NEW YORK CITY TAXI & LIMOUSINE COMMISSION
PUBLIC HEARING

Held on Thursday, November 18, 2010

40 Rector Street

New York, New York.

Time: 10:00 a.m.

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APPEARANCES:

COMMISSIONERS:
DAVID YASSKY, Chairman
HARRY GIANNOULIS, Commissioner
LAUVIENSKA POLANCO, Commissioner
ED GONZALES, Commissioner
MARK GJONAJ, Commissioner
CHARLES FRASER, General Counsel

SPEAKERS:

GEORGIA STEELE, Licensing Division
VINCENT SAPONE, LOMTO
ANDREW VOLLO, Director, Taxi FHV
Driver Institute
CLIFF ADLER, LOMTO
ETHAN GERBER, Greater New York Taxi Association
JOHN MOORE, on behalf of
Council Member Jessica Lappin
PETER MAZER, Metropolitan Taxicab
Board of Trade
DEPUTY COMMISSIONER RAY SCANLON
DEPUTY COMMISSIONER PANSY MULLINGS
MR. YASSKY: Good morning. We have another Commissioner on her way, and I'm told that she will be here shortly. So, I know everyone has business schedules, and we would like to try and get started right at ten o'clock or as close thereto as we can. So, I figure we mine as well get started and we will achieve quorum in progress.

We have some distinguished folks with us today. We have all the distinguished members of the industry and interested public, and one special guest that we'll get to in a moment. But first let me introduce a new face for some folks here. I would like to introduce our newest Commissioner on the Taxi and Limousine Commission Mark Gjonaj, whose appointment was unanimously approved by the City Council on October 27th unanimously, everybody in favor.

(Applause)

MR. YASSKY: Mark is president of MP Realty Group, a rapidly growing real estate firm that specializes in property development, mergers and acquisitions,
property management, and the underwriting of debt, and sales with a portfolio of over 1,000 units of commercial and residential real estate. He is also founding member of the Elyria (ph) Partnership and is involved in numerous other health care organizations and community organizations in New York City. He is serving the remainder of the term that ends in January 2015, representing his home Borough of the Bronx.

I have had the pleasure of spending some time with Mark in bringing him fully up to speed in what we're doing at the Commission and what the staff is up to. I can say with confidence that you will see that he is a superb addition to our team at the Commission. I'm very, very pleased with his presence here on the Commission.

So, we have, as you know, in our vacancy that is I believe on its way to being filled, Frank Garon (ph,) who has been very gracious in bearing with the government as its wheels of justice grind slowly toward our confirmation of his appointment, but I
believe that we're on our way to having a full-strength Commission before too long. A couple other items, first, Taxi of Tomorrow. As I'm sure you know, Mayor Bloomberg announced earlier this week that the Taxi of Tomorrow process is moving forward apace. As the Mayor announced, the process yielded seven proposals, three of which were scored sufficiently highly by the scoring committee to make them the leading contenders. Those were -- I wouldn't go through this in detail, but there is a proposal from Ford Motor Company for the Transit Connect, a proposal from Karsan for a vehicle called the V1, and a proposal from Nissan for their MV200 vehicle. We are asking each of those three to submit their best and final offer, which we expect we will get over the next month or six weeks, and we I believe are still on track toward a selection early next year.

So, in the meantime, in conjunction with the Mayor's Office of Media and Entertainment, we have launched a webpage to
solicit public feedback. Obviously the people in this room have a powerful interest of what the new taxi design will be, so, of course, does the broader riding public and the broader New York City public. So, we're soliciting that feedback on a webpage that contains a survey, not a vote on the vehicles, but a survey on which attributes people care about the most. You know, you will all make your voices heard directly to the Commission, but I encourage you to fill out the survey as well. If you do, you will have a chance at free taxi rides for a year. You know, some of you have taxis at your disposal, but still, I'm sure you would appreciate that nonetheless, a chance to check out the competition.

The Media and Entertainment Office also designed a public service announcement about Taxi of Tomorrow that, as you know, is now running in taxicabs.

A personnel change that I would like to tell you about, another thing that I'm just enormously pleased by, is the rounding out of
our senior team here at the Commission. We have a new staff member, Ashwini Chhabra, will you raise your hand please?

MR. CHHABRA:  (Raising hand.)

MR. YASSKY:  This is our new Deputy Commissioner for Policy and Programs. Ashwini comes to TLC most recently from the private sector in a senior position at a law firm, but before that, also extensive experience in the government, in the City government. He was part of Jeff Kay's team at the Mayor's Office of Operations. He worked under Chancellor Joel Klein at the Department of Education. When he was working with Jeff Kay, he worked on a number of TLC projects including the initial stage of Taxi of Tomorrow, an in-house expert to join the other experts.

But he, I can tell you again, I think we have a strong a team in place now as any City agency does, and Ashwini is a terrific addition.

Couple of last things, recent, some milestones in the industry, and some other
points. The taxi industry reached a notable landmark recently. Earlier this month, we hacked up, or you hacked up, the 4,000th hybrid electric taxicab. The number of hybrid taxis has been increasing steadily since the Commission first approved the use of the hybrids in 2005, and with gas prices hovering at around three dollars a gallon, we certainly expect that trend to continue. So, 4,000, I think this industry has done something material for the health of New Yorkers in the cleanliness of our air. So, I commend you for that.

Also, credit card usage in taxis has continued to grow. For the month of October, 39 percent of taxi trips were paid by credit card, up from 29 percent a year ago; about 43 percent of the total fare box paid by credit cards during October compared to 34 percent October 2009. So, the trend continues, that is a fairly rapid rate of increase. I think fairly soon, you'll see a majority, two-thirds maybe, of the trips paid by credit card, I think testifying to the importance of
And credit card tipping I'm pleased to say remains high. The average credit card tip during October was 19 percent of the fare up from 18 percent in October 2009.

So, that's all good. A couple of less cheery things I'll point out, one is to acknowledge an issue that we had here at the Commission. Wait times to get inspections of livery vehicles, which I know in the spring had gotten unacceptably high and we worked hard to bring that wait time down again, I acknowledge that it got up again in October, and really to a kind of unacceptable point of a couple weeks wait for an inspection. We fully understand that time is money, and we added extra hours on Friday, and we will continue to do that to get it back down again. The wait is now about five days for a transfer, which I think is okay. It is high for a new still, it is about 12 days as of today for a new vehicle. I repeat, we understand that that is unacceptably high and we will get that number down.
TLC PUBLIC HEARING 11/18/10

I also want to tell you about something that will be in the news today about the Mayor's budget. Today's New York Post reports that the Mayor will release his midyear financial plan today, and it's not -- these are difficult times. As the Post reports, the Mayor will be announcing significant layoffs throughout the City government -- not here at TLC, I want to make that crystal clear. We fortunately will continue to have the resources that we need to do our mission, but elsewhere in the City government, the budget will require layoffs. It said over a $3 billion gap for the coming fiscal year, and the City will do what it needs to do to make the books balance.

There is a part of the budget relating to this industry. As part of the budget exercise, the City has reviewed a number of fees to see if the fee is covering the cost of providing the service; we're talking here about the license fee and the inspection fee. And what that survey showed in the case of TLC is that our fees which have not been
raised in some 18 or 19 years, at least for those two, the core inspection fee and the license fee, those no longer do cover the cost of the operation, they are significantly under that cost. The Mayor's budget will propose adjusting those fees -- not to cover the entire costs still, because that would be, you know, that would be a steep increase given where they are -- but they will propose a modest increase. I don't know what the exact figure is at this point, but they will propose a modest increase in both the license fee and the inspection fee.

The last business point, and then, you know, then pleasure, the December meeting, we are going to address an issue that I think is as important as any on our agenda, the issue of access ability. As you know, the Commission has long been working to ensure that the TLC regulated industries are accessible to all New Yorkers including those who use wheelchairs. We are the firm belief that all New Yorkers should have access to the type of service that you provide, point
TLC PUBLIC HEARING 11/18/10

to point service at a market rate. We tried a pilot program for dispatching the taxis. As you know, we also have a rule for liveries, for livery bases, neither that pilot program, nor I dare say 607(f), have succeeded in producing an acceptable level of service for people in wheelchairs. We are working on some other solutions. And what we will be doing in December is having a hearing. It certainly wouldn't be right for vote by this Commission, but we're going to put out some thoughts about what we should do next and invite the interested public or the members of this community and advocates of the disabled to make a presentation to you Commissioners in response to the staff's suggestions. Again, this is a big issue, I don't think it is the sort of issue that we can have testimony and vote the same day like some more straight forward issues. So, between now and December, we will be putting out a proposal and getting back comments at the December meeting so that you can hear it and have time to digest those comments with
an eye toward moving forward sometime in the beginning part of next year.

So, now, before we turn to our actual business, I do want to recognize an important honoree, really, that we have with us today, Matt Daus, my predecessor in this position.

Matt is here. We have a gift from the TLC, so, if you will come and join us, and while you are doing that, I will note what everyone in this room knows, that Matt served the Commission for 14 years, first as counsel and then as the longest-serving chair in the Commission's history. And Matt, I expect that record to stand a good long while. I think that is the Lou Gehrig of the TLC.

Matt certainly served during interesting times: A taxi strike; a transit strike; a franchise bus strike; a blackout; border wars with Nassau County, that remained, you know, cold wars, never sprang into actual armed conflict, but nonetheless tension, but leading to good resolution; there was September 11th, on a serious note, just blocks from the Commission's office here at
Rector Street. During all that time and despite all those challenges, the TLC did world class innovative work during Matt's tenure. The TPEP system has become a model for taxis everywhere across the country and indeed across the world. And I'm sure that the Taxi of Tomorrow, a project started under Matt's tenure of course, I'm sure that will be equally influential every place that taxis are used.

It's really been, in the time I've been here, I've just come to appreciate more and more the enormous quality of leadership that Matt provided during his tenure, and I see the fruits of that continuing to be produced day in, day out. Operations were modernized. Customer service standards enhanced here at the TLC. Waiting times dropped dramatically. March Madness became March Mildness -- I wish I could take credit for that line, that's a really good one.

(Laughter)

MR. YASSKY: And the transparency of TLC's operations is unparalleled, and the
website has a true wealth of information, statistics, tools and listings.

And one aspect of Matt's legacy that I appreciate every day is the superlative staff you recruited to the TLC, and I repeat that. If there's one thing that you expect a leader to do, is attract first-rate people and empower them, and Matt certainly did that.

So, in recognition of all of that, but just tokens that can't quite approach it even, we have, Matt, for you today, your badge, the badge that was yours as Chairman and Commissioner, suitably encased so that --

MR. DAUS: I can carry it in my car.

(Laughter)

MR. YASSKY: It can hold down the legal papers that must be proliferating in your new office. And also, and this is quite pretty, a gavel and plaque: "Hail to the. Your drive to excel helped the TLC's regulated industries safely drive over one million people each day. Your compassionate leadership will never be forgotten." To Matt Daus.
MR. DAUS: Thank you, Commissioner. This is beautiful, thank you. I was expecting to get at least a week's free worth of cab rides, when I came here today, for 14 years of service. I am going to go up to the website and apply I guess. But it's really good to see everybody. Thank you so much for welcoming me back. And I can't take credit for any of that stuff, because really the people that were in the room, many of them still are really the ones that did it all. And I'm glad that you are happy with the team, and I see you're building and making great additions to the team, and I'm very, very honored and pleased. And I think you have already done a tremendous job in the first six months that you have been here, and I'm here to support you even after I'm gone. It's not only the things that we started that you brought to the next level, but there are new things going on too. And I greatly appreciate the honor, the recognition.
And it's good to see -- it's kind of weird being on the other side, it is kind of like Alice in Wonderland. But, having been at every meeting for the last fourteen years and standing up here and being down there, it's not that bad down there actually. It's good to see my colleagues that we've been through wars together, friends, Commissioner, new Commissioner -- and some frienemies too, it's good to see you. It's good to be back, and thank you for this honor, I really, really appreciate it.

(Applause)

MR. DAUS: You know, if I know my brothers, you'll do 10 million times better than what I've ever done, and I hope you do and I know you will.

MR. YASSKY: Thank you. What Matt graciously didn't say is that by Alice in Wonderland, he meant it going from the topsy turvy world back to the above-ground reality.

MR. DAUS: That's correct.

MR. YASSKY: So, to business, we have minutes to adopt. The minutes of the October
21st meeting have been provided, do I have a motion to adopt them?

MR. GONZALES: Motion to adopt.

MR. YASSKY: Thank you. All in favor, say "aye."

THE COMMISSION: (In unison) Aye.

MR. YASSKY: Opposed, "no"?

(No response)

MR. YASSKY: By unanimous vote, the minutes of the October 21, 2010 meeting are adopted.

We have base applications. Georgia, you are still the presenter, yes?

MS. STEELE: Good morning. Licensing would like to present before the Commission 16 bases with a recommendation for approval.

MR. YASSKY: Is there a motion to adopt this?

MR. GONZALES: Motion to adopt.

MR. YASSKY: All in favor, say "aye."

THE COMMISSION: (In unison) Aye.

MR. YASSKY: Opposed, "no"?

(No response)

MR. YASSKY: By unanimous vote, the
recommendation is adopted.

And you have three bases as well being recommended for denial?

MS. STEELE: Yes, and we request that the Commission grants an additional 30 days so that they may present the outstanding items.

MR. GONZALES: Motion to deny.

MR. YASSKY: All in favor, "aye."

THE COMMISSION: (In unison) Aye.

MR. YASSKY: Opposed, "no"?

(No response)

MR. YASSKY: By unanimous vote, the recommendation for denial of those three bases is adopted, and with an additional 30 days to give them time to meet their requirements.

MS. STEELE: Thank you.

MR. YASSKY: We now have three rules, or three sets of rules. Let's do them in this order: First, the change in the effective date for the TATC Rule Book and then the proposed critical driver rule and then the adjudication rules.
MR. FRASER: The first one is changing the effective date of the Rules Revision and the comprehensive rewrite of the rules from January 1, 2011 to April 1, 2011. This is to enable our MIS staff and other staff to complete preparations which are extensive for a complete revision of the rule book.

We published this for a public comment for the 30-day required period. We received no comments, and no one has signed up to testify today.

MR. YASSKY: So, Commissioners, just to report to you, we of course put in an enormous amount of the work in the re-writing of the rule book to plain language and to achieve greater clarity of text and organization. There are, I guess not innumerable, they can be numerated, but there are numerous implementation steps that go with these forms that need [to be re-done]. A lot of MIS work where the programming refers to specific rule numbers and looks for those rule numbers and has to be now rewritten. And given all of the other
initiatives going on in the Commission, I just didn't want to stop work completely on everything else to get that implementation done, so, we're pushing that effective date back from January 1st to April 1st. But we are on target to stick to that, so, I think that's a good date and I would ask for your support.

Motion in favor?

MR. GONZALES: Make a motion.

MR. YASSKY: All in favor say, "aye."

THE COMMISSION: (In unison) Aye.

MR. YASSKY: Opposed?

(No response)

MR. YASSKY: The proposed rule book effective date is adopted.

MR. FRASER: The next one is a revision to the critical driver rules which are applicable to drivers. The originally published proposal made three changes to the existing rules. In response to public comments, the staff is recommending removing one of those changes, that change is the one that would total all of the points for all of
the violations from a particular incident, and instead what the staff is recommending is we adhere to the current rule, which is only the violation with the highest number of points arising from a particular incident will be counted.

The other two changes that the proposed rule would make that the staff is recommending be promulgated, the rule was published for comment. And a number of written comments were received and those have been circulated to the Commissioners. In addition, four people have signed up to testify today.

MR. YASSKY: Vincent Sapone from LOMTO, League of Mutual Taxi Owners.

(Applause)

MR. SAPONE: Good morning. Thank you, Mr. Chair. Thank you, Commissioners, for giving me the opportunity to speak.

I represent the League of Mutual Taxi Owners, known as LOMTO, established in 1934. My name is Vincent Sapone, as you know.

Before that two-minute clock goes on, I
TLC PUBLIC HEARING 11/18/10

want to say a little something. First of all, this has got nothing to do with today's meeting. I want to thank the Commissioners for being here month after month without getting paid, probably losing four, five hours a day to be here. Whether you support us or not, it's nice of you to be here and take the time out and support the City.

And No. 2, for 33 years it's been two minutes there. I think it's time for a change for three minutes. Maybe it's time for a change for four minutes.

MR. YASSKY: I think our rules should change from three to two.

MR. SAPONE: What about three and a half minutes, you know? With an important meeting like today, three minutes is sometimes not enough. If a guy is out of order, put him out.

MR. YASSKY: The one place where inflation does not operate, sadly, is time. It operates in currency, but not time.

MR. SAPONE: You sound like my wife.

Anyway.
MR. YASSKY: To what do we owe this special comedic routine treat today?

(Laughter)

MR. YASSKY: I'm sorry, Mr. Sapone. Please continue.

MR. SAPONE: Maybe we should go on stage somewhere, you know, call it the "TLC Comedy Hour."

Anyway, people who drive their personal cars in New York don't spend much time behind a wheel. Taxi drivers work six days a week and average 12 hours a day sometimes seven days a week to make ends meet. They cover hundreds of miles every day between construction, bus lanes, bike lanes, petty cabs, skaters. It is very tough to get around the City today, and they are very vulnerable to get some kind of a summons. They there is no quota, but there definitely is a quota, it's been that way since I was a kid -- and anyone could tell me I'm wrong, I don't know what I'm talking about -- that's what it is, and the police officer or the traffic officer who gives out the most
tickets is saluted.

I would like to discuss the 15-month period in which points are accumulated. The current rule states that the 15-month period starts from the most recent violation. This would be changed to that it is cited in the summons issue. If this happens, many drivers will be suspended or revoked.

LOMTO is in favor of keeping safe drivers on the road. If a driver received three two-point summonses in 2007 or 2008, which could easily happen, and say, no summonses since then, or maybe only one two-point summons in 2010, is it fair to put that driver out of work for 30 days? He's got a family. He's got to pay rent just like all us.

Let me get started here. Based on what happened two or three years ago, the 15-month period should only start from the most recent summons issued.

Education is a vital part of any industry. Many drivers do not know they can take a defensive driving course every 18
months if needed. I think the critical
driver rule needs to be changed so that the
driver can take a defensive driving course
even after a critical driver summons is
issued. The point reduction should apply and
the driver will learn to be a safe driver.
Thank you very much. Have a nice day.
Have a nice Thanksgiving.

(Applause)

MR. YASSKY: Thank you. We also have
Christian Palamik (ph) who has signed up to
testify.

(No response)

MR. YASSKY: We will move on to Andrew
Vollo.

MR. VOLLO: Good morning. Thank you,
Chairman. Thank you, Commissioners. My name
is Andrew Vollo. I'm the director of the
Taxi FHV Driver at the La Guardia Community
College.

The New York City Taxi and FHV Driver
Institute at La Guardia Community College
recognizes the value and supports the Taxi
and Limousine Commission's proposed amendment
TLC PUBLIC HEARING 11/18/10

to the critical driver program.

The proposed rule will enhance and
increase the program's contribution to public
safety. The institute applauds the TLC's
plan also to include commuter vans and
Paratransit in the program.

While drivers should be rewarded for
taking advantage of professional education,
the institute believes that they need
additional training beyond the standard motor
vehicle accident prevention course, given
that the professional drivers face unique
driving conditions.

As a provider for over 26 years of
experience training TLC drivers, the
institute works closely with the TLC in the
conception, design and implementation of
training programs. We're concerned that
there's not enough time in the current
six-hour vehicle accident prevention course
to meet the specialized needs of the TLC
drivers. These needs include coping with
passengers while driving under already
stressful conditions; the need to drive
longer hours; TLC traffic regulations that apply only to TLC drivers, such as cell phones, electronic device rule, alcohol restrictions, critical driver/persistent driver program, new technologies that drivers need to embrace and enhance.

The institute, in conjunction with the National Traffic Safety Institute, NTSI, has developed a TLC driver safety component that has been approved by the New York State Department of Motor Vehicles. This seven-hour course specifically is designed to address the needs of TLC drivers. In August 2009, the institute and NTSI certified 100 drivers with the seven-hour defensive driving course so that a survey study could be done to access the program value. We've shared this information with your staff and we thank them for their participation and cooperation.

Mandating that all TLC drivers attend a specialized State certified seven-hour defensive driving course designed specifically for TLC drivers who will more
effectively into training safer drivers than
generic programs designed for the general
public. The institute has a secured data
link to the TLC expediting the completion and
compliance requirements and eliminating many
of the possibilities of fraud. Having the
course conducted by an official New York City
taxi training school rather than a generic
course delivered by any motor vehicle
accident prevention course provider will
ensure program integrity and compliance.

The proposed seven-hour defensive
driving course is ready for immediate
commencement and will be taught by the New
York State certified defensive driving
instructors who are taxi drivers and FHV
drivers. They bring a wealth of knowledge to
the class. Such a course will be beneficial
to both the TLC driver, the passenger, by
ensuring that professional drivers have the
skills and knowledge that they need to
provide a safe and comfortable driving
experience.

The TLC may want to consider
compensating drivers for their additional
time and effort in taking this course by
allowing them to reduce four violation points
from their license, helping to keep
professional drivers on the streets of New
York City.

Thank you for considering our views on
these important regulations. Should you have
any questions, I'll be --

MR. YASSKY: Thank you. Just for
clarity, the course you are describing you
said has been approved by the State DMV?

MR. VOLLO: Correct. It exits.

MR. YASSKY: And the driver then taking
that gets credit under our rules?

MR. VOLLO: Correct, and they get credit
with the State also.

MR. YASSKY: I understand. Thank you.

MR. VOLLO: Thank you.

MR. YASSKY: We have Cliff Adler, also
representing the League of Mutual Taxi
Owners.

MR. ADLER: Mr. Chairman, Commissioners,
ladies and gentlemen, thank you. There's a
point which has been bothering not just myself but a lot of drivers especially around stations like Penn Station and Grand Central. When you're talking about the critical driver program, drivers are pulling up in traffic close to Penn Station, passengers who I'm sure you understand get very antsy when they're looking at four minutes, five minutes, seven minutes to catch a train, they jump out in the middle of traffic throwing money through the partition or on the front seat. Drivers in most cases have no chance to say, "Please don't do that, I'll get a ticket." The passenger jumps out, when driver pulls up, another 50 yards is a police officer waiting to pull them over, and they give them not one, but two or three tickets; blocking traffic, improper discharge of passengers, they write out a whole slew of tickets, because it's what they do, okay? So, if you wind up with three, four or five tickets, that could put somebody out of business right there. And I wish the Commissioner and the Commission would
seriously think about this please. Thank you.

(Applause)

MR. YASSKY: Finally, Ethan Gerber from the Greater New York Taxi Association.

MR. GERBER: Thank you, Mr. Chairman.

At the outset, I just want to say that my first and biggest concern of these particular rules was taken care of by your office already with the top count merger, and I appreciate the hard work that your staff did of doing that, so, that was my number one concern with this particular section of the rules, so, thank you.

Also, since I'm cutting out that large portion of my speech, saying I want to welcome the two new Commissioners, the Commissioner sitting and the one to be, both have wonderful reputations and I'm delighted to have them. I'm speaking for members of the industry.

Also speaking as a member of the industry, I do want to take the opportunity, since I have it, saying, 14 years back,
TLC PUBLIC HEARING 11/18/10

congratulations, that's a fantastic run. My wife threatened to change the locks when I served four years in government, so, I understand what a sacrifice that was.

As to the problem I do have with these rules is the retroactive effect of the 15-month purge going back in time. This seems to be inherently unfair that a driver, who like many professionals gets better with time, can still run the risk of activities that took place quite a long time ago. This grabbing of a number and not going forward and starting off with day one has inherent due process problems and inherent problems for the drivers personally with the retroactive effect.

I urge the Commission to make this a point of going forward and not one of going back. We do not need to purge drivers who have been excellent drivers and who have improved with time. Thank you.

(Applause)

MR. YASSKY: Commissioners, are there questions?
MS. POLANCO: Yeah. I have a question regarding -- I'm trying to understand this. So, basically a driver that got two or three summonses that basically will sum up to six or more points three years ago could easily be suspended today if, for example, the TLC staff runs his license or his TLC license number and they realize that he's accumulated that time. I'm trying to see in the rule; it says that within any 15-month period, so we can go back to 2006, basically there is no limit. So, basically it depends on when we catch this driver.

MR. FRASER: It doesn't depend so much when we catch the driver, it depends when the DMV adjudicates the violation. In other words, although the violation counts the day you run the stop sign, for example, if it takes two years, which I understand from the documents I have seen, it is not atypical at all for the DMV to adjudicate that, obviously there are no points until the adjudication, even though once they're adjudicated, the points are now two years old.
Our licensing staff runs weekly computer
runs of points on all of our drivers, subject
to the critical driver program, and so
therefore, no more than a week after that
adjudication basically, the point total
created by that adjudication will be
detected. But the fact of that matter is,
the adjudication does not happen necessarily
quickly. That's obviously because there can
be adjournments, there can be all kinds of
delays in the process, and of course the
driver can end that process by pleading
guilty, which is I think probably more often
than not how the State adjudication is ended.
The point is the driver has some control
over the adjudication date, we have none of
course. And the driver has no control
presumably over the violation date. The
statute calls for the point, using DMV
points, DMV accrues them as of the violation
date. We feel that we really have to
accumulate them as of the violation date,
even though they don't exist obviously until
there is an adjudication.
So, yes, it is possible that we can be looking at older violations, but we're always looking at newer adjudications, because we run those every week.

MR. YASSKY: And that's why -- I don't want to belabor, but, Mr. Adler's hypothetical where police officer issues three tickets to somebody, first of all, that, you know, the industry folks came to us and said they were concerned about the fairness of that, and I think that's a judgment call, it could go either way, but it was the staff's judgment unbalanced that we should not count all three tickets issued for one episode, but only count the most grave of the violations. So, that cannot happen under the new rules, meaning somebody gets three tickets all at once and now all of a sudden they're a critical driver and their license is suspended.

As General Counsel explains, while it is possible, I guess, that this could operate to suspend a license based on, you know, three separate episodes in 2007, the only way that
could really happen is, No. 1, if we just
grew back and looked for the first time --
which doesn't happen, since we do every
week. You know, as soon as that third
violation that adds up to six points hits the
DMV database, we're going to learn about it
in the next few days, and then they'll get
their critical driver notice.

The only other way would be if somehow
it has not been, even though the violation
was in 2007, it was not adjudicated until
now. And then that makes sense, because only
now do they have the six points. So, I hope
that answers your question.

Further discussion?

MS. FRIEDMAN: Excuse me, Commissioner.
I'm a traffic attorney. My name is Karen
Friedman, I'm the president of the
Association of Motor Vehicle Trial Attorneys.

MR. YASSKY: You know, we do ask people
to sign up to speak. It is formality, but
still it helps order the proceedings here.
But why don't you go ahead and make your
comment.
MS. FRIEDMAN: Thank you very much, Judge. The problem is that over the years, attorneys have suggested to drivers that they plead guilty to a ticket to cut off that period, that 15-month look-back period. So, now what's going to happen is that those drivers who had six points or eight points, perhaps a year or two went by and they were worried that they might be called in under the critical driver rules. So, then they got a two-point ticket, went out and pled guilty, thinking, "Okay, well, this cuts off that look-back period." And now, the TLC conceivably could look back to 2007 and say, "Oh, my gosh, this man has 10 points. We'll have to revoke his Hack License," or whatever the situation is, but it's not fair, because they actually proceeded based on your rules.

MR. YASSKY: First of all, I mean, in truth it's not TLC's belief that the rules as previously written have the same effect, but this clarifies it. Second of all, still, the core kind of bottom line is that you're only subject to
the critical driver penalty if you have six points within a 15-month period. So, it's not in the question of 2007 and then 2009 and then 2010 violations, but the violations have to be within that 15-month period.

MS. FRIEDMAN: Yes, I understand what you're saying, Commissioner. The problem is that assuming, arguendo, the person went and pled guilty to six points, and he did it over the last 15-month period, odds are that the TLC would pick that up. But what has happened as drivers are convicted of six or eight or 10 points in a 15-month period, but that period has gone by, and then subsequently, a year later they are afraid that "Oh, I might get convicted of the critical driver rules," so, they'll get a two-point ticket and plead guilty based on your present rules. And under your proposed rules, the TLC could look back at any 15-month period, and that would create a problem for many drivers.

MR. YASSKY: Okay.

MS. FRIEDMAN: In addition, when you
consider it, a six-point ticket could be
given out for 22 miles over. In other words,
the Clearview Expressway, you want to pass
somebody on a hill, and you could all of a
sudden get six points, and that would be
grounds for --

MR. YASSKY: That's always been true.
But, okay, your testimony is noted. Thank
you.

MS. FRIEDMAN: Thank you.

MR. GONZALES: I would like to make one
general comment here. In essence, what we're
trying to do here is to make sure that both
the drivers and the riding public are safe,
correct? Now, I understand some of the
logistics around the 15-month period, but
there is a resolution to this, you can take
the program, and the program removes points;
that's resolution, it's not determining
whether it's 15 months, this month, that
month or not.

(Interruption)

MR. YASSKY: Thank you, Commissioner.

You are certainly correct.
MR. YASSKY: Is there a motion to approve the rule as drafted?

MR. FRASER: The statute, we have no authority to change this. The 15-month look-back period is in the statute, we don't get to change that. And the two-point credit is also in the statute, and what it says is if you voluntarily take the course, our judges for many years have interpreted "voluntarily" to mean before you get a summons for it. If you are under a summons and you take the course then, they have construed that to be not voluntarily. All this rule does is codifies that long standing precedent of our judges. You can take the two points, you can take that time any time up until the day before we issue the summons when you have six points, four points, eight points, whatever number of points you want, or no points. Now, you can only do it once -- and again, this is in the statute, we don't get to change this -- every, I forget, 18 months or
whatever the statute says. You can't take three courses in three weeks and drop your point total to zero. But what we are doing here codifies long standing precedent of our judges, and we thought it was a good thing to do and take those appeals decisions and put them in the rules rather than to have them in appeals decisions.

MR. YASSKY: Thank you.

I move that we adopt the critical driver rules as written. All in favor say, "aye."

THE COMMISSION: (In unison) Aye.

MR. YASSKY: Opposed, "no"?

(No response)

MR. YASSKY: With all in favor, the motion is adopted and the rule is adopted.

Our final package are the adjudication rules that the General Counsel will now explain.

MR. FRASER: This is two separate rules packages. What we're doing here is we have -- and they are supposed to be identical, hopefully they are -- one of them amends our existing rules, the rules that are
in effect today, and one of them amends the set of rules that will become effective April 1st as we just determined a few minutes ago. They modify to our adjudications chapters in a number of respects. We published the rules for comment, we received I think it was two written comments which we circulated to the Commissioners, and three people have signed up to speak today.

MR. YASSKY: The first is John Moore representing Council Member Jessica Lappin.

MR. MOORE: Thanks for letting me speak today on behalf of Council Member Jessica Lappin. Again, my name is John Moore.

"I am pleased to testify in support of the Taxi and Limousine's Commission to proposed changed and regulations regarding hearing postponements. These new regulations will help close a loophole that will allow unscrupulous operators to put off hearings to put off their misconduct seemingly indefinitely. I ask the TLC to undertake this change after learning of an exasperating experience of one of my constituents. That
TLC PUBLIC HEARING 11/18/10

constituent was driving his car on March 11, 2007 when he was forced out of his lane by a taxi driver. He and his young child were badly frightened by the encounter. He filed a complaint on the same day and was asked to attend a hearing on September 19th. He showed up but the driver did not. The hearing was rescheduled and this happened four more times. Each time my constituent showed up and the driver did not, always asking to get another postponement always for medical reasons.

"Then in June 2008, my constituent was asked to appear for a fifth time. The case was finally heard in July 2008, 16 months after the incident, and the driver was found guilty. His license was suspended for a period of time and he received a substantial fine.

"The story does not end there. The driver appealed, as is certainly his right, and in August 2008, an administrative judge reduced his penalties. The case was reviewed again, and it was not until July 2009, more
than two years after the original incident, that the case was resolved in my constituents's favor.

"I think that this is a clear case of justice delayed, justice denied. During these two years, the driver in question, who has also been found to be a dangerous driver, was out on the streets possibly endangering his passengers, occupants of other vehicles, pedestrians, and himself.

"It is certainly possible for a driver as well as the complainant to have a valid medical reason or other reason for needing a postponement of a hearing. However, on looking into this case, I learned that the TLC had no regulations limiting the number of postponements a driver could request, no verification of the medical necessities alleged, and no way to make sure the hearings proceeded at a reasonable pace in order to protect the public from dangerous drivers.

"I was in contact with former Commissioner Daus and current Commissioner Yassky to request that this matter be
pursued, and I'm pleased with the outcome.

"These regulations provide that, except for a very clearly defined good cause, a respondent shall be entitled to only adjournment. They also clarify the appeals procedures including time limits for each stage of the process and clarify the timing of the imposition of penalties after a hearing decisions. These new regulations are appropriate and sensible and I'm delighted to lend my support, and I hope they're adopted. Thank you very much."

MR. YASSKY: Thank you, Mr. Moore.

Peter Mazer?

MR. MAZER: Good morning.

MR. YASSKY: Good morning.

MR. MAZER: Good morning, Chairman Yassky, Mr. Fraser, members of the TLC Board of Commissioners. My name is Peter Mazer, and I'm general counsel to the Metropolitan Taxicab Board of Trade, an association representing the owners of more than 3,500 licensed taxicabs.

As part of our member services, we
provide representation at TLC tribunals to medallion owners, agents, brokers, licensed taxi meter businesses, as well as drivers at the various TLC adjudications tribunals.

I personally represented respondents at nearly 500 TLC hearings during the past five years and served as a judge at the TLC tribunal from 1987 to 1996, and as the TLC's chief judge from 1996 to '98.

MTBOT has previously submitted written comments, which you have, regarding a number of concerns raised by the proposed amendments to the adjudications rules, but I will limit my testimony to two major concerns that I have.

The first issue in which I would like to address is the proposed new Section 18-06(c), which would allow the TLC to prosecute hearings without the testimony of the officer who issued the summons. The proposed rule provides, "If the summons of Notice of Violation is sworn to under oath or affirmed under penalty of perjury, a copy of the summons will be admitted into evidence prima
facie proof of the allegations alleged." And I believe that there is a new draft this morning that changed the word "prima facie proof" to the word "prima facie evidence."

MR. FRASER: I forgot to mention that there were four changes that staff is recommending to the rule. I would regard them all as technical. One of them is changing the word from "proof" to "evidence," in response to the comments submitted by Mr. Mazer and others.

MR. MAZER: In the Statement of Basis and Purpose, accompanying the rules would the following: "This change in adjudications procedures conform to procedures used at other tribunals in the City including the Environmental Control Board." However, the rules governing the ECB shows that its rules are quite different. Section 3-54(a) of the ECB rules provides that the Notice of Violation if sworn to or affirmed shall constitute prima facie evidence of the facts stated therein.

ECB also routinely allows respondents to
obtain adjournments to compel the issuing officer to be present. The judge need only determine that the hearing can be conducted more effectively if the officer were made available.

When a summons is presented into evidence at an ECB hearing, it is the same as if the officer were at the hearing and testified under oath to the facts contained in the summons. For example, the summons was issued because there's no curb cut in front of a building, it's like introducing the summons is like having the officer saying, "I saw that there was no curb cut."

The judge then decides what to do with the facts; believe them, discredit them, consider defenses or responses. ECB rules are very clear that burden of proof in the hearing remains at all times with the agency issuing the summons. The City must prove the respondent guilty. A respondent is never required to prove his or her innocence.

This is a significant distinction between a summons being prima facie evidence
of the facts as practice at the ECB and the
summons being prima facie proof or even prima
facie evidence of a violation as proposed by
the TLC.

Under the TLC proposed rules, a summons
is not merely evidence of the facts stated on
it, it is proof that the allegation
occurred. Thus, the proposed rule asserts
the authority of the judge to apply the law
to the facts alleged and to reach a judicial
determination as to whether the facts are
sufficient to establish the violation alleged
in the summons. By simply introducing the
summons into evidence, the TLC now shifts the
burden of proof to the respondent. So, now,
the respondent is guilty unless he or she
could prove innocence, unlike The ECB where
hearings are routinely adjourned because the
respondent wants the issuing officer to be
present. Under proposed rule 18-09(a)(4),
the burden is also on the respondent to
convince the judge that the issuing officer's
testimony is even necessary. Not only is the
respondent presumed to be guilty but the
respondent may even be denied the tools to
defend a case to establish his or her
innocence.

If the TLC truly wanted to replicate the
procedures in other agencies, it should look
at the ECB rules, look at The City Charter,
set forth the due process requirements and
mandate first that the burden of proof remain
with the TLC to establish guilt and not with
the respondent to prove innocence; and
second, to develop a fair procedure to
balance the respondent's right to a fair
hearing with the TLC's admitted desire to
utilize its offices in ways other than
testifying at hearings.

Replicating what the ECB does word-for-
word might be one way to achieve the result.
The proposed TLC rules neither replicate
ECB's procedures as they purport, nor provide
a truly fair hearing to the respondent.

While we're on the subject of
replicating procedures at other tribunals,
the TLC is unique among tribunals in not
providing attorneys or representatives with
TLC PUBLIC HEARING 11/18/10

notice of scheduled or rescheduled hearings. Part of the rationale that reforms those today is to reduce the number of adjourned hearings. One of the reforms, the one I previously discussed would actually increase the number of adjourned hearings, because now, whenever a respondent chooses to contest a hearing, there will be a necessity of at least two appearances by the respondent and the hearing would be adjourned at least once to have the issuing officer present.

A large number of summonses are adjourned because the TLC is unprepared to go forward. From my experience, about 10 percent of hearings are adjourned for that reason. Also from my experience, about 20 percent of hearings are adjourned at the request of the respondent or his attorney. Non-availability of a party or the attorney or the representative is the number one reason for adjournments, followed by adjournments to request records.

Unlike every other tribunal that I am aware of, if an attorney or representative
requests an adjournment, the notice of
rescheduled hearing is not sent to the
attorney or representative, but directly to
the respondent. The attorney or
representative at the TLC is not given timely
notice or given any notice of a rescheduled
hearing. If a hearing is dismissed at the
TLC level and an appeal is filed, appeal or a
notice of appeal is occasionally sent to the
attorney, but not always. If a case is
remanded for a new hearing, the attorney is
never notified. A respondent who receives a
notice and who has an attorney will usually
assume that the attorney knows of the
hearing. After all, in every other tribunal,
attorneys and authorized representatives are
informed in a timely basis about all future
proceedings, only the TLC does not.

Many of the issues relating to
adjournments and missed hearings arise
because the TLC does not inform attorneys and
representatives about rescheduled hearings.
A simple change in the procedure would make
the TLC tribunal operate just like any other
court, any other adjudication tribunal. Simply have the attorneys and representatives file notices of appearances either at the hearing or at any pre-hearing request such as an adjournment request. By the way, this is the way it's done at the JFK Tribunal that the TLC operates, although absolutely nothing is done with the notice of hearings that are filed there. Give the attorney or the representative notice of all future hearings. ECB does it, Department of Health does it, every court does it. This simple change in procedure will enable your tribunals to operate more efficiently and reduce the number of adjournments and missed hearings.

I'll be happy to answer any questions that anyone may have.

MR. YASSKY: Commissioners, are there any questions for Mr. Mazer?

(No response)

MR. YASSKY: Alright, while you are here, we have one more person who is testifying, my guess is, along much the same
lines. I have to say I think that the
distinction between evidence of the facts and
evidence of the violation, I think that seems
to be your main point, I think is utterly
without meaning. If a summons says, "I saw
that Mr. X. I hailed Mr. X who was an
unlicensed vehicle and he offered me a ride
and a ride for money," and therefore, it's an
illegal street hail, you are saying that
there is a difference between saying that it
is evidence of facts that constitute
unlicensed activity and that's one thing, and
saying evidence of unlicensed activity is a
different thing?

MR. MAZER: Well, actually I'm a lot
happier that the word "proof" was changed,
"proof of the violation" to "evidence of the
violation."

MR. YASSKY: Honestly, I mean it's
mandated, we would be happy to have it say
"evidence of proof," but in neither case is
it conclusive. In both cases, it's a
rebuttable evidence that if a defendant has
something to say in his or her case, he or
she is perfectly free to do that. And if they can persuade the judge that the summons is incorrect or wrong, then the judge will dismiss the case.

MR. FRASER: If I may add. I, as five years in charge of enforcement at the Buildings Department, supervised the practice of the Buildings Department's violations at the Environmental Control Board. And our Deputy Commissioner for Adjudications was an official for many years at the Environmental Control Board, I believe leaving as legal director. So, we have a pretty good idea of what ECB practice is, and it is our intention to precisely mimic that practice in this rule. You can write that down as part of the legislative history right from the transcript of the hearing.

You should know that we conceive of this as having -- there are four types of hearings procedurally speaking: One, the respondent defaults, doesn't show up; two, the respondent shows up and asks for an adjournment that has nothing to do with the
inspector being present; three, the
respondent shows up and doesn't need the
inspector to testify, his defense relates to
some other thing altogether; and four, the
respondent shows up and needs to have the
inspector's testimony.

In the first three cases, the procedure
that is being advocated for would require us
to have the inspector present for all of
those hearings, even though only in the
fourth case is that inspector's testimony
needed. This is exactly what happens at
ECB. If the respondent does not show up,
there is no hearing. And I know this, this
comes from my own practice. The computer, at
the end of the day subtracts out all the
things where action was taken, says, "Okay
everything else, no action was taken," the
computer spits out a default decision. No
judge even looks at it.

We're not proposing to go that far by
the way. In this respect it is different
than the ECB practice. We will still have a
judge issue a decision based on the summons.
But the inspector won't have to take time to testify for an uncontested case. The only time an inspector will have to testify is when the inspector's testimony is in issue. And that can be put in issue, of course the respondent would ask for it, the judge would review it, and our intention is that the judge will have the same flexibility to adjourn to call the inspector that the ECB judge has. I guess that's the points I wanted to make.

The notice of the adjourned date to the attorney, your point is well-taken. We think that's something that should be done. We don't think that's a rule-making issue. That's something we think we need to work on operationally and we've committed to do that.

MR. MAZER: Can I make just one rebuttal to your first point about the inspector's testimony?

MR. FRASER: Sure.

MR. MAZER: The only difference there, and if you want to replicate ECB practice, it's true that ECB spits out default
judgements for respondents that do not show. But the respondent who files a motion within 45 days has an absolute right to the hearing be reopened. There is nothing in these rules that give that respect.

MR. FRASER: That's right. The motion to vacate default is different. At any speed, that's true. But that's not covered -- that is the prima facie proof issue.

MR. MAZER: And I'm very happy that you're saying as part of this transcript is the legislative history that your practice here will replicate the ECB practice with respect to inspectors, with respect to adjournments.

MR. FRASER: Well, I can't and won't try to bind our judges. What I'm saying is our rule is intended to mimic their rules and their practice. I do not decide the actual cases, so.

MR. YASSKY: Thank you.

Mr. Ethan Gerber again has also signed up to testify.

MR. GERBER: Thank you, Mr. Chair.
Thank you, Commissioners, and I do adopt all of Mr. Mazer's comments.

I do want to say that I'm here on behalf of the Greater New York Taxi Association and Owners Association, which largely concerns drivers as well, which is of course essential to our industry. I'm also here because on a personal level as a Bar Association leader and as a former prosecutor, my sense of due process is deeply upset by what's going on. We have got a couple of things going on, one of them is the change of adjournment rules. And what we're doing here, let's be certain, is we're taking the discretion away from the administrative law judges. What we're doing in changing the discretionary powers of administrative law judges to be certain is changing the powers of the administrative law judges' discretion of the administrative law judges that were appointed and screened by this agency itself. So, we are not happy with the discretion that's being given buy these ALJs, and we are going to reduce their powers to do the fact-finding and to exercise
TLC PUBLIC HEARING 11/18/10

their discretion.

It's ironic, because just recently I received or became aware of a plethora of appeals decisions where the TLC was not ready on dates by their inspectors for the dates that they set, that the TLC inspectors set and the agencies set, were not ready, the adjournment was denied and brought to the appeals bureau, and the denial of the adjournment was appealed by this agency and overturned. The appeals bureau signed off on by the General Counsel.

MR. FRASER: Whoa, whoa, hold on a second. I do not decide appeals, please.

MR. MAZER: Your name is on the bottom of it.

MR. FRASER: Alright, yeah, they sign them in my name. That's actually one of the things that this rule would change. I do not see appeals decisions.

MR. GERBER: Right. But this agency has a history of appealing its own denial of adjournments when it seeks the adjournments, that's number one.
As to the prima facie case or the fact on a piece of paper, I would like to take some umbrage also at the comparison between ECB. The violations of this agency are quite different than the violations that are often given. They are very fact specific. The statement given by who happens to be my Councilwoman, I understand the frustration. But the specific charge given in that particular case had to do with the type of reckless driving. That is not the type of allegation that, let's say, did not properly dispose of a flammable liquid or some other type of thing which either happened or did not. A reckless driving is akin to a court case which is very, very fact specific, and the idea of being able to defend such a charge without cross-examination is virtually impossible. I don't know what evidence I would come in to rebut an allegation on a piece of paper of that type of conduct. I would not know how to do that cross-examination. Maybe an attorney with better power than I can figure it out, but as
someone who has tried many jury cases and has tried many bench trials, I don't know how I would possibly cross-examine that piece of paper. The Administrative Code of the City of New York gives due process rights and the Administrative Code specifically recognizes that cross-examination is one of those essential rights.

Here, what we do is we put the burden on the respondent to make a motion to the court to bring in a person to cross-examine. This is not consistent with the Administrative Code. Again, liking it to a sanitation issue I really think is a stretch because of the very fact-specific nature of the types of charges that appear here. There are all types of issues that are subject to cross-examination.

You know, you get a violation, a driver gets a violation in this forum for not checking the back seat when they drop off a passenger. They take a passenger from the airport, they don't check the back seat, the passenger alleges three weeks later that he
lost his wallet in that cab and the driver didn't check. How am I supposed to prove or disprove that allegation on a piece of paper? I mean cross-examining the witness would be interesting. I know I don't like the type of questions when I lose my wallet every other day and my wife says, "Where's the last place you had it?" You know, well, that's a difficult question. And that's a difficult question that you would ask to a person who makes the allegation that "I lost my wallet in the back seat of a cab."

Again, I could go on and on with the type of allegations, but those type of cases are thrown out routinely in court when there is a tort of a bailment issue and they base it on the ALJ decision that came out of TLC, routinely thrown out of court because the proof is insufficient. But here, it's okay. How you could possibly sustain those charges in almost the whole plethora of type of charges that a driver could be faced with on a piece of paper and cross-examine a piece of paper? It is virtually impossible to prove a
negative, I don't know how to do it.

MR. YASSKY: Thank you.

(Applause)

MR. YASSKY: Are there questions by Commissioners?

MS. POLANCO: Well, my question is, I thought that the driver when he appears at a hearing, basically he will have the option to call the officer, the issuing officer.

MR. YASSKY: That's correct.

MS. POLANCO: But the issue here is that the hearing, when they come in for the first time, let's say there is no adjournment by the driver, automatically there will be an adjournment because the issuing officer will not be there.

MR. YASSKY: If I can, Mr. Gerber, if there is an issue in dispute; so, what this enables, and the goal, my goal, my primary goal here is to maximize the use of our very limited enforcement resources and enable our officers to be in the field writing tickets for illegal street hails every possible minute, rather than in court, when they have
no need to be there, right?

If there are facts in dispute, the respondent's, the driver's right to cross-examine is unchanged. If there are facts in dispute, the driver can say "This summons is inaccurate. I need to examine the officer to show why it is inaccurate, to show that there are other things that weren't reflected here," they can do that.

But in the bulk of cases in which there are no facts in dispute, we don't have to have our officers sitting in the Long Island City hearing area for their entire shift when they could be out writing tickets. That's the goal.

MR. FRASER: Mr. Gerber's hypothetical I think is precisely the argument that would lead to the calling of the inspector. In other words, he said, "The facts are in dispute, I need to call him. I need to cross-examine him. I can't cross-examine a paper." What this rule is intended for is if there is a defense that has nothing to do with the inspector's testimony. For example,
service was incorrect, or "I wasn't the
person in the car," or whatever it might be
that calling the inspector has nothing to do
with it.

But, there's one other point. When I
was at the Department of Buildings, you would
be amazed how many times the respondent asked
to have the inspector called and the judge
would say, "Are you contesting the
violation?" and the answer was "No."

"Well, why are we calling the
inspector?" And that's what this is intended
to root out, delay for delay's sake.

MR. GERBER: Can I answer the question
posed by the Commissioner? The question of
the Commissioner was, do you have a right to
call the witness? And the answer is
certainly 100 percent, no, you do not. What
you have the right to do is make a motion to
the judge to request a witness, which is the
same effect as let's say an oath proceeding
of asking the court to issue subpoenas --
which it virtually never does, very, very
rarely.
MR. FRASER: Again you have insulted me. I was an ALJ for 10 years, I signed many, many subpoenas, Mr. Gerber.

MR. GERBER: And I could bring in testimony by one of your lawyers on the record that said "We don't do that here." I have that transcript, Mr. Fraser.

So, what you would do is -- you do not have the right. The question, Commissioner, I thought was, do you have the right to call witnesses? No you do not have the right to call witnesses. You have the right to make a motion to ask for the right to call witnesses. And as you know, being familiar with the court system, that's a big difference between having the right to make a motion and having the right to do something.

I have, as a litigator in the court system representing parties, I have subpoena powers myself. I can subpoena witnesses. If they don't come to a lawful issued subpoena that was done in the course of litigation, the judge could hold that person in contempt.
In this proceeding, all I have is a right to a motion, and the motion I'm calling is -- and what am I doing? I'm asking simply for the judge to call the witness against my client. That's what I'm asking them to do.

So, I asked you if The Charter of the City of New York says that there must be due process in this forum, and that due process says you have a right to cross-examine witnesses, and that is exactly what The City Charter says. If The City Charter of New York says I have a right to due process and due process includes the right to cross-examine witnesses, how is that right discretionary with the court?

MS. POLANCO: Where is that in the rules about a motion to call a witness?

MR. FRASER: Where that is --

MS. POLANCO: Because my understanding is they appear at the hearing, if they tell the ALJ judge basically that that they dispute the facts as they are in the violation, "I'm requesting to speak with the officer," does it have to prove anything
MR. FRASER: I have to say the purpose of the rule is to leave very wide discretion, and as I said, the intent was to mimic the ECB's rules and procedure in that respect. Where it is, it's under requests for adjournment, so, in the new version of the rules it is 18-09(a)(4), and it's adjournments to obtain the testimony of a complaining witness.

One of the purposes of the rules is notice. It's supposed to inform people the kind of things you have to say, and of course inform the judges the kind of things we have to find. So, as the respondent must explain the subject of the testimony the respondent intends to obtain, Mr. Gerber says, "I want to cross-examine him because I'm going to contradict what he has to say," that's the subject matter. ALJ will find good cause if he concludes that the complainant's witness is reasonably likely to be necessary to a fair hearing. Cross-examination of an adverse witness all on material facts is very
likely to be reasonably likely to be necessary.

And then the non-attendance of the complaining witness is submitted a sworn -- oh, that's a different issue. So, that's what he needs to show: (i) and (ii) is what he has to show. And my position on it is that the judge then has very wide discretion to determine that that's good cause.

And my expectation would be that barring some fairly bizarre circumstances I can't anticipate, if that hypothetical as Mr. Gerber just spelled it out were the case, the witness would be called. Now, it might not be if this was the eighth time the case was on or some other bizarre circumstance, but as a general matter, I would expect that to be the case.

MR. GERBER: And that's exactly my point. My point is that it requires a motion, it requires the burden to show that there is good causes on the party calling the witness. The judge must then determine that there is good cause and that it will somehow
impact. So, in other words, I have to make
my case of what my cross-examination is going
to reveal before I cross-examine.

Remember, this is not a trial where I
have deposition testimony to say, "Look,
there has been conflict in testimony." What
do I have other than my driver says this is
not true and this would bear witness? And
this procedure makes it a discretionary, it
shifts the burden, it shifts the burden on
the party seeking to call the witness. It
requires a finding of fact by the judge that
it would have some material effect without
the ability to cross-examine that witness in
the first place to find out these issues of
fact and the bearing omissions and perhaps
the triteness or silliness of the
allegation.

If we take the position that all drivers
are guilty, you know, it's just a rubber
stamp anyway, then I agree, then we don't
need these procedures. You know, but the
purpose of these rules should not be about
the kangaroo to jump higher.
MR. GIANNOULIS: Do we know approximately what percentages of the cases actually end up currently with one of our inspectors testifying?

MR. FRASER: My understanding is it's about 10 percent, but someone in the back might have a better number.

MR. MAZER: I said in my testimony my records show 10 percent of the cases that I have handled were adjourned because the issuing officer was not available.

MR. FRASER: Maybe Deputy Commissioner Mullings might know. But I had the idea it was about 10 percent.

MS. MULLINGS: What was the question?

MR. GIANNOULIS: Just of these cases, currently what percentage does an inspector show up?

MS. MULLINGS: Any summons written in the field, the inspector shows up.

MR. GIANNOULIS: Any summons?

MS. MULLINGS: Written by an officer, written from actions in the field, the inspector shows up.
MR. YASSKY: So 100 percent?

MS. MULLINGS: 100 percent.

MR. FRASER: But how many end up testifying? In other words, they show up now because --

MS. MULLINGS: Unless somebody takes a plea of guilty, they testify. Every now and again there is a rare moment where the rep will stip to the testimony, but in 99 percent of the cases that go to hearings the inspector testifies.

MR. YASSKY: Or shows up and is prepared to testify.

MS. MULLINGS: Shows up to testify.

MR. GIANNOULIS: On average, how many cases are seen a day would you see?

MS. MULLINGS: The overnight squad writes, actually writes for an entire day of hearings. The other inspectors schedule basically either a morning session or afternoon session. So, they are tied up through their entire shift basically.

MR. YASSKY: Thank you.

MS. POLANCO: You mentioned the goal
that we're trying to accomplish with this, we want to basically not have the inspector tied up sitting around in hearings, and we want them out there on the street issuing summonses.

MR. YASSKY: Yeah, unless they are needed to adjudicate the facts in dispute, then of course their place is in the hearing room.

MS. MULLINGS: Thank you. I would just like to point out an issue as having been in unfortunately about 20 years in Sanitation. The Sanitation summonses, the officers do not appear. The uniform forces did not appear for most of the hearings.

MR. FRASER: Those are ECB?

MS. MULLINGS: ECB summonses.

MR. FRASER: Parking violation summonses, the cops do not go.

MR. YASSKY: In speaking of Mr. Gerber's point, let me ask General Counsel, do ECB rules give the power of subpoena to the respondent?

MR. FRASER: I actually don't know.
TLC PUBLIC HEARING 11/18/10

They may formally refer to subpoenas. Deputy Commissioner Scanlon would know this.

MR. SCANLON: The rules that were in effect when I was there, the judges did have subpoena power.

MR. YASSKY: The judges do, but do the respondents?

MR. SCANLON: The judge would issue a subpoena based on respondent's request.

MR. FRASER: But in the case of an inspector of an agency employee, the subpoena wouldn't be used, it would just be adjourned and the agency instructed to call the inspector.

MR. SCANLON: Due to a disputed fact, the judge would screen the basis on an issuing officer. Not just Sanitation, the Parks Departments, even the Police Department, when cases are general, they include them and they would not automatically show up.

MS. POLANCO: Basically, when you get let's say a DMV violation, you appear and so forth. If you have an issue, you request an
adjournment because you want to produce the officer, but I don't know about proving or speaking with the judge trying to prove basically why you need the testimony of the officer I think. Does that happen?

MR. FRASER: Yes, at ECB, well, in general. As a general matter, if you are calling asking for adjournment of a witness called, most bureaus, the judge would want to know what for and would want to make sure that it is not a waste of time. And certainly when I was an oath judge, I did not allow witnesses who had nothing material to say. If the issue was not contested, if it was irrelevant or whatever, I did not allow the witness.

MR. YASSKY: Can we hear from Deputy Commissioner Mullings if there is additional?

MS. MULLINGS: I mean, I would just point out that in Sanitation there were some summonses where we would appear, and there are certain summonses that we will appear because there will be questions of fact. Some summonses, for example, whether it could
be a simple thing as whether there was a missing detail, I don't know that we need to appear on that unless somebody is coming in. But I mean, there are going to be some issues where we're going to appear. And the same way in Sanitation where the respondent could request to appear.

MR. GIANNOULIS: How detailed is the information in the summons?

MS. MULLINGS: Well, what I'm saying is once this rule passes, we will be changing how we write the summonses, so they will have to be more detailed, so they will spell out the facts.

MR. GIANNOULIS: Currently?

MR. YASSKY: Often not at all, just "checked," you know. And you are right, Commissioner Polanco. I feel like what you're getting at is just put some kind of burden on the judges to do the job, which I have faith that they do, in determining whether their issue is in dispute or not. And that is, you know, that does become part of their job, you are right.
MS. POLANCO: Especially because we have at these hearings, a lot of these drivers are pro se, so, they are not represented by counsel, they're not going to be looking at summonses and say -- you know, they way they will explain it to the judge I mean.

MR. FRASER: That is true, but the judges are obligated and there's still a relatively new three, four-year-old code of ethics that applies to judges that spells out in a fair amount of detail their obligations when a party appearing before them has no counsel, and they stick strictly to it. I've seen transcripts, I have listened to recordings, they are very good about it. So, I would not be too worried about that.

MR. YASSKY: For example, when Mr. Gerber points out that it's not uncommon for judges to deny the Commission's request for an adjournment such then the Commission goes and appeals, I think that tells you a little bit about the independence of the judges, you know, they're not there just to be rubber stamps.
MR. GIANNOLIS: Would it be problematic then if they as part of their little speech explain that they have the ability to call in the inspector?

MR. FRASER: I don't see why, and if it isn't already there, we're going to add it.

MR. YASSKY: That's an excellent idea. I think that is clear.

Look, the goal of course is to identify the cases where there is a factual issue and the cases where there is not. And if there is not, the amount of, you know, kind of bureaucratic time we will make as little as possible.

MR. GIANNOLIS: I mean, people should certainly should have a clear understanding that they have a right to do that if they think that there's something under it. I mean, a bunch of these summonses I assume are factual and are not that under dispute, right? I mean in terms of whether it is equipment issues or other things that the inspector really has nothing to offer anyway.
MR. FRASER: That's right. And a number of them aren't eye witness cases. In other words, the administrative summonses that we wrote, the computer record shows this or that or the other thing, the person who wrote the summons is going to relatively add to that. But yes, many of them are eye witness cases. In the field, you picked up a street hail, you know, "I saw the person paying."

MR. YASSKY: For what it's worth, they are. I think Mr. Gerber is correct in saying that a lot of these cases are fact intensive. That doesn't necessarily mean though that there are disputed facts. I mean, you know, "I saw a cell phone," the facts are more detailed than maybe an average Sanitation violation, but that doesn't mean they're disputed.

"I saw that the driver was speaking on the cell phone," now, the officer doesn't have to show up. Judge says, "Were you speaking on the cell phone?" "Yes." If the answer is yes, then the facts are non-disputed.
You know, "You are denying that you were speaking on the cell phone?" "Yes." "Okay, then we need to have the officer here."

I think that you will find that most people though tell the truth and will not say that the facts are in dispute if later it's going to turn out that they really are not.

Is there a further discussion?

MS. POLANCO: Was there something else you needed to say?

MR. GERBER: Yes. I mean, I think the point of this is that there are problems with the rule as written. Commissioner Giannoulis' point that the witness should be advised of their rights, one of the things that an advisory of the rights would do is it would remind the ALJ of their duty to institute justice where a fact is in dispute. There is no guidelines here of why that would be necessary.

I think these rules need to be amended. With all due respect, Mr. Chairman, I would beg my request for adjournment, so that you can contemplate a little bit of a safeguard
needed just so that people have the ability
and the right to cross-examine witnesses that
are essential. And it is very difficult to
make a case of why you need to cross-examine.
I mean, you gave a point about "I saw a
witness on the cell phone." Well, if there
were three people in the back seat and you
are sitting behind the rate card, maybe it
is, maybe you saw something you didn't think
you had seen, which is one of the reasons why
cross-examination is important.

MR. GIANNOLIS: I'm not advocating for
this, but just maybe to save some time. I
actually believe that while attorneys will
find value in being able to have the
inspector, I actually think that most people
will not want the inspector there, because
chances are you are going to get off better
if he's not there. There is no debate about
that in my mind, so, eventually, people
figure that out, because the judge will be
more lenient. "Oh, okay. Well, I was only
on the phone for a second. You know, the guy
really screwed me, and you know, it was my
wife and she was driving me crazy," the judge, you know, "Okay." There's no debate about what's going to happen.

MR. YASSKY: Thanks for the dose of reality.

MR. GIANNIOULIS: Again, maybe this defeats the purpose of this rule, so, I don't know if this is a very good idea, but is there possibly some process during the summons, kind of a notification where somebody could express their intent as also, "I would like to have the inspector"?

Because I think a lot of people will say, "No. I don't want the inspector there because he busted me. He caught me. I don't want him there."

MR. YASSKY: I think you are absolutely right that, you know, I think our operations need to be improved. That starts with a hand-held device for the officers to issue the summons. And the reason I put it that way is then we can build into the document that the person gets. We could do this today, but once our processing of the
summonses is automated, we can build in the
opportunity to say, you know, "I'm contesting
this and I think there are facts in dispute,"
and then we can know.

The whole goal of this is for us to know
of the thousands of summonses that we issue
which are the handful of real cases and which
aren't. And we don't have to have the full,
you know, people just sit and stand and wait
for something that's not a real case. Once
we have the hand-held, then we can move to an
online ability for -- and the point of about
notice by the way, you are right, kind of an
ideal world we would send the notice to the
respondent and to the representative as well.
All of these things are operational, and
take, you know, it is a question of what our
priorities are for implementing operational
improvements; you know, which sooner and
which later. You know, we don't think that
that one -- that we don't see much evidence
of kind of day-to-day practical problems,
Mr. Mazer, but nonetheless you're right, the
representative should get notice too.
TLC PUBLIC HEARING 11/18/10

Once we have the hand-helds and then you can go to the online response both to ask for adjournments, to reschedule on your own, to pay, just to plead guilty online and pay in advance, all of that will enable us to identify the real cases and separate the real cases from the ones where it is just a matter of getting to them, and quicker.

So, you were right about those operational improvements. We will certainly incorporate. I want to tell you, when this goes into effect, the ALJs will get training on this as they do on all new rules, and Deputy Commissioner Scanlon and our new Deputy Chief ALJ have done really a very nice job in kind of stepping up our training regimen for ALJs. They'll be trained on the rule, and that will include a directive to advise people that if you think that there are facts in dispute and you want to question the inspector, that you can ask the judge to call on the inspector.

Mr. Gerber?

MR. GERBER: Mr. Chairman, I do want to
caution that I think some of these goals that
you are stating are fair and I wish they were
incorporated into the rules that you are
about to pass. What you are about to do, if
you do it, is change the essential due
process rights that have been in effect in
this organization since it started, since
this Commission started.

It is ironic to me slightly, when I was
going through some of the past issues that
have here, is that just not too long ago, we
just changed the rules so that you allowed
testimony by witnesses via video
conferencing. At the hearings for that, it
was suggested, "Don't worry, you'll still
have all your due process rights to cross-
examine." Apparently those rights that we
talked about, those due process rights that
we talked about when we went to video
conferencing no longer exist and they have to
be by request of the judge.

If you're going to shift the burden, if
you're going to say that a piece of paper is
enough to take away someone's livelihood --
and another distinction between the
Sanitation summons and the summonses that are
issued by this body is that particularly for
drivers you are talking about things that
could result their suspension, their ability
to put food on their table, to pay for their
children's school, to pay for their rent, and
in doing so, they should have due process
rights. And the severity of the punishment
involved, the lack of livelihood is such that
I believe that it gives rise to a greater due
process rights, and I think that's what all
Administrative Code decisions that I have
read say that, say that it has to do with the
deprivation that is going on by the body. A
fine for leaving the garbage out is not the
same thing. So, I do ask that these
suggestions that were made today be
incorporated into these rules and they are
re-examined when those changes are made.
Thank you.

(Applause)

MR. YASSKY: Thank you. As strongly as
I do feel that these rules are not just smart
but fairly common sense, I'm glad that we had
the discussion. I think it's good to have
kind of a full and thorough airing of the
issues including points of view with which I
disagree. So, I appreciate all of the folks
who testified here to bring those issues
forward.

Do we have a motion to approve the
rule?

(No response)

MR. YASSKY: I will move to approve the
rule as written. All in favor, say, "aye."

THE COMMISSION: (In unison) Aye.

MR. YASSKY: Opposed, "no"?

(No response)

MR. YASSKY: By unanimous vote, the rule
is adopted. Thank you, Commissioners.

MS. POLANCO: I mean, I did approve the
rule, but I would just like to maybe between
now and December -- well, by December, I
would like to see basically some of the
suggestions that we spoke about, something in
writing regarding instructions to the ALJ,
maybe something in the summons itself where
people can check that they are disputing the facts, something. I want basically just something in writing.

MR. YASSKY: We will do that. Thank you, Commissioner. Thank you for that suggestion.

The last item is, and I know it is now 20 minutes before noon, Commissioners, so, I don't want to impose on your schedules, I did think it was a good time for me to kind of bring you fully up to speed on the Taxi of Tomorrow project. I outlined at the beginning of this session the broad outline of where we are in the process, but we haven't as a group discussed it in some time.

Given that the responses involved confidential material from the proposers, it is necessary that we retire to executive session to do that. So, I'm going to move that we now move to executive session to discuss the Taxi of Tomorrow project. If that motion is approved, we will then adjourn this meeting. We can do that, so, we'll
adjourn the meeting and then we can do that
in the conference room inside so people don't
have to leave more expeditiously than they
otherwise would.

So, I move that we convene executive
session to discuss the Taxi of Tomorrow
project. All in favor, "aye."

THE COMMISSION: (In unison) Aye.

MR. YASSKY: Opposed, "no"?

(No response)

MR. YASSKY: Okay, the motion is
approved. With that, this meeting is
adjourned. Thank you.

(TIME NOTED: 11:48 a.m.)
CERTIFICATION

STATE OF NEW YORK )

: SS.: 

COUNTY OF NEW YORK )

I, CASEY MARTIN, a Stenotype Reporter and Notary Public for the State of New York, do hereby certify:

THAT this is a true and accurate transcription of the Taxi & Limousine Commission Public Hearing held on November 18, 2010.

I further certify that I am not related either by blood or marriage to any of the parties in this matter; and

I am not in any way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of November 2010.

__________________________
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Bronx 4:11
brothers 17:16
brought 16:22
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build 84:23
building 16:16
Buildings 56:8
bulk 66:11
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