in the disciplinary process. Does anybody else know about this at all? Do you?

MR. CAPERS: I don't.

CHAIR EMERY: I am not positive but my sense is that you can't make this promise without including the exception so that the police officer is properly informed.

MS. ZOLAND: I think the problem changing this is it is exactly what's in the Patrol Guide and what has been read and used for the police officers since it's been bargained for. I think the issue has

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not, in general, this is true, it would
take a very exceptional circumstance --

CHAIR EMERY: That's right.

MS. ZOLAND: -- to get where you're
going and they are represented by counsel,
and I think they have a clear understanding
about what this means --

CHAIR EMERY: Well, I understand
that. Sorry. Go ahead.

MS. ZOLAND: Anyway, I would be very
hesitant to change this language.

CHAIR EMERY: Well, let's look into
it because I'm certainly not willing to be
giving the police officers incorrect advice
about how their statements can be used and
the implication here is it can't be used at
all.

And I am not sure that is correct, and
so I don't want to -- I mean quite frankly,
if the Police Department is misleading them,
that's their problem. We can't be in that
same position. We are not bargaining with
these police officers for language through
their collective bargaining agreement.

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We're giving them, literally constitutional advice or warnings, if you will, before they come in to make statements. I'm -- if this is incorrect, we have to correct it, so let's get to the bottom of it.

MS. FLOOK: I can just verify how changing it -- I was mostly sure it was for the Patrol Guide, which Ms. Zoland agreed with, but I think the question is how it would affect the NYPD allowing us to interview officers. That is what we need to look into.

CHAIR EMERY: Well, that's a bigger issue and I understand that. But if we were giving -- it's hard to imagine that they are going to undermine our opportunity to bring officers in if we're giving the officers more effect, more correct advice than they do, but that's an issue for a different day. Let's figure out whether, first of all, this advice is correct in so far as it leaves out the exception, which I was trying to carve out here. Let's -- I want to hold on until Dan comes, the whole

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issue of the oath question. So let's --
we'll skip over that for now, the
verification and the oath. That's on the
next page. With respect to what is asked of
a complainant, we have it in here, the
proposal is that they swear under penalty
of perjury, and quite frankly, I am not --
I for one, I'm not inclined to require
complainants to take this language and
require them to affirm to this language,
unless police officers are put under the
same restriction, and I don't think we can
put them under the same restriction because
if we do, that will implicate exactly what
you said, Lindsey, which is that will
change the manner in which we do it. It'll
make it different than the manner in which
IAB does it, and the Charter says pretty
clearly that we don't have -- that the
Police Commissioner doesn't have an
absolute obligation to produce officers for
our investigations, unless we follow the
exact same procedures as the Police
Department. So if they don't do it, we

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can't do it in the police's case; and my feeling is if we can't do it in a police case, we can't do it in the case of the civilian.

Now, in the civilian case, we already have a verification and the verification does in fact, under the research we've done, lead to the potential for misdemeanor charges if a false statement is given. And it seems to me that's plenty without raising the issue of perjury beyond that. So my inclination is to leave things the way they are, but I do want to hear from Dan Gitner on this before we finalize anything in that regard and I want to hear from anyone else who has views on this. just -- I'm just giving you a preview of my personal thinking.

On the next page, all right, under 131B, the language that is underlined, I thought that -- let me just see here, "Panel membership shall be determined by the Chair, but each panel shall consist of at least one member." I wanted to see if

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we could create language that would give us a little more flexibility than this.

MS. FLOOK: There is flexibility. This was based on the discussion I read in the last transcript in the last meeting.

CHAIR EMERY: That's correct.

MS. FLOOK: This allows for one, one and one, unless such a panel composition would interfere with the CCRB's operational functions.

CHAIR EMERY: And "operational functions" is the term I have a little problem with, and, so what I was proposing that we substitute is, "at least one designated by the Mayor; unless such a panel composition will delay the Civilian Complaint Review Board disposition of cases more than 21 days after a case is ready for panel review." I just thought we -- something along that line but I'm not wedded to that language, but I thought that would be the specific reason. "Operational functions" is a little bit vague in terms of varying from the regular formula that we

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have basically agreed on, which is to have a member of each appointing authority in the panel. But I think if -- it's really, the issue is delay. So how do others feel about that.

MS. CORTES-GOMES: I agree in terms of what "operational functions" mean in terms of the 21 days; I just don't know if it's too wordy.

MR. CAPERS: Well, it depends on how much flexibility you want. The existing language provides more flexibility than specifying delay, specifying 21 days.

MS. ZOLAND: I mean, you could just change --instead of "interfere" put "delay" without the 21 days; because there could be times when it's -- it just can happen.

CHAIR EMERY: Right.

MS. ZOLAND: If your main concern is not interference but delay, you could put "interfere" or "delay," then you have more options but delay would be an interference, so you put "interfere" or "delay" --

CHAIR EMERY: It's operational

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functions, it's not really -- interfere,
right, with the Civilian --

MS. ZOLAND: Interfere

CHAIR EMERY: Yeah, interfere or
delay, why don't we say that, Civilian
Review Board --

MR. CAPERS: Can I make a suggestion?

CHAIR EMERY: Please.

MR. CAPERS: Add "unreasonable" in
front of "delay," so "unreasonable delay."

CHAIR EMERY: Yeah, I mean --

MS. CORTES-GOMEZ: Put "interfere or
unreasonably delay."

CHAIR EMERY: Yeah. Okay. Why don't
we do that.

MS. FLOOK: So we're going to change
it to, and I just want to verify that we're
correct on this, "unless such a panel
composition would interfere or
unnecessarily delay," but we're going to
keep "operational functions" or we're going
to remove that?

CHAIR EMERY: I think we are going to
leave it, right?

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MS. ZOLAND: Put "operations."

CHAIR EMERY: "Operations," why don't we say "operations" and say "interfere with and/or cause unreasonable delay" or something or -- yes, "interfere" with or cause unreasonable delay.

MS. ZOLAND: Or "unreasonably delay."

CHAIR EMERY: Or "unreasonably delay the Civilian Complaint Review Board's operation." Okay. The next comment I had, unless, Deb, or somebody else has any.

133 --

MS. ZOLAND: I have just one minor one on 132. "B," it says "upon approval of the Board, conduct additional fact-finding," I would put "including interviews," it doesn't have to be just interviews, it's most likely interviews, but it could be other things.

CHAIR EMERY: Which one is this? Is this "B," or --

MS. ZOLAND: "B" 1-32B, the end of the sentence, "upon approval of the Board, conduct additional fact-finding

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interviews."

CHAIR EMERY: "Including," it should be "including." On 130- -- I have a question on 133C. "A report of the findings and recommendations with respect to each case reviewed shall be prepared and transmitted to the Police Commissioner." Do we do that now for unsubs and for referrals? And -- I don't think we do this, or --

MS. MALIK: Not for unsubs. I don't believe we do it for unsubs.

CHAIR EMERY: They have access, they have access to it.

MS. FLOOK: It's transmitted via access through CTS.

CHAIR EMERY: They have access to CTS, but they -- but we don't actually -- actually -- what does it say? It says that we have to...

MR. CAPERS: Prepared "and transmitted."

MS. ZOLAND: That's not a change, right? That's been in the rules.

CHAIR EMERY: That's in the rules. I

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was wondering whether we are -- either take --

MS. FLOOK: It's been -- I have to look into it, but I think, off the top of my head, it may be part of our understanding that NYPD -- so that might be why that's in there and "transmitted" is for us being that they access to CTS where those are transmitted but I can look into that.

CHAIR EMERY: We might want to just say "for each case reviewed shall be available to the Police Commissioner," you know, as needed or whatever. I mean -- I don't know how you want to put it. Saying "transmitted" puts a burden on us, that I think we're not -- we can do it but I think it's -- if they are happy with CTS.

MS. CORTES-GOMEZ: Why don't we just eliminate "to the Police Commissioner."

CHAIR EMERY: Well --

MS. CORTES-GOMEZ: If what we've been doing is placing all of the findings, no matter if it's subbed or unsubbed so on and so forth, into CTS, then it's being

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transmitted, it's just not being given directly to the Police Commissioner, he's just getting access to it.

MS. FLOOK: Well, we -- because we are organization of Police Commissioners, often -- he does not do it, look at most things that you know, but we personally do. We have in his definition his designees, so we opened that definition up. But I need to look into it to see if this requirement is anywhere else in our rules or requirements to make sure that we would still be complying with everything else we have in the Charter.

CHAIR EMERY: I think they are satisfied with their access, so if we put -- if we capture that obligation on our part mainly to provide them access to all case dispositions, I think that's a better -- a better interpretation.

MS. ZOLAND: I think --

CHAIR EMERY: Sorry.

MS. ZOLAND: I think we need language that doesn't indicate that tell

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get access if they ask, in other words it's automatically available to them but now it's done electronically, so it is transmitted electronically, so the rule, you don't want to change the message within the rules.

CHAIR EMERY: I think that's right. The reason I flagged this is simple, because the third recommendation of the OIG's choke hold report issued, I think in, when was, in January, was that we were not -- we had --we should be obliged to communicate with the Police Department all of our -- all of our -- our dispositions. This was always in here and I checked it. I told them in advance and they had full access to CTS and they put that implicit criticism of the CCRB in their report. And it was nonsense, and it was just wrong but they did it and I told them it was wrong in advance but they did it anyway. I just want to make it clear to anybody who reads our rules, that the Police Department has full access to the CTS results of all cases.

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I have something else in "D."
Anything else from anybody else? At the
end of "D" where you have the new language
"Based on its findings, the Board may
recommend penalties of charges, command
discipline or instructions or any
combination of the three of these."

First of all, I think we should put
"instructions with formalized training,"
because these days we are -- whenever, I
think panels are recommending training or
instructions, we're recommending formalized
training, so can we put that in the rule as
well, that -- when we recommend
instructions, we are recommending
formalized training and that for our
purposes, those terms are the equivalent to
one another, somehow capture that idea.

The second part of this is, it seems
to me we may want to add another sentence
here which would eliminate another
discussion tonight about APU, and that is,
I propose the following sentence, "However
if" -- something like this, again, I am

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not -- I have no pride of authorship,
"However, the Board or panel of the Board
recommends charges all substantiated
allegations shall be included as part of
that recommendation."

If we have that in there, we've
eliminated the problem that we were going
to discuss separately later on in the -- in
the Board meeting. So do you want me to
give you that language?

MS. FLOOK: Sure.

CHAIR EMERY: I would just add a
sentence that said "However, if the Board
or panel of the Board recommends charges,
all substantiated allegations shall be
included as part of that recommendation."

Does that solve it, Jon?

MS. ZOLAND: I would just say
"charges for any of the allegations," I
would just add those words.

MS. FLOOK: "Charges for any
allegations" to which section?

MS. ZOLAND: With the charges however
the Board or any panel of the Board

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recommend charges, then the entire -- I would put just add the two -- the three words "charges for any of the allegations."

CHAIR EMERY: Right. Then, "all substantiated allegations shall be included as part of that recommendation."

A little tweak on E1 right below this. I -- I personally like the original language better, it says, E1, "Substantiated: There was evidence to establish a preponderance of evidence that the acts alleged did occur and did constitute misconduct." The original language was, "There was a preponderance of evidence that the acts alleged did occur or constitute misconduct." What was wrong with that?

MS. FLOOK: The language actually had "to suggest", which is what --

CHAIR EMERY: O, yes. Take out "suggest," I totally agree, that has to be removed.

MS. FLOOK: We basically, we were trying to allow E1, E2, E3, and E4 to have similar language -- remove the sufficient because that was a bit of a problem as well

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as falling in line whether or not there was or was not evidence to establish, so, we are, you know, we are trying to make everything uniform.

CHAIR EMERY: It's so unwieldy, "there was evidence to establish a preponderance of evidence." If you want to live with that, I'll live with it, but it seems so ungainly to me. Debbie. Anybody else has

MS. ZOLAND: I think --

CHAIR EMERY: So if we say it the way I said it, "that there was a preponderance of evidence that the acts alleged did occur or did constitute misconduct" -- and "did constitute misconduct." And then you want to make it consistent, "there was insufficient evidence to establish whether or not an act," that's fine, "exonerated - there was evidence to establish" -- no, "there was a preponderance of evidence that the acts alleged did occur but did not constitute misconduct." Can't we do that?

This leaves open the possibility,

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just by the way of hearkening back to other conversations, the police officer contradicts this but nevertheless we find exoneration, even in the face of a police officer asserting that other things occurred.

I think, we -- I came around and I think everybody agreed, if I'm not mistaken, that this was a possibility that police officers can say, no, that's not what happened, the panel could -- the panel could reach the conclusion that what he said -- what he or she said did not happen, in fact, did happen, but that it was exonerable, and that rankles me but I could see the reality that it could occur.

It sounds to me like that should be an unsubstantiated case, but I think people have convinced me that could be an exoneration even in the face of the police officer contradicting the conduct, which is exonerated.

You see what I mean? So I think if we leave the language the way that I just

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said it, does that work?

MS. FLOOK: I'll change "4" to match that.

CHAIR EMERY: So, then, "Unfounded: There was a preponderance of evidence to establish that the acts alleged did not occur."

MS. FLOOK: So you want me to add "to establish" there?

CHAIR EMERY: So -- it's there "Unfounded: There was," I think take away "sufficient" and put a "preponderance of the evidence."

MS. FLOOK: No -- you actually -- the way you want me to change all of them is to "there was a preponderance of the evidence that" --

CHAIR EMERY: Yes. Take out "establish." Yes. You are right, it's better. Make it consistent in the way you're saying it now, that's better. That's all I have on these.

On the next page, which is the various dispositions. What's the

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difference between 12 and 17? This is "Referral: The complaint was referred to another agency"; 17 is "Administrative Closure: The case was referred to the Board by another" -- oh, "to the Board." I am sorry, "by another agency," not by a member of the public, okay. There's no problem, my mistake.

Then in "F," how do we harmonize "F" with Section 144 on OMNs? Isn't this an OMN? Isn't this another misconduct noted?

MS. FLOOK: Yes.

CHAIR EMERY: So do we need this in light of 144?

MS. FLOOK: One moment.

CHAIR EMERY: Or can we just leave this out or put 144 here?

MS. FLOOK: If anything, I would pull it out of the case dispositions because it's that argument we've made and is not exactly a disposition case, it's just really a notation for the Police Department.

CHAIR EMERY: Let's pull it out and

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leave it at 144 and see how that looks.

MS. FLOOK: Okay.

CHAIR EMERY: I don't think it belongs here, if it does belong here then make sure you have "may have" after "officer"; "When the investigation reveals the police officer may have committed misconduct falling outside," okay?

MS. FLOOK: Absolutely.

CHAIR EMERY: But I think it doesn't belong. In 134B, I thought it should say, in the new language, "no case or cases" and then at the end "review copies of said case or cases." If you want to, you can just do parentheses with an S, however you want to do it.

MS. FLOOK: Okay.

CHAIR EMERY: All right. Then we have this new language on the next page, on 142, "Prosecution of charges." We have the new language in the separate sheet in your folder for "D." All this does is reflect the Board resolution that we passed in August or September, which says that when

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we -- when -- "when the APU reaches a plea deal with an officer" --

MS. FLOOK: Just -- you said 142, it's actually 140.60.

CHAIR EMERY: It is?

MS. FLOOK: Yes, it is. It's just for the correction.

CHAIR EMERY: I am sorry. 140.60 --

MS. FLOOK: Second sentence of 140.60. Yes.

CHAIR EMERY: I am jumping ahead, so just forget what I said, we'll get there in a second. Does anybody have anything before we get to -- I have a couple of little things on 142F. Does that read correctly in "F"? "In all cases other than those" -- shouldn't it be "in which the Board is to refrain from prosecuting" or "in all cases other than those which the Board is to refrain from prosecuting." It seems ungrammatical, am I wrong?

(Daniel Gitner enters the room.)

MS. FLOOK: I can try to fix the grammar on that sentence.

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CHAIR EMERY: In H2 I would propose to add after "reconsidered" "for substantiation," they are requesting the previously considered allegations against the subject officer that did not previously result in a substantiation by the Board be reconsidered for substantiation. Okay?

MS. FLOOK: Okay.

CHAIR EMERY: Then in "I," "After a case has been referred to the Administrative Prosecution Unit for prosecution, the Chief Prosecutor or Executive Director may, upon approval by either the Chair or full Board dismiss any charges."

MS. FLOOK: Oh --

CHAIR EMERY: Take out "without premission by the board."

MS. FLOOK: We changed one part and didn't look at the rest. Sorry about that.

CHAIR EMERY: Okay. Good. I have nothing under 144. We are going to get back to your issue, I saved it for you, Daniel.

MR. GITNER: I didn't know I had an

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issue.

CHAIR EMERY: You have an issue.

MR. GITNER: I have issues. We'll be here all night with my issues.

CHAIR EMERY: 144, 145 I have nothing; and 146, 146D is the one we're getting to.

MS. FLOOK: Second sentence.

CHAIR EMERY: So 146D we have a separate page and all this does is substitute for 146D, the proposal on this separate page, which now will reflect the Board resolution that we reached last -- late summer or early fall, in which we said that when the APU has a plea agreement with an officer, that plea agreement will be held in abeyance until the Police Commissioner approves it, rather than reaching a final plea agreement and having that agreement subject to the Police Commissioner's approval. Totally as a way of making sure we have the option to go forward with a prosecution, in the event that the Police Commissioner does not

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approve it, which we probably do not have under the current, well, under the prior regime.

In any event, the point here is to take our resolution and put it into the rules. So what we have is this proposal and I propose that we adopt that into the rules, okay. All right.

Moving right along, finishing up here. The next thing I have is a note to everybody just to be aware of this in 152; 152 used to have an "A" and an "B." The "B" is gone, so it's just what it is here. The "B" required in-person or web meetings for panels. We determined after some research that it is not required by the open meetings law or any of the state laws or -- so we are giving ourselves the option of having a conference call for panel meetings or for particular cases.

I still think, given how well WebEx seems to work these days, that a web meeting is a good thing, and we should stick with web meetings as a matter of

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practice. But now with the absence of "B," the elimination of "B," we're going to have the option of having a conference call for individual cases when it's too unwieldy to set up a personal meeting or a WebEx meeting.

And then in 153, I thought that in B we should contemplate the reconsiderations that occur. In "B," I thought it should say "The Civilian Complaint Review Board shall, within seven business days of a final decision of the Board write to the complainant and/or victim with such findings and recommendations," take out everything from "sending" to "case." See what I mean Lindsey?

MS. FLOOK: So "The Civilian Complaint Review Board shall, within seven business of a final decision of the Board".

CHAIR EMERY: Right. Then "write to the complainant and/or the victim with such findings of recommendations." So that admits to the possibly that there will be a reconsideration.

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MS. FLOOK: It allows for FI's or reconsiderations?

CHAIR EMERY: For it to allow other reconsiderations, it has to be a final decision of the Board, and if it is the final decision of the Board, then we do it. But it just -- the way it reads now it wouldn't allow for that. I have nothing on 154; I have nothing on 155, actually, that is not quite true.

MS. ZOLAND: 154 in H, I thought we had agreed that they must sign an agreement for mediation?

MS. FLOOK: No, they don't. This section, the changes to it were actually, we worked with Lisa Cohen and the indication is it's "may," there is requirement to sign anything, it's optional.

MS. CORTES-GOMEZ: It's a voluntary process.

CHAIR EMERY: 155B the way I added a phrase, "Upon receipt of a written letter sent by the Police Department Advocate

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requesting the reconsideration or reopening of a previously fully investigated," I would say "previously fully investigated case," I would say, with "panel findings and recommendations."

In other words, "a fully investigated case with panel findings and recommendations, a panel the chair or full Board may reconsider penalty and/or disposition of an allegation or reopen the case, if" -- one, two, three. So just the phrase after "case" take out "and closed" and add the phrase "with panel findings and recommendations."

MS. FLOOK: Yes. The way you -- just to verify, because we did change something in the last meeting, the way that you worded that just now you said "a written letter." In the last Board meeting it had been discussed changing that to "request." Do you want to keep it as "request" or go back to "letter"?

CHAIR EMERY: It's a written -- we have agreed upon a template from DAO, which

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1 is very thorough and very -- I think most
2 panels have seen it on occasion, very
3 extensive and detailed. Whatever reflects
4 that. It's certainly a writing, so however
5 you want to say it.

6 MS. ZOLAND: I'm just concerned that
7 if we haven't -- there's nothing to change
8 it to "letter," it's fine but these rules,
9 it's hard to change the rules. So 20 years
10 from now when the rules will be in place
11 and if the letter is not what the people
12 are doing, they shouldn't be in violation
13 of the rules.

14 CHAIR EMERY: Right.

15 MS. FLOOK: "Request" is fine, I just
16 wanted to make sure since you read it
17 differently to make sure I knew where to keep
18 it.

19 CHAIR EMERY: Okay. Let's make it
20 consistent with what we have, okay. We're
21 going to stick to "request," right? Okay.

22 MS. FLOOK: Yes.

23 CHAIR EMERY: And that's all I have.
24 Does anybody have any other comments?

25 So the one issue left is the Gitner

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issue; he doesn't even know what it is.
The issue is, and it's evolved and it's complicated and it's messy, is this question of the parallelism or the necessities -- the issue of that started it, the genesis of it was the police unions, in particular the PBA, seeking to have complainants sworn under penalty of perjury for any complaint they make.

The current status of affairs is that we do not proceed in any case at this point; we have some limited exception. But the general rule is we do not proceed in any case without what we call a "sworn complaint," and we value a sworn complaint, but what we call a sworn complaint is a statement by a complainant, a civilian, that is then subject to a verification. And the verification language is that you've provided a statement and the statements you're hereby verifying as true and correct and it doesn't say under penalty of perjury and it doesn't say under oath, as I remember. I think that's

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correct.

Who can confirm that for me? Marcos, does it say -- under -- the verification form, we have it actually in here. It just says "I certify and it's true" but it doesn't say "under penalty of perjury" and it doesn't say "oath." Isn't that right, Lindsey?

MS. FLOOK: That's my understanding, yes.

CHAIR EMERY: However the research reveals that a false official statement with this type of -- this type of verification would subject an intentionally misleading complainant to a misdemeanor, and that's never been pursued by -- as far as I know by the Civilian Review Complaint Board but it is a potential.

On the other side of the coin, well, let's stick with that side of the coin for a second. So we could change that and in these rules there is a proposal that I think we should eliminate personally, that seeks to require under penalty of perjury a

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complainant to swear under oath that the statement is correct. So that's one side of the coin.

The other side of the coin is police officers who come in and they are told, by the way, I don't think the statement says that the Patrol Guide may cause their termination if they give a false statement. But the Patrol Guide does say that if they give a material and intentionally false statement, they can be terminated. But -- it could be that we should be saying that, that's one option here, but we certainly do not put under oath officers who have statements compelled by our -- appearances at CCRB.

The structure on that, for our doing that and potentially a very important preclusion of us doing that, is that the City Charter says, the Charter provisions, which underlie CCRB, say in no uncertain terms, that we must follow the same procedures for taking statements from police officers that the New York Police

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Department does in its disciplinary process or the Police Commissioner is not compelled to produce police officers to CCRB.

In other words, we get the production of the police officers at CCRB because we follow the same rules as required by the Charter of the Police Department. So we could be sacrificing the compulsion of appearance before the CCRB if we alter the rules of -- of the investigation -- of the interview.

With that mind, unless the Police Department, and this might be subject to the collective bargaining agreement unit and all other kinds of implication, unless the Police Department changes the rules, I don't see us changing the procedure for police officer interviews, and if we don't change the interview -- the procedure for police officer interviews, it's hard for me to justify, personally, swearing in civilians.

Now, some people may say "A" doesn't have anything to do "B" but I think

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parallelism here is important. So that's where my head is on this, that we probably are in a position where even if we did want to make a change, we probably can't and we should leave well enough alone.

So I just opened that up to anybody who wants to talk about it and saved it for you, Dan, because, two meetings ago you were very interested in this.

MR. GITNER: I do remember now why you're calling it the "Gitner issue." My view on this is I think I'm in complete agreement with you. I don't think there's any need to swear a complainant, such that a false statement would subject them to some sort of perjury felony. I've never, since I've been on the Board, ever thought or heard of, even in situations where you feel the complainant has made false statements, the notion of referring them for a prosecution is the furthest thing from my mind. I've never heard another panel member suggest otherwise. And I think as a policy matter, except perhaps

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the most egregious, repeated kind of circumstance, it would be a horrific idea, so I would not change that, and I actually feel pretty strongly -- as strongly, that we should not for all the reasons you stated, as well as other policy reasons, we should not like-wise subject the police officers to similar sorts of, you know, swearing them also. I think frankly it would harm our investigative abilities in questioning officers and I think it would also harm our relationship with the Police Department, so I think on both accounts, if it's not broken, I don't think it needs to be fixed.

CHAIR EMERY: Any other thoughts on this?

MR. CAPERS: It sounds like we're all in agreement.

CHAIR EMERY: Good. Well, that's good. So we can eliminate that section where we have the change to the civilian statements, now, it's red-lined that requires them to be under oath, that has to

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come out. You know, what I mean, Lindsey?

MS. FLOOK: I am flipping into the old changes from --

CHAIR EMERY: It's in the new one.

MS. FLOOK: I know but the cross-outs, I believe, were from the April changes. What we did -- it was so many cross-outs that was discussed at the last Board meeting, it was just red all over the place and some blue as well. We accepted those changes, gave you guys the April and then just did the new changes. So it's accepted into the current document, so I'm trying to look under that section --

CHAIR EMERY: The place I find it, there may be other places, but the place I see it is under 124, way in after L, 124L and then down four paragraphs.

MS. FLOOK: Yes.

CHAIR EMERY: "Do you swear or affirm under the penalty of perjury as defined in the New York State penal law that all of the statements you are about to provide in connection with this investigation are true

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to your knowledge."

MS. FLOOK: And that paragraph "I'm going to present to you this formal required signature of penalty of perjury," two paragraphs down?

CHAIR EMERY: Both of those have to come out.

MS. FLOOK: Okay.

CHAIR EMERY: I mean if you want to say something about the verification, that's okay, but the language. And it seems to me that the only question left in my mind and I'm agnostic on this, is whether we should be informing police officers, that there of the Patrol Guide section relating to false statements, which I don't think we do. Do we?

MS. FLOOK: Not to my knowledge, no.

MS. ZOLAND: I believe the Police Department does.

CHAIR EMERY: Before they send them over, or?

MS. ZOLAND: No. When they do an official interview, that they reference

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that section of the Patrol Guide.

MS. FLOOK: We're not doing anything with false officials, if they give a false official statement, we mark it - it's mark it as an "OMN," as another misconduct noted and it's literally a notation that then gets provided to the Police Department. So we're not -- they're not facing anything from us, it's just that we will refer it to the Police Department.

CHAIR EMERY: Right.

MR. GITNER: Well, what exactly does the Patrol Guide say?

CHAIR EMERY: It says, essentially, that if you give a material intentionally false statement, you may be terminated.

MR. GITNER: But, does it say who that statement must be made to?

CHAIR EMERY: Any official -- in any official capacity. I mean it's basically meant for courts, perjury in court, but it also applies to us.

MS. ZOLAND: It applies to documents.

CHAIR EMERY: So the real issue is

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whether we should put that in our warning to the police officer, as it is now, it's not in there.

MS. ZOLAND: But that doesn't have to be a rule issue, if we want to adopt it, we can adopt it as a practice.

CHAIR EMERY: Yes. It's true. It's just that we have the statement in here that we're giving the police officer in our rule.

MS. ZOLAND: This we have to, we have to under the Charter give them the same rights that they have in the Police Department. I think that's what the genesis of this is.

If we want to say something -- I don't know, but it has to be in the rules, if you want to have a copy of that Patrol Guide section say that and advise them that any statement here, of course, you're subject to all the Patrol Guide provisions, including the official false statement and give them a copy.

CHAIR EMERY: I don't think we need

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it. I mean, I think we can do that as we see fit, it may be something that the investigator -- we can think about it in terms of investigative procedure in-house.

All right. So what I would like to do, if possible, with the Board's agreement, is that we make the changes that we adopted tonight. I don't think anything is left open except the issue whether we have to add the impeachment language, or not.

And -- but short of that, can we adopt these proposed rules, so they can go into the administrative systems and go through the public comment period? Can I have a motion to that effect.

MR. CAPERS: I so move.

CHAIR EMERY: Second? All in favor?

MR. EASON: Aye.

MS. CORTES-GOMEZ: Aye.

MR. GITNER: Aye.

MS. ZOLAND: Aye.

MS. ARCHER: Aye.

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MR. YOON: Aye.

MR. CAPERS: Aye.

CHAIR EMERY: Any opposed? Good.

All right. Thank you, Lindsey, thanks a lot. Hard work. All right. Let's -- do you want to do your report first or public comment first?

MS. MALIK: It doesn't matter.

CHAIR EMERY: Why don't you do your report and then we'll do public comment, Mina, okay?

MS. MALIK: Good evening, ladies and gentlemen. My name is Mina Malik and I am the Executive Director of the Civilian Complaint Review Board. We're glad to be here tonight at Friends of Crown Heights Educational Center, and at this time I want to recognize and thank the center and Council Member Robert Carnegie and his staff for assisting us in being here tonight.

I will first provide you with a highlight of our monthly statistical report, and then we'll discuss other

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matters pertaining to the operation of our agency, and for its full review of the agency monthly statistics, please visit our website.

So there's important and good news to share about our docket and case processing time. In the past month we have implemented a strategy, which was designed to further reduce both the number of old cases in our open docket and the average time to complete an investigation. We continue to reduce the number of cases in the open docket of the Investigations Division.

Last month I reported to you that the open docket in the Investigations Division decreased from 1,858 cases in January of 2014 to 842 active cases in March of 2015. By the end of April it had been further reduced by 107 cases to 735 cases.

We focus particularly on cases that have been 12 months or older, in order to minimize the number of cases approaching the statute of limitations. As of the end

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of April we only had three cases in the Investigations Division that were 15 to 18 months old, and 22 cases that were 12 to 14 months old, there were three cases that were older than 18 months.

The executive staff and I have made those cases a high priority, only 3 percent of all cases currently being investigated are 12 months or older. By the end of April, there were 713 cases pending Board review or 45 percent of the open docket, which is the reason the open docket has actually increased from 1,417 cases in March of this year to 1,572 cases by the end of April of this year.

Given the high number of old cases that we've investigated in recent months, these improvements in the docket have yet to materialize into across-the-Board gains in the time it takes to complete an average investigation.

However there are strong signs that we've reached some of the benchmarks that we set for ourselves a few months ago. We

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have reviewed the productivity of the Investigations Division from January to April of this year and found that investigators under the new pod or new smaller team structure were able to close cases in half of the time that it took investigators to close cases under the former larger team structure.

The new pod structure submitted cases for review in an average of 141 days, while the old team structure did so in 281 days. Those numbers include cases that were filed prior to and in 2015.

More importantly, under the new structure we've closed 185 cases that were filed in 2015 in an average of 63 days, this is a 78 percent reduction, compared to the average time it took to conduct an investigation just one year ago.

As I stated in the past months, the preliminary data for the new pod structure shows that it's far more effective than the former larger team structure, and we expect going forward that this efficiency is

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going to continue.

The number of days it takes to interview a complainant has decreased from 31 days in January 2014 to 11 days year-to-date in 2015, and the number of days it takes to interview an officer has increased -- has decreased rather, from over 200 days in 2014 to 51 days year-to-date 2015. So we've come a long way and we're still in the process of creating the conditions for a far more effective and efficient organization from the foundation up.

I also want to highlight a few statistics related to the disposition of our cases. The percentage of cases that are fully investigated compared to the total number of investigations has increased from 44 percent in 2014 to 53 percent year-to-date.

And conversely, the truncation rate has decreased. Year-to-date, this Board has substantiated 19 percent of all full investigations, which is slightly higher than the data from the same period last

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year, when the Board substantiated 17 percent of the cases that were fully investigated.

The percentage of cases referred to the Administrative Prosecution Unit is now 24 percent of all substantiated cases, and from March through -- from January through March of 2015, the discipline rate was 89 percent for cases handled by the Police Department Advocates Office and the discipline rate for cases handled by the APU was 71 percent.

Finally, I want to highlight another positive development and that is of our relatively new Administrative Prosecution Unit, which has conducted more trials than ever, year-to-date. The APU conducted a total of 78 trials since its inception, only one in 2013; 45 trials in 2014; and 32 trials to date in 2015.

Currently the APU has 32 trials involving 77 respondents already scheduled in the next few months and these numbers underscore the important work of the

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hardworking meticulous and dedicated prosecutors in that unit.

Equally important, last year's discipline rate for the APU was below 50 percent in the first half of 2014, whereas, currently the discipline rate is 77 percent in year-to-date in 2015.

CHAIR EMERY: Very good. Pretty amazing numbers. When you look at the annual report tomorrow you will see confirmation of this and overall trends that are just astoundingly good, I have to say. I'm surprised and hardened that -- it's sort of far more productivity than I had ever expected at this stage of things and I think it's amazing work. It's not perfect yet but it's really going in the right direction.

So, we have a list of people who want to speak. I don't have -- Carlmais?

MS. JOHNSON: Yes, I have it.

CHAIR EMERY: Thank you. Oh, Mr. Cordey, come on up. Cordey? Coraday?

MS. MALIK: Grady.

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CHAIR EMERY: Is it Grady?

MR. GRADY: Grady.

CHAIR EMERY: Sorry. I couldn't read your writing. My fault.

MR. GRADY: First of all, I would like to -- a typo in last month's minutes, one page, 123, line 10. District Attorney, "weak sister, weak sister," S-I-S-T-E-R, is charged or responsible for prosecution of the criminal offense.

District Attorney has an independent budget, Norman Siegel alleges Police Department provides "bread and butter" for District Attorney. I wanted to get that, weak sister, I didn't see "weak sister." Under -- Mr. Norman Siegel alleges that the Police Department provides the "bread and butter," however, they don't agree with Mr. Siegel.

Corporation Counsel integrally, principally, involved in all foreclosures occurring in New York City. This location possesses in excess of 30 professional independent units. Representatives of

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Corporation Counsel knocked on all the doors of -- knocked on the doors of all the residents at this location, advising residents this developer pocketed \$200,000 of New York City funds.

Corporation Counsel put this developer off property, any connection with property due to this pocketing \$200,000. Thirty professional independent full units, Corporation Counsel indicated in written summary, residents by law are to vote whether the developer returns to the property after being removed by Corporation Counsel. 30 professional units at this location. Corporation Counsel had introduced residents to their job foreman.

Assemblyman Keith Wright resident of Riverton Square residential establishment, 135th Street and Fifth Avenue to Harlem River Drive, Madison -- includes Madison Avenue and 135th Street and Fifth Avenue to Harlem River Drive, 200,000 residential units, parking spaces for 200 automobiles, indicated that their developer pocketed 100

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million from property. Corporate Counsel foreclosed the property.

CHAIR EMERY: Thank you. Chris.

MR. DUNN: Good evening.

CHAIR EMERY: Good evening.

MR. DUNN: I won't ask how many of you made it to page 121 of the minutes before you voted to approve them. But I'll give you credit for that. But --

CHAIR EMERY: We would've approved it even if we had known about the deficiencies.

MR. DUNN: Let me start with the monthly report. So Mina, congratulations. You guys have made enormous headway in terms of making the CCRB process more efficient, to your credit, and I hope that that is also translating into higher quality investigations. It's sort of hard for us, from the outside, to know if that's the case.

I hope at some point the agency starts looking a little more closely, now, that you have greatly shortened the period

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of time it takes you to investigate a case that are being investigated, how thoroughly they're being investigated.

I also hope that, now, that you presumably have a fair amount more staff capacity to work on cases, since the cases are being done so quickly and the complaints are down, that you actually have more time to invest in the quality of investigations and more time to work on the truncation rate, which still remains far too high. But I do think also there's some concerns that I want to raise about the monthly report, even though for the most part I think it's a positive report, to be sure.

I see a substantial increase in the number of cases that are 12 months or older, by my calculations it's about 70 percent in the last month, the numbers are not huge but it's a substantial increase there.

I also note, there's a very clear increase in complaints for the last several

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months, and if you look at the line graph that you have in here, you see in 2014 the complaints go way down and then they are coming way back up. And when I look at that, I immediately ask the question, is there something happening in terms of the way you're getting complaints, because the swing in the numbers is so dramatic that it suggests to me there is something going on beyond just what is happening out there in world, and as I think you know, there has been some reporting about the purported huge drop in complaints last year, the details, of which I assume will come out in the annual report.

I am deeply suspicious about the number of complaints you're getting from the Police Department, and whether or not you are getting all of them that they are receiving. When I see the swing in the numbers that you are reporting in your report, it makes me very concerned about that.

The substantiation rate, Mina, you

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mentioned is 19 percent; that's a good number, it's up. I only note, and I think the table in your report is misleading in this respect, it is 19 percent of all full investigations.

Full investigations are only a portion of all of the investigations, from my perspective, it needs to be clear to the public, when you say things like 19 percent, we're talking about 19 percent of the relatively modest subset of all the complaints.

Okay. On the rules.

Richard, I give you enormous credit for slugging through the rules in public, I realize that's got to be difficult for a lot people and for the people, it's hardly an exciting exercise, and I understand that you have now voted to publish the rules that you just discussed. I do have some comments, though, about the discussion that you had. This business about the officer's script, and Dan, you missed this, but I think you may have caught the second round

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when you came in, we wrote to you about this in March, Dan, you were the one who raised it initially in December, as far as I know. Richard, you are right the script is wrong and in our letter in March we said you should stop reading that script immediately or deal with the rule around it and I think you are right now, immunizing police officers in a way that is inappropriate. So I just hope you get to that as quickly as possible.

In terms of the issue about swearing complainants, good for you, it's the right thing to do. Dan, I was -- what you had to say about swearing in complainants, I think is the best thing I've heard you say in quite some time, not that you and I always disagree --

MR. GITNER: It must be excellent.

MR. DUNN: It must excellent --

MR. GITNER: Because I say a lot of good things.

MR. DUNN: I got to tell you that my friend Pat Lynch is not going to like what

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you guys did. I don't know if he's here, I know he's been sending "anonymous," as he puts it, representatives to CCRB meetings --

CHAIR EMERY: He watches us on the web all the time. You should see how many times, he knows everything we say by heart.

MR. DUNN: Anyhow, I'm looking forward to his response to this and how you guys are knuckling under to, you know, the commie-pinkos --

CHAIR EMERY: Like you you mean?

MR. DUNN: Like me, exactly. If I would to just say to Pat, as you may know the PBA is in our building, so if I run into him in the elevator tomorrow I would say this to his face, but he has a problem with the police officers coming in making false statements to you, and I think that unless and until he's prepared to take that on, the PBA is in no position to be suggesting that civilians who come in to file complaints should be subject to perjury prosecutions.

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CHAIR EMERY: I want just to be clear about one thing on this point, I think it's worth having the discussion openly and publicly. It would be a whole different debate if the Police Department swore officers when they did their investigations, but we cannot, under any circumstances even have this debate when we are disqualified from bringing in police officers by the Charter, unless they do -- unless our procedures are the same as theirs, so we can't even reach the merits of the debate as a practical matter notwithstanding what Dan said.

MR. DUNN: Well, if Pat starts making a stink about this you should offer it to him to see if he'll take the deal, that he'll agree to change the Department procedures so that officers can be sworn in making statements in GO-15 and CCRB interviews --

CHAIR EMERY: That's exactly --

MR. DUNN: I don't think he's going to take that deal.

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MR. GITNER: Before you continue, I'm sorry to interrupt. I just want to say one thing, you raised my name, which is fine for you do. I just want to be clear, I think I was misquoted in a meeting about this, I have not said in any way that the police officers have a problem coming in and telling the truth. I have never said that. And so I realized that you've just said that and that's your opinion, and that's fine. I want to be very clear since my name is wrapped up in the discussion. I have not said that.

MR. DUNN: Very well. I don't think I ever suggested that you said that. I think what I have suggested was this agency has repeatedly found that police officers have done that. So -- and that's a matter of record, it's in the regular annual reports.

On the subject on the OMNs, you discussed the possibility of informing officers about the Patrol Guide section concerning false statements. Personally I

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think that's a very good idea as Debbie says in her GO-15, a police officer is informed of that. I think that is good in terms of putting the police officer on notice and a officer deserves to be put on notice about things. And frankly, that sort of warning tends to induce a little bit of sobriety in some people and I am not sure for what is not your reason is for you not, both as a matter of principle and as a matter of good investigative process, to be notifying officers or reminding them about the Patrol Guide section. I agree it does not need to be in the reg, I do think it is worth considering in terms of your interview process.

All right. A couple of minor things. You talked about deleting the provision that requires in-person or face-to-face conference calls when panels meet. I must say, you know, this is a small process, but I think the dynamic when you are looking at somebody and talking to somebody, it's very different then when you're talking on the

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phone.

I know when this came up several years ago, when you folks were wrestling with this -- Richard, this is before your time, but not before mine -- that the Board felt like having telephone conference calls for panel meetings was a bad idea. You just didn't have the sort of dynamic you want among the panel members, and I would really encourage you to revisit that, I think that's a mistake.

CHAIR EMERY: Let's be clear, I think we intend to, in every instance have our panel meetings on WebEx, which is a face-to-face on-the-web meeting. It's -- the only place it becomes unwieldy really and I think the only the reason we want the flexibility is when we do a number of these calls with -- about one case at a time with investigators and when we reconsider a case and we've reviewed all the material and it's a reconsideration of what we already talked about. Those are really the only instances that I see it when we are going

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to be using conference calls, when WebEx is unwieldy. Even then, we can use WebEx; WebEx is so easy now. So really, it's going to be used as a matter of course.

MR. DUNN: I hear what you are saying that, and that's fine. I just reiterate that even for cases like that, in some respect in the reconsideration cases where you have a situation where the Department is pushed back, that may be one of the most important examples where there needs to be face-to-face discussion, but I hear what you're saying.

You're proposing changing the timing as I understand it when a complainant will get notice of a substantiation until there is this reconsideration process --

CHAIR EMERY: In the event there is reconsideration.

MR. DUNN: But jeez, you won't even know that for at least 30 days at best. So you're now putting yourself in a situation where you send over a sub case, typically

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the letter would go out, you're not going to send the letter, you're going to sit there, wait for a month, and if you get a sub, you get a reconsideration request back, you might add 30, 60, 90 days to the clock. I'm not saying that you will, but it can be a considerable amount of time; all this time the complainant is sitting there.

From my perspective, as a matter of both accountability and interaction with civilians, I think you owe it to them to tell them when you initially substantiate a complaint.

The fact that you may change your mind down the road, you should own up to it and tell the complainant that have changed your mind. But this change in the notification procedure is just another step in, what I view, as being backsliding in terms of this entire arrangement, in which the CCRB is less and less on the hook for making a serious final decision in the first round and I just feel like, you sub a

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case, it should be a serious matter and you should be prepared to tell the complainant you subbed the case, and if it changes down the road, you should be prepared to own up to the fact that you have changed your position.

CHAIR EMERY: Let's think about that. I don't think anything in the way of the rules are now written precludes what you're saying, so I just -- really it just leaves it open, I think that -- I see your point and I see that there's definitely truth, I think the real issue is how long it takes the Police Department, which we can work on, to review the case and see when -- how quickly they can ask for reconsideration.

But you may be right, maybe the way is to simply tell the complainant that we've subbed it and it's going over to the Police Department but is subject to reconsideration, potentially, that's not out of the question either.

MR. DUNN: But on a related topic, this discussion about the use of the term

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"letter" in the provision with respect to the way the Department to request reconsideration, and Debbie was pointing to this in the notion that maybe we don't want to say "letter" in here because 25 years from now nobody's got letters, maybe that's the case, maybe it's not.

I will tell you just using the term "request" opens the door to what was talked about several meetings ago, which is this meeting, that you can just get e-mail things saying, we request reconsideration.

I understand you, Richard, saying right now the Department has been sending you back some relatively formal written thing, but I assume that is just an act of grace on their part, and I'm not saying they're going to change their position, but the people running that place are going to be gone in one, two, three, four years, there'll be a new PC, there'll be a new mayor, a new CCRB. I personally would not write regs that allow the Police Department to send you an e-mail, or even make a phone

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call and just say, please reconsider these following 25 cases.

I want to go back one second on the OMNs, I'm sorry, I missed one point. I understand from some of the reporting I have seen that the OMNs, I am sure this is an issue, now there is more video in the world, there's more opportunity to test the veracity of the police officer's statement to you, and I suspect that you are finding perhaps that OMNs are going up more because you have more independent evidence to learn the facts of a situation.

The question I have for you is, are you getting body worn cameras at this point.

CHAIR EMERY: We have had a couple right?

MS. MALIK: We have had a few.

CHAIR EMERY: Not very many.

MR. DUNN: I think that would be an important source of information for you, and frankly, if I were you, I would be thinking about a project in which you are

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asking the Department for all body worn camera videos, so you can start assessing police officers' behavior through those videos, perhaps police officer training through those videos. Even if there's not necessarily a complaint related to an officer, and you don't even have to know the identity of the officer from whom you get the video, but, you know, one of the things that you all talk about and we all deal with all time is the cop says this is what happened, the civilian says that's what happened, and who knows. Well, now, we have a way of knowing and it cuts both ways. I think that videotape in most instances benefits police officers. But I think you should be seriously thinking about the way the body worn camera project can be useful for you in terms of providing material in thinking about what you do.

All right. The final thing about the rules is something that you did not mention, is that you have removed from the rules a provision about which you provide

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notice to the complainant about the final disposition of the case from the Police Commissioner, and there wasn't any discussion about that that I heard; this is Section 153D.

I take it based upon the video that I watched from last month's meeting and I apologize for missing it, that there is some notion here that Section 50A of the civil rights law is driving some concerns about the CCRB notifying complainants about the final Police Commissioner's disposition?

MR. GITNER: What section did you say it was?

MR. DUNN: I believe is it Section 153D.

CHAIR EMERY: It's no longer. Well -- yes. There is a 50A issue there, we can notify them of certain information, and we can't notify them of other information. What is the current state of affairs on that, Lindsey?

MS. FLOOK: One moment.

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MR. DUNN: Actually can you come over here so the public can hear what you have to say.

MS. FLOOK: Of course. We've had conversations with the Law Department on this issue at the request of the Board in regard to both sub "B" and sub "D" in that category, based upon not only the wording but also what we do and what information we give out.

The wording in "B" is fine, we just need to adjust how we turn the letters out, the letter has some inappropriate sections that we need to adjust in terms of officer's tax numbers under 50A, but we've discussed this with the Law Department who has said "D" is a violation, we have to comply with that.

MR. DUNN: So my point is that if you folks are going to stop telling complainants what happens to police officers who get substantial complaints, there is going to be a big problem.

If I am a complainant and I come to

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the City of New York and I said this officer abused me in whatever way, and I never find out what happened to that officer, that is going to substantially undermine your organizational credibility.

CHAIR EMERY: I don't think that is what we're saying. I think we're saying we can't reveal the police officer's -- my understanding is we could say that the case was substantiated, we can say there's a result. Lindsey?

MS. FLOOK: I'm just going to stay over there.

CHAIR EMERY: Please.

MS. FLOOK: The understanding is we can provide our own dispositions, the Board's decision; the officer's name and tax is the issue, we will deal with that. We're working on changing the letters. But sub-D isn't our decision, it's the Police Commissioner's decision and that's what we can't give, is when the APU has done charges and the Police Commissioner has given discipline, we are hindered by the

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law on that.

CHAIR EMERY: Okay. I understand, that makes much more sense. I think that's an issue we have to deal with the Police Department on. I do know that the Police Commissioner has discretion to provide information on discipline that we don't have under the 50A statute, it's under 50D, isn't it?

In the subsection of the civil rights law -- no, is it the civil rights? Yes. It's in the civil rights laws that provides discretion for the Police Commissioner to provide information. For instance, I mean, we've heard press reports of discipline from the Police Commissioner and that's permissible, so this is an issue that we have to work out with the Police Department when there are Police Department -- ultimately Police Department dispositions.

MR. DUNN: I am happy to have you work it out with the Police Department, all I can tell you is, as far as I know for 20 years this agency has been notifying

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complainants of the discipline imposed --

CHAIR EMERY: This agency has done a lot of illegal things for 20 years.

MR. DUNN: Well, I recognize, Richard, that doesn't mean it was right or wrong. Although, legally, I can tell you if you're going to announce from this day forward civilians in New York City will never learn of the discipline imposed upon police officers who had complaints substantiated by the CCRB, that's not going to be doing the CCRB a whole lot of good, it's not going to give notion to civilian oversight a whole lot of good.

CHAIR EMERY: I'm not announcing that at all. I am announcing that we have to comply with that 50A and getting an opinion from Law Department, 50A precludes us from telling the public or the complainant what the Police Commissioner's final discipline is in a case that came up through CCRB. And, you know, that may be there is a declaratory judgment that can be filed by someone to the Civil Liberty Union, for

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instance, to clarify that the advice we're getting from the Law Department is wrong, but I don't see how we can not follow the Law Department, number one, and number two, it seems to me that this is an issue has to be taken up with the Police Commissioner, and this Police Commissioner, at least for one, is likely to figure out a way for us to announce to at least complainants, what the ultimate disposition of cases initiated at CCRB is.

MR. DUNN: I would welcome that. I'm sure he's sitting with Pat Lynch right now watching this and working on this problem shortly.

MR. GITNER: Do you know, Lindsey, if the law prohibits us from notifying the complainant of the fact of the discipline or just specifics of the discipline? In other words, can a letter be written saying we got your complaint and substantiated discipline was imposed?

MS. FLOOK: Without what the discipline was, basically being able to say

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there was discipline without saying what that was?

MR. GITNER: Exactly.

MS. FLOOK: That hasn't been posed, but we absolutely can pose that to see if that would affect something.

MR. GITNER: I would ask that question, assuming the Law Department's view is correct, which I do, then, maybe that's the next compromise that fits everybody's need.

MS. FLOOK: The only question that is if it wasn't imposed that it is going to create an issue, but I can absolutely make the request, absolutely.

MR. GITNER: Thank you.

MR. DUNN: One really final thing, you mentioned the stop-and -frisk training and that you're going -- some people are going to be participating in that and I think that is terrific, I should forewarn you that, that is provisional training, we had a very big rush with the monitor to get some stop-and-frisk changes in place for the

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current class, all that training is subject to revision upon further examination. So I think it is terrific that you folks are going to participate in that and encourage you to do so, but I don't think you should go in thinking this is the end of the deal, it is not, it's the beginning. And I would also note that the idea of having the Department come to you is a bad idea, the very important part of the training is role playing, those are things that typically only happen at the academy, maybe they can bring their entire production to you, but frankly, if you want to have the experience that police officers are having you need to go to the academy. And the final thing I would say is you're having spent five meetings on the rules, again, I give you enormous credit for that, I look forward to you turning to talking about substantive police practice controversies, in which we have plenty in this City, and I want to hear that, I think members of the public who are coming to these meetings want to

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hear that, and I look forward to your turning to those issues in future meetings.

CHAIR EMERY: Thanks, Chris.

MS. MALIK: Chris, I want to address two things that you raised and two very important and good points. The first being the body worn camera program for the New York City Police Department. I think that it's very important and you raised a great idea in terms of looking into that. It is a relatively new program right now, so it hasn't been in existence for a very long time. I know that Attorney General Kamala Harris out in California raised an issue on the report, I think that further on down the road once this program takes off and is really implemented in New York City, that might be an interesting study; something we would like to do. So I thank you for that idea.

The second thing I would like to raise with you is our truncation rate, which is tied into the quality of our investigations. And certainly my main aim

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and the aim of this Board is to insure that they are timelier and more efficient investigations and prosecutions of all these cases because these cases are important, they're important to the police officers of the New York City Police Department, and they're important to the civilians who file complaints, and so bringing down the investigative times and bringing down and decreasing the case processing time is extremely important to me, but not at the sacrifice of quality of investigations. I've been a career prosecutor all my lifetime and one of the things I've always made sure was all the Ts were crossed and all the Is were dotted, and that is what I plan on doing here in this position and with the great staff that I have, is making sure all the Ts are crossed and all the Is are dotted in the these investigations.

MR. DUNN: Okay.

CHAIR EMERY: Let me just add one thing to that and maybe others as well. We

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2 are the recipients of these investigations, so
3 Dan, and Youngnik and Janette, have
4 perspective on this over a fairly long period
5 of time, longer than any of the rest us
6 sitting here tonight, but I certainly saw some
7 of the old -- a number of the old
8 investigations before the new ones that are
9 coming under the pod system and quite frankly,
10 from my perspective and I would love to hear
11 from Janette and Youngnik and Dan their
12 perspective, that these are just as good, if
13 not better, and you could work with the whole
14 system better because you can actually
15 interact now with investigators and talk to
16 them about issues that you have, and the sheer
17 focus of them now is so much greater because
18 before you just got a long long recitation of
19 what X said, what Y, what Z said, what A said,
20 what B said, and no analysis of what the
21 issues were in the cases, except at the very
22 end, and then it was so kind of vague and it's
23 -- well, I didn't find the old investigations
24 focused, I found it very thorough, but
25 thorough to a

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fault, thorough to a point where it hid the crucial things that had to be discussed and analyzed, and that's what I think we are doing now. We're really focusing on the evidence you bring to bear to resolve the allegation, and that to me is a huge qualitative improvement. I would love to hear from those who have more perspective than I.

MS. CORTES-GOMEZ: I think actually I'm the veteran of the group, well, Youngnik. I think the investigations are better, I don't know if it's a result of better training, better investigators, more input from the Board, there's definitely a lot more input from the Board members, but I do see a positive difference in what we receive and what we review in order to determine whether to substantiate or unsubstantiate and so on and so forth. I think the interactions between us and the investigators and the attorneys help. I think having the APU Unit also is a great help because they are thinking of it in a

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different perspective, so when they're receiving something, they know what they need to prosecute these cases that we deem substantiate with charges, and I think the cooperative collaboration of these factors are lending themselves to better investigations overall.

MR. DUNN: Okay. Thank you.

CHAIR EMERY: Dwayne Neckles is it? Come on up.

MR. NECKLES: These are questions from someone who couldn't make it. The first question is, hold on a second, the mediation cases and the substantiated cases, I don't think they are organized by precincts in the reports.

CHAIR EMERY: They're on the web.

MR. NECKLES: By precinct?

CHAIR EMERY: We have certainly substantiated it by precincts on the web 'cause they're mapped by precincts if you go to the website. Mediations by precinct I don't know if -- they're not on the web, I am not sure we have -- we have got data and we

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certainly can make that available,
mediations by precinct, just put in a
request to the office, probably send it
over to Linda Sachs first or to Mina Malik,
the Executive Director, and we can get
information to you about mediations for
precincts.

MR. NECKLES: The last one is
"community policing," she asked what is it
to you guys, your understanding, what do
you guys feel is "community policing"?

CHAIR EMERY: Well, that's a good
question. I'm not sure if it's really
directly within our jurisdiction, although
all of us obviously are very committed to
the idea of policing that is humane and
careful and respectful. I guess that's how
I would describe community policing,
basically that reflects the needs of the
community, rather than imposes a will on
the community. I mean that's the way I
see, some may have different views.

MR. NECKLES: Just your general idea,
thanks guys.

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CHAIR EMERY: Thank you very much.
That's all I have unless there are other reports; Bishop is not here. Is there any other reports that we want to have from subcommittees?

MS. CORTES-GOMEZ: I have a very brief mediation.

CHAIR EMERY: Let's do the mediation report.

MS. CORTES-GOMEZ: From January through April of this year, 2015, we had 60 cases that were successfully mediated, while 69 were closed as mediation attempted, these numbers represent a 33 percent increase in the number of cases that were successfully mediated and 64 percent increase in the number of cases closed as mediation attempted. The number of successfully mediated cases in the same period, in 2014 were 45 and mediation attempted were 42. In April of this year the Board closed 12 cases as mediated and 24 cases as mediation attempted. From January through April of 2015, 84 percent

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of the officers who were offered the opportunity to participate in mediation accepted, representing a 3 percent increase in the officers acceptance rate over the same time period of 2014.

However, the civilian acceptance rate, which is the rate at which civilians agree to participate in mediation, declined by 8 percent, going from 47 percent to 39 percent in the same period this year in 2015. On a good note, in April of 2015 civilian acceptance rate rose back to 48 percent.

In terms of cases that were returned to investigations, we had 48 in the time period of January through April of 2014, whereas we had 39 from January through April of 2015, 14 of which were April of this year. In terms of the cases that were received, 1,076 cases were received between January and April of 2014, and of those, 927 were deemed eligible for mediation; that was 2014, and in 2015 we had 1,290 cases that there were received, 673 cases

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were deemed eligible. It is our hope in mediation that we can continue to provide the statistics to you on a monthly basis. We had anticipated based on what we had discussed, perhaps six months ago, an increase in the number of mediation cases, mediation eligible, because we expanded the category, but it seems the number of cases aren't necessarily increasing, but we are doing what we can with what we have, and it just happens that there are successful mediated cases.

CHAIR EMERY: Thank you Janette. Do you want to talk about outreach, Brian?

MR. CONNELL: Good evening everyone. I just would like to give the outreach summary. The outreach program is well on its way and is keeping pace with the efforts of last year, we did over 300 presentations last year, and in year to date, we have done 96 presentations for the first third of the year through April, so we're on pace to do another 300 presentations this year as well. The

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next -- our focus this year has been on NYCHA Housing Developments, in trying to reach out to the council presidents in those areas and we're also focusing on doing presentations at police precincts, it's important to get our message through to the civilians as well, but it's also important to get our message through to police officers, as well, and we have done 17 presentations at precinct councils, and they've been very receptive, they've been supportive and they have shown to be sort of -- want to give the same message that we've giving to police officers, so I really want to thank the precincts that have allowed us to come in and give presentations, and we look forward to continuing doing presentations at other precincts, council meetings as well, not just officers are at these meetings but also civilians attend these meetings and they raise issues, that are local issues and concerns at these precinct meetings, and we are on the agenda and speak about

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police misconduct at those meetings. The other item is CCRB partnership initiatives, where we are using additional sites in the boroughs to do interviews and to do intake. We have three sites that are being used right now. One is at the St. Clare Church in Rosedale; another is the Jacob A. Riis Settlement Houses, and the other is Council Member Carnegie's office, and that gives us an opportunity to do interviews during non-business hours in the local community where it's more accessible to civilians at times that are more convenient for them. We're looking to explore that and expand it with the leadership of the City Counsel Speaker's Office and we're working with them to consolidate other venues where this effort can be more available and more widespread, that will also give us the opportunity to -- expedite our interviews because if it's more convenient for civilians. We are able to have them more quickly than having them at our office at 100 Church Street in Manhattan. The other

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initiative that would be upcoming is our CCRB Ambassador Internship Program. That's a program we've had for the last two years where the youth becomes the ambassador and they become the public speakers for the agency and it's a peer-to-peer program, Bishop Taylor has mentioned it a couple of times at the Board meetings, where the teenagers are in the community, are going to go out and give the presentations about police misconduct to their peers, so that program is getting on the way. We're partnering with Urban Upbound, Urban Upbound, they're established -- or a program called Epic Explore programs for internship and careers and it's a job readiness program, and part of the job readiness programs is to create opportunities for teenagers to go out and hold jobs. They set up interviews, they'll be a job fair later this month where all the organizations that will be offering internships, the Museum of Moving Images is one of them, CCRB is another one, and there

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are a couple of others. So we will be competing with other organizations for -- to attract the teenagers that will want to use our -- use the CCRB for their internships, we're not the only show in town. We have to really make it attractive so they say, you know what, I'd rather come to CCRB and do an internship, because this is something I feel is going to be more fruitful for them and ultimately their careers. So we hope to get the job fairs done this month and the internships would be for a six-week period in July and they would be serving -- they'll be doing a great service for the agency as well. So that's all the information I have and that's our update.

CHAIR EMERY: Thanks, Brian.

Anything else from the Board? So we are going to move into a short Executive session. Can we have a motion to that effect?

MR. GITNER: Aye.

MR. EASON: Aye.

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MS. CORTES-GOMEZ: Aye.

MS. ZOLAND: Aye.

MS. ARCHER: Aye.

MR. YOON: Aye.

MR. CAPERS: Aye.

CHAIR EMERY: I move. Thank you for

coming to this Executive Session. Thank
you. The public session is otherwise
adjourned. Thank you.

(Time noted: 8:26 p.m.)

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C E R T I F I C A T E

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

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

That I stenographically reported the foregoing hearing and that the transcript is a true record of said proceeding, to the best of my ability.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of May, 2015.

REGINA DONES

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