

Public Board Meeting of the CCRB October 10, 2012

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

---

Public Board Meeting of the  
Civilian Complaint Review Board

---

Wednesday, October 10, 2012  
10:00 a.m.  
40 Rector Street - 2nd Floor  
New York NY 10006

Daniel D. Chu, Esq., Chair  
Joan M. Thompson, Executive Director

Public Meeting Agenda:

1. Call to Order
2. Adoption of Minutes
3. Report from the Chair
4. Report from the Executive Director
5. Committee Reports
6. Old Business
7. New Business
8. Public Comment

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BOARD MEMBERS PRESENT WERE:

- DR. MOHAMMAD KHALID
- JAMES DONLON, ESQ.
- YOUNGIK YOON, ESQ.
- JANETTE CORTES GOMEZ, ESQ.
- RUDOLPH LANDIN
- TOSANO J. SIMONETTI
- DAVID G. LISTON , ESQ
- JULES A. MARTIN, ESQ.
- BISHOP MITCHELL G. TAYLOR
- ALPHONZO A. GRANT JR., ESQ.
- MARY ELLEN FITZMAURICE, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHAIRMAN CHU: All right, we're going to call this meeting to order. First order of business is the adoption of the September, 2012, minutes. Is there a motion?

MR. TOSANO J. SIMONETTI: So ruled.

CHAIRMAN CHU: Thanks, Commissioner Simonetti. Is there a second?

DR. MOHAMMAD KHALID: Second.

CHAIRMAN CHU: Thanks, Commissioner Khalid. All those in favor of adoption, please say, "Aye."

IN UNISON: Aye.

CHAIRMAN CHU: Any abstentions or objections? Seeing and hearing none, the minutes are approved for September, 2012. I begin my report this month by informing the board members that, once again, those ugly three letters, PEG, has reared its ugly head. For those who need a reminder, PEG stands for a plan to eliminate the gap. And that gap is the budgetary gap. So at this point, it looks like for fiscal year 2013 we needed to do a reduction of 4%. And in the out years in 2014, we needed to eliminate and reduce the budget by about 8%. I'm happy to report that for fiscal year 2013,

1 the number for us is \$763,000, which it looks  
2 like we will be able to meet by the use of  
3 accruals and money that we already have. For  
4 the out years, we will not be as unscathed. But  
5 the number for fiscal year 2014 is around  
6 \$1,088,000. And, similarly, for the out years  
7 we hope we have to put up certain positions  
8 here and it was certainly no easy task. We had  
9 to make some difficult choices. But ultimately  
10 on balance, we offered up six positions in the  
11 newly created APU or Administrative Prosecution  
12 Unit and eight positions in the investigative  
13 unit. Hopefully, the cuts in the investigative  
14 unit can also be ultimately accomplished through  
15 accrual savings and personal services so that  
16 layoffs don't need to take place. As you all  
17 know, there is a natural cycle here and we do  
18 expect that by the time that kicks in, some of  
19 the accrual savings will be able to satisfy a  
20 very substantial proportion of that number that  
21 we need to offer back. Other than that, we're  
22 also calculating the other than personal  
23 services or OTPS to fulfill the balance that we  
24 need to return. I think in order to make sure  
25 that the APU functions at its optimum, we really

1           needed to balance where the pain was going to  
2           be sustained. Obviously, if we cut  
3           investigative heads, the days to completion for  
4           trial for the investigations goes up, the case  
5           load goes up, and we don't want that to happen.  
6           But in terms of the APU, we also wanted to  
7           insure that the program got off to a very strong  
8           start. So we didn't want any undue impact on  
9           that program before it even gets off the ground.  
10          In conducting the interviews for the APU  
11          prosecutors, I'm happy to report that at this  
12          point we already have five that have accepted  
13          offers. And in so doing, we also wanted to  
14          insure that we were not making offers to people  
15          that were coming from very safe and stable jobs  
16          and offering them a job that may or may not be  
17          in existence depending on the budget cuts. So  
18          at this point while we initially had 10 spots,  
19          we've hired five, we're in the eliminations mode,  
20          we're eliminating two spots that were not  
21          filled at this point, leaving us with a  
22          balance of three prosecutor positions that  
23          remain to be filled. So I think we're in a good  
24          position. I think that we're cautiously  
25          optimistic that maybe we can be spared some of

1           these cuts. But, you know, worst case  
2           scenario, there is a little bit of bloodletting,  
3           both on the APU side and also on the  
4           investigative side. And we should be able to  
5           move forward even in a worst case scenario. I'm  
6           going to turn the floor over now to Joan  
7           Thompson, the Executive Director, for her  
8           report.

9                       MS. JOAN M. THOMPSON: Thanks. These are  
10           the monthly statistics. The CCRB received 576  
11           complaints in September, 2012. This is 78 more  
12           complaints than in September, 2011, and a 16%  
13           increase in month to month complaint activity.  
14           Year to date complaint activity has decreased  
15           by .5%. From January through September, we  
16           received 4,572 complaints, which is 22 fewer  
17           than the same time period last year when there  
18           was 4,594. We have seen an increase in  
19           complaint activity in the last three months.  
20           From July to September, we have received 15%  
21           more complaints than the same period of last  
22           year. Although different factors affect  
23           complaint activity, the total number of contacts  
24           the public made with the agency has also  
25           increased. The board closed 3,948 cases from

1 January to September, 2012. The substantiation  
2 rate is 14% of full investigations, which is six  
3 percentage points higher than the same period in  
4 2011 when the substantiation rate was 8%. Year  
5 to date, the board has substantiated 160 cases.  
6 The truncation rate is 65%, which is a three  
7 point increase from 2011 when the year to date  
8 truncation rate was 61%. Year to date, the CCRB  
9 has resolved 251 cases through the mediation  
10 program. The number of cases resolved by the  
11 Mediation Unit is approximately 18% of the total  
12 number of cases resolved by the CCRB. Six  
13 percent of all of closed cases have been  
14 alternative dispute resolution closures. The  
15 agency's docket at the end of September stood at  
16 3,278 cases. Ninety-three percent of our open  
17 investigations were filed within the last year  
18 and 63% were filed in the last four months. Of  
19 the open cases, 642 are awaiting panel review,  
20 or 20% of the docket. 2,417 are being  
21 investigated and 219 cases are in the mediation  
22 program. By date of incident, 16 cases in the  
23 open docket are 18 months and older. This  
24 is .3% of the open docket. Two cases are or  
25 were on DA hold. Nine cases were filed a month

1 after the date of incident. And in two cases,  
2 the delay had no apparent justification. And in  
3 one case, the officer is on military leave. Two  
4 cases are also pending board review. In August,  
5 2012, the Police Department closed 39  
6 substantiated cases. Year to date, the  
7 department has closed 180 cases. The department  
8 has imposed discipline against 139 officers.  
9 The department did not impose discipline against  
10 40 officers. The disciplinary action rate is  
11 78% and the department's decline to prosecute  
12 rate is 15%.

13 CHAIRMAN CHU: Thank you, Joan. Moving on  
14 to committee reports, are there any committees  
15 that have anything to report today? Okay,  
16 moving on to old business. If you look inside  
17 your board packet, you will see the draft rule  
18 changes that are necessary for implementation of  
19 the MOU. You should find the draft notice  
20 itself, the draft statement of basis and  
21 purpose, also a copy of the rules changes, which  
22 includes deleted sections and new sections which  
23 are underlined along with two certifications,  
24 one from the Law Department and one from the  
25 Mayor's Office of Operations. At this point,



1 all the board members should have had ample  
2 opportunity to review the rules changes and at  
3 the conclusion of my statement, we are going to  
4 be putting this up for a vote to approve it for  
5 publication in the City Record. I would again  
6 just remind everyone that right now we're not  
7 adopting the actual rules, just the draft rule  
8 changes. And once that has been done, there  
9 will also be time, further time, for written  
10 comments from the public, which will be  
11 forwarded to the board members upon receipt by  
12 the agency. But if there are any questions or  
13 concerns by the board members as a result of  
14 their review of the draft rules, I am open to  
15 any discussion now. Upon seeing and hearing  
16 no issues that need to be discussed, I will  
17 put the draft rules up for a vote now. Do  
18 I hear a motion?

19 MR. JAMES DONLON: So moved.

20 CHAIRMAN CHU: Is there a second?

21 MR. JULES MARTIN: Second.

22 CHAIRMAN CHU: All those in favor of  
23 adopting the draft rules as they are presented,  
24 and the final version is the October 5th version,  
25 please say, "Aye."

1                   IN UNISON: Aye.

2                   CHAIRMAN CHU: Are there any objections?  
3                   Are there any abstentions? With no objections  
4                   and no abstentions, the draft rules are hereby  
5                   approved. Thank you. Moving on, to the next item,  
6                   is there any old business from any other  
7                   commissioners? Let's move on to new business.  
8                   Any new business?

9                   BISHOP MITCHELL G. TAYLOR: Did we, did we  
10                  finish the discussion on, truncation?

11                  CHAIRMAN CHU: I believe there were two  
12                  discussions that took place at the last meeting.  
13                  One was jurisdictional issues. The other was  
14                  truncation. Both of them were tabled for the  
15                  next operational meeting, if I'm not mistaken,  
16                  and Commissioner Liston?

17                  MR. DAVID G. LISTON: The discussion is the  
18                  jurisdictional issues. We have yet to  
19                  reschedule. I don't know if we've actually  
20                  pinned down a date or a time.

21                  CHAIRMAN CHU: Okay. But we're looking at  
22                  possibly at the next opportunity to have an  
23                  operational meeting.

24                  MR. LISTON: We could do it there. That  
25                  makes sense.

1                   CHAIRMAN CHU: Right. And I think  
2 likewise for the truncation. I think if I  
3 recall, we had the memo that was provided to  
4 both the board and the public in terms of what  
5 the stats are traditionally, what some of the  
6 possible new categories might be. And certainly  
7 we'll discuss that, I think, at the next  
8 operational meeting, hopefully, before the next  
9 November meeting.

10                  BISHOP: Excellent. Great.

11                  CHAIRMAN CHU: Yes, Commissioner Simonetti?

12                  MR. SIMONETTI: Mr. Chairman, you know, in  
13 looking at the cases over 18 months old, there  
14 were 16 listed behind the--it's on the second  
15 page of the report. And it's interesting to  
16 note that late filing comprises nine of those 16  
17 cases. And anecdotally I could tell you DA  
18 holds was always the major reason for cases  
19 being delayed. But interesting, if you look at  
20 the time, the date of the report, and the date  
21 of the incident and it spells out the number of  
22 days there. And it runs from anywhere from 207  
23 days late to over 618 days late. And if you  
24 average those nine cases out, it comes out to  
25 406 days, which means they're late by over a

1 year on average. And that, I mean, this has  
2 been not a cause of embarrassment, but certainly  
3 we've always attempted to keep this number very  
4 low. So maybe we should devote some time and  
5 try to figure out maybe there is another way of  
6 handling those cases, particularly if they are  
7 minor cases. Because if the SOL is 18 months,  
8 more than two-thirds of the SOL on average has  
9 collapsed in these cases with the late filing.  
10 So I think we should be taking a look at that or  
11 talking about it at the next operations  
12 committee meeting and try to figure out some way  
13 to deal with those particular cases,  
14 particularly if the allegations are not serious  
15 and would be exemptions to the SOL.

16 CHAIRMAN CHU: My reading and interpretation  
17 of this is I'm in agreement that traditionally  
18 we see a lot of DA holds. And I think the  
19 process there needs to be very clear that if the  
20 DA is requesting that we hold off because  
21 there's a pending criminal investigation, they  
22 need to do their part to put something in  
23 writing, have it in the file, and alert us as to  
24 when that hold is released. We also have been  
25 seeing military leave due to the wars that are

1 going on. But with respect to the late  
2 filing, my understanding with that is that  
3 that's something that I think is the most  
4 difficult on our part to control because we  
5 don't really have control over when someone  
6 decides in the course of, you know, their  
7 thinking that the time is right to make a  
8 report. So I think that certainly something  
9 that, that maybe we should look into. But I  
10 think in terms of finding a process to address  
11 that, that's probably going to be the most  
12 difficult one for us to handle as an  
13 institution.

14 MR. SIMONETTI: Well, to complete a  
15 case, what is the average time for completing  
16 an investigation ?

17 MR. SOLER: Right now it is about 293 days.

18 MR. SIMONETTI: Two hundred and ninety-three  
19 days. And I assume, and I think anecdotally, I  
20 may be correct that most late filing cases go to  
21 complete investigation?

22 MR. SOLER: Yes.

23 MR. SIMONETTI: So if you add the 200 plus  
24 days to the 400 days, we've blown the SOL by a  
25 considerable amount of time. You know what I'm

1           saying? I'm just saying that we should look  
2           at those cases with a view toward if the  
3           allegations are minor in nature, maybe there is  
4           some way to facilitate them a little, facilitate  
5           those cases. If they are serious allegations  
6           and they're an exemption to the SOL, then we  
7           should go with a full blown investigation. But  
8           there should be some way to deal with them.

9                   CHAIRMAN CHU: Yes, but you know, I think  
10           that's certainly something and there seems to be  
11           a lot of late filings in this month's report.  
12           But again, I think the difficulty is until they  
13           file, it's not really on our radar. So I'm not  
14           sure how we proactively, before any filing is  
15           made, do anything.

16                   MR. SIMONETTI: [interposing] Oh, no, no.  
17           I'm not suggesting we do anything before the  
18           filing. Certainly we have to wait for the  
19           filing, the case to come in. But once the case  
20           comes in, I mean, I think they should be looked  
21           at more carefully than the average case coming  
22           into the intake. And if they are of minor  
23           consequence, I think we should facilitate those  
24           cases and get them out of the pipeline.

25                   CHAIRMAN CHU: Sure. On that point, I think

1 we're all in agreement.

2 MR. SIMONETTI: Because this is more than  
3 50% of the cases.

4 CHAIRMAN CHU: Right. Anything further?

5 MR. ALPHONZO A. GRANT: Dan?

6 CHAIRMAN CHU: Yes?

7 MR. GRANT: I'm sorry to backup but I just  
8 wanted to make a brief comment with respect to  
9 the PEG. You know, it really concerns me the  
10 fact that we're being asked to make adjustments  
11 to APU before it really gets off the ground.  
12 And I tell you, the submission that the staff  
13 made I thought was a compelling submission and  
14 really arguing for the need for us to be exempt  
15 from that reduction. I just wanted to make that  
16 known publicly that we are moving ahead as a  
17 board and as a staff to try to argue against  
18 those reductions. And I thought the submission  
19 was excellent.

20 CHAIRMAN CHU: I would concur. I think the  
21 submission really does spell out a very  
22 compelling argument for why an agency such as  
23 ours is left with very little fat to trim. And,  
24 you know, through the discussions it was really  
25 a difficult choice in where to offer up the, the

1 heads, whether they be in investigations or in  
2 the APU. And as we always discussed, the  
3 success of the APU is largely going to hinge  
4 also on the quality of the, of the cases that  
5 the Investigations Unit is able to produce. So  
6 the investigations really fuel the success of  
7 the APU. And rather than making the  
8 Investigations Unit sustain all the cuts and  
9 seeing the numbers just skyrocket in terms of  
10 the time it takes to complete a case and the  
11 number, the case load per investigator, we did  
12 have to take some head count from the APU and  
13 hopefully, we're pretty confident that we're,  
14 you know, in a worst case scenario, we would  
15 still find a way to make it work. However, we  
16 are, as I mentioned, cautiously optimistic that  
17 maybe we will not be facing a worst case  
18 scenario and we will get some of that back.  
19 And, you know, to that point I also wanted to  
20 mention that, you know, we wanted to send a  
21 message to the people that we hired that, we  
22 understand; we are not putting them in a situation  
23 where they're coming on board only to kind of  
24 jeopardize their careers. And most of them are  
25 coming from jobs where they have been for many



1 years and that are very stable and possibly  
2 not as susceptible to budget cuts and  
3 fluctuations. So I think we've, we've kind of  
4 proceeding very cautiously. We didn't go out  
5 and hire the full 10. We're holding back. But  
6 at the same time, I think eight is a number  
7 we're comfortable with in terms of the caseload  
8 that we anticipate as like the worst case  
9 scenario. Hopefully we'll get those other two  
10 back and we'll be at full count, at full steam  
11 ahead. But I agree wholeheartedly with your  
12 concerns. And I think the staff laid it out  
13 perfectly in terms of arguing as to why there  
14 really could be dire consequences if we end up  
15 taking the full hit.

16 MR. SIMONETTI: If there was a deferral in  
17 the implementation of the APU, and by the way,  
18 I'd like to remind people that the original  
19 memorandum of understanding was signed 12 years  
20 ago to implement an APU and not just very  
21 recently. In the past, when we had to implement  
22 cuts, it was a deferral of the APU all the time.  
23 We just deferred implementing the APU. Rather  
24 than give up investigators, and we said this,  
25 the investigation side is our bread and butter.

1 The department, the Police Department, will  
2 continue to prosecute the cases, the  
3 substantiated cases, until such time as we, you  
4 know, the economy straightens itself out and we  
5 are able to get an APU that's workable. You  
6 know, I think it's the same cuts before we even  
7 know what we have in the unit, a brand new unit,  
8 I don't know if that's going to work out too  
9 well. So I don't know. I may opt to just defer  
10 the APU to a later date. And they've been doing  
11 it for 12 years.

12 CHAIRMAN CHU: Well, Tony, that's an  
13 interesting opinion. And before we leave today,  
14 I would be happy to have Marcos and Denis and  
15 Laura sit down with you and show you the head  
16 count. Because my sense is with all the effort  
17 that has gone into the APU, I don't think any of  
18 us on the board or the senior staff really  
19 considered scrapping the APU at this point.

20 MR. SIMONETTI: I don't want to scrap it. I  
21 just want to defer it.

22 CHAIRMAN CHU: Again—or deferring it.

23 MR. SIMONETTI: Defer it.

24 CHAIRMAN CHU: I think that at this point,  
25 we've gone too far. We've had the support of

1 City Hall, of the Speaker, of City Council. I  
2 think that this is an important milestone. As  
3 I've said in the past, I think it's historical.  
4 And I think to defer it at this point would  
5 really be, you know, kind of a terrible waste of  
6 time and resources.

7 MR. SIMONETTI: I agree with everything you  
8 said. However, why shouldn't the owners go back  
9 to OMB and they tell us, "Well, the APU is  
10 exempt from the cuts." You know what I'm  
11 saying? And therefore, by a certain percentage,  
12 we will lower you a percentage of the cuts.  
13 Because if we do it on the investigative side,  
14 we're going to go back to where cases are going  
15 to languish for a long time. And my concern is  
16 when that docket gets too big—and then we  
17 haven't seen a decrease in the number of cases.  
18 We're almost dead even from last year with the  
19 number of cases that we're receiving. You know  
20 the Police Department, I think they're putting in a  
21 new class, so there should be a new class coming  
22 out of the academy and normally that means a  
23 rise in the number of complaints. It will be  
24 interesting to see what comes out of this  
25 hearing today over at the City Council regarding

1 stop and frisk. But, having said that, let's  
2 put the onus on them. They made all  
3 these grandiose things to us about implementing  
4 the APU. Get it started, we are going to give you  
5 the money for it to get it started. Now, we're  
6 going to give up six positions in the APU? We  
7 don't know what it even looks like. We don't  
8 know if we can afford one position. That's my  
9 comment.

10 CHAIRMAN CHU: Thank you, Commissioner  
11 Simonetti. Any other Commissioners?

12 MR. LISTON: What about, sorry, what about  
13 Commissioner Simonetti's suggestion that we look  
14 into some sort of exemptions. Is that something  
15 we've considered?

16 CHAIRMAN CHU: We always do. And if, if you  
17 take a look at the budget, at the PEG memo that  
18 was submitted, again we're asking at the end  
19 that hopefully we are somehow exempted or spared  
20 from those cuts. But certainly all avenues have  
21 been explored by the senior staff. And the  
22 Executive Director, the Deputy Executive  
23 Director in charge of administration, Brian  
24 Connell, is in constant contact with OMB. So  
25 all of those avenues either have been explored

1 or continue to be explored. And again, you  
2 know, for that reason, I think that Commissioner  
3 Simonetti's points are well taken. I mean, I  
4 think for the APU to have a real chance of  
5 success, it really would be terrible to start  
6 cutting the legs from under them before it takes  
7 its first steps. So I think on that, I would  
8 certainly agree wholeheartedly.

9 MR. LISTON: Thank you.

10 CHAIRMAN CHU: Anything further from any of  
11 the board members? At this point, we're going  
12 to turn it over to public comment. Okay.  
13 Seeing no one has signed up to speak today,  
14 we're going to take a five minute break and go  
15 into Executive Session. Thank you very much.

16 [END 1002]

17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

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

Signature

Date 10/14/12

