

Civilian Complaint Review Board - Final
October 11, 2017

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CIVILIAN COMPLAINT REVIEW BOARD

PUBLIC MEETING

October 11, 2017

4:00 p.m.

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100 Church Street
New York, NY

TRANSCRIPT OF PROCEEDINGS

B E F O R E:

DEBORAH N. ARCHER, ESQ., Acting Chairperson

JONATHAN DARCHE, ESQ., Executive Director

Reported By:

Deirdre Smith

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PUBLIC MEETING AGENDA:

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

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BOARD MEMBERS PRESENT:

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DEBORAH N. ARCHER, ESQ.

ANGELA FERNANDEZ, Board Member

FREDRICK DAVIE, Board Member

JOHN SIEGAL, ESQ., Board Member

JOSEPH A. PUMA, Board Member

RAMON PEGUERO, ESQ., Board Member

YOUNGIK YOON, ESQ., Board Member

MARBRE STAHLY-BUTTS, Board Member

SALVATORE F. CARCATERRA, Board Member

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JONATHAN DARCHE, ESQ., Executive Director

SPEAKERS: Jamie Banda

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MS. ARCHER: I would like to call to order the October meeting of the Civilian Complaint Review Board.

My name is Deborah Archer and I'm acting Chair of the CCRB and I thank you all for joining us. We are still waiting for one additional board member to come to have a quorum, so we are going to defer from adopting our minutes until later on, when he arrives.

So, we are going to start the meeting with a report from a our Executive Director.

MR. DARCHE: Thank you, Madame Chair. Thank you all for joining us today. I will discuss matters pertaining to the operations of our agency and I will provide you with highlights from our monthly statistical report. For a full review of the agency's monthly statistics, please visit our website.

Please note that the November board meeting will take place on Wednesday,

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1 November 8. It will be held at the Bronx
2 Community College, at 2155 University Drive in
3 the Bronx.

4 In September 2017, the CCRB initiated 357
5 new complaints, which reflects an increase from
6 317 in September, 2016, and a decrease from 429
7 in August of 2017.

8 At the end of September, the CCRB's total
9 open docket was 1,259 case. 824 of these cases
10 were in the investigations division, an
11 increase of 2.4 percent from the end of August.
12 265 cases were pending board and/or executive
13 staff review, a decrease of 1.9 percent from
14 the end of August. There were a 158 cases
15 assigned to the mediation assignment program,
16 exactly the same as the end of August. There
17 were an additional twelve cases on DA hold in
18 September. The September, 2017 docket includes
19 fourteen reopened cases, or active investigations
20 and six are pending board review. Of the cases
21 that remain in the CCRB's active docket,
22 88 percent have been open for four months or
23 less, and 98 percent have been opened for seven
24 months or less.

25 Investigators closed a 135 full

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1 investigations in September, 2017. Year to
2 date, the average days to close a full
3 investigation, excluding reopened and DA hold
4 cases was 161 days, compared to 132 days in
5 2016, and 219 days in 2015.

6 In September, 2017, the CCRB fully
7 investigated 35 percent of the cases it closed
8 and resolved, which is fully investigated,
9 mediated or mediation-attempted, 46 percent of
10 the cases it closed.

11 The truncation rate was 51 percent in
12 September, 2017. Administrative closures
13 accounted for 3 percent of closed cases.

14 Now, I would like to highlight other key
15 statistics for the month of September. The
16 September case substantiation rate was
17 17 percent, compared with 20 percent for 2017,
18 year to date. With regard to fully
19 investigated allegations in September, The
20 Board substantiated 3 percent of force
21 allegations, 10 percent of abuse of authority
22 allegations, 9 percent of discourtesy
23 allegations, and no offensive language
24 allegations.

25 Investigations with video evidence, either

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1 substantiated, exonerated or unfounded
2 allegations in 41 percent of fully investigated
3 cases in September 2017, compared to 42 percent
4 of the cases in which video was not available.

5 The discipline rate for non-APU cases was
6 77 percent in September, and 75 percent
7 year-to-date. For cases in which a policeman's
8 misconduct was substantiated by The Board and
9 sent to the Police Department's, Department
10 Advocacy Office with penalty recommendations.
11 The department's declined of prosecution rate
12 for non APU cases in September was 20 percent,
13 and 22 percent year-to-date.

14 In September, the police commissioner
15 finalized decisions against four officers in
16 APU cases. One was guilty after trial, one was
17 resolved by a plea, and two were not guilty
18 after trial. The APU conviction rate in
19 September was 50 percent. The APU conducted
20 one trial against an officer in 2017, the total
21 number of respondents tried in 2017 is
22 thirty-two.

23 I would like to introduce new staff and
24 staff who are in new roles. Nicole Napolitano
25 joined our agency from NYPD OIG, and is the new

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1 Director of Policy and Advocacy. Raise your
2 hand Nicole.

3 Harya Tarekegn joined our agency from
4 Ranio Compo, LLC, and is Senior Counsel for
5 Policy and Advocacy. Dane Buchanan is now the
6 Deputy Chief of Investigations, and finally
7 Nick Carayannis is now the Director of Quality
8 Assurance and Quality Improvement.

9 MS. ARCHER: Thank you.

10 Does anyone have any questions for
11 Jonathan regarding his report?

12 (No response.)

13 MS. ARCHER: Now that we have a
14 quorum to move to adopt the minutes, is there a
15 motion to adopt the minutes from our September
16 board meeting?

17 MR. SIEGAL: So moved.

18 MS. ARCHER: A second?

19 MS. HERNANDEZ: Second.

20 MS. ARCHER: All in favor?

21 (A chorus of ayes.)

22 MS. ARCHER: All opposed?

23 (No response.)

24 MS. ARCHER: Abstentions?

25 (No response.)

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1 MS. ARCHER: We have our minutes.

2 And now, we will move to public comment.

3 I have a Jamie Banda signed up. And as Mr.
4 Banda comes up to the microphone we ask folks
5 to please try to limit their comments to two
6 minutes, so we have an opportunity to hear from
7 as many people as possible.

8 MR. BANDA: Hello, my name is Jamie Banda,
9 and this is more a comment than a question.

10 I have -- on Friday I had to go to court
11 because a police officer stopped me while I was
12 driving with my son, and he said that I wasn't
13 wearing my seatbelt.

14 When police approach me, I just -- I'm a
15 brown man, I'm big and I've been in America for
16 30 years, so I know what to do.

17 So, I said, officer, do when you need to
18 do. Then he, was like oh, like, whoa, trying
19 to be funny and trying to tell me that if I
20 wanted to know why he was talking to me, and I
21 was like, officer, just do your job.

22 And then when he finishes giving me the
23 ticket -- my son is five years old, sitting in
24 the backseat, and he was like, papa, is he
25 joking? And I'm like -- right there, I had to

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1 start explaining to my son, you know, why this
2 police officer is doing that.

3 I have a court date on Friday. I read the
4 last two articles in the New York Times this
5 week about police lying, and that's why I'm
6 here.

7 MR. DARCHE: So, sir, if you would
8 like to speak to one our investigators, we have
9 people here and you can --

10 MR. BANDA: That's the -- my question --
11 what can I do?

12 MS. ARCHER: Can one of the
13 investigators raise their hands?

14 (Whereupon, an investigator complies.)

15 MS. ARCHER: They're right behind
16 you. So, you can speak to one of them.

17 MR. DARCHE: So, one of them will
18 come to you right now and talk to you.

19 MR. BANDA: Thank you.

20 MS. ARCHER: Thank you.

21 Is there anyone else who would like to
22 make a public comment who did not already sign
23 up to make a public comment?

24 (No response.)

25 MS. ARCHER: No. Okay. Then we will

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1 move on to the next item on our agenda. And
2 that first one is, Old Business, and it's to
3 vote on our proposed rules.

4 As many of you all know, our rules process
5 began a few years ago, in 2015. We had a
6 series of board meetings at which The Board
7 publically discussed the rules, proposed
8 amendments to the rules. We also posted those
9 rules and accepted written comments, and we did
10 receive comments from several organizations, as
11 well as from the NYPD.

12 We also had a meeting on June 13, 2016, at
13 which we invited the public to make comments to
14 those rules as well.

15 The Law Department reviewed our rules on
16 July 25, 2017, and determined that all the
17 changes were within the authority delegated by
18 law to the CCRB, and now we are going to have a
19 vote on those rules.

20 What will happen is that we cannot make
21 any additional changes to the rules. We have
22 to vote on them as they were posted and shared
23 with the public.

24 So, we will have a yes or no vote on the
25 rules that have been posted and approved by the

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1 Law Department.

2 Does anyone have questions about that
3 process?

4 MR DUNN: Can I ask a question?

5 MS. ARCHER: I supposed you can,
6 Chris.

7 MR. DUNN: Did you make changes to the
8 rules after the comments?

9 MS. ARCHER: Yes.

10 MR. DUNN: Are those changed rules then
11 made available to the public?

12 MS. ARCHER: So, we made very small
13 language modifications to the rules that the
14 Law Department told us were within our
15 authority to make.

16 MR. DARCHE: And those were posted.

17 MS. ARCHER: They were posted. I can
18 articulate what they are for you now? No --
19 are you good?

20 MR. DUNN: You added, not, to the
21 reconsider section?

22 MS. ARCHER: We added the word,
23 alleged, in front of, victim, and we added a
24 new definition for, victim, and throughout we
25 incorporated the use of the term, alleged

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1 victim, where it previously said, victim, and
2 few other small changes but none them were what
3 we or the Law Department, deemed to be
4 substantive changes.

5 MR. DUNN: Okay.

6 MS. ARCHER: All right. Do I have a
7 motion to vote on the rules, to adopt the rules
8 as they've been posted?

9 MR. CARCATERRA: I so move.

10 MS. ARCHER: Second?

11 MR. DAVIE: Second.

12 MS. ARCHER: All in favor of adoption
13 of the rules? Please raise your hand so that
14 we actually need an accurate count. Okay.

15 (All members except Mr. Puma raise their
16 hands.)

17 MS. ARCHER: All opposed?

18 (No response.)

19 MS. ARCHER: Any abstentions?

20 (Mr. Puma raises hand.)

21 MS. ARCHER: All right. I think we
22 have rules after a very long process. Thank
23 you very much.

24 The next item on the agenda is New
25 Business, and we are going if ask our Executive

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1 Director to discuss the APU penalty frame work.

2 MR. DARCHE: The agency was
3 recently the subject of criticism from
4 community advocates for the penalty recommended
5 police officer, James Frascatore, received as a
6 result his misconduct.

7 I thought it would be helpful to explain
8 the process that the Administrative Prosecution
9 Unit uses to develop penalty recommendations in
10 the case.

11 The first factor the APU assesses is what
12 penalty the department has levied against other
13 members of the NYPD who conducted similar
14 misconduct. To make these assessments, the APU
15 uses case law from prior misconduct cases.

16 When the unit was first established, this
17 was often difficult, as many of the cases the
18 APU were bringing would not have resulted in
19 charges and specifications being brought
20 against the officers in the past. Thus, the
21 APU was often forced to make its
22 recommendations without a firm grounding in
23 NYPD disciplinary precedent.

24 Today, however, a 157 members of service
25 have been found guilty after trial, and another

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1 154 members of service have resolved their
2 cases through pleas through the APU.

3 Members of service have been found guilty
4 of a wide variety of misconduct including
5 excessive force, the use of choke holds,
6 discourtesy, improper stop and frisk, improper
7 vehicle stops, improper entries, improper strip
8 searches and using offensive language.

9 Therefor, there is now a considerable amount of
10 precedent that the APU can use to determine
11 what penalty to recommend that the Police
12 Commissioner impose upon a respondent.

13 The next factor is the respondent, him or
14 herself. What is the respondent's rank? The
15 APU holds supervisors to a higher standard than
16 it does the rank and file members of service.
17 How long has the respondent been a police
18 officer? The APU holds members of service who
19 have been with the department longer to higher
20 standards. The APU also takes into account
21 whether a member of service has received good
22 evaluations or received commendations for their
23 work.

24 When assessing the respondent however, the
25 most important factor is a respondent's

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1 disciplinary history. The APU will request
2 higher penalties against a member of service
3 who has had prior discipline, or prior
4 substantiated allegations of misconduct,
5 especially if the misconduct the respondent
6 committed in the case in question is the same
7 as the misconduct he or she committed in the
8 past.

9 The final factor the APU takes into
10 account is the egregiousness of the conduct in
11 question. For example, if the misconduct caused
12 a serious injury, the APU will request a higher
13 penalty. If the victim of the misconduct was a
14 member of a vulnerable group, such as a minor,
15 the APU will request a higher penalty. If the
16 respondent shows no willingness to take
17 responsibility for their actions the APU will
18 request a higher penalty.

19 There are many people who feel the
20 forfeiture of vacation days is too lenient a
21 penalty for all forms of misconduct against
22 civilians. The NYPD pays a police officer with
23 five years of service approximately \$70,000 a
24 year. That would mean a respondent who has been
25 a police officer for five years, will give up

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1 approximately \$1,350 when they forfeit five
2 vacation days. That is a significant penalty.

3 The APU has only been part of the CCRB
4 since 2013. The agency is committed to
5 assessing the efficacy of its prosecutions, and
6 as time goes on, will measure how well
7 prosecution deters future misconduct.

8 MS. ARCHER: Thank you. Does anyone
9 have any further questions?

10 MS. STAHLY-BUTTS: I do. Thank you for
11 that.

12 I guess I a have a concern more than a
13 question. So, my concern is about basing it on
14 departmental history, considering the history
15 of unaccountability and the precedent of that
16 inside the department for officers. So I'm
17 curious why that's the baseline.

18 And I'm also curious as to why The Board
19 can't make specific recommendations about the
20 outcomes of disciplines, and when charges are
21 brought, it's the APU and not the board who
22 decides what discipline should essentially
23 happen. So, why is that? Is it in our bylaws
24 or why is that the case?

25 MR. DARCHE: So, under the

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1 Memorandum of Understanding, the prosecutors in
2 the APU stand in the shoes of DAO while
3 prosecuting the cases. But clearly if that's
4 something that the board wants to be more
5 involved in, then that is something that we can
6 look at going forward.

7 With regard to the precedent question, it
8 is part of the disciplinary process in the city
9 that prior precedent is used to determine
10 penalty recommendations. It is something that
11 was a tough road to hoe for the APU when it
12 first started trying cases and prosecuting
13 cases, because there was no precedent for many
14 of these cases. But now that we have a body of
15 precedent that we can use, it makes our cases
16 more effective.

17 And I think you're right that it is
18 something that we have to keep making sure that
19 we are getting fair discipline from the
20 department.

21 MS. STAHLY-BUTTS: Thank you.

22 MS. ARCHER: Other questions? Mr.
23 Siegal.

24 MR. SIEGAL: I just want to understand,
25 we're talking about the cases where The Board's

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1 Hearing Panels voted there should be charges
2 and specifications, so that the case should be
3 tried --

4 MS. ARCHER: Can you move your
5 microphone closer to you?

6 MR. SIEGAL: Certainly.

7 MS. ARCHER: Thanks.

8 MR. SIEGAL: If I understand this right,
9 we're talking about that group of cases in
10 which the hearing panels of The Board have
11 recommended charges and specifications.

12 So, when the hearing panel of The Board
13 makes that recommendation, it's determined that
14 a forfeiture of vacations days is not an
15 appropriate penalty in that particular case,
16 because that's an option that's available to
17 us.

18 So, we have already in essence, in hearing
19 that case, decided that this is a more serious
20 case that deserves to be tried; is that right?

21 MS. DARCHE: There's a differences
22 between discipline recommendation and the
23 penalty recommendation. So, the most serious
24 form of discipline is charges and
25 specifications.

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1 The next, descending, is a schedule B
2 command discipline, then a schedule A command
3 discipline, then formalized training, then
4 command instructions.

5 The command disciplines are essentially a
6 shortcut that's provided by the police contract
7 that allows them to accept discipline without
8 going through the full formal process.

9 The penalties that are available on a
10 schedule A command discipline are from a
11 reprimand to forfeiture of up to five vacation
12 days. The penalty available for a scheduled B
13 command discipline is from a reprimand up to
14 forfeiture of up to ten vacation days.

15 So, there is no set penalty for those
16 disciplines, it's merely a range that is up to
17 the department to ascertain.

18 With charges, the penalty can go from as
19 low as reprimand all the way up to termination.
20 So, you could have, termination, which is the
21 highest penalty, separation from the
22 department. Dismissal probation, which means
23 that if the officer commits another mistake
24 during the next year they can be terminated
25 from the department without any due process,

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1 suspension for up to thirty days, forfeiture of
2 vacation days and then reprimand.

3 So, it is the difference between penalty
4 and discipline.

5 MR. SIEGAL: Thank you, I think I
6 understand it.

7 MS. ARCHER: Do you have an
8 additional questions? Mr. Davie.

9 MR. DAVIE: Thank you. I'm just curious if
10 you could share with the public who hears or
11 adjudicates the case when it comes before APU
12 and how that person is appointed?

13 MR. DARCHE: So, the APU tries its
14 cases in the trial room at One PP. It's the
15 Deputy Commissioner of trials is the person in
16 charge of that unit, and the sometimes she sits
17 in on individual cases. Sometimes she has
18 Assistant Deputy Commissioners of Trials who
19 sit in on those cases and they are civilian
20 members of the NYPD. I guess, civilian
21 employees, is the correct term.

22 MS. ARCHER: Do you want to ask an
23 addition question?

24 MS. STAHLY-BUTTS: No, I'm good.

25 MR. SIEGAL: One more, Jon, can you

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1 explain how you came up with the dollar figure
2 for vacation suspension days? In other words,
3 you took an average salary against how many
4 vacation days to get that number?

5 MS. DIR. DARCHE: Okay. So, I took
6 seventy thousand, divided by fifty-two, and
7 that was -- I figured five vacation days was a
8 weeks worth of pay.

9 MR. SIEGAL: And officers otherwise get
10 how many vacation days?

11 MS. DARCHE: That, I don't know.

12 MR. CARCATERRA: That depends on when they
13 came on the job. The contract now is
14 different. Years ago it was twenty-seven, now
15 it's maybe twelve. It's different with the
16 time on the job.

17 MS. STAHLY-BUTTS: So, just to add, I
18 would like to revisit the boards ability to
19 influence the APU. I think to Mr. Siegal's
20 point that when we do specific recommendations
21 the assumption has been that it's a more
22 serious offense that we want to see prosecuted.

23 So, I'm thinking about how to have more
24 influence into those decisions so we're not
25 just listening and seeing less intense

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1 discipline afterwards. So, I would like to
2 hear that conversation.

3 MS. ARCHER: Okay. No additional
4 questions.

5 Is there any other new business from board
6 members? Mr. Puma.

7 MR. PUMA: Thank you, Chair. I have a
8 general question. I know we have a new data
9 specialist here on staff. I have a general
10 question about our referrals for incidents that
11 are not within our jurisdiction, and whether
12 there's been any increase, or any observation
13 of any increase, in, for example, incidents
14 that might be involving other police forces
15 like ICE, or, I know there are more state
16 troopers operating in New York City now. It's
17 just a point of information that I would like
18 to know. I don't know if the agency has
19 received more of these complaints?

20 MR. DARCHE: Can we report on that
21 at the next meeting? I just don't have that in
22 front of us.

23 MS. ARCHER: If it's all right with
24 Mr. Puma, we'll add that to the agenda of our
25 next board meeting.

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1 MR. PUMA: Sure.

2 MS. ARCHER: Anyone else with new
3 items?

4 (No response.)

5 MS. ARCHER: If there is nothing else
6 I'm going to ask for a motion to adjourn to
7 Executive Session.

8 Is there a motion?

9 MR. SIEGAL: So moved.

10 MS. ARCHER: Second?

11 MR. CARCATERRA: Second.

12 MS. ARCHER: All those in favor?

13 (Chorus of ayes.)

14 MS. ARCHER: All opposed? Abstain?

15 (No response.)

16 MS. ARCHER: We will adjourn and move
17 to Executive Session. Thank you all for
18 coming.

19 (Time noted: 4:22 p.m.)

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STATE OF NEW YORK)
) ss.
COUNTY OF WESTCHESTER)

I, DEIRDRE SMITH, Court Reporter and Notary Public within and for the County of Westchester, State of New York, do hereby certify that I reported the proceedings that are hereinbefore set forth, and that such transcript is a true and accurate record of said proceedings.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

WITNESS MY HAND, this 26th day of October, 2017.

Deirdre Smith

Deirdre Smith
Notary Public

My commission expires:
April, 2019

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