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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

March 12, 2008

9

10:00 a.m.

10

40 Rector Street, 2nd Floor

New York, New York 10006

11

B E F O R E :

12

FRANKLIN H. STONE, ESQ.,

13

Chair

JOAN M. THOMPSON,

14

Executive Director

15

A G E N D A:

16

1. Call to Order

17

2. Adoption of Minutes

18

3. Report from the Chair

19

4. Report from the Executive Director

20

5. Committee Reports

6. Old Business

7. New Business

8. Public Comment

21

Sabine Faustin,

Court Reporter

22

23

24

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BROOKLYN, NEW YORK 11216**

25

1 CCRB Public Hearing - March 12, 2008

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

4
5 BOARD MEMBERS:

6 TOSANO J. SIMONETTI

7 YOUNGIK YOON, ESQ.

8 SINGEE L. LAM

9 VICTOR OLDS, ESQ.

10 WILLIAM F. KUNTZ II, ESQ.

11 JULES A. MARTIN, ESQ.

12 CAROL LIEBMAN, ESQ.

13 JAMES DONLON, ESQ.

14 LAWRENCE L. LOESCH, ESQ.

15 DR. MOHAMMAD KHALID

16 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. I want to
10 call this meeting of the Civilian Complaint
11 Review Board to order. The first matter on
12 our agenda is the adoption of minutes from
13 the last board meeting, our February 13,
14 2008 board meeting which has been
15 circulated to all board members.

16 Do we have a Motion to approve the
17 minutes?

18 **MR. deLEON:** Motion.

19 **THE CHAIR:** A second?

20 **MR. KUNTZ:** Second.

21 **THE CHAIR:** Any discussion, comments
22 or questions?

23 (No response.)

24 **THE CHAIR:** All right. We'll put it
25 to vote. All in favor?

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2 (Board responds in the affirmative.)

3 **THE CHAIR:** Any one opposed?

4 (No response.)

5 **THE CHAIR:** No opposition. Any
6 abstentions?

7 (No response.)

8 **THE CHAIR:** No abstention, so the
9 minutes are approved.

10 Next on agenda is the report from
11 the Chair. I have a couple of items to
12 report today that are significant. The
13 first is that we participated in a
14 conference at John Jay College on February
15 28th. It was the 2nd Annual Fyfe Police
16 Accountability Conference and this year we
17 focused on stop and frisk policy practice
18 and research.

19 It was a day long conference
20 including lunch and it was attended by many
21 of our staff members including the members
22 of our legal staff.

23 We participated in a round table
24 discussion about community confidence in
25 the police, community trust and we

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2 participated in discussions with other
3 people who were either panelists or
4 attendees at the conference.

5 It was really well done. There was
6 really very good discussion and we were
7 delighted to be able to be a part of it.

8 The second item from our report is
9 our budget which our Executive Director
10 will address in greater detail.

11 As many of you may know, the Mayor
12 called last week for City agencies to cut
13 another 3% from their budgets for the next
14 fiscal year which for us translates to
15 another \$343,000 off of our budget, which
16 obviously will have a disastrous impact on
17 the processing of our case load.

18 We intend to ask both the Mayor and
19 City Council to restore some of our monies
20 to us, so we shall see. Joan will provide
21 additional details about that. I should
22 add that this round of cuts is on top of a
23 round of cuts that we have experienced
24 within the last few months.

25 The third thing in my report is --

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2 and it's a little bit of old business but
3 it's to follow-up on the Board's discussion
4 about truncated cases: Why do we have so
5 many; where are they coming from; what can
6 we do to reduce them; how much of the
7 agency's resources should be devoted to
8 pursuing complaints that either are or
9 appear to be about to truncate.

10 There -- we have an updated set of
11 statistics that should be in your board
12 packages and I believe in the public
13 packages as well, that Marcos Soler
14 prepared, if you all want to -- if anyone
15 wants to follow along. There's some
16 interesting findings.

17 It's basically --

18 **MR. deLEON:** What was it?

19 What's the title of the document?

20 I'm sorry.

21 **THE CHAIR:** It's the "Analysis of
22 Factors of Findings of CCRB Truncation Rate
23 2001 to 2007".

24 We had previously done many of these
25 analysis for our 2006 annual report but

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2 after our discussion at the last board
3 meeting I asked Marcos to update those
4 statistics and that's what we have in the
5 package.

6 This -- just briefly, the statistics
7 show complaints filed by phone are much
8 more likely to truncate than those that are
9 filed by mail or email or in person; that's
10 Table 2.

11 Complaints that are referred to us
12 by the NYPD are much more likely to have
13 complainants who are unavailable; that is,
14 that can't be reached, that's Table 3. I
15 think that's an interesting stat that might
16 point to some room for improvement.

17 Complaints --

18 **MR. deLEON:** What did that table
19 mean?

20 **THE CHAIR:** Table 3?

21 **MR. deLEON:** How do you interpret
22 that?

23 **THE CHAIR:** Complaints that are
24 referred to us from the Police Department
25 are more likely to have complainants who

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2 are unavailable; who we ultimately find are
3 unavailable; that is, we can't reach them.

4 It suggests that maybe we could get
5 more contact -- better contact information.
6 I don't want to speculate because I don't
7 know really what's behind it but it
8 certainly looks like something that we
9 could get further into.

10 Table 4 indicates that complaints
11 that are filed within a week are more
12 likely to be truncated than those that are
13 filed more than a week after the incident.

14 Tables 5 and 6 indicate that race
15 and gender are not major determinants of
16 our truncation rate.

17 I think that there's a suggestion --
18 I'm doing this from memory -- that American
19 Indians may truncate at a higher rate but
20 I'm not sure how statistically significant
21 that is. But let's just say generally race
22 and gender are not major factors.

23 Our truncation rate decreases with
24 the age -- as the age of the complainant
25 decreases, that's Table 7. Force

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2 complaints are somewhat less likely to be
3 truncated but I notice that the Complainant
4 is more likely to be unavailable in force
5 cases, which is interesting.

6 Table 9 says that fewer number --
7 the fewer numbers of complainants there are
8 the greater the likelihood there is of
9 truncation, which I guess makes sense
10 because cases can go forward even when all
11 complainants don't agree to cooperate with
12 investigations.

13 Prior analysis that we've done on
14 the truncation rate -- we tried to include
15 that in your package today -- show that
16 there's no correlation between the
17 truncation rate and the Complainant's
18 residence, which I think is another
19 interesting factor. And there may be other
20 points that we made in 2006 that I don't
21 recall now but I thought I would highlight
22 these for you.

23 We have a meeting planned with the
24 Research Department at John Jay to discuss
25 additional analysis investigations that we

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2 might undertake to try to understand our
3 truncation rate and perhaps to adjust it.
4 Stay tuned. I'll keep you posted on that.

5 And I do want to point out, in case
6 board members don't know, our CCRB staff
7 and Chief Statistician, Marcos Soler, who I
8 don't see here -- oh, I'm looking right at
9 you -- is an Adjunct Professor at John Jay.
10 So we do have another connection there on
11 top of the other connections that we have.

12 The last thing that I wanted to
13 include in my executive report -- in my
14 Chair report was the NYPD Disposition
15 Report for January 2008. It wasn't in your
16 board packets on Friday but it is in your
17 board packets this morning.

18 It continues to be very troubling.
19 It covers complaints against 29 Officers in
20 22 cases. In eight of those, the
21 Department duped them "Department unwilling
22 to prosecute" and one Police Officer
23 resigned.

24 Where discipline was imposed on
25 officers in our substantiated cases,

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2 instructions were imposed 11 times and
3 Command discipline 16 times.

4 **MR. deLEON:** I don't think that's in
5 the packet.

6 **MS. THOMPSON:** It was sent out.

7 **THE CHAIR:** No, it's supposed to be
8 in the Board packet.

9 **MR. deLEON:** It's in our report.

10 **THE CHAIR:** No. No. It's a three
11 paged document on the side. Okay, see if
12 it's behind --

13 **MR. CASE:** It's also in the
14 Executive Director Report.

15 **THE CHAIR:** Okay, look behind the
16 Executive Director Report, in the back.
17 It's the last attachment to the Executive
18 Director's Report.

19 **MR. deLEON:** Is this the report
20 (indicating)?

21 **MR. CASE:** No.

22 **MR. deLEON:** I'm sorry.

23 (Pause in proceedings.)

24 **THE CHAIR:** Of those taken -- cases
25 taken to trial, two were found not guilty

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2 and one case was dismissed. I'm not sure
3 what a dismissal means but there appears to
4 have been no victories in the Police
5 Department trial room for our cases.

6 And that concludes my report.

7 **MR. deLEON:** Madam Chair, can I ask
8 that our packets be uniformed?

9 **THE CHAIR:** I could not agree with
10 you more; that is my expectation that they
11 would be complete and uniform.

12 The next item on the agenda is the
13 report from the Executive Director. Joan?

14 **MS. THOMPSON:** In February of this
15 year the CCRB received 624 complaints which
16 is up 14% from February of last year when
17 the CCRB received 545 complaints.

18 Year to date, Civilians filed 1,279
19 complaints or 4% more than the same time
20 last year when they -- we received 1,230
21 complaints.

22 In February the Board closed 521
23 cases. Year to date, the Board has closed
24 1,043 cases. Of those cases, 365 were full
25 investigations, which is 35% of all of the

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2 cases; 668 were truncated, which is 64% of
3 all the cases and ten cases were closed to
4 mediation, which is 1% percent of all closed cases.

5 The substantiation rate is 7.4%,
6 which is approximately consistent with last
7 year's rate, which was 7.8%.

8 Year to date, the Board
9 substantiated 4.5% of all allegations,
10 exonerated 36% of these allegations,
11 unfounded 13% and unsubstantiated 32%.

12 Stop/question/frisk, abuse of
13 authority allegations continue to make up a
14 large portion of the substantiated cases or
15 35% of all the substantiated allegations.

16 According to the January 2008
17 Disposition Report from the PD, the
18 percentage of Officers disciplined is 60%
19 which is identical to the percentage for
20 2007. The Department has closed eight
21 cases as the Chair just said, has
22 disciplined 17 with either Command
23 discipline or instructions and has
24 dismissed or found not guilty after trial
25 another three Officers.

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2 Since the beginning of the year the
3 Department has disciplined -- excuse me,
4 has declined to prosecute 110 cases.

5 On the update of the move for the
6 agency, the Herman Miller furniture was
7 delivered and installed on the 14th floor
8 and the inactive Case Management Inventory
9 has also been moved. The expected move-in
10 date for every one is, we're hoping, within
11 the next month but our fingers are crossed
12 on that.

13 As the Chair said, we did have
14 contact with President Jeremy Travis and we
15 will be working with his Center for
16 Criminal Justice Research and Education.
17 They'll be setting up a meeting to discuss
18 with the Board any of our issues and I
19 particularly spoke to him about the
20 truncation rate and he said that he would
21 have appropriate staff to discuss that with
22 us.

23 **MR. deLEON:** Could we also -- Madam
24 Chair?

25 **THE CHAIR:** Yes?

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2 College, Baruch, NYU and Columbia and today
3 she is at Hunter College. And in fact,
4 she has already pre-screened four
5 applicants which came in and two of the
6 teams are interested in three of the
7 applicants. So we're beginning to see
8 people coming in, so that's a positive
9 move.

10 And/or to follow-up with what the
11 Chair has said on the budget, the amount to
12 be cut again is \$343,000 which could amount
13 to approximately 10 heads. We already have
14 taken a five head reduction in head count
15 for June '08 and another five in June '09.
16 So with this ten on top, that would mean
17 approximately, obviously, twenty.

18 There are other things that we have
19 put up and we don't know about them yet.
20 We are having City Council testimony on
21 March 19th and all of our efforts have to
22 be written up and obviously given to OMB on
23 March 18th. So we'll stay tuned to what
24 will happen after that.

25 **THE CHAIR:** Okay.

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2 **MS. LAM:** I have a question -- oh,
3 I'm sorry, I should raise my hand first.
4 Joan, last month Tony and I both were questioning
5 the cases that are 18 months and over 18
6 months.

7 **MS. THOMPSON:** Yes?

8 **MS. LAM:** I see we have another
9 slight increase, about 10%.

10 **MS. THOMPSON:** There are 28 cases
11 now on DA holds.

12 **MS. LAM:** Are they on DA holds?

13 **MS. THOMPSON:** Yes.

14 **MS. LAM:** Okay. All of them?

15 **MS. THOMPSON:** Well, 28 of them are
16 on DA holds. I'm not sure . . .

17 **MS. LAM:** And of the 23 at 18
18 months, seven of them -- sixteen are over
19 18 months and hopefully 23 --

20 **MS. THOMPSON:** Not all of them are
21 DA holds, though.

22 **MS. MARGULIES:** If I can just help
23 clarify that issue. Although we have 28
24 cases that are on DA hold, they actually
25 span the entire months -- sorry, they span

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2 the entire age of cases that we have.

3 Of the ones that are 18 months and
4 older, a number of them -- some of them
5 have been per DA hold; some of them are per
6 investigations returned by the Board; some
7 of them have been reported late by the
8 Complainant by some significant number,
9 many often more than a year late and others
10 have had additional reasons that they aided
11 it out and so that accounts for a fair
12 number of those cases.

13 **MS. LAM:** Okay, would it be too much
14 if we asked for a listing --

15 **MS. THOMPSON:** A review?

16 **THE CHAIR:** A break down?

17 **MS. LAM:** Just maybe a break down; a
18 little footnote at the bottom.

19 **MS. THOMPSON:** Okay.

20 **MS. LAM:** All right, thank you.

21 **THE CHAIR:** Thank you. Um, the next
22 item on our agenda is Committee Reports.
23 Have we had any committee meetings this
24 past month to be reported?

25 (No response.)

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2 **THE CHAIR:** Hearing none, we'll move
3 on to old business. The principal item of
4 old business that we have on our agenda is
5 the disposition of our some 5,000 cases a
6 year that are truncated and how those are
7 handled internally within the CCRB.

8 We had an extensive discussion
9 during the public session of last month's
10 meeting. We can clearly have additional
11 discussions about the policy here today,
12 although I would certainly ask that
13 comments -- we had such an extensive
14 discussion last month, I would appreciate
15 if the comments were new information as
16 opposed to just repeating the arguments
17 that were made last month.

18 We have prepared a draft letter to
19 our attorney which will be discussed in
20 executive session following this meeting.

21 **MR. deLEON:** Just to clarify --

22 **THE CHAIR:** Yes, Dennis?

23 **MR. deLEON:** I don't recall from
24 the -- and I have not reviewed the minutes
25 in great detail -- was there a discussion

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2 about actually writing -- having the Corp.
3 Council write words for a Charter amendment
4 at the last meeting?

5 **THE CHAIR:** Not that I recall.

6 **MR. deLEON:** Okay.

7 **THE CHAIR:** That is all I have for
8 old business --

9 **MR. deLEON:** Bill has --

10 **MR. KUNTZ:** This falls into the
11 intercellular space between old business
12 and new business. Are you done with old
13 business?

14 **THE CHAIR:** Right. I'll tell you I
15 have two points on for new business: One
16 is the Administrative Prosecution Unit and
17 the second is the correspondence with NYPD
18 about --

19 **MR. KUNTZ:** Oh, I'll wait for you to
20 complete --

21 **THE CHAIR:** Well, those are under
22 "New Business". If your points are going
23 to -- if you're going to address those two
24 points --

25 **MR. KUNTZ:** They're really new

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2 business.

3 **THE CHAIR:** I think they're new
4 business. I mean, It's not that we have
5 not discussed them at times in the past
6 but --

7 **MR. KUNTZ:** Go ahead.

8 **THE CHAIR:** So okay, are we done
9 with old business?

10 **MR. KUNTZ:** Go ahead.

11 **THE CHAIR:** New business: The first
12 item that I have on for new business is the
13 question of the Administrative Prosecution
14 Unit which has been discussed many times
15 over the last at least five years at the
16 CCRB but is brought back to our agenda by,
17 among other things, a letter from NYCLU
18 that calls upon us to "take all available
19 actions to force the Mayor's office, the
20 City Council and the NYPD to turn over to
21 the CCRB the responsibility for prosecuting
22 substantiated cases".

23 We also, late yesterday afternoon,
24 received a letter from the -- from Police
25 Commissioner Kelly commenting upon --

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2 commenting basically upon Mr. Dunn's letter
3 from the NYCLU and basically rejecting the
4 arguments, calling them specious, the
5 arguments that the Police Department is not
6 doing a good job or that we could do a
7 better job than the Police Department at
8 handling our cases.

9 Yes?

10 **MR. DUNN:** Can I interrupt just for
11 a second?

12 Has that letter been circulated
13 publicly?

14 I have not seen a copy. Is that
15 something that is confidential?

16 **THE CHAIR:** It just came in last
17 night. I don't think we have discussed it.
18 I don't think it is confidential but having
19 not done the courtesy of actually asking
20 him whether he thinks it's confidential --

21 **MR. DUNN:** Can someone give it to
22 me?

23 **THE CHAIR:** Copies were being made
24 as I walked in the door here this morning
25 so I don't know -- I know copies --

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2 **MR. KUNTZ:** The record should
3 reflect that Mr. Dunn is being handed a
4 copy of Police Commissioner Kelly's letter
5 dated March 11th, 2008 by a Commissioner.

6 **THE CHAIR:** I will confess to having
7 only briefly read it myself but I believe I
8 have captured the import of it.

9 So we are testifying before City
10 Council this week. Although the subject of
11 our testimony -- excuse me, next week --
12 although the subject of our testimony is
13 the budget, this is an issue that could
14 come up so I think it is an appropriate
15 subject for discussion for that reason as
16 well.

17 So, would anyone like to comment?

18 **MR. deLEON:** On what?

19 **THE CHAIR:** On I guess the call from
20 the NYCLU for us to assume responsibility
21 for the prosecution of our cases and the
22 Police Commissioner's rejection or
23 indication to us that he has no plan to
24 delegate that authority to us.

25 Dennis?

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2 **MR. deLEON:** Um, I know that this is
3 not a new issue for the Board but I would
4 like -- I'd like us to consider actually
5 developing a concrete plan for the
6 Civilian -- for us -- for the CCRB to
7 prosecute cases.

8 And in that plan, I'd ask that there
9 be some detail giving our best shot
10 basically of how we would do it if we got
11 the funds and we got the authority.

12 Because I think until we have
13 something on paper, I don't think anyone is
14 likely to act on just an idea. I think if
15 we actually presented a plan for civilian
16 prosecution and they had a plan to react
17 to, we could have a full debate with the
18 City Council on it, a full panel discussion
19 and I think it would move the process
20 ahead.

21 **THE CHAIR:** Carol?

22 **MS. LIEBMAN:** I was going to make
23 exactly the same suggestion, that we really
24 need -- we need to know what's involved in
25 this and we need to make a step towards it.

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2 I must say I was disheartened by the
3 most recent data, in terms of the
4 Department's decisions, being unwilling to
5 prosecute; that was not the kind of
6 follow-up that I hoped for after our
7 meeting with the Commissioner.

8 I think we really need to take the
9 responsibility to, even if we decide in the
10 end not to do anything, we have to take the
11 responsibility to look at what would be
12 involved since we do have a sense of the
13 hard work of our investigators and our
14 teams are doing and it is not really being
15 given the kind of respect that it should by
16 the Department.

17 **THE CHAIR:** Just let me add one
18 point. We did have a plan five years ago
19 that -- obviously things have changed.
20 Among other things, we have four new
21 attorneys on board that we didn't have last
22 time. This was considered and some of the
23 background work has already been done on
24 what an APU would look like within the
25 CCRB. It would need to be modified and

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2 reflect the reality of our staff as it
3 currently exists.

4 **MR. deLEON:** Can we share the --
5 what's been done?

6 I mean can a committee report --
7 what's the committee that reports on the
8 policies and practices --

9 **THE CHAIR:** We have a Reports &
10 Recommendations Committee.

11 **MR. deLEON:** A Reports &
12 Recommendations Committee?

13 **THE CHAIR:** (Continuing) -- or the
14 Operations Committee is probably a better
15 committee to handle it.

16 **MR. deLEON:** Can we ask that the
17 committee report back at the next meeting
18 as to a plan -- with a plan for civilian
19 prosecutions -- I'm sorry, for prosecutions
20 by the CCRB of these cases and then discuss
21 what to do with it?

22 **THE CHAIR:** I think we can ask --
23 I'm just going to rephrase it.

24 Why don't we ask the Executive
25 Director and the staff to work up such a

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2 plan and refer it to the Reports &
3 Recommendations Committee who would then
4 report to the Board or do you want them to
5 report directly to the Board?

6 **MR. deLEON:** The Board, yes.

7 **MR. OLDS:** Madam Chair, may I make
8 a -- just a thought?

9 Instead of plan -- that sounds a bit
10 premature -- I would just like to know more
11 about the considerations that would go into
12 formulating a plan.

13 I think it may be a little bit
14 ambitious at this point to ask, you know,
15 anybody to come up with a plan without an
16 opportunity for discussions about
17 considerations, you know. So maybe if we
18 could dial it back a little bit.

19 **THE CHAIR:** What would you like to
20 see?

21 I was just reacting to Dennis' --

22 **MR. OLDS:** Yes, I know. This is
23 kind of a stream of consciousness, frankly.
24 My thought is I'd like to be better
25 informed about what considerations will be

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2 taken into account to implement any kind of
3 plans in the future that would allow us to
4 proceed in that manner.

5 **MR. deLEON:** Victor, I think the
6 problem is that we've been reacting --
7 we've been discussing these issues really
8 in the abstract for a long time. I think
9 we should, taking those considerations into
10 account, come up with a plan, come up with
11 a concrete plan for doing this and then
12 with those considerations, with that
13 information, discuss it in an intelligent
14 way.

15 **MR. OLDS:** Yeah, I don't disagree
16 with you. I just -- the question in my
17 mind is who should be doing that?

18 And I think --

19 **MR. deLEON:** Well, we as a Board
20 should be doing it. The announcement, the
21 discussion of it, if you want to suggest
22 this is the way to go, and then how to
23 proceed from there.

24 **MR. OLDS:** And the "that" that I was
25 referring to is the plan. In other words,

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2 which entity should actually be formulating
3 a plan.

4 In my view, I think that should come
5 from the Board after we have an opportunity
6 to consider considerations going in that;
7 that's just my thought.

8 **MR. deLEON:** Okay, I don't really
9 care if it's the committee or the Board.

10 **THE CHAIR:** What I had in mind was
11 not sort of a policy plan coming from the
12 staff but a notation -- you know, as a sort
13 of a factual predicate for how many lawyers
14 at what levels and at what costs and what
15 other logistical space needs -- I'm sort of
16 making this up -- would be needed.

17 And a lot of that work was done five
18 years ago but obviously things change.
19 They also would -- I guess they could also
20 identify for us policy considerations. You
21 know, how -- I'm making this up again --
22 but how would cases be plea bargained, you
23 know, before trial. Just to spot the
24 logistical issues.

25 You know, I hear you on the

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2 prematurity because -- especially now that
3 we've heard from the Police Commissioner
4 that he does not intend to delegate this
5 authority to us any time soon. But it is
6 nice to always have a factual predicate as
7 you're considering policy matters and
8 that's what I heard was coming from Dennis
9 with this request.

10 **MR. OLDS:** I totally agree with what
11 you've just said thus far.

12 **THE CHAIR:** Any other comments on
13 this point?

14 Bill?

15 **MR. KUNTZ:** I would just note that
16 as the staff and the Board considers this
17 it should be in the context of the decision
18 by the Appellate Division, First Department,
19 in the case captioned In re: Application
20 of Patrick J. Lynch versus Rudolph W.
21 Giuliani, decided January 7th, 2003 --

22 **THE CHAIR:** Which is in the Board
23 package.

24 **MR. KUNTZ:** (Continuing) -- which is
25 in the Board package, and the citation is

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2 2003 New York slip op 10051, and the
3 passage that we should bear in mind as we
4 do anything, from the Appellate Division
5 1st Department which governs the rights and
6 responsibilities under the MOU, Memorandum
7 of Understanding, in the decision is as
8 follows:

9 "Expanding the role of the CCRB to
10 prosecute civilian initiated complaints
11 would not improperly expand the sphere of
12 the Board's influence because the
13 administrative hearings which may result
14 from CCRB prosecutions will be conducted by
15 the Police Department's Office of the
16 Deputy Commission Trials (DCT) in the trial
17 rooms.

18 "In addition, the recommendations of
19 DCT are subject to the Commissioner's
20 retained power and may be modified,
21 remanded or revoked at his or her
22 discretion.

23 "Moreover, the Commissioner also
24 retains authority to revoke the MOU itself
25 at any time. The proposed rule changes do

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2 not contemplate granting CCRB any new
3 substantive rights, nor has it diminished
4 the Police Commissioner's authority to make
5 the final determination as to appropriate
6 disciplinary sanctions."

7 That is the legal context in which
8 this is going forward. I'm not --

9 **MR. deLEON:** I think that was a
10 different legal context because we don't
11 have an MOU now; I mean, it's not being
12 raised. I don't know what the decision
13 would be if we happen to get City Council
14 authorization for this and what that would
15 do to a Court's decision making. I just
16 don't know.

17 **MR. KUNTZ:** I think the MOU is still
18 in place. It was signed by the Police
19 Commissioner and by the Chair of the Board.
20 It is still the governing -- I'm not saying
21 there couldn't be a modification of the MOU
22 or a new MOU by the Police Commissioner or
23 the Mayor but the Board, from where I'm
24 sitting right now, we are under the MOU and
25 under this decision I believe as a matter

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2 of law. There may be a different view.

3 **MR. deLEON:** I feel more comfortable
4 going into this issue with an MOU and with
5 also legislative City Council approval
6 but -- with both, you know, that's my
7 personal opinion.

8 **THE CHAIR:** Any other discussion on
9 this point?

10 **MR. deLEON:** Can I make a Motion?

11 **THE CHAIR:** Yes.

12 **MR. deLEON:** I move that the -- I
13 guess Victor, you wanted a full Board to
14 consider this?

15 **MR. OLDS:** Yeah -- well, I did
16 initially but when I listened to what was
17 being called for by the Chair, I'm happy
18 with the way you framed it because we're
19 basically trying to gather information
20 before we go forward.

21 **MR. deLEON:** Right. Right. Can we
22 gather information and pass proposals for
23 the CCRB to prosecute all or some category
24 of cases and to discuss the information
25 gathered at a future Board meeting,

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2 hopefully the next Board meeting?

3 **THE CHAIR:** It seems to me that
4 that's easy enough to do with or without a
5 Motion.

6 **MR. deLEON:** Okay, fine.

7 **THE CHAIR:** Unless there's some
8 opposition to gathering this information.

9 **MR. DONLON:** Well, I think it's --
10 just following up this decision that
11 Commissioner Kuntz quoted from. To me it
12 seems clear that this is not going to ever
13 happen without an amendment to the City
14 Charter giving the CCRB the authority to
15 act independently of the Police
16 Commissioner.

17 Because I think it's just -- I think
18 that's a realistic view and I don't know
19 how much effort and time we should spend
20 constructing a model as to what this
21 prosecution unit might look like when the
22 reality is, I think without a City Charter
23 amendment, I don't think it's likely to
24 happen any time soon --

25 **THE CHAIR:** With the Police

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2 Commissioner's consent. It doesn't
3 require --

4 **MR. DONLON:** No, I agree. I agree.

5 **MR. KUNTZ:** If I could just make one
6 point of information in fairness to the
7 Police Department on this point. I believe
8 that in 2001 the Police Department was
9 prepared to have CCRB prosecute cases at
10 OATH.

11 Now maybe Commissioner Simonetti can
12 agree or disabuse me of that notion but I
13 think that was their position. And then
14 the Court said, 'The bad news is you cannot
15 trial cases at OATH because they're not
16 employees of the Police Department. The
17 good news is you can trial cases in a trial
18 room if the Police Commissioner asks you to
19 do so'.

20 So I think in fairness, in terms of
21 intent going in, the intent going in from
22 the Department's point of view was probably
23 to have CCRB do the OATH cases and they
24 would continue to do the cases in the trial
25 room.

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2 Now that being said, I do not
3 disagree in any way, shape or form with
4 what you have said, Commissioner Donlon.

5 **MR. deLEON:** I don't disagree but it
6 seems to me, based upon the Chair's
7 letter -- draft letter to Michael Cardozo
8 regarding an opinion, we don't seem to be
9 afraid to ask for Charter revision either.

10 **THE CHAIR:** Well, I don't construe
11 our letters as asking for Charter revision
12 but we can discuss that.

13 **MR. deLEON:** The language is a
14 Charter revision request.

15 **MR. KUNTZ:** I do have another point
16 of business, if you're done with this
17 issue.

18 **THE CHAIR:** We are done with this
19 issue. I also have another item of new
20 business --

21 **MR. KUNTZ:** Oh, okay. I'll defer to
22 you.

23 **MR. OLDS:** How did we leave this?
24 We're going to go forward?

25 **THE CHAIR:** Yeah, we'll collect

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2 this. I think we'll pull together the
3 materials and if they are meeting on other
4 Reports & Recommendations Committee issues,
5 we'll give them the materials to report at
6 the next board meeting. I guess if that
7 committee -- no, we decided it's the
8 Operations Committee.

9 **MR. KUNTZ:** Operations Committee.

10 **THE CHAIR:** (Continuing) -- the
11 Operations Committee, if it meets, it will
12 report; if not, I guess the materials will
13 come directly to us --

14 **MR. deLEON:** And we'll get notice?

15 **THE CHAIR:** I would ask that the
16 staff pull together what they can in time
17 to have the materials go into the Board
18 packages for the next meeting.

19 **MR. SIMONETTI:** What exactly are we
20 going to get?

21 **MR. deLEON:** Something from about
22 five years ago. I mean, I'm not certain --

23 **MR. SIMONETTI:** Everything Bill said
24 is correct, up until five years ago --
25 maybe I misunderstood when you read this

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2 decision by the Court of Appeals. Is my
3 understanding correct that the Police
4 Commissioner can revoke this at any time?

5 **MR. KUNTZ:** In whole or in part, at
6 any time.

7 **MR. SIMONETTI:** I think his letter
8 kind of does that, doesn't it. Why would
9 we go through this exercise?

10 **MR. deLEON:** Because the City
11 Council has the --

12 **MR. SIMONETTI:** Than I agree with
13 Jim, you would need a Charter revision.

14 **MR. deLEON:** Okay, then a Charter
15 revision. I mean, we can ask that --

16 **MR. SIMONETTI:** That's something
17 entirely different. I mean, if you want to
18 make a proposal; if you want to make a --

19 **MR. deLEON:** If that's the
20 conclusion we come to, that will be
21 discussed, whether to seek a Charter
22 revision. I'd like to know some of the
23 history.

24 **MR. OLDS:** Well, maybe if -- if
25 maybe we can combine those two and as part

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2 of the information gathering we can get any
3 updates on the law as well, as to what it
4 would take in terms of Charter revision, if
5 that's the direction we decide to take --
6 in other words, gathering information can
7 be all inclusive; it can include the points
8 that you're both making.

9 Right now we're just trying to
10 gather information. I don't see a reason
11 not to do that.

12 **MR. deLEON:** Right. Right.

13 **THE CHAIR:** The next item that I
14 have for new business is the draft
15 correspondence or the correspondence with
16 the NYPD concerning our semi-annual report
17 which is at the printer as we speak.

18 Because the NYPD has agreed to make
19 their letter to us public, it is not only
20 in the Board packages, it's also in the
21 public materials that were available for
22 people today --

23 **MR. CASE:** It's not, but I have
24 copies of it for every one because it was
25 not clear, the distribution of it so anyone

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2 who wants a copy can have it.

3 **THE CHAIR:** I did not put my
4 draft -- the draft responsive letter is in
5 the Board's -- Board packages so if anyone
6 has any comments on it --

7 **MR. deLEON:** They can --

8 **THE CHAIR:** I'm not sure it needs to
9 be held for executive session but, you
10 know, this is -- we've never discussed this
11 letter before, the text of it in a public
12 board meeting so I don't have any precedent
13 for it but I'm happy to take public
14 comments on it.

15 **MR. deLEON:** Okay, I guess my first
16 comment really pertains to Paragraph 2 of
17 the Commissioner's letter and our response
18 to -- I'm sorry --

19 **THE CHAIR:** Just a minute, let me
20 find it.

21 **MR. deLEON:** Paragraph -- the 40th
22 Precinct. Paragraph 3.

23 **THE CHAIR:** Paragraph 3 is about the
24 40th Precinct.

25 **MR. deLEON:** It's in your response.

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2 **THE CHAIR:** Yeah.

3 **MR. deLEON:** Just because an area is
4 an Operation Impact Zone, does that mean
5 necessarily that there has to be an
6 increase in complaints regarding Police
7 misconduct?

8 **THE CHAIR:** I don't think we concede
9 that it does. I think what we say is the
10 more information we have about factors, the
11 more sophisticated we can make our
12 reporting. And we are delighted to take
13 any information that they are prepared to
14 give us, and this is the first time they've
15 given us such information.

16 **MR. SIMONETTI:** But I think the
17 point that the Commissioner is making, if
18 you look at Paragraph 3 of his letter,
19 about halfway through --

20 **MR. deLEON:** Wait. Let me get the
21 right letter.

22 **MR. SIMONETTI:** Okay. The letter
23 addressed to Chairperson Stone.

24 (Continuing) -- he clearly points
25 out that the Operation Impact Zone receives

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2 a large influx of personnel. So it's not
3 a -- it's not a matter of impact zones
4 solely impacting on the numbers. It's the
5 number of the Police that impact those
6 numbers.

7 **MR. deLEON:** I'm just saying that --
8 what his logic is, is basically by placing
9 more Police you're going to get more
10 complaints and I don't think that logic
11 follows.

12 **THE CHAIR:** I think there's some
13 suggestion from our statistics -- in fact,
14 we've reported that where there's an
15 increased in stop and frisk we have an
16 increase in complaints. So there's some
17 correlation between Police activity in an
18 area and our complaints.

19 **MR. deLEON:** But does that
20 necessarily mean that we can expect to see
21 either substantiated or corrupt Police
22 misconduct?

23 **THE CHAIR:** No, I don't know that
24 that --

25 **MR. deLEON:** That's my issue. I

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2 just think putting more cops -- more Police
3 Officers in an area does not necessarily
4 mean that they all have to physically
5 bombard -- that there's a higher number of
6 cases where we'll find misconduct.

7 **MR. SIMONETTI:** Well, I think
8 there's a direct proportion between the
9 number of Police Officers assigned and the
10 number of civilian complaints.

11 I mean, if you look historically at
12 the facts, that's the way it shakes out.

13 **MR. KUNTZ:** I mean what the Police
14 Commissioner says, accurately or not, what
15 he says is "generally speaking, it is my
16 experience that as the number of personnel
17 assigned to a command increases or
18 decreases, the number of civilian
19 complaints received will tend to follow".

20 That may or may not be true but they
21 have come that. They're looking at
22 numbers. He's telling us his views and I
23 think Chairwoman Stone is saying, 'We're
24 welcomed to receive more information and to
25 receive his views'. We're not necessarily

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2 agreeing or disagreeing. We're telling
3 him, 'Keep telling us what you think about
4 that and we'll engage in colloquy'. I
5 don't see any downside to that.

6 **MR. deLEON:** Okay. The last point
7 is on the -- is the third paragraph --

8 **THE CHAIR:** The paragraph that
9 begins "Third" or the paragraph that begins
10 "Fourth".

11 **MR. deLEON:** Yeah, the paragraph
12 that begins "Fourth".

13 **MR. SIMONETTI:** Fourth paragraph.

14 **THE CHAIR:** The paragraph that
15 begins "Third"?

16 The paragraph that begins with the
17 word "Third"?

18 **MR. deLEON:** Yeah, the fourth
19 paragraph.

20 **THE CHAIR:** This involves the Police
21 Department's repeated assertion that we
22 should be calculating our substantiation
23 rate against the entire universe of cases
24 that we receive as opposed to calculating
25 it against the fully investigated cases,

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2 eliminating the truncated cases.

3 And essentially our response is to
4 do that would be to suggest that there
5 is -- was -- to be essentially making an
6 affirmative finding that there was no
7 misconduct in those truncated cases which
8 we're not prepared to do.

9 **MR. deLEON:** I only raise it because
10 in light of the discussion over the
11 truncated cases I think now he would have a
12 better argument because none of those
13 truncated cases would have been reviewed by
14 the Board therefore the stats, I think,
15 would necessarily change because he would
16 have a better claim in saying that of the
17 cases reviewed by the Board, you know, that
18 would be the case -- that would necessarily
19 follow.

20 **MR. KUNTZ:** We've not made that
21 change yet.

22 **MR. deLEON:** No. No. I know that.
23 I'm just highlighting that as a possible
24 implication of that.

25 **MR. KUNTZ:** Correct.

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2 **THE CHAIR:** I would think, if
3 anything, it would go the other direction,
4 the implication.

5 But in any -- but the bottom line is
6 where we don't make an affirmative finding,
7 where a case is truncated, it's not fair to
8 conclude that either all of those cases
9 would have been substantiated or the
10 reverse, that they all would have been
11 exonerated or unfounded. Therefore, we
12 leave them out of the equation. And this
13 is consistent with the way other Police
14 oversight organizations across the country
15 do their statistics.

16 Any other comments, Dennis or from
17 anyone else?

18 (No response.)

19 **THE CHAIR:** Then I'll put this into
20 final and get these out today.

21 **MR. deLEON:** Can I make a note?

22 I'm very pleased, for myself, very
23 pleased that the Chair has chosen to share
24 this with the public. It's a somewhat --
25 it's a nice breath of fresh air.

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2 **THE CHAIR:** Thank you. Okay, Bill
3 you have a new item of business?

4 **MR. KUNTZ:** Yesterday, March 11th I
5 sent the following letter to the Honorable
6 Peter Vallone with Counsel Members
7 receiving copies, including Council Member
8 Quinn.

9 "Dear Council Member Vallone, I am
10 deeply concerned as a longstanding City
11 Council designee to the Civilian Complaint
12 Review Board (CCRB) of the impending rules
13 change supported by the current CCRB Chair.

14 "The contemplated change, as
15 reflected in the attached draft letter to
16 Corporation Counsel Cardozo, would prevent
17 any City Council designee from reviewing
18 two-thirds the complaints filed by the
19 public.

20 "This shocking deviation from CCRB
21 practice would eradicate any meaningful
22 oversight of complaints by your designees.
23 I respectfully request that the New York
24 City Council tie any funding of the CCRB to
25 a requirement that it continue the

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2 longstanding practice of requiring at least
3 three commissioners review each complaint
4 made by the public. Anything less would
5 make a mockery of our mission and a total
6 sham of this important agency which I have
7 served since 1987.

8 "Respectfully submitted, William F
9 Kuntz II."

10 Copies to Speaker Quinn, to each
11 member of the City Council and to each
12 member of this Board. Thank you.

13 **THE CHAIR:** I'd just like to comment
14 that the comments made in Board Member
15 Kuntz' letter do not accurately reflect
16 either the proposal that I made or the
17 intention that I would have had with
18 respect to my proposal at the last board
19 meeting that we consider having our
20 truncated cases reviewed by the staff, in
21 view of the fact that the board over the
22 last five years has overturned the staff's
23 recommendation one or fewer times per year.

24 **MR. KUNTZ:** But we read them and we
25 had access to read them.

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2 **THE CHAIR:** Mr. Kuntz is quite
3 willing to -- you know, is quite able to
4 say anything he wants to, to anyone else.
5 I would note that members of the CCRB were
6 not cc'd by Mr. Kuntz on this letter.

7 **MR. KUNTZ:** They were. They were.

8 **THE CHAIR:** Well, I didn't receive a
9 copy of it.

10 **MR. KUNTZ:** Well, I'll give you a
11 copy now and it was sent to your office. I
12 have copies for everyone (handing).

13 **MS. LIEBMAN:** I didn't receive a
14 copy of it.

15 **THE CHAIR:** It was mailed? It was
16 mailed --

17 **MR. deLEON:** It was an email. It
18 was an email.

19 **THE CHAIR:** Was it mailed?

20 **MR. KUNTZ:** It was mailed. You have
21 it now.

22 **THE CHAIR:** And you attached to this
23 letter a copy of our draft letter to our
24 lawyer --

25 **MR. KUNTZ:** About public matters,

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2 yes, absolutely.

3 **THE CHAIR:** (Continuing) -- a copy
4 of the NYCLU letter --

5 **MR. KUNTZ:** Correct.

6 **THE CHAIR:** (Continuing) -- about
7 the Administrative Prosecution Unit --

8 **MR. KUNTZ:** Correct.

9 **THE CHAIR:** (Continuing) -- and a
10 draft of the letter to Police Commissioner
11 Kelly --

12 **MR. KUNTZ:** Correct.

13 **THE CHAIR:** (Continuing) -- about
14 the semi-annual report?

15 **MR. KUNTZ:** Correct, to the members
16 of the Council.

17 **THE CHAIR:** Anyone else have any
18 comments?

19 Yes, Carol?

20 **MS. LIEBMAN:** I think -- I think as
21 it's known, I intend to be sympathetic to
22 some revisiting of how we handle truncated
23 cases.

24 I think Commissioner Kuntz' letter
25 to the City Council is a rather

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2 melodramatic overstatement of the intention
3 or the actual actions any of the
4 Commissioners might take.

5 I think any of us who are
6 sympathetic to the notion of handling
7 truncated cases in a different way feel
8 very strongly that that cannot be something
9 that totally removes the Board from
10 oversight, that there are many ways to do
11 it, including, I think that I would be
12 happy if any members of the Board,
13 Commissioners, City Council designee or
14 not, would be willing to take on the task
15 of reviewing this voluntarily.

16 I think nothing prevents any of
17 member of the Board from looking at these,
18 from reviewing as many of the cases as they
19 want.

20 So I think it's unfortunate again
21 that we get an escalation in the way that
22 we discuss issues that I think are hard and
23 I think people can differ about.

24 **MR. KUNTZ:** Well, I think that
25 Council will certainly have a view as to

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2 whether its designees should be cut out
3 from reading truncated cases.

4 I've told you before this is a
5 serious issue and you've continued to push
6 it. You're now subjected to cuts. You're
7 going before the Council and you're going
8 before the Council with a proposal that in
9 my view would mean that Council designees
10 would not see complaints that wind up being
11 truncated by the staff.

12 That is not acceptable to me as a
13 Council designee, and I don't believe that
14 the Council will give you more money if its
15 designees are not seeing two-thirds of the
16 complaints that are filed by the public.

17 It is not about whether you change
18 the disposition recommendations of the
19 staff. As I've told you repeatedly, it is
20 about whether the members of this board are
21 in a position to say to the Council, the
22 Mayor and the Police Commissioner, 'We, as
23 a board have reviewed the complaints that
24 have come in from the public'.

25 And under your proposal two-thirds

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2 of the complaints would never appear before
3 the eyes of the City Council designees.

4 Now if the City Council wants to
5 give you money when its designees cannot
6 see the complaints filed by members of the
7 public, I would personally be surprised.

8 But you go before them on March 19th
9 and see if they agree with you or they
10 agree with me. You'll find out when you
11 ask them for more money.

12 I would urge you to withdraw a
13 change of the policies policy that this
14 Board has operated under since 1987, when
15 we were internal to the Police Department.
16 We saw -- and I was on this board and no
17 one else around this table was -- we saw
18 every complaint filed with the CCRB. We
19 read them as Commissioners, in panels; that
20 has been the practice for twenty-one years
21 and I am not going to tolerate that
22 practice being deviated from, especially at
23 a time when you will go before the City
24 Council and ask for more money.

25 Now if the Council doesn't care

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2 about it; if the Council says 'downstream
3 it to the staff' then the Council can say
4 that and give you more money. I doubt that
5 they will do it but it is up to the
6 Council. I have urged you not to do this.
7 The Police Department practice wasn't to do
8 it. The prior boards didn't do it. We
9 shouldn't do it.

10 **THE CHAIR:** I just have one factual
11 point to make because I -- apparently the
12 facts are not exactly as Mr. Kuntz has just
13 stated them.

14 **MR. KUNTZ:** They're exactly as I
15 stated them.

16 **THE CHAIR:** Let me finish. From the
17 time that this agency was founded in 1993
18 through the end of 1997 there was a
19 category of truncated cases called
20 "Administratively Closed", where cases were
21 in fact closed by the staff without their
22 coming before Board review; that practice
23 was changed in 1998, effective January 1,
24 1998, when we changed our intake system to
25 have intakes done by investigators instead

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2 of by administrative staff.

3 At that point that truncation
4 category, "Administratively Closed" was
5 eliminated and all cases came through for
6 board review. But there was that period of
7 time, from 1993 to the end of 1997, when a
8 significant number of CCRB cases were not
9 subject to Board review.

10 **MR. KUNTZ:** In 1987 through 1993 we
11 read every case and we read every case that
12 was filed as a Board, that's the facts.

13 And in any event, if you want to
14 change the policy back to a position where
15 two-thirds of the cases filed by members of
16 the public are not seen by any City Council
17 designee at the same time that you're
18 asking the City Council of New York to
19 provide more funds to this agency, I think
20 that you are barking up the wrong tree.

21 But you will see when you go before
22 the Council as to whether or not they think
23 that that's a good idea, and whether they
24 think in light of that you're entitled to
25 more money.

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2 I would certainly say that any
3 funding should be tied to Council designees
4 having the opportunity to see the
5 complaints of the public.

6 There is no reason to deviate from
7 our practice, none whatsoever. It simply
8 designed to cut out Council designees from
9 seeing the complaints of the public; that
10 is not something that I am prepared to have
11 happened.

12 **MR. YOON:** Can I make a comment?

13 **THE CHAIR:** Yes, Mr. Yoon.

14 **MR. YOON:** Okay, without going into
15 whether this policy is right or wrong, in
16 light of the fact that Commissioner Kuntz
17 has sent this kind of letter to the City
18 Council, for the sake of our agency --
19 like, we cannot really risk reduction of
20 funding, so I mean the fact that this is
21 known, you know, without even like going
22 into which policy is right or wrong, I
23 mean, we have to think about the
24 ramifications --

25 **THE CHAIR:** Are you suggesting that

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2 we should write a responsive letter?

3 **MR. YOON:** Oh, no. I'm just
4 saying -- I'm just asking the Board whether
5 we should just --

6 **MS. LAM:** Table it?

7 **MR. YOON:** (Continuing) -- you know,
8 yes, just table it. You know, just stop
9 this discussion and continue the old
10 practice.

11 **THE CHAIR:** I assure you I have no
12 intention of cutting out City Council reps
13 or any other designees from reviewing any
14 case --

15 **MR. YOON:** So can we just continue
16 our old practice, whatever it was, for the
17 sake -- my reasoning is not that you are
18 wrong or who is right, it's just that for
19 the sake of our agency, so that at this
20 point we may not risk any reduction of
21 funding.

22 **THE CHAIR:** Tony?

23 **MR. SIMONETTI:** My recollection of
24 last month's discussion was not that we
25 finalized this issue. In fact, people had

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2 made several recommendations and in reading
3 Carol's email, she even suggested some
4 further things about the truncated cases.

5 So I don't think we definitively
6 said that we are asking that we give all
7 the truncated cases to staff to close
8 before we look at them. I think -- that
9 was my understanding of that discussion,
10 that there was still a lot that could be
11 done with the truncated cases.

12 **MR. DONLON:** And you know, my take
13 on this draft letter was that, you know, if
14 Corp. Counsel says that it can't be done,
15 you know, that might be the end of it.

16 So I think we're getting way ahead
17 of ourselves, in terms of what we may do
18 and what we intend to do. You know, I
19 think a lot of us haven't really made up
20 our minds what might happen in the event
21 that we have this ability to
22 administratively close these things.

23 **MR. KUNTZ:** I just want the Council
24 to know what will happen if you take that
25 route.

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2 **MR. DONLON:** Well, I think, as I
3 said I think we're getting ahead of where
4 we should be.

5 **MR. KUNTZ:** No. No. I don't.
6 We're exactly where we should be.

7 **THE CHAIR:** Mohammed?

8 **MR. KUNTZ:** I think we're exactly
9 where we should be.

10 **THE CHAIR:** Now wait a minute, hold
11 on. Dr. Khalid?

12 **DR. KHALID:** I certainly agree with
13 Tony and Jimmy that to my recollection we
14 have not adopted the policy. We were just
15 in the process of getting some
16 clarification from the City Corp. Counsel
17 and once it's adopted that's a different
18 story. But I think we are certainly
19 getting ahead -- jumping ahead.

20 I think we should wait until we
21 receive that information from the City
22 Corp. Counsel and from there we should
23 proceed further.

24 **MR. KUNTZ:** It's a political matter.
25 You're going before the City Council to ask

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2 for money and you're going to cut out their
3 designees if you vote this way and the City
4 Council needs to know that. And if they're
5 prepared to have us cut out, they can vote
6 that way. I don't think they will be.

7 And I think that it's misleading to
8 go on March 19th to the City Council, not
9 tell them that you're going to cut out
10 their Council designees from reading
11 two-thirds of the complaints and then have
12 a vote after you get an opinion from Corp.
13 Counsel. I find that disingenuous.

14 So the Council now knows what this
15 Board is contemplating and the Council can
16 tell you what they think of it and I'm sure
17 they will.

18 **THE CHAIR:** Dennis?

19 **MR. deLEON:** Can I move that we drop
20 the sentence --

21 **THE CHAIR:** I think our request to
22 Council should be discussed in Executive
23 session.

24 **MR. deLEON:** Okay.

25 Tony?

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2 **MR. SIMONETTI:** I think there are
3 factors that occurred, that brought us to
4 that discussion last month. You know,
5 clearly in my twelve years on the Board, if
6 I think back to when I first came on the
7 Board -- and Bill has probably a better
8 recollection than I do, and Singee -- the
9 number of cases were no where near the case
10 load that we have today.

11 Secondly, the truncation rate was
12 well below 50%, and it's only creped up
13 recently. And I think that's a matter of
14 the number of cases that we receive
15 annually, if that's correct?

16 So I think that's what brought us to
17 that discussion. Last month -- you know,
18 over the years it's been creeping up and
19 that was the discussion last month.

20 So I thought it -- it was still --
21 in my own mind, that it wasn't resolved;
22 that we were just asking for an opinion
23 that we give all the truncated cases to
24 staff.

25 I thought there was some wriggle

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2 room where we could have further
3 discussion, as Carol mentions in her email.

4 **MR. deLEON:** What email was that?

5 **DR. KHALID:** In response to
6 Cardozo --

7 **THE CHAIR:** There's no pending
8 proposal except for the proposal to seek
9 legal advice, so I agree with you.

10 Any other comments on this?

11 (No response.)

12 **THE CHAIR:** That concludes -- I'll
13 check the agenda but I think that concludes
14 the new business and it is time for public
15 comment, and we have Mr. Dunn.

16 **MR. DUNN:** What a surprise. All
17 right, starting with the smallest things,
18 in the minutes -- I actually see a number
19 of mistakes in the minutes. I'm not sure I
20 am the one that gets to have standing to
21 suggest corrections to the minutes but I
22 will -- it doesn't have to be now. We'll
23 figure out some mechanism.

24 For instance, you, Franklin in my
25 comments are occasionally identified as

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2 "frankly" and I'm quite sure that's
3 incorrect.

4 **THE CHAIR:** Yes, I noticed that but
5 I didn't feel like I could -- I would have
6 hoped that would have gotten caught
7 earlier.

8 **MR. DUNN:** There was actually the
9 John Jay conference. I appreciate those of
10 you who came. There was quite a turn out
11 from the CCRB and I thought it was -- that
12 you contributed significantly and I hope
13 you came away with something useful from
14 it.

15 With respect to the truncation data,
16 I thought those figures were actually quite
17 interesting. But the issue about the
18 entire truncation rate for the reports that
19 are going to the Police Department itself,
20 where there's --

21 **THE CHAIR:** I'm not sure I'm
22 following.

23 **MR. DUNN:** (Continuing) -- you
24 cannot find the complainant. Your table
25 shows that for reports that go to the

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2 Police Department as opposed to the CCRB
3 you have a much higher percentage of
4 truncation, of the witness being
5 uncooperative/unavailable --

6 **THE CHAIR:** Unavailable, I think.

7 **MR. DUNN:** Unavailable.

8 (Continuing) -- and that may be
9 because they're not getting good contact
10 information. It may also be because they
11 think that the contact they get from you is
12 actually coming from the Police Department.

13 And so when you look at that you
14 might want to make sure that it's clear to
15 the Complainant that what's happening down
16 the line is not some guy from the precinct
17 that's calling or some guy from the NYPD
18 but it's some guy from outside of the
19 Police Department.

20 All right, in terms of the breakdown
21 of the old cases, this keeps coming up and
22 I do think it would be important to have
23 for the 18 plus cases and even the cases
24 that are like 15, 16, 17 months, because
25 they are running into the statute of

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2 limitations.

3 Maybe you really need to see those
4 things, not once they become 18 plus months
5 because then it's over; I think it would be
6 helpful to see a breakdown further up the
7 time chain, and I think it also should
8 include the number of cases that are
9 pending Board review.

10 Now I don't know if there are any
11 significant number of cases that are in the
12 old cases that are sitting there waiting
13 for Board review but I think that continues
14 to be an issue.

15 And I've said this many times and
16 I'll say it again, I think there should be
17 a similar aging analysis for cases waiting
18 Board review.

19 **MR. deLEON:** Can I?

20 **MR. DUNN:** Yes?

21 **MR. deLEON:** You mean as to why?

22 **MR. DUNN:** No, how long they've been
23 sitting there, how old they are.

24 **MR. deLEON:** Because I realize -- I
25 mean, for me it would be interesting to

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2 see -- they fall into like three
3 categories: Police Officers not showing
4 up. They fall into Complainant -- you
5 know, basically there's like a finite
6 number of reasons that would be useful in
7 order to --

8 **MR. DUNN:** Well, I agree. I guess
9 the broader point is setting some of the
10 details. I think there should be a fair
11 amount of analysis of the old cases.

12 You've got quite a few cases that
13 are aging out and maybe they're aging out
14 because of DA holds, and you guys have
15 decided not to take on the DA holds -- that
16 will give us new information to complain
17 about you guys, but there are other issues.

18 For instance, the complaints that
19 are unavailable. Maybe the Board is
20 sitting on the cases; I don't know what it
21 is.

22 **MR. deLEON:** Or it's been
23 transferred to a new Investigator?

24 **MR. DUNN:** There may be lots of
25 explanations. I think there should be more

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2 than just a reporting about the numbers,
3 about the cases getting old.

4 All right, with regard to the
5 Administrative Prosecution Unit, I hear a
6 baby step which is better than no step.

7 You know, I'm kind of intrigued by
8 the Police Commissioner and his preemptive
9 strike; that's perhaps the fastest response
10 the NYCLU has ever gotten a response to a
11 letter and it wasn't even sent to him.

12 And why do you think it came in last
13 night?

14 So people like Jim and Tony and Bill
15 can say: "Forget it. This is a waste of
16 time. Why are we doing this? It's over.
17 If the Police Commissioner isn't going to
18 do it, it's not going to happen".

19 I started this process with a given
20 that the Police Commissioner was not going
21 to say, 'It's Okay'. That goes without
22 saying. But you know, he does work for
23 someone else and that guy is the Mayor and
24 if the Mayor says to Kelly, for whatever
25 reason, 'We've got to do this'. Just like

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2 Giuliani -- you know who was behind the MOU
3 last time? You think it was Howard
4 Safir?

5 No, Franklin, Kerik made him. It
6 was not the Police Commissioner. It was
7 Rudy Giuliani who went in and said,
8 `Bernie, we have a problem. We have lots
9 of problems but we have a problem here.
10 These Justice Commissioners are barking
11 down our backs and we're going to fix this.
12 We'll throw them a bone, something that was
13 broken from the beginning but we'll give
14 them that.

15 Kelly is going to say no. You have
16 to go in understanding that. Frankly,
17 people here saying, `We don't want to do it
18 because Kelly said no', that's just giving
19 up.

20 **MR. KUNTZ:** I voted against it from
21 the beginning. What do you want to do?

22 **MR. DUNN:** You're going to vote
23 against it. I think you're undermining the
24 process --

25 **MR. KUNTZ:** I disagree.

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2 **MR. DUNN:** I understand that. You
3 guys, if the Board is going to get serious
4 about this, one thing it can do is push on
5 the prosecution issue.

6 If Kelly says `No' you have to stand
7 up and say, `You're wrong and we'll go to
8 the person with the authority', and that is
9 the Mayor. That does not require Charter
10 revision, it requires Bloomberg putting
11 Kelly in a head lock and saying, `Ray,
12 we're giving up on this one because the
13 CCRB are all going to quit. They're making
14 a stink about this in the semi-annual
15 report'.

16 I have to laugh, I finally have to
17 laugh. I finally get to see a letter from
18 Kelly and the reason is because he says
19 it's okay.

20 Who is running this place, the
21 Police Commissioner or you guys?

22 **THE CHAIR:** We'll give them to you
23 going forward.

24 **MR. DUNN:** Regardless of whether
25 he consents, that's the issue. You should

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2 have had those things from the beginning.

3 Finally the third rail, as Bill
4 wants to put it -- I have to tell you Bill,
5 I think you're dead wrong on this, not only
6 are you dead wrong but I think you are
7 creating an obstruction dynamic in the
8 Board when you engage in tactics like that.

9 You can do it, it's your business
10 but if you think Peter Vallone is going to
11 rescue you, you have a different view of
12 his role than I do.

13 I don't see him paying a whole lot
14 of attention to the CCRB. I just think
15 there are serious issues about truncation.
16 It is a huge problem in the agency. I
17 don't think at the top of the list is the
18 issue of looking at who looks at the
19 two-thirds of the cases.

20 I think the problem is the truncated
21 cases. There are much bigger fish to fry
22 than having a blood bath over how many
23 cases people from the CCRB review.

24 By the way, I am intrigued. Your
25 letter said there should be three

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2 commissioners reviewing this. We talked
3 about this before. I don't think any of
4 you guys are commissioners. I know your
5 sign says "Commissioners" --

6 **MR. KUNTZ:** We got badges. We got
7 letters.

8 **MR. DUNN:** I understand.

9 **MR. KUNTZ:** They say "Commissioner".

10 **MR. DUNN:** Let me tell you, no one
11 is talking about City Council appointees.
12 Frankly, if they care about civilian
13 oversight they should be worried about
14 two-thirds of the cases getting truncated
15 and why is that happening. Why is the
16 Police Commissioner dumping all of your
17 cases?

18 You're dead wrong --

19 **MR. KUNTZ:** If I were you, I would
20 take a moment before saying I'm dead wrong
21 to look at what was attached to my letter
22 to Mr. Vallone. I would note that it was
23 sent to every member of the Council and I
24 would also note that one of attachments was
25 your letter with respect to the prosecution

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2 unit.

3 And just in regard to reviewing the
4 bidding, I was opposed to it in part
5 because CCRB did not have authority to
6 prosecute the cases that it had decided to
7 prosecute.

8 **MR. DUNN:** You have the authority to
9 prosecute them, you just can't do it in
10 OATH.

11 **MR. KUNTZ:** With all due respect,
12 I'm just telling you my reason for opposing
13 it in 2001, which was because we could not
14 go forward and prosecute it, either at OATH
15 or in the trial room without the Police
16 Commissioner's approval.

17 **MR. DUNN:** Everyone understood that
18 but the MOU gives you that approval.

19 **MR. KUNTZ:** With all due respect,
20 the Police Commissioner can stop that at
21 any time.

22 **MR. DUNN:** Of course he can. You're
23 going to argue, I suspect you will, `We
24 should not do that because Kelly can pull
25 the plug at any point. We're not going to

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2 do it until the Charter is revised' --

3 **MR. KUNTZ:** How do we get around the
4 revision?

5 The decision says that he can pull
6 the plug any time.

7 **MR. DUNN:** Okay, then let him pull
8 the plug.

9 **MR. KUNTZ:** He just did.

10 **MR. DUNN:** Then you have to go to
11 the Mayor. He'll never cooperate. You
12 might as well throw the substantiated cases
13 in the trash. These guys are all killing
14 themselves doing investigations for what,
15 for a bunch dupes and instructions?

16 If that's what you want to spend
17 your time on, if you think that's what this
18 agency is about, you can keep doing it. I
19 don't think that's what the CCRB is about
20 or should be.

21 When this agency got created in
22 1993, that was not the hope; that is not
23 why these guys are working so hard, so they
24 can get a whole bunch of dupes. You guys
25 need to stand up for them.

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2 Sitting and hoping for a Charter
3 revision that's never going to come is
4 doing nothing in my view.

5 Thank you.

6 **THE CHAIR:** Any other public
7 comments?

8 (No response.)

9 **THE CHAIR:** Okay, hearing no
10 response we will retire to executive
11 session to discuss the disposition of the
12 cases.

13 Don't go too far away. Let's take a
14 brief break and try to reconvene quickly.

15 (Time Noted: 11:45 p.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)

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I further certify that I am not
related, by blood or marriage, to any of
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IN WITNESS WHEREOF, I have hereunto
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