



**New Hampshire Commission of Law Enforcement
Accountability, Community, and Transparency**
Remote Commission Meeting via Teleconference
Friday, August 14, 2020 at 9:30 a.m.

Commission Members Present: Deputy Attorney General Jane Young, *Chair*; Robert Quinn, *Commissioner of the Department of Safety*; Ahni Malachi, *Executive Director, New Hampshire Commission for Human Rights*; John Scippa, *Director, Police Standards and Training*; Rogers Johnson, *Chair of the Governor's Advisory Council on Diversity and Inclusion*; James McKim, *President of the Manchester NH NAACP*; Timothy King, *Lieutenant, Concord Police Department*; Charlie Dennis, *President, New Hampshire Association of Chiefs of Police*; Ken Norton, *Executive Director, National Alliance on Mental Illness - New Hampshire*; Joseph Lascaze, *Smart Justice Organizer, ACLU New Hampshire*; Julian Jefferson, *Attorney, New Hampshire Public Defender*; Eddie Edwards, *Public Member*; and Ronelle Tshiela, *Public Member*.

Also Present: Maria Eklund; Kim Schmidt, *Legal Research Assistant, New Hampshire Department of Justice*; Annie Gagne, *Paralegal, New Hampshire Attorney General's Office*; and Nicole Clay, *Assistant Attorney General, New Hampshire Department of Justice*; and Robin Melone, *Esquire*.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Maria. Good morning, everyone. Just a reminder, as you just heard, this media -- this meeting is being audio-recorded. I am in Deputy Attorney General Jane Young. And pursuant to Executive Order 2020-11, I am serving as the Attorney General's Designee.

First order of business is the call to order. This meeting of the Commission on Law Enforcement Accountability, Community and Transparency is now called to order. The meeting is taking place pursuant to Emergency Order Number 12 and is being conducted remotely.

I'm going to ask each Commission Member to identify themselves, where they are located, and if anyone is currently with them. As I indicated, I am Jane Young. I am at the Department of Justice in Concord. And as always, with me, this morning, Kim Schmidt, Anne Gagne, and Attorney Nicole Clay. Good morning, Commissioner Tshiela. How are you?

MS. TSHIELA: Good morning. I'm good. How are you?

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Where are you today, or do you have a fancy McKim background?

MS. TSHIELA: I'm currently in Exeter, New Hampshire, at my significant other's home. And there's people in the house with me, but they're not in the room with me right now.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Chief Edwards.

CHIEF EDWARDS: Good morning, Deputy and fellow Commission Members. I am at my home in Dover, New Hampshire. And I -- yeah, my wife's in the other room. Yeah.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Attorney Jefferson?

ATTORNEY JEFFERSON: Good morning, Deputy Young and fellow Commissioners. I am at my office in Manchester and I'm alone.

DEPUTY ATTORNEY GENERAL YOUNG: If you're not called yet, please mute your mic. We're having some background noise, please. Thank you. Julian, can you do that one more time. It was a little wobbly.

ATTORNEY JEFFERSON: Certainly; good morning, Deputy Young and fellow Commission Members. My name is Julian Jefferson. I am at my office in Manchester, New Hampshire. And I am alone.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Commissioner Lascaze. How are you?

MR. LASCAZE: Morning, Deputy Young and fellow Commission Members. I am at a residence in Ipswich, Massachusetts. There are two other people here. But there is no one else in this room.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Director Norton.

DIRECTOR NORTON: Morning, Deputy Young, Commission Members. Ken Norton from NAMI New Hampshire, the National Alliance on Mental Illness. I'm on Great Cranberry Island, Maine. There's nobody with me at the moment. But I do expect family will be here at some point during the call, but not in the room with me.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much. Good morning, Chief Dennis. Welcome back.

CHIEF DENNIS: And good morning, glad to be back. Hope everyone had a great day yesterday. I'm Charlie Dennis representing the Chiefs Association. I'm at the Hanover Police Department, 46 Lyme Road in Hanover, New Hampshire. And I'm alone in my office.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Tim. Nice to see you.

LIEUTENANT KING: Nice to see you, Deputy General. For the Board, my name is -- I'm Lieutenant Timothy King from Concord Police Department. I'm a Director of the New Hampshire Police Association. And Lieutenant Mark Morrison asked me to sit in today, because he had other business.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Welcome, we're glad to have you.

LIEUTENANT KING: Yeah, I am presently in Manchester at my home. My son is conducting business in the other side of the house. But I am alone.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Judge Gardner is not able to join us. She is traveling today. Good morning, President McKim. How are you?

MR. MCKIM: Good morning, Deputy Attorney General and Commissioners. I'm well, thank you. I am in Lincoln, New Hampshire. And I am alone in this room.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Commissioner Johnson. How are you?

MR. JOHNSON: I am well, Deputy Commissioner Young. Good morning, fellow Commissioners. I am Rogers Johnson. I am in my home office in Stratham, New Hampshire. And due to the lack of noise, I believe I'm alone in this building.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Director Scippa.

DIRECTOR SCIPPA: Good morning, Deputy General. Good morning, Commissioners. John Scippa, Director of Police Standards and Training, I am in Exeter, New Hampshire, today. There are other people in the house with me. But they are not in this room.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Director Malachi, good morning.

DIRECTOR MALACHI: Good morning. *Wa ni hao.* That's my Chinese for the day, sharing with everyone. I am alone in this room. My name is Ahni Malachi. And I'm at my home in Penacook, New Hampshire.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Quinn, good morning.

COMMISSIONER QUINN: Good morning, Deputy Young and fellow Commission Members. Robert Quinn, Department of Safety, I'm at my office at 33 Hazen Drive in Concord. And I am alone.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. The next order of business would be to approve the Meeting Minutes from yesterday, August 13th. Anyone have any comments or edits to the Meeting Minutes from yesterday?

(No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: Do I have a Motion to Approve them?
Commissioner Quinn moves to approve the Minutes. Do I have a second?

DIRECTOR NORTON: This is Ken. I second it.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ken. I vote yes. Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Johnson?

MR. JOHNSON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Is that a yes?

MR. JOHNSON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So, Rogers is saying yes for the record.

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Rogers. President McKim?

MR. MCKIM: I will abstain.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you. Judge Gardner is not with us. Lieutenant Morrison is not with us. Chief Dennis was not here.

CHIEF DENNIS: Yes, I will abstain, Jane, since I wasn't here yesterday.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Director Norton?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Lascaze?

MR. LASCAZE: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Tshiela?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: We have enough, correct? Thank you. So, the next order of business is Section IV of the Report. Judge Gardner sent an email last night that on page 6, Number 10, it currently the word is "required". We need to drop the D to change the word to "require". She is correct on that edit. Do I have any other edits or comments? Julian and then Ahni?

ATTORNEY JEFFERSON: Thank you. Both are just stylistic. On Number 15 -- Recommendation Number 15, I think we need to remove the word "the" in there. Let me pull it up.

DEPUTY ATTORNEY GENERAL YOUNG: I have it. You're correct.

ATTORNEY JEFFERSON: Okay. And also on Number 16, it looks like the transgender and nonconforming community was stricken and just the acronym was there. I don't think that makes sense. I think you need to have the phrase followed by the acronym. Or it's unclear what the acronym means. So I would suggest we put that back in.

DEPUTY ATTORNEY GENERAL YOUNG: Let me go back, Julian. I thought that we did that because we had used the acronym previously. But if we haven't, then we will leave it the way that it was.

ATTORNEY JEFFERSON: And I think even if we have used the acronym previously, if it's not in that same paragraph, I would still say to keep it in because we're relying upon somebody to remember an acronym from an earlier paragraph. And I think that creates too much danger that people will not know what we're referring to.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, understood. Ahni?

DIRECTOR MALACHI: Good morning. Back, let's see, page 2, and this is more of a question. Page 2, in the third paragraph, it starts in addition to consistent community outreach, after the number -- after the year, 2019, there's a pound mark. Does that...

DEPUTY ATTORNEY GENERAL YOUNG: So, because we're doing sections not in order, that just means we don't know what the footnote number will be. So we will put in the correct footnote number. So that just leaves us a placeholder for the footnote number.

DIRECTOR MALACHI: Excellent, okay. Thank you. That was it.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. James, question or comment?

MR. MCKIM: Thank you, Deputy General. Just a question; in section -- let me pull it up. It's the hiring and recruitment section. Director Norton had some very specific and good, I think, language around offering potentially a scholarship to students who might serve in law enforcement, after their graduation. And I don't know whether that was discussed as to whether that could or should be added into this section. But I think coming up with innovative kinds of ideas like that would be something we might want to recommend.

DEPUTY ATTORNEY GENERAL YOUNG: James, we're just going back. We had a lot of discussion yesterday. And I know that some of the items, we decided that we would address in the next section. So let me just see if we can get a little clarity on that. I don't remember that off the top of my head. Ken, do you?

DIRECTOR NORTON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Ken, can you hear me?

DIRECTOR NORTON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Ken?

DIRECTOR NORTON: I'm having some bandwidth problems. But, yeah, I didn't really hear what you said. It was garbled.

DEPUTY ATTORNEY GENERAL YOUNG: So James had questions about your language about scholarships. I don't remember there being a lot of discussion about that yesterday. Do you remember that?

DIRECTOR NORTON: (No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: So, James, based on what we can put together, there was mention of it. But we did not have a lot of depth of discussion on it. And these are what we voted on. If somebody else wants to correct me on that memory, you're welcome to. Go ahead, Julian.

ATTORNEY JEFFERSON: No, I agree with you, Deputy Attorney General. And I think we did discuss it somewhat, the scholarship. And then, we decided to go with develop a comprehensive strategy. So I think we decided to encapsulate the need but not to drill down into specific recommendations.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Yeah, we've now found that. That is correct. So, with that clarification, James, that's where we were.

MR. MCKIM: I wonder if there might be an opportunity to, as we have done in other places, give examples, because I thought Ken's suggestion was a brilliant and innovative kind of suggestion that is out of the box that I'm not sure other entities would think about. And it might be something at the State level we could provide, not just something that individual Agencies might provide.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, Ahni, go ahead.

DIRECTOR MALACHI: The question out there, the hiring Law Enforcement folks to have them answer, but would this not be something that's already being done? Or I mean, some places have, I guess, for lack of a better way to say it, a signing bonus. Like, in the Military, we will give you this much money and you'll enlist. Are there not those things currently taking place? Or am I misunderstanding Kim's suggestion?

CHIEF DENNIS: Deputy, I wasn't here yesterday. So I'm not sure the whole conversation. But I can chime in a little bit of what Ahni's saying. Some Agencies have a hiring bonus, if that's what she's referring to, to try to attract people in. Usually the hiring bonuses are more toward lateral Officers that already have the experience, so that you're not having the time to send someone to the Police Academy. It's someone that can come in, in a relatively short period of time, be up-to-speed. Generally, that's where the hiring bonuses that I'm familiar with that Agencies may use is to attract a lateral Officer that's experienced.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Chief. John and then Commissioner Quinn?

DIRECTOR SCIPPA: I was just going to say what Charlie Dennis said that, when you have a Certification, that does put you way ahead of the curve, because the Hiring Agency doesn't have to spend a lot of money or time to get somebody through the Police Academy. So, they generally will try to poach, if you will, Officers from different Agencies. Chief Edwards is laughing. It's unfortunately that the -- that is a practice that happens because it's -- financially it makes more sense. And the hiring pool is so shallow. So that oftentimes will happen.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Quinn?

COMMISSIONER QUINN: I think, as written, is fine, James. You raise a good point about the scholarships. But I think the folks that are being tasked with this, the entities, themselves, understand if you were to put in to include but not limit to, there are just so many innovative ways to increase hiring.

So I think that's kind of why we tried to strike the balance, looking at adding going outside of the State. But, to put scholarships in, I think, opens up how many other unique, innovative ideas are there. So that's why we kind of left it at that. And I think the Agencies that are going to be tasked with this are well-aware of the benefit from a scholarship.

And as John said -- and Chief Edwards and I have talked about this offline, as well as Chief Dennis -- it is very competitive. And if the Commission is looking for a well-balanced Law Enforcement across the State, that's why the key is working together. And as John said, not having one Agency really successful while the others are not; so it's got to be a comprehensive strategy which sets the entire State up for the proper balance of workforce. So I think as written is good, because I think the audience knows what to do with this recommendation.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: I just want to chime in briefly and say I agree with Chief Dennis, Director Scippa, and Commissioner Quinn. We have kind of discussed this at different times and throughout all our careers. So I think the language is fine the way it's written. And I think it makes sense the way it's written, as well. So, I support the prior comments.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Any other questions or comments about the Report?

(No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: Do I have a Motion to Move It Forward, as written? Ahni, first; do I have a second? Commissioner Quinn is a second. Commissioner Tshiela?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Chief Edwards?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Lascaze?

MR. LASCAZE: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you.

MR. LASCAZE: I did have a quick question. That recommendation section that you're saying that was going to be added that the Motion was tabled, is that going into this or a different section?

DEPUTY ATTORNEY GENERAL YOUNG: I think that we talked of putting it in the other section, Joseph.

MR. LASCAZE: Got it.

DEPUTY ATTORNEY GENERAL YOUNG: We have flagged it on our end to only talk about the mental-health piece, again. But if you flag it, too, and we flag it between us, we won't miss it. I hope.

MR. LASCAZE: Perfect, thank you. I just wanted that clarification. All right, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Okay? All right. Thank you. So, yes, as it's written now, Joseph?

MR. LASCAZE: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you.

MR. LASCAZE: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Norton?

DIRECTOR NORTON: Yes, and I'm not going to let you miss the mental-health piece.

DEPUTY ATTORNEY GENERAL YOUNG: I know you won't. Thank you. Chief Dennis, I know that you were not here for the discussion yesterday. But I trust that you have read the recommendations?

CHIEF DENNIS: Yes, I have. And I agree. Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you. Judge Gardner is not here. Tim, have you read it and have you discussed what Mark's recommendation would be? Or do you want to pass?

LIEUTENANT KING: Yeah, I'm going to abstain. I did start to bring myself up-to-speed, and I have been monitoring these discussions over the weeks. And so, I will abstain at this point. But, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Thank you, Tim. Judge Gardner's not here. President McKim, same, I know you were out for a bulk of yesterday. But I trust you have read this?

MR. MCKIM: I have, indeed, and I vote yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Johnson?

MR. JOHNSON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Your speaker's off but I can tell that you're saying yes.

MR. JOHNSON: And that would be correct. I am saying yes. I keep wondering, who's keep turning my mic off?

DEPUTY ATTORNEY GENERAL YOUNG: It's not me. Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Ahni was the first. Quinn was the second. And I vote yes. Look at that, consensus again. So, now we move onto the next section, which I'm sure we will have lots of conversations about. So we are now moving to Section 3(b) of the Governor's Executive Order, where we will take up first expert testimony regarding State and local procedures related to the reporting and investigation of Police misconduct and potential reforms, which may include but are not limited to the development of a uniform statewide system for the reporting, investigation, and punishment of Police misconduct.

Today, we are going to have John Scippa speak from the perspective of Police Standards and Training. And then, we will be joined by Attorney Robin Melone. This is a four-hour section. So depending on how long Director Scippa takes, I'll try to give you a 10-minute break around the two-hour mark. Does that sound good to everyone?

(No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Thank you very much. With that, good morning, Director Scippa. The floor is yours.

DIRECTOR SCIPPA: Thank you so much. Before I begin, and just to kind of set the table here, I sent out three specific documents. All three of them were for not only the public, obviously, but for the Commission to really look over. All three of those documents are pretty -- they're pretty volumous (ph). And the reason I needed to send these things out to you is because really a lot of the answers that you're probably going to have questions to, those answers are going to be found in one of those three documents. And I'm certainly happy to help kind of identify where you might find those answers, as you have questions.

In full transparency, having held the position that I have for such a short period of time, I have yet to have direct experience being involved in any type of disciplinary process. And that is because I've only held this position since March. The Council meets once a month. And due to COVID, we restricted bringing people into the building for any such hearings. And for that reason, the -- I have not had any direct experience with regard to any type of hearing on a Certification. But I will do the best I can to help explain the process and then answer any questions. So I'm going to try and start a PowerPoint presentation. Can everybody see that? And I can't see you now. So, if somebody could say yes or no?

CHIEF EDWARDS: No.

DIRECTOR SCIPPA: Okay. So, I apologize here. Let me -- hang on one second. Hang on one second. I think I got to go here. And here I come again, all right?

DIRECTOR NORTON: Director, this is Ken. And if you could also email it out, that would be helpful, because my visual is in-and-out.

DIRECTOR SCIPPA: Okay. I'll definitely share it for everybody. Can everybody see that now?

DIRECTOR NORTON: All right.

CHIEF EDWARDS: Yes.

DIRECTOR MALACHI: Yes.

DIRECTOR NORTON: Yeah.

DIRECTOR SCIPPA: Outstanding.

LIEUTENANT KING: Yes.

DIRECTOR SCIPPA: All right. So, very quickly, I'm going to kind of glaze over the three huge documents that I sent you, which was RSA -- let me see. We will go to the next. I sent you the RSA that covers Police Standards and Training. It's RSA 106-L.

I sent you all of our Administrative Rules. And those Administrative Rules are really very specific with regard to misconduct, decertification, certification, all of that. And then, finally, I sent everybody an audit that had been conducted in February of 2019 by the Legislative Bureau of New Hampshire. And I think all three of these documents are very important, as you -- as we kind of work through this.

So, I apologize here. Here we go. So, I guess the best place to start would be talking about the source of authority. And so, we are an Executive Branch of Government. We stand alone. We're not associated with any other branch of Government. And we're established under RSA 106-L.

And then, the Administrative Rules that I speak about further kind of give us guidance and direction. And those can be found under New Hampshire Administrative Rules POL Chapters 100 through 800. You have both those documents. And I would ask you to refer to them as we go through, if you have any questions. And like I said, I'll do the best I can to work through any answers for you.

Specifically, we will talk about certification. And RSA 106-L:6 is titled Education and Training Required. And it sets forth the authority to require Police Officer candidates to go through a background vetting process, education and training, in order to become certified.

New Hampshire is what we refer to as a POST State. Certain States certify or license Police Officers to work, much like if you were going to get a License to drive a car, or a License to be a Cosmetologist or a Plumber. New Hampshire issues a Certification in order for a Police Officer to work. There are some States that do not do that. I was the Director of a Police Academy in Massachusetts. And Massachusetts does not have a Certification System. They are not a POST State.

So, in the first instance, let's talk about the hiring process. And under our Administrative Rule 301, this particular rule very clearly defines the vetting process that every candidate must successfully get through in order to become eligible really just to be hired and sent to the Police Academy.

And as you can see there, the Administrative Rules speak directly to the fact that the candidate has to have at least a high school education, that they must have a fingerprint check, a criminal record check, and a Motor Vehicle check. And that fingerprint check is sent to the New Hampshire State Police. They check their system first. And then, the New Hampshire State Police will forward that to the FBI. And then, the fingerprints are checked at the FBI, as well.

We could do it old school on paper. And we can also use a system called AFIS, which is an Automated Fingerprint Identification System. But either way, that candidate has to be checked both statewide and nationally for those issues.

New Hampshire requires that a Police candidate have citizenship. And some States do not. New Hampshire does. The Administrative Rules dictate that the candidate must have a physical exam to include a drug screen. That physical exam clearly is to make sure that they're healthy enough to take on the job of a Police Officer and that they meet certain physical requirements, such as the ability to see without corrective lenses to a certain degree. Their hearing has to be intact, and mobility, things of that nature.

The candidate has to pass a fitness test. And then, that fitness test has to be repeated every three years. So any new Police Officer that gets hired has to be able to demonstrate a level of fitness. And then, in essence, they have to maintain that level of fitness throughout their entire career, every three years. And the notion behind that was to encourage kind of a lifelong affinity for staying healthy and making sure that they're in the best possible shape to do their job throughout their career.

POL 301 speaks to a background investigation. And ladies and gentlemen, if you are not familiar with this process, I know all the Police Officers on this Board can speak directly to this. This is an intensive, exhaustive process and, in some cases, can take weeks and sometimes even months, depending on what kind of records need to be checked, interviews that need to be conducted. And you'll see, within the POL, you'll see specifically certain mandated things that need to be checked by the Hiring Authority before they can make a hire with a candidate.

And then, finally, a psychological screening; now this is really in no particular order. But I've kind of laid it out in a way where that's probably the order that the Hiring Authority would take. But that psychological screening is, again, just to make sure that there is no concerns with regard to impulsive action or self-harm, that they are psychologically stable to take on what this job is going to bring them.

The -- it's important to understand that the Hiring Authority's responsible for completing this vetting process. In other words, if I were to apply to the Hanover Police Department, Chief Dennis would have one of his Investigators take this role on and complete this entire background investigation. And then, that -- once it's completed, Hanover Police Department would have to then file what we call a Form I, which is basically a document that is guaranteeing Police Standards and Training that this entire vetting process was conducted and that they successfully completed every portion of it.

So, that's how you become hired in the State of New Hampshire as a Police Officer. And when I use the word "Police Officer", I should have put in there, as defined, a Police Officer is also a Liquor Investigator, is also a Fish and Game Officer, a Trooper, a Sheriff. And this also crosses over into Correctional Officers, as well. So, anybody who is in the Criminal Justice System and has the authority to make arrests and complete investigations, even Division of Weights and Measurement here in New Hampshire, Division of Agriculture have Investigators. And so, they have to complete certain types of Police training to be certified. And they are subject to any kind of rules that we have here at Police Standards and Training.

So, let's talk now about revocation or suspension of Certification. POL Rule 402.02 provides the authority and defines really the process that Council can take with regard to revocation and suspension of Police Certification. And again, as you can see, I'm just glazing over this because I sent you ever single one of those rules with regard to how deep you can dial down into what can get a Police Officer suspended or revoked.

The process that the Council must follow is set forth in POL Rules, as well, Chapter 200, and specifically 206, which talks about the conducting of hearings. Now, it's important for everyone to understand that if there is a decertification hearing, and ultimately the Council votes to decertify the Officer, these two things are important to remember. A sustained decertification is on the public record.

It's done in a public setting and it's included in the Minutes of our Council meetings. And those Council Minutes are -- they're posted on our website. So anybody can see them.

And on top of that, New Hampshire is one of the many States that participates in the National Decertification Index. And so, if ultimately an Officer is decertified here in New Hampshire, we report that to the National Decertification Index. And that means that that Officer -- or decertified person, they're no longer a Police Officer. If they were to leave the State of New Hampshire and let's say go to the State of Texas or Arizona and try to get a job, if the Hiring Authority checks that National Decertification Index, our Report of the New Hampshire decertification will be on the record so that they can have access to that from a different State. So I think that's important for everyone to recognize.

So, why would Police Standards and Training begin a process? Why? What would bring an Officer's situation to Police Standards and Training? And there's really three ways that this can happen. And I would ask everybody, if you have the opportunity, in the 2019 Audit, if you were to turn to page 20 in that Audit, it very clearly, by way of a flowchart, describes the different processes that go along with each one of these events. And what I'll do is I'll again ask you to refer to page 20, Figure 2, of that Audit, as I talk about these three in a very summary way.

So, the first way that Police Standards and Training would start to kind of take on a complaint process and start looking at an Officer's certification is if Police Standards and Training receives what we call a Form G. Police Standards and Training, there's forms for everything and they're all lettered. So Form A is for a hire. Form B, change of status; Form G is reporting of arrest.

And under POL 501.01, Report of Arrest, every Law Enforcement Agency in New Hampshire is required to report to Police Standards and Training any time that they arrest or charge an Officer. And when I say Officer, remember I talked about it's really any Law Enforcement Officer or Corrections Officer, as defined in our rules. If they charge anybody who fits that definition with a violation of Criminal Law, they have to report that within 15 days of the action.

Further, under this rule, any Law Enforcement Agency that becomes aware of such an arrest must also report on a Form G within 15 days to Police Standards and Training. So, this is kind of the belt-and-suspenders approach that we take presently. And that second piece, any Law Enforcement Agency that becomes aware, really what we're looking for is the Home Agency, the Hiring Authority that had their Officer get arrested.

Every single Police Department that I've ever had contact with has a Policy that mandates that an Employee report to the Chief of Police if they've had any contact with Law Enforcement, to include any type of arrest, speeding ticket, doesn't matter. They have to report it. So it's kind of a belt-and-suspender way of making sure that Police Standards and Training gets that information.

To be clear, minor motor vehicle violations, Police Standards and Training really doesn't want to hear about if somebody got a speeding ticket or somebody drove through a Stop sign. We understand that that's probably, in almost all cases, being reported to the Hiring Authority.

I'll tell you a story. I was driving my family down to Disney World. And got stopped by the Georgia State Patrol and received a Summons; and that was probably two or three months after I became the Chief of the Stratham Police Department. And so, when I got back, I had to report it to my Selectmen. Hey, I got a speeding ticket. And I was really excited to go on vacation. That's what happened there. But, that -- something like that does not -- we don't want to get that information at Police Standards and Training.

Whoop, hang on one second here. So, the second -- and I guess I'll wait for questions at the end, unless somebody wants to ask a question about -- I don't want to get too bogged down with questions and not get through this first. So I guess I'll just plow through this and then we can ask questions.

The second way that we would look -- Police Standards and Training would look at a situation that may need attention, with regard to decertification, is if we receive a Status Change Report, which is a Form B. So, New Hampshire Police Standards and Training tracks all status changes of all New Hampshire Police Officers. When you get hired, we get a Form A for that. And then, any time after that, if there's a change where the Police Officer goes from one Agency to another, we hear about that.

Any change in status is, again, filed by the Hiring Authority. That Form B is completed by the Hiring Authority and they send it to Police Standards. Now, oftentimes, the status change is positive. It's exciting. It's a new hire. It's a promotion. It's a well-deserved retirement. And when we receive things like that, clearly it doesn't draw any attention, because it's just part of the normal process of being a Police Officer.

Now, there's times when that is not a positive change. And in cases of termination, suspension, and then there's a category that speaks to in lieu of. So if somebody resigns their position in lieu of termination, that clearly is a flag for us.

And so, when we see a negative status change, we will reach out to the Hiring Authority. And we will investigate it to determine what the reason was for that not-so-pleasant status change. And clearly if, through the investigation, if it's determined that there's been a rule violation or some type of misconduct, then we will take those appropriate actions to make sure that it is addressed.

And then, finally, on a straight-up complaint; and ironically, I had to step away from yesterday's meeting early on. And I may have seemed disengaged, because I was actually -- I had to take a complaint and had to take that information, and then get it to the appropriate authorities to follow up on.

So, if we receive a complaint from any source, that can also trigger a process here at Police Standards and Training. Now, if -- and again, I'd ask you to please look at the process on page 20 -- if it's an anonymous complaint, in the first instance the Council will review that complaint and then rule on whether it should be pursued or not.

If it's an allegation of a crime, a criminal event, then the Council will seek guidance from the AG's Office. Now, the Attorney General sits on the Council. And so, that he is right there for us to seek guidance from him and his Agency with regard to how it needs to be followed up.

If it's an allegation of a rule violation, when I say rule violation, I'm talking about the Administrative Rules that we've kind of talked about already. Then, a Member of Police Standards and Training will begin the investigation.

Now, if, in fact, probable cause is sustained that there's been some kind of negative event that has occurred, based on a complaint investigation, then the Council will set a hearing up. And then, we will begin the process from that first stage.

Now, in -- again, for the Commission to understand, I sent out the 2019 Audit that was conducted from the Legislative Budget Assistance Bureau here in New Hampshire. And they conducted, as you can see, a very extensive audit on the operation and organization of Police Standards and Training.

And under their fourth observation in that Report, they made two recommendations with regard to the complaint and disciplinary process. And the -- again, to summarize, the first recommendation was to increase authority in the POL Rules to allow for disciplining nonterminated Officers and Officers found not guilty of criminal offenses.

If you look at the flowchart on page 20, if there was an arrest of a Police Officer and the case was either dismissed, or the person was found not guilty, then, as it stands now, in the present conditions, the flowchart says that that's the end of process. And the audit observation is that, while they may not have been found guilty of a criminal event, they may still have committed an act that can be demonstrated beyond a preponderance that would be contrary to our Administrative Rules. And so, there is that gap that exists right now. And that was identified through this audit.

And then, the second recommendation is to develop mechanisms and procedures to ensure unreported criminal misconduct is addressed. Well, that's a big lift, because it's just if we can't mandate or encourage Police Officers to report criminal misconduct, if we don't get the information -- and I think one of the very early Commission meetings that we had, it's clearly if Police Standards and Training doesn't receive the information that there is a problem, then we can't do anything about it.

Now, it's important to know that the Governor just signed into law that now mandates Police Officers to make reports of criminal misconduct. So, our hope is that, by way of that law being put into effect, and then some of the things that are going to come out of this Commission's recommendations, with regard to stepping in to prevent misconduct, and then to reporting misconduct, hopefully that second recommendation will be addressed in a meaningful way. So, I appreciate your time. I know that was a real quick overview. And I stand ready for any questions that anybody on the Commission might have.

DEPUTY ATTORNEY GENERAL YOUNG: So we will take questions by raising of hands, instead of going through the list. Joseph?

MR. LASCAZE: Thank you. Yeah, so, thank you, Director Scippa, for this, enlightening. I have some questions, when I'm looking at this process on page 20 that you had pointed to. So, the first question that I have for you -- well, let's go to the recommendations from the 2019 Audit. Do you know what's specifically being done to implement those two recommendations from the 2019 Audit?

DIRECTOR SCIPPA: Joseph, I can candidly tell you that this is something that clearly has been identified. It is going to take the Council to work on making rule changes. And the day I hit the ground running, I literally have been just trying to keep my head above water in terms of response to COVID, still delivering the Academy, and then participating in this Commission.

And so, there has been it -- during my time here, the -- we have not moved on any of these proposed changes. We have not had any discussions, or anything like that. Clearly those have been identified. I know prior to my arrival, there was the leadership of my organization, due to health concerns and health problems, there was a tumultuous time in leadership where people were sick.

And so, to that end, we recognize that we have to address these concerns. They have been identified. Again, my hope is that recommendations that come from this Council will help provide guidance to how we can strengthen this process and make it better. And I wish I had more for you, Joseph. But that is where it is right now.

DEPUTY ATTORNEY GENERAL YOUNG: Joseph, you're muted. Joseph, you're -- sorry.

MR. LASCAZE: All right, sorry about that.

DEPUTY ATTORNEY GENERAL YOUNG: That's okay.

MR. LASCAZE: So, and -- okay. I need to go back to this third column. So, this third column, when we are -- when we're looking at the complaints -- the complaint section, is the Police Standards and Training Complaint Form easily accessible on the Police Standards and Training Council Website? And do you know if each Police Department has that also accessible on their website? And do you also know if there's clear instructions on how to do this?

DIRECTOR SCIPPA: I can't speak for any Police Department -- any single Police Department. We do not have presently on our website a way to receive a complaint. And generally speaking, we accept complaints in any form, whether that be a phone call, a letter, an email. So there's no -- in the world of forms here at Police Standards and Training -- and we have a form for everything -- we do not have a specific form for that. So we will take the complaint in any form.

MR. LASCAZE: All right. Great, and I just wanted to make sure I'm understanding something on this document. So, on the first column -- I'm sorry. I just lost the entire document and I'm just trying to get back to it -- so, on the first column where you go for convictions, you have -- not you. I should say this form says that suspender -- so under this whole flowchart, it says criminal status conviction. And then, we get down to final hearing on matter, suspend/revoke certification, no, process ends.

So can you just, so that I understand this, when it says that a criminal conviction, it's saying that -- and from what I'm understanding here -- an Officer has been convicted of a criminal charge and they're still maintaining their Certification, is that what that's saying? Is that possible? So it's possible to maintain your Certification after a criminal conviction?

DIRECTOR SCIPPA: Yes, so this is one of the things that we come up against, where -- and I'll give you an example. Let's say that the Police Officer is arrested. They have a trial and it's for an event like DWI, which is, on the side, DWI seems to be the thing that will get most Police Officers decertified.

If they are in the first instance found guilty and in court, and they file an appeal, or they file to suppress evidence, then the -- even though they've been initially convicted, they're still entitled to that due process. And then, based on where they may or may not work, they may be under a Contract or a Collective Bargaining Agreement that allows them -- and that's a relationship between them and their Agency -- that allows them the opportunity to be suspended with pay until such time as all due process rights are seen through. And then, there's a final disposition on that case. And so, yes, there might be a time where that Officer might continue to maintain their Certification.

Now, you'll see that the Council, if it's a DWI case, the Council may or may not take action. But if it's an allegation of some serious, serious crime, we have a hearing immediately. And regardless of whether there's final disposition in a Criminal Court, we would take action to suspend. And I say we. It's the Council. I don't even participate in this. But the Council would take immediate action after a hearing to suspend the Certification.

So, generally speaking, if it's something like a DWI, we will let it play through. And if it's clearly something that it -- and it's very clearly defined in the POL Rules, but something that is egregious, something that is potentially something that could impact the community, anything like that, we would do an immediate suspension of that.

And it's also important to recognize that I have not seen a case in the years that I have worked where if a Police Officer was arrested, even for DWI, and they were found guilty in the first instance, and then they filed an appeal, it's very difficult for the Agency to allow them to come back without that case being resolved. Doesn't happen, maybe it does. My experience is that the Home Agency, the Hiring Authority, would suspend them anyway from any kind of Police activity, whether it's paid suspension or unpaid suspension. So I hope that kind of helps explain that.

MR. LASCAZE: No, it does. And I'm just wondering, because you used the example of DWI. And this is just in my mind. And I think about I know that there is levels to crimes. And I'm just thinking DWI, that is something that has potentially very, very drastic consequences. Is there a list of offenses, of criminal convictions, that an Officer could have, but that wouldn't lose their Certification under like the -- so DWI is one of them that you said that the Council may wait until the end of the disposition. Is there other charges that would be on that list? Or is it done on a case-by-case basis? And the Council decides?

DIRECTOR SCIPPA: So, it -- again, because of my kind of newness to the position, I refer back to POL Rule 402.02 that speaks directly to revocation and suspension. I mean, there are certain things that will cause immediate suspension. And the -- if you go to page 50 of 64, and you look at the very top of page 50, it's entitled Letter B, and speaks directly to the temporary suspension pending resolution of criminal charges.

If the Officer has been arrested, indicted, or bound over, either prior to or after certification, for felony or any crime involving moral turpitude, or of a crime which tends to bring discredit on the Police, Correction, Probation service, unless the Council, in its discretion, determines that the safety of the public or the confidence in the Criminal Justice System would not be adversely affected. And then there's a list after that that speaks to those cases. And as I'm looking at this, DWI's one of them that would cause the Council to sit down and have a hearing on a temporary suspension. So, I guess my example of DWI is probably not a good example to use. But that would -- it's a -- I guess it's a case-by-case basis, unless it is something specifically listed. And I'm going to say that it's page 50.

MR. LASCAZE: Okay. Thank you very much, Director Scippa. I appreciate that. And I will yield the rest of my questions.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Joseph. Julian's hand was up. And I also see Ronelle's hand up. Just so you're all aware, sometimes if mics are left open, Maria will shut them off to get rid of the background noise. So don't think that your computer is being taken over by us. I think instead of sort of breaking somebody off in midstream of a sentence, we're trying to help you out a little bit. Julian?

ATTORNEY JEFFERSON: Thank you. Director Scippa, a few questions, so does PTSC currently have the authority to deal with sort of this hypothetical? So a citizen calls PTSC and says, listen, Officer X from Agency Y pulled me over, called me derogatory names, and I think issued me a ticket out of animus. Does the PTSC, under the Administrative Rules, currently have any authority to investigate or discipline that conduct -- alleged conduct?

DIRECTOR SCIPPA: (No audible response).

ATTORNEY JEFFERSON: And I ask because it looks like, from observation number 4, one of the recommendations was it doesn't appear that PTSC does, that the Administrative Rules seem to be limited to sort of these criminal offenses and defined roles. So, is that correct? And if so, what are your thoughts on PTSC having the authority to investigate any allegation of misconduct that's reported to it, and discipline for it, if it's sustained?

DIRECTOR SCIPPA: So, the short answer is yes to your question. The yes is, I guess, with the caveat that we would not conduct the investigation. It would be referred back to the Hiring Authority for investigation. The Hiring Authority might use an outside Agency to conduct an investigation. But it does get investigated. To that end, if, in fact, the Hiring Authority determines that the conduct was such that it was unbecoming, that it was against Policy, then they would send their rendering to Police Standards and Training for review as to whether that Officer would be decertified.

As the rules stand right now -- and again, these rules have been around for a long time. And there hasn't been much in the way of changes to them. We know, as an Agency, and the Council understands that there needs to be a complete revision of what we're working with right now. A lot of it is just housekeeping stuff. And then, to address the concerns that have been brought up during this Commission, and one of the recommendations that I made was that we need to add language in there when we're vetting Police Officers to make sure that there's no overt indications that they would be aligned with a subversive or biased-based group. And I think that's important to include, because, much like in medicine, we have to be able to have pertinent negatives when we do an investigation, to make sure that we speak to the fact that, hey, we looked for this and we did not find it. So, to that end, we understand that we do have to make some really thoughtful changes, with regard to these Administrative Rules. I hope that answers your question.

ATTORNEY JEFFERSON: No, I think it does. So I understood that when a complaint of that nature comes in, you would send it back to the Hiring Authority to investigate it and then give you some conclusions about their investigation. And then, you would determine -- the Council would determine whether or not it would take any further action. Is that a fair summary?

DIRECTOR SCIPPA: Sorry about that. That is an accurate summary. And that is really because of how the rules are written today.

ATTORNEY JEFFERSON: Okay. And my other question to you was, so does Police Standards and Training Council have a database of information for sustained complaints, where they've received information? Do they keep a list of Officers who have had sustained complaints? And if so, do they compare that list to what's currently known as the Laurie or, EES, List to make sure that PTSC is satisfied that all information they have about Officers that they believe should be on the list is on the list?

DIRECTOR SCIPPA: So, as you've heard me talk about throughout the Commission, our database system, our Record Management System is archaic, at best. And you'll see that that was another recommendation in the Audit. So literally there are times that we have to find a paper file and open that file up to find information.

So, we do not maintain any -- that would be an unfair statement. We maintain certain records in a homemade database. But not all of our records are maintained in that database. And that database is significantly limited in the way that we can collect information and look at information.

The question that you asked, we can't do. We don't have that kind of a running tally of that kind of thing. And I think you and I both agree there's tremendous value in seeing that, even if things aren't sustained, do we see a pattern that's being created here?

And with regard to the EES, because I have no knowledge to speak on that, I'm going to defer any EES questions to General MacDonald. And I think he, or someone from his Office, is clearly in a better spot to speak to that, speak to the interface, and speak to any kind of process there.

ATTORNEY JEFFERSON: Okay. And my last question to you is, do you think it would be useful for Police Agencies -- and I think this is more Police Agencies than PTSC -- to do periodic reviewed of Police Officers' social media websites to look for evidence of animus or outward bias? As any, I think, Police Officer or Criminal Defense Attorney will tell you, one way to get a criminal is just to look at their social media website.

And so, I was thinking about that and then thinking about your recommendation that you made on the frontend to do the investigation. Do you think it makes sense for us to make a recommendation that Law Enforcement Agencies should periodically review Police Officers' social media websites to see if there's anything of concern that they need to look into further?

DIRECTOR SCIPPA: You are very correct. Social media is a tremendous friend of Law Enforcement. But it can also not be so friendly. And I can speak to direct knowledge of people in law enforcement who have been -- they've lost their jobs and been decertified because of social media posts that they made.

There's a tremendous amount of training and observations out there with regard to Employers accessing Employees' social media accounts. I know that most Hiring Authorities will ask for every single account that the Employee has, and that anything that's public-facing certainly can be reviewed at any time.

Quite often, if there's a Police Officer out there that's being inappropriate on social media, that gets referred to the Hiring Authority almost immediately. And then, like I said, it's been my experience that it gets addressed very quickly, and, if it's something that is unacceptable, that they're terminated and decertified. So -- but I agree with you. I think that that would be something that could be very easy to do, and would certainly shine a light on something that needed to be addressed head-on.

ATTORNEY JEFFERSON: Thank you, Director Scippa. I yield the balance of my time.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Tshiela?

MS. TSHIELA: Thank you. And thank you, Director Scippa, for your presentation. My first question is, how does -- and I think you touched on this a little bit. But how does Police Standards and Training intersect with the procedures for how an individual Agency investigates or responds to misconduct?

DIRECTOR SCIPPA: So, there's a -- also in the Audit that you saw that was sent out, you'll also notice that another observation that was made is that there was no real set Policy with regard to how

Police Standards and Training was auditing Police Departments. And one of our jobs, one of the mandates, is that we conduct audit on Police Departments to make sure that they are complying with our rules.

And to be quite candid with you, I have one part-time Employee that manages and oversees that process. And then, I have one part-time Employee, and sometimes two, if I can steal them away from their other duties, to be able to conduct those audits.

And those audits, they're extensive. You drive to the Agency. And it's not a hide-the-ball kind of thing. It's not a surprise, we got you. It's, hey, we're coming in. We want to look at you and we want to look at background investigations. We want to look at training certifications. There's a whole number of things that we look at.

But we send our folks to that location. It takes a couple hours to review some documents, take notes, talk with the Head of Agency. And then, after that, obviously that investigation would produce a Report. And then, if there was any findings that needed to be addressed or corrected, we would direct that Hiring Authority to address those problems and remedy them. So that's kind of the intersect. And we have started to put some things in place to make it a little bit better. But I don't have the Staff to conduct those in a way that I would like to conduct those, if that helps.

MS. TSHIELA: Okay. And so, my second question is, under this new law that requires the reporting of misconduct, would a failure to report trigger a review of an Officer's Certification?

DIRECTOR SCIPPA: Not -- I don't know yet. I don't know. I think that's going to be a decision that needs to be determined at the Council level -- the Police Standards and Training Council level. And exactly how are we going to bring those two things together, because I think your question is very valid? So how does that fit into our rules right now? And is that something that we can consider, when we start looking at trying to redo this process indicated by the Audit? Is that something that we need to include? And I think we have to somehow tie that together. And I don't know how that looks.

MS. TSHIELA: Because even before the law, there was Policies in individual Agencies that they were required to report misconduct, right? But even then, there was no Policy outlining whether or not that would trigger a review of Certification?

DIRECTOR SCIPPA: Yeah, so, again, we can only act on what we know about. So, we depend on the Hiring Authority to do what they're supposed to do and follow our rules to report those types of events. And if it's not reported to us, then we don't know about it. And so, we can't do anything about it.

And that's one of the things that you talk about interfacing and how things work together. We set the rules. Police Standards and Training sets the rules with regard to certification and decertification. And then, we depend on every single Police Chief and Department Head to be very familiar with our rules and to make those reports, as mandated through our rules. So we really do depend on that cooperation.

I would say, overall -- and I'd let any of the other Police Executives on this Board speak to it, as well. But, Police Executives in New Hampshire are very, I think, cognizant of our rules and very vigilant in following them. And if there is a bump, it's generally because somebody didn't know about the rule. We explained it to them, and then they remedied it. Or that it's just something that's innocuous, they forgot to make this Report, or whatever the case might be. I don't think -- there's not too much nefarious failure to report.

Now, it's a naïve statement, because if they don't report it, we don't know about it. But I truly believe that Department Heads do a good job of doing what they're supposed to be doing. We rely on them. We have to.

MS. TSHIELA: Okay. Thank you. With that, I'm going to yield the balance of my questions.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ronelle. Tim King, you are up next, question or comment?

LIEUTENANT KING: I think that Director Scippa answered the question. So I'm all set. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Ken, you're up next. Can you hear me?

DIRECTOR NORTON: I can. Thank you. Director Scippa, thank you for your presentation and thank you for not running the other way when you read this Legislative Audit, because, although I haven't had the opportunity to read through the whole thing, it is pretty intense. And in addition to everything else that we've been talking about, yeah, you clearly have your work cut out for you and the Council does.

I know I asked you this before, I believe. But, I'm kind of incredulous that when, in reading some of the recommendations of this Audit, that there was no statement in the Audit regarding the need for PSTC to have more resources than is currently available in order to enact these recommendations. The Legislature did not make that statement. Is that correct?

DIRECTOR SCIPPA: That is correct, Director.

DIRECTOR NORTON: So, I -- yeah, I mean, I guess I'll just leave that for a moment, because that's stunning to me. But, one of the other questions that I have is just related to data. Do you have data that you can provide to us about how many complaints there were, how many investigations, how many hearings, how many defense-certifications? Is there an appeal process for de-certifications, and all of that?

DIRECTOR SCIPPA: I can speak to I'm learning very quickly in my first year kind of what happens annually at the State level. And I know for a fact that we -- Police Standards and Training delivers an Annual Report. And within that Annual Report, I'm almost positive -- I just reviewed it the other day -- that we provide summary information on the number of hearings and the number of de-certifications. And I would have to check when I get back to the office. I'll send everybody a copy of our Annual Report, if that's helpful, to kind of show you -- or give that information.

Again, because everything's kind of kept on paper and kept in files, to string out that data would be -- it would require people to sit down and touch paper, and write things out. It's just it -- I'm embarrassed to say, it's just not with current time technology. So I could not produce that data very quickly. I'm sure we could. And we would be happy to do that on anybody's request. But it's just very, very time-intensive.

DIRECTOR NORTON: Thank you. And you shouldn't feel embarrassed. I mean, this is all of us. And this is our State. And we need to do better with this stuff. And I'll just say, as a citizen, it's very upsetting to read a Report like this where there's clearly deficiencies that are noted. And many of those

deficiencies due to lack of capacity, and that there's not a recognition by the Legislature, which is the funding source, to address that.

And I also want to say, relative to data -- and if it's not possible to get, I understand. But I'm very interested in the number of retirement requests that are being put in right now. It's not a happy time to be a Police Officer. And I'm concerned, as we talk about recruitment and whatnot. I don't know if there's a way to compare that to 2019 or 2018. But I would be interested in seeing that data.

And then, I also want to just comment. And obviously you've said several times you can only know what is reported to you. And you mentioned drunk driving charges being one of the primary errors for decertification.

I mean, what happens when Police use -- Officers use their discretion and they drive somebody home, because they are an Officer, or they don't file charges? And I think that that probably happens in domestic violence situations, sometimes, as well. And maybe that's more of a comment than a question.

But to get to Ms. Tshiela's questions, I mean, one of the things in this Report was close to 30% of Agencies didn't consistently require drug screening. And it goes on with other things, as well. So, how do we get -- I mean, I think this is the heart of a lot of what we're wanting to get at, in terms of this next section.

What authority, I guess, does Police Standard and Training have, if let's say they do an audit? And again, I'm just going to comment on that. To have two half-time people to be auditing over 240 organizations in the State is just -- yeah -- problematic. And -- but what happens if they see significant deficits and they return a year later and there are still significant deficits? What is the enforcement authority that the Council has at that point, over an Agency, as opposed to an individual Officer?

DIRECTOR SCIPPA: That is a great question. And it was actually -- it was discussed during my hiring process, in one of the interview questions. As the rules exist right now -- and it might take me a while to find the actual rule. But there is a rule in our Administrative Rules that speaks to penalties with regard to a Police Department that is not complying with the rules.

And again, understand that these rules have been around. We were established in 1971. And the foundation of these rules were created in 1971. And so, the penalty for not following the rules was that the Agency couldn't send anybody to training. And I thought to myself, that seems to be the worst possible way to punish somebody. If they need training to understand what they're supposed to be doing, taking away their ability to attend training at the very place that's finding out that they're not following the rules and not doing what they're supposed to be doing, it seemed counterintuitive to me.

And instead, my thought is, do we create some kind of a consent decree to allow some oversight from Police Standards and Training to make sure that the rules are being followed, and to have somebody kind of watching over them for a period of time? So, from a pragmatic point of view -- and I'm sure you've all figured me out as how can we get this done -- which one of my two part-time people do I send to northern New Hampshire to conduct a consent decree over a period of time to see if they're following the rules?

So, I think that's a great question, Director. I think that it needs to have some real thoughtful and mindful discussion, and come to something that's going to be of value that we can put in place to make sure that these rules are being followed. I think it's a consent decree of some kind, is a good way to do it, because it identifies the problem. And then, it sets up a course of action to help resolve the problem,

remedy the problem. Make sure that reporting is done correctly. So I hope that that answers your question.

DIRECTOR NORTON: Yeah. And then, I guess, as a follow on to that, when there has been an audit done of a local Agency, who is that information shared with? Is it just shared with the Chief? Is it shared with the -- if it's a municipality, is it shared with the Selectmen? What is the transparency relative to an audit finding?

DIRECTOR SCIPPA: A great question, I'm not sure of the entire answer. I know clearly it's shared with the Home Agency, because if there's any kind of deficiencies, we want those considered immediately, and to include, hey, go back and do this background the way you were supposed to do it. And then, report those findings to us. So those things need to be hit head-on.

I think there's a Summary Report. And I'm speaking from recall here. Again, I have very limited understanding. I've only sat through four meetings. But, my recall's telling me that there's a Summary Report that's delivered to the Council, as well.

And actually, Commissioner Quinn might be able to speak to that a little bit more, because he -- Commissioner Quinn, when he was the Colonel, sat on the Council for a long period of time. So, I don't know, Commissioner, if you have anything else to add to that.

COMMISSIONER QUINN: Can you hear me okay?

DIRECTOR SCIPPA: Yes.

DIRECTOR NORTON: Yeah.

COMMISSIONER QUINN: Yeah, sure. Yeah. Before I get to that, just -- and I'll try and be brief. I think it's important. I've listened to the Director's testimony. And it's clear to me. I just want -- I hope that everybody understands the terminology.

So the Police Standards and Training, Director Scippa, their charge is to train and certify new Recruits at the onset. And he does that, based on information that's sent from the Hiring Authority. The Hiring Authority recruits and does the whole process to get them ready to embark up to PSTC and go through what I think is phenomenal training. Stand on that stage, get their certificate. Then, once they embark back to their community, it's the responsibility of the Police Chief, the Head of the Agency, to oversee them.

And then, as John said, it's the responsibility of the Police Chief to handle complaints. Complaints can come in from anywhere. They could go to the AG's Office that get referred back to the local level. They can sometimes come to the local level and have to get referred to the AG's, because it's criminal. So the most important thing is the complaint gets to the Head of the Agency who can address it.

And I'll share this with you. I mean, some of the larger Departments understand this. These Professional Standards Units, Internal Affairs, they're robust. And some of these investigations are very comprehensive and, at the end, result in the Officer being found that they didn't do anything wrong. So it cuts both ways. But the amount of time the investigations require, looking at sometimes video and audio, and interviews.

And so, those investigations are handled at the local level. And some that rise to a certain level trigger notification to PSTC, which then they would look to see, would that impact the Certifications? But I think overall, I think that Police Chiefs understand their responsibility. But, again, these investigations are not always simple. And the complaints can be very minor. But they're looked at. They're investigated. But for this Commission, I think what you're concerned with is when things rise to that high level. So I think we stay focused on that.

But, back to what Ken brought up, I think what's most important to me in my recommendation to Director Scippa would be to see that he has the tools. He has the software. And both he and I, and A.C. Bailey have talked -- chatted a couple times offline, because what we're asking him to do is to run Reports, look at trends, do a little predictive thought on what's happening today with retirements. Look at how many folks are coming in for hearings. How many are sustained, not sustained? What's happening with the training? So I think, moving forward, once the Director gets that software up-and-running, that his life will be a lot easier.

And we've been victim of this. There's boxes of paper in a lot of Agencies. We're trying to eliminate that. The ability for the local Chief to transmit these Form As, Form Bs electronically, there's just too much paper. So, Ken, did I hit that, Ken? But I think that's the most important thing I'm hearing with the Director. And all these recommendations, we've got to try and streamline and use the electronic transmission and documentation of this so that he can take that and look at it, and make some insightful decisions, and recommendations, on where changes need to be made. So, sorry if I was wordy, John.

DIRECTOR NORTON: Yes. No, that was good, Commissioner. And I think that I mean, I guess one of the things for me -- and this is where I was with the training piece -- is that the Council, as established, should be the authority in the State. I mean, it contained a wide makeup of different people, including public. You have Judges as well as Police Officers.

But it seems to me that the Council has lacked the authority to enforce what -- I mean, the simple thing for me was -- and I still want to come back to it -- to decide that, yes, every Officer this year should get this training. And to not be able to do that without going through an Administrative Rule is problematic.

Likewise, with some of these recommendations relative to Agencies, or to reporting, it seems like the Council doesn't have the authority that it should have in order for us to tighten up some of these things. And those are my opinions.

And I think, as we start to look towards recommendations, I'd be interested in hearing what the -- Director, what your thoughts are, but not even your thoughts. I mean, what the Council's conversations have been relative to some of these findings of the Audit and where they think things should go.

One last question I have and a little bit off of -- I'll get off my soapbox -- is relative to the psychological screening pieces. We've had some conversations about whether we should have a similar mandate regarding psychological screening, as we do for physical screening every three years. Do you have thoughts about that? And be interested in hearing what your thoughts are.

DIRECTOR SCIPPA: From a personal point of view and as a Police Executive, that would be a wonderful thing to do really for the Employee, quite frankly. In the first instance, this is a tough job. And every Cop that sits on this Commission will tell you that you bring things home and things live in your head for a long time. And so, those periodic checks to make sure that your Employees are doing well and that

they don't need maybe some additional help, just like maintaining physical fitness, mental fitness goes right along with that.

Now, again, pragmatic New Hampshire John Scippa's going to say, well, how much does that cost and who's going to pay for it? And I think that's the obstacle. I think that that's probably the biggest obstacle.

Now, there's been legislation that allows, in the first instance, that there be money available for those communities that don't already budget for the initial psychological screening. But I couldn't agree with you more, Director. I think it speaks to Officer wellness in the first instance. I think it speaks to Agency wellness in the second instance. And then, certainly, it helps guarantee, in the third instance, that those Officers are mentally prepared to continue their jobs. And then, if they're not, let's get them help. It shouldn't be disciplinary. It should be get them healthy. And then, get them back to work. And so, I agree with you. Will it cost money? Yeah, it will. But I agree with you.

DIRECTOR NORTON: And I know I said that was my last question, but I do have a follow-up, which is do you think that there should be limits placed on overtime, or the amount of hours that an Officer can work? I mean, we have heard some testimony that fatigue is a big challenge relative to response, and, again, relative to wellness and how difficult these jobs are, would appreciate your thoughts on that.

DIRECTOR SCIPPA: Throughout my career as a Police Executive, I've had the occasion to attend a lot of different trainings and presentations relative to Officer wellness, and specifically performance, in relation to sleep deprivation. And clearly -- and you don't have to be a Cop to know -- you don't get enough sleep, then you're not on your game. And if your game happens to be involving arresting people or having to use force, you really need to be on your game.

To that end, every community and every Police organization is different. And they have different needs. They have different levels of resources. And so, those decisions about how many hours a Police Officer can work continuously before they're mandated to have a break, and then mandated with regard to how long that break is from duty for them to come back to duty, those decisions are made at a local level, given the staffing, given available resources, and what the needs of the community are. But, again, you're spot-on. It's a concern that is in our business, our industry, much like a concern with the airline industry and the fire industry, and things of that nature. So, yeah, good question.

DIRECTOR NORTON: Thank you. And thank you to my fellow Commissioners for indulging me all these questions.

DEPUTY ATTORNEY GENERAL YOUNG: So, before we move onto the next question, Ken, I would ask you to also remember to bring this up again. You pointed out sort of the concern that a number of us have. What happens to the Officer who stops the Officer and says, leave your car there and I'll bring you home, or says it to the Fireman? That would be something that the Public Integrity Unit here would look at. We would need to know that. I think you sort of have to develop a culture, right, that it's not a thin blue line, that they're just as accountable as any other citizen who gets behind the wheel of a car who's drunk or who's involved in a domestic.

So, I think that when the Attorney General's Office makes their presentation about public integrity cases, I think we have to have that discussion. And we have to have an honest discussion about it. As we

say here, nobody's above the law. So, I don't want that to get lost, when we get to the next section. So, I would ask that you raise that again. Joseph, you had a question, followed by James, and then Ahni?

MR. LASCAZE: Yes, I just had one quick follow-up question for Director Scippa. It's a very blunt question. After hearing all the questions and everything, keeping in mind that we're talking about accountability and misconduct right now, since Police Standards and Training deals with the certification of Officers, which is something that's very serious, do you believe that the failure to report misconduct should have a clear defined penalty attached to it, because reporting of misconduct is something that erodes the very foundation of public trust? And I am -- just ask...

DEPUTY ATTORNEY GENERAL YOUNG: Joseph, we've lost the sound. Can you hear me?

MR. LASCAZE: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: No, now your speaker's off. Try it again. Maybe you just lost a connection for a minute. Joseph, you're frozen. Oh, there you are. Kim, why don't you help him? Joseph, we will come back to you. James?

MR. MCKIM: Thank you, Deputy. And I will echo, Director Scippa, all of the compliments you've been given by other Commissioners. This is truly a huge Report and a huge undertaking. And thank you so much for being willing to take it on.

I'm curious to follow up on the thread of psychological testing. And we've had some discussion about this previously. And I'm heartened to see the recommendation that psychological testing be really made mandatory, even as it's addressed but not really required, because of the way the language has been.

But what I'm curious about is -- and you may not know this answer. But I'm going to ask it. And maybe we find some other experts who might answer it -- to just say psychological testing being done by a Licensed Psychologist, one of my main concerns is when we're talking about implicit bias, we are talking about -- and I have a technology background, as some of you know. And we use the term "bleeding edge", not just leading edge, but bleeding edge. Implicit bias is one of those issues, those concepts that is on the leading edge of the psychological world. And not all Licensed Psychologists are really knowledgeable about it, an expert about it. So, when we talk about psychological screening, how do we ensure that the reason -- one of the main reasons this Commission is here is around implicit bias and ensuring that what is unconscious behavior is -- or potential for unconscious behavior is actually caught before someone is actually hired?

DIRECTOR SCIPPA: President McKim, that is an excellent question. And that is a question that many Police Leaders have asked amongst ourselves as we move forward to make things better. And I would ask the Commission to refer back to written testimony delivered by Dr. Nicole -- somebody help me -- Sawyer.

DIRECTOR NORTON: Sawyer.

DIRECTOR SCIPPA: Yes, thank you. Dr. Nicole Sawyer, who she is a Psychologist who has an expertise in working with First Responders, Police, Fire, EMS. And because she is kind of a leading authority in the State relative to working with our population, she produced a written document that's been entered into this Commission's Report to really explain that, despite the best intentions of any Psychologist trying to screen for bias, they find that there's really no screening technique, per se, that will shine a light on that. And then, she goes into why.

I've read her Report. If I was getting tested on it right now, I'd get an F, because I don't know any of the -- I can't remember the details. But the summary was that, despite the best efforts, psychological screening is a poor way to identify bias in a candidate. And I don't know if there's other experts out there that have a differing opinion. But she did cite a number of people that she was kind of referring to, when she put her paper together.

MR. MCKIM: Yeah, and I do recall that. So this is the challenge I think we really face here in that what is typically referred to as psychological screening does not get to an understanding of whether someone -- and actually, I should back up. We all have it. Regardless of whether we know it or not, we all have unconscious implicit bias.

So what comes to mind for me is a way to make sure that people are aware of that bias and are actively thinking about how they, as I like to say, strengthen their cortex muscle in their brain to not let that bias come through. And I don't know whether we need to make a recommendation somehow to add to what's in the Audit, or where. But I just feel really strongly that we need to make a statement about this. And just looking for recommendations on what we should say and where we should say it, and where it should be targeted to, to make sure we address it.

DIRECTOR SCIPPA: Yeah, I concur with you, President McKim, wholeheartedly. There's a number of Commission Members. I'm seeing their faces on the screen here. And we all had an opportunity to attend a Fair and Impartial Policing class. And I tried to have radio contact with everybody who attended, just to get their feel. Is this something that's going to be positive and of value?

And I would never put any words in anybody's mouth. But the overall response that I got from everybody who attended was very positive, with regard to speaking to your question, which is helping Police Officers recognize that they have implicit bias. Deliver procedural justice and treat people with respect, and be sensitive and cognizant to that conversation, and to that interaction. So I hope -- and I'd let anybody who was on the -- at that training speak to it one way or the other. But there was a fair amount of Commissioners there.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: James, do you have follow up?

MR. MCKIM: Oh, I was waiting for any of the Commissioners who were there. And I'm really sorry I was not able to attend the training. I really wanted to and got called off. So I guess what I would say is, if the assumption is that all Officers will go through this training, that makes them aware that they have an implicit bias and how to deal with it, I think that might be a way of addressing it.

It's still after they've been hired, I would assume, is when they would take this. So part of this also, though, is having Supervisors of these people who are hired understand that these people have this bias, or this person, or this individual has this bias and can work with that individual to create an environment where that bias does not influence behavior.

So it's bigger to me just in the training of the individual. It's also, how do we make sure that the Supervisors and Managers understand that there might need to be something done a little special with this person, because this -- the -- of this bias, and the -- so a place that they are in their journey of addressing that bias?

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. So, I think we have Joseph back. So we have Joseph, Ahni, Ken, and Eddie. And then, I think I'm going to close the questions at that point. I'll give you a break. And then, we will move onto Attorney Melone. So, Joseph, I think you are -- you're back with us.

MR. LASCAZE: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Oh, no, Joseph, we can't hear you. Joseph, yeah. And your speaker's off. So, okay, we will come back to you. We will have you work. Sorry. Ahni, are you -- I know you wanted me to pass for a minute. Are you all set?

DIRECTOR MALACHI: Yeah, I'm good. I just wanted to make sure that Joseph was able to finish.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, we will come back to him. I won't, certainly...

DIRECTOR MALACHI: Okay.

DEPUTY ATTORNEY GENERAL YOUNG: And even if we have other issues and we move on, I'll get back to him some other time.

DIRECTOR MALACHI: Yeah. Okay, very good. Just two questions, Director Scippa, super easy; I guess my first one is: so, with us, as a Commission, notwithstanding any individual recommendations that the individual Commissioners might have, would supporting the findings of the LBA Audit be helpful, us as a -- if we made that one of our recommendations that those recommendations are followed through?

DIRECTOR SCIPPA: Yes. That would be helpful.

DIRECTOR MALACHI: Okay. And to Ken's point, would it be helpful if we, along with supporting those recommendations, maybe even put staffing needs, as necessary, or some statement in there, because the Audit obviously has a lot of work that needs to be done to bring things to right, as well as the suggestions that we're making as a Commission, as it relates to what Standards and Training is going to be required to do, or needs to do, or should do? Maybe asking for additional staffing is helpful, as well?

DIRECTOR SCIPPA: It clearly -- we are under-resourced. And so, any recommendation that could come out of this Commission Report with regard to that is going to be very helpful. During the training

piece, when we were talking about different types of mandated training and implementation timelines, there may have -- you may have sensed some concern from me. And I wonder if I had sent this Audit out to everybody before that discussion, just to let you know what other things I have going on in the backgrounds that I also have to get done. So, I'm happy that I sent this out. I wish I had sent it out sooner. But to answer your question, yes, any help is going to be helpful to accomplish what we're trying to get done.

DIRECTOR MALACHI: Okay. And maybe as a request to that end, if in the next batch of recommendations that we're all going to put together and merge into one, maybe if you artfully craft the recommendation as you would like it, and maybe put that into your list of recommendations as something that we can all get behind, because we would lean to you for that language anyway. And I'm not attempting to put words in the mouth of the other Commissioners.

But at least if you have it written the way you'd like, then it's something that we can all discuss. But it would support what your needs are versus me trying to guess what you need. You can tell us what you need.

DIRECTOR SCIPPA: Thank you. Yes, I will.

DIRECTOR MALACHI: Okay. And then, one last question, you mentioned before about the capital funds that you already have available for -- was it for software? Was it for a new database? And whichever one of those that you were referring to previously, is that the system that would help you do what we've talked about today, meaning getting things off paper and making them electronic, and pulling all sorts of resources together. Not talking about the manpower to get it from paper into a system, but the system that you previously spoke about, does that help you maintain and do the things that you were talking about today?

DIRECTOR SCIPPA: It absolutely does, yes.

DIRECTOR MALACHI: Okay. So, you already have that money allocated. It's just a matter of you being able to spend it is the issue at this point?

DIRECTOR SCIPPA: Yes, due to the anticipated significant shortfalls in the State budget due to the COVID response, rightly so, there was a direction from the Governor's Office rightly so to be as (inaudible) as we could, be to include any project that wasn't shoveling the ground to be put on hold. And then, a thoughtful decision would be made with regard to whether that money could be accessed as needed. So, there is money set aside -- that was set aside for this purpose. And we would just need to get permission to spend it.

DIRECTOR MALACHI: Okay. If I could in the last moments of my questioning time, if I could also make a request that you would artfully craft a recommendation that would reflect that, that the money's been allocated, that you need it for this purpose, but to outline the specifics, because I want to say I thought that the system helped with training and it helped with tracking, and then it would help with this piece. So

if you could outline the depth and the breadth of what this software or system would cover, if you would be so kind as to put that into one of your recommendations?

Then, again, not to put words into the other Commissioners' mouths, but it would be something that we could fully discuss. And then, we could get behind that as a potential recommendation, if we're all in agreement and speaking in one voice.

DIRECTOR SCIPPA: I will do that.

DIRECTOR MALACHI: Okay, great, thank you. And thank you, all, very much.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ahni. And we have sort of discussed that in another recommendation. So what we would do would be we'd drop a footnote and refer it back to that other, too, so we have covered it multiple ways. Thank you. Maria, do we have Joseph back?

MS. EKLUND: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Joseph, are you there?

MS. EKLUND: I just sent him a text. Let me check.

MR. LASCAZE: Can you hear me?

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, you're good now. Yeah.

MR. LASCAZE: Okay. Oh, all right.

DEPUTY ATTORNEY GENERAL YOUNG: Oh, yeah. You're still there. Okay.

MR. LASCAZE: Do you want me to -- I can ask my question?

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, the floor is yours.

MR. LASCAZE: Oh, okay. Thank you. Yeah, just one last quick question for -- as follow-up for Director Scippa. And what I had wanted to say was, keeping in mind that we are talking about accountability and we are talking about misconduct, should there be a clear, defined penalty for the failure to report misconduct?

And you said that if Police Standards and Training doesn't know something's happened, they don't know. And because Police Standards and Training deals with the certification of Officers, I'm just asking, in your professional opinion, do you think that there should be a clear defined penalty for the failure to report misconduct?

DIRECTOR SCIPPA: Candidly, I don't know that that would have any impact at all with regard to whether that would increase reports, whether it would decrease reports. Philosophically, you talk about

laws and penalties in our society. People know that there's penalties for driving too fast and people do it anyway. So I don't know that that helps force/compel reporting because now there's a penalty attached. I don't know.

MR. LASCAZE: But there is a clear penalty for those offenses, as you had stated. Okay. Thank you. I appreciate that.

DEPUTY ATTORNEY GENERAL YOUNG: Thanks, Joseph. Ken, your hand is up?

DIRECTOR NORTON: Yeah, a couple quick points I wanted to make just regarding Dr. Sawyer's written testimony. She had let me know that she had used an acronym in that testimony, PEPE. And by that, she meant Pre-Employment Psychological Exam. So if you're reading that and seeing that, it leads with one of the paragraphs. And I think to just summarize her point was that a written psychological exam (inaudible) is more likely to be effective in getting to those biases.

And I just wanted to comment. Director Scippa had asked about the Fair and Impartial Policing Training. I thought it was excellent. I did miss a few hours. But it was very interactive and really based on the assumption that all (inaudible). And it just made it very (inaudible) to doing different scenarios relative to that. Thanks.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ken. Eddie, you had your hand up. You were the cutoff. But, James, you have your hand up. So, I will let James go, and then we will take a break.

CHIEF EDWARDS: Okay. So, thank you. I just wanted to echo Commissioner Norton's comments about the training. I want to thank Director Scippa, too, for making that available to the Commission Members, because those of us who attended I thought it was very enlightening the way the class was instructed. You had Law Enforcement mixed with non-sworn people, community people, talking about their biases. And I think it's going to be very helpful in New Hampshire to have that training to make sure people are aware of their bias.

And secondly, I wanted to just make sure that, as a Commission, that we're making recommendations for Director Scippa. But I think we should stand ready as a Commission, either as individuals or as a unified body, to make sure that our recommendations are followed through because there's going to be a lot of work needed to make sure these recommendations are followed through.

I think you've heard. Director Scippa talked about this a lot. I made it one of my recommendations early on that staffing should be there, particularly for the Compliance Unit. And I think Director Scippa is going to need that kind of help to get these things accomplished, because a lot of these issues that have occurred at the Police Academy occurred long before he was the Director. And we see the lack of financial support there. So we're going to have to put some work in to making sure those things are realized.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much. James, we will take your questions or comments. And then, we will take a break and then bring Attorney Melone on. So, James?

MR. MCKIM: Thank you, Deputy. To kind of pick up on Chief Edwards and the tone here, I wanted to just ask Director Scippa the question, because he mentioned that, and clarified that the money had been

allocated and the decision was made, a request came from the Governor's Office to hold off on any projects that were not shovel-ready.

I'm curious, because I've been trying to think of how we make recommendations that move the ball forward here. Who makes the decision as to whether that money can then be spent on the software and the systems? And what recommendations might we make to ensure that that decision gets made to the positive?

DIRECTOR SCIPPA: Being the new guy on the block, I think the Governor says I can either spend the money or not. And whatever the Governor says is what's going to happen. So, I think that the notion of being able to identify exactly what we need, we're working on that now. We're putting together the RFP to really outline exactly what we're going to need with this particular system. We're in contact with a number of people right now. And I told my Staff, continue to build out that RFP. We still have to be ready, even if the money's not freed up this time. We still have to be ready. So whether we get permission to spend it or not is another thing. But, I believe that's who says yes or no is the Governor.

MR. MCKIM: Thank you. And that, to me, just points to the importance of, as we make our recommendation, of including the persuasive arguments for prioritizing this above other projects that he might have to weigh funding for. So, thank you for that.

DEPUTY ATTORNEY GENERAL YOUNG: Rogers, I know that your hand is up and you probably have an answer to the financial question. So I will let you go.

MR. JOHNSON: Yes, hope my mic's on. Good.

DEPUTY ATTORNEY GENERAL YOUNG: Yes, sorry about that.

MR. JOHNSON: That's okay. Before the end of the year, this calendar year, the Governor's Office, with assistance from the LBA, the Legislative Budget Assistant, is going to come to a conclusion of whether or not they can, in fact, balance the budget before the end of the fiscal year, that fiscal year being June 30th of 2021.

In order for that to happen, these cuts across the board for the Government are going to have to be made. The question is whether or not we could convince the Governor that certain additional cuts be made in other Agencies to allow for certain other things to happen within the Government. What that does is that sets off a stampede, meaning that other individuals within the Government start asking for exceptions, because they need X, Y, and Z.

What the Governor tends to do -- not just this Governor, but every Governor -- what they will tend to do is say, no, we need to make these cuts across the board. The only thing that's going to be saving us is whether or not the Federal Government actually allocates additional monies. If anybody's been paying attention, that's not likely to happen anytime soon.

So, Director Scippa is between a rock and a hard place. There's no place for him to go. We can make all the recommendations we'd like. But, at the end of the day, if the scenario is still the same, he's not going to be able to do what he wants to do.

So, we have to take that into account, meaning that, given the next budget cycle, we need to necessarily go in front of the Criminal Justice Committee and then the Finance Committee to make sure that this money's restored. But the question really becomes: given the limited nature of finance within the State, we are asking for something to be done which may come at the expense of somebody else.

So, those are the things you need to keep in mind. And if possible, if you're going to go in front of the Legislature, you better have somebody know what they're talking about and why they're doing it, because, otherwise, it's going to fall on deaf ears, especially when it gets to the Finance Committee. And I know, because I was on the Finance Committee. We didn't listen to anybody. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: That should answer the questions that are out there. Thank you. With that, it's 11:40. We will come back at 11:50 with Attorney Melone. The recording will go off, Maria, correct, until we come back?

MS. EKLUND: Correct, I will pause the recording now.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you.

(Off the record at 11:40 a.m.)
(On the record at 11:50 a.m.)

MS. EKLUND: Now recording.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Maria. This meeting is called back to order. And we are being recorded. Maria, do we have Joseph with us? Has he resolved his technical difficulties?

MS. EKLUND: He -- I gave him the call-in information. Oh, he's here. And I...

DEPUTY ATTORNEY GENERAL YOUNG: Joseph, can you hear me?

MR. LASCAZE: Yes, I can hear you. I'm in the process of trying to download this to my phone so I can hopefully switch over so that what's happening doesn't keep happening. So I might have to be off-camera if I do use my phone, as alerts are coming in. I'm not putting my finger over the camera, like I'm shunning anyone.

DEPUTY ATTORNEY GENERAL YOUNG: All right. So I'm going to continue on (inaudible) difficulty. So I didn't want you to miss anything. And I know, Ahni, that you had your hand up. So, before we bring Attorney Melone on, would you like to say something or ask a question?

DIRECTOR MALACHI: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Go ahead, Ahni.

DIRECTOR MALACHI: I would, thank you. Just to give Agency clarification to what Rogers stated, so, yes, that is absolutely 100% correct. There's no confusion there. As a former Legislator, Rogers is very clear and very adept on the process. If a Department Head, like myself or Director Scippa, is bringing forth money to -- or requests for money to do something and, yes, you need to have on your tap-dancing shoes and be ready when you get in front of the Fiscal Committee.

However, for this particular situation, it's slightly different. And I just wanted to make a tiny point of clarification for the Commissioners, when we move into this recommendation to free up the money. Currently, because of COVID, things are pretty much frozen expenditure-wise statewide. So we're doing that -- or that's being done to make sure if you really don't need to spend it, then don't spend it. It's not taken away. But it's frozen. So, it's like when you need to keep yourself away from your credit cards, put them in ice. Put them in the freezer. So our money, in some areas, has been frozen.

So, if we make the recommendation, to Mr. McKim's point, who is very careful about monies, if we make this recommendation, if at all possible, then the Governor could determine that the money that's already been allocated in this current biennium, which is Fiscal Year '20/Fiscal Year '21, without getting too far in the weeds, he can make the determination that the money that's already been allocated to Director Scippa to spend can simply be spent today, tomorrow, two days from now, so that he can move ahead. And that's why Director Scippa has told his Staff to move forward with the RFP process, to make sure that they have the things in place and have what they need.

Now, if it cannot be spent and if the money has to be reallocated somewhere else due to all of the budget shortfalls due to COVID, then, we, as Agency Heads -- Director Scippa, myself, and the people he has in his Agency to work on his upcoming biennium budget for '22/'23, that the request to get the money back, if and only if it's removed from him, because it isn't right now. It's just frozen. It's just in the freezer. Then, he can put that into a budgetary prioritized need. And when he goes to Fiscal, it's very easy, along with the LBA Audit, along with our recommendations, and his testimony that this money needs to be restored. And that's if and only if he has to even go that route.

So what we, as a Commission, are hoping is, since the money has already been allocated, and since the LBA Audit completed last year says these are the shortfalls, and since we have been empaneled by the Governor to look at all of these things and have been told, don't remain inside of a box, that the Governor will then be able to hopefully unfreeze the money, get the hairdryer out and thaw off the credit card, so that he can spend money that's already allocated.

So we're not asking for new money. We're asking for access to the currently allocated money. And I'm sure Director Scippa will straighten me out if I'm incorrect. However, as an Agency Head looking to who I would normally look to as Rogers on the Fiscal Committee, from an Agency perspective that's where we are, because that's the current state of my Agency, as well. Thank you, all, for your indulgence.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much, Ahni. Maria, is Attorney Melone online and ready to go?

MS. EKLUND: She is. Would you like me to bring her in now?

DEPUTY ATTORNEY GENERAL YOUNG: Yes.

MS. EKLUND: Okay.

(Pause)

MS. EKLUND: She has been added.

DEPUTY ATTORNEY GENERAL YOUNG: Hey, Robin. It's Jane.

ATTORNEY MELONE: Good morning. How are you?

DEPUTY ATTORNEY GENERAL YOUNG: I'm good. How are you?

ATTORNEY MELONE: I'm well, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Do you have video capabilities, Robin? Or are you just to be audio?

ATTORNEY MELONE: I have the audio. My internet connection is unstable.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So that's no problem. So, welcome. Robin, the ground rules are the Commission Members have your six-page written testimony, as well as (inaudible). I'm going to presume that everybody has reviewed them. So you have three minutes to sum up your testimony. And then, what happens is that the Commission Members get to ask you questions. And we have about an hour and a half left in this session. So, with that being said, again, on behalf of the Commission Members, I welcome you. And you are able to present your testimony now. Thanks, Robin.

ATTORNEY MELONE: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Robin, you may be muted.

ATTORNEY MELONE: Is that better?

DEPUTY ATTORNEY GENERAL YOUNG: Yes, that's much better. Thank you. Go ahead.

ATTORNEY MELONE: Thank you. Members, thank you for the opportunity to testify today. I'm here representing the New Hampshire Association of Criminal Defense Lawyers. And we are asking that you consider first and foremost that the Laurie List, or Exculpatory Evidence Schedule, be made public.

If the list continues to exist, we urge that you make four recommendations. First, revision of the protocol for determining that an Officer's file contains information that must be disclosed to a Defendant. This should include creation of a centralized, or single, entity to make these determinations in a complicit manner, respectful of Officers' due process rights.

Second, the creation of enforcement mechanisms to compel compliance by individual Agencies with maintaining an accurate list. Third, a more streamlined protocol for Prosecutors at all levels to have direct access to the relevant information so they can meet their constitutional obligations. And fourth, creation of

a protocol that allows the Defense to review the information in an Officer's file to decide if they will seek permission of the Court to use that information publicly at trial.

We want you to understand that our call to make the Laurie List public is not borne out of a desire to expose dirt, to ruin someone's career, or to make a good Cop lose their job. We defend those charged with crimes. We do not defend crime. We respect that Police Officers do an incredibly dangerous job that is often thankless. And we need them to do that job.

Our call is based on our obligation to protect constitutional rights. An Officer's testimony can singlehandedly lock a Defendant up for months, years, or even life. At the same time, that badge brings with it an inherent credibility that any fact-finder, whether Judge or jury, will consider in reaching a criminal verdict. The presumption is that a Police Officer will be honest and follow the rules. And the vast majority do. But for those who don't follow the rules, the Courts have made it clear, both New Hampshire and United States, that that information that could challenge an Officer's credibility must be provided to a Defendant so they can use it to challenge credibility for the fact-finder.

This list was created as a tool for Prosecutors to equally learn what information exists in an Officer's file that they are constitutionally required to provide. This tool, instead, has become one for obfuscation and is not easy or reliable.

While the buck stops with the Prosecutors, the Prosecutors are not the problem here. A January 2020 list shows that only 17% of Agencies required to certify the accuracy of this last had done so. That means one of two things. It could mean that the remaining 83% of Departments have provided all that information, but have not confirmed that they have done so. Terrifyingly, it could also mean that the remaining 83% have not reported those in their Agencies who should be on the list.

As far as I am aware, there is no penalty or consequence when an Agency does not report this information. This, alone, makes the list useless as a tool for the very purpose it was created, to help Prosecutors meet their constitutional obligations. The Defense Bar has no confidence that this is working, nor should you.

I share in my written testimony just two of many experiences with the Laurie List. And I do respect Attorney Young's representation that you have read those. But these examples are troubling. Many of us have had Prosecutors drop or dismiss cases out of fear of burning their Officers. Dismissing cases is not an option. It's not acceptable. If an Officer cannot see a case through from arrest-to-testimony because of something in their file, they should not be making arrests.

This isn't fair to the community, to the individual Defendants, or to the good Cops who do their job with honor. This is not working at any level and must be fixed. And the system for gathering, tracking, and disclosing this information is ad hoc and secret, rather than centralized, consistent, and transparent. The risk of constitutional violation is significant. And the impact is on the individuals, but also on the overall community level of trust in their Law Enforcement. I welcome your questions. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much, Robin. Questions or comments for Attorney Melone? Commissioner Tshiela, you had your hand up first, followed by Joseph.

MS. TSHIELA: Thank you, Attorney Melone, for your testimony. So my first question is, all the information that you've given us and that you've provided in your written testimony, if this information isn't disclosed, how did you receive it? If the list isn't disclosed, sorry.

ATTORNEY MELONE: Sure; so, in each individual criminal case, a Prosecutor learns, in theory, that an Officer involved in that case and is a potential witness, if they learn that that information exists, they go (inaudible). They file what's called an Ex Parte Motion, which means the Prosecutor's making a Motion without telling the Defense, and says, Judge, this is the information that we know exist. Please decide if we have to tell the Defense if this exists.

The Judge, knowing what they know -- and typically Judges do not have the full Police Reports in a case, they typically do not have defense strategy informations (ph). They look at the information in that file and they say yes or no. If they say no, you do not have to provide this, we never get it. And we never know that it exists. So we can't argue that it should have been provided, because we don't know that it was not provided.

If the Judge says, yes, we do get it, it is forwarded to us with a Protective Order. Before we're actually given the materials, we execute the Protective Order that agrees that we will not discuss the information with anyone outside the specific Defense Team. So I can't tell my colleagues. I can't tell my Law Partner. I can't tell, in some instance, my Client. And I have to then seek specific leave from the Court to use that information. And sometimes the answer is no. Sometimes the answer is yes. Only if the answer is yes then can it become public.

MS. TSHIELA: Thank you. And my second question is, what happens when a case is dismissed, as described in your written testimony?

ATTORNEY MELONE: So the one that was in Circuit Court that we learned of on the day of the trial, Defendant walked away. We were prepared for trial, as stated in the testimony. The Prosecutor had offered us a sentence of three months in jail. We had truly expected to lose that trial and that my Client would have to appeal with a de novo appeal in Superior Court. Because it was dropped, the charges were dropped. We filed the Petition to Annul and evidence of that arrest is no longer on his record. In Superior Court, if a case is dropped, it's a little more difficult to get annulled.

MS. TSHIELA: Okay. Yeah, thank you, again, for your testimony. I think it was very valuable information. And with that, I'm going to yield the balance of my time.

ATTORNEY MELONE: Thank you, Commissioner.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ronelle. Attorney Melone, I have one question about that case. Was that Officer the sole witness? Was he a critical witness? Could the case have gone forward without his testimony? I assume it's a him. So, without the Officer's testimony?

ATTORNEY MELONE: It was a him. In that instance, we had the Arresting Officer. There were some complicating issues with the victim. It was a domestic case. So we had the victim, this specific Officer who was the one who had responded to the 911 call. And there was one additional Officer who arrived on-scene after-the-fact.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. (Inaudible) followed by Julian and Tim Kin. So, (inaudible), and Rogers has his hand up. You can go.

MR. LASCAZE: Thank you, Deputy Young. Thank you, Robin, for testifying today. And I do want you to know I did read every sentence of your written testimony. For me, I just -- and for the people that are listening, can you explain what exculpatory evidence is and how this intersects with the Laurie List?

ATTORNEY MELONE: Sure; so exculpatory evidence is case-dependent. Some things are (inaudible). So if an Officer has patently (inaudible) dishonesty in his conduct file, that would be potentially exculpatory. And I'm speaking here just as it relates to an Officer. It might be easier to relate it to civilians. Would that be a good comparison for you?

MR. LASCAZE: Sure; yeah. Absolutely.

ATTORNEY MELONE: Okay. So with civilian witnesses in a case, I'm going to give you an example. My Client is accused of assaulting somebody. There are no witnesses. It was a bar fight. The victim in the case (inaudible) statements. I, then, get a copy of his criminal record. That is part of discovery. It does not have to go through same ex parte or Protective Order process.

I can see on that criminal record that he has a prior conviction for false report to Law Enforcement. So he made a false report to the Police. I can, then, request a certified copy of that conviction. And when we go in for trial, I can use that to challenge his credibility. I can say, Mr. Victim, you have a prior conviction for false report to Law Enforcement. You lied to the Police. How do I know that you're not lying now? How does the Judge know you're not lying now? But that's an obvious example. It's not always that simple. It's frequently nuanced.

With Police Officers, again returning to that example, if an Officer has fabricated in a Report, has made a false statement, those types of things are obviously exculpatory. An exculpatory can mean anything that challenges the credibility of that witness. It can be truthfulness or honesty. It can also go to ability to ascertain or observe.

I had one case where an Officer disclosed that he had not been wearing his contacts at the time that he made an arrest. In that specific case, that was exculpatory. I had another instance where an Officer indicated that he had not taken medication that morning and was not feeling well. That obviously raises some separate concerns. I did not bring up the need for the medication or any of that. I simply took that information to say you weren't feeling that well, then, weren't you? And that manifested as having extreme headaches. You were having some vision issues. Yes, I was. So all of that can be potentially exculpatory. And it's information that the fact-finder uses to assess the credibility and reliability of the witness' testimony.

MR. LASCAZE: Okay. Thank you. All right. Well, that leads me to my next question, because I found this kind of troubling. You stated that County Attorneys have, I believe, a constitutional obligation to disclose exculpatory evidence. However, in your written testimony, you also stated that, during your professional experience, that County Attorneys have dropped charges and gone as far as to vacate criminal cases to protect the dissemination of information. So, I just want to know. In your professional career, is this a common practice? And is there a theory behind why this information is not released in the first place?

ATTORNEY MELONE: So there are a couple parts to that question. I'm going to try to unpack them. Yes, I have had frequent cases. I will step that back. I will say many, not frequent. I have had many cases in my career where cases have been dropped. I know my colleagues have had many cases that have been dropped to avoid disclosure. To be clear, I don't think that that's the intention of the creation of the list, nor do I think that the Prosecutors support that. I think, in many instances, their hands are forced.

In cases of vacating convictions, the Prosecutors have an ongoing duty. It is a constitutional duty. It starts in *Brady v. Maryland*, which is a United States Supreme Court case. And locally here in New Hampshire it's the Laurie case. They have an obligation to disclose potentially exculpatory evidence, including this type of evidence. If that evidence is discovered after somebody's convicted, they still have that obligation to disclose. It's an ongoing duty.

So, for example, I had a Client who was serving a Prison sentence who was convicted after trial. And I think everybody on this Commission is aware of a fairly childlike revelation of allegations which were sustained against two Manchester Officers. And those Officers -- those revelations led to the unraveling of a number of cases. I'll simply say that.

One of my Clients was one of those. I received the file. I reviewed it. I was of the opinion that the information available to me at that point would lead to a favorable result for my Client. I contacted the Prosecutor, told them I intended to seek to publicize the misconduct information. He chose, instead, to vacate my Client's conviction and the last four years of his Prison sentence just went away. He walked out.

MR. LASCAZE: Okay. Well, what -- well, if you're going to talk about convictions, so can you then explain to me what an unsound conviction is, and how this affects the due process for Defendants, because reading your written testimony and what you just said sounds like an unsound conviction? And I just want to make sure that I'm correct on this. So can you expand on what an unsound conviction is and how this affects that due process?

ATTORNEY MELONE: I can. And I'm going to offer my personal view of what I see is a risk for unsound convictions. I think each Attorney understands it fundamentally the same. But for me, specifically, on this topic, I'll explain what I think.

When a Defendant is convicted based on a trial, that does not recognize and allow him to exercise all of his rights a conviction that is subject to reversal on appeal for any reason, we see that as unsound. So, for example, there are many times during jury trials when we will file Motions we know we will lose for the sole purpose of articulating that argument for the Court and preserving our argument for appeal.

And we see it any time the New Hampshire Supreme Court hears appeals. It could be little things that reverse a conviction. It could be big things that reverse a conviction. And I think that the exculpatory evidence piece is one that has kind of two prongs.

I think the first is that, so in the example I just gave of the gentleman whose Prison sentence was vacated, his conviction was vacated. That was unsound because of the Officer's conduct. In that instance, the conduct was known. It was documented. Law Enforcement took the correct actions. And those Officers were held accountable. And that information was disclosed. And that unsound conviction was remedied I think appropriately so.

But there are other ways that a conviction can be unsound. And I think that there are many, including myself, who, with the distrust in the list in its current form, don't feel confident that every Officer who should be on the list is on the list. There are certainly rumors about Officers that are on the list.

Sometimes those rumors are substantiated by disclosures and sometimes they're not. But because we don't know, it's really hard for us to know and for us to convince our Clients that the Officers in their case don't have information that should be disclosed that has not been. So I think that there's also the appearance of infirmity, which can harm public integrity.

MR. LASCAZE: Thank you. So, let's switch then to the civilian witnesses. So, what evidence or information do Defense Counsel then have access to, if they were going to -- I guess the word would be -- impeach a civilian witness? And how would you go about getting access to that information?

ATTORNEY MELONE: So, when we get a Police Report, or the Discovery Packet, as we call it, from the Prosecutor, that's typically shortly after the case starts. Included in that is my Client's criminal record and ultimately, before trial, they will provide a copy of any civilian witness' criminal history.

And then, I have to look at the Rules of Evidence, Rule 608, 609, and a couple of others. And we go through the legal exercise of deciding how it is admissible. And then, the Judge makes the Decision. Oftentimes, the Prosecutor concedes that certain convictions are admissible for impeachment purposes. And then, we proceed at trial. There's no confidentiality.

MR. LASCAZE: Okay. Thank you. And I appreciate the Commission indulging me. I have just one last question for you. And this is based on not only your professional experience but on feedback from community members who have been your Clients that you represent. Is there a feeling that the secrecy of the Laurie List impacts the trust in New Hampshire Law Enforcement?

ATTORNEY MELONE: I can say without question, without hesitation, that the community members, specifically community members of color, view the list and its secrecy as an attempt to protect Officers, and that that appearance impacts the ability (inaudible) trust Law Enforcement.

MR. LASCAZE: Thank you very much, Mrs. Melone, for your testimony. I appreciate that and I yield the rest of my time.

ATTORNEY MELONE: Thank you, Commissioner.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Joseph. Julian, you're next.

ATTORNEY JEFFERSON: Thank you. Good morning, Robin. Or good afternoon.

ATTORNEY MELONE: Good morning, Julian. Good afternoon...

ATTORNEY JEFFERSON: So, I have a question for you. And so, it seems to me in my experience, hearing from both Police Officers and Members of the Defense Bar, and members of the community, that really nobody is happy with this EES Schedule.

Police Officers are not happy because it's left to the individual discretion of a Chief of Police whether or not to put them on the list, or not put them on the list. And there's no due process or any kind of formal

mechanism or formal rules of the road. It's just this hodgepodge of these hundreds of different Agencies deciding that in the first instance.

And from a Defense perspective, the same concern is there. So -- and then from the secrecy perspective, that concern then pervades into the community. Do you get a sense that that is -- that there's a correct -- that there's elements on all side of this who just think that this is not the right way to go?

ATTORNEY MELONE: I do get that sense. I was part of the Laurie Commission several years ago, when we were discussing ways to potentially improve the employment side of this. I am not an Employment Attorney. I understand that there are employment issues here and that the Bargaining Authority of the Unit -- I'm sorry, the Unions for the various Agencies certainly have an impact on how this plays out.

I have spoken with many Officers who are friends of mine, who I work with and I have a great deal of respect for. They have a significant dislike for the Laurie List. They see it as making Officers unemployable. And they see it as having a lack of consistency. They see it as having a lack of reliability.

I think, as far as consistency -- and Julian, I'm sure you have, as well -- I've gotten disclosures every year that are useless. And they are things that should not result in an Officer being on the list. And that Officer should not be on the list. I have no qualms saying that.

There are certainly other things that should land an Officer on the list. And I think that there should be one body making the decision. There needs to be some consistency. There's too much individual -- there's too much risk of individual Departments not doing this consistently and fairly for the Officers and for us.

ATTORNEY JEFFERSON: And so, how do you -- can you put some more meat on the bones there and give us an idea of what that entity would look like? Who, specifically, do you think would be in the best position to be that one entity who makes that decision? And for consistency, do you think there needs to be a defined set of rules? Is that a Uniformed Police Code of Conduct? Like, who decides what the floor is to make sure that it's being consistently applied? So kind of what are your thoughts on, if we were to move in a different direction, some details about who you think would be the appropriate Agency or body, or do we need to create a new Agency or body to handle this?

ATTORNEY MELONE: If I'm reaching for the stars?

ATTORNEY JEFFERSON: Yeah, reach for the stars.

ATTORNEY MELONE: I think ideally there would be one centralized statewide body. There would be a panel that includes a Representative, or multiple Representatives from Police Standards and Training; Representatives from a Prosecutor's Office. I would like to see a Representative of the Attorney General's Office on there. I think that, for transparency purposes, there should be Defense Representatives.

And I think that that body would have a uniform process of looking at each individual case and deciding what conduct, specifically, lands somebody on the list. There are some that are going to be obvious. Lying on a Report, frankly, I think any Officer who lies on a Report should be terminated. If they can't be trusted to properly report in a Report, they shouldn't be wearing a badge or carrying a gun. And I think any Officer who can't see a case through from arrest to trial should not be an Officer.

I think that there should be, in addition to that, a standardized process for what the due process for the Officer looks like, what the appeals for removal from the list look like, and perhaps a probationary period. I think that the list, itself, needs to be, even in that instance, public.

I think that if an Officer has engaged in misconduct, that warrants (inaudible), that it needs to be available to the Defense. And again, I recognize the arguments for public transparency. From a purely Defense Attorney perspective, my concern is access to that information for my Clients. And I don't have confidence that any secret process, secret body, or secret document will allow us to get that information. Does that answer your question? I think I missed the last part.

ATTORNEY JEFFERSON: No, I think it does. And so, my last question to you is, as we're on this Commission, there seems to be these two intersecting things. And I want to get your thoughts on whether you think these things could be handled as sort of one thing, or they need to be two separate things.

So, on the one hand, there's this current Laurie List, or EES Schedule. And then, on the second hand, as a related issue and has many of the same concerns, should there be an independent statewide Agency to investigate all allegations of misconduct, so it's not left to individual Police Agencies investigating conduct of their fellow colleagues?

And it seems like these two issues are very related. So I was interested to get your thoughts on, if there is this creation of this one Agency, do you think that one Agency could clearly tackle both of these issues? So they can be the Agency in charge of investigating conduct with robust due process layers, very similar to the due process that an Attorney has through the Attorney Discipline Office. And that same Agency can, then, also be in charge of this list.

And potentially, as a final thought, do you think the list would sort of become not even necessary at that point, because if an allegation is alleged, it is required to be reported to this statewide Agency? And if, at the end of the day, and after all appeals are exhausted, the misconduct is sustained, it goes on a list. And just like any, an Attorney or Judge, that information is publicly available. And so, therefore Prosecutors would still have an obligation to turn it over. And Defense Attorneys can also just easily see it because, by law, it would just be publicly available information, like any other professional, Doctors, Nurses, Teachers. Any other Professional Agency seems to be it's a very transparent and open process. So, what are your thoughts on one Agency sort of handling both of those issues? Or do you think they should be two discrete issues?

ATTORNEY MELONE: I think that they are one in the same. And I think that they need to be connected and handled by one Agency. I think one of the issues that I have is that, in looking at the Certification List, it's pages and pages long of each individual town who has a Police Agency, who has to handle misconduct of its Officers. And sometimes Departments have two Officers.

There are names of towns on here that I've never heard of. And I've been familiar with New Hampshire for over 20 years. So I think that that speaks to the fact that breadth is not always a good thing. I think centrality is a good thing.

I do. And I don't know if the Commission has looked at the way that the ADO or the JCC -- I'm sorry, the Attorney Discipline Office or the Judicial Conduct Committee, or frankly the Board of Medicine, even Hairdressers have to be licensed and can lose their License if they face certain convictions and have certain complaints of misconduct. They all have a much more centralized process.

And again, I'm shooting for the stars. I think that that should be what happens to Law Enforcement. The fact that it's so disparate and ad hoc, it is concerning. And I think it leads to issues on a constitutional level. But I also think -- I think it puts a burden on the individual Departments.

ATTORNEY JEFFERSON: Thank you so much, Robin. And to briefly address your point, we are going to have a presentation from the Attorney Discipline Office, so that all Commission Members can know what that process looks like as a comparable model for us to consider. Thank you, Robin.

ATTORNEY MELONE: Thank you so much. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: So, let me just throw this out to the Commission. Robin, you can weigh-in. I think we all understand, right? If somebody lies, that has to get disclosed. That's the no-brainer.

Sort of the struggle is maybe you have an Officer who has had three speed warnings in the Department, right? He's now in a motor vehicle accident. The other person gets charged. In that case, those three speed warnings could be exculpatory. Why not have complete open (inaudible) and have (inaudible) to make a decision? Wouldn't it be easier just to look at the file, because it's very dependent on a case? What is exculpatory in one case may not be in another.

And again, I take the lying off. What if an Officer assigns a Chief's name to a form, unbeknownst to the Chief? Is that problematic or not? So, I just -- I'm not sure it's that clear-cut of we can create a new Agency to do all this. Is it just better to be able to look at a file, because what Julian may think would be helpful in a case, may think, yeah, that's not going to go anywhere? So I throw that out there for thought and discussion. And Rogers, you are next.

ATTORNEY MELONE: If I can just speak quickly, Deputy Attorney General, I absolutely agree. Our first call and our first call for a recommendation is that the list be abolished, that the Defense Counsel be given access to the file and the information.

I don't think that a Judge in an ex parte proceeding is in a position to make a Decision about what could be pertinent for a defense case. Any Prosecutor, yourself included, obviously, knows that we don't have to give you information about defense strategy. The first time that the State gets a full picture of a defense strategy is during opening.

Obviously, there are cases where you know what's coming. But I think that for a Judge who is juggling thousands of cases, doesn't have an intimate knowledge of a case, to have a snapshot of the case and then make a Decision that this piece of information may or may not be relevant, I don't think that the Judges are in a position to do that. And frankly, I don't think that they want to be in that position.

So, first and foremost, we would advocate that the list be abolished and we just get the information. I think that that can be done in a way that protects the Officers. But I also recognize that the Officers will oppose that. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Now, everybody's hand has gone up. And the only other piece that I would say sort of as a Prosecutor who's been doing this for a long time, you ask for something and you know that it's out there, and you don't get there, and you make another request. And you hear,

yeah, but you didn't ask for this file. So I've never understood how one person could have multiple files within the same Police Department. So, with that, Rogers, you are up.

MR. JOHNSON: Thank you, Deputy Attorney General. Counselor, essentially my question is directly related to the statement you just made. If we have a requirement for the person adjudicating the case to make sure that that information is provided to the Defense, if that information is either exculpatory or, more importantly, has a direct impact on the case, then the problem is (inaudible).

What you're saying is that the Judge doesn't have the ability or the -- or I guess the requirement to provide the information, because they make a determination that that information isn't relevant to this case. I think that Judges have that capability. And most likely, if we allow that to take place, this issue is solved.

So I don't care if there's a Laurie List with 1,000 Officers. If that information is made available to the Defense, because that information is more to the nature of the case, why don't we just pass a law and tell the Judges that they are required to make sure that that information is made available?

ATTORNEY MELONE: Thank you for your question, Commissioner. If I understand, what you're saying is just direct the Judges to provide whatever they get, instead of making a decision about whether it should be provided?

MR. JOHNSON: No, I didn't say that. I said, they should provide the information if they could determine that that information has a direct impact on the case, as opposed to someone being on the Laurie List because they had a speeding ticket, or because somebody made a comment (inaudible). That information is not germane to the case.

ATTORNEY MELONE: I understand. Thank you. I think that that is the current state of affairs and I think it's not working for the reason that Attorney Young stated and which I stated, as well, is that sometimes these issues are more nuanced.

I have had instances where midtrial Prosecutors have said, I previously discussed with the Court whether or not this information should be disclosed. The Court made the decision it was not potentially exculpatory and ordered that it not be disclosed. At this point in trial, having heard the questions and the direction of the Defense case, I understand that it is potentially exculpatory. And I am now, midtrial, providing it to you.

So I think that that speaks directly to the fact that the Judges, while well-intentioned, cannot get inside a Defendant's head, or Defense Counsel's head, and may not understand all the nuances, or frankly all the facts available in a case. They don't have the full Police Reports. And they don't have the benefit of information from Defense Counsel, when making a Decision of what should be provided. I have no doubt that Judges are doing their best.

MR. JOHNSON: What you're telling me essentially is that we're bordering on something which may be close to judicial misconduct, because that Judge has looked at a situation and midtrial determined, oh, well, that may be important. I'm thinking that, if that's the case, then maybe we should look again more at the Judicial System along these lines, as opposed to asking the Police to disclose the Laurie List. If the Laurie List is really an issue, then why don't we just outlaw it altogether?

ATTORNEY MELONE: I certainly support outlawing the Laurie List. But I don't think it is an issue of judicial misconduct. I think that the Judges, in my experience, make Decisions based on the information available to them.

Again, and key in that specific case that I just referenced, was that we had a very unique defense. The Judge was not privy to that defense, so he did not know that the information that was in the file, which was not traditionally seen as potentially exculpatory, it was not something obvious like signing your name, or falsifying a document. And because that was not immediately obvious, he made a Decision that we were not to be provided that information.

Respectfully, I credit the Prosecutor in that case for being honest enough to come forward, midtrial, and say this wasn't immediately apparent as necessarily disclosed. It is now. And here you go. But I think that speaks to the potential pitfalls of having a Judge review that information and make that assessment in the first instance.

MR. JOHNSON: So, if I read you correctly, Counselor, what you're really saying is elimination of the Laurie List then precludes all (inaudible) subsequent problems that you've identified. Something along the lines of judicial misconduct or prosecutorial misconduct is a direct result of having the Laurie List in existence in the first place.

Having said that, should there be a specific (inaudible) on individuals who somehow end up on the Laurie List, meaning if you're in a situation where an individual Police Officer, regardless of what the situation is, is then recommended for the Laurie List, should that be, in and of itself, a question for the judicial -- excuse me, for the State -- excuse me, New Hampshire Police Misconduct Committee for recertification?

ATTORNEY MELONE: Commissioner, I think I understand what you're asking. There's a little bit of interference. Are you asking if simply having an Officer's name placed on the Laurie List should be the basis for decertification?

MR. JOHNSON: That's correct.

ATTORNEY MELONE: I think that the answer is yes but sometimes no. And I think...

MR. JOHNSON: Now we have the nuance here, because, again, just being placed on the Laurie List doesn't mean that the individual Officer should have that information disclosed, if being placed on the Laurie List is something as innocuous as, again, speeding or something else. It may not be exculpatory to a case. So then, the question becomes, who makes the determination?

ATTORNEY MELONE: Which is why we've advocated for a more centralized process, I have no objection to Officers having their due process afforded. I also recognize in the files that I've seen over the years that there is a wide inconsistency between what some Officers -- between what lands some Officers on the list and what some are placed on for. I think that that is a problem. I think that there needs to be consistency and there needs to be more consistent guidance.

MR. JOHNSON: You know what, Counselor? You've just described human nature. Having said that, being involved in government for as long as I have, the one thing I do know is that a centralized Government Committee doesn't necessarily create the necessary results that you want. And with that, I (inaudible) the rest of my time.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Tim King?

LIEUTENANT KING: Good afternoon, Robin.

ATTORNEY MELONE: Good afternoon, Lieutenant. How are you?

LIEUTENANT KING: I'm well, thank you. I just want to clarify one thing, before I get into my questions. You said something when you were talking to Julian about probationary, while you were talking about due process. Can you explain that to me just a little bit?

ATTORNEY MELONE: I'm sorry, Commissioner. (Inaudible) your question; I think it's on my end, not on yours.

LIEUTENANT KING: Okay. You had mentioned that, when you were talking about the process, you're talking about standardization. You're talking about a probationary period or something. Just looking for clarification, because you are cutting in-and-out.

ATTORNEY MELONE: Sure thing; so, my understanding of the process that is currently in place for Officers to be placed on the list is that there is a procedure for removal. And I know that -- I guess I should say I know anecdotally, because this is not a process that I'm intimately familiar with, that there's some Officers who are removed from the list.

I have spoken with some Officers and Counsel who represent Officers that, upon completion of certain conditions and requirements, that they will be recommended for removal from the list. Whether or not is that successful, I don't know.

I do support due process for the Officers, as a whole. I don't think they should be placed on the list based on the animus or the bias of the person making that assessment. I think they are entitled to a fair and impartial determination of whether or not their conduct meets the standards. And I think that those standards need to be uniform throughout the State.

LIEUTENANT KING: I appreciate your last statement. One of the things that Law Enforcement struggles with -- and Julian brought it up -- is at the discretion of the Chief and the inconsistencies of that information being put on the list, or the individual being put on the list.

And as you know, larger Agencies, Agencies that may have (inaudible) organization involved (inaudible) have very formalized due process systems in place. And after the Supreme Court Decision on the actual Laurie List (inaudible), saying that Officers should be afforded due process, and should have an ability or a mechanism to get off that list. (Inaudible) the Attorney General's Office to try to formalize that due process statement within the EES Memo that they have on file.

One of our concerns to go back to is that there are many names on that list. And some of those individuals have had due process, have gone through the system, and have had a substantiated allegation. So they have committed that act. It's been substantiated.

But there are many on there we have found out, throughout my 25-year career, that there are people on the list that never knew they were on the list until get notified when they get called in for a (inaudible) see a need for a continued in-camera review by a Judge for the current list, or the members on that list that haven't (inaudible) due process, in contrast to the Officers that have already been vetted and had due process, and been substantiated?

ATTORNEY MELONE: I think (inaudible) question, I can give you our position on this. I do think that Attorney Krupski, who I believe is testifying later on, on this issue, as well as a couple of other folks that may speak more specifically to this process, we do not support placement on the list without due process.

We don't know who's been placed on with or without due process. And we don't know who's on the list, in general. So, because it's confidential and still heavily redacted, and frankly we don't find out many times when we do get disclosures how they came to get on the list, so we are really just the recipients of the information.

I think that we do absolutely support review of the list by a single body, or a single entity, or somebody who will eliminate that individual Department bias and that risk of unfair placement. We do support a review to make sure that people are appropriately on the list.

I would caution to say, though, that I agree with Attorney Young that it's nuanced. And I am not in a position to say -- and nor would I pretend to be -- about what should be on the list. I know that some who are on the list are no longer employed or have died. I don't know who those are. Like looking simply at the nature of the offense in the righthand column, I can't tell.

I know that the ones who are no longer employed were appropriately terminated. And I think that those are the ones that would obviously lead to a necessary disclosure. I think that the more nuanced stuff is something that needs to be evaluated separately. I'm sorry, sir. I think your mic is off.

LIEUTENANT KING: But you do agree that the due process procedure is important, and that there may be people on that list that haven't been afforded that due process in the past.

ATTORNEY MELONE: Based upon the information I have, which is anecdotal from conversations with Attorney Krupski, participation in the Commission several years ago, I have been told that there are individuals on the list without due process. Again, I don't have any direct knowledge of that. But I don't take as anything other than true the information that I do have.

LIEUTENANT KING: And just as a final note, would your organization be receptive to a -- I know in some States they have a Police Officer Bill of Rights, which basically has a guaranteed list of rights for Law Enforcement, which kind of balances out those (inaudible) that don't have legal representation, and the 250-man Department that has robust representation for personnel issues and other issues? Would they be receptive to a standardized Police Officer Bill of Rights for maybe the State of New Hampshire, like other States like California or such?

ATTORNEY MELONE: I think that that's something I need to (inaudible). That's not something that we've ever discussed. And I'm not comfortable taking a position for our entire body without having discussed that with the Board. But I certainly will go back and do that.

LIEUTENANT KING: Thank you very much.

ATTORNEY MELONE: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much. So the (inaudible) is Ahni, James, Eddie, ken, John Scippa, Joseph, and Julian. Ahni, do you have a question?

DIRECTOR MALACHI: Thank you, General Young. Good afternoon, Attorney Melone.

ATTORNEY MELONE: Good afternoon.

DIRECTOR MALACHI: So, for the -- for my question -- I have one or two questions here -- let's just pretend me and you, magic wand, yellow brick road, we can have whatever we want. And I think Attorney Jefferson sort of took us partway down this road. But I just want to make sure I'm super clear.

So, in looking at your written testimony and, of course, something you've testified to verbally here with us, if we could simply -- and I put that in air quotes -- if we could simply get rid of the Laurie List, or the other -- I think it was the EES.

ATTORNEY MELONE: Correct.

DIRECTOR MALACHI: That was a phrase that was also used. So if we could just make it disappear, what would you like in this world that we live in? It's just me and you talking. And if I have the power to wave a wand to make it disappear, what system makes sense for you to be put in place, and if I could wave the wand and put that system in place?

ATTORNEY MELONE: Thank you for that question. Speaking purely from a criminal defense perspective, recognizing that many have views on the general necessity for publication of this information, but strictly from a strictly criminal defense constitutional perspective, I would argue for elimination of the list, that an Officer's information be provided to the Defense Counsel, and that the Defense Counsel review that information, make an assessment of what may or may not be available or useful during trial, and that we, then, ask the Court for leave to use that information. I think that that eliminates the ex parte communication that has to happen from a Prosecutor.

And if I can step back for one second, if you'll let me do that, I think one of the things -- I'm sorry. I will call it one of the flaws in the current process is that a Prosecutor has a case, has a list of their Officers, and they look at the Laurie List. And they, then, take that Officer's name if it's on the list, and they give it to the Judge. In that instance, as I understand it -- and I'm sure Deputy Young will correct me -- they don't always have the full information, either.

I'm aware that our State has a wide variety of Prosecutors. In Circuit Court, that could be a Police Prosecutor. Some Agencies have one Officer that prosecutes this for the three in the Department. And in those instances, it's a Prosecutor who is also a fellow Officer reviewing his fellow Officer's misconduct files, which raises issues. There's also City Solicitors and then the County Attorneys on the Superior Court level. So I think that that's the step that we would like to see removed.

We're (inaudible) that this information just be provided to us for free and open disclosure, so that we are in the best position as our Client's Attorneys to make a decision of what is potentially exculpatory under these facts. And then, we ask the Court's permission to disclose that information.

DIRECTOR MALACHI: Okay. So, if I'm understanding what you're saying, if we live in the land of there is no list, if there are any notable infractions regarding a Police Officer, that those notable infractions would be information that would be turned over to Defense Counsel so that they could have access to that information, review that to see if it's something that's pertinent to the case that you are working on in that situation. Is that a good understanding? Or am I missing something?

ATTORNEY MELONE: No, I think it's that simple, Commissioner. And we certainly would support measures in place that would help the Officers feel more comfortable, knowing that (inaudible) feel comfortable with that option.

DIRECTOR MALACHI: Yes. And to add into the mix, I mean, certainly there would have to be due process, since there's no list, whatever the infractions are, whatever the penalties are. There would have to be due process in all of that.

But I guess that leads me to another question. If it -- so, we don't have a list anymore. And this particular Officer is the Officer that would be appearing in a case that you are defending a Client on. And that person is -- there's a Report of some sort that has been made, something that could potentially be germane to the case that you're currently working on. But that information is still being investigated. It feels like there's this unfortunate intersectionality between the due process of the Officer and the due process of your Client. So I don't know if you have any thoughts on that, or that's something that those smarter than me would have to arm wrestle to figure out.

ATTORNEY MELONE: Thank you for that question. It's our position -- and I believe the current guidance from the AG's Office is that there is interim placement on the list. And Deputy Young can speak to that more specifically, if I'm mistaken. And I say that because the most recent document I have is from 2018. (Inaudible) there haven't been significant changes.

Frankly, I respect the due process rights of the Officers. I'm familiar with the Supreme Court cases that articulate that Officers have a property interest, or a liberty interest, in their employment. But the rights that I'm defending for my Clients are constitutional (inaudible).

If an Officer is under investigation, if the steps have been taken to start that process, I am confident that there was a reason for that. And if that reason exists, that Officer's ability to arrest and deprive my Client of his liberty is relevant for my consideration and for the fact-finder's consideration.

DIRECTOR MALACHI: So, I guess I would say if there's no list -- so we won't even talk to Deputy Young here on this one. So if we're pretending there's absolutely no list and there's a process that's created, I believe the way things are currently handled -- and we would look at using a system that we have and then expanding that, potentially. But if there's a complaint or an issue, then everything is investigated.

So potentially, any complaint or situation would be investigated. And it could be that it's unfounded, or there was actually a misunderstanding. Or it could be spot on. And that person would then go through the process of having corrective actions, or decertification, or any of those things, depending. And we're certainly not talking about illegal activity. But the -- I hate to use the word "basic" -- but the activities that you've been discussing throughout your testimony.

ATTORNEY MELONE: I understand you.

DIRECTOR MALACHI: So, I guess that would be my question. And forgive me for processing externally. But if we all sort of agree that there are issues with the list, and let's just pretend it's me and you, magic wand, yellow brick road, and we can get rid of it, then I have been very curious throughout your testimony.

How do we help the process along, meaning those that need to be dealt with are dealt with? Defense Bar gets the information that they're looking for. Police Officer or Law Enforcement Officer still gets due process. And we still have -- and we have a process that works.

And then, as you answer that question, my last question would be: if we get rid of the list completely, let's say we just get rid of it, and the however many people that are currently on the list. How would we appropriately clear those people in such a way that Defense Bar would feel comfortable that they have been cleared? And that may be a much bigger question than you or I could answer. But I want to throw that out as the last question for you.

ATTORNEY MELONE: Can I ask a follow-up question on your last question, before I answer it?

DIRECTOR MALACHI: Absolutely.

ATTORNEY MELONE: So, when you say "cleared", do you mean there's no list? What happens to people who may have been placed on the list in error to begin with? What happens with those?

DIRECTOR MALACHI: Correct; so the list -- we have the list right now. But let's say all of us decide and Attorney General's Office, etc., we all agree. Standards and Training, Law Enforcement Executives agree the list needs to disappear.

Well, the people that are currently on the list, they don't necessarily -- they're not necessarily no longer held accountable for issues that put them on the list. I mean, obviously there's a new system. But, there would need to be, in my thinking, a way to make sure that those that are currently on the list are actually there for a real reason and not, as you've spoken so eloquently -- I'm the Chief and I'm mad at you about something. And so, I've put you on the list for whatever my reasons are. And you didn't know or you did know. And there's no way for you to clear my name.

So we're just going to make the assumption that there's a way to do some sort of investigation to get that person off of the old list, so that they are properly included in the new system. Do you have any

thoughts on what that would look like in such a way that would satisfy Defense Bar, because if all these names are on the list and let's say half of them come off of the list, are you all satisfied? Would you be satisfied that these people are back out into society and taking care of legal issues, as reputable Law Enforcement Officers?

ATTORNEY MELONE: I think I'm going to take that from three separate pieces, if I can.

DIRECTOR MALACHI: Okay.

ATTORNEY MELONE: I think the first piece is that, so the list was created to compile what is in the Officers' files at the individual Agencies. So, I think, as a starting point, we're not confident that the list is complete or accurate. We believe it's inaccurate because of representations made to us by Law Enforcement that folks have been added to it in error, or out of animus.

DIRECTOR MALACHI: Okay.

ATTORNEY MELONE: We also have concerns that it's not accurate because of that 17% compliance certification level. So we don't know that there are Officers not on the list that should be. From a starting point, I think the system is a mess.

I think, to dial it back, what we need -- and this is a monstrous task, but we need someone to look at the list as it exists and start there. But I also think that each individual organization and Agency needs to have somebody independent come in and look at their files. That is, indeed, a monstrous task.

If you look at the list for certification, there are well-over 200 organizations. Would that be one individual, multiple individuals? I don't know. But I think that's what we need to do to know that the stuff that should be on there is on there. We need a mechanism to force reporting.

As far as would we be satisfied if people were cleared and removed from the list, if I can I'm going to draw a comparison to civilian witnesses. So, it regularly happens that I have a case where I have witnesses who have been arrested and subject to trial, and pled not guilty. (Inaudible) is not available to me as a conviction to use under the Rules of Evidence. So, for all intents and purposes, it doesn't exist. It's been subject to the Court System. The Court has determined that there's no conviction appropriate. So that's just not available.

And I see that there would be a parallel for Law Enforcement Officers who are on the list, if it's determine they've been inappropriately on the list, are taken off. And that's just not available to us. So I think that it's -- I don't mean to oversimplify it. But I think we use what we have.

DIRECTOR MALACHI: Yeah. Yeah, I think that was fair. And I had some other question in there somewhere, but that's okay. You have been more than patient. And I appreciate it. And thank you, Attorney Melone and other Commissioners. I am complete.

ATTORNEY MELONE: I appreciate your questions. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: So I just want to address the comment that Ahni made. And I think that we have heard this anecdotally that the Chief doesn't like me. And so, he put me on the list.

So, we have heard that, as well. We say, then come in and tell us that, because, if that's true, that could be a crime.

I have met with Union Reps who have done at least one investigation. I'm going to another Department. The Chief was mad. Now, I'm on the list. We do an investigation, send it to the Court. As of right now, that has not come back from the Judge saying, yes, that was retribution.

So I know that that is out there. And I still say, we have a Public Integrity Unit. If that is, in fact, happening, we should look at that to see if that Chief has committed a crime. But the cases that we have looked at, there have been sustained findings. The individual has committed conduct to get them on the list, or to have that in their file. So, it's out there. (Inaudible) cases that have been sustained.

To the extent that there are others out there, we are, as we always say here, we are open for business. And I would encourage anyone to come forward. And that would be something that the Attorneys that do public integrity would look at. James, followed by Eddie. James?

MR. MCKIM: This is fascinating discussion going on. And my question may be in a slightly different direction. And as I'm soaking all this in and learning, I'm curious. And thank you so much, Attorney, for your testimony.

ATTORNEY MELONE: Thank you for listening.

MR. MCKIM: I'm just wondering if what we're talking about here has any implications for the concept of qualified immunity.

DEPUTY ATTORNEY GENERAL YOUNG: So, James, we have somebody coming in on Monday to discuss that qualified immunity piece. We put somebody on just to address that.

MR. MCKIM: With relation to Laurie's List?

ATTORNEY MELONE: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: No, I'm not -- I'm just trying to -- I'm not sure sort of where those two would intersect.

MR. MCKIM: And that's my question. I don't know, either. It just dawned on me to ask the question. And if they don't intersect, I'm fine with that. I'm just curious.

DEPUTY ATTORNEY GENERAL YOUNG: So, right, I suppose an Officer could come forward and say, I was put on this list inappropriately, and now this list is going to become public. And it's detrimental to me. Maybe the Chief gets to say, well, no, I could do this in my position. So, perhaps somewhere there, but I don't see a nice connection. He's frozen. Robin, do you disagree with that?

ATTORNEY MELONE: I don't disagree. I think I am not the best person to talk about qualified immunity. I do think that there are certainly instances that could give rise to an Officer being charged criminally and potentially engaging in conversations about qualified immunity. But I don't think that the

intersection is quite a clear as what you're asking, or what I'm asking. I'm sorry, if I didn't answer your questions.

MR. MCKIM: All right, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: James, the...

MR. MCKIM: That was it for me.

DEPUTY ATTORNEY GENERAL YOUNG: Could the thought also be, James, that you have a Defendant who's not told about issues with a Police Officer and the conviction gets overturned? Maybe there, but that -- boy, if somebody knows, (inaudible). I just -- I don't have a clear path to your question. Think about it.

MR. MCKIM: Think about it; neither do I. It just...

DEPUTY ATTORNEY GENERAL YOUNG: Okay.

MR. MCKIM: It seemed like it was in the same ballpark, and thought I would ask the question.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: Yes, thank you, Deputy. And thank you so much for your testimony today. I just wanted to state for the record integrity is the foundation of law enforcement. And I think everyone here could agree with that.

And I think most people -- most Law Enforcement Officers are worried about having due process, when it comes to the Laurie List. We've heard that repeatedly today. And I think you've made mention of that. And that's very important to this process.

However, I'm someone when I was an active Police Officer for more than 25 years, I have never supported or understood why we have the Laurie List. I think we should definitely do away with the Laurie List. Officers should be given due process. But if you've lied, or if you've misrepresented your facts in a Report, I'm not sure why you still have a Police Certification.

There are two different areas where I think this could be addressed. One, Deputy Young talked about, the Public Integrity Unit, or Police Standards and Training, if they had the proper resources to do investigations and follow-ups. So, we don't need another Governmental Agency. This process could be handled by those two Agencies, if that's the direction.

So I think that's all I have (inaudible) in this list for the Officers is due process, so they're treated fairly in the process. But I think if we want to reinforce to the general public where we all stand when it comes to credible Officers, I think having a list that says Officers have credibility issues is really disheartening for the general public. So we should definitely address this issue.

But I wanted to ask you a specific question, because you made a comment. And I'm just curious. I just want to make sure I understood your comment correctly. You were asked about this, communities being concerned about the integrity of this list. You said specifically the community of color, or the

(inaudible). Do you think that the community of color is more concerned about the Laurie Lists than the majority of the community?

ATTORNEY MELONE: Thank you for your question. And I welcome the opportunity to clarify that comment. 95% of my Client population is black. And I think that that speaks to the issues of disproportionality that this Commission has talked about more generally. And I think that the fact that those communities, in our opinion, are often overpoliced, means that they feel more animosity towards Law Enforcement when they are treated badly.

I think that we all agree that there are Officers who misbehave. And there are Officers who are human and may speak out-of-turn, use a harsh voice, or handle somebody harshly. And when that happens for a person of color, who has endured trauma at the hands of Law Enforcement previously, or has been incarcerated previously, or has trauma from other sources, I think they react differently.

In conversations that I've had with my Clients of color, and frankly my gay, transsexual, bisexual, and queer Clients, they are inherently skeptical of a secret list. And they -- and my white Clients, and other non-Clients within the community who I've spoken with -- wonder who is on the list. They wonder if the Officer who they believe treated them badly during their last traffic stop is on the list. They wonder if that person has a history or a track record of mistreating people. And if they are alone, they wonder if making a Report will fall on deaf ears. And the fact that they view this list as shielding misconduct, and the fact that the nature of that misconduct generally and specifically to Officers is not publicly stated, makes them think that their voice will not be heard.

So that is what I've heard from many Clients of color, and queer Clients. It is also representative of what I have heard from people in the (inaudible) community who are not criminally engaged, and from similarly white and other minority and majority populations, as well.

To be clear, though, that is the conversation that I've been very deliberate about having with my Clients of color since this Commission started, because I want to be informed. I'm a white girl. So, I want to represent what my Client's experience is. I can only speak for them.

CHIEF EDWARDS: I appreciate your answer. But, what you just described, I think, would be of concern to people of color. I think it would be of concern to the white community. I think it would be of concern to Police Officers.

Integrity is something that we all want to make sure that we maintain in law enforcement. So I don't think that is specifically -- and I appreciate what you've said about your Clients and representing them, and the level of mistrust. But, I can assure you that Police Officers also have a mistrust of Police Officers who have credibility issues and lack integrity.

So, I'm just sensitive to the nature, when we start bifurcating our communities based upon an issue like this, where it should be something that we're all concerned about. I'd just like you to keep that in mind when you go forward in this process.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Chief. Director Norton? Yeah, Joseph, I see your hand up, too. Robin, can you do me a favor? When the other -- when the Commissioners are speaking, could you just mute your -- because we're getting some feedback.

ATTORNEY MELONE: I am muted.

DEPUTY ATTORNEY GENERAL YOUNG: Your speaker?

ATTORNEY MELONE: I don't know how to do that. I have my microphone muted. I don't know how to mute -- I don't have a speaker on any place other than my phone that I'm listening to with my headphones.

DEPUTY ATTORNEY GENERAL YOUNG: Oh, okay. All right. Thank you. Ken, you're up.

DIRECTOR NORTON: Thank you, Attorney Melone. And I just had one question. You mentioned a previous Laurie List Commission. Were there recommendations that came out of that Commission, or a Report that came out of that Commission?

ATTORNEY MELONE: Thank you, Commissioner Norton. My recollection's that there were recommendations. Candidly, at 11:00, last night, I was looking for them. And I can't put my hands on them. I believe the Commission was in 2017 or 2018. Deputy Young can articulate that. And I'm sure that the AG's Office will be able to...

DEPUTY ATTORNEY GENERAL YOUNG: Ken, my memory is that that was -- there was a group of individuals that were brought together that formed the basis for the updated Memo. Is that right, Robin?

ATTORNEY MELONE: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Maybe Tim King knows. There were multiple stakeholders brought together is my recollection.

LIEUTENANT KING: There were a couple of different events. One was in the Judiciary Committee. The Legislature had a Commission set up. I believe it was Senator Carson. A very diverse group: Attorneys; I believe the ACLU was there; Law Enforcement.

The first time the Commission came out with consensus, and we walked out of that Committee, and one of the Legislators started tacking on Addendums. And the legislation died. That's one instant. I'm not sure if you're referring to that. The second is that a group of people who got together with the Attorney General's Office to address primarily the Duchesne case (inaudible) Supreme Court dealing with due process...

DEPUTY ATTORNEY GENERAL YOUNG: Tim, no, we can't hear you. I think you got to get closer to your mic.

LIEUTENANT KING: Can you hear me now?

DEPUTY ATTORNEY GENERAL YOUNG: (Inaudible), but if you could raise your voice, that would be great.

LIEUTENANT KING: Okay. I'm going to raise my voice, and it's the first time anybody's told me to raise my voice, I think, in my history. So did you get the first part about the Legislature?

DEPUTY ATTORNEY GENERAL YOUNG: Yes, we were up to the second.

LIEUTENANT KING: Okay. So, after the legislative hearings -- or Commission Meetings, we later met with the Attorney General's Office with General MacDonald and some of his Staff to address the -- what primarily came from the Duchesne case, which is Supreme Court Decision that spoke about due process and spoke about removal -- a mechanism to remove a name from the list that was not substantiated. So, kind of two different things; so I'm not quite sure which one you're referring to. But those two events did take place where groups were designated to talk about the EES List.

DEPUTY ATTORNEY GENERAL YOUNG: There was also a prior, when, at that time, Attorney General Foster wanted to update the prior Memo. There was a group that was put together that consisted of County Attorneys, the Defense Bar. I believe individuals from the Law Enforcement Committee.

The Memo was rolled out. After that Memo was rolled out, I think that that's when the concerns about due process came up. So there was probably more meetings. So there's been -- so the short answer, Ken, is I don't think that there is a Report. It was the variation. It was the backup, the support to the Memos that came out.

And we will have the Attorney General's -- because of scheduling, we couldn't have them on today. We will have a presentation next week about the current state of what used to be known as the Laurie List. And for those that don't know, it was called the Laurie List, because there was a case in New Hampshire called State v. Carl Laurie. Disclosures weren't made in that case. And a murder conviction was overturned.

There was a Memo that was published at the time. And that's when there was guidance about anybody that has dishonesty. And in Laurie, there was certainly (inaudible) should turn that information over in the background. So the Memo came out. That was guidance for a number of years.

And we heard from Law Enforcement Agencies that they wanted more clarity, because the lies are the easy case. But what do you do about the Officer who said it took them an hour to get home, but he really got home in a half-an-hour? Or what do you do about the Officer who's on-duty who parks his car and maybe goes on a frolic that he shouldn't be on?

So, those were the cases that sort of led to the formation of the Committee and greater discussion, which led to the Foster Memo, which then led to the updated MacDonald Memo. But you'll get sort of a greater tutorial than that next week.

DIRECTOR NORTON: Thank you. And I yield the rest of my time.

DEPUTY ATTORNEY GENERAL YOUNG: And John Scippa, we are finally up to you. I've seen your hand raised. Thank you for your patience.

DIRECTOR SCIPPA: Thank you. Attorney Melone, thank you very much. I deeply appreciate the -- really some of the most valuable testimony that, in my opinion, this Commission has received. I think you

were evenhanded. I think you were objective. And it really does speak to the concerns that everybody kind of shares with regard to this topic.

And I would -- I guess I'd just ask this question. I'm not a lawyer. I tried to prosecute cases during my time as a Police Officer. Is there an easier way to address this with the complete understanding that exculpatory evidence does not equal disciplinary activity, right? And we've all agreed to that. So, isn't there a way that when the Prosecution puts up a Police Officer as a witness, right after they swear that Officer in, the Prosecutor's duty would be to do basically on-the-record, under the penalty of perjury, a Laurie disclosure, to have that Police Officer testify in open court directly to any kind of disciplinary action? And then, after that happens, the Police Officer can go ahead and start his or her testimony.

And then, upon cross, in an effort to maintain your defense strategy, then the Defendant, on cross, relative to their defense strategy about anything that may be of exculpatory nature in the Police Officer's background, and then that way we get away from the list. There's no list.

We don't have to find -- because I agree with you wholeheartedly. It's so mucky to try to decide who goes on the list and who doesn't. It really boils down to the Officer. And either the Officer tells the truth on direct and cross, or the Officer is committing a crime. And then, it's one-and-done.

But I don't know to what degree, if any, the judicial process could allow for that Laurie disclosure and Laurie cross before you even get into testimony. And I'm just curious as what your thoughts would be on that.

ATTORNEY MELONE: Thank you for that question, Director Scippa. I think that's what we would colloquially call owning your bad stuff. And (inaudible) in the defense community, or in the prosecution community often, it's not uncommon for Prosecutors who know that an Officer has information that's going to come out, it's not uncommon for them to ask or list that information on direct examination from their Officer. It kind of takes the sting out. And we do the same when we have a Client who testifies, who has a criminal record that's going to come in. We may ask on direct examination, before they have a chance to prosecute, to give them an opportunity to own that.

I think that that is one way to do that. I fully expect that there would be pushback from an Officer that that be a protocol in every case. And it is something. I mean, we need the disclosure in advance of trial to be able to prepare, because we don't know what's in it.

I mean, it could be that there's some small thing that would -- has an odd factual relevance. Obviously if an Officer has lied, they're not going to still be employed. They may be gone at that point and coming back as a civilian. And we obviously know how to think on our feet and deal with a lie for an Officer. But something more nuanced, I think effective assistance of Counsel would require thinking on it, if I'm understanding your question correctly. I might have missed it.

DIRECTOR SCIPPA: No, I appreciate very much your answer. And I guess, in my mind, it seems to me that you could very narrowly and specifically get right down to it, based on whatever defense strategy that you may have developed.

Alternatively, is there a way for those questions to be asked and answered in a deposition prior to a trial? And then, that way, again, you're getting rid of the trying to maintain a list, trying to make sure that there's objectivity on a list.

Again, I'm just spit-balling here, just trying to think of other ways that we could address this in a more direct and specific way, fully understanding that something that may be innocuous in the Officer's

background could very well be exculpatory in nature, and that the Defense could build a case on. And I'm very appreciative of that, too.

But it does get away from the track on let's look at everything. Let's decide whether any of this might have anything to do with what we're going to talk about. And I certainly appreciate your thoughts on this. And I really do appreciate your testimony. And I yield. Thank you.

ATTORNEY MELONE: Thank you, Director Scippa.

DEPUTY ATTORNEY GENERAL YOUNG: So, John, I'll tell you how -- John, can you hear me?

DIRECTOR NORTON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: I'll tell you how someone who's been in this business too long does it. I put my witness list together and I send a letter to every Agency where there's a witness and say, is there anything exculpatory in the file? I need it now. And I need it until the day. I don't go look at a list. I've never gone to look at a list, because I want something in real-time. And if it all goes to hell in a handbasket during a trial, I want to be able to say, I sent you this letter. And that's what you -- that's the safest way.

Now, it's different when you're not doing 20 cases a week. So I get that. I think that there's some (inaudible). But I mean, that's the safest course in which to do it. And it's a standard letter that you send out with your witness list. And then, that puts the onus on the Police Department to go and look. And you may get a call that says, to Ahni's question, we have something going on. We have the obligation to tell the other side, or to go into court to say, we may need a continuance.

The onus, the obligation, is on the Prosecutor. As Robin said, there is a constitutional right to present. They have a duty to understand what the favorable and the exculpatory evidence is. And there may be a case where we turn something over. And if the Defense asks them about something that happened 15 years ago, that just doesn't cut well for them. So those are all sort of trial strategies. So, to have this disclosure at the beginning could be clunky and it may not be effective. So that's just one of the ways things are done. Chief Dennis, and then, Joseph, I know you have a -- I'll give you the last question. We have about two minutes left.

CHIEF DENNIS: Thank you, Deputy. I'm not going to take very long at all, because I think I want to wait until after the Attorney General's Office makes their presentation next week to make some further comments.

We know there are issues with the EE List. We know there's issues with due process. We want to find out what's fair and appropriate. Certainly, as Chief Edwards said also, no one wants someone that's been untruthful or has integrity-related issues. That's an extreme problem and they shouldn't be working in law enforcement.

But I'll yield the rest of my time. I just wanted to get on the record a little bit that there are issues with the list. I think there's some things, as Director Scippa said, they need to do on the rule side to enhance de-certifications. So, again, these are processes that are going to come into play that are going to help some of these issues we're dealing with. And I'll wait again to hear the Attorney General's response next week and make further comment. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Chief. Joseph?

MR. LASCAZE: Just two things real quick; just a quick response to Chief Edwards, a question about the list and impacting people of color. And what I just wanted to say concerning that is one voice who's not being heard that loudly directly -- or I shouldn't even say that. Let me scratch all that.

The Prison population's voice is one that I think that we should also listen to on this issue, because when Edwards is right that the list does affect everyone. And there's a majority of the individuals in State Prison who have looked at the situation that's happened in Massachusetts, and when an unethical and untruthful situations happen. And so, they wonder about the list.

But people in color -- of color, and particularly the Hispanic population will say, oh, absolutely, I definitely had X, Y, or Z, or absolutely, I was doing XYZ, but that Officer 100% lied on this. Or that Officer 100 -- I had -- you'll hear things of them say, I had this on me and this was never entered into the evidence. And you're hearing these things. And these are people who are taking ownership of their crimes and are saying that they did what they did. But, the general voice of they want to know if an Officer's involved in a case is coming from people of color within the Prison System for drug-related offenses.

But I did have one question. And I don't know who is the best to answer this question. But, after hearing everything, and I heard that if Officers are on the list, they have been -- it's been a sustained finding, which would mean that they would have their due process.

So, my question that I want to pose to the entire Commission, whoever can answer it, is then wouldn't that mean that Officers who are on this list that are being protected are Officers who have had their due process rights? And it's been founded and sustained. And they're on this list. But they're still being protected, because that information's not being made publicly available. It's not just Officers who haven't received their due process.

ATTORNEY MELONE: This is Robin. I can say that, again, I know the Commission is going to hear from Attorney Krupski and the Attorney General, who are much more intimately familiar with the process that lands an Officer on the list, or is intended to land an Officer on the list.

My understanding is that some Officers believe they have not been afforded due process. Again, I'm not intimately familiar with that. But as Deputy Attorney John -- I'm sorry, John said a couple moments ago is that they have received inquiries and have investigated, and have found that the people on the list have been afforded due process.

Because it's secret, I don't have any information. I think the individual Agencies, I think Attorney Krupski, I think Attorney Young, and the Attorney General would be in a better position to speak about it.

MR. LASCAZE: All right. Thank you very much. And I am all set.

ATTORNEY MELONE: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: So, Joseph, to your comment, there are people in Prison that say I did A and B, but I didn't do C and D. I will tell you that we did a case within the last couple of years where a Police Officer went into an apartment, said, A and B, and it didn't happen (inaudible) Affidavit. And we prosecuted that person.

That's exactly why you have to have a robust Public Integrity Unit that will be able to look at those cases and make a determination, whether it's a civilian Defendant or whether it's a Police Officer. As I have said before, no one is above the law. And I think that the Police that sit here and every Police Officer who is true to that badge is going to say we want -- there's nobody that's going to say that that's right conduct. The ends do not justify the means. You have to do it honestly and by the book. And you got to hold people accountable, because it just gives everybody else a bad name, right? Nobody wants that.

As they've pointed out, these are difficult, thankless jobs. And when one person soils it for everyone else, it's bad. And it's even more disheartening to put that uniform on. So, that's why there needs to be public integrity and people have to be able to take these cases on, and look at them, and do them with integrity and with honesty. So, thank you for pointing that out. But you need to know there's somebody that you could trust, too, right? If we go there, we know that they'll do the right thing. And they'll get to the bottom of it.

MR. LASCAZE: Absolutely, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: And with that, Joseph, do you have anything else this afternoon?

MR. LASCAZE: Absolutely, this is how I submit my Motion now. Let's go enjoy the weekend. I'm putting a Motion right now that we adjourn to enjoy this weekend.

DEPUTY ATTORNEY GENERAL YOUNG: All right. And we will thank Attorney Melone for her testimony, written, and her verbal testimony. Do I have a second to Joseph's weekend Motion?

CHIEF EDWARDS: Second.

DEPUTY ATTORNEY GENERAL YOUNG: That is a second. I will take a roll call. Commissioner Quinn?

COMMISSIONER QUINN: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Tim King?

LIEUTENANT KING: Yes, and thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. It was a pleasure to have you. Chief Dennis?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Norton?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson has left us. Ms. Tshiela?

MS. TSHIELA: Yes, because I'm a fan of the sunglasses.

DEPUTY ATTORNEY GENERAL YOUNG: All right. Have a good weekend, everybody. Enjoy the sun. Hope it shines bright.

(Meeting adjourned.)