

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

CHARTER REVISION COMMISSION 2019

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MARCH 7, 2019

Start:

Recess:

HELD AT: COUNCIL CHAMBERS - CITY HALL

B E F O R E: GAIL BENJAMIN, CHAIRPERSON

COMMISSIONERS: DR. MERRYL TISCH  
SATEESH NORI  
REVEREND CLINTON MILLER  
SAL ALBANESE, FORMER COUNCIL  
MEMBER  
STEPHEN FIALA, FORMER COUNCIL  
MEMBER  
JANETTA JOHN (SP?)  
JIM CARAS  
EDUARDO CORDER, SR., COMMISSIONER  
LISETTE CAMILO, COMMISSIONER  
CARL WEISBROD  
PAULA GAVIN  
DR. LILLIAN BARRIOS-PAOLI  
ALISON HIRSH

## A P P E A R A N C E S (CONTINUED)

RACHEL BLOOM, Director of Public Policy  
and Programs at Citizens Union

ETHAN GERINGER-SAMETH, Citizens Union

JOO-HYUN KANG, Representing Communities  
United for Police Reform

PAMELA MONROE, New York City Campaign for  
an Elected Civilian Review Board (ECRB)

MICHAEL SIZITSKY, Lead Police Council for  
New York Civil Liberties Union

LIZA CHOWDURY, Assistant Professor at  
Borough of Manhattan Community College,  
teaches Criminal Justice

CYNTHIA CONTI-COOK, attorney at Special  
Litigation Unit of the Legal Aid Society,  
member of Communities United for Police  
Reform

BRIAN CORR, Director of our Police review  
and Advisory Board, President of National  
Association for Civilian Oversight of Law  
(NACOL)

NICHOLAS MITCHELL, attorney at Office of  
Independent Monitor in Denver, Colorado

KEVIN RICHARSON, Deputy Commissioner,  
Department Advocate

## A P P E A R A N C E S (CONTINUED)

OLEG CHERNYAVSKY, Executive Director of  
the Legislative Affairs for the NYPD

JONATHAN DARCHE, Executive Director of  
the Civilian Complaint Review Board  
(CCRB)

1 CHARTER REVISION COMMISSION 2019

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2 SARGEANT AT ARMS: Test, test. This is  
3 Charter Revision Commission. Today's date is March  
4 7, 2019. This recording is being recorded by Hom  
5 Dilite (SP?).

6 CHAIRPERSON GAIL BENJAMIN: Good evening  
7 and welcome to tonight's public meeting of the 2019  
8 New York City Charter Revision Commission. I'm Gail  
9 Benjamin, the Chair of the Commission and I am joined  
10 by the following members: To my left is Dr. Merryl  
11 Tisch, Mr. Sateesh Nori, Reverend Clinton Miller, Sal  
12 Albanese, former Council Member, Stephen Fiala,  
13 former Council Member and to my right is my Council.  
14 Uhm Janetta (SP?) James.

15 JANETTA JOHN: John.

16 CHAIRPERSON GAIL BENJAMIN: I don't know  
17 why I said James, John, they are all books.

18 JANETTA JOHN: You are alright.

19 CHAIRPERSON GAIL BENJAMIN: Jim Caras,  
20 Lisette Camilo, Commissioner and below her is Carl  
21 Weisbrod, Paula Gavin, Dr. Lillian Barrios-Paoli and  
22 Alison Hirsh. Do you want to join them on that side?  
23 Yeah, there is an extra seat there. Alison is on the  
24 move. Okay. Before we begin, I will entertain a  
25 motion to adopt the minutes of the Commissions

1  
2 meeting on February 25<sup>th</sup> at City Hall, a copy of  
3 which has been provided to all of the Commissioners.  
4 Do I hear a motion? Second? All of those in favor?

5 ALL: Aye.

6 CHAIRPERSON GAIL BENJAMIN: Opposed? The  
7 motion carries. Today we will continue the  
8 Commissions series of expert forums on the focus  
9 areas we adopted in January. This evening we are  
10 privileged to be joined by a distinguished set of  
11 panelists put together in consultation with my fellow  
12 Commissioners who have generously agreed to speak to  
13 us about the extremely important topic of Police  
14 Accountability. New York like many cities has a long  
15 history of grappling with how best to ensure  
16 effective oversight over Law Enforcement Agencies and  
17 Officers who wheeled immense power in order to do the  
18 vital job of keeping the City and its citizens safe.  
19 The Commission has received many proposals for  
20 reforming and strengthening the Police Accountability  
21 and Disciplinary System. Many centered on the rules  
22 of the Civilian Complaint Review Board and of course  
23 the Police Commissioner himself. We very much look  
24 forward to delving into these important panelists  
25 with our topic. Uhm I would like to make a few

1  
2 announcements just for the audience which I see is  
3 very full. One is I know you are aware this is a  
4 public meeting not a public hearing so you will not  
5 be able to speak. Uhm our forum is that each one of  
6 our panelists will have three minutes to make a  
7 statement uhm and then the Commissioners will  
8 question them for approximately half an hour. Uhm,  
9 then we have several more panelists and panels. The  
10 rules of the Chamber I noticed that many of you have  
11 signs and I know that the Sargeant at Arms have told  
12 you that the signs are fine as long as they are on  
13 your lap but not above your head. Uhm, this one  
14 would interfere with the live stream and the cameras  
15 and two it is just kind of a little uhm, hard for  
16 other people in back of you to see and I would like  
17 to make sure as I have at all the meetings that the  
18 hearing is a courteous one. Uhm in that regard, I  
19 would ask that all of us refrain from clapping,  
20 booing, or otherwise expressing satisfaction,  
21 dissatisfaction with the speaker, the question uhm  
22 and allow the panels to speak without interruption.  
23 Uhm if you have comments, we are happy to take them  
24 afterwards in writing or if you want to speak to a  
25 staff member and give them comments or questions or

1  
2 other things, we are happy to take that. We also  
3 have your uhm our site online. You can tweet at us  
4 and there are various ways you can communicate with  
5 us. Uhm last but not least if you feel that you  
6 really want to indicate your support or something and  
7 you feel that you must let us know, we prefer jazz  
8 hands. Uhm, with that being said, let's get started  
9 with our first panel. Each panelist will have three  
10 minutes to introduce themselves and provide brief  
11 opening remarks. Then we will have 30 minutes for  
12 Commissioner questions, if 30 minutes ends up not  
13 being enough time to get to your question, let me or  
14 staff know and we will arrange for a followup. For  
15 brevity sake I'm going to call up the panelist and I  
16 will ask that each of them introduces themselves  
17 briefly in their statements. On this first panel we  
18 have Rachel Bloom, do you want to just raise your  
19 hand, Ethan Geringer-Sameth, Joo-Hyun Kang, have I  
20 pronounced that or mangled. Okay, Pamela Monroe and  
21 Michael Sizitsky. Uhm is now all yours, uhm Ms.  
22 Bloom would you like to start?

23 RACHEL BLOOM: Thank you very much. Good  
24 evening Chair Benjamin and distinguished members of  
25 the New York City Charter Revision Commission. My

1  
2 name is Rachel Bloom and I am the Director of Public  
3 Policy and Programs at Citizen's Union. Thank you  
4 for holding this forum and inviting us here to  
5 publically share our recommendations with you. Uhm  
6 as a Watch Dog Group for the public interest and a  
7 historic advocate in open and honest government here  
8 in New York City we urge amendments to the City  
9 Charter tonight that will strengthen the  
10 accountability of the New York City Police  
11 Department, the Public and consequently improve the  
12 relationships between the NYPD and the public. Since  
13 2008, we have been exploring the issue of police  
14 accountability with particular emphasis on  
15 establishing clarity and consistent across the police  
16 oversight system and strengthening the Civilian  
17 Complaint Review Board to bolster independent  
18 oversight of the police. The following are our  
19 recommendations for Charter Reform which we believe  
20 are urgent and should be taken up by this Revision  
21 Commission. These changes, if adopted would amend  
22 section 440 of Chapter 18A of the New York City  
23 Charter. (1) Codify the CCRB's power to file and  
24 handle the prosecution of complaints. It  
25 substantiates with the recommendations of charges and

1 specifications instead of NYPD Lawyers from the  
2 Department Advocates Office. The CCRB should be  
3 given full authority and responsibility in the law  
4 for developing its own team of qualified and  
5 experienced lawyers to litigate the substantiated  
6 cases. A 2012 Memorandum of Understanding (MOU)  
7 between the NYPD and the CCRB gave the CCRB this  
8 authority by establishing an administrative  
9 prosecution process but this does not have the force  
10 of law and the extent to which certain features of  
11 the MOU are being followed is questionable. (2)  
12 Require the Police Commissioner to provide the CCRB  
13 and respondent the rationale when diverging from CCRB  
14 Disciplinary Recommendations. The 2012 MOU requires  
15 the Police Commissioner notify the CCRB in writing  
16 with a detailed explanation for the reasons for  
17 deviating from their recommendation, uhm Citizens  
18 Union was involved in the negotiation of the MOU and  
19 believes this requirement would provide inappropriate  
20 and meaningful expansion of the CCRBs independent  
21 oversight. (3) Amend the Charter to permit the CCRB  
22 to initiate an investigation into report or known  
23 incidents of police misconduct within its  
24 jurisdiction in the absence of a complaint. With  
25

1  
2 this authority the CCRB would no longer be forced to  
3 remain on the sidelines when there was a notorious  
4 and serious incident that has become the focus of  
5 community and police concern. I am going to run  
6 through them now. (4) Empower the CCRB to  
7 investigate complaints by the public against members  
8 of the Police Department's School Safety Division, a  
9 unit of public safety officers under the supervision  
10 of the police department as well as other divisions  
11 overseen and controlled by the police department.

12 (5) Safeguard the independence and integrity of CCRB  
13 investigations and standardize the effects of  
14 participation in an investigation for complaints,  
15 witnesses and officers and finally we would just  
16 recommend that for greater transparency in the Budget  
17 of City Agencies including the NYPD uhm the four  
18 being voted on by the Council to that and the words  
19 program, purpose, activity and institution need to be  
20 defined in the Charter Chapter 6, Section 100 in  
21 relations to units of appropriation so that units of  
22 appropriation will be made more narrow and fine  
23 rather than continue as a catch all category  
24 reflecting numerous programs or an entire Agency's  
25

1  
2 Budget. Thank you very much for having us here  
3 tonight to talk about this issue.

4 CHAIRPERSON GAIL BENJAMIN: Thank you  
5 very much, Ms. Kang. Sorry. Uhm dry. Can I say one  
6 thing? Hold on one second. Uhm we have just been  
7 joined by Commissioner Cordero.

8 JOO-HYUN KANG: Okay, uhm thank you  
9 Commissioners for inviting Communities United for  
10 Police Report to testify tonight. My name is Joo-  
11 Hyun Kang representing our campaign which is for  
12 those of you who don't know, a campaign that runs  
13 coalitions of up to 200 organizations that are  
14 national and local around police accountability. Our  
15 work on police accountability and transparency over  
16 the past few years has resulted in landmark  
17 legislation by the City Council including the  
18 Community Safety Act, the Right to Know Act. We were  
19 also able to coordinate a campaign to have Governor  
20 Cuomo do an Executive Order for a special prosecutor  
21 for all police killings in the State of New York.  
22 The Commission for tonight. We have seven  
23 recommendations and two areas that we would like to  
24 share, specifically around changes to the Charter  
25 that we think would advance Police Accountability and

1  
2 Transparency. We will be submitting written  
3 testimony separately uhm but I did want to start by  
4 saying that these seven recommendations are really  
5 based on the experience of our Member Organizations  
6 and CPR as a whole over the past number of years but  
7 even preceding CPR over the past several decades  
8 working with families including families of Ramarley  
9 Graham, Eric Garner, Delron Small, uhm Saheed  
10 Vassell, Anthony Baez, Aminut Deallo (SP?), etc. but  
11 also the experiences of our members whose names are  
12 not known and who face daily humiliation in  
13 Communities that are over policed or abuse that goes  
14 hidden and not reported or reported and not acted  
15 upon. The two areas that we have recommendations are  
16 (1) Around the absolute systemic crisis that there  
17 is right now of lack of any kind of meaningful,  
18 timely or transparent discipline when officers cause  
19 harm to members of the public and my harm we include  
20 the entire scale including from the most egregious  
21 cases as revealed by BuzzFeed of hundreds of officers  
22 who are still on the force today even though they  
23 have been found guilty by the Department of Excessive  
24 Force, Sexual Misconduct and Lying. The second areas  
25 around lack of transparency and lack of meaningful

1  
2 oversight of major NYPD expenditures but on the first  
3 category of lack of timely transparent and meaningful  
4 discipline there are four recommendations that we  
5 have in terms of changes to the Charter (1) That the  
6 Police Commissioner should not have exclusive  
7 authority for all disciplinary cases. We would  
8 recommend that the Ch, what one of the Charter  
9 Revisions that the Commission takes up be that the  
10 CCRB being able to determine discipline in cases that  
11 the Administrative Prosecution Unit prosecutes (2)  
12 Secondly is to expand the CCRBs authority to be able  
13 to prosecute related misconduct so that includes  
14 cases where someone has been, an officer was caught  
15 lying or other kinds of misconduct that the CCRB  
16 certainly, currently cannot prosecute on and so they  
17 split cases and send those examples to the IAB which  
18 almost never gets acted upon. (3) Third is to expand  
19 the CCRBs authority to include School Safety Agents  
20 as well as Peace Officers as we saw most recently in  
21 the case of Jazmin Headley, uhm being brutalized by  
22 officers it would have been incredibly important to  
23 have some kind of oversight. (4) Fourth is when the  
24 Commissioner deviates from CCRB findings and  
25 discipline the reason should be made public and then

1  
2 the other three recommendations around the oversight  
3 of NYPD expenditures I don't want to take too much  
4 time so I am happy to go through them during  
5 questions or do you just want me to run through them  
6 right now?

7 CHAIRPERSON GAIL BENJAMIN: Just do them  
8 really quick.

9 JOO-HYUN KANG: I will do them really  
10 quick (1) Amend the Procurement Process. So, in  
11 December the NYPD purchased its first set of drones.  
12 There was no public oversight process for that and  
13 unlike other municipalities around the country there  
14 is no ability for the public to require transparency  
15 or even to be able to veto those kind of expenditures  
16 around surveillance technologies (2) Second is to  
17 require NYPD reporting of private income and expenses  
18 where some surveillance and other types of purchases  
19 are made and there is no public oversight even from  
20 the Council that is enabled by that and third is  
21 similar to what Citizens Union said which is to make  
22 sure that there are detailed units of appropriation  
23 within the Budget so that the NYPD's full Budget is  
24 transparent to the public and to the City Council and  
25 to Legislators. Thanks so much.

1  
2 CHAIRPERSON GAIL BENJAMIN: Thank you,  
3 thank you very much. The next speaker is uhm Pamela  
4 Moore.

5 PAMELA MONROE: Monroe.

6 CHAIRPERSON GAIL BENJAMIN: Monroe, I'm  
7 sorry.

8 PAMELA MONROE: Good evening, my name is  
9 Pamela Monroe and I represent the Campaign for an  
10 Elected Civilian Review Board. We are a coalition of  
11 over 44 organizations and prominent individuals.  
12 Over the past three years we have talked to thousands  
13 of New Yorkers about replacing the current Appointed  
14 Review Board with an elected board. Our idea is met  
15 with nearly universal support wherever we go. As of  
16 this afternoon, we have thousands of signatures on  
17 our petition and we have collected more this evening.  
18 One day while canvassing in Brooklyn, we met a young  
19 black mother who told us she has arranged her work  
20 schedule morning and afternoon to walk her kids to  
21 and front school. This wasn't to protect them from  
22 gangs or criminals, she said this was to protect them  
23 from the NYPD. That is why we are here tonight, for  
24 New Yorkers who are afraid of the police and we have  
25 good reason to be afraid. Over the last four years,

1  
2 over 17,900 Civilian Complaints were made to the  
3 CCRB. As a result, 0 officers have been fired. But  
4 in the past five years our City has paid out \$384  
5 million taxpayer dollars in civil judgments. So  
6 clearly, misconduct is occurring. In fact, New  
7 Yorkers are being harassed, injured and killed while  
8 our City's response is just to wait for the lawsuits.  
9 At your faces, at their faces you will see the real  
10 human cost is reflected in the portraits of our  
11 neighbors killed by the NYPD. We propose a new  
12 system of Police Accountability and Discipline. One  
13 that is in the hands of the people. We propose a  
14 board of 21 members elected by their neighbors,  
15 responsible to their District and answerable to New  
16 Yorkers. Police Discipline has been for too long  
17 tied up in an appointed board and by now we think it  
18 is safe to say that the CCRB has failed. Our elected  
19 board would put the needs, experience and values of  
20 the community to work holding the police accountable  
21 to the same standards that apply to every resident.  
22 Our elected board would have bending disciplinary  
23 power. Our elected board can change the fabric of  
24 New York. Public outcry around Rodney King gave rise  
25 to the appointed review boards of the 90s. The

1  
2 modern Black Lives Matter Movement demands elected  
3 civilian review boards now. Let's talk about being  
4 first to do the right thing. Let's bring in elected  
5 Civilian Review Board to voters.

6 CHAIRPERSON GAIL BENJAMIN: Thank you  
7 very much and if you could (applause). Excuse me.  
8 Excuse me I had asked as a matter of courtesy if we  
9 would not applaud or boo or if we would just either  
10 use jazz hands to indicate that we are in favor of  
11 what a speaker is saying but I would really  
12 appreciate your assistance in this. (applause).  
13 Please, please. Please. The next speaker is Ethan  
14 Geringer-Sameth.

15 RACHEL BLOOM: Ethan is just, he is just  
16 my colleague. We are just one testimony together.

17 CHAIRPERSON GAIL BENJAMIN: Okay, then we  
18 have Michael Sizitsky.

19 MICHAEL SIZITSKY: Thank you, good  
20 evening, my name is Michael Sizitsky. I am the Lead  
21 of the Policy Council with the New York Civil  
22 Liberties Union. I will also apply that we are also  
23 members of Communities United for Police Reform and  
24 we support all of the recommendations that Joo-Hyun  
25 mentioned in her testimony and I want to expand on

1  
2 the pieces about what City Charter can be amended to  
3 better reflect greater accountability for Police  
4 Discipline as well as greater oversight and  
5 procurement of surveillance technology by the NYPD.  
6 Local and independent civilian oversight is a  
7 necessary component for fair and accountable  
8 policing. The NYCLU has been instrumental in trying  
9 to ensure that there were such systems in place in  
10 New York City. We were instrumental in creation of  
11 the CCRB and have worked to ensure that it has what  
12 it needs to live up to its Charter mandate. But the  
13 biggest problem has always been in the lack of the  
14 CCRBs authority. While the CCRB has the authority to  
15 investigate and in some cases to prosecute cases of  
16 police misconduct, its recommendations on  
17 disciplinary outcomes are not binding on the NYPD.  
18 And the Police Commissioner has exclusive authority  
19 in the City Charter Section 434 to decide and impose  
20 disciplinary outcomes in all cases. And in practice,  
21 the exercise of this authority has been really  
22 causing for alarm. In 2017, the Police Commissioner  
23 imposed penalties weaker than those recommended by  
24 the CCRB in the overwhelming majority of cases. And  
25 in the most serious cases of Officer misconduct that

1  
2 were substantiated to the CCRB and that went to full  
3 departmental trials within the NYPD the Police  
4 Commissioner imposed discipline consistent with CCRB  
5 recommendations in just 27% of cases and this low  
6 rate of concurrent is not unique to any one Police  
7 Commissioner. It has been persistent throughout  
8 different Mayoral Administrations, throughout  
9 different Police Commissioners. It has been a  
10 consistent pattern of the NYPD flagrantly  
11 disregarding CCRB recommendations. In the past the  
12 NYCLU has called on the City to remove the Police  
13 Commissioner's Exclusive Authority to decide  
14 disciplinary outcomes and we reiterate that call  
15 tonight. The NYPD has proven time and time again its  
16 willingness to ignore calls for outside oversight and  
17 its unwillingness to hold itself to the high  
18 standards that we expect of our police force.  
19 Civilian oversight of policing is an MT Exercise if  
20 the Police Commissioner can just disregard the  
21 recommendations of an oversight agency. So, we  
22 would recommend that the Commission look at either  
23 removing, transferring that authority, outright  
24 outside the NYPD or in some way cabining that  
25 exercise of discretion to prevent the kind of abuses

1  
2 that we have been seeing. And lastly the piece  
3 regarding surveillance technologies. The problem  
4 that we see with police abuse of communities of color  
5 is that it often happens in secret because the tools  
6 that the NYPD uses to target and harass communities  
7 of color are acquired in secret. Unlike places like  
8 Seattle, Oakland, Cambridge, Massachusetts. Those  
9 places require anytime the Police Department seeks to  
10 acquire new surveillance tools, it disclose that  
11 planned acquisition to the City Council, proposed  
12 their planned polities, how they intend to use the  
13 technologies, whether they are going to share the  
14 information gathered by those technologies with other  
15 agencies including potentially Federal Immigration  
16 Enforcement Agencies and then give the public an  
17 opportunity to comment on, testify as to whether or  
18 not they want that technology acquired in the first  
19 place and give those local Councils the ability to  
20 veto technology acquisition if they find that the  
21 risk to privacy and civil liberties are not worth the  
22 risk. Uhm, so we would recommend that the Commission  
23 look at amending the Charter to require that the NYPD  
24 seek Council approval anytime they seek to acquire  
25 new surveillance tools and technologies. We have

1  
2 more information in our written testimony and would  
3 be happy to answer any questions.

4 CHAIRPERSON GAIL BENJAMIN: Okay  
5 Commissioners. Commissioner Hirsh?

6 ALISON HIRSH: I have two questions, uhm  
7 one is for either Rachel or Joo-Hyun, what is the  
8 current procedure for discipline of School Safety  
9 Officers?

10 RACHEL BLOOM: Sorry, there is not really  
11 a good procedure. Oftentimes those complaints  
12 actually end up going to IB, the Internal Affairs  
13 Bureau of the NYPD which as we all know actually  
14 doesn't act upon complaints with the seriousness that  
15 we need in New York and so an example of that is that  
16 there have been hundreds of racial profiling  
17 complaints of officers, not only in terms of School  
18 Safety Agents but NYPD officers and they NYPD's  
19 Internal Affairs Bureau has not substantiated one of  
20 them. This is after the stop in fr... the Federal Law  
21 Suit the Floyd Lawsuit. So, we don't really have any  
22 kind of faith that when serious allegations go to the  
23 IB that they will be acted upon and it is one of the  
24 reasons why it has important that the CCRB is now  
25 also investigating sexual misconduct complaints.

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ALISON HIRSH: Thanks.

JOO-HYUN KANG: And I would just add that it is extremely important when we are thinking about you know the youngest people, uhm that for a time very clear system for how they can file a complaint by a school, by a School Officer. There's a, you've got to think about access as well for those students in New York.

ALISON HIRSH: Uhm and my second question is for Ms. Monroe. I understand the goal of the elected CCRB is to reform the system and ensure its accountability but can you explain why elections are necessary to do that and are you at all concerned that you know organizations like the PBA could put a tremendous amount of resources and sort of shift in a way that the CCRB could be actually less transparent and worse than it is now through the election process?

PAMELA MONROE: Sure, uhm first and foremost we believe that an elected board is the way to go because it stands on the tenant of, of the Democratic tenant that citizens in this country deserve the right or have the right to have equal say in issues that affect them. So, we believe that

1  
2 current appointed systems are biased toward the  
3 politicians that appoint them so this would allow the  
4 people to have a say uhm which is a Democratic tenant  
5 and an elected board would represent not just one  
6 person elected or appointed from each borough but  
7 actually all of the neighborhoods in the City so  
8 there would be greater uhm representation of our  
9 diverse City so there would be 21 members versus the  
10 13 and again they would not be one person from each  
11 borough, there would be 21 members from the different  
12 districts. There are so many reasons why we think an  
13 elected board would be the way to go. We, we don't  
14 currently have an elected board but that doesn't mean  
15 that there aren't strides being made in this country  
16 for elected or in part or in whole. Our sister ci...  
17 our sister city Rochester, New York has put through  
18 proposals to amend the current board to that of an  
19 elected board. Chicago is doing the same, uhm, New  
20 York City has the largest police force. The New  
21 Yorkers deserve to have the people represent them. I  
22 don't, I don't, I don't un... well, I'll keep my  
23 personal opinion to myself, so. Uhm it, it allows  
24 basically the people who have been abused a says.  
25 It, the NYPD is the Police Department of the people,

1  
2 is it not, is, the tax payers they should report to  
3 the people. Yeah, yeah. Uhm.

4 CHAIRPERSON GAIL BENJAMIN: Uhm, Mr.  
5 Caras?

6 JIM CARAS: I would like to pose  
7 Commissioner Hirsh's last question to the New York  
8 Civil Liberties Union and the uhm Citizens Union.  
9 Uhm what their views on an elected board would be?  
10 Especially uhm my concern would be in times of  
11 increasing crime you might get a very different  
12 Civilian Complaint Review Board that in times of low  
13 crime and also if you have any comments on any  
14 changes that your organizations think might be  
15 salutary for the composition of the board?

16 ETHAN GERINGER-SAMETH: Uhm Citizens  
17 Union hasn't considered or taken a formal position on  
18 the position of an elected view board, uhm but we do  
19 believe that the amendments that we have outlined in  
20 our testimony are necessary steps to improving the  
21 accountability of the Police Department uhm and yes  
22 and uhm you know we would like to see those tested  
23 before. I don't know necessarily if we would like to  
24 see them tested before considering something as  
25 radical as uhm electing a review board, but you

1  
2 should be considered as part of that conversation as  
3 well.

4 PAMELA MONROE: Can I, I didn't answer  
5 Commissioner Hirsh's question about Special Interest.  
6 She asked me what did I think about the BPA maybe  
7 sending people. Uhm it is true that in a democratic  
8 society we have elections, and elections are a  
9 process whereby the people chose the most qualified  
10 candidate. So, anyone would have to run on a  
11 campaign and their campaign would, would expose their  
12 qualifications and expose their opinions and expose  
13 their interest. When you are looking at the whole  
14 City voting and you are looking at candidates from  
15 all of the neighborhoods, not just a borough but all  
16 of the neighborhoods yes, you may have people from  
17 Staten Island who may you want to see the police have  
18 a free pass but on a board with 21 members it is not  
19 about the one person it's about all of these people  
20 from all of these other neighborhoods who were  
21 affected by this crisis.

22 ALISON HIRSH: Thank you very much.

23 MICHAEL SIZITSKY: And uhm to answer your  
24 question the NYCLU has also taken no position on uhm  
25 an elected civilian review board. Our view has been

1  
2 the Central Crisis facing police accountability has  
3 been the lack of authority for an outside,  
4 independent oversight agency but that said I do think  
5 that we are all in agreement with a shared goals of  
6 trying to find ways that the Charter can ensure that  
7 these decisions are not just left up to the NYPD  
8 Commissioner.

9 JIM CARAS: I'm sorry I didn't mean to  
10 leave Ms. Kang out as well.

11 JOO-HYUN KANG: Uhm we are a pretty big  
12 coalition and we are still in discussion so we don't  
13 have a position on this.

14 CHAIRPERSON GAIL BENJAMIN: Okay,  
15 Commissioner Nori?

16 SATEESH NORI: I guess my question is not  
17 having a position on an issue such as having an  
18 elected CCRB at this time isn't that a position in  
19 itself and, and turning it over to Ms. Monroe, what  
20 are you views on the other recommendations made by  
21 your colleagues at the table? I mean do you support  
22 any of those recommendations? Do those  
23 recommendations satisfy some of the concerns that you  
24 are raising in support of an elected CCRB? So, maybe  
25 we would start with you guys first on your lack of a

1  
2 position on this issue as a position in itself. I  
3 mean seven recommendations but an elected CCRB is not  
4 one of them?

5 RACHEL BLOOM: Well, I will start for  
6 Citizens Union. Our work in police accountability  
7 uhm sort of really been focused in the last decade,  
8 we are 120 years old. It takes us a very long time  
9 to come to our policy positions. We have a very uhm  
10 slow collaborative process uhm, I think that when  
11 it's not that we didn't. I mean historically we  
12 largely usually believe that the Mayor has the right  
13 to appoint, make appointments. We've supported that,  
14 not necessarily specifically about the CCRB but in  
15 general about uhm different roles throughout the City  
16 Government. Uhm but I, I can also say that it hasn't  
17 been something as we started, as we focused on this  
18 work our work was about sort of making our, making  
19 the police and just more accountable and transparent  
20 and that is sort of our approach to police  
21 accountability reform. It could be something that we  
22 would look at in the future. Just, it is, we, we  
23 have not looked at it at all. Uhm that's not the say  
24 that we won't in the future we just haven't yet.

1  
2 PAMELA MONROE: Uhm to ans... oh, did you  
3 want to go.

4 MICHAEL SIZITSKY: Uhm for the NYCLU we  
5 similarly have a long deliberative process internally  
6 and again this issue has been one where we viewed it  
7 as less of a problem of, where the appointments were,  
8 elections come from for these members as to what kind  
9 of power that we able to exercise in these matters.  
10 So that has been the main focus of our engagement  
11 with the CCRB with NYPD discipline more broadly is  
12 where those structural lines of authority to actually  
13 act upon disciplinary investigations and  
14 recommendations lie and similarly we work with a lot  
15 of community based partners, uhm, with uhm with  
16 communities for Police Reform and we are engaged in  
17 these conversations and we are trying to make sure  
18 that whatever positions that we take are reflective  
19 of where our community partners are.

20 PAMELA MONROE: Uhm and I don't know that  
21 my answers changes much beyond that we don't have a  
22 position. That we have a long, we are in discussion  
23 about it but what I would say is that the seven  
24 recommendations that we have come directly from our  
25 memberships experience with the failures in

1  
2 relationship to cases. So, for example, with Eric  
3 Garner right now which I think everyone knows about  
4 Eric Garner. It is one of the most high-profile  
5 cases in the country as well as the world. We have a  
6 situation right now where the only reason the officer  
7 who put Eric in a chokehold and killed him in front  
8 of all of us in video is even being prosecuted for  
9 disciplinary charges, because the CCRB brought  
10 charges. And in fact, the NYPD blocked those charges  
11 for close to a year. It wasn't until this past  
12 summer when we were able to expose that the NYPD had  
13 been lying about why, uhm they couldn't move forward  
14 that they finally let CCRB move forward with charges  
15 against Pantaleo. However, Eric Gardner's mother has  
16 been demanding that other officers who failed to  
17 intervene who were found to lie on official reports,  
18 who leaked sealed information should also be facing  
19 some type of discipline. And the NYPD has refused to  
20 bring charges in any of those cases which is part of  
21 why one of our recommendations around expanding CCRBs  
22 authority so that they can actually pursue those  
23 types of cases when it is on a case that they are  
24 already processing. So, they are prosecuting  
25 Pantaleo. They are prosecuting on this particular

1  
2 case of the killing of Eric Gardner and their hands  
3 are tied to be able to do anything about officers who  
4 lied, who've covered up and that's actually what the  
5 Blue Wall of Silence is? Right? It is not just  
6 about the brotherhood so called of the NYPD. It is  
7 actually systemic historical coverup that happens in  
8 all of the police brutality cases that we've worked  
9 on, uhm that we see routinely where there is illegal,  
10 activity including leaking sealed information or  
11 really brutal activity that is happening and I will  
12 just say that these recommendations are coming  
13 directly from the experience that members have had  
14 and what's been wrong in the cases to be able to see  
15 how we can actually increase accountability  
16 transparency of the NYPD and on the drones piece  
17 which is not really about the CCRB uhm recommendation  
18 for surveillance technologies, rather, we are in a  
19 moment right now where if we if New York City doesn't  
20 take action to try to reign in surveillance  
21 technologies we won't be able to turn back the clock.  
22 Uhm Pandora's box will be open.

23 JOO-HYUN KANG: To address the other  
24 question the Commissioner asked about how do we feel  
25 about the proposals that are being presented by other

1  
2 members of the panel. Uhm I will read from our  
3 proposed Legislation which has been submitted to you.  
4 Uhm in Section C, Powers and Duties of the Elected  
5 Civilian Review Board. I will just mention that we  
6 do, our proposal is asked for an elected and  
7 empowered board. So, under Section C under Powers  
8 and Duties of the Elected Civilian Review Board, the  
9 ECRB should have the power to receive, investigate  
10 here, make findings and this is the Amendment, take  
11 action upon complaints by members of the public. It  
12 goes on to say in that section in expansion of their  
13 jurisdiction of things that we can and we outline all  
14 of the uhm, including sexual misconduct, all of the  
15 allegations that they can investigate so that's been  
16 hugely expanded. Uhm also within section C uhm  
17 number 5 the findings and determinations of the board  
18 and the bases therefore should be submitted to the  
19 Police Commissioner for implementation as opposed to  
20 for, a recommendation being submitted. So, our  
21 elected board would be empowered with the things that  
22 they suggest.

23 CHAIRPERSON GAIL BENJAMIN: I'm sorry,  
24 are you referring to written to, some written  
25 testimony because I don't seem to have it?

1  
2 JOO-HYUN KANG: We submitted it a long  
3 time ago when.

4 CHAIRPERSON GAIL BENJAMIN: Okay.

5 JOO-HYUN KANG: When all of this but I am  
6 happening to. The last time it was sent was in  
7 December when we sent research.

8 CHAIRPERSON GAIL BENJAMIN: Okay then its  
9 on our website. I just thought that you had  
10 something that you were presenting today and that I  
11 just somehow lost it.

12 JOO-HYUN KANG: No.

13 CHAIRPERSON GAIL BENJAMIN: Council Mem..  
14 uhm Reverend Miller and then Council Member Albanese.

15 REVEREND CLINTON MILLER: Thank you. My  
16 question is actually about the elections of an  
17 elected Civilian Review Board. What would the  
18 elections look like? Would there be terms? How many  
19 terms? I'm assuming based on your testimony there  
20 would be absolutely no appointees. During such  
21 elections would candidates run under a political  
22 party affiliation? I would like to know more about  
23 that?

24 JOO-HUNG KANG: In the proposed  
25 Legislation that we submitted under Section B, uhm

1  
2 the Election Civilian Review Board, point number  
3 four, the members shall be elected for a term of four  
4 years, coinciding with the terms of office and  
5 scheduled elections of the Mayor and City Council  
6 Members. Uhm, I don't think we specified that they  
7 have to run with a party. It might be kind of like  
8 how, how with the last election we just had it, it's,  
9 yeah.

10 CHAIRPERSON GAIL BENJAMIN: With a Public  
11 Advocate. Sal?

12 SAL ALBANESE: Uhm this is for anyone on  
13 the panel. Uhm, the CCRB has evolved from the time  
14 when it was basically a uhm a substratum of NYPD,  
15 most of the officials were appointed by the Police  
16 Commissioner and the Mayor and my limited law  
17 enforcement now, the CCRB doesn't have anyone that  
18 sits on that board that is an NYPD employee. And we  
19 also have another agency that was just created that  
20 has an additional 40 staff members uhm independent in  
21 the NYPD in the Inspector General's Office, whose  
22 focus is on police accountability. We also have a  
23 federal monitor who gets paid a lot money uhm to uhm,  
24 oversee the Police Department as part of a Federal  
25

1  
2 Court decision. So, my question is to anyone on the  
3 panel, uhm are these things not working? (laughter).

4 JOO-HYUN KANG: Sorry, we are laughing  
5 along with the audience. I hope that is okay. The,  
6 but I think the bigger issue, or I think what we  
7 would say uhm with the Communities United for Police  
8 Reform is that all the agencies and individuals that  
9 you named actually have different functions. And the  
10 CCRB, the Police Commissioner still appoints three  
11 members to the CCRB board as you know so it is not as  
12 if the Police Commissioner has no influence right  
13 now. With the Federal Monitor they have a very  
14 narrow mandate. Which is only to assess compliance  
15 in relationship to the Floyd's Federal Stop and Frisk  
16 Lawsuit, the Langone Lawsuit and the uhm Davis  
17 Lawsuit in terms of Policing and Public Housing. So,  
18 it is kind of apples and oranges that you are talking  
19 about. With the Inspector General they are as an  
20 agency as you know within DOI that was created  
21 specifically to be able to review and look at  
22 systemic issues within the NYPD make recommendations  
23 but those are nonbinding recommendations. So, we are  
24 in a situation where we've got a, the biggest police  
25 agency in the world and in a country that actually

1  
2 has unfettered power. So, I don't think that saying  
3 that there are all of these other agencies that have  
4 particular pieces of jobs. He's, there shouldn't be  
5 uhm that the Commission shouldn't take this  
6 opportunity to put things on the ballot that will  
7 increase accountability and transparency which we  
8 desperately need.

9 SAL ALBANESE: Have you, have you uhm...  
10 Assessed other cities with the municipalities in  
11 terms of police accountability and, and what have you  
12 come up. What is the ideal scenario that you see  
13 across the country?

14 JOO-HYUN KANG: I mean I can keep  
15 talking.

16 MICHAEL SIZISKY: I mean I don't know  
17 that anywhere has actually gotten it right uhm in  
18 terms of police accountability uhm we've been working  
19 with some of our local partners. It was mentioned  
20 that there were some proposals in Rochester. That we  
21 are now looking at, kind of grappling with similar  
22 issues with a lack of accountability and their  
23 civilian review board and are looking to empower a  
24 new police accountability board with actual  
25 disciplinary authority. Because the current system

1  
2 just does not work there is no face in the  
3 institutions that exist to actually carry out their  
4 mandates and serve as independent checks on police  
5 abuse. So, I don't know that we can point to any  
6 place that has gotten it right because I don't know  
7 that such place exists.

8 JOO-HYUN KANG: And we would argue that  
9 it won't get right until you allow the people to hold  
10 the police, their police departments accountable.  
11 (applause).

12 CHAIRPERSON GAIL BENJAMIN: Please,  
13 please, Sal?

14 SAL ALBANESE: On a follow, up on the  
15 Federal Monitor, as I understand and we have a  
16 disagreement the Federal Monitor also monitors  
17 discipline, police discipline as well as the Stop of  
18 Frisk issue that was raised in a court decision.

19 JOO-HYUN KANG: Maybe we don't  
20 disagreement maybe it is a matter of clarification,  
21 the Federal Monitor has oversight to be able to  
22 oversee compliance of reforms that are discipline  
23 related that have to do with the Floyd, Davis, or  
24 Langone Lawsuits, not one discipline reform has been  
25 ordered so nothing is being monitor.

1  
2 CHAIRPERSON GAIL BENJAMIN: And please,  
3 please, I would just add that uhm, what we are  
4 asking, is we are asking to improve and better our  
5 system. And I just because there are multiple forms  
6 of oversight in different agencies doesn't mean you  
7 know that does not necessarily not that they are  
8 working well and so we are trying to just improve  
9 upon the CCRB and just make sure it is more  
10 accountable and transparent and more empowered to  
11 actually act out on the things that they are putting  
12 out and on their recommendations are actually  
13 implemented.

14 SAL ALBANESE: You are raising some good  
15 issues regarding procurement, that's, that's, that's  
16 something that should be looked at very carefully.  
17 For all agencies, especially the NYPD.

18 CHAIRPERSON GAIL BENJAMIN: Thank you,  
19 Commissioner Fiala.

20 STEPHEN FIALA: Thank you Madam Chair.  
21 For Citizen's Union, I took note during your  
22 testimony that you referenced the 2012 Memorandum of  
23 Understanding and so that I'm not speaking out of  
24 turn, the exact language was the extent to which  
25 certain features of the MOU are being followed is

1  
2 questionable. As we try to dig into the Bedrock in  
3 this subject matter. I think it would be helpful if  
4 we could put some meat to those bones. What  
5 specifically about the existing construct, that 2012  
6 MOU that you refer to. What is questionable about  
7 it? What areas of reform would you suggest this body  
8 consider making, specially charter related to that  
9 MOU?

10 ETHAN GERINGER-SAMETH: What was  
11 questionable uhm in particular is the provision in  
12 the MOU that requires the Police Commissioner to  
13 explain when they've diverged from a CCRB  
14 recommendation of charges and specifications. Uhm,  
15 from what Citizen's Union can tell, we understand  
16 that those explanations are still being delivered but  
17 it took us an appeal of a FOIL request to find that  
18 out. So obviously there is very little transparency  
19 in the way that these uhm explanations are being  
20 delivered and it is impossible for us to tell  
21 whether, for instance if the Police Commissioner is  
22 providing such a detailed explanation with reasons  
23 not limited to each factor that the Police Commission  
24 has considered in making that determination? Uhm so  
25 that, that alone we think is a problem. If the

1  
2 public can't tell the value of that explanation then  
3 what value does that really have. Is it meaningful?

4           STEPHEN FIALA: This is probably a  
5 question that will have to be deferred for the CCRB  
6 but I will ask it of you anyway since you seem to  
7 have a fair amount of knowledge in this area. Are  
8 you aware of any current or ongoing discussions  
9 between the CCRB and the NYPD with respect to this  
10 particular provision that you seem to say is lacking?  
11 It is deficient? It seems to me that it is kind of a  
12 loop hole that wouldn't really require very much to  
13 close. Are you aware of any dialog that, that  
14 presently is being undertaken to close that loop hole  
15 or strengthen that provision so as to arrest the  
16 concern?

17           ETHAN GERINGER-SAMETH: Well currently  
18 uhm I think part of, part of the wall that is being  
19 hid behind is the state law, the Civil Rights Law  
20 Section 50 A which prevents the Disclosure of  
21 Disciplinary Records of Police Officers and other  
22 officers. Uhm and that is being used as I believe as  
23 an excuse to also shield these explanations.  
24 Citizen's Union folds these written explanations and  
25 specifically asks that any identifying information of

1  
2 police officers or any other parties be redacted but  
3 we were told that that couldn't be provided because  
4 it was in violation of Civil Rights Law Section 50 A  
5 and only on appeal were, we given that information.  
6 So, obviously Civil Rights Law Section 50 A does not  
7 actually constitute a barrier to that disclosure with  
8 the information redacted but there are obviously  
9 still serious barriers for the public accessing that  
10 information.

11 RACHEL BLOOM: Can I just add something  
12 slightly different in terms of this question is the,  
13 our main and I don't know that we differ but maybe it  
14 is just a different way of saying it. Our main  
15 concern with that provision is actually when the MOU  
16 was done in 2012 former speaker Quinn and others who  
17 executed it had the expectation that when the  
18 Commissioner deviated from findings or discipline  
19 recommendations of the CCRB that those, those  
20 deviations and the rationale for why it deviated  
21 would be made public. In fact, speaker Quinn was  
22 quoted saying that in the New York Times Article when  
23 the MOU first came out so the fact that that is now  
24 public now really actually shows how the NYPD is  
25

1  
2 unfortunately been allowed to create their own rules  
3 even after making agreeance.

4 CHAIRPERSON GAIL BENJAMIN: I had the  
5 question or the members of the panel about the public  
6 safety officers and the peace officers that work for  
7 HRA, HHC, and a number of other city agencies. What  
8 is, what are they currently covered by, just union  
9 agreements? How are they disciplined now?

10 RACHEL BLOOM: I'm not sure do you want  
11 to.

12 ETHAN GERINGER-SAMETH: It varies so when  
13 the school safety agents, they report to IAB there  
14 are different union rules that govern the various  
15 agencies. Uhm but where you know the CCRB has  
16 interpreted its own charter given authority is just  
17 in relation to uhm uniformed, sworn members of the  
18 NYPD which is a problem because that's not how most  
19 people actually experience and encounter with a peace  
20 officer. In the case of Jasmin Headley, you know to  
21 her it really didn't matter whether the officer was  
22 an HRA officer or an NYPD officer the point was,  
23 there was someone who was empowered by the state with  
24 Law Enforcement Authority that was uhm engaged in  
25 horrific misconduct. Uhm so the uhm the sense and

1  
2 expectation of New Yorkers should be that when there  
3 is any officer, police officer or peace officer they  
4 should have some independent outside agency like the  
5 CCRB that is responsible for processing and  
6 investigating those cases. But it does, right now  
7 with the current system vary based on which agency.  
8 And I think what we would add is that it also, part  
9 of the problem is that there is a whole patchwork  
10 quilt right now, where actually nobody knows how is  
11 responsible.

12 RACHEL BLOOM: So, in a particular  
13 instance like with Jasmin Headley, HRA, the  
14 Commissioner took action in relation to the HRA  
15 officers. But that doesn't mean that the public  
16 would know that they could actually make a complaint  
17 to HRA about peace officers who were stationed there  
18 and it is not clear that that would actually be how  
19 it happens. And what we hear often times from  
20 members who uhm are in homeless shelters in  
21 particular, that's another example where there is a  
22 lot of peace officers stationed is that they have no  
23 recourse. They feel like everytime they've  
24 complained at the shelter or they try to complain  
25 anywhere else there is no mechanism for them to be

1  
2 able to actually have a complaint, follow the  
3 complaint and see what happens.

4 CHAIRPERSON GAIL BENJAMIN: Uhm do you  
5 think you could provide us a list of all of the  
6 agencies that currently utilize peace officers?

7 RACHEL BLOOM: We could try.

8 CHAIRPERSON GAIL BENJAMIN: And would it  
9 be your recommendation that if they were covered by  
10 the CCRB that their agency heads function in the same  
11 way as the PC or would you have the PC make the  
12 determination?

13 JOO-HYUN KANG: I mean that we would say  
14 that the CCRB should make the determination that you  
15 are asking but I, I would have to ask our members.

16 CHAIRPERSON GAIL BENJAMIN: Okay thank  
17 you. I think Commissioner Gavin is next.

18 PAULA GAVIN: Yes, thank you very much.  
19 I wanted to confirm that your recommendation is to  
20 expand the CCRB beyond the four current categories of  
21 complaints that they receive and then sort of a bit  
22 more about why you are recommending that?

23 PAMELA MONROE: Uhm I, it's probably my  
24 fault because uhm it went so quickly. We are not  
25 necessarily recommending and expansion beyond FUTO,

1  
2 the Force of Use of Authority Etc. what we are  
3 recommending is that in cases where there is a fatal  
4 complaint that is substantiated by the CCRB and that  
5 the CCRB is prosecuting that case, that if there are  
6 other misconduct found that they should be able to  
7 prosecute on those, that other misconduct and a great  
8 example I think is uhm you all probably heard of  
9 James Blake, the retired tennis star who was slammed  
10 ot the ground brutally in 2015. He was uhm the case  
11 against Officer Frascatore was investigated by the  
12 CCRB, they substantiated charges and they did the  
13 trial on the excessive force. However, what happened  
14 in addition is that Frascatore had also been guilty  
15 of not notifying his supervisor and other related  
16 misconduct and so the NYPD ended up doing a second  
17 disciplinary trial, never told James Blake that this  
18 was happening so he finds out from the media that  
19 there was another trial against Frascatore. To this  
20 date, even though that trial happened last year or  
21 the year before I'm not quite sure, James still  
22 doesn't know what the outcome, what the disciplinary  
23 outcome against Officer Frascatore was. And so, it's  
24 a completely not only efficient but very abusive  
25 system that means that you can have a complaint, you

1  
2 go to the agency where you think it is the oversight  
3 agency to be able to deal with it. They try to deal  
4 with what they can but then they have to form out the  
5 rest of the complaint to the IAB which doesn't really  
6 end up doing much.

7 CHAIRPERSON GAIL BENJAMIN: And did  
8 anybody else recommend expanding the CCRB?

9 MICHAEL SIZITSKY: So uhm also because we  
10 were pressed for time we had to, to rush through but  
11 uhm point number 5 of our testimony, safe guarding  
12 the independence and integrity of the CCRB  
13 investigations. Uhm and standardizing the effects of  
14 participation includes granting the CCRB the  
15 authority to prosecute officers who lie under oath  
16 during the course of their investigation, its  
17 investigation.

18 PAMELA MOORE: I would also like to add  
19 that we expand uhm areas of investigation that also  
20 include uhm conducting unauthorized investigation,  
21 surveillance infiltration, disruption of lawful,  
22 political, social, economic, religious organizations  
23 or their members for their politico-social economic  
24 views, religious views. Also discriminating on the  
25 basis of age, sex, race, ethnicity, religion, creed,

1  
2 national origin, immigration status, political views,  
3 union membership, sexual orientation, gender identity  
4 and expression, record of criminal conviction and  
5 incarceration. There is a lot but uhm yeah, we try  
6 to get it all in there.

7           CHAIRPERSON GAIL BENJAMIN: Thank you  
8 very much, are there any further questions from the  
9 Commissioners? Thank you very much for joining us  
10 and for your information and if you would like to  
11 send us any additional information that you may have  
12 or respond further to some of the questions that may  
13 have been asked, I would appreciate receiving that  
14 from you. Thanks so much. Thank you. (applause).  
15 (long pause). Okay, we are ready for our second  
16 panel now. First, I want to thank you all for being  
17 here and sharing your perspectives with us. We will  
18 proceed in the same manner as I described the first  
19 time. This is our second panel and we are joined by  
20 Liza Chowdhury, Cynthia Conti-Cook, Brian Corr and  
21 Nicholas Mitchell. Uhm can we start with Ms.  
22 Chowdhury which I have probably pronounced  
23 incorrectly.

24           LIZA CHOWDHURY: Hi how are you, I'm Dr.  
25 Chowdhury I'm and assistant professor down the street

1  
2 at Borough of Manhattan Community College. I teach  
3 criminal justice courses full-time but I am also a  
4 long-time youth advocate and community organizer and  
5 the reason that I am here is to discuss uhm the CCRB  
6 obviously but also the fact that uhm just this week  
7 we've been covering policing. My students are here  
8 and they can attest to that and the question that I  
9 opened up the chapter was with Do you think we need  
10 the police? Simultaneous they all said yes. Then I  
11 followed up with the question, do you trust the  
12 police? More than half said no. So here we are with  
13 where I'm teaching criminal justice students that  
14 want to one day become law enforcement officers that  
15 don't trust an institution, they want to be a part  
16 of. This is my concern. So, a lot of the work that  
17 I do in the community is how can we improve this  
18 Police-Community relationship? A lot of the youth  
19 that I work with they don't trust even trying to  
20 report to the CCRB because they don't feel that it is  
21 accessible to them or they feel that they are not  
22 represented there. So uhm some of the conversations  
23 that you know as we've heard to date you know how can  
24 we improve this. The CCRB needs to look like the  
25 communities uhm so that they have the pulse of the

1  
2 City. They know what is going on in their community  
3 and they can actually reach out to the community so  
4 that they can bring them in and you know create some  
5 legitimacy as to the fact that you know they actually  
6 can be represented as a CCRB you know effectively.  
7 So, that's all.

8 CHAIRPERSON GAIL BENJAMIN: Ms. Conti-  
9 Cook.

10 CYNTHIA CONTI-COOK: Good evening, my  
11 name is Cynthia Conti-Cook. I'm an attorney at the  
12 Special Litigation Unit of the Legal Aid Society  
13 which is the largest public defender in New York  
14 City, we serve all five boroughs. We are also a  
15 member of Communities United for Police Reform. What  
16 I want to talk about tonight are three things and I  
17 apologize I don't have written testimony to submit to  
18 you today but I will get it to you.

19 CHAIRPERSON GAIL BENJAMIN: That's fine.

20 CYNTHIA CONTI-COOK: Uhm the three  
21 things that I want to talk about this evening are the  
22 conflicts between the law department and oversight  
23 agencies like the Civilian Complaint Review Board as  
24 well as the Board of Correction. Of course, this  
25 evening I will focus on the Civilian Complaint Review

1  
2 Board and how that impacts our work in terms of what  
3 is publically disclosed regarding Police Misconduct  
4 information and also what is disclosed throughout the  
5 criminal court discovery process. The second thing  
6 that I want to talk about is the independence of the  
7 CCRB and the third is the budget transparency. So, I  
8 want to start in talking about the conflict between  
9 the law department and the Civilian Complaint Review  
10 Board by discussing a little bit of history. So,  
11 when before I worked at the Legal Aid Society, I was  
12 a Civil Rights Attorney and fought for 7-1/2 years,  
13 more than 100 cases of Civil Rights of 1983 Federal  
14 Lawsuits and the opposing council in every single one  
15 of those law suits was the City Law Department. In  
16 2014, I moved to the Legal Aid Society and I  
17 initiated several FOIL requests. The CCRB in 2014  
18 had answered several of those FOIL requests and had  
19 responded with information about a summary of those  
20 officer civilian complaints and whether they were  
21 substantiated, unsubstantiated and what they  
22 recommended to the NYPD. Several months later, that  
23 process ended and we suddenly we found ourselves in a  
24 position where we had to litigate for the Freedom of  
25 Information Request that we had sent in and we began

1  
2 litigation and the responding, the opposing Council  
3 in that case was also the City Law Department. So,  
4 the City Law Department was responding not just for  
5 the Civilian Complaint Review Board, at the same time  
6 it was simultaneously representing all of the  
7 officers who have been sued for Civil Rights  
8 Violations. It is also representing the NYPD and  
9 that conflict I think needs to be addressed by this  
10 Charter Revision Commission. Uhm one of the other  
11 results of that if we, if we go back to about 2014,  
12 2015, so when the CCRB stopped responding to our FOIL  
13 requests and we began litigating against the City of  
14 New York for those FOIL requests, at the same time in  
15 criminal court, we saw the CCRB, this is not  
16 occurring now. This has past but for a period of  
17 time and because the law is unclear enough and the  
18 Charter is unclear enough for a period of time, the  
19 Civilian Complaint Review Board's General Counsel was  
20 coming in to criminal court and fighting every  
21 subpoena that we were issuing for police officer  
22 misconduct records. In cases where it was up to the  
23 judge as the gatekeeper, to decide whether or not  
24 those records were relevant and material in each case  
25 and it is because we even had a case where the judge

1  
2 had ordered that the subpoena be signed and that the  
3 CCRB information be turned over and the CCRB appealed  
4 the judge's order and they eventually withdraw that,  
5 that motion when we intervened but it was an example  
6 of how extreme this conflict can take an agency that  
7 is supposed to be an oversight agency and how far it  
8 can take it from its mission.

9 CHAIRPERSON GAIL BENJAMIN: Hold on, Dr.  
10 Chowdhury can I ask you to give the time that you  
11 didn't use to Ms. Conti-Cook?

12 LIZA CHOWHURY: Sure.

13 CHAIRPERSON GAIL BENJAMIN: Thank you.

14 LIZA CHOWHURY: Thank you. Uhm I will  
15 move to the other two points, uhm as was mentioned on  
16 the earlier panel, the independence of the CCRB is  
17 extremely important especially in their ability to  
18 serve officers. What partially caused the delay of  
19 the Initiation of the Disciplinary Proceeding against  
20 Daniel Pantaleo is the CCRBs inability itself to  
21 serve police officers with the charges it wants to  
22 bring. The, uhm issue about Budget Transparency in  
23 addition to what has already been mentioned, which of  
24 course we support, I want to add that the breakdown  
25 in the budget needs to happen also by command. We

1  
2 issued a website yesterday, capstat.nyc and in that  
3 website you can really analyze officers but overtimes  
4 and commands by overtime and the budget needs to also  
5 allow a breakdown by command so that it is very clear  
6 which commands are costing the City the most amount  
7 of overtime. I will leave it there, thank you.

8 CHAIRPERSON GAIL BENJAMIN:

9 Commissioners. Oh, I'm sorry no not commissioners,  
10 uhm, Ms. Corr.

11 PAULA GAVIN: Can I, are you, did you  
12 give written testimony my dear?

13 CHAIRPERSON GAIL BENJAMIN: No, no she  
14 did not. She is going to provide written testimony ...

15 CYNTHIA CONTI-COOK: I will.

16 CHAIRPERSON GAIL BENJAMIN: In the  
17 ensuing days. Mr. Corr.

18 BRIAN CORR: Uhm good evening. Thank you  
19 for having me here. I just came down from Cambridge,  
20 Massachusetts where I work as the Director of our  
21 Police Review and Advisory Board, our City's  
22 oversight agency and I am also serving as the  
23 president of NACOL, the National Association for  
24 Civilian Oversight of Law Enforcement. I think it is  
25 probably more in that capacity that I was asked to

1  
2 come down. NACOL represents approximately 70 Civilian  
3 Oversight Agencies of all types across the United  
4 States and about 1000 individuals who work in  
5 Civilian Oversight as staff, board members, and other  
6 capacities. And my own personal background, I am  
7 originally from Detroit, Michigan, grew up in an era  
8 in the 70s where we saw serious police misconduct  
9 have worked for the ACLU of Massachusetts as an  
10 organizer and have been working in Municipal  
11 Government for about 11 years. The things that I  
12 want to really focus on in my brief period here is to  
13 say that my philosophy around Civilian Oversight is  
14 that ultimately, we have the same goal, police  
15 Departments, communities has a whole want peaceful  
16 and just communities and where that falls short is  
17 often where civilian oversight has been asked to come  
18 in. But for Civilian Oversight to be successful  
19 there are many elements that are important and I will  
20 hopefully get a chance to touch on some of those  
21 during the questioning from the Commissioners but I  
22 will say that it is vital that procedural justice and  
23 legitimacy exists in oversight. Just as we demand  
24 that in our policing, we also demand that in  
25 oversight and it means that Civilian Oversight has to

1  
2 be impartial, it has to be fair, it has to look not  
3 just at back end accountability, looking at what went  
4 wrong and what should we do about it but also at  
5 front end accountability. How do we create systems  
6 within policing and within society that promote the  
7 type of policing that our communities need and  
8 deserve and so in my comments I also want to mention  
9 that the CCRB is very important but also the OIG,  
10 NYPD, the Office of the Inspector General for the  
11 NYPD is a very important element of oversight here in  
12 New York City. Uhm in Civilian Oversight we have to  
13 be looking at not just as I said what went wrong but  
14 what are the systemic issues and that's an important  
15 part of creating the type of police departments that  
16 we need. The other thing that I will mention that I  
17 think is very important is the role of trauma,  
18 individual trauma, community trauma, historical  
19 trauma and that trauma exists not just in the broader  
20 community or in the most oppressed communities but  
21 also within law enforcement and if we do not  
22 understand the role the trauma plays in interactions  
23 between individuals within the system issues, within  
24 law enforcement and in how law enforcement officers  
25 themselves experience trauma we will not make

1  
2 progress in this work so those are some of the key  
3 points and I look forward to the discussion.

4 CHAIRPERSON GAIL BENJAMIN: Great, thank  
5 you very much. Mr. uhm Mitchell.

6 NICHOLAS MITCHELL: Yes, uhm good evening  
7 my name is Nick Mitchell and I am the Independent  
8 Monitor of the Denver Police and Denver Sherrif  
9 Departments. I am also a New Yorker and in what  
10 feels like a lifetime ago I once worked for the CCRB.  
11 Uhm I'm an attorney and I suppose that I am here to  
12 talk with you about my experiences in, uhm in Denver.  
13 Uhm in these brief opening remarks I don't have  
14 sufficient time to comment on each of the proposed  
15 changes that are before you though I do have some  
16 thoughts that I am happy to discuss during the Q and  
17 A portion. Uhm so instead I wanted to propose a  
18 framework for you to think about each proposed  
19 change. As you contemplate each proposal, I suggest  
20 that you frame your inquiry around three principal  
21 questions. First, would the proposed change improve  
22 the independence and effectiveness of the oversight  
23 agency. Second, would the proposed change enhance  
24 the public's trust in the independence and  
25 effectiveness of the agency and third, what are the

1  
2 likely unintended consequences associated with making  
3 the proposed change. I believe if the answer to  
4 these three key questions will help you to determine  
5 what changes should ultimately be recommended for the  
6 City's Charter. Uhm I was asked to speak about  
7 Denver to help provide some text for your current  
8 process. Uhm and during my six-year tenure as the  
9 Independent Monitor in Denver on three occasions  
10 Denver's Charter or ordinances have been amended to  
11 address problems have arisen regarding the powers or  
12 independence of my office. For example, oversight  
13 agencies are sometimes rendered ineffective or less  
14 effective than they could be by legal provisions that  
15 are ambiguous about the authority of the oversight  
16 agency to obtain documents or information from within  
17 the Police Department. In Denver, we had a somewhat  
18 ambiguous legal provision that governed my access to  
19 information and perhaps better stated it was  
20 ambiguous about the Police and Sherrif Departments  
21 obligations to share documents and information with  
22 me upon request. Several years ago, after  
23 considerable friction regarding my access to internal  
24 documents, the law was changed to ensure that we now  
25 have much broader authority to access all documents

1  
2 and information within the departments that we  
3 oversee with some limited caveats. It is my  
4 understanding that one of the recurring issues here  
5 in New York for the Inspector General and possibly  
6 for the CCRB relates to ambiguity about what  
7 documents and information must be disclosed by the  
8 NYPD. If that is indeed an issue it would both  
9 undermine the effectiveness of the oversight agencies  
10 and the public's perception of their effectiveness  
11 and should be remedied by a change in the law.

12 Similarly, I note that several of the proposals  
13 before you relate to enhancing the independence of  
14 the CCRB and I haven't really yet seen proposals that  
15 address the independence of the Inspector General.

16 Many agencies including some Inspector General  
17 Agencies have created structures in which the  
18 Inspector General is truly independent and free from  
19 any appearance of possible political influence over  
20 his or her decision making. In New York the  
21 Inspector General is an official within the  
22 Department of Investigation and is subordinate to  
23 several layers of appointees within that agency.

24 That is, although the City has had hired an Inspector  
25 General and told the public that they will receive

1  
2 that person's unvarnished opinions and analysis about  
3 some of the most pressing public safety issues facing  
4 the City. That person has been embedded underneath  
5 several political appointees within DOI, all of whom  
6 could theoretically influence the reports issued by  
7 the Inspector General and I want to be clear. I know  
8 I have no time left. I have no cause to believe that  
9 any official within DOI would operate with anything  
10 other than good faith in the handling of the OIG or  
11 attempt to interfere with the IGs reports but I am  
12 thinking about the second question that I proposed  
13 earlier the public's perception of independence and  
14 effectiveness, this structure in which the IG is  
15 subordinate to several layers of political appointees  
16 could create doubt for the public about whether or  
17 not the IG is truly as independent as has been  
18 advertised. And that is an issue that I suggest you  
19 should grapple with during this process. Thank you.

20 CHAIRPERSON GAIL BENJAMIN: Thank you  
21 very much. Any questions from Commissioners? Uhm  
22 let's start with Commissioner Nori and move in a  
23 leftward direction.

24 SATEESH NORI: Thank you all for taking  
25 the time to come out here. Uhm Ms. Conti-Cook I too

1  
2 work at the Legal Aid Society. You are one of my  
3 heros I am embarrassed to say that we've never met  
4 but it's a big organization. I'm wondering if you  
5 could talk a little bit more about uhm the new or new  
6 to me the database that you've been working on and  
7 the impact of transparency or the issue of  
8 transparency in police misconduct and what that means  
9 and other initiatives uhm that address the lack of  
10 transparency within the NYPD?

11           CYNTHIA CONTI-COOK: Yes, thank you and  
12 and likewise, I am, I do forget how large 3000 people  
13 large organization can feel like. Uhm the reason I  
14 didn't bring up transparency earlier is because I'm  
15 not sure what, what solution there is within this  
16 Commission's preview. Civil Rights Law 50A is a  
17 State Law and is really the crux of the problem.  
18 With that said, the position that Public Defenders  
19 are in, in relation to this information and then I  
20 will move to the public but the position that the  
21 public defenders were in when I joined the Legal Aid  
22 Society in 2014 and began the work of building a  
23 database in 2015 which was available to defenders in  
24 2016, the purpose behind that was because our  
25 defenders when they were submitting their motions,

1  
2 uhm under 50A they have to submit a motion in order  
3 to have a Judge sign a subpoena and the things that  
4 the attorneys have to describe in the motion is why  
5 they believe there is an existence of police  
6 misconduct information in the custody of the NYPD or  
7 in the custody of the CCRB that would be relevant and  
8 material in their client's cases. Now, without  
9 having access to as much as a summary of that  
10 information, it is impossible for our attorneys to be  
11 able to describe the existence of records they can't  
12 access. Let alone their relevance and materiality in  
13 their case. To address that problem, of really  
14 arguing in the darkness for our client's ability to  
15 confront the people that are accusing them of crimes,  
16 we created the database which allowed our defenders  
17 to review the publically available information that  
18 there is about officers misconduct histories to the  
19 extent that it is described in documents external to  
20 a custody of the NYPD and external to the custody of  
21 the CCRB and that mostly was law suits, filed in  
22 Federal Court through 1983 allegations. To some  
23 extent that also included newspaper articles where  
24 officers are described as committing misconduct and  
25 the way that our defenders have been able to use this

1  
2 database in court is that they've been able to then  
3 point out the existence of some information about  
4 officer's misconduct and then use that information to  
5 argue that there is likely existence of misconduct  
6 records in the custody of the CCRB or the NYPD and  
7 therefore the Judge should sign the subpoena. Now  
8 the impact that it has on the public is that people  
9 who have been harmed by the police are not able to  
10 uhm to sort of have any sense of whether that was a  
11 bad day for an officer. Whether that was a mistake  
12 or whether this is a systemic problem and whether  
13 this is a problem that is not occurring because of an  
14 off day or something that they misinterpreted but  
15 because something that this officer has done. And  
16 really this work for me began when I was filing Civil  
17 Rights Complaints and I saw the same people come in  
18 to complain about the same squad of officers in the  
19 Brooklyn North Narcotics units over and over again  
20 who are abusing people repeatedly the same way and  
21 yet new people would come in reporting the same type  
22 of misconduct over and over. So, people are harmed  
23 and unable to know. The public is not able to engage  
24 in an informed debate because they are, they are  
25 prevented from knowing the context and the amount of

1  
2 information that the debate really requires. So, we  
3 can't sit here today for example and say you know  
4 what the Police Department isn't doing a very good  
5 job at disciplining Stop and Frisk as Mr. Albanese  
6 mentioned. We have no idea of what the average  
7 penalty is for an unlawful stop or frisk. And  
8 therefore, it is very difficult for the public to  
9 walk in and say we want more penalties for stop and  
10 frisk or different types of penalties. So those are  
11 some of the ways that the lack of ... (applause)... those  
12 are some of the ways that this lack of information  
13 harms, harms the people accused of crimes and harms  
14 of public.

15 CHAIRPERSON GAIL BENJAMIN: Reverend  
16 Miller. Uhm Council Member Albanese.

17 SAL ALBANESE: Mr. Corr you, you  
18 discussed the importance of Civilian Oversight which  
19 I agree with but in essence don't we have Civilian  
20 Oversight. We elect the Mayor, we elect the City  
21 Council, the Mayor appoints the Police Commissioner.  
22 The Mayor appoints members to the CCRB, the City  
23 Council appointments members to the CCRB, and if we  
24 don't like what they are doing, we can kick them out  
25

1  
2 in the next election, isn't that in essence Civilian  
3 Oversight (laughter).

4           BRIAN CORR: To answer your question  
5 Commissioner, I would say in the literal sense it is,  
6 in the practical sense for that oversight to be  
7 exercised effectively in the City as large as New  
8 York or many cities, even my own City you need to  
9 have an infrastructure that can actually do that work  
10 and also does need to be independent of the Police  
11 Department. Now I will say that it is very important  
12 that it be part of government to be able to exercise  
13 that oversight effectively you need entities that  
14 also report to the Mayor, to the City Council and can  
15 balance out that power but you have to have a  
16 structure with people who are trained in Civilian  
17 Oversight who understand investigations and who also  
18 can look at the systemic issues but ultimately I  
19 would say that Civilian Oversight is most effective  
20 when you have people who are able to focus on that as  
21 part of their work, are able to understand the  
22 broader picture of Civilian oversight can look at the  
23 history in a specific community and nationally and  
24 can really understand what are the standards? What  
25 is the type of training that both law enforcement

1  
2 officers get and Civilian Oversight Practitioners  
3 get? Civilian Oversight cannot be effectively  
4 exercised by an Executive individual or even a small  
5 cabinet but it has to be within an Agency that has  
6 independence, that has sufficient budget and that has  
7 the appropriate access. Uhm talking about Inspectors  
8 General in particular, one of the principals is  
9 unfettered access. If you look at the National  
10 Level, a Bedrock Principal and this is quoting the  
11 Council of Inspectors General from a May 2016 letter  
12 they sent to Senators McConnell and Reed federally, a  
13 Bedrock Principal Act of 1978 is that an Inspector  
14 General must have access to all agency records and  
15 information "which relate to programs and operations  
16 with respect to which that Inspector General has  
17 responsibilities under the Act." So, I bring that up  
18 because again to have effective Civilian Oversight,  
19 you have to have that level of access in an agency  
20 that is within the Government but is separate from  
21 and devoted to oversight.

22 SAL ALBANESE: But that's up to the  
23 political system or the Mayor or the City Council to  
24 create that infrastructure, correct?

1  
2           BRIAN CORR: I would, that would be my  
3 position in terms of something that can be effective  
4 in terms of having oversight of the police  
5 department.

6           SAL ALBANESE: And you pointed out  
7 something very important, that is that you need  
8 checks and balances. You need and entities that are  
9 independent of whatever agency like the City, have  
10 the City Council and the Mayor and they are checks  
11 and balances, right? We need the same thing with  
12 Agencies. The City Council if they did their job  
13 properly would also has oversight over the police  
14 department and the public safety committee so we have  
15 these things, these things in place. Now you  
16 mentioned the Inspector General uhm Ms. Cook referred  
17 to the Federal Monitor that I, that I mentioned, they  
18 both outside the police department, in your opinion  
19 is that a good vehicle for uhm for the checks and  
20 balances that we need. Just your opinion. You know.  
21 You are not a New Yorker I know but.

22           BRIAN CORR: I, but I try to be good  
23 anyway. So, you know I would say that in my opinion  
24 it's a vital part. It's not the only thing and in  
25 this particular model I think the Inspector General

1  
2 within DOI is an interesting model as Mr. Mitchell  
3 mentioned. There are a few layers. I would say a  
4 best practice would be for there to be either  
5 independence or quasi independence from DOI. I do a  
6 lot of work with the City of Chicago as they were  
7 creating a Deputy Inspector General for Public Safety  
8 about two years ago in the wake of everything that  
9 they have gone through. And so, they did create a  
10 DIG, a Deputy Inspector General within the Inspector  
11 General's Agency in order to be part of that umbrella  
12 and to have access but it is a bit different from the  
13 other Deputy Inspectors General in that Agency. The  
14 Budget and the staffing for the Deputy in General,  
15 the Deputy Inspector General for Public Safety was  
16 about  $\frac{1}{4}$  of the entire budget of the IGs Office in  
17 Chicago and also that particular position was  
18 something that you could not just dismiss the person  
19 at will but there had to be cause and the Council was  
20 involved in that so I think that to have an effective  
21 Inspector General that really has the independence  
22 because of the size of the police department.  
23 Because you are dealing with a multi-billion dollar  
24 budget, tens of thousands of sworn Law Enforcement  
25 Officers and more Civilians, you need to actually

1  
2 make sure that the Inspector General in this City  
3 which has oversight of the police department is able  
4 to have the independence and the resources to do that  
5 effectively and then with CCRB I will just add that  
6 I've reviewed some of the recommendations that they  
7 have made and I know that the Director will be  
8 testifying so I won't say a lot but I, I think the  
9 recommendations you are making are important about  
10 unfettered access, about the Budget being pegged to  
11 the police department budget, that really is being  
12 seen as a best practice in communities where you can  
13 do that so that whatever happens as the police  
14 department grows or shrinks as you bring in body worn  
15 cameras and video or other things that the oversight  
16 agency has the ability in the Budget and the staffing  
17 to manage that, to do it's oversight effectively.  
18 Uhm I will stop with that because I could go on and  
19 on.

20 SAL ALBANESE: I, one more question of  
21 Professor Chowdhury?

22 LIZA CHOWDHURY: Yes.

23 SAL ALBANESE: I'm always puzzled by  
24 this. We have, you mentioned and you did an  
25

1  
2 assessment of your students and they had a very  
3 negative view of the police. Uhm, correct?

4 LIZA CHOWDHURY: Well, they distrusted.

5 SAL ALBANESE: They distrusted the  
6 police. Now every poll that I have seen over the  
7 last nine or ten years, the findings were that 70% of  
8 the minority's communities, people of color had a  
9 favorable view of the police? How did we?

10 LIZA CHOWDHURY: Had a favorable?

11 SAL ALBANESE: A favorable view, yes.  
12 (background noise).

13 LIZA CHOWDHURY: Which po... I'm sorry, I'm  
14 not aware of the poll that you are dis...

15 SAL ALBANESE: No there's a, there are a  
16 number of polls and I can send them to you but...

17 LIZA CHOWDHURY: I mean uhm if we look at  
18 studies and understand systemic trauma and the  
19 relationship between black and brown communities and  
20 the police, we know there is a historical kind of  
21 layer right of what has gone and the distrust and  
22 where it comes from right? We are not far from that,  
23 I mean I don't have to bring out the cases like  
24 Michael Brown, Eric Garner. Right here in New York  
25 City we have a lot, right. I've seen videos of young

1  
2 people walking home from school. I, i work with kids  
3 that walk home from school and are sometimes you  
4 know, you know kind of ostracized by the police not  
5 for doing anything just maybe not saying Hi, or not  
6 looking approachable, whatever it is, right? I work  
7 in the community. Like I'm with the kids, right and  
8 for me it's problematic when uhm I teach criminal  
9 justice and I used to be a law enforcement officer  
10 for 10 years, I used to be a probation officer for  
11 the State of New Jersey. I know how important it is  
12 to have a good, a good relationship with the  
13 community, so that the young people that we work with  
14 trust us, right. So, we need transparency. We need  
15 oversight, we need the Civilian Review Board to  
16 actually look like the community, because right now  
17 the way it looks it's not accessible to them. They  
18 don't feel comfortable reporting complaints and  
19 things like that. (applause). So, so uhm I'm not  
20 sure of the, of the poll that you are referring to  
21 but I know there are several studies. You can look  
22 at everything, policing, black and brown lives. He  
23 has a huge talk about Oakland. We can look at New  
24 York City's history we just have right now. You  
25 already know we are under. All of this is coming out

1  
2 because people are dissatisfied and my concern is as  
3 a professor who teaches criminal justice, I'm  
4 teaching future officers. I worry about their  
5 safety, right, because when they are being  
6 legitimized, when they are working out in the  
7 community because there is no trust in them right  
8 now. How can they do a good job, even for the ones  
9 out there trying to do a good job, right and then for  
10 the community because I'm worried about these kids  
11 that don't feel comfortable reporting to the police  
12 and so they are walking around carrying guns because  
13 they don't feel safe. Let's get real so you know I  
14 just think that. So, growing up in a black and brown  
15 community. Growing up in a predominantly working-  
16 class community, I have a different world view and  
17 you know as far as my research is concerned, uh for  
18 the population that usually work with. Our young  
19 people that are in gangs and you know young people  
20 that live in these types of communities. I work  
21 right now in Harlem with the Live and Redemption  
22 Youth Opportunity Hub and you know I do a lot of work  
23 in Patterson, New Jersey. You know so, I know what  
24 these kids fear, right? And I would love for the to  
25 feel safe in their community and one of the ways to

1  
2 do it is legitimizing it by having transparency with  
3 the CCRB that is representative of them and they feel  
4 that it is accessible to them. So that is just my  
5 take on it. (applause).

6 CHAIRPERSON GAIL BENJAMIN: Council, jazz  
7 hands. Council Member Fiala.

8 STEPHEN FIALA: Thank you Madam Chair and  
9 thank you to each of the panelists for those who  
10 traveled from outside of New York. We thank you for  
11 visiting us and we thank all of you for attending  
12 tonight. Uhm. You know Professor I would say you  
13 are very eloquent and uhm the issue of trust I don't  
14 think is lost on anybody today because it seems to me  
15 that your colleagues in the university or college  
16 setting, regardless of what area they teach. Let's  
17 take Law Enforcement out of the mix, right. You go  
18 into any other profession and I imaging the students  
19 would say the same thing about that area of vocation  
20 because it seems that over the last half century, uhm  
21 our trust as a people in institutions, government,  
22 religious and otherwise has been on a downward trend.  
23 So, trust is very important, I agree with you there.  
24 Uhm but that is a tough concept, right. In the  
25 abstract it is easy when you then try to get into the

1  
2 specifics okay what does that mean. So, my questions  
3 if I could uhm start with Mr. Mitchell, you used the  
4 word independence a few times. Independence is a  
5 great word. We all like to think that we are more  
6 independent. We all kind of support the notion of  
7 independence. It's a bold word. For most people I  
8 think they perceive it as a good thing. But what  
9 does it truly look like? Alright how do you go from  
10 that abstraction notion of an independent, external  
11 review board for placing? Uhm how do you go from the  
12 abstract to the specific, what in your view  
13 constitutes true independence and if you could to the  
14 extent that you can, specifically with regard to New  
15 York City, what's lacking right now that if these  
16 things were addressed would suddenly equate to okay  
17 now we have true independence of this external review  
18 board.

19                   NICHOLAS MITCHELL: So, thank you for  
20 that question. Uhm I guess my first point would be  
21 I, I don't know that there is one thing lacking, you  
22 know in light of the testimony that has already been  
23 provided tonight. I think there are probably several  
24 areas that are lacking uhm you know that may be  
25 necessary to to create the kind of independence that

1  
2 the people in the City appear to be calling for. Uhm  
3 when I use the word independent, I was speaking  
4 specifically about the Inspector General and the, the  
5 structure in which that official is you know  
6 subordinate to several layers of other sort of  
7 political appointees and that and that seems to me to  
8 be a relatively obvious potential independence  
9 problem in light of the somewhat politically charged  
10 nature of the work and of the reporting being done  
11 by, by necessity by an Inspector General's Office of  
12 the, of the NYPD. So, I think there are, you know  
13 when I use the word independent, I was referencing  
14 the IGs office in particular. You know there are  
15 probably a number of steps that could be taken to  
16 enhance both the actual independence of the CCRBs as  
17 well as the publics perception of its independence.  
18 I thank you for some of those tonight and I don't  
19 know if we have time to go through all of them. Uh I  
20 certainly sympathize with the Democratic kind of  
21 impulse that we have heard about in terms of you know  
22 an elected CCRB though I have some potential  
23 reservations about the unintended consequences  
24 associated with having an elected board. But I, but  
25 I do believe that is needed to be taken to enhance

1  
2 the public's perception of the independence of that  
3 body.

4           STEPHEN FIALA: So, could I ask each of  
5 you, your thoughts on an elected you, you have some  
6 concerns with unintended consequences. Mr. Corr, I  
7 don't know if I caught you agreeing but I would love  
8 to hear your thoughts on that as well, right? We  
9 know what, we know what is intended, right? We don't  
10 ever spend enough time on what are the unintended  
11 consequences. What other types of things could  
12 result? So, if any of you feel comfortable enough  
13 that you want to approach this question, I'd be  
14 grateful.

15           BRIAN CORR: Well I'd be happy to start  
16 off and I think that yes, unintended consequences are  
17 very important. I will say I am not an attorney so I  
18 don't necessarily have that worst-case scenario  
19 thinking that is very valuable in an attorney  
20 perhaps. But I do think specifically when we are  
21 thinking about civilian oversight and unintended  
22 consequences. I would put those in two broad  
23 categories, considering the proposals that I am aware  
24 of that have been made and with no disrespect to  
25 people who are here in New York City who are doing

1  
2 this work and who are living the struggle. I would=  
3 say that the main challenge I see around an elected  
4 Civilian Review Board is that once you have a group  
5 of people that are elected that have oversight of the  
6 police department there will be many, many forces  
7 locally and nationally. You've got I believe four  
8 very powerful police unions; you've got a National  
9 Federation of Police. There will be lots and lots of  
10 effort to make those elections turn out the way that  
11 those forces want and as someone who personally comes  
12 out you know a lefty political organizing background  
13 and that is really where my heart is. I also have  
14 learned that the believe often in the communities  
15 were better organizers and we will out organize the  
16 opposition and I think that the biggest unintended  
17 consequence of having an elected Civilian Review  
18 Board would be that it would become political, again  
19 not to disparage anyone or pick on anyone but I know  
20 a comment earlier about it shouldn't be politicians  
21 who are doing this. Well if you have an elected  
22 review board it is by its very nature, political and  
23 they are politicians. And I'm not opposed to  
24 politicians. The other big unintended consequence  
25 that I see from some of the proposals that have been

1  
2 made is actually around binding recommendations and I  
3 wouldn't say that I or NACOL has an absolute position  
4 on this but one of the challenges when you have  
5 something where you have binding recommendations that  
6 are outside of the command structure is you've got  
7 people who are managed within that paramilitary  
8 policing structure but the discipline is separate and  
9 again in the abstract that could sound really great  
10 but the reality is there are many unintended  
11 consequences and this sort of when you know when you  
12 squeeze the balloon it pops out some place else so I  
13 think people have to be very careful as they are  
14 contemplating what would be the actual results of say  
15 giving the OIG, NYPD or the CCRB absolutely binding  
16 power on specific recommendations about misconduct or  
17 on broader recommendations about systemic changes.  
18 Uhm I will stop with that.

19 CHAIRPERSON GAIL BENJAMIN: Reverend  
20 Clinton Miller.

21 REVEREND CLINTON MILLER: Thank you.  
22 Thank you very much Madam Chair. I think  
23 Commissioner Fiala brings up a very interesting  
24 dynamic that might give us traction on how to resolve  
25 some of these issues regarding trust, how do you

1  
2 transform the abstract to the specific? How do you  
3 make this look like something that we can all  
4 understand and practice? In my conversations with  
5 police officers and high ranking brass there is an  
6 unspoken pedigree requirement so that, that ends up  
7 looking like a police officers father was a police  
8 officer and grandfather was a police officer and  
9 there is a very inherent distrust for people of  
10 color, not to become police officers, have there been  
11 any studies done and Mr. Corr you mentioned not only  
12 working on the back end of police misconduct but  
13 working on the front end of being proactive. Have  
14 there been any studies that could try to translate  
15 how hiring could become easier with the, the result  
16 of the police force being reflected of the population  
17 in the five boroughs more so than it is right now.

18 BRIAN CORR: So, I will use the  
19 opportunity to first say I'm not an academic and I  
20 don't have studies that I can cite so I will, I will  
21 try to respond to the heart of your question. Uhm in  
22 terms of reflecting communities, I'm going to say  
23 something that I want everyone to really think about.  
24 We often hear rightfully so that we want our police  
25 departments to look like our communities. We think

1  
2 about where people live. We think about what their  
3 ethnicity is. We think about their family background  
4 which is very important. I rarely hear anyone say  
5 and we want police departments that are 50% female.  
6 I think the biggest thing that we can do to change  
7 policing in this country is to have a balance between  
8 overall you know understanding gender is changing in  
9 our society. Men and women have much more of a  
10 balance. Not because women are inherently different  
11 from men but the socialization that men and women  
12 undergo is different. The standards that we hold  
13 women and men to are different and if we want to  
14 change policing, if we want to reduce the use of  
15 force, whether it is lawful or not we should change  
16 that aspect of policing. The other thing that I will  
17 say, related to this is what when you talk about  
18 multi-generational police families and a lack of  
19 trust that police may have of people who don't have  
20 that background experience. This is here I go back  
21 to trauma. There is a different but shared  
22 experience of trauma. And I think that people in law  
23 enforcement are becoming increasingly aware of this.  
24 They are looking at the role that trauma plays around  
25 bad decision making, around shortened life

1  
2 expectancies and increasingly understanding why  
3 police officers and police systems make bad terrible  
4 decisions. Decisions that take people's lives  
5 needlessly. Not just law enforcement officer's lives  
6 of course but the lives of people all over this  
7 country, especially black and brown people and young  
8 people and at the same time we have to look at how  
9 trauma has affected our communities and officers have  
10 to understand that. They have to understand the  
11 history so I would say those are my big two buckets.  
12 So not really directly answering your question but we  
13 have to look at the gender composition of our police  
14 department and change that radically and we also have  
15 to look at the role of individual and multi-  
16 generational trauma and how that sets up, sets up  
17 this terrible cycle of violence and mistrust from  
18 the, I hate to say both sides because that is a toxic  
19 term these days in our society but from these  
20 different parts of our community, the police  
21 department, law enforcement, the community activist,  
22 the every day residence, the government officials.  
23 All of us have to be taken out of that cycle of  
24 trauma and violence.

25 CHAIRPERSON GAIL BENJAMIN: Mr. Caras.

1  
2 JOHN CARAS: I, just if you could all  
3 perhaps. First of all, I want to thank everyone. I  
4 think this is great. Uhm the Police Commissioner.  
5 We haven't said anything about the Police  
6 Commissioner. In New York City, appointed solely by  
7 the Mayor, only can be removed by the Mayor. Or the  
8 governor under some circumstances. Should that  
9 change? (background noise).

10 BRIAN CORR: Should it change in, in what  
11 respect? The elec...

12 JOHN CARAS: Should there be somebody you  
13 know should the Police Commissioner be accountable to  
14 more than just the Mayor? Should there be advice and  
15 consent? Should there be a term? Well there is a  
16 term a five-year term but I think the Council has  
17 proposed a three-year term where they have to come  
18 back to the Council in three years and therefore you  
19 know if their rate of disc... ignoring the CCRB  
20 Discipline is 95% they would have to answer that  
21 after three years. You know? I'm just asking for  
22 your thoughts on that. You know it is sort of the  
23 other end of the equation?

24 BRIAN CORR: Sure, well you know I think  
25 your question sort of relates back to the question

1  
2 about political accountability uhm earlier from the  
3 Commission and yes, clearly, the sort of political  
4 oversight of the police department is an important  
5 component. It is not the same thing as I think Mr.  
6 Corr mentioned. It is not the same thing has  
7 Civilian Oversight. It is political oversight by the  
8 political branches and uhm it is sort of policing is  
9 a critical municipal function that I think sort of  
10 belongs with the Mayor's office but the Council has a  
11 very important role to play in overseeing the way in  
12 which the policing function is executed in the City  
13 of New York and that would and should include tough  
14 questions about things like some of the statistics  
15 that we've heard on the first panel about the rate at  
16 which the police commissioner is or is not accepting  
17 the CCRBs findings for discipline. It could and  
18 should include you know very tough political  
19 oversight form the City Council associated with a  
20 whole variety of functions of the Police Department  
21 and how they are being carried out. Uhm whether that  
22 equates to changes you know in the, in the advice and  
23 consent process. I mean that seems like it would  
24 make sense to me. I'm not sort of taking a position  
25 on behalf of my agency but my personal perspective I

1  
2 think it would make sense to involve the City Council  
3 at both sort of the front end in the appointment  
4 process and on you know the back in over... in  
5 overseeing the performance of the Commissioner and so  
6 I would support those kinds of proposals.

7 CHAIRPERSON GAIL BENJAMIN: That's not  
8 mine. Ms. Conti-Cook I had a couple of questions.  
9 Okay I had a couple of questions for you. You spoke  
10 about the law department and their role in  
11 representing perhaps you would say too many clients  
12 at the same time and wearing too many hats. Uhm  
13 within the process of police accountability and  
14 discipline. Could you elaborate on how you think  
15 that could be handled in a better way and whether you  
16 think there is a need for some other type of legal  
17 representation within that system?

18 CYNTHIA CONTI-COOK: Yes and thank you I  
19 did not get to sort of close that loop and offer what  
20 I think could be the recommendation and the  
21 recommendation would be to allow the Civilian  
22 Complaint Review Board and other types of oversight  
23 agencies to elect a Conflict Counselor or have  
24 Conflict Counsel where they could ask for legal  
25 advice or legal representation from law firms outside

1  
2 the law department of the City of New York and so  
3 both of the things that were, that are happening were  
4 the CCRB, it interpreting 50A along the lines of the  
5 City Law Department and is interpreting its  
6 disclosure duties under subpoenas. I think both of  
7 those legal interpretations were made directly  
8 because the law department was sort of dictating how  
9 they interpreted Civil Rights Law 50A.

10 CHAIRPERSON GAIL BENJAMIN: And my second  
11 question has to do with something the prior panel  
12 brought up which is that and this is for you and the  
13 other members that there are other officers who are  
14 not represented in under CCRB such as Peace Officers,  
15 School Safety officers. Do you know of any example  
16 where officers other than police officers are  
17 disciplining for those officers are handled through a  
18 CCRB type process?

19 CYNTHIA CONTI-COOK: In another  
20 jurisdiction?

21 CHAIRPERSON GAIL BENJAMIN: Yes.

22 CYNTHIA CONTI-COOK: I'm not aware, no.

23 NICHOLAS MITCHELL: So, in Denver,  
24 Colorado as I mentioned at the beginning, I'm the  
25 Independent Monitor of the Denver Police Department

1  
2 and the Denver Sherrifs Department. The Sherrifs  
3 Department in Denver does not have a patrol function  
4 so it does not patrol its officers do not patrol the  
5 streets. They run the jails, they run courthouse  
6 security, the run the vehicle impounds lots and other  
7 kind of associated processes and so through my office  
8 we, oversee the investigation of both police officers  
9 and in effect Sherrifs Deputies who are really quasi  
10 kind of correction officers.

11 CHAIRPERSON GAIL BENJAMIN: And do they  
12 also hand the discipline of other police personnel  
13 such as 9-1-1 operators or?

14 NICHOLAS MITCHELL: We do not, our  
15 jurisdiction is limited to sworn employees of the  
16 police department and the sherrifs department for  
17 civilian employees. There are there is a separate  
18 process handled by the Department for investigating  
19 and disciplining Civilian Employees.

20 BRIAN CORR: And if I may uhm there are  
21 so many different models. Every place is different  
22 but I know for example, Milwaukee, they have a police  
23 and fire commission and so in Milwaukee you have one  
24 agency that has oversight both of the police and of  
25 the fire department and it may not occur to a lot of

1  
2 people but they actually gets lots of complains about  
3 people on the fire department and again thinking  
4 about what fire fighters go through and the trauma  
5 they experience and how they may inappropriately.  
6 You can imagine there are a number of issues that  
7 come up, so, uhm and that's something that we can  
8 certainly at NACOL I could go back and talk to my  
9 colleagues around the country and find out which  
10 agencies have that kind of multi-jurisdictional  
11 oversight.

12                   CHAIRPERSON GAIL BENJAMIN: I'd be really  
13 interested in anything you could supply us with.  
14 That came up from a prior panel and I was, it had  
15 never occurred to me and was not aware uhm of the  
16 discrepancies. But thank you very much, are there  
17 other questions for this panel?

18                   PAULA GAVIN: Can I just say something?

19                   CHAIRPERSON GAIL BENJAMIN: Yes.

20                   PAULA GAVIN: I want to say that I  
21 learned so much listening to all of you tonight. The  
22 first panel and the second panel. I learned a lot  
23 and it made me think about things in a very different  
24 way and I want to thank all of you for taking the  
25 time.

1  
2 CHAIRPERSON GAIL BENJAMIN: Are there any  
3 other questions for this panel? If not, I thank you  
4 very much and I hope that we will be in touch with  
5 you in the days to come. Thank you very much.

6 (applause). (long silence, background noise).

7 (gavel pounding).

8 UNIDENTIFIED: I say give it a couple of  
9 raps and tell people to start finding your seats  
10 we've got the next panel here.

11 CHAIRPERSON GAIL BENJAMIN: (gavel  
12 pounding). Excuse me we have one more panel to go  
13 folks and so if you could start finding your seats.  
14 (silence). And for our final panel. We will be  
15 joined by Deputy Commissioner Kevin Richardson and  
16 Oleg Chernyavsky, how badly did I mangle it as well  
17 as Jonathan Darche or Darche.

18 JONATHAN DARCHE: Darche.

19 CHAIRPERSON GAIL BENJAMIN: From CCRB.  
20 Please go ahead and introduce yourself and share any  
21 comments that you may have. Uhm let us start with  
22 Mr. Darche.

23 JONATHAN DARCHE: Thank you Madam Chair.

24 CHAIRPERSON GAIL BENJAMIN: Uhm you need  
25 to turn your mic on. When the red dot is on.

1  
2 JONATHAN DARCHE: Thank you Madam Chair.  
3 My name is Jonathan Darche and I am the Executive  
4 Director of the Civilian Complaint Review Board or  
5 CCRB, an independent City agency that investigates,  
6 prosecutes and mediates complaints of misconduct  
7 filed by Civilians against the New York City Police  
8 Department, against members of the New York City  
9 Police Department. Thank you to the 2019 Charter  
10 Revision Commission for inviting me to speak about  
11 some of the proposed City Charter changes related to  
12 police accountability. The CCRB is committed to a  
13 fair, transparent and robust system of police  
14 accountability in New York. However, there are a  
15 number of challenges to achieving that goal that  
16 would be greatly diminished by making four changes to  
17 the City Charter. First to codify the CCRBs  
18 Administrative Prosecution Unit. Second to enable  
19 the board to designate subpoena, the power to sign  
20 subpoenas to the agency's highest-ranking staff.  
21 Third to better define the department's duty to  
22 cooperate with the agency with our request for  
23 information and documented related to policy,  
24 outreach and operational support. And finally, to  
25 amend the CCRB Budget to be 1% of the NYPD's Budget.

1  
2 I can provide more detail on any of our  
3 recommendations, achievable Charter Revisions that we  
4 think would help strength the CCRB but for tonight I  
5 will limit my focus to two important areas  
6 codification of the APU and the NYPDs Duty to  
7 Cooperate. The work of the APU is governed by a 2012  
8 Memorandum of Understanding between the NYPD and  
9 CCRB. The first unit of its kind in the United  
10 States and heralded is a significant step for police  
11 oversight by local elected officials and advocates.  
12 The APU prosecutes nearly all of the cases in which  
13 the board recommends charges and specifications, the  
14 most serious disciplinary recommendation. Since the  
15 creation of the APU, the CCRB has administratively  
16 prosecuted officers for misconduct at 374 trials, as  
17 evidenced by the APUs current prosecution in the  
18 Pantaleo case, the APU was a vital part of a  
19 disciplinary process for officers who commit  
20 misconduct. Amending the City Charter to codify the  
21 APU will ensure that this independent and effective  
22 tool for Civilian Oversight will continue.  
23 Similarly, better defining the NYPDs Duty to  
24 Cooperate would enable the established cooperation  
25 between agencies to continue regardless of leadership

1  
2 changes at either agency. The charter currently  
3 requires that the NYPD cooperate with CCRB  
4 investigation, relax any specific language requiring  
5 the Department to Cooperate with prosecutions or the  
6 agencies operational capabilities. Further, while  
7 there is no current charter requirement for the  
8 Police Commissioner to defer to the CCRBs Findings of  
9 Fact Recommendations for Discipline there is also no  
10 requirement for the Commissioner to explain his or  
11 her reasons when downwardly department, Madam Chair  
12 do you mind if I?

13 CHAIRPERSON GAIL BENJAMIN: No, please  
14 continue.

15 JONATHAN DARCHE: Thank you ma'am, when  
16 downwardly departing from the CCRBs findings and  
17 recommendations including a provision in the Charter  
18 to require the Police Commissioner to document the  
19 CCRB, the case specific, factual and legal reasoning  
20 for downward departures would help hold the Police  
21 Commissioner accountable for disciplinary decisions  
22 regardless of the person in the role. That's its  
23 ma'am.

24 CHAIRPERSON GAIL BENJAMIN: That's all?

25 JONATHAN DARCHE: Yes ma'am.

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CHAIRPERSON GAIL BENJAMIN: Are you sure?

JONATHAN DARCHE: Yes ma'am.

CHAIRPERSON GAIL BENJAMIN: I'm giving you an extra minute so you can take it if you want.

JONATHAN DARCHE: I welcome the opportunity to answer any questions from the Commission.

CHAIRPERSON GAIL BENJAMIN: Okay. Mr. uhm Churn... you sed.

OLEG CHERNYAVSKY: Sure, I may have to take that extra minute so I hope that.

CHAIRPERSON GAIL BENJAMIN: If he will give it. So, he actually has it he. (laughing).

OLEG CHERNYAVSKY: Good evening Chair and members of the Commission I am Oleg Chernyavsky, Executive Director of the Legislative Affairs Unit of the NYPD. I am joined here today by Deputy Commissioner and Department Advocate Kevin Richardson. On behalf of Police Commissioner O'Neill, I'm pleased to offer a comment on our internal discipline process and our shared goals of increasing transparency into this process. While I've submitted a lengthier statement in the interest of time, I would like to highlight recent action the

1  
2 Police Commissioner has taken to improve the  
3 Department's Discipline Process and our push for  
4 greater transparency into the process before speaking  
5 to some of the Charter Revision Proposals. As part  
6 of his continuing effort to better the department,  
7 Commissioner O'Neill last year, took the  
8 unprecedented step of commissioning an external panel  
9 of criminal justice experts to examine the  
10 department's internal discipline process. Thought  
11 the panel noted that there was no evidence of a lack  
12 of fairness it made a number of important  
13 recommendations which the Commissioner immediately  
14 accepted. He quickly formed an implementation group  
15 chaired by the First Deputy Commissioner and a number  
16 of the Department Executives to guide the effective  
17 implementation of these recommendations. Some of  
18 which the department was already in the process of  
19 addressing. For example, taking steps to expedite  
20 the disciplinary timeline and assessing the  
21 feasibility of adopting a disciplinary matrix to  
22 assist in the consistent application of discipline.  
23 Equally important with regard to transparency, the  
24 department strongly supports legislative efforts to  
25 amend rather than repeat Civil Rights Law 50A. Our

1  
2 goal for an amended 50A would permit us to release  
3 information of significant public interest including  
4 officer names, trial transcripts, trial decisions and  
5 final disciplinary outcomes concerning all serious  
6 misconduct that leads to the formal service of  
7 charges as well as cases involving improper use of  
8 force or improper searches, even if charges are ot  
9 served in those cases at the conclusion of a  
10 disciplinary process. This is information advocates,  
11 elected leaders and the public have long sought.  
12 Importantly, such an amendment would leave in place  
13 safeguards that protect police officers by allowing  
14 the Department to Assess and Address threats to  
15 officer safety prior to disclosing such records.  
16 Safeguards against disclosure of non-disciplinary  
17 personnel records, such as records dealing with  
18 changes to social status, absence from or tardiness  
19 at work and transfer requests and safeguards aims at  
20 protecting officers against harassment on the stand,  
21 reprisals, hostility and outright threats to their  
22 physical safety which has always been the intent of  
23 the law. We pledge to continue those efforts as  
24 their fruits will enable us to publicly demonstrate  
25 the effectiveness of our discipline process and build

1  
2 greater trust and confidence in the department. I  
3 now would like to brief comment on some of the  
4 Charter Revision Proposals. First granting the CCRB  
5 Prosecutorial Powers and making their decisions  
6 binding. As you are aware the department and the  
7 CCRB are participates in the agreement whereby the  
8 police commissioner had delegated CCRBs,  
9 administrative prosecution unit, the authority to  
10 process civilian complaints against NYPD officers  
11 that have been substantiated and for which the board  
12 has recommended charges and specifications. This  
13 agreement has been in effect since 2012 and stands as  
14 an excellent example of the effective collaboration,  
15 cooperation and respect, amongst, amongst our  
16 agencies. Although the commissioner can delegate  
17 portions of the discipline process as the legally  
18 vested administrator of the Department and its  
19 discipline. This delegation should not be codified  
20 or circumscribed as it effectively dilutes the police  
21 commissioner's authority by extinguishing his  
22 judgment in this final area of Department Governance.  
23 Judgment that has been exercise prudently by this  
24 commissioner and his predecessors who have reflected  
25 on their decades of police service to arrive at

1  
2 meaningful and fair discipline that creates a  
3 deterrent to future misconduct while at the same time  
4 preserving morale. Second, granting subpoena signing  
5 power to the CCRBs highest ranking staff. Currently  
6 the CCRBs Board may compel attendance of witnesses or  
7 doc... or production of documents by a majority vote  
8 via their existing subpoena power. It is important  
9 to note that the department routinely cooperates with  
10 the CCRB by providing witnesses and documents without  
11 the need for a subpoena. The Department does not  
12 have an objection the subpoena signatory authority  
13 being expanded to include the Executive Director of  
14 the CCRB in connection with cases where there is an  
15 active CCRB investigation based on a Civilian  
16 complaint; however, we would object to such an  
17 expansion which effectively eliminates the majority  
18 board vote safeguard against overly broad demands and  
19 demands for information that may not be relevant if  
20 the scope of CCRBs authority is expanded beyond its  
21 current charge. Third, the expansion of the  
22 Department's duty to cooperate with CCRB in relation  
23 to subjects that go beyond the scope of the  
24 investigations. Currently the Charter mandate that  
25 the Department cooperate with the CCRB in connection

1  
2 with investigations that the CCRB is conducting  
3 pursuant to its legal authority. While the  
4 Department will continue to encourage a healthy  
5 working relationship that goes beyond the strict  
6 bounds of the Charter, we, as we did with the  
7 creation of the APU we do not support such an  
8 expansion of the CCRBs authority. As the members of  
9 the Commission are aware the Department is the  
10 subject of multiple oversight entities to include the  
11 Office of the Inspector General, Department of  
12 Investigation, District Attorneys, US Attorneys, a  
13 Federal Monitor, the Commission to Combat Police  
14 Corruption, the City Council, and of course the  
15 public, allowing an expansion of the CCRBs Legal  
16 Jurisdiction to include prosecution and policy review  
17 would be duplicative of existing oversight frameworks  
18 and create a significant unfunded burden to the  
19 Department.

20 CHAIRPERSON GAIL BENJAMIN: Could you  
21 just summarize, your last points?

22 OLEG CHERNYAVSKY: Sure, I have two more,  
23 right, mandate that the CC, the CCRBs Budget be  
24 fixed, a fixed percentage of the NYPD's Budget. It is  
25 our position that every City Agency has a duty to put

1 forward the justifications for their expenditures and  
2 their future needs and those and those are the needs  
3 uhm that should be evaluated. Tying an Agency's  
4 Budget to the NYPD's Budget we do not believe is, has  
5 a rationale correlation to the needs of any  
6 particular agency. With respect to establishing set  
7 timelines for various aspects of the discipline  
8 process. As the department has done prior to the  
9 Blue Ribbon Panel being commissioned as well as based  
10 on the Blue Ribbon Panel's recommendations we are  
11 already in the process of streamlining our current  
12 discipline process as well as implementing the  
13 recommendations of the Blue Ribbon Panel and will  
14 continue to do so; however, there are many variables  
15 that are unique to each discipline case that guide  
16 the timing of that particular case which could  
17 include adjournments requested by the subject of the  
18 discipline and it could include requests for stays in  
19 the prosecution of discipline cases by whether, by  
20 either state prosecutors or US attorneys. So, we  
21 would ask that the codification of timelines not,  
22 that they not be codified in law but rather left to  
23 policy. With that, thank you for listening to our  
24  
25

1  
2 comments, and we, we are happy to answer any  
3 questions you may have.

4 CHAIRPERSON GAIL BENJAMIN: Thank you  
5 uhm, Mr. Richardson.

6 KEVIN RICHARDSON: Yes ma'am.

7 CHAIRPERSON GAIL BENJAMIN: What say you?

8 KEVIN RICHARDSON: I say I'm ready to  
9 answer any questions that this Commission, uhm this  
10 Council has for me.

11 CHAIRPERSON GAIL BENJAMIN: Okay,  
12 questions from my fellow Commissioners? Mr. Fiala.

13 STEPHEN FIALA: Thank you uhm  
14 Commissioner, Executive Directors, thank you for your  
15 being here tonight. Uhm. In listening to your  
16 testimony, I glean from your words that there seems  
17 to be discussions taking place which are addressing  
18 many of the issues that we've been dealing with. Uhm  
19 that there is an ongoing relationship where  
20 apparently the two sides can come together and talk  
21 about making needed changes as these uhm these areas  
22 unfold. This is a 2012 Memorandum of Understanding,  
23 I realize that that was what six or seven years ago,  
24 it is not a lot of time, in order for an entity in  
25 New York City or any bureaucracy to get its full sea

1  
2 legs. So I think it is fair to say that we are  
3 probably still in the early stages of getting this  
4 entity to a place where everyone believes, oh it is  
5 really maximizing it's potential, am I right that  
6 there is ongoing dialog and that there are some big  
7 ticket areas where you seem to be willing to meet on  
8 that bridge and I would assume and correct me if I am  
9 wrong, I would assume that would simply mean amending  
10 the existing Memorandum of Understanding as opposed  
11 to looking toward Legislative fixes other than and  
12 this is the second area of inquiry, it seems to me  
13 based on your testimonies as well as the two subse..  
14 the two previous panels, Lord please, no subsequent  
15 panels. Uhm that 50A, Civil Rights Law 50A is a  
16 significant impediment. That is a state law if I am  
17 correct. There is, there are some real serious  
18 issues around that so you couldn't just snap your  
19 fingers and do all the things that folks want today  
20 because there is that wall that quite frankly needs  
21 to be addressed. So, if I could I realize this has  
22 been a very convoluted set of questions here. Are  
23 you guys uhm working in tandem to try and effectuate  
24 some reforms on your own through amending the  
25 existing memorandum and uhm are you all on the same

1  
2 page with respect to the fixes that we are alluded to  
3 with 50A in, in your testimony. For anyone who want  
4 to jump in first.

5 KEVIN RICHARDSON: So uhm with respect to  
6 the ongoing relationship, I think you are correct,  
7 although it has been since 2012, six years, uhm  
8 important to note that it spanned two Administrations  
9 and three Police Commissioners so there is a  
10 commitment that uhm crosses Administrations and  
11 crosses the heads of our Department to uhm to the  
12 Memorandum of Understanding and the framework around  
13 it. Uhm I think we have and I'll let Executive  
14 Director Darche comment after me. I think the  
15 relationship is productive, it's constantly uhm being  
16 reviewed. I think we speak with one another on a  
17 regular basis and uh meaning our agencies work  
18 together and we resolve any issues or try to resolve  
19 any issues that may come up. With respect to 50A, I  
20 think you're correct that it is a state law. With  
21 respect to Commissioner O'Neill he has attempted uhm  
22 to be more transparent within the bounds of the  
23 existing law by uhm by attempting to release body  
24 worn camera footage that was the subject of  
25 litigation. Recently we have a favorable court

1  
2 decision that permitted the release of body worn  
3 camera footage in the sense that it didn't classify  
4 it as 50A personnel records. We also uhm the  
5 Commissioner also tried to release data that would  
6 provide greater transparency into our discipline  
7 process that would include having some cases so the  
8 reader, the public would be able to not only see  
9 numbers and statistics of how many cases are coming  
10 in and what kind of bucket it falls into but they  
11 could also get a feeling of what are the cases about  
12 and could compare and contrast cases. That, that  
13 attempt is the subject of current litigation and the  
14 subject of the stay. So, what we are left with is to  
15 be able to be as transparent as possible within the  
16 bounds of the law. We are committed to lobbying in  
17 furtherance of an amendment to 50A that would offer  
18 the protections that I mention because 50A should not  
19 be repealed and I, I need to say that as clearly as  
20 possible because I think what often times gets  
21 conflated is the need for greater transparency into  
22 our discipline process with, with the safeguards that  
23 are created by 50A. We can have both, we don't need  
24 to throw away the safeguards that are afforded to our  
25 officers at the cost of transparency. We could

1  
2 actually amend the law that could give greater  
3 insight into discipline records while at the same  
4 time maintaining the purpose of that law which was to  
5 protect officers against harassment because at the  
6 end officers testify. There are many, there are many  
7 folks that are protected by 50A, many correction  
8 officers, fire department but police officers are  
9 unique in the sense that police officers routinely  
10 testify in court as a function of their duty and what  
11 we're, and what 50A was built around was not to  
12 conflate the charges being brought against an  
13 individual that is being tried in a criminal case  
14 with the harassment of an officer and digging up  
15 irrelevant accusations against an officer and  
16 diverting the attention of the juries away from the  
17 subject of the trial and on to a police officer. So  
18 that's what rule 50A was actually built for and that  
19 part of 50A should remain as well as the protections  
20 against personnel records, you know that are, not  
21 connected to discipline at all. The things that are  
22 just generally aren't of any kind of public interest.

23 CHAIRPERSON GAIL BENJAMIN: Okay.

24 JONATHAN DARCHE: And Chair can I respond  
25 as well?

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CHAIRPERSON GAIL BENJAMIN: Certainly.

JONATHAN DARCHE: So, with regard to 50A the CCRB has not made a decision to back any particularly bill but it is clear that the current version of Civil Rights Law 50A as it exists is a real impediment to communicating to the community and explaining exactly what is happening in the police disciplinary system. The CCRB is committed to doing everything it can within the law as it stands now to inform people of what is going on in the disciplinary system and if, if you look at our quarterly APE reports you will see that we include summaries of cases in a way that stays within Civil Rights Law 50A but does explain not only what the CCRB believes happened but if the Police Commissioner has a difference of opinion what that uhm opinion was and the reasoning behind it and with regard to the, the first part of your question about, Mr. Commissioner with regard to, do we have conversations? Yes we do because as, we are very different agencies with very different points of view but we have to work together in order for the CCRB to do its job of, of overseeing the actions of the NYPD's members of service and so while we often communicate in order to explain each

1  
2 other's points of view there are sometimes just going  
3 to be differences that can't, that can't be bridged  
4 but we work as hard as we can to explain our point of  
5 view and hear from the Department their point of  
6 view.

7                   OLEG CHERNYAVSKY: And if I might add,  
8 uhm to Mr. Darche's comments, we have conversations  
9 that aren't just conversations but they are  
10 constructive conversations for both sides. The  
11 Department learns from our conversations with the  
12 CCRB. We listen to how the CCRB accepts cases, how  
13 they analyze cases. How they evaluate and review  
14 cases and where we agree with the CCRB on those  
15 components we act upon that agreement but where there  
16 is a disagreement rather than just attempt to be  
17 heavy handed and not communicate, we speak back to  
18 the CCRB and we explain to them the department's view  
19 of the evidence that the CCRB has uncovered or  
20 presented. We explain to them the department's  
21 interpretation of a legal standard or of a patrol  
22 guide provision that might different from what the  
23 CCRBs evaluation was and, in those conversations, we  
24 have learned that we can find a middle ground. We  
25 can find a concurrence if you will on disciplinary

1  
2 issues and it relates to all four of the CCRB  
3 categories, force cases, abuse of authority,  
4 discourtesy and offensive language and it's through  
5 those constructive conversations that the current MOU  
6 has proved to be an invaluable template for us  
7 working together for the CCRB working in the trial  
8 room on their charges cases, for the department  
9 having an obligation pursuant to the Memorandum of  
10 Understanding to cooperate and assist the CCRB in  
11 those prosecutions. So many of the things that the  
12 Charter Revision Committee is discussing are things  
13 that exist within the MOU but they are also things  
14 that we are working with the current MOU and actually  
15 achieving through great communication and great  
16 understanding so those points I think that the  
17 current MOU as it exists is a very valuable tool, is  
18 a very dynamic resource for both sides to look at, to  
19 evaluate and process disciplinary cases. And to that  
20 end, I personally communicate with Jon Darche several  
21 times a week, probably more times than I would like  
22 to but the conversation while we may disagree in  
23 points they are professional, they are respectful,  
24 they are informative, they are insightful, Jon Darche  
25 will offer assistance from the CCRB to the department

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2 to understand what the CCRBs vision is and we have  
3 also offered assistance to the CCRB in the form of  
4 material, in the form of training, in the form of  
5 resources that we have to demonstrate our commitment  
6 ot what the policies of the department are and to  
7 make sure that the CCRB is fully informed and aware  
8 of them. And it is through those constructive  
9 conversations that I think that we've built a  
10 relationship that is also unprecedented in the  
11 history of CCRB with the level of cooperation, the  
12 level of collaboration and a level of discipline that  
13 the department imposes in CCRB cases.

14 CHAIRPERSON GAIL BENJAMIN: Thank you.

15 OLEG CHERNYAVSKY: Uhm Chair can...

16 CHAIRPERSON GAIL BENJAMIN: Actually, the  
17 next, the next speaker is Mr. Weisbrod and then Ms.  
18 Hirsh and then Ms. Camillo and then Mr. Albanese.

19 CARL WEISBROD: I have, first just a,  
20 just a quick clarification, Mr. Darche because your  
21 statement is sort of awkwardly worded but the four  
22 changes that you mention I just want to clarify are  
23 changes to the Charter that would in the opinion of  
24 the CCRB or your view, enhance and strengthen your  
25 role rather than diminish your role?

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JONATHAN DARCHE: Correct.

CARL WEISBROD: Okay. Second, I'm a little I'm just a little confused. I don't quite understand, I disagree with my colleague, Commissioner Fiala. This is an MOU that has now existed for six years, almost seven years, it hasn't been amended, uhm it has as Mr. Chernyavsky indicated uhm span two Mayoral Administrations, three Police Commissioners uhm a) which shouldn't it be codified given the fact that it is, has stood the test of time. I have spent a lot of time in City Government and six years is uhm more than enough time to get it right and it appears that you have gotten it right so my first question is why it shouldn't it be codified? And my second question is, uhm what do you think of the various citizen's union recommendation regarding the operation of the MOU uhm and its effectiveness in addressing the issues that the MOU was intended to address? And I will first start with Mr. Darche and then Mr. Chernyavsky.

JONATHAN DARCHE: So, I agree with Commissioner Richardson in that the MOU is a great template I just think that it is a template for a

1  
2 Charter Revision and I think it belongs in the  
3 Charter.

4           CARL WEISBROD: You are agreeing that it  
5 should be codified?

6           JONATHAN DARCHE: Correct.

7           CARL WEISBROD: Thank you.

8           JONATHAN DARCHE: The, when I, when I  
9 first joined the agency around in 2013 we were, I was  
10 the Deputy Chief Prosecutor of the APU and we were  
11 trying to hire staff and it was a real difficulty to  
12 get experienced prosecutors to give up their  
13 positions to take a risk on something that they saw  
14 as not established. So, on that level alone I think  
15 it would make sense to put the APU in the Charter.  
16 But I also think it sent a message to the people of  
17 this City that the CCRBs prosecutorial power on  
18 discipline cases is an important part of its function  
19 and, and should be permanent.

20           CARL WEISBROD: Mr. Chernyavsky.

21           OLEG CHERNYAVSKY: Sure, so the, the  
22 Police Commissioner is giving you, is given unique  
23 authority in the Charter. He is in charge of the  
24 governance of the Police Department, the  
25 Administration of the Department, the Discipline of

1  
2 the Department and that was done for a reason and it  
3 is an important reason which is the individual that  
4 holds that spot. And if we look back at uhm I guess  
5 recent history and not so recent history, the  
6 individuals that have held that spot have long  
7 records of police service. They rose through the  
8 ranks of police officer all the way to the highest  
9 rank of the, the civilian rank of Police  
10 Commissioner. These individuals are citizens of New  
11 York City. They take a look at discipline through a,  
12 through a variety of lenses. Not only, not only that  
13 of a citizen but that as a police officer in every  
14 rank all the way up to their existing rank. At a  
15 time where I think the important part, the important  
16 balance to strike is that yes there needs to be  
17 confidence with the public in our discipline process  
18 and I think that confidence can be achieved by  
19 amendments to 50A and greater transparency. Because  
20 even the independent Commission of respected legal  
21 experts have found that there is, the system is a  
22 fair system, the only problem is that not too many  
23 people know too much about it and can see that it is  
24 a fair system. But I think the other point is that  
25 police officers have to be comfortable with the

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2 system. Have to have confidence in the system and  
3 especially at a time when, where, we are implementing  
4 neighborhood policing which is fully implemented  
5 across all precincts. Police surface areas, being  
6 expanded into schools, being expanded into the  
7 transit system where police officers are told don't  
8 only respond to radio runs. Don't sit in your car and  
9 wait until the radio rings and just go respond to a  
10 call. They are being told spend 1/3 of your time off  
11 of the radio, go and affirmatively engage with the  
12 public, put yourself out there. I think when  
13 officers are given this expanded mission, this unique  
14 mission that we can do because I'm sorry, oh I think  
15 we can do it because we have seen crime drop to  
16 record lows while at the same time enforcement  
17 significant decreased, summons are down, arrests are  
18 down and crime continues to go down. So, I think we  
19 are leveraging those achievements in furtherance of  
20 better ties to the community, building trust with the  
21 community and telling our officers put yourself out  
22 there but at the same time we need the officers to  
23 also have trust in the system. They need to trust  
24 that the individual who has this great level of  
25 experience that has been appointed to the title of

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2 Police Commissioner will exercise those duties,  
3 unique to the Police Commissioner which in addition  
4 to the governance of the whole entire department also  
5 includes the governance in the administration of its  
6 discipline system.

7 CHAIRPERSON GAIL BENJAMIN: Thank you.

8 Uhm Alison?

9 ALISON HIRSH: Yes, uhm just as a  
10 followup to that for Mr. Darche's testimony uhm  
11 earlier today suggested that the Commissioner should  
12 not be the final arbiter of discipline and I'm  
13 wondering if you or the agency have an opinion on  
14 that?

15 JONATHAN DARCHE: That's uhm, it's a very  
16 complicated question. Its, a there is an  
17 intersection of state law and the Charter and the,  
18 the uhm Administrative Code and it gets to the heart  
19 of as I think Mr. Corr was describing in the las  
20 panel, the difference between oversight and  
21 employment but the changes that the CCRB has proposed  
22 to the duty to cooperative, I think uhm would give  
23 people knowledge of what's going on in the  
24 disciplinary process. It would give them more  
25 confidence in the, in the system.

1  
2 ALISON HIRSH: And that includes uhm sort  
3 of an explanation when the Commissioner decreases the  
4 disciplinary recommendation?

5 JONATHAN DARCHE: Correct.

6 ALISON HIRSH: And can I ask, uhm Mr. Uhm  
7 Chernyavsky, uhm can you I guess, like understanding  
8 the limitations that 50A grants you know you spoke to  
9 us a minute ago the prior panel spoke to the same  
10 importance of public trust in the system, assuming  
11 you know Albany is a crazy place. You may or may not  
12 be able to accomplish anything ever and uhm  
13 (laughing) and you know the, it seems like especially  
14 in occurrences when the Commissioner either decreases  
15 the, the uhm recommendation, the recommended  
16 discipline or in cases where there is no knowledge of  
17 what is going on and families of Victims of police  
18 brutality have no idea where in the system, where in  
19 the process you know the disciplinary procedures may  
20 be. What do you see as the obligations of the  
21 Department in terms of, or what kind of proposals  
22 would you share for how to better under,  
23 understanding limitations of current law how to  
24 better, uhm explain the policies, procedures,  
25 recommendations and processes of the Department when

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2 it comes to issues of discipline and police  
3 brutality?

4 OLEG CHERNYAVSKY: Sure, so I think that  
5 uhm what the ... with the restrictions of the law  
6 create is our inability to give more pointed or  
7 specific data. I mean I think that there have been  
8 interpretations of, of 50A that have dated back the  
9 five decades and more recently there have been cases  
10 that found even the redaction of certain information  
11 uhm is does not eviscerate the protections of 50A. I  
12 think what we can do is give some level of aggregate  
13 data that looks into the process. I think what we  
14 can do is explain the process of putting aside  
15 numbers, putting aside how many complaints or how  
16 many disciplines and what the complaints are for.  
17 What is the process? How does it work? I mean I've;  
18 I've talked about it during the discipline hearing  
19 before the Council. I've, it's part of my longer  
20 prepared statement that I cut out of my, my condensed  
21 statement. I think those are steps that we can take.  
22 Now the commissioner has tried, Commissioner O'Neill  
23 has tried to give greater insight as I mentioned by  
24 giving case summaries and more data than we current  
25 given that that has been stayed and so that is the

1  
2 subject of litigation. We can't do that so we are  
3 really playing within the margins. We are trying to  
4 push, we are trying to go further but when a, when a  
5 case is filed and we are stayed we know that that is  
6 a line that we can't cross. Now there are certain,  
7 certain information obvious CCRB puts out certain  
8 information on their website. Uhm we put out certain  
9 information on ours. I think the Blue-Ribbon Panel  
10 certainly made a recommendation that we, that we be  
11 more transparent and look at these things. The, the  
12 Commissioner and panel and implementation panel  
13 and so we are looking at that now to see how far we  
14 can go. I think in the last week or two we started  
15 posting trial room calendars on our website something  
16 that was a recommendation of the panel that gives  
17 greater transparency. I think one of the issues was  
18 that attorneys from some of the stakeholders would be  
19 seated, seated in the trial room waiting to see if  
20 the case that they were interested in was coming up  
21 so I think this should resolve that issue, uhm I  
22 think uhm so I guess that's, that's not so short  
23 answer to your question.

24 JONATHAN DARCHE: Madam Chair?

25 CHAIRPERSON GAIL BENJAMIN: Yeah.

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2 JONATHAN DARCHE: Could I respond to that  
3 as well? Because I just wanted to, to explain some  
4 of the things that CCRB does to make sure people are  
5 informed when they have a complaint and that is in  
6 our jurisdiction that they have made to us. So, every  
7 person knows who their investigator is once they make  
8 the complaint and they can reach out and contact them  
9 for information on what's going on. We have a  
10 website so if they know their case number they can  
11 look and find out what status their case is in and if  
12 it, it will tell them to call if they have questions.  
13 At the end of the CCRB investigation, the, the  
14 Complainant and the member of service are both given  
15 written explanation as to what the board's decision  
16 was and then in cases where an allegation of  
17 misconduct is substantiated, we give Civilian an  
18 explanation of what the final discipline decision  
19 was.

20 CHAIRPERSON GAIL BENJAMIN: Thank you.

21 OLEG CHERNYAVSKY: And I just add one  
22 point, my colleagues pointed out that one of the  
23 recommendations of the, of the Blue Ribbon panel was  
24 to appoint a liaison in these situations where the  
25 liaison could contact the complainant and give them

1  
2 status updates on the case and that's certainly  
3 something the implementation group is working on.

4 CHAIRPERSON GAIL BENJAMIN: I have two  
5 questions, one short and one possibly longer but I  
6 will try not to take too much time. This is just for  
7 information because I don't actually know, can the  
8 CCRB take complaints of witnesses of uhm policemen  
9 misconduct or just from Victims of police misconduct?

10 JONATHAN DARCHE: So that is currently  
11 the subject of litigation but currently the CCRB  
12 takes complaints from witnesses of misconduct.

13 CHAIRPERSON GAIL BENJAMIN: Okay. And  
14 then uhm from my limited reading it looks like the  
15 concurrency rate, I guess is the technical term  
16 between the CCRB recommendations and the Police  
17 Commissioner's Final Discipline Ruling has dropped  
18 like considerable and I wonder if either of you have  
19 any explanation of, or if there is anything that the  
20 Agency of CCRB is doing to deal with that issue or  
21 why that is?

22 OLEG CHERNYAVSKY: Well actually I think  
23 that, thank you, actually I think the disciplinary  
24 rate for the full year of 2018 has actually gone up.

25 CHAIRPERSON GAIL BENJAMIN: Oh.

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2 OLEG CHERNYAVSKY: We saw a decline in  
3 the concurrency rate between the two agencies in  
4 2017, uhm there had been some adjustments made to the  
5 reconsideration process that I think caused that  
6 reduction in the concurrence rate. Those changes  
7 have been, have been revised so for 2018 I think that  
8 you will see that the Department imposed discipline  
9 in over 90% of the CCRB cases including 85% of the  
10 CCRBs most serious cases, the charges cases. So,  
11 it's through that, again that communication that  
12 collaborative effort that we have spoken about to  
13 make sure that the Department is disciplining its  
14 officers properly which is what the department's  
15 interest is, which is what the CCRBs interest is and  
16 I'm not speaking for Mr. Darche he is here but we do  
17 that through, through our joint communication. So,  
18 yes there was a dip downward in the concurrency rate  
19 but we've seen that go up before year 2018 and I  
20 expect that to improve for this year as well.

21 JONATHAN DARCHE: I think uhm a lot of  
22 the discrepancy comes between using our discipline  
23 rates and the concurrence rate. So, the discipline  
24 rate measures if the CCRB recommends discipline and  
25 the Department imposes discipline. The concurrence

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2 rate is lower which is when the CCRB makes a  
3 recommendation, the Department imposes exactly that  
4 recommendation so in a, APU case where a member of  
5 service has uhm, uhm had five allegations of  
6 misconduct on their charges and the CCRB makes a  
7 recommendation based on the guilt of the member of  
8 service to all five specifications and then not all  
9 five specifications are guilty in either the, the  
10 hearing officer recommends less than what the CCRBs  
11 original recommendation is and then the, the police  
12 commissioner imposes less than what the CCRB  
13 recommended that shows up as less than concurrent.

14 ALISON HIRSH: Thank you.

15 CHAIRPERSON GAIL BENJAMIN: Thank you.

16 Uhm Ms. Camila?

17 LISETTE CAMILA: Thank you uhm very much  
18 for the testimony I, my question is directed to Mr.  
19 Darche, so you focused your testimony on two  
20 recommendations but I was hoping you could expand on  
21 the other two that you didn't talk about. So, the  
22 subpoena signatory power as well as the duty to  
23 cooperate.

24 JONATHAN DARSHE: With regard to the  
25 subpoena power, uhm it seems silly but days matter.

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2 In New York City many of the locations that record  
3 video, copy over it after several days so if the CCRB  
4 needs to uhm investigate or gets a case, drafts a  
5 subpoena we have to take it uptown to where the,  
6 current chair is working. The board is part-time and  
7 then he signs it and then we have to get someone to  
8 bring it back and the we can serve the subpoena and  
9 if you lose two or three days you might have lost the  
10 evidence. So, it is actually very important to be  
11 able to designate a staff member to sign those  
12 subpoenas so that we don't lose valuable evidence  
13 that is helpful in having the CCRB make a  
14 determination. The CCRB is committed to uhm fair and  
15 impartial investigations and we need evidence of that  
16 and it is important for us to get that evidence and  
17 the video is a very important part of that function  
18 and the the presence of body worn camera footage is,  
19 is helpful in that part but also just video that is  
20 just being used by different locations to  
21 surveillance video, for us to get that video is very  
22 important.

23 LISETTE CAMILA: Thank you.

24 CHAIRPERSON GAIL BENJAMIN: Commissioner  
25 Albanese.

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2 SAL ALBANESE: Uhm as one of the  
3 panelists pointed out, I think all of you agree that  
4 a disciplinary system has to be, has to be fair and  
5 transparent. The public has to be comfortable with  
6 it as well as police officers. Otherwise it is just  
7 not going to work. We have work to do in order to  
8 make sure that it does work. Uhm I just want to  
9 clarify something, 80% of the complaints are either  
10 unsubstantiated for false? Correct? At CCRB? About  
11 80% I don't, I don't believe that's, that's. What's  
12 the number do you know?

13 JONATHAN DARCHE: So approximately half  
14 of the complaints in our jurisdiction are not fully  
15 investigated. Uhm of the cases that are, and that's  
16 for a variety of reasons, sometimes someone has  
17 pending litigation whether it is a civil suit or a  
18 criminal case against them that they don't want to  
19 give a statement so the case is, it is closed without  
20 having a fully investigation, sometimes someone, we  
21 are unable to find them to get a full statement from  
22 them. The uhm Chair to mind if I...

23 CHAIRPERSON GAIL BENJAMIN: Oh no, it's  
24 okay. Continue.

25

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2 JONATHAN DARCHE: Of the cases that we  
3 do fully investigate approximately 20% are  
4 substantiated, uhm, there is, I should know the exact  
5 number of exonerations, unfounded and but there is  
6 also I would say approximately half of the cases are  
7 unsubstantiated.

8 SAL ALBANESE: Let me get the essence of  
9 my question, the unsubstantiated complaints or false  
10 complaints uhm.

11 CHAIRPERSON GAIL BENJAMIN: Uhm, I'm not  
12 sure that unsubstantiated means false.

13 SAL ALBANESE: Unsubstantiated or false,  
14 or false. No, I didn't say that. Do you is it your  
15 proposal to publish the names of the officers when  
16 complaints of substantiated?

17 JONATHAN DARCHE: I don't, I don't think  
18 that was proposed but if.

19 SAL ALBANESE: That's not something that  
20 you are considering?

21 JONATHAN DARCHE: So, not not in these  
22 four proposals, no and it is something that if Civil  
23 Rights Law 50A were to change it is something that we  
24 could consider but certainly members of service who  
25 have either had their allegations exonerated which

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2 means that the conduct that was complained about  
3 occurred so the department was able to ... the CCRB was  
4 able to determine that. The civilian made a  
5 complaint and what they complained about happened but  
6 the officer did not commit misconduct when it  
7 happened. That's not a false complaint. If the CCRB  
8 did an investigation and was unable to determine by a  
9 preponderance of the evidence what happened, that's  
10 an unsubstantiated complaint that doesn't mean that  
11 it didn't happen. So, it's a very small number of  
12 cases that are false complaints.

13 SAL ALBANESES: My, my point is that uhm  
14 you know police officers' career could be, if that  
15 information was public, uhm an officer's career could  
16 be derailed or sidetracked if that officer (yelling).  
17 If that officer.

18 CHAIRPERSON GAIL BENJAMIN: Please, we  
19 agreed that that was not going to happen.

20 SAL ALBANESE: If that, if that officer  
21 says three or four unsubstantiated complaints.  
22 That's why I am asking the question is that one of  
23 the things that you are considering publishing the  
24 names of the officers who have had unsubstantiated  
25 complaints?

1  
2 JONATHAN DARCHE: So, I, I don't think  
3 that would actually derail someone's career and we  
4 inform the department when what happens in those  
5 cases. So, I don't.

6 SAL ALBANESE: So, are you planning to  
7 publish the names of the officers?

8 JONATHAN DARCHE: No sir. No Mr.  
9 Commissioner.

10 SAL ALBANESE: Okay thank you.

11 CHAIRPERSON GAIL BENJAMIN: Okay I've got  
12 a question now. Uhm a series of questions and the  
13 first uhm Ms. Conti-Cook who spoke earlier spoke  
14 about the problem of the Law Department representing  
15 both you and the police department and basically  
16 everybody else who is involved in the process except  
17 for the lawyer for the complainant. Do you see that  
18 as a problem also?

19 JONATHAN DARCHE: So, I'm aware that some  
20 people see that as a problem. We monitor the  
21 situations that come up to look for active conflict  
22 between, that would prevent the law department from  
23 representing the CCRB and in those cases uhm I would  
24 go to the board and request permission to retain  
25 outside Counsel.

1  
2 CHAIRPERSON GAIL BENJAMIN: And in your  
3 experience how many times has that happened?

4 JONATHAN DARCHE: We have not don't that.

5 CHAIRPERSON GAIL BENJAMIN: Excuse me?

6 JONATHAN DARCHE: We have not done that.

7 CHAIRPERSON GAIL BENJAMIN: So, is that  
8 because you don't consider any of the cases that have  
9 come before you to have had that issue, because the  
10 board did not approve outside counsel or this just  
11 isn't an issue?

12 JONATHAN DARCHE: So, my understanding of  
13 the case law surrounding this issue is that there  
14 needs to be an active conflict and an active  
15 litigation and so far, I as Executive Director  
16 haven't been confronted with an issue like that where  
17 I've gone to the board.

18 CHAIRPERSON GAIL BENJAMIN: Do you think  
19 there is a smaller issue that may not be active but  
20 that the law department is speaking on behalf of more  
21 than one client whose interest may not be perfectly  
22 aligned?

23 JONATHAN DARCHE: It's possible.

24 CHAIRPERSON GAIL BENJAMIN: Anyone else?  
25 Oh no I was just asking and my second question,

1  
2 several of the first panel raised the issue of other  
3 kinds of officers who may be subject to disciplinary  
4 actions peace officers, uhm school safety officers,  
5 uhm and that they are not under the umbrella of CCRB.  
6 Do you think that it would be a desirable thing to  
7 have them under CCRB?

8           JONATHAN DARCHE: So, if the, if the City  
9 were to change the Charter to add peace officers and  
10 school safety agents to our jurisdiction it would be  
11 an extremely difficult expansion. Uhm number one I  
12 think just school safety agents are another 5,000  
13 school safety agents so how would we have the  
14 capacity to take on that added uhm responsibility.  
15 It not something that I would just take on. But its  
16 more than just the numbers, it's also, my  
17 investigators are trained and experienced in dealing  
18 with a patrol guy that, members of the NYPD are  
19 responsible for abiding by. I, I don't know what  
20 school safety agents or HRA peace officers, how they  
21 are trained, how they are, what their standard they  
22 are held to. It would be, I'm not saying that we  
23 couldn't do it but it's not something that if uhm in  
24 November when the voters vote on Charter Revision if  
25 it was enacted its not something that we can do

1  
2 quickly. It would be an intensive process for us to  
3 get up and running and resource intensive.

4 CHAIRPERSON GAIL BENJAMIN: I don't think  
5 its good for the schools either to, to have that.  
6 You know I was involved in school safety officers for  
7 over a decade and I just don't see. I understand the  
8 need for monitoring them but I just don't think that  
9 is right basket to put them. When PD was in the  
10 schools though did complaints against school safety  
11 officers who were members of PD fall within the CCRB  
12 jurisdiction?

13 JONATHAN DARCHE: So, school safety  
14 agents were never in the CCRBs jurisdiction but  
15 police officers, sworn members of service even when  
16 they go into a school are in our jurisdiction.

17 CHAIRPERSON GAIL BENJAMIN: Uhm thank  
18 you. The next person is Mr. Caras.

19 JIM CARAS: I just was curious as to what  
20 effect the APU prosecuting cases since the 2012 MOU  
21 has had on the discipline and the concurrence rate?

22 JONATHAN DARCHE: I'm sorry, I'm sorry  
23 can you repeat your question please?

24 JIM CARAS: What affect did the APU that  
25 was required by the 2012 MOU has had on the

1  
2 discipline and the concurrent rate? I mean has there  
3 been a correlation, has it been negative? Positive?

4 OLEG CHERNYAVSKY: Do you mind if I  
5 answer it? So, in the year and a half before the MOU  
6 went into effect which is before Deputy Commissioner  
7 Richardson was at the Department there were no trials  
8 in cases that had been referred by the CCRB. Just  
9 having the APU has resulted in 374 public trials that  
10 people can attend and see. So, just from that alone,  
11 the amount of visibility into the discipline process,  
12 because of the APUs presence is dramatic.

13 JIM CARAS: So, let me ask about uhm  
14 police department. So, you don't want the APU  
15 codified so you would be okay going back to a  
16 situation where I don't mean you, this, this Police  
17 Commissioner but where a future Police Commissioner  
18 sort of threw out the MOU and we went back to no  
19 trials?

20 OLEG CHERNYAVSKY: No, I, I don't think  
21 that at all, I think that we have shown. First the  
22 APU and the MOU was voluntarily entered in to so this  
23 was something that the police department saw value  
24 in. We, we, as we do with many of the programs  
25 initiatives that we do we always reevaluate, reassess

1  
2 and see and find, try to find ways to improve, that  
3 improvement as it related to discipline in 2012 was  
4 giving CCRB prosecutorial jurisdiction over the cases  
5 pursuant to the MOU. Now that MOU has survived and  
6 been built on and improved. So, I, I would not say  
7 that we want to go back to to.

8 JIM CARAS: No, no I don't mean you. I  
9 mean.

10 OLEG CHERNYAVSKY: No, no I understand  
11 but I am speaking on behalf of the department sir.

12 JIM CARAS: The Mayor or another Police  
13 Commissioner could want to go back to a situation  
14 where there are no trials and not codifying the MOU  
15 would give them that opportunity.

16 JONATHAN DARCHE: Well I think that is a  
17 bit of a mesomeric the term no trials. There were  
18 trials prior to the creation of the MOU and the MOU  
19 and the creation of the Administrator Prosecution  
20 Unit it is just that those cases were tried by  
21 department trial lawyers. But the cases were tried  
22 in the same courtrooms that the CCRB appears in and  
23 tries cases. So, the cases were tried, they just  
24 weren't tried by the CCRB.

1  
2 JIM CARAS: But were they CCRB cases that  
3 were getting tried? I don't believe so.

4 JONATHAN DARCHE: CCRB cases were tried  
5 as well. If a CCRB case was substantiated was  
6 brought to a position where it was going to be tria..  
7 where it was trial ready and it needed to go to trial  
8 those cases would go to trial. So it wasn't that no  
9 cases were tried. It's just before the, before the  
10 APU the CCRBs prosecutors weren't the prosecuting  
11 attorneys.

12 JIM CARAS: How ha.. I guess I am not.

13 JONATHAN DARCHE: I think we agree to  
14 disagree on that.

15 JIM CARAS: I think I'd like.

16 OLEG CHERNYAVSKY: I think to your larger  
17 point about future Administrations I guess coming  
18 before the Council and testifying on a regular basis  
19 I think at last count four or five times a month I  
20 can tell you that if a program, an initiative such as  
21 this were to go away there would be a lot of  
22 answering to be done to the 51 members of the  
23 Council. Where routinely subjected to oversight  
24 whether it be by the City Council, we have an  
25 Inspector General that, that does oversight, a

1  
2 Federal Monitor and on and on. The Commission to  
3 Combat Police Corruption so we, we are very  
4 accountable and we are held to account and we are  
5 called to hearings where we need to explain our  
6 decisions and in the scenario that you raised, that  
7 having a situation where some future Police  
8 Commissioner is going to say okay no more APU and we  
9 are not going to prosecute CCRB cases either, I think  
10 there would be a lot of explaining that needs to be  
11 done and I can't envision that such a scenario would  
12 ever happen.

13 CHAIRPERSON GAIL BENJAMIN: Paula you are  
14 next and then Alison.

15 PAULA GAVIN: Uhm this is for uhm Deputy  
16 Commissioner Richardson. I have noticed that you two  
17 don't agree and that is the four proposals that you  
18 don't agree with and CCRB does agree with. But one  
19 of them I want to poke at a little bit which has to  
20 do with the uhm Police Commissioner documenting the  
21 reasons for his decision. In the Independent Review  
22 Panel, the recommendation was to go to a decision  
23 matrix and to use that to explain decisions. Is that  
24 going to be implemented?  
25

1  
2 KEVIN RICHARDSON: First of all, thank you  
3 for your question. Uhm the Blue-Ribbon Panel  
4 suggested that, one the Police Commissioner detail  
5 more specifically why he deviated from a disciplinary  
6 penalty. The Police Commissioner has committed to  
7 that recommendation from the Blue-Ribbon Panel and  
8 has already begun the process of formalizing  
9 informational memoranda of why the Police  
10 Commissioner made the decision that he made in a  
11 particular case but with respect to the disciplinary  
12 matrix the department had been considering that for  
13 some time. The recommendation of the Blue Ribbon  
14 Panel just strengths to resolve to review the  
15 Disciplinary Matrix so that is currently under review  
16 by the implementation committee and we have actually  
17 had conversations with the CCRB where we have  
18 committed to including them in the conversations  
19 about creating and building a disciplinary matrix  
20 that we would both share and utilize and I do agree  
21 that if we had such matrix in place it could assist  
22 in a disciplinary concurrent rate but a matrix is not  
23 an absolute because there are always going to be  
24 variables in each and every case involving each and  
25 every officer that have to be considered both in the

1  
2 Department cases and in CCRB cases. So, we are making  
3 sure that we create a, a matrix system that takes  
4 into account the need for standardization yet  
5 maintains the ability to have flexibility.

6 PAULA GAVIN: So, to some degree you do  
7 agree with the proposal to strengthen the  
8 documentation?

9 KEVIN RICHARDSON: Yes, I do.

10 PAULA GAVIN: Exactly okay and then the  
11 other one is a totally different question and that is  
12 the you've talked to the proposals that you support  
13 or don't support. Is there anything that NYPD would  
14 like in the charter for example, neighborhood  
15 policing is there any issues that are important that  
16 you think should be in the Charter?

17 KEVIN RICHARDSON: That's a good, that's  
18 a good question, I think uhm I mean I think generally  
19 speaking I'm not going to be able to give you exact  
20 proposals but I think anything that strengthens our  
21 ability generally speaking to, to provide better  
22 police services, to uhm...

23 PAULA GAVIN: To build trust.

24 KEVIN RICHARDSON: To build trust. To  
25 offer greater transparency and I think just to the

1  
2 transparency point, yes, we are working towards an  
3 amendment to 50A but we, I would argue that I think  
4 and I think most would agree that we are probably the  
5 most transparent, uhm we've ever been, I think. I  
6 think we have (background noise). We've collaborated  
7 with Council I would say over 30 or so transparency  
8 bills where we put data up. We've put or patrol  
9 guide online. We self-initiate reporting to point if  
10 you simply just go to our website and you will see a  
11 tremendous amount of data, a treasure trove of data  
12 that could enable individuals, the public, academics,  
13 to crunch numbers, determine patterns, we put, we put  
14 most of our data on machine readable format so making  
15 it easier for folks to digest. So, yeah, I, the  
16 nonspecific answer.

17 PAULA GAVIN: Well I think police  
18 accountability does have an underlying point on trust  
19 so maybe you do want to think about if there is  
20 anything. Thank you.

21 CHAIRPERSON GAIL BENJAMIN: Commissioner  
22 Hirsh.

23 ALISON HIRSH: Uhm this question is for  
24 Mr. Darche, uhm on the first panel in particular we  
25 heard a lot about the make up of the CCRB. I think

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2 in the limited research that I have done many other  
3 cities their Independent Review Board does not have  
4 any appointees for instance made by the Police  
5 Department of the Commissioner. There was also one  
6 panelist spoke about the fact that the youth that she  
7 works with doesn't look at the, either members of  
8 the. I couldn't, I wasn't clear if it was members of  
9 the board or the staff and see them as folks that  
10 they feel comfortable and trusting in in submitting  
11 their complaints and so I was wondering if you have  
12 any thoughts on whether the current make up of the  
13 CCRB works or what the ideal make up of the CCRB  
14 would be?

15                   JONATHAN DARCHE: So I think in and I  
16 believe that the board is committed to making sure  
17 that the board and the staff of the CCRB reflect the  
18 diversity of the City and the CCRB has hired a  
19 recruiter to make sure that we are bringing on  
20 investigators, investigative staff that we are trying  
21 to get not just the best people but the best people  
22 who also reflect this City and I'm I'm confident that  
23 we are making strides to doing that. It is something  
24 that we are committed to that the board has charged  
25 me with doing and I take very seriously. Uhm.

1  
2 ALISON HIRSH: In terms of the make up of  
3 the who gets to appoint and the makeup of the  
4 appointees on the board do you have a position or is  
5 that too fraught for your position?

6 JONATHAN DARCHE: So, I've seen some of  
7 the proposals and I think they are, they go towards  
8 how the board functions at its core. So, most cases  
9 are heard by panels of three people. Uhm one City  
10 Council designee, one Mayoral designee and one Police  
11 Commissioner Designee. If there is a different type  
12 of designee added to the mix it would make for a four  
13 person panel which could result in ties which is  
14 something that we try and avoid and it also will make  
15 it much more harder to schedule and uhm it is a real  
16 priority for the agency to do things as fast as  
17 possible and it is a real struggling and making that  
18 process more complicated, would if that happens will  
19 will work with it but I just urge you all to take  
20 into account how we actually hear cases when you are  
21 working on the who designates things.

22 ALISON HIRSH: Thank you.

23 CHAIRPERSON GAIL BENJAMIN: Thank you  
24 very much.  
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JONATHAN DARCHE: Uhm Madam Chair  
Commissioner Camila had asked a question earlier and  
I only answered one part of it and I want to  
apologize and see if there is a chance for me to  
answer it fully.

CHAIRPERSON GAIL BENJAMIN: Okay.

JONATHAN DARCHE: With regard to the 1%,  
there is sometimes things that happen in the NYPD in  
their budget over the course of a year. Decisions  
that they make that have a real impact on the CCRB.  
They require us to have to change how we train. They  
require us to change our technology and, and while I,  
I understand what uhm Mr. Chernyavsky, Executive  
Director Chernyavsky said about how every agency  
should have to justify its own needs on its own  
terms. It is very tough to do oversight over such a,  
the largest police force in the country when you are  
playing catchup.

CHAIRPERSON GAIL BENJAMIN: Thank you  
very much. Uhm seeing no further questions, uhm I  
want to thank all of you and I want to thank all of  
the people in the audience, all of the participants  
who have been here and been a part of this hearing.  
I appreciate your time and your interest. I

1  
2 appreciate the courtesy that you have shown us and I  
3 hope that you feel we have shown you. Uhm and our  
4 next forum will be on Monday March 11<sup>th</sup> at 6 p.m. at  
5 the Borough of Manhattan Community College and that  
6 will be on Finance and Budget. So I thank you very  
7 much and (gavel pounding). Uhm do I have a motion to  
8 hit the gavel again (laughing)? Is there a second?  
9 Any discussion? All in favor?

10 ALL: Aye.

11 CHAIRPERSON GAIL BENJAMIN: Opposed, the  
12 meeting is adjourned (applause).

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date April 22, 2019