Public Board Meeting
Of the Civilian Complaint Review Board
Wednesday, May 14, 2014
10:06 a.m.
100 Church Street, 10th Floor
New York, New York 10007

BISHOP MITCHELL G. TAYLOR, ACTING CHAIR
TRACY CATAPANO-FOX, ESQ., EXECUTIVE DIRECTOR

PUBLIC MEETING AGENDA:

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

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BOARD MEMBERS PRESENT WERE:

Dr. Mohammad Khalid
Daniel Gitner, Esq.
James Donlon, Esq.
Rudolph Landin, Esq.
Jules A. Martin, Esq.
Alphonzo Grant, Jr., Esq.
Joseph A. Puma
Youngik Yoon, Esq.
Tosano J. Simonetti
BISHOP MITCHELL TAYLOR: All right. We're calling our meeting to order today. Thank you so much for being in attendance. First order of business is the adoption of our minutes from the last meeting. I'm sure that everyone has had a chance to read those minutes, and if there are any discrepancies or changes that might need to be made, we can raise them now before a motion is made to accept the minutes as produced.

DR. MOHAMMAD KHALID: Motion to accept.

BISHOP TAYLOR: Okay. Anyone second that?

MR. JAMES DONLON: Second.

BISHOP TAYLOR: All right. All in favor?

(Chorus of ayes.)

BISHOP TAYLOR: All right. So carried.

Now we're going to have a brief report. The Agency is moving in a forward direction. I'm grateful for that. There are a lot of exciting things that are happening and there's a lot of work that we yet have to do to make sure that things stay on track. And I'm certain that, as the days and weeks progress, that a lot of those things that may be off track will be put back on track. And we will continue the work of serving the citizens of New York City and the complaints that are filed with the
Agency and be productive in that respect.

We, of course, had an Executive Session today that discussed some of the things that we, as a Board, are trying to really move forward as it relates to cases that are being disposed of or categorized, and we certainly hope to discuss more of that in the public meeting on today.

Now, we're going to have the report from the Executive Director.

DR. KHALID: May I make a correction, Mr. Chair? That was the Operations Committee this morning.

BISHOP TAYLOR: I'm sorry. Operations Committee.

MS. TRACY CATAPANO-FOX: Thank you, Bishop. Good morning, everyone.

THE AUDIENCE: Good morning.

MS. CATAPANO-FOX: This month, the CCR -- I'm sorry. In April of 2014, the CCRB received 486 complaints. This is 52 complaints fewer than the same period of 2013, when the CCRB received 538 complaints. And you can see this referenced in page 5 of our report.

During the first four months of 2014, the CCRB received 1809 complaints within its jurisdiction. This is 230 more complaints than were received in
the same period last year when we received 1570 complaints. Year to date, we've had an increase of 15 percent of our cases since last year. However, it should be recognized that these cases -- these numbers reflect cases that fall within our jurisdiction, and as investigations proceed, sometimes those numbers can fluctuate to reflect the cases that are not within our jurisdiction.

The Board closed 553 cases in April and a total of 1629 year to date. In the first four months of 2014, the Board closed 630 full investigations, including 99 substantiated complaints. And, year to date, our substantiation rate is 16 percent of fully investigated cases. Again, what we have discovered -- and I want to thank the IT department for working so hard to help us with this -- is that Board closings of cases can fluctuate in terms of month to month. So sometimes that number may look different than what we presented the month before, but that is an issue that we are working on and we will address.

In April, civilians and officers mediated 15 cases. Year to date, civilians and officers have mediated a total of 45 cases, and that from January to April of this year, the Board has closed 42 cases
as mediation attempted.

The detailed monthly statistical report includes two forms of reporting dispositions of CCRB cases. The first report shows a truncation rate, that's on page 8, and the second report shows the case resolution rate, which is on page 9. From January to April of this year, the updated truncation rate, excluding cases closed as complaint withdrawn, was 50 percent. In the same period from last year, that rate was 59 percent. But if you look at page 9, the case resolution rate from January to April of 2014 was 44 percent, and in the same period of this time last year, it was 30 percent.

The Agency docket at the end of April 30th of this year was 2,545 cases. This is a 5 percent decrease over the open docket from March of this year, when we were at 2,690 cases. And if you look at page 1 of our report, by date of report, 95 percent of our open investigations stem from complaints filed within the last year and 65 percent were filed in the last four months.

Out of the 2,545 open cases, 321 were awaiting panel review, which is 13 percent of our docket; 1,964 were being investigated, 77 percent of our docket; and 268 cases were in the mediation program,
including mediation-attempted cases pending Board approval for closure, which is a total of 10 percent of our docket. That's reflected on page 2.

By date of incident, 15 cases in our open docket are 18 months or older. This is 0.6 percent of our open docket. And in March of this year, that was 21 cases. Breaking down those 15 cases as follows: Four cases are pending Board review, of which two were returned by the Board for further work, one was filed late, and the other was late because of delays in receiving Police Department documents.

In one of those cases, the statute of limitations crime exception applies. Of the remaining 11 open investigations -- the SOL crime exception applies to six cases -- four cases are on DA hold, five cases were filed months after the date of incident, one case was reopened seven months after the first closure, and one case was late due to investigative delays.

In March of 2014, the Police Department closed five substantiated cases involving seven officers. Two of these officers received Command Discipline A, three officers received instructions, and the Department declined to prosecute two cases. One case, a substantiation of charges was referred to
the Police Department prior to the implementation of
the APU, and six cases, all of which were
recommendation of CDs or instructions, were sent
after the implementation of the APU.

In March of this year, the disciplinary action
rate was 71 percent, and 76 percent year to date.
From January to April of this year, or from year to
date, the Police Department decline-to-prosecute
rate was 24 percent. That's reflected on page 30 of
our report.

In April of 2014, 16 cases were substantiated by
the Board with a recommendation of charges and
specifications and were added to the APU docket. At
the end of April, the open docket of the APU was
comprised of 192 cases. Of these cases, three had
dispositions modified for the Police Commissioner
and we're awaiting recalendar; 12 cases had
guilty pleas entered and we're awaiting approval by
the Police Commissioner; in 2 cases the trial
verdict was rendered and is awaiting approval by the
Police Commissioner; 13 trials have been completed,
awaiting verdicts; 9 trials were commenced but not
completed; 34 trials have been scheduled; 22 cases
are calendared for court appearances; 69 cases are
awaiting their initial court appearance after
charges have been served; and 6 cases, charges have been filed; and the remaining 22 cases are awaiting service.

In the March disposition report, there were no final dispositions of APU cases reported.

This month, or in April of -- April 28th of 2014, the Executive Committee -- Commissioners Martin, Liston and Taylor, as well as Commissioner Simonetti -- and members of the staff and I met with Deputy Police Commissioner Susan Herman to discuss mediation, and her collaborative policing unit, and how we can work together, be more -- to enhance our mediation program for civilians and be more collaborative in our process.

She had some excellent ideas for the Board in terms of how we can move towards a more dialogue-minded mediation program versus a formal, more litigious mediation program. One of her concerns -- what was good about the meeting was that a lot of her concerns we have already incorporated. And I have to thank the Executive Committee for their hard work in preparing us for the meeting and articulating how our agency does incorporate a lot of the suggestions she made.

One of the ideas was to restructure our
mediation agreements to look less like legal
documents and more of a dialogue type of document.
That's something that we can -- presented to the
Board and something we can consider. They wanted to
make sure that we are keeping these matters
confidential, which, of course, we are, and we
ensure that there are confidentiality agreements.

She also wanted to make sure that we have a high
caliber of mediators and that they're continually
trained, and she actually volunteered to help us
with the training with them. So that's something
that we've been working on.

But, again, the Executive Committee set up a
great meeting in terms of working together to make a
commitment between the NYPD and us to further
increase the number of cases going to mediation
where the parties want to and making them as
successful and fruitful as possible. And I have to
thank Lisa Cohen for all her hard work on this as
well.

In terms of the Agency operations, as you can
see, we have repainted some of the areas. So that
is a positive. I also have to thank Rob Rodriguez
for -- one of our team managers -- for his hard
work. He has been a great -- he's a great supporter
of our softball team, and he's been working hard to
encourage the Agency and all of our staff to come to
the games and participate, as well as a Yankee/Met
game that we went on yesterday. So it's positive
that the Agency is moving in a good direction and
working together.

Any questions?

MR. DANIEL GITNER: I have a question about the
statistics.

MS. CATAPANO-FOX: Okay.

MR. GITNER: And the APU in particular. When
the APU tries a case that, say, involved two
officers in the same incident, does the APU try both
officers at the same time or is it two separate
trials?

MS. CATAPANO-FOX: It would be the same time --

MR. GITNER: Same time?

MS. CATAPANO-FOX: -- unless there was some
reason --

MR. GITNER: They're joined?

MS. CATAPANO-FOX: (Indicating.)

MR. GITNER: Okay. That's -- that's good.

And then, am I reading this right, that last
month the Police Department came back, I think, with
seven -- let me see -- the Police Department closed
five substantiated cases involving seven officers?

MS. CATAPANO-FOX: Yes.

MR. GITNER: But we're sending upwards of 20 officers a month, at least, to the APU for charges; isn't that right? At least last month, I think. I counted, but it's hard to count, but I think it's about 20 different -- different officers who were given charges, quote/unquote.

MS. CATAPANO-FOX: One of the things that we're finding is that month to month some of the statistics are being reflected, I don't want to say inconsistently, but in ways that we need to fix within our computer system, because a panel might meet in one month and then meet again in another month.

MR. GITNER: Yeah.

MS. CATAPANO-FOX: And so in terms of how those numbers are being projected in our reports, it may show --

MR. GITNER: I understand.

MS. CATAPANO-FOX: It's hard to give a month-to-month assessment of what's going over to DAO because those numbers could change.

MR. GITNER: Yeah, I understand that. I mean, sometimes my panel will meet twice a month instead
of -- and skip the next month. I understand that. But it does seem to me, regardless, we are still sending significantly more cases for charges than the Police Department closes each month.

MS. CATAPANO-FOX: Well, one of the things, I have the action items that we discussed last month, and in terms of following up on some of the things that the Board members presented, that was certainly a concern that you had presented and the other Board members.

So what we are doing is we have started reconciling our cases with DAO. We've sent them over a list of all of the cases that we have that we know we've sent where we don't have closure. They have been working with us to send us cases back to give us resolution on those cases that have been resolved. And, at this point, we actually are down to a very small pool of numbers --

MR. GITNER: Great.

MS. CATAPANO-FOX: -- that they have open. So I think it's just a matter -- what we've instituted now is on a monthly basis we will do reconciling with DAO and then be able to report back to you how many cases they have in their open dockets that are CCRB cases.

MS. CATAPANO-FOX: One of the other things that came up last month, Commissioner Simonetti wanted us to circulate to the Board a list of cases that were eligible for mediation and those that weren't. We did that last month. All the Board members received that by e-mail. So it gives us a greater opportunity to discuss whether or not you want to expand that list, whether that list is appropriate. And that's something that the Board can discuss.

Commissioner Grant wanted to set up a procedure to have employee feedback in terms of exit interviews, when people are leaving. We have that proceeding; we do that with our HR director. And then I myself, also meet when the person is leaving, to discuss with them how -- the positives and negatives, and what they think we could do to improve our operations. So that is something that we are -- that we have implemented since last year.

BISHOP TAYLOR: Do we have a Board member as a part of that process when employees exit?

MS. CATAPANO-FOX: We don't, but we could. That's a good idea.

BISHOP TAYLOR: Because I think that someone from Personnel Committee should probably be on that
exit interview process. I don't know how you guys feel about that, but I think that that -- you know --

MR. ALPHONZO GRANT, JR.: No.

BISHOP TAYLOR: -- to have it -- huh? It's not?

MR. GRANT, JR.: I -- it may not be feasible to have a Board member on it initially. I think if there is some significant information that needs to be escalated, then a Board member can be involved. But I think, feasibly, that can happen pretty quickly. There's a lot of turnover at the Agency, I just don't know if we have the resources to do that. I certainly think I see where you're going, right, if there's some issues that we need to be made aware of. I think the way to address that is to have a, you know, a significant number of people involved in that exit interview.

Traditionally you'll have your head of HR, you might -- you'll have your executive director and you might have, you know, someone from the legal, on the employment side. We're looking to fill our GC position, but we can work out who will be on that group to do the post interviews.

BISHOP TAYLOR: Is there a document that one fills out that is available to review?
MS. CATAPANO-FOX: Yes.

BISHOP TAYLOR: Like, in post the exit of a staff member?

MR. GRANT, JR.: Well --

MS. CATAPANO-FOX: We do. We have an exit interview sheet that the employee fills out explaining the positives/negatives, what their experience was, how they would improve it, why they're leaving. It's a two-page form and it gives them ample opportunity to give feedback.

They also have sometimes added to that form, they add their own pages, and they write out what they want. So we can certainly provide that to the Personnel Committee --

MR. GRANT, JR.: Yeah --

MS. CATAPANO-FOX: -- for your review.

MR. GRANT, JR.: -- I haven't seen the form, so I --

BISHOP TAYLOR: Well, I mean, just as, as long as there's some kind of record from the employee. I think it's just our responsibility to make sure that if there's exit interviews done, that it's made a part of the public file for that employee.

MR. GRANT, JR.: The only thing I would say there -- you know, my lawyer hat is sort of going
here so I'm -- you know, I want to get advice from, you know, appropriate council for the Board just to make sure that that document is what it should be and can't be misconstrued into anything else. But I hear what you're saying and --

BISHOP TAYLOR: Excellent.

MR. GRANT, JR.: -- we'll look into it.

MR. TOSANO SIMONETTI: I don't know that that should be a public file. You just --

BISHOP TAYLOR: When I say "public," I mean, you know...

MR. SIMONETTI: What, public means public, right? It's available to the public? Is that --

BISHOP TAYLOR: Not the public-public, but I mean --

MR. SIMONETTI: Who -- what public?

BISHOP TAYLOR: -- in terms of the Board.

MR. SIMONETTI: Us? We're --

BISHOP TAYLOR: Yeah.

MR. SIMONETTI: Just us?

BISHOP TAYLOR: The members of the Board, yes.

MR. SIMONETTI: Okay. Because I don't think that that should be a public document.

BISHOP TAYLOR: No. I mean, that's why you don't talk about personal issues in public.
MR. SIMONETTI: No, no. But the exit interview
document I'm talking about --

BISHOP TAYLOR: Right.

MR. SIMONETTI: -- specifically. I don't think
that should be a public doc -- because suppose the
person is going to be very candid with the people
who are doing the interview and say, you know,
there's a deficiency here. You got to plug this
hole, you know, you're not doing it right, you know
what I'm saying? And I don't think that should be
available.

Now, what information do we give a prospective
employee -- employer who calls the Agency and says,
did you -- did Simonetti was in your employ for a
couple of years? You just give the dates?

MS. CATAPANO-FOX: That's correct.

MR. SIMONETTI: That's it?

MS. CATAPANO-FOX: Only the HR person speaks to
that, to that --

MR. SIMONETTI: Is that what you give, that's
the extent of your information?

MS. CATAPANO-FOX: That's correct.

MR. SIMONETTI: You don't comment on --

MS. CATAPANO-FOX: No.

MR. SIMONETTI: Okay, good. I mean, that should
be the policy.

    MS. CATAPANO-FOX: It is. And the only person that speaks to prospective employers is the HR. Any calls that come in --

    MR. SIMONETTI: Okay.

    MS. CATAPANO-FOX: -- if anyone else were to get them, they would refer them to the HR department for their questions. But HR has been directed, and that's their policy.

    MR. GRANT, JR.: Is that documented? Does HR document who calls?

    MS. CATAPANO-FOX: Oh, well, I can tell you that the current HR director does. I mean, I don't know what the policy was before I got here, but I can tell you that, to my knowledge, I know that the new director does that.

    BISHOP TAYLOR: The new director has been on the Board how long now?

    MS. CATAPANO-FOX: January.

    BISHOP TAYLOR: Since January? And so no one else has talked to prospective employers relative to past employees?

    MS. CATAPANO-FOX: Not to my knowledge.

    BISHOP TAYLOR: Okay.

    MS. CATAPANO-FOX: Another issue that came up,
we were talking about tolling the statute of
limitations on DA hold cases. Commissioner
Simonetti suggested we discuss this at the meeting
with Susan Herman. It didn't -- we had a long
meeting and we had a lot of topics, and we never got
to that one. But it is something that I'm hoping
that once DAO appoints a new deputy commissioner,
it's something we can discuss in terms of how we're
handling those cases.

Commissioner Grant had suggested that all new
initiatives raised be documented and followed
through, so we're working on that. So that's
something that we're moving on.

The complainant satisfaction --

MR. GRANT, JR.: Just, sorry, just to be clear
on that, this, again, goes back to my point that,
you know, decisions are made, we talk about doing
these things, action items are made, and we end up
coming back to it again in three months.

And so what I've asked Tracy --

MR. SIMONETTI: Right.

MR. GRANT, JR.: -- to do is to, you know,
detail what we've discussed in the Board meetings,
aside from the minutes, but just the action items,
and then we can track those action items and see
what's being done to move it forward.

So, thank you, Tracy.

MS. CATAPANO-FOX: Thanks.

Commissioner Simonetti had mentioned the Complainant Satisfaction Survey, and that is something that Susan Herman is working on for the NYPD. Mediation already does that, as does Outreach. So I have to thank Carlmais Johnson and Lisa Cohen for showing me -- they actually have given us some samples.

We're trying to incorporate it for the investigative side, so it's something that we can work on with the Operations Committee. Once we get some drafts together, we can work on whether or not we want to do satisfaction surveys once a case is completed when we send out the letter informing both sides of the results. But that's something that the Board can -- we'll get to you and we can work on that as a project.

Then there were a couple of items that came up. We've been talking about the substantiated cases. We are -- we put together in the packet some more information about the total substantiated cases in 2013, and we're breaking that down for you. And we had discussed the idea of the entrance of visitors
and getting IDs and photos and such. We've been working on that.

The building has committed that they will not take pictures of people coming in on a public day and that they routinely, biweekly, will erase -- either weekly or biweekly -- will erase all pictures taken. But it's something that once we get our own exit, which we're -- entrance and exit -- we're working on, and that should be done in the next probably two months, where we'll have more control over it. But right now -- and we've been able to confirm today that they did not take photos of any of the public coming in today.

Other than that, I think that that's -- that addresses the issues that came up last month.

MR. SIMONETTI: Yeah. At the Operations Committee this morning, we were discussing administratively closed cases. And the members that -- of the Board that were present suggested that we bring it up to the entire Board and we adopt the resolution to do it as a pilot program for six months, beginning in June and lasting until the end of the year, to take a look, to get a better understanding of what that's all about. So that's the discussion we had about administratively closed
cases.

And the members that were there agreed that we should bring it to the full Board and then have it decided by a vote of the full Board.

So, if you want to put it in the form of a resolution.

BISHOP TAYLOR: Tony, can you just give just a little bit more bandwidth on it so that members that were not here can --

MR. SIMONETTI: Yeah. The administratively closed cases, as Tracy points out, we get a lot of those cases that come from IAB and they're not complainant generated in most cases. Most of those cases are a blurb that they got, in some cases, from reading a newspaper article, and then the Department will generate a blurb to us saying, so-and-so. So it's not, in most cases, a complainant generated.

So what they do, they get those cases, they take a look at them, they reach out, see if they can talk to someone, particularly the complainant, to find out if they want to go forward with the case -- well, no, excuse me. You wait 21 days.

MS. CATAPANO-FOX: No, we first reach out.

MR. SIMONETTI: You reach out, then --

MS. CATAPANO-FOX: Then wait 21 days.
MR. SIMONETTI: -- wait 21 days. And after 21 days, if they haven’t heard back, they’ll attempt on several more occasions to reach out to try to get the complainant. At that point, if they’re unsuccessful, the case is administratively closed. Our best guesstimate is that there's going to probably be somewhere between 100 and 125 cases a year. So it's not a large number of cases, though it -- but it does impact somewhat on the docket. So that's basically what the resolution is. But the six-month trial period will give Board members an opportunity to take a look at it, and then we can always make changes to, or make changes as we go along. This is not cast in granite.

DR. KHALID: And I would like to add also, Tony, that the cases which are sensitive, excessive force, all those are not included in this category.

MS. CATAPANO-FOX: Right.

MR. SIMONETTI: Yeah.

MS. CATAPANO-FOX: Essentially, what the Operations Committee is proposing for the full Board to vote on is in those cases where there's no complainant, where the complainant has never contacted us, we did not get notice from the complainant, we got notice either from IAB or some
other NYPD department, we will reach out to that complainant. We will try to call them and we will send a letter indicating that they may be the victim or a witness to police misconduct and that they can file a complaint reaching us by all the methods that we have.

We will then wait 21 days. If we've not heard from the person or -- and not receive any communication, we'll send another letter saying that we need to hear from you if you're wishing to proceed, but we're going to administratively close the case until we hear from you. And you have an 18-month window to communicate with us.

Once the investigator and the team supervisors have reviewed those cases and ensured that they're not serious injury, that there's not excessive force, that they're not sensitive cases, then they will be put into a panel where the Deputy Executive Director for Investigations, Denis McCormick, and/or I will review them, make sure that they still fit that criteria.

If they do fit that criteria, they will then be sent to a panel of the Board members. And that will be a rotating panel each month where the Board members will get the case, review all of the
communications and determine whether or not that case should be administratively closed. As Commissioner Simonetti pointed out, if any one panel member feels the case should go back for further review or for further information, it will be sent back to the team for further investigation. If that -- if the panel does not vote to administratively close it, then the case will be sent back and we'll make more attempts.

But these are separate from truncated cases --

MR. SIMONETTI: Right.

MS. CATAPANO-FOX: -- or complaint withdrawn. These are cases -- truncated cases are cases where there's been some communication with the complainant, and then that compl -- either that they become unavailable, they're uncooperative, they've withdrawn in some fashion. These are strictly cases where we have never heard from the complainant.

So it's not a big number of our cases, as you pointed out, but again, it would resolve -- right now, we have about 60 cases in this posture, and we've had these cases waiting for about five months. So that's where we figured out, it's on average 12 cases a month.

And the panel, the Board can determine how the
panel -- it would obviously be one designee from each, Mayoral, City Council and Police, and it would be a rotating panel that would ultimately decide if those cases are administratively closed.

So the resolution is to adopt this --

MR. GITNER: Procedure.

MS. CATAPANO-FOX: -- procedure.

MR. GITNER: I move to adopt the procedure.

DR. KHALID: I do, too.

MR. SIMONETTI: I second.

BISHOP TAYLOR: All in favor?

(Chorus of ayes.)

BISHOP TAYLOR: So carried.

MS. CATAPANO-FOX: Thank you very much, Commissioner.

BISHOP TAYLOR: So we move to Committee reports.

I guess Dave Liston is not here today, he had an emergency, but if there is a report from the APU, maybe, Laura, you can give that?

MS. LAURA EDIDIN: Sure. I would just say that the APU has released its quarter -- our quarterly report for the first quarter of 2014. It's part of the packet that was distributed publicly today.

And, you know, I just want to commend the Unit. There's a lot of hard work that's been embodied in
those numbers, both on the trials that we've taken in terms of outreach that the Unit has done. I'm very proud of the work and I'm grateful to everyone for all their hard work you've put in to those cases.

BISHOP TAYLOR: Thank you so much, Laura.

And I, too, want to congratulate the APU Unit and the work that you guys, your team is doing. It's really valuable work and very good work and very intense work. So thank you so much for the job that you guys are doing.

Any other committees have reports?

MR. GITNER: I can report on the Investigations Committee. I've worked with Denis on the DA holds issue that was raised last month just to make sure that everything is in order with that. There are one or two cases where the statute of limitations is approaching, but none imminent, and I'm working with Denis to make sure that the right decisions are made in those cases. So we're on top of the issue, to the extent there was any worry last month.

BISHOP TAYLOR: Okay. Excellent.

MR. SIMONETTI: You know, apropos of that, there was a very interesting case in the press, so we can -- we certainly can discuss it. The case of the
two detectives on duty in Queens, assigned to Brooklyn, in Queens doing -- following up on a robbery investigation, if I understand it correctly. And it winds up -- winds up one detective discharges his weapon and he injures his partner.

Now, if you read the follow-up stories to that, you'll notice that the shooter, Poggi, submitted his application for retirement. Did anybody catch that? Does everybody understand that there's a 30-day calendar, a 30-day waiting period? You cannot -- you cannot go into a police station as a police officer, or anybody in the Police Department, and tell the desk officer, I'm retiring right -- effective right now. That doesn't work. The Department has 30 days to take a look at you to make sure there are no criminal activities pending, that there are no serious charges pending, and that's been that way for many, many years. When I first came into the Police Department many years ago, we didn't have that provision. They have that provision, and it's a built-in safeguard, and thank God they have it.

And it's interesting because they're going to bring -- it appears that they're going to bring him up on charges very quickly. And it happened in the
Livoti case, the case that I cited a couple of times here, similar kind of thing with the chokehold, with the Baez case, where the young man was killed after Livoti applied a chokehold, and we brought him up on charges. He applied to vest from the Department. I think Poggi is a different case because he has over the 20 years, so he's eligible to retire, not to vest out. So that's an important consideration.

So the Department is going to bring those charges within the 30 days, and they'll come up with a disposition. And I don't know, I mean, I could guess what the disposition could be. I don't want to venture a guess, but they could -- they could give him a monetary fine, they can give him a reduction of his -- all his leave, they could take that money away from him or they could fire him. So it's going to be interesting to see, but there's that safeguard built in and that's important. And very kind of similar to, also, DA hold.

One of the things about the list of things that are not mediable, and the one thing, and I've been saying this, I've been saying -- preaching it for 17-1/2 years at this Board, that gun pointed should be a case that's eligible for mediation. And I'm sorry that most of the Board members were not at the
meeting with Susan Herman because she, I mean, she absolutely feels that we should widen the cases that we're putting into mediation, and I couldn't agree more. And the one that jumps off the page here that is not eligible for mediation is the gun-pointed case.

I have to tell you a personal story. My partner was killed in 1964. He had the bad guy up against the wall, he had his weapon out, he had the guy. He was going to be in the process of cuffing him -- the guy just committed a robbery of a retail establishment -- and he said, the guy said to him, from eyewitnesses that were close by, hey, listen, you got me, you know, just relax. And he did relax, but he had the gun pointed. He did relax. The guy turned around, shot him right between the eyes and killed him. So I feel very strongly about guns being pointed at people.

The weapon is a tool to a policeman. And I'm not going to second-guess anybody, particularly if they're, 2 or 3 o'clock in the morning, and they're stopping a vehicle that maybe have four or five people in the vehicle, you don't know what you have in that vehicle. By the way, more cops get killed or injured making vehicle stops and responding to
domestic violence disputes. That's a fact throughout the United States. So I'm not going to question or second-guess cops. If they feel threatened -- and I know this, we're allowed, with the gun withdrawn, you're allowed to mediate, but the gun pointed, you can't mediate. Doesn't make any sense to me.

If I'm going to take my weapon out, let me just tell you very clearly, and I think you're a bad person, that gun's going to be pointed right at you, okay? So I believe that those cases should be eligible for mediation, if everything else being equal. That's the one that jumps off the paper.

Force cases. There are a lot of force cases that we should take a look at that should go into mediation. And I think our discussion with the Deputy Commissioner was very clear. I mean, she says, there's very few cases that couldn't go into mediation, and I kind of agree. So, I mean, that's -- that one jumps off the page at me.

MR. JULES MARTIN: So, Tony, the Mediation Committee, the Mediation Unit, and members of the Board and the staff, for that matter, will take a look at cases that can be mediated -- mediation eligible. The gun drawn versus the gun pointed,
there's too much of a hairline difference, and I absolutely agree with you.

I think that, for me, mediation is a tremendously important tool. It's shortened at times when the complainant could have a conversation with the officers, and I think that that complainant does not have to wait six months to three-quarters of a year to have that conversation. I think that it's just absolutely valuable and it can be a teaching tool for some officers. And it could be tremendously powerful for the complainant because that's probably the first and only time that they would have a level playing field where they can discuss what actually occurred.

MR. GITNER: For what it's worth, I agree. I haven't -- I don't know why the line was drawn. I'd like to hear that, if anybody has a memory as to why certain things were placed on the not-allowed-to-mediate list, just to hear the rationale.

But, Mr. Simonetti, what you said resonates with me very much. So, for what it's worth, to me at least, I would -- if we had to vote right now, I would vote in the same way I think you would.

MR. MARTIN: Well, we're probably going to give
you more cases to consider.

    MR. GITNER: Yeah.

    MR. MARTIN: And all will be determined not
helter-skelter, but for a good and sensible reason
why they should be mediation eligible as opposed to
ineligible.

    BISHOP TAYLOR: And also, Jules, Commissioner
Jules, with the cases that are eligible for
mediation or given to the Mediation Committee,
they're looked at and scrutinized --

    MR. MARTIN: Right.

    BISHOP TAYLOR: -- to see if they actually
qualify. So, I mean, I think that in the gun
drawn/gun pointed, I agree with you, Tony, I think
that based on the circumstances and conditions of
that particular interaction, it could or could not
be eligible for what we're calling now mediation and
be a great opportunity for dialogue to begin.

    I also think, on the point of mediation, that in
our meeting with Susan Herman, she brought out
that -- and, of course, she wrote some of the
original material for the Mediation Committee years
ago, right? I think that, you know, focusing it
more on not being as combative as it has sometimes
been between the officer and the complainant, and
refocusing it so that it is a conversation of respect and a dialogue, and not an opportunity for a civilian to beat up on an officer and then an opportunity for an officer to just sit there without any concern or compassion about what this collaborative discussion is about, is very important.

So I think that it would be a -- I don't think that it's so much of the charges or the actual interaction that should disqualify, but the attitude and the willingness of the officer to participate, no matter what the particular charge is, and the civilian to be able to understand the civility of coming together and having a dialogue. So I think that's important.

So I think that makes more cases, you know, eligible when you have -- and I think moving the process up, and I think we talked about that, rather than letting it lie out six or seven months because the officers are dealing with hundreds and hundreds of stops and cases, and the sooner you begin the process of dialogue, interviewing the officer to find out if that is something that he's amenable to, and understanding the dynamics of it and the benefits of it for the officer and for the civilian
is important.

So I think that gives us more bandwidth to be more flexible with gun drawn/gun pointed and things that may seem more egregious to us in the past in terms of not allowing it to be eligible for mediation, especially some of the forced cases as well.

MR. MARTIN: And to further encourage officers to participate in the mediation/dialogue program, whatever information is derived through that conversation through the mediation process, it will not be used in future proceedings. That will kind of lower the suspicion on the part of a lot of officers because they believe that if they participate in mediation, it may come back to haunt them.

BISHOP TAYLOR: Right. And I think a campaign, an exhaustive campaign to the Police Department and the rank and file, relative to the benefits and the value of mediation, or having a conversation with someone that they had indifference with, is important. I think that marketing it is going to be very, very important. And once they have a level of trust -- I think what was brought out in our meeting with the Deputy Commissioner was that once you have
a few officers that actually participate in the process and they're satisfied that, you know, information is being destroyed, you know, on the spot, no notes are being tabulated and taken out of the room, and everything that happens in that room stays in that room and is, you know, extinguished when it's finished, when that word gets out, I think, to the rank and file, more people would be interested in participating in that process.

All right. Any other committee --

MR. SIMONETTI: You know, I think we've gotten the cooperation of all the unions except one. There's only one union that represents detectives that's been stonewalling us; all the other unions are on board. And, I mean, that's the vast majority of people that come here for cases.

MS. CATAPANO-FOX: And we have seen an increase in their numbers as well. They are a small percentage of our cases, involving detectives, and even --

MR. SIMONETTI: Are getting mediated?

MS. CATAPANO-FOX: -- and even that number -- yeah.

MR. MARTIN: Even better.

MS. CATAPANO-FOX: And in terms of the total
number, there's very few cases involving detectives
when you look at the grand --

MR. SIMONETTI: Right.

MS. CATAPANO-FOX: -- scope of our cases. But
the numbers have improved when it comes to
detectives participating in our mediation program.
So that's a positive.

MR. SIMONETTI: And Commissioner Herman also has
agreed to speak to them personally, the Board of
Officers of the DEA, to see if they would get on
board with that and talk up their program amongst
the membership, talk up the mediation program. So
hopefully that will go on.

PBA's on board. They're completely on board
with this. And I guess they're the vast number of
our clients, right, PBA members.

MS. CATAPANO-FOX: Witnesses.

BISHOP TAYLOR: All right. Are we finished with
that particular committee?

(No response.)

BISHOP TAYLOR: Any other committee reports?
(No response.)

BISHOP TAYLOR: All right. If not, moving on to
old business.

MR. GITNER: I just have a question about
something Tracy said. I'm not sure I followed.

You were talking about pictures of people coming into the building when --

MS. CATAPANO-FOX: Yes. Typically when you come into the building, their policy was that you'd have to show ID and then they would take your photo.

MR. GITNER: Right.

MS. CATAPANO-FOX: And then you'd be allowed in.

They basically -- essentially, they take a --

MR. GITNER: Like every building.

MS. CATAPANO-FOX: -- printed picture, and then --

MR. GITNER: Right.

MS. CATAPANO-FOX: -- they use that to scan it to allow you in.

There have been concerns presented that some of the people coming into the building are offended and are uncomfortable with being taken pictures of because we are a building, a law department, our agency; a concern that NYPD would possibly get those pictures or that they would be stored in some type of, you know, database. So there's been concerns and we're addressing them.

MR. GITNER: Okay.

BISHOP TAYLOR: I had the same kind of feeling
as you had because I think, you know, most buildings
in New York City, you know, be it a city building or
a non-city building, you know, for security
purposes, they take pictures.

    MR. GITNER: Exactly. I mean, I would -- I
mean, I guess, I guess you have to balance the
security -- the building has to be confident that
security is still at whatever level they decide is
necessary to protect everybody in the building,
staff on this floor and any of the other number of
floors, but I suppose what you're saying is that if
they take pictures, it will dissuade complainants
from coming in?

    MS. CATAPANO-FOX: There are complainants that
are concerned that they might not --

    MR. GITNER: Don't we take --

    MS. CATAPANO-FOX: -- want to come in because --

    MR. GITNER: -- when a complainant comes in,
don't we ask for ID?

    MS. CATAPANO-FOX: We do, but they consent to
that and that's something -- in order to get into
our public sessions --

    MR. GITNER: Yeah.

    MS. CATAPANO-FOX: -- this is supposed to be for
the public --
MR. GITNER: Oh, so for this session?

MS. CATAPANO-FOX: Yes.

MR. GITNER: I see. So it's not just the complainant, it's for this session, which happens to be videotaped.

MS. CATAPANO-FOX: In particular.

MR. GITNER: We're not going to take pictures. Okay. I just want to make sure the secur -- I just wouldn't want this complaint to have been instituted, a policy to have been instituted without the building or us taking into account whatever security, I'm not a security expert, but whatever security the building or the building security decides necessary. I mean, it's not just us in the building, it's a lot of people in the building.

BISHOP TAYLOR: Well, you know what, maybe this was --

MR. GITNER: I just want to make sure that's balanced. That's my only view. I'm not taking it --

MS. CATAPANO-FOX: The people are still showing ID --

MR. GITNER: Yeah.

MS. CATAPANO-FOX: -- in terms of getting in --

MR. GITNER: Okay.
MS. CATAPANO-FOX: -- and the building has a right to obviously be concerned about our security --

MR. GITNER: Yeah.

MS. CATAPANO-FOX: -- as are we --

MR. GITNER: Yeah.

MS. CATAPANO-FOX: -- of course, but the idea that there could be some storage of data -- a database where people's pictures are held and then potentially used by other avenues, other agencies. I can understand why citizens might be concerned about that, so, we're trying to balance out the interest --

MR. GITNER: Okay.

MS. CATAPANO-FOX: -- of the security versus making sure that --

MR. GITNER: I just wanted --

MS. CATAPANO-FOX: -- people don't feel -- we don't want people to feel that they shouldn't -- they don't want to come here, that they're making a choice between having their privacy rights be violated to come to a public meeting versus --

MR. GITNER: I understand that. I'm just suggesting that the balance has to be done. But it sounds like it was.
DR. KHALID: When we have our own entrance, how does that work -- that would work?

MS. CATAPANO-FOX: We're going to -- we're not going to take photos of people at the entrance when they come for public meetings, but, of course, in investigations, people who are coming here for investigations, we do ask for ID.

We've talked about the different levels of ID, whether or not you can show a school ID versus a government-issued ID. And again, the idea is to protect the security of everyone here, but ensuring that we know who these people are as well so that we don't have any issues with identification of witnesses or complainants.

BISHOP TAYLOR: I might want to add that Jay-Z might have something to say about this as well.

Any other old business?

MR. GITNER: On old business, I think it was last month, it was raised that someone from our -- from legal, or a lawyer, had written a memo about when it was appropriate essen -- I don't have it in front of me -- but essentially to frisk somebody; when it was appropriate for a police officer to frisk somebody in the context of issuing a summons.

I obtained the memo, I read it. I have to say,
it was very well written, just from a lawyer's point of view. Regardless of whatever the conclusion is, I wanted to say that.

But I do think, to the extent that there was any thought or push for the Board to adopt some sort of policy, some sort of generalized policy about when a police officer can frisk in that context, I don't think we should engage in that discussion because we're not a court, we're not a policy-making body where we tell the Police Department what to do. All we do in our panels is look at the specific facts and decide whether or not any number of the FADO allegations are approved, substantiated or not.

And I think that the memo -- well, you perhaps could read it as being a very generalized memo, I think it was meant in the context of that case, having read it, and not as advocating a policy. And so to the extent there was any desire for us to issue a policy, I don't think that would be appropriate. I think that's more the province of the court.

So regardless of how I, personally, might feel, one way or the other, I'm not saying I do agree with it one way or the other, I don't think we as a Board should be -- should be pronouncing policy or law
like that. It's just not our roll.

BISHOP TAYLOR: Just to be clear, I think that the reason why the memo was circulated, and you're right, was based on a particular case that we were reading, the panels were reading, and I think that the whole purpose was that, to find out what is the extent of the law as it relates to the procedure of executing a stop, question or frisk or a frisk in -- when a person is in custody or not in custody or the dynamics centered around that so that there can be impartial adjudication in those cases, not for us as a panel, a Board, to make policies about what the Police Department should or should not be doing.

MR. GITNER: I agree.

BISHOP TAYLOR: So it wasn't -- it wasn't there.

MR. GITNER: I agree. I just know that there was some discussion last time about whether or not it was. So I'm just -- I'm agreeing with you.

BISHOP TAYLOR: Okay. Any more old business or any old business?

(No response.)

BISHOP TAYLOR: New business?

MR. GITNER: I do want to raise one thing. It goes to our job to issue sort of policy reports or recommendations.
BISHOP TAYLOR: Is this new business or old business?

MR. GITNER: This is new.

BISHOP TAYLOR: Okay.

MR. GITNER: I've seen, in my panels at least, some case -- without commenting on any specifics -- some cases where there's some sort of altercation, and typically a young, younger person takes out his or her phone and starts videotaping it. And the officer may be, rightly, from a human point of view, doesn't want to be videotaped, and they react one way or the other, sometimes perhaps, in my view, a little too harshly, sometimes rightly, whatever.

I, at least, am not clear that the Police Department has any sort of policy or procedure or training on how to handle somebody who's literally a bystander, so not involved in the actual event, and who happens to be taping the event. And I think that that kind of incident will only increase, particularly with young people who all have phones and they all have videotape and everything gets posted everywhere, and they may not understand how, by videotaping the officer engaged in a very stressful event, it may just increase the stress level on the part of the officer. And so I -- and
so they videotape it. And then when the officer says, "please don't," even if the officer reacts the right way, and I don't know if that would be right or wrong for the officer to say "please don't," you know, it just escalates.

I think that we should look into the number of incidents where that happens and the kinds of factual scenarios that we've seen, and perhaps, without, again, commenting on any specific report, but at the very least encourage the Police Department to also look into and think about this kind of incident in action. I mean, I think it's important, and I wouldn't want to see an officer, again, in a stressful event, essentially get angry at somebody for just videotaping and perhaps create another stressful event that involve -- that results in injury or something worse.

So I think that there should be some thought on that and we should perhaps encourage the Department to look at that.

MR. SIMONETTI: Wasn't there a case just recently argued in the Supreme Court about the cell phone? But this dealt with an alleged perpetrator.

MR. GITNER: Yeah. So I think that case --

MR. SIMONETTI: The ceasing of the phone of an
alleged perpetrator.

    MR. GITNER: That case, I think --

    MR. SIMONETTI: And I think they said they
couldn't do an extensive search of the phone.

    MR. GITNER: Right. That was a little
different. That case, if somebody -- I think, if
the Police Department ceases somebody's phone --

    MR. SIMONETTI: Right.

    MR. GITNER: -- the Police Department can't
necessarily look in it for evidence without a
warrant. I'm not sure exactly what the contours
are. This, what I'm saying, is a little different,
it's somebody literally videotaping an incident as
it's occurring.

    MR. SIMONETTI: I think the -- I mean,
personally, I think anybody can videotape. I mean,
I think -- Chris, you were around the days of
Tompkins Square Park when we had Patterson?

    MR. CHRIS DUNN: We litigated this thing
30 years ago, Tony, with the Department, which I'll
tell you about when I stand up.

    MR. SIMONETTI: Okay. But we had it -- we had
it with Patterson in Tompkins Square Park, when I
was the CO of that precinct. You remember, you used
to videotape everything. And he was horrible at
doing it because everybody was jumping up and down (inaudible), and I had to look at all those tapes.

BISHOP TAYLOR: Can I --

MR. DONLON: There is a provision in the Patrol Guide, apparently, that covers this exact situation. And I'm quoting from a summary of the provision. It says: "Citizens are protected against unreasonable search and seizure in order to" -- sorry. "Citizens are permitted to observe and record arrests of other citizens as long as they do not directly endanger the safety of an officer, obstruct an officer's ability to administer his governmental duties or are otherwise in violation of the law."

And it's NYPD Patrol Guide, Procedure 208-03, Enclosure 4A-N. And...

MR. SIMONETTI: In my --

MR. DONLON: So if there's no obstruction of governmental administration --

MR. SIMONETTI: Absolutely.

MR. DONLON: And this is probably the result of what Chris Dunn is referring to.

MR. DUNN: Yes, it is.

MR. DONLON: But it's in there.

MR. GITNER: I think it's great that it's in there, and I think it's probably, obviously, to some
extent, that people can videotape certain things.

My concern is not whether or not an individual can do it, but how an officer in a stressful situation -- you know, I was never an officer, but I was a prosecutor, so I got to hear a lot about stressful situations. And I think officers sometimes don't, while they're handcuffing somebody who's resisting and there's a gun involved, aren't thinking, oh, my God, Patrol Guide, Section 1.1E-2A, what do I do? Instead, like anybody who's being videotaped when they don't necessarily want to be videotaped, they may react. And I think you can blunt some of that by significant training and just making them aware of better ways to react in that kind of situation. That's all my saying.

MR. DONLON: But I think this issue comes up many times in situations where there is no stress. There shouldn't be any stress involved. It's a situation where an officer's giving someone a summons and there's no gun drawn, there's no physical altercation going on, it's just a situation that should be routine, and all of a sudden somebody's recording it and it escalates where the officer is taking offense. And, you know, I think those are the situations that we're seeing
occasionally in cases that we read as Board members.

    MR. SIMONETTI: I can tell you, I mean, most --
most officers' reactions would be, hey, you can't be
doing that.

    MR. DONLON: Exactly.

    MR. SIMONETTI: Turn that Goddamn thing off, you
can't be videoing this.

    MR. GITNER: Exactly.

    MR. SIMONETTI: You know. And if it's that --
if it's a stressful a situation as you described, he
may go beyond that and, you know, push the guy.
Hey, I told you, get out of here, you can't be doing
that. I mean, that -- that's the reality of it.

    But apropos to your comments, Jimmy, boy, what a
timely -- what a timely comment. Look what happened
yesterday in the West Village.

    MR. DONLON: I'm not sure I heard this incident.

    MR. SIMONETTI: You didn't? You didn't hear
what happened in the West Village yesterday?

    MR. DONLON: Oh, with our friend, the --

    MR. SIMONETTI: Oh.

    MR. DONLON: -- the Hollywood actor or --

    MR. SIMONETTI: Yeah.

    MR. DONLON: -- the New York City actor? Yes,

    okay.
MR. SIMONETTI: Yeah.

MR. DONLON: Yeah, I haven't been under a rock completely.

MS. CATAPANO-FOX: We could do a policy review, if the Board wants.

MR. DONLON: Yeah.

MS. CATAPANO-FOX: We could put together cases, we could do a review of cases --

MR. DONLON: Yeah, I think there --

MS. CATAPANO-FOX: -- involving videos that were taken.

MR. DONLON: Yeah, I think there are lots of cases --

MR. GITNER: Yeah.

MR. DONLON -- that we could look at, yeah.

MS. CATAPANO-FOX: Okay.

MR. DONLON: There's plenty of them.

MR. SIMONETTI: But that would be a reaction, clearly, on the part of an officer.

MR. GITNER: Even in a -- I mean, my view is that a police officer even giving a summons, that is -- could be a stressful situation. I mean, a police officer giving a summons is still an adverse relationship with somebody. They're handing somebody a ticket, that's not necessarily a fun
thing for that person to receive. I think in all situations it's a -- it can be very difficult. It's important to --

BISHOP TAYLOR: Yeah.

MR. GITNER: -- to train these police officers the right way.

MR. SIMONETTI: It always happens with paparazzi --

MR. GITNER: Yeah.

MR. SIMONETTI: -- and celebrities.

MR. GITNER: Exactly.

MR. SIMONETTI: Clearly.

MS. CATAPANO-FOX: But are you looking for cases where an independent person is videotaping it or when the complainant -- when the victim themselves, or both? That's fine. We can do --

MR. GITNER: I think both.

MS. CATAPANO-FOX: Okay.

MR. GITNER: Yeah, I think both.

BISHOP TAYLOR: Yeah, when you were talking, I made a note that it probably would be prudent for us just to kind of index how many video-involved cases that we have --

MR. GITNER: Sure.

BISHOP TAYLOR: -- and just kind of get some
bandwidth on the particulars of those cases and see -- you know, but I also think that as police professionals, we should -- the Police Department should have a knowledge of the Patrol Guide and know that in 208-03, Enclosure 4A-N --

MR. DONLON: Exactly.

BISHOP TAYLOR: I think they should know that a citizen has the right to videotape as long as they're not obstructing the scene of the crime or interfering with the police protocol.

So I would say that they -- for them to say, well, I don't know that number, that -- no, no, no. They're police professionals.

MR. DONLON: We have this --

MR. MARTIN: Well, I think it's -- I think of it as more of a --

MR. SIMONETTI: It's an emotional response.

BISHOP TAYLOR: I agree with you.

MR. SIMONETTI: That's what it is.

MR. MARTIN: Yeah, I think it --

BISHOP TAYLOR: I know it's an emotional response, but there -- we also -- we also hold them to a high standard as they're interacting with the public and should know. I mean, this is not something that is, you know, done, you know, once in
a while. I mean, in the advent of social media and
the continuum of that, you know, that is something
that should be in the forefront of their minds and
know that they cannot come up to a citizen and just
react emotionally.

MR. MARTIN: Yeah, I don't think that's --
MR. SIMONETTI: I think what you're describing
--

MR. MARTIN: -- yeah.
MR. SIMONETTI: -- and what Dan described,
they're two different situations. He's talking
about a very heated situation wherein a bystander is
videoing the police officer taking whatever action
he's taking and he -- and he threw in some -- some
points that --

BISHOP TAYLOR: Well, he also said that there
were things that were videotaped that were not
heated, that created a separate escalation.

MR. SIMONETTI: I can tell you, from my
practical experience, most cops would respond by
saying, hey, you can't be doing that, get the hell
out of here.

BISHOP TAYLOR: So they're violating Patrol
Guide 208-03, Enclosure 4A-N.

MR. SIMONETTI: Then you substantiate it and
come up with a disposition.

    MR. MARTIN: I think that that --

    MR. SIMONETTI: That's why we're here.

    MR. MARTIN: -- I think it's not a matter of
    policy adjustment, I think it's a matter of more
    training.

    MR. GITNER: (Inaudible.)

    MR. MARTIN: I think this is an opportune time
    to --

    BISHOP TAYLOR: That's what you raised.

    MR. MARTIN: -- at this juncture, to possibly
    communicate to the Department that this area is
    percolating and that they should be reminded of that
    particular Patrol Guide provision. Whether or not
    every officer knows ever -- the entire four corners
    of the Patrol Guide, no, they do not, but this is an
    area, this is a category that needs -- they need
    some reminding of. I think this is a very, very
    important point.

    MR. SIMONETTI: Exactly. And this is something
    for the IG and us to have a discussion about. And
    let me just tell you something. They've got a
    Deputy Commissioner of Training, a new person over
    there --

    MR. MARTIN: Right.
MR. SIMONETTI: -- that takes his job very seriously. Worked for me for many, many years, and this is the right guy to have in that position.

And, listen, I don't care how many times you tell cops about that, but -- by the way, just let me remind you, a lot of people think that that thing is gospel, the Patrol Guide. Listen to what it's called, "patrol" -- that ain't the important thing -- the second word, it's a guide. It's a guide. If you can memorize half of the stuff that's in that thing, boy, you're a genius. Believe me. Believe me. If you can regurgitate half of that stuff, you're a genius. But it's a guide. But all -- every -- and Ben Tucker, who's the new Deputy Commissioner of Training, he can tell them, he can have classes about this.

MR. MARTIN: Right.

MR. SIMONETTI: They can do role-playing about this. And I'm going to tell you what happens: You get hot on the street, it happens, then that's going to be the cop's reaction, his initial reaction. I mean, that's for us to decide. That's why we have the Civilian Complaint Review Board.

MR. GRANT, JR.: You know, Commissioner Martin raised a good point. I think we, at times,
categorize things under the title "policy." You know, when we recommend policy changes or suggestions, that's one thing, but this has come up a couple of times about identifying areas where, I like to use your words, where there's -- things are percolating, and bring that to the attention of the PD. We've done that in the past in the form of memos. I think we all put that under policy. And I think that's what you were saying, Dan, because we've discussed this, and I agree with you.

But this raises one of my -- what has become one of my pet peeves is that we've talked about this before. And I remember a meeting earlier this year, or late last year, where we had asked, the Board had asked for some sort of an outline of potential matters that were seen percolating so that we could assess that and decide whether or not we needed to submit a memo over to the PD. And I'm not sure if that fell between the cracks.

There's a lot of things going on, but I just don't want these things to fall through the cracks because this came up before. I'm sure of it. We've asked for, you know, something back to highlight some of these things that could be of issue.

You know, where are we on that, Tracy? Marcos?
I don't know.

MS. CATAPANO-FOX: We did submit in one of the Board packets, I could go back and look which month it was, all of the reports that we have done and then the reports that we were working on.

MR. GRANT, JR.: Right. I remember that.

MS. CATAPANO-FOX: So that did come through.

MR. GRANT, JR.: So where are we with the reports that were recommended on that?

MS. CATAPANO-FOX: That's a good question.

MR. GRANT, JR.: And, look, I don't want to put anybody on the spot right now, let's just -- you know, for the next meeting, if we could have a report on that --

MS. CATAPANO-FOX: Absolutely.

MR. GRANT, JR.: -- so we can move forward because, you know, Mr. Dunn, I don't agree with a lot of things he says, but one thing that he did say that I agree with is part of our role is to address these policy or percolating issues, and we haven't done that in some time.

MR. SIMONETTI: You know, if we get a permanent chairperson, one of their role -- their jobs could be to take those reports and disseminate it to appropriate committees to take a look at to see if
they need updating on some of that stuff. There's a lot of stuff we sent over to the Police Department, tremendous amount of stuff that we sent over. So the committee should be taking a look at that, make a recommendation as to updating or any new thing. And this is certainly a new thing.

By the way, the IG comes into effect next Tuesday. He's going to be on board May 20th, that's when his job starts. And we should have a lot of discussions with the IG because this is the kind of stuff he'll bring back there. And I guess what he tells them, probably he holds more weight sometimes than what we say, you know. And he can tell --

MS. CATAPANO-FOX: Well, I hope not.

MR. SIMONETTI: Well, he's the IG. I mean, so, you know.

MS. CATAPANO-FOX: I think Mr. Eure is very familiar with the operations of the Agency because he was running the DC --

MR. SIMONETTI: Yeah, DC.

MS. CATAPANO-FOX: -- version of the CCRB --

MR. SIMONETTI: Yeah.

MS. CATAPANO-FOX: So I think that that's a positive in our favor. I also think that, in light of the legislation that the City Council is
proposing with regard to him giving quarterly
reports on the law department, which we submitted
written testimony on, the Board -- and I thank the
Board members and the Executive Committee for
helping to draft the written testimony that we
provided -- I think that that's going to go exactly
to what you were saying in terms of being -- working
with all the different groups more, the
Comptroller's Office, the law department and the IG,
to kind of get those policy ideas out there to see
what we've done, to see where we should be moving
forward, and then figuring out amongst the agencies
how to best make those policy recommendations to the
NYPD.

MR. GRANT, JR.: Does this -- is this
something -- because obviously we don't have a chair
and, you know, another one of my pet peeves, that's
another issue -- but do we have a committee that
addresses this? Would this fall under the Reports
Committee?

MR. SIMONETTI: Well, I think the reports that
we've sent over dealt with a lot of different areas,
and I think for one committee to handle them all, I
don't think that would be appropriate. It could be
disseminated either to the Operations Committee or
the Reports Committee, or, like, we had established several special committees when we did the hollow-point bullet controversy that was percolating, I don't know how many years ago that was with the hollow-point bullet, and we get a report on that. So I think it would be up to the chair to take a look at it and then get those reports disseminated.

And, by the way, we got to get our committees back on track. I mean, I think we lost sight of some of those committees, you know. We haven't heard -- and I think the new chair, one of the thirst things they should do is appoint chairs for those committees and then, if people are not willing to serve on them, just nominate people to be on them. That's what we need.

BISHOP TAYLOR: I totally agree. Totally agree.

MR. GRANT, JR.: I don't know if you're being positive, Tony, or you're hinting at something that's about to happen regarding the new chair, but --

MR. SIMONETTI: I wish.

MR. GRANT, JR.: All right. Well, if that's the case, I don't want this to sit any longer, you know. I want us to keep moving these things forward, so --
MR. SIMONETTI: You're absolutely right.

MR. GRANT, JR.: -- I don't want to wait for a chair.

MR. SIMONETTI: No, no. You're absolutely right.

MR. GRANT, JR.: I want us to decide if we're going to designate --

MR. SIMONETTI: I agree wholeheartedly.

MR. GRANT, JR.: -- a committee to help drive this along because we have to keep moving forward.

MS. CATAPANO-FOX: Commissioner Grant, what we could do is send the Board a list of -- for example, we've been working on the I-Cards policy report, we've been -- there are a couple of reports that we've mentioned in the past that we're working on. What we could do is send a list, send some drafts to the committ -- to all the Board members, and they could either -- the Executive Committee could designate people or you could volunteer to be part of reviewing that report and then presenting it, if the Executive Committee wants to create those special committees for people to be a part of, as you said. That's something we can -- we can certainly send it to you guys so you can get a feel for what different projects we're working on, and
then you could maybe perhaps designate members to --

MR. GRANT, JR.: Right.

MS. CATAPANO-FOX: -- review it and oversee it.

MR. GRANT, JR.: I think it should definitely be
sent to the full Board, but I will recommend to my
fellow Board members that some folks volunteer or be
designated to drive this because it's going to fall
through the cracks again. And a lot of us are
working on committees, we're working extremely hard
right now, and, you know, you can't task the same
people to do the same thing over and over again. So
some folks need to step up and help to drive this
through.

MS. CATAPANO-FOX: Commissioner Taylor, one
other issue that has come up very recently, the NYPD
has now issued a -- I don't know if it's a Patrol
Guide, yet, designation -- but essentially those
cases where police are not supposed to collect
condoms any more in certain cases. I don't know if
that's going to -- if the Board has any position on
whether they want to see that as an abuse of
authority in cases where they do.

So we may get cases now, and we actually have
had cases in the past, where the collection of
condoms as evidence has come into play. It's not,
per say, relevant. Before, it was not relevant to the allegations that we had, but now that it is a violation by the NYPD, is that something that you might want to consider as an abuse of authority or is that an other misconduct noted.

It's something that we should talk about. And once we get a little more information from the NYPD about how they're handling it, maybe we can come up with some guidelines because that might be some -- an allegation now that we'll see in future cases.

MR. GITNER: I think it should be case by case.

MR. MARTIN: I think we should wait because the devil is going to be in the details.

BISHOP TAYLOR: Absolutely.

MS. CATAPANO-FOX: Okay.

MR. GITNER: Yeah, I think it should just be case by case. I can see a situation where it's abusive authority. I can also see a situation where, okay, so they grabbed a box of condoms, who cares, from an abusive authority point of view, as opposed to a Police Department -- you know, a violation of some sort of Police Department rule or district attorney rule. So I'm not --

MS. CATAPANO-FOX: But as an allegation. In terms of investigators getting a case --
MR. GITNER: But that --

MS. CATAPANO-FOX: -- if a case came in today
and that was an allegation, how they would proceed.

MR. GITNER: Oh, I see.

MS. CATAPANO-FOX: I guess the Investigations
Committee could meet and talk about --

MR. GITNER: Whether it's OMN or an abusive
authority.

MS. CATAPANO-FOX: Exactly. So that we would
know how to proceed --

MR. GITNER: I see.

MS. CATAPANO-FOX: -- in terms of the closing
reports and recommendations.

MR. GITNER: Okay, sorry. I misunderstood.

Thank you.

MS. CATAPANO-FOX: That's just a new item that
just came up.

BISHOP TAYLOR: All right. We're moving on now
to public comment, and we have a long list of people
beginning with and ending with Chris Dunn.

MR. DUNN: Good morning. I know it's been a
long morning already.

Mr. Grant, I will take you up on your olive
branch. The policy stuff is very important and I'm
happy to hear you say that. And I don't know who
you meant when you said, some people got to "step
up," but you guys probably know who he was referring
to, so hopefully people will step up.

All right --

MR. GRANT, JR.: They know me. They know --

MR. DUNN: I know, I know.

Starting with the symbolic, but not --

nonetheless, not unimportant, thank you for

repainting. It's a small thing, perhaps, but I do

think that your public perception is important.

I will say, in conjunction with that, and as a

small thing, Dan, I think it's an important thing,

the business about people getting in here, it is

just part of a larger concern that you've heard me

say many times about public engagement between the

CCRB and complainants and witnesses. And I view

moving here, having -- being a situation where you

have created, actually, more barriers. And I just

think you have to -- we have to get to the point

where the public is easily engaged with you.

And, Tracy, you have talked often about borough

offices. None of that has happened yet. And I

just, you know, I just want to keep saying, you have

got to work on this. It reflects on the truncation

rate. The truncation rate is just not an abstract,
statistical number, it reflects in large part how comfortable members of the public feel working with you. And it may come down a little bit because we've rejiggered the categories, and it may come down some using more investigators, but what's really going to bring it down is when you have a more open relationship with the public.

And I know, with respect to the APU report -- I do want to say, I'm going to come back to it, I thought that was an excellent report, I appreciate you doing it -- the APU report talked about videotaping access to the trial room to allow complainants who are incarcerated to participate in the trial. I think there was some discussion at some point with the Board about the possibility of allowing a video connection for complainants so they don't have to get their way down here to 100 Church Street and go through the security downstairs. It's a lot easier on them. We just have to figure out a way to make it easier for people to participate in the investigation process.

All right. With respect to the APU report, as I said, I think that's a terrific report. I encourage all of you to read that report. It raises some genuine concerns about the APU process and your
relationships with the Department, and I think the report is good in being candid in that respect. I don't know what it leaves out, but what I see, it looks like an open and candid report.

One thing that struck me as being a particular, potential problem is apparently the Department's refusal to allow you to plea down a specifications and charges case. And, as I understand it, but correct me if I'm wrong, basically the Department says, once you file charges and specs you are on a trial track and you cannot turn something into a lower-level offense.

MS. CATAPANO-FOX: To be fair, that's the way the MOU reads.

MR. DUNN: The MOU actually specifically prevents that?

MS. CATAPANO-FOX: No.

MR. DUNN: I don't remember that.

MS. CATAPANO-FOX: No. It just says that we have substantiation with charges. There's no mechanism within it --

MR. DUNN: Yeah.

MS. CATAPANO-FOX: -- for a reduction, so it's something that the Executive Committee and the Board is working on with DAO --
MR. DUNN: Okay.

MS. CATAPANO-FOX: -- to work that out.

MR. DUNN: I'd be surprised if the MOU actually bars you from doing that.

MS. CATAPANO-FOX: No.

MR. DUNN: I don't remember that. My guess is the Department's taking the position you cannot do it. And if that's the case, I hear you're saying you're talking to them, but that -- that's a significant issue. And in no small part, that creates some perverse incentives in terms of the Agency's preferring charges and specs versus something else, and it takes away some flexibility from the process. So there's that.

The other thing is, and there are very few cases that have come through, looks like you're batting zero in terms of the Police Commissioner adopting pleas that you have negotiated. Am I right about that? There are three cases and, as I understand it, in two cases, he has imposed a lesser penalty, and in one case he --

MS. CATAPANO-FOX: He increased it.

MR. DUNN: -- increased the penalty?

MS. CATAPANO-FOX: Yes.

MR. DUNN: I realize it's a sample of three,
three is three, but I do think it's very important
to stay on top of that because the more the Police
Depart -- the Police Commissioner is not adopting
pleas that you have negotiated, obviously that
undermines your authority in terms of actually being
at the table and negotiating pleas with the police
officer.

Okay. On the administrative closures, there was
a much longer discussion about this at the
Operations Committee meeting. I'm happy to see
there was a Board discussion about this. And what
you're talking about sounds to me like it makes
perfect sense, if truly they are cases that are
being generated without any complainant. But it
does raise a larger issue about -- and I am somewhat
embarrassed even to say this, but I don't know the
answer -- about whether or not you can be proceeding
with an investigation without a complainant, whether
by Charter you are required to have the
complainant --

MS. CATAPANO-FOX: The Charter only reads that
we cannot proceed solely with an unsworn complaint.

MR. DUNN: Okay. Well, there we go. It's the
Charter that says that. So, I mean, the concern I
have about the administrative closure cases is
putting that case back into the pot, if you decide
you should put it back into the pot. It doesn't
really advance anything because you're not going to
have a complainant who's going to come in, you're
not going to have a sworn complaint that's going to
get truncated anyhow, so I'm not sure at the end of
the day that it's going to make much difference, but
there is that.

The docket, I noticed that -- we talked about
this -- the 18-plus-month docket seems to have come
down considerably since the last month. That's
great. I hope -- I know you all take it seriously,
but I just want to say it again, just for the
record, those blown statute of limitation cases are
a huge problem. You still have four cases where the
complainant filed on time and they've blown the
statute of limitations. And it's better than it
was, to be sure, but this is something where Zero
Vision should be part of the CCRB's mission. You
should have no cases where you've blown the statute
of limitations.

All right. Mediation. I heard all the speeches
about mediation. That's great.

Tony, I was a little surprised because you said
two completely contradictory things today. First
you said, the heart and soul of what we do is investigations, and then you turned around and said, we shouldn't be doing any investigations, we should be having hand-holding sessions with cops.

MR. GITNER: I don't think that's what he said.

MR. DUNN: That's my characterization --

MR. SIMONETTI: That's not a contradiction.

MR. DUNN: -- of what he said. Thank you for coming to his defense.

MR. SIMONETTI: That's not a contradiction.

MR. DUNN: See, there we go. He's not denying it.

MR. GITNER: And it's not a contradiction.

MR. DUNN: You're going to have to work that out with him.

Look, I get mediation. I understand the benefits to mediation. But I've said this before and I'll say it again, when you do mediation, there's no investigation; you don't get to the bottom of what's going on. You get two people in the room, they have whatever session they have, and people walk away. And the Agency learns nothing about what actually is behind the incident, and the Agency can't use what's behind the incident.

And going to the policy points, the most
valuable thing beyond getting sort of, some sort of resolution for the complainant is your figuring out patterns and practices, trying to talk to the Department about that in an effort to make sure that doesn't happen again in the future so you don't have to get rid of your complainants. And I would love to have you have zero complaints, but when you do mediation, you just cut off that possibility.

And, Tony, with respect to specifically the gun pointed, I heard your story, I get that. That doesn't translate to me into the notion that gun pointed is inconsequential for the complainant. And you may be talking about situations where cops may have many circumstances in which they pull out a gun and point a gun at you. And you probably have had a gun pointed at you, I have not. My guess is not too many other people here have. Jules, perhaps.

MR. MARTIN: Yeah.

MR. DUNN: Mr. Landin, perhaps. I am quite sure that for a complainant, in many instances, that's a hugely traumatic episode. And it is not appropriate, in my view, given the impact on the complainant, for that to be routed into mediation.

MR. GITNER: But what if the complainant wants that?
MR. DUNN: Well, I --

MR. GITNER: Right now, the situation, as I understand it, is if a complainant wants that, the complainant can't have that.

MR. DUNN: That's correct. Just like if --

MR. GITNER: And we're talking about dealing with the trauma to the complainant. So I think all Tony was saying was make it -- make that available.

MR. SIMONETTI: About the safety of the officer. That doesn't count? That doesn't come into play?

MR. DUNN: But Tony, that's the basis for a non-substantiated complainant. I think you're, in my mind, you're confusing the merits of the complaint --

MR. SIMONETTI: No, I'm not.

MR. DUNN: -- with how the complaints should --

MR. SIMONETTI: No, no, no.

MR. DUNN: -- be processed by the CCRB.

MR. SIMONETTI: I'm -- it's very clear in my mind that the weapon is a tool of being a police officer. And if I feel threatened, whether I'm stopping somebody in the middle of the night and I hold a weapon at my side or I got it pointed directly into the car, and there's four or five people and there's only two of us, I don't see that
that's a contradiction to what I said before.

MR. DUNN: Okay. That's fine. I'm just telling you, from my perspective, and I understand there's going to be a process, I heard what Jules said, there's going to be a process, you're going to have a discussion about this, I'm just telling you, gun pointed, I think, is a big event for a complainant. I don't think that should be batted off to mediation.

And I will say the reason why that is now non-mediable, and you will go back and I'm sure Tracy will pull it for you, there was a Times story about four or five years ago about a case where there was a gun-pointed incident, that was a very dramatic incident, and the CCRB had mediated it.

MR. SIMONETTI: The CC -- I'm sorry, I didn't hear that.

MR. DUNN: The CCRB had mediated it, and the complainant talked about how unhappy he was about that. A big Times story. And that prompted, as I recall it, a change by the Board that those were not going to be treated as mediable cases.

So again, it was a number of years ago, you'll pull it out. Maybe I've forgotten some of the details probably, but that --
MR. SIMONETTI: I don't even -- I don't --
MR. DUNN: -- there was a whole discussion about it.
MR. SIMONETTI: I don't recall that. I had to be on the Board.
MR. DUNN: You were certainly on the Board. You might not have been here that day, but you were on the Board.
MR. SIMONETTI: Then pull the case.
MR. DUNN: Okay.
MR. SIMONETTI: I think I would've remembered that.
MS. CATAPANO-FOX: But I think your ideas go --
MR. SIMONETTI: I would have argued --
MS. CATAPANO-FOX: I think your ideas are going in the same direction. The idea that the complainant initiates the idea of mediation so that if they are so impacted in a negative way by a gun pointed, they wouldn't want a mediation --
MR. DUNN: Well --
MS. CATAPANO-FOX: -- so we wouldn't send it there. And then if, for some reason, they are -- they would prefer a mediation, they prefer the opportunity to address the officer in a mediation forum, all I think Commissioner Simonetti and, you
I know, Commissioner Gitner are saying is, give them that opportunity.

MR. DUNN: I understand that.

MS. CATAPANO-FOX: If that's their goal.

MR. DUNN: I just -- I think maybe you are ascribing a benevolence to a mediation offer by the CCRB that I do not ascribe to, okay. I mean, you know, you kind of view that when you guys say "mediation" to somebody, they're just sitting there going, well, they're bouncing this or doing that, was I sufficiently traumatized. You know, I think, for many people, they may think, you know, I'm getting jerked around by these guys, I'm never going to get any justice from them, if that's all I can get, I will take it.

And so, I'm just saying that I don't think it's quite the dispassionately logical decision made by a complainant to participate in mediation, and I think there are some categories of offense that you have all decided should not be mediable, okay. So you have recognized there's some things where the complainant should not be given a choice, and I am simply saying that gun pointed is a category, I do not think, for the same reasons you don't give complainants the choice in other alleged misconduct,
you should give the complainant a choice here, given
the importance of a gun pointed.
  
  Now, I will say, in conjunction with that, and I
say this publicly, the Department is very good in
terms of shootings. The Department's
extraordinarily restrained when it comes to the
shootings. So I don't say this in the context that
we have a shooting epidemic in New York City, we do
not. But I think the gun-pointed episode is still
very, very important.

  All right. What we do have an epidemic of is
photography harassment. And you, Dan, you were
absolutely right to be raising that. You guys
should be looking at it.

  And, Tony, I'm a little alarmed by your
suggestion that it doesn't make any difference what
we say, it doesn't make any difference how many
times you remind cops that they can't do this, they
are going to blow up at people who take out their
cell phones and videotape or photograph things.

  MR. SIMONETTI: That's the reality of a
situation that's described by Dan.

  MR. DUNN: I understand that. Well, Dan was
talking about a variety of situations. But I can
tell you, if the Department --
MR. SIMONETTI: But the most traumatic one he talked about.

MR. DUNN: Well, no. I think you're -- all right, look. There may be an instance where there's a whole lot of stuff happening and someone pulls out a phone and a cop has an instinct. I'm not quite sure why the phone should necessarily prompt that. If they're engaged with somebody, the fact that someone's ten feet away with a cell phone should be the least of his or her concerns.

But I can tell you, we get photography arrest complaints all the time. We sue the Department regularly about photography arrest issues. Starting with the Patrol Guide provision that Jim read, is from a case called Black v. Cudd (phonetic), and we litigated in the '70s, the Department settled it. That Patrol Guide language has been in there. There have been at least two operation orders that have gone out in the last ten years that I have worked out with the Department about photography issues and it just continues to be a problem. And I do think it is a training problem, I do think it is a sensitivity problem.

I understand people don't like having cameras in their faces, but, you know, as I think Dan's
suggesting, you know, in today's world, they're everywhere. And at some level they have got to recognize that that's just part of the landscape and it shouldn't be prompting any problem on their part. And it's not just they say, people, get out of here, people are getting arrested.

We had two cases of clients who got arrested for photographing police activity. One, a stop and frisk in Bed-Stuy. A woman is walking home, you know, they've got -- they stopped three kids, they're stopping/frisking them, she takes out her phone and videotapes it, she ends up in cuffs. And it just -- it happens all the time.

So I think it would actually be very helpful for the CCRB to be saying to the public and to the Department, you have an issue about your officers in terms of the way they're responding to photography and videotape, and here's some constructive things that you can do. I think Commissioner Bratton will be receptive to that. I think everyone recognizes that's fully, legally protected activity, and the trick has got to be to get officers to deal with the instinct that they have had about, you know, that sort of scrutiny. So I would encourage that. I think that's a very good idea.
All right. Thank you very much.

BISHOP TAYLOR: Thank you, Mr. Dunn.

MR. DUNN: Oh, actually, I'm sorry, I forgot one thing. I'm sorry.

Dan, you mentioned the memo, the frisk and summons memo. So I've gotten three reports that there's a DOI investigation taking place here at the CCRB about how I got that memo; is that correct?

MS. CATAPANO-FOX: That would be up to DOI.

They wouldn't --

MR. DUNN: Well --

MS. CATAPANO-FOX: -- tell us.

MR. DUNN: No, no. Well, I'd be very -- whether they told you or not, Tracy, I'd be very surprised if you didn't know it was happening. I've gotten reports from CCRB staff that it is happening. So are you telling me you don't know that there's an investigation --

MR. GITNER: I think the answer is --

MR. DUNN: -- taking place?

MR. GITNER: -- if there's an investigation, no one's going to answer that question. So you can make a comment, but nobody here is going to comment on whether or not there is a Department of Investigation investigation, which, by its nature,
is confidential.

MR. DUNN: Okay. But if there were no investigation taking place, Dan, I don't think there's anything confidential about this statement, "There is no DOI investigation." Is anyone prepared to say, "There is no DOI investigation"? Because I have been told by three different sources in the CCRB there is a DOI investigation about my having gotten this memo.

MR. SIMONETTI: I think I --

MR. DUNN: Yes, Tony.

MR. SIMONETTI: -- would've known about it if I heard it. I've never heard it.

MR. GITNER: I heard about it from you.

MR. DUNN: Okay. I would have thought you would have known about it also.

MR. SIMONETTI: I've never heard it.

MR. DUNN: Okay.

BISHOP TAYLOR: And I --

DR. KHALID: I just --

BISHOP TAYLOR: -- for the record, I've never heard it either.

MR. SIMONETTI: And if I did hear it, I'd tell you.

MR. DUNN: Okay.
DR. KHALID: I did not hear it. News to me.

MR. GITNER: I heard about it from you earlier.

MR. DUNN: All right. Very good. I hear what people are saying. We'll see. I don't hear Tracy saying, "I know nothing about it and if I did I would tell you," but that's okay.

MS. CATAPANO-FOX: I haven't heard anything from DOI about an investigation.

MR. DUNN: Okay. Okay.

MS. CATAPANO-FOX: Sorry.

MR. SIMONETTI: And they shouldn't be calling you.

MS. CATAPANO-FOX: I don't think that they would tell us. I think that's --

MR. SIMONETTI: Absolutely not.

MS. CATAPANO-FOX: -- the key.

MR. DUNN: Okay.

MR. SIMONETTI: It would tantamount to an EEO complaint coming back to us.

MR. DUNN: Well, Tony, we can debate that some other time.

MR. SIMONETTI: Well, they're not supposed to be calling us. I don't know anything about it. I never heard it before until you just said it.

MR. DUNN: Okay.
MR. GRANT, JR.: But, you know, it begs the
question, so if we did, what's the problem? What's
the issue?

MR. DUNN: What the issue is is that there is
nothing that is unlawful or improper about the fact
that somebody gave me that memo.

MR. GRANT, JR.: Okay. So you made your
comment. Then why are you standing here in a
threatening manner, like --

MR. DUNN: No, I'm not --

MR. GRANT, JR.: -- you have to demand it. I
don't understand that.

MR. DUNN: No, I'm not threatening anything.
What I'm saying is I think it would be a serious
issue if the Board or the Agency or, frankly, the
City were investigating people within the CCRB who
made available to the public a policy memo about a
significant police practice issue, namely, the
frisking of people in conjunction with summonses.

And, Dan, I was a little surprised by your
comments because I do think the Agency has to have a
position about whether or not that is misconduct or
not, and the pol -- the memo takes the position it
is not misconduct because frisk in those
circumstances are permissible as a matter of law.
So I think that's actually going to be dispositive of what --

MR. GITNER: But the memo is limited -- the memo is one lawyer's opinion, reading cases on an area of law of which there is no court decision deciding one way or the other. It's just one lawyer's opinion, frankly, a well-written memo, in the context of a single case. That's all it is. And it wasn't distributed. It's not, as you keep saying, some sort of recommendation to the Board to adopt a policy. It's just not that.

MR. DUNN: I get that. I understand that. Although, it was distributed within the Agency --

MR. GITNER: It was distributed to you.

MR. DUN: No, no, no.

MR. GITNER: It wasn't distributed to me.

MR. DUNN: No, no. But it did -- let me -- rest assured, the one person who did not give it to me was the person who wrote it.

MR. GITNER: I understand that.

MR. DUNN: This got circulated within the Agency, other people had it, okay. And the point is that, what I am saying, is that even for that particular case, okay -- I mean, you do this all the time. You make decisions about substantiated cases
based upon your assessment of what is lawful or not
or what is permissible or not, for instance, under
the Patrol Guide, which is, Tony points out, is only
a guide. Although, cops who go through the trial
room and get fired for violating the Patrol Guide
might think it's a little more than a guide.

But the point is, it, at the very least for that
case, it takes a policy pos -- a pure legal
position. You've read that memo, it's purely a
legal memo. And I do think that it's not okay for
the Board simply to say, we're going to leave that
to somebody else because, by virtue of the
complaint, you had to make a decision about whether
or not to substantiate that complaint. And that
memo determined whether or not -- I assume, though,
I know nothing about the particulars of the case --
that the complaint in that case was substantiated or
not. So it does take a position. And it's
guided --

MR. GITNER: On the facts of that case.

MR. DUNN: Well, there are no facts in the memo,
Dan.

MR. GITNER: Right, because you didn't get the
entire folder. But under the facts of that case,
the panel made whatever decision it made. And under
the facts of another case, that panel or a different
panel will make whatever decision it makes, and it
may or may not be the same. It's a totally
fact-driven decision.

MR. DUNN: Okay. Well, then I don't know what
the point of the legal memo was, but I hear what
you're saying. We'll see where it goes. Okay.
BISHOP TAYLOR: All right. Seeing that there's
no more public comment, this meeting is --

MR. MARTIN: Wait, wait --

MS. NAHAL ZAMANI: I'm sorry, excuse me.
MR. MARTIN: -- a minute. Ms. --
BISHOP TAYLOR: Oh, did you sign up?
MS. ZAMANI: I'm sorry, I did not.
MR. MARTIN: That's okay.
BISHOP TAYLOR: Okay. State your name and --
MS. ZAMANI: Sure. Nahal Zamani with the Center
for Constitutional Rights. I'm the --
MR. SIMONETTI: Could you come up so I can see
you?
MS. ZAMANI: -- advocacy program manager here.
Sure.
MR. SIMONETTI: Thank you.
MR. MARTIN: And so that the stenographer can
hear you.
BISHOP TAYLOR: Can you just sign the...
(Whereupon, Nehal Zamani complies.)

MS. ZAMANI: Thank you.

MR. GRANT, JR.: Thank you. Get some diversity here in comments.

MS. ZAMANI: So I have some questions and maybe some comments. This is my first CCRB meeting, so I'm sorry for obstructing the process, but trying to participate in it.

I wanted to know a little bit more about the APU report. I saw there was about -- is it just the two pages in here or is it a longer report? I haven't checked your website from today.

MS. CATAPANO-FOX: In terms of the pro --
BISHOP TAYLOR: It's more than two pages.
MS. ZAMANI: It's more than two pages.
MS. CATAPANO-FOX: In terms of the process, we'd be happy to talk to you --
MS. ZAMANI: Okay.
MS. CATAPANO-FOX: -- about any questions you have.
MS. ZAMANI: Great. So specifically --
MS. CATAPANO-FOX: Typically this is a public comment where the public makes comments --
MS. ZAMANI: Okay.
MS. CATAPANO-FOX: -- about what's happening with the Board.

MS. ZAMANI: So, you know, I haven't read the report in its entirety, I've just gone over the two pages, but, you know, I think it would be interesting to see, I notice that in the CCRB's monthly reports, just in the last month or two, we've seen the modification pleas by the Police Commissioner. It's been a small number, but I'd still be interested in finding out a little bit more. So to the degree that the MOU allows you to make any information about that more public to get a sense if there's any patterns or practices in these modifications, it might be helpful to make that public if that's something that the Board can do.

For example, and I'm just speaking off the top of my head here, if our Police Commissioner of the NYPD were to be modifying pleas in which cases only the officers were white and always the complainants were black, and that were happening in 90 percent of the pleas that he was ultimately modifying, and that number was beyond three, but, you know, something more statistically relevant, that might be something that we should know about as the public. So that would be just one example.
So if that information could be, if it's not already in the report, made more detailed and have some more analysis made available, that would be great. And I do urge more consistent reporting on this modification of pleas if it does continue to happen.

MR. SIMONETTI: That sounds like a question for the Police Commissioner. You're asking on modifications?

MS. ZAMANI: I'm asking on if you guys have information such as a written explanation or information about the details of cases --

MR. SIMONETTI: Are you talking about placing someone on modified assignment? Is that what you're talking about?

MS. ZAMANI: No, I'm sorry.

MR. SIMONETTI: Modifying the recommended discipline?

MS. ZAMANI: Exactly.

MR. SIMONETTI: Okay. Do you also know that the Police Commissioner is the final arbiter --

MS. ZAMANI: Absolutely.

MR. SIMONETTI: -- of discipline --

MS. ZAMANI: Yes.

MR. SIMONETTI: -- in the Police Department?
MS. ZAMANI: Yes.

MR. SIMONETTI: Regardless of anybody else who's -- has recommendations and adjudic --

MS. ZAMANI: I understand that.

MR. SIMONETTI: He is the final arbiter.

MS. ZAMANI: Yes.

MR. SIMONETTI: And, by the way, I must tell you, apart from the Police Commissioner, it has to remain that way because I held that position. It has to be that way. Because in the military it's the same way, the commanding officer has to be the person. And I know the whole issue about the cases of rape in the military and I've been listening to, on C-SPAN, all those discussions, but there has to be that the Police Commissioner has to be the final arbiter.

MS. CATAPANO-FOX: I think Commissioner Simonetti makes a good point. And in terms of our -- right now we've only had three --

MS. ZAMANI: Yeah.

MS. CATAPANO-FOX: -- come back, so we do annual reports, we do semiannual reports. The Executive Committee and the Board reviews them very carefully. There are FOIL requests that can be made --

MS. ZAMANI: Okay.
MS. CATAPANO-FOX: -- with regard to obtaining information about cases, so that's a method by which you can proceed. But I think that as the year goes on and we get more determinations from the Police Commissioner, I think the Board will be in a better position to decide in terms of what information we can present and how we can present it in the reports.

MS. ZAMANI: And I would just urge that the Board, to the degree that it can through the MOU, make as much information public just in case we're seeing an emerging issue. I think that would be really compelling for the public to have a really wholistic understanding of what's happening. And that's, you know, just given the scope of the MOU and the agreement that you have and any written explanations that you may have or actually some detailed information about those cases, which you do, to some degree, of course, identifying and lifting the identifying information made public, if we can have a little more sense of what's happening here, that would be great, if it's not already contained in the report.

As for the conversation around the new NYPD, and I believe it's a policy, but I do have to check if
it's an order or not, regarding the collection of condoms as evidence. Wherever this Board may land, I think any type of consistent tracking that you can have would be really helpful. Because there are times that the NYPD changes things that it does either in the light of the law or the consideration of the impact it has on New Yorkers, right, and then it doesn't go by that; that is, it doesn't trickle down to the behaviors and interactions that individuals have with officers.

So if that is happening, any type of whatever you may land on, how you -- if you land on identifying as an abusive authority, in terms of tracking of complaints, whatever you do, if you can do that consistently, that really helps us ensure that this is not an ongoing issue, which it has consistently been. And with a particular disparate impact on LGBTQ people and individuals of color and transgender individuals.

And as you're conducting your policy review, proposed policy review regarding filming of individuals in police interactions, one suggestion may be or one comment may be to consider the escalation of either force or possibly misconduct in association with the presumed or actual filming of
incidents. So that if individuals either being
stopped by or interacting with law enforcement or
others on the street are engaging in a lawful
filming of activities, are you guys seeing the
escalation in misconduct, are you seeing an
escalation in the use of force, are you seeing a
disproportionate or incorrect escalation in the use
of force; therefore, if someone filming my
interaction with a cop 20 feet away, has the cop
react in whatever way, but that reaction, whatever
it may be, may be actually thwarting the appropriate
levels of force that are expected for that level of
interaction.

And, lastly, I mean, this is more of a personal
comment, but I can't imagine that if someone had a
gun drawn on my face, or, you know, to my head as I
was laying down on the ground and, you know, a boot
presumably was on my neck, that I might
automatically feel safe enough to go into a
mediation. So as you guys are representing the
interests of New Yorkers, a personal plea, and not
for me as an advocate but for me as an individual,

MR. SIMONETTI: Nobody's -- I did not --

MR. GRANT, JR.: Nobody said that.
MR. SIMONETTI: -- suggest that.

MS. ZAMANI: Maybe just to consider --

MR. SIMONETTI: I did not suggest that.

MS. ZAMANI: Maybe just to --

MR. SIMONETTI: This is not a drama course.

This is real life stuff.

MS. ZAMANI: Sure. If I could just complete my comment.

MR. SIMONETTI: Yeah, but, please, don't take it out of context.

MS. ZAMANI: Absolutely.

MR. SIMONETTI: You're talking about somebody pointing a gun in your face with his boot on your neck.

MS. ZAMANI: Sure.

MR. SIMONETTI: That is not what I talked about.

MS. ZAMANI: So in cases of guns being drawn, it's not always a pleasant experience for whomever might be there. And so if you have individuals who are having a gun drawn on them by a member of law enforcement, by someone that is sworn in to serve the public, it can be assumed that they may not feel safe going into a mediation space, irrespective of how particularly stellar your mediation teams may be. So I just wanted to put that out there.
MR. GITNER: Can I just say, so it's clear the public --

BISHOP TAYLOR: Thank you so much.

MR. GITNER: -- understands, I don't think anybody was saying that if somebody gets a gun pointed at them and then makes a complaint, they're being forced into mediation. I don't think anybody suggested that.

MS. ZAMANI: My understanding was that you were talking about the possibility of opening up the opportunity for mediation, should those individuals be opened to it, right?

MR. SIMONETTI: I suggested that. Exactly.

MR. GITNER: Should they choose it.

MS. ZAMANI: Right. Okay.

MR. GITNER: Not just be open to it --

MS. ZAMANI: Yeah.

MR. SIMONETTI: Yes.

MR. GITNER: -- should they choose it.

MS. ZAMANI: Yeah. And I think --

MR. GITNER: That's all.

MS. ZAMANI: -- I think my feelings on that, personally, would probably echo that of Chris Dunn's, in that, you know, this -- it may not be something that is even felt like a choice because
the experience may not be -- may be so problematic
and so traumatic for the individual that it might
even have some ratifications on perceptions of your
guys' ability to do the work that you're doing, the
mere suggestion of it. So I just wanted to offer
that.

     DR. KHALID: But the public, if a person
individually wants to accept that, you may not
accept, but the other person might want to accept
and --

     MS. ZAMANI: Absolutely, yeah.
     DR. KHALID: That's what Tony Simonetti --
     MS. ZAMANI: And I don't want to -- I only spoke
for myself, how I would feel if, you know, a gun was
on me. I wouldn't want to make any comments about
all of the public, all of New York.
     MR. SIMONETTI: Have you ever been confronted
with that?
     MS. ZAMANI: No, I haven't. But I can't imagine
it's very nice. I have had interactions --
     MR. SIMONETTI: Have you ever been shot at?
     BISHOP TAYLOR: Excuse me. Can I just say --
     MS. ZAMANI: Yes.
     BISHOP TAYLOR: -- are you finished with your
public comment?
MS. ZAMANI: Absolutely. I tried to finish a couple of minutes ago.

BISHOP TAYLOR: Let me just say for the record --

MS. ZAMANI: Yeah.

BISHOP TAYLOR: -- that, just so that no one is, you know, thwarted from giving public comment, the purpose of public comment is so that you can make public comment without fear of retribution or challenge. And so I want to thank you for your -- is it Thamani or Tama -- Ta -- how do you pronounce that?

MS. ZAMANI: My last name's Zamani.

BISHOP TAYLOR: Zamani. Right.

MS. ZAMANI: Yes.

BISHOP TAYLOR: Thank you so much, Ms. Zamani.

MS. ZAMANI: Thank you.

BISHOP TAYLOR: All right. This meeting is adjourned.

(Whereupon, the hearing concluded at 11:48 a.m.)
CERTIFICATION

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

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

I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

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 22nd day of May, 2014.

________________________________________
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