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2 MEETING OF
3 THE CIVILIAN COMPLAINT REVIEW BOARD
4 -----X

5 June 10, 2009
6 10:10 a.m.
7 40 Rector Street, 2nd Floor
8 New York, New York 10006

9
10 ERNEST F. HART, ESQ., CHAIR
11 JOAN M. THOMPSON, EXECUTIVE DIRECTOR

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13 PUBLIC MEETING AGENDA:
14 1. Call to Order
15 2. Adoption of Minutes
16 3. Report from the Chair
17 4. Report from the Executive Director
18 5. Committee Reports
19 6. Old Business
20 7. New Business
21 8. Public Comment

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23
24 Reported By: Jason Gottlieb

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2 BOARD MEMBERS PRESENT WERE:

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4 YOUNGIK YOON, ESQ.

5 WILLIAM F. KUNTZ, II, ESQ.

6 MICHAEL MCCANN, ESQ.

7 DANIEL D. CHU, ESQ.

8 JAMES DONLON, ESQ.

9 DR. MOHAMMAD KHALID

10 TOSANO J. SIMONETTI

11 DAVID G. LISTON, ESQ.

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2 THE CHAIR: Okay, let's get started.

3 First item on the agenda is the adoption
4 of the minutes from the last meeting. Do
5 I hear a motion?

6 MR. KUNTZ: So moved.

7 MR. MCCANN: Second.

8 THE CHAIR: All in favor?

9 (Whereupon all agreed)

10 THE CHAIR: Any opposed?

11 (No response)

12 THE CHAIR: Report from the Chair.

13 Well, it's always very -- it's always a
14 pleasure to be here. We have a new board
15 member, David Liston, who I will
16 introduce, sitting to my left, and Dave,
17 would you like to introduce yourself
18 to everyone?

19 MR. LISTON: Sure, I'd be glad to;
20 thank you, Mr. Chair. My name is Dave
21 Liston and I've been appointed to serve
22 on the Civilian Complaint Review Board
23 and I feel very honored to be appointed.
24 I have watched the work of the board for
25 many years; I've admired the work of the

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2 board; I have seen it from a number of
3 different perspectives. I served as an
4 Assistant D.A. with the Manhattan D.A.'s
5 office for five years. I also served as
6 the Vice President of the 19th Precinct
7 Community Council for several years and I
8 presently serve as the President of the
9 Holy Trinity Neighborhood Center, an
10 organization that provides services to
11 the homeless and to other people in need.
12 And I served as Chair of Manhattan
13 Community Board 8 for three years and I'm
14 still on the community board. So I
15 have -- I think I've served the public in
16 a number of different capacities; each
17 has given me a different and unique
18 perspective and all combined I hope will
19 contribute to my work on the board and I
20 certainly am honored and look forward to
21 serving with my colleagues and serving
22 the board and serving the public through
23 the board. Thank you.

24 THE CHAIR: I know I speak for the
25 rest of my colleagues on the board and

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2 staff that we're happy that you've joined
3 us.

4 MR. LISTON: Thank you.

5 THE CHAIR: Report from the
6 Executive Director.

7 MS. THOMPSON: Okay. I'll start
8 with the stats this morning. In May 2009
9 the CCRB received 698 complaints, or 71
10 more complaints than it received in May
11 2008, when the agency received 627, which
12 constitutes an 11 percent increase in
13 complaint activity. Year-to-date 2009,
14 the board has received 3,447 complaints.
15 This represents 11 percent more
16 complaints than in the same period of
17 2008 when the agency received 3,104. The
18 current projected annual complaint rate
19 for 2009 is now between 82 to 8400 cases.
20 The last few years it had been
21 approximately 7500. So you do see now
22 that we're experiencing increased activity.
23 In May 2009, the board closed 179 cases.
24 Year-to-date, the board has closed 2,498
25 cases. Of these year-to-date board

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2 closures, 832 were full investigations.
3 This means that thirty-three percent of
4 all closed cases were fully investigated,
5 which is one percent higher than the
6 thirty-two percent rate for 2008. We
7 have mediated nine cases in May and
8 forty-nine cases year-to-date. We have
9 also attempted to mediate sixteen cases
10 year-to-date. From January to May, the
11 substantiation rate is 8.2 percent, which
12 is slightly higher than the
13 substantiation rate for 2008, which was
14 7.2. In May, the CCRB substantiated
15 seven cases containing at least one
16 substantiated allegation against eleven
17 officers. With the board closing fewer
18 cases than it received, the agency's open
19 docket shows a fourteen percent increase
20 in relation to the previous month's open
21 docket. The docket stands at 4,721.
22 About ninety-two percent of our open
23 investigations have been filed within the
24 last year. Of the open cases in the
25 current docket, 1,964 cases are awaiting

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2 panel review or approximately 41.6
3 percent of all cases. In April 2009, the
4 police department disposed of seventeen
5 cases. Five officers received
6 disciplinary action and twelve officers
7 did not receive disciplinary, resulting
8 in a twenty-nine percent disciplinary
9 rate. Year-to-date, the disciplinary
10 rate is fifty-three percent. In 2008,
11 the percentage of officers disciplined by
12 the NYPD was fifty-six percent, which was
13 four points lower than the sixty percent
14 rate for 2007. In April 2009, the
15 department closed twelve cases as
16 declined to prosecute and disciplined
17 four officers with command discipline and
18 four officers with instructions. One
19 officer negotiated guilty charges and
20 received a penalty totaling the loss of
21 two vacation days. The year-to-date
22 department declined to prosecute rate is
23 now forty-four percent.

24 And this is a -- really a
25 congratulations to our staff and I wanted

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2 to specifically note that because of the
3 digital recording project that we've been
4 involved in in the past few months,
5 I wanted to make special note of Brian's
6 staff, particularly Yuriy, Alex and Sarah
7 that helped put the digital project
8 together and the members of each team
9 that went through it, helped them and
10 then also went back to teach all the
11 other team members. So that's Kathryn
12 Duffy, Suzanne Donnelly, Hilary Hudson,
13 Rita Bobeh-Saleh, Elizabeth Johnson, Greg
14 Bok, Robert Johnson and Anna Steel. So I'd like
15 to say again, thank you very much, a collective
16 thank you for all of them. Great work That's it.

17 THE CHAIR: Any questions or -- for
18 the Executive Director? Next item on the
19 agenda is committee reports. Do I have
20 any committee reports? Next item on the
21 agenda is old business, and at this point
22 I would like to entertain a motion for
23 the adoption of the proposed rule change
24 that was on the Web site and at which we
25 had a public hearing about two months

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2 ago. Do I hear a motion?

3 MR. MCCANN: Motion.

4 MR. KUNTZ: Second.

5 MR. SIMONETTI: Second.

6 THE CHAIR: Seconded. All in favor?

7 (Whereupon all agreed)

8 THE CHAIR: Any opposed?

9 (No response)

10 THE CHAIR: So moved. Any other old

11 business? As far as the proposed rule

12 change, when it does become affective

13 you'll be hearing -- you know, we'll be

14 talking about that more in the future.

15 Any new business? Awfully short. No new

16 business? Public comment. We have two.

17 One says Mr. O'Grady? You wish to say

18 something?

19 MR. O'GRADY: Yes, I brought some

20 copies for the board (handing out

21 copies). Commissioner Kuntz said that he

22 disagreed with our former commissioner --

23 former Chairman Gonzalez. He told me to

24 discontinue speaking to the board because

25 my case was accepted. Thank God and

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2 three unknown contributors; I thank the
3 unknown judge. I also thank the unknown
4 men or women in police uniform who served
5 on the night of December 6th to 7th.
6 Jones' landlord was subdued and
7 apprehended on the night of December 6th
8 to 7th. Jones' landlord wrote a letter
9 to the judge stating the landlord does
10 not come to court to answer questions
11 about the plumbing. The landlord asked
12 the question at which point the judge
13 signed the warrant for the arrest of the
14 landlord. Now, Corporation Counsel, they
15 don't use that word landlord. They use
16 the word applicant. Jones instructed --
17 Jones was instructed to call a dress
18 teams -- arrest teams. Arrest teams told
19 Jones the landlord arrested on the night
20 of December 6th and 7th. Sergeant
21 Arenberg indicated that the
22 landlord's fingerprints were sent to
23 Washington, D.C.; Jones told to show up in
24 criminal court January 20th. January --
25 I didn't see the arrest, but I went to

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2 court on January 20th and they brought
3 the landlord into the court room; the
4 landlord started yelling at Jones.

5 THE CHAIR: Mr. O'Grady, is this all
6 reflected in the documents you gave to
7 the board?

8 MR. O'GRADY: Well, yes and no.
9 Commissioner Kuntz said that if I wanted
10 to speak to the board I should continue
11 to do so even though Hector Gonzalez --
12 see, actually the case was open under
13 Frank Wohl; Chairman Frank Wohl. He
14 first mentioned that a case should be
15 open. And then Hector Gonzalez took
16 over.

17 THE CHAIR: So let us look at this,
18 what you've -- let us look what you have
19 given us, okay?

20 MR. O'GRADY: You don't want me to
21 speak?

22 THE CHAIR: Well, I think that
23 you've given us some material to read; I
24 would like time to read it and --

25 MR. O'GRADY: Next month?

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2 THE CHAIR: Yes.

3 MR. O'GRADY: Okay.

4 THE CHAIR: Thank you. Mr. Dunn?

5 MR. DUNN: Can't top that, but I'm
6 going to try. Seven minutes for the
7 business part of the meeting; I said this
8 last month when the meeting was ten
9 minutes, I'll repeat it, I hope that
10 there're more things happening than seven
11 minutes would indicate. Let me first say
12 hello to Mr. Liston, welcome.

13 MR. LISTON: Thank you. Thank you.

14 MR. DUNN: Sounds like you have a
15 very impressive background. I noticed
16 that the first act as a board member was
17 that you voted to adopt the minutes. I
18 don't think you were here for the meeting
19 last month.

20 MR. LISTON: True.

21 MR. DUNN: I don't want you to get a
22 reputation as being a yes-man, so.

23 MR. LISTON: No.

24 MR. DUNN: Welcome to the board. As
25 you will learn, or if you don't already

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2 know, at the public meetings I often
3 speak on behalf of the NYCLU. We're very
4 involved in core business, and we look
5 forward to your service on the board.

6 MR. LISTON: Thank you so much, same
7 here.

8 MR. DUNN: I do have a question
9 about the rules that you adopted. Were
10 there no amendments? Were they adopted
11 as originally published?

12 THE CHAIR: Yes.

13 MR. DUNN: Okay.

14 THE CHAIR: That's right -- I mean,
15 without getting into conversation,
16 obviously, the application of the -- the
17 implementation of those rules are another
18 story and, you know, we'll be discussing
19 that in the future, but --

20 MR. DUNN: Fair enough. I just -- I
21 don't know if anyone else had made a
22 comment beyond the comments that we
23 submitted. We raised some questions
24 about some substantive issues, you know,
25 rules as they were drafted. I'm not sure

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2 those things will be fixed simply by
3 implementation, but the board has acted;
4 so be it.

5 In terms of the -- just for the
6 board, I noticed two things of
7 significance -- one of significance and
8 one of semantics. I see that you -- we
9 have now adopted the convention of
10 decline to prosecute for the DUPs; I know
11 originally had been unable to prosecute
12 then there was a discussion about
13 unwilling to prosecute, now it's decline
14 to prosecute. I don't know what the
15 significance of that is, but since this
16 such an important statistical fact, I at
17 least would like initially hearing what
18 the thinking is behind the document's
19 specific terminology. But beyond that,
20 Joan, I think that you left out of your
21 report, you mentioned what the annual
22 rate was so far, but I didn't hear you
23 say what the rate was for last month and
24 as I understand the report, the
25 department DUPed seventy percent of the

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2 cases that closed last month?

3 MS. THOMPSON: Yes.

4 MR. DUNN: That is an astonishing
5 level. I understand month to month there
6 are fluctuations. We have never had
7 anything remotely close to seventy
8 percent in a month. And this will be Mr. Liston
9 for your benefit, you may not be
10 familiar with this issue. When the board
11 substantiates complaints, they go to the
12 police department. The police department
13 has complete discretion to decide what to
14 do with the substantiated complaint. For
15 many years, the department would
16 essentially dismiss a small percentage of
17 complaints, something like three percent.
18 Three years ago -- that never went up
19 dramatically until the last two or three
20 years the department has been dismissing
21 about a third of all substantiated cases.
22 That means that folks here do all the
23 work to investigate the cases, you go
24 through all the work to review the
25 investigations and make recommendations,

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2 and substantiate cases which are a tiny
3 percent of cases; they go to the police
4 department and the police department
5 throws them away. So they're not going
6 to do anything with them dismissed. So
7 we, this month have a dismissal rate of
8 seventy percent of the cases the
9 department declined to prosecute, which
10 is just an astronomical number; it's a
11 very troubling number. And I will keep
12 saying, and I think there are people on
13 the board who in the past have expressed
14 concern about this -- and Ernie, I hope
15 you don't lose sight of this. I'm not
16 suggesting you are, but you are rapidly
17 approaching a point, if you have not
18 passed it, where the department is saying
19 look, we just don't care what you do at
20 all; we're just going to toss these
21 cases. And I'm not suggesting you go to
22 the media and make a big stink, not that
23 I would object to that, but something has
24 got to happen about these dismissals.

25 THE CHAIR: I will say this. I am

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2 concerned, and I think the board is
3 concerned, and it certainly has caused a
4 lot of discussion. And there were
5 reasons for many of those, and we are
6 looking at that. I will tell you it's
7 not something that has gone unnoticed,
8 okay? I mean --

9 MR. DUNN: I'm sure it hasn't, and I
10 appreciate that. And, I mean, obviously
11 this has been a building problem. I just
12 hope for the thirteen of you, not that
13 all thirteen people are here, and the
14 entire staff, and thank you for the
15 public, that has got to be some way to
16 address the fact that so many of your
17 substantiated cases are ending the way
18 they are. I do not believe, even though
19 we have, for instance, at times, been
20 critical about the investigation process
21 here in CCRB. I do not think that your
22 investigations are for the most part
23 bogus investigations, not for a moment;
24 we're sending over a very selective
25 number of cases and your substantiation

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2 rate for the last several years has gone
3 down considerably. But to suggest that
4 you're being more and more selective, to
5 put it in the best terms, by what you're
6 sending over there, and yet at the same
7 time and I know that you understand this,
8 this dismissal rate has gone through the
9 ceiling. And, frankly, I think the
10 department has completely been -- and can
11 do this in the community and has been
12 able to do that so far, and I would
13 particularly ask for the police
14 department representatives, Tony and
15 Michael and Jules isn't here, I don't
16 know what conversations you've had with
17 the department about this and what
18 conversations you may have had with the
19 commissioner; I don't doubt your
20 commitment to being for civilian
21 oversight, but it looks really, really
22 bad what's happening.

23 Maybe the department just thinks
24 they can do it and get away with it
25 because it certainly has so far, but

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2 something really has to be done.

3 MR. SIMONETTI: Let me tell you that
4 as the Chair pointed out, this board
5 spends a great deal of time -- and has
6 concerns about some of those numbers and
7 we spend a great deal of time discussing
8 these very issues. You should know that.

9 MR. DUNN: I accept that. And, you
10 know, part of my alarm, if you will, is
11 that sort of discussion -- not that I
12 think that all discussion that
13 constitutes non-confidential business in
14 the CCRB should be happening in this room
15 once a month, but when I see a seven
16 minute meeting and I look at these
17 numbers, you know, I say to myself, you
18 know, but there are terrible things
19 happening and there's no discussion from
20 the public in all of that. And I just
21 think, you know, for the public, for the
22 staff, it's really important for the
23 board to publically be discussing what
24 has happened in these cases. You know, I
25 realize you're maybe limited as to what

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2 you can say, but it's got to be a topic
3 of discussion.

4 In conjunction with that, the -- I
5 want to talk a little bit about the
6 Edwards shooting, which was not something
7 that implicates the CCRB because it was
8 not a civilian who shot, but you may have
9 seen some of the reporting in the last
10 week about the CCRB histories of two of
11 the people involved in the shooting. The
12 officer who was the shooter and the
13 sergeant, particularly the sergeant who
14 apparently had something like a dozen or
15 thirteen CCRB complaints since 1996 and
16 was in a monitoring program. And I have
17 not had the impression that the board has
18 been particularly involved in what is
19 happening with the department's
20 monitoring of cops who have multiple CCRB
21 complaints. I -- we recently obtained,
22 through FOIL, documents that describe the
23 department's monitoring program --
24 internal monitoring program, particularly
25 force monitoring, which is the monitoring

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2 that is triggered by CCRB histories. I
3 don't know that you folks have those
4 documents; I don't how much you are
5 engaged with the department, with the
6 help monitoring that is happening as a
7 result of multiple CCRB complaints for
8 substantiations. With those documents,
9 we also got a memo that indicates there's
10 been a huge increase in the last four
11 years of police officers who are on force
12 monitoring; they have gone from
13 approximately 25 cops in 2005 to over 300
14 officers as of March of this year.

15 THE CHAIR: Are you saying, Chris,
16 that looking at the correlation between
17 those police officers on monitoring and
18 what the relationship is with the number
19 of complaints that they may get from
20 CCRB?

21 MR. DUNN: Yes, and this is what
22 happens: They qualify people for
23 monitoring because -- largely because of
24 CCRB effort. Okay? So -- I'm sorry,
25 Joan?

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2 MS. THOMPSON: No, no, I was just --
3 I thought they were for other reasons as
4 well, not just CCRB --

5 MR. DUNN: Well, there are other
6 reasons, but when it comes to force --
7 what they describe as force monitoring,
8 they have given programs. Okay, there's
9 a disciplining program, there's a
10 performance program and there's a force
11 program. You can get into level 1 force
12 monitoring if you have had three or more
13 CCRB complaints in one year -- this is
14 according to department documents we just
15 got, six or more complaints in the last
16 five years, or four or more force
17 complaints in the last two years or five
18 or more force complaints in the last four
19 years. So it appears that all of level 1
20 monitoring in the force category is
21 triggered by CCRB complaint.

22 Level 2, which is the next higher
23 level, you go in there if you were guilty
24 of one set of charges and specs for force
25 within five years, two, you have two or

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2 more substantiated force abuse,
3 discourtesy or offensive language
4 complaints within a four year period --
5 CCRB complaints. And we see very big
6 increases in the number of people who, as
7 a result of multiple CCRB complaints, are
8 being subject to monitoring at the same
9 time that we see the department
10 completely turning its back to you folks
11 when it comes to imposing real
12 discipline.

13 And I think that raises a lot of
14 questions about what's happening in terms
15 of the department's handling officers who
16 had CCRB histories, some are all clear to
17 us from the documents, what the
18 department's actually doing with these
19 people other than putting them on
20 monitoring programs. My guess is you
21 folks don't actually have any idea what
22 they're doing with any of these
23 monitoring programs. I don't want to
24 assume anything, but my guess is you
25 don't have a lot of information about

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2 that.

3 I believe that there used to be
4 communications through a deputy
5 commissioner when there was a complaint
6 filed against an officer who was under
7 monitoring, and we'd get a notice saying
8 this guy's under monitoring, we need you
9 to expedite the investigation. I don't
10 believe you've gotten those for some
11 time. I may be wrong; that's my
12 understanding. Anyway, the point being I
13 think there is a whole kind of process
14 over there -- the way this surfaced
15 was -- Ernie, this is before your time.
16 The January hearing involving stop and
17 frisk, there was -- since he showed the
18 activity and the police department's
19 disposition of cases, Julie Schwartz, in
20 response to questions from City Council
21 members, alluded to some sort of internal
22 monitoring process.

23 There's been some public discussion
24 about that several years ago, but not a
25 lot of information public available. So

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2 we then FOILED the department to get
3 information about that process and we
4 were just about to stop this. And I just
5 think that it is particularly important
6 at a time that the department is not --
7 is choosing quite consciously not only
8 not to impose discipline in your cases,
9 but to toss those cases. That the CCRB
10 try to figure out what has happened to
11 the police officers who have substantial
12 CCRB histories. And the increase in the
13 numbers of people who under this
14 monitoring program certainly indicate
15 that there are a lot of additional cops
16 who are ending up with multiple
17 complaints in an awfully short period of
18 time. And I think that should be a
19 source of concern for you, it should be a
20 source of concern for the department and
21 I'm just hoping that you folks will try
22 to get a little more engaged in the
23 program on that issue.

24 THE CHAIR: Thank you.

25 MR. DUNN: Thank you.

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2 THE CHAIR: Thank you. Nobody else
3 has signed up for any testimony,
4 therefore seeing no objection, the
5 hearing is closed and we will take a five
6 minute break and go into Executive
7 session.

8 (Meeting adjourned at 10:34 a.m.)

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C E R T I F I C A T I O N

I, Jason Gottlieb, Electronic Court Reporter and Notary Public, do hereby certify that I was present during the entirety of the foregoing meeting and that I caused to be recorded a true, complete and verbatim recording of the proceedings via digital means.

I further certify that I am not employed by nor related to any party to this action.

In witness whereof, I hereby sign this date:
June 17, 2009.

Jason Gottlieb

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C E R T I F I C A T I O N

I, Yeshayahu Heiliczer, hereby certify that the foregoing is a true and correct transcription, to the best of my ability, of the sound recorded proceedings submitted for transcription.

I further certify that I am not employed by nor related to any party to this action.

In witness whereof, I hereby sign this date:
June 17, 2009.

Yeshayahu Heiliczer

