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In the Matter of the

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**MEETING OF THE
CIVILIAN COMPLAINT REVIEW BOARD**

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8

January 9, 2008
10:00 a.m.

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10

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

11

B E F O R E :

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FRANKLIN H. STONE, ESQ.,
Chair

13

JOAN M. THOMPSON,
Executive Director

14

15

A G E N D A:

16

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

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Sabine Faustin,
Court Reporter

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BROOKLYN, NEW YORK 11216

25

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

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BOARD MEMBERS :

6

TOSANO J. SIMONETTI

7

YOUNGIK YOON, ESQ.

8

SINGEE L. LAM

9

JULES A. MARTIN, ESQ.

10

CAROL LIEBMAN, ESQ.

11

JAMES DONLON, ESQ.

12

LAWRENCE L. LOESCH, ESQ.

13

DR. MOHAMMAD KHALID

14

DENNIS deLEON, ESQ.

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P R O C E E D I N G S

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THE CHAIR: Good morning. Good
10 morning. Good morning. I want to call to
11 order the meeting of the Civilian Complaint
12 Review Board. Happy New Year to you all,
13 I'm delighted to see you here. The first
14 item we have on the agenda is the adoption
15 of minutes. The minutes were placed in all
16 the Board member's packets that were
17 circulated last week.

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It quickly came to our attention,
courtesy of the first reader of the
minutes, Board Member Martin, that we were
missing some of the pages. Those were
circulated -- the missing pages were
circulated to the board I think on Monday.

Did everyone get them?

(Board responds in the

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2 affirmative.).

3 **THE CHAIR:** That was -- okay, in
4 addition to that correction I found at
5 least one other correction that I'd like to
6 put into the record. On Page 21 I'm quoted
7 as referring to a meeting of the
8 "Investigations Committee".

9 What I meant, if not what I said was
10 the Reports and Recommendations Committee.
11 So I'd like to change "Investigations" to
12 "Reports and Recommendations".

13 Were there any other corrections
14 that anyone wanted to make to the minutes?

15 **MS. LEIBMAN:** I found about five or
16 six words that the Stenographer was unable
17 to decipher in my mumbling. I ended up
18 giving her them in writing, unless the
19 Board wants me to say it on the record.
20 They don't change the substance of what I
21 said except to make me sound slightly more
22 coherent.

23 **THE CHAIR:** Any other comments --
24 corrections to the minutes?

25 (No response.)

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2 **THE CHAIR:** Subject to those
3 corrections -- do we have a Motion to
4 approve, subject to those corrections?

5 **MS. LEIBMAN:** I'll make the motion.

6 **THE CHAIR:** Thank you, Carol.
7 Second?

8 **MR. DONLON:** Second.

9 **THE CHAIR:** All in favor?

10 (Board responds in the affirmative.)

11 **THE CHAIR:** Anyone opposed?

12 (No response.)

13 **THE CHAIR:** Then the approval of the
14 minutes is unanimous.

15 The next item on the agenda is the
16 report of the Chair. I have three things
17 to report. First is that as I indicated at
18 our last meeting we have a meeting
19 scheduled with the Police Commissioner for
20 next Tuesday. There is a draft agenda in
21 your board packages to prepare you for the
22 issues that we have been discussing and
23 will be discussing next Tuesday.

24 We note that this is not a mandatory
25 meeting but we'd like to have as many Board

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2 members as possible attend.

3 **MR. deLEON:** I don't seem to have
4 the agenda.

5 **THE CHAIR:** All the way in the
6 back -- you know, your Board package may
7 have come from the front desk. We'll get
8 you one, Dennis.

9 (Pause in proceedings.)

10 **MR. DONLON:** Dennis (handing).

11 **THE CHAIR:** The second is that the
12 New York Police Department's disposition of
13 our substantiated cases continues to be
14 troubling.

15 In the November report -- the
16 November report indicates that they have
17 declined -- not declined to prosecute but
18 have noted as "Department Unable to
19 Prosecute Charges" against 16 officers in
20 10 cases out of a total of 21 cases that
21 are disposed of on the report.

22 We continue to have dialogue with
23 the NYPD about our concern and about seeing
24 if there's some way for us to reconcile the
25 differences we seem to have in the facts

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2 and law as it relates to those cases.

3 The third thing that I have to
4 report on is the staff is preparing the
5 2007 annual report.

6 They are considering converting this
7 report to a more user friendly format along
8 the lines of our semi-annual report which
9 we changed, I guess now two years ago.

10 The Reports and Recommendations
11 Committee will be meeting with the staff to
12 discuss the semi-annual report, including
13 whether we want to package our tables
14 separately and/or post them on the web
15 instead of putting them in the main body of
16 our annual report.

17 Any board members that have any
18 comments on this, we are delighted to hear.
19 You're welcome to come to the Reports and
20 Recommendations Committee meeting, which
21 has not yet been scheduled with the staff,
22 when we discuss this.

23 So please let your views be known on
24 the subject, either generally or
25 specifically. That concludes my report and

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2 we have a report from the Executive
3 Director, Ms. Thompson.

4 **MS. THOMPSON:** I'm going to start
5 off with personnel issues. I just wanted
6 everyone to know that the interviews have
7 been completed and a candidate selected for
8 the Director of Recruitment and Training.

9 Her name is Dawn Fuentes and she
10 will be starting at the end of January;
11 January 28th, I believe that is the start
12 date. She has a masters from NYU in
13 International Education and seven years
14 experience in designing, directing and
15 implementing training and recruitment.
16 She's worked for City government,
17 non-profits and in the corporate
18 environment.

19 I have to say that we were really
20 quite excited that we had two excellent
21 candidates and it was almost a toss up as
22 to which one to choose but Ms. Fuentes edged
23 out the other one.

24 So I think it will be quite a
25 fabulous improvement to the agency when she

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2 begins. Also I'd like to let you know that
3 the ads for the First Deputy Director have
4 been placed and appeared in The New York
5 Times last Sunday.

6 Of course it's also advertised in
7 the usual places, on the DCAS web site, in
8 the Law Journal, El Diario, Amsterdam --

9 **MR. deLEON:** I can barely hear you.

10 **MS. THOMPSON:** Oh, I'm sorry.

11 **THE CHAIR:** There's jack hammering
12 outside.

13 **MS. THOMPSON:** The ad for Eric's
14 replacement has been placed and appeared in
15 The Sunday Times. It also went out to the
16 Law Journal; it's on DCAS's web site, in
17 the El Diario, Amsterdam, et cetera.

18 So as to any of the others we will
19 be letting you know as the resumes have
20 started to come in. We've been going
21 through them as they present themselves.

22 As to the budget, we have received a
23 peg, which is the plan to eliminate the gap
24 from OMB. Our peg target from this part of
25 the remaining fiscal year was \$299,000. We

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2 did meet that target for '07.

3 The other figure however was
4 \$599,000 and we did not meet that target.
5 We were short approximately \$230,000 and
6 for us to have met that target would have
7 meant a reduction in head count.

8 So we will continue to meet with OMB
9 and look at that. Right now they have not
10 said anything, neither yea or nay to us, as
11 to the way we have suggested we meet our
12 target.

13 We did have a surplus of
14 approximately \$200,000 which came from
15 accruals, however we're hoping to use that
16 to assist the Director of Recruitment and
17 Training in providing a career ladder and
18 in doing other things that we might need to
19 do to get that off and running.

20 So we are setting up meetings with
21 OMB in the near future to talk about that
22 before we hear from them with their final
23 answer to us, and that should -- the
24 meeting should be held next week.

25 Some of the year-end stats that we

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2 received were 545 complaints in December,
3 which were down 2 percent from December of
4 2006 where we received 556 complaints.

5 Totally for the year there were
6 7,578 complaints which is one percent less
7 than the previous year. The Board closed
8 2,797 full investigations which is thirty-
9 five percent of all the cases.

10

11 There were 4,920 truncated cases
12 which is 62 percent of all the closed cases
13 and 208 cases were closed through
14 mediation, which is 2.5 percent of all the
15 closed cases.

16 From January to November '07 the
17 percentage of officers disciplined by the
18 NYPD was 60 percent, which is down 19
19 percentage points from 79 percent of last
20 year.

21 The Department has closed as
22 Department Unable to Prosecute 37 percent
23 of all cases and only 3.5 percent of all
24 the cases that have been disposed of went
25 to trial with a guilty rate of 33 percent.

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2 So that's really about it. Yes,
3 that's it.

4 **THE CHAIR:** Thank you. Do we have
5 any committee reports?

6 **MS. LEIBMAN:** The ADR Committee had
7 promised to bring a report to this meeting
8 but we received quite a substantial
9 proposal from Mr. Voloshin at our last
10 meeting and want a little bit more time to
11 fine tune it. We'll hopefully bring it
12 next time.

13 **MR. deLEON:** I didn't hear what you
14 said?

15 **MS. LEIBMAN:** The ADR Committee said
16 they'd have a report for us this month but
17 we want to take a little more time to
18 polish it before we bring it to the Board.

19 **THE CHAIR:** Any other committee
20 reports?

21 (No response.)

22 **THE CHAIR:** Old business?

23 I think we have three items of old
24 business, one is the ongoing discussion
25 that we've been having on -- about our

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2 current practice could be characterized as
3 a rule that we always comply with.

4 **MR. deLEON:** Okay.

5 **MR. SIMONETTI:** I would suggest that
6 we table it for another month or if Victor
7 appears today, maybe we can continue that
8 discussion.

9 **MR. deLEON:** I --

10 **MR. SIMONETTI:** Is there a second to
11 that?

12 **THE CHAIR:** The second --

13 **MR. SIMONETTI:** Is there a second to
14 table the motion?

15 **MR. MARTIN:** Second.

16 **MS. LEIBMAN:** We have a motion?

17 **MR. SIMONETTI:** I made a motion to
18 table it. Sorry, I thought it was implied.

19 **MS. LAM:** Second.

20 **THE CHAIR:** Okay, so we'll put it
21 over for discussion another month. Another
22 item of old business, a discussion began
23 last month about an increasing problem with
24 memo book entries being missing from Police
25 Officer's memo books and the ways in which

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2 that is hampering our ability to both
3 identify officers and to conduct our
4 investigations.

5 This trend has been noted by Board
6 members and by staff and is the subject of
7 some ongoing discussions between the CCRB
8 and the New York Police Department.

9 I believe a meeting is scheduled for
10 next week on -- specifically on this topic.
11 We also have it on our agenda for our
12 meeting with the Police Commissioner next
13 Tuesday.

14 The third item I have is one that
15 I've already addressed, which is the
16 ongoing problem of the Police Department's
17 disposition of our cases. I'm not sure I
18 have anything to add to the comments that
19 I've already made but I'll put it out there
20 for anyone else to say anything they have
21 to say on it.

22 (No response.)

23 **THE CHAIR:** Nothing?

24 Okay, well I think that concludes
25 old business. How about new business, is

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2 there any new business?

3 (No response.)

4 **THE CHAIR:** Hearing silence, I'll
5 conclude that there's no business today --
6 new business today and it's time to turn to
7 public comment. Mr. Dunn?

8 Happy New Year.

9 **MR. DUNN:** Happy New Year to all of
10 you. Good morning to the staff. I do want
11 to follow-up on a couple of things from
12 last month.

13 Frankly, as to the report last
14 Monday, you said the Board was considering
15 several policy reports, thinking about them
16 and I don't think there's been any
17 discussion about the topics of those
18 reports, the focus on them.

19 I don't know if this is the time but
20 I would hope that at some point in the
21 public meeting there will be group
22 discussion about policy reports the Board
23 may be doing.

24 **THE CHAIR:** There may well be. You
25 are welcome to attend any meetings of the

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2 Reports and Recommendations Committee,
3 which is where a lot of those issues are
4 both generated and discussed but the
5 Committee did not meet last month or this
6 month.

7 **MR. DUNN:** Okay, I'll take you up on
8 that but I do think the issue of what
9 policy issue the Board looks at should be a
10 Board discussion.

11 I'm not sure -- maybe it's just the
12 way you folks operate -- that the Reports
13 and Recommendations Committee makes a
14 decision about the reports and that's it,
15 it just goes off and does the report.

16 It seems to me there should be a
17 full Board discussion about what policy the
18 Board is going to investigate, for whatever
19 that is worth.

20 Now as to the semi-annual report and
21 the annual report, you were talking about
22 changing the format of the annual report.
23 When the Board did that for the semi-annual
24 report a couple of years ago, it actually
25 asked for public comment about the proposed

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2 changes and I think notwithstanding Tony's
3 concern that there would be a blizzard of
4 submissions, there was one, which was from
5 us.

6 Much to my chagrin, the response I
7 got when we submitted it was something
8 along the lines of, 'Well, thank you very
9 much but we've actually made the decision
10 and we'll think about your suggestion some
11 time down the road'.

12 So even though we submitted it in a
13 timely fashion that was the response. So I
14 would hope that this time if you're going
15 to change the format of the report or think
16 about it seriously you solicit public
17 opinion and in soliciting, you do it in
18 good faith, meaning you wait for the
19 response to be submitted.

20 As to the Unable to Prosecute case
21 dispositions, I was kind of intrigued by
22 the numbers you mentioned. Frankly, I
23 think they're actually worse than you
24 suggested, both for this year and the
25 year-to-date. The numbers are really quite

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2 astonishing, how the so-called, Unable to
3 Prosecute' cases have gone up, in terms of
4 the percentage of the cases.

5 I mean from the report this month
6 frankly I see 18 cases not 16 and it may be
7 because the last page, which is a little
8 page in the back, has two more cases.

9 I see 18 cases out of a total of 43
10 but in the year-to-date figures for -- at
11 least by the CCRB --

12 **THE CHAIR:** I didn't give any
13 year-to-date figures.

14 **MR. DUNN:** I know you didn't but I'm
15 now looking at the year-to-date figures for
16 at least -- the table -- I'm sorry, there's
17 no pagination here but in the tables by
18 year for CCRB referrals -- for 2007
19 referrals you said something like sixty
20 percent of the cases being closed were
21 disposed of as Unable to Prosecute, the
22 ones they have completed.

23 By my calculations it's actually
24 4,177 compared to your 2007 cases. I mean
25 it's 58 out of 286 --

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2 **MS. SOON:** It's 66.

3 **MR. DUNN:** Yes, 66. Thank you. My
4 eyes are going fast. So it's like 20
5 percent and the numbers are really
6 dramatically changing. I appreciate the
7 fact that you're having conversations with
8 the Department, as you should, but this is
9 not a slight change. There's something
10 quite significant here that shouldn't be
11 happening.

12 **THE CHAIR:** What is it that you
13 think we should be doing that we're not
14 doing?

15 **MR. DUNN:** I don't know what the
16 conversation has been with the Police
17 Department. I think you're engaging with
18 them, which is good. I'm not suggesting
19 that you're not doing something you should
20 be doing.

21 My suggestion is that the numbers
22 indicate that there's every -- I think
23 there's something being done on your end
24 but I don't know how much people are
25 focusing on how dramatically these numbers

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2 are changing.

3 It's just not that they're getting
4 worse, it's that there's almost a sea
5 change in how they're handling the cases.
6 How much that's political and how much that
7 is reality, who knows but there's something
8 else changing, other than the change in the
9 quality of your investigations; that has
10 not changed that much.

11 Again, I'm going to raise a semantic
12 issue which I raised at the least meeting.
13 It's semantic but not, I think,
14 unimportant. I assume the language "Unable
15 to Prosecute" is their language and not
16 your own?

17 **THE CHAIR:** You're asking is it our
18 language?

19 **MR. DUNN:** Frankly, I don't know why
20 you would buy into the "Unable to
21 Prosecute" disposition as the issue.
22 Unwilling to prosecute, okay but not
23 unable, not unless -- until there's a whole
24 lot more discovery into this and somebody
25 concludes that these cases are not

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2 prosecutable, and I doubt that will prove
3 to be the case.

4 **MR. deLEON:** Is that our terminology
5 Fran?

6 Is that our terminology or is it --

7 **THE CHAIR:** You know what, let's ask
8 Abby. What do they say when they send the
9 cases back?

10 **MS. MARGULIES:** They use other terms
11 to describe these cases internally.

12 We have for a number of years
13 received that "Unable to Prosecute"
14 disposition on cases; that is the blanket
15 term they use when they choose not to
16 prosecute the cases.

17 **MR. deLEON:** It would be helpful if
18 we could actually see the reasons they put
19 down.

20 **MS. MARGULIES:** They have not been
21 releasing those to us.

22 **MR. deLEON:** I can't hear you.

23 **MS. MARGULIES:** They have not been
24 releasing those to us. They release it
25 only as "unable to prosecute".

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2 **THE CHAIR:** And they call it that?

3 **MS. MARGULIES:** They call it that
4 only when they turn it into us.

5 **THE CHAIR:** So that's a Department
6 term they use, 'Unable to Prosecute'. So I
7 think it's coming from them.

8 **MR. deLEON:** Have we ever thought to
9 ask why it was determined to be Unable to
10 Prosecute.

11 **MS. MARGULIES:** I don't know the
12 full history of what we've done in the
13 past. I know that was the terminology used
14 between the Police Department when Floe was
15 the Executive Director.

16 **MR. deLEON:** I think one item that
17 should be raised, in addition to the Unable
18 to Prosecute case dispositions, is how much
19 information we get as to why they were
20 unable to prosecute.

21 **THE CHAIR:** I can tell you that the
22 Police Department has been loath to share
23 much of any information with us but we can
24 certainly put it on our agenda of things to
25 discuss with the Police Commissioner.

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2 **MS. LEIBMAN:** Wasn't there an
3 attempt to sit down and look at several --
4 did that ever happen, where we pulled
5 several cases and attempted to talk to the
6 Department about them?

7 Did a meeting like that ever happen?

8 **THE CHAIR:** There's been several
9 meetings.

10 **MS. THOMPSON:** There's been several
11 meetings but none recently on specific cases.

12 **MS. MARGULIES:** I'm not sure what
13 time period you're referring to. There was
14 a time over the course of summer where
15 different people from the staff went over
16 to meet with the Department Advocates'
17 office to discuss specific cases but ever
18 since the beginning of fall, the meetings
19 have been discontinued.

20 **MR. deLEON:** Discontinued because --

21 **MS. MARGULIES:** We've continued to
22 request them but the Police Department has
23 not facilitated setting up these meetings.

24 **THE CHAIR:** And we've asked formally
25 for an opportunity to meet with the

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2 Department Advocates' office and legal
3 counsel's office, to review cases before
4 the decision is made by the Department
5 officially to decline to prosecute a case,
6 and at least so far they've not indicated
7 any interest in having such meetings.

8 **MR. deLEON:** And so they just didn't
9 respond?

10 **THE CHAIR:** I'm sorry, the jack
11 hammering is so bad.

12 **MR. deLEON:** There was no interest
13 or they've never responded?

14 **THE CHAIR:** To date the response has
15 been they're not looking favorably on that
16 but I don't know that a final decision has
17 been made.

18 Again, it's one of the things we
19 should be discussing on Tuesday.

20 **MR. DUNN:** Basically, it's you guys
21 getting stiffed, that's what's happened.

22 **THE CHAIR:** And what would you like
23 us to do that we have not done?

24 **MR. DUNN:** I think you're doing what
25 needs to be done and I'm looking forward

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2 to -- I won't be there but I'm assuming
3 you're looking forward to what Commissioner
4 Kelly says next week when someone points
5 out to him that now an overwhelming number
6 of the substantiated cases by you are being
7 designated as completely unable to
8 prosecute.

9 **MR. deLEON:** Is there a recourse
10 with the Mayor's office?

11 **THE CHAIR:** The Mayor's office is
12 totally aware of what is going on. You
13 know, it falls totally within the
14 Commissioner's jurisdiction what to do with
15 our cases. We have no legal ground to
16 argue with him about what he does with any
17 of our cases.

18 **MR. deLEON:** I'm not just speaking
19 in terms of the legal grounds. If they're
20 not responding to our request for a
21 meeting, it seems to me that we're kind
22 of -- that we need to be aware of the
23 reason why.

24 **MS. THOMPSON:** Dennis, there's a
25 meeting next week with Julie, with Abby and

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2 myself and obviously that is one of the
3 things that we will be discussing before
4 the -- in our meeting with the Police
5 Commissioner, so we shall see what comes
6 out of that.

7 **MR. deLEON:** You're going to raise
8 this issue?

9 **MS. THOMPSON:** Yes. They have --
10 she basically has said that they will kind
11 of do it as a bundle; that they will not go
12 over each individual case with us; that was
13 the last thing that I heard.

14 **MR. LOESCH:** There's also a number
15 in these statistics -- I'm not an expert on
16 this chart but it says the percentage of
17 the cases still pending is seventy percent,
18 that's what's here. So these numbers may
19 be skewed, the results here unless I'm
20 reading it wrong.

21 It says of the 200 some odd cases
22 there's 189 still pending.

23 **MS. MARGULIES:** It takes on average
24 about nine months for the Police
25 Department, from the time that they receive

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2 our cases, to dispose of it one way or the
3 other so it would make sense that you have
4 a lag from the 2007 cases.

5 **MR. LOESCH:** So that would change.
6 In regard to the cases that Chris is now
7 raising he's saying that we should look
8 at --

9 **MR. DUNN:** Of course, those numbers
10 will change. What I'm saying is there's no
11 reason that your numbers shouldn't get
12 better as the year goes on.

13 For instance, if you look at the
14 month of November, essentially last month
15 for reporting purposes, the most recent
16 numbers you have is 18 out of 43. You're
17 talking about close to half your cases.

18 So again, the numbers may change but
19 it doesn't look like this is some
20 statistical fluke. Maybe it will turn out
21 to be --

22 **MR. deLEON:** It might be. But to
23 follow-up on Commissioner Loesch's point,
24 is it possible for us to go into the
25 meeting with a sample of completed cases

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2 which we've referred, say over a period of
3 a year and the numbers -- I guess leaving
4 out the ones where -- that are pending
5 disposition, just completed cases and the
6 outcome of those completed cases?

7 **MS. MARGULIES:** I'm not sure I fully
8 understand.

9 **MR. deLEON:** Commissioner Loesch
10 raised the point that many of the cases
11 have not been disposed of yet. I believe
12 you said about 100 --

13 **MR. LOESCH:** Seventy percent.

14 **THE CHAIR:** Are you suggesting that
15 we highlight the ones that are pending?

16 **MR. deLEON:** No, just the opposite.
17 Take the ones that we've decided and
18 they've disposed of, either by taking no
19 action or in some other manner and have
20 that information with you. I would like to
21 have that information at the meeting.

22 **THE CHAIR:** We've done that. The
23 staff met extensively this summer and went
24 over specific cases and we were unable to
25 reconcile our differences in regards to

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2 resignations. The staff can go on strike
3 for a day or two --

4 **THE CHAIR:** This is your suggestion?

5 **MR. DUNN:** At some point someone has
6 to say, 'What are we doing?' It has to be
7 completely infuriating for the staff and
8 you guys. You do all this work and it's
9 not like you substantiate a huge number of
10 cases. You send them over and they're
11 saying in effect, 'Drop dead'.

12 At some point someone should say,
13 'I'm not going to play that game'. Not
14 that I'm expecting a mass resignation; Tony
15 might, but I think some ones got to -- the
16 numbers are getting to the point where you
17 have to wonder are we here to kind of
18 legitimate a process that is not producing
19 or what?

20 The process has got to change. It's
21 the Police Department's fault, don't get me
22 wrong. Things are not perfect here or
23 anywhere but as far as I'm concerned the
24 Police Department's unwillingness to
25 explain what they're doing is not fair.

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2 As long as they keep refusing to do
3 that and people are not raising up the
4 pressure -- I'm not suggesting you're
5 sitting on your hands; I know you're not
6 but something has got to give.

7 **MR. deLEON:** The last time we raised
8 this question, I recall right before the
9 last meeting with the Police Commissioner,
10 the point beforehand was that our
11 investigations had been complete, several
12 of our investigations --

13 **THE CHAIR:** That's not what this is
14 about. This is not about shoddiness.
15 Every time we meet with him there's a
16 slightly different nuance but I think it's
17 fair to say for the last six months they
18 have not been complaining about the quality
19 of our investigations.

20 It's their rationale -- although
21 they didn't say that at the City Council
22 hearings in the spring -- it's now evolved
23 to, as they've said publicly, we don't
24 understand the law and the fact application
25 of law to the facts.

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2 So they're saying we're sending them
3 cases that they're unwilling to take to
4 trial because they do not state --
5 adequately state a claim for misconduct.

6 **MR. LOESCH:** Well, to Mr. Dunn's
7 point all of these are thrown into this one
8 category "unable to prosecute". Is there a
9 break down anywhere as to why they're
10 unwilling to prosecute or another type of a
11 break down of the unable to prosecute
12 cases; is there anything like that?

13 **MS. MARGULIES:** We don't receive
14 that information.

15 **MR. LOESCH:** Is there something
16 internally. Maybe we should discuss that
17 next week?

18 **THE CHAIR:** I think it's important
19 to point out, there will always be cases
20 that we send over that are incapable of
21 being prosecuted.

22 Witnesses die and disappear, time
23 passes. I don't think there's anything
24 inherently suspicious or wrong with the
25 fact that some cases would be disposed of

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2 as Unable to Prosecute, in the same way
3 that we sometimes determine that by the
4 time they get to us.

5 So we're not talking about cases
6 where the witnesses are unavailable.
7 Although we have pointed out, if they use
8 CCRB resources like investigators with
9 relationships to the witnesses, we might be
10 able to marshal that and help them with the
11 prosecution for trial. At the time they've
12 been unwilling to take that up with us.

13 At the time, we're not talking about
14 cases where there's a problem with the
15 witness. They're claiming that we sent
16 over cases that we should not have sent
17 over because we've misunderstood the law
18 and we've disagreed with them loudly and
19 publicly, but it's the Police
20 Commissioner's call.

21 **MS. LEIBMAN:** Can I -- it's the
22 Commissioner's call whether to move forward
23 or not but that's not what this category --
24 we're being told that our cases are not in
25 the kind of shape that would allow the

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2 Department Advocates' to move forward.

3 That's a very different thing.

4 If he wants to make a call of not
5 prosecuting these cases that is his right
6 but for him to say that it's our work that
7 is deficient, I think that's unacceptable.

8 **MR. deLEON:** That's the most
9 upsetting.

10 **THE CHAIR:** I've said exactly that
11 to the Police Commissioner. He can do
12 whatever he wants to do with them but to
13 the extent that he says he can't prosecute
14 because of our wrongdoing, he's going to
15 hear us scream about it, and he has heard
16 us scream about it but it doesn't seem to
17 have changed his behavior.

18 **MR. deLEON:** Did he point to any
19 specific example at the last meeting, any
20 specific cases where -- was there any
21 discussion, in these meetings between the
22 agencies or with the Commissioner directly
23 where he was able to point to the cases
24 where our investigations were insufficient?

25 Were there any specific cases where

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2 the Commissioner or the staff pointed to
3 cases where there was an insufficient
4 investigation?

5 **MS. MARGULIES:** No, we have not had
6 any discussions that revolved around
7 insufficient investigations. They have, in
8 almost every case, either said that we were
9 wrong on the law or we have differences in
10 our philosophy and they were not interested
11 in prosecuting the cases.

12 **MR. deLEON:** Was there any
13 elaborations on what was meant by
14 differences in philosophies?

15 **MS. MARGULIES:** It largely revolved
16 around search and seizure issues. A lot of
17 times what the Police Department has taken
18 issue with is opportunities for the
19 officers to conduct frisks with the
20 individuals that they're interacting.

21 There's a body of law that dictates
22 that, and the Police Department Advocate's
23 Office is stepping back and saying, even
24 though the law might not have permitted the
25 frisk, under the totality of the

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2 circumstances we're comfortable with the
3 frisk that took place so we're not going to
4 prosecute the Officer.

5 It's those sort of philosophical
6 arguments that they're making. We've
7 pointed out the times -- there's been times
8 when they've told us we're wrong under the
9 law and we're able to point to cases that
10 support our position but they're unable to
11 point to cases that support their --

12 **THE CHAIR:** I'll add publicly what
13 the Police Department through the late
14 Summer and Fall has said is that they were
15 prepared to exonerate officers who acted in
16 good faith; that's the term they're relying
17 on and that's an improper legal standing
18 for judging whether misconduct has occurred
19 or not. I think that's really at the
20 heart --

21 **MR. deLEON:** That goes to remedy or
22 action taken in response to the charge as
23 opposed to --

24 **THE CHAIR:** But so you understand
25 what I'm saying, the legal standing is not

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2 whether the police officers acted in good
3 faith. The Police Officer could have acted
4 in good faith but if his actions were
5 wrong, if misconduct occurred, regardless
6 of his subjective view of what he was doing
7 it is prosecutable.

8 So I think the crux -- that probably
9 does not cover all the cases that we're
10 talking about but it covers a great number
11 of them.

12 They're just not prepared to move
13 forward on cases where they, the Police
14 Department, believe that the Officer acted
15 subjectively in good faith even if that
16 good faith was mistaken.

17 Back to Mr. Dunn.

18 **MR. DUNN:** Maybe we can request a
19 copy -- I don't -- my files are not clear.
20 The letter that they sent in response --
21 NYCLU sent in response to your first six
22 month report, the one where you laid out --

23 **THE CHAIR:** Yes.

24 **MR. DUNN:** Since it would be
25 probably easier for me to find out, Dennis,

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2 than for Joan, I'll send it to her, okay.

3 All right, with respect to
4 Commissioner Kelly -- your meeting with
5 him, good for you.

6 I didn't get an agenda in my packet;
7 is that an omission?

8 (No response.)

9 **MR. DUNN:** Perhaps.

10 Is there anything that -- is there
11 going to be any public discussion on the
12 agenda?

13 It does not strike me as necessarily
14 being a conditional executive session
15 topic.

16 **THE CHAIR:** I don't believe there is
17 going to be any discussion about it but if
18 anyone wants to raise it, they can.

19 **MR. DUNN:** Okay. All right, well
20 with that unhappy --

21 **MR. deLEON:** Why is that --

22 **THE CHAIR:** If you wish to discuss
23 it. I think the issues are the same issues
24 that we've been covering in other ways.

25 **MS. LEIBMAN:** We've discussed these

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2 issues?

3 **THE CHAIR:** Yeah, we've discussed
4 these issues.

5 **MR. deLEON:** It might be these:
6 Prosecution of CCRB substantiated cases,
7 consulting with the NYPD on policy and
8 procedure issues, lack of documentation in
9 memo books and lack of supervisory sign
10 off, follow-up from earlier requests,
11 Officer appearance issues and upgrades for
12 NYPD computers for the newest version of
13 CTS."

14 **MR. DUNN:** Okay, I just hope at the
15 next meeting there's some public discussion
16 of what comes out of your meeting with Mr.
17 Kelly. Thank you --

18 **MR. deLEON:** Commissioner.

19 **MR. DUNN:** Commissioner Kelly,
20 sorry.

21 **THE CHAIR:** He is a Commissioner.
22 We are board members.

23 **MR. DUNN:** He's also a Board Member
24 but I'll refer to him as Commissioner.

25 **THE CHAIR:** Anything else?

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2 (No response.)

3 **THE CHAIR:** We'll retire to
4 executive session to discuss perhaps
5 personnel matters but certainly a specific
6 case that we have to discuss. Thank you.

7 **(Time Noted: 10:50 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 _____, 2008.

SABINE FAUSTIN