

Civilian Complaint Review Board-Draft
September 9, 2015

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Public Board Meeting
of the Civilian Complaint Review Board
Wednesday, September 9, 2015
6:41 p.m.
Brooklyn Community Board 3
Restoration Plaza
1368 Fulton Street
Brooklyn, New York 11216

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

PUBLIC MEETING AGENDA:

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1. Call to Order
2. Adoption of Minutes
3. Report from the Chair
4. Public Comments
5. Report from the Executive Director
6. Committee Reports

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Civilian Complaint Review Board-Draft
September 9, 2015

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BOARD MEMBERS PRESENT WERE:

Richard D. Emery, Esq., Chair

Lindsay Eason, Commissioner

Salvatore F. Carcaterra, Commissioner

Deborah L. Zoland, Esq., Commissioner

Deborah N. Archer, Esq., Commissioner

Bishop Mitchell G. Taylor, Commissioner

Janette Cortes-Gomez, Esq., Commissioner

Youngik Yoon, Esq., Commissioner

Joseph A. Puma, Commissioner

Mina Q. Malik, Esq., Executive Director

**Civilian Complaint Review Board-Draft
September 9, 2015**

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Proceedings

CHAIR RICHARD D. EMERY: So let's call the September Civilian Complaint Review Board Meeting to order. And we have a quorum. We are expecting at least one more person -- two more, right? Joe's coming, isn't he? Do we expect Joe Puma?

MS. MALIK: I believe so, yes.

MR. EMERY: Brian?

MS. MALIK: He's coming.

MR. EMERY: So we expect at least two more people. But I do think we should move ahead since people are here on time.

And let's start with an adoption of -- an adoption of the minutes, they were distributed previously. Do we have a motion for the adoption of the minutes?

BISHOP TAYLOR: I move. So moved.

MR. EMERY: Second?

MS. ZOLAND: Second.

MR. EMERY: Second, Debbie.

All in favor?

(Members raise their hands to vote.)

MR. EMERY: Any opposed?

(No response.)

Civilian Complaint Review Board-Draft
September 9, 2015

4

1 Proceedings

2 MR. EMERY: Okay. No -- any amendments, any
3 discussion? Okay. There are a number of issues
4 tonight. Where is -- is -- Linda, the people
5 here who we -- all right. (Inaudible.)

6 MS. ZOLAND: We don't have agendas.

7 MR. EMERY: We don't have an agenda? Okay,
8 we should -- where is -- where are our materials
9 here?

10 MS. MALIK: Marcos?

11 MR. EMERY: We need materials for the board
12 members.

13 MR. SOLER: Give me one second.

14 MR. EMERY: Actually all -- all the board
15 members do not have materials. I don't -- I
16 don't have --

17 MS. ZOLAND: We have pads.

18 MR. EMERY: I don't -- you have pads?

19 MS. MALIK: There's Joe.

20 MR. EMERY: There's Joe. Hi, Joe.

21 Well, this doesn't have -- do we have
22 the --

23 MS. MALIK: Thank you.

24 MR. EMERY: -- package? Where's the package?
25 Isn't the package out front? We have a fairly

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

thick package of materials that should be in front of the board.

We are going to -- some of us are not going to wear our coats. I urge you to be comfortable. I don't think there's any necessity for formality given the fact that we don't have air conditioning, notwithstanding this nice place to gather, but -- so I -- and it's hot -- it's a hot night, for those of you who don't understand that watching on the web. So we're not standing on formality.

MS. MALIK: Thank you.

MR. EMERY: All right. Does everybody have a packet at this point and an agenda? All right. We all set?

First of all, I would like very much to thank Stefani Zimmerman, who is Chief of Staff for -- to Councilman Cornegy, a councilman in this district who invited us here and done the work to prepare this venue for us. And I very much appreciate it. It's the second time we've been here, and I think it's great to be in this neighborhood and with the people here. So, many thanks to those who helped put this together, and

Civilian Complaint Review Board-Draft
September 9, 2015

6

1 Proceedings

2 particularly, the Chief of Staff and Councilman
3 Cornegy.

4 Let me just say a couple things about some
5 issues that are report -- that are on the agenda
6 as report from the Chair. First of all, the
7 mid-year report was obviously interestingly
8 received. I'm sure we're gonna get a lot of
9 continuing commentary as the wealth of statistics
10 and information and observations in there that
11 are read, and digested, and debated in the
12 community that cares about our issues. I'm sure
13 that we'll have public commentary on that --on
14 the mid-year report tonight, and also, of course,
15 on the current numbers which are more up to date
16 through the Executive Director's Reports through
17 August.

18 Anything that any board members want to
19 discuss with respect to the mid-year report, and
20 its distribution and publication recently?

21 (No response.)

22 All -- everybody satisfied with it? Okay.

23 Where's Lindsay? What happened to Lindsay?

24 MR. CARCATERRA: He'll be right back. He
25 just had to make a phone call.

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

MR. EMERY: All right. I want to -- I do want to wait for him. I guess I can go on to one other thing. We've had an ongoing debate and internal discussion and discussions with the Corporation Counsel's Office about the degree to which we reveal identification of officers in a number of different contexts, in our actions with respect to the media, with respect to FOIL requests, and most particularly, and most importantly, with respect to complainants.

We've had a number of meetings. We've had a lot of legal analysis. We have Vasudha Talla on the staff, who has done a lot of legal analysis for us with the rest of the legal staff. And I think we've reached an agreement or a position, with respect to what we can and what we cannot reveal under 50A to complainants.

The other issues are a little more open. I think the FOIL issue and the issue of media, we are pretty well foreclosed by 50A. These are harder and more difficult discussions. But the easier discussion and the point that we have reached with the help of the Corporation Counsel and a lot of advice back and forth and even some

Proceedings

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2 changing of positions, but nevertheless, in an
3 intellectually rigorous exploration of this 50A
4 issue, is that we will now, and we have been, I
5 think, very recently, re-formulated our letters
6 that communicate with complainants the results of
7 panel recommendations; so that, complainants
8 receive those results with the officer's name
9 attached to the results. Notwithstanding the
10 fact that there maybe substantiations, and that
11 there may -- this is considered part of the CCRB
12 investigatory independent function, a function
13 separate and apart from its function in the
14 disciplinary process of the New York City Police
15 Department.

16 And therefore, we feel safe and we feel
17 that it's appropriate under 50A to provide
18 complainants -- and after all it's only fair when
19 complainants go through the whole process of an
20 investigation that results in a panel
21 recommendation that they be notified of the
22 results of those panel determinations.

23 The more difficult issue and still open is
24 what happens when there's final discipline at the
25 police department. That is not yet resolved and

Civilian Complaint Review Board-Draft
September 9, 2015

9

1 Proceedings

2 we are still working on that. But panel
3 recommendations will definitely -- complainants
4 will definitely receive the specific results with
5 the officers' names, when they've been
6 identified, of panel recommendations. And I
7 think -- and I hope and think that's a big step
8 forward.

9 Any discussion or thoughts about that?

10 BISHOP TAYLOR: Is there an issue with
11 revealing the officer's name in the disposition
12 letter? Is there a question about that?

13 MR. EMERY: Well, there was a question about
14 it and what we've come to is that in our
15 disposition letter we can now reveal the name of
16 the officer in conjunction with the panel
17 recommendation and after the CCRB acts. It's
18 still an open question, after the New York City
19 Police Department acts, that's not clear even
20 though it's a CCRB case, and we're still working
21 on that.

22 There is one solution that we can
23 transport from what we've done in the past to, as
24 a practical matter, solve that latter problem of
25 the police department. And that is, if we

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

identify officers as one, two, three, and four in the disposition letters from panels, and then simply don't name the officers again but say the number in the letter that's communicated after the New York City Police Department disposition, we've sort of solve the problem. But I'm not sure that somebody wouldn't challenge that or that there wouldn't be questions about that. And so we're --

BISHOP TAYLOR: Well, I think --

MR. EMERY: -- trying to deal with this.

BISHOP TAYLOR: The reason why I raise it, and I knew the answer, but the reason why I raise it is because, the complaint is based on the complainant identifying the officer.

MR. EMERY: Sometimes it is, sometimes it isn't, right?

BISHOP TAYLOR: Right, well --

MR. EMERY: Right.

BISHOP TAYLOR: Yeah. Well, in some form or fashion they give us some lead. He had a black tie --

MR. EMERY: Right.

BISHOP TAYLOR: -- whatever. And so we go on

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

that pathway to identify. And then once it's confirmed, you know, I don't think it's a secret that me and you had a confrontation that resulted in this complaint. So I don't know why, you know, the identification post the investigation is such a bad thing if it's already known.

MR. EMERY: Well, I think that's why in some sense we have obtained the result we have and we are able to put it in the letters. But as you may know, 50A has been interpreted by the New York Court of Appeals to prohibit disclosure of supposedly anything that can embarrass a police officer, other people as well, but particularly police officers and potentially this could. But since it's not done in its function in a disciplinary context or a personnel context, which is what 50A seems to protect, it's done in a context of an investigation by an independent agency. We found comfort with the Corporation Counsel's advice in doing it the way we're now doing it, which is identifying the officer's name in relation to the allegation as to whether it's substantiated, unsubstantiated, unfounded, exonerated, and the like.

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

BISHOP TAYLOR: And I guess the purpose of 50A is to protect the officer, right?

MR. EMERY: Well, it is the most protective civil rights statute for government personnel and officers, in particular, in the United States. It inhibits more disclosure. I think one of the things we may want to be discussing is what legislative initiatives we want to support in the future.

I, for one, would like to be as transparent as possible about our operation and our findings and the ultimate findings, 50A has been an obstacle to that kind of transparency. And I'm afraid that this agency has suffered from the non-disclosure of its results in the past. And the more we can disclose the better off we are. The more people understand how we go about our business and what the results are, the better off this agency is.

BISHOP TAYLOR: And then the other thing is, we represent the public.

MR. EMERY: Right.

BISHOP TAYLOR: So I mean, you know...

MR. EMERY: So that's the theory and so we're

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

pushing the envelope on this.

MR. PUMA: I have an additional question here.

MR. EMERY: Yeah.

MR. PUMA: Mr. Chair, I wanted to flush out and clarify the issue of notification to the complainants about police department action. Is that a letter that they get from the police department or is that a letter that currently -- in terms of current practice, that they get from our agency?

MR. EMERY: My understanding is, and people correct me if I'm wrong, we send out letters as to the final discipline that comes in CCRB cases from the police department.

MR. PUMA: Regardless of whether it's a charges case or it's any --

MR. EMERY: Well, they are almost always charges cases. I guess -- I mean -- if our cases in -- I don't know what we do in the cases where they reduce or dup -- I mean when they're not charges cases. Certainly in charges cases, that's what we do. They are witnesses, they are essentially the people who have helped the

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

prosecution -- in our case, the prosecution unit -- pursue.

Maybe somebody else can enlighten me what we do in -- in cases where there's CD'S or instructions, that are not followed by the police department. Do we notify complainants in those situations? Anybody know? We must have some -- Tom -- I mean, we must know that. Nina certainly knows it. We can report on that, because I do think that it's not that many cases. John, do you know?

JOHN: We do not.

MR. EMERY: We do not notify?

JOHN: No.

MR. EMERY: Okay. Well, I -- we probably should talk about that. Because it seems to me that if the police department takes a different position than we have, and then the person ought to be notified that the discipline that we recommended that they're now being told is going to -- is part of our recommendation, is not occurring. So that's part of the same discussion. But that would certainly be a thornier thicket, because of the fact that it

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

really is a personnel decision at the police department.

Now, I'm sorry to -- anyone has more comments on this?

I have to go back to something that's a little bit tricky and complicated and rehearse some of the history and talk about it here so that we're understood as to what's going on in our Garner investigation. We've talked about the Garner investigation by the CCRB for some time. We've talked about it in various board meetings in the past, April and June in particular, at some lengths, and then some other references in other past board meetings.

And the Garner investigation has been taking place at the CCRB since the event occurred on July 17th last year. A field team went out, there were witnesses interviewed, but then very shortly after we started our investigation, it was put on DA hold. Then the DA hold was lifted when there was no true bill in December.

And we wanted to start up the investigation again, but the federal government -- the Eastern District of New York --

**Civilian Complaint Review Board-Draft
September 9, 2015**

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Proceedings

called us up and said they were on a DA hold. They wanted us to hold it. We felt obliged to do that. And we did hold it in abeyance pending that final resolution in the Eastern District. That situation still exists. The Eastern District still is investigating the Garner case.

So we are not permitted to go out and interview witnesses or bring in police officers, and ask them for what their evidence is. However, we are permitted to -- I mean we took the position as a board that we are permitted to seek the results of the police department investigation, which we tried to get for some six months, and ultimately did get in June.

And we initiated litigation in May to seek the grand jury minutes from the Staten Island District Attorney. And our theory of that case, which we pursued publicly, openly, was that we were in a different position with respect to grand jury secrecy, because we were not seeking to publicize those minutes. We were seeking simply to review them as evidence in our disciplinary proceeding, and do what a good investigation would do, and that is, thoroughly

**Civilian Complaint Review Board-Draft
September 9, 2015**

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Proceedings

investigate all contemporaneous statements, statements under oath, statements by the medical examiner, statements by the experts who appeared before the grand jury, statements by all the witnesses who appeared before the grand jury.

Janette, come up please. Where are you sitting? Come sit here. All right, thank you. Joined by Janette Cortes-Gomez.

So we were seeking to gather the documentary evidence, which we would ultimately be relevant to our investigation and to the panel determination of whether there was misconduct. We sought -- we argued the case in June. Shortly after that argument, we obtained the file or we had access to the file of the police department and reviewed that file of the police department, and then there was a court decision, I believe August 20th, or thereabouts, that denied us what we believed was the appropriate access to the grand jury materials. And when I say appropriate access, I think it's important for us to understand that the access we were seeking was not to publicize it, not to make it in any way available to anyone other than the investigators

Civilian Complaint Review Board-Draft
September 9, 2015

18

1 Proceedings

2 under court supervision or under the district
3 attorney's supervision; we would go there, we
4 would review what we had to review, and go
5 forward with the evidence we collected. There
6 was a very nasty, I think completely erroneous,
7 decision issued by Justice Garnett in Staten
8 Island, who denied us our access to these
9 minutes, notwithstanding the fact that there's a
10 substantial body of law that says grand jury
11 minutes should be available to a governmental
12 disciplinary body when there are disciplinary
13 issues that are about which the grand jury
14 minutes are probative.

15 And that decision, consistent with our
16 position and that decision, I had announced
17 publicly that we intended to appeal it, and we
18 intended to do an expedited appeal in order to
19 make it worthwhile. Because if you did do a
20 regular appeal, it's going to be too late under
21 any scenario. So we wanted to do an expedited
22 appeal.

23 At the same time, I asked -- we had up to
24 that point, litigated this issue with our own
25 lawyers, which we do frequently. I mean, lawyers

Civilian Complaint Review Board-Draft
September 9, 2015

19

1 Proceedings

2 at the CCRB litigate quite frequently, most
3 prominently Brian Krist, who's here tonight. He
4 does and we do FOIL litigation, we do subpoena
5 enforcement litigation, we do all kinds of
6 litigation. And this was in fact subpoena
7 enforcement litigation and grand jury -- attempt
8 to get the grand jury records under the
9 applicable statute and its exception to secrecy.

10 Then -- so in April -- on August 20th, the
11 court ruled that we were not entitled to that.
12 We have an appeal date of September 20th; that's
13 the outside date by which we can appeal. So it
14 had to be essentially brought up at this meeting
15 tonight because this is the last time the board
16 is going to get together before that appeal date
17 expires; unless we had an emergency meeting which
18 doesn't seem necessary for this.

19 So the issue here tonight is not whether
20 we're going to appeal or not -- and I'll explain
21 that in a minute -- but how we deal with this
22 problem. Because when I brought it to the
23 Corporation Counsel's Office, asking them for
24 help with the appeal and asking them for support
25 in this appeal, they determined, Zac Carter

**Civilian Complaint Review Board-Draft
September 9, 2015**

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Proceedings

particularly determined that he did not want to appeal this case. That he felt that the judge's opinion was right, that we did not have what is called particularized need, especially since we had the police file, to proceed with our appeal. And I strongly disagree with him. I've -- I've made a career of disagreeing with the Corporation Counsel's Offices, so it's nothing new. But I strongly disagreed with him, and we had a debate, which I think each of you has probably seen in the emails that went back and forth from me and Zac Carter. Those are attorney-client emails, so I don't want to go into those emails, but they are statements of our respective positions, I think it fair to say.

And moreover, there's no equivocation about the fact that Zac, as Corporation Counsel, under the charter has the final say as to what city agencies can do in a litigative mode. And nobody can quibble with that. We are, for those purposes, I'm convinced, defined as a city agency. We are bound by Zac's opinion; and therefore, if he says we can't appeal, we can't appeal. I think it's very important that the

Civilian Complaint Review Board-Draft
September 9, 2015

21

1 Proceedings

2 public understand this board wants to appeal
3 that, win, lose, or draw. Because the integrity
4 of our investigation, in my view, depends on this
5 in some sense. Because we now are in a position
6 of relying substantially on the police department
7 investigation.

8 And I don't have any reason to doubt the
9 police department investigation is an attempt
10 at a rigorous investigation, but they don't swear
11 their witnesses. They don't swear their police
12 witnesses when they do the IAB investigation.
13 Mina and I reviewed the investigation and they
14 weren't sworn statements, and they do it their
15 way and it's not our way. And moreover, the City
16 Counsel created this entity to do independent
17 investigations, not to defer to the police
18 department investigations. That's the whole
19 purpose as to why we exist.

20 And so I think very strongly that we
21 should -- I happen to think it's a very strong
22 case because there's no grand jury secrecy that's
23 really in jeopardy here, and if ever there a
24 situation where anybody could review the grand
25 jury minutes, it's this one, in my view, as a

Civilian Complaint Review Board-Draft
September 9, 2015

22

1 Proceedings

2 governmental agency and responsible for
3 maintaining secrecy and the like. But I did not
4 prevail on that point.

5 And I have no doubt that Zac Carter's
6 opinion is based on his intellectually honest
7 view of the law. It's not based on any direction
8 from anybody. I don't want anybody to suspect
9 that Zac Carter's view of this case comes from
10 either the Mayor or the police department. It
11 doesn't. And I'm quite confident of that fact.
12 It comes from his own view, and his experience as
13 a prosecutor with respect to grand jury minutes.

14 However, that leaves us in a bind. I feel
15 in a bind about this issue. Because we publicly
16 said we want to get those grand jury minutes as
17 part of the rigorous investigation that's
18 conducted with integrity and an independent board
19 seeking to determine what happened in the Garner
20 case and determine whether we should be
21 disciplining any of the officers involved. And I
22 certainly think that we're not going to be lax in
23 that regard in any way, shape, or form. And I
24 want it clear to the public, and the community at
25 large who's concerned about us doing a rigorous

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

investigation in the Garner case. And after all, if the Eastern District does not prosecute, it's not an issue if the Eastern District prosecutes, right? If the Eastern District prosecutes, we don't have a role anymore we just sit back and that's it.

But if the Eastern District doesn't prosecute, which is somewhat likely in my view, then we are the only independent agency left. There's no prosecutor, there's no attorney general, there's no special prosecutor. There's just us that has to dig into what happened here and seek discipline, if any is going to happen, other than by the police department. And the police department by definition is not an independent agency.

So my view is, is that win, lose, or draw, this is a good case. It's a good case, number one, in my view, notwithstanding that Zac differs with me. But more importantly, it's a case which demonstrates the integrity of this agency and its independence. And we have to pursue it to the extent we can. He's not allowing us to, we have to respect that. But I have asked that a

**Civilian Complaint Review Board-Draft
September 9, 2015**

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Proceedings

resolution be drafted and the resolution reads as follows, I really want everybody to vote their conscience on this. I don't -- I'm not asking -- I would like this resolution to be passed, obviously, that's why I'm offering it, but I just want it to be clear and open and transparent what certainly my position is, and ultimately, I hope, what the board's position is.

And the board resolution that I'm proposing reads as follows:

"It is resolved that, unless and until the Board otherwise resolves, the CCRB believes that it is legally entitled to obtain the grand jury evidence related to our investigation of the Eric Garner matter consistent with the litigation that the CCRB initiated in Staten Island Supreme Court. We further seek to appeal that Court's adverse decision to the Appellate Division Second Department and if necessary to the New York Court of Appeals.

"We respectfully request the support and representation of our lawyers at the New York City Law Department in pursuit of this appeal. If the Law Department does not wish to represent

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

us, or does not choose to represent us, we respectfully request permission to represent ourselves in pursuit of this appeal. Of course, the CCRB will abide by the Law Department's final decision in this matter.

"Regardless of the outcome of the litigation, the CCRB will do everything in its power to continue its investigation into the death of Eric Garner."

So I'd love to have other people's views of this and have discussion on it, and then ultimately try and vote on it.

Any comments?

BISHOP TAYLOR: I don't want to be the first to comment, but a couple of questions I had. Do we know if there was any disciplinary action issued on the police department's behalf on any officers involved in the Garner case at all?

MR. EMERY: We do know that there has been none at this point.

BISHOP TAYLOR: There's been none?

MR. EMERY: Right.

BISHOP TAYLOR: Okay. The second question I wanted to ask is, Mr. Carter talks about our

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

actions possibly foreclosing future access
because we don't have a particularized need.

MR. EMERY: Mmm-hmm.

BISHOP TAYLOR: And because -- without
revealing the context of the conversation, but if
there's access to the same information from other
sources, it neutralizes the idea of a
particularized needs.

MR. EMERY: Mmm-hmm.

BISHOP TAYLOR: Which is, in his words, I
guess the antithesis of what we're trying to
accomplish. So I'm trying to figure out, you
know, although my view is that we are the agency
that represents the public, right? And so,
having access to as much information as possible
in order to possibly adjudicate this case on
behalf of the public, I think, is what we're
looking for.

But I'm trying to understand what
Mr. Carter is saying in terms of this foreclosing
access in the future hurting our process or other
processes.

MR. EMERY: Well I can say, without going too
far into it, that his view is that if we have

Civilian Complaint Review Board-Draft
September 9, 2015

27

1 Proceedings

2 access in this case, we'd have access in every
3 case and that that can't be correct. I don't
4 agree with that. I think that where this agency
5 should review grand jury materials where a police
6 officer is being investigated, we should have
7 access in every case, and that we do not have to
8 reveal those grand jury minutes. They do not
9 become public. They remain secret as practical
10 matter under the court's supervision; and
11 therefore, there is nothing wrong with us looking
12 at the minutes. That's number one.

13 Number two is, particularized need is a
14 pretty undefined concept in the law as I have
15 reviewed the cases. It doesn't mean that you --
16 let me put it this way -- let me try and say what
17 it does mean. I think in an investigation, an
18 investigation's that's conducted with rigor and
19 integrity, as I think ours should be in every
20 case, let alone this case, you want -- every
21 person who's in charge of any investigation wants
22 every statement made by the potential targets,
23 and not only that, wants to under their defenses
24 and wants to understand the expert testimony and
25 wants to understand the other witnesses'

Civilian Complaint Review Board-Draft
September 9, 2015

28

1 Proceedings

2 corroboration or non-corroboration, and wants to
3 have material that might be used for impeachment
4 when that person testifies before us or before
5 the police department's trial division if charges
6 are voted. So if ever there were a
7 particularized need to have a rigorous
8 investigation, it would seem to me the grand jury
9 minutes are probative, relevant, and necessary.

10 Mr. Carter disagrees with me. As I
11 understand, his position is that the police file
12 is adequate. Well, I have a fundamental
13 disagreement with that. The police file is not
14 adequate because it's the police file, and we
15 don't rely on police files. We rely on our own
16 investigations. So I think, by definition, the
17 police file is not adequate; and therefore, we
18 should go forward or urge him to let us go
19 forward.

20 If he rejects it, he rejects it. But we
21 have done everything we can under our legal
22 authority and power to pursue this investigation,
23 and we will continue to pursue it with one hand
24 tied behind our back, but we will continue to
25 pursue it.

**Civilian Complaint Review Board-Draft
September 9, 2015**

29

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Proceedings

BISHOP TAYLOR: And can I assume that PD also does not have access to the grand jury files?

MR. EMERY: They do not have access to the grand jury file.

BISHOP TAYLOR: Okay.

MR. EMERY: And Mina and I have reviewed their file, and the grand jury minutes are not part of it in any way, shape, or form.

MR. EASON: Did the police department make a request for the grand jury minutes also?

MR. EMERY: I don't believe -- I don't believe they did. I don't believe they asked for the grand jury minutes. But I'm not positive of that. But, my understanding is IAB did this investigation on its own, and did not seek the grand jury minutes. I believe the Eastern District has the grand jury minutes, that is, the federal prosecutors.

MS. ZOLAND: Just to follow-up with Bishop Taylor, the police department, you said, has not taken any disciplinary action yet but is that because it has not made any findings and dispositions yet or because it's not taking disciplinary action?

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

MR. EMERY: It's not because it's not taking disciplinary action, and I don't want to --

MS. ZOLAND: That's what I was thinking.

MR. EMERY: I don't want to imply that for a second.

MS. ZOLAND: Right.

MR. EMERY: I think the police departments -- I mean, Mina and I looked at the investigation and I can just say that I have no -- I have no suspicion that the investigation was in any way compromised at all. But at the same time, it's not our investigation, and I think that the status at the police department is that IAB has the case still; it hasn't been transferred to DAO yet with recommendations because of the hold.

BISHOP TAYLOR: Well, isn't that a voluntary hold from the DA?

MR. EMERY: In theory, it's a voluntary hold, but my reading of our charter provisions is that we have to respect that hold. There's a provision in the charter that says something to the effect -- maybe you'll remember it better than I -- that we have to respect coordinate or other law enforcement agency's request.

Civilian Complaint Review Board-Draft
September 9, 2015

31

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Proceedings

MS. ZOLAND: Not interfere with --

MR. EMERY: Not interfere with, yes. And they are telling us that we're interfering if we do anything that is interviewing witnesses and in any way gathering statements. But these statements already exist, so we're not doing anything like that.

BISHOP TAYLOR: But yet there is a school of thought out here saying that, you know, we held because we did it voluntarily, not because we were legally bound to it. According to, you know...

MR. EMERY: Right. The judge, and that's one of his grievous errors in his opinion, in my opinion, said that we were lax in not pursuing it because we respected the DA hold. What he didn't understand or chose not to acknowledge is that we're bound by the DA hold under our authorizing statute.

BISHOP TAYLOR: And so then, someone's wrong then in the interpretation of that voluntary thing if we go back to the conversation between us and Corp Counsel.

MR. EMERY: Yeah. And that's part of the

Civilian Complaint Review Board-Draft
September 9, 2015

32

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Proceedings

judge's ad hominem attack on our agency, which is pretty blatant in the opinion. His bias, in my view, was palpable, and I think the judge's position and decision is indefensible, quite frankly. But that's my view and Zac Carter differs with it.

MS. ZOLAND: Okay. I think that as far as the judge's point of view regarding the zealotness of the Civilian Complaint Review Board, I think is wrong. I think I've seen this kind of thing before, where the court takes advantage of certain time frames and just comes to the conclusion that the agency was lax, and I think that part of the decision is wrong.

However, looking at the big picture and the issue of -- well there's two issues, of particularized need when it was shown. But, I think the bigger issue is that I do not agree that the Civilian Complaint Review Board is entitled to or should get grand jury minutes when a police officer is criminally investigated. Because we're seeking not just the officer's statement, we're talking about the citizens' statements. I think that that would be just

Civilian Complaint Review Board-Draft
September 9, 2015

33

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Proceedings

contrary to the purpose of a grand jury and the secrecy people are -- they say you will -- your testimony will be held secret unless there's an indictment, and that would be not true. As to the secrecy part, I don't believe that we -- I would be concerned about our ability to maintain the confidentiality. Even if there are no leaks and everybody does their job completely well, if we use that information in our findings or we use that information to impeach officers, that means the information is put into the public.

And so for those reasons, I disagree with those portions of the resolution. And I also believe that just as the police department did its own investigation, the Civilian Complaint Review Board can do its own investigation, and I think it has, and it will, and will continue to. So those are my thoughts on the subject.

MR. EMERY: I agree with your last statement. We will definitely do a vigorous investigation to the extent we're capable of doing it. But I certainly think that investigation would be aided by the grand jury minutes that we reviewed. And I do think that the courts all the time --

Civilian Complaint Review Board-Draft
September 9, 2015

34

1 Proceedings

2 MS. ZOLAND: Let me just -- you didn't review
3 the grand jury minutes?

4 MR. EMERY: No.

5 MS. ZOLAND: You said --

6 MR. EMERY: No. I'm just saying there will
7 be -- undoubtedly, we know that officers made
8 statements under oath, the only statements
9 they've ever made under oath, to that grand jury.
10 We know that the key officers, Pantaleo and
11 others, testified at that grand jury.

12 MS. ZOLAND: Okay.

13 MR. EMERY: So, that is clearly an earlier
14 statement which is relevant to our investigation,
15 just like any document representing what a police
16 officer said is relevant in any investigation we
17 do, even though we take the police officer's
18 testimony.

19 In any event, I understand your point, and
20 I do disagree that a judge can't oversee the
21 conduct of our investigation and keep it secret.
22 I think that is something we can do and, in fact,
23 the use of testimony and impeachment and other
24 matters could be very carefully circumscribed.
25 But it certainly would help the panel in making a

Civilian Complaint Review Board-Draft
September 9, 2015

35

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Proceedings

recommendation. And that's what we're chiefly concerned with here, is that our panel be properly informed as to all the facts that underlay the allegations of misconduct in the Garner case.

MS. ZOLAND: And I guess that's where we -- I think where we diverge is that if it will be helpful in every case, there's no particularized need in this particular case. I think your position is you would like to see it in every case but that the law is you need a particularized need. And I don't think that viewing grand jury minutes, that the secrecy of the grand jury should be overwritten because the subject of that criminal investigation or the grand jury proceeding is a police officer.

MR. EMERY: So just let me say one more thing about this, and that is, I don't view the particularized needs standard in the cases that I've read has meaning, that you have to have a particularized need in a particular case. It means that you have to have a particularized need in any case where you're seeking the grand jury minutes. And, quite frankly, when they're not

Civilian Complaint Review Board-Draft
September 9, 2015

36

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Proceedings

being made public, I think the Civilian Complaint Review Board, just as the Public Service Commission, just as a number of other agencies have gotten grand jury minutes have shown a basis for it has a particularized need when the investigation -- if the investigation is going to be rigorous, complete, and serious.

But I understand the hesitancy, and obviously, a very fine lawyer named Zac Carter agrees with you and not with me. But that's, you know, that's the way things are. We disagree, and I don't want to pretend otherwise, and I don't want to paper it over. I don't want to paper the disagreement over. I want it to be understood so the public understands openly if we do not pursue this appeal by the 20th of September why we are not pursuing this appeal.

But I do think that it's certainly my intention to make it clear that from my point of view, this board wants to pursue the every avenue of evidence; and therefore the resolution I hope -- I hope would be passed. But if it isn't passed, it isn't passed.

Any other comments, thoughts?

Civilian Complaint Review Board-Draft
September 9, 2015

37

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Proceedings

Well, I move the resolution. Do I have a second?

BISHOP TAYLOR: Point of information before we take the vote.

MR. EMERY: Yeah.

BISHOP TAYLOR: So the vote is basically to say that we want to appeal and we want the Law Department to support the appeal but we will respect whatever decision they make?

MR. EMERY: Or we will appeal -- yes, we will respect whatever decision they make, that's a given.

BISHOP TAYLOR: Right.

MR. EMERY: Either they will represent us or they will allow us to represent ourselves.

BISHOP TAYLOR: Okay.

MR. EMERY: They do that all the time. The City Counsel represents itself, Public Advocate represents itself -- a lot -- it happens. So that's not out of the ordinary. It's usually out of a conflict but they can do it because they don't believe the case has merit. And they can say go represent yourself, if they want to authorize us to do that. But in any event, if

Civilian Complaint Review Board-Draft
September 9, 2015

38

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Proceedings

they say they're directing us not to appeal, we will abide that.

MR. EASON: What are the chances of, what we know going into this meeting, a resolution will change that, in terms of how the Law Department feels currently?

MR. EMERY: That an excellent question, Lindsay. And quite frankly, I don't think it'll change their opinion at all. I think it's more of a stance that we are taking as a Board for the integrity of this process, and for the full vigorous position that the Civilian Complaint Review Board will take in the Garner case. To me, it is a statement that the Board wishes to pursue all the evidence that might be obtained. We don't know whether a court will agree with us. But we might have -- we have a shot, we might have a shot at getting it, and, in my view, we should try and get it if there's a shot.

Do we have a second?

BISHOP TAYLOR: I so move.

MR. EMERY: Okay. All in favor?

(Members raise their hands.)

MR. EMERY: Are you in favor?

Civilian Complaint Review Board-Draft
September 9, 2015

39

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Proceedings

BISHOP TAYLOR: Oh, yes.

MR. EMERY: Okay. Anyone else in favor?
One, two, three...five in favor.

All opposed?

(Members raise their hands.)

MR. EMERY: Three. Debbie, you're not
voting?

MS. ARCHER: I'm abstaining.

MR. EMERY: Abstaining, okay.

Does that pass or not? I don't know as a
practical matter. Is a majority -- it's five,
three, with one abstaining. Well, let's just
record the vote and whatever it is, it is. All
right.

One quick other thing from me, and then
we'll move on. I'm sorry to take so long on this
but I think it's an extremely important matter
and it deserves the time and thought we gave it.

This morning I made a mistake on the Brian
Lehrer Show, and I just want to be very clear
about it so that in a public forum the mistake is
corrected. I said that we informed complainants
when they come in of their, I said, their
obligation to tell the truth and that they could

Civilian Complaint Review Board-Draft
September 9, 2015

40

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Proceedings

potentially be exposed to some legal proceedings if they did not tell the truth. That's not quite correct. We do tell them that they have to tell the truth. We ask them to sign a verification form that they swear to in a verification form, but we do not tell them that they might be subject to further legal proceedings, although that may be implied.

So I just wanted to correct that as a matter of record in a public forum, even though it doesn't have near the audience that Brian Lehrer had this morning. So I just want to be clear about that.

Let's have the Executive Director's Report.

MS. MALIK: We're doing the public comments.

MR. EMERY: Yeah, let's do Executive Director's Report first.

MS. MALIK: Good evening, everyone. My name is Mina Malik. I am the Executive Director of the Civilian Complaint Review Board. I would like to thank Council Member Cornegy and his Chief of Staff Stefani Zinnerman and Community Board 3 for hosting us tonight and assisting us

**Civilian Complaint Review Board-Draft
September 9, 2015**

41

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Proceedings

in being here.

I first want to provide you with some highlights from our monthly statistical report. And we'll discuss other matters pertaining to the operations of our agency. For a full review of the agency's monthly statistics, I direct you to our website.

I'd like to point out that year-to-date civilian complaints against the police have decreased by 18 percent. From January through August of 2015, the agency received 2,889 complaints versus 3,512 complaints in 2014 for the same time period. Discourtesy complaints have decreased by 27 percent, force complaints by 19 percent, offensive language complaints by 20 percent, and abuse of authority complaints have decreased by 11 percent.

From January through August of 2014, the agency received an average of 439 complaints per month. And in 2015, there were two distinct patterns that emerged. From January through March of this year, the average of -- there was an average of 291 complaints per month, and from April through August, the average rose to

**Civilian Complaint Review Board-Draft
September 9, 2015**

Proceedings

approximately 403 complaints per month.

In August, case processing times continued to improve, even though there was an increase of cases in the open docket of the Investigations Division. In August, the total open docket was 1,288 cases, and that included all cases in investigations, mediation, and those pending Board review.

Despite an increase in the number of cases in the open docket, the number of cases in the open docket continues to be lower than at any point in the last decade. A year ago the open docket of the investigations was 1,834 cases and in August of this year it was 658 cases, which is a 64 percent reduction.

In August we continued to focus on cases that were nine months and older in order to minimize the number of cases approaching the statute of limitations, which is 18 months. At the end of August there were three cases that were 18 months or older, four cases that were 15 to 18 months old, and 19 cases that were nine to 14 months old. Only four percent of all cases under investigation in August of this year were

**Civilian Complaint Review Board-Draft
September 9, 2015**

43

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Proceedings

nine months or older, as compared to 15 percent in August of last year.

And in August of this year, 89 percent of the cases in the open docket of the Investigations Division were four months or younger, which was 28 percentage points better than in August of 2014. These docket numbers represent and continue to be the best docket numbers since the creation of this agency as an independent agency for the New York City Police Department.

At the end of August, there were 482 cases pending Board and/or executive staff review. 148 of the cases were in our mediation program and ten of them were on DA hold. Our statistics show that month after month we continue to meet the new benchmarks and the goals that we have set for ourselves in terms of timeliness.

We've reviewed the productivity of the Investigations Division from January through August, and we continue to find that investigators under the new smaller squad structure are able to close cases in substantially less time than it took

Proceedings

investigators to close cases under the former larger team structure. 1,550 full investigations were closed by our investigators from January through August of 2015, compared to 1,321 cases last year, and that reflects 15 percent more full investigations.

Of the cases filed after the implementation of the reforms in the Investigations Division, the division has closed 664 cases. These cases were closed at an average of 86 days, which represents a 70 percent reduction in the number of days to close full investigations compared to a year ago. The average time to investigate a substantiated complaint decreased from 343 days before the reforms in the Investigation Division to 101 days after the reforms. That reflects a 71 percent reduction.

There are also other statistics showing that the new squad structure is far more effective than the former larger team structure. For example, the average number of days to interview a complainant is 31 days in the first half of 2014 compared to 12 days year-to-date in

**Civilian Complaint Review Board-Draft
September 9, 2015**

45

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Proceedings

2015. The average number of days it takes to interview the first officer was 182 days from January through August of 2014, compared to 56 days year-to-date this year.

With respect to complaining witnesses' interviews, our investigators interviewed 1,816 complainants and witness from January through August of 2015. 1,617 civilians were interviewed at the CCRB and 199 civilians were interviewed outside of the CCRB -- this is for you, Chris Dunn. By comparison, in 2012 and 2013, seven percent of civilian interviews were at other locations outside of the CCRB. In 2010, four percent of civilian interviews were outside at other locations.

I also want to highlight some statistics related to the disposition of our cases. To date, the case resolution rate is 49 percent. In terms of cases not fully investigated, six percent were complaint withdrawn; 32 percent were complainant and/or victim uncooperative; 8.5 percent were complainant and/or victim unavailable; and .4 percent were victim unidentified; and 3.3 percent were

**Civilian Complaint Review Board-Draft
September 9, 2015**

46

Proceedings

administratively closed cases.

With respect to the truncated cases and the reasons for civilians withdrawing their complaints, which Chris Dunn brought up at the last board meeting, 58 percent of civilians withdrew because they had no desire to follow through; 11 percent of civilians stated they did not have time for an interview; eight percent withdrew upon the advice of their counsel; six percent feared retaliation; and in 16 percent of cases, civilians withdrew their complaint without providing other reasons or for no reasons at all.

Year-to-date the Board substantiated 22 percent of all full investigations, which is higher than the percentage for the same period last year when the Board substantiated only 15 percent of the cases it fully investigated, and notably, the Board has substantiated 34 percent of all fully investigated frisk allegations.

Year-to-date the agency has resolved 235 cases through our mediation program, and 25 percent of all substantiated cases were referred to the Administrative Prosecution Unit. To date, the Administrative Prosecution Unit conducted

**Civilian Complaint Review Board-Draft
September 9, 2015**

47

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Proceedings

seven trials against 10 members of service in July of 2015.

And from January to July of 2015, the discipline rate was 89 percent for cases in which police misconduct was substantiated by the Board and sent to the Department Advocate's Office with penalty recommendations. The police department's decline-to-prosecute rate was ten percent from January through July of this year. However, I'm happy to report that the department's decline-to-prosecute rate for the month of August was zero.

MR. EMERY: Did you want to do something else publicly or the Marcos thing or was that later?

MS. MALIK: Maybe later. The other update that I would have is our update on the rules, which we've been dealing with for a few months now. And we have gotten some comments from the Mayor's Office of Operations, as well as the Law Department, to incorporate into the rules structure. And so we should have that for the board, and for final review of the board probably tomorrow. I'm going to email it to all of you.

MR. EMERY: When will the public comment

Civilian Complaint Review Board-Draft
September 9, 2015

48

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Proceedings

period start?

MS. MALIK: So we will schedule a hearing date for public comment, and that should be hopefully scheduled within the next month.

MR. EMERY: Okay. Is that it?

MS. MALIK: That's it.

MR. EMERY: Good. We're going to go to the public comment section. Mr. Grady -- O'Grady?

BISHOP TAYLOR: Can we do --

MR. EMERY: Oh, sorry.

BISHOP TAYLOR: -- can we do committee reports first?

MR. EMERY: You want to do committee reports first?

BISHOP TAYLOR: Yeah.

MR. EMERY: Okay. Sorry. Can you just wait one short time? Thank you.

Go ahead, yes.

BISHOP TAYLOR: All right. Just as a point of information for Outreach. We have five positions that we are filling on the Outreach Committee, and I'm excited to report that we have filled two of those positions. And I just want to talk about the two exciting people that are on

Civilian Complaint Review Board-Draft
September 9, 2015

49

Proceedings

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2 the team.

3 Ms. Sylvia Ancrum, who I had the privilege
4 of meeting when we were at our -- stand up and
5 just wave to everybody -- I had the privilege to
6 meet at our CCRB meeting in Staten Island. I got
7 there early to meet with a friend of mine, Rev.
8 Demetrius Carolina, who opened up the center for
9 us to have the meeting, and Ms. Ancrum came in
10 and I had a chance to meet her then and talk
11 briefly. However, I did not influence the
12 process of her applying for this job, but I'm so
13 glad that she did. She spent the last 11 years
14 working as Constituent Liaison in the office of
15 the New York State Assemblyman Matthew Titone;
16 where she was responsible for attending public
17 meetings, and relationship management with
18 community leaders, and such a like. And so we're
19 proud to have her on board.

20 And then also Mr. Gregory Glover, who is
21 from the Kings County District Attorney's Office
22 as a Grand Jury Intake Clerk and Community
23 Service Aide. He also ran a couple of campaigns
24 and very closely connected to churches, civic
25 associations, and such a like. And so, Mr.

Civilian Complaint Review Board-Draft
September 9, 2015

50

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Proceedings

Glover can you stand and just identify yourself?

Thank you so much, both of you, for being on the team.

We had a NYCHA event on, I think, yesterday, right? In Queensbridge, and so they had a chance to firsthand get out into the community.

So we expect in short that, Outreach is going to really begin to take off now, and we've had an in-person meeting to kind of plan out what Outreach is going to look like, and we're still in that mode. And myself, Joe Puma, and Janette Cortes-Gomez, and Lindsay Eason are aggressively working with the staff to make sure that we're successful. Thank you so much.

MR. EMERY: Thank you. Any other committee reports before we go to public comment?

(No response.)

Okay. Mr. O'Grady. Good evening.

MR. O'GRADY: Hello, hello, hello. This thing work?

MR. EMERY: Yeah. For you, it works.

MR. O'GRADY: There are typos; unfortunately, there are typos. I have some copies that I've

**Civilian Complaint Review Board-Draft
September 9, 2015**

51

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Proceedings

brought here. When are we going to get a full Board?

MR. EMERY: Good question, you know, we're working hard at that. And --

MR. O'GRADY: Talk to the Mayor.

MR. EMERY: You, as our most loyal follower and supporter, are entitled to a full board.

MR. O'GRADY: Well, I wish it wasn't that I have an ax to grind.

MR. EMERY: I wish -- I agree.

MR. O'GRADY: Does everyone have a copy?

MR. EMERY: Thank you.

MR. O'GRADY: So there are some typos over here. Page 39, line 14 and 17, Mel Barkan is spelled Mel, I guess it's Melvin, B-A-R-K-A-N, not -- there's no K. That's the fourth line 14. And also Zarno, is Z-A. Z-A, not Z-O. Mel Barkan, B-A-R-K-A-N. I don't know -- I guess it's Khan, that sounds Arabic. And page 40, line six -- line six, that's the 42nd Street Library. Fourth century, fourth -- it's 42nd Street not fourth century, 42nd Street Library. I'm sure everyone knows where that is. And line 14, elude not allude, E-L-U-D-E, elude military service.

Civilian Complaint Review Board-Draft
September 9, 2015

52

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Proceedings

And line 18 -- line 17 rather, page 40, if her able-bodied son, not if an able bodied son, if her able bodied son will not served the nation. Okay.

So what I want, I want to bring to your attention -- and actually the sergeant who signed this, Command .501, Salotano. Actually I don't know if it's Salotano, but a detective, a cop, and -- I guess he was a detective -- I know he was a cop, but he was in plain clothes. He told me that it was Sergeant Salotono. I don't know about the penmanship, though. But -- okay.

So a sergeant at the front desk at the 24th Precinct in Manhattan indicated the 28th Precinct Integrity Control Officer is a strange animal. The sergeant at the 24th Precinct said that the 28th Precinct Integrity Control Officer is a strange animal. Most New York City police precincts change Integrity Control Officers once every five years, and this is according to the 24th Precinct sergeant. The 28th Precinct change their Integrity Control Officer every week. That is 52 times a year. This is a strange animal, the 52 -- the 28th Precinct. And this is what I

Civilian Complaint Review Board-Draft
September 9, 2015

53

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Proceedings

was -- I was told by the sergeant at the desk at the 24; that the 28th Precinct changes their Integrity -- Integrity Control Officer every week, while other precincts change every five years.

So, the middle -- middle school American young people are given the name John Wilkes Booth. Not -- not so with the name Mary Suratt, sex partner -- sex partner of John Wilkes Booth. Mary Suratt, sex partner of John Wilkes -- John Wilkes Booth. This information is attributed at Ulysses S. Grant, Julia Dent Grant, Federal Installation, Riverside Drive, New York City.

Mary Suratt was -- Mary Suratt was held and subdued for planning, plotting, masterminding the attack on President Lincoln. When she was subdued, she asked for contact with a Roman Catholic priest. Mary Suratt was not allowed contact with any Roman Catholic priest. A Roman Catholic priest was allowed to join Mary Suratt standing on the gallows platform, according to Ulysses S. Grant information. Mary Suratt was the first woman in the United States given capital punishment.

Civilian Complaint Review Board-Draft
September 9, 2015

54

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Proceedings

MR. EMERY: Thank you, Mr. O'Grady.

Chris, will you come up to the podium please? Thank you.

MR. DUNN: Good evening.

MR. EMERY: Good evening.

MR. DUNN: All right. So, Richard, kudos to you for your Garner crusade. I think that a Board decision requires a majority of the Board. So I'm concerned that your resolution, even though you got a plurality of people here, a majority of people, it did not pass.

I will say though, that I think you're absolutely right. I think it is important for the integrity of the agency that you pursue an appeal. I think the City should do that. I understand why police department reps voted against it, but I disagree with that.

And I will say if Zac will not represent you, we will. Although, as you know, we have a case involving that which is on the way to the Court of Appeals.

MR. EMERY: Well if Zac allows us, we'll let you -- we'll consider having you represent us.

MR. DUNN: There we go.

Civilian Complaint Review Board-Draft
September 9, 2015

55

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Proceedings

MR. EMERY: But I think we'll do it ourselves, though.

MR. DUNN: Okay. Well, you know --

MR. EMERY: As much as I would like you to because you're a very good lawyer.

MR. DUNN: There we go. The other thing I wanted to mention, which you paid some mention to at the beginning, is the issue of the semi-annual report. I will say, as I intimated to you at the beginning of the meeting, before the meeting, I disagree with the presentation that got made about the semi-annual report.

I am the first person and I think we are the first organization that would commend the police department when we saw serious improvements in police misconduct. And I would like to think, that we would be the first people to publicly say so. I feel like the Board's presentation about the statistics that are in the semi-annual report significantly overstate the progress the department is making, and I think ignores -- and I don't mean maliciously -- but I think underplays some significantly troubling patterns.

Civilian Complaint Review Board-Draft
September 9, 2015

56

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Proceedings

So I'll just point to a few things, and I take this, starting off with the basic presentation or the message that came out of the Board was police misconduct is a significantly decreasing problem in the City of New York, and it is a problem that is limited to an isolated number of police officers. Those are the two big messages I hear coming from this agency as a result of the semi-annual report.

And the concerns I have about that is that that may be true in some respects but there are significant numbers that suggest otherwise. And just to take a couple of examples, I note that in the first six months of this year, there were nearly twice as many officers against whom you substantiated complaints of misconduct than in the first six months of last year, twice as many. There were 187 officers in the first half of 2014 who you substantiated complaints against, and there's 354 in the first half of this year. That is a statistic that nobody pointed to to suggest that there was a problem with the doubling of substantiated complaints, one.

Secondly, the discussion about the scope

**Civilian Complaint Review Board-Draft
September 9, 2015**

57

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Proceedings

of the problem and the suggestion a small number of police officers are engaging in most of the misconduct, and the implication that most police officers and most of the department is not involved in any misconduct given complaint distributions, I think is fundamentally flawed.

When I look at the numbers, I see that you identify something like 4,000 police officers who in a six-month period -- excuse me -- an 18-month period had a complaint filed against them, 4000 officers. Excuse me. 5,000 officers, and then you did some math that suggests that that was about 14 or 15 percent of the department, taking the entire police department.

And as I said at the last meeting when this number initially got floated, I think it completely exaggerates things to look at the entire police department, given the fact that many police officers or members of the department have few, if any, interactions with civilians such as you could ever even possibly have a complaint. And so the number of 36,000, or 37,000 of that actually comes down considerably when you're doing a percentage. I think it's,

Civilian Complaint Review Board-Draft
September 9, 2015

58

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Proceedings

you know, maybe it's conservatively 30,000; I think it's probably closer to the high 20's or even 25,000 officers.

And the second thing is you have 4,000 -- 4500 officers who you didn't identify, who you simply removed from the analysis. So, in fact, you actually have close to 9,000 officers in the 18-month period against whom a complaint was filed. So if you consider that 9,000 officers against what may be 28,000, 30,000 officers, you have close to a third of the department that has a complaint filed against it in a single 18-month period. That, to me, speaks to a very wide and broad problem. That is not a limited problem. That is not a problem of a few bad apples. That is a significant problem with a lot of police officers. And I think it is wrong for this agency to be sending out a message that police misconduct in the New York City Police Department is a matter of a few bad apples. That is not what the numbers show.

The final thing I would say is about complaint activity. I don't assign -- I never have assigned a lot of weight to complaint

Civilian Complaint Review Board-Draft
September 9, 2015

59

Proceedings

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2 numbers. I do feel, though, that you are
3 significantly overstating the trends in complaint
4 numbers in talking about substantial decreases in
5 complaints. This is all a matter of comparison.
6 I simply note as a countermeasure that the
7 complaints for the first six months of this year
8 were slightly higher than the complaints of the
9 first -- of the last six months of last year. So
10 if you're looking at six months intervals the
11 second half of 2014 compared to the first half of
12 2015, complaints went up. And I also note that,
13 in the first half of 2015, you had a very big
14 increase in complaints in the second quarter as
15 opposed to the first.

16 I point this out not to suggest that
17 complaints are going up in some significant way.
18 I am just saying there are lots of different ways
19 of comparing complaint numbers, and I think that
20 it is a mistake, given the facts that are in the
21 report, to be suggesting to the public that the
22 overall significant phenomenon here is that
23 complaints are diving, because there are lots of
24 different ways to look at complaint numbers where
25 that is not the case.

Civilian Complaint Review Board-Draft
September 9, 2015

60

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Proceedings

MR. EMERY: Yeah.

MR. DUNN: All right. Just a few quick things. I want to commend you on the officer ID issue; this is something we raised, we've written to you about it. I'm glad you went back to the Law Department. I'm glad you sorted it out. Richard, you're doing absolutely the right thing on that. Complainants need to know about what's happening to particular police officers, and you did the right thing on that.

Mina, in terms of your report about the agency functioning, you guys are doing great, I mean this quite sincerely. I mean, I think the decrease in the time for investigations is really important. The fact that you're getting to complainants and getting to officers much faster is critically important. The fact that your dockets are coming going down is great. I think the way the agency is functioning is really a testament to some substantial improvements. And kudos to all of you, but particularly to you Mina and to the staff. I think there's a lot to be said there.

I did note just because I don't want to

Civilian Complaint Review Board-Draft
September 9, 2015

61

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Proceedings

let you off the hook completely --

MS. MALIK: Why did I think that you were going to do that?

MR. DUNN: -- that the business about the dupe rate, where you said, well, the dupe rate was ten percent for the first six months or through the end of July, which is what's in the report, but then you said you went outside the report -- by the way, I just want to let you know that in August there were no dupes. Well, I don't know what the numbers were in August. I know that a ten percent dupe rate is still a very high rate. And I would encourage you to stay within the numbers in the report. Because my guess is, if I asked you about some other numbers in August, they might be going in the other direction, so I think we should stay away from that.

The final thing I will say was at the last meeting Mr. Capers mentioned an interesting idea, which was the prospect of the agency referring to district attorneys incidents where police officers made false statements. I think there was a subcommittee that was formed there. I

Civilian Complaint Review Board-Draft
September 9, 2015

62

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Proceedings

think I said in my comments at that point were, Congratulations, Mr. Capers, you are now a marked man. I notice that he is not here tonight.

MR. EMERY: Yeah, yeah. That is completely correct.

MR. DUNN: And so I am a little worried about his welfare. And I hope somebody has been in touch with him recently.

MR. EMERY: We've sent protection.

MR. DUNN: Okay. Nobody has contacted me about my participation in that subcommittee yet, and I am looking forward to getting an invitation. And even if I don't get invited, I am looking forward to hearing what the subcommittee does because that is an important issue.

MR. EMERY: You will. Can I -- let me just say a couple of things about what you said, if I may. I disagree with you about the message of the report. You were right about some sense of the import of the report, but the doubling of the substantiated complaints is certainly a big message of this report. You know, the substantial number of complaints that we are

Civilian Complaint Review Board-Draft
September 9, 2015

63

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Proceedings

finding that have merit is a huge -- it's gotten a lot of publicity and we emphasized it right up front, and it is a very important aspect of what this agency is doing. And we attribute it to video, and we attribute it to doing faster, more accurate, more thorough investigations. When the evidence is obtainable quickly, you get better substantiation rates.

MR. DUNN: Well, that's what you've talked about Richard, was the substantiation rate.

MR. EMERY: Right. But --

MR. DUNN: Okay, that's an abstraction to people. What you didn't talk about was there were twice as many cops in the first half of this year, who we found engaged in misconduct than a year ago.

MR. EMERY: I agree with you and that's very much upfront. And I think it's very prominent in the report. I don't think anybody makes any bones about the fact that we have been more effective at substantiating complaints in all categories, because the evidence is better. And, yes, there are more cops who have substantiated complaints against them. But that doesn't take

Civilian Complaint Review Board-Draft
September 9, 2015

64

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Proceedings

way from the fact, I believe, that complaints are down. And that's the second thing I wanted to point out.

The complaints being down is a long-term trend. It's not just in the last year, it's over several years. So I don't think if there are blips in it. Comparing it to last year, for instance, the last six months, we'll see what the whole year shows at the end of the year. But I think complaints coming down is an extremely important trend and number, because it's very hard to explain anyway. Especially when, I think, the credibility of this agency is more prominent than ever. We're getting fewer complaints. Now --

MR. DUNN: Yeah.

MR. EMERY: -- I don't know how to explain that other than that civilian, police interactions are better. Now clearly stop and frisk --

MR. DUNN: That's the explanation you want to offer, Richard. But --

MR. EMERY: Well civilian -- clearly stop and frisk has something to do with it. And the fact

Civilian Complaint Review Board-Draft
September 9, 2015

65

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Proceedings

that there's ten percent of the stop and frisks
than there were --

MR. DUNN: Yeah.

MR. EMERY: -- a couple of years ago. But
that's not the only reason. There's a lot more
to it than that, I think. And I think that the
interactions -- look, there's got to be some --
the culture change in the police department, they
are vigorous about trying to change the culture.
How successful they're going to be in the long
run, I don't know. But they are genuinely and
honestly trying.

And as I said to you earlier, I think the
ship is going in the right direction. It isn't
at the -- it isn't anywhere near port yet, and I
don't know if it will ever get there, but it is
definitely steaming in the right direction and I
think there's some evidence of that in this
report. Some. I don't think it's unequivocal.
I don't think it's absolute. But there's some
evidence that it's going in the right direction.

What else did I want to tell you, one
thing. Oh, the 9,000 number, even with the
unidentified officers, is a little bit tricky;

**Civilian Complaint Review Board-Draft
September 9, 2015**

66

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Proceedings

because by our lights the officers who aren't identified probably duplicate substantially with the officers who are. Moreover, they just have different events when they were out there doing something that they were identified in one and weren't identified in the other.

And I also think that the fascinating statistic in some ways is how few officers have multiple complaints against them. And those are the ones that we are going to be most concerned about. One CCRB unsubstantiated complaint, to me, is not the end of the world. Three, four, five in an 18-month period is a very serious indication of something going wrong between that officer and civilians. And -- depending on the assignment. And that's one of the things we're doing. We're looking -- this is a big struggle -- but we're looking at which officers deviate from the norm in particular assignments. Because that's going to be a very interesting indicator. If all the officers have an average of a certain number of complaints in a particular assignment, and some officers are two standard deviations off the norm in the direction of

Civilian Complaint Review Board-Draft
September 9, 2015

67

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Proceedings

having more complaints, that, to me, is a bigger indicator in some ways than just the raw number of complaints.

MR. DUNN: I agree completely. And then there's no question that if what you're working towards is identifying a group of officers who are responsible for multiple complaints in a way that triggers some concerns and some special attention, that makes perfect sense. And of course, the department has a monitoring program that tries to capture some of that.

What I am objecting to is what I think is a principle message that came out of this report. The suggestion that police misconduct in New York City is attributable to a small number of police officers. And I just think that when you have -- if it's true, and we have to see what's happening with the unidentified officers. I have no reason to think they don't mirror in terms of distribution what the identified officers look like because that's just another big pot of people.

As I said, I think you could easily have a third of the entire relevant portion of the

Civilian Complaint Review Board-Draft
September 9, 2015

68

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Proceedings

department, that had at least one complaint in an 18-month period. And I said this to you before the meeting, I challenge any of you to identify any line of work where anything like a third of the employees have a complaint filed against them in a 18-month period.

MR. EMERY: You don't know --

MR. DUNN: You're not going to find one.

MR. EMERY: In the legal profession, you don't think ever?

MR. DUNN: No. How many lawyers do you know, Richard?

MR. EMERY: No.

MR. DUNN: How many do you know have had a complaint filed against them?

MR. EMERY: I well -- it's --

MR. DUNN: One in 100, one in 1000?

MR. EMERY: A lot of people complain. I don't know about complaints filed against them.

MR. DUNN: No. I'm talking about complaints against them.

MR. CARCATERRA: How many lines of work, Chris --

MR. EMERY: Yeah.

Civilian Complaint Review Board-Draft
September 9, 2015

69

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Proceedings

MR. CARCATERRA: -- have the number of encounters with the public on a daily basis that the NYPD has?

MR. EMERY: Where they're asserting their authority.

MR. CARCATERRA: Just give me one example.

MR. DUNN: I understand. I agree with you in the sense that I would expect a higher rate --

MR. CARCATERRA: No, no, but you --

MR. DUNN: -- than other professions.

MR. CARCATERRA: The question you just posed was that --

MR. DUNN: Yes.

MR. CARCATERRA: -- a third and you're kind of shocked by it. So my question to you would be, give me one or two other professions that have encounters with people, that are most times not happy encounters? It's not the fire department putting out your house fire, right? They're encounters. Tell me what other agency does that.

MR. DUNN: I don't think there's any other agency that does that. And therefore, I would not say -- I wasn't comparing them to other

Civilian Complaint Review Board-Draft
September 9, 2015

70

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Proceedings

agencies, in this sense. I am saying --

MR. CARCATERRA: But how can you say the number is high, if you can't compare it to anything?

MR. DUNN: I think that by any measure, that if a third of an agency's employees are the subject of complaints within an 18-month period, that suggests a serious issue.

MR. CARCATERRA: No, I would agree with you.

MR. DUNN: And it certainly suggests -- I'm sorry. And that certainly suggests that it is not -- and here's the thing, the principal thing I'm resisting. It's not like some group of 50 cops in the Bronx, in one precinct, who are knuckleheads. When you've got a third of the department, you've got people everywhere.

MR. EMERY: But that's not --

MR. DUNN: And so --

MR. EMERY: But that's not true. The complaints are very focused. Look at the website, where they come from; they come from very focused -- and that's the interesting thing to me. Why is it that cops are going in and out of various precincts or commands and yet,

Civilian Complaint Review Board-Draft
September 9, 2015

71

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Proceedings

regardless of the flow of the cops, they get the complaints when they go into those precincts and commands?

MR. DUNN: I --

MR. EMERY: So interesting analysis is going to be to look at the assignments and see whether they deviate from the norm within those commands. That --

MR. DUNN: Okay.

MR. EMERY: Those are going to be the real red flags.

MR. DUNN: That's fine. I'm with you on that, and it may well be. And that's what the map does, and the map is a very helpful thing. The map may tell you that misconduct is a defined phenomenon in terms of commands. But there are certain commands, particular precincts -- I mean, you know, it's mostly going to be patrol, that's where a disproportionate number of the complaints come from.

That though is a very different proposition than when you talk about, as you do in your analysis of police officers, okay. And you can't say, according to the numbers you have

Civilian Complaint Review Board-Draft
September 9, 2015

72

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Proceedings

here, that there are only 14 percent of police officers who've had a complaint within 18 months. That's just not what the numbers bear out. I think the numbers bear out something --

MR. EMERY: I disagree with you.

MR. DUNN: -- closer to twice that percentage.

MR. EMERY: Yeah, I disagree with your spin on the numbers. I know you disagree with ours. But somewhere in between we're going to find the accurate, you know --

MR. DUNN: Okay.

MR. EMERY: -- fair.

MR. DUNN: I'm all for that.

MR. EMERY: Okay. Shannon Jones?

BISHOP TAYLOR: While she's coming up, Mr. Chair, can I make a --

MR. EMERY: Oh, please.

BISHOP TAYLOR: -- a point on --

MR. EMERY: I'm sorry if I cut you off.

BISHOP TAYLOR: No, no, you didn't cut me off.

MR. EMERY: Just come on up. But we're going to wait -- we're going to let Bishop Taylor...

Civilian Complaint Review Board-Draft
September 9, 2015

73

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Proceedings

BISHOP TAYLOR: Could I make a recommendation or can this be done. Can we do a more in-depth study of extrapolating non-active officers in the field? And do a study on, you know, one complaint, what is the field of that? What does that really look like? What percentage does that look like, over --

MR. EMERY: We are doing exactly that now. We're working very hard at it --

BISHOP TAYLOR: So we'll be able to give you real --

MR. EMERY: We're working hard at this. This is a very complex statistical problem.

MR. EASON: Get those codes and assignments...

BISHOP TAYLOR: Yeah. I mean if Lindsay Eason had any juice at all, we'd be done.

MR. EASON: I'm going there tonight when I leave here.

MR. DUNN: Take out everybody from captain and above, okay? That's a lot of people there.

MR. EASON: Okay.

MR. DUNN: Maybe the lieutenant even.

MR. EMERY: Oh, are you kidding me? We get

Civilian Complaint Review Board-Draft
September 9, 2015

74

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Proceedings

complaints against captains and lieutenants all
the time.

(Inaudible.)

BISHOP TAYLOR: Okay, yeah.

MR. EMERY: All right. Sorry, Ms. Jones.

MS. JONES: Good evening, everyone.

MR. EMERY: Good evening.

MS. JONES: Thank you for having me this
evening. I'm here tonight representing Bronxites
for NYPD Accountability a/k/a NY Accountability.
I've appeared before this Board, so everyone
should be familiar with me. So I'm just going to
get rolling. I took a little break, but I have
been monitoring the information, you know,
peripherally that the Board has been putting out.

So with respect to the statistical
information, the map is helpful, the complaint
activity map. And what it's showing is what the
community already knows, that in communities of
color there are high concentrations of civilian
complaints. And if I can contextualize that for
the Board and for everyone that's here is that
police officers do not respect people of color,
and that's based on the complaints that you do

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

get. That does not count the complaints you will never get, okay.

They do not respect communities of color. And I will give you an example, Monday -- I want to say -- yes, Monday, I went to PSA One and I went to speak with a Sergeant Lax, after asking for the commander or the staff sergeant on duty, and the response to me, and I'm quoting is, "This is not a military. There's no staff sergeant here." I said, Well, will it offend you, if I write down your information before we begin speaking for my own protection? His response to me was, I don't care, you can do whatever you want.

After I expressed to him my disdain and distaste for some police activity I had been observing in that community and I told him I was there to represent the community, his response to me was, and I'm quoting, "You're not the community. You're only one person."

So, I could easily make a discourtesy CCRB on that, easily, easily, easily. Every time I spoke he interrupted me with, I don't understand you. Huh? What are you saying? I said to him,

Civilian Complaint Review Board-Draft
September 9, 2015

76

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Proceedings

Sir I'm very English proficient, so there's no reason for you to interrupt me to ask me what I'm saying.

These are tools of psychological warfare that take place in our communities to disrespect us, to degrade us, not have them do their job, and not treat us with what's written on the side of the police car. Your statistics will never capture that, ever, ever, ever. As long as you have police officers get on the LIE and go to their own community, they will never, ever, ever treat communities of color with respect. Because I will never run into Sergeant Lax's wife in the supermarket, his children don't go to school with my children, we don't play in the same playground. So he doesn't have to respect me because there's no accountability for him or his family.

And that is a pervasive, festering, boil between the police and the community. And at this juncture, I believe that we all understand it. We all know it. It's as plain as day, for 50, 60, 75 years. And no matter how much you play with stats, the bottom line is communities

Civilian Complaint Review Board-Draft
September 9, 2015

77

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Proceedings

of color are treated with disdain, disrespect, apathy, and physical abuse by the inherently corrupt New York Police Department.

So with that said, I will move on to the statistics. Where are the substantiated cases by precinct on the monthly statistical report? That's in the form of a question.

MR. EMERY: They're on the maps, I mean --

MS. JONES: They are not on the maps.

MR. EMERY: We were --

MS. JONES: The maps show you the number of complaints for year-to-date. The previous reports from 2014 you guys stop doing it in January, where it outlined every single substantiated case by precinct, what it was for, and what was the outcome; was it referred to APU or what, what. It's no longer there.

MR. EMERY: Well, let me ask Marcos. What is the status of that, because we certainly should be reporting on our panel decisions on the maps.

MR. SOLER: I'll look into the matter, as to why they're not online. I'll check.

MR. EMERY: Well, didn't we -- didn't we --

MR. SOLER: I'll check in -- I'll check on

Civilian Complaint Review Board-Draft
September 9, 2015

78

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Proceedings

the report tomorrow, of the Board, on where --

MR. EMERY: I mean this -- we have to keep up this website, vigorously and -- and just -- I certainly agree with you; we want to make available to the public all of the results of what we know about patterns of police misconduct whether unsubstantiated complaints or substantiated complaints. So...

MS. JONES: Okay.

MR. EMERY: I thank you, Ms. Jones, for pointing that out.

MS. JONES: Following in that vein, there's also no mediations and their outcomes by precinct. Where is that? You guys have stopped providing those, two critical pieces of information that allowed the community to directly address their commander. You are tying the hands of the community from actively engaging with their precinct house.

If I took a statistical report to my precinct house, it has no meaning to the public at large. Put this stuff in plain English.

I'm fortunate and blessed to have a Master's degree, but that is not who we are

Civilian Complaint Review Board-Draft
September 9, 2015

79

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Proceedings

speaking to. We are speaking to complainants. We're not speaking to politicians. We're not speaking to the Mayor. We're not speaking to potential employers. We are speaking to the public.

Put this stuff in English. I would like to see -- and I brought this up in February, now this is September, when it went on for two months in a row -- I need to see the substantiated complaints by precinct and the mediation results by precinct every single month. Thank you for that.

Next, the unsubstantiated cases by percentage, whether it be by month or year-to-date, should not be combined with exonerated or unfounded cases. It gives the impression to the lay reader that that's all the same thing, and it's not. Unsubstantiated is a he said/she said. If I say you told me, F you, and the police said, No, I didn't do that, it's a unsubstantiated, which is totally different from unfounded or exonerated. And it should not look like 70 something percent are unfounded, exonerated, or unsubstantiated.

Civilian Complaint Review Board-Draft
September 9, 2015

80

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Proceedings

Unsubstantiated complaints need to be broken out of that statistic on the pie chart. Because it needs to show the public how much does the Civilian Complaint Review Board find the complainant credible. Because if I said, You did, and he says, He didn't, but the ACLU is able to contextualize the fact that it could be up to one-third of these officers out here are abusive, that means you are not finding the community that you're up here to serve credible. If I make a complaint on what Sergeant Lax said to me on Monday morning, and he gets up in there and says, No, I didn't, it's unsubstantiated as far as the Board is concerned. You guys need to start finding the community credible.

Every single day you go on the Internet and you see these videos of police abuse in New York City, we're not even talking nationwide. Hopefully, you guys go on the Internet and hit YouTube. Every single day there's a new video of police abuse. You need to find your community credible that you serve.

Next, when you guys did provide the statistical breakdown of substantiated cases and

Civilian Complaint Review Board-Draft
September 9, 2015

81

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Proceedings

mediation, the case number on those reportings did not match the case numbers on the APU trial calendars. So how am I supposed to link up which substantiated case I want to attend the public APU trial for? That makes no sense. Again, that is tying the hands of the public.

After the chokehold death of Eric Garner captured on videotape, we are not having it. This dog and pony show will stop. There are educated people that are watching what you're doing, and what you're doing is insufficient. It might look good to the Mayor, it might sound good on New York One on a sound bite, but for me and my community it is insufficient.

I want to see the case number on the substantiated cases list match the number on the APU trial calendar. So if I want to follow a 47th Precinct officer chokehold substantiated in December of 2014, I can attend his public APU trial and address it with the commander if I choose to. You guys need to stop it.

Next, I would like to formally on record co-sign everything that the ACLU said this evening. It is not your job to contextualize how

Civilian Complaint Review Board-Draft
September 9, 2015

82

1 Proceedings

2 well or how poorly the NYPD had made strides.
3 That's not your place. What it actually does is
4 undermine your credibility as being for the
5 civilians. You don't tell anybody, Oh, I think
6 they're making great strides. There is nothing
7 that they do differently since July 17th of 2014
8 that they do today, nothing. There is no policy
9 difference. A chokehold is not a crime. Nothing
10 is different. Nothing.

11 Civilian complaints are like rape, going
12 down is not good. Up is good, down is bad. You
13 know why? Because police abuse in our
14 communities are constant. They are on a
15 continuum. They don't stop. So if civilian
16 complaint goes down, that means the community is
17 not reporting, and that's very similar to rape.
18 Because I took criminology; so when rape goes up,
19 that means people are reporting which is actually
20 a good thing.

21 Because when you have -- when you look at
22 census statistics, people report rapes on a
23 continuum, although they may not report it to the
24 police. So when the informal surveys are done by
25 the census bureau, and other type of surveys

Civilian Complaint Review Board-Draft
September 9, 2015

83

1 Proceedings

2 begin to match the police and crime data, that's
3 how you know you are capturing everybody. So you
4 guys may have to engage in some type of informal
5 surveys of police misconduct, not solely through
6 formal complaints, and see if it matches. Random
7 like, robo calls. Do you have cancer? Is your
8 blood pressure high? Do you feel safe in your
9 community? Have you ever been abused by the
10 police? Have you ever made a complaint about it?
11 And see what you get.

12 People are afraid of retaliation from the
13 police department. They conduct themselves like
14 a street gang. In June, I had a barbecue. The
15 barbecue was over, families were packing up, the
16 police pull up in a van and they shine a roach
17 light on us. They shined a roach light on us.
18 And when I approached the officers and asked
19 them, Why are you shining the brightest light
20 available on your police van to families
21 barbecuing, he had no answer for that. This is
22 what they do. This is who they are. It is an
23 inherently corrupt and racist institution. White
24 people may not want to hear that, but it's the
25 truth.

Civilian Complaint Review Board-Draft
September 9, 2015

84

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Proceedings

Next, I would like to see on the statistical reporting a breakdown of uniform police officers versus undercover. We have a serious problem of these plainclothes officers jumping out of unmarked vehicles, abusing the public. So you don't know who the hell that is. I can legally wear a bulletproof vest out here, that don't make me a cop. So just because somebody approaches you with a bulletproof vest, with no badge showing, you don't know who that is. And they're jumping out in unmarked vehicles, harassing the public, jumping back in, and zooming off. Divide those complaint statistics between uniform and undercover, and see what the deal is. Because that is another phenomenon. I had an undercover get up in my face, white female, on my own block, in my own community.

Now I've already told three incidences, only in 2015, where I have been disrespected by the NYPD, me, three, for which I have made no complaint. You see what I mean? Because I got to work, I have to take care of a child, I have family responsibilities, and I want to have a

Civilian Complaint Review Board-Draft
September 9, 2015

85

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Proceedings

life. And I don't want the NYPD to run a line on me and harass me or intimidate me or intimidate my child because I made a complaint. This is what I'm here to bring across to y'all.

Statistics are only for the benefit of those running them, and you can chop them up any way you want. I do it at my own job. You guys gotta -- it's got to stop.

Precinct meetings, the reason why I bring it up here is because, I've said this on the record before, when precinct meetings are not run in an orderly fashion according to the guidelines, it is a discourtesy of the NYPD. It is an abuse of authority, and I will repeat that again. Because if they can stand there and watch a precinct meeting that is supposed to be run by the community, not run properly, that shows a disdain and a disrespect of the community.

Precinct community meetings are not cheer leading sessions for the police department. They have managed, through neglect of the community and through these Boards, to turn them into propaganda parades for themselves. These forums belong to the community. Any precinct

Civilian Complaint Review Board-Draft
September 9, 2015

86

Proceedings

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2 council president that does not have the
3 following constituencies in that room: youth 16
4 to 24, blacks living in public house,
5 non-homeowners and renters, people that may have
6 had a criminal background in the past,
7 particularly in high crime district areas; if
8 those people are not being represented in that
9 community council meeting, that meeting is not
10 being run according to the guidelines and
11 appropriately. And for a commander and a
12 precinct community council president to conduct
13 those meetings in that fashion, they are not
14 conducted orderly and that is a disrespect to the
15 community.

16 So this is what I came up in here to
17 address. Because I didn't come in here for so
18 long, because I saw the statistics were becoming
19 more and more cloaked from community oversight
20 and contextualization, and these instances of
21 disrespect I've gotten from the police. And for
22 you guys to sit up there, on record, and say you
23 believe the police are moving in the right
24 direction, it's either one of two -- one of three
25 things. It's either you guys are incredibly

Civilian Complaint Review Board-Draft
September 9, 2015

87

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Proceedings

ignorant or you're complicit with the police department or you're more interested in maintaining your own employment rather than do the work of the people. Thank you.

MR. EMERY: That's the end of the agenda as far as I'm aware.

Anybody have any comments or other -- anything else to offer?

BISHOP TAYLOR: Yeah, I guess I shouldn't but I want to say this. I've been in the meetings when Ms. Jones has come up to testify, and I've totally enjoyed some of the things that she's highlighted, both times. But I just want to just remind the public that we are here to represent and to advocate on behalf of the public. And so, when you say, You guys have to stop, you know, personally I want to say that, you know, as a Board member I'm doing everything I can to aggressively pursue the mandate. And I can comfortably say that all of my fellow Board members demonstrate the same kind of, you know, mentality.

So I just want you to know that, you know, there are people on this board, and I would say

Civilian Complaint Review Board-Draft
September 9, 2015

88

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Proceedings

all of us, that share in your concerns, Ms. Jones. So I just want to let you know that we're on your side. We're not complicit, we're not ignorant, and certainly not trying to protect a job because no one can pay you to sit up here, these hours, and read these cases the amount of hours that you read, and it be -- no this is a labor of love. So --

MS. CORTES-GOMEZ: And I wanted to back Bishop on this. We all have jobs.

BISHOP TAYLOR: Yeah.

MS. CORTES-GOMEZ: This is not our job. This is something that we do because we're part of the community and because we want to see change, and so that you can scratch off the list, because I don't know of anyone here who is doing it for any other reason.

I understand your frustration. I myself have dealt with certain frustrating moments involving the police. However, just like you, you have your family, you have other things that are priorities, as do I.

I've never made a complaint. I never thought there was a need. And so when the

Civilian Complaint Review Board-Draft
September 9, 2015

89

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Proceedings

opportunity came up for me to join the Board, I absolutely did. And it has changed, somewhat, my perception of what goes on in the community, what goes on with the PD. I've spoken a lot more to police officers who have retired. I have family members who are married to police officers. So I get a very good perspective.

So I do appreciate you attending the meetings. I encourage you to continue attending the meetings, and in fact, I encourage you to spread the word.

You indicated you're from the Bronx, correct?

MS. JONES: Yes.

MS. CORTES-GOMEZ: You're in Brooklyn. I encourage you to tell more people from the Bronx. Tell people from Staten Island. Tell people from Queens. Attend these meetings. They don't just have to go to their borough meeting. Keep coming, it's once a month. We'd like to hear from you.

MS. JONES: I just want to make clear, my grandfather's a retired first grade detective and received the second highest commendation

Civilian Complaint Review Board-Draft
September 9, 2015

90

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Proceedings

available in the police department, okay?
Everybody of color has somebody in their family
that work for the police. So it's not that the
community doesn't know anything about law
enforcement or what they have to do or what they
have to experience.

But the bottom line is, as an institution,
I repeat, it is inherently corrupt. Because over
and over again the statistics have proven that
every time there is something negative going on,
it disparately impacts communities of color. It
does not happen in Whitestone, Rego Park, Staten
Island, doesn't happen, it doesn't happen, all
right.

So I have that experience and that
perspective. I don't get behind that mic for no
reason, and I know how to find the balance before
I say what I say. And my grandfather is still
alive, he's not deceased, and he finds the
conduct of these officers today, embarrassing and
reprehensible. They're focused on petty crime,
misdemeanors, and nonsense instead of real police
work, as he called it: Rapes, robberies, murders,
burglaries, and car thefts; he finds disgusting.

Civilian Complaint Review Board-Draft
September 9, 2015

91

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Proceedings

And this is where the City continues to make their money, and push statistics about crimes. Bothering Black and Hispanic males, in particular, for pettiness. The information is already out here. The inquiry phase has closed; it's closed. We already know what's going on out here, and it's a matter of whether the CCRB is gonna properly contextualize what we already know and advocate for the community. And once the statement was made on this podium tonight that it was the belief of this Board, that the police is reformed and changing, I already know where you guys stand.

BISHOP TAYLOR: I don't think that's true, but okay.

MR. EMERY: All right. I think we're going to make a motion to go into Executive Session to handle a couple of individual case matters.

BISHOP TAYLOR: I make the motion.

MR. EMERY: Second?

MS. CORTES-GOMEZ: Second.

MR. EMERY: Everybody in favor?

(Members raise their hands.)

Any opposed?

Civilian Complaint Review Board-Draft
September 9, 2015

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Proceedings

(No response.)

Okay. Thank you very much for attending, we appreciate it. The public session is adjourned.

(Time noted 8:25 p.m.)

Civilian Complaint Review Board-Draft
September 9, 2015

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CERTIFICATE

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

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

THAT the within transcript is a true and accurate record of the testimony given by such witness.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 9th of September 2015.

BONITA RICHARDS

**Civilian Complaint Review Board-Draft
September 9, 2015**

A		
a/k/a (1) 74:11	agree (10) 27:4 32:19 33:20 38:17 51:11 63:18 67:5 69:8 70:10 78:5	asking (4) 19:23,24 24:4 75:7
abeyance (1) 16:4	agreement (1) 7:16	aspect (1) 63:4
abide (2) 25:5 38:3	agrees (1) 36:11	Assemblyman (1) 49:15
ability (1) 33:7	ahead (2) 3:12 48:19	asserting (1) 69:5
able (6) 11:10 43:24 52:3,4 73:11 80:7	Aide (1) 49:23	assign (1) 58:24
able-bodied (1) 52:3	aided (1) 33:23	assigned (1) 58:25
absolute (1) 65:21	air (1) 5:8	assignment (2) 66:17,24
absolutely (3) 54:14 60:8 89:3	alive (1) 90:20	assignments (3) 66:20 71:7 73:16
abstaining (3) 39:9,10,13	allegation (1) 11:23	assisting (1) 40:25
abstraction (1) 63:13	allegations (2) 35:5 46:20	associations (1) 49:25
abuse (6) 41:17 77:3 80:18,22 82:13 85:15	allow (1) 37:16	assume (1) 29:2
abused (1) 83:9	allowed (3) 53:19,21 78:17	attached (1) 8:9
abusing (1) 84:6	allowing (1) 23:24	attack (2) 32:2 53:17
abusive (1) 80:9	allows (1) 54:23	attempt (2) 19:7 21:9
access (14) 17:16,20,22,23 18:8 26:2,7,16,22 27:2,2,7 29:3,4	allude (1) 51:25	attend (3) 81:5,20 89:19
accomplish (1) 26:13	amendments (1) 4:2	attending (4) 49:16 89:9,10 92:3
accountability (3) 74:11,11 76:18	American (1) 53:7	attention (2) 52:7 67:10
accurate (3) 63:7 72:12 93:11	amount (1) 88:7	attorney (2) 16:18 23:11
acknowledge (1) 31:18	analysis (5) 7:13,14 58:7 71:6,24	attorney's (2) 18:3 49:21
Ackram (2) 49:3,9	and/or (3) 43:14 45:22,23	attorney-client (1) 20:14
ACLU (2) 80:7 81:24	animal (3) 52:17,19,24	attorneys (1) 61:23
action (6) 13:8 25:17 29:22,25 30:3 93:14	announced (1) 18:16	attributable (1) 67:16
actions (2) 7:8 26:2	answer (2) 10:14 83:21	attribute (2) 63:5,6
actively (1) 78:19	antithesis (1) 26:12	attributed (1) 53:12
activity (3) 58:24 74:19 75:17	anybody (7) 14:8 21:24 22:8,8 63:20 82:5 87:8	audience (1) 40:12
acts (2) 9:17,19	anymore (1) 23:6	August (24) 6:17 17:19 19:10 41:12,19,25 42:3,6,15,17,21,25 43:3,4,8,13,22 44:5 45:4,9 47:12 61:11,12,17
ad (1) 32:2	anyway (1) 64:13	authority (4) 28:22 41:17 69:6 85:15
additional (1) 13:3	apart (1) 8:13	authorize (1) 37:25
address (3) 78:18 81:21 86:17	apathy (1) 77:3	authorizing (1) 31:19
adequate (3) 28:12,14,17	appeal (25) 18:17,18,20,22 19:12 19:13,16,20,24,25 20:3,7,24,25 21:2 24:18,24 25:4 36:17,18 37:8 37:9,11 38:2 54:16	available (5) 17:25 18:11 78:6 83:20 90:2
adjourned (1) 92:4	Appeals (3) 11:12 24:21 54:22	avenue (2) 1:23 36:21
adjudicate (1) 26:17	appeared (3) 17:4,6 74:12	average (9) 41:20,23,24,25 44:11 44:15,23 45:2 66:22
Administrative (2) 46:24,25	Appellate (1) 24:19	aware (1) 87:7
administratively (1) 46:2	apples (2) 58:16,21	ax (1) 51:10
adoption (4) 1:17 3:14,15,16	applicable (1) 19:9	
advantage (1) 32:13	applying (1) 49:12	B
adverse (1) 24:19	appreciate (3) 5:22 89:9 92:4	B-A-R-K-A-N (2) 51:16,19
advice (3) 7:25 11:21 46:10	approached (1) 83:18	back (10) 6:24 7:25 15:6 20:12 23:6 28:24 31:23 60:6 84:13 88:10
advocate (3) 37:19 87:16 91:10	approaches (1) 84:10	background (1) 86:6
Advocate's (1) 47:7	approaching (1) 42:19	bad (4) 11:7 58:16,21 82:12
afraid (2) 12:15 83:12	appropriate (3) 8:17 17:20,21	badge (1) 84:11
agencies (3) 20:20 36:4 70:2	appropriately (1) 86:11	balance (1) 90:18
agency (29) 11:20 12:15,20 13:12 20:23 22:2 23:10,17,22 26:14 27:4 32:2,14 41:6,12,20 43:10,11 46:21 54:15 56:9 58:19 60:13,20 61:22 63:5 64:14 69:21,24	APU (5) 77:17 81:3,6,18,20	barbecue (2) 83:14,15
agency's (3) 30:25 41:7 70:7	Arabic (1) 51:20	barbecuing (1) 83:21
agenda (5) 1:14 4:7 5:15 6:5 87:6	Archer (2) 2:8 39:9	Barkan (2) 51:15,19
agendas (1) 4:6	areas (1) 86:7	based (4) 10:15 22:6,7 74:25
aggressively (2) 50:14 87:20	argued (1) 17:14	basic (1) 56:3
ago (4) 42:13 44:14 63:17 65:5	argument (1) 17:15	basically (1) 37:7
	asked (6) 18:23 23:25 29:13 53:18 61:16 83:18	basis (2) 36:5 69:3

**Civilian Complaint Review Board-Draft
September 9, 2015**

bear (2) 72:4,5
becoming (1) 86:18
beginning (2) 55:9,11
behalf (3) 25:18 26:18 87:16
belief (1) 91:12
believe (12) 3:8 17:18 29:12,13,13
 29:17 33:6,15 37:23 64:2 76:22
 86:23
believed (1) 17:20
believes (1) 24:13
belong (1) 85:25
benchmarks (1) 43:18
benefit (1) 85:6
best (1) 43:9
better (7) 12:17,19 30:23 43:7 63:8
 63:23 64:20
bias (1) 32:3
big (7) 9:7 32:16 56:8 59:13 62:23
 66:18 67:22
bigger (2) 32:19 67:2
bill (1) 15:22
bind (2) 22:14,15
Bishop (45) 2:9 3:18 9:10 10:11,13
 10:19,21,25 12:2,21,24 25:15,22
 25:24 26:5,11 29:2,6,20 30:17
 31:9,21 37:4,7,14,17 38:22 39:2
 48:10,12,16,20 72:17,20,22,25
 73:2,11,17 74:5 87:10 88:11,12
 91:15,20
bit (2) 15:7 65:25
bite (1) 81:14
black (2) 10:22 91:4
blacks (1) 86:4
blatant (1) 32:3
blessed (1) 78:24
blips (1) 64:8
block (1) 84:18
blood (2) 83:8 93:14
board (53) 1:2,3,6 2:2 3:3 4:11,14
 5:3 6:18 15:12,15 16:12 19:15
 21:2 22:18 24:10,13 32:11,20
 33:17 36:3,21 38:11,14,15 40:22
 40:25 42:9 43:14 46:6,14,17,19
 47:6,23,23 49:19 51:3,8 54:9,9
 56:5 74:12,16,23 78:2 80:5,15
 87:19,21,25 89:2 91:12
board's (2) 24:9 55:19
Boards (1) 85:23
bodied (2) 52:3,4
body (2) 18:10,12
boil (1) 76:20
bones (1) 63:21
BONITA (2) 93:8,21
Booth (3) 53:9,10,12
borough (1) 89:20
Bothering (1) 91:4
bottom (2) 76:25 90:8

bound (3) 20:23 31:12,19
break (1) 74:14
breakdown (2) 80:25 84:3
Brian (4) 3:9 19:3 39:20 40:12
briefly (1) 49:11
brightest (1) 83:19
bring (4) 16:9 52:6 85:5,10
broad (1) 58:15
broken (1) 80:3
Bronx (3) 70:15 89:13,17
Bronxites (1) 74:10
Brooklyn (3) 1:6,9 89:16
brought (5) 19:14,22 46:5 51:2
 79:8
bulletproof (2) 84:8,10
bureau (1) 82:25
burglaries (1) 90:25
business (2) 12:19 61:5

C

calendar (1) 81:18
calendars (1) 81:4
call (3) 1:16 3:2 6:25
called (3) 16:2 20:5 90:24
calls (1) 83:7
campaigns (1) 49:23
cancer (1) 83:7
capable (1) 33:22
Capers (2) 61:21 62:3
capital (1) 53:25
captain (1) 73:21
captains (1) 74:2
capture (2) 67:12 76:10
captured (1) 81:9
capturing (1) 83:3
car (2) 76:9 90:25
Carcatera (10) 2:6 6:24 68:23
 69:2,7,10,12,15 70:3,10
care (2) 75:14 84:24
career (1) 20:8
carefully (1) 34:24
cares (1) 6:12
Carolina (1) 49:8
Carter (7) 19:25 20:13 25:25 26:21
 28:10 32:6 36:10
Carter's (2) 22:5,9
case (40) 9:20 13:18 14:2 16:7,18
 17:14 20:3 21:22 22:9,20 23:2,19
 23:19,21 25:19 26:17 27:2,3,7,20
 27:20 30:15 35:6,9,10,12,22,24
 37:23 38:14 42:3 45:19 54:21
 59:25 77:16 81:2,3,5,16 91:19
cases (47) 13:15,20,20,21,23,23
 14:5,11 27:15 35:20 42:5,7,7,10
 42:11,14,15,17,19,21,22,23,24
 43:5,13,15,24 44:2,5,8,11,11
 45:18,20 46:2,3,12,18,22,23 47:5

77:6 79:14,17 80:25 81:17 88:7
categories (1) 63:23
Catholic (3) 53:19,20,21
CB'S (1) 14:5
CCRB (18) 8:11 9:17,20 13:15
 15:11,17 19:2 24:13,17 25:5,8
 45:10,11,14 49:6 66:12 75:22
 91:8
census (2) 82:22,25
center (1) 49:8
century (2) 51:22,23
certain (4) 32:13 66:23 71:18
 88:20
certainly (14) 13:23 14:9,24 22:22
 24:8 33:23 34:25 36:19 62:23
 70:11,12 77:20 78:5 88:5
CERTIFICATE (1) 93:2
certify (2) 93:9,13
Chair (7) 1:11,18 2:3 3:2 6:6 13:6
 72:18
challenge (2) 10:8 68:4
chance (2) 49:10 50:7
chances (1) 38:4
change (8) 38:6,10 52:20,22 53:5
 65:9,10 88:15
changed (1) 89:3
changes (1) 53:3
changing (2) 8:2 91:13
charge (1) 27:21
charges (5) 13:18,20,23,23 28:5
chart (1) 80:3
charter (3) 20:19 30:20,22
check (3) 77:23,25,25
cheer (1) 85:21
Chief (3) 5:18 6:2 40:24
chiefly (1) 35:2
child (2) 84:24 85:4
children (2) 76:15,16
chokehold (3) 81:8,19 82:9
choose (2) 25:2 81:22
chop (1) 85:7
chose (1) 31:18
Chris (4) 45:11 46:5 54:3 68:24
churches (1) 49:24
circumscribed (1) 34:24
citizens' (1) 32:24
city (17) 8:14 9:18 10:6 20:20,22
 21:15 24:24 37:19 43:11 52:19
 53:14 54:16 56:6 58:20 67:16
 80:19 91:2
civic (1) 49:24
civil (1) 12:5
civilian (17) 1:3 3:3 32:10,20 33:16
 36:2 38:13 40:22 41:10 45:13,15
 64:19,24 74:21 80:5 82:11,15
civilians (9) 45:9,10 46:4,6,8,12
 57:21 66:16 82:5

**Civilian Complaint Review Board-Draft
September 9, 2015**

3

clarify (1) 13:7
clear (7) 9:19 22:24 24:7 36:20
39:21 40:14 89:23
clearly (3) 34:13 64:20,24
Clerk (1) 49:22
cloaked (1) 86:19
close (5) 43:24 44:2,13 58:8,12
closed (6) 44:4,10,11 46:2 91:6,7
closely (1) 49:24
closer (2) 58:3 72:7
clothes (1) 52:11
co-sign (1) 81:24
coats (1) 5:5
codes (1) 73:15
collected (1) 18:5
color (7) 74:21,24 75:4 76:13 77:2
90:3,12
combined (1) 79:16
come (11) 9:14 17:7,8 39:24 54:3
70:22,22 71:21 72:24 86:17
87:12
comes (5) 13:15 22:9,12 32:13
57:24
comfort (1) 11:20
comfortable (1) 5:6
comfortably (1) 87:21
coming (7) 3:6,10 56:9 60:19
64:11 72:17 89:21
Command (1) 52:8
commander (4) 75:8 78:18 81:21
86:11
commands (5) 70:25 71:4,8,17,18
commend (2) 55:15 60:4
commendation (1) 89:25
comment (5) 25:16 47:25 48:4,9
50:18
commentary (2) 6:9,13
comments (8) 1:19 15:5 25:14
36:25 40:17 47:19 62:2 87:8
Commission (1) 36:4
Commissioner (8) 2:5,6,7,8,9,10
2:11,12
committee (5) 1:21 48:12,14,23
50:17
communicate (1) 8:6
communicated (1) 10:5
communities (7) 74:20 75:4 76:6
76:13,25 82:14 90:12
community (35) 1:6 6:12 22:24
40:24 49:18,22 50:8 74:20 75:18
75:19,21 76:12,21 78:17,19
80:10,16,22 81:15 82:16 83:9
84:19 85:18,19,20,23,25 86:9,12
86:15,19 88:15 89:4 90:5 91:10
compare (1) 70:4
compared (6) 43:2 44:5,14,25 45:4
59:11

comparing (3) 59:19 64:8 69:25
comparison (2) 45:12 59:5
complain (1) 68:19
complainant (5) 10:16 44:24 45:22
45:23 80:6
complainants (14) 7:11,18 8:6,7
8:18,19 9:3 13:8 14:7 39:23 45:8
60:9,17 79:2
complaining (1) 45:6
complaint (38) 1:3 3:3 10:15 11:5
32:10,20 33:16 36:2 38:13 40:22
44:16 45:21 46:12 57:6,11,23
58:9,13,24,25 59:3,19,24 66:12
68:2,6,16 72:3 73:6 74:18 80:5
80:12 82:16 83:10 84:14,23 85:4
88:24
complaints (51) 41:10,13,13,14,15
41:16,17,20,24 42:2 46:5 56:17
56:20,24 59:5,7,8,12,14,17,23
62:23,25 63:22,25 64:2,5,11,16
66:10,23 67:2,4,8 68:20,21 70:8
70:21 71:3,20 74:2,22,25 75:2
77:13 78:8,9 79:11 80:2 82:11
83:6
complete (1) 36:8
completely (6) 18:6 33:9 57:18
61:2 62:5 67:5
complex (1) 73:14
complicated (1) 15:7
complicit (2) 87:2 88:4
compromised (1) 30:12
concentrations (1) 74:21
concept (1) 27:14
concerned (6) 22:25 33:7 35:3
54:10 66:11 80:15
concerns (3) 56:11 67:9 88:2
conclusion (1) 32:14
conditioning (1) 5:8
conduct (4) 34:21 83:13 86:12
90:21
conducted (4) 22:18 27:18 46:25
86:14
confident (1) 22:11
confidentiality (1) 33:8
confirmed (1) 11:3
conflict (1) 37:22
confrontation (1) 11:4
Congratulations (1) 62:3
conjunction (1) 9:16
connected (1) 49:24
conscience (1) 24:4
conservatively (1) 58:2
consider (2) 54:24 58:10
considerably (1) 57:24
considered (1) 8:11
consistent (2) 18:15 24:16
constant (1) 82:14

constituencies (1) 86:3
Constituent (1) 49:14
contact (2) 53:18,20
contacted (1) 62:11
contemporaneous (1) 17:2
context (4) 11:17,17,19 26:6
contexts (1) 7:8
contextualization (1) 86:20
contextualize (4) 74:22 80:8 81:25
91:9
continue (8) 25:9 28:23,24 33:18
43:9,17,22 89:10
continued (2) 42:3,17
continues (2) 42:12 91:2
continuing (1) 6:9
continuum (2) 82:15,23
contrary (1) 33:2
Control (5) 52:16,18,20,23 53:4
conversation (2) 26:6 31:23
convinced (1) 20:22
coordinate (1) 30:24
cop (3) 52:9,11 84:9
copies (1) 50:25
cops (5) 63:15,24 70:15,24 71:2
copy (1) 51:12
Cornegy (3) 5:19 6:3 40:23
Corp (1) 31:24
Corporation (6) 7:6,24 11:20
19:23 20:9,18
correct (6) 13:14 27:3 40:4,10 62:6
89:14
corrected (1) 39:23
corroboration (1) 28:2
corrupt (3) 77:4 83:23 90:9
Cortes-Gomez (7) 2:10 17:9 50:14
88:10,13 89:16 91:22
council (4) 40:23 86:2,9,12
councilman (2) 5:19,19
Councilmen (1) 6:2
counsel (6) 7:24 20:18 21:16 31:24
37:19 46:10
Counsel's (4) 7:6 11:21 19:23 20:9
count (1) 75:2
countermeasure (1) 59:6
County (2) 49:21 93:6
couple (7) 6:4 25:16 49:23 56:14
62:19 65:5 91:19
course (3) 6:15 25:4 67:11
court (9) 11:12 17:18 18:2 19:11
24:18,20 32:12 38:17 54:22
court's (2) 24:18 27:10
courts (1) 33:25
created (1) 21:16
creation (1) 43:10
credibility (2) 64:14 82:4
credible (4) 80:6,11,16,23
crime (4) 82:9 83:2 86:7 90:22

Civilian Complaint Review Board-Draft
September 9, 2015

crimes (1) 91:4
criminal (2) 35:16 86:6
criminally (1) 32:22
criminology (1) 82:18
Crist (1) 19:3
critical (1) 78:16
critically (1) 60:18
crusade (1) 54:8
culture (2) 65:9,10
current (2) 6:15 13:11
currently (2) 13:10 38:7
cut (2) 72:21,22

D

D (3) 1:11 2:3 3:2
DA (7) 15:21,21 16:2 30:18 31:17
31:19 43:16
daily (1) 69:3
DAO (1) 30:15
data (1) 83:2
date (7) 6:16 19:12,13,16 45:19
46:24 48:4
day (3) 76:23 80:17,21
days (10) 44:12,13,16,17,23,24,25
45:2,3,5
deal (3) 10:12 19:21 84:16
dealing (1) 47:18
dealt (1) 88:20
death (2) 25:10 81:8
debate (2) 7:4 20:11
debated (1) 6:11
Debbie (2) 3:21 39:7
Deborah (2) 2:7,8
decade (1) 42:13
deceased (1) 90:20
December (2) 15:22 81:20
decision (12) 15:2 17:18 18:7,15
18:16 24:19 25:6 32:5,15 37:10
37:12 54:9
decisions (1) 77:21
decline-to-prosecute (2) 47:9,12
decrease (1) 60:15
decreased (4) 41:11,15,18 44:16
decreases (1) 59:4
decreasing (1) 56:6
defenses (1) 27:23
defer (1) 21:17
defined (2) 20:22 71:16
definitely (4) 9:3,4 33:21 65:18
definition (2) 23:16 28:16
degrade (1) 76:7
degree (2) 7:6 78:25
Demetrius (1) 49:8
demonstrate (1) 87:22
demonstrates (1) 23:22
denied (2) 17:19 18:8
Dent (1) 53:13

department (53) 8:15,25 9:19,25
10:6 13:8,10,16 14:7,18 15:3
16:13 17:16,17 21:6,9,18 22:10
23:15,16 24:20,24,25 29:10,21
30:14 33:15 37:9 38:6 43:12 47:7
47:21 54:17 55:16,22 57:5,14,15
57:19,20 58:12,20 60:7 65:9
67:11 68:2 69:20 70:17 77:4
83:13 85:21 87:3 90:2
department's (5) 25:5,18 28:5 47:8
47:11
departments (1) 30:8
depending (1) 66:16
depends (1) 21:4
deserves (1) 39:19
desire (1) 46:7
desk (2) 52:14 53:2
Despite (1) 42:10
detective (3) 52:9,10 89:24
determination (1) 17:13
determinations (1) 8:22
determine (2) 22:19,20
determined (2) 19:25 20:2
deviate (2) 66:20 71:8
deviations (1) 66:25
difference (1) 82:9
different (9) 7:8 14:18 16:20 59:18
59:24 66:5 71:22 79:22 82:10
differently (1) 82:7
differs (2) 23:20 32:7
difficult (2) 7:22 8:23
dig (1) 23:13
digested (1) 6:11
direct (1) 41:7
directing (1) 38:2
direction (7) 22:7 61:18 65:15,18
65:22 66:25 86:24
directly (1) 78:18
Director (4) 1:12,20 2:4 40:21
Director's (3) 6:16 40:15,19
disagree (9) 33:13 34:20 36:12
54:18 55:12 62:20 72:6,9,10
disagreed (2) 20:7,10
disagreeing (1) 20:8
disagreement (2) 28:13 36:15
disagrees (1) 28:10
disciplinary (9) 8:14 11:17 16:24
18:12,12 25:17 29:22,25 30:3
discipline (5) 8:24 13:15 14:20
23:14 47:5
disciplining (1) 22:21
disclose (1) 12:17
disclosure (2) 11:12 12:7
discourtesy (3) 41:14 75:22 85:14
discuss (2) 6:19 41:5
discussing (1) 12:8
discussion (7) 4:3 7:5,23 9:9

14:24 25:12 56:25
discussions (2) 7:5,22
disdain (3) 75:16 77:2 85:19
disgusting (1) 90:25
disparately (1) 90:12
disposition (5) 9:11,15 10:3,6
45:18
dispositions (1) 29:24
disproportionate (1) 71:20
disrespect (5) 76:6 77:2 85:19
86:14,21
disrespected (1) 84:21
distaste (1) 75:17
distinct (1) 41:21
distributed (1) 3:15
distribution (2) 6:20 67:21
distributions (1) 57:7
district (14) 5:20 15:25 16:5,7,18
18:2 23:3,4,5,8 29:18 49:21
61:23 86:7
diverge (1) 35:8
Divide (1) 84:14
diving (1) 59:23
division (8) 24:19 28:5 42:6 43:6
43:21 44:10,10,17
docket (8) 42:5,6,11,12,14 43:5,8,9
dockets (1) 60:19
document (1) 34:15
documentary (1) 17:11
dog (1) 81:10
doing (19) 11:21,22 22:25 31:7
33:22 40:17 57:25 60:8,13 63:5,6
66:5,18 73:9 77:14 81:12,12
87:19 88:17
doubling (2) 56:23 62:22
doubt (2) 21:8 22:5
drafted (1) 24:2
draw (2) 21:3 23:18
Drive (1) 53:14
Dunn (37) 45:12 46:5 54:5,7,25
55:4,7 60:3 61:5 62:7,11 63:10
63:13 64:17,22 65:4 67:5 68:9,12
68:15,18,21 69:8,11,14,23 70:6
70:11,19 71:5,10,13 72:7,13,15
73:21,24
dupe (3) 61:6,6,13
dupes (1) 61:11
duplicate (1) 66:3
duty (1) 75:8

E

E-L-U-D-E (1) 51:25
earlier (2) 34:13 65:14
early (1) 49:7
easier (1) 7:23
easily (5) 67:24 75:22,23,23,23
Eason (8) 2:5 29:10 38:4 50:14

Civilian Complaint Review Board-Draft
September 9, 2015

73:15,18,19,23
Eastern (8) 15:25 16:5,6 23:3,4,5,8
29:17
educated (1) 81:11
effect (1) 30:23
effective (2) 44:22 63:22
eight (1) 46:9
either (4) 22:10 37:15 86:24,25
elude (2) 51:24,25
email (1) 47:24
emails (3) 20:12,14,15
embarrass (1) 11:13
embarrassing (1) 90:21
emerged (1) 41:22
emergency (1) 19:17
emphasized (1) 63:3
employees (2) 68:6 70:7
employers (1) 79:5
employment (1) 87:4
encounters (4) 69:3,18,19,21
encourage (4) 61:14 89:10,11,17
enforcement (4) 19:5,7 30:25 90:6
engage (1) 83:4
engaged (1) 63:16
engaging (2) 57:3 78:19
English (3) 76:2 78:23 79:7
enjoyed (1) 87:13
enlighten (1) 14:4
entire (3) 57:15,19 67:25
entitled (4) 19:11 24:14 32:21 51:8
entity (1) 21:16
envelope (1) 13:2
equivocation (1) 20:17
Eric (3) 24:15 25:10 81:8
erroneous (1) 18:6
errors (1) 31:15
especially (2) 20:5 64:13
Esq (8) 1:11,12 2:3,4,7,8,10,11
essentially (2) 13:25 19:14
evening (8) 40:20 50:20 54:5,6
74:7,8,10 81:25
event (4) 15:17 34:19 37:25 50:5
events (1) 66:5
everybody (9) 5:14 6:22 24:3 33:9
49:5 73:21 83:3 90:3 91:23
evidence (11) 16:10,23 17:11 18:5
24:15 36:22 38:16 63:8,23 65:19
65:22
exactly (1) 73:9
exaggerates (1) 57:18
examiner (1) 17:4
example (3) 44:23 69:7 75:5
examples (1) 56:14
excellent (1) 38:8
exception (1) 19:9
excited (1) 48:23
exciting (1) 48:25

excuse (2) 57:10,12
executive (9) 1:12,20 2:4 6:16
40:15,18,21 43:14 91:18
exist (2) 21:19 31:7
exists (1) 16:6
exonerated (4) 11:25 79:17,23,25
expect (4) 3:6,11 50:9 69:9
expecting (1) 3:5
expedited (2) 18:18,21
experience (3) 22:12 90:7,16
expert (1) 27:24
experts (1) 17:4
expires (1) 19:17
explain (3) 19:20 64:13,18
explanation (1) 64:22
exploration (1) 8:3
exposed (1) 40:2
expressed (1) 75:16
extent (2) 23:24 33:22
extrapolation (1) 73:4
extremely (2) 39:18 64:11

F

F (2) 2:6 79:20
face (1) 84:18
FACSIMILE (1) 1:25
fact (17) 5:7 8:10 14:25 18:9 19:6
20:18 22:11 34:22 57:19 58:7
60:16,18 63:21 64:2,25 80:8
89:11
facts (2) 35:4 59:20
fair (2) 8:18 20:16
fairly (1) 4:25
false (1) 61:24
familiar (1) 74:13
families (2) 83:15,20
family (5) 76:19 84:25 88:22 89:7
90:3
far (5) 26:25 32:8 44:21 80:14 87:7
fascinating (1) 66:8
fashion (3) 10:22 85:13 86:13
faster (2) 60:17 63:6
favor (6) 3:22 38:23,25 39:3,4
91:23
feared (1) 46:11
February (1) 79:8
federal (3) 15:24 29:19 53:13
feel (6) 8:16,16 22:14 55:19 59:2
83:8
feels (1) 38:7
fellow (1) 87:21
felt (2) 16:3 20:3
female (1) 84:18
festering (1) 76:20
fewer (1) 64:15
field (3) 15:18 73:5,6
figure (1) 26:13

file (10) 17:15,16,17 20:6 28:11,13
28:14,17 29:5,8
filed (7) 44:8 57:11 58:10,13 68:6
68:16,20
files (2) 28:15 29:3
filled (1) 48:24
filling (1) 48:22
final (8) 8:24 13:15 16:5 20:19 25:5
47:23 58:23 61:20
find (6) 43:22 68:9 72:11 80:5,22
90:18
finding (3) 63:2 80:10,16
findings (4) 12:13,13 29:23 33:10
finds (2) 90:20,25
fine (2) 36:10 71:13
fire (2) 69:19,20
first (25) 5:17 6:6 25:15 40:19 41:3
44:24 45:3 48:13,15 53:24 55:14
55:15,18 56:15,18,19,21 59:7,9
59:11,13,15 61:7 63:15 89:24
firsthand (1) 50:7
five (6) 39:4,12 48:21 52:21 53:5
66:14
flags (1) 71:12
flawed (1) 57:7
floated (1) 57:17
flow (1) 71:2
flush (1) 13:6
focus (1) 42:17
focused (3) 70:21,23 90:22
FOIL (3) 7:9,20 19:4
follow (2) 46:7 81:18
follow-up (1) 29:20
followed (1) 14:6
follower (1) 51:7
following (2) 78:13 86:3
follows (2) 24:3,11
force (1) 41:15
foreclosed (1) 7:21
foreclosing (2) 26:2,21
form (6) 10:21 22:23 29:9 40:6,6
77:8
formal (1) 83:6
formality (2) 5:7,12
formally (1) 81:23
formed (1) 61:25
former (2) 44:2,22
forth (2) 7:25 20:13
fortunate (1) 78:24
forum (2) 39:22 40:11
forums (1) 85:25
forward (6) 9:8 18:5 28:18,19
62:13,15
found (2) 11:20 63:16
four (6) 10:2 42:22,24 43:6 45:14
66:13
fourth (4) 51:17,22,22,23

Civilian Complaint Review Board-Draft
September 9, 2015

frames (1) 32:13
frankly (3) 32:6 35:25 38:9
frequently (2) 18:25 19:2
friend (1) 49:7
frisk (3) 46:20 64:21,25
frisks (1) 65:2
front (4) 4:25 5:3 52:14 63:4
frustrating (1) 88:20
frustration (1) 88:19
full (8) 38:12 41:6 44:3,6,13 46:15
51:2,8
fully (3) 45:20 46:18,20
Fulton (1) 1:8
function (4) 8:12,12,13 11:16
functioning (2) 60:13,20
fundamental (1) 28:12
fundamentally (1) 57:7
further (3) 24:18 40:8 93:13
future (3) 12:10 26:2,22

G

G (1) 2:9
gallows (1) 53:22
gang (1) 83:14
Garner (13) 15:9,10,16 16:7 22:19
23:2 24:16 25:10,19 35:6 38:14
54:8 81:8
Garnett (1) 18:7
gather (2) 5:9 17:10
gathering (1) 31:6
general (1) 23:12
genuinely (1) 65:12
getting (5) 38:19 60:16,17 62:13
64:15
give (6) 4:13 10:22 69:7,17 73:11
75:5
given (8) 5:7 37:13 53:8,24 57:6,19
59:20 93:11
gives (1) 79:17
glad (3) 49:13 60:6,7
Glover (2) 49:20 50:2
go (25) 7:3 8:19 10:25 12:18 15:6
16:8 18:3,4 20:14 28:18,18 31:23
37:24 48:8,19 50:18 54:25 55:7
71:3 76:11,15 80:17,20 89:20
91:18
goals (1) 43:18
goes (4) 82:16,18 89:4,5
going (41) 5:4,5 14:21 15:9 18:20
19:16,20 22:22 23:14 26:24 36:7
38:5 47:24 48:8 50:10,12 51:2
59:17 60:19 61:4,17 65:11,15,22
66:11,15,21 68:9 70:24 71:6,11
71:19 72:11,24,25 73:19 74:13
82:11 90:11 91:7,17
gonna (2) 6:8 91:9
good (18) 16:24 23:19,19 40:20

48:8 50:20 51:4 54:5,6 55:6 74:7
74:8 81:13,13 82:12,12,20 89:8
gotta (1) 85:9
gotten (4) 36:5 47:19 63:2 86:21
government (2) 12:5 15:25
governmental (2) 18:11 22:2
grade (1) 89:24
Grady (1) 48:9
grand (36) 16:17,21 17:5,6,21
18:10,13 19:7,8 21:22,24 22:13
22:16 24:14 27:5,8 28:8 29:3,5,8
29:11,14,17,18 32:21 33:2,24
34:3,9,11 35:14,15,17,24 36:5
49:22
grandfather (1) 90:19
grandfather's (1) 89:28
Grant (3) 53:13,13,23
great (4) 5:23 60:13,19 82:6
Gregory (1) 49:20
grievous (1) 31:15
grind (1) 51:10
group (2) 67:7 70:14
guess (10) 7:3 12:2 13:20 26:12
35:7 51:16,19 52:10 61:16 87:10
guidelines (2) 85:14 86:10
guys (13) 60:13 77:14 78:15 80:15
80:20,24 81:22 83:4 85:8 86:22
86:25 87:17 91:14

H

half (7) 44:25 56:19,21 59:11,11,13
63:15
hand (2) 28:23 93:18
handle (1) 91:19
hands (6) 3:23 38:24 39:6 78:19
81:7 91:24
happen (5) 21:21 23:14 90:13,14
90:14
happened (3) 6:23 22:19 23:13
happening (2) 60:10 67:18
happens (2) 8:24 37:20
happy (2) 47:11 69:19
harass (1) 85:3
harassing (1) 84:13
hard (4) 51:5 64:13 73:10,13
harder (1) 7:22
He'll (1) 6:24
hear (3) 56:9 83:24 89:21
hearing (2) 48:3 62:15
held (3) 31:10 33:4 53:15
hell (1) 84:7
hello (3) 50:21,21,21
help (3) 7:24 19:24 34:25
helped (2) 5:25 13:25
helpful (3) 35:9 71:15 74:18
hereunto (1) 93:17
hesitancy (1) 36:9

Hi (1) 4:20
high (6) 58:3 61:14 70:4 74:21 83:8
86:7
higher (3) 46:16 59:8 69:9
highest (1) 89:25
highlight (1) 45:17
highlighted (1) 87:14
highlights (1) 41:4
Hispanic (1) 91:4
history (1) 15:8
hit (1) 80:20
hold (12) 15:21,21 16:2,3,4 30:16
30:18,19,21 31:17,19 43:16
hominem (1) 32:2
honest (1) 22:6
honestly (1) 65:13
hook (1) 61:2
hope (5) 9:7 24:8 36:23,23 62:8
hopefully (2) 48:5 80:20
hosting (1) 40:25
hot (2) 5:9,10
hours (2) 88:7,8
house (4) 69:20 78:20,22 86:4
huge (1) 63:2
Huh (1) 75:25
hurting (1) 26:22

I

IAB (3) 21:12 29:15 30:14
ID (1) 60:4
idea (2) 26:8 61:21
identification (2) 7:7 11:6
identified (5) 9:6 66:3,6,7 67:21
identify (6) 10:2 11:2 50:2 57:9
58:6 68:4
identifying (3) 10:16 11:22 67:7
ignorant (2) 87:2 88:5
ignores (1) 55:23
impacts (1) 90:12
impeach (1) 33:11
impeachment (2) 28:3 34:23
implementation (1) 44:9
implication (1) 57:4
implied (1) 40:9
imply (1) 30:5
import (1) 62:22
important (9) 17:22 20:25 39:18
54:14 60:16,18 62:16 63:4 64:12
importantly (2) 7:11 23:21
impression (1) 79:18
improve (1) 42:4
improvements (2) 55:17 60:21
in-depth (1) 73:3
in-person (1) 50:11
Inaudible (2) 4:5 74:4
incidences (1) 84:20
incidents (1) 61:23

**Civilian Complaint Review Board-Draft
September 9, 2015**

included (1) 42:7
incorporate (1) 47:21
increase (3) 42:4,10 59:14
incredibly (1) 86:25
indefensible (1) 32:5
independence (1) 23:23
independent (7) 8:12 11:19 21:16
 22:18 23:10,17 43:11
indicated (2) 52:15 89:13
indication (1) 66:15
indicator (2) 66:22 67:3
indictment (1) 33:5
individual (1) 91:19
influence (1) 49:11
informal (2) 82:24 83:4
information (15) 6:10 26:7,16
 33:10,11,12 37:4 48:21 53:12,23
 74:15,18 75:12 78:17 91:5
informed (2) 35:4 39:23
inherently (3) 77:3 83:23 90:9
inhibits (1) 12:7
initially (1) 57:17
initiated (2) 16:16 24:17
initiatives (1) 12:9
inquiry (1) 91:6
Installation (1) 53:14
instance (1) 64:9
instances (1) 86:20
institution (2) 83:23 90:8
instructions (1) 14:6
insufficient (2) 81:12,15
Intake (1) 49:22
integrity (12) 21:3 22:18 23:22
 27:19 38:12 52:16,18,20,23 53:4
 53:4 54:15
intellectually (2) 8:3 22:6
intended (2) 18:17,18
intention (1) 36:20
interactions (3) 57:21 64:20 65:8
interested (2) 87:3 93:15
interesting (4) 61:21 66:21 70:23
 71:6
interestingly (1) 6:7
interfere (2) 31:2,3
interfering (1) 31:4
internal (1) 7:5
Internet (2) 80:17,20
interpretation (1) 31:22
interpreted (1) 11:11
interrupt (1) 76:3
interrupted (1) 75:24
intervals (1) 59:10
interview (4) 16:9 44:24 45:3 46:9
interviewed (4) 15:19 45:7,9,10
interviewing (1) 31:5
interviews (3) 45:7,13,15
intimated (1) 55:10

intimidate (2) 85:3,3
investigate (2) 17:2 44:15
investigated (5) 27:6 32:22 45:20
 46:18,20
investigating (1) 16:7
investigation (41) 8:20 11:6,19
 15:10,11,16,20,24 16:14,25
 17:12 21:4,7,9,10,12,13 22:17
 23:2 24:15 25:9 27:17,21 28:8,22
 29:16 30:9,11,13 33:16,17,21,23
 34:14,16,21 35:16 36:7,7 42:25
 44:17
investigation's (1) 27:18
investigations (15) 21:17,18 28:16
 42:5,8,14 43:6,21 44:3,7,10,14
 46:15 60:15 63:7
investigators (5) 17:25 43:23 44:2
 44:4 45:7
investigatory (1) 8:12
invitation (1) 62:14
invited (2) 5:20 62:14
involved (3) 22:21 25:19 57:6
involving (2) 54:21 88:21
Island (6) 16:17 18:8 24:17 49:6
 89:18 90:14
isolated (1) 56:7
issue (16) 7:20,20 8:4,23 9:10 13:7
 18:24 19:19 22:15 23:4 32:17,19
 55:9 60:5 62:17 70:9
issued (2) 18:7 25:18
issues (6) 4:3 6:5,12 7:19 18:13
 32:17
it'll (1) 38:9

J

Janette (4) 2:10 17:7,9 50:13
January (10) 41:11,19,22 43:21
 44:4 45:4,8 47:4,10 77:15
jeopardy (1) 21:23
job (7) 33:9 49:12 76:7 81:25 85:8
 88:6,13
jobs (1) 88:11
Joe (5) 3:6 4:19,20,20 50:13
Joe's (1) 3:6
John (7) 14:11,13,15 53:8,10,11,11
join (2) 53:21 89:2
Joined (1) 17:9
Jones (13) 72:16 74:6,7,9 77:10,12
 78:10,11,13 87:12 88:3 89:15,23
Joseph (1) 2:12
judge (2) 31:14 34:20
judge's (4) 20:3 32:2,4,9
juice (1) 73:18
Julia (1) 53:13
July (6) 15:18 47:3,4,10 61:8 82:7
jumping (3) 84:6,12,13
junction (1) 76:22

June (4) 15:13 16:15 17:14 83:14
jury (36) 16:17,21 17:5,6,21 18:10
 18:13 19:7,8 21:22,25 22:13,16
 24:14 27:5,8 28:8 29:3,5,8,11,14
 29:17,18 32:21 33:2,24 34:3,9,11
 35:14,15,17,24 36:5 49:22
Justice (1) 18:7

K

K (1) 51:17
keep (3) 34:21 78:3 89:20
key (1) 34:10
Khan (1) 51:20
kidding (1) 73:25
kind (5) 12:14 32:12 50:11 69:15
 87:22
kinds (1) 19:5
Kings (2) 49:21 93:6
knew (1) 10:14
know (64) 11:3,5,6,11 12:24 13:21
 14:8,9,10,12 25:17,20 26:14
 31:10,13 34:7,10 36:12 38:5,17
 39:11 51:4,19 52:9,10,12 54:20
 55:4 58:2 60:9 61:10,12,13 62:24
 64:18 65:12,17 68:8,12,15,20
 71:19 72:10,12 73:5 74:15 76:23
 78:7 82:13 83:3 84:7,11 87:17,18
 87:22,24,24 88:3,17 90:5,18 91:7
 91:9,13
known (1) 11:7
knows (2) 51:24 74:20
knuckleheads (1) 70:16
kudos (2) 54:7 60:22

L

L (1) 2:7
labor (1) 88:9
language (1) 41:16
large (2) 22:25 78:23
larger (2) 44:3,22
late (1) 18:20
law (13) 18:10 22:7 24:24,25 25:5
 27:14 30:25 35:12 37:8 38:6
 47:20 60:7 90:5
lawyer (2) 36:10 55:6
lawyers (4) 18:25,25 24:23 68:12
lax (5) 22:22 31:16 32:14 75:7
 80:12
Lax's (1) 76:14
lay (1) 79:18
lead (1) 10:22
leaders (1) 49:18
leading (1) 85:21
leaks (1) 33:8
leave (1) 73:20
leaves (1) 22:14
left (1) 23:10

**Civilian Complaint Review Board-Draft
September 9, 2015**

legal (7) 7:13,14,15 28:21 40:2,8 68:10
legally (3) 24:14 31:12 84:8
legislative (1) 12:9
Lehrer (2) 39:21 40:13
lengths (1) 15:14
let's (5) 3:2,14 39:13 40:15,18
letter (5) 9:12,15 10:5 13:9,10
letters (4) 8:5 10:3 11:10 13:14
Liaison (1) 49:14
Library (2) 51:21,23
LIE (1) 76:11
lieutenant (1) 73:24
lieutenants (1) 74:2
life (1) 85:2
lifted (1) 15:21
light (3) 83:17,17,19
lights (1) 66:2
limitations (1) 42:20
limited (2) 56:7 58:15
Lincoln (1) 53:17
Linda (1) 4:4
Lindsay (6) 2:5 6:23,23 38:9 50:14 73:17
line (11) 51:15,17,20,21,24 52:2,2 68:5 76:25 85:2 90:8
lines (1) 68:23
link (1) 81:4
list (2) 81:17 88:16
litigate (1) 19:2
litigated (1) 18:24
litigation (7) 16:16 19:4,5,6,7 24:16 25:8
litigative (1) 20:20
little (5) 7:19 15:7 62:7 65:25 74:14
living (1) 86:4
locations (2) 45:14,16
long (4) 39:17 65:11 76:10 86:18
long-term (1) 64:5
longer (1) 77:18
look (14) 50:12 57:8,18 59:24 65:8 67:21 70:21 71:7 73:7,8 77:22 79:23 81:13 82:21
looked (1) 30:9
looking (9) 26:19 27:11 32:16 59:10 62:13,15 66:18,19 73:13
lose (2) 21:3 23:18
lot (13) 6:8 7:13,14,25 37:20 58:17 58:25 60:23 63:3 65:6 68:19 73:22 89:5
lots (2) 59:18,23
love (2) 25:11 88:9
lower (1) 42:12
loyal (1) 51:7

M

maintain (1) 33:7

maintaining (2) 22:3 87:4
majority (3) 39:12 54:9,12
making (3) 34:25 55:22 82:6
males (1) 91:4
maliciously (1) 55:23
Malik (15) 1:12 2:4 3:8,10 4:10,19 4:23 5:13 40:17,20,21 47:16 48:3 48:7 61:3
MAMARONECK (2) 1:23,24
man (1) 62:4
managed (1) 85:22
management (1) 49:17
mandate (1) 87:20
Manhattan (1) 52:15
map (5) 71:15,15,16 74:18,19
maps (4) 77:9,10,12,21
March (1) 41:23
Marcos (3) 4:10 47:15 77:19
marked (1) 62:3
marriage (1) 93:14
married (1) 89:7
Mary (7) 53:9,11,15,15,19,21,23
Master's (1) 78:25
masterminding (1) 53:16
match (3) 81:3,17 83:2
matches (1) 83:6
material (1) 28:3
materials (6) 4:8,11,15 5:2 17:21 27:5
math (1) 57:13
matter (13) 9:24 24:16 25:6 27:10 39:12,18 40:11 58:21 59:5 76:24 77:22 91:8 93:16
matters (3) 34:24 41:5 91:19
Matthew (1) 49:15
Mayor (4) 22:10 51:6 79:4 81:13
Mayor's (1) 47:20
mean (17) 12:24 13:20,22 14:9 16:11 18:25 27:15,17 30:9 55:23 60:14,14 71:18 73:17 77:9 78:3 84:23
meaning (2) 35:21 78:22
means (5) 33:11 35:23 80:10 82:16 82:19
measure (1) 70:6
media (2) 7:9,20
mediation (5) 42:8 43:15 46:22 79:11 81:2
mediations (1) 78:14
medical (1) 17:3
meet (4) 43:17 49:6,7,10
meeting (20) 1:2,14 3:3 19:14,17 38:5 46:6 49:4,6,9 50:11 55:11 55:11 57:16 61:21 68:4 85:17 86:9,9 89:20
meetings (12) 7:12 15:12,15 49:17 85:10,12,20 86:13 87:11 89:10

89:11,19
Mel (3) 51:15,16,18
Melvin (1) 51:16
member (2) 40:23 87:19
members (12) 2:2 3:23 4:12,15 6:18 38:24 39:6 47:2 57:20 87:22 89:7 91:24
mentality (1) 87:23
mention (2) 55:8,8
mentioned (1) 61:21
merit (2) 37:23 63:2
message (5) 56:4 58:19 62:20,24 67:14
messages (1) 56:9
mic (1) 90:17
mid-year (3) 6:7,14,19
middle (2) 53:7,7
military (2) 51:25 75:10
Mina (9) 1:12 2:4 14:9 21:13 29:7 30:9 40:21 60:12,22
mine (1) 49:7
minimize (1) 42:19
minute (1) 19:21
minutes (25) 1:17 3:15,17 16:17 16:22 18:9,11,14 21:25 22:13,16 27:8,12 28:9 29:8,11,14,17,18 32:21 33:24 34:3 35:14,25 36:5
mirror (1) 67:20
misconduct (14) 17:13 35:5 47:6 55:17 56:5,17 57:4,6 58:20 63:16 67:15 71:16 78:7 83:5
misdeemeanors (1) 90:23
mistake (3) 39:20,22 59:20
Mitchell (1) 2:9
Mmm-hmm (2) 26:4,10
mode (2) 20:20 50:13
moments (1) 88:20
Monday (3) 75:5,6 80:13
money (1) 91:3
monitoring (2) 67:11 74:15
month (10) 41:21,24 42:2 43:17,17 47:12 48:5 79:12,15 89:21
monthly (3) 41:4,7 77:7
months (18) 16:15 42:18,20,22,23 42:24 43:2,6 47:18 56:15,18 59:7 59:9,10 61:7 64:9 72:3 79:9
morning (3) 39:20 40:13 80:13
motion (3) 3:16 91:18,20
move (6) 3:12,18 37:2 38:22 39:17 77:5
moved (1) 3:18
moving (1) 86:23
multiple (2) 66:10 67:8
murders (1) 90:24

N

N (1) 2:8

Civilian Complaint Review Board-Draft
September 9, 2015

9

name (8) 8:8 9:11,15 10:4 11:22
40:20 53:8,9
named (1) 36:10
names (1) 9:5
nasty (1) 18:6
Natella (1) 7:13
nation (1) 52:4
nationwide (1) 80:19
near (2) 40:12 65:16
nearly (1) 56:16
necessary (3) 19:18 24:20 28:9
necessity (1) 5:6
need (19) 4:11 20:5 26:3 27:13
28:7 32:18 35:10,12,13,22,23
36:6 60:9 79:10 80:2,15,22 81:22
88:25
needs (3) 26:9 35:20 80:4
negative (1) 90:11
neglect (1) 85:22
neighbor (1) 5:24
neutralizes (1) 26:8
never (7) 58:24 75:3 76:9,12,14
88:24,24
nevertheless (1) 8:2
new (26) 1:9,24 8:14 9:18 10:6
11:11 15:25 20:10 24:20,23
43:11,18,23 44:21 49:15 52:19
53:14 56:6 58:20 67:15 77:4
80:18,21 81:14 93:5,9
nice (1) 5:8
night (1) 5:10
nine (3) 42:18,23 43:2
non-active (1) 73:4
non-corroboration (1) 28:2
non-disclosure (1) 12:16
non-homeowners (1) 86:5
nonsense (1) 90:23
norm (3) 66:20,25 71:8
notably (1) 46:19
Notary (1) 93:8
note (4) 56:14 59:6,12 60:25
noted (1) 92:5
notice (1) 62:4
notification (1) 13:7
notified (2) 8:21 14:20
notify (2) 14:7,14
notwithstanding (4) 5:8 8:9 18:9
23:20
number (31) 4:3 7:8,12 10:5 23:19
27:12,13 36:4 42:10,11,19 44:13
44:23 45:2 56:8 57:2,17,23 62:25
64:12 65:24 66:23 67:3,16 69:2
70:4 71:20 77:12 81:2,16,17
numbers (18) 6:15 43:8,10 56:13
57:8 58:22 59:2,4,19,24 61:12,15
61:16 71:25 72:4,5,10 81:3
NY (1) 74:11

NYCHA (1) 50:5
NYPD (6) 69:4 74:11 82:2 84:22
85:2,14

O

O'Grady (9) 48:9 50:20,21,24 51:6
51:9,12,14 54:2
oath (3) 17:3 34:8,9
objecting (1) 67:13
obligation (1) 39:25
obliged (1) 16:3
observations (1) 6:10
observing (1) 75:18
obstacle (1) 12:14
obtain (1) 24:14
obtainable (1) 63:8
obtained (3) 11:9 17:15 38:16
obviously (3) 6:7 24:6 36:10
occurred (1) 15:17
occurring (1) 14:23
offend (1) 75:11
offensive (1) 41:16
offer (2) 64:23 87:9
offering (1) 24:6
office (6) 7:6 19:23 47:7,20 49:14
49:21
officer (16) 9:16 10:16 11:14 12:3
27:6 32:22 34:16 35:17 45:3
52:16,18,23 53:4 60:4 66:16
81:19
officer's (5) 8:8 9:11 11:22 32:23
34:17
officers (53) 7:7 10:2,4 11:15 12:6
16:9 22:21 25:19 33:11 34:7,10
52:20 56:8,16,19 57:3,5,9,12,12
57:20 58:4,6,8,10,11,18 60:10,17
61:24 65:25 66:2,4,9,19,22,24
67:7,17,19,21 71:24 72:3 73:4
74:24 76:11 80:9 83:18 84:4,5
89:6,8 90:21
officers' (1) 9:5
Offices (1) 20:9
Oh (5) 39:2 48:11 72:19 73:25 82:5
okay (33) 4:2,3,7 6:22 14:16 25:24
29:6 32:8 34:12 37:17 38:23 39:3
39:10 48:6,17 50:20 52:5,13 55:4
62:11 63:13 71:10,24 72:13,16
73:22,23 74:5 75:3 78:10 90:2
91:16 92:3
old (2) 42:23,24
older (3) 42:18,22 43:2
once (4) 11:2 52:20 89:21 91:10
one-third (1) 80:9
ones (1) 66:11
ongoing (1) 7:4
online (1) 77:23
open (10) 7:19 8:23 9:18 24:7 42:5

42:6,11,12,13 43:5
opened (1) 49:8
openly (2) 16:19 36:16
operation (1) 12:12
operations (2) 41:6 47:20
opinion (7) 20:4,23 22:6 31:15,16
32:3 38:10
opportunity (1) 89:2
opposed (4) 3:24 39:5 59:15 91:25
order (5) 1:16 3:4 18:18 26:17
42:18
orderly (2) 85:13 86:14
ordinary (1) 37:21
organization (1) 55:15
ought (1) 14:19
outcome (3) 25:7 77:17 93:15
outcomes (1) 78:14
outlined (1) 77:15
Outreach (4) 48:21,22 50:9,12
outside (5) 19:13 45:11,14,15 61:9
overall (1) 59:22
oversee (1) 34:20
oversight (1) 86:19
overstate (1) 55:21
overstating (1) 59:3
overwritten (1) 35:15

P

p.m (2) 1:5 92:5
package (4) 4:24,24,25 5:2
packet (1) 5:15
packing (1) 83:15
pads (2) 4:17,18
page (3) 51:15,20 52:2
paid (1) 55:8
pair (1) 72:14
palpable (1) 32:4
panel (10) 8:7,20,22 9:2,6,16 17:12
34:25 35:3 77:21
panels (1) 10:3
Pantaleo (1) 34:10
paper (2) 36:14,15
parades (1) 85:24
Park (1) 90:13
part (9) 8:11 14:22,23 22:17 29:9
31:25 32:15 33:6 88:14
participation (1) 62:12
particular (9) 12:6 15:13 35:10,22
60:10 66:20,23 71:18 91:5
particularized (12) 20:5 26:3,9
27:13 28:7 32:18 35:9,13,20,22
35:23 36:6
particularly (6) 6:2 7:10 11:14 20:2
60:22 86:7
parties (1) 93:14
partner (3) 53:10,10,11
pass (2) 39:11 54:12

Civilian Complaint Review Board-Draft
September 9, 2015

passed (4) 24:5 36:23,24,24
pathway (1) 11:2
patrol (1) 71:19
patterns (3) 41:22 55:25 78:7
pay (1) 88:6
PD (2) 29:2 89:5
penalty (1) 47:8
pending (3) 16:4 42:8 43:14
penmanship (1) 52:13
people (33) 3:12,13 4:4 5:24 11:14
12:18 13:13,25 33:3 48:25 53:8
54:11,12 55:18 63:14 67:23
68:19 69:18 70:17 73:22 74:24
81:11 82:19,22 83:12,24 86:5,8
87:5,25 89:17,18,18
people's (1) 25:11
percent (37) 41:11,15,16,17,18
42:16,24 43:2,4 44:6,12,18 45:13
45:15,19,21,21,23,24,25 46:6,8,9
46:11,11,15,18,19,23 47:5,9
57:14 61:7,13 65:2 72:2 79:24
percentage (6) 43:7 46:16 57:25
72:8 73:7 79:15
perception (1) 89:4
perfect (1) 67:10
period (11) 41:14 46:16 48:2 57:10
57:11 58:9,14 66:14 68:3,7 70:8
peripherally (1) 74:16
permission (1) 25:3
permitted (3) 16:8,11,12
person (6) 3:5 14:19 27:21 28:4
55:14 75:21
personally (1) 87:18
personnel (3) 11:17 12:5 15:2
perspective (2) 89:8 90:17
pertaining (1) 41:5
pervasive (1) 76:20
pettiness (1) 91:5
petty (1) 90:22
phase (1) 91:6
phenomenon (3) 59:22 71:17
84:17
phone (1) 6:25
physical (1) 77:3
picture (1) 32:16
pie (1) 80:3
pieces (1) 78:16
place (4) 5:8 15:17 76:6 82:3
plain (3) 52:11 76:23 78:23
plainclothes (1) 84:5
plan (1) 50:11
planning (1) 53:16
platform (1) 53:22
play (2) 76:16,25
playground (1) 76:17
Plaza (1) 1:7
please (3) 17:7 54:4 72:19

plotting (1) 53:16
plurality (1) 54:11
podium (2) 54:3 91:11
point (17) 5:15 7:23 18:24 22:4
25:21 32:9 34:19 36:20 37:4 41:9
42:13 48:20 56:2 59:16 62:2 64:4
72:20
pointed (1) 56:22
pointing (1) 78:12
points (1) 43:7
police (99) 8:14,25 9:19,25 10:6
11:13,15 13:8,9,16 14:6,18 15:2
16:9,13 17:16,17 20:6 21:6,9,11
21:17 22:10 23:15,16 25:18 27:5
28:5,11,13,14,15,17 29:10,21
30:8,14 32:22 33:15 34:15,17
35:17 41:10 43:11 47:6,8 52:19
54:17 55:16,17 56:5,8 57:3,4,9
57:15,19,20 58:17,19,20 60:10
61:23 64:19 65:9 67:15,16 71:24
72:2 74:24 75:17 76:9,11,21 77:4
78:7 79:21 80:18,22 82:13,24
83:2,5,10,13,16,20 84:4 85:21
86:21,23 87:2 88:21 89:6,7 90:2
90:4,23 91:12
policy (1) 82:8
politicians (1) 79:3
pony (1) 81:10
poorly (1) 82:2
port (1) 65:16
portion (1) 67:25
portions (1) 33:14
posed (1) 69:12
position (12) 7:16 14:19 16:12,20
18:16 21:5 24:8,9 28:11 32:5
35:11 38:13
positions (4) 8:2 20:16 48:22,24
positive (1) 29:14
possible (2) 12:12 26:16
possibly (3) 26:2,17 57:22
post (1) 11:6
pot (1) 67:22
potential (2) 27:22 79:5
potentially (2) 11:15 40:2
power (2) 25:9 28:22
practical (3) 9:24 27:9 39:12
practice (1) 13:11
precinct (23) 52:15,16,17,18,22,22
52:25 53:3 70:15 77:7,16 78:15
78:20,22 79:11,12 81:19 85:10
85:12,17,20,25 86:12
precincts (5) 52:20 53:5 70:25
71:3,18
prepare (1) 5:21
PRESENT (1) 2:2
presentation (3) 55:12,20 56:4
president (3) 53:17 86:2,12

pressure (1) 83:8
pretend (1) 36:13
pretty (3) 7:21 27:14 32:3
prevail (1) 22:4
previous (1) 77:13
previously (1) 3:16
priest (3) 53:19,20,21
principal (1) 70:13
principle (1) 67:14
priorities (1) 88:23
privilege (2) 49:3,5
probably (5) 14:16 20:12 47:23
58:3 66:3
probative (2) 18:14 28:9
problem (13) 9:24 10:7 19:22 56:6
56:7,23 57:2 58:15,15,16,17
73:14 84:5
proceed (1) 20:6
proceeding (2) 16:24 35:17
proceedings (92) 3:1 4:1 5:1 6:1
7:1 8:1 9:1 10:1 11:1 12:1 13:1
14:1 15:1 16:1 17:1 18:1 19:1
20:1 21:1 22:1 23:1 24:1 25:1
26:1 27:1 28:1 29:1 30:1 31:1
32:1 33:1 34:1 35:1 36:1 37:1
38:1 39:1 40:1,2,8 41:1 42:1 43:1
44:1 45:1 46:1 47:1 48:1 49:1
50:1 51:1 52:1 53:1 54:1 55:1
56:1 57:1 58:1 59:1 60:1 61:1
62:1 63:1 64:1 65:1 66:1 67:1
68:1 69:1 70:1 71:1 72:1 73:1
74:1 75:1 76:1 77:1 78:1 79:1
80:1 81:1 82:1 83:1 84:1 85:1
86:1 87:1 88:1 89:1 90:1 91:1
92:1
process (5) 8:14,19 26:22 38:12
49:12
processes (1) 26:23
processing (1) 42:3
productivity (1) 43:20
profession (1) 68:10
professions (2) 69:11,17
proficient (1) 76:2
program (3) 43:15 46:22 67:11
progress (1) 55:22
prohibit (1) 11:12
prominent (2) 63:19 64:15
prominently (1) 19:3
propaganda (1) 85:24
properly (3) 35:4 85:18 91:9
proposing (1) 24:11
proposition (1) 71:23
prosecute (2) 23:3,9
prosecutes (2) 23:4,5
prosecution (4) 14:2,2 46:24,25
prosecutor (3) 22:13 23:11,12
prosecutors (1) 29:19

**Civilian Complaint Review Board-Draft
September 9, 2015**

prospect (1) 61:22
protect (3) 11:18 12:3 88:5
protection (2) 62:10 75:13
protective (1) 12:4
proud (1) 49:19
proven (1) 90:10
provide (3) 8:17 41:3 80:24
providing (2) 46:13 78:16
provision (1) 30:22
provisions (1) 30:20
PSA (1) 75:6
psychological (1) 76:5
public (39) 1:2,14,19 6:13 12:22
 21:2 22:24 26:15,18 27:9 33:12
 36:2,3,16 37:19 39:22 40:11,17
 47:25 48:4,9 49:16 50:18 59:21
 69:3 78:6,22 79:6 80:4 81:5,7,20
 84:7,13 86:4 87:15,16 92:4 93:8
publication (1) 6:20
publicity (1) 63:3
publicize (2) 16:22 17:24
publicly (5) 16:19 18:17 22:15
 47:15 55:19
pull (1) 83:16
Puma (6) 2:12 3:7 13:3,6,17 50:13
punishment (1) 53:25
purpose (3) 12:2 21:19 33:2
purposes (1) 20:22
pursue (10) 14:3 23:23 28:22,23
 28:25 36:17,21 38:16 54:15
 87:20
pursued (1) 16:19
pursuing (2) 31:16 36:18
pursuit (2) 24:24 25:4
push (1) 91:3
pushing (1) 13:2
put (7) 5:25 11:10 15:21 27:16
 33:12 78:23 79:7
putting (2) 69:20 74:16

Q

quarter (1) 59:14
Queens (1) 89:19
Queensbridge (1) 50:6
question (11) 9:12,13,18 13:3
 25:24 38:8 51:4 67:6 69:12,16
 77:8
questions (2) 10:9 25:16
quibble (1) 20:21
quick (2) 39:16 60:3
quickly (1) 63:8
quite (7) 19:2 22:11 32:5 35:25
 38:9 40:3 60:14
quorum (1) 3:4
quoting (2) 75:9,20

R

racist (1) 83:23
raise (6) 3:23 10:13,14 38:24 39:6
 91:24
raised (1) 60:5
ran (1) 49:23
Random (1) 83:6
rape (3) 82:11,17,18
rapes (2) 82:22 90:24
rate (10) 45:19 47:5,9,12 61:6,6,13
 61:14 63:11 69:9
rates (1) 63:9
raw (1) 67:3
re-formulated (1) 8:5
reached (2) 7:16,24
read (4) 6:11 35:21 88:7,8
reader (1) 79:18
reading (1) 30:20
reads (2) 24:2,11
real (3) 71:11 73:12 90:23
really (7) 15:2 21:23 24:3 50:10
 60:15,20 73:7
reason (9) 10:13,14 21:8 65:6
 67:19 76:3 85:10 88:18 90:18
reasons (4) 33:13 46:4,13,13
receive (2) 8:8 9:4
received (4) 6:8 41:12,20 89:25
recommendation (5) 8:21 9:17
 14:22 35:2 73:2
recommendations (5) 8:7 9:3,6
 30:16 47:8
recommended (1) 14:21
record (6) 39:14 40:11 81:23 85:12
 86:22 93:11
records (1) 19:8
red (1) 71:12
reduce (1) 13:22
reduction (3) 42:16 44:13,19
references (1) 15:14
referred (2) 46:23 77:17
referring (1) 61:22
reflects (2) 44:6,18
reformed (1) 91:13
reforms (3) 44:9,17,18
regard (1) 22:23
regarding (1) 32:9
regardless (3) 13:17 25:7 71:2
Rego (1) 90:13
regular (1) 18:20
rejects (2) 28:20,20
related (3) 24:15 45:18 93:13
relation (1) 11:23
relationship (1) 49:17
relevant (5) 17:12 28:9 34:14,16
 67:25
rely (2) 28:15,15
relying (1) 21:6
remain (1) 27:9

remember (1) 30:23
remind (1) 87:15
removed (1) 58:7
renters (1) 86:5
repeat (2) 85:15 90:9
report (33) 1:18,20 6:5,6,7,14,19
 14:10 40:16,19 41:4 47:11 48:23
 55:10,13,21 56:10 59:21 60:12
 61:9,10,15 62:21,22,24 63:20
 65:20 67:14 77:7 78:2,21 82:22
 82:23
reporting (5) 1:23 77:21 82:17,19
 84:3
reportings (1) 81:2
reports (6) 1:21 6:16 48:13,14
 50:18 77:14
reprehensible (1) 90:22
represent (12) 12:22 24:25 25:2,3
 37:15,16,24 43:9 54:19,24 75:19
 87:15
representation (1) 24:23
represented (1) 86:8
representing (2) 34:15 74:10
represents (4) 26:15 37:19,20
 44:12
reps (1) 54:17
request (4) 24:22 25:3 29:11 30:25
requests (1) 7:10
requires (1) 54:9
resisting (1) 70:14
resolution (11) 16:5 24:2,2,5,10
 33:14 36:22 37:2 38:5 45:19
 54:10
resolved (3) 8:25 24:12 46:21
resolves (1) 24:13
respect (19) 6:19 7:9,9,11,17
 16:20 22:13 23:25 30:21,24
 37:10,12 45:6 46:3 74:17,24 75:4
 76:13,17
respected (1) 31:17
respectfully (2) 24:22 25:3
respective (1) 20:16
respects (1) 56:12
response (7) 3:25 6:21 50:19 75:9
 75:13,19 92:2
responsibilities (1) 84:25
responsible (3) 22:2 49:16 67:8
rest (1) 7:15
Restoration (1) 1:7
result (2) 11:9 56:10
resulted (1) 11:4
results (11) 8:6,8,9,20,22 9:4
 12:16,19 16:13 78:6 79:11
retaliation (2) 46:11 83:12
retired (2) 89:6,24
Rev (1) 49:7
reveal (4) 7:7,17 9:15 27:8

**Civilian Complaint Review Board-Draft
September 9, 2015**

revealing (2) 9:11 26:6
review (19) 1:3 3:3 16:23 18:4,4
 21:24 27:5 32:10,20 33:17 34:2
 36:3 38:14 40:22 41:6 42:9 43:14
 47:23 80:5
reviewed (6) 17:17 21:13 27:15
 29:7 33:24 43:20
Richard (8) 1:11 2:3 3:2 54:7 60:8
 63:11 64:23 68:13
RICHARDS (2) 93:8,21
right (39) 3:6 4:5 5:14,15 6:24 7:2
 10:18,19,20,24 12:3,23 17:8 20:4
 23:5 25:23 26:15 30:7 31:14
 37:14 39:15 48:20 50:6 54:7,14
 60:3,8,11 62:21 63:3,12 65:15,18
 65:22 69:20 74:6 86:23 90:15
 91:17
rights (1) 12:5
rigor (1) 27:18
rigorous (6) 8:3 21:10 22:17,25
 28:7 36:8
Riverside (1) 53:14
roach (2) 83:16,17
robberies (1) 90:24
robo (1) 83:7
role (1) 23:6
rolling (1) 74:14
Roman (3) 53:18,20,20
room (1) 86:3
rose (1) 41:25
row (1) 79:10
ruled (1) 19:11
rules (2) 47:17,21
run (7) 65:12 76:14 85:2,12,17,18
 86:10
running (1) 85:7

S

S (2) 53:13,23
safe (2) 8:16 83:8
said/she (1) 79:20
Salotano (2) 52:8,9
Salotono (1) 52:12
Salvatore (1) 2:6
satisfied (1) 6:22
saw (2) 55:16 86:18
saying (7) 26:21 31:10 34:6 59:18
 70:2 75:25 76:4
says (5) 18:10 20:24 30:22 80:7,14
scenario (1) 18:21
schedule (1) 48:3
scheduled (1) 48:5
school (3) 31:9 53:7 76:15
scope (1) 56:25
scratch (1) 88:16
second (17) 3:19,20,21 4:13 5:22
 24:19 25:24 30:6 37:3 38:21 58:5

59:11,14 64:3 89:25 91:21,22
Secondly (1) 56:25
secrecy (7) 16:21 19:9 21:22 22:3
 33:3,6 35:14
secret (4) 11:3 27:9 33:4 34:21
section (1) 48:9
see (15) 35:11 57:8 64:9 67:18
 71:7 79:8,10 80:18 81:16 83:6,11
 84:2,16,23 88:15
seek (5) 16:13,16 23:14 24:18
 29:16
seeking (7) 16:21,22 17:10,23
 22:19 32:23 35:24
seen (2) 20:12 32:11
semi-annual (4) 55:9,13,21 56:10
send (1) 13:14
sending (1) 58:19
sense (7) 11:9 21:5 62:21 67:10
 69:9 70:2 81:6
sent (2) 47:7 62:10
separate (1) 8:13
September (6) 1:4 3:3 19:12 36:18
 79:9 93:18
sergeant (11) 52:7,12,14,17,22
 53:2 75:7,8,10 76:14 80:12
serious (5) 36:8 55:16 66:14 70:9
 84:5
serve (2) 80:11,23
served (1) 52:4
service (4) 36:3 47:2 49:23 51:25
SERVICES (1) 1:23
session (2) 91:18 92:4
sessions (1) 85:21
set (3) 5:16 43:18 93:17
seven (2) 45:12 47:2
sex (3) 53:10,10,11
Shannon (1) 72:16
shape (2) 22:23 29:9
share (1) 88:2
shine (1) 83:16
shined (1) 83:17
shining (1) 83:19
ship (1) 65:15
shocked (1) 69:16
short (2) 48:18 50:9
shortly (2) 15:20 17:14
shot (3) 38:18,19,20
show (6) 39:21 43:16 58:22 77:12
 80:4 81:10
showing (3) 44:20 74:19 84:11
shown (2) 32:18 36:5
shows (2) 64:10 85:18
side (2) 76:8 88:4
sign (1) 40:5
signed (1) 52:7
significant (4) 56:13 58:17 59:17
 59:22

significantly (4) 55:21,24 56:5
 59:3
similar (1) 82:17
simply (4) 10:4 16:23 58:7 59:6
sincerely (1) 60:14
single (5) 58:13 77:15 79:12 80:17
 80:21
Sir (1) 76:2
sit (4) 17:8 23:6 86:22 88:6
sitting (1) 17:8
situation (2) 16:6 21:24
situations (1) 14:8
six (12) 16:14 45:20 46:10 51:21
 51:21 56:15,18 59:7,9,10 61:7
 64:9
six-month (1) 57:10
slightly (1) 59:8
small (2) 57:2 67:16
smaller (1) 43:23
solely (1) 83:5
SOLER (3) 4:13 77:22,25
solution (1) 9:22
solve (2) 9:24 10:7
somebody (5) 10:8 14:4 62:8
 84:10 90:3
someone's (1) 31:21
somewhat (2) 23:9 89:3
son (3) 52:3,3,4
sorry (7) 15:4 39:17 48:11,17
 70:12 72:21 74:6
sort (1) 10:7
sorted (1) 60:7
sought (1) 17:14
sound (2) 81:13,14
sounds (1) 51:20
sources (1) 26:8
speak (1) 75:7
speaking (7) 75:13 79:2,2,3,4,4,5
speaks (1) 58:14
special (2) 23:12 67:9
specific (1) 9:4
spelled (1) 51:16
spent (1) 49:13
spin (1) 72:9
spoke (1) 75:24
spoken (1) 89:5
spread (1) 89:12
squad (2) 43:23 44:21
ss (1) 93:5
staff (10) 5:18 6:2 7:14,15 40:24
 43:14 50:15 60:23 75:8,10
stance (1) 38:11
stand (4) 49:4 50:2 85:16 91:14
standard (2) 35:20 66:24
standing (2) 5:11 53:22
start (4) 3:14 15:23 48:2 80:16
started (1) 15:20

Civilian Complaint Review Board-Draft
September 9, 2015

starting (1) 56:3
State (3) 49:15 93:5,9
stated (1) 46:8
statement (6) 27:22 32:24 33:20
34:14 38:15 91:11
statements (13) 17:2,3,3,4,5 20:15
21:14 31:6,7 32:25 34:8,8 61:24
Staten (6) 16:17 18:7 24:17 49:6
89:18 90:13
States (2) 12:6 53:24
statistic (3) 56:22 66:9 80:3
statistical (7) 41:4 73:14 74:17
77:7 78:21 80:25 84:3
statistics (14) 6:10 41:7 43:16
44:20 45:17 55:20 76:9 77:6
82:22 84:15 85:6 86:18 90:10
91:3
stats (1) 76:25
status (2) 30:14 77:20
statute (4) 12:5 19:9 31:20 42:20
stay (2) 61:14,18
steaming (1) 65:18
STENO-KATH (1) 1:23
step (1) 9:7
Stephanie (2) 5:18 40:24
stop (9) 64:20,24 65:2 77:14 81:10
81:22 82:15 85:9 87:17
stopped (1) 78:15
strange (3) 52:16,19,24
street (5) 1:8 51:21,22,23 83:14
strides (2) 82:2,6
strong (1) 21:21
strongly (3) 20:7,10 21:20
structure (5) 43:24 44:3,21,22
47:22
struggle (1) 66:19
study (2) 73:4,5
stuff (2) 78:23 79:7
subcommittee (3) 61:25 62:12,16
subdued (2) 53:16,18
subject (4) 33:19 35:16 40:8 70:8
subpoena (2) 19:4,6
substantial (4) 18:10 59:4 60:21
62:25
substantially (3) 21:6 43:25 66:3
substantiated (20) 11:24 44:15
46:14,17,19,23 47:6 56:17,20,24
62:23 63:24 77:6,16 78:9 79:10
80:25 81:5,17,19
substantiating (1) 63:22
substantiation (2) 63:9,11
substantiations (1) 8:10
successful (2) 50:16 65:11
suffered (1) 12:15
suggest (3) 56:13,22 59:16
suggesting (1) 59:21
suggestion (2) 57:2 67:15

suggests (4) 57:13 70:9,11,12
supermarket (1) 76:15
supervision (3) 18:2,3 27:10
support (4) 12:9 19:24 24:22 37:9
supporter (1) 51:8
supposed (2) 81:4 85:17
supposedly (1) 11:13
Supreme (1) 24:17
Suratt (7) 53:9,11,15,15,19,21,23
sure (5) 6:8,13 10:8 50:15 51:23
surveys (3) 82:24,25 83:5
suspect (1) 22:8
suspicion (1) 30:11
swear (3) 21:10,11 40:6
sworn (1) 21:14
Sylvia (1) 49:3

T

take (11) 34:17 37:5 38:14 39:17
50:10 56:3,14 63:25 73:21 76:6
84:24
taken (1) 29:22
takes (3) 14:18 32:12 45:2
talk (7) 14:17 15:8 48:25 49:10
51:6 63:14 71:23
talked (3) 15:10,12 63:10
talking (4) 32:24 59:4 68:21 80:19
talks (1) 25:25
targets (1) 27:22
Taylor (44) 2:9 3:18 9:10 10:11,13
10:19,21,25 12:2,21,24 25:15,22
25:24 26:5,11 29:2,6,21 30:17
31:9,21 37:4,7,14,17 38:22 39:2
48:10,12,16,20 72:17,20,22,25
73:2,11,17 74:5 87:10 88:12
91:15,20
team (5) 15:18 44:3,22 49:2 50:4
tell (12) 39:25 40:3,4,4,7 65:23
69:21 71:16 82:5 89:17,18,18
telling (1) 31:4
ten (5) 43:16 47:9 61:7,13 65:2
terms (8) 13:11 26:21 38:6 43:19
45:20 60:12 67:20 71:17
testament (1) 60:21
testified (1) 34:11
testifies (1) 28:4
testify (1) 87:12
testimony (5) 27:24 33:4 34:18,23
93:11
thank (17) 4:23 5:13,18 17:8 40:23
48:18 50:3,16,17 51:13 54:2,4
74:9 78:11 79:12 87:5 92:3
thanks (1) 5:25
thefts (1) 90:25
theory (3) 12:25 16:18 30:19
thereabouts (1) 17:19
thick (1) 5:2

thicket (1) 14:25
thing (23) 7:4 11:7 12:21 31:23
32:12 35:18 39:16 47:15 50:22
55:7 58:5,23 60:8,11 61:20 64:3
65:24 70:13,13,23 71:15 79:19
82:20
things (11) 6:4 12:8 36:12 56:2
57:18 60:4 62:19 66:17 86:25
87:13 88:22
think (93) 3:12 5:6,23 7:15,20 8:5
9:7,7 10:11 11:3,8 12:7 14:11
17:22 18:6 20:11,16,25 21:20,21
22:22 26:18 27:4,17,19 28:16
30:8,13 32:4,8,11,11,15,19,25
33:18,23,25 34:22 35:8,10,13
36:2,19 38:9,10 39:18 50:5 54:8
54:13,14,16 55:2,14,18,22,24
57:7,17,25 58:3,18 59:19 60:14
60:19,23 61:3,18,24 62:2 63:19
63:20 64:7,11,14 65:7,7,14,19,20
65:21 66:8 67:13,17,20,24 68:11
69:23 70:6 72:5 82:5 91:15,17
thinking (1) 30:4
third (6) 58:12 67:25 68:5 69:15
70:7,16
thornier (1) 14:25
thorough (1) 63:7
thoroughly (1) 16:25
thought (3) 31:10 39:19 88:25
thoughts (3) 9:9 33:19 36:25
three (9) 10:2 39:4,7,13 42:21
66:13 84:20,22 86:24
tie (1) 10:23
tied (1) 28:24
time (20) 3:13 5:22 15:11 18:23
19:15 30:12 32:13 33:25 37:18
39:19 41:14 43:25 44:15 46:9
48:18 60:15 74:3 75:23 90:11
92:5
timeliness (1) 43:19
times (4) 42:3 52:24 69:18 87:14
Titone (1) 49:15
today (2) 82:8 90:21
told (6) 14:21 52:11 53:2 75:18
79:20 84:20
Tom (1) 14:9
tomorrow (2) 47:24 78:2
tonight (10) 4:4 6:14 19:3,15,19
40:25 62:4 73:19 74:10 91:11
tools (1) 76:5
total (1) 42:6
totally (2) 79:22 87:13
touch (1) 62:9
transcript (1) 93:10
transferred (1) 30:15
transparency (1) 12:14
transparent (2) 12:12 24:7

Civilian Complaint Review Board-Draft
September 9, 2015

transport (1) 9:23
treat (2) 76:8,13
treated (1) 77:2
trend (2) 64:6,12
trends (1) 59:3
trial (5) 28:5 81:3,6,18,21
trials (1) 47:2
tricky (2) 15:7 65:25
tried (1) 16:14
tries (1) 67:12
triggers (1) 67:9
troubling (1) 55:24
true (7) 15:22 33:5 56:12 67:18
70:20 91:15 93:10
truncated (1) 46:3
truth (4) 39:25 40:3,5 83:25
try (3) 25:13 27:16 38:20
trying (7) 10:12 26:12,13,20 65:10
65:13 88:5
turn (1) 85:23
twice (4) 56:16,18 63:15 72:7
two (15) 3:5,11 10:2 27:13 32:17
39:4 41:21 48:24,25 56:8 66:24
69:17 78:16 79:9 86:24
tying (2) 78:18 81:7
type (2) 82:25 83:4
typos (3) 50:24,25 51:14

U

ultimate (1) 12:13
ultimately (4) 16:15 17:11 24:8
25:13
Ulysses (2) 53:13,23
unavailable (1) 45:24
uncooperative (1) 45:22
undefined (1) 27:14
undercover (3) 84:4,15,17
underlay (1) 35:5
undermine (1) 82:4
underplays (1) 55:24
understand (16) 5:10 12:18 17:23
21:2 26:20 27:24,25 28:11 31:18
34:19 36:9 54:17 69:8 75:24
76:22 88:19
understanding (2) 13:13 29:15
understands (1) 36:16
understood (2) 15:9 36:16
undoubtedly (1) 34:7
unequivocal (1) 65:20
unfortunately (1) 50:24
unfounded (4) 11:24 79:17,23,24
unidentified (3) 45:25 65:25 67:19
uniform (2) 84:3,15
unit (3) 14:3 46:24,25
United (2) 12:6 53:24
unmarked (2) 84:6,12
unsubstantiated (9) 11:24 66:12

78:8 79:14,19,22,25 80:2,14
update (2) 47:16,17
upfront (1) 63:19
urge (2) 5:5 28:18
use (3) 33:10,10 34:23
usually (1) 37:21

V

van (2) 83:16,20
various (2) 15:12 70:25
vehicles (2) 84:6,13
vein (1) 78:13
venue (1) 5:21
verification (2) 40:5,6
versus (2) 41:13 84:4
vest (2) 84:8,10
victim (3) 45:22,23,24
video (2) 63:6 80:21
videos (1) 80:18
videotape (1) 81:9
view (16) 21:4,25 22:7,9,12 23:9
23:18,20 26:14,25 32:4,6,9 35:19
36:21 38:19
viewing (1) 35:14
views (1) 25:11
vigorous (3) 33:21 38:13 65:10
vigorously (1) 78:4
voluntarily (1) 31:11
voluntary (3) 30:17,19 31:22
vote (6) 3:23 24:3 25:13 37:5,7
39:14
voted (2) 28:6 54:17
voting (1) 39:8

W

wait (3) 7:3 48:17 72:25
want (54) 6:18 7:2,3 12:8,9 20:2,14
22:8,16,24 24:3,7 25:15 27:20
30:3,5 36:13,14,14,15 37:8,8,24
39:21 40:13 41:3 45:17 47:14
48:14,24 52:6,6 60:4,25 61:10
64:22 65:23 75:5,15 78:5 81:5,16
81:18 83:24 84:25 85:2,8 87:11
87:14,18,24 88:3,15 89:23
wanted (9) 13:6 15:23 16:3 18:21
25:25 40:10 55:8 64:3 88:10
wants (7) 21:2 27:21,23,24,25 28:2
36:21
warfare (1) 76:5
wasn't (2) 51:9 69:25
watch (1) 85:16
watching (2) 5:11 81:11
wave (1) 49:5
way (18) 11:21 17:24 21:15,15
22:23 27:16 29:9 30:11 31:6
36:12 54:21 59:17 60:20 61:10
64:2 67:8 85:8 93:15

ways (4) 59:18,24 66:9 67:3
we'll (8) 6:13 39:17 41:5 54:23,24
55:2 64:9 73:11
we're (42) 5:11 6:8 9:20 10:10
11:21 12:25 15:8 19:20 22:22
26:12,18 31:4,7,19 32:23,24
33:22 35:2 40:17 48:8 49:19
50:12,15 51:4 64:15 66:17,18,19
72:11,24,25 73:10,13 79:3,3,4
80:19 88:3,4,4,14 91:17
we've (15) 5:22 7:4,12,12,16 9:14
9:23 10:7 15:10,11 43:20 47:18
50:10 60:5 62:10
wealth (1) 6:9
wear (2) 5:5 84:8
web (1) 5:11
website (3) 41:8 70:22 78:4
Wednesday (1) 1:4
week (2) 52:23 53:5
weight (1) 58:25
welfare (1) 62:8
went (8) 15:18 20:12 59:12 60:6
61:9 75:6,7 79:9
weren't (2) 21:14 66:7
WHEREOF (1) 93:17
white (2) 83:23 84:18
Whitestone (1) 90:13
who've (1) 72:3
wide (1) 58:14
wife (1) 76:14
Wilkes (4) 53:8,10,11,12
win (2) 21:3 23:18
wish (3) 24:25 51:9,11
wishes (1) 38:15
withdrawing (1) 46:4
withdrawn (1) 45:21
withdrew (3) 46:7,10,12
witness (3) 45:8 93:12,17
witnesses (7) 13:24 15:19 16:9
17:6 21:11,12 31:5
witnesses' (2) 27:25 45:6
woman (1) 53:24
word (1) 89:12
words (1) 26:11
work (8) 5:21 50:22 68:5,23 84:24
87:5 90:4,24
working (7) 9:2,20 49:14 50:15
51:5 67:6 73:10
works (1) 50:23
world (1) 66:13
worried (1) 62:7
worthwhile (1) 18:19
wouldn't (2) 10:8,9
write (1) 75:12
written (2) 60:5 76:8
wrong (7) 13:14 27:11 31:21 32:11
32:15 58:18 66:15

**Civilian Complaint Review Board-Draft
September 9, 2015**

X	11 (3) 41:18 46:8 49:13	37,000 (1) 57:24
	11216 (1) 1:9	39 (1) 51:15
	12 (1) 44:25	4
	1368 (1) 1:8	4 (2) 1:19 45:24
	139 (1) 1:23	4,000 (2) 57:9 58:5
	14 (6) 42:24 51:15,17,24 57:14	40 (2) 51:20 52:2
	72:2	4000 (1) 57:11
	148 (1) 43:14	403 (1) 42:2
	15 (5) 42:22 43:2 44:6 46:17 57:14	42nd (3) 51:21,22,23
	16 (2) 46:11 86:3	439 (1) 41:20
	17 (2) 51:15 52:2	4500 (1) 58:6
	17th (2) 15:18 82:7	47th (1) 81:19
	18 (6) 41:11 42:20,22,23 52:2 72:3	482 (1) 43:13
	18-month (7) 57:10 58:9,13 66:14	49 (1) 45:19
	68:3,7 70:8	5
	182 (1) 45:3	5 (1) 1:20
	187 (1) 56:19	5,000 (1) 57:12
	19 (2) 41:16 42:23	50 (2) 70:14 76:24
	199 (1) 45:10	501 (1) 52:8
2		50A (8) 7:18,21 8:3,17 11:11,18
	2 (1) 1:17	12:3,13
	2,889 (1) 41:12	52 (2) 52:24,25
	20 (1) 41:16	56 (1) 45:4
	20's (1) 58:3	58 (1) 46:6
	2010 (1) 45:14	6
	2012 (1) 45:12	6 (1) 1:21
	2013 (1) 45:12	6:41 (1) 1:5
	2014 (10) 41:13,19 43:8 44:25 45:4	60 (1) 76:24
	56:19 59:11 77:14 81:20 82:7	64 (1) 42:16
	2015 (12) 1:4 41:12,21 44:5 45:2,9	658 (1) 42:15
	47:3,4 59:12,13 84:21 93:18	664 (1) 44:11
	20th (4) 17:19 19:10,12 36:17	7
	212.95.DEPOS (1) 1:24	70 (2) 44:12 79:24
	22 (1) 46:14	71 (1) 44:18
	235 (1) 46:21	75 (1) 76:24
	24 (2) 53:3 86:4	8
	24th (3) 52:15,17,22	8.5 (1) 45:22
	25 (1) 46:22	8:25 (1) 92:5
	25,000 (1) 58:4	86 (1) 44:12
	27 (1) 41:15	89 (2) 43:4 47:5
	28 (1) 43:7	9
	28,000 (1) 58:11	9 (1) 1:4
	28th (5) 52:15,18,22,25 53:3	9,000 (3) 58:8,10 65:24
	291 (1) 41:24	914.381.2061 (1) 1:24
3		914.722.0816 (1) 1:25
	3 (3) 1:6,18 40:25	953.3767 (1) 1:24
	3,512 (1) 41:13	9th (1) 93:18
	3.3 (1) 45:25	
	30,000 (2) 58:2,11	
	31 (1) 44:24	
	32 (1) 45:21	
	34 (1) 46:19	
	343 (1) 44:16	
	354 (1) 56:21	
	36,000 (1) 57:23	
Y		
y'all (1) 85:5		
yeah (18) 10:21 13:5 31:25 37:6		
40:18 48:16 50:23 60:2 62:5,5		
64:17 65:4 68:25 72:9 73:17 74:5		
87:10 88:12		
year (24) 15:18 41:23 42:13,15,25		
43:3,4 44:6,14 45:5 46:17 47:10		
52:24 56:15,18,21 59:7,9 63:16		
63:17 64:6,8,10,10		
year-to-date (7) 41:9 44:25 45:5		
46:14,21 77:13 79:16		
years (6) 49:13 52:21 53:6 64:7		
65:5 76:24		
yesterday (1) 50:6		
Yoon (1) 2:11		
York (21) 1:9,24 8:14 9:18 10:6		
11:12 15:25 24:20,23 43:11		
49:15 52:19 53:14 56:6 58:20		
67:15 77:4 80:19 81:14 93:5,9		
young (1) 53:8		
younger (1) 43:7		
Youngkik (1) 2:11		
youth (1) 86:3		
YouTube (1) 80:21		
Z		
Z-A (2) 51:18,18		
Z-O (1) 51:18		
Zac (10) 19:25 20:13,18 22:5,9		
23:20 32:6 36:10 54:19,23		
Zac's (1) 20:23		
Zarno (1) 51:18		
zealousness (1) 32:10		
zero (1) 47:13		
Zinnerman (2) 5:18 40:24		
Zoland (13) 2:7 3:20 4:6,17 29:20		
30:4,7 31:2 32:8 34:2,5,12 35:7		
zooming (1) 84:14		
0		
1		
1 (1) 1:16		
1,288 (1) 42:7		
1,321 (1) 44:5		
1,550 (1) 44:3		
1,617 (1) 45:9		
1,816 (1) 45:7		
1,834 (1) 42:14		
10 (1) 47:2		
100 (1) 68:18		
1000 (1) 68:18		
101 (1) 44:17		
10543 (1) 1:24		