

Commission on Law Enforcement Accountability, Community and Transparency

Meeting Minutes for August 14, 2020

Meeting held via videoconference at the Attorney General's Office in Concord, NH.

Deputy Attorney General Jane Young called the meeting to order at 9:38 a.m. and reminded participants that the meeting was being recorded.

Members were then asked to introduce themselves and state their present location for the record.

Deputy Attorney General Jane Young - from the Department of Justice with Kim Schmidt, Annie Gagne, and Nicole Clay

Robert Quinn, DOS Commissioner - Concord, NH

Ahni Malachi, Executive Director, NH Commission for Human Rights – Penacook, NH

John Scippa, Director of Police Standards and Training Council – Exeter, NH

Rogers Johnson, Chair of the Governor's Advisory Council on Diversity and Inclusion – Stratham, NH

James McKim, President of NH NAACP - Lincoln, NH

Sawako Gardner, Justice of the NH Circuit Court – absent

Mark Morrison, New Hampshire Police Association – Timothy King (designee), Manchester, NH

Charlie Dennis, NH Chief Association – Hanover, NH

Ken Norton, Executive Director of NAMI – Great Cranberry Island, ME

Joseph Lascaze, NH ACLU representative – Ipswich, MA

Julian Jefferson, Criminal Defense Representative – Manchester, NH

Ronelle Tshiela, public member and BLM organizer – Exeter, NH

Eddie Edwards, public member – Dover, NH

The Deputy Attorney General requested the approval of the August 13th, 2020 minutes. Motion to approve the minutes by Commissioner Quinn, seconded by Ken Norton. A roll call vote was taken and the votes were recorded as follows:

Deputy Attorney General Jane Young –Y

Commissioner Robert Quinn – Y

Director Ahni Malachi – Y

Director John Scippa – Y

Chairman Rogers Johnson – Y

President James McKim – abstain

Justice Sawako Gardner – absent

Lt. Mark Morrison – absent

Chief Charlie Dennis – abstain
Director Ken Norton – Y
Mr. Joseph Lascaze – Y
Attorney Julian Jefferson – Y
Mr. Eddie Edwards – Y
Ms. Ronelle Tshiela – Y

The Commission discussed minor edits to the final Community Relation recommendations.

Director Ahni Malachi moved to adopt the Community Relations recommendations as written, Commissioner Quinn seconded the motion. A roll call vote was taken and the votes were recorded as follows:

Deputy Attorney General Jane Young –Y
Commissioner Robert Quinn – Y
Director Ahni Malachi – Y
Director John Scippa – Y
Chairman Rogers Johnson – Y
President James McKim – Y
Justice Sawako Gardner – absent
Lt. Mark Morrison – absent
Chief Charlie Dennis – Y
Director Ken Norton – Y
Mr. Joseph Lascaze – Y
Attorney Julian Jefferson – Y
Mr. Eddie Edwards – Y
Ms. Ronelle Tshiela – Y

Motion carries.

The Deputy Attorney General stated we are now moving on to the next section about Police Misconduct. Director Scippa would start with his presentation on decertification, and then we would hear from Robin Melone.

Director John Scippa, NH Police Standards and Training (testimony on website)

Administrative Rules POL cover what NHPSTC can and cannot do. Process the council must follow to decertify falls under chapter 200 of POL rules. Council minutes posted on website for public view. Officers decertified in NH are reported to national decertification index so other hiring authorities in other states can see the status of an officer's certification.

- Joseph Lascaze – what is being done to implement 2019 audit recommendations
 - o Have not had any discussions during Scippa's tenure

- Joseph Lascaze – do you know if these are on police departments re: complaints
 - o We accept complaints in any form, nothing currently on website
- Joseph Lascaze – possible to maintain certification after criminal conviction
 - o Due process rights need to be seen through, can work with their CBA, there may be instances when they do keep certification
- Joseph Lascaze – list of criminal convictions where officers wouldn't lose certification or case by case basis
 - o Based on criminal due process, it would depend on the disposition of the case
- Julian Jefferson – does PTSC have the authority to investigate or discipline any alleged misconduct
 - o Yes, but might start with sending back to hiring authority
- Julian Jefferson – does PTSC keep a list similar to Laurie list
 - o Database system is archaic as best. Maintain certain records in homemade database
- Julian Jefferson – useful for agencies to do periodic reviews of social media sites
 - o Absolutely, some agencies will ask for all social media accounts to review
- Ronelle Tshiela – how does PSTC interface with local PDs
 - o Audits on local PDs to ensure they follow PSTC standards. Doesn't have the staff to manage all PDs
- Ronelle Tshiela – would a failure to report trigger officer decertification
 - o Don't know yet, decision will have to be made at PSTC council level. Depend on hiring authority to report, if not reported can't do anything about it
- Ken Norton – No note in audit about increasing resources for PSTC
 - o Correct
- Ken Norton – data for us, how many decertifications, hearings, etc.
 - o PSTC annual report, addresses summary information about those items. Will follow up with annual report email.
- Ken Norton – when audit done of local agency, who is info shared with
 - o Home agency, summary report provided to council
- Ken Norton – screening every few years, thoughts on that
 - o Would be wonderful for employee point of view. Periodic checks, similar to maintaining physical health, mental health just as important.
- Ken Norton – limits placed on OT or hours officers work
 - o Decisions made on a local level but is a concern
- Joseph Lascaze – since PSTC deals with certification of officers, do you believe that the failure to report misconduct should have a clear penalty
 - o Not sure that would impact to increase or decrease reports
- James McKim – psychological testing to help uncover implicit bias
 - o That's something police leaders have asked amongst ourselves. Refer back to Nicole Sawyer testimony
- Director Malachi – would supporting the findings of audit be helpful
 - o Yes
- Director Malachi – would it be helpful to add staffing needs as necessary to audit

- Yes, any recommendation that would support more resources would be helpful
- Director Malachi – capital funds available, would those help you with the data collection
 - Yes
- James McKim – who can authorize the release of funds being held in capital reserve fund for PSTC
 - The Governor

Attorney Robin Melone, President of the New Hampshire Association of Criminal Defense Lawyers (testimony and exhibits on website)

Consider making EES or Laurie List public. If list continues to exist, recommendations:

1. Revision of protocol for determining that an officer's file contains information that must be disclosed to a defendant. This includes the creation of a centralized or single entity to make these determinations in a consistent matter respectful of officer's due process rights.
2. The creation of enforcement mechanisms to compel compliance by individual agencies with maintaining accurate lists.
3. A more streamline protocol for prosecutors at all levels have direct access to the information (not just the List) so they can meet their constitutional obligation to disclose information to defendants.
4. Creation of protocol to allow defense to review the information in an officers file to decide if they will seek permission from the court to use that information publicly at trial.

Constitutional violations apparent due to lack of transparency and availability.

- Ronelle Tsheila – all the info you've provided, how to you receive this info if not disclosed
 - Prosecutors learns of information, files an ex parte motion with information, asks judge to determine whether information has to be disclosed
- Ronelle Tsheila – what happens when cases are dismissed
 - Defendant walked away
- Jane Young – was the officer the sole witness
 - Officer was the responding with a supporting officer responding after
- Joseph Lascaze – what would be exculpatory
 - If officer falsified in statement, or anything that challenges credibility of truthfulness, would be exculpatory
- Joseph Lascaze – protection of dissemination of officer personnel information
 - Yes, many cases where dropped to avoid disclosure. Doesn't believe that's the intention of creation of list. In instance of vacating, if *Brady* material found after conviction, prosecution has duty to disclose.
- Joseph Lascaze – what is an unsound conviction and how does that effect due process
 - When defendant is convicted based on trial that does not allow them to express all rights and could be subject to appeal, that's unsound
- Joseph Lascaze – what information does defense have to impeach a witness

- Rule 609, judge helps decide what is admissible at trial
- Joseph Lascaze – feeling that Laurie List impacts trusts in law enforcement
 - Community members and POC impacts trust
- Julian Jefferson – do you get a sense that elements on all sides that this is not the way to go
 - I do
- Julian Jefferson – if we move in a different direction, what body would control this
 - Singular body, reps from AGO, PSTC, defense, prosecution, uniform process. Standardize process for what disciplinary process looks like, list should be public. If officer engages in misconduct, needs to be available to defense.
- Julian Jefferson – one agency handling all the concerns
 - Yes
- Rogers Johnson – if we have information and make sure to provide to defense, judges decisions wouldn't matter
 - Judges cannot understand full defense to make decision ahead of time.
- Rogers Johnson – if individual put on Laurie List, should they be decertified
 - Yes, but sometimes no.
- Timothy King – probationary period, need clarification
 - Knows that some officers removed from list (upon completion of some conditions, can be removed from list)
- Timothy King – does your org see a need for in camera review
 - We do support review to make sure appropriate people are on the list
- Director Ahni Malachi – if we could get rid of both lists, what do we put in place
 - Officers information provided to defense counsel, then as for leave to use to during trial
- Director Ahni Malachi – if we get rid of the list, how do we clear those people
 - Not confident list is completely accurate
- Eddie Edwards – AGO Public Integrity Unit and PSTC can handle these, communities concerned about integrity of this list specifically POC, more concerned than majority of community
 - 95% of her clients are black, feel more animosity towards officers that misbehave, skeptical of a secret list, wonder if officer that treated them badly is on the list, wonder if they make report will fall on deaf ears
- Ken Norton – recommendations that came out of the Laurie commission
 - There were, commission was 2017 or 2018
 - Jane Young – formed the basis of the current memo
- Director John Scippa – is there an easier way to address this, after swearing officer in, have prosecutor do Laurie disclosure, on cross, defense can ask anything of exculpatory nature
 - Anticipate push back, parties will take issues head on and ask during direct
- Joseph Lascaze – prison population need to be heard, wouldn't officers who have sustained findings on this list still be protected even after due process
 - There are some people on the list who believe they haven't had due process

The Deputy Attorney General requested a motion to adjourn. So moved by Mr. Joseph Lascaze and seconded by Eddie Edwards. A roll call vote was taken on the motion to adjourn and the votes were recorded as follows:

Deputy Attorney General Jane Young – Y
Commissioner Robert Quinn – Y
Director Ahni Malachi – Y
Director John Scippa – Y
Chairman Rogers Johnson – Y
President James McKim – Y
Justice Sawako Gardner – absent
Timothy King – Y
Chief Charlie Dennis – Y
Director Ken Norton – Y
Mr. Joseph Lascaze – Y
Attorney Julian Jefferson – absent
Mr. Eddie Edwards – Y
Ms. Ronelle Tshiela – Y

The meeting was adjourned at 1:36 p.m.