



**New Hampshire Commission of Law Enforcement
Accountability, Community, and Transparency**
Remote Commission Meeting via Teleconference
Tuesday, August 18, 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*; Sawako Gardner, *Justice of the New Hampshire Circuit Court*; Mark Morrison, *New Hampshire Police Association*; Charlie Dennis, *President, New Hampshire Association of Chiefs of Police*; Ken Norton, *Executive Director, National Alliance on Mental Illness - New Hampshire*; Gilles Bissonnette, *Legal Director, ACLU of New Hampshire*; Julian Jefferson, *Attorney, New Hampshire Public Defender*; Eddie Edwards, *Public Member*; and Ronelle Tshiela, *Public Member*.

Also Present: Maria Eklund, *Operations Program Assistant II, State of New Hampshire, Homeland Security & Emergency Management*; Kim Schmidt, *Legal Research Assistant, New Hampshire Department of Justice*; Annie Gagne, *Paralegal, New Hampshire Attorney General's Office*; Nicole Clay, *Assistant Attorney General, New Hampshire Department of Justice*; Brian Moushegian, *General Counsel, New Hampshire Supreme Court Attorney Discipline System*; and Jake Krupski, *Attorney, Milner & Krupski, PLLC*.

MS. EKLUND: Recording.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Maria. Good morning. Good morning, everyone. We have a busy day today. First order business, welcome, again, Gilles, you're standing in for Joseph today and tomorrow. Joseph will be back on Thursday. I think Joseph is the only Member today that has a fill-in.

I'm going to take the roll call, as always. And then, I think that you had the Meeting Minutes sent to you last night. So hopefully everyone has had an opportunity to go over those. So, as a formality, as always, good morning, everyone. I'm Deputy Attorney General Jane Young. And pursuant to Executive Order 2020-11, I am serving as the Attorney General's Designee.

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

I'm going to ask each Commission Member this morning to state their name, indicate where they are presently, and who, if anyone, is with them. As I indicated and as you are well-aware, I am Jane Young. I am at the Department of Justice in Concord this morning. And with me are Kim Schmidt, Annie Gagne, and Nicole Clay. Good morning, Commissioner Quinn.

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

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Director Malachi. How are you?

DIRECTOR MALACHI: Good morning, Deputy Young. I'm well, thank you. I am Ahni Malachi. I am at my home in Penacook, New Hampshire. I am alone.

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

DIRECTOR SCIPPA: Good morning, Deputy General. Good morning, fellow Commission Members. John Scippa, New Hampshire Police Standards and Training, I am in my office at the Police Academy at 17 Institute Drive in Concord, New Hampshire. And I am alone.

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

MR. JOHNSON: I'm well, Assistant Attorney General -- Deputy Attorney General Jane Young. I am Rogers Johnson. I am the Chair of the Governor's Diversity and Inclusion Council. I am in my home office in Stratham, New Hampshire. I am alone. There are people in the house, because it has not blown up.

DEPUTY ATTORNEY GENERAL YOUNG: Let's hope it stays that way.

MR. JOHNSON: It's a distinct possibility with an Aeronautical Engineer in the house.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. President McKim, good morning.

MR. MCKIM: Good morning, Deputy Young. And good morning, Commissioners. I am James McKim, President of the Manchester branch of the NAACP. I am presently in my home office in Goffstown, New Hampshire. And I am alone.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Judge Gardner, you were just -- oh, there you are. Good morning, Judge Gardner. How are you?

JUDGE GARDNER: Good morning, Deputy General Young and fellow Commission Members. Sawako Gardner, I'm actually back in Greenwich, Connecticut today visiting family. So, it was a long trip back here last night. Thanks.

MR. JOHNSON: Four hours.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you for joining us. Lieutenant Morrison, good morning.

LIEUTENANT MORRISON: Good morning. Good morning, everyone. Mark Morrison, on behalf of New Hampshire Police Association, and I am currently located at the Londonderry Police Department. And I am alone in my conference room.

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

CHIEF DENNIS: Good morning, Deputy Young, fellow Commission Members. I'm Charlie Dennis, representing the New Hampshire Chiefs. I'm at the Hanover Police Department in my office. And I am alone.

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

DIRECTOR NORTON: I'm well. Morning, Deputy Young and fellow Commission Members. I'm Ken Norton from NAMI New Hampshire, the National Alliance on Mental Illness. And I'm on Great Cranberry Island in Maine. And there are family members here with me. But I am alone in the room.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Welcome, again, Gilles. Good morning.

DIRECTOR BISSONNETTE: Good morning, Deputy Young. Gilles Bissonnette, Legal Director for the ACLU of New Hampshire, pinch hitting for Joseph today. And I'm alone in my work office in Concord, New Hampshire.

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

ATTORNEY JEFFERSON: Good morning, Deputy Young and fellow Commission Members. I'm at my office in Manchester, New Hampshire. And I am alone.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Chief Edwards. I see you're back home.

CHIEF EDWARDS: I am.

DEPUTY ATTORNEY GENERAL YOUNG: No ocean background today.

CHIEF EDWARDS: No ocean background; morning, Deputy Young and fellow Commission Members. I am at my home in Dover, New Hampshire. My wife is in the other room.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Commissioner Tshiela. You've returned home, too.

MS. TSHIELA: Yeah, I'm back here. Good morning, everyone. I'm in Durham, New Hampshire this morning. And I am alone.

DEPUTY ATTORNEY GENERAL YOUNG: We've been together so long we know where everyone is, from family members' houses to vacations. So, first order of business would be to approve the Minutes. So, Annie sent the Minutes for August 14th and for August 17th. John Scippa, I know that you had a correction. But we -- on page 4 -- but we didn't know what it was. So could you just go over what corrections you have?

DIRECTOR SCIPPA: I believe the only correction was at the top of page 4. And I'm working off memory here. I don't have the document in front of me. It'll take me a second to find it. But there was a question relative to spending money that was presently being held, because of COVID response.

And the way it's reflect in the Report, it (inaudible). The question -- and I believe it came from President McKim -- was who was in charge of the budget? And I think it would be more accurately reflected, my recollection is that President McKim asked me, who would be able to authorize the release of that money that was being held? And I would defer to President McKim on that, just to confirm my recollection.

But I think it would more accurately represent what the question and the answer was, because it looks like I'm saying the Governor's in charge of just the regular budget matters. And I don't believe that was the actual question.

DEPUTY ATTORNEY GENERAL YOUNG: So it looked like the question (inaudible) from President McKim, who makes decision on money being spent at PS&T? Do you -- so what you're saying is the question (inaudible) question, but it was who could release the money? Is that what your memory was, John? President McKim?

DIRECTOR SCIPPA: That is correct.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim, do you remember that one detail?

MR. MCKIM: I'm not sure I used the word "released" but it's a fine nuance. I guess my question really was about who makes the decision to be able to spend the money. And I suppose you could call that who releases the funds.

DIRECTOR SCIPPA: President McKim, was it more who could authorize the release of that money? I know the line of questioning was specific to the money that was held in the capital reserve fund for the software.

MR. MCKIM: Yes.

DIRECTOR SCIPPA: And just the way it captured it, it appears that the question was, who's in charge of your budget? And I don't think that accurately reflects what the conversation was.

MR. MCKIM: That is correct. I was really trying to ask who authorizes -- who can authorize the release of -- I guess release is the right word -- release of those funds to actually make the purchase -- to authorize you to make the purchase.

DEPUTY ATTORNEY GENERAL YOUNG: So we will make that change. Does anyone else have any additions or corrections to the Meeting Minutes from August 14th?

(No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: Does anyone have any additions or corrections to the Meeting Minutes from August 17th?

(No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: We will make that amendment to the 14th Minute. Does anyone want to move the Minutes from the 14th and the 17th in?

DIRECTOR SCIPPA: Madame Chair, I'd make a Motion to Accept both sets of Minutes with the discussed amendment. And thank you, President McKim.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. And I think, Lieutenant Morrison, did you raise your hand as a second?

LIEUTENANT MORRISON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So I will take a roll call for both the Minutes.

LIEUTENANT MORRISON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: If you didn't participate in one meeting or you don't think that you can, you can abstain. You'll just tell us which one you'll abstain from and then we will go from there. Commissioner Tshiela, how do you vote on the Meeting Minutes for the 14th and the 17th?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: To both?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you. Chief Edwards, how do you vote to both?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Attorney Jefferson, how do you vote to both?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Gilles, you will abstain. Is that correct? Or have you spoken with Joseph about the Minutes?

DIRECTOR BISSONNETTE: I'm going to have to abstain at the moment. Yes, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Director Norton, how do you vote to both sets of Minutes?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Dennis, you were not at the meeting on the 14th. Is that correct?

CHIEF DENNIS: No, that was Friday, right? I was here Friday.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, sorry. You weren't here Thursday.

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: So do you vote yes to both sets of Minutes?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Lieutenant Morrison, how do you vote? Vote yes to both sets of Minutes?

LIEUTENANT MORRISON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Judge Gardner?

JUDGE GARDNER: I am abstaining from the 14th and then yes on the 17th.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. President McKim, how do you vote on the 14th and the 17th?

MR. MCKIM: Yes to both.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Johnson?

MR. JOHNSON: Yes and yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Director Scippa?

DIRECTOR SCIPPA: Yes to both.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Director Malachi?

DIRECTOR MALACHI: Yes to both.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Quinn?

COMMISSIONER QUINN: Yes to both.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. And with the amendment, I vote yes to both. So, as I indicated, we have a busy schedule today. But I received a communication from Director Malachi last night. And she asked for a few minutes this morning to address the Commission Members. So I will grant that request. And with that, I will yield the floor to you. Good morning.

DIRECTOR MALACHI: Thank you. Good morning, everyone. This was something that I wanted to say yesterday but kind of chickened out. So bear with me, everyone. And I'll make my statements as quickly and as expeditiously as possible.

So, thank you all for allowing me to speak to you for just a couple of minutes. As you all are probably well-aware, since we've been together for so long, I'm the resident thread puller. And just wanted to put a few things out there today.

As I said before, I was really struggling yesterday, Sunday with making these comments. But I just felt it was really important to do that, so decided to reach out to Deputy Young to ask for a few minutes of time. The public's -- the comments are more so for the public. But obviously since we're on this Commission together, sharing these with you all. I'll start by saying this.

As we all know, our world is in a really super strange place right now. It's a very sad and very confusing place right now. And with all that's going on everywhere within our State, across the country, across the globe, I believe that ultimately, as humans, we're all looking for certainty. And we're looking for it in one place or another. Some people look to religious beliefs. Some people look to each other. Some people look to authority to help and to fix things, to secure things, to change things.

And this Commission is made up of a variety of subject-matter experts from different walks of life that have different perspectives, and unique perspectives for the issues that are in front of this Commission. Our passion, our experience, and our perspectives have come together for a discussion and ultimately in the form of recommendations to be submitted to the Governor and the Legislature.

We, in real-time, have disagreed on points without being disagreeable, and have managed to continue to speak with one voice. I'm hopeful that the public will understand that our recommendations are not a vaccine against human nature, nor are they a healing salve for the wrongs that have been committed, or the hurt that has been caused to the men and women in law enforcement across the State, or to the individuals and communities that have been hurt by those sworn to protect and to serve all of us who did not honor that commitment. It is a very sad day any time trust is breached or broken.

The tension between Law Enforcement and the communities that they serve may always be there, based on the very work that is required. I don't know that we really want that tension to go away. But what we do want is for all to be treated with dignity, with respect, and kindness wherever possible. In the

course of daily interactions, to be treated fairly, to be treated equally, and to know that when a call is made, the warrior will show up ready to protect, or the guardian will respond, ready to serve.

As you've witnessed, the Commission has taken testimony coupled with our lived experiences to put forth recommendations that provide some latitude for Law Enforcement to look at itself and fix what is broken, to remove those who should no longer be a part of a noble and necessary profession; to do a systems check, as it were, and make needed changes to do better, to be better in upgrading Policies and standards, and processes to remove the -- the removal of those not living up to expectations will certainly take place, but so will the training of those that need course corrections.

We, as a community, must remember to not vilify the whole lump, but to inspect what happened before so as not to repeat past mistakes. If the community were to decide that all are bad and irredeemable, then why would the best among us put up their hands to protect and to serve?

So, with that, I hope to recalibrate expectations from perfection to human. The public knows there is a plan in place to help to do the external work. And that means Policies and trainings, etc. But the plan is only as good as the people that raise their hand and step up to enter the plan. The best among us has to show up for the job. If not, how can this or any Commission, or even Legislators, fix human nature?

Of course, people are trained, clear expectations set, and consequences given, but so is encouragement to always do better and listen more. However, if these recommendations are used like a blunt instrument to punish Law Enforcement instead of operating like a set of checks-and-balances that lead to keeping and, in some cases, restoring public trust, again, why would the best among us raise their hand, pass the test, and show up for the job?

It is also important to note that complete transparency in testimony has not been fully realized even up to and including yesterday. I will take the liberty to remind those who are preparing to testify in front of this Commission, it is important to the process that you fully disclose connections, even if it's difficult and you believe it may make hearing your testimony difficult.

Isn't this what you want to happen, full disclosure, full transparency, connections laid out in the daylight? Then, to be the change you want to see and to live up to the expectations you expect from others, this is a necessity. And with these comments, I thank you, Deputy Young, fellow Commissioners, and all others preparing to testify for your time and thoughtful consideration from the resident thread puller. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much, Ahni. Don't ever apologize for being a thread puller. That's how things get done. And with that, we will start with our lineup for the day. As I indicated yesterday, the first will be Attorney Brian Moushegian, who sent us a number of documents to review. He's General Counsel of the New Hampshire Supreme Court Attorney Discipline Office.

That will be followed by Gilles Bissonnette, who is the Legal Director of the ACLU New Hampshire who has been Joseph's fill-in for the last two days. And we will end with Attorney Jake Krupski, who also submitted written testimony, as did Gilles. So, without further ado, Attorney Moushegian, are you on the line?

ATTORNEY MOUSHEGIAN: I am. Do you hear me?

DEPUTY ATTORNEY GENERAL YOUNG: I do. Good morning. How are you?

ATTORNEY MOUSHEGIAN: Excellent, I'm really happy that the camera -- I finally figured out how to use the camera, because I've gotten all dressed up today. And it would have been a shame if you couldn't have seen the fact that I got dressed up, because it's been so long since I've done that.

DEPUTY ATTORNEY GENERAL YOUNG: Well, yes, you are there. And welcome. We have your testimony. You are to presume, because this is a very dedicated group of individuals who get up early in the morning, work late at night, and do this on their vacation, that they have read what you have submitted, both your written testimony and the applicable rules that you sent, as well.

So, with that, the process goes, Attorney Moushegian, there's a timer clock up there. You have three minutes to summarize your testimony. Don't worry about not being able to get it in, because the Commission Members will, then, ask you questions. And they'll ask you questions and you'll have answers that you never thought to give because they are very probing and, as Ahni describes herself, a thread puller. So, with that, welcome. The floor is yours.

ATTORNEY MOUSHEGIAN: Great, and good morning. And I thank the Commission for the opportunity to provide testimony on these important issues. My name is Brian Moushegian. I serve as General Counsel for the New Hampshire Supreme Court (inaudible).

And through my testimony and through my responses to your questions, I really hope to provide the Commission with a helpful overview of New Hampshire's Attorney Discipline System. Just I know that I've sent a large amount of materials to you. And from what I understand, from Deputy Young, you've had an opportunity to review those materials closely. So I'll be relatively quick and then open the floor for questions, in hopes of aiding you and explaining anything that you might have need to be explained.

So, the primary purposes in New Hampshire of Attorney Discipline are the protection of the public and the protection and preservation of the integrity of the legal system. (Inaudible) Rule 37-A, which established and set forth the Rules and Procedures of the Attorney Discipline System. I provided you copies of obviously both of those rules.

So, the Attorney Discipline System, as it exists, is broken into various Committees. So there's four components. One's the Professional Conduct Committee. The second is the Hearings Committee. Third is the Complaint Screening Committee, which I know Attorney Jefferson has done a great service serving on; and the Attorney Discipline Offices, which is the office of which I work.

The Attorney Discipline System, importantly, it really relies on volunteers. Those three Committees -- the Professional Conduct Committee, Hearings Committee, and Complaint Screening -- the Attorney Discipline Office where I work is made up of paid Staff. We are funded through an Annual Assessment of the Supreme Court. And our job is basically just to be -- to perform the administrative tasks and also to do the initial review, receipt, investigation, and prosecution of disciplinary matters. So, understanding that you've had an opportunity to review, I hope I'm able to answer those in a helpful manner.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Brian. So, Commission Members, if you just raise your hand, we will call on you in the order that your hands go up. Director Scippa?

DIRECTOR SCIPPA: Thank you, Madame Chair. Thank you, Brian, for being here and offering this information. Who makes the appointments to these different levels, or layers, of Committee? And how long do they serve for?

ATTORNEY MOUSHEGIAN: The New Hampshire Supreme Court appoints the various volunteer members of the Committees. They serve differing terms. On some Committees, (inaudible). I believe for example Julian would serve a -- is it a two-year period, Julian?

ATTORNEY JEFFERSON: A three-year term for my Committee.

ATTORNEY MOUSHEGIAN: (Inaudible) would leave at the same time. So certain members, there's some consistency in membership. But it's the New Hampshire Supreme Court. And it's limited to those staggered time periods.

DIRECTOR SCIPPA: And how do these various Committees identify citizens to participate? Do they advertise for these roles? Or are they identified through the Attorneys that sit on the Boards as good, viable participants?

ATTORNEY MOUSHEGIAN: Yeah, so first and foremost, let me just explain, on the Professional Conduct Committee, there's 12 Members. There's eight Lawyers and (inaudible) panel that's appointed to hear a matter, there'll be five people appointed, three of which will be Attorneys, two non-Attorneys. And on the Complaint Screen Committee, which is nine Members, there's five Attorneys and four non-Lawyers. So, there is a pretty significant mix of Lawyers and non-Lawyers, because we don't want just Lawyers determining and dictating whether or not another Lawyer has (inaudible).

How do we learn of volunteers? It can be through word of mouth. It can be through advertisement on our website, for example, opening up the fact that there's potential positions open on those various Committees. Oftentimes, it's through Lawyers who know people who are active within their community and are -- they served on other Committees. They're timing out on these other Committees and still want to serve their community and the State through service on one of these Boards.

DIRECTOR SCIPPA: And how often do these various Committees meet? Are they monthly or as needed, or set schedule?

ATTORNEY MOUSHEGIAN: Right, it varies. So the Professional Conduct Committee and the Complaint Screening Committee generally meet once per month. Hearings scheduled or -- so there's 30 Members -- approximately 30 Members of the Hearings Committee, five of which at any one time would serve on a hearing panel. So that's our version of a trial, for example. And they become like the administrative jury or hearing panel. And I -- so, at any point, they might be called to serve maybe once or twice a year, the Members of the hearing panel. So if we have a hearing once per month, maybe, on average, they might be able to serve on a hearing panel couple times a year.

DIRECTOR SCIPPA: Thank you. And to what degree, depending on what panel or Committee is sitting, to what degree does 91-A apply? And are these hearings public? And from the very beginning, the intake all the way up to disposition, is that all public, 91-A, or (inaudible) that are protected?

ATTORNEY MOUSHEGIAN: Right, so (inaudible) filed with our office, it's considered confidential. There are points in our system in which matters in the public file become public. Every matter eventually becomes public. It's just a matter of when certain things happen.

When something call -- if a matter's dismissed -- ultimately dismissed or what we would call non-docketed, it becomes public 30 -- the file becomes public 30 days after the dismissal. If the matter is docketed as a Complaint and referred to Disciplinary Counsel, and Disciplinary Counsel issues a Notice of Charges, which would be the (inaudible).

Hearings before the Hearings Committee are public, along with the arguments before the PCC, obviously arguments in the Supreme Court. Our work product is confidential. It -- because there's been a -- we go by previous Ruling by the Attorney General's Office in which, as an arm of the Supreme Court, it's considered the Court work product, so on and so forth, is not subject to 91-A. So any Memorandums I write, so on and so forth, that's not -- does not become public.

But the hearings (inaudible) become public, subject to the files being redacted, for example, Social Security Numbers and information like that. Otherwise, it does all become public and available to the members of the public.

DIRECTOR SCIPPA: Thank you so much for your assistance with this. And I yield.

DEPUTY ATTORNEY GENERAL YOUNG: Brian, how many complaints would you say you get on average a month?

ATTORNEY MOUSHEGIAN: We average about 200 complaints per year. So, just doing the math, I'm going to say simple math, maybe 18 to 20 on the high end, per month.

DEPUTY ATTORNEY GENERAL YOUNG: And what is the review process when a complaint comes in?

ATTORNEY MOUSHEGIAN: So when we (inaudible), we will review it. Our office is divided into what's called General Counsel and Disciplinary Counsel. General Counsel is responsible for the initial receipt, review, and investigation of matters that come to our attention.

So what we will do (inaudible) Attorneys that (inaudible) grievance, we make sure that it meets certain threshold requirements. For example, it has to implicate the Rules of Professional Conduct. That's the universe we work within. If the allegations do not implicate the Rules of Professional Conduct, it's going to be dismissed, or non-docketed.

It needs to be filed within a set time period. So, we have a specific (inaudible) certain tolling provisions, which, if you look at the rules, you can see the specifics on those. It needs to be submitted under oath. It needs to be copied to the -- against the Attorney -- or to the Attorney against whom the matter's been filed.

So, the first thing we do is make sure it meets these basic and also jurisdictional requirements. It has to be filed (inaudible) within New Hampshire, whether it be pro hac vice or in some other capacity. So, once we determine they meet these threshold requirements, we will take a look at the grievance and make a determination whether or not we believe that there's a reasonable likelihood of clear and convincing evidence that we could prove by reasonable likelihood of clear and convincing evidence that's there's been

a violation of the Rules of Professional Conduct. So clear (inaudible) is lower than beyond a reasonable doubt, somewhere in the middle.

If we think that there's a reasonable likelihood that we can meet that burden, we will docket that matter as a Complaint. And once it's a Complaint, that's important, because if it's non-docketed, the matter, it does not become part of that Attorney's permanent record. And the file eventually gets destroyed after a period of time. It is available to the public, the file, for two years. But what we would report, there would be no permanent record on that Attorney's file.

Once it's docketed as a Complaint (inaudible) filed against the Attorney and ultimately if it was (inaudible) if it resulted in some sort of a sanction. So, once it's docketed as a Complaint, what we will do is do a further investigation, which oftentimes means meeting with the Attorney, meeting with the person that filed the grievance, speaking with witnesses, obtaining records sometimes through Subpoena, if need be. (Inaudible) Committee, and then the Complaint Screening Committee will make a determination as to whether or not that's something that should be referred for formal proceedings, which would be a matter referred to Disciplinary Counsel for the prosecution of the disciplinary matter.

Our process generally, of the 200 -- I'm going to throw out generalizations here. But, of the 200 matters that we receive each year, (inaudible) we make a determination that there really is no basis to pursue the matter, because we don't believe that there is going to be a reasonable likelihood of clear and convincing evidence of a violation. So that leaves about 50 matters that we will docket as Complaints and process through our system.

But, (inaudible) receive a grievance, we try to get it to the Complaint Screening Committee, if it's not -- we either try to basically dismiss it or present it to the Complaint Screening Committee within 90 days, because we believe that it's important to move quickly on these matters. It's important not only to Attorneys, but also members of the public, so they know that action is being taken. So we try our best to meet our internal guidelines and 90 days to the Complaint Screening Committee.

Once the Complaint Screening Committee has it, refers it to Disciplinary Counsel. Disciplinary Counsel tries to get it to a hearing scheduled within six months. And then, the entire matter from the time Disciplinary Counsel gets it to the ultimate disposition of the matter, within a year, so that's our internal timeframes.

And as I said, it's important because (inaudible) to process the matter. What good is a public censure if that Attorney's turned around their whole practice three years prior to that, because it's taken so long? So, we really try to stick with internal guidelines, try to move things as quickly as possible, but fairly and efficiently and do it the right way, obviously, to ensure that there's been a full and fair consideration and processing of the grievance. So, I think timeliness is important in any type of system.

DEPUTY ATTORNEY GENERAL YOUNG: So if the grievance is not docketed, grievance comes in. It doesn't meet your guidelines. It's dismissed or a letter goes back to the Complainant. Is that public?

ATTORNEY MOUSHEGIAN: It does become (inaudible). A Grievant, upon receipt -- because the Grievant is copied on whatever we send. When we non-docket something, we send out a letter -- a detailed letter explaining why there's not a reasonable likelihood of clear and convincing evidence of a violation. We will write it in detail.

We send that letter directly to the Grievant, generally the member of the public that's filed the grievance. We copy the Attorney on it. At that point, the Grievant has an opportunity under our rules to request reconsideration.

So, in about I'd say 35% to 40% of our cases, the Grievant will request reconsideration. In that instance, it goes to the Complaint Screening Committee, which then will basically issue (inaudible). But they see the entire file. And the Complaint Screening Committee will determine whether or not to affirm the (inaudible), and basically direct us to further investigate the matter. But the main point is (inaudible) matter becomes public and is available for review here at our office.

DEPUTY ATTORNEY GENERAL YOUNG: And my last question is, if a complaint comes in, because your process could take upwards of a year, if you have a complaint that comes in that looks like it has a criminal component, or it looks like, if you let this Attorney continue to practice, there could be far more damage done, what do you do in those two cases? So, you see something that screams out crime or harm, if we let this person continue to practice.

ATTORNEY MOUSHEGIAN: (Inaudible) in both those cases under Rule 37:9(a), there's basically a process that's laid out for (inaudible) be that someone's been charged with a felony. We will -- we basically will immediately bring that to the attention of the Court and request in almost every instance that the Attorney be suspended on interim basis. There's (inaudible) a matter entitled Reiner's case that lays that out. And (inaudible) issue an interim suspension of that Lawyer, pending the final disposition of the matter.

DEPUTY ATTORNEY GENERAL YOUNG: But what if you just a complaint from a client that alleges criminal conduct that somebody hasn't been arrested? What do you do with those? Do you call the local Police Department? Do you tell the Complainant to contact them? What do you do in that case?

ATTORNEY MOUSHEGIAN: You're asking, so we receive a complaint that might implicate criminal conduct?

DEPUTY ATTORNEY GENERAL YOUNG: Correct.

ATTORNEY MOUSHEGIAN: Which we receive a complaint, for example, in which the Attorney is alleged to have taken money from the client, or has served as a guardian for a relative of an individual and money's all of a sudden missing in that account that's intended to support that -- the ward. In those instances, what we will do is we will conduct an investigation. If it reaches the point where we believe that there's something significant here that implicates (inaudible) not only the Attorney General's Office or County Attorney's Office with regards to those matters.

There's been a number of cases in particular on the county level which (inaudible) matters that were initially reported to our office. And then, as we went through and prosecuted the matters, they eventually were referred over to various Law Enforcement. So, we do-do that.

DEPUTY ATTORNEY GENERAL YOUNG: And do you stop your process while that criminal investigation's going on?

ATTORNEY MOUSHEGIAN: No.

DEPUTY ATTORNEY GENERAL YOUNG: They go on parallel tracks?

ATTORNEY MOUSHEGIAN: Absolutely, yeah.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you. Gilles -- so the lineup for questions are Gilles, Julian, James McKim, John Scippa, Lieutenant Morrison, and Chief Edwards. Gilles, questions or comments for Brian?

DIRECTOR BISSONNETTE: Yes, thank you so much for your testimony today. I was just appointed to the Hearings Committee so I'm still learning the process.

ATTORNEY MOUSHEGIAN: Yes.

DIRECTOR BISSONNETTE: And enjoy very much the submissions; so I just had a couple questions just about the transparency piece, as to how this works. What becomes public and what doesn't? And so, I just -- I kind of want to make sure that I understand how it works.

So, is it right to say that complaints that do not meet the criteria of docketing, which is around, I think you said, maybe roughly 75% in a given year, that they're available for public inspection for two years. So essentially there doesn't need to be a sustained finding of misconduct for that information ultimately to be publicly available. Am I right about that?

ATTORNEY MOUSHEGIAN: You are correct. We maintain those files for a two-year period.

DIRECTOR BISSONNETTE: Okay.

ATTORNEY MOUSHEGIAN: And they're available at our office. This is sort of a nuanced issue, but we (inaudible) matters, however they are available. So a member of the public could come into our office and review all matters that have been docketed.

DIRECTOR BISSONNETTE: And is it also true that when that occurs, a non-docketed complaint becomes publicly available -- I know it's not put on the internet. Someone could go access it, though, and walk in -- that the Attorney gets an opportunity to submit a reply that exists in the file, as well, so if a member of the public comes in, they'll not only see the non-docketed complaint, they'll also see the Attorney's reply. Am I right on that, too?

ATTORNEY MOUSHEGIAN: Yeah, correct. So, say a matter is non-docketed, in almost -- not in every instance, but in many instances, when we receive a grievance, we will request a response from the Attorney, a voluntary -- it's called a voluntary response. The Attorney will submit one.

We, then, will make a decision whether to docket it or non-docket the matter. If we non-docket the matter, the Attorney is given an additional 30 days from the date of the non-docket to submit a subsequent or follow-up response or rebuttal. 30 days after that non-docket is issued, that matter becomes available

for public review. If the Attorney submits a further response during that 30-day time period, that becomes part of the file.

DIRECTOR BISSONNETTE: Got it, thank you. I'm still learning all this.

ATTORNEY MOUSHEGIAN: No, I'm still learning it and I've been here for years.

DIRECTOR BISSONNETTE: I've looked at the rules and they're long.

ATTORNEY MOUSHEGIAN: It's -- I understand.

DIRECTOR BISSONNETTE: So for findings of misconduct, so setting aside those that are not docketed, when there's maybe a finding of misconduct, how are those separately accessed by the public? How does public access work for that type of instance?

ATTORNEY MOUSHEGIAN: Yeah, I mean, in any matter in which there's been actual sanctions issued -- so it goes through the process. There's a finding of misconduct and a sanction has been issued. So, under our system, the (inaudible) suspension can be served, or it can be stayed, and disbarment. In any (inaudible), those decisions by the PCC and the Supreme Court in the cases of disbarment or suspension of greater than six months, that becomes available on our website. So if you go to our website, you type in a Lawyer's name. You're going to see whether there's been any sanctions issued against them, from reprimand through disbarment.

DIRECTOR BISSONNETTE: And I just had one last question. I was going to ask what are the array of sanctions. And you just answered that for me. Thank you very much. So, there's one rule that Lawyers have to follow. And it's a rule that a Lawyer must report another Lawyer where there's a substantial question as to that Lawyer's honesty, trustworthy, and fitness.

Does that rule come up at all -- I'm just curious -- in your practice running the ADO? And I don't know if you have thoughts or opinions as to the importance of that rule and why it exists for Attorneys as a self-regulated profession. So you may not have thoughts or comments. But it's just something that I've been thinking about in trying to assess whether there are parallels between this process and maybe some sort of other process that may or may not should exist for Law Enforcement.

ATTORNEY MOUSHEGIAN: Yeah, I mean, we're a self-regulated profession. And with that comes responsibility. And one of those responsibilities is set out in Rule 8.3, which requires an Attorney to report misconduct -- the misconduct of an Attorney in which there's basically a substantial concern with regard -- the Lawyer knows that they've engaged in misconduct and there's (inaudible).

It's not every instance of misconduct, I should say. But, if it's a serious -- if they know, for example, that an Attorney's been stealing money or lied to the Court, something along those lines, there is an obligation to report the Attorney to our office for investigation.

It is important, as I said, as a self-regulated profession. We really have that responsibility to abide by these Rules of Professional Conduct, something that we obligate ourselves to doing when we become members of the bar in New Hampshire.

So, I think it's a very important rule. We do receive a number of (inaudible) files a grievance, it's called a referral. They can choose to file it as a grievance. But generally, they're called referrals. And we receive a number of those a year, based on that rule, 8.3.

I can't say that I recall any specific instances where we prosecute an Attorney for not reporting an Attorney for misconduct. But what I would say is that it can become a problem. There's a lot of instances, I can tell you -- not a lot, but some come to mind in which for example there's an Attorney that stops showing up to hearings. And they had always been a good -- they were a good Attorney. They stopped showing up to hearings. They stopped communicating with Counsel. They wouldn't meet deadlines, so on and so forth.

And the opposing Attorney and the Court who thought highly of this Attorney basically were just hoping things worked out and something would happen. And things would get resolved. The problem is that, during this time period, clients were hurt. We -- that's an instance in which that Attorney should have been reported to our office under 8.3, and also pursuant to the Judicial Canons. And they weren't. People were harmed because of that.

So, it's critical, if we're to meet our goals of protection of the public and preservation of the integrity of the legal system that Attorneys abide by these rules, that it's necessary or significant harm can result. So, I think it's an incredibly important rule. It's one that Attorneys sometimes unfortunately are hesitant to abide by. But that can result in a lot of harm, not only to clients but also the Attorney that they're afraid to report, because of concerns that it's going to hurt their career or reputation, because a lot of times that Attorney's going through something significant. And if we caught it on the frontend, we really would help that Attorney out through either our office or through New Hampshire Legal Assistance Program, which is a great program that we work with in dealing with Attorneys that might have substance abuse issues or other issues that could really -- where they need help.

DIRECTOR BISSONNETTE: Thank you so much for that. I'm done with my questioning, Deputy Young.

ATTORNEY MOUSHEGIAN: Great, thank you. And thank you for your somebody.

DIRECTOR BISSONNETTE: Well, I haven't done anything yet. My first hearing is in a month's time.

ATTORNEY MOUSHEGIAN: Excellent, thank you.

DIRECTOR BISSONNETTE: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Brian, can I just follow up on that? I think that a lot of Lawyers struggle with that reporting requirement because you may have a belief or a suspicion. But the rule does not require you to do your own independent investigation to get to the bottom of what's going on, correct? So you...

ATTORNEY MOUSHEGIAN: Yeah, that is correct. Sometimes Attorneys will call our office and ask if they're obligated to report it. And I'll read the rule to them. And the first component of the rule is that you know there's been a violation of the Rules of Professional Conduct, not that you think, but that you

know there's been a violation. And then, the second part of it is it's not every violation. It's ones that really go to the heart of their ability to practice.

So, I'll oftentimes break it down into those two elements. But, you're right. You don't have an independent obligation to investigate to find out whether or not a matter -- or that Attorney has engaged in misconduct. That's correct.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Attorney Jefferson?

ATTORNEY JEFFERSON: Thank you. Good morning, Brian.

ATTORNEY MOUSHEGIAN: Good morning, Julian.

ATTORNEY JEFFERSON: So just to address any transparency concerns, I've already let the Commission know that I was the one who invited you to speak at this Commission. And also I want to make clear to all Commission Members that Attorney Moushegian isn't here to provide any opinion upon any recommendations that we would be making for potential reforms. He's simply here to lay out the Attorney discipline process so we can have it as a model. Is that your understanding, Brian, of...

ATTORNEY MOUSHEGIAN: That is my understanding. Thank you.

ATTORNEY JEFFERSON: Okay. All right. Thank you. So, let me ask you a question about due process for Attorneys in this process. So how would you describe the level of due process that an Attorney gets when they're accused of a crime? Would you describe it as robust, as like a 10, or a 0 as getting no due process? Where do you think that falls?

ATTORNEY MOUSHEGIAN: About as robust as possible, and I can go through the various levels of due process protections that exist for Attorneys through the process, if you want me to. But it's considerable.

ATTORNEY JEFFERSON: Yeah, please. Yes, please, if you can go through the process, I think it would be helpful.

ATTORNEY MOUSHEGIAN: So when a matter comes to the attention of our office, it's a grievance. So the first issue is whether or not it's going to be docketed as a Complaint or not. And an Attorney is given the opportunity in almost all -- in many instances in which we're going to docket the matter as a Complaint to file a response before the matter's docketed. If a matter is docketed as a Complaint, the Attorney's going to have an opportunity to formally respond to the Complaint.

The matter, then, goes to a Complaint Screening Committee, who then makes the determination whether or not a matter should be referred to Disciplinary Counsel. If a matter's then referred to Disciplinary Counsel, they can make an argument. They're contacted, the Attorney, by Disciplinary Counsel, or the Attorney's -- Respondent Attorney's Counsel. And they can speak with Disciplinary Counsel. And ultimately she can make a decision whether or not to dismiss the matter with the approval of the PCC.

If she issues a Notice of Charges, they have an opportunity, then, to answer the Notice of Charges. They'll have a hearing before a hearing panel. The hearing panel will have a hearing on the merits of the case.

If the matter is not dismissed by the hearings panel, then it goes to the Professional Conduct Committee. They have an opportunity to argue before the Professional Conduct Committee why either they haven't violated the rules or why a certain sanction recommended by the Hearings Committee was greater than it should be.

If the Professional Conduct Committee ultimately determines that a reprimand, public censure, or suspension of less than six months is appropriate, the Attorney has an opportunity to appeal that to the Supreme Court. If the PCC comes back and recommends that an Attorney be suspended for greater than six months, or disbarred, that matter goes to the Supreme Court. And they have an opportunity in the Supreme Court to argue why that -- why they should have been found to have engaged in misconduct, or that the proposed sanction, or recommended sanction, by the PCC is higher than it should be.

So there's various gates between the General Counsel first receiving it, the Complaint Screening Committee, a Hearings Committee, the PCC, and the Supreme Court, in which an Attorney can basically argue their case as to why they shouldn't be found to have violated the Rules of Professional Conduct, or why a sanction should not be levied against them.

ATTORNEY JEFFERSON: And as far as these Committees are concerned, as you know I serve on the Complaint Screening Committee, and so there's two things about these Committees. So, one, there is a slim majority of the relevant professional, so here Attorneys. So on every single Committee, they hold a slim majority.

And so, speak to me about your thoughts on if it's useful to have Committees that have both the relevant professional community here, Attorneys, and also non-Attorneys. And if you can speak to, in general terms, whether or not that results in fruitful deliberation, and whether those Committees are instances where they disagree with the Attorney Discipline Office and reverse those decisions.

ATTORNEY MOUSHEGIAN: First and foremost, yes, there are instances where they disagree with our office, as you know, Julian, which is the way it should be. Each of these -- there's four independent components of our system: the ADO, which is our office; the Complaint Screening Committee; Professional Conduct Committee; Hearings.

There's number of instances where the Complaint Screening Committee tells me -- I mean, basically they don't tell me, but they'll make a ruling that's adverse to the ruling that I previously made. So, they're not afraid to do so and that's what they're supposed to do. It's a system of checks-and-balances.

Number 2, it's incredibly important to have non-Lawyers on our Committees. Number 1, that's important to members of the public that file grievances. The last thing that they want are, in a Complaint Screening Committee, nine Lawyers deciding whether or not a Lawyer has violated the Rules of Professional Conduct. They're comforted by the fact that nearly half the Members of this Committee are non-Lawyers coming from various walks of life. So it's critically important for transparency and appearance purposes that there are non-Lawyers that serve on these Committees.

The next point I'd make is that sometimes Lawyers can't -- I mean, they'll see a matter and they think in terms of the Lawyer like in very nuanced or technical terms as to whether or not there's been a

violation, this-and-that, whereas sometimes non-Lawyers really get it. They can see from the perspective of the client.

For example, where an Attorney might say, oh, that Attorney didn't respond to the phone call in a month. Well, I mean, that can happen in a busy law firm, this, this, and that. Whereas the non-Lawyer will look at that and go, you know what? I gave that Attorney \$2,000. This is my -- this case is the most important thing going on. I called him three times. And the Attorney didn't respond to me. The non-Lawyer gets it sometimes and says that's unacceptable. And that's, for example, a diligence issue. So it's important to get the perspective of non-Lawyers when assessing whether or not that Attorney engaged in conduct potentially in violation of the Rules. So, I can't imagine a system where we wouldn't have non-Lawyers participating in significant proportions, which they do on our various Committees.

ATTORNEY JEFFERSON: And my last question to you, Brian, is what happens if -- so the Attorney Disciplinary Office receives an initial complaint. And so, say we will just make up a law firm, Law Firm X. And you get a complaint in which you, before becoming -- working at the Attorney Disciplinary Office, you used to work for Law Firm X. What would you do in that circumstance and why?

ATTORNEY MOUSHEGIAN: Well, I can tell you I worked at Devine, Millimet & Branch prior to coming to the Attorney Disciplinary Office in 2014 for years. And I don't think I have yet taken any matters in which Devine, Millimet Attorneys have been involved. So I automatically recuse myself from any matters involving my former law firm.

And certainly if it's someone I know and am friendly with, I'll recuse myself, not because I don't think I could decide fairly, but I don't want even an appearance of impropriety or maybe there's a subconscious thought process that might play a role. I just rather not even allow that to happen. So I'll recuse myself in any matter in which I think there's a potential conflict or necessity to recuse oneself.

There's actually a Recusal Policy within our system, as well, in instances in which Attorneys believe that there may be -- or a Member of any Committee believes that there may be prejudice or bias in favor, or against, any individual. So I try to use that pretty liberally in my practice, just because I want to make sure we don't allow either conscious, or subconscious, bias or prejudice to enter into any of our decisions.

ATTORNEY JEFFERSON: And do you think that's important to go to the overall integrity and trust of the whole process?

ATTORNEY MOUSHEGIAN: Yeah, oh, absolutely. Absolutely.

ATTORNEY JEFFERSON: Okay. All right. Thank you, Brian. I yield the balance of my time.

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

MR. MCKIM: (No audible response)

ATTORNEY MOUSHEGIAN: Oh, I'm not getting any audio.

DEPUTY ATTORNEY GENERAL YOUNG: You have to unmute your mic, President. No, you're still muted.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Just hold for a second, Brian. Sometimes we have to...

ATTORNEY MOUSHEGIAN: Absolutely, no, I'm not going anywhere.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you. Maria, can you work with President McKim and I will loop back to him? Director Scippa, I will go to you next. I promise I'll come back, President McKim. Go ahead, John.

DIRECTOR SCIPPA: Thank you, Madame Chair. Actually, you asked a couple of questions that I was going to ask relative to collective investigation and are the Attorneys still allowed to practice if they are under investigation at the time. Brian, I think you kind of hit it but I just want to make sure. There's no penalty for a Lawyer to fail to report another Lawyer. Is that correct?

ATTORNEY MOUSHEGIAN: In the -- they are required under Rule 8.3 in certain circumstances to report another Attorney's misconduct. But it's kind of narrow in that they have to know that misconduct occurred and it needs to be significant misconduct.

I can't remember any matter within -- I've been at this office for six-plus years. I can't remember any matters in which we've prosecuted an Attorney for failing to abide by, or for violating 8.3, i.e. not reporting such misconduct, because it would be very difficult to prove, number 1. And the instances just haven't been there to justify any type of prosecution of an Attorney for that violation. So, in effect, there hasn't been any prosecutions. But I still believe that it's a critically important rule to have.

DIRECTOR SCIPPA: And I would agree with that. But there is no specific penalty that's written out for failing to report?

ATTORNEY MOUSHEGIAN: No, what would happen, if there was a violation of 8.3, you'd have to go through the whole process of proving that there's been a violation. And you'd work through the whole system. And ultimately the (inaudible) levied, or there's other recourse, which is called diversions, in which an Attorney's required to meet certain conditions. And if they meet those conditions, the matter's dismissed with a finding of no professional misconduct. So that then is the type of resolution that could occur in that instance.

DIRECTOR SCIPPA: And thank you for that. And family, does this process entertain anonymous complaints?

ATTORNEY MOUSHEGIAN: No. I can say, as a general matter, no. You need to submit it under oath, a grievance. We've received some grievances in the past where there's some wild accusations. But they're anonymous. And absent supportive evidence -- independent supportive evidence, no.

DIRECTOR SCIPPA: Thank you very much. I yield.

DEPUTY ATTORNEY GENERAL YOUNG: Brian, so you get an anonymous complaint. Do those become public?

ATTORNEY MOUSHEGIAN: They go into our file of correspondence which I don't know if any rule specifically states that the general correspondence is public. I don't think there would be an issue with someone wanting to review general public -- or general correspondence. But in incidents where it's an anonymous accusation making wild complaints, we may make a determination either to redact certain information, or not make that part of the public file, where it's almost potentially defamatory-type information.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. President McKim, are you able to unmute your mic? There you go.

MR. MCKIM: I am. Apologies for the technical difficulties. I believe that my questions have been asked; that I could ask, in following Attorney Jefferson's reminder that Attorney Moushegian's here to merely explain the process and not to offer suggestions. So I will withhold my questions until such time as we have someone who might be able to offer some suggestions.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, President. Lieutenant Morrison?

LIEUTENANT MORRISON: Good morning, thank you. My list keeps getting shorter and shorter as this hearing goes on, as well. How many licensed Attorneys are there in New Hampshire?

ATTORNEY MOUSHEGIAN: There's approximately 7,000-plus licensed Attorneys. There's approximately 5,500 active Attorneys. So you register as either active or inactive. About 5500 are registered as active. About 1700 to 2,000 are registered as inactive right now, so about 7500 total.

LIEUTENANT MORRISON: Thank you. And do you keep a statistical breakdown, I guess, by race or ethnicity of complaints?

ATTORNEY MOUSHEGIAN: No.

LIEUTENANT MORRISON: Looking at your -- you mentioned about 75% of the complaints are -- or the grievances are essentially dismissed on first exam. Is that correct?

ATTORNEY MOUSHEGIAN: That is on first review, which may include a response from the Attorney. So we will receive a grievance. We will receive a response from the Attorney. And oftentimes we will do a little bit of digging. In other words, I'll get the Court Case Summary from the Courts. I'll get some pleadings that were filed in the matter from the Courts, and some additional information, if that's helpful. And then, ultimately, we may make the decision not to docket the matter. And that occurs in about 75% of instances.

LIEUTENANT MORRISON: Okay, thank you. And of those dismissed grievances that are requested for a second review, how many of those Complaints move forward? Do you know?

ATTORNEY MOUSHEGIAN: Yeah, so I'd say it's about of the number of requests for reconsideration, I'd say it's about a 1% to 3% are reversed decisions in non-docketing. I think it's about one to three out of every 100 requests for reconsideration.

I believe -- and this may be helpful to Members of the Commission -- on our Annual Report -- so we post Annual Reports on our website. And I believe it has some in the breakdown as to how many are filed and in what percent, or how many are requests for reconsideration or (inaudible) very small percentage.

LIEUTENANT MORRISON: Okay, thank you. And does your Committee, or any of the Committees, assign I guess what I would describe as a pejorative sort of flavor to Attorneys who may have received multiple complaints that are not sustained, meaning does your Committee sort of make an assumption that, well, this Attorney's had two or three complaints before, there must be an issue?

ATTORNEY MOUSHEGIAN: (Inaudible) are dismissed. So in other words, a matter's docketed as a Complaint and it's presented to the Complaint Screening Committee. There are instances where they've seen an Attorney multiple times. And it's all fact-driven. I mean, it could be that, you know what, we really do think in the past that they've done something wrong. We just know that it can't be proven by clear and convincing evidence.

So where you do see an Attorney multiple times before a certain Committee -- and maybe Julian can speak better to this than I -- I think it's just human nature to reach conclusions that this -- nonpositive conclusions with regards to that Attorney's conduct. I just think that's human nature. Whether or not it should be taken into consideration is another factor, but I think it's reality.

LIEUTENANT MORRISON: Okay. I was more referring to like upon initial screening they're found either not to have occurred or...

ATTORNEY MOUSHEGIAN: I don't know that. I think that's really fact-driven. If it doesn't even reach the level of being docketed, I think it's oftentimes pretty clear that they didn't -- notwithstanding their previous history -- I think it's oftentimes pretty clear that they didn't engage in conduct that warrants any further consideration or investigation, in my opinion.

LIEUTENANT MORRISON: Okay. Thank you very much. And I don't have anything else, because you've already indicated the standard that you operate on to review complaints. And essentially you're operating with the model Rules of Professional Conduct. Is that what you're basing all of your...

ATTORNEY MOUSHEGIAN: Correct.

LIEUTENANT MORRISON: Okay.

ATTORNEY MOUSHEGIAN: Correct.

LIEUTENANT MORRISON: Okay. Thank you very much.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Lieutenant. Chief Edwards?

CHIEF EDWARDS: Thank you, Deputy. And thank you so much for the testimony this morning.

ATTORNEY MOUSHEGIAN: My pleasure.

CHIEF EDWARDS: Just a couple questions; are you able to kind of describe the vetting process that a Lawyer would go through before being admitted to the bar?

ATTORNEY MOUSHEGIAN: Character and Fitness is actually a separate entity. It used to be part of our office. But Board of Bar Admissions and Character and Fitness is actually separate now from our office. So that would be -- Sherry Hieber's General Counsel for that office, Character and Fitness. And that would be a question that I think she's much better qualified to answer, as to the vetting. There is a vetting process through the Character and Fitness office. But she would be better able to go into details of that.

CHIEF EDWARDS: Okay. And just to follow up a little bit on Lieutenant Morrison's questioning about the unfounded complaints, you said earlier in your testimony they're not indexed. Is there a reason why?

ATTORNEY MOUSHEGIAN: That are not -- grievances that are filed that are non-docketed are not indexed?

CHIEF EDWARDS: Yes.

ATTORNEY MOUSHEGIAN: I can't tell you the specifics. That's a rule that existed before I was here. It's just within the Supreme Court Rules. It could be -- I can't guess for a reasoning why the Court adopted that specific rule. I don't wish to speculate as to why that is.

CHIEF EDWARDS: So I just want to be clear. So there's a rule that says that they will not be indexed?

ATTORNEY MOUSHEGIAN: Non-docketed matters are not indexed, but they are available for public's view. So in other words, if a member of the public walked in and said, I want to see all grievances that were non-docketed against Attorney Moushegian, we don't have an index of that, that we'd be able to say, here it is.

But what we would say is, here are our file cabinet for the past two years. Here's every matter that has been non-docketed, every grievance. So that number's going to be about -- based on what we've said -- about 300 matters, if you use 200 matters a year, 75% are non-docketed. And they're only in our files for two years. So anyone can come to our office and review all 300 of those matters. And they're all well-organized and easily accessible, and easy for anyone to go through. But, under our specific Court Rules, they're not indexed.

CHIEF EDWARDS: Right, they're easy to go through, just not for a specific Attorney that you're looking for?

ATTORNEY MOUSHEGIAN: Correct.

CHIEF EDWARDS: Right.

ATTORNEY MOUSHEGIAN: Correct, it would take some time.

CHIEF EDWARDS: Okay. Is there like a early warning detection system in place? So for like, for instance, most -- a lot of Law Enforcement Agencies have a system in place to monitor or track an Officer's behavior, whether they're founded, unfounded, just keeping track of that to determine this particular Officer's struggling or having problems. Is there any such thing like that in place for an Attorney?

ATTORNEY MOUSHEGIAN: Yeah, I -- what it really is, is we see -- every year, we will see instances of which an Attorney is -- seems to be coming to our attention more and more often. And if it's for certain things -- and I touched on this earlier, but not showing up for hearings, not responding to clients, not responding to opposing Counsel -- we're pretty experienced with what goes on, as far as why some of that may be happening.

And what we will often do is we will contact Terri Harrington, who is the Director of New Hampshire Legal Assistance, refer that Attorney to Terri Harrington, or have Terri suggest that she give that Attorney a call. Her conversations with that Attorney are confidential, absent a Waiver signed by that Attorney allowing her to speak with our office.

But we work hand-in-hand with the Lawyers Assistance Program. And I think what you're referring to are instances in which we have some concerns about an Attorney's behavior manifesting itself in the Attorney's conduct that we believe there could be reasons for that, and that we believe we, or the Attorney's Assistant Program -- Lawyers Assistance Program can intervene and help that Attorney before it becomes a major issue that ultimately results in either a suspension or a disbarment.

We're not here to punish Attorneys. We're not here because we want to disbar or suspend Attorneys. We're here, as I said, to protect the public and preserve the integrity of the legal profession. And sometimes that means intervening early instead of trying to see -- laying a trap, allowing an Attorney to get into more hot water, intervening early and getting them the assistance they need to avoid those results of suspension or disbarment.

CHIEF EDWARDS: I would agree with you on that. Question, unethical behavior, we talked a little bit about criminal behavior, identifying that. Unethical behavior, so for instance if the Lawyer lied in a different proceeding, not in a civil proceeding, criminal proceeding, but in a separate personal proceeding, is that something that your office would investigate?

ATTORNEY MOUSHEGIAN: I mean, there's rules that prohibit, for example, candor to a tribunal -- or failure to exercise candor before a tribunal. And there's instances, for example, I'm going to say in personal matters.

Maybe it's a divorce in which an Attorney is representing themselves. If an Attorney's representing themselves, they're still subject to the Rules of Professional Conduct to the extent that they are -- make any type of misrepresentations to the Court or otherwise.

But, for example, if you're an Attorney, I guess this would fall within the criminal context of filing, for example, a false Insurance Report or something in your own personal life. Certainly, you'd run afoul of the rules, regardless of the fact that it doesn't involve conduct within a courtroom or in representing a client. You're still engaging in conduct involving misrepresentation, deceit, or dishonesty, which, under our rules, capture such conduct, even if it's not in the context of a court proceeding. So, yeah, in a number of instances, non-courtroom, non-client-related behavior still falls within our rules.

CHIEF EDWARDS: Okay. You put a little nuance on that. I just want to make sure I'm clear. You said -- you went back to criminal. So, does that same standard apply to ethical behavior?

ATTORNEY MOUSHEGIAN: Dependent, I mean, if it's an issue where not -- our rules -- so our universe is the Rules of Professional Conduct. (Inaudible) but it's really Rules of Professional Conduct. And if it doesn't run afoul of those Rules, then we have no jurisdiction to prosecute someone for their conduct. So it has to implicate one of our Rules of Professional Conduct.

I can't tell you in every instance when they're implicated or not implicated. There are instances in which it can -- the Rules are implicated for conduct done with -- outside the courtroom, potentially noncriminal conduct, I suppose. But each one is fact-specific. And I'd have to -- I can't give an advisory opinion on any type of potential implication of the Rules.

CHIEF EDWARDS: Sure, no. I appreciate that. And I promise, my final question. Are any of the Committees chaired by non-Lawyers?

ATTORNEY MOUSHEGIAN: No, each of the Committees, I think, under our rules, require that the Chair of the PCC, Chair of the Hearings Committee, and Chair of the Complaint Screening Committee are Lawyers.

CHIEF EDWARDS: Okay.

ATTORNEY MOUSHEGIAN: And Chair of the hearing panels that are appointed by the Hearings Committee are Lawyers.

CHIEF EDWARDS: Thank you very much, appreciate it.

ATTORNEY MOUSHEGIAN: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Chief. Director Norton?

DIRECTOR NORTON: Yes, thank you, Attorney Moushegian. Just a couple questions that kind of follow on some of the questions that other folks have been asking. But, do you feel that the ADO is adequately resourced as it stands now to perform the duties which it is tasked with?

ATTORNEY MOUSHEGIAN: Yeah, so our funding, just to explain, our funding comes from a Supreme Court Order assessing each New Hampshire-licensed Attorney who's active a certain amount, and then inactive Attorneys a certain amount. So, with the fact that there's 7,000-plus Attorneys, 5500 which are active, we have found that we're adequately funded for the duties we are tasked with.

DIRECTOR NORTON: And you had indicated in your written testimony that that was comprised of 10 fulltime equivalents. Is that correct?

ATTORNEY MOUSHEGIAN: I think it's 9.5, in reality. Yeah, there's five Lawyers, one Paralegal, and four Support Staff, one of which is a part-time. She works 8:30 to 2:30. But she does full-time work in that limited time period. But, she's considered a part-time Employee, so I guess it would be 9.5.

DIRECTOR NORTON: Thanks. And I would just note for the record that that's quite a contrast to what Director Scippa had indicated as two half-time FTEs. And I get that it was for the auditing purposes of Police Departments. But with approximately 4200 part-time and full-time Police and 5500 Attorneys, there's quite a contrast there. But you don't need to respond to that. That's just an observation that I want to make.

And then, following some of the questions that Attorney Bissonnette and others have asked, I'm also very interested in the reporting -- the self-reporting of the legal professional. And you've indicated that there's hesitancy among the Attorneys and Judges in reporting a fellow Attorney, under Rule 8.3, in part to the high threshold that's there.

And I guess, in my profession as a Social Worker, I would say that I see these things sometimes maybe comparing it to child abuse reporting to DCYF, where the Teacher or the Coach feels that it's the Nurse or the Principal's responsibility to report it, or that somebody else is going to do it and they don't do it. But I think my question is, do you have any thoughts about how the culture among the legal profession could be improved, meaning to protect the public, regarding the self-reporting of misconduct?

ATTORNEY MOUSHEGIAN: I think that, as you noted, Attorneys are hesitant to report other Attorneys, especially when they're not certain, because they don't want to be in a situation where they report another Attorney and that Attorney, it turns out, has not engaged in professional misconduct, or there's not a finding of that. And they're worried about the implications of that. They're worried about the implications of being seen, I presume, as someone who's reported other Attorneys.

But how to expand that, I don't know, because there's so many instances where we don't know that someone has not been reported. It's only a small number of cases where it becomes obvious to us that an Attorney knew, or should have known, that this Attorney needed help, or needed to be reported to our office, so that we could assist. And it didn't happen. Those instances are very limited. They do happen. It happens very limited number of times. That said, we don't know how often it occurs. And we just never hear about it, for a variety of factors.

I think some of it's just through our CLE presentations and education to Attorneys about the potential harms that are caused by not getting ahead of issues and reporting Attorneys for the simple fact, as I said, it helps not only the public, but it also helps that Attorney oftentimes. So, I think a lot of it is just educational, that we need to really emphasize the fact that it's something that ultimately helps, not only the Attorney but the public, in general, and the client, and courts, and for not having to sit there as the Attorney

doesn't show up for the third time for a hearing and wastes public funds. So, I think it's educational on our part, just to try to get out there and explain the importance of adhering to that rule.

DIRECTOR NORTON: Thanks, and I mean, I think, as Attorney Bissonnette mentioned, I also see parallels here in how we, as a Commission, try to come up with strategies for changing the culture among Police reporting of their observations of misconduct. The last question I have for you is that it's -- a recommendation's been made -- or was made yesterday that the Supreme Court pass a Rule of Professional Conduct that requires a Prosecutor to report Police misconduct to the appropriate authorities. Would that fall under your purview if that rule were passed? And if so, do you see any barriers or challenges to enforcing such a rule?

ATTORNEY MOUSHEGIAN: I -- that's the first I've heard of that, although we do have a member of our -- so, under the -- under Supreme Court Rule -- and it may be statutory now. But a member of our office serves on the Rules Committee. In our instance, it's Deputy General -- or I mean, I'm sorry, Disciplinary Counsel Sara Greene. I'm not familiar with that. But she may just not have told me about it yet.

If it does get incorporated into the Rules of Professional Conduct, we would have jurisdiction to investigate and potentially sanction an Attorney for failing to adhere by the -- that Rule of Professional Conduct. Barriers or concerns that I have about that, I can't answer that at this stage.

DIRECTOR NORTON: That's fine.

ATTORNEY MOUSHEGIAN: I'd just have to think about it.

DIRECTOR NORTON: Sure; thanks very much for your testimony and your answering my questions.

ATTORNEY MOUSHEGIAN: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ken. Chief Dennis?

CHIEF DENNIS: Thank you, Brian, for your testimony this morning. I just have a few questions. You talked about the civilians that served on the Committees. And sometimes you may advertise on your website or different places for that service. Or sometimes an Attorney may have a friend or an acquaintance that's referred to that's a community member. What type of screening process is used to -- is there a screening process to bring that person to serve?

ATTORNEY MOUSHEGIAN: Yeah, so Applications to serve on any of our Committees are available on our website, or by contacting our office, or the Court. And what will happen is you fill out a -- I think it's a couple-page Application.

On that Application, you give certain background information. You answer certain questions. I believe it may ask about criminal background or not. And it asks for references. So, at a minimum, we're going to look at see -- to contact -- we contact each of the references, our office does. We will talk to the

Applicant. And then, we will forward the name to the Chairman, whether it be the Complaint Screening Committee, Hearings Committee, or PCC.

And oftentimes, if it's the Complaint Screening Committee or Hearings Committee, there'll be an actual interview with the Chair and probably a member of our office. So, there is a pretty significant vetting process to ensure we get people that truly want to serve in that capacity and bring certain qualities and abilities to do so, are selected to serve on those Committees.

CHIEF DENNIS: Okay. Thank you for that. I'm assuming you've kind of talked about there's a funding cost to this Attorney Discipline Office. Is that correct?

ATTORNEY MOUSHEGIAN: Yes.

CHIEF DENNIS: Okay. And you process about 200 complaints per year?

ATTORNEY MOUSHEGIAN: Correct.

CHIEF DENNIS: And so, if an organization like this was to be birthed within the State, I mean, I guess the potential would be to handle 1,000-plus complaints statewide of all Law Enforcement, how much of an increase in staffing would something that be to handle complaints of that volume?

ATTORNEY MOUSHEGIAN: Yeah, I mean, I can only speak with regards to our office in our experience. As I said, I don't know how many Law Enforcement Officers there are in New Hampshire. I think the real universe of Attorneys that we deal with is about 5500 to 6,000, because there's 5500 actively licensed Attorneys. And then, we will have 500 that are pro hac viced in. In other words, they're licensed in other States and given permission from the Courts of this State, or the Federal Court, to practice within the State.

So say there's a universe of about 6,000 Attorneys per year. We receive I say on average 200. So it's really anywhere from 175 to 225 per year. So within that universe of 200, that's how many grievances we deal with.

Now, we deal with a lot of other things, too, at our office. For example, an Attorney -- if an Attorney is disbarred, disabled, basically any number of things that puts them out of their ability to practice, deceased, we have to take over. We will be appointed to inventory files and take over those files, and contact clients, contact the Court, so on and so forth.

There's a lot of things we do that are not -- are beyond that 200 complaints. We deal with all types of reciprocal discipline. So if discipline's entered in another court -- State, we will deal with that with the Supreme Court. That's not included in any of the 200 cases that I discussed.

There's a lot we do beyond just those 200 cases. So, I could only speak for our office in that for what we do, I think the processing of grievances is about half of what we actually do here at our office, although many believe that's the only thing we do.

We're certainly adequately staffed for all of our obligations. And that, as I said, is five Attorneys, one Paralegal, 3.5 Support Staff. I -- that -- I can only speak to our experience. And I can tell you that the Supreme Court Assessment, if you do the math, it's about \$205 per actively licensed Attorney. That's what

they pay. That's the funding source for our office through the Supreme Court's Order assessing funding for our office.

CHIEF DENNIS: Okay, thank you for that. You'd testified earlier that the complaints or grievances filed had to be filed under oath.

ATTORNEY MOUSHEGIAN: Correct.

CHIEF DENNIS: What happens if the complaint that's filed under oath was found not to be truthful? Is there a penalty for that?

ATTORNEY MOUSHEGIAN: So a grievant non-Attorney files a grievance that's not true, we wouldn't have -- our office doesn't have any jurisdiction over that individual. What I suppose could happen is that we could report that Attorney [sic] to Law Enforcement for some sort of perjury, if it's signed under oath, under the pains and penalties of perjury. Has that happened? No. I can't remember one instance where that's happened in the six-plus years I've been here.

CHIEF DENNIS: Okay. I just bring some of these things up as this has been brought as a model that Law Enforcement should look at. And I just know in here and other States that used to, on complaint forms, you would have a part on there. Maybe there was a State Law that would speak to filing a false Report. And Law Enforcement got rid of that years ago, because it felt like it was a deterrent to people to come and file complaints. And I don't know. I just find it interesting that there's that bar to file with this organization.

Also, the high level, I guess, of clear and convincing evidence, which is the bar, certainly in the employment world, in the civil world, it's less. It's preponderance of the evidence. It's just interesting, as I'm looking at this. And I don't know if those that have -- using this as a model for us to go to, or if they're talking about raising the bar, I don't know. It's just a little confusing to me, as I look at some of the things.

No anonymous complaints, certainly that's a big thing for Law Enforcement to take the time to investigate those anonymous complaints, because many times there's people that may, as we've heard stories, they don't want to put their name to that paper. So it's just interesting and I just wanted to bring that up. Thank you for time, sir, today.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Chief. Commissioner Quinn and then President McKim, thank you.

COMMISSIONER QUINN: Sure, thank you, Deputy. Thank you, Brian, for sharing and enlightening us to your process. So just a couple follow-up questions, quickly, I've read your Rules of Professional Conduct, maintaining the integrity of the profession. And the standard is I would say pretty high. And there's some very descript incidences of what could cause an infraction or a breach of trust.

Is there any way to quantify what might have happened, not taking an anonymous complaint, by a Grievant that might be incarcerated or just quite honestly is afraid to put pen to paper, or just does not have the wherewithal to move forward on it? But have you ever put any thought to that? And I'd like to

understand why you wouldn't accept or move on an articulated well-drafted complaint that outlines some violations, or breaches of trust, that you did not have someone to swear to the complaint, if you may.

ATTORNEY MOUSHEGIAN: I can -- with regards to swearing to the complaint, that's a rule that was created by the Supreme Court. I can't change -- I mean, I suppose, as we have a Member on the Advisory Committee on Rules, they could raise that with the Court. But that's just part of the Court's Rule with regards to prerequisites to filing a complaint.

What the specific reasoning, I can speculate, it creates -- it makes the person understand the importance of what they're doing, that they want to ensure what they're stating is accurate to the best of their knowledge and belief. But that ultimately is a Decision the Court made in passing these rules as to having complaints filed under oath.

The anonymous complaint, again our rules are pretty clear as far as a grievance has to be filed under oath. What -- if it's submitted anonymously, then it isn't submitted under oath. Now, there are an ability for our office to do what's called an ADO-generated complaint. And I can tell you, if we received an anonymous grievance that had some supportive evidence of misconduct, not just someone making allegations, beyond those -- just beyond simple allegations against an Attorney, but supplied some sort of cooperating -- corroborating evidence, we can open an ADO-generated complaint. And if that happens, then we actually would draft up the specifics of the complaint. And we can serve that complaint on the Attorney.

So, when I say we don't accept anonymous complaints, we don't accept anonymous complaints by themselves. If there's reason to further investigate it as an ADO-generated complaint, we can do that. I can tell you, in the six-plus years I've been here, I have not received an anonymous complaint -- or this office has not received an anonymous complaint that warranted that second step, in my mind, in our determination.

That said, there could be instances, absolutely, where we could be able to -- we either receive corroborating evidence, or there'd be a simple or specific way in which we could corroborate some of the allegations ourselves, through -- and then we'd open an ADO-generated complaint and prosecute the matter that way. So, I don't want to say every instance of an anonymous complaint would not be pursued. It could be, as an ADO-generated complaint. But I want to get some (inaudible) accusations without any...

COMMISSIONER QUINN: Understood.

ATTORNEY MOUSHEGIAN: Yeah.

COMMISSIONER QUINN: No, understood, and I think that just caught our attention, Chief Dennis and I, because we have to. We do. We investigate all complaints. But lastly, Brian, there's been a lot of talk about ensuring that we have the right Police Officers, that we hire/recruit the right folks to go out there and do the job today.

And Law Enforcement is subject to background investigations preemployment, psychological screenings, at times polygraph examinations, credit checks, reference checks, very in-depth checks. Could you just explain what there is on -- prior to getting into the profession on...

ATTORNEY MOUSHEGIAN: Yeah, and let me touch on this, because it just is part of my personal life. My brother, Michael, is actually a former Lieutenant for Nashua Police Department. So I've got a very strong familiarity with what Police Officers go through, because I've been questioned, as part of those background checks.

I've got a cousin who was a Medal of Valor winner for his policework in Massachusetts. My grandfather was a Police Officer. So I come from a long line of a family with Police/Law Enforcement history. So I'm familiar with a lot of the background.

What I would say is that's under a different office. That's Character and Fitness. So I can't really answer that. I think that's something that Sherry Hieber, who's General Counsel for Character and Fitness, and Board for Bar Admissions, is better equipped to respond to.

That said, I believe there's specific rules within the Supreme Court Rules that would lay out the process for admission to the bar. In detailing those requirements, there's an Application that I'm sure you can obtain, which would specify exactly what is looked towards.

I know, as someone who applied for the bar, I had to give references. There's a number of things that may not even exist now with regards to questions asked. That might have changed since I was first admitted to the bar and filled out an Application.

So there's a pretty significant vetting process. And if there's question -- I can say, if there's questions as to whether or not the Attorney has the requisite character and fitness, they'll actually be brought in before the Character and Fitness Committee and asked questions. And they won't be recommended with -- basically the Character and Fitness will recommend or not recommend that that Attorney be admitted to the bar, based on whether or not they believe that they've met those underlying prerequisites. So, there is a significant vetting process.

COMMISSIONER QUINN: Thank you, Brian. I yield my time and I appreciate your participating in the event today. Thank you.

ATTORNEY MOUSHEGIAN: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Thank you, Deputy Young. And thank you, again, Attorney Moushegian, for your testimony and your answers. They sparked in me, based on questions from Chief Edwards and Commissioner Norton, a question that I am not sure that you can answer. Being a layperson, this is getting very technical from a legal perspective for me. So I'm struggling to keep up.

But one thing that does of course to me is, as Chief Edwards and Commissioner Norton were asking questions about how ethics are handled versus how adherence to Professional Standards are handled, it's a distinction I'm really grappling with, especially since we've heard testimony about cases, like State v. Ernest Jones, where it doesn't seem like the law was necessarily broken. But ethnically, the behavior of the Prosecutor was suspect, to say the least. So I'm trying to understand where in the system would an ethical breach be brought to light and adjudicated?

ATTORNEY MOUSHEGIAN: It depends. I'm sorry. I apologize.

MR. MCKIM: No, that's it. Go ahead.

ATTORNEY MOUSHEGIAN: Yeah, I mean, there's some -- I look at -- some people use the two terms interchangeably: ethics and professional responsibility. I think that there's considerable overlap between the two, but not in every instance is someone's unethical activity a violation of the Rules of Professional Conduct.

For example, we always say we have no jerk rule. An Attorney can be a jerk. There's a lot of Attorneys that could be described as that way. That's not necessarily a violation of the Rules of Professional Conduct. I mean, being rude and things along those lines I view as unethical. But it's not a violation and doesn't implicate the Rules of Professional Conduct.

There's a point where they can act so irresponsibly that it potentially can implicate the Rules of Professional Conduct. But I think there is a nuanced separation between ethics or acting unethically and acting in violation of the Rules of Professional Conduct.

MR. MCKIM: Great, and I agree with that, I guess. But what I'm grappling with is this Commission is here to improve accountability, community, and transparency. So, if I'm looking at, for example, the State v. Jones case, the Prosecutor engaged in behavior that I'm not sure rose to the level of professional standards breach but certainly ethical breach. So, how would a case like that, given we do have this distinction between professional standards and ethics, how would the system prevent that from happening, or adjudicate that case?

ATTORNEY MOUSHEGIAN: Yeah, I can only say that what we have jurisdiction over would be instances of which the Rules of Professional Conduct have been violated. That is our whole universe as to what we can determine.

Now, if conduct occurs that, after considerable -- we review everything carefully. If conduct occurs that simply does not implicate the Rules of Professional Conduct, we just have no authority to pursue that matter further.

I can't speak exactly on the Jones matter. But, it -- it's -- and it's dependent on different jurisdictions in different courts as to what falls within those Rules of Professional Conduct. I certainly think it's important for anyone to be treated with respect, to not be treated poorly or rudely, or things along those natures. But I'm not sure I have that power to enforce that through the Rules of Professional Conduct.

Maybe -- and then there -- it's really an issue of creating a substandard of rules. And then, your Committee or whatever entity has been tasked with enforcing those rules has that opportunity to exercise those, or enforce those regulations. I can only speak to what the Rules of Professional Conduct prohibit or require. And that's the world I work within.

If there's certain areas where there's holes in those Rules, there's the ability to amend the Rules and add certain new Rules. And if that happens, then I have that ability to enforce or at least to investigate and potentially prosecute Attorneys for a violation of those Rules. But it's really important to have Rules that cover everything that you believe are necessary to meet those standards that you'd expect or want any type of professional group to adhere to. So, that's the baseline is I can only work within the Rules of Professional Conduct. Beyond that...

MR. MCKIM: Great, thank you. So, I guess my question then would be to Deputy Young and maybe one of the other Commissioners. Who could we get? Or is there someone who's going to be testifying who could address this question of when it comes to ethics that are at that fine line, not quite professional standards yet, but ethical behavior? Where does that get addressed in this system, overall?

DEPUTY ATTORNEY GENERAL YOUNG: So they're -- Prosecutors have their own rule, correct, Brian? There's a rule that's...

ATTORNEY MOUSHEGIAN: There's a subset of rules for Prosecutors is correct.

DEPUTY ATTORNEY GENERAL YOUNG: And so, can you just, James, articulate what the issue is that the Prosecutor should have looked at that case and should have not prosecuted it? Is that sort of where you're...

MR. MCKIM: That's where I'm headed, yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. But, I mean, again, that sort of goes back to my sort of tirade yesterday about leadership. And I think, as we sit here, that case went up. It went through a number of layers. It came back down. If that case was affirmed, we don't have this conversation.

So I think that we're sort of Monday morning quarterbacking that, gee, you shouldn't have brought that case. I just -- I think that's really sort of hard to do. As I said, that case went through a number of layers. I think that that's probably, as you so eloquently point out, right? These are educational opportunities. These are opportunities to learn, not necessarily opportunities that somebody violated something.

I think the rules are there. You have to conform to the rules. Certainly, a Prosecutor can't move forward if they don't believe that they can prove a case. A lot of times we will look at a case and we will think, I think this person did it. But I just don't think I can prove it. So we go back and we get more information. And I will tell you, as a career Prosecutor, those are struggles that you have a lot of the time.

So I'm not sure that there is anyone who's going to be able to come on here and say, other than you don't have the evidence, you don't think you can prove it, you shouldn't go forward. But, Julian has his hand up. Julian?

ATTORNEY JEFFERSON: Yes, and I concur 100% with what Deputy Young said. There are Rules of Professional Conduct that would apply, has the Prosecutor done something wrong. So a Prosecutor is barred, or any Attorney is barred, from making any frivolous or false claim, or filing a Claim or a Motion, or any proceeding for the principal purpose to harass somebody.

So it's just that the premise of the question -- and I agree with Deputy Rung [sic] -- is just that that does not exist. A Prosecutor has an obligation to defend a prosecution and to defend a conviction. And there's nothing about the State v. Jones case that suggests to me that the Prosecutor, in any way, came close to having something that was frivolous.

This was something that was affirmed by the Trial Court Judge. I mean, that was sided upon with the Trial Court Judge, after reviewing all the caselaw and argument, and then was reversed by the Supreme Court. That Finding does not suggest that the Prosecutor somehow violated the Rules of Professional

Conduct. So, I agree with Deputy Young. I don't think you're going to get anybody who would come here and say that, because I don't think it's an issue that exists. To briefly respond to two points that were brought up, so, Brian, if the Supreme Court decides that you should take anonymous complaints, the Attorney Discipline Office could do that, correct, if the rule was changed?

ATTORNEY MOUSHEGIAN: Yeah, I mean, under the rules right now, you have to submit a grievance under oath. If the Court Rules didn't require a submission under oath, that would make it easier to accept those type of complaints.

But what I would say is if I receive an anonymous complaint, that there's some -- I think there's some substance or ability to prove those allegations, we will docket it as an ADO-generated complaint and pursue it that way. I just -- I shouldn't have said -- initially, I think I testified that, no, we don't accept anonymous complaints.

Well, I mean, I could say, as a practical matter, the anonymous complaints that we've received here at this office since I've been here we didn't pursue. But, what I would also say is that it's based on a review of that anonymous complaint and whether or not we believed that there's either corroborating evidence, (inaudible) person, or an ability to obtain corroborating evidence. If any of those exist, for example this Attorney's been stealing money, then there's ways that we can look into that and find out if there's evidence supporting that.

So, not in every instance would we just dismiss an anonymous complaint. I just can't think of any instances since I've been here where we received one that warranted an -- it being entered as an ADO-generated complaint. I might be wrong. But I think I'm not on that. So I don't want to get hung up too much on that issue.

ATTORNEY JEFFERSON: Thank you. And Deputy Young, just a comment and response to the vetting process that Attorneys go through, I, too, as well as Attorney Moushegian, and probably Deputy Young, any Attorney on this Commission knows that you have to disclose any criminal record you have. You have to disclose any arrests you have. You have to disclose the amount of speeding tickets that you have. You have to disclose if you were involved in any litigation, how many times you were involved in a litigation. You have to do multiple character references.

So there is a very robust vetting process that all Attorneys have to go through. And as Attorney Moushegian said -- and actually, Attorney Moushegian and I have recently dealt with an issue when this came up that if there was any information in somebody's Application that is suspect, not only would that person be brought forward to our Character and Fitness Committee for further review. That person is also subject to the Rules of Professional Conduct in even applying to become an Attorney. So there is a very robust preemployment or precertification process before any Attorney is licensed to practice in New Hampshire. Thank you, Deputy Attorney.

DEPUTY ATTORNEY GENERAL YOUNG: And I would add to that, and that cost of that investigation is passed onto the Applicant. So I'm not sure, in Law Enforcement, that there is a price to pay to gain admission. But I don't know. Maybe, Brian, you know what the fee is today. But it's...

ATTORNEY MOUSHEGIAN: Yeah, I don't know offhand. I know it's pretty substantial, whatever it is. But it is considerable. And based on my own personal experience, I can tell you that it's pretty thorough vetting, your Application and the process for being admitted to the New Hampshire bar.

DEPUTY ATTORNEY GENERAL YOUNG: It looks like it's somewhere around the \$700 mark now.

ATTORNEY MOUSHEGIAN: Yeah.

DEPUTY ATTORNEY GENERAL YOUNG: Plus yearly dues that are in that same...

ATTORNEY MOUSHEGIAN: Yeah, it...

DEPUTY ATTORNEY GENERAL YOUNG: So when you're looking for a fund -- right, when you're looking for a funding source, it's somewhat of a self-funded profession, as well, for at least that. I don't think that there's anything equivalent in Law Enforcement.

ATTORNEY MOUSHEGIAN: Right, yeah.

DEPUTY ATTORNEY GENERAL YOUNG: I'm sure Director Scippa knows.

ATTORNEY MOUSHEGIAN: Yeah, I believe Character and Fitness is solely funded by Application fees. So that -- if that's helpful.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Chief Edwards?

CHIEF EDWARDS: Yes, thank you. I think the struggle, at least for me, and maybe some others particularly in law enforcement, the Officer involved in George Floyd's case had reported 18 complaints. I think two of those complaints, maybe three, resulted in disciplinary action. But, all of the complaints were listed. All of the complaints were held.

And there doesn't seem to be that mechanism with Attorneys. Doesn't seem to be that if you have a complaint, if it goes through your vetting process and you determine that it has no merit, then it's pushed into this category of complaints that are not easily found, if you're looking for a particular Officer -- not Officer, Attorney. So you can't track that Attorney's history of complaints easily as you could in this case.

And so, it seems like it wasn't reported that this Officer had three founded complaints. It was 17, 18 complaints, which makes it more concerning for folks. And I'm not sure if that same process is available with Attorneys.

ATTORNEY MOUSHEGIAN: Well, what I would say is if you have a Complaint filed against you, so, in other words, you have a grievance filed. It's docketed as a Complaint. That becomes part of your record. So if someone calls our office, asks us about an Attorney, we will say, oh, there were three Complaints filed, one of which resulted in the sanction of a public censure, two of which were dismissed with a finding of no professional misconduct. So there is a mechanism.

The only caveat that I would add is that it wouldn't be posted. The fact that there's been a Complaint that was dismissed with a finding of no professional conduct would not be posted on our website, only if there's been sanctions issued against that Attorney, or a finding of misconduct. The other thing that I was going to add to that is -- and frankly, I forgot what I was about to say. So forget about it. It was going to be very good and very important, enlightening.

CHIEF EDWARDS: No, and I appreciate that.

ATTORNEY MOUSHEGIAN: I will move on.

CHIEF EDWARDS: I appreciate that. I just want to make sure that I'm clear at least for the record. So, there is the opportunity to follow an Attorney's Complaint history?

ATTORNEY MOUSHEGIAN: Yes.

CHIEF EDWARDS: If you know the individual Attorney you're looking for, okay.

ATTORNEY MOUSHEGIAN: Right, to the extent that a Complaint was docketed, yes, even if there's been a finding of no professional misconduct. There'll be a record of the fact that a Complaint was filed and it was not -- it was dismissed with a finding of no professional misconduct.

The other thing is that file will remain at our office for three years before it's destroyed. The fact that a Complaint was entered against the Attorney is not destroyed. The file will be available for three years. So someone could then come in. And that is indexed, so we'd be easily able to provide that to a member of the public. Or oftentimes, we just scan and email that file to a member of the public, if it's asked for, or mail it, or however is easiest for them to obtain it.

CHIEF EDWARDS: Okay. All right. So, okay. I am clear, then. The undocketed complaints are not indexed. And those, you can't track?

ATTORNEY MOUSHEGIAN: Correct.

CHIEF EDWARDS: Okay.

ATTORNEY MOUSHEGIAN: Correct, and oftentimes that's just because there's no basis whatsoever for a finding of a violation of the Rules of Professional Conduct.

CHIEF EDWARDS: Right, no. I understood that the first time. I'm just trying to ascertain, because I know that's not the same for Law Enforcement, right? So, because you have to keep track of that information; in this case, it kind of gets lumped altogether in one year. And if you want to take the time to go through it, you can't easily find it, right?

ATTORNEY MOUSHEGIAN: The non-docketed matters, it -- I mean, it wouldn't actually be that hard to find, because we have a pretty good filing system and it wouldn't take very long to go through it,

frankly. It would require -- I would say that it might require the member of the public to come to our office to review it. But we're pretty accommodating. To the extent that anyone asks for any information, we're pretty quick to try to make it as easy as possible for them to obtain it. I think that's important.

CHIEF EDWARDS: Sure, no. I appreciate the verification and follow-up. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: They're also a good resource for background checks. So, when hiring Attorneys, you can call over to the Attorney -- or the ADO to ask if they're in good standing. I think if you were really good at doing a background, you would probably go over and look through the three years. So, just to at least have that resource is beneficial for doing backgrounds. It is 11:39. I don't see any more questions or comments. So, Brian, thank you.

ATTORNEY MOUSHEGIAN: Great. Well, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: This was very informative and very helpful. I'm going to give you a break until 11:50. And with that said, we will have about an hour and a half, when we come back. We will start with Gilles, and then we will go to Attorney Krupski.

So, this took a little over two hours. I think this was a new subject. This gave us a background. So I would just ask you to be cognizant of time, as we move forward to -- we do have a hard 1:30 stop today. So I will see you all back in 10 minutes. Maria, if you could turn off the recording for now? Thank you.

MS. EKLUND: Yeah, I'm pausing it now.

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

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

MS. EKLUND: And we are now recording.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning. We are back. It is -- this meeting is being recorded again. And as promised, up next is Attorney Gilles Bissonnette from the ACLU. Gilles, you submitted 13 pages of testimony yesterday, as well as the Jamison v. McClendon case. I trust that the Commission Members have read your written response.

So, being here for a couple of days, I think you know how this goes. (Inaudible) to give your testimony. And then, the Commission Members will ask you what questions they have. So, with that, Gilles, the floor is yours. Thank you.

DIRECTOR BISSONNETTE: Great, thank you. Can everyone hear me? I'm still getting used to the technology.

(No audible response).

DIRECTOR BISSONNETTE: I'm going to assume that's a yes. So, thank you, Deputy Young, for this opportunity to testify before the Commission. And thank you, all, as well for allowing me to pinch hit for Joseph. I very much appreciate the welcome, as I know I'm meeting many of you for the first time.

So as I circulated yesterday, I've broached six proposals for the Commission for discussion purposes. I just want to be clear that these are my proposals for the Commission's consideration as Legal Director for the ACLU of New Hampshire. The ACLU's specific recommendations for this phase will ultimately be submitted later by Joseph, as the Commission starts the Report-writing stage. So I just kind of wanted to make that clear that these are really kind of my thoughts as Legal Director, as my legal practice is kind of weighted into some of these issues. So I just wanted to really start with that preface.

And so, I had -- I've broached three accountability recommendations. The first, which is somewhat connected to the testimony from earlier this morning, would be the creation of a statewide system for reporting, investigating, and adjudicating Police Officer misconduct. And so, the way that I've conceived of this system is that it would be a system involved with -- it would involve essentially the creation of an independent Agency that would have the ability not only to investigate citizen complaints but also look into more forensically Police Departments for Department-wide issues that may exist with respect to misconduct, Internal Affairs, and citizen complaints.

And so, I've been thinking about this, to be honest, I have actually been thinking about maybe the ADO or the Judicial Conduct Committee could be a potential framework for the Commission's consideration. I think there are, no doubt, some tweaks that would need to be made, where there probably would need to be meaningful difference. But I think there's some, in my view, utility, in just thinking about this framework and what may work and what may not.

And I think really one of the reasons before I get to my next recommendation as to why I think a statewide system is important is because I think there are often conflicts, whether perceived or actual, with investigations into misconduct being exclusively performed by a Police Officer's own Department. And we've seen this. It's highlighted in my testimony. But we've seen this most recently with the Salem Police Department in an Audit Report that was published in late-2018 that showed that the Department really, at least according to the Court, wasn't taking seriously citizen complaints concerning Officer misconduct.

And I think this system also would have the benefit, once misconduct findings are made public, after an Officer goes through this process, it would have the benefit of really there no longer needing to be going forward a Laurie List or Exculpatory Evidence Schedule, because that information now would be collected elsewhere. It would be publicly available, not only to citizens and taxpayers but also to Defense Attorneys.

So, I think there's some benefit there, because I agree, as I'll address later, or in response to questions. I don't think we need an Exculpatory Evidence Schedule, if we're just more transparent as a State about Police Officer discipline and misconduct.

I will also say briefly as to my second recommendation, I think that pretextual stops should be banned. I have some real concerns with them. Just so everyone knows, I know there's been discussion on this. I've heard and sat in on some of it.

But pretextual stops are basically a traffic stop where the Officer says the person was pulled over for a minor traffic violation or vehicle equipment issue, but really it's pretext. The purpose is something else, whether it's suspicion of drugs or anything else, where there wouldn't actually be probable cause or reasonable suspicion to engage in the stop.

These are common in New Hampshire, at least from what we can tell, based on what we've been hearing from Defense Attorneys and Court Decisions. This is, it seems to me, to be a practice done quite a

bit within the State Police. And they give Law Enforcement just huge discretion to engage in stop, because they can decide to follow a car for whatever reason, and simply wait for a motor vehicle violation. And this discretion, I fear, can allow biases to manifest themselves, with respect to the initial decision as to when to stop a vehicle.

My third recommendation is creating a State cause of action for Police violations of citizens' State Constitutional Civil Rights. So, basically it would be an analog to what we have in Federal Court. In Federal Court, a individual who believes he was wronged by an Officer's behavior has the right to sue the Officer for damages arising out of a Federal constitutional violation. It's not clear whether or not an individual has that right in New Hampshire State Court to sue out of a violation of the New Hampshire Constitution.

So I think to create some parity, I would recommend the creation of that right so individuals can invoke their State Constitutional Rights with one caveat that dovetails into what we discussed yesterday. I do think that it would be important that qualified immunity not exist as a defense with respect to this Claim. I'm going to maybe leave that for the questions. But it's something that we document in my testimony, something that I've been concerned about. It's probably no surprise, given some of my questions yesterday.

With respect to -- and I will also echo that, on the qualified immunity issue, I did submit Judge Reeves' Decision from Mississippi that I found very illuminating. And he kind of walks through the genesis of qualified immunity and some of the criticisms of that Doctrine that both he has and others have referenced in the past few years.

With respect to transparency, we have three recommendations. I have three recommendations, I should say. And the first is making Police disciplinary files categorically public under the Right to Know Law. And I think this is critical, I think, to fostering Police confidence in Law Enforcement so individuals know that if an Officer's on the force paid by taxpayer dollars, they know that that Officer has done something wrong. I think it's critical.

The law is changing a little bit in New Hampshire on this issue. Under two recent Supreme Court Decisions, these types of records are now subject to what's called a public interest balancing analysis. They can't be categorically withheld from the public. For the past 27 years-or-so, the law was more rigid. In full disclosure, I litigated these cases.

So, right now, the current state of the law is there's public interest balancing before misconduct and disciplinary records are released. There needs to be assessment as to whether there's a public interest in disclosure. And are there any privacy interests that are at-issue, and also are there any governmental interests in nondisclosure.

I think my own view is let's kind of take that issue away from the Courts and away from that type of balancing, and let's just make them public. Many other States do this in some way, shape, or form, at least 12 by our count, based on a WNYC article that we cite in our submission. One of those States, actually, is Minnesota. And that's actually why we know about some of the misconduct issues and Findings of the Officers involved, because there's just more transparency in Minnesota than there is in New Hampshire.

And I think also why we need to take this away from the Courts is that even after these recent Supreme Court Decisions, in my practice I'm still seeing Police Departments really not want to turn over a lot of this information, which concerns me. So, my hope is that the Commission will at least consider making this type of recommendation, with respect to misconduct.

This is also related to the Laurie List. I do think that needs to be public. It is documenting misconduct. And I -- to me, I think the one thing I'll say about the List and what crystalizes for me why I

think the List should be public is if you just look at the first page of it, I know that it's on the Commission's website. The first page lists Officers where there's an indication of credibility, falsifying evidence, "falsifying Reports or records", "deception credibility".

So, I don't really feel that there's a compelling need to protect that type of information. These are Officers that I think work for us. And I think that the citizens of those jurisdictions where those Officers are especially have a right to that type of information so they don't have to go about their business with some concern that Officers that they're interacting with are on this List and have some sort of credibility and truthfulness issue.

And lastly, I think that my recommendation would be that there be a change to the retention of Police Internal Affairs records. So, currently Police Internal Affairs records -- and if there's background, there's some construction. So I hope it's not too distracting, because it's distracting me, the background noise.

But Police right now, their Internal Affairs records, how they are retained, the frequency with which they are destroyed is negotiated through Collective Bargaining Agreements. With respect to municipal Employees, that is actually not the case. With respect to municipal Employees, there is a 20-plus-year retention requirement.

And so, I've always thought that there really should be parity here that we should make Police -- retention of Police personnel files really no different than how we, by law, mandate the retention of other municipal Employees. We got close last year to getting that enacted in law. And ultimately, it was unsuccessful I believe in the Senate and died in Committee.

But I believe that is a prudent and wise change in my view for the reasons that are in my testimony. So, with that, I'd be happy to take questions. And again, thank you so much for the opportunity to testify and pinch hit on these issues.

DEPUTY ATTORNEY GENERAL YOUNG: Gilles, do you ever see a circumstance when a pretextual stop is an investigative tool that should be used or could be used by Law Enforcement?

DIRECTOR BISSONNETTE: Yeah, I get it, right? The idea that -- the notion that it's a tool, it will help us identify instances where individuals may have contraband. They could use the initial stop to try to see if they, from that stop, could then develop suspicion or probable cause. So I get that it's viewed often as a valuable tool.

I think what I would just encourage some folks to think about are the tradeoffs on the other side, which is a lot of individuals stopped, right? They may have their stops prolonged. There may not be evidence of contraband. There's probably a lot of individuals who are really having their liberty deprived needlessly.

Now, I certainly understand the rationale, of course, that, well, they're really being stopped for a motor vehicle offense. But that's not the real motivation that applies. I think that that's what I'm concerned about is that, from a civil liberties perspective, you're having a lot of people stopped when it's really not the...

DEPUTY ATTORNEY GENERAL YOUNG: So, I know that you talk a lot about contraband stops. I'll give you an example and tell me if you could think of a better way to do an investigation like this.

State Police gets information that a public servant, somebody at the DMV, is taking money and giving Driver's License in fraudulent names. That's a problem for a whole host of reasons.

Somebody comes in, right? They're paying somebody to bring them in. So, to some degree, they're a victim of this system of somebody. They come in. They get the false ID in a false name. We have no idea who that person is. They leave the DMV. And now, they're speeding down -- legitimately speeding. That's not a good tool to stop that person to see what ID they produce to try to figure out who just came in and perhaps could be a victim, themselves, could be trafficked, could be a drug dealer, could be a murderer, and to get the State Employee who's violating everyone's trust? I mean, well, we can't do a pretext stop. We have no real other reason, because we're still doing this investigation.

DIRECTOR BISSONNETTE: I think my response would be acquire reasonable suspicion and probable cause through other investigatory tools to identify the person. I think what my concern about, and particularly when you read Judge Schulman's Order in the Perez Decision, which I know is also on the Commission's website, is that that's not what's happening, it seems, or at least from the cases that he documents.

He documents situations where Officers are just tailing individuals, because things like, well, maybe he's driving too carefully with his hands on 10 and 2. Or maybe he has his seat reclined a little bit too much. So, I mean, I see your point. But I think that is not always what is occurring, right? And it's something that I'm concerned about. It seemed like Judge Schulman was concerned about...

DEPUTY ATTORNEY GENERAL YOUNG: And I hate to keep sort of looping back, but that probably goes back to better training and better oversight of when to employ what could be a sound investigative tool.

DIRECTOR BISSONNETTE: Yeah, and maybe that's, Deputy Young, where we disagree, right? And it's a principle disagreement, because pretextual stops just give an awesome, awesome, awesome amount of discretion to Law Enforcement for whatever reason to sit behind a car and wait for a motor vehicle violation.

We -- well, maybe not all of us, I tend to have the view that you almost inevitably could find a motor vehicle violation if you tail someone long enough. And I think that is just something I'm worried about, because, on the other side of the equation, there are real, in my view, civil liberties implications with just people getting stopped routinely on State freeways for things that really are not that suspicious in the hopes of just satisfying or addressing some hunch. And that is something that comes up quite a bit in...

DEPUTY ATTORNEY GENERAL YOUNG: Well, I think this is a debate we could eat up the rest time.

DIRECTOR BISSONNETTE: We could have over the next two hours.

DEPUTY ATTORNEY GENERAL YOUNG: We understand each other.

DIRECTOR BISSONNETTE: I appreciate it. And I don't want to dismiss it, Deputy Young.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah.

DIRECTOR BISSONNETTE: I'm just trying to get folks to think about some of the consequences on the other side. That's all, with respect to the massive discretion it provides.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, and I will tell you we would have never been able to identify the dozens of people who came and got those Licenses without doing a stop. I mean, there was no other way we were going to do that without tipping an investigation. But, with that said, I see that John Scippa has his hand raised. Julian, is your hand raised, as well? Are you?

ATTORNEY JEFFERSON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So we will go to John Scippa and then Julian. And Ronelle, is your hand up, too?

MS. TSHIELA: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you. John?

DIRECTOR SCIPPA: Thank you very much and, Attorney Bissonnette, thank you very much. Had a lot of time spent last night reviewing all of the documents that you had submitted. And there was one piece of your documentation, you kind of laid out a theory with regard to the removal of qualified immunity.

And it appears that your theory is that if qualified immunity would be removed from the equation, then that would lead the Police to be more efficient, more effective, which then would lead to a more positive engagement with the community. Did I understand your...

DIRECTOR BISSONNETTE: Director Scippa, that is certainly part of it. I think the other part of it is just making sure that people who are wronged have a remedy. But it's part of it, no doubt. Yeah.

DIRECTOR SCIPPA: And I guess that's one way to look at it. And I think another way to look at it would be that if qualified immunity were to be taken out of the occasion, that could very well have a chilling effect on proactive policing, which would tend to reduce the Law Enforcement's initiatives to seek out and arrest bad people that are driving intoxicated, or bringing opioids into our State, or committing crimes in neighborhoods that really -- and you know this better than anybody else on this panel maybe other than the Cops that it's the proactive stuff that always kind of goes into those gray areas.

But that chilling effect and the reduction of proactive policework could very well lead to the community being very disenfranchised with the Police, their own local Agency, because they're not reducing crime. And they're not taking dangerous people off the street, or preventing bad things from happening.

And I certainly give your theory weight. But I give my theory as much weight. I mean, it could go either way. And I'm sure you're familiar with the term "the Ferguson effect" that's been used throughout the country to talk about that chilling effect that happens when Law Enforcement Officers are afraid to do their job and to be proactively seeking lawbreakers, because they're afraid of what's going to happen to them.

So, I thought your documentation was excellent. I know you were taking some ribbing this morning on the paperwork that you submitted. But I thought it was excellent. I just bring that qualified immunity piece up and I do think that it would have a very negative effect on New Hampshire Law Enforcement. And that's really the perspective I'm looking at this from is New Hampshire Law Enforcement. But I appreciate your time and I appreciate your -- the work and the effort that you put in for us.

DIRECTOR BISSONNETTE: No, thank you for at least considering it. I think this is a very important view that's being debated not just in New Hampshire, nationally -- but nationally. I do think Police can police without qualified immunity. I would just note that qualified immunity is a pretty new construct that really originated by Judges in the late-'60s, didn't really come into its current force until the mid-'80s. And prior to that point, I -- we had Police and they were policing.

And I also think, though, to address, Director Scippa, your point more directly about chill and about whether Officers are willing to do proactive policing, they are indemnified, even if you remove qualified immunity. So this is not a situation where they're losing their house. So that, I think, provides some modicum of protection, as well.

And Police do police in gray areas, no doubt. I think the removal of qualified immunity is designed to create an opportunity for more reflection, as well, among Law Enforcement, particularly in situations where you're not acting in a split-second way, about how to operate within that gray area, because, at its core, what qualified immunity is, is even if there's been a constitutional violation, if qualified immunity applies, that person who is a victim of that violation doesn't have a monetary remedy, and in all, but very few circumstances, isn't actually going to be able to sue the Employer, the Police Department, or the State, if your dealing with the State Police. So I'm not dismissing your concerns, Director. I just kind of want to offer my spirited rebuttal in the course of this debate.

DIRECTOR SCIPPA: And I guess I would just finish with this. And you spoke about the (inaudible) stops providing the Police with a tremendous amount of discretion. And I guess I would make this statement.

With regard -- I make this statement to everybody who's listening (inaudible). We are (inaudible). We have (inaudible) to exercise discretion literally with every single contact that they have, every single day that they come to work. We are, in essence, the gatekeepers of introducing people into the Criminal Justice System.

And so, the discretion that you speak of is -- it doesn't come with the notion that the United States Supreme Court has no problem with contextual stops. Police Officers, every single day, with every single contact, have that tremendous amount of discretion to try to serve their communities, balance the interest of maintaining a safe community, and, at the same time, enforcing laws in a way that is equal-handed.

And that is quite a balancing act that we ask these Law Enforcement Officers to do every single day. And that's why, to me -- and again, that qualified immunity is so very important, because a vast majority -- and nobody would disagree with this -- a vast majority of the Cops in this State are trying to do the right job. They come with good effort and good faith. And they're operating in that gray zone. They're not playing. They're operating in that gray zone. And I think that's why it's just so important that it just lends itself to that balancing act.

But much like Madame Chair and yourself, I imagine you and I could have a very respectful and lengthy conversation on this. But I -- honest to goodness, thank you very much for being here. And thank you for your testimony. I really appreciate it.

DIRECTOR BISSONNETTE: Thank you. I'll reserve my response for later. Thank you. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Thank you. So, Gilles, I want to focus my question on two recommendations that you have that I think hopefully might have some consensus among our Commission. So the first one is making disciplinary files categorically available for public inspection under Chapter 91-A.

So I have one question for you, because I think there is a legitimate concern between sustained and un-sustained questions. And I am sympathetic to Members of Law Enforcement who would get this negative impression if there's 20 misconduct allegations and they're filed but only one of them is sustained.

So what is your response to that distinction that the public certainly has a right to know, or any Defense Attorney has a right to know, without question? And it's something in a personnel file where something was sustained (inaudible). So what's your reaction to that distinction?

DIRECTOR BISSONNETTE: Yeah, and I think my reaction is once an investigation has been completed, whether it's sustained or not sustained, my own view is that that really is something that needs to be public. And I think one of the things we learned today with respect to Lawyers is that even un-sustained findings are made public.

Now, I wish it was actually more transparent with Lawyers, rather than you having to go and pick it up manually, and rather than it being held for two years, I wish it was more. And I think we could ask the same for Law Enforcement that all of that information be collected and made available, because they work for us. I think knowing whether something is unsubstantiated can be very valuable in knowing whether or not an Officer may have 20 unsubstantiated findings. That's useful information. Maybe there is a little bit of an issue with that particular Officer. So I think that would be my response.

But I think the other reason why that information is helpful because it also gives you the ability to learn more or evaluate the adequacy of the unsubstantiated finding, as well. I think that is something sometimes that the public should have the ability to probe, because there, I think, is a little bit of a concern. You see this a little bit out of Salem in a Report, as I said, that was issued in November of 2018, that there was a lot of unsubstantiated findings that were the product of really not great investigations. Let's be blunt.

So, because there, I think, is some doubt in some Departments, it's hard, because there's no transparency. But at least with respect to Salem, because there's doubt, I think it shows the utility in just being more transparent, allowing that information to come to light.

And to the extent that Police have concerns about information that's unsubstantiated being public, it will be public that it was unsubstantiated, right? And I think that cures some of the fears that Police may have because that's how it works for Lawyers, right? Not docketed complaints are still publicly available and could be accessed, at least within the two-year window that are provided under the rules.

ATTORNEY JEFFERSON: And as a follow-up to my question -- and this is something that Deputy Attorney General Young and I were discussing before I had to go yesterday -- was if you make public -- the -- at least in the context of a court setting, if you just sort of create a rule that Defense Attorneys are allowed to have the personnel disciplinary file of an Officer, I don't think that solves the problem, because there was this underlying problem that you have to address which is that we don't know the mechanism of what get -- how something gets into the file. And we're relying upon the Police to police themselves.

And we literally have no other profession that we allow that to happen, where we allow the individual Agencies to police themselves and rely 100% upon them to make that determination, put it into the record, and then send it to the relevant Prosecutor's Office. So that -- that's why I think that you can't really have these two recommendations in two different silos, because if you're not going to reform this part, then make it a recommendation that personnel files be available. I think really there's a rule without no teeth, because you're not -- the underlying issue is how do we investigate this misconduct to begin with? Do you agree or disagree with that...

DIRECTOR BISSONNETTE: No, I agree completely with what you said. I just think transparency is key, because it brings faith and confidence to the system. Taxpayers just have a better handle on what's going on in their police Departments. And I think right now, because we don't have a statewide independent Agency, these Internal Affairs investigations are done within a Department. I'm sure a lot of them are done with integrity. And I don't mean to suggest that that many aren't. But some may not be.

And I think it puts sometimes Law Enforcement in an uncomfortable position where they're now having to respond to a citizen complaint. And the person who that complaint is about is a friend. And that is probably a common thing, particularly in some of the smaller Police Departments.

The one thing I do want to add with respect to transparency, making disciplinary and misconduct records public, is that that, too, could also eliminate the need for the Laurie List, because I think the Laurie List is a hot-button issue, no doubt. I think, for legitimate reasons.

But when you have more sunshine, when you make this information more accessible to the public, which would also mean Defense Lawyers in criminal cases, you don't need a list that acts as a flagging mechanism for Prosecutors, right? We only have a Laurie List because we're reconciling two competing ideas, right: the notion of Police file confidentiality; and the obligation of Prosecutors to produce exculpatory evidence.

Well, let's take this shield of confidentiality and remove it. Make that information more public, and now you just don't need a list. And so -- and now, it removes all of these issues about the concerns with the vis-à-vis due process and placement on the list. Let's just not have the list and be a more transparent State. That would be something that I strongly recommend and certainly hope that the Commission would consider.

ATTORNEY JEFFERSON: And my last question -- and I was really shocked to see this. I had no idea that there is this unique rule that Police personnel records are not subject to the 20-year retention as all other State personnel files.

So, to the extent that you know why that exists, I'd like to know. And I'd like to have you comment on my beliefs there. If any personnel files should be subject to 20 years, it should be Police. I mean, we've all heard of innocent projects throughout this entire Country and this State where essential to addressing

people being wrongly convicted are issues related to Police personnel files, or issues related to making sure that evidence that was no longer used could be used.

So there seems to be an obligation to keep those files open so that if there are any issues that result in any criminal conviction that we have the ability to look back, if there's a reason to look back. And I see absolutely no downside to preserving Police personnel records for 20 years and nothing but danger. So, I mean, I'm just perplexed why that would even exist. So if you can just comment on any sort of...

DIRECTOR BISSONNETTE: Well, my comment is I don't know.

ATTORNEY JEFFERSON: Okay.

DIRECTOR BISSONNETTE: I don't know the answer. Things evolve over time. I think traditionally, for whatever reason -- and I don't know the genesis -- this has just tended to be something that has been part of the collected bargaining process.

And I just think let's remove it from that process, take it out of the bargaining equation. And let's adjudicate. Let's establish a rule as a matter of good policy to create a consistency throughout, because you're right, with respect to Police. There are great reasons why you want to retain those records for a significant period of time.

You may not learn until five, six years later, wow, there was a real problem with a particular Officer or a Department. And now, you put yourself in a position where you're at the mercy of whatever the CBA is, and the Destruction Rules that exist within the CBA. So, I think my view is let's just take our -- remove ourselves from that equation.

I do think there was some proposed legislation on this. It was unsuccessful. One of the things that we were amenable to, probably begrudgingly, okay, was grandfathering in existing CBAs. Once those CBAs expire, the new rule kicks in, because I'm just not so sure the State can upend existing Contracts. So that was probably not ideal from my perspective but not unreasonable to just grandfather existing CBAs, and then we have the new rule going forward.

ATTORNEY JEFFERSON: And just to nail this point, just to make sure that your recommendation is clear, so, by preserving the records -- so if we took this recommendation, we could litigate for another day the amount of access, or the ease of access, to these records. So this recommendation, sort of standing on its own, would just say Police personnel files are important enough that they should be preserved for 20 years, just like any other State personnel file. Would you support that recommendation standing on its own, and we could leave for another day how easily to access the information?

DIRECTOR BISSONNETTE: It is a distinct recommendation, Attorney Jefferson, no doubt. It is a retention recommendation as opposed to what I previously testified to, which is access and transparency to that information. But that is -- it's distinct, no doubt.

ATTORNEY JEFFERSON: Okay. Thank you very much.

DIRECTOR BISSONNETTE: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Can I just sort of follow up, gentlemen, on what's surprised me and I probably should have known this was that the Attorney Discipline Office only took complaints that were sworn to? I know that we have looked at Police Departments where that has -- that that has been.

And so, I will say, personally, I found that sort of as a chilling effect that you could only do that if you swear to it. I get it. I get that there could be issues. But that's something that I just struggle with. You want to make sure that you don't have somebody coming in for an unholy motive to jam somebody up. But also having somebody swearing to it thinking that they could be prosecuted, that doesn't feel right, either.

DIRECTOR BISSONNETTE: If I may comment, it doesn't feel right to me. I didn't know that until this morning and I should know, because I'm on the Hearings Committee. I know that -- yeah, I don't think that's best practice among Police Departments for Internal Affairs investigation because of that chilling effect concern.

I mean, maybe there's differences with Law Enforcement as opposed to Lawyers, because it's Law Enforcement that would be prosecuting any alleged false statement. But I -- that doesn't seem like a good enough reason even, I think, for Lawyers to mandate it being under oath. That's just me speaking off the cuff.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Yes, and thank you, Deputy Young, for bringing that up. As somebody who serves on the Complaint Screening Committee, I agree with you. And using the Attorney Discipline Office as a potential model, I think that would be one thing that we would not suggest would be part of any sort of model, using that model. I think anonymous complaints are absolutely necessary, because Law Enforcement has a lot of position and power over people. So that chilling effect is real. And speaking for myself, personally, even in the context of the Attorney Discipline Office, I think there's also good reason to revisit the necessity of having that, as well, even for Attorneys. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Tshiela?

MS. TSHIELA: Thank you. So I just have two pretty quick questions. So my first is, as a community member, there's a lot of concern that Police Officers are given special treatment. So, that being said, do you believe that there are specific ways in which Police Officers are given different or special treatment than regular citizens under the law?

DIRECTOR BISSONNETTE: Yeah, I think there is. And we can go back to my earlier testimony with respect to Police retention. I don't see why we have different rules for Law Enforcement. It could just be inertia. I'm not attributing any malice or deliberateness to it. Things kind of happen over time. But that is, I think, a degree of special treatment that I think we probably should and could quickly dispel with.

I think one other degree of special treatment is -- two other things I want to say; I mean, really one is qualified immunity. It is true, right, that qualified immunity does apply to all Government Employees, not just Police. That's true. But it is in the vast, vast, vast majority of instances really going to be applied in situations where you're dealing with Police and an alleged constitutional violation.

And Doctors don't get qualified immunity when they make split-second decisions in Emergency Rooms. When I make split-second decisions in my cases, I'm not going to get the benefit of qualified immunity.

Now, Police maybe are a little bit different. But because of those differences, because they hold a badge, because they have the ability to use lethal force, I actually think they should be to a higher standard not a lower standard.

Number 3, with respect to access to public records, I could just tell you right now that there is a Statute in New Hampshire, RSA 105:13-B, which is a little bit of a mouthful. And it is a Statute that is, from time-to-time, used by Law Enforcement to argue that Police personnel files, just -- and that's a Statute just dealing with Police -- are categorically protected. And that is different from how personnel files for all other Government Employees are handled. It's through a public interest balancing analysis.

Now, query to what extent the new Court Decisions kind of upend 105:13-B, but I want to kind of make sure that folks are aware of that that there's this argument that that Statute really provides these special protections for Police. And I just think that's wrong. When you have those types of special protections, I think it hurts transparency and it hurts accountability. That's my view, at least. Thank you.

MS. TSHIELA: Okay. Thank you. And (inaudible). Sorry, there was like an echo. But you raised a lot of issues today in regards to transparency, accountability, qualified immunity, and also the use of pretextual stops. So how do you think all of these issues directly affect the relationship that Police Depart -- well, Law Enforcement, in general, have with communities that they serve?

DIRECTOR BISSONNETTE: (No audible response).

MS. TSHIELA: I think you're muted.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, thanks.

DIRECTOR BISSONNETTE: Rookie move by me here. I think they're all tied together. Going back to pretextual stops and why I have some concern with it, I mean, as I said before, huge discretion, right, in the ability of Law Enforcement to just tail someone for no real reason. And then, ultimately pull them over some motor vehicle offense.

Why that's concerning is because that discretion can allow -- it allows for, I think, biases to manifest themselves, right, implicit or more overt biases. So I don't think it's something that we maybe should just train our way out of. Let's get rid of the mechanism, the core problem that allows maybe a stop to occur that may have a race issue.

I'm not suggesting that it was racism, not even suggesting that it was racial profiling. But we know nationally with motor vehicle stops there are significant disparities. We have a little bit of a data collection problem in New Hampshire, something that we're looking into. But, let's just not put ourselves in a situation where those disparities, those biases can manifest themselves.

I mean, we know we have massive disparities with respect to our imprisonment population. Where do those come from? I mean, how do those folks enter the system? And that is, I think, one of the reasons why I would just really give strong consideration to just taking this tool away, because I think there are significant costs on the other side.

Might be in some situations a good Law Enforcement tool, I have no doubt that Deputy Young can cite many examples in which it's been helpful. How many other individuals have been stopped in which nothing's materialized, people who are just going along their business being deprived of their liberty? Yes, they may have committed a motor vehicle violation. That wasn't the point of the stop, though, right?

And so, I think that pretextual stops really hurt confidence and faith, because essentially I don't want to call it a lie, but it's a little bit of a fib, right? I'm stopping you for a lane violation, but I'm not really stopping you for a lane violation. It's -- it's a degree -- it's not fully candid to some extent, right? And I think that is something that I'm concerned about, as well, when it comes to pretextual stops. And so, I think that practice really should be done away with. Other States have addressed it through their own State Constitutions.

And on the accountability side, I think, to me, it's just obvious if internal investigations, Police misconduct records, I think the public should know what their Departments are doing so they can have faith and confidence that the Officers employed by their Department are good Officers, are solid Officers. That secrecy hurts good Officers, right, because every time that good Officer is going about his or her business, there is suspicion. That's not good for anyone, in my view.

MS. TSHIELA: Okay, thank you. And thank you, again, for your testimony today.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. I just -- it's 12:38 and I know that we have Attorney Krupski on the line. So, we have President McKim, Lieutenant Morrison, and Commissioner Quinn lined up, and Rogers. So, I just -- we're going to see what Attorney Krupski's availability is for tomorrow. But I just want you to know we are at a bit of a time crunch. So, with that, President McKim?

MR. MCKIM: Thank you, Deputy Young. And thank you, Attorney Bissonnette, for your testimony and all that hard work. I -- I'm struggling with a couple of things. And one of these may be a philosophical question that I'd love to get your thoughts on. And you mentioned earlier we're at this point where we're weighing a tool that can be used to catch criminals with civil liberties. And especially in a situation where there's a history of discrimination, how do we balance those two? What's the sort of thought process of balancing those two competing interests?

DIRECTOR BISSONNETTE: Well, I'm not going to pretend it's easy. And I think this debate really reflects the difficulties of it. I think probably folks are hardly surprised about my perspective on how to balance it, which is on the side of civil liberties and on the side of transparency, and making sure that people aren't seized needlessly. It's a big deal to be seized and detained by Law Enforcement.

And I would submit that the Constitution really kind of already provides that balance, where the Fourth Amendment bars unreasonable searches and seizures. Now, I know the Wren decision disagrees with me, with respect to pretextual stops. But we all have the ability as a State to say that we're different in New Hampshire, that we're maybe a more libertarian-minded State and we don't want to allow, necessarily, Law Enforcement to detain people for reasons that are not really the reasons they're detaining people.

So, I have an answer. I think it is just really more guided towards the civil liberties that I and our organization cares about, because we're just worried about immense Law Enforcement power on individuals, including power where that's placed on people and communities of color, perhaps needlessly.

MR. MCKIM: Thank you for that. And I guess my next question would be, is this one of those situations where we really should wait to make recommendations until we have more data here in New Hampshire?

DIRECTOR BISSONNETTE: I don't know. And I think I would say no, because some of the data that we have certainly with respect to incarceration rates is concerning. We do have some data that I cited it in my piece from 2016 about some jailing data and arrest data in Hillsborough County, which is concerning. Now, I don't know if that data's changed and a lot could happen in four years. But there's no reason to think that we're in a different place now.

So I think my view is that we have enough to implement these reforms, which I think are important, because I firmly believe, as is clear in my testimony, I think we do have a racism issue in New Hampshire. I do. And I think those statistics really bear it out.

Could we get better data? Sure. But I really don't want to let the perfect be the enemy of the good. We are really, I think, in an historic and unique moment to enact real change. And I think that would be why I hope that the Commission would at least consider the proposal now in this historic moment.

MR. MCKIM: Thank you, Gilles. That helps. So the other area I'm struggling with is I think I heard you say that without -- even without qualified immunity, Law Enforcement Officers are indemnified or protected. And I am contrasting that with what I thought I heard yesterday, which is that the concept of qualified immunity is used in a number of places, in addition to protecting Police.

So I'm struggling to understand how all this plays out. First of all, I guess, does everyone agree that, without qualified immunity, Law Enforcement would be protected? Is that 100% agreed-upon by everybody?

DIRECTOR BISSONNETTE: Well, I guess maybe it's more of a question of terminology, right, protected as opposed to indemnified. Indemnified was the term that I used. Attorney Broadhead mentioned it yesterday.

So even if, in the course of your duties as an Officer, you violate an individual's rights, or even maybe not, but it's alleged that you have and you are sued, unless what you did was outside the scope of your employment, or done in such a wanton and reckless manner, you're going to be indemnified. So, when Director Scippa talked about that gray area, that is an area in which there is indemnification. So even if an Officer is sued for something arising out of his or her duties, even if that Officer is found liable and there is no qualified immunity, that Officer's house is -- no one's going to take the Officer's house, right, because those monies would come from the municipality, from the State. With respect to municipalities, there's insurance -- municipal insurance that would also cover a judgment.

So I hope I'm answering your question. But that's generally how the process would work, because Attorney Broadhead is right about that caveat to indemnification. Wanton and reckless, I think something like that, as to the standard in which when the State won't indemnify.

MR. MCKIM: Okay. That last one about wanton and reckless, does that mean that the concept of qualified immunity indemnifies a Law Enforcement Officer when the conduct is wanton and reckless? I guess I'm trying to understand why qualified immunity exists at all if there's indemnification already there.

DIRECTOR BISSONNETTE: Right, that has really been my argument is that, do you really need qualified immunity for Officers to work in that gray area, right? When they are indemnified by their Employer, if there's a violation and someone's been wronged, I really want to get back to what qualified immunity is.

Qualified immunity is a doctrine that deprives a Plaintiff of a remedy, a victim of a constitutional violation of a remedy. And that, to me, is the problem with its application, and particularly its clearly established kind of framing of it by the Supreme Court. So, I think you're kind of -- or your kind of wrestling with this is really something that I've wrestled with. And to me, it really doesn't justify qualified immunity in my view.

MR. MCKIM: So, thank you for that. So removing qualified immunity would remove those cases where it's applied outside of the Police situations of potential misconduct. Is that a thinking also?

DIRECTOR BISSONNETTE: Qualified immunity -- removing qualified immunity would still allow a Plaintiff to sue an Officer for a constitutional violation. Whether it was wanton or reckless, or not, I suppose. But if we're talking about that gray area, or even not a gray area, to some extent, it would just allow a Victim to get a remedy.

Now, I want to also say, if you remove qualified immunity, that doesn't mean the Officer's held liable. All that means is that the case gets to proceed, right? Gets proceed to discovery where witnesses are heard, and you get to proceed potentially to a trial. That Plaintiff may still lose at the end of the day.

MR. MCKIM: Thank you. That helps me tremendously. And I yield the balance of my time.

DEPUTY ATTORNEY GENERAL YOUNG: Gilles, I know that you keep saying, well, the Officer will never lose his house. But there are some municipalities that are self-insured, correct?

DIRECTOR BISSONNETTE: Yes, Manchester being one of them. Yeah.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, and so they're -- and I don't know every municipality. And I do not certainly know what their funding is. But I know that, right, we are in a funding world right now.

So, specifically, there could be a case, Police Officer doing his job, not doing anything improper or illegal, and there could be a settlement where the municipality did not have sufficient funds. And he could lose, or she could lose, her house, correct?

DIRECTOR BISSONNETTE: My -- I'm not sure. I think the answer is maybe. Has it ever happened? I'm not aware of that happening. And perhaps other folks in the Plaintiffs' bar who have a little bit more experience can comment on that.

I'm looking right now though at the Municipal Indemnification Statute, right? So, by Statute, RSA 31:106 -- this is my parenthetical on page 7 or 8 of my testimony -- municipal Employees are indemnified except for violation of Civil Rights done within the scope of employment, so long as the acts were not committed with malice. So, by Statute, my understanding of this is that there is a legal obligation to indemnify. Now, could a City go bankrupt? Sure; I just don't know if that's something that is a common thing to occur.

DEPUTY ATTORNEY GENERAL YOUNG: But we also (inaudible) the amount of the judgment and I think a good Plaintiff's Lawyer will tell you, you bring the suit everywhere to make sure you're covered. So I'm just...

DIRECTOR BISSONNETTE: Yeah, what? Say that again. I'm sorry. I didn't hear you. I didn't hear you. Say that again.

DEPUTY ATTORNEY GENERAL YOUNG: I think that a good Plaintiff's Lawyer will also tell you that you bring the suit everywhere you can bring the suit. So, currently if we think there wouldn't be sufficient funds within the coffers of the municipality, you would then bring a suit against the individual Officer or -- so, I'm just saying you make the statement. And I'm just not sure that there's not a case where that could happen, especially when they're in a (inaudible). That's my own...

DIRECTOR BISSONNETTE: I just -- I don't think it's ever happened. I just don't think it's ever happened.

DEPUTY ATTORNEY GENERAL YOUNG: Right, but I think that there's a possibility. So, I'm just putting that out there that I don't know it's an absolute. Lieutenant Morrison?

LIEUTENANT MORRISON: Thank you very much. Attorney Bissonnette, thank you for your testimony. It is through speaking with people who we completely disagree with that I think we help sharpen our own positions. And I will put you and Buzz into that category. And it is not a negative thing. It is simply we view the world completely differently. But, as Director Scippa mentioned, we always appreciate differing opinions, especially from people who are reasoned and prepared.

That being said, I am -- I don't want to say horrified, but I'm pretty frustrated with some of your testimony in that it could be just completely inaccurate. If an Officer does not have qualified immunity, even though he may -- he or she may ultimately be indemnified somewhere down the road, there still would be a cost to the litigation. There would still be a cost to the defense. Officers would absolutely lose their homes. They would lose their savings and livelihoods, not just belonging to the Officer but their families.

If you've been paying attention whatsoever -- and I'm sure you are -- Officers' families go through quite a bit as it is, never mind being subjected to the gross potential of financial ruin from frivolous lawsuits that should be screened out through Summary Judgment, which is exactly why, in my opinion, you have this Doctrine.

Fruit of the Poisonous Tree is also a Judicial Doctrine. It's not the fact that it's a Judicial Doctrine. It's the fact of what it's designed to do, because, in my opinion, the State Supreme Court recognized that

Officers have a constitutional right to their good name. They deserve certain protections, because they are asked to do things nobody else is asked to do.

We are not just talking about pretextual stops or things that Officers do on their own. We are also talking about calls where we have to respond to what's in front of us, whether through emergencies or different types of calls, where we don't have a choice in our reaction other than to respond to what is in front of us. It's not always simply the Officer chose to do X, Y, and Z.

So, much like the testimony from Attorney Scherr, I take issue with some of the things in there. And I don't mean this disrespectfully when I say cherry picked sort of information, but it's information that is being -- citing minority Opinions, and people that agree with you but that are outside the mainstream of legal Decisions. Do you think that motor vehicle stops are a reasonable interruption in people's lives?

DIRECTOR BISSONNETTE: That's the purpose of the stop and it's not for some other underlying purpose where there wouldn't otherwise be an independent basis to stop the person for that purpose, that's my response.

LIEUTENANT MORRISON: No, and I appreciate that. Thank you. Do you think that there can be any justification for an Officer expanding the scope of his stop based on his or her observations after stopping the vehicle?

DIRECTOR BISSONNETTE: Yeah, I do, assuming that the reason for the stop was a motor vehicle violation and, again, not some other purpose in which there wasn't an independent basis to stop the person.

LIEUTENANT MORRISON: Okay. So, we are going to have to get into subjective sort of natures for the reason for the stop may be this, may be that. And I think you appreciate the difficulty in trying to, well, certainly legislate anything along those lines. I think it would be near impossible. And we can't legislate mindset or (inaudible). Do you agree with that?

DIRECTOR BISSONNETTE: No, I don't, and let me explain why. The State Police, at least according to Judge Schulman, there is essentially a Policy in place to do pretextual stops. So this isn't a subjective thing. Did that Officer stop the person for a broken taillight or it was for something else, maybe just a hunch?

There could be some difficulties in regulating pretextual stops, no doubt. But with respect to the dynamic that I'm referring to on our State freeways concerning the MET, I think that subjectivity's out of the equation, because it seems to me, at least according to Judge Schulman, there's a Policy of doing those stops by State Police on our freeways.

LIEUTENANT MORRISON: Okay. And this Policy -- and I'm sure the Commissioner could speak more to it. And I'll refer to it in your terms, this Policy. But, I think every Officer around the State shares in a desire to combat certainly the opioid crisis we're dealing with right now.

I have almost been killed by vehicles that have crashed, because the drivers have been overdosing behind the wheel, more than once. We have major problems with some -- with drugs in our society. I'll just term it as drugs in our society.

And anything that Law Enforcement can do to limit the damage from some of these things, I think that's exactly what the public expects of their Police Department. And this is where I sort of look at what the public is hoping for and expecting out of their Law Enforcement and what the ACLU may have as a vision of that. I think those two things sometimes are a little bit further apart than we'd hoped.

But, I'm going to reserve really any further questions for the other panelist, because I know we're short on time. But, I -- and I mean this sincerely. I do appreciate your perspective. And I think it's through some of these conversations that we are able to sort of sharpen our skills, or sharpen our training, or maybe pay a little bit closer attention to some of these -- the constitutional protections in those gray areas in which we operate. So, despite the fact that I disagree with a lot of what you said, I do appreciate your position. And I look forward to being part of all these solutions as we move forward. Thank you.

DIRECTOR BISSONNETTE: And let me just respond to that briefly, because this is a very robust debate and a principle debate. I'm not questioning individuals' motives here. You know, we just have a disagreement about how to approach some of these things. And that's all. And I respect it. And this is the point of this Commission, where a diversity of perspectives are brought together to hash out solutions.

I mean, I just want to say that I -- there are a lot of problems in New Hampshire, no doubt. And no doubt they have to do with some of the issues that you just raised. I just don't think personally that one of the solutions should be stopping individuals what is not completely but pretty close to indiscriminately, given the fact that Police can simply tail individuals until they commit a motor vehicle violation. That is the perspective that I am coming from and why I have concerns.

But just on the indemnification piece, I just want to say that indemnification doesn't just include paying out a final judgment, right? Indemnification includes defense. So, unless that Officer, again, is accused of doing something outside the scope of his or her employment, or of acting wantonly, as Attorney Broadhead articulated, that defense is going to be provided, as well, assuming that they don't fall outside the scope. And in every case that I've litigated, that indemnification through defense has been provided.

And I think the last rebuttal I would have -- and again, we're just debating, which is fine -- qualified immunity is not a mechanism to screen out frivolous cases. We have plenty of those mechanisms already. What qualified immunity does is screen out cases where you can't find clearly established law, even where there is a constitutional violation. And that is, I think, what gives me real concern, and why we're advocating for its end as a form of real accountability, because maybe that's the disconnect between our perspectives. But that is my qualms with it. And Judge Reeves in his Opinion out of Mississippi really talks about that effect of it. So that'll be my response. But, I appreciate this discussion. I think it's a very important one. And I'm glad we're having it.

LIEUTENANT MORRISON: Yeah, thank you very much. And I just think we also need to keep in mind the public policy sort of ramifications of these types of changes. And as I've stated before, this would completely decimate law enforcement ranks across the State. And with the -- we have a hard time hiring people and retaining people, frankly, because of so many other factors that we could speak to. This would exacerbate that to a level that nobody in this State, I think, wants to see. And for Officers that have starting pay south of \$40,000 a year, I think we need to have a little bit of reasonableness attached to (inaudible). So, thank you.

DIRECTOR BISSONNETTE: Thank you. Colorado's figuring it out. So, I -- even with ending qualified immunity, so I just hope that we could consider it, as well. This is, I think, something that's important to consider. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. So we have a question, because I think those of us in the business sort of just throw names around. Judge Schulman is a Superior Court Judge. I believe he was sitting in Rockingham -- and Gilles, you can correct me if I'm wrong -- when he issued that Order. So that is an Order on a specific case out of what would be called the Trial Court.

Attorney Schulman has been an Attorney in New Hampshire for a number of years. He was with the Public Defender Program for a number of years. I believe he was at the Appellate Defender Program. He, then, went to Getman and Stacey is where he was. Gilles, can you remember?

DIRECTOR BISSONNETTE: What was the -- you cut out -- what was the question? I'm sorry, Deputy.

DEPUTY ATTORNEY GENERAL YOUNG: The question is Judge Schulman, so I was just sort of giving his background. So he was a Public Defender. I think he left the Public Defender, I think went to a private firm, then went back to the Public Defender (inaudible). Did he go to the bench after Getman and Stacey?

DIRECTOR BISSONNETTE: Yeah, I cannot -- I've only been here seven years. But my memory's quickly faded. I believe he became a Judge maybe four or five years ago, if I'm not mistaken. And he previously was in Rockingham. I think he's since moved to another county.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, he may (inaudible). But that's (inaudible). The case that's being discussed is a case from maybe a year ago-or-so, Gilles, where there was a motor vehicle stop. There was a Motion to Suppress that was heard before Judge Schulman. He issued an Order.

And so, it's a Trial Court Order. It's not an Order from the Supreme Court. I think under -- sort of under our rules and Trial Court Rules -- Trial Court Order have no (inaudible) value. But it certainly is good guidance. We look at these Trial Court Orders. They're good teaching (inaudible) for us. But is the Order that's being discussed. And that's who Judge Schulman is. So, Rogers has his hand up. Ahni, is your hand up, as well?

DIRECTOR MALACHI: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: I can't tell. So, Ahni, we will come back to you. I'll come back if your hand is raised. Rogers is up. Just so you know (inaudible) with Attorney Krupski. I'm not going to rush this. I think everybody wants to hear from Attorney Krupski. So we're going to try to put him over until tomorrow. Oh, Ahni has her hand up. Okay. Ahni has one question, Rogers, and then...

DIRECTOR MALACHI: It was just the name of the case that Gilles was referring to with Judge Schulman.

DIRECTOR BISSONNETTE: It was the Perez Decision. I think it just comes up if you do a search on the Commission website. If not, I'm happy to recirculate it. The other Decision I was referencing was the Judge Reeves Decision attached to my testimony out of Mississippi.

DIRECTOR MALACHI: The Jamison case?

DIRECTOR BISSONNETTE: (No audible response).

DIRECTOR MALACHI: Okay.

DIRECTOR BISSONNETTE: Yeah.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, Rogers, now you're up. Thank you for your patience.

MR. JOHNSON: Well, thank you very much, Deputy Attorney General. Gilles, I love you like a brother.

DIRECTOR BISSONNETTE: I know where this is going.

MR. JOHNSON: Now you probably (inaudible). I'm not saying you're wrong but you're a little short on being right. One of the things that you have stated in your testimony and your written testimony is that you believe that Law Enforcement in the State is inherently biased, which is one of the reasons why there are more people of color that are in our Prison systems. And I think you need to go deeper than that. Have you had a chance to look at the Report that we wrote on COVID-19 a month ago?

DIRECTOR BISSONNETTE: I've not. But does that reference the disparities with respect to COVID cases?

MR. JOHNSON: You are correct, sir.

DIRECTOR BISSONNETTE: Okay.

MR. JOHNSON: What I'm really trying to reference is the reality of what is happening within black and brown people in the State and across the country. This disparity leads off by the fact that young black and brown children aren't adequately educated, starting out in 1st and 2nd, and 3rd grades. Because they're not adequately educated, they don't really qualify for getting decent jobs.

Because they can't get decent jobs and earn a decent income, they have issues with food disparities. They have issues with housing, issues with healthcare. And because of the desire to want to provide those services, if you will, they're put in compromising situations which leads to potentially crime. And the Police are always policing in high-crime areas. That, I think, is an exacerbating issue with Police, because they're there where individuals are trying to make a living.

So, what we need to do is probably address the underlying cause. The underlying cause is education, is proper employment, getting a good salary, getting healthcare, getting proper living conditions. Now, the reason why I state this is I'm a living example of exactly what that problem was.

Gilles, I was born in a small town called Rye, New York. It is the quintessential affluent town, the most affluent town probably in the country. It's equal to Greenwich, Connecticut. Having said that, I was born to a third-story walkup with four rooms and nine children.

In the land of million-dollar homes, I lived inside of them, but I didn't live in one. My parents made it essential that we got a decent education through the right schools. And people in my town thought better of me to send me to Phillips Exeter Academy. I got a good education. I got a decent job. I provided for my family. And none of the children in my family ever had to deal with a Police Officer ever. The same was true of my cousins, the Kennedys, and the only other black family in the City of Rye, the Nixons.

Now, you may find it interesting that it was the Johnsons, Kennedys, and Nixons who happened to live in Rye. Yes, we were the "presidential backfield" for a good 15, 20 years. But the remarkable aspect is, is that none of them -- myself and all them combined -- ever had a dealing with the Police because of the education afforded to us.

So, in many ways, I can state to you that if we went out and provided that level of education to black and brown people, I would say, honestly, the level of people being incarcerated in our Prison Systems would decline significantly. This isn't an issue of Police being biased. And while there may be some, but I think putting people in that situation goes a long way toward creating the issue that you brought up. So, again, like I said, you're not wrong. But again, you're a little short on being right. There are other issues that need to be addressed.

DIRECTOR BISSONNETTE: I don't disagree that we have massive problems in our society beyond at least in my view policing, accountability, transparency, education, increased social services, increased mental health services are all things -- increased access to healthcare are all things that are going to address -- hopefully would at least address some of these racial disparities that we're seeing throughout.

I mean, with respect to policing, I do think that biases -- and I'm not saying this is overt racism -- do creep into policing decisions. I mean, we all have implicit biases, myself included. And I think, I mean, obviously that's what we're trying to address, the ACLU is trying to address, and is the limited scope of the Commission.

But it's -- I just finished Michelle Alexander's *The New Jim Crow* which is amazing book. I probably should have read it a lot sooner. But one of the things that she talks about and cites studies, at least, in her introduction is that she is, at least, not persuaded based on the studies she's evaluated that black folks are committing more crime than white folks. And so, the question ultimately becomes really what's triggering some of these disparities.

Now, I don't really know the answer completely. But I would like to think -- not that I would like to think. But part of it, I think, would have to be some biases that exist in policing. And that's really, I think, what we're trying to address is just what Policies exist that may allow those biases come up to the service. And that's why I'm broaching pretextual stops and those types of things. So I'm not discounting your experience. I mean, it's important and I need to and should learn from it. But I just kind of wanted to convey our perspective and why we're pushing some of these proposals.

MR. JOHNSON: Which is one of the reasons why I'm pushing my perspective; Gilles, growing up, I was exposed to two individuals who really formed my opinion on what was actually happening within the black community in America. I went to school with an individual by the name of Timothy Moynihan. His father was Daniel Patrick Moynihan. He would come to our school and pontificate a great length on his white paper called "The Negro Family: the Case of National Action".

And what was really important there was that he was right. The black community was being destroyed by the great society, by the war on poverty created by both Presidents Johnson then Nixon. He went to great lengths to espouse upon that issue. And we were mesmerized just sitting in a glen listening to him talk.

Another individual who I came to know, because he was the uncle of a family friend, was a District Court -- a U.S. District Court Judge by the name of Arthur Kennedy -- excuse me, Arthur Garrity. Arthur Garrity was the -- issued the Opinion on bussing in Boston. He had told me that the reason why he issued that decree is because he could not force black people to move into an area. And so, his only remedy was to have bussing. He did not want to do it, but that's what he did. Those two individuals formed my opinion as to what was happening within the black community. That happened when I was 13, 14, and 15.

I honestly believe that there's been a great disservice given to the black and brown community because of the inability for this country to properly educate, properly house, properly feed, to give healthcare to those individuals, and because of the individuals are forced to do whatever they have to do in order to survive.

And unfortunately, as I said earlier, the reason why Police Officers are in those communities, because that's where crime's being committed. That's where they go. So the situation is exacerbated by the fact that these things have taken place.

So the concept of being a racist Police Force is only part of it. It's more along the lines of what we have to do in order to make people realize that the situation of black America is dire and has gotten worse since 1965. I know that you understand this. The question becomes: what do we do about it? And basically that's all I have to say about it.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Rogers. Commissioner Quinn, you are the last hand that is raised. Thank you for your patience. Oh, Ronelle and Ahni, do you have a hand raised, and Ronelle? Okay. I'll come back to you guys. Go ahead, Commissioner.

COMMISSIONER QUINN: I'll defer to Ronelle and Ahni, if they have a question, Deputy. I thought...

DEPUTY ATTORNEY GENERAL YOUNG: No, they're saying go ahead.

MS. TSHIELA: I have more of a comment just on the last thing if you just wanted me to go first to get that out of the way.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, go ahead.

MS. TSHIELA: All right.

DEPUTY ATTORNEY GENERAL YOUNG: All set.

MS. TSHIELA: Yeah, so I think the words that Attorney Bissonnette was falling short is kind of wrong. I think that he came here to help us address a certain problem. And I know that we all know that there are a lot of issues in the black community. Unfortunately, we are facing -- we are still feeling the repercussions of earlier years of this country. And so, there are a lot of things that essentially contribute to the cycle that keep us in the positions that we are today in a lot of situations, not all.

And so, I thank him for his testimony. And I just think that, of course, like he said, I don't think he was discounting a lot of the experiences and things that we have. And I believe that he knows that this is only a small part of the situation.

However, we learned -- and Mr. Johnson, you attended the same course that I did -- we learned the first thing that the Instructor said is we all have implicit bias. And so, this implicit and explicit bias contribute to a system that unfortunately keeps black and brown communities in the positions that they are. And so, I just wanted to take this time to not only say that but thank Attorney Bissonnette for coming to address that specific problem that we are here to address today.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ronelle. Rogers, you can...

MR. JOHNSON: Yeah, Ronelle, Attorney Bissonnette and I know each other. We go back a long way. We have shared -- actually eaten a lot of the same dirt together on certain issues. So, like I said, when I said to him he was like a brother, he kind of is because of the fact that we have fought the same battles.

My issue isn't with the fact that he made a statement as relative to the Police. My issue is we need to expand our horizons. He just didn't mention that and I wanted to make sure that that was mentioned, because it's a bigger problem than just the Police. And that's the only reason why I said what I said. And I guarantee you, Gilles understands what I'm saying.

MS. TSHIELA: I agree. And like as a Black Lives Matter Activist, I get told all the time that we are focusing on the wrong issues and that there are other things that we need to talk about. And in my personal life and with people in my communities, I definitely do address these issues.

But this is also something that I feel strongly about. And so, I can understand, in a place like this, I think there's a certain time and place. So I understand why that was addressed. And I totally understand the relationship that you guys have and I think that's cool. But I just wanted to give my perspective, as well.

DEPUTY ATTORNEY GENERAL YOUNG: It's always welcome. Thank you, Ronelle. Ahni?

DIRECTOR MALACHI: So, I have quite a few questions, not quite sure how to do this, Deputy Young, because we have 12 minutes. So, is there an opportunity to carry over until tomorrow?

DEPUTY ATTORNEY GENERAL YOUNG: Certainly, I'm not going to cut you off, Ahni. So you can start. Gilles, are you able to come back?

DIRECTOR BISSONNETTE: Course, I'm sitting in tomorrow.

DIRECTOR MALACHI: okay.

DIRECTOR BISSONNETTE: And so, I'm happy to come back. Yeah.

DIRECTOR MALACHI: Okay, unless if Commissioner Quinn has less statement -- fewer statements than I do, I'm happy to have him go for the remainder, because I know we have a hard stop. And then, if we can start tomorrow, then I'm absolutely pleased to do that.

COMMISSIONER QUINN: Ahni, you have momentum. I'll be here tomorrow. So, go ahead and I'm interested to hear your questions.

DIRECTOR MALACHI: Oh, Commissioner Quinn, on the spot I am. So, I wanted to -- I read your testimony. And I just -- I have a variety of questions here. Ms. -- President McKim and I, I think we were twins in a former life. So, on -- and I'm just going to start at the beginning. I think that's sort of the easiest path for me. And forgive me for looking away, because I have notes everywhere.

DIRECTOR BISSONNETTE: I have notes everywhere, too.

DIRECTOR MALACHI: Right? Oh, the landscape of the troubled mind. So, we will just start in Section 1.

DIRECTOR BISSONNETTE: Yeah.

DIRECTOR MALACHI: On page 1, there are a lot of numbers here and lot of percentages. Journalism Major didn't have to do a lot of math, so with that being said, the percentages and the numbers that you have here, they cover a lot of ground. So, are you saying in here that race is a problem, arrests are a problem, the Legislature is a problem, poverty, society? What's the problem?

DIRECTOR BISSONNETTE: That's a great question without an easy answer, right? And I think I could only respond by saying what I think some of the data shows is that there are some racial disparities in our State Prison. That is what that shows.

The question beyond that, as to its root causes, are complicated. And I understand what Rogers just said. And he's getting to that. And I believe that, as well, that there are other causes. So I just don't have a reason.

What I would suggest -- and I'm not going to say it in absolute terms, because we don't have great data. So I want to be careful in the words I use. But what I'm trying to suggest is that what could play a role in some of these disparities, in addition to some of the society forces we're talking about, is policing, right, and in part, because of some of the practices that we allow: pretextual stops, etc. So that is the suggestion. We have some data from NHPR. And we need to do more, undoubtedly. I know the Committee has really been -- the Commission's been wrestling with the data question.

DIRECTOR MALACHI: So, a couple of notes with that, so the data that you have on this page was provided from -- specifically from NHPR or was there another source?

DIRECTOR BISSONNETTE: Two sources; the first is a Sentencing Project. And this was data that I pulled about a year ago. And in 2019, the most recent data was from 2014. So, somewhat dated, undoubtedly. The NHPR piece, which was a forensic dive by Journalist Emily Corwin who used to be here and is now in Vermont, that was from a 2016. So, I just wanted to make the Committee aware of it. Yeah.

DIRECTOR MALACHI: So then two questions relative to each of those. So you mentioned the Sentencing Project. So what would be transparency on that organization?

DIRECTOR BISSONNETTE: I don't have anything beyond what's -- I cited it so the Commission can obviously look at it. I don't have anything beyond what's on its website, how they describe themselves, and who funds it. And I don't know that off the top of my head. But I cited it to be transparent. Yeah.

DIRECTOR MALACHI: Okay. So, the question, I guess, I would have in looking, The Sentencing Project is a nonprofit organization, which is great. However, they do provide funding for the ACLU, correct, based on their website?

DIRECTOR BISSONNETTE: If that's what it says, that's what it says. That could be true. I have no reason to dispute that.

DIRECTOR MALACHI: Okay. And why so many -- as I was looking through, there are a lot of articles that are cited, as I guess I would -- and forgive me if it's a mischaracterization. But they appear to be more experts at -- that you're citing to supplement your testimony. So why not more legal cases, as opposed to a Journalist who can write whatever, however they want? I guess I was a little curious about that, as well.

DIRECTOR BISSONNETTE: I don't know how to answer the question other than it's data that they've collected. I don't know if any more recent studies have been done of the State Prison and racial demography. I'd certainly be interested in knowing it. I don't have any reason to question The Sentencing Project's data. And if there were problems with it, I'd be happy to learn more and inquire.

DIRECTOR MALACHI: I mean, not having an opportunity to maybe reach out to the New Hampshire Prison to ask them, is that not a better, easier, or more direct, or you could information up-to-date at that point?

DIRECTOR BISSONNETTE: Yeah, we could. I have no doubt that we could do that, might be a good idea for all of us to have more recent data. Yeah.

DIRECTOR MALACHI: Yeah, I mean, because a lot of it is very dated. So that was a little concern. So, yeah, I'm sorry. Go ahead.

DIRECTOR BISSONNETTE: No, no, I agree. It's dated data. It's one of those things you're working quick. It's the most recently publicly available data we have. We haven't had the resources to do the forensic dive right now. And I'd be interested in those results.

DIRECTOR MALACHI: Yeah, and I do understand that. I mean, most organizations and Agencies these days are very understaffed. However, since this is so important and this is such an important topic, not only for all of us but certainly for the ACLU, I was -- it was just a little curious for me.

So moving into the numbers, there was some information that was provided to the Commission a while ago. And it does have some corrections demographics information for New Hampshire. And what I'm showing on this -- and I'll give you the numbers in case you don't have it.

So, as of June 2020 -- so we will just use that one as an example. And then, here's where you'll get to put your expert math skills to work. So -- and good guesses are fine with me. If you have the actual information...

DIRECTOR BISSONNETTE: I don't mean to interrupt. But is this on the Commission's website?

DIRECTOR MALACHI: Yeah.

DIRECTOR BISSONNETTE: I don't have this handy, to be honest.

DIRECTOR MALACHI: Yes, it is.

DIRECTOR BISSONNETTE: So, I'm...

DIRECTOR MALACHI: Give me just a second.

DIRECTOR BISSONNETTE: And nor can I promise to be able to do quick math.

DIRECTOR MALACHI: Well, this is not even quick math. It's good guesses.

DIRECTOR BISSONNETTE: Oh, even worse.

DIRECTOR MALACHI: If you look on the website, I think it's going to be all the way towards the bottom.

DEPUTY ATTORNEY GENERAL YOUNG: Ahni, I don't mean to interrupt you, but maybe this is a good place, because it's 1:27 and we could -- is that okay? Is this a good place?

DIRECTOR MALACHI: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Okay. So, we have...

DIRECTOR BISSONNETTE: Ahni, would it be possible for you to just send me separately the link just so I can take a look? That'd be helpful, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: So because we were a little behind today, Attorney Bissonnette will be back tomorrow as a substitute Commission Member, and we will conclude his testimony and any questions that Director Malachi has. Then, Attorney Krupski will be up. He has been on the line for a few hours today but has agreed to come back tomorrow. So I thank him for his time and his patience. And then, the Attorney General's Office is the last to give a presentation. So we can certainly tighten that up.

I will -- everyone that we will hear public comments on Thursday, so any member of the public who wishes to speak on this section should notify the Commission in advance by sending an email to LEACT@doj.nh.gov. And written testimony is strongly encouraged and should be submitted to the same email address, LEACT@doj.nh.gov. And we will post that on the Commission's website.

Any member of the Commission who is questioning why we want written testimony, I think that you can see from here we have a much stronger dialogue moving forward when we know what somebody is going to testify to. We could look at it. As you can see, the Commission Members do a lot of homework on this and they can hone [sic] in on the exact questions they want. So it's a better flow and it's able to get the points across much easier.

So, again, if you would like to provide public testimony, we are going to hear that on Thursday. The Commission meeting starts at 9:30 and you are asked to send in your comments beforehand. Any questions or comments about sort of the procedure going forward, by any of the Commission Members?

(No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: So, on Thursday, we will have the public comment. You are to have your recommendations to us by Monday, which is the deadline. We will try to do the Narrative section and get that out to you, when we begin our discussion one week from today on this section. Questions or comments? Do I have a Motion to Adjourn for the day?

DIRECTOR BISSONNETTE: I move.

DEPUTY ATTORNEY GENERAL YOUNG: Judge Gardner?

DIRECTOR BISSONNETTE: I move.

DEPUTY ATTORNEY GENERAL YOUNG: No, Judge -- you didn't get a chance. Judge Gardner had her hand up first. Judge Gardner, is that...

JUDGE GARDNER: Yeah, actually, I had a question.

DEPUTY ATTORNEY GENERAL YOUNG: Oh, okay. Well, then...

JUDGE GARDNER: So, sorry about that.

DEPUTY ATTORNEY GENERAL YOUNG: Okay.

JUDGE GARDNER: I think I have a Police Standards Council meeting on next Tuesday. And I think, Director Scippa, you're going to be there, as well. Is that correct?

DIRECTOR SCIPPA: (No audible response).

JUDGE GARDNER: So that's two of us out of the deliberations on Tuesday, just so that you're aware of that.

DEPUTY ATTORNEY GENERAL YOUNG: Oh.

JUDGE GARDNER: And so, I wasn't sure how long this deliberation was going to take. I have a feeling that it's going to probably go over, because this is a huge section of information. Do you want us to submit some of our voting probably which way we would go on something, or that was my only question?

DEPUTY ATTORNEY GENERAL YOUNG: Because I thought that there would be a lot of discussions around these, I have two days blocked off. Do you know what your schedule looks like for next Tuesday?

JUDGE GARDNER: Oh, great. Then, that's fine.

DEPUTY ATTORNEY GENERAL YOUNG: Is that going to be a long meeting?

JUDGE GARDNER: Director Scippa, do you know?

DIRECTOR SCIPPA: I don't know. I do have the Executive Major that can fill in for me. I have...

JUDGE GARDNER: Oh, I can't...

DIRECTOR SCIPPA: So I could be in deliberations.

JUDGE GARDNER: Great.

DIRECTOR SCIPPA: But those meetings, sometimes they can be lengthy if there's any kind of hearing. So I think everything is -- there's one hearing that day.

JUDGE GARDNER: Okay, great.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. And Rogers, are you not here tomorrow, or are you not here on Thursday?

MR. JOHNSON: Tomorrow with the issue...

DEPUTY ATTORNEY GENERAL YOUNG: Okay.

MS. TSHIELA: I'm not going to be here tomorrow, either. I forgot to -- yeah.

DEPUTY ATTORNEY GENERAL YOUNG: All right. No, we will just -- everyone else will be here tomorrow, correct?

(No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: All right. Well, Commission -- we will keep it going for you guys. Okay. So, now, Gilles, what would you like to say?

DIRECTOR BISSONNETTE: I would like to move to adjourn, so I can get some food.

DEPUTY ATTORNEY GENERAL YOUNG: Do I have a second? Ahni is the second on that one.

DIRECTOR MALACHI: (Inaudible) tomorrow.

DEPUTY ATTORNEY GENERAL YOUNG: I vote yes to adjourn the meeting for today. Commissioner Quinn?

COMMISSIONER QUINN: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Yes, where's lunch?

DEPUTY ATTORNEY GENERAL YOUNG: Judge Gardner?

JUDGE GARDNER: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Lieutenant Morrison?

LIEUTENANT MORRISON: As proof that we do work with the ACLU, yes, I will second that.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Dennis?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Norton?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Ms. Tshiela?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Bye, Rogers. Bye, Ronelle. We will miss you. We will see you on Thursday. Miss us, too. Bye.

(Meeting adjourned.)