

Public Board Meeting of the CCRB October 9, 2013

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Public Board Meeting of the

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Civilian Complaint Review Board

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Wednesday, October 9, 2013

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10:00 a.m.

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40 Rector Street - 2nd Floor

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New York NY 10006

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Daniel D. Chu, Esq., Chair

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Tracy Catapano-Fox, Esq., Executive Director

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Public Meeting Agenda:

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1. Call to Order

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2. Adoption of Minutes

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3. Report from the Chair

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4. Report from the Executive Director

22

5. Committee Reports

23

6. Old Business

24

7. New Business

25

8. Public Comment

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1 Board Members Present Were:

2 Dr. Mohammad Khalid

3 James F. Donlon, Esq.

4 Youngik Yoon, Esq.

5 Jules A. Martin, Esq.

6 Janette Cortes-Gomez, Esq.

7 Tosano Simonetti

8 Bishop Mitchell G. Taylor

9 Daniel M. Gitner, Esq.

10 Rudolph Landin

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1 THE CHAIR: I'm going to call this meeting  
2 to order. Welcome everyone to the October 2013  
3 meeting. It's good to be back in New York. I  
4 think the first order of business is going to be  
5 the adoption of the September 2013 minutes. But  
6 before I do that, since I wasn't here, I had to  
7 rely on the transcript and I picked up at least  
8 two mistakes here that I would bring to the  
9 attention of the Board. The first one is on  
10 page five, starting from line four, and it reads  
11 that is 23 percent of our open  
12 docket. Now to me it seems that that makes no  
13 sense because it talks about the 10 cases in the  
14 open docket that are over 18 months. So upon  
15 clarification, I think that that should read,  
16 that is point three percent of our open docket.  
17 And the second statement here that I believe  
18 needs to be amended is the same page, line 13  
19 where it reads in the middle of line 13, in New  
20 York State the disciplinary rate is 60 percent.  
21 I believe that should read year to date the  
22 disciplinary rate is 60 percent. So do I hear  
23 a motion on making those two changes to the  
24 transcript?  
25 COMMISSIONER JAMES DONLON: So moved.

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1 THE CHAIR: Is there a second?

2 COMMISSIONER JANETTE CORTES-GOMEZ: Second.

3 THE CHAIR: All those in favor of making

4 those amended changes please say aye.

5 ALL IN UNISON: Aye.

6 THE CHAIR: Any objections? And since I

7 wasn't here, I will abstain. All right, with

8 those exceptions made, with those amendments

9 made, I'm now--

10 COMMISSIONER TOSANO SIMONETTI:

11 [Interposing] I make a motion to--

12 THE CHAIR: [Interposing] Yes.

13 COMMISSIONER SIMONETTI: --accept it with

14 the amendments.

15 THE CHAIR: Thank you. Is there a second on

16 adopting the minutes as a whole?

17 COMMISSIONER DANIEL GITNER: Second.

18 THE CHAIR: And all those in favor, please

19 say aye?

20 ALL IN UNISON: Aye.

21 THE CHAIR: Any objections? And I will

22 abstain due to my absence from the meeting.

23 All right. It's good to be back. We were

24 out in **Naple** and Salt Lake City this year for

25 the Police Oversight Meeting. I was out there

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Comment [LS1]: Is this right?

1 with the Bishop, Bishop Mitchell Taylor, as well  
2 as Rudy Landin, also Deputy Executive Directors  
3 Marcos Soler and Denis McCormick. As always,  
4 it was very interesting to sit in on the  
5 presentations to get the different perspectives  
6 from oversight organizations throughout the  
7 country and some from places throughout the  
8 world. This year Marcos participated in two  
9 panels, regarding the LGBTQ community  
10 and the other involving evolving models of  
11 oversight, including Professor Walker, who I  
12 think played a pretty substantial role in some  
13 of the recent litigation in New York City.  
14 Moving on, as would be expected, we're  
15 getting close to the end of the current  
16 Administration. The staff has prepared a  
17 transition memo regarding our agency,  
18 highlighting some of the issues and the current  
19 status of the agency and I think I will let the  
20 staff give you more details on that later in the  
21 new business report.  
22 My final point is, the 18 months and older  
23 cases continues to go down it looks like, and I  
24 think that is in no small measure due to new  
25 strategies that have been implemented by Denis

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1 McCormick along with Tracy Catapano-Fox and I'm  
2 pleased to see that that number continues to  
3 decline. So with that, I'm going to now turn  
4 the floor over to Tracy Catapano-Fox for her  
5 Executive Director report.

6 EXECUTIVE DIRECTOR TRACY CATAPANO-FOX:  
7 Thank you, Chair, it's nice to have you back.

8 THE CHAIR: Thank you.

9 EXECUTIVE DIRECTOR CATAPANO-FOX: And I want  
10 to thank Commissioner Janette for doing such a  
11 great job last month. I really appreciated  
12 working with you.

13 COMMISSIONER JANETTE CORTES-GOMEZ: Thank  
14 you.

15 EXECUTIVE DIRECTOR CATAPANO-FOX: In terms  
16 of our monthly reporting, everybody, I apologize  
17 allergies so please bear with me, I'll try to speak a little  
18 louder. In terms of our monthly statistics, the  
19 CCRB received 518 complaints in September which  
20 is 37 fewer the same period last year when we  
21 received 555 complaints. In total that's a  
22 seven percent decrease for that period. From  
23 January to September of this year, the Board has  
24 received 4,083 complaints, within its jurisdiction,  
25 which is a 10 percent decrease in complaint

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1 activity when compared to the same time last  
2 year. The total intake of CCRB including  
3 complaints within our jurisdiction and those we  
4 refer out has declined by 30 percent. The  
5 Board closed 636 cases in September in the first  
6 nine months of 2013. The Board closed 1573  
7 cases that were fully investigated and  
8 substantiated 235, creating a substantiation  
9 rate of 15 percent of fully investigated cases.  
10 Our truncation rate was 55.5 percent. This was  
11 nine points higher than in the first nine months  
12 of 2012 when the truncation rate was 46.5 percent  
13 In September the mediation unit  
14 successfully mediated 21 cases involving 25  
15 officers. Mediation was not successful in one  
16 case and in an additional 25 cases were closed  
17 as mediation attempted involving 31 officers.  
18 The agency's docket at the end of September  
19 stood at 2774 cases, a two percent  
20 decrease in the open docket from August when we  
21 were at 2826 cases. Ninety percent of our open  
22 investigations stem from complaints filed within  
23 the last year and 67 percent were filed in the  
24 last four months. Out of our open cases, 681  
25 are awaiting panel review, which is 25 percent

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1 of our docket, 1865 are being investigated and  
2 228 cases are in the mediation program. By date  
3 of incident, nine cases in the CCRB's open  
4 docket are 18 months and older as compared to 12  
5 in September 2012 and this is a .3 percent of  
6 the open docket. Three cases are on DA hold,  
7 one case was filed months after the date of  
8 incident, three cases are pending panel review  
9 in which one case was an investigative delay and  
10 one case had been reopened. In August the  
11 police department closed eight substantiated  
12 cases involving 10 officers. They didn't impose  
13 discipline against seven officers and from  
14 January through August, the disciplinary rate  
15 has been 58 percent, the decline to prosecute  
16 rate was 28 percent. In cases in which the  
17 department pursued charges and specifications,  
18 the conviction rate was 81 percent. This  
19 includes officers who plead guilty to charges  
20 and officers who are found guilty after  
21 disciplinary trials. And the guilty after trial  
22 rate is 60 percent.  
23 In terms of what we're doing within the  
24 agency, there's been a lot of new programs we're  
25 starting. We're doing more



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1 trainings now and I have to thank Denis and  
2 Roger in particular, as well as Lauren who have  
3 been working very tirelessly to encourage an  
4 increase in training for investigators and staff  
5 throughout the agency. In terms of our  
6 Outreach, I have to thank Brian and our  
7 supervisor, CarlMais who has been constantly  
8 working to increase and improve our Outreach.  
9 Thanks to the efforts of Commissioner Bishop  
10 Taylor we have met with Brooklyn Pride. I want  
11 to thank Nicole Junior, one of our prosecutors  
12 who coordinated that meeting so that they will  
13 assist us with some of our Outreach programs.  
14 And then in the future, with the assistance of  
15 Commissioner Taylor, we're going to start  
16 looking at Borough Halls so that with the new  
17 incoming presidents in Queens and Brooklyn in  
18 particular, we'll be able to set up space where  
19 we have investigators and Outreach  
20 people there to work within the community.  
21 One of the issues that came up and  
22 Commissioner Taylor and Commissioner Simonetti  
23 brought it up last month, was with regard to  
24 cases getting into panels and so we're making  
25 more efforts to increase the number of cases

1 within the panels so that we are moving our  
2 cases more productively and effectively. So I  
3 thank you for bringing that up.

4 And then I have to thank Commissioner Chu  
5 for his hard work this past year because as you  
6 know, at the end of the month it's the  
7 anniversary of Hurricane Sandy, and although I  
8 was not at the agency at the time, I was  
9 affected. I live in an area that was affected  
10 by the storm and I want to thank Commissioner  
11 Chu, the other Board members and all of the  
12 staff for their very hard work during a very  
13 tumultuous and unpredictable year.

14 So thank you all and that's my report.

15 THE CHAIR: Well, thank you, Tracy. And  
16 just to add to the increase in Outreach efforts,  
17 I think it's been significant and it's been very  
18 noticeable to all of us on the Board and I want  
19 to thank you for spearheading those efforts. I  
20 know that Commissioner Taylor has also been  
21 involved almost on a daily basis in trying to  
22 heighten our Outreach efforts and I think  
23 it's great that we've made that a  
24 priority. I think it's very important.  
25 Just a quick note regarding the DUP rate

1 from PD. I was informed that the  
2 DUP rate for the last reporting period went up  
3 to 70 percent and as a result, I've asked the  
4 staff to prepare some numbers and try to figure  
5 out exactly what might be driving that change.  
6 That's a pretty significant increase and without going  
7 into speculation, we'd like to know what might  
8 be driving that. So without further ado,  
9 Marcos, do you want to speak to that? And Board  
10 members, you have a memo that should be in your  
11 folder addressing that issue.

12 DEPUTY EXECUTIVE DIRECTOR MARCOS SOLER: As  
13 the Chair and Executive Director indicated, from  
14 January to August, the police department had  
15 declined to prosecute 28 percent of all  
16 substantiated cases that it has closed. In CCRB  
17 jargon, this **right** is known as the  
18 department unable to prosecute rate or the DUP  
19 rate. And from January to July, the monthly  
20 rates fluctuated between 21 and 37 percent.  
21 However the monthly rate reached its highest  
22 level for the year in August at 70 percent.  
23 The current DUP rate of  
24 28 percent is 13 points higher than the rate in  
25 the same period of 2012, which was 15 percent.

Comment [LS2]: Huh?

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1 The DUP rate was 32 percent in 2007, 31 percent  
2 in 2008 and 27 percent in 2009. It then  
3 declined to 17 percent in 2010, 16 percent in  
4 2011 and 21 percent in 2012. From January  
5 through August, the department declined to  
6 prosecute cases against 64 officers and in an  
7 additional 19 cases, the department has declined  
8 to prosecute at least one substantiated  
9 allegation against officers while proceeding to  
10 prosecute all other allegations in those cases.  
11 By allegation, the police department declined to  
12 prosecute 111 allegations out of the 336  
13 substantiated allegations in the cases it  
14 closed. A rate of 33 percent. The most common  
15 allegations the department declined to prosecute  
16 have been question, stop and frisk and/or  
17 search, 54, vehicle stop and vehicle search, 17  
18 and discourtesy allegations, 11. During this  
19 time period, there were specific allegation  
20 categories with a higher than average DUP rate  
21 of 33 percent. For example, the department  
22 declined to prosecute 75 percent of offensive  
23 language allegations, 58 percent of all  
24 discourtesy allegations, 46 percent of vehicle  
25 stops and searches, 42 percent of physical

1 force allegations. In the area of stop and  
2 frisk, the department declined to prosecute 58  
3 percent of questions, 35 percent of stops, 17  
4 percent of frisks and 28 percent of searches.  
5 Premises enter and/or searched had a 37 DUP  
6 rate. The department declined to prosecute 25  
7 percent of cases in which the Board recommended  
8 charges and specifications, 33 percent of cases  
9 in which the Board recommended command  
10 discipline and 38 percent of cases in which the  
11 Board recommended instructions. Since May with  
12 implementation of the APU, two-thirds of the  
13 declined cases are those in which the Board  
14 recommended command discipline or instructions.  
15 As the Board knows, the department still has a  
16 backlog of charged cases from prior to the  
17 implementation of the APU so we expect to see  
18 those cases coming along and we don't know the  
19 disposition yet. In 17 of the 64 cases in which  
20 the department declined to prosecute the FADO  
21 allegations, the Board noted ~~all other~~ forms of  
22 misconduct outside CCRB jurisdiction, which is  
23 known as other misconduct noted or OMN. In 15  
24 cases the department imposed discipline for the  
25 OMN but not for the FADO allegation. In the

1 remaining two cases, the department declined to  
2 prosecute even the OMN.

3 That concludes this additional report.

4 THE CHAIR: Thank you, Marcos. Now Marcos,  
5 I note that in this month's disposition report,  
6 there are no substantiated cases where the Board  
7 recommended charges and specifications. From  
8 what you're saying, there's still a backlog,  
9 right? So it's just by coincidence that there  
10 are no such cases in this month's report?

11 DEPUTY EXECUTIVE DIRECTOR SOLER: Right,  
12 it's by coincidence. The department still has a  
13 few cases that were referred before the APU.  
14 Then there are charges and specifications and  
15 certainly the department might continue with  
16 prosecution, might decline prosecution. We  
17 don't know at this point. In terms of the times  
18 these cases came, there was one case that came  
19 from March,  
20 three cases from April, and the other three  
21 cases were from June and July. And after the  
22 APU had been implemented. So the seven cases  
23 that were decline to prosecute had been recent  
24 cases, 2013 cases as I said from March to the  
25 present.

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1 THE CHAIR: But as we're  
2 speaking this moment, they're not getting new  
3 cases with recommendations and specifications.  
4 DEPUTY EXECUTIVE DIRECTOR SOLER: They're  
5 not getting any new cases, that's correct.  
6 THE CHAIR: Okay.  
7 DEPUTY EXECUTIVE DIRECTOR SOLER: I think  
8 they accepted all their cases on the APU as  
9 referred and they don't have any cases right  
10 now.  
11 THE CHAIR: Commissioner Simonetti.  
12 COMMISSIONER SIMONETTI: You know, just  
13 based on reading these stats, it's rather clear  
14 that the OMN cases, they seem to be prosecuting  
15 at a much higher rate than the FADO allegations.  
16 And I don't know what's that all about but if  
17 you do--you're going to do an analysis for us  
18 and let us know?  
19 DEPUTY EXECUTIVE DIRECTOR SOLER: Well, I  
20 can explain it to you, Commissioner. There are  
21 some instances as you will know and  
22 recommend other misconduct noted and the  
23 department declines the FADO allegation on the  
24 case but decides to impose a level of  
25 discipline, either instructions, command

1 discipline, it's A or B in most cases--

2 COMMISSIONER SIMONETTI: [Interposing] Are

3 they using that as a bargaining chip? In other

4 words, if you plead to the OMNs, we'll then, the

5 penalty that will be imposed will also take care

6 of the FADO allegations?

7 DEPUTY EXECUTIVE DIRECTOR SOLER: Right.

8 But the department does not understand--I don't

9 want to mis--

10 EXECUTIVE DIRECTOR CATAPANO-FOX:

11 [Interposing] We can't speak to what they're--

12 DEPUTY EXECUTIVE DIRECTOR SOLER: --to say

13 something inappropriate here, but the department

14 doesn't understand--

15 COMMISSIONER SIMONETTI: [Interposing] No,

16 no, we don't know that.

17 EXECUTIVE DIRECTOR CATAPANO-FOX: We don't

18 know. We can't speak on their behalf.

19 COMMISSIONER SIMONETTI: Can you tell us the

20 percentage of the cases that they decline to

21 prosecute on the FADO complaints, can you tell

22 us the ones that went over with recommendations

23 to substantiate without any OMNs attached?

24 DEPUTY EXECUTIVE DIRECTOR SOLER: Yes, if

25 there were--I think I said there were 15 OMNs so



1 the other 64, that would be about 49 went  
2 without OMN attached.

3 COMMISSIONER SIMONETTI: So a large  
4 percentage of those are being DUP'd.

5 DEPUTY EXECUTIVE DIRECTOR SOLER: Yes.

6 COMMISSIONER SIMONETTI: Particularly in  
7 this month.

8 DEPUTY EXECUTIVE DIRECTOR SOLER: Yes.

9 COMMISSIONER DANIEL GITNER: I have a  
10 question. Just so I understand. Do these  
11 numbers include the cases that went to the APU?

12 DEPUTY EXECUTIVE DIRECTOR SOLER: No, no,  
13 these numbers is a  
14 disposition by the department of our cases. The  
15 APU has not yet disposed of any case and this is  
16 just our report on the disposition--

17 COMMISSIONER GITNER: [Interposing] So if we  
18 didn't have the APU and those cases  
19 that went to the APU were included, and  
20 presumably the department decided to prosecute  
21 them, the percentage would be lower,  
22 correct?

23 DEPUTY EXECUTIVE DIRECTOR SOLER: It could  
24 be either lower or higher. There is no way for  
25 us to determine that.

1 COMMISSIONER GITNER: But if the department  
2 decided to go forward with the cases that were  
3 in the APU, the percentage would be lower.  
4 DEPUTY EXECUTIVE DIRECTOR SOLER: No, not  
5 necessarily. That's why I provided the  
6 statistic about the breakdown by the  
7 recommendation from the Board. The department  
8 is DUP'ing cases in which the Board recommended  
9 charges ~~of at~~ 28 percent, ~~recommended dup'd~~ cases in  
10 which we recommended command discipline at 32  
11 percent and recommended ed instructions on 38 percent  
12 So the rate for charges is about 28 percent  
13 So I'm not sure that their rate would be  
14 lower than it is.  
15 COMMISSIONER GITNER: I see.  
16 DEPUTY EXECUTIVE DIRECTOR SOLER: Because  
17 the rate of 38, 28 percent is consistent with  
18 the current rate. The Board substantiates about  
19 70 percent of cases as charges. So it's a  
20 large portion of it. And when you look at these  
21 DUPs, I think about 60 percent of these DUPs  
22 are still charges from prior to the  
23 implementation of the APU.  
24 COMMISSIONER GITNER: Understood. Thanks.  
25 Also, second question, we call DUP department

1 unable to prosecute?

2 DEPUTY EXECUTIVE DIRECTOR SOLER: Yes.

3 COMMISSIONER GITNER: But you're talking

4 terms of declining to prosecute? Is there some

5 sort of discretionary notion here where the

6 department sometimes can have it in its own

7 discretion to decline to prosecute and sometimes

8 literally is unable to prosecute?

9 DEPUTY EXECUTIVE DIRECTOR SOLER: The

10 department doesn't give us as a specification.

11 The department uses the term department unable

12 to prosecute. This is the term that we

13 inherited from the department since the days we

14 became independent from the NYPD. I think we

15 use the term decline to prosecute, that has been

16 the term that we have been using internally

17 among us in our reporting for the last three or

18 four years.

19 COMMISSIONER GITNER: Okay.

20 DEPUTY EXECUTIVE DIRECTOR SOLER: But a

21 decline to prosecute or department unable to

22 prosecute or unwilling to prosecute is--we don't

23 have much input into whether they are really

24 declining or they're unable or--

25 COMMISSIONER GITNER: [Interposing] So the

1 answer, we just don't know.

2 DEPUTY EXECUTIVE DIRECTOR SOLER: Right.

3 THE CHAIR: Well, just for clarification  
4 also, when I saw this number, I mean this is a  
5 significant jump. And I think to your original  
6 question, if the universe included these  
7 substantiated cases where we asked for charges  
8 and specifications, I think that the percentage  
9 would most likely be lower than 70 percent.

10 However, getting to the point that you were  
11 talking about, you know a lot of these cases I  
12 think the nomenclature is a little misleading  
13 because it's unable to prosecute. Sometimes it  
14 is unwilling to prosecute. And in this  
15 particular case, you know, I had the staff pull  
16 these cases and I personally looked at these  
17 cases and for the most part these cases are  
18 pretty solid cases. We can't get into what's in  
19 the mindset of PD, but when there's independent  
20 corroboration or things that are either on audio  
21 or video tape, it becomes very hard for me to  
22 surmise why they're unable to prosecute. So  
23 that remains kind of a mystery to me.

24 Yes.

25 COMMISSIONER SIMONETTI: I think we have

1 enough expert opinion on the panel. People have  
2 worked in prosecutor's office. If we look at  
3 this as analogous to a prosecutor's office, can  
4 you tell me, do they make a distinct--I know  
5 they decline to prosecute on occasion. They  
6 just won't--or they'll send it back to try to  
7 get further information so they can develop a  
8 case. So can you tell me, do they make that  
9 distinction in the prosecutor's office at the city  
10 level and federal level?

11 THE CHAIR: I feel like it's really apples  
12 and oranges. Because here it's not like we're  
13 sitting in an intake bureau, an early case  
14 assessment bureau and taking a quick look and  
15 making a decision as to whether or not to go  
16 forward. This is usually a situation where our  
17 investigators have spent months and months  
18 speaking with people, working the case until  
19 there's not much more to do. And then going to  
20 a panel, getting voted on and being  
21 substantiated. So you know, again, without  
22 speculating as to what the inner workings of DAO  
23 are to decide not to prosecute on these cases,  
24 I'm a little baffled as to why the number is  
25 what it is.

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1 COMMISSIONER GITNER: Has the DAO ever sent  
2 a case back to the commission for further  
3 investigation? Do we know that?  
4 THE CHAIR: Marcos, has that happened?  
5 DEPUTY EXECUTIVE DIRECTOR SOLER: Yes.  
6 THE CHAIR: That's a rarity--  
7 DEPUTY EXECUTIVE DIRECTOR SOLER:  
8 [Interposing] Yeah, I would think.  
9 THE CHAIR: So in other words, the  
10 difference between the DA's office or  
11 prosecutor's office and now is these cases have  
12 already been worked up.  
13 COMMISSIONER SIMONETTI: So then a follow up  
14 question would be, so I know at intake the DAs,  
15 the ADAs make a lot of decisions, those  
16 decisions at the intake station. However, I'm  
17 sure there are cases that move along the process  
18 in a prosecutor's office and then at some point  
19 as they're investigating it, they say we're  
20 either going to decline for whatever reason at  
21 some future point, not at intake, or we're  
22 unable to prosecute. Is there a distinction  
23 made there?  
24 THE CHAIR: There certainly can be. I mean,  
25 the usual case with a felony case going from

1 inception to trial could be over a year, year-  
2 and-a-half, two years, whatever that process  
3 takes. And certainly in between, in that  
4 interim, witnesses can change their stories,  
5 things can change. But I, you know, from  
6 looking at the cases here that were DUP'd,  
7 that's not the situation here. So. Okay.  
8 Moving now onto committee reports, is there-

8 -Commissioner Liston is not here--

9 COMMISSIONER JAMES DONLON: Reports and recommendations  
10 are here.

11 THE CHAIR: Okay. Why don't we start with  
12 APU. Ms. Edidin?

13 MS. LAURA EDIDIN: Sure. Commissioner Liston  
14 has asked me to give an update on the status of  
15 the APU docket. Currently there are 105 cases  
16 which have been assigned to the APU, 12 of those  
17 since last month's Board meeting. And the  
18 breakdown in terms of the origin of the case,  
19 the kind of allegations that brought the case to  
20 the attention of the agency, has remained  
21 relatively consistent. About half of those  
22 originated in a stop, question and frisk  
23 scenario. Approximately 17 percent originated  
24 with a car stop. And about 12 percent  
25 originated with an improper entry into a

1 dwelling. That's been consistent over the life  
2 of the APU. We had two trials that were  
3 scheduled for October and they've been shifted  
4 slightly as is common. November 22nd is the  
5 earliest trial we have calendared right now and  
6 then we have another one on December 4th.  
7 I'd like to welcome Bernardo Gutierrez and  
8 Ethan D'Angelo to the team as  
9 investigators. We're very excited to have them.  
10 And also let you know that the APU has been very  
11 energized by and involved with Outreach. And I  
12 want to thank Alan Alvarez and Paul  
13 Scotti who went and spoke to The  
14 Bronx Defenders. Liz Pegues and  
15 Vivian Cedenno are going today out to  
16 Queens College and as Tracy mentioned, Nicole  
17 Junior who arranged a meeting with Brooklyn  
18 Pride. I think it's a reflection of their  
19 enthusiasm for and commitment to the agency that  
20 they've been involved in Outreach. And I thank  
21 Brian Connell and Tracy for giving  
22 the unit the opportunity to participate. Thank  
23 you.  
24 THE CHAIR: Thank you, Laura. Reports and  
25 Recommendations?



1 COMMISSIONER JAMES DONLON: Yes. The  
2 committee requested an update on the mid-year  
3 report, the semi-annual report. And Marcos  
4 Soler has been good enough to provide this  
5 update. The staff has prepared a first draft of  
6 the mid-year report. The draft is not ready for  
7 distribution to the committee and the executive  
8 director for two reasons. First, some of the  
9 statistics reported in that draft report are not  
10 consistent with some of the previously reported  
11 statistics. They found that there were two  
12 reasons for these discrepancies and these  
13 obviously have to be corrected. With the  
14 implementation of the APU, some modifications  
15 were made to the case tracking system that's  
16 used and this altered the reliability of some of  
17 the queries that are used to extract data. The  
18 second factor is a small incidence of data entry  
19 mistakes. So last week and early this week we,  
20 we meaning the staff, have been manually  
21 reviewing specific data--guys, I'm sorry.  
22 They've been reviewing specific cases to  
23 corroborate the data that we intend to publish.  
24 So those discrepancies in the statistics are  
25 being addressed.

1 And the second reason for the delay is that  
2 some of the sections that were initially  
3 included in the mid-year report have been deemed  
4 more appropriate for the year-end report. So  
5 the template is being adjusted. And these  
6 matters are expected to be corrected this week  
7 and there will be an accurate draft presented to  
8 the committee and the executive director as soon  
9 as possible.

10 So respectfully submitted, that's the  
11 report.

12 THE CHAIR: Thank you.

13 COMMISSIONER DONLON: And thank you, Marcos,  
14 for giving us that update.

15 THE CHAIR: Thank you, Commissioner Donlon.

16 Are there any other committee reports?

17 Outreach?

18 COMMISSIONER BISHOP MITCHELL TAYLOR: I just  
19 wanted to commend everyone that has really  
20 stepped up and became activated with Outreach  
21 and we have a very aggressive schedule already  
22 and so it's just, it's really exciting and I  
23 think that the report has already been given  
24 multiple times. So...

25 THE CHAIR: Well, again, I think it bears

1 repeating that I really want to commend everyone  
2 in the agency for stepping up because I think  
3 that it really speaks volumes when the staff and  
4 the investigators are taking the time to go out  
5 there knowing that they have, you know, a  
6 caseload working for them and I think it is  
7 important because I think in years past that's  
8 something that has been somewhat lacking. And I  
9 think now with you and the executive director  
10 spearheading it as well as other senior staff  
11 members, I think it's infectious, it's  
12 contagious and I hope it continues. So thank  
13 you.

14 COMMISSIONER TAYLOR: The greatest thing  
15 about it is that I feel that the staff are  
16 owning it now. So, you know, we're not--they're  
17 owning it, the people that are volunteering are,  
18 they want to do it so it makes a big difference.

19 THE CHAIR: And hopefully the City Council  
20 and the Administration and the new  
21 Administration will take notice and hopefully,  
22 even though we weren't able to get the  
23 additional budgeting last time, maybe we'll get  
24 it in the near future.

25 COMMISSIONER TAYLOR: Yes.

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1 THE CHAIR: So it's something to think  
2 about. Thank you very much. Any other  
3 committee reports? No additional committee  
4 reports. Is there any old business that anyone  
5 wants to take up and discuss? Any new business?  
6 Okay. We're going to open it up now to public  
7 comment. Chris Dunn, you're up.

8 MR. CHRISTOPHER DUNN: I'm going to have to  
9 start talking by taking this--you said there was  
10 going to be a presentation about the transition  
11 by staff?

12 THE CHAIR: Marcos, did you want to speak  
13 briefly about the transition? Are there any  
14 points that need to be discussed?

15 DEPUTY EXECUTIVE DIRECTOR SOLER: I think  
16 there are some points that need to be discussed  
17 in executive session. Basically, Administration  
18 asked us to prepare a report detailing every single  
19 function of the agency and all of our  
20 activities, anything from our budget to  
21 legislative agenda, et cetera, our operations.  
22 And there are some elements of that report  
23 that is not for public discussion.  
24 So we prefer to keep that  
25 in executive session. But obviously I think

1 everybody is aware this is not always a report  
2 just for the CCRB, this is a report for an  
3 entire agency. All the City agencies are involved in  
4 this kind of process. So we are trying to prepare  
5 a basic document for whoever it is that you want  
6 Administration to know what are the main issues  
7 right now going on with the agency.

8 THE CHAIR: And at this point it's, you're  
9 seeking input from different people in the  
10 agency and revising it into work in progress--

11 DEPUTY EXECUTIVE DIRECTOR SOLER: This was  
12 done with the input from members of the staff  
13 and it's being under review right now and it's  
14 not ready for distribution - - .

15 EXECUTIVE DIRECTOR CATAPANO-FOX: Chairman,  
16 I think the idea was that after 12 years of an  
17 Administration, there's been a lot of  
18 developments and changes and so the new  
19 Administration--this is really supposed to be  
20 try to create a seamless transition into a new  
21 Administration as possible. So all of the city  
22 agencies were asked to compile this information.  
23 So some of it is data driven in terms of our  
24 staffing numbers, personnel, different  
25 departments we have and some of it is our

1 legislative agenda, our Outreach programs our  
2 goals for the future in terms of what the  
3 agency and the direction we're moving. So the  
4 point of it I think is to give the new  
5 Administration a basic perspective on our  
6 agency, what we've done, what we're doing, who  
7 we are and how we're going to move into the  
8 future. So for the transition, that was truly I  
9 think the purpose that it was meant for.

10 MR. DUNN: Thank you.

11 ~~THE CHAIR: Thank you.~~ Well, don't get me  
12 wrong. I think it's great that that you're  
13 doing it and Dan, I think it's, I appreciate  
14 you're mentioning it. I just understood it was  
15 going to be a presentation. And I understand  
16 there may be things that people think are more  
17 appropriate for the executive session. And  
18 since unfortunately I don't get invited to that,  
19 I have to rely on what you said - - . You said  
20 there are pieces that probably better for  
21 executive session. There are lots of pieces  
22 that are not. So I would just hope - - expect  
23 that we be part of the discussion about this  
24 with the - - things are - - executive session?

25 THE CHAIR: I will make sure you get invited

1 when appropriate.

2 EXECUTIVE DIRECTOR CATAPANO-FOX: We always

3 the openings here so maybe one day you'll be in

4 an executive session.

5 MR. DUNN: That's right.

6 THE CHAIR: There we go. All right. We

7 will switch seats.

8 MR. DUNN: Yes. I don't know about that but

9 okay. Let's continue. So the 18-month

10 reduction, Dan and I agree completely. You guys

11 are doing a terrific job on that and that's a

12 really important issue. I do see that there is

13 a sub statute of limitations case in this

14 month's disposition report. That's obviously bad.

15 And hopefully we'll be getting to the point

16 where that just never happens. But the one

17 perhaps timely saving grace in the statute of

18 limitations docket was there was no knowing how many

19 Of those would get sub'd, if any.

20 It's not too often we actually see a sub case

21 running into the statute of limitations but

22 hopefully that will no longer be a problem.

23 Also raises the issue about Inspector Bologna

24 his article 78 and the issue

25 about CCRB investigations even when the statute

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1 has run. There was no mention of this as I  
2 understand that the City Law Department is filing papers on  
3 Friday.

4 EXECUTIVE DIRECTOR CATAPANO-FOX: They filed  
5 it last Friday.

6 MR. DUNN: They filed it--well, again, I  
7 talked to a city lawyer. It got extended to  
8 this Friday. That's what she told me.

9 EXECUTIVE DIRECTOR CATAPANO-FOX: Oh, okay.  
10 I received an email on Friday and I know that  
11 the case - - --

12 MR. DUNN: [Interposing] Yeah.

13 EXECUTIVE DIRECTOR CATAPANO-FOX: But maybe  
14 she--

15 MR. DUNN: [Interposing] But you're the  
16 client. But I did talk to her on Friday  
17 afternoon and she said they're going to be filed  
18 on the 11th.

19 EXECUTIVE DIRECTOR CATAPANO-FOX: Okay.

20 MR. DUNN: But one thing that was  
21 interesting about the papers filed by Inspector  
22 Bologna was a quote of the statute that talks  
23 about the statute of limitations with respect to  
24 CCRB. And it provides, as the statute says,  
25 that it's 18 months unless there is something



1 pending that could result in a criminal  
2 conviction. And clearly Inspector Bologna was  
3 facing potential charges that could, or  
4 investigation, could have resulted in a criminal  
5 conviction which means the clock would have been  
6 tolled. Something they don't seem to understand  
7 or appreciate. But I am just hoping that with  
8 whenever SOL cases seem to be on here, that the  
9 agency is continuing to investigate complaints  
10 even after 18 months because the fact that the  
11 18 months have elapsed does not mean that  
12 necessarily the statute of limitations has run.  
13 Certainly not from the DA hold cases. So I just  
14 mention that.

15 EXECUTIVE DIRECTOR CATAPANO-FOX: Chris, we  
16 are working on that.

17 MR. DUNN: Okay.

19 EXECUTIVE DIRECTOR CATAPANO-FOX: Public  
20 Officer's section 75 does in fact exactly the  
21 section you're citing because it does allow for  
22 us to toll the statute when the activity of the  
23 officer would be a crime. So we have been  
24 working with the chairman to more, to document  
25 that more effectively in the future so that

1 everyone is aware that in those cases where we  
2 do have a DA hold or we are requesting, there's  
3 been a request for a DA hold, that the Board has  
4 said they want to document whether or not that  
5 would fit within the statute exception and that  
6 we could proceed. Which is exactly the posture  
7 we're taking in the Bologna case.

8 MR. DUNN: Okay. The DUPs. I'm glad to see  
9 that the problem with DUPs have landed squarely  
10 amongst all of you. We've been talking about  
11 this for a long time. I'm going to start with  
12 the, again, issue you raised about the unable to  
13 prosecute versus unwilling to prosecute versus  
14 whatever. I don't believe there's any case that  
15 they're unable to prosecute. They choose not to  
16 prosecute. That's purely an act of discretion  
17 on their part. They are unable to prosecute,  
18 for instance, when the officer retires but that  
19 doesn't come in as a DUP. That comes in as a  
20 filed. So I understand that in every single  
21 instance it comes as a DUP to you. It is a case  
22 where the department has decided in an act of  
23 its own discretion not to proceed with the  
24 prosecution of a case - - even otherwise  
25 substantiated. So I think we should be clear

1 about that. In terms of the numbers, I mean  
2 we've been talking about these numbers and  
3 Marcos provided some perspective about recent  
4 years. But if you go back not even that far,  
5 like nine or ten years ago, the DUP rate was  
6 three percent, five percent. I think there  
7 was a year, Marcos,  
8 when it was .3 percent. So  
9 when we were talking about 20 and 25 and 30  
10 percent, we're talking about extraordinary numbers,  
11 as - - . And you know, there's no long  
12 discussion here about that and I just think  
13 that--I don't want anyone to think that, the  
14 kind of range of things we've been talking about  
15 is 25 or 30 percent. You know, not that long  
16 ago we were under five percent and in some  
17 instances under nine percent. I think the - -  
18 try to look at it from that respect.  
19 Dan, you raised this issue about the fact of  
20 the APU and what's that going to mean to the DUP  
21 rate and the department's role. As I understand  
22 it, the only thing the department will be left  
23 with will be the cases that are not charged to  
24 the - - and that would certainly reduce the  
25 number of cases where they have the ability to

1 DUP the case. Although as we see, that's also a  
2 significant number of cases. And so I thought,  
3 and I didn't actually realize this until last  
4 month, that the DUP problem was going to  
5 disappear because their role in DUP cases was  
6 going to disappear. That is wrong. And so I do  
7 think it's important to continue to pursue this  
8 and I hope that you do. This last month is  
9 really bad. I do note the seven cases so the  
10 seven percent is bad as a percentage. That  
11 kind of overstates how bad it actually is. I am  
12 more concerned about what it looks like for the  
13 year and the year is turning up and the year is  
14 close to 30 percent again and so I'm glad that  
15 you're looking - - .  
16 The only other things I would say on the  
17 semi-annual report, I know you're working on it  
18 here, what you're saying was the problems with  
19 it. It's October, people want to hear from you.  
20 It's getting late, late, late. So there's  
21 nothing that can be done about that.  
22 And then finally in reports, I didn't get it  
23 in my packet but there typically has been an  
24 Outreach report. There's no Outreach. Are you  
25 guys still, doing an Outreach report or did you

1 stop doing that?

2 COMMISSIONER TAYLOR: Well, we're going to

3 resume doing that.

4 EXECUTIVE DIRECTOR CATAPANO-FOX:

5 [Interposing] We can work together. I take the

6 blame on that. That's my--

7 MR. DUNN: [Interposing] There's no blame.

8 I just--that was actually a helpful report and

9 you talked about doing Outreach. I think it

10 would be helpful for you institutionally if you

11 had this paper to show people that have this.

12 Because you used to have a report on every

13 single--

14 COMMISSIONER TAYLOR: [Interposing] With the

15 calendar--yes, we'll resume that for the next

16 meeting, yes.

17 MR. DUNN: Okay. All right, the thing that

18 you got about the DUP numbers, going back to

19 that for a second, did Marcos just read what you

20 got or was, did you actually get something, the

21 paper that he handed out - - ?

22 COMMISSIONER SIMONETTI: I think that was

23 verbatim.

24 THE CHAIR: It was verbatim.

25 MR. DUNN: All right. So I can get a copy

1 of it?

2 DEPUTY EXECUTIVE DIRECTOR SOLER: Yeah.

3 THE CHAIR Again, whenever appropriate you

4 are invited.

5 MR. DUNN: I don't need that qualification.

6 Always appropriate, Dan. Thank you very much.

7 THE CHAIR: Thank you.

8 DEPUTY EXECUTIVE DIRECTOR SOLER: I would

9 actually like you to clarify for the committee

10 and everybody else, - - . First is, concerning

11 my responsibility. But second is we have a

12 particular problem within not realized is when

13 we changed with the APU, cases in our APU

14 technically in the system became reopened for a

15 reason that was not explained to me by MIS, so

16 technically when we run a lot of the disposition

17 reports, we saw a decrease in the numbers. So

18 all the substantiated cases with charges have

19 disappeared from our queries. So we run the

20 numbers, we prepare our report and now all of a

21 sudden we are comparing to previous numbers from past

22 years and we realized that it's a problem. And

23 part of that is, as I said, part of that is

24 because in the system, technically the 105 cases

25 that are - - APU are reopened. I didn't realize

1 about that. There were a couple of other  
2 problems, technical mistakes and I apologize.  
3 It's my responsibility, it's my obligation to  
4 make sure that we have quality control  
5 mechanisms and all of that and data. That's the  
6 reason for the delay. There are a couple of  
7 other factors as well, but that's the main  
8 issue. We had experienced a particular problem  
9 given that the transition with APU, and I  
10 apologize for that.

11 MR. DUNN: What other reporting--just one  
12 second. Under the MOU there's a paragraph about  
13 quarterly reporting on the APU. Has there been  
14 a quarterly report done yet?

15 THE CHAIR: We've not begun with the  
16 reporting on that as cases are still building  
17 up--I'm sorry, go ahead. Go ahead Commissioner  
18 Simonetti.

19 COMMISSIONER SIMONETTI: You know, thinking  
20 about the DUP cases, I wonder, Marcos, when you  
21 considered doing that analysis to take a look at  
22 this, if you would consider when we got into the  
23 business of doing OMNs, having been on this  
24 Board for a long time, there was some, at some  
25 point way back we didn't do OMNs. And then we

1 had a discussion with the department and it  
2 became apparent and they agreed to allow us to  
3 send over OMNs for a whole host of reasons. So  
4 I'm just wondering if there's a correlation at  
5 that point in time when you talked about .2 percent  
6 DUP rate, if there's a correlation when we  
7 got the OMNs, and it appears that they use that  
8 as some plea bargaining kind of a DUP. In other  
9 words, you got a couple of FADOs that are  
10 substantiated. Listen, we'll hit you with two  
11 or three days on the OMNs and we'll DUP the rest  
12 of it. I mean, they're not telling the officers  
13 that but that's what is in effect happening. So  
14 I'm wondering if you can kind of see if there's  
15 some correlation to when we got into the  
16 business of doing OMNs and to see if it became  
17 the bargaining tool to DUP the FADO complaints.  
18 DEPUTY EXECUTIVE DIRECTOR SOLER: I think  
19 what Mr. Dunn was referring was for prior to  
20 2007 in which the DUP rate was, well, five percent  
21 consistent with from 2000 to 2007. The  
22 Board began the practice of--not began the  
23 practice, the Board has always submitted OMNs to  
24 the department. But increased the number of  
25 OMNs starting in 2008/2009. So those two



1 periods do not coincide. What is certainly the  
2 case, as you indicated Commissioner Simonetti,  
3 is the fact that in many cases the department  
4 has imposed discipline. We don't report  
5 publicly the discipline because the department  
6 doesn't think it's our jurisdiction or our  
7 authorization to report that information. But  
8 we know that in many cases they have pursued  
9 discipline on the OMN and they have decided not  
10 to do it with the FADO. I don't know what the  
11 arguments are behind this for the department. I  
12 don't know the reason behind, but certainly you  
13 are right which technically speaking--

14 COMMISSIONER SIMONETTI: [Interposing] See  
15 if it statistically correlates.

16 DEPUTY EXECUTIVE DIRECTOR SOLER: Right.  
17 What I was going to try to say is technically  
18 speaking, in many of the cases in which we have  
19 reporting DUP, the officer has received  
20 discipline but we are not reporting on it  
21 because the discipline has been on the OMN. But  
22 I will definitely look into it.

23 THE CHAIR: Okay. We're going to take five  
24 minutes and break into executive session. Thank  
25 you.

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1 C E R T I F I C A T E

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

5

6 Signature

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9 Doreen Angermayr

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12 Date: October 15, 2013

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