



**New Hampshire Commission of Law Enforcement
Accountability, Community, and Transparency**
Remote Commission Meeting via Teleconference
Wednesday, August 26, 2020 at 9:30 a.m.

Commission Members Present: Deputy Attorney General Jane Young, *Chair*; Robert Quinn, *Commissioner of the Department of Safety*; Ahni Malachi, *Executive Director, New Hampshire Commission for Human Rights*; John Scippa, *Director, Police Standards and Training*; Rogers Johnson, *Chair of the Governor's Advisory Council on Diversity and Inclusion*; James McKim, *President of the Manchester NH NAACP*; Sawako Gardner, *Justice of the New Hampshire Circuit Court*; Mark Morrison, *New Hampshire Police Association*; Charlie Dennis, *President, New Hampshire Association of Chiefs of Police*; Ken Norton, *Executive Director, National Alliance on Mental Illness - New Hampshire*; 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*; and Nicole Clay, *Assistant Attorney General, New Hampshire Department of Justice*.

MS. EKLUND: We're recording.

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

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

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

MS. TSHIELA: Morning, everyone. This is Ronelle Tshiela. I am my residence in Durham, New Hampshire. And there are people here with me but not in the room with me.

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

CHIEF EDWARDS: Good morning.

DEPUTY ATTORNEY GENERAL YOUNG: There you are.

CHIEF EDWARDS: Yeah, good morning, Deputy and fellow Commission Members. I am in Washington, D.C. at the Hamilton Hotel. And I am alone.

DEPUTY ATTORNEY GENERAL YOUNG: You are on tour.

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Good morning, Commissioner Lascaze.

MR. LASCAZE: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Joseph, are you not on? I thought I saw Joseph. We will come back. Good morning, Director Norton.

DIRECTOR NORTON: Morning, Deputy Young and Commission Members (inaudible) the National Alliance on Mental Illness. I'm at my home in Tilton, New Hampshire. There are other family members at my home, but nobody is in the room with me.

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

CHIEF DENNIS: Good morning, Deputy Young and fellow Commission Members. Charlie Dennis, representing the New Hampshire Chiefs of Police Association, I'm at the Hanover Police Department in my office. There are other people in the building, but I am alone.

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

LIEUTENANT MORRISON: Morning, Deputy Young. Good morning, fellow Commission Members. Mark Morrison, on behalf of the New Hampshire Police Association, I am located at the Londonderry Police Department. I am alone in my conference room. And thank you, Eddie, for joining us on your vacation, even though you're not going to see much between 9:00 and 1:30.

DEPUTY ATTORNEY GENERAL YOUNG: I think Judge Gardner has a pretty busy Docket. So she's going to be in-and-out. But let me just see if she's here. Judge Gardner, are you with us?

JUDGE GARDNER: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: President McKim, I do not see him no the line yet.

MR. MCKIM: I am here.

DEPUTY ATTORNEY GENERAL YOUNG: You are. There you...

MR. MCKIM: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Yeah, good morning.

MR. MCKIM: Good morning. I am in Goffstown, New Hampshire. I am in my home office. And my wife is elsewhere in the house.

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

MR. JOHNSON: I'm well, thank you, Deputy Attorney General Young. I am Rogers Johnson, Chair of the Governor's Advisory Council on Diversity and Inclusion. I'm in my home office in Stratham. And I am curiously alone.

DEPUTY ATTORNEY GENERAL YOUNG: Well, maybe that will change.

MR. JOHNSON: It probably will.

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

DIRECTOR SCIPPA: Good morning, Deputy General. Good morning, Commission Members. John Scippa, Director of Police Standards and Training, I am in Exeter, New Hampshire. There are other adults in the building, but they are not in the room with me.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning. Oh, right, it's just taking (inaudible). Good morning, Director Malachi. How are you?

DIRECTOR MALACHI: Good morning. Yes, kiss me. I'm caffeinated. Ahni Malachi from the Human Rights Commission, I am alone in my room in my home in Penacook.

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

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

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Good morning, Attorney Jefferson. I thought I saw him up there.

ATTORNEY JEFFERSON: Yes, good morning, Deputy Young and fellow Commission Members. I am in my office in Manchester. And I am alone.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. And Commissioner Lascaze, do we have you now? I see your name on the screen.

MR. LASCAZE: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Joseph, are you with us?

MS. TSHIELA: He told me he's having connection issues, I think. And everyone's stuttering. So, yeah, he's trying to figure it out.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So, Ronelle, can you tell Joseph that when he gets on, just we will take his attendance?

MS. TSHIELA: I will.

DEPUTY ATTORNEY GENERAL YOUNG: You'll be playing the role of Ahni this morning. Did you get him the message?

MS. TSHIELA: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Oh, God. I hope she can hear me.

MS. TSHIELA: I can hear you, sorry. I'm typing it to him right now.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Okay. Thank you for doing that for me. So the next order of business will be the approval of Minutes. So we're going to go to the August 20th Minutes. I think that we have had all the edits and corrections.

Anyone want to move those Minutes in? We will do them separately today, only because August -- we've had a fair amount of work on the August 20th Minutes. Do I have a Motion to Approve the Minutes from August 20th? Chief Dennis, you move the Minutes in, as written?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: And Ahni, you are seconding that. Is that correct?

DIRECTOR MALACHI: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. So, as to the Minutes of August 20th, I vote yes. Commissioner Quinn?

COMMISSIONER QUINN: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Judge Gardner's still not with us. Lieutenant Morrison?

LIEUTENANT MORRISON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Dennis was the first. Director Norton?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Joseph is still not with us. Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Tshiela, can you hear me?

MS. TSHIELA: Yes and yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you. I will now move to the Minutes from yesterday's meeting, August 25th. Do I have any questions or comments on these, as they are written? Do I have a Motion to Approve the Meeting Minutes from August 25th, as written? Chief Edwards so moved as written. Do I have a second? Second by Director Scippa. Commissioner Tshiela, how do you vote on the Meeting Minutes from yesterday?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Director Norton?

DIRECTOR NORTON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: I think Director Norton is saying yes. Is that correct?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thanks. Chief Dennis?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Lieutenant Morrison?

LIEUTENANT MORRISON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Quinn?

COMMISSIONER QUINN: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: And I vote yes, as well. So the Minutes are approved, up-to-date. Thank you. Maria -- oh, good morning, Judge Gardner. How are you?

JUDGE GARDNER: Good morning, everyone. How are you?

DEPUTY ATTORNEY GENERAL YOUNG: Good; so we've done our roll call. But if you could just provide your name and where you are located, we've notified the group that you have a busy Docket this morning. So you'll be joining us, as you can.

JUDGE GARDNER: Yes, thank you. So my -- Sawako Gardner, I'm in chambers in Dover District Court, and I'm alone. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Maria, can you hear me?

MS. EKLUND: Yes, I can hear you.

DEPUTY ATTORNEY GENERAL YOUNG: Could you work with Joseph to get him on? I know that Ronelle's trying to communicate with him. But if you could try to get him on, that would be great.

MS. EKLUND: Yeah, I'm working on it right now.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you, both, for that. So the next order of business is to pick up where we left off yesterday. But we have a couple of edits. So we accepted the draft Report, as written. But Lieutenant Morrison correct -- whoops, correctly pointed out that we were missing a word on page 2.

So we indicated that Internal Affairs investigations are not regulated by Policy or Procedure. We neglected in to put in a clarifying word. So he suggested the word "uniform". That seems to be the word, "uniform", standard, universal. But I think uniform fits. So we would make that edition, that edit to the Report.

And the other addition that we would have is on the recommendations, the first recommendation that we voted on yesterday, which would be establishing the independent statewide Agency, we neglected to add the language that any sustained finding would be accessible in a database maintained by that entity. So those are the two edits, editions that we would have currently on the Report. I would ask if any other Commission Members saw any other edits, since you had the night to sort of look at this, if you would raise your hand. If not, I'll take a vote on these two edits. Attorney Jefferson?

ATTORNEY JEFFERSON: Yes, just on Number 1 on 1C, I think it just should -- it should say any Committee or Hearing Panel would be slightly weighted toward Law Enforcement.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So I see no other hands raised on that. So I would take a vote on these three edits, as written. And then, we will move on. So, I vote yes to the three edits. Commissioner Quinn, your...

COMMISSIONER QUINN: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: I would vote yes with just one quick question for clarification.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah.

MR. MCKIM: And this is regarding Attorney Jefferson's comment about adding the word "hearing" to Panel. The first phrase in Section C also speaks of Committees and Panels. And I didn't know whether the word "hearing" should be added to in front of that word "Panels" to be consistent, or if there was a different interpretation of Panel, if there's a Panel being considered that would not be a Hearing Panel.

DEPUTY ATTORNEY GENERAL YOUNG: So we could take out hearing in the second line. I think -- so I don't know if you were with us at this point, President McKim, when we were massaging C. So I think we just probably didn't have continuity in it.

MR. MCKIM: I was not in -- but the lack of continuity, to me, came with Attorney Jefferson's comment just now about adding the word "hearing" in front of Panel in that one place.

DEPUTY ATTORNEY GENERAL YOUNG: No, he added Committee. So it read before any Hearing Panel.

MR. MCKIM: Oh, on Committee.

DEPUTY ATTORNEY GENERAL YOUNG: He wanted Committee or Hearing Panel. So I think we just either have to take out hearing on this line or here...

MR. MCKIM: Right.

DEPUTY ATTORNEY GENERAL YOUNG: So I would move to take out the word "hearing". So any Committee or Panel and take out the word "hearing".

MR. MCKIM: That would be fine. Parallelism works for me.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you for that catch. Okay. So, with that, I'm going to run through the roll again. I vote yes. Commissioner Quinn?

COMMISSIONER QUINN: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Chairman Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Keep calling him Chairman.

MR. JOHNSON: Chairman's good.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Where'd he go? President McKim?

MR. MCKIM: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: I think your mic is muted, President. I'll come back to President McKim. Judge Gardner?

JUDGE GARDNER: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Lieutenant Morrison?

LIEUTENANT MORRISON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Dennis?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Norton?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Tshiela?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Joseph, I see that you have joined us this morning. Good morning.

MR. LASCAZE: Good morning, Deputy Young and fellow Commission Members. I don't know if you've taken a roll call and/or what's going on. I've just been having some very terrible issues this morning with my internet.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So we've taken a roll call. So why don't you tell us your name and where you're located, and who is with you?

MR. LASCAZE: Okay. Joseph Lascaze, Representative of the ACLU of New Hampshire, I'm at my residence in Bedford, New Hampshire. There are two family members here, but they are not in this room.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So where we approved the Minutes, Joseph, from the 20th and yesterday, the 25th.

MR. LASCAZE: Okay.

DEPUTY ATTORNEY GENERAL YOUNG: And where we are now, we went back to the Report. Lieutenant Morrison picked up a word that we neglected to leave out, in regard to internal investigations. So, it current reads that investigations are not regulated by Policy or Procedure. And we needed to add the word, as you'll see on the screen, "uniform". So there's no uniform Policy or Procedure.

And then, over on our first recommendation, we neglected to add that sustained findings would be publicly accessible in a database maintained by the entity. And then, Attorney Jefferson picked up on C that we needed to add Committee before Panel, so it would match any Committee or Panel. And we deleted the word "hearing". So those are the technical changes that we've made to the Report. So we just did a roll call. So do you agree with those four changes?

MR. LASCAZE: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. So now, we will continue where we left off yesterday. And where we left off yesterday, Commissioner Norton had proposed a recommendation that -- sorry, having a screen issue here -- that terms of a Judgment or Settlement from a civil lawsuit against any Law Enforcement Agency or Officer, related to alleged misconduct, should be a matter of public record, and that Nondisclosure Agreements relating to civil lawsuits should be prohibited.

So, we went back last night, because this is where we left off. We were having some debate if this was already law. So we went back and we looked at the current state of the law. And we talked to what I would describe as the experts in this office. And it's our position that this is covered in law, both under the Statute that we looked at yesterday, and under 91-A, specifically 91-A:4, VI. Every agreement to settle a lawsuit against a Government Unit, threatened lawsuit, or other Claim entered into by a political subdivision, or its insurer, shall be kept on file at the Municipal Clerk's Office and made available for public inspection for a period of no less than 10 years from the date of the settlement. So, since this is already law, I think where we were moving yesterday was should we just not -- either table this or not vote on it. So I think I see Chief Dennis' hand up. Chief Dennis?

CHIEF DENNIS: Subject matter, I just wanted to speak quickly before we get too far down the road. From yesterday's meeting on Recommendation 1, as you recall I abstained from that vote in saying that I had a meeting later that afternoon, and I was hopeful to be able to change that. After a meeting yesterday afternoon, more questions had been answered. And if it's possible, I'd like to change my abstain to a yes for Recommendation 1 that was voted on yesterday.

DEPUTY ATTORNEY GENERAL YOUNG: Certainly, that will be so noted. Thank you, Chief.

CHIEF DENNIS: Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Director Norton?

DIRECTOR NORTON: Thank you. I wonder if it makes -- I really appreciate the clarification on this. I wonder if it makes sense to just make a statement, similar to what you just stated, that public transparency regarding Settlement Agreements is covered under existing New Hampshire Law, and then cite the laws. It just seems like there's so much disinformation out there about it that it would be helpful for us, as a Commission, to state that it is covered under existing law.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: Well, to Ken's point, I think a lot of this happens when we hear from folks who are representing national organizations that this may not be the case in other States. And so, much of the testimony, as I remember, came from folks who made recommendations who represent national organizations to have chapters here in New Hampshire.

So, again, my Motion from yesterday was to remove this as a recommendation. But, if the Commission is in favor of putting something that reaffirms what is already in law, I'm okay with that, as well. I just think we have to be careful about national organizations making recommendations that may not be taking place in other States but are taking place here.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Lieutenant Morrison?

LIEUTENANT MORRISON: Thank you. And I -- with all due respect to Ken, I appreciate his sentiment with this. But I just think we need to cut it and move on. It's already covered in the Statute. And I just would like to spend more time on some of the other recommendations.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. President McKim followed by Director Malachi?

MR. MCKIM: Thank you, Director -- Deputy Director [sic]. I would like to recommend that we move -- make that notice that Ken was mentioning up in the above section about the current situation, or further up above, where we talk about what the current status is, and just mention the Statute, just to highlight it. I think it is -- this is an opportunity to educate the public. And I think it's just a one-sentence reference, maybe two sentences, at most, up above. And we move on.

DEPUTY ATTORNEY GENERAL YOUNG: Director Malachi?

DIRECTOR MALACHI: So, I'm struggling a little. I was trying to decide if my hand was up or down. I'm not sure that we need it at all. Maybe I could go on the hair splitting of a sentence above. But the concern I would have with that is does it open some other can of worms that we somehow need to answer or provide justification for in some other section, meaning the other section? So, if we'd have to open another can of worms to explain it, I'd say take it out. We don't need it, because it's already covered. If a sentence really will speak to it, then I could be in favor of that.

DEPUTY ATTORNEY GENERAL YOUNG: So why don't we try to work in a line-or-two in the Narrative section? And then, we can bring that back tomorrow to see if that covers it. Is everyone in agreement?

(No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Okay. All right. So I -- is there anyone that's not in agreement?

(No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: Julian, is your hand up?

ATTORNEY JEFFERSON: Yes, so I had a suggestion that I think sort of gets at the heart of this issue. And I don't know if it was anybody's recommendation. So it seems to me, Director Norton, that sort of the purpose of this is to make sure that any alleged misconduct becomes public.

So I think, in line with the -- with Number 1 that we recommended, I think a second part of that is to require all Police Agencies to report any alleged misconduct to the entity in Number 1. And I think that sort of gets at the heart of Number 5.

So if a Police Agency gets a complaint of alleged misconduct that fits the defined standard of what misconduct is, which I think it would be for anything that rises to the level of an allegation of a civil lawsuit,

then, by definition, it will become public if it's a sustained finding. So I think that is a recommendation that I think would sort of get at this issue, because I don't think it's really the idea of civil lawsuits that's the problem. You just want to make sure that any allegation of alleged misconduct is impartially investigated. So that would be my thought.

(Pause)

DIRECTOR NORTON: This is Ken. And thank you for that, Attorney Jefferson. I was unclear on that. But Director Scippa, is that -- would that be required in Form B, if there had been any settlement relative to misconduct? Would that constitute the -- or Commissioner, would that constitute filing a Form B form?

DIRECTOR SCIPPA: Director Norton, we do not capture any settlement information on a Form B, nor would we have any need to collect that form as a regulatory -- or collect that information, as a regulatory body.

DEPUTY ATTORNEY GENERAL YOUNG: Julian? Oh.

ATTORNEY JEFFERSON: Yes, I'm sorry. Go ahead.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So, we've put it. Now, we did a 1L. Does that capture it?

ATTORNEY JEFFERSON: Yes, it does.

DEPUTY ATTORNEY GENERAL YOUNG: So, do I have a Motion to Strike Five in Favor of 1L? Ahni, do you have a question?

DIRECTOR MALACHI: Okay. But, to require the Agency to report the misconduct, don't they already do that? Isn't misconduct reported? I mean, if it's a Form B, then it's reported. If it's -- Director Scippa, help me out, or Commissioner Quinn.

DEPUTY ATTORNEY GENERAL YOUNG: But this is to the new entity, Ahni. This is to the new entity.

DIRECTOR MALACHI: Oh, to the new...

DEPUTY ATTORNEY GENERAL YOUNG: Yeah.

DIRECTOR MALACHI: Get with it, hello.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah.

DIRECTOR MALACHI: All right, I'm with you. I'm swimming in Ken's confusion this morning. I'm sorry, you all, not enough coffee.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So we would -- instead of five, as proposed, five -- we would strike five and we would create a new 1L. Do I have a Motion for that? Chief Edwards, what is the Motion?

CHIEF EDWARDS: I move to strike Number 5 and replace it with L on the Number 1, 1L.

DEPUTY ATTORNEY GENERAL YOUNG: Do I have a second? Ken, thank you. Ken is the second. I would vote yes. Commissioner Quinn?

COMMISSIONER QUINN: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Judge Gardner?

JUDGE GARDNER: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Lieutenant Morrison?

LIEUTENANT MORRISON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Chief Dennis?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Ken was the second. Commissioner Lascaze?

MR. LASCAZE: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Tshiela?

MS. TSHIELA: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Tshiela?

MS. TSHIELA: Yes. Hello?

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

MS. TSHIELA: Yes. I -- yeah, I could hear you the whole time. My phone's just being weird. Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Thank you very much. Okay. So, now, we will move onto the next topic area, which is the requirement that Police personnel files be retained for at least as long as other municipal records. Do we have any comment or discussion about that recommendation?

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Oh, sorry, Julian, is your hand up for this, or...

ATTORNEY JEFFERSON: Oh, no, I'm sorry. Let me un-raise my hand.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So, then, Director Scippa followed by Director Norton?

DIRECTOR SCIPPA: I guess I would just offer that, as a Police Chief, I retain those records according to the State RSA that deals with the retention of public records. So I'm not sure whether there is any kind of, I guess, maybe changes to that record retention schedule, unless it's controlled by a Collective Bargaining Agreement. So this would be something that we may not be in a position to speak to, only because it may be something that is being negotiated from CBA-to-CBA. I know, for a fact, we were not a Union shop. And so, those record retention schedules set forth in RSA were the ones that we followed. Thank you.

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

DIRECTOR NORTON: Director Scippa answered part of my question. But I just -- I guess I just don't understand. Does that mean it's different from municipality-to-municipality? And if there is a statewide law, I think it'd be helpful to cite that law. Thanks.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. We will grab that, as -- okay. Now, I'm having problems. Why am I having problems? Can you hear me?

(No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: So we will try to grab that law. Commissioner?

COMMISSIONER QUINN: (No audible response).

(Pause)

LIEUTENANT MORRISON: Can I make a comment, while we're waiting?

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

LIEUTENANT MORRISON: I can.

DEPUTY ATTORNEY GENERAL YOUNG: So, we're having issues on this end. But, yes, you can make a comment. But, tell Commissioner Quinn he was up next.

LIEUTENANT MORRISON: Oh.

DEPUTY ATTORNEY GENERAL YOUNG: So when you're done, pass it to Commissioner Quinn. And we will try to figure out what's going on, on my end.

LIEUTENANT MORRISON: Well, the comment I wanted to make was, this -- I don't know if we want to add this RSA in what was my suggestion yesterday. This is the in-camera review, essentially the Statute. 105:13(b), I think this -- it might be helpful for any clarification to add just the RSA to match my suggestion. I just thought I'd bring that up, while you have it right on the screen.

(Pause)

MS. EKLUND: Everyone, just a small technical issue, Jane has signed out. And she's going to sign right back in, so if you don't mind just waiting a moment-or-two? Everyone, while we're figuring out the technical issue, we're going to pause the recording and we're going to take a 10-minute break. We will begin again at 10:20.

(Off the record at 10:10 a.m.)
(On the record at 10:20 a.m.)

MS. EKLUND: We are now recording once again.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Maria. My apologies for our technical difficulties. So, Lieutenant Morrison, could you start at the beginning, please? Thank you.

LIEUTENANT MORRISON: Okay. I'm sorry, The screen is now different than it was when I started. And my statement was, should we take, or capture, that RSA, the 135-B that was up, and add that as a label in the suggestion, because that's what I was going off of, when I was talking about the in-camera review for the Reports? I didn't know if it made sense to help with a clarifying label of that RSA.

DEPUTY ATTORNEY GENERAL YOUNG: So, Lieutenant, the 105 -- yeah -- that's the confidentiality provision. This is the retention provision.

LIEUTENANT MORRISON: You're 100% correct. And my conversation started before the screen changed.

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

LIEUTENANT MORRISON: So, what was up was exactly what I was referring to in my recommendation. And my question was just if it would be helpful to take that RSA, capture it, and put it with our recommendation for clarity. But that was all.

DEPUTY ATTORNEY GENERAL YOUNG: But we do have a discussion of that on page 2 of the Narrative of the confidentiality piece.

LIEUTENANT MORRISON: Okay. In the formation of the new entity?

DEPUTY ATTORNEY GENERAL YOUNG: No, we describe it in the Narrative of the Report.

LIEUTENANT MORRISON: Okay. I just thought it would be helpful to have that clarity. But if you say it's covered, then I'll go with that.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you. Commissioner Quinn?

COMMISSIONER QUINN: Yeah, the only thing, Deputy, I had is, when we talk about clarity, I think that's the first time we use the word "personnel files". So I just think it's important for us. It was defined in the Memo dated 2017 by then-Attorney General Foster. He actually defined what a personnel file was for the purposes of misconduct. And it was pretty much everything, absent the preemployment background. So it would be everything from the day the Officer got hired moving forward, including medical, everything.

So, is that -- when we're -- I think, as a Commission, we have to all be in the same -- what is a personnel file? So is it all-inclusive, or -- for this recommendation, I want to make sure that I understand it. So, is it -- what is it? That's my only comment, because many folks on here don't understand, I think, what

is contained in a personnel file. So that's all. And I didn't know if this was going to -- it will supersede this Memo, I would imagine. So is it the same definition or is it all-inclusive?

DEPUTY ATTORNEY GENERAL YOUNG: So the Memo that you're talking about, is that the EES Memo?

COMMISSIONER QUINN: Yeah. Yes, and it -- they dropped a footnote. It's on page 3. And it basically -- personnel files include -- I don't want to read the whole thing. But it's everything. And the last sentence said, for purposes of EES, the Chief shall only disclose matters arriving after an individual becomes a Law Enforcement Officer. That's all. I just wanted to make sure that we all understand. If that's changing, then that's changing. If it isn't, it isn't.

DEPUTY ATTORNEY GENERAL YOUNG: No, understood. And so, this was just a compilation of recommendations. I think that that's a good point. So, I guess the question to the Commission is, what do you want to be retained? Chief Edwards?

CHIEF EDWARDS: Sorry, I was trying to send a message that Joseph's internet is down again. I was trying to text you a message. But...

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Chief, do you have any sort of questions or comments about this proposal, or it was just that it was a technical...

CHIEF EDWARDS: No, just that. It was just that. Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, thank you. Attorney Jefferson?

ATTORNEY JEFFERSON: Yes, so I agree with Commissioner Quinn that we should define it, specifically. And so, I think what the ACLU was getting at, and what I support, is to amend -- recommend amending this Statute, so the one that is highlighted, so not the entire personnel file. I think we're only concerned with Internal Affair investigations and their results. So that be retained for a period of retirement or termination, plus 20 years, so it was to bring (inaudible) with all other municipal personnel files.

But I agree with Commissioner Quinn. I think it'd be burdensome and unnecessary for them to keep the entire personnel file. I mean, nothing would ever be relevant to any ongoing criminal investigation with their medical records or anything like that.

So there are a lot of things in personnel records I don't think need to be retained, but that that specific carveout that's in the Statute, the recommendation, I believe, and what I would support is that is changed so that would be a period of termination plus 20 years, would be my thought to sort of narrow it down and make it very specific.

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

MR. MCKIM: Thank you, Deputy Young. I wholeheartedly agree with Attorney Jefferson and Commissioner Quinn. And so, I would support the verbiage that is magically appearing on our screen. I wanted to just go back to something we were discussing yesterday and wonder if we could advocate for this.

We talked about putting a very brief phrase or sentence of purpose for each of these recommendations so that it's clear why we're making the recommendations that we're making. So I'm just wondering. I'd love to advocate for ensuring that we do that for each of the recommendations we make.

DEPUTY ATTORNEY GENERAL YOUNG: So, for current recommendations, President, or every recommendation that we make?

MR. MCKIM: Well, I think it would probably be appropriate for every recommendation for clarity for the public, or whoever's reading the document. And I know that probably since it -- it's -- that seems to be retroactive, that goes to votes we've taken. So I'm fine with just having it going forward, if that makes more sense. But I'm curious to hear what the rest of the Commissioners think.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Director Scippa?

DIRECTOR SCIPPA: Yes, I just want to offer my support of Attorney Jefferson and Commissioner Quinn, relative to parsing this particular piece out. To Attorney Jefferson's point, the personnel file is not something that I think is relevant to what we're trying to accomplish.

And by carving out this change in the RSA would speak directly to, I think, what this Commission is trying to accomplish. And it will help in the future, in terms of separating those two items, so that we don't have the complete personnel jacket available. And that would still be protected.

But part of the confusion here is we're using the term "personnel file". And to that end, I was a little -- I was confused in that I knew, for a fact, that you had to keep those personnel files for well after the separation of an Employee. So, here's just a case where you see a term and everybody's kind of seeing that term in a different definition. So I just want to offer that. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Director.

COMMISSIONER QUINN: Deputy, yeah.

DEPUTY ATTORNEY GENERAL YOUNG: Go ahead.

COMMISSIONER QUINN: Yeah, this is to President McKim. James, and I think if we are to put an explanation now at this point in time, August 26th, on just this lane, misconduct, I don't think we have the time to go back and change the other two. And I just think we've got a lot of work to do between now and the next few days with others and the final recommendations.

So I think these are quite clear. I agree it might be offered more. But I think we, as a Commission, just have to look at time. And I think we've got a lot to accomplish. So I think it's well-intended. But I think we continue on with the standard format. That's just my opinion.

DEPUTY ATTORNEY GENERAL YOUNG: Director Malachi?

DIRECTOR MALACHI: Yes, well, Commissioner Quinn stepped on in. Yeah, to the thoughts of adding more work, too many words, we just need to keep it moving. What we have is great. And I would venture to say that less is more.

When you have too many words, you're beating people over the head with stuff. And then, it becomes confusing. And you're trying to figure out, well, what do they mean. If the words that we're using are purposeful, then we don't need a lot of additional expository writing to explain something. I think the public is smart enough to understand what we mean.

And because if we're sending this to the Governor, and we're sending this to lawmakers, and it's being released to the public, I think they're pretty smart. I would trust them to be able to understand what we mean, as long as we're using clear words.

The other thing -- and I don't know if this is to Commissioner McKim or Attorney Jefferson, or Commissioner Lascaze. I mean, just in as few words as possible, why are we needing this particular recommendation? Very few words, and not too scholarly, not too lawyerly, why do we need this plus-20 years? I just want you to plainly state it. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: So, Joseph, are you with us?

MR. LASCAZE: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: This was a recommendation made by Joseph and Ronelle. Ronelle, are you on?

MS. TSHIELA: I'm on. Yeah. I was just -- after listening to the testimony on it, I just thought it would be inline with other -- what is the word? Sorry, I'm blanking. But it seemed as though this is the standard for other offices. So I just thought that this would be good for this, as well.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ronelle.

MS. TSHIELA: Believe that this was talked about on the last -- I don't think it was public testimony. It could have been public testimony. But it might have been the day before.

CHIEF EDWARDS: Joseph asked to be unmuted. Apparently, he's muted.

DEPUTY ATTORNEY GENERAL YOUNG: Maria, can you get that? Can you help Joseph?

MS. EKLUND: Well, let me see if he's...

DEPUTY ATTORNEY GENERAL YOUNG: Okay.

MS. EKLUND: Oh, okay. Okay. I think I see him. One moment. Joseph, if you can hear us, can you please speak up if your line's unmuted?

MR. LASCAZE: Thank you. I don't know if my computer and router have COVID. But I don't know what's going on with this internet and why I can't talk to everyone. I did hear the question from Ahni. And I just wanted to let you know.

So, for me, personally, when it comes to the retention of this -- of the files, for me it has to do with the fact that, one, Police Officers are public servants and that other public Employees have the same standard. And I don't know why we would discriminate against them and make something different, when it comes to Police files.

And this is also about having relevance in the future, if there have been wrongful convictions, which we heard testimony that there have been. And also if (inaudible) years down the road, so that this is what this is about for me. This is about retention, not disclosure to the public but retention for us to be able to have this on-file to look at, if the need arises later on.

DIRECTOR MALACHI: Okay. Thank you for that. So, the question I would have, then, is if we make the delineation here that if it's not the entire personnel file, right? So it's not their medical records and everything. It's if there's any misconduct that the Police Officer has had over the course of their career that has been appropriately handled, so that becomes a part of their file, and those would be the things that would be kept.

If we, in New Hampshire, are now changing how we process misconduct, right, so let's say we get everything that we want. So, there's a new Board or Commission, or whatever, that's set up. So, that's over here. And then, the audits and things, information from the different Chiefs and different Agencies are sent over. And everything is processed properly. We get rid of -- because, see, this, to me, makes sense to keep this if there's a Laurie List.

But we are all advocating, and I think we are all in agreement, to getting rid of the list. So everything will be in the daylight, meaning people that are on the list, they're processed and they are either -- whatever the consequences are, they'll have those. And then, once that list is gotten rid of, then, going forward, there is no list, so everything will be public in a proper way. Certainly once the Law Enforcement Officer has their due process, then there's no list.

So, to me, things like this make sense if there are all these other pieces where things are hidden, or over here, and nobody knows. But we are constructively changing all of that. And I would venture to say that Law Enforcement Officers are more likely than not to have lawsuits against them in the course of their daily work than anyone.

Then, we've set up multiple mechanisms to track and handle misconduct. So all of that is going to be out in the open anyway. So why is changing this RSA, which is potentially something that's a collective bargaining issue, why are we in that pool swimming around? Thank you.

MS. TSHIELA: Can you just -- so to put it simply, so is your concern is that if there is no Laurie List, then this recommendation doesn't make sense here, because, I'm sorry, that was just a lot? And I was

trying to figure out what it was that was your concern with this, because what I -- I just think that I understand what you're saying.

But, at the same time, other public Employees don't have that list. But this is a thing. So if this is already in place for public Employees, I don't see why it should be any different. And so, that's why I recommended this.

DIRECTOR MALACHI: Understood; and I -- there was a lot there because there's a lot. But, with that being said, if you make it super simple, Police Officers more likely than not to be sued than anyone else. If I'm a creative Attorney, I'm looking for stuff, because maybe someone's been aggrieved. Maybe not, I don't know. But, I have -- and I have that issue in my Agency. So, that's why I can speak to that.

And I understand that right now there's a Laurie List. So, this recommendation potentially makes sense, because there's a Laurie's List. But when that list goes away, the necessity for this based on what it is we're trying to do, meaning to handle misconduct and to allow people to correct any part of the process that has caused them to be incarcerated and it was wrongfully done.

If there's no Laurie's List, if all misconduct is appropriately handled and put out in the sun, so that if I'm a Defense Attorney, if my Client has been in jail for 10 years and it's wrong. And I'll be able to find all that out. So why do we need to do this?

MR. LASCAZE: I just wanted to highlight that. Thank you, Ahni, because now I fully understand what you're getting at. This is not about the publication of misconduct. And I think that that's not what we're not seeing. We're on two different pages on this.

This is -- this has nothing to do with whether or not this information's being public. This is about making sure, all right, that the Internal Affairs records are retained, just like other municipal records, and that the retention of these records are not bargained away by the Collective Bargaining Agreements that we did hear about earlier. That's what this is about.

This is not about misconduct being made public. It's -- we're not trying to mandate that these records are that. It's just simply about the retention of these records. And I personally don't think that the retention of public records should be subjected to bargaining. That's just my own opinion.

But I think that I don't know if we can do something that would grandfather the current Collective Bargaining Agreements that are in, that are already established now. We'd grandfather them in. And then, moving forward, that we'd change. But I just want to make it clear, Ahni, this is not about making this public.

And what I did want to just quickly point out is, when I had gone back and I had read over the testimony, Gilles Bissonnette had submitted testimony that has said that the retention rules that were governing Police Internal Affairs documents are dictated by Collective Bargaining Agreements. And so, under RSA 33-A, the retention provisions gives the Police special protections that don't exist for other public Employees.

So, that's what this is about. And it's just simply putting the municipal retention of these Police Internal Affairs documents inline with the retention rules that apply for personnel information from other municipal Employees. So, that's what it is for me on this recommendation.

MS. TSHIELA: Yes, I -- making them public, it wasn't about that, either, the publication of it. It was just the retention of it, like Joseph said. And that was strictly based on the testimony that we received.

DIRECTOR MALACHI: Yes, and I think I'm -- I understand you guys. And yes, it was not about making the personnel records public. But then, we moved into misconduct as the focus. So if misconduct is the focus, then that's already going to be handled under the recommendations that we've previously made and the changes that will take place at Standards and Training, number 1.

Number 2, I understand what the ACLU is saying, relative to Police Officers and other Employees, municipal or State Employees. However, I would venture to say, although Police Officers are paid with public dollars, they are not the same.

The DOT guy or the chick on the side of the road with the sign, they're not making life-and-death decisions. So, maintaining those records, why? If misconduct was the focus, then that's already going to be handled. And that will be available for any and all that need to see those records or that information. They'll be able to see it.

Other than that, what other reason is there to retain the personnel records, or misconduct files, or whatever we want to call them, because, when that misconduct happens, and that person is either -- whatever the consequences are, whether they're terminated or whether they have other consequences, that information is going to have to be revealed so that Defense can review it.

And as Lieutenant Morrison has said so eloquently, an in-camera review. So if there are other elements to that, other Internal Affairs elements to that investigation of that misconduct, whatever it is, then the Defense Attorney, if that's who we're concerned about, is going to be able to review that. If it's The Innocence Project folks, I would assume they would be able to review those things, as well, to use those in the proper defense -- proper and vigorous defense of their Client. So, I still don't understand. I heard all the words that you're saying. And I understand all the words that you're saying. However, this part makes no sense to me.

MR. LASCAZE: Okay.

DIRECTOR MALACHI: Thank you.

ATTORNEY JEFFERSON: Deputy Attorney?

DEPUTY ATTORNEY GENERAL YOUNG: So, I'm going to stick with the list. Julian, you have your hand up. But let me. It's Mark Morrison and then Julian, and then Chief Edwards. And then, we're going to move on from this topic. So...

MR. LASCAZE: Deputy Young, could I just quickly respond to that just before we do that on this very line of questioning?

DEPUTY ATTORNEY GENERAL YOUNG: Yeah.

MR. LASCAZE: Just wanted to respond real quickly to that and just say, again, Ahni, that this is -- that I don't -- the misconduct is not the focus. And I'm just trying to understand. If you're saying that because there's going to be a new misconduct Agency, that that would negate the need for Police records to be retained for 20 years, I don't know if that's what you're saying.

And the situation that you gave about the DOT workers making life-and-death decisions, I 100% agree with you that you're completely right on that. And I think that you actually highlighted the need for why they need to be kept for 20 years, because of the decisions that they're making.

And the independent Agency is still going to need records to review, if that's what you're talking about. If you want to talk about the Agency and the misconduct, they're still going to need records to review and they can't do that if the records are destroyed.

So I just don't understand why a retention of a file for a time period is -- there's this much pushback on this, when this is not about making something public and it's not about misconduct. It's about keeping and preserving something in case that it's needed.

DIRECTOR MALACHI: It's the content in the file. But somebody else will speak to that.

DEPUTY ATTORNEY GENERAL YOUNG: Lieutenant Morrison?

LIEUTENANT MORRISON: Thank you. I guess to deal with some of the verbiage that we have selected here, I would change the word "termination" to separation in Number 5. But, I've been listening to the discussion going back-and-forth. And I guess some of it concerns me, because I'm -- and maybe the Attorney General's Office could speak to this, like the Statute of Limitations for appeals, say, on a criminal case.

The whole purpose for a Statute of Limitations -- correct me if I'm wrong, Deputy Attorney General -- but it's so that there's at least an endpoint where there's a finality of the incident or of the crime, or of -- there just has to be a point where you can say this is over and this is put to bed. My concern with extending certain files well-beyond either, one, what is the case; two, what has been something that has been collectively bargained across the State, between whatever entity, I don't feel as though we're in the best position to recommend anything changing some of these practices, and for the reasons those entities have.

I've not been involved in a discussion before today about retaining these records for these periods of years and stuff. But I think one of my big concerns is, well, who's asking and what would they want with them? I think that's always the first question that we should look at. And if it's the ACLU that's asking and they're in the business of appeals and litigation, I think that we need to look long and hard at that so that there is some level of finality.

The last thing that I would want is to have some sort of a ill-willed person. And all they do is follow an Employee around and bludgeon them with a Report from 10 years ago, or 12 years ago, or 15 years ago, or 19 years ago.

So, because of the emotional sort of involvement in law enforcement, when people don't like being arrested, they don't like being told no. There's certain things that just happen naturally with this job, as Ahni mentioned, some of these things need to be taken into account.

And to willy-nilly or sort of make a sweeping comparison and set this up for a change where so many people are involved and so many different entities have already discussed it and decided on their own how to do this, I think we overstep a little bit. And I would just want to be a little bit cautious. I'm not against it totally. But I think we just need to be cautious of it.

And to Commissioner Quinn's point, there's so many things that we need to work on. I just want to make sure that we're cognizant of all the stuff that we still have ahead of us, and just kind of keep that in mind as we go through here. Thanks.

DEPUTY ATTORNEY GENERAL YOUNG: So, Mark, to answer your question on the Statute of Limitations, so, on a homicide case, there is none. Police Officers, if they commit misconduct within their job, it's -- there -- it's two years after you leave office.

I will tell you, doing some public integrity matters, when you have allegations that there is, say, a Department that has issues, to go in to find out, yeah, we don't have these files anymore is pretty frustrating on our end, because, yeah, a Statute may have expired. A felony may have not. But it's different when you're a Law Enforcement Officer.

So, I can't get too descriptive into details. I think it's pretty much public knowledge that we're looking at, at least one Department. But we have, again, the anomaly. But we have run into Departments in the past and we're like, where are these records? What do you mean they don't exist?

So, I am supportive of keeping records. So, I think that sometimes those are your answers. But that's just in response to your question about sort of the Statute of Limitations, because we do prosecute homicide cases. And we could bring somebody back. We've prosecuted older cases. And we go to look for Officers to determine 20 or 30 years ago what happened. So...

LIEUTENANT MORRISON: Right, and there are certain things obviously you have to keep, the Police Reports and whatnot.

DEPUTY ATTORNEY GENERAL YOUNG: Right.

LIEUTENANT MORRISON: But when we're talking about an Internal Affairs Report for something that an Officer did that's a performance, I just don't -- I just have to be cognizant of the who and the why, and extending that beyond what is reasonable. If Statute of Limitations is two years for things, I don't think 20 is reasonable.

And we love to make comparisons with other things. And sometimes they're appropriate and sometimes they're not. But I just don't want to recommend such a drastic change, especially to something that -- which I didn't actually appropriate -- was something that's collectively bargained with different groups. So, I think we need to be careful about straying into these areas and having our recommendations be completely tossed aside.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Attorney Jefferson?

ATTORNEY JEFFERSON: Yes, so to the whole -- so there's two separate issues. And they're equally important. So the parity is the point. So to reiterate what Ronelle and Joseph have said, that, in and of itself, warrants this.

So, you have personnel files for any municipal Employee. We have a law that says termination or retirement plus 20 years. And then, what you have here is the Police Officers getting special treatment of having Internal Affairs investigations be subject to being less than that via Collective Bargaining Agreements. This is totally in our wheelhouse. That sends a very inappropriate message to the public that Police Officers are getting this deferential treatment. And they are the most important people that we'd want to keep these records.

So, to Commissioner Malachi's point, the DOT guy or lady on the side of the road, who cares about their records? And that's kind of the point. We have made an obligation to keep those records for

20 years.

But yet the most important people who can have the most drastic impact on somebody's life, we're allowing Police Agencies to have that be subject to Collective Bargaining Agreements. And it's improper, and it's absolutely wrong. It should never be subject to a Collective Bargaining Agreement. Those records need to be available for at least 20 years, so that when things pop up, we have the ability, as Deputy Young said, to have the records to go back and take corrective action, if needed.

In regards to Statute of Limitations, that is a protection of Defendants to get against stale prosecutions. There is no Statute of Limitations if newly-discovered evidence gives rise to a retrial. And that's kind of the point here. This information is so important that if it has not gotten through, if it was not handed over, we have the ability to go back and get it. That is how The Innocence Project, the Attorney General's Office, and any other entity would be able to go back and get this information, and to take appropriate action.

The -- in regards to there being a -- potentially this new misconduct entity, it's an assumption that that is going to happen. So we cannot rely upon the fact that that may happen to say that this is not needed. They're two completely separate recommendations and we cannot base the need for one recommendation on an assumption that another recommendation is going to happen. So we cannot rely upon that.

So this, I think it is important for all of those reasons. It is Police records going to the heard of internal investigations, is probably the most relevant piece of a personnel file that will ever need to be considered down the road. So, if we are going to keep the DOT person, we have to keep the Police. And right now this law sends absolutely the wrong message and we need to correct that. Thank you.

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

CHIEF EDWARDS: Actually, Deputy, your statements answered my questions.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you.

DIRECTOR MALACHI: Could I ask Attorney Jefferson a quick question?

DEPUTY ATTORNEY GENERAL YOUNG: Sure.

DIRECTOR MALACHI: Okay, super quick. So, thank you for that, Julian. So, is it the entire personnel file? Is it misconduct information? What is it that's at the heart of what this recommendation is getting to?

ATTORNEY JEFFERSON: Sure, so, I mean, so, to your point, we're actually still giving the Police Officers preferential treatment in the sense that the law requires that personnel files for all other municipal Employees are 20 years after retirement or termination. And that's the entire file.

So, here, we're still giving Police Officers preferential treatment, because we're amending the Statute to say you just have to keep the Internal Affairs investigations. So any allegation of Police misconduct that was investigated, you have to keep those files. So that's what is at the heart of it right now in this recommendation.

DIRECTOR MALACHI: And then, Innocence Project would be able to access that information. And potentially there's some de novo -- information for a de novo trial?

ATTORNEY JEFFERSON: Correct, so, I mean, so how convictions get reversed and overturned, and new trials happen is that new information comes to light. And so, when that new information comes to light, that gives rise to a new trial or a conviction being vacated and things of that nature. And we know these things happen, because Innocence Projects successfully do these things all the time. And so, it is that, the ability to be able to get that information.

And so, this recommendation is just saying retain it. And then, you have to satisfy a Court that you should have the ability to get it. But the -- but to retain it is important, so that the Attorney General's Office can have access to it, if they need to. A post-conviction Attorney can have access if they need to. So, yes. So that it is just the retention of it. And then, there are legal and Court Rulings that will determine who has access to it.

DIRECTOR MALACHI: Okay. Thank you, Julian and Joseph, and Ronelle, and the rest of the Commissioners. Thank you for your indulgence. But I thank the three of you for your explanations and conversation.

And for the Attorney General's Office, I would ask if there's something in this, Number 5, that we need to add to assist you, Attorney General's Office, in investigations that you're doing. Then, maybe that needs to be placed in here, as well. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ahni. Commissioner Norton?

DIRECTOR NORTON: Thanks, just a quick question and I'll direct it to you, Deputy Young. Why is this limited to non-criminal Internal Affairs investigations? Why not just any Internal Affairs investigations?

And then, just comment that, just a reminder to folks that this is a recommendation that would require going through the legislative process. So, there'll be much more discussion to come on this issue. Thanks.

DEPUTY ATTORNEY GENERAL YOUNG: So, Director Norton, this is the current language of the Statute. So if it's a criminal case, I think it's covered up above. So we were just tracking the language as it is now, but changing it to the retirement or separation plus 20.

DIRECTOR NORTON: Thank you. I thought that was the case. But I just wanted to make sure. Thanks.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. And Ahni, in response to your question, this is a start. In a homicide case, you can call an Officer to the stand any time until they're no longer with us. So -- all right, so, Ronelle, you have your hand up. I will let you have the last word, and then I'll see if somebody wants to move this forward, as written.

MS. TSHIELA: Thank you. And I'm actually kind of glad that this was last, because it's taking me a bit of courage to say something right now. But respectfully, I listen to the very same testimonies as everybody else, and I made what recommendations I felt were best as a public member.

And Lieutenant Morrison, for you to suggest that I am recommending things carelessly or willy-nilly, as you put it, whether intended or not, I found that language to be very disrespectful. And I just have to take this moment to say something about that. Thank you.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ronelle. Do I have a Motion to Move This Forward, as written?

MR. LASCAZE: Moved.

DEPUTY ATTORNEY GENERAL YOUNG: I'm sorry. So, we're having some computer issues. Rogers, was that you? Did you move it forward?

MR. JOHNSON: Not me.

MR. LASCAZE: No, that was Joseph.

DEPUTY ATTORNEY GENERAL YOUNG: Okay, Joseph. So Joseph is a first. Do I have a second on that? Ahni is a second. Commissioner Quinn, I believe, has stepped away. So, as written, I will vote yes. Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Johnson?

MR. JOHNSON: No.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Judge Gardner?

JUDGE GARDNER: Since I wasn't privy to the conversation, I'm going to abstain.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Lieutenant Morrison?

LIEUTENANT MORRISON: Although I support Julian's explanation, and I'm not in disagreement with it, I'm going to vote no.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Chief Dennis stepped away for a moment. Director Norton?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Lascaze -- oh, Joseph, you were the first. Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Tshiela?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Hold for one minute.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: So, Number 5, as written, has passed. So that will be a recommendation. We will now go onto the -- and the wording is not -- these are just topic areas to discuss. But the next area that we had to discuss were the recommendations surrounding the duty of Law Enforcement to intervene with Police misconduct and a penalty for failure to do so.

Sorry, our computers are really slow today for some reason. So is there discussion? That should say duty of Law Enforcement Officers to intervene. Questions, comments, or discussion, please raise your hand. And I will call on you in the order in which it's raised. Director Scippa?

DIRECTOR SCIPPA: Sorry, I keep hitting the wrong buttons here. I think that this has already been addressed with brand-new legislation that has come out. And it speaks directly to reporting of misconduct. And once that misconduct is reported, then there's going to be either criminal charges and/or decertification. So I think there's already been legislation that has been passed that speaks directly to this. And to that end, and to move things along, I'd make a recommendation that we don't take any action on this, as it's already been spoken to in New Hampshire Law. And we can move on.

DEPUTY ATTORNEY GENERAL YOUNG: So we have other hands raised, Director. I would tell you the way that we read this, so it's a separate. There's an actual you have to intervene, as opposed to just reporting. So I will go through the list. But that's the way that we have read this recommendation, that you have an affirmative duty to intervene, not just report what you know.

DIRECTOR SCIPPA: Oh, okay. I'm sorry.

DEPUTY ATTORNEY GENERAL YOUNG: That's okay. And as you know, I certainly could be wrong. So we have a few hands raised. So we could come back to that. So, the hands raised are Ken, Joseph, President McKim, and Julian. So, Ken, you are up.

DIRECTOR NORTON: I think that it's covered in terms of the requirement to report misconduct, or what the penalty is for failing to report misconduct. That's my comment.

DEPUTY ATTORNEY GENERAL YOUNG: Ken, I don't know if it's my end or your end. But could you -- I didn't get the beginning part of that. I'm sorry.

DIRECTOR NORTON: That I don't believe it is covered under the new law, as written, and nor do I think it -- does the new law spell out the -- what the penalty is for failing to report misconduct. So I think it's sort of two parts. It's the duty to intervene, as well as penalty for that, and for failing to report misconduct. Thanks.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ken. Commissioner Lascaze?

MR. LASCAZE: Thank you, just real quick and so that everyone knows, I'm on my cellphone now. That is why I am not on camera, because I keep getting messages and alerts. And I just can't. That's the only reason why, so just so everyone knows.

But, I did want to talk about this. For me, HB-1645 only applies to reporting. It has nothing to do with the Officer or Law Enforcement Officer intervening when misconduct is taking place. That is what this is about for me.

I have -- like I said, everyone knows I've been incarcerated. I've been in different correctional facilities in this State. And I have seen instances of Officers doing misconduct against other incarcerated individuals. And the worst thing is not the people who are actually doing the misconduct. The worst thing is watching other Officers around them not doing anything to stop them.

And then -- and when we look at the George Floyd situation, that hasn't thankfully happened here in New Hampshire. But, do we have to wait for something like that to happen in this State to make sure that there is a duty to intervene when misconduct is happening?

I just don't understand how we can have a law that requires something, but there is no penalty associated with it. And I under -- I completely understand that right now Police Departments in New Hampshire, they already have a -- as far as I know, and please correct me if I'm wrong, anyone on the Commission. But the New Hampshire Police Departments already have a duty to report misconduct. But there is no penalty for not doing it.

And one incident that I would like to flag, as an example, is the Seabrook incident that was mentioned just recently on this Commission. There was other Officers that were involved in that situation, and they did not intervene or stop it. And that is what I am talking about.

It is worse when you have Officers that do not intervene, when they are the only people in the situation that could protect the constitutional rights of someone that's being violated in that moment. And if you're not going to intervene, then I do not know what type of message we are sending to the New Hampshire public if we're going to say that, okay, well, you're supposed to do this. But if you don't do it, then it's all right. Nothing needs to happen about it. We will just keep talking about it and just keeping

waiting until the next situation happens. That's not right. And I fully believe that, when it comes to doing the right thing, there needs to be a penalty for not doing the right thing.

DIRECTOR SCIPPA: And Madame Chair, if I could, to everybody else on the Commission, I misread the initial recommendation. So, I apologize. After rereading and explanation, I clearly understand what this recommendation is trying to accomplish. So, if anybody was going to speak to that, I apologize. I just read it the wrong way.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Joseph. And thank you, Director Scippa. President McKim?

MR. MCKIM: Thank you, Deputy. And after just listening to the testimony and blanking on what I was going to say, I apologize. So, loop back to me, please.

DEPUTY ATTORNEY GENERAL YOUNG: I certainly will. Attorney Jefferson?

ATTORNEY JEFFERSON: Yes, so, I thought we dealt with this duty to intervene in our training. And I thought we passed something. So I was looking to go back there, because this is something that we talked a lot about in the Police training and procedures. And I was pretty sure that we passed something that said that Police Standard and Training Council would create a Policy that would be a minimum standard on a duty to intervene and also a duty to report misconduct.

So, I'm trying to go back now. I am fully support of it. I just think we've already covered it. So, let me. I'm just going to go back and see that, because, to the extent it wasn't covered enough, I'm certainly in support of it, because I think duty to intervene is absolutely essential. But, let me just go back. I was trying to do that, as other people were talking.

(Pause)

MR. LASCAZE: If I can just jump in there real quick, I believe, Julian, that what we had talked about would be that New Hampshire Law -- hello? That the...

DEPUTY ATTORNEY GENERAL YOUNG: Sorry, having computer problems.

MR. LASCAZE: No, no problem. No. I thought that what we had worked on was that there would just be training for Law Enforcement to intervene, that PSTC would properly train Law Enforcement on how to do that. And that was going into ABLE or EPIC program and whatnot. That's what we had established.

But there wasn't yet anything that had to do with a penalty to intervene, if it wasn't followed. And I don't think that this Commission should establish what that penalty is. So, I don't want us to start getting down that rabbit hole of trying to define that or whatnot. I'm just saying that on the record there should be a penalty for not intervening, which would be essentially not doing the right thing.

DEPUTY ATTORNEY GENERAL YOUNG: So, Joseph, if we look at the new law that was just passed, that appears to be a misdemeanor for the new law. All right.

MR. LASCAZE: HB-1645, because I do not believe that there is a penalty associated with that.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: What is going on?

ATTORNEY JEFFERSON: Deputy Young?

DEPUTY ATTORNEY GENERAL YOUNG: (No audible response).

DIRECTOR SCIPPA: Deputy Young, we can hear you now, but we couldn't hear you before. Deputy Young, you're still muted. It looks like you're good now.

DEPUTY ATTORNEY GENERAL YOUNG: Can you hear me?

(No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Maybe I just can't go off mute. So, Joseph, it looks like it's going to go into the 105 Section of the Statute currently. And if you go to 105:8, if a person violates any regulation, he shall be guilty of a misdemeanor. So, I'm fine not putting in a penalty here. But it appears to us that the first law that just got passed will be a misdemeanor.

MR. LASCAZE: Oh, okay.

DEPUTY ATTORNEY GENERAL YOUNG: Could you hear me?

MR. LASCAZE: I had not seen that Section. And this is under 105:9? I do not see that.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, it looks like it's going to go under 105, which are Police Officers and Watchmen, the Section.

MR. LASCAZE: Okay, all right. Yeah. So, that would for, then, the reporting of misconduct, correct?

DEPUTY ATTORNEY GENERAL YOUNG: Correct, that's the way that it appears. Yeah.

MR. LASCAZE: Yeah, okay. So, this would be aimed at not intervening. Would that still apply to if a Law Enforcement Officer did not intervene in a situation where misconduct was happening?

DEPUTY ATTORNEY GENERAL YOUNG: So, if it goes in that portion of the Statute that that probably would be, but, again, we don't have to define what the penalty would be. We could leave that to

the Legislature. We don't have to do that today. We could make the recommendation, as written, with the penalty to be defined. We could leave it that way, if that's what the group wants.

MR. LASCAZE: And I am okay with that.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So, Judge Gardner, you have your hand up?

JUDGE GARDNER: Yes, so I have to leave soon. But I did want to mention that I do appreciate the sentiments of Commissioner Lascaze. There's a famous saying by Elie Wiesel that says that silence is the voice of complicity. And so, I believe that some type of intervention is necessary.

At the same time, I have to indicate that when you say that an Officer must indicate to stop the conduct, my concern is that then we're going to have this other situation where Officers are fighting amongst themselves, while, perhaps, there's some other incident going on at the same time. So, I -- I'm not that comfortable saying to stop the conduct. I think they have a obligation to intervene. But then, what they do next, I think we should leave up to Police Standards to define the further obligation. So I'd just put that out there as a discussion point. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Your Honor.

MR. LASCAZE: Absolutely, Your Honor. I agree with you that we do not want to have Law Enforcement Officers having situations like that in the public. And I do think that Director Scippa, he had given me a really good overview of what the ABLE Program would be that PSTC would implement. And I think that that would address that exact concern, Your Honor. And I don't know if Director Scippa wants to speak more on that, or we can look back at the ABLE training slides that we had received. But I do think that if PSTC trains Officers on how to intervene, I think that there would be a whole process for that.

And I do want to just point out. And I know. And again, this is just for the sake of conversation, since we're talking about discussion points. But -- and I'm -- and this is not what I'm asking. But, how does it look when we say, if we have a situation where you have four community members that are engaging in misconduct -- and I'm saying misconduct, because there has been some definitions of what misconduct looks like. So if we have New Hampshire community members that are engaging in misconduct and a Law Enforcement Officer comes by, they're going to intervene right then and there.

And so, keeping that in mind is what I was thinking about when I say that they need to intervene, that it needs to happen. But it needs to happen in a proper way that makes sure that all Parties involved are protected and that they are not subject to any further misconduct. But, to me, it's just that there has to be that type of accountability there.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Lieutenant Morrison?

LIEUTENANT MORRISON: Thank you very much. I was wondering if the hand raising was going to work anymore. But, something that I'd like to say to this suggestion is I think that we should phrase it that we support the recommendation for Agencies to develop a Duty to Intervene Policy.

As we have previously noted, which you brought up on the screen, that is a Policy recommended by CALEA. We have it. Many Agencies have it. And I think, to Judge Gardner's point, that's really the essence of sort of managing situations and things. We needed to have some guiding Policies.

And those Policies go directly to Joseph's sentiments, that you would want to have somebody intervene and stop behavior that's inappropriate. So, I think the language we're looking for is to have a Policy that deals with that. And then, that obviously a violation of that translates to misconduct. So I think to have a Policy for each Agency would speak well to this suggestion.

And secondly, the Members on this Commission are going to disagree, even passionately. I passionately disagree with some of the things that have been said, some of the things that have been testified to. But I'm trying to do so in an agreeable manner.

So I think that it'd be helpful to remember that we are going to disagree even passionately, but to be productive, which I think we've done a fantastic job, as a group, of doing. We need to maintain, I think, some of that understanding that we are going to disagree. And are going to disagree passionately. But it does not have to be disagreeable.

So I think I just would like to drop a comment about that, because there's still a lot to do. And we're going to have a lot more disagreements going forward. So, with that, I'll take my hand down from the queue.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. So, the hands up that I am aware of are President McKim, Attorney Jefferson, Commissioner Quinn, Commissioner Lascaze, and Chief Scippa. And then, when Chief Scippa's done, I will call for a vote. So, with that, President McKim?

MR. MCKIM: Thank you, Deputy. I have a request and a question. My request is for this and the subsequent recommendations, it appears we just have, as you mentioned earlier, the kind of topic area. We don't have a full text of recommendations.

And for me, it would be helpful if we could see on the screen the actual verbiage of recommendations that were made in this topic so we can kind of have in front of us the language that we might support, or recommend, be used in crafting the actual recommendation. So that's a request that would help me and not have to flip back-and-forth between the recommendations document and what's going on, on the screen.

So, with that, my question -- and thank you to Lieutenant Morrison for raising the notion of Policy within Law Enforcement Agencies, because it brings to me the question of: what's the best approach to having an impact on this topic? In the previous recommendation, we actually talked about amendment of legislation. That's different than, of course, recommending that there be Policy be made in the Law Enforcement Agencies.

So, I'm grappling in not being a legislature, and not being really adept of all of this. I'm struggling to understand which of those approaches -- either recommendation around legislation or recommendation around Policy -- which of those approaches should we be advocating for in the recommendations?

DEPUTY ATTORNEY GENERAL YOUNG: I'll respond, I guess. Thank you, Mr. McKim. I think the best way to begin for us here would be to recommend Policy formation. It's already in existence. And I think to allow for the guiding -- the guidance of Policy for behavior with the Officers and Troopers, I think,

is the most appropriate way to go. And knowing full well that violations of these types of Policies can, then, trigger misconduct.

So, I think, as I stated before, supporting the creation of Policy for Law Enforcement Agencies on the topic of duty to intervene, and when you couple that with the training and the other things that we've already sort of settled on and PSTC is going to be providing at the outset of people's careers, and then the Policy dealing with the Employees who are already in the field, I think, is the most efficient and appropriate way to go. And again, violations of these Policies can trigger sort of a misconduct violation in and of itself, which would also be inline with the spirit of our discussion, the spirit of the Statute, as enacted, I think.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim, do you have a follow-up question or comment?

MR. MCKIM: I do. And I'm just formulating it. Thank you for that thought. I guess I'm curious, as we are here to make recommendations that lead to accountability across the State, is making a recommendation around each Law Enforcement Agency establishing a Policy, when we know that many of them -- I should -- let me rephrase that. We know that some will not, or for various reasons, yet we believe that this should be at the statewide level. Is that good enough, in terms of our charge of making recommendations around accountability?

LIEUTENANT MORRISON: Can I make a Motion that we change this wording to say recommend duty to intervene -- a Duty to Intervene Policy be created for each Agency that deals with intervening? And I'd just say that recommend the creation of a Duty to Intervene Policy for all Law Enforcement Agencies.

DEPUTY ATTORNEY GENERAL YOUNG: And I would submit that that's already covered in II.5. So I -- and I'm not speaking for anyone. But my reading of this, you have a Policy. If you violate that Policy, there has to be something else other than an internal issue.

So this language, the way that we have drafted it in six, we have just -- we've copied the language of the newly-created law for the duty to report. We just put in, who observes misconduct, the duty to intervene. So that's where that has come from, President McKim. We're trying to sort of track the language of the Statute.

But if it's to create a Policy, I think we are back to Director Scippa. We already have that. And my understanding of reading this duty to intervene was it was a -- it's something separate. So that's where I am, as the Chair, on reading that. Julian, Commissioner Quinn, Joseph, Director Scippa, Chief Dennis, and then we have the three other areas we're going to have to cover before we end in two hours. So, Attorney Jefferson?

ATTORNEY JEFFERSON: Yes, I'll keep it brief. I don't think we need this recommendation at all. I think we need to set it aside. And it's not because I don't passionately care about it. I care about it a lot. But I think it's appropriately covered already in our Police Policies.

We have this to be -- and it's a minimum standard. So it will be a statewide Policy. So I was very careful in articulating that to cover all the bases. So PTSC working with all Law Enforcement Agencies will create a minimum standard which every single Police Officer in this State has to comply with.

I also, in my recommendation, gave Director Scippa a model to work with that says that, as soon as possible, another Police Officer has to intervene to stop the excessive use of force. So I don't think we need to create a law or suggest that a law and a penalty need to be created, and for two reasons: one, we don't want to create a hostile environment for Law Enforcement and assume that we have to create a legal infraction for them to comply. I think that sends a wrong message to Law Enforcement and kind of perpetuates this us versus them mentality. And I don't want to do that.

And I think to something Lieutenant Noyes said very early in this process that culture is really the most determinative thing. And I think creating this minimum Policy and having this EPIC training will foster a culture where even a young Police Officer, second, third day on the job, will be empowered to say to a Senior Officer, if there were a situation to occur similar to George Floyd, hey, stop that. I'm not cool with that. I'm not participating in this. And I think we really did a good job already in our prior recommendation. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: So just so I'm clear, Julian, you believe that a prior recommendation covers this?

ATTORNEY JEFFERSON: Correct; and I don't think we need to go the further step of creating a law that creates a legal infraction. I think that's the pendulum swinging too far. And I think it creates a hostile environment that's unnecessary. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Commissioner Quinn?

COMMISSIONER QUINN: I agree. And I was going down the same path that Attorney Jefferson did. And I think it's been addressed. I think PSTC can lead on this. I think violation of this Policy, there's opportunities at the Department, at PSTC, the Council. So, I think that I understand the importance of this. But I think it's been addressed by Policy. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Joseph, I know you have your hand up. John Scippa and Chief Dennis; but I will let Chief Dennis go first, because he has not had the floor yet. Then, I will go to Director Scippa. And Joseph, you can have the last word. Chief Dennis?

CHIEF DENNIS: Thank you, Deputy. And I can make this really brief because between what Attorney Jefferson said and Commissioner Quinn said, I have no further comments but to say I agree with what they say. Thank you.

DIRECTOR SCIPPA: Madame Chair, I think you recognized me to speak. But I cannot hear you. I concur wholeheartedly with Attorney Jefferson on this and Commissioner Quinn, very well-stated by Attorney Jefferson. And really what we're trying to do is address the notion of culture. And I would second Attorney Jefferson's Motion, quite frankly, to strike this, as it's already been covered.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Joseph?

DIRECTOR SCIPPA: And I'm sorry. One more point that I wanted to make, and that is that sometimes these things are so dynamic that there is no way, while the Officer is standing there, to be able to intervene, because that's how fast it happens.

And to Commissioner Lascaze's example, where he pointed to Seabrook and that the whole thing was captured on video, but candidly the two Officers that were with the third Officer that committed the misconduct, the assault, it happened so fast that the other two Officers would never have been able to intervene, if they had chosen to, just because it was an instantaneous armbar takedown into the wall.

So, I was a little nervous about, if we were going to keep that verbiage, to say to intervene to stop misconduct whenever possible, because it certainly would put an Officer standing next to another Officer who did something wrong, the immediate question would be, well, how come you didn't do anything to stop that? The Officer would shrug his shoulders and say, I didn't even know that was coming. I had no idea that was coming. It does create a precarious situation for the second Officer that just couldn't move fast enough. So, just a pragmatic point of view. But back to my original point, I wholeheartedly support Attorney Jefferson's position on this and would second his Motion.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Director Scippa. Commissioner Lascaze?

MR. LASCAZE: Thank you, Deputy Young. Director Scippa, thank you for that. And Julian, I appreciate what you brought to the table by mentioning that. What I would like to just say is this. There is a law on the books to report misconduct. We do not have a law to intervene.

And when a situation happens in New Hampshire, okay, where an egregious situation of misconduct happens, and there is other Officers there, I for one will not be a person that is looked back on, on this Commission, and a family member or someone else asks, what could this Commission have done more or different to prevent this situation? I do not want to be that person that is second-guessed on the decisions that were made today, and that this is what this is about for me.

I completely understand, Director Scippa, what you're saying, that things happen very quickly. But in the Seabrook situation, right, the ABLE training that you had talked about and the examples you gave, it would show that before that -- before the armbar slamming into the wall situation even happened, there could have been other Officers there that tapped him on the shoulder, like in the example used for ABLE, and said, hey, let me take it from here, because obviously that Officer -- I'm not thinking that that Officer just woke up that morning and was like, hey, I'm going to slam this kind into the wall. I don't think that that's what happened.

Obviously there had to have been a conversation or some type of incendiary or inflammatory words that were going back-and-forth that got him to that point. If the other Officers had intervened right then and there, when he's saying, hey, you're getting a little worked up right now. Let me take this over. That could have been avoided.

Now, fast-forward to a more egregious situation happening, I just cannot -- I -- on my conscience, I cannot have that on me that I didn't do everything that I thought that I could to make sure that something like that wouldn't happen. I will not be that person.

And lastly, the -- what I just wanted to point out on this is that -- and I just lost the point that -- I'm sorry, because I'm worked up on this one right here. I apologize. I lost the point that I wanted to make. Oh, that's what it was, that this is also about empowering current Law Enforcement Officials to be able to make that stand and take -- and be like, I am going to intervene on this. I'm going to stop this. And not have

blowback on them for standing up and doing the right thing, or be seen as going against a brother, or any of that. That's what this is about, is giving that power back to them for me.

And with that, that's -- so I would like it on the record. I do not feel that this is covered already. I do not think that there is a penalty to intervene. There -- and that, to me, is just -- I just -- I don't know. I just can't do it. I just can't.

DEPUTY ATTORNEY GENERAL YOUNG: So the current Motion before the Commission, Julian, is to what?

ATTORNEY JEFFERSON: Current Motion is to set this recommendation aside.

DEPUTY ATTORNEY GENERAL YOUNG: So to table it? Well, so you want it tabled?

ATTORNEY JEFFERSON: Well, no, not table it. No, just to strike it.

DEPUTY ATTORNEY GENERAL YOUNG: You want to strike it. You just want...

ATTORNEY JEFFERSON: Motion to Strike the Recommendation.

DEPUTY ATTORNEY GENERAL YOUNG: And John Scippa, you second that?

DIRECTOR SCIPPA: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Commissioner Tshiela, how do you vote to strike this recommendation, so it will not move forward?

MS. TSHIELA: Yeah, so just so this is on record, because unfortunately I didn't participate in the discussion, but I cannot, in good faith, vote to strike a recommendation like this, especially knowing that here, in New Hampshire, we could easily become another situation that we've seen all around the country. And I hear Joseph's sentiments. And I thank him for his passionate response to everybody's comments on this. So, with that, I'm going to vote no.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Oh, you were -- sorry, you were the first, sorry. Joseph?

MR. LASCAZE: I will vote no.

DEPUTY ATTORNEY GENERAL YOUNG: Director Norton?

DIRECTOR NORTON: No, I think I appreciate Number 5, but I think it says shall create Policy guidelines. And I think that this is different. So I'm going to vote no.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Dennis?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Lieutenant Morrison?

LIEUTENANT MORRISON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Judge Gardner is not with us. President McKim?

MR. MCKIM: Can I ask a clarifying question, procedural question, point of order, I guess, if we're following Robert's Rules?

DEPUTY ATTORNEY GENERAL YOUNG: (No audible response).

MR. MCKIM: Just trying to understand what a yes or a no vote means here; does a yes vote mean that -- does either, I guess, mean that we would be tabling -- or are we tabling just the -- or removing just this particular wording for the recommendation? Or are we saying that we're not going to discuss any recommendations around penalty for failure to intervene at all?

DEPUTY ATTORNEY GENERAL YOUNG: So, as written, the Motion is to strike it. So the answer is we will -- this will not be the recommendation.

MR. MCKIM: But one of us could put forth a Motion for a differently worded recommendation on this same topic. Is that what I'm understanding?

DEPUTY ATTORNEY GENERAL YOUNG: You could. Oh, Rogers?

MR. JOHNSON: Yeah, Attorney General, if I may? To vote to strike this recommendation does not preclude the ability for anybody else to make a similar or even the same recommendation at a later date, later time, even today, even five minutes from now. All it means is that we're striking this recommendation. If you vote against this recommendation, that means that you want to continue with another approach. So, striking this means that we're striking this. That's all it means.

MR. MCKIM: Then, I would vote yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Scippa? Oh, you're the second. Thank you. Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Quinn?

COMMISSIONER QUINN: Yes. I voted yes. Did you hear me, Deputy?

DEPUTY ATTORNEY GENERAL YOUNG: You did.

COMMISSIONER QUINN: Okay.

DEPUTY ATTORNEY GENERAL YOUNG: So, as you can tell, I'm struggling with my vote. I added the language after to intervene. I think that that needs to be developed more. And for that reason, I'm going to vote to strike it as it is.

I agree with Joseph and Ronelle that I don't believe that this is covered in the other. I don't believe that a Policy is sufficient to achieve the goal of this. But the way it's written, I'm going to vote yes to the strike.

It's 11:46. I know we had a 10-minute break earlier because of technical difficulties. But I will give you a 10-minute break. And then, we have to come back and we have to go through three other topics, which are dash and bodycams, official immunity, and EES.

If the Commission Members have another topic they want to discuss, if you could just email that to Kim, we will put it on. But we have to get through these today. So, it's 11:47. I'll give you to 12:00 noon. So, Maria, if you could stop the recording and we will be back at 12:00 noon? Thank you.

MS. EKLUND: Yeah.

(Off the record at 11:47 a.m.)

(On the record at 12:00 p.m.)

MS. EKLUND: All right. And we are, once again, recording.

DEPUTY ATTORNEY GENERAL YOUNG: Good afternoon, Commission Members. We have taken a 10-minute break and we are back on. We are going to talk. We had three additional topics to discuss. And per my request or invitation, President McKim sent additional areas to discuss. So we will add those to the draft, and we will share that.

With that being said, the next topic area was the encouraging all Law Enforcement Agencies to use body and dashcams. I know that an email came in last night. It probably has not been posted yet from Chief Shagoury of Tuftonboro. But, Chief Dennis, if you're on the line, if you just wanted to share

Chief Shagoury's input on that? You're welcome. And then, I'll take up any discussion on whether we should make a recommendation to encourage all Law Enforcement Agencies to use body and dashcams. Thank you.

CHIEF DENNIS: Thank you, Deputy Young. And I'll try to go through this. Chief Shagoury submitted this late last night. So I've had time to review it amidst other things. He also attached some documents and Reports, which I've tried to get through best I could on a short period of time.

And certainly I think he wanted to bring it to the attention of the Commission. And I think some of the smaller Agencies throughout New Hampshire, which we know the majority of Agencies in New Hampshire are small Agencies, many of them have one or two, or three Officers, some five or six. But, again, the majority of Law Enforcement Agencies in New Hampshire are small Agencies.

And I think sometimes they struggle a little bit with looking at what the Commission is doing and trying to figure out how do we accomplish this with limited fundings (ph)? They speak about the encouragement of Citizen Review Boards. And I think many times these Agencies feel like they're embedded within their community. They may have to make a call to their next-door neighbor and take enforcement action, and how they treat those people who are their neighbors, or their kids play on the same sports teams at school.

But they take a different approach than what you see on national TV taking place in Minneapolis and other places like that. They do well with de-escalation techniques, treating people with respect, and different things like that.

So I just kind of wanted to share a little bit how some of the smaller Agencies are looking at things and how they're looking at how things will impact them that come from this Commission. But they also realize that change needs to happen, too. And there's some good things that come from the Commission.

On this topic of dealing with body cameras, I just want to share. He shared a little bit of information on some recent studies. There was one done with the Metropolitan Police Department in Washington, D.C. back in October of 2017, where they looked at measuring the effects of body-worn cameras, specifically in the areas of uses of force and civilian complaints, as well as other variety of additional policing activities and judicial outcomes. Through this Report, they were unable to detect any statistically significant effects. As such, they stated their experiment suggests that we should recalibrate our expectations of body-worn cameras.

I'm just trying to get some of these points they put in here. What they're saying is Agencies considering adopting a program with body-worn cameras should not expect a dramatic reduction in the use of force or complaints, or other large-scale shifts in Police behavior solely from the deployment of this technology. They talked that the Administrative Court data they had access to has certain limitations. But preliminary analysis does not uncover any clear benefits. Again, at the conclusion of their experiment, they're just saying to expect large Department-wide improvements and outcomes, they're just not going to be there.

So, what does that mean? Does that mean small things will -- and medium-sized outcomes could happen? I think that's possible. They're also a little concerned, not only about necessarily the cost of purchasing body-worn cameras. It's the storage. It's dealing with 91-A requests. And large Departments have the manpower and personnel, and the support functions to go through videos and do redactions, and different things like that. Or they have IT Staff that can handle when technology, as it always does, it has a

tendency to go down sometimes, and spending several hours on the phone with Support Staff trying to figure out why this technology is not functioning.

With that said, I will speak now as the Police Chief for the Hanover Police Department. I support the use of body-worn cameras. I implemented a body-worn camera back in 2009, way before the talk of this is a great product. I've seen the value of body-worn cameras.

I think maybe looking at this Report that came out, I've seen Reports that say the opposite early on. I think there is value. Maybe the effect isn't as large-scale of an effect as it was 5 years ago or 10 years ago. But I still think there's value in this.

I think there's value when you do receive a complaint on an Officer. I think my experience is, it's one of the first things I want to look at. What does the video tell me? And many times, what I see, if it's a rudeness complaint of something along that lines, yeah, the Officer might have not have been Officer Friendly. But he wasn't rude.

And what I really like about it is the opportunity to bring in the individual that's making the complaint to have them sit down and watch that video. And many times, they'll say, that's not the way I remembered it.

And I think that's important, as we in Law Enforcement have to remember when we do deal with people, it is stressful for people. They may be going through a traumatic experience, different things like that. You stop them for speeding. They're late for work. They're upset. The Officer might have been professional in what he said, but they didn't feel it that way. But when they sit back down and look at the video, they can say, oh, yeah, he wasn't yelling. I felt like he was yelling at me. But he wasn't yelling at me.

But we can also use it as a training tool for our Officers. You always wonder. You listen to yourself on a recorder and you think, oh, is that really me? Do I really sound that way? And it's no different for Law Enforcement when we turn around and watch those videos after-the-fact. I think it's a great learning tool for us.

I also think it does provide value for court and things like that. And Officer-involved shootings, uses of force, I think there is value. Does it tell the whole story? No, it does not. But is it one part of the evidence? Yes, it is.

So, certainly, I wanted to share that there are Reports out there that this isn't the end-all. It's not the solution to all this. It can have an impact on small Agencies. But certainly, as the Police Chief in Hanover, I do see the value in this technology, think it's good technology, realizing that it's challenging for some smaller Agencies to incorporate programs like this could be challenging for them. With that, I will stop. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Chief. Any other questions or comments, or a Motion to Move Forward with this recommendation: encourage all Law Enforcement Agencies to use body and dashcams?

(No audible response)

DEPUTY ATTORNEY GENERAL YOUNG: No questions or comments, anyone want to move it forward? Joseph, you'd like -- what is your Motion, Joseph?

MR. LASCAZE: Motion is -- could I -- I'm trying to see it as written.

DEPUTY ATTORNEY GENERAL YOUNG: Encourage all Law Enforcement Agencies to use body and dash cameras.

MR. LASCAZE: Yeah, I would like to move a Motion to have this move forward, as written.

DEPUTY ATTORNEY GENERAL YOUNG: I would second that. Ms. Tshiela, how do you vote?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Norton?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Dennis?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Lieutenant Morrison?

LIEUTENANT MORRISON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Judge Gardner?

JUDGE GARDNER: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: I vote yes. And I just wanted to make sure. Did we have a second on that?

DEPUTY ATTORNEY GENERAL YOUNG: I was the second.

MR. MCKIM: Okay, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: You're welcome. Chairman Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Quinn?

COMMISSIONER QUINN: Before I vote, can I just -- I want to make this comment. We are saying to use both. So we're encouraging them to purchase both a body-worn and a cruiser-mounted dash camera. Is that the intent? Or can it say -- I'm going to vote yes. But can it say and/or, or a combination? That's all. I just want to make sure we're clear, because this recommendation is saying we want every Law Enforcement Agency to buy both. So can we put an and/or or just want to make sure we see what we're recommending here?

DEPUTY ATTORNEY GENERAL YOUNG: So, Joseph, you're the first on this. Can we put the or?

MR. LASCAZE: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Whoops, we lost Joseph again.

MR. LASCAZE: I'm here. I -- can you hear me?

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, we can hear. Yeah, there you are.

MR. LASCAZE: Yeah, so I am okay with the and/or being added to it. Yeah, I'm okay with that.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So we can do and/or. I'll second the and/or. So I got to take a vote again. Commissioner Tshiela?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Norton?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Dennis?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Lieutenant Morrison?

LIEUTENANT MORRISON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Judge Gardner?

JUDGE GARDNER: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chairman Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Quinn?

COMMISSIONER QUINN: Yes, and thank you.

DEPUTY ATTORNEY GENERAL YOUNG: You're welcome. And again, these are recommendations. So the next area is there was conversations regarding official immunity. Do we want to raise any recommendations in regards to this, or move on? Questions or comments? Judge Gardner?

JUDGE GARDNER: I would recommend that we move on.

CHIEF EDWARDS: Second.

DEPUTY ATTORNEY GENERAL YOUNG: Who said second?

CHIEF EDWARDS: I did, Eddie.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So, I would also vote to move on, to have no further discussion on this. Commissioner Quinn?

COMMISSIONER QUINN: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chairman Johnson?

MR. JOHNSON: Aye.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Judge Gardner was the first. Lieutenant Morrison?

LIEUTENANT MORRISON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Dennis?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Norton?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Lascaze?

MR. LASCAZE: Sorry about that.

DEPUTY ATTORNEY GENERAL YOUNG: There you go.

MR. LASCAZE: I'm going to vote no. I don't think that, with all the talk that we had, we should just blow past this without any further discussion. So I'm going to vote no. And I would like it on the record that the ACLU New Hampshire is supporting a recommendation that would create a State cause of action for constitutional violations by Law Enforcement, where official immunity and/or qualified immunity is not a defense.

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

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: I was the second.

DEPUTY ATTORNEY GENERAL YOUNG: Oh, you were, sorry. Commissioner Tshiela?

MS. TSHIELA: I think it's a disservice to not discuss this after all of the testimony. So I'm going to vote no.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. The next topic area for discussion or not is the EES. What I will tell you is we have made our first recommendation is for an independent Agency. The subject of whether the EES will become public is presently before the New Hampshire Supreme Court. There is oral argument scheduled for September 16th. The Court has been issuing Orders anywhere from a few months to longer. So that issue, whether that EES is public, is before the Supreme Court.

So the question is, do we need to have any discussion on that, or let the Court deal with that matter? And we have a new vehicle going forward for transparency on the issues. Questions or comments? President McKim, followed by Joseph.

MR. MCKIM: Thank you, Deputy. I want to pick up on something that Director Malachi said earlier. We've talked about a number of mechanisms and avenues, in terms of addressing misconduct. And I'm -- it's tricky to make a recommendation on one thing without impacting another, or understanding what the impact of another recommendation might make.

So, I would be in favor of -- I'm actually in favor of removing or eliminating the list, hoping that -- and I can't really say hoping. But I would like to see the list eliminated along with the formation of the new Committee that the AG's Office is recommending. So, I'm wondering if there's a verbiage, a language we can use for a recommendation that might tie the two together, because having one would eliminate the need for the list, potentially.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So I'll take the rest of the comments. Suppose we could go back to Number 1 and indicate that the formation -- that the intention of creating this entity would eliminate the need for the list. So let me get the rest of the comments. And then, we can go back and look at that. Thank you, President. Mr. Lascaze?

MR. LASCAZE: Thank you, Deputy Young. So, this has been a very, very controversial topic. And the EEE [sic] list, we had a lot of testimony on this. I don't know if everyone has taken a look at the EEE list. But I did. I went through the entire list.

And when you have issues on the list that the reason next to it says coverup, coverup as a reason, how can we not make this public? If we get rid of this list without publicizing this list, in hopes of this new Agency -- I completely agree. Once this new Agency is established, we don't need this list. But this Agency, as Mr. Johnson had pointed out, is going to take time to bring about. This is not -- it's not in December that we're going to get this new Agency.

And if we do not address this issue right now, given the fact of what some of those reasons are on that list, it is going to appear that we are sweeping this under the rug. It is going to appear that we are trying to keep something secret that is already secret. And there's just no -- there is no way that I could support us not having a further discussion on this, or moving forward with the Officers on the list that have been afforded due process for that to not be publicized.

Now, I would like to make it very clear, because I could see that, as I've been hearing this whole Commission, there's always been references back to Law Enforcement and the things that they are doing well. And I want to make it very, very clear right now who I'm talking to.

What my recommendations and my seeking reforms in these areas is not at all, whatsoever aimed at the good men and women in Law Enforcement who wake up every day with pride. They put their uniform on. They go into the community to protect people from being victimized. That is not who I am aiming my recommendations or any of this at.

I am specifically addressing and talking to those in law enforcement who have chosen that they are going to misrepresent the badge, who, in their minds and heart, they think they're above the law and that they do not need to be held accountable for their actions. That's what this is about. That's what this Commission was formed on. This is not to talk about anything else other than that. This is what this is about, is addressing that, because we have -- we do have problems here in New Hampshire that need to be fixed.

And they can only be fixed by ripping away the veil of secrecy and making things public so that the people of New Hampshire know, because you cannot have any effective institution if there is no faith from the people. And this is what this is about.

The last thing, I know that I get longwinded sometimes, but this is the last point that I did want to make is that Director Malachi and Lieutenant Morrison said something yesterday that stuck with me. They had said that we needed to trust the AG's Office. And I do believe that that is extremely valuable, when it comes to this, because we have seen the Memos from the Attorney General's Office. And it specifically outlines due process.

So if there's anyone who's on the EEE [sic] list, according to the Memos that the Department of Justice released, I believe that they've been afforded due process. And what I do know about great Officers, good men and women who are in law enforcement, one thing that I do know about them that's a common character trait among law, is the moment their name, the most valuable thing to them, comes up in a negative light, they go out of their way to make sure that that situation is cleared up, because they do not want their good name that they have worked so hard to build to be in any way associated with misconduct or those in law enforcement who do not represent the values and principles of good policing.

So I just find it very hard to think that people that would be on this list with the Memos that came out from the Attorney General's Office wouldn't have sought to get their names removed from the list. And

like Deputy Young said that they do their investigations and the conduct is sustained. They're on that list. How can we sweep this away, or how can we not discuss this further?

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Joseph. Julian, Ken Norton, and then, Eddie, you are up after that. Attorney Jefferson?

ATTORNEY JEFFERSON: Thank you. So, I think we have to have a discussion and a recommendation on the EES, because, again, these are two separate issues. The EES List is what we have for conduct going backwards. The newly formed Commission would be conduct going forward.

So even assuming that that recommendation goes forward, which you really can't to be as a reason not to have a recommendation on the EES, but even if you made that assumption, that still doesn't solve the problem, because this is all conduct that has already happened. And these Officers are on this list.

So, I think it's a complicated issue that's going to need to have a recommendation for it. And so, my thought is, Chief Hamblin put in a recommendation that I think gets us to the issue. So I think there's two issues.

So there needs to be a mechanism for the Attorney General's Office and probably in combination with the County Attorney's Office to go through the list. Make sure that the Officers know that they're on the list, and for the Attorney General's Office, or the County Attorney's Office, to make a determination that they should be on the list.

Once that determination is made and the Officers have an ability to challenge whether their names should be on the list, then I completely agree with Chief Hamblin and other Members on this Commission that that list needs to be public. And that -- and this has to be discussed. And we have to have a recommendation and a vote on it, because the Commission, going forward, does nothing to solve the EES issue.

And the fact that it's before the Supreme Court also is not a reason for us not to do our due diligence here. I haven't followed that case too closely. But I believe that's an issue of statutory construction of how that list applies in combination of people's constitutional rights to exculpatory evidence, and the laws regarding confidentiality around personnel files. So that's a legal issue that Supreme Court is going to decide.

We are here to say, what do we, as a community, think a standard should be with this? So I think we need to have a robust discussion on this. I don't know if we will solve this issue today. I can certainly try to come up with some language using Chief Hamblin's recommendation as a baseline. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: So what we're putting up on the screen now was Lieutenant Morrison's recommendation to publicize the existing EES with the caveat of immediate written notice to all living persons on the list. Give anyone on the list a year to request a hearing to have their names removed. If, after one year, the remaining names on the list with a sustained finding shall be made public. So that -- Mark, am I correct? Is that your recommendation, as written?

LIEUTENANT MORRISON: Yes, that is my recommendation. And I just want to take a quick second to really extend my appreciation for some of Joseph's comments and Attorney Jefferson. It's important to remember that any effort to deal with this list from our perspective is not, in any way, shape, or form, about protecting bad Employees. It's about protecting a system, protecting the process that we all refer to as due

process. And that's really very law enforcement-centric in that even citizens, we want there to be a process: the laws, the enforcement of laws, the court process, and everything else.

This list, because of the way it was formed and how people get on it, and what you're on it for, and there's so many problems with the list that just simply publishing it isn't an option. And my recommendation works to really cure some of these things as best we can.

First, I know there are people who didn't know that they were on the list, until something happened, like they applied for a job. And the testimony from Mark Bodanza, who I believe is now a Captain in Hanover, when he was at the Academy dealt with decertification hearings. And I'll just read a couple sentences from his testimony that he submitted that I hope everybody's had a chance to read. He says, "Lastly, I would not have believed that Officers were being placed upon the Exculpatory Evidence Schedule without due process, until I observed it within the system."

Now, the instance that he goes on to articulate is the guidance was to place the Officer on the EES List and then subsequently remove him, if the ensuing investigation revealed an un-sustained finding. Now, that's not what the list is for. And that's not the best practice for any due process.

So if you have a damaged list, I'm with Joseph in that there are certain things that we should disclose. But it needs to be right. There needs to be the appropriate due process for the people on it. And that's why I made this recommendation.

First, give people notice that they're on it. And then, give them some way to get off and some sort of a timeframe. And I just -- I selected a year as just a reasonable time period for people to file the appropriate challenges or whatever. And then, at the end of that year, anybody who hasn't challenged it or lost their challenge, publicize it. That's the history behind my suggestion.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Mark. The hands that are up are, again, Ken Norton, Chief Edwards, Ahni, Rogers, Joseph, and Julian. Ken, floor is yours.

DIRECTOR NORTON: Thanks, I was actually going to suggest that we use Lieutenant Morrison's recommendation as a guide. And pretty much point-by-point, Attorney Jefferson has represented the comments that I was going to make.

I would just sort of summarize by saying that I think it's critical for us to address this. I think regardless of what's happening with the Supreme Court, as I understand it, that's only about whether it should be publicized or not. We need to resolve this list so that it doesn't exist in the future.

And then, I think that -- and I don't know whether Part A, in terms of the Superior Court, I don't know if that's the proper process for due process to take place, or the proper venue. But I think that this is a good recommendation.

And, yeah, this could -- the Supreme Court piece could drag on for months and months, and months, and has already, and has already been stated, our primary recommendation regarding misconduct to create a separate entity may or may not every come to pass. So, thanks.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ken. Eddie, you're up next.

CHIEF EDWARDS: Thank you, Deputy. I certainly echo Attorney Jefferson's comments, as well as Lieutenant Morrison's. I think one of the things that's most disturbing and one of the thing that's pretty

clear is that we all agree that no one wants bad Police Officers to maintain their jobs. And that should be made public.

But, what is concerning is that, if we have a list where individuals are not aware they have been put on the list, that should be concerning for everyone. If we're going to publish someone's name on a list that speaks to misconduct, then we should make that an Officer has been afforded due process, and they've had an opportunity to have that addressed.

This list hasn't been handled in the most effective way. And that's largely by Law Enforcement, to be honest. If we have Law Enforcement Leaders who are putting their men and women on the list because they're not totally clear on why or how they add a list -- add someone to the list, that's a disservice to those men and women in law enforcement, as well as to the general public.

This is very concerning that we want to make sure that people who are using excessive force, falsifying documents, or not being truthful with the public, they shouldn't have a Certification. I make that very clear.

But, just to release their names without affording them opportunity to know they're on the list and have that addressed is of concern. And so, I would certainly support Lieutenant Morrison's recommendation. Thank you.

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

MR. JOHNSON: Thank you, Deputy Attorney General. One of the things that I was a little bit concerned about was the overall statement that individuals who are on this list had been afforded due process. And then, in hearing Julian's response and Lieutenant Morrison's response, it appears that some individuals on the list have not been afforded due process.

In many ways, I want to make sure that at least that happens, so therefore in order to really get this resolved, then I'd concur with the statement that's on our screen right now to do this. And then, honestly, to be done with it. And that's my only statement.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Rogers. So for probably the one Commission Member who has held the list, has sort of been the keeper of the list for a snapshot in time, I'll agree with Joseph. I think it's probably fair to say, since the -- since probably 2018, I think that we can -- we have a high degree of certainty that there has been due process.

When I sort of became the keeper of the list, there were names on there. I can't tell you what those individuals have been afforded. So there has always been a concern. Is there even just one person who's on there who doesn't know, or who was not put on for the proper reasons?

So, for that, I agree. There has to be some notification and some ability to indicate whether they want a hearing or not. This also echoes why it's probably a good idea to keep personnel files for a period of time. It all ties in. You think something's never going to come back and, 10 or 15 years later, you're sort of back in the same spot you were.

I'm going to go to -- so, Joseph, you have your hand up, Julian, Chief Dennis, and Judge Gardner. Because Chief Dennis and Judge Gardner haven't been able to address this, I'm going to go to them first. And then, I'll loop back to Joseph and Julian. Chief Dennis?

CHIEF DENNIS: Thank you, Deputy Young. Just wanted to -- I've certainly heard the testimony by Attorney Jefferson, Lieutenant Morrison. And we all know there are issues with the EES. I think, Deputy Young, you said it well when you said it's overinclusive and underinclusive. I also hear the part where you comment that from that 2017/2018 area, people should have had the opportunity for that due process, or to appeal that decision by the Chief to take it there.

The one element that I believe -- and I agree with you on that and what Joseph said, too. The only different element is there is now the list is going public. And not every Officer's a member of a Union that may pay funding for them to challenge things like this to an Arbitrator or to the Superior Court. And so, maybe some Officers chose not to appeal that decision, due to funding, and just live with it. And now that that may become public, that may mean they may want to do something differently and not want their name out there, or at least try to go through that appeal process. So that's the one different I see there.

But certainly, I think we've all made great progress that we believe the list should be published. It just needs to make sure that everyone is acknowledged, aware of it, and has that opportunity. So, with that, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Chief. Judge Gardner?

JUDGE GARDNER: Thank you, Deputy General. So, my position is that procedural fairness dictates that notice has to be given to the people that are on the list. I mean, otherwise, if there is no due process in terms of being placed on this list, then I think the list is halfway meaningless, because we're not sure what that information is and whether or not it's accurate. And so, I would support this recommendation. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Your Honor. Attorney Jefferson?

ATTORNEY JEFFERSON: Yes, so I'm in support of this recommendation. The only thing I would say is on I, I think that needs to be 90 days to request a hearing. A full year to request a hearing wouldn't make it the one-year benchmark to make it public. So, that's my only change is that, after they get the notification, they have 90 days to request a hearing. And then, after one year, all resolved cases, or if no challenge was filed, then the list becomes public. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Joseph?

MR. LASCAZE: Thank you. What I did -- so two things just for clarifications purposes, and I'll start with the most recent. And I hear you, Chief Dennis, on what you said. So I just wanted to ask a question. If in the scenarios that you're saying that individuals weren't represented by a Union and didn't want to go through that process, what I'm asking is, are you saying that an Officer would sacrifice their name and credibility because they do not have the Union backing them to clear their name, which will affect their future interactions?

So, because under what I heard, it has me thinking, okay, so a good Officer who doesn't believe on that list, that knows they didn't do something wrong, just because they're not backed by the Union, they're not going to go fight to clear their name. And in the future, if they were to be involved in an incident in New Hampshire and then they were needed -- absolutely needed in the Court System, they would throw that

away to where their testimony potentially could benefit the New Hampshire community, just because they didn't have the backing of the Union to clear their name. And they would leave their name on the list, knowing it's there, but would then only have a problem if it was going to become public. I just want to know how that gets balanced.

And also, to Lieutenant Morrison's earlier comments, what I just wanted to point out is I understand. And I'm very happy that you said that this is not about protecting the specific people that I had drawn the line about who I'm talking about. It's not about them. It's about protecting the system.

But I think that we just need to be very careful when we are protecting a system that that system protects, completely protects secrecy and the issues that are talking about. I fully think that we need to address this specific part of the system, so that the system gets faith again, that people believe in it again. And that's what this is about.

So, Chief Dennis, if you could just clarify that for me, I would really appreciate that. And the other thing I would like to know is, out of every Officer who is on the list, how many are we saying haven't been afforded due process? Is there even a number that we know who hasn't been afforded due process? Or is there a number that we can guarantee saying we know that these people have been afforded due process? I mean, apparently all of New Hampshire was put on notice by the AG's Office back in 2017 with this Memo. So I'm just trying to clear up those two things: if we know how many people are on this list that have been afforded due process or not; and the question for Chief Dennis.

CHIEF DENNIS: Thank you, Joseph, and good questions, as always you ask. As far as how many people are on the lists that have had or have not had due process, I don't know that anyone has that answer. I mean, Deputy Young would probably be the best one to say that. But I can probably guarantee you that she doesn't have that answer, either. We would hope, from the Attorney General Memorandum that went out in 2017 and 2018, that those from that point would have had due process.

And then, second, to answer your question about public, I think it's important to remember, Joseph, that not everyone that's on the EES is a bad Cop. It may have been they just made a poor decision. Just because they're on the EES does not mean they told a lie, or they committed excessive force.

And Deputy Young can probably explain this even better than I can. EES is very broad. I think you heard her give an example earlier in some testimony talking about an Officer was involved in an accident. I mean, there's all sort of things that could be exculpable. And it doesn't mean it affects the outcome of a trial. What it means is that that Defense has an opportunity to get that information, and then ask that Officer questions. And it may not even pertain to the case, or that particular case.

The purpose is the Attorney has had an opportunity to review that material and ask questions of that witness, and go on. But there's many things that put you on the Schedule beyond the scope of being untruthful and things like that.

So that's my point when I'm talking about an Officer, now that it's going to go public, maybe it wasn't that big of a deal to them. You know what? I can handle this in court. But, now, maybe they don't want their neighbors Googling their name and seeing, oh, gee, what do we have here? He's on the EES. So it allows them that opportunity to take care of that. So that's the only reason I made that comment. Is that helpful?

MR. LASCAZE: That is very helpful. Thank you. And I'm thinking. So, would -- and I guess that I -- probably the AG's Office would be the one to know this. I'm just curious that is there a way, after talking

about due process, after we've done that, that instances that undermine public trust -- excessive force, stuff like that -- that's what we're talking about here, that that would be what would be published or something? I don't know. I'm just trying to figure out how to just...

CHIEF DENNIS: Yeah, and that's the challenge. It's kind of like when we get back to reporting misconduct and what is defined misconduct? And like you just kind of mentioned, that stuff of public trust, like excessive force, as I said, exculpatory evidence -- and I'll let Deputy Young talk -- it's very broad. It's much broader than what Laurie was. It's much broader. And I think it's a good thing that we're looking at this, because I think it's important.

Anyone that was sitting in the Defense chair would want that same opportunity to know about anyone testifying in court as a witness. So, I agree that it's very important. But it is very, very broad. And Deputy Young, I don't know if you want to jump in here. You're more the expert.

DEPUTY ATTORNEY GENERAL YOUNG: So, it's broad and it's also case-specific. So, what could be exculpatory in one case may not be exculpatory in another case. And I know that we're having a lot of sort of conversation around this creation.

But what Prosecutors should be doing in real-time in cases, they should be checking with the Law Enforcement Agency and they should be checking with the Officer, if somebody is going to court. They shouldn't be relying on this list.

This is the very reason, when you asked, well, how many people have had due process? I can't answer that question. I don't think anyone could answer that question. And that's the exact reason why there has to be notice given to individuals and an opportunity for them to go to court.

And I think it was Commissioner Norton asked if Superior Court is the correct venue. It is the correct venue. They would go there. They could hear the testimony, the evidence. That's where the recent cases have gone. There was a new case that recently came out, the Doe case. But that's also where the Ganter case was heard, where the Duchesne case was heard. So that's the first stop in the litigation process.

And just because there very well could be Officers that are on the EES who are no longer employed; sometimes Officers commit conduct. They're fired. And then, they're on the list. So, I understand the need for that information to be out in public. But there does have to be process. Fairness -- again, fairness to all.

Julian, you said 90 days. If you asked me to pick a number, I would have picked six months. I don't know that I'm going to get into a battle with anyone for one year versus six months, versus 90 days. I do think that when somebody gets the notice, if they are -- if there is that person's that's unaware, they'd have to find a Lawyer. They'd have to meet with a Lawyer. They would have to get into court. I think it's just challenging to do that in the middle of the ongoing pandemic. So, my recommendation would be six months. But I also understand the need for people to know this information. Yes, Julian?

ATTORNEY JEFFERSON: So, the reason why I would advocate staying for 90 days because it's just to request the hearing. So that's giving a person 90 days just to request the actual hearing. So that's just to initiate the process of requesting the hearing. So that's why I would say 90 days. And it also -- to give it all the way out to six months, I think, then makes it kind of -- II, less practical. And I think it's important we get this list out as soon as possible. So that's why I chose 90.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, and I know that. But I think, practically speaking, I'm not sure if someone -- A, you're going to have to find the person. If they're living in the State, they have to get a Lawyer. They have to figure out -- I think it's probably hard to get into a Lawyer to figure all that out and get something filed in court within 90 days. But I'm not going to have a debate about that. At least, personally, I'm not going to have a debate about the time. Ahni, and then I will ask if there's a Motion to Move Forward on Number 7, as written. Ahni?

DIRECTOR MALACHI: Yeah, I was just to say, if the person is pro se, if they're not represented in the meantime, I mean, the 90-day clock is ticking quickly. And if you don't know how to put information into court to at least stop the clock or put your bookmark there, while you go find an Attorney, 90 days is not a lot of time.

And we all understand that it needs to get out there. But it hasn't been out at this point. To give the people the needed amount of time to get the due process that they're searching for, then I think we can still do that. And even if it's after the -- number II, I think, still is okay. But definitely giving that person longer, because if you've never been to court before, I mean, do you even know where the Courthouse is? I know these are Law Enforcement Officers. But for those of us who don't make it to court often, I think we should consider upping the time from the 90 days to what Deputy Young mentioned, which is the six months. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Dennis, is your hand up? Or is that from -- (inaudible), right? Okay. Do I have a -- Commissioner Quinn?

COMMISSIONER QUINN: Yes, I just -- if I can have just one minute? I just want to add to something that Chief Dennis said. And I think it's very important. We are a couple months into this. EES has come up time and time again. The word "liar" has come up time and again. There's been several recommendations of what could be done.

I think it's very important. I think we're all on the same page with the serious misconduct, moving forward, what could be violation of law. I think we have to have faith in Chiefs to make the right decision. But I think it's important.

There's been so much anticipation put on this. And I hope that we don't present a situation where we've got individuals there. And I don't know who they all are. I don't know what they've done. I don't think any of us do.

I think it's important to understand that these -- there are people working still in our communities. I think what Charlie said is important. It's exculpatory evidence. People can make mistakes. They can tell the truth. They can improve.

I think it's important for everyone to understand Police Officers, Doctors, Attorneys, we all make mistakes. So, I just want to make sure that we're clear that we're talking about exculpatory evidence. And you can tell the truth and still your actions have been exculpatory.

So I just think that I think Jane said it best. Fairness, we're looking for fairness. If you bifurcate this, it's, what do we do moving forward? But then we have to look back at whoever, whether they're men or women that are on the list, because they're individuals. And I just think we need to do our best to make sure that they're treated fairly, because I think we've really done our best moving forward, looking into the future.

So, I don't think I could have said it any better than Chief Dennis did. But I'm also sensitive to Joseph's concerns that there are things being hidden that are so outrageous. And again, it's the unknown. And I just think that we need to make sure that we handle this with decency and fairness to all. So, I don't mean to repeat what was already said. I just think it's important that we need to understand that it isn't a one size fits all for people. And they are people that are on this list. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: So we just need to fix II a little bit, because we need to make sure that the whole list is not held until the last piece of litigation is done. So, just give us one minute and we will wordsmith number II. Go ahead, Mark.

LIEUTENANT MORRISON: Keeping in mind that right now Superior Court is giving court dates of to be determined, that's why I selected a year just to have a reasonable timeframe. And I don't think it's too long, considering the backlog of cases and COVID, and every other packed Docket reason that we can come up with.

But the issue that I think you might be considering right now is the reason I had my separate bullet point in there. And that separate bullet point was to form a confidential temporary section of the list reserved for anyone who is currently appealing. And I know -- and I am not obviously in favor of more lists and things. But to peel off those who are in the middle of an appeal, I think, is just a responsible thing to do. Those who haven't challenged or lost their appeal, I think that goes.

So I think I would move to put the timeframe back to a year, only just out of reasonableness for the concerns of everybody involved, and then the lift that's going to be required to do this. And I would suggest adding maybe a III that allows for the -- those that are in mid-hearing or in mid-process to carve those out away, so that it does not hold up the rest of the list. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: So, I think, Mark, the way that we did number II probably has captured that. So the list is public after one year, except for any individuals with pending Superior or Supreme Court Actions, because after Superior Court, you could go to the Supreme Court.

The 90 days, if I read that 90 days right, it's just the date to request the hearing. So it doesn't mean that you have to get into court and have the hearing. You just have to file the Action is the way that I read Number I. Julian, you...

LIEUTENANT MORRISON: I appreciate that. I just think that's still too short. So, I would lobby for a longer timeframe.

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

ATTORNEY JEFFERSON: So, I've heard from now three other Commissioners. And I want to be able to speak with one voice. So I'm fine with going for six months. That allows a Officer six months just to request the hearing. And so, I'm fine with going along with Deputy Young's recommendation, which Commissioner Malachi also seemed to support. I think that's a fair compromise, and gives them six months to simply decide whether or not they're going to request a hearing. And once they start that clock, their name will never be made public until all their appeals are exhausted.

LIEUTENANT MORRISON: I'll go with that. Thank you, Julian.

ATTORNEY JEFFERSON: No problem, thank you.

MR. LASCAZE: I also wanted to say that I go with that, too. I agree with that.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So, seven, as written, makes the EES public. Provide -- provided there's immediate written notice to all living persons currently on the list that they're on the list with the following notifications: I, six months from the date of notification to request a hearing in Superior Court to have his or her name removed from the EES; and then, number II, after one year, individual names on the list with a sustained finding shall be made public, except for any individual with a pending Superior or Supreme Court Action in regards to removal from the EES. Do I have a -- Julian?

ATTORNEY JEFFERSON: Yes, I would just say just to make it a little cleaner, so make the EES public subject to the following conditions below. So I would just add that before the semicolon. And I think that makes it clear.

DEPUTY ATTORNEY GENERAL YOUNG: No. After notification.

ATTORNEY JEFFERSON: No, up there. Yeah.

LIEUTENANT MORRISON: Are we also to assume that it's just the living people whose names will be disclosed, because those who are no longer with us won't have the ability to appeal, I guess?

(Pause)

LIEUTENANT MORRISON: I'm just not sure how to address that.

DEPUTY ATTORNEY GENERAL YOUNG: Mark, doesn't the issue become, though, I'm the person who had a trial and that Officer was on there, and that was never disclosed to me? I don't know. I mean, I'd defer to the Defense Attorney in the room. Would that be a basis for a new trial?

LIEUTENANT MORRISON: Well, I'm assuming that because it goes back 20 years, I think, or more, I'm just guessing. I don't know. I'm just guessing.

CHIEF EDWARDS: It already says living, A.

ATTORNEY JEFFERSON: Right, but, Lieutenant...

DEPUTY ATTORNEY GENERAL YOUNG: It does, because that was the Lieutenant's language. We were having sort of a side discussion about that here.

DIRECTOR MALACHI: So, this is Ahni. What's the question?

LIEUTENANT MORRISON: If I could, I guess, try to rephrase, Jane, my wonder, it could be a concern, but anybody who's not alive, because I think because this list goes back so many years, I think there's a chance that somebody won't be alive that is on it. So, which is why I included in my recommendation to notice all living persons.

And my only question was: should we have anything in the proceeding suggestions to -- if somebody's not alive, obviously they're not going to file an appeal. So I just didn't know if we wanted to address that.

DEPUTY ATTORNEY GENERAL YOUNG: So do you have an objection, or is there any discussion, if we add a III that anyone who is deceased, their name will be provided?

DIRECTOR MALACHI: Is that a question Julian can answer?

ATTORNEY JEFFERSON: I'm sorry. What was the question?

DEPUTY ATTORNEY GENERAL YOUNG: Can we add a III to say, when the list is made public, it will include anyone who has previously died?

ATTORNEY JEFFERSON: Yes, and I think it's important that even deceased people be on there, to the point that Deputy Attorney Young made, that if somebody is on there, that could form the basis of new evidence that would impact somebody's ability for post-conviction relief. So I think that outweighs the fact that the person's deceased.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards, I see your hand up. But I think Judge Gardner may have to go. So I'm going to let her go first, okay?

CHIEF EDWARDS: Okay.

JUDGE GARDNER: Thank you very much. I've got to leave. So, we come back to procedural due process and I really have a hard time. If they have not been given notice and something happened 15 years ago, they've passed, and they didn't know they were on this list -- and this is just about being on the list made public. Whether or not you can receive documentation or the Courts about their whatever they may have done incorrectly, that's a separate matter. And so, I just have a hard time putting someone who's deceased that didn't have an opportunity to have a hearing be on a public list. So, I guess that's just my point. Thank you. And now, I got to go.

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

CHIEF EDWARDS: Actually, that was -- Judge Gardner kind of pointed to the issue that I had -- that I have, because I'm thinking about the folks who are living who are on this list. They're going to be given notification. They're going to be given an opportunity to have their name removed from the list.

And someone who's deceased is not afforded that same opportunity. Their family certainly will read their name in the paper and they may very well object it. They may have been put on the list inappropriately.

And so, I think we have to be very -- I don't know. It's very concerning that we'd put someone names on a list and make it public, when we've given other people who are living an opportunity to have their name removed.

LIEUTENANT MORRISON: I guess I would also add that we don't know that there wasn't exculpatory information passed to Defense in the court case that would come up. So, again, I think to jump onto Judge Gardner's position, I'd just feel uncomfortable with people who are no longer with us being put on there. And I don't think it changes the fact that they probably had that information disclosed at the time of trial. I would guess or hope. So I would just not want the deceased names to be released.

DEPUTY ATTORNEY GENERAL YOUNG: So what if there was some way to ensure that they had process, if we could look at a file to determine that there had been process, or that we know that there had been a disclosure in previous criminal cases? Could we sort of at least put that caveat on there for now?

CHIEF EDWARDS: Yeah, that works for me. As long as we have jurisdiction that this person was afforded due process, and that was part of the process, I'm fine with that.

COMMISSIONER QUINN: Deputy, I have a question.

DEPUTY ATTORNEY GENERAL YOUNG: Wait, we got to stick with the list. I got to stick with the list. So I'll put you on. President McKim, Joseph, and then Commissioner.

MR. MCKIM: Thank you, Deputy. And you actually just hit on the thought -- or similar thought that I had just had. And I'm wondering if we even have a sense of how many people are deceased currently on the list, and if it would be too much of a challenge to investigate those who are deceased to make sure that they, at least, have had due process, because if it's not that many people, then maybe that's the step we take. We make sure that due process has occurred. And then, whoever falls on the list, falls on the list.

DEPUTY ATTORNEY GENERAL YOUNG: And again, I can't give you a number. But what I can say sort of not from the EES but sort of from other matters that I have looked at in the public integrity realm, when you start to go back a number of years, those records don't exist. I mean, they go back to the days of we had microfiche. And so, it -- it's going to be hard to ensure that.

But we're never going to get out of this swirl with this, because this is -- again, it's the anomalies that I think take us off-track. So we can build in a little language. Again, this is a recommendation. And then, we can work from there.

But I do think that we have to acknowledge that there very well could be deceased people there. And maybe they have. Maybe they haven't had the process. But that would be sort of an extra step to take. Commissioner -- oh, Joseph, you put your hand down -- Commissioner Quinn and then Ahni?

COMMISSIONER QUINN: No, is it Joseph or me, Deputy?

DEPUTY ATTORNEY GENERAL YOUNG: It's you, Commissioner. He put his hand down.

COMMISSIONER QUINN: Oh, okay. So, I just want to be clear. Is the reason we're putting number III in, is it, one, for the transparency to the public, or is it a combination of affording -- I'll use Julian, for example -- Julian to have access to this name in the event that he had a court case and needed to find relevant information that was exculpatory? And if the latter is included, doesn't that exist today? Doesn't the Prosecution put this forward today?

So I'm just trying to find out why. What are we trying to accomplish by III? Is it public transparency? And again, if it's that, as opposed to ensuring the court process is intact and somebody doesn't get convicted without getting access to some potential exculpatory material -- so I'm just trying to understand, Deputy, if you can just educate me. I might be missing it. That's all.

DEPUTY ATTORNEY GENERAL YOUNG: So it's both. It's for -- so the public is aware. And I don't mean to be flip when I say this. But you don't know what you don't know. So you could have tried a case, thought you had all the information. You see this list and there's a name on there that there wasn't a disclosure. You would hope that that doesn't happen. But this will ensure that. So it's for both reasons. It's so the public is aware of who's on there and to correct any former issues that there may have been.

COMMISSIONER QUINN: Okay, thank you. That helps.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you, Ahni?

DIRECTOR MALACHI: My only thought was there was something that Lieutenant Morrison mentioned earlier regarding this list, in-camera review. But I don't know if that pulls us into a whole other topic of conversation. If it does, then forget I ever said it. But, if that's helpful for this, for the deceased people, then maybe that's we add. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, I don't see a Court any more than we're going to look at this -- and I don't see that a Court's going to look at this and say that they've had process. I mean, I think that -- so, I don't think the Court's the answer for that. Joseph? Hold on. We're trying to work the language on this, too. So I'm sorry if I'm distracted.

MR. LASCAZE: It's no worries at all. So just real quick, the first thing was that I did want to say that I hear the concerns about people who have passed away. And I do think that, if possible, not to heap any more work on the DOJ, but if they could, if there was a way of determining whether or not due process was afforded in that situation, I think moving forward that the chips fall where they may on that situation.

I did have a question of I'm just trying to figure out for the group why it's a year after a sustained finding for the publication, as opposed to six months. That was the question that I just had for the group, if there was a reason why a year was specifically worded there.

And the last thing that I'd wanted to know, if this recommendation is pushed -- put forward and it would be implemented, how would this come about? Is the Governor going to -- would it be for the Governor to tell the DOJ, you need to implement this? Or would it be the DOJ who takes it, itself, and then

moves forward on this recommendation? I'm just curious about that, only because this is not a legislative issue.

DEPUTY ATTORNEY GENERAL YOUNG: I'm sorry, Joseph. I was trying to do this A again. What? Sorry, I -- ask the question again.

MR. LASCAZE: That's all right. So, the first was concerning the due process that needs to be afforded to individuals. And in relations to the men and women who have passed on, if -- I support the DOJ making sure that work, if they can, that due process was afforded to those people.

And the second part was, I had a question on why -- I got to get close to my screen, just because I got to see it. But the year, it says on the screen, I think, after one year, individuals' names on the list with a sustained finding shall be made public. And I was just wondering what -- if it was a sustained finding, why we were using a one-year benchmark as opposed to six months, 90 days, whatever, why we arrived at a one-year benchmark on a sustained finding.

And the third, Deputy Young, was about who would implement this recommendation. Would it -- if this is adopted and moved forward on, is it going to be the Governor's Office who speaks to the DOJ and says, hey, you guys need to implement this and do this? Or would the DOJ on its own take this on and implement these -- this recommendation here?

DEPUTY ATTORNEY GENERAL YOUNG: So, Joseph, to the second part, right, this is the recommendation of the Commission. The DOJ position right now is there is litigation before the Supreme Court. And I think depending on the Order from the Supreme Court, I think we address that at the time. So I can't commit to this now. I don't know how the Court will rule.

I mean, the position of the office sort of at a high level, because I am not -- I was -- I did not argue that below. There is the -- there's the EES, right? There -- that was sort of what I'll call sort of a manmade creation as a cheat sheet.

But then you also have the law that Lieutenant Morrison talked about earlier about Police files being confidential. And that's the tension that we see. That's how we're here. That's why it was our recommendation to create this new entity.

So I can't commit to what will happen. I can tell you that the Attorney General is a very reasonable person and would certainly have discussions. But it takes two sides to have those discussions, depending on what the Court's Ruling is. So I think that's a bridge we have to cross once the oral arguments are presented and the Supreme Court has had the ability to review and weigh in on the matter. So this right now would be the Commission's recommendation to the Governor.

MR. LASCAZE: Okay. All right.

DEPUTY ATTORNEY GENERAL YOUNG: Does that make sense?

MR. LASCAZE: That does make sense. Thank you very much. I appreciate that.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Thank you, Joseph. And let me just -- I just need one minute to -- I understand what you say. So what will happen is the recommendation is the EES will be

public. There'll be immediate notice. An Officer would have six months to request a hearing not to have his litigation complete, but just to get into court. So I think that the one year matched the one year. Is that correct, Mark?

LIEUTENANT MORRISON: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: So, should number II be now after six months, because I guess Joseph's question is, why do you get an extra six months, if you haven't gone to court? Is that right, Joseph?

MR. LASCAZE: Yes, and it's saying that's on a sustained finding. So I was just wondering how we arrived at a year on a sustained finding. That's all I was wondering. And if we're mirror -- if it was mirroring a year mirrored the year, I felt that consistency would be the best approach here, then. Six months would match the six months. That was just what I was thinking.

LIEUTENANT MORRISON: So, the thought process behind my recommendation was essentially to give a reasonable timeframe of a year to get this all sort of wrapped up. Most people will be requesting a hearing, if they want to, before that year, right?

So, I -- again, it was arbitrary. But it was a reasonable timeframe just to allow things to work through the court, because even if you request a hearing tomorrow, you're not going to get a court date for probably several months, right? So my thought was just, let's just have some reasonable timeframe of a year to get this square to allow people time to -- and the sustained finding is important, Joseph, because even if you have a sustained finding, you can still appeal it. Even there was no appeal, so you have to allow time for those things to work through.

And I'm trying to remember who mentioned it earlier. But you could have somebody that had a minor -- what they considered to be a minor infraction and just got a writeup. And then, that's forwarded to the EES List. So the position might be, well, if that's going to the list, I'm not going to just accept that writeup. I'm going to fight that. And sometimes people, they just want to be done.

So, the year timeframe was just a reasonable timeframe to get it all buttoned up and wrapped up together. And that's why I was okay with the six months from the date of notification to file. And then, at the end of that year, it's published. So whatever's been worked out, it's published. That's why I was in favor of the six months with the one-year sort of cap, if you will, on how long you'd let it go.

MR. LASCAZE: That makes more sense to me now. So this was about even after the sustained finding, still giving them a time period to appeal and exhaust all due process and all avenues afforded to them before this was made public, correct? That's pretty much what you're saying, correct?

LIEUTENANT MORRISON: Yes. And that would give time for that hearing to occur. And then, so you'd actually have decisions. So you'd be able to actually release something that would be some sort of a product.

MR. LASCAZE: Okay. Good. I -- that makes perfect sense to me. And I did want to just highlight something that you just said, Lieutenant Morrison, which was the situation of a minor infraction and yet

they were added to the EE List. And one thing -- I've heard this a few times now -- and one thing that I did want to just make clear, and just make sure that no one on this Commission is doing, which is -- and I should ask you this first, Lieutenant Morrison.

Are you saying that because there's a fear that people in the public would, if they see an Officer's on the name on the Laurie List, they're just going to automatically assume that they're a bad Officer because they're on this list? And it could be something simple, like you were saying, as a minor infraction. They're not filling up a gas tank or something like that. Is that what the concern is?

LIEUTENANT MORRISON: Well, I guess I would ask you. What do you think of when you would assume somebody's name was on the list? What would you think?

MR. LASCAZE: So, well, personally, I don't know if I'm the person to ask on that, because I have been in situations where -- so a -- I can give you a perfect example. An Officer in the State Prison who brings a cellphone into the Prison, it's a departmental violation, but that's not a chargeable offense. Doesn't mean that that Officer is a bad Correctional Officer.

I think that we have to be very careful of not assigning feelings and judgments to the New Hampshire public of what they will think and feel about something. I think that our -- the New Hampshire citizens are smart enough to understand the difference between a minor offense of not filling up a gas can, or -- I mean, not filling up a gas tank, or a small departmental violation like that, as opposed to coverup and falsifying documents.

I just really think that New Hampshire can make that distinction. And I think that it allows Law Enforcement -- I feel like it gives Law Enforcement the platform to be like, hey, look, we are human. No one is saying that Law Enforcement isn't human. And humans do make mistakes. And not filling up a Police cruiser for gas at the end of a long shift, that's a mistake. That's different.

And I think people recognize that. And Law Enforcement will be able to say, we are human. We do make mistakes. We're not trying to hide our mistakes. And we're not trying to even say that no one in our Force makes mistakes. But we're also giving the New Hampshire public that ability to be like, okay, we thank you for that transparency and we do recognize there is a difference between this and that. So...

LIEUTENANT MORRISON: And I think the important thing to remember, though, with the EES List, this is only for trials like for people to understand there's exculpatory evidence, which is evidence that should be given to the Defense if there's a court case. So it's not a misconduct list. It's exculpatory evidence.

And because of the confidentiality of personnel files, as Deputy Attorney General Young described earlier, they created this list. And how people got on it, what was the criteria for getting on? All these things were just not either in existence or it was not equally applied. Or there's so many problems that that's why the list is so damaged.

So, for your example of somebody bringing a phone into the jail, that's -- they're not out making arrests and things like that, I guess, as a Corrections Officer, unless they're an Investigator. I'm really not up on the Prison System. But this is mostly for court cases, going forward. And it's not just to highlight (inaudible) performance.

MR. LASCAZE: I get that. That makes sense. And the very last point then would be, with all that, going back to what you were saying about that time period, would it make sense then if a person didn't file a challenge, after being put on notice, after being given the notice that this is a -- this is what's happening? If they didn't challenge, wouldn't then the six-month or that time period be sufficient, because those who would challenge would automatically be carved out and excluded? And they would be afforded the time needed to clear their good names and get off this list?

LIEUTENANT MORRISON: And I think these are some of the rabbit hole issues that I just didn't want to really get into. And that's why just give a flat timeframe, a reasonable timeframe to file a request to hearing, to get off. And then, sort of these problems will work themselves out.

Whatever decision they made before may not be now. It's not up to me to even deal with. I'm not even going to start to get into that. So, just allowing the appropriate timeframe, here's a way off, or here's the way to solidify this list once and for all, and then done.

MR. LASCAZE: Lieutenant Morrison for indulging me, I really appreciate it.

DEPUTY ATTORNEY GENERAL YOUNG: So we have about three minutes left. Chief Dennis and then Attorney Jefferson?

CHIEF DENNIS: Thank you, Deputy Young. I think the way it's written now, I don't have an issue with. I don't know if it creates an issue for the DOJ of basically, at the end of six months, I see exactly what Joseph is saying. If someone hasn't filed for an appeal to the Superior Court, why not, after six months and one day, that name could become public? But that would also mean DOJ's now creating another list. You're moving. It's been six months. These 20 people didn't appeal so those names can become public.

So, I don't have an issue with the way it's written now. I understand, I think, what Joseph was saying. If they don't file for the appeal in six months, then their name becomes public, unless they've appealed it. Then there's a process waiting. So that's all I have. Thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Yeah, very briefly. I'm also in full agreement with it as it's currently written. I would just have one thing to say that, on II(a), that the determination, I think we just need to specify who's making that determination. And I'm assuming it's the Attorney General's Office, so just to make that clear. Thank you.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Sorry, we're having some internal debate. We will be right back.

MR. MCKIM: Deputy, can I ask a question, while we're waiting?

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, go ahead.

MR. MCKIM: So, Attorney Jefferson just made a comment about adding to II(a) that the determination is made by the AG's Office. And I guess I'm curious why we would add the AG's Office at that point and not anywhere else in seven. Who's providing the immediate written notice? Who's doing all of this? Is this the AG's Office doing all of this? We're adding the AG's Office to II(a) to be covered. Or is there a specific reason why we need to add AG's Office there and not mention who's doing the rest of this?

DEPUTY ATTORNEY GENERAL YOUNG: So that is a good point. So I think that, yes, sort of as the keeper of the list, we would provide the notice. I come back to, if we're not making the determination in A.II, I don't know how we make it in A.II(a). But now, who's in Superior Court, right? That becomes...

MR. MCKIM: Um-hmm [yes].

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: So, that probably takes care of the rest of it. Agreed, Julian?

ATTORNEY JEFFERSON: Yes, I'm fine with that.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Do I have any Motion to Move -- is this really the number 7? So, I see Commissioner Quinn's hand. Is that a -- Commissioner Quinn, your hand is up.

COMMISSIONER QUINN: I make a Motion to Move It, as written.

DEPUTY ATTORNEY GENERAL YOUNG: Okay.

MR. LASCAZE: I second it.

DEPUTY ATTORNEY GENERAL YOUNG: Oh, I have a second by John Scippa. So, that I will take a roll call on that. Commissioner Tshiela?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Edwards?

CHIEF EDWARDS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Lascaze?

MR. LASCAZE: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Director Norton?

DIRECTOR NORTON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chief Dennis?

CHIEF DENNIS: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Lieutenant Morrison?

LIEUTENANT MORRISON: Yes and thank you, everyone, for the help on that.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you for the crafting of it. Judge Gardner?

JUDGE GARDNER: Can you come back to me? I'm going to have to review it.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, okay. Take your time.

JUDGE GARDNER: Thanks.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Chairman Johnson?

MR. JOHNSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. John Scippa was the second.
Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Quinn was the first. And I vote yes.
Judge Gardner, just raise your hand up on the screen when you're done reading it.

DIRECTOR SCIPPA: Madame Chair, if I might just really just a quick word to the Commission?
Ladies and gentlemen, I sent an email out to everybody relative to ABLE training. And I need letters of
support written by organizations to help me get Trainers into those seats.

So, President McKim, President Johnson, if you could create those letters, email them to me, that would be most helpful. And I appreciate any other letter of support, so that we can secure those seats for the training. Thank you.

MR. JOHNSON: You got \$5?

DEPUTY ATTORNEY GENERAL YOUNG: Hey, hey, not in front of me.

DIRECTOR MALACHI: #Mandatedreporter, hello, AG's Office.

MR. JOHNSON: I don't care about no stinking AG's Office.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, but you care about me.

MR. JOHNSON: Yes, I do. In fact, I absolutely do.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Judge Gardner, you raised your hand?

JUDGE GARDNER: Yes, so I vote yes.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So this was the list that we put together. And we have additional areas to discuss from President McKim and Joseph. So we're just -- I know that we're a little over our time, but we're going to pop up President McKim's areas of discussion and then just run through them.

So, tomorrow, we were going to move onto other topics. So, President McKim, I don't know if we could put these in the other topics, or if you think that these are part of this. So, would you like to discuss that?

CHIEF DENNIS: Deputy Young, can I hop in right quick?

DEPUTY ATTORNEY GENERAL YOUNG: Oh, go ahead, Chief.

CHIEF DENNIS: I've got another appointment I'm going to have to take off to. So I'm going to have to sign off.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. See you tomorrow.

CHIEF DENNIS: Okay, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you for everything. So, President McKim, if we could close this section out, I would like to do that tomorrow and then move onto other topics. I just don't know if you think that some of these should go into this, which is reporting and investigating -- investigation of Police misconduct.

MR. MCKIM: So, I believe that most of these belong in this particular section. There are a couple that could be tagged for the other section.

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Just (inaudible), sorry. Okay. There's quite a few of them. So...

MR. MCKIM: I'm looking...

DIRECTOR MALACHI: Deputy Young, I have a question.

DEPUTY ATTORNEY GENERAL YOUNG: Who has a question?

DIRECTOR MALACHI: It's Ahni.

DEPUTY ATTORNEY GENERAL YOUNG: Oh, Ahni, hi. Go ahead, Ahni.

DIRECTOR MALACHI: A lot of the -- well, some of these seem very familiar. So, are these not things that we've already covered?

MR. MCKIM: Yes.

DIRECTOR MALACHI: And if so...

MR. MCKIM: Well, that's actually part of the discussion. We have talked about some of this. And I just wanted to make sure that we've covered it. For example, this first one, we talked about the statewide system for Director Scippa around a learning management system. That's one piece of it.

The other piece was -- my recollection is -- a system that allows for capturing the data statewide that various Law Enforcement Agencies would report in around performance. So, I didn't -- I wanted to make sure, because the first piece, the learning management system, we covered in the training section. But that training is separate from the actual reporting of information from various Law Enforcement Agencies, which, as I recall, Director Scippa said some of them have to kind of fax this data in, because they don't have their own Record Management Systems. And a lot of it has to be done manually. So I just wanted to make sure we had made recommendations around both those issues.

DIRECTOR MALACHI: But I thought when we -- I think it was even back in the training section. And I believe we've already recommended -- I think -- to support the findings of the LBA Audit, which covers a lot of topics, as well as we gave -- I thought we gave a recommendation to support the release of funds that Director Scippa already has for a database management system that would help in reporting.

So -- and maybe I'm missing that. That recommendation wasn't inclusive of what you're talking about. But if we've already made those recommendations for those things and the things will cover this, then I don't think we need to go back over them again, just a thought.

MR. MCKIM: Oh, I would agree. And I just put them up to make sure that we did, in fact, cover them previously. But if not, they also have relevance for this section. So, we just need to make sure they're covered in one place or the other.

DEPUTY ATTORNEY GENERAL YOUNG: And James, when we added the database for the new entity today, do you think that that addressed your second part of that?

MR. MCKIM: Actually, yes, it does. Yes, it does. So, that's a good call.

DEPUTY ATTORNEY GENERAL YOUNG: Am I on or off?

(Pause)

DEPUTY ATTORNEY GENERAL YOUNG: Hold on. Give me one second.

DIRECTOR SCIPPA: I think, Madame Chair, just -- President McKim, just to speak to the concerns relative to the database, in fact the system we're looking at would be outward-facing to allow for reporting from the Agencies. And plus, it would also be internally-facing, so that we could also maintain information to kind of build out that Academy-to-retirement tracking, so to speak. So I hope that answers your question.

MR. MCKIM: That does. Thank you very much. Take that one off.

DEPUTY ATTORNEY GENERAL YOUNG: So the second one is the PELRB.

MR. MCKIM: Yeah, so this is testimony by David Auger, mentioned the PELRB and I wasn't recalling that we really delved into that at all. So, it sounded as if that was the -- yeah, PELRB was an entity that needed to be involved in these discussions about how misconduct is dealt with.

DIRECTOR MALACHI: Is that not the Labor Relations Board? And wouldn't that be where you would go if you don't agree with the finding? You'd go before the PELRB, as we call it, to have your case heard again. Commissioner Quinn?

COMMISSIONER QUINN: Yes, but I think it -- I'll defer to Deputy Young on due process. There is a PELRB that Employees have the right to go to for appeal. But I think it's a fair question. Is the Commission's Rulings final and there is an appeal, I think, to the Supreme Court? Or what role does the PELRB play in making decisions on misconduct? So, again, not being an Attorney, I don't know. But I think it's a fair question, which I don't have the answer to.

DEPUTY ATTORNEY GENERAL YOUNG: So that is an entity that the Officer could go to address any issue they have. I'm not sure that we have any oversight over them. They're their own sort of freestanding sort of right of appeal to there. So I don't know that we have much say over them, or how they interplay with this Commission, or what recommendation we could give them.

MR. MCKIM: Well, certainly, from the perspective of the public and accountability, and transparency, whatever we recommend, it would seem, needs to encompass all of the stakeholders, or at least invite input from, and so that our recommendations make sense, because if we make recommendations and this Board can make a decision that just overrules all of what we recommended, then what good is what we've been doing?

DIRECTOR MALACHI: This is Ahni. It just feels like we're over our skis on this. And that's not germane. I think we're out of our jurisdictional area. I mean, I appreciate Mr. Auger's testimony. But we need to keep it moving.

MR. MCKIM: I will defer to folks who know much more about all this than I do. I was merely picking up on a testimony that we didn't really get into and I didn't understand. So...

COMMISSIONER QUINN: So, just to comment back to Deputy Young being the -- I'd say -- the most senior and knowledgeable Lawyer, is the Commission -- if we are recommending that they, the Commission, be the fact-finder and the decision-maker on what is misconduct, do we focus on the misconduct and make sure we understand what our recommendation is?

What the PELRB does in regards to whether an action was too strict or whether a suspension for 10 days should have been 5, or whether a firing was too severe is separate. But I think it's -- I just think we need to -- I think it's a good issue that's been raising, in regards to misconduct.

So, the PELRB, can they reverse the decision of the Commission? Are we aware of that? And what -- I just -- we should just be aware if that, in fact, can happen. Does the PELRB trump this new Commission that we're recommending? And I don't know. And I don't want to go backwards here. But I just think it's -- I think it's good that we're all aware of this now before it happens in the future.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. So, for time, I'm going to keep going through these. I think, President, the endorsed the findings and recommendations of the 2019 Audit for Police Standards and Training. I think that's an other. So I think that we should put that on for tomorrow. I know that we have heard that discussion throughout. So I think that that's probably other for tomorrow. Number 3, ensure Prosecutors (inaudible) tools to check Officer misconduct. Could you elaborate a bit more on that for me?

MR. MCKIM: Sure, I actually had several sub-bullets in my official recommendations which fleshed this out a bit. I just chose to put the topic, because that's the way we seem to be working. But this is as a result of conversations with a couple of County Attorneys, and a brief discussion around -- we've had a little bit of discussion about making sure that Prosecutors have received annual implicit bias training, that there might be training for Prosecutors and County Attorneys that is strategic in nature, rather than tactical in nature.

So, my understanding is that the training that's now available, that's now done, is a one-day that's basically on how to fill out the forms that are necessary. That's different than training for the County Attorney on how to run the office. That's more leadership and we've had some discussion about leadership training, and leadership being the way to address some of these issues we've discussed with the

Attorney's office, and making sure that the Prosecutors are performing their jobs appropriately. So that's a piece of this.

DEPUTY ATTORNEY GENERAL YOUNG: So, to that, I would say, yes. When new County Attorneys are hired, they come in. We do a one-day training sort of as to what's to be expected. But if they need to be trained on how to run an office or what misconduct is, or how to be a County Attorney, I'm not sure why they ran for the office. I mean, right? That sort of seems to be if you're not qualified, then that's a lot more than one day.

And I understand County Attorneys' Offices take in new Attorneys. And that's why I say it starts with leadership at the top to train them. I came from a County Attorney's Office. I started doing misdemeanor appeals, working with other people. But, when you come in, you are supposed to have, I would hope, some semblance of how to prosecute a case and how to run an office. I don't know how we train them on that piece.

MR. MCKIM: So, from my -- I guess my point was more that what I heard from the two County Attorneys with whom I spoke -- and I would love to have had -- and Robin Davis actually submitted some testimony that kind of gets to some of this. But what they said was, because the County Attorney's Office is an elected position, there are people who run for it and have been elected who don't have that leadership component knowledge that you just referred to. So -- and I'm really just elaborating. You asked me to elaborate on some of what this is about.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, and that's a separate question. I think that's a fundamental issue that you run for an issue that you are not qualified for, when you have multiple people's hands in your lives: victims, defendants. That -- I mean, that's another whole Commission for a broken system.

And again, a side subject, I read County Attorney Davis' submission, again fundamentally flawed in an understanding of the County Attorney's role and the Attorney General's role. We oversee the County Attorneys. It is in Statute. It is in common law. People may not like that, but that is the status of the law. So, I think that's a whole separate discussion, and I'm not sure that it fits, again, within what this Commission's mission is.

MR. MCKIM: All right, so...

DEPUTY ATTORNEY GENERAL YOUNG: I will step off my soapbox.

MR. MCKIM: Right, I was just expounding upon the recommendation around making sure Prosecutors have the knowledge and tools to do their jobs. The details of that, I don't have. I'm not an expert. I can't speak to. But, from the conversations I had with the County Attorneys, they felt they didn't have the tools and the knowledge that they should have had. And they've seen others in the position who don't. That's merely my point, and why I raised it.

DEPUTY ATTORNEY GENERAL YOUNG: No, I get that. I go back to then they probably shouldn't have run for the office. But...

MR. MCKIM: So, it was around being able to ensure being able to check misconduct. So that's why I thought it was part of this section to have a recommendation around it.

DEPUTY ATTORNEY GENERAL YOUNG: I -- so the next one is develop a system to gather for the Attorney Discipline Board. That is overseen, President, by the Supreme Court. So we don't -- I mean, that's not something that we have authority over.

MR. MCKIM: We, being the Attorney General's Office, or we, being the Commission?

DEPUTY ATTORNEY GENERAL YOUNG: Well, I'm not sure. Again, I think that this might be a little beyond the mandate of the Commission. So the Attorney Discipline Board answers to the Supreme Court. So the -- that's its own branch of government. What's the rationale behind this, President? Why is that important for them?

MR. MCKIM: This was based on testimony from Professor Scherr and I think Chief Edwards, also, indicated that getting this data would be helpful in understanding the scope of discrimination against people of color. And maybe this isn't really tied into law enforcement, as it's been defined, folks with arrest authority. But that was the genesis of that recommendation. So if it's out of our scope, that's appropriate. We can move on. And the next one would be in the same vein, I guess.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, and I think that we have discussed that. There are Attorney Discipline Rules. And I don't understand the difference between behaving unethically and not fitting within a rule. So, we have Professional Conduct Rules that deal with ethics. And I think that the conversation that you and I have had is that one case, well, why did the Prosecutors go forward, if it appears that there was bias, or that the individual was only questioned because of the color of his skin? I don't know that that falls in an unethical category. So I have a hard time sort of understanding that concept there that they're trying to get at.

MR. MCKIM: All right, I think we need to move on. I'd be happy to -- I'd love to have a conversation further about it, but we're running out of time. So I'm happy to move on.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, perfect. And then, the Sheriffs to be Certified Police Officers; so the problem, right, they're Elected Officials. But we did put them into what would be the new entity, because we do see that that's an area that you don't have to be certified to be a Sheriff. So I see that. That's why we put that into the other position.

MR. MCKIM: Okay.

DEPUTY ATTORNEY GENERAL YOUNG: And Scippa, correct me if I'm wrong. You can suspend a certification of a Sheriff and they could still remain in that position and discharge some of their duties. Am I correct?

DIRECTOR SCIPPA: Yes, generally speaking, because they're an Elected Official. They don't even have to carry law enforcement powers. And they don't have to have a Certification as a Police Officer to act in that capacity. They could have a Chief Deputy who would kind of be the overseer of all of the law enforcement aspect of it. The Sheriff would be an Administrative Manager. He'd still hold, or she would still hold that high office, but would just not have the authority to act as a Police Officer.

DEPUTY ATTORNEY GENERAL YOUNG: So, President, if you want to put that on for a discussion for tomorrow, we could certainly do that. But the certification really doesn't do much.

MR. MCKIM: Well, let's skip it. I think the notion was that they should be trained just as any other Law Enforcement Officers are trained, and be held to the same standards. And so, I think we're okay.

DIRECTOR NORTON: This is Ken. I would support moving it to the other category for tomorrow. And I think it was the Judge who had initially raised it. I'm not sure that she's with us right now.

DEPUTY ATTORNEY GENERAL YOUNG: She is, Ken. Yeah. So we will put that over for tomorrow, then. President, you want to talk about seven?

MR. MCKIM: This was something that was also raised by the Commissioners -- sorry, the County Attorneys that is just an attitude that they've run into. And I'm not sure whether there are guidelines or there's any training that is given to engender this attitude. And I don't know whether there's anything we'd really can -- I'll just leave it at that. That was the thinking behind that recommendation.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. And then, number 8, that the County Attorney has the final say in how a case is tried so that misconduct...

MR. MCKIM: And I think we just had the conversation about this one, in terms of how -- who has the final say as to how a case is adjudicated.

DEPUTY ATTORNEY GENERAL YOUNG: So I will tell you that that is absolute the Attorney. I would also say we work with Police Departments. They have a significant role in this, as I have said repeatedly. They are that first line dealing with an individual. It's a dangerous job. So I think we, at least, have to listen to their input. Sometimes we miss a fact or a detail. And I think that we need to have open dialogues.

But, again, I would go back to leadership. There are people here. I'm sure there are people on the line that we have not agreed with how something will end. But, at the end of the day, they know that the final say is with the Prosecution. They may not agree. But there's a respect. And you have to build that from the top-down. And that's why you have to have a competent, qualified person at the helm who understands that and who can send that message to the Attorneys.

MR. MCKIM: Moving onto number 9; this, I could see, as an other.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, I agree that that's probably an other. And then, Joseph had -- was that it, President?

MR. MCKIM: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Okay.

MR. MCKIM: That's it, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: And Joseph -- you're welcome -- Joseph had a rewrite of the law to intervene. So why don't we take that up tomorrow? We will redraft. We will format everything that we did today.

Joseph, we can even put that into the other category. We can vote on this. And then, we can talk about other recommendations. I asked yesterday, do any of the Commission Members want to have anybody testify in the other section, or can we finish that tomorrow? And then, Friday, we have a buffer day. We could open it to any other public comment with the hope of still getting this in on Monday.

But, I have to tell you, it's a lot of work on this end. I mean, just the writing, the synthesizing. I know that we don't get everybody's exact quotes there. But, as you see, we're sending emails out late at night. So we're trying to stay on track and have a good end product. So, thank you for your patience with us, as we try to keep this moving. Commissioner?

COMMISSIONER QUINN: Deputy, it might help for me, personally. I know you talked. And again, in full disclosure, I'm not aware. But I believe a law -- the law that just passed on reporting, but the conversation we're to have tomorrow is on the duty to intervene, which is other. But, could we have that language so that we all know what is currently on the books? Or I believe, is it going to be effective January 1st? But might help if we could see that law tonight and know what is on...

DEPUTY ATTORNEY GENERAL YOUNG: Yeah.

COMMISSIONER QUINN: Yeah.

DEPUTY ATTORNEY GENERAL YOUNG: We will send that to you. And we changed the language of the first recommendation to mirror that and just changed reporting to intervene. But, yeah, we will get that out to you if that's easier.

COMMISSIONER QUINN: Good, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Ahni?

DIRECTOR MALACHI: Quickly, for the category, other, do we already have a list of what we're discussing tomorrow?

DEPUTY ATTORNEY GENERAL YOUNG: We have -- Joseph had something previously that we had on there. I think it was -- was it the SUD? Yeah, so I think the answer's yes. And Ken, we know that we put a number of your issues tomorrow. So we will try to get those together and send them out with this draft.

DIRECTOR MALACHI: Okay, thank you. I know there were a couple of things in the other two sections that we talked about to some degree and then decided it should go into other. So I just wanted to make sure.

DEPUTY ATTORNEY GENERAL YOUNG: Yeah, we think that we have captured all of those. Anything else? Okay. So, we will have to put out a notice. So we will take public testimony on Friday beginning at 1:00 on other. Joseph, your hand is -- is your hand up because a question, or is your hand up for something else?

MR. LASCAZE: You know me well. It's actually for all of that. So, it's everything. The first thing that I wanted to say was I -- just so that I make sure that I knew what was going, we haven't taken a vote yet on the recommendation of the EES List, correct? We never voted on that.

DEPUTY ATTORNEY GENERAL YOUNG: Oh, thank you.

MR. LASCAZE: All right. So, can I move that we adopt this recommendation?

DEPUTY ATTORNEY GENERAL YOUNG: Hold on. Hold on. Wait a minute. Hold on, Joseph. Hold on. Okay. We did. I'm being told we did.

MR. LASCAZE: We did vote on it?

DEPUTY ATTORNEY GENERAL YOUNG: Yes. Yes, we all voted yes.

MR. LASCAZE: Oh my, goodness. See, this is what (inaudible) day has been.

DEPUTY ATTORNEY GENERAL YOUNG: I know. And now you confused me.

MR. LASCAZE: Oh my, goodness. I am so sorry about that.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. Oh, we lost him.

MR. LASCAZE: No, but the second is, I am totally fine with moving that recommendation to the other section.

DEPUTY ATTORNEY GENERAL YOUNG: Okay.

MR. LASCAZE: And would also like to right now put in a Motion that we adjourn for the day, when the time comes. I would like to get that on the record now.

CHIEF EDWARDS: That's now.

DEPUTY ATTORNEY GENERAL YOUNG: Could I have a second? Eddie, was that a second from you?

CHIEF EDWARDS: (No audible response).

DEPUTY ATTORNEY GENERAL YOUNG: Oh, sorry, President. Chief Edwards came first. Ms. Tshiela, how do you vote?

MS. TSHIELA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Eddie was the second. Attorney Jefferson?

ATTORNEY JEFFERSON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Norton?

DIRECTOR NORTON: Yes.

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

LIEUTENANT MORRISON: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Judge Gardner?

JUDGE GARDNER: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: President McKim?

MR. MCKIM: Yes, with gratitude for everyone here.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. Chairman Johnson?

MR. JOHNSON: You keep saying people leave us. I have all this dread every time you say that. Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Thank you. No, I don't think it's anything bad. I think it's probably lunch.

MR. JOHNSON: It just gives me the jeebies (ph).

DEPUTY ATTORNEY GENERAL YOUNG: The smart ones. Director Scippa?

DIRECTOR SCIPPA: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Director Malachi?

DIRECTOR MALACHI: Yes.

DEPUTY ATTORNEY GENERAL YOUNG: Commissioner Quinn?

COMMISSIONER QUINN: Yes, and a shoutout to you and the support staff, and HSEM for keeping us (inaudible) August 26th. So, thank you.

DEPUTY ATTORNEY GENERAL YOUNG: Okay. I vote yes, too. See you in a few hours, guys.

(Meeting adjourned.)