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May 6, 2016

The Honorable William J. Bratton
Police Commissioner of the City of New York
New York City Police Department
One Police Plaza
New York, New York 10038

Re: **Report on the Administrative Prosecution Unit
Fourth Quarter 2015**

Dear Commissioner Bratton:

This report will address the following items: (1) the decision to overturn a guilty verdict issued by an Assistant Deputy Commissioner of Trials; (2) the size of the APU's docket; (3) the retention of cases under Section 2 of the April 2, 2012 Memorandum of Understanding ("MOU"); (4) treatment of APU pleas by the Police Commissioner; (5) dismissal of cases by the APU; and (6) length of time to serve respondents.

Reversing the Guilty Verdict Issued By an Assistant Deputy Commissioner of Trials

On December 15, 2015, the Department informed the Agency that the Police Commissioner would find a respondent not guilty in a case that had gone to trial in July 2014. The draft decision finding the respondent guilty was issued in January 2015.

The draft decision, issued by an Assistant Deputy Commissioner of Trials ("ADCT"), describes the incident. It began when a fifteen-year-old boy was verbally disrespectful towards the respondent's partner. When the respondent's partner attempted to guide the boy back onto the sidewalk, the boy moved the partner's hand away. The respondent then grabbed the boy and held him for between two to three minutes against a wall while the respondent's hand was close to the boy's throat.

While the ADCT credited the officers' version of events about the beginning of the incident, the ADCT found that both the video of the incident and the respondent's memo book contradicted the respondent's testimony about the end of the encounter. First, the respondent claimed that he

held the boy for so long because the boy was struggling in his grasp and he had trouble restraining the boy. The video showed that the boy did not offer any resistance for at least the last minute of the incident. Furthermore, the video showed the respondent's partner standing unconcerned next to the respondent and the boy, without offering any assistance.

Second, although the respondent testified at trial that he would have handcuffed the civilian in similar situations, the respondent claimed that he did not place handcuffs on the boy because he had to respond to a robbery. The last entry in the respondent's memo book for the tour in question, however, involved the incident with the boy and did not memorialize a robbery. The ADCT noted that if the respondent had in fact responded to a robbery, he would have noted it in his memo book.

Inspector Cecil Wade, Commanding Officer of the Police Commissioner's Office, wrote that one of the reasons that the Police Commissioner decided to find the respondent not guilty was because the respondent documented the incident in his memo book and the Stop, Question and Frisk Report. Although this documentation was relied upon to overturn the guilty verdict, it is this very same memo book and the lack of documentation regarding the robbery that was part of the ADCT's rationale as to why the respondent was not credible.

Finally, Patrol Guide Section 203-11 mandates that members of service use "minimum necessary force." The ADCT concluded that since the respondent kept his grip on the boy long after any resistance ended, the force the respondent used was excessive.

The Department's decision to overturn the ADCT's guilty verdict raises concerns for several reasons: (1) it renders a well-reasoned guilty verdict by a Trial Commissioner meaningless, despite the fact that the Trial Commissioner was in the best position to evaluate the witnesses and the evidence introduced at trial; (2) it sends a message to the respondent and other members of the Department that they can use more than the minimum necessary force allowed; (3) it sends a message to the Trial Commissioners that they should not enforce the Patrol Guide's mandate that members of the NYPD should use the minimum necessary force; and (4) it sends a message to the citizens of the City of New York that the Department will not hold officers accountable for misconduct.

The APU's Docket

As seen in the following table, the APU's docket grew 5.4% during the final quarter of 2015. That growth was due to the decrease in the number of cases approved by the Police Commissioner. The APU closed approximately half as many cases in 4Q15 as it did during the other three quarters in 2015. In addition, in 4Q15 the APU closed approximately 45% of the cases it closed in the Fourth Quarter of 2014. At the end of 4Q15, there were 66 pleas and 35 verdicts awaiting approval by the Police Commissioner.

Cases in Open Docket¹					
Period	Start of Quarter	Received During Quarter	Closed During Quarter	End of Quarter	Growth
4 th Quarter 2014 (4Q14)	352	51	53	350	-0.6%
1 st Quarter 2015 (1Q15)	350	43	53	340	-2.9%
2 nd Quarter 2015 (2Q15)	340	63	51	352	3.5%
3 rd Quarter 2015 (3Q15)	352	52	49	355	0.9%
4 th Quarter 2015 (4Q15)	355	48	29	374	5.4%

Retention of Cases Under Section Two of the MOU

Continuing the trend from earlier in 2015, the Department did not retain any cases pursuant to Section Two of the MOU in 4Q15. There is currently one case where the defense has requested that the Police Commissioner exercise his power under Section Two of the MOU. It is the Agency's theory that the reason the Department ceased retaining cases is due to the implementation of the reconsideration policy, which began in 2014.

Treatment of APU Pleas

During 4Q15, the Department finalized and approved three pleas without any changes by the Police Commissioner.

Dismissal of Cases by the APU

When in the course of investigating a case, the APU discovers new evidence that makes it improper to continue to prosecute misconduct against a member of the NYPD, the APU dismisses the charges against that respondent. The APU did not dismiss any cases during 4Q15.

Time to Serve Respondents

As can be seen in the following chart, one area that continues to need improvement is the length of time that DAO takes to serve respondents after the APU files charges with the Charges Unit.

Time To Serve Respondents		
Period	Number of Respondent's Served	Average Length of Time to Serve Respondent
1Q15	42	68
2Q15	43	77
3Q15	60	62
4Q15	42	59

¹Each APU case involves a single respondent.

At the close of 4Q15, there were 61 respondents who had not yet been served with charges, and the average length of time that those cases had been waiting for service was 103 days.

Thank you for your consideration.

Kind regards,

A handwritten signature in black ink, appearing to read "Mina Malik", enclosed within a large, loopy circular flourish.

Mina Malik, Esq.
Executive Director

Cc: Deputy Commissioner Rosemarie Maldonado
Deputy Commissioner Kevin Richardson