

Civilian Complaint Review Board-Draft
April 8, 2015

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Public Board Meeting
Of the Civilian Complaint Review Board
Wednesday, April 8, 2015

6:37 p.m.
10 Richmond Terrace
Staten Island, New York 10301

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

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

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BOARD MEMBERS PRESENT:

- Richard D. Emery, Esq., Chair
- Bishop Mitchell G. Taylor, Commissioner
- Janette Cortes-Gomez, Esq., Commissioner
- Youngik Yoon, Esq., Commissioner
- Deborah L. Zoland, Esq., Commissioner
- Lindsay Eason, Commissioner
- Joseph A. Puma, Commissioner

Mina Q. Malik, Esq., Executive Director

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CHAIR RICHARD D. EMERY: Let's call to order the April, 2015 CCRB monthly meeting. We do not yet have a quorum, but we're going to begin with a few of the matters that we do not need to vote on and that we could discuss and move forward so we're not holding everybody up, because somebody is delayed and had a car that's going to take for awhile to get here. And both Janette Cortes-Gomez and Bishop Mitchell Taylor are not here yet, but when they come we will have a quorum and at that point we will have the capacity to vote which we do not at this point.

So we're going to vary from the agenda. We're not going to adopt the minutes since we don't have a quorum yet for that purpose. Let's start with a report from the Executive Director and then I may make some comments. We may go -- we have a lot of work on the rule changes tonight so we can start with that as well.

First of all, Mina Malik, our relatively new Executive Director, now not

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so new any more, which is exciting.

MS. MALIK: Still new.

CHAIR EMERY: And so we'd like to hear about updates from you.

MS. MALIK: Good evening, ladies and gentlemen. My name is Mina Malik and I'm the Executive Director of the Civilian Complaint Review Board, and we are very happy to be here at Staten Island Borough Hall this evening.

I'm going to first provide you with a highlight from our monthly statistical report and then we will discuss other matters pertaining to the operations of our agency. For a full review of the monthly statistics, please visit our website.

The executive staff and I continue to implement the strategy of further reducing the number of old cases in our open docket. Last month I reported that the open docket was 1,514 cases at the end of February, which was a significant reduction from the 2,699 cases that were pending at the end of January, 2014.

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This month we have further reduced the open docket by 97 cases from a total of 1,514 cases to 1,417. This was another substantial reduction of our open docket in one month alone. All in all, our docket is 47 percent smaller than it was 15 months ago.

In March, the Board closed 488 cases. These 488 cases included a special panel of the Board with 81 cases pending panel review that were 12 months or older in age at the end of February. The goal was to eliminate the chance of any case being referred to the Police Department beyond the statute of limitations. For this reason, our statistics reflect a substantial reduction of cases 12 months and older pending panel review when compared to the prior month.

Presently, there are 450 cases pending panel review. Of these 450 cases, our investigators submitted 405 cases for panel review in March alone. The remaining 45 cases were submitted for review prior to

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2 March. This demonstrates the commitment,
3 hard work, and the team effort of our
4 investigators to ensure that cases are
5 closed in a timely and more effective manor
6 without sacrificing the quality of our
7 investigations.

8 We continue to reduce the number of
9 cases in the open docket of the
10 Investigations Division. Last month I
11 reported that the open docket of the
12 Investigations Division decreased from
13 1,858 cases in January, 2014 to 912 active
14 cases in February of 2015. By the end of
15 March it has been further reduced by 70
16 cases to a total of 842 cases.

17 We have focused particularly on
18 cases that are 12 months or older. As of
19 the end of March, we had only four cases in
20 the Investigations Division that were 15 to
21 18 months old and 18 cases that were 12 to
22 14 months old. There are four cases that
23 are older than 18 months of age. The
24 statute of limitations does not apply to
25 three of these cases as they were or are on

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DA hold, and the statute of limitation
crime exception applies to those cases.

The other case was filed after the
statute of limitations had expired. With
this strategy, the executive staff and I
are committed in minimizing the number of
cases approaching the statute of
limitations and have made those remaining
cases a high priority. Only three percent
of all cases currently being investigated
are 12 months or older.

I would like to point out that we
have reached several milestones. For
example, the Mayor's management report
shows that it took 324 days on average to
investigate a complaint in fiscal year
2014. In March on average, investigators
submitted cases for Board review in 207
days. More importantly, cases submitted
for review by the new investigated PODs
were submitted on average in 128 days.
When we examined cases after August, 2014
when the new Chair focused efforts on
improving the Investigations Division, the

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2 average number of days to investigate a
3 case decreased to 95 days.

4 Also, as I stated last month, the
5 preliminary data for the new POD system
6 shows that is more effective than the old
7 CCRB team system. The number of days it
8 takes to interview a complainant has
9 decreased from 31 days in January, 2014 to
10 10 days in year-to-date 2015. We have come
11 a long way and are still in the process of
12 creating the conditions for a more
13 effective and efficient organization from
14 the foundation up.

15 Finally, I would also like to
16 highlight statistics related to the
17 disposition of our cases. First, the
18 percentage of cases that are fully
19 investigated has increased from 44 percent
20 in 2014 to 56 percent. Second,
21 year-to-date the Board has substantiated
22 19 percent of all full investigations,
23 which is slightly higher than data from
24 last year when the Board substantiated 17
25 percent of the cases it fully investigated.

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percent have been DUP'ed.

CHAIR EMERY: Eight percent, so in other words, what had previously been a figure that I was very concerned about, in fact when we were last in Staten Island we discussed this in some substantial detail and had some debates here about it -- Youngik, you remember that, and Joe, and others, Lindsay -- the simple fact is that when we were last here, the rate at which the Police Department was not agreeing with our recommendations for discipline was above 20 percent. It was in the 20 to 30 percent range. We have now gotten that down to eight percent where the Police Department is now agreeing with us in all but eight percent of the cases.

I had said in this very hall that the goal was within a year, now we're only a few months later, to get it down below ten percent. We're looking for five percent, but eight percent is terrific progress and it's very exciting that our new processes and the Police Department's

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respect for the staff of this organization and the product of the staff of this organization is so great in this regime. So I think that's a very exciting development.

More exciting actually though, is what Mina has described and that is the incredible progress that the staff is making in processing cases more quickly and doing just as good a job. I can say that certainly from my point of view, I'm interested in other peoples point of view on this panel because this panel, the Board members review cases on a regular basis. As you know, we go through 40 or 50 cases a month that are fully investigated and have to make rulings on them, each of us do in panels of three. My view of it, after having done that now for many -- several months since August, is that under the new format and the new methods of investigation and under the new organization, if anything, the investigations are more thorough and more clear and more precise in

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the way that they come to the panels for our review than they have been in the past.

And I wonder if other people want to comment on that at all, because I'm certainly -- I'm feeling very proud of the way that the staff has become extraordinarily effective in articulating the point of view that they have about a particular case and the focus on the really truly material factual issues that lend themselves to Board panel review of whether cases are to be subbed or unsubbed.

Anybody has any thoughts on that?

(No response.)

CHAIR EMERY: I take it you all disagree with me.

(Laughter.)

CHAIR EMERY: I must say that the progress we're making is terrific, and since Mina's here we have now some sense of real leadership within the entity at the office. I mean, I was trying to instill that but I was doing it from afar. The Chair of the Board can't do that in the way

1 Proceedings

2 that an Executive Director can with her
3 open door, her transparent view of how
4 everything is operating at the CCRB and the
5 accessibility that all staff has to her. I
6 think we're making enormous progress. And
7 I hope some of the culture of the CCRB of
8 being the stepchild of the disciplinary
9 system is going by the Board, that we are
10 playing a role as a truly vital and
11 vigorous oversight entity which we are.
12 And I think Mina is leading that process,
13 from my point of view, in a terrific way.

14 MS. MALIK: Thank you.

15 CHAIR EMERY: Now, we're still
16 waiting for two people, so I think what we
17 should probably do now to use some of the
18 time we have before they come is talk a
19 little bit about some of the issues that
20 are percolating both in these rules and
21 more generally.

22 The one area where I can say that we
23 have been truly remiss is that two meetings
24 ago I promised we would have an annual
25 report ready. We will have an annual

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2 report ready though it's too late, from my
3 point of view at this point, but we will
4 have an annual report ready within the next
5 week or so. And by the way, this annual
6 report is not going to just be pabulum.

7 It's not going to be just a bunch of
8 blowing our own horn. There's going to be
9 real, interesting reading in this annual
10 report and I can promise you that, and I
11 hope that all of you will look at it
12 carefully and those watching will look at
13 it carefully because the annual report is
14 going to talk a lot about current issues,
15 it's going to talk a lot about trends and
16 it's going to talk about a number of things
17 that the CCRB has not done very well in the
18 past and that we hope to do better in the
19 future. So it's going to be a very
20 interesting document. It's not going to
21 just be the usual statistical compilation.
22 It's going to have that as well, but it's
23 not only going to be the usual statistical
24 compilation.

25 We have rules -- sorry,

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2 Councilperson Debi Rose is here. Did
3 Debi Rose come in?

4 COUNCIL MEMBER ROSE: Yes.

5 CHAIR EMERY: Good. I want to
6 recognize you and as one of the leaders in
7 the Council as a person who is supporting
8 our efforts. And I know you've given us
9 all a statement, but I want to give you an
10 opportunity right now, if you wish, to make
11 whatever statement you want publicly to
12 the Board and to the public who
13 has -- which is in attendance. If you
14 would, you can come up to the mic over here
15 on the podium. Thank you so much for
16 coming. I'm flattered and honored that
17 you're here.

18 COUNCIL MEMBER ROSE: Well, I am
19 flattered and honored that you're here for
20 the second time in this borough. And
21 actually, I came to hear. I wanted to not
22 only listen to the proceedings of the
23 meeting, but also what the public comments
24 would be, and I did have a prepared
25 statement, but I was really interested in

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2 the fact that you're -- you have agreed to
3 do an annual report and that you're almost
4 ready to present that. Yes?

5 CHAIR EMERY: Well, I wish it would
6 have come sooner but we have been pillar to
7 post with all kinds of changes, and all
8 kinds of reorganizations, all kinds of
9 analysis of our internal systems and
10 external systems, which as I can tell you
11 frankly has distracted us from getting this
12 annual report done. But the annual report
13 will be done shortly and as I said before,
14 I think you and other council members are
15 going to find it to be actually quite
16 interesting reading. It's not going to be
17 that dry. It's going to actually have
18 some --

19 COUNCIL MEMBER ROSE: We would never
20 imply that of your job or of the results
21 would be dry.

22 CHAIR EMERY: Well, in this
23 environment, I think it's important that we
24 are as transparent and open about what we
25 have done in the past and what we're doing,

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and what we intend to do in the future, and that's all going to be in the annual report.

COUNCIL MEMBER ROSE: And I first, I should have said good evening to everyone and welcome you and welcome you, Commissioner. I am really excited that you're here. And I am looking forward, not only to the report, but I was really interested in the figure that you gave of 89 -- that only eight percent of your findings have sort of been disputed by NYPD because that's what really sort of brought me out here tonight, is the issue of accountability.

And I wanted to know if you are finding that you have all the tools that you need and possess -- that you need in order to bring a thorough investigation forward and then once you do, how are your findings received?

So eight percent, were you able to determine why the NYPD did not agree with eight percent of your findings?

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CHAIR EMERY: Oh yes. In fact, what we've done which is -- well, I think there are two components to why we're now getting the respect we're getting from the NYPD about our recommendations. And that is, one, is they simply are viewing us as an integral part of their disciplinary system now which they have never have done in the past.

The second is that we've implemented a process where when we decide a case and if there's a sub, a substantiated finding, we send it over to the Police Department and we allow a period of time for the Police Department to comment on our findings when we are willing to reconsider it if they wish to bring to our attention some facts or ideas or something that's powerful enough to cause us to reconsider.

And so, this has never happened in the past. In the past, investigators made findings, they made recommendations to panels, investigators never knew what the panels did, the panels made findings and

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2 made recommendations to the Police
3 Department, the panels may have heard later
4 what they did but it was considered a very
5 static arrangement, and then the case went
6 over to the Police Department and whatever
7 happened there, happened. And the
8 consequence of that, certainly during the
9 Kelly years, was upwards of a 40 percent
10 discordance between our recommendations and
11 theirs. And what we have done now is open
12 up that whole process so that investigators
13 have a lot to do, panels get to talk to
14 investigators and internally there's a
15 great deal of interchange in every
16 investigation potentially where there's
17 discussion about what the right outcome is.

18 Similarly, when the panels make
19 decisions, there's an open process for a
20 period of time between the Police
21 Department and us so as to give -- we are
22 allowed to give them and we talk to them
23 our reasons for our position and they give
24 us reasons why they might disagree with our
25 position, and we come to some kind of

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2 resolution in a great number of cases that
3 otherwise would have gone in a separate
4 direction.

5 COUNCIL MEMBER ROSE: And do you
6 actually recommend the discipline that
7 should be meted out?

8 CHAIR EMERY: Yes.

9 COUNCIL MEMBER ROSE: And in, I guess
10 89 percent of the times they actually agree
11 also with the discipline in addition to the
12 findings?

13 CHAIR EMERY: That's right, Marcos,
14 right? The numbers -- they agree both to
15 the substantiation and to the discipline in
16 89 percent of the time; isn't that correct?

17 MR. SOLER: Yes.

18 CHAIR EMERY: So we're well on the
19 way to the goal of what we had hoped to do
20 which is get it down to single digits on
21 both counts, and we're even on single
22 digits when it comes to agreeing with
23 substantiated cases. There's a slightly
24 greater discordance with the nature of the
25 discipline, but it's really become a

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genuinely rewarding process in that what we do means something now and it never did in the past.

COUNCIL MEMBER ROSE: So what is the time frame between the time that you actually deliver your findings, and you said it's a reasonable amount of time for them to respond back?

CHAIR EMERY: This is an interesting question you ask because one of the rules that we're proposing to adopt for the CCRB tonight puts the time frame at 30 days. Because this is a new process and because the Department Advocates Office which processes our results has been backed up tremendously, and because we have sent over cases where the statute of limitations is very close because we're cleaning up this terrible back log that we had prior to the Fall, that time limit has not been as short as we want it to.

And over the last four, five months where we did do reconsiderations, it has varied from a week to five or six weeks,

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2 and what we want to do is have a 30-day
3 turnaround and hopefully faster than that,
4 but 30 days as the outside goal for any
5 reconsideration. And that way, the final
6 result -- by the way, it happens in a small
7 percentage of the cases overall, but it
8 does happen. Among the substantiated
9 cases, you know, I don't know the actual
10 percentage among substantiated which are
11 subject -- where they ask for
12 reconsideration, but it can't be more than
13 10 or 15 percent. So that process should
14 happen quickly.

15 COUNCIL MEMBER ROSE: So -- and you
16 are to be commended, you know, because I
17 think a 30-day window is reasonable. And
18 then you have to respond back within a
19 certain amount of time for reconsideration?

20 CHAIR EMERY: Well, that's right.
21 Usually what happens is when they ask for
22 some reconsideration, we make a very quick
23 decision, usually it's within three or
24 four days that we make a decision on
25 whether a panel is going to get together,

1 Proceedings

2 the same panel that made the original
3 decision gets the reconsideration. We do
4 not send it -- it could go to the full
5 Board, but so far I don't think we've had
6 any reconsiderations that went to the full
7 Board. I think the reconsiderations have
8 always gone back to the panel and the
9 panels have either confirmed their original
10 decision and explained why and why we're
11 sticking with it or they have made an
12 adjustment.

13 And the adjustments have been, you
14 know, relatively minor. Mostly -- I think
15 probably mostly the requests have been for
16 officers whose records in the Police
17 Department we don't have and if they have
18 an unblemished record, the Department
19 Advocates Office often asks us to give the
20 person a break and have instructions rather
21 than lost days of vacation time or docked
22 time. And that sometimes we agree with
23 because we don't know what the officer's
24 records are at the Police Department. We
25 only know the records at CCRB. So when we

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find out that information, we sometimes do, depending on the seriousness of the case, think that instructions might be actually more productive.

Let me say one more thing about that because it's important to you I think and that is, when we do instruction now, it's not the way it used to be. Instructions used to be that the officer went back to his or her command in the precinct and the superior officer gave them some instruction. I don't have a lot of faith in that process myself. Who knows? Some officers would probably get very good instructions, and some officers would probably get very poor instructions. Now all our instructions, I think we all agree, are formalized instructions where they go to the Police Academy for a day and have real instructions from a -- on the issues that have arisen in the case.

COUNCIL MEMBER ROSE: And have you -- you had input into what these instructions would be or look like or

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should contain?

CHAIR EMERY: Not to the extent that I hope in the longer run we will, but that has been outside our purview at this point. We certainly expect and believe that the instructions relate to the particular case that was substantiated, but we have not audited that or checked that or been apart of that training regiment in the Police Department today.

COUNCIL MEMBER ROSE: And I hope that there is some place within the training regiment for CCRB and your recommendations. And the time frame, once they agree to what your recommendations were, what is the actual time frame in terms of when they actually speak with the officer and that it's actually implemented or put in place, whatever the --

CHAIR EMERY: That's a good question. I don't know the answer specifically, but my understanding is it's very quickly. Once they accept the ruling, once the Police Commissioner actually signs

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off on the discipline, it's virtually immediate that that goes to the police officer.

COUNCIL MEMBER ROSE: And that's very important to me, especially when we just witnessed in South Carolina where they made -- they came to some sort of determination rather quickly and there was action actually taken as opposed to what we've seen here. It's almost a year and we have not seen any departmental sort of response to the Pantaleo --

CHAIR EMERY: You're talking particularly about the Garner case?

COUNCIL MEMBER ROSE: Yes.

CHAIR EMERY: Well, the problem in the Pantaleo case, we know because we have an investigation which is also being frozen, is that the Eastern District Federal Prosecutor has asked the Police Department and our agency to put that investigation on hold until they determine whether there's going to be a civil rights action in that matter. As you may have

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seen in the newspapers today, there was a Westchester case with Cox and I forgot the other fellow's name, where the U.S. attorney in Southern District for Westchester -- it was a Westchester case, took I think almost two years before they declined to go forward with a prosecution.

So this is a bit of a problem for us and we are chomping at the bit to have a finished product, a fair and full investigation in the Garner case. We have pending complaints.

COUNCIL MEMBER ROSE: So that's why we haven't seen any departmental sort of response to a disciplinary action?

CHAIR EMERY: Well, I know that they have had virtually a full investigation at the Department, but my understanding is that they can't do anything with it until the Eastern District releases the hold.

COUNCIL MEMBER ROSE: Until the civil rights --

CHAIR EMERY: Yes.

COUNCIL MEMBER ROSE: So it seems

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2 like I violated what I first said, I came
3 here to listen and I'm doing an awful lot
4 of talking.

5 CHAIR EMERY: Well, you're asking
6 very interesting questions.

7 COUNCIL MEMBER ROSE: But I will be
8 here and I do want to hear --

9 CHAIR EMERY: Well, I want to say
10 one other thing, Council Member Rose, and
11 that is we really appreciate how involved
12 you've been and how you've offered your own
13 office here for our work in the boroughs,
14 and we're hoping that we can really
15 institutionalize council member offices
16 throughout the city, particularly in the
17 neighborhoods where we have the most
18 complaints so that we can be present in
19 those neighborhoods and be available to
20 people so they don't have to go downtown
21 and they don't have to go through security
22 at 100 Church Street, and all the rest of
23 the stuff that makes it hard --

24 COUNCIL MEMBER ROSE: They will have
25 to go through security get to my office,

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2 but --

3 CHAIR EMERY: But it doesn't feel
4 the same, I think.

5 COUNCIL MEMBER ROSE: No, it doesn't.

6 CHAIR EMERY: So we're really
7 appreciative of that and we hope that you
8 can work in the council to make that
9 attitude that you have contagious.

10 COUNCIL MEMBER ROSE: Well, thank
11 you. And it's very important to me, I
12 guess because Staten Island is somewhat
13 isolated. No one wants to come here and
14 it's the same for us to get services and
15 when my constituents have to go into
16 Manhattan it's a hardship. So anything
17 that I can do to make it easier, I'm really
18 excited and I can't wait for you to, you
19 know, to be there so that the constituents
20 can have somewhere to go without having to
21 go into Manhattan. And I do try to get
22 everyone to sort of have the same response,
23 I guess, maybe because transportation isn't
24 as big an issue for them as it is here, but
25 it's very important that -- and I'm excited

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2 and I can't wait for you to start.

3 What is that timeline like?

4 CHAIR EMERY: Well, we are starting.

5 We are starting. We were out -- Carlmais
6 (phonetic) is running a lot of this and so
7 is Brian and others. We are starting but
8 we really want to have the council make
9 this -- I know that the leader wants to do
10 this.

11 COUNCIL MEMBER ROSE: Yes, she does.

12 CHAIR EMERY: So it's just a
13 question of pushing it forward and like
14 everything less, implementing it with all
15 the other stuff that's going on at the same
16 time.

17 COUNCIL MEMBER ROSE: Well, if you
18 don't mind, I won't tell if you don't, you
19 can start anytime you'd like in my office.

20 CHAIR EMERY: Well, we'll do that.
21 We'll take you up on that.

22 COUNCIL MEMBER ROSE: Thank you.

23 CHAIR EMERY: I don't know where
24 Brian is -- Brian, we have to make sure we
25 have office hours at Council Member Rose's

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2 office.

3 COUNCIL MEMBER ROSE: Thank you. And
4 I'm going to yield the floor but --

5 CHAIR EMERY: Well, thank you. I
6 wanted to make sure that you had an
7 opportunity to --

8 COUNCIL MEMBER ROSE: -- I might come
9 back if you say something really, you know,
10 interesting.

11 CHAIR EMERY: Come back anytime you
12 want.

13 CHAIR EMERY: All right. We still
14 are missing -- Bishop is here. We still
15 need one more to do voting.

16 I think what we ought to do is, let
17 me just think of mine -- I think what we
18 ought to do is go into the rule changes if
19 we can as a group because there's a lot of
20 work to do there and we should try and get
21 it done. And I'm working from the
22 distribution that was put out that -- that
23 Mina sent out and that there were two
24 memos; one was an explanatory memo from the
25 legal team dated April 2nd, and then there

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2 was also the actual rules of the Civilian
3 Complaint Review Board with the reflected
4 proposed amendments and deletions.

5 And so I wanted to, if we could,
6 work from that. I know that Debbie Zoland
7 has done a lot of work on this and I hope
8 others have looked at it as well, but
9 there's some very interesting issues that
10 arise in these rules and I think we ought
11 to try and get through them so if not at
12 this meeting, certainly at the next one we
13 have something to put out for public
14 comment and then adoption in the normal
15 processes of rule making in the city.

16 So looking at page one, which is
17 definitions, 1-01, any comments there from
18 Board members? And by the way, I think
19 there are copies of these documents at the
20 back of the room if anybody wants to follow
21 along and later on make public comments
22 here, we welcome them, not while we go
23 through it, but during the public comment
24 period.

25 Page two, I have a comment on page

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2 two under victim. Anything before that?

3 MS. ZOLAND: Yes.

4 CHAIR EMERY: Do you have something
5 before that?

6 MS. ZOLAND: I do. The small things
7 I'm just going to leave aside, the small
8 wording things I'm not going to bring up.

9 CHAIR EMERY: Well, mine was sort of
10 a small wording thing too. Just for the
11 record, I mean, are the staff people who
12 are working on this, you're here, I see
13 Lindsey, I see Brian -- who else is
14 here -- oh, Lauren's here, Roger's not, I
15 guess. But are you guys doing
16 some -- taking some notes so we can --
17 good, good. Because I think it's important
18 that we reflect what happens here tonight
19 as best we can with the next draft.

20 Just in victim, I have -- victim
21 refers to the person alleging harm --

22 MS. ZOLAND: I had that same one.

23 CHAIR EMERY: -- alleging harm by
24 the alleged police misconduct.

25 Anything else?

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2 MS. ZOLAND: Under personal
3 knowledge it says, "Facts gained through
4 firsthand observation," I'm wondering if
5 it should be limited to -- if observation
6 is too limiting, if it's something you
7 heard on the phone, a text. I'm just
8 wondering.

9 CHAIR EMERY: Firsthand information
10 you can say or whatever.

11 MS. ZOLAND: Through firsthand
12 knowledge. I think observation is too
13 limiting. I didn't know if we meant to,
14 that's all.

15 Then under complainant, I'm a little
16 bit confused. It says, "Refers to a person
17 with personal knowledge of alleged police
18 misconduct who is filing a complaint on
19 behalf of another." You mean or
20 themselves, right?

21 CHAIR EMERY: Victim is on behalf of
22 yourself the way this is -- the dichotomy
23 exists here.

24 MS. ZOLAND: Victim is the person
25 harmed, but can't the person harmed be a

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2 complainant? Can't the complainant be the
3 person who is harmed?

4 CHAIR EMERY: The victim is alleging
5 harm by the alleged police misconduct, so
6 presumably --

7 MS. ZOLAND: I think it's on behalf
8 of themselves or another.

9 CHAIR EMERY: Yeah. Do you want to
10 say something? Feel -- you know, we can
11 chime in here.

12 MS. ZOLAND: Because I don't know
13 your thought process. So I'm just --

14 MR. KRIST: In crafting these, our
15 thought here is the complainant would
16 really be -- in differentiating complainant
17 and victim, a victim can certainly make a
18 complaint about conduct served by him or
19 herself of course, but the complainant is
20 really to differentiate that as someone who
21 is personally witnessing an act committed
22 against someone else; they would be there,
23 they would have that knowledge, it would be
24 something they directly say or heard, but
25 it's not something where, to use a force

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case for example, they weren't the person being subject to the force, they happened to be physically witnessing it. So it's a person making the complaint can certainly be a victim.

MS. ZOLAND: I think I understand that -- I understand your attempt to differentiate, but in the common usage of the word complainant, I don't think that it will be well understood that a victim can't be a complainant.

MS. FLOOK: A victim can be a complainant. The issue here is that there are situations wherein a victim isn't always the person that reports. Sometimes the victim is found through the reporting process, but they aren't the person reporting so they are the complainer, so it's kind of like the circle, the square, rectangle argument. A victim can be a complainant but a complainant can't be a victim kind of thing.

MS. ZOLAND: But if we use the term complainant by definition, we're talking about someone who's making the complaint on

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2 behalf of someone else if this is our
3 definition, and I don't think that will be
4 logical.

5 CHAIR EMERY: Is there anything
6 wrong with saying on behalf -- I mean,
7 let's see -- on behalf of another or him or
8 herself?

9 MR. KRIST: We can shift it to
10 accommodate that, probably reflecting
11 something of themselves or another. We can
12 work that out.

13 CHAIR EMERY: I think that helps.
14 Anything else on that page?

15 MS. ZOLAND: If we're doing language
16 things --

17 CHAIR EMERY: Might as well go
18 through it, just not too --

19 MS. ZOLAND: Not too picky, right?

20 CHAIR EMERY: Yes.

21 MS. ZOLAND: The last word under B,
22 "As from time to time, during the period
23 that the MOU is applicable", I would
24 imagine if it's time to time it would be in
25 effect?

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2 MR. KRIST: Yeah, we can certainly
3 change that.

4 CHAIR EMERY: Next page. I had no
5 problems on the next page. You, Deb?

6 MS. ZOLAND: I have just a question
7 under 1-11C. So we're saying, does this
8 mean that we take a complaint without a
9 complainant?

10 CHAIR EMERY: We can in video cases,
11 for instance. This contemplates --

12 MS. ZOLAND: Yeah. I just want to
13 make sure that that's what it means.
14 That's how I read it and that's fine. I
15 just wanted to make sure I'm reading it the
16 way it was meant to be.

17 MR. KRIST: Yes.

18 CHAIR EMERY: Yeah. When we refer
19 to video by IAB or we get it off the news,
20 we can proceed with the complaint, or if
21 there's another compelling reason to go
22 forward without -- I think it's the
23 exception rather than the -- the rare
24 exception rather than the rule, hopefully.

25 I have one thing on the next page.

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MS. ZOLAND: I have one thing, 1-22.
I don't know if it necessarily needs to be
included.

CHAIR EMERY: That's the page after.
I'm on 114 through 121.

MS. ZOLAND: I must have skipped a
page.

CHAIR EMERY: In 115B, I think it
should be one year and not six months for a
late complaint. When there's still six
months left, if a complaint is sufficiently
important, we can always turn it down if it
is -- if there's a reason to turn it down,
but I think we ought to have the discretion
up to a year after the event to investigate
a complaint.

MS. ZOLAND: I did have something in
A. I would just add after 18 months
statute of limitation, I would add the
statutory reference, the CPLR Section 75,
whatever the subsection is because that
makes it clear what the statute of
limitation is, otherwise people may not
know what it means.

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MR. KRIST: Yeah, we can address that.

CHAIR EMERY: Next page.

MS. ZOLAND: I was wondering if in C where the statute of -- adding something like when the statute of limitations expired, the Board shall consider whether an investigation in the interest of the city should go forward. That's not something that we -- there are sometimes reasons after the statute of limitations to complete an investigation; there could be a policy reason, there could be a pattern reason.

CHAIR EMERY: I agree with that. I think we should have discretion to do that.

MR. KRIST: The way we currently wrote it, we didn't -- and I don't think that the text will make the factors here exclusive. We can certainly add it to the extent we're making it more clear for other consumers of the rules, we can add that. I don't think it would be technically necessary, but we certainly can do that.

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2 MS. ZOLAND: I get it. I wasn't
3 part of your discussions, so if you've
4 already talked it through to death then
5 you'll, you know --

6 MS. FLOOK: Because sub-A does allow
7 for that discretion, obviously.

8 CHAIR EMERY: Right, expired, is
9 already expired.

10 The question really for me there is
11 on A, is whether it should be -- I think
12 that's fine.

13 Bishop, do you have something?

14 BISHOP TAYLOR: No. I just was
15 questioning the amount of time a person has
16 to report the incident. I was just stuck
17 on the six months.

18 CHAIR EMERY: Yeah, I said -- I
19 tried to -- I think I recommended one year.

20 BISHOP TAYLOR: Oh. So it's a year?
21 Okay.

22 CHAIR EMERY: That's what I'm saying
23 to the drafts people here.

24 Anything else on that page?

25 MS. ZOLAND: They don't have to,

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2 you're right. I skipped one.

3 MS. ZOLAND: This is just for
4 discussion in 122 and it may be obvious,
5 but they use, "Investigators may use any
6 techniques enumerated here or as they may
7 be useful." I would also add lawful. I
8 don't know, but you can say that's within
9 our purview anyway, it just seems somewhat
10 overbroad. I throw that out as...

11 MR. KRIST: We can certainly add
12 that lineage. I mean, obviously we would
13 not be able to even -- if we just say we
14 can use unlawful method, it would have no
15 force if we add it in the rules. So we
16 didn't include that in here. We can
17 certainly change it to say any
18 investigative method allowed by law or
19 something similar to that.

20 MS. ZOLAND: Something like that,
21 yeah. Because useful seems just so vague
22 and open to too much discretion by a very
23 zealous investigator.

24 CHAIR EMERY: In 123D is where I am.
25 I think it should be such subpoenas instead

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of Board subpoenas in the second sentence just because the Executive Director is added.

MR. KRIST: Here going back to the definition section for a moment, Board is meant in that situation to be referring to the entity essentially, so CCRB, both the Board and staff. So there we could leave it as Board, if you'd like to say it as agency we can -- or simply a Civilian Complaint Review Board subpoena. But Board there is a fine term in covering the entity itself so that would be --

CHAIR EMERY: Yeah, but the entity doesn't have to issue the subpoenas, right? The Executive Director is issuing the subpoena. "Upon a majority vote from members of the Board or at the discretion of the Executive Director, subpoenas ad testificandum may be served." I would just say such subpoenas are enforceable pursuant, blah, blah, blah.

MR. KRIST: We can do that.

CHAIR EMERY: And then the next

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section I have is 124. Anybody before that?

(No response.)

CHAIR EMERY: Now, this is the section where -- that's quite controversial. And I actually, because of certain -- let me try and explain this, negotiations that are going on with the Police Department currently and because of the legal team's analysis of the implications of swearing police officers, I actually feel like we have to table this discussion for the time being because it's quite sensitive and potentially problematic. The goal -- I may -- other Board members may disagree with me, but my inclination in this section is to have parallel levels of swearing or oath taking by police officers and complainant, and witnesses and victims so that neither police officers nor people from the community who come to us to complain about police misconduct are more burdened by the oath than the other. I think it should be

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2 as parallel as it can be.

3 Now, plainly police officers have
4 the obligation under the patrol guide to
5 tell us the truth and to be accurate, but
6 currently they are not sworn. Currently,
7 witnesses and complainants are not sworn in
8 the classic sense of raising their right
9 hand and taking an oath before they give
10 their statements, but they do sign a
11 verification that what they've told us is
12 true and that verification is in fact in
13 front of a Commissioner of Deeds which
14 formalizes it because all the investigators
15 are Commissioners of Deeds.

16 At this point, they're not exactly
17 parallel, but we've lived with this system
18 for a long time and I would prefer to leave
19 it in place until we come up with the right
20 system that's parallel with respect to both
21 police officers and other witnesses at the
22 CCRB. The problem is that under the
23 Charter that enables us to call in police
24 officers, we can only call them in if our
25 methods of inquiry are the same as the

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Police Department's methods of inquiry and interestingly, the Police Department does not swear police officers when they do investigations at IAB or elsewhere.

Consequently, if we started swearing police officers, the implication might well be that the Police Department does not have to produce those police officers to us. So we have to be very careful about how we proceed here. I am currently talking to the Police Department about either changing their methods or committing to having police officers produce to us even though we swear them and they don't.

But the ultimate solution here might be Councilperson Debi Rose, because it may be that we will submit to you legislation for the Council that changes that Charter provision and requires the Police Department to produce police officers to CCRB notwithstanding that our procedures may be somewhat different than the police procedures in terms of administering an oath or conducting our investigations.

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2 So that is the background under
3 which I am trying to table this for the
4 time being given that there is a good deal
5 of flex -- well, a good deal of activity on
6 this issue, but it is a hot issue. The
7 unions are very concerned about it, the
8 Police Department is very concerned about
9 it, and I think our job is to be -- call it
10 right down the middle, to be exactly fair
11 to both police officers and complainants or
12 victims or people who come to us, and not
13 put a heavier burden on either one than the
14 other.

15 Are we good with that for the time
16 being? I mean, I hate to delay it but I
17 don't think there's any way around it.

18 BISHOP TAYLOR: I guess, if I can --

19 CHAIR EMERY: Yeah, please.

20 BISHOP TAYLOR: If the Police
21 Department in interviewing officers while
22 conducting an investigation does not
23 particularly swear an officer in but there
24 has resulted in, should I say varying
25 accounts of the event that they're

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2 questioning and they're able to drill down
3 and say well, no, we know this happened
4 rather than that, isn't there an assumed
5 orientation of truth that they can take
6 action on based on those interviews that
7 there's varying levels of truth or --

8 CHAIR EMERY: Yes. They have in the
9 patrol guide the obligation of every police
10 officer to tell them the truth and they can
11 discipline people for not telling them the
12 truth.

13 BISHOP TAYLOR: Even though they're
14 not sworn?

15 CHAIR EMERY: Even though they're
16 not sworn. And they have to do the same
17 thing with us. The Police Department can
18 discipline people if they don't tell us the
19 truth. And there's an argument which the
20 legal time has made, Brian Krist wrote a
21 memo which I think is convincing, that
22 there are even misdemeanor penalties for
23 them not telling us the truth under the
24 false official statements rules and the
25 like that could result in criminal

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2 prosecution at a relatively low level.

3 Similarly, I think complainants or
4 witnesses who do not tell us the truth have
5 some exposure potentially to minor level
6 criminal prosecutions. However, I think
7 the goal would be to have a process at the
8 CCRB which is equivalent or close to
9 equivalent to testifying in court for
10 anybody who comes there and that they
11 should be subject to fairly serious
12 consequences if they tell us a material
13 lie.

14 In other words, I mean, it has to be
15 material, it has to be clear, they have to
16 intend to be lying, but these days with
17 video or other documentary proof there may
18 be rare occasions where perjury is an
19 appropriate thing to refer to a district
20 attorney if somebody comes in, police
21 officer or non-police officer, and lies to
22 us. And quite frankly, I think raising the
23 level of necessity for telling us the truth
24 is probably healthy, but that's a debate
25 that we all ought to have.

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BISHOP TAYLOR: What's the consequences now if a complainant victim comes and we find there are, just say varying levels of --

CHAIR EMERY: Well, when we put out our annual report, there's going to be a section on just this, that's why I say it will be interesting reading. The practical consequence is that we refer police officers on occasion, about 60 plus times in the last five years, interestingly about 30 plus times through 2013 and about 30 plus times from 2014 to the present, so a lot more more recently for false statements. We don't make findings on false statements, but we make a referral saying it appears that a police officer may have made a false statement to -- I don't think there's ever been any consequence for a non-police officer that I know of. I don't think any non-police officer has ever been referred for a prosecution. We certainly do often say in our reports that we do not believe a complainant for X, Y

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and Z reasons, but we say they're lying, we don't say that they are intentionally misstating the truth. But with police officers we refer to the Department for potential consequences under the patrol guide prohibitions on telling us untruths.

Now, what has come of those referrals is an interesting question and I believe that our annual report is going to discuss these matters, and in fact I think there will be other potential system-wide consequences to the issues of when police officers are believed not to have told us the truth. So that's -- this is an issue which is percolating and it's a serious issue that's percolating a lot of different fora.

BISHOP TAYLOR: So I understand the police side of it but I'm just having problems understanding the complainant, victim, witness side of it and what difference it's going to make, you know, by escalating this to the next level for a complainant when there should be an assumed

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orientation of truth, but even if you did tack this on in some form of fashion, what difference is it going to make?

I mean, I see the parallel between not wanting to have a difference between an officer's accountability and a complainant, but the officer is representing another level of truth, right, they are officers of law, right, and I understand that victims or complainants should be held to truthful statements and making truthful complaints, but what difference is it going to make? We're not going to give them a ticket, right?

MS. ZOLAND: I think that you're exactly right, but for the complainant what happens is their complaint isn't substantiated and that's really all the Board's going to do, and if they were under the penalty of perjury, I think it would be highly rare that they would ever -- that we would ever make an allegation.

CHAIR EMERY: I agree. I think there will be a highly rare when we do it

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2 for a police officer.

3 MS. ZOLAND: But I just wanted to
4 follow-up also on the police side is that
5 it's not that -- the police officer takes
6 an oath of office when they take their job
7 and so that is why we can if they don't
8 tell the truth there are allegations of
9 false statements and they can be brought up
10 on disciplinary charges and they can -- and
11 that is one of the areas in which a police
12 officer found guilty for false statements
13 in the past has lost their job, you know,
14 that and drug use would be your two highest
15 ways in which you could lose your jobs.

16 A police officer is now -- I just
17 don't want the impression to be that a
18 police officer is not held accountable and
19 with the situation we have now this officer
20 has no choice, they must appear and they
21 must answer our questions. So that's why I
22 think it's a very complicated discussion
23 about which process will serve us best in
24 the end. And Bishop Taylor does raise a
25 good point about if it is up for the

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2 complainant, is the parallel necessary and
3 what would we get from the parallel. I
4 think that's part of the discussion.

5 CHAIR EMERY: Well, you may be right
6 and it may be that we'll end up saying that
7 we keep the system we now have which is a
8 little bit haphazard, but nevertheless, the
9 issue arises because there have been a lot
10 of public calls for complainants to be
11 sworn and I'm loathed to think about
12 complainants being sworn if police officers
13 are not sworn. So this is how the issue
14 arises and it's a debate we should have.

15 In terms of complainants and the
16 consequences to them, I think you're right,
17 it would be extraordinary rare. But if a
18 complainant comes into us and it could be
19 documented that he or she is flat out lying
20 about something a police officer did and
21 it's clear proof, the referral to a
22 prosecutor does not concern me. It's
23 really a question of that's an issue for
24 the prosecutor to make a decision on.

25 BISHOP TAYLOR: Excuse me. I'm

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sorry, Mr. Chair. Oh, no, Debra, you go first.

MS. ZOLAND: The only other thing I wanted to say is that I would think we would need further discussion about whether the conversation with our investigators should be tantamount to courtroom testimony. Courtroom testimony is different than trying to get at the truth. An investigators job is to try to piece together elements from different places and I'm not sure that that is how we would want complainants especially, and witness to see their interaction with the investigator. I'm just not sure that that would be the wisest course.

CHAIR EMERY: The problem is they sign a verification now that is tantamount to swearing at the end of their statements, every statement.

BISHOP TAYLOR: But I think going -- I mean, I think it is -- I mean, the devil is in the details of the complications, but I think we are

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2 complicating something that already exists
3 in the orientation of what's done and
4 again, the overarching outcome is that the
5 complaint will be unsubstantiated or
6 unfounded or exonerated. So I mean, to
7 discredit the complainant -- to find the
8 complainant is not being truthful by
9 piecing together events and activities that
10 the investigators have to kind of comb
11 through, just diminishes the strength of
12 the case.

13 I just don't think that the
14 messaging that we want to send, and I'm not
15 sure as a Civilian Commission is that, you
16 know, and by the way -- and the reason why
17 I'm saying that is because people always
18 have conspiracy theories and they can say,
19 well, yeah, they set me up and now I got
20 arrested for, you know, making a truthful
21 complaint against an officer that was
22 involved. So, I mean, rather than creating
23 that, you know, that's my only concern.

24 CHAIR EMERY: I understand. I think
25 the deterrent effect is a very serious

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concern that we have to have of scaring away potential complainants who have truthful and valid complaints but don't want to face the potential of having an accusation that they are lying. And I agree with you, that's a very serious concern that we have to take into account on the one hand.

On the other hand, I can't imagine that we would ever refer a case unless it were black and white, you know, unless it were absolutely clear that somebody was trying to use the Civilian Complaint Review Board by lying to it for their purposes.

BISHOP TAYLOR: So to that point, can we have a clause that would give us the ability to flag egregious statements rather than -- so do it the opposite, rather have it the exception rather than the rule?

CHAIR EMERY: Oh, I agree with you that it should be the rarest of rare exceptions in both cases in the case of police officers. Now, I don't think that every reference to a potential false

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1
2 statement by a police officer as we do them
3 now, as I said there's 60 plus over the
4 last five years, and more more recently, in
5 fact more recently because of so many
6 videos, but I don't think that should be in
7 any way the equivalent of referring for
8 perjury. Perjury would have to be far more
9 egregious for us to refer than if we made a
10 reference to a potential false statement
11 because we don't have a jurisdiction to
12 find false statements so we're not making a
13 finding of the false statement. All we're
14 saying is this appears notable because it
15 appears it may be false, you should look at
16 it, you know, NYPD.

17 BISHOP TAYLOR: I think that in
18 terms of, I just -- where I kind of fall on
19 the issue is that I think, you know,
20 officers that make false statements there's
21 a process for accountability if they're,
22 you know, unable to substantiate that. I
23 think the complainant is just, you know,
24 failure to substantiate their complaints.
25 Do you know what I mean?

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2 CHAIR EMERY: You may be right. I'm
3 not convinced that we should do anything
4 here. I think it's just something that we
5 have to clearly debate and consider.

6 BISHOP TAYLOR: I agree. I just
7 don't want to see the conspiracy theory
8 thing, you know, yeah, they got together
9 because we went after this particular, just
10 say supercop and we didn't want that to
11 happen so we found a way to discredit the
12 complainant and then penalize them for
13 doing such, I mean, which is totally never
14 going to happen, right, ever in life
15 because we don't operate like that but --

16 CHAIR EMERY: You know, you're
17 making me think that maybe tabling this
18 thing is not the right thing to do. Maybe
19 the answer is we should vote here tonight,
20 we have a quorum, to leave things the way
21 they are.

22 MS. CORTES-GOMEZ: But I believe
23 Commissioner Gitner really wanted to
24 discuss this.

25 CHAIR EMERY: You're right about

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that. Let's leave it to -- because he definitely wanted to -- and we'd have to be unanimous anyway on this. And I think we should have a very strong one -- I don't think there should be a split issue. If it's a split issue we ought to leave it the way it is, but if it's -- if we're going to change it, I think we all ought to be on board for it. So yeah, let's wait for Dan to get back and address it.

So we'll go on to 131, I think is the next one.

MS. ZOLAND: I just have a drafting question. After all the police related interviews, G, H, I, J and I guess K, I assume you mean for those to be applicable to all interviewees?

MR. KRIST: Yes.

MS. ZOLAND: So I'm just not sure it's clear, but you can look at that. And for the reasonable accommodation piece, I think that the way the law "reasonable accommodation" generally works is the person who wants the accommodation

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2 needs to ask for it and I think that we
3 should make reasonable accommodations, but we
4 can't read people's mind so that people
5 usually would have to tell us in advance. So if
6 we parallel some of the other statutes
7 about that where they say the person should
8 make us aware within -- our policy should
9 be similar to other accommodations for
10 meetings and things where if you need an
11 accommodation you have to let the people
12 know and then we can do it, but I think the
13 rule should be a little clearer on that.

14 CHAIR EMERY: I have nothing more on
15 131 or 130 -- well, actually 132 I do. No,
16 132 I don't.

17 MS. ZOLAND: I have on 131.

18 MR. PUMA: I also have something, so
19 you go first.

20 MS. ZOLAND: Well, on 131 I think
21 that's also subject to -- I think the law
22 is correct and this has been the law since
23 the statute -- the Charter was amended and
24 the City Charter was created whenever it
25 was, and I would not want to see the

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2 practice of having a representative from
3 each agency on every panel without further
4 discussion. I think that is it is useful
5 for CCRB for the panels to have
6 representation from the Mayor's Office and
7 the City Council and the Police Department
8 on all panels. I think that each has their
9 own perspective and I wouldn't want to see
10 that just done away with. And I agree this
11 is a truthful statement of the law, but it
12 was true when that other rule was adopted
13 as well.

14 CHAIR EMERY: Well, let me just say
15 something about that. I would agree that
16 we should continue with the practice. I
17 would like to have the rule change for the
18 flexibility because there may come a time
19 when there's one police person here or one
20 City Council person and it's just too much
21 to handle with the caseload and I don't
22 want to be paralyzed by the absence of one
23 of the categories of people in any way.

24 MS. ZOLAND: Well, I do have a
25 suggestion for that. I think that we leave

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2 it is the way it is. It says unless such
3 practice would interfere with the CCRB
4 operations, or something like that.

5 CHAIR EMERY: That I have no problem
6 with because I would agree that it's a
7 perfectly -- it's a good way to proceed,
8 that what we're doing now is perfectly fair
9 and reasonable, but I do think that we
10 should -- what we should do, Brian and
11 Lauren and Lindsey, we should recognize
12 that we have the flexibility not to do it
13 in this section, but say that this is the
14 way we are doing it except in -- in
15 circumstances where it inhibits the ability
16 to resolve cases.

17 MS. ZOLAND: Interfere with the
18 CCRB's operational --

19 CHAIR EMERY: Well, I would say
20 resolves -- in the process of panels
21 resolving cases, being specific.

22 MR. KRIST: So essentially just
23 clarifying that our current practice
24 essentially would be the default rule but
25 giving us kind of a safety valve for being

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2 able to deviate a little bit.

3 CHAIR EMERY: And by citing the
4 Charter. I think that's fine.

5 BISHOP TAYLOR: Mr. Chair, is this
6 the point where we can also talk about
7 the -- if you really, and we kind of eluded
8 to it in the last meeting I think, in terms
9 of balancing the number of representatives
10 from each governing body?

11 CHAIR EMERY: Yes. This is where we
12 are doing it as a rule of practice unless
13 under the most extreme circumstances it
14 inhibits our ability to get decisions done.

15 BISHOP TAYLOR: I got that but I'm
16 saying historically there's been, you know,
17 at least 30, 40 percent more City Council
18 and Mayoral reps than police reps. So I'm
19 saying is there a thought or, you know, a
20 thought about balancing the reps from each
21 city agency so that it would be easier. So
22 if you only have historically three police
23 reps, and you have five City Council and
24 you have five --

25 CHAIR EMERY: The Charter commands

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2 it this way. We would have to get City
3 Council legislation to do it.

4 BISHOP TAYLOR: And there may be
5 some reason why they wanted it to be -- the
6 police reps to be outnumbered.

7 CHAIR EMERY: I think that's right.
8 I think that's right, although it's
9 interesting, I think their intentions of
10 outnumbering the police reps have exactly
11 the opposite affect. Since -- if a police
12 rep has to be on every panel, the police
13 reps have more influence over panel
14 decisions than the rest of us as a
15 practical matter or they have more
16 decisions to make with fewer of them and
17 obviously --

18 BISHOP TAYLOR: More decisions to
19 make, yes.

20 CHAIR EMERY: Yeah. And so I think
21 actually the conceptual basis for saying
22 that -- I mean, it's more atmospheric than
23 anything else, right. The public sees that
24 the majority is from the Mayor and from the
25 City Council and that the police have

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2 you know, that the role of the police
3 representatives, if you went back and -- I
4 don't know, Marcos, if you've ever done a
5 study of this, whether they have decided
6 cases any differently. I mean, I think
7 under the old -- when Simonetti was here
8 and Landin, they were just as likely to sub
9 a case as anybody else on this Board. And
10 I don't know what the actual statistics
11 are, but I would be very surprised if
12 there's any trends or deviation from the
13 norm by the police representatives.

14 BISHOP TAYLOR: Yeah. I would say
15 no because I think historically, I mean,
16 when people, you know, when we assemble a
17 Board -- a Board, you know, assembles, we
18 assemble with the idea that we're going to
19 adjudicate, you know, cases based on the
20 facts and the experience of each
21 individual. So I think it, you know --

22 CHAIR EMERY: I agree with you. You
23 know, I'm not -- it's certainly not a bias
24 issue, and I agree with you that their
25 experience on the ground is very helpful.

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Let's go to --

MR. PUMA: I have something.

CHAIR EMERY: Yes, please, Joe.

MR. PUMA: I'm not sure, I think it would fit more in 132, but it occurred to me looking at this section and thinking about our practice on panels where there is an option for Board members to recuse themselves from voting on a particular case and I'm wondering whether it would be beneficial to add a rule referring to that sort of -- I don't know --

CHAIR EMERY: Well, there is a Charter provision that refers to members not sitting on cases in which they have an interest.

MS. FLOOK: It's 152 has -- 152 is the only section that has --

CHAIR EMERY: Is it 152 in our rules?

MS. FLOOK: There's 152, the rule about a board member has a relationship, they must disclose it and request for concern forwarded to a different panel and

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2 if the case is a part of the full board,
3 the member should recuse himself or herself
4 from deliberations.

5 CHAIR EMERY: Because for instance,
6 I have a whole list of cases in which I'm
7 recused for my law firm and they -- you
8 know, I do whatever I can to obviously
9 avoid that. So that seems to cover that
10 problem.

11 Anything else on that, Joe?

12 MR. PUMA: No. That's a clarifying
13 answer.

14 CHAIR EMERY: Good.

15 Next page. Okay. I had some
16 significant issues with D on the next page.

17 BISHOP TAYLOR: 133?

18 CHAIR EMERY: Yeah, 133D. Let me
19 just see how I put it here. I thought
20 that -- first of all, we don't report on
21 unsubs to the Police Commissioner now.
22 They have access to them through CTS, but I
23 don't believe we report any unsubs to the
24 Police Department and this implies that we
25 do. "Where the disposition of one or more

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allegations --", and then it says, "Such Board findings and recommendations shall be forwarded direct --", it's not only subs though. I just want to be clear that nothing in here should imply that we are reporting unsubs. They have access to them but we don't actively report them.

MR. KRIST: We actually, pursuant to our Charter section in C1 of the Charter for us, we do, certainly by Charter obligation, we do report our findings. I can't personally say whether it's an individual report to the Commissioner or their access through CTS, but there is a Charter operation for reporting --

CHAIR EMERY: I understand that but we don't do it and I think the way we -- we rely on their access to CTS to fulfill that obligation. So I just don't want to have anything that implies that we actively report to the PC or the NYPD on unsub cases.

And then five business days -- yeah, I thought that we should -- I made such a

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mess of this and I can't figure out what I wanted to say here. I thought that the -- we should forward these to the Police Commissioner within five business days with the case and the number with pertinent facts when it's a substantiated case.

MS. ZOLAND: It might be help --

CHAIR EMERY: Go ahead.

MS. ZOLAND: I think that if you flip the first two sentences, if you start the paragraph with, "Where the disposition of one or more allegations substantiated is defined in subdivision E, based on its findings, the Board may recommend penalties, charges, etc." I think it makes more sense that first sentence, if those two were switched.

CHAIR EMERY: Right. And the other misconduct noted --

MS. ZOLAND: That should be handled, I think, as a whole separate para -- you know, sentences.

CHAIR EMERY: I agree with you.

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Because other misconduct noted should not be considered a finding. It should be considered a other misconduct noted and referred to the Police Department. We're not making findings in the case of false statements. We don't have any jurisdiction to do it and so I want to make sure that it's a referral on other misconduct noted and it probably should be, as Debbie said, a separate paragraph.

MS. ZOLAND: I have -- like I have some draft language, I didn't like -- it says something like a designation of other misconduct noted may be forward to the Police Department where conduct was not within the jurisdiction of CCRB and then may require -- we may want to put in or not what the PD should do with it.

MS. CORTES-GOMEZ: We actually have 144.

MR. KRIST: 144 we do already have OMN treatments in its own category as a separate rule.

CHAIR EMERY: Well, then maybe it

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2 shouldn't be here because there's
3 something --

4 MS. ZOLAND: I think I read that
5 after I wrote that.

6 BISHOP TAYLOR: And it should be
7 clarified that we historically send them to
8 the Chief of Departments, It's not to PC.

9 CHAIR EMERY: Well, yeah. I mean
10 that's up to them who we send it to. Do
11 you know what I mean?

12 MR. KRIST: And for the purposes of
13 rule drafting here we did list and find the
14 Commissioner or his or her designee, so I
15 think in that situation functionally, we
16 will be sending it to whoever the Police
17 Commissioner asks us to send it to as a
18 matter of convenience. I think we can work
19 that with the rules we have.

20 CHAIR EMERY: Yeah. I think that
21 satisfies it, but why wouldn't we want to
22 put that as one of the possible -- we
23 certainly want to refer to that in D if
24 we're going to have it or we want to just
25 take it out, take out the reference to

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2 other misconduct noted here.

3 MR. KRIST: We have also in
4 regarding other misconduct, we have
5 subsection F on the following page. We
6 can --

7 CHAIR EMERY: On the following page?
8 Where? Oh, F, right. All I think is it's
9 confusing here in D. I think it's -- is it
10 necessary in D? Can't we just take it out
11 of D?

12 MR. KRIST: We can take it out of D.

13 MS. FLOOK: If we're discussing the
14 reporting in F then I don't think we need
15 it in D.

16 MR. KRIST: We can take it out.

17 CHAIR EMERY: Good.

18 MS. ZOLAND: And I have just another
19 thought about that. We had discussed
20 amongst ourselves and we have to discuss
21 with the Department, but something about,
22 and I'm not sure if it's here, where
23 there's a finding other than substantiation
24 the CCRB may from time to time recommend
25 that the officer receive training as

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2 opposed to discipline.

3 CHAIR EMERY: Well --

4 MS. ZOLAND: Not instruction,
5 but training on a specific issue,
6 something like that.

7 CHAIR EMERY: Well, I think our hope
8 was, and this is something that we talked
9 about among ourselves at some point or it
10 came up somehow, I don't remember exactly,
11 was to discuss tonight the possibility of
12 having both a penalty and training as part
13 of our possible -- as part of our possible
14 outcomes in panels. And I think Lindsay,
15 you were interested in that, right, that we
16 wanted to have training and a potential
17 penalty. It's like a CD-A, why should that
18 preclude training?

19 MR. KRIST: Certainly. And there
20 are some legal questions that come to my
21 mind that I would want to look at a little
22 more closely before giving a larger answer
23 on that, but we can certainly work on that

24 -- CHAIR EMERY: Well, let's do that,
25 but let's look at the possibility of

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2 incorporating training along with the
3 penalties.

4 Marcos, you want --

5 MR. SOLER: Yeah. I just want to
6 state that the Department already in some
7 many cases, they impose penalty and they
8 impose training.

9 CHAIR EMERY: I agree, but I would
10 like for us to be able to recommend it as
11 within our --

12 MR. SOLER: No. I'm simply saying
13 that it's already a practice of the Police
14 Department.

15 CHAIR EMERY: Right. So it wouldn't
16 be a big dislocation if we recommended it.
17 But I would like to know that we have that
18 power, if we do.

19 MS. ZOLAND: And I think also if we
20 unsubstantiate but we think the officer is
21 in need of training and is equally or more
22 important that it's just training and not
23 discipline. Training is not discipline,
24 you know. I think that's --

25 CHAIR EMERY: Well, instructions are

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2 training.

3 MS. ZOLAND: Well, no. There is
4 case law about training your officers and
5 instructing your officers so that whether
6 one is disciplinary or not. So I think
7 that's kind of --

8 CHAIR EMERY: Well, this is an
9 interesting question because unsubing and
10 then recommending training is kind of like
11 the middle ground between instructions and
12 unsub and I'm worried about that, you know.
13 It would be somehow a --

14 MS. ZOLAND: It may not be our place
15 because that usually has to do with
16 tactical things, like tactics went wrong
17 and there's no misconduct. So it may not
18 be our place, but I just wanted to throw it
19 out there. It may not be --

20 BISHOP TAYLOR: I think that it seems
21 counterintuitive and I think that this makes
22 Marco's point relevant, that if an officer is
23 found -- if an allegation is substantiated
24 and an officer's penalty is CD-A, -B or
25 charges, that I think it should be a

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2 standard part of the entree that there
3 should be some formalized training. I
4 mean -- and you're saying that happens now?

5 MR. SOLER: That's already the
6 practice in many cases.

7 BISHOP TAYLOR: In many cases, so
8 it's not a practice that if an officer is
9 penalized that they will get training to
10 help them advert doing the same thing over
11 again. That's my point.

12 CHAIR EMERY: I don't that's
13 uniformed by any means. I think that --

14 BISHOP TAYLOR: Well, then that's
15 why I think that's viable for us to
16 recommend. I mean, if there's a penalty
17 for an officer, to ensure that it's not
18 done again, just taking three vacation days
19 doesn't assure it's not going to be done
20 again, but offering some formalized
21 training based on the findings of the case
22 would possibly do something.

23 CHAIR EMERY: Well, I think -- yeah.
24 It's an interesting question because at
25 some point often in our cases we know the

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officer knew that they were doing something wrong and were imposing a penalty because they knew perfectly well they were doing something wrong. That's often why we do charges or even a CD-B. So I'm not sure training would be appropriate in every case.

But I do think there are going to be a lot of cases where we think training would be beneficial and the question is for Brian and the team, do we have the authority to do that? Is that within our proper role? And I'm not sure it is. It's certainly not in the Charter that we're recommending training.

MS. ZOLAND: I think you're right that it's not part of the rules. It's something that could perhaps be a discussion with the Police Department but not a rule making issues.

CHAIR EMERY: I see what you're saying. In other words, that it would be part of a panel's comments in the result of a vote.

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2 MS. ZOLAND: Right. We can't expand
3 our jurisdiction by the rules but we can
4 create ideas.

5 CHAIR EMERY: I think that's right.
6 So maybe the answer is -- well, I mean, the
7 rules can say that if a panel wants to
8 comment in addition to meting out a result,
9 that is appropriate. I don't know. We can
10 decide -- yeah, Marcos.

11 MR. SOLER: The language of the
12 Charter is to recommend action. It does
13 not limit the action for any specific
14 category. So the Charter does not specify
15 that the Board has to recommend a specific
16 level of penalties. The Board recommends
17 action. That's what the Charter says.

18 CHAIR EMERY: Let's do this: Brian
19 and you guys, why don't you tell us what
20 you think we can do in this regard, because
21 if we have the power to recommend training
22 in specific cases along with a penalty or
23 even in the case of an unsub, we should
24 know that and decide whether we want to do
25 that.

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2 BISHOP TAYLOR: I think we would get
3 significant push-back for recommendations
4 with training for unsubstantiated cases.

5 CHAIR EMERY: Yeah. Who knows? But
6 we should think about whether we can even
7 do that or not in a perfect world.

8 All right. Can we go over to --

9 MS. ZOLAND: I just -- for the
10 definition of substantiated, isn't there
11 already a definition in the patrol guide?
12 I'm not sure if -- this sounds different to
13 me, I didn't have a chance to look it up.

14 CHAIR EMERY: It wouldn't be the
15 patrol guide, would it?

16 MS. ZOLAND: Yeah, the patrol guide
17 has --

18 CHAIR EMERY: Oh. You mean for
19 other discipline?

20 MS. ZOLAND: Yeah. Because
21 suggesting that sounds very vague. I would
22 like to work on that language.

23 MR. KRIST: We can change that to
24 establish or belief, if that would --

25 CHAIR EMERY: No, that the acts

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2 alleged did occur. You don't have to take
3 out all of that, just that the acts alleged
4 did occur.

5 MS. ZOLAND: Right.

6 CHAIR EMERY: Next page, in 11 you
7 should capitalize Board. There are some
8 places here we have to go through and look
9 at the consistency of the terms. Still,
10 you've improved it a lot from what it was,
11 but still there might be a good pass-through
12 on that.

13 MR. KRIST: I will admit we were
14 focused more on substance. We're getting
15 to the style.

16 CHAIR EMERY: Right. Of course.

17 I have something in 134B. "Prior to
18 the close of any case by the Executive
19 Director, the Board must be afforded an
20 opportunity to review such case." I think
21 we should take that out. I think the whole
22 point here, in fact now we're reaching it,
23 I would like to purpose a resolution. Do
24 we have it in our folders?

25 MS. MALIK: Yes.

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2 CHAIR EMERY: That on an interim
3 basis, yes, on an interim basis, you have
4 it in front of you, even before we pass
5 these rules, that the Executive Director or
6 her designee be entitled to close cases in
7 the following categories: Complainant
8 unavailable, victim unavailable,
9 complainant uncooperative, victim
10 uncooperative, the complaint is about a
11 police officer not currently employed, and
12 the victim unidentified. What's happening
13 over and over again in my panels and I
14 presume in yours is that we get a whole
15 bunch of cases that haven't been fully
16 investigated and there's a recitation of
17 attempts usually to contact the victim or
18 the witnesses or to fine the officers and,
19 I mean, they're all correct, but I think
20 the integrity of the process will be
21 enhanced by allowing the Executive Director
22 to have control over whether her staff is
23 truncating these cases. These are
24 essentially truncated cases and I think
25 control over truncated cases is not a Board

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1 function, I think it's a staff function.
2 And I think there will be much -- there
3 will be a higher level of integrity that
4 truncated cases are not inappropriately
5 truncated if the Executive Director is
6 vested with authority to review them, and I
7 also think that there will be internal
8 audits to check in the context of CCRB stat
9 that there's an appropriate process for
10 truncating cases. I think we should get in
11 our panels fully investigated cases only
12 and not truncated cases. So I would like
13 to pass this to that effect.

14 MS. CORTES-GOMEZ: Just to throw
15 this out there, and I have not come
16 across it in quite some time, but in the
17 past there have been very few instances
18 where in reviewing a truncating case, a
19 panel has discovered, hmm, perhaps if the
20 investigator did X, Y or Z, we may have
21 more information to be able to make a
22 determination.

23 CHAIR EMERY: I agree with you.

24 MS. CORTES-GOMEZ: So what occurs in
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that case?

CHAIR EMERY: Well, what I'm saying is I agree with you and I've come across those cases occasionally as well, but I think that if the Executive Director and the supervising staff has that function, they will do that more thoroughly than the panels because the panels have a tremendous amount of work to do on investigated cases. When you get to one of -- look, I'm speaking for myself, maybe you're not like me, maybe you do your work for thoroughly than I do, but when I get to one of those truncated cases I go, oh, that's nice, it's a truncated case now, I can just quickly go through it and pass it by and that's not what the staff will do. The staff and the supervisors will do it far more rigorously than we do and I think we should just recognize that and not pretend that we're the answer to all problems with the CCRB.

MS. CORTES-GOMEZ: But isn't it reviewed by the supervisory staff of investigators before it comes to us?

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2 CHAIR EMERY: Not nearly as much as
3 it will be if we don't have the final say.
4 Then it will be done much more thoroughly.

5 MR. EASON: Before the decision is
6 made to truncate, I'm sure it goes through
7 a process where a supervisor approves it.

8 CHAIR EMERY: Yeah, one supervisor.

9 MR. EASON: And then if we're going
10 to vote to have this in, then the Executive
11 Director should also have the options of
12 saying I'd like to bring this one before
13 the Board.

14 CHAIR EMERY: That's true. She can
15 always do that. She can always take a case
16 and say --

17 MR. EASON: If it's truncated?

18 CHAIR EMERY: Yeah. If it's
19 truncated it can be reopened, but if she
20 finds that it's improperly truncated she's
21 going to reopen it anyway. Do you see what
22 I mean? If it's improperly truncated she's
23 going to send it back to the investigator
24 and say do the work.

25 MR. EASON: But if there's an

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2 impasse with the investigators --

3 supervisors and the investigators and the

4 Executive Director --

5 CHAIR EMERY: There can't be because

6 there's no such thing as impasse. She

7 rules.

8 MR. EASON: Okay. Well, if she

9 pushes it up then, let's say she's a bit

10 unsure, although we have the utmost

11 confidence in her, would she have the

12 option of saying --

13 CHAIR EMERY: Sure. She can come to

14 the Board with anything she wants, right?

15 She can come to the Board with, you know,

16 who should get the bathroom keys. I don't

17 think she's going to.

18 MS. CORTES-GOMEZ: I hope not.

19 CHAIR EMERY: Do you want to say

20 something? Oh, sorry.

21 I think, look, this rule change

22 proposes essentially that, but it's going

23 to take months. I think we should pass

24 this interim --

25 MS. ZOLAND: Can we just get an

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2 explanation of what number three means?

3 I'm not sure I understand it.

4 CHAIR EMERY: This is something --
5 this is to mollify Lindsay Eason. This is
6 so that he thinks that he has a role to
7 play when actually he doesn't.

8 No, I mean, I would take three out.
9 I would just let the executive staff
10 truncate cases unless there's some
11 controversy they can bring it to the Board.

12 MS. ZOLAND: I mean, I agree. I
13 think that if the Executive Director can't
14 figure out whether a case should be
15 truncated or not --

16 MS. MALIK: Then we have a bigger
17 problem.

18 MR. PUMA: One of the issues that
19 I've noticed in my panels and it sort of
20 speaks to the point that
21 Commissioner Cortes-Gomez mentioned, was
22 that it's rare, but there are the
23 occasional cases where there's a truncated
24 finding or even the disposition of victim
25 uncooperative or complainant uncooperative

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2 is kind of assigned erroneously.

3 Sometimes -- I've been harping on this for
4 awhile now -- sometimes it's a misreading
5 of our rule 133 sub A, which speaks to no
6 finding or recommendation shall be based
7 solely on an unsworn complaint or
8 statement, which is a very important rule,
9 but in cases where there are
10 multiple -- where there are others who are
11 providing sworn statements or there may be
12 even video evidence, it's possible to
13 actually not find that the victim was
14 uncooperative or that the complainant was
15 uncooperative.

16 Sometimes, I guess I'm bringing this
17 up -- the case I'm recalling was a full
18 investigation so it's not fully applicable
19 to the rule, but it sort of relates to the
20 concern.

21 CHAIR EMERY: Well, if it's a fully
22 investigated case it's going to come to us
23 no matter what. If it's not a fully
24 investigated case and an investigator wants
25 to truncate it because he or she believes

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they made enough contacts or they've done their work necessary and it can't be fully investigated, I think that's a staff determination. That's not a determination for us.

You know, one of the problems with this organization has been that traditionally the Board has intruded into too many aspects of what the staff should be doing in my view, and I think this is a perfect example. And I think what we can do is direct the executive staff and the Executive Director to audit truncations so that we feel secure that truncations are being done properly. As you heard tonight, truncations are way down, we're investigating far more cases than we ever have, at least the recent statistics say that truncations are down by about 15 or 16 percent from where they were awhile ago.

So I just think that the staff -- this is a staff function. It's not a Board function. It will clean up our panels tremendously if we have the cases

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that are fully investigated, we know that we have to do the hard work on each case, and that when we get to one of these cases, it's not just something you skip over lightly.

BISHOP TAYLOR: Excuse me, Mr. Chair. Didn't we pass something already that gave the Executive Director the ability to dispose of, I think complaint withdrawn -- Marcos, isn't there something that we already passed?

MR. SOLER: This resolution mimics the resolution that the Board already passed in 2009 for complaint withdrawn cases.

BISHOP TAYLOR: So now this expands it to --

MR. SOLER: Now it expands to --

CHAIR EMERY: Other truncated categories.

MR. SOLER: -- other categories of cases.

CHAIR EMERY: I would take out three.

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MR. SOLER: Consists of the three elements that weren't incorporating in that situation. Number one, review by the Executive Director; number two, the opportunity -- offer the opportunity to any Board member to review these cases if he or she wants to do so; and number three, it provides for a regular audit of these cases. Those are the three elements.

CHAIR EMERY: We can leave three in and keep them.

MS. ZOLAND: Well, the audit can be by the Executive Director, not the Board.

CHAIR EMERY: Yes, that's right. But she can report on it.

MS. CORTES-GOMEZ: So we shouldn't eliminate number three, we should modify number three so that it says that ED shall from time to time, and report to the Board.

CHAIR EMERY: Right. The ED shall report to the Board, right.

MS. CORTES-GOMEZ: And, I mean, I guess the emphasis will be, I guess on Commissioner Puma and I, along wit Brian,

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2 and Nina, and everyone else on the training
3 subcommittee to ensure that our
4 investigators are very well trained so that
5 we as a Board can rely on their
6 determinations that they should be --

7 CHAIR EMERY: I don't think we
8 should fully rely. I think we should check
9 the audits. I think the audits are
10 important. I think the Executive Director
11 should -- do you know what's going to
12 happen, if truncations start creeping up,
13 we're going to get immediately suspicious
14 and be concerned about it. So
15 we'll -- there will be indicators right
16 away if there is a pattern or tendency to
17 truncate too many cases.

18 CHAIR EMERY: So can I move it and
19 get a second?

20 MS. ZOLAND: I second.

21 CHAIR EMERY: Anybody -- let me put
22 it this way: All in favor, and the real
23 issue is if there's anybody opposed because
24 if there's anybody opposed it's not going
25 to pass, we need seven votes.

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MS. CORTES-GOMEZ: As modified with respect to number three, yes.

CHAIR EMERY: Anybody opposed as modified?

(No response.)

CHAIR EMERY: Okay. So if we count all the votes in favor, it's passed.

And then I think that solves the place where we were. Yeah, 134, I think, 134A and I think we take out -- let's see, take out B. I think we take out B, eliminate B.

MR. KRIST: I personally do not have, and Lauren and Lindsay do not have copies of the resolution that was before you tonight so we'll get that and obviously incorporate the changes from --

CHAIR EMERY: Here, take this one.

MR. KRIST: We'll incorporate these in and obviously reconcile out of those --

CHAIR EMERY: And the last one has the ED shall report to the Board instead of the Board.

MS. CORTES-GOMEZ: Just a quick

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2 nothing on the next page. Anybody else?

3 (No response.)

4 CHAIR EMERY: I'm actually up to 142
5 small I, I have a comment. Do you have
6 anything before that?

7 MS. ZOLAND: No.

8 CHAIR EMERY: "After a case has been
9 referred to the Administrative Prosecution
10 Unit, the Chief Prosecutor, Executive
11 Director --", I think it should be and
12 Board Chair because -- to dismiss. This is
13 the way it was in our resolution that we
14 passed. I take personal offense of being
15 eliminated from this.

16 So I think that that concluded this
17 issue of dismissing cases. I'm concerned
18 about -- and I don't think it should be
19 designees. I think if we're going to
20 dismiss charges, it should be the Chief
21 Prosecutor or Executive Director and the
22 Board Chair is what we had before. So I
23 think there should be some check on that
24 beyond just the staff.

25 The next page, I don't have anything

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2 until a couple of pages later. And then
3 we're almost done so we can move on with
4 the meeting, get some comments from the
5 people here in the audience if they wish to
6 make them.

7 The next one I have is 153D. That's
8 notification -- communications,
9 notification with complainants. This 50(a)
10 issue, these are tricky, as you guys know.
11 My question is this: When we communicate
12 with our complainants after the resolution
13 of this, I'm not -- the question I have is,
14 is it a 50(a) issue if we're not disclosing
15 any actual records, but we're just simply
16 disclosing the results that we're sending
17 over to the NYPD without saying the name of
18 the officer? You know, that the
19 circumstances you have alleged have been
20 shown to be substantiated by a
21 preponderance of the evidence, we have
22 found that your allegation with respect to
23 this event is correct, your allegation with
24 respect to this event is not correct or it
25 was not proven or something like that. I

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don't think that's a problem with 50(a). I don't think we have to tell them what the penalty is recommended, we just have to say that we've made a finding by preponderance of the evidence that your allegation is proven.

MS. FLOOK: Are we referring to subsection B or subsection D in this instance?

CHAIR EMERY: I'm having -- D is the issue. Maybe it comes up before then.

MS. ZOLAND: It comes up in B and D as I see it.

MS. FLOOK: There's two issues and they kind of go together on the 50(a) issue. As we suggested kind of in our notes for B, B discussions after we have sent a case to the Commissioner after the Board has made a determination, which I believe, Mr. Chair, is what you're discussing when we have made our decision and that decision is then made by the Board.

Now, in those cases our concern is

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if a civilian does not know the name of an officer, providing that name, and we suggested that could simply be adjusting those letters as we indicate in our notes to prevent officer names and just delineating out types of conduct and describing --

CHAIR EMERY: Why don't we just take out -- why don't we just never have names of officers in those letters at all? If the person knows, they know, if they don't know, they don't know, and we just say with respect to the allegation it is either proven or not proven and describe what the allegation that's proven is and the allegations that are unproven are.

MS. FLOOK: And we have no problem with that. And the language B wasn't as much the issue as the practice of how we do it as to how it works with those names. That is fine. D is a larger issue because D specifically discusses us explaining to the complainant the findings not of our Board, but of the Police Commissioner, and

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that is a more clear potential violation of
50(a).

CHAIR EMERY: I don't think we can
do that.

MS. FLOOK: I don't think we can
either.

MR. KRIST: And it's something that
we're -- that issue is very much a work in
progress for us because we obviously want
to give out as much information as we can,
but we also have obligations under the
statute.

CHAIR EMERY: Right. So I don't
think we can do D. I think we have to just
do what we do, describe what we do in
relation to the complainant with respect to
the specific allegations and whether
they're proven or not, and we can explain
that in any number of ways, but I don't
think we can say what the Police
Department's going to do. That's really up
to them. All we can say is we're
recommending discipline based on the
following findings that have been proven by

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2 a preponderance of the evidence.

3 MS. CORTES-GOMEZ: But the way I'm
4 reading D, and forgive me, maybe it's the
5 time of night, it appears as though it's
6 not what we believe the Commissioner is
7 going to do, but it's based on the
8 Commissioner's final determination. So
9 when the determination is made as to
10 whether to go with that recommendation or
11 DUP'ed it or change it, that is what is
12 told to the complainant.

13 CHAIR EMERY: Right, and I don't
14 think we can do that.

15 MR. SOLER: These rules were
16 approved already by the Police Department
17 when we reviewed the rules. I don't
18 disagree with you, Mr. Chair, that this is
19 a serious issue, but it was part of the MOU
20 that we agree with the Police Department
21 and it was also part of the rules that were
22 already approved by the Police Department
23 when the Police Department and ourselves
24 went through this process three years ago
25 in 2011.

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I would say that this is a provision that is not new. This is a provision that has been in effect for more than three years and has been vetted and reviewed by the Police Department since 2011.

CHAIR EMERY: I think the Police Department has some discretion to describe its results of discipline within 50(a). I think there's actually a proviso that allows an agency to do certain things under certain circumstances. We can look at this more carefully, but I'm remembering --

MR. KRIST: It's something that we would have to look at.

CHAIR EMERY: But I do think -- I don't think we can do it. Now, they can delegate it to us to do and maybe that's something we should be explicit about with them if this is the way that we're going to do it, but I think it actually requires revisiting this a bit with -- I know that this Police Department and Larry Byrne in particular is extraordinarily sensitive about 50(a), and

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we should make sure that we are either going to resolve it with the Corporation Counsel that we are right and they are wrong if they disagree with us or we agree on it.

MS. CORTES-GOMEZ: I think absent anything that says we cannot do so, I do not see a problem telling our complainants who have come to us as an agency and telling them okay, first letter, we make these recommendations, and final letter based on our recommendations, this is what the final determination is. They came to us so we're giving them what the final determination is. I don't see a problem.

CHAIR EMERY: Well, I'd like to be able to do that too and the question is making sure we're right about the fact that we are allowed to do it.

MS. ZOLAND: Under Commissioner Cortes's solution, in the first letter we didn't give the officers name, so in the second letter, say, you know, there was a prosecution with the

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2 officer involved, which the complainant may
3 or may not know but they may have to
4 testify; this officer lost vacation days,
5 this officer was found not guilty, this
6 officer was fired.

7 CHAIR EMERY: Yeah. I'm afraid that
8 might be a 50(a) violation.

9 MS. ZOLAND: But you're not
10 identifying --

11 MS. CORTES-GOMEZ: Without
12 disclosing the officers name.

13 CHAIR EMERY: I still think it's
14 probably -- I think the disciplinary record
15 cannot be disclosed of an officer even
16 though you're not identifying the officer,
17 especially if they're subject to
18 identification, but I could be wrong about
19 this and that's why I think we should look
20 at it carefully, or at least get agreement
21 or figure out if we disagree what the
22 Police Department wants to do on this.

23 MR. KRIST: It's certainly an issue
24 that we've spent a great deal deal of time
25 looking at and more work is still needed in

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the area.

CHAIR EMERY: You guys had a comment about E on the next page, which is 154E on mediation, your concern about the Executive Director deciding whether a person has the capacity and needs assistance?

MR. KRIST: Yes. We just wanted to shift this into a little bit more from what our understanding is the current practice in that if people have -- if people are uncomfortable and people believe they need assistance they can ask for someone to be with them and we certainly want to accommodate them in that area. We don't want the agency to be in the position of unilaterally deciding on our own whether or not someone needs an additional person present to help understand the proceedings. That's beyond our realm.

CHAIR EMERY: I think Commissioner Zoland was right before when it's like in a disability context they should ask. So if they ask, then I think it may be up to the -- and I'm not sure it

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2 has to go all the way to the --

3 MS. ZOLAND: Well, then the criteria
4 becomes -- if it's a reasonable request and
5 it creates an undue burden on the agency.
6 If it's an undue burden on the agency then
7 we can say no, otherwise you have to say
8 yes.

9 MS. CORTES-GOMEZ: Perhaps I'm wrong
10 again, I believe Commissioner Zoland
11 previously was describing disabilities,
12 whereas this is describing if for example,
13 I as a complainant have chosen to go
14 forward with mediation, but I would wish my
15 husband, my brother, my pastor to accompany
16 me. I believe that's what it's referring
17 to, correct?

18 CHAIR EMERY: I think that the same
19 framework could be used --

20 MS. ZOLAND: But if you asked, we
21 shouldn't unreasonably withhold --

22 MS. CORTES-GOMEZ: Correct. I just
23 don't want to confuse the two issues. One
24 is a physical disability, which we should
25 be able to accommodate. The other is if

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you just want someone to accompany you. I mean, that's what I'm reading, accompanied by family member or legal guardian. I could be wrong.

MR. KRIST: In our drafting we wanted to make sure that we had flexibility for people who believe they needed help to seek it and for us to be able to try to accommodate reasonable requests for it. We didn't want to be in the position of as an agency saying I believe you need help to understand this --

CHAIR EMERY: I agree with that.

MR. KRIST: -- or participate in this. So we wanted to create it more along the lines of reasonable accommodations in us making a decision.

CHAIR EMERY: And I don't think the ED has to make the decision if they ask. I think it should be the investigator and the supervisor -- or the mediation people. The mediation people because it will happen, you know, wherever they do the mediation or, you know, it will happen in a context

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2 where the Executive Director shouldn't get
3 in the middle of it at that point.

4 MS. CORTES-GOMEZ: That I agree
5 with. I just think the language needs to
6 be a little clearer because, I mean, and I
7 am the Chair of Mediation and just reading
8 this is a little confusing to me.

9 CHAIR EMERY: I'm up to
10 reconsideration on which I have a couple of
11 comments, 155.

12 MS. ZOLAND: I thought just in H we
13 had said last time that you were going to
14 change the language under may sign, must
15 sign. I thought we had already discussed
16 that.

17 CHAIR EMERY: Beyond mediation you mean

18 MS. ZOLAND: Yes. I think we
19 already --

20 CHAIR EMERY: Shall sign, may sign.
21 You're saying they must? "If mediation
22 says the parties --"

23 MS. CORTES-GOMEZ: Shall sign means
24 you must, may sign is optional.

25 MS. ZOLAND: So is it optional?

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2 MS. MALIK: It is optional.

3 CHAIR EMERY: 155, I think this has
4 to be, in A, doesn't it have to say, reopen
5 a case from a complainant or and a police
6 officer? Don't you want to have -- when
7 you have the list from a complainant,
8 police officer, alleged victim of a
9 subject, police officer, the full Board,
10 Chair or Executive Director may reopen --

11 MS. CORTES-GOMEZ: Shouldn't it say
12 or police officer?

13 MS. FLOOK: I'm sorry. I was having
14 trouble hearing.

15 MS. CORTES-GOMEZ: Should that say
16 or instead of of?

17 MS. FLOOK: Yes, it should. That is
18 a typo.

19 CHAIR EMERY: But it should be
20 police officer in that list too, right?

21 MS. FLOOK: It is. Police officer
22 is the third on the list.

23 CHAIR EMERY: Victim, alleged
24 victim -- no. Where is it? Complainant,
25 alleged victim of a subject, police

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2 officer --

3 MS. FLOOK: That should say or, that
4 was a typo.

5 CHAIR EMERY: Oh, or. I see. Okay.
6 That's the problem.

7 Then the other problems I have here
8 are -- the other problem I have here is
9 that I do not think it should be the full
10 Board. It should be a panel that this goes
11 to. Not every reconsideration is going to
12 go to a full Board. In fact, this is what
13 we've done already and we have a process on
14 this that it goes back to the panel. That
15 is in B, it should be a panel, the panel or
16 the original panel and we have something
17 later on which indicates that it's going to
18 the panel. I don't think the full Board
19 has to decide whether something is going to
20 be reconsidered or not. I think it should
21 be the ED or the Chair or the panel that
22 looked at it previously.

23 MS. ZOLAND: We have that for the
24 Police Department, we don't have the
25 parallel. We have the Police Department

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2 requests a reopening, you want it parallel.

3 CHAIR EMERY: It should be the same
4 way.

5 MS. ZOLAND: It should be the same.

6 CHAIR EMERY: Same way for both, for
7 the Police Department opening or any of
8 these people.

9 And I think in the paragraph after
10 three on the next page --

11 MS. ZOLAND: I would just like to go
12 to B.

13 CHAIR EMERY: Sure. Go ahead.

14 MS. ZOLAND: "Upon receipt of a
15 written letter sent by the Police
16 Department", I think we should say upon
17 receipt of a written request from the
18 Police Department. Official letterhead is
19 like an archaic term. Now everybody uses
20 e-mail. So I just say a request in writing
21 because I think most of the communication
22 I've seen is by e-mail.

23 CHAIR EMERY: Right.

24 MS. MALIK: And I think this is
25 where we want to formalize the process a

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2 little bit more which is what we had been
3 discussing. So instead of an e-mail that
4 it's actually a formal letter requesting
5 reconsideration or reopen it.

6 CHAIR EMERY: Well, it can be an
7 e-mailed letter, right. And we were going
8 to give them a template.

9 MS. MALIK: We did.

10 CHAIR EMERY: We did. Okay. So I
11 think that if we say a written request as
12 Debbie points out, that should do it, and
13 then they will follow up with a template.
14 I mean, we don't have to have a
15 policy -- our own rules don't have to say
16 what the template is. I think we just
17 agree on it.

18 MS. MALIK: We did agree on it, but
19 they're planing to put it in a formalized
20 memo form and attach it to an e-mail.

21 MS. ZOLAND: At this time, but you
22 don't want to have to be locked
23 into -- letterheads are so -- not used so
24 much anymore.

25 CHAIR EMERY: So a written request.

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2 I think we should just say it that way.

3 MS. CORTES-GOMEZ: But we also don't
4 want to have to so informal. I believe
5 that's what Mina was just saying, just an
6 e-mail -- it shouldn't just be an e-mail
7 sent saying, can you reconsider. It should
8 be something a little more formal.

9 MS. MALIK: Exactly. And the Police
10 Department has actually agreed to it.

11 MS. CORTES-GOMEZ: Especially since
12 it is the Police Department. It's not like
13 we're asking our complainants to draft a
14 letterhead and write their requests on a
15 letterhead. This is the Police Department.

16 CHAIR EMERY: So I think where you
17 have full Board, not in every instance, it
18 doesn't work in every instance, but it
19 should be the Chair or the ED instead of
20 full Board for -- Chair, ED or the panel
21 that originally decided or the members of
22 the panel that originally
23 decided -- current members of the panel
24 that originally decided, however you want
25 to handle it. But I don't think -- the

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full Board is much too cumbersome for this process, and for both of these processes, whether it's individual or DAO, and that's all I had.

Anything more from you, Deb?

MS. ZOLAND: No.

CHAIR EMERY: Or anyone else?

(No response.)

CHAIR EMERY: All right. We got through that. That's pretty good.

MR. KRIST: If I could just mention before you're done, I know I've bored you a great deal with my voice over the past few minutes, but I do want to make sure that everyone recognizes the extraordinary amount of work that both Lindsey, and Lauren and Roger did on this in certainly the past few weeks.

CHAIR EMERY: And you. No, no. We're very pleased at how much has gone into this and how good it is, what a good product it is. I think with a few more tweaks we're going to have something that we can put into the whole official system

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2 for public comment, the official system for
3 public comment.

4 At this point, are there any
5 audience members who would like to come
6 forward and speak? I have a list, but
7 nobody other than Council Member Rose is on
8 the list as yes and she already spoke.

9 BISHOP TAYLOR: Do you want to
10 go back to adopting the minutes?

11 CHAIR EMERY: Move the minutes.

12 BISHOP TAYLOR: So moved.

13 CHAIR EMERY: Seconded. Any
14 objection to the minutes?

15 BOARD MEMBERS: No.

16 CHAIR EMERY: Let's make sure that
17 Janette and Debbie are here. They're here.

18 BISHOP TAYLOR: And then did we need
19 to do the truncated case -- we did that,
20 right?

21 CHAIR EMERY: Yes, we did that.

22 BISHOP TAYLOR: We checked it off.
23 Okay. And new rules we checked off. We
24 didn't adopt anything?

25 CHAIR EMERY: We haven't adopted

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anything at this point. So -- we adopted the new rule, the board resolution. We did that.

So let's have -- I have nobody on a list that wants to talk. Anybody want to talk?

MS. TOLLIVER: I do just have two quick things. So, just two things on sort of the regulation on what you all were talking about today.

So the swearing in of complainants. I'm actually really concerned about that. I do a lot of know your right trainings in communities and I mean, no shade, but there's not like people are beating down your door to come and make complaints against officers. So there's already sort of a level of mistrust from the community for this agency and I think that it is definitely a deterrent. It could also be sort of revictimization for you to feel like if I don't remember every single little piece about this incident that happened between me and the officers I

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should just not even go because they're going to think I'm lying and then I might be held accountable for that and I might get a misdemeanor charge or whatever.

You know, I think that whether or not -- I know that you're saying that the window of people who would be affected by it is so small, but just knowing that that can happen to you is going to be a serious deterrent for a lot of people to want to come to you and actually get a complaint on the record. So I think you should really seriously think about that.

CHAIR EMERY: We will. That's a very difficult question and I think your point is very well taken.

MS. TOLLIVER: Yeah. I mean, you know, when we do the workshops we sort of talk to people about like as soon as, you know, the encounter is over, sit down and write down as much as you can remember, but when you talk to people they always have like an incident and a story and they may not remember some pieces. And they're

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like, well, I can't make a complaint because I don't remember what the officer looked like, or I don't remember his name or badge number and we don't want those to be, you know, things that make people say I should definitely not come because now there's actually a rule by the CCRB that if I'm lying about anything, you know, I can get in trouble for that. So I think it's a serious deterrent and you should probably reconsider that or give that a lot more thought.

I think the other thing that I would want you all to consider, I hear the piece about, you know, the different committees and having like equal numbers and how it's sort of an undue burden on the Police Department appointees. You know, when people -- the visual of the representation of the Board is important to people, but I think beyond the visual, as an advocate and a community member, I know how to hold accountable the appointees from the Mayor and the appointees from the City Council.

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I can meet with the Mayor and talk to them about why their appointees are falling short of what I think they should be doing on this, you know, on this Civilian Board, or I can meet with my council members and talk to them about those appointees.

I don't feel like that direct line is as easy with the Police Department and so as an advocate and thinking about how to hold people accountable when they're on this Board, I think that there are very little chances for me to hold the Police Department appointees accountable, and that is the reason why the numbers should be the way it is.

So when you all are taking a vote, they're outnumbered but you all are the ones we can hold accountable, and we can't necessarily hold them accountable. And so that should be something you think about when you think about whether or not you want to increase the number of Police Department appointees on the Board. But that's it for me.

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2 CHAIR EMERY: Thank you. Thanks a
3 lot. Good points.

4 BISHOP TAYLOR: Mr. Chair, just a
5 point -- to comment on it. So when the
6 police appointees and the Mayoral
7 appointees kind of fall in similar
8 jurisdictions so there could be some
9 audience there if there's concern about
10 that.

11 MS TOLLIVER: Yeah, sometimes, but
12 it depends on who the Mayor is at the
13 moment as opposed to --

14 CHAIR EMERY: I understand. I think
15 that -- I actually think this is probably
16 an issue that council members who created
17 this entity and who are still -- had the
18 history of it and who looked at it again
19 when APU was created a couple of years ago
20 are going to have strong opinions about it
21 and it's not really going to be up to us.
22 And I'm loathed to make a big effort to
23 tamper with the current configuration. I
24 mean, I think if Debbie and Lindsay want to
25 work day and night, that's fine with me.

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2 MR. EASON: I just want to keep
3 three in this.

4 CHAIR EMERY: I think other than
5 committee reports -- any committee reports?
6 I think we're done with the public session,
7 but for the committee reports; is that
8 correct? Am I missing -- you wanted to say
9 something? Come on up. You want to
10 comment on our minutes?

11 MR. O'GRADY: Yes, especially since
12 I have a summary from the Corporation
13 Counsel. They use the word affidavit,
14 false affidavit in their summary to me.
15 They said a false affidavit is a criminal
16 offense. However, they said it was up to
17 the district attorney to prosecute in their
18 summary and their district attorney, they
19 have satellite in Harlem the 28th and this
20 guy is saying that, you know, well, at
21 least in my instance, the contractor
22 didn't -- was two days late in getting to
23 him, therefore my only option was this
24 Board because the contractor was two days
25 late -- used the statute of limitation.

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The contractor was two days late and so therefore the statute of limitation, and so he's telling me to -- that this is the place to be since the statute of limit -- the contractor wasn't on time in speaking to him.

But they use the term false affidavit. They say it is a criminal offense, but it gets weak when he says -- well, I don't know if it gets weak, but this guy, he was -- well, actually this officer he was promoted to a judge and that satellite operative, he was promoted to narcotics, but he's still in the 28th. I don't know why he's still in the 28th, but narcotics was a problem, because, you know, they, you know, they have a recruitment, you know, they actually have a recruitment process. You know, they offered me a job. You know, they told me how much money I would be making selling for them.

CHAIR EMERY: Thank you very much.

Thanks a lot.

All right. Are we ready for

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2 committee reports? Anybody have anything
3 to say about a particular outreach or other
4 issues? Janette, you wanted to say
5 anything or --

6 MS. CORTES-GOMEZ: We have nothing
7 new this month for mediation and I believe
8 Commissioner Puma and I agreed that in
9 terms of training, we are definitely
10 working with Nina and Brian and the
11 subcommittee getting this --

12 CHAIR EMERY: It's a very active
13 area.

14 MS. CORTES-GOMEZ: -- correct, on
15 track. So we do not have anything new to
16 report per se, but we are definitely
17 actively working on it.

18 CHAIR EMERY: Thanks. Do you want
19 to --

20 BISHOP TAYLOR: Yes. Outreach
21 always has things going on all the time and
22 again, we want to thank the efforts of
23 Carlmais and Brian and the team for staying
24 on top of outreach where we're also
25 planning now for the new hires that we were

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2 approved for as it relates to outreach and
3 next month, of course, we will have our
4 next meeting at the Friends of Crown
5 Heights, 671 Prospect Place in Brooklyn,
6 and then our June meeting will be at the
7 Lower Eastside Girls Club. And our report
8 is available in the back if anyone wants to
9 read it in particular, but more outreach,
10 more connections with religious
11 institutions and other community-based
12 organizations has been our objective in
13 spreading the word and getting the word out
14 to the public.

15 Of course we've been talking about
16 some social media platforms that we're
17 still like wrangling with now in terms of
18 how to best and effectively use them to
19 serve the public. So yeah, so outreach
20 has, you know, has very extensive
21 movement, you know, as every month.

22 CHAIR EMERY: Well, you know, I
23 know, and Carlmais is just doing terrific
24 work, works just day and night. It's very
25 impressive. She really does.

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Are we ready to adjourn? We're going to adjourn to executive session and deal with some cases. Thank you all. I appreciate it.

(Time noted: 8:43 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
COUNTY OF RICHMOND) ss:

I, JENNIFER CASSELLA, 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
to the best of my ability.

I further certify that I am not related
to any of the parties to this action by blood
or 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 11th day of April, 2015.

JENNIFER CASSELLA

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