

Civilian Complaint Review Board - Final  
December 13, 2017

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CIVILIAN COMPLAINT REVIEW BOARD

PUBLIC MEETING

December 13 , 2017

4:00 p.m.

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100 Church Street  
New York, NY

TRANSCRIPT OF PROCEEDINGS

B E F O R E:

FREDERICK R. DAVIE, Acting Chairperson

JONATHAN DARCHE, ESQ., Executive Director

Transcribed 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 the Acting Chairperson
4. Report from the Executive Director
5. Public Comment
6. Old Business
7. Presentation from Nicole Napolitano,  
CCRB Director of Policy and Advocacy
8. New Business
9. Adjourn to Executive Session

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BOARD MEMBERS PRESENT:

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FREDERICK R. DAVIE, Acting Chairperson

SALVATORE F. CARCATERRA, Board Member

FRANK J. DWYER, Board Member

LINDSAY EASON, Board Member

RAMON PEGUERO, ESQ., Board Member

JOSEPH A. PUMA, Board Member

JOHN SIEGEL, ESQ., Board Member

YOUNGIK YOON, ESQ., Board Member

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JONATHAN DARCHE, ESQ., Executive Director

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SPEAKERS:

Jordan Wouk

Unidentified Audience Member

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1           ACTING CHAIR DAVIE: Welcome everyone. We  
2 would like to call the meeting of the CCRB, the  
3 Civilian Complaint Review Board, to order.

4           We are going to suspend with the adoption  
5 of the minutes until we have a quorum. And, I  
6 guess I'm up then to give an Acting Chair's report.

7           I don't have so much as a report as I do  
8 just a few words.

9           I want to thank you and welcome everyone  
10 to this meeting. I am humbled and honored to  
11 have the mayor's confidence to lead the  
12 New York Civilian Complaint Review Board. I  
13 also want to thank my friend, Deborah Archer,  
14 the most recent past Acting Chair, for her  
15 thoughtful and dedicated leadership here, both  
16 of this agency as whole, and more recently in  
17 guiding us through this transition as Acting  
18 Chair.

19           I would also like to thank the CCRB staff.  
20 In looking through the annual report last week,  
21 I saw a lot of data. Facts and figures about  
22 complaints of police misconduct, charts and  
23 tables on trials and meditations -- mediations,  
24 rather, graphs and maps outlining the impact of  
25 video evidence.

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1 All of that is good and useful  
2 information, but what really makes this agency  
3 special, in my eyes, is everything beyond  
4 what's in this or in that report.

5 It's the investigators who take the extra  
6 mile to interview a witness or get a hold of  
7 surveillance video. It's the folks who stay  
8 late analyzing all the data. It's the folks on  
9 our staff who go out into the community and  
10 remind New Yorkers that we, that you, are here  
11 to help them. It's these Board Members, who by  
12 their commitment, show a dedication to civic  
13 responsibility and to the general welfare of  
14 this city.

15 As I begin my tenure as Acting Chair, I  
16 know we face great challenges in policing, both  
17 here in New York and across the country. New  
18 technology, including body worn cameras, has  
19 already revolutionized our civilian  
20 interactions with law enforcement. That impact  
21 is only going to get bigger as the city moves  
22 toward equipping every NYPD patrol officer with  
23 a body worn camera, which is an imminent trend  
24 CCRB data makes clear.

25 This is a pivotal moment in the history of

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1 the city. A city I love and that I'm committed  
2 to serving.

3 I'll close with this, if there is anything  
4 I have learned about leadership, from my  
5 experience at Uniondale Theological Seminary as  
6 the Executive Vice President, or serving on the  
7 mayor's Clergy Advisory Counsel, it is that  
8 good leadership requires good servanthood and  
9 good servantship.

10 And it is my commitment to be a servant to  
11 you, to this agency, to the people of New York.  
12 For as long as I do this job I am committed to  
13 helping the CCRB and the city move forward.

14 Thank you very much.

15 (Applause.)

16 ACTING CHAIR DAVIE: We will now have the  
17 report from the Executive Director, Jon.

18 MR. DARCHE: Thank you, Mr. Chair. Good  
19 evening everyone.

20 I want you all to note that the January  
21 Board Meeting will take place on Wednesday,  
22 January 10. It will be held at the Queens  
23 Public Library in Long Island City which is  
24 located at 37-44 21st Street in Long Island  
25 City.

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1           I'm just going to give a brief summary of  
2 the statistics from November. In  
3 November 2017, the CCRB initiated 352 new  
4 complaints, which reflects an increase from 314  
5 in November, 2016, and a decrease from 394 in  
6 October, 2017.

7           In November, the CCRB's total open docket  
8 was 1,307 cases. By the end of November, 877 of  
9 those cases were in the investigations  
10 division, which is an increase from 849 at the  
11 end of October, 2017.

12           Of the total docket, 297 cases were  
13 pending Board or Executive Staff Review, which  
14 is down from 383 cases in October.

15           The mediation program handled 124 cases in  
16 November, which is down from 135 cases in  
17 October. There were an additional nine cases on  
18 DA hold in November.

19           The November 2017 docket includes 17  
20 reopened cases, 11 of those cases are active  
21 investigations and five are pending Board  
22 Review. Of the cases that remain in the CCRB  
23 active docket, 88 percent have been open for  
24 four months or less, and 98 percent have been  
25 open for seven months or less.



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1           Investigators closed 176 full  
2 investigations in November 2017. Year to date,  
3 the average days to close a full investigation,  
4 if we exclude reopened and DA hold cases, is a  
5 163 days, compared to 132 days in 2016, and 219  
6 in 2015.

7           In November, 2017, the CCRB fully  
8 investigated 41 percent of the cases it closed  
9 and resolved, which means fully investigated,  
10 mediated or attempted mediation, 55 percent of  
11 the cases it closed. The truncation rate was  
12 44 percent, November 2017.

13           The November case substantiation rate was  
14 18 percent, so far, year to date, it is  
15 20 percent.

16           With regard to fully investigated  
17 allegations in November, the Board  
18 substantiated 9 percent of force allegations,  
19 11 percent of abuse of authority allegations,  
20 14 percent of discourtesy allegations and  
21 11 percent of offensive language allegations.

22           Investigations with video evidence either  
23 substantiated, exonerated or unfounded  
24 allegations in 70 percent of fully investigated  
25 cases in November. That compares to 33 percent

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1 of cases in which video was not available.

2 The discipline rate for non-APU cases was  
3 55 percent in November, and is 72 percent, so  
4 far, in 2017 for cases in which police  
5 misconduct was substantiated by the board and  
6 sent to the Police Department's Advocate Office  
7 with a discipline recommendations.

8 The department's declined to prosecute  
9 rate for non-APU cases in November was  
10 33 percent, and is 23 percent year to date.

11 In November, the police commissioner  
12 finalized decisions against seven officers in  
13 APU cases. Two were guilty trial -- two were  
14 guilty after trial, and five were not guilty  
15 after trial.

16 The conviction rate in November was  
17 29 percent. The APU conducted one trial against  
18 an officer in November, 2017. The total  
19 respondents tried in 2017 is 34.

20 I just want to take a minute to say, thank  
21 you, to Ms. Archer, for her service as Acting  
22 Chair twice, and for her time on the Board. I  
23 learned a great deal from working with her and  
24 enjoyed working with her.

25 And I hope the staff and the people of the

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1 city were as motivated and excited by what you  
2 said in your introduction to the members of the  
3 Board and the city, because I'm pretty fired up  
4 right now too.

5 ACTING CHAIR DAVIE: Thank you, Jon.

6 Do we take questions?

7 MR. DARCHE: We could.

8 ACTING CHAIR DAVIE: Okay. Are there any  
9 questions for our Executives Director?

10 (Inaudible audience  
11 participation.)

12 ACTING CHAIR DAVIE: Yes, sir.

13 MR. DARCHE: If you could stand up and  
14 then give your name.

15 MR. WOUK: My name is Jordan Wouk,  
16 W-O-U-K. I'm a first time visitor. I live in  
17 the 1-9 precinct, so there's not a lot in here  
18 related to us.

19 I was at a community board eight presentation  
20 where one of your liaisons came and spoke to  
21 us, and I said I'm a little bit interested.

22 I did have the honor of going to the  
23 Civilian Police Academy just before it moved to  
24 Queens.

25 In reading over what I saw online, it

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1 would appear from time to time, the police  
2 commissioner can disagree or stop a process,  
3 but as they -- its part of doing that, there  
4 has to be a written explanation given.

5 First of all, is it true that a written  
6 explanation has to be given? And the second  
7 is, how would I, as a member of public, have  
8 access to those responses?

9 MR. DARCHE: So, yes, the police  
10 commissioner is required to give a written  
11 explanation when there is a disagreement  
12 between the commissioner and the agency, and we  
13 get those written decisions. But those are,  
14 those are disciplinary records, and they're  
15 covered by section 50(A) of the Civil Rights Law  
16 in New York State, and so we can't share that  
17 information with you.

18 It's -- it is something that the agency is  
19 committed to working with our partners in the  
20 state legislator to change, but for right now  
21 we can't share that information.

22 MR. WOUK: Okay. Even if it redacted all  
23 the names?

24 MR. DARCHE: So, it's something where, if  
25 you would make a request of our office we would

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1 see what we could do, but my -- off the top of  
2 my head, I would say we can't share that with  
3 you.

4 MR. WOUK: And are the reasons ever  
5 summarized? Of the 15 that were rejected,  
6 seven were -- do we know anything about why it  
7 didn't go forward?

8 MR. DARCHE: So, in the annual report that  
9 we're going to put out in early 2018, we plan  
10 to summarize the -- when there were  
11 disagreements between the Board and the police  
12 department, so that there will be a better  
13 explain about how that, what happens in those  
14 cases.

15 MR. WOUK: Thank you.

16 MR. DARCHE: Thank you.

17 ACTING CHAIR DAVIE: So, we can go to the  
18 Public Comment section of the agenda if there are no  
19 other questions about the report from the  
20 Executives Director.

21 All right. Yes, and we're going to ask  
22 that --

23 MR. DARCHE: Do we have a sign in sheet so  
24 that we know who --

25 (Inaudible discussion between

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1 Board Members.)

2 ACTING CHAIR DAVIE: Sure, come up to the  
3 mic. And we're going to ask you to limit  
4 your comments to two minutes.

5 AUDIENCE SPEAKER: This is also my first  
6 time, and I live in Los Angeles and go to  
7 police commission meetings there.

8 So, I was just curious, it seems like you  
9 do independent investigations and then it goes  
10 to the commissioner's office with your  
11 recommendation. I just wondered if you have,  
12 if this commission has, subpoena power to do  
13 its investigations?

14 MR. DARCHE: Yes.

15 ACTING CHAIR DAVIE: Yes, we do.

16 Any other comments or questions?

17 MR. PUMA: Yes, I do.

18 CHAIR DAVIE: Yes, Joe, Mr. Puma.

19 MR. PUMA: Thank you, Mr. Chair,  
20 Mr. Acting Chair.

21 Along the lines and what the gentlemen,  
22 Mr. Wouk, just raised, I did have two  
23 questions.

24 One about the general concordance rate  
25 with the department's concordance with our

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1 recommendations. I know this was sort of a  
2 highlight of our semi-annual report. It got  
3 some coverage in the news. What are the steps  
4 that this agency is taking to, I guess, to  
5 address this with the department? If it's  
6 something that needs to be addressed? Could  
7 you, I guess, offer some insight on what  
8 internal or external conversations are  
9 happening around that issue?

10 And then the other question has to do with  
11 the not guilty verdicts. Since I had --I  
12 guess, for my benefit and also for the benefit  
13 of the public, I'm wondering what does a not  
14 guilty verdict mean on an officer's record?  
15 And what, I guess, what gets reflected on the  
16 officer's record after the whole APU process,  
17 and, you know, I guess, ultimately this not  
18 guilty verdict, what, you know -- it's a little  
19 bit foggy to me what happens.

20 MR. DARCHE: I'm going to deal with the  
21 second question first if that's okay, Mr. Puma.

22 A not guilty verdict after a trial in the  
23 Deputy Commissioner's of Trials Office is kept  
24 on the officer's personnel record, which is  
25 also referred to as the CPI -- and I should

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1 know but I forget at this point what that  
2 acronym stands for -- but it is kept on their  
3 record.

4 MR. CARCATERRA: Central Personnel Index.

5 MR. DARCHE: Thank you, Mr. Carcaterra.

6 ACTING CHAIR DAVIE: What was that?

7 MR. DARCHE: Central Personnel Index.

8 ACTING CHAIR DAVIE: Thanks.

9 MR. DARCHE: And the first question, the  
10 concurrence rate, is something that I'm in  
11 regular contact with members of the leadership  
12 of the police department to discuss, and it is  
13 a work in progress.

14 ACTING CHAIR DAVIE: Other questions?

15 (No response.)

16 ACTING CHAIR DAVIE: Comments?

17 (No response.)

18 ACTING CHAIR DAVIE: Is there any Old  
19 Business to come before us?

20 (No response.)

21 ACTING CHAIR DAVIE: Referrals to IAB?

22 MR. DARCHE: So, if I can call on Nicole  
23 Napolitano, our Director of Policy and  
24 Advocacy, to talk to us about what happens when  
25 the agency refers complaints to the department.



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1 MS. NAPOLITANO: Hello. So, members of  
2 the Board may have something that looks a  
3 little bit like this in your packet.

4 (Ms. Napolitano holds up a  
5 document.)

6 MS. NAPOLITANO: And for everyone else I'll  
7 just read some of these.

8 We started tracking the reasons that we  
9 refer things to IAB for investigation in 2016.  
10 And so, I wanted to present some of the numbers,  
11 the changes, in between 2016 and 2017, for some  
12 of the reasons to discuss what's gone up a bit,  
13 what's gone down a bit.

14 So, in 2016 we had a total of 891  
15 referrals to IAB, compared to 2017, this year  
16 to date had been 956.

17 And there are a number of reasons why we  
18 might refer things to IAB for investigation.  
19 The largest category of that currently for this  
20 year is the subcategory of on-going harassment  
21 by a member of service. So, that would be a  
22 complaint by a civilian for something that is  
23 not covered by what CCRB investigates, so we  
24 send that over to the department for  
25 investigation.

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1           In 2016 there were a 176 of those, and  
2           this year there are 269 of those referrals.  
3           So, that's approximately 19.75 percent last  
4           year, compared with 28.14 percent for this  
5           year.

6           Another large category that we have is  
7           racial profiling, and that's something that IAB  
8           investigates and has a specific category to  
9           investigate the profiling allegations itself or  
10          complaints of bias related to race. There were  
11          120 of those referrals in 2016, and slightly  
12          fewer, 113, in 2017. So, that went from about  
13          13.47 percent to about 11.82 percent.

14          Other categories would involve things like  
15          false official statements, which are down  
16          slightly, there were only 17 last year and 11  
17          this year. Unreturned property after an arrest  
18          went from 127 referrals to 75 referrals. There  
19          are some additional sexual misconduct  
20          referrals. So, there were 50 in 2016, compared  
21          with 60 to date this year.

22          In some cases there are referrals for  
23          retaliation for filing CCRB complaints, and  
24          that would be 35 for last year, compared with  
25          23 this year.

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1 Non-FADO allegations also make up a  
2 pretty substantive chunk of that, but that's  
3 gone slightly down as well, so 79 last year to  
4 53 this year, which is a 3 percent decrease.

5 So, those are just some of the  
6 categories of things that we refer over to IAB  
7 for investigation that are outside of CCRB's  
8 current investigations.

9 ACTING CHAIR DAVIE: Questions,  
10 comments on the report?

11 MR. SIEGAL: I have a question.

12 So, along the lines of what we're  
13 discussing about the ultimate disposition of  
14 the cases at the police department, what  
15 information, if any, do we have on what happens  
16 to cases we refer to IAB?

17 MS. NAPOLITANO: So, to my knowledge, and  
18 Jon, you can correct me if I'm wrong here, not  
19 much.

20 So, we do have some information that comes  
21 back on the final dispositions for false  
22 official statements. So, when a member of  
23 service makes a statement here during a CCRB  
24 investigation, and there's a false statement  
25 involved there, that gets to sent to IAB for

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1 investigation, we do have some information  
2 about the dispositions of those cases.

3 We've inquired as to some of the other  
4 dispositions, but have not been able to get any  
5 information on the dispositions of other cases  
6 that we've referred.

7 MR. DARCHE: The explanation I was given  
8 by the department is that the CCRB is the  
9 victim when a false official statement is given  
10 during the course of one of our investigations,  
11 so therefor the department will disclose the  
12 results of those investigations to us.

13 But in cases where we are merely  
14 forwarding along a case that is not, that we  
15 don't consider a part of our jurisdiction, they  
16 are not going to give us the disposition.

17 MR. SIEGAL: And a related follow-up  
18 question, probably for Jon, who probably knows  
19 the history better.

20 A number of the categories that Nicole  
21 laid out, arguably also fall under, abuse of  
22 authority.

23 What's the source, or the legislative  
24 history if you will, of how those categories are  
25 IAB referrals rather than us treating them as

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1 abuse of authority?

2 MR. DARCHE: So, the Board has the power  
3 to define what is considered an abuse of  
4 authority, or how to interpret the jurisdiction  
5 that is set forth in the charter which gives  
6 the Board jurisdiction over force abuse of ,  
7 authority, discourtesy and offensive language.

8 One of the things that we have been trying  
9 to do as an agency over the last couple of years  
10 is really try and document why we do what we  
11 do, so that I can give you better answer to  
12 that question.

13 It's kind of lost in the mist of CCRB's  
14 history. But there -- so, I just don't have a  
15 good, accurate answer to give you.

16 ACTING CHAIR DAVIE: Is there any other  
17 recourse we have in terms of encouraging NYPD to  
18 give us information on the disposition of  
19 disposition of those referrals?

20 MR. DARCHE: You know, I think whenever  
21 there is a new Chair it's something where we  
22 can, I will bring it to the department's  
23 attention and seek to bring up the issue again.

24 ACTING CHAIR DAVIE: I just want to make sure  
25 that it's the consent of the Board also, that

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1 we would like to have that. I'm assuming so,  
2 if we can get it.

3 MR. SIEGAL: I was asking just as a  
4 factual question. I think that's something  
5 that we should discuss. It you're going to put  
6 that on you.

7 (Laughter)

8 ACTING CHAIR DAVIE: Okay. We'll take it up  
9 in Executive Session then.

10 MR. DARCHE: So, that is something, that really  
11 should, if the Board would like to vote on something,  
12 it's clearly something that we should do now.

13 ACTING CHAIR DAVIE: Okay.

14 MR. DARCHE: But it might be better to  
15 table it for a later public meeting where there  
16 are more Board Members present.

17 ACTING CHAIR DAVIE: And as much as it would be  
18 on me, in my first meeting, I would love to table it  
19 until we've had a chance to discuss it.

20 (Laughter.)

21 ACTING CHAIR DAVIE: Any other questions or  
22 comments?

23 MR. PUMA: I would just.

24 ACTING CHAIR DAVIE: Sure.

25 MR. PUMA: I would like to second the,

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1 Mr. Siegal's, the sentiment around his comments  
2 around some of these categories falling under,  
3 possibly under, the abuse of authority and the,  
4 having us, as a board, reexamine some of these  
5 categories.

6 For example, one of these categories was  
7 one that I had mentioned in a panel, I don't  
8 know how many moons ago, and now I finally get to  
9 see some numbers around how many allegations  
10 that would fall into this category we've  
11 actually received.

12 So, this is really informative and I think  
13 it's something that we should, as a board,  
14 continue to work with.

15 ACTING CHAIR DAVIE: Thank you, Mr. Puma.

16 Anyone else?

17 (No response.)

18 ACTING CHAIR DAVIE: All right. So, I think  
19 then we, do we have any New Business to come before  
20 the Board, before the public?

21 (No response.)

22 ACTING CHAIR DAVIE: All right. Then, I think  
23 we need to go back and approve the minutes.

24 MR. DARCHE: Yes.

25 ACTING HAIR DAVIE: Is there a motion to

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1 approve the minutes as presented to us?

2 MR. DWYER: Motion.

3 ACTIVE CHAIR DAVIE: Is there a second?

4 MR. SIEGAL: Second.

5 ACTIVE CHAIR DAVIE: Any questions,  
6 discussion?

7 (No response.)

8 ACTING CHAIR DAVIE: All those in favor of  
9 the motion, please say Aye.

10 (Chorus of Ayes.)

11 ACTING CHAIR DAVIE: All those opposed, No?

12 (No response.)

13 ACTING CHAIR DAVIE: Any abstentions?

14 (No response.)

15 ACTING CHAIR DAVIE: The motion carries.

16 There being no other business, we will  
17 adjourn then to Executives Session.

18 Thank you.

19 (Whereupon, the board holds an  
20 Executive Session.)

21 (Whereupon, the board meeting  
22 concludes.)

23

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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 28th day of December, 2017.

*Deirdre Smith*

Deirdre Smith  
Notary Public

My commission expires:

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