



NYCLU
NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
(212) 607 3300
Fax (212) 607 3318
www.nyclu.org

BY ELECTRONIC AND FIRST CLASS MAIL

Christopher Dunn
Associate Legal Director
(212) 607-3300, ext. 326
cdunn@nyclu.org

March 6, 2008

Franklin Stone
Chair
Civilian Complaint Review Board
40 Rector Street, 2nd Floor
New York, N.Y. 10006

Re: CCRB Prosecution of Substantiated Cases of Police Misconduct

Dear Ms. Stone:

As you know from comments I have made at recent public meetings, we are alarmed by the NYPD's treatment of cases substantiated by the CCRB and referred to the Department for prosecution and discipline. Following up on a conversation I had with Boardmember William Kuntz after last month's meeting and following up on my comments at the last several meetings urging the CCRB to take strong action in response to this situation, I now write on behalf of the NYCLU to request that at next week's public meeting the Board agree to take all available actions to force the Mayor's Office, the City Council, and the Department to turn over to the CCRB the responsibility for prosecuting substantiated cases.

We long have been concerned about the NYPD having responsibility for prosecuting cases substantiated by the CCRB. As an initial matter, that arrangement leaves prosecutions in the hands of the very agency whose members have been found to have engaged in misconduct, which destroys the independence that should be central to any prosecution. Beyond the issue of independence, many have expressed serious concerns about the quality of Department prosecutions.

Our concerns about the NYPD's handling of prosecutions have taken on greater urgency in light of last month's CCRB reporting about the Department's handling of substantiated cases. According to that report, of the 296 substantiated cases closed by the Department in 2007, over one-third of them (34.4%) were closed because the Department simply refused to prosecute the officer. This reflects a ten-fold increase from the prior five years, where the rates were as follows: 2006: 3.3%; 2005: 2.3%; 2004: 2.9%; 2003: .8%; and 2002: 3.9%.

This is an intolerable situation and must be remedied. While we recognize that responsibility for this lies primarily with the Department, the CCRB can and must take steps to remedy this situation. Most immediately, the CCRB should demand that it be given responsibility for the prosecution of its cases.

As you are aware, this is not an unprecedented idea. Ironically, former Mayor Rudolph Giuliani agreed to give the CCRB this very authority near the end of his tenure, and the City Council for several years provided budget funds to the CCRB to support such a unit. And in litigation challenging that transfer of prosecutorial authority, the First Department held that the CCRB could be authorized to prosecute substantiated cases so long as such prosecutions took place in the NYPD's trial room. *See Lynch v. Giuliani*, 301 A.D.2d 351, 755 N.Y.S.2d 6 (1st Dep't 2003). It was only because that specific proposed transfer authorized the CCRB to prosecute cases in OATH that it was blocked by the court.

In light of this ruling, the City is entirely free, without any further reform, to authorize the CCRB to assume responsibility for the prosecution of substantiated cases in the NYPD trial room. We believe this change would substantially improve the prosecution process by assuring that prosecutions would be independent of the NYPD, by eliminating the ability of the NYPD to refuse to prosecute cases, and by leading to higher quality prosecutions. In addition, by making the CCRB responsible for prosecuting cases it substantiates, we believe this arrangement would improve CCRB investigations, since it will be the CCRB using the investigations to conduct prosecutions.

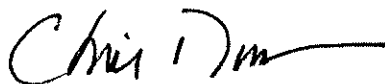
We fully recognize that the transfer of prosecutorial responsibility alone is no panacea for the crisis surrounding civilian oversight. In particular, we realize that it does not address the Department's failure to impose meaningful discipline on a large number of officers who have been found to have engaged in misconduct.

Nonetheless, if it is to have any hope of being a fully effective check on police misconduct, the CCRB must move forward with whatever actions are available to it. And moving aggressively to claim responsibility for the prosecution of its cases would clearly signal to the Mayor, the Council, the Police Department, and the public that the Board is serious about its duties. Conversely, if the Board does not act, it would signal acquiescence in a situation that cannot be allowed to continue.

After last month's public meeting, where I once again raised this issue, Boardmember Kuntz called me to discuss the NYCLU's concerns and was kind enough to solicit our views about what actions we thought the Board should be taking. We specifically discussed the transfer of prosecution responsibilities, and I was quite encouraged by his stated support of this and the possibility that he himself would offer a resolution on this matter.

We take no position about the specific form of the Board's actions, but we believe it is critically important that the board act now and that it act boldly. I look forward to next week's public meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Dunn", with a long horizontal flourish extending to the right.

Christopher Dunn

c: Boardmember William Kuntz
Executive Director Joan Thompson