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June 23, 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
First Quarter 2016**

Dear Commissioner Bratton:

This report will address the following matters: (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 Two 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 March 18, 2016, the Police Commissioner reversed the decision of an Assistant Deputy Commissioner of Trials ("ADCT") and found a respondent not guilty in a case¹ that had gone to trial in April 2015. The draft decision finding the respondent guilty was issued in July 2015.

The draft decision describes the incident. It began when officers conducting a patrol in a NYCHA building found a firearm in an unlocked closet. One of the officers radioed the Respondent with a description of two men whom the officers had passed when they entered the building but had not seen in control of, or even near, the closet with the firearm. In response, the Respondent, along with his partner, stopped two men fitting the description standing outside of the building. When one member of a separate group of four men began videotaping that

¹ This case involved the Respondent and two co-respondents. The Trial Commissioner found both co-respondents not guilty. The Police Commissioner confirmed one co-respondent's not guilty verdict and changed one co-respondent's verdict to guilty.

encounter, the Respondent pointed his weapon at the four individuals, stopped them, frisked one of them, and was discourteous to them.

The ADCT found that the Respondent merely had a sufficient legal basis to conduct a Level II inquiry of the men that the officer inside the building described. The ADCT held that the Respondent “had an insufficient basis to believe that any of the men had placed the gun in the closet or that any of the men were in possession of a weapon at the time he confronted them. Thus, he possessed insufficient legal authority to forcibly stop and frisk any of the men.” The ADCT further held that the Respondent was not authorized to try and force the group of men to comply with his order to get up against the fence by pointing his firearm at them. The ADCT wrote, “[t]he power to carry and use firearms in the course of public service is an awesome responsibility. Respect for human life requires that, in all cases, firearms be used as a last resort, and then only to protect life.”

Deputy Chief Cecil Wade, Commanding Officer of the Police Commissioner’s Office, wrote that the officer who broadcast that he had found the firearm caused the Respondent to stop the Complainants in this case. He also said that the Respondent only went to the location because of the recovering officer’s call and took police action only because the recovering officer asked him to stop individuals that the recovering officer believed were linked to a found firearm. This rationale overlooks the fact that the Respondent pointed his firearm at four individuals that the recovering officer never described.

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 do not have to use their firearms with proper care and only as a last resort; (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 not abuse their authority to stop and frisk civilians; 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 decreased 7.6% during the first quarter of 2016. That decline was due to the higher number of verdicts and pleas approved by the Police Commissioner and the lower number of cases where a panel of the Board recommended that a member of service receive Charges and Specifications. While the decrease in the APU’s docket is encouraging, it should be noted that, as of June 23, 2016, there were 68 pleas and 41 verdicts awaiting approval by the Police Commissioner. The CCRB looks forward to resolving these 109 cases in a timely manner.

Cases in Open Docket ²					
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	53	350	2.9%
3 rd Quarter 2015 (3Q15)	350	52	50	352	0.9%
4 th Quarter 2015 (4Q15)	352	48	30	370	5.1%
1 st Quarter 2016 (1Q16)	370	24	52	342	-7.6%

Retention of Cases Under Section Two of the MOU

Continuing the trend established in 2015, the Department did not retain any cases pursuant to Section Two of the MOU in 1Q16. 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 1Q16, the Department finalized ten pleas. Seven of those pleas were approved without any changes by the Police Commissioner. In one CCRB case involving three respondents, however, the Police Commissioner set aside the pleas, dismissed the Charges and Specifications against the Respondents, and imposed Formalized Training on the respondents.

This case involved three members of the NYPD who were looking for the subject of an investigation card. Upon arrival at the location, the Respondents spoke to the building superintendent who informed the Respondents that the subject of the investigation card stayed at the residence "from time to time." The Respondents then knocked on the front door yelling "police." When no one answered, they surrounded the residence. One Respondent shined his flashlight through a cracked window of the residence. When he saw someone, he instructed that person to open the door to the apartment. The person complied, told the Respondents his name, and provided identification to the Respondents. Although the Respondents determined that the person, a minor, was not the subject of the investigation card, they entered the apartment anyway.

Once the Respondents entered the apartment, the minor telephoned the Complainant, an adult who resided at the home. The Respondents spoke with the Complainant, who instructed the Respondents not to search her home and to wait until she arrived home before entering her locked room. Once the Complainant arrived at the location, the Respondents told her that they would not leave the apartment until they verified that the subject of the investigation card was not inside the apartment. Under duress, the Complainant opened the locked bedroom door. All

²Each APU case involves a single respondent.

three Respondents then proceeded past the Complainant and entered her room. According to the Complainant, they searched her closet and under her bed.

The Agency's recent report, "*Crossing the Threshold: An Evaluation of Civilian Complaints of Improper Entries and Searches by the NYPD from January 2010 to October 2015*," discussed the issues surrounding members of the NYPD violating the Fourth Amendment and the right of citizens to be secure in their home. The misconduct of the three Respondents in this case is illustrative of the larger problems addressed in the report. To dismiss the Charges & Specifications against these Respondents and impose such a mild penalty will not deter misconduct of this type.

Even more concerning, the Police Commissioner's office has informed the Agency that the Police Commissioner intends to set aside the pleas of an additional 13 respondents and dismiss the Charges and Specifications against them. Of those 13 cases, the Police Commissioner intends to impose a Schedule A Command Discipline against two respondents, Formalized Training against nine respondents, Instructions against one respondent, and no disciplinary action against one respondent.

While it is recognized that the Police Commissioner is the final arbiter regarding disciplinary actions against members of service, it is worth noting that all parties involved in these cases -- the assigned CCRB prosecutors, the Respondents' attorneys, and the Respondents themselves -- had the opportunity to consider the proposed plea agreements, weigh their benefits and disadvantages, and ultimately exercise the right to accept the plea agreements. Rejecting -- and more specifically, dismissing -- the Charges & Specifications in these cases is highly inappropriate when the Respondents admitted wrongdoing, agreed to accept the Charges & Specifications and penalty, and where similarly-situated respondents specifically received Charges & Specifications and similar penalties. I would be remiss if I did not note that rejecting these plea agreements and dismissing the Charges & Specifications, as well as the agreed upon penalties, regrettably calls into question the legitimacy of the process, and the validity of holding members of service accountable for acts of police misconduct.

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 1Q16.

Time to Serve Respondents

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

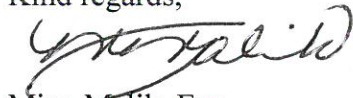
Time To Serve Respondents		
Period	Number of Respondent's Served	Average Length of Time to Serve Respondent
1Q15	42	59
2Q15	43	76
3Q15	59	62
4Q15	39	62
1Q16	26	135

As of June 23, 2016, there were 52 respondents who had not yet been served with charges, and the average length of time that those cases had been waiting for service was 112 days. The Agency has brought this issue to the Department's attention in the past based on the average length of time to serve respondents in Calendar Year 2015 (noted above), which also warrants dire improvement. The CCRB notes and is very concerned that the average length of time to serve respondents has basically doubled from each quarter in CY2015 to CY 2016, and has thus drastically increased to over four months -- 135 days -- during the First Quarter of 2016. This figure is alarming. The Agency also notes that in addition to the significant increase in the length of time to serve respondents, there also has been a considerable decrease in the number of respondents served during the First Quarter of 2016.

We recommend that the Department take immediate action to improve its service-of-charges benchmark to a more reasonable amount of time, especially in light of the ease in which a member of service can be served at her respective command during a regular tour of duty. By improving the average length of time to serve respondents to an average of two weeks, we can ensure that APU prosecutions are being processed in a timelier manner, and by extension, resolved more expeditiously, for both members of the Department and the people of the City of New York.

Thank you for your consideration.

Kind regards,



Mina Malik, Esq.
Executive Director

Cc: Deputy Commissioner Rosemarie Maldonado
Deputy Commissioner Kevin Richardson