

Public Board Meeting  
Of the Civilian Complaint Review Board  
Wednesday, May 8, 2013  
10:15 a.m.  
40 Rector Street - 2nd Floor  
New York, New York 1006

DANIEL D. CHU, ESQ., CHAIR  
JOAN M. THOMPSON, EXECUTIVE DIRECTOR

PUBLIC MEETING AGENDA:

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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

1 BOARD MEMBERS PRESENT WERE:

2 Daniel D. Chu, Esq., Chair

3 James Donlon, Esq.

4 Youngik Yoon, Esq.

5 Jules Martin, Esq.

6 Janette Cortes Gomez, Esq.

7 Rudolph Landin

8 Tosano J. Simonetti

9 Bishop Mitchell G. Taylor

10 Dr. Mohammad Khalid

11 Alphonzo A. Grant, Esq.

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1 [START RECORDING]

2 [Crosstalk]

3 CHAIRMAN CHU: All right. Let's get  
4 started. Okay. Let's get this meeting under  
5 way. First order of business is the adoption of  
6 the minutes and we're talking about the April,  
7 2013. Do I have a motion?

8 COMMISSIONER LANDIN: So moved.

9 CHAIRMAN CHU: Is there a second?

10 BISHOP TAYLOR: I second.

11 CHAIRMAN CHU: All those in favor say "Aye."

12 Any in opposition? Any abstentions? The  
13 minutes are adopted. All right. I just want to  
14 begin by mentioning that this is going to be our  
15 beloved executive director Joan Thompson's last  
16 public board meeting. And after over 30 years  
17 of service to this city and specifically almost  
18 just under 6 years of service to the CCRB, she  
19 has submitted her retirement to be effective at  
20 the close of May 17th and I know that everyone on  
21 the board, the senior staff, the staff and the  
22 agency as a whole will join me in wishing her  
23 well in her future endeavors and at this point  
24 I'm wondering whether she's going to be doing  
25 center pieces or traveling the world, but

1     whatever it is I'm sure she's going to keep in  
2     touch, maybe both. She's going to keep in  
3     touch, send us postcards, I get the sense that  
4     this maybe not the last that we see of her in  
5     city government as well. But who knows. But,  
6     all in all I think as much as we will miss her,  
7     we wish her well in whatever it is she decides  
8     to do with her wealth of knowledge. And I just  
9     want to say that this is something apparently  
10    that's been in the works for a while. She  
11    wanted to retire early in 2012 and then the APU  
12    came on and we were able to convince her to stay  
13    and help us implement the APU. There was a time  
14    when she was close to retirement right before  
15    Superstorm Sandy, so now seems to be the right  
16    Time --

17   EXECUTIVE DIRECTOR JOAN THOMPSON:

18   [Interposing] I want to get out before anything  
19   else happens.

20   CHAIRMAN CHU: --before the locusts come.

21   EXECUTIVE DIRECTOR THOMPSON: Exactly.

22   CHAIRMAN CHU: Probably a good time. And I  
23   know that the board joins me in saying that she  
24   will be missed and that the agency, she's done  
25   great things for the agency and the agency will

1 not be the same without her. So, thank you.

2 [Applause]

3 CHAIRMAN CHU: So, in line with that we have  
4 a board has unanimously selected a new executive  
5 director and that situation right now is being  
6 processed, it's going through vetting at DOI and  
7 so stay tuned for more news on that. In the  
8 interim the board has decided to make Marcos  
9 Soler, our current deputy executive director for policy and  
10 strategic initiatives, the interim and acting  
11 executive director until the permanent executive  
12 director gets through the vetting and the  
13 background process. So, I want to congratulate  
14 Marcos on that. All right. Without further  
15 adieu I am going to turn the floor over to Joan  
16 Thompson for her final executive director  
17 report.

18 EXECUTIVE DIRECTOR THOMPSON: Okay. Before  
19 I start I just wanted to ask the committee who  
20 worked on Take Our Sons and Daughters to Work, I  
21 know some of them are here as I look around, to  
22 stand. They've done a fabulous job year after  
23 year, Shay and her team and Wendy and Cary and  
24 everybody else, Hannah, oh God, of course mommy  
25 to be over here, Manny. There's a few people

1 missing, but they've done a fabulous job year  
2 after year and this year I just wanted to say  
3 that Wendy, Hannah and Carrie put together this  
4 fabulous newsletter of the kids and the  
5 activities and what they did was to have the kids go and  
6 interview some of the staff. So, this is, I  
7 think, absolutely fabulous. The kids were  
8 totally engaged and I know Laura's daughter was  
9 here and she was interviewing Carlmais and the  
10 lieutenant's daughter was here and I just wanted  
11 to say this was absolutely fabulous. They took  
12 a trip to City Hall and I know Shay works very  
13 hard every year doing this and discuss with me as  
14 to where they can go, what they can do. And she  
15 does it every single year, so I just want to say  
16 thank you to the committee, you did a fabulous  
17 job and this is great. So, yes, you have to give us  
18 something great for next year.

19 CHAIRMAN CHU: Nice Job.

20 [Applause]

21 EXECUTIVE DIRECTOR THOMPSON: Okay. All  
22 right. The stats for May, excuse me, for April,  
23 - - state, the CCRB received 564 complaints in  
24 April. This was 117 more complaints filed than  
25 in the same period of 2012 when the CCRB

1 received 447 complaints. There was a 26 percent  
2 increase in complaint activity for that period.  
3 Year to date the board has received 15 percent  
4 fewer complaints than in the same period of last  
5 year. The board closed 878 cases in April and  
6 year to date the board has closed 54 percent  
7 more cases than in the same period of 2012. The  
8 board closed 692 full investigations as compared  
9 to 442 investigations in the first 4 months of  
10 2012. Year to date the board has substantiated  
11 97 cases for a substantiation rate of 14 percent.  
12 This is 5 percentage points higher than the same  
13 period of last year. Year to date the  
14 truncation rate is 70 percent which is 4 points  
15 higher than the same period of 2012. The  
16 agency's docket at the end of April stood at  
17 3,029 cases which is a 12 percent decrease over  
18 the open docket in March, 2013 where it stood at  
19 3,442. On January 1st, 2013 it stood at 4,109  
20 cases. Eighty six percent of all open  
21 investigations have been filed within the last  
22 twelve months. And 48 percent have been filed  
23 in the last 4 months. Of the open cases, 756  
24 cases are awaiting board review or 25 percent of  
25 the docket, 1,927 are being investigated and 346

1 cases are in the mediation program. Cases  
2 pending board review include four categories of  
3 cases: cases assigned to panels and scheduled to  
4 meet, cases completed by the investigations  
5 division to panels which are begin processed by  
6 the case management unit and have not been  
7 delivered yet to the panels, truncated cases  
8 delegated by the board to be completed by the  
9 executive director for closure and mediated  
10 attempted cases awaiting ADR committee approval.  
11 By date of incident, 23 cases in the CCRB's open  
12 docket are 18 months and older as compared to 64  
13 in March of 2013. This is a 64 percent  
14 reduction. Two cases are in DA hold. One case  
15 was filed months after the date of incident and in  
16 one case the delay has no apparent  
17 justification, one case is in the mediation  
18 program and eighteen cases are pending board  
19 review. In March, the police department closed  
20 25 substantiated cases involving 38 officers.  
21 The department imposed discipline against 20  
22 officers and did not impose discipline against  
23 17 officers, one case was filed which means  
24 probably somebody retired. Year to date the  
25 department has imposed discipline at a rate of



1 59 percent and it has declined to prosecute  
2 cases at a rate of 28 percent. In cases in  
3 which the department pursued charges and  
4 specifications the conviction rate was 75  
5 percent. This includes officers who pled guilty  
6 to charges and officers who were found guilty  
7 after disciplinary trials. From January to  
8 March the trial conviction rate was 50 percent.  
9 That's it.

10 CHAIRMAN CHU: Okay, moving on. Is there a  
11 question?

12 COMMISSIONER SIMONETTI: Yes.

13 CHAIRMAN CHU: Mr. Simonetti.

14 COMMISSIONER SIMONETTI: In light of the  
15 fact that we had a 26 percent increase for the  
16 month as compared to last year and if you couple  
17 that with the fact that we had 51 percent  
18 reduction in stop and frisks since the beginning  
19 of the year I liked to see if the staff could  
20 take a look at those cases to see if there's any  
21 discernable patterns, if there's something else  
22 coming up or are there any locations in the city  
23 that seem to be getting more than what they normally would  
24 have. So, I'd like to see that if they can do  
25 that for us, do an analysis of those cases.

1 CHAIRMAN CHU: Okay. Anything further?

2 [Crosstalk]

3 CHAIRMAN CHU: All right. Let's turn to

4 committee reports. Are there any committees

5 that have anything to report?

6 COMMISSIONER DONLON: Mediation?

7 CHAIRMAN CHU: Yes, yes, Commissioner

8 Donlon.

9 COMMISSIONER SIMONETTI: - - last.

10 COMMISSIONER DONLON: This is a rundown of

11 the last year performance

12 of the mediation program

13 COMMISSIONER SIMONETTI: [Interposing] - -

14 a year or so in

15 COMMISSIONER DONLON: 2012 - - .

16 [Crosstalk]

17 The mediation unit was not fully

18 operational for a couple of months

19 due to Superstorm Sandy - - --

1 COMMISSIONER DONLON: --we'd like to note  
2 the following with respect to cases received and  
3 processed by the mediation unit- - . In 2012 the number of  
4 cases resolved by the mediation unit was  
5 approximately 18 percent of the total number of  
6 cases resolved by CCRB either through the  
7 mediation process or full investigation. The  
8 mediation resolution rate represents an increase  
9 over the mediation resolution rate achieved in  
10 2011 of 16.3 percent, so 2012 was 18 percent.  
11 Total number of cases closed by the mediation  
12 unit 2012 as a percentage of total CCRB  
13 closures, that rose by 12 percent over the 5  
14 year period 2008 to 2012. In 2012 the mediation

1 unit closed 285 cases. Although the number of  
2 cases closed declined from 2011 to 2012 there  
3 were 16 percent fewer cases transferred to the  
4 mediation unit during that time period. And  
5 again, in 2012 the number of cases processed by  
6 the mediation unit was 474. This is a decline  
7 from the historical high of 2011, but the  
8 mediation unit in 2012 processed 23 percent more  
9 cases in that year - - compared to 2008.

10 [Crosstalk]

11 COMMISSIONER DONLON: Mediation continues  
12 to be perceived by both civilian complainants  
13 and the police as a strong alternative to  
14 investigation. And we'd like to note the  
15 following items in that regard. The significant  
16 increase in the rate at which mediation was  
17 offered to complainants, that increase was  
18 achieved in 2011 has been maintained in 2012 at  
19 approximately 58 percent. That's the rate at  
20 which mediation was offered to civilians. The  
21 rate at which mediation was accepted by  
22 complainants was 56 percent in 2012 compared to  
23 48 percent in 2008. And the MOS acceptance rate  
24 which is the acceptance rate by police officers  
25 has decreased slightly from 77 percent in 2011

1 to 74 percent in 2012. And both civilian and  
2 police officers acceptance rates are consistent  
3 with the 5 year upward trend in acceptance  
4 rates. In 2008 the acceptance rate for  
5 civilians and police officers respectively were  
6 48 percent and 68 percent, 48 percent was - -  
7 acceptance. And that's the - - report.

8 CHAIRMAN CHU: Okay. Thank you. Are there  
9 any other committees making reports this month?

10 BISHOP TAYLOR: Outreach doesn't have a  
11 report this month, but I did want to say that we  
12 are doing very well with our softball team,  
13 congealing the team, getting a team together and  
14 although we haven't had a win yet, I think the  
15 victory is that we come together nicely and  
16 we're getting much better. And I think it's  
17 really a testament and a strategy that kind of  
18 morphs into outreach as we're building those  
19 inter-relationships and really getting more  
20 people feeling good about what the agency does  
21 overall and then being able to incorporate them  
22 in that outreach team that's going to be going  
23 out hitting young people across the city, so  
24 we'll have the detailed report--

25 COMMISSIONER SIMONETTI: [Interposing] I see

1 we've got an optimist on the softball team,  
2 loving today.

3 CHAIRMAN CHU: No, that was actually Mr.  
4 Darche's glove.

5 COMMISSIONER SIMONETTI: Oh.

6 CHAIRMAN CHU: But, yeah, just so the rumor  
7 mill can be put to rest, I took a fall yesterday  
8 and the rumors of my demise are greatly  
9 exaggerated, so I'm here, we're okay, we're  
10 going forward. But, thank you for that, Bishop.  
11 Dave, did you want to give us a quick rundown of  
12 the APU meeting this morning?

13 COMMISSIONER LISTON: Sure. I'd be glad to.  
14 The APU committee met right before this meeting.  
15 We met for an hour, it was a public meeting,  
16 many of you were there. It was an exciting  
17 meeting, these are exciting times. We're very  
18 excited about the prosecutors that we have, the  
19 new investigators that we have. We met several  
20 of the investigators today. - - new for the  
21 APU - - . They're not new to the CCRB, they  
22 have a great deal of experience as investigators  
23 at the CCRB and we're just really looking  
24 forward to seeing great work that they're going  
25 to do in support of the work of the APU. We

1 discussed today at length and I'm just going to  
2 briefly summarize here. As with every  
3 relationship and everything that is new, there's  
4 always a challenge to make sure expectations are  
5 clear and relative roles are clear and under the  
6 terms of the memorandum of understanding between  
7 the NYPD and the CCRB, the MOU as we call it,  
8 carves out certain cases that although they were  
9 substantiated by the CCRB and careful  
10 investigation and consideration there are  
11 limited circumstances under which the NYPD  
12 decides not to return the case to the CCRB for prosecution.  
13 And there have been - - for good reason. There  
14 are limited cases in which the officer has - -  
15 prior disciplinary record, has had those  
16 substantiated cases from the CCRB and then and  
17 only then those criteria are met then it's in  
18 the interest of justice not to move forward on  
19 the matter. So, we are still working out with  
20 the NYPD the implementation of some of that  
21 language. It seems as if recently a case or two  
22 was not referred to us for prosecution and  
23 reasons given include things like well, there  
24 was no prior significant disciplinary history  
25 with the NYPD or this officer has substantiated

1 cases with CCRB, but the NYPD declined to  
2 prosecute it. As we discussed at the APU this  
3 morning I just want to make clear on the letter  
4 that we'll send to the NYPD due to the language  
5 of the MOU - - there were significant less - -  
6 history, also when a case is substantiated by  
7 the CCRB we take that very seriously and we're  
8 not in the business of ignoring that. So, it's  
9 our view that regardless of whether the PD  
10 decides to prosecute the case and as far as that  
11 remains that the case was investigated, reviewed  
12 and substantiated and we're not going to take  
13 lightly any expansion of that definition within  
14 the MOU. I'm confident, I'm sure the CCRB is  
15 confident that we'll sort through these - - PD -  
16 - the best that we can to sort it out. It was  
17 pointed out earlier today by several  
18 commissioners on cases substantiated by the CCRB  
19 and then it's due to be referred - - for  
20 prosecution we fully expect it to come back to  
21 us for prosecution. And we'll work to make sure  
22 that happens. I think that's a fair summary of  
23 - - Laura Edidin and John Darche for their  
24 great work. This is, as I said earlier,  
25 exciting, but it's also challenging to implement



1 in the letter and spirit of a really important  
2 agreement and try to ensure that we are still on  
3 mission and that's why I commend both of you and  
4 your teams for your excellent work.

5 CHAIRMAN CHU: Thank you, David. Are there  
6 any other further committee reports this month?  
7 Seeing no additional reports let's move on to  
8 old business. And last month we started delving  
9 into the issue of truncation. We dealt with - -  
10 this month. I believe we've expanded on that.

11 There's additional reporting with respect to  
12 truncation to give us a summary on that is that  
13 going to be you, Marcos, or Denis?

14 MR. MARCOS SOLER: You will find in your  
15 folders a memo from Dennis and I regarding these issues.  
16 The memo contains two parts. The first part provides  
17 definitions - - they were not included in our report last  
18 month. In the last meeting, there were a few concerns regarding how  
19 we comply with our standards in certain categories. So  
20 we provide you here with the definitions included in our rules as  
21 well as our investigative manual. And I also provide you with the  
22 guidelines as to what steps we take in cases and  
23 what's the problem with identifying cases that  
24 we're going to truncate. So, the first important

1 decision is regarding complaint withdrawn. As you know, withdrawn  
2 is a complaint in which the person affirmatively  
3 decides to withdraw the complaint. The  
4 complainant unavailable is a case in which we  
5 cannot locate the victim or a case in which we  
6 have some to information concerning the victim, but we are never  
7 able to make contact with the officers and a  
8 complainant uncooperative is a case in which we  
9 have made contact with the person, we have  
10 established a ways of contact and the person  
11 refuses to cooperate with us and particularly  
12 refuses to provide us with a formal interview  
13 o a sworn statement of the incident. So,  
14 what we have done is to provide you with different type of  
15 reporting that you will see in your memo. The memo is  
16 proposing a new type of report. - - that we  
17 would like to include for complaint withdrawn. As a result,  
18 We will move complaint withdrawn away from  
19 the current truncation category into its own  
20 independent category with the complaint  
21 withdrawn in different subcategories. They will  
22 include the following: complaint withdrawn upon  
23 advice of counsel, complaint withdrawn  
24 complainant has no desire to follow through,  
25 complaint withdrawn complainant didn't want to

1 take time for interview, complaint withdrawn  
2 complainant just wanted to report complaint,  
3 complaint withdrawn complainant feared  
4 retaliation or complaint withdrawn complainant  
5 provided no reason. These are  
6 categories that we have found in our analysis of  
7 complaint withdrawn cases so we are evaluating  
8 what we have seen but certainly these categories can be  
9 expanded as we learn that people are withdrawing  
10 complaints because of other reasons. The second topic  
11 that we have explored is to take the expanded  
12 categories of truncation rates, truncation  
13 through - - complaints, sorry. And we will  
14 break down complainant uncooperative into two types  
15 of complainant uncooperative. Complainants were  
16 uncooperative after initial contact was made. -  
17 - either did not return calls, respond to  
18 correspondence or failed to appear at a  
19 scheduled interview. The second reason for an  
20 uncooperative is that when after the initial  
21 contact was made the - - she or he didn't want  
22 to take time for the interview, but they don't  
23 want to withdraw the complaint either. Then  
24 unavailable would have three categories: is  
25 unavailable because there is an unidentified or

1 anonymous civilian, there is unavailable because  
2 a civilian he didn't return calls or respond to  
3 correspondence and contact was never established  
4 and third is unavailable because a civilian  
5 filed complaint with internal affairs and there  
6 is no - - contact information at that point, no  
7 sufficient contact information was gotten.  
8 Those are the five categories that we have  
9 discussed among ourselves, cases that we have  
10 seen hundreds of times. Certainly we can expand on  
11 this category but we think this will provide  
12 additional information to the board and to the  
13 public as to our truncation rate and the reasons  
14 why civilians decide not to participate or  
15 withdraw from the process.

16 BISHOP TAYLOR: Now, you said in your  
17 opening statement that these are going to be  
18 taken out of the truncation calculations and  
19 aggregated in a different way

20 MR. SOLER: Only complaint  
21 withdrawn will be taken away. If you look at  
22 the charts, complaint withdrawn will appear as a  
23 separate category--

24 BISHOP TAYLOR: --good.

25 MR. SOLER: And all the other cases,

1       unavailable or uncooperative will remain under  
2       the truncated investigations category and with  
3       much more information for the public to know.

4       BISHOP TAYLOR: But, at least it won't be  
5       aggregated with the others.

6       MR. SOLER: Yes. It will not be aggregated  
7       with the others.

8       BISHOP TAYLOR: Okay.

9       CHAIRMAN CHU: Thank you, Marcos.

10      MR. SOLER: thanks.

11      CHAIRMAN CHU: Okay. Moving on to further  
12      old business, the board had an issue with  
13      regards to the I-cards, so can you provide us  
14      with an answer, Roger Smith, you have the floor.

15      MR. ROGER SMITH: The question was raised  
16      coming from some cases that the board was  
17      dealing with about what extent is the authority  
18      of an I-card to justify entries both into  
19      residences and into third party residences for the  
20      purpose of arrest. An I-card is a document  
21      which is generated within the police department  
22      based upon information provided to the police  
23      department which directs and records the  
24      activities in a police investigation. The I-  
25      card itself is not a warrant and it is not a

1       substitute for a warrant. When asking the  
2       question whether an entry based upon on I-card  
3       is justified, the courts are going to look at  
4       whether there was probable cause and exigent  
5       circumstances for the entry or whether the  
6       police had consent to make the entry. And these  
7       are for entries for purpose of arrest. In  
8       certain other circumstances officers may enter  
9       when there is an emergency requiring an  
10      immediate entry for the protection of life or  
11      property. But, none of those can be done merely  
12      because an I-card exists. The question will  
13      always be whether the information known to the  
14      police department included in the I-card itself  
15      provides probable cause and exigent  
16      circumstances. So, again the mere existence of  
17      an I-card does nothing to justify an entry for  
18      purpose of arrest.

19     COMMISSIONER SIMONETTI: I think the other  
20     category we're concerned about are parolee  
21     warrants. Does that give justification to going  
22     into the residence and other locations where the  
23     person may be suspected. We had a particular  
24     case where that came up. And the sergeant from  
25     the warrant squad. I mean, his statements to

1 CCRB, he articulated a very long statement and  
2 very carefully he says "Oh, we're permitted to  
3 do these things." And I was hoping to get an  
4 answer today.

5 CHAIRMAN CHU: Roger, you want to say  
6 something?

7 MR. SMITH: Yes. Parole warrants, bench  
8 warrants and arrest warrants under the law are  
9 treated the same. And you can enter a location  
10 pursuant to a parole warrant when the officer  
11 has reason to believe that the subject of the  
12 warrant is present at that location. However,  
13 this is confined to places where the person is  
14 known to reside. In situations where officers  
15 have reason to believe that a person is in a  
16 third party residence who's the subject of an  
17 arrest warrant, officers must also pursuant to  
18 the CPL get a warrant for that third party  
19 residence.

20 COMMISSIONER MARTIN: In that case does now  
21 because a search warrant as opposed to an arrest  
22 warrant?

23 MR. SMITH: Yes. For the third party  
24 residence you need a search warrant. And that's  
25 contained in CPL Section 690.05.

1 COMMISSIONER GRANT: Unless you can  
2 demonstrate exigent circumstances.  
3 MR. SMITH: Yes, that's correct.  
4 COMMISSIONER GRANT: Right.  
5 MR. SMITH: But, you'd have to be able to  
6 demonstrate exigent circumstances with respect  
7 to that residence.  
8 COMMISSIONER GRANT: Right.  
9 COMMISSIONER SIMONETTI: So, but, I mean,  
10 based on that I think a letter to the PD  
11 regarding that particular case with the  
12 testimony of the sergeant from the warrants  
13 squad was sounding very definitive on what he  
14 was saying that maybe they should look at that  
15 in terms of retraining particularly for people  
16 form the warrant squad who do these things every  
17 day.  
18 MR. SMITH: Agreed. I think we were on the  
19 same panel that we had that case.  
20 COMMISSIONER SIMONETTI: Yeah. Right.  
21 CHAIRMAN CHU: And it seemed like the  
22 sergeant stated his knowledge quite  
23 authoritatively--  
24 COMMISSIONER SIMONETTI: Yes, right.  
25 CHAIRMAN CHU: --and did seem to be slightly



1       inaccurate.

2       COMMISSIONER SIMONETTI: Thank you for that.

3       CHAIRMAN CHU: Thank you.

4       COMMISSIONER GRANT: It's a question of our  
5       knowledge, the board, right?

6       CHAIRMAN CHU: Definitely. Is there any  
7       other old business? Seeing no additional old  
8       business to attend to does anyone have nay new  
9       business to discuss?

10      COMMISSIONER GRANT: Commissioners, I'm sorry  
11      I didn't have a chance to vet this with you  
12      before hand and let you know, but I was  
13      contacted a couple weeks ago by an individual  
14      whose son had filed a complaint and the  
15      complaint was dealt with in a due course, but  
16      one of the things that the individual raised was  
17      photo identification. Specifically, his son  
18      after the incident with police where there was  
19      excessive force alleged and abuse of authority,  
20      was given a photo array during his CCRB interview and  
21      the photo array was of pictures of officers  
22      fresh out of the academy and the officers that  
23      he encountered and interacted with were much older.  
24      They were undercover or rather they were not in  
25      uniform, had beards, they were much older

1 officers so he wasn't able to identify them  
2 because the photo line up was very young  
3 officers clean shaven. And so, the question  
4 that this individual raised was is that fair  
5 that my son wasn't able to look at more updated  
6 photos of the officers? Now, I didn't know the  
7 answer to that, but I thought that it would be  
8 something that I would just bring to the board's  
9 attention with respect to our investigators  
10 moving forward if we can get an answer as to the  
11 process for obtaining the photo identifications  
12 of officers and how it is updated to keep  
13 consistent with how officers look more recent.

14 CHAIRMAN CHU: Interesting. And you're  
15 saying this was a photo array that was conducted  
16 by the CCRB?

17 COMMISSIONER GRANT: That's my  
18 understanding, yeah, that the investigator  
19 showed him a book of pictures that we have that  
20 we normally show to victims or witnesses and the  
21 book has old pictures.

22 CHAIRMAN CHU: Let's work on trying to get  
23 some clarification on how we get updated  
24 pictures because I have been advised that  
25 particularly in this digital age whenever an ID

1 card is updated there might be a more updated  
2 picture. I mean, I think any of us who've  
3 served as prosecutors know that when you do a  
4 line up it really spans the range. I mean, you  
5 can have everyone in white T shirts with crew  
6 cuts and it certainly would make a difference.  
7 So, let's have some staff members look into  
8 that. Let's get a report on that at the next  
9 meeting as to procedurally how we conduct it and  
10 whether there's a way to remedy some kind of a  
11 situation like that where it seems like it's not  
12 being done in an effective manner or fair  
13 manner.

14 COMMISSIONER GRANT: Thank you.

15 CHAIRMAN CHU: Anything further?

16 BISHOP TAYLOR: New business.

17 CHAIRMAN CHU: New business.

18 BISHOP TAYLOR: Again, I apologize too for  
19 not talking to you prior about this particular  
20 issue. Has the board considered putting  
21 together a budget committee for the agency,  
22 maybe a small committee that can kind of look at  
23 redundancies and efficiencies from a different  
24 lens opposed to just jumping right into a budget  
25 based on staff determinations especially with

1 the new, with the APU and with some of the  
2 growing interest that the board has. I think it  
3 would be prudent for us to have a budget  
4 committee.

5 CHAIRMAN CHU: Anyone else have any thoughts  
6 on formation of a budget committee? If not,  
7 what I'm thinking is let's have some further  
8 discussions at the next operational meeting as  
9 to how such a committee would fit within the  
10 existing framework and then ultimately once we  
11 are able to get some more information on that  
12 we'll take a vote for it. But, I think that's  
13 certainly an interesting issue that has come up  
14 from time to time and probably should be looked  
15 at.

16 BISHOP TAYLOR: Second point was I want to  
17 press the issue again. I think I mentioned in  
18 the last board meeting that we want to expand  
19 our human capital for outreach. And that may be  
20 getting us more than one body for outreach full-  
21 time. We only have one full-time person to  
22 outreach that spans the five boroughs of New  
23 York City. And it's just not, I mean, for an  
24 agency that lives and breathes off communicating  
25 a right for the citizenship and we do not posses

1 the capacity to maximize that ability. I think  
2 that we should be ashamed of ourselves, so in  
3 terms of that human capital resource not in  
4 terms of our overall effort of communicating.

5 CHAIRMAN CHU: Commissioner Simonetti?

6 COMMISSIONER SIMONETTI: Mr. Chair, in  
7 several of the panels that I recently sat on the  
8 same question came up on several occasions and  
9 it goes something like this: three to four  
10 officers respond to a scene. One officer  
11 alleged to have his gun out and then the other  
12 two officers said "I know nothing about that. I  
13 saw nothing, I know nothing." But, when we  
14 looked at that and we started to delve in a  
15 little bit, it appears that the investigator  
16 there may be some of our new investigators  
17 didn't ask probing questions to find out where  
18 were they located, where were they standing if  
19 it was a car stop, were they on the other side  
20 of the car so they couldn't see? Were they  
21 behind the alleged officer who's supposed to  
22 have his gun out and those kinds of things? So,  
23 just as a training issue for the investigators I  
24 think that that should be looked at and they got  
25 to ask more probing questions to answer those

1 questions. You just can't take for the answer  
2 "I didn't see anything. I don't know if he had  
3 his gun out." You got to ask questions. Where  
4 were you? Where were you in proximity to the  
5 other officer? And that has arisen in several  
6 cases.

7 COMMISSIONER LISTON: I am - - .

8 CHAIRMAN CHU: Yes, please.

9 COMMISSIONER LISTON: I want to just echo  
10 what the commissioner said, and  
11 on a related note we've seen in a few panels  
12 recently this is sort of a - - . Investigator  
13 speaks to the complainant, speaks to the police  
14 officer. Complainant, of course, vividly  
15 remembers and describes something terrible  
16 happening. Officers more or less say "Oh,  
17 didn't see that. Don't remember." And we both  
18 have asked these questions that you were  
19 mentioning Commissioner - - but, at the end of  
20 the day if the answer still is we don't remember  
21 that, what I've seen happen and some of us have  
22 seen this a few panels, investigator then says  
23 "Well, can you picture - - ?" If the  
24 complainant witness vividly and accurately and  
25 unchallenged fashion describes something

1     terrible happening and the officer's saying  
2     "Well, we just don't remember seeing that." I  
3     don't think of that as a tie. I don't think  
4     most panels do as well. And I think I'd like to  
5     encourage investigators and I think a few of us  
6     feel the same way that you're going to have to,  
7     one of the things you're paid for and hired for  
8     is your judgment. And if three officers say  
9     "Well, I don't remember it," it seems like  
10    something you'd remember and complainant  
11    credibly describes it I would suggest it's  
12    within your power and in fact it's your duty to  
13    make that judgment call this can go to the  
14    commissioners and they can offer a decision.  
15    But, I'm sensing a certain amount of timidity in  
16    making those judgment calls and I want to  
17    empower the investigators, just encourage them  
18    to feel that courage and ask the - - .

19    CHAIRMAN CHU: And again, I think this is an  
20    issue that I think came up during the litigation  
21    as well in terms of where is that extra iota of  
22    evidence that puts it into the preponderance.  
23    What is that one percent at a minimum that puts  
24    it in and I think the difficulty becomes we are  
25    there with the complaining witnesses or with the

1 officers so it's very hard for us looking at a  
2 call record or just paper to make a  
3 determination as to credibility, but I certainly  
4 do think that to the extent that we train these  
5 investigators properly to ask the right  
6 questions they certainly might be in a position  
7 to make that type of assessment. And perhaps we  
8 can bring that up again in the next operational  
9 meeting to figure out how we would be able to  
10 get that. Because it probably would not work  
11 out where you check the box, it's who's more  
12 credible, CW or PO? But, I think on those close  
13 calls perhaps there's a way we can logistically  
14 do it so that when a panel has a meeting certain  
15 cases that fall into category we might be able  
16 to get the investigators to kind of tell us what  
17 he or she saw or what the basis of that judgment  
18 call is. So, certainly I think that's another  
19 item probably to the next operational meeting  
20 for us to take a step in that direction and see  
21 what we can do to just not conclude something  
22 because it's a he said she said argument. Thank  
23 you. Any further new business?

24 COMMISSIONER DONLON: Just one thing again,  
25 I think it might be worth mentioning on this



1 question of the photo arrays and the fact that  
2 there may have been photos of officers just out  
3 of the police academy. I think it's probably  
4 worth mentioning that in most of the reports  
5 that we read where there are photo arrays  
6 included you don't get old photographs right out  
7 of the police academy. Most of the photo arrays  
8 seem to be of recent vintage anyway. So, I just  
9 wanted to make sure that don't get the  
10 impression that this is a typical situation. I  
11 mean, obviously they're young officers right out  
12 of the academy you'd expect to have a photo  
13 array of young officers, but in the typical  
14 world, in the situation where the officers have  
15 10 or 15 years of experience I think it's much more  
16 typical to have photos that reflect that age.  
17 So, this guy's interesting because I think it's  
18 worth following up as you suggested. I just  
19 don't want to leave that impression that this is  
20 a typical situation.

21 CHAIRMAN CHU: I agree. I think in the vast  
22 majority of photo arrays that I've seen in the  
23 files that I'm reviewing it doesn't seem like  
24 new cadet photos. It does seem like if anything  
25 they might be the ID photos that are being used

1       because they seem to have to similar background  
2       and you'd expect that to be fairly recent.

3       COMMISSIONER DONLON:   Right.   Right.

4       CHAIRMAN CHU:   So, let's look into that.

5       But, that's a good point.   We certainly don't  
6       want to make it seem like that that's the  
7       standard operating procedure because, I think,  
8       by and large they seem pretty fair.

9       COMMISSIONER DONLON:   Yeah.

10      CHAIRMAN CHU:   If there's no further new  
11      business I'm going to turn the floor over to  
12      public comment.   Mr. Dunn, you're up.

13      MR. CHRISTOPHER DUNN:   Okay.   Good morning.

14      Last month - - .

15      [Crosstalk]

16      MR. DUNN:   - - trial that's going on, but  
17      Joan first, I want to say I wish you the best.

18      EXECUTIVE DIRECTOR THOMPSON:   Thank you.

19      MR. DUNN:   And Marcos, I wish you the best with  
20      the task at hand.   All right.

21      Picking up on this issue that you raised about  
22      the credibility.   This did come up in the trial  
23      and I understand why your investigators may be a  
24      little bit gun shy because I was struck by Julie

1 Schwartz' testimony. And I don't know what sort  
2 of reports you guys got about that, but she on  
3 the stand said on direct examination that when  
4 the police officer told one story and  
5 complainant told another story that always meant  
6 they were going to DUP the case because it could  
7 never get across the legal threshold of  
8 preponderance of the evidence. Judge Scheindlin  
9 said "Well, wait a second, what do you mean by  
10 that?" And she said "Well, it's a he said she  
11 said." And Judge Scheindlin said "I deal with that  
12 every day of the week. Judges make credibility  
13 determinations. That is a central part of what  
14 an adjudicator does." And she was unrepentant  
15 about that. One qualification she ultimately  
16 offered is the police officer says "Well, I  
17 don't really remember," and the complainant is  
18 clear well then we'll proceed with the case. I,  
19 for years, have heard complaints from people on  
20 this board who thought that what was going on  
21 was that the department was refusing to pursue  
22 cases when there was simply a he said she said  
23 dispute which is a common scenario to hear  
24 complaints. And I just always kind of  
25 discounted that because I just couldn't believe

1     that was the case. But, you should go back and  
2     you should look at the trial testimony of Julie  
3     Schwartz gave on that and that Judge Scheindlin was  
4     incredulous about that and I don't think that  
5     she understood. She was as incredulous as the  
6     judge. What she really didn't understand was  
7     the implications of that, of what was happening  
8     on the CCRB side. So, I think that's an  
9     important issue and there's going to be some  
10    discussion perhaps with the police commissioner  
11    about new business which I'm going to come to.  
12    I feel like that's an important issue because  
13    that is a critically important decision for one  
14    that the department issues. Let me just a  
15    couple quick things about some of the reports -  
16    - . - - is now creeping back towards 30  
17    percent. I keep mentioning this and I harp on  
18    this, but actually when it was going down I said  
19    good. But, you need to pay attention to the - -  
20    rate. The 18 month plus cases, the numbers have  
21    come down somewhat. But, I do think  
22    particularly with this issue of the APU that  
23    there has got to be some consideration of  
24    perhaps changing the board's approach on the  
25    statute of limitation cases. Perhaps saying no

1 matter what we are going to finish a case within  
2 16 months or 15 months or 17 months, whatever it  
3 is, and there's no difference if we have to cut  
4 some corners because I think it is probably  
5 better off to cut corners and actually get to a  
6 disposition than to let the 18 months run out  
7 and then it's dead. In some way, we're just all  
8 wasting our time if we let cases go past 18  
9 months. It does not make any difference how good an  
10 investigation you do, it's done. And if I'm the  
11 complainant I'd rather have an imperfect  
12 investigation that gets results of some sort  
13 than one that just washes out. There was some  
14 cases you get very late - - and I - - someone  
15 comes in 17 months you can't do it. But, most  
16 of the complaints that are on the review board  
17 you have ample time to do an investigation even  
18 if it's not as full of an investigation as you  
19 might have wanted to do. All right. So, the  
20 APU business. Felt like I had an out of body  
21 experience at the APU session this morning  
22 because that was the most passionate I have  
23 heard from people on this board in years about a  
24 department issue. And I think I owe an apology  
25 to a couple people on this board, but frankly

1 I have not heard so much in public sessions and I  
2 heard a lot in the APU session and I heard a  
3 sense of indignation from virtually everyone on  
4 the board about this that I never hear  
5 publically. David, to be fair, you washed out a  
6 lot of that passion in your presentation. And I  
7 appreciate the - - . But, I think it is worth  
8 being very good. As I understand it seven cases  
9 have gone over the department and one is now  
10 proceeding in the APU. Is that the correct set  
11 of numbers?

12 MS. LAURA EDIDIN: And one is  
13 pending.

14 MR. DUNN: And one is pending.

15 MS. EDIDIN: The department's  
16 determination.

17 MR. DUNN: And they rejected five.

18 MS. EDIDIN: They have held back three.

19 At least one is pending, one the SOL had  
20 expired.

21 MR. DUNN: Uh-huh.

22 MS. EDIDIN: And one had been  
23 inadvertently processed outside the APU although  
24 it should have been pulled into the APU.

25 MR. DUNN: Okay. So, you got seven cases.

1 You got one left. And, Dave, just to be clear,  
2 you said has to go to the department for their  
3 approval for pursuing the APU, that's not the  
4 way I think about the MOU. The MOU says you  
5 start a case it's your case.

6 COMMISSIONER LISTON: Right, - - back.

7 MR. DUNN: Okay. Tell the department to set  
8 the case for proceeding and then they have the  
9 option under the MOU to write back and say no,  
10 no, no, actually we're telling you cannot do  
11 it. And then if they tell you that you can  
12 write back and say yes, we are. We think we  
13 should do it and commissioner just - -.

14 Okay. So, it's not like you had to say to them  
15 do we have permission to proceed. You have  
16 permission to proceed under the MOU. And they  
17 are then exercising the authority they were  
18 given to say: you cannot proceed. Just so  
19 we're clear because they have now taken the  
20 position that a case the CCRB substantiates but  
21 they chose to do now in their view counts under  
22 the MOU as a case which there is no CCRB  
23 disciplinary - - . And they've not gotten these  
24 two cases - - .

25 MS. EDIDIN: No, their position is

1 evolving on that. But, there are indications  
2 that that's the way they--

3 MR. DUNN: [Interposing] Well, I don't know  
4 of all the decisions. What they've said at this  
5 point--

6 COMMISSIONER LISTON: [Interposing] - - one  
7 thing, I am confident that we would be able to work things out.

8 MR. DUNN: --okay, well, I - - .

9 COMMISSIONER LISTON: and we think the department is evolving in the  
10 right direction.

11 MR. DUNN: Okay.

12 COMMISSIONER LISTON: this does not suggest a  
13 lack of passion on our side.

14 MR. DUNN: Well, no, you guys are quite  
15 passionate in the meeting and I appreciate it.  
16 And they have also all of a sudden said that a  
17 second criteria that must be met for them to  
18 take a case away from us is the officer has no  
19 department disciplinary history. That's what the  
20 MOU says. And they have now qualified that to  
21 mean no significant department disciplinary  
22 history. A term that Julie pointed out could  
23 mean anything. And they have already taken that  
24 position as a way of throwing out one of the  
25 cases. And that really does not appear in the



1     MOU and instead of you pointing it out during  
2     the committee meeting how dare they all of a  
3     sudden start asserting new things in the MOU  
4     that allow them to take cases away from you?

5     All right. So, until it is you guys talked  
6     about writing a letter back to them, I hope that  
7     goes to the police commissioner, I hope that all  
8     of you sign on to it, but there's no question  
9     that we'll see right from the get go is the  
10    department's doing whatever it can to undermine  
11    your authority to prosecute - - . And this is a  
12    bell weather. It's the beginning of the show.

13   It's particularly important, they're setting  
14   some ground rules with us and you have got to be  
15   very strong as indicated in the committee  
16   meeting you were going to be. But, this is  
17   completely unacceptable, it violates the terms  
18   of the MOU. And Tony, you pointed out that the  
19   commissioner, of course, has the final authority  
20   in disciplinary matters. That is true. He does  
21   not have the final authority on what cases you  
22   get to prosecute. Those are in the MOU. He  
23   does not get to, after the fact, redefine the  
24   MOU to his liking. So, I thank you guys for all  
25   - - that I appreciate the vigor and the

1 indignation got expressed around that. And you  
2 should pursue it and pursue it aggressively and  
3 I think there needs to be a continued detail  
4 public reporting about that. And I - - the  
5 subcommittee meetings are open to the public,  
6 but I think this meeting also it's important  
7 there be detailed reporting particularly because  
8 this goes right to the heart of the biggest  
9 reform the city has talked about in police  
10 accountability in the last several years. Just  
11 giving you the authority to prosecute cases  
12 which turns out to be a phantom authority if the  
13 department is going to proceed the way it is. All  
14 right thanks.

15 CHAIRMAN CHU: Thank you. Seeing no  
16 additional people wishing to make any statements  
17 we're going to take a five minute recess and  
18 break into executive session.

19 [Crosstalk]

20 [END RECORDING]

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23  
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## 1       C E R T I F I C A T E

2       The prior proceedings were transcribed from  
3       audio files and have been transcribed to the  
4       best of my ability.

5

6       Signature \_

7       Date\_\_\_\_\_5/13/13\_\_\_\_\_

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