

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PUBLIC SAFETY

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January 29, 2009

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City Hall

B E F O R E:
PETER F. VALLONE, JR.
Chairperson

COUNCIL MEMBERS:

Erik Martin Dilan
Helen Foster
James F. Gennaro
Melinda R. Katz
David Yassky
Vincent Gentile
Daniel R. Garodnick
Elizabeth Crowley
Council Member 9
Christine C. Quinn
Robert Jackson
Letitia James
Maria del Carmen Arroyo
Helen Sears

A P P E A R A N C E S (CONTINUED)

Julie L. Schwartz
Deputy Commissioner
Department Advocate
New York City Police Department

John Donohue
Deputy Chief
Office of Management Analysis and Planning
New York City Police Department

Franklin Stone
Chair
Civilian Complaint Review Board

Joan Thompson
Executive Director
Civilian Complaint Review Board

Meera Joshi Cattafesta
First Deputy Executive Director
Civilian Complaint Review Board

Donna Lieberman
Executive Director
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Christopher Dunn
Associate Legal Director
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Robert Perry
Legislative Director
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Susan Lee
Attorney
Bronx Defenders

Vincent Southerland
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NAACP Legal Defense Fund

A P P E A R A N C E S (CONTINUED)

Dick Dadey
Executive Director
Citizens Union

Marc Krupanski
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Iris Martinez
Make The Road New York

Gabriel Arkles
Staff Attorney
Sylvia Rivera Law Project

William Antalics
Member
Lower East Side Call for Justice

Andrea J. Ritchie
Director, Sex Workers Project
Urban Justice Center

Paul Lance Mills
New York City Policing Roundtable

Lillian Rivera
Concerned Citizen

Andriana Pagano
Advocate

Danette Chavis
Concerned Citizen

Dee Lazersmith
Concerned Citizen

A P P E A R A N C E S (CONTINUED)

Danny Hernandez
Concerned Citizen

Kevin Conin
Concerned Citizen

Jonathan Sunshine
Concerned Citizen

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2 CHAIRPERSON VALLONE: Okay. Please
3 find seats. Turn off all cell phones. Welcome
4 everyone to this hearing of the Public Safety
5 Committee. Today we're having an oversight
6 hearing on the Civilian Complaint Review Board,
7 the CCRB. We're going to discuss the annual
8 report for 2007 and the recently released
9 statistics from 2008. We had a hearing on this
10 topic not too long ago after the Sean Bell tragedy
11 in Queens; the Committee on Public Safety and City
12 Council responded by having a series of three
13 hearings during 2007 to address community
14 concerns. The second of those hearings was a CCRB
15 oversight hearing in March. And at that hearing
16 we covered both the internal and external
17 monitoring of the NYPD, and we heard testimony
18 from many of the same organizations and
19 individuals who are here today. In 2007, the CCRB
20 and the Civil Liberties Union, who will be
21 testifying today, expressed concern over the
22 amount of CCRB substantiated cases that the Police
23 Department was declining to prosecute. They also
24 expressed concern about the increasing incidences
25 in which the NYPD disciplined officers with only

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2 minor punishment. The Police responded that types
3 of substantiated cases coming from CCRB were
4 almost-- were more often than in the past abuse of
5 authority cases, which are difficult to prosecute.
6 They also argued-- the Police argued about the
7 analysis, some of the analysis of the CCRB, and
8 they will make other arguments, which we will hear
9 today. One of the reasons we delayed this
10 hearing, because I know it's been sought for a
11 while, is because '07 did show a dramatic increase
12 in the amount of cases which were not prosecuted
13 by the Police Department. We wanted to see the
14 '08 numbers and we waited for those to come out,
15 and they've come out. And they do indicate that
16 '07 was not an aberration, but which is a part of
17 a patter, which I think makes this a hearing which
18 grows in significance. We are going to also-- we
19 also will discuss ideas that have been given to us
20 by NYCLU and the other groups about whether or not
21 the CCRB should be prosecuting its cases, what new
22 powers the CCRB should have, if any. Very
23 interesting topics. I'm entering this hearing
24 with an objective, open mind and I'd like to hear
25 what others have to say about that. To keep

1 things in perspective though, you know, I don't
2 want to make this at all sound like we're coming
3 in here to knock the NYPD. I mean we are living
4 in a time right now with strained resources,
5 especially with the NYPD. As you know, as we all
6 know, the Police Department-- the next two classes
7 from the Police Department have been cut from
8 1,200 people to 250 people, which we have argued
9 against. And the Council was successful in
10 getting the 250 people from zero. I've never felt
11 it's enough, and it's not going to get better out
12 there. There will be less police dealing with
13 more stress, which is why this hearing becomes
14 even more important. The Police Department, as
15 always, needs to be commended for the work that
16 they're doing-- safest big city in America, 18th
17 straight year we've seen a decrease in major
18 felony crime. The City has fewer than 600 murders
19 for the seventh year in a row, the only city to
20 see less murders in 2007. Major felony crime
21 fallen 30% since 2001, in contrast, as I said, to
22 cities like Chicago, Atlanta, DC saw an increase
23 in crime. It doesn't mean we can't improve.
24 That's how we continue to maintain these great
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2 improvements that we have every year, by
3 continually keeping their feet to the fire and
4 making improvements. We shouldn't forget also
5 that this is the most transparent Police
6 Department in the country. And a lot of that is
7 due to the efforts of people up here like Speaker
8 Quinn. We have passed laws recently mandating for
9 the first time that we see information about crime
10 in parks, crime in schools, and the first bill of
11 2009 was a bill that Speaker Quinn and myself co-
12 sponsored regarding information about firearm
13 discharges being given over to the City Council.
14 So, again, they are the most transparent Police
15 Department. We are the safety big city. We are
16 here today to just continue to make improvements.
17 And that's our job, oversight. We're joined today
18 by Deputy Commissioner Julie Schwartz of the
19 Police Department's Advocate, and Deputy Chief
20 John Donohue. Before we hear from them, we're
21 going to hear from the Chair of the CCRB, Franklin
22 Stone. We're glad she's with us also. But before
23 we get to that, it's my honor and also I think
24 goes to show the import of this hearing and of
25 this topic and to this body to have with us the

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2 Speaker of the City Council, who's been at the
3 forefront of the fight to keep this City safe and
4 give the Police the resources they need to
5 continue to win the fight against crime. And I'd
6 like to turn over the Chair to Speaker Christine
7 Quinn.

8 SPEAKER QUINN: Thank you very
9 much. And I want to thank you, Chair Vallone. We
10 have intentionally kept your Committee incredibly
11 busy in the past three years, and this, the final
12 year of this term, is not going to be any
13 exception. But I want to thank you for all of
14 your work on a host of different issues, and in
15 particular, the series of oversight hearings that
16 came after the Sean Bell tragedy. So thank you
17 very, very much. You know as the Chair mentioned,
18 and it's very, very important to note, that over
19 the past few years we have lived through
20 unprecedented drops in crime statistics, drops to
21 levels that many thought would never be possible.
22 Homicide rates are at their near lowest in
23 recorded history. Crimes across the board in
24 nearly all categories are at all time lows. But
25 still, despite this tremendous accomplishment, and

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2 it is a tremendous accomplishment, there are still
3 some who feel the Department is falling short of
4 its own high standards when it comes to demanding
5 accountability for officer misconduct. The CCRB's
6 2007 annual report shows that while the CCRB is
7 substantiating fewer cases than ever before, the
8 NYPD is pursuing fewer and fewer of those cases
9 every year. 2007 saw the fewest number of
10 substantiated cases in five years, and yet, the
11 number of cases not pursued by the NYPD hit its
12 highest point in years. Clearly, with any entity
13 we need to have balance, and under the current
14 regulations that balance, in my opinion, is not
15 being achieved. We're spending City resources,
16 some say we should spend more, but we're
17 nonetheless spending City resources to keep the
18 CCRB up and running, nearly 11 and a half million
19 in Fiscal Year '09. If the cases are not being
20 prosecuted, then we have to ask, what are the
21 people of the City of New York, what are they
22 receiving in return for their money, especially
23 now, when as the Chair mentioned, we're going to
24 have to continue to make tough budget decisions?
25 In the past, during the Giuliani administration,

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2 the CCRB and the Police Department issued and
3 signed a Memorandum of Understanding granting
4 authority to the CCRB to prosecute its cases.

5 Although lawsuits prevented the full
6 implementation of that MOU, at the time, the
7 thinking was that allowing the CCRB to prosecute
8 its own cases would increase the quality and
9 efficiency of cases. CCRB attorneys would take
10 ownership of their cases and they would be
11 responsible for their own success or failure.

12 When you look at how the current system is serving
13 New Yorkers, it's clear to me that we need to get
14 back to those kind of basics. The people of New
15 York are best served when the NYPD meets not only
16 the incredible standards they've achieved in
17 recent years when it comes to crime statistics,
18 but the people of New York also benefit from
19 knowing that the few bad actors there may be in
20 the department are subject to the same laws and
21 same prosecution as those-- the other laws in the
22 City that they are sworn to protect. Reinstating
23 the MOU would be a critical acknowledgement that
24 restoring balance to the CCRB is an important
25 issue to so many communities across our City, but

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2 it is also a top priority inside City Hall. So I
3 urge all of us who have a role in this process to
4 come together as quickly as possible to restore
5 prosecutorial authority to the CCRB. And I know
6 that today's oversight hearing will add to the
7 dialogue on that matter, and I hope bring us
8 closer to the place where that MOU will be back in
9 place in the City of New York. Thank you very
10 much Mr. Chair.

11 CHAIRPERSON VALLONE: Thank you.

12 And we've also been joined by Eric Dilan, a valued
13 member of this Committee. And I want to thank our
14 staff for the work they've put into this hearing
15 today. Ms. Stone, thank you for being here again.
16 I know that you have some concerns that you wanted
17 us to hear about, and I'm sorry about the delay in
18 this hearing, but I think it's better now that we
19 have all the new statistics that we can go
20 through. So I'm going to ask you to testify, and
21 then we're going to question the CCRB. I'm going
22 to ask you to remain, if you can, so we can all
23 listen to the Police Department's testimony, in
24 case you have anything to add after that. And I
25 want to thank the Police Department for allowing

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2 that to happen. It's not often that they'd allow
3 someone to go first. But in the interest of
4 fairness, we now get to hear both sides and they
5 get to respond to you, and I think that's a very--
6 it's a great move on your part, and maybe we'll
7 see that more often in the future. But thanks for
8 doing that today. Ms. Stone, the floor is yours.

9 FRANKLIN STONE: Speaker Quinn,
10 Chairman Vallone and members of City Council, I'm
11 Franklin Stone; I'm the Chair of the Civilian
12 Complaint Review Board and I welcome this
13 opportunity to talk about the Civilian Complaint
14 Review Board and its 2007 annual report. With me
15 are the Agency's Executive Director, Joan
16 Thompson, and First Deputy Executive Director,
17 Meera Joshi Cattafesta, who will also be available
18 to answer questions after my testimony. First, I
19 want to thank you for your consistent support of
20 the CCRB. During the past years, as the agency
21 found itself confronting the prospect of handling
22 more complaints with fewer resources, you on the
23 Council provided necessary and much appreciated
24 funding in our adopted budgets. The focus of my
25 testimony today though is not on financial

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2 matters, but on our 2007 Annual Report, and in
3 particular on the changes in the way in which the
4 Police Department has been handling allegations
5 substantiated by the CCRB. The report covers
6 activities and actions for 2007, but the
7 statistical analysis of trends includes data for
8 the calendar years 2003 through 2007. I also have
9 information concerning developments since our
10 report was published. For background: Cities and
11 communities around the country have recognized the
12 value that civilian oversight of the police can
13 provide. Studies have identified at least four
14 ways in which civilian oversight makes a valuable
15 contribution: first, by holding officers
16 accountable for past misconduct and so deterring
17 future misconduct; second, by keeping a record
18 recognizing complaints as vital sources of
19 information about a department; third, by
20 identifying patterns and problems relating to
21 policies or supervision, rather than individual
22 misconduct; and fourth, by building public trust
23 in the police. The Board believes that the CCRB
24 meets all four objectives in its work overseeing
25 the New York City Police Department, the largest

1 police force in the United States. CCRB
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3 Procedures: for the record, I will briefly
4 describe our procedures for reviewing complaints
5 from the public about police misconduct. The CCRB
6 Board is comprised of 13 members appointed by the
7 Mayor. Five of those members are individuals
8 designated by the City Council, five from the
9 Mayor and three by the Police Commissioner. The
10 CCRB currently has a staff of approximately 180,
11 including 139 civilian investigators and
12 investigative supervisors and a team of four
13 attorneys. An investigator reviews complaints and
14 civilian witnesses, and obtains and analyses
15 Police Department data and other documentary and
16 other evidence, and interviews subject and witness
17 police officers. Each investigator is assigned to
18 an investigative team containing at least one
19 assistant supervisor, a supervisor and an
20 investigative manager. After completing an
21 investigation, the investigator prepares in draft
22 a detailed summary and analysis of the evidence
23 obtained. That draft is then reviewed by members
24 of the investigator's supervisory team and, in
25 certain cases, since September of 2007, also by

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2 one of our staff attorneys, each of whom is a
3 former New York State prosecutor. If the
4 recommendation is that an allegation is
5 substantiated, the draft is also reviewed by at
6 least one member of the agency's executive staff.
7 After any necessary changes are made, a report and
8 recommendation is submitted to the Board of the
9 CCRB for a decision as to the disposition of a
10 case. In practice, most cases are decided by
11 panels of the Board, each comprising one member
12 designated by City Council, one designated by the
13 Police Commissioner and one designated by the
14 Mayor, but any Board member can ask that a case be
15 considered by the Board as a whole. Cases are
16 decided using a preponderance of the evidence
17 standard, which is sometimes described as a more
18 likely than not, or a 51% standard. If an
19 allegation is substantiated, the Board will in
20 most circumstances recommend that the officer be
21 disciplined. This may take the form of
22 instructions in which the superior officer
23 instructs the officer to appropriate conduct, or
24 sends the officer for retraining; command
25 discipline, which is the imposition of the command

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2 level of penalty, up to ten days loss of pay; or
3 the issuance of formal charges and specifications
4 against the officer, which may lead to up to 30
5 days loss of pay or termination. During the
6 period from 2003 through 2007, the Board
7 recommended the issuance of charges in 80% of all
8 the cases which it substantiated. For 2007, the
9 figure is 76%. As soon as the Board reaches a
10 decision on a case, the complainant, the subject
11 officers and the NYPD are notified of its
12 findings. A copy of each substantiated case is
13 sent to the NYPD Advocate's Office, which reviews
14 the case and determines how it should be handled
15 within the Department. By statute, the Police
16 Commissioner makes the final decision in all
17 disciplinary matters concerning NYPD officers.
18 Board dispositions: During the five-year period
19 from 2003 to 2007, the Board substantiated
20 allegations in 1,434 cases, against 1,967
21 officers, which represented 11% of the cases in
22 which the CCRB had carried out a full
23 investigation. For 2008, that figure is slightly
24 lower, it is 7%. Although the number of
25 complaints received by the CCRB, and over which it

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2 has jurisdiction, has risen from 5,556 complaints
3 in 2003 to 7,548 complaints in 2007, the number of
4 substantiated cases has fallen, from 294 in 2003,
5 to 217 in 2008, and 161 in-- excuse me, I got my
6 numbers wrong here. This is important, so I want
7 to get them right. In 2003, we substantiated 294.
8 By 2007, we substantiated only 217, and in this
9 past calendar year we substantiated far fewer,
10 161. NYPD dispositions: As reflected in the 2007
11 annual report, two important trends are
12 discernable for the period 2003 to 2007. First
13 there has been a decline in the number of cases in
14 which charges have been issued. Second, there has
15 been an increased in the number of cases
16 designated, Department Unable to Prosecute. The
17 decline in the number of cases leading to charges
18 comes during a period in which the Board has
19 substantiated fewer cases, as I just described.
20 Charges were issued by the NYPD in 47% of the
21 cases disposed of by the NYPD in 2003. And in 7%
22 of such cases in 2007. During the same period,
23 the proportion of officers receiving instructions
24 increased from 26% in 2003 to 54% in 2007, and the
25 proportion of officers losing more than ten days

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2 pay fell from 8% in 2003 to 2% in 2007. In 2003,
3 just one percent of the CCRB's substantiated cases
4 were designated as Department Unable to Prosecute,
5 that's three cases in all of 2003. By 2007, that
6 number had risen to 36%, or 104 cases. During the
7 same period, the proportion of cases taken to
8 trial fell from 26% in 2003, that's 90 cases taken
9 to trial, to just 4% in 2007, that's 11 cases
10 taken to trial. These changes are of great
11 concern to the Board, which believes that a
12 disciplinary process which provides predictable
13 outcomes and appropriate punishments is more likely
14 to deter future misconduct and lead to public
15 confidence in such process. This objective can
16 best be achieved by moving the CCRB's
17 substantiated cases through the department's
18 disciplinary process by the issuance of charges.
19 When this is not done, the public does not get the
20 full benefit of such process. Recent
21 developments: Since issuing its 2007 Annual
22 Report, the Board has engaged in discussions with
23 the Department Advocate, and the CCRB's first
24 executive director has met monthly with the
25 Department Advocate to discuss cases designated

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2 Department Unable to Prosecute. Additionally, a
3 pilot project has been initiated, under which the
4 CCRB attorneys are assisting the department in
5 addition to selected, substantiated CCRB cases,
6 including by second seating departmental trials.
7 The CCRB hopes that such cooperation may result in
8 the issuance of charges in more instances; and
9 fewer cases being designated Department Unwilling
10 to Prosecute. The CCRB welcomes these
11 developments, but understands that there remains
12 much work to be done. We would like to have a
13 more transparent disciplinary process that will
14 achieve greater accountability on the part of
15 police officers. The figures for 2008 show a
16 modicum of change. Charges were issued with
17 respect to 13% of the CCRB's substantiated cases
18 in 2008, compared with 7% of such cases in 2007.
19 And 35% of the CCRB's substantiated cases were
20 designated Department Unwilling to Prosecute in
21 2008, that's 91 cases, compared with 36% in 2007,
22 which was 104 cases. I am grateful to have the
23 opportunity to discuss with you today the CCRB's
24 2007 Annual Report. And my colleagues from the
25 CCRB are happy to answer any of your questions.

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Thank you.

CHAIRPERSON VALLONE: Thank you, Ms. Stone. We've been joined also by Council Member Dan Garodnick. Thank you. Let's start with the good news. In 2008 161 substantiated charges. That's out of one of the world's largest standing armies, about 36,000 people. So the Police need to be commended for that very small number. Now let's get right to the crux of the problem however. In your testimony you state that in 2003 47% of the cases were disposed of by the NYPD. Well let me just work these figures out for a second. You stated that there's a much greater percentage of cases today than in 2008 that are being prosecuted by the NYPD after you substantiate the charges. Now we have discussed this, as you have, many times with the Police Department, and one of the things-- and they've got some obvious disagreements, and some explain a good portion of this number, but not all of it. One of the things they'll argue is there's a higher percentage now of abuse of authority cases, which are not force cases, which are cases where reasonable people can disagree as to whether or

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2 not there was reasonable suspicion for a stop or
3 probably cause for an arrest, things prosecutors
4 and defense attorneys argue about all the time.
5 So they will argue that many of these cases are
6 difficult to prove, abuse of authority cases.
7 What would your answer be to that allegation?

8 FRANKLIN STONE: That very argument
9 was raised by the Police Department in response to
10 our 2007 report when we sent it to them in draft,
11 and I did address that and a number of other
12 points raised by the Police Department in my June
13 16th letter. So I'm going to just refer you to
14 that, and then I'll say that in this context it
15 seems fair for us to note, this is what I wrote
16 the Police Commissioner, that the NYPD has
17 declined to prosecute substantiated Force cases
18 involving night sticks or pepper spray, so that it
19 is not true-- the decrease in their willingness to
20 prosecute cases, even bring them to trial to
21 figure out what the facts are of a particular
22 case, and their unwillingness to press charges has
23 occurred across the board within all categories of
24 cases. And there certainly have been Force cases
25 which they have been unwilling to prosecute in

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2 addition to other cases. So I think the number
3 just don't bear out that argument. And the staff
4 could address the numbers issue here.

5 MEERA JOSHI CATTAFESTA: Hi, I'm
6 Meera Joshi Cattafesta, First Deputy Executive
7 Director, and I can give you a backdrop on the
8 allegations, the types of allegations that they've
9 declined to prosecute in 2007 and 2008. In 2007,
10 the way we categorize the Declined to Prosecute
11 when it comes to types is by allegation, because a
12 case can contain more than one type of allegation,
13 so a more accurate measure is the allegation. In
14 2007, they declined to prosecute 43% of our Abuse
15 of Authority allegations, and they declined to
16 prosecute 40% of our force allegations. And in--

17 SPEAKER QUINN: [Interposing] Can
18 you just restate that again? I'm sorry. And can
19 you move the mic a little closer? I'm having a
20 little trouble hearing you. I'm sorry.

21 MEERA JOSHI CATTAFESTA: Can you
22 her me?

23 SPEAKER QUINN: That's better.
24 Thanks.

25 MEERA JOSHI CATTAFESTA: Okay. In

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2 2007, they declined to prosecute 40% of our Force
3 allegations. In 2007, they declined to prosecute
4 43% of our Abuse of Authority allegations. In
5 2008, they declined to prosecute 38% of our Force
6 allegations and they declined to prosecute 40% of
7 our Abuse of Authority allegations. I have the
8 numbers behind those percentages if you need them.

9 CHAIRPERSON VALLONE: Now, there
10 are other arguments that the Police Department
11 will make, and much of it revolves around the
12 types of charges substantiated by the CCRB. There
13 will be obvious disagreements, no matter how many
14 cases you substantiate, there are always going to
15 be reasonable disagreements between people on what
16 should be prosecuted and what shouldn't. But many
17 times-- in about 20 or 30% of these cases, the
18 Police will argue that even your own investigators
19 have stated that no charges should be
20 substantiated in this case. That has then been
21 overruled without comment by a Board member, by a
22 Board member. And therefore it would be very
23 difficult for the Police to prove that charge, and
24 so therefore they don't bring those charges. Now
25 we, let me answer the question a little bit for

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2 you, we've determined that that's not a practice
3 that's new, and that would not in any way explain
4 the dramatic drop this year; but it is a very
5 interesting situation that's raised where an
6 investigator will say no charges, and then a Board
7 member will overrule that without comment and give
8 that to the Police Department. As a former
9 prosecutor, I can see the problems with that. So
10 how would you address that?

11 FRANKLIN STONE: I'm going to let
12 Ms. Cattafesta address the facts, and then I'll
13 address the balance of your comments.

14 MEERA JOSHI CATTAFESTA: As you
15 correctly stated, it is not a new phenomena for
16 the Board to come to a different final disposition
17 than the investigator's underlying recommendation.
18 I'll give you the background for 2007 and 2008.
19 In 2007, 23 of the substantiated cases that we
20 sent over were what we refer to as Flips, the
21 investigator's recommendation was different from
22 the Board's final decision, which was to
23 substantiate. Out of those 23 cases, the DAO
24 prosecuted seven of them. So they prosecuted 23%
25 of those Flip cases in 2007. In 2008, 31 of our

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2 substantiated cases that were sent over to the
3 Department Advocate's Office to prosecute were,
4 what we refer to as Flips. The DAO prosecuted 11
5 of those cases; therefore they prosecuted 35% of
6 the flips.

7 CHAIRPERSON VALLONE: And in '03?

8 MEERA JOSHI CATTAFESTA: I can give
9 you the numbers for '03. In 2003, the Board-- we
10 sent over 30 cases that were the result of Board
11 Flip, and the Department declined to prosecute one
12 of those cases. They prosecuted 29. The next
13 figure I have is actually 2005. We sent over 13
14 cases that were flips, and again, they declined to
15 prosecute one and they prosecute 12. In 2006,
16 there were nine such cases, two they declined they
17 prosecute and seven they prosecuted. And again, I
18 gave you the 2007 and 2008 numbers.

19 CHAIRPERSON VALLONE: Okay, thank
20 you. I'm going to go ahead--

21 FRANKLIN STONE: [Interposing] The
22 facts make the point, which is we have always, as
23 a Board, as we're charged under the Charter, we're
24 the ones who make the decision. And having been
25 on the Board now for more than ten years, I have

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2 participated in cases where-- and generally it's
3 one or tow members on a panel will have read a
4 case and come to a panel meeting and said, I just
5 disagree. I just disagree, and we disagree with
6 the investigator. I mean, that is as the process
7 is supposed to work. There has been a change.
8 During the first eight years that I was on the
9 Board, when I flipped a case or my panel or the
10 Board flipped a case, it was still prosecuted by
11 the DAO. And that has dramatically changed in the
12 last year and a half. We have been told by the
13 department, I guess over the last few years,
14 various things about the reason for that. But the
15 points that they seem to be settled on now are
16 twofold. One is that they are implementing a
17 different standard now for the prosecution of
18 cases that come from the CCRB and the IAB, so that
19 they-- even though the law hasn't changed in any
20 respect, they are imposing a different standard in
21 their decision of what cases to take to trial and
22 to pursue discipline. And the second is that they
23 say we do not understand police activity, a
24 comment that I have categorically rejected in this
25 chamber before and I categorically reject again

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2 today. I believe that the CCRB board and its
3 investigative staff has a very, very good
4 understanding of the realities of police life and
5 has a very good understanding of the applicable
6 law. We call them as we see them. We have not
7 changed our standard, and the changes are not
8 because of what has come out of the CCRB, with the
9 exception possibly of our sending over fewer
10 substantiated cases, now that we've got our cases
11 being reviewed by former prosecutors before they
12 go over. The changes, the fundamental changes
13 have come from changes within the Police
14 Department, and we stand by our recommendations.

15 CHAIRPERSON VALLONE: And we're
16 going to go through-- you've both implemented many
17 changes since our last hearing, which have worked,
18 and that's one of them, your prosecutor that now
19 reviews these cases, much of the training that's
20 being involved, second seating, things that we're
21 going to go through in a moment. But I think our
22 staff's analysis bears out what you said, that
23 it's very clear that this has been, this flip has
24 been something that's been going on for a while,
25 would not explain the difference in the failure to

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2 prosecute between '03 and '07. I'd still like to
3 know more about why that happens, but we'll get to
4 that. But while we have the Speaker, I want to
5 make sure that she has the chance to ask some
6 questions. So we're going to go to her now.

7 SPEAKER QUINN: Thank you very
8 much. And first, Ms. Stone, I just want to thank
9 you for your service for so long on the CCRB and
10 as Chair. There's a long list of Boards in the
11 City of New York and sometimes they're actually,
12 as you well know, quite hard to fill, because they
13 take a lot of work and a lot of people's time for
14 very little recognition or reimbursement. So I
15 just want to thank you very much for that lengthy
16 service.

17 FRANKLIN STONE: Thank you. And
18 I'd like to thank my Board too, because they work
19 very, very hard.

20 SPEAKER QUINN: Absolutely.
21 Absolutely. So just in listening to the
22 conversation about cases that are unable to be
23 prosecuted by the Police Department, it actually
24 sounds like what you're saying is that based on
25 the changes you all have made internally, and

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2 other changes that have been made internally,
3 hiring prosecutors, etcetera, you think the trend
4 should be the other way, that the quality of the
5 cases-- I just want to understand what you're
6 saying. So you're actually saying you think the
7 quality of the prosecutions or the recommendations
8 I guess I should say, that you're sending to the
9 Police Department are of a higher level, so that
10 there should be fewer that are ending up in the
11 Unable to Prosecute category.

12 FRANKLIN STONE: Absolutely. That
13 is my view, and I don't believe the Department is
14 unable to prosecute. I believe they are unwilling
15 to prosecute.

16 SPEAKER QUINN: And in your
17 conversations with them, which you mentioned with
18 the Advocate's Office, etcetera-- and I want to
19 reiterate what you said in your testimony, it's
20 good that everybody is kind of at the table trying
21 to work this through and fix this, are there
22 specific things the department has said that, you
23 know, this was a problematic way of documentation
24 or this was a problematic way of investigating
25 that didn't meet our standard, or something that

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was tangible that you could go back and, you now, routinize or change to address concerns?

FRANKLIN STONE: There will always be cases that we send over that cannot be tried.

SPEAKER QUINN: Of course.

FRANKLIN STONE: That's the reality. We're not suggesting that 100% is the standard that we would hold the Department Advocate's Office to. There certainly are more things that they could-- they do point; I don't think they point to any systemic problems--

SPEAKER QUINN: [Interposing] That's actually my question, yeah.

FRANKLIN STONE: I'm going to let Ms. Cattafesta address that, but I don't believe they've pointed to systemic problems that we need to fix. I think it's a case-by-case basis. Unfortunately we do not hear about the reasons that they are declining to prosecute the cases until, for the most part until after the decision has been made, so we get an after the fact decision that leaves us not in a position where we can come back and say, oh, but that's not true; oh, you would have found that complainant very

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2 persuasive if you'd actually sat down-- oh, you
3 couldn't find the complainant; we could have
4 helped you find the witness.

5 SPEAKER QUINN: There's nothing
6 that prohibits that conversation during the
7 process is there? There's no legal reason-- I'm
8 not a lawyer so-- sometimes I try to pretend I'm
9 one, but I'm actually not. There's no legal
10 reason you couldn't have that conversation wit the
11 Department is there?

12 FRANKLIN STONE: None that I am
13 aware of. Let me let Ms. Cattafesta address it,
14 because she has actually participated--

15 SPEAKER QUINN: [Interposing] Thank
16 you.

17 FRANKLIN STONE: --in some of those
18 discussions.

19 MEERA JOSHI CATTAFESTA: Hello. At
20 every month, on or about the 15th of the month, we
21 get a disposition report from the NYPD, and those
22 cases which they've declined to prosecute, I go
23 over and meet with the advocates to determine the
24 reasons that they decline to prosecute, and then I
25 present those reasons to the Board in executive

1 session, and to our attorneys. On occasion there
2 are differences of opinion, and that's the best
3 way to phrase most of the Declines to Prosecute,
4 and on the instances where there is a systemic, as
5 you say, problem, then that information is
6 conveyed to the attorneys so that the same problem
7 does not reoccur. But I have to say, that
8 percentage is very low. In general, the Decline
9 to Prosecute cases surround a difference of
10 opinion in terms of credibility or the weight of
11 the officers' statements.
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13 FRANKLIN STONE: And just to
14 summarize, where the deficiency is in that area I
15 think is that the CCRB and no one else is given an
16 opportunity to be an advocate on behalf of their
17 recommendation or the complainant before the
18 decision is made. And there are a lot of things--
19 I think that that would make a difference, if we
20 had an opportunity to discuss it before the
21 decision was made instead of after.

22 SPEAKER QUINN: How would you, just
23 one more quick question, describe the general
24 working relationship with the Department as it
25 relates to this back and forth around cases that

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they are not prosecuting? Pardon me.

FRANKLIN STONE: Police

Commissioner Kelly and I have a very cordial relationship and we have certainly discussed this toe-to-toe many, many times. It has not resulted in any significant changes, although we are pleased with the opportunity to participate in a limited basis in cases that the Department does take to trial. Again, I'll ask Ms. Cattafesta, because she and the staff have been on the front lines of this, and not me.

SPEAKER QUINN: Great. And let me just say just in the context of your answering the question. Just, Chair Stone's reference, the pilot around the second chair, so I'm interested to also know as it relates to the working relationship, how that's going, A; and B, whether you think that's going to be a sufficient solution to the challenges around cases that the Department has not prosecuted?

MEERA JOSHI CATTAFESTA: As to the continued cooperation and the second seating program, we hope that it provides a solution, but the numbers, obviously, will tell the story for

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2 us, and they'll dictate how we proceed. In terms
3 of cases where they decide to prosecute, the
4 cooperation, the cooperation, my impression is
5 that it has been greatly enhanced. Our attorneys
6 are frequently in contact with the Department
7 Advocates. This week they finished their first
8 trial under the second seat program. They contact
9 us--

10 SPEAKER QUINN: [Interposing] The
11 first?

12 MEERA JOSHI CATTAFESTA: The first
13 trial was completed this week, and they contact us
14 frequently with help on obtaining witnesses or on
15 reviewing the original case file. And all of
16 these, I think are excellent steps in the right
17 direction, and they provide good prosecutorial
18 support. In terms of cooperation for cases that
19 they decline to prosecute, there isn't much of a
20 dialogue, because as chair stone pointed out, we
21 find out about the decision to decline to
22 prosecute after it's already become official. I
23 do meet with them to understand the thinking
24 behind it, but at that point, the action is
25 complete.

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2 SPEAKER QUINN: My final question
3 to you, Chair Stone, and I don't know whether this
4 is a question you can answer in your capacity as
5 Chair of the CCRB or maybe just as an individual;
6 what is your opinion on restoring or giving, I
7 guess it is restoring, giving the MOU
8 prosecutorial authority to the CCRB?

9 FRANKLIN STONE: As you know, I was
10 on the Board when the authority was given--

11 SPEAKER QUINN: [Interposing]
12 Right.

13 FRANKLIN STONE: --to the Board
14 during the Giuliani administration. I am
15 personally in favor of the CCRB being given that
16 authority, for the reasons very well laid out in
17 the CCPC reports, there are two reports that
18 recommend it, and the Citizen's Union Report. And
19 though I'm not very fond of the NYCLU Report--

20 [Laughter]

21 SPEAKER QUINN: Sorry.

22 FRANKLIN STONE: --there are
23 aspects of it I absolutely disagree with, as you
24 have heard in this room, one thing I do agree with
25 them on is their endorsement of the APU. The CCRB

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2 Board has not discussed this subject in many, many
3 months. It is fair to state that a number of
4 Board members, and I guess I do too, have concerns
5 about the practical aspects of implementing that--

6 SPEAKER QUINN: [Interposing]
7 Staffing, funding, etcetera.

8 FRANKLIN STONE: --so I'm not going
9 to take a position on behalf of the Board or
10 venture a guess as to exactly how they would come
11 down on it. But there certainly are practical
12 questions. In response to your last question,
13 just on this point of cooperation, and I may be
14 putting the cart before the horse but I think it
15 fits in here, in the Police Department's testimony
16 which we are about to hear, they make the
17 assertion that in every case that they get they
18 work with us, they reach out to the investigators.
19 I think the specific language is that in every
20 instance in which charge and specifications are
21 served, my staff reaches out to the CCRB to enlist
22 the assistance of the investigators in contacting
23 complainants so that the complainants are not
24 surprised by a call from the Police Department,
25 and that if they're having difficulty reaching

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2 someone, you know, they will always contact the
3 investigator. And I get a very different report
4 from the CCRB staff. They report to me that these
5 are wholly inaccurate statements. Although the
6 NYPD has occasionally reached out to
7 investigators, it certainly hasn't happened in
8 every case, and probably not even in the majority.
9 In fact, during the recent trial in which a CCRB
10 lawyer second-sat, the NYPD turned down our direct
11 offer of assistance in which we offered to have
12 the investigator reach out to the complainant.
13 Further, there have been cases which we have
14 received recently in which the advocate's office
15 admits that they were unable to contact the
16 witness or the complainant, but did not ask for
17 our help. So that, I think also speaks to the
18 question of how well the cooperation is actually
19 happening, though we have high hopes that as
20 individuals work together that we'll make progress
21 in this area.

22 SPEAKER QUINN: Thank you very
23 much, and thank you Chairperson Vallone. I want
24 to apologize; I'm not going to be able to stay for
25 the entirety of the hearing, but thank you very

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much.

CHAIRPERSON VALLONE: Thank you for joining us, Madam Speaker. To follow up on something you just said-- and first of all, we've been joined by Council Member Katz from Queens, and our newest member, Council Member Crowley, also from Queens. You said that you don't get the reasons that the case has been declined until after it's been declined. Now during our 2007 hearing the Police Department did discuss actually returning the cases to you prior to making a decision, - - that has not happened?

FRANKLIN STONE: My understanding is that it has not. You haven't--

MEERA JOSHI CATTAFESTA:
[Interposing] I think, and this was raised in the context of the prior hearing, one of the biggest impediments to that is time. We are all under an 18-month statute of limitation. So by the time the Police Department gets the case, they have a set amount of time within which to decide to prosecute and serve charges, or to decline. So in an ideal world, given a larger amount of time, then that could be an excellent way to provide

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2 prosecution support with CCRB investigators. For
3 those cases that have enough time on the statute
4 of limitations, then we would encourage that and
5 be of course available to provide that support.

6 CHAIRPERSON VALLONE: And one of
7 the arguments in favor of the Speaker's position
8 of giving you prosecutorial powers, which I have
9 not taken a position on yet, is that it would
10 greatly enhance the amount of time you have in
11 that you do not have to work on a case, give it to
12 the Police Department, have them work on the case,
13 and in essence double the amount of time that you
14 would be working on it. It would be quicker for
15 the police officers to have a resolution of the
16 case and obviously you wouldn't lose as many cases
17 to the statute. But, be that as it may, that's
18 not what we're operating under right now. One of
19 the things you didn't discuss in detail, and we
20 discussed the percent of cases they've declined to
21 prosecute. You mentioned in your testimony the
22 percentage of cases where they've given
23 instruction. That was a huge topic of discussion
24 at our last hearing. The percentage has gone up
25 to 54% in 2007, from 26% in 2003. One of the

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2 reasons that will be given is that most of these
3 cases involve abuse of authority, where
4 instructions are appropriate. You didn't stop
5 correctly in this case; this is how you should do
6 it next time. There was some disagreement. The
7 Police Department argued that in almost all cases
8 where instructions were given, there was no
9 recurrence of any charges against those officers.
10 You disagreed and I think part of the problem was
11 we didn't have enough time to evaluate the
12 situation. Now some more time has passed. So
13 what is your stance now on the issuance of
14 instructions by the Police Department?

15 FRANKLIN STONE: I'll let Ms.
16 Cattafesta address the numbers. Again, that's a
17 point that I addressed in my letter to
18 Commissioner Kelly back last June. The fact is
19 the Police Department had taken the position,
20 through Chief Campisi, in testimony before the
21 Council that officers receiving instructions are
22 invariably found, you know, to not return to the
23 CCRB with the same type of complaint again. As
24 our report indicates, the 2007 report indicates,
25 this statement is false. Many officers who have

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received instructions have received the same type of complaint again. Although there's probably more that could be said on this subject, you know, I think it's important to correct the public record there.

CHAIRPERSON VALLONE: There may be a simple correction, they may have received the complaint, but the amount of substantiated charges against those officers were very, very few; unless you disagree?

FRANKLIN STONE: I think we agree with you on that. We were challenging the Police Department's statement that instructions work, that once an officer has gotten instructions, he never gets another complaint in that area, and that is just patently false.

CHAIRPERSON VALLONE: True. But complaints are one thing. Anybody can make a complaint. Substantiated complaints are your job, and if there was only, I believe three, substantiated complaints against officers who have received instructions before, I can see the Police Department's point when it comes to that or-- clearly what they said wasn't technically correct,

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2 but if only three of the officers-- 7 of 90? 90
3 charges were brought against officers who received
4 instructions, 7 were substantiated. I think that
5 proves that the instructions did work. Or do you
6 disagree?

7 FRANKLIN STONE: I'm not sure I can
8 take a position on whether the reason a police
9 officer doesn't get a second substantiate case is
10 because instructions work. We substantiate, as
11 you know, a very, very small number of cases
12 against the NYPD officers.

13 CHAIRPERSON VALLONE: Okay. You
14 indicated before that you took issue with the fact
15 that it was alleged that you don't understand what
16 the police officers put up with. What sort of
17 training to your members receive? What sort of--
18 do they still do ride alongs, as used to occur? I
19 did that when I was a prosecutor, immensely
20 effective. What sort of training do you receive
21 to be able to understand the police officers?

22 FRANKLIN STONE: Our Board members,
23 to the best of my knowledge, do not do ride
24 alongs. Our Board members consist by and large of
25 lawyers. Well first, we have three board members

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2 who are former executive in the New York City
3 Police Department, so they are very well-versed in
4 it. Several of us, including myself, are former
5 prosecutors who have worked with the police
6 officers, sent them out to execute search
7 warrants. I, and I believe some of the other
8 prosecutors; have had situations where they've had
9 police officers shot when they've been executing
10 search warrants. So we are certainly aware of the
11 dangers associated with police-- normal everyday
12 police activity, and we're also very well versed
13 in the law. We have at least one and maybe two
14 law professors. We certainly have had many law
15 professors over the history of the agency. And
16 we've had criminal defense lawyers; we've had an
17 assortment of people. Training afterwards, we're
18 giving cases. We understand what the law is.
19 When there's a question about the law we consult
20 with the staff. And there's a lengthy discussion
21 sometimes about case law. And there's certainly a
22 lengthy discussion about the facts of
23 substantiated cases. I think that was sort of a
24 long-winded answer. But I stand by the fact that
25 we know what we're doing and we haven't change din

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the last 15 years.

CHAIRPERSON VALLONE: Actually, I was thinking more about your staff. What kind of training did they receive?

FRANKLIN STONE: Ms. Cattafesta can address that.

MEERA JOSHI CATTAFESTA: The CCRB investigators have an in-depth in-house training, but we also are able to take advantage of several of NYPD's training programs. We do an IAB training. They do have the opportunity to visit precincts, go on ride alongs and the Deputy Commissioner, Julie Schwartz has extended the opportunities for training for our staff attorneys to undergo some of the same training that her advocates undergo, such as the Laser, the new Laser policy training. So--

CHAIRPERSON VALLONE: [Interposing] Well you just mentioned opportunities a few times. How many are actually used in practice?

MEERA JOSHI CATTAFESTA: They have not attended-- no, the opportunities for the investigators are, I meant that as a fact. It's something that happens and happens regularly. But

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2 we look forward to the opportunities to sharing
3 training that the advocates undergo too, so our
4 attorneys have the same background knowledge of
5 NYPD procedures that they do.

6 FRANKLIN STONE: And the Police
7 Department has actually recently made itself
8 available, at our request, made itself available
9 to answer questions that we have about internal
10 police practices and policies, and that sometimes
11 comes up as an investigator is reviewing a case.

12 CHAIRPERSON VALLONE: Okay, yes.

13 MEERA JOSHI CATTAFESTA: I'll just
14 say we actually have a Lieutenant, a Sergeant and
15 two Officers who work out of the CCRB and are
16 available on a daily basis to answer questions
17 about police practice.

18 CHAIRPERSON VALLONE: Okay. Let's
19 discuss some of the changes that were made since
20 our last hearing. You argued or you asked time
21 for Stop and Frisk data based on precincts rather
22 than police commands. And as I understand it,
23 since then you've received that information based
24 on precincts. First of all is that true and has
25 it been helpful? I'm seeing heads shaking.

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2 FRANKLIN STONE: Give us just a
3 moment.

4 CHAIRPERSON VALLONE: Sure.

5 [Pause]

6 MEERA JOSHI CATTAFESTA: My
7 understanding is we received the same information
8 that the City Council received regarding Stop and
9 Frisk.

10 CHAIRPERSON VALLONE: That-- well
11 that's based on precinct then. Has that been
12 helpful to you?

13 MEERA JOSHI CATTAFESTA: Yes, it
14 has.

15 CHAIRPERSON VALLONE: Okay. You
16 also, the Police Department testified and you
17 agree, that it's part of your job to give the
18 Police Department policy suggestions and
19 recommendations. Have you given any recently and
20 have they been implemented?

21 FRANKLIN STONE: I don't believe
22 we've issued a policy recommendation in the last
23 year or two. We certainly have over the time that
24 I've been on the Board, and the Police Department
25 has responded very positively, by and large, to

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those recommendations.

CHAIRPERSON VALLONE: One last question before I go to Council Member Garodnick. As you said, and as the Police Department details in many of their pieces of correspondence with myself and others, there's just going to be disagreements and there will be a number of cases that they don't believe should be prosecuted and you do, and there's nothing anyone can ever do about that. But many times, the Police Department will say that since they have to prosecute and you don't, they're given cases that they can't prove. Have you been able-- obviously you don't agree with that statement, but have you been able to implement any changes to address that concern, or is there anything else that can be done to address that concern?

FRANKLIN STONE: As I said earlier, I don't believe there are systemic problems that we're able to fix to address it. I don't believe-- there will always be some cases that can't be tried. Beyond those cases, I don't think there's been anything to fix at the CCRB. We stand by the substantiated cases that we send over.

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2 CHAIRPERSON VALLONE: Okay. I have
3 some more, but first we'll go over to Council
4 Member Dan Garodnick.

5 COUNCIL MEMBER GARODNICK: Thank
6 you, Mr. Chairman. And Ms. Stone, and to your
7 colleagues, thank you for being here today. I
8 wanted to follow up on a couple of points from
9 your testimony. First was the Unable to Prosecute
10 element. I noted that the-- and the Speaker asked
11 you a few questions on the subject of the number
12 going up from one percent to 36% I think you said
13 in your testimony. The first question that I had
14 for you was, the standards, as far as you're
15 concerned-- we can ask this directly of the NYPD
16 in a moment; but the standards that are used
17 internally by the NYPD for making the
18 determination that they are unable to prosecute,
19 is that something which is set out clearly and
20 articulated as part of policy? Or is that just
21 made on a case-by-case determination? How is that
22 done, from your view, within the Police
23 Department?

24 FRANKLIN STONE: I don't believe we
25 have written out policies, because this is a

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2 decision that falls squarely within the Police
3 Department, what they do with our cases when they
4 come over. But the law is, while it's a complex
5 area of the law, the law is clear and we are
6 applying the same-- we are in theory applying the
7 same law to the determination. I think there are
8 two points to be made. One is that the statistics
9 show that there has been a change in the standard,
10 if you look at 2003 to 2008. Something happened
11 two years ago that made them unwilling to
12 prosecute a significantly larger number of our
13 cases. A second thing that I've had experience
14 with on an individual case basis, because we
15 pulled out a few cases about a year and a half ago
16 that we discussed in depth with the New York City
17 Police Department, and what I found in discussing
18 those cases was that it appeared to me that the
19 Police Department had unilaterally resolved to
20 factual issues in favor of the testimony of the
21 police officer, and did not give sufficient credit
22 that the CCRB had given to the testimony of the
23 complainant. And as a former prosecutor, my
24 believe-- and a corporate litigator for many
25 years, my belief is the place to thrash out the

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2 issues of fact are in a trial, not by reading a
3 cold piece of paper and deciding unilaterally that
4 the police officer's testimony should be credited.
5 So I believe that that's one fault that I've seen
6 in at least some cases.

7 COUNCIL MEMBER GARODNICK: Well let
8 me just follow up on that for a moment, because it
9 sounds like there were situations in which you
10 believe that the Police Department credited the
11 information given by police officers over a
12 complainant's. But would that be done at the
13 outset where they were discussing whether or not
14 to prosecute the case in the first instance? I'm
15 sorry; I'm having a contact lens problem.

16 FRANKLIN STONE: Our investigators
17 make credibility determinations as part of their
18 recommendation to substantiate a case. And if a
19 case has been substantiated, by and large they
20 have determined that the complainant and the
21 witnesses supporting the claimant have made a
22 colorable claim of 51% preponderance-- that the
23 51% preponderance of the evidence standard has
24 been met. So they've generally made a credibility
25 determination in favor of the complainant, in at

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least some aspects of the testimony.

COUNCIL MEMBER GARODNICK: I see, so in those situations, the CCRB has made a credibility determination, has included that in its report to the Police Department, and the Police Department in those situations say, we don't believe the CCRB's credibility determination on the basis of the complainant, rather we believe in the entirety the police officer's testimony, and as a result of that we're not going to prosecute this case. Is that accurate?

FRANKLIN STONE: That's how it appears to us in many cases, and I would add one more gloss to that. Often, as someone who's read thousands and thousands of these cases, often the credibility turns not that the complainant is so credible, but that the police officer, we flat out do not believe is credible. So it can go both ways. There's a credibility determination, but it often turns on the police officer's testimony, for example, being contradicted by other police officers or internally inconsistent, or you know, some other reason that we may have found the police officer not to be credible.

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2 COUNCIL MEMBER GARODNICK: And your
3 view, if I understand it correctly, is that those
4 determinations should not be made at the point of
5 able or unable to prosecute, but rather should we
6 adjudicate this case in favor of the complainant
7 or of the police officer once it goes to the
8 formal process. Is that right?

9 FRANKLIN STONE: That's my view.

10 COUNCIL MEMBER GARODNICK: Okay.
11 What happened two years go, in your view, that
12 changed the attitude towards the CCRB's
13 substantiated cases?

14 FRANKLIN STONE: Well, I think the
15 Police Department can describe that better than I
16 can, but certainly Ms. Schwartz's arrival and the,
17 as they characterize it, the professionalization
18 of the DAO office, is the turning point in the
19 treatment of CCRB cases. That's what happened two
20 years ago. They can describe, because I'm not
21 privy to what happened internally with that, but
22 clearly that was the turning point. And I think
23 that they agree that that was the turning point in
24 the treatment of our cases, that they're applying
25 a different standard from the standard that they

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applied before.

COUNCIL MEMBER GARODNICK: But you have seen no written policies which set for that standard. Is that right?

FRANKLIN STONE: No.

COUNCIL MEMBER GARODNICK: Okay. I heard you and your colleague, I'm sorry I don't know your name; I missed it before. But, both of you have referred to what I think is the same thing, where you've said Declined to Prosecute, and I've also seen the statistics you gave as Unable to Prosecute. Now it would see to me like those should be two different ideas. But I just want to make sure that I'm understanding. If they are separate, I'd like to know that. If you're referring to them as the same, I just want to understand that as well.

FRANKLIN STONE: The Police Department only has one category that is used to cover both those cases. We refer to them as the DUP cases, D-U-P. And the Department has always said, Department Unable to Prosecute. We have been increasingly referring to it as Department Unwilling to Prosecute. I think when they were

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2 declining-- in 2003, when they were declining one
3 case, or in 2004, when they were declining one or
4 two cases, we were all in agreement that that case
5 was probably an Unable to Prosecute. And I think
6 now we believe the category, and I believe that
7 they agree with this, that the category includes
8 not only those they are unable to prosecute, for,
9 you know, the death of a complainant or the death
10 of a police officer or whatever, but also those
11 that they are unwilling to prosecute.

12 COUNCIL MEMBER GARODNICK: I took
13 interest in your testimony where you said that the
14 CCRB does not hear until after a decision is made
15 by the Police Department that they are unable to
16 prosecute, let's just go with their terminology
17 for a moment, which would mean to me that there
18 were not adequate facts to be able to put on a
19 case or that somebody had died, the complainant
20 had died or unavailable or any number of those
21 issues-- but that the CCRB, which should have
22 compiled all of the facts and spent all of that
23 time and our taxpayer dollars to compile all that
24 information, you know, has all the relevant
25 information to allow them to go forward. The

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2 question that I have for you is, what would have
3 been the circumstances in your view if the Police
4 Department had reached out to you in these cases
5 where they said they were unable to prosecute,
6 would you have been able to provide information to
7 them to be able to allow them to go forward?

8 FRANKLIN STONE: I think having an
9 opportunity for us to advocate on behalf of the
10 complainant and on behalf of our decision in the
11 case invariably should have made a difference in
12 some of the cases, but at least as a matter of
13 fairness, it would have been nice if we had had an
14 opportunity to do it. I also would find it hard
15 to believe in the cases that they declined to
16 prosecute because they couldn't find the
17 complainant, that we might have been able to
18 assist in making that happen.

19 COUNCIL MEMBER GARODNICK: I would
20 think so. Which raises the question, from your
21 view, do you think that the NYPD in these
22 proceedings is adequately representing the
23 interests of the complainants in these cases?

24 FRANKLIN STONE: I think that the
25 input from the CCRB would improve that.

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2 COUNCIL MEMBER GARODNICK: So you
3 think that if the CCRB were to step into the role
4 of being able to present facts in the
5 circumstance, complainants would be better served?

6 FRANKLIN STONE: I believe that
7 fairness and the truth would be better served. I
8 am a believer in the process.

9 COUNCIL MEMBER GARODNICK: Okay, I
10 only had one more question for you and it's on a
11 separate topic. It was on the subject of the
12 decline in substantiated cases. You noted that
13 the number of substantiated cases went down from
14 2003 to 2007 from the number of 294 to 217, and
15 then on an even more dramatic drop from 2007 to
16 2008 from 217 down to 161. And I m very hopeful
17 that my chairman's conclusion is the right one,
18 that perhaps things are going well, perhaps that
19 is the reason, and I think that would be terrific.
20 But my question for you is, has there been a
21 decline in the number of investigators who are
22 assigned to these cases over time from between
23 2003 and 2008? My question here is just the
24 obvious one, I just want to make sure that this is
25 attributable to the good news as opposed to an

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2 inability by the CCRB because of budgetary
3 constraints or other, to actually go out and do
4 the work that you need to do.

5 MEERA JOSHI CATTAFESTA: First of
6 all, as to the decline in substantiated cases, I
7 don't know that we necessarily categorize that as
8 a victory. The cases are reviewed on a case-by-
9 case basis. As to the headcount, we have seen a
10 decline in headcount. We're currently at 138. In
11 FY 2007, our investigative headcount was 148. In
12 FY 2008, our investigative headcount was 143, with
13 the projected November and what we anticipate
14 January Plans going into affect, we're going to be
15 down to 123, that's 123 investigative headcount.
16 That has a tremendous effect on our ability to
17 complete cases timely. Obviously a full
18 investigation takes more work and more time. So
19 those will be the efforts that are able to be put
20 forth, and full investigations will be diminished.
21 The average days to completed currently is 316.
22 With the November Plan in effect and the
23 anticipated January Plan, that number is going to
24 jump to 404. The average investigator caseload is
25 currently 33. In 2007 Fiscal Year, we were at 23.

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2 In 2008, we were at 28. With the November Plan in
3 effect and the anticipated January Plan going into
4 effect, we will be at a high of 57 cases per
5 investigator. Currently 46% of our caseload is
6 older than 12 months. For the statute of
7 limitation reasons that I outlined before, we
8 consider that an at risk population. With the
9 projected effect of the November and January
10 Plans, that's going to jump to 70% of our caseload
11 being at 12 months. So the effect of the budget
12 cuts are going to have a devastating effect on our
13 ability to complete cases thoroughly and timely.

14 COUNCIL MEMBER GARODNICK: Thank
15 you, and I appreciate your point about the
16 anticipated cuts and where we are today. But I
17 really just wanted to focus you on the point,
18 really between 2007 and 2008, really if we can
19 just hone in specifically. There was a
20 considerable drop in the number of substantiated
21 cases from 217 to 161. So that's about a 25%
22 drop. It seems like the number of investigators
23 was hovering in the ballpark of 148, 138 or 143 at
24 that time, and I didn't see the 25% drop off in
25 investigators. What happened there?

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2 FRANKLIN STONE: We are internally
3 studying whether there might be something systemic
4 that's gone on within the CCRB. One change that
5 we had during that period of time was the addition
6 of four prosecutors to our staff. They review all
7 substantiated cases. So that's another sieve, if
8 you will, that substantiated cases are going
9 through before they hit the senior staff and
10 Board. There may be other reasons as well, and we
11 are working on slicing and dicing the statistics
12 and analyzing everything we can to figure out
13 whether there's a reason. I will make a comment
14 that since I've been on-- when I first arrived at
15 the CCRB I was advised in no uncertain terms to
16 avoid speculating on why there's an increase in
17 the number of complaints or decrease in the number
18 of complaints or why there are more substantiated
19 or why there are fewer substantiated, because we
20 don't really know. I certainly agree with the
21 comment that Chairman Vallone made, which is it's
22 a very small number of police officers that we
23 find have committed misconduct. That certainly,
24 you know, you can just look at that statistically
25 and know that's true. But we can't say they're a

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2 better a police force when the compliant
3 statistics go down or that they're worse when it
4 goes up. I think we don't-- there are too many
5 variables in that for us to know, and I would
6 include in that the substantiation rate.

7 COUNCIL MEMBER GARODNICK: Well
8 thank you. I'm going to wrap it up. And I just
9 wanted to just to understand that last point was
10 that you did bring in prosecutors at around 2007
11 to review cases before they became substantiated
12 or before you sent them over to the Police
13 Department?

14 FRANKLIN STONE: Yes. That was a
15 new addition to our staff that the Mayor gave us a
16 year and a half ago. I think they arrived--

17 COUNCIL MEMBER GARODNICK:
18 [Interposing] Okay, so right around then, not that
19 you're going to make that definitive conclusion,
20 but you did bring them in around that time to do
21 another look at the cases before they were sent
22 over to the Police Department?

23 FRANKLIN STONE: Yes.

24 COUNCIL MEMBER GARODNICK: Thank
25 you very much.

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2 CHAIRPERSON VALLONE: However,
3 substantiated cases have been going down since
4 '04, so we just can't blame-- I'm not saying blame
5 the prosecutors. I think that's a good idea. And
6 I think that if substantiated cases were going up,
7 people would say, hold that against the Police
8 Department. And while it may not be a victory, I
9 think it's a very good thing that substantiated
10 cases are going down, unless there is a systemic
11 problem that you find. You know, I'm so used to
12 saying the Police Department said this, what do
13 you have to say? Because the situation was
14 changed today, I forgot that the Police Department
15 is sitting right there and they're going to be
16 able to make their own arguments. So I'm going
17 allow one more question from Council Member Dilan,
18 and then we'll hear from the Police Department,
19 and anyone else who has questions can ask
20 questions when they're done, when the Police
21 Department are done. Okay. Council Member Dilan?

22 COUNCIL MEMBER DILAN: Sure, thank
23 you Mr. Chairman. I just noticed in our briefing
24 report, Ms. Stone, and it's good to see you again,
25 that there are a large number of unsubstantiated

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2 cases in a specific area, and it's an area that's
3 a huge frustration to many of my constituents, and
4 that's in the area of the Stop, Question and
5 Frisk. First of all, in your report, under what
6 category, would it be Force, Abuse of Authority or
7 Discourtesy, would the Stop and Frisk complaints
8 fall under?

9 MEERA JOSHI CATTAFESTA: The Stop,
10 Question, Frisk and Search of Person all fall
11 under Abuse of Authority.

12 COUNCIL MEMBER DILAN: Abuse of
13 Authority. And I noticed again, according to our
14 reports, and the numbers do appear to be high,
15 maybe it's over a several year period, but it says
16 in excess of 400,000 Stop and Frisk reports. I
17 would imagine that's over a five-year period, and
18 less than 200 of them were you guys were able to
19 substantiate these cases. And I can imagine that
20 with that type of action it would be tough to
21 substantiate those cases. What are the
22 difficulties that your agency has in coming up
23 with the criteria to effectively substantiate
24 these cases?

25 MEERA JOSHI CATTAFESTA: One of the

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2 difficulties with any street encounter case is
3 that we're faced with the complainant's version of
4 events versus a single officer's version of
5 events, or two complainants and two officers. So
6 that makes it difficult to make the 51%
7 requirement we need to substantiate a case. In
8 terms of numbers I can give you the rates that we
9 have of unsubstantiated. For example, for Frisk
10 of a Person, we unsubstantiated between 2003 and
11 2007, 21.8% of those types of allegations. For
12 Stop, we unsubstantiated 23% of those types of
13 allegations over the five-year period. For
14 Search, we unsubstantiated 37.3% of those types of
15 allegations over the five-year period.

16 COUNCIL MEMBER DILAN: All right.
17 This is just an area of concern to me and I'm
18 interested in working with the Chair to maybe
19 assist in better being able to substantiate cases
20 where necessary. They may not always be
21 necessary, but it's a big problem in my area,
22 especially among adolescents and young adults
23 because of maybe the way they're dressed or
24 whatever reason. I think that simply the way
25 someone is dressed is not cause to stop or frisk

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2 and question someone, so it's an area of concern
3 for my constituents, and I plan to work with the
4 Chair on that issue, so I'd like to thank you.

5 CHAIRPERSON VALLONE: Thank you
6 Council Member Dilan. I'd like to caution that
7 there are no outbursts allowed during Public
8 Safety hearings, and if that happens, we'll have
9 to have you removed. Everyone will get a chance
10 to testify for two minutes each at the end of the
11 invited guest testimony. I am now going to turn
12 it over to the Police Department and then we'll go
13 through some more questions. Ms. Stone and your
14 staff, I'd ask you to stay and listen and there
15 may be some more questions we have for you too.
16 Thank you for being patient. Thank you for
17 allowing us to hear other testimony first, and we
18 look forward to your testimony.

19 JULIE L. SCHWARTZ: Good morning.
20 Good morning Mr. Chairman and Members of the
21 Council. I am Deputy Commissioner Julie Schwartz,
22 Department Advocate for the New York City Police
23 Department, and with me today is Deputy Chief John
24 Donohue, the Commanding Officer of the Office of
25 Management Analysis and Planning. On behalf of

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2 Police Commissioner Raymond W. Kelly, we are
3 pleased to be here today with Chairperson Stone
4 and Executive Director Thompson and First
5 Executive Director Cattafesta to discuss the
6 Police Department's interaction with the Civilian
7 Complaint Review Board. I would first like to
8 express our respect for the mission of the
9 Civilian Complaint Review Board and our regard for
10 the hard work of the Board members and their
11 staff. We share a common goal of ensuring that
12 civilian complaints are investigated thoroughly
13 and that appropriate discipline is imposed where a
14 police officer has committed misconduct. In
15 acknowledgement of the vital role that the CCRB
16 plays in helping to ensure that police officers
17 perform their duties in a professional manner, I
18 would like to briefly describe the type of
19 assistance the Police Department provides to the
20 Civilian Complaint Review Board in the form of
21 training, staffing and information sharing. The
22 Police Department offers several types of training
23 to newly hired CCRB investigators. The
24 investigators receive instruction on Police
25 Department practices and procedures at the Police

1 Academy. They also receive a presentation from my
2 office regarding the Department's disciplinary
3 procedure and system. They visit the Department's
4 outdoor range where they experience firearms
5 training in the tactics house, and they accompany
6 patrol officers on ride alongs to get a practical
7 sense of police work. In addition, selected CCRB
8 investigators attend the Internal Affairs Bureau
9 two-week Internal Investigations course. We have
10 also offered additional training opportunities to
11 the four attorneys who CCRB hired in late 2007,
12 and have consistently invited and welcomed the
13 attendance of investigators and attorneys at
14 Department trials, so they may directly observe
15 the process flowing for substantiated cases. We
16 have permanently assigned a lieutenant, a sergeant
17 and two police officers full-time to the CCRB
18 office, providing an on-site presence which
19 assists CCRB staff in many ways. The Police
20 Department's staff has access to several different
21 NYPD databases, which facilitate the quick
22 gathering of Police Department documents requested
23 by CCRB staff. In the past six years, the
24 Department has increased its own ability to
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1
2 utilize computerized databases, we have been able
3 to provide real time access to this information
4 for the CCRB's investigative purposes as well.
5 The database information available includes, but
6 is not limited to, photos, complaint and arrest
7 reports, radio run printouts, Stop Question and
8 Frisk forms, aided reports, precinct unit roll
9 calls, vehicle fleet information, accident reports
10 and search warrant execution locations. For other
11 types of NYP documents relevant to the CCRB
12 investigations, the request is made to the
13 Internal Affairs Bureau, and the on-site NYPD
14 personnel are able to assist the CCRB
15 investigators in framing their requests and
16 interpreting the documents they receive. The NYPD
17 personnel also coordinate the appearances of
18 police officers for official interviews at CCRB
19 and addressing scheduling problems or other
20 problems. In addition to the Police Department
21 personnel actually located at the CCRB office, I
22 have designated two members of my staff as Police
23 Department liaisons to the CCRB: one, our most
24 senior trial attorney, and the other, the
25 executive officer of my office. They are able to

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2 provide information and insight about Police
3 Department policies, procedures and operations,
4 and of course to address issues as they arise. I
5 am informed that the Council is particularly
6 interested about how the Police Department handles
7 substantiated civilian complaints. And so I would
8 like to describe exactly what happens when the
9 civilian complaint review board sends a
10 substantiated case to the Police Department. My
11 office is the entity within the Police Department
12 responsible for receiving substantiated cases from
13 the Civilian Complaint Review Board. We conduct a
14 comprehensive review of the case, including a
15 thorough legal, procedural and factual analysis of
16 the entire case file, as well as a review of the
17 officer's CCRB history and disciplinary history,
18 an evaluation and recommendation by the officer's
19 commanding officer, and examination of similar
20 cases. At the conclusion of this review, I will
21 recommend one of four options: instruction for the
22 officer; imposition of command discipline; service
23 of charges and specifications; or no disciplinary
24 action to be taken. My recommendation is
25 forwarded to the first deputy commissioner and

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2 ultimately to the Police Commissioner for his
3 determination in the exercise of his exclusive
4 jurisdiction over the discipline of the Police
5 Department. Many factors form the basis for the
6 recommendation to select a particular level of
7 discipline as the preferable option, or to decline
8 to prosecute a substantiated complaint. They
9 include, analysis of whether the allegation
10 constitutes misconduct, the appropriate level of
11 discipline given the seriousness of the
12 allegation, the strength of the case and how
13 readily it may be proven before the Department's
14 Trial Commissioners, the availability of the
15 credible evidence, whether the misconduct would
16 better be addressed by instructions as a learning
17 tool rather than by another penalty, an officer's
18 prior disciplinary or employment history and
19 dispositions in similarly situated cases. In 2008
20 the Police Department closed 267 cases that were
21 received from the Civilian Complaint Review Board.
22 Of that number 67 cases resulted in command
23 discipline and 71 cases were resolved by
24 instructions, with the source of the instruction
25 tailored to the allegation, for example, from the

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2 Department's Legal Bureau, the Police Academy, the
3 Office of Equal Employment Opportunity, or the
4 officer's commanding officer. The Department was
5 unable to prosecute the case in a total of 91
6 instances. However, in seven of those cases,
7 members of the service received command discipline
8 for other misconduct that was noted during the
9 course of the investigation. Please note that
10 since 2007, the two agencies have developed a
11 practice where in every instance, and I stand by
12 this, in which charges and specifications were
13 served on the subject officer, my staff, meaning
14 the attorney, reaches out to the CCRB investigator
15 to enlist their assistance in contacting the
16 complainants, so that the complainants are not
17 surprised by a call from the Police Department.
18 Instead, on my understanding what the
19 investigators are doing is that they are informed
20 by the-- the complainants are then informed by the
21 CCRB's investigator that they will get a call
22 asking for their help in preparing the case for
23 Department trial. Further, if my staff is having
24 difficulty obtaining the cooperation of a party or
25 a witness, we will contact the CCRB investigator

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2 for their help in encouraging the individual to
3 participate in the process. In the case that was
4 mentioned by Ms. Stone, we had no difficulty. The
5 witnesses testified at the trial, so that may be
6 why we didn't need the assistance of the
7 investigator. But in addition, we do contact them
8 for assistance in developing more information in a
9 case, if an additional investigation or
10 clarification may help to bring a more appropriate
11 resolution to the complainant. CCRB investigators
12 may also be called upon to actually testify in a
13 case if we cannot secure the availability of a
14 complainant or witness. My office provides to the
15 CCRB on a monthly basis the dispositions of all
16 substantiated allegations forwarded to the
17 department by the Board, as well as copies of all
18 decisions by the Department's Trial Commissioners.
19 In addition, we meet on a monthly basis with the
20 CCRB's first deputy executive director
21 specifically to discuss the cases dispositions in
22 detail, to provide updates and status reports for
23 ongoing cases and to discuss the cases in which
24 the Department declined to prosecute. As you may
25 have observed the CCRB and the Police Department

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2 collaborate in many ways at many levels to
3 accomplish the mutual goal of resolving civilian
4 complaints. We have recently enhanced this
5 communication by instituting a pilot project
6 together, in which CCRB attorneys second seat
7 Department prosecutors as they prepare for and
8 conduct Department trials of substantiated
9 civilian complaints. In selected cases, CCRB
10 attorneys observe the negotiation of disciplinary
11 charges and where the case is scheduled for trial,
12 participate in the preparation of the case. The
13 CCRB attorney and the assistant advocate jointly
14 review the case file and interview complainants
15 and witnesses and ultimately sit together at the
16 prosecutor's table at trial, where the CCRB
17 attorney is able to make suggestions and provide
18 insight to the assistant advocate during the
19 trial. In fact, we have just concluded our first
20 trial and found the collaboration to be very
21 positive. We are hopeful that this project will
22 benefit both agencies in increasing the level of
23 understanding between us and strengthening our
24 disciplinary prosecutions. I thank you for the
25 opportunity to be here today and will be pleased

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to answer any of your questions.

CHAIRPERSON VALLONE: Thank you, Commissioner Schwartz. And I'm not going to repeat all the commendations I said earlier about what a great job the Police Department as a whole is doing, so have the testimony read back. But let's get right down to it. On page 3 of your testimony you mention that 91 instances you were unable to prosecute in '08. In '03 it was six. Now you've given a number of reasons here that you base your recommendation on, whether it's misconduct, the seriousness of the allegations, strength of the case. You know, obviously all valid reasons. There are going to be instances where you and the CCRB just disagree, and I've read many of the incidences you've cited, and I happen to agree with you most of the times, where if everything the CCRB and the witness said was true, I still don't think that would be something that should be-- that the police officer should be held accountable for. Even if all that's true, from three in 2003 to 91 in 2008 can't be explained by the statistics and the reasons you gave. So what is the reason for that huge jump in

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the declines to prosecute?

JULIE L. SCHWARTZ: Chairman, it's a combination of factors. Starting from 2005 when I took over, as I said when I was here previously, I was a prosecutor. I was a Bureau Chief in Kings County for 15 years. I'm now almost a prosecutor for 20 years. So in 2003, the majority of the Department Advocates Office were uniform attorneys. Since I took over, and as I sit before you today, every attorney that works in my office is a civilian member of the Department. They all have prior legal experience. The majority of them are law enforcement-- or I should say criminal justice, because I have a good part of them are prior public defenders, legal aid attorneys; so they all have experience in analyzing and understanding the prosecution of criminal cases. So we, not only for CCRB, when I took over we started looking at the cases in a way that a lawyer who has experience will look at the cases. 2005 I dismissed 64 cases across the board, not just CCRB cases, that we were unable to prosecute. Now we dismiss about 10 or 11 cases a year, because we are doing a much better up front

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2 analysis. We also in 2005, slightly over 51% of
3 the cases that went before the Deputy Commissioner
4 of Trials were negotiated. In the last two years,
5 we had 71% in 2007 and 73% in 2007, that is a
6 direct example of our bringing tight cases, strong
7 cases, where the officers understand it's better
8 to take a plea then to risk going to trial. So
9 these are the changes as well as, we've discussed
10 before, that the abuse of authority are on arise,
11 while the force is down, that's much more
12 subjective. 20% of the cases that we decline to
13 prosecute or were unable to prosecute in 2008, 20%
14 of them are where the investigator recommended on
15 subbing or exonerating, and the Board overruled
16 it. All--

17 CHAIRPERSON VALLONE: [Interposing]
18 But that percentage hasn't changed since 2003. It
19 is a factor but it doesn't explain that.

20 JULIE L. SCHWARTZ: Well it--

21 CHAIRPERSON VALLONE: [Interposing]
22 Look, let me jump in.

23 JULIE L. SCHWARTZ: Sure.

24 CHAIRPERSON VALLONE: And I very
25 much appreciate the reasons you gave, because

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2 you're not doing what maybe I expected, which was
3 to just state that the different types of
4 complaints, the 20% you just mentioned, because
5 they don't explain it. I think you did give as
6 good an explanation as possible, which is
7 basically what I'm getting from this is that there
8 are different standards that you've implemented
9 since you've been there, which saves us a lot of
10 time trying to get around the statistics. Now we
11 can work on how we can work together with the CCRB
12 so that they can meet those standards. For
13 instance, you testified about how much information
14 you give them. You give them the dispositions of
15 the cases. You sit down with them, you go through
16 the cases. Why not sit down with them prior to
17 dismissing a case to discuss the case with them?

18 JULIE L. SCHWARTZ: Because I
19 expect when they give me a case they're giving me
20 the best case they can possibly give me. And
21 they've given me their reasons why they believe it
22 should go forward. If I had to go back on 91
23 cases and have a discussion on why-- it would
24 pretty much stop what's going on in my office. I
25 expect that they give me a case that I can go

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2 forward on. There may be a case here or there
3 that I will call back and say I'm on the fence,
4 what could you do, how could you help me?
5 Sometimes I even give it to my Internal Affairs
6 Bureau to do another investigation.

7 CHAIRPERSON VALLONE: Before you
8 move on, when you say you call back, you reach
9 back out the CCRB?

10 JULIE L. SCHWARTZ: I'll reach back
11 to the executive director to see if there's
12 something that we missed or an evaluation on a
13 witness or-- and that happens occasionally. But
14 on the majority of the cases it doesn't happen.

15 CHAIRPERSON VALLONE: I understand
16 that. On the majority of the cases it's not going
17 to make a difference to you, meeting with the
18 CCRB. But there does appear to be cases, where
19 whether it's not being able to find witnesses or a
20 credibility issue or something like that, where
21 you might, even if you don't anticipate changing
22 your mind, it might behoove you to sit down and
23 discuss it with the CCRB before you make the
24 dismissal. It's something I don't expect you to
25 change your mind as you sit there and break down

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2 in tears or anything. You know, my prosecutor
3 days are over with, but it's something that we can
4 discuss. You just mentioned something interesting
5 also, you said that--

6 [Pause]

7 CHAIRPERSON VALLONE: I'm going to
8 get back to that question when I find the
9 statistics. As we're sitting here today, what
10 would you recommend the CCRB do in order enable
11 you to prosecute these cases more efficiently?

12 JULIE L. SCHWARTZ: One of the
13 recommendations I made in December when we met
14 with the Board is to look at from the start the
15 allegations that they originally start with. What
16 we find is that it's almost like, you know, a law
17 school exam. There will be ten allegations that
18 possibly they'll be looking at. And then the
19 Board or the investigator will Sub one allegation,
20 because the rest of it they'll say that the
21 witness exaggerated or it can't be proven, and
22 that then is fodder for the lawyer's attorney's to
23 go forward. So we've talked about really framing
24 what the actual complaint is about and writing the
25 allegations just to that, and not giving, you know

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2 every possible allegation under the sun. So
3 that's one of the steps that we've discussed
4 recently, and I'm hoping to see that that happens.

5 CHAIRPERSON VALLONE: Any other
6 recommendations?

7 JULIE L. SCHWARTZ: You know, we
8 talk about the legal analysis when we meet. We
9 talk about sometimes better ways that we can help
10 in identification procedures. Those are some of
11 the majority of reasons why cases go forward, or
12 we can't go forward. The last recommendation
13 we've had over and over is if the Board is
14 substantiating when the investigator is
15 recommending exoneration or an unsubstantiation,
16 we've asked for the Board to give us a reason why
17 they're doing that, but that has not come to
18 fruition.

19 CHAIRPERSON VALLONE: And that's
20 something I did want to ask them and I forgot to,
21 but, as we've said, in the past you've prosecuted
22 90, 91, I forget the number off the top of my head
23 of cases, I think it was something less, 29 of 30
24 in '03 of cases where there was a Flip.

25 JULIE L. SCHWARTZ: Well--

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CHAIRPERSON VALLONE: [Interposing]

Now, you're not.

JULIE L. SCHWARTZ: Oh, I'm sorry.

CHAIRPERSON VALLONE: So it's--

JULIE L. SCHWARTZ: [Interposing]

Well, you know the term prosecute is used loosely. What happened to those cases? And the majority of them get dismissed. So they stay on someone's record because nine months later we have nothing to go forward on. All we're doing is we've switched and we're doing an up front analysis. In the past sometimes charges and specifications were written and then when it couldn't be proven later, the case gets dismissed. So now we're doing that analysis up front. And we don't do it only with CCRB; we do it across the board.

CHAIRPERSON VALLONE: Okay. I'm going to go to-- again to Council Member Garodnick and come back for some more questions. And we've also been joined by, excuse me, Council Member Gentile. The standard of proof that both operate under preponderance of evidence, is that correct? Now when you take testimony from witnesses is it sworn testimony? Well, when the CCRB gives you

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testimony, is it sworn testimony?

JULIE L. SCHWARTZ: Yes.

CHAIRPERSON VALLONE: Are you able to prosecute for perjury? I was told no.

JULIE L. SCHWARTZ: No.

CHAIRPERSON VALLONE: Now why would that not be?

JULIE L. SCHWARTZ: The officers you mean?

CHAIRPERSON VALLONE: No, I'm sorry, prosecute the witnesses if they've come in and lied about an officer?

[Pause]

CHAIRPERSON VALLONE: All right, one more time, as I said, and you're going to be gone. Excuse me, officer? There you go.

JULIE L. SCHWARTZ: I would not be comfortable prosecuting witnesses for lying. As a prior sex crimes prosecutor, domestic violence prosecutor, there may be reasons-- I mean you can't always prove that somebody's lying. So I think that would be--

CHAIRPERSON VALLONE: [Interposing]
That's the case in every perjury. But if a

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witness, if people have made up charges by a police officer which are disproved by video, are you able to bring perjury charges under the law or can you not?

JULIE L. SCHWARTZ: Well what would happen in that situation is that the CCRB would refer that case to the Internal Affairs Bureau, who would do an investigation and work-- I don't have jurisdiction to prosecute them, the five District Attorneys do, Internal Affairs would then work with whatever county the accusation took place in and they would consider whether or not they would do a criminal prosecution.

CHAIRPERSON VALLONE: But they able to?

JULIE L. SCHWARTZ: Yes.

CHAIRPERSON VALLONE: You're swearing them under oath?

JULIE L. SCHWARTZ: The civilian witnesses are sworn under oath.

CHAIRPERSON VALLONE: Are you aware of how many times that happens, if at all?

JULIE L. SCHWARTZ: Since I've been here, I have not been aware of that happening.

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2 CHAIRPERSON VALLONE: Because that
3 is a concern of the police union, obviously, that
4 can and have been proven to have completely made
5 up charges. Drug dealers do it against
6 particularly aggressive police officers, often
7 according to the union, and nothing happens to
8 them. Is that something that's going to be
9 addressed?

10 JULIE L. SCHWARTZ: That has to
11 start with the CCRB because many of those cases we
12 don't even see because they rightfully
13 unsubstantiated or exonerate the officer, so it
14 wouldn't even come to our attention. They would
15 need under those situations to refer that case to
16 the Internal Affairs Bureau to do the
17 investigation. Okay. I'll ask them. Council
18 Member Garodnick?

19 COUNCIL MEMBER GARODNICK: Thank
20 you, Mr. Chairman, and Deputy Commissioner
21 Schwartz, thank you for your testimony. I wanted
22 to just take you back to your description of the
23 process when you get the substantiated case from
24 the CCRB. I understood from your testimony that
25 you do a comprehensive review of the facts, the

1
2 law, the circumstances. I heard you say that the
3 CCRB has a responsibility at that point to give
4 you its best case that you can go forward on. My
5 question for you is when you're looking at that
6 case at the outset, the first time you're-- after
7 you have the comprehensive review and the best
8 case that they can go forward on, are you at that
9 point determining whether the case has any
10 legitimacy?

11 JULIE L. SCHWARTZ: Well it's a
12 thorough review. What happens is that I have
13 attorneys that are assigned solely to CCRB. They
14 get the whole case file and they will review it in
15 its entirety. They will look at the police
16 reports. They will look at both the synopses of
17 the witness's testimony and listen to their tapes.
18 So then they make an initial recommendation
19 through-- and then it goes up in my staff. So
20 it's really, you start from this is substantiated,
21 okay, what do we have. And then we go forward.

22 COUNCIL MEMBER GARODNICK: So it's
23 based on the law. It's also based on the facts.

24 JULIE L. SCHWARTZ: Right.

25 COUNCIL MEMBER GARODNICK: Okay.

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It seems to me that you're, in this comprehensive review, the Police Department is actually making factual determinations like you just said, is that right?

JULIE L. SCHWARTZ: Well, we're provided with the facts.

COUNCIL MEMBER GARODNICK: And you're assessing the facts.

JULIE L. SCHWARTZ: And we're assessing the facts.

COUNCIL MEMBER GARODNICK: Now isn't that the role of the adjudicative process, the folks who are going to actually make the decision on the case itself as opposed to the review of what I would equate to being the complaint?

JULIE L. SCHWARTZ: Then you don't need me. No. It's my job as the prosecutor to figure out what the facts are, is it misconduct and what is the appropriate way to handle the case. If we took every case to trial because we want a judge to figure out what the facts are, we'd shut down the system.

COUNCIL MEMBER GARODNICK: Well

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then what's the job of the CCRB?

JULIE L. SCHWARTZ: The CCRB is to identify what they believe to be misconduct and to do the investigation and allow the civilians to feel that they can come there and provide that information and do a thorough case and provide it to the Police Commissioner, who has the ultimate decision in dealing with discipline in the Police Department.

COUNCIL MEMBER GARODNICK: We don't want the members of the public to just feel like they have a place to go. I mean we have a situation where we have an agency here that is studying, it's doing the work, it's professionalizing its operation, much like you have, and is trying to bring prosecutors or people with criminal justice backgrounds-- they are limiting the number of cases that they've substantiated for one reason or another, their numbers are going down. And it seems to me like everybody is whittling away so as to try to either professionalize or to streamline the process, and fewer and fewer of these cases are going anywhere. I mean the numbers are astounding, the ones which

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2 the Police Department claims to be unable to
3 prosecute, going from one percent to 36% in a
4 four-year period and the numbers going to trial
5 from 26% to 4% during a four-year period--
6 something has happened and it seems like everybody
7 is duplicating each other's work.

8 JULIE L. SCHWARTZ: Well what's
9 happening is that first of all, and CCRB should
10 really, you know, take credit for the fact that
11 the numbers are going down. The message is
12 getting out there to members of the Department
13 that if you do misconduct and commit what is
14 considered misconduct, you will have to be brought
15 in and you will be disciplined. So I mean, if you
16 look at the types of allegations that have
17 changed, there's no longer-- the Force number is
18 considerably down, offensive language is
19 considerably down, so that's the first positive
20 step that we see from the fact that the numbers
21 are going down. Their message is getting out
22 there. The second is that we, yes, we are
23 professionalizing. We are looking at it. We're
24 evaluating it, because discipline is the core that
25 keeps the New York City Police Department running.

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2 And we have to be-- it's my job to make sure that
3 we're credible. You know, to just write a charge
4 that's going to get dismissed nine months later is
5 not sending the appropriate message to our
6 employees. They have to know that what we're
7 writing and what they face is misconduct.
8 Sometimes it's not. Sometimes it's better to be
9 taught the right way to do it so it doesn't happen
10 again.

11 COUNCIL MEMBER GARODNICK: Your
12 point about the fact that this is an internal
13 determination by the Police Department, I think is
14 a good one. And it raises the obvious question as
15 to whether there should be some independence in
16 making the determination about whether a case goes
17 forward. But let me just make sure I understand
18 though your procedures and your policy for
19 Department Unable to Prosecute. Because I heard
20 you use the same language that the CCRB too as to
21 Unwilling to Prosecute, in the course of your
22 comments before. But I understand that the formal
23 procedure is Unable to Prosecute. So what makes
24 the-- first of all, are there procedures or policy
25 in place which sets out what makes the Police

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Department unable to prosecute a substantiated claim from the CCRB?

JULIE L. SCHWARTZ: After, as I said, a thorough review of the entire case with looking at who the officer is, the analysis; you know, what I mentioned before. We make a determination is it misconduct. If we do not believe it to be misconduct, then no disciplinary action will occur.

COUNCIL MEMBER GARODNICK: So you're deciding the case.

JULIE L. SCHWARTZ: Well as a prosecutor, the first step you have to decide is do you have a viable allegation. Is it what it's purported to be? And many times it is not misconduct. Sometimes it is misconduct, but the wrong person is identified. So, you know, that may be a reason that no disciplinary action for that person could go forward. You know, there's many reasons.

COUNCIL MEMBER GARODNICK: But then, in that situation, shouldn't you be bringing the CCRB into the conversation before you decline to prosecute or say-- sorry, before you say that

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2 you are Unable to Prosecute, to bring them in to
3 identify who the correct person is? I mean
4 they're the ones who we have empowered to research
5 and investigate these claims. Surely they should
6 be part of that process. If there's a factual
7 inconsistency or something which makes it
8 impossible for you to move forward, shouldn't they
9 be in that process?

10 JULIE L. SCHWARTZ: Well, when
11 there's time we do. But the problem is, is when
12 we get the case, many times there's, you know, the
13 statute of limitations, we have 30 days left, 60
14 days left. If we send that back to the CCRB, they
15 just don't have enough time to figure that out.
16 When there is time, we do. But it's unfortunate
17 that most of the time, as Ms. Cattafesta said,
18 it's the time that gets involved in that.

19 COUNCIL MEMBER GARODNICK: Okay.
20 So what I understand from you about the policy or
21 procedure is, it's not that there's a specific
22 policy or procedure which says, you know, if the
23 complainant is no longer available or alive or
24 fill in the blank number of circumstances; rather
25 your policy is determine whether or not there is

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something to the case.

JULIE L. SCHWARTZ: Yeah, that's pretty--

COUNCIL MEMBER GARODNICK:
[Interposing] Okay.

JULIE L. SCHWARTZ: I mean is it misconduct?

COUNCIL MEMBER GARODNICK: Okay.
So you're deciding if it's misconduct.

JULIE L. SCHWARTZ: Correct.

COUNCIL MEMBER GARODNICK: Okay.
Now, that is of course the role of the Police Department at the end of the line, because this is within the power of the Police Department to determine if it is misconduct. My question then becomes, why does the Police Department even need any further process within the Department? I mean, if you're determining at the outset that this is misconduct, why do you even need anything more at the back end? Why does the Police Department need to look at the case anymore? There are so many comprehensive reviews going on that I'm a little confused as to, you know, why you even need the judge and the jury here.

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2 JULIE L. SCHWARTZ: Well, because
3 every member of the Department is entitled to due
4 process. So--

5 COUNCIL MEMBER GARODNICK:

6 [Interposing] I agree. I agree, but it seems then
7 also the complainant or the person bringing the
8 complaint should, if substantiated by the CCRB,
9 have more than a, you know, a shot in the dark
10 chance of having their claim go forward.

11 JULIE L. SCHWARTZ: Well, they
12 don't have a shot in the dark. I am the
13 Department Advocate, so I need to make sure that
14 there is misconduct, if we are going to allege and
15 make these allegations against a member of the
16 Department. If there's no misconduct, then I'm
17 not doing any service to anyone. I'm doing a
18 disservice as well to the complainant if I tell
19 them we're going to take their case and then they
20 believe so and nine months later it gets dismissed
21 because there's no substance to it. So--

22 COUNCIL MEMBER GARODNICK:

23 [Interposing] And that's fair and it's also a
24 reason why if there's no misconduct, the CCRB
25 should not be substantiating the case.

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JULIE L. SCHWARTZ: Correct.

COUNCIL MEMBER GARODNICK: Right.

Okay. Which means that somebody should have the role to determine whether there is misconduct there at the outset enough to move forward. I don't know-- there appears to be a duplication of efforts in a way that is unnecessary and I have the inkling that some independence would be a valuable thing here. But let me just ask one last question, because I know I've already well exceeded the time allotted to me. But the second seat pilot program that you have, are the CCRB attorneys able to participate in the decision about whether or not to-- you are able to prosecute these cases at the outset? Or are you just bringing them in to participate in the proceeding itself?

JULIE L. SCHWARTZ: As the way its structured today, they're only working on cases that have already been decided that we're going to issue charges and specification. So their input comes when the case goes to trial. And they participate in every step of it, every stage, from when-- if the member of the service declines the

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negotiated offer.

COUNCIL MEMBER GARODNICK: Thank you. I appreciate your testimony. I've definitely gotten insight into the process and we look forward to a further conversation on this issue, and I thank the Chairman for the time.

CHAIRPERSON VALLONE: Thank you. We've been joined or we had been, by Council Members Jackson, James, Gennaro; I see Maria del Carmen Arroyo auditing us from the press booth. We are-- I'm going to only ask a few more questions because people have been waiting patiently and I really would like to hear from the NYCLU and the Citizens Union, who have done a lot of work on this issue. And so, let me discuss the issue of instructions, which hasn't been fleshed out. How do you explain the increase in the percentage of instructions that have been given out? And obviously I want to hear you address the same disagreement that we discussed earlier about whether these instructions work or not.

JULIE L. SCHWARTZ: Well I fully believe that the instructions work. And I think, as I think you got from the report; we've only had

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2 since 2003 seven allegations of reoffending. I
3 don't know what happened in 2003, 2004, but since
4 2005 there was three cases substantiated by CCRB
5 where someone who received instructions. One of
6 those was the same person, so he got them
7 together. So all we really have had is one person
8 who reoffended since that time, and that person, I
9 offered him a command discipline and he refused
10 it, and I made the executive decision of
11 reinstructing him, because it was not a provable
12 case; and that is in the discretion of the
13 prosecutor. I fully believe they're working,
14 because we are not seeing a recidivism rate. We
15 are not seeing them reoffend. A complaint as the
16 CCRB says in their report, is just a complaint.
17 They've only substantiated seven, and three of
18 them are only after 2005, where we've really
19 gotten our arms around the problem. Most of the
20 cases that are instructions fall within the Abuse
21 of Authority. Sometimes the officer may think
22 that he is allowed to do something and he's not,
23 and they need to be taught the appropriate way for
24 it to be done so they don't continue to make the
25 mistake again.

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2 CHAIRPERSON VALLONE: And in order
3 to try to make some concrete improvements so that
4 we can maybe change this trend around a little
5 bit, the CCRB testified about their flipped cases,
6 clearly you're just not prosecuting flipped cases
7 where you had before. I'm not saying that's wrong
8 or right. That's the way it is. What can we do
9 to change that? What should they do when they
10 flip a case that would allow you to continue to
11 prosecute or decide to prosecute or go forward
12 with the case?

13 JULIE L. SCHWARTZ: As I've asked
14 repeatedly, is if the Board could at least give an
15 explanation of why they felt the case should be
16 flipped. Sometimes I see it and we get it and we
17 go forward on those cases, not every one we don't
18 go forward on. But if there's something there,
19 maybe, you know, they should at least explain it.
20 That would be a help, and that would also be a
21 help if that's in the case folder. Because what
22 happens on flip cases, on a regular basis if we go
23 forward, is that the respondent's attorneys, the
24 members of the service, with then call the CCRB
25 investigator at the trial to testify why the

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2 witness isn't credible; you didn't believe her on
3 X, Y and Z, but, you know, and that was a
4 recommendation you made. So it's a very, very
5 high hurdle for us to get over. So we really-- it
6 would help to have an explanation when they choose
7 to do it, and to really look carefully and
8 consider when they do do it, you know, is that the
9 way to go and is that the appropriate, you know,
10 case to send to us.

11 CHAIRPERSON VALLONE: There seems
12 to be some disagreement about what the policy is
13 with cases that you don't go forward on that are
14 substantiated. You mentioned that you do
15 occasionally go back and as for their help finding
16 witnesses. I believe they said that didn't
17 happen. And you've mentioned that you do
18 occasionally reach out to-- because you're on the
19 fence and I believe they said that didn't happen.
20 So is there a policy involved regarding finding
21 witnesses or additional evidence?

22 JULIE L. SCHWARTZ: I find-- the
23 finding witnesses, I don't know where that's
24 coming from. First, I have a unit solely
25 dedicated to finding witnesses, within my own

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2 department. If we have difficulty, since even
3 before I got here, we always reach out to the
4 investigator to see what information they have,
5 what contacts they have. SO, sometimes you can't
6 find them, they're, you know, but I just want you
7 to know, we go above and beyond. This past year,
8 I did a damiani [phonetic] on three-- one case was
9 a complainant and an eye witness; the other was a
10 complainant on complainants who are doing upstate
11 time--

12 CHAIRPERSON VALLONE: [Interposing]
13 I'm sorry. You did a what?

14 JULIE L. SCHWARTZ: I had them-- a
15 take out order, taken from upstate prison, brought
16 here to come testify against a member of the
17 service. So we look high and low to find the
18 complainants and to go forward on the cases when
19 it is misconduct. I mean, you know.

20 CHAIRPERSON VALLONE: I'm not
21 questioning your efforts in your ability to find
22 people, but if you can't, is there a policy about
23 whether you reach out to CCRB and say, hey, do you
24 guys happen to know something that we--

25 JULIE L. SCHWARTZ: [Interposing]

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2 All the time. This happens on a daily basis. We
3 don't need a policy because there's not an issue.
4 My attorneys speak with the investigators
5 regularly. I had three investigators here last
6 month to testify when they couldn't find the
7 witnesses. They didn't need to because the
8 defense stipulated, but they were in the hallway.
9 It's not an issue.

10 CHAIRPERSON VALLONE: Okay. I'm
11 going to let Ms. Stone answer these allegations
12 right after-- I'm sorry, not allegations these--
13 prosecutor stuff here-- these comments and give us
14 your opinion. But I want to hear from Council
15 Member James and Jackson. I'd ask you both to
16 keep it relatively brief, because we do need to
17 get to the NYCLU and the Citizens Union, and there
18 are a number of people from the audience, and we
19 don't have this room all that much longer. So
20 thank you for your cooperation. Council Member
21 James.

22 COUNCIL MEMBER JAMES: Thank you.
23 Please take these questions in light of the fact
24 that I'm very concerned about the increase in
25 complaints, but yet the decrease in substantiated

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2 allegations. Please also consider that this is
3 not an indictment of NYPD, but my concerns with
4 regard to the decrease in substantiated
5 allegations and the lack of discipline that
6 appears to be going forward. So my first question
7 has to do with the fact that there were, according
8 to this report, 64 officers received ten or more
9 complaints from the period of 2003 and 2007. In
10 addition to that there were a significant number
11 of officers, 645 officers, who received-- no,
12 excuse me. I withdraw that. There appears to be
13 officers who received numerous complaints against
14 them, and yet appear to continue to be on the
15 force and yet have not received any instruction
16 and or discipline. Are you referring cases where
17 they're pattern and practices against any
18 particular officers to any of the District
19 Attorneys? And if you have, to what District
20 Attorney and how many cases or reports have you
21 referred?

22 JULIE L. SCHWARTZ: That's a three-
23 part question. Starting with the--

24 COUNCIL MEMBER JAMES:

25 [Interposing] That's a what question?

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2 JULIE L. SCHWARTZ: You know, three
3 parts.

4 COUNCIL MEMBER JAMES: Okay.

5 JULIE L. SCHWARTZ: I'm going to
6 answer it in parts. Referring to the District
7 Attorneys, the jurisdiction of the CCRB does not
8 lie within criminal context, it's whether it's a
9 Force allegation, Abuse of Authority, Discourtesy
10 or Offensive Language, so no, those cases do not
11 get reviewed. However, the Internal Affairs
12 Bureau has a group designated solely to
13 investigate Force cases. They do review those
14 cases and refer them on a regular basis to the
15 District Attorney.

16 COUNCIL MEMBER JAMES: I guess I'm
17 getting at repeat offenders.

18 JULIE L. SCHWARTZ: Well, if it's a
19 repeat offender that's discourteous, there's no
20 jurisdiction within--

21 COUNCIL MEMBER JAMES:

22 [Interposing] More than discourteous, raise the
23 bar to a higher standard where the offenses are
24 very serious. Do you have repeat offenders? And
25 if you have referred them to Internal Affairs, as

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2 far as you know has there been any action taken
3 against any repeat offender who is still on the
4 salary of NYPD, on staff of NYPD?

5 JULIE L. SCHWARTZ: It depends, if
6 it's not criminal, no they don't get referred to
7 the District Attorney. However--

8 COUNCIL MEMBER JAMES:

9 [Interposing] Do you know of any instance where
10 there has been a repeat offender who has been
11 prosecuted, disciplined or removed from NYPD?

12 JULIE L. SCHWARTZ: Yes. There's
13 many instances. We have a profile-- a civilian
14 complaint review profile and assessment board. So
15 members of the service, even when the cases aren't
16 substantiated, go before that board. So if they
17 just get an allegation, there's a, you know, a
18 recipe. And that board meets on a regular basis.
19 It's the highest-ranking members of the
20 department. And yes, if you see a pattern there,
21 that person will, you know, there's different
22 procedures. They maybe taken out of that command.
23 They may be sent for retraining.

24 COUNCIL MEMBER JAMES: Is there a
25 report from that board as far as you know? And is

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2 that report available to members of the City
3 Council?

4 JULIE L. SCHWARTZ: I don't believe
5 it's available. It's an internal--

6 COUNCIL MEMBER JAMES:
7 [Interposing] It's an internal document.

8 JULIE L. SCHWARTZ: Right.

9 COUNCIL MEMBER JAMES: So do you
10 have specific information with respect to the
11 recommendations of this board or if any action was
12 taken by this board?

13 JULIE L. SCHWARTZ: I know what
14 happens on the board, yes.

15 COUNCIL MEMBER JAMES: You do know.
16 And is that something that's confidential?

17 JULIE L. SCHWARTZ: It's internal
18 personnel issues within the department, so...

19 COUNCIL MEMBER JAMES: It's
20 confidential?

21 JULIE L. SCHWARTZ: Yes.

22 COUNCIL MEMBER JAMES: Okay. From
23 what I understand, I've received some information,
24 I believe it was last year; your office is set up
25 in different units. Is that correct?

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JULIE L. SCHWARTZ: Correct.

COUNCIL MEMBER JAMES: Okay. And is there one-- is there some units that close cases more than other units?

JULIE L. SCHWARTZ: No.

COUNCIL MEMBER JAMES: No? So on par, all of the units basically handle the cases on the same level?

JULIE L. SCHWARTZ: I have three units. I have the CCRB unit; I have a civilian unit that handles all discipline for civilian members of the department; and then I have what I call, colloquial, the trial team, that handles uniform members of the department, various levels of misconduct that is within the patrol guide, comes to our department.

COUNCIL MEMBER JAMES: According to the report, 25 officers that have been found to make false statements between 2003 and 2006 were still members of NYPD. As far as you know, have any of these members been disciplined and or given instruction?

JULIE L. SCHWARTZ: Well, they weren't found to make false statements. Let's

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start from that.

COUNCIL MEMBER JAMES: Okay.

JULIE L. SCHWARTZ: The CCRB felt--

COUNCIL MEMBER JAMES:

[Interposing] It's in the report.

JULIE L. SCHWARTZ: Well, I'm going to explain it.

COUNCIL MEMBER JAMES: Okay.

JULIE L. SCHWARTZ: The CCRB felt that there was a possibility that they made a false statement. The process then is they refer that to the Internal Affairs Bureau that does an investigation to determine if in fact they would substantiate a false statement allegation.

COUNCIL MEMBER JAMES: Again--

JULIE L. SCHWARTZ: [Interposing]

Now--

COUNCIL MEMBER JAMES:

[Interposing] Okay.

JULIE L. SCHWARTZ: Since 2005, there have only been, I believe, six cases. In the last few years there have been none. I do know that there was one member that clearly made a false statement to CCRB, and he has been

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2 terminated, and I think one who also made it
3 retired. So before that, most of them were
4 unsubstantiated. In more recent years, the ones
5 that were substantiated were prosecuted
6 appropriately.

7 COUNCIL MEMBER JAMES: Last three
8 questions, Mr. Chair. It appears to be in the
9 report that over the course of a five-year period,
10 more complaints were attributed to officers who
11 work out of Brooklyn. As a City Council Member
12 who represents part of Brooklyn, I'm very much
13 concerned about the fact that there are-- the
14 borough of Brooklyn, unfortunately, has the
15 highest numbers of complaints.

16 JOHN DONOHUE: It also has the
17 largest number of police officers that are
18 assigned to it, in absolute numbers, so that
19 including with the types of patterns of crime that
20 occur may result in the types of complaints that
21 are generated.

22 COUNCIL MEMBER JAMES: And is your
23 agency-- do you sit down with the commanding
24 officers of the precincts in Brooklyn and speak to
25 them about this high number of complaints? And is

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2 there any one particular precinct? Is there any
3 one particular sector of Brooklyn?

4 JOHN DONOHUE: The issue of
5 civilian complaints is a matter of record with
6 respect to a commanding officer's performance. It
7 becomes, as part of the management accountability
8 process, part of the Comp Stat process, so it does
9 come up on the commanders' profiles. It is a
10 matter of importance to the high-ranking, to the
11 executive core of the department. So the answer
12 is absolutely yes.

13 COUNCIL MEMBER JAMES: And who is
14 addressing that?

15 JOHN DONOHUE: That's dealt with at
16 the highest levels of the agency, both at the Comp
17 Stat process with the Chief of Departments Office,
18 and not merely through the Department Advocates
19 Office, but more broadly.

20 COUNCIL MEMBER JAMES: Last two
21 questions. In 2007, 102 officers that were
22 subjects of substantiated allegations,
23 substantiated allegations, NYPD chose not to
24 punish. Why is that?

25 JULIE L. SCHWARTZ: Well as I've

1
2 been saying, we did a thorough review of those
3 cases and after a long analysis within many--
4 within my unit, the First Deputy Commissioner and
5 ultimately with the Police Commissioner, the
6 determination was made that those allegations were
7 not misconduct. And on some occasions where they
8 were misconduct, the wrong person was identified
9 and we could not go forward.

10 COUNCIL MEMBER JAMES: So why were
11 they substantiated? Substantiated means that
12 there is sufficient credible evidence to believe
13 that the subject officer has in fact committed
14 misconduct? If in fact you believe that there is
15 no misconduct, why in fact was it classified as
16 substantiated? It seems to be a conflict.

17 JULIE L. SCHWARTZ: Well it is a
18 conflict, because I'm not the one who
19 substantiated it. My review is that they should
20 not have been substantiated. The CCRB has
21 reviewed that they were. And that is the analysis
22 that took place, and that is why, after a long
23 review, we did not go forward on those cases.

24 COUNCIL MEMBER JAMES: And you did
25 not prosecute the cases, the cases are referred to

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NYPD attorneys, correct?

JULIE L. SCHWARTZ: I am the Deputy Commissioner. The attorneys-- I do prosecute; they all fall under me.

COUNCIL MEMBER JAMES: And you are not of the opinion that that's not an inherent conflict?

JULIE L. SCHWARTZ: That's my job. My job is to be the Department Advocate. I supervise the staff of the Department Advocate's Office. There is no conflict. That is how we operate, and ultimately the Police Commissioner has the final say.

COUNCIL MEMBER JAMES: And do you have any concern with regards to the fact that there's been an increase in complaints, but yet the number of substantiated complaints and or prosecution or instruction is down? Does that cause you concern? And have you expressed those concerns to the highest levels of NYPD?

JULIE L. SCHWARTZ: As I'm in charge of the discipline. So to me--

COUNCIL MEMBER JAMES:
[Interposing] First of all, do you share those

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concerns?

JULIE L. SCHWARTZ: I'm not sure I can fully answer your question.

COUNCIL MEMBER JAMES: Do you agree with that statement?

JULIE L. SCHWARTZ: No, because all that comes to me are the cases that are substantiated.

COUNCIL MEMBER JAMES: Okay, thank you.

CHAIRPERSON VALLONE: Thank you. I'm going to allow one very short question from Council Member Jackson. And yes he's going to ask one. I literally have 20 to 30 pieces of paper who need to testify and was just informed that we have the room until 1:00. They will let us go a little bit over, but we're going to have to hurry this up to try to get to hear from everybody. So Council Member Jackson?

COUNCIL MEMBER JACKSON: Thank you, Mr. Chair, and let me apologize. I wanted to be here earlier. I had some personal problems at home that I had to deal with, and I'm sorry I was not here to hear the entire testimony in order for

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2 me to ask the appropriate questions. But in
3 listening to the testimony I just have a question.
4 And I heard the discussion about unable or
5 unwilling to prosecute based on recommendations by
6 the CCRB. And what terminology do you use, Deputy
7 Commissioner, unable or unwilling?

8 JULIE L. SCHWARTZ: Well actually
9 my, not to confuse you more, but internally I
10 refer to it as No Disciplinary Action. Before I
11 got here somehow it was referred as Department
12 Unable to Prosecute. But my review of it is we
13 are not taking disciplinary action on that
14 particular case. So that's how we look at it.

15 COUNCIL MEMBER JACKSON: Because
16 you've reached the determination that you-- it's
17 not at the level where you can go forward with
18 discipline, is that correct?

19 JULIE L. SCHWARTZ: Well, the most
20 common reason is because no misconduct occurred.
21 Sometimes, like I said, there can be cases where
22 there was misconduct, but the wrong person is
23 identified.

24 COUNCIL MEMBER JACKSON: I
25 understand. So where the recommendations are made

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2 by CCRB to go forward with discipline and you
3 determine that there was no misconduct has taken
4 place, that's-- so in essence I guess you see
5 something that they didn't see or they saw
6 something that you don't see in the matter. I
7 mean in plain and simple language and not legal
8 language, because obviously there's clearly a
9 difference in day and night, where one
10 recommendation based on their investigation that
11 there are enough evidence to go forward, and you
12 feel there's no evidence whatsoever or there's no
13 charges to go forward with.

14 JULIE L. SCHWARTZ: Let me give you
15 an example, and I'll take it outside of this
16 world. The police officers on the street make an
17 arrest.

18 COUNCIL MEMBER JACKSON: Right.

19 JULIE L. SCHWARTZ: And they
20 believe there was enough to arrest the person. It
21 then goes to the grand jury. And the grand jury
22 makes a determination if there's enough evidence
23 to go forward. That's kind of what we have here.
24 The CCRB does the investigation and they believe
25 that it's enough to go forward. And on some of

1
2 those cases, for the reasons I've mentioned, after
3 an analysis that there was-- no disciplinary
4 action should be taken.

5 COUNCIL MEMBER JACKSON: And where
6 does the CCRB go if they feel you are wrong? What
7 is their right to do?

8 JULIE L. SCHWARTZ: Yes, this is
9 why we're here.

10 COUNCIL MEMBER JACKSON: No, I'm
11 asking you. You're the Chief-- you're the Deputy
12 Commissioner. I'm asking you, if they disagree
13 with your determination, can they go to the
14 Commissioner and appeal to the Commissioner?

15 JULIE L. SCHWARTZ: Well the
16 Commissioner has the ultimate say in discipline
17 for the Police Department.

18 COUNCIL MEMBER JACKSON: Okay.

19 JULIE L. SCHWARTZ: I know that Ms.
20 Stone speaks with him regularly. We meet on an
21 annual basis. So there is back and forth, and he
22 is aware of times when she disagrees with his
23 actions.

24 COUNCIL MEMBER JACKSON: And you've
25 made a point several times in mentioning that in

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2 some cases there was a misidentification of the
3 officer or people involved. What percentage of
4 cases where there's misidentification have come
5 forward to your attention, because you've
6 mentioned that, since I've been here, at least
7 three or four times as a factor in why you would
8 not go forward.

9 JULIE L. SCHWARTZ: I don't have
10 that number right in front of me, but there are a
11 percentage of cases where the wrong person is
12 identified or-- I can think of a case I looked at
13 the other day where there were two detectives and
14 a sergeant and the wrong person was identified as
15 the detective. The sergeant wasn't there, so he
16 got charges for allowing-- or it was a
17 recommendation for charges, for allowing the
18 detective to do something, but it was the wrong
19 detective.

20 COUNCIL MEMBER JACKSON: Okay.

21 JULIE L. SCHWARTZ: So it's not
22 always that cut and dried, the number.

23 COUNCIL MEMBER JACKSON: I
24 understand. But of the cases that have gone
25 forward that were substantiated by CCRB, in your

1
2 opinion, those that fall into that category as
3 misclassifications, and I'm calling it that, are
4 you talking about one percent, five percent,
5 twenty percent? I'm trying to get a percentage of
6 the number of cases that have come forward that
7 were substantiated by CCRB, since, as I said
8 earlier, you mentioned that quite a number of
9 times in response to questions that have been put
10 forward to you.

11 JULIE L. SCHWARTZ: I don't want to
12 speculate because I don't have the numbers in
13 front of me.

14 COUNCIL MEMBER JACKSON: Can you
15 please forward that information to the Committee
16 if you don't mind?

17 JULIE L. SCHWARTZ: Sure. But what
18 I do want to say is we are all working together so
19 that doesn't happen.

20 COUNCIL MEMBER JACKSON: Okay.

21 JULIE L. SCHWARTZ: That is why we
22 have a photo array system set up there, that is
23 why, you know, so that we can do photo arrays.
24 You know, we're moving and working so that number
25 won't be here.

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2 COUNCIL MEMBER JACKSON: My final
3 question, and I know the Chair has indicated we
4 have a lot of witnesses to hear from, and I
5 clearly understand where he is coming from because
6 I chair a Committee myself and I've been in the
7 same situation. Of the cases that you feel should
8 go forward and that you've sent to the
9 Commissioner for action, what percentage of those
10 cases are actions taken against-- go forward by
11 the Commissioner? And--

12 CHAIRPERSON VALLONE: [Interposing]
13 Council Member, we've been through this before you
14 got here, so I don't want to--

15 COUNCIL MEMBER JACKSON:
16 [Interposing] Has that been answered specifically?

17 CHAIRPERSON VALLONE: Yeah. In her
18 testimony. So--

19 COUNCIL MEMBER JACKSON:
20 [Interposing] Okay. That's good.

21 CHAIRPERSON VALLONE: They'll get
22 you that information again if you need it.

23 COUNCIL MEMBER JACKSON: I'll get
24 it. Thank you.

25 CHAIRPERSON VALLONE: But, thank

1
2 you. Ms. Stone, I did promise you a chance to be
3 heard again, so if you would just comment briefly
4 on the testimony. I've got numerous additional
5 questions. I'm sorry; before Ms. Stone you go,
6 Council Member Yassky wanted to get something in
7 writing from them?

8 COUNCIL MEMBER YASSKY: I do. And
9 I know we're out of time, so I'm going to ask
10 this, and I'm going to ask you too, Deputy
11 Commissioner, if you could respond in writing
12 because we don't have time for a full question. I
13 won't rehearse everything that's been talked about
14 here, but the best evidence in some ways of what
15 the Department is doing wrong when it does things
16 wrong, is claims that are filed and then paid out
17 against the City. So here's my question. Is what
18 processes are in place when someone sues or files
19 a claim and the City pays it, pays someone money
20 because an officer has done something wrong; what
21 then do you do to say, go back and change the
22 training or make sure that that doesn't happen a
23 second time? And that, I would ask for a written
24 response to that question. I asked the Chair for
25 the, if he would indulge me to ask that question,

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2 but he told me we were out of time. So I'm going
3 to ask for that in writing.

4 CHAIRPERSON VALLONE: It's actually
5 a great question and it's something that I
6 actually have a meeting with Corporation Counsel
7 Mike Cardoza on with the Public Safety Staff about
8 the fact that there is not enough communication
9 between Corp Counsel, Police Department and all
10 these different agencies regarding lawsuits. And
11 we will be following up on that.

12 COUNCIL MEMBER YASSKY: Well thank
13 you. I wasn't going to belabor it because the
14 truth is--

15 CHAIRPERSON VALLONE: [Interposing]
16 It's a very good point.

17 COUNCIL MEMBER YASSKY: There
18 really is no-- I didn't want to--

19 JOHN DONOHUE: [Interposing] I
20 believe we're in receipt of a letter asking that
21 very question.

22 CHAIRPERSON VALLONE: From me.

23 JOHN DONOHUE: It is from you? I
24 apologize.

25 CHAIRPERSON VALLONE: So we will be

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working on that.

COUNCIL MEMBER YASSKY: Thank you.

CHAIRPERSON VALLONE: Ms. Stone,
comments?

FRANKLIN STONE: I will be very
brief, and I'll just flag the points I want to
make instead of discussing them at greater length.
One, I am optimistic that there is going to be an
increased use of our investigative staff following
this hearing, and I thank you very much for that.
Two, there were three recommendations that Ms.
Schwartz said, or aspects that she attributed her
problem to; one was what she referred to as there
being many allegations where we sub only one or
two or three. I think that is an astonishing
comment. We are required under our charter to
list the allegations that are made by the
complainant and to do a separate legal analysis as
to each one, and I think that the fact that we sub
some and don't sub others should increase the
strength of the case, not make it worse. Ms.
Schwartz says that they do an extensive legal,
procedural and factual analysis of the case;
that's exactly what the CCRB does, but as her

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2 testimony shows on page 2, they do something more
3 before they decide whether to put the case in the
4 trial room. And I'm sorry that Council Member
5 Garodnick is not here, if you could pass this
6 along to him, they also review the officer's CCRB
7 and disciplinary history, they have an evaluation
8 and recommendation by the officer's commanding
9 officer, and they do an examination of similar
10 cases. Those are things that we do not do and
11 result in cases, obviously result in cases not
12 being tried, because of what it is that the
13 commanding officer has to say about the officer,
14 instead of looking at the facts of a specific
15 instance. And the last statement I'll make, which
16 is I think a very important point that stems from
17 the flipped cases issue; the problem with the
18 flipped cases is exacerbated by the cumbersome
19 process that New York City has for civilian
20 oversight of law enforcement, with our Board
21 reviewing some 8,000 cases that come every year.
22 There is a reason why no other jurisdiction in the
23 country has adopted our process since we were
24 implemented. And if we had a more efficient, less
25 costly, and I think more effective process, the

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2 question of flipped cases would not exist. And
3 that's a subject, longer subject, for another day.

4 CHAIRPERSON VALLONE: Yes it is,
5 unfortunately. There are so many more questions
6 that arise based on what I just heard, which I
7 just can't go into unfortunately, in fairness to
8 the people who are waiting to testify. But we do
9 have a lot of work to do. We made progress last
10 year; we made some more progress today. And we
11 will follow up on this. There is some information
12 that we need to get to the Committee from you, and
13 we look forward to continue working with all of
14 you to ensure that we continue to make our police
15 department the best police department it can be,
16 so thank you all for coming out today and we look
17 forward to working with you. The next panel is
18 going to be the NYCLU, and I believe it's both
19 Donna Lieberman and Chris Dunn? Okay. And
20 they'll be coming up with Susan Lee from the Bronx
21 Defenders and Vincent Sutherland from the NAACP
22 Legal Defense Fund.

23 [Pause]

24 CHAIRPERSON VALLONE: Let me
25 announce that the Cultural Affairs hearing, if

1
2 anybody is here for that, will be at 250 Broadway,
3 the 14th Floor. And that will start about 1:00.
4 Education will be right next door at 1:00, chaired
5 by the very able Robert Jackson.

6 [Pause]

7 CHAIRPERSON VALLONE: Okay, Mr.
8 Dunn. I don't know if you'll both be testifying
9 or one, but however you want to handle it, you
10 guys begin.

11 DONNA LIEBERMAN: Okay, I'll start.
12 I'm Donna Lieberman, and with us also is Robert
13 Perry, our Legislative Director and the primary
14 author of Chairman Stone's favorite report on the
15 CCRB. I want to thank you for holding this very
16 important hearing.

17 CHAIRPERSON VALLONE: Donna, could
18 you move it closer? Because there's a little bit
19 of noise in the room. Thanks.

20 DONNA LIEBERMAN: Okay. And before
21 I begin I want to sort of make the point that the
22 NYCLU has a very deep and profound respect and
23 appreciation that the job that the New York Police
24 Department has to do, and the job that it does do.
25 And we believe that civilian oversight and

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2 accountability for misconduct is very much in the
3 best interest of the Department, in the best
4 interest in the vast majority of good cops who do
5 their job well and respectfully of the law and
6 people's rights and the community, and that it's
7 really important that we in their interest as well
8 as the community's to hold rogue cops accountable
9 for wrongdoing. We believe that actually the
10 entire system here in New York of civilian
11 oversight is fundamentally broken and in need of
12 reform. But the dramatic changes in Police
13 Department disciplinary practices over the last
14 two years have created an unprecedented crisis
15 that can and must be ameliorated through more
16 limited and immediate action than massive
17 overhaul, and that's the transfer to the CCRB of
18 the authority and responsibility for prosecuting
19 cases in which the CCRB concludes that police
20 misconduct in fact did occur. As things stand
21 now, once the CCRB concludes that there has been
22 police misconduct and substantiates the claim
23 against a police officer and forwards it to the
24 Police Department, matters are out of the CCRB's
25 hands. The authority to prosecute and discipline

1 rests exclusively with the Police Department. As
2 Prosecutor, the Department Advocates Office can
3 take the case to trial, negotiate a plea or simply
4 close it without any further action or
5 explanation. With regard to discipline, it's all
6 up to the Commissioner. He can impose a range of
7 punishment from a mere slap on the wrist, which we
8 call instructions, to the more severe dismissal.
9 Once again, no explanation is required. The past
10 few years we've seen two disturbing phenomena: a
11 nine-fold increase in what we call DUPs,
12 Department Unwilling, unable, to Prosecute. These
13 are the cases where the charges of abuse were
14 substantiated after thorough investigation, but
15 closed by the Police Department without any action
16 or discipline. The numbers have risen from about
17 four percent, a steady four percent over many,
18 many years, to 35% approximately in the past
19 couple of years. At the same time with regard to
20 discipline, we've seen a dramatic decline in
21 meaningful, in significant discipline, a 50%
22 decrease in all but the most mild form of
23 discipline.
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25 [Pause]

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2 DONNA LIEBERMAN: In other words,
3 the Police Department is telling is quite
4 unequivocally that it doesn't really take police
5 misconduct seriously. It has failed to discipline
6 or even prosecute huge numbers of cases that the
7 CCRB has investigated and substantiated. And the
8 message to the Police Department and the community
9 is that rogue police officers can get away with
10 misconduct and that going to the CCRB is a waste
11 of time. I don't think that's the message that we
12 want to convey. And I'll ask Christ to continue.

13 CHRISTOPHER DUNN: Peter, I want to
14 particularly thank you for having this hearing. I
15 know that this is not a topic that's near and dear
16 to your heart, but as Donna said, you know, we're
17 not here to beat up on the Police Department. But
18 I think that you understand that when cops do
19 engage in misconduct, we should care about that;
20 and that when cops do engage in misconduct, they
21 need to be disciplined; and if they are not, it's
22 bad for the Department, it's bad for the public,
23 it's bad for the City. And you, I think, are good
24 a smelling a rat, and there's a rat here, and you
25 have pointed to it in the numbers. When you look

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2 at--

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CHAIRPERSON VALLONE: [Interposing]

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I'm not sure whether any of these things are

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actually compliments, but okay. Thanks.

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CHRISTOPHER DUNN: When you look as

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the numbers push as the Department tries to

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explain it, you can't explain what's happening,

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other than saying that the Department is walking

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away from discipline. They are walking away from

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discipline and everyone should be concerned about

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that. Not only are they walking away from

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discipline, but I think we need to understand the

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racial implications of this; it has not been

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mentioned in this hearing. Nearly 57% of the

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complaints that were filed in 2007, the most

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recent year available, are from African Americans

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living in the City. Okay, there is a huge racial

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component to police complaints and police

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misconduct and the way the Department handles

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that. It comes at a time when there is a lot of

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controversy about stopping frisk activity, which

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we know is racially very disproportionate.

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There's a dispute about why, but there's a huge

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controversy about the racial implications about

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2 that. And we know that stop and frisk is driving
3 complaints to the CCRB and is a large portion of
4 complaints the Department is tossing. So to be
5 clear, in 2007, 45% of the cases they just threw
6 out, were substantiated stop and frisk cases.
7 Last year, 35% substantiated stop and frisk cases.
8 Beyond that, the Department seemed to be trying to
9 suggest Force complaints were going down. That's
10 just not true. Last year, of the complaints that
11 they threw out, 23% of those complaints are force
12 complaints, substantiated complaints of physical
13 force against police officers; the Department just
14 walked away from those. That is simply sending a
15 clear signal to everyone. And then Peter, one
16 final thing I want to point out to you. You as a
17 former prosecutor will understand this, and most
18 people will also, the Department has stopped
19 trying police officers. The percentage of cases
20 that go to trial has plummeted. And if you're
21 someone who's facing a potential prosecution and
22 you know the prosecutor is not going to go to
23 trial, well you're in a much better position. And
24 we now have a police department that refuses to
25 take CCRB's substantiated cases to trial. Okay.

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2 Something has got to change. Many Council Members
3 have pointed out what the CCRB is doing is simply
4 being duplicated by the NYPD, and it's being
5 duplicated by an entity that has an obvious
6 conflict. A system that allows the Police
7 Department to prosecute or control the
8 prosecutions of its own officers is a system that
9 is designed not to work, and we now see it is not
10 working. So we fully support the change in the
11 administering prosecution unit. It is something
12 that Even Rudy Giuliani signed off on. If it's
13 good enough for Rudy Giuliani, why isn't it good
14 enough now? And we call on the Department to do
15 that, excuse me, on the City Council to get
16 involved with that. Two quick other things I want
17 to mention. This came up, there was a question
18 about policy recommendations. And Chair Stone
19 mentioned in the last couple of years they had not
20 done that. We have specifically recommended and
21 we think it's imperative that Counsel consider
22 creating a policy reform unit within the CCRB.
23 They are the agency that is looking at all of
24 these complaints. They are in the best position
25 to analyze patterns and practices and make

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2 recommendations to the Police Department. They do
3 not have the staff to do that now. Finally, and
4 this is something the Council itself can do, as
5 some of you may not realize, the CCRB has one
6 office. It is at 40 Rector Street. If you're in
7 Brooklyn, if you're in the Bronx, if you're in
8 Queens, if you're in Uptown Manhattan, if you want
9 to come in for an interview about a complaint that
10 you filed, you have to travel to the CCRB. Okay,
11 this is a citywide agency; it's a citywide
12 problem. It's not a problem in the First Precinct
13 for the most part; it's a problem around the City.
14 And there needs to be a way for CCRB people to be
15 out into the community. City Council Members
16 could make their offices available to the CCRB,
17 and they should. Borough Presidents may be able
18 to do that also. We have a lot of City offices
19 that will allow the CCRB to get out into the
20 community without having to rent new spaces or
21 build new buildings. Thank you very much.

22 CHAIRPERSON VALLONE: Thank you
23 both, before we move on I want to thank you both
24 for the help in preparing for this hearing and
25 your work with regard to improvements with the

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2 CCRB, whether or not it's dear to my heart, I've
3 had more CCRB hearings than in the history of the
4 City Council here at the Public Safety Committee;
5 or as a prosecutor who prosecuted Police Officers
6 for abuse, and was a defense attorney, who
7 represented people who were abused by the Police
8 Department. So I know it's out there and that's
9 why this is so important. Before I move on to the
10 others, and thank you for keeping your testimony
11 quick, we've hit a roadblock twice now. I mean
12 we're making progress and we're doing what we can
13 do, but at some point, as you heard, it comes down
14 to a policy of just-- a change in policy when it
15 comes to going forward with substantiated cases.
16 Other than prosecutorial powers to the CCRB, are
17 there any other changes that you heard that might
18 be, that we could work on based on the testimony
19 today?

20 [Pause]

21 CHAIRPERSON VALLONE: Keeping it
22 quick.

23 CHRISTOPHER DUNN: Yeah, you know,
24 Peter there's a lot of discussion about the
25 minutiae of these cases. We can all get lost in

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2 that. The basic problem is we've got two
3 institutions that are doing the exact same thing,
4 essentially. And one of them happens to be in the
5 conflicted position of having to decide whether or
6 not to prosecute its own people. Okay, if we're
7 going to believe in civilian oversight and if
8 we're going to believe in the notion of the CCRB,
9 give them the prosecutorial authority. The Police
10 Commissioner still has control, ultimately, of
11 what happens in the case. But there is no reason
12 to have every complaint go through two identical
13 stages to determine whether or not to proceed with
14 the case. So to answer your question, I would not
15 worry about any of the details. I mean those are
16 nice details. The fundamental problem though is
17 that the Police Department is getting to decide
18 about prosecuting cases after the CCRB has
19 ostensibly done the exact same thing.

20 CHAIRPERSON VALLONE: Okay. And I
21 don't disagree, but we will deal with the minutiae
22 later on. I will sit down with you because there
23 may be changes we have to make before that happens
24 to ensure that this works better than it does.
25 Yes, Donna?

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2 DONNA LIEBERMAN: Yeah. I don't
3 know. I wouldn't consider this minutiae, but for
4 the Police Department to unilaterally, you know,
5 raise the standard of proof in these cases, it's
6 not minutiae, it's significant. And that's what
7 the testimony this morning indicated was going on.
8 Bob Perry wants to make two points.

9 CHAIRPERSON VALLONE: No wait,
10 because I called three--

11 DONNA LIEBERMAN: [Interposing]
12 He's our legislative-- he's with us.

13 CHAIRPERSON VALLONE: There are
14 more people than I called up there, so I got
15 confused. Okay.

16 ROBERT PERRY: Thank you, Mr.
17 Chairman. Just two quick observations; one,
18 there's been a lot of talk in earlier testimony
19 about recidivism and repeat offenders, quote
20 unquote, based on outcome data published by the
21 CCRB. What's missing in that analysis is that in
22 recent years, close to 60% of cases that have been
23 brought to the CCRB have been closed without even
24 initiating an investigation. For 2008, that
25 number has jumped to 65%. You're talking about

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2 two-thirds of all complainants bringing a
3 complaint to the CCRB and there is no
4 investigation. Now the truncations happen for a
5 range of reasons, but you're talking then about
6 making judgments on recidivism based on a sample
7 that is simply not indicative of what's going on,
8 and that's important to realize. The second point
9 I want to make is that in the report we issued
10 last year, Mission Failure, to which Franklin
11 Stone has taken objection, and I don't want to
12 reargue the report, but one point main in that
13 report is significant and goes directly to the
14 CCRB's capacity to do its work, is that in light
15 of limited resources and significant NYPD
16 opposition and subversion of the investigative
17 process, the CCRB is not able to do its job. I
18 don't want to cite my citations; it's a well-
19 documented phenomenon. It's not been taken on
20 seriously and it needs to if the CCRB is able to
21 do rigorous investigation.

22 CHAIRPERSON VALLONE: Ms. Lee?

23 Thank you.

24 SUSAN LEE: Hi. Good afternoon.

25 My name is Susan Lee. I'm a criminal defense

1 attorney with the Bronx Defenders, and I'm
2 submitting these comments on behalf of the Bronx
3 Defenders and really thank the Committee for the
4 time. I'll keep my comments very short. The
5 Bronx Defenders is a community-based public
6 defender service. We provide fully integrated
7 criminal defense, family defense, civil services
8 and social services to indigent people who are
9 charged with crimes in the Bronx. And so day in
10 and day out we represent thousands of people, and
11 we work with their families; we have very close
12 communication with their families, and we hear a
13 lot of stories about people's encounters with the
14 police, and that is why I wanted to be here, to
15 give a little bit of voice to some of the stories
16 that we hear. What's most, I think most
17 significant about the stories that we hear is that
18 they are angry stories. They are fearful stories
19 and they are the stories of people who are in a
20 lot of pain and feel a lot of hopelessness and
21 lack of faith in the ability of the system to
22 correct some very serious injustices. Stories
23 like that of Ms. James, who had-- nearly had a
24 heart attack when officers broke down her door.
25

1
2 They ransacked her apartment and then they
3 realized that they were in the wrong person's
4 apartment. Or Ms. Scott, who was called an animal
5 and called is disgusting pig and several other
6 less repeatable slurs when all she was doing was
7 trying to record on her phone the arrest of a
8 friend. Then there's Mr. Miller, who's leg was
9 broken in three places after he asked officers to
10 show him a search warrant before allowing them
11 into his home; or even Mr. Johnson, who was
12 rounded up and falsely arrested for, quote
13 unquote, trespassing in his own cousin's building.
14 And that's not even counting the hundreds of
15 thousands, actually 400,000 stops, frisks, and
16 searches that result in no arrest whatsoever,
17 because there was never any probably cause to stop
18 and search in the first place. When our clients
19 tell us these stories, we as their attorneys
20 advise them to talk to the CCRB. We tell them to
21 call 311. We tell them to make these reports.
22 But their responses are incredibly disheartening.
23 Their responses are, well aren't they with
24 Internal Affairs? They're not going to do
25 anything. Or they'll say, well I've called them

1
2 before and nothing happened, so why would I call
3 them again? Or they'll say, I'd rather file a
4 lawsuit. Now why is it that our clients feel that
5 the only justice available to them is at the end
6 of a lawsuit? Because the community that we
7 serve, in the community that we serve the general
8 sense is the police have nothing to fear from the
9 CCRB. That's the reality of the situation.

10 People don't believe the CCRB have the power to
11 actually change police behavior. Remember Ms.
12 James I mentioned before? She was 70 years old
13 when the police broke into her house and tore
14 through her apartment. They had a search warrant,
15 but it was for a different unit. Unfortunately
16 they destroyed her home and they sent her to the
17 hospital because she collapsed out of fright and
18 shock. Ms. James filed a report with the CCRB and
19 that claim was found to be unsubstantiated, so she
20 filed a civil lawsuit, and she received \$350,000
21 from the City of New York in a settlement.

22 CHAIRPERSON VALLONE: Do you have
23 more? I don't need it now but--

24 SUSAN LEE: [Interposing] Yes.

25 CHAIRPERSON VALLONE: That is

1
2 exactly the reason I'm meeting with Cardoza and
3 the problem with the fact that the City is
4 settling cases and there's no-- and there's no
5 improvements made, no action taken against the
6 police officers, and it's amazing that CCRB
7 wouldn't substantiate, yet they would pay the
8 money. So if you could get me--

9 SUSAN LEE: [Interposing] Well CCRB
10 doesn't pay them the money. The City does, in a
11 totally different--

12 CHAIRPERSON VALLONE: No, they
13 would unsubstantiated-- they would not
14 substantiate you said, and yet the City would pay
15 that kind of taxpayer money in that situation
16 without apparently any guilt, which doesn't make
17 any sense.

18 SUSAN LEE: Right. I think that
19 says--

20 [Crosstalk]

21 CHAIRPERSON VALLONE: Well,
22 exactly.

23 SUSAN LEE: I think that story
24 illustrates many, many problems in this whole
25 process in the CCRB.

1
2 CHAIRPERSON VALLONE: If any of you
3 have more examples of that, please provide it to
4 me because I'm working on that angle.

5 SUSAN LEE: Absolutely. But I
6 think what this illustrates is exactly why the
7 pervasive sentiment amongst our clients and our
8 communities is that the CCRB is powerless. It
9 doesn't have the teeth to hold officers
10 accountable. And when that happens, one thing
11 that results is the City ends up spending millions
12 of dollars on these lawsuits, right? Because the
13 CCRB complaint puts the City on notice that an
14 officer is acting unprofessionally and abusively.
15 And the more CCRB complaints and the fewer
16 actions, disciplinary actions taken against the
17 officer, the stronger the cause of action is in a
18 civil suit, charging the City with negligent
19 supervision, negligent hiring and other personal
20 injury claims. So giving the CCRB real power to
21 nip that misconduct in the bud could save the City
22 millions of dollars, which is not a point that I
23 think has been brought up yet today. And so long
24 as the CCRB does not possess prosecutorial power,
25 Police Officers also have really good reason to

1
2 believe that they can continue to act with
3 impunity and without oversight. Very few cases
4 are even substantiated by CCRB, and even when a
5 lawsuit is filed, the money doesn't come out of an
6 officer's pocket, it's the taxpayers who are hurt
7 in the end. So, lastly, just to conclude, I think
8 the inability of the CCRB to hold officers
9 accountable results in an even more significant
10 and widely felt consequence, which is that the
11 community loses faith in the people who are sworn
12 to serve and protect them. And when the community
13 does not trust the police, the police have a
14 harder time doing their job. Right? And when the
15 police are having a hard time doing their job, our
16 communities are less safe. And this just results
17 in a deeper cycle of dysfunction and a cycle of
18 mutual distrust and tension between the community
19 and the police. And for all of these reasons, I
20 just want to join in the recommendations of the
21 NYCLU, the main point of which is to give the CCRB
22 real teeth and real prosecutorial power so that we
23 can address a lot of these problems with that one
24 solution. Thank you.

25 CHAIRPERSON VALLONE: Thank you,

1
2 and finally, Mr. Southerland, if you can please
3 summarize your testimony?

4 VINCENT SOUTHERLAND: Sure. I want
5 to thank you for providing me with the opportunity
6 to testify before you today. I've submitted the
7 balance of my testimony in written format, so I'll
8 try and keep my remarks brief. I am currently
9 Assistant Counsel at the NAACP Legal Defense and
10 Educational Fund. The Legal Defense Fund, since
11 its founding by Thurgood Marshall in 1940 has
12 worked to secure the full social, economic and
13 cultural integration of all Americans into our
14 society, to eradicate the influence of racism and
15 prejudice on the criminal justice system, and to
16 break down the barriers that prevent African
17 Americans from enjoying the most basic civil and
18 human rights. I come before you today to address
19 the New York City Police Department's failure to
20 impose discipline in cases involving citizen
21 complaints of police misconduct substantiated by
22 the CCRB. Our concerns, however, are not limited
23 to the affairs of the NYPD. The CCRB is also
24 faulted in its mission to adequately investigate
25 and effectively reprimand abuses of police power,

1 leading to what many in the African American and
2 other minority communities have come to view as
3 indifference to, if not tacit complicity with,
4 police misconduct. In the end the joint failures
5 of the NYPD and CCRB leave African Americans and
6 often other minority communities to suffer two
7 corrosive violations of public will and rights:
8 misconduct by police officers followed by the
9 abdication of any effective government response to
10 that misconduct. At the core of the society
11 envisioned by LDF is a real and enduring sense of
12 trust and mutual respect between the people and
13 their government, a government that is responsive
14 to the voices of its entire citizenry. Simply put
15 the NYPD in its approach for addressing complaints
16 of police abuse and misconduct fall far short of
17 that which we would require to earn the trust and
18 win the confidence of African Americans and other
19 minority communities. For far too long, African
20 Americans have been disproportionately and in an
21 overwhelming number of cases unjustifiably
22 targeted by the police. Consistent with the
23 disproportionate number of interactions between
24 the police and the African American community,
25

1
2 African Americans have filed approximately 50% of
3 all police misconduct complaints with the CCRB and
4 filed closed to six times the number of street
5 stop complaints as their white counterparts.

6 However as the volume of complaints from African
7 Americans and others about police misconduct has
8 rise, the failure to address these complaints by
9 the NUPD and CCRB undermines the legitimacy of our
10 police force and political leaders, which in turn
11 undermines public safety goals. Compounding these
12 failings and because of the way in which
13 complaints are handled by the NYPD, there's a
14 tangible sense of skepticism about the independent
15 nature of the CCRB. Given their experiences in
16 making complaints, many are left with the lasting
17 impression that the CCRB and NYPD are essentially
18 the same agency, a perception that over time
19 diminishes the chances that one will turn to the
20 CCRB to complain about police misconduct, and has
21 effectively undermined the willingness of African
22 Americans to cooperate with the CCRB or NYPD in
23 the process. The overarching result is the
24 emergence of a pattern that will--

25 CHAIRPERSON VALLONE: [Interposing]

1
2 Mr. Southerland, you don't appear to be
3 summarizing. You've got four pages, singled
4 spaced. Are you summarizing?

5 VINCENT SOUTHERLAND: Yes. I'm
6 summarizing.

7 CHAIRPERSON VALLONE: Okay, thanks.

8 VINCENT SOUTHERLAND: I am. I will
9 only have a paragraph left. Officers often feel
10 emboldened to escalate their conduct and rights
11 violations. You already see this phenomenon
12 played out in a range of interactions between
13 police and members of the community they serve
14 from everyday encounters which are ripe for abuse
15 and harassment, to unjustified police shootings
16 and other deadly uses of force that generate
17 significant media attention, but seemingly never
18 result in wholesale institutional reforms. We
19 urge the City Council to promote significant
20 reforms for NYPD and CCRB that will help each
21 agency to fulfill its obligations to the people of
22 the City of New York. We join NYCLU's
23 recommendation that the City Council urge to
24 divest the NYPD of its power to review and
25 prosecute and adjudicate substantiated claims of

1
2 misconduct and place that power in the hands of an
3 independent agency, or the CCRB itself. This
4 action will help remove the cloud of suspicion
5 cast over the NYPD's handling of complaints, and
6 improve relationships between the community, NYPD
7 and CCRB. We would also ask City Council approve
8 community access to civilian oversight of the NYPD
9 by creating a public education and outreach
10 program to promote discourse around policing
11 practices. These and other truer forums will help
12 the NYPD and CCRB earn the trust they need to have
13 from the African American community and provide a
14 real measure of service for all. Comprehensive
15 steps must be taken now to improve the quality of
16 the agency and the strength of the process for
17 responding to civilian complaints of police abuse
18 and misconduct. Only then can NYPD and CCRB
19 effectively serve the community as a whole.

20 CHAIRPERSON VALLONE: Thank you for
21 summarizing, and just to clarify, it's State law
22 that governs who has the final say in discipline.
23 So there's nothing we can do about that. It
24 doesn't stop you from calling for a change. The
25 MOU, what that would do and what Speaker Quinn

1
2 came out in support of, I don't know if you were
3 here earlier, would be give prosecutorial powers
4 to the CCRB.

5 VINCENT SOUTHERLAND: Right.

6 CHAIRPERSON VALLONE: But we can't
7 change the discipline here in New York City.
8 Thank you all for coming down. We've got a number
9 of other panels, but we look forward to working
10 with you all to continue to improve the CCRB,
11 thanks, and the Police Department. Now we have--
12 the next panel consists of Dick Dadey from
13 Citizens Union, Marc Krupanski from Center for
14 Constitutional Rights; Iris Martinez, Make the
15 Road New York; and Gabriel Arkles? Wait.

16 [Pause]

17 CHAIRPERSON VALLONE: With the
18 Sylvia River Law Project, is that? Okay.

19 [Pause]

20 CHAIRPERSON VALLONE: Good
21 afternoon, Mr. Dadey. If you all have written
22 testimony, obviously be aware that it will be made
23 part of the record.

24 DICK DADEY: Right.

25 CHAIRPERSON VALLONE: I'd ask that

1
2 you sum it up. And I know, Mr. Dadey, you've been
3 very helpful and knowledgeable when it comes to
4 this topic, and have in fact been requesting a
5 hearing of this nature for some time, so we thank
6 you for your help and the impetus that you've
7 given us, and we look forward to your testimony.

8 DICK DADEY: Sure. And even
9 thought the written testimony is nine pages long,
10 I'm not going to read it. But I do thank you
11 again, and members of the Committee, for this
12 opportunity to have Citizens Union testify on the
13 need to create greater public oversight of police
14 misconduct. Last year Citizens Union issued a
15 report in which it put forward a number of
16 recommendations on how to improve public
17 accountability of the Police Department and its
18 way of handling misconduct. We are concerned by
19 the information that was again provided today
20 about the increase in the number of complaints to
21 the CCRB over the last couple years; but actually
22 the decline in the number of cases that are
23 actually being disciplined by the New York Police
24 Department, and our written testimony goes into
25 great detail about much of the data that's already

1
2 been disclosed, so I'm not going to get in to any
3 of that detail. But I do want to say that our
4 five core recommendations are as follows. We do
5 support the idea of transferring prosecutorial
6 power to the CCRB and allowing the CCRB attorneys
7 to try the cases it substantiates. And I will get
8 into why we think that from a good government
9 perspective. We also believe that there are four
10 other important components of the need to improve
11 this whole process, and they are: expand the range
12 of penalties available to the Police Commissioner;
13 reinstate the zero tolerance penalty for false
14 statements; provide the CCRB with the authority to
15 prosecute officers found guilty of lying during
16 CCRB investigations; and create a permanent and
17 stronger Commission to combat police corruption.
18 Let me just quickly address the transfer of
19 prosecutorial power. A strengthened CCRB we
20 believe is in the best interest of citizens, as
21 they are most protected by a transparent system
22 that facilitates accountability. We also believe
23 that transferring prosecutorial power to the CCRB
24 would create more balance in the Department's
25 disciplinary system by eliminating the ability of

1
2 the NYPD to function as an institutionally hostile
3 gatekeeper, through its triple role as serving as
4 prosecutor, judge and jury. It will remove the
5 NYPD from unnecessarily second guessing the very
6 good work of the CCRB, while also protecting
7 legitimate interests of the Department by allowing
8 the Department to retain the ultimate tribunal
9 role as well as the Commissioner's authority over
10 disciplinary action. The interest of the
11 Department and Commissioner would be protected
12 while allowing for greater accountability,
13 transparency and independence. In listening to
14 the testimony earlier today by the NYPD it was
15 curious to hear them essentially admit that much
16 of what they do duplicates the work of the CCRB,
17 but actually they try and create, they bring new
18 factors into determining whether or not misconduct
19 did in fact occur by looking at information that
20 goes outside of that incident, which I thought was
21 very interesting to note, which points to the
22 need, I believe, for greater independence. To
23 have the NYPD essentially act as the prosecutor,
24 the judge and the jury, and as the NYCLU mentioned
25 earlier, presents an inherent conflict and

1
2 undermines public confidence in the integrity and
3 the independence of the entire process. Our
4 testimony goes into, as I said, greater length as
5 to why we believe this is necessary. We think it
6 can be accomplished in one of three ways. One,
7 the Mayor could simply implement the 2001 MOU that
8 then Mayor Giuliani and his police commissioner
9 entered into, and that upon the election Mayor
10 Bloomberg chose not to implement. Two, a charter
11 revision commission could recommend a change and
12 the citizens could support that change, or three,
13 we believe that the City Council has the power and
14 the authority to pass legislation that also would
15 effectuate that change. And we make the case in
16 this testimony and are happy to talk with you
17 further, as we have in the past, about this. Some
18 of the other recommendations that we have include
19 expanding the range in penalties to the Police
20 Commissioner, because we believe that the current
21 penalty structure is not sufficient. In the
22 interest of moving along--

23 CHAIRPERSON VALLONE: [Interposing]
24 Dick, we discussed that at the last hearing, and I
25 do have news for you. I met with the Speaker on

1
2 that and I expect that a bill to do that will be
3 introduced shortly.

4 DICK DADEY: That's great. That's
5 wonderful to hear. We also believe that the
6 allegations of misconduct must also be handled
7 with great integrity. And in analyzing the CCRB's
8 2007 report, we found that 31 officers from 2003-
9 2006 made a total of 32 false statements during
10 the CCRB interviews, and that 25 of these officers
11 were still on the police force as of January 1,
12 2008. For these officers not to receive any
13 penalties for lying under oath is particularly
14 troubling, as the police are responsible for
15 upholding the law and must not be allowed to skirt
16 it by lying under oath during investigations and
17 disciplinary proceedings. It is for this reason
18 why we recommend that the Commissioner reinstate
19 the zero tolerance policy as enacted by
20 Commissioner Safer in 1996, which required
21 dismissal, absent exceptional circumstances. The
22 policy covered all false statements without
23 exception, and explicitly included lying under
24 oath during a civil administrative or criminal
25 proceeding, including CCRB investigative

1 interviews. However it was not enforced
2 effectively and was weakened in 2005. The revised
3 patrol guide now specifies that the policy does
4 not apply where the officer merely denies a civil
5 claim or an administrative charge of misconduct.
6 This exception is subject to great
7 misinterpretation, potentially allowing officers
8 to deny with impunity misconduct in CCRB
9 interviews. It should be narrowed to apply solely
10 to the police if not guilty in administrative
11 proceedings or answers in civil cases denying
12 paragraphs of complaints. We also believe that
13 the CCRB should be given the authority to
14 prosecute these officers found guilty of lying
15 during these CCRB investigations, and finally we
16 believe that the commission to combat police
17 corruption, which exists at the present time
18 through the force of an MOU, be strengthened by
19 having the City Council create it as a permanent
20 City agency with greater authority and greater
21 independence than it presently has. That
22 concludes my testimony. Thank you.

24 CHAIRPERSON VALLONE: Thank you.

25 And let me just announce for all the witnesses

1
2 that the CCRB is still in the room to listen. I
3 know the Police Department has a representative
4 here. I want them to know that I don't agree or
5 disagree with anything that's being said, but I'm
6 not going to comment on it just for sake of time.
7 Who was going to go next? Are you? Okay. So
8 then why don't we just slide down in order?
9 Identify yourself please and go next.

10 GABRIEL ARKLES: My name is Gabriel
11 Arkles, and I am a staff attorney from the Sylvia
12 Rivera Law Project.

13 CHAIRPERSON VALLONE: Thanks for
14 coming, Gabriel, and I do have your eight pages of
15 single spaced testimony. So I know we are going
16 to sum up, but we appreciate all the work, thanks.

17 GABRIEL ARKLES: Yes. Don't worry,
18 it's not eight pages in this version. The Sylvia
19 Rivera Law Project provides legal services to low-
20 income people and people of color who are
21 transgendered, intersexed or gender non-
22 conforming. I'm grateful to have the opportunity
23 to talk about the lack of police accountability in
24 this City, which is an issue that profoundly
25 affects transgendered and gender non-conforming

1 communities, particularly communities of color.
2 Not long ago I was speaking with an African
3 American transgendered woman in her 50s who has
4 experienced so much police misconduct over the
5 last few decades of her life that she is literally
6 afraid to leave her own home. She described
7 dozens of instances of police demanding to see her
8 breasts when she was walking down the street,
9 stopping and searching her for no reason, calling
10 her a faggot and a whore and threatening to beat,
11 rape or arrest her. She's never been arrested,
12 but she has experienced so much of this harassment
13 that she does not go outside of her house at
14 night, and tries to limit the times when she
15 leaves her--

17 [Off Mic]

18 GABRIEL ARKLES: --as well. It is
19 a tragedy and an outrage that residents in New
20 York City are afraid to leave their own homes
21 because of police violence. The experiences of
22 this woman actually involve some of the more mild
23 forms of the police misconduct that trans and
24 gender non-conforming people report. Profiling,
25 improper stops, improper entries into home and

1
2 false arrest all fall under abuse of authority,
3 are very common. Young trans women of color are
4 commonly profiled as sex workers, regardless of
5 whether or not they're engaged in sex work. Trans
6 and gender non-conforming people who are victims
7 of hate or domestic violence are often arrested
8 instead of or in addition to their attackers.
9 Trans and gender non-conforming people are at
10 times harassed, stopped or arrested for no more
11 than using the restroom or for not having ID that
12 a police officer considers valid. Unlawful and
13 abusive searches are widespread. For example, the
14 NYPD actually has stripped searched transgendered
15 people explicitly for no purpose other than to
16 touch and see their genitals in order to, quote
17 unquote, determine their gender. Excessive use of
18 force and verbal harassment, which can also be
19 termed discourtesy and offensive language, are
20 also widespread and often extreme. It's widely
21 known among trans and gender non-conforming
22 communities of color that there are no real means
23 for police accountability when it comes to these
24 types of acts. Many do not know the CCRB exists,
25 but when I talk to my clients about the CCRB, they

1
2 often tell me that it's useless or worse. In a
3 survey that a community-based organization named
4 FIERCE did, 62% that LGBTQ youth of color surveyed
5 experienced, reported experiencing, police
6 misconduct and zero percent had reported that
7 misconduct to the CCRB. Those few of my clients
8 who do file complaints often have hostile and
9 alienating experiences and see their complaints go
10 nowhere, which ultimately seems to make less
11 difference than we would like it to, since so many
12 of the substantiated complaints don't result of
13 any sort of meaningful discipline regardless. I
14 have included a more comprehensive set of
15 recommendations in my written testimony, and I
16 generally concur with everything that I've heard
17 so far from the other advocates who have
18 testified. I'll just highlight a couple that I
19 think haven't been spoken about as much. First of
20 all, I think the CCRB has to become truly
21 independent of the NYPD, which means I don't think
22 that the Police Commissioner should be appointing
23 the members of the CCRB. I think CCRB Board and
24 staff should include survivors of police
25 misconduct, and should reflect the diversity of

1 the communities most targeted for police
2 misconduct, including trans and gender non-
3 conforming communities of color. Also if trans
4 and gender non-conforming people experience the
5 same transphobic attitudes and biases at the CCRB
6 they do from the NYPD, the CCRB can never be an
7 meaningfully open avenue or redress. The CCRB
8 should get training from qualified community-based
9 providers on transgender awareness, cultural
10 competence, techniques for working with survivors
11 of sexual violence with sensitivity. Also the way
12 that the CCRB currently collects data makes
13 invisible the abuse against trans and gender non-
14 conforming communities in particular. Statistics
15 about gender identity of the complainants should
16 be kept and shared as well. And also, the CCRB
17 needs to do better outreach in trans and gender
18 non-conforming communities, in that complaints and
19 investigative procedures need to be made far more
20 flexible and accessible, so that some of the most
21 marginalized members of our community, including
22 people who don't have stable housing for example,
23 still have a reasonable chance of receiving a real
24 response to their complaints. Of course it's the
25

1
2 NYPD, that's actually directly responsible for
3 police misconduct, and it's the NYPD that needs to
4 take responsibility for it. The NYPD has to
5 change its culture, its policies, its practices
6 and its training for interacting with trans and
7 gender non-conforming communities and other
8 marginalized communities, including people of
9 color, people with psychiatric disabilities,
10 youth, homeless people, immigrants and women. The
11 NYPD must begin a commitment to true
12 accountability to the communities it polices. But
13 in closing I just want to add that overall in
14 order to create true public safety in our
15 communities, I think that we need as a City to be
16 putting greater investment into supporting and
17 strengthening them and less into policing them.
18 We need resources for quality, trans-friendly and
19 affordable services and opportunities such as
20 voluntary drug treatment, healthcare, education,
21 jobs, housing and leadership development. And
22 those things need to be prioritized over resources
23 for policing, prosecution and punishment. I
24 encourage the City Council to do everything in
25 your power to help put these recommendations in to

1
2 place, and I thank you again for the opportunity.

3 CHAIRPERSON VALLONE: Thank you.

4 Ms. Martinez?

5 IRIS MARTINEZ: Good afternoon. My
6 name is Iris Martinez. I am a resident of
7 Bushwick Brooklyn, a recent high school graduate
8 and a member of Make the Road New York. I am
9 speaking from firsthand experience of being a
10 victim of police misconduct. I fall under the age
11 range that is mostly targeted, harassed and
12 arrested, and live in a community with the highest
13 rates of police misconduct in the City. When I
14 was harassed, I was waiting to pick up my younger
15 brother from school. At first I was being
16 verbally harassed because I was standing outside
17 of the school waiting for him, where all of the
18 other parents wait. Then the abuse escalated into
19 physical assault. The experience was very
20 traumatic. I was aware that I can file a
21 complaint, but I did not trust the process because
22 officers protect one another, and because I
23 thought what I felt didn't matter to the NYPD. I
24 began to meet with community members to look into
25 effective ways to hold police accountable for

1
2 their actions and look into ways to make our
3 community safer. One of the options that we
4 looked into was how the CCRB can become an
5 effective way for community members to file an
6 effective complaint against police officers. Some
7 of the recommendations that we came up with and
8 agreed with from our research are the following.
9 Increase public awareness of the CCRB, of what the
10 CCRB is and where to file a complaint. Amongst
11 those who are aware of the CCRB, there is-- sorry.
12 Amongst those who are aware of the CCRB, there is
13 a lack of trust in the oversight system and a
14 widespread belief that the agency is unfair,
15 intimidating and ineffective. We recommend that
16 there is more accessible locations, including
17 community spaces, that are not affiliated with the
18 NYPD where the complaints for the CCRB can be
19 filed. If we are verbally or physically assaulted
20 by the NYPD the scariest location to make file of
21 the incident is the precinct where the officers
22 involved work in. Also, we believe that school
23 safety agents should be under the CCRB. There is
24 currently no place to file complaints about school
25 safety. School safety agents are part of the NYPD

1
2 umbrella; therefore it makes sense that there is a
3 system in place where students and the broader
4 community can hold them accountable. We have
5 proposed legislation called the Student Safety
6 Act, which has been supported by the majority of
7 City Council. If passed, it would help make this
8 a reality. Lastly, we want the City Council to
9 transfer the authority to prosecute from the NYPD
10 to the CCRB. There is a clear conflict of
11 interest with the NYPD deciding if officers are
12 prosecuted. Although most of the public has left,
13 public hearings are important. We at Make The
14 Road are committed to helping make the CCRB an
15 effective route to file complaints against NYPD
16 and hold them accountable. Thank you.

17 CHAIRPERSON VALLONE: Thank you.

18 Mr. Krupanski, we have your very well produced
19 booklet.

20 MARC KRUPANSKI: Right. I won't be
21 going through that. Good afternoon. My name is
22 Marc Krupanski, from the Center for Constitutional
23 Rights. We have heard today a good deal of
24 testimony concerning different forms of police
25 misconduct and the lack of accountability for

1 officers who engage in such conduct. I would like
2 to focus specifically on the NYPD's stop and frisk
3 practices and as that relates to CCRB and the DAO.
4 CCR is currently involved in class action
5 litigation against the NYPD challenging this
6 practice, chiefly the overwhelming occurrence of
7 stops and frisks that particularly target Black
8 and Latino New Yorkers. We also litigated this in
9 the past, which led to the creation of the NYPD's
10 anti-racial profiling policy. As a result of this
11 current litigation, we have received ten years of
12 the raw stop and frisk data from the NYPD, which
13 is more than has been provided to the City
14 Council. Along with statistical experts who are
15 in the process of analyzing this data-- and you
16 have the report in front of you, which analyzes
17 the 2005 through the first half of 2008. I know
18 my time is brief, so I just want to focus on three
19 main points. The first concerns NYPD's stop and
20 frisk practice, the second concerns the Department
21 Advocates Office's failure to discipline stop and
22 frisk related cases that are substantiated by the
23 CCRB, and third, our recommendations for an
24 independent special prosecutor and independent
25

1
2 police auditor. Stop and frisk is of particular
3 concern to us as well as most New Yorkers, due to
4 its alarming rate of occurrence. In the first
5 half of 2008, the NYPD conducted over 270,000
6 stops, which put them on pace for 540,000 for the
7 year, the highest total ever. Of these stops, 81%
8 were of Blacks and Latinos, and just 11% of
9 Whites. This disparity increases in regards to
10 frisks. For Chair Vallone, the precinct closest
11 to your office has made the most stops in Queens.
12 The first six months of 2008, was over 6,000 when
13 the average per precinct was 3,000. Council
14 Member Dilan, who I think has left, his precinct
15 made the most citywide, with close to 14,000.
16 Some people may not be bothered by these high
17 numbers, claiming stop and frisk is a legitimate
18 practice to get criminals, weapons and drugs off
19 the street. However, in the first half of 2008,
20 only six percent of those stopped were arrested,
21 seven percent received a summons. Weapon and
22 contraband yield rates were even lower, with just
23 one percent of stops yielding a weapon and two
24 percent yielding contraband. On the other hand,
25 24% or one out of every four stops result in some

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2 use of physical force by the officer. This rate
3 is nearly double the combined rates of arrests and
4 summons. Based on these and other figures in the
5 report, it is our strong belief that a large
6 number of these stops were unjustified and very
7 likely illegal. Since stops and frisks are the
8 main form of contact between civilians and police
9 officers, it's no surprise that as they increase
10 citywide, so have the complaints to CCRB. In
11 fact, stop and frisk related complaints now make
12 up the majority of complaints received by the
13 CCRB. So it's of particular concern to us that
14 the NYPD is not disciplining officers in the
15 incredibly few complaints that the CCRB
16 substantiates. In fact it has come to our
17 attention that the Department Advocates Office
18 current procedure and stated procedure is to not
19 pursue any disciplinary action against any officer
20 who is named in any substantiated stop and frisk
21 case by the CCRB. In such cases, the DAO credits
22 police officers' versions of events in full,
23 without any further review. The structures that
24 are put in place for the NYPD's self-monitoring
25 and self discipline are not just broken, but

1 intentionally flipped on their head, where
2 misconduct and illegal activity are ignored and
3 thereby encouraged. Consequently, the DAO fails
4 to meet minimum standards of competence and in the
5 end condones police misconduct. The NYPD cannot
6 police itself. For these reasons we support
7 efforts to move prosecutorial authority out of the
8 hands of the NYPD and the Department Advocates
9 Office, and to the CCRB. We also join other calls
10 for reform of the CCRB that have been discussed
11 today. However, we want to emphasize that this is
12 just one step and by no means is our ideal end.
13 Instead we need a truly independent body, one
14 independent from the NYPD and the Mayor's Office
15 and directly accountable to the people of New York
16 through the City Council. That's why we would
17 like to see both an independent special prosecutor
18 to investigate and prosecute cases of police
19 brutality and an independent police auditor to
20 investigate and monitor departmental wide policies
21 and initiatives such as stop and frisk.
22 Independence and investigation and in
23 prosecutorial authority is key to achieving
24 accountability. Thank you and I look forward to
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working with you on this more.

CHAIRPERSON VALLONE: Testing. All right, thank you all, and we look forward to working with all of you. Thank you for coming down and for your patience. Next panel, and we are-- we have a few more panels and we are now going to go to two minutes per person. The next panel will be William Antalics. I can't read the writing. Sorry. Antalics, it looks like. Close enough? And Andrea Ritchie from the Sex Workers Project at Urban Justice Center; Paul Lance Mills at the NYC Policing Roundtable; and Lillian Rivera.

[Pause]

CHAIRPERSON VALLONE: Mr. Antalics, why don't you begin while everyone else is getting settled?

[Pause]

WILLIAM ANTALICS: My name is William Antalics. I'm a member of the Lower East Side Call for Justice. We're a peace and justice group. This is our testimony on the CCRB. Members of the Lower East Side Call for Justice have attended CCRB meetings quite regularly since

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2 its inception. I myself have attended quite
3 regularly for four years. It is abundantly clear
4 that the Board members are quite deferential to
5 the police. They appear to believe that
6 Commissioner Kelly and Mayor Bloomberg are
7 watching over their shoulders, monitoring what
8 they say. Indeed they say very little. Their
9 meetings are very short. Chris Dunn of the New
10 York Civil Liberties Union is the only consistent
11 voice represent public, it seems. He tries
12 mightily to hold Board members' feet to the fire.
13 We suggest that an informed member of the Public
14 Safety Committee staff attend CCRB meetings, speak
15 up forcefully when appropriate and report back to
16 the Committee Chair. The report should include
17 the voices of the public. The Committee Chair
18 should share the report with members of the
19 Committee and with the entire Council. During the
20 last 12 years, the Lower East Side Call for
21 Justice has conducted nearly 200 workshops with
22 young people about what to do when stopped by the
23 police. Whether they are in residences,
24 alternative to incarceration programs, high
25 schools or community centers, the reactions of the

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2 young people are consistent. They have many
3 complaints about the police abusing them, but they
4 almost never file complaints. Many are ignorant
5 of the complaint process and they're all deeply
6 skeptical of whether anything will be done for
7 them. WE suggest the distribution of complaint
8 forms to places of worship, young adult
9 residences, community centers and schools.
10 Instruction sheets should be provided. We also
11 suggest that members of the CCRB Board and its
12 staff--

13 CHAIRPERSON VALLONE: [Interposing]

14 Can you sum up, please?

15 WILLIAM ANTALICS: Okay. Give
16 presentations about the complaint processes at
17 places where people gather, churches, residences,
18 community centers and schools. I'm almost
19 finished. We have examined the complaint
20 statistics for the 7th and 9th precincts in our
21 neighborhood. Although we believe filed
22 complaints are but the tip of the iceberg, when
23 filed complaints are high, we meet with the
24 precinct commanders. If necessary, we meet with
25 them repeatedly until the complaints are reduced.

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2 We suggest that community groups in other
3 neighborhoods do the same. We believe that until
4 the Police Commissioner takes substantiated
5 complaints more seriously or those complaints are
6 prosecuted by the CCRB, and until the City Council
7 and the Mayor strengthen the disciplinary
8 measures, the CCRB will have little purpose and
9 little effect. Thank you.

10 CHAIRPERSON VALLONE: Thank you.

11 Please all try to stay within the two minutes. I
12 want to get to everyone who's waiting to testify,
13 and it wouldn't be fair if they didn't get a
14 chance. So why don't we just-- you'll be next.
15 And Helen Foster had joined us momentarily.
16 You're on. I can hear you.

17 LILLIAN RIVERA: Thank you Council
18 Member Vallone and the rest of the staff. My name
19 is Lillian Rivera. I'm a community disability and
20 TBI activist. I have first hand and I have
21 acknowledged how within my community, the
22 Frederick Douglass Houses, how they are taking our
23 youths, subjecting them to illegal search and I
24 have a problem with that. I have a problem with
25 that, because not all youths are drug dealers.

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2 Also, I am a human being that loves humanity. I
3 have genuine love for humanity. And I've been
4 victimized, although I will not be their victim.
5 I've been deprived of going to the 24th precinct
6 and making any type of incident reports. I want
7 to just, you know, go as quickly as I can, because
8 it's a lot that I've been through with the New
9 York City Police Department. Just on October
10 11th, 2007, I went to see my Traumatic Brain
11 Injury - - in Far Rockaway. I fell asleep. My
12 legs were swollen due to a medical illness I have,
13 and I was grabbed by a police officer and
14 manhandled and thrown out of the train and against
15 the wall. He stated to me that he needed to know
16 my name, that I had fallen asleep and that was a
17 crime I had committed, and he wanted to know-- he
18 wanted to keep me because I had an alleged warrant
19 for my arrest, something that was untrue. Anyway.
20 Then after that on November 26th, I was crushed by
21 the doors five times and my point finger was
22 squashed and it was bleeding and I was treated
23 very, very badly by the Transit Authority Police.

24 CHAIRPERSON VALLONE: You're going
25 to have t sum up.

1
2 LILLIAN RIVERA: I want to sum it
3 up. Okay. On October 11th of this year-- can I
4 have at least one more minute please?

5 CHAIRPERSON VALLONE: No, I don't
6 want to hear about specific incidents. I don't
7 want anyone to come up here and talk about that.
8 That's not what we're about. We're here about
9 making improvements. And if you've got some
10 testimony, sum that up. But if people are going
11 to come up and tell me about bad things the
12 police--

13 LILLIAN RIVERA: [Interposing]
14 Improvement?

15 CHAIRPERSON VALLONE: --did, that's
16 not what we're here for today.

17 LILLIAN RIVERA: Okay. The
18 improvement with the CCRB is that I did file a
19 complaint. They didn't allow me to tape record my
20 testimony, although they were recording my
21 testimony. They didn't follow through on my
22 October 11th of 2008 accident where I was two and
23 a half hours unconscious 60 feet away from the
24 precinct. No police officer came to my aid,
25 although they were called. The CCRB needs to be

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2 reformed totally, because they are not doing what
3 they are supposed to do for our citizens. Thank
4 you so much.

5 CHAIRPERSON VALLONE: Thank you.

6 Are you not testifying? Okay.

7 ANDREA J. RITCHIE: Ms. Pagano is
8 going to testify briefly after I do. She's
9 already on the list, so she should have an
10 additional two minutes. Good afternoon. My name
11 is Andrea Ritchie. I'm the Director of the Sex
12 Workers Project at the Urban Justice Center, and I
13 very much appreciate the opportunity to testify
14 before you today concerning the CCRB's annual
15 report. In light of the widespread police abuse
16 and misconduct our clients experience on a daily
17 basis, we welcome the Council's renewed attention
18 to the issue of police accountability. The Sex
19 Workers project shares the concern of Council
20 Members and many of the organizations you've heard
21 from today with respect to the significant portion
22 of substantiated CCRB complaints which are going
23 unpunished by the NYPD. Not only does the NYPD's
24 failure to pursue administrative charges or impose
25 meaningful discipline in these cases contribute to

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2 creating a climate of impunity with respect to
3 abuses of the rights of New Yorkers by the police,
4 it significantly erodes public confidence in the
5 civilian oversight process. Of equal concern to
6 us is the fact that countless incidents of police
7 misconduct experienced by women and transgender
8 people and particularly women of color and
9 transgender people of color, including sexual
10 harassment and misconduct by NYPD officers,
11 unwarranted and abusive strip searches, false
12 arrest for prostitution and refusal to investigate
13 complaints of interpersonal violence and other
14 gender specific forms of police misconduct, are
15 never even reported to the CCRB in the first
16 place. SWP and other community-based
17 organizations hear of such abuses on an almost
18 daily basis. Just this week we received three
19 separate complaints of police misconduct, the
20 first involving use of excessive force during a
21 prostitution arrest, the second an unwarranted and
22 public strip search of a Latina transgender woman
23 in a police precinct in full view of male
24 arrestees and police officers, and the third, an
25 inappropriate and abusive police response to a

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2 woman attempting to make a police report after she
3 was drugged, tied to a bed and raped. We also
4 heard one of our clients complain that she ran
5 away from an abusive home at 14, only to be
6 subsequently picked up by a police officer who
7 forced her to have oral sex. These clients do not
8 see reporting such police misconduct to the CCRB
9 to be a viable option. In addition to widespread
10 lack of trust in the public process and its
11 further fueled by NYPD's failure to discipline
12 officers against whom such complaints are made,
13 there are additional barriers. Although the types
14 of police misconduct I described fall well within
15 the CCRB's mandate, practically speaking the CCRB
16 is not set up to properly accept investigate or
17 track these types of complaints. Additionally
18 their--

19 CHAIRPERSON VALLONE: [Interposing]
20 Would you like Ms. Pagano to finish the testimony?

21 ANDREA J. RITCHIE: Yes. Let me
22 just say that the type of police misconduct I've
23 described today is not the subject of any specific
24 NYPD policy prohibiting it, nor is there any
25 specific training regarding prohibition on that.

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2 And the rest of my testimony I'll commend to you
3 in writing and ask Ms. Pagano to give hers.

4 CHAIRPERSON VALLONE: We do have
5 your testimony. It's very extensive and helpful.
6 Thank you.

7 ANDRIANA PAGANO: Hi, everyone. My
8 name is Andriana Pagano and I work with victims of
9 violent crime, particularly human trafficking. We
10 have a new state law that allows us to take
11 clients into the precinct to report the crime of
12 human trafficking that happened here in New York
13 State. And I filed a complaint with the CCRB last
14 year on behalf of myself and my client. I brought
15 her to the precinct and was told-- I said we need
16 to make a report, and was told by an officer and a
17 lieutenant that we're scammers, because they
18 hadn't heard of human trafficking. And offered a
19 business card, I offered to sit down. I said this
20 is a sensitive issue and we can sit down and
21 explain to you what happened, it is within your
22 jurisdiction and we need to make this report. I
23 was told that we were scammers and that we needed
24 to get out and that I wasn't allowed to translate
25 for my client, who didn't speak English, and a

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2 translator would not be provided and we had no
3 right to be there. And to make a long story
4 short, they chased us out saying, scammers,
5 scammers, you have to get out of here. So I filed
6 a report, and the problem with the CCRB that we
7 had was that because what the officer did was not
8 particularly illegal, it wasn't a crime to yell,
9 scammers get out, or not take a police report,
10 there's no recourse. The CCRB needs to provide
11 recourse for misconduct that is not specifically
12 illegal, but that impedes our work and that
13 impedes the rights of victims of whatever crime we
14 are advocating for. And the rest you have in
15 written testimony. Thank you.

16 CHAIRPERSON VALLONE: That's a very
17 interesting point.

18 [Pause]

19 PAUL LANCE MILLS: Good afternoon,
20 and thank you for the opportunity to testify this
21 afternoon. My name is Paul Lance Mills. I'm a
22 resident on the Upper West Side of Manhattan. I'm
23 a Civil Rights Attorney and I'm a member of the
24 same New York City Policing Roundtable that a
25 number of the panel attorneys who've testified

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2 today participate in. I'm here to support the
3 reforms recommended by the NYCLU and particularly
4 to argue the urgency of transferring as much
5 authority as possible to mandate officer
6 discipline from NYPD to an independent agency.
7 And I'm here today to offer the perspective of a
8 Civil Rights attorney with extensive experience in
9 litigating police misconduct in Los Angeles. I
10 believe the Los Angeles experience can be very
11 instructive to New York City. New York City's
12 Mayor Dinkins announced his support for an
13 independent review board just two months after the
14 Rodney King disturbances. In the meantime,
15 despite having the city in flames, Los Angeles has
16 been unable through the actions of its own police
17 department to reform itself. Some years later the
18 Rampart scandal broke and at present New York
19 City's police department remains under the control
20 of a US District Court, at a cost of \$50 million a
21 years, because it was unable to institute on its
22 own reforms that are strikingly, alarmingly
23 similar to those recommended by the NYCLU. Thank
24 you.

25 CHAIRPERSON VALLONE: Thank you

1
2 all, and thank you for being brief. I appreciate
3 it. And next panel will be Deirdre McNamara
4 [phonetic], then Danette Chavis [phonetic], Dee
5 Lazersmith [phonetic], Danny Hernandez, and Kevin
6 Conin [phonetic].

7 [Pause]

8 CHAIRPERSON VALLONE: Thank you
9 ma'am. Why don't we start on the left side there
10 where you are with that microphone and we can
11 begin. Just pull the mic towards you. Turn it
12 on.

13 [Pause]

14 DANETTE CHAVIS: Good morning.
15 Because we're pressed for time I'm going to try to
16 go as fast as I can. In these communities, you
17 can kill folks, but you can't sell drugs.

18 CHAIRPERSON VALLONE: Can you
19 identify yourself for the record?

20 DANETTE CHAVIS: My name is Danette
21 Chavez. In these communities, you can kill folks,
22 but you can't sell drugs. For that, you go to
23 jail. And don't stand in front of your building.
24 You'll get arrested for loitering. And if you're
25 walking up the street and look suspicious, you'll

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2 be stopped, searched and cussed out at the same
3 time. And if you speak and they don't like what
4 you said or the manner in which you said it,
5 you'll be assaulted, then brutalized, then
6 arrested. And if you manage to get out from
7 underneath those charges, whatever it is they
8 manage to pin on you, and attempt to get some
9 justice for the manner in which they brutalized
10 you, the CCRB may recommend disciplinary action,
11 but what action shall be taken? What action shall
12 they take that shall rectify the brutalization,
13 the humiliation and time lost during and after the
14 entire fiasco? The CCRB can recommend all it
15 wants to, but what does it mean if it does not
16 curb the next officer from committing the same
17 violations? Explain how a recommendation for
18 discipline can be made with no rules to enforce or
19 carry it out. Therefore, it is a mockery of the
20 intended purpose. The complainant alleges an
21 abuse of authority. The Board, upon
22 substantiating the allegation recommends
23 discipline. Recommends indeed, not enforces, but
24 merely recommends. It's not a directive; it's
25 merely a suggestion. And suggestions and either

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2 taken or ignored at the discretion of the one who
3 received it, therefore why would any superior pay
4 heed to any suggestion of discipline against his
5 officer who has denied from day one that the
6 allegations have occurred? He has no compelling
7 reason to do so.

8 CHAIRPERSON VALLONE: Sum up
9 please.

10 DANETTE CHAVIS: May I continue?

11 CHAIRPERSON VALLONE: Just sum it
12 up in two more sentences?

13 DANETTE CHAVIS: I'll sum it up.
14 The name civilian in itself speaks volumes.
15 Review Board, that is exactly what they do, go
16 over it, missing the key element, the exacting of
17 punishment should that recommendation not be
18 complied with. No power or authority have they in
19 this regard, and until such power and authority
20 can be established, the CCRB shall serve no
21 purpose but to further antagonize the complainant
22 in adjudicating the abuse.

23 CHAIRPERSON VALLONE: Thank you.
24 Please identify yourself and stay within the two
25 minutes.

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2 DEE LAZERSMITH: My name is Dee
3 Lazersmith. The CCRB told me they do not have
4 power over NYPD Aviation and they must have that
5 in the future. I live in Bayside Queens. I have
6 been tortured by NYPD Aviation for over two years.
7 I have 52 complaint numbers with me today from
8 Internal Affairs. I have many more. I am in pain
9 and I am suffering. This is also happening to
10 Keith LaBella [phonetic], who is a lawyer in
11 Queens and Tim White, also in New York City. I
12 have both of their contact information. NYPD
13 Aviation gave me cancer that my doctor said no 28
14 year old should get. NYPD also threatens me not
15 to complain or they will arrest me. This is an
16 emergency. This is an emergency. NYPD commits
17 sexual abuse, mental abuse and physical abuse
18 against me and others. My human rights are being
19 violated. Protect my rights as a human being.
20 NYPD takes away my human rights. You need to do
21 something about this and you need to do something
22 now. I need relief. I cannot sustain any more
23 police torture and abuse. I feel like I am being
24 murdered. I'd be happy to discuss my case with
25 anyone. Save my life. No excuses.

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CHAIRPERSON VALLONE: Thank you.

[Pause]

CHAIRPERSON VALLONE: Yeah, please begin.

KEVIN CONIN: My name is Kevin Conin. I'm a democratic candidate for the office of Mayor in 2009. And the people will ultimately be the ones to decided on whether or not they're being heard, listened to, and there should be things that should be changed. But the administration fails to hear the people. So in November, they'll have their opportunity. The Civilian Complaint Review Board doesn't work the way it was intended. Maybe it does. The CCRB is charged with investigating and mediating complaints that the members of the public file against New York City Police Officers involving the use of force, abuse of authority, discourtesy and offensive language. If you take a look at the statistics, you'll see that the NYPD will rarely take the CCRB's determination and discipline its officers. Why should it? The CCRB doesn't understand police work. In order to understand police work, you have to do it. There's no other

1 way to understand it. It's a dangerous job, not
2 an extremely monetarily rewarding job at that. It
3 is difficult to even get anyone to take the test
4 anymore, as the standards have been lowered and
5 the respect that an officer once had is fading.
6 I'm going to tell it like it is, so I hope that I
7 don't offend anyone. I would like to make myself
8 clear. It is not my attention to offend anyone.
9 A review board has no authority at all, none.
10 Unless you have a trial in a court of law with a
11 jury, you can forget about the NYPD disciplining
12 one of their own, and rightfully so. If you walk
13 the beat you will side with the officer 99% of the
14 time, and although it might not be morally
15 correct, that's just the way it is. Discipline is
16 handed down by a jury. The CCRB is a sedative for
17 the angered civilians who feel they weren't
18 treated correctly, and after being put through the
19 process of the CCRB in which they get no relief
20 then any process after that seems ludicrous.

21
22 CHAIRPERSON VALLONE: Sum up,
23 please.

24 KEVIN CONIN: I'll sum it up.
25 There were 7,559 complaints; only three of them

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2 were found guilty. Something is definitely wrong
3 with that. The CCRB is a watchdog and they
4 basically have no credibility. They actually have
5 credibility but anything they come up with is just
6 discounted. So something needs to be done about
7 that. Thank you.

8 DANNY HERNANDEZ: All right. Good
9 afternoon. My name is Danny Hernandez. My
10 brother Iman Morales was killed on September 24,
11 2008, after the NYPD failed follow protocol. Iman
12 fell from a 10-foot awning after being tazed by
13 Sergeant Nicolas Marchisona. The lieutenant that
14 gave the order to fire the tazer committed suicide
15 a week later, while the other officer who actually
16 fired the tazer recently been promoted to
17 Detective on Halloween 2008. The NYPD say they
18 are investigating, but how can they be
19 investigating if they just promoted Nicolas
20 Marchisona, although he broke police procedure?
21 As of right now, the Civilian Complaint Review
22 Board doesn't have any authority over the NYPD.
23 All they have is their opinion. And at the end of
24 the day, it doesn't mean much. Why is that? The
25 officers get a slap on the wrist for taking a

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2 life. That's unjustified. City Council, it's up
3 to you. You have the power.

4 CHAIRPERSON VALLONE: Thank you
5 all. And the next panel will be Mary Dougherty
6 [phonetic], Jonathan Sunshine [phonetic], Diane
7 Bagley [phonetic]. I can't read the writing here,
8 but it ends with Rashed [phonetic], David Newton
9 [phonetic]. Could you please let the next people
10 up to testify?

11 [Pause]

12 CHAIRPERSON VALLONE: All right.
13 Well you're speaking on behalf of all those
14 people. Identify yourself. Turn the mic on. You
15 still only get two minutes, though.

16 JONATHAN SUNSHINE: Hello? Okay,
17 hi. My name is Jonathan Sunshine. My group was
18 here before. I represent RIF [phonetic] Urban
19 Justice, what do they call it? Urban Justice and-
20 - what I'm here to talk about today is the fact
21 that, you know, when police-- first of all, when
22 police come to answer a call and everything, if
23 they're coming, they should work on their
24 practices of, you know, instead of coming out like
25 a SWAT team with their you know, they should at

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2 least come with ,what do they call it, Mobile
3 Crisis Units, and you know, come to talk to the
4 people and investigate it the same way they do a
5 domestic disturbance. You know, when you go and
6 you talk about-- or a hostage crisis where you
7 have people coming with bullhorns to assess the
8 situation before they make decisions. Because
9 sometimes they can, you know, they have too much
10 mistaken identity, too much arresting the wrong
11 people, and then when a person-- somebody's having
12 problems with their family members or something
13 they call the police and the police come out and
14 they come out and they don't try to assess the
15 situation. They come out with guns and stuff like
16 that. Instead of coming out with guns, they
17 should be coming out with crisis counselors. They
18 should come out with mobile patrol teams, you
19 know, crisis mobile patrol teams and stuff like
20 that. And it's better to, you know, while I sit
21 here and I tell you that it would be better off--
22 people would be better served that way.

23 CHAIRPERSON VALLONE: Thank you.

24 Thank you all for coming down and thank you for
25 your patience. We do not have any more slips to

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testify. And I thank you all for your attendance,

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and this Public Safety Meeting is adjourned.

C E R T I F I C A T E

I, Erika Swyler, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature  _____

Date February 5, 2009