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In the Matter of the  
**MEETING OF THE  
CIVILIAN COMPLAINT REVEIW BOARD**

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**September 12, 2007**  
10:00 a.m.

40 Rector Street, 2nd Floor  
New York, New York 10006

**B E F O R E :**

**FRANKLIN H. STONE, ESQ.,**  
Chair  
**ERIC DORSCH,**  
Acting Executive Director

**A G E N D A:**

- 1. Call to Order
- 2. Adoption of Minutes
- 3. Report from the Chair
- 4. Report from the Executive Director
- 5. Committee Reports
- 6. Old Business
- 7. New Business
- 8. Public Comment

Sabine Faustin,  
Court Reporter

**AMEERAMAC REPORTING INC.**  
168 PUTNAM AVENUE 2ND FLR  
BROOKLYN, NEW YORK 11216

1            CCRB Public Hearing - September 12, 2007

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A P P E A R A N C E S :

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6            COMMISSIONERS:

7

TOSANO J. SIMONETTI

8

YOUNGIK YOON, ESQ.

9

SINGEE L. LAM

10

VICTOR OLDS, ESQ.

11

WILLIAM F. KUNTZ II, ESQ.

12

JULES A. MARTIN, ESQ.

13

CAROL LEIBMAN, ESQ.

14

JAMES DONLON, ESQ.

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LAWRENCE L. LOESCH, ESQ.

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DR. MOHAMMAD KHALID

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**P R O C E E D I N G S**

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**THE CHAIR:** Good morning. I want to

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call to order the public board meeting of

11

the Civilian Complaint Review Board. The

12

first item on our agenda this morning is

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the adoption of minutes from our last

14

meeting on August 8th, 2007.

15

Has every Board member had an

16

opportunity to review them?

17

I believe they were included in your

18

board packages last week.

19

Do we have a Motion to approve the

20

minutes?

21

**MR. OLDS:** So moved.

22

**THE CHAIR:** Second?

23

**MR. DORSCH:** Second.

24

**THE CHAIR:** Any comments,

25

discussions, corrections?

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2                           (No response.)

3           **THE CHAIR:** We'll put it to a vote  
4 then if there's no discussion. All in  
5 favor say aye?

6                           (Board responds in the  
7 affirmative.)

8           **THE CHAIR:** Any opposed? Any  
9 abstentions?

10           **MR. DONLON:** One -- one ab --

11           **THE CHAIR:** One abstention?

12           **MR. DONLON:** Oh, I was not here  
13 so --

14           **THE CHAIR:** You were not here;  
15 that's sounds fine. That sounds fine, Jim.

16                           Okay, well the minutes are adopted.  
17 The next item on our agenda is the report  
18 from the chair, that's me.

19                           I have two items to report on. The  
20 first is with respect to the issue of CCRB  
21 Board members having telephone meetings and  
22 their propriety in the context of the Open  
23 Meetings Law.

24                           This was raised at our last meeting  
25 and has been the subject of some discussion

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2           for some time. We have received advice  
3           from the Law Department and we will be  
4           discussing that advice and our future  
5           actions, at least initially in executive  
6           session today.

7                     The second item on my -- for my  
8           report is the NYCLU report which, as many  
9           of you know, came out last week. We  
10          received it only hours before it was  
11          published, though I would have to say the  
12          press has had it since August.

13                    We agree with some of the assertions  
14          that are contained in the report especially  
15          the need to further improve the NYPD's  
16          cooperation with our investigations and the  
17          NYPD's treatment of our substantiated  
18          cases.

19                    As you know, we have been public  
20          ourselves on both of those issues and we  
21          welcome the support of the Civil Liberties  
22          community, to the extent that it has helped  
23          in trying to improve those situations, both  
24          of which have been the subject of  
25          discussions and continue to be the subject

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2           of ongoing discussions.

3                       My second comment, however, on the  
4           NYCLU report is that it is rife with  
5           factual errors and misimpressions,  
6           particularly in regard to the nature and  
7           significance of our truncated rate on our  
8           truncated cases and our substantiation  
9           rate, I think both of those are  
10          misperceived in the CC -- in the NYCLU  
11          report. In short, they are wrong on the  
12          numbers and they're wrong about what they  
13          mean for Police oversight.

14                      The report also ignores that which  
15          we do well, which is our core mission of  
16          investigating complaints when we have the  
17          cooperation of the complainant.

18                      Many of our investigators and  
19          managers are in this room. We investigate  
20          over 3,000 cases a year and I can speak as  
21          a Board member who has been on this Board  
22          for more years than I can count, your  
23          reports really are first rate.

24                      We appreciate the time and effort  
25          you put into them. We think that is our

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2           core mission. We know that's your core  
3           mission and you all do a great job in  
4           helping us carry out that portion of our  
5           mission. The Civil Liberties Union calls  
6           on us to perform tasks that are not within  
7           the scope of our mission. I think their  
8           misuse of the facts confuses many of the  
9           issues and actually can undermine serious  
10          discussions about Police oversight.

11                       We are preparing a written response  
12          that will be circulated to the Board before  
13          it is sent over to the NYCLU, and that  
14          concludes my report for today.

15                       **MR. SIMONETTI:** I have one thing I  
16          would like to add. I differ with you on  
17          just one point that you've made and that is  
18          that -- I agree that we're fulfilling our  
19          responsibility in doing investigations and  
20          I must say I think they're very good  
21          investigations.

22                       However, I disagree with our having  
23          to deal with the Department on what he  
24          ultimately does -- what the Police  
25          Commissioner ultimately does with those

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2           cases; by statute that's his -- he's --  
3           it's well within his province to do  
4           whatever he likes with those cases, and I  
5           think as long as we continue fulfilling our  
6           responsibilities and we feel comfortable  
7           that the investigations are adequate and  
8           complete it's his responsibility to  
9           adjudicate those cases.

10                   **THE CHAIR:** Of course you're right.

11                   **MR. KUNTZ:** I would like to agree  
12           with what Commissioner Simonetti said about  
13           the ultimate responsibility being under the  
14           statute of the Police Commissioner. I  
15           would like to say however also, while  
16           everyone is entitled to their own opinion,  
17           people are not entitled to their own facts.

18                   The fact is when this Board  
19           substantiates a case and sends it to the  
20           Police Department the Board is saying in  
21           effect this case is legally sufficient to  
22           be prosecuted, now to the extent that the  
23           Police Department has a different view it  
24           would be my position and recommendation,  
25           since we share distinguished common counsel

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2           and Mr. Cardoza has Corporation Counsel,  
3           that any time they feel a case is not  
4           legally sufficient, the Police Department  
5           should send it to Corp. Counsel and if they  
6           don't, we should ask Corp. Counsel for  
7           their opinion.

8                        I would imagine in some instances  
9           they will agree with the Department's  
10          lawyers that the cases are not legally  
11          sufficient. I will suspect in some cases  
12          they'll agree with us that the cases are  
13          legally sufficient.

14                      To the extent we are mistaken in  
15          substantiating a category of cases or our  
16          approach to a case is wrong, we'll be  
17          guided by our lawyers, Corp. Counsel, and  
18          we'll adjust.

19                      To the extent we send a case over  
20          that is legally sufficient, if the Police  
21          Commissioner elects for any reason not to  
22          prosecute, as Commissioner Simonetti has  
23          said, that is his right and responsibility.  
24          But he cannot say publicly that the cases  
25          we have determined are legally sufficient

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2           and the Corp. Counsel has determined are  
3           legally sufficient are not legally  
4           sufficient.

5                       He retains the right not to  
6           prosecute. He is entitled to his opinion  
7           but he is not entitled to his facts, as the  
8           late Senator Dennis Patrick Monahan said,  
9           of all people.

10                      **THE CHAIR:** Any other comment on  
11           this subject?

12                      (No response.)

13                      **THE CHAIR:** All right the next item  
14           on the agenda is the report from the  
15           Executive Director. Mr. Dorsch?

16                      **MR. DORSCH:** Well, I have the  
17           pleasure of telling you that we have a new  
18           Assistant Deputy Executive Director for  
19           Investigations, however, she was unable to  
20           come to this meeting so I can't introduced  
21           you but I will at the next meeting.

22                      Her name is Jessica Darpino and she  
23           came on board on September 4th and I  
24           promise you she'll be introduced at the  
25           next board meeting.

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2                           Moving on to the statistical  
3           information, our current head count is 192.  
4           As of the end of August we had our full  
5           time head count of 189.

6                           With regard to our complaint  
7           activity, in August of 2007 we received 683  
8           complaints which is up 2.2 percent from  
9           August of 2006. Year to date, we've  
10          received 5,186 complaints which is up 1.1  
11          percent from year to date 2006.

12                          We closed 1,078 cases in August, 373  
13          full investigations, 652 truncated cases,  
14          and 10 mediations; 15 cases were closed  
15          with a disposition of mediation attempted  
16          and then 28 cases were closed in a  
17          different manner.

18                          The agency's docket as of September  
19          1, 2007 was 3,618, which is down from 195  
20          cases as of -- from August 1, of 2007.

21                          As of September 1, 2007 there are  
22          1,273 cases pending for review and closure  
23          in terms of case dispositions year to date  
24          of the we have 1,894 full closures, and out  
25          of that we have substantiated one or more

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2           allegations in 9.1 percent of those cases.

3                   Out of all the allegations year to  
4           date we've substantiated 5.2 percent of  
5           those allegations, unfounded 18.7,  
6           exonerated 4.1, unsubstantiated 24.5,  
7           closed as Officer unidentified 8.2, and  
8           closed as miscellaneous 2.1; that completes  
9           my report.

10                   **THE CHAIR:** Okay, any question from  
11           the Board?

12                   Next item is committee reports. I  
13           have one committee report. Do we have any  
14           other?

15                   **MS. LIEBMAN:** Sort of an Assembly  
16           Committee report.

17                   **THE CHAIR:** Why don't you just go  
18           over it.

19                   **MS. LIEBMAN:** I just want to inform  
20           the Board, as has been our practice in the  
21           past five or six semesters, CCRB  
22           Investigators, and also in this case, Beth  
23           Thompson from CCRB have attended mediation  
24           training in law school as a way of having  
25           investigators be better informed about the

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2           nature of mediation and how it can work.

3                       As always, I'm very, very impressed  
4           with the quality of people we have working  
5           here and their insights into  
6           investigations. I just want to let the  
7           Board know that.

8                       They met all day Saturday and until  
9           9:30 Thursday night. So this is not a  
10          field trip; this is hard work. Me, too.

11                      **THE CHAIR:** Our report just briefly  
12          on a committee without a name which is the  
13          committee that's been working hard on the  
14          search for a new Executive Director of the  
15          CCRB. We have received resumes from many,  
16          many qualified candidates.

17                      We've narrowed our search to a few  
18          finalists, whom we are in the process of  
19          interviewing now and I expect to have an  
20          update when we have an update.

21                      But the process is moving forward  
22          and I think we will probably have a new  
23          Executive Director relatively shortly.

24                      Is there any new business?

25                      (No response.)

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2                   **THE CHAIR:** I don't think we have  
3 anything down for old business. All right?  
4 Mr. Dunn, from the NYCLU?

5                   **MR. DUNN:** It's a good thing I'm  
6 here because if it hadn't been for me the  
7 meeting would have been six minutes.

8                   **THE CHAIR:** Come to the Committee  
9 minutes meetings, Mr. Dunn.

10                  **MR. DUNN:** I could not have made it  
11 to the last meeting because of the subway.

12                  **THE CHAIR:** The rest of us got here.

13                  **MR. DUNN:** I'm impressed, that's  
14 because you all drive in and I take the  
15 train.

16                  **THE CHAIR:** Oh, no, I came by subway  
17 and on foot.

18                  **MR. DUNN:** All right, you know, I'm  
19 sorry that Gene walked in after the  
20 discussion about the reports. So Gene let  
21 me just reprise you a little because I know  
22 you want to hear this.

23                   Does everyone know Gene White from  
24 the NY CPI?

25                   He works for CPI. He's a good man.

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2           Franklin, I appreciate the positive things  
3           you said and we can talk about some of the  
4           critiques. After Franklin actually said  
5           something nice about the report,  
6           Commissioner Simonetti pointed out that the  
7           Commissioner gets to make the calls about  
8           discipline, that's the way it's set up.

9           Commissioner Kuntz said well that  
10          maybe but he does not have -- get to give  
11          his version of the facts, which goes to the  
12          Law Department. All are very good  
13          perspectives. From an advocate's  
14          perspective, Tony, you're absolutely right.  
15          He gets to make the call, that's the way  
16          it's set up.

17          If he wants to ignore police  
18          misconduct that's his business but as far  
19          as we're concerned that's not the solution  
20          and I'll tell you the one thing we've spent  
21          a lot of time thinking about is whether or  
22          not that authority should be taken away  
23          from him for CCRB complaints.

24          It's one thing when he's violating  
25          NYPD policies, those sort of things are

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2           different but when you're talking about  
3           civilian misconduct that's different. I  
4           think we're a long ways from that one thing  
5           that was supposed to happen many years ago,  
6           which is taking the prosecution outside of  
7           the trial room. I would absolutely be  
8           interested in hearing your advice about  
9           that, that's something we're interested in  
10          and something the Board should take a view  
11          on.

12                         It was signed on in NYCLU and it was  
13          initially opposed. Setting aside the good  
14          faith in which people operate, when you put  
15          prosecutions, police misconduct in the  
16          trial room, in the hands of Police  
17          Department employees, that just creates a  
18          dynamic that is not good for anybody.

19                         **THE CHAIR:** Mr. Dunn, you're aware  
20          that State law requires those cases to be  
21          tried there?

22                         **MR. DUNN:** Yes,

23                         **THE CHAIR:** Okay.

24                         **MR. DUNN:** I understand that there  
25          are statutory and other concerns that

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2           affect what sort of cases can go into the  
3           trial room and have to go.

4                   **MR. KUNTZ:** There are Appellate  
5           Division decisions. They've ruled that we  
6           can only try these cases from the  
7           Department in the trial room. We cannot  
8           try them at OATH and the Appellate Division  
9           has ruled we have to wait for the Police  
10          Commissioner to tell us whether or not we  
11          are authorized to try cases in the  
12          Department trial room, and that decision  
13          has been sitting with the Police  
14          Commissioner for a number of years now.

15                   We cannot try cases at OATH  
16          according to the Appellate Division so it's  
17          statutory and judicial, as you know.

18                   **MR. DUNN:** I'm aware of all of that.

19                   **MR. KUNTZ:** All right.

20                   **MR. DUNN:** And there are various  
21          solutions to that. Some of which this  
22          Board might well have some say in. For  
23          instance, pushing Commissioner Kelly about  
24          the possibility of CCRB conducting  
25          investigations in the trial room might be

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2           one of those solutions; pushing for some  
3           sort of statutory change to take that  
4           outside of the trial room, might be a  
5           change. You folks and the City both will  
6           have a say in that.

7                         Frankly, I think that, as we've  
8           pointed out and I don't think there's a  
9           disagreement about that, the changes of  
10          what we see in the department handling the  
11          cases are so dramatic that there clearly  
12          has been a substantial change in the policy  
13          on the Police Department's side in the way  
14          they're responding to substantiated cases,  
15          and I think if we're going to be serious  
16          about police misconduct, setting aside how  
17          widespread it is, and the quality of the  
18          truncated case -- you're sending over a  
19          substantial number of the substantiated  
20          cases.

21                        Bill, as you've pointed out, he does  
22          not get to put in his version of facts.  
23          There are a lot of cases that say something  
24          bad has happened here and those cases are  
25          disappearing. It's bad for the Department

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2           and bad for the people of New York City.

3                       But on the less global issues, let  
4           me just go back. In terms of some of the  
5           factual disputes, setting aside when you  
6           got the report -- and there are complicated  
7           reasons of why people get the reports when  
8           they get them, Franklin -- as I told you we  
9           look forward to getting a response and will  
10          also be happy to sit down and talk about  
11          the factual issues and the policy issues.

12                      This is a report that focuses not  
13          primarily on the CCRB but the civilian  
14          oversight in the Police Department. You  
15          guys obviously play a big role in that but  
16          our primary concern is making sure when  
17          there is police misconduct, something  
18          happens as a result of that at the end of  
19          the day.

20                      I think there's been some progress.  
21          I suspect the Board may support that view.  
22          You may have disagreements about other  
23          aspects of the report and we can talk about  
24          that but I do want to make it clear, most  
25          of the people who come to these meetings

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2           are the investigators.

3                         We have made this point for many  
4           years: We support the Investigator staff.  
5           We're concerned about the resources they  
6           have, the cooperation they receive from the  
7           Police Department. We're concerned about  
8           how quickly their cases are handled by the  
9           Board and we of course have concerns about  
10          some investigations, but we do not have  
11          concerns about the Investigator staff in  
12          general.

13                        They've become increasingly  
14          professional over time and we've long  
15          recognized the quality of the  
16          investigations that are completed have  
17          gotten better, notwithstanding what the  
18          Police Department is suggesting, and that's  
19          been a positive trend.

20                        So that's what I have to say about  
21          the report. From our perspective, it's a  
22          starter point of having a broader  
23          conversation about where civilian oversight  
24          is going. I know there's a lot of  
25          discussion by virtue of the number of the

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2           cases that are coming to you, and  
3           investigating those cases and the Board  
4           review of them.

5                        But there's much that is happening  
6           with the Police Department, and we're  
7           hoping they'll be some progress in the  
8           coming months.

9                        Two quick things about the report  
10          today, and this was raised at the last  
11          meeting. There continues to be a  
12          substantial number of cases that are either  
13          at or over 18 months that are still being  
14          investigated and I'll repeat what I have  
15          said many times, I think there needs to be  
16          some closer examination of those cases and  
17          frankly some public reporting about why so  
18          many cases are hitting 18 months. I think  
19          in this report there are 50 some odd cases  
20          that are showing at 18 months. Last month  
21          there were 60.

22                        Now there is there are 16 that are  
23          over 18 months -- I just, you know, maybe  
24          these are all cases that were suspended  
25          because of criminal investigations

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2           pending -- I doubt it.

3                   **MR. DORSCH:** By date of

4           occurrence --

5                   **MR. DUNN:** I'm sorry.

6                   **MR. DORSCH:** By date of occurrence?

7                   **MR. DUNN:** Date of occurrence is

8           what counts. It's when the statute of

9           limitations run, not the date of report

10          that matters so I'm looking at the second

11          page and I just continue to be concerned

12          about the number of cases that are hitting

13          18 months.

14                   The second thing I want to mention

15          is the number of cases before the Board,

16          which I see is down, but still is -- what

17          may be a very big number. I think it's

18          something like 1,200 cases and I would like

19          to repeat what I have often asked for,

20          which is I think there needs to be some

21          reporting about how long those cases have

22          been sitting at panels.

23                   I say that because if it turns out

24          that this month 600 cases or 800 cases got

25          sent to the panel, from the 1,200 that are

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2           there, that tells you something very  
3           different than if 800 of those cases are  
4           from six months ago. I just think that  
5           given issues about timeliness, completing  
6           investigations, including Board review,  
7           there should be more specific reporting  
8           about the age of cases sitting before the  
9           Board. I don't mean before which panel and  
10          which people, I just mean a break down of  
11          the age of the cases sitting with the  
12          panels. That's all I have to say, thank  
13          you.

14                   **THE CHAIR:** Anyone else wish to make  
15          another comment?

16                   (No response.)

17                   **THE CHAIR:** We will be retiring into  
18          Executive session following this meeting,  
19          in order to discuss personnel matters and  
20          cases. Any other topics?

21                   (No response.)

22                   **THE CHAIR:** I think those are the  
23          two topics we'll be discussing, thank you.

24                   (Time Noted: 10:30 a.m.)

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**C E R T I F I C A T E**

STATE OF NEW YORK        )  
                                  ) **ss.:**  
COUNTY OF NEW YORK     )

I, **SABINE FAUSTIN**, a Shorthand  
Reporter and Notary Public within and  
for the State of New York, do hereby  
certify:

That I reported the proceedings in  
the within-entitled matter, and that the  
within transcript is a true record of  
such proceedings.

I further certify that I am not  
related, by blood or marriage, to any of  
the parties in this matter and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
2007.

\_\_\_\_\_  
SABINE FAUSTIN

