



**New Hampshire Commission of Law Enforcement
Accountability, Community, and Transparency**
Remote Commission Meeting via Teleconference
Thursday, August 20, 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*; 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*; Joseph Lascaze, *Smart Justice Organizer, ACLU New Hampshire*; Julian Jefferson, *Attorney, New Hampshire Public Defender*; Eddie Edwards, *Public Member*; and Ronelle Tshiela, *Public Member*.

Also Present: Maria Eklund, *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*; Tonya "Ty" Tyler, *The New Road Project*; Rebecca Brown, *Attorney, The Innocence Project*; Cynthia Mousseau, *Attorney, New England Innocence Project*; Richard Van Wickler, *Chameleon Consulting of New England and Law Enforcement Action Partnership*; Lawrence Vogelman, *Attorney, Shaheen & Gordon, P.A.*; Chuck Douglas, *Attorney, Douglas, Leonard & Garvey, P.C.*; Gregory V. Sullivan, *Attorney, New England First Amendment Coalition and Union Leader Corporation*; Stacey Ober, *Attorney, American Kennel Club*; and Sam Katz.

MS. EKLUND: Now recording.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, everyone. This meeting is being audio-recorded. I am Deputy Attorney General Jane Young. And pursuant to Executive Order 2020-11, I am serving as the Attorney General's Designee.

We have quite a busy day today. So, a number of Commissioners, but there's still emails back-and-forth with Annie Gagne about the Minutes. So I think we're going to have to have the Minutes pushed over until next week for the last two sessions.

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

I'm going to ask the Commission Members to identify themselves by name, where they are located, and if anyone is with them. I will start. My name is Jane Young. I'm at the Department of Justice in Concord. And with me this morning -- in person with me this morning are Kim Schmidt and Annie Gagne. Nicole Clay is joining us remotely. And I will tell the group that Judge Gardner is not available to join us this morning. With that, I will take the roll call. Good morning, Commissioner Quinn.

COMMISSIONER QUINN: Good morning, Deputy Young and Commission Members. Robert Quinn, Department of Safety, I'm at my office, which is located 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. Doing well, thank you. Good morning, Commissioners. I'm Ahni Malachi, my home in Penacook. I am alone. Thank you.

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

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

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

MR. JOHNSON: I am well, Attorney General Young. I am Rogers Johnson. I am the Chair of the Diversity and Inclusion Council. And I am in my residence in Stratham. And I am alone.

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

MR. MCKIM: Good morning, Deputy Young and Commission Members. My name is James McKim. I am President of the Manchester branch of the NAACP. I am in my home office in Goffstown and I am alone.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Lieutenant Morrison.

LIEUTENANT MORRISON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Lieutenant, you are unmuted, but we cannot hear you.

LIEUTENANT MORRISON: IS that better?

DEPUTY ATTORNEY GENERAL YOUNG: There you are.

LIEUTENANT MORRISON: Perfect, my apologies. Good morning, Deputy Young, and good morning, fellow Commission Members. Mark Morrison, on behalf of the New Hampshire Police Association, I am located at the Londonderry Police Department. And I am alone in my conference room.

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

CHIEF DENNIS: Good morning, Deputy Young, fellow Commission Members. Charlie Dennis, New Hampshire Chiefs Association, I'm at my office at the Hanover Police Department, 46 Lyme Road in Hanover, and I am alone.

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

DIRECTOR NORTON: Morning, Deputy Young and (inaudible), Director of NAMI New Hampshire, the National Alliance...

DEPUTY ATTORNEY GENERAL YOUNG: Ken, I think you froze for a moment. And Ken, you are gone. We will loop back to Ken. Good morning and welcome back, Commissioner Lascaze.

MR. LASCAZE: Good morning, Deputy Young and fellow Commission Members. Joseph Lascaze, I am working out of Ipswich, Massachusetts. There are three people in this residence. But no one is in this room.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Ken, I think you're back with us. So we got your name, so if you want to continue from there?

DIRECTOR NORTON: Ken...

DEPUTY ATTORNEY GENERAL YOUNG: Oh, I think Ken's gone again. Good morning, Attorney Jefferson.

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

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

CHIEF EDWARDS: Good morning, Deputy Young and fellow Commission Members. I am at my home in Dover, New Hampshire. And I am alone.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. And good morning, Commissioner Tshiela. How are you?

MS. TSHIELA: I'm good, thank you. Good morning, everyone. I'm at my residence in Durham, New Hampshire. And there are people in the apartment with me. But I'm alone.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. When we get Director Norton back on, we will get his location. It appears he is still on vacation. But we will get -- Maria or Fallon, are you working to get him back on the line?

MS. EKLUND: Yes, we're discussing right now.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Just let me know when he's there. So, fellow Commission Members, today, as you're aware, is public testimony regarding state and local procedures related to the reporting and investigation of Police conduct, and any potential reforms.

I will go through a list of the speakers that I know that we currently have. When we get through the list of the speakers, we will open it up, if there are any other public members who didn't notify us, as required.

So the speakers that we have this morning are: Tonya "Ty" Tyler; Rebecca Brown and Cynthia Mousseau. They are going to speak together. They are from The Innocence Project. Ty Tyler is from The New Road Project.

We have Attorney Larry Vogelmann from Shaheen & Gordon. Laura Kelley has asked to speak, but I think that that is sort of a game day decision, whether she will choose to speak or not. Rick Van Winkler [sic] from Chameleon Consulting of New England and Law Enforcement Action Partnership; Nancy West, who is the Publisher for InDepthNH; Attorney Chuck Douglas of Douglas, Leonard & Garvey; Attorney Greg Sullivan, New England First Amendment Coalition and Union Leader Corporation; Attorney Stacey Ober, who's the Legislative Analyst in Community Outreach in New England Region Government Relations for the American Kennel Club; and Sam Katz.

Those are the speakers that we have lined up this morning. As we have indicated, speakers will have three minutes. I'm going to hold you pretty tight to a three-minute limit. Commissioners, if you have questions, you are limited in the number of questions you have. But you can certainly defer your questions to other Commission Members. So, we stand right now, we have 10 known speakers, for timing purposes. Ken, are you back with us?

DIRECTOR NORTON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, there you are. Hi, Ken.

DIRECTOR NORTON: Hi. Ken Norton, NAMI New Hampshire, and I'm on Great Cranberry Island, which is a beautiful place but not beautiful for internet connections, necessarily. And there are other family members present, but no one is in the room with me.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. So, Ken, did you hear that today's the public speakers and we have a lineup of 10 speakers currently with a three-minute limit each? And I'm going to hold pretty tight to that three-minute limit, so we can get through the public testimony.

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. And with that, I think that we are able to start the public testimony. Fallon or Maria, Tonya "Ty" Tyler is first up. Is that correct?

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Where are we?

MS. EKLUND: That is correct. I'm getting everything ready. Just need one moment.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Just let me know when I can introduce Ty. I'd also ask for speakers, when their name is called, to press *3, so we will be able to identify you more easily. There are a number of people on the line this morning. So, again, please press *3, so we can identify you in the list.

MS. EKLUND: Okay. Our first comment is from Ty Tyler. When I unmute your line, you will hear a prompt that you are unmuted. Your line is now open. Please begin with your...

DEPUTY ATTORNEY GENERAL YOUNG: Good morning, Thank you. It's Jane. Can you hear me?

MS. TYLER: I can hear you, Deputy Young.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, welcome. As I indicated, we have (inaudible) your written testimony in this matter. So you have three minutes to provide a summary of that testimony. With that, the floor is yours and...

MS. TYLER: Deputy Young, there's a lot of static behind you.

DEPUTY ATTORNEY GENERAL YOUNG: So I would ask any other Commission Member -- I do hear that, as well -- I would ask any other Commission Member to go on mute. Once you start to speak now, Ty, I am going to mute my mic, as well. So, the floor is yours. Good morning.

MS. TYLER: Thank you, Deputy Young. Good morning, Commission. My name is Ty Tyler and I have over a decade of law enforcement experience in the State of Florida. I currently was the Sex Crimes and Child Abuse Detective and I'm also a Board Member for The New Roads Project in New Hampshire. We are grateful for this existence of this Commission and have the opportunity to offer suggestions and improvements that can be made to best prove [sic] the New Hampshire child protection.

Over the past year, there has been more than 100 families that have reached out to us in contacts, and that have had contact with Law Enforcement. Unfortunately, their experience has been somewhat negative.

In my letter that I had written to you guys, I went through some considerations that I thought would become positive, one being that the New Hampshire Police Standards and Training Council mandate that all New Hampshire Law Enforcement Agencies to have a base to protect child and understand how to investigate child abuse and sex crimes for their Patrol Officers, as we were not taught in the Academy. Also, to establish a Policy or Statute that allows State Law Enforcement to investigate all reported cases of child abuse within a certain period of time; unfortunately, we see children's cases not being investigated within appropriate times through The New Roads Project.

As we know, New Hampshire is a small town [sic]. And sometimes we lack that training and ability to train our Officers. So we rotate them. We also feel that there is a statewide Policy for all Departments on handling sex crimes and child abuse cases. This Policy should include how to investigate, the interviewing

process on how to interview the victims, the suspects, and others, in a timeframe which is definitely needed throughout the State of New Hampshire.

We know that again New Hampshire's a small State. And Law Enforcement Personnel investigating crimes will have a connection to the suspects, because these towns are very small and there's few Officers working in these towns. A repeat complaint for The New Roads Project is the connections, the unprofessionalism, and the sensitivity that our Officers are lacking.

Training our Officers about the preponderance of the evidence and along with working closely with DCYF, we believe would be a positive impact for New Hampshire. Law Enforcement should have more training, we believe, inhouse. And Officers should be held accountable, if these actions aren't taken.

And in many Departments, we see that Officers are rotated into these shifts, and they don't have the complete training, because as we know investigating child abuse and sex crimes, it does take years to learn how to do these interviewing processes. But allowing Officers to rotate in at three months, six months, to a year, they're just getting their feet wet and they're unable to have the training that they need to do this.

(Inaudible) for accountability, Officers need to be able to hold each other accountable for their actions. There are missteps being taken, whether it's through the lack of knowledge of a conflict of interest. Mistakes are literally the lives of the children. There are always points where adults could intervene, or we could advocate. But Law Enforcement needs to step up and be held accountable for their actions, as well.

The pressure on Law Enforcement is immense, because Law Enforcement is undoubtedly one of the most few professions that has the ability to undertake extraordinary measures to protect children. And meeting that responsibility requires people with a sense of mission and integrity greater than themselves. This is where I think that we need to step in and help them understand that there needs to be more diversity training, more sensitivity training, and more understanding that we all work together and we all are one. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much for your testimony. Commission Members, any questions or comments? Seeing none, I thank you for your testimony, both verbal and written. And have a nice -- have a good rest of the day.

Next will be Rebecca Brown and Cynthia Mousseau from The Innocence Project. Again, if you could hit *3 to raise your hands? Good morning, Attorney Mousseau and Brown. Can you hear me?

ATTORNEY MOUSSEAU: I can hear you. This is Attorney Mousseau.

DEPUTY ATTORNEY GENERAL YOUNG: How are you?

ATTORNEY MOUSSEAU: Good. How are you?

DEPUTY ATTORNEY GENERAL YOUNG: I'm well. Thank you.

ATTORNEY BROWN: Oh, I think -- can you hear me, as well?

DEPUTY ATTORNEY GENERAL YOUNG: I can. Good morning.

ATTORNEY BROWN: Great, wonderful.

DEPUTY ATTORNEY GENERAL YOUNG: So, because you are two presenters, you have a combined time. You've agreed to do your presentations together. So you have a total of six minutes. Again, we have your four pages of written materials. You can trust that the Commission Members have read that. They are very diligent in everything that they receive. So, with that, the floor is yours, and good morning.

ATTORNEY BROWN: Good morning. Thank you very much for the opportunity to present testimony to you today. My name is Rebecca Brown. I'm the Policy Director for The National Innocence Project. The Innocence Project works to free the staggering number of people behind bars who were wrongfully convicted of crimes they didn't commit. And we really regard each exoneration as an opportunity to examine the foundations of the Criminal Legal System and identify ways to prevent future injustice.

The Innocence Project urges changes in the current law in New Hampshire, which permits the shielding of personnel records of Police Officers, even when those records reveal Police misconduct from public view. Currently under New Hampshire Statute Section 91-A:5, Police disciplinary records are exempt from public disclosure as personnel records. And the current law keeps misconduct information from the public and the press, and withholds it not only from Defense Attorneys involved in the active defense of accused persons, but also Prosecutors litigating cases. This law perpetuates a culture of secrecy that systematically and pervasively shields Police misconduct.

It's crucial to a fair and just system that the law be repealed and all allegations of misconduct be publicly disclosed. 27 States have varying degrees of public access, and 12, including States like Georgia, Alabama, and Florida, have full access. When these Bills have been considered elsewhere, Law Enforcement voiced privacy concerns. But none of the States that have longed allowed for transparency in this area have gone back to keeping disciplinary records secret. And there are actually provisions, privacy protections, that are added to some of these laws. And we're happy to discuss them, if you have questions.

But, consider what can happen when this information is shielded from the public. John Burge is a Detective in Chicago. He was an Area Commander who, along with his subordinates, were known as the Midnight Crew, the A-Team. Burge and his Team coerced countless confessions, many of them false, from suspects through beatings, suffocation, mock executions at gunpoint, sexual assault. They directly participated in or approved the torture of at least 118 Chicagoans, most of whom were black. Through these abusive tactics, Burge and his Officers contributed to many wrongful convictions that have since been overturned, leading the City of Chicago to pay out nearly \$60 million to survivors of his abuse. Yet, because of exemptions written into Illinois' Freedom of Information Act, the disciplinary records of some of those Officers are still being withheld from the public to this day, curtailing abatement of their misconduct.

So, States are beginning to take notice of the holes in their laws that allow Police misconduct to continue unabated. They're taking action. And I share this testimony with you today not only as an Advocate for the Innocence Project, but as a former Investigator of Police misconduct for the City of New York.

I have firsthand knowledge of the importance of making all disciplinary records transparent, even those that don't result in discipline. As an Investigator, I observed how many complaints lodged by the public were unsubstantiated or unfounded, even when they had merit. It was only upon further examination that we came to learn many of those complaints really had merit but couldn't be proven

because evidence like bodycam footage had been held back from Investigators, and there were other reasons, too, which I'm happy to discuss during Q&A.

But I mention this to say that all allegations, regardless of whether they're substantiated, should never be hidden from public view. New Hampshire's one of the States with the most restrictive laws in this area, and that needs to be addressed, given the liberty interests and the very integrity of the Criminal Legal System at stake. And The Innocence Project strongly supports addressing the need for this foundational reform to increase Police accountability and transparency in Government operations.

Transparency is inimical to a Government that earns the public trust, reduces the prevalence of wrongful prosecutions and wrongful convictions, and could save the State of New Hampshire millions of dollars over time. Thank you so much.

ATTORNEY MOUSSEAU: Good morning. My name is Cynthia Mousseau. And I'm the New Hampshire-based Staff Attorney from the New England Innocence Project, an organization that works both to correct and to prevent wrongful convictions throughout New England.

I'm here today as part of the prevention aspect of our mission. The New England Innocence Project recognizes that systemic racism underlies the Criminal Legal System in this country. The pervasiveness and insidious nature of racism calls into question the legitimacy of the convictions of many people of color.

There have been 1,310 exonerations of black people since 1989, leading to a total of 13,698 years of incarceration for crimes these people did not commit. In 750 of these exonerations, official misconduct, meaning actions undertaken by the Government, including the Police, contributed to the wrongful conviction.

In New Hampshire, we too often hear "that doesn't happen here", as a resounding refrain, when we try to discuss issues with policing. Those who parrot that refrain are not listening. The grassroots organization in this State have highlighted the need for accountability. Black Lives Matter organizations out of Manchester and Nashua, a prominent Member of which sits on this Commission, include a Civilian Oversight Board to oversee Law Enforcement as one of their seven demands aimed at the Governor and Gubernatorial Candidates. Accountability and transparency in policing are essential to Criminal Legal System that is trustworthy and reliable, as these organizations have acknowledged.

As a Public Defender in this State, I have witnessed the concrete effects that a lack of accountability can have on the criminal legal process. As a Defense Attorney, I have experienced learning information following the resolution of my cases that would have changed my advice to my Clients, or would have changed the outcome of a trial.

When the Police, the very people responsible for public safety, are not held accountable for holding back information, or not being fully truthful, this gives permission to lie without consequence, even when there is concrete evidence exposing those lies. These lies should not be permitted in a Court of Law. The Police version cannot be the official version for the community. The community version must be the official version.

No one should be entitled to hiding (inaudible) as a matter of their profession, least of all those who claim to be public servants. We encourage the Commission to consider measures that would increase transparency and accountability in policing, both for public safety and for the integrity of the Criminal Legal System, such as Civilian Accountability Oversight Boards and full public access to Police misconduct records, as well as removal of qualified immunity.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, both, very much. That was timed perfectly. I don't know if you planned it that way, but to the second.

ATTORNEY BROWN: We aim to please.

DEPUTY ATTORNEY GENERAL YOUNG: Wow; questions or comments from the Commission Members? Seeing none, I thank you both for your -- oh, Joseph, go ahead.

MR. LASCAZE: Oh, I couldn't -- I didn't know if I raised my hand or tried to get the hand up on the participant list. It's been a few days. Hold on. All right, there we go. So, thank you for this testimony today, Cynthia. I really appreciate this.

I had a question for you about your testimony. So, you said, when you were talking about Officer misconduct, disciplinary files, and transparency in New Hampshire, and what I'm wondering is we hear about New Hampshire's exceptionalism and just how different we are, as a State. And this also extends to Law Enforcement.

And what I want to know is, in your opinion, given the secrecy of the Laurie List and specifically disciplinary files of Police Officers, is there a way for the public, or anyone else, to verify whether or not Law Enforcement is living up to that exceptionalism, if misconduct is being kept secret?

ATTORNEY MOUSSEAU: I think that's a great question. I do appreciate the exceptionalism of New Hampshire. I've always loved this State and I have been here for such a long time. I think the answer to that question is no. There is no way for people to ensure that the law enforcement standards are meeting that exceptionalism standard that we hold in New Hampshire.

The Laurie List is really critical for the public to have access to, because we really want to ensure that everybody knows, both -- and in some ways, Commissioner Lascaze, I think it's important to understand that, not only understanding what's been founded but what's been unfounded is important, right? I mean, I think that aspect is important for Police Officers on both sides. It's important to understand that there are complaints that are founded and complaints that are not founded. And I think it's -- I think publication of the Laurie List when we know that those complaints have been founded is critical to people feeling like they can trust and they can believe the Police.

MR. LASCAZE: And this would include people who have been convicted, but they still have questions whether or not Officers in their case had committed misconduct, correct?

ATTORNEY MOUSSEAU: Absolutely; I think the trend in so many of our wrongful conviction cases is to find out after-the-fact that somebody that was involved with our case, as an Officer, did have disciplinary issues, as we highlighted in our written testimony about, for example, George Floyd. I mean, in that particular case, there was an Officer involved that had had a history of disciplinary issues, who, then, was involved in that particular issue.

MR. LASCAZE: Okay. And one last question; for New Hampshire, in particular, when you worked on cases here in New Hampshire, how many individuals have stated situations that would amount to misconduct, if their story was the way that they had said?

ATTORNEY MOUSSEAU: I couldn't give you a specific number. But what I can tell you is this. It is so hard for us, as Attorneys, to advise our Clients, because there is such a punishment for being honest. And because that Police version that we discussed becomes the official version, our Clients are considered to be liars. When people make these accusations, they're frequently accused of lying in order to manipulate the system. I couldn't put a number on it. But I will tell you that it is not infrequent. I experienced it fairly frequently.

MR. LASCAZE: Okay. All right, thank you very much. I appreciate that.

ATTORNEY MOUSSEAU: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Good morning, Attorney Mousseau. For full disclosure, Attorney Mousseau and I worked together at the Public Defender Office before she departed to work at the New England Innocent Project.

So I had a question for you. One of the things that the ACLU recommended is that we recommend a reform to the law so that Police personnel records are retained for a period of 20 years. So, I wanted to get your thoughts on that both in do you support that, and, if so, the timeframe of 20 years? What is your organization's sort of thoughts on how we should look at that recommendation?

ATTORNEY MOUSSEAU: So, thank you for that question, Commissioner Jefferson. And we really support the retention of records for as long as possible. And the reason is that we have -- as science changes and as the law changes, we see things in cases that are very old that we learn over time that these issues have come up. And so, what ends up happening is we will go back 40 years on a case, or 45. And so, those records of Police misconduct still become extremely relevant for us in litigating those old cases.

Wrongful convictions are not always immediately apparent. Sometimes they become apparent over time. As we know, DNA has changed so much over the years. Cases that we didn't realize were bad in the '80s, we now see through DNA were bad. And when we see that, we wonder, how did this person become arrested in the first place? How has this person served 20 years of incarceration for a crime that they never committed? And that naturally inclines us to say, what did the Police see here? What were they doing here? And those misconduct records and personnel records are really important for us.

I can't speak to the 20-year timeframe other than to say the longer, the better, honestly. I mean, we would support retention for as long as possible. And again, for us, we have cases that, I mean, 40 years old, 50 years old. I mean, cases can be very, very old. And still those issues that come up with the Police are very relevant in those cases for those people that have served all this time for something they didn't do.

ATTORNEY JEFFERSON: Thank you very much. I yield the balance of my time.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Thank you, Deputy General. And thank you, Attorney Mousseau for your testimony. I'm curious, just thinking about this whole concept of the Laurie's List, I'm trying to wrap my head around

is there an alternative to having a Laurie's List at all, that would provide transparency in terms of disciplinary history of Officers?

ATTORNEY MOUSSEAU: I think that's a really good question. And I think now is an excellent time to consider creative options, in terms of addressing the different issues that we've been presented with. I think that's one of the great options for this Commission.

One of the things that I think that we've proposed, and one of the things that I think that we've heard from the grassroots organizations in this State, is the Civilian Accountability Oversight Board. I mean, that makes things explicitly public during the time that they're being investigated. And then, the results are also something that become public.

I mean, that's an option that's been discussed. And the reason that that is so beneficial is the public can see the process. The public can feel confidence in the process. The public can feel trust and reliability in that process. They can participate and they can be part of that. And I think that that's, the -- I think that's something that could be explored as an option.

MR. MCKIM: Thank you. And I'm curious what might some of the pitfalls be, if we were to pursue that kind of approach.

ATTORNEY MOUSSEAU: I'm sorry. Did you ask about the pitfalls?

MR. MCKIM: Yes.

ATTORNEY MOUSSEAU: The pitfalls.

MR. MCKIM: Pitfalls, various challenges, things that we might consider including in any recommendations we might make.

ATTORNEY MOUSSEAU: Yeah, I mean, we want to be careful about who's going to be on the Board, because we want to make sure that the community is represented, and that the people whose voices are being heard are the people who -- the people who are considering this are both the people that are affected by it, and the people that it'll affect down the line. So there needs to be a Board that's representative of the community at-large.

And I think that's going to be an important piece of crafting any Civilian Oversight Board. You want to make sure that you have representatives from the community. Any Civilian Oversight Board in our personal opinion should have diverse representation: racially diverse; social economic diversity; trans-inclusive, LGBT-inclusive communities. You want to make sure that people that are directly affected by Police behavior the most, that are affected the most by that behavior, are represented on that Board, so they can sort of represent how they're feeling. And they can sort of take it from the community's perspective.

At the end of the day, it's a community by the people and for the people. I mean, that's what the point of the Government is. So, this is the Board that we would want to make is a Board that's made by and for the people.

I mean, there's -- I am no expert. There are certainly other people that would be able to tell you additional pitfalls, and highs and lows. And actually Rebecca might be in a good position to give you some other points. But that's definitely one that we would want to highlight.

ATTORNEY BROWN: And I agree with everything Cynthia just said. I just would highlight one other element that I think is critically important to civilian oversight is subpoena power, and just to make sure that there's access, that Investigators have access to the documents that they need to properly investigate crimes -- or complaints.

When I talked before about the fact that there are many unsubstantiated and unfounded complaints, sometimes it's because Investigators can't even get the underlying information they need to investigate a case. There was a big expose in ProPublica the other day about how, in New York, bodycam footage hasn't been handed over to the CCRV, the Civilian Oversight Entity there. And so, as a result, it's hard to investigate a case without that information.

When we were information-starved as Investigators, you can't substantiate a case even if it should be. And that is one more reason, sometimes, why cases are unsubstantiated. But there are other reasons, too.

MR. MCKIM: Thank you. That's great information and exactly the kind of information I was looking for. And I will yield back the balance of my questions. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Seeing no -- oh, yeah. Go ahead, Joseph.

MR. LASCAZE: I just have one quick clarification on what was just stated, just so I understand correct. Hold on. Are you saying that it's potential that a claim of misconduct could be unsubstantiated, just because the Investigator wasn't given the necessary information to investigate it? Is that what you're saying? I just...

ATTORNEY BROWN: Sure; yeah. I mean, I think there are several reasons. And there are, of course, different ways that complaints are assessed. So if it's assessed by an Internal Affairs Entity, of course that's peers reviewing each other. So you could see sort of an inherent conflict there.

And when it's civilian oversight, there are many reasons why Investigators cannot or don't substantiate cases. And I can just be frank with you. When I was a 22-year-old, I was investigating Police misconduct for the City of New York. And quite frankly, I was totally ill-equipped to look at those cases of that magnitude, because I didn't really have a profound understanding of the Criminal Justice System. I hadn't come from a community that had been overpoliced. There were many reasons why I as, even an Investigator, was ill-equipped to really look at the full information. And then, sometimes we just didn't get some of the underlying information, because it was held back. And so, we couldn't do a proper investigation, as civilian oversight.

So, I mean, there are lots of reasons why, even if misconduct took place, it might not be substantiated. And again, we were working with a burden of proof and we weren't going to move forward with cases that we didn't feel like could absolutely be substantiated and moved forward into an administrative hearing.

So, there are just reasons why that all happens. And some of it is just we were 22-year-olds. We were being supervised by former Law Enforcement. We felt pressured to make sure that whatever we put forward was absolutely unassailable.

But what I think is really interesting is when you look at wrongful conviction cases, and we go back and ultimately people are seeking civil redress for their wrongful conviction, oftentimes we find a litany of complaints involving the Officer who was involved in that wrongful conviction case that nobody had ever seen. And a lot of those complaints were unsubstantiated. And when Lawyers -- Civil Lawyers go back and reinvestigate, they have a lot more resources and a lot more time. And they're able to really see, in fact, these should have been substantiated cases.

So, the reason why you want to really have a full record is, look, if something has absolutely no merit, that's not going to be harmful to Law Enforcement. But if you see a pattern of 10 unsubstantiated complaints of excessive force, that might tell you something. And certainly, if I was a Police Chief and/or I was a member of the public, or I was whomever, I would want to know the breadth of what I was -- the person's history.

And these are -- it's just critical information, I think, for all people to have. And right now even Prosecutors don't have access to all of that. So they're making charging decisions not even having a full sense of an Officer's history. And that Officer could be impeached on the stand. I mean, there are just many reasons this benefits the entire system.

MR. LASCAZE: Thank you very much for that clarification. I appreciate that.

ATTORNEY BROWN: Sure.

DEPUTY ATTORNEY GENERAL YOUNG: So, I do not see any further questions or comments at this time. So, thank you, again.

ATTORNEY BROWN: Thank you.

ATTORNEY MOUSSEAU: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Have a great day, guys.

ATTORNEY MOUSSEAU: You, too.

DEPUTY ATTORNEY GENERAL YOUNG: Bye. Next up is Attorney Larry Vogelman. Larry, if you could please hit *3, so we could be able to identify you on the line?

MS. EKLUND: And (inaudible), our next comment is from Larry Vogelman. And just one moment. I will open your line, sir. Larry Vogelman, go ahead. Your line is open.

DEPUTY ATTORNEY GENERAL YOUNG: Good morning, Larry. It's Jane.

ATTORNEY VOGELMAN: (No audible response).

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

ATTORNEY VOGELMAN: (No audible response).

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Good morning, Attorney Vogelman.

ATTORNEY VOGELMAN: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Kim or Fallon, are we having some issues?

MS. EKLUND: His line is open. I would just ask that he make sure that he is muted on any (inaudible) on his computer.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Vogelman, I'm not sure if your computer is still muted. We are not able to hear you. But we have unopened your line. We have opened your line. So why don't we just -- we can try to figure that out, ladies. And then, we can come back to Attorney Vogelman.

Is Laura Kelley on the line? If so, hit *3, please. There was a question as to whether Ms. Kelley was going to call in. Okay. So we will move onto Rick Van Winkler [sic]. Mr. Van Winkler, if you could hit *3, we could open your line. And you'll be able to testify.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Is he on the line, ladies?

MS. EKLUND: I do not see his name called in. We do have an anonymous caller. If you'd like, I can (inaudible) the individual.

DEPUTY ATTORNEY GENERAL YOUNG: No, we will continue. Next up is Nancy West. Ms. West, if you're on the line, *3, please, so we can -- Ms. West on the line, ladies?

MS. EKLUND: Give me one moment. I do not see her on the computer. I am checking to make sure she has not called in.

MS. REED: Deputy Young, this is Fallon. If I may for one second, as Maria said, we have a anonymous number. Maria will unmute them and we will just check their name. And if it's not one of the callers that you've already identified, we will just put them on hold. We're just not sure. We can't identify the line. So I think to make sure it's not one of the folks we're looking for, if you're okay with us just checking?

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much.

MS. EKLUND: The individual on the anonymous line has been unmuted. If you've been called on, please speak your name.

MR. VAN WICKLER: Good morning. It's Rick Van Wickler. How are you this morning?

DEPUTY ATTORNEY GENERAL YOUNG: Good morning, Mr. Van Wickler. How are you?

MR. VAN WICKLER: Thank you. I apologize. My number's unlisted, which is probably why it came across as anonymous.

DEPUTY ATTORNEY GENERAL YOUNG: No problem. So the Commission Members have your three pages of written testimony. If you've been on the line this whole time, you know that you have three minutes in which to provide a summation of your written testimony. So, with that, good morning, welcome, and the floor is yours for the next three minutes.

MR. VAN WICKLER: Thank you, Deputy General Young and Honorable Committee. My name is Richard Van Wickler. And in accordance with RSA 100-A:1, I am a retired Chief Law Enforcement Officer of 32 years in New Hampshire. I want to thank you for the opportunity to testify today for this important work during this very unique time.

I was responsible for 84 Employees, 54 of whom were Sworn Law Enforcement Officers. But I also employed Doctors, Nurses, Mental Health Workers, and Case Managers. The Exculpatory Evidence List, or the Laurie List, as it was previously known, was intended, at a minimum, to provide a list of Police Officers that have credibility issues.

And I often wondered if there was a confidential list of Medical Personnel or Mental Health Workers with credibility problems, because I employed them, too. And if not, why not? Or why do the Police have a Laurie List? What good does it serve, if there's no public or Employer access to that list?

The New Hampshire Board of Nursing is a Regulatory Board that, according to its website, safeguards the life and the health, and public welfare of New Hampshire citizens. Knowing all of the training that my Medical Personnel had to go through, the testing, the licensure, accountability, the Board of Nursing has public information available on Board Actions, meetings, continuing education, competency requirements, Board access, enforcement, licensure, all available for the public to see. And I pondered why we could never have such information for our Police Officers.

The public can go to oplc.nh.gov and quickly access the name of individuals who had hearings on their misconduct. They can see their License number, the date of the hearing, the disposition of that hearing. And there seems to be no confidentiality in the medical profession when it comes to misconduct or discipline. And I think we should be held to the same standard.

It's also essential that I address the issue of culture. When the culture of an organization is stronger than the training or accountability for that profession, we have significant problems. Most studies show that the skillsets taught in Police Academies are not adequately utilized in the field.

Our defense in law enforcement, when we're confronted for accountability on a mishandling of an issue, we say, well, we provided the training, or it's a matter of personnel. Therefore, it's confidential. Well, even if the training is provided, do our Officers take it to heart? And how do we know? Sitting in a class does not define a culture, but it does check a box.

As public servants, we should not fear examination and feedback by the public. The medical and teaching professions have high accountability standards and they have no weapons. They have no powers of arrest over civil liberty. And if they do step out-of-line, everyone knows who they are.

So I'm an advocate of the three recommendations of Exculpatory Evidence List, or the Laurie List, should be made public in the way that our medical profession is monitored, not only for transparency purposes, but so the public can ensure that disclosures are being made. Secondly, the personnel files of Law Enforcement Officers ought be retained the same as any other public Employee's personnel file, which is 20 years post-retirement or termination. And finally, any perception that Police are above accountability, which is the impression that qualified immunity creates, of course, is problematic, and that impedes public trust. I deeply appreciate this Committee's work. And I thank you for the opportunity to contribute to it this morning.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much. Questions and comments from the Commission Members? Mr. McKim?

MR. MCKIM: Thank you, Deputy. And thank you Attorney Van Wickler [sic] for your testimony. I wanted to just check on a couple of things, and just to understand for myself what your thoughts are. You just made a statement about most training not being actually used in the field, the skills that someone acquires through training not being used in the field. And I have a learning and development background. And I have seen that happen time and time again. And the reason I've seen it happen is because the Supervisors in the field aren't trained on how to help ensure that those skills are, in fact, used.

And I'm wondering if -- first of all, if that's what your -- if you have an observations about that in New Hampshire. And do you have any data supporting that statement here in New Hampshire? Do you know of any data in New Hampshire that would support that statement?

MR. VAN WICKLER: To the answer of data, the answer is no. I do not immediately. But I did recently read an article that was out of California on this particular issue. With respect to my ability to -- or having witnessed this, I witnessed it in my own institution.

I served in the Army for 26 years. I witnessed it there. I've witnessed it in the field with New Hampshire's Police Officers. And while I've never been given a ticket, I have been given a couple of warnings. And it's amazing the difference in conduct between the New Hampshire State Police, which, in my experience, has always been exception, versus a smaller New Hampshire Department that doesn't have the benefit of such training, which is absolutely deplorable. And I'm a middle aged white guy in a pretty nice vehicle. So I can't imagine what they do in other instances.

And that's why we call it a culture. And the remedy for this is for the Chief Law Enforcement Officer and Field Commanders -- Senior Field Commanders to enforce the culture -- the true culture that we all want. But, as we become friendly with one another, accustomed to one another, we are close to one another in the very difficult work that we do. We have a tendency to cave into a desire for decision, which we heard in earlier testimony this morning. We cave into the thin blue line, if you will, which is just unacceptable in public service, as defined as it should be in this country.

MR. MCKIM: Thank you for that. And one last question, to pick up on that notion of the local communities and that friendliness, what's -- what might we recommend to address that? Is there

something around leadership training that we need to include, or culture around leadership? What might you suggest we recommend to help address that situation?

MR. VAN WICKLER: I have always felt in my entire three decades of work here in law enforcement New Hampshire that eight hours a year for Police Officers is just not enough. How do we police a small Agency with a Chief who's probably not up to par in a small town who employs people who are probably not up to par in a small town is a very difficult challenge for us all, when you have 223 communities in the State of New Hampshire that have these kinds of situations going on. Larger Departments have more training. They have better funding. Oftentimes, they have a better culture, although not always.

So the recommendation that I have would certainly be to give New Hampshire Police Standards and Training more of an opportunity to provide training to those Chiefs, and their Staff. And also, some very stern recommendations to citizens of New Hampshire who are going to raise their hand and be a Chief of Police, to uphold the appropriate culture and to uphold the laws of the State of New Hampshire, and remember Sir Robert Peel's, one of his nine principles that the Police are the public and the public are the Police. We have to get away to thinking that Law Enforcement is above the public, which is right now much too widespread in our State.

MR. MCKIM: Thank you. And I -- that was my last question.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Lascaze?

MR. LASCAZE: Can everyone hear me?

DEPUTY ATTORNEY GENERAL YOUNG: Yes.

MR. LASCAZE: All right, good. Thank you, Mr. Van Wickler, for your testimony today. I wanted to ask you a question, because I am just trying to understand, when you're talking about culture, you're talking about being a Chief Law Enforcement -- that you were former Chief Law Enforcement.

I'm looking at your testimony and I'm wondering. I'm paraphrasing what you said. You said that it's up to the Chief to enforce the culture. In your time as a Chief Law Enforcement Officer, have you ever referred anyone to the Laurie List?

MR. VAN WICKLER: At least five people, and the problem is I don't even know if they made it. I followed the law, in terms of putting a packet together, forwarding it to the County Attorney's Office. I have no idea if they made it. But I did my due diligence in enforcing that at least five times.

And I would have no way of knowing how to access that list or who to call to see if they did. I know it goes from me to the County Attorney. From the County Attorney, it's supposed to go to the Attorney General's Office. My packets were complete. There was no recommendations for any modifications. So, yes, sir, I have done that.

I've also wrestled Unions over the discipline of Employees for inappropriate conduct, which, in a lot of institutions, might have been acceptable. It's not acceptable in mine. And unless I'm out of my office walking around, actually witnessing how my Line Staff is behaving, I don't know what the culture is and I can't rely on what I think it is.

I have to get out there and see it. And I have to have Field Commanders and Supervisors that I can rely on that have that shared vision. And I did. And if I didn't, I would make sure that they would be replaced. And it caused me a lot of work and a lot of headaches. I was successful in making sure that the appropriate culture and due respect for the citizens of New Hampshire...

MR. LASCAZE: Okay. Yeah, so this is aimed at preserving a culture of Law Enforcement that the public would have faith in and would feel as if it accurately represented the values and principles of good policing. That's what you're speaking about specifically?

MR. VAN WICKLER: Yes, sir. I think if the public felt confidence that they knew that if a Police Officer acted inappropriately -- or maybe the Officer didn't act inappropriately, but there was a complaint, that it was at least addressed in a sober, meaningful, serious way. There would be a lot greater faith in the Law Enforcement of New Hampshire. And I, for one, think that that's a very real issue. Just because Police Officers or Staff are called to the front office to explain their actions doesn't mean they've done anything wrong.

MR. LASCAZE: Um-hmm [yes].

MR. VAN WICKLER: But the fact that you, as a Chief or Administrator, at least take some action and document that action, and are field to say appropriately to the public that this issue has been addressed, I think their faith, then, increases in our ability to provide adequate Law Enforcement.

MR. LASCAZE: Okay. All right. Thank you very much. I appreciate that. I have no further questions.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Attorney Jefferson?

ATTORNEY JEFFERSON: Thank you. Mr. Van Winkler [sic], I have one question for you, as a former Law Enforcement Officer. One of the things we're deliberating is whether or not there would be value in making a recommendation to have a independent statewide Agency that would investigate and adjudicate whether or not Police -- allegations of Police misconduct are sustained or not sustained.

Can you give us your thoughts on if you see any value or utility in that? So removing it from individual Agencies investigating it, themselves, and letting an independent Agency adjudicate those matters.

MR. VAN WICKLER: I think it does have merit and I think it has a significant value, because I think part of the perception -- not calling it a truth. I'm calling it a perception -- is that when the Police investigate the Police, things will be covered up, or information to the public will be limited. So having independent bodies that can examine these complaints, these issues, protocols, whether or not things were done correctly, is a very good idea, in my view.

ATTORNEY JEFFERSON: Thank you very much. I yield the balance of my time.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much. Mr. Van Winkler [sic], I see no additional questions for you. So, with that, I would thank you for your testimony and have a nice day.

MR. VAN WICKLER: Thank you, Deputy General Young. And thanks, Honorable Committee. Have a great day. Thank you for your work. Bye, for now.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much. I believe that Attorney Vogelman is now on the line. And Attorney Vogelman, can you hear me? It's Jane.

MS. EKLUND: Just give me one moment. I have to transition over.

DEPUTY ATTORNEY GENERAL YOUNG: Okay.

MS. EKLUND: Sorry.

DEPUTY ATTORNEY GENERAL YOUNG: That's okay.

MS. EKLUND: Okay. Our next comment is from Larry Vogelman. I will open your line so you may speak. And it looks like it is open. Please go ahead. Your line's ready.

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

ATTORNEY VOGELMAN: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Oh.

MS. EKLUND: We also have a phone line for him, I believe. So just give me moment and I will attempt that. Larry Vogelman, are you on the line? And can you address the Commission?

ATTORNEY VOGELMAN: Can you hear me now?

DEPUTY ATTORNEY GENERAL YOUNG: Oh, thank God. Yes. Hello, Larry.

ATTORNEY VOGELMAN: Okay.

DEPUTY ATTORNEY GENERAL YOUNG: So, Larry.

ATTORNEY VOGELMAN: Thank you. One of the problems with being 71 years old is oftentimes I'm technically sound.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, well, I am, too. So, Larry, it's Jane. I don't know what that sound is.

MS. REED: Deputy Young, it's Fallon. Mr. Vogelman, are you able to turn the speakers off on your computer?

ATTORNEY VOGELMAN: Okay. Yeah. Can I just do it by phone and hang up on the computer?

MS. REED: Yes, sir. That would probably be better.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah.

ATTORNEY VOGELMAN: Yeah, so I'm...

DEPUTY ATTORNEY GENERAL YOUNG: Take your time. We will wait for you, Larry. Go ahead.

ATTORNEY VOGELMAN: How is that?

DEPUTY ATTORNEY GENERAL YOUNG: Oh, it's like a fire alarm.

ATTORNEY VOGELMAN: So I'm trying to close (inaudible). How's that?

DEPUTY ATTORNEY GENERAL YOUNG: That's great. Can you hear me?

ATTORNEY VOGELMAN: Great; yes, I can.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. It's Jane.

ATTORNEY VOGELMAN: Hi.

DEPUTY ATTORNEY GENERAL YOUNG: How are you?

ATTORNEY VOGELMAN: I'm doing okay.

DEPUTY ATTORNEY GENERAL YOUNG: It's okay. Okay.

ATTORNEY VOGELMAN: I want to thank Deputy Young and the Commission for allowing me the few minutes to give my testimony. One of the downsides of being on the phone, I don't see my time getting knocked off on the screen. So if somebody could just let me know when I've got 30 seconds left, I'd appreciate it.

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

ATTORNEY VOGELMAN: In my submission, I gave you a little biography, because I thought it was helpful for you to know my career and the many different hats I wore in interacting with the Police, both as

a Public Defender in the South Bronx, a Law Professor, the Deputy Director of the New Hampshire Public Defender, and now in private practice.

There are tons of issues that are relevant to the inquiry that this Commission is engaged in. But I highlighted in my written material four of them. And I highlighted them by giving specific examples in my cases. And when I'm finished, if you have any questions about the ones I'm not going to talk about right now, I'm here and free to share with you my almost-50 years of experience with Law Enforcement and the Criminal Justice System.

The one I really want to highlight was touched on just before, and that is some sort of accountability, some sort of civilian accountability, some sort of method to hold Law Enforcement who violate the rules accountable for their actions, whether it be by prosecution, civil suit, or employment consequences. I want to start out by saying I've been doing Civil Rights in New Hampshire just about 20 years. And 90% of the Agencies, I have never even got a complaint about their conduct, which is unusual, because most of you know that many criminal defendants are not shy about complaining about the way they're treated. But about most of the Agencies, I don't hear a peep. It's that 5% that I believe are poisoning the well. And one of the reasons they're poisoning the well is there's no real oversight.

If any of you have had the ability to read the Audit Report that Crow Associates did of the Salem Police Department, you can get a taste of some of the things that happen in a Police Department that tries to police itself. Things like the first time a complainant walks into the Department to make a complaint, they're told that if their complaint turns out to be unfounded, they will be arrested; things like very short deadlines for complaints; things about the Union Contract allowing Officers time to get their stories straight.

That Report was a indictment of Salem, but also was an indictment of some other Departments. But in my remaining time, I'd like to talk about the Attorney General's oversight into what is euphemistically called Police-involved shootings.

I probably have investigated 99% of those in New Hampshire since I've gotten here. And in very few, frankly, did I find basis for any lawsuit. But the process is, is that the Attorney General and the Major Crimes Unit investigate the Officer's conduct. And one thing that's never clear in the press and never clear to the public is that investigation is an investigation into whether that Officer committed a crime, whether that Officer should be criminally charged.

The AG's Office and the Major Crimes Bureau does not make a recommendation as to whether or not that Officer should be disciplined, should be found civilly liable. It only addresses criminal behavior. And there's one in particular which I think highlights one of the problems.

A number of years ago, a young drug dealer in a small town was involved in a botched sting operation with the small town Police Officer. As he was fleeing the scene, he was shot three times while he was driving away. The Officer claimed self-defense.

The AG's Office did a very detailed Report, interviewed everybody. It was a very impressive endeavor. What wasn't impressive was the end of the Report. The end of the Report stated that Sergeants involved had given three different stories as to why he shot at the gentleman in the car and killed him. And the AG said none of those stories constituted self-defense. But, because we really don't know what happened, because he has different stories and the other guy's dead, there is no basis for prosecution.

For those of you, like Attorney Jefferson and myself, who do criminal defense, we really know that none of our Clients get that kind of consideration. None of our Clients tell stories that aren't self-defense. But because there's no corroboration, or they're inconsistent, they're given a free ride.

That's the kind of investigation the AG's Office does when a Police Officer in this State shoots a citizen. There's got to be a better way. There's got to be some sort of civilian oversight. There's got to be real Internal Affairs procedures in the Department, because, absent that, none of us will have any, any confidence that the Police Officers in this State are really being looked at, and the good Police Officers are painted with the same bad brush as those that commit offenses. I have no idea where my time is. So, then, normally I could keep talking for a while. You tell me. Do I have time left?

DEPUTY ATTORNEY GENERAL YOUNG: You don't. But I have the authority to give you another minute, if you'd like it, Larry.

ATTORNEY VOGELMAN: Okay. So why don't I pick out one other thing? And it's what's euphemistically called the thin blue line. And I could tell you, since I started out in the South Bronx, that Serpico is real, for those of you old enough to remember. That park was across the street from my office. Police Officers really are almost forced, or encouraged, not to testify and give information about other Officers. They're just not. If they do, there are consequences.

The example I will give is a Client of mine with a long history of domestic violence. He was arrested around 20 times, while drunk and being with his girlfriend. His girlfriend was arrested actually 35 times for being drunk with him.

But one day, he's leaving her apartment where he's not supposed to be and he's being followed by four Officers from that Police Department, a K-9 Officer and three other Patrol Officers. At the end of the day, he has a fractured orbit, pretty serious injury. The non-K-9 Officers all write in their Reports the same chronology, that this man was running from the Police, tripped, and hit his head on a railroad tie. And that's how he fractured his orbit.

However, they never spoke to the K-9 Officer and never realized that he was going to tell the truth, because his Report says that his German Shepherd tackled my Client and then "being in fear for the safety of my K-9, I proceeded to strike the perpetrator three times in the fist -- in the head with my fist". He testified as to what happened, but the impetus to cover up for Police misconduct is so great that we have the other three Officers just made up a story to help protect the K-9 Officer, who obviously felt he needed -- did not need any protection.

Things like that happen all over the country. I'm fortunate now that I'm doing these cases all over the country. And as long as those things happen, and as long as Police Officers allow the bad Police Officers in their midst, the very, very small percentage of bad Police Officers to get away with what they get away with, then the community will have no faith in the Police. And it really will be like it is today, us and them, rather than real community policing. And if you have any questions, I'm happy to answer them.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Attorney Vogelmann. Questions or comments from the Commission Members? Director Norton?

DIRECTOR NORTON: Thank you, Attorney Vogelmann, for your testimony. Thank you, also, for all the work that you do with Veterans. We're going to hear more about Officer-involved shootings. But I really appreciate you raising this issue.

And I know that other States have changed the standard of investigating use of deadly force. I believe California changed it last year from -- and I'm not an Attorney. So bear with me -- but from

reasonable use of deadly force to necessary. Some States have said justified. And other Advocates have asked for it to be -- for the definition to include last resort.

Do you think that we need to change that definition? Do you have suggestions about how to change that definition in terms of the piece that you talked about relative to the Attorney General's Office doing a criminal investigation versus a thorough review that what other alternatives might have been to the shooting?

ATTORNEY VOGELMAN: Yeah, I feel strongly about that, because if there is an investigation into what happened that isn't criminal, you could figure things out that maybe we need better training on. You could have impact on the hiring and supervision of Police Officers. You could figure what went wrong. You could figure.

Right now, we have this defund the Police movement, which has a very unfortunate name. But basically the movement is saying just don't send Police Officers. Have Social Workers go there. Have somebody who can talk to a mentally ill person there. So I think an investigation that is broader than just a criminal investigation is an investigation that will help Police Officers better do their jobs, that will protect all of us, and will help us know better how to train Police Officers to do what they're supposed to do, which is serve the community.

DIRECTOR NORTON: Thanks for that. And do you think that that should be public? I know that, as a Social Worker, that, in our community mental health system, for instance, when there's a suicide death, there may be a psychological autopsy done. It's protected confidentially, so that it is a learning process. And there can be a thorough examination without the threat of that information being determined for civil litigation. And I know that might be controversial. But how do you balance that public transparency with the ability to genuinely learn and investigate these types of situations?

ATTORNEY VOGELMAN: I think there are ways to do it. Other jurisdictions do-do that. I think that any particular mental illness or disorder by a Police Officer need not specifically be laid out to the public. The public should know, though, that the man has, or woman has, issues. And that's why this happened.

And we face this in the courts on a day-to-day basis. Lawyers do not have free rein to bring up mental health issues of anybody in the system. It has to be relevant to the inquiry. And it has to protect the privacy of the Police Officers. And we have -- we're relatively good in doing that in most cases. And there's no reason why we can't do that in these cases.

DIRECTOR NORTON: Thanks. Yeah, I meant not so much the mental health of Law Enforcement but just the whole -- a whole look at an Officer-involved shooting and how transparent it should be, as opposed to try to make it a learning situation to address what you talked about for training and other areas.

ATTORNEY VOGELMAN: Well, I think nowadays our hand is really forced. If we do the latter and do an investigation that's not shared with the public, the cities and towns across this country, you'll see what happens. The public will demand information. And I believe the public is entitled to information. And that information could be redacted to protect privacy rights both of the person who's shot and the

Officer. But I think our society now is no longer going to allow these instances to be investigated behind closed doors. I know the young people won't.

DIRECTOR NORTON: Thanks. So, would it be your position that you would support some type of public Commission to investigate all Officer-involved shootings that goes beyond what's currently done through the Attorney General's Office?

ATTORNEY VOGELMAN: Definitely, and even more broadly. I don't think only cases in which an Officer shoots and kills a citizen should be investigated. I think any allegations of serious misconduct by the Police should be investigated.

DIRECTOR NORTON: Thank you. And I yield any of my remaining time.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much. We have questions from Commissioner Lascaze, President McKim, and Commissioner Quinn. So, with that, Joseph?

MR. LASCAZE: Thank you very much, Deputy Young. Thank you very much, Attorney Vogelman, for your testimony today and in highlighting these specific New Hampshire instances. I had a question for you, because I'm looking at your testimony. And you said here that you were talking about an instance that an Officer was negligent in his duty involving a missed -- an overdose.

Okay. So what I wanted to ask you was we've heard that qualified immunity and official immunity, it's made to protect Officers when they do have to make split-second decisions. But in this situation, it seems as if you're saying that inaction is what led to the unfortunate passing of this individual, and that that negligent action, there was no accountability on that. Is that what you're implying?

ATTORNEY VOGELMAN: Yeah, well, let me put my Law Professor hat on for a second. There are two distinct methods to litigate Police misconduct cases. There's the Federal Civil Rights Act, § 1983. And then, in many jurisdictions, there's regular State Law: battery, false arrest, things that all citizens are not supposed to do.

MR. LASCAZE: Um-hmm [yes].

ATTORNEY VOGELMAN: That point was not really addressed to qualified immunity. I know the Civil Liberties Union and some other testimony addresses that even more completely than I do. But, the Supreme Court of New Hampshire has created a judicially-created immunity. Let me say that again. It's judicially-created. There is no Statute that says you cannot sue a Police Officer for a tort -- for a State tort for negligence. It's not there.

What happened in a particular case is the Supreme Court thought it should be there. And the first case is *Everett v. Town of Hooksett*, where they specifically said, under State Law, if the Police Officer is negligent, he or she is immune from State Law prosecution. And that got expanded in a later case to even intentional torts, intentionally beating up somebody. Under State Law, in New Hampshire, unless it's changed, you have no cause of action.

And that's why it's even more important to deal with qualified immunity in Federal Law, and why I really urge this Commission to recommend one of things I know has been recommended, which is fashioning a State Court cause of action for violation of the State Constitution and violation of citizens' civil rights, which does not include either qualified immunity or this misnomered (ph) official immunity.

MR. LASCAZE: Okay. Thank you. And what I'm curious to know, then, is have you represented any Clients where you either had to turn them away, or the case was dismissed because of that being used as a defense, but there was misconduct that had taken place?

ATTORNEY VOGELMAN: Well, the case I put in my testimony, even though I made it anonymous, was one case that I lost because of that. And I turned Clients away. I get on a given week anywhere from 2 to 10 letters from either inmates or criminal Defendants about Civil Rights cases. And I turn most of them away.

And if the only avenue is a State Court Action, there are two things that we'd reject most of those cases. Number 1 is what we discussed, the official immunity for torts. But there's also a Statute which deals with sovereign immunity of municipalities and counties, and municipalities. The law only allows lawsuits against cities and towns, if it involves motor vehicles, premises, or roads.

So, if you can't sue the Police Officer, you would think you can sue the town as the Employer of the Police Officer. But, no, unless that happened on a road, unless it's a motor vehicle collision, or unless it's a slip-and-fall on premise, the municipality still has sovereign immunity. So there's a whole package of things that we have to look at in order to fashion a law that really gives citizens remedies when they're injured by the Police.

MR. LASCAZE: Thank you. And one last question, because you just said it right now, remedies for our citizens. And when you have your interaction with your Clients, and when you're speaking with them, do you think, or have your Clients expressed that suing a Police Officer for misconduct is not about a monetary gain, but as their form of accountability?

ATTORNEY VOGELMAN: It's mixed. Yeah.

MR. LASCAZE: Okay.

ATTORNEY VOGELMAN: As you know, different people are different people. I think particularly if there's injuries, and bills, and lost employment, many of my Clients think about monetary gain. Most of them come in and say it's not the money. I just want accountability. And very often, I have to battle with them, if there's no real injuries and they just want me to do a § 1983 Action just to vindicate them. And I do some of those. But I also advise them that I've got to keep the electricity going in my office.

MR. LASCAZE: Okay.

ATTORNEY VOGELMAN: So, it's really both. Unfortunately, particularly in death cases, no amount of money, no amount of money is going to bring that loved one back.

MR. LASCAZE: Right.

ATTORNEY VOGELMAN: And that's why very often, when I'm settling cases, I'm looking to interject some nonmonetary relief, some change in procedure, or even something as simple as an apology to the citizen from the Police Officer, for a more holistic solution than just money.

MR. LASCAZE: Okay. Well, thank you very much. I really appreciate this today. And I will yield the rest of my time.

ATTORNEY VOGELMAN: You're welcome.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. President McKim, followed by Commissioner Quinn.

MR. MCKIM: Thank you, Deputy. And thank you, Attorney Vogelmann, for your testimony, very informative. I want to ask you about culture and culture change. And you're really making some excellent points about our needing to have -- so the accountability for not just the criminal activities but the ethical lapses and bad conduct.

And solutions we've been discussing, many of them have to do with after-the-fact, something having -- taking place, bad behavior having happened. I'm curious to hear your thoughts about what should be done before the fact, in a proactive mode. And training is certainly one thing we've talked about.

But I'm interested in hearing your thoughts about how particularly these small towns, where there aren't that many Officers, how the culture can be changed there, as well as in the larger offices. I don't know that we really have much of a problem with the culture in larger offices. But I'm curious to hear your thoughts about how does the culture get changed within the Agency?

ATTORNEY VOGELMAN: I think the best way to understand that is to understand that the culture of any Agency comes from the top. I was happy to hear the testimony of the former Superintendent of Cheshire House of Corrections, because he ran a hell of a good jail. And I remember him testifying before the Death Penalty Commission, which I was a Member of, and was asked by a State Trooper, doesn't the death penalty protect your Officers from inmates who might want to hurt them? And his answer was, no. What protects them is treating them like human beings. And that's really what should be carried over into law enforcement.

When you train young Lawyers, or you advise Lawyers graduating Law School, you tell them, be careful about what your first job is, because that's where you're going to get your ethical compass. That's where you're going to get your sense of right and wrong, because you're just first starting and you have to look up to those that have been doing this longer.

And a Police Department is the same. If you have a Police Department with a culture of serving the community, with a culture of don't use profanity towards citizens, with a culture of being helpful, rather than arrogant, if you have Departments like that -- and there are many in New Hampshire -- you find that the young Police Officer adapts to that culture.

But if you have cultures like what was pointed out in the Salem Audit where none of that happens, where bad behavior is rewarded and not punished, then a new Officer intimidated and surrounded by the other Officers adopts that culture. So culture is really crucial.

This notion of a thin blue line protecting New Hampshire from the hordes from Massachusetts, the idea that I'd rather be judged by 12 than carried by 6, the idea that it's us and them, or we got to stand together, that has got to change. And the way it's going to change is from the top, from the Chiefs, from the white shirts, from the Supervisors, from your Training Officer, from day 1 telling that Police Officer this is how we do it. And this is how we become part of the community. And I think, until that happens, almost none of the other changes that we're discussing will make much of a difference.

MR. MCKIM: Thank you for that. That's certainly consistent with what I've observed, in terms of changing culture in organizations. So I appreciate that. And so, looking at how we might ensure that that top-down approach exists, what are your thoughts about how we might check Agencies for that? Is that where the Civilian Oversight or Review Board comes in, which not every community can have? Is there an audit process to be undertaken? How do we determine that the culture in the Law Enforcement Agencies across the State is what it should be?

ATTORNEY VOGELMAN: Well, one thing you should encourage the municipalities to stop hiring Chiefs at the end of their career who was thrown out of their earlier Departments because of misconduct. And that happens in New Hampshire a lot.

The municipality should be looking to hire the kind of Chief that they believe will instill in that Department the kind of respect for the community that the community deserves. And I think that's step 1. Make sure that when you hire a Chief, you're hiring somebody that really, really wants to be part of the community and doesn't want to be us-and-them with the community.

MR. MCKIM: And just a follow-up for that -- and you might not know the answer to this, but is that a tall order to fill? Are there many Chiefs out there, retired, who are of that ilk and the municipality wouldn't have much trouble finding them? Or is that one of the challenges that we face here?

ATTORNEY VOGELMAN: Well, I don't know. I know that some of the Departments I have a lot of respect for have managed to hire either within their ranks, or from outside, really good Chiefs. It's not always easy. But the rewards are many.

MR. MCKIM: Thank you and that was my last question.

ATTORNEY VOGELMAN: You're welcome.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Quinn?

COMMISSIONER QUINN: Thank you, Deputy. I'll be brief. Good morning, Attorney Vogelman. Thank you for joining us and thank you for submitting your written testimony. I just have a comment and a question.

And I'm not sure how much you've followed the Commission, but we've spent a lot of time dealing with the mental illness problems and where they intersect with Police. And as you know, we've got Mr. Norton on the Commission.

And one of the things we've looked at strongly and discussed is increased training and CIT training, and an integrated approach to how Law Enforcement deals with these cases that are presented to them, sometimes presented rapidly unfolding. Sometimes they're meeting with suspects. They don't have a clinical diagnosis.

But, as you state in your testimony, these are potentially very dangerous situations, psychotic episodes of people with knives. And everyone on this Commission, I think we've talked about this and we all want the same outcome. We want safety for everybody involved.

So, having said that, we've recommended more training. We've recommended these integrated approaches, CIT training. Clearly, we don't want to send a Healthcare Provider into a dangerous, deadly situation alone. But, knowing that, I'm just curious if you think we're on the right track, or if you have any recommendations that might differ for that, as this is definitely something that is very high on our list and we see it, as well?

ATTORNEY VOGELMAN: Yeah, as you probably know, that is really what the defund Police movement is asking for. I'm not saying send in a Social Worker in a volatile situation alone. But I'm saying, don't send the Police Officer in alone. Send somebody in who is trained to talk to people, who is trained, even more important, since your mouth isn't your most useful organ, your ear is. Send somebody in who's trained to listen to people. That will deescalate the situation much quicker than somebody in a uniform with a gun ordering somebody to drop a knife or get down on their knees.

Right now, I think more than half of my cases that involve the death, or serious injury, of civilians in Police encounters around the country, more than half start out with no criminal conduct whatsoever; start out with a cry for help; start out with one case in Northern New Hampshire, somebody who's having an epileptic fit. And when the Police came, the young Officer, instead of trying to keep things calm until the ambulance came, actually tased this person who's having an epileptic fit, which is caused by the electricity in the body. Luckily, he wasn't killed. So, yes, if you think it's a high, dangerous situation, have Police Officers present. But you need people who are better trained to deal with mental illness.

It's unfortunate that in our country we really don't do that very well. We toss the people with mental illness into the Criminal Justice System. And why is that? Because that's the system that's funded; you have to give money to Officers, to Public Defenders, to Judges. So what happens? The largest psychiatric facility in the world is the Los Angeles County Jail. And any of the Superintendents in any of the jails will tell you that the overwhelming majority of people incarcerated have serious mental illness. And we, as a society, really can't deal with that.

The Criminal Justice System is not the system that should be dealing with people with mental illness. Ken Norton will be the first one to tell you that. And until we deal with that, until we get the culture changed and understand that the Police are there not to fight crime but to help people, and so, along with the Police, have trained people arrive at scenes where there is high tension among everybody, then it's just going to keep repeating. And again, it's exactly what the defund the Police movement is talking about, taking some of that money away so there are Social Workers, so there are Negotiators, so there are Psychologists involved in citizen encounters with the Police.

COMMISSIONER QUINN: Well, thank you for that. And I think that that is what we have been discussing and recommending. So, I think the Commission has kind of narrowed in on many of the points that you've raised. And I think the CIT training and other forms of it will address an integrated approach that does just that. I thank you for your time and your participation, sir.

ATTORNEY VOGELMAN: You're welcome.

DEPUTY ATTORNEY GENERAL YOUNG: Seeing no other questions, I will thank you for your written testimony and for your testimony here today. Enjoy the rest of the day, Larry.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Maria, Fallon, next is Nancy West.

MS. EKLUND: Nancy West, if you are on the line, please select *3 on your phone, so we can locate your number. If you are on the line, please press *3, so we can locate your number. I am not seeing a hand raised and I do not see her in the lobby.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Then, we will move onto Attorney Chuck Douglas. He's on the line. Please *3 or raise your hand on the icon of your computer, please.

MS. EKLUND: Our next comment is from Chuck Douglas. Your line is now open. Please go ahead.

ATTORNEY DOUGLAS: Okay. I don't know if I'm -- I'm not on the phone, Jane. I'm on the computer.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Hi, Chuck. How are you?

ATTORNEY DOUGLAS: Can you hear me okay?

DEPUTY ATTORNEY GENERAL YOUNG: I can. Can you hear me?

ATTORNEY DOUGLAS: Yes, ma'am.

DEPUTY ATTORNEY GENERAL YOUNG: How are you?

ATTORNEY DOUGLAS: Okay. I have my camera open, but I don't know why it's not working. But I do want to thank you and the Commission for your efforts in listening to folks. I had submitted written testimony, as you know.

Just by way of background, I've practiced for 52 years. And 10 of those were as a Superior and Supreme Court Judge. And like Larry, I'm a Litigator. I've represented many Chiefs and many Police Officers over the years, Correction Officers. And I've sued the same.

One of the reasons why I think litigation is helpful is if you just go out and look at your garage door opener, you'll see now, day, in this era, we have protections for the garage door so it doesn't crush kids, infants. If you're mowing your lawn and you let go of the handle, the mower stops. These are all things that changed because Manufacturers were held accountable. And without that, those devices would still be dangerous.

I'm a strong believer in those rare cases -- and Larry has brought them. And I've brought them. And they are rare. They're not frequent -- where we need to sue an Officer, or a Department, to hold them accountable for conduct that violates the Constitution.

Now, one of the concerns that any Officer would have is, okay, if this immunity stuff goes away -- and that's what I advocate, that we have no immunities in State Court. You just have the same test that you would have if you sued me or anyone else for a car accident. You still are held accountable.

But there are four protections that Officers have, the ordinary citizen does not have. First, I told you, on page 3 of my testimony, there are two State Statutes that indemnify and protect Local and County Officers from writing a check. And that's RSA 31:105 and 31:106. RSA 90 -- 91 -- I guess I had 91-D. It should be 99-D. That was an error; is the same for State Troopers.

Second, the State self-insures and stands behind its Officers, as do the cities and towns who have insurance through Primex. So there are protections there to save an Officer's house, their pension, etc. None of that is ever on the line, because Primex or the State stands behind them, unless it's an egregious situation. And there was one once, where the State -- and it's Douglas Towery, was a Corrections Officer at White Farm, and was abusing and sexually assaulting female inmates. The State said, you're on your own. And there was no protection for him.

The other two reasons are there are caps on recovery: \$325,000 cap for local, and \$475,000 for the State. And then, finally -- and I'll then take questions -- no Claim can go forward if the Employee reasonably believes at the time of the act that they were acting within the law, and that they were in the scope of official duties.

So what that means is if you're in a barfight Saturday night and you're in another community, you're off-duty. No one has to defend you in a barfight. You're doing that on your own dime. But if you are suppressing a fight in a bar in uniform as part of your duties and use excessive force, I think that there should be accountability.

And that's why I would advocate the Commission recommend that there be no immunities raised in State Court. You cannot change Federal Court. You cannot change the qualified immunity raised in Federal Court. But when we bring Civil Rights cases in State Court, you can do like Colorado just did a month-or-two ago and say, you can't raise qualified immunity if you're sued in State Court. And of course, Larry talked about it. We should abolish the Legislature official immunity, the Everett case. So there are my thoughts and be happy to take any questions.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much.

ATTORNEY DOUGLAS: All right, Jane.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim, is your hand up?

MR. MCKIM: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Okay.

MR. MCKIM: Yes, it is. And thank you, Attorney Douglas, for your testimony. This is really intriguing to me, based on the testimony we've heard in trying to sort out these different levels of immunity. Deputy Young raised a point in one of our previous discussions about that. And you highlighted that municipalities have insurance through Primex.

ATTORNEY DOUGLAS: Right.

MR. MCKIM: And what Deputy Young mentioned is that most, probably not all, do. So, if that's the case, there would be some municipalities where, if we did eliminate official immunity, that they would be subject to having to pay out. And I think what you just said about the fourth protection may limit that by creating a cap of what was \$300,000 or \$350,000. I think that's what you said. So do I have that correct?

ATTORNEY DOUGLAS: Yes, \$325,000.

MR. MCKIM: \$325,000; so, how, from your perspective, do we weigh the situation where there are potentially some smaller municipalities who are not insured, with eliminating official immunity? How do we balance? How do we come up with the right approach for that?

ATTORNEY DOUGLAS: Well, I don't have an answer as to whether there actually are some that aren't covered by Primex. And that may be. I don't want to say there aren't. I know Manchester self-insures, has for decades. Nashua both used to have a commercial policy. And some of the towns and cities have commercial policies, say through Traveler's or someone like that. That's very rare, but it does occur. And if you're a really small town, you're either in Primex or, as a practical matter, you may have to think about whether there's any point in suing, because the town doesn't have the capability to write a check anyway.

But that assumes you get past the burden that it had to be what -- you'd have to prove that the Officer couldn't reasonably have believed at the time that they committed the act that that was a lawful act that they were committing. And that's a good protection. It's more than you or I have, when we're driving a car.

But, as a practical matter, I would just say that if there is a town of 200 or 300 in the North Country, that doesn't have the capability, I don't know that it's what the point is going forward, because there's not the ability to write a check. But virtually all of the small towns are in the Primex network, because it's the cheapest and also the best insurance they can get. And they also have training every year. They go around to the towns and talk about risk, and loss, and what's working, and what's not. But I can't promise you there's someone that's bare.

MR. MCKIM: So, I think what...

ATTORNEY DOUGLAS: Should the greater good should prevail, and that is to eliminate official immunity.

MR. MCKIM: Great, thank you. So I'm wondering, then, if in moving toward that greater good, would it be appropriate for us to recommend that there be some kind of statewide assistance for those towns who are not able to come up with the money to become insured?

ATTORNEY DOUGLAS: Well, the problem there is, once you set up that program, then a lot of the towns that are doing it now will suddenly change their mind and say, oh, well, we can't afford it. So let's do it.

What would help is if the folks at Primex were to tell you how extensive their network is, and they easily know that. They know how many towns. They know how many cities. They know how many schools. And they know how many counties they cover. And that's something that -- they're a Quasigovernmental Agency. And I would think you'd have no trouble getting that information from them. If there are 40 or 50 towns that are bare, what we would call bare, meaning they have no coverage, I would say then your solution might make sense, President. I don't think that's going to be the case.

MR. MCKIM: Great, thank you. So, this is definitely a line that I'd be interesting in, in following up on. And I'm not sure how we get that list. And I'm not sure we'd be able to get it before our time is up. But I would certainly be interested in knowing how many we're talking about, and trying to weigh the differences. My next question -- go ahead.

ATTORNEY DOUGLAS: If I could, I would think if the Deputy were to send a letter over, they would be able to get you that information within 48 hours.

MR. MCKIM: Great, thank you. So, my next question is another curiosity question. Based on the four protections that you have laid out, I'm curious to know why the -- why official immunity was created in the first place. Were these four protections not in place when the law was created? Or have some of them come into being? Or were they there and not put together as enough of a protection? Help me understand why we have it in the first place and now we're here talking about eliminating it.

ATTORNEY DOUGLAS: I would suggest to you that one of the problems with the Everett case that was written back in 2007 is that it does seem to omit any reference to RSA 31:106. And that is concerning, because it appears that they really didn't look at the indemnity situation. And they cite 31:104. But they don't cite 106. And that, to me, when I read it, I said, geez, you guys are going on and on about indemnity and the time, and the risk, and loss, but you're not even looking at the fact that, since 1971, we've had an Indemnification Statute for all the schools, cities, towns, etc. for Civil Rights cases. So, it just amazed me that they missed that, but they did.

All the other Statutes are still in effect and were in effect. I don't know if the Court at the time felt that they needed to do something more. But I -- it's just like the Decisions 50 years ago under the Federal Civil Rights Act that were judicially created. I don't know what was motivating that. So I can't speak to that unfortunately. But I think they missed a key Indemnity Statute that is on the books and has been for decades.

MR. MCKIM: Thank you. That was my last question. And thank you for your testimony.

ATTORNEY DOUGLAS: Thank you, sir.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Thank you. Thank you, Attorney Douglas. So, I've been trying to sort of learn about this, because this is a subject that I wasn't too familiar with, before this Commission. And I looked at the Statute that you cited, 541-B:19. And it looks like subsection (d). So I'm a little confused why qualified immunity even exists as a new thing, or why it was necessary, because it looks like (d) -- subsection (d) of this Statute already provides this defense. And correct me if I'm wrong. It says that if an Officer reasonably -- let me see -- reasonably believes that their conduct was lawful and within the proper scope of their duties, they would be exempt from suit. So is that a fair understanding of how the Statute exists?

ATTORNEY DOUGLAS: Right.

ATTORNEY JEFFERSON: And do you know why this further judicially-crafted immunity was created, because it doesn't really kind of make sense to me?

ATTORNEY DOUGLAS: I think first of all you're correct. It's been on the books since 1985. It may be that some of the Judges on the Supreme Court were getting -- reading, etc., about qualified immunity and were thinking, geez, we need something like that here. And they created it. They didn't need to. There had been no abuse. I don't think there's anyone that will say, oh, we were overrun with problem cases in 2007.

So I honestly think it was more, how do we do something like the Feds have done? I don't know why we always have to copy what the Feds do, because we're a nation of States. But, be that as it may, they did it. And I think it's time to get rid of it.

ATTORNEY JEFFERSON: So, further kind of in response to that, and it seems to me -- and if you could shed some light from your experience -- so when I look at the definition that you provided, the Federal qualified immunity, it seems very similar to our Statute that Police Officers, if they make reasonable mistakes as to the legality of their actions, and there's nothing in the state of the law that gives them fair notice that it wasn't reasonable, that sounds very similar to our Statute.

This *Everett v. General Electric* seems very confusing to me that it's discretionary versus menacerial [ph] and made in a wanton or reckless manner. Do you agree with me that that sounds very confusing and sort of confuses, then what is the purpose of the Statute, because it seems to me to be a very poorly written rule that doesn't even mirror the Federal Rule, which sort of, to me, sounds very much like our Statute? So can you give me your comments on that, because I -- it really doesn't make sense to me. And I wanted to hear your thoughts on that.

ATTORNEY DOUGLAS: Well, I hate to tell you. I agree with you. I didn't think the Opinion made a lot of sense at the time. And as I reread it, it's even a bit more pernicious, because if you look on page 843 of the Official Reporter's version, they say, "Ultimately numerous factors must be weighed. And we identified but a few." They then list 10 factors for things like whether the responsibility, the extent to which the lawsuits would impact discretion, a whole series of things that are impossible for a Judge in a

Trial Court to deal with, certainly nothing that a -- it's too complicated. It's unnecessary. The Legislature set a reasonable balance in 1985. And 40 years -- 30 years later, I don't see what the problem was they were addressing. And they don't do it well, even when they did it.

But the problem with immunity, both State or Federal, is more pernicious than what I've talked about. And it's something I don't want to get in the weeds too much. But the problem with immunity is this. It is raised after the suit is filed, but before you've had full discovery. So it's very unfair for the victim of a shooting, or an excessive force, or a Fourth Amendment violation, because they have not received the file. They have not deposed anyone. They have not sent out any interrogatories.

And the question is, immune from suit? This Trial Judge has to make that Decision, and they're supposed to do it early in the case. Well, you know, or anyone knows, I know anyone in your Commission knows who's ever been involved in litigation, there's a thing called the discovery process. The Court says, well, you shouldn't have to go through that if you're immune. And I understand that. That makes sense. If you're immune, why spend a year providing information?

The problem is there may be a meritorious case. But you can't get through the door, because you don't have the information you need from the file, the Police Department, etc. And that's where immunity is worse than a defense.

And I think the defense is in 541-B:19. And that's a fine defense. It's something you and I don't have as Lawyers, or drivers. But it's better than nothing. And yet to impose immunity on top of that is setting a barrier where you don't even get to have your Claim heard by a Judge or a jury. And I didn't get into that in my paper. But that's, to me, what is most pernicious about immunity in State or Federal Court, is that it's executing you before you've even had a chance for a trial.

ATTORNEY JEFFERSON: So, my last question to you is this on that line of thinking, because I think there are legitimate interests on both sides on this one. And this one is one, quite frankly, that I wrestle with.

So, actually one legal question; my brief reading of 541 suggests that that does create immunity, in and of itself, because it says this Chapter shall not apply to Law Officers who reasonably took actions that they reasonable -- that they had a reasonable belief that were lawful. So, to me, that suggests that that can be asserted as an immunity after prosecution. So, if you can comment on that?

And to address your point, would a sort of meaningful compromise that sort of respects all positions is that you can assert this immunity, but a Defendant -- or a Plaintiff -- I'm sorry. I miscircumstanced [ph] -- would be entitled to some discovery before the Judge makes that determination? What are your thoughts about that, as a recommendation? And your comment on -- and your response to if 541, in and of itself, is also immunity, thank you.

ATTORNEY DOUGLAS: Well, okay, if I may, 541-B was enacted after the Supreme Court in the Merrill case in '74 abolished municipal immunity. And then, when I was on the Supreme Court, a couple of us made it clear in a Concurring Opinion that we were going to do away with sovereign immunity for the State. The Legislature then acted and created these Statutes, some of which have been tested, some which haven't. So, the State is, yes, itself immune from suit, unless you can fit it into 541-B.

But the judicially-created official immunity, which does not appear there, is an additional hurdle and a problem in Police litigation cases. And it's limited to that. It talks about the Police only. So other State Employees or local Employees aren't protected.

Your suggestion would at least be better than status quo, because you would at least get some discovery and a reasonable period of time to do it, before the Defendant says, oh, I'm immune and the case gets blown up, where you never found out whether they should or should not be accountable. And again, it's all about accountability.

Par 1, Article 8 of our Constitution says powers derived from the people and Officers of Government are at all times accountable. How are you accountable if you're immune from suit? I don't understand that. That does not fit in a democracy. It's great in the monarchy. It's great in Belarus. It's great in Venezuela. But it doesn't work for me in New Hampshire.

ATTORNEY JEFFERSON: Thank you, Attorney Douglas. I appreciate your testimony.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Director Norton?

DIRECTOR NORTON: All right, thank you, Attorney Douglas, and thanks for your testimony. Attorney Vogelmann talked quite a bit about investigations of Officer-involved shootings.

ATTORNEY DOUGLAS: Yes.

DIRECTOR NORTON: Do you have any comments or recommendations regarding that aspect, as well?

ATTORNEY DOUGLAS: Well, I understand that, in talking with Attorney General MacDonald, that he has budget money. Jane probably knows the status. But they were going to try to come up with an outside expert to do at least the fatal Police shootings, whether it was State or local. That is a step forward. But it's very awkward for the AG's Office, who has to work with the Department of Safety, Commissioner Quinn and others, on a day-to-day basis to also be investigating a situation, and also to have it so limited. As one of your Members said, it's only to determine whether a crime was committed by the Officer. That does not help the Department with whether Policies or protocols were violated, or whether the force was necessary. And so, certainly the question should not be whether we're going to criminally charge the Officer, but was the force necessary?

And I know there was a County Attorney in Belknap County, five or six years ago, she's now a Judge, who made a determination that a shooting -- and I believe it was in Belmont. An Officer fired several shots at a car he had stopped when the driver drove away. And she said, well, that may not be a crime but it certainly was not necessary and it was dangerous, and should not be done. So she kind of went beyond the, was it a crime, and made it very clear to that Department, you don't shoot at cars that are stopped for motor vehicle violations because you might kill somebody who, frankly, all they did was run a Stop sign. And we don't believe in capital punishment for that.

So it's too narrow. It's too awkward for Jeff Selzin [ph] -- or Strelzin, who's head of the Criminal Division, to be investigating Departments that they have to work with on a day-to-day basis. It also takes time. And there should be some other entity or body to do that. That would be my thought. I just think that's just something that's too difficult to do and have the public feel it was a fair investigation. The perception is not always there.

DIRECTOR NORTON: Thanks; and do you feel that the public should have some role in that oversight?

ATTORNEY DOUGLAS: Yes, just as they do. And I think you've seen it in some of the testimony. The Attorney Discipline Office -- and this has all evolved over the years. And this is the good thing about a small State.

But years back, 30, 40 years ago, it was a Supreme Court Committee, or a Committee of the Bar, volunteers that would determine whether a Lawyer had violated the Code of Conduct. Now, there is a separate office in a separate location, not located in a Courthouse, called the Attorney Discipline Office. They get the complaints. They determine whether or not it should go forward, whether it's frivolous, whether it's expired, under the Statute of Limitations. And it's a professional operation. And when they say, this is a problem and we're going to recommend suspension or disbarment, they have the force of experience and guidance that I think makes it credible, whereas now it's someone in the AG's Office questioning Troopers and often -- or local Officers.

The other problem, because I know this from a case I had, they waited two weeks. You don't want to wait two weeks. You want to question the Officer as soon as you can, while memories are sharp. To give everyone two weeks before you get around to investigating it is not helpful.

DIRECTOR NORTON: Thanks; and there's been testimony that, if there were such an investigatory body, that it should be weighted towards Law Enforcement. Would you agree with that?

ATTORNEY DOUGLAS: Well, the Attorney Discipline panels, as I recall, are a majority of Attorneys, or retired Judges. But there are also citizens on there. And you always have that. I don't know that you need a majority of Police Officers, or retired Officers. But you certainly don't want only citizens and you don't want only Police.

Right now, all you have investigating is the Attorney General's Office. There's no public input. There's no mental health component. A lot of these cases are what are called suicide by Cop. And unfortunately the victim is someone who was in a crisis and creates a situation where they get shot. So it'd be nice to have other people involved in that decision-making as to whether it was necessary to kill that person or not.

And I commend to you England, Scotland, and the fact that those Officers overwhelmingly carry no weapon that's deadly. And they are trained in talking people down. And they're very successful at it. I remember year ago being in Scotland, having a drink at a pub in Glasgow, with a retired Sergeant of 30 years. And he'd never had a gun in his hand the entire time he was an Officer. And he said, I worked some of the worst neighborhoods in Glasgow. He said, you just learn a different technique. And that's what we need to do in this country. We still need the guns, but we need a different techniques. And we ought to look to our ancestors to see how they do it.

DIRECTOR NORTON: Great. Thank you for your testimony. And thanks for your answers to my questions.

DEPUTY ATTORNEY GENERAL YOUNG: Ken, I will tell you that the Attorney General sought and was granted a position to hire an Investigator within this office to assist in investigating Officer-involved use of deadly force matters. That Officer was hired from another State and is onboard.

But the reality of the situation is when the event happens, it needs to be investigated in real-time. So, in order to do that without the assistance from the Major Crime Unit, who is the gold standard for investigating these cases, you would need to almost set up a mini Police Departments. So you would need crime scene vans. You would need a number of Investigators building in vacation and sick time. And whether that is a model that should or shouldn't be, that comes with a hefty price tag.

And the (inaudible) matter that occurs in these is a determination of whether a crime occurred. And I hear Attorney Douglas say, sometimes it takes people two weeks to come. That's because they hire Attorneys. They are subject of criminal investigations. Like any other person, they have a right to consult with an Attorney before they speak with the Police. So those are just sort of some of the hurdles that we deal with.

But, in this office, they are investigated for whether a crime was occurred. We do not opine on tactics, because that is not our area of expertise. So I think that there are different levels of what happens in these cases. But the first investigation is done is whether a crime occurred and whether someone should be charged. Joseph?

DIRECTOR NORTON: Thanks, Deputy.

DEPUTY ATTORNEY GENERAL YOUNG: You have a question? You're welcome. Joseph, question?

MR. LASCAZE: Yes, thank you very much, Deputy Young. I had a quick question about something that was referenced earlier. Mr. Vogelmann had referenced that he had got -- he gets several letters from individuals who are incarcerated about instances of misconduct, but he has to turn them away. What I was wondering is, in your experience, the majority of complaints for misconduct, do they originate from the community? Or do they originate from individuals who are incarcerated?

ATTORNEY DOUGLAS: Commissioner, I would say that I get more -- I get letters, as well, not as many as Larry does. But, often they come from inmates. But, it's a mixed bag. You don't always get an honest appraisal from an inmate, because, my experience, if you ask most inmates, they're not in prison for a crime. They're in prison because of the miscarriage of justice. And I say that somewhat tongue in cheek. But they always have a reason why they shouldn't be there. And it's rare that there's a lot of merit to it.

And you look at them. You may send someone up. I know I've gone up to interview inmates, and others in my office have. They want you to take the case. So they don't always tell you everything that you need to know, which is a risk we have with all Clients.

But I think that it's not a widespread situation and there are not that many meritorious cases. And there are only a handful of us who even consider taking them. So, when we do take it, it's usually that we really feel it's worth looking at. They're very time-consuming. And it's not an easy...

MR. LASCAZE: Okay. Thank you for that. And I just do want to point out, I don't think that an individual's subjective view of why they're incarcerated would have an impact on a specific incidence that they would be referring to during their incarceration. But what I did want to point out with that, then, so as

long as you do point out to individuals the merits of their case and whether or not you think that this case has any fruition or any merit, correct?

ATTORNEY DOUGLAS: Oh, yes. And if we think it's worth getting the file and looking at, a lot of it has to do with the credibility of the inmate, or the person who comes through the door with an incident that happened last week, whatever it is. Credibility assessment's important. But I find, whether it's an inmate or anyone -- a realtor, a banker, it doesn't matter who it is -- one of the problems Lawyers have is the Client wants you to take their case and you have to be very vigilant that they're leaving out a couple of interesting facts, like, well, yeah, I may have had a gun in my hand but...

Things that they don't tell you, and then you find out you have to go back and say, well, you never told me that. So, it's a difficult thing, because I'm going to be gambling my time if I take the case. They're not paying me. They're not paying Larry. We are gambling our time on the hope that we can get a recovery and get paid. And so, we're doing the screening as to whether we believe the facts or the relator of those facts is telling the truth, whether they stack up. So, there's no science to it. It's a bit of an art. But, after a few decades doing it, you get some feel for whether you're getting rolled or if there's really actually a bad situation here that needs to be looked at.

MR. LASCAZE: Well, thank you, because that gets to the point that I was actually trying to get at which is we're hearing that if immunity is removed, that there's going to be a floodgate of lawsuits that are brought forward. And from what I'm hearing, you're describing that, before the litigation process even starts, that you are vetting the complaints to make sure that they have merits, before you even bring them forward.

ATTORNEY DOUGLAS: Yes.

MR. LASCAZE: So would think that it's a fair assessment to say that...

ATTORNEY DOUGLAS: Yes, you're...

MR. LASCAZE: Excuse me? Hello?

ATTORNEY DOUGLAS: Yeah, we're breaking up a little bit unfortunately. But, yes. No, there will be no floodgate. There was no floodgate before the Everett Decision. I mean, I'd defy you to say well, there were hundreds of cases with Police getting sued. That was not happening. The -- Everett in 2007 did not put a stop to some floodgate of cases.

We heard the same thing two years ago when we were voting on Question 1 to amend the Constitution to allow taxpayer suits. And I led the charge on that. And the argument was, oh, there'll be thousands of taxpayer suits. We will have to hire more Judges. None of that happened. There have only been a handful of suits brought in the last two years. It never happened. It's always the saw, oh, we're going to be flooded.

And there are not enough Lawyers who want to take them. And there are not enough Lawyers who are willing to put their time on the line, even if it's a meritorious case. So, frankly, there are probably more

cases that aren't brought that should be brought than there ever are cases brought that shouldn't be brought.

MR. LASCAZE: Okay. Well, thank you very much. I appreciate that. And I yield the balance of my time.

ATTORNEY DOUGLAS: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Joseph. Lieutenant Morrison and then, Commission Johnson, you'll be after that. And then, Chief Edwards after that; go ahead, Lieutenant.

LIEUTENANT MORRISON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: No, Mark, you're unmuted but we cannot hear you.

LIEUTENANT MORRISON: Sorry about that. I have to hit two buttons. So, thank you, Attorney Douglas, for being here today and thank you for your service to the State before you went into private practice. It's something that not everybody can do.

And I'm going to set aside the propensity for your revenue stream to increase, should this change. I think that's why you're (inaudible). So -- but we've heard testimony in regards to this topic. And I want to ask you a couple of questions and see if I'm under the right impression, because I think I am, which is why I have some concerns with your testimony. 541-B, does that not apply to just the State?

ATTORNEY DOUGLAS: Correct; and I finally figured out how to do the camera. I apologize to you folks. I just realized, because I've been doing Zoom for months now. 541-B does only apply to the State. And 507-B applies to everyone else.

However, to complicate it just slightly, there was a case that my office, *Hawkins v. Sweeney*. And that was a tasing at a gas pump up -- I don't know -- Ashland or somewhere upstate. I'm trying to remember where.

But in any event, that went up to the Supreme Court. And they said that they are applying 541-B:19 to the towns and cities, because there would be an equal protection problem otherwise. So they read in that standard in *Hawkins v. Sweeney* to apply across the board in the State. So that's a short answer as to what happened.

LIEUTENANT MORRISON: All right. And you mentioned 99-D.

ATTORNEY DOUGLAS: Yes, sir.

LIEUTENANT MORRISON: I pulled that up. That applies to State, as well?

ATTORNEY DOUGLAS: Only the State, and that's where, when Kelly Ayotte was Attorney General, Doug Tower, the Sergeant at White Farm asked to be indemnified and he was turned down. They said, your acts were intentional. They were numerous. And the State is not going to stand behind you. And he's

in Prison now, where he should be. But he was thrown under the bus justifiably by the Governor and Council and by AG Ayotte, because you couldn't fit him within any standard that was fair and reasonable. He was a rogue...

LIEUTENANT MORRISON: And I think that's appropriate. I think that's the appropriate use of that.

ATTORNEY DOUGLAS: I agree.

LIEUTENANT MORRISON: I'm sorry?

ATTORNEY DOUGLAS: I agree.

LIEUTENANT MORRISON: Thank you. And we heard testimony from Attorney Krupski on some of these issues, as well, which is why I asked him to speak. And 31:105, I believe it is, the local Select People can vote not to indemnify people. Is that correct?

ATTORNEY DOUGLAS: Basically, what 105 does is a town -- I ran into this with the Town of Hudson in a suit I had against the Hudson Police Department. Like 40 years ago, Hudson voted to indemnify, and luckily they found the vote from the Town Meeting.

You don't do it on a case-by-case basis. But almost every town, when the Statute came into effect, adopted it. There may be one somewhere that does not have it. But this is before you had Primex, because this goes back way into the '70s and '80s. And there was no Primex. So, they would have to write the check, themselves, whereas now, whether they use 105 or not, if they have Primex, that takes care of it. And again, there's a cap anyway of \$325,000 for local Governments.

LIEUTENANT MORRISON: And it's also my understanding of the Everett case is that they essentially said Officers like myself who work for a municipality should enjoy the same protections that State has. And that essentially is where that qualified immunity sort of ties back in. Is that fair to say?

ATTORNEY DOUGLAS: No, qualified is the one in Federal cases. If you don't bring a Federal case, you won't get qualified immunity raised. But you will -- in State cases, you'll get official immunity raised. And if you bring both counts, you'll get them both raised. So you actually have to go through two sets of hurdles to see if you can even get into the Courthouse.

LIEUTENANT MORRISON: But it was also a way to incorporate protections for people who didn't work for the State, who didn't fall under these other Statutes, that applied only to State Officers and Employees?

ATTORNEY DOUGLAS: Well, I -- Everett never mentioned State immunities or Statutes. It's only dealing with 507-B. I don't think they even get into what would happen if this was a State. Well, they do say -- the mention 99-D. I mistyped it as 91-D. That's my fault. But it's 99-D. But they don't really deal with State immunities, as such. They're dealing with municipal figures in the Opinion, itself.

LIEUTENANT MORRISON: Okay. And I think that's where my difference of opinion from yours comes in, as well as some others who have testified. And thank you for your depth and knowledge on that. And I would like to sort of transition to something that you said that it kind of gave me pause. And I almost got the sense that you were suggesting that the Attorney General's Office wouldn't be able to impartially investigate these use of force cases.

ATTORNEY DOUGLAS: No, I don't think that there's any malice. It's more the perception that can sometimes happen, Commissioner. When you are -- and it's less so with municipal or county situations. But if you're a State Trooper and you work closely with the Criminal Division of the Attorney General's Office, and then you have an Officer-involved situation where there's a fatal shooting, that same Office is the one that will investigate. That's my only point. I think it puts -- it does not create the public perception of an arm's length situation.

I get all the Reports. I read them. I have a file that's very thick. And I agree with 90% of them. There are some, though, where I think, geez, did they look at this or look at that? But the problem is they're limited to, as Jane said, whether a crime was committed. So that does not help.

I think if they're going to keep status quo, the standard should be, was the use of force necessary? Was it excessive, not whether they committed a crime? And then, once you get through that, what protocols and Policies were violated, because shooting at moving cars probably in your Department is not something that is condoned. We don't shoot at moving vehicles in this day and age. So if someone does that, shouldn't we have that as a reminder that that's not the way we're supposed to police? That's all I'm saying. And then to answer...

LIEUTENANT MORRISON: Oh, I (inaudible) that opinion. And it sort of did, but it didn't really alleviate my concern. But the -- I hear what you're saying with that specific tactic.

ATTORNEY DOUGLAS: Okay.

LIEUTENANT MORRISON: And I think it's safe to say that tactic of shooting at moving vehicles is really dissipating across the country, because of the effectiveness of it and the potential for other things that happen. So, with the advancement in professionalization of Departments, which is occurring across this State, those things are being taken care of and addressed, and these are being taken care of in a proactive way by the Departments, themselves.

Lastly -- and I apologize for taking so much time. This conversation has ranged so far that I feel like I need to touch on some of these things. And I'm just trying to look at my notes. You talked about interviewing an Officer post-some major event, like a shooting or something like that, and the need to do that immediately or very close to the incident. And having had a gun pointed at me personally, I can tell you there's a whole set of physiological things that happen to you that might make your statement not as accurate or complete in that moment, because you're still dealing with physical factors.

ATTORNEY DOUGLAS: I agree.

LIEUTENANT MORRISON: So, I think the common practice is to have that time for the Officer to physically recover to be able to have a sound mind to give a complete statement. And I think we need to be

very, very careful when we start suggesting things like that that really don't represent practice for interviewing people, and are fraught with concerns.

So -- and having been -- and still am -- a Crisis Negotiator, I've been a Negotiator for over 12 years. I can sympathize with what you're saying with your experience in the UK. They are very good at negotiating. And they are some of the leaders in that area. And we do try to implement a lot of those tactics here. And the training is similar across the board. So I would second the notion that we sort of move in that direction.

And I just want to end with this. I don't think anybody would argue we want the best-trained person to show up at that call and deal with that situation. We are human beings and takes a long time to acquire that level of training, where you could be that absolute perfect Officer in every scenario. Takes a lot of money, a lot of time. And it has to be the right person.

ATTORNEY DOUGLAS: Yeah.

LIEUTENANT MORRISON: So, I appreciate your position with respect to the conversation today. I respect your experience and the value that you add. And I would just leave my sort of disagreements with some of your contentions as they are, so we have sort of a complete picture. And I'll thank you very much.

ATTORNEY DOUGLAS: Well, thank you. And I totally agree that you've got some very good points. My only concern was that if we wait two or three weeks, that may be too long. But I agree you can't do it the night of the event. The Officer, I'm sure, is upset. I know they are. I've deposed many and it's a very upsetting situation, and I get that.

I just wanted to close with page 847 of Everett, just to clarify. The Court says, "Because today we've adopted for the first time official immunity for Municipal Police Officers." I know you and I had kicked that around a few minutes ago. I just wanted to commend you to look at page 847. I think that helps answer the question on Everett. But, thank you, sir.

DEPUTY ATTORNEY GENERAL YOUNG: Chuck, for the Commission and for my own edification, you talk about the cap being \$350,000. But there's ways around the cap, correct? I mean, not every settlement is capped at \$350,000?

ATTORNEY DOUGLAS: Okay. Now that you're into it, you're absolutely right. It's \$ 325,000 for the locals. However -- and this is one of the things that drives this -- if it's under the Federal Civil Rights Act, there is no cap, so that if a case is brought and resolved under the § 1983, there's no State Law that can cap that. So that's where the indemnity or the insurance would kick in, if it's an amount above that, but only if it is a § 1983, because if it's under some State, let's say just common law battery, an excessive force where the only count is battery, you'd be governed by the cap.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Johnson, questions or comments for Attorney Douglas?

MR. JOHNSON: Yes, thank you, Attorney General Young. And Chuck, long time no see.

ATTORNEY DOUGLAS: Yeah, long time no see, Rogers.

MR. JOHNSON: How are you?

ATTORNEY DOUGLAS: Good.

MR. JOHNSON: Chuck, you may or may not know, but I also serve as the President of the Seacoast NAACP. And because I serve in that capacity, over the last three or four years, I have I would say inadvertently, or maybe -- I'm thinking of a positive step of...

ATTORNEY DOUGLAS: Sorry, I'm having trouble hearing you, Rogers.

MR. JOHNSON: Okay. What I'm saying, Chuck, is that because of that position, I have been more visible to the public over the last three or four years, primarily because of the efforts of the Governor, who I will take this up at another issue.

In that capacity -- and this is related specifically to Joseph, as well -- that I have been contacted by individuals who are incarcerated, whether they be in the Federal Prison in Berlin, or the State Prison in Concord, or the various County Prisons, at least once a month about issues related to their incarceration, meaning that they wanted to contact the NAACP because of their belief that we will appoint them an Attorney at no charge to address their situation.

Now, it falls upon me and the Members of my branch to begin the process of investigation. Now, I want to make this clear. If we're getting contacted once a month from individuals who are in Prison, can you imagine what would happen if the belief if that if there's an opportunity to overturn their cases, if we decided to change the parameters by which they were incarcerated, meaning qualified immunity? I would make a suggestion to you, based on my personal experience now, over two or three years, that there would be a rush of individuals who would be requesting.

I say that because I think it's beginning to happen to Jim McKim. As he is exposed, it will happen more frequently. And I would suggest to everybody who's on this Commission that I think that the floodgates would be opened in that scenario. Now, do you understand what it is that I'm trying to relate?

ATTORNEY DOUGLAS: I think so. But keep in mind the difference, if I could. The people contacting you if they're incarcerated are there because they're involved in the Criminal Justice System. And I'm involved in the Civil Justice System, so that there would be no floodgate.

If you're in Prison because you got convicted, that conviction may or may not -- I mean, the underlying facts may or may not have violated the Constitution. But odds are, through the appeal process, etc., that gets resolved.

So I don't see that getting rid of official immunity would lead to a material change at all, Commissioner Johnson. I just don't see it. But if you were to say, I've got 10 free Lawyers, we're going to station them in Berlin. Yes, every inmate will have a reason why they want to talk to them. There's no downside.

But, I don't see that happening. That kind of resource isn't going to be there. And frankly, we're not at a situation where we're convicting people falsely in -- by the hundreds. It's just not happening in this State.

MR. JOHNSON: Again, to reiterate, in every instance, Chuck, I have individuals who are coming to me not just in terms of their incarceration was improper, but they have made claims that the individual Police Officer in their capacity have violated their Civil Rights. They have to make as brought a case as possible. So in every instance, it's one in the same, either side of the ledger. And again, the NAACP is not in the capacity to do this level of investigation.

ATTORNEY DOUGLAS: Right.

MR. JOHNSON: Having said that, once a month, I'm getting this request. And so, what I'm saying to you is it's on both ends of the spectrum. So I come back and say, do you see the potential floodgates opening? Obviously, you don't. But it's obvious to me that that would be the case. And again, the only reason they know I exist is because my name happens to be in the paper, and they know that I represent the NAACP. That's the only thing that makes a difference in my life.

ATTORNEY DOUGLAS: Yeah, I don't know that I have an answer for you. I know sometimes -- and they may -- and tell me if this is the case. Sometimes the inmates are concerned not with how they got there, but the treatment while they are there. Are they being denied proper medical care? You must get some of those calls, too.

MR. JOHNSON: Again, in every case, it's all of the above. I hear everything.

ATTORNEY DOUGLAS: Okay.

MR. JOHNSON: So, they tell me that they don't get proper care. They tell me that they're not getting properly fed, or at least have inability to contact their loved ones. I'm hearing everything that these individuals want to bring. In many ways, again, I have no ability to adjudicate this, because that's not my role. I'm just trying to find out whether or not it's true.

Having said that, again, relative to Police misconduct, in every case, I'm getting an accusation that there was Police misconduct. So, I will say this. If I'm getting one a month, I would suggest to you that changing along these lines may indicate that I may get more. Again, you're turning them away because you're going to charge them. They don't believe that I'm going to. And that's why they're contacting me.

ATTORNEY DOUGLAS: Oh, no. I don't charge them. Just to clarify, none of them are paying me. If I have to start a three-year march for a meritorious case, compensation is three years -- two years from now. They're not paying it, unless there is a settlement.

So, as a practical matter, Larry, me, there are only a handful of us who even entertain these. And that's why we get the letters. But what you're telling me is also somewhat reassuring, because there are hundreds of inmates in the Berlin facility, several hundred. And if only one a month are surfacing, our Criminal Justice System is not locking up a lot of innocent people. Let's put it that way, or you'd be getting 20 a month, or 30 a month. So I would flip it around and say that's actually not a bad number.

I'd probably get one a month here. And another Attorney who does these with me from Berlin, from the State Prison, we get letters and we read them. We look at them. And very often, we will spend money getting their medical records on our dime to see if they have a legitimate case. And I have Doctors that I

run the stuff by. And if they say, yeah, there's a problem here, then we will pursue it. But we're doing it on a contingency. No one is paying us. We know the Inmate can't pay.

So, the filter is, how meritorious is the case for Larry, me, or anyone else? And there are about a dozen of us who would even entertain such letters out of 5,000 or 6,000 Lawyers in the State. I wish we could do more. I wish you could do more. But we're all limited by time and money, Rogers.

MR. JOHNSON: Yeah, Chuck. The reality is, is that we don't get paid, even on a contingency basis.

ATTORNEY DOUGLAS: Okay.

MR. JOHNSON: We don't get anything. We don't even go after organizations whatsoever for (inaudible) settlements. We go after primarily on a Civil Rights basis, alone. So we're evaluating the case based on Civil Rights issues.

ATTORNEY DOUGLAS: Okay.

MR. JOHNSON: Again, nonetheless, depending upon our visibility, what tends to happen is it's relevant, for example, if you knew about the Hampton Civil Rights case. I had four that month, because it was in the paper.

ATTORNEY DOUGLAS: Um-hmm [yes].

MR. JOHNSON: That's what I'm talking about. The more that I'm in the paper, the more information, the more requests we get for some type of assistance. That's really the driving force. This is more of a comment because of what I personally believe may happen.

But again, I have a unique position, whereby this happens to me. And in many ways, because we can't do as much as they expect, I then get the further request letters calling me essentially a (inaudible) Uncle Tom because I couldn't do something for them.

ATTORNEY DOUGLAS: Yeah.

MR. JOHNSON: So, I'm damned either way.

ATTORNEY DOUGLAS: Yeah, unfortunately, but you have to keep plugging away and hopefully you can help some. You're not going to be able to help everybody.

MR. JOHNSON: From your mouth to God's ears, yes. I'm done, Attorney General.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Chief Edwards?

CHIEF EDWARDS: Thank you, Deputy. And good morning, Honorable Douglas. It's great to see you.

DEPUTY ATTORNEY GENERAL YOUNG: Hey, Eddie, good to see you.

CHIEF EDWARDS: And I have a great deal of respect for your view of the Constitution, and your loyalty and allegiance to it. So I'm curious to get your opinion, because, as someone who's (inaudible) for a number of years, and certainly during my time, I tried to bring light to things that I thought were inappropriate in government or unethical behavior.

So, much has been made of the Attorney process for investigating Attorneys, oversight of Attorneys. And you made a statement. I'm very curious about this. You said you didn't think that it would be really necessary to have a panel or a Commission lean towards Law Enforcement in the majority, as opposed to what we see with the Attorneys setup. There's more Attorneys than civilians on that Commission. And I'm curious to know...

ATTORNEY DOUGLAS: Yeah, I don't have a problem with it, Commissioner Edwards. I really don't. I don't have a problem with it. I think sometimes when it is misconduct with an Attorney, the facts are so complicated you may need some Attorneys involved, whereas, in Law Enforcement, likewise, there's certain techniques, certain strategies, certain tactics, protocols. I have no problem with a majority being Law Enforcement.

And I would include retired, because often that means they've had decades of experience. And with that, sometimes comes wisdom, usually at least more so than with a 25-year-old. But, no, I'm not telling the Commissioners -- it's not an area where I'm even going to opine. It's up to you folks how you would set such a thing up. And I'm not going to say it should be a majority this or that. I'd leave that to your judgment, Eddie.

CHIEF EDWARDS: Right, great. A couple follow-up questions, also. When I look at the Criminal Justice System, I think about Police Officers, Lawyers, Judges, and the Department of Corrections. In that Criminal Justice Systems, I think Police Officers go through the most intensive vetting process. Would you agree with that?

ATTORNEY DOUGLAS: I would agree, certainly more so than I think for COs. However, there's one flaw that I uncovered in a very tragic case. Most Departments will ask for -- let's put it this way. A lot of Officers today have had experience in Iraq or Afghanistan. They're Vets. They're coming back. Everyone asks for their DD-214. They want to see their file from the Army, or the Marines.

What they don't ask for is their VA file. If that Officer is actively engaged in treatment for PTSD, that may be something that a Department needs to consider as to what they do when they hand that Officer a gun and a badge. And so, one thing I think that is deficient is following up with the VA Department, because that's where most of the Vets get their treatment for PTSD. And if it's under control and they're doing the things they're supposed to do, I don't have a problem. But unfortunately, nationally, you have seen a disproportionate number of Police shootings involving Officers with PTSD from the Mideast.

CHIEF EDWARDS: But here in New Hampshire, I don't think our Police Departments are disproportionately staffed by Veteran -- Military Veterans. But, going back to that, I want to kind of focus on the Lawyers and Judges, who are involved in the criminal justice process. Would you agree that the Police Officers go through much more intensive vetting, in terms of their backgrounds than a Judge?

ATTORNEY DOUGLAS: I don't -- when you say "vetting", there is a Character and Fitness Committee that screens whether you can become a Lawyer in State. And then, if you're going to be a Judge, there's a three-step process.

You first go through a Judicial Selection Commission. And that's been the case for at least 20 years now under a variety of Governors. You, then, have a hearing in Governor and Council, which is public. And then, you have to convince three of the five Counselors that you have the temperament, the background, the experience to serve as a Circuit, Superior, whatever.

So I'm not sure that I can say that the vetting -- the vetting certainly isn't the same. But I'm sure some of the smaller Departments may vet differently than, say, Nashua or Manchester. That's just a function of personnel, sophistication, staffing patterns, etc. So I don't know that I can give you an answer.

But I think, to be a Judge in this State does require multiple hurdles. We also -- because I chair the Judicial Selection Commission for Governor Sununu. We also check with the Attorney Discipline Office. And we have recommended people and then found, uh-oh, they've got a problem with the ADO. And that's the end of them. So, we do many things, Eddie, to try to not have a problem Judge, just as you folks do to try not to have a problem Officer. No.

CHIEF EDWARDS: And I think you for that, as well, because there was a Rutgers University investigation that talked about the number of Judges who abused their authority and violated the Constitution, and were allowed to maintain their jobs and their positions. And in the Criminal Justice System, the Judge has the ultimate authority at the very end of hearing facts and circumstances. Is there a mechanism to review if a Judge is racist or engages in unethical behavior to be removed? Can a Judge be sued for that behavior, abuse of authority against a citizen?

ATTORNEY DOUGLAS: Okay. Let me -- this is a good question. First of all, let me just say Rutgers is in New Jersey. New Jersey elects their Judges. There is no vetting at that point. You could be an alcoholic loser of a Lawyer and win an election in Jersey as a Judge. And that's just the way it is. We don't do that. We don't elect Judges. So, I think you are right. There are outrageous Judges in various States that we read about. I predict almost all of them are in States where they elect.

As to our State and how do you review a Judge, there is a Judicial Evaluation that is sent out every year on a number of Judges. They're on rotation. And it's open to the public. The names are posted. If you went onto the Judicial Branch website, you can find which Judges are up for evaluation. And if there is a Judge that is racist, sexist, incompetent, (inaudible) Evaluation either leads to correction by the Supreme Court getting them in and trying to reeducate them. They put Monitors in the courtroom who are anonymous to watch. There's a lot of steps that are taken.

And in the end, if someone is really should not be a Judge, then they would be impeached and removed. But, yes, there is an evaluation system. And luckily, there's a lot of self-correcting that seems to go on. If a Judge gets a bad score, the Chief or the Administrative Judge is going to be monitoring them and trying to show them where they need to change their attitude, their demeanor, etc.

CHIEF EDWARDS: Yeah. But there's no Civilian Review Board and process in place for that process, right?

ATTORNEY DOUGLAS: There's no Civilian Review Board. But the Judicial Conduct Committee has civilians -- has citizens on it and has from the beginning. I don't know the current makeup of Attorneys, Judges, and citizens. But the Judicial Conduct Committee has done a pretty good job of correcting problems when they come up. And luckily, we don't have that many, but they're always going to be, like anything else. As you know, if you've got 50 or 60 people, 1 or 2 of them are going to be a problem.

CHIEF EDWARDS: Sure. My final question, sir, out of all the folks involved in the Criminal Justice System -- the Attorneys, the Judges -- wouldn't you agree that they're making decisions after they have had an opportunity to review all the facts known to them, presented to them in that process? And a Police Officer is asked to respond to calls, situations, where he or she may not know all of the facts at the time, and deal with a situation where people are highly emotional at times and react (inaudible) the best decisions and adjustments in that moment.

And then, they are being reviewed sometimes weeks, months later, when people have had the opportunity to put together all the facts. And so, this makes them positioned very uniquely in the criminal justice process. Would you agree with that?

ATTORNEY DOUGLAS: No, I would agree. And of course, an emergent situation at 3:00 in the morning is very different than this time of day saying, well, let's go out and investigate a burglary, which is not an emergent, violent, fast-moving situation. And Police Officers, unfortunately, get to deal with all those ranges. And I understand that. And frankly, jurors understand that, totally. I mean, they're not immune from reality.

And that's why, when you see a case where a jury has said the Officer was out-of-line, it's a pretty extreme case, Eddie. It's not normal. It's not usual. And they're not going to do it if it's -- you got a situation like George Floyd, that doesn't take a rocket scientist to figure out something went wrong there. And that's very different than walking into a building and someone suddenly starts shooting at you.

CHIEF EDWARDS: Correct, right. Well, thank you so much, sir. And it's always a pleasure to see you.

ATTORNEY DOUGLAS: Likewise. All right, Jane, have I monopolized enough time?

DEPUTY ATTORNEY GENERAL YOUNG: Oh, no. We have two other questions.

ATTORNEY DOUGLAS: All right.

DEPUTY ATTORNEY GENERAL YOUNG: I'm sorry. But I would just like to respond to Chief Edwards for a minute. The Judge part, right, you're appointed for life. But that mean that they're immune from criminal review.

We did a case -- time goes by -- probably within the last two years where someone came to us and said these Judicial Evaluations do not look like they're accurate. And the Public Integrity Unit in this office looked at that situation, determined that the Evaluations were submitted by the Judge. But it also had a bigger impact than that.

It was somebody who then wanted to retire and the judicial retirement is a good retirement. It probably saved the State, in addition to somebody committing a crime, there was an actual tax dollar issue, because that person probably could have collected upwards of a couple of million dollars.

So that's also a reason why there needs to be a freestanding Public Integrity Unit that doesn't care who they're investigating, whether it's a Police Officer or whether it's a Judge. As I have said repeatedly, no one is above the law. So, last two questions, and then I will give you a five-minute break, because we have three people left: Commissioner Lascaze and then President McKim. Joseph, you're all set.

MR. LASCAZE: Thank you. I just wanted to follow up with a response to the conversation that Commissioner Johnson and Mr. Douglas was having. And what I wanted to point out is, one, that if -- Mr. Johnson, if you don't have the time to respond to the complaints that you are getting monthly, I would -- I will volunteer that you can send them over to me.

As someone who has been incarcerated, I have watched and witnessed individuals get their foreheads split open down to their nose. I have watched people get handcuffed and their ribs broken. I have watched people get extracted, their beds OC sprayed without them knowing it, so that when they went back into their rooms, they were sleeping on that. So, this does happen.

And to imply that, based off of people asking for help that we think that a floodgate is going to be open, we are prejudging individuals' intentions. And to me, that sounds like the Minority Report. And that's very problematic, if we are going to base a decision off of that.

And I know that you say that you represent the NAACP. But my question really now becomes, how many of those complaints have you picked up to see if there's merit to them? But even more than that, are we suggesting that we should keep something in place because we would have to have more correspondence with our constituents? That's what I'm just trying to figure out, if that's what's being implied.

So, I just -- I find that very problematic. And I do think that, when we look at the corrections settings, it is very different than the public setting for Police Officers, when they're dealing with these instances. Police Officers are in a very, very public light, when their instances of misconduct happens. And to assume that this is not happening within the walls of our correctional facilities in New Hampshire is very, very naïve. And it's harder to prove. And I think that that is the reason why we don't get as many complaints and we think that there isn't merit to that.

DEPUTY ATTORNEY GENERAL YOUNG: Rogers, you may respond.

MR. JOHNSON: Thank you, Attorney General. And Joseph, you don't see the cases that I see. You don't recognize the fact that the issues that you just identified, I don't get. What I get is individuals who are complaining about the process that they received and the fact that they're incarcerated unjustly.

I'm not getting cases from individuals who say that they've been mistreated in the jail, other than the fact that they don't get the proper medical service, the proper food, or the inability to contact family members. I get the issues of people who are saying that they have been improperly treated by the Police in the process of their incarceration. I don't get individuals who are saying they've been assaulted in jail, or had their jail cells overturned for whatever reason. I don't get that.

We investigate everything. We don't turn anybody away. What we do is we try to find out the merit of the issue. More often than not, we don't get the full story. But that shouldn't be a surprise. Now, I

unfortunately take offense at someone who says that, as a Member of the NAACP, we're not doing the due diligence on behalf of the people of color. On the reverse, it's absolutely true. We do go through the hoops just to understand what's happening.

Now, I understand that you've been incarcerated. However, my ability to ask questions within Judicial System relates to my official capacity as President of the NAACP. They would not otherwise answer, because I'm not a family member. I have no standing. But because I happen to work at a particular organization, I get individuals within the Judicial System respond to me.

I cannot give that ability to you. I wish I could, because, quite frankly, you would save me a lot of time if I could turn this information over to you and say, investigate it as you wish. It doesn't work that way. And I think perhaps we need to talk offline, so you full understand what it is that we're seeing. Thank you.

MR. LASCAZE: And I hear you. And I wanted to make that distinction that what was being spoken about was the merits of a case that ended an individual in Prison, but the misconduct that happened while incarcerated. And that voice as going towards representation for that specific misconduct to be addressed, that's what I'm talking about.

MR. JOHNSON: Let me see if I can say this again. We're not getting questions about their misconduct while incarcerated. We're getting questions about how they were incarcerated and their complaints against either the Police, in some instances they're the Prosecution, or their defense.

Again, I mentioned just yesterday -- you weren't here -- that there are a number of individuals who are incarcerated who made specific allegations against their Defense Attorneys, the Public Defenders Office. I've had to contact Public Defenders and ask them what it was that caused this scenario.

Again, it's nothing about how they were treated in Prison other than their lack of medical assistance, their lack of -- get this -- food, and their lack of being -- contacting their family members. I'm getting calls from people in Ohio on behalf of their individuals who are members who are incarcerated in the Federal Prison in Berlin.

We get everything. And these are individuals who are basically complaining about how they were adjusted within jail. This has nothing to do with a physical altercation whatsoever in jail. They only complain about their circumstances and how it affects them. And they believe that their Civil Rights were violated.

MR. LASCAZE: Okay. I get that. So let me say this again. I was specifically talking about instances of misconduct that involved use of force and constitutional violations. And unless an individual has been incarcerated and deprived of food, as you pointed out, I would want to see who wouldn't complain about that, if you're not being given food, which is an essential of life, itself.

I am not talking about the merits of a case that got someone there that is complaining about that. Being denied medical attention, yeah, I can address that, too. My friend -- I don't even know if he wants me to put his name out there -- was denied medical attention and ended up having his entire jaw -- okay, entire jaw had to be rewired and have corrective surgery where now, to this day, his entire face is lopsided, because he had made a complaint about being denied medical attention that wasn't taken serious.

And he did get a very substantial suit. It was found to be sustained, after people took it seriously. But he still, to this day, is walking around in New Hampshire with his whole face lopsided. So this is a very,

very personal issue to me, when we're trying to confuse the two. I'm talking about what you're referencing. I'm talking about something completely different.

MR. JOHNSON: Correct, because, again, we take everything that someone sends to us seriously. We investigate to the degree that we can. If we find that there is some merit to the case, we then proceed. That's all. That's all we're saying. It does not matter whether or not someone was physically assaulted in Prison.

MR. LASCAZE: So, if this immunity was removed, are you saying, then, that you would then start having the floodgate of more situations that you would pursue?

MR. JOHNSON: It is my opinion that in the scenario where this immunity had been immuned [ph] -- had been removed, that there may be other individuals who will come forward and make the claim to us for the purposes of helping them adjudicate a case, because (inaudible) as the NAACP giving them free legal advice. The problem I have with that is that it starts to tie up our resources and funds to investigate circumstances which may not rise to the level.

So, we're seeing in many instances, individuals who are coming to us with, I would say, specious claims that we can't verify, only for the purpose of making sure that we provide them with an Attorney to get them either exonerated or released from Prison. We tend to find that circumstance rather problematic, because we cannot verify the information that they have provided to us. And often, the information is rather one-sided.

It doesn't mean that we don't investigate. We do. And as I said, we will talk offline. And I'm going to involve you in a case-or-two. And once you see what I'm saying, I think you'll come to the same conclusion that I just did.

MR. LASCAZE: Thank you. And then, just one last thing, then, these many cases that you're referring to that you see, are those outside of the one a month that you're talking about getting? So the 12 a year that you get, you said you have many cases. Are those outside of those 12, or is those 12 cases what you're referring to?

MR. JOHNSON: It's those 12 cases. More often than not, again, we tend to find that, of the cases that we're getting directly from the Prison System, are somewhat, like I said, problematic in terms of how they're coming to us. We tend to find more valid cases that are coming to us outside of that.

MR. LASCAZE: Thank you, and thank the Commission. And I thank the Commission for indulging me on this.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Commissioners. We have less than 45 minutes less. Does anyone have any questions for Attorney Douglas? If not, I will thank you for your time, for your testimony, and enjoy the rest of the day, Chuck.

ATTORNEY DOUGLAS: Thank you, appreciate it.

DEPUTY ATTORNEY GENERAL YOUNG: Nice to see you.

ATTORNEY DOUGLAS: See you, Jane.

DEPUTY ATTORNEY GENERAL YOUNG: Bye. I will -- because we've been going for a little over three hours, I'll give you a 10-minute break. And then, we will come back. And we have three speakers still lined up: Greg Sullivan, Stacey Ober, and Sam Katz. And then, we will open it up to any members of the public. I would ask, though, that you be cognizant of time, because we're only going to have about a half an hour left. So, thank you, and I will see you all right at 1:00. Thank you.

MS. EKLUND: The recording will...

(Off the record at 12:50 p.m.)

(On the record at 1:00 p.m.)

MS. EKLUND: We are now recording.

DEPUTY ATTORNEY GENERAL YOUNG: Good afternoon, Commission Members. We are back and we are being recorded. Next up is Attorney Greg Sullivan. Attorney Sullivan, can you either raise your hand on the computer or hit *3?

MS. EKLUND: He's currently a panelist. His line is open.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much. Good afternoon, Attorney Sullivan. Can you hear me?

ATTORNEY SULLIVAN: I can hear you very well. Thank you, yes.

DEPUTY ATTORNEY GENERAL YOUNG: Welcome. You have three minutes in which to make your presentation. You can trust that the Commission Members have read the testimony that you've submitted, your written testimony. So, with that, Attorney Sullivan, you may begin.

ATTORNEY SULLIVAN: Thank you very much, Deputy General Young, Members of the Commission. I want to give a shout out to the Governor and the Attorney General for their thoughtfulness and efforts in creating this Commission, and to all the Members of the Commission for their efforts.

Also want to give a shoutout to Attorney Bissonnette of the New Hampshire ACLU for his thoughtful testimony, which made my preparation a heck of a lot easier. His recommendations that I fully support include repealing the immunity for Government Employees, obviously Police Officers included; amending Chapter 91-A to make all charges and complaints of Police misconduct public. I've submitted Statutes in my written testimony from Minnesota, Florida, and other States, which I think would be a great example and starting point for the amendment to 91-A.

Thirdly, the Civilian Accountability Board, I was quite pleasantly surprised to see the Attorney General's Office supporting such a Board. Prior to seeing that, I had wondered whether or not some type of

a Sub-Commission under the Police Standards and Training Council would have been appropriate, as opposed to creating a whole new entity. I look at the powers and the duties of the Police Standards and Training Council and certainly think that overseeing Police misconduct would be under their purview, although I point out that the composition of that Council is 12 Law Enforcement Officials versus two citizens. And those two citizens can't be Lawyers or have Lawyers or Judges in their immediate family. So I'd like to see that obviously reviewed.

I do want to say that -- and boy, is that time going by fast -- in my 43 years of representing media companies in New Hampshire, I've seen great progress in shedding light on governmental action. And certainly, in May of 2020, we had two Decisions from the Supreme Court in Seacoast Newspapers v. Portsmouth and Union Leader Corporation v. The Town of Salem, wherein the Supreme Court has now overruled a 1993 Fenerman [ph] Decision, which was a terrible aberration shielding Police misconduct files under the guise of calling them internal personnel practices. That's now been overturned and I think it's a great step in the right direction. And as you all know, September 16th, we will be arguing the case I'll call the Laurie's List case to have that made public. And I think that should be done by Statute, as well. And I see that my time is up already. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Questions or comments from the Commission for Attorney Sullivan? Seeing no questions or comments, Attorney Sullivan, I would thank you for your testimony and for your patience. I know that you have been on the line most of the day. So, thank you very much.

ATTORNEY SULLIVAN: Can I say one last thing, Deputy Attorney?

DEPUTY ATTORNEY GENERAL YOUNG: Absolute.

ATTORNEY SULLIVAN: All right.

DEPUTY ATTORNEY GENERAL YOUNG: Go ahead.

ATTORNEY SULLIVAN: I want to say that the sunshine that these efforts are headed for certainly show the good work that Police Officers do 99% of the time, as well as weeding out the bad conduct. And when there is bad conduct, this oversight which is proposed not only reflects on the bad conduct, but it shows how the Supervisors review and take appropriate action, or not. So it's not just the bad Police Officers that we can look at, but their Supervisors, as well. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. And enjoy the rest of the day.

ATTORNEY SULLIVAN: You, also.

DEPUTY ATTORNEY GENERAL YOUNG: Next is Attorney Stacey Ober, who is representing the AKC. Is Attorney Ober -- I'd ask that you either raise your hand in your computer, or hit *3.

MS. EKLUND: Stacey Ober, I will open your line in one moment so you can speak.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you.

ATTORNEY OBER: Good afternoon.

MS. EKLUND: Stacey Ober...

ATTORNEY OBER: Deputy Young, can you hear me?

DEPUTY ATTORNEY GENERAL YOUNG: I can, Attorney Ober. Welcome. We have your -- I think it was two pages, right? We have your two pages of written testimony. So you have three minutes in which to provide a summation of that testimony. And to the extent the Commissioners have questions, those will be asked after. So with that, I welcome you.

ATTORNEY OBER: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: And you may present your testimony now.

ATTORNEY OBER: Thank you very much. I want to just emphasize how grateful I am for this opportunity to have time with you and the other Commissioners this afternoon, knowing that you're contemplating a statewide system for the reporting, investigation, and punishment of Policemen misconduct.

I wanted to take the opportunity to share with you observation that I've had in this role in the past year, which is detailed in my written testimony. And just acknowledge the American Kennel Club does have a compliance arm. It performs more than 5,000 kennel inspections a year that are arbitrarily performed and also in response to any complaint or concern that might be received by them. That is a voluntary consented inspection by virtue of having a relationship with the American Kennel Club and registering dogs or litters with us. They look go ensure the adherence to our Care and Compliance Policy and recordkeeping, and other procedures.

The reason for my participation today is to acknowledge that on occasion Law Enforcement does reach out to seek the assistance from third parties, as it relates to animal cruelty. And in New Hampshire, there have been scenarios where I have come to understand that, during the assistance with Law Enforcement search and seizure, Fourth Amendment procedures, these third parties have not necessarily taken the proper course of action, or have even engaged in questionable bad faith. And so, I wanted to raise it in the context of acknowledging that there may, on occasion, be third parties that ought to be included for purposes of establishing any system of reporting, review, and investigation of misconduct.

If you look at Governor Sununu's Animal Cruelty Investigation and Prosecution Commission, they do have a User Manual, for instance, that's available for New Hampshire Law Enforcement. And in the Manual, it points out that the laws in the Criminal Code can only be enforced by Law Enforcement Officers certified by the New Hampshire Police Standards and Training Council, unless otherwise provided in the law.

And so, I wanted to point out Chapter 105-18, Special Deputies, where it acknowledges that an Officer or Agency of any incorporated society for the prevention of cruelty to animals, upon being designated in writing for that purpose by the Sheriff of any county in this State, may, within such county,

make arrests and bring before any Court or Magistrate having any jurisdiction offenders found violating the provisions of this subdivision.

Further, in the Manual, I just want to note that apparently in New Hampshire it's only the progressive communities that are requiring Animal Control Officers to have any law enforcement training, or animal control training as part of their background. So they are given extensive authority and it has resulted, I think, in unfortunate situations that would be appropriate to be captured in any statewide system to review and look at patterns of conduct.

These are third parties that are not licensed or certified by the State. And therefore, there's no oversight or disciplinary consequence for any bad faith or action without proper cause. So that really summarizes my testimony for this afternoon.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much. Do any Commission Members have any comments or questions for Attorney Ober? Seeing no questions, I thank you for your testimony, both written and verbal, and wish you a good afternoon. Thank you, Attorney Ober.

ATTORNEY OBER: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Cal -- Fallon, next up is Sam Katz.

MS. EKLUND: And one moment, I will open your line so you can speak. Sam Katz, your line is now open. Please go ahead.

MR. KATZ: Hello, Commission.

DEPUTY ATTORNEY GENERAL YOUNG: Good afternoon, Mr. Katz. We have your three pages of written testimony. So you have three minutes to provide a summary of that testimony. And to the extent the Commissioners have questions or comments after, you'll be able to address them. So, thank you for your anticipated testimony. And you may begin.

MR. KATZ: Thank you, Commission. Recently with the assistance of Mr. Lascaze I analyzed an MET spreadsheet which contained all of the traffic tickets handed out from the 1st of last year to the end of May in this year. And I have found multiple idiosyncrasies that worry me really deeply.

To begin, of the 2,852 recorded traffic tickets within the State, as said, the race column was left completely blank 904 times. More than just an error in training, I believe that this mere overwhelming frequency of absent racial data is emblematic of how some of New Hampshire's Police Officers fail to properly understand how to navigate racial situations. If policing is to be conducted in a transparent manner, then crucial data like this needs to be recorded.

Furthermore, there still exists a saddening racial disparity regarding the frequency of handing out tickets. People of color in New Hampshire comprise 11.8% of all traffic tickets, despite making up only 5.8% of the general population. If everything was just and equal, there would be little to no disparity between these percentages. However, this disparity shows that race plays a part in the likelihood of someone getting pulled over.

Additionally, according to this dataset, people of color are stopped for certain offenses at a higher rate than their white counterparts. For example, while following too closely was listed as the reason for 4.3% of all white traffic stops, it was simultaneously listed as the reason for 8.8% of traffic stops against people of color. In this way, some more frivolous or minute reasons for initiating a traffic stop might be used as retroactive ways to justify an Officer's bias suspicions against people of color. This is not to say these perceptions aren't conscious. They're not necessarily conscious, but they are present. They are dangerous. And they are oppressive.

To summarize these discrepancies, a person of color is more likely to be pulled over in New Hampshire than a white person, and is more likely to be pulled over for a frivolous offense. Both of these are clear accounts of Officer misconduct, not on an individual level, but at a systemic and routine level. This is racialized policing. This is a clear targeting of people of color. This is grievous misconduct that I do not feel is currently taken seriously, or even recognized widely within New Hampshire.

From an empirical and data-driven perspective, the impacts of systemic racism can often be quite nebulous and obfuscated. However, I believe I have quite plainly presented a specific set of systemic problems with how New Hampshire handles policing and race.

Therefore, I'd like to see some greater degree of accountability and responsibility for these blatant injustices, not just for this past year and a half of tickets, not just for future ticketing offenses, but I believe accountability needs to become a central tenet of how New Hampshire polices, especially when dealing with race.

If there is no accountability, there is no trust. There cannot be trust without it. A lack of accountability precludes trust and thus effective policing. There needs to be clear penalties for Officer misconduct and Officers need to be better trained so they know how to respond when their fellow Officer begins to engage in dubious conduct.

More concretely, there needs to be an Oversight Board to investigate Officer misconduct. Otherwise, if we do not begin to hold Officers accountable and responsible for their own conduct, as we currently fail to do, what does that say about our values as a State and our values as individuals? Thank you, Commission.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you very much, Mr. Katz. Any Commission Members -- Joseph, is your hand -- yeah, I see your hand up, Joseph. Yes.

MR. LASCAZE: Yes, for full just disclosure and transparency, Sam is one of the individuals I work with routinely. And we have been looking at different trends and patterns in policing across the State, looking for concrete evidence of things that we believe to misconduct. So I just wanted the Commission to be aware of that.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Joseph. And when -- Mr. Katz, there was an indication of that, as well. So that -- I think that we even put that on the website. So, thank you.

MR. KATZ: Um-hmm [yes].

DEPUTY ATTORNEY GENERAL YOUNG: Seeing none, I thank you, Mr. Katz, for your written and verbal testimony. And enjoy the rest of the day.

MR. KATZ: Thank you, Commissioner.

DEPUTY ATTORNEY GENERAL YOUNG: Are there any other members of the public that are on the line that would like to speak? If so, raise your hand on your computer or please hit *3.

MS. EKLUND: Just to review with those on the computer, at the bottom right of your screen on the Attendee List, there's a little hand icon. Click that and it will raise your hand so I can identify your line. Once again, if you're on the phone, click *3.

DEPUTY ATTORNEY GENERAL YOUNG: Seeing no indication that there is anyone else, we will move onto the next order of business. We do not have a meeting tomorrow. But tomorrow is your day to get your homework done, because, on Monday, the -- your recommendations are due on this section.

And I would ask that you send them to both Kim and to Nicole. We will work on our draft for the next section. And we will get together again on Tuesday. Any other business for today? Seeing no other business, Joseph -- oh, yeah, John Scippa. Go ahead.

DIRECTOR SCIPPA: I'm sorry. I just wanted to let the Commission know that both myself and Judge Gardner, because of other commitments here at Police Standards and Training, we have a Council meeting on this upcoming Tuesday. So we may be in-and-out of the meeting during that Tuesday next week.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. I know that Judge Gardner said that. I thought that you had coverage. So just to know that you may be in-and-out, we will note that. Thank you. Seeing -- yes, Ken?

DIRECTOR NORTON: I just want to make sure that we can assume that your recommendations that you presented yesterday will be submitted relative to what we might submit, as well. I don't want to duplicate efforts.

DEPUTY ATTORNEY GENERAL YOUNG: Sure, yes. But those are our recommendations. But we can submit them again. What we do, just because we're doing a number of things here, we get the other Commissioners' recommendations in. And to the extent they're not covered, we do our additional ones. But, yes, those are submitted. So we will discuss those. We can submit them again if you want.

DIRECTOR NORTON: Great.

DEPUTY ATTORNEY GENERAL YOUNG: But there's no reason to duplicate. And we put some detail on there, because, quite frankly, the conversation that I had with the Attorney General was that I know how the -- at least I think I know at this point how the Commission Members think. And sort of the ones that have the more detail are the ones that we gravitate to. So, that's why we try to add a fair amount of detail to those yesterday.

DIRECTOR NORTON: Great. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: So, I'm going to look for a Motion to Adjourn. But before I do that -- okay, Joseph's back -- I would like to say to Fallon and Maria, I know that these days are pretty challenging with people calling in. There are a number of people on the line. We're raising our hands.

So, once again, they have done a stellar job. And it only goes this smooth, at least from my end, because of those two, because of Kim, who I don't think has slept in whatever day we're on, day 56, Annie and Nicole. I fear that, come September, they will all take time off and I'll be in a world of hurt. So, thank you, all. I could not do this so smoothly without you. So, thank you.

MR. JOHNSON: And Maria.

DEPUTY ATTORNEY GENERAL YOUNG: Yes, yea, Maria. So, Joseph, would you like to make a Motion?

MR. LASCAZE: Yes, I would like to put in a Motion right now that we adjourn for the day. It is gorgeous outside. And enjoy it and get these recommendations put together.

DEPUTY ATTORNEY GENERAL YOUNG: I like your Patriot sticker in the back. You got a Patriot sticker.

MR. LASCAZE: Yes, listen, if the Patriots come up on the Commission, that is a nonnegotiable subject right there. Okay? That is not something that we're going to negotiate. Patriots are number 1.

DEPUTY ATTORNEY GENERAL YOUNG: They're kind of dead to me since Tom Brady left.

MR. LASCAZE: I don't even want to talk about that. Let's not even start in that. Oh, it gets me so mad.

DEPUTY ATTORNEY GENERAL YOUNG: I cannot speak his name.

MR. LASCAZE: Oh my, goodness.

DEPUTY ATTORNEY GENERAL YOUNG: Ahni, a second? Thank you. (Inaudible), how do you vote to adjourn? Commissioner Tshiela, how do you vote?

MS. TSHIELA: Oh, sorry. There was noise in the background. Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Chief Edwards?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Norton?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Enjoy the rest of your vacation. You'll get one day without us on your vacation.

DIRECTOR NORTON: Thanks.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Dennis has left us. Lieutenant Morrison?

LIEUTENANT MORRISON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Yes, that was a yes. Yes. Thank you. President McKim has left us, as well, correct? Commissioner Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Ahni was the second. Did I do Eddie? Chief Edwards, did I do you?

CHIEF EDWARDS: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Yes, thank you. Commissioner Quinn, are you with us remote -- by phone?

COMMISSIONER QUINN: Yes, I vote yes, Deputy.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. And I vote yes, as well. Enjoy your Friday. Enjoy your long weekend without the Commission. See you Tuesday. Bye.

(Meeting adjourned.)