

C I V I L I A N R E V I E W B O A R D
PUBLIC SESSION MINUTES
July 19, 2018

Present at the meeting were Civilian Review Board members Bridal Pearson (Chair, Northern District), Mel Currie (Southwestern District), Ebony Harvin (Southern District), Betty Robinson (Northeastern), George Buntin (Western District), Fred Jackson (Northwestern District), Marcus Nole and Leslie Parker Blyther (Central District).

Also present were:

Acting Director Sharita Thomas, Director of the Office of Civil Rights
Jesmond Riggins, CRB Supervisor
Shaun Clark, CRB Investigator
Samantha Jeffrey, CRB Investigator
Amy Cruice, ACLU
David Rocah, ACLU
Andre Davis, City Solicitor
Kristin Blumer, Law Department
Kay Harding, Law Department
Major Stephanie Lansey, IAD
Chief David Cali, IAD
Andrew Hill, CRB Intern

Members of the public and community members were also present.

I. Discussion on the Confidentiality Agreement

Leslie Parker Blyther motioned to open the confidentiality discussion to the public, Betty Robinson seconded, and all were in favor. Solicitor Davis addressed the new organizational structure and noted that Senator Carter would be returning soon as Deputy Director. Chair Pearson asked whether the Mayor or the Solicitor would make leadership decisions and Solicitor Davis noted that he would not disclose this information in public. Solicitor Davis clarified that Senator Carter could not return as director since the Law Department had researched the law and come to the conclusion that as state office holder she could not hold certain position under the Baltimore City Charter and MD Constitution. He noted that it had been suggested that she could return as Director, but that he had not seen that analysis. Betty Robinson asked why the Office of Civil Rights was placed under the City Solicitor's Office, and where the policy was written that stated that the solicitor would be counsel for the Board. Solicitor Davis noted that the City solicitor is the lawyer for every city agency that does not have its own independent counsel and that all agencies would have to account to the City solicitor. He noted that a contradiction was built into the CRB statute in 1999, where the legislature created an entity that is independent, but also part of a city agency. He noted that COTF was making a number of recommendations, including that the City provide the CRB with a \$15 million budget. Leslie Parker Blyther noted her concern that if the CRB made a decision to sustain a case, and the Law Department had to

represent that officer in a case against the City, there was a concern is that the Law Department would put forth policy over the Board to benefit its client, and that this could create a contradiction in terms. Solicitor Davis stated that there is tension when a government creates a watchdog and that the question to answer is what resources, what expertise, are needed to do that job well. He stated that the friction arises from the law and that the City Solicitor represents all the agencies of Baltimore City. He noted that there are agencies that have overlapping jurisdiction or centers of interest and that hopefully there are procedures and entities to mediate disagreements when they arise. He stated that in the federal system, there are truly independent entities, which have their own lawyers. Chair Pearson noted that the issue was that the Law Department represents both BPD and CRB, and would not issue subpoenas for the CRB. Solicitor Davis stated that this was not related to dual representation, but rather that the Law Department could not issue subpoenas to an accused officer. Mel Currie noted that when they had discussed issuing a subpoena to a witness officer, Solicitor Davis did not seem enthusiastic, and wondered if he would support the Board's subpoenas. Solicitor Davis answered that when the Board attempted to serve a subpoena, the Law Department would provide an answer based on those circumstances. Ebony Harvin asked why the Solicitor represented the police department in addition to the CRB, and Solicitor Davis answered that these were questions about the structures of the law that the Law Department had nothing to do with. Betty Robinson noted that COTF had recommended an independent counsel, and wanted to know why the Mayor was curtailing CRB's independence. Solicitor Davis stated that he disagreed with this interpretation as there was no evidence for it. He stated that the Law Department and the Police Department wanted bad officers removed from the agency as badly as the CRB. He stated that the Mayor had appointed Jill P. Carter, Baltimore's greatest civil rights leader, to head the agency. George Buntin stated his concern that when the CRB came under the Law Department, the Solicitor had come in requiring that the Board members sign a confidentiality agreement about what Board members can and cannot say to the public. He stated his concern that Solicitor Davis had come in asking about how CRB would protect officers, and noted that it was the civilians who needed protection. He noted his concern that the Solicitor was a representative of BPD, and noted that the last officers that had been prosecuted had been committing crimes for 15 years while the community knew. He stated that he did not feel that CRB should do any more business under the City Solicitor, and that he did not feel comfortable going forward knowing that the Solicitor would have the final answers on how they would proceed. Leslie Parker Blyther stated that she was not interested in entertaining the confidentiality agreement. Betty Robinson noted that Board members had signed a confidentiality agreement upon joining and was not sure why they needed to sign another. Mel Currie wanted to discuss certain issues in the agreement, specifically that the Board findings could not be made public. Bridal Pearson stated that he had advised the Board not to sign the document until after it had been reviewed by their own legal counsel. He wanted to know if under the agreement, Board members could discuss and reach their decisions in public. Solicitor Davis stated that the Law Department thought that it would be helpful to the members of the Board to provide a confidentiality document that each Board member would sign. He stated that he had planned to do a training on confidentiality. He noted that there were four reasons that the Law Department was urging the Board to sign this agreement. He stated that confidentiality was required by the law, and that he had seen the Board's previous confidentiality training materials. He noted that the release of the findings in the Keith Davis case was a violation of state law because the officers' names were included in what was released.

He noted that there were other aspects which violated the law. He noted that the results of the letter were court orders and subpoenas. He stated that while he respected the Board's views about the law, it was a law that none of them had written. He noted that he did not want staff from the Office of Civil Rights or the Law Department to spend time on court orders, subpoenas, etc., which the agency would be flooded with if they released their findings. He noted that disclosure of confidential materials was a criminal offense and not a civil violation. He stated that the motivation for the confidentiality agreement was to protect the Board. Chair Pearson advised that the Board would not be signing the agreement as it was written. Solicitor Davis stated that he understood, but that if the Board wanted the police department, OPR, and IAD to cooperate fully, they should maintain confidentiality. He noted that the Board had developed the idea that the Law Department is out to protect police officers, and stated that the police department protects officer personnel information because the law requires it. He stated that a member of the Board or staff member of this agency can be prosecuted criminally, as well as any agent, officer of BPD who released confidential information. He stated that BPD is a state agency created under MD law, and that while the City Law Department represents the police department, the Police Commissioner is a state official protected by sovereign immunity. He stated that with regards to the question that Mel had brought up, the section he was referring to brought home the imperative of confidentiality. He stated that he fully acknowledged the difficulty that the Board was facing, but that he wouldn't know how to advise them without first observing them. Fred Jackson stated that complainants usually know who they're complaining about, and that in discussion Board members refer to officers by initials and numbers. Mel Currie agreed that no names of anyone involved are ever used in public meetings, allowing discussions to proceed publicly. He noted that the section in the confidentiality agreement that he was referring to would not allow the Board to operate that way, and that those two sentences would need to be removed. Solicitor Davis noted that there was an inherent contradiction in that the complainant could attend and bring others who would become aware of the details of the case. Supervisor Riggins noted that with regards to the Keith Davis letter, it was the complainant who released the letter to the public and not the Board. Solicitor Davis stated that the Law Department was trying to help the Board do their work. He stated that in reviewing the Board's closure letter template, he had noted that there was an inaccuracy in the statement that the Commissioner would notify the complainant of the outcome. He stated that he felt that the Board had insulted one of his lawyers, who had spent the last two days in City Hall prosecuting a police officer. Chair Pearson noted that while this officer may have been prosecuted, it would be statistically correct to state that most other officers are not prosecuted for their misconduct. Solicitor Davis stated that if the Board wanted to make it possible for BPD to notify the complainant of disciplinary proceedings against police officers, they should join him and go to Annapolis in the next session and get the LEOBR amended. David Rocah stated that he took exception, and that he was happy to hear that the Solicitor recognized the problem with the current law that bars complainants from knowing an officer's disciplinary history. He stated that the ACLU had been working since the court's inception to change this, and that it was the City of Baltimore which had opposed any change in that law. Solicitor Davis stated that he respectfully disagreed. David Rocah noted that he had had an excellent bill, and gave excellent testimony in support on the senate side. He stated that when the bill was heard on the house side, however, the Law Department sent another individual who gave opposing testimony. Solicitor Davis stated that this was not the case. David Rocah stated that on the issue of confidentiality,

both this evening and in the proposed confidentiality agreement, he felt that what was said to be confidential was being grossly overstated, given the court of appeals ruling on PG County. He noted that a court rejected the claim by PG County that the decisions of their CRB were personnel records, and noted that in that case, the officers were identified by name because the court had no disciplinary authority. He noted that the current discussion was related to the DeShield case. He stated that if the City was interested in transparency and accountability, the Board meetings should be public. He stated that the confidentiality agreement far overstates the existing law, and says that everything the Board receives is confidential .He noted that it said that all information disclosed to Board and staff shall be deemed confidential. He stated that they were in a time when the public demand is for more transparency and not less. He stated that the Board's findings and recommendations are not personnel records. He noted that in reference to the Solicitor's statement that BPD does not disclose to complainants, HB 1016 passed in 2016, and contained a provision that said every police department is required to disclose the outcome of the investigation. He stated that if BPD was not currently doing that, they are in violation of state law. Solicitor Davis asked how the law enforcement MOU would effect this, and David Rocah answered that an MOU can't contravene state law. He stated that when a state law requires a police department to disclose its findings, it was not ambiguous.

Chair Pearson stated that at this point the Board should begin their regular public meeting.

II. Welcome and Introductions

Chair Pearson welcomed everyone and called the meeting to order at 7:23. He recognized and introduced non-voting members of the Board and staff.

III. Director's Report

Acting Director Thomas noted that there had been a series of meetings between the Parties in the Consent Decree to discuss exchange of information and to undergo a technological assessment. She noted that they had had two meetings, and she noted a very productive, positive working relationship.

IV. Approval of Minutes from May 17, 2018

Bridal Pearson motioned to approve the minutes from May 17, 2018. Mel Currie seconded, and all were in favor.

V. Approval of Minutes from June 8, 2018

Bridal Pearson motioned to approve the minutes from June 8, 2018. Mel Currie seconded, and all were in favor.

VI. New Complaints

CRB2018-0046 H AL CRB

Supervisor Riggins explained the process of voting on new complaints, and Chair Pearson noted that the Board often voted for a CRB investigation to gain additional information. Leslie Parker Blyther clarified that Board members review the complaint form, rather than just the summaries included in the agenda.

A majority of Board members voted to authorize an independent CRB investigation.

CRB2018-0076 H EF AL CRB

A majority of Board members voted to authorize an independent CRB investigation.

CRB2018-0077 EF FI CRB

A majority of Board members voted to authorize an independent CRB investigation.

CRB2018-0082 FA CRB

A majority of Board members voted to authorize an independent CRB investigation.

CRB2018-0089 H EF IAD

A majority of Board members voted to review only IAD's investigation.

VII. Appeal

PD016-11

Chair Pearson stated that the Board did not have any information on the complainant's case, and motioned not to reopen because of insufficient documentation. Mel Currie seconded the motion, noting that he had read what was available, but that the case had passed the statute of limitations. He stated that he did not feel they could overturn what the previous board did. Betty Robinson stated that she did not see what new information they could learn given the statute of limitations. Leslie Parker Blyther asked what the letter would state so that the aggrieved person did not feel unheard. Supervisor Riggins noted that they would communicate that the Board feels sensitive to persons aggrieved, and it appears IAD never did an investigation. He noted that the letter would state that the Board can only make a decision with both investigations, and that the case will not be reopened.

VIII. Completed Investigations Noted on Via Email to Avoid Expiration

<u>CRB#</u>	<u>IAD#</u>	<u>Allegations</u>	<u>Findings</u>
CRB2017-0103	17-0311	EF H AL	NS
		Board members voted not to sustain because it was not clear that officers were BPD, and were not established within the Board's jurisdiction. Board members also noted that there was not sufficient evidence. A majority of Board members voted not to sustain the allegations.	
CRB2017-0110	17-0327	H	NS
		Mel Currie noted that he believed this would be a civil case, and should be worked out in court. A majority of Board members voted not to sustain the allegations.	
CRB2017-0121	17-0352	FI AL EF	NS
		Mel Currie stated that he had no reason to believe that the search warrant was not valid, and noted that no abusive language had been captured on the body worn camera footage. He also noted that the complainant's mother disputed the claim. A majority of Board members voted not to sustain the allegations.	
CRB2017-0126	17-0346	FI EF	NS
		Ebony Harvin stated that she wanted to sustain because the complainant told the officer he had gun permit, he told them he had returned from treatment, and she felt the case itself was not handled correctly, since he gave them the proper paperwork. Leslie Parker Blyther asked if Board members would agree that the officers had the obligation to verify the permit, and Fred Jackson stated that they were correct to take the gun and handcuff him, but after seeing what he was doing, he believed that they had kept him cuffed because he was big, and that this was an issue. He noted that they kept him cuffed for 30 minutes, and that they could have done it differently. He stated that he did not sustain because the officers followed procedure, but he still had concerns. Betty Robinson stated she could not sustain, but asked that they represent in the letter that the police department needs to have better consideration for how they treat people. Fred Jackson noted that the officers could make an argument for what they did and be correct, but they also had discretion. Mel Currie and Marcus Nole did not sustain. Bridal Pearson did not sustain excessive force, but did sustain for false imprisonment, since they left him handcuffed even after they found out the permit was legitimate. Fred Jackson noted that they didn't have to call state police, and could have chosen to verify the permit through dispatch. Leslie Parker Blyther stated that she could not sustain, but she felt that community policing was missing in this situation. A majority of Board members voted not to sustain the allegations.	

IX. Completed Investigations

<u>CRB#</u>	<u>IAD#</u>	<u>Allegations</u>	<u>Finding</u>
CRB2017-0010	17-0050	EF	S
		George Buntin sustained the allegation because a neighbor called the police, but noted that there was no evidence to believe that the reported gunshots had come from the complainant's house. He stated he was concerned about the way they had handled the complainant while she was obviously pregnant, noting that this had been caught on the body worn camera footage. Mel Currie noted that the officer had potentially been angry about being hit by the pillow, which is why he began to pull the husband down the steps, and the wife was pulled while she was holding him. Leslie Parker Blyther asked if they had consented for officers to enter the home, and if not, this was a problem. Mel Currie stated that he was convinced that the officers should not have entered the house. Fred Jackson did not sustain because of what he saw on the body worn camera footage, and noted that he saw the other officer deescalating. He also noted that the complainant's bruises weren't consistent with fall, and that she was going into labor regardless. Leslie Parker Blyther sustained because there was no consent to enter the house, and no exigent circumstances existed. Fred Jackson stated that he believed the officers would say they went in because of exigent circumstances. Fred Jackson noted that if the complainant did have a gun, he could have been going upstairs to get it. Marcus Nole noted that it reminded him of another case with a pregnant woman, and he was considering how things could have been handled differently. A majority of Board members voted to sustain the allegation of excessive force.	
CRB2017-0064	17-0290	H	NS
		Board members did not sustain because there was no record of a helicopter in that location. A majority of Board members voted not to sustain the allegations.	
CRB2017-0084	CIU16-02353/17-0405	EF H	NS
		Mel Currie did not sustain because the complainants retracted some of the statements in the complaint and allowed the officers to come in. He stated that it would have helped if the officers had allowed her to dress. He noted that police officers deal with public constantly, and that most members of the public infrequently deal with the police. Fred Jackson noted that the body worn camera footage showed that the complainant was being untruthful. Betty Robinson agreed and wanted to know if there was training for the officers on how to deal with the public. She felt that the woman was frightened, and lived alone, and wondered if officers understand what the citizens experience. She noted that officers should seek true community policing tactics to work out a better way to handle these situations. Ebony Harvin asked how it is handled when citizen property is	

destroyed during a search. Major Lansey noted that the claim would go through solicitor's office. Ebony Harvin asked the Solicitor if he could clarify this process, particularly when the person is innocent. Solicitor Davis noted that the property owner or tenant should file a claim with the Law Department, and if city made a mistake, they would be reimbursed. Ebony Harvin asked how many complaints had been received, and the Solicitor noted that two separate council people had contacted him about a similar situation. He stated that unless they have a no-knock warrant, police are supposed to give reasonable opportunity to open the door. He noted that sometimes a warrant will name a certain person who is not a resident, but who is dealing drugs out of the residence, and that it can occur that the police have the wrong person but not the wrong house. **A majority of Board members voted not to sustain the allegations.**

CRB2017-0114

17-0358

EF H NS

Leslie Parker Blyther noted that the officers and crisis team did a great job, and that the CRB needed to see situations like that one more often. **A majority of Board members voted not to sustain the allegations.**

CRB2017-0131

17-0357

FI H EF NS

Mel Currie noted that they had seen that complainant before for a similar incident. Bridal Pearson stated that if he did not have a permit, he was breaking the law, and the police had the right to approach him. Leslie Parker Blyther asked if the complainant had indicated interest in mediation, and Supervisor Riggins stated that he had not and explained the mediation process. **A majority of Board members voted not to sustain the allegations.**

CRB2017-0140

17-0424

AL NS

Board members did not sustain because complainant withdrew. **A majority of Board members voted not to sustain the allegations.**

CRB2017-0141

17J-0017

EF H FI AL NS

Board members did not sustain because the complainant did not follow the officer's orders and they felt the officer's actions were warranted. **A majority of Board members voted not to sustain the allegations.**

CRB2017-0151

EF FI AL H

Board members voted to administratively close the complaint because it was filed against officers from a police department outside the Board's jurisdiction.

CRB2017-0159

17-0449

EF FA

NS

Board members noted that the officers had an arrest warrant. Marcus Nole noted that with regards to the excessive force, the officer had said that the complainant had been passively resisting, but it looked like there was an arm pull. He noted that there was clear redness on her right eye resulting from the incident. He voted to sustain excessive force for the arresting officer, but not false arrest. Leslie Parker Blyther stated that it was not clear that the citizen was resisting. She noted that you could hear the officer instruct her to put her hands behind her back. She stated that she did not have a preponderance of evidence that the force was excessive. She also noted that the officer's body worn camera was disabled when he tussled with the male. Betty Robinson noted that the women was under the influence of a substance, and that others on the scene were attempting to deescalate. **A majority of Board members voted not to sustain the allegations.**

X. Public Comment

Jennifer Pope stated that she had come on behalf of her father, who was a complainant and is now deceased. She stated that as a citizen, she recognized the difficult job that law enforcement has. She felt that the attitudes of the community towards law enforcement often comes from unfriendly customer service, and that often the way officers handle issues leaves a bad impression that causes issues to escalate. She noted that her father's case reminded her of Philando Castile, and agreed that his treatment was due to his larger stature. She asked if outcomes from the cases would be used to serve as a best practice or call for improved training. She felt that in that case, officers intensified the situation rather than relaxing it, causing mistrust. Major Lansey noted that it was their practice beginning in 2018 to pull detectives up and review cases, to help with investigative paths and find cases where improvement is needed, and to change policy to make things better. Ms. Pope noted that they used to have Officer Friendly in school, but that her children have the perception that police will hurt you, and wanted to know what the department was doing to change youth perception. Major Lansey stated that they had youth outreach including the basketball league. Bridal Pearson noted that they could all learn from this situation.

Reverend Morris stated that she came to the meetings to learn, and wanted to say that the Board's transparency is important. She stated that she had never seen any confidentiality breached in meetings she attended. She noted that CRB was needed to set the model and example.

Keesha Ha stated that she had attended almost every monthly Board meeting, and that Board members had been totally professional and never breached confidentiality. She expressed hope that the City Solicitor would keep in mind that the Board is a citizen's spokesperson. She stated that the police have enough protections, and to hear that the

city is coming in to try to take away the little accountability that they have is appalling.

Lucy Morant wanted to know what happens when a police officer comes in and possessions are destroyed. She wanted to know whether these incidents can be considered excessive force if there is damage that is unnecessary. Mel Currie noted that excessive force only applies to human beings. Fred Jackson stated that officers are taught how to search a home in a way that mitigates damage, but that these policies are almost not enforceable. Mel Currie stated that if someone destroys an item of value, the civilian's redress is compensation. David Rocah noted that the example given is not encompassed in the authority that's given to this Board, and that this is a problem. He stated that that does not mean that there was not a constitutional violation or a violation of procedure, or that everything police do during the execution of a search warrant is ok. He noted that this was a flaw in the governing statute that prohibits the Board from investigating these issues. He encouraged everyone to review the COTF Report, and reiterated that there is no reason that civilian oversight should be limited to these 5 categories.

Amy Cruice noted that she was glad David Rocah was in attendance and encouraged Board members to think about what independent counsel could look and feel like. She noted that she respects and appreciates the Board's work and wanted to be a resource. She stated that she had a list of concerns about recent changes and read a statement advising that the ACLU is concerned that the City's actions are undermining rather than strengthening CRB's ability to be transparent and hold officers accountable. She noted that the City Solicitor defines CRB's ability to obtain records through settled case law based on the MPIA rather than CRB's statute, meaning that CRB could not receive any more information than a regular member of the public. She noted that the statute gives CRB more access because the Board needs it. She noted concern about the Law Department limiting CRB's ability to communicate with the public. She stated her specific concerns were that CRB is not allowed to speak directly to DOJ, agendas must be approved by the City Solicitor's office, findings letter cannot be sent to complainants, body worn camera footage provided to the CRB could be redacted, and subpoenas would be treated as standard MPIA requests. She stated that the changes are unacceptable and that the public wanted more transparency accountability. She noted that she wanted to talk about what formal requests could be made to the city for independent counsel and to elected officials to take swift actions to protect the CRB.

XI. Old Business

There was no old business to discuss.

XII. New Business

Special Assistant Muth advised Board members of the upcoming meeting with the CRB, OPR, DOJ and Independent Monitor, as well as the Quarterly Public Court Hearing.

Public Information Officer John Milton Wesley advised Board members and public about the upcoming Civil Rights Day event.

XIII. Adjournment

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jill Muth