

CIVILIAN COMPLAINT REVIEW BOARD
CITY OF NEW YORK

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PUBLIC SESSION
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40 Rector Street
New York, New York

February 11, 2004
10:05 a.m.

BEFORE:

HECTOR GONZALEZ, Chair

COMMISSIONERS PRESENT:

deLeon, Kuntz, Lam, Liebman,
Olds, Simonetti, Stone, Yoon,

FLORENCE FINKLE,
Executive Director

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THE CHAIR: Good morning. I'd like to

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call to order this public meeting of the Civilian

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Complaint Review Board for Wednesday, February

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11, 2004.

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The first item on the agenda is the

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adoption of last month's minutes.

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I believe all Board members have had an

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opportunity to review those.

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Is there a motion to adopt those minutes

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as transcribed?

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COMMISSIONER KUNTZ: So move.

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THE CHAIR: Any second?

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COMMISSIONER OLDS: Second.

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THE CHAIR: All in favor.

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Can I see a show of hands.

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THE CHAIR: The motion passes unanimously.

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The next item is my report.

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The first thing I'd like to report on to

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the public is that several Board members and

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staff met last month, on January 15th, with the

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Police Commissioner.

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Some of the items that were discussed, the

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first item involved mediation and the Board's

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request that the Department issue a new order

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regarding the mediation program and updating changes in the mediation program.

Commissioner Kelly informed us that the Department is, in fact, publishing a new order describing the mediation program and we hope to see that order shortly, hopefully, within the next several weeks.

We also discussed the Republican National Convention with the Commissioner and his staff.

One item that was of particular concern to us was the speed with which we will be able to retrieve records and documents pertinent to our investigation from what we assume will be complaints flowing from demonstrations at the convention.

The Commissioner assured us that he will instruct his staff to provide us with whatever assistance we need with respect to obtaining those records.

We also discussed with the Commissioner suggestions for enhancing civilians' ability to identify mounted officers, since we likewise assume that Mounted Units will be used as part of the crowd control mechanisms by the Department.

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The Commissioner agreed to consider ways to improve the visibility of identifying information regarding the mounted officers so that there is a way for a civilian to actually identify the Mounted Unit that it had contact with.

We followed up with the Department regarding our recommendation that in circumstances where a No-Knock Warrant was used, that once the premises was secure, if there was an occupant in those premises, that the Department provide that individual with a copy of the warrant.

Although not required under the Criminal Procedure Law, unlike the situation where it's a knock - where the police knock and announce their presence - where they are required to leave a copy of the warrant or to show a copy of the warrant, in the No-Knock situation, there is no statutory requirement. The Department, nevertheless, agreed with our recommendation and informed us that they will be issuing an order to that effect.

We also discussed with the Commissioner

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our desire, the Board's desire, to access training materials and certain data bases. In particular we wanted a copy of the revised curriculum from the Police Academy. We have received that since that meeting. So now we have the updated curriculum from the Academy

We also discussed accessing the data base of photographic images of officers.

As some of you may know, part of many investigations involve identifying the subject officer. The way we routinely do that is through the use of a photo array, a series of photos, where the complainant can identify the subject officer if present in that array.

The Department has told us that once they finalize the data base that captures the images of officers digitally, that we will have access to a data base and that that data base will allow us to produce computer-generated photo arrays for the subject officer identification.

Also in your package is a letter that we received from the City Council regarding Intro 142, a bill regarding NYPD policies and procedures regarding racial profiling. We are

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reviewing and studying that piece of proposed legislation and intend to comment to the City Council about that legislation and, in particular, how it would affect the CCRB.

We certainly encourage public input on that and would, to the extent if anyone wants to send us an e-mail, correspondence, phone call, whatever, regarding the CCRB's role as contemplated in that bill so that it can inform our response, we encourage that sort of input.

We also attached in your packet a copy of the Department's, the Police Department's, Operation Order No. 11, which is dated March 13, 2002, regarding the Department's policy banning the use of racial profiling, for your information.

That concludes the report from the Chair and I now hand it off to the Executive Director for her report.

One final item is we, the CCRB, will be testifying or is scheduled to testify on March 9th before the City Council regarding the annual budget process.

THE EXECUTIVE DIRECTOR: Good morning.

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I'd like to talk first about the budget.

On January 15th, Mayor Bloomberg announced the City's Fiscal Year 2005 January financial plan.

In that plan the Administration restored twelve investigative positions that had been planned to be cut starting July 1st, at a cost of \$451,000. And the City also restored a position for the Assistant Deputy Executive Director for Investigations, at a cost of \$70,000.

This was in response to a new needs requests that we had submitted to OMB back in October.

So as of the January Financial Plan, our Fiscal Year '05 budget stands at about \$9.3 million and authorizes a headcount of about 169, six of those positions devoted to the non-existent Administrative Prosecution Unit, 43 devoted to Executive, Administrative, Senior and Support staff, and 120 positions for investigators.

And while we are grateful that the Office of Management and Budget, in particular, I think has a pretty comprehensive understanding of our

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2 staffing needs, I want to make it clear that the
3 plan to allow us a headcount of 120
4 investigators, even with a zero percent vacancy
5 rate, is inadequate to responsibly process and
6 investigate the increasing number of complaints
7 that we are receiving.

8 In 2003 we had already an average staff of
9 121 investigators. We received, total number of
10 complaints, including complaints that did not
11 fall within our jurisdiction, over 10,000 -
12 10,046 complaints - that was 1581 higher than we
13 received in 2002, a 19 percent increase.

14 And so our investigative staff was
15 required and our administrative staff was
16 required to input into our complaint data base,
17 review and in many cases take investigative steps
18 on more than 1500 cases last year than it did in
19 the previous year.

20 And those are cases, some of those cases
21 where we don't have jurisdiction over. But
22 before we can determine that we don't have
23 jurisdiction, we have to sometimes interview the
24 civilians and perform identification procedures.

25 And so we are doing a lot more work than

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we previously had to do.

Of those 10,046 complaints filed with us last year, 5568 fell within our jurisdiction and, again, that's a 21 percent increase over the number in 2002.

Our investigative case loads while we averaged 121 investigators on staff, increased from seventeen to twenty-three.

Higher individual case loads led to an increased open docket which rose last year by 667 cases. Our time to complete went up in the second half of last year by about a month and the number of cases that we substantiated after the Statute of Limitations expired increased.

We substantiated only 4 such cases in in 2002. Last year that number rose to 11.

We project that even with 120 investigators on staff, with a zero percent vacancy rate, our open docket will increase by an average of 98 cases per month. And we calculated that we need a minimum of 140 investigators with a zero percent vacancy rate to keep pace with the increased complaint rate.

And to that effect, we will be submitting,

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within the next week or so, another new needs request to the Office of Management and Budget asking for 20 additional investigative positions.

With respect to personnel, we have currently a full-time head count of 164: 126 investigators on staff and 38 other personnel, which includes Executive Staff, Mediation, Public Outreach, Statistics, Support Staff, Records Management.

Last month I mentioned that we were having some problems with receiving complaints from 311. 311 is forwarding to us a significant number of callers each month.

In December 2003, for example, 311 transferred 281 callers to the CCRB and gave or referred 14 other callers to the CCRB, people who didn't want to be transferred.

But in some cases they had failed to transfer the call to the CCRB.

As a result, we met with 311 management on January 28, 2004, and learned that these errors - operator errors - resulted from failure to classify the complaint against a New York City Police Officer differently from complaints filed

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against other New York City employees.

They have a certain way of treating complaints filed against New York City employees but the staff there is trained to record Police Officers as special.

So they have promised to enhance training of their operators regarding the treatment of complaints against New York City Police Officers and they also promised to review complaints made against New York City employees more expeditiously, to determine if, in fact, some callers weren't transferred to the CCRB or the NYPD IAB Unit, that they would notify us about those operator errors, those complaints, much sooner than they had in the past.

We also, just within the last two weeks, made an alteration to our complaint tracking system so that we can capture the amount of complaints that we are receiving after someone has called 311. We want to be able to track the complaints that we are getting after people call 311.

I also would like to discuss some highlights of the Executive Directors report and

1
2 mention that the report had come become quite
3 lengthy. So what we have done is we have
4 separated out from that report about a 20-page
5 report that describes in detail the attribution
6 of complaints to the individual police commands.
7 That is still available to anyone who wants it
8 and we have given that information to the Board
9 and to members of the public who want it.

10 But we have tried to condense, make more
11 concise, the monthly Executive Director's report
12 that we are going to put on the website, because
13 it became very unwieldy at about 40 pages in
14 length.

15 In January 2004 we received 524 complaints
16 that as of the end of last month were classified
17 as CCRB complaints. That is up 18% from the 444
18 we received in January, 2003.

19 And we want to note that our projections
20 with respect to budgeting have been based on the
21 notion that complaint rates would remain the same
22 as in 2003, when we received an average of 466
23 complaints a month, or 463 complaints a month.

24 Last month we received a much higher
25 number of complaints than that, a month when I

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think everyone recalls temperatures were freezing and we might have thought that the number of citizen/police encounters would have gone down, leading to decreased complaint rates.

So, last month's complaint rate figures only reinforce the fact that the complaint rate continues to go up and that we need more staff, rather than keeping our staff the same.

We closed a total 416 cases last month: 187 full investigations, 214 truncated case closures, we mediated 5 cases and closed 10 as mediation attempted.

Our docket went up by 89 cases. It now stands at 2905 as of the first of this month.

That completes my report.

THE CHAIR: I just have one question where you describe staffing and 126 investigators.

Do we have 126 that are actually working or do we have terminal leave, military leave?

THE EXECUTIVE DIRECTOR: We have two people on military leave and I think at least one person is still on payroll who has resigned.

We have less than that actually at work.

THE CHAIR: I believe the Reports and

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Recommendation Committee has a report.

COMMISSIONER STONE: We do.

The Reports and Recommendation Committee met on January 23, 2004. We had three items on the agenda.

The first was the CCRB January through December 2003 status report. The Committee reviewed an outline of the status report and discussed the special sections that will be included in the report. We also spoke about the time frame for the completion of the report.

The staff hopes to be able to submit a draft of the report to the Committee and the Chair at the end of March.

The second item on our agenda was the monthly Executive Director Report and this item was covered in our Executive Director's Report, that is, for the purpose of simplifying the monthly statistics that are distributed to the public and published on the website, the Committee agreed that the 16-page report which detailed the attribution of complaints to individual NYPD commands should be separately distributed at public Board meetings and

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available to the members of the public by request.

The third item on our agenda was a possible recommendation to the New York Police Department regarding strip searches.

Prior to the Committee meeting, the Committee members reviewed a number of cases, or I guess, all cases which occurred since --

All cases?

THE EXECUTIVE DIRECTOR: That were substantiated.

COMMISSIONER STONE: -- all substantiated cases involving strip searches since January 1, 2002, in which the Board substantiated strip search allegations.

And we also reviewed a memorandum, prepared by the Executive Director, which summarized those cases.

The Committee members also reviewed the applicable patrol grab procedures and New York State and Federal decisions regarding strip searches, as well as the legal memo regarding strip searches.

The Committee decided that the

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substantiated cases raised an issue about the adequacy of officers' training and understanding of the Department's own search guidelines, and directed the Executive Director to draft a letter or memorandum to the Police Commissioner regarding this issue.

The Committee will review that draft at its next meeting.

Obviously, this is a matter that would also be discussed by the full Board.

THE CHAIR: Thank you. I believe that is the only Committee report.

There is no old business on the agenda.

Does any member wish to address new business?

Yes, Commissioner Simonetti.

COMMISSIONER SIMONETTI: Mr. Chairman, because our complaints are up rather significantly for January, they are up about 18 percent, I would ask that staff pay particular attention and kind of track what's going on in Brooklyn South and Queens South.

If you look at the borough attribution form, you can see that Brooklyn South and Queens

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South are both up rather significantly for
January 2004.

And when you analyze Brooklyn South, there
are two precincts out of the thirteen precincts
that account for more than half the cases that
are occurring in Brooklyn, and that being the
67th and the 70th precinct and those two areas
are contiguous to each other - that's the
Flatbush, East Flatbush section.

So I ask that staff take a look at those
cases, see if there is something that's going on
that we should be aware of, kind of track them,
let us know what kind of categories they are,
what categories they fall under.

Queens South to a lesser, there is no
discernible precincts in Queens South with any
significant rise. But overall they had a
significant rise.

So I ask that you track that and let us
know what's going on there.

One other issue, of the 563 cases that we
got in January, 243 of them, or about 42% of the
cases, they are unable to determine what commands
they came from.

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Now, I ask that staff, you know, make every attempt to try to determine what command they are attributed to because if, in fact, they fall within Brooklyn South and Queens South, the numbers will be much larger, much more exaggerated.

THE EXECUTIVE DIRECTOR: Let me just say that usually within - the efforts to identify the subject commands are much more successful over time. So, initially, within the early days of an open complaint, the rate at which that we don't know the subject commander, subject officers, is much higher than a couple of months later as we get into the investigation.

And the rate at which we have been unable to determine subject officers' identity in full investigations has dropped over time. So that rate should come down.

COMMISSIONER SIMONETTI: Good.

THE CHAIR: If we could just include Commissioner Simonetti's request in next month's agenda for a follow-up.

THE EXECUTIVE DIRECTOR: Okay.

THE CHAIR: Any other new business?

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Seeing none, we will now turn to our public comment portion of the meeting.

Mr. Dunn, you have signed up for comment.

MR. DUNN: Good morning. Thank you.

I was greatly encouraged to hear the report about the meeting with Commissioner Kelly in many respects.

And I have some specific requests in response to that that I am going to get to.

First, in terms of a new mediation order, I hope that any mediation that was provided to the Board will also be provided to the public so that we can see what that is.

And I did not understand if he was offering to provide a draft to the Board for comment or if you were simply going to be provided with a final order without having an opportunity to comment on it.

I would hope that you would get an opportunity to comment on the order before they issued it, given how important it is to the work of the Board.

With respect to the No-Knock Warrants, I think that recommendation is an important

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2 recommendation and I think it's a terrific
3 example of the Board suggesting an affirmative
4 policy step by the Department that's not
5 necessarily required by law, not necessarily
6 required by statute, but something that you are
7 proposing as good policy.

8 And I think it's very encouraging that
9 they have accepted that, particularly in a
10 controversial area, in an area where there are
11 lots of issues around policing, namely, the
12 provisional warrants to apartment occupants.

13 And I think that's an important step.

14 With respect to the training materials, I
15 would be interested in knowing more specifically,
16 and it doesn't have to be now, what training
17 materials you actually received, because we are
18 always interested in looking at training
19 materials from the Academy.

20 With respect to the convention, in going
21 back a little bit to the search warrant issue, I
22 was pleased to hear the discussion about the
23 convention. What I was a little troubled by is
24 it didn't sound like there were any
25 recommendations from the Board about steps like

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the policy issue of giving the warrants in terms of certain policing issues that are raising misconduct complaints for the Board.

I mean, identifying mounted officers is fine, that's an important thing to do after someone has gotten run over by a cop on a horse.

But I think the Board has a role to play in the policy issues about the circumstances in which the cops are deciding to use the Mounted Unit, for instance, to disperse protestors.

And given the number of complaints the Board received from people after February 15th concerning horses, I think it is perfectly appropriate for the Board to be saying to the Department, we would like to see what your policy is about the use of the Mounted Unit for purposes of dispersing protestors, to see if there are policy issues that you want to address.

Because you got a large number of complaints about the horses. The use of horses is a use of force that raises very serious questions that are policy questions that I think are within the Board's purview.

The final thing about the meeting and the

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thing that actually shocked me was, I didn't hear any report about a discussion with Commissioner Kelly about the rise in the number of complaints filed with the Board and the rise in the number of substantiated complaints.

And with the exception of Commissioner Simonetti - who I am going to make an honorary member of the NYCLU, at least for today - we have now had two meetings, you have reported historic rates of complaints and substantiated allegations against Police Officers, and I have heard no discussion whatsoever about what that means about misconduct by Police Officers.

I have heard Flo talking - and I understand her position - about the impact of the complaint rate on staffing and budget issues. That's important and that's fine and that's good.

But the CCRB - and I don't mean this disrespectfully - you guys are not just bean counters. We are not just here to count the number of complaints and count the number of substantiated allegations.

You have a role to play in terms of addressing police misconduct. And, for the life

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of me, I don't understand why there has been no conversation about the extraordinary numbers that you have reported over the last year and it continues. There is another 20% increase this month. It just keeps coming.

And I think the Board has got to be saying -- I mean, if you guys aren't saying it, no one is saying it inside the City - the Board has got to be saying, what is going on here.

And Commissioner Simonetti, it's not just a matter --

I appreciate your raising this.

It's not just a matter of two commands. This is a Citywide increase; it's an historic increase. And all of you need to be saying to Commissioner Kelly and to yourselves, what is going on here.

I understand the issue about monthly fluctuations. They go up, they go down, we can all debate what happened. That's not what happened here.

There has been a sustained surge in complaints over the last three years and there is no end in sight and I think the Board has got to

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address it.

A couple other things.

In terms of mediations, I notice in the mediation report this month that there there are two force allegations that are mediated or attempted to be mediated. And I don't know what those allegations are because because my understanding is that force allegations were not part of mediation. I think we should talk about it.

It is reported they are force allegations and one of the complaints there is only a force allegation. So, there is an issue about that.

With respect to, the other thing I want to mention, Hector, you mentioned about the City Council hearing.

As you may or may not know, there is also a bill that Mr. Vallone has introduced concerning search warrant reporting by the Police Department. There was a hearing last Thursday that I testified at and the Police Department testified at.

And I don't know if you got notice of that hearing. But it's a very important bill that Mr.

1
2 Vallone has introduced that would require the
3 Police Department to report about all kinds of
4 specific information concerning the execution
5 of search warrants, where they are being
6 executed, bad warrants, whether the cops and
7 actual informants are involved, the sort of
8 information that goes to some of the issues that
9 the Board itself has raised in terms of concerns
10 about the execution of search warrants.

11 And then, finally - and I don't know if I
12 can give Mr. deLeon credit for this - but I was
13 very happy to hear about the strip search issue,
14 not that I'm happy to hear about strip searches,
15 needless to say.

16 But whoever gets the credit for it, I
17 think it's terrific that the Board --

18 COMMISSIONER STONE: Flo should get the
19 credit.

20 MR. DUNN: All right, Flo. We beat up on
21 Flo, so I'll give her the credit.

22 I think it's terrific that you guys are
23 now focusing on the strip search issue. I will
24 tell you that we get complaints regularly about
25 strip searches.

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It's very difficult for us to tell what those actually evidence because they are somewhat - given the sorts of complaints that we get - you get a much more systemic picture of that.

And I think it's terrific that the Board has taken this on and is looking at it.

It sounds like you have identified a problem and that you are prepared to do something in terms of dealing with the Police Department and I thank you for that.

Thank you.

COMMISSIONER deLeon: On the point about the rise in complaints and how do we respond to that programmatically as a Board, it strikes me that there is kind of an inherent difficulty in responding to it on a general basis. Because the complaints all have to be investigated, there is a need for individual, they present individual issues - some are strip search, some are search warrants - and we keep a lookout for patterns in the different areas.

So what do you propose --

I am just curious.

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What kind of analyses do you think we could do with the volume aspect of it?

MR. DUNN: Well, my initial concern is, I think there are lots of different ways to approach it. I understand just responding to the number - 6000 versus 5000 - is a difficult thing to do.

What I am initially responding to, what I hear is a complete lack of, we got a problem, let's try to figure out what's going on.

I haven't even heard that.

What Tony said is the first time in the last whatever period of time that someone has said what's going on with the numbers.

One way to look at the numbers is, if you see significant increases in particular commands, as he suggested, you say, is that real, are those numbers genuine. And, if so, we need to look at what's happening in those commands.

There may well be that you start seeing practice patterns or categories of complaints that lend themselves to certain things.

I am not suggesting a particular methodology for going about doing that. What I

1
2 am responding to is what I hear - or don't hear -
3 as the initial step of saying, this is an
4 alarming situation; they are serious sustained
5 increases in complaints; how do we go about
6 thinking about how do we analyze it and make
7 recommendations.

8 COMMISSIONER deLeon: It seems the
9 Commission could approach the Police Commissioner
10 or internally to figure out some global approach
11 to addressing the rise in complaints.

12 MR. DUNN: I think that's got to be part
13 of it.

14 I mean, for instance, the meeting last
15 month, I think you guys met with Kelly the next
16 day and what conversation there was with him
17 about the complaint numbers I don't have any
18 idea.

19 Didn't sound - I didn't hear a report
20 about any conversation.

21 But I would think an initial step would be
22 a conversation with him saying, look, we have got
23 this very substantial and sustained increase in
24 complaints. We are not sure what that means, but
25 the numbers are so big and so sustained, it means

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something that we should both be worried about.
And let's start thinking about ways to deal with
it.

You know, the Police Department has got
Compstat - and not that I'm endorsing Compstat, I
don't know enough about Compstat to endorse it or
not - but they have got a whole system of
thinking about trends that start appearing and
how you figure out what's behind those trends and
how you address them.

I don't know if they track CCRB complaints
as far as Compstat.

THE EXECUTIVE DIRECTOR: Yes, they do.

MR. DUNN: They do, okay.

So at some level they already have some
ways to start thinking about that.

What I'm saying, the initial step has to
be both sides - the Board and the Police
Department - I think needs to start thinking
about complaint activity, given how big the
numbers have gotten.

And then maybe it becomes a matter, on
your side, of looking at commands or looking at
practices or looking at types of complaints.

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I'm not quite sure, again, what it is

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because I don't see enough of the particulars.

4

You see them in your panels; you see them in your

5

analysis.

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What I am saying is, there has got to be

7

an instinctive response, there is something going

8

on here, it's got to be a priority for us to

9

start figuring what is going on here and what can

10

we do about it.

11

I get very frustrated when I see --

12

You know, after the last meeting, you guys

13

made these startling announcements about

14

complaint numbers. I don't think you put

15

anything out.

16

I'm acting as your press secretary of

17

sorts, but I let some people know.

18

And then I read in the newspapers, we

19

don't have any idea what is behind these numbers.

20

And that is a, if you will excuse me, a refrain

21

from the CCRB in terms of statistical numbers.

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At some point, I think you need to say,

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all right, maybe we don't know, but maybe we got

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to figure it out.

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That's what I'm talking about.

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COMMISSIONER deLEON: So you are saying we should say we don't know, because we don't know, but that we are going to analyze the trends.

COMMISSIONER STONE: One substantial trend is the introduction of 311, from which we are receiving substantial reports. I don't mean to suggest that that accounts for the entire difference, but I think one can't assume that it's an increase in police misconduct as opposed to an increase in reporting.

MR. DUNN: I understand that. Although, since the substantiation rate has gone up also, I mean, if what this was was - as the Police Department likes to spin it - it's a lot easier to report complaints and the implication is that there are a lot of unfounded, inappropriate reports coming in because it's easier to complain, you would see the substantiation rate go down. That's not what has happened.

The substantiation rate has actually gone up as the number of complaints have gone up.

So, it may well be, Franklin, you are getting more complaints because it's easier to complain. I don't think that that is an

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explanation for -- that suggests that there is not more misconduct taking place.

I'm just saying that there has got to be an instinct on the Board's part -- You see these numbers; you see these numbers long before we walk in and have these meetings. You see it going up.

Someone should be saying, what is going on on behind this substantively and trying to figure it out.

Maybe it's a reporting thing and it's not misconduct, but maybe it's not.

THE CHAIR: Mr. Kuntz.

COMMISSIONER KUNTZ: I would just like to make a few comments that are perhaps informed a little bit by the history of reviewing complaints as I have, going back to 1987.

Traditionally, when complaints have gone up, certain institutions - such as the New York Civil Liberties Union and others - have articulated a view that they perceive that to be a reflexion of bad behavior by Police Officers.

When complaints have gone down, the NYPD has traditionally cited that as evidence of

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good behavior by Police Officers.

When complaints have gone up, traditionally, organizations such as Civil Liberties Union - and your predecessor in particular - would argue that outreach was working particularly from the civil liberties community.

When complaints went down the argument was often made by members of the Civil Liberties Union that people had lost confidence in the Civilian Complaint Review Board.

Now, if you read the Mollen Commission Report you will know that during the period when what has been referred to as the "Dirty 30", the 30th Precinct, was engaged in what has been described as rampant criminal activity - of stealing drug money from drug dealers, stealing guns from drug dealers and reselling them by Police Officers - that complaints City-wide and complaints in that precinct were going down historically.

That is not a matter of opinion; that is a matter of a fact.

There is the fact that 311 has come on

1
2 board. It will be interesting to know whether or
3 not there has been a general increase in
4 complaints against City workers, including Police
5 Officers and others, as a result of having what
6 is probably a more transparent and value neutral
7 transmission mechanism for complaints.

8 If someone calls Bill Kuntz to complain
9 about Bill Kuntz, perhaps he is less likely to
10 circulate that as opposed to someone calling
11 someone else to complain about Bill Kuntz.

12 So I'm not saying that 311 necessarily is
13 a clearer filter about complaints than calling
14 911.

15 But I would simply point out that it is
16 certainly something that, impressionistically, as
17 Commissioner Stone has suggested, may very well
18 have enhanced the ability of all citizens to
19 complain about all activities.

20 But I would - and I have and I continue
21 to - make this cautionary note based on what I
22 saw of the behavior of the Officers of the 30th
23 Precinct, where they engaged in bad behavior - by
24 which I mean criminal behavior - and complaints
25 were going down City-wide and in that Precinct it

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would be dangerous to draw simple-minded and
illusory conclusions between increases in
complaints and decreases in complaints in terms
of good or bad behavior.

And I have sat here for years and I have
listened to people from the civil liberties
communities say when complaints go up, bad dog,
bad dog; when complaints go down, no one has
faith in you.

And I'm tired of hearing the police say
complaints go up - obviously, hysterical elements
are driving that; and when complaints go down -
see, we are being good.

It just isn't so. Life is more
complicated than that.

Our job is to call them as we see them.
If we are substantiating more complaints, if more
complaints are being filed here, people have the
perfect right - and I think obligation - to go
forward and say what they think about that.

Take what we give you. If we have a
thousand more complaints and we are subbing at a
higher rate, duh - that's spelled D U H. Okay.

You don't need us to comment on that. And

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by the same token, if complaints are going way down and substantiation rates are down, duh, again.

Our job is to call them honestly, to investigate them carefully.

And I personally do not think that we are in the business of spinning. If I were in the business of spinning, I would have gotten off this Board many years ago.

Let me finish, please.

My point is this, analysis is fine. I have never heard from the Police Department an explanation as to why when the "Dirty 30" activities were going on, complaints were going down. I have never heard from the civil liberties community an explanation as to why that's so that works for me.

I have heard a lot of spinning from a lot of people over a lot of years.

I believe in analysis. It may very well be that 311 has had a material impact. I don't know that. I would like to see what other complaint factors have played a role in here.

I don't mind the analysis. But I am a

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little bit, foregive the word, humble about saying complaints are up, you should be seriously concerned.

The number of complaints we get are the number of complaints we get. The number of complaints we sub are the number of complaints we should sub.

We do our jobs; we do them as well as we can.

I have been here when this agency had a budget 1/3 the size of its current budget, which was woefully inadequate. And I listened to a lot of people attack the character and the quality of people on this Board and on this staff, and I didn't like it.

And I'm telling you we do the best we can with what we have.

I never subbed a case that I didn't believe should be subbed. I have never exonerated where I thought it should go any other way than exoneration. And I believe that around the people of this table, whatever their perspectives.

So maybe we will get to a point where we

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can say, well, they went up 10% because of X and Y and Z. Everybody wants to do that. Your predecessor wanted to do it; the Department wants to do it.

But I have seen this for 13 years now. And I am telling you it is very complicated. A lot of very smart people - a lot of very smart people - from a lot of different perspectives have tried to explain it and, for what it is worth, they have left me unimpressed.

So, take your best shot at explaining it but be very, very clear about something, explain to me why the "Dirty 30" complaints were going down when there was criminal activity.

Thank you.

THE CHAIR: Commissioner deLeon.

COMMISSIONER deLeon: I do take the rise in complaints seriously for, maybe for a different reason, that it's just we don't -- I don't know what the rise in complaints signifies.

We get the reports say abuse of force, but there is data in the actual charges around, say, an allegation of pointing of gun or guns were drawn improperly or some other kinds of charge.

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Those kinds of charges are what goes into the cases that we all consider.

It strikes me as conceivable that that - and I know no one has time for extra work; I don't want to impose any extra work - it strikes me as conceivable there may be - I am thinking about patterns and I'm not thinking about the rise, per se - I am just thinking about the patterns, regardless of whether the cases are up or down - what can we tell by what's coming in by the nature of the charges.

Is there any more detail in the reports that we receive that could provide us with a better snapshot of what's walking in the door.

THE CHAIR: I can assure you that in speaking to the staff - and assure the public - the staff does not just get this data and sits on it. It tries to analyze, it tries to do the sort of analysis that Commissioner Simonetti has requested that the staff do to see if there was increased police activity in a given command, to see if there is a change in police practice, to see if there is a change in the method by which complaints are coming in.

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If they find a pattern, the staff will let us know and we will let the public know.

I think it is unfair to assume that the staff just receives these numbers and puts them on a spread sheet and reports them out.

I know for a fact that the staff looks at these numbers, tries to analyze them, tries to run through whatever statistical analyses programs they have.

And if a pattern comes out, they will report such a pattern.

COMMISSIONER deLEON: Just in terms of what I see as a Commissioner, what I get is my Board packet and, in general, breakdown by abuse of authority - I forgot the other categories, but the four or five categories.

If there is analysis being done at a more finite level, that would be interesting to see, if it becomes --

THE CHAIR: Right, if it's statistically significant. They will report that --

I mean, the staff knows that they need to report that now to the Reports and Recommendations Committee, because that's where

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such - if there is a report to be issued as a result of that analysis - that's where that report will have its genesis.

MR. DUNN: If I can, first, I think this is the most significant, substantive discussion there has been at the Board in I don't know how long and I appreciate that.

But I do feel like I have to respond to Bill's suggestion of our simplistic and illusory analysis.

But what I'm saying, I think what you heard me say is, when the complaint numbers go up to an eight year high and when the substantiation rate goes up, that raises questions that call for analysis. That is what I said and that is our position.

I am not saying, as others have said, oh, the complaints went up 20 percent, cops are out there beating up people all the time. I have never said that.

And what I am responding to is not some suggestion that staff is not analyzing the data. I don't know what the staff is analyzing or not.

What I am responding to is what I see and

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what the public sees, which is, we come to Board meetings; we read press accounts. There has been zero discussion along the lines of these raise questions, we are analyzing them.

No one has said anything about that.

What Commissioner Simonetti said is the first comment I have heard by someone on the Board, until Mr. deLeon just raised this, saying, there is an issue with these numbers; we should look at them.

All I am saying from the civil liberties perspective, from the NYCLU's perspective, is the numbers are big enough in terms of complaints sustained over time and the substantiation numbers are big enough to raise questions that you should be answering.

Bill, I know you have a different view than I about do about what the Board should be doing.

I do not think the Board should just be calling them as they see them. I think you have a policy role to play.

And I think if your analysis of your numbers, as you call them, raise issues, as they

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sometimes do, you should comment on those issues.

I think that is part of the Board's responsibility.

COMMISSIONER KUNTZ: Since the comment was addressed to me, I'll just respond as follows, if that's okay with you, Mr. deLeon.

COMMISSIONER deLEON: Sure.

COMMISSIONER KUNTZ: Thanks. And that is, as follows.

For many years, as I have said, the civil liberties community has had a response when complaints have gone down that people are losing confidence in this Board.

And they have also had a tendency to say, as people say in New York City when complaints have gone up, it suggests that there is more real world bad behavior.

And what I have said throughout my tenure here is that I have seen complaints go down at times when, objectively, historically, we now know that there was real bad behavior.

And I have seen complaints go up at times when I think, objectively, there may or may not have been.

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And that is what I mean when I say it is complicated.

I would think that there are some members of the community that want to know when you come to the CCRB, we give you the numbers, we give you the analysis that we can give you, we are not in the spin business.

I have sat next to Deputy Police Commissioners who have said publicly, isn't it great that complaints have gone down and I have said to them, "sottovoce", what are you guys and gals going to say when they go up.

And I have sat next to civil liberties leaders who said, it's terrible that the number of complaints have gone up. And I have said to them, what are you going to say when they go down.

And what the civil liberties community says traditionally, when they go down, is something along the lines of, people are losing confidence in the CCRB. And when complaints go up, they say the Police Department is behaving badly, not that people are gaining confidence in the CCRB.

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And when complaints go down, the Police Department traditionally says, isn't this great, the police are behaving better.

And when they go up, they hear that the civil liberties community and 311 and the outreach is working.

And, you know what, I have enough work to do here to get it right, to deal with policy issues that are important - like hollow points, like search warrants, like the conventions, like identifying commanders on horses - I have enough real work to do without going down the road of this is what the increase or the decrease means.

I'd like to know the answer.

But I will just say again, a lot of very bright people - the civil liberties community, the Police Department on this Board - have looked at this issue for years.

And when you have read the Mollen Report, when you have read the compendium that New York Law School did, under the auspices of Ross Sandler, dealing with periodic reports going back to the 19th century, as I have done, and you have looked at the Seabury report and you've analyzed

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it, when you haved looked at 5000 cases a year since 1987, when you have done your work, you have done your homework, we can talk.

MR. DUNN: Bill, I will suspend all public comment from this point forth.

THE CHAIR: Any other public comment?

Seeing none, I will now close what Mr. Dunn has characterized as our most substantive discussion in a long time.

And we will retire into Executive Session.

Thank you all.

(Public session adjourned at 10:55 a.m.)

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C E R T I F I C A T E

I, ELLEN REACH, a Stenotype Reporter
and Notary Public of the State of New York do
hereby certify that the within transcript is a
true and accurate record of the Public Meeting
held February 11, 2004.

IN WITNESS WHEREOF, I hereunto place
my hand this _____ day of _____, 2004.

ELLEN REACH

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