

**Testimony of Daniel D. Chu, Chair
Civilian Complaint Review Board
Before the Finance and Public Safety Committees
of the New York City Council**

May 18, 2011

Chairs Recchia and Vallone, members of the Finance and Public Safety Committees, I am Daniel D. Chu, the new Chair of the Civilian Complaint Review Board (CCRB). With me today is the agency's Executive Director, Joan M. Thompson. Ms. Thompson and I will be available to answer your questions at the conclusion of my testimony.

Fiscal 2011 has been a year of challenges and hope for the agency. The budget cuts of past years and the longstanding vacancies on the Board, which now total four, have made our mission ever more difficult and challenging. While the hard work of the Board and the staff have made a difference in gaining new efficiencies, the board vacancies have offset the full benefit of these achievements. As we look to fiscal 2012, we find new challenges ahead, and we are here to discuss them with you.

The CCRB's budget for fiscal 2012 stands at \$9,610,246, with a headcount of 141, 112 of whom are investigative staff. The Executive Budget reflects dramatic funding and headcount reductions that have taken place in just four years. In fiscal 2008, the CCRB had an approximate \$12 million budget and a headcount of 192. Since then, a total of \$3,239,025 and 51 positions have been eliminated.

The lack of appropriate funding has a substantial effect on two critical areas – the Administrative Prosecution Unit (known as the APU) and the Investigations Division. The 2012 budget includes \$77,023 for the APU.

However, this funding makes possible the continued operation of the program for only six months in fiscal 2012. It only supports two of the four positions that were originally funded in 2011 – eliminating an attorney and a clerical position.

The reduction in funding will also affect our investigative mission as investigative dockets will increase. Investigative headcount has dropped precipitously from 153 in 2008 to 112 positions in 2012, or 28%. As a result, the loss of 41 investigators has led to higher caseloads per investigator. In fiscal 2008 an investigator received, on average, 49 complaints annually. From fiscal 2009 to fiscal 2011, investigators have received, on average, 53 complaints per year. In 2012, we project that investigators will receive – based on 2011 complaint levels – an average of 57 complaints per year, or 16% more complaints than in 2008.

Accordingly, we respectfully request that the Council restore to the CCRB's fiscal 2012 budget some of the funding that we have lost in recent budget cycles. In particular, we seek restoration of funding for the APU and seven investigative positions for a total amount of \$518,345.

Restoration of the Administrative Prosecution Unit

In February 2010, the Police Commissioner and the former Chair announced a pilot program under which CCRB attorneys would be designated as lead prosecutor for a portion of the substantiated CCRB cases brought to trial. The project was funded by the Administration for fiscal year 2011 through a one-time increase to the CCRB's budget of \$366,313. The funds provided for four positions; a lead and an assistant prosecutor, one investigator and one clerical position. We have hired the investigator and the lead prosecutor, a former United States Attorney for the Eastern District. The other two positions were never filled – even though candidates were interviewed - because of the two-for-one hiring restriction imposed by OMB as well as the uncertainty about the continuation of the program.

The APU builds on our second seat program, started in the fall of 2008, under which a CCRB attorney acts as supporting counsel to the assigned Department prosecutor. When time permits, a CCRB attorney, whose primary function is to provide legal review of CCRB investigations, participates in the second seat program. The second seat attorney presents at least one direct and one cross examination and participates in witness preparation, plea negotiations and trial strategy. When we began the program we had four full time CCRB attorneys. Due to budget reductions, we now have two agency attorney lines - one of which has been vacant since mid-2009 because of financial and hiring constraints. However, the volume of cases the NYPD has invited us to second seat has increased. Unlike lead prosecution cases, which are limited to a portion of the CCRB trial cases, there is no limit to the number of cases CCRB's attorneys can second seat. We have turned down the invitation to participate in at least four trials because of lack of available staff.

Through both programs, APU and the second seat, the CCRB has participated in eighteen prosecutions to date and six additional cases are scheduled. Our lead APU attorney has participated in three trials. Her first solo lead prosecution trial is scheduled to take place on May 24, 2011, and her second lead trial is scheduled to take place this summer. CCRB attorneys have acted as the second seat on fifteen cases, nine of which went to trial and six of which were resolved through a plea agreement. Four additional cases have been designated for the second seat program.

The CCRB will present an evaluation of the APU after the completion of the second lead prosecution trial. The metrics used to evaluate the program will not be limited to trial outcomes. Our analysis will include other factors such as: the opportunities the program affords the CCRB to inform trial commissioners and DAO advocates about our investigative process, the ways in which we are

able to enhance our training and legal review to reflect the unique forum of the NYPD trial room and the incidents of trial support APU staff are able to provide.

In March 2011 we submitted a “New Needs” request to the Administration to base-line funding for the APU at the same levels as fiscal 2011 (as described previously). In order to align our staffing, funding, and the Board’s desire to maintain a presence in the trial room, we noted that the scope of the APU would be expanded to include the second seat program. The two attorneys funded through the APU would be available for all prosecutions, lead and second seat. The two team attorneys could then devote their time to CCRB’s core mission and support our staff to conduct timely and thorough investigations.

The Administration has informed us that they will only fund two positions for the APU, the lead attorney and the investigator. Funding will only extend until December 2011, at which time they will reconsider our request. With reduced and short term funding it will be difficult for us to maintain our current level of participation in the NYPD trial room. Consequently, some of the benefits of the CCRB’s participation in the prosecution process will be lost. Our investigations are strengthened by our role in the trial room; lessons learned there are incorporated into CCRB’s training curriculum. Additionally, communication has increased between the NYPD and the CCRB as a result of this link. This communication has played a part in reducing the rate at which the NYPD declines to prosecute substantiated CCRB cases. From the public’s perspective, confidence in the CCRB’s mission is reinforced through the City’s financial support of the APU.

Accordingly, we respectfully request that the Council restore to the CCRB’s fiscal 2012 budget that portion of the APU budget not included in the Executive Budget. Specifically, we request funding for two positions for the APU from July 1, 2011 through December 31, 2011 as well as funding for four

positions from January 1, 2012 through June 30, 2012. The amount of restoration for the APU we seek is \$224,345.

Restoration of Seven Investigative Positions

The loss of seven investigative positions – on top of previous reductions - will erase recent productivity gains attained in 2011 and will affect our mediation and outreach programs as well as our ability to issue policy recommendations. Equally important, with fewer investigators and higher workloads our services to the public will suffer. For instance, we will have to do fewer field visits and limit after hour contacts. Finally, we will not be able to keep pace with complaint filings at current complaint activity levels.

By the end of fiscal 2009, the agency's open docket was 3,358 cases; currently, the docket is at 2,556 cases. This reduction has been accompanied by a decrease in the average time it takes to complete an investigation. In 2009, when efficiency was lower, it took an average of 343 days to complete a full investigation and 392 days to complete a substantiated investigation. However, year-to-date 2011 the average time to complete a full investigation has declined to 282 days, and the average time to complete a substantiated investigation has decreased to 335 days.

However, we predict that in fiscal 2012 the loss of seven investigators will cause the open docket to rise to 3,304 cases, a 29% increase. Additionally, our average time to complete a full investigation could increase to 331 days – a 17% increase - and the average time to complete a substantiated investigation could climb to over 376 days for fiscal 2012, a 12% increase. Consequently, 26% of substantiated cases referred to NYPD are likely to be 15 months and older, which would double the 13% rate of 2011. This is very significant, as the NYPD has consistently indicated that the older a case, the more difficult it is to impose discipline. The rate at which the NYPD declined to prosecute CCRB cases was 17% for calendar year 2010, a significant reduction from previous years when it

was on average 30%. If the age of our substantiated cases goes up, we may see the decline to prosecute rate rise again.

In addition to the devastating effect the loss of investigators will have on the agency's productivity, with less staff the CCRB will be unable to continue its expansion of two important programs, Mediation and Outreach, as well as its work identifying trends and making policy recommendations. These initiatives are mostly staffed through our investigator pool. In the beginning of 2010, the Board reiterated its commitment to these areas and the last two years have been a success in this regard.

In fiscal 2011, the number of cases that the CCRB resolved through our mediation program has risen significantly from the prior year. In fiscal 2009, the CCRB mediation program closed 193 cases; year-to-date we have closed 285 cases. Similarly, the Outreach Unit has almost doubled the number of outreach presentations it conducts annually.

The work of our investigators makes possible the identification of trends and areas of concern. Thus, for instance, our recommendation to the Department concerning improper stops in New York City Housing Authority developments was made possible through numerous hours of work reviewing hundreds of cases in addition to the daily responsibilities. With fewer resources, the same task would be impossible to perform.

Accordingly, we respectfully request that the Council restore to the CCRB's fiscal 2012 budget funding for seven investigative positions. The amount of restoration for the Investigations Division we seek is \$294,000.

In closing, we are seeking your support to keep the APU pilot-program fully funded and to restore the investigative positions I have just described. The total amount of restoration we seek is \$518,345. We thank you for your time and

for your continued support. Ms. Thompson and I will be happy to answer any questions you may have.