1 Public Board Meeting
2 Of the Civilian Complaint Review Board
3 Wednesday, November 13, 2013
4 10:00 a.m.
5 40 Rector Street - 2nd Floor
6 New York, NY 10006
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8 DANIEL D. CHU, ESQ., CHAIR
9 TRACY CATAPANO-FOX, ESQ., EXECUTIVE DIRECTOR
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12 Public Meeting Agenda:
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14 1. Call to Order
15 2. Adoption of Minutes
16 3. Report from the Chair
17 4. Report from the Executive Director
18 5. Committee Reports
19 6. Old Business
20 7. New Business
21 8. Public Comment
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23
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BOARD MEMBERS PRESENT WERE:

Dr. Mohammad Khalid
James Donlon, Esq.
Youngik Yoon, Esq.
Daniel D. Chu, Esq.
Tosano J. Simonetti
Bishop Mitchell G. Taylor
Tracy Catapano-Fox, Esq.
Janette Cortes-Gomez, Esq.
Daniel M. Gitner, Esq.
Rudolph Landin, Esq.
MR. DANIEL D. CHU: No gavel, but good morning, everyone. Thanks for coming to the meeting. I'm going to call it to order. First order of business is the adoption of the October 2013 minutes. Do I hear a second on the adoption?

MR. TOSANO SIMONETTI: Second.

MR. CHU: All those in favor of adopting the October 2013 minutes, please say aye.

ALL: Aye.

MR. CHU: Any objections? Any abstentions? The October 2013 minutes are adopted.

Well, we had a meeting this morning of the operations committee. Some of you were in attendance for part of it. We ran short on time. We had about six issues to cover. We covered about four, so the most important issue perhaps that was discussed this morning at the operations meeting was the formation of an investigations committee, and that's going to be a standing committee to support and assist the investigations division with any legal questions
they have, and to work with them on strategies in terms of resolving issues that may occur in some of the more high-profile issues or issues where you're having difficulties let's say securing the attendance of witnesses and members of the service and things of that nature.

We also spoke further about the truncation issues where truncation is kind of a big, amorphous term, and going forward, when we do have a programmer back, we'd like to explore something similar to what we did with the withdrawals. With the withdrawals, there was a breakdown as to the reasons for the withdrawals. Some of them would be on the advice of counsel. Some people lost interest in the case, and similarly, we're looking to do something similar for the truncation rate.

As you all know, the truncation sometimes stems from an unwillingness on the part of the complaining witness to go forward. So while we're probably going to keep that terminology around for the time being because that's what people are used to seeing, we're going to break that down into more precise sub categories because it really does seem to be inaccurate to
say that the agency is truncating or somehow abbreviating or curtailing a case when in many instances, it's not out of our choice. And the sad reality is that it's people that don't want to go forward, and notwithstanding the fact that I know now you guys have the five and two rule. You guys make about five calls, and send two letters. We're unable to proceed, so that's something we talked about.

Let's see. The other thing that was discussed was the ability to reopen cases. I'm not going to go too much into that, but that's more in regard to some of the cases that have been substantiated and then gone to APU with certain issues that need to be resolved. Up to this point, the people that are empowered to reopen cases would be the complaining witness and the police officers.

We voted on a resolution to allow the board to do that when it's necessitated by the discovery of any new evidence or any kind of new meaningful and material revelations. That's what I have to say with regard to the meeting this morning. I'm now going to turn to Tracy Catapano-Fox, our Executive Director, to give
MS. TRACY CATAPANO-FOX: Good morning, everyone.

ALL: Good morning.

MS. CATAPANO-FOX: The monthly statistics for the agency are as follows.

In October, the agency received 514 complaints, which is 86 fewer than it received last year in the same timeframe, when we received 600 complaints. So overall, that's a 14% decrease for that period. From January to October of this year, the board received 4,569 complaints within its jurisdiction. This is an 11% decrease in the complaint activity in comparison to the same period from last year.

Our total intake including complaints within our jurisdiction and those we referred out declined by 29% year to date. In October, the Board closed 516 cases. In the first ten months of this year, the Board has closed 1,713 fully investigated cases and substantiated 254. That leaves us with substantiation rate of 15% of fully investigated cases. I hate to use the word now after this morning’s meeting, but our truncation rate was 55%. This is five points...
higher than in the first ten months of 2012 when
the rate was 50%.

The mediation unit in October successfully
mediated 19 cases involving 24 officers, and an
additional 35 cases were closed as mediation
attempted involving 46 officers.

The agency's docket at the end of October
stood at 2,678 cases. That is a 3% decrease of
the open docket from September when we were at
2,774 cases. 91% of our open investigations
stem from complaints filed within the last year,
and 66% were filed within the last four months.
Of our open docket, 621 are awaiting panel
review. That's 24% of our docket. 1,823 are
being investigated, and 226 cases are currently
in the mediation program.

By date of incident, 12 cases in our open
docket are 18 months or older as compared to 15
in October of 2012. That is 0.4% of our open
doctor. Three of those cases are on DA hold,
four cases were filed months after the date of
the incident. Two cases are pending panel
review. Two cases there was an investor delay,
and one case has been reopened. In September,
the NYPD closed 11 substantiated cases involving
16 officers. They did not impose discipline against 11 officers. They declined to prosecute five officers, and the statute of limitations expired in cases involving six officers. From January through September of this year, the disciplinary action rate of the NYPD is 57%, and the decline to prosecute rate is 29%. In cases in which the NYPD pursued charges and specifications, the conviction rate was 81%. This includes officers who pled guilty as well as officers who were found guilty at the disciplinary trials. The guilty after trial rate is 60%. That's the monthly statistics. In terms of the agency activity, we are still set to move to 100 Church. No timeframe has changed. We're still mid-December, that's what we're looking at, and the construction is still ongoing. So expect that the next board meeting will still be here. We were able to get administrative judge Barry Kamins yesterday, who came to give a lecture on search and seizure for our investigators and our APU staff, as well as other staff members, and I think that was well received. I truly appreciate him giving us the
time and attention to talk to us about this important topic.

Thank you to Bishop Taylor again, of course, for our outreach program. With your support and enthusiasm, we're doing even more outreach, and our investigators have now been fully trained and staffed, and they've been going out into the field and doing all types of outreach programs throughout the community. I think everyone's really enjoying it, so I thank you for that.

Other than that, I do want to mention that two of our employees ran in the New York City Marathon, Chris Duerr and Lisa Cohen. They did a great job, and they're still here, so I'm very impressed.

MR. CHU: Well, I think, Tracy, in addition to your duties as the executive director, a little birdie told me you ran it as well, so congratulations to you, too.

MR. SIMONETTI: Of the 660 cases that are awaiting panel review, do we know how long the oldest panel is awaiting review, how many months or how many weeks?

MR. CHU: Marcos, would you have those numbers? If not, can you provide those for
Commissioner Simonetti at a later time?

MR. SIMONETTI: Of the cases awaiting review, 660 cases. Do we know how long the oldest panel is awaiting review? How many months or what number of the panel?

MS. DENISE ALVAREZ: We're all caught up, so everything that has gone up is already scheduled to meet within the next few weeks. So nothing is outstanding.

MR. SIMONETTI: We had nothing before panel ten?

MS. ALVAREZ: No.

MR. SIMONETTI: Okay. I would just encourage board members to get those things done because if we can get this docket down, I mean, we used to have a docket of around 1,200 cases. That would be great, you know? And then it gives the investigators more time to look at the real serious matters. So I would encourage us to get those cases done.

MR. CHU: Absolutely.

MS. CATAPANO-FOX: Thank you, Chair.

MR. CHU: Thank you. Let's move on to committee reports. I already spoke about the operations committee. Do we have any other
committees that need to make a report this morning?

MR. JAMES DONLON: Well, reports and recommendations committee briefly, the semi-annual draft is out, and the committee is reviewing it and hope to move it onto the next step. Marcos, there are I think--are the graphics and all that, I mean the charts and all that, they’re done I think, right?

MR. MARCOS SOLER: Right, the charts are done. The text is done. Once it’s reviewed, we will briefly send it to the policy department for any comments on the data or any of that, for verification purposes. But at the same time, we will send it to the vendor, who puts the layouts while we wait for comment from the police department. While working on laying out the product, and the police department will be incorporated into that process, and hopefully we’ll have it here ASAP.

MR. DONLON: Thank you.

MR. CHU: Go ahead.

MR. SOLER: And also what we did in order to be more proactive in this, we have already laid out a schedule for the committee, which we
indicated all the steps. Rather than waiting till the end of the year when release the data, you start running the data, what we’re going to start doing is run preliminarily the data, see some of the trends, and start working now a month before, and - - way prior to--by the time we get to January 1st, we already have basically the layout of the process. Then we can just dump in there the new data, hopefully submit it to the board, and we have a much more aggressive deadline in terms of accomplishing the budget.

MR. DONLON: Sounds like a good plan.

MR. CHU: Not to take the wind out of anyone's sails, but yes, that sounds like a plan. Let's try to be proactive about getting that out.

APU, did you have something?

MS. LAURA EDIDIN: Commissioner Liston is out of the country, so he apologizes he wasn't able to be here today, but asked me to give an update on the APU. To date, the APU has received 123 cases, 18 since the last board meeting, and the origin of the encounter remains roughly the same in terms of percentages.
Almost 53% originated in stop and frisk.

Approximately 15% originated with a car stop.

About 12% with an improper entry into a dwelling. I want to thank Jon Darche for preparing those statistics.

The really exciting news is that we have seven trials calendared between now and the end of January, the first being on November 22nd, and I think we're all looking forward to getting those underway.

I also want to acknowledge that several members of the APU conducted an outreach in the last month, including the Nicole Junior, Heather Cook, Remi Simoes, Vivian Cedano [phonetic], Liz Pegues and Jon Darche. If I left anybody out, I apologize. And I also want to acknowledge that Nicole Junior conducted in-house training on cultural competencies in working with the lesbian, gay, transgender and bisexual community, which was extremely powerful and successful, so thank you for that.

MR. CHU: Thank you.

MS. CATAPANO-FOX: And Chairman, you should know that Nicole's program was the first that
the agency has done with regard to training and
working on issues regarding the LGBTQ community.
So we plan on doing it routinely throughout the
year, but it was very successful.

MR. CHU: that is great, and I really
applaud the efforts of everyone on the staff for
getting involved. I think this is kind of a new
phenomenon, and I think it starts from the top,
and it's kind of caught on where the staff
members have taken time out of their busy
schedules to be involved, and I hope it
continues.

Lisa, did you have some report for
mediations?

MS. LISA COHEN: I did not.

MR. CHU: Oh, you didn't. Okay. I was
told you did. Moving along, then, is there any
old business that needs to be discussed? Is
there any new business that any members want to
discuss?

MR. SIMONETTI: Yes, Mr. Chairman, in
looking at the list of cases that are 18 months
or older, it's encouraging to see that half of
them are late filing cases. So I think with
Hurricane Sandy more than a year behind us now,
it looks like the staff has done a great job in getting this number down. And late filings, not very much you can do with those, you know? Then if that's half of our docket, with 18 months or older cases, we're doing very well. So I'd just like to commend the investigative staff for getting that number down.

MS. CATAPANO-FOX: Chairman Simonetti, I should tell you that the team managers have been incredibly helpful and working hard toward--we've been doing monthly meetings on cases that are 14 months and older just to see where they're at and what we can do. They have been working really hard with their staff, and I have to commend them all because they've done a great job in acknowledging the cases that need to get moving and what we can do to make them move forward.

MR. CHU: Okay. If there's no other new business, we're going to move onto public comment. There's no sign in sheet today, but I assume Chris Dunn.

MR. CHRIS DUNN: Tragically, your assumption was right. Is the no sign-in sheet the same strategy as we're not going to use the word
truncation.

MR. CHU: We're actually working on your nameplate. It should be ready by next week.

MR. DUNN: That's great. You're not commissioners - -. Okay. So on the truncation part, let me actually start on that because that's something I harp on all the time, and I'm sorry I missed most of that conversation. I feel like the real meeting happened before this meeting, and I'm really sorry I missed that. It sounds like it was a spirited discussion.

I think it's a very fair point that you're raising this - - about whether or not the term truncation is masking things that are unfair to the agency in just reporting a truncation rate - - truncation rate. So I think it's perfectly valid to say let's look a little more closely on what's behind those things. But I also want to caution you. I'm not saying anyone is doing this, but I think there are issues, and they cannot be defined away, and I also worry about we have had a history--I don't remember how long it goes back. Someone mentioned it goes back - - that's the case. Truncation has been a defined term within the agency, and that term
has - - associated with it that's more smaller,

it's going to look like there's some substantive change in - - . I assume there will be more discussion of this as we go forward. But I'm scared--we'll look at the truncation, what's behind it, but I also want to hear we're not papering over some substantive issues. Maybe the investigations committee - - .

MR. DANIEL GITNER: What are the substantive issues that you're talking about?

MR. DUNN: The shortcomings and actual investigative practices by the agency in getting people to participate in their complaints. And so a simple thing we had talked about I think you're moving to address is the problem about people having to come here to sign sworn complaints.

MR. SIMONETTI: Chris, you were not here for our operations committee meeting this morning, and I had brought up the point that we had to have a quality control unit take a look at that. Like have the computer randomly set up 10% of those cases or whatever percentage would be a valid and reliable number, spew them out of the computer and send them out to panel and make
absolutely certain that they are truly complainant or cooperative witness is unavailable, witness is uncooperative, whatever. And that's the safeguard that's going to be built into this program.

MR. DUNN: Okay. And that makes good sense. I understand there's a concern that's been expressed. I'm sorry, again, I missed this. That you for instance might be getting some meaningful complaints from IEB that are - - complaints and so on. They are never going to turn into an actual complaint here, and that's fair enough. You need to - - that. On the other hand, I think it is wrong to think there aren't things that the agency cannot do that will improve the cooperative, willingness of complainants. This notion, for instance, of taking out of the pot intakes that you get where someone has not filed a complaint, that is something I would resist strenuously because I think you are not - - barriers that people sign their complaints. And so I just think that's not a substantive issue. I think that's an investigative practice issue that should be dealt with. Tracy, you
have talked in the past about setting out other
city council member offices.
MS. CATAPANO-FOX: Borough halls. The
election is over, we're able to--we have a new
borough president in Queens, Linda Katz. I have
spoken to some of her people, and they're very
amenable to giving us some space there.
Different--this is a big election year locally,
so we need people to get into place.
MR. DUNN: Eric is going to put a big sign
on the Brooklyn borough hall saying CCRB intake
- - -.
MS. CATAPANO-FOX: That's what I'm hoping.
MR. DUNN: - - -.
MS. CATAPANO-FOX: Yes, we have some people
that have already reached out.
MR. GITNER: I don't understand. What's the
problem with indicating when a complaint is
filed versus when it's not filed? Maybe I'm
wrong, but I thought that certain things could
not happen by the CCRB unless and until it's
filed.
MR. DUNN: By filed, so you mean signed?
MR. GITNER: Yeah, signed, yes.
MS. CATAPANO-FOX: Yeah, I review the
truncated cases. Denise has them sent over to
me each month in terms of the cases that we can
proceed on, and some of the complainants have
said that they have trouble getting here.

MR. GITNER: I agree with you, and that's a
legitimate issue, but let's assume they just
don't want to file a complaint. What's the
problem? It sounds like you're saying there's a
problem with just saying that, and I don't see a
problem with that, but if there is, I'd like to
hear it because these are important issues.

MR. DUNN: I think the problem is if you say
that and therefore take them out of the
truncation category without having addressed
that maybe they a barrier created by the agency’s
own practice signing this.

So for instance, in
these days, we got a lot of young people who can
just use their cellphone. Those
are people who have made it very difficult to
actually come down to the registry. They may
have never been to this part of the city in their lives. And
given the change, it may well be that if
you have a place in a borough where they can
actually go and sign a complaint, you yourself
right there can fix in a significant way the truncation problem which otherwise would just be defined away because a person cannot sign. It may be perfectly fine to say someone has not signed, and therefore we're not going to count the case, and someone like me will not complain about that if in fact you have made all these efforts to get somebody to sign, which is different than--

MR. GITNER: I see. I understand, thank you.

MR. DUNN: Okay. So the APU, you guys are going to trial on the 22nd? That's very exciting. I just wanted to make sure you said the distribution was 53%, the stop and frisk?

MS. EDIDIN: A little less, a little shy. Originated with a street encounter.

MR. DUNN: And then 15 and 12?

MS. EDIDIN: Correct.

MR. DUNN: And then there's even trials scheduled between now and--

MS. EDIDIN: The end of January.

MR. DUNN: I look forward to the 22nd. I'm sorry again. I missed some of the conversation. I was back and forth with the department about
some of your cases. One of the things I caught from the first discussion was this ability that you're being able to be involved in plea negotiations where there's a sub’d case and only a recommendation for command discipline. Am I right that the only cases you're allowed to participate is when the board has recommended charges and specs?

MS. EDIDIN: Correct.

MR. DUNN: Okay. The other subcases are going just to the department advocates office. They deal with all these, and those are still the category cases for the council - - ?

MS. EDIDIN: Yes, correct.

MR. DUNN: So - - they have control over, and these--those cases are just entirely department cases?

MS. EDIDIN: Correct.

MR. DUNN: Okay. In looking at the report, you mentioned about the 18 plus cases getting better, and they certainly have gotten better. I notice I've not paid attention to this before.

There are six statute of limitations this month that got closed by the department, and there are 29 for the year that are - - statute of limitations?
MS. CATAPANO-FOX: It's six officers. Some
of them were in the same cases.

MR. DUNN: Okay. I actually want to go back
and look. I don't know if that's an unusual
number. It just jumped out at me when I saw how
much statute of limitations officers there were
on that report. Do you know if this month is
usual in that respect?

MS. CATAPANO-FOX: I think there were only
two cases. If I were looking at the September
report and the disposition, the SOLs were six
officers in two cases.

MR. DUNN: Okay. But I also see the 29
officers for the year. Okay. That just struck
me - - . So - - going to your point about
dealing with the 18-plus - - cases. I said
this. I think the numbers have come down
significantly, which is very good, but maybe
that's an artifact of cases coming to you from
six months ago or nine months ago, but that
seemed like a big number.

MR. SIMONETTI: By the way, there's going to
be a recommendation made that Denise take a look
at those cases where the investigators are
recommending they be substantiated, and those
cases getting out to panels immediately, the
substantiated cases.

MR. DUNN: That makes sense. I mean, it makes great solutions - - .

MR. SIMONETTI: It's happening.

MR. DUNN: That's great. Just two other small things. In this business of reopening cases, what I caught was you having ruled, it seems, to limit the ability of cases to be reopened by the agency. And maybe that - - actually eliminate - - actually perform the - - limit your ability to reopen cases.

MS. CATAPANO-FOX: It doesn't limit it, but the rule itself says that it envisioned it being upon the request of the complainant or the officer. It was made prior to the existence of APU, so there was no--I don't think there was any thought to allow for other circumstances.

MR. DUNN: I get that entirely. The only thing I'm a little bit nervous at this time - - , but in committee meetings there being resolutions that are on the record that may affect rules changes, and for better or worse, there's a whole public process around rule changes for the agency. So I just wanted to
make sure that what you're doing, that rule that exists - - process wise, - - what you're going to do. It sounds like substantively it's the right thing to do.

MS. CATAPANO-FOX: We reached out to the law department to get a determination on whether or not this would be a rule change, whether there had to be a formal process, and their answer was you're not changing a rule that exists for the public to reopen a case. You're just allowing for a mechanism, a process by which the board itself could do it. So it adds to more than - - .

MR. CHU: There was no prohibition, and there's not a rule change per se. It's really more how we do things internally, and I think that was the crux of the recommendation from the law department.

MR. DUNN: On the reports - - I think it's great that you're getting ahead of the game for annual report, that you're getting ahead of the game. We talked about that, and that's great. If the annual report can come out in the month of January, good for you - - pay attention. - - .
The final thing I wanted to mention was in talking to various people about the status — lawsuit and the issue of his appearance, something else has surfaced, which I had not been aware of and somebody else told me about. There's apparently some dispute at the department about reducing a chief who is either a witness or a subject officer in a CCRB investigation, and I hadn't heard any discussion about that here. Some of you who have been here for a while know that was an issue that rose during the convention, and the department — who is the subject officer in an investigation. So I just wanted to know is there going to be a public discussion about the department producing witnesses or subject officers of that rank?

MR. CHU: I think at this point, we don't see a widespread pattern. I think it's limited and isolated to the case you spoke of, and perhaps one other case at this point. So there will be discussions pertaining to that specific case. It hasn't gotten to a point where we think that there's an issue that requires some kind of board action. We are in the process of working that out with the
MR. DUNN: All right. Thank you very much.

MR. CHU: Thank you very much, Mr. Dunn.

If there's no one else who's looking to speak--

MALE VOICE: Will the meeting occur on these premises next month?

MS. CATAPANO-FOX: Yes.

MR. CHU: Yes, we will let you know when we're at 100 Church. All right. Thank you so much, thanks.
CERTIFICATE

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

Signature

Date November 20, 2013_________