

HONOLULU POLICE COMMISSION  
City and County of Honolulu  
State of Hawaii  
Minutes of the Regular Meeting  
September 19, 2018

CALL TO ORDER                      Chair Sheehan called the meeting to order at 2:01 p.m. on Wednesday, September 19, 2018, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT                                Loretta A. Sheehan, Chair  
    Steven H. Levinson, Vice-Chair  
    Shannon L. Alivado, Member  
    Jerry Gibson, Member  
    Richard T. Grimm, Member  
    Carrie K. S. Okinaga, Member  
  
    James K. S. Yuen, Executive Officer  
    Denise W. Wong, Deputy Corporation Counsel  
    Erin Marie Yamashita, Secretary

EXCUSED                                Karen Chang, Member

ALSO PRESENT                        Susan Ballard, Chief of Police  
    Jonathon B. Grems, Deputy Chief of Police  
    John D. McCarthy, Deputy Chief of Police  
    Lynne Uyema, Legal Advisor

ASCERTAINMENT OF QUORUM                      Counsel Wong ascertained that a quorum was present

CHIEF OF POLICE REPORT

Chief Ballard informed commissioners the Honolulu Police Department (HPD) would be increasing its pedestrian enforcement due to the increase in the number of traffic incidents involving pedestrians, and noted the two most recent fatalities—one in Kapolei and one in the Honolulu. Enforcement will be for those walking and in automobiles.

She also reported that in attempts to reduce property crime, HPD would take action against lower level drug dealers. A recent operation in partnership with the Drug Enforcement Agency (DEA) resulted in 17 arrests in the Chinatown area. The U. S. Attorney will be handling the prosecution.

Chief Ballard provided commissioners the first view of the HPD lip sync video. The video was directed by Officer Don Faumuina and included civilian and sworn personnel, and completed with no cost to the City. Commissioners enjoyed the video and commended the HPD employees involved in the video.

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### Questions and Comments from Commissioners

Chair Sheehan wanted to know the specific task of the operation by HPD and DEA. Deputy Chief McCarthy explained the operation was specific to street buys from dealers in and among the homeless population in the Chinatown area. There were 15 buys made by the DEA, and while they were executing the last of the arrest warrants, there were two on view cases made because agents were approached by persons offering to sell them drugs. All but two individuals had prior arrest records.

Commissioner Grimm asked if there was one drug used more than others to which Deputy Chief McCarthy informed commissioners the preferred drug is crystal methamphetamine, which is imported.

Commissioner Gibson asked if the pedestrian fatalities involved persons in cross walks. Chief Ballard informed commissioners the majority of incidents are out of cross walks, and the last two pedestrians had darted out into traffic. She also said it is important for drivers to be careful, and provided an example of Sergeant DeFoster having to avoid a male who intended to illegally cross the street when driving her (Chief Ballard) to the convention center for a speaking engagement.

Vice-Chair Levinson said he would be happy if HPD worked with the Department of Transportation Services (DTS) on the pedestrian crossing signals as he feels the countdown timer system is a menace and many people still cross illegally. He then asked if HPD could weigh in on the issue with the DTS. Chief Ballard then said if HPD were to weigh in they (HPD) would have to suggest an alternative, because she believes that would be the first question DTS would ask. Vice-Chair Levinson said his suggestion would be to remove the timers.

### APPROVAL OF MINUTES

Commissioner Gibson made a motion to approve the August 1, 2018, meeting minutes. Commissioner Grimm seconded the motion.

Discussion: None.

Vote: The motion carried with the exception of Commissioner Okinaga who recused herself from the vote since she was not in attendance at the August 1, 2018 meeting.

### PUBLIC TESTIMONY

#### Officer Denny Santiago

Officer Santiago introduced himself for the benefit of commissioners who are new and explained that he attended a Commission meeting a year ago in which he shared his complaints of false arrests and retaliation. His intention today was to update the Commission on what has happened since he last attended a Commission meeting.

He explained he was suspended for sharing his complaints with the Commission and during this time he has been making complaints he has been retaliated against. HPD and the City and have dismissed all of his complaints. The employees in his complaints oversaw the complaints, which he feels is convenient for those he is making the complaints against.

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### Officer Denny Santiago (Continued)

Officer Santiago received two letters, one from the acting chief and one from the current chief both state they reviewed everything and felt he should be suspended. Through the grievance procedure, Chief Ballard reviewed everything and felt that he (Officer Santiago) should be suspended.

Officer Santiago shared his views that a case he was involved in was incorrectly investigated, and all of the facts gathered and procedures that were followed were incorrect.

In his complaint about retaliation, Officer Santiago provided examples of the incidents he felt were retaliatory. He said the Department felt it best to compartmentalize the complaint and break it up into single incidents. Officer Santiago had his overtime removed and his investigative responsibilities taken away. He would find tissues on his chair, which he said was an indication from others that he is a crybaby. The sergeant and corporal that carried out the arrest and falsified the police reports both earned over \$200,000 while he (Officer Santiago) suffered. Officer Santiago then left the division because he did not want to be exposed to the treatment anymore.

Officer Santiago told commissioners he would be glad to meet and share the information he has as well as bring in the individuals the detectives did not interview.

Officer Santiago feels he has no place else to turn. Commissioners cannot take the word of HPD without checking, and he has provided examples of false arrests, falsifying police reports, evidence destruction along with personnel being indicted. Officer Santiago also brought up a case involving a retired major who was involved in a collision resulting in the death of pedestrian in a crosswalk in which officers removed evidence from the truck.

Officer Santiago also brought up a lawsuit in which the City is currently in the process of settling. The lawsuit involves a whistleblower who was retaliated against after complaining training records were falsified and later destroyed to cover up the wrongdoing.

Officer Santiago feels his only choice now is to retain an attorney because nobody in the City is willing to help him. Everything he has done and everything he was suspended, for was done in accordance with training he has received. He is picked on and was suspended for making detrimental statements against the department. He was also accused of using profanity, and said the reason he used profanity was when he told his lieutenant he would go to the FBI she laughed in his face. When she laughed in his face, Officer Santiago felt that he was the scapegoat and told his lieutenant he was not "f-ing joking" and was going to the FBI. His intention was to get his lieutenant to do the right thing and was not swearing at her for an unnecessary reason.

In addressing the issue of profanity, Officer Santiago provided an example of Chief Ballard conducting the chief's review for District 7 and using profanity. In his explanation, he indicated Chief Ballard used the terms "talking shit." When he heard the Chief using profanity, he then thought if she was trying to get the point across to him (Officer Santiago) that he better not bring up what he believes is wrongdoing and she just used profanity—something he did, was suspended for, and she upheld.

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### Officer Denny Santiago (Continued)

Officer Santiago also mentioned an incident in District 1 in which he was told that several officers had violated an individual's civil rights.

Chair Sheehan thanked Officer Santiago for attending the meeting and explained that it is the Commission's job to evaluate the Chief at least annually and commissioners are interested in what he (Officer Santiago) had to say. In order to further the conversation, Chair Sheehan informed Officer Santiago that her suggestion would be for the Commission's executive officer interview to interview him in order to flesh out things he (Officer Santiago) is saying and find out what is within the Commission's jurisdiction and what is outside of its jurisdiction.

Chair Sheehan further said that in terms of retaliation, the internal investigation of any police department never ends the matter. Within 180 days there are EEOC complaints that can be made, Hawaii Civil Rights Commission complaints that can be made. Forms for the Hawaii Civil Rights Commission can be found online and encouraged Officer Santiago to look into that avenue and said the statute of limitations begins to run from the last day of the retaliation, so it is important to be timely on matters.

Chair Sheehan then asked Officer Santiago if he was agreeable to meet. Officer Santiago agreed to the meeting. Chair Sheehan then requested James Yuen, Executive Officer, take the lead and make contact with Officer Santiago. Chair Sheehan indicated she may ask some commissioners to participate in the interview and investigation of comments.

In clarifying some of Officer Santiago's statements, Vice-Chair Levinson then asked if he was currently suspended. Officer Santiago said he is not currently suspended. The three-day suspension occurred in November 2017 for the comments and issues he brought up at a Commission meeting regarding the false arrest of a person.

Vice-Chair Levinson then asked about the report Officer Santiago had referred to, and wanted to know if the report was ever provided to the Prosecutor's Office. Officer Santiago informed commissioners that the prosecutor would have access to the report via the case reporting system. Vice-Chair Levinson began to ask Officer Santiago if the defense never received the report, and Officer Santiago finished that it would involve the Prosecutor's Office and failure to make the necessary discovery.

Chair Sheehan requested clarification that the Prosecutor's Office can go into the HPD's report writing system and retrieve reports to which Officer Santiago said that was his understanding. She then asked if all prosecutors had access or if it was just those assigned to the screening section. Officer Santiago said he was not sure who had access, but he was informed that there are people in the Prosecutor's Office that have access.

Vice-Chair Levinson asked Officer Santiago if he had any personal knowledge as to why the defense never received his report from the Prosecutor's Office. Officer Santiago responded that his report was the only report that was not forwarded. He also said he released the male because he was arrested without probable cause, and suspected the report was not given to the defense attorney because they did not want to expose what they were doing.

Officer Denny Santiago (Continued)

Chair Sheehan asked who the defense attorney was, to which Officer Santiago replied, Rustom Barbee.

Mr. Robert Lee Perry

Mr. Perry informed commissioners he took their advice from a prior meeting, and went to the Professional Standards Office (PSO) to file his complaint. He explained he is not happy with the PSO because they were not professional in handling his complaint.

Mr. Perry had an incident on the bus in March in which approximately eight to twelve officers responded. He explained that when his trained service dog, Robert, does not like someone he will bark. During the incident, officers threatened Robert saying they are going to put him down because he barked at one person and did so again about 15 minutes later. Mr. Perry explained that when Robert barks, he tells him to stop barking and Robert stops. Mr. Perry felt the officers were ganging up on him and their talking about putting down Robert hurt him psychologically. He told the officers, whose hands were on their guns, that he did not want them to shoot his animal.

Chair Sheehan requested Mr. Perry go to the Commission's office and fill out a complaint form. She also asked if he knew the names of the officers. Mr. Perry said he knew one officer's name was Tsunada. Chair Sheehan said the police commission investigators could help in the identification of the officers.

Mr. Perry then explained an incident that happened today, September 19, 2018, again on the bus and his asking of people to be careful of Robert when they walked through. Everyone was being supportive except for one individual who loudly said he was going to step on Robert. Mr. Perry told him that he was not supposed to threaten Robert, so he informed the bus driver what had happened and the bus driver ignored him. He then called the complaint in to the bus company and told them what happened and was told to call the police. The police were called and the police said they could not stop the bus and that he (Mr. Perry) had to get off the bus to document the incident. Mr. Perry then asked what would happen to the person who threatened Robert and that the bus should have remained so he could identify the male who threatened Robert.

Mr. Perry explained that there is a law against harming a service animal. He is studying the law in relationship to service animals, and said once someone makes an allegation, the law is broken.

Mr. Perry said he always comes and makes complaints and never has anything nice to say about officers, but he knows there are good officers and plans to say something nice. He does need his concerns addressed because if he gets out of character he will be arrested and will go to jail and/or prison and he does not want to go there. He is 63 years old and has worked hard to change his behavior.

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### Mr. Robert Lee Perry (Continued)

Chair Sheehan again told Mr. Perry he is welcome to go to the Police Commission office to file his complaint against the officer that threatened Robert. Mr. Perry then said the reason he does not go to the Police Commission office is that one of the employees was hostile and rude toward him and he felt threatened. Mr. Perry said he has many things that need settling and they include issues with the HPD and Police Commission and all he wants is justice.

Chair Sheehan introduced James Yuen the Commission's new executive officer who will help him with the filing of his complaint.

Vice-Chair Levinson then explained to Mr. Perry that the powers provided to the Commission are from the City Charter and the City Charter says the Commission has the power to receive citizen complaints regarding police misconduct, but the complaint must be registered within 60 days of the incident. The Commission does not have the authority to investigate other agencies and complaints beyond 60 days or involves non-HPD employees. Vice-Chair Levinson suggested that Mr. Perry limit the complaints he makes to things that he thinks should not have happened that police officers did within the last 60 days. Mr. Perry, again, explained the difficulties he has had with the PSO and FBI. Vice-Chair Levinson said he was trying to emphasize that if the complaint was more than 60 days ago or if he would be making a complaint about people who are not police officers, the Commission does not have any authority and that he (Mr. Perry) should think about what it is that he wants to discuss with Mr. Yuen.

Mr. Perry then informed Vice-Chair Levinson that he understood that anything he speaks to Mr. Yuen about has to be within 60 days and has to be something administrative or criminal toward him.

### NEW BUSINESS

#### Report on Actions Taken at the Executive Session of July 18, 2018

Commissioner Alivado reported that commissioners approved the June 6, 2018, executive session minutes. She then made a motion to approve the report. Commissioner Gibson seconded the motion.

Discussion: None.

Vote: The motion carried with the exception of Commissioner Okinaga who recused herself from the vote since she was not in attendance at the June 6, 2018 meeting.

#### Commissioner Individual Reports on Commission Business

Commissioner Alivado reported she attended the Hawaii State Law Enforcement Officials Conference from September 5-7, 2018. The conference was well organized, focused on homeland security issues, and provided opportunities for networking among agencies. During the conference, each department recognized its officer of the year. Commissioner Alivado attended the commissioners meeting and was able to get some ideas from neighbor island commissioners for the next commissioners' conference in 2019.

Commissioner Individual Reports on Commission Business (Continued)

Vice-Chair Levinson informed commissioners he received an invitation to attend the 10<sup>th</sup> Parole Completion celebration on October 9, 2018. Ms. Lorenn Walker invited him to the event in his capacity as a member of the Commission and representing the HPD by way of presence. Vice-Chair Levinson then asked for the authorization from commissioners and said he felt comfortable if there was a vote on his attendance at the event. Chair Sheehan then made a motion to direct Vice-Chair Levinson to attend the 10<sup>th</sup> Parole Completion celebration representing the Commission. Commissioner Gibson seconded the motion.

Discussion: None.

Vote: Unanimous.

Response to Concerns Raised by Colonel John R. Bates, USMC (Ret.)

Chair Sheehan reminded commissioners of Colonel Bates' attendance at a previous meeting and that he has written to commissioners and referred everyone to their copies of the Col Bates' letter dated August 22, 2018. He made four requests of the Commission; however, three of his requests are outside of the Commission's purview.

Chair Sheehan and Vice-Chair Levinson met with Chief Ballard, Deputies McCarthy and Grems, and Assistant Chief Nagata on the issues raised by Colonel Bates. Chair Sheehan said Colonel Bates is entitled to an answer from the Commission. She drafted a letter to Colonel Bates and circulated it for review by commissioners. Because certain information submitted when requesting a firearms permit is confidential, the letter to Colonel Bates requests he provide to the Commission any and all paperwork he submitted to the HPD in his applications to carry a firearm.

Commissioner Gibson asked what type of documents would be provided to the Commission. Chair Sheehan said there is an application and other documents collected when applying for a firearm. The request for any documents from HPD to Colonel Bates is made so that the information can be compared to the statute and criteria that is used by HPD in approving or denying the carrying of firearms. Chair Sheehan said she would also like to speak with Colonel Bates again.

Commissioner Alivado asked if the Commission has ever done something like this in the past. Chair Sheehan said this is something new, and said the reason she is pursuing the matter is because the Commission is responsible for evaluating, at least annually, the Chief of Police. The strength of the program to approve or to deny firearms is extremely important. She would like to use Colonel Bates' request as a launch into an inquiry. Chair Sheehan said she recognized that it feels like it may seem out of the Commission's responsibility; however, in light of the recent 9<sup>th</sup> Circuit Case, *Young v. State of Hawaii*, and the potential shift in the interpretation of the Second Amendment she is curious how strong the HPD's system is in terms of granting or denying permits for firearms.

There was much discussion on the recent decision in the *Young v. State of Hawaii* case. The heart of the opinion that everybody has a Second Amendment right to bear arms, subject to regulation. Vice Chair Levinson said that Colonel Bates' lament arises in the context of his multiple applications for a permit to carry a concealed weapon, all of which have been denied.

Response to Concerns Raised by Colonel John R. Bates, USMC (Ret.) (Continued)

Vice-Chair Levinson said that there is a significant likelihood that the Young Decision is not the only one Hawaii will be dealing with.

Whether Colonel Bates files a lawsuit over denials of his applications or someone else does, the Constitutional integrity and defensibility of the HPD's criteria for assessing applicants and granting or denying will be a direct issue. He would like to ensure that HPD's regulatory system is as legally defensible. This issue is something Vice-Chair Levinson feels is clearly within the purview of the Commission's responsibilities, if only in the context of the annual evaluation of the Chief.

Commissioner Alivado shared her concern, which is that the Commission may be inserting itself where it may not be necessary and worries of a precedent being set for any other future permit. She requested the statute be reviewed before sending the letter to Colonel Bates.

Chair Sheehan was agreeable to holding off on the vote to send the letter, and she appreciated Commissioner Alivado's concern with the possibility of commissioners interfering with administrative operations of the HPD. She explained that the issue was vetted with Chief Ballard prior to the meeting, and there is no intention to micro-manage HPD. It was out of concern after reading the Young Decision and the Attorney General's opinion that there became concern that HPD may not have the regulations or criteria to pass constitutional muster. Chair Sheehan and Vice-Chair Levinson want to be sure HPD is ready.

Vice-Chair Levinson added that in response to Commissioner Alivado's comments, the Attorney General filed a petition in the 9<sup>th</sup> Circuit to hear the case en banc. He is fairly certain the 9<sup>th</sup> Circuit will take up the case en banc and there is a significant likelihood the matter will be taken up on the three grounds cited in the Attorney General's petition.

Vice-Chair Levinson further explained the decision will either be up held or tinkered with and whichever party is unhappy with the outcome will probably apply to the U. S. Supreme Court for a writ of certiorari, which will probably be granted. He also said there is a split among the federal circuits on the scope of the Second Amendment, and explained the differences.

Vice-Chair Levinson said that this issue is like Hurricane Florence--it is a monster storm that is coming. If HPD has no defensible mechanism for addressing applications for concealed carry or open carry permits, there will be trouble because the U. S. Supreme Court has held there is a fundamental, individual Constitutional right, and the intent is to avoid a potential catastrophe.

Commissioner Grimm said that according to Colonel Bates' letter the Department of Defense informed him (Colonel Bates) that he is at risk and wanted to know if there was any bearing to his denial. Vice-Chair Levinson said it is not the Commission's job to make a decision on his application, but it is within the Commission's authority to try to ensure that the process by which applications are considered are legally defensible.

Commissioner Grimm then asked Chief Ballard if there are a lot of applications for concealed carry permits. Chief Ballard said there are some, but she did not have the exact number. He then asked why some people are granted a concealed carry permit and others are denied. Chief Ballard said she did not have the information available at the moment.



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### Response to Concerns Raised by Colonel John R. Bates, USMC (Ret.) (Continued)

Chair Sheehan said that Chief Ballard will have to ensure HPD has particular criteria for the issuance of a concealed carry permit. Commissioner Grimm said he assumes HPD currently has criteria in place to which Commissioner Levinson said HPD has no criteria.

He shared that the Hawaii County Police Department has formal regulations setting criteria for permit applications to carry concealed or open that are evaluated; however, the HPD has no such formal regulation.

Chair Sheehan clarified that HPD does have criteria, which is in the process of being formalized. Commissioner Grimm said it is important for commissioners to gain knowledge on the issue and the procedures followed in the past.

Chair Sheehan explained that there is a citizen complaint directed at Chief Ballard, which is within the Commission's power to consider and will be used, with Chief Ballard's agreement, to make the system better. No vote will be taken today and if any commissioner would like legal advice on the issue it can be done in executive session.

### Questions/Comments from Commissioners

Chair Sheehan requested the following items for the October 3, 2018 agenda:

- Nomination of Commissioner Alivado to formally chair the 2019 State of Hawaii Police Commissioners' Conference
- Discussion regarding criteria for firearms permits
- Discussion with Chief Ballard regarding disciplining the chief of police

Chair Sheehan reminded commissioners of the Sunshine Law requirements for agenda items and requested any commissioner wanting to add an agenda item should contact staff.

Vice-Chair Levinson and Chair Sheehan explained that there is no contemplation of disciplinary action against Chief Ballard. It was further explained that the Commission has no formal policy or procedure to follow should it be necessary to take disciplinary action against a chief.

Chair Sheehan explained she has spoken with Chief Ballard on the matter, and it is the Commission's job to evaluate the Chief of Police. There are no formal rules on addressing complaints against the chief or a written process to investigate, or take disciplinary action against the chief. It is important for a system to be in place for future commissions.

### Executive Officer's Report

EO Yuen reported there are 49 complaints registered to date ten cases are pending. Interviews for the vacant investigator positions will be conducted September 20, 21, and 24, 2018. Vice-Chair Levinson asked if the 49 complaints included requests for legal counsel. Commissioners were informed the number of registered complaints does not include requests for legal counsel submitted by officers.

EO Yuen informed commissioners an invitation was received from the White House Office of Interior Governmental Affairs sent an invitation to the Commission inviting them to attend the White House Conference with Hawaii Local Leaders on October 23, 2018. Chair Sheehan asked if any commissioners were interested in attending to please contact HPC staff.

EXECUTIVE SESSION

At 3:20 p.m., Chair Sheehan made a motion to enter into executive session to review agenda items pursuant to HRS 92-5(a), subsections (2), (4), (5), (6) and (8): to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; to consult with its attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities; to investigate proceedings regarding criminal misconduct; to consider sensitive matters related to public safety or security; to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to state or federal law, or a court order.

Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

RETURN TO OPEN SESSION

The Commission returned to the open session at 4:20 p.m.

Vice-Chair Levinson made a motion to defer item X 2., the continued deliberation for the contested case hearing for Officer Ronald J. Lombardi, Civil No. 18-00100 ACK-KSC to the October 3, 2018, meeting as Commissioner Chang, who is one of the five commissioners considering the matter, is not present. Commissioner Gibson seconded the motion.

Discussion: None.

Vote: The motion passed with four votes as Chair Sheehan and Commissioner Okinaga are recused.

HRS 52D-8 Adjudication

Contested Case Hearing for Sergeant Daniel Sellers

The contested case hearing began at 4:27 p.m. and ended at 5:10 p.m. Refer to transcript for further details.

At 5:27 p.m. commissioners returned from deliberation, and Chair Sheehan announced Sergeant Sellers' request for legal counsel was denied unanimously. Findings of fact, conclusions of law, decision and order will be issued.

ANNOUNCEMENTS

Chair Sheehan announced the next meeting Honolulu Police Commission will be on October 3, 2018.

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ADJOURNMENT

At 5:38 p.m., Commissioner Grimm made a motion to adjourn the meeting. Vice-Chair Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.